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CONDITIONS OF VALIDITY OF THE CESSION AGREEMENT AND THE CLAIM'S TRANSITION IN THE EUROPEAN AND THE LATVIAN CIVIL LAW

Abstract:

For the cession to be in effect the following is required 1) the claim must belong to the assignor, 2) the assignor must have power to act with the claim, 3) the claim under assignment must be defined.

That is why assigning a claim, the principle „nemo plus juris ad alium transferre potest, quam ipse habet” is determinative. There is no rights visibility bearer, whom the beneficiary could trust; then honest claim acquisition from an unauthorized person is excluded.

Considering the first precondition, a question about the future claim admissibility arises (previous or anticipated cession). We should agree with the scientists who admit the possibility of such cession.

The cession agreement is valid only if the assignor has the powers to act with the claim or, which is the same, the rights to act with the claim. The rights to act with the claim in relation to the claim mean the related rights with the nature transforming the action”.

The assignor's power to act with the claim is required at the moment when the cession agreement comes into effect. If the creditor assigns the claim to other person, then he has no rights anymore to act with it: when the claim moves to the assignee, the assignor's action rights become „empty”. After this moment the claim belongs to the assignee, who according to the law receives rights to act with this claim. If the creditor has assigned one and the same claim several times, the assignee who is the first by time receives it.

Like other directions, the cession agreement is subordinated to the principle of determination or speciality (Bestimmtheits- oder Spezialitätsprinzip): the contents of this agreement must make it possible to determine the claim, which belongs to the assignor. Contrariwise, in the obligations agreement, when the claims are the debt subject, its determination also by the family features is allowed.

The assigned claim moves to the assignee „in that volume and upon such conditions, which had existed at the moment of rights transition” or, like the people studying civil law usually say, in the condition, in which it was at this moment.

Keywords:

cession, creditor, debtor, grantor, grantee