
REVIEWS AND ANNOTATIONS

Michal Tomášek *et al.*, Czech Law between europeanization and globalizatióin, Charles University in Prague, Karolinum Press 2010, 368 pp.

Czech law has during the last two decades undergone dramatic changes. Within a very short time after the 1989 revolution, the law had to be adapted to the new social and economic situation, as the transformation of the society into political democracy and market economy was to a large extent a legal project. Another huge task faced by Czech law was to prepare itself for Czech membership in the European Union. In addition, there was – and is – the continuous impact of globalization and rapid technological development, for instance in the area of information technology.

The Czech Ministry of Education, Youth and Sports awarded in 2005 the Faculty of Law of the Charles University a financial grant to carry out a large-scale research project about the transformation of the whole Czech legal system at the beginning of the 3rd Millennium. Preliminary results of the project, which engaged some 60 specialists in almost all fields of law, were presented at an academic seminar in April 2008, organized in Prague to celebrate the 660th anniversary of the Charles University. The written reports made within the framework of the project were subsequently published, in the Czech language, in four volumes dealing with legal history (vol. I)¹⁾, theory of law and constitutional law (vol. II)²⁾, public law (vol.

III)³⁾ and private law (vol. IV)⁴⁾. This review concerns the fifth volume of this series, containing English translations of summarized versions of almost all of the reports. Even though it calls itself a monograph, it is submitted that it would be more correct to call it an anthology, which *per se* naturally does not make it less valuable. This volume is obviously intended for foreign readers who are interested in the development and the present state of the Czech legal system. Even though the picture offered is far from comprehensive and covers merely a number of selected problems, it gives the readers a general idea about present Czech legal thinking. The choice itself of the selected subjects tells something about what issues occupy Czech legal researchers and the way they reason about them.

As could be expected, the volume consists of four parts, reflecting the structure of the above-mentioned four volumes. The first part (pp. 20-97) deals with historical impulses for the development of law and contains twelve papers on a great variety of subjects, such as the protection of tenants and housing in Czechoslovakia between 1918 and 1948, interference with property rights between 1945 and 1948, retrospective interventions of Czechoslovak legislation from the 1989 revolution until 1992, “legality” of authoritarian regimes in the 20th century, referendum as an institution of direct democracy in Czechoslovakia after 1989, current interpretation of the US Constitution, Czech concepts of federalism in the

¹⁾ KAREL MALÝ, MICHAL TOMÁŠEK *et al.*, *Nové jevy v právu na počátku 21. století I. historické impulzy rozvoje práva*, Univerzita Karlova v Praze, Nakladatelství Karolinum 2009.

²⁾ ALEŠ GERLOCH, MICHAL TOMÁŠEK *et al.*, *Nové jevy v právu na počátku 21. století II. teoretické a ústavní impulzy rozvoje práva*, Univerzita Karlova v Praze, Nakladatelství Karolinum 2010.

³⁾ PAVEL ŠTURMA, MICHAL TOMÁŠEK *et al.*, *Nové jevy v právu na počátku 21. století III. proměny veřejného práva*, Univerzita Karlova v Praze, Nakladatelství Karolinum 2009.

⁴⁾ MONIKA PAUKNEROVÁ, MICHAL TOMÁŠEK *et al.*, *Nové jevy v právu na počátku 21. století I. proměny soukromého práva*, Univerzita Karlova v Praze, Nakladatelství Karolinum 2009.

1960s, Czechoslovak constitutional developments in the 1960s and problems of ethnicity, development of Czech ecclesiastical law, legal status of churches and religious societies in the USA, new paths and methods of Roman law studies, and *bona fide* acquisition of chattels in Roman law.

The second part (pp. 98-206) consists of twelve papers focusing on theoretical and constitutional impulses for the development of law. It contains contributions on invariability and purpose in law, binding effect of legal texts in juridical interpretation and application of law and logical reasoning *lege artis*, antinomy in implementing justice and legal certainty in contemporary law, polycentrism and pluralism in law, changing the structure of the legal order, changes in constitutional law on the threshold of the 21st century, reservation of statute in a democratic state respecting the rule of law, impact of the Constitutional Court on the legislative procedure, new phenomena in electoral law, information society and copyright, role of law in the management of national economies, and corporate governance in the public sector.

The third part (pp. 207-278), dealing with transformation of public law, is composed of five contributions on the universality of international law, the role of courts in the protection of the environment, Europeanization of criminal law, criminal liability of legal entities, and Czech tax law in the EU context.

The fourth and last part (pp. 279-364) is devoted to the transformation of private law and contains seven papers, dealing with the barrier separating the property of a business company from that of its owners, contractual obligations and obligations resulting from torts, codification of private international law in the European Union, recodification of Czech family law, consequences of changed circumstances for contractual relations, globalization of Czech labour law, and insolvency law in the European context.

This multitude of papers and subjects makes it manifestly impossible to analyze and discuss the substantive contents of the various contributions within the framework of this short review. A proper discussion would, in addition, require expert knowledge of all of the fields of law covered by the numerous authors, which is something this reviewer does not possess. As

far as I can judge, the contributions are of high quality, which is hardly surprising in view of the fact that they have been written by leading experts (often the leading expert) in each field. The editors, authors and translators deserve great admiration for the efforts and skills that must have been involved in shortening and summarizing the 1,600 pages of the four Czech volumes into a highly readable and interesting text of merely 368 pages, even though a few of the articles in the original volumes have been omitted in the English version. I hope that none of the authors will be offended when I say that I find that some of the papers have actually profited from becoming more concise.

The reviewed volume shows that the Czech Republic has today a new generation of very capable young legal researchers and that even many from the older generation have contributed and continue to contribute greatly to making and preserving Czech law as a modern and functional European legal system.

Michael Bogdan

J. Malíř et al., „Česká republika v Evropské unii (2004-2009). Institucionální a právní aspekty členství“ („Czech Republic in the European Union (2004-2009): Institutional and legal aspects of the membership“), Praha – Plzeň 2009, 255 pp.

The reviewed book consists of five chapters, an introduction, conclusion and extensive summary of research results that are presented in English. It has been written by a team of sixteen authors. These authors have various professional backgrounds and deal on a daily basis with issues concerning the membership of the Czech Republic in the European Union, in particular with issues concerning creation of norms of national law that would be compatible with the law of the European Union, as well as the application of EU law. Not only are they renowned employees of prestigious universities (such as Charles University in Prague, Masaryk University in Brno and Palacký University in Olomouc) and of other Czech scientific and research institutions (such as the Institute of State and Law of the Czech Academy of Sciences in Prague), but also practicing lawyers and experts in various branches of law who work for such distinguished insti-

tutions as *inter alia*: the Constitutional Court of the Czech Republic, the Supreme Administrative Court of the Czech Republic, the Supreme Court of the Czech Republic, Office of Senate of the Parliament of the Czech Republic, Permanent Representation of the Czech Republic to the European Union or the Court of Justice of the European Union. Given such a numerous group of authors on the one hand and space limitations provided for this review on the other, this text contains only general remarks, without reference to any single part of the book written by a particular author.

Not only does the team of authors involved in the creation of the reviewed book make the so-called "excellent first impression", but they also account for a strong stimulus we experience that makes us grab this work. Thus, encouraged reader will not be disappointed either when reading the book whose probably biggest asset is the capacity to skillfully match deliberations concerning sophisticated theoretical issues with a scrupulous analysis of the existing legal practice, both on office or parliamentary level.

Undoubtedly, the book fills the gap that hitherto existed on the Czech book market because before the reviewed study there had been no publication which would talk about Czech experiences and achievements of Czech membership in the European Union in such a multi-dimensional and complex way. The period of five years under scrutiny by the Authors is long enough to show certain tendencies and factual practical problems that have become part of the Czech post-accession reality, especially at the border between the Czech and EU law.

The authors set for themselves a very ambitious goal which is to present in a profound way and in one work such complex issues as constitutional dimension of the membership of the Czech Republic in the European Union and the question of limits to transferring powers of state authorities to those of the European Union (Chapter I), position and role of the Czech Republic in the decision-making procedures in the European Union with particular emphasis on ways of creation and formulation of positions of the Czech Republic (Chapter II), or legal implications of membership of the Czech Republic in the EU with an emphasis on discussion on the institutions and mechanisms of implementation of the EU law into

the Czech legal order and analysis of the impact of membership of the Czech Republic in the EU on the Czech practice of application in the area of international law (Chapter III). The authors rightly decided to devote much space to familiarize readers with practical application of Community law (today, i.e. after the Treaty of Lisbon entered into force, the proper term would be EU law but the publication was created before this happened) by national judicial authorities and administrative authorities. The authors deserve special recognition for this part of the book (it is the IV chapter of the reviewed book). The editor very sensibly managed to "collect" such a team of authors which guaranteed both knowledge of both the theory and the practice relevant to the issues under consideration. Finally, Chapter V of the study, entitled "The Czech Republic and the Community Institutions" refers to selected institutional issues and shows the problems concerning the Czech electoral law pertaining to the elections to the European Parliament, relations between the Court of Justice of the EU and EU Member States and the issue of defending the Czech Republic before the EU courts.

The book, though it was written by several authors, is very consistent both substantively and stylistically which should be credited primarily to the editor. The formal layout of the publication does not raise any objections and the graphs and tables enclosed in the book enrich the text and facilitate the reader's perception of issues which are often complex. The reviewed work is written in a clear language. The book was created, as it is noted in the introduction, at a time when there was a stormy debate in the European Union over the ratification of the Treaty of Lisbon so the editor explained that the individual authors referred to the solutions provided in that Treaty only in so far as they considered it necessary. In such a situation, it was the only possible solution. Certainly it was the right decision to devote within Chapter I (very interesting by the way) - a whole separate subsection by J. Zemánek to a debate on the issue of compatibility of the Lisbon Treaty with the Czech constitutional order and discuss the key (not only for the Czech Republic but also for other courts and constitutional courts in the EU, which also later ruled on the constitutionality of the Treaty

of Lisbon) ruling of the Czech Constitutional Court of 26 November 2008, ref. Pl. ÚS 19/08.

The authors of the book arrive at a whole range of relevant conclusions. They substantiate that the Czech Republic does not have to play the role of a “master brake” in the European integration and that both courts and administrative authorities are doing quite well in the new, merely five-year-old post-accession reality. The authors also rightly, in different parts of the study, defend the argument that membership of the Czech Republic in the EU does not undermine its sovereignty but it is an opportunity to participate in the integration processes in Europe, keeping the rights of a respected partner. In order for this to happen, however, political elites must have a vision of the Czech Republic in Europe and try to faithfully pursue it. We should agree with the authors’ point of view, who having analyzed the decision-making procedures in the European Union come to a conclusion that it is not the right of veto that constitutes the strength and real impact of a given country on the decision-making process in the EU, but its coalition ability, efficiency of diplomacy and arguments with which it is able to induce other countries to its position.

But – since the book covers the period 2004-2009 – the fact that the most important event within the membership of the Czech Republic in the EU, i.e. Czech Presidency of the Council of the European Union exercised between 1 January - 30 June 2009, is not reflected in it even in a concise form constitutes certain shortcoming. On the one hand, it is clear that the Presidency itself could be the subject mat-

ter for a separate book and the fact that the presidency coincided with the preparation of this publication would be an additional difficulty for the authors and in order to make its fair and full assessment, they would have to have more time distance as the editor explains in the preface of the book. On the other hand, in reviewer’s opinion, the authors might have – without compromising the design of the book – added a brief chapter (or section) which would include at least a description of the preparations for the Czech Presidency and the presentation of its priorities. Were the authors to prepare the next edition of the book in future - which the reviewer encourages them to do (perhaps in a perspective of the next five years) - it would be certainly advisable to include in such a work an analysis of the major milestones of the Czech Presidency.

The reviewed publication is undoubtedly an interesting analysis of the outcome of five years of membership of a new “Member State” in the European Union. The Czech experience in this area is very rich and may be of interest to readers from other Member States, especially from those that joined the EU at the same time as the Czech Republic or later. However, the linguistic intricacies may often be an insurmountable obstacle. It is therefore necessary to emphasize the relevance of the decision to add a comprehensive summary in English at the end of the book and to suggest that in the future the publication might also be written entirely in English.

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