

Right to one's own image

Abstract

The aim of this thesis is to describe the conditions of capturing someone's image and of further portrait use under the law of the Czech Republic. Its content is based on the state of play on legislation after adoption of the new Civil Code (effective since 1 January 2014) but reflects also older literature and especially case law.

This thesis begins with an explanation of the constitutional fundamentals of personality protection, followed by a description of personality protection itself. The substantial part of the thesis focuses on the right to one's own image and to right to portrait. Generally, capturing one's appearance is possible only upon one's prior consent but there exist several exceptions: interest license, official license, scientific license, artistic license and newspaper license. The situation is different with public figures as the level of their privacy protection is lower than the level of privacy protection of "ordinary" people. The judgment of the European Court of Human Rights in the case of *von Hannover v. Germany* in 2004 was ground-breaking, saying that the public has the right to be informed about facts which intrude into the privacy of public figures, as long as these facts are capable of contributing to a debate on matters of public interest in a democratic society.

In the case of a breach of the right to one's own image and to the right to portrait, it is possible to exercise negatory and restitution claims. Apart from these, it is also possible to claim non-material damage, damages and unjust enrichment. After the death of the concerned person, these claims can be exercised by her or his close person. This thesis also deals with the copyright of the portrait author and with its possible clashes with personality protection law.

The thesis further includes lecture on employment law, administrative law (in relation to personal data protection) and criminal law (the crime of defamation) aspects of the right to one's own image. The thesis deals also with the conditions of use of illegally acquired portraits as evidence in civil and criminal proceedings.

The thesis brings on various spots several examples from Germany and in its conclusion introduces the German point of view on this topic from a general perspective.

Key words

right to one's own image, right to portrait, personality protection