Developments in Marriage and Marital law in the Czech Republic
(after the communist take-over, collapse of communism and accessing the European Union)

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A. Introduction

The aim of my paper is to explore the influence of political, social, and economical changes after the communist take over, the collapse of communism and finally accessing the European Union.

The paper is, first of all, focused on the family based on marriage with its problems as follows: rejecting or postponing marriage to the “later age”, insufficient marital property law, marital instability and domestic violence, divorce etc. Main part of the paper is devoted to “free” forms of cohabitation, both heterosexual and homosexual, and to the problems caused by them, especially after the break-down of the relationship. This part is concluded by contemplation on another negative aspect of nowadays - the phenomenon of single style and the increase of the amount of children born out of wedlock (32%), which creates a lot of problems for single mothers, for children in fatherless family, for the whole society.

Secondly, through presenting a comprehensive study with respect to historical aspects, the paper analyzes changes in family law. So-called velvet revolution from 1989 brought out attention on human rights, mainly to the Convention on Protection of Human Rights and Fundamental Freedoms (which was signed by the former Czechoslovak Republic after some 40 years after its conclusion and published under No. 209/1992 in the Collection) and its Article 8 protecting the right to respect for private and family life, which caused “new” interpretation and application of old family law (1963) influenced by the Soviet model. Euphoria and enthusiasms of early 90’s could have run to the revolution changes in Family law, too. Unfortunately, development in the Czech Republic was different than in countries of former Soviet Union: all the 15 republics cancelled law designed according Soviet pattern and passed new law. In the Czech Republic, a long time expected so-called great amendment to the Act on the Family (1998) meant only a half-hearted law reform. Nevertheless, thanks to the above mentioned amendment to the Act of the Family and signing a long list of conventions, the Czech Republic could access the European Union in 2004.

Nowadays, due to quite chaotic legislative process and strong lobbies, we can face passing of controversial laws. The Act on the childbirth with “secret identity” of the mother is considered to be a very bad step on the way of improving Family law (2004). This Act is in contrary with the rights of the child and of the child’s father and creates space for non-family behaviour. The Act on Registered Partnership, being passed after so many attempts, has been broadly criticised as dilettante by both favourers and objectors of any kind of registration of same sex couples (2006). The Act against domestic violence, which was
passed only recently, is not complete: the effective civil law protection is missing (force 2007).

The full reform of Family law within new Civil Code has been discussed for almost 15 years with expectations by most, while others still adore the old Act (1963). There were some attempts in history of “free country”. The first commission on recodification of Civil Code was run by professor Knapp (Prague) and professor Plank (Bratislava) (shortly after 1989 and before 1993). Due to the political problems which lead to the split of the Czechoslovak federation in 1992, the commission could not fulfil its task. Later on, both professors died. The next attempt to create new Civil Code in the middle of 90’s was under supervision of professor Zoulík (Prague). His conception was not successful either – due to voices of quite strong opponents and mainly due to political crisis and new elections.

In 2001 the new Government approved legislative intention of new Civil Code. The draft of the new law has been finished recently by professor Eliáš (Plzeň) and associate professor Zuklinová (Prague) and has been a topic of comments, analysis and conferences. Family law norms form the second part of the draft. According to some experts, this project should return the Czech Republic again to the sphere of European legal tradition, which was broken by the communist take-over in 1948.

Shortly after this year elections, new Minister of Justice pronounced a statement expressing the will of the new government to support completing of the new Civil Code and its passing to the Parliament at the end of 2007 for further legislative process.

B. Family based on marriage and its problems

1. Demography

   i. After the communist take-over in 1948

The communist take-over in 1948 was followed by many changes: political, social, and economical. These changes influenced the Czech family, family policy and family law as well.

The first Czechoslovak Constitution stated: the family based on the marriage is the basic unit of socialist society (1960). According to new family policy with the basic aims and ideals of socialism, socialists family should have look like as small unit of husband and wife, both fully equal. Emancipation of women realised through their full employment (including mothers with young children) and underestimating the role of maintenance duty
between the spouses and ex-spouses. Anyway, there was a need for “two family incomes” (the man stopped to be the head of the family and its supporter) with so called “consumption” character become a standard. Due to nationalisation and expropriation the Czech family rested without property, real estates, land …. Czech family was allowed to own only thing which belongs to personal use. To explain, the law of that time used to distinguish socialist, cooperative, personal and private ownerships. The last one was under the weakest legal protection. New matrimonial property law regulated by ius cogens without possibility of antenuptial agreements and law regulating family dwelling by the institution of flat tenancy corresponded to new economical conditions. State policy regarding family dwelling placed the Czech family small state or co-operative flats which reduced the family to the so called nuclear one: married couple with one or two children. That is why, the social function of family has had to be transferred into state institutions: institutional facilities providing children’s care, their upbringing and leisure time spending, and institutional houses caring for old grandparents. The socialist paternalistic state proclaimed to help families with great support and many kinds of allowance, mainly young newly established families.

Preferring marriages in a young age to any other forms of cohabitation led to an enormous marriage rate, a very low average age of marrying and a high divorce rate.

(a) According statistics, almost everyone once in life got married, sometimes twice (see Table I). So called single style was not accepted. It was not convenient to live without marriage. Cohabitation without marriage between young people was rare due to problems with obtaining flats (young married couples were always preferred in assigning flats by the state) and was mostly deemed a preparation for or a “stage before” marriage.

Cohabitation of unmarried couples used to be almost exclusively limited to older couples (surviving spouses) taking into consideration adult children and namely with regard to retain the right to widow pensions. Also persons who had experienced several marriages frequently cohabited without marriage.

There were almost no children born out of wedlock, although the discrimination of such children was cancelled (see Table III).

(b) It was very convenient to get marry “soon” because of many effects: the new young family was granted small loans with almost no interest, small flats, and after the birth of the child – small financial support of the state. The only way a young couple could be allocated was to wed and have a child, a powerful inducement for early marriage and birth. An extremely high birth rate of women around eighteen years of age (20-23 years for
women) was typical for Czechoslovakia as for other countries of Soviet block. Most of them were already pregnant at the wedding day. Referring to sociologists’ survey about 51 per cent of brides. Since the seventies pregnancy of brides was no longer considered a violation of societal standards, being often “included” in the life plans of single women.

The number of these women decreased with the age growth approximately from 80 per cent marriages up to 17 years of age to 43 per cent for women getting married after 24-25 years of age. For women marrying after their 26th year the percentage increased a bit (40 per cent).

The brides “under age” were not exceptions (see Table IV).

The men used to get married at above finishing their compulsory basic army service.

Along with all the above mentioned political, social and economical changes, no possibility to leave the country, impossibility to select a different life style from a family one, led to so-called concurrence of life starts: economic activity (both the need and the duty to be employed), marital life and parental responsibilities.

It all brought various problems: economic dependence on parents, insufficient social maturity and a resulting high divorce rate in the first three years of marriage.

(c) While between 1919 and 1939 the number of divorces (legal termination of marriage) ranged around 4 500 divorces a year, after the communist take-over and passing new law in 1949, the average of the years 1950-1954 was as many as 10 535 divorces a year. The divorce rate thus grew rapidly, not to drop any more, and by the early nineties it was growing almost linearly. Divorce become fully acceptable mean of solving matrimonial problems. Strong position of the women led to the fact, that the divorce proceedings were started on their motion. According specialist, women’s behaviour at divorce court is more aggressive than acting of men.

The minor children were not to prevent couples to get divorced at all. Regarding after-divorce-settlement, the minor children were as a rule placed to the individual care of the mother, who was entitled to use the former family flat as a individual tenant.

ii. After the so-called Velvet Revolution in 1989

Thanks to political, social and economical changes in 1989, the Czech family has started to have completely different look. In general, partners have delayed get married and
having children. There are a lot of divorces - the increase of divorces of long lasted marriages must be especially mentioned. Quite a lot of people decided to live together without marriage. It is accompanied with increase of children born out of wedlock. It all brings many problems, mainly if property sphere. In addition, some people prefer to stay single and childless. So, there is increase of one person households (10% in 2004). Last but not least, we have to mention free migration of people, the increase of “mixed” couples and their problems when the partnership collapses. We face the increase of international child abductions.

The average wedding age of the brides has increase from 23,2 years in 1993 to 28 years in 2004, the average age of the groom has increase from 25,4 in 1993 to 30,5 in 2004 (the first marriage).

The divorce rate curve stopped to grow only in 1990 after reaching a historical peak of 32,055 divorces a year. In 1991 and 1992 a slight decrease of divorce rate was noted - 29,366 divorces in 1991 and 28,572 divorces in 1992. The decrease of divorce rate in early nineties might be a result of feelings of uncertainty related to fundamental social changes, but it was also a result of growing numbers of lawsuits in this period (namely a great impact of restitution disputes and many experienced judges leaving the court practice) causing a considerably longer time needed for court proceedings.

Then the number of divorces started to grow slightly arriving at the peak of 33 113 in 1996. Surprisingly, after passing the great amendment to Act on the Family in 1998, which brought above key change in divorce rules. Due to new regulation, the divorce proceedings in case of spouses with minor children extended and divorce rate started to decrease - 23 657 in 1999. Nevertheless, nowadays we can face again increase of divorce rate: in 2004 there were 33 060 divorces (see Table II). The women are still more active in filling the motions for divorce (2004 - women: 22 110, men: 10 950).

Recently the number of divorces of long lasting marriages increases. It brings about new problems with settlement of common property and maintenance duty. Mainly problems for older women (feminisation of poverty) and advantage for men (new start with new young women).

A number of non-marital spouses’ cohabitation has been growing significantly. Cohabitation of unmarried couples used to be almost exclusively limited to older couples (surviving spouses) during period of communism. That is why couples are not
used to regulate their rights and duties by any contract, which makes problems especially when the partners split.

*Birth rates* have reached a historic and prolonged low in the Czech Republic, straining pension plans and depleting the work force. Women have delayed having children (at times until it is too late), or opted out entirely, as they have become more educated and better integrated into the labour market. Free fall in births is most precipitous and most recent in the Czech Republic, where Communist-era state incentives that made it economical to have children – from free apartments to subsidized child care – have been phased out even as costs skyrocketed. New possibilities – interesting labour market, professional opportunities, travelling etc. – provide young people with tantalizing alternatives to family. The birth rates became the lowest in the World and the lowest sustained rates in history: 1.2 per woman in the Czech republic (in 1993 it was 1.67). There is – of course, the increase of the age of mothers at the birth of their first child (…… in 1989, 22.6 in 1993, 26.3 in 2004).

As a paradox, a number of children born out of wedlock has been growing rapidly, too (see table III). While in 1989 there were only 8 per cent….. in 1996 it was over 15 per cent. At present the number ranges of children born out of wedlock is around 30 per cent (see table III). It is similar to situation in years 1918 – 1939. Nevertheless, there are different grounds. The mothers of such children do not live alone, but very often with the fathers of the children. There is great amount of cohabiting couples (see above) who simply do not want to get married - mostly because of the advantage of state benefits.

iii. *After accessing the European Union in 2004*

After accessing the European Union, mainly bigger immigration from non European countries must be mention. Due to this phenomenon, the Czech Republic faces the increase of its population.

As the “birth dearth” has become a political issue, the Czech Parliament voted this year to double the payment given to women on maternity leave to encourage new births. The Czech Statistic Office announced recently a slow increase of child births. Nevertheless, the increase of natality was interpreted by specialist as a result of pro-family behaviour of so called strong population born in the middle of 70’s.
2. Marital law
   i. Marital law – general, history and presence

After the rise of an independent Czechoslovak Republic (1918), the previous Civil Code effective in the territory of the former Austrian-Hungarian Empire (Allgemeines Bürgerliches Gesetzbuch of 1811 as later amended) was taken over by the means of so-called reception rule for the Czech lands, and old Hungarian customs law for Slovakia (Act No. 11/1918 Coll.).

According the Civil Code, the man was the head of the family. Nevertheless, he was bound to care for the family funding and had maintenance duty towards his wife and children. He was entitled to administer the property owned by wife (paraphernalia) unless expressly cancelled by the wife and property of children. Matrimonial property law was based on separation of property of spouses and on the wedding contract. As the Civil Code was generally based on a religion principle, the marriage dissolution was possible only for non-Catholic marriages.

Shortly after the rise of the Czechoslovak Republic, new regulation of marital relations called Marriage Amendment of 1919 (Act No. 320/1919 Coll.) was passed as considerably compromise. It stipulated new conception of marriages, legal obstacles to marriage, and divorce. The Marriage Amendment had introduced, in addition to a church wedding, an option of a civil wedding as well as the possibility of divorce as a legal termination of marriage regardless of the religion of the spouses, and retained the earlier institute of marriage separation (separatio a mensa et thora) which, however, did not have effects of legal termination of marriage as through granting marriage separation only the duty of spouses to cohabit became extinct. Legal rules for divorce were rather complex. So-called absolute grounds for divorce were given under the Amendment, however they also recognized so-called relative grounds (irresistible aversion and breakdown of marital relations). The proceedings were complex and in some cases a separation suit had to be filed prior to petitioning for divorce.

Because of so-called legal dualism (bipartismus) in Czech lands and Slovakia, the Compilation Commission on recodification of Civil Code was established in 1937. The result of work was the draft of Civil Code, which serves as an inspiration for experts working on recodification of Civil Code in these days. Unfortunately, the part devoted to Family Law was missing because of differences between Czechs and Slovaks regarding the conception.
After the communist take-over in 1948, the traditional distinguishing of Public law and Private Law was abandoned. According to the Soviet model, the Czech legal order was divided into relatively separated legal branches. Not only the new Constitution of May 9, 1948, but many new acts were passed in so called juridical two-year-plan ("právnická dvouletka") to found the socialist law. The destructive character of traditional values of law was pointed out in the series of the International Encyclopedia of Family Law.

Provisions of family law was enacted into new Family Law Act (Act No. 265/1949 Coll., Family Law Act, operative on Jan. 1, 1950), which was passed beside new Civil Code (Act No. 141/1950 Coll., Civil Code, operative on Jan. 1, 1951). The separation of the Codes was a result of the conception of underestimating the property in family, socialist society and law. The new Family Law Act was concentrated only on “personal relationships among family members”. Property aspects of marriage were regulated insufficiently in Civil Code. Protection of property rights of the child was missing at all.

The aim of the new Family Law Act was to purify family law from characters known in bourgeois society and its law. That is why the Family Law Act should have arise from the ideals embedded in the Constitution of May 9, 1948. The socialist family based on marriage was pronounced as a base of the socialist state. Because socialist society and socialist law intended to eliminate the influence of the Catholic church on run of social life, the form of obligatory civil marriage was stipulated as an exclusive one. The concept of marriage as a contractual relation was disregarded and marriage was made upon an affirmation of spouses on marrying before a national committee. The hate against the clergy escalated into criminalisation of priests.

The new Family Law Act simplified the terms for a rise of valid marriage. Both, the Constitution and the Family Law Act stipulated equality of man and woman in marriage and family. Regarding personal rights and duties, the spouses had equal right and duties, they were had to live together, be faithful to each other and help each other. A far as matrimonial property law, the regulation was stipulated on the principle of legal property community with an option of contractual modifications. No antenuptial agreements were allowed. After-divorce maintenance was constructed as an exceptional one.

Also marriage dissolution was considerably simplified. The old institution of separation was repealed. Marriage was terminated by divorce based on an objective principle, which was the irretrievable breakdown of relations between the spouses. This objective principle was modified by the principle of a breakdown caused by one of the
spouses’ fault namely in case of granting a divorce and its legal consequences. Married spouses could not be divorced without a consent granted by so called exclusively faultless spouse. If so petitioned by both spouses, the court could omit the fault to be rendered in the verdict. Family Law Act was amended twice.

Beside the Family Law Act, a discriminating law stipulating marriages with aliens was passed (Act No. 59/1952 Coll., on Marrying Aliens). Under this law to marry a person with other than a Czechoslovak citizenship was possible only on approval of the Ministry of Home Affairs or an authority empowered by it. Without such an approval marriage may not have arise. The Act was in force till 1964.

Due to passing the new Constitution in 1960 (No. 100/1960 Coll.) proclaiming the victory of socialism in Czechoslovakia, all codes from so called juridical two-year-plan (právnická dvouletka) were substituted by new acts: Act on the Family (Act No. 94/1963 Coll.), and Civil Code (Act No. 40/1964 Coll., both became operative on April 1, 1964). Both the new Act on the Family and Civil Code are said to be more simplified than older ones. Some speaks about further vulgarisation of legal culture.

As a main change, the divorce law and regulation of matrimonial property law is to be mentioned. Divorce regulated in Act on the Family was based only on irretrievable breakdown of relations between the spouses. The rules of undivided co-ownership of spouses as a basic institution of matrimonial property law was introduced into Civil Code. Only things in “personal ownership” could have been the object of undivided co-ownership of spouses. The law was rigid, without any possibility of contract making. The Codes were amended severally, but the changes were not of much importance.

The favourable atmosphere of the post-revolution period of the beginning if the 90’s provided the lawmakers (legislators) with great space for re-codification of the basic codes, mainly the Civil Code and the Act on the Family. Unfortunately, advantage was not taken. On the contrary, the most important codes have been amended many times, partially and totally without any proper concept, which has made the life of applicators (users of law, the practical life) very complicated, it disturbed the legal consciousness of the public and has obstructed the formation of „the state of law“ (rule of law) in the country.

That is why, both Act on the Family and Civil Code do not serve well the needs of the contemporary society. Since early nineties, there were some projects of family law reform. Unfortunately, systematic ones were rejected. In general, we are obliged to confess,
that the result of the legislative work are far from the desire of most Czech legal theorists to have a really effective family law as part of civil law system in the democratic tradition of Continental Europe. The first signs reveal that the reform has been greeted with no cheers – with a few exceptions – and that courts, solicitors, social care centre workers and other professional who have to bear the main burden of applying the Family law in practice are already rather embarrassed and hesitant.

Nevertheless, thanks to the role of the Constitutional Court, the Czech “old law from sixties” has been started newly interpreted in harmony with the Constitution.

As changes of the most importance we have to mention as follows:


2. promulgated (human rights) treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, which make thanks to Article 10 of Constitution part of the legal order and are directly applicable and prevail over domestic ordinary law (see Appendix),

3. the small amendment to Act on the Family (Act No. 234/1992 Coll.), which re-introduced a church weeding into legal order,

4. the so called great amendment to the Act on the Family and Civil Code (Act No. 91/1998 Coll.), which brought out (regarding our topic) “reform” of divorce and maintenance duty between ex-spouses and matrimonial property law,
5. the law regulating partnership between the same sex partners - *Act on Registered Partnership* (Act No. 115/2006 Coll.),

6. the law against domestic violence (Act No. 135/2006 Coll.).

**ii. The nature of marriage**

*Marriage* is defined by law as a permanent cohabitation of *man* and *woman*. So, only a man and a woman are allowed to entry into marriage.

The situation of *transsexuals* is not provided by law sufficiently. For contracting marriage, it is decisive is what sex is stated in the state register of birth. Under law, the person, after having officially changed his or her sex, may contract a valid marriage with a person having in his or her birth certificate an opposite sex.

Regarding the *same sex couples*, there have never been serious contemplations in Czech society to allow them to conclude marriage (it would be *non matrimonium*, *matrimonium putativum* according Act on the Family). The very new Act on Registered Partnership (2006) allows the same sex couples (only) get registered, but does not stipulate neither personal rights nor property rights between registered partners (for details see Part C/1). The new act is said not to be about partnership, but only about its registrations.

Although the number of marriages contracted after 1989 has been decreasing significantly and the number of cohabitations and the number of children born out of wedlock has been growing (see appendix), the Czech law maker do not see any need to equalise *cohabitants* with spouses. From the wide-accepted view, the man and the woman are allowed to get marry and through marriage have rights and enjoy legal protection. If they do not want to conclude marriage, they should not ask for any kind of protection. According strong voices it would be the best way to undermine marriage.

**iii. Contracting marriage**

Since 1992 there is a choice regarding the form of concluding the marriage: both civil and religious solemnisation are available: Marriage is contracted by a free and fully consenting declaration of man and woman that they are marrying before a municipality authorized to keep registers or before an authority of a church or congregation registered by the state (§ 3 AF). The opinion of legal experts inclined towards the re-
introduction of an obligatory civil ceremony in 1998, but political reasons have led to retention of the dualism. Nowadays, there is discussion regarding the future of church wedding in relation with recodification of Civil Code. However, regarding the church wedding, there is a kind of supervision from the part of the state (since 1989): the obligatory pre-matrimonial preparatory proceeding in front of the state body (civil registrar) has to proceed. The capacity to conclude marriage (for instance the age, legal capacity) and the legal obstacles (for instance other marriage or registered partnership, consanguinity, ) are investigated. The written testimony is issued for the reason of religious matrimony. Within three working days the priest is bound to deliver the record of marriage solemnization to the register office in the district of which the marriage was contracted. The register office will file the marriage contracted in the marriage register and issues certificate of marriage to the married couple.

The solemnization of marriage must be carried out by the persons to be married before (a) the mayor, his deputy or an authorized member of local council with the registrar present (civil wedding) and (b) person authorised by any church or religious society (congregation) registered by the state - the Ministry of Culture (church wedding). The number of churches and religious societies has exceeded 21 in the Czech Republic.

Czech citizens abroad are also entitled to undergo a marriage ceremony at the diplomatic offices. In the case of immediate danger to life, the wedding may be performed before the captain of a Czech ship or plane or commander of a Czech military unit abroad – one of the spouses must be Czech citizen.

Marriage is formed just by mutual consent by nupturients. However, the record in the state register is obligatory (both civil and church weeding). The register office will file the marriage contracted in the marriage register and issue a certificate of marriage to the married couple.

Regarding the mutual consent, the persons to be married are bound to declare that they are not aware of any circumstances barring their marrying (age, bigamy, consanguinity, mental decease). This declaration substitutes the traditional public announcement of two persons intending to marry (bans).

Act on the Family imposes the duty of the persons to be married to know in advance each other’s character and health condition so they can create a marriage which will fulfil its aims. In the course of the marriage ceremony the parties only declare they know each other’s health conditions. This declaration, however, has no legal
consequences as Czech law does not require obligatory medical checks prior to marriage. The fact that the persons to be married did not know each other’s health conditions, that e.g. one of them concealed a serious disease or disorder has no effect upon the validity of marriage.

The persons to be married are also bound to declare that they have considered future arrangement of their property relations, dwelling and providing the family after marrying. This declaration has no legal effects, either. The fiancées are not bound to enter into any contract concerning matrimonial property or a contract concerning matrimonial cohabitation.

The persons to be married are also bound to declare how they have agreed on using their surnames after marrying. On marriage solemnization the parties are bound to declare how they agreed on the surnames used after marrying. They have three options:

a) couple will agree on common surname of either of them,
b) both husband and wife will retain his/her original surname,
c) couple will agree on common surname of either of them and one of them will retain his/her original surname and use it as a second one.

iv. **Personal rights between the spouses and maintenance duty**

Provisions governing the personal and property rights of spouses remain scattered in several places in the Act on the Family and in the Civil Code. This is so even now because of the conceptual defects of the so called great amendment to the Act on the Family from 1998.

Unfortunately, due to socialist theory and soviet pattern of family law, the Act on the Family is concentrated only on personal rights and duties between spouses. As it was said above, the property aspects of life were underestimated by law makers after 1948. That is why, matrimonial property regimes and law regulating matrimonial home are stipulated in Civil Code. So, there are still problems inspired by the political reasons.

Regarding **personal rights and duties** between the spouses, the Act on the Family stipulates as follows: According law, both the husband and the wife have the right (and duty as well) to live together, to be faithful to each other, to mutually respect of their honour and human dignity, to help each other and to represent each other and duty to create sound living environment and background (§§ 18, 19 AF).
Right and duty of spouses to cohabit does not mean that the wife is bound to follow her husband as had been imposed by ABGB. Anyway, so called one home and one address are typical as matrimony is considered to be a life unit. One of the spouses, non-owner of the family flat of house, is entitled to live in his/her spouses’ property during the marriage.

Duty to be faithful arises from the nature of matrimony as a union of one man and one woman. Violation of this duty has no direct sanction. Nevertheless, such a breach may cause a marriage breakdown and influence the divorce proceedings and after-divorce settlement.

Duty to respect one another’s honour and human dignity emphasizes equal status of both spouses. It is very important regarding phenomenon of domestic violence.

Duty to help one another arises from the family solidarity as a basic principle of family law. The principle of family solidarity forms a base for rights of maintenance duty between spouses and ex-spouses and marital property regime.

Duty to jointly care for the children means care of common children of the spouses and of children of only one of them. The step father or step mother has duty to help the child’s parent to bring the child up.

Duty to care for family needs imposed by law means that both spouses are obliged to care for the needs of the family consistent with their individual capabilities, abilities and property situation. The law does not distinguish between financial support and personal care of household and children. Personal care of children and common home is deemed equal to monetary contribution. If one of the spouses does not perform his/her duty to share covering the expenses of the common household, the court will rule in the matter based upon the petition filed by the other spouse.

As spouses are principally entitled to have equal living standard, the Act on the Family regulates duty to maintain. Husband and wife have mutual maintenance duty in such a scope that their economic and cultural level is to be on the same level (§ 91 AF). This goal is possible to reach within matrimony by the institution of “Joint property of spouses”. When it applies, both the husband and wife are allowed to fulfil all their needs by exploring the “Joint property”. Both theory and legal practice agrees that institution of maintenance duty between spouses can not applied when there is the institution of “Joint property of spouses” in legal scope and when the spouses live together.
Because the Czech socialist family law did not regulate classical antenuptial agreements and regime of separated property of spouses were exceptional, the institution of matrimonial maintenance used to apply only when there was separation de facto. However, after introduction of the so-called great amendment to the Act on the Family (1998), mainly in connection with so called “divorce based on controversy - dispute with hardship clause” (tvrdostní klauzule) (§ 24b AF), the importance of institution of maintenance duty between spouses has increased.

v. Marital property law

While for historical civil law regulation (ABGB) the separation of spouses’ property and freedom to conclude antenuptial agreement was typical, the socialist law established the uniform legal community property regime (both the Act on the Family from 1949 and Civil Code from 1964). In general, socialist law underestimated property aspects in family life. Property issues were considered of secondary importance. Thanks to political, social and economical changes in 1989, the matrimonial property law has changed a lot in 1992 (Act No. 509/1991 Coll.) and mainly in 1998 (Act No. 91/1998 Coll.). Anyway, key changes are expected.

“Joint property of spouses” as a legal regime is the basic institution of matrimonial property law (§ 143 ff. CC, introduced by Act No. 91/1998 Coll.). Not only “assets” acquired by spouses during their marriage (assets, with the exception of assets acquired by inheritance or gift and assets which by their nature serve the personal needs of one of spouses), but “liabilities” incurred by spouses during their marriage as well, form the object of “Joint property of spouses” (§ 134 CC). Unless proved otherwise, it shall apply that assets acquired and liabilities incurred during marriage represent “Joint property of spouses” (§ 144 CC).

Husband and wife, as well as nupturients, are allowed by the contract in a form of notaries record to modify legal object of “Joint property of spouses”: to restrict it only to the usual equipment of the common household or to extent it without limit. However, cancelling or creating of a different type of „community of property” by the contract is not allowed. This conception is residuum of original rigid conception of Civil Code, which obtained great sum of ius cogent. That is why, traditional antenuptial agreements are not stipulated by law.

Beside modifications, the couple, or nupturienst, are also allowed by the contract to create a deferred community (Zugewingemeinschaft, comunione differita, coaquisita coniugum). It means, that husband and wife, or nupturients, can fully or partly postponed
establishment of “Joint Property” as of the day of termination of their marriage, unless items (things) which form part of the usual equipment of their common household. It is not used in praxis.

Moreover, the spouses may refer to the contracts reducing or increasing their joint property or to the contracts postponing the rise of the joint property of spouses by the day of their marriage termination towards another person only if this person is aware of the content (the text itself) of such contract.

Special registration of such contract is not stipulated by law, which is broadly criticised. The problem is partially resolved by the Commercial Code requiring filing a counterpart of the notaries record on modifying the extent of the joint property in the Commercial Register Deeds Collection. The same applies for court rulings reducing the joint property.

The court may if so requested by one of spouses restrict the legal scope of “Joint property of spouses”, except in the case of things which form part of the usual equipment of their common household. It can happen on:

- serious reasons (for instance drugs or spirit addiction, gambling etc., § 148/1 CC),
- when one of spouses obtains permission (approval or licence) to carry out on business activity or becomes a partner in a business company with unlimited liability (§ 148/2 CC). This instrument is used in praxis very often. The separation of property is a result of the courts’ decision, in fact. This praxis do not protect effectively neither the interests of so called weaker partner and family, neither the third parties, mostly the creditors…..

The term items (things) which form part of the usual equipment of common household was introduced into the law in 1998. Items should always form part of a common property. An interpretation prevails, arising from subjective outcomes, that the items making usual equipment of a common household evolve from property situation of a particular family.

Both husband and wife use and maintain enjoy assets, which form part of their “Joint property” (§ 145 CC).

As regard as administration of assets (management), the agreement (consent) of both spouses are required in crucial matters, otherwise the act in law would be avoidable. Other
rights and duties, esp. routine management of assets which are part of the “Joint property of spouses” can be exercise by any of the couple.

Both spouses are entitled and liable jointly and severally in respect of acts in law relating to their “Joint property” (active and passive solidarity). Both spouses fulfil jointly and severally liabilities which are part of their joint property. The spouses’ creditor may claim full satisfaction, or its part, jointly from both spouses, or separately from each of them. Each of the spouses is liable for the entire debt by the time the creditor is fully satisfied.

_During marriage joint property of spouses becomes extinct under law in two cases:_

1. Punishment of property forfeiture may be included by court in cases when imposing maximum penalty or a prison term for a serious intentional crime by which the convict acquired, or attempted to acquire, property gains. If court imposes a fine, this penalty has no effect upon the existence of the joint property of spouses.
2. Joint property of spouses becomes extinct under law also upon bankruptcy order issued by court. The part of joint property used in business by the bankrupt becomes part of bankruptcy assets. It means that the items serving in business activities of the bankrupt will always become part of bankruptcy assets.

_Dissolution of a marriage also dissolves the “Joint property of spouses” (§ 149/1 CC). Such a property must be settled._

The law allows the ex-spouses to settle their extinct joint property by the contract. The autonomy of will may be fully realised. An agreement of the spouses on their joint property settlement must be in writing. If their joint property includes a real estate, the agreement becomes effective when registered in the Land Register (§ 150/1 CC).

The ex-spouses have to aware only of their creditors’ interests. The rights of creditors may not be effected by the agreement. Therefore the joint property settlement agreements made within six months prior to bankruptcy declared are deemed invalid. Similarly the settlement agreements made by a bankrupt after bankruptcy declaring are deemed invalid. Settlement agreement in case of bankruptcy is made between the administrator in bankruptcy and the other spouse and this agreement must be approved by the creditors’ board.

When the ex-spouses are not able to reach an agreement, one of them may apply to the court. The basic principle for the settlement provides that the shares of both spouses in their “Joint property” are equal. The court will take into consideration the needs of the minor
children, care of the children, family and the common household (§ 149/3CC). Either spouse is entitled to claim reimbursement for whatever he/she has spent on the joint property from his/her own funds, namely the funds owned by him/her prior to marriage, or which he/she acquired exclusively by gift or through inheritance. Either spouse must compensate for whatever he/she has taken from the joint property for the benefit of his/her own property.

If within three years of termination of the spouses’ joint property no settlement has been reached, or if within three years of the said termination no petition to the court for the joint property settlement has been filed, the law regulates settlement upon presumption: the movable things handling by the spouses will be deemed to have been settled consistent with the principle of using, namely that each spouse will be deemed an owner of such things from the joint property which he/she uses exclusively to satisfy his/her own needs or the needs of his/her family and household. Other movable and immovable things will be deemed part of the apportioned co-ownership, the shares (ownership interests) of each of the co-owners being equal. The same will apply as appropriate to their joint property rights, assets and liabilities. Thus joint property of spouses is settled directly under law. Following three years after divorce ruling has become effective none of the spouses may bring a suit to have the joint property settled.

vi. Marital dwelling – matrimonial home

“Joint lease of a flat by spouses” is the basic institution of common cohabitation of spouses’ (§§ 703 ff. CC). Civil Code distinguishes between (a) the lease in general and (b) the lease of a co-operative flat. Although this conception has its roots in period of socialism, is still of great importance, mainly when one of spouses decides to leave the family flat, when the couple gets divorced or when one of spouses dies.

“Joint lease of flat by spouses” is established always when the marriage is celebrated (§ 704 CC). The norms are cogent. The impossibility of conclusion of any convention (contract) makes great problems mainly when the people form second or further marriage. The effect of the institution of “Joint lease of flat by spouses” is that by the marriage both husband and wife obtain equal rights and duties to the flat.

“Co-ownership” (§ 136 CC) is another of legal titles of living. The “joint easements” (§ 151 CC) and “joint non nominal contract” (§ 51 CC) can be base for matrimonial living as
well. Spouses can live on the base of the so-called “derived legal reason”, for instance when one of them is individual lessee of the flat determined to living of disable people.

Generally, it can be said, that legal regulation of living is due to spreading within a lot of institutions and mainly due to residuum from the period of socialism non-systematic, rather chaotic and problematic. The umbrella institution of family living is missing, as well as its protection known from traditional legal regulation.

vii. Divorce law

Matrimony ceases to exist by death, which is to be proved by declaration issued by state registers. Matrimony extinct as well by declaration of the death pronounced by the court (§ 22 AF). The court can sentence the death of one of the spouse when it is possible to find out the death by other ways or when the spouse is missing for one year (§ 195 Civil Procedure Code). During the life of the spouses, the matrimony can be cancelled only by means of divorce.

The development of legal regulation of divorce was quite colourful. As a great “achievement of socialist law” is was considered that the „fault-based divorce“ totally disappeared from the legal order when the Act on the Family was passed (1963). The divorce has not provided for penalties for erring spouses but a remedy for difficult human situation. Since early 60’s the divorce is based on irretrievable breakdown, without specific grounds.

Very important changes to substantive legal regulation of divorce were made by the so-called great amendment to the Act on the Family (1998). The law of divorce is still based on “irretrievable breakdown”, but according to the need of proving the “irretrievable breakdown” the new law distinguishes:

(a) Divorce based on controversy, dispute (§ 24, 24b AF). General legal regulation provides that the court may divorce the matrimony on the motion of one of spouses when matrimony is so deeply and permanently disturbed that re-cohabitation does not seem to be realistic (§ 24 AF). The court takes into consideration the cause of the breakdown of the matrimony, which could be of objective character (for instance infertility) or of subjective character (drug or spirit addiction, gambling etc.). Who claims the divorce has to prove the breakdown. The court however does not examine the „fault“ on divorce. The disadvantage of this vary of divorce is that “all the marital problems” have to be discussed at the courtyard. Another difficulty is caused by the fact, that this type of divorce can solve only
the problem of “personal status”. It means, that the divorce proceeding can not be connected with settling of Joint property of spouses or maintenance duty after the divorce.

So-called "hardship clause" was introduced into the legal order of the Czech Republic for the first time by the so-called great amendment to the Act on the Family (1998). According the new regulation, the court will not divorce the matrimony, unless one of spouses disagree. This provision applies only when this spouse proves:

- that it was not he/she, who predominantly caused the matrimonial break-down,
- that the divorce would cause to him/her exceptionally serious loss,
- that there are extraordinary circumstances, which support for conservation of the marriage (§ 24b AF).

The legal protection of the person, who is against the divorce, is not absolute. When the couple has not been living together for the period longer than three years, the court will pronounce the divorce. The spouse, who seeks the divorce, has to prove separation de facto.

(b) Divorce beyond dispute or divorce by mutual consent – agreement, uncontested divorce (§ 24a AF). This vary of divorce is novelty in the Czech family law (from 1998). The name (title) of this type of divorce is not precise, though. Event this vary of divorce is based on the total irretrievable breakdown of marriage. However, the breakdown does not have to be proved when the husband and wife agree on:

- settlement of mutual propriety relations, rights and duties of matrimonial home and (facultative) on maintenance duty after the divorce,
- determination of the rights and duties towards the minor children after the divorce.

Then the new provision contains an unbeatable presumption of an irretrievable breakdown of the marriage. The spouses have to only prove that their marriage has lasted at least one year and that they have lived separately (apart) for more than six months.

The court has to examine (investigate) only the length of the matrimony and of the separation which can be proved only by mutual declaration of spouses. Then the court examines whether the above mentioned agreements were submitted and whether the other of couple has joined the suit (motion).

The positive aspect of this new regulation is that the so-called “Divorce beyond dispute or divorce based on agreement” can serve as complex and final solution of right and duties based on marriage.
The problems and negatives of the new type of divorce are caused by the fact that the law is brief. It makes grave interpretation and application problems, mainly as regard the content of the contracts, implementation of autonomy of will within concluding of these contracts, legal protection of the so-called economically weaker partner, interests of minor children etc. The question, whether the “divorce contracts” are to be built as “pactum de contrahendo” or “contract with suspense condition” were broadly discussed.

Next defect of new legal regulation is that the “role” of the court is “not clear”. The law says that the court takes into consideration that the contracts were submitted, that are in writing and that the signature of spouses are verified. It can run to the conclusion that the court is too examining only formal aspects of the contracts. Regarding the content of the contracts, unfortunately the law does not say anything. The praxis differs. The courts mostly examine only whether the contracts follow the basic provisions regulating acts in law.

Grave problems were caused by the fact, that the amendment to the Act on family was not followed by changes in civil procedural law. The so-called “divorce beyond dispute or divorce based on agreement” is proceeded within the frame of “controversy proceeding”. It means, that even when spouses are “beyond dispute” regarding divorce and after divorce settlement, they have to play the roles of “plaintiff” and “accused”. The spouses are not allowed to fill a motion to this effect jointly because of a problematic conception of the Civil Procedural Code (1963).

When spouses have minor children, a “special” court determination of the after-divorce parental care (custody) and maintenance liability has to precede the divorce itself (§ 25 AF).

Decision of custody (“Rozhodnutí o svěření dítěte do výchovy” – Decisions on the upbringing of minor children) may be done by judgements or by approved agreements when the parents of the child entitled with parental responsibility do not live together or do not want to live together (see § 26 AF regulating divorce, § 50 AF regulating separation of the parents).

The court may decide even without a petition to whom the child shall be put into custody (who of the parents will care for the child in his/her household and who will be participating in care during access with the child):

a) the court shall determine who – mother or father - shall be entrusted with individual custody of the child;
b) if both parents are able to bring up the child and are interested in the upbringing, the court may put the child into a *common custody* of both parents if it is compatible with the child’s interest and if it leads to a better security of his or her needs;

c) if both parents are able to bring up the child and are interested in the upbringing, the court may put the child into an *alternative custody* of both parents if it is compatible with the child’s interest and if it leads to a better security of his or her needs.

The separation of the two proceedings, the divorce itself and children settlement ones, is to be considered as novelty in Czech law (from 1998). In fact, it is a comeback to legal regulation introduced by the Family Law Act (1949). Unfortunately, the changes in substantive law were not followed by changes in civil procedural law. This fact caused rather grave problems in praxis, particularly the diversity of courts procedure and final decisions (sentences).

After divorce, the rights and duties of the former spouses cease to exist, namely the duty to live together. When the divorce sentence comes into the force, the institutions of “Joint property of spouses”, “Joint lease of Flat by spouses” and “Maintenance duty between spouses” terminate as well. The spouse, whose surname changed due to matrimony, is allowed to pronounce that he/she comes back to his/her prior surname or that he/she ceases to use the one of the double-surname.

**vii. Maintenance duty between the ex-spouses**

Unlike law of many West European countries, law of former socialist countries did not regulate duty to maintain the divorced spouse as an usual effect of divorce. Legal regulation of post-divorce maintenance duty faced quite dramatic development. It was caused by almost full-employment of women in the former Czechoslovak socialist republic from early 50’s. Those times the institution of after-divorce maintenance duty was consider as exceptional. Therefore the Act on the Family in its original wording (1963) recognized the divorced spouse’s right to be maintained in a situation the spouse was not able to support himself/herself. The claim was limited to so called *necessary maintenance* and to *five years following the divorce* with an option for judge to prolong the duty to
maintain in exceptional cases. The statutory limit of five years was based on an unreal presumption that the period mentioned was sufficient for majority of divorced spouses, especially women, whom it mostly concerned, to become economically independent. If these were women looking after young children, the period of five years was considered to be long enough to place the children to collective upbringing facilities so their mothers could get employed in turn. It proved, however, that the conditions applied in the time of determining maintenance allowance for the divorced spouse and which provided grounds for its granting continued to exist in most cases even after the five years expired.

The Act on the Family as amended in 1982 revoked the statutory time limit and the claim to be maintained was extended by so called “adequate”/“appropriate”/“reasonable” maintenance. So called great amendment to the Act on the Family from 1989 brought out big changes: general provision and so called “sanctioning” maintenance.

(a) General legal regulation of post-divorce maintenance is based on the “state of need” and is not time-limited. The key presumption in claiming duty to maintain between the divorced spouses is the fact that one of the spouses is not able to support himself/herself after the divorce. The person dependent on maintenance, as deemed, is mainly the one looking after a child younger than three years or an older child, but impaired or in need of special care. A person can be dependent also in case of his/her illness, loss of qualification due to care of matrimonial home during a longer marriage, etc.

The former spouse, who is not able to provide the maintenance for himself, can ask the other one for the rent of “adequate”/“appropriate”/“reasonable” allowance (§ 92 AF). Court practices hold “reasonableness” as considered in relation to abilities and situation of the person liable, i.e. his/her living standard, health condition, age etc. There are no tables, percentages fixed by law etc. In fact, the amount of maintenance is based on possibilities (objective category), abilities (subjective category) and property conditions on the side of the obliged and on reasonable needs of the authorised.

The allowance must not be settled when it is in contrary to the principle of proper morals. It is to be proved by potential obliged. Therefore along with determining maintenance the court also will have to deal with the grounds that led to the marriage breakdown.

(b) The law regulates specifically the so-called “sanctioning” maintenance (§ 93 AF). The former spouse, who by violating the matrimonial duties did not prevalently affect
the breakdown of matrimony and who suffered a serious (non-proprietary) loss by the divorce, can ask the other former spouse maintenance in the scope of “the same living standard” - an amount that the material and cultural living standard of both spouses would be principally the same, i.e. like as though no divorce occurred. This provision is connected with the new regulation of divorce and mainly with the problem named “feminisation of poverty”. Maintenance so extended may be granted for no more than three years following the divorce. In determining the extent of maintenance the court does not investigate whether the divorced spouse is able to support himself/herself.

When the divorce is realised by the vary of “Divorce beyond dispute or divorce by mutual consent”, all rights and duties of former spouses should be settled within the contract already passed to the judge.

But when the divorce proceeded as a “Divorce based on controversy, dispute” and the divorced couple failed later on to make any agreement regarding the settlement of common property and housing and maintenance, it is necessary to fill a motion to the court for the settlement. In this case, no “umbrella settlement” is unfortunately available. In fact, different motions should be brought to the court, as this vary of divorce changes only “civil status”.

Right of the divorced spouse to be maintained may cease to exist also by receiving a lump amount of money based on a written agreement (§ 94/2 AF), when the obligated spouse dies or when the entitled spouse gets re-married.

3. Family not based on marriage and its problems
   a. The Act on the Registered partnership

After many attempts, the Parliament of the Czech Republic passed the Act on Registered Partnership (No. 115/2006 Coll.). The President of the Czech Republic applied a veto power, nevertheless the Act was passed in another proceeding. The main thought of the President’s contemplations is that the draft does not regulate partnership - rights and duties of the partners, but just registration itself. He is right. In addition, the new law is said to be without conception as is typical for drafts based only on deputies activities.

The new act has two sources: (a) present Act of Family regarding regulation of marriage (some articles are identical) and (b) the draft of new Civil Code regarding registered partnership.
The idea, terminology, systematic and logic are problems as well. Registered partnership is sometimes similar to marriage (maintenance duty between the partners and ex-partners) and sometimes similar to cohabitation within marriage (no duty to live together, no duty to be faithful to each other, no duty to help each other, no community of property, no common tenancy of flat by force of law, no right to adopt a child as common, no right to become common foster parents and guardians, no right to have a child charged into joint custody etc.).

According to the new Act, registered partnership is permanent community of two persons of the same sex established in the manner stipulated by the Act (§ 1 ARP). Under the new law, couples of identical sex, older than 18 years, with full legal capacity, no brothers, no sisters, no descendents, no ascendants, at least one citizen of the Czech Republic, are allowed to get registered (§ 4 ARP).

Registration shall be done in front of state registrar (§ 3/1 ARP).

Extinction of registered partnership is similar to extinction of marriage:

(a) dead of one partner and

(b) cancellation (not divorce) of the relationship by the court on the motion of either partner (§ 14 ARP). There are two grounds for the court decision: (aa) the prove that the relationship between the partners in fact ceased to exist (§ 16 ARP) and (bb) there does not have to be made any prove regarding relationship, if the second partner joins the motion of the plaintiff – then the court shall not examine whether the relationship between the partners in fact ceased to exist or not (§ 17 ARP). The partners (nor spouses) are not allowed to fill a motion to this effect jointly because of problematic conception of the Civil Procedural Code (1963).

The Act on the Registered Partnership does not content an article declaring that “the Act on the Family or Civil Code shall apply in case where the Act does not provide otherwise”. So, it will be quite difficult to overcome its gaps.

Due to a lot of defects of the Act on the Registered Partnership, an amendment is on the preparation.

b. Cohabitation of a man and a woman without marriage and its legal aspects

Although marriage is highly valued in Czech Republic, number of persons living as unmarried couples has been growing. The pool results show that more and more
people wish to live with his/her partner without marriage in so called factual cohabitation, or independently without a partner. To a great extent it is a reaction to a previous closed society where the family life based on marriage considerably prevailed as a way of life. During socialism, only older people – divorced or widowed – used to live as unmarried couples. That is why there is neither legal definition of cohabitation nor a catalogue of right and duties of unmarried couple in Act of Family.

In legal order there is no right between unmarried spouses to be provided by maintenance. If the spouses manage their finances together, their personal needs are factually satisfied within this framework. Nevertheless, after extinction of such relationship they have no legal claims to one another, not even in a situation they have had a common child. Act on the Family provides for the claims of an unmarried mother toward her child’s father only in a very limited extent. The duty to maintain the mother is limited to the period of two years (for details see Part C/3). Factual voluntary maintenance although not provided for in Act on the Family may, however, be of significance in regard to recovery of damages. If a physical injury resulted in death, the defendant is bound to refund by monetary allowances maintenance costs of the survivors whose maintenance was factually provided or was owed under law by the deceased person (§ 448/1 CC).

No property community similar to joint property of married spouses may arise between unmarried spouses based on law or by contract. According to the explicit provision of the Civil Code, joint property may arise only between a married couple (§ 136/2 CC). When unmarried spouses have lived together in a factual long term union, each of them acquires property into his/her own individual ownership and may dispose of this property without the consent of the other spouse. If they obtain something together, the co-ownership may arise between them like among other persons. If not stipulated by law or agreed by the parties otherwise, the portions of the property owned are equal (§ 137/2 CC).

Unlike married spouses no common tenancy of flat shared by unmarried spouses may arise by operation of law. The other spouse may lives in the flat only as a close person, or as a family member (§§ 115, 116 CC). In order to take an unmarried spouse to the flat the tenant needs no consent of the owner of the flat or house. Only upon death of the tenant the tenancy of flat may by operation of law pass over to the surviving person supposing he/she proves that he/she lived with dead couple together three years prior to the death of the other person and he/she does not have a flat of his/her own (§ 706/1 CC).
cooperative flats it applies that in case of death of the tenant the tenancy is passed over to the heir of the share.

c. Single mother and her claims towards the child’s father

According Czech legal order, the single mother always have had some claims towards the child’ fathers. The regulation origins from the ABGB, which provided non-married mothers with quite limited rights.

Since 1998, the rights of the non-married mothers stipulated in Act on the Family have had enriched (§ 95). The child’s father whom the mother is not married to is bound to contribute appropriately to cover the costs for her maintenance in the period of two years and to reimburse of her expenditures related with her pregnancy and confinement.

The costs related to pregnancy and child delivery are the costs of the mother to purchase clothing and shoes for the period of pregnancy, medical care costs that are not for any reason covered by her health insurance etc. The mother may claim the cost as stated if and only after the child has been delivered and paternity established either by common affirmation of the parents or by a court ruling.

Regarding the maintenance duty to the child, the child has the right to follow the life standard of the parents (does not matter they are married or not) till he/she gets possibility to provide for his/her maintenance on his/her own (see § 85 AF). That is why, the mother can claim the cost incurring from purchasing the necessary items for the child like baby pram, baby cot, baby clothing etc. towards the child’s father.

To avoid difficult social situation of a pregnant non married woman, the law provides her to claim in court prior to the child’s delivery towards the man whose paternity is probable: (a) the costs for her maintenance, (b) the costs related to pregnancy and child delivery and (c) the costs for the expected child’s maintenance for the time of 37 weeks. The court may rule the probable father will be obliged to reimburse the necessary amount in advance.

4. The law against domestic violence

Act on the Family imposes on the spouses the duty to create a sound living environment and background (since 1963). The amendment on the Act of Family enriched spouses’ duties of the duty to respect the one another’s dignity (1989). However, if such
there are no sanction for breaching the duties neither in the Act on Family nor in Civil Code. Of course, there are general rules protecting personality in Civil Code (see §§ 11 ff CC). However, they are difficult to use in praxis.

Socialist state kept eyes closed before the problem called domestic violence although the specialist were proving that homes are not so safe how they should be. There are not big changes after 1989. The parliament of the Czech Republic does not see domestic violence great problem and that it why Czech legal order does not contend a complex regulation against this phenomenon. The draft No. 828 from 2004 could be a good solution bringing the Czech republic towards European Standards.

Anyway, there are some important steps on the way to the complex protection against domestic violence:

a) the amendment to the Criminal Code (No. 91/2004 Coll.) introduced new § 215a: battering of a person cohabiting in the common flat of house,
b) the amendment to the Act on the Police of the Czech Republic, Civil Procedural Code, Criminal Code and others (No. 135/2006 Coll., in force since 1 January 2007): banish (expel) from the family home and prohibition to return

According to the new law,
- the policemen is entitled (ex lege, ex offo) to banish a suspected person and prohibit its return to the flat or house shared with the victim and its surroundings for 10 days,
- the court is entitled on the motion of a victim to impose by interlocutory injunction the duty on defendant to leave temporally the flat or house and its surroundings and the duty to retrain meeting the victim and creating contacts with the victim for one month. The court may prolong the period on the motion. The interlocutory injunction ceased to be effective by passing of time - not longer than 1 year. The court must immediately organise the execution of its decision.

5. Re-codification of Family Law within new Civil Code

It is possible to say that the above stated partial changes of Czech family law (see Part B/2, i. Marital law – general, history and presence) prepared the grounds for a fundamental step – the re-incorporation of family law institutes into the Civil code as the basic source of
private law. The time enabling the realisation of the second detached phase could start – the phase of the private law family regulation reform recommended in specialists’ studies for general discussion on the Czech family law de lege ferenda in such a way that it was closer to the current legal regulations of European countries.

In the spirit of the European tendencies, the work on the re-codification of the civil code as the basis of the private law is currently going on in the Czech Republic. The work should result in a unified, coherent, systematic, clear, complete, and at the same time necessarily open code. This direction of development of the Czech family law, defined by the subject matter of the Ministry of Justice (ref. No. 2623/00-L of January 29th 2001), can be characterised as an effort to create European continental civil concept of the family law. Family law norms were incorporated into the second part of the paragraphed working version (draft) of the re-codified private law code, which, apart from the matters now codified by the Act on the Family (the divorce by mutual consent will be a novelty), also includes marital property law, based on the principle of full private autonomy between the spouses, further the right of marital and family dwelling and other connected property issues, including the private-law norms against domestic violence. The new Civil Code will also regulate among others the registered partnership of people of the same sex.

This concept had, has and will certainly have many adherents, but also opponents, both in the issue of returning the family law in the civil code at all, and in the issue of its inclusion into the system of civil code, and last, but not least, the content of the individual institutes.

We can only add one aspect to the issue: conceptual inclusion (returning) of the family law norms into the civil code is correct. It namely draws upon the status rights of people, or persons in the legal sense of the word in general. This is not changed even by the fact that in family law, a significant role is played by mandatory legal norms, as this is a phenomenon characteristic for status rights, without leaving anyone in a reasonable doubt about private character of such rights. Also the high level of mandatory nature does not make this part of private law public.

An indubitable positive aspect of the big codes is exactly their stability. In democratic conditions it is not easy to change them ad hoc, according to the topical particular interests.

6. Conclusion

In spite of the problems with searching for European standards, the Czech family law de lege ferenda moves towards the traditional family law institutes included in the Civil Code
as the basis of the private law. The new regulation of the family relationship will namely be very similar in its concept to the large codices of private law, i.e. also the General Civil Code (ABGB, 1811), which is the basis of the Czech civil law and whose institutes are still in the minds of wide public of both specialists and laymen. We can agree with the opinion that the new private law code should include, as a principle, all the private law matters, i.e. also family law in such a way that is usual in countries with comparable legal environment, with the reference to the necessity of unity of private law.

With reference to the explanatory note on the Proposal of civil code, the creators’ effort aiming at discontinuity with the socialist law and the aim to create a code comparable with European cultural convention is perceivable at first glance.

Appendix:

1. *Data from the Statistic Year Book*
2. *Articles and books available in English*