

Resumé

Mandatory Rules In International Business

My work researches mandatory rules in international business focussing on EU Member States. In international business, mandatory rules remain binding for the parties in a contractual or non-contractual relationship no matter what they agreed on or what law they chose to rule their relationship. Their main purpose is to protect certain values. Since these rules may impact the parties' original agreement and since there is no reference list to state which rules are mandatory, it is important to understand their purpose and their evolution in order to understand their concept and application. My work provides the reader with a factual basis for such knowledge and also draws the reader's attention to the conflict between a contractual freedom (which is very important for the effective functioning of international business) and the protection of various values by the mandatory rules. I demonstrate how legal certainty can be jeopardized when judicial decisions and legislation deal with this conflict in potentially opposing manners. A common understanding of the importance of legal certainty made EU States agree on a concept of mandatory rules in the European Rome Regulations which will come into force soon. Subsequently, it will be possible to judge whether the solution will have been beneficial or not.

The above will be explained in the following structure. Firstly, I will provide a reader with a theoretical analysis of mandatory rules and I will explain the difference between the mandatory rules and overriding mandatory rules. Then, a historical analysis will follow. In this part of my work, I will analyse the first judicial decisions dealing with this issue in different countries. The first international conventions dealing with mandatory rules will be mentioned. This will be followed by a detail analysis of a very important international legal document, The Rome Convention on the Law Applicable to Contractual Obligations, especially its provisions dealing with mandatory rules. Importance of this document may be seen also in a large number of states for which this Convention became binding. Analysis of judicial decisions that were applying the provisions of the Convention dealing with mandatory rules and historical and theoretical ground will help with a proper interpretation of the particular Convention's provisions.

Such an analysis will help me to explain new legislative solution that (since the 17 th December 2009) replaced the Rome Convention, the Regulation Rome I. Concept of mandatory rules in the Regulation Rome I and Regulation Rome II will be explained. Since the arbitration is a very frequent way of solving disputes arising from international business, I will examine whether arbitrators have a duty to apply or at least to pay attention to mandatory rules. The whole work will be ended by a chapter on the czech judicial decisions dealing with mandatory rules. The main aim of this thesis is to show, how the balance between a protection of individual's freedom and a protection of various values by mandatory rules has been sought. Although, there will never be a final solution in this search, a concept of mandatory rules that will increase legal certainty is very important. The concept of mandatory rules in Regulation Rome I is such.

KLÍČOVÁ SLOVA: KOGENTNÍ NORMY, IMPERATIVNÍ NORMY, NAŘÍZENÍ ŘÍM I, NAŘÍZENÍ ŘÍM II, SMLUVNÍ SVOBODA, PRÁVNÍ JISTOTA
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