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## Recodification and Legal Consciousness

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### Abstract

*The new Civil Code came into force on 1st January 2014 and went to as the greatest intervention to the system of law of the Czech Republic after the Velvet Revolution and it is affecting almost all legal fields. Contribution focuses on the fundamental difficulties that arise from this new discontinuous regulation of private law relationships which can occur in understanding of law itself. All legal consciousness in terms of Czech Republic is experiencing a great shift. Fundamental changes are not only in the process of interpretation and application of this regulation by the civil courts and professionals. Legal awareness affects whole society. Contribution is based on comparative analysis of the Internet presentations of civil recodifications in Europe. Strengthening of connection between new legal regulation and intentional influence on legal consciousness has to be seen as a macro trend in current legal regulation. The Czech recodification is compared with current similar foreign recodifications of private law in particular European countries in order to find a general theory of the above-mentioned trend in the recodification processes.*

Keywords: Law, civil law, recodification, internet, legal interpretation

### 1. Introduction

Over the last few years, recodification of private law took place in several European countries. Comparing the process of the particular recodification with respect to the relation to legal awareness of the addressees of law, we may deduce some findings about the macro trends in the states' approach to informing their citizens of the new legislation being drafted. Surprisingly, internet and the websites of the particular state authorities did not play a crucial role in this process.

Methodologically, this paper has been elaborated as a case study focused on the passage of the new Civil Code in the Czech Republic. The findings of this case study were further compared with the available expert sources dealing with recodification in the European countries.

In the first part of this paper, we outlined the analysis of the web content of the Ministry of Justice of the Czech Republic. Next, there is a comparison of recodification in several states we selected (some states of Europe, Asia and North America). This comparison is grounded mainly on analysis carried out by the Faculty of Law of Palacký University of Olomouc. The source analysis was financed from the European Social Fund via the Human Resources and Employment

Operational Programme and from the budget of the Czech Republic. It is also available on the website of Ministry of Justice. In the next chapter, we described the influence that the provided information about the new legislation has on legal awareness in society.

The aim of this paper is to identify the level of importance that internet is believed to have by the states as for sharing information about new legislation. Finally, we will ponder whether this could be a macro trend. The intention of the authors is to start a discussion about the consequences of this approach in connection to the methods of interpretation and argumentation before the courts.

### **NCC**

The Act No 89/2012, Civil Code, (further to be referred to as „NCC“) is presented on the website <http://obcanskyzakonik.justice.cz/> as an “Act for life, and act inspired by life” (obcanskyzakonik.justice.cz, 2014). The Code was promulgated on March 22, 2012, and entered into force on January 1, 2014. Considering the often questions of both legal professionals and laypersons, we can be in a doubt as to whether the abovementioned statement is justified.

### **The Web content of obcanskyzakonik.justice.cz**

This website is operated by the Ministry of Justice of the Czech Republic. It is financed from the European Social Fund via the Human Resources and Employment Operational Programme and from the budget of the Czech Republic within the project entitled New Private Law, reg. No CZ.1.04/4.1.00/80.00003. The purpose of this website is to provide the public with information about the newly adapted regulation of private law, i.e. aside from the information about NCC, it also provides info of the Act No 90/2012, Act on Business Corporations (further to be referred to as “ABC”); the Act No 91/2012, the Act on the Private International Law (further to be referred to as “APIL”); and other respective laws.

Ministry of justice gives commentary which, however, cannot be considered as binding, because it is not an authentic or legal interpretation. Therefore, in this case, an official interpretation is out of the question (Knapp, 1995). Considering the fact that the new legislation often fails to follow the existing situation and logically there are not any new court decisions on this subject which could be used as a lead for interpretation (Kuhn et al., 2006), we may argue that this interpretation is the most significant one for the addressees of the law, especially due to the authorship of this interpretation. From the point of view of legal certainty, which, according to Radbruch (2013), is one of the three purposes of law, one may possibly rely on interpretation provided by the state although it is not an interpretation presented by the legislators or derived from application as an institutional interpretation.

In order to increase the level of legal knowledge of the public, which is an essential part of legal awareness (Večeřa and Urbanová, 2011), the Ministry of Justice presents, although not explicitly and aside from the texts of the particular law, information about the completed and undergoing legislative process, i.e. the Ministry also presents drafts of laws in the particular stages of the legislative process, explanatory reports, remarks of the public, an opinion of the Institute of the Czech Language of the Academy of Science of the Czech Republic, information about the members of the expert groups, managing committee and the recodification committees. It also includes the explanatory report to NCC and the subject intention and the presenting report. It lacks the report of regulatory impact assessment, which, however, has not even been prepared for NCC and the relating laws. These sources may facilitate understanding of the intention that the legislators had while adapting the new regulation. Therefore, it may serve as a valuable source of information beneficial for application of law.

Another instrument for interpretation presented by the Ministry of Justice of the Czech Republic, are the interpretative opinions of an expert group of the Commission for Application of the New Civil Legislation. Since September 2012, this Commission has been a permanent advisory board of the Minister of Justice for the issues of the new private law. Information about functioning, composition and tasks are presented on the website of NCC together with the existing opinions. As of May 14, 2014, there were 27 of those opinions. Next, there are two additional outputs in other form. The opinions cover the whole area of the new recodification, i.e. from the issues of flats, via regulation of the corporations, to family issues.

There is also presented information about the existing course of the legislative process concerning the recodification laws, which may provide help not only to laypersons to orient in the validity and effectivity, and understand also the other consequences and interconnection of the particular laws, which may be hard in the tangle of so many processes. Moreover, there are presented also the outputs of the project New Private Law, reg. No CZ. 1.04/4.1.00/80.00003, an analysis of implementation of the new private law abroad, which was elaborated by the Faculty of Law of Palacký University of Olomouc. Both a shorter version and a longer version of the analysis persuade the readers that the manner, in which the process of recodification has been carried out, is standard from the comparative point of view. One of the features, which is typical for all the compared recodifications, is a website (usually operated by Ministry of Justice) which is to inform about the changes in regulation and provide some leads for interpretation.

The Ministry also presents all kinds of new regarding the issue on its website, which includes also selected news from media (from which it, however, distances, as they are not an official opinion of the Ministry). They also present brief answers to common questions. Questions may be asked directly via an electronic form on the website. Aside from that, the Ministry offers all kinds of information brochures and other publications regarding the particular areas of recodification for free download.

With respect to the abovementioned facts, this source of information provided by the Ministry of Justice of the Czech Republic is now the only relevant source which may help us to define in a reliable manner the areas affected most by the legislative changes brought by the recodification of private law, in connection with legal awareness and, in particular, legal knowledge, as it is information presented by an administrative body, not to say the state. The content and the conception of the website and published documents show the intention of the executive power to provide the public with as much information as possible, including the interpretation tools. There is a clear purpose of the state to share its knowledge of positive law so that it becomes a part of the legal awareness of the public. Nevertheless, there is a question whether the same state will also insist on authority of this “tool” and expect that the interpretation of law will conform to it. Does the state have this right at all?

## **2. Comparative analysis**

### **The Netherlands**

In the Netherlands, they have a new civil code, which entered into force on January 1, 1992 and replaced the former civil code, which had been in force since 1838. The process of transformation was long. It was more of a codification than modification nature. An emphasis was placed on informing society about the ongoing changes. It also included a website and an info line known as („Postbus51“). However, as opposed to some of the other states, what became apparent was a

week-long obligatory national course for all the judges. The role of internet, however, appeared as well, and it continues to occur by involving the legal professional in the discussion about the changes of legislation ((Hrušáková et al., 2013: 11).

### **Lithuania**

There is a new civil code in Lithuania, which entered into force in 2001. The Lithuanian Ministry of Justice had a website established for the purpose of regular publishing of press news concerning the new piece of legislation. In order to strengthen legal knowledge, the Ministry also created flyers and videotapes with practical advice. Aside from that, there were broadcast educative television programs. The most effective was the service of providing answers to questions raised in emails sent to the Ministry; these answers are available at: <http://www.min.tmlt/nck.asp>. These answers first served as a source of information concerning interpretation of the debatable norms. It is mainly the creative approach of the state to informing both legal professionals and laypersons which is considered to be the most positive thing about the Lithuanian approach to recodification ((Hrušáková et al., 2013: 16-20)

In the first years, the information campaign was mainly in form of seminars for legal professionals; there were also news in media for laypersons. Internet was not used so often, because it was not widely used by the public. Now, the situation is different and websites of the Ministry of Justice and of other resorts, there are being published proposals of amendments to the existing legislation (Hrušáková et al., 2013: 26).

### **Russia**

The reform of private law in Russia had its peak in 2008 to 2012. The reform was introduced to legal professionals by means of expert seminars, obligatory and professional workshops. There is also a website whose purpose is to give information to the public (<http://zakon.ru/>). However, there were not carried out any sociological researches concerning evaluation of quality of the new legislation in the eyes of the public. Generally, it may be said that the state did not place a special emphasis on supporting legal knowledge of society (Hrušáková et al., 2013:30).

### **Romania**

The new Romanian private law legislation entered into force in 2001. It is grounded on the idea of continuity with the former regulation, and it included the entire private-law regulation in a single complex code. Aside from the classic methods of informing society, there was a website entitled the New Civil Code – interpretation for all (<http://noucodcivil.just.ro>). This website included explanation of the legislative changes and the core legal institutes. However, the effects on the public were not researched in any sociological study, yet (Hrušáková et al., 2013: 32-38).

### **Ukraine**

During the process of recodification of civil law, Ukraine failed to inform the public. The adaptation of the new civil code was not paid attention by media. No special website concerning the recodification was launched ((Hrušáková et al., 2013: 45).

### **Hungary**

While adapting the new civil code in Hungary, the state focused mainly on informing society via websites (e.g. [www.ptk2013.hu](http://www.ptk2013.hu)). Nevertheless, independent media played an important role, too ((Hrušáková et al., 2013: 53).

## The Slovak Republic

In Slovakia, the new civil code is currently being prepared. They place a strong emphasis on informing public about the new code. Therefore, there is an information campaign. Media and universities are also engaged in this campaign. Aside from that, numerous documents are published on the website of the Slovakian Ministry of Justice (<http://www.justice.gov.sk/Stranky/Nase-sluzby/Nase-projekty/Obciansky-zakonnik/Obciansky-zakonnik.aspx>) (Hrušáková et al., 2013: 57).

## Quebec

In Canada's largest province Quebec, the new civil code, with exception of some parts, entered into force on January 1, 1994. It replaced the former civil code of 1865. The public was informed mainly by means of media, such as television, radio and press. There were, however, no special websites launched (Hrušáková et al., 2013: 41).

## 3. Conclusion

It is obvious that a majority of the countries, in which recodification of private law had taken place over the last years, placed an emphasis on informing the public about the content of the new legislation. The particular states used all different kinds of combinations of tools including everything from videotapes, via information flyers to websites. In this paper, we focused on the web presentation of recodification. It was used by most of the countries, usually in the form of a specialized websites of the respective ministries of justice. If the comparison shows that the websites were not used in Quebec, it rather relates to the year of recodification, i.e. 1994 than to missing the internet as a source of information. Therefore, we may argue that presentation of the changes in legislation on the internet is a macro trend, which need to be taken into consideration. This trend is supported by the growing role of internet as an information channel leading to legal information (Polčák, 2012). There is, however, a question whether the web presentation of new pieces of legislation has or may have effects on interpretation of laws. To which extent is it binding? How seriously is should be taken by the courts while applying law? From the theoretical point of view, the answer is 'no', because it does not fall into any of the categories of binding interpretation of legal norms. On the other hand, these categories may be adjusted to the "information age", as both law and technologies keep developing (Castells, 2011). Another macro trend which relates to presentation of new pieces of legislation on the state-operated websites introduces using of a new type of interpretation or new broader approach to the so-called legal interpretation. We should, however, keep in mind the risks which would be introduced by such a change. Do they comply with the contemporary understanding of the methods of interpretation of law (Wintr, 2013)? The main risk, although not the only one, is vulnerability of internet and the related uncertain veracity and reliability on the information presented on the internet.

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