Abstract

The thesis concerns with the development of the Chinese family law during the 20th century, presents legal sources in relation to the historical development and describes the basic aspects of the Chinese family law with regard to similar aspects of the ancient Roman law. Explains the significance of the social stability in legal context from the end of the Qing dynasty up to the present, describes the importance of the neoconfucian ideology to the family law and the role of the law in the Chinese society in general.

The thesis is divided into several parts, the first one begins with the period of the end of the Qing dynasty at the turn of the 20th century, describes the historical circumstances of the founding of the first Chinese Republic, explains the principles of the then family and social relations in detail, especially the structure of the traditional family, the significance of the ancestor worship, the scope of the agnatic relationship and its relation to the property rights, the importance of the marriage and the system of mutual dependency of the family members. The thesis further expounds the attempt to reform the traditional family after the 1911 revolution, the circumstances of the creation of the Civil Code, the contents of the Chapter IV of the Code and their significance to the reorganization of the familial relationships after the 1949. It follows with the description of the legislation related to the family in the Border Areas and the Liberated Areas during the Civil War in the 1930s and 1940s, explains the development of the women’s rights movement's position and its influence to the attitude of the communist politics towards the liberation of the women and the family law reform after the end of the Civil War.

The second part describes the circumstances how the New Marriage Law was passed in the 1950 on the basis of the sources in the form of the statutes, other regulations and the judicial decisions and opinions of the Supreme Court, with special focus on the creation and dissolution of marriage and related administrative procedures, explains the attempt to replace the former parental supervision over the marriages with the supervision of the state, carried out by the local administrative body, also discuss marital property issues, and the overall implementation of the law in practice. The thesis analyses the effort to change the character of the marriage, the preference of the nuclear family, the attempt to provide subordinate members of the family with economic independence from the family by the means of the land reform, the endeavor to enforce the women's right to divorce, and the failure caused by the
preference of the poor peasant class and their family rights to the rights of their wives and children, resulting in the gradual resignation from the reform of the traditional family.

The third part describes the 1960s and 1970s period, which, except for the disastrous economic experiments, also brought about the final change in the ownership rights to the rural land and transformation of the industrial production, the improvement in the food and consumer goods supply and the adoption of the social security system provided by the state instead of the family members. It resulted in the gradual improvement in the women's position in the Chinese society and successful enforcement of some of the principles of the Marriage Law. This period is also the beginning of the systematic implementation of the state control over the birth planning.

The fourth part of the thesis thus follows with the description of the Chinese society's transformation after the initiation of the economic reforms at the turn of the 1980s, which lead to dramatic change in the government attitude towards women resulting in the return to the patriarchal structure of the rural society, including the shortcomings of the traditional marriage and the family structure, overall transformation of the character of marriage and its function in the Chinese society, and the state control over the family life and procreation. The thesis describes in detail the circumstances under which the Marriage Law was passed in the 1980 and analyses related regulations, judicial decisions and opinions of the Supreme Court, which substituted for the nonexistent amendments to the law during the 1980s and 1990s. The thesis also describes the 1990s legislation regulating the position of the women, children and elderly in the Chinese society which indirectly amended the Marriage Law.

The last part of the thesis deals with the transformation of the Chinese legal system at the end of the 1990s in relation to the economic and social development and claims laid by the gradually developing civil society. The thesis describes extensive amendment to the Marriage Law from the 2001 following opinions of the Supreme Court and state regulations regarding the birth control legislation.

In the conclusion the thesis sums up the importance of the family relationships in the Chinese society and the cause and effect of the failure of their reform.