I.4 THE POSITION OF THE JUDICIARY

Court decisions and writings are not considered to be sources of law; nevertheless, they often have a decisive influence upon courts and administrative authorities. In this context, rules of interpretation are of the great importance, such as interpretation of words, grammatical-logical interpretation, interpretation of intention analogy of statute, analogy of legal principle or principles of natural law.

In order to guarantee a uniform case law, only the Supreme Court and the Supreme Administrative Court can give their opinions to unification of the case law. Such opinions do not have nature of a generally binding source of law. As a rule, however, they are followed by all courts.

A special position is granted to the Constitutional Court. The Constitutional Court may declare void any statute or its provisions insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The Constitutional Court may declare void any administrative regulation or its provisions insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The decisions of the Constitutional Court are the so-called "negative source of law". The Constitutional Court is not a law making authority but it can declare void the existing sources of law or their parts.

I.5 PUBLIC LAW AND PRIVATE LAW IN CZECH LEGAL SYSTEM

Until 1950, civil (in narrower sense) or private law (in broader sense) were understood as all that was not public law; thus it included even commercial law. Legal writers for some time used the term "private law" in a narrower sense excluding commercial law. However, between 1950 and 1989 the distinction between "private" and "public" law was considered inappropriate. After 1989, a new discussion on this topic was opened. An important step towards solving the problem of distinction between private and public law was establishing necessary criteria of such a distinction. The first of them may be riteria of involvement and the second one criteria of power.

According to the criteria of involvement private law respects freedoms of an individual while public law protects public interests and the public order. Such classification is dating back to Roman law as expressed by Ulpianus: *"Publicum ius est, quod ad statum rei romanae spectat; privatum, quod ad singulorum utilitatem"*. According to the criteria of power, public law expresses the dominant position of the state authority in protecting public interests and the public order. The Czech legislators accepted the dualism of public and private law again after 1991 in several modifications of the Civil Code. A renewal of dualism of private and public law in the Czech legal system was regarded as an instrument of reinforcing legal guarantees of the natural or artificial legal persons and preventing the state from unauthorized interventions in private business activities.

I.6 DEFINITION OF CZECH PRIVATE LAW

The present Civil Code reflects the principle of the Civil Law regulation declaring that the parties of Civil Law relationships are equal in their rights and obligations. This equal position is reflected in the following way:

- none of the parties of a civil law relationship is authorised to impose unilaterally any duties or to transfer unilaterally any rights on the other one;
- none of parties of a civil law relationship is authorised to decide disputes concerning rights and duties of another participant as created from the civil law relationship. Such disputes can be decided solely by competent authorities, in particular by Courts or in special cases by arbitrators if statutes provide so. The participants of any litigation are equal in their rights (§ 2, Art. 2, Civil Code).

The principle of equality is now undoubtedly one of the basic principles of legal regulation of private law. The public authority can influence private law relationships or create their inequality under limited and special conditions:

A particular interest to protect special categories of civil law relationships, e.g. protection of children or protection of persons who are not capable to defend effectively their own interests.

Protection of some participants of a civil law relationship against economic supremacy of other participants which could lead, respecting formal equality of the participants, to a devaluation of the social purpose of the legal relationship, eg consumer protection, abuse of the dominant position, etc.

I.7 CIVIL LAW AND COMMERCIAL LAW

The Czechoslovak legal system in 1950-1989 did not make any distinction between private law and public law. Thus no discussion was possible on the broader sense of private law or on its narrower sense excluding commercial law. Starting from 1948, an extensive state control and central planning of the economy were introduced and in 1964 the Economic Code more or less established an administrative regulation of economic contracts. Those were more similar to the above described administrative contracts than to commercial contracts in the sense of Continental legal systems.

After 1989, the concept of "private law" was renewed in Czechoslovakia but in a very broad sense including commercial law as well, as a reaction to its previous absence in our legal system. Amendments to the Civil Code in 1991 and the introduction of a new Commercial Code in 1991 created a dual codification of private law. The Civil Code represents a general codification of private law including contract law while the Commercial Code is a special codification for commercial contracts and for persons of commercial relationships such as commercial companies and cooperative companies.