

A Brief Introduction to Czech Law

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for Central European Legal Studies**

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INTRODUCTION

On a personal note, I can assure the reader that this brief introduction to Czech Law has been a labor of love and devotion. For so many years, the rule of law was an unattainable goal and a vague concept to the Czechs. The twin totalitarian scourges of the twentieth century - Nazism and Communism - struck the Czech lands and undermined and corrupted their judicial system. For nearly fifty years, those who occupied the corridors of power warped the rule of law to suit their own needs and agendas.

The law was usually wielded arbitrarily and without regard for the resulting consequences. Fortunately, this politicized system of justice finally gave way in the Velvet Revolution of 1989. This work is dedicated to my friend, Mojimír Victorín, and to all those Czechs who fought and suffered for the rule of law in their homeland. Čest jejich památce ! Long be honor to their memory !

Omar Z. Bartos

DOMESTIC VIOLENCE PROTECTION IN THE CZECH REPUBLIC

RADOVAN DÁVID¹

ABSTRACT:

This article deals with the issue of domestic violence. The author of this article provides the reader with many different interpretations of the concept of domestic violence that is being used in various legal systems. Domestic violence is extremely severe and serious problem that has to be solved in the sphere of social sciences. The main purpose of law is to regulate relations within society and to protect subjective rights and interests. The law protects these (substantive) rights and interests through civil procedure law, eventually through rules of criminal law. This article describes the regulations in the Czech Republic that reflect the legal changes within the last three years. It also presents some questions that are very disputable. It discusses on the Czech legal regulation of protection of actual situations of the domestic violence. These problems may be solved by the acts of police and by issuance of preliminary rulings *per curiam*. The article concludes with a discussion on the necessity of cooperation with the social sciences.

The author uses descriptive and comparative methods to analyze the Czech legal regulation of domestic violence and synthesizes all possibilities or instruments of protection.

KEY WORDS:

Domestic violence, civil procedure law, preliminary ruling, enforcement of law, act of police.

¹ JUDr. Ing. Radovan Dávid, Lecturer in Law Masaryk University Faculty of Law Brno, Czech Republic.

CONCEPTION OF LIABILITY FOR ENVIRONMENTAL DAMAGE IN THE CZECH REPUBLIC - ADOPTING EUROPEAN PRACTICES

IVA HROMKOVÁ AND MARTIN PODHORSKÝ¹

ABSTRACT:

The article discusses the scheme of liability for environmental damage under the new legislation in the Czech Republic. Special attention is devoted to the possibility of exoneration from liability as well as to the eventual transfer of liability in cases when undertaking whose activity has caused the environmental damage is sold. When dealing with the main aforementioned issues, comparative and inductive methods of legal research were used with respect to European legislation as well as previous Czech legislation. With regard to the relatively strict approach of the responsible state authorities and the lack of highly developed case law in the area of environmental law, it is necessary to subject the environmental issues to scientific research. Any environmental law issue must be considered on a case-by-case basis; therefore, any investor should undergo special legal and environmental due diligence procedures prior to the contemplated acquisition of the assets that are the source of environmental contamination in order to minimize or exclude future liability.

KEY WORDS:

Liability for environmental damage, operator, exoneration from liability, polluter pays principle.

¹ *JUDr. Iva Hromková, LL.M.*, Associate, Prague, and *Mgr. Martin Podhorský*, Associate at Salans, v.o.s., law firm, Prague.

TO GENERAL MATTERS OF BUSINESS LAW OF CONTRACT IN CZECH REPUBLIC (TILL 1991, SINCE 1992, TODAY)

KAREL MAREK¹

ABSTRACT:

After the social changes in 1989, Czech private law was regulated by former regulations for some time. The relationships with foreign countries were regulated in the International Trade Code, for the relationship with the subjects called “socialist organizations” there was the Economic Code and the other relationships were regulated by the Civil Code. On the 31st December 1991, the International Trade Code and Economic Code were abolished. As of 1st January 1992 the new Commercial Code came into force. Today a private law is regulated essentially by the Civil and the Commercial Code (see below).

KEY WORDS:

Economic code; Commercial Code; Civil Code; International Trade Code.

¹ *Doc. JUDr. Karel Marek, CSc.*, associate professor, Faculty of Law, Masaryk University, Czech Republic.

SEEKING ENTRY INTO THE UNITED STATES: HOW AMERICA'S VISA WAIVER PROGRAM WORKS

CARISSA MEYER¹

ABSTRACT:

This article looks at the American Visa Waiver Program, a program established by Congress that has the authority to place certain countries on a list that entitle citizens of those countries access into America without obtaining a visa. The article looks at the most recent amendments to the Immigration and Nationality Act, including the Post- 9/11 amendments, and addresses the reasons for allowing or not allowing a country to become a member of the program. This article looks at how a country is afforded the opportunity to become a member of the program, and it also looks at the several conditions a citizen of a country on the Visa Waiver Program must still meet in order to enter the United States. Finally, the article seeks to highlight a few similarities between a non-United States citizen's entrance into America and a non-European Union citizen's entrance into the Schengen Zone of the European Union.

KEY WORDS:

United States, Visa Waiver Program, Immigration and Nationality Act, Schengen Zone, European Union

¹ *Carissa Meyer* is a law student at The John Marshall Law School in Chicago, Illinois

LAW ON COOPERATIVES IN THE POST-TRANSITION PERIOD IN THE CZECH REPUBLIC

MOJMIR SABOLOVIC¹

ABSTRACT:

The purpose of this article is to present an analysis of advance development legal regulation of cooperatives in the Czech Republic. A secondary goal is to provide a general overview of new possibilities and perspectives and the economic consequences of cooperatives according to legislative procedure and the general economic environment. The subject of observation is cooperative as the form of voluntarily associated members in order to fulfill their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. The importance of the objective indirectly mirrors principles of continental law. Fundamental research methods were applied on analysis from historical, economic and legal consequences of cooperatives since the command economy breakdown of the 80's. The first stage of analysis covers a legal study on cooperative legal concepts in associated legal regulations. The second stage of analysis contains descriptive statistics of data obtained from secondary resources. Partial results emphasize the significance of cooperatives in the economy of the Czech Republic from, 1995 to 2007. The final stage of analysis considers a comparison of advantages and disadvantages of individual legal persons using the comparison grid method.

KEY WORDS:

Cooperative, Transition, Legal Person, CEE, Commercial Code.

¹ *Mojmir Sabolovic*, Faculty of Law, Masaryk University, Czech Republic.

THE ALTERNATIONS OF CZECH CIVIL PROCEDURES AFTER 1989

KAREL SCHELLE¹

ABSTRACT:

The purpose of this article is to describe the evolution and fundamental changes in Czech civil procedures from 1989 until present day. However, the basic changes in civil procedure were done in the first half of the 90's, the notary and advocacy is still being privatized and even the role of prosecution in the civil procedures has been changed. The author of this article outlines the changes in "adversary" and "non-adversary" proceedings; alternation of core principles; establishment of an "extraordinary appeal" as a new way of seeking reparation of previous final judgment; and a couple of new methods how disputes might be solved (default judgments). Further, the author of this article pinpoints some changes in executory proceedings; establishment of administrative judiciary; and reestablishment of arbitration proceedings and there is a special emphasis placed on insolvency proceedings. According to all these changes, one can say that there have been many crucial modifications. However, the foundation of the Czech civil procedures is still based on the old socialist Code from 1963. Although a new recodification of Civil procedures is being prepared that is intended to make procedures more effective and faster, this new code will have to be built on the forthcoming recodification of Czech Civil Code, and eventually on the new Czech Business Code.

KEY WORDS:

Civil procedures; "adversary" proceeding; "non-adversary" proceeding; executory proceeding; arbitration proceeding; insolvency proceeding; administrative judiciary.

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LIMITS OF FREEDOM OF EXPRESSION

- WHEN IT COMES TO FLAG BURNING...

JOHAN SCHWEIGL¹

ABSTRACT:

This article is a partial outcome of comparative study on the “limits of freedom of speech”. Generally, the author considers “flag burning” issues in Czech and American legal systems and outlines the core doctrines and tests respecting freedom of speech and its limitation. Notwithstanding that these two legal systems are based on completely different grounds, he compares their limitation doctrines and shows the actual effects of such doctrines on applicable court rulings. When reading this article, a reader will be given explanation of such concepts as “bad tendency”, “clear and present danger”, “Brandenburg test”, “proportionality test” and many others and be shown how extensively the concept of “freedom of speech” can be interpreted. The final part of this article is devoted to analyzing the approaches to “flag burning issues”. It has been shown that the breadth of “freedom of speech” in the Czech Republic and United States varies in respect to national symbols. However, the author recommends future communication between these two legal systems.

KEY WORDS:

Freedom of Expression, Freedom of Speech, Negative Rights, Positive Rights, Czech Charter on Fundamental Human Rights and Freedoms, First Amendment, Bill of Rights, Flag burning, Limitation of Freedom of Speech, Limitation Doctrines, Brandenburg Test, Proportionality Test, Expressive Conduct Test.

¹ *Johan Schweigl*, student of Faculty of Law at Masaryk University in Brno, Czech Republic. He concentrates mainly on issues of constitutional law, business law and legal theories and is also VIP member of AICELS (The American Institute for Central European Legal Studies).

THE SYSTEM OF CONSUMER PROTECTION IN CZECH LAW

MARKÉTA SELUCKÁ¹

ABSTRACT:

The purpose of this article is to provide the reader with core information on consumer protection in the system of Czech law. Consumer protection can be divided into two subgroups – private and public. However, the private and public areas of consumer protection are merging into one another and that is why they shall be explained as inextricably intertwined. Czech private law has gone through many significant changes due to the need for implementation of EC consumer protecting directives. Generally, the EC directives have been implemented by members of EU in the form of mandatory acts but some countries have decided to enact brand new consumer protection codes. The former applies also to Czech Republic. Consumer protection in Czech law can be characterized as unsystematic and fragmented. The author of this article emphasizes that the core problem is the bedrock of the law, that is, in consumer law terminology. For example, the concept of “consumer contract” does not follow the nomenclature rules that have been set by legal theory. Any contract wherein a consumer acts as one of the contractual parties shall be called: “contract concluded with a consumer” as opposed to the concept “consumer contract”. It is deemed to be very problematic that the new draft of Czech Civil Code does not contain consumer protection provisions and does not offer any complex alternative.

KEY WORDS:

Consumer Protection – Czech Civil Code – Draft of Czech Civil Code – Implementation of Directives – Consumer Contract

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CZECH REPUBLIC AND THE NULLITY OF THE MUNICH AGREEMENT

JAROMÍR TAUCHEN¹

ABSTRACT:

This article retraces what is now understood the first big-power summit in the modern sense, not being the international conference, which took place on 29. – 30. September 1938 in Munich and it also traces the reasons which led to it. At this summit the representatives of Great Britain, France, Italy and Germany agreed to persuade Czechoslovakia to give up border areas inhabited with ethnic German settlers. The second part of this paper illustrates the reasons leading to the annulment of this international agreement in terms of international and national law. From the legal point of view, the Munich agreement was an invalid legal act from the very beginning. The absolute nullity of Munich agreement is crucial for Czechoslovakia and for its successor the Czech Republic because its nullity is one of the legal bases for the existence of the current Czech Republic. Any possible casting of doubt on the nullity evokes automatically the possibility of territorial and proprietary claims by neighboring states.

KEY WORDS:

The Munich Agreement, the Munich Agreement, the Sudetenland, the German Empire, Czechoslovakia.

¹ *JUDr. et Bc. Jaromír Tauchen, LL.M.Eur.Integration (Dresden); Masaryk University Brno, Faculty of law, Czech republic.*

TAX EVASION IN THE CZECH REPUBLIC

EVA TOMÁŠKOVÁ¹

ABSTRACT:

This article deals with the tax system in the Czech Republic. The goals of this paper are to point out development of tax evasion and to show the common ways of evading taxes in the Czech Republic. Analysis and comparison are the methods used in this article. They describe the main specification of taxes. The appendix gives a development of the dimension of taxes in the Czech Republic from 1993 to 2007. It is possible to analyze the income of selected taxes to public budgets. The second part of this paper is aimed at the development of tax evasion in the Czech Republic. Also shown is the development of tax share, share of delinquent taxes and the size of taxes and total delinquent taxes in the Czech Republic in the last few years. The final section of this paper discusses the highest instance of tax evasion in the Czech Republic. These tax evasions are connected with indirect taxes (Value Added Tax and Consumption Tax). Included are some recommendations for better prevention of tax evasion and tax avoidance and for future research in this area as well as the limitations of this article.

KEYWORDS:

Tax evasion, tax avoidance, the Czech Republic, tax share, value added tax, consumption tax.

¹ Ing. Eva Tomášková, Ph.D., Faculty of Law, Masaryk University, Czech Republic

COMPENSATORY DAMAGES AND ITS LIMITATION IN CZECH LAW

TEREZA VAŠÍČKOVÁ¹

ABSTRACT:

The author of this article outlines the concept of “Compensatory Damages” and many issues regarding it such as the causes and origination of “damage” itself and presumptions for “liability for damages”. Generally, the issue of compensatory damages is being dealt in almost every kind of obligations when a breach of duty of any party occurs. The author also concentrates on limitations on compensatory damages, a very thorny point of discussion of lawyers and law professors in the Czech Republic. The concept of limitations on compensatory damages is an actual and timely concept to discuss due to the contradictory and variable nature of its understanding. Although the peremptory provisions of § 386, sec. 1 of the Czech Commercial Code bar the origination of a waiver to claim damages before such damages have occurred; the provision does not preclude setting such limitations at least partially and in conformance with the basic principles of business relations and proportionality. The Czech Supreme Court has made clear in its rulings that one can limit their liability if certain conditions are met, but this applies only to the scope of Civil Law (*stricto sensu*). Nonetheless, it has been a great step forward for business relations.

KEY WORDS:

Limitations on Compensatory Damages; Compensatory Damages – Redress; Monetary (pecuniary) Damages; Non-monetary (non-pecuniary) Damages; Facts Suspending Liability; *Damnum Emergens*; *Lucrum Cessans*; Abridgement of Damages; Lump-sum indemnity; Contractual Penalty; Contractual Penalty; Peremptory Provisions; Non-mandatory (supportive) Provisions.

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