

[Mandatory rules in international business transactions]

Abstract

Nowadays, international elements often penetrate legal relations, which may interfere with the fundamental values of individual states. The mandatory rules of private international law offer protection against such unwanted interferences. These rules represent social, political and economic organization of the state and they apply always regardless of the applicable law of the legal relationship. Although the purpose of mandatory rules is obvious, there are many questions about their application in practice. This thesis offers an overview of possible answers concerning the definition, naming of this type of rules or determination of their mandatory character. Furthermore, the work categorizes mandatory rules according to their function and origin and explains the difference between mandatory rules in the context of private international law and national law. The thesis describes issues of mandatory rules that protect weaker parties of obligations and their international mandatory character. Example of contradictory opinions is based on case-law of the Court of Justice of the European Union in cases Ingmar and Unamar, which recognizes international mandatory character of these rules, and on German doctrine and case-law, which considers these rules mandatory only at the national level. A part of the thesis deals with mandatory norms of a third state, which is neither a law applicable to the law relationship nor a law of the court in which a proceeding is brought. The conditions necessary for their application, the differences in wording between various legal sources or theories and why these norms should be applied are described in detail. Emphasis is given to the evolution of the European approach concerning these norms and the limitation of the conditions for their application from the Rome Convention on the Law applicable to Contractual Obligations to the European Union Regulation Rome I. The application mandatory rules of third country in practice is illustrated by the case of the Court of Justice of the European Union - Nikiforidis. The final part of the thesis deals with a concept of European mandatory rules. The European mandatory character relates to some of the provisions of European directives that are implemented at the level of Member States. Despite the introduction of the concept by a central judicial body of the European Union - the Court of Justice in the case Ingmar, there is a different understanding of the scope of the mandatory character of these provisions among the Member States and the national case law is split into two streams. These two different streams are presented on the basis of German and Austrian case-law.

Key words: [overriding mandatory provisions, mandatory provisions of third countries, national-european-international mandatory rules]