

Abstract

In this paper we examine contractual and non-contractual obligations in situations involving a conflict of law. The special emphasis is given to overriding mandatory rules, the importance and impacts of these rules of law on civil and commercial relations with international element. This thesis is composed of four parts and each of them is subdivided into further sections and paragraphs.

In the first part, we introduce the general theory as theoretical base of the subject and we define the key terms. The question concerning the role of Czech courts in the application of foreign law is also mentioned. Subsequently, we analyze national Czech legislation and we focus on the relevant provisions contained in the draft of new Private International Law Act.

By becoming Member State of the European Union in 2004, Czech Republic undertook to accede to the 1980 Rome Convention on the law applicable to contractual obligations. Second chapter is dedicated to this international treaty which has clarified the concept of “mandatory rules” but has also given rise to some qualification problems. We discuss the relationship between overriding mandatory rules and protective mandatory rules (particularly rules of consumer and labour law) and present the main approaches to this problem.

Rome I and Rome II regulations are immediately enforceable instruments of conflict-of-law rules in the area of Private International Law in Europe. They should cover almost the entire area of civil and commercial obligations. Last two chapters of the thesis focus on a detailed presentation of these regulations, highlighting the most important changes in comparison to previous legislation, especially the introduction of the definition of overriding mandatory rules in article 9 of Rome I Regulation. It is also important to point out that the importance of overriding mandatory rules is different in the area of contractual and non-contractual obligations.

The Rome I and Rome II regulations have been subject of huge academic debates and are a result of many compromises made by Member States. Without a doubt, the effect of overriding mandatory rules upon party autonomy have also been argued fiercely. It proves how difficult it is to reach a suitable balance between public interests and individual interests of parties such as predictability and transparency of law. Party autonomy has always been thought as one of the basic principles of international private obligations and freedom to choose the applicable law will be the cornerstones of the system of conflict-of-law rules.

Key terms: conflict of rules, overriding mandatory rules, Rome I Regulation, Rome II Regulation, Rome Convention