

THE NEW CZECH CIVIL CODE. PRINCIPLES, PERSPECTIVES AND OBJECTIFS OF ACTUAL CZECH CIVIL LAW RECODIFICATION: ON THE WAY TO MONISTIC CONCEPTION OF OBLIGATION LAW ?¹

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SUMMARY

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Abstract

The paper describes the drafting of the new Civil code of the Czech Republic emphasizing the principles and values to which is attached, and the new solutions adopted as well. The law of obligations, consumer law and inheritance law are specially treated in this article.

Keywords: Codification, civil code, sources, values, law of obligations, consumer law, inheritance law.

Resumen

El trabajo describe la elaboración del nuevo Código civil de la República Checa resaltando los principios y valores en los que se inserta, así como las nuevas soluciones que pretende adoptar. El Derecho de obligaciones, el Derecho de consumo y el Derecho de sucesiones son objeto de especial atención.

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Palabras clave: Codificación, código civil, fuentes, valores, derecho de obligaciones, derecho de consumo, derecho de sucesiones.

1. General part - Czech Common Law in its historical review and future perspectives.

Actual Czech Common Law was adopted in 1964. It is relatively young codification especially in comparison with Spanish Civil Code which was promulgated in 1888. The difference is that the Spanish Civil Code —celebrating its 120th anniversary— is still valid while the Czech one has had serious difficulties to overcome a 40 years lasting socialist experiment. Both Common Laws have been modified and changed as an answer to correspond the socioeconomic developments. The main reform of Czech Civil Code came up with the amendment in 1991 shortly after the “Velvet revolution”². Spanish Civil Code has gone through the certain changes recently as well. We can underline the essential reforms in Spanish family law that have happened since 1975 by now and have been connected with the marriage institute and concerned the legal position of men and women within the marriage.

The problem of actual Czech Common Law relies rather on the circumstances, political and ideological bases at the moment of its adoption. Whereas the Spanish *Código Civil* is ideologically based on liberalism of the end of 19th. century, the Czech one broadly reflected the idea of “winning socialism” what flew into the fact that Czech Civil Code differed very much from similar codifications not only within the continental legal family but was particularly different even within the socialistic countries in central and eastern Europe³. Already in the

² At that time, the essential question the legislative Council of government faced up to was whether adopt a revolutionary approach towards the whole legislation (which would have meant a complete disparition of law system and its replacement by any foreign law system functioning in chosen european country) or opt for the evolutionary principle. The last mentioned approach was finally adopted. The consequence of that was an urgent need to modify all applicable laws including the civil code and particularly the commercial one.

³ In comparison with the Hungarian and Polish civil codes, the Czech one seemed to be the most orthodox in the way how it applied the principles of new socialistic law.

early 50's there is a start of a gigantic revision of Czech Civil Legislation which was motivated by a decision of Czech Communist Party central committee in 1948. One of the main target of socialistic law doctrine—besides others— was to deny definitely the duality of private and public law. The existence of private law was systematically contested. The motivation was evident as results from the following thesis: if we acknowledge the original existence of private law it would be the same as if we acknowledged the existence of private interest worthy to be protected what was impossible because of the immanent conflict with the interest of working class as a whole. The distinction private/public law was—during this period— destroyed as a “bourgeois anachronism” not only in the practical point of view but also theoretically and was replaced with the single socialistic law. This law was actually rather public law leaning on the public law methods of regulation which facilitated the state interventions in private citizens sphere. The most important legal institutions of Civil Law were state socialistic ownership (in the rights area) and central economic plan (in obligation law area). Needless to say that there was a strict hierarchy among the different forms of ownerships and only the state socialistic ownership was the most protected one under the former legal system⁴.

The key problems of Czech Civil Law might be summarized into five synthetic points:

A) Decoding. The first sinister trend that Czech private law appears not being able to overcome until now is its decoding. At the time it was predominantly influenced by the soviet legal doctrine saying that each part of private law such as family law, labor law, commercial law, international private law etc. should have been codified separately. The Czech legislator proceeded to it even more deeply and properly than

The Polish and Hungarian civil relationships in sphere of obligation law were much more tolerant vis-à-vis the private ownership and small business activities.

⁴ One of the earliest changes made in the very beginning of the whole legal transformation process was abolishing such differentiation among several forms of ownership. The czech constitution proclaimed the unity of property law, restored the equality among the different owners and introduced a principle of equal protection of property law no matter who the owner is.

the soviet model itself. The Czech Family Law and after that all the other parts of private law have been codified apart and independently on Civil Code. Thus the Czech Republic still does not have a general and standard coding of private law which would be measurable with its European equivalents.

B) Deviation. The Czech Civil Law —with regard to all political and ideological resources— has shifted away from the European conventional tradition of civil codifications and became a simple instrument for a direction of society. Not only from the substantial point of view but also from the terminological one. All traditional legal expressions were widely replaced with the new titles and denominations reportedly much closer to the people’s comprehension⁵.

C) Simplification. Another very negative trend was the idea of simplification of the most of the traditional legal institutions. This effort led to the abolition of many classical legal notions and institutions such as “possession”, “positive prescription”, “easements”, “purchase”, “rent”, “tenancy”, “neighbourhood rights”, “legacy”, “disinheritance”, etc. This tendency was part of a general and broader shared idea of law decline and its final extinction based on the thesis that the law will not be needed at all in developed socialistic society. Shortly after, this idea revealed completely mistaken and erroneous but unfortunately irreversibly damaged the Czech Civil Law and Private Law as such.

D) Narrow conception. The Czech Common Law was conceived purely and simply as a consumer code law in the socialistic context. The civil legislation focused only on proprietary relationships and largely neglected the other aspects of private life. The accent upon the material sides caused the obvious underestimation of personal rights and things related to personal status⁶. For instance modern Civil Code of Québec contains about 300 provisions concerning the personal rights and 250 regulating the family law which is definitely its integral part. The Czech

⁵ “Person” was replaced with “participant”, “proper morals” were substituted by “rules of socialist common life”; “obligation” by “service” and “legal entity” by “organisation”, etc.

⁶ Furthermore see M. KNAPPOVÁ, J. ŠVESTKA and J. DVOŘÁK, *Ob anské právo hmotné I.*, 4th ed., Praha, 2006, pp. 60-61.

Civil Code contains only 9 dispositions relevant to personal rights and the family law which is codified separately has approximately 100 dispositions.

E) Prevailing cogency of norms. Most of the legal rules contained actually in Civil code are peremptory and the parties cannot derogate them. Such norms serve rather as a powerful state instrument how to interfere into private relations what is fully undesirable in the modern democratic state. One example might serve for all: invalidity of legal act due to the absence of some of its attributes. The principle in Czech civil law is absolute invalidity which occurs in such cases⁷. It means that public authority (especially judge) must always take into account such invalidity of any act even though the parties have no interest in declaration of invalidity. It is not necessary to underline that an absolutely invalid legal act can never be convalidated.

1.1. Why there is a need to recodify the Czech Civil Law?

Even though the main insufficiencies and defects were mitigated by the fundamental amendment in 1991, many of imperfections and inconsistencies mentioned above persist and are hardly to eradicate as they are spread all over the Common Law. The civil code was afterwards amended 30 times but there was no deeper modification of its ideological base, no rectification of its unsuitable and inappropriate conception.

The first real attempt to proceed into recoding was made very early before 1993 at the very beginning of our social, economic and political transformation. This draft as well as the second project in 1996 was not ended for many various reasons, particularly for the political ones⁸.

⁷ See also K. PLANK, *Neplatnosť právnych ukonov a možnosti odstúpenia od zmluvy v občianskom práve*, *Acta Facultatis Iuridicae*, SPN Bratislava, 1981.

⁸ The first draft of new civil code existed very short time and was put in discussion in 1992. A work on its articulated version ceased soon after the extinction of Czechoslovak federation and splitting of both republics into independent states. The second draft published in 1996 came out from the conception of largely concentrated private law. With regard to governmental changes operating afterwards, there was not a political will to support such draft any longer.

Actually, the Czech Republic is passionately discussing its third draft —proposed by two professors of law⁹— which has already form of code with the articulated provisions. The work on the third draft started in 2000 and now is submitted to expert and professional review. The sense of this procedure is to make a critical analyses of the draft and to put the remarks and observations which might be finally incorporated into the code. The academic and scientific sphere has been widely included into this discussion and the Law faculty of Charles University in Prague organizes regularly the seminars where our colleagues from abroad have been invited to come and discuss about the draft and to bring their proper suggestions. The latest news is that the Czech government should decide whether to present the draft in the parliament later this year. A few days ago, a sort of information campaign in principal Czech media was launched. The question remains whether the new civil code will be adopted *en block* or will be submitted to large parliamentary debates possibly with proposals, suggestions and modifications coming from different deputies.

1.2. What are the essential principles and sources of recoding draft?

The draft tries to carry back the Czech Common Law into the European continental tradition and to make it in accordance to European Civil Code standards. The basic aim is to wholly restore the idea of private and public law duality. It implies definite and consequent turnover from the marxist-leninist conception of legal system and its functions whose relics reveal resisting, and adopting a way oriented to the idea of private law in the sense of European intellectual patrimony.

The primary source of inspiration for Czech draft is the governmental proposal of civil code coming from the period of ex-Czechoslovakia¹⁰. This proposal —published in 1937— represents in fact the modernisation and revision of Austrian ABGB which was valid on our territory till 1950. Obviously, such inspiration —however important— must be subject of

⁹ Prof. JUDr. K. ELIÁŠ from the University of West Bohemia in Pilsen and Doc. JUDr. M. ZUKLÍNOVÁ from Charles University in Prague.

¹⁰ So-called “First Czechoslovak republic” was created in 1918 at the very end of the First World War after the disintegration of former Austro-Hungarian Monarchy.

revision and critical evaluation in view of its age. Finally, the authors came out from three main intellectual resources:

1. The critical analysis of private law development operating and valid in our territory since 19th century.

2. The principal national civil codes of European countries. Particularly the Austrian, Swiss, German, Italian, Dutch and Polish Civil Codes. From the latest codification the Québec and Russian codes have been taken into account. Into closer consideration have been taken also the French, Spanish, Belgian and Portuguese codifications.

3. International treaties and EU legislation. A sort of inspiration are apparently the European soft law papers and drafts such as Principles of European contract law, Principles of European tort law, Common frame of reference, European code contracts (Prof. GANDOLPHI), etc. However, it is necessary to point out that the influence of above mentioned soft law proposals has not been so substantial¹¹.

The main approach principles the draft of new Czech Civil Code is built up might be resumed into the following triad: conventionalism, discontinuity and integration.

The crucial ambition of new Czech Common Law is to be conventional *vis-à-vis* the standard European legislation originating from Roman law but at the same time with respect to central European legal thinking tradition. This point is relatively well accepted and widely shared in Czech Republic.

The second one is much more controversial. The discontinuity might be considered as something inopportune, unwelcome and completely out of place. By and large, it is comprehensible that this negative opinion is emphasized by Czech legal practise. The judges, advocates, notaries, executors and other legal professions are scared of such legal rupture and are trying to push their own proposals and want to intervene into the parties of the draft which might have any impact to their profession.

¹¹ Prof. ELIÁŠ (one of the authors) indicates that however interesting all these soft law drafts are, they are not a sort of dogma and must be put through the critical discussion as well. For more see K. ELIÁŠ, “Rekodifikace občanského práva v postmoderní době”, *Právní rozhledy*, n. 1, 2008, pp. 1-7.

However, the authors of draft insist categorically on the necessity of such break up with — what they call «the totalitarian legal thinking» in the same way as they want to perturb — what they ironically call «golden fund of judicature practise»¹².

The last approach starting point is great effort to integrate all parties of private law which are now codified separately. The draft wants new civil code to gain back the position of common and general legal enactment which would fulfil the role of *integrating focus*¹³ of modern private law as it is actually in Europe from Portugal to Russia. It stands for the overcoming the totalitarian way of lawmaking and the persisting methods of separate regulations. To have many independent and separate legislations, different approaches on one field of private law means in consequence evident destabilization, chaoticness and unfortunately also weakness of private law, its functions and its synergical effect¹⁴. It brings the imminent danger of legal incertitude in private law relationships as it will be referred in law of obligations.

1.3. What are the principal values the new czech civil code is based on?

Philosophically said, the draft of Czech Civil Code seeks to achieve the ideals of Europeanism and humanism¹⁵. The major axis of whole draft is a human being and his interests which are predominantly individual in private law sphere. It is the end of preferring any kind of collectivism and higher protection of collective interests. Such approach seems to be inappropriate for private law codification. According to this

¹² See especially the Explanatory Report to the new czech civil code which is a document serving as an ideological background and as a deeper clarification of single provisions of the draft. This Report is officially published via internet sites of the Czech Ministry of Justice:

<http://portal.justice.cz/ms/ms.aspx?j=33&co=23&k=381&d=125304>

¹³ J. ŠVESTKA, O. JEHLIČKA, M. ŠKÁROVÁ, *et al.*, *Občanský zákoník, Komentář*, 10th ed., Praha, 2008.

¹⁴ K. ELIÁŠ & M. ZUKLÍNOVÁ, *Principy a východiska nové koncepce soukromého práva*, Praha, 2001.

¹⁵ J. ŠVESTKA, O. JEHLIČKA, M. ŠKÁROVÁ, *et al.*, *Občanský zákoník, Komentář*, 10th ed., Praha, 2008.

anthropological approach and from the systematical point of view, the first part of proposed Civil Code deals with the legal status of person as individual and with his personal rights. In the second part we find the legal regulations of his family and family law related questions. In the third part we read about his property no matter if during his life or after his death and the last part of the present draft concerns the obligation law. The last part contains the legal enactment for his legal relationships with the others either rising from his contractual activity or arising from his delictual responsibility. From the very beginning till the end, the human being is in the centre of lawmaker's view. Analogical approach is present in all referred codes and is supposed to belong to European standard¹⁶.

Naturally the draftmakers' attention has been paid largely also to the legal entities and their legal regulation. The juridical persons are subjects of regulation within the proposed Czech Common Law in its first part. Their regulation is relatively huge and is conceived as a general enactment being subsidiary for all legal entities in Czech Republic. In connection with the discussion about the value system and general legal principles which are supposed to be determinant for new Civil Code, the key battle has been fought about the general leading principle. The disagreement reigns upon the question whether the principle of equality in legal relationships or the principle of private autonomy is supposed to be the leading principle of new private codification. The draft's authors are strongly convinced that the determinant principle of civil law is just private autonomy principle. This opinion is not commonly accepted in Czech legal doctrine¹⁷. The draft's authors however argue that a real equality can never be achieved between the individuals and legal entities. The last mentioned are created by individual and are serving to his interests and the positive law only can but not must acknowledge them as the subjects of rights and duties.

¹⁶ K. ELIÁŠ, *Rekodifikace občanského práva v postmoderní době*, in: *Právní rozhledy*, n. 1, 2008, pp. 1-7.

¹⁷ Prof. ŠVESTKA, prof. KNAPPOVÁ accent the priority of principle of equality in legal relationships whereas prof. FIALA and prof. ELIÁŠ lay weight on private autonomy principal.

2. Law of obligations of Czech legal system tendencies and particularities

2.1. Problem of “complex regulations” outside Common Law

The biggest inconvenience of Czech obligation law consists in the existence of so-called “complex regulations” which totally independently on the civil law treat several institutions of obligations law¹⁸. It means that out of civil codification there are many separate legal enactments which involve different legal regulations applicable to similar situations.

Nowadays Czech legal doctrine is witness of a real dispute between the civil law and the labor law¹⁹. Traditionally we had had a self-existent Labor Code applicable on legal relationships rising from the working situations as a result of soviet doctrine’s influence. After over than 40 years of its application, our legislator decided to replace it by new one. Two years ago, Czech Republic adopted new Labor Code²⁰. Unfortunately it is a product of a very bad legislative coordination. New labor code thus completely denied any reasonable link and connection with civil code. New labor code closed itself up into the impenetrable barrier and tries to regulate all obligation institutes apart with no regard to civil law as a leader enactment of private law. Only exceptionally there is possible to use the Civil Code provisions that is if Labor Code explicitly says so. Instead of principle of general subsidiarity, the principle of pure delegation was chosen. Deplorable consequence of it is the fact that the unwanted duplicity of obligation institutes appears petrified. The situation around labor law in Czech Republic is much more difficult as a group of deputies unsatisfied with new labor code called our Constitutional Court to

¹⁸ Furthermore see J. BEJČEK, “Existují tzv. «komplexní právní úpravy» v obchodním a v občanském zákoníku?”, *Právní rozhledy*, n. 11, 2000, pp. 492-497.

¹⁹ For more about the conception of czech labour law and its position within the legal system see M. KALENSKÁ, “Zachováme zákoník práce?”, *Právník*, n. 12, 1997; J. KOSTEČKA, “Pracovní právo a legislativní koncepce v oblasti soukromého práva”, *Právní praxe*, n. 1, 1995; P. TRÖSTER, “Požadavky na reformu českého pracovního práva Právo a zaměstnání”, n. 5, 1996; M. BĚLINA & J. PICHRT, “Nad návrhem nového zákoníku práce”, *Právní rozhledy*, n. 11, 2005, pp. 381-389.

²⁰ New Czech labour code was adopted in 2006 after very passionate discussions and came into force on 1st January 2007.

re-examine certain of its provisions in view of constitutional conformity. After deliberation, the Constitutional court declared quite openly the principle of delegation —**the Labor Code is based on— contradictory** to constitutionally guaranteed principle of legal certainty²¹. After this decision, the subsidiary use of civil code in labor relationships is possible but the problem of duplicities remains unsolved.

Another unwilling duplicity in obligation law is represented by commercial law. There is also the commercial code which codifies extremely largely the obligation parts and regulates in consequence many obligation institutes independently. Notwithstanding, for the private recoding law purpose the authors of the draft opt for the monistic conception of obligation law as a reasonable and functional system. Monistic concept works with the idea of unified integrated obligation law which should be present in the Civil Code and will be used as a general legal regulation in all private law. The commercial code as well as the Labor Code will be obviously co-existing with the civil code but will be including only the justified differences and divergences, specifics and special legal regulations, but no more the duplicate complex regulations as it is now²². Hence we can imagine the Commercial Code as a simple

²¹ See the Constitutional Court's Decision no. Pl. ÚS 83/06 from 12th march of 2008 which has touched directly and in a significant manner the very conception of new labour code.

²² To be more concrete, one example for all: if you cause a damage to someone, there are three possible legal regimes to apply depending on your status. In the civil and commercial law we are obliged to compensate the real damage (*damnum emergens*) in the same way as the lost profit (*lucrum cessans*) whilst under the labour law we compensate the lost profit only if the damage was caused by intentional unlawful act. As for the manner of compensation, the civil law qualifies the natural restitution by its usefulness, the commercial law by its habitualness and labour law ignores both criteria and leave the way of compensation entirely on the will of tortfeasor (wrongdoer). As regards the mitigation of compensation, the civil code provides the possibility of diminution if such damage was caused unintentionally, while the labour code permits the reduction only if the damage was caused by employee no matter if it was caused intentionally or by simple negligence. These anomalies and discrepancy finally complicate uselessly the normal life of people and are counterproductive because they are weakening the principle of legal certainty. For more see Explanatory report, p. 16 et seq.

codification of corporate law while the destiny of Labor Code as a codification apart continues to be an item.

The authors of the present draft finally reached to incorporate all important contract types which have been dispersed in private law statutes so far. The question of Civil Code incorporation concerned namely the contractual types included in special law related to the securities²³. Hereafter all contractual transactions with securities will be covered by civil coding. Very tough struggle have taken place recently about the insurance contract which is actually treated by special law²⁴. The idea that private insurance is common and frequent in daily life insomuch that it shall be an integral part of new Common Law has prevailed after all. However, not even an international comparative analysis about insurance contract regulation have brought down the clear evidence of the European trend in this domain. On the one hand there are many countries from continental legal family which have special regulation act in the matter of insurance. For instance France, Austria, Germany, Swiss and Denmark²⁵ have traditionally the insurance contract out of Common Laws. On the other hand, most of recent civil codifications have proceeded to incorporation of insurance contract directly into civil codes. Particularly the Italian *Codice civile* from 1942 (articles 1887-1932), *Code civil québécois* from 1991 (articles 2389-2628), Lithuanian Civil Code from 2000 and Russian Civil Code from 2001 (articles 927-970). The fact that majority of modern civil codifications include the insurance contract was persuasive for the Czech draft.

According to what was said about the labor code position within the Czech private law, the only contractual type standing absolutely out of civil code remains the labor contract. The same way has been chosen by Hungarian recodification. The reasons for such solution are more political than juridical.

²³ Law no. 591/1992 Coll., relevant to the securities. This law contains the special legal regulations related to the transactions with commercial papers.

²⁴ Law no. 37/2004 Coll., relevant to the insurance contract.

²⁵ Denmark —not having a civil code as such— must regulate all these questions in separate statutes.

2.2. Consumer law and the private law codification - Czech point of view

Another important aspect of modern private law codification is consumer protection and legal reflection of consumer law as such consumer law is more and more perceived as a relatively compact subdivision of private law. The question is how the national legislation should take it into consideration. Across the European legal systems two principal approaches towards consumer law have been employed. The first solution is to integrate somehow the consumer protection into the existing civil codifications. It is case of Germany, Netherlands, Slovakia and actual Czech Common Law²⁶. The Czech Republic being inspired by German BGB opted for integration and implemented the European directives related to consumer protection directly into Civil Code²⁷.

However, as well as its German model, the Czech legislator does not concentrate all aspects of consumer law in civil code. Beside the Civil code, there is a special law which implements the public law aspects of consumer protection. Actual Czech civil code contains chapter 5 named «Consumer contracts» and situated in its general part where are treated -not very systematically- following questions: the unfair terms in consumer contracts, the consumer protection in case of contracts negotiated outside commercial establishments, the consumer protection in distance contract matters, protection of acquirers as regards certain aspects of time-share contracts. On the other place of Civil Code—in its obligation part—are regulated further questions concerning partly the certain aspects of the sale and guarantees of consumer goods²⁸ and partly relating to package travel, package holidays and package tours. All the other aspects—especially consumer credit matters, general framework of

²⁶ See K. ELIÁŠ, “Rekodifikace občanského práva v postmoderní době”, *Právní rozhledy* n. 1, 2008, pp. 1-7.

²⁷ The Dutch model seems to be more sophisticated as it tries to put the European consumer protection directives continuously and rigorously into the Dutch civil code in the way that it does not concentrate all in one place but amends always relevant articles and paragraphs.

²⁸ Especially the articles 616-620 of Civil code regulating the conformity with sale contract and the guarantees.

activities in favour of consumers (the consumer protection associations), deceitful advertising matters, labelling and advertising matters of food products, misleading advertising including comparative advertising, price indication matters in products offered to consumers, general safety of products and products which place health and safety of consumers in danger— are subject matter of special law, regulatory and administrative provisions out of Common Law²⁹.

Another possible conception —that after all we find in many other European systems (such as France, Spain, Italy, Belgium, Luxembourg, Austria, Finland, Latvia, Lithuania etc.)— is to issue special law which would *grosso modo* cover up the consumer law as a whole. The private and public aspects of consumer protection would be situated altogether in one regulating act. The last mentioned solution is apparently confirmed also by Czech civil code draft referring to the following argument which is interesting to point out. In the first place the authors of Czech draft are aware of particular character of consumer law which —despite its relevance— does not concern all persons at a time but only a group of persons being at a given moment in the consumer relationships. The common and general civil law, namely the law of obligations, pursues other targets. It tends towards non-mandatory rules, to rather abstract formulations of its norms. In short, by all means the civil code should support the stability of regulation even keep a certain degree of constancy in the private law relationships. While the consumer law is characterised by its high dynamism. It tends rather to much more concrete formulations (sometimes we even talk about its causistical features) and prefers the mandatory rules which in details describe the issue of facts. At last, the consumer law is for many reasons regularly amended or modified which might present a serious handicap for stable codification³⁰.

In reference to these principal arguments the Czech draft put aside the consumer law and does not try to incorporate it into civil corpus

²⁹ We are referring particularly to the following regulations: Law no. 634/1992 Coll., Consumer Protection Act; Law no. 59/1998 Coll., Product Liability Act; Law no. 321/2001 Coll., Consumer Credit Act; Law no. 102/2001 Coll., General Safety Product Act.

³⁰ See K. ELIÁS, *op. cit.*

yet. Czech legislator has picked out the “waiting off” strategy *vis-à-vis* the dynamic development of consumer law. He declares himself willing to absorb the consumer protection into private law codification but not until it is almost formed, stabilized and fixed. The actual evolution in the consumer law appears exceedingly turbulent. It is not a sort of resignation, the aim of consumer law ought to be achieved, but for the time being the main battles on this field are supposed to operate out of civil codification in the special legal enactments. If I may slightly adapt the words of Professor Hans Schulte-Nolke from Germany who has been recently talking in Prague about the phenomenon of “consuming of private law”, the Czech draft for the present seems to wait to be able to proceed subsequently to “civilization of consumer law” by adoption or readoption of its principles into civil codification.

2.3. Several notes about the Czech inheritance law

The last remark we make regarding the Civil Code draft will concern the inheritance law because it may serve an illustrative example demonstrating the necessity of change. If we proceed to a small comparison on the beginning, we will learn that *Código civil español* deals with the inheritance law in its Title III entitled «*De las sucesiones*» and comprehends over 400 legal provisions³¹ whereas the actual Czech Civil Code contains only 27 legal provisions about inheritance law³². The underestimation of law of succession in Czech law is evident. The simplification tendency of socialist doctrine revealed here in its crystalic form.

Socialist legislator strongly supported an idea that there was no real all-society interest to allow to the testator to dispose with his belongings after his death. Hence the Czech legislation of succession law is based on entire disrespect and irreverence towards the testator’s will, his interests and desires. For having slight notion about this weak point, we have

³¹ Articles 657-1087 of Spanish civil code.

³² Articles 460-487 of Czech civil code. In concrete, if we compare two particular institutes of inheritance law such as collation (*colación*), we will see that if Spanish civil code treats it in 15 provisions the Czech civil code contains only one provision regulating the collation.

to note that in Czech succession law there are not taken into account any conditions or order disposals that testator have expressed in his testament³³.

The authors of Czech draft consider this situation unsustainable and proclaim that this point of view leads to the weakening of intergenerational solidarity³⁴. In order to improve the legislative level of succession law the authors of the draft propose entirely new legislation which represents a real break up with the actual Common Law provisions. The draft includes over 230 provisions concerning the inheritance law which is eight times more than the actual one. Naturally the quantity is not a conclusive element but at least it shows the legislator's deeper interest. Being largely inspired in this domain by France, Switzerland, Germany, Austria, Spain, Italy and Netherlands the draft introduces into Czech law for instance a particular institute of succession contract³⁵ or the privileged testaments³⁶.

3. Conclusion

It is not a purpose of this contribution to give an exhausting list of all changes that might occur in the Czech private law. Its sense was rather to point out the principal difficulties of Czech private law system and give just the notion about the solutions adopted within the recoding process with regard to the draft of new Czech Civil Code as it is presented to the Czech public. There are off course many other examples of more or less substantial discrepancies in Czech private law worthy of note but it

³³ The theoretical explanation of such strange approach is that dead person has no will so that his/her orders, reservations and conditions —however put down in the testament— have no legal relevance. It is completely up to the heirs to dispose with the estate they inherited. For more about the actual Czech inheritance law see J. MIKEŠ, *Dědické právo*, Praha, 1982, J. MIKEL, *Právo a dědictví*, Praha 1993 and M. HOLUB, J. FIALA, J., BIČOVSKÝ *et al.*, *Komentář k občanskému zákoníku*, Praha, 2001.

³⁴ Explanatory report, p. 13 et seq.

³⁵ Succession contract as a bilateral legal act providing possibility to establish a contractual relationship between the testator and any other person concerning the testator's property is regulated in the articles 1368 et seq. of the present draft.

³⁶ See § 1332 - § 1337 of the present draft.

would exceed the purpose to mention rather the conception matters only in general way.

Despite the uncertainty about the final adoption of present draft as a new Czech Common Law, one thing is clear already now: every recoding attempt of Czech civil law in future will have to be compared with this draft and will have to face *grosso modo* the same challenges. By this draft, the authors started a great and deep discussion about different legal institutes, their history, evolution and place in the private law codification. The Czech draft will be soon translated into English, so it might serve as a source of suggestions, impulses and perhaps also inspiration for other countries which are trying to come up with a new codification.

4. Bibliography

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