

# Abstract

## Abuse of Law in the European and Comparative Context

This thesis aims at description and assessment of the principle of abuse of law in the Czech law. Characteristics and consequences of abuse of law are provided and put into context of legal systems and cultures different from the Czech one.

Two major aspects of abuse of law are compared: its origin (i.e. emergence, legal basis in relation to character of given legal culture) and actual characteristics and ramifications of application of abuse of law. Where applicable, the consequences of the doctrine are provided separately for private and public law. In the Czech law, this sorting is more fine. This means that more branches of law are being characterized. European law, on the other hand, is not divided into any formal categories.

The first part provides general theoretical basics. It deals with the way that legal principles work in the legal system and what is their role among other elements of law such as goals and values, and legal norms on the other hand. It provides description of the way that legal principles work during creation and application of law.

The thesis also deals with consequences of application of the principle of abuse. The leading idea of this thesis states that „We must see the abuse of law to know it.“. It is thus very important to show practical examples of application of the principle of abuse of law and analyze the legislation, explanatory statements and commentaries, as well as courts' decision making. The final part of the thesis provides for specific theoretical characteristics of abuse of law. Although the author's effort is to provide as many answers to all questions related to abuse as possible, the outcome is an acknowledgement of a relatively abstract nature of the principle of abuse of law. Then the thesis deals with a difference between private and public law as well as differences between characteristics of abuse of law in these branches. The question why the principle of abuse of law emerged at first in czech private law and yet later transferred to public law is answered.

The result of the thesis is a statement that abuse of law is a fluid concept that is always bound to aims of respective branch of law, and that its characteristics are directly linked to these goals. It is thus kind of “principles' principle” – its character is defined by other general principles that define the branch of law where it emerges. That is why every statutory definition of the principle is very general and its specification is predetermined to be provided by courts and not by a legislator.