Development of Legal Order in the Czech Republic after 1989

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The development of the legal order of the Czech Republic has come through difficult periods during which political systems and forms of state organizations had been changed many times and depended on an intensity of prevalence of the Czech state law.

The Czechoslovak post–war development taking place in the bipolar world was marked by forming of new political powers which began to penetrate with their ideology into legal orders. That should secure strengthening of their power position. Thus, the change of a democratic legal state into a totalitarian state in 1948 was reflected in a sudden liquidation of the democratic legal order that had been being built for more than 100 years. Forty years' ruling of the totalitarian regime governed by the marxistic ideology had fundamentally changed the bases of the Czech or Czechoslovak legal order. Since then, it had been based on ideological knowledge ensuing from a class character of law, superiority of the society ownership to the individual ownership, moreover, the repressive aspect of criminal law had been emphasized, etc. Political changes of the year of 1989 interrupted the forty years lasting rule of the class like legal order and enabled a comeback to the democratic traditions. Creators of new legal regulations could finally let themselves be inspired by the democratic and, above all, Western legal orders.

The political system change enabled a comeback of the traditional legal system, too, that is to say it enabled a distinction between public law and private law. As for private law, its fundamentals are based on the Ulpian's definition of private law (D, 1, 1, 1, 2). Ulpian distinguished public law from private law the criterion for that distinction being the fact whether a certain regulation "spectat ad statum rei Romanae" or "ad singulorum utilitatem". Ulpianus said: "Publicum ius est quod ad statum rei romanae spectat, privatum, quod ad singulorum utilitatem" (Public law concerns the Roman State, private law serves the benefit of individuals).

In the text to follow, we shall try to explain some fundamental changes of legal branches after 1989. We will especially focus our attention on the sphere of private law. However, some information of a general character concerning the development of constitutional law and the organization of public administration is necessary to

provide since these changes have predeterminated further modifications in other legal branches.

1. Constitutional System

The constitutional developmet after 1989 is typical of two aspects: the democratization of state system aiming at establishment of legal state and minorities problems which are becoming acute, that is to say relations between the Czech and Slovak nations.

After 1989 the minorities problems have in the former Czechoslovakia unfortunately prevailed over civic problems and the state had become gradually disintegrating. The common social life of the Czech and Slovak nations terminated on the last day of the year of 1992. The Czechoslovak state has vanished from the map of Europe and two states – the Czech Republic and the Slovak Republic have emerged on its place. Since then, the Czech as well as the Slovak legal order are developing solely separately.

I intend to mention the process of a democratization of the Czech i.e. Czechoslovak political system and the state system. As it has already been stated, a new era of the Czechoslovak constitutional development had been commenced in November 1989. Moreover, a part of the students' and artists' requirements with which almost the whole society agreed immediately, was the demand of removing the power and ideological monopoly of one political party and the requirement of free elections.

Therefore, first changes concerned provisions of the Constitution of 1960 anchoring the leading position of the Communistic Party of Czechoslovakia (the Constitutional Act No. 135/1989 Coll.). This was followed by a promulgation of other laws enabling an origin of a pluralistic political system based on functioning of political parties and interest organizations. It was, above all, the Act No. 15/1992 Coll. on Political Parties that enabled citizens to assemble in political parties and take them part on the political life of the society, especially on forming of the representative bodies.

A wide range of other legal regulations enabling a realization of political rights of citizens was later adopted as, for instance, the Act No. 83/1990 Coll. on Assembling of Citizens, the Act No. 84/1990 Coll. on the Assembling Right and the Act No. 85/1990 Coll. on the Petition Right.

However, fulfillment of the requirement of free elections was preconditioned by promulgation of new election laws – the Act No. 47/1990 Coll. on Elections into the Federal Assembly, the Act No. 54/1990 Coll. on Elections into the Czech National Council and the Act on Elections into the Slovak National Council.

The elections were held on July 9, 1990 and their important consisted in the fact that they were a plebiscite in the frame of which the electors have refused

the totalitarian past and elected a new democratic future by an almost complete majority of votes.

Based on the acts of the Czech and Slovak National Councils (the Act No. 368/1990 Coll. on Elections into the Authorities in Municipalities), the elections into local bodies were held in November 1990.

The elections were preceded by a new constitutional regulation (the Constitutional Act No. 294/1990 Coll.) and later a legal regulation of local, i.e. territorial self-government was promulgated (the Act No. 367/1990 Coll. on Municipalities). This legal regulation has declared a municipality as a self-governing community of citizens with its own property a basis of the self-government.

Efforts aimed at achieving the political plurality corresponded with efforts aimed at the economic plurality. In respect of that activities, the Constitutional Act No. 100/1990 Coll. changing and amending the Constitutional Act No. 100/1960 Coll. and the Constitutional Act No. 143/1968 on the Czechoslovak Federation have declared that the state provides all owners with an equal protection. Thus, the so far existing superiority protection of the state ownership was annulled.

A main task of the newly elected representative bodies was the adoption of a constitution in 1990. As for the federations, such a constitution should not have been consisting of several constitutional acts but it was to be based on really democratic principles and enable an optimal functioning of the common state of Czech and Slovak nations.

Constitutions should have been adopted in both republics. However, it is known that the Federal Assembly of the Czechoslovak Federative Republics, the Czech National Council and the Slovak National Council have not fulfilled that task. Nevertheless, the Federal Assembly in cooperation with the National Councils has passed some acts forming the basic institutes of the democratic constitutionalism.

The mentioned legal regulations adopted was, above all, the Charter of Fundamental Rights and Freedoms (the Constitutional Act No. 23/1991 Coll.), further, the Constitutional Court Act (the Constitutional Act No. 91/1991 Coll.) and the Referendum Act (the Constitutional Act No. 327/1991 Coll.).

Disputes concerning the common life of the Czech and Slovak nations were growing acute during 1991 and have culminated after the elections held in 1992. The second half of the year of 1992 was just only a last sad common stage of the common Czechoslovak state. The Constitution of the Slovak Republic was adopted in autumn 1992 (the Czechoslovakia had still been existing at that time) and on December 16, 1992 the Czech National Council adopted the Constitution of the Czech Republic that took effect on January 1, 1993. The former common state of the Czech and Slovak nations was liquidated after more than seventy years of its existence. The Czech Republic and the Slovak Republic have found their independent places in the community of European states.

2.
Public Administration

The public administration organization was changing together with the constitutional system. The former National Committees' existence was quickly wound–up. The Act No. 367/1990 Coll. on Municipality Authorities was passed in 1990 and the Act on Elections into Municipality Authorities (the Act no. 368/1990 Coll.) quickly followed as well as the Act No. 425/1990 Coll. on Regional Authorities. Thus, the public administration has come back to the former dual system.

Municipalities are in the Czech system of administration defined as self–governing communities of citizens, having the status of legal persons with their own property. Moreover, the legal regulation presumes that a municipality is characterized by an appurtenant territory. At the same time, the legal regulation emphasizes status of citizens as subjects endowed with the right to rule about matters belonging into the frame of the territorial self–government either directly or in a mediated way.

Legal regulation dealing with the municipality administration distinguishes appurtenant terms, thus it is possible to distinguish municipalities having the status of towns.

So–called statutory towns have a special status.

Legal regulation concerning a status of municipalities presumes and defines many concrete relations arising among municipalities i.e. bodies of municipalities and so–called district authorities as territorial bodies of the state administration.

According to the valid legal regulation, the district authorities rank among the state administration bodies established with the aim of effection of the state administration in their territorial districts. The district authorities thus act as superior bodies in relations towards the entrusted local authorities in appurtenant territorial districts.

A further public administration development in the Czech Republic depends on the future choice of a territorial organization concept. For more than three years, almost completely unfruitful discussions have been held, concerning a size of administrative units, a hierarchy of administrative bodies and a division of competence among individual levels of the hierarchy. The problem of administrative organization of the Czech Republic is one of the most important ones which are to be solved by the law–giving bodies. However, its solution is still being put off.

3.
Organization of Judiciary, Notary and Advocacy, State Prosecution

Significant changes have taken place in the organization and status of the courts of law, notary and advocacy. Moreover, the status of public action bodies has been modified, too.

Courts of law are one of the most important units of the state system, being typical of several basic characters. Firstly, the courts of law form an organization and they act in a legally stipulated form. An important characteristics of judiciary is the state coercion. As for matters discussed and ruled over in the frame of the civil proceedings, the courts of law may use the state coercion only in cases where an effective verdict concerning a fulfillment was brought and the parties to the proceedings did not fulfill that verdict voluntary. As for the criminal proceedings, under the state coercion punishments of criminal offenders are brought and effection of the punishments are ordered provided that such a decision, according to the law, ranks into the frame of the court's competency. It is stated that the independence of judiciary from other state bodies belongs among the principles of modern judiciary. The organization of judiciary is based on several fundamental principles that distinct judiciary from other state bodies.

Due to the above mentioned reasons, the organization of judiciary reflects all significant changes in the socially–economic development though this fact is not as striking as if concerning other parts of the state system. Thus it is only logical that the November events of 1989 and, subsequently, changes of the political as well as the economical spheres have remarkably modified the organization of judiciary. The courts of law were the firstly and most widely criticized parts of the state system, though not always objectively, since that part of the state system had been considered one of the main tools of the the communistic party dictatorship. It is indisputable that the courts of law have played a negative role during the totalitarian regime, especially in criminal matters. The so–called guards of legality changed into guards of the leading political party's interests. An objective evaluation of the courts of law activities in civil sphere should be effected after a necessary period of time since an inadequate critics often arising due to unprofessional approach would cause lowering of prestige of the courts of law hierarchy that would instigate a vast removal of judges from judiciary into other legal spheres together with bad material means. Such situation would paralyze whole judiciary for some time. However, the critical situation of our judiciary has not changed, though the Ministry of Justice has enforced some changes concerning financial remuneration of judges. Thus the crisis in judiciary appeared to be deeper and its removal will take a long time.

The November events of 1989 has thus shown a necessity of personnel as well as organizational changes. In respect of that, many legal acts have been adopted during 1990 – 1993.

The Act on Courts and Judges promulgated in the year of 1991 (No. 335 as of July 19, 1991), is undoubtedly the most important act adopted. It enabled to anchor judges' position as a steady part of the democratic political mechanism that has set off for a creation of a legal state. Since then, judges are appointed for an unlimited period of time, a position of the Ministry of Inferior has changed, too, and the judges' independence is guaranteed.

Further, the Act on Seats and Competency of the District Courts and the Regi-

onal Courts has been passed (the Act No. 98/1991 Coll.) and later the appurtenant promulgation act was adopted, too.

As for the new character of the administration of justice, the Act No. 436/1991 Coll. is of a great importance. The disciplinary liability of judges is newly anchored in the Act No. 412/1991 Coll.

The democratic process has evoked some further changes. Thus, advocacy and later notary have been privatized. A modification of the former state notary has, above all, called for necessary changes of organization in the frame of judiciary. Thus, a relation between notary and advocacy has changed. Since January 1, 1994 the former state prosecution was reorganized into the state office of attorney. The Civil Court Order as well as the Penal Code have been amended for several times.

At present, the last fundamental changes in the organization of justice have been caused by the new state organization effected in January 1, 1993. Understably enough, all bodies effective on the level of the former federation have been liquidated. As for justice, it concerned the Supreme Court of the Czecho–Slovak Federative Republic. Consequently, the High Courts came into being. Finally, the Martial Courts were wound up as of January 1, 1994 and the agenda was transferred on civil courts.

Naturally, it is not possible to omit the origin of the administrative justice and the business justice. Even the Constitutional Court of the Czech Republic was given the proper place in the organization of judiciary.

The organization of judiciary and, subsequently, the legal institutions have thus remarkably changed within the last four years. The position of judiciary has changed as well as appurtenant legal institutions in the last four years. The legal regulation granting the position and organization structure of judiciary has changed even for several times. However, our public is still waiting for an efficient operation of the courts of law. This will need a long education of judges and improvement of their professional abilities as well as moral qualities so that they would be able to bear the independence of judges while reflecting the needs of the society.

From the beginning of 1993, the position of the bodies of public action has changed, too. The former state prosecution has been modified into the state office of attorney. The status of the state office of attorney is now reflecting the changed functions of criminal law.

4.
Criminal Law

As for the sphere of criminal law, the changes were and still are aimed at de-ideologization, decriminalization, depenalization and diferenciation of the criminal liability. The mentioned for fundamental principles are typical of the reform and will be decisive in the future. At the same time, it is necessary to remark that no

linear process is in question in the sense that e.g. decriminalization would mean a mere liquidation of some factual deeds of criminal offenses. On the contrary, it is necessary to react in an appropriate way on new forms of criminality. The mentioned characteristics of the reform are thus concerning criminal substantive law, but they can be also analogically applied on criminal law of procedure.

The reform of criminal law is being effected in several phases. The first faze reflects a need of immediate changes of both of the branches of criminal law in respect of new or still changing political, economic and social conditions. The second faze should, on the contrary, respect the need of long–time–changes, perspective modifications aimed at a creation of pluralistic democratic society based on the idea of the rule of law.

As for legislature, the first faze of the process is reflected in adopted of a great number of amendments (within 1989 and 1993, nine amendments of criminal substantive nature and eight amendments of criminal procedure have been adopted). As long as the second faze is concerned, a recodification of criminal substantive law should be the crucial point as well as a recodification of criminal law of procedure.

As for the results of these two fazes of the reform, it is possible to give an account of five direct amendments to the Criminal Code (in the sphere of criminal substantive law, the Act No. 158/1989 Coll., the Act No. 545/1990 Coll., the Act No. 557/1991 Coll. and the Act No. 290/1993 Coll.) and six amendments, not being of a direct nature (the Act No. 47/1990 Coll. on Elections into the FR of the CSFR – § 177, the Act No. 84/1990 Coll. on the Right of Assembly – § 197, letter b), the Act No. 457/1990 Coll. on the Standing Order of FR of the CSFR – § 175, the Act No. 451/1991 Coll., the so–called Screening Act – § 175, the Act No. 490/1991 Coll. on Means of Effecting Referendum – § 177, the Act No. 182/1993 Coll. on the Constitutional Court – § 69 on high treason).

Criminal law of procedure has been changed six times by means of adopting direct amendments (the Act No. 159/1989 Coll., the Act No. 178/1990 Coll., the Act No. 303/1990 Coll., the Act No. 558/1991 Coll., the Act No. 25/1993 Coll., the Act No. 115/1993 Coll.) and two other amendments, not being of the direct nature (the Act No. 13/1993 Coll. – the Custom Act, § 22 of this act has anchored the institute of custom inspector of criminal offenses concerning import, export ... etc. of goods, the Act No. 26/1993 Coll. – the amendment to the Act on the Police of the Czech Republic, § 14, par.1, letter d) and e)).

Criminal law of procedure has been modified for four times in the Czech Republic during the last four years, either by means of amendments of direct or not direct nature. The reform aims at the following goals: 1. strengthen the protection function of criminal law of procedure. 2. Strengthen the regulative function of this branch of law. 3. Modify the educational function of criminal law of procedure. 4. In spite of the existing division of procedural functions, the investigating function especially in the sphere of the judicial part of the proceedings, substitute it for the sake of the principle of contradiction. 5. In respect of strengthening the principle of

contradiction, to modify the principle of objective truth, the principle of officiality, legality, the principle of inquisition and the principle of no-guilt presumption. 6. To stress the other principles in the separate fazes of procedure and in institutes of procedure. 7. To reach an easy conduct of the process by means of a new regulation of the criminal institutes, and thus transfer matters not belonging into the competence of bodies of criminal law, thus a complete acceleration of criminal procedure should be reached.

5.
Civil Law

The Civil Code is the fundamental legal regulation of civil law. The Civil Code is in force as of 1964 in the Czech Republic, formerly in the Czechoslovak Republic. Within the years of its validity, the Civil Code has been changed and amended several times. Let us mention the following amendments: the Act No. 58/1969 Coll., the Act No. 131/1982 Coll., the Act No. 94/1988 Coll., the Act No. 188/1988 Coll., the Act No. 105/1990 Coll, the Act No. 116/1990 Coll., the Act No. 87/1991 Coll., the Act No. 509/1991 Coll. (the so-called Great Amendment) and the Act No. 264/1992 Coll..

The Civil Code has been changed, above all, by the amendments adopted after November 1989. This was of importance for the position of civil law in the system of legal order. Changes of civil law ensued from the vast process of modification of the whole legal order of the Czech Republic. As for the sphere of private law, due to fundamental social changes it became obvious that crucial changes of the fundaments of private law should be considered, that is to say in civil law. The Civil Code reflecting the needs of the former administrative and directive system became of no use under the circumstances after 1989. In respect of that, it was necessary to renew a position, goals and previous importance of civil law to an extent reflecting a pluralistic society aiming at market economy. It was, above all, necessary to modify the Civil Code so that it would correspond to the Charter of Fundamental Rights and Freedoms. The first step taken in that direction was the adoption of an amendment to the Civil Code of 1991 valid as of January 1, 1992.

That amendment has greatly extended the object of the social relations governed by the Civil Code. Thus, the Civil Code became a fundament of whole private law. Further the amendment has brought a different understanding of application of the basic principles of the private methods of regulation in all parts of the Civil Code. It especially concerned a wider use of the principle of private autonomy, namely the autonomy of owners and contractual autonomy, the principle of total compensation, that is to say property compensation as well as compensation for immaterial damages, and the principle of good faith.

The amendment of 1991 has modernized many fundamental private institutes, reflecting the needs of market economy. In general, it concerns all parts of the Civil

Code.

In its first – general – part, many provisions of the Civil Code have been modified and new provisions were added. In general, about fifty modifications have somehow concerned the first part of the Civil Code, some of which should be considered fundamental. For example, it is possible to mention a completely new delimitation of the object of regulation of the Civil Code and a position of participants of civil relations, protection of personality rights of natural persons, a regulation of the institute of legal persons and a protection of the right of good reputation protection of legal person and a regulation of associations of legal persons, a regulation of foundations as one of basic parts of the future non-profit sector, a regulation of legal deeds, a regulation of contracts. Furthermore, provisions concerning forfeiture and negative prescription have been also changed to a great extent. Flats and non-habitable premises can also be objects of civil regulation. A need of a commercialization of the Civil Code instigated the amendment of this part of the Civil Code.

As for the second part of the Civil Code, the respective provisions have been modified due to constitutional amendments which changed the former regulation of ownership rights. Thus, a unified and general term of ownership has been anchored, including its protection.

Provisions on liability for damages and groundless enrichment have been concerned by the amendment, too. On the whole, almost thirty modifications and changes concerned this provisions.

Provisions on succession have been also greatly changed. Next to a new regulation concerning a possibility of establishing a custodian in the proceedings on succession, if it is in the interests of good operation of an enterprise, a whole regulation of law of succession was changed. Conditions applied on succession were stipulated in detail, a new fourth group of possible heirs was created, a legal share of adult children was stipulated as a half of the amount that would be determined for the legal share otherwise. In respect of a need of compliance with the Charter of Fundamental Rights and Freedoms, notaries have been deprived of their right to decide about rights and duties of participants on a legal relation, who have not reached an agreement on settlement of a heritage and thus the courts of law have been entrusted with the right to deliver a ruling in respective matters.

A new part was added to the formerly shortened Civil Code, i.e. obligation law. As for the drafts of this part of the Civil Code, international treaties binding the Czechoslovak Republic were respected. The respective international treaties were also published in an appurtenant way.

Further, the Civil Codes of 1811 and 1950 were also taken into consideration. As for terminology, the adopted amendment to the Civil Code respects the traditional terms.

Due to the fundamental changes of the Civil Code, civil law became again the basis of private law. Thus our Civil Code became to resemble other Europian civil codifications using the rich traditions of codifications drafted in the 18th and 19th

centuries. The Civil Code, together with the Commercial Code and other important legal regulations adopted in the last two years, it has contributed to the fundaments of the rule of law.

However, other private legal regulations have been changed in the frame of civil law. A last outstanding changed concerned the sphere of ownership of flats. On March 24, 1994, the Parliament of the Czech Republic has passed an act regulating some questions of common ownership rights to buildings and some ownership relations to flats and non–habitable premises. An adoption of this act was awaited without any patience since it is evident that an absence of such an act was a serious trouble in the system of the Czech legal order. The previous legal regulation was based on a monistic theory according to which a flat is an object of ownership rights. A house, to say it better common parts of a house had not been considered an object of ownership rights but an object of common ownership, while the common ownership rights had been considered only subsidiary in relation to the ownership rights to a flat. However, such a kind of common ownership rights had not been considered a part of the object of ownership rights, therefore a house or its common parts had not been recognized as an object of ownership rights to a flat. A new concept of a flat in the Czech civil law is different, the first sign of difference to be seen in the title of the act. The adopted regulation is based on the dualistic theory that prefers a concept of common ownership where the main object is a building and a subsidiary object is a flat, both in the frame of ownership rights. Thus, an authorized subject is enjoys common ownership rights to a building and, subsidiarilly, ownership rights to a flat. The act resembles relevant regulation in Germany based on the condition of undivided common ownership and ownership rights to a flat, however, it does not presume a mere subsidiary nature of ownership rights to a flat compared to common ownership rights. At the same time, ownership rights to a unit includes ownership rights to a flat, or non–habitable premises, and divided common ownership rights to common parts of a building.

There are other topical problems in the Czech Republic apart from the sphere of ownership rights to flats. A main task of legislature in the frame of civil law is, however, adoption of new complex civil code. A solution to this task is, nevertheless, in the future.

6.
Business Law

A transformation of economy effected after November 1989 called for an adequate legal regulation. Such a legal regulation should be based on the principles of market economy and a democratic rule of law. In respect of that reason, legislative bodies have adopted a new legal regulation anchored in the Commercial Code. The Commercial Code was promulgated as the Act No. 513/1991 Coll. The former trade law was replaced with business law based on private concept. The Commercial

Code together with the greatly amended Civil Code have created a complex concept of the sphere of private law which is becoming independent and is being separated from the public sphere after forty years.

A removal of the former power position of the state in national economy, typical of the so–called socialistic economy can be considered the main feature of the new Czech business legislature. The state had been intensively intervening into the business activities of all subjects by means of administrative directive concept of operation of economy, especially by means of directive planning.

The Czech Commercial Code has anchored a completely different legal regulation. Direct regulative interventions of the state are not possible at all, planned tasks or trade obligations including the former so–called contractual duty are not recognized by the Commercial Code. A contract has become a fundamental, absolutely prevailing method of legal regulation of business relations. A contractual will has thus become a decisive legal issue.

So far, the Commercial Code has been amended three times. The first amendment was promulgated as the Act No. 264/1992 Coll., changing and amending the Civil Code. The Act on State Notary was annulled as well as the Order of Notaries. This amendment brought a change of attaining ownership rights to immovables and an origin of right of pledge to immovables by means of entering a pledge into the Register of immovables and thus changed five provisions of the Commercial Code.

The second amendment was anchored in the Act on Securities No. 591/1992 Coll. and the Act No. 600/1992 Coll.). This amendment brought a possibility entering securities into a special register. Business operations with securities are now governed by the Commercial Code as absolute trades. Further, the amendment has stipulated contracts concerning securities, that is to say a contract on transfer of securities, a contract of mediating a purchase of securities and a contract on pledging securities.

Third amendment was promulgated as the Act No. 286/1993 Coll.. It observed a new amendment to the Act on Protection of Business Competition in such a way that it brought a possibility of winding up a business company by means of a court's ruling in case that a company does not fulfill a duty imposed on it by a decision of the Ministry of Business Competition as in accordance with the Act on Protection of Business Competition.

A development of the legal order of the Czech Republic is being done more intensively than it was previously thought and than it is common in steady democratic states. Other changes concerning either directly or otherwise the Commercial Code will reveal in the sphere of business law. However, in the near future, no changes of fundamental nature are expected.

7.
Labour Law

The Labour Code promulgated in the year of 1965 is the fundamental legal regulation of Czech labor law. The Labour Code has gone through a stormy development within the years of its validity. The law–giver has always had tried to modify the Labour Code so that it would correspond to the relevant economic situation and needs of the state. A vast number of amendments to the Labour Code (all together 17) reflects certain embarrassments and uncertainty of the law–giver rather than reverses of the economy. At the same time, the valid 17th amendment passed by the Parliament in March 1994 is not an exception. Furthermore, all amendments adopted have been a little of organic interventions into the formerly systematic code and caused a number of problems by means of interfering into its system. So, there is an account of the changes brought by the last amendment to the Labour Code in the following paragraphs.

Firstly, a legal regime of labour relations concerning all employed subjects has been consolidated. So far, the Labour Code had been regulating above all labour relations where employers were legal persons, as in accordance with legal ideas from the times of adoption of the Labour Code. Labour law reckoned with the possibility that even a natural person might be in the role of an employer, however, a systematic position of provisions regulating this possibility was in the final provisions of the Labour Code, thus it was of a very low importance.

A provision regulating the competence of the Labour Code has also been newly worded, especially a provision according to which labour relations come into origin in relations among employees and employers. The law–giver has thus abandoned the overcome theory about citizen's participation on common social works.

In respect of a development of private undertaking in the Czech Republic, it was necessary to solve problems concerning labour subjectivity of an employer. So far, the Labour Code anchored organizations, which were understood as legal persons employing citizens. It was up to other legal regulations (especially civil and business legal regulations) to determine conditions concerning an origin of labour subjectivity. Therefore, the law–giver has anchored a new paragraph in the Labour Code that solves that question in a way similar to that of the Civil Code – acapacity of a natural person to be endowed with rights and duties as an employer in labour relations origins when a natural person is born.

In certain parts, the amendment to the Labour Code concerned a position of trade unions and, above all, collective agreements. A new provision was anchored in the Labour Code according to which trade unions are entitled to take part on labour relations including collective negotiations under conditions stipulated by the law.

The most widely discussed part of the amendment to the Labour Code was a sphere of regulating labour relation for a limited periods, that is to say a labour relation where the parties to the contract have agreed to limit the time of its validity. The law–giver has annulled provisions concerning this kind of labour relation.

An important change was brought by stipulating the legal institute of compensation that was anchored in the Labour Code. The compensation is understood as a monetary means of a satisfying nature in case that a labour relation is terminated due to reasons consisting in an organization of work or other similar circumstances on the side of the employer.

In the recent days, there are often occurring cases in which entrepreneurs pay either no or a lower remuneration to their employees then they are entitled to get. This is connected with the complex economic situation in small enterprises usually. The amendment to the Labour Code reacts to that situation in a remarkable way, i.e. it anchors a new reason for an immediate termination of a labour relation on the side of an employee.

The lastly adopted 17th amendment to the Labour Code is only a small step on the way to adapting labour law to the economic conditions of market economy. In a way, it solves only partial and, viewed systematically, not very crucial problems. Labour law reflecting the economic situation in a great detail in comparison to other branches of law needs a more substantial changes. This should be fulfilled by the adoption of a new labour code. However, such a change is planned for the next two years.

8.
Judicial Proceedings

There are important changes in judicial proceedings, too. The principle of impartiality in the decision–making process of the courts of law is becoming to be the leading principle determining even a position of judges. The principle of judges' independence is anchored in the text of the Czech Constitution, namely in Section 82. According to this provision, the judges are independent in the effection of their function. The mentioned constitutional principle is stipulated in detail in the Act on Judges and Courts of Law (the Act No. 335/1991 Coll. and its amendments). The said act defines the independence of judges, stipulating that judges effecting their function are bound only by the law and are obliged to interpret legal regulations according to their best knowing and consciousness. They are bound to decide impartially, justly and without unnecessary delays and only on the basis of facts ascertained in compliance with the law. The principle of independence of judges is closely connected with a fundamental change concerning appointing of professional judges into their office. Our judges are appointed into their office by the President of the Czech Republic for an unlimited period of time.

As for the civil procedure, the law–giver has passed a vast number of basic

changes by means of adoption of the so–called great amendment to the Civil Court Order taking effect as of January 1, 1991 (the Act No. 519/1991 Coll.). This newly adopted regulation brought changes into the sphere of material competence of the courts of law. The Regional courts as the courts of the first instance became materially appurtenant for many types of proceedings stipulated in the law. The new regulation of the material competence the courts of law ha also anchored commercial judiciary effected in the frame of civil regulation. The administrative judiciary is after 40 years a part of our Civil Court Order again. A limitation of a possibility of access of a state attorney into the sphere of civil proceedings was a really deep democratic change of civil procedural law. At present, state attorneys can interfere into civil proceedings in three cases only, i.e. proceedings on capacity to effect legal acts, proceedings on declaring somebody dead and proceedings on a record into the Companies Register. In this connection, we can also point at a democratic change consisting in possible extraordinary legal remedies in civil procedure. By means of adopting this amendment, we have abandoned an absolutely non–democratic possibility of extraordinary remedy consisting in lodging a complaint for a breach of the law. This was substituted with the institute of a claim. After 40 years, we have come back to this extraordinary legal remedy. It up to the participants of civil proceedings to use this kind of remedy and thus it is not mediated by a state attorney as it had been the practice in case of applying the complaint for a breach of the law. Even the execution proceedings were changed, an institute of a judicial auction was anchored in cases where the execution of movables and immovables is in question. As for executions aimed on monetary fulfillment, we have extended possibilities of establishing a judge's pledge on immovables. On the contrary, the execution effected by means of liquidation of property was annulled and replaced with a separate Act on Competition and Bankruptcy Proceedings.

Another fundamental amendment to the Civil Court Order was promulgated as the Act No. 171/1993 Coll. taking effect as of September 1, 1993. Democratic principles have thus been renewed, especially in the frame of an equal position of participants to civil proceedings. In this connection, there has been a basic change in a concept of the principle of material truth. The new concept ensues from respecting, even in the court's acting concerning demonstration of proofs, differences between the contentious and non–contentious proceedings. Thus it is deduced that the contentious procedure must be governed by the principle of discussion while the non–contentious procedure is ruled by the principle of investigation. As for the sphere of the contentious procedure, the joint unity of duty imposed of a participant to urge facts and suggest proofs is applied. The duty of proofs is the fundamental principle governing the procedure of demonstrating proofs before the courts of law. It is up to the activity of participants to determine the way of the procedure of examining the proofs. Thus, it is not a duty imposed on the courts of law. Formerly, the courts of law replaced the activity of the parties to the proceedings. As far as the non–contentious procedure is concerned, it is not possible to rule out the

right of the court (not the duty) to demonstrate other proofs than suggested by the participants in case that it became obvious that it is necessary to demonstrate such proofs so that a factual state would be ascertained. A new concept of the principle of material truth thus combines unambiguous consequences with a failure to fulfill the duty of proofs imposed on the participants of the proceedings. Then, the court is entitled to decide on the basis of the demonstrated proofs only and has no duty to ascertain "the proper state of facts". The consequences of a failure to bear so–called proof burden are revealed in a negative decision for a participants who failed to fulfill his/her proof duty. In regard of fundamental differences between the contentious and non–contentious procedure, a failure to bear the proof burden cannot be applied in proceedings which can be commenced even without an action and for other proceedings where it is essential to deliver a decision based on the factual state of events. As for non–contentious proceedings, the principle of investigating is applied according to which the courts of law are bound to demonstrate all proofs necessary for ascertaining the factual state of matters.

Finally, decisions due to acknowledging and decisions due to missing have been anchored again into the Civil Court Order

As for the Czech science of procedure, the compensation procedure is very topical now. After forty years, it has been anchored in the Czech legal order in 1991. The draft of the Compensation Act and its other amendments have been accompanied by large studies of this topic in countries which have long years of experience with this legal institute. The draft to this act observed the legal regulation of the institute of 1931, but there were other legal regulations from other states at disposal, especially those from Austria, Germany, Italy, France, Switzerland, England as well as the U.S.A.. Experience gained from the English regulation called "Insolvency Act 1986" appeared to be very useful. Furthermore, it was possible to consider the preparations of multilateral international treaties aiming at unified collision criteria in bankruptcy and competition proceedings with a foreign issue involved. At the same time. the same problems were discussed in the European Community as well as in the Counsel of Europe as expressed in the draft of a multilateral international treaty called "Draft European Convention on Certain International Aspects of Bankruptcy (CDCJ–89–66) from December 15, 1989. Very inspiring were also results of international conferences discussing bankruptcy and compensation proceedings if more than one state are involved. Rather fruitful have been results of e.g. XII–I. International Conference on Comparative Law on the topic of "L'insolvabilité transfrontiére".

Bankruptcy and compensation are legal institutes closely connected with market economy. Therefore, they were brought into our legal system again by the Act No. 328/1991 Coll. on Bankruptcy and Compensation taking effect as of October 1, 1991. Thus, it is necessary to consider those legal institute a part of a legal complex opening the door for market economy in the Czech Republic. Compensation and bankruptcy enjoy an important place in modern countries. They reflect a marginal

situation, i.e. an insolvency of a debtor and disorders consequently occurring in contractual relations. It would be reckoned as a lack of legal system if such situations were not reflected in legal regulations since this situations do occur and will occur in the future. As for a solution to a "bankruptcy" of an economic subject, the Czech legal regulation of compensation and bankruptcy will concentrate on the problems of dispersing economic losses among creditors in equal and just way so that no one could gain any profit from a bankruptcy. A basic principle of compensation according to the Czech regulation, is not saving of a debtor but a parity of creditors who are concerned by a bankruptcy.

A legal regulation of compensation as well as of bankruptcy in the conditions of the Czech legal regulation consists in the fact that, in both cases, proprietary settlements are in question. A fundamental prerequisition for a compensation or a bankruptcy is the existence of insolvency of a debtor. Further, a proprietary settlement must always be in question and is taking place due to the fact that there are more creditors. Thus, always a wider number of bilateral obligation relations which are being solved at one moment, is in question. The settlement is effected among subjects whose interests are in contradiction (and not only among a debtor and creditors but also among creditors themselves), therefore there are strict rules governing this situation.

Compensation and bankruptcy, in regard of the Czech concept of its legal regulation, have a general nature, i.e. they can concern basically all legal subjects with no regard to the fact whether a natural or a legal person are in question, or whether it concerns an entrepreneur in the sense of the Commercial Code or a person who is not an entrepreneur. Anyone can take part on the proceedings as a creditor. Thus it is not decisive whether the conditions under which a competition can be declared or bankruptcy allowed, have originated in the frame of conducting business activities.

A fundamental condition necessary for declaring compensation or allowing bankruptcy is a bankruptcy ensuing from the Italian word "banca rota". The term of bankruptcy is defined in two ways in the Czech legal regulation: either as insolvency or overdebtiness. Both terms are of a different nature. Insolvency can be in question without overdebtiness and vice versa. As for the person of a debtor, insolvency is of a general nature, i.t. it concerns all debtors. On the contrary, overdebtiness can concerns only juristic persons and, as for natural persons, only entrepreneurs. Insolvency consists in the fact that a debtor has not at his disposal a sufficient amount of monetary means. Overdebtiness is not namely defined in the law, thus it is necessary to base it on the general meaning of this term. Thus we can understand it as a state when a debtor's debts prevail over his monetary means. Debts include a total amount of his obligations and proprietary means are meant as a total amount of his property. While considering overdebtiness, we do not take into account only a debtor's monetary means contrary to insolvency, but also other values belonging to the debtor (things, claims, other rights of a monetary value etc).

The Czech concept of compensation and bankruptcy is thus consisting in a multilateral scope of relations of participants of compensation and bankruptcy contrary to e.g. bilateral nature of relations between an authorized person and a liable person in the execution procedure.

To conclude the Czech legal regulation of compensation and bankruptcy, it is suitable to add that the relevant legal regulation has already been amended by the Act No. 122/1993 Coll. taking effect as of April 16, 1993. According to the mentioned amendment, a fundamental change consists in stipulating the institute of the so–called protection period within lodging a proposal for compensation and its declaring. Within this period, an entrepreneur has a last chance to reach a consolidation of his financial situation and to overcome the situation of bankruptcy. At the same time, thus is created a certain room for the founders of a debtor to take appurtenant measures. The protection period is commenced upon a requirement of a debtor, not automatically. The protection period lasts three months, in extraordinary cases and under conditions stipulated by the law it can be prolonged for other three months. Further, the amendment regulates a relation of compensation and the process of privatization in the Czech Republic. As for state enterprises, other state organizations are legal persons with a property participation of the state, there is a special regime distinguishing separate phases of the privatization. Contrary to the previous legal regulation, possibilities given to managers of a debtor are limited in the compensation proceedings. The concerned persons may not gain ownership rights to things owned by the debtor at the beginning of the proceedings, even in case that such things were sold at auction. Such things may not be transferred to managers in the period of three years after termination of the compensation and bankruptcy proceedings. Legal acts effected contrary to the provision are ineffective.

A legal regulation of compensation and bankruptcy proceedings enabled to start a process of compensation and bankruptcy proceedings in the conditions of the Czech legal order. Such a process will enable concerned subjects to face losses necessarily brought by bankruptcies while using economic means.

Conclusion

Naturally, it was not possible to give an account on all changes of the Czech legal order in the last two years in the article. We have not mentioned the completely new tax system, the origin of trade law as well as changes in family law. However, we have tried to draw attention to changes in decisive branches of legal order.