

Mandatory rules in the Civil Code

Abstract

The aim of this diploma thesis entitled "Mandatory rules in the Civil Code" is to analyse the mandatory rules in Act No. 89/2012 Coll., the Civil Code (hereinafter "CC"), in terms of their theoretical definition, the way of their identification and occurrence. The work is therefore systematically divided into three parts.

The first part deals with the conceptual and contentual definition of the mandatory rules and defines the differences between the mandatory and non-mandatory rules. Various types of mandatory rules are also discussed, with particular emphasis being placed on analysing the category of so-called relatively mandatory rules. In this part, the author profoundly deals with a division of rules into mandatory and non-mandatory. Moreover, the author discusses the pivotal principle of private law – the principle of autonomy of will. On one hand, this principle mirrors the non-mandatory rules of the Civil Code. On the other hand, it is pointed out to the necessity of limiting the autonomy of the will through the mandatory rules. The second part of the diploma thesis is devoted to the long-standing problem of identifying a mandatory rule. First of all, the legislative techniques used by the legislator for distinguishing mandatory and non-mandatory rules are analysed from the historical and comparative viewpoint. The discussion involves, in particular, the issue of identifying mandatory rules in the Polish Civil Code, with reference to representative decisions of the Supreme Court of Poland. The very core of this part is an analysis of § 1 par. 2 CC, which is in the new Civil Code meant to be a guideline for identification of the mandatory rules. At the end of this part attention is paid to the legal consequences of the deviation from the mandatory rule, especially the relation between § 1 par. 2 CC and the provisions relating to the invalidity of legal acts (especially § 580, § 586 and § 588 CC). The third part focuses on the two pivotal general clauses of the new Civil Code: good morals and public order. Good morals are a well-known concept in Czech civil law, but the connection between good morals and the legal character of the rules is new. On the other hand, public order is a concept that brought the new Civil Code into the Czech civil law. For this reason, the author draws the reader's attention to the French civil law doctrine where public order – as an “*ordre public interne*” – has its origin. The aim of the third part is to demonstratively enumerate the mandatory rules in

the Civil Code with regard to the criteria of good morals and public order, which form the basis for justification of their legal character.

The very core of this diploma thesis is to answer a more general question: how the new Civil Code has changed the way of understanding the mandatory rules and the way of their identification. For this purpose, the author discusses the doctrinal foundations of mandatoriness, analyses older and more recent case law and offers a comparative view of foreign doctrines, especially the Polish one. However, the greatest attention is paid to the valid legal regulation in the Civil Code. It is also pointed out to the problematic aspects of mandatoriness which are not considered uniformly by the doctrine, or the civil doctrine does not deal with them at all.