

CZECH FAMILY LAW

I.

HISTORY - PRESENT - FUTURE

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HISTORY

MAIN TURNING-POINTS

- the establishment of the Czechoslovak republic (1918)
- the second world war (1939 -1945)
- the communist take-over (1948)
- the collapse of communism (1989)
- the accession to the European Union (2004)

1918 the establishment of the Czechoslovak republic

- Act No. 11/1918 Coll. - reception of the law of the Austrian - Hungarian Empire ► legal dualismus
- Czech lands: Civil code - ABGB (1811)
- Slovakia: Hungarian law (based on legal customs)
- +
- Act No. 320/1919 Coll., so called Marriage Amendment
- Act No. 121/1920 Coll., Constitution (new principles: equality between a man and a woman, all children)
- Act No. 56/1928 Coll., Adoption Act
- 1937: legal steps for recodification of CC ► failed

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1939 - 1945 the second world war

(16. 3. 1939 - 8. 5. 1945)

- three categories of inhabitants:
 - German citizens
 - Citizens of Protectorate
 - Citizens under „racial“ rules from Norimberk (15. 9. 1935) on Protection on German Blood and German Honour ► prohibition of marriages between the German race and Jew
- property aspects
 - Act from 21. 6. 1939 on aryanize of Jewish property

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1948 the communist take-over

- Act No. 150/1948 Coll., Constitution
- Soviet pattern - atomisation of legal order - *Czechoslovak-Polish Commission*:
 - Act No. 265/1949 Coll., Family Law Act
 - Act. No. 141/1950 Coll., CC
 - Act No. 59/1952 Coll., on Marrying Aliens
 - Act No. 69/1952 Coll., Children Act

+ equality of a man/a woman
equality of children
no guilty divorce

- elimination of church
bagatelisation of
property in family

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1963/1964

- Act No. 94/1963 Coll., Act on the Family (AF)
- Act No. 40/1964 Coll., Civil Code (CC)

till present - see:

<http://vsp.blog.cz/0810/ceske-zakony-v-anglictine>

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1989 the collapse of communism

- the access to the Human Right Conventions
- Amendments to the Act No. 100/1960 Coll., Constitution
- Act No. 23/1991 Coll., Charter of Fundamental Rights and Freedoms
- Act No. 509/1991 Coll., great amendment to CC
- Act No. 234/1992 Coll., amendment to AF (church wedding)

- ▶ Establishment of the Czech republic
- *reception of old laws of the Czechoslovak Republic*
- Act No. 1/1993 Coll., Constitution
- Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms
- Act No. 91/1998 Coll., great amendment to AF (no ideology, new conception of divorce, parental responsibility, guardianship, maintenance, adoption etc. + community of property of spouses)
- Act No. 359/1999 Coll., Children Act

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2004 the accession to the European Union

- 1st May 2004
- major changes occurred after 1989 - human rights dimension of interpretation and application
- old laws from 60' still in force (AF, CC)

- +
- Act No. 422/2004 Coll., on Secret Child Births
- Act No. 115/2006 Coll., on Registered partnership
- Constitutional Court Decision No. 244/2010 Coll.

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PRESENT

<http://vsp.blog.cz/0810/ceske-zakony-v-anglictine>

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The Act on the Family - structure

- I. Part Marriage
- II. Part Relations of Parents and Children
- III. Part Maintenance Duty
- IV. Final Provisions

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The Civil Code - structure

- I. Part: General Provisions
- II. Part: Right related to Things:
 - § 143 - § 151 *Community of Property of Spouses*
- III. - V. Parts: repealed
- VI. Part: Liability for Damage and Unjust Enrichment
- VII. Part: Inheritance
- VIII. Part: The Law of Obligations
 - § 703 ff. *Joint Lease of a Flat by Spouses*
- IV. Part: Concluding, Transitional and Repealing Provisions

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FUTURE

Legislative Intention of Ministry of Justice
No. 2623/00-L from 29. 1. 2001

▶ the new Civil Code

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- almost 20 years of expectation of a full reform
- early 1990's: *prof. Knapp and prof. Plank*
- middle of 1990's: *prof. Zoulik*
- 2001: *prof. Eliáš*
 - great support of the government
 - the draft ► www.justice.cz
 - end of 2009 Parliament ► www.psp.cz
 - family law: the second part of „draft“ Civil Code
 - the main aim:
 - discontinuity with communist law
 - comeback to European Legal Traditions
 - *Commission on European Family Law (CEFL) - Principles*

<http://www2.law.su.se/prlv/cefl/>