The Czech Legal System and Contexts

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Charles University in Prague, Law Faculty
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Marta Chroma

1. Introduction

1.1 Historical Outline

The Czechoslovak Republic, the legal predecessor of the Czech Republic, was established on October 28th, 1918, as a consequence of the dissolution of the Austro-Hungarian monarchy after World War I. Under the Constitutional Charter of 1920, Czechoslovakia was to be a democratic republic with a bicameral parliament called the National Assembly. The period between 1918 and 1938, labelled "the First Republic", was the only time of true democratic development in modern Czech history.

The Munich Agreement, signed in 1938, caused the cessation of democratic development and resulted in fifty-one years of totalitarian rule in Czech territory with a two-year intermission between 1946 - 1947, when unsuccessful attempts to reinstall democratic principles of government were made. The political and party systems were made "uniform", that is, political parties not opposing the Communists were assembled under the so-called National Front led by the Communist Party; others were dissolved and outlawed.

A new Constitution was adopted in May 1948 which labelled the newly installed system a "people's democratic regime" characterised by the leading role of the Communist Party. A second Constitution, the Socialist Constitution, was approved in 1960 which openly affirmed the status of Socialism in the Czechoslovak Socialist Republic. Another material amendment to the Constitution was made in 1968, whereby a formal federation of two countries, the Czech Socialist Republic and the Slovak Socialist Republic, was instituted.

After the collapse of the communist regime in November 1989, all political restraints were repealed in the Constitution and, consequently, the country peacefully split into two independent states, the Czech Republic and the Slovak Republic, on January 1st, 1993.

1.2 Sociopolitical Outline

Population and Language

The Czech Republic has a population of 10 million people; of whom 90% are Czech, 3.7% are Moravian and 1.8% are Slovak. The remaining 4.5% of the population is made up of members of the following nationalities: Romanian, German and Polish.[1]

Czech remains the only official language since the split into the two republics in 1993.[2] The Collection of Laws of the Czech Republic is the official publication and is exclusively in the Czech language. If an international treaty is published in the official Collection of International Treaties, it is accompanied by the Czech translation, which has the same force as the original text.

Political Background

In the early years following the "Velvet Revolution" of November 1989, the people were very enthusiastic about the new political situation and also the challenges arising out of the situation. With respect to legislative activities, the focus was on amending all laws with a view to adjust them to the new political, economic and social conditions. Most industries were privatised and many privately owned businesses were established. The society opened up to Western influences and economic principles. A wide range of political parties was re-established. After the creation of the Czech Republic, the Government attempted even more conscientiously to join existing Western European structures. Political development has been marked by efforts to achieve formal as well as actual integration into these structures. The Czech Republic gained membership of the OECD on December 21st, 1995. The Europe Agreement came into force on February 1st, 1995, establishing the association between the Czech Republic and the European Community. In April 1998, the Czech Parliament approved the Czech Republic's membership in NATO.

These measures notwithstanding, the strong focus on economic restructuring between 1993 and 1998 led to substantial problems in the society and difficulties in installing a stable and functioning democratic system. Many people tried to attain economic wealth at any price and as quickly as possible, which led to

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1 The Czech Statistics Office, 2000 Census Preliminary Results, published electronically at: <http://www. czso.cz>.

2 Between 1918 – 1993, the Czech language was the official language in the territory of Bohemia and Moravia (with the exception of World War II when German was required as the first official language). The Slovak language was the only official language in the Slovak territory.

extensive violations of the law, assisted or even committed by top representatives of the State, since the law enforcement machinery did not function in the ways that it should have. Naturally, people's enthusiasm for reform evaporated as a result and the present social atmosphere seems rather frozen, or at least, far from positive. Insufficient level of legal certainty, public security and personal safety appear to be the main issues of this recent stage in the development of Czech society.

The Constitutional System

Parliamentary democracy has been the form of government since 1918. The latest Constitution of the Czech Republic was passed on December 16th, 1992 and came into force on January 1st, 1993. The Government is divided into the Executive, the Legislative and the Judicial branches. The Constitution describes the Czech Republic as a sovereign, unitary and democratic state where the rule of law applies and where the people are the source of all State power. The Charter of Fundamental Rights and Freedoms has been attached as an inherent part of the Constitution.

The Executive

Three bodies perform the executive function: the President, the Government and the State Attorney's Office. The President is the head of State and is elected at a joint session of both chambers of the Parliament of the Czech Republic for a five-year term of office. The President primarily performs a ceremonial role and represents the State externally. He appoints and has the power to dismiss the Prime Minister, members of the Government, Judges of the Constitutional Court[3], President of the Czech National Bank, President of the Czech Audit Office, and the judges of general courts.[4]

The Government is the supreme executive authority and accountable to the Chamber of Deputies, which is the Lower House of Parliament. There are 13 ministries representing different areas of the executive branch headed by ministers who all are members of the Cabinet.

The devolution of both executive and legislative powers has led to the establishment of the so-called "higher territorial units", generally named

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3 The President both nominates and appoints the Constitutional Court judges without any interference by the Executive branch (the Ministry of Justice), but upon the approval of nominations by the Senate as a higher chamber of Parliament.

4 Judges of general courts are appointed by the President only upon their nomination by the Ministry of Justice.

Regions[5], which came into existence on January 1st, 2001. They combine the execution of devolved powers of the State by Regional Authorities and legislative initiatives by their Regional Councils.

Municipalities, as basic self-governing units, form the basis of local government. They execute some administrative duties of the State through Municipal Authorities, and are responsible for self-government within the designated territory (jurisdiction) through their Municipal Councils.

The Legislature

Legislative power in the Czech Republic is vested in the Parliament, which consists of two houses: the Chamber of Deputies, or the Lower House, and the Senate, or the Upper House. The Chamber of Deputies is composed of 200 members elected for four-year terms. The Senate consists of 81 members elected for six-year terms. In order to maintain continuity in the operation of the Senate, one third of all Senators are subject to election every two years. Deputies are elected by secret ballot on the basis of universal, direct suffrage under a system of proportional representation. Elections to the Senate are by secret ballot and are based on majority system. Every citizen of the Czech Republic aged 18 or over has the right to vote; he or she may be elected to the Chamber of Deputies from the age of 21 onwards; persons at the age of 40 and over are qualified to run for the Senate elections.

The Judiciary

The Judicial branch is headed by the Supreme Court of the Czech Republic. The role of the judiciary is to apply and interpret the law. Decision-making is based primarily on the application of statutory provisions to individual cases; precedents are not considered to be relevant in continental law, from which the Czech system derives. The Judiciary in the Czech Republic is based on a two-instance (trial and appeal) and four-tier system (District Courts; Regional Courts; High Courts; the Supreme Administrative Court and the Supreme Court). Should any dispute occur in relation to the application or interpretation of any provision of the Constitution and the Charter of Fundamental Rights and Freedoms, the question would be referred to the Constitutional Court for a final decision.

The Supreme Administrative Court was established in April 2002. Although mentioned in the Constitution as early as in December 1992, it was constituted by Act Number 150/2002 Coll.[6] passed by Parliament on March 21st, 2002 (and

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5 There are 13 Regions and the Capital City of Prague.

6 In this article, "Collection" or "Coll." always stands for the Collection of Laws of the CR. The abbreviation is a compulsory part of the citation of any Czech law.

becoming effective from January 1st, 2003). Unlike the Constitutional Court, the Supreme Administrative Court is a part of the general court system and its main role is to assure the uniformity and legality of judicial decisions in administrative cases.

The Constitutional Court of the Czech Republic is positioned outside the general court system. Its sole assignment is to safeguard the constitutionality (the compliance with the Constitution and the Charter) of both legislation (general and local) and court decisions.

2. Legislation

2.1 Sources of Law

Czech law, as a derivative of continental law, is based on three sources: legislation, international treaties to which the Czech Republic is a signatory and the judgments of the Constitutional Court.[7] Legislation, or normative acts, can be further subdivided into statutes, regulations issued by executive bodies, and generally binding ordinances issued by local government. There are two types of statutes, the classification of which depends on whether they are aimed at amending any provision of the Constitution or the Charter (i.e. "Constitutional Acts"), or to regulate any other issue (i.e. "Acts").

Czech legislation has been published in the Collection of Laws of the Czech Republic since 1918. Judgments of the Constitutional Court have been published in the Collection, too. International treaties, binding on the Czech Republic, have been published in the Collection of International Treaties. The general rule is that publication in the Collection is considered the official promulgation of a law in question and the date of publication is the date of the law coming into effect. The law itself provides for the date of effect, however, the earliest date it may become effective is the date of publication in the Collection.

There is to be another source of law after the Czech Republic becomes a member of the European Union. Community legislation will be published in the Czech version of the Official Journal, which will then become the third official collection of laws binding on the Czech Republic.

A major factor affecting the research of legislative genres is the question of validity of legislative acts, that is, the concept of hidden derogation.[8] Since 1918,

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7 Boguszak and Čapek, 1997: 46.

8 Hidden derogation occurs when a new law is passed without express derogatory provisions relating to all the affected pieces of existing legislation. The absence of

almost nothing has been done to make Czech legislation transparent in this respect. Among the 30,000 texts published in the Collection of Laws since 1918, one sixth are not legislative acts (e.g. various editorial announcements and comments, resolutions, etc.).[9] About 10,000 acts have been expressly repealed. 15,000 acts can be subdivided with respect to their validity as follows: one third may exist due to "legislative muddle"[10]; another third consists of laws that are still in force but are obsolete and hence unused. It is the remainder, or 5,000 legislative acts, that forms the core of the Czech legal system. Since 1990, in spite of a number of affirmative resolutions of the Government, no attempt has been made to confront problems such as those presented by hidden derogation. In other words, the "legislative muddle" has become even more extensive.

The corpus of Czech legal texts, or *legal realia*, consists not only of normative acts but also of other types of writings:[11]

- Legislation (all laws as well as secondary legislation published in the Collection of Laws of the Czech Republic)
- Judicial decisions (as published in various law reports)
- Individual decisions and normative instructions of State administration
- Explanatory memoranda published along with proposed legislation
- Proposed legislation and projects
- Parliamentary debate records
- Collected comments on draft bills as a result of their circulation in the relevant government departments
- Commentary on enacted legislation
- Law textbooks and monographs
- Law journal articles
- Expert opinions of outstanding lawyers primarily with respect to the interpretation of legislation
- Itemised lists of legislation in force in both chronological and topical arrangements

All these texts are sources of the legal language which is of primary importance in understanding and interpreting law in general.

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such a provision is due to either certain "legislative neglect" or ignorance of drafters.

9 Kořenský, Cvrček and Novák, 1999: 32.

10 Ibid.

11 Kořenský, Cvrček and Novák, 1999: 16-17.

The Legislative Process

Most bills originate in the Chamber of Deputies. They can be proposed by the Government (Government-sponsored bills), an individual Deputy or a group of Deputies (private-member bills), or a region (regional bills).[12] The Senate as a whole also executes the legislative initiative by proposing Senate bills. Once passed by the Lower House, bills are committed to the Senate for consideration. At this point, the Senate may:

- Approve the bill and commit it to the President for his assent
- Adopt amendments and return the bill to the Chamber of Deputies for reconsideration
- Dismiss the bill entirely, return it to the Chamber of Deputies and the Lower House will vote again although it usually overrules the Senate's dismissal
- Ignore the bill, which will automatically lead to its passage

Presidential veto may be, and has been so far, overridden by the qualified majority vote in the Chamber of Deputies.[13] Bills related to the State Budget may be proposed only by the Government and considered exclusively by the Lower House.

The legislative process in the Czech Republic has been rather complex and somewhat disorganized. Due to the accelerated EU pre-accession stage, the quantity of proposed legislation is rapidly increasing. Government bills are drafted by legislative departments within relevant ministries and finalised by the Legislative Council of the Government. Private-member bills are drafted by individual Deputies (or their advisors and assistants who usually lack sufficient legal background). Although both houses of Parliament have their own legislative departments, the experienced professional legislative drafters there are consulted only occasionally.

The only instrument regulating legislative drafting is known as "The Law-Making Guidelines", a document issued by the Government but not legally binding. In consequence, the quality of proposed legislation from the point of view of drafting technique has varied and is worsening.

However perfect a draft law may be at the moment of its submission to the Parliament, it would normally suffer substantial "damage" as a result of many

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12 Boguszak, Čapek, 1997: 49.

13 Knapp, 1998: 82.

inconsistent amendments passed by both Houses.[14] In proposing changes to the bill under consideration, Deputies and Senators would typically not respect the opinions of professional legislative drafters and experts; their primary objective would be to ensure the interests of their own political parties.[15]

Quantitative Comparison with Other Legal Systems

No significant differences can be seen in the quantity of legislation passed in continental law countries.[16] There are variations due to the different systems of division of legislative capacity between a central legislature and law-making bodies in regions, and different traditions in official publications. Statistically, it can be shown that countries such as France, Spain or Italy continuously produce a larger bulk of legislation than those in the North - Sweden, Finland or Norway. From the quantitative point of view, the Czech Republic resembles the development in Austria, including a certain legislative "boom" after World War II and, similarly, the "depression" in the late 1950s.

The comparison of the production of primary legislation (i.e. laws) in major common law countries with the Czech Republic (based on continental law) in 2001 can be seen in Table 1 below:

	UK	USA	Canada	Ireland	Australia	Czech Republic
Passed laws	30	137	45	55	170	97
Of which amendments	0	14	21	13	116	60
Percentage	0	10%	46%	24%	68%	62%

Table 1. A comparison of the production of primary legislation

The table shows no significant differences between the UK, Ireland and Canada with respect to the number of laws passed during one session of parliament. The USA and Australia passed a similar high number of laws, a fact which was admittedly due to their federal status; historically, however, numbers have

[14] The latest example may be Act N. 14/2002 Coll. to amend the Ownership of Flats Act: the proposed bill contained one amending provision which was, according to the Government, sufficient to alleviate the existing problems; it consisted of 27 provisions at the end of the legislative process, 23 of which were to no effect in relation to the original intent and, moreover, led to some hidden amendments of other laws.

[15] This conclusion is based on the author's collaboration with the Legislative Department of the Senate over a period of three years.

[16] Kořenský, Cvrček and Novák, 1999: 36.

remained quite stable since World War II. The Czech Republic, as far as the quantity of passed laws is concerned, stood in between these two poles: a relatively high amount of legislation was a visible result of the so-called "legislative flurry" [17] which began under the recent social democratic Government elected in 1998.

There are many factors influencing the number of laws enacted, with legislative tradition and the system of law (continental law v. common law) being only two of them. On the other hand, none of the above-mentioned common law countries have ever allowed a situation of "legislative muddle" in their systems; they have consistently purified their legislation. As an illustration, a digest of Australian laws for 1999 consists of 145 pages, and lists not only 202 laws newly enacted or amended, but also hundreds of valid statutes affected by the new enactments by means of derogation or amendment; thus, legislation has remained transparent and its effective interpretation, application and enforcement have been maintained.

It should also be noted that the proportion of newly enacted laws and amended laws in the Czech Republic has leaned towards amendments. In this respect, the trend has not been positive, and acceleration of this negative process is more than obvious. In 1990, there were 159 new laws and 70 amended laws passed; in 1994, 69 new laws and 52 amended laws; in 1997, 57 new laws and 46 amended laws.[18] As can be seen in Table 1 above, 62% of laws passed by the Czech Parliament in 2001 are accounted for by amended legislation. The enormous growth of amended primary legislation is obvious and can be considered to be somewhat extreme. No track, such as the Australian digest mentioned above, of all consequences of amended laws for other statutes and secondary legislation has ever been kept. Moreover, amendments have not been evenly spread over the whole range of legislation; they apply primarily to already amended laws in what has been referred to as a "self-destruction" process.[19] For example, the Civil Procedure Code, originally adopted in 1963, was amended 5 times before 1990 and 36 times after 1990; the Commercial Code, adopted in 1991 has been amended 21 times; the Trade Act, adopted in 1991, has been amended 50 times. Thus, the application of one famous legal principle that the

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17 Although this terminological metaphor has been usually used to denote a sudden burst of activity even in the US Congress, it says nothing about the quality of the process. In the Czech context, the whole process led to substantial deteriorating of the quality of legislation passed by the Parliament simply because the houses have been objectively unable to pay sufficient attention to every single bill.

18 Kořenský, Cvrček and Novák, 1999: 39.

19 Ibid.

"ignorance of law is no defence", generally recognized also in the Czech legal theory, has become virtually impossible in the Czech reality although we all have to pretend that the principle has been observed. Even law specialists admit sometimes that the application, interpretation and enforcement of law in the Czech Republic are becoming more and more difficult particularly because of the lack of transparency in legislation and chaotically amended laws.

The relative proportions of private and public law in legislation is another aspect that should be mentioned here. Surprisingly, only 5 to 10% of all valid legislation applies to private law; the remaining 90 to 95% are laws regulating public law institutes and practice. Thus, it can be said that the State has dealt primarily with itself in the realm of legislation.[20]

EU Prospects

As mentioned above, the Czech Republic is at the pre-accession stage for EU membership. The last general election was held in June 1998. The new Government was established in July 1998; since then, the Government has submitted a total of 360 bills, 254 of which relate to the modelling of Czech laws after EU legislation.[21]

The pre-accession stage in legislation has been somewhat difficult not only due to the prevailing "legislative muddle" in the main legal corpus mentioned earlier, but also as a result of new terminology and legal institutes which must be introduced and incorporated in Czech law. For example, the word "establishment", which is a basic component of the term "freedom of establishment", seems to have no legal or linguistic equivalent in the Czech language that would encompass all legal connotations associated with it. Legislators and linguists are now in the process of finding and negotiating which Czech word or term can be used to denote such an important and frequently mentioned institute, being able, at the same time, to produce morphological or lexical inflexions. Since the Czech Government has had to arrange for the translation of about 200,000 pages of EU legislation into Czech, there are undoubtedly many more legal-linguistic problems to be solved.

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20 Ibid., p. 40.

21 The data have been provided by the Secretary of the Legislative Council of the Government.

2.2 Translation of Legislation

The Czech language as the target language
Traditionally, international treaties binding on the Czech Republic have been the only foreign language legal texts to be translated into Czech. Translations have been the responsibility of the Ministry of Foreign Affairs and the quality of translated texts has varied considerably. The lack of attention paid to the quality of translation may have been due to the recognition of the authenticity of only the original but not the Czech versions.

In 1999, a new unit was established within the Office of the Government of the Czech Republic, namely, the Compatibility Department. It consists of three sections: the first, the Compatibility Section, responsible for ensuring all Government bills to be compatible with EU legislation; the Revision Section, responsible for revising translations of EU legislation into Czech and the last, the Analytical Section, in charge of reviewing Czech positive, or valid, law in the light of EU *acquis communautaire*. The Revision Section has played an extremely important role in the codification of new Czech terminology as transposed into Czech law from EU legislation. The team is composed of both lawyers and linguists and the main outcome of their work has been the Guidelines for Translation of EU Legislation (1995). The manual is used by all personnel translating EU laws into Czech and the Revision Section regularly augments this volume with new terminology, or revise older terms and phrases as appropriate.

The Czech language as the source language
There has been no specialised authority responsible for the translation of Czech legislation into foreign languages. Should any foreign partner (whether a partner of the State or a private individual or entity) need a Czech law to be translated and made more comprehensible, only an unofficial translation without any legal force and effect can be provided[22]. Even translations of the Czech Constitution and the Charter of Fundamental Rights and Freedoms placed on the official website of the Czech Parliament are unofficial and may not be relied upon in case of any conflict and interpretation dispute.

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22 "Official" translation of any legislative text is only the translation published in the Collection of Laws of the Czech Republic. Any other translations even those displayed on the official internet webpage of Government authorities are considered "unofficial" because one cannot refer to them when claiming his/her right before a court or an administrative body.

The absence of any comprehensive study comparing Czech for legal purposes with other languages as used for comparable purposes is one of the main reasons for the above situation. Recently, work has been done in mapping the characteristic features of Czech for legal purposes [23], including those that distinguish it from Czech in its normal usage[24]. These features have also been partially mapped onto equivalents in the English language with respect to the Anglo-American system of law. Certain problems facing translators of Czech legal texts into another language such as English result from the specificity of legal language that is deeply rooted in the relevant system of law.

Another aspect of the legal language and legal translation may be considered, namely the *normativity* of terminology.[25] Generally, two levels are to be found in the language of law: ”descriptive terminology” representing a descriptive norm of terms, i.e. in their everyday legal usage, and ”prescriptive terminology” representing a prescriptive norm, i.e. terms as defined by and contained in statutes. Obviously, the level of normativity should be observed when translating legal texts. As can be seen from the following, the dichotomy should not be confined to pure legal terminology[26] but extended to all aspects of the legal language, such as the use of prepositions. One example is provided here for illustrative purposes. The term *odvolání* (“appeal”) is combined with the preposition *proti* (“against”) in Czech. Such a prepositional collocation is of a standard nature both in general and legal Czech serving as both descriptive and prescriptive norm of the usage. It may be combined with any noun or nominal phrase denoting an act or decision that may be appealed against, as in:

- *Odvolání proti rozsudku* (“an appeal against the judgment”)
- *Odvolání proti zamítnutí stížnosti* (“an appeal against the dismissal of complaint”)

However, in legal Czech, there are other two prepositions regularly co-occurring with *odvolání*, namely, *z* (“from”) and *do* (“to”) when referring to the decision of a court. The phrases *odvolání z rozsudku* and *odvolání do rozsudku* denote

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23 Marta Chromá, Czech-English Law Dictionary with Explanations (Leda, Praha 2001)

24 Traditionally, there are two clearly defined levels of the Czech language: (a) “literary” i.e. standardized or codified Czech (spisovná čeština), supposedly taught at schools and required to be used in regular written texts of any kind, with the exception of fiction, and as a spoken language of instruction or for any other official purposes, and (b) common Czech (nespisovná, obecná čeština), i.e. a primary and widespread spoken variety of the national language.

25 Galinski, 1982: 189.

26 Riley (1995: 73-79)

exactly the same concept and have the same legal effect as *odvolání proti rozsudku*, or "an appeal against the judgement". It may be argued, however, that the two prepositional collocations *odvolání z rozsudku* and *odvolání do rozsudku* constitute "legal jargon" in Czech; in fact, they fall within the ambit of descriptive norm (everyday legal usage). A search through our own corpus[27] of various English legal texts consisting of about 6 million words suggests that the English collocations "an appeal from (a judgment, decision)" is a part of statutory language (i.e. prescriptive norm), for example, Criminal Alien Deportation Amendments of 1990, sec. 4(5)(a)(iii) in the USA, or the Criminal Appeal Act 1995, sec. 7(2)(b) in the UK). In its usage it serves, along with the primary phrase *appeal against*, as a counterpart of the Czech *odvolání proti rozsudku*. The Czech preposition *do* in the phrase *odvolání do rozsudku* has no equivalent descriptive counterpart in English, however, the whole phrase can be freely translated as *an appeal against a judgment* without any shifts in the legal sense. In the absence of a corresponding descriptive equivalent in the target language its prescriptive counterpart may always be used without any loss of legal and linguistic information.

The author of the present chapter has been working towards the identification of authentic equivalents in the Anglo-American system of law for words and concepts which seem to have been previously poorly translated from Czech into English. A frequently used Czech phrase *právní subjekt* has often been mistakenly translated into English as a *legal subject*, primarily because in both Czech and English the noun (E: *subject*, C: *subjekt*) is a polyseme and interlanguage interference contributes to the incorrect choice of terminological equivalents. The Oxford English Dictionary[28] provides 18 main meanings of "subject", of which only one is assigned to law. This legal meaning is divided into three glosses:

1. A thing over which a right is exercised
2. A piece of property (in Scottish law)
3. The object of an agreement.

None of the above corresponds to the legal meaning of the Czech *subjekt* and yet may be combined with an attribute "legal" in the sense of the Czech phrase. The English word "subject" in its legal meaning can only be translated by the Czech

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27 Software "Wordsmith Tools", produced by the Oxford University Press, was used to compile the corpus.

28 CD Ed. 1992.

legal term *předmět*. The Comprehensive Dictionary of the Czech Language[29] provides three meanings for the Czech word *subjekt*, one of which applies to law denoting "an individual". Czech law defines *právní subjekt* as a person (termed natural person) or entity (artificial person) capable of entering into a legal relationship thus acquiring rights and undertaking duties recognised by law. Such a definition corresponds to the English term "legal person", which is the only appropriate equivalent of the Czech binominal term considering both the linguistic and legal aspects of translation. The English term *legal subject* should instead be understood as a jargon referring to the drafting of a contract in accordance with a statute and translated into Czech as *předmět v souladu se zákonem*.

Differences within Anglo-American legal terminology among individual English speaking countries constitute another set of problems for translators. Consider for example, the term "company", as defined in the Companies Act 1985 of the UK and "corporation" as defined by the (Revised Model) Business Corporation Act 1984 of the US. Although it would appear that the two terms are synonyms, they may not be used interchangeably within the British nor within the US legal system since "company" in US law usually denotes an unincorporated entity, whereas "corporation" in British legal texts regularly refers to an entity established not primarily for business purposes.

Similarly, the US counterpart for the British legal usage of "frustration" (as in a kind of the discharge of contract) is "impossibility" while "theft" as defined by The Theft Act of 1967 of the UK is termed "larceny" in US legislation. As yet another illustration of the issues of translatability between languages and legal systems, which of two or even three terms "statutory instrument" (UK), "executive regulation" (US) or "legislative instrument" (Australian) would serve as the best gloss in English for *podzákonný právní předpis* in a Czech-English law dictionary? Should there be any preference at all? Such and similar questions would deserve more attention to be paid in further research leading to guidelines on how different genres of Czech legal texts may be translated into their English equivalents in the light of the existence of varieties of legal English in different English-speaking jurisdictions operating different legal systems.

The problems of translatability, however, have been somewhat relativised by a number of scholars.[30] It has been argued that discussions implying the inability of the target language to express certain meanings of the source language are nonsensical. The experience of the present author and her colleagues in Czech-English legal translation suggests strongly that each language is able to express

[29] Havránek, Vol V, 1989: 298.
[30] Čermák, 1995: 238.

adequately whatever is required of it. The more pertinent issue, however, is the way in which it does so compared to the source language. This further suggests that a variety of strategies need to be adopted in effective legal translation.

Translation and Interpreting in Court Proceedings

Documents relating to judicial proceedings are highly specialised and yet diversified in terms of their communicative purposes and hence in their generic membership. Czech authorities recognised this as early as in 1967 when the Act making provisions for sworn experts and interpreters was passed (Act N. 36/1967 Coll.). Although the word "interpreter" is used in the Act, both oral interpreting and written translation are covered by it.

The sworn (also termed "certified", "forensic" or "court") interpreter is entitled to interpret before courts and administrative bodies, to translate official judicial documents of a private nature (such as petitions, judgments, certificates of births, marriages and deaths, and testaments). Translations bear the round seal indicating authorisation of the State and the interpreter's registration number. Such translations may be used as evidence before court.

The Ministry of Justice has been responsible for licensing both experts and interpreters who can act before courts. Sworn interpreters have played a significant role not only in the judicial procedure, enabling foreigners to appear and act before courts, to deal with the Police and prosecutors, but also to have texts officially translated into foreign languages, or into Czech, as the case may be.

The administration relating to licensing has been delegated to Regional Courts, however, the Ministry has failed to provide uniform guidelines with respect to qualifications requirements. Generally, certificates of language proficiency and of the absence of criminal record have been required. A number of courts have arranged for qualifying examinations while others are satisfied with written proof of competence.

In 1996, the Chamber of Sworn Interpreters of the Czech Republic was established to assure favourable conditions and environment for the performance of responsibilities of sworn interpreters under the 1967 Act. The Chamber, among other things, participated in the preparation of a specialised two-semester course for interpreters and translators of legal documents run by the Law School of Charles University in Prague, entitled the "Complementary Course of Law and Legal Language". The main objective of the course has been to supply the participants with a sufficient background in Czech law and to introduce them to foreign law and legal languages (English, German and French).

3. Commercial Arbitration in the Czech Republic

3.1 Historical background

The Explanatory Report on the Arbitration Bill 1994[31] provided a brief historical outline of arbitration in the Czech Republic and its predecessors. Arbitration proceedings have been firmly rooted in law applied within the territory of the today's Czech Republic. The Civil Procedure Act of 1895 provided for an arbitration agreement to be made by competent parties with respect to matters that might have been settled out of court. The Act defined the procedure of an arbitrator´s appointment and the elements of arbitration proceedings.

The Civil Procedure Act of 1950 maintained the institution of arbitration. It narrowed, however, the eligibility conditions so that at least one party to arbitration had to be a legal entity.

In 1963, arbitration was separated from civil procedure and a new act was passed (Act N. 98/1963 Coll.). A substantial difference occurred: arbitration agreements could be made only with respect to disputes over property claims resulting from international trade transactions. Thus, the close connection of arbitration with the newly passed International Trade Act, 1964, became obvious.

This situation lasted until 1992 when a number of insufficient modifications were made (Act N. 214/1992 Coll., Act N. 229/1992 Coll.). A new bill was drafted in order to extend the applicability of arbitration proceedings to other than international trade transactions.

3.2 The Arbitration Bill 1994

In international contexts, the institute of arbitration has been known and widely used in all developed countries. The applicability of arbitration proceedings in many countries has extended from international trade to other private relations with respect to property.

International execution of arbitral awards has been ensured by many bilateral and multilateral treaties and agreements, to most of which the Czech Republic has been a party. All treaties, regulating the international legal aid system, provide for the execution of arbitral awards issued by arbitrators in the participating countries. The European Convention on International Commercial Arbitration has been one of the most important documents in this field.

The drafting of the Bill was based on the European Convention and some foreign arbitration laws, the review of the existing Act N. 98/1963 and other relevant legislation, and on some provisions of the UNCITRAL Model Law on International Commercial Arbitration 1985. A significant deviation from

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international law was introduced to the Czech Parliament, namely the intrusion of the State through the Ministry of Justice into the whole system; the Ministry was to decide who might have been listed in the Register of Arbitrators. Those provisions, however, were not passed; parties to arbitration procedure may choose any person to act as their arbitrator. The Economic Chamber of the Czech Republic under which the Arbitration Court operates has kept and maintained a register of arbitrators to help parties choose knowledgeable and experienced specialists; however, the list is optional.

The Bill was passed and became Act as a result of the so-called shortened legislative procedure on November 1st, 1994. The main reason for the reduction of the legislative term was to create, as soon as possible, the legal framework for international transactions in the new Czech Republic after the split of Czechoslovakia on January 1st, 1993.

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