



MASARYKOVA UNIVERZITA
PRÁVNICKÁ FAKULTA

Introduction to the Czech civil Law 1st lesson

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Zápatí prezentace



Introduction to the course I

- Aim of the course:
 - Description of history, contemporary situation and its crucial crossroads and probable future development of Czech civil law
- Methods of course:
 - Genetic-procedural
 - Comparison
 - Description
- Content of course
 - Civil law (6 lessons)
 - Civil procedure law incl. structure and org. of justice (6 lessons)
 - Termination of the course (1 lesson)



Introduction to the course II

■ Sources and literature:

- Textbook Introduction.. - to buy in the bookshop or to borrow from the library or to copy in the library (+ on IS)
- Czech civil Code (eng.) - on IS or to borrow or to copy
- Czech commercial Code (eng.) - on IS or to borrow or to copy

Completing literature:

- Hurdík-Fiala: Contracts. Czech Republic. IEL. Kluwer Int. 2009
- Hurdík-Polčák-Smejkalová: Czech law in European regulatory context, Wien-München 2009
- Poplawski-Šramková: Legal sanctions..Brno 3008



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Introduction..

Czech civil Law



Czech civil Law I - from past to future

- 1811 - austrian General Civil Code/Allgemeines bürgerliches Gesetzbuch
- 1937 – project of Czechoslovak Civil Code (1939 after occupation canceled)
- 1950 - 1st czechoslovak Civil Code (141/1950 Sb.-Coll.)
- 1964 - „socialist“ czechoslovak Civil Code (40/1964 Sb.) - was changed by Act 509/1991 Sb.
- 1964-1991 - 2 national (Czech) civil Codes were parallel (side by side) in force: it was next to Civil Code, the Code of International Commerce (101/1963 Sb.-Coll.)



Czech civil Law I - from past to future II

- from 2000 - started project of new czech Civil Code
- 2012 – new Civil Code accepted in Parliament and signed by the President (20.2.2012)
- from 1.1.2014 new Civil Code will be in force
- In preparation – complementary acts (mainly civil procedure)



Czech civil Law II - System of **existing** private Law (by 31.12. 2012)

- 1811 - private Law = civil Law
- In the course of 19th century, and especially in the 2nd half of the 20th century the labor Law, Family Law and Commercial Law as the separated branches of private law were established
- Now, the parts of czech private Law are:
 - Civil law (Civil Code - Act 40/1964 Sb., Authors act 121/2000
 - Commercial Law (Commercial Code - Act 513/1991 Sb.
 - Family Law (Family Act - Act 94/1963 Sb.)
 - Labor Law (Labour Code - Act 262/2006 Sb.)



Czech civil Law II - System of new private Law

Recodification of czech civil law is going to change the whole system of czech private Law:

- The part of civil code should be:
 - Family Law,
 - legal capacity to be the part of labour legal relations, legal reference (link) to labour contract in Labour Code,
 - main part of commercial law (excl. Act of commercial Corporations)



Current situation of Czech civil law

- The new Czech Civil Code has been signed by President (20th February 2012)
- The text of NCC was published in the Collection of Laws on 23th March 2012, No 89/2012 Sb.
- New Czech Civil Code will come in force from 1st January 2014
- The base of recodification of Czech Private Law is composed of 3 legal acts:
 - Civil Code (89/2012 Sb.-Coll.)
 - Act of commercial Corporations (90/2012 Sb.-Coll.)
 - International private law Act (91/2012 Sb.-Coll.)



Czech civil law III - New Czech Civil Code

Structure of the text:

- 5 parties:
 - Part One : General Part
 - Part Two: Family Law
 - Part Three: Absolute property Rights
(incl. Inheritance)
 - Part Four: Relative property Rights (Contract and
Tort Law)
 - Part Five: Final, Transitory and Repealing Provisions
- 3.046 of paragraphs.



The main attributes of new civil Code I

- 1) **Universal Code of private Law** - integration of entire private Law
- 2) Proclaim itself **charter of private basic rights soukromých práv** - it lost that function Constitution- now the goal to apply the constitutional rights .
- 3) Based on the doctrine of natural rights - applied mainly – juridical conception of human being (§ 19) and principles of private law (§ 3). Dangr – implementation of principles of natural law leads to the destruction of grounds of natural law.
- 4) Based on individual (loss of the social dimension).
- 5) **Discontinuity** of the existing development



The main attributes of new civil Code II

- 6) Basic institutes **family, property (ownership) and contract.**
- 7) Deeper „privatization“: mainly contract relations (more autonomy, more non-mandatory rules, more respect to the will - last will/testament..).
- 8) Between tradition and modernization/upgrade of Civil Law regulation the legislator selected the traditional concept of (ABGB, Draft of Czechoslovak Civil Code 1937)
- 9) Denied the function of Code civil as the tool of the control of social relations.



The main attributes of new civil Code III

Motto: F.v.Zeiller: Code shall be „*kurz, klar, abstrakt*“
(short, clear, abstract)

- 1) Wide range of terms of the same word meaning (e.g. equity principles)
- 2) Many terms of very near word (groups of principles)
- 3) Many problems with functional/working implementation of the term into context (The effect of judgement on the juridical act once validity, another time formation of juridical act another time effectiveness of j.a. § 33 odst. 1, § 46 odst. 2, § 50)
- 4) The trouble in translation (how to translate *Good Faith and Fair Dealing* of DCFR to Czech C.C.?)



The main attributes of new civil Code IV

- 6) Attention to detail of regulation - C.C. won't work (example: 8 steps to choose the person who can/shall bury dead person §114 odst.1, 9 steps to choose the authorized person to agree with the intervention into the human integrity (§ 97 odst. 1))
- 7) Recurrent terms in modified versions (exam. principles)
- 8) Former, extincted social relations (výminek- exchange? § 2707n.)
- 9) A lot of presumptions and fictions - Civil Law resignes from the aim to be true image of social reality
- 10) What is contained in code has the same importance as what there misses (equality before the law, of opportunities, solidarity, juridical relation as the paradigm of all legal/judirical constructions..)