



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 future development of Czech civil law
- Methods of course:
 - Genetic-procedural (very rich history)
 - Comparison (with national laws, european law..)
 - Description
- Content of course
 - Civil law (6 lessons)
 - Civil procedure law incl. structure and organisation of justice (6 lessons)
 - Termination of the course (1 lesson)



Introduction to the course II

Basic sources and literature:

- Textbook „Introduction..“ - on IS or to buy in the bookshop or to borrow from the library or to copy in the library
- New: Czech civil Code (machine translation) - on IS

Completing literature:

- Hurdík-Fiala: Contracts. Czech Republic. IEL. Kluwer Int. 2009 - upgrade 2011 – on IS
- **New Czech contract Law:** Hurdík-Fiala: Contracts. Czech Republic. No 81.IEL. Kluwer Law Int. upgrade 2014 – on IS
- Hurdík-Polčák-Smejkalová: Czech law in European regulatory context, Wien-München 2009
- Poplawski-Šramková: Legal sanctions..Brno 2008
- Czech civil Code 1964 (eng.) - on IS or to borrow or to copy
- Czech commercial Code 1991 (eng.) - on IS or to borrow or to



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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.) called „middle Civil Code“
- 1964 - „socialist“ Czechoslovak Civil Code (40/1964 Coll.) - was changed by Act 509/1991 Coll.
- 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 Coll.)



Czech civil Law I - from past to future II

- 1990 „federal“ project of new C.c.
- 1996 „Zoulík’s project“ of new C.c.
- from 2000 - project of new Czech Civil Code started
- 2012 – new Civil Code accepted in Parliament and signed by the President of Czech Republic (20.2.2012)
- 23. 2. 2012 new C.c. published
- from 1.1.2014 new Civil Code in force
- complementary acts (mainly civil procedure) were published – see below



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
- Currently, the parts of czech private Law are:
 - Civil law (Civil Code - Act 40/1964 Sb., Author's 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 changes the entire system of Czech private Law:

- The part of Civil Code are:
 - Family Law (part two of C.c.),
 - Labour Law: legal capacity to be the part of labour juridical relations, legal reference (link) to labour contract in Labour Code Act 262/2006 Coll,
 - main part of Commercial Law - commercial contract (excl. Act of commercial Corporations)



Czech civil Law III - System of new private Law

- The integral part of Civil Code are not:
 - Labor Law (Act No 262/2006 Coll., Labor Code) : Systemic relation between C.c. and L.c.: general regulation - special regulation
 - The law of commercial corporations (Act. No 90/2012 Coll.)
 - The international private Law (Act. No 91/2012 Coll.)
 - They are „specific private laws“



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 Coll.
- 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 Coll.)
 - International private law Act (91/2012 Coll.)



Published complementary legal acts to C.c.

- 1) Act 256/2013 Coll., **land registry act**
- 2) Act 257/2013 Sb., **changing some acts concerning l.r.a.**
- 3) Act 292/2013 Sb., **special civil procedures**
- 3) Act 293/2013 Sb., **changing civil procedure order**
- 4) Act 294/2013 Sb., **changing bankruptcy act**
- 5) Act 303/2013 Sb., **changing some legal acts concerned by the recodification of Private Law**
- 6) Act 304/2013 Sb., **concerning legal regulation of public registries of legal and natural persons**



Complementary acts prepared/refused

- changing some tax acts concerning recodification of private law
- changing some tax acts concerning transfer if immovable
- Proposal of legal Act concerning **Status of public utility**
refused by Senat 13th September 2013



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.Trust, incl. Inheritance)
- Part Four: Relative property Rights (Contract and Tort Law)
- Part Five: Final, Transitory and Repealing Provisions
3.081 paragraphs (ABGB 1502; BGB 2385; Slovak CC 880; new Hungarian CC cca 1500.



The main attributes of conception of new civil Code I

- 1) **Universal Code of private Law** - integration of entire private Law
- 2) Proclaim itself to be the **charter of private basic rights** - C.c. lost that function - Constitution; now the goal of C.c. to apply the constitutional rights
- 3) Based on the doctrine of natural law - applied mainly – juridical conception of human being (§ 19) and principles of private law (§ 3). Danger – implementation of principles of natural law leads to the destruction of grounds of natural law.
- 4) Based on individual position/privity of private law (the social dimension is missing)
- 5) **Discontinuity/breach** of existing development



The main attributes of new civil Code II

- 6) Basic institutes **family, property (ownership) and contract (responsibility?)**.
- 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 accepted the traditional concept (ABGB, Draft of Czechoslovak Civil Code 1937) and refused the future development
- 9) Denied the function of Code civil as the tool of the control upon social relations.



The main attributes of new civil Code III

Motto: F.v.Zeiller: Code should be „*kurz, klar, abstrakt*“ (short, clear, abstract) M.T.: *buta ember*

- 1) Rule: the same word - the same meaning/the different word - the different meaning
- 2) Reality: Wide range of different terms of the same word meaning (e.g. equity principles)
- 3) Many terms of very near word meaning (groups of principles)
- 4) Many problems with functional/working implementation of the term into context (The effect of judgement on the juridical act: once validity, some other time formation of juridical act, some other time effectiveness of j.a. § 33 odst.1, § 46 odst.2, § 50)



The main attributes of new civil Code IV

- 5) The trouble in translation (how to translate *Good Faith and Fair Dealing* of DCFR to Czech C.C.?)
- 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..)