Tschechien

1 Sources of the rules in force

1.1 National rules

The key national measure in the conflict of law rules is Act No 91/2012 on Private International Law.

1.2 Multilateral international conventions

1.2.1 Selection of significant multilateral international conventions governing the applicable law:

1.2.1.1 Directly applicable

Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw 1929
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956
Guadalajara Convention on the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, 1961
Vienna Convention on Civil Liability for Nuclear Damage, 1963
Hague Convention on the Law Applicable to Traffic Accidents, 1971
Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), 1973
Convention on the Limitation Period in the International Sale of Goods, 1974
United Nations Convention on the Carriage of Goods by Sea, 1978
United Nations Convention on Contracts for the International Sale of Goods, Vienna 1980
Convention concerning International Carriage by Rail (COTIF), 1980
Convention for the Unification of Certain Rules for International Carriage by Air, Montreal 1999

1.2.2.2 Conflict of law

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, The Hague 1996
Hague Convention on the International Protection of Adults, 2000
Hague Protocol on the Law Applicable to Maintenance Obligations, 2007 (the EU as a whole is the party)

1.3 Principal bilateral conventions

1.3.1 Selection of significant bilateral international conventions governing the applicable law

Agreement between the Czechoslovak Republic and the People's Republic of Albania on legal assistance in civil, family and criminal cases, 1959
Agreement between the Czechoslovak Socialist Republic and the Socialist Federal Republic of Yugoslavia on the regulation of legal relations in civil, family and criminal cases, 1964 (applies to all successor states of the former Yugoslavia)
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Bulgaria on legal assistance and the regulation of legal relations in civil, family and criminal cases, 1976
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Mongolia on the provision of legal assistance and on legal relations in civil, family and criminal cases, 1976
Agreement between the Czechoslovak Socialist Republic and the Cuban Republic on mutual legal assistance in civil, family and criminal cases, 1980
Agreement between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on legal assistance and legal relations in civil, family and criminal cases, 1982 (applies to the Russian Federation and many of the other successor states to the former USSR)
Agreement between the Czechoslovak Socialist Republic and the Socialist Republic of Vietnam on legal assistance in civil and criminal cases, 1982
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Poland on legal assistance and the regulation of legal relations in civil, family, employment and criminal cases, 1987
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Hungary on legal assistance and the regulation of legal relations in civil, family and criminal cases, 1989
Agreement between the Czech Republic and Romania on legal assistance in civil cases, 1994
Agreement between the Czech Republic and Ukraine on legal assistance in civil cases, 2001
Agreement between the Czech Republic and the Republic of Uzbekistan on legal assistance and legal relations in civil and criminal cases, 2002

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

This matter is governed by Section 23 of the Act on Private International Law.
The court applies the foreign law of its own motion. The law applies in the same way as in country where it is in force. The provisions of the law applied are the provisions that would be applied for a decision in the case in the country in which the law is in force, regardless of their ordering in the system or public law status, provided that they do not conflict with provisions of Czech law that must be applied.
The court determines, of its own motion, the part of the foreign law to be applied. The court or the public authority that decides in cases governed by the law in question takes all necessary steps to determine the law in question.

2.2 Renvoi

This matter is governed in general terms by Section 21 of the Act on Private International Law.
Renvoi is accepted, with the exception of relationships based on contract and employment law. Where the applicable law has been selected by the parties, conflict of law provisions may be taken into account only where this follows from the agreement of the parties.

2.3 Change of connecting factor

It is generally the case that a given criterion is evaluated only when a legally significant fact is under assessment. Specific conflict of law rules can, of course, settle an issue at certain moments – see for example the rules on rights in rem in point 3.8.

2.4 Exceptions to the normal application of conflict rules

This matter is governed in general terms by Section 24 of the Act on Private International Law (known as the ‘escape clause’).

The law that should be applied, according to the Act on Private International Law, need not be applied in wholly exceptional circumstances where, after proper reasoned consideration of a summary of all circumstances of the case and in particular of the parties’ justified expectation regarding application of another law, it would appear disproportionate and contrary to a sensible and fair settlement of the relationship between the parties. Under these conditions, and where the rights of other persons are not affected, the law to be applied is the one that reflects such a settlement.

2.5 Proof of foreign law

This matter is governed by Section 23 of the Act on Private International Law.

The court determines, of its own motion, the part of the foreign law to be applied. The court or the public authority that decides in cases governed by the law in question takes all necessary steps to determine the law in question.

If the court or the public authority that decides in cases governed by the law in question is not familiar with the contents of the foreign law, it may request the opinion of the Ministry of Justice in order to determine them.

Where the foreign law cannot be determined within a reasonable period of time, or where such determination is impossible, Czech law applies.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Contractual obligations are governed by Sections 87 and 89 of the Act on Private International Law. This is limited to those contractual obligations or aspects thereof that do not fall within the scope of EU legislation or international agreements, unless that legislation or those agreements allow them to be covered by that Act. It is thus a residual provision.

Contracts are governed by the law of the State with which the contract is most closely connected, unless the parties have selected the applicable law. The selection of a law must be made explicitly or it must follow unambiguously from the provisions of the contract or from the circumstances of the case.

Insurance contracts are governed by the law of the State in which the policy holder is habitually resident. The parties may select the applicable law for an insurance contract.

In the case of insurance agreements that are subject to the Rome I Regulation, the Act utilises the option Member States have under Article 7(3) of that Regulation allowing the parties to select any applicable law to the extent allowed by the Regulation.

Legal relationships created from unilateral legal contracts are governed, under Section 90 of the Act, by the law of the State in which the party that makes the unilateral legal contract is habitually resident or has its registered office at the time when the legal contract was made, unless another law was selected for application.

3.2 Non-contractual obligations

Section 101 of the Act on Private International Law lays down, mainly in relation to the scope of the Rome II Regulation, a conflict of law measure only for non-contractual obligations arising from a breach of private and personality rights, including defamation. These obligations are governed by the law of the State in which the breach occurs. The injured party may, however, select application of the law of the State in which (a) the injured party is habitually resident or has its registered office, (b) the originator of the breach is habitually resident or has its registered office, or (c) the breach produced a result, provided that the originator of the breach could have foreseen this.

Non-contractual liability is also legally uniform in a number of the international transport agreements referred to above (see paragraph 1.2.1).

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

This matter is governed by Section 29 of the Act on Private International Law.

Unless the Act specifies otherwise, legal personality and legal capacity are governed by the law of the State in which the person is habitually resident. Unless the Act specifies otherwise, it suffices if the natural person performing a legal act has capacity for the act under the law that is applicable in the place in which the natural person performs that act.

The measure on names of natural persons is governed by the law of the State of which the person is a national. The person may, however, opt for application of the law of the State in which he is habitually resident. Where a person has multiple nationality, the procedure laid down in Section 28 of the Act on Private International Law is followed.

The personal status of natural persons is also regulated in several of the bilateral agreements on legal aid by which the Czech Republic is bound. Conflict of law rules in those agreements are generally based on the criterion of nationality and take precedence over the rules set out in the Act on Private International Law.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The establishment and contesting of parent-child relationships is governed by Section 54 of the Act on Private International Law. It is subject to the law of the State of which the child is a national by birth; where a child acquires more than one nationality by birth, Czech law applies. The law of the State in which the child’s mother was habitually resident at the time of birth applies where this is in the interests of the child. Where the child is habitually resident in the Czech Republic and where it is in the child’s interests, the establishment and contesting of a parent-child relationship is subject to Czech law. A parent-child relationship may be established in accordance with the law of the State in which the declaration of a parent-child relationship is made. Where a parent-child relationship is contested in another State in a judicial or extra-judicial procedure in accordance with the law of that State and the parent-child relationship is established in respect of another person, this will suffice to establish a parent-child relationship in respect of that person.

The applicable law for relationships between parents and children in matters of maintenance is determined in accordance with Article 15 of the Regulation on obligations relating to the Hague Protocol on the Law Applicable to Maintenance Obligations (2007). In other cases involving parental rights and obligations and measures to protect the person or property of a child, the applicable law is determined in accordance with the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures to Protect Children (1996).

3.4.2 Adoption

This matter is governed by Sections 61 and 62 of the Act on Private International Law.

For adoption it is necessary to fulfil the conditions laid down by the law of the State of which the adoptee is a national and the State of which the adoptive parent is a national. Where the adoptive parents are of different nationality, the conditions of the legal systems determined by the nationalities of both parents must be fulfilled, as well as law of the State of which the adoptee is a national. Where, under these rules, it would be necessary to apply the law of another country that does not allow the adoption or allows it only under highly restricted circumstances, Czech law applies, as long as the adoptive parent or at least one of the adoptive parents or the adoptee is habitually resident in the Czech Republic.

The effects of adoption are governed by the law of the State of which all parties are nationals at the time of the adoption or, where this is not the case, by the law of the State in which all parties are habitually resident at the time of the adoption or, where this is not the case, by the law of the State of which the adoptee is a national.

For relationships between an adoptive parent and an adoptee, or adoptive parents in matters of parental rights and obligations, child-rearing and maintenance, the law determined under the international agreements listed in paragraph 3.4.1 for parent-child relationships applies.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

3.5.1 Marriage

This matter is governed by Sections 48 and 49 of the Act on Private International Law.

The capacity of a person to marry, as well as the conditions for the validity of a marriage, are subject to the law of the State of which that person is a national.

The form of a marriage is subject to the law applicable in the place in which the marriage takes place.

A marriage performed in an embassy of the Czech Republic in another country is subject to Czech law. A Czech national cannot enter into a marriage at a diplomatic mission of a foreign state in the Czech Republic.

Personal relationships between spouses are governed by the law of the State of which both persons are nationals. Where they are nationals of different States, the relationship is governed by the law of the State in which both spouses are habitually resident or, where this is not the case, by Czech law.

3.5.2 Unmarried/Cohabiting couples and partnerships

Section 67 of the Act on Private International Law governs the applicable law for partnerships and similar relationships and the effects thereof, capacity to enter into them, the procedures for entering into them or for dissolving, annulling and voiding them, and for settling personal and property matters between the partners.

All of these matters are subject to the law of the State in which the partnership or similar relationship is being or has been entered into.

Czech law does not include any conflict of law measures dealing with cohabitation.

3.5.3 Divorce and judicial separation

Section 50 of the Act on Private International Law governs the applicable law for divorce and for annulment of a marriage or a determination as to whether or not a marriage is void. The Czech Republic does not take part in enhanced cooperation in the area of the applicable law in divorce and legal separation cases and it is thus not bound by Council Regulation (EU) No 1259/2010.

Divorce is governed by the law of the State governing the personal relationship of the spouses at the time of starting the procedure. (Personal relationships between spouses are governed by the law of the State of which both persons are nationals. Where they are nationals of different States, the relationship is governed by the law of the State in which both spouses are habitually resident or, where this is not the case, by Czech law.) If, under those conflict of law rules, it would be necessary to apply foreign law that does not permit divorce or permits it only under highly restricted circumstances, Czech law applies, as long as at least one of the spouses is a citizen of the Czech Republic or at least one of the spouses is habitually resident in the Czech Republic.

In the annulment of a marriage or in determining whether or not a marriage is void, the capacity to conclude a marriage and the form of conclusion thereof are assessed under the laws applicable to them at the time the marriage was entered into.

Czech law does not include a conflict of law measure for separation.

3.5.4 Maintenance obligations

Maintenance obligations between spouses and former spouses are governed by Article 15 of the Regulation on obligations relating to the Hague Protocol on the Law Applicable to Maintenance Obligations (2007).

3.6 Matrimonial property regimes

Since 29 January 2019, the conflict of law rules relating to matrimonial property regimes included in the Act on International Private Law have been replaced by Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. The Regulation applies to legal proceedings instituted and agreements concluded after 29 January 2019.

This matter is governed by Section 49 of the Act on Private International Law. The property regimes of spouses are governed by the law of the State in which both spouses are habitually resident; where this is not the case, by the law of the State of which both spouses are nationals; and where this is not the case, by Czech law.

The contractual settlement of matrimonial property rights is governed by the law applicable to matrimonial property regimes at the time when the arrangement was made. Where this is not the case, spouses may also agree, for the contractual settlement of matrimonial property rights, that their property regimes will be governed either by the law of the State of which one of the spouses is a national, or by the State in which one of the spouses is habitually resident, or by the law of the State in which the immovable property at issue is located, or by Czech law. A notarial record of the agreement must be drawn up or a similar document where the agreement is concluded in another country.

3.7 Wills and successions

The applicable law in relation to the succession of persons dying on or after 17 August 2015 is governed by Regulation (EU) No 650/2012.

This matter is governed by Section 76 and 77 of the Act on Private International Law. This measure applies in relation to the succession of persons who died on or before 16 August 2015 (unless the applicable law is governed differently by a bilateral international agreement).

Pursuant to the Act on International Private Law, the legal regime of succession is governed by the law of the State in which the testator was habitually resident at the time of death. Where the testator was a national of the Czech Republic and at least one of the heirs is habitually resident in the Czech Republic, Czech law applies.

The capacity to make or annul a will, as well as the effects of defects in a will and manifestations thereof, are governed by the law of the State of which the testator is a national at the time of making the will, or in which the testator is habitually resident. A similar determination of the applicable law is performed in respect of capacity to make or annul other kinds of bequests upon death and for determining which other kinds of bequests upon death are admissible.

A will is valid as to its form where the form complies with the law of the State (a) of which the testator was a national at the time of making the will or at the time of his death, (b) on the territory of which the will was made, (c) in which the testator was habitually resident at the time of making the will or at the time of his death, (d) which is to be applied for the legal regime of succession or which was to have been applied for such a regime at the time of making the will, or (e) in which there is immovable property involved. These rules also apply to the form of annulment of a will. These rules also apply mutatis mutandis to the form of agreements as to succession and other bequests upon death, provided that the testator is a party to the agreement as to succession. This also applies to the form of annulment of an agreement as to succession or other bequests upon death.

The testator may specify in a will that, instead of the law otherwise applicable, the legal regime of succession will be governed by the law of the State in which the testator is habitually resident at the time of making the will, including for an immovable bequest, or he can specify that the legal regime of succession, including for an immovable bequest, will be governed by the law of the State of which he is a national at the time of arranging the will. The parties to a succession agreement can choose a legal regime of succession from these legal systems provided that the testator is one of the parties to the succession agreement. This also applies mutatis mutandis to other bequests upon death.

Under the Succession Regulation if, under the applicable law for inheritance according to the regulation, there is no heir for any of the assets, or legatee in accordance with the bequest upon death, or any natural person who is an heir, application of a law determined in this way does not exclude the right of a

Member State or an entity designated by a given Member State for that purpose to take ownership, by right, of assets from an inheritance that are located on its territory, where creditors have a right to the payment of outstanding debts from the residual assets. In Czech law, this matter is governed by Section 1634 of the Civil Code. According to this, where there is no heir to inherit even under intestacy rules, succession passes to the State and the State is regarded as the legal heir. The State has the same standing vis-à-vis the other parties as an heir in accordance with the benefit of inventory. Under Section 78 of the Act on International Private Law, a testator's items and rights located in the Czech Republic pass to the Czech Republic where there is no heir; decisions in these matters lie within the jurisdiction of the Czech courts. The State or another territorial unit or existing institution is not, for these purposes, regarded as an heir, unless established as an heir in the will.

3.8 Real property

This matter is governed by Section 69 to 79 of the Act on Private International Law.

The general rule is that substantive rights to immovable property or to tangible movable property are governed by the law of the place where the property is located. It is also according to this law that a determination is made as to whether property is movable or immovable. For selected property and for certain aspects of rights in rem the Act nevertheless contains special conflict of law rules – see below:

Rights in rem to ships and aircraft that are recorded in a public register, the establishment and expiration of which are governed by the law of the State where the register is kept.

The establishment and expiration of rights in rem to tangible movable property are governed by the law of the place where the property was located at the time when the event occurred that led to the creation or expiration of that right.

The establishment and expiration of ownership in tangible movable property that is transferred on the basis of an agreement is governed by the law that governs the agreement that is the basis for the creation or expiration of ownership.

Where a legal procedure that is to be the basis for the establishment and expiration of rights in rem to tangible movable property is made after the start of shipping of the property and for the duration of the shipping, such establishment and expiration shall be governed by the law of the place from where the property was dispatched. If, however, the establishment and expiration of rights in rem to the property in question is made through the handling of a certificate that must be presented for the purpose of surrendering the property and handling it, the law of the place in which the certificate is located at the time of the handling thereof applies.

The provisions on entries in public books and similar lists valid in the place where the immovable or movable property is located are also applied where the legal reason for the establishment, expiration, restriction or transfer of the recorded right is assessed under another legal system.

Acquiescence is governed by the law valid in the place where the property was located at the start of the period of acquiescence. The holder, however, may refer to the law of the State on which the acquiescence takes place, where – from the time when the property arrived in the State in question – all of the conditions for acquiescence under the law of that State have been met.

3.9 Insolvency

This matter is governed by Section 111 of the Act on Private International Law. The conflict of law provisions of the Insolvency Regulation apply mutatis mutandis, except for cases subject to that Regulation.

Last update: 31/03/2021

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.