

ON THE NEW CONCEPT OF CIVIL PROCEDURE (COLLECTION OF ARTICLES)

RÉSUMÉ

After the year 1989, when the then Czechoslovakia could again set out for the journey to join civilised European countries, the law of civil procedure as well as other legal branches were facing the question concerning their future development. It was clear since the very beginning that there would be rather a trend of partial amendments of those provisions that could not comply with the new conditions, than the way of fast recodification of the procedural law as a whole.

It was necessary to quickly rectify evident distortions in civil procedure: to strengthen the guarantee of independent courts and judges, to return the entire field of deciding economic and business cases within the civil jurisdiction of courts which was previously removed from them, to restore practically non-existent administrative justice as well as other fields. But the issues of the judicial system structure were not so clear, particularly after the split of the federation in 1992/93, there was lack of clarity also in the question of general concept of civil procedure, the system of remedies and many other partial questions. This field soon turned out to be the space for conflict between various opinions and influences.

Originally there was the model of very high quality rules of civil procedure effective till 1950 (which is by the way still effective in Austria). Many would see as a solution the return to these rules or at least to the outline of the law prepared in pre-war Czechoslovakia which could not be adopted due to World War II.

However it was necessary to also get inspired abroad where after the second world war – at the time when we were separated from the democratic world – supranational concepts of protection of rights, justice and access to it developed. Therefore it was, and still is becoming more and more pertinent to consider the judicial decisions of the European Court of Human Rights in Strasbourg, the recommendations of the Council of Europe, and recently also the judicial decisions of the European Court of Justice in Luxembourg. It is particularly the issue of the “right to due process of law” in relation to Strasbourg Court that has an important influence on procedural law (in addition to the decisions of the European Court of Human Rights, our civil procedure is also refined by the findings of the Constitutional Court of the Czech Republic). With respect to the European Court of Justice, it is the European integration process which requires that various issues of civil procedure are harmonised or unified as it represents the only way to accomplish the European idea of common space of freedom, security and justice in which we want to participate. Reviewing various influences, it must be also taken into account that many would like to apply the elements of – for us rather remote nevertheless efficient – American justice. All this will need to be reflected in the new codification of civil procedure.

The collection of treatises, studies and articles published in 1990–2005 predominantly in specialized law journals that are now reprinted, is dedicated primarily to the following partial issues of Czech civil procedure:

- overall concept of future regulation of contentious and non-contentious proceedings;
- relationship between adversarial and inquisitorial principle, activity of judges and instructing participants;
- the issues of finding the truth in civil procedure including restoration of judgment by default and judgment of recognition;
- issues of speeding up civil procedure and application of concentration principle;
- the concept of new execution proceedings (establishment of independent licensed executors);
- new regulation of administrative justice.

After the year 1997, when the first Czech procedural code came into force, it was necessary to carry out a series of changes in the law of civil procedure, as well as other legal acts, in order to bring the law into line with the requirements of the European Union. It was necessary to carry out a series of changes in the law of civil procedure, as well as other legal acts, in order to bring the law into line with the requirements of the European Union. It was necessary to carry out a series of changes in the law of civil procedure, as well as other legal acts, in order to bring the law into line with the requirements of the European Union.

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