

Název, abstrakt a klíčová slova v anglickém jazyce

Dispositive legal norms

The thesis deals with the ways of distinguishing between imperative and dispositive norms. The thesis examines the basic ideas prevalent in legal theory concerning dispositive and imperative norms and their connection with private and public law and autonomous and heteronomous law. Furthermore, the thesis has examined the position of autonomy of the will in the system of fundamental principles of private law and its connection to dispositive norms, which provide space for it through autonomous law. On the basis of the analysis of different approaches to the assessment of the nature of legal norms, the thesis then creates its own test of imperativeness. This test of imperativeness is divided into two parts. The first part is based on an analysis of the structural elements of the legal norm, which must be carried out in order to make the initial approach to the character of the norm. The analysis of the structural elements makes it possible to differentiate between some of the imperative and dispositive norms without the need to make any comparison of values. The second part of this test of imperativeness focuses on the teleological and axiological interpretation of the norms and highlights the need to respect the autonomy of the will. It is necessary to find the purpose of the norm and determine what values are protected by it. Where we conclude that the values protected by the norm are values that can be derogated from in certain circumstances, it is then necessary to ensure that the autonomy of the will is protected by conducting a test of proportionality. Furthermore, the thesis examines the positions taken by the case law of the courts on the distinction of the nature of norms. The thesis concludes that the decisions of the courts concerning the imperativeness or dispositivity of norms are very poorly reasoned and the courts arrive at their decisions seemingly arbitrarily and without any opportunity for judicial dialogue. A possible solution to this situation is the universal adoption of the test of imperativeness proposed by the thesis. Its universal adoption would improve the quality of the reasoning of judicial decisions and enable the parties to challenge the courts' views on the basis of clear and predetermined criteria.

Keywords: dispositivity, imperativeness, dispositive and imperative legal norms, test of proportionality, interpretation