

CZECH FAMILY LAW AFTER THE VELVET REVOLUTION OF 1989

*Zdeňka Králíčková
Associate professor*

*Masaryk University, Brno, the Czech Republic
e-mail: zdenka.kralickova@law.muni.cz*

THE AIM OF THE PRESENTATION

- political, social and economic changes
- impact on family and family law

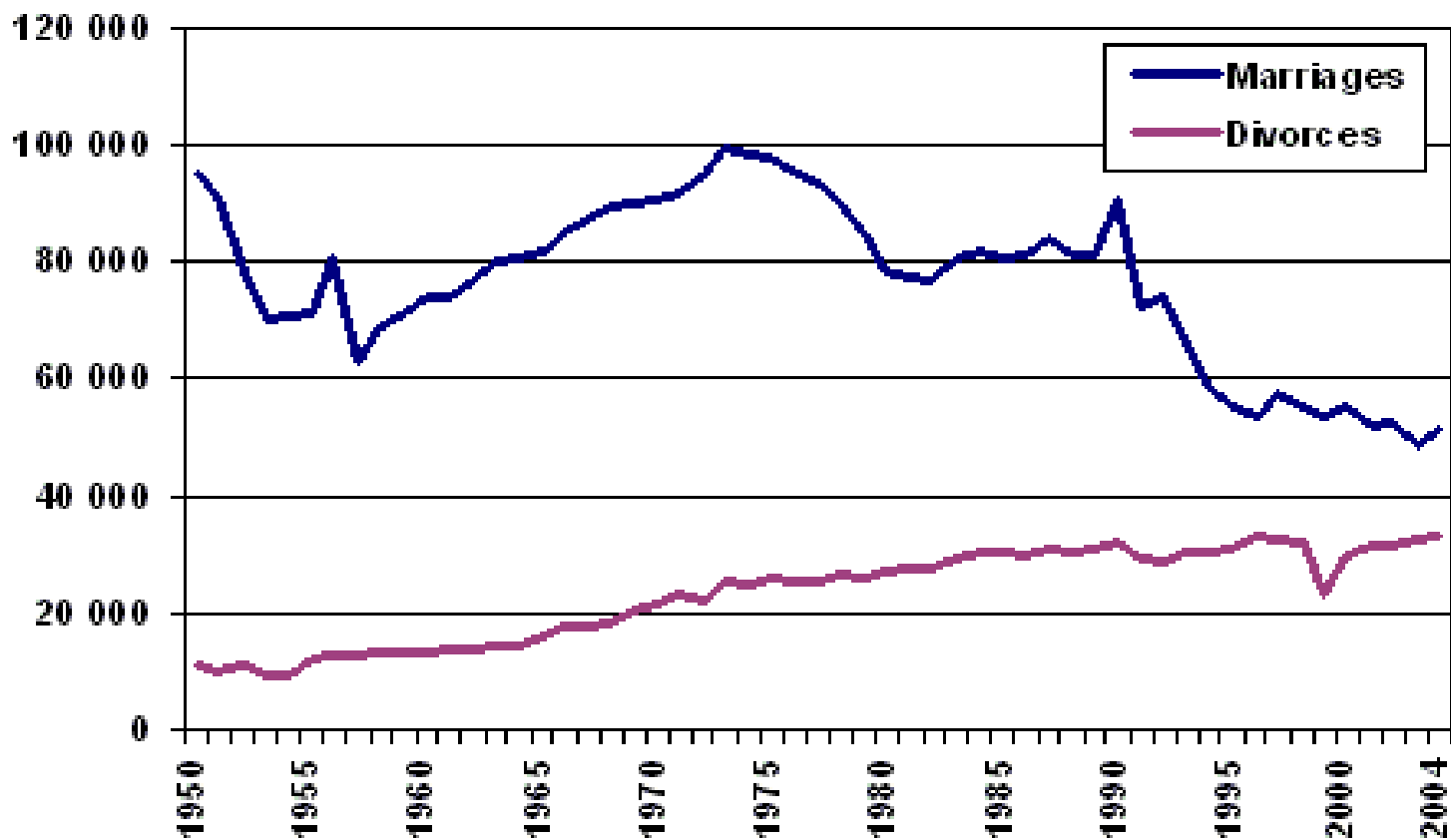
after

- communist take-over (changes in 1949)
- collapse of communism (changes in 1992, 1998)
- accession to the European Union (2004)

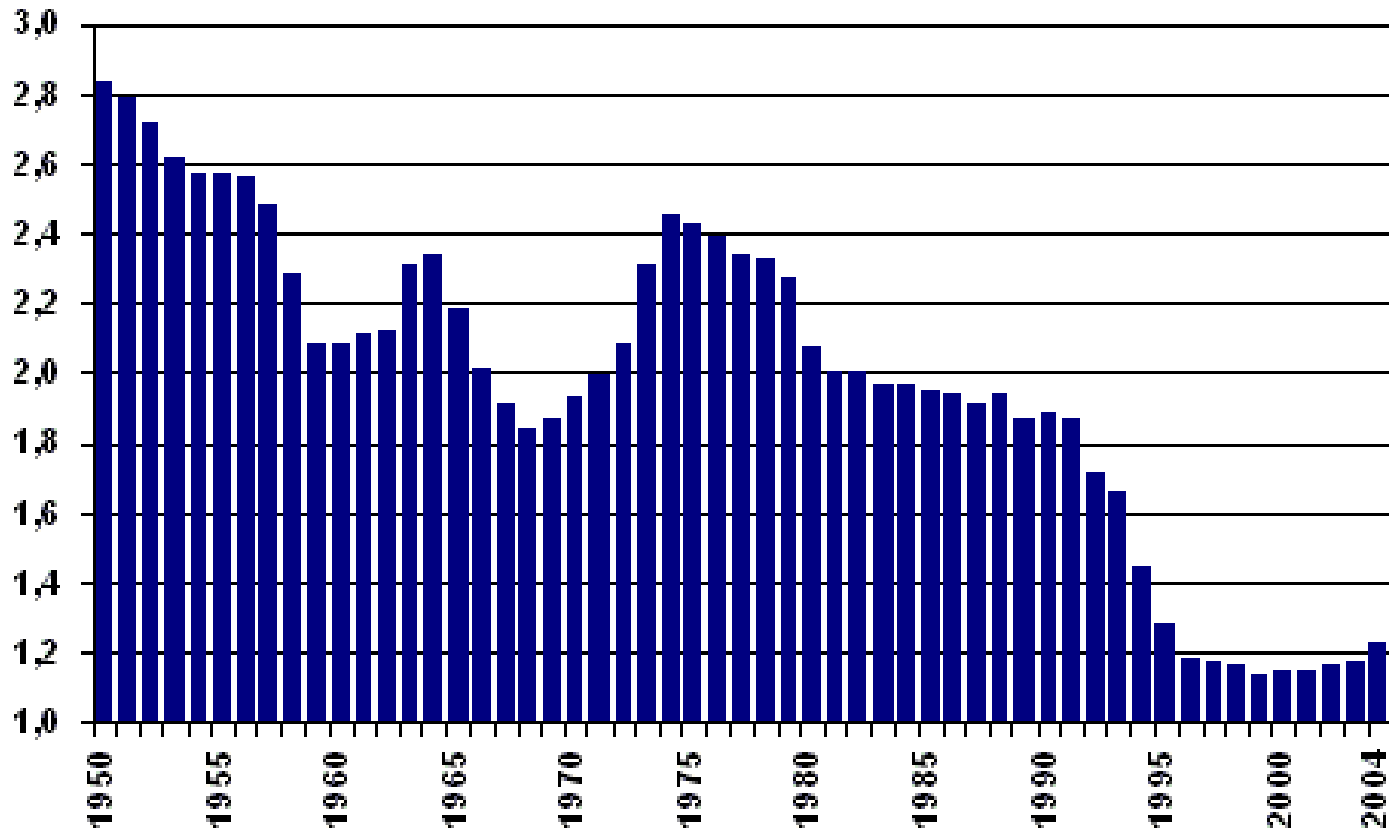
WEAKENING MARRIAGE, PARENTAGE AND FAMILY LIFE?

- 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

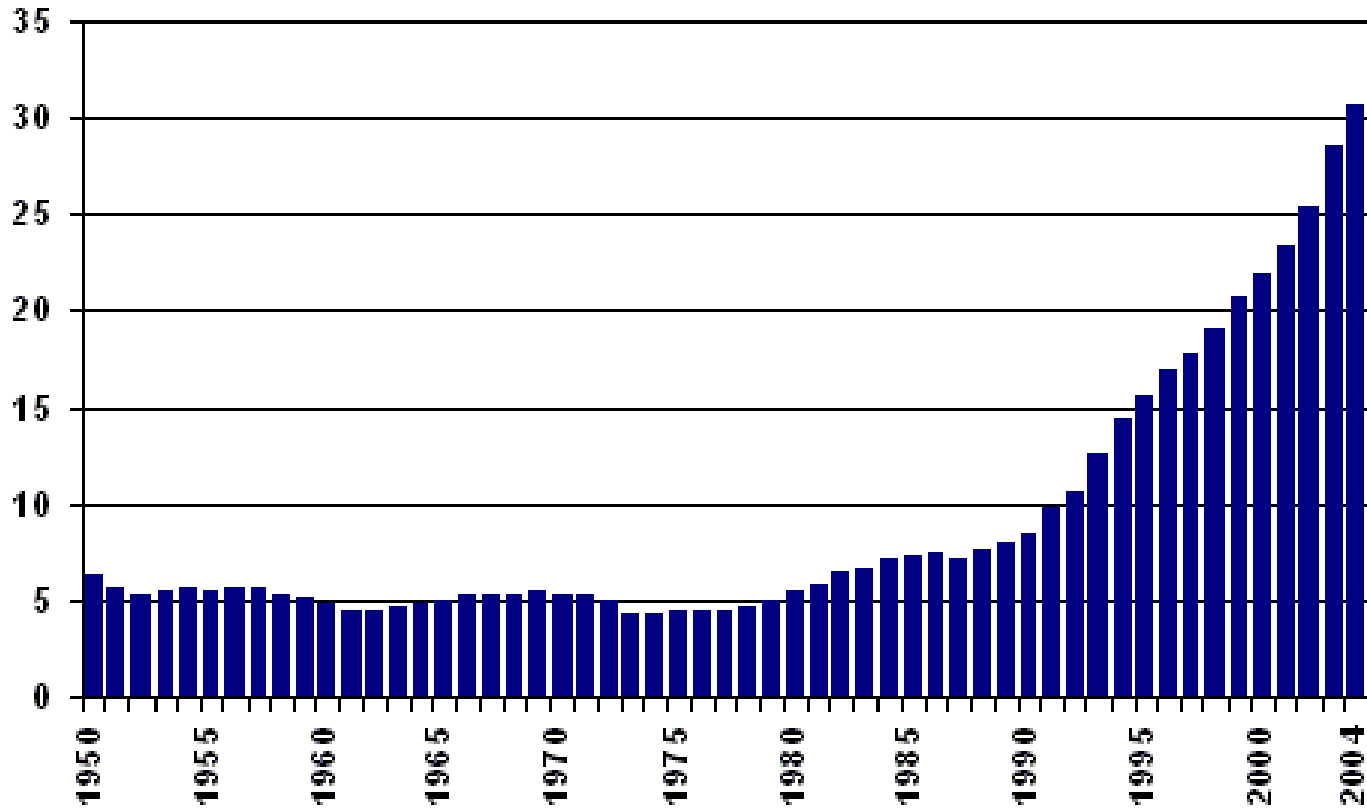
Marriages and divorces, 1950-2004



Total fertility rate, 1950-2004



Percentage of extra-marital births, 1950-2004



THE NATURE OF MARRIAGE

- permanent cohabitation of a man and a woman
- the same sex couples are not allowed to get married

non matrimonium/matrimonium putativum
since 1. 7. 2006 registered partnership

IMPEDIMENTS TO MARRIAGE

- INFANCY (under 16 years, 16 - 18)
- BIGAMY - POLYGAMY - REGISTERED PARTNERSHIP
- BLOOD AND ADOPTIVE RELATIONSHIP (siblings, ascendants – descendents)
- MENTAL ILLNESS AND INCAPACITY

CONCLUSION OF MARRIAGE

mutual consent

➤ CIVIL WEDDING

- before municipality authorised to keep registers (some exceptions)

➤ CHURCH WEDDING

- before a church or a congregation registered by the state (21)
- obligatory pre-matrimonial state preparatory proceedings
- record in the state register is obligatory

PERSONAL RIGHTS AND DUTIES OF SPOUSES

➤ 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

➤ legal scope

- assets acquired by spouses during marriage (exceptions)
- liabilities incurred by spouses during marriage (exceptions)

➤ modification by contract

- restriction (limit: things in household)
- extention (no limit)
- deferreed community
- no registration !
- intra partes effects !





➤ MAINTENANCE DUTY:
THE SAME LIVING STANDARD

DIVORCE LAW

➤ 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

TWO VARIATIONS OF DIVORCE DIFFERENT CONSEQUENCES

➤ PROOF OF BREAKDOWN

- CHANGE OF STATUS

(HARDSHIP CLAUSE)

exceptional

➤ PRESUMPTION OF BREAKDOWN

- CHANGE OF STATUS
- SETTLEMENT OF
PROPERTY RIGHTS,
FAMILY DWELLING,
EX-MARITAL
MAINTENANCE

THE NATURE OF REGISTERED PARTNERSHIP

- permanent cohabitation of two persons of the same sex
- not a marriage
- not allowed for a man and a woman
- „act on registration“
- not „act on rights and duties of partners“

since 1. 7. 2006

IMPEDIMENTS TO PARTNERSHIP

- INFANCY (under 18 years)
- BIGAMY - POLYGAMY – MARRIAGE - REGISTERED PARTNERSHIP
- BLOOD AND ADOPTIVE RELATIONSHIP (siblings, ascendants – descendants)
- MENTAL ILLNESS AND INCAPACITY
- NOT FOREIGNERS (ONE MUST BE A CZECH CITIZEN)

CONCLUSION OF PARTNERSHIP

mutual consent

➤ ONLY CIVIL CONCLUSION

- before some special municipality authorised to keep registers

PERSONAL RIGHTS AND DUTIES OF PARTNERS

- **EQUALITY**
- **NO** to live together, to be faithful to each other, to mutually respect their honour and human dignity, to help each other and no duty to create healthy living environment and background
- **to represent each other**
- **NO** to adopt a child together, **NO** to be a foster parents or guardians together

PARTNERS PROPERTY LAW

- NO JOINT PROPERTY OF SPOUSES
- NO COMMUNITY OF PROPERTY
- JUST OWNERSHIP WITH SHARES TOWARDS THINGS
- MAINTENANCE DUTY

DISSOLUTION OF PARTNERSHIP

➤ ONE GROUND:

- no existence of partnership *de facto*

➤ NO SPECIAL PROCEEDINGS:

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

TWO WAYS TO DISSOLUTION OF PARTNERSHIP

➤ PROOF OF BREAKDOWN

- duty of a plaintiff

➤ PRESUMPTION OF „NO EXISTENCE OF PARTNERSHIP“

- „agreement“ of both
partners

PARENTAGE

➤ MOTHER

- a woman, who gave a birth to a child

➤ FATHER

presumptions:

- husband of mother
- a man, who agreed with the mother
- a man, who had a sexual intercourse with the mother

*(180 – 300 days
before the birth of the
child)*

PARENTAL RESPONSIBILITY

- BOTH PARENTS OF FULL LEGAL CAPACITY
 - CARE OF PERSONALITY OF A CHILD
 - REPRESENTATION OF A CHILD
 - ADMINISTRATION OF A CHILD'S PROPERTY



- PERSONAL CARE OF A CHILD AFTER DIVORCE OR SEPARATION DE FACTO: INDIVIDUAL, ALTERNATING OR JOINT (!)

SUBSTITUTE FAMILY CARE

„a child is a part of his natural family“, strong protection after 1998

➤ ADOPTION

- A CHANGE OF STATUS
- ALWAYS „FULL“
- ADOPTIONE NATURA IMITATUR

➤ FOSTER CARE

- INDIVIDUAL OR S.O.S. VILAGES
- BOTH PAID BY STATE
- PARENTS ARE ALLOWED TO MEET A CHILD IN FOSTER CARE

FAMILY LAW *de lege ferenda*

- almost 20 years of expectation of a full reform
- early 1990's: *prof. Knapp and prof. Plank*
- middle of 1990's: *prof. Zoulík*
- 2001: *prof. Eliáš*
 - great support of government
 - end of 2008 - Parliament
 - family law: the second part of „draft“ Civil Code
 - discontinuity with communist law
 - comeback to European Legal Traditions