

Abstract

Comparative analysis of representation by the attorney in Czech and Spanish civil proceedings

The subject of the diploma thesis is the comparative analysis of representation by the attorney in Czech and Spanish civil proceedings. The first part is dedicated to concepts of civil procedure and its categories. The second part contains a definition of the concept of representation in the civil procedure and its categories in the Czech and the Spanish law. The third part which is crucial for this thesis focus on the role and the position of an attorney in the civil procedure and on the relationship between the attorney and his client. The third part is also dedicated to the attorney and the requirements the attorney has to meet according to the law. In case of the attorney, as a professional in law and as a member of a bar association, and in case of the relationship between attorney and his client - Czech and the Spanish law are very similar to each other. However significant differences exist in roles which attorney holds - precisely the extent of his activity as a representative of the participant. One of differences is an existence of the legal institute of the legal representative in the Spanish procedural law. This legal institute does not exist in the Czech procedural law and its functions belongs to the Court and to the participant itself or to his representative. Another difference lies in the legal obligation of being represented by the attorney. In the Kingdom of Spain this obligation is set down by law in a lot more cases than in the Czech Republic and this regulation could be an inspiration for the Czech law. The last part consist the consideration de lege ferenda and the author focuses on the possibility of the wider obligation to be represented by the attorney. The obligation to be represented by the attorney would be a significant change in the Czech civil proceedings and is included in the White Paper of the Rules of Civil Procedure. The White Paper is a draft of the regulation which could replace Rules of Civil Procedure from 1963. In continuation there are outlined the consequences of the new regulation and the measures which would have to be made with the change of law. One of these measures would be an adoption of the Free Legal Aid Act. One of the considerations de lege ferenda is an evaluation of the regulation of the legal institute of the legal representative in the Czech law. However the legal representative seems to be a spare and expensive legal institute in the Czech law.

Key words: representation – attorney – obligation to be represented