
REVIEWS AND ANNOTATIONS

Pařízková, I., Loskotová, J. (eds.): 2nd International Summer School on Health Law, Assisted Reproduction, Mediation, Complementary and Alternative Medicine, Masaryk University, Brno 2011, 160 pp.

The book under review represents the outcome of the 2nd International Summer School on Health Law, which took part in Brno 4. – 10. 9. 2011.

Health or medical law belongs to those branches of law that are quickly developing. As stated in the speech of the Dean of the Faculty of Law of Masaryk University, „...the area of medical law is an area that can be defined by a number of attributes: interdisciplinary, new, dynamic, ...“¹⁾

The publication is based both on contributions of participants of the Summer School and other authors that editors called for co-operation.

Welcome speeches of authorities such as Ministry of Health or Justice, Vice-president of World Association of Medical Law and representatives of academia forms the prologue. Though such speeches are usually formal and general, summer schools are the opportunity to exchange ideas and experiences. That is why even in contributions of guests sounded for example:

„Medicine and Law have different speeds, and different languages. They need to find a common ground, a single language to communicate with each other; this common language is bioethics.“²⁾

The interdisciplinary nature of medical law is reflected in all parts of the scientific contents of the book, which is divided into four parts.

The **first part** (pp. 30-81) is devoted to the **legal issues of assisted reproduction**. General introduction to legal and ethical questions of assisted reproduction are addressed by Lukáš

Prudil. Jan Piasencki in his contribution examines the embryo research and the outcomes of British embryo research law.

This part of the book discusses the surrogacy issues generally and also from the point of view of the new Civil Code:³⁾

„The new Civil Code in its over 3000 sections does not include the provision of surrogacy arrangement. The test of the motion of Civil Code in s 775 declares... that ‘a child’s mother is the woman who bore him.’ Surrogate motherhood is explicitly mentioned only in part of the adoption of § 804: “Acquisition is excluded among those with relatives in a direct line and between siblings.

This does not apply in the case of surrogacy.“⁴⁾

The first chapter also highlights the legal aspects of home birth and comparative perspective of legal aspects of post - mortem reproduction in French, Brazilian and Portuguese legal system.

Second part of the publication addresses the issues of **resolving conflicts in health care administration**. This chapter deals not only with the conflicts in patient - doctor - provider relationship, but also discusses the possibilities of resolving disputes among health care professionals. Ideas for the out-of-court settlement of issues arising from the distribution of health care are important, because we should expect that with new laws on health care valid from 1st of April, 2012, possible infringements of patients’ rights may be more common.

Patients have wide range of options as one of the authors in this part mentions:

„Apart from filing a civil lawsuit or a crime notification, the public health insurance act allows the patient to fill a complaint. Therefore the patients may address...the respective professional chamber, the health insurance com-

¹⁾ P. 22.

²⁾ P.2.

³⁾ Law No. 89/2012 Coll.

⁴⁾ P.58

pany. Or they may file a petition for review with the head of the medical facility, or its founder. They may also contact the authority that registered the medical facility.⁵⁾

Treatment options and alternatives are discussed within the **third chapter** devoted to complementary and alternative methods of treatment.

New legal possibilities of seeking officially the second opinion⁶⁾ will undoubtedly bring questions whether the conventional medicine should not be followed by:

„Medical procedures outside of a mainstream of used and recommended methods“⁷⁾.

Last but not least is the **fourth part**, which focuses on various and **current issues** of health care and medical law.

The issues of informed consent, respect to fundamental rights when providing the health care, as the right to self-determination and privacy are, form the core of the fourth chapter. The importance of public finance and economy to enable the appropriate health care are discussed at the end of this chapter.

„It is said that the financial support and protection of health cannot be understood only as outgoings but especially as a good kind of investment for an individual and state, too. It keeps people stay active and work more.

Statistically, the quality of provided health care, as one of the 10 most important social determinants, is influencing healthiness of population in approx. 20%. We should realize it and implement this idea in the process of financing of public health care with the emphasis on prevention.“⁸⁾

The publication certainly contributes to the discussion of substantive and new issues of medical law not only at academic level but in practice as well. It is to be welcomed that the Masaryk University opens this developing branch of law to students and public.

Miroslav Mitlöhner

Michael Geistlinger; Friedrich Harrer; Rudolf Mosler; Johannes M. Rainer: 200 Jahre ABGB – Ausstrahlungen Die Bedeutung der Kodifikation für andere Staaten und andere Rechtskulturen, (Two hundred years of the ABGB, - Radiation, Significance of codification for other states and legal cultures) MANZsche Verlags-und Universitätsbuchhandlung GmbH, Wien, 2011, 290 S.

The Austrian general civil code (common for countries of the former German-Austrian monarchy) came to effect on January 1st 1812, i.e. two hundred years ago. This anniversary was an inspiration to look back, review, map and assess the importance of this codification for the neighboring states and legal cultures in the central-European area. An unprecedented wave of interest in this issues in Austria lead to a number of recent publications, e. g. a book edited by Elisabeth Berger “Österreichs Allgemeines Bürgerliches Gesetzbuch (ABGB) III. Das ABGB ausserhalb Österreichs, 2010”, publication by Barbara Dölemeyer and Heinz Mohnhaupt edited in Germany “200 Jahre ABGB (1811–2011), Die österreichische Kodifikation im internationalen Kontext”, Frankfurt am Main, 2012. In the Czech Republic Jan Dvořák and Karel Malý recently published a collective monograph “200 let Všeobecného občanského zákoníku” (200 years of the General Civil Code), Wolters Kluwer, Praha 2011, that also deals with this issues.

The editors of the reviewed book focused on regions that mostly belonged to the Habsburg Monarchy. The book is an outcome of a conference on this topic that took place in June 2011 in Edmundsburg near Salzburg. In total 23 contributions from a large collective of authors provide a plastic picture of the history, creation and effects of this Austrian codification in Italy and Liechtenstein and other European countries and areas of law.

The first contribution is from the pen of a re-

⁵⁾ P.86

⁶⁾ §28, par.3, al. a)

⁷⁾ P.97

⁸⁾ P.159

nowned legal historian and expert on the ABGB prof. **Werner Ogris**. It is titled “**ABGB inside and outside of Austria**” (pg. 1-25). Prof. Ogris in his contribution emphasizes the importance of the codification and says: “national legal systems are never isolated and self-sufficient; they are rooted in a general cultural effort and must, in one way or another, reflect foreign legal systems” (pg. 3). In his introduction Prof. Ogris maps not just the parts of the monarchy, where the ABGB was effective, but also its relation to the Hungarian legal system that had its specific features within the legal system of the monarchy. The author notices also the influence the codification had on the legal systems in Liechtenstein, Switzerland, Italy, Germany. He ponders about the importance of the three large amendments to this codification from the beginning of the century. He also watches the changes taking place after the World War II, as a consequence of the new “socialist” systems. He also looks at the development of this codification in Austria since the break-up of the monarchy until present. In the summary he points out a number of features common to the countries, where the ABGB was in effect or an inspiration for their own codex and he believes that these states make up “*Orbis iuris Austriacus*” within Europe. He sees also possible common elements of codification of the law in the European Union. Another contribution written by **J. Michael Rainer** from Salzburg “**About the birth of the ABGB**” follows the history of the creation of this codification and introduces in detail the main creators - von Martini and von Zeiller. **Daniele Mattiangeli**, again from Salzburg, in his contribution “**Transfer of the ABGB in Northern Italy and its influence**” he focuses on mapping the changes to the ABGB in Northern Italy and their impact on the legal systems in the neighboring countries. He first looks at the problems connected with the adoption of this codification and later with the translation into Italian. He points out that two commissions were created – one in Milan and one in Venice that were assigned the task to “adjust [the codification] to Italian legal tradition” (pg. 39). To illustrate his points he includes also examples of applications. **Wilhelm Brauner** from Vienna in his contribution “**ABGB and Liechtenstein**” describes the role of the codification in Liechtenstein. He

first points out the fact that the adoption of this codification was not originally intended by the authors nor by the monarch. It took place almost ten years later than in Austria based on a decree that also included the adoption of criminal justice standards. The name of the codification was “General Code of Law”, it respected local traditions and peculiarities and it was not enforced in all parts of Liechtenstein. So in Liechtenstein the codification had its own development as a “Liechtenstein Modification” (pg. 74). A part of the original codification is still valid outside of Austria until this day. Four more contributions map the importance of the codification for the southern states of Austria that, until recently, made up a common state Yugoslavia. **Dušan Nicolich** from Nový Sad describes in this contribution “**The relevance of the Austrian Civil Code of the ABGB to the development of the Civil Law of the former Yugoslavia and today’s Serbian Civil Law**” the importance of the Austrian codification of the ABGB for the development of the civil law in the former Yugoslavia and Serbia today. **Miha Juhart** from Ljubljana in his essay “**The importance of Austrian the ABGB for the development of the Civil Code in Slovenia**” focuses on assessing the importance of this codification of the private law in Slovenia. **Zvonimir Slakoper** investigates in his contribution “**The ABGB and Croatian Civil Code**” the effect of codification on the private law in Croatia. The last contribution describing this legal area is “**The influence of Austrian Code (ABGB) on Bosnian Civil Law**” written by **Genc Trnavci** from Bihac, which maps the effect the Austrian codification had on Bosnian private law. Another essay from **Zoltán Véghe** from Salzburg “**ABGB and Hungarian private law – about the history of love and hate**” focuses on the interactions between the ABGB and the Hungarian Civil Code, which he classifies as hateful love or love and hate (pg. 131). The author offers a detailed view of this relationship and notes that the people of Hungary tried to maintain national independence within the monarchy. The political changes of the early 19th century did not bring progress to the Hungarian part of the monarchy, as was the case in other parts. The imposed laws and the ABGB designed to enhance centralism were hard to enforce in Hungary and the people were rejecting

them. Gradual efforts of Hungary for emancipation within the monarchy reduced the importance of the ABGB which, however, remained present in everyday life (pg. 142). Hungarian civil code was not adopted until the socialist era. Social changes brought by the year 1990 were projected, through numerous amendments, into the original codification and the most striking legal relics were removed. **Mircea Dan Bob** from Cluj-Napoca in the next article **“The influence of ABGB on the Romanian legal system”** describes the impact the ABGB had on the Romanian civil law. In his introduction the author notes that the influence went two ways – indirectly via Moldavian Civil Code from 1817 published by prince Scarlat Calimachi and directly by implementing the ABGB in Transylvania and Bukovina. He points out the fact that the Moldavian code was in many ways based on the Austrian code, although it did take into consideration the local legal system and traditions stemming from the Roman and Byzantine tradition. In the following text the author observes the application of the ABGB in Transylvania and Bukovina and the changes that took place after the World War I and World War II. In the next article **“Testing the ABGB in the area of Galicia and its impact on today’s civil legislation in Ukraine”** the author **Galyna Bogdanovna Yanovytska** from Lviv describes the “trial” adoption of the ABGB in the Galicia area and its impact on the current civil law in Ukraine. The author first describes the preparations preceding the codification of “West Galician Code” from 1779 that was gradually adopted also in the east part of Galicia and its importance for the ABGB from 1811. The author also ponders about the reasons for adopting the code in these areas and offers various explanations from the legal theory. The most frequent explanations include e.g. disrupted economy and general disorder in the country after it was annexed by Austria; the code was a part of Austria’s effort to restore order and thus control this area. However, the author considers this explanation unlikely (pg. 151). In the following text the author describes the legal development in the area of civil law after the World War I. He points out the fact that the first Ukrainian Civil Code was adopted in 1923 and that it is a copy of the RSFSR codes from 1922. In the following years the development

in this area followed closely the development of the entire USSR. The new Ukrainian codex became valid on January 1st 2004. The following essay **“The ABGB and Slovakia’s civil law”**, written by Slovak authors **Kristián Csach** and **Miriam Laclavíková**, looks into the relationship between the ABGB and the Slovak civil law. The authors visit the relationship of the ABGB and the Hungarian law in the period, during which Slovakia was a part of the monarchy and subsequently analyze the history after the breakup of the monarchy and creation of Czechoslovakia (Slovakia was a part of Czechoslovakia until 1939). Finally, the authors assess the importance of the codification for future codifications of the civil law in Slovakia. The Czech Republic is represented in the collection by a contribution from **Josef Bejček** **“The ABGB and the Czech civil and Commercial law”**, where he describes the relationship between the ABGB and the Czech civil and commercial law. He analyzes the nature of the civil law between the two World Wars, and with even more detail analyzes this issue after the communist revolution, when the commercial law ceases to exist and is replaced by a separate socialist economic laws, the Economic Code (Law on Economic Contracts) and the Foreign Trade Code. In the end the author comes to the “back to the roots” principles used for the new codification of the civil law. **Rafal Wojciechowski** in his essay **“The ABGB and Polish civil law”** focuses on the issue at hand in the context of Polish civil law. First he examines the historical circumstances leading to the accession of Galicia to the Austrian monarchy and the implementation of the “West Galician Code of Law” in 1797. He emphasizes that this codification is considered to be the first complex codification of private law valid in Europe. This codification was accepted by the people mainly because it applied to all citizens equally and was quickly translated into Polish (pg. 185). Subsequently the author follows the changes in the application of the codification between 1918 and 1946, but also later. The author shows traces of inspiration with the ABGB in some legislation adopted in Poland today. **Janus Gumbis** in his article **“The Impact of the ABGB on the Lithuanian Civil Law”** studies the impact of the ABGB on the Lithuanian Civil Code, while addressing also

the basic principles of the civil law as a whole. Later the author tries to identify the basic ideas of this “old classic codification” that found their way into the new Lithuanian Civil Code. He emphasizes that ABGB not only had a strong influence on the Lithuanian private law, but that its influence was not limited by state borders or historical period of its creation (pg. 209).

Janis Lazdinš from Riga in his contribution “**The impact of the General Civil Code for countries of the former Austrian monarchy on Baltic civil law**” investigates the strength and form of this influence in the Baltic region. In the beginning the author introduces the civil law valid in Lithuania in the 19th century, which had certain specific features when compared with the general nature of the civil law in other regions of the Tsardom of Russia. All Baltic countries were a part of the east Gubernia and the private law was regulated by the Baltic Civil Code sanctioned by tsar Alexander II. Although it was written in German language, it was translated into Russian and, as an official text, it is also in Russian. In order to extend the codex it also included references to other laws (e.g. regulations governing the Farmer's Law). The author also emphasizes that the codex was an ensemble of historical and existing particular and casuistic regulations (it contained 4,600 articles, while the ABGB only 1502) and he also tracks the influence of Roman law, German Pandectists and Saxony Civil Code on the Baltic codification. In the end the author emphasizes that the influence of the ABGB was mostly philosophical and only article 375 of the ABGB was adopted literally as the article 942 of the Baltic codex. **Sanita Osipova** in her contribution “**General importance of the Austrian legal system for Latvia**” interprets the general significance of the Austrian legal system for Latvia. The author first describes the key period for Latvian legal history, while Latvians were still under the rule of other nations. This period can be divided into the following parts: German period, Swedish period, Russian and Soviet period. She emphasizes that Latvia, just like Estonia, was from the 13th century a part of a region controlled by the order of knights that was subject to the German emperor and the pope. German legal tradition was therefore very strong in these areas. After Latvia split

apart in 1561 the area becomes part of Sweden, later Poland and Russia. The author follows the influence of foreign legal systems on the legislation in the Baltic regions and, as an example, studies the institute of a public notary and his role within the justice system and state administration. **Anton Rudokvas** from Petrohrad in his contribution titled “**The Impact of the Austrian Code (ABGB) of 1811 on the Concept of Ownership in Russia**” follows in detail the ownership relationships in Russia. He first analyzes the concept of “split ownership” and ways, in which it was influenced by the German legal doctrine. Subsequently he studies this institute within the Austrian codification and compares it with the codification of Russian law (Svod zakonov 1832). **Natalya Kozlova** and **Alexander Yagelnitskiy** from Moscow in their contribution “**The Compensation for Injury to Business Reputation of Legal Persons under Russian Law and the Austrian Civil Code: A Comparison to the Civil Code of Austria (ABGB)**” compare the legal status of compensation for damaging goodwill of legal persons in Austrian and Russian versions. The authors conclude that this institute was in the past neglected by the Russian, as well as by the socialist legal systems. Changes in this regard took place after 1991, when the Principles of Civil Legislation were adopted. **Irene Kull** from Tartu divided her contribution “**The Impact of the Austrian Civil Code 1811 on the Estonian Civil Law**” into three parts; in the first part she looks into the philosophical influence of the ABGB on the first codification of the Estonian civil law, in the second part she focuses on the influence of the Austrian codification on the Estonian legislation after 1991 and in the final part she describes the parts of the Civil Law, which were directly influenced by the codification. She speaks about adoption of some provisions from the hereditary right, calling them “legal transplants” (pg. 264). **Rudolf Mosler** from Salzburg in his one-page essay about the relationship between the ABGB and the labor law introduces the last two contributions to this publication that deal with the labor law. Mosler emphasizes that the ABGB is in fact the “mother of the labor law” and that the labor law as such was separated or singled out of the civil law (pg. 275). **Evgenij Borisovich Khokhlov** from Saint Petersburg (“**The influence of the**

Austrian ABGB (1811) on the creation of the labor law as a legal branch in Russia) focuses on the influence the ABGB had on the creation and development of the labor law as a legal branch in Russia. The last contribution by **Friedrich Harrer/Patric Warty** from Salzburg titled **“The ABGB and slavery”** focuses on the relationship between the ABGB and the institute of slavery. The authors emphasize the importance of article 16 of the ABGB (declaring personal freedom) for future legal development. They note that the abolition of slavery had no economic meaning for the monarchy, but that it was a strong argument in the American and English-Ameri-

can environments. This ban found a new meaning in the 20th century in connection with labor camps, forced labor in the Reich and in Soviet gulags.

In general the publication can be seen as very well done, because as a whole it offers the reader a very plastic picture of the significance this basic codification of civil law had not just in the past, but also for the future. Many contributions also provide inspiration for the future development of civil law in Europe.

Petra Skřejpková