

The subject of this diploma thesis is discourse theory and its reflection on the style of judicial decision-making and argumentation. Discourse theory is based on the fundamental assumption that an interaction of more people is needed to achieve right and just knowledge. This is so because an individual is not capable of surmounting her or his own subjective perception of reality. On the contrary, a dialogue enables the articulation of opposing points of view and thus makes it possible to arrive at a more objective and just knowledge.

The discourse theory of law, developed by J. Habermas and primarily by R. Alexy, ranks among the theories of legal argumentation with the dialogical approach to the decision-making as a basic feature. The judge is no longer perceived as an authority that dictates a binding solution of the case to the parties. He or she cooperates with the parties to find and co-create the law to be applied. Discourse theory also stresses the claim to the equal position of parties. According to the contradictory principle, all parties have the same possibility to defend their statements and points of view. The parties and the judge thus create a discourse community in which they argue about the disputed subject and its legal solution.

The ideal of the legal discourse theory is to render decisions which are not binding solely based on the authority of the court, but also manage to convince the addressees of the rightness, rationality and justice of said decision. The pivotal part of this theory is therefore a legal justification which has to be fully transparent, consistent and convincing to be able to satisfy such a claim.

The first part of this diploma thesis presents the legal discourse theory (from the legal as well as from the philosophical point of view) and its relevance in the current legal theory and practice. At the same time it treats the issue of the contradictory principle which is a natural outcome of the discursive demand for the equal discussion of all parties.

The second part concerns the practical comparison of three judicial systems (French, American and Czech) from the standpoint of the argumentation of their supreme Courts and its discursivity. Firstly, the practice of the French *Cour de cassation* is presented with its brief and compact form of the judicial argumentation. Secondly, the fully discursive and transparent style of the *American Supreme Court* is treated. A description of argumentation practice of the three supreme Courts of the Czech Republic forms the last part.

The conclusion offers a brief reflection on the judicial legitimacy which can be significantly strengthened by the quality and transparency of the judicial reasoning.