

COMPARISON OF THE LEGAL ADJUSTMENT OF THE GENERAL PARTNERSHIP IN THE CZECH AND GERMAN LEGAL SYSTEMS

Abstract:

The purpose of my thesis is to analyse the differences and similarities between the general partnership in the Czech and German legal system. The reason for my research is to identify the differences and the similarities between the two companies mentioned above to demonstrate how the laws and legal adjustments in different countries of the European Union are.

The thesis is composed of an introduction, seven chapters and a conclusion, each of them dealing with different aspects of the legal adjustment of the general partnership (hereinafter referred to as “partnership“).

The introduction defines the basic terminology used in the thesis: history, company of private law, legal personality, legal characteristics and definition of the partnership, foundation and formation of the partnership, the rights and duties of the partners and the governing of the partnership.

Chapter One deals with the brief history of the partnership in both countries and describes the similarities and differences between the companies in the past.

Chapter Two examines the common features of the German company of private law which serves as a legal basis for the partnership and the contract of association, the Czech equivalent of the company of private law which is however not considered to be a company, and the partnership in the German and Czech legal systems. The aim of this chapter is to demonstrate how the company of private law influences the partnership in one legal system whereas in the other legal system there is a strict border between the contract of association and the partnership.

Chapter Three studies the differences of the legal personalities in both legal systems. In the Czech legal system, the partnership and its partners are two different persons whereas in the German legal system the partnership has only a partial legal personality and it is not considered to be a legal entity. Subchapter One illustrates the comparison of the legal person and partial legal personality.

Chapter Four investigates the difference and similarity in the legal characteristic and definition of the partnership in both law systems. The subchapter concentrates on the legal position of the partners of the partnerships.

Chapter Five is about the foundation and formation of the partnership that is regarded in a completely different manner in the Czech and in the German legal system. This chapter consists of four parts. Part One focuses on the registration of the partnership into the Company's Register. Part Two deals with the firm of the partnership. Part Three illustrates the comparison of the foundation and formation of the partnership in the compared legal systems and part Four deals with the deficiencies of the partnership.

Chapter Six provides an outline of relevant differences and similarities in the rights and duties of the partners. Part One shows a general exposition of the rights and duties. Part Two compares two important duties: the Czech duty of care of a regular manager and the German duty of loyalty. Both of them are different kinds of due diligence. Part Three deals with the deposit duty, part Four concentrates on the other duties and rights and the last part Five touches the issue of the inheritance of the partnership's share.

Chapter Seven concentrates on the governing and managing of the company. Part One describes some general issues of the company's conduct, part Two illustrates the managing of the company and part Three compares the dealing in the name of the company.

The conclusion drawn in the end of the thesis provides a summary of the results of the previous comparison.

The main aim of the thesis is to prove that my initial hypothesis has been reached. I cannot suggest any legislative changes because the adjustment of the partnership refers to two different independent countries. Both structures have advantages and disadvantages and the only thing I can suggest is to consider some advantages of the German law, for example the legal opinion about the defective company, and implement them into the Czech legal system.