DEVELOPMENT OF CRIMINAL LAW IN THE FIRST CZECHOSLOVAK REPUBLIC

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On the eve of October 27 and October 28 1918, the bill about the establishment of the independent Czechoslovak State was drafted by Alois Rašín.[1]The proposal, which consisted only of 5 articles, was debated and approved by the Czechoslovak National Committee[2] the following day. Promulgated as Act Nr. 11 of 1918, and often referred to as the Reception Act, this law spoke about the establishment of Czechoslovakia laconically, even the decision on the form of government was postponed.[3]

This law set out the most basic principles of the legal system in its second and third articles. The former stated that all imperial and territorial acts and governmental decrees would remain in force temporarily. Moreover, the later decreed that all authorities, public offices and municipalities should be operating on the basis of the laws that were in effect in the moment of the birth of the state. Therefore, the Austrian legal norms continued to form the basis of the legal system in the "Czech lands" (meaning Bohemia, Moravia and Czech Silesia) while the Hungarian laws and customs played the same role in Slovakia and Carpathian Ruthenia. This was a direct consequence of the constitutional framework that existed in the dual monarchy of Austria-Hungary that entailed the existence of two separate legal systems since both states had complete authority to enact their own laws except for those concerning military and foreign affairs. However, Czech and Slovak legal experts emphasized that these legal norms were not considered Austrian and Hungarian laws. Within the borders of the Czechoslovak State, the legality and the legitimacy of these legal norms were derived from the Reception Act from October 28, 1918. Therefore, they were considered as being Czechoslovak law together with the laws enacted by the National Committee and later by the National Assembly. This situation is described by the Czech and Slovak legal historians as 'legal dualism'. Despite this it must be emphasized that the Reception Act was tailored to some degree to manage the relations in the Czech lands. The differentiation between imperial and territorial acts was not applicable in the context of

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[1] Czecheconomist and politician, thefirstminister of finance of the Czechoslovak Republic. Forshort biography see: https://www.britannica.com/biography/Alois-Rasin Last accessed: 2017. november 23.

[2] In Czech: Národnívýborčeskoslovenský. Itwasformed in Pragueon 13 July1918. See: Jan Kuklík: *Příprava a přijetíprozatímníústavy* (The Preparation and theEnactment of the Provitional Constitution). In: Jan Zeman, Petr Wawrosz, Jan Bárta, Jan Kuklík, Ferdinand Peroutka, Jan Rychlík, Václav Pavlíček, Karel Malý, Eva Broklová: Československáústava 1920: Devadesátletpoté (The Constition of the Czechoslovak Republic of 1920: After 90 Years), 77-78. *Ekonomia, právo, politika* (Economics, law, politics)

[3] Ivan Liška: *Unifikácia a recepciapráva v ČSR poroku 1918* (Unification and Reception of Law in the Czechoslovak Republic after 1918). In: Visegrad Journal for Human Rights, 2004, 2. sz. 55.

the Hungarian legal system. Moreover, it did not mention the reception of those customs upon which the Hungarian private law was mostly based.

Furthermore, the status of the territory called Hultschiner Ländchen was internationally debated after the first World War. Both the Czechoslovak Republic and the Weimar Republic asserted their claims regarding this region. In the end, this territory joined Czechoslovakia after signing the Treaty of Versailles. There, the German law remained in effect for a short time. Therefore, the rules of three separate legal systems determined the everyday life of the citizens of Czechoslovakia for approximately six months.

Ultimatley, the need for a more modern legal system arose in conjunction with a unified legal system. The attempts to realize these goals spanned the entire interwar period. The first steps were taken by the Czechoslovak Government that established a ministry responsible for unification of the legal system and the state administration in 1919.[4] Even though it had a provisional character, it functioned until late 1938. The question arises as to how exactly the various governments wished to meet these goals. First and foremost, the government wished to unify the legal system by enacting new laws and governmental decrees.[5] However, even if the Parliament in Prague enacted more than a thousand laws between 1918 and 1928, these attempts were successful only to a certain degree. For example, the unification in finance and tax law was quite successful. Still, there remained differences in most branches of the law, between the western and eastern territories of the country. The government also initiated the process of codification and installed several codification committees. In criminal law, few attempts were made for enacting a criminal code but none of them was successful until 1950. This also applied to most branches of the law.

The final method for unification was achieved through the judicial practice. This attempt was aimed at the application of the former Austrian legal norms in Slovakia and the Carpathian Ruthenia mostly. These efforts achieved very difficult, since, as I mentioned earlier, the Austrian and Hungarian legal system fundamentally differed in many ways.[6]Still, even if this particular problem could not have been applied to the criminal justice system due to the Beccarian principles of *nullum crimen et nulla poena sine lege*, there were considerable differences between the respective Austrian and Hungarian laws. For example, the Austrian Criminal Code of 1852 and the Hungarian Criminal Code of 1878 regulated the fatal offences quite differently. The Hungarian Code differentiated between murder and manslaughter. The former had to be committed with premeditation while the other required only intent. In the Austrian Code, both of these cases were treated as murder. Still, the term manslaughter was used by the Austrian code. However, it described a criminal offense that equaled to aggravated battery in the Hungarian Code. The punishments were also quite different. The regimes used in the prison system differed too. This, combined with the fact that the principle of legal certainty demanded the fore see ability of one's actions especially in the criminal justice system, made the unification using judicial practice impossible.

[4] The official title was the following: Ministy for the Unification of Laws and the Organisation of Public Administration (Ministerstvo pro sjednocenízákonůa organisaces právy). See: 431/1919 Sb.

[5] I have to mention that many government decree sapplied only to selected parts of the country.

[6] Liška 2004, 57.

1. Attempts of codification between 1920 and 1938

The idea of enacting a Czechoslovak Criminal Code, was formulated at the very beginning of the formulation of the republic. On March 14 1920, a codification committee was established. A year later, the proposed text of the General Part was published. When comparing it to the Austrian Code of 1852 and the Hungarian Code of 1878, we can see some influences. For example, the proposal followed in both of its parents' footsteps when it retained the trichotomy in the criminal offences.[7]Furthermore, the various regimes of imprisonment were defined as separate punishments just like in the Csemegi Code. However, there were some fundamental differences in the punishments; the most important was the abolishment of death penalty. In the end, four forms of punishments existed: imprisonment in a correctional facility (žalář), imprisonment in a penitentiary (vězení), fine and penal servitude.[8] Regarding the imprisonment in a correctional facility, the proposal stated explicitly that its aim was to emphasize the despicable nature of the criminal act besides the resocialization of the inmate.[9] This led to some controversies amongst the legal experts.[10] It is also worth mentioning that while the term of incarceration ranged between one month and 15 years in correctional facility, and it lasted between 14 days and 15 years in penitentiary, the life sentence was applicable in both instances. If the term of imprisonment lasted more than a year, the more severe form of imprisonment was to be carried out in prison(káznica) while the lenient in penitentiary (věznica). If someone would be sentenced for less than a year, the sentence would be carried out in a county jail in both cases. The inmates had to be secluded in the different regimes and distinguished by their distinctive clothes.[11]

Furthermore, the judges could impose indeterminate prison sentences in some cases. First of all, the perpetrator had to be less than 30 years old. Moreover, the accused's desire to be resocialized had to be assumed. At last, the median of the prescribed scale of penalty should have fallen between 1 and 8 years. The confinement was to be carried out in a reformatory for adults. The actual term of the conviction was determined by the behavior of the inmate but it could not be shorter than the minimum or longer than the maximum duration set by the act for the criminal offence in question.[12]

By 1925, the entirety of the proposal was finalized. It is worth mentioning that the committee essentially created two bills. Just like the Csemegi Code, an act was supposed to regulate the felonies and misdemeanors. The contraventions were to be treated separately. Still, neither of them was enacted by the parliament.

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[7] Jan Krejčíquotes: Jaroslav Fenyk – Dagmar Císařová: *Meziválečné trestní právo a vědatrestníhopráva v Československu* (Criminal Law and Criminal Science in theinterwar Czechoslovakia). In: Karel Malý, Ladislav Soukup (ed.): Czechslovakian Law and Legal Science in theinterwarperiod (1918-1938) and theirplace in Central Europe). Prague, 2010, Karolinum, 822-825.

[8] See: *Přípravnéosnovytrestníhozákona o zločinek a přečinech a zákonapřestupkového* (Proposalforthe Criminal Code of felonies and misdemeanours and theCriminal Code of contraventions). Prague, 1926, Ministry of Justice (In thefollowing: „Proposal"). 42. §. Forthefull text see: https://digi.law.muni.cz/handle/digilaw/7991 Last accessed: 2017. november. 23.

[9] Proposal 109. §

[10] Lenka Simonováquotes: *O zločinu a bojiprotiněmu v československé osnově trestníhozákona* (Aboutthefelonies and thefightagainstthem in the Proposal of the Czechoslovak Criminal Code).Právník, 1927, 230-231.

[11] Proposal 43. § (1) – (3)

[12] Proposal 67. §

Twelve years later, the Ministry of Justice drafted a second bill on the Criminal Code. However, this proposal fundamentally differed from the previous one. First of all, it maintained capital punishment. The death penalty was applicable against the perpetrators of the following crimes: overthrow of the republic, treason, espionage, aggravated arson and public endangerment. Moreover, it could also be used in cases of aggravated murder (when someone killed two or more persons, killed with malice aforethought or malicious motive or with particular cruelty). Furthermore, the murder of the president of the republic, the prime minister or any member of the cabinet or the Parliament, was also punishable by death. Last, but not least, committing murder against relatives also entailed capital punishment.

Regarding the criminal procedure, a proposal was completed by the end of the decade. The basis for the work of the committee was the Austrian code of 1873 which was regarded to be superior compared to the Hungarian code of 1896.[13] However, this bill was not enacted either. In the 1920s, the professional debates stood in the way of codification. By the late 1930s, the historic circumstances made the process of codification almost impossible.

2. Criminal laws enacted between 1918 and 1938

The failed attempts at codification did not mean that the development of criminal law had stopped. In 1919, an act regarding money forgery and stock counterfeiting was enacted. The same year, the Parole and Conditional Sentence Act was passed. The latter of these legal institutions was not regulated by the Austrian Criminal Code. Therefore, the Czech Courts did not have to apply it up until this point. Although this law repealed the provisions of the Amendment act of 1908 that introduced the conditional sentence in Hungarian criminal law; it also (re)introduced and unified these legal institutions in the whole country. In 1921, the freedom of assembly was protected via punitive measures.[14] In 1923, the Republic's Protection Act was enacted that secured both the constitutional status of the country and its republican form of government.[15]

In 1931, a law (re)introduced the minimum-security prison as a form of imprisonment. It was applicable if the perpetrator's resocialization seemed likely and if the crime was not committed with malice aforethought or with malicious motive.[16] Perpetrators, who committed treason, murder, voluntary manslaughter or some severe military offences, were excluded.[17] In such cases, only the other regimes of imprisonment were applicable.

The minimum-security prison had to be carried out in correctional facilities or in county jails. Compared to the other regimes, this form of imprisonment was more lenient. The inmates were separated from all the other convicts. If they proposed, they could be placed in private cells. They could wear their own clothes and they were exempt from compulsory labor. They were not obliged to clean the prison cells. Furthermore, they could take care of

[13] Lenka Simonováquotes František Kronberger: *K unifikacitrestníhořízení* (Regardingthe Unification of Criminal Law). Právník, 1925, 468.

[14] See: 309/1921 Sb.

[15] See: 50/1923 Sb.

[16] 123/1931 Sb. 1. § (1)

[17] 123/1931 Sb. 1. § (3)

their own meals and they could obtain books and newspapers. They had the right to spend four hours in the open air everyday and were allowed to smoke and to have visitors, if that did not violate the order of the jail. The act also spoke about the disciplinary measures. These inmates could be reprimanded, placed in solitary confinement and also some of their privileges could been withdrawn temporarily.[18]

Just like the Parole Act of 1919, this law also repealed the respective paragraphs of the Csemegi Code on the minimum-security prison. Therefore, all convicts, who had been sentenced for this form of punishment on the basis of the 'old Hungarian laws', had to be transferred to other regimes of prison based on the severity of their crimes.[19]

In 1931, another law was enacted that unified the system of juvenile courts in the country. Although this act repealed the rules of the Amendment Act of 1908, we can see some resemblances to its solutions. Whereas it regulated the organization of courts mostly, it also (re)defined the legal definition of juvenile offenders. According to these provisions, any person between the age of fourteen and eighteen years at the time of committing a criminal offense, who was able to recognize the unlawful nature of his or her acts, was considered as a juvenile offender. Regarding their punishment, the judges could choose from three options. They could release the accused with a warning or they could rely on a conditional sentence. If neither of these options was sufficient, the judges could either imprison them of fine them.[20] The act emphasized, that only the juvenile courts had authority in such cases.

In 1934, the Parliament enacted a law that modified and unified some issues regarding the death penalty and life sentence. This act made it possible for the courts to sentence someone to life even in such cases where the committed crime was only punishable by death.[21] Concerning those, who were sentenced to life, this act stated that they could be released on parole only after 30 years.[22] However, this provision was not applicable in cases where the convict received a presidential pardon.[23]

Regarding the criminal procedure, some issues were regulated by the Constitution of 1920, which stated that all the judgements had to be delivered in the name of the republic.[24] Moreover, several acts were enacted that amended both the Austrian and Hungarian Code of Criminal Procedure simultaneously. In 1923, the State Court was established. It had the sole authority to adjudicate cases regarding the protection of the state.[25] A year later, the rules of trial in absentia were established.[26] This type of criminal procedure was previously

[18] 123/1931 Sb. 5. § (2) a) – h)

[19] 123/1931 Sb. 9. § (2)

[20] 48/1931 Sb. 5-8. §§

[21] 41/1934 Sb. 1. § (1)

[22] 41/1934 Sb. 2. § (1)

[23] 41/1934 Sb. 2. § (2)

[24] See: 121/1920 Sb. of the Constitution of the Czechoslovak Republic 94–105. §§

[25] See: 51/1923 Sb.

[26] See: 8/1924 Sb.

unregulated by the Hungarian code.[27] In 1928, the lower courts were unified across the whole country.[28]

3. The criminal justice system between 1918 and 1938

A code regarding prison administration and prisoner law was not enacted in the interwar period. The basic principles regarding the prison system stemmed from the Austrian and Hungarian Criminal Codes of 1852 and 1878 respectively. Yet, some issues, like the minimum-security prison, were regulated in the enacted laws mentioned above.

Regarding the penal institutions, most of these facilities were inherited from the Austro-Hungarian Monarchy and the absolute majority of them continued to function as such. Only some of them, like the city jails in Ipolyság (Šahy), Aranyosmarót (Zlaté Moravce)[29] and Révkomárom (Komárno) were closed in 1920. Two years later, a new city jail was established in Érsekújvár (Nové Zámky).[30] A judicial complex was opened in Rózsahegy (Ružomberok) in 1932, which also incorporated a penitentiary. It consisted of solitary cells mostly, but some of them were used for congregate confinement.[31] In Besztercebánya (Banská Bystrica), a city jail was opened back in 1898. During the 1920s, its capacity became increasingly constrained and the problems regarding the safety and hygienic conditions became even more apparent. The building was renovated twice in 1929 and 1937.[32] In Pozsony (Bratislava), it was decided in the 1920s that a penitentiary must be built near the planned Judicial Palace. This undertaking was realized between 1934 and 1936. Most of the accused, who were placed in detention, were held here. The architects based their plans on the Pennsylvania system, i. e. Jeremy Bentham's panopticon. It was built in the shape of a cross.[33] The prisons in Illava (Ilava) and Lipótvár (Leopoldov), where the oldest Hungarian prisons were,[34] continued to function as such. In Illava, the intermediary institute based on the Irish system of prison administration has also remained in use.[35] The county jails of Nyitra (Nitra), Kassa (Košice) and Lőcse (Levoča) also continued to exist. It is worth mentioning that most of these prisons form the basis of the Slovak modern day criminal justice system.[36]

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[27] Ivána Blahova: *Rekodifikacetrestníhoprávaprocesního v letech 1948-1950* (The Recodification of the Czechoslovak Criminal Procedure in 1948-1950). Prague, 2017, Auditorium, 21.

[28] Lenka Simonováquotes: Ladislav Vojáček – Karel Schelle: *Repetitorium českých právních dějindoroku 1945* (Czechoslovakian Legal Historyuntil 1945 – Repetitorium). Ostrava, 2008, Key Publishing, 189.

[29] See: 590/1920 Sb.

[30] See: 197/1922 Sb.

[31] http://www.zvjs.sk/index.php?ustav-vykonu-trestu-ruzomberok (Last accessed: 2016. november 27.)

[32] http://www.zvjs.sk/index.php?ustav-vykon-vazb-b-bystric (Last accessed: 2016. november 27.)

[33] http://www.zvjs.sk/index.php?ustav-vykon-vazby-bratislava (Last accessed: 2016. november 27.)

[34] See: Mezey Barna: *A magyar polgári börtönügy kezdetei*. Budapest, 1995, Osiris-Századvég, 78-79.

[35] http://www.zvjs.sk/index.php?ustav-vykonu-trestu-vazby-Leopol (Last accessed: 2016. november 27.)

[36] http://www.zvjs.sk/index.php?ustav-vykon-vazby-levoca (Last accessed: 2016. november 27.)