

## *Slovak Share in the Unification and Codification Efforts in Interwar Czechoslovakia\**

### Abstract

The creation of the Czechoslovak Republic and its legal system had its basis in the Act No. 11/1918 Coll. The Act preserved in force former Hungarian law in the territory of Slovakia. In Czech lands, former Austrian law was to be used further on. Quite understandably, attempts were present already in the interwar period to unify the legal system of Czechoslovakia. Analysis of the process and results of unification of law in Czechoslovakia reveals the participation of broad-scale of Slovak lawyers in the process and partial influence of law valid in Slovakia in the projects of new Czechoslovak codes. In the area of substantive law, the revised Austrian Civil Code (ABGB) was to become the basis of the new Czechoslovak Civil Code and therefore, not much space was left for “Slovak law” to influence the final version of the Civil Code project. In the area of procedural law, however, the codes of civil procedure valid in the Czech part and in the Slovak part of the Republic were not as different as it was the case with the substantive civil law. Therefore, the unification process was easier and many institutes of law valid in Slovakia were to be preserved in the project of the Czechoslovak Civil Procedure Code. Unfortunately, the events of the years 1938–1939 was the reason for none of the prepared projects being actually enacted. It was only after the Second World War (mostly in 1950) that the legal order was finally unified in Czechoslovakia.

**Keywords:** unification of law, Czechoslovakia, Civil Code, Civil Procedure, continuity of law

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## Introduction<sup>1</sup>

The unification of law in the first Czechoslovak Republic (1918–1938) shows certain common features but also several differences in comparison with the process of unification of law taking place in other European countries of the interwar period. Unification of law was a common problem shared by several successor states of defunct monarchies.<sup>2</sup> Their main common feature thereby was, of course, the effort to speed up the unification of laws taken over from their state predecessors. Differences can be identified in particular in the types of unification bodies and in the details of the process of unification undertaken by the responsible authorities in the individual countries.

Based on the extent and scope of the unification problem in various interwar countries, in 1937, František Vaverka divided the affected states into two groups: (a) states in which unification was only a problem of assimilation, i.e. extension of the valid legal order from the main (core) territory to newly acquired territories (applicable in case of France, Italy and Austria), and (b) countries where the unification problem was associated with reception of law, the issues of legal continuity and discontinuity, and subsequent re-codification and reform, thus aiming at creating a completely new legal order (this was the case of Yugoslavia, Romania, Poland and Czechoslovakia).<sup>3</sup>

Upon comparing development in the given European countries, one can identify several similarities between the unification process in Czechoslovakia and the already-mentioned countries – firstly, it was the establishment of a special office for unification, and secondly, an effort (at least verbally declared) to adapt the law to local conditions. Thirdly, Czechoslovakia also shared with Yugoslavia, Romania and Poland the problem of the combination of unification with (re)codification. We shall ponder upon all three issues in this paper, which is focused on the role that Slovak lawyers and “Slovak law” played in the organisational and methodological aspects of unification, as well as in the final wording of the unificatory draft projects.

### 1. Establishment of Czechoslovakia and the Problem of Legal Dualism

The first law of the Czechoslovak state (its republican form has not yet been explicitly declared) was a law that was hastily prepared by Alois Rašín on the night of 27–28 October 1918.<sup>4</sup> The law was signed by the so-called “Men of 28 October”: Rašín, František Soukup, Antonín Švehla, Jiří Stříbrný and the only Slovakian – Vavro Šrobár.

<sup>1</sup> The paper is a partial outcome of the V4 project, “Continuity and Discontinuity of Pre-war Legal Systems in Post-war Successor States (1918–1939)”. The topic was previously extensively covered by the author of this paper. Self-references to the other works of the author were intentionally omitted by the author.

<sup>2</sup> Fritz, “Unifikační problém”, 411–31; Vaverka, “Unifikačný problém”, 337–65; Gábriš, “Unifikačné snahy”, 193–208; Laclavíková, “Riešenie problému unifikácie”, 187–217.

<sup>3</sup> Vaverka, “Unifikačný problém”, 338.

<sup>4</sup> Cf. Vojáček, *První československý zákon*.

The public got acquainted with the text of the law on the next day, being published by the press and in the form of posters. It was later published in a partially amended version in the Collection of Laws and Regulations under No. 11 and became known as the so-called “Reception Norm”. Mirroring its primary nature and purpose, its title was *On the Establishment of an Independent Czechoslovak State* whereas in its first sentence, it was stated: “The independent Czechoslovak state came to life”, followed by five articles. Article 1 stipulated that the National Assembly would determine the state form of the Czechoslovak state in agreement with the Czechoslovak National Council in Paris. Article 2 contained the actual reception norm itself, stating that “all existing provincial and imperial laws and regulations remain temporarily in force”. Albeit very laconic in its wording, from a formalist point of view, the reception norm as formulated in Act No. 11/1918 Coll. witnessed a heated debate, pointing to several specificities worthy of attention here – having a direct connection to the problem of legal dualism and unification of law in Czechoslovakia.<sup>5</sup>

The first interesting thing about the reception norm was its wording, which presupposed only the “temporary” validity of the legal order taken over from the former Austria-Hungary (laws and regulations “remain temporarily in force”). This provision tends to be interpreted as meaning that the creation of an entirely new Czechoslovak legal system with completely new legal regulations and standards was envisaged. However, similar wording was included in all reception norms of the period in all states dealing with the problem of the reception of law after the territorial changes caused by the First World War.<sup>6</sup>

More problematic is the wording which claims that “all” laws and regulations should remain in force, which would also mean the reception of regulations governing institutions and legal institutes typical of the monarchy, being in serious conflict with the new character and form of the state. However, since at the time of the promulgation of the Act on the Establishment of the Czechoslovak State, its republican form had not yet been determined, this wording cannot be strictly considered defective. The boundaries of the reception were later introduced by the Constitutional Charter of 1920 in connection with the final determination of the form of the state.

However, an actual major theoretical and practical problem with the Reception Norm was the formulation, which listed only provincial and imperial “laws and regulations” that were to “remain temporarily in force”. The legislator apparently did not realize the existence of specific sources of Hungarian law (foremost: customary law, court decisions, statutes, privileges, and Provisional Judicial Rules of the Judex-Curial Conference of 1861), without the reception of which a legal vacuum would have arisen in Slovakia and Subcarpathian Rus, especially in the field of private law.<sup>7</sup> This theoretical problem was, luckily, solved very quickly by the legal practice, which automatically considered all other formal sources of the law specific to the former Hungarian legal system to have been taken over as binding sources of law in Czechoslovakia (its eastern part). Some theoreticians (e.g. Ervín Hexner) even came up with the idea of the so-called “implicit

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<sup>5</sup> On details, cf. Beňa, *Vývoj slovenského právneho poriadku*, 20–1, 27.

<sup>6</sup> Cf. also Weyr, *Soustava československého práva státního*, 56–7, Horák, “Vznik Československa a recepcie práva”; Gábriš, “Desať ‘R’ právnej (dis)kontinuity”.

<sup>7</sup> Laclavíková, “Recepcia obyčajového práva”, 149–67.

reception” of these specific sources of law that was to serve as a theoretical underpinning for this practice.<sup>8</sup>

Soon, unfortunately, the situation got even more complicated by Section 98 of the Constitutional Charter of Czechoslovakia (1920), which provided that judges are bound only by the Acts of Parliament. This could again preclude the application of customary law in the eastern part of the Republic. Here too, however, the practice coped with the problem so that customary law was fully accepted as the source of law valid in the territory of Slovakia way until 1950. Apparently, the interpretation of the norms was not formalistic at all.

To return back to the contents of the first Czechoslovak Act No. 11/1918 Coll., its Article 3 further stipulated that all self-governing offices, state and county offices, provincial and district institutions, and especially municipal offices are required to act in accordance with binding laws and regulations. It is hence possible to speak of a second reception norm contained in this Act, targeting foremost public authorities, since, especially in Slovakia, the former Hungarian officials were very reluctant to submit to the new power.

Finally, articles 4 and 5 of the Act dealt with the entry into effect of the Act – interestingly, it was as of the day of its publication, i.e. 28 October 1918, albeit its publication in the official collection of laws took place only on 6 November 1918.

This first Czechoslovak Act was considered by legal normativists of the interwar period to be the so-called focal norm of the creation of the new Czechoslovak state and its new legal order. However, due to the reception of the former Hungarian and former Austrian law, the newly created Czechoslovak legal order was not uniform, nor did its sources have a uniform form and content. Namely, in addition to the Acts of the Parliament (be it Czechoslovak Parliament or former Austrian and Hungarian parliaments), in Slovakia and Subcarpathian Rus, one must also take into account other types of sources of law applicable in these territories – foremost the customary law, manifested in particular in court decisions, but also residually the privileges, and statutes of local corporations (being foremost city and county statutes).

A specific source of former Hungarian law was also the so-called curial decisions from 1912–1918, being decisions of the Hungarian Supreme Court, equivalent in their legal force to the Acts of Parliament. However, after the establishment of the Supreme Court of the Czechoslovak Republic (by Act No. 5/1918 Coll.), the question arose in this connection as to whether or not the decisions of the Hungarian Curia should also be binding for the Supreme Court of the Czechoslovak Republic. The prevailing view was that this was not the case. For example, in the decision of 3 December 1934, Pres. 912/34, No. 1890, the Supreme Court deviated from the decision of the Curia No. 8 of 19 February 1916.<sup>9</sup> However, there were also opinions that the binding power of curial decisions did not cease to apply. In this context, it was suggested that the judgments of Curia delivered and promulgated before 28 October 1918 could only be changed by a new decision of the 11-member Senate of the Supreme Court. Still, at the end of the day, all attempts to entrust to the Supreme Court the normative powers of the Hungarian Curia,

<sup>8</sup> Hexner, “Zvykové právo”, 497–502, 529–35, 561–70.

<sup>9</sup> Laclavíková, “Recepcia obyčajového práva”, 149–67.

referring to the reception of Hungarian norms regulating this competence, failed. The authority of the decisions of the Supreme Court of the Czechoslovak Republic remained only factual, without the generally binding nature of its decisions.<sup>10</sup>

As follows from the above, the result of the reception was the fact that in different parts of the Czechoslovak Republic, different laws applied. Moreover, soon, based on Act No. 76/1920 Coll. which incorporated the territory of Hlučínsko to the Czechoslovak Republic, in addition, former German legal norms entered into play for that small territory, representing the situation of legal pluralism in Czechoslovakia. However, differences between the German-based legal order in Hlučínsko and the rest of the Czechoslovak legal order were soon eliminated by process of “assimilation”, with the use of a number of governmental regulations. Within a year, apart from some minor issues, Czechoslovakia has overcome the situation of legal pluralism and returned to “dualism only”. However, overcoming the dualism was not so easy, and in the very end, interwar Czechoslovakia did not cope with it at all.

In order to gradually eliminate the situation of legal dualism existing between the Czech Lands on the one hand and Slovakia and Subcarpathian Rus on the other, under the Act No. 431/1919 Coll. a special governmental authority was established in Prague, being the Ministry for the Unification of Legislation and Administrative Organisation, abbreviated to the “Ministry of Unification”. It was originally headed by the Slovakian Milan Hodža as the first minister (later, he became the first Slovak Prime Minister of Czechoslovakia). However, other ministries of the Czechoslovak Government, in particular the Ministry of Justice, were also fully involved in the process of unification of law in Czechoslovakia. Unification efforts were namely acutely present in all areas of law.

The professional public was naturally very much interested and fully involved in the unification process as well. However, despite the widespread interest, or perhaps just because of it, the unification process has progressed very slowly. Indeed, as one of the reasons for the slow unification, in addition to the notorious financial problems of the Ministry of Unification, the democratic nature of unification is being blamed – namely, in contrast to other countries where unification was entrusted to governmental power, the Czechoslovak Republic involved never-ending democratic discussions. After all, only in Slovakia, there were seven expert commissions established for individual legal branches (civil, public, financial, criminal, commercial, civil procedural and social) by Ivan Dérer, then acting Minister of Unification. Seeing this slow pace, it was proposed in the 1930s that the Government be empowered to unify the legal order by regulations (as in the case of the Hlučínsko region), but this plan did not materialise and the unification continued at its slow pace.<sup>11</sup>

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<sup>10</sup> *Ibid.*

<sup>11</sup> Kindl, “Slovenské unifikační iniciativy”, 23–5.

## 2. Organisational Aspects of Unification in Interwar Czechoslovakia

### 2.1. Ministry of Unification

From the organisational point of view, as already mentioned, the Ministry for the Unification of Laws and Organisation of Administration, abbreviated as the Ministry of Unification, headed by Minister Hodža, was established by Act No. 431/1919 Coll. According to the wording of this Act, the Ministry was also to be only temporary in its nature and its operation was to cease once it fulfils the set goal (task) – the unification of laws and administration throughout the Czechoslovak Republic.

A more detailed delimitation of its competence was introduced in the Governmental Regulation No. 501/1921 Coll., which in its § 2 defined the competence of the Ministry of Unification negatively so that its competence did not cover: (a) cases where legal relations were regulated by legal norms of only one of the legal orders (e.g. in pension insurance); (b) cases in which a complex reform was necessary (however, this concept has not been explained anywhere); (c) laws and regulations enacted after 28 October 1918; and (d) regulations issued to implement the Acts of Parliament.

In fact, the Ministry was mostly expected to translate “Hungarian” legal sources into the state language (Czech or Slovak) – but due to its lack of funds, the Ministry had to back down from this plan and work with un-translated Hungarian-language sources itself, which required its staff to acquire knowledge of Hungarian language, or to recruit new employees familiar with the Hungarian language. Still, during the existence of the Ministry, the translation department produced more than 500 translations.<sup>12</sup>

In terms of its purpose and staffing, the Ministry of Unification was often considered a “Ministry of Slovaks”. However, this was mostly due to the generally perceived lack of Slovak lawyers, which made it impossible to equip all central offices with a sufficient number of experts knowledgeable in Hungarian law. Instead, one central body to compensate for that was established in the form of this Ministry. Nevertheless, this was certainly not enough and often, problems emerged when introducing new legal standards in the first years of the Republic that were incompatible with the law and its terminology as applied in Slovakia and Subcarpathian Rus. As a matter of example, in § 13 of the Regulation of the Ministry of Finance on the Circulation of Banknotes issued by the Austro-Hungarian Bank and Located on the Territory of the Czechoslovak State, of 25 February 1919, No. 86 Coll., and in § 12 and § 14 of the Regulation of the Government of the Czechoslovak Republic on the Inventory of Mined and Unprocessed Gold, Silver, Gold and Silver Coins and Foreign Paper Money, of 19 March 1919, No. 141 Coll., it was not taken into account that according to the valid “Hungarian” criminal law, imprisonment cannot be imposed for an offence (Section 15 of the Offences Act) and that under Section 16 of the Offences Act penalty higher than 200 korunas cannot be imposed, which the regulations did not comply with.<sup>13</sup>

<sup>12</sup> Kreč, *Fond Ministerstva unifikací*, 6.

<sup>13</sup> Skála, *Trestní soudnictví*, 10–2, 96.

Similarly, regulation of 5 November 1918, No. 28 Coll., on amnesty, used only the terminology of criminal law applicable under the former Austrian Criminal Code. Therefore, it was necessary to laboriously compile the list of corresponding crimes under the Hungarian criminal law, while many controversial issues allegedly remained unresolved due to the diversity of criminal laws applicable.<sup>14</sup>

These and other cases seem to be sufficient proof to show that the new laws and regulations issued by the Czechoslovak authorities often took into account unilaterally exclusively the law valid in the territory of the Czech lands since there were not enough experts in the respective bodies and ministries who would be acquainted with the laws and regulations in force in the territory of Slovakia. Not even the Ministry of Unification was able to compensate for this on each and every occasion.

Although every government bill was to be submitted to the Unification Ministry, this body was degraded already in the first half of the 1920s to a purely advisory body, whose cooperation in the preparation of draft legislation was often used only in formal terms. There was even a shift in the actual activity of the Ministry, which gradually turned only into consultations in preparation of legislation to be adopted exclusively for the territory of Slovakia and Subcarpathian Rus. This, however, means that its activity, in fact did not consist in the unification anymore, but rather in the translations of Hungarian legal texts and in the preparation of drafts of laws to be valid in only one part of the Czechoslovak Republic. An example of this rather unsystematic legislation was the extension of the Austrian Limited Liability Companies Act onto Slovakia and Subcarpathian Rus.

The Ministry of Unification thus ceased to fulfil the tasks for which it was primarily established. This led to the idea of legally changing the character of the Unification Ministry, which would formally mean ceasing to be a Ministry and becoming a sort of a central administrative office, or even only an advisory body to the Government or to the National Assembly.

The Minister of Unification Ivan Markovič emphasised the advantages of the unification body of experts without being headed by a Minister. According to him, independent experts not exposed to political pressure and changes could ensure the goals of unification better than a politically nominated minister.<sup>15</sup> Within the respective negotiations, Ministerial Advisers Jaroslav Čabrada and Karel Schrotz were asked to prepare a proposal to turn the Ministry into a unification institution attached to the National Assembly, while Dr Sommer was asked to prepare a draft of attaching the body to the Government. Finally, Dr Fritz was entrusted with drafting a proposal for the creation of a separate administrative office for unification, with being headed by an appointed expert.<sup>16</sup> Still, even after pondering upon all three draft projects, no specific conclusion was reached. In the end, there were no changes introduced and the form of a special Ministry was retained until the abolition of the Ministry in 1938, by a special decree of the Ministry of Interior. The ministry building was sold to the city of Prague, the library, files and inventory as well as the employees of the abolished Ministry were taken over by the Ministry of Interior.<sup>17</sup>

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<sup>14</sup> *Ibid.*

<sup>15</sup> MU, 1.

<sup>16</sup> *Ibid.*

<sup>17</sup> Kreč, *Fond Ministerstva unifikací*, 7.

## 2.2. Ministry of Slovaks?

As already mentioned, in terms of staffing, the Ministry was often considered a “Ministry of Slovaks”. Despite the fact that the Ministers were indeed mostly of Slovakian nationality, there were only few Slovakian employees of the Ministry at all.<sup>18</sup> The background of some employees can be revealed from the employees’ work files, which show that most of them were not Slovaks. The files of applicants for employment<sup>19</sup> also indicate a predominantly non-Slovak, primarily Czech, origin of the applicants.

From among the actual Slovaks who applied for employment and then really worked at the Ministry, it might be interesting to point out the biographies of some of them for a more detailed idea of their regional origin, education and employment profile.<sup>20</sup> For example, Hučko, a law student born on 2 January 1902 in Stará Turá, worked for the Ministry as a translator. He resigned on 31 March 1923. Macák, a law graduate, born on 30 January 1894 in the village of Kysač, Nový Sad District, worked as a contract translator from Hungarian to Slovak and resigned on 15 July 1921. Pecho Pečner, born on 4 May 1899, in Lúčky in Liptov, a high school graduate in Kecskemét, applied for a position of an assistant on 17 January 1920 and was employed on 11 February. He resigned in May 1920 because, as a student, he would have to give up a dormitory and cheap student food. Šindelářová, born on 16 July 1895, in Letenye in the Zala County of Hungary, with a completed high school and an accounting course, did not have Czechoslovak citizenship. However, nevertheless, as a half-Czech born in the territory of the former Hungarian Kingdom, speaking Hungarian, she became a contractual auxiliary force for translations. However, on 31 November 1922, she announced that she intended to terminate her employment with the Ministry. Rusnák, born on 1 April 1892, in Petrovec, Nový Sad district, Bačka County, with a completed gardening school in Budapest, became a contractual translator from 30 June 1922, working four hours a day. He resigned on 15 July 1923, due to his studies at the Czech Technical University in Prague. In general, therefore, it was mainly young people, students, even people without any professional legal background who applied for the position at the Ministry.<sup>21</sup>

Among all the applicants Tuka was probably the most interesting (albeit unsuccessful) candidate for employment at the Ministry. Until 1914, in his own words, he was a “professor of constitutional and administrative policy, legal and state science, encyclopaedia, legal and state philosophy, public and international law at the law academy in Pécs” and since 1914 at the Hungarian Elizabeth University of Bratislava. He became later infamous as an autonomist Slovak politician, and later even a Prime Minister of the wartime Slovak State, who was later convicted and executed as a war criminal.

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<sup>18</sup> MU, 14.

<sup>19</sup> MU, 15–18.

<sup>20</sup> MU, 4, 5.

<sup>21</sup> *Ibid.*



### 3. Methodological Aspects of Unification – Slovak Share in the Works?

After clarifying the organisational aspects of unification efforts in Czechoslovakia, we will now pay attention to how these works were actually conducted, i.e. the methodology of unification of law. However, it is not generally the case that any special method must be used in order to achieve unification. There are various ways to achieve this goal – some of them use the method of a functional comparison of law, others a simple confrontation of contrasting laws, while others just a simple technical extension of the standards from one part of the territory onto the entire territory of the state without any deeper thoughts and studies. Therefore, it might be appropriate to distinguish professional unification from “technical” unification.

According to the “Czechoslovak Dictionary of Public Law” (published in multiple volumes in the 1930s and 1940s), the ways of unification can be numerous. Unification can be implemented either: (1) by simply transferring the validity of legal norms from one area to another; (2) by a special unificatory Act which adapts the standards valid in one area to the relevant standards valid in the other area of the state; (3) by an Act which introduces uniform standards for the entire territory of the state; (4) unification associated with a partial reform; (5) unification consisting in a complete reform, or, finally; (6) partial unification of only selected issues.<sup>22</sup>

#### 3.1. Slovak Share in the Unification of Civil Procedure

The unification of civil procedural law can be cited here as an example, whereby a somewhat professional process of unification with partial reform was used, even involving the Ministry of Unification and a Slovak Commission of Lawyers, leading to a large share of “Slovak law” being reflected in the final drafts.<sup>23</sup>

Although the sponsor of the proposals was the Ministry of Unification, the work was, in fact, entrusted to a Czech Professor V. Hora. Nevertheless, the comments of the special Slovak Commission were paid attention to in the discussions, as well as in the explanatory memorandums on the three drafts – of the Introductory Act, the Act on Jurisdiction, and the draft Code of Civil Procedure. The most substantial Slovak intervention is thereby visible in the elaboration of the Introductory Act to the Civil Procedure Code.<sup>24</sup>

According to the comparative table attached to the text of the Introductory Act, offering a comparison with the valid Czechoslovak law, it is namely clear that the former Hungarian law was indeed taken as a model on many occasions – out of 52 articles of the Introductory Act, the provisions of Article I/1911 or LIV/1912 were used in 17 articles. Only in three cases the new wording was based on the Czechoslovak Act No. 69/1922 Coll. Still, this was not a complete reform for the Czech Lands – the law in force in the

<sup>22</sup> Hoetzel, Weyr, *Slovník veřejného práva*, 74.

<sup>23</sup> See detailed analysis in Šorl, “Občianske právo na Slovensku”, 646–718.

<sup>24</sup> Cf. *Vládní návrh uvozoovacího zákona*.

Czech Lands already used rules similar to the articles of the Introductory Act in case of 42 articles, of which in 11 cases the wording was basically the same as in the law in force in Slovakia. Only in six cases, the regulation taken from the former Hungarian law was previously completely unknown in the Czech Lands. On the other hand, in 28 articles of the Introductory Act, there was a regulation that was previously completely unknown in Slovakia. Thus, in these cases, the models from the law valid in the Czech lands were incorporated into the Introductory Act. It can therefore be stated that even in this draft, the “Czech law” clearly dominated quantitatively. Still, in comparison with other draft legislative texts from among the interwar unification projects (including projects on substantive and procedural civil law), there was still a “substantial” reflection of the law valid in Slovakia present in the text of the Introductory Act to the Civil Procedure Code.

In the case of the Act on Jurisdiction, the situation is slightly different, its text being to a greater extent based on the “Czech” (former Austrian) model. Still, in terms of the degree of consideration of the law in force in the Czech Lands and in Slovakia (and Subcarpathian Rus), a comparison table attached to the draft shows that most provisions had their pendant in both legal systems.<sup>25</sup> In 13 cases, regulation of the issue was previously unknown in Slovakia, while on the other hand, there was only twice a reversed situation where there was no existing pendant to the “Slovak” regulation used as a basis for the wording of the Act on Jurisdiction. It should be noted, however, that these ratios are only approximate. This is evidenced by a more detailed analysis of the explanatory memorandum, which distinguishes up to eleven cases (in nine paragraphs) where the law in force in Slovakia was used in the wording of the Jurisdiction Act. However, these are often only minor changes and inspirations. All in all, still, the total number of accepted solutions from the legal area of Slovakia and Subcarpathian Rus in the final wording of the Jurisdiction Act was relatively high – and the final text did not deviate significantly from the law valid in Slovakia either.

Finally, the most important piece of legislation within the unificatory efforts in civil procedural law is the Code of Civil Procedure. Here again, the number of inspirations from the Slovak legal tradition is dominant in comparison with other sources of influence. The approximate proportion of models and sources used, according to the explanatory memorandum, represents about seven instances of former Austrian regulations, fifteen Czechoslovak regulations, six changes resulting from case law, five instances of foreign models being used, 27 cases of doctrinal solutions and as many as 91 cases of taking into account the law valid in Slovakia and Subcarpathian Rus – albeit it was mostly the cases where more precise “Slovak” wording of the relevant regulation was used even where the law valid in Czech Lands was very similar but not that precise in its formulation.

Similarly, the quantitative survey of the correlation tables at the end of the explanatory memorandum to the draft Code of Civil Procedure shows that in 78 cases (out of 636 paragraphs of the proposal), there was no previous pendant in law valid in Slovakia. On the other hand, in 32 cases, there was no pendant in the Czech lands for the wording taken from the “Slovak” tradition.<sup>26</sup> Upon discussing the draft in the Parliament, the Member of the Parliament, Mičura, evaluated the proposal with the following words, “I could say

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<sup>25</sup> MJ, 208.

<sup>26</sup> *Vládní návrh uvozoovacího zákona.*

that the Czech branch of our political nation dominates quantitatively, but qualitatively it prefers the Slovak component”.<sup>27</sup> However, given the substantial similarity of the law valid previously in Slovakia and in Czech Lands, the method of slight modernisation was essentially equivalent to the method of unification without major changes in this branch of law. However, just as it was the case with all major unification efforts in interwar Czechoslovakia, the unification projects failed and the law remained dualist throughout the first half of the 20<sup>th</sup> century.

### 3.2. Slovak Share in the Re-codification of the Civil Code

In contrast to the civil procedural law unification efforts, the situation was very much different with respect to the unification of substantive civil law. In 1967, Štefan Luby, retrospectively evaluating the unification efforts of the Interwar Czechoslovak Republic in the field of substantive civil law, distinguished six methods of unification, which were negotiated originally with respect to the unification of civil code: (1) the republication of ABGB in the Czech and Slovak languages; (2) slight revision of the ABGB and subsequent extension of its validity to the entire territory of the state; (3) partial unification, preserving in part the dualism of regulation; (4) complete unification by “amalgamation” of the law in force without significant modernisation; (5) complete unification, associated with a slight modernisation; or finally (6) fundamental codification, i.e. the creation of an entirely new legal system.<sup>28</sup>

In the end, however, the dominant method was to be a slight revision of the Austrian Civil Code ABGB only and its subsequent extension to the entire territory of the Republic. Therefore, in examining the nature of unification efforts in this branch of law, Luby even claimed that “this was not a unification at all, because Slovak law was not taken into account at all and the content of the new code and its form were not clearly affected by Slovak law”.<sup>29</sup> We will try to deal with this claim in the following text, both to the extent of Slovak influence in the final wording of the draft, as well as to the extent of Slovak share in the unification works.

Already in the very first expert meeting at the premises of Ministry of Justice on 16 June 1920, it was decided that the works on the unification of substantive civil law should be entrusted to four subcommittees, under the guidance of Professors Kafka, Krčmář, Stieber and Svoboda. At the next meeting on 15 November, a fifth subcommittee was set up, headed by Professor Weiss. In addition to representatives of the ministries, selected members of the judiciary, attorneys and public notaries also took part in the work of the subcommittees. However, there were only two Slovak lawyers in all subcommittees altogether.

Also, the participation of the Slovak professional public in the discussions on the revised Civil Code was only minimal in the first half of the 1920s. At the third congress of Slovak lawyers in March 1922, the Slovak legal community itself called for a codification based on the Austrian General Civil Code (ABGB), but at the same time

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<sup>27</sup> *Těsnopisecká zpráva o 94. schůzi.*

<sup>28</sup> Luby, “Unifikačné snahy”, 573ff.

<sup>29</sup> *Ibid.*

demanded that particular legal institutions of co-acquisition (property of spouses) and branch property that were in force in Slovakia be taken into account and be preserved in the draft Civil Code.

At the initiative of the Ministry of Unification, a special commission of Slovak lawyers was established in Bratislava, but only after the completion of the work of the subcommittees. The Slovak commission, under the leadership of Dr Vladimír Fajnor, then examined the proposals in terms of the law applicable in Slovakia and Subcarpathian Rus. Its task was thereby not to assess the proposal in terms of the law in force in Slovakia but rather to assess the impact of the adoption of the proposal on Slovak economic and social conditions only. The minutes from these negotiations were published in 1923 and 1924 by the Unification Ministry under the title “Revision of the Civil Code”.<sup>30</sup>

During the commission’s deliberations themselves, all participants were reminded already at the outset that the Congress of Slovak Lawyers at the end of October 1920, recognised the need for rapid unification and adopted the principle that the former Austrian General Civil Code (ABGB) should be revised and amended and introduced as a common Civil Code for Czechoslovakia. In order to dispel any concerns, Ministerial Counsel Schrotz was even willing to claim that the Austrian Civil Code was largely of Slavic and Roman origin and only to a small extent of German and Austrian origin and that it had hitherto already applied partially even in Slovakia and Subcarpathian Rus.<sup>31</sup>

Nevertheless, the Slovak Commission has submitted quite a few substantive amendments to the text. Its proposals can be divided into three groups: first, proposals suggesting to take over the regulations valid in Slovakia, then proposals from the project of the Hungarian Civil Code of 1913, and finally, completely new suggestions.

The final text was then put together by a special super-audit commission, where again Slovaks only had two seats reserved, and even these two were mostly vacant due to the need to travel from Slovakia to Prague. The outcome of the super-audit commission was therefore discussed again by the Slovak Commission, and its comments from 1931 were again submitted to the super-audit commission. In total, the super-audit commission held 321 meetings – the last on 4 November 1931.<sup>32</sup>

Regarding the incorporation of the comments of the Slovak Commission, several of its proposals were indeed taken into account. However, neither the “Slovak” regulation of branch property and branch inheritance nor the regulation on the property of spouses (co-acquisition) were taken over into the draft, which was considered as rather a negative aspect of the final text.<sup>33</sup>

At the beginning of 1932, the final wording was printed and presented to the public and to the other ministries for comments. In the autumn of 1935, the super-audit commission was convened again to discuss the results of the inter-ministerial discussions. After 30 meetings extending from 4 November 1935 to 18 March 1936, the negotiations were basically concluded; only some of the last details were resolved by 9 November 1936.<sup>34</sup>

<sup>30</sup> Rouček, *Revise občanského zákona I*; Rouček, *Revise občanského zákona II*.

<sup>31</sup> Rouček, *Revise občanského zákona I*, 5.

<sup>32</sup> *Tisk 425*.

<sup>33</sup> Šorl, “Vetvový majetok”, 221–37.

<sup>34</sup> *Tisk 425*.

Thereby, there were some significant differences between the first proposal presented in 1931/1932 and the second proposal from 1937. The systematics of the 1931 draft, and thus the ABGB system of 1811, was retained, but the provisions on private international law were moved from the original Title 46 in the 1931 draft to the first part as Title 2 in the second draft. The first part no longer contained the provisions on family law, as these were the subject of a heated debate without any results being reached in the end. Since some family law issues have also hitherto been resolved in the framework of partial legislative unification, it has been decided to maintain legal dualism in the field of family law temporarily. However, the legislator did not give up on the idea of a complete unification of civil law in the future, which was explicitly emphasised in the explanatory memorandum to the 1937 draft.<sup>35</sup>

All in all, in principle, the Austrian model of civil law has been clearly used as the basis of the final draft. Some minor new elements can be divided as follows:

- Separate Austrian legal regulations enacted prior to 1918 were now included in the ABGB in the revision process.
- The ABGB revision was also an opportunity to include the texts of Czechoslovak Acts amending or newly regulating certain specific civil law issues.
- Literature and doctrine of civil law have served as starting points, especially in regulating issues of private international law, inheritance law, contract law and family law, specifically matrimonial property law. In addition, some new arrangements for liability and unjust enrichment were based on the doctrine of civil law.
- Judicial decisions were also an indispensable source of the new amendments. They inspired changes in particular within the property rights regulation.
- The draft of the Civil Code also contained a number of elements clearly inspired by foreign legislation. The Swiss models affected mainly the content of the property rights. The German models were followed in the regulation of construction law, in the law of obligations and especially in the issues of liability for damage. The Czech notion *vespolné právo zástavní* was taken over from the Polish name for the simultaneous lien *wspólność*. The explanatory memorandum also mentions numerous other cases where the use of a foreign model was considered, but in the end, it was not used. However, it is often the case that the same models of several foreign laws or drafts were followed at the same time.
- Interestingly, the Hungarian draft civil code of 1913 was an important source of influence, in particular in the field of property law and the law of obligations.
- Finally, the Vienna draft of the Private International Law Act (edited by the Vienna Ministry of Justice in 1913) was a model for almost the entire regulation of private international law in §§ 8–60 of the new draft Civil Code of Czechoslovakia.
- Still, special attention should be paid to the degree of use of the law in force in Slovakia in the unification process. There were only a few such instances – especially in the regulation of inheritance law. One can mention the two most important examples. The first is the provision that the true heir may defend himself against the false heir in a special court proceeding and not in a new inheritance proceeding. This regulation was identical to the regulation introduced in the for-

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<sup>35</sup> *Ibid.*

mer Hungarian Article XVI/1894 (§ 89). The second example is the preservation of broadly conceived heritage classes. In fact, given the law in force in Slovakia and Subcarpathian Rus, the planned substantial narrowing of the legal heirs was waived in the final wording of the draft (§ 550).

Within an informative quantitative comparison of the explicit references in the explanatory memorandum to the draft, the following conclusion can be drawn regarding the importance and impact of individual sources:

- (1) According to the explanatory memorandum, the law valid in Slovakia was the basis for the changes in only two (above-mentioned) cases, albeit, in fact, some other minor instances of “Slovak influence” might also be identified.
- (2) The original Austrian regulations adopted before 1918 for the territory of the Czech lands were used in 38 cases.
- (3) The legislation adopted during the existence of the Czechoslovak Republic was used twelve times in the draft.
- (4) The case law served as a starting point for drafting the text in six cases, as mentioned in the explanatory memorandum.
- (5) Scholarship and literature were invoked in 54 instances, and
- (6) From among the foreign legislation, the French Civil Code and Polish civil law were a model in only one case, the Swiss Code in nine, the German in 23, the Hungarian draft of 1913 in seven cases, and finally, the Vienna draft of Private International Law was used only once, but to amend almost the entire part on private international law.

Although these numbers are very inaccurate since the explanatory memorandum focused only on the most important changes to the ABGB and omitted several minor influences, they still may have some value for the unification and revision process assessment – namely proving that there were no significant interventions and all changes were only “cosmetic adjustments” to the original ABGB text.

In 1937, the final version of the draft text was submitted to the National Assembly for approval, together with the drafts on the unification of civil procedure. The debate began with an introductory speech by the Minister of Justice, Dérer, who emphasised the importance of private law in regulating the citizens’ daily lives from their birth to death and even after their death. In connection with the outline of the historical development of the unification efforts, he pointed out that already in the final years of the Great War, this issue was discussed in Vienna with representatives of the Slovaks, including Hodža and Dérer himself. At this meeting, according to Dérer, a simple extension of the validity of Austrian laws, including the Civil Code ABGB, onto the territory of Slovakia and Subcarpathian Rus was suggested. However, according to Dérer, this measure would only bring chaos and would be virtually ineffective. Still, in the end, “the right principle was selected”, since “Czechoslovak codification could not build on the uncertain basis of Hungarian customary law”.<sup>36</sup>

In both chambers of the National Assembly, the draft was approved in its first reading and moved to the second reading in committees. Some particularly sensitive or com-

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<sup>36</sup> “Reč ministra spravodlivosti dr. Ivana Déreera”, 647. See also *Těšnopisecká zpráva o 92. schůzi*.

plicated issues were thereby discussed and some changes were suggested, from among which the following can be mentioned:

Right at the beginning, the relationship between “written” and customary law was changed by an extension of the admissibility of the use of customary law, since the new wording of the text was to read as follows: “Customs can only be considered where the law allows it.” This meant that the written law did not have to refer to them explicitly as envisaged previously.

However, the most significant change made at the level of the National Assembly was the inclusion of the institute known in Slovakia – co-acquisition (co-acquired property of the spouses). As a result, the wording of §§ 1062–1066 deviated significantly from the corresponding sections of the 1937 draft proposal.<sup>37</sup> This was the one and only substantial influence of the “Slovak law” on the draft from 1937.

However, the revised draft never returned to the plenary meeting of the National Assembly for its final approval. It was only after the break caused by the Second World War and the related political changes that the draft project was to serve again as a basis for further unification negotiations in 1946. However, it was soon replaced by a new draft (although to some extent building on the proposal of 1937), which finally resulted in the Czechoslovak Civil Code of 1950.

Still, the text of the 1937 draft was not forgotten completely – many decades later, it resurfaced to serve as a model and starting point for recodification efforts in the Czech Republic at the beginning of the 21<sup>st</sup> century, leading to the current Civil Code of the Czech Republic. Of course, without the amendments suggested at the level of National Assembly in 1937, aiming at the greater inclusion of the “Slovak law”...

## Conclusions

Throughout the whole first half of the 20<sup>th</sup> century, former Hungarian law was continuously used in the territory of Slovakia and Subcarpathian Rus within the Czechoslovak Republic. This was the case mostly due to the fact that all major unification projects which were started failed in the interwar period and had to be finished under completely new circumstances after the Second World War only. Thereby, after the war, not only the ideological background but also the methodology and organisational frame of the unification process changed dramatically. Democratic discussions were set aside, and political will took the leading role instead. Nevertheless, it was a huge success this time. In 1948–1950, the Czechoslovak legal system was practically unified. Paradoxically, at the same time, it was also a period when in formal terms, Slovakia for the first time gained certain legal sovereignty, which was not recognised in the interwar period, when the unitary Republic was the primary goal instead. Since 1945, in contrast, Slovakia was newly represented by the officially recognised Slovak National Council, equipped with independent legislative powers. Nevertheless, in spite of that, the late 1940s was the beginning of the period lasting until 1992, when the Czechoslovak legal system managed

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<sup>37</sup> Luby, “Československý občiansky zákonník”, 184–5.

to create and maintain its efficient legal uniformity – albeit it was a uniformity forced onto the legal system by the tools of the Communist Party.

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