Krakowskie Studia z Historii Państwa i Prawa
2025; 18 (3), s. 557–587
doi:10.4467/20844131KS.25.035.22165
https://ejournals.eu/czasopismo/kshpp

Miriam Laclavíková
https://orcid.org/0000-0002-8984-0529
Trnava University in Trnava

Ingrid Lanczová
https://orcid.org/0000-0003-2767-3558
Trnava University in Trnava

New Family Law: Efforts to Change the Family Law in Czechoslovakia During the People's Democracy[1]

Abstract

Family law underwent fundamental material and formal changes during the people's democratic regime in Czechoslovakia, ruled by the Communist Party from 1948. The government needed a new family law, which, in the spirit of the rhetoric of the time, was supposed to be freed from the influence of the Church. As a result of the new approach, the state started to thoroughly supervise families and familial relationships with a clear goal – to place them under ideological patronage.

The starting point for the transformation of family law (and the entire legal order) was the constitution adopted in May 1948 (Constitutional Law no. 150 of 1948 Coll., commonly known as the "Ninth-of-May Constitution."). Shortly after, the new Act on Family Law no. 265 of 1949 Coll. came into force and stayed in effect until the socialist recodification and the follow-up of the Constitution of the Czechoslovak Socialist Republic of 1960 which was the Family Act no. 94 of 1963 Coll.

The authors present and analyse the fundamental principles of the people's democratic Czechoslovak family law, namely:

– compulsory civil marriage substituting the possibility to choose between a civil and Church marriage
– equality between men and women in familial, marital, and property relations
– equal rights for children regardless of their marital or non-marital origin (abolition of differences between children born in and out of wedlock)
– joint parental authority substituting the sole paternal authority over children
– deepening of the public (state) interest in the child policy

Visegrad Fund

[1] The project '(Dis)continuity of Legal Systems in Czechoslovakia, Hungary and Poland after WW II: Difficult Heritage' is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from the International Visegrad Fund. The mission of the fund is to advance ideas for sustainable regional cooperation in Central Europe. Visegrad Grant No. 22330152.

– a new understanding of the termination of marriage by divorce
– a new concept of a socialist family and a socialist marriage built upon new definitions of the functions of family and marriage.

The authors also thoroughly focus on the legal regulation of marriage in the Czechoslovak people's democratic legal order. In detail, they describe and analyse marriage formation, personal and property relations between spouses, the dissolution of marriage, fault in the breakdown of marriage, and the interests of minor children in the divorce proceedings.

The authors base their research on historical legal theory and practice, including historical legal acts, legal drafts, explanatory reports, case law, historical school textbooks, ideologically influenced papers and books to provide the reader with a holistic understanding of the family law in Czechoslovakia during the years 1948–1960.

Keywords: family law, people´s democracy, Czechoslovakia, 1948–1960, totalitarian regime, principles, marriage, dissolution of marriage, minor children.

Introduction

Family law was one of the branches of law that underwent fundamental material and formal changes with the introduction of the people's democratic regime in Czechoslovakia, ruled by the Communist Party from 1948. The government needed a new family law, which, in the spirit of the rhetoric of the time, was supposed to be freed from the influence of the Church and traditional conservatism, hence from the so-called "tendencies of bourgeois society."[2] While codifying the new people's democratic family law, the legislator made no secret of his intention to radically rebuild family law, shifting from the previous legal development. According to the Explanatory Report on the People's Democratic Act on Family Law of 1949, the profound changes in economics and politics in Czechoslovakia, after the May Revolution and during the years of consolidating people's power and building the foundations of socialism, very closely related to familial and marital relations. The Explanatory Report emphasized that the democratic regulations on family relationships and marriage, which partly dated back to the beginning of the XIX century, no longer corresponded to the changed circumstances, and, in their provisions, reflected the conditions prevailing at the beginning of capitalism and the so-called bourgeois principles. The new family law in the People's Democratic Czechoslovakia was supposed to be the legal basis for the successful development of the family in the era of building socialism.[3]

[2] One of the most famous Czechoslovak lawyers of the second half of the 20th century, Viktor Knapp, also pointed out that past experiences were still deeply rooted, especially in a family environment. He said that Lenin more than once reminded that new socialist relations between people did not come into existence suddenly, and the liberation from capitalist exploitation did not result in the disappearance of the influence of the past and an immediate release from the burden of entire centuries. Experiences of capitalism in the consciousness of people were surviving, and it was not possible to erase them all at once. Knapp said that the society building socialism began a decisive struggle against these remains, and that that struggle would undoubtedly lead to a victorious end. The family law in post-1948 Czechoslovakia was supposed to be the tool for achieving this goal. Knapp [*et al.*], *Učebnica*, 81.

[3] The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of ... 1949. General Part.

The starting point for the transformation of family law (and the entire legal order into one ideologically convenient for the people's democratic state) was the constitution adopted in May 1948. It was the constitutional law no. 150 of 1948 Coll., commonly known as the "Ninth-of-May Constitution."[4]

The Ninth-of-May Constitution put the marriage and the family under the state's patronage, introduced a changed understanding of the essence of marriage, introduced the equality of men and women in the family and society, and eliminated the unequal status of legitimate and illegitimate children. It was such a radical change that it often required the direct application of the provisions of the Ninth-of-May Constitution to family law cases.[5] In the spirit of Marxism-Leninism, it assigned families a public (social) role, which also became one of the leading principles in the subsequently adopted legal norms (especially into the first Czechoslovak People's Democratic Act on Family Law No. 265 of 1949 Coll.). The rapporteur Zdeňka Patschová pointed out the transformation of the relationship between the state and the family and the family's role in the newly built People's Democracy in her speech during the discussion about the Government Draft Act on Family Law in the National Assembly.[6] She said that the 1948 Constitution determined the relationship between the state and the family and its place in the new social order. This new constitutional character of the principles directly applicable to family law was supposed to result from the very essence of the family and its dependence on the social order.[7]

As a result of the new approach toward citizens in a totalitarian People's Democracy (and later during the socialist era), the state started to thoroughly supervise family matters with a clear goal – to have ideological patronage over them. Until 1989, under the guise of protecting the well-being of families, the state penetrated the traditional familial intimacy. Family law became publicized, secularized, and separated into a freestanding

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[4] The Ninth-of-May Constitution repealed the Czechoslovak Constitution No. 121 of 1920 Coll. and all constitutional acts and other acts that contradicted the provisions of this constitution and the principles of a People's Democracy or regulated things in deviation from this constitution (Section 173 Paragraph 2 of the Constitution). According to the Explanatory Report, this constitution was supposed to be a constitution of the people and for the people. It was supposed to be a charter of human rights but also a human charter – a document that people would understand and become close and familiar with. The lawmakers wanted to achieve it from the inside through universal comprehensibility (which in law is a difficult task) and from the outside. This attempt to make law understandable for ordinary people became a significant feature of the law-making process during the time of the People's Democracy regime. Edvard Beneš, who served as the president of Czechoslovakia from 1935 to 1938 and again from 1939 to 1948, refused to sign the Ninth-of-May Constitution, which came into force on May 9, 1948. Following, on June 7, 1948, he resigned as president. Therefore, it was the new Communist President Klement Gottwald who signed the constitution, i.e., Act No. 150 of 1948 Coll. It was valid until July 10, 1960, and replaced by the socialist Constitution of the Czechoslovak Republic No. 100 of 1960 Coll. The Constituent National Assembly of the Czechoslovak Republic 1946–1948. The Constituent National Assembly of the Czechoslovak Republic 1948. 5th Session: Explanatory Report to the Draft of the New Czechoslovak Constitution. *Digital Library* [online]. Print no. 1227.

[5] Laclavíková, Gerhát, "Rovnosť muža a ženy," 32.

[6] Zdeňka Patschová was a lawyer and an author of several publications and articles about Czechoslovak family law in the 1950s. She actively participated in the enactment of the Czechoslovak Act on Family Law during the People's Democratic regime.

[7] The National Assembly of the Czechoslovak Republic 1948–1954, Speech of the Rapporteur Patschová: Report of the Constitutional-legal Committee on the Government Draft Act (Print 378) on Family Law (Print 382). *Digital Library* [online]. Stenoprotocols. 37th meeting. Wednesday, December 7, 1949. Print 382.

code.[8] The representatives of the communist regime were since the beginning aware that family relations and loyalty to a family were a threat to the communist regime. Therefore, the propaganda and politics focused on weakening the relationship between parents and children.[9]

Hence, the state imposed several strategies to fight against traditionally strong and conservative family ties to disrupt them, undermine parental authority, and generally unsettle familial relations, such as:

– strong support of changes in behavior and accepted social structures (migration for work, populations leaving villages for cities, building new residential neighborhoods, etc.), and abandoning traditions, often religiously determined (e.g., marriages became "civil unions");
– massive and systematic promotion of the emancipation of women (presented as "freeing women from domestic slavery") and political and social pressure on mothers to leave their natural family environment and start working;[10]
– collective models of education (a new network of nurseries and kindergartens, and the state children's homes providing social and legal care for children and youth who could not live with their own families);
– ideological influence in schools (e.g., promotion of a unified scientific atheistic worldview) in youth and children's organizations (the SZM – Czechoslovak Socialist Youth Union, Pioneer Organization);
– evaluation of children based on ideology (e.g., assessing their "inappropriate bourgeois origin" or, on the contrary, "suitable working-class origin," which was particularly evident upon their admittance to secondary schools and universities); etc.

In Czechoslovakia, Act on Family Law no. 265 of 1949 Coll. introduced changes to family and marriage issues following the Ninth-of-May Constitution.[11] The National Assembly discussed and approved the Government Draft on December 7, 1949.[12] One should note the short legislative vacancy period, as the Act entered into force as soon as January 1, 1950. The Act on Family Law of 1949 was the first Act prepared during the so-called legal biennial process[13] (1948–1950), which transformed the Czechoslovak

[8] Laclavíková, Lanczová, "Publicisation," 160.

[9] Hamplová, "Stručné poznámky," 2.

[10] Reality, however, brought a certain acceptance of the double burden of women (housework and childcare on the one hand, and women's employment on the other). Laclavíková, Lanczová, "Publicisation," 169.

[11] The Act of 1949 was the work of a joint Czechoslovak-Polish commission, which is why the Czechoslovak and Polish family law differed only slightly. Knapp [*et al.*], *Rodinné právo*, 8–9.

[12] The draft law on family law was prepared jointly by experts from Czechoslovakia and Poland in three months, and it was almost identical for both countries. Vojáček, Kolárik, Gábriš, *Československé* , 132.

[13] This first act, the Act on Family Law of 1949, marked the beginning of the Sovietization of family law, i.e., emphasizing respect for the Soviet model, which became mandatory for all authors of professional publications. Šošková, "Tvorba," 2715. See the report of the Constitutional Law Committee on the Government Draft: "This Draft was the first one prepared by the Ministry of Justice within the legal biennium. In our country, albeit in a slightly different form, the same principles apply as in the Soviet Union. Also there, the first code regulated civil status, marriage, family, and guardianship matters. The All-Russian Central Executive Committee adopted it in 1918, not only as the first codification of Soviet family law but as the first Soviet code ever. It proves how much the socialist state cares about creating legal conditions that allow the citizens to have an undisturbed development of their individual and family happiness." The National Assembly of the Czechoslovak Republic 1948–1954, Speech of the Rapporteur Patschová: Report of the

legal order into a people's democratic legal order through the fundamental codifications in all branches of law. Through this Act, family law became a separate branch of law.[14] For Viktor Knapp,[15] this was one of the most profound differences between the bourgeois and socialist legal order.[16] The starting point for the parliamentary debate and the basis for the Explanatory Report was the criticism of the bourgeois (capitalist) family law.[17] The leading ideological and constitutional principle became collectivism. The rapporteur, Zdeňka Patschová, pointed out that where society gave such great opportunities to the individual, marriage could not be regarded only as a private matter, and family could not be considered a unit that had nothing to do with society. She said that in the capitalist world, where man is a wolf to man, and where individuals stand against society, the family also stands against the collective. "Just as the interests of the capitalist and the worker are contradictory, so are the interests of the capitalist state and the family. Only by eliminating the exploitation of man by man is it possible for these interests not to cross but to complement each other." With these words she explained why so much emphasis was placed on bringing the interests of individuals into line with the interests of society and the state, even in the family.[18] [emphasis by authors].

Family and marriage were to be at the service of the new regime. On the one hand, Communists needed families to believe in their ideology and fulfill their goals via them. On the other hand, families were their "enemies" as they prevented the complete ideological domination of the individual, and, thus, ideology tried to dominate the family ties. In the same year, Act No. 266 of 1949 Coll. on Temporary Changes in Selected Civil Legal Matters came into force, which contained important intertemporal and derogatory norms.[19]

Constitutional-legal Committee on the Government Draft Act (Print 378) on Family Law (Print 382). *Digital Library* [online]. Stenoprotocols. 37th meeting. Wednesday, December 7, 1949. Print 382.

[14] In Slovakia, it was not a radical change because the previous legal regulation of family matters was also a freestanding Act (Act no. XXXI of 1894 on Marriage Law).

[15] Knapp, "Systém," 445–6.

[16] According to Knapp, in the bourgeois legal system, family law is part of civil law, and in such a system, people make families because of property, which is the main object of civil law. In socialist law, family law is a separate branch of law, distinct from civil law, and, therefore, essential are the personal relationships, i.e., the mutual relations of the members of the family collective, and property relations are only secondary and subordinated to them. Knapp [*et al.*], *Učebnica*, 78.

[17] After 1948, the politicians promoted the newly introduced ideology through criticism of the previous regime and its legal order, i.e., they heavily criticized the regime and legal order of the First Czechoslovak Republic (1918–1938).

[18] The National Assembly of the Czechoslovak Republic 1948–1954, Speech of the Rapporteur Patschová: Report of the Constitutional-legal Committee on the Government Draft Act (Print 378) on Family Law (Print 382). *Digital Library* [online]. Stenoprotocols. 37th meeting. Wednesday, December 7, 1949. Print 382.

[19] This Act was necessary because of the unfinished codification works on the new Civil Code and the Code of Civil Procedure. It repealed the Hungarian regulations in Slovakia, such as Act No. XXIII of 1874 on the Lawful Age of Women, Act No. XXXI of 1894 on Marriage Law, and a part of the 1911 Civil Disputes Procedure. It also repealed relevant parts of the Austrian ABGB in Bohemia, Moravia, and Silesia. Furthermore, it repealed the interwar Czechoslovak norms such as Act No. 320 of 1919 Coll., known as the Marriage Amendment (which included provisions on marriage contract ceremonies, separation, and marriage impediments in the First Czechoslovak Republic) and Act No. 447 of 1919 Coll. on Lowering the Age of Minority. This Act replaced the derogatory provisions of the Act on Family Law of 1949. Last but not least, it lowered the age of majority and set it at 18.

The Act on Family Law of 1949 was directly amended twice in the 1950s, namely by:

- Legal Measure of the Presidency of the National Assembly no. 61 of 1955 Coll. on the amendment of divorce regulations, which limited the effect of the principle of fault in divorce proceedings; and
- Act no. 15 of 1958 Coll. on changes to the legal regulation of adoption.[20]

The indirect amendment of the Family Law Act of 1949 was through Act no. 46 of 1959 Coll., which amended the provisions of the Code of Civil Procedure of 1950 on divorce.

The Act on Family Law of 1949 was valid in Czechoslovakia until March 31, 1964. According to the Constitution of 1960, Czechoslovakia became part of the world socialist system, and, therefore, it was necessary to adopt new socialist legal acts, including the Family Act No. 94 of 1963 Coll. that substituted the Act of 1949.

1. Essential principles of the People's Democratic Family Law

What principles changed the so-called bourgeois family law into the People's Democratic family law?[21] These were:

- compulsory civil marriage substituting the possibility to choose between civil and Church marriage;
- equality between men and women in familial, marital, and property relations;
- equal rights for children regardless of their marital or non-marital origin (the abolition of differences between children born in and out of wedlock);
- joint parental authority substituting the sole paternal authority over children and increased public (state) interest in the child policy;
- a new understanding of the termination of marriage by divorce,
- a new concept of a socialist family and a socialist marriage built upon new definitions of the functions of family and marriage.

In the following subchapters, the authors will analyse the principles in more detail.

1.1. Introduction of obligatory civil marriage

According to the Act on Family Law of 1949, men and women entered marriage upon full and free consent before a local national committee (in the Czech and Slovak languages abbreviated as MNV). They made a statement to a state authority, which did not have a contractual character because the new ideology rejected the contractual nature of marriage.[22] The betrothed (the Act used the term "betrothed" even though it did not recognize

[20] This Act introduced the so-called irrevocable adoption, in which the registry lists the adopters in place of the biological parents.

[21] Veselá, "Vývoj rodinného práva," 890; Laclavíková, Záteková-Valková, *Rozvod*, 44–56.

[22] Knapp specified that the post-1948 Czechoslovak legal system did not perceive marriage as a contractual relationship established by a marriage contract. For the society building socialism, it was not a contractual relationship but a permanent union of a man and a woman, the result of their mutual emotional affection. Obviously, this relationship had legal consequences, but not in terms of civil law.

engagement, unlike the previous regulation[23]) had to make a declaration of entry into marriage exclusively before a state authority (MNV). Otherwise, the marriage was not valid (Act on Family Law of 1948, Section 1, Paragraph 2). Church marriage was possible (Act on Family Law of 1949, Section 7), but only after the civil marriage. The state did not recognize a marriage performed solely by a religious body. The Commentary on Act on Family Law of 1949, issued by the Ministry of Justice in 1954, clarified that obligatory civil marriage emphasized the political role of marriage and its importance for the state.[24]

Thus, marriage in the People's Democracy was not a purely private matter of parties entering into marriage, as it had an important social function. The family founded by marriage was supposed to be an educational collective of people cultivating a socialist spirit.[25] Its role was to shape individuals whose interests could not collide with the interests of society.

1.2. Equality of women and men in familial, marital, and property relations

The Ninth-of-May Constitution introduced the concept of the equality of men and women in the family and society in Section 1, Paragraph 2. It said that "men and women have the same status in the family and society and share the same access to education and all professions, offices, and ranks." Subsequently, the lawmakers incorporated this principle into the Act on Family Law of 1949.[26] Men and women were supposed to become equal partners.

The reform of family law in the Soviet Union, which "ended the slavery of women and their exclusion from public and social life," was supposed to be the inspiration for this fundamental change that ended the *de facto* dominance of the husband as the head of the family and the representative of the household. The path to equal rights was supposed to include economic equality (equal employment opportunities for women to become beneficial for society) and, subsequently, legal equality.[27] By introducing the equality of men and women in the People's Democracy (a radical change compared to the past), the totalitarian legislator pursued several concurrent goals, especially:

– the breaking of traditional social, kinship, and family ties, which was supposed to help the Communists dominate society;

Therefore, the provisions of the Civil Code on the creation of contractual legal relations did not apply. Knapp [*et al.*], *Učebnica*, 84.

[23] Betrothal and wedding objections were no longer legally recognized because of their canon-law origin.

[24] The authors of the first Commentary on Act on Family Law identified that performing marriage rites of the religion to which both or one of the betrotheds belonged before the marriage would discredit this character. The first duty of every citizen was to cherish the laws above all. Even though the Constitution guaranteed the performance of religious ceremonies, religious belief, or religious confession, duties towards the state were primary, and respecting the establishment was crucial. They said that the state exalted the esteem and solemnity of the marriage by a direct prohibition, addressed both to the religious bodies and the betrothed, to perform religious ceremonies or to submit to them before the civil marriage. Andrlík, Blažke, Kafka, *Komentář*, 43.

[25] Šošková, *Manželstvo*, 55.

[26] Act on Family Law of 1949, Preamble and Section 15.

[27] The separation of economic and legal equality was derived from the ideas of Lenin and Stalin. Often cited was their joint publication about work. See: Knapp [*et al.*], *Učebnica*, 102.

– the influx of a new labour force for industry that justified the collective forms of education.

In the press, articles about the criticism of women's work in capitalism often appeared, describing it as exploitative and destructive for women. According to official propaganda, only socialism could make a change and assert the equal status of women with men, "which the bourgeoisie regime recognized in words but not through deeds."[28]

Temporarily, between 1948 and 1949, the constitutional principle of equality between men and women created a relatively problematic situation. Until the new Act on Family Law of 1949, previous Czechoslovak family acts applied. In the words of propaganda, these were the regulations "from the bourgeois period," and in force alongside them was the Ninth-of-May Constitution, which, in contrast, completely transformed personal and property relations between spouses and the relations between parents and children. Hence, the judges found themselves in a tricky situation, for which the direct application of this revolutionary constitutional principle became necessary.[29] It lasted until the so-called legal biennial process and its first product – the Act on Family Law of 1949, solved this problematic direct application of the Constitution in family law cases.[30] Nevertheless, judges in court decisions continued to refer to this principle even during the 1950s. It was because, in the words of propaganda, it was necessary "to make the bourgeois experiences in consciousness and thinking fade."[31] However, the real reason was the social unpreparedness for its radical enforcement.

Family law has always been more conservative and traditionalistic than other branches of law. Therefore, society adopts changes, especially concerning social roles, patterns of behaviour, and ties between family members, rather slowly. According to the equality principle, women were supposed to have the same conditions, possibilities, and opportunities to become fully-valued members of the new people's democratic society. Therefore, spouses were supposed to agree on all essential marital and family issues. Only if they could not or did not agree, was the court to decide for them (Act on Family Law of 1949, Section 16). Thus, according to jurisprudence, the courts fulfilled "their necessary educational task."[32]

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[28] The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of ... 1949. General Part.

[29] Kühn, *Aplikace práva*, 19; Laclavíková, Gerhát, "Rovnosť muža a ženy," 32.

[30] E.g., the Decision of the Regional Court in Košice from March 29, 1949, no. Co 153/49 (No. 28 of the Collection): "Since the Ninth-of-May Constitution, determining joint residency is not the man´s exclusive right." As clarified in the rationale of this decision: "According to Section 1, Paragraph 2 of the Ninth-of-May Constitution, women have the same status in the family and society as men. Therefore, the same rights belong to both spouses and not only to the man. The same applies to the determination of a separate residency." Ministry of Justice, *Collection*, 40.

[31] Knapp [*et al.*], *Učebnica*, 81.

[32] The authors of the first Commentary on Act on Family Law specified that the law gave the court a new necessary social function, i.e., to defend what was beneficial for society, the spouses, and the family. In cases where the spouses presented matters of minor importance to the court, the court educated them even more profoundly. Correctly pointing out the social aspects of marriage, the court was supposed to help the spouses, convince them that it was up to them to make a reasonable agreement. The life experiences of lay judges were to contribute to this in a substantial measure. Any court was supposed to fulfil this role if there was no other procedure and decision-making taking place, even if the court was not competent to hear the case of the spouses. Furthermore, a senate needed to decide marital issues, with a woman sitting as one of the lay judges. Andrlík, Blažke, Kafka, *Komentář*, 72.

Also, the principle of equality and the Soviet model altered marital property relations[33] because the postulate was that both spouses were regularly responsible for acquiring property during marriage either because they were both employed or because the earning activity of one developed with the support of the other, who worked in the household and took care of the children.[34] According to Section 23 of the Act on Family Law, each spouse alone could perform the ordinary management of joint marital property. The other spouse had to consent if the management was not ordinary.

1.3. Introduction of equal rights for children regardless of their marital or non-marital origin (abolition of differences between children born in and out of wedlock)

The equality of legitimate and illegitimate children according to the Ninth-of-May Constitution, Section 11, Paragraph 2, was presented as a revolutionary approach towards family and its members and an achievement of the new regime.[35] Radically, and one must admit progressively, the new legal regulation dealt with the discrimination of children based on their origin. It abolished the illegitimacy status that, according to the explanatory report, had existed for centuries "in all bourgeois legislations."[36]

1.4. Introduction of joint parental authority substituting the sole paternal authority over children and increased public (state) interest in the child policy

The paternal power, derived from Roman law, was no longer recognized in the People´s Democratic Czechoslovakia.[37] Instead, the **authority over children belonged equally to both parents** [emphasis added by authors]. Parental authority was based upon the equal

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[33] Plank, *Majetkovoprávne vzťahy*, 30.

[34] Král', "Majetkové," 8. The Explanatory Report also stated that both spouses regularly contributed to joint marital property, either because they were both employed or because one could earn money due to the other's direct or indirect support. This support meant no burden of caring for the children and the household for one of the spouses. The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of ... 1949. General Part.

[35] Knapp said that the legal distinction between legitimate and illegitimate children was a direct consequence of the organization of society based on private property relations and an expression of class contradictions and exploitation. Lenin spoke of particularly disgusting, shameful, and hypocritical inequality in marriage law and family law, an inequality that so influenced the children, and Knapp agreed with him. He emphasized that the Czechoslovak Act on Family Law abolished the differences between children born in and out of wedlock. The origin of children was determined by parents, regardless of whether they were married. Knapp [*et al.*], *Učebnica*, 80.

[36] The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of ... 1949. Section 35.

[37] The father with paternal authority was the legal representative of the minor child, had the right to decide who would or would not become the minor's guardian after his death, and had the right to manage and dispose of his child's property. The wife (mother) took part in raising the children, bound to respect the status and rights of the husband (father).

status of both parents to their children and equal responsibility for their successful development. Both parents had the same rights and duties concerning education, maintenance, representation, and property management. The Act on Family Law of 1949 regulated the parental authority in Section 53. The exercise of this authority had to favour the interests of society. Parents were supposed to take care of the physical and mental development of the child/children, mainly their nutrition and upbringing, so that the children became well prepared to contribute to the benefit of the whole society with their work (Section 35).

1.5. A new understanding of the termination of marriage by divorce

The only possible way to terminate a marriage *inter vivos* was a court divorce at the request of one of the spouses. The legal basis for the divorce and the only reason for the marriage dissolution became the irretrievable breakdown of the marriage. The court could grant a fault divorce, which required a showing of wrongdoing by either party (Sections 30–31).[38] It was a significant change compared to the previous era when the legal acts exhaustively enumerated specific grounds for divorce. Initially, only a husband who did not cause the marriage breakdown could apply for a divorce. However, this led to an increase in the so-called paper marriages (also called dead marriages) and concubinages. A change was introduced in 1955 through the Legal Measure of the Presidency of the National Assembly no. 61 of 1955 Coll. on the Amendment of Divorce Regulations. It amended Section 30 of the Act on Family Law of 1949 and limited the effect of the principle of fault in divorce proceedings. If socially beneficial, the court could grant a divorce even against the will of the innocent spouse. There was an ambition in the People's Democratic Czechoslovakia to decrease the rising divorce rate, presented as the relic of capitalism, but this effort was unsuccessful.[39]

[38] The Code of Civil Procedure of 1950 (Act No. 142 of 1950 Coll. on Proceedings in Civil Legal Matters) regulated divorce proceedings in Sections 230–6 and 239–41. Initially, courts decided on divorce without the previous conciliatory procedure. The rising divorce rate led to the introduction of conciliation proceedings in 1953. However, this change did not come about through an amendment to the Code of Civil Procedure, as one would assume, but through a Resolution of the Plenum of the Czechoslovak Supreme Court from November 4, 1953, No. Pls 2/53. It contained directives for courts on conciliation proceedings at the first hearing. Laclavíková, Záteková-Valková, *Rozvod*, 118–9.

[39] Court decisions and jurisprudence often emphasized the state's interest in the stability of marriages: "Socialist society cares for the well-being of families and, therefore, has the right to decide whether the family, once established by law, could be dissolved. The courts, entrusted with this function, must thus examine the legal requirements for dissolution of the marriage by divorce, whether the spouses do not seek a consensual divorce where there is no irretrievable breakdown, and what are the reasons for the marriage breakdown for the possibility that these could disappear if the behaviour of the spouses changed." Resolution of the Plenum of the Czechoslovak Supreme Court from November 4, 1953, No. Pls 2/53. General Prosecutor's Office and Supreme Court in Prague, 19–24.

1.6. A new concept of a socialist family and a socialist marriage built upon new definitions of the functions of family and marriage

The state guaranteed to protect the family in the Ninth-of-May Constitution. Under Section 10: "The state protects marriage, family, and motherhood. The state ensures that the family provides a healthy basis for the national development." State protection of the family, rooted in Marxist-Leninist ideology, heralded the transformation of family law.[40] The bourgeois family, which was supposed to no longer exist in the People's Democracy, was said to be built on the property relations between its members. The socialist family, on the other hand, was supposed to be a collective of members tied through deep emotional relationships and socialist values, following the example of Soviet family law.[41] This transformation was supposed to be the result of the publicization of family matters.[42] The state regulated and controlled family matters and presented this approach as part of the transition from capitalism to socialism.[43]

Criticism of the "bourgeois family" emerged in literature, propaganda, and explanatory reports. Also, the Explanatory Report on the Act on Family Law of 1949 emphasized that capitalist private property was the foundation of the bourgeois family. Capitalism was said to perceive family and marital relations through the lens of production and class interests of the bourgeoisie. The bourgeois family was described as an economic unit serving the property benefits of its members, placing material interests above social interests and subordinating human freedom and personal relationships between spouses and between spouses and children to monetary interests. It allegedly imposed on parents the idea that the well-being of children depended on their wealth rather than personal development.[44] [emphasis added by authors].

Therefore, families had to disengage from their predominant economic function. The Explanatory Report on the Act on Family Law of 1949 depicted the ideal socialist family

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[40] One of the most influential judges, František Pávek, said that the first fourteen years after 1948 was both a hidden and overt struggle between the present and the past over establishing and consolidating the features of socialist marriage and family. It was a period of searching, with natural mistakes and the first realization that the socialist marriage with equal relations between woman and man would not be only a result of the changed social order and a swift reform of existing marriages. However, the couples married without fully realizing what the future would bring. Similarly, already-married couples could not foresee the dynamics of new changes, especially the impact of female economic activity. New and old marriages stood on the threshold of far-reaching changes of inner content without being prepared for them. Pávek, František, *Rozvody*, 49–50.

[41] Nora Viktory, a leading author of commentaries in expert journals, wrote that Soviet family law regulated a specific area of social relations – legal relations between spouses and family members where personal relations prevailed over property relations. Soviet family law understood marriage union and family as collectives, in which the collective benefit matched as much as possible with the individual benefit, and the property was not of the utmost importance. Marriage and family were primarily economic units in the bourgeois legal systems, and their purpose was to create, collect, and secure family property. Therefore, according to Viktory, bourgeois family law was part of civil law. Viktory, "Sovietske rodinné právo," 115–6.

[42] The same opinions appear in the Communist Manifesto of 1848.

[43] Kuklík [*et al.*], *Vývoj*, 575.

[44] The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of... 1949. General Part.

as a solid collective whose members provided each other with moral and material help and took care of each other. In other words, the socialist family was a group of workers whose interests did not conflict with the interests of the collective. They primarily pursued the general common interest, the interest of the socialist society.[45]

Thus, the socialist family was supposed to be an evolutionary and progressive form of family.[46] However, the reality of the 1950s brought existential problems resulting from the lack of goods, disruptions in supply, efforts to abolish traditional family ties through collectivization and socialization of the countryside, separation from family because of work-related commuting, persecution of relatives of class enemies, etc. Through gradual social corruption from the 1960s onwards (most evident from the 1970s on), the regime remedied the functioning of families, which resonates nostalgically in the collective memory in the present.

The post-1948 jurisprudence attempted to newly interpret the traditional definition of a family according to Marxism-Leninism.[47] The form of the family, as everything in history, was perceived as subject to development, change, and recreation according to changes in the production methods and relations between people in production. **It perceived the previous form of family as over-individualized and over-economized, and the socialist family based on marriage as a matter of personal affection, love, and friendship**.[48] [emphasis added by authors]

Besides the evolution of the family, jurisprudence emphasized the ties between the family, society, and the state. Allegedly, a socialist society eliminated economic inequality and its causes, and families could thus **help to combat isolation and anti-social attitudes**.[49] [emphasis added by authors]. Therefore, the interests of individuals, families, and society were supposed to be uniform, even if it meant suppressing the needs or activities of individuals. Suppression of individualism and preference for collectivism became a new ideological postulate. The collective (and society as a whole) was more important than the individuals.

Families performed social, biological, and educational functions that enjoyed protection only if they performed them ideologically correctly.[50] Despite the ideology, they continued to perform the economic function too. Families were supposed to be the most suitable environment for raising children, teaching them the correct worldview, good practice and habits, and implementing accurate opinions.[51] In simple terms, families were supposed to be a tool in the hands of the regime.

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[45] *Ibid.*

[46] Knapp said that the Soviet type of family freed itself from the influence of private property relations due to a new economic base in the socialist system established on social ownership of the means of production. Knapp [*et al.*] *Učebnica*, 74.

[47] The authors often referred to the publication of Friedrich Engels, *The Origin of the Family.*

[48] Roháček, "Trestná ochrana," 645.

[49] *Ibid.*, 646.

[50] Pávek, František, *Rozvody*, 56.

[51] Planková, *Rozvod*, 12.

2. Marriage (Marriage formation, spousal relationships, marriage dissolution)

One of the functions of marriage in the new regime was to help form a people's democratic society. As a prominent contemporary family lawyer Ivana Šošková said: "Marriage was supposed to have a primary social mission, i.e., to reform society. Therefore, it was not a private matter of individuals, and the state bodies paid considerable attention to the marital and family matters."[52] Marriage became publicized[53] to help build the people's democratic and socialistic establishments. Also, marriage was supposed to be a union of workers rightfully fulfilling their duties and educating children in Marxism-Leninism, as pointed out in the speech of the Minister of Justice, Alexej Čepička, during the discussion on the Government Draft Act on Family Law at the 37th session of the National Assembly on December 7, 1949. He said that family law and families were social unions and solid foundation stones of public nature **because of their important social function and mission**. Their role was to strengthen the social establishment through the workforce and the socialist education of children. As marriage was not a private matter, **the state necessarily engaged right from the beginning**.[54] [emphasis added by authors].

These statements document the effort for state control and the introduction of radical changes.[55]

The ideological undertone of the Preamble of the Act on Family Law of 1949 was evident in the definition of marriage as a voluntary and permanent union between a man and a woman, a legal union, which, as the basis of the family, served the interests of its members and the benefits of society and its progressive development. The Preamble became an important interpretation tool because the Act on Family Law of 1949 did not include a legal definition of marriage.[56]

2.1. Marriage formation

The Act on Family Law of 1949 regulated the marriage formation, the rights and obligations of spouses (including the regulation of property relations), and the dissolution of marriage in its very first chapter. As written in Section 1, the consent declaration of a man and a woman before the local national committee was a necessity in order to marry.

[52] Šošková, "Tvorba," 2718.

[53] Knapp said that the Soviet state did not consider marriage and family issues as private matters indifferent to society and the state and quoted Lenin, who said that society always benefits from the relations of men and women through which they commit to the collective. Knapp [*et al.*] *Učebnica*, 78.

[54] The National Assembly of the Czechoslovak Republic 1948–1954, Speech of the Ministry of Justice Čepička: Report of the Constitutional-legal Committee on the Government Draft Act (Print 378) on Family Law (Print 382). *Digital Library* [online]. Stenoprotocols. 37th meeting. Wednesday, December 7, 1949. Print 382.

[55] Veselá [*et al.*], *Rodina*, 92.

[56] Case law and jurisprudence often referred to the Preamble as the interpretation tool for understanding marriage, its functions, and its roles in the new establishment.

Marriages were civil unions, and Church marriages without previous civil ceremonies had no legal relevance.[57] The marriage ceremony was public and solemn and took place in the presence of two witnesses. It had no contractual character because that was said to be a typical feature of bourgeois marriage.[58]

The Act on Family Law recognized four marriage impediments. From the terminological point of view, though, the Explanatory Report and jurisprudence[59] criticized the term "impediments"[60] and used the formula "facts that prevent the formation of a valid marriage." It was a quasi-change because the terminology was new, but the content still had the canon law foundation.

The facts that prevented the formation of a valid marriage were:
– bigamy (Section 8);
– kinship, adoption, affine[61] (Section 9);
– mental health issues[62] (Section 10);
– insufficient age[63] (Section 11).

2.2. Spousal relationships (Personal and property relationships)

According to Section 15, which expressed the constitutional principle of the equality of spouses, they had "the same rights and the same obligations." They were supposed to "live together, be faithful to each other, and help each other."[64] These legal provisions were supposed to guarantee the elimination of the patriarchal model, i.e., the husband's supremacy as the head of the family. Spouses acted as equal partners and were obliged to take care of the household and the family together and jointly bear the costs according to their economic abilities and possibilities.[65] Inspired by Soviet family law, such a change was quite radical in Czechoslovakia.

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[57] The authors of the first Commentary on Act on Family Law specified that the consent to enter into a marriage was not a contractual declaration. It was a declaration of consent before a state body, made towards this body, not of the betrothed towards each other. The form of this declaration and the relevant legal requirements had nothing to do with the form and requirements of the expression of will according to the Civil Code. This consent was part of the cumulative administrative act. Andrlík, Blažke, Kafka, *Komentář*, 29.

[58] Bělovský, "Rodinné pravo," 467.

[59] Knapp said that in post-1948 Czechoslovak family law, marriage was not a contract, and, therefore, the so-called marriage impediments had no place in it. Knapp [*et al.*], *Učebnica*, 92.

[60] The Draft recognized the facts that prevented the formation of a valid marriage. However, it was not the concept of the so-called marriage impediments, which had justification in canon law and allegedly served the bourgeoisie in a capitalistic society to easily dissolve marriages The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of... 1949. Section 8.

[61] In the case of affine, just and grave causes could justify the validity of a marriage.

[62] Exceptionally, it was possible to permit the marriage of mentally disabled persons if their health conditions were compatible with the essence and purpose of the marriage.

[63] Child marriage was not allowed. The age of majority was 18 years of age, but exceptionally and for just and grave reasons, the court could also allow a minor over 16 to enter into a marriage (Act on Family Law of 1949, Section 11).

[64] The jurisprudence of the 1950s regularly emphasized the requirement of equal mutual rights and obligations of spouses. The failure in requirements "to live together, to be faithful to each other and to help each other" was often determined in the divorce proceedings as the reason for the marriage breakdown.

[65] Šošková, "Komparatívny pohľad," 905.

The spouses were supposed to live in the family community, where "the essence and content of this life community are deeper than the mere concept of living together."[66] The joint life of the spouses ceased to equate merely to the joint residence of the spouses. The wife was no longer obliged to follow her husband to his residence or a place he designated as a joint residence.[67] This change, supported by legal science and jurisprudence, conceptually fitted in with a society that needed to introduce women's work and work-related migration.

The fidelity requirement had an ideological undertone as people in the socialist society were supposed to marry because of personal reasons, not property reasons. The request for mutual help was related to understanding the family as a collective, in which members helped each other to ensure their well-being and satisfy material needs. The jurisprudence of the time emphasized the "factual equality" of spouses as opposed to the criticized bourgeois "mechanical" equality in marriage, economically dominated by the man as the head of the family.[68]

The courts scrutinized the equality of rights and obligations individually for each case:

> One shall not understand the wording of Section 15 of the Act on Family Law of 1949 on equal rights and obligations of men and women in marriage narrowly or numerically. It is always necessary to consider the circumstances of each case, i.e., the reasons that prevent the wife from fulfilling her duties, the number of children, her health and ability to work, and the earning potential and financial possibilities of both spouses. These circumstances help to correctly assess the claim of the wife.[69]

Under the equality principle, both spouses were supposed to decide on all essential familial matters together. If they did not reach an agreement, following the motion of one of them, the court decided.

The Act on Family Law of 1949 was supposed to be a comprehensive legal regulation of personal and property relations between spouses. The basis of the property relations was joint marital property (Act on Family Law of 1949, Sections 22–29).

The term joint marital property included the adjective "legal" to emphasize the *ius cogens* character of the regulation.[70] According to Section 22, property acquired by either of the spouses during the duration of the marriage – excluding the inheritance, gifts, and objects serving the personal needs or profession of the spouse – was the acquired property. The acquired property of both spouses was their community property (joint marital property).

Exempt from joint marital property was the non-matrimonial assets:

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[66] Knapp [*et al.*], *Učebnica*, 103.

[67] As the Regional Court in Ostrava ruled: "The obligation of spouses to live together according to Section 15 of the Act on Family Law does not encompass the obligation of the wife to follow her husband into the apartment where he moved without a previous agreement and a serious reason." Decision of the Regional Court in Ostrava from March 10, 1950, no. Co V 33/50 (Collection, No. 42). General Prosecutor's Office and General Prosecutor's Offi ce and Supreme Court in Prague, 70–3.

[68] Andrlík, Blažke, Kafka, *Komentář*, 67.

[69] Decision of the Regional Court in Ostrava from November 21, 1955, no. Co 334/55 (Collection, No. 102). General Prosecutor's Offi ce and Supreme Court in Prague: *Collection*, 190–2.

[70] Plank, *Majetkovoprávne vzťahy*, 69.

– acquired before marriage;
– acquired as an inheritance or gift;
– serving the personal needs or profession of the spouse, even if acquired during marriage.

The inspirational source for the legal regulation of joint marital property was Soviet law.[71] The ruling principle was that "Both spouses are regularly responsible for acquiring property during marriage either because they are both employed or because the earning activity of one develops with the support of the other, who works in the household and takes care of the children."[72] Hence, joint marital property was supposed to help to achieve the goal of marriage and the unity of the spouses.[73]

The joint marital property existed from the first day of the marriage until the dissolution of the marriage by death, by the legal declaration of death or divorce, or by a valid declaration of nullity. In exceptional cases, the joint marital property ended during the marriage, *ex-lege* because of the deprivation of a legal capacity of one of the spouses, or a court decision following the motion of one of the spouses for grave reasons[74] (Act on Family Law of 1949, Section 25, Paragraph 1). Dissolution of joint marital property meant its division and settlement as required by the principle of equality.

An irrebuttable presumption of equality of shares applied if the marriage ended due to the death or deprivation of the legal capacity of one of the spouses (Act on Family Law, Section 25, Paragraph 1). On the contrary, the rebuttable presumption and the possibility of determining a different share in the joint property of the spouses applied in the case of a fault divorce, while the subject of proof was that the spouse did not contribute (or only to a lesser extent) to the acquisition of the property.[75] It also applied in the case of an invalid marriage if one of the spouses intentionally caused invalidity, e.g., when the marriage party knew about the invalidity of the marriage and had a wasting behaviour.[76] When

[71] *Ibid.*, 30.

[72] Kráľ, "Majetkové," 8.

[73] Decision of the Regional Court in Prague from June 25, 1959, No. 19 Co 506/59 (Collection, No. 19), the Rationale: "The regulation of property relations of the spouses should strengthen the marriage bond. It results from the nature of marriage, which is a voluntary and permanent life partnership of a man and a woman, which should serve all members of the family, as well as the society. The joint marital property serves this aim, as it essentially consists of all property acquired by either spouse during the marriage." General Prosecutor's Offi ce and Supreme Court in Prague: *Collection*, 74–8.

[74] For example, such grave reasons were the frivolous behaviour of a spouse, which could lead to wasting the joint marital property, endangering the satisfaction of the family's needs or the temporary separation of the spouses. The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of ... 1949. Sections 24 and 25. Similarly, Rapporteur Patschová said that a grave reason was, for example, an extravagant or idle life, but, considering the nature of marriage, not a long-term illness. The National Assembly of the Czechoslovak Republic 1948–1954, Speech of the Rapporteur Patschová: Report of the Constitutional-legal Committee on the Government Draft Act (Print 378) on Family Law (Print 382). *Digital Library* [online]. Stenoprotocols. 37th meeting. Wednesday, December 7, 1949. Print 382.

[75] Under the Act on Family Law of 1949, Section 28, Paragraph 1, the divorcee who was at fault for the divorce could lose their share in the joint marital property at the request of the innocent spouse if the spouse did not contribute to the acquisition of this property. Or, if the spouse contributed only to a small extent, it could be reduced. If both spouses were at fault, the court adjusted their shares at the request of either of them so that the ratio of shares corresponded to how they contributed to the acquisition of the joint property.

[76] Kráľ, "Majetkové," 10.

determining the degree of contribution to the acquisition of joint property, it was necessary to consider the care for children[77] and the household (Section 28, Paragraph. 2). According to the Explanatory Report, personal care for children and the joint household was socially necessary work, comparable to the monetary contribution of the other spouse or provided in addition to earnings, assessed for each case individually.[78]

As Jaromír Blažke said, there was no precise legal definition of the nature of joint marital property: "The joint marital property generally appears as an in-rem legal relationship but towards the other spouse as an obligation relationship."[79] Karol Plank[80] called joint marital property the so-called *property by entirety*, meaning that the shares were undetermined, and each spouse had an equal, undivided interest in this joint property. Later, this term was used in the 1964 Civil Code.

Compared to other legal norms, the cogent character of marital property regulation was slightly limited. Through a contract, it was possible to modify the extent of the joint marital property, its management, and the day of its beginning (while this day could even be the day of the dissolution of the marriage).[81] For the contract modifying the joint marital property to be valid, it was necessary to preserve it in court.

This regulation of property relations between spouses remained valid until the 1960s. A new Constitution came into force in 1960, with subsequent socialist codifications throughout the early 1960s. The new Act on Family no. 94 of 1963 Coll.[82] did not regulate property relations (an exception was the spousal maintenance during and after marriage[83]), and they became part of the newly adopted Civil Code No. 40 of 1964 Coll. The basis of property relations became property by entirety.

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[77] As the Regional Court in Prague ruled: "Without an agreement, the court will divide the joint marital property according to the principles in Sections 26–8 of the Act on Family Law. The court must consider the specific nature of this joint property and try to divide it in a way that best suits the spouses and the benefit of the children. It means that the spouse with child custody shall receive property that allows the proper raising of children." Decision of the Regional Court in Prague from June 25, 1959, no. 19 Co 506/59 (Collection, No. 19). General Prosecutor's Offi ce and Supreme Court in Prague: *Collection*, 74–8.

[78] The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of... 1949. Section 28.

[79] Blažke, *Majetkové*, 48.

[80] Plank, *Majetkovoprávne vzťahy*, 81.

[81] Under the Act on Family, Section 29, spouses could agree that the extent of their joint property would differ from what the law foresaw. They could even agree on managing their property differently than the law settled. Furthermore, they could agree that their property would be joint only on the day of the dissolution of the marriage. The Explanatory Report stated that everyday life required such a possibility in terms of extent and management. It was necessary to allow them to legally limit the existence of their joint property to the day of the marriage's dissolution. The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of... 1949. Section 29.

[82] See also: Planková, "Priebeh," 30 et seq.

[83] Act on Family no. 94 of 1963 Coll., Section 91 (maintenance during marriage) and Sections 92–4 (spousal maintenance after marriage).

2.3. Marriage dissolution – new regulations of divorce

The Act on Family Law of 1949 regulated divorce in Sections 30–34.[84] The legal basis for divorce and the general reason for marriage dissolution became the irretrievable breakdown of marriage according to Section 30 (literally, "deep and irretrievable breakdown of marriage for grave reasons"). It was a radical change compared to the previous legislation, with an exhaustive list of diverse divorce grounds.[85] The cause for this thorough change was that, over time, the definite list of divorce grounds became too rigid and binding for everyday life and legal practice.[86] Furthermore, jurisprudence criticized the possibility of arranged divorces by mutual consent tacitly allowed through the list of divorce grounds, the financial cost of the procedure, and its legal complexity.

The jurisprudence highlighted the advantages of the new general grounds for divorce, i.e., that the judges could investigate the accurate causes of the marriage breakdown. On the other hand, it placed high demands on the judges because they had to determine the so-called material truth through more complex evidence and had an educational role in preventing the increasing divorce rate.[87] It was up to the judges to assess the causes of the marriage breakdown and conclude whether it was irretrievable.[88] Under the principle of material truth, it was necessary to investigate all the causes of irretrievable breakdown and determine guilt.[89] Divorce was supposed to be a legal solution to "such an intense disruption of relations between the spouses that a social interest justifies the dissolution of the marriage, which is no longer capable of fulfilling its social purpose."[90]

The Act on Family Law of 1949 did not include a legal definition of irretrievable breakdown. Rather brief was also the Explanatory Report. It stated that the Draft introduced irretrievable breakdown as the only reason for divorce, having an immediate consequence that the marriage could not fulfil its purpose. The irretrievable breakdown of marriage was an immediate and objective state of marriage failure. The legal practice in the 1950s considered the marriage breakdown to be a state in which the union ceased to be a marriage, and its further existence was no longer possible. The spouses were no longer motivated to remain in the marriage. They lacked the will to continue in their union that was once based on mutual affection and love, the need to satisfy natural sexual desires in a monogamous marriage as a morally and legally approved union, and to have or jointly raise children as well as to remain permanently in this union.[91]

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[84] This was the substantive law. The procedural regulation was in the Code of Civil Procedure of 1950 (Sections 230–43).

[85] Laclavíková, Záteková-Valková, *Rozvod manželstva*, 60.

[86] The authors of the first Commentary on Act on Family Law wrote that the practice showed that the exhaustive list of divorce grounds led to formalism in assessing marital relationships and was an obstacle to determining the material truth. Andrlík, Blažke, Kafka, *Komentář*, 108.

[87] According to the authors of the first Commentary on Act on Family Law, the divorce decrees had an important educational function and contributed to shaping a correct opinion on family and marriage in Czechoslovak society. Andrlík, Blažke, Kafka, *Komentář*, 109.

[88] Planková, *Manželstvo*, 24.

[89] Planková, *Rozvod*, 51.

[90] Hrušáková, *Rodinné právo*, 5.

[91] Havelka, "Rozvody," 16.

The causes of the irretrievable breakdown had to be objective. Planková said that these were the situations in which, not only from the point of view of the spouses, it was impossible to insist on their continued cohabitation, but also because of the interest of society, as such a marriage could no longer fulfil any of its social functions.[92] The reason for emphasizing the social function of marriage was to remind that marriage, society, and the state were interconnected and that frivolous divorces were not welcome in a socialist society. Following the idea of collectivism, this social function of marriage was "superior to the other functions," encompassing these other functions because the interests of the spouses were secondary compared to the interests of society.[93] Said differently, the social interest was supposed to be a corrective to the personal interests of the spouses.

According to the ideological teachings, society wanted harmonious, solid, and permanent marriages.[94] correctly fulfilling their social function alongside the biological, economic, and educational ones. The social function of marriage was a term introduced and elaborated on in the collectivist ideology in the 1950s.[95] In jurisprudence, the new term "social purpose of marriage" appeared in the 1960s.[96] The answer to whether marriage fulfilled its social function (social purpose) depended on the analysis of whether it fulfilled biological, economic, and educational functions.[97] However, it was also necessary to consider the alternation of the hierarchy and priority of marriage functions in the life cycle.

Under the Act on Family Law of 1949, the irretrievable breakdown had to be deep and permanent.[98] In 1953, Jiří Havelka explained that the breakdown was irretrievable if the marriage ceased to be a union and could no longer continue, specifically due to the estrangement of the spouses and the cooling of their mutual relationship, which turned them into strangers.[99]

In court rulings, we often find expressions such as estrangement, indifference, rejection, or rudeness. Furthermore, the term "irretrievable" did not indicate only the temporality (time-related nature) of the problem.[100] The permanence of the breakdown precluded the possibility of resuming any marital cohabitation.

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[92] Planková, *Rozvod*, 52.

[93] *Ibid.*, 55–6.

[94] Češka [*et al.*], *Československé rodinné právo*, 85.

[95] Laclavíková, Záteková-Valková, *Rozvod*, 62.

[96] According to the Explanatory Report, the Draft introduced irretrievable breakdown as the only ground for divorce in situations where the marriage no longer fulfilled its function. This wording of the Explanatory Report extended the Act on Family Law of 1949 in Section 30. The court acted primarily as a guardian of social well-being and had to consider the personal wishes of the spouses as secondary. The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of... 1949. Section 30.

[97] The authors of the first Commentary on Act on Family Law stated that the Act, serving the needs of the society building socialism, emphasized the well-being of society and each spouse. However, if the spouses did not respect social morality and order, the well-being of society became more important. Andrlík, Blažke, Kafka, *Komentář*, 114.

[98] Laclavíková, Záteková-Valková, *Rozvod*, 64.

[99] Havelka, "Rozvody," 16.

[100] Planková, *Rozvod*, 54.

Another necessary condition was that it was serious reasons that caused the irretrievable breakdown of marriage.[101] According to the court rulings, these reasons could be various and often multiple reasons led to a breakdown. The lawmaker reserved the right for judges to assess these reasons, relying on their opinions and life experiences.[102] Besides determining these reasons, the judges had to carefully examine whether these reasons truly led to or caused the marriage breakdown.

The socialist jurisprudence divided the reasons for breakdown[103] into two groups[104]:

1) objective reasons – reasons independent of the will and actions of the spouses. According to legal science and judicial practice, these were psychological illness, infertility, impotence, unreasonable age difference, character and world-view contradictions, inadequate interventions by relatives or third parties into the relation,[105] unfavorable housing conditions,[106] etc. They often co-existed with other subjective reasons.
(2) subjective reasons – conscious actions or inactions of the spouses, including the conscious culpable violation of essential marital obligations. They either existed at the marriage's conclusion[107] or emerged during the marriage due to breaching marital rights and obligations resulting from the Act on Family Law.[108] Section 15 of the Act on Family Law recognized obligations such as mutual cohabitation, faithfulness, and mutual help. Among the most frequent subjective reasons in the court rulings were infidelity, financial and sexual disagreements, alcoholism, rudeness, excessive jealousy, a conviction for a crime, leaving the joint household, etc.[109] Alongside the subjective reason for the breakdown, the court determined the fault of one or both spouses for the breakdown of the marriage. In the

[101] For the reasoning, see the Explanatory Report. There, we find the information that, on purpose, the Draft did not include a list of reasons potentially leading to marital breakdown, not even demonstratively. The reason was to avoid the past approaches, when, allegedly, the judges ascertained the reasons only mechanically to keep goodwill. It was not enough to only determine such a reason. The judge had to thoroughly examine whether this reason was able to cause the marital breakdown. Hence, it was more complicated to divorce after 1948 than in the past when, allegedly again, frivolous divorces without valid grounds were frequent. The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of... 1949. Section 30.

[102] The marital breakdown was not an immutable condition. It could be subject to developmental changes or arise after a longer time from when the reasons existed. See: Planková, *Rozvod*, 54.

[103] The determination and assessment of the reasons were also relevant for: (1) the possibility of filing for divorce (under the Act on Family Law, Section 30, Paragraph 2, the faulty spouse could file for divorce only if the other spouse consented); and (2) legal consequences of divorce (alimony and property rights).

[104] Češka [*et al.*], *Československé rodinné právo*, 130.

[105] Mostly, young couples who lived in the same household with their parents had to deal with their strong influence. It was problematic for jurisprudence and courts to precisely assess this reason for the marriage breakdown due to having a partly objective and partly subjective nature (e.g., culpable favouring of only one of the spouse's parents). Planková, *Rozvod*, 54.

[106] In most cases, unfavourable housing conditions of a temporary duration were not a sufficient objective reason.

[107] In this context, lawyers often discussed issues such as pregnancy or concealment of important facts before the marriage by one of the spouses.

[108] Planková, *Rozvod*, 66.

[109] Pávek, František, *Rozvody*, 64.

rationale of the ruling, the court morally condemned the inappropriate behaviour of the spouse or spouses and the fault in the marriage breakdown.

Objective or subjective reasons were considered as the reasons for the breakdown of the marriage only if there was a causal connection (causal nexus) between these reasons and the breakdown of the marriage.[110]

If the reasons were independent of the will of the spouses (objective), the judge, in the rationale of the court ruling, only listed them as the reasons for the irretrievable breakdown.[111] However, if the violation of marital obligations was culpable (subjective), the judge morally condemned it and determined who was guilty of the breakdown unless the spouses unanimously requested a waiver of the verdict of guilt.[112] Due to the educational (ideological) approach, it was necessary to declare and condemn these reasons "by the whole socialist society" in the rationale. According to statistics in the 1950s, the reasons were predominantly infidelity, differences of character and interests, rudeness (aggression), abandonment of the household, and alcoholism.[113]

2.3.1. Fault in the breakdown of marriage

Once the judge determined the irretrievable breakdown (whether deep, permanent, based on subjective or objective reasons), further examinations were necessary for a marriage dissolution. Under Section 30, the spouse who filed for divorce had to be innocent of the marriage breakdown, except when the innocent spouse consented to the filing of the motion (by the guilty party).[114] This legal provision co-reflected a new understanding of marriage as a responsibility towards society, in which the innocent spouse needed to be protected, and the guilty spouse educated in good morals. Therefore, the court was obliged to reject a motion for divorce in which only one of the spouses was solely at fault for the irretrievable breakdown if the innocent spouse did not want to divorce. The innocent spouse could also withdraw until the end of the legal proceedings the consent to divorce. Even if the innocent spouse agreed, the court still had to examine whether there was an irretrievable breakdown and what caused it. So, it was still necessary to determine the material truth. The taking of evidence could be concise, though.[115] In no case was the court bound by the concurring requests of the spouses and it had to thoroughly ascertain the facts of the case, especially if there were also minor children involved.

The strict application of Section 30, Paragraph 2, caused an increase in the number of dysfunctional marriages (so-called paper marriages or dead marriages), concubinages, and cohabitation of unmarried partners with children who did not legalize their relationship.[116]

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[110] Češka [*et al.*], *Československé rodinné právo*, 130.

[111] Planková, *Rozvod*, 61.

[112] Češka [*et al.*], *Československé rodinné právo*, 130.

[113] *Pávek, Franti*šek, *Rozvody*, 64.

[114] The wording of Section 30 did not apply if: (1) both spouses were at fault for the irretrievable breakdown; (2) the irretrievable breakdown was a combination of subjective and objective reasons; (3) objective reasons caused the irretrievable breakdown, but the spouses had no guilt and could not influence them.

[115] Under the Code of Civil Procedure of 1950, Section 239, provided that the other spouse joined the motion for divorce and both spouses agreed about the fault in the breakdown, the hearing of the parties was sufficient for determining the breakdown and the guilt.

[116] Pávek, František, *Rozvody*, 59.

Criticism of the requirement for the innocent spouse's consent to divorce began to appear sporadically as early as in the first half of the 1950s. In the rulings, courts often pointed to the fact that dead marriages, in which the breakdown lasted for several years without hope for restoration, did not fulfill their social function on a long-term basis.[117] In these cases, the wording of Section 30 became "a permanent sanction" and was of no benefit to the spouses and society. Thus, the mid-1950s became an appropriate time for change.

Legal Measure of the Presidency of the National Assembly no. 61 of 1955 Coll. on the amendment of divorce regulations, which limited the effect of the principle of fault in divorce proceedings, was supposed to solve the situation with the dead marriages.[118]

A new Paragraph 4 extended Section 30 of the Act on Family Law and said that even without this consent (i.e., the consent of the innocent spouse), the court, considering the interest of society, could, in exceptional cases, grant a divorce provided that the spouses had not currently lived together for a long time.[119] According to the Explanatory Report, educating the spouses in broken marriages, where there was no hope of resuming marital cohabitation, especially if one of the spouses lived in a new union, was meaningless. Such dead marriages could not fulfill their social function and impeded the arrangement of new family relationships that the spouse at fault wanted or had made.[120]

Despite this new legislation, judges still had to follow the essential principles in the Act on Family Law and could not come into conflict with them when ruling on divorce.

Courts could apply Section 30, Paragraph 4, only under three simultaneously occurring conditions. Thus, legal science and the courts once again faced the difficult task of reinterpreting terms such as the "interest of society," an "exceptional case," or a "long time."[121] The interpretation of a "long time" was between three and five years.[122] The Explanatory Report interpreted the term "not living together for a long time" as either living apart in different places or, due to housing shortages, remaining in the same household but having a disrupted marital cohabitation.[123]

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[117] Laclavíková, Záteková-Valková, *Rozvod*, 98.

[118] The Legal Measure of the Presidency of the National Assembly no. 61 of 1955 Coll. came into force on January 1, 1956. Lawmakers justified its adoption using utilitarianism reasoning as it was not a common source of law. The first reason was political, to avoid interfering with the result of the ideologically determined legal biennial process so soon. The second reason was the lack of social consensus on this issue (many still considered the protection of the innocent spouse more important than the "interests of the guilty spouse").

[119] It was an exemption from Section 30, Paragraph 2, according to which the court could not dissolve a marriage if the spouse at fault filed a motion, and the innocent spouse did not consent.

[120] The National Assembly of the Czechoslovak Republic 1954–1960. Presidency of the National Assembly. 1955. II. Electoral Period. no. 14-P: Explanatory Report on the Legal Measure of the Presidency of the National Assembly no. 61 of 1955 Coll. on the Amendment of Divorce Regulations. *Digital Library* [online]. Government Draft.

[121] According to the Explanatory Report, it had to be long enough not to raise doubts about irretrievable breakdown and disruption of the social function of marriage. The National Assembly of the Czechoslovak Republic 1954–1960. Presidency of the National Assembly. 1955. II. Electoral Period. no. 14-P: Explanatory Report on the Legal Measure of the Presidency of the National Assembly no. 61 of 1955 Coll. on the Amendment of Divorce Regulations. *Digital Library* [online]. Government Draft.

[122] Knapp [*et al.*], *Rodinné právo*, 71.

[123] The National Assembly of the Czechoslovak Republic 1954–1960. Presidency of the National Assembly. 1955. II. Electoral Period. no. 14-P: Explanatory Report on the Legal Measure of the Presidency

If the judicial opinion was that society would benefit from a divorce, the circumstances were exceptional, the spouses had currently not lived together for a long time, and the guilty spouse caused the irretrievable breakdown, divorce could be granted even without the consent of the innocent spouse. Hence, the consequences of the new legislation were the partial limitation of the principle of fault and the legalization of non-marital unions.

The judge had to determine the guilt in the court ruling according to the Act on Family Law, Section 31, Paragraph 1.[124] It could lead to three possible situations:

– both spouses were at fault for the marriage breakdown;
– one of the spouses was at fault for the marriage breakdown;
– neither of the spouses was at fault for the marriage breakdown.

Various consequences resulted from the determination of guilt. Firstly, it influenced the division of the joint marital property. The guilty spouse could lose or get only a limited share (Act on Family Law of 1949, Section 28). Only the innocent spouse could ask for an adjustment of the share.[125] If both spouses were at fault for the irretrievable breakdown, each could ask for the adjustment of the shares. If both spouses were innocent and the breakdown happened for objective reasons, the innocent spouses could not ask for the adjustment of the shares. Problematic was the situation if the spouses requested a waiver of the verdict of guilt and adjustment of their shares.[126]

Secondly, it influenced the maintenance (spousal support) after divorce. The Act on Family Law of 1949 in Section 34 stipulated that the spouse at fault had no right to get alimony after divorce from the innocent spouse.[127] The innocent spouse had the right to have their personal expenses covered by the spouse at fault or even the innocent spouse if the reasons for the irretrievable breakdown were objective. If both spouses were at fault for the divorce, the court could grant payment of expenses for the divorcee's personal needs by the other guilty spouse. The spouse was not legally entitled to the payment but had the right to claim it. The court made its decision after considering the duration of the marriage, the claimant's behaviour before and after the divorce, and the level of dependency of this spouse.[128]

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of the National Assembly no. 61 of 1955 Coll. on the Amendment of Divorce Regulations. *Digital Library* [online]. Government Draft.

[124] The consequences of the determination of guilt were moral and material.

[125] To stipulate a spouse at fault (guilty), the court ruling needed to include the declaration of guilt.

[126] The joint opinion was that the judge could declare the guilt only in divorce proceedings, not in any other. If the spouses requested a waiver of the verdict of guilt, both spouses were to be considered innocent. Plank, *Majetkovoprávne vzťahy*, 154–5.

[127] (1) If the divorcee, who is not at fault for the divorce, cannot satisfy the personal needs, it is possible to claim from the other spouse, even if also innocent, to cover the expenses considering their earnings and property possibilities; (2) If both divorcees are at fault, the court may also entitle the one at fault. (3) The right to claim expenses ceases upon the death of the one obligated to pay, except for recognition of this obligation by the divorcee or the court. The divorcee entitled to maintenance loses this right upon entering a new marriage. (Act on Family Law of 1949, Section 34).

[128] Divorcees had to cover their expenses primarily from earnings. The expense claim was only possible when the divorcee had no income, usually because of taking care of minor children. If the other divorcee could not pay, the dependent divorcee could claim expenses against relatives (Section 70 – maintenance obligation between relatives). Plank, *Majetkovoprávne vzťahy*, 210–1.

The idea was that spouses were jointly responsible for their fate and material satisfaction.[129] The divorcee had the right to a certain standard of living, comparable to the quality of life of the other divorcee.

If the spouses unanimously requested a waiver of the verdict of guilt, the judge could assent under Section 31, Paragraph 2. However, the judge examined whether the spouses were aware of the moral and property consequences so that one would not lose the advantages of the status of an innocent spouse due to ignorance of the law.[130] As stated in the Explanatory Report, the judge explained these circumstances to the spouses and emphasized the legal consequences of fault in the divorce.[131] This protection of the innocent spouse and the related advantages was said to result from the proper fulfilment of legal duties and moral behaviour appropriate for a member of a people's democratic society[132].

Waiver of the verdict of guilt was not a rare phenomenon (as the legislator initially believed) and essentially replaced the mutually agreed divorces, sparing the spouses from discussing the details of their intimate life in the courtroom.[133] According to statistical data from 1961, the court waived the verdict of guilt at the request of both spouses in 8,334 cases out of 16,427 divorces, that is, in 50.73% of cases.[134] The tendency to request a waiver of the verdict of guilt kept increasing during the era of the People's Democracy, which finally led to the omission of the determination of fault for the breakdown of marriage in the new Act on Family No. 94 of 1963 Coll.

2.3.2. Best interests of minor children in the divorce proceeding

It was said that society asked to preserve marriage if it was in the best interest of the minor child.[135] The authors of the Explanatory Report emphasized that socialist society considered the best interest of the child one of the factors with the highest priority when assessing family conditions. Hence, the desire of parents to obtain a divorce was secondary.[136] Under Section 30, Paragraph 3, if the spouses had minor children, the court did not grant a divorce, unless in the best interest of the child.

Minor children were supposed to live in an environment that would shape them into good future citizens of the socialist state. Spouses had to be aware of their responsibility towards society, including the desired way of raising children and their maintenance obligation towards them, i.e., responsibility superior to their own interests and desires.[137]

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[129] *Ibid.*, 205.

[130] The recommendation for courts was to record this instruction in the minutes. Andrlík, *Rodinné právo*, 47.

[131] The National Assembly of the Czechoslovak Republic 1949. I. Electoral Period. 4th Session: Explanatory Report on the Draft Act on Family Law. *Digital Library* [online]. Print 378. Government Draft Act on Family Law of ... 1949. Section 31.

[132] Planková, Radvanová, *Rodinné právo*, 22.

[133] Through this provision, the lawmakers wanted to facilitate divorces in the case of truly broken marriages and educate spouses at fault to avoid their mistakes in future unions. For more, see: Steiner, "Úhrada," 943.

[134] Schiller, "Zamyšlení," 27.

[135] Šošková, *Manželstvo*, 154.

[136] "The will to maintain marriages is expressed in Section 30, Paragraph 3 because it does not allow divorce if it would conflict with the interests of minor children. The court acts as the protector of social benefit and considers the will of the spouses as secondary." Šimkovič, "Niekoľko otázok," 259.

[137] Glos [*et al.*], *Rodinné právo*, 8–9.

Under Section 32, the divorce decree had to include the determination of the rights and obligations of parents towards their minor children and maintenance of the children's property. The authors of the Explanatory Report emphasized that the court first determined these rights and duties and decided on divorce only afterward. Such an approach was in the best interest of the child and their proper physical and mental development.

However, it was different courts that decided about divorce and the rights and duties towards minor children. Under Section 240 of the Code on the Civil Procedure of 1950, the guardianship court initiated the proceeding after the divorce court had requested a ruling for the case that the divorce court would issue a divorce decree.[138] The divorce court made this request if it was clear that the divorce would not conflict with the interests of the minor children and that the court would issue the divorce decree.

The guardianship court decided on child custody and the maintenance obligation of the parent, or guardianship, or placing the child into a collective education facility. As highlighted in the Commentary on the Act on Family Law, the Marxist-Leninist ideology supported the collective and targeted uniform education. The authors said, contrary to what the courts in capitalism used to emphasize, that education exclusively within the family circle was not always a guarantee of the best upbringing for the child. Instead, the best for the appropriate development of the child was family education suitably supplemented with collective forms of education in kindergartens, youth homes, and clubs, which, according to the Education Act No. 95 of 1948 Coll., served the uniform education of youth. The people's courts were supposed to find suitable solutions following the spirit of the law.[139]

The most important factors for the guardianship court were the best interest of the child and the benefits of education for society. The court evaluated the background of the parents,[140] their emotional bonds, and the conditions for the healthy physical and mental development of the child – a future citizen of the socialist state.[141] A progressive (ideological) upbringing was of high importance. For child custody, Section 35 required considering the political views of parents. Parents were responsible for the physical and mental development of their children. Above all, they supported and educated them so that they were well prepared to contribute to society through their work, according to their abilities and preferences. Finally, once the guardianship court issued the ruling, the divorce court could render the divorce judgment.

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[138] Under the Code of Civil Procedure of 1950, Section 240, if there were minor children, the divorce court requested the general court for minor children to conditionally rule on the parental rights and obligations before the divorce court granted a divorce.

[139] Andrlík, Blažke, Kafka, *Komentář*, 135. The court rulings show that the highest priority was the stable emotional background of the child. According to a survey conducted in 1959, in 87% of cases, courts gave custody to the mother. Petruľáková, "K otázke umiestnenia," 522–3.

[140] When determining the best interests of the minor children, the guardianship court investigated the financial situation of the parents, their living conditions, and social background.

[141] "The fault in the divorce does not impede the custody of the children, i.e., the court decides regardless of which parent is guilty of the divorce. Of course, this does not apply if the reason for divorce is the bad behaviour and educational influence of the parent, such as leading an immoral life, gross negligence of family, etc." Petruľáková, "K otázke umiestnenia," 525.

Conclusion

After 1948, family law in the People's Democratic Czechoslovakia significantly changed. The Ninth-of-May Constitution of 1948 introduced new principles governing family law matters. Subsequently, the Act on Family Law No. 265 of 1948 elaborated on them, introducing:

– compulsory civil marriage;
– equality between men and women in familial, marital, and property relations;
– equal rights for children regardless of their marital or non-marital origin (abolition of differences between children born in and out of wedlock);
– joint parental authority substituting the sole paternal authority over children, and an increased public (state) interest in the child policy;
– a new understanding of the termination of marriage by divorce (irretrievable breakdown as the only ground for divorce);
– a new concept of a socialist family and a socialist marriage built upon new definitions of the functions of family and marriage.

However, the totalitarian ideology distorted and ideologized many of these principles because:

– the state bodies put themselves into the role of the protectors of family and marriage and used this role to control the intimate space of people;
– the state bodies used their role also to control the relations between husband and wife, hence placing families under their ideological influence, introducing a new hierarchy of relations and new values, and disrupting long-rooted traditions;
– the state tolerated no opposition to the communist ideology, which was the only allowed worldview in which to educate children at home and in educational facilities.

The above-mentioned approaches turned family law into the secular and public domain.[142] The primary function of marriage was its social function. Lawmakers elaborated on these approaches and principles even after 1960, when the Constitution declared the victory of socialism and the Act on Family of 1963 became the new codification in the Czechoslovak Socialist Republic. The Czechoslovak family law fundamentally transformed only after the fall of the communist regime in 1989, with the process of deetatization as one of the goals and governing principles.

[142] Family law became a separate branch of law, contrary to the bourgeois establishments where the civil codes traditionally included provisions on family law (e.g., ABGB, Code Civil). Such fragmentation of the legal order was typical in people´s democratic and socialist countries.

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