

Abstract

My dissertation thesis is concerned with the theme of divorce and its civil-law consequences. It would be difficult to find any other legal concept in the real life that has undergone so many changes as divorce and the associated civil-law consequences.

While compiling this thesis I strived to become acquainted primarily with any available theoretical sources, such as commentary literature, specialised books, legal textbooks and, last but not least, also specialised magazines, both printed, such as *Právní rozhledy*, *Soudní rozhledy*, *Rodinné právo*, *Právo a rodina* and *Právní rádce*, including magazines published by relevant professional chambers – *Bulletin advokacie* (Czech Bar Association), *Ad Notam* (Notary Chamber of the Czech Republic) and *Komorní listy* (Chamber of Distainers of the Czech Republic), and the electronic ones, such as *epravo.cz* or *eLAW.cz*. Where relevant legal opinions on a particular matter varied, I recorded this plurality of opinions and, at the same time, I formulated my own stance.

As the topic of my thesis consisted in studying applicable law, I heavily stressed that account should be taken of any decisions of general courts as well as of the Constitutional Court. Where the court case-law had been developing over the years and either inconsistent or even contradictory legal opinions had unified, I recorded and described this development and its causes in my thesis.

The thesis is divided into several parts. First, it is divided into a part concerning divorce as such and a part dealing with its legal consequences. Both parts are then subdivided.

The part on divorce is introduced by a short historical overview. I consider this historical overview of the entire development important, especially because these changes in divorce arising in the course of centuries were not only of legal nature. Changes that influenced or influence the subject of divorce kept occurring from time to time and can be traced at any level, be it community level (divorce stopped to be perceived as life-long stigma), or socio-economic level (increasing financial independence of individual persons who no longer have to rely on cohabitation with another person), or religious level (fading influence of the Church, especially the Catholic Church, which has historically always dealt with irrevocability of marriage as one of

its major topics). These levels actually work like communicating vessels where social (non-legal) changes prompt developments in the relevant legal regulations, and vice versa – changes in the legal regulations will consequently be reflected in increased accessibility of divorce, thus contributing to the frequency of its use in the community. From initially almost an unacceptable concept which was later permitted, yet bound to many diverse restrictions and conditions, including e.g. consent of both parties, the divorce has gradually evolved in a frequently used instrument.

The next part of my thesis, which is concerned with the applicable legal regulations on divorce, is divided into a chapter discussing the topic from the viewpoint of substantive law and a chapter looking at divorce from the viewpoint of procedural law. In my thesis I dealt with all three types of divorce, i.e. divorce in its basic form and its two variants diversified by the criterion of compulsory finding of the cause of the breakdown of the marriage and the temporary possibility to dismiss the claim for divorce by application of a so-called “harshness clause”. I also dedicated certain space in my work to identification of differences among them and their specific features as well as their mutual relations. At the same time, while studying the procedural aspects of divorce, I tried to encompass all general features of divorce proceedings as well as features characteristic for individual divorce types.

The part studying consequences of divorce is introduced by a list and description of several key consequences in other than civil law, as I did not disregard them as unimportant. I mentioned, for instance, the key impacts from the viewpoint of criminal law, social security law and finance law. However, I naturally focused mainly on civil-law consequences. Indeed, these consequences of divorce of a marriage are not scarce at all.

I classified the civil-law consequences of divorce of a marriage into a category of status consequences and category of property consequences. The latter category is rather extensive and includes a large number of diverse legal relations.

First, I paid attention to maintenance and support issues, which are a direct and essential impact of divorce. This does not involve only the mutual maintenance of spouses during the marriage, but also the duty to maintain and support the divorced spouse and, last but not least, also the duty to maintain and support children, if any.

Furthermore, my thesis deals with community property of spouses as divorce will bring serious implications for it. I paid special attention to protection of property interests of third persons (creditors) as their rights may be directly affected by divorce, although third persons themselves are not parties to divorce proceedings.

Another important area of relations influenced by divorce is the aspect of common housing of the spouses. In my thesis, I focused on determining these consequences based on the diverse ways spouses satisfied their housing needs. I analysed these divorce consequences in view of the legal title to use the place where the spouses lived (own housing/rented housing) or based on its type (house/flat). In case of rented housing I did not omit, in particular, the specific category of cooperative housing.

Last but not least, I also dealt with other civil-law consequences of divorce, such as consequences in probate law, protection of personal rights or running of the limitation period.

Where I concluded in my thesis that any of the studied areas would deserve more attention and changes *de lege ferenda*, I expressed this opinion and described what legal considerations led me to such a conclusion. As a matter of fact, I could not omit essential legislative amendment of this area that is currently being adopted; indeed, the legislative procedure was completed and the new Civil Code passed during the process of drawing up this thesis. The legislative procedure in this matter was completed when the bill, which had been approved by the two chambers of the Parliament of the Czech Republic, was signed by the President of the Czech Republic on 20 February 2012. Now it is ready to become effective on 1 January 2014. For this reason, I also compared the original legal regulation with the new one and defined the most important changes relevant to the subject-matter of my thesis. In the last part of my thesis, I summarised the conclusions I had made in the thesis and I briefly dealt with the possible changes *de lege ferenda*.