

The possibility of using law & economics as a tool for application and interpretation in the field of right to privacy and personality rights

Abstract

This thesis is focused on the area of economic analysis of law (law & economics) and it is based on an assumption that law & economics is a suitable addition to other methods of interpretation, especially as a part of purposive interpretation. We apply economic analysis to the field of privacy and personality rights, especially intrusion into privacy by libel, or slander. In other words, we use law & economics to help solve conflict between privacy rights and free speech rights.

The thesis has six main parts. In introduction (part 1) we discuss reasons for the choice of this topic and formulate hypothesis, which is: (i) that law & economics can help distinguish which situations are covered by privacy rights protections, (ii) that using law & economics one can value privacy and therefore estimate damages for infringement of privacy rights and (iii) law & economics is capable of estimating pecuniary damages for infringement of personality rights.

In the second part we focus on history of privacy rights in the United States from its humble beginnings in an academic paper by Samuel Warren and Louis Brandeis to its modern iterations, such as reproductive rights etc. Next, we discuss privacy laws in Europe, including case law of the European Court of Human Rights. We also briefly introduce current Czech personality rights laws and case law of the Czech Constitutional court.

Third part discusses the issue of legal interpretation, first the interpretation in general and subsequently we focus on purposive interpretation of law. In chapter 3.3. we briefly describe how to connect economic analysis of the law to purposive interpretation.

Finally, in the fourth part we briefly introduce microeconomic concepts that we use as a basis in our analysis. This was deemed important to clarify as there are many approaches to law & economics. In chapter 4.2. we apply these basic economic principles on privacy rights, especially the valuation of privacy using law & economics concepts such as Hand rule and WTA or WTP analysis of preferences. In

chapter 4.3. we design a model of computing damages for personality rights infringements.

In discussion (part 5) we evaluate practical possibilities to apply our findings from previous chapters and also their compatibility with current applicable law. In the conclusion, we evaluate whether our initial hypothesis was confirmed.

Keywords:

Privacy, personality rights, law & economics,