

The civil court's duty to instruct in contentious proceedings

Abstract

This rigorous thesis first and foremost seeks to create a complex overview of the civil court's duty to instruct in contentious proceedings from its historical development's viewpoint (first chapter of this rigorous thesis) and from the viewpoint of the legislation currently in force (second chapter of this rigorous thesis); it then aims to sort the overview obtained directly from the statutes in question via induction to categorize it based on several parameters – those parameters being the individual codes of civil proceedings that were historically in force on the territory of today's Czech Republic in the first chapter and the pool of addressees to whom the instructions are given, the individual phases of the proceedings during which the instructions are given, the consequences of failing to adhere to the given instructions and the degree of the dependency of the content of the court's instructions on the specifics of the procedural situation in question (i. e. its adaptability) in its second chapter. The second chapter also contains generalized categories of the individual excesses of the civil courts when it comes to their duty to instruct, those being underinstruction, incorrect instruction and overinstruction respectively.

The third chapter deals with the right to be instructed, first striving to establish whether or not it exists at all due to the fact that the academic publications published up to the date of the publication of this rigorous thesis did not operate with the phenomenon in question in this context. The relationship between the right to be instructed and the right to a fair trial is also explored, as are the means to remedying the violations of the right to be instructed, as is the phenomenon of losing the right to be instructed.

The fourth chapter utilizes the outputs of the previous chapters, especially the second chapter and the third chapter, and on their basis presents three independent *de lege ferenda* thoughts within the overall subject matter of this rigorous thesis; it namely considers the potential of implementing different consequences of incorrect instruction of participants with legal counsel as opposed to participants without it, implementing „Opt-in“ instructions of the defendant in the event of a lawsuit being filed against them as well as establishing the procedural right to forfeit one's right to be instructed.

Keywords: duty to instruct, civil courts, contentious proceedings