

TORT LAW IN THE CZECH REPUBLIC

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Derived from the renowned multi-volume *International Encyclopaedia of Laws*, this book provides ready access to how the legal dimension of prevention against harm and loss allocation is treated in the Czech Republic. This traditional branch of law not only tackles questions which concern every lawyer, whatever his legal expertise, but also concerns each person's most fundamental rights on a worldwide scale.

Following a general introduction that probes the distinction between tort and crime and the relationship between tort and contract, the monograph describes how the concepts of fault and unlawfulness, and of duty of care and negligence, are dealt with in both the legislature and the courts. The book then proceeds to cover specific cases of liability, such as professional liability, liability of public bodies, abuse of rights, injury to reputation and privacy, vicarious liability, liability of parents and teachers, liability for handicapped persons, product liability, environmental liability, and liability connected with road and traffic accidents. Principles of causation, grounds of justification, limitations on recovery, assessment of damages and compensation, and the role of private insurance and social security are all closely considered.

Its succinct yet scholarly nature, as well as the practical quality of the information it provides, make this book a valuable resource for lawyers the Czech Republic. Academics and researchers will also welcome this very useful guide, and will appreciate its value not only as a contribution to comparative law but also as a stimulus to harmonization of the rules on tort.

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Since 2004, he has been a professor of Civil Law. He is the author or co-author of more than sixty books and textbooks on various issues concerning civil law, and numerous articles and papers in specialized publications in the Czech Republic and abroad. In addition, he has been involved in a number of grant projects concerning research and university education in law, in the Government Committee's preparatory work on the new Civil Code and, as the head in a legislative committee preparing a new law on foundations and endowments. From 2016 to 2019, he was the Head of the Civil Law Department of the Faculty of Law, Masaryk University, Brno. He is a member of the Scientific Council of the Faculty of Law, Masaryk University, Brno and Faculty of Law, University of West Bohemia, Plzeň. He is also a member of the European Law Institute, the SECOLA association, and a former member of the Acquis Group.

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List of Abbreviations

al.	Para. (a clause within an article or within a § of a code or of an act – see Para.)
and foll.	et sequential, et sequentes (and following)
Art.	Article (of a code or of an act – see §)
cf.	Compare
Coll.	Collection of Acts of the Czech Republic
EU	European Union
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 Section (§) of a code or of an act – see al.)
PETL	Principles of European Tort Law
§	Section (of a code or of an act – see Art.)

Preface

This monograph is part of the encyclopaedia of law, specifically tort law, created within the editorial project of IEL, and outlines the system of tort law in the Czech Republic, describing the situation of the new Czech private law effective since 1 January 2014. The work complies with the outline made by the editor but it inevitably reacts to specific features of the law of tort in the Czech Republic, which brought about the need to adjust some parts of the publication as appropriate.

The current tort law in the Czech Republic has several specific features that should be pointed out. First of all, the sources of tort law in the Czech Republic included, until 1 January 2014, two important acts: The Civil Code (Act No. 40/1964 Coll.) and the Commercial Code (Act No. 513/1991 Coll.). Both the Codes contained specific rules for commercial as well as non-commercial relations and actions but a strict dividing line between the two of them was often missing and thus the application of a particular law to a given case was governed by rather complex rules. The dualism of the Civil Code and the Commercial Code was the source of the specific division of the regulation of tort law: the rules of the Civil Code were aimed at delictual liability, while the Commercial Code was focused on contractual liability. This dualism was overcome in the new Czech Civil Code (Act No. 89/2012 Coll., being in force since 1 January 2014). The Czech tort law forms the main part of Part IV of the Civil Code.

Another feature 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 contract was, through a number of legislative changes including the Commercial Code recodification, gradually returning back to the democratic standards of contract relationships, overcoming the Communist experiment in law which was applied in 1950–1989. However, the consistent changing of the system of law necessarily brought about the necessity to carry out a complete recodification of private law as a whole, including the law of contract. Legislative activities involving the complete recodification of the Czech private law were taking place since 1992. The aim of the recodification was to create a comprehensive civil code which would also include family law. As for the basic types of contract, the new Civil Code was supposed to contain all standard contract types including employment contracts and contracts used in commercial relationships and elsewhere (which implies a concept of the Civil Code emphasizing more on commercial relationships). The new Civil Code also includes a general part concerned with tort law and the main types of responsibility and quasi-responsibility relations.

After twelve years of preparatory and legislative work a set of laws forming the basis of recodification of private law in the Czech Republic was passed by the Czech Parliament. They are as follows:

- Act No. 89/2012 Coll., i.e., Civil Code;
- Act No. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act); and
- Act No. 91/2012 Coll., on Private International Law.

Subsequently, a set of laws was passed as accompanying legislation which makes it possible to put the recodification into practice.

The acts forming the recodified private law of the Czech Republic came into force on 1 January 2014.

Due to the above-mentioned reasons, this monograph provides an overview of the new Czech tort law which has become part of the recodified Civil Code. The authors are aware of the fact that this is one of the first treatments of the new tort law of the Czech Republic which will undoubtedly be changed in the future. Due to the same reasons, there have been not, in the Czech civil law, a sufficient number of court decisions and scholarly papers yet, concerning the new codification of tort law. Therefore, many important legal questions remain still, i.e., by 1 September 2019, open. Their solution can be expected in the near future, though it may not be generally accepted yet.

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

The authors would like to thank Mgr. Radek Šimek, PhD, Faculty of Law, Masaryk University, Brno, for the translation of the main part of the text and for the final language correction of the text.

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

General Introduction

§1. GENERAL BACKGROUND

I. Geography

1. The Czech Republic is located right in the heart of Europe, surrounded by the range of mountains, constituting the natural borders of the country. The Czech Republic shares its national borders with the Federal Republic of Germany in the west, and partially in the north, with the Austrian Republic in the south, with the Slovak Republic in the east, and with the Polish Republic in the north.

The Czech Republic is situated in a mild climate zone. Because of a great diversity of its landscape, the Czech Republic can produce various agricultural products, especially in the lowlands along the great rivers as Labe (Elbe) and Vltava (Moldau) in Bohemia and along the river of Morava in Moravia. The highest Czech mountain range is Krkonoše, the highest mountain being Sněžka with 1,603 metres above the sea level.

The number of inhabitants of the Czech Republic is more than 10 million people. The greatest Czech cities are Praha/Prague (capital of the Czech Republic) with more than 1 million inhabitants, and Brno (the greatest Moravian city) with nearly 400,000 inhabitants, followed by the cities of Ostrava and Plzeň.

II. History

2. The territory of the present Czech Republic had been, since time immemorial, inhabited by many groups of people. Historical sources refer to Celts, and later also to Romans. Since the Dark Ages till today, the territory has been inhabited by Slavs.

The first historically known state was the so-called Great Moravia. In 863, Prince Rostislav introduced Christianity there brought from the Byzantine Empire.

In the tenth century, Great Moravia came under the power of the Czech dynasty of the Přemyslids who ruled over the Czech and Moravian territory till 1306, from 1222 as Czech kings (on the basis of the Golden Bull of Sicily issued by the Roman emperor Friedrich Barbarossa). During the Middle Ages, the Czech prince/king was one of the seven electors of the Roman king/emperor.

After the extinction of the Přemyslid dynasty, the dynasty of Luxembourg (Jean, Charles, Václav, and Sigismund) governed the Czech Kingdom from 1310 to 1436.