

Comparative advertisement – development of its regulation in Czech law

In my diploma thesis I deal with comparative advertising in the Czech legal system. Its main goal is to monitor the development of legal regulation of this phenomenon in historical periods, with an emphasis on private law and its changes after harmonization amendment no. 370/2000 Coll.

The work is divided into the introduction, seven chapters, which are further divided into subsections, and the conclusion.

Following the introduction, there are three chapters, which are dealing with general topics that are connected with main theme of my thesis. The first chapter briefly allude to regulation of competition, including system of unfair competition with accentuation of the general clause. Next chapter is focused on the general term of advertising with the mention of its self-regulation, which serves as an alternative to legislation. In the third chapter is specification of theoretical frame of comparative advertising, including the list of different types of comparative advertising, which is followed by summary of different legal approaches to advertising comparison.

Fourth chapter contains historical overview of legal regulation of comparative advertising in the Czech legal system covering the period from the First Republic to the harmonization amendment to the Commercial Code. In this period, comparative advertising was judged primarily by the general clause and the approach to it was formed exclusively by case-law. This chapter chronologically analyzes the period from First Republic Law against Unfair Competition and the related case-law, through the deformation of competition during the era of socialist legislation, all the way to the return of free competition, which led into the adoption of the Commercial Code. Above that, there is summary of legislation in the legal systems of other European states, which outlines the legal situation across the Europe before the start of harmonization process.

Next chapter is dedicated to the development of European Law, which significantly affected regulation in the Czech legal system, and then there is also short mention about the role of the Court of Justice of the European Union.

The key part of my thesis lies in Chapter Six, in which I analyze comparison between the legislation in Commercial Code and new Civil Code. In this chapter are analyzed various issues, that are connected to legislation in compared Codes with reference to the EU

Directive 2006/114/EC. Among those issues are for example general admissibility of comparative advertising, its definition or the individual conditions for admissibility. This analysis includes relevant European and Czech case-law.

In the seventh chapter are briefly presented facts about the public law legislation concerning comparative advertising and the whole work is finished with the final conclusion.