

Mandatory rules in the Civil Code

Abstract

The diploma thesis entitled "Mandatory rules in the Civil Code" is dedicated to the analysis of mandatory rules in Act No. 89/2012 Coll., the Civil Code.

The aim of this thesis is the theoretical definition of the concept of mandatory and non-mandatory rules and legal rule itself, which is necessary for framing them within the context; the analysis of the valid legislation in the Civil Code as well as the legislation immediately preceding it and a comparison with the current and past recodification efforts in the Slovak Republic. Therefore, the thesis is systematically divided into three parts.

Firstly, the term legal rule is defined in the initial part of the work, the specific features, structure and classification of the legal rules are discussed. Furthermore, it provides a definition of a pair of the terms mandatory and non-mandatory, as it is defined in the Czech Republic, but also abroad as well as a brief historical overview. Finally, the attention is drawn to a specific decision of the Supreme Court of the Czech Republic regarding the nature of the provision regulating the amount of default interests.

In the second part of the work, the currently applicable legislation in the Civil Code is discussed. At this point we can find a description of the legislative technique chosen by the Czech legislator to establish the legal provision regarding mandatory and non-mandatory rules and further the analysis of the newly established criteria including good morals, public order and the rights concerning the status of persons. At the end of the second part, the diploma thesis deals with so called relatively mandatory rules, provisions protecting third parties and the critical feedback to the method of establishing the provisions regarding mandatory rules.

In the last part, the work will focus on a comparative analysis of the recodification processes in Slovakia, where it will set out the way in which the legislators were inspired by the country with shared history of common state (and therefore legislation) of Czechoslovakia. It will evaluate the progress and results of the work of several recodification commissions and within the developed proposal, it will focus on enshrining the mandatory and non-mandatory rules.

Keywords: mandatory rule, non-mandatory rule, recodification