

## **How facticity influences normativity: conventions in law**

This thesis is about social practice and its influence on the legal system. We examine the basic philosophical approaches to law and use them to challenge the very existence of conventions in law. After we derive the basic notion of convention we develop the three-step test to guarantee that we are able to identify conventions within the legal system and distinguish them from other categories of legal notions.

The three-step test presented in chapter two is slightly modifying Andrei Mamor's test. The first criterion of the test is the existence of certain social group that maintains in certain situation specific conventional rule. The second criterion is build around the idea that conventions exist when there are people who have certain reasons to comply with this rule. Final criterion represents the existence of an alternative rule that could be upheld by those people as well. Nevertheless, those people rather comply with the conventional rule. If those three criterions are met, it is probable that we are dealing with conventions.

We conclude that the conventions are present within every system of social norms although its importance within various legal cultures and systems varies dramatically. The value of social practice for legal practice shall not be underestimated. Thus, judges and legislators should take conventions into account when shaping the legal system.

In chapter three we use our theoretical foundations to challenge prevailing approach to sources of law within the Czech legal discourse. The prevailing understanding of sources of law is rather restrictive one. Nevertheless, due to numerous rulings of the Czech Constitutional Court and the Supreme Administrative Court, there are foundations for wider recognition of conventions within the Czech legal system. We do vigorously support those efforts and our hope is that other courts will recognize and further develop full potential of conventions in law as well.