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Changes in the Czechoslovak legal system 1948–1960

There were new features of socialist law introduced to the Czechoslovak legal system after 1948. The first important characteristic is that the law was very much based on ideology. [372] Marxist-Leninist theory designates the first period after communist accession to power as the dictatorship of the proletariat. Lenin's works on the role of the state in the initial period after the communist takeover, as readdressed and simplified by Stalin (and also Vyshinski for Legal Theory and Criminal Law),[373] worked as an official ideology in the form of the socialist theory of the state and law in Czechoslovakia as well. Its primary role was to legitimize the existing communist power in the form of a totalitarian system. The Czechoslovak environment was quickly determined by Soviet doctrine, even though it initially took the form of a simplified and scientifically low level set of guidelines.[374] Concepts such as the dictatorship of the working

372 The Marxist legal theory claimed to be in the first instance "scientific" and that it is derived from the whole Marxist philosophy. Kelsen, H.: *The Communist Theory of Law*. New York, F. A. Praeger 1955, especially preface and chapter I. For changes during Lenin's period see pp. 51 and following.

373 *Ibidem*, pp. 116–132.

374 In more details see Slapnicka, H.: *Soviet Law as Model: The People's Democracies in the Succession States*; Natural Law Forum. Notherdam Law School 1963, Paper 97, pp. 109–121, and

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class, the class approach and socialist legality were applied. On the other hand, it should be noted that the doctrine changed in accord with changes made both in the Soviet Union (particularly after the death of Stalin) and the whole Soviet Bloc, which resulted in a more liberal period in the second half of the 1950s and the 1960s.[375] Perception of the atmosphere in the society significantly declined from an "optimistic" and very active attitude towards the class approach at the beginning of the 1950s to a later more "pessimistic" and, in many ways, formalistic approach, culminating in the period of so-called "normalization" after 1969, based upon the concept of the "law of real, existing socialism."[376] It is necessary to look at the real life of the law, which could escape unnoticed behind the facade of formal law and which was very often in direct contradiction to the wording of the laws. The known contradiction between law in the books and law in action acquired yet another dimension in the socialist law of Czechoslovakia.

The first wave of changes was connected with the two-year "legal plan" of codification. After the idea had been discussed by political bodies of the Communist Party, the Ministry of Justice was entrusted, in September 1948, to prepare a series of new "socialist" codes to change the existing legal system according to the new political and ideological needs. The deadline was set for September 1950, i.e. in two years. That is why the re-codification process is known as a two-year legal plan, to terminologically approximate it with the two-year economic plan of reconstruction. The main outline of codification was set during a special congress of "progressive" lawyers, where the new ideology, together with its adherence to the Soviet model, were discussed. The Communists attacked the formalistic, apolitical and impartial "old" legal system; they also attacked the continuity of the Austrian legal system, emphasizing its backward and feudal nature dating back to Maria Theresa. They preferred that the new law assist the ideology, the working class and the establishment of a socialist society. The "new law" was seen as a mere tool for political and ideological aims, and, as Klement Gottwald put it, "the law serves us to transform the society".[377] As proclaimed several times by leading Communist politicians, the law had to express the will of the working class.

Skilling, H. G.: *The Soviet Impact on the Czechoslovak Legal Revolution.* Soviet Studies Volume 6/ 4, 1955, pp. 361–381. See also Táborský, E.: *Communism in Czechoslovakia: 1948–1960*, pp. 175–176. Táborský speaks about the "transplants from the East".

375 For theoretical aspects of an attempt to introduce gradually modern aspects of civic society, rule of law and socialist democracy into the socialist society see Kusin, V. V.: *The Intellectual origins of the Prague Spring. The Development of reformist ideas in Czechoslovakia 1956–1967.* Cambridge University Press, 1971, especially Chapter 3, Legal re-thinking, pp. 28 and following.

376 For judiciary see excellent study by Kühn, Z.: *The Judiciary in Central and Eastern Europe, Mechanical Jurisprudence in Transformation?*, especially pp. 21–45 and 67–124.

377 Cited according to Gottwald, K.: *Právo v lidové demokracii* (Law in People's Democracy). In: *O kultuře a úkolech inteligence v budování socialismu.* Prague: Státní nakladatelství politické literatury, 1954, pp. 30–31.

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The traditional division of law into public and private had to be abolished and replaced by a universal legal system. This was another example of the intention to introduce the Soviet legal principles as soon as possible. Another goal was to simplify the legal system. The assumption was that abridged law would be more understandable for people. This approach was accompanied with the changes in interpretation of existing "old laws" with the aim to "fill them with new, socialist spirit" before they were abolished and replaced by new laws.[378]

The result of the two-year legal plan was a very rapid and efficient change, especially in civil and criminal law. Another aim of the codification was to unify the law applicable to the Czech lands and Slovakia. Various outcomes of codification endeavours from the interwar period were used to speed up the preparation. Communists misused and presented them as another example of the effectiveness of people's democracy, in comparison with the unsuccessful twenty years of bourgeois interwar democracy.

Two main commissions were set up in the beginning of the codification process. One commission was in charge of civil law, with sections dealing with substantive law and procedure, and this same model applied to criminal law.

A new family law in accord with the Soviet pattern was introduced in 1949.[379] The concept of family law as a new branch of law was the first example of the fragmenting of civil law. The Czechoslovak codification commission cooperated closely with their Polish colleagues; they proposed a common Czechoslovak-Polish Civil Code. The proposal did not assume material form, with the notable exception of the Czechoslovak Family Act in December 1949, which was heavily influenced by the Polish "People's Democratic" model. Thus the Soviet view of the separate existence of family law under the special curatorship of the state prevailed, and the concept of the law of persons, known from the Austrian Civil Code (ABGB), abandoned. Family law was thus excluded for decades from the Civil Code. On the other hand, the new Family Act was the first example of the successful unification of Czech and Slovak law. The Act implemented the provisions of the May Constitution of 1948 regarding the equality of men and women, both as parties to marriage and as parents towards their children, as well as the special protection of family and children by the state.

The Family Act (No. 265/1949 Sb.) prohibited the conclusion of a marriage before the Church; the only valid form was a marriage concluded before national committees, which were in charge of all personal status records (compulsory civil marriage). Religious celebrations were allowed, but could take place only after the marriage was concluded before the civil authority.

378 From comparative perspective see Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe.* Vol. 1, part I. Continuity of law, pp. 495–496.

379 Hikl, M.: *The Civil Codes in Communist Czechoslovakia*. Toronto: The Czechoslovak Foreign Institute in Exile, 1959, pp. 23–27.

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Both parties to marriage were equal; they had an obligation to live together, to be faithful and mutually assist each other morally and materially. The power of the father of the family was abolished, and both parents had equal rights towards their children. They were responsible for the physical and mental development of their children, for their alimentation, property and education. Differences between legitimate and illegitimate children were abolished.

The Family Act unified the property rights of spouses and introduced an obligatory type of community property between spouses. Community property covered all property acquired during the existence of the marriage; however, there was still the individual property of each spouse, what he or she owned prior to marriage or acquired by inheritance.

A spouse could seek termination of marriage through a judicial decision; the term "divorce" was used to define general reasons for the court to grant a divorce "if deep and lasting breakdown developed between the spouses for serious reasons". However, the discretion of courts was limited by specific provisions protecting minor children; another provision stated that that spouse who alone was guilty of causing the serious and deep breakdown could not file the petition for divorce, unless the other, innocent, spouse consented to it. In 1955 an amendment of the Family Act emphasized the interests of society as an important condition for the decision of courts on divorce; for example, the court was examining whether or not the marriage "was fulfilling its social functions". The Family Act dealt also with tutorship. In practice also family law was influenced by new "socialist ideology" and for example Czechoslovak (and also East German) courts in the 1950s in several cases favoured guardianship of special state social welfare institutions to those parents (especially during divorce or as a result of criminal proceedings) who "failed to educate their children in socialist way".[380]

The new Czechoslovak Civil Code was adopted in 1950 (Act No. 141/1950 Sb.).[381] To a certain extent it rejected the Roman law tradition in private law; civil law was misused for the purposes of the communist ideology.[382] This was particularly visible in the concept of ownership, which in fact followed the principles already set by the May Constitution of 1948. National property and the property of people's cooperatives was proclaimed to be a socialist type of ownership and, as such, given priority. On the other hand, private ownership, ideologically related to capitalist exploitation and limited to small enterprises, houses or land not exceeding 50 hectares, was

380 See cases cited by Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe.* Vol. 1, part I., pp. 505–506.

381 For its detailed analyses in English see Falada, D.: *Codification of private law in the Czech Republic.* In: Fundamina: A Journal of Legal History (South Africa), Vol. 15, Issue 1, 2009, pp. 58–61 and Hikl, M.: *The Civil Codes in Communist Czechoslovakia*, pp. 6–22.

382 Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe.* Vol., II. part V., Sovietization of Civil Law, Czechoslovakia, pp. 1238–1276.

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discriminated against and confronted with provisions on individual property based on one's labour, such as objects of household, small family houses and savings accumulated from wages.

One of the prominent Czech lawyers who took part in the codification process was Viktor Knapp,[383] who later became a leading Czech legal theoretician; he explained the purpose of the adoption of the new Civil Code as follows: "to liquidate the remnants of bourgeois property relations, as well as bourgeois thinking in our society… to strengthen and protect socialist ownership and to observe the rules of the socialist community life…"[384]

The purpose of the Code and the new concept of private law were expressly stated in the first two parts: introductory provisions remarking on the building of socialism and people's democracy, and general provisions common to civil law as a whole. The concept of socialist ownership, together with other aspects of property law and mortgages, were contained in Part Three.

Part Four, dealing with obligations (arising both from contracts and from torts), underwent equally important changes. The Commercial Code had no place in the communist economic system and was abolished. Obligations could be formed not only on the basis of an agreement between parties, but in the case of "needs of economic planning" also by decisions of the planning authorities. Obligations could be changed or terminated for the same reason. When the Draft of the Civil Code was presented to the National Assembly, the Government expressly stated that "the law of contracts shall serve primarily the uniform economic plan… and the economic plan was designed to direct all the economic activities and in particular trades, production and transport." The most important entities were national enterprises, which were governed by special laws; for example, industrial national enterprises were regulated by the Act on National Enterprises of 1950. They were entrusted with national (state) property only for operational administration and were subjected to the economic plan and directives of the planning authorities. The Government, in the form of Governmental decrees (for example, Decree No. 33 of 28th May 1955) set specific rules for so-called economic contracts of national enterprises dealing with the supply of goods, performance of work, or rendering of services. Although a new Act on Joint-stock Companies was enacted in 1949, in practice most private companies were put under national administration, were nationalized, or simply ceased to be operational (even though they were sometimes liquidated years later).

Disputes between national enterprises and between national enterprises and other legal entities within the socialist sector were dealt with in most

383 See also his memoires, where is trying to play down his original zeal to bring about radical changes into the Civil Code, Knapp, V.: *Proměny času: vzpomínky Nestora české právní vědy*. Prague: Prospektrum, 1998, pp. 121–122.

384 See especially Knapp, V.: *Vlastnictví v lidové demokracii*: *právní úprava vlastnictví v Československé republice*. Prague: Orbis, 1952, pp. 67 and following.

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cases (in particular, concerning production, services and work) through a new type of state sponsored and supervised arbitration, yet again according to the Soviet model.[385] There was a special Act No. 99/1950 Sb., on Economic Contracts and Government Arbitration, amended by Governmental decrees in 1953 and 1954. There was a specialized arbitration agency for co-operatives.

The Civil Code was not a complete departure from the Austrian Civil Code. This was mainly true of certain passages dealing with easements (servitudes) or the law of inheritance in Part 5. This was partly because the Code was prepared by leading Czech and Slovak professors educated in the Austrian times or in the interwar period (especially by professor Jan Krčmář), and partly because of a lack of time. The plan had to be fulfilled in a maximum of two years and at any price, including compromise in parts of law not so ideologically exposed. It is interesting that despite changes in the Constitution and in labour law, including the duty to work and many administrative interventions in the area of labour law, the Labour Code was not ready until 1965, and the part on labour contracts from the Austrian Civil Code remained in force. However, the Government introduced a number of regulations governing labour relations, for example that on absenteeism and job-switching issued in 1953.[386]

New civil proceedings resembled changes in the judiciary and administration of justice from 1948–1950.[387] Prosecutors were given the right to intervene in civil proceedings whenever they deemed it necessary for the protection of the interests of the Government (the People's Democratic State) or the working people. Again the class meaning of this concept was evident and was misused in practice against the "members of the former exploiting classes"; it violated the constitutional principle of equality of people before the law. The Government Attorney (from 1952 "Prosecutor") could apply all legal remedies under the Code of Civil Procedure.[388]

On 6th October 1948 a new Act on the Protection of the People's Democratic Republic (No. 231/1948 Sb.) was enacted to fortify the new regime through the potential of criminal law. Although most of the crimes contained in the Act were already punishable under the laws from the interwar period, a more severe punishment was introduced for political, military and

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385 Hazard, L. N. – Shapiro, I. – Maggs, P. B.: *The Soviet Legal system. Contemporary Documentation and Historical Commentary*, pp.272–273.

386 Gsovski, V. – Grzybowski, K. (eds.*): Government Law and Courts in the Soviet Union and Eastern Europe*. Vol. II, part VI., Worker and factory, Czechoslovakia, pp. 1497–1514.

387 Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe*. Volume 1, pp 885–893. See also Hikl, M.: *The Civil Codes in Communist Czechoslovakia*, pp. 47–60.

388 Táborský, E.: *Communism in Czechoslovakia: 1948–1960*, pp. 287–288. In comparative perspective Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe.* Vol. 1, pp. 892–893.

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economic crimes, in particular for high treason, terrorism, conspiracy, spying, incitement against the Republic, or sabotage, and certain other crimes, like propagation of Nazi ideology and misuse of religious functions. Crimes were defined broadly and loosely to enable courts to take arbitrary decisions in the first instance of political trials.

The Act on the Protection of the People's Democratic Republic was accompanied by the Act on the State Court No. 232/1948 Sb. The State Court together with state prosecutors and state security formed the major institutional bases for political trials, described in more detail below.

The new Criminal Code and the Code on Criminal Procedure (Acts No. 86 and 87/1950 Sb.) were enacted in 1950 as part of the two-year legal plan.[389] Criminal law enabled harsh punishment of real or potential opponents of the communist regime and, sometimes, simply people of different religious beliefs or political views, and also those coming from a "wrong" class or being of a "wrong" social origin.[390] The aim was not only punish individuals but also to deter and discipline the rest of the society. Naturally, traditional roles attached to criminal law and criminal justice were performed as well. New objectives set for criminal law by the communist legal science were to correct the shortcomings of the building of socialism, the "organization of social relationships" and of educating the society.

The purpose of the Code was expressly stipulated by Section 1:

"Criminal law shall protect the people, the People's Democratic Republic, its construction of socialism, the interests of workers and of individuals and shall teach the observance of the rules of socialist community life." The means to attain this purpose was the threat of punishment, the imposition and execution of punishments and of so-called protective measures.

The class character of the administration of criminal justice was connected with the concept of "socialist legality". According the leading textbook on criminal substantive law from the 1950s, socialist legality meant "the precise application and observance of such laws as are in accordance with the will of the working class and of workers. Its aim shall be to crush the enemies of the people and to protect and strengthen the dictatorship of the working class in order to build socialism and later communism". The principles of judicial independence were interpreted with regard "to the present social relationships" and as a "political principle".

The class character was discriminatory; for example it was possible to apply a milder punishment when a crime was committed by an offender who

389 Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe.* Vol., II. part IV., New Substantive Criminal Law, pp. 994–1022. For the English translation of Criminal Code see Bulletin de droit Tchécoslovaque, No. 3–4, 1952, Prague: Union des juristes de Tchécoslovaque, pp. 345 and following.

390 Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe*. Vol. II, part IV, pp. 998 and following.

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was a worker and was living an orderly life. On the other hand, a "wrong social background" or an unfriendly attitude towards the People's Democracy constituted an aggravating circumstance and was followed by a harsher punishment.

The Criminal Code was divided into general and special parts.[391] The general part dealt with the general principles of criminal liability and the foundations for sentencing. The division between crimes and misdemeanours was abolished. New Soviet principles were introduced. The Criminal Code was based on the theory of both formal and "material" criteria for criminal acts, the former being elements set by the law, the latter representing a certain degree of danger to the society. The Code expressly stated that "The crime shall only be conduct dangerous to the society for whose consequences specified by statute the offender shall be liable…". The degree of danger to the society was used as a vague distinction between criminal offences and administrative delicts. The Administrative Criminal Code (Act No. 88/1950 Sb.) was seen as complementary to the Criminal Code.

On the other hand, some features of Soviet law were not followed by the Czechoslovak legislators. They particularly opposed the theory of analogy (i.e. to apply the criminal code to acts which do not exactly match the elements of an offence set by statute by analogy to the nearest applicable offence); the legislators bravely stated that such a theory is not suitable for Czechoslovakia because it was applied by the Nazi courts during the German occupation. The Czechoslovak Criminal Code prohibited the retrospective application of criminal law to the defendant's disadvantage.

There was an intended harshness to criminal law; for example, the death penalty could be imposed for 9 political offences, 3 common offences and 15 military offences. The sentence of imprisonment was either for life or for a maximum of 25 years, and correctional labour without imprisonment could be imposed. There were additional penalties, like deprivation of citizenship, deprivation of civic rights or military ranks, confiscation of property, fines, and prohibition of performing certain activities, and prohibition from staying in a certain town or region.

The special part of the Code reflected the higher significance attached to the protection of the state, economic and social system more than to the protection of the interests of individual citizens. The crimes against the state (taken virtually unchanged from the Act on the Protection of the People's Democratic Republic) and protection of socialist forms of ownership and economic planning came in the first two chapters.

391 In more details see Hikl, M.: *The Penal Codes in Communist Czechoslovakia*. Toronto: The Czechoslovak Foreign Institute in Exile, 1957.

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In the second half of the 1950s there were some changes also to substantive criminal law concerned with the reinforcement of an individual approach to punishment with regard to the offender (see also Chapter 21) on the one hand and increased protection of socialist property on the other, embodied in such Acts as Act No 63/1956 Sb., which brought a more moderate approach towards imposition of penalties including the death penalty, and Act No. 24/1957 Sb. on Disciplinary Prosecution of Stealing and Damage to Property in Socialist Ownership.

Criminal law was used also for solutions of some social problems including the attempt to settle the Roma (Gypsy) population. Act No 74/1958 Sb. punished those who refused to settle and continued their "nomadic style of living", although they were offered new housing.

The Code of Criminal Procedure 1950 introduced important changes to the Austrian model.[392] Two main stages of proceedings – pre-trial proceedings, and trial before a court – were introduced.

The system of an independent investigative (examining) judge was abolished. Pre-trial proceedings were conducted by the police forces of the communist regime, the State and Public Security, and supervised by the office of the Prosecutor; as such they prevailed in practice over the main trial, and the results and evidence presented during the pre-trial stage influenced the majority of judicial decisions during the trial before a court. This was true not only in the case of political trials. The prosecutor personally supervised and directed the execution of custody and the sentence of imprisonment.

Courts usually did not take into account the evidence and defence strategy of the accused; such an approach was broadened by changes in the legal profession of attorneys. Although the Code of Criminal Procedure contained provisions for appeal and other types of remedial measures, in practice the right of the accused to any remedy was limited. A so-called limited revision principle applied in accord with the Soviet model.

In 1950 new Codes on Administrative Criminal Law and Procedure for Administrative Authorities (Acts No. 88 and 89/1950 Sb.) supplemented the Criminal Code and the Code of Criminal Procedure, as the administration of justice in criminal matters was carried out by two types of criminal (penal) authorities – by criminal courts and certain administrative authorities, especially national committees. National committees dealt with administrative transgressions; in practice they imposed quite severe penalties, including confinement in labour camps, confiscation of property, imposition of fines and public reprimand, prohibition of certain activities, or publication of the sentence. There was a specific class character to administrative criminal law,

392 *Ibidem*. See also Gsovski, V. – Grzybowski, K. (eds.): *Government Law and Courts in the Soviet Union and Eastern Europe*, vol. I. Judicial Procedure, Czechoslovakia, pp. 848–849.

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since those offenders who showed a hostile attitude towards the People's Democratic Order could be awarded a double fine instead of a regular one. Act No. 102/1953 Sb. transferred the authority to impose the most severe penalties to criminal courts and milder punishments were introduced.

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