

Abstract

The Ph.D. thesis called “Protection of personality in a Czech-German comparison” applies to, as the name indicates, a comparison of legislation examined in two jurisdictions.

The aim of the thesis is certainly not a statement that one of the legislations is "better" than the other, but to determine whether and how the Czech and German legislation differ or how similar are the rules in both countries.

The first part of the thesis is devoted to sources of law and aims to compare the rights of personality in both jurisdictions. In addition to national sources of law (with emphasis on private law) international treaties are mentioned.

With regard to the treaties it can be concluded that although the Czech Republic and Germany are not signatories to the same contracts this difference is not significant for the purposes of the protection of personality. The wide content-overlap and considerable generality of the treaties causes that identical rights are protected in both countries.

In the area of domestic sources of law it can be clearly stated that the German constitution plays more important role in its country than the Czech constitution in the Czech Republic. This is primarily due to the fragmentation of German legislation and the desire to overcome this inconsistency, but also the important position of the German Constitutional Court plays a role.

In terms of sources of law, the fundamental difference between the Czech legal system and the German legal system is the existence of so called general clause that is typical for the first mentioned legal order. The German legal order on the other hand does not know any general clause and the sources of law are divided among several major sources with the main line of the BGB and KUG. In this respect, the German concept seems little bit confusing and the different nature of the sources of law leads to difficulties in interpretation.

On the other hand, the Czech law is, in terms of sources of law, considerably more clearly arranged. But that does not mean that Czech courts grew up on more unambiguous and more logical conclusions than German courts. On the contrary, at the

time of socialism the comprehensive and practical rules did not lead to a fairer application.

The second part of the thesis deals with the issue of general right of a personality and its basic definition using the sources of law referred to in the first part and case law.

One of the possible characteristics is that the general right of a personality is an immaterial right. However, this concept raises several questions in relation to commercial aspects of a personality.

Another question the thesis deals with is the issue of limitation of time in claims concerning infringement in the general right of a personality. A long lasting discussion between two opinion groups in the Czech Republic could be terminated by the latest case law of Czech courts, which opted to the limitation of time of such claims in which a material remedy is required. Otherwise, both jurisdictions correspond to each other in the opinion that general right of the personality as such is not subject to the statute of limitations.

Described is also the question of inheritance and transferability of certain rights related to general right of a personality. Especially in Germany, case law plays a considerable role. The possibility of commercial use of certain rights showed that there are situations when it is not entirely clear who is the person who gives consent to use the rights of a personality. This issue is illustrated on the judgments Marlene Dietrich and Nena.

Both legal systems have to cope with different general questions. For instance the question of subjects to general right of the personality: this issue is indisputable in the Czech Republic, but faces serious disputes concerning the rights of unborn child in Germany.

Another key issue is the posthumous protection of personality. Among others judgments Otto von Bismarck and Mephisto are described. Some ideas of these two judgments that are fundamental for German law are also transferable to the Czech law.

It is stated at the end of the second part of the thesis that the solution of some fundamental issues would be beneficial to both jurisdictions.

The third part deals with general characteristics of rights of a personality; this is also described through its components. As there is no limited number of the components, only the most common of them are mentioned. Besides the most typical

attributes such as life and health, privacy, appearance and name, the right to bio-material self-determination that appears in the literature only in recent years is described.

Although the components of general right of a personality are recognized by experts for a long time, over the years new aspects are emerging. In both countries so called informed consent for medical procedures is still an issue, the same pays for the questions concerning transplantation, artistic freedom in clash with privacy and also protection of personal data seems to be more and more important topic. This thesis reacts on the ruling of the Constitutional Court regarding the collection of data in electronic communications services and the issue of protection of copyright through Digital Rights Management. Our western neighbor has to deal with the same questions too.

This part of the thesis is followed by sections devoted to the general use of rights of a personality. In both countries, the basic possibility how to make use of the rights is consent of the holder of the right. This rule does not apply only in some situations, when so called legal licenses enable the user not to ask for permission. Unlike the Czech legislation that enshrines the legal licenses of several types, German law knows only one license based on KUG.

The following fifth part concerns the protection of the rights and shows different types of claims and remedies, which are in both countries substantively similar. An exception is so called license analogy that does not appear in the legal system of the Czech Republic. In both countries, the types of remedies that a natural person can seek create an illustrative unlimited list.

In the context of available remedies, the arrangement of legal provisions in the field of protection of personality in Germany is to be mentioned once again as it is one of the causes that it remains still questionable on which legal provision certain remedy is based.

It is dealt closer with compensation in money, which is often a subject of discussion. It is especially the question concerning its amount or the eligibility of a specific person to require it.

The sixth chapter provides a short overview how to exercise of the rights.

With regard to the fact that some areas of law are specifically connected with the protection of personality, seventh part of the thesis describes more closely areas such as labor law, news and commercial aspects related to general right of a personality.

Although the commercial exploitation of rights of personality is most often associated with advertising, it is not the only possible case. New trends emerged in the areas such as computer games, merchandising (bags, toys, clothing etc.). A certain trend in the Czech Republic is also a speculative registration of domain names, which can considerably infringe in the rights of a natural person.

At the end of the thesis key issues of both legal systems are briefly summarized. The result is a statement of particular differences that can be basically seen as an inspiration for both jurisdictions.

The PhD. thesis is complemented by a brief picture attachment with examples of advertisement that have become the subject of dispute or a court decision and a very short comment on newly prepared recodification of the Czech private law, especially with respect to the protection of personality.