

Comparison of Czech and German legal regulation of appellate review

Abstract

The purpose of the master's thesis is to describe and subsequently compare the appellate review in the civil procedure in the Czech and German legal regulations, namely in the light of the upcoming recodification of civil procedure in the Czech Republic. The appellate review is a remedial measure which aims to review the challenged decision of the appellate court from the legal point of view. The role of the appellate review is to unify case law and to ensure justice in individual cases. While in the Czech Republic the appellate review is conceived as an extraordinary remedial measure, in Germany it is a regular legal remedy. This difference determines most of the elements of the appellate review.

The thesis is composed of an introduction, seven chapters and a conclusion, including the author's *de lege ferenda* suggestions. The chapters first introduce the topic, continue with a description of a particular element of the appellate review in the Czech and German legislation, and conclude with a comparison and evaluation of the author. The subchapters addressing the Czech legal regulation also contains *de lege ferenda* suggestions, particularly with respect to the substantive intent of the Code of Civil Procedure.

Chapter One first defines the models of remedial procedures in general and then describes the system of remedial measures in the two legal systems. This chapter also examines the nature of the appellate review, the extent to which the court of final appeal reviews the contested decision, and the specific decisions made by the courts in relation to the appellate review filed. Chapter Two deals with the admissibility of the appellate review. It sets out the admissibility criteria and the way in which the court deciding on admissibility is selected. The subchapter on German legal regulation also covers the special institute of the leapfrog appellate review and the complaint against non-admission. Chapter Three gives a description of the grounds of the appellate review in both legal systems and the court's obligation to adhere to the grounds of the appellate review. In Chapter Four the author looks into the oral hearing before the court of final appeal and its contribution to the appellate review procedure. She describes whether and, if so, how often an oral hearing is ordered by the court of final appeal in the legal systems compared. Chapter Five focuses on legal regulation of time limits in the appellate review procedure and on the method of their calculation. Chapter Six elaborates on the representation before the court of final appeal, especially the mandatory representation by an attorney-at-law in the appellate review procedure. Chapter Seven outlines the way of decision-making in the case of intended overruling of the panel of the court of final appeal and the method of publication of the court of final appeal's decisions.

In the conclusion, the author outlines a legal regulation that in her view would be optimal, based on the conducted comparison of the two legal systems in terms of core elements covered by the chapters.

Klíčová slova: appellate review, remedial measures, civil procedure