

CONCLUSIONS BY THE SCIENTIFIC EDITOR

MICHAL TOMÁŠEK

Finally, everything has been written, there comes a scientific editor and his task is not easy. It is not appropriate for him to repeat everything, but everybody expects him to summarize and to write final conclusions. Our accession to the European Union as a historical occasion for which this volume has been prepared is to be a sufficient reason to use historical method to describe circumstances of creation of the present volume. The idea to prepare a special volume of the *Acta Universitatis Carolinae – Iuridica* on the Czech Law on the threshold of the European Union was pronounced shortly after the announcement of the official date of our accession to the European Union. We considered as necessary not only to greet this important milestone of our modern history but particularly to express the impact of our accession on our legal system. Such an intention provoked a fundamental discussion on the concept of this volume between two principal opinions. First option was to summarise the results of “europeisation” of the Czech legal system as they were achieved during the past more than ten years. The second option was to show fundamental problems in selected matters of each legal discipline. After a very stimulating exchange of views, the second option was adopted as a leading principle of this volume. We came to a conclusion that a simple report on harmonisation of the Czech legal system with the EC legislation would not fully reflect a scientific dimension of the Czech legal system on the threshold of the European Union. Such reports have been in the past very important tools to discover gaps of compatibility of the Czech legal system with the *acquis communautaire*. They served to the technology of “europeisation” more for administrative purposes. On the academic field we have to go in our analysis deeper to the substance of individual legal problems and concepts. Adoption of the *acquis communautaire* represents for us more than legislative an intellectual problem. We need to seek broader consequences and impacts on the Czech legal system and on its functioning in our society.

Basing all the above mentioned arguments, all departments of our Faculty of Law were consulted concerning their eventual contributions to this project. As a scientific editor I was delighted to hear that my academic colleagues from each legal discipline intended to bring their ideas and remarks. In this context it should be mentioned that not all legal disciplines have been fully integrated in the pre-accession process. Not all

legal disciplines obviously have equal place in the whole system of the *acquis communautaire*. While for example administrative law, financial law or labour law have been for a long time supplied with huge volumes of Community legislation to be implemented in the Czech legal system such disciplines like civil or criminal law are in the European Union itself staying farer from the whole process. But in these very “key disciplines” of each legal system like civil law or criminal law Czech lawyers will soon be invited to join their colleagues from other EU countries in order to discuss with them such problems like harmonisation of European private law or European cooperation in criminal matters.

An important added value of the present volume is its impact on all disciplines of the present Czech legal system regardless to the fact that some of them were not subject of harmonisation in the pre-accession period. Civil law or criminal law are the best examples of such an approach. Thus the present volume contains a contribution by *Pavel Rubeš* dealing with the European cooperation in the attempts to harmonise the systems of private law among Members States. In the area of civil law – procedural aspects one can find another contribution by *Alena Macková* concerning law of establishment in the area of legal services. Intellectual property is a very important issue of the Community legislation and of its external contractual aspect. The contribution by *Jan Kříž* gives detailed analysis of this phenomena in the light of public relations. Concerning the criminal law, a very important aspect of present transeuropean discussion is integrated in this volume – criminal aspects of medical law by *Ondřej Dostál*.

All our legal disciplines deeply concerned by harmonisation with the *acquis communautaire*, disciplines of public law like administrative law, environmental law, financial law or labour law in the area of private law in their contributions strictly followed the idea not merely to summarize results of approximation process but to identify main functional problems of new European legislation in their areas. Concerning administrative law, there is an important contribution on due diligence issues in European public administration by *Richard Pomahač*. Our colleagues from the department of labour law as well dealt with broader areas of labour law than a simple free movement of workers. Topics like agency employment by *Jan Pichrt*, European social policy by *Gabriela Munková* or family policy by *Věra Štangová* go far beyond the present scope of Community legislation having a broad impact on international relations in the area of labour and employment. The article published by *Petr Kotáb* and *Vít Ossendorf* from the Department of financial law deals with the new trends of regulation in financial services. As from our accession to the European Union, our experts will be closely integrated to the European discussion how to organise supervisory authorities on financial markets. Topical problems of Czech environmental legislation are summarized by *Milan Damohorský*.

EU accession timetable for the Czech Republic coincides with a waste discussion on the draft Treaty establishing a Constitution for Europe. This issue has at last two dimensions. Firstly, a discussion on sharing powers and competencies between the European Union and Member States, secondly, impact of European law on the internal constitutional order of individual Member States. The latter is not a new one.

Constitutional Courts of several Member States have been dealing already for decades with a lot of cases concerning supremacy of Community law over national constitutional law. The path toward supremacy of European law over national Constitutions has been up to now very complicated regardless to the fact that the European Court of Justice in his famous judgement *Costa* declared such a supremacy already forty years ago. What will be the approach of the Czech Constitutional Court this is the topic of contributions by *Jan Kysela* and *Richard Král*. The idea of power sharing between legislative and executive authorities in the European and national context is treated in the article by *Jana Reschová*.

The draft Treaty establishing a Constitution for Europe is and opening topic of the volume. Thanks to the Department of European Law we were granted a permission to publish the analysis written by experts of this Department on the request the Czech Parliament. Articles following this analysis are dealing with broader impacts of the Constitution of Europe on political sciences, as presented by *Jan Winter* and on internal implementation by the Member States – in the Czech Republic in particular – as presented by *Jiří Zemánek*. The inclusion of the Charter of Fundamental Rights into the draft Treaty establishing a Constitution for Europe significantly expands the set of internally applicable provisions of Union law with supremacy not only over national legislation but even over constitutional order of the Member States when such legislation or Constitutions may obstruct domestic implementation of the future Union law. This aspect is treated by *Pavel Šturma*.

The development of European law as well as the emerging Union law brings new challenges for the development of international law. New quality of international legal subjectivity of the European Union will have unavoidable consequences on international contract law as described by *Pavel Svoboda*. But international private law as well is more and more integrated to Community legal framework. The article by *Monika Pauknerová* describes important issues of this process.

Last but not least the present volume does not leave aside historical aspects. *Karolina Adamová* writes about an inspiration for European integration as emerged from the idea of federalism by František Palacký in XIX century.

The contents of our volume is presented above more or less in reversed order of contribution but in the matter of fact we had some difficulties to arrange its structure in an appropriate way. The question arose what criteria should we use in order to maintain a logical construction of the whole project and to stress important priorities. Finally the editorial board came to a conclusion that we should follow a structure reaching from constitutional law via private law up to public law. The “constitutional” part contains both European constitutional issues and Czech constitutional questions, followed by human rights topics and by the questions of international contracts. After this constitutional part, there is an article on legal history and then a block on private law. Private law section starts with aspects of international private law and continues by intellectual property aspects and civil law in its substantive and procedural aspects as well as by the aspects of labour law. The third and final section covers the issues of public law in its administrative, financial and criminal aspects.

The present volume is neither an encyclopaedia of the Czech legal system nor a report on harmonisation of the Czech law with the European union. It is a compendium of essays on selected problems of Czech law on the threshold of the European Union. It should be read as such and not as a textbook of Czech law. Furthermore it has a good ambition to have a durable importance for the future as a witness how did our legal system look like when we were becoming member of the European union.

A legitimate question may appear whether the present volume should have been or in the matter of fact is a volume about Czech law or about European law. Since as from the 1st May 2004, Czech and European laws are both independent legal system in force on the territory of our country it would be foolish to insist in having only the focus of Czech law or only the focus of European law. The scientific editor is of the opinion that all the authors were writing their contributions with regard to both legal systems. And furthermore, some of them included comparative remarks focusing other legal system of our united Europe.

At the very end of his conclusions, the scientific editor would like to express his thanks to all the contributors for their articles and for their cooperating in preparing the present volume. A tribute should be paid to all scientific reviewers *Jan Bárta*, *Pavel Holländer* and *Zdeněk Masoupuš* for their patient effort to read and comment all the contributions. A special appreciation is to be expressed to *Petr Tröster*, chairman of the editorial board of the *Acta Universitatis Carolinae – Iuridica* for his effort in managing the whole project. Last but not least our thanks go to *Blanka Jandová* for her assistance in processing all the necessary documents and materials and to *Miroslava Hubáčková* for translation of selected texts of this volume in English.