Czech Civil Law
Introduction

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Preface

This book pursue an aim to serve as a textbook for the students of the course Czech civil law that has teached at the Faculty of Law of Masaryk University in Brno, Czech Republic in the frame of the program Socrates-Erasmus since the academic year 2009/2010. It outlining the concept, the system and the development of civil law in the Czech Republic and reflecting the situation in the legislation by July 31, 2009. The work corresponds with the contents of the course of Czech civil Law, teaching in the program Socrates-Erasmus; however, the really lessons take inevitably into evidence the development of the Czech „civil" legislation and the development of the court practice.

The current state of civil law in the Czech Republic has several specific features that should be pointed at.

The private law has in Czech Republic the complicated **system**. The sources of civil law in narrower sense in the Czech Republic are composed of two most important acts of law: The Civil Code (Act No. 40, 1994 Col.) and Commercial Code (Act No. 513, 1991 Col.). Both the Codes contain specific rules for both commercial and non-commercial juridical relations and deeds but a strict dividing line between the two of them is often missing and thus application of a particular rule of law to a given case is governed by rather complex rules.

Czech civil law in broader sense (private law) is composed of:

- Civil law (based on Civil Code and others acts of law) and Commercial law (based on Commercial Code and others acts of law),
- Labour law (based on Labour Code (Act No. …., 2006 Col. and others acts of law) and
- Family law (based on Family Code (Act No. 94/1963 Col. and others acts of law).

The Intelectual property law is partially considered as a part of civil law in narrower sense (especially law of authors, Act No. 121/2000 Col.), partially as a part of commercial law (particularly industrial property law).

Another feature influencing the character of the Czech civil law is its dynamic **development**: following the changes of the political situation after 1989 the law of contracts has, through a number of legislative changes including Commercial Code recodification, gradually returned back to democratic standards of contract relationships, leaving aside the socialist experiment in law, as applied between 1950 and 1989. However, a consistent change of the system of law necessarily means to carry out an entire recodifiction of private law as a whole, including the law of contract. Since 1992 legislative activities involving that entire recodification of the Czech private law have been in progress. The aim of the recodification should be a large civil code, including family law. As for basic types of contracts, the new civil code should contain all standard contract types including employment contracts and contracts used both in commercial relationships and beyond (which implies a commercionalized concept of the civil code).

Regarding the above mentioned specific features of the transitional period of the Czech civil law the authors had to make some inevitable compromises with regard to standards of comparative civil law. These were brought about by the following circustances in particular:

- A concise regulation of general provisions of civil law is in contrast to the detailed regulation of specific contract relationships in both the Civil and the Commercial Codes.
- The czech regulation of civil law is still different, to a large extent, from the standard, traditional forms of civil law of other european countries and the modern projects of civil law, like the DCFR, Gandolphi principles, UNIDROIT principles and other.
- Conception, content and terminology differences are quite apparent in individual juridical relationships.
Due to the above mentioned reasons it was not possible to pattern fully the conception, system and content of the Czech civil law upon the standardized model structures of the textbooks Civil Law in majority of european countrie and the authors inevitably had to respect – in the interests of authenticity of the description of the Czech civil law (which is not in the existing version legislatively harmonized and suffers from systemic imperfections) – these oddities which may give an impression of incoherency and unsystemic nature. These oddities concern the terminology of the described institutes, too; the authors respect the special terminology of the Czech civil law striving at the same time to adapt it to the language standards of the "European" English.
The authors would like to thank ………….., for the translation and to thank ……for the corrections of this work.

Introduction to the Czech Civil Law

1. General description of the Czech Republic

The Czech Republic forms geografically the centre of Europe and is situated among Polonia, Germany, Austria and Slovakia. Longtime it was the frontier between West and East. Historically, its position between West and East was a reason of many war and politoval conflicts concerning this country.
The Czech Republic was born as one of the heirs of former Czech and Slovak Federative Republic. Now it is a unitary state created after the splitting of Czech and Slovak Federative Republic on 1st January 1993. The Constitution of the Czech Republic was adopted at the end of 1992, entering into force on 1st January 1993. The country is divided into fourteen regions. The capital of the country is Prague. Since the 1st May 2004 the Czech Republic has been a Member State of the European Union. The European law is in force in the Czech territory having supremacy over the Czech law.

The legislative power is exercised by the Parliament of the Czech Republic which consists of the Chamber of Deputies and the Senate. 200 members of the Chamber of Deputies are elected in general and direct elections every four years. 81 members of Senate are elected in general and direct elections for six years. The election takes place every two years in order to renew one third of the Senate. Besides its legislative power*s*, the Parliament has also other important functions. The Chamber of Deputies must pass the annual state budget and the final account. The Senate gives its consent to the appointment of judges of the Constitutional Court. Both Chambers sitting jointly elect the President of the Czech Republic every five years. The President of the Czech Republic can only be elected for two consecutive terms.

The **executive power** is partially vested in the Government of the Czech Republic and partially in the President of the Czech Republic. He is part of the executive power, too. He appoints the

Prime Minister according to the result of the election to the Chamber of Deputies and appoints and dismisses each Minister of the Government on the proposal of the Prime Minister. The primary task of the Government consists in issuing regulations and making decisions needed for implementation of laws.

The **judiciary power** is independent of the executive and legislative powers. The Constitutional Court has the authority to pass judgements on constitutionality of laws enacted by the legislature and on regulations enacted by the executive authorities. The ordinary law courts are organised in four *degrees* – district courts, regional or municipal courts, high courts and Supreme Court. Administrative courts have jurisdiction over public law controversies outside constitutional issues, in particular over challenges to administrative acts. The systém of administrative courts is partially organised as a part of general courts, on the head of administrative justice is the Supreme Administrative Court.

2. Short history of Czech law and of Czech legal culture

A legal culture has been in the territory of what is now the Czech Republic from time immemorial. As early as the thirteenth century, land records, the legal registers of noble estates existed in Bohemia. At the beginning of the fourteenth century, under reign of the Czech King Wenceslas II, Roman law was adopted (*ius regale montanorum*). From 1620 until 1918, the Czech legal system developed within the framework of the Austrian empire. At the beginning of twentieth century, the German Civil Code (BGB) influenced the development of the Austrian legal system, including the Czech one. Some elements of the French legal system penetrated to the Czech law after the establishment of the Czechoslovak Republic in 1918. Particularly the constitutional system of the new Czechoslovak Republic adopted some elements of the French Constitution of the Third Republic. The general system of private law remained untouched until 1950 when the Czechoslovak law was subject to the influence of the Soviet legal system. Under the communist regime (1950-1989), the democratic principles of civil law were distorted. After 1989, the Czech legal system finds again its original roots but some of its new codifications are more and more inspired by modern European codifications, particularly of the German origin.

3. Czech legislation and the Czech legal system as a part of continental legal system

In the Czech Republic, law making must proceed by means of legislation. There is therefore no customary law as such. Customs can be considered only in those cases in which a statue refers to them. Nevertheless, under the influence of European law and its development, the general principles of law came to be the source of Czech civil law.

Other important sources of law are international treaties and international covenants of human rights. Those international treaties and covenants have a direct binding effect and supremacy over statutes.

The Constitution takes precedence over statutes. The priority of the Constitution is especially important in respect to provisions protecting fundamental individual rights. All ordinary statutes are void or may be declared void insofar as they violate any fundamental constitutional rights. The priority of statutory law over administrative regulations results from the subordinate position of the administrative agencies in respect to the legislature. Furthermore, an administrative agency

may promulgate legal norms only on the basis of a formal statutory delegation of power which specifies the content, purpose, and scope of the authority so granted. Duties and obligations can be imposed only by statutes, not by administrative provisions.

Two rules govern the conflict between legal norms otherwise having the same priority: a recent law prevails over a prior law; specific norms prevail over more general ones.

4. The position of the judiciary

Court decisions and writings are not considered to be sources of law; nevertheless, they often have a decisive influence upon courts and administrative authorities. In this context, rules of interpretation are of the great importance, such as interpretation of words, grammatical-logical interpretation, interpretation of intention analogy of statute, analogy of legal principle or principles of natural law.

In order to guarantee a uniform case law, only the Supreme Court and the Supreme Administrative Court can give their opinions to unification of the case law. Such opinions do not have nature of a generally binding source of law. As a rule, however, they are followed by all courts.

A special position is granted to the Constitutional Court. The Constitutional Court may declare void any statute or its provisions insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The Constitutional Court may declare void any administrative regulation or its provisions insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The decisions of the Constitutional Court are the so-called "negative source of law". The Constitutional Court is not a law making authority but it can declare void the existing sources of law or their parts.

5. Public law and private law in Czech legal system

Until 1950, civil (in narrower sense) or private law (in broader sense) were understood as all that was not public law; thus it included even commercial law. Legal writers for some time used the term "private law" in a narrower sense excluding commercial law. However, between 1950 and 1989 the distinction between "private" and "public" law was considered inappropriate. After 1989, a new discussion on this topic was opened. An important step towards solving the problem of distinction between private and public law was establishing necessary criteria of such a distinction. The first of them may be riteria of involvement and the second one criteria of power.

According to the criteria of involvement private law respects freedoms of an individual while public law protects public interests and the public order. Such classification is dating back to Roman law as expressed by Ulpianus: *"Publicum ius est, quod ad statum rei romanae spectat; privatum, quod ad singulorum utilitatem"*. According to the criteria of power, public law express*es* the dominant position of the state authority in protecting public interests and the public order. The Czech legislators accepted the dualism of public and private law again after 1991 in several modifications of the Civil Code. A renewal of dualism of private and public law in the Czech legal system was regarded as an instrument of reinforcing legal guarantees of the natural or artificial legal persons and preventing the state from unauthorized interventions in private

business activities.

6. Definition of czech private law

The present Civil Code reflects the principle of the Civil Law regulation declaring that the parties of Civil Law relationships are equal in their rights and obligations. This equal position is reflected in the following way:

- none of the parties of a civil law relationship is authorised to impose unilaterally any duties or to transfer unilaterally any rights on the other one;
- none of parties of a civil law relationship is authorised to decide disputes concerning rights and duties of another participant as created from the civil law relationship. Such disputes can be decided solely by competent authorities, in particular by Courts or in special cases by arbitrators if statutes provide so. The participants of any litigation are equal in their rights (§ 2, Art. 2, Civil Code).

The principle of equality is now undoubtedly one of the basic principles of legal regulation of private law. The public authority can influence private law relationships or create their inequality under limited and special conditions:

A particular interest to protect special categories of civil law relationships, e.g. protection of children or protection of persons who are not capable to defend effectively their own interests.

Protection of some participants of a civil law relationship against economic supremacy of other participants which could lead, respecting formal equality of the participants, to a devaluation of the social purpose of the legal relationship, eg consumer protection, abuse of the dominant position, etc.

6. Civil Law and Commercial Law

The Czechoslovak legal system in 1950-1989 did not make any distinction between private law and public law. Thus no discussion was possible on the broader sense of private law or on its narrower sense excluding commercial law. Starting from 1948, an extensive state control and central planning of the economy were introduced and in 1964 the Economic Code more or less established an administrative regulation of economic contracts. Those were more similar to the above described administrative contracts than to commercial contracts in the sense of Continental legal systems.

After 1989, the concept of “private law” was renewed in Czechoslovakia but in a very broad sense including commercial law as well, as a reaction to its previous absence in our legal system. Amendments to the Civil Code in 1991 and the introduction of a new Commercial Code in 1991 created a dual codification of private law. The Civil Code represents a general codification of private law including contract law while the Commercial Code is a special codification for commercial contracts and for persons of commercial relationships such as commercial companies and cooperative companies.

The most complicated situation between civil law and commercial law relationships relate to civil and commercial contracts. While the application of the Commercial Code to specific persons, such as commercial companies, is relatively clear, the application of the Commercial Code to specific contracts such as commercial contracts is not without difficulties. The category of commercial obligations is defined in § 261 of the Commercial Code as follows:

- Obligations between entrepreneurs (businesses), i.e. between persons involved in continual business for profit.
- Obligations created between the state or its entities and between an entrepreneur (business) in the framework of business activities of the latter for the purpose of public interest.
- Obligations where the character of parties is not decisive but the Commercial Code provides for special types of contracts which should be governed by commercial law, for example, contracts on letter of credit, banking guarantee, traveller's cheques, lease of a share of a company, etc.

When a contract is concluded between other parties than those who should conclude it according to the Commercial Code or when there is a contract not directly specified by the Commercial Code as a commercial contract, the parties may agree to conclude such a contract according to the Civil Code or according to the Commercial Code. A choice between the Civil Code and the Commercial Code, if possible, must be expressed in a written form. Both types of contracts provide for a protection of the consumer in terms of general provisions of Civil or Commercial Code.

7. Civil law and family law

Czech family law is relevant to the relationships between married couples (inclusive registered partnership), between (among) the parents and children and others relativem, include maintenance (alimony). Only the property relations between married couples (inclusive registered partnership)have been regulated in Czech civil code. The relationsship between Family code and Civil code has been based on the rule of speciality and subsidiarity.

8. Civil law and labour Law

In czech legal system, the labour law has the autonomy position towards the civil law. It regulates the relationships arising between employer and employee on the base of the employment contract and the incidental relationships.

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Completing sources and literature:

Civil Code „Občanský zákoník", Prague: Trade Links, s.r.o., June 2007

Check (control) questions:

1) Describe the background of Czech Republic
2) Characterize the political system of Czech Republic
3) Describe the historical development of czech law
4) Descibe the historical development of czech civil law
5) Describe the system of czech law
6) Characterize the czech private law and civil law
7) Distinguish the czech civil law in narrower sense and in broader sense
8) Distinguish the czech civil law on one hand and the czech commercial law in other hand
9) Distinguish the czech civil law on one hand and the czech family in other hand

10) Distinguish the czech civil law on one hand and the czech labour law in other hand