

The deficits of contemporary law-making in the Czech Republic

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Abstract: The thesis concerns contemporary law-making process in the Czech Republic in an effort to identify its weak spots, which can lead to low-quality laws being created and passed. Rating the quality of legislative process is considered by the author to be impossible without a proper philosophical and theoretical basis. Such basis is found in the theory of legisprudence, which was conceived by L. Wintgens. Legisprudence is a theory of rational law-making and it presents itself as an alternative to mainstream jurisprudence that is focused mainly on interpreting law. In accordance with legisprudence, the legitimacy of law is dependent on bringing positive outcomes compared to a situation of absence of law. Philosophically, legisprudence is based on social contract as a mandate for the lawmaker to pass laws that only minimally encroach on freedoms.

Principles of legisprudence and the requirements on lawmakers that it formulates, are applied on specific parts of the law-making process in Czech Republic. Specifically, administrative procedure of legislative drafting, legislative technique, explanatory memoranda, regulatory impact assessment, and parliamentary procedure are examined. These parts of the law-making process are analyzed both from the point of view of procedural regulation and based on their practical functioning. The author consults relevant literature, quantitative studies, methodological documents and further sources. They also apply the method of case-study on explanatory memoranda. Based on this empirical research, they identify the deficits of the law-making system.

In the thesis' fourth part – which follows up the theoretical second part and empirical third part – the author considers the relations between legisprudential principles and requirements and the identified deficits. Based on this, they form conclusions about how these principles are observed in practice, and by which deficits they are the most affected.