

Author: Bolesław Banaszekiewicz

Title: Nad komentarzem do nowego czeskiego kodeksu cywilnego / On the Commentary to the New Czech Civil Code

Source: Kwartalnik Prawa Prywatnego (“Quarterly of Private Law”)

Year: 2017, vol. XXVI, number 1, pages: 39-73

Keywords: private law, legal codification, commentary to legislation, Czech legal history

Discipline: Private Law

Language: Polish

Document type: Article

Publication order reference: boleslavb@gmail.com

Abstract:

The Civil Code of 3 February 2012 has been in force in the Czech Republic since 1 January 2014. The new Code constitutes the chief groundwork for a wide-scale recodification of Czech private law, and is envisaged as the core of this part of the Czech legal order and the point of reference for the remainder of its provisions.

The present author considers the commentary by Filip Melzer, Petr Tégel et al., launching the series to be published by the Prague publishing house Leges and entitled *Občanský zákoník: Velký komentář* [The Civil Code: The Great Commentary], from the scholarly point of view, as the most interesting of the several multi-volume commentaries to the new Civil Code which have appeared so far on the Czech book market. Out of the prospective nine volumes of the Great Commentary three volumes – I, III, and IV – were issued by the end of 2016. Volumes I and III address a major part of Book One of the Code (“General Provisions”), Volume IV covers the whole of Book Two (“Family Law”).

The article focuses particularly on the way the commentators have treated the following issues: the definition of private law and how its implementation is independent of the implementation of public law (Section 1.1 CC); the special clause intended to prevent arbitrariness in the application of private law (Section 13 CC); the broad legal definition of “thing” (Section 489 ff CC); the new legal institution of family enterprise (Section 700 ff CC); the situation of sexual minorities, especially in the context of sex change (Section 29 CC), adoption (Section 794 ff CC), and the fact that the Czech legislator has left the essential regulation of same-sex registered partnership out of the new Civil Code (cf. Section 3020 CC).

One of the Great Commentary’s strengths is its endeavour to show the historical, comparative, and theoretical context of the provisions adopted by the Czech legislator. A full legal exposition of provisions of a code requires showing all the salient factors that have shaped them or should be taken into account in their interpretation. This is what the Great Commentary has achieved, albeit not always with the same intensity and thoroughness.

Czech private law jurisprudence flourished before the Second World War, and its period of prosperity had already begun under Austrian reign. Had it not been for the unfavourable political situation from 1938 to 1989 which was detrimental to the quality of legislation, the legal sciences, and legal culture, Czech civil law would no doubt have been among the best in Europe in these years. The Great Commentary as well as the new Civil Code prove that the Czech legal community are making up for the time lost, the reservations and criticisms voiced on the Code itself notwithstanding.