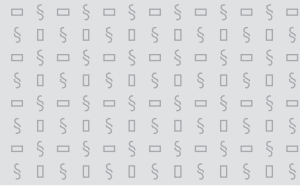




MASARYK UNIVERSITY  
FACULTY OF LAW

# Codifications of Privat Law

Zápatí prezentace



## Basic overview

- Koldín's codification of Town law
- GBGB
- ABGB (1811, valid from 1.1.1812)
- OZO (ABGB novelized after 1918)
- CC 1950
- CC1964
- CC2012 (valid from 1.1.2014)



# Middle age

- Land law
  - Based on customs, very few influence of roman law
  - Using of terminology x but other word meaning: medieval „testament“
- Towns law - stronger influence of roman law
  - Schöppenbuch (Brno 14th century)
  - Práva městská království českého (Koldín's codification )
  - - Bohemia 1571 (1610) Těšín (1598) Moravia (1680 subsidiary, 1697 full) valid until 1811

Práva městská  
království českého





# ABGB

- **Codex Theresianus**
  - Joseph Azzoni (Prague)
  - 1753-1766 Commission in Brno
- **Horten´s Draft - 1772-1776 (1780)**
  - Revision of Codex Theresianus
- **Josephinisches Gesetzbuch 1787 - 1. Part**
- **Martini´s Draft 1790- 1793-1796**
  - Based on Horten s Draft
  - Inspiration in ALR - Allgemeines preussisches Landesrecht (1794)
- **GBGB - (West)galizisches Bürgerliches Gesetzbuch 1797**
- **ABGB 1811**
  - After 10 years of using of WGGB
  - F. von Zeiller
  - In Austria valid until today (big novelizations in WW1, 70-80ties - family law, 2015 law of succession)



# ABGB - characteristic

Three parts:

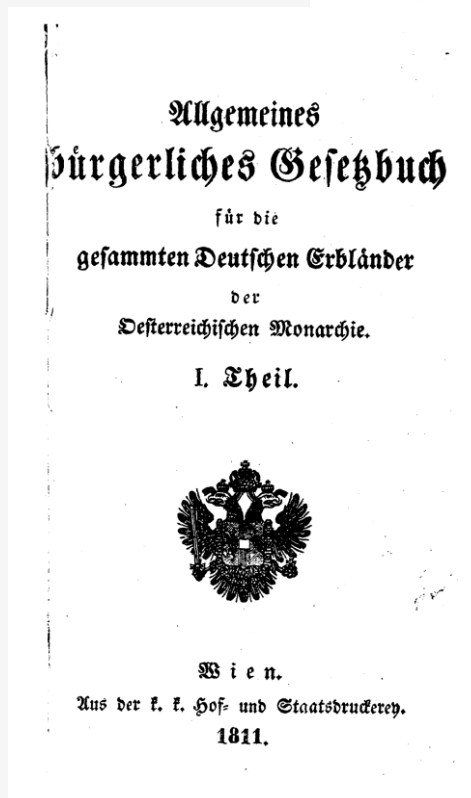
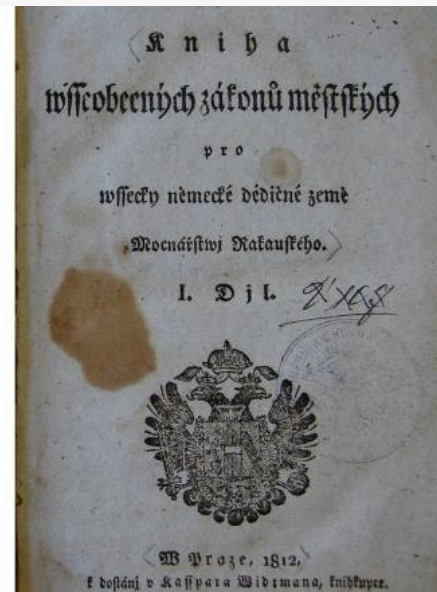
Law of persons

Rights to things (absolut and relativ)

General part

Sec. 7

the original proposal intended to embody secondary application of general law, but this provision was later abandoned and replaced by a reference to natural law





# Hungary

- Custom law
- Tripartitum Opus Iuris - draft of codification by Stephan Verböczy
- Acts x until half 19th century has custom law priority
- End of custom law after the WW2





# Interwar period - Civil law in Czechoslovakia

11/1918 Sb. - The Reception Norm / the law about the inception of the independent Czechoslovak state, 28.10.1918 / art. 2 “*All existing laws and regulations have still remained in force.*”

***Czechia, Moravia, Silesia*** - Austrian laws - ABGB

***Teritorry of Hlučín*** - Prussian laws /BGB x only short time - then the Austrian law/

***Slovakia, Subcarpathian Ruthenia*** - Hungarian law norms

New codification is necessary for unification of law - possibilities:

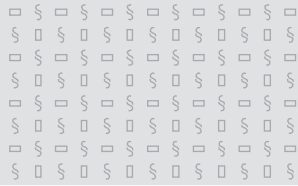
- Translation of ABGB in czech and extension on the territory of Slovakia an S. ruthenia x Slovak politics protest + ABGB need novelization to
- Brand new codification x to long time for preparing
- Code based od ABGB with novelizations and taking into account the law in force in Slovakia - **the best idea for politics**



# Interwar codification - overview

- 1921-1924 - 5 Subcomitee
  - Family law, Law of property, Law of inheritens, Obligation general part (and general part of the code), Obligation - special part
  - each subcommittee was headed by a professor of law and was composed of representatives of the Ministry of Justice and unification and practitioners (notaries, lawyers and judges)
  - 1924 - publication of proposed text - following the comments of the professional public, Commission of Slovak lawyers
- Draft 1931 - final work of „Superrevisision commission“
  - followed by commentary by the authorities and ministries
- Draft 1937 - final draft
  - on the begining of the year 1937 started the legislativ procedure x stopped after Munich Dictate (1938) and WW2
  - Draft 1937 is one of the sources of inspirations for Civil Code 2012
- Draft 1946 - (not very known)
  - an attempt to continue the legislative procedure after the WW2 x was halted after the Communists took office in February 1948





# Civil Law 1948-1989 - Communist period

## “Publication” of Civil law

- restriction on freedom of contract and volitive discretion with a property - e.g. preferences for the intestate succession prior to the property /

## Ownership

- Distribution of the property institute with elimination of the private ownership and preferences for the state ownership

## Separation of substance in more regulations - formation of new branches

- family law,
- land law
- economic legislation /planned economy/



# OZ 1950

## *Civil code 1950 /Střední občanský zákoník/ - middle civil code*

- It was considered as a relatively good-class work x only thanks to the “quality” of the subsequent Civil Code from the year 1964.
- It observed the terminology and features of “bourgeois” civil codexes x a number of terms expressed a different meaning
- A negative demarcation against the Roman law in the explanatory report was very often
- Provisions were very brief - then an extensive domain for an interpretation of the court



# OZ 1964

- More socialistic then the exemplary Soviet civil code
- Abandonment of traditional terminology
- Privat ownership - not regulated in part Property law - one section in „transitional and final provisions“
- Abolishment of regulation of possession , usucaption and easements
- Big novelization in 1982 - trying to eliminate the biggest problems (forced by lawyers from practice)
- *Zákon o mezinárodním obchodu* - international trade act (101/1963) - reacted to the capitalist part of the word



## After 1989

- CC 1964 does not suit the ratios x there were bigger problems (commercial law)
- Only novelizations(1990-1993) - biggest inspiration CC 1950
- Several proposals for recodification x neuspěli
- CC 2012 -main author prof. Eliáš
  - without reference to previous proposals
  - success thanks to ministre of justice



## MASARYK UNIVERSITY FACULTY OF LAW

# Thank You for Your attention