

CONTRACT LAW IN THE CZECH REPUBLIC

SECOND EDITION

JOSEF FIALA
JAN HURDÍK

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Contract Law in the Czech Republic

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Derived from the renowned multi-volume *International Encyclopaedia of Laws*, this practical analysis of the law of contracts in the Czech Republic covers every aspect of the subject – definition and classification of contracts, contractual liability, relation to the law of property, good faith, burden of proof, defects, penalty clauses, arbitration clauses, remedies in case of non-performance, damages, power of attorney, and much more. Lawyers who handle transnational contracts will appreciate the explanation of fundamental differences in terminology, application, and procedure from one legal system to another, as well as the international aspects of contract law. Throughout the book, the treatment emphasizes drafting considerations.

An introduction in which contracts are defined and contrasted to torts, quasi-contracts, and property is followed by a discussion of the concepts of 'consideration' or 'cause' and other underlying principles of the formation of contract. Subsequent chapters cover the doctrines of 'relative effect', termination of contract, and remedies for non-performance. The second part of the book, recognizing the need to categorize an agreement as a specific contract in order to determine the rules which apply to it, describes the nature of agency, sale, lease, building contracts, and other types of contract. Facts are presented in such a way that readers who are unfamiliar with specific terms and concepts in varying contexts will fully grasp their meaning and significance.

Its succinct yet scholarly nature, as well as the practical quality of the information it provides, make this book a valuable time-saving tool for business and legal professionals alike. Lawyers representing parties with interests in the Czech Republic will welcome this very useful guide, and academics and researchers will appreciate its value in the study of comparative contract law.

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List of Abbreviations

al.	alinea (a clause within an article or within a § of a code or of a law – <i>see par.</i>)
and fol.	et sequentes (and following)
Art.	article (also section; of a code or of a law – <i>see §</i>)
cf.	Compare
Coll.	Collection of Legal Acts of the Czech republic
e.g.	exempli gratia (for example)
etc.	et cetera (and so on)
i.e.	id est (that is)
para.	paragraph (a clause within an article or within a § of a code or of a law – <i>see al.</i>)
§	paragraph (of a code or of a law – <i>see art.</i>)

Preface

This book is a part of the encyclopaedia of law on contracts under the editorial project IEL outlining the system of contract law in the Czech Republic and reflecting the situation in the legislation as of 1 January 2014 by the end of August 2019. The work corresponds with the framework selected by the editor; however, it inevitably reacted to specific features of the law of contracts in the Czech Republic, which brought the need to adjust some of the parts of the publication as appropriate.

The current state of contract law in the Czech Republic has several specific features that should be pointed at. First of all, the sources of (internal) contract law in the Czech Republic were till 1 January 2014 composed of two most important acts of law: The Civil Code (Act No. 40, 1964 Coll.) and the Commercial Code (Act No. 513, 1991 Coll.). Both the codes contained specific rules for both commercial and non-commercial contracts and deeds but a strict dividing line between the two of them was often missing, and thus application of a particular rule of law to a given case is governed by rather complex rules.

Another feature influencing the character of the Czech contract law is its dynamic development following the fall of the Iron Curtain and the change of the political establishment after 1989 the law of contracts has, through a number of legislative changes including Commercial Code recodification, gradually returned to democratic standards of contract relationships, leaving aside the communist experiment in law, as applied between 1950 and 1989. However, a consistent change of the system of law necessarily meant the requirement of carrying out an entire recodification of private law as a whole, including the law of contract. Since 1992, legislative activities involving the entire recodification of the Czech private law have been in progress. The aim of the recodification was a large civil code, including family law. As for the basic types of contract, the new civil code should have contained all standard contract types including employment contracts and contracts used both in commercial relationships and beyond (which implies a commercialized concept of the civil code).

After twelve years of preparatory and legislative work, a set of laws representing the basis of recodification of private law in the Czech Republic was passed by the Czech Parliament:

- Act No. 89/2012 Coll., Civil Code;
- Act No. 90/2012 Coll. on Companies; and
- Act No. 91/2012 Coll. on Private International Law and Rules of Procedure.

Subsequently, a set of laws was passed forming an accompanying legislation making it possible to put the recodification into practice.

The acts representing the re-codified private law of the Czech Republic came into force on 1 January 2014.

Due to the above-mentioned reasons, this monograph is a substantially revised version of the previous monograph contract. The Czech Republic is providing an overview of the new Czech contract law which has become a part of the re-codified Civil Code. The authors are aware of the fact that it is one of the first treatments of the new contract law of the Czech Republic which will undoubtedly be changed in the future.

The authors respect the special terminology of the Czech contract law striving at the same time to adapt it to the language standards of the 'European' English.

The authors would like to thank PhDr Anna Lysá, CSc, Department of Legal Communication, Comenius University, Bratislava, Slovakia, for the translation of the original version of the work. The authors would also like to thank Prof. JUDr et PhDr. Michal Tomášek, DrSc., Faculty of Law, Charles University, Prague and Carissa Meyer, John Marshall Law School in Chicago, for corrections of the terminology, and especially Mgr. Radek Šimek, PhD, Faculty of Law, Masaryk University, Brno, Czech Republic for the final language correction of the text and for the translation of the updated text.

This monograph has been written with the support of Faculty of Law of Masaryk University in Brno.

General Introduction

§1. GENERAL BACKGROUND OF THE COUNTRY

1. The Czech Republic is a unitary State created after the splitting of Czechoslovakia on 1 January 1993. The Constitution of the Czech Republic was adopted at the end of 1992, entering into force on 1 January 1993. The country is divided into fourteen regions. The capital of the country is Prague. Since 1 May 2004, the Czech Republic has been a Member State of the European Union (EU). 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. About 200 members of the Chamber of Deputies are elected in general and direct elections every four years. Eighty-one 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 powers, 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. The head of the Czech Republic is the President of the Czech Republic elected directly by the citizens of the Czech Republic. 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 of 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 judgments on constitutionality of laws enacted by the legislature and on regulations enacted by the executive authorities. The ordinary law courts are organized 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.