Abstract

Non-existence as a new legal institution of Czech law

This paper deals with non-existence as a legal insitution that has been added to the traditional consequence of defective legal acts – invalidity – during the recodification of Czech private law. The aim of this diploma thesis is to comprehensively analyse the legal institution of non-existence.

The paper is divided into eight chapters, the introduction and the conclusion. For the purpose of analysing non-existence comprehensively the paper focuses also on systematic explanation of legal acts themselves.

The first chapter brings the definition of legal act, deals with different ways to enter into legal acts as well as forms of legal acts provided by law or by agreement of contracting parties.

The second chapter focuses on describing the principles of legal act whilst aiming especially on manifestation of will as the essence of legal act. Besides that this chapter deals with creation of legal acts and their legal effects.

The chapter three defines the four essential elements of legal acts – the elements of subject, the elements of will, the elements of manifestation of will and the elements of the object of legal acts.

The fourt chapter continues with description of legal acts that suffer from defect in one or more of their essential elements, i.e. defective legal acts.

The chapter five is focused on legal effects of defective legal acts, distinguishing between the cases in which invalidity or non-existence are consequences of defect in essential elements and the cases in which the law expressly provides that certain legal acts are invalid or non-existent.

The key part of the paper is the sixth chapter which deals with non-existence. The chapter is divided into four subchapters. Subchapter one focuses on describing the notion and the essence of non-existence, while subchapter two focuses on the purpose and the objective of the legal institution. The third subchapter is dedicated to the explanation of general provisions

on non-existence that can be found in § 551 to 554 of the Czech Civil Code. The fourth subchapter deals with non-existence in family law.

The chapter seven aims to explain the difference between non-existence and invalidity of legal acts, therefore it brings a brief description of invalidity, both absolute and relative.

The last chapter is comparative. It focuses on comparison of Czech legislation with related legal systems, specifically with French and German legislation. The goal of the chapter is to find any legal institutions similar to non-existence in these systems and to describe their essence.