

Case brief

Judgement of the highest court 31 Cdo 1038/2009 about community property

1) Parties

Parties in this case are following. The plaintiff is Mrs. M. Š. (spouse after divorce). The defendant is Mr. M. Š. (former husband).

2) The facts of the case

The instant case involves the following circumstances. The plaintiff sued defendant, in order to pay one hundred and forty six thousand Czech crowns, which he owed her after the settling up of community property. This settling up passed through by mediation, in which participants made an agreement. The main problem is that divorced spouses made an agreement up to three years after divorce. Appellant is the Mr. M. Š., which appealed against judgement of the lower court. Mrs. M. Š. appealed against judgement of the appeal court to the highest court.

3) Legal issues involved in the case

The question before the court is whether spouses can make an agreement about settling up of community property up to three years after termination of the community property (divorce). This condition is stated by Czech Civil Code in section one hundred fifty and sub-section four.

4) The ruling of the courts

The lower court ruled that participants can make an agreement about settling up of community property up to three years after divorce if there was commenced trial about settling up of community property in free year period of time after divorce. The lower court applied section one hundred fifty, sub-sections one and four of the Civil Code. In addition issued from judgement of the highest court R 44/2000.

The appeal court reversed the ruling of the first instance. This court ruled that participants can make an agreement about settling up of community property only up to three years after its termination. This ruling backed up on judgement of the highest court 22 Cdo 2574/98. The next reason of its ruling was that this statement directly ensues from section one hundred fifty, sub-section four of the Civil Code.

The highest court ruled in favour of plaintiff and remanded the case back to the appeal court for further proceeding. Its ruling is binding for appeal court. Its exact ruling was that out-of-court settlement about settling up terminated community property can be made even up to three years from termination of the community property, if proceed trial about settling up community property.

5) The reasoning of the highest court

The highest court drew the conclusion that in legal relations must be respected principles of the law. Especially in this case is main principle contract liberty. The highest court pointed out that contract liberty even refers to community property. So in the settling up of the community property must be respected participant's contract liberty and liberty in disposition with property.