

Legal Formalism

Abstract

Legal formalism is an eternal topic of the modern legal philosophy. However, this does not diminish the relevancy of the topic in the present day. It is because of the fact that as long as law exists, legal formalism will exist too as one of the possible approaches to the issues of it, or respectively as one of the methods of its interpretation. In the present day the topic of legal formalism is even more relevant in the Czech Republic, because so far no larger-scale debates about it have been conducted and the legal system as a whole is still in the process of transformation. The author chooses the American legal realism movement as the starting point and also as an inspirational source to the research of legal formalism and its problems.

The diploma thesis formulates several interconnected research questions. In the first place it tries to define legal formalism and its aspects. As a next step it critically analyzes the phenomena of uncertainty and ambiguity in law, as it is fundamentally connected with the topic of legal formalism. Understanding the essence of it is essential for full understanding of the shortcomings of legal formalism. The thesis then researches the most important question of legal formalism – the question of the interpretation of law. In the scope of this question the thesis critically examines whether formalistic approaches to the issues of law can be successfully applied when construing legal rules and if so, under which circumstances. The thesis also offers a prescriptive argument stating what is the correct way of applying law.

The thesis defines legal formalism as a method of legal interpretation which considers the written text of a legal rule to be the most important factor and which at the same time greatly diminishes or outrightly ignores the importance of relevant factors which cannot be explicitly deduced from legal texts. It can be said that legal formalism tries to deduce the legal rule mechanically and logically from the written legal text. However, as a result of law's inherent uncertainty and ambiguity this conception of law and of its interpretation cannot properly work in hard cases. In contrast, formal approaches to law work and are ideal in routine, soft cases.

The author on the basis of the facts above promulgates the view that the legal system of the Czech Republic which is still in the process of transformation should adopt mild anti-formalistic approach to law in hard cases. One of the aspects of this adoption is transition from stark judicial reasoning to a discursive model of judicial reasoning in which the court openly and rationally presents arguments and reasons which led the court to the judgment.

Keywords: American legal realism, formalism, legal interpretation