

Legal status of a surviving spouse

Abstract

The topic of my dissertation is legal status of a surviving spouse. In the introductory of this thesis I concentrated on the death of a spouse whereby the other spouse becomes the surviving spouse. Within this chapter I took into account substantive-law aspects, as well as procedural-law aspects of legal regulation, that means proving death, including proceedings to determine date of death, but also presumption of death, including declaration of death of a missing person. Then, I tried to point out the issue of determining the date of death relating to law of succession.

Within the second chapter devoted to the status of a surviving spouse in terms of law of succession, I have focused on law of inheritance as such, including legal capacity and incapacity to inherit. Within this topic I tried to analyse the status of the surviving spouse as a statutory heir (his/her position as the heir of the first and second degree), the spouse as an incompetent heir, also as a testamentary heir, and finally as an heir subject to an inheritance contract. I also tried to think about the question why in the law of the Czech Republic the surviving spouse is not considered as the forced heir, while in other jurisdictions a spouse is a forced heir.

Another chapter deals with the status of a surviving spouse in view of community property of spouses. Firstly, it was necessary to define the concept of community property, as well as other property regimes of spouses in the Czech Republic. Within this chapter I focused further to consequences related to the death of one of the spouses, that means when the community property extinct, and settlement of community property, but also to relating specific situations, including inheritance proceedings.

Finally, the last chapter deals with the security of a surviving spouse, in particular taking into account Act No. 89/2012 Sb., the Civil Code, which brought into the legal regulation new types of security, aim of which is to strengthen the position of the surviving spouse.

The purpose of this dissertation was evaluation of current legal regulation dealing with the topic of legal status of a surviving spouse, including definitions of associated pitfalls. In single chapters I have also attempted a brief comparison of the current legislation and the previous one, as well as comparison of Czech legal rules and legislation of other countries.

Key words: spouse, death, heir