

**The third year of a doctoral private law conference  
called *Civilistické pábení*, this year on Duty and  
Liability in Civil Substantive and Procedural Law, Prague,  
25<sup>th</sup> June 2021<sup>1</sup>**

The Charles University, Faculty of Law, hosted on the 25<sup>th</sup> June 2021 a doctoral conference called *Civilistické pábení* for a third year, continuing a tradition that has been commenced in 2019, of **conferences for doctoral students with specialization in private law**, concentrating on issues of civil law, including civil procedure and intellectual property, commercial law, private international law, European law, non-fiscal financial law, labour law, legal theory, sociology and political science, including the historical background of these disciplines and artificial intelligence. The conference is an ideal platform for doctoral students to share their research with their peers as well as with their teachers. However, the conference's primary goal is not only to share research but above all, to gain acquaintances. The conference is to help connect professionally in this stage of the career of commencing researchers and enable the attendees to make possibly academic relations between them. The Department of Civil Law has organised the conference as the primary and general venue of private law of the Faculty of Law, Charles University.

The title of the conference *Civilistické pábení* is to resemble one of the renowned literary figures, Bohumil Hrabal, who is the graduate of the Faculty of Law, Charles University, and is said to be the author of the term “**pábení**”. In the context of private law, the notion of “*pábení*” relates to the narration of private law, to a free-flowing speech on the ordinary and mundane aspects of individuals and their lives that the private law in general regulates. The result of such narration can be extraordinary, shedding light in a precise analysis of the object of the regulation and the law as well and providing enlivening synthesis. Therefore, the vital part of this format of the conference is not only the presentation of the research in front of the auditorium but also the questioning and debating the issues afterwards in a rather relaxed free and open discussion. Thus, gagging is both a creative principle and a creative mask by which the conference was covered.

Due to the **COVID-19 crisis**, the conference was held in a **hybrid form**. Therefore, participants could attend in person at the Faculty of Law, Charles University, or join the conference online via the ZOOM system. This year's conference brought the attention of nearly 40 doctoral students from the faculties of law in the Czech Republic (Prague, Pilsen, Olomouc) as well as from Slovak faculties of law (Bratislava, Trnava). This is the highest number of participants compared to previous years of the conference. As a result, this year's conference was held in two simultaneous sections.

The conference centred its focus on the overarching theme of **Duty and Liability in Civil Substantive and Procedural Law**. As the first year of the conference was on the legal actions and procedural acts both in civil law and civil procedure, and the second year of the conference was on the representation, duty and liability in civil substantive and procedural law seemed like another of the essential institutes in civil law, therefore as a logical choice. Duty and liability as institutes have multiple aspects when viewed from different angles: in the analysis of the liability of natural persons and legal entities, in the analysis of the duties of the court and the parties in civil proceedings, or the examination of the liability of artificial intelligence, etc. As for the scientific research, it is a tremendous theoretical topic, as the conference has shown, and a convenient one.

The conference's topic non-coincidentally resembled a title of a monograph by **Professor Marta Knappová**, late member of the Department of Civil Law, Faculty of Law, Charles University, called

---

<sup>1</sup> The conference was supported by the PROGRES Q03 program: Private Law and Today's Challenges, conducted at the Faculty of Law, Charles University. The partnership was provided by the publishing house Wolters Kluwer, Czech Republic, which is also a partner for the publication from the conference.

**Duty and Liability in Civil Law.** The conference's aim was to follow the analysis of the theme as presented in her well-received monograph published by publishing house Academia in 1968 and which was made again available in bookshops when republished by publishing house Eurolex Bohemia in 2003. The monograph itself to some extent followed her previous research published in Lawyer No. 3 in 1957 under the title Liability for breach of duties from economic contracts. As the topic of duty and liability is still of utmost importance, and ever will be, the conference tried to encourage doctoral students to undergo not only a new analysis of the issues presented in the monograph of Marta Knappová but also to tackle issues inherent to the topic and related to it, stemming from the developments in law, society, technology and politics (not overlooking events such as pandemics).

The well-known theoretical dilemma whether to understand liability as a threat by a sanction (liability for non-fulfilment of obligations) or to understand liability as a notion of fulfilment of duties (liability for fulfilment of obligations), as it was analysed by Marta Knappová, was pivotal to the conference. It is well known that **Professor Karel Eliáš**, the main author of the new Czech Civil Code, Act No. 89/2012 Coll., understands the notion of liability as the liability for fulfilment of obligations as it is reflected by the new Czech Civil Code and participants of the conference were bound to deal with such paradigm. The dichotomy of breach of contract and breach of statute was also to be discussed. The contributions by the participants to the conference also had to deal with a notion of subjective duty (analysed also by Marta Knappová) as a counterpart to subjective right as the conference highlights the subjective duty rather than the subjective right. At the heart of the conference was also the famous sentence from **Ulpian's Digest**: *Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere* (The following are the orders of law: live honestly, do not harm anyone, give everyone what is theirs.). These are the obligations around which and from which the individual contributions of participants were to revolve (directly or indirectly) and this well-known sentence is to resonate when a conference is organized under such title.

This year's conference was divided into two sections. The first section, focusing on the conference's stated theme, was then divided into three parts, two-morning parts and one afternoon part, where each of them had a unifying subject matter. The first part of the conference, which **Assistant Professor Miroslav Sedláček** moderated, revolved around **general issues of duty and liability both in substantive and procedural law** (mainly the questions of the definition of duty and liability in private law, the prerequisites for the liability of individual subjects, the duty and liability of the court and the question of liability based on probability were discussed). The second part, moderated by **Assistant Professor Kateřina Eichlerová**, was focused on **duty and liability in commercial law** (e.g. during a bankrupt of a business corporation or in the field of payment transactions). In the third part, moderated by **Assistant Professor Tomáš Štřeleček**, the themes of **duties of the court, questions of damages and liability on the internet** were discussed (e.g. on the concept and development of liability of artificial intelligence). Simultaneously with the third part of the first section, the second section, which **Daniel Hanuš** moderated, took place focusing mainly on **the duty and liability in family law, medical law and labour law** (additional issues such as employer's duties or entitlement to loss profit compensation under extraordinary circumstances were presented).

The conference was officially opened by **Professor Jan Kuklík**, Dean of the Faculty of Law of Charles University. He was followed by **Professor Jan Dvořák**, Head of the Department of Civil Law, and **Professor Alena Macková** from the Department of Civil Law, both from the Faculty of Law of Charles University. Professor Jan Kuklík appreciated that the conference aimed at doctoral students and stated that such an opportunity to meet and discuss the research provides a venue for doctoral students that is always desirable. Professor Jan Dvořák has wished the conference all the best and discussed the issue of duty and liability as one of the utmost topical issues of civil law and concentrated on various types of liability. Professor Alena Macková concluded the opening by emphasizing the importance of duty and liability from a procedural point of view. She also suggested possible topics for future editions of the conference (in particular, to focus on alternative dispute resolution).

These introductory remarks were followed by the presentation of the contributions of the individual participants of the conference. **Assistant Professor Petr Navrátil** gave a speech on the *Limits*

of the Duty of the Court to Give Instructions in the Substantive Law or Law as the Art of Good and Fair. His presentation dealt mainly with comparative aspects of the topic and provided view *de lege lata* and *de lege ferenda*. The discussion that followed revolved around whether it would be a step forward to have a duty to classify claim legally.

Subsequently, a contribution by **Assistant Professor Miroslav Sedláček** was delivered on *Duty to Instruct of the Civil Court*. The author dealt with the basic aspects of the court's duty to instruct, i.e. the division of the duty, its content, including its relation to the substantive aspect, as well as the case law and the manner of its fulfilment. In his presentation, the author did not forget to address the court's duty of inquiry and explanation. In the part on duty to instruct itself, emphasis was also placed on its normative anchoring and content and limits, taking into account the principle of equality of parties and the principle of predictability.

Among other authors was also **Assistant Professor Tomáš Štřeleček** who presented his contribution on *Model European Rules of Civil Procedure - Basic Duties of the Parties and the Court*. He dealt in his presentation with an overlooked topic (in the Czech context) of Model European Rules of Civil Procedure created by UNIDROIT and European Law Institute, which is with its importance and depth comparable to the Draft Common Frame of Reference. Recently adopted model rules, as it was stated, are built not on the difference between the social and liberal model of civil procedure but on the cooperative model, which deals primarily with duties of the parties and the court as a methodological approach.

Exactly 26 papers were presented at the conference. To mention some of them, **Nikola Černíková** in the first part spoke on the topic of *Liability Based on Probability*, **Richard Macko** gave an analysis on the issue of *Conception of Strong Judge in Context of the Material Case Management*, **Yulia Galinskaya** spoke on the topic of *Development of the Institute of Limited Liability in Czech Law*, and **Ondřej Šmat** presented his research on *Duties of the Neighbour when Planting Plants on his Land in Relation to the Neighbouring Land*. Consequently, **Jan Škrabka** gave a speech on *Duty and Liability of the Provider and Payer in Payment Transactions*, and **Alexander Kult** had a contribution on *Liability in Insurance Mediation*, both presented in the second part. After the lunch break, **Tereza Profeldová** delivered a presence on the topic of *Duties and Limits of the Jurisdiction of the Courts when Considering an Arbitration Agreement*, **Dominika Novotná** gave a speech on *Liability for Damage Caused by Information or Advice in the Light of Recent Case Law*, also **Vladimír Sharapaev** presented a contribution on the topic of *Liability of the State for Damage Caused by Crisis Standard-setting (not only) from the Perspective of Expert Activities*. The third part concluded with a presentation on *The Impact of Algorithmic Decision Making and the Imperative to Preserve Fundamental Rights on the Concept of Civil Liability of Social Networks for Content Uploaded by Third Parties* by **Jan Hořeňovský**, in which he dealt mainly with the question of whether social networks should be liable for content uploaded to third parties, seen from the perspective of maintaining freedom of expression in democratic societies. Among the other speakers, it is worth highlighting **Robin Brzobohatý's** presentation on *Private Ordering Doctrine, Parental Liability and the Role of the State in Family Mediation*, as well as exciting presentations by **Klára Zikmundová** on *Civil Liability for Damage to Health Caused by (Non-) Use of Artificial Intelligence in Medical Diagnostics*, and **Ondřej Drachovský** on the topic of *Alternative View of the Running of the Time Limit for Exercising the Right of Defective Performance in the Case of Replacement of a Defective Thing*. The last part of the conference was concluded by **Matěj Tkadlec's** speech on *Employee's Accident at Work and Employee's Obligations Related to it*. All other contributions were also of an exceptionally high standard (chronologically from Bohdan Chrenovský, Petra Kotápišová, Jaroslav Kuba, Karolina Drachovská, Linda Holková Lubyová, Eva Decroix, Filip Wágner and Martin Tůma).

The conference was concluded by awarding a **prize called Civilistický pábítel** for the best presentation of research at the conference. The prize winner was **Viktor Kolmačka** from the Palacky University in Olomouc, Faculty of Law, Department of Private Law and Civil Procedure. His contribution was delivered on the topic of *Price Reduction as a Means of Compensating for Distorted Equiv-*

*alence*. In this speech, he has meticulously analysed various approaches to distorted equivalence in civil law and has argued the most suitable one as a suggestion *de lege ferenda* based on several criteria.

The conference was supported by the program **PROGRES Q03: Private Law and Today's Challenges**, conducted at the Faculty of Law, Charles University. The partnership of the conference was again accepted by the publishing house **Wolters Kluwer, the Czech Republic**, which is also a partner for the conference output – a collective monograph that is currently being prepared under the supervision of the editor **Marie Novotná**. Finally, let us recall the successful publications from previous editions of the conference under the titles *Legal Actions and Procedural Acts (2019)* and *Representation (2020)*.

Miroslav Sedláček\*

Tomáš Střeleček\*\*

---

\* JUDr. Miroslav Sedláček, Ph.D., LL.M., Department of Civil Law, Faculty of Law Charles University, Prague, Czech Republic

\*\* Mgr. Ing. Tomáš Střeleček, LL.M., Ph.D., Department of Civil Law, Faculty of Law Charles University, Prague, Czech Republic