

# **Adversarial principle in the civil procedure of Czechoslovakia and later the Czech Republic throughout the 20<sup>th</sup> century: an analysis**

## **Abstract**

The aim of thesis is to analyse the adversarial principle in the civil procedure of Czechoslovakia and later the Czech Republic. The hypothesis states that there were three different time periods, each with its unique look at adversarial principle, which the later interpretation of courts and authors maintained. First, I challenge this hypothesis with respect to authors and courts continuing in the footsteps of creators. After that I search for any common ground between all of the concepts. Both topics are examined with respect to how the facts of the case were collected and to whether the court was obliged to follow cause of action pursued by the parties.

Based on the analysis of literature and case-law from 1918 to present the conclusions are following: With respect to how the facts of the case were collected, majority of literature and case-law published in the first part of communist regime replaced the adversarial principle by the inquisitorial principle, giving precedence to the activity of court instead of rejecting the claimant's action on the basis of lack of facts presented. The situation changed in literature in the second part of the communist regime, which with its focus on party responsibility bears resemblance to literature and case-law prevailing in the 1990s, although the latter restricted the position of the judge. Neither of them resembles the Austrian model of adversarial principle based on mutual cooperation between parties with the court discussing the case with them on both factual and legal grounds. The clash between the ideas of Austrian model, "re-discovered" in the 1990s by Josef Macur, and ideas stemming from the literature and case-law prevailing in the 1990s influence the current state of literature and case-law.

As to the question whether the court was obliged to follow cause of action pursued by the parties, the literature and case-law maintained a unanimous opinion until 1990s, where the literature and case-law stripped the court of its powers to discuss or at least to notify its legal view of the case to parties. The situation was aggravated by the fact that a part of literature and case-law decided to change the definition of the cause of action to extend its scope, which resulted in judgements becoming unpredictable to the party's legal opinion. The issue was resolved by the Amendment to the Civil Procedure Code approved in year 2000. The conflict between the authors following the Austrian model and the Amendment still remains with respect to the extent of cases where the judge is obliged to inform parties of his legal view of the case.

**Key words: adversarial principle, civil procedure, 20th century**