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THE CZECHOSLOVAK CIVIL CODE OF 1964 AND ITS 1982 AMENDMENT WITHIN THE FRAMEWORK OF CZECHOSLOVAK CIVIL LAW

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INTRODUCTION

Czechoslovak civil law is rich in history. Its roots reach back for many centuries to the beginning of the Czech State in the seventh century A.D.¹ In those early times, Czechs and Slovaks governed them-

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1. Three historic areas make up present day Czechoslovakia: Bohemia and Moravia, the homelands of the Czechs, and Slovakia. About 3000 years ago, this area was populated by three distinct ethnic groups: the people of Unetrice, in an area north of present-day Prague, the so-called “people of the barrows,” past natives of southern Germany who inhabited Bohemia and Moravia and later formed Celtic tribes, and the people of Lusatia, who evolved into the original Slav inhabitants. F. KAVKA, AN OUTLINE OF CZECH-OSLOVAK HISTORY 7, 10-11 (2d ed. 1963). These ethnic groups fought and intermingled among one another, with the Celtic tribes eventually, but only temporarily, overcoming the original Slav population. They, in turn, became dominated by transient Germanic tribes making their way south through Bohemia, id. at 11-12, which largely disappeared around 450 A.D. Slavic tribes, originally from the area between the Volga and Dnieper Rivers, were pushed farther westward and southward by other expanding peoples from the east. By the end of the fifth century, these various ethnic groups originally formed in small units and gradually joined larger tribes distinguishable as Czechs or Bohemians, Moravians and Slovaks. S. H. THOMSON, CZECHOSLOVAKIA IN EUROPEAN HISTORY 7 (1965).

Around 800 A.D., there began perceivable movements toward unification among these groups and the creation of political entities. Struggling against the Slovakian Prince Pribina, Moravia’s Prince Mojmir prevailed to form the “Great Moravian Empire,” perhaps a misnomer, for it was a state with “neither clearly defined boundaries nor a sound internal organization . . . . Under the rule of the successors of Mojmir (d. 846),
selves by unwritten customary law. Beginning in the tenth century, law developed separately in the Czech speaking regions of Bohemia and Moravia. Slovakia was occupied by the invading Magyars and became subject to the Hungarian crown. Both parts of the country were, however, frequently united under the same king. In 1526, the throne of Bohemia came to Archduke Ferdinand I of Austria, brother of the Hapsburg Holy Roman Emperor Charles V. Austrian rule continued until 1918, when Bohemia and Moravia were reunited with Slovakia to form the Republic of Czechoslovakia.

Rostislav (d. 870) and Svatopluk (d. 894), Greater Moravia strengthened its internal organization and secured its position among the embryonic nations of Europe.” Id. at 10. Not only did these princes politically unify the area, but they oversaw the christianization of Moravia from Byzantium. Id.; see also Dvornik, The Byzantine Mission to Moravia, in 2 CZECHOSLOVAKIA PAST & PRESENT 1107-21 (M. Rechcigl ed. 1968). See generally K. KROFTA, A SHORT HISTORY OF CZECHOSLOVAKIA (W. Beardsmore trans. 1935).


3. See generally KAVKA, supra note 1, at 17-18; KROFTA, supra note 1, at 17-18.

4. KAVKA, supra note 1, at 18; KROFTA, supra note 1, at 3-4.


6. The nationalistic sentiments of the Czechs and Slovaks were primarily responsible for the establishment of the Czechoslovakian Republic in 1918. A HISTORY OF THE CZECHOSLOVAK REPUBLIC 1918-1948, at 3 (V. Mamatay and R. Luza eds. 1973). Both the Czechs and Slovaks had little reason to remain attached to the Austro-Hungarian Empire.

The Czech peoples, who had “achieved by 1914 a level of social, economic, and cultural development second only to the Germans in the empire,” id., had not attained their political objective of restoring “the historic ‘state rights’ (Staatsrecht) of the Kingdom of Bohemia and . . . secur[ing] for it a place in the empire” similar to that achieved by the Kingdom of Hungary with the 1867 Austro-Hungarian compromise. Id. at 4. The inability to realize their political ambitions created frustration in the Czechs leading to alienation from the Hapsburg dynasty and the Austrian Empire. Id.

The Slovak peoples had even more compelling reasons for not attaching loyalty to their pre-1918 political system. The Hungarian policy of transforming the country into one ethnic and culturally homogeneous people brought oppression to Slovak cultural life. Id. at 7. This accounts for the mass emigration of Slovak people to the United States and other countries at the turn of the century. Id. In addition, unlike the Czechs, the Slovaks were never given adequate representation in their parliament. Id. at 8. Consequently, they felt no allegiance to remain a part of Hungary. Like the Czechs, the Slovaks before the First World War had no plans to seek independence and unity in the formation of a separate state. Id. at 10.

Plans for a separate and independent state developed, however, with the outbreak of World War I and the prospect of the breakup of the government of Austria-Hungary. Czech leaders included the Slovak people in their struggle for independence. This was
Legal development was similar in both areas. By the end of the

done both out of empathy for the Slovak plight and, also, as a way to direct Russia's sympathy for the Slovaks towards the Czech cause. Id. at 18. Hopes of Russian support, however, were soon dashed. The Russian armistice of December 5, 1917, which included the declaration that the question of national minorities was an internal one for the state involved, forced the Czechs and Slovaks to look to the United States for support after that country declared war on Austria-Hungary on December 7, 1917. Id. at 19. President Woodrow Wilson, in response to the Austro-Hungarian Government's offer to discuss peace, replied on October 19, 1918 that the recognition by the United States of the aspirations of the Czechs and Slovaks for freedom required that these two peoples determine for themselves how the Austro-Hungarian Government could satisfy their objectives for nationhood. Id. at 24. The panic created in Vienna by Wilson's reply culminated in the disintegration of the Empire approximately one week later. Id. at 25. The "disappearance of the Hapsburg empire left a legal vacuum in East Central Europe," id., which was partially filled by the establishment of the Czechoslovak state in late October, 1918. Id. at 26.

The new Czechoslovak nation encompassed the three Czech territories, formerly under Austrian influence (Bohemia, Moravia and Silesia), and the two Slovak territories, formerly under Hungarian influence (Slovakia and Ruthenia). Id. at 40. The country covered an area of 54,244 square miles, making it the 13th largest European nation. Id. at 39. In population, Czechoslovakia became in 1921 the ninth most populous European state with 13,374,364 people. Id. at 40.

A diverse representation of national minorities was found in the new Czech and Slovak nation. The northwestern Bohemian and eastern Silesian districts had not minorities but majorities of German people. Id. at 39. The existence of such a large number of Germans along the Czech/German border would prove crucial in events leading to the fateful Munich agreement and the Second World War. See infra note 25. A higher standard of living existed for the Germans of Czechoslovakia. Id. at 46. Their population had a higher proportion of industrial workers than the Czechs. Id. Social stratification of the Germans tended to be more rigid than the Czechs, id., with the German nobility continuing to regard themselves as attached to the German nation and culture across the border. Id. at 47. In Slovakia and Ruthenia, a Hungarian minority existed. Id. at 39. They primarily embraced the social patterns of old Hungary. Id. at 47. The old authoritarian value system of Hungary died slowly, but did finally succumb through the experiences of the Hungarians working under post-war democratic Czechoslovakia. Id. "The creation of Czechoslovakia liberated the Slovaks from foreign rule, but at the same time constituted a veritable revolution resulting from the confrontation of the more religious, traditional, and generally more conservative Slovaks with the rationalistic, progressive, and often agnostic Czechs." Id. at 46.

The Czech and Slovak economies, like the cultural life of the two peoples, differed at the formation of Czechoslovakia. The situation "represented a challenge to the new Czechoslovak Republic to bring about a more equitable balance between its eastern and western provinces." Id. at 49. In the east, the former Hungarian provinces of Slovakia and Ruthenia were the most economically underdeveloped parts of the new nation. Id. Slovakia contained only 17% of former Hungarian industries, id. at 48, and its agriculture was not as modernized as other parts of former Hungary. Id. at 49. This accounted for 17.1% of Slovakia's population being employed in industry and 60.4% employed in agriculture and forestry. Id. Compare these figures with the former Austrian provinces located in the west. The industrial capacity of the new nation was almost entirely located in Bohemia, Moravia and Silesia. This capacity, inherited from the former Austro-Hun-
thirteenth century, unwritten customary law had developed to such an extent that the nobility and city dwellers were bound by their own distinct bodies of law. Village law, with its origins in unwritten customary law, was gradually supplanted by regulations issued for the village pop-

The transition in the Czech provinces from a former member of the Austro-Hungarian Empire to part of Czechoslovakia was "swift and orderly, [while] in Slovakia it was slow and confused." Id. at 56. The Czech provisional government, the Prague National Committee, functioned during the first two weeks of the new nation. Id. at 51. "It was composed of the leaders of prewar Czech political parties, their representation being proportionate to their electoral strength in the last Austrian election of 1911." Id. Public order was stressed by the National Committee through "legal continuity with the defunct Austro-Hungarian Empire." Id. at 52. The first act adopted and maintained the Empire's laws and ordinances and kept intact the state and local administrative and judicial bodies under the control of the National Committee. Id. While the Czech National Committee quickly gained control of the Czech provinces, the Slovak National Committee "failed to establish its authority over Slovakia." Id. at 56. The combination of social turbulence occurring upon the return of Slovak soldiers from the disbanded Austro-Hungarian army, id., and the number of local national councils and workers' councils were primarily responsible for the lack of control of the Slovak National Committee of Slovak Affairs. Id. Matters of importance to Slovakia were consequently decided by the Prague National Committee. Id.

A provisional constitution, id. at 54, which became effective on November 14, 1918, id. at 55, was adopted by the Prague National Committee. The constitution provided for a unicameral national assembly, which would elect a prime minister and cabinet. Id. at 53. A president, possessing very limited authority, would be the head of state. Id. "While the provisional constitution represented an extension of Western constitutionalism into East Central Europe, its terms stemmed predominantly from the political and social realities that prevailed in the Czech provinces at the time." Id. at 54.

The provisional National Assembly had a total membership of 268 representatives. Id. at 55. Czech provinces had 228 members, while the remaining 40 members came from Slovakia. Id. Within the National Assembly, seven parties or "clubs" were present. Id.

In the Constitution of 1920, provisions were made for an elected president, a cabinet of ministers, an independent judiciary and a bicameral legislature, consisting of a Chamber of Deputies and a Senate. Id. at 95. "Following Western models, the constitution provided for the protection of fundamental civil and political rights of all citizens on a completely equal basis, and for special protection of the rights of national and religious minorities." Id. at 95-96. The adoption of a constitution on February 29, 1920, id. at 97, by a unanimous vote of the provisional National Assembly, ended the need for this body. Id. at 98. The dissolution of the provisional National Assembly came on April 15, 1920, with elections following under the new constitution several days later. Id. "Czechoslovakia's 'revolutionary' (i.e. formative) period had come to an end." Id. The new elections marked the beginning of regular constitutional government in Czechoslovakia. Id. The First Republic of the new nation was born.
ulation by the lords holding the land. The thirteenth century was also marked by the slow reduction of customary laws to writing and the appearance of scholarly legal texts—the most notable being that of On-drej de Dubá (On the Czech Law) published circa 1400.

Another thorough work on Czech law entitled Nine Books on Czech Law, by Viktorin Kornel de Vsehrde, appeared in 1500. It is a systematic treatise with analytical comments and criticism on the Czech law then in force. The work testifies to the fact that Roman law, although well known in the Czech kingdom, had no influence on Czech legal development at that time. The end of the fifteenth century also witnessed the codification of the law governing the nobility, enacted by parliament in 1500 under the title Constitutions of King Vladislav.

In the second half of the sixteenth century, Roman law began to influence Czech legal development in the domain of city law. The laws governing the nobility had been unaffected by Roman legal concepts, until the seizure of the Bohemian throne by Ferdinand II in 1620. In 1627, Ferdinand imposed on the Czech kingdom a new con-

7. See generally KAPRAS, supra note 2, at 13-29.
8. Id.
9. Id.
10. See generally KROFTA, supra note 1, at 48-51, 64.
11. In 1556, Ferdinand I of the Hapsburg family became Emperor of what would later become the Danubian Empire of Bohemia, Hungary and Austria. In an effort to strengthen and extend the power of his family in Europe, Ferdinand rekindled affiliation with the Holy Roman Empire. THOMPSON, supra note 1, at 38. Legal reforms were thus effected throughout the Empire, but because the affiliation between Bohemia and the Holy Roman Empire was a loose one, Bohemia remained comparatively immune from the “manifold reforms.” Id. at 35-37. Roman Catholic influence was also felt. With the introduction to Bohemia in 1556 of the Jesuit Order and the restoration in 1561 of the archbishopric of Prague, the Roman Catholic Church began toward the end of the reign of Ferdinand I “a new life on the lines of the reform principles laid down by the Council of Trent.” KROFTA, supra note 1, at 67. These religious and political developments were challenged by the constitutional Letter of Majesty, signed by the later Rudolf II in May 1609, which operated as “a surrender of the absolutist pretensions of the Crown [and primarily] assured the free exercise of religion to all who professed the ‘Confessio Bohe-mia.’” THOMSON, supra note 1, at 104.
12. G. BLUNDEN, EASTERN EUROPE 33 (1965). The violent seizure of the Bohemian throne by the Holy Roman Empero, Ferdinand II, was the direct result of religious and political conflicts whose roots lay in the early years of the 15th century:

More than a century before Martin Luther precipitated the Protestant Reform-formation by nailing his 95 theses to the door of a church in Wittenberg, Germany, the Czech clergy had preached against the abuses Luther attacked: the sale of indulgences and Church positions, the excessive veneration of holy pictures and statues and other evils.

Id. at 33. One of the most outspoken advocates of church reform was Master John Hus, a priest and professor of philosophy who became a dean of the University of Prague in 1401. At that time the faculty of the university, like the hierarchy of the Church in
stitution based on Roman law. As a result, a gradual process was begun through which Czech laws were made increasingly uniform.

During the reign of the Holy Roman Empress Maria Theresa (1740-1780), work was begun on codes which were to apply to both Bohemia, was mostly German. Hus was the leader of the Czech faction at the university, which disputed a number of theological questions with the German professors and clergy. Hus's propagation of the views of the English theological reformer John Wycliffe met with widespread opposition at the university and in the Church establishment, because Wycliffe believed that man could obtain the grace of God and enter into heaven without the aid or intercession of the clergy. Id. at 32.

Hus's books were denounced by the German faculty members and he was excommunicated by the Pope. In 1415 he was delivered into the hands of the Church Council of Constance by Emperor Sigismund and was burned at the stake as a heretic. Id.

The execution of Hus aroused nationalistic sentiments throughout Bohemia and the Bohemian Diet refused to permit Sigismund to sit on the Bohemian throne until 1436. The uneasy peace between the Empire and the increasingly Protestant Bohemian nobility was exacerbated by the Protestant Reformation, which swept through Europe in the 16th century, and the accession of the Hapsburgs to the Bohemian Throne in 1526. Id.

During the 16th century, the Hapsburgs made repeated attempts to suppress non-Catholic elements and Emperor Ferdinand I called in the Jesuit Order in 1556 to reconvert Bohemians to Catholicism. KROFTA, supra note 1, at 67. The Jesuit efforts met with little success and Lutheran influence continued to spread. In the spring of 1618, a meeting of Bohemian nobles was held to protest the closing of two Protestant churches by the authorities and members of the Bohemian estates reached the conclusion that their only option was revolt. BLUNDEN, supra at 33. When Emperor Rudolph II sent three emissaries to the nobles, they were thrown out of a window in Hradcany Castle in Prague. Id.

In 1619, the Bohemian Estates refused to accept Rudolph II's cousin Ferdinand II, soon to become Holy Roman Emperor, as King of Bohemia, and instead chose Frederick V of the Palatinate, as their sovereign. A Calvinist, Frederick II was a leader of the Protestant faction in the Empire. Id. The Emperor refused to accept the decision, and in 1620 an Imperial Bohemian army met the Bohemian army at White Mountain on the outskirts of Prague and crushed Frederick's forces. The rebel leaders were executed or exiled and their lands confiscated. Catholicism was declared the sole legal faith of Bohemia and German became an official language along with Czech. Id.

The Battle of White Mountain ignited the Thirty Years' War (1618-48) of religion and the conflict spread throughout Europe. Bohemia was almost destroyed; its towns burned, its countryside made waste. Although the population in 1618 had been nearly three million, it was but 900,000 in 1648. Id. Over 30,000 non-Catholic families were compelled to emigrate from Bohemia. KROFTA, supra note 1, at 76.

In May 1627, Ferdinand II issued his new constitutional Verneuerte Landesordnung (Renewed Ordinance), replacing the Letter of Majesty and reinstating the Roman influence, particularly as to the restoration of Catholic and other religious precedence. THOMSON, supra note 1, at 114.

The Renewed Ordinance "was a far-reaching experiment in the expansion of the royal power," id., as it made the Crown hereditary and took from the Diet its right of initiative and its right to attach conditions to money grants. Id. at 115. The Diet was now restricted to proposals by the Crown, which in addition to extending its legislative powers, now controlled the higher official appointments and the bureaucracy. Id. See generally R.J. KERNER, BOHEMIA IN THE EIGHTEENTH CENTURY (1932).
Bohemia and the Austrian duchies. The Civil Code of 1811, the Codes of Civil Procedure (1781), Criminal Law (1768) and Criminal Procedure (1803) were enacted about this time.

14. In 1749, Maria Theresa abolished both the Austrian and Bohemian Court Chancelleries and set up in their place two offices, a supreme administrative office and a supreme court of justice, for joint administration over Austria and Bohemia. "The Lands of the Bohemian Crown, hitherto administered independently, were thus, in the sphere of political and judicial administration, united with the Austrian Landa." Id. During the partially concurrent reigns of Maria Theresa, Queen of Hungary and Bohemia, and her son and successor, Joseph II (1765-1790), an effort was made to transform Enlightenment influences into legal reforms. See generally M. Chambers, R. Grew, D. Herlihy, T.K. Rabb & I. Woloch, The Western Experience Since 1640, at 636-37, 680-81 (1974) [hereinafter cited as Chambers]. Joseph II was actually the most "enlightened" of the major European monarchs in the 18th century, overseeing, however autocratically, the reforms of various codes to reflect these Enlightenment ideals. Id. at 680; see infra notes 15-18 and accompanying text.

15. The Civil Code of 1811 was actually not promulgated until more than three decades after the reign of Maria Theresa, and two decades after that of Joseph II, but their "comprehensive codification" is today still considered "the crowning masterpiece of Austrian judicial legislation." R. Kann, A History of the Hapsburg Empire 1526-1918, at 118 (1974). See generally Chambers, supra note 14, at 680-81; H. Strakosch, State Absolutism and the Rule of Law: The Struggle for Codification of Civil Law in Austria 1753-1811, at 1-163 (1967).

16. Initiated under Maria Theresa, the new civil procedure code left more initiative to the litigants than ever before. Kann, supra note 15, at 180.

17. The Constitutio Criminalis Maria Theresa of 1769, the main legislative work of the Empress's reign, reflected her unwillingness to fully embrace Enlightenment ideals, despite the efforts of competent advisors on her various legal reform commissions. Designed primarily to codify procedure, the code nonetheless comprised a great deal of substantive law. Kann, supra note 15, at 179. The system of government prosecution in matters of public interest was enlarged, but the inquisitory principle was still largely retained. "All the barbarities of various kinds of capital and other physical punishment, based on torture as a means of obtaining confessions, were preserved, contrary to the pleas of reformers." Id. Maria Theresa's slow recognition of humanitarian reforms introduced elsewhere has been attributed, not to some innate cruelty on her part, but to her "inability to comprehend the new thought that proof would be more convincing if based on a combination of testimony by witnesses and circumstantial evidence than primarily on extorted confessions." Id. at 180.

18. Joseph II promulgated his code of Substantive Criminal Law in 1787, by which he "substantiated the Enlightenment's belief in the efficacy of legal reform as an instrument of social progress," Chambers, supra note 14, at 680. Kann, supra note 15, at 180. Although capital punishment was eliminated for most crimes, it was replaced with life sentences of hard labor "of the most cruel kind like pulling ships on treading mills to give the government the benefit of a wretched criminal's toil." Id. Certain crimes, such as witchcraft and apostasy, were altogether abolished; the use of torture in criminal proceedings was prohibited. Chambers, supra note 14, at 680. Perhaps the most striking egalitarian reform, however, was the elimination of class differences in the application of criminal law. Nobles convicted of crimes were humiliatingly subject to the same laws as were commoners and, thus, were subject to the same sentences. Id.; Kann, supra note 15, at 180.
In 1514, Tripartitum opus juris consuetudinarii inclyti regni Hungariae partiumque adnexarum (Three-part Work of the Statutes and Customary Laws of the Renowned Monarchies of Hungary, the Beginnings and Codifications) was published in Slovakia. This work consolidated all law of the nobility: public, private, penal and proces-
sual.\(^1\) Although it was accepted by both the king and parliament as an official compilation, it was not enacted as law. Nonetheless, it acquired widespread adherence. City laws were partially consolidated in a compilation entitled Articuli juris tavernicalis and approved by King Rudolph II in 1602. The Tripartitum, which was gradually extended to apply to all citizens and continued to be the law of the land until the second half of the nineteenth century, was supplemented by numerous royal decrees. The then applicable law was consolidated in a private collection of law entitled Corpus Juris Hungarici and published in 1696.\(^2\) Between 1850 and 1860, when Hungary was administered from Vienna,\(^2\) the codes then in force in the Czech kingdom and the Austrian duchies (such as the Civil Code of 1811) were directly applied in the lands of the Hungarian crown, including Slovakia.\(^2\) After 1861, however, when Hungary resumed its self-administration, the situation

\(^{19}\) See generally S. LUBY, DĚJINY SŮKROMNÉHO PRÁVA NA SLOVENSKU [HISTORY OF PRIVATE LAW IN SLOVAKIA] (1946); 5 ČESKOSLOVENSKÁ VLASTIVEDA [CZECHOSLOVAK STUDIES] 63-104 (1931).

\(^{20}\) 5 ČESKOSLOVENSKÁ VLASTIVEDA 63-104.

\(^{21}\) Following the European-wide revolutions in the late 1840's, including that of Hungary, the new Hapsburg emperor Francis Joseph issued a new constitution, promulgated "purely by virtue of the imperial power. . . ." KROPTA, supra note 1, at 110. The new constitution recognized only a single common citizenship of the Hapsburg Empire and a single commercial and customs area, and introduced a single imperial parliament of two chambers. Id. at 110-11. It was by this policy of centralization, known by its originator as the Bach system, that Francis Joseph attempted to rule Hungary from Vienna. Helmreich, Hungary in History, in HUNGARY 10 (E. Helmreich ed. 1957). Bach staffed his administration with non-Hungarians, ignorant of the Hungarian language, and, consequently, German became the official language. He made Croatia, Transylvania and southern Hungary into provinces separate from the Empire. The Magyars refused to accept the system, although Bach introduced many needed reforms, built modern roads and railroads, and raised the material prosperity of the country. Id.

"The war with Italy and France in 1859 convinced the government in Vienna that concessions were necessary . . . . [T]he Diet . . . petitioned for the restoration of the territorial integrity of the kingdom and the restitution of the fundamental laws." Id. See generally C. MACARTNEY, THE HAPSBURG EMPIRE 1790-1918, at 426-51 (1968).

\(^{22}\) A wide range of enactments were issued but were of provisional force as to Hungary, officially pending the establishment there of civilian government. Many of the enactments were, however, actually applied immediately in Hungary and Transylvania, where officials of the civilian administration were, from the start, directly responsible to the Ministry in Vienna. MACARTNEY, supra note 21, at 437.
existing prior to 1850 was reinstituted.23

After the establishment of the Czechoslovak Republic in 1918, each constituent part of the country, Bohemia and Moravia, Slovakia and Subcarpathian Ruthenia, continued to enforce the laws inherited from the Austro-Hungarian Empire. Nevertheless, a process of legal unification was commenced and new codes—civil, civil procedure, criminal, criminal procedure and commercial were prepared by the Czech Ministry of Justice.24 As a result of World War II, these

23. The Compromise (Ausgleich) of 1867 established the dual monarchy of Austria-Hungary and restored the territorial integrity of Hungary. Id., at 10-11.

24. The need to unify the civil law, as well as the penal law, throughout newly independent Czechoslovakia was essential to promoting the legal reality of one nation governed under a legal system equally applicable to Czechs, Slovaks, and all minorities. After World War I, the Ministry of Justice was principally assigned the difficult task of unification. See Government, Law and Courts in the Soviet Union and Eastern Europe 1238-39 (V. Gsovski and K. Grzybowski eds. 1959) [hereinafter cited as Gsovski & GRZYBOWSKI]. In addition to creating a special Ministry for the Unification of Law, the Ministry of Justice drafted a civil code as preparation for its application throughout the new nation. Id. at 1239. The final draft of the proposed civil code was approved by the cabinet about two decades later in 1937. Id. A parliamentary subcommittee held numerous discussions on the proposal, but events after the Munich agreement, see infra note 27, permanently delayed passage of the civil code into law. Id.

The enactment of a unified penal law came much closer to success than the civil code. The criminal statutes were gradually applied in a uniform manner by impartial courts "without any political or other bias in a liberal and humanitarian spirit" throughout the entire country. Id. at 994-95. The criminal law of the recently disbanded empires of Austria and Hungary was first retained by the new Czechoslovak Republic in 1918. Id. at 994. The law was soon amended "to comply with the needs of the new democratic Republic." Id. Most notable among the new penal laws were the laws that reflected the latest thinking in criminology and penology. Id. Examples cited include: the law concerning suspended sentences and release on parole of 1919, and the law of 1931 dealing with criminal proceedings against juveniles. Id.

The civil and criminal laws of the First Republic (1918-38) were applied in the Czechoslovak judicial system by four tiers of courts, which had general jurisdiction over both areas of law. TADORSKY, infra note 26, at 269. The judges in these courts were guaranteed independence for life upon appointment by the President of the Republic or the Cabinet. Id. "They could be removed, transferred, or have their salaries reduced only upon conviction by a special senate of five judges of the Supreme Court or the Court of Appeals for gross malperformance of their duties." Id. Although the judges "had both the right and obligation to deny validity to any government ordinance in conflict with an Act of Parliament," the power to examine the constitutionality of laws was placed in a special Constitutional Court. Id. This special court could make a determination if a conflict arose between law and the Constitution but only on a very limited basis. Id. Professional judges, who were all required to obtain a law degree and pass a special examination, presided over all cases of original and appellate jurisdiction. Id. In special cases, laymen were involved in the judicial proceedings. Id. Such participation by non-judges took place in "special labor courts, in courts dealing with commercial matters, in cases arising out of social insurance, and in certain types of offences committed through the printed word." Id. A jury system was used during criminal trials for felonies which were
codes were never enacted.20

punishable with at least five years imprisonment. Id. A special court empowered to protect against unlawful acts of the administration, called the Administrative Court, was composed “of experts in public law and administration appointed for life by the President of the Republic.” Id. The judges of this court “became intrepid protectors of individual rights against interference on the part of any government agent . . . from the President of the Republic down to the village constable . . . .” Id. at 270.

In assessing the overall performance of the judicial system of the First Republic, one observer has noted that justice was dispensed “with reasonable speed and ample impartiality at a relatively low cost [the one exception being the ‘rather slow work’ of the Administrative Court. The prewar system] provided for full legal protection of the rights of the individual, not only against violations by private citizens and groups, but also against infringements by government authorities.” Id. See VANEČEK, supra note 2, at 429.

The interwar years witnessed the functioning of the First Republic under the Constitution of 1920, see supra notes 5 and 6, “modeled . . . largely after that of the United States.” CZECHOSLOVAKIA: A COUNTRY STUDY 158 (1982). The multi-party state of the First Republic, consisting in 1925 of twenty-nine political parties, has been described as “a model of democratic pluralism in Central Europe . . . .” Id. The two decades of political continuity and stability, characteristic of the First Republic, were without parallel in any other country in Europe. THOMSON, supra note 5, at 137. This twenty year period of Czechoslovak political history has been divided into four distinct phases:

First, a brief period of decidedly nationalistic policies, representing the release of the pent-up forces of a thwarted nationality, and roughly coinciding with the ministry of Karel Kramar; second, an interval characterized by a marked socialistic policy—Czechoslovakia’s psychological reaction to the wave of mild, liberal collectivism which swept over Europe in 1919 and 1920; third, after a colorless transition, a long era of agrarian dominance, lasting for a decade and a half, down to 1935; and finally, the ‘critical period’ resulting from the incursion of German national socialism into Czechoslovak affairs, and lasting down to the dismemberment of the Republic by the so-called Peace of Munich.

Id. at 137-38. For a detailed discussion of these four periods of political history in the life of the First Republic, see id. at 137-69.

25. The first Czechoslovak Republic, founded in 1918, see supra note 6, was to come to an abrupt end with events in 1938 leading to the Second World War. The demise of the First Republic was due primarily to events involving the German majorities occupying the northwestern districts of Bohemia and the districts of eastern Silesia. MAMATEY & LUZA, supra note 6, at 39. These Germans resented the existence of these German majorities in the Republic, preferring instead the time when the Hapsburg Empire ruled the region. Id. at 240. “They had not lost their citizenship and there was a place for them in the new nation if they would forget the past and work for the future. However, dreams of the old life died hard.” Id.

Such dreams of the old life were exploited by Adolf Hitler, who “realized that once Czechoslovakia was overcome, German troops would debouch into East Central Europe, outflanking Poland, menacing Austria and overawing Hungary and Rumania.” Id. at 239. The value of a dominated Czechoslovakia to Nazi Germany’s hegemonic plans was thus clear. The new republic had to be defeated, but to avoid opposition, Germany must not appear to be the aggressor. Id. Hitler consequently exploited “the existing Sudeten German minority problem in Czechoslovakia.” Id. This was done through the willing participation of the Sudeten Germans and through the pressure exerted by Britain and France on the Czech Government to make peace with Hitler, lest responsibility for a European
CZECHOSLOVAK CIVIL CODE AMENDMENT

war lie with Czechoslovakia. *Id.* at 243-44.

The Sudeten German Party was controlled by Nazis after Hitler came to power in Germany. *Id.* at 240. Nazi Germany provided financial assistance for the Party, “which subordinated its policies to the wishes of the Reich Foreign Ministry and the Nazi Party.” *Id.* The Sudeten German Party won the majority support of the German-dominated Czech districts in the 1935 elections. *Id.* “The success of the party . . . offered Hitler a welcome opportunity to achieve his goals.” *Id.* The leader of the Sudeten German Party, Konrad Henlein, presented the party as agent for Hitler’s plans of conquest. *Id.* at 242. Henlein desired not only the incorporation of Sudeten German territory into the Reich, but also the entire areas of Bohemia, Moravia and Silesia. *Id.* To do this, the Sudeten Germans would have to provide an excuse for Nazi Germany to attack Czechoslovakia. *Id.*

Hitler, in a February 20, 1938 speech, promised to protect “those fellow Germans who live beyond our frontiers and are unable to insure for themselves the right to a general freedom, personal, political and ideological.” *Id.* The excuse for attacking Czechoslovakia could come through the purported need to provide this protection to the Sudeten Germans. The scheme was to have Sudeten Party leader Henlein bring unacceptable demands to the Czech Government. *Id.* at 243. “Berlin would not intervene for its own sake, but cooperate closely with Henlein, who would seek to destroy Czechoslovakia under the cover of negotiating with Prague over self-determination.” *Id.*

The fear of war with the Sudeten Germans prompted Britain and France to apply pressure on Czechoslovakia for a settlement of Henlein’s demands. “This was the policy of appeasement that had been practiced in one form or another since 1919, with only one lapse in 1923.” *Id.* The May crisis of 1938, when for several days rumors spread of advancing German troops towards the Czech borders, reinforced the British and French attitude that the Czech Government must reach a settlement of the Sudeten German problem. *Id.* at 244. A short time after the crisis, “Hitler signed a directive for war against Czechoslovakia.” *Id.* at 245. No date was set for the offensive.

The negotiations between the Sudeten Germans and the Czech Government continued in futility. The Germans always found some excuse to reject any offer made by Prague. *Id.* The British and French forced the Czechs to accept a mediator in an attempt to resolve the dispute. *Id.* at 246. The Czechs feared the loss of ties with the West, and so capitulated to Henlein’s demands. *Id.* The acceptance by the government of virtually all of the Sudeten German’s demands put Henlein in an unexpected position. *Id.* The plan to have Czechoslovakia appear hopelessly obstinate and unreasonable had failed. A way out through a manufactured incident was concocted when the arrest of Sudeten German demonstrators resulted. *Id.* at 247. This offered an excuse to break off negotiations with the Czech Government. *Id.* Other incidents of a violent nature were also staged to increase tensions. *Id.* Hitler declared, on September 12, that he would not “look on calmly forever at a further oppression of German fellow countrymen in Czechoslovakia.” *Id.* Pleas to Hitler for negotiation and restraint were brought by Britain and France. Italy joined in urging Hitler to negotiate, although Mussolini did not desire his unprepared army to enter a major war. *Id.* at 249. The three powers helped to bring about the Munich conference. *Id.* at 249-50. At the table sat Chamberlain of Britain, Daladier of France, Mussolini of Italy and Hitler. The four leaders would “decide the fate of Czechoslovakia, a nation that had not been defeated in battle and would be unrepresented at the conference.” *Id.* at 250. The Munich agreement, requiring large portions of politically and economically vital territory to be ceded to Germany by Czechoslovakia, *id.* at 250, was signed on September 30, 1938. *Id.* The Czech Government, faced with the alternative of fighting a war alone, accepted the terms forced upon it at Munich.
After its seizure of power in February 1948,26 the Czechos-

Id. at 251. "The manner of the [Munich] capitulation indicated the depth of Western
fear that a European war could erupt over Czechoslovakia. It did not prevent war, how-
ever, because the Munich conference tricked Hitler into believing that there could be a
repetition for Poland." Id.

Munich was just a harbinger for the "darkness that [would settle] over the lands
. . . ." D. PAUL, CZECHOSLOVAKIA: PROFILE OF A SOCIALIST REPUBLIC AT THE CROSSROADS
OF EUROPE 28 (1981). Hitler pressured the Czech Government to agree to the demands of
the Slovaks for increased autonomy. Id. The nation was renamed "Czecho-Slovakia." Id.
The addition of the hyphen served "to emphasize a kind of confederative association
between the two major parts of the truncated state . . . ." Id. The hyphen proved to be
of transitory value. On March 14, 1939, Slovakia declared itself a separate state allied
with Germany. Id. It became "in reality a satellite of Nazi Germany." Id.

During this time, Hitler sought excuses to occupy the Czech state with Nazi forces.
The excuse was provided through manufactured incidents "by German agents in Bohe-
mia and Moravia that were blown up by the Goebbels press into brutal acts of oppres-
sion against the few Sudeten Germans remaining in the provinces." MAMATEY & LUZA
supra note 6, at 275. The Czech Government was forced "with uncompromising brutali-
yty" to surrender the Czech provinces to Germany. Id. Despite the fact that Germany
had agreed at Munich to guarantee the independence of the Czechoslovakian state, id.
at 274, Hitler occupied Bohemia and Moravia on March 15, 1939. Id. at 275. The two
Czech provinces became "protectorates" annexed to Germany. Id. All political parties
within the protectorates were outlawed. PAUL, supra, at 28.

During the world war which followed, the hopes for a future independent and democ-
tratic Czechoslovakia were kept alive by a government in exile in London. Id. at 29.
Keeping in contact with resistance forces in the provinces back home, the exiled govern-
ment concluded alliances with the United States and the Soviet Union. Id. at 30-31. The
hopes for the reemergence of a democratic Czechoslovakia were cast in doubt, however,
with a military decision that foretold which superpower would have the most influence
over post-war Czechoslovakia.

The liberation of Prague, the last major step in freeing Czechoslovakia from Nazi
subjugation, came in the spring of 1945 by Soviet troops. American forces, under the
command of General George Patton, could have been the first to recapture the capital
from the Nazis. At the time, United States troops were only 60 miles from the city,
Soviet forces were more than twice the distance away. Patton, however, did not advance.
He allowed the Soviets the time to reach Prague and fight the last remnants of the Ger-
(1959). This action had been agreed to by Roosevelt, Churchill and Stalin at their 1943
Teheran meeting. Id. at 123. This military decision would have, for millions of Czecho-
slovak people, "the most drastic political consequences. For them there was only one
possible interpretation: the West was not interested in Czechoslovakia, in her democracy.
She belonged in the Soviet sphere. The psychological impact was devastating." Id.

26. The liberation of Prague by Soviet troops on May 9, 1945, see supra note 25,
foreshadowed events of the next several years leading to the domination of the country
by the Czechoslovakian Communist Party via the February 1948 coup d'etat. See KRYST-
TUFUK, infra note 28, at 24-30. The short lived period of democratic rule experienced by
Czechoslovakia before the coup has been characterized as a "dismal three-year regression
into the night (of communist dictatorship)." KORBEL, supra note 25, at 121.

The details of a new government for post-war Czechoslovakia were negotiated be-
tween the two principal political forces during a conference in Moscow in March 1945. Krystufek, infra note 28, at 24. On one side of the table sat representatives of the government-in-exile located in London, during the war. Id. This political group was composed of the democratic political elements in Czechoslovakia before the war, headed by Eduard Beneš, former Foreign Minister and President under the First Republic (1918-1938). Id. Across the table were the Czechoslovak Communists, situated in Moscow during the war, and headed by Klement Gottwald. Id. The Communists had suggested holding the negotiations in the Soviet capital as a “suitable place.” Korbél, supra note 25, at 109.

The two political groups had very different plans for the new Czechoslovakia. The democratic group “had conscientiously prepared many legislative proposals designed to effect a smooth transition from the war to a peaceful political life, adequate economic reconstruction and social progress.” Id. at 114. The “solid front” put up by the communist group at the conference was not anticipated by Beneš’s representatives. Id. Gottwald and his associates completely dominated the proceedings, pressing home the tremendous psychological and political advantages accruing to them from the Red Army’s control over Czechoslovakia and the overt Soviet support of their cause.” E. Taborsky, Communism in Czechoslovakia: 1948-1960 at 13 (1961). The Communist proposal for the “government of the National Front of Czechs and Slovaks” was forced upon the democratic group. Id. The composition of the new twenty-five member government, which included Beneš as President, clearly demonstrated the advantageous position gained by Gottwald. Korbél, supra note 25, at 115. Four Czech parties were represented: Communists, Social Democrats, National Socialists and Catholics. Id. at 115-16. Two Slovak parties were represented: Communist and Democrats. Id. at 116. Each of the parties of the National Front had three members in the government. Id. Six additional members of the government were not officially allied with either the Democrats or Communists. Id. They were described as “personalities of national repute and experts without regard to their political membership.” Id. The most prominent among these personalities was Jan Masaryk, former Minister of Foreign Affairs under the First Republic and son of Thomas G. Masaryk, the founder and former President of the First Republic. The new government saw Masaryk as Minister of Foreign Affairs, but he was “held in check by the communist State Secretary . . . .” Krystufek, infra note 28, at 25. The Communists also held seven other cabinet seats, which comprised “all the key positions for the forthcoming battle for the body and soul of the Czechoslovak people.” Taborsky, supra, at 14. The total of eight cabinet positions held by the Communists did not reflect, however, their true influence in the new government. When party allegiance was taken into account, the Communists held “almost all positions of importance . . . .” Korbél, supra note 25, at 116. These positions were “the Premiership, two of the vice Deputy Premierships, the Deputy Foreign Ministership, the Ministry of National Defense, the Ministry of the Interior, the Ministry of Education, the Ministry of Information, the Ministry of Industry, the Ministry of Agriculture, and the Ministry of Social Welfare.” Id. Although the Democrats saw the Moscow agreement as a “factual foundation for political cooperation,” the Communists took the agreement as “a mere jumping-off point for the fulfillment of their own objectives.” Krystufek, infra note 28, at 24. The outcome of the Moscow conference has been described as “the deathbed of Czechoslovak democracy.” Korbél, supra note 25, at 120.

One of the first acts of the National Front was the Kosice Program of April 5, 1945. Mamatey & Luza, supra note 6, at 438. The program was approved through a proclamation of all the political parties. Id. It set forth the basic features of the economic system immediately after the war. Id. The Kosice Program provided “that the property of “trai-
tors and collaborators with the Nazi occupation' would be confiscated; the entire financial and credit system, insurance companies, natural energy resources, and key industries would be placed under the control of the state; and the economy would be planned." *Id.* This control was secured by four nationalization decrees in 1945, covering mining, energy production, manufacturing, food industries, banks and insurance companies. *Id.* at 438-41. The degree of nationalization can be viewed in terms of "employment weights," in which "the percentage of nationalization varied between 50 and 100% in producer goods industries and between 3 and 50% in consumer goods industries." *Id.* at 441.

The political development of post-war Czechoslovakia continued with the establishment of a "National Assembly" in October of 1945. *Korbél, supra* note 25, at 150. The 300 members of the National Assembly were selected by the various National Committees of the Provinces, but the six political parties within the country actually agreed to the distribution of the membership. *Id.* "Each of the six parties sent forty deputies to the parliament, an arrangement which gave the communists a double representation because of their device of a technically separate Communist Party of Slovakia. The remaining sixty seats were allotted to such special-interest groups as trade unions and cultural organizations." *Id.* at 150-51. Almost all of the special interest representatives joined a political party. *Id.* The result was substantial representation in the National Assembly for the Communists. "[T]he communists had 98 deputies, the National Socialists and Social Democrats 50 each, the Catholic Party 49, the Slovak Democratic Party 47, and the Ukrainian political group 5." *Id.* at 151. The National Assembly, due to the manner of selection of its representatives, lacked the character of a true representative democratic body. *Id.* at 151. Although "all democratic parties looked forward eagerly to elections [they] once again failed to anticipate communist strategy." *Id.*

In the ensuing campaign to send elected representatives to the Parliament, the Communists had five advantages over other parties. First, the Communists authored a provision in the democratic election law in which "voters were given the opportunity to vote for a so-called empty ticket if they did not wish to cast a ballot for any of the recognized political parties." *Id.* The apparent hope of the Communists had been that conservative voters, especially former supporters of the forcibly dissolved Agrarian Party, would rather cast an empty ballot as a protest than vote for one of the democratic parties. *Id.* Second, former Nazi collaborators could be stricken from the electoral lists if so identified by a member of the public. *Id.* Between 250,000 and 300,000 people lost their franchise. *Id.* After the election, however, the vast majority of the accused were cleared. *Id.* at 152. Third, the Communist Party had substantial access to the media. The Ministry of Information, headed by a Communist, controlled the radio and a large number of newspapers. *Id.* Fourth, the Communist Party platform, which spoke of freedom, democracy and free enterprise, "sounded more like the program of a middle-of-the-road party than of revolutionary communism." *Id.* This deceit, as evidenced by the 1948 coup and events thereafter, proved difficult for the democratic parties to deal with. They "were unable to outdo the Communist Party in national sentiment and in their voiced devotion to principles of liberty." *Id.* Fifth, the Ministry of Agriculture, under Communist control, "offered to farmers easy credit to buy agricultural implements and it distributed various minor and major favors." *Id.* at 153.

The results of the May 26, 1946, elections proved to be a "pleasant surprise" for the Communists but a "shock" for the Democrats. *Id.* "The Communist Party carried 38 percent of the electorate; the Social Democratic Party [led by a communist supporter] . . . 13 percent; the National Socialist Party, 18 percent; the Catholic Party, 16 percent." *Id.* The Czech victory for the Communists was not repeated in the Slovak region. The Democratic Party received 62% of the vote, while the Communists received only half as
many votes. *Id.* The remaining Slovak vote “was shared by the two small Slovak parties which had been formed shortly before the elections, the Party of Labor and the Freedom Party.” *Id.* The composition of the National Assembly resulting from the election was as follows: “the Communists 114 (93 Czech and 21 Slovak), the Social Democrats 37, the National Socialists 55, the Catholics 46, the Slovak Democrats 43, the Slovak Party of Labor 2 and the Freedom Party 3.” *Id.* All assembly seats were to be up again for election in 1948. *Id.* The composition of the Council of Ministers initially favored the Communists by a majority. The Communists and their supporters had 113 votes on the Council, while the democratic parties had a total of 12 votes. *Id.* The replacement of one minister and the appointment of another soon changed the bare majority to the Democrats. *Id.* Gottwald was designated Prime Minister “according to the democratic tradition of appointing to this office the representative of the strongest party.” *Id.* at 155.

A significant event for Czechoslovakia before the coup of 1948 was its decision not to participate in the Marshall Plan. This action was “the most apparent and formally important encroachment of the Soviet Union upon Czechoslovak sovereignty before the communist takeover.” KRYSTUFEK, *infra* note 28, at 48. In July 1947, the Czechoslovak Government, including its Communist members, had intended to be present at a conference in Paris where the Marshall Plan was to be discussed. KORBEL, *supra* note 25, at 181. The Communists believed that the Soviet Union consented to their participation in the conference and in the Marshall Plan. *Id.* When Gottwald and other members of his government traveled to Moscow on July 9 for talks with Stalin on treaty interpretation and trade relation matters, the Czechoslovak Government learned the real Soviet view towards Czech involvement in the Marshall Plan. *Id.* Stalin told the members of Gottwald’s government present on the evening of July 9 “that the Marshall Plan was directed against the Soviet Union. To him, as he put it, the Czechoslovak attitude was a matter of principle, upon which would depend Soviet friendship toward Czechoslovakia.” *Id.* at 182. In the early morning hours of July 10, an emergency session of the Council of Ministers was held in Prague after Gottwald had telephoned from Moscow. *Id.* Gottwald asked that the Council reverse its earlier intentions to participate in the Marshall Plan. *Id.* After a heated discussion between the Democratic and Communist ministers, the Council revoked its original acceptance of the Marshall Plan. *Id.* The result of the decision was a loss of Czechoslovakian independence on July 10, 1947, because “[t]he Soviet Union had arrogantly dictated to her government a course of action on a matter of paramount importance to her future.” *Id.* Minister of Foreign Affairs Masaryk best expressed the ramification of the Marshall Plan reversal. He said to a friend upon arriving in Prague on July 12 that “[i]t is a new Munich. I left for Moscow as Minister of Foreign Affairs of a sovereign state. I am returning as Stalin’s stooge.” *Id.* at 183.

A number of illegal actions by the Communists led the way for their coup in February 1948. Most critical was an action which led to the resignation of the non-Communist ministers from the government on February 20, 1948. MAMATEY & LUZA, *supra* note 6, at 412.

The democratic ministers [had] offered their resignations as a protest against abusive acts of the communist Minister of Interior, who had removed democratic representatives from leading police positions and had replaced them by communists; and against the unwillingness of Prime Minister Klement Gottwald to comply with the government decision that he should redress that action. KRYSTUFEK, *infra* note 28, at 26. The democratic leaders had mistakenly believed that they could head off a communist dictatorship through constitutional means. *Id.*

The belief by the Democratic ministers in a defense against Communist encroach-
lovak Communist Party began restructuring the conditions of life in

tment through constitutional and parliamentary means has been termed "foolish," but
the Democrats probably had no other alternatives available. Id.: The communists had evidently decided to bring about a coup d'etat in the
first half of 1948 in order to avert the scheduled election of the National Assem-
bly, which would have demonstrated their numerical inferiority. By tendering
their resignations the democratic ministers had, at most, affected the timing of
the planned coup by providing the communists with an unanticipated chance to
give it a legal appearance.

Id.

The chance to give the coup an aura of legality was taken by Gottwald on the morn-
ing of February 21 when he addressed a mass meeting in Prague. “He accused the re-
signed ministers of having formed a ‘reactionary bloc’ in the cabinet to obstruct the pop-
ular policies of the communists. They had precipitated the crisis, he alleged, to prevent
the holding of elections, the outcome of which they feared.” MAMATEY & LUZA, supra
note 5, at 413-14. Gottwald said the resigned ministers would be replaced “with new
people who have remained faithful to the original spirit of the National Front.” Id. at
414. The legal facade for the coup could not hide the true instruments used by the Com-
munists for the takeover: “party activists, workers’ militia, the police, and ‘action com-
mittees’” in a carefully prepared plan. Id. Armed workers were visible throughout
Prague on February 24. Id. “In the event of an armed conflict with the other parties, the
communists relied on the police, particularly specially trained police regiments composed
exclusively of Communists. On the morning of February 21, the police assumed guard
over the Prague radio station, post and telegraph offices, and railway stations.” Id. Mass
demonstrations in Prague and the threat of violence enabled the Communists to isolate
and silence the democratic parties and awe the president. Id. The Communist demands
were resisted by President Beneš for five days until February 25. Id. On that date “he
accepted the resignation of the democratic ministers and simultaneously appointed a
new cabinet hand-picked by Gottwald, which—in addition to communists and Social
Democrats—included some members of the National Socialist, Populist, and Slovak
Democratic parties, who had secretly agreed to cooperate with the communists.” Id. Feb-
ruary 25 was described as being “bitterly cold. Gray skies obscured the sun. In Czecho-
slovakia, democracy was dead.” KORBEL, supra note 25, at 235.

All hope of any possible change after the coup was truly lost with the passing from
public life of two of Czechoslovakia’s staunchest supporters of democracy. Foreign Min-
ister Jan Masaryk was found dead March 10, 1948, below his bathroom window where he
had apparently committed suicide. The communist government’s public pronouncements
of Masaryk’s death as suicide, however lost all credibility with facts coming out years
Beneš resigned from office June 7, 1948, when he refused to sign a new constitution for
the country drafted by the Communists. P. ZIMMER, COMMUNIST STRATEGY AND TACTICS
IN CZECHOSLOVAKIA, 1918-48 at 255 (1963). After retiring to his country residence, Beneš
died three months later. Id.

After their takeover, the Communists chose to adopt a monolithic regime of commu-
nist dictatorship. KRSTUFER, infra note 28, at 29. All political parties, although still ex-
isting as a sham proof of the democratic character of the country, were stripped of any
political power. Id. at 30. “Most of their former leaders were imprisoned or saved them-
theselves by escaping abroad.” Id. Confirmation of the new dictatorship came with the elec-
tions to the National Assembly on May 30, 1948. ZIMMER, supra, at 226. The elections:

[F]eatured a single electoral list of the National Front, although a “blank” or
Czechoslovakia along Soviet lines. The Communist Party of Czechoslovakia removed all existing law and replaced it with new laws, modeled on those of the Soviet Union. The break with Czechoslovak white ballot was provided for registering dissent. In most places, voting was done openly for the first time in the constitutional history of the country. The official results showed that 89 percent of the electorate endorsed the single list of candidates, among whom were 214 Communists and 86 representatives of other parties.

*Id.* The Sovietization of the country, *see infra* note 27, had begun.

27. *See* Paul, *supra* note 25, at 609. After the Communist Party took control of the government in 1948, the Soviet pattern of rule was embraced. "The state became an all-powerful force in society, imposing itself upon all aspects of life according to the arbitrary will of the rulers. The ruling Party became functionally indistinguishable from the state, and the constitutional instruments of state power became merely tools in the Party's exercise of rule." *Id.* The adoption by the Party of the Leninist principle of democratic centralism, *see infra* note 48, confirmed the influence of Soviet ideology into Czechoslovakia. *Id.* Industry, mines, banks and insurance companies were nationalized. Gsovský & Grzegowski, *supra* note 24, at 236.

28. In 1950, having gained control of the administration of justice in Czechoslovakia, the Communist regime began total sovietization of the Czech legal order. A new communist civil code was enacted as well as a code of civil procedure and four codes of criminal law—the Criminal Code and Code of Criminal Procedure for Courts, the Administrative Criminal Code and the Code of Criminal Procedure for Administrative Authorities.

The continual and major changes of law that took place demonstrate that the courts and other legal institutions as well as law enforcement officers were supposed to fulfill tasks of justice inconsistent with the traditional adhesion to law among the Czech people.

The Codes of 1950 modelled the Czech administration of justice after Soviet law, thereby paving the way for the ultimate sovietization of the entire Czech legal order. Their shared characteristics include the class concept of the law administration of justice and the political control of the regime over the activity of the courts through hand-picked people's assessors on the benches and through the increased power of government attorneys.

The leading principles of communism—relying on the concept that the main function of the law, of courts and of all law enforcement agencies was to secure the rule of the communist regime—were officially set out by the Government in the "Motives" to individual Codes. The class character of the administration of justice was continually stressed at the expense of impartiality and independence of courts and judges. Gsovský & Grzegowski, *supra* note 24, at 675-79. *See also* Z. Krystufek, *The Soviet Regime in Czechoslovakia* 45-52 (1981). The author discusses the principal leaders in the Communist Party of Czechoslovakia in 1948 and concludes that they all had "complete confidence in the Soviet structural model" of communism. *Id.* at 45. The main feature that makes Czechoslovakia a Soviet-style state is political dictatorship. *Id.* at 51.

Seen conceptually, a Soviet-type state is a state with socialized economy and monolithic political power. It is not conceivable that communist dictatorship could have been implemented and maintained in Czechoslovakia without the help of the Soviet Union. However, even if it had been possible, a Czechoslovakia with monolithic political organization and socialized economy would not cease to be a state of Soviet pattern.

*Id.* Government control by the Communist Party after February 1948, was followed by
legal tradition was absolute, because the new laws were foreign imports based on alien concepts running contrary to national aspirations and experience. In the area of civil law, the Communists first enacted the Civil Code of 1950, and later replaced it with a new code in 1964 which was partially amended in 1981.

I. GENERAL CONCEPT OF CZECHOSLOVAK SOCIALIST LAW

A brief exposition on the concept of socialist law must precede the treatment of Czechoslovak civil law, because Czech law today is based on Marxist-Leninist principles. The term "law" as it is used in socialist legal doctrine has a different meaning from that in democratic countries. Although "law" is defined as a system of norms set by the state, it is meant not only to uphold the existing political order but also to
play an active role in the restructuring and building of a communist society. Its major function is to ensure the fulfillment by the people of their duties to the state and society. Emphasis is placed on an individual’s duties to the state rather than on his rights as against the state.

33. Law as a reflection of the “will of the new ruling class [the proletariat]” is intimately related to the process of change from a capitalist to a communist society. W. Butler, Soviet Law 30 (1984). It is noteworthy, however, that traditional Marxist theory downplayed the role of law in communist society:

Marx and Engels had comparatively little to say about law in their writings, and what they did say appertained principally to their larger critique of contemporary society and explanation of societal change. Law in effect was explained away. Future society, it was supposed, would administer itself without need of legal rules. Those who came to power in October 1917, who confronted, as Marx and Engels had not, the need to govern nations, peoples, an economy, an Army, found no specific blueprint in the writings of Marx and Engels. There commenced the process of developing adapting theories of revolutionary change to cope with a real revolution, a process which continues to this day, by devising substages through which a society is to pass in the course of transition to socialism and communism. These levels of societal development are closely linked to and dependent upon law and legal institutions.

Id. at 29-30.


Article 34 states:

Citizens are bound to observe the Constitution and other laws, and in all their actions to pay heed to the interests of the socialist state and society of the working people.

Id. art. 34.

Article 38 mandates:

An integral part of the duty of every citizen is to respect the rights of his fellow citizens and to conscientiously observe the rules of socialist community life.

Id. art. 38.

35. Id. The Soviet Constitution of 1977, for example, also emphasizes this function of communist law:

The new [1977] Constitution of the USSR proceeds from the assumption that citizens’ enjoyment of their rights and freedoms must not harm the interests of society and the State, or those of other citizens. The Constitution stresses citizens’ duty to work honestly and conscientiously, to safeguard the interests of the Soviet State, to help consolidate its might and prestige, to do their best to maintain public order, combat misappropriation and squandering of State and socially-owned property, protect nature and its riches, help preserve cultural values, etc.

Chkhikvadze, Soviet Democracy and the Legal Status of the Individual in The Soviet
The state, as defined by Lenin, constitutes organized government by the ruling class; it is the instrument with which that class governs society. 36 This control by the ruling class, or "dictatorship of the proletariat," constitutes the state's political foundation. 37 As such it is unlimited, unregulated by laws of any kind and relies upon force and violence to maintain itself. 38 State coercion assures the binding nature of socialist law. 39

Czechoslovak law conforms fully to the Marxist-Leninist principles that stress its class character. The ruling class in Czechoslovakia is the "working class" of which the Communist Party is the vanguard. 40 The

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36. According to Lenin, the state is the instrument of force through which the exploiting class (the bourgeoisie) suppresses and continues to exploit the masses. It is up to the proletariat to overthrow the bourgeoisie by uniting the oppressed masses and leading them to revolution. Once overthrown, the proletariat becomes the new ruling class. V. Lenin, State and Revolution 22-23 (1932).

37. Id. Lenin cites the Marxist definition of the state as "the proletariat organized as the ruling class." Id. at 22.

38. The rule of the proletariat is "shared with none and relies directly upon the armed force of the masses." Id. at 23. Lenin further notes: "The proletariat needs state power, the centralized organization of violence, both for the purpose of crushing the resistance of the exploiters and for the purpose of guiding the great mass of the population—the peasantry, the petty-bourgeoisie, the semi-proletarians—in the work of organizing Socialist economy." Id. (emphasis in original).

39. Coercion must be used by the Communists to force compliance with socialist law because socialist law is not the will of the majority:

For, if the law were really in conformity with the will of all, it would not need to have a coercive character. Such a social order could be based on the voluntary obedience of its subjects, and hence would be no law at all. This may be true of the social order of the perfect communism of the future; but it is certainly not true of the decidedly coercive order which is the law of the Soviet state.

Kelsen, supra note 32, at 132.

40. See Constitution of 1960, supra note 34, preamble, art. 4.

The preamble states in relevant part:

We, the working people of Czechoslovakia, solemnly declare:

The social order for which whole generations of our workers and the other working people have fought, and which they had in view as a model since the victory of the Great Socialist October Revolution, has also become reality with us, under the leadership of the Communist Party of Czechoslovakia.

The Communist Party of Czechoslovakia, the tried vanguard of the working class, steeled in the struggle under the bourgeoisie Republic and during the occupation, took its stand at the head of the Republic.

Id. preamble.

Article 4 states:
government is controlled by the Communist Party. The will of the ruling class is the law, and the law is an instrument of state policy through which the Communist Party governs the nation and directs development in all fields of endeavor. The dictatorship of the working class is, in reality, the dictatorship of the Communist Party, although the Party forms only a tiny fraction of the population.

In Czechoslovakia today, the State and the Communist Party are merely different parts of the same entity. The State bureaucracy is

The leading force of society and the state is the vanguard of the working class, the Communist Party of Czechoslovakia, a voluntary combative union of the most active and conscious citizens from the ranks of the workers, peasants, and the intelligentsia.

Id. art. 4.
41. Id.
42. Kelsen, supra note 32, at 129. According to the Soviet jurist A.Y. Vyshinsky, law is “an aggregate of norms expressing the will of the dominant class, guaranteed by the coercive force of the state.” Id.
43. See Constitution of 1960, supra note 34, art. 17. Article 17 mandates:

(1) All citizens and all state and social organizations adjust all their behavior to the legal order of the socialist state, and ensure the full observance of socialist legality in the life of society.

(2) Social organizations, in fulfilling their mission, guide citizens to observe the laws, maintain labor discipline and comply with the rules of socialist community life, and endeavor to forestall and prevent infringements thereof.

Id.

By way of analogy, the Communist Party of the Soviet Union is, in the words of Professors Ginsburgs and Pomorski:

[El]itist by nature. It is composed of the “best” representatives of the working classes. Indeed, its commitment to a tight, exclusive, and disciplined format has always been a political cornerstone of Leninism . . . . Hence, the [Soviet] Constitution [of 1977] is pervaded by a central contradiction between the ideology of popular, egalitarian, participatory democracy, on the one hand, and the ideology of political monopoly by an oligarchic Communist Party on the other.

Ginsburgs & Pomorski, A Profile of the Soviet Constitution of 1977, in The Constitutions of the USSR and the Union Republics: Analyses, Texts, Reports 15 (F. Feldbrugge ed. 1979). Membership in the Czechoslovak Communist Party may be obtained only by membership or candidate membership. Children of Party members have preference and acquire party membership as a matter of course. Party membership thus stays in the family. This feature of communist rule whereby the communist ruling class perpetuates itself on family basis, resembles the feudal system of the Middle Ages when landed nobility constituted the ruling class. Overall, there is a striking resemblance of the feudal system in all its aspects with the Communist Party rule, with the only exception that the Communist Party rule controls the nation more completely and ruthlessly than the feudal lords in the Middle Ages.
chosen by the Communist Party from among Party members. The Party constitutes the policy-making entity, while the State serves as an executive instrument of the Party, an instrument designed to effectuate the party's decisions. The Communist Party, in its hierarchically organized structure, is the directing force and Party officers simultaneously hold state offices commensurate with their rank in the Party. Thus, the highest representatives of the Party hold the highest State offices. To continue in power the Communist Party leadership relies on the Czech secret and uniformed police and the armed forces, all of which are under its control, as well as on Soviet troops stationed in Czechoslovakia. A dictatorial regime existing for the purpose of its own perpetuation has thus been established.

All laws are made by the Communist Party through the State organs and are put into effect and administered by those organs. Laws that are published are designed primarily as instructions or guidelines, though variations in application may be made when appropriate.

45. All national institutions and organizations are subject to directives from the Communist Party and the individuals who control it. The Constitution of the Republic, its laws and other controls typically accepted in the West are subordinate to these decrees. In addition, these decisions are often only voiced verbally, beyond the hearing of the public. The decisionmakers owe allegiance to no one but each other; yet they have enormous influence on both the legislative and executive branches of government, as well as on the judiciary, trade unions, interest groups, other political parties, enterprises, factories and other institutions for whom these directives have precedence even before the law. H. SKILLING, CHARTER 77 AND HUMAN RIGHTS IN CZECHOSLOVAKIA 210 (1981) (Prague Declaration of Jan. 1, 1977).

46. In addition to its regular army of 140,000, Czechoslovakia also has a security forces that numbers 35,000. Experts say this high number reflects Russian memories of dissension in the Czech army during the "Prague Spring" of 1968. The security forces consist of 11,000 border troops, equipped with armored vehicles and antitank guns and 24,000 internal security forces with infantry weapons. The latter are under the control of the Ministry of State Security which oversees the operations of the secret police. N.Y. Times, Jan. 10, 1982, § 4, at 4E, col. 1.

47. See CZECHOSLOVAKIA: A COUNTRY STUDY, supra note 24, at 169. All policy decisions are first made within the Communist Party of Czechoslovakia (Komunistická strana Československa). Id. The governmental structure within the country exists to carry out these policy decisions. Id. "At all administrative levels . . . [the party] actually maintains a shadow government which from behind the scene leads ministries, drafts laws, and in effect hands down court sentences long before the responsible legislative, executive or judiciary organs addressed the subject." Id. (quoting "a top Eastern Europe specialist in the United States Department of State").

48. See id. at 157. The government exists to administer policy decisions made within the hierarchy of the Communist Party. See supra notes 45 and 47. "Democratic centralism" is an overriding principle for both the Government and the Party. CZECHOSLOVAKIA: A COUNTRY STUDY, supra note 24, at 157. "[S]trict hierarchical discipline in the implementation of decisions made at the top," id., is the demand made by democratic centralism. "As a result there [is] no room for innovative thinking within the ranks of the country's
laws are interpreted as furthering the will of the “working class,” but this actually means furthering the objectives of the Communist Party because the Party is the exclusive spokesman of the “working class.”

The law is formed by the Party before being enacted by the State organs. Such a process, although purely formal, is time-consuming and results in the publication of the measure as a law. Rather than utilizing this process, the Party prefers to rule the country by “instructions” which it issues from its Secretariat-General through the hierarchy of subordinate Party secretariats (regional, district, local). Instructions are never published but are strictly binding. The measures contained in the instructions frequently become law at a later date if the Party decides to formalize them. Unpublished instructions are thus a type of higher law, which must be strictly obeyed and enforced, as

massive public bureaucracies that regulated and oversaw virtually every activity of a citizen’s life outside the confines of the home.” Id. The absence of innovative thinking should not preclude the necessity for some variation in the application of laws.

49. See id. at 179. The position of the Communist Party as the spokesman of the working class is illustrated by the preamble to the Constitution of 1960. The preamble reaffirms that the Party is the “proved vanguard of the working class...” Id. As the Communist Party formulates all policy decisions, see supra note 47, the laws of the country are made to further the will of the working class.

50. For all practical purposes, the Communist Party of Czechoslovakia runs the country through its Central Committee. Article 31 of the Statute of the Communist Party of Czechoslovakia reads:

The Central Committee of the Communist Party of Czechoslovakia directs the entire work of the party in the period between Congresses; in particular:

(a) it works out and resolves questions concerning the further development of socialist society and internal and foreign policy in the spirit of party congress decisions;

(b) it focuses the activities of party organs and organizations on a consistent implementation of the line agreed, it directs lower party organs and helps them to develop political and organizational work; it directs the People’s Militia; verifies the fulfillment of party decisions; sets up and directs various party institutions and enterprises;

(c) it guides and supervises through communists and party groups the activities of the federal and republic representative organs, of the government and other central state organs... it directs their activities towards the consistent promotion and execution of party policy...


51. See supra note 47.

52. See CZECHOSLOVAKIA: A COUNTRY STUDY, supra note 24, at 169. The principle of democratic centralism, supra note 48, accounts for the hierarchy within the Party structure. The Communist Party “provides for the election of Party leaders at all levels but requires that each level be fully subject to the control of the next higher unit.” Id. Through compliance with democratic centralism, “party programs and policies are directed from the top, and resolutions of higher organs are unconditionally binding on all lower organs as well as on individual members.” Id.
contrasted to the published law, which is subject to interpretation. Some measures may be in effect for years before going through the legislative process; some remain as instructions until withdrawn or superseded. After a certain period of time, published laws are usually amended to conform with unpublished instructions, but the problems connected with the making of published laws also apply to their amendment and repeal. Consequently, it may take a long time before a published law is amended or repealed despite the fact that it has been inoperative for years. Frequently, published laws are left standing, although they have been made obsolete by developments introduced by party instructions. This occurred in provisions of the 1811 Civil Code and the 1950 Civil Code. Published law, therefore, is of secondary importance to unpublished law.

II. THE CIVIL CODE OF 1950

Immediately after the communist minority seized power in Czechoslovakia in February 1948,43 work was begun on a new civil code. A purely Marxist code could not be produced to regulate the communist society that did not yet exist.44 The civil code, therefore, reflected only

53. See supra note 28 and accompanying text.
54. At this time, the structure of Czech society was still democratic. “From the collapse of the German occupation in May 1945, to the seizure of power by the Communists in February 1948, the democratic interests of Czechoslovakia fought a defensive struggle against the continuous pressure of the Soviet-controlled Communist Party.” 1 Gsovski & Grzybowski, supra note 24, at 223. Gsovski and Grzybowski note that between 1945 and the Communist coup d’etat in Czechoslovakia in February 1948 “the great majority of Czechs and Slovaks remained loyal to the common state and to the cause of democracy.” Id.

After the collapse of the Nazi occupation in May 1945, the Czech government in exile attempted to restore the traditional social, political and economic order to the country. Enlisting the assistance of the Soviet Union, which had liberated the nation and “moved into the vacuum created in 1938 by the definite retreat of France from its previous political position as the stabilizing power in Central and Eastern Europe,” id. at 233, the Government-in-exile led by Dr. Eduard Beneš, returned to Czechoslovakia by way of Moscow. Id. at 225. Beneš, in 1943, had bargained for security from the Soviet Union against Germany and any communist subversion, and in the Treaty of Alliance, Friendship and Mutual Aid, the Soviets agreed to noninterference in Czechoslovakia’s internal affairs. Id. By the time of the Czechoslovakian liberation in 1945, the Democratic government had agreed in the Košice Program to compromise with the Communists, and this incorporation of Soviet models into the Czech Government paved the way for the 1948 Communist seizure of power. Id. at 227. “[T]he Košice Program reflected the belief of the democratic leaders that to acquiesce in some of the Communist demands would induce the latter to refrain from immediate revolutionary action, and, in the meantime, would permit the democratic parties to secure a working parliamentary majority.” Id. Later, the Communists would reduce the members of political parties to effectively exclude the Democrats. Id. at 230.
a tentative overview of what the Communist Party wanted to achieve, and incorporated the existing relationships that the party could not immediately abolish. The 1950 Code served as a guideline, or rather a

Between 1945 and 1950, the fabric and structure of Czech society changed dramatically. The Kosice Program, replaced a traditional system of locally elected legislatures and careerist administrators with Communist-approved people's committees, id. at 228-29, reducing the number of political parties, id. at 230, and nationalizing certain industries, id. at 236. It set the stage for the Communists placing themselves in charge of some major government departments, id. at 230, confiscating land under the deceptive title "land reform," id. at 234, and allocating it on the basis of party membership, id., as well as elementary independent trade unions. Id. at 235. Gsovski and Gryzbowski describe a strong democratic opposition to this communist domination between 1946 and the 1948 coup, id. at 238, and highlight the fact that polls showed the Communists' prospects for the 1948 election to be doubtful. Id. at 240. The authors note, however, the Communists had set the foundation for a move outside the political process. Reacting to the dim electoral prospect, engineered in 1948, they forced the resignation of key non-Communist cabinet ministers, and, thus, clandestinely created a crisis in government. See supra note 26. When the Communist coup was carried out between February 23 and 25, 1948, the crisis conditions in the nation afforded the Communists a convenient backdrop for the extraordinary changes in the Czechoslovakian order. Gsovski and Gryzbowski observe:

There is no doubt that a great majority of the Czech and Slovak people, including the Army, from officers down to privates, consisted of true democrats. However, the general public, as well as the Army, was not aware of what was at stake and was restrained from direct counteraction against the Communists until it was too late.

GsovsKI & GRZYBOWSKI, supra note 24, at 246. Once the Communists had seized power, the democratically structured National Assembly was postponed, a new National Front and Cabinet were formed, non-Communists were ousted from government departments. Id. at 246-51.

What followed between 1948 and 1950 was a complete rewriting of Czech law. As for the judicial system, Gsovski and Gryzbowski note:

At the time of the Communist coup (February 25, 1948), the same criminal law, civil law, and administrative law, and the same setup of the judiciary and of the public prosecution were in force as during the 1918-48 period.

The provision of the original (1920) constitution relating to the judiciary and to the courts, and the constitutional law to protect personal freedom, relating to fundamental civil rights, were also still in force. But during and after the coup d'état, many of these provisions were openly isolated by the Communists and their followers.

Id. at 671-72. A new constitution, based on the Soviet model, was enacted in 1948, and a new civil code was put into force in 1951.

The prior civil code, which Czechoslovakia inherited in 1918 from the Austro-Hungarian Empire, was in force for 130 years. M. HIKL, THE CIVIL CODES IN COMMUNIST CZECHOSLOVAKIA 6 (Studies of the Czechoslovak Foreign Institute-in-Exile, Feb. 1969). As already noted, see supra note 27, from 1918 to 1937, the Czech Government worked on a revision of the Code. The final draft was approved by the cabinet in 1937 and submitted to parliament. But because of the German occupation, it was never made law. GSOVSKI & GRZYBOWSKI, supra note 24, at 1239. The Communists used this earlier model in drafting their 1950 Civil Code, but:

[T]heir aims were totally different from those which animated the authors of the
makeshift measure, intended by the Party to give the appearance of a civil code. In reality, however, it was nothing of the kind. In fact, the party worked feverishly between 1948 and 1950 to alter the basic structure of Czech society in order to create a Marxist state, and they disregarded the provisions of the Code as soon as changed conditions made them obsolete.\textsuperscript{56} The main reason, though, for the introduction of the Civil Code of 1950, was the desire to repeal the Civil Code of 1811, which was based on democratic principles. Rather than face the adverse reaction at home and abroad which ignoring the code would have produced, the Party replaced the Code with a transitory measure which would operate as a smokescreen. Behind this smokescreen the party could convert a democratic society into a socialist one.\textsuperscript{57} The Civil Code of 1950 became operative on January 1, 1951 and the 1811 Civil Code and the Commercial Code were repealed on that same day.\textsuperscript{58} 

\begin{verse}
old draft. The framers of the old draft were guided by the ideal of inherent human rights, private enterprise, free contracts and protection of private ownership. In contrast the general purpose of the entire new legal system and also the Civil Code was, as was stated in the Constitution of 1948 (preamble), “to ensure . . . a peaceful road to socialism.” \end{verse}

\textit{Id.} Gsovski and Grzybowski go on to write that the 1950 Code used the Soviet civil codes as models, but did not copy them. \textit{Id.} at 1240. In drafting the new Code, the Czech Communists also disregarded Czech history and tradition. \textit{Id.} at 1242. The entire Code was drafted in two years. \textit{Id.}

56. \textit{See GSOVSKI \& GRZYBOWSKI, supra note 24, at 676.} The authors, noting the frequent amendments to the 1950 Civil Code, observed in 1959:

\begin{verse}
The number of Codes of law and of their comprehensive amendments, enacted from 1950 through 1957, shows an unsettled situation in the Czechoslovak legal order and especially in the administration of justice. Such continual and important changes of law may be ascribed to the fact that the courts and other bodies and the law enforcement officers are supposed to fulfill tasks of class justice which are not compatible with the traditional, strong devotion of the Czechoslovak people to the rule of law.
\end{verse}

\textit{Id.}

57. In fact, in the Czech Government's message introducing the Civil Code, a tabulation was presented showing how private ownership in industry and commerce was destroyed as of February 1949. \textit{See id.} at 1246-47. Mario Hikl, in his 1959 work on the Czech civil codes, \textit{supra} note 55, at 59, observed: “The former democratic State which was understood as a legal order became a state of arbitrariness, a totalitarian, absolute State, guided by the universal Communist idea as its ultimate goal.” \textit{Id.}

58. Section 568 of the 1950 Civil Code stated, “As from the 1st of January 1951, all previously valid provisions concerning matters regulated by the present Law shall be repealed, including also common law resulting both from judicial decisions and other sources.” Civil Code of 1950, \textit{supra} note 29, § 568, \textit{reprinted in} 10 BULL. OF CZECH. LAW 582. Up until that time, the 1811 Civil Code and the Commercial Code technically had remained en vigueur. They had been completely disregarded, however, by the Communist authorities, whenever it suited their ends. The same fate awaited the 1950 Civil Code.
The Czechoslovak Civil Code of 1950 was modeled on the Soviet Civil Code of 1922 and its post-1922 amendments. It applied the entire Soviet experience in civil law up to that time, especially the principles of Soviet civil law as expressed in the Soviet Constitution of 1936. The Soviet Civil Code of 1922 was already considerably behind actual developments in the Soviet civil law, so the draftsmen of the Czechoslovak Civil Code of 1950 incorporated the actual Soviet civil law practice as it then applied. The form of the Code and its distribution of material closely followed that of the Soviet Code. The Czechoslovak Civil Code of 1950 had sections, including: General Provisions, Rights in Rem, the Law of Obligations and the Law of Succession.

The General Provisions section of the 1950 Code concerned Persons, Things and Rights, Legal Transactions, Representation and Prior to the Communist coup in February 1948, the courts applied the Commercial Code in disputes between commercial litigants. After the nationalization of private enterprise, however, the Czech Government became the sole commercial entity. Because there were no parties able to bring suit, the Code could not be applied and so fell into disuse. Conversation with Professor Vratislav Pechota, Parker School of Comparative Law, Columbia University (April 12, 1985).


60. See Gsovski & Grzybowskí, supra note 24, at 1240. The authors quote a Czechoslovak jurist, who stated: “Our pattern for the codification is first of all the Soviet Socialist Civil Law . . . . The main principles of the Soviet Civil Law as they are pronounced in the Stalinist Constitution are our guidance in the first line.” Id.


62. Id. §§ 100-210, reprinted in 10 Bull. of Czech. Law 524-38.

63. Id. §§ 211-508, reprinted in 10 Bull. of Czech. Law 538-74.

64. Id. §§ 509-561, reprinted in 10 Bull. of Czech. Law 574-82.

65. Id. §§ 4-22, reprinted in 10 Bull. of Czech. Law 513-15. Under “Persons,” the Code specified that a natural person’s civil rights and duties “originate with his birth and cease to exist at his death.” Id. § 4, reprinted in 10 Bull. of Czech. Law 513. The provisions set down principles of law such as a presumption of simultaneous death when it was unclear which of several persons had died earlier, a vesting of civil rights in a person at “conception” if he or she was later born alive, a statutory death provision for an individual missing for five years or for one year after a “dangerous event . . . in connection with which he is missing” and a provision that death annuls a marriage. Id. §§ 7-8, reprinted in 10 Bull. of Czech. Law 513-14. The Code also provided for an 18-year-old age of majority with the exception of legal majority at marriage at any permissible age, a definition of complete incompetency prior to age six, a statutory ability to contract for immediate actions between ages 6 and 15 for an individual’s own benefit, an ability for an individual to contract for his own work at age 16, a provision for legal guardianship of incompetents and court declarations of incompetency, and a law of consanguinity for purposes of descent. Id. §§ 13-17, reprinted in 10 Bull. of Czech. Law 514-15. In addition, the Code delineated the rights and duties of legal persons in a way similar to United States corporate or association statutory provisions. Id. §§ 18-21, reprinted in 10
Power of Attorney,\textsuperscript{66} Reckoning of Time\textsuperscript{70} and the Statute of Limitations.\textsuperscript{71} Rights in Rem contained Right of Ownership,\textsuperscript{72} Right to Struc-

BULL. OF CZECH. LAW 515.


67. \textit{Id.} §§ 30-55, reprinted in 10 BULL. OF CZECH. LAW 516-19. The Code defined “Act in the Law” as “a manifestation of intention to establish, alter, or annul a right or a duty.” \textit{Id.} § 30, reprinted in 10 BULL. OF CZECH. LAW 516. It specified that such an intention was to be interpreted in light of the circumstances and the rules of “socialist community life.” \textit{Id.} § 31, reprinted in 10 BULL. OF CZECH. LAW 516. The Code noted that manifestations of intentions in light of incompetency or incapacity or of fraud or duress were invalid. \textit{Id.} §§ 32-34, reprinted in 10 BULL. OF CZECH. LAW 517. A mistake, in fact, tied to the essence of the manifestation would invalidate an act. \textit{Id.} § 35, reprinted in 10 BULL. OF CZECH. LAW 517. The Code further specified that intent could be implied, that title deeds to immovables had to be recorded, that written instruments (where required) had to be signed and that creditors had rights against debtors. \textit{Id.} §§ 38-41, 46, reprinted in 10 BULL. OF CZECH. LAW 517-18.

68. \textit{Id.} §§ 56-59, reprinted in 10 BULL. OF CZECH. LAW 519-20. Representation, under the Code, could be authorized by law, official decision or “authorization.” \textit{Id.} § 56, reprinted in 10 BULL. OF CZECH. LAW 519. If a representative (an “agent” under United States law) acted “within the limits of the authorization on behalf of a represented person the rights or duties [arose] directly in respect of the represented person” (i.e., acting within the scope of his agency). \textit{Id.} § 57, reprinted in 10 BULL. OF CZECH. LAW 519. “Ultra vires” acts, however, were ineffectual unless approved. \textit{Id.} § 58, reprinted in 10 BULL. OF CZECH. LAW 520. The Code denoted a legal guardian of an incapacitated person a “curator” for management of that person’s affairs, to be appointed by a court, and to be effective so long as the incapacity persisted. \textit{Id.} §§ 60-65, reprinted in 10 BULL. OF CZECH. LAW 520.

69. \textit{Id.} §§ 66-72, reprinted in 10 BULL. OF CZECH. LAW 520-21. The Code specified the extent that intent to create such a power (whether in writing or proved through extrinsic evidence) was controlling. \textit{Id.} § 66, reprinted in 10 BULL. OF CZECH. LAW 520. The Code also stated a general rule of agency for an enterprise employee and provided for the equivalent of a stockholders’ derivative action for an agent’s breach of what United States law would call a breach of fiduciary duty. \textit{Id.} § 81, reprinted in 10 BULL. OF CZECH. LAW 522.

70. \textit{Id.} §§ 82-85, reprinted in 10 BULL. OF CZECH. LAW 522-23. This section set forth when legal obligations would commence and when they would cease.

71. \textit{Id.} §§ 86-99, reprinted in 10 BULL. OF CZECH. LAW 523-24. Unless otherwise specified, the statute of limitations under the 1950 Code was generally three years. It did not apply to “rights resulting from family relationship nor inalienable rights of socialist legal persons.” \textit{Id.} § 87, reprinted in BULL. OF CZECH. LAW 523.

72. \textit{Id.} §§ 100-154, reprinted in 10 BULL. OF CZECH. LAW 524-31. Compared with the Code’s “General Provisions” section, the “Real Rights” section was more clearly based on Soviet socialist doctrine. The Code, under “Right of Ownership,” stated: “Social, socialist ownership shall be an inviolable resource of the wealth and strength of the Republic and of the prosperity of the working people.” \textit{Id.} § 100, reprinted in 10 BULL. OF CZECH. LAW 524. It specified a classification of property into that which was state owned
and that which was under "co-operative ownership," and it excepted "[o]bjects of household use and personal consumption, small family houses, and savings acquired and that which was under "co-operative ownership," and it excepted 

Barter,8

Obligations in

Mortgages

7

Retentions" provision provided for a setoff of expenditures incurred in use of the item retained. Id. § 205, reprinted in 10 BULL. OF CZECH. LAW 537.

73. Id. §§ 155-156, reprinted in 10 BULL. OF CZECH. LAW 531-32. The Code specified the distinction between ownership of land and ownership of a building, and denoted the respective rights thereof.

74. Id. §§ 166-187, reprinted in BULL. OF CZECH. LAW 532-34.

75. Id. §§ 188-190, reprinted in 10 BULL. OF CZECH. LAW 535.

76. Id. §§ 188-189, 191-193, reprinted in 10 BULL. OF CZECH. LAW 535-36. The Code spoke of "pawnnees" who would hold chattels until encumbrances were satisfied. Id. § 191, reprinted in 10 BULL. OF CZECH. LAW 535.

77. Id. § 205-210, reprinted in 10 BULL. OF CZECH. LAW 537-38. The Code's "Right of Retention" provision provided for a setoff of expenditures incurred in use of the item retained. Id. § 205, reprinted in 10 BULL. OF CZECH. LAW 537.

78. Id. §§ 211-250, reprinted in 10 BULL. OF CZECH. LAW 538-43. The Code set down such obligations as those arising from the law of torts, from contracts and from related factors such as unjust enrichment. As to contracts, the Code stated familiar notions of offer and acceptance. Id. § 214, reprinted in 10 BULL. OF CZECH. LAW 538-39. In regard to damages, it provided for joint and several liability. Id. §§ 239-243, reprinted in 10 BULL. OF CZECH. LAW 541-42. The Code also provided for a right of assignment, Id. §§ 262-283, reprinted in 10 BULL. OF CZECH. LAW 544-47, and indemnification and security. Id. §§ 284-297, reprinted in 10 BULL. OF CZECH. LAW 547-48.

79. Id. §§ 366-381, reprinted in 10 BULL. OF CZECH. LAW 556-58.

80. Id. § 382, reprinted in 10 BULL. OF CZECH. LAW 558. Under the Code the contract of sale provisions applied also to barter arrangements.

81. Id. §§ 383-386, reprinted in 10 BULL. OF CZECH. LAW 558-59. The Code specifically allowed such a gift arrangement without consideration, but provided for its easy revocation "if the donee commits an intentional offense against the donor, his spouse, children, or parents." Id. § 386, reprinted in 10 BULL. OF CZECH. LAW 559.

82. Under "Rights and Liabilities of Lessor and Lessee," id. §§ 387-409, reprinted in 10 BULL. OF CZECH. LAW 559-62, the Code set down the mechanics of landlord-tenant relations, such as liability for repair, right of possession, right of sub-letting and right of the lessor to place a lien on movable objects of the lessee for nonpayment of rent.

83. Id. §§ 419-421, reprinted in 10 BULL. OF CZECH. LAW 563. The Code provided that interest on loans "must not exceed the interest paid on deposits by the people's financial institutions." Id. § 421, reprinted in 10 BULL. OF CZECH. LAW 563.

84. Id. §§ 422-433, reprinted in 10 BULL. OF CZECH. LAW 563-65.


86. Id. §§ 474-488, reprinted in BULL. OF CZECH. LAW 570-72.

87. Id. §§ 504-505, reprinted in 10 BULL. OF CZECH. LAW 573-74. The Code explic-
Goods,\textsuperscript{66} Wagering and Gaming\textsuperscript{67} and Public Promise of Reward.\textsuperscript{68} The Law of Succession included the Right to Inherit,\textsuperscript{69} and Intestate and Testamentary Succession.\textsuperscript{70}

\section{A. The Law of Property}

Sections 155 to 165 of the 1950 Code separated the title to land from the title to structures built on the land.\textsuperscript{81} The Communist Party set out gradually to abolish private ownership of land and make the State the exclusive owner.\textsuperscript{82} Nevertheless, structures built on State-owned land were permitted to belong not only to the State but also to different State instrumentalities, legal entities and even citizens, who were permitted to own small family homes.\textsuperscript{83}

\footnotesize{Note to text: 1. It is stated that "[w]ager or gambling profits cannot be exacted." \textit{Id.} § 504(1), \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 573. Lotteries could only be run by the State or by those officially licensed to do so. \textit{Id.} § 505, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 574. 88. \textit{Id.} §§ 506-508, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 574. 89. \textit{Id.} §§ 509-525, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 574-76. The Code specified that both natural and legal persons could inherit either by last will or by the laws of succession, or both. \textit{Id.} § 512, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 574. It also provided for escheat to the State, \textit{id.} § 515, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 575, and written renunciation of inheritances. \textit{Id.} § 516, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 575. 90. \textit{Id.} §§ 526-552, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 576-80. Under the Code's intestacy provisions, the children and spouse surviving would inherit in equal shares. \textit{Id.} § 526, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 576. If a child was no longer living at the time of death, any children of that child would inherit his portion in equal shares. \textit{Id.} § 527, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 576. An adopted child or parent would be treated as a natural child or parent for purposes of inheritance. \textit{Id.} § 532(1), \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 577. Inter vivos gifts to issue, parents and grandparents of decedents were deductible from the intestate share upon death. \textit{Id.} § 533(1), \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 577. The Code also provided for disposition of property by last will, stating: "[w]hen interpreting the last will, care should be taken to fulfill the testator's real intention." \textit{Id.} § 538, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 578. 91. \textit{Id.} § 155, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 531. "The owner of a building may be a different person from the owner of the land." \textit{Id.} 92. Section 110, read in conjunction with §§ 100 and 101, provides: "Ownership relations concerning soil [are] based upon the principle [that the] 'Soil shall belong to those who work it,' [and that they] shall be governed by the Civil Code." \textit{Id.} § 110, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 524. "Social, socialist ownership shall be an inviolable resource of the wealth and strength of the Republic and of the prosperity of the working people; Socialist ownership shall have either the form of state ownership or the form of co-operative ownership." \textit{Id.} §§ 101-102, \textit{reprinted in} 10 \textit{BULL. OF CZECH. LAW} 524. By this time the Czech ruling elite had openly manifested its intention to abolish the private ownership of land. 93. Sections 158 and 159 provide that "a socialist legal person may construct and have its own building on land which has been handed over to it for permanent use" but all others require a right to build in order to erect a permanent building on another's land. \textit{Id.} §§ 158-159, \textit{reprinted in} 10 \textit{BULL OF CZECH. LAW} 531. Section 160 indicates that}
Sections 100 to 154 divided ownership into two categories: socialist and private. Socialist ownership is ownership by the State. The State manages its property directly through organs of public administration (ministries and regional, district or local national committees) or through State and communal enterprises. These entities do not actually own property, but administer it for the benefit of the State. Private ownership was marked for elimination as it embodied a capitalist way of life.

Personal ownership, considered a category of socialist ownership, is ownership by individual citizens of items of personal need.

a right to build "shall proceed from law or an official decision . . . " or from a contract "which requires consent from the District National Committee." Id. § 160, reprinted in 10 BULL. OF CZECH. LAW 531.

See infra notes 94-97, providing the different Code definitions of ownership; and note 98 for the definition of a socialist legal person.

94. Id. § 101, reprinted in 10 BULL. OF CZECH. LAW 524. This section provided that socialist ownership shall have the form of state ownership or the form of cooperative ownership. The Civil Code of 1950 further stated under §§ 102-103, the type of use that will be made of national property and the conditions of that use. National property shall be exclusive under State socialist ownership, but in order that it may "serve its social mission as completely as possible . . . the State shall deliver parts of its progeny in trust to national and communal enterprises or other socialist legal persons, especially people's cooperatives, for permanent use, in the interests of the development of the national economy and of general prosperity." Id. § 103, reprinted in 10 BULL. OF CZECH. LAW 524.

95. See supra note 94 and the discussion of §§ 103 (1) & 103 (2) concerning the conditions under which national property will be used: in trust for the state, i.e., the people, by national and communal enterprises, or by socialist legal persons.

96. Civil Code of 1950, supra note 29, § 100, reprinted in 10 BULL. OF CZECH. LAW 524: "Social, socialist ownership shall be an inviolable resource of the wealth and strength of the Republic and of the prosperity of the working people."

The first step in the revolution by the working class, is to raise the proletariat to the position of the ruling class. This is a concept echoed in The Communist Manifesto:

The proletariat will use its political supremacy to wrest, by degrees, all capital from the bourgeoisie, to centralize all instruments of production in the hands of the State, i.e., of the proletariat organized as the ruling class; and to increase the total of productive forces as rapidly as possible.

Of course in the beginning, this cannot be effected except by means of despotic inroads on the rights of property, and on the conditions of bourgeoisie production . . . .

These measures (by which the proletariat will achieve its objectives) consist generally of the following:

1. Abolition of property in land and application of all rents of land to public purposes . . . .


Private property is an inherently bourgeois concept, and according to Marxist-Leninist tenets, the root of all evils in the human condition. Only by doing away with private property entirely, can the workers' state emerge. See generally id.

97. The rights of the private owner are also addressed by the Civil Code of 1950.
sonal ownership differs from private ownership in that personal ownership stems from the income of personal labor and not from any exploitative activity. As such, it is permitted.

B. Legal Entities

In section 21, the 1950 Code introduced the concept of socialist legal entities as the only permissible association with legal personality. These entities include "organizations," "national enterprises" and "communal enterprises."98 "Organizations" include such entities as the Revolutionary Trade Unions, the Czechoslovak Youth Organization and the Union of Czechoslovak-Soviet Friendship. "National enterprises" are State economic organizations which took over nationalized businesses and industries. "Communal enterprises" are businesses and industries that perform services within communities and which were taken over by the cities from their lawful owners without any specific nationalization.

All shops and trades, such as electricians, plumbers, carpenters, bakers, tailors, foodstores and barbers, were forcibly integrated into the system of communal enterprises without compensation for their businesses, stock and equipment.99 Any other association of persons

Under § 105, an "owner may dispose of a thing within the limits of the legal order, demand its surrender from anyone who has it unlawfully in his power and resist usurpation." Id. § 105, reprinted in 10 BULL. OF CZECH. LAW 525. See also id. § 23, at 515, which provides the definition of "thing": manageable material objects and natural forces which serve human needs . . . . The rights of the private owner are circumscribed by the language in § 108, which binds said owner, in case of necessity, to permit his thing to be used as compensation to the extent that this is unavoidable. The same rule is found to apply in situations in which an important common interest, which cannot be satisfied otherwise, demands it:

[If, however, there would be concerned such a restriction of the owner's right as cannot thus be properly demanded, he shall be bound to permit it only after those proceedings will have been conducted which otherwise are necessary for the restrictions of a person's rights or for the deprivation of ownership of a thing, in common interest.

Id. § 108.

98. Id. § 21, reprinted in 10 BULL. OF CZECH. LAW 515. Chapter I of the 1950 Civil Code applies to persons. Section 21 comes under the heading of "legal persons" within chapter I. The Code recognized the existence of the legal personality, but only afforded the "socialist legal person" special protection under the provisions of § 21." Socialist legal person "encompassed the categories of "voluntary organizations created by the people, and . . . national or communal enterprises." Id.

99. Section 158 of the 1948 Constitution guarantees private ownership of small and medium enterprises employing up to 50 people. Nevertheless, in 1950, the Cabinet reported to the National Assembly that "by means of legislation on national administration, confiscation, and nationalization, and partly through retributory measures, the victorious working people have deprived the big bourgeoisie of its economic basis."
mentioned in the Civil Code of 1811 or the Commercial Code, partnerships and corporations, for example, were abolished by the 1950 Civil Code, or were forcibly eliminated along with shops and businesses on instructions of the Communist Party in the 1950's.

C. Law of Contracts

The law of contracts in the usual meaning of the term was also marked for extinction in the 1950 Civil Code, although most contrac-

"retributory measures" included forced labor camps which held many thousands of small tradesmen whose shops were nationalized. Other small entrepreneurs were ruined by taxes. In 1951, the Minister of Finance reported that the state budget had an additional important function, namely to support the development of the socialist enterprise and to eliminate the remnants of capitalism. The President of the Republic reported in his 1951 New Year's Message that small trades have been almost completely nationalized on a socialist basis. See CZECHOSLOVAKIA 53-54 (V. Busek & N. Spulber eds. 1967); accord Z. SUDA, THE CZECHOSLOVAK REPUBLIC 40 (1969).

100. The Civil Code of 1950, acknowledges the fact that there are socialist legal persons with special preference. See supra note 98 and accompanying text. The only manner in which a socialist legal person may be created according to the Civil Code is if: 1) it is established directly by law, or 2) it has originated "by or with the consent of, the organ competent for it." Civil Code of 1950, supra note 29, § 18, reprinted in 10 BULL. OF CZECH. LAW 515. The 1811 Civil Code is discussed supra note 15.

101. The First Five Year Plan implemented by the Czechoslovak government was geared, in Soviet fashion, to almost exclusive state ownership outside agriculture. The goals established were to increase industrial output; increase the output of all key industrial commodities; and to establish the "basis of socialism" through "all-round" development (i.e., development in all directions). As the plan unfolded from the period of 1949 to 1953, the sphere of state and collective ownership "producer's cooperatives" was extended increasingly to the "small commodity sectors" crafts, trade and agriculture. Spulber, The Economy, Retrospect and Prospect, 1945-1960, in CZECHOSLOVAKIA, supra note 100, at 221.

The small partnership type of economic arrangement had been tolerated at first when the country was still recovering from Nazi occupation during the Second World War, because it was felt that a small private sector would provide a stimulus to the larger state-run factories and because, they would provide mutual efficiency checks on one another; the private sector could undertake production of articles which are highly subject to changes in fashion; and further, the smaller factories would require less administrative attention from the Party planners because they would be able to function on their own, free from governmental controls in their own little areas of the economy. There was little apprehension on the part of economists that these small businesses would grow so strong that the government would not be able to control them on a theoretical level because there was great faith at that time in the so-called "economies of scale" and the expansionist model of economic development. On a more practical level, the Czech ruling elite knew by the elections in 1948-1949 that they had attained an unshakeable position of power and that they could enact any laws they wanted which would achieve their ultimate ends. Young, Economic Planning and Nationalization, in CZECHOSLOVAKIA: SIX STUDIES IN RECONSTRUCTION 41 (1950).
tual relationships still appeared in sections 211 to 508. All economic activity in the country became the province of the State and were directed by the State's plan. The economic plan provided for arrangements or contracts to be made among national and communal enterprises within the scope of the plan. This newly created economic law, however, developed separately and independently from the relationships referred to in the Civil Code. As a result, the provisions of sections 211 to 508 of the Code were never actually applied to their full extent and were mostly disregarded by the Communist authorities from the outset.

In this environment, the law of succession also acquired a different meaning, because individuals were gradually deprived of all property except for items of personal use. Only such items could be inherited.

These developments were foreshadowed in the Reasons, General Part of the 1950 Civil Code. The concepts of civil law of democratic countries as embodied in the Civil Code of 1811 were to be destroyed in their totality, and only after the process of transformation was com-

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102. Civil Code of 1950, supra note 29, §§ 211-508, reprinted in 10 BULL. OF CZECH. LAW 538-74. Perusal of the Code leads one to the conclusion that for the most part the traditional law of contracts had been adopted intact. The major difference arises in that “obligations shall (stem) from carrying out the Uniform Economic Plan, from acts in the Law, in particular from contracts, and also from causing damage, from unjust enrichment, and from other factors referred to in the laws.” Id. § 211, reprinted in 10 BULL. OF CZECH. LAW 538.

103. Section 212 states:

(1) Carrying out the Uniform Economic Plan shall be insured by contracts especially adapted to the needs of economic planning (by economic contracts). According to the needs of economic planning, competent organs may impose definite obligations.

(2) The legal relations thus established shall be governed by this Law, in so far as nothing else is provided.

Id.

104. See supra notes 106-08 and accompanying text for a discussion of the different categories and rights pertaining to such categories, as provided for in the 1950 Civil Code, dealing with ownership.

105. Civil Code of 1950, supra note 29, §§ 509-561, reprinted in 10 BULL. OF CZECH. LAW 574-81. This part of the Code deals with the “Right of Inheritance.” Section 511 states: “An heir may acquire either the entire property of the deceased (or a proportionate share thereof), or even a particular thing or right only.” Given the state of the ownership laws in Czechoslovakia, this severely limits what may pass through inheritance. See supra notes 108-10 and accompanying text. This state of affairs is completely consistent with the basic tenets of Marxism, which seek to do away with the trappings of bourgeois ownership of private property. One of the very tools suggested for the advancement of the proletarian cause by the Communist Manifesto, is in fact the abolition of all right of inheritance. MARX & ENGELS, supra note 96, at 104.

106. See supra note 31 and accompanying text.
plete would the civil law concepts be replaced by socialist law. The Communist Party anticipated that this transformation would take some fifteen to twenty years.

III. CIVIL LAW ON THE ROAD TO SOCIALISM

By January 1, 1951, when the 1950 Civil Code became effective, the Communist Party had already seized all factories and large businesses and converted them into the system of national enterprises. The Communists also seized a great number of small businesses and shops and incorporated them into communal enterprises. They then intensified their drive so that by the mid-1950's no shop had escaped. At the same time, they initiated a drive to seize all apartment houses and family homes. Although family homes were protected by the Con-

107. Even before the Second World War, the state owned the railways, certain steel works, certain coal mines, forests, silver mines, salt mines and farms. In addition, there was a state tobacco monopoly. Young, supra note 101, at 40 n.1.

As early as October 24, 1945, President Beneš had signed a series of decrees which provided for the nationalization of certain industries. All the joint stock banks, all the private insurance companies, coal and other forms of mining, the iron and steel industry, electricity supply and gas, cement, most sections of the chemicals industry, the armaments industry, certain sections of the glass industry, sugar refining distilleries and the film industry. In all other cases, only the larger companies, (but not in any case the cooperative societies) employing more than a certain number of workers at specified dates were transferred to public ownership. Id. at 41-42.

The whole trend of that early period was to nationalize as much of the economy as possible, in a very short amount of time. When the Code was actually introduced, the Cabinet message to that effect stated that "it was clear that the abolition of private ownership in industry and commerce and the institution of government enterprise in various forms was accomplished before the enactment of the Code. The basis for a socialist economy had been built by a large number of nationalization (confiscatory) laws and decrees." 2 GSOVSKI & GRZYBOWSKI, supra note 24, at 1239; see also T. SZULC, CZECHOSLOVAKIA SINCE WORLD WAR TWO 50 (1972). In 1948, the regime availed itself of Parliament (the National Assembly) to legalize retroactively the nationalizations of industrial and other private property; nine separate nationalization acts were voted that same year. Id. at 41-42.

108. A plan for communal enterprises was devised to eliminate the private enterprises which remained after nationalization. The laws enacted in 1948 and 1950, as amended by Law No. 105/1953 C. of L., provide that communal enterprises, like national enterprises, are owned by the State. The People's Committees can thus force small entrepreneurs to give up their businesses and join communal enterprises; so that ultimately all but an insignificant fraction of industrial output has been produced by state enterprises. CZECHOSLOVAKIA, supra note 99, at 53-54; see also SUDA, supra note 99, at 40. Although the May 9th Constitution had explicitly guaranteed private ownership of enterprises with 50 or fewer employees, the nationalization of industry continued apace, so that by 1950, almost all the means of production were incorporated in the socialist sector. At the same time, all trades, including small retail businesses, were taken over by the State; service enterprises, repair shops, laundries, restaurants, etc., passed without exception into the ownership of the communal authorities. Id.
stitution of May 9, 1948 and by section 105 of the 1950 Civil Code, the authorities set an artificially low square footage of living space for permissible family homes (publicly disclosed for the first time in the 1964 Civil Code), and proceeded to confiscate existing family homes.

Another technique was used to confiscate apartment houses. Tenants were required to pay rent to special accounts opened with national committees (city government). The rents were kept artificially low so that the buildings could not be maintained in proper repair. The landlords, who now had no income, were ordered to carry out repairs, and when they were unable to do so their buildings were taken over by the national committees. In the process, the landlords were urged to donate the buildings to the State to avoid harassment. Whenever an apartment house or family home was expropriated by one of these methods, the dwelling was taken without any outstanding mortgages and remained the responsibility of the owner. The landlords, who were employed in lowly positions in State enterprises, had the amount of their mortgage gradually deducted from their wages. This process of expropriation continued into the early 1960's.

109. ÚSTAVA ČESKOSLOVENSKÉ SOCIALISTICKÉ REPUBLIKY, Constitutional Act of May 9, 1948, No. 150, C. of L., reprinted in 1 Peaslee, Constitutions of Nations 602 (1950). More generally, the 1948 Constitution provided:

The economic system of the Czechoslovak Republic rests on the nationalism of mineral wealth, industry, the wholesale trade and of finance;

on the ownership of the land in accordance with the principle "The land belongs to those who till it";

on the protection of small and medium-sized enterprise, and on the inviolability of personal property.

_id. art. XII (1).

Section 8, dealing with the Right of Property, further states: "Within general statutory limits every citizen may anywhere within the territory of the Czechoslovak Republic acquire real and other property and carry on gainful activity there." _Id._ All of the above rights are subject, however, to the legal caveat that: No one shall misuse the right of property to the detriment of the community.


111. Civil Code of 1964, _supra_ note 30, § 128, reprinted in 22 Bull. of Czech. Law 66. Section 128 provides:

(1) A family house is a dwelling in which at least two thirds of the floor space of all the rooms constitute flats. A family house may have the maximum of five dwelling rooms, excluding kitchens. It may have a larger number of dwelling rooms if their total floor space does not exceed 120 square metres; this total shall include, from kitchens that are habitable, only space by which such kitchens exceed 12 square metres.

(2) The habitable part of a farm shall be considered as a family house under the conditions listed in paragraph 1.

_id._

112. See O. ULC, THE JUDGE IN A COMMUNIST STATE: A VIEW FROM WITHIN 98 (1972): The owner of a house that once earned him an income was no longer enti-
By 1952, a concerted drive against farmers was initiated to confiscate their property and incorporate them into collective farms. The farmers were deprived of their land, livestock and equipment, and became nominal co-owners of collective farms run by Communist Party appointees. Their interests were later legally transferred to socialist ownership and the collective farms themselves are being gradually converted into State farms. Although physical coercion had to be used at times to overcome the farmers’ resistance, the process of collectivization was completed by the late 1950’s.

In the early 1950’s, the formerly free vocations, such as the legal, medical and engineering professions, were incorporated into newly created State organizations. The offices of these professionals were closed and they became State employees.

...
By the end of the 1950's, the Communists had succeeded pauperizing Czechoslovakia. Each person was permitted to possess items of personal use only and so became totally dependent on the State for his daily livelihood. The State became the sole owner of property and the sole employer. Wages and salaries were minutely regulated according to the rank and nature of employment. Compliance with the rules was strictly supervised and enforced by the huge apparatus of the Communist Party, the State organs of public administration and the police forces operated by the Communist Party. The total subjection of each individual to the power of the Communist Party was thus achieved. A narrow group of Communist Party members was established as the ruling class and was endowed with privileges including access to education, employment, housing, food, necessities and luxuries. The Communist Party called this the attainment of socialism. To give legal effect to their actions, the Communist Party promulgated a new constitution on July 11, 1960 and officially declared Czechoslovakia a socialist re-

sive, less imaginative, less competent, and somewhat more dishonest than their dispossessed colleagues. In prewar Plzeň the telephone directory had listed dozens of more or less prosperous private law firms; the cooperative reorganization contented itself with about ten lawyers. The district branches, as a rule, consisted of only one member.

Id. 117. See id. at 269:

Everything a citizen of Czechoslovakia might own (laces, shoes, a car and unlike the case in the Soviet Union—even land) fell under the category of either "personal" (osobní) or "private" (soukromé) property. The difference in the political appraisal of the two could not have been more momentous. "Personal" ownership was supposed to derive from socialist ownership, was inseparably bound with it, originated from the honest work of the owner, and was designed for socialist enjoyment. The law even attached to this property the adjective "inviolable."

In contrast, "private" property was protected by no one. What was understood as private? Anything could qualify: land, a car, shoes or laces, provided the object owner could be shown to be tainted by either a capitalist past or of sinister intentions, present or future . . . . If a house were confiscated, the compensation paid by the state, according to the Ordinance of the Ministry of Finance of April 1, 1964 (No. 73 of 1964 Collection of Laws) would be as follows:

personal property—840 Kcs to 1,930 Kcs per cubic meter;
private property—0.20 Kcs to 0.30 Kcs per cubic meter.

Because of this distinction, promulgated on April Fool's Day, a citizen would receive from four thousand to six thousand times less for his property.

Id. 118. Constitution of 1960, supra note 34. See also, Procházka, Czechoslovakia’s Socialist Constitution and the Road to It, in 11 Bull. of Czech. Law 19 (1960); Knapp, Questions of Ownership in the New Constitution of the Czechoslovak Socialist Republic, id. at 46; Mural, Rights and Duties of Citizens as Stated in the New Constitution of the Czechoslovak Socialist Republic, id. at 53; Levit, The Supreme Organs of the
The Party decided that the published law should be brought in line with the existing political and economic reality and ordered the preparation of new legal codes. In the field of civil law, in addition to the Civil Code of 1964, the Code of Civil Procedure of 1963, the Family Code of 1963, the Economic Code of 1964, the Labor Code of 1965, the Law on Private International Law, the Rules of Procedure Relating Thereto of 1963 and the Code of International Trade of 1963 were enacted. The Code of Civil Procedure updated the procedure in civil courts; the Family Code dealt with marriage, divorce and parent-child relations; the Economic Code regulated economic relations, the production and distribution of goods and services, and the work of State enterprises; the Labor Code regulated employment of individuals within the system; the Law on Private International Law concerned the law that would govern civil cases with a foreign element, including rules on the legal status of aliens and procedural rules to be applied by courts in dealing with such cases; the Code of International Trade, based on the Civil Code of 1811, regulated the dealings by the State and its instrumentalities with foreign parties in foreign trade.

IV. THE CIVIL CODE OF 1964

In view of the enactment of separate codes in other areas, the 1964 Civil Code was restricted to regulating relations involving the acquisition by individuals of moveables from socialist organizations, services...
rendered to individuals by socialist organizations and the protection of
the rights of socialist organizations and individuals.

The Civil Code of 1964 includes sections on Fundamental Principles; General Provisions; Socialist Ownership and Personal Ownership; Personal Use of Apartments and Rooms, Use of Space for Purposes other than Accommodation, and Use of Land; Rights and Obligations from other Legal Acts; Liability for Damage and Unjust Enrichment; Inheritance of Property in Personal Ownership; and Final Provisions.

A. Fundamental Principles

Civil law relations are based on the socialist system of principles in
which the material needs of individuals are satisfied through remunera-
tion for their work according to its quality, quantity and impor-
tance. Civil law relations give rise not only to mutual rights and du-
ties between the parties but also to rights and duties with respect to
society. The exercise of these rights, therefore, must be in harmony
with the rules of socialist conduct, and the provisions of the code are
interpreted in conformance with these principles.

B. General Provisions

The Civil Code of 1964, in satisfying their material needs, primar-
ily regulates relations between individuals and socialist organizations.
The Code deals with individuals and socialist organizations, which are
defined as State, cooperative and public organizations, as well as other
organizations whose activity contributes to the growth of socialist rela-

129. Id. art. VII, reprinted in 22 BULL. OF CZECH. LAW 44. For example, under § 2 of
the 1950 Code: “Civil rights shall be protected by Law. “However, this guarantee was
qualified by § 3, which stated: “No one shall be permitted to misuse civil rights to the
detriment of the society.” Civil Code of 1950, supra note 29, §§ 2-3, reprinted in 10
BULL. OF CZECH. LAW at 513; see also ULC, supra note 112, at 266.
130. Civil Code of 1964, supra note 30, art. VII, reprinted in 22 BULL. OF CZECH. LAW.
44. Under the 1950 Code, a citizen could act in any way as long as his action did not
violate “any of the clauses of the Code such as: “the rules of socialist community life;
fulfillment of the Uniform Economic Plan; law; [or] common interest . . . .” ULC, supra
note 112, at 266. Since these clauses were nowhere defined, they could mean anything
and, therefore, “could be applied at any time, for whatever good or bad political reason.”
Id.
131. Civil Code of 1964, supra note 30, art. VIII, reprinted in 22 BULL. OF CZECH. LAW 44.
132. Id. §§ 1-122, reprinted in 22 BULL. OF CZECH. LAW 38-59.
tions. It further discusses the power of attorney, the expression of will in legal acts, and the securing of rights and obligations, which may be accomplished chiefly by a guarantee and a garnishment of wages. It includes the assignment of claims and the assumption of debt, the termination of rights and obligations by payment, settlement, lapse of time, death and set-off. It also deals with prescription and carries definitions of certain terms.

C. Socialist Ownership and Personal Ownership

The Czech civil law provides for two distinct types of property ownership—socialist and personal. Socialist ownership is ownership other than personal ownership, and personal ownership is ownership of items used for the satisfaction of personal needs of individuals. Private ownership has been phased out, but since it still nominally existed in 1964, it is referred to in sections 125 to 151. Section 490(2) expressly provides that building lots still registered in the name of a private individual can be transferred only to the State.

Personal ownership arises by transfer from socialist ownership in accordance with economic planning. It includes income and savings derived from work and social security, articles of personal and domestic need, family homes and weekend homes. A family home may have no more than five rooms, the kitchen excluded. If it has more than five rooms, a family home cannot exceed 120 square meters, including any kitchen space that exceeds twelve square meters. A person may own only one family home and one week-end home, which may not exceed fifty square meters of floor space.

133. Id. § 53, reprinted in 22 Bull. of Czech. Law 47.
134. Id. §§ 52-57, reprinted in 22 Bull. of Czech. Law 53-54.
137. Id. §§ 123-151, reprinted in 22 Bull. of Czech. Law 65-70.
138. Id. §§ 125-151, reprinted in 22 Bull. of Czech. Law 65-70. Personal ownership was supposed to derive from socialist ownership, be inseparably bound with it, originate from the honest work of the owner, and be designed for socialist enjoyment. Private property was protected by no one and almost anything could be considered private property. For example, a woman could sew her worker-husband's trousers and the needle she used would be personal property. If the needle were to be used to fix a customer's suit, it would be considered private property. The determining factor was whether the owner or the object "could be shown to be tainted by either a capitalist past or of sinister intentions, present or future." Ulc, supra note 112, at 269.
Only properly acquired property may be owned by individuals. Property acquired from illicit sources does not enjoy the protection extended to personal property.\footnote{Civil Code of 1964, supra note 30, § 125(2), reprinted in 22 BULL. OF CZECH. LAW 65.} Equally, property in excess of personal need accumulated in contradiction to the interests of the society is not protected.\footnote{Id. § 130(2), reprinted in 22 BULL. OF CZECH. LAW 66.} Accumulation of any quantity of clothing, shoes, items of personal use and food beyond what is needed for personal use is considered hoarding and such activity is punishable according to articles 117 and 118 of the Criminal Code.\footnote{Law of November 29, 1961, No. 140, C. of L., promulgated as amended on October 10, 1973 under No. 113, C. of L., reprinted in 13 BULL. OF CZECH. LAW 187-276 (1974) [hereinafter cited as The Criminal Code]. Article 117, entitled “Speculation,” provides: (1) Whoever acquires or keeps articles of necessity in a larger quantity or an article of greater value with the intent of selling them or exchanging them with profit, or of obtaining another advantage for them, or whoever acts as intermediary in such activity, shall be punished by imprisonment for a term of six months to three years. (2) The offender shall be punished by imprisonment for a term of three to ten years, (a) if he commits the act defined in paragraph 1 as member of an organized group, (b) if he commits such act for gain, or (c) if by such act he gains considerable profit. (3) The offender shall be punished by imprisonment for a term of five to fifteen years, (a) if by the act defined in paragraph 1 he causes a serious breakdown in supply, or (b) if he commits such act under the state of defense emergency. Article 118. Unauthorized Business Enterprise (1) Whoever engages on a larger scale in private manufacturing or other gainful enterprise without authorization shall be punished by imprisonment for a term of six months to three years. (2) The offender shall be punished by imprisonment for a term of two to eight years, (a) if he uses another person as a worker for the activity defined in paragraph 1, or (b) if through such activity he gains considerable profit. Id. \footnote{Id. § 137(2), reprinted in 22 BULL. OF CZECH. LAW 68.}} Joint personal ownership is of two kinds: ownership based on shares and ownership by husband and wife.\footnote{Civil Code of 1964, supra note 30, §§ 143-151, reprinted in 22 BULL. OF CZECH. LAW 67.} Joint ownership based on shares arises mainly by gift or inheritance but may also arise when relatives pool resources to build a family home.\footnote{Id. § 137(2), reprinted in 22 BULL. OF CZECH. LAW 68.} Joint ownership by
husband and wife is mandatory and includes all property that may be personally owned or acquired by either spouse during marriage, with the exception of items acquired by inheritance or by gift and items which by their nature serve the personal need of only one of them.\textsuperscript{146}

\textbf{D. Personal Use of Apartments, Rooms and Space for Purposes Other Than Accommodation, and Personal Use of Land}\textsuperscript{147}

Housing, notoriously in short supply,\textsuperscript{148} is administered by the national committees.\textsuperscript{149} They assign apartments, rooms and space for purposes other than accommodation (e.g., garages or storage) to individuals. The socialist organizations that administer the buildings are under a duty to lease the premises to the assignee. Apartments and rooms are allotted according to the size of the family. Families usually occupy much less than the permissible floor space and, consequently, two or more families may live in an apartment intended for only one family. This is known as joint use of an apartment.\textsuperscript{150} Usually, children continue to live with their parents after marrying, making it common for three or four generations to live in the same apartment. These apartments are frequently referred to as two, three or four generation apartments. Should the number of persons living in an apartment fall below the permissible space limit, the apartment will be deemed excessive, the family's right to use it will be cancelled by the national committee and they will be assigned smaller premises.\textsuperscript{151}

The regime began to build housing in the 1960's but hardly manages to keep the status quo. This is primarily because older buildings are not properly maintained, resulting in their falling beyond repair and having to be demolished. New apartments are kept very small in order to comply with the eighteen square meters per person rule. The 1964 Code contains detailed regulations for the assignment and use of apartments, including provisions for disposal of the space in case of divorce,\textsuperscript{152} exchange of apartments\textsuperscript{153} and payment of rent.\textsuperscript{154}

\textsuperscript{146} Id. § 143, reprinted in 22 Bull. of Czech. Law 68-69.
\textsuperscript{147} Id. §§ 152-221, reprinted in 22 Bull. of Czech. Law 70-83.
\textsuperscript{148} ULC, supra note 112, at 216, 232-33, 270, 287.
\textsuperscript{149} Civil Code of 1964, supra note 30, §§ 152-154, reprinted in Bull. of Czech. Law 70.
\textsuperscript{150} Id. §§ 172-174, reprinted in 22 Bull. of Czech. Law 74.
\textsuperscript{151} Id. §§ 185-186, reprinted in 22 Bull. of Czech. Law 77.
\textsuperscript{152} Id. §§ 148-150, reprinted in 22 Bull. of Czech. Law 69-70. Housing is one of the most pressing problems in Czechoslovakia. In one of the ten districts of Prague, more than 1000 people were, in the middle of the 1960's, forced to stay with their former spouses in the same flat; even after the divorce and remarriage of one of the partners. J. Adam, Wage, Price and Taxation Policy in Czechoslovakia, 1948-1970, at 208 (1974).
Although land may only be publicly owned, private individuals still may own small family homes, weekend homes, garages and small gardens, and arrangements are made to allot them sufficient use of land for those purposes. Public land is allotted for the use of individuals by the district national committees in accordance with the economic plan. The land for a family home may not exceed 600 square meters, the land for a week-end home or a small garden may not be more than 400 square meters, and the space for a garage may be as much as is strictly necessary for that purpose. On the strength of the allotment, the organization administering the land makes an agreement for the use of the land with the individual. When an individually owned structure is built on the land, the right to use the land together with title to the structure are transferable. The use of the land may be granted to several individuals for joint use as well as for the joint use of husband and wife.

E. Services

Because all production, manufacture and distribution are done by socialist organizations, individuals can obtain goods and services only from them. The organizations sell goods and perform services in accordance with the economic plan at prices set by the Government. Whenever an organization transfers goods to individuals, the transferees obtain clear title and any rights of third parties are extinguished. Such outstanding rights may be held by other organizations, such as suppliers of raw materials. The Code ensures that problems have to be settled between the concerned organizations. The individual purchaser obtains title to the goods even if the title of the selling organization is defective. The individual also has the right to a reduction of the purchase price and even to rescission of the contract in the case of
defective goods and services.167

1. Retail Sale of Goods168

The organization is under an obligation to deliver the purchased item to the purchaser, and the purchaser is bound to take delivery and pay the purchase price.169 Items not regularly stocked will be sold on order.170 Items intended for sale must have the required quality, quantity, measurements or weight and must be without defects.171 Items which have defects that do not prevent them from being used for their intended purpose may be sold at a reduced price.172 The organization is liable for defects in the item sold.173 The period of warranty, which runs from the time of delivery,174 is six months for most goods and eight days for food stuffs.175 If the organization cannot cure a defect, or if it is more convenient, the organization may exchange the item for a new one.176 The purchaser may rescind the contract in such a case or he may keep the item. If he keeps the item, he is entitled to a partial refund of the purchase price.177 Claims for defects in perishable goods must be made on the day following the day of purchase.178

2. Leasing179

Some items that can be purchased also may be leased by individuals, who then can make periodic payments for the items without being required to buy them. In a leasing agreement a person acquires the right to use an item for a specified time for a fee to be paid to the leasing organization.180 Defects in the leased item are treated similarly to defects in a purchased item. The lessee is not liable for normal wear

167. Id. §§ 234-235, reprinted in 22 BULL. OF CZECH. LAW 86.
168. Id. §§ 239-256, reprinted in 22 BULL. OF CZECH. LAW 87-91.
169. Id. § 29, reprinted in 22 BULL. OF CZECH. LAW 87. Prices under this system differ from prices in a market economy. They are not a result of market forces, but rather are fixed by central authorities. Unlike a market economy, prices under this system have little impact on the allocation of resources. ADAM, supra note 152, at 95.
171. Id. § 244, reprinted in 22 BULL. OF CZECH. LAW 88.
172. Id. § 246, reprinted in 22 BULL. OF CZECH. LAW 88-89.
173. Id. § 247, reprinted in 22 BULL. OF CZECH. LAW 89.
174. Id. § 244, reprinted in 22 BULL. OF CZECH. LAW 88.
175. Id. § 248, reprinted in 22 BULL. OF CZECH. LAW 89.
176. Id. § 250, reprinted in 22 BULL. OF CZECH. LAW 89.
177. Id. §§ 251-252, reprinted in 22 BULL. OF CZECH. LAW 90.
178. Id. § 254(2), reprinted in 22 BULL. OF CZECH. LAW 90.
179. Id. §§ 257-262, reprinted in 22 BULL. OF CZECH. LAW 91-92.
180. Id. § 258, reprinted in 22 BULL. OF CZECH. LAW 91.
and tear. If the leased item is damaged, lost or destroyed, the lessee must notify the lessor without delay and may be required to compensate him. A fee is levied for late return.\textsuperscript{181}

3. Making Things to Order\textsuperscript{182}

Socialist organizations may make goods to order.\textsuperscript{183} An agreement to that effect creates the individual's right to have the goods made by the organization and his obligation to pay the price for the service. He may cancel the contract until the item is made but he must pay the organization for the work completed, provided the organization cannot make use of the item.\textsuperscript{184}

The organization has to make the item according to contract and within the agreed time. If the service is not provided in time and the individual still wants the item, he is entitled to a price reduction.\textsuperscript{185} The organization is liable for defects in an item within a warranty period. The usual warranty period is six months from delivery, eighteen months in the case of buildings, but a longer time may be set by special provisions.\textsuperscript{186} If the defect can be cured, the organization must cure it free of charge. If the defect cannot be cured and it prevents proper use, the individual can rescind the contract, but if it can be used he is entitled to a price reduction.\textsuperscript{187}

4. Repairs and Modification of Things\textsuperscript{188}

Under a contract for repair or modification, the organization has to undertake the work in the agreed time for a stipulated price.\textsuperscript{189} It may hold the item until payment is made.\textsuperscript{180} The organization is liable for defects in the service within warranty, which unless otherwise stipulated is three months, and eighteen months in the case of construction.\textsuperscript{181} The individual is entitled to a cure of the defect. If it cannot be cured or the organization does not cure within the stipulated time, the individual can rescind the contract or request a reduction in price.\textsuperscript{182} If

\textsuperscript{181} Id. §§ 260-262, reprinted in 22 Bull. of Czech. Law 92.
\textsuperscript{182} Id. §§ 263-275, reprinted in 22 Bull. of Czech. Law 92-95.
\textsuperscript{183} Id. § 263, reprinted in 22 Bull. of Czech. Law 92.
\textsuperscript{184} Id. §§ 265, 268, reprinted in 22 Bull. of Czech. Law 93.
\textsuperscript{185} Id. § 269, reprinted in 22 Bull. of Czech. Law 93.
\textsuperscript{186} Id. §§ 270-271, reprinted in 22 Bull. of Czech. Law 94.
\textsuperscript{187} Id. § 273, reprinted in 22 Bull. of Czech. Law 94.
\textsuperscript{188} Id. §§ 276-283, reprinted in 22 Bull. of Czech. Law 95-97.
\textsuperscript{189} Id. §§ 276-277, reprinted in 22 Bull. of Czech. Law 95.
\textsuperscript{190} Id. § 278, reprinted in 22 Bull. of Czech. Law 95-96.
\textsuperscript{191} Id. § 280(1), reprinted in 22 Bull. of Czech. Law 96.
\textsuperscript{192} Id. § 281(1), reprinted in 22 Bull. of Czech. Law 96.
the individual fails to claim the item within six months from the day he was notified of the completion of the service, the organization may sell the item and pay him the proceeds less its expenses. The individual's right to claim the proceeds is extinguished one year after the sale. 193

5. Agency, Commission Sale and Safekeeping 194

Socialist organizations provide services to individuals that private individuals may not perform. Socialist organizations do not, however, engage in a broad spectrum of services or act on behalf of individuals on a professional basis. In such instances, an individual is often forced to rely on his personal contacts. With respect to commission sales, the organization accepts used articles for resale and sells them for a fee. 195 In the case of safekeeping, the organization accepts items for a fee. 196

6. Accommodation 197 and Transport Services 198

Socialist organizations engaging in hotel, hostel and dormitory businesses provide temporary accommodation for a fee. 199 Those organizations engaging in the transport of persons and goods provide the service in return for payment of a fare or transport charge as prescribed by the applicable regulations. 200 The transport organizations are liable for personal injuries to persons and for damage to goods transported in accordance with transport regulations. 201

7. Legal Assistance Provided by the State Bar 202

The Code contains basic provisions concerning the extension of legal advice to individuals. Legal assistance is a service provided by the State bar for a fee. 203 The individual may retain any attorney em-

193. Id. § 282, reprinted in 22 BULL. OF CZECH. LAW 97.
195. Id. §§ 291-292, reprinted in 22 BULL. OF CZECH. LAW 98.
196. Id. §§ 296-297, reprinted in 22 BULL. OF CZECH. LAW 99.
197. Id. §§ 300-306, reprinted in 22 BULL. OF CZECH. LAW 99-100.
198. Id. §§ 307-320, reprinted in 22 BULL. OF CZECH. LAW 101-03.
199. Id. § 300(1), reprinted in 22 BULL. OF CZECH. LAW 99-100.
200. Id. § 307, reprinted in 22 BULL. OF CZECH. LAW 101.
201. Id. §§ 310-318, reprinted in 22 BULL. OF CZECH. LAW 102-03.
202. Id. §§ 321-324, reprinted in 22 BULL. OF CZECH. LAW 104.
203. Id. Under "Legal Assistance By An Organization of Advocates," individuals may contract for the appointment of a particular attorney for protection of their legal rights and interests. Ordinarily, the State bar provides such services for a fee; however, "the individual shall have the right to receive legal assistance partially or fully without charge if it is warranted by his personal and material situation or if there are any other special
ployed by the locally competent office of the State bar. The attorney may represent his client before courts, State offices and socialist organizations; or he may offer the client legal advice.

8. Banking Services

Individuals are offered banking services by socialist banking institutions. They may place money on deposit, keep a checking account or obtain a loan. Savings banks issue deposit books to customers when deposits and withdrawals are entered. The book may be in the name of an individual or it may be issued to bearer. Disposal of the funds may be conditioned on the use of a password. The deposit and the interest payable are guaranteed by the State. Checking accounts also may be opened as joint accounts. Loans may be obtained by individuals for a specific purpose recognized by regulations and the money must be used for that purpose only. The borrower repays the loan by agreed periodic payments together with interest.

9. Insurance Services

State insurance organizations write property, life and liability insurance in accordance with regulations. Property insurance entails chiefly fire insurance and the insurance of motor vehicles. Liability insurance primarily protects against risks arising from the operation of motor vehicles. Insurance is obtained by making a contract of insurance wherein the individual agrees to pay premiums and the organization is bound to pay the agreed amount upon the occurrence of the stated event. Insurance is written for a given term and terminates unless renewed.

From the scope of the services offered by socialist organizations, it appears that the State has preempted the entire field of services which may be performed exclusively by these organizations. In order to prevent reasons for warranting it.” Id.

204. “Financial services,” Id. §§ 325-344, reprinted in 22 BULL. OF CZECH. LAW 105-08.
205. Id. §§ 325-326, 341, reprinted in 22 BULL. OF CZECH. LAW 105, 108.
206. Id. §§ 328-333, reprinted in 22 BULL. OF CZECH. LAW 105-06.
207. Id. § 327, reprinted in 22 BULL. OF CZECH. LAW 105.
208. Id. § 344, reprinted in 22 BULL. OF CZECH. LAW 108.
209. Id. § 343, reprinted in 22 BULL. OF CZECH. LAW 108.
210. Id. §§ 345-383 reprinted in 22 BULL. OF CZECH. LAW 108-16.
211. Id. § 347, reprinted in 22 BULL. OF CZECH. LAW 109.
212. Id. § 349-352, reprinted in 22 BULL. OF CZECH. LAW 109-10.
213. Id. §§ 354-355, reprinted in 22 BULL. OF CZECH. LAW 110.
214. Id. § 358, reprinted in 22 BULL. OF CZECH. LAW 111.
vent "capitalistic exploitation" the state prohibits individual persons from providing services to customers for payment. Providing services after hours by individuals may be punishable as speculation under article 117 of the Criminal Code or as an unauthorized enterprise under article 118 of the Criminal Code.\(^{215}\)

**F. Rights and Obligations From Other Legal Acts\(^ {216}\)**

In this division the Code deals with cases of civic help, whereby one person aids another with money or work.\(^ {217}\) It also covers subletting\(^ {218}\) and the purchase of things by organizations from individuals or by individuals from individuals. It further covers exchanges and gifts between individuals, sales of second-hand articles for personal use,\(^ {219}\) taking care of another's business and how public competitions are to be run.\(^ {220}\)

An individual helping another is entitled only to compensation for his actual costs.\(^ {221}\) Since civic help is understood to be rendered free of charge, he is not entitled to payment of a reward unless it was agreed upon in advance.\(^ {222}\) The same applies to a loan of money, although interest of two percent may be charged.\(^ {223}\) The borrower of generically designated items must return items of the same kind, quality and quantity. A borrowed piece of movable property may be used only in the usual manner and for the purpose for which it is intended.\(^ {224}\)

The owner of a family home may let it to another if he himself cannot live in it because he is assigned to work at another place. The letting is governed by the Code's provisions covering the personal use of apartments, the renting of rooms in family homes and the subletting of apartments.\(^ {225}\) The owner or user of an immovable object may also rent it for temporary use.\(^ {226}\) Use usually involves gardens, garages,

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220. *Id.* §§ 412-414, *reprinted in* 22 BULL. OF CZECH. LAW 122.
221. *Id.* § 402, *reprinted in* 22 BULL. OF CZECH. LAW 120.
222. *Id.* § 385(2), *reprinted in* 22 BULL. OF CZECH. LAW 116.
223. *Id.* § 387(1), *reprinted in* 22 BULL. OF CZECH. LAW 117. The Code provides: "If a pecuniary loan is involved, interest may be demanded only if it has been agreed upon. The interest shall not exceed the amount stipulated by the implementing regulations. Any agreement concerning other material shall be invalid." *Id.*
224. *Id.* § 389, *reprinted in* 22 BULL. OF CZECH. LAW 117.
225. *Id.* §§ 390-396, *reprinted in* 22 BULL OF CZECH. LAW 119.
226. *Id.* §§ 397-398, *reprinted in* 22 BULL OF CZECH. LAW 119.
apartments or week-end homes used during a person's annual vacation. An appropriate compensation for such use may be agreed upon.\textsuperscript{227}

An individual may sell a second-hand article to another or to a socialist organization for a price determined by regulations. He may also exchange such an article for another.\textsuperscript{228}

A gift is a contract subject to acceptance by the donee.\textsuperscript{229} A written contract is required unless the item is tendered at the time the gift is made. Anything that individuals may own may be given as a gift.\textsuperscript{230} The donor may demand the return of his gift if the donee grossly violates the rules of socialist conduct toward the donor or members of his family.\textsuperscript{231}

Attending to the business of another is understood to be uncompensable, however, compensation commensurate with the result may be agreed upon.\textsuperscript{232} Necessary costs and expenses are always recoverable.\textsuperscript{233}

The term "public competition" refers to the announcement by a socialist organization of a competition for certain work or performance.\textsuperscript{234} The prizes and criteria upon which prizes will be awarded must be disclosed.\textsuperscript{235}

The above provisions illustrate the strict government regulation of any property dealings between individuals. Individuals may deal with second-hand articles only and may not engage in any activity resembling a business transaction. Property transactions should not result in any profitmaking and are understood to fall within the area of civic assistance.

\begin{itemize}
  \item \textsuperscript{227} Id. § 397, reprinted in 22 Bull. of Czech. Law 119.
  \item \textsuperscript{228} Id. §§ 400, 406, reprinted in 22 Bull. of Czech. Law 120. Although the Code does not specify in this section that it applies to second-hand articles, it is implicit in the section's provisions for disclosure of defects in such items.
  \item \textsuperscript{229} Id. § 407(1), reprinted in 22 Bull. of Czech. Law 121.
  \item \textsuperscript{230} Id. § 407(2), reprinted in 22 Bull. of Czech. Law 121.
  \item \textsuperscript{231} Id. § 409, reprinted in 22 Bull. of Czech. Law 121.
  \item \textsuperscript{232} Id. § 411, reprinted in 22 Bull. of Czech. Law 121.
  \item \textsuperscript{233} Id.
  \item \textsuperscript{234} Id. § 412, reprinted in 22 Bull. of Czech. Law 122.
  \item \textsuperscript{235} Id. § 413, reprinted in 22 Bull. of Czech. Law 122.
\end{itemize}
G. Liability for Damage and Unjust Enrichment

1. Liability for Damage

Damages are dealt with extensively in the 1964 Code, which first declares the principle that everyone has a duty to act so as not to injure another or cause damage to property, and stresses a corresponding duty to avert damage in a manner appropriate under the circumstances. Damage caused in averting an imminent threat do not give rise to liability.

Individuals are liable for damage caused to other individuals or socialist organizations, and socialist organizations for damage caused to individuals by an unlawful decision. A socialist organization's liability for damage to other socialist organizations is regulated by the Economic Code. Minors and the disabled are liable only if they are able to control their actions and assess the consequences of their actions.

Both individuals and socialist organizations are responsible for damage caused by them during any kind of transport. The transport operator cannot be relieved of liability if the damage was caused by circumstances originating in transport. He will be relieved of liability, however, if he can prove that the damage could not have been prevented by the use of ordinary care. Damage includes physical injuries as well as damage to property and the misappropriation or loss of property. If two or more transport operators are involved, they are liable in proportion to their participation in the damage incurred.

The Code regulates liability for damage to things brought onto the premises of hotels, restaurants, garages or any similar premises oper-
ated by socialist organizations. The operator remains liable unless he can show that the loss would have occurred in any event. This obligation is imposed by law and the operator cannot disclaim liability by notice or even by agreement. Liability for loss of jewelry, money and other valuables is limited to amounts stipulated by regulations unless the loss is caused by persons employed in the organization, in which case the operator is liable without limitation. There is also no limit to the amount of damages when items are accepted for safekeeping. Garage operators and similar establishments are similarly liable for vehicles and their accessories. A claim must be made within fifteen days from the day the person who suffers the loss learns of it, otherwise the claim is extinguished.

If two or more individuals or socialist organizations cause the loss, liability is shared in proportion to the participation of each. They may be held liable jointly and severally, in which case they shall settle among themselves, with each paying his proportional share of the damage. If the person that incurred the loss is also at fault, he is responsible for his proportional share, and if he is exclusively to blame, he alone bears the loss.

With respect to the manner and extent of compensation, the Code limits compensation to actual loss by providing for restoration to the state of affairs existing before the damage. If such restoration is not possible or efficient then money damages will be awarded in an amount that would be sufficient to do so. A limit on the payment is thereby established. If damage is caused intentionally, damages in excess of the actual loss may be recovered, and the court may reach profits realized independent of the loss. The amount of damages is based on prices existing at the time the loss occurred.

Personal injuries are compensated by the payment of medical and hospital expenses, payment for loss of earnings during incapacity and a

251. Id. § 433(2), reprinted in 22 Bull. of Czech. Law 126.
252. Id. § 433(3), reprinted in 22 Bull. of Czech. Law 126.
253. Id. § 434(1), reprinted in 22 Bull. of Czech. Law 126.
254. Id. § 434(2), reprinted in 22 Bull. of Czech. Law 126.
255. Id. § 435, reprinted in 22 Bull. of Czech. Law 127.
256. Id. § 436, reprinted in 22 Bull. of Czech. Law 126.
257. Id. § 438(1), reprinted in 22 Bull. of Czech. Law 127.
258. Id. § 439, reprinted in 22 Bull. of Czech. Law 127.
260. Id. § 442(1), reprinted in 22 Bull. of Czech. Law 128.
261. Id.
262. Id. § 442(3), reprinted in 22 Bull. of Czech. Law 128.
263. Id. § 442, reprinted in 22 Bull. of Czech. Law 128.
lump sum payment for pain and suffering.\textsuperscript{264} If permanent disability results, disability payments are recoverable. All payments are made in accordance with regulations, which take into account any social security payments and retirement benefits, and may not exceed the determined maxima.\textsuperscript{265}

Fatal injuries are similarly compensated, and a cash annuity is paid to the decedent's dependents, but only to the extent beyond which maintenance is not covered by social security. Funeral expenses are also recoverable.\textsuperscript{266}

2. Unjust Enrichment\textsuperscript{267}

The chapter covering unjust enrichment is of special significance. It not only covers the finding of lost articles and the invalidity and rescission of contracts but, most importantly, any profit or income from unauthorized sources. All undue enrichment is to be returned to the person or organization to whose detriment it was gained, and if that party cannot be found, the amount falls to the State.\textsuperscript{268}

With respect to finding lost articles, the 1964 Code provides that any found article is to be surrendered promptly to the national committee. If the owner does not claim it within a year, it falls to the State. Articles abandoned or hidden and treasure troves belong to the State.\textsuperscript{269} Retention of such articles by finders would amount to profit from an unauthorized source and would be punishable under the Criminal Code.\textsuperscript{270}

With respect to invalidation and rescission of contracts, the Code provides that whenever a contract is held invalid or is rescinded, each party must make restitution to the other in the amount received thereunder.\textsuperscript{271} If the parties entered into the contract in order to evade the law, the court may order the parties to transfer a part or the entire subject matter of their performance to the state as income from an unauthorized source.\textsuperscript{272}

With respect to income from unauthorized sources, the Code contemplates not only found items not surrendered by the finder, but also anything kept that was to be surrendered after a contract was held

\begin{flushleft}
266. \textit{Id.} §§ 448-449, reprinted in 22 Bull. of Czech. Law 129.
270. \textit{Id.}
\end{flushleft}
invalid or was rescinded and, especially, any income or profit realized by individuals operating any business or repair activity after hours. Such activity is also punishable as speculation or unauthorized business enterprise under articles 117 and 118 of the Criminal Code.\footnote{273}

\[\text{H. Inheritance of Property in Personal Ownership}\footnote{274}

Because individuals may own only items of personal use, the law of succession has lost most of its importance. As a result, it is only summarily dealt with by the Code. The Code recognizes both testamentary and intestate succession.\footnote{275}

A holographic will is effective if handwritten by the testator, dated and signed by him, or made in the office of the state notary public.\footnote{276} Minor children, however, must receive at least their statutory share and adult children not less than three-fourths of the statutory share which they would receive on intestacy.\footnote{277} If the will does not comply with this provision, it is invalid to that extent.\footnote{278} A will may be revoked by the same formalities used to make a will, or by destroying the document.\footnote{279}

Priority of intestate succession proceeds in three groups.\footnote{280} First are the decedent’s children and the spouse, who inherit in equal shares. If a child does not take for any reason, his children share equally, and if all or some of them do not take, their children share equally.\footnote{281} In the second group, which takes only if the decedent’s descendants do not, is the spouse, the decedent’s parents and persons who lived with the decedent in a common household for at least one year prior to his death and who took care of the household or depended on the decedent for their maintenance.\footnote{282} All take equally, except for the spouse, who receives at least one-half of the estate.\footnote{283} In the third group, which takes only if the spouse and parents of the decedent do not, are the decedent’s brothers and sisters, and persons who had lived with the decedent in a common household for at least one year prior to his
death and who cared for the household or depended on the decedent for their maintenance. They all take equally. If no person succeeds to the estate, it will escheat to the State.284

Probate or letters of administration proceedings are conducted by the office of the State notary public.285 When there are two or more persons entitled to an estate, they may proceed to partition and distribute the estate by agreement. The office will approve the agreement unless contrary to law or the public interest.286 In the absence of an agreement, the office will distribute the estate ex officio.287 The will and the intestacy law serve only as the basis for the actual distribution, so as to arrive at a reasonable settlement.288

I. Final Provisions289

Under the Final Provisions section, the Code grants legal personality to non-socialist organizations recognized by the State.290 These are mostly foreign legal entities that are active in the country under Czechoslovak law, church organizations and associations. The Code also deals with the remnants of private property which still nominally may have existed on April 1, 1964, and specifically declares that any parcel of land, still recorded in the name of its owner, can be transferred only to the State or to a specifically designated socialist organization.291 Otherwise, the Code applies to all such nominally surviving property in private ownership mutatis mutandis.292

V. THE 1982 CIVIL CODE AMENDMENTS293

The purpose of the 1982 amendments is to bring the provisions of the Code into closer conformity with existing developments. These changes are too few and technical to have a major impact. They can be grouped into three classes: 1) additions to existing provisions; 2) modifications of the existing provisions; and 3) entirely new provisions.

284. Id. § 475, reprinted in 22 BULL. OF CZECH. LAW 134. See also id. § 462, reprinted in 22 BULL. OF CZECH. LAW 131.
285. Id. § 481, reprinted in 22 BULL. OF CZECH. LAW 135.
286. Id. § 482, reprinted in 22 BULL. OF CZECH. LAW 135.
287. Id. § 483, reprinted in 22 BULL. OF CZECH. LAW 135.
288. Id.
289. Id. §§ 488-510, reprinted in 22 BULL. OF CZECH. LAW 136-41.
290. Id. § 488, reprinted in 22 BULL. OF CZECH. LAW 136.
291. Id. § 490(2), reprinted in 22 BULL. OF CZECH. LAW 137.
292. Id. § 490(3), reprinted in 22 BULL. OF CZECH. LAW 137.
293. See supra note 31.
A. **Additions to the Existing Provisions of the Code**

These additions were made chiefly because of omissions in the Code. The provisions, as a rule, were originally part of the democratic Czechoslovak law, included in the 1950 Civil Code but eliminated in the 1964 Civil Code. They were later found necessary and consequently reinstated.

Section 130a was added within the framework of enjoyment of items of personal property that may be owned by individuals. It provides that an owner should not commit any acts of nuisance so as to annoy his neighbor. This applies particularly to owners of family homes, who are required to refrain, for instance, from making excessive noise, smoke, gaseous emissions, bad smells or doing other things that might penetrate land used by a neighbor. Such owners must also trim tree branches and roots in order to prevent an interference with adjoining properties.

Section 132a reintroduces into the Code the concept of possession that was eliminated in 1964. It provides that a person using a thing in good faith as his own has, unless otherwise provided, similar rights as the owner.

Section 135a reinstates the concept of acquisition of property by adverse possession, which was considered repugnant to socialism in 1964. Items that may be held in personal ownership may be acquired by adverse possession: movables in three years and immovables in ten years. If land designated for personal use is adversely held, the individual will acquire the right to have it assigned to him for his personal use.

Sections 135b and 135c reinstate easements, which were being phased out in 1964. They limit the right to use immovables and land under personal control so that the user must suffer something, do or abstain from doing something to his detriment.

Section 453a strengthens the power of the authorities to confiscate items that the owner uses contrary to the interests of society. The provision falls within the broader framework of unjust enrichment and also covers items referred to in section 453(2),\(^{294}\) with the difference that section 453a provides that the owner himself has hidden the items to prevent their falling into the hands of the authorities. Additionally, section 453a provides that where the owner acts contrary to law so as to deprive himself of the use of a thing he owns, the item will fall to

\(^{294}\) Civil Code of 1964, *supra* note 30, § 453(2), *reprinted in* 22 BULL. OF CZECH. LAW 130: "Abandoned or hidden things whose owner is unknown shall fall to the state. Whoever appropriates or uses them must surrender them to the state together with any unjust enrichment he may have thus gained."
the State.

Section 469a reinstates disinheritance in the law of succession. It provides that a testator may in his will disinherit a descendant because he did not help the testator in sickness, old age or other important instances. The testator must specify his reasons for disinheriting.\footnote{295}

Section 489a provides that a person may, after having received the proper license, offer his services for reward to other persons and socialist organizations. This provision is designed to legalize the present and widespread after-hours offering of services by craftsmen and repairmen that have been prohibited as an unauthorized business enterprise.\footnote{296} This provision has not met with much success, however, because most repairmen continue to work unlicensed in order to avoid declaring profits for income tax purposes.

B. Modifications of the Existing Provisions of the Code

The amendments introduce some modifications of the existing provisions in a few instances. All these amendments are highly technical and are designed to solve difficulties in application.

New subsections (2) and (3) are added to section 142, which concerns co-ownership of personal property. They provide that, for economic reasons, the court may in proper cases decline to partition items of personal property.

Section 447 dealing with damages also has new subsections (2) and (3), which reintroduce the Roman concepts of light and gross negligence (culpa levis and culpa lata). The 1964 Code previously recognized only one level of negligence.

A newly phrased and greatly expanded section 221 deals in detail with unauthorized structures built by individuals on land for the use of which they do not hold proper authorization.

Newly worded subsections (2) and (3) of section 457 enhance the power of the State to seize the performance of parties in the case of invalidation and rescission of contracts between individuals. The provision falls within the unjust enrichment that would result from the transactions.\footnote{297}

C. Entirely New Provisions of the Civil Law

Clause II of the Law of Amendment provides for only one provision of this kind. It states that, with the approval of the federal Minis-
tries of Finance and External Affairs, socialist organizations may establish by contract the right of permanent use of a parcel of land in favor of a foreign legal person. The contract must describe the land, the purpose for which it will serve, the kind of use and the method of termination of the use.

With the exception of section 489a, which became effective on January 1, 1983, the 1982 amendments became law on April 1, 1983. As previously mentioned, only the provisions of section 489a introduce a new concept within the rigidly enforced Marxist economics by offering to legalize the services performed by craftsmen and repairmen after hours. All the amendments are designed to remedy a gap in the Code that arose in the hastily pursued efforts of the Communist Party on the road to communism.

CONCLUSION

The Czechoslovak Civil Code of 1964 attests to the profound transformation of the civil law in Czechoslovakia under the government of the Communist Party. Although the enactment of the 1950 Civil Code constituted a fundamental change from a democratic to a totalitarian concept of law, it neither anticipated nor reflected the significant restructuring of society that was about to be imposed on the country by the Communist Party under the auspices of the Soviet Union. The actual change in the socioeconomic structure of the country was nothing less than the transformation of a democratic, free enterprise society into a communist dictatorship, where the Communist Party is almighty. The State and its instrumentalities own all resources and real property; the State is the sole employer, public administrator and judge under the direction of the Communist Party; and the citizens are totally destitute and allowed to own only items of personal use. The country is ruled by unpublished instructions of the Communist Party that are enforced as law. Published law is of secondary importance.

The provisions of the 1964 Civil Code do, however, approximate themselves closely to the existing situation in Czechoslovakia. The gulf that existed between the actual situation in Czechoslovakia and the law as declared in the 1950 Civil Code has been virtually eliminated. To this extent the Civil Code of 1964 has far surpassed the Soviet Civil Code of 1964. Although the actual socioeconomic situation in the Soviet Union is comparable to that in Czechoslovakia, the Soviet Civil

Code of 1964 does not reflect the existing situation as closely as the Czechoslovak Civil Code. From a legal perspective, therefore, the Czechoslovak communist draftsmen have considerably overtaken their Soviet counterparts. In the Czechoslovak legislation, the attainment of socialism has found an appropriate expression in the Civil Code of 1964.

The objective of the Communist Party has always been to fully subject the nation as a whole and every citizen as an individual to its absolute power; to make each citizen dependent on the Party for his livelihood. The daily life of each citizen is minutely controlled. The Communist Party determines the location and nature of each person's work, the location and quality of his housing, his family's access to education, the quantity and quality of his food and clothing, the extent and quality of his health services and, upon retirement, the size of his retirement benefits. Should he incur the displeasure of the Party, he may be subtly or openly penalized by strict or arbitrary application of rules and regulations before any stricter police or criminal measures are applied.

The system is characterized by total regimentation which has resulted, foreseeably, in a total loss of initiative on the part of those subject to this system. It has also led to a total economic and intellectual stagnation. It goes without saying that, above all it has led to a complete loss of personal freedom. Anticipating general discontent with Party domination of the country, the Communists have closed off the borders in an effort to prevent the discontented labor force from leaving the country. The regime, under the overall direction of the Soviet Union, offers no promise of a change in direction and so the Czechoslovak citizenry have become apathetic. The Communist Party is well aware that the entire non-communist populace opposes and rejects the established system including the provisions embodied in the Civil Code of 1964, but the Party clings to power in the centuries old tradition of dictatorial regimes ever present in this world.