



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Introduction to the Czech civil Law in broader context

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Zápatí prezentace



Introduction to the course I

- Aim of the course:
 - Description of history, contemporary situation and its crucial crossroads and future development of Czech civil law
- Methods of course:
 - Genetic-procedural (there is very rich Czech history)
 - Comparison (with national laws, European law..)
 - Description
 - Generalization
- Content of course
 - *See info of garant of the course/on IS*



Introduction to the course II

Basic sources and literature:

- Textbook „Introduction..“ - to buy in the bookshop or to borrow from the library or to copy in the library (+ on IS)

Sources of existing (actual) Czech Private Law

- Czech Civil Code (eng. translation of Ministry of Justice) - on IS
- Business Corporations Act (eng. translation) - on IS
- Act governing Private International Law (eng. translation) - on IS
- Private Law Reform. Lavický, Hurdík et al., Brno: MU, 2014
- Hurdík-Fiala: Contracts. Czech Republic. IEL. Kluwer Int. (upgrade 2020)
<http://www.kluwerlawonline.com/index.php?area=Looseleafs>
- Hurdík-Dobešová: Torts. Czech Republic. IEL. Kluwer Int. 2017 (prepared upgrade 2020)



Introduction to the course III

Completing literature about **former** Czech Private Law (not obligatory):

- Former Czech civil Code (eng.) - on IS or to borrow or to copy
- Former Czech commercial Code (eng.) - on IS or to borrow or to copy
- Hurdík-Fiala: Contracts. Czech Republic. IEL. Kluwer Int. 2009 - upgrade 2011 - on IS
- Hurdík-Polčák-Smejkalová: Czech Law in European regulatory Context, Wien-München 2009
- Poplawski-Šramková: Legal sanctions..Brno 2008



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Introduction..

Czech civil Law



Czech civil Law I - from past to future

- 1811 - Austrian General Civil Code/Allgemeines bürgerliches Gesetzbuch
- 1937 – project of Czechoslovak Civil Code (1939 after occupation of Czech Republic canceled)
- 1950 - 1st Czechoslovak Civil Code (141/1950 Sb.- Coll.)
- 1964 - „socialist“ Czechoslovak Civil Code (40/1964 Coll.)-was changed by Act 509/1991 Coll.
- 1964-1991 - 2 national (Czechoslovak) civil Codes were parallel (side by side) in force: it was - next to Civil Code - the Code of International Commerce (101/1963 Coll.)



Czech civil Law I - from past to future II (history of legislative attempts till existing recodification)

- 1990 „federal“ project of new C.c.
- 1996 „Zoulík’s project“ of new C.c.
- from 2000 - started project of new Czech Civil Code
- 2012 – new Civil Code was accepted in Parliament and signed by the President of Czech Republic (20.2.2012)
- 23. 2. 2012 new C.c. was published in Coll.
- from 1.1.2014 new Civil Code in force
- Accepted and published also complementary acts (mainly civil procedure)



Czech civil Law II - The system of former private Law (by 31.12. 2013)

- 1811 - private Law = civil Law
- In the course of 19th century, and especially in the 2nd half of the 20th century the Labor Law, Family Law and Commercial Law as the separated branches of private law were established
- By 31. 12. 2013, the parts of Czech private Law were:
 - Civil law (Civil Code - Act 40/1964 Sb., Author's Act 121/2000)
 - Commercial Law (Commercial Code - Act 513/1991 Sb.)
 - Family Law (Family Act - Act 94/1963 Sb.)
 - Labour Law (Labour Code - Act 262/2006 Sb.)



Czech civil Law II - System of new/existing/in force private Law

Recodification of Czech civil law changed the entire system of Czech private Law:

- The parts of Civil Code are:
 - Family Law (part two of C.c.),
 - partially Labour Law: legal capacity to be the part of labour juridical relations, legal reference (link) to labour contract in Labour Code,
 - main part of Commercial Law - commercial contract incorp. into the C.c. (excl. Act of commercial Corporations)



Czech civil Law II - System of new/existing/in force private Law II

- 2 essential parts of the system of private law:
 - General private law (C.c.)
 - Special private law (part 2 of C.c. - family; commercial law (*pro parte* in C.c., *pro parte* in special acts); consumers protection law (*pro parte* in C.c., *pro parte* in special acts))
 - Criterion to distinguish: method („technology“) of legal regulation



Czech civil Law III - System of new private Law

- The integral parts of Civil Code are not:
 - Labour Law (Act No 262/2006 Coll., Labour Code) : Systemic relation between C.c. and L.c.: general regulation - special regulation
 - The law of commercial corporations (Act. No 90/2012 Coll.)
 - The international private Law (Act. No 91/2012 Coll.)



Current situation of Czech civil law I

- The new Czech Civil Code has been signed by President (20th February 2012)
- The text of C.C. was published in the Collection of Laws on 23th March 2012, No 89/2012 Coll.
- New Czech Civil Code came in force on 1st January 2014
- The base of recodification of Czech Private Law is composed of 3 legal acts:
 - Civil Code (89/2012 Sb.-Coll.)
 - Act of commercial Corporations (90/2012 Coll.)
 - International private law Act (91/2012 Coll.)



Current situation of Czech civil law II

- Code civil No 89/2012 Coll: contents general private law
- Special private law:
 - Labour Law (Act. No. 262/2006 Coll. - Labour Code)
 - Commercial law (esp. Act. No. 90/2012 Coll. - Commercial corporations)
 - International Private Law (esp. Act. No. 91/2012 Coll.)
 - „European“ private law (EU PL in broader sense)



Published complementary legal acts to C.c.

- 1) Act 256/2013 Sb./Coll., **land registry act**
- 2) Act 257/2013 Sb., **changing some acts concerning l.r.a.**
- 3) Act 292/2013 Sb., **special civil procedures**
- 3) Act 293/2013 Sb., **changing civil procedure order**
- 4) Act 294/2013 Sb., **changing bankruptcy act**
- 5) Act 303/2013 Sb., **changing some legal acts concerned by the recodification of Private Law**
- 6) Act 304/2013 Sb., **concerning legal regulation of public registries of legal and natural persons**



Complementary acts prepared/refused

Proposal of legal Act concerning **Status of public utility**

refused by Senat 13th September 2013

subsequently: the term Status of public utility was canceled and „forgotten“



Czech civil law III - New Czech Civil Code

Structure of the text:

- 5 parties:
- Part One : General Part
- Part Two: Family Law
- Part Three: Absolute property Rights
(incl. Inheritance)
- Part Four: Relative property Rights (Contract and quasi contract Law; Tort Law; unjust enrichment)
- Part Five: Final, Transitory and Repealing Provisions
3.080 paragraphs (ABGB 1502; BGB 2385;
Hungarian CC cca 1500; prepared Slovak CC 880..)



The main attributes of conception of new civil Code I

- 1) **Universal Code of private Law** - integration of entire private Law
- 2) C.c. proclaim itself as **charter of private fundamental rights** - C.c. lost that function - Constitution; now the goal of C.c. to apply the constitutional rights—horizontal impact of f.r.
- 3) Based on the doctrine of natural law - applied mainly – juridical conception of human being (§ 19) and principles of private law (§ 3). Danger – implementation of principles of natural law leads to the destruction of grounds of natural law.
- 4) Based on individual position (the social dimension is missing)
- 5) **Discontinuity/breach** of existing development



The main attributes of new civil Code II

- 6) Basic institutes **family, property (ownership) and contract (responsibility?)**.
- 7) Deeper „privatization“: mainly contract relations (more autonomy, more non-mandatory rules, more respect to the will - last will/testament..). Contrary - EU law
- 8) Between tradition and modernization/upgrade of Civil Law regulation, the legislator accepted the traditional concept (ABGB, Draft of Czechoslovak Civil Code 1937) and refused the future development
- 9) Denied the function of Code civil as the tool of the control of social relations.



The main attributes of Czech civil Code III

Motto: F.v.Zeiller: Code should be „*kurz, klar, abstrakt*“ (short, clear, abstract) M.T.: „*buta ember*“

- 1) Rule: the same word - the same meaning/the different word - the different meaning
- 2) Wide range of different terms of the same word meaning (e.g. equity principles)
- 3) Many terms of very near word meaning (groups of principles)
- 4) Many problems with functional/working implementation of the term into context (The effect of judgement on the juridical act: once validity, another time formation of juridical act, another time effectiveness of j.a. § 33 Al.1, § 46 Al.2, § 50)



The main attributes of new civil Code IV

- 5) The trouble in translation the terms (how to translate *Good Faith and Fair Dealing* of DCFR to Czech C.C.?)
- 6) Attention to details of regulation - C.C. doesn't work (example: 8 steps to determine a person who can/shall bury the dead person §114 odst.1, 9 steps to determining the authorized person to agree with the intervention into the human integrity (§ 97 odst. 1))
- 7) Recurrent terms in modified versions (exam.: principles)
- 8) Former, extincted social relations (výměnek- exchange? § 2707n.)
- 9) A lot of presumptions and fictions - Civil Law resignes from the aim to be true image of social life
- 10) What is contained in code has the same importance as what there misses (equality before the law, of opportunities, solidarity, juridical relation as the paradigm of all legal/juridical constructions..)



Current development of the Civil law legislation

- The recodification is in force 6 years: first experiences
- There exist deep different expert opinions concerning basic concept of private law reform
- One of the strong criticisers - dr. Robert Pelikán - from 2015 till 2018 the Minister of Justice
- Legislative activities of Ministry of Justice follow the large changes of new C.c.
- Main part of scholars recommend to wait
- Most important change of C.c.: Act No 460/2016 Sb.(Coll.)