



MASARYK UNIVERSITY
FACULTY OF LAW

CZECH FAMILY LAW

MARRIAGE AND DIVORCE

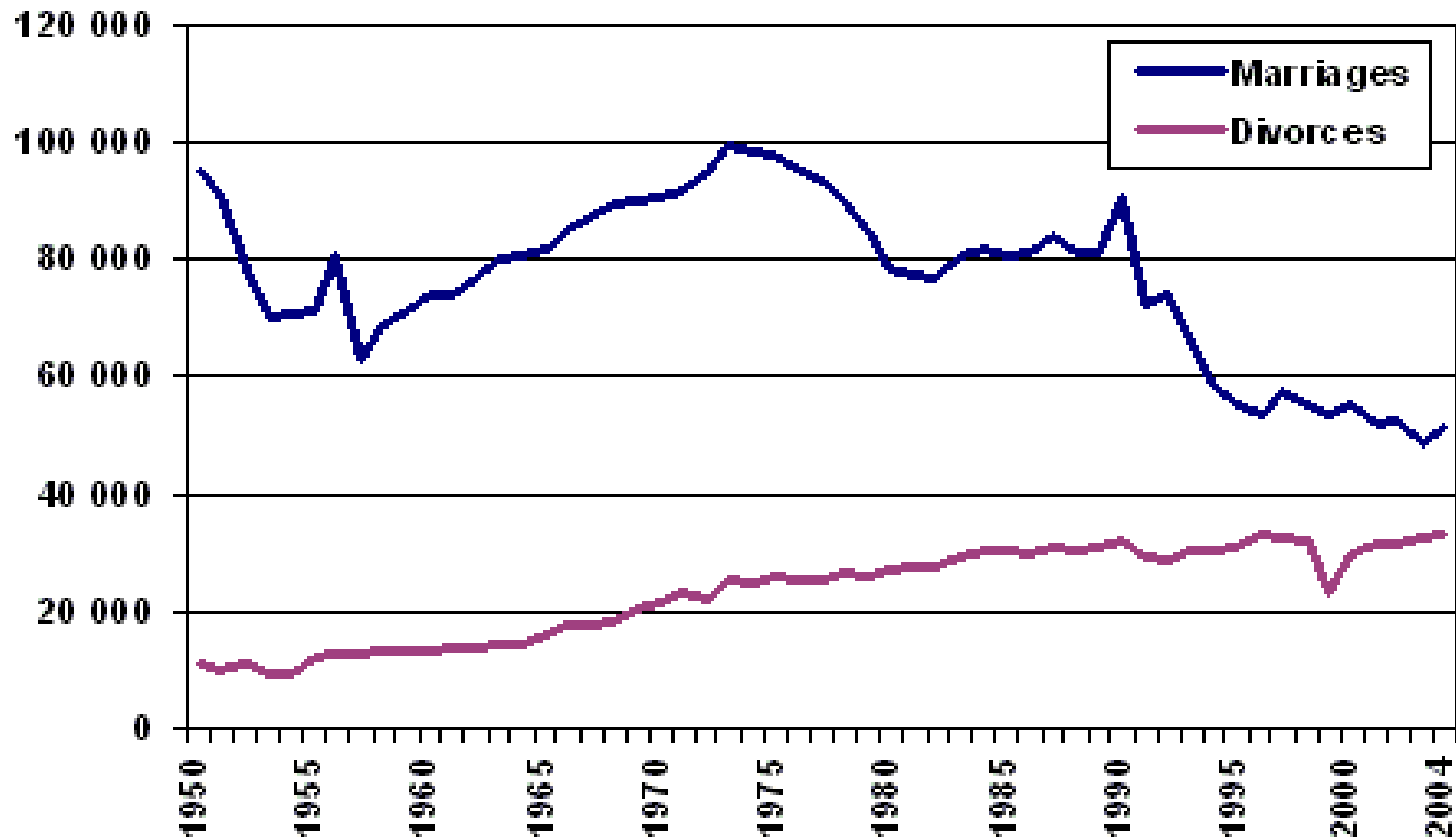
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WEAKENING MARRIAGE, PARENTAGE AND FAMILY LIFE after 1989?

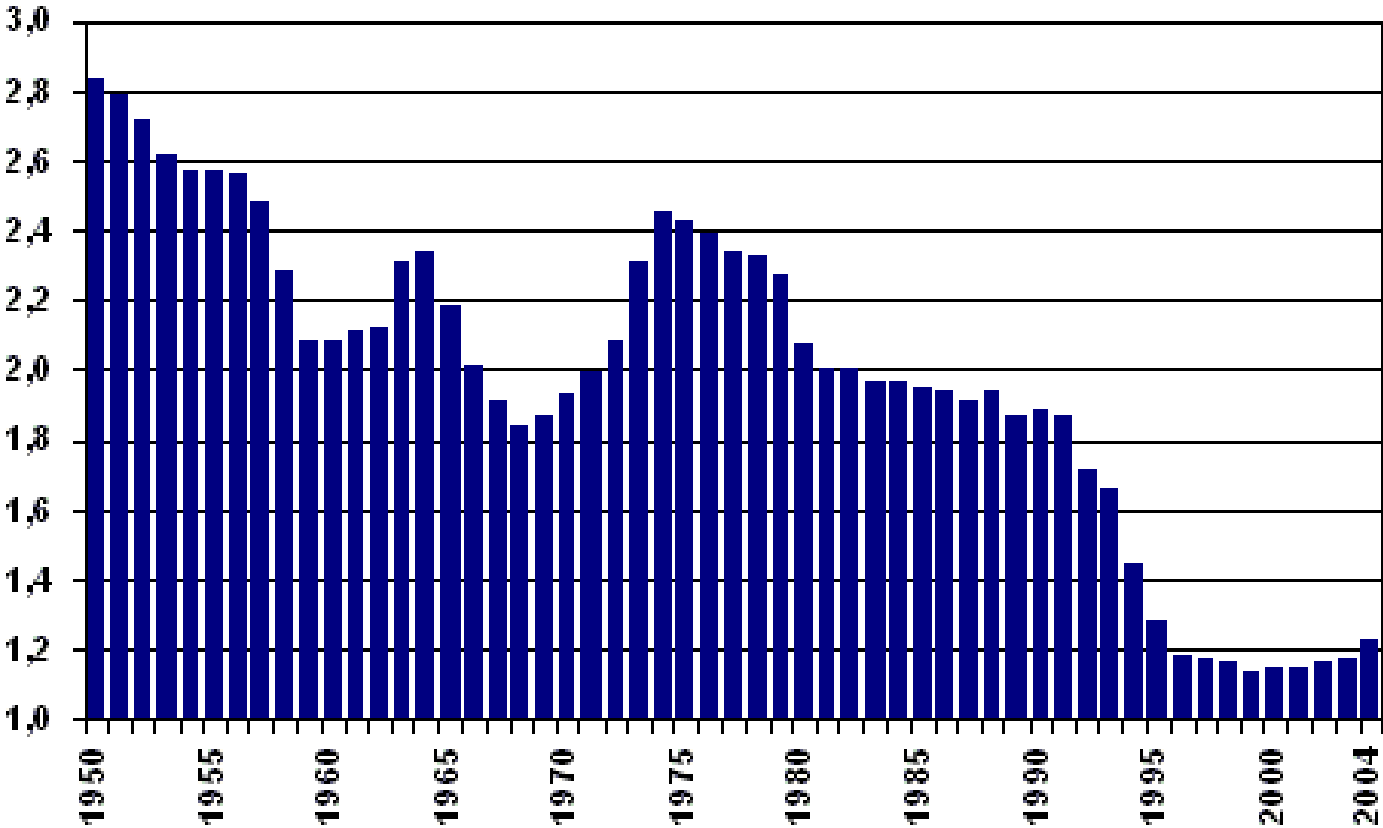
- rejecting/delaying marriage
- low fertility rate: 1.2 child per a woman
- marital instability: high divorce rate
- increase of quasi-marital unions: both homo- and hetero-sexual
- increase of children born out of wedlock: more than 30%
- increase of one-person households: 10%
- new problems: baby-boxes, „secret“ child births
- increase of international child abductions

Marriages and divorces, 1950-2004



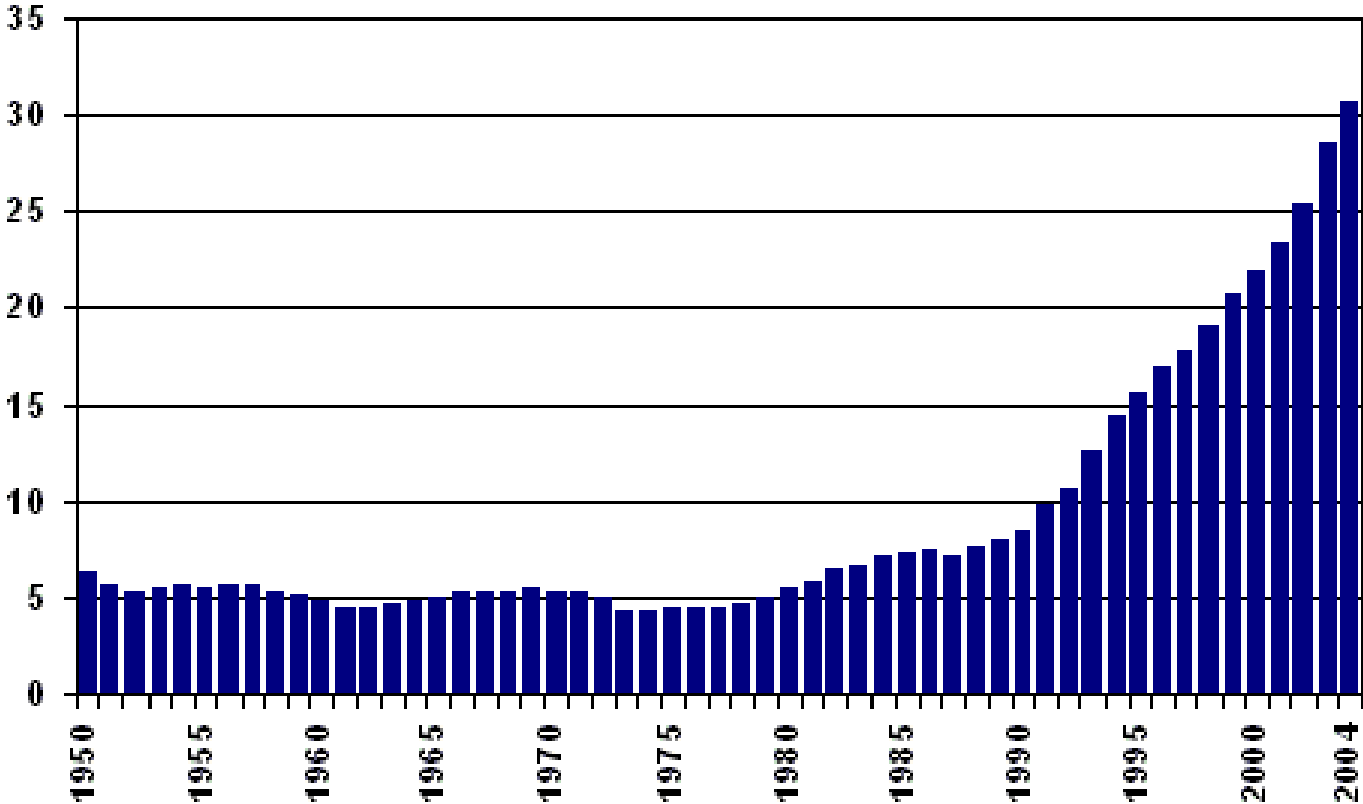


Total fertility rate, 1950-2004





Percentage of extra-marital births, 1950-2004





THE NATURE OF MARRIAGE (AF No. 94/1963 Coll.)

- permanent cohabitation of a man and a woman
- the same sex couples are not allowed to get married
matrimonium putativum
since 1. 7. 2006 registered partnership

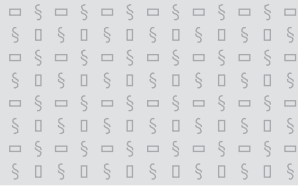


IMPEDIMENTS TO MARRIAGE (AF: § 11 -17a)

- INFANCY (under 16 years: no, 16 - 18: permission)
- THE SAME SEX
- PRIOR MARRIAGE - REGISTERED PARTNERSHIP
- BLOOD AND ADOPTIVE RELATIONSHIP
(siblings, ascendants - descendants)
- MENTAL ILLNESS AND INCAPACITY

PROBLEMS:

- MATRIMONIUM NULLUM (court decision, effects: § 17)
- MATRIMONIUM PUTATIVUM (ex lege: § 17a)



obligatory pre-matrimonial preparatory
proceedings by register office (AF: 6)
documents, forms the aim: valid marriage

- FOR CIVIL WEDDING
 - date

- FOR CHURCH WEDDING
 - certification



CONCLUSION OF MARRIAGE (AF: § 3)

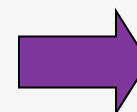
mutual consent

■ CIVIL WEDDING (§ 4)

- before municipality authorised to keep registers (some exceptions)

■ CHURCH WEDDING (§ 4a)

- before a church or a congregation registered by the state and with special rights (21)
- certificate not older than 3 months issued by register office (state) within obligatory pre-matrimonial preparatory proceedings
- record in the state register is obligatory

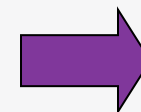


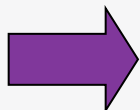


CHURCHES AND RELIGIOUS SOCIETIES AND ASSOCIATIONS OF CHURCHES AND RELIGIOUS SOCIETIES IN THE CZECH REPUBLIC

SPECIAL RIGHTS FOR RELIGIOUS WEDDINGS

- APOSTOLIC CHURCH
- BAPTIST UNION OF THE CZECH REPUBLIC
- SEVENTH-DAY ADVENTISTS CHURCH
- EVANGELICAL BRETHREN CHURCH
- CZECHOSLOVAK HUSSITE CHURCH
- CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
- GREEK CATHOLIC APOSTOLIC EXARCHATE IN THE CZECH REPUBLIC
- ROMAN CATHOLIC CHURCH
- EVANGELICAL CHURCH OF THE CZECH BRETHREN
- EVANGELICAL CHURCH OF THE AUGSBURG CONFESSION IN THE CZECH REPUBLIC
- EVANGELICAL METHODIST CHURCH
- FEDERATION OF JEWISH COMMUNITIES IN THE CZECH REPUBLIC
- MORAVIAN CHURCH (UNITAS FRATRUM)
- BRETHREN ASSEMBLIES
- EVANGELICAL (LUTHERAN) CHURCH OF THE AUGSBURG CONFESSION IN THE CZECH REPUBLIC
- RELIGIOUS SOCIETY OF CZECH UNITARIANS
- RELIGIOUS SOCIETY OF JEHOVAH'S WITNESSES
- NEW APOSTOLIC CHURCH IN THE CZECH REPUBLIC
- ORTHODOX CHURCH IN THE CZECH LANDS
- SILESIA EVANGELICAL CHURCH OF THE AUGSBURG CONFESSION
- OLD CATHOLIC CHURCH IN THE CZECH REPUBLIC





NO SPECIAL RIGHTS FOR RELIGIOUS WEDDINGS

- CHRISTIAN FELLOWSHIP CHURCH
- CZECH HINDU RELIGIOUS SOCIETY
- CHRISTIAN COMMUNITY IN THE CZECH REPUBLIC
- CENTRE OF ISLAMIC COMMUNITIES

FOR MORE DETAILS SEE

www. <http://www.mkcr.cz/en/cirkve-a-nabozenskespolecnosti/default.htm> (24. 3. 2009)



FAMILY SURNAMES (AF: § 8)

■ NAVRÁTILOVÁ

■ NAVRÁTILOVÁ

- no change for her,
children: after mother or
after father

■ LENDLOVÁ

- common family surname

■ LENDLOVÁ NAVRÁTILOVÁ

- double surname for her

■ LENDL

■ LENDL

- no change for him,
children: after mother or
after father

■ NAVRÁTIL

- common family surname

■ NAVRÁTIL LENDL

- double surname for him



PERSONAL RIGHTS AND DUTIES OF SPOUSES (AF: § 18-21)

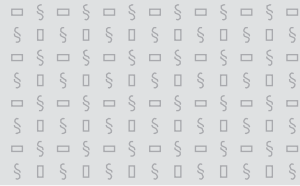
- EQUALITY
- to live together, to be faithful to each other, to mutually respect their honour and human dignity, to help each other and to represent each other and duty to create healthy living environment and background



MARITAL PROPERTY LAW: JOINT PROPERTY OF SPOUSES (CC: No. 40/1964 Coll., § 143-151)

- legal scope (§ 143)
 - assets acquired by spouses during marriage (exceptions)
 - liabilities incurred by spouses during marriage (exceptions)
- modification by contract (§ 143a)
 - restriction (limit: things in household)
 - extention (no limit)
 - deferreed community
 - no registration !
 - intra partes effects !





MAINTENANCE DUTY (AF: § 91)

THE SAME LIVING STANDARD

+ joint provisions (§ 96)

+ good manners!



DIVORCE LAW (AF: § 24-24b)

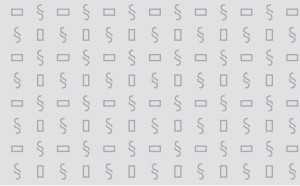
■ ONE GROUND:

■ IRRETRIEVABLE BREAKDOWN:

„matrimony is so deeply and permanently disturbed that re-cohabitation cannot be expected“

■ NO SPECIAL PROCEEDINGS:

- on the motion of one of spouses
- plaintiff x accused



DIVORCE WITH MINOR CHILDREN (AF: § 25)

„A MARRIAGE CAN NOT BE DIVORCED UNLESS THE DECISION ON REGULATION OF CONDITIONS OF MINOR CHILDREN AFTER THE DIVORCE ISSUED BY THE COURT ACCORDING TO § 176 OF THE CIVIL PROCEDURE CODE HAS BECOME FINAL AND CONCLUSIVE“

DECISION ON CHILDREN:

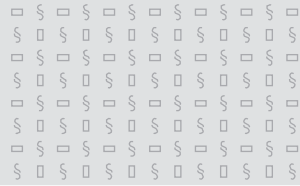
- a) agreement between the parents approved by court or
- b) court's decision

on

CUSTODY (INDIVIDUAL, COMMON, ALTERNATIVE)

MAINTENANCE (no time limit, *clausula rebus sic stantibus*)

VISITING RIGHTS - not obligatory



TWO VARIATIONS OF DIVORCE - DIFFERENT CONSEQUENCES

- PROOF OF BREAKDOWN
(§ 24)
 - CHANGE OF STATUS

- PRESUMPTION OF BREAKDOWN
(§ 24a)
 - CHANGE OF STATUS
 - SETTLEMENT OF PROPERTY RIGHTS, FAMILY DWELLING, EX-MARITAL MAINTENANCE
(by contract -
autonomy of will, CC)



HARDSHIP CLAUSE
(§ 24b)
exceptional



MAINTENANCE DUTY after divorce (AF: § 92 - 94)

■ ADEQUATE MAINTENANCE

§ 92

- inability to provide for his/her maintenance from his/her own sources

- no time limits (in general)

- *clausula rebus sic stantibus*:

- new marriage
- pension

■ THE SAME LIVING STANDARD

§ 93

- not taking part in breakdown
- suffering harm due to the divorce

- 3 years limit



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PRINCIPLES OF EUROPEAN DIVORCE by CEFL - Commission on European Family Law

<http://www2.law.uu.nl/priv/cefl/>

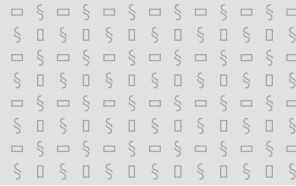


CEFL Principles

- **Principle 1:1 - Permission of divorce**
 - The law should permit divorce
 - No duration of the marriage should be required

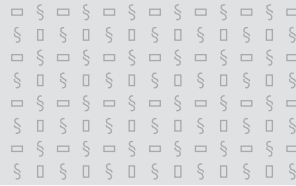
- **Principle 1:2 - Procedure by law**
 - The divorce procedure should be determined by the law
 - Divorce should be granted by a competent authority which can either be a judicial or administrative body

- **Principle 1:3 - Types of divorce**
 - The law should permit both divorce by mutual consent and divorce without the consent of one of the parties.



CEFL Principles

- **Principle 1:4 - Mutual consent**
 - **Divorce should be permitted upon the basis of the spouses' mutual consent. No period of factual separation should be required.**
 - **Mutual consent is to be understood as an agreement between the spouses that their marriage should be dissolved.**
 - **This agreement may be expressed either by a joint application of the spouses or by an application by one spouse with the acceptance of the other spouses.**



European Divorce Jurisdiction

- Brussels IIbis (Regulation 2201/2003)
 - Rules on jurisdiction (Article 3)
 - Both parties citizens, or
 - Habitual residence of the defendant; or
 - Habitual residence of the claimant and:
 - If last marital HR there, or
 - If lived there 1 year prior to petition, or
 - If lived there 6 months prior to petition and national.
 - No choice!



European Divorce Recognition

- Brussels IIbis (Regulation 2201/2003)
 - Rules on recognition (Article 21)
 - Recognition without any procedure
 - Very limited refusal grounds (Article 22)
 - Public policy
 - Untimely summons and other Article 6, ECHR protection
 - Incompatibility with previous decision
 - No jurisdictional test