Author: Bolesław Banaszkiewicz

Title: Powojenne przemiany czeskiego ustawodawstwa dotyczącego małżeństwa (wybrane zagadnienia) / The Post-War Evolution of Czech Legislation on Marriage (Selected Issues)

Source: Kwartalnik Prawa Prywatnego ("Quarterly of Private Law")

Year: 2021, vol. XXX, number 3, pages: 369-504

Keywords: marriage, divorce, Czech legislation, Czechoslovak legislation, codification of civil law

Language: Polish

Document Type: Article

Publication order reference: Warsaw [boleslavb@gmail.com]

Abstract:

The article presents the evolution of Czech (and, before 1993, Czechoslovak) legislation on marriage after World War II, including the legislation currently in force, as well as selected legal ideas for the future. The author distinguishes five historic stages of the legislative changes in question: (1) unification acts 1949–1950 and their amendments introduced in the 1950s; (2) recodification acts in the 1960s with amendments introduced before 1989; (3) first legislative changes in the wake of the fall of the Communist regime (1991–1992); (4) the so-called big amendment in 1998 and subsequent changes in the Family Act 1963; (5) Czech recodification which entered into force on 1 January 2014. In relation to these stages, the author describes and partially evaluates legislative changes, especially those regarding the following issues: the statutory definition of marriage (insofar as it has been developed), as well as statutory provisions concerning the purpose of marriage and the essential rights and duties of the spouses; capacity to enter into marriage, legal impediments to marriage and the legal consequences of disregarding an impediment; legal reasons for divorce, legal reasons for rejecting divorce petition despite the existence of a divorce reason, divorce proceedings; maintenance obligation between spouses and between divorced spouses; legal standing of a decedent's spouse under inheritance law. Legislative changes are discussed in the context of the constitutional background and by selective references to Czech case law and jurisprudence. A part of the article includes an overview of and a commentary on the bills filed during the 8th legislative period (2017-2021) of the Chamber of Deputies of the Czech Parliament with a view to amending a number of legal provisions on marriage. The last part of the article includes author's reflections de lege lata and de lege ferenda on some problems of the institution of divorce and of the standing of a decedent's spouse in Czech law.