

Abstract

The theme of rights to protection of personality of natural person as individuality and sovereign is not only nowadays really actual topic reflecting gradual changes of social and political development of the society. Czech Republic proceeds due to influence of changes of political environment the journey of transformation of social and economical relationships. The rights to the protection of personal rights pertains to every natural person from internal nature of her existence and consequently they have important position in the system of civil law which guarantees sufficient and effective protection by means of protecting instruments, in particular by means of judicial protection. Nevertheless it is necessary to enunciate that social relationships are various so far, that frequently it is not in power of legislator to involve all human acting by enumerative legal regulation. This imperfection may of course mean gaps in legislation, and in addition legal rules are often ambiguous and systematically unelaborated. Writing of this dissertation thesis illuminates the fact that the field of rights to protection of personality which comprehends wide extent, because human being itself as natural person, who is entitled to these rights, is elementary object of inexhaustible human research for millenniums, and therefore it is not possible to globally describe this problematic in the limited framework of dissertation thesis.

Accordingly I consider substantial matters of this problematic in this thesis. Initially it was necessary to concentrate on general theoretical questions of rights to protection of personality and determinate some concepts, particularly concept of person and concept of human personality. With regard to the tradition and sense of rights to protection of personality I devoted myself to their regulation from the view of general and Czech historical development as well. Significant development of international legal regulations of these rights even in the individual regulations of particular states could be observed naturally after Second World War. I was concerned with rights to protection of personality in the Anglo-American system of law, particularly in the United Kingdom of Great Britain and Northern Ireland and in the United States of America, and then in the continental system of law, in France and Germany. Fundamental part of my thesis focuses on the Czech legal regulation of rights to the protection of personality of human being, their regulation in the sphere of constitutional law and especially in the sphere of civil law

and other branches of law complementing comprehensiveness of legal regulation of this topic.

The analysis of general rights to the protection of personal rights was written in objective as well as in subjective sense, while other substantial part of the thesis was devoted to the subjects entitled to these rights. Notwithstanding these rights belong to the most important rights of human being as sovereign in general and state guarantees their protection and full-valued development, there are different situations when it is necessary to restrict the rights to the protection of personal rights in democratic states. Czech legal system determinates restrictions of these rights *secundum legem* only accordingly to legally defined terms; the restrictions of rights to the protection of personal rights are possible only on the basis of consent such as free act and deed of human being and on the basis of civil code *de lege lata* and other legal enactments. The next chapter deals with the object of general rights to the protection of personal rights. Phrasing § 11 civil code determines that partial values of rights of personality of human being are stated in demonstrative way by means of general clause, nevertheless it must be considered, that object of rights to the protection of personal rights is not exhausted by far, it is not *numerus clausus*. With regard to the extent of this subject I was concerned with selected values of personality of human being in my next interpretation, particularly body integrity, right to honor and dignity of human person, right to privacy and finally right to name. Rights to the protection of personality as subjective rights are, in case of unlawful interference in the form of threatening or breaching of these rights, protected by general and specific remedies. Whereas the merits of this protection is consisted in judicial protection, consequently man may seek protection of his rights at the independent court by means of *actio negatoria*, *actio restitutio in integrum* and satisfactory action, due which entitlements of moral and financial satisfaction could be claimed. Just the ascertainment of the amount of financial satisfaction for unlawful interference with the rights of human being is matter of judicial discretion depending on the character and circumstances of each case and *de lege ferenda* it is appropriate to solve duplicity of claims of damage for bodily harm by title of compensation of damage and harm of personality of human being. Truly recommended it is better to leave contemporary conception of damage *de lege lata* and accordingly with the judgment of the Constitutional Court of the Czech Republic dated 4 May 2005, Pl. ÚS 16/04, where the Constitutional Court emphasizes towards to the legislator, that it is proper to leave contemporary conception of damage as harm to property and consider damage as harm to the body integrity and mental integrity of injured human being. According to contemporary principles of European Tort Law it is necessary to

comprehend damage as harm to property or non proprietary harm to interest protected by law. *De lege lata* the relationship between § 444 sub. 3 and § 13 civil code appears to be disputable, it means compensation of specific persons for death of next of kin and compensation of non proprietary harm for the interference with the right to privacy and its sphere of family life. I afford to refer to fragmentariness of regulation of right to privacy in the Charter of Rights and Freedoms with this connection.¹ The authors of prepared new private codex shall be highlighted *inter alia* for reincorporating family law in this codex and for explicit regulating of right to privacy in § 87 whereas the general prohibition of interferences with the privacy of human being is regulated without consent of this human being or without legal ground by means of demonstrative general clause § 87. The authors of new codex focused on the matter which is under debate. The matter concerning (non)limitation period of financial satisfaction of non proprietary harm in case of unlawful interference with the personality of human being, *de lege ferenda* accordingly with the hereinbefore mentioned principles of European Tort Law. These principles understand non proprietary harm as kind of damage, therefore the entitlement to financial satisfaction from *obligatio ex delicto* shall be subjected to time limitation.

Lastly may be stated that legal regulation of general rights to the protection of personal rights on the ground of civil code is relatively modest, nevertheless improved by ECHR influenced judicature of the Constitutional Court of the Czech Republic as well as by the Supreme Court of the Czech Republic. I am persuaded that regarding to the delicate, widely discussed and extensive theme of rights to the protection of personal rights, the conflicts of ethical, religious and legal questions may happen and we may expect lot of interesting disputes due to newly prepared private codex, development of not only communication technologies but with regard to variability of human life as well.

¹ Art. 7, 10 sub. 2 and 3, Art. 12, 13 and Art. 32 sub.. 1 of the Charter.