

AMERICAN JUDICIAL SYSTEM
MEETS THE CZECH REPUBLIC'S
LEGAL SYSTEM: HOW THE "RULE
OF LAW" PROMOTES FAIRNESS

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Masaryk University

Instructors

Peter Kolker – Attorney at Law since 1966, practicing in Washington, D.C., with the law firm of Zuckerman Spaeder, LLP

- 45 Years' Experience with criminal and civil litigation, arbitration and mediation
- Including trials, appeals, arbitration hearings, private mediations in the U.S. and some in Europe (Germany, Sweden, the U.K.)

Special Guest: U.S. Ambassador Norman Eisen, a colleague, then member of White House Staff of President Obama, and in 2011, Ambassador to C.R.

Overview of the Course

Topics we will cover:

A. U.S. Dispute Resolution Methods

- Fundamentals of U.S. Judicial System: how it works; how it affects business outside of the U.S. and how it contrasts with Czech Republic system.
- Why U.S. laws can operate beyond the U.S.
- How disputes are resolved in the U.S. – federal and state court systems; and out-of-court dispute resolution through arbitration and mediation.
- Advantages and disadvantages of each method: what would be best for a Czech business problem?

Overview of the Course

- B. Transparency in Government, Corporations and Non-Government Organizations to assure fairness**
- What good is any dispute resolution system if corruption destroys fairness?
 - How does the U.S. system assure (or try to assure) fairness?
 - What measures can assure that the judges, arbitrators, mediators and public prosecutors perform their functions without improper influence?
 - What role is there for private citizens who become aware of corruption, and what legal procedures are available in the U.S. for exposing corruption or unfairness?

Overview of the Course

We will discuss:

- The role of a free press in exposing corruption.
- Limitations on election financing of candidates.
- The purpose of a “Freedom of Information Act” to bring transparency to decision making.
- The role of the “whistle blower” – what is it and is it good, bad or both?



Overview of the Course

U.S. Ambassador Eisen – How can we improve the Rule of Law and assure ethical performance by business people, lawyers, judges and prosecutors?

- Role of the Public, the Press and of Government Officials in achieving these goals.
- Ambassador Eisen's experience as Ethics Officer in President Obama's White House.

Overview of the Course

Expectations for the Class:

- My hope is for class participation: as much as you are comfortable with – the more, the better.
- Between Class II and Class III, a “Problem Set” will be provided: outlining a dispute between a Czech Company and a U.S. Company.
- We will ask for two groups to be formed to give us their ideas of the best way to resolve the dispute.
- There will be one final paper (approx. 10 pages) at the end of the class, which I will read and return with comments.

U.S. Meets the Czech Republic

Common types of disputes you will likely encounter

A. Civil Disputes

- What do we mean by “civil dispute”?
- Dispute between companies or individuals.



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Common types of civil disputes:

- **Contracts:** your company agrees with another to ship products but the products don't arrive on time; or they are not as expected; or not enough of them. As a result, you or the buyer loses money.
- **Product Liability:** the product you purchased explodes and causes injury.
- **Personal Injury:** during a business trip to the U.S., you are injured in a car accident.

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B. Common Types of Criminal Disputes we will consider

- **Payment to a Government Official** - to get or keep a contract with the government, a payment is made to a government official.
 - could be a crime in the U.S. as well as in the C.R., if done for a U.S. company, even if the payment happened in the C.R.
- **Payment to a U.S. Government Official** - to influence his conduct: such as, payments to legislators:
 - Judges
 - Prosecutors
- **Agreement on Prices or on Bids** - setting a price among competitors - could be a crime in the U.S. as well as in the C. R. if done for a U.S. company, even if the agreement was made in the C.R., but affected US market.

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- More about the Common Civil Disputes –
 1. Contract Dispute
 - Czech company does business with a U.S. company and something goes wrong with the performance of the contract.



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- 2. **Product Liability**: the product you purchased is defective and causes injury.



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- **3. Personal Injury:** During a business trip to the U.S., you are injured in a car accident.



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- ▣ If these civil disputes are going to be resolved in the U.S., they will be resolved most often through litigation in the U.S. Court system.
 - NOTE: Some of the disputes just mentioned – Contract disputes, for example – could be resolved in the Czech Republic or in the U.S. Could be agreed to by both sides
 - OTHER disputes where the result occurs in the U.S. will be decided in the U.S. by U.S. courts.
 - There are other methods of resolution (arbitration and mediation) which we will discuss.

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- ▣ Criminal Disputes where the U.S. is involved but the action takes place outside the U.S.
 - Can they be decided in a U.S. Court ?
 - Can they be decided in the court of another country?
 - Can a citizen from the Czech Republic be forced to come to the U.S. to answer to criminal charges?



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Overview of the U.S. legal system:

- A “federal” system:
 - U.S. Government (“federal” government)
 - 50 state governments
 - Laws of both the federal and state governments can apply at the same time

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Federal Supremacy V

Who Can Do What (Continued)

<u>Subject Matter</u>	<u>Federal</u>	<u>States</u>	<u>Both</u>
Federal elections		◀	
Tax			◀
Local government		◀	
Courts			◀
Borrow and spend			◀
Print money	◀		
Military	◀		
Police power			◀

U.S. Meets the Czech Republic

Overview of the U.S. legal system:

- Laws include:
 - Statutes (enacted laws)
 - Court decisions (precedent: where a decision in one case controls the outcome of the next, similar case)
 - Administrative rulings (agencies set detailed rules that apply the law)
 - Judicial interpretations of the law are important

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- ▣ Relation between U.S. Federal Government and State Governments
 - Federal Government is “supreme” – more important than the state governments.

- FEDERAL:



- STATE:

- ▣

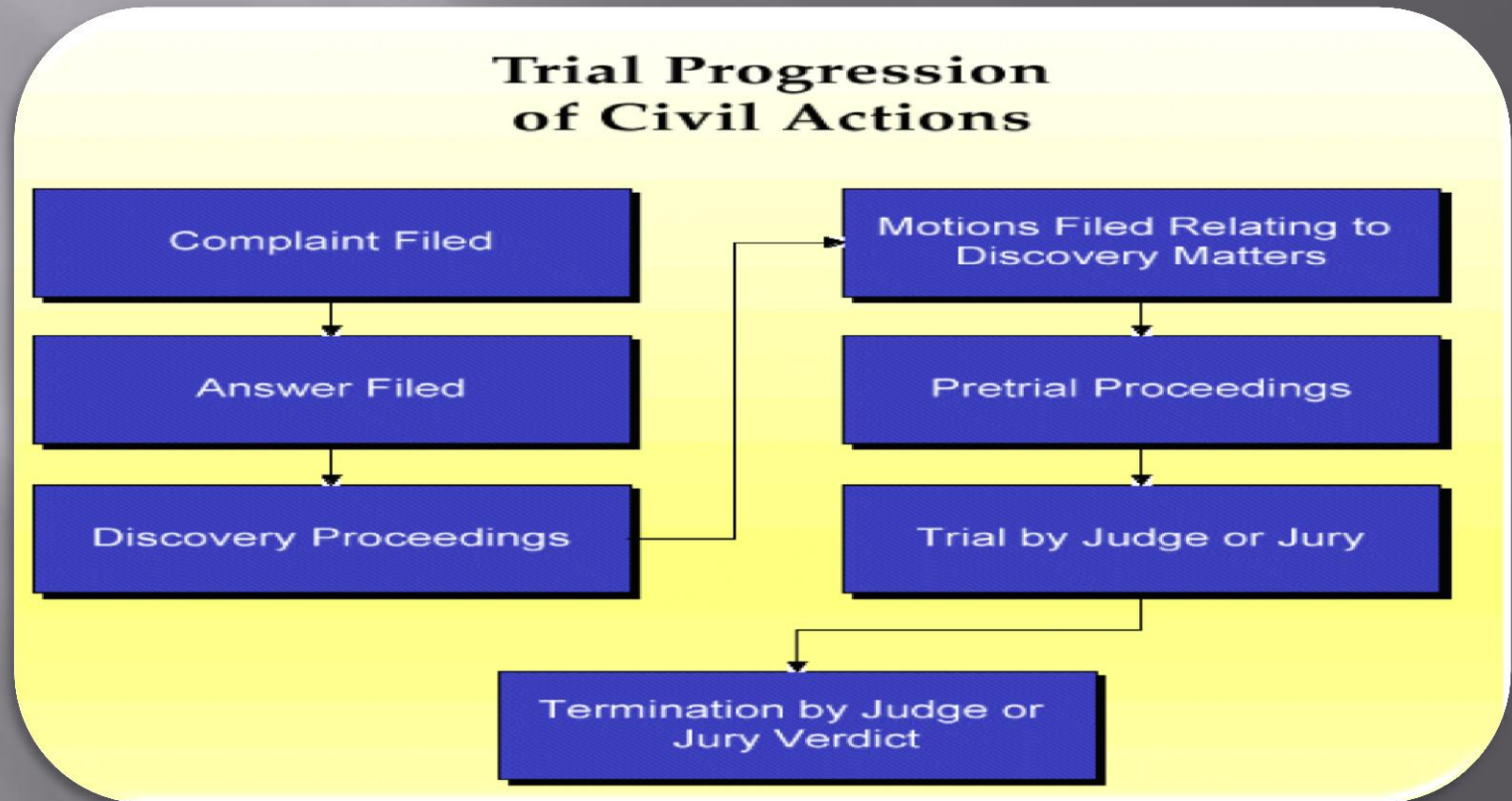


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- ❑ Most important decisions of state courts can be reviewed by the U.S. Supreme Court.
- ❑ Decisions of U.S. Supreme Court are final and cannot be further reviewed.
- ❑ Decisions of U.S. Supreme Court can over-rule (reverse) the decision of a state court.
- ❑ If U.S. (federal) laws conflict with State laws, U.S. laws control.

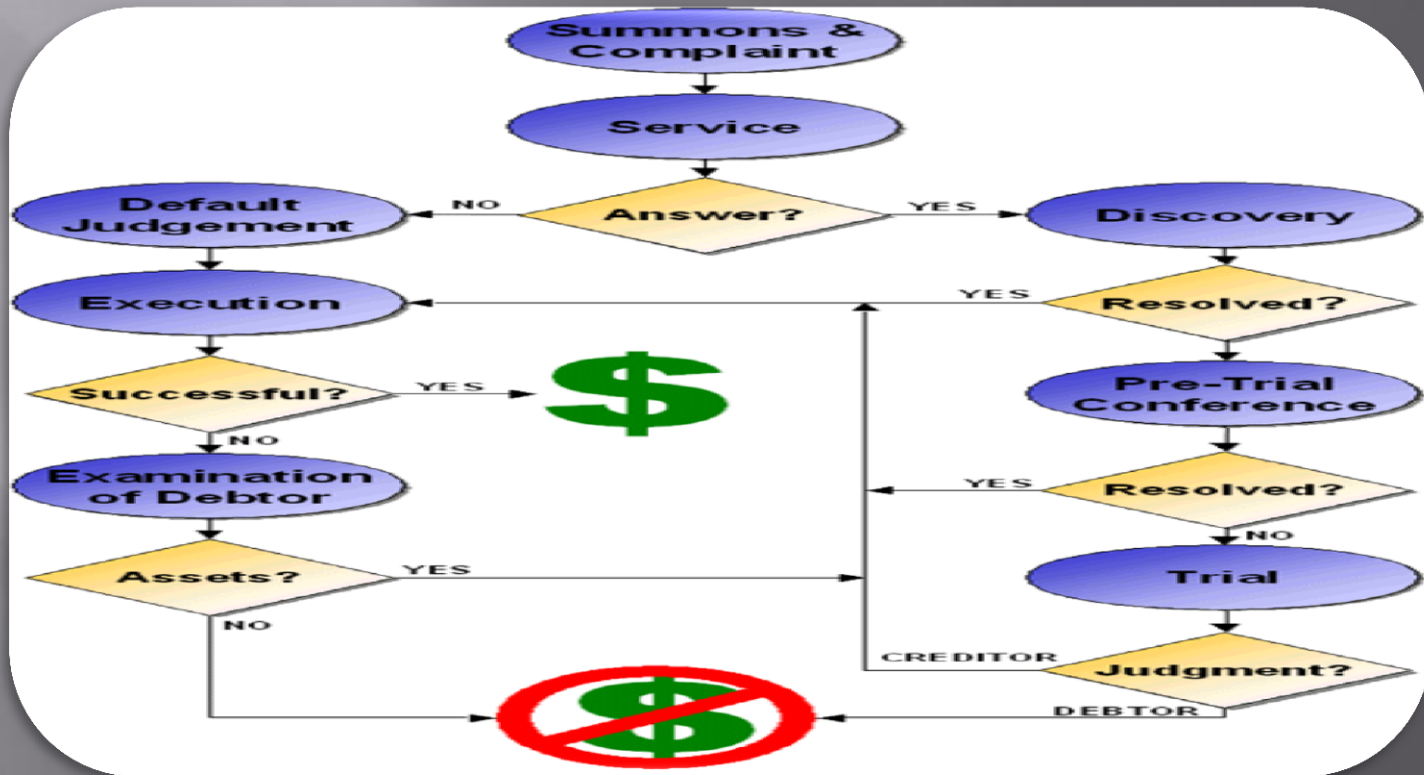
U.S. Meets the Czech Republic

The Litigation Process I



U.S. Meets the Czech Republic

The Litigation Process I



U.S. Meets the Czech Republic

In the U.S.

- Judges are first practicing lawyers; there is not a separate career path for judges.
- Federal judges are appointed for life.
- State judges may be appointed or elected, for a term of years; then they must be re-appointed or re-elected
 - They campaign for office and sometimes for re-election
 - Effect on independence
- State judges may return to private practice as lawyers or may serve as professional arbitrators and mediators and make more money.

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- **Contrast to the Czech Legal System**
 - Code of laws governs the conduct;
 - One system throughout the country
 - Court decisions in one case do not necessarily affect the outcome of the next case, even if similar, although this is changing
 - Judges are selected for long terms and do not come from the group of practicing lawyers
 - They do not run for office; their income and future source of income is fixed

The differences in the U.S. and Czech legal systems can make it difficult to decide how to resolve disputes when there is a choice of places for the dispute to be resolved.