

Legal nature of technical regulations and technical standards

Abstract

This thesis deals with the question of the legal nature of technical regulations and technical standards. The position of both types of documents is quite different, because unlike technical standards, technical regulations are legal regulations. In particular, the legal nature of technical standards has changed over time. The aim of this thesis is to define both types of documents with regard to their nature in relation to law and the legal system, as well as to each other.

The thesis is divided, if the introduction and conclusion are not counted, into seven chapters. The first chapter deals with the question of the development of legislation of technical regulations and technical standards. In both cases, past legislation was compared with current legislation. In the case of technical regulations, the issue of non-compliance of this definition with the definition of technical regulations in EU legislation and international treaties is addressed here, which resulted in the need to create a category of technical documents. This chapter also deals with the question of the classification of both types of documents within the legal system of the Czech Republic. The second chapter is devoted to the creation of technical regulations and technical standards. In the case of technical regulations, the thesis focuses on the obligation to provide information, and draws attention to some shortcomings in the legislation in the fulfilment of this obligation. This chapter is followed by the third chapter, which attempts to classify the creation of technical regulations and technical standards under the relevant forms of public administration activities. In the fourth chapter, the thesis addresses the question of whether technical standards are legal regulations, or whether individual rules contained in technical standards can be considered legal norms. This question arises especially in connection with the fact that legal norms relatively often bind technical standards, which thus become part of them. This issue is also addressed with regard to the past, when technical standards were considered legal regulations, and the legislation of the time corresponded to this. However, this chapter also deals with the institution of presumption of conformity, which expresses the relationship between technical standards and technical regulations. The thesis attempts to answer the question of whether the presumption of conformity is rebuttable or irrebuttable, in particular in relation to the regulation of the liability in the supply chain in case a product causes damage to the user. This chapter defines the presumption of conformity in terms of administrative law regulation, where it represents a possible but not mandatory approach. The fifth chapter deals with the issue of the binding nature of technical standards, which are generally non-binding, but there are possibilities to make them binding. Attention is drawn here to problems in both the constitutional and legal level, which are related to the binding of technical

standards in technical regulations. The thesis also highlights significant problems with references to technical standards in technical regulations caused by non-compliance with rules for referencing them. The sixth chapter then deals with the issue of accessibility, especially with regard to technical standards, which, if binding, are made available on the basis of sponsored access. This chapter also addresses the shortcomings of sponsored access, both in relation to technical standards and technical documents, which significantly reduce the possibilities of its use. The final chapter deals with the significance of technical regulations and technical standards in terms of the free movement on the European market.

In order to address the above-mentioned questions, the thesis mainly uses available publications and articles in professional journals, as well as legal regulations, in particular the currently effective Act No. 22/1997 Coll. The individual chapters draw conclusions and, where relevant, make recommendations that could lead to improvements in the use of technical standards and regulations.

Key words: technical regulation, technical standard, legal regulation