ments – primary sources with the aim of facilitating the studies of legal history.[12] Such editions, however, contain fewer critical tools and explanations, leaving it for the teacher and students in the seminars to compensate for that.

Since the tradition of editions of sources on legal history in Slovakia is not that long, and the editions proper are not quite numerous, we consider it necessary to briefly consider the very purpose of editing and commenting on historical legal texts in this paper while reflecting on the possible future directions of editorial efforts in Slovakia.

Editorial activity is considered a part of scholarly research activity in the field of legal history, and history of state and law respectively. The fact that it actually is a scholarly activity is manifested by the objective of an unbiased reconstruction of the past and also by the methods used. These are the methods that originated in several different disciplines, since it is clear that texts from different periods require different approaches. For example, in some cases there is only one official source text, while in others there are various copies which must be put into genetic relationship. In the latter case, it is necessary to determine whether any transcription errors, amendments, etc. occurred in the process of copying. Moreover, past law is to be fitted not only into its historical context, but also into its legal context, while at the same time it should not be evaluated only in terms of today's law and principles. Rather, it must be regarded through the prism of historical legal thought of the period. Hence, commenting on a historical legal source, often in a foreign language, poses completely different demands on the author than commenting on currently applicable legislation. It could possibly be compared to commenting on foreign laws within the discipline of comparative law.

For all these reasons, legal history disposes of its own scholarly methodology. This reflects the fact that legal history is by its nature interdisciplinary, using both legal and historical methods, while at the same time its methodology differs to some extent from both purely legal and purely historical methods. Such an approach – a "methodology of legal history" – was attempted in the latest Slovakian edition of a historical legal source – the Provisional Judicial Rules of the Judex-Curial Conference of 1861.[13] We will, therefore, use this edition as an example of the methodology applied in this case of editing historical legal texts.

This important treatise was an echo of the years 1849–1860, when Hungarian law was in its original form set aside and a new legal system was built in the Hungarian Kingdom on the entirely new platform of Austrian law. However, at the Judex-Curial Conference of 1861, legal scholars and politicians adopted a decision to abandon the previous twelve years of Bach's neo-absolutism and centralism with Austrian law, and opted for a renewal of the traditional Hungarian legal system with some changes triggered off by the laws of March 1848 (the March Constitution of 1848), retaining (in the sense of partial recep-

[12] *Pramene k právnym dejinám Slovenska I. (do roku 1918)*, ed. M. Lysý, Bratislava 2009; *Pramene k právnym dejinám Slovenska II. (Po roku 1918)*, eds. L. Vojáček, t. Gábriš, Bratislava 2009; *Právne dejiny Slovenska I*, ed. J. Kolárik, Bratislava 2012; *Pramene k dejinám práva. Starovek*, ed. J. Beňa, Šamorín 2012; *Pramene k dejinám práva. Stredovek*, ed. J. Beňa, Bratislava 2007; *Pramene k dejinám práva. Novovek*, ed. J. Beňa, Bratislava 2009; *Právní dějiny na území České Republiky*, ed. J. Bílý, Praha 2003; *Pramene práva na území Slovenska I. (od najstarších čias do roku 1790)*, eds. M. Laclavíková, A. Švecová, Trnava 2007; *Pramene práva na území Slovenska II. (1790–1918)*, eds. M. Laclavíková, A. Švecová, Trnava 2012.

[13] *Dočasné súdne pravidlá Judexkuriálnej konferencie z roku 1861: Monografická štúdia a historickoprávny komentár*, ed. t. Gábriš, Bratislava 2013.

tion) some rules of Austrian origin, while at the same time creating some entirely new rules, particularly in the fields of civil procedural law and inheritance law.

The importance of the Provisional Judicial Rules of 1861 is thus more than obvious. However, it must be stated with regret that this important historical legal source has not been published in a Slovak translation nor in any modern critical edition until 2013.

2. Legal history and its sources

Before discussing methodological details, we shall first pay attention to the fundamental **specificities of legal history** itself.

In terms of jurisprudence, **legal history does not constitute a legal branch**, such as civil law, commercial law, criminal law, and the like. This is already reflected in the name of the discipline – "legal history", or "history of law", alternatively "history of state and law". The same applies to the theory of law / legal theory or philosophy of law / legal philosophy. We are leaving aside here the views that confer to "legal history" different contents, meaning and mission than to the "history of law". The difference might lie in that "legal history" is a discipline that examines "the history of law", i.e. the history of law is the object of research of legal history as a scholarly discipline. For our purposes, this distinction will not be of any particular importance and we will use the terms legal history and history of law interchangeably.

Legal history therefore does not represent a legal branch, a structural component of the valid legal system. Hence, legal history is not a set of norms and institutes governing legal relationships exhibiting a common method of treatment (private or public, or mixed), or a common object of regulation. Rather, legal history uses, in addition to both private and public law methods, other methodologies, such as those of historical disciplines. Moreover, the object of research is "the law" in the broadest sense, including its meta-legal assumptions and implications. **Legal history therefore, in contrast to "branches of law", is "only" a "legal discipline"**.

Legal history as a legal discipline researching the history of law is thus a *complement* to positive legal disciplines, the names of which largely coincide with the name of the legal branch they research – e.g., the discipline of civil law explores the civil law, discipline of commercial law explores commercial law, etc. Similarly to the legal history, the subject of which is history of law, we could, possibly, mention the discipline of civil law as exploring the "law of citizens", the discipline of commercial law as exploring the "law of commerce" or "of traders" (depending on whether the commercial law is based on a theory of persons or objects), and so on. These terms are not widely used, though, and instead of such distinctions between legal disciplines and legal branches, latinized forms of legal disciplines´ names are, rather, being applied in Central Europe – e.g., civilistics, commercionalistics, proceduralistics, and the like.

Thus, when we consider legal history, we refer to a separate legal discipline. In contrast to commercionalistics, proceduralistics and other separate legal disciplines, it is somehow special to the extent that it is at the same time a **legal discipline as well as**

a sub-discipline of history as another scholarly discipline. In the broader context, legal history is a part of historical scholarship that has its focus on the history "of law".[14]

Just like history, legal history can therefore have the same objectives as other historical disciplines, i.e. researching past events.[15] However, **being at the same time a legal discipline**, legal historians have also **other objectives**. At the educational level they entail mainly the moral and intellectual formation of law students, and at the scholarly level – the enrichment of current national and transnational or global legal thought. At the same time, however, the **practical use** of legal history should also be stressed; legal history is used in legislative activities as well as within judicial application of historical laws, for example, in the form of interpretation of historical legislation,[16] especially when dealing with property cases.[17]

After **emphasizing the differences between the law, legal history, and history**, we must necessarily refer also to the **uniting elements**. For legal history as well as for history in general, the use of historical **sources** is characteristic, i.e. the past and information about it. Thus, historical **sources** are used by both historical and legal scholars.

Current theory of law recognizes the **material (meta-legal) and formal sources of law**. Material sources are the social, moral, ideological, philosophical, economic, technical, cultural, and various other aspects of human society (e.g., the existence of slavery, existence of e-commerce, and so on). In contrast, the formal sources of law are those in which the law is formally expressed, these being mostly normative acts (Constitution, constitutional acts, acts of parliament, governmental regulations, ministerial ordinances and decrees, etc.).[18]

Classification of **historical sources** is much more complicated in comparison to the system of current legal sources. One may, for example, distinguish between unwritten sources (material, visual, audio, oral) or written sources (of official origin or of a private nature).[19]

Štefan Luby, the great Slovakian civilist (private law scholar), regarded also as the founder of the Slovak legal historiography (Slovak legal history as a discipline), distinguished especially **for the needs of legal history** between **sources of knowledge of law and sources of creation of law**. **Sources of knowledge of law** include all those that provide knowledge of the formerly applicable rules of behaviour. These sources do not reflect the rules in the form as set or recognized by the State (e.g. in the form of laws or regulations), but rather in other, often informal forms that refer to legal norms of behaviour, chronicles for example, or legends, private letters, and the like. This type of sources of law is not recognized in today's theory of law, since law nowadays can be primarily explored from the text of legislation, namely from the formal law. Sources of knowledge of law are of interest rather for legal philosophy, legal sociology, and psychology, and last but not least for legal history. Such sources can be – as per Š. Luby[20] – divided into

[14] J. Bartl, *Úvod do štúdia dejepisu*, Bratislava 2003, p. 8–9.

[15] *Ibidem*, p. 16.

[16] S. Balík, *Právněhistorická argumentace v judikatuře Ústavního soudu ČR* [in:] *Historické právne systémy a integrácia Európy*, Bratislava 2011, p. 11–15.

[17] In detail see: t. Gábriš, *Právo a dejiny: Právnohistorická propedeutika*, Kraków 2012.

[18] J. Prusák, *Teória práva*, Bratislava 2001, p. 188.

[19] J. Bartl, *Úvod*..., p. 63–88.

[20] Š. Luby, *Dejiny súkromného práva na Slovensku*, Bratislava 2002, p. 43.

official and unofficial sources. **Official sources** include, in particular, written instruents (warrants derived from official activities, accompanied by seal, etc.), protocols (minutes of court hearings), formularies and official accounting books. **Unofficial sources** of knowledge of law are mainly private letters as well as literary works (e.g., those of the Hungarian author Jókai and other Hungarian authors, who in their novels and short stories described the functioning of Hungarian law and the judicial process in the second half of the 19th century, together with relevant contemporary terminology).

Within **the second category of historical legal sources – sources of creation of law** – Luby distinguished between the **material and formal sources** in the same way as it is done in today's jurisprudence. Into the category of **material sources** he explicitly included conditions of life, jurisprudence and judicial practice, since the latter two are complementary to the conditions of life in the sense that they help to clarify and formulate areas where conditions of life affect or may affect the law. Jurisprudence namely helps to theoretically identify where there are "gaps" in the law and it also highlights the need for new regulation of some unresolved issues. Judicial practice, similarly, identifies in the day-to-day process of deciding disputes the "gaps" in the law and brings the law-making bodies to fill these "gaps" by new legislation, or the courts themselves fill those "gaps" . **Formal sources of creation of law** represented within Hungarian legal history consist mostly of the following forms: **legal custom, acts of parliament, international treaties, regulations and other subordinate legislation, privileges, statutes, and decisions** (especially decisions of the Hungarian Supreme Court – the Curia).

This whole breakdown of sources into sources of knowledge and sources of creating law is considerably more complex. a problem also arises with the term "sources of knowledge of law" since, for example, we come to *know* the law from the acts of parliament that were classified by Luby as sources of creation of law. Perhaps, more appropriate and easier for the needs of legal history is a breakdown of the **historical legal sources** into:

- **Meta-legal (material) sources** – factors of creation and evolution of law. In order to research these, historical, philosophical, sociological, political, economic, and/or other scholarly methodologies are used;
- **Primary legal sources** – i.e. legal norms. Their research requires legal methodology, but in the case of legal history and historical legal norms, the methods of history and other scholarly disciplines also may be used;
- **Ancillary sources** – all information on law in the broadest terms. Within their research, various methods of numerous disciplines are being used, including historical and legal methods.

In the present paper we will discuss only one of the primary legal sources – the Provisional Judicial Rules (hereinafter referred to as the "PJR"). However, as we shall see below, the **legal nature of the PJR as a source of law is not that clear and there are several explanations and theories offered in this respect**.

3. Methodology of editions of historical legal sources

Another unifying element of legal history, law and history, besides historical legal sources, is the **methodology**. For historical legal research and for a possible edition of a historical primary source of law it is obvious that the author and editor must necessarily **combine at least the historical and legal methods**. Commenting on a historical primary source of law is thus not only served by the use of legal methods of interpretation or only by the use of historical methods. The principles and operation of the historical legal system need to be reconstructed by legal history, using specific scholarly methods. Namely, it is obvious that in commenting on legal norms, for example, those of 1861, we will not only be interested in the doctrinal analysis of hypotheses, dispositions and sanctions of legal norms, and their interrelation with other norms of law or with the judicial interpretation of these norms in practice. This would be satisfactory for purely legal methods of interpretation. This dimension, however, must be combined and enriched with methodology of legal history by putting legal issues into their historical and social context.

What, then, are the individual methods used for editing and commenting on the historical legal sources? First, we shall pay attention to **historical methods**:

1) Source criticism is the prime historical method. Evaluation of historical sources is the condition *sine qua non* of proper scholarly work and proper evaluation of historical sources. Positive law usually does not require criticism of sources since it is working with the valid law that is being interpreted and applied. On the other hand, legal history must take into account the need for criticism of historical legal sources – not only when researching meta-legal and ancillary sources, but also when interpreting and evaluating the formal sources of historical law.
2) From among other methods used by historians, indirect induction may be noted. Using this method, all the available elements are scanned for the same characteristic. At the same time, they are also tested for an opposite characteristic.[21] When identifying the same characteristics, general validity is ascribed to the characteristics. Law does not use this method, at least not in the normativist version of legal scholarship where applicable legal norms are being applied in their exact wording.
3) The opposite of the induction method is the deduction method. When using this method, we proceed from the general to individual items.
4) The direct method in historical disciplines means studying the primary source. In legal scholarship, this is a must, just like in legal history. It may not be ignored when editing historical legal sources either.
5) The indirect interference method is used for researching analogous relations. In case of positive law, the use of analogy is problematic. In criminal law, the use of analogy to the disadvantage of the offender is prohibited due to the principle of *nullum crimen sine lege*, *nulla poena sine lege*. In legal history, however, analogy can be applied, just like in history.

[21] J. Bartl, *Úvod*..., p. 97–98.

6) Application of information about a small part of items to the whole[22] is a special method, called illustrative method. In positive law this method is not used due to the requirements of accuracy. Even in legal history it may lead to a mistake.
7) Particular historical methods comprise also the progressive method and the retrospective method. While the progressive method monitors the chronological course of events, the retrospective method uses the *ex post* knowledge about the causes of some phenomena. In legal scholarship, these methods are not applicable, except in cases of making clear the facts of the case that the law should be applied to. In legal history, these methods are used quite often.
8) Structural analysis seeks to discover mutual relationships of economic, cultural, social, political, and other phenomena – this is applicable also in the discipline of legal history and even in positive law within some types of interpretation.
9) The typological method entails creating bulks of interrelated phenomena, characterizing these, and creating categories – e.g. in law this means creating legal "institutes" within civil law and commercial law.
10) The model analysis may be used both in general history, legal history and in law. It consists of creating model situations that law should resolve.
11) The method of probe (sounding) is similar to the illustrative and induction methods. It means reaching conclusions on the basis of testing certain probes, taking into account the relativity of the outcomes. It is not used in law, where strict adherence to facts and norms should be the rule. Within legal history, on the other hand, it is used quite often.
12) Finally, the general methods used in the humanities, analysis and synthesis, are applied equally in law, history and legal history.

Specific **legal methods** that could be used by legal historians in the creation of editions of historical legal sources include:

1) methodology for clarifying the facts of the situation;
2) subsumption of the facts under a legal norm; and
3) various types of interpretation of law.[23]

4. Methodology used specifically in the edition of Provisional Judicial Rules

When editing the Provisional Judicial Rules of 1861, the following methodology was specifically used:

a) A critique of the source was used when we evaluated the extent to which the published text of the PJR corresponded to the actual output of the Judex-Curial Conference; for example, whether there were additional interventions or changes after the final Conference draft was approved. In fact, no changes or interventions were identified.

[22] *Ibidem*, p. 101.
[23] R. Zippelius, *Juristische Methodenlehre*, München 1990, p. 39–58, 65–72, 79–99.

In this context, we also had to deal with the question of the nature of the source – whether it was a formal source of law or only a "soft law", and further, whether it was actually used in practice etc. This aspect was an important part of our initial study of the edited source.

b) The induction method was used in the analysis of public attitudes, political as well as legal, especially of courts and judges, towards the importance of the PJR for the continuity of law in Hungary. We identified that the interpretation of the PJR in this respect was that these were considered a tool of restoration of Hungarian law and reception of some Austrian norms, although there were also voices which called for proclaiming the law from the 1849–1860 period totally invalid, null and void, which in fact did not happen and the PJR introduced a blend of Hungarian and Austrian law.

c) The deduction method was also used in our edition. For example, we used it to clarify the impact of the economic interests of the landowning strata of Hungarian society and of the nascent capitalist bourgeoisie, who were represented at the Conference, on the final wording of the Provisional Judicial Rules and on the development of Hungarian law in the second half of the 19th century in general.

d) The direct method, meaning the analysis of the immediate source is manifested in the commentary on individual provisions of the PJR.

e) The indirect, interference method was used to examine analogous relationships in the initial study of the edition. Comparing legal-historical developments in the Hungarian Kingdom with similar developments in Czechoslovakia of the 20th century allowed us to deduce some theoretical conclusions on the continuity and discontinuity of law in general.

f) A particular method used was that of application of knowledge of a small part to a whole, where the information was obtained by the direct method. This method is also called illustrative. In the edition of the PJR, the illustrative method was applied in the selection of certain judicial decisions which illustrate the position of the Hungarian legal community (particularly the judicial community) in relation to the PJR. Of course, that does not mean that dissenting opinions were not present. A judicial system itself, however, may make an effort not to decide divergently by employing special means of unifying case-law, and such efforts were present in Hungary. In such cases, it is sufficient to find the decision of the Supreme Court for the unified interpretation of the case.

g) Specific historical methods used in the edition are the progressive method and retrospective method. Both of these were used when setting the edited source into its social context. First, we described the progressive development of discontinuity of state and law in Hungary in the period of 1848–1867, and then we retrospectively reviewed the legal nature of the PJR.

h) Structural analysis was used in interpreting the reasons why the instruments of both the restoration and reception of law were chosen instead of declaring nullity of the whole previous period (1849–1860).

i) The typological method was used in categorizing types of continuities, receptions and theoretical institutes analyzed in the initial study.

j) The model analysis was used in the interpretation of jurisdiction and explanation of which courts operated as functionally superior instances in relation to courts of first instance, depending on the subject matter and the persons involved.

k) The probe method was used when offering views of selected representatives of the Slovak national movement on the issue of continuity of the Hungarian state and law.

l) Finally, analysis was used in commenting on individual provisions of the PJR, and synthesis when setting the PJR into a broader context of the evolution of law in the 19th century.

m) On the other hand, from among the specific **legal methods**, this edition mostly employed only the interpretation of law.[24] This is because the edition of a historical formal legal source does not offer opportunity to clarify the facts of a specific case for the purpose of their subsumption under a specific norm of law, which is rather the case of sources on practical application of law. However, the methods of clarifying the facts and their subsumption under the norms were used in this edition in a different context - namely in the initial study, in order to clarify the situation of continuity and discontinuity of the law of Hungary between 1848–1867, and in characterising the identified situations as various types of continuities, discontinuities, reception, restoration, retroactivity, etc. However, this is not subsumption under a legal norm, but rather a subsumption under a theoretical concept which we have defined first.

The method of interpretation of law was necessarily used in particular in the commentary section of the edition. However, when interpreting the past law, rather the linear or retrospective interpretation[25] of development of legal principles was offered, instead of interpretation of the actual wording of the norms, hence reflecting the aims of the discipline of legal history rather than of positive legal disciplines.

The development of legal principles can therefore be researched in every legal branch when approached from the historical perspective, even though, admittedly, legal principles and their development are especially distinctive in the discipline of constitutional law.[26] This is confirmed also in our edition, when we tried to evaluate the constitutionality or unconstitutionality of legislation in the period from 1849 to 1860 and subsequently until 1867. The legality and legitimacy of legal norms of this period depend quite strongly on an assessment of their constitutionality.

In branches of law other than constitutional law, the development of legal principles can be seen, according to Llompart, especially in the different balance between various principles of law. E.g., there is a different relationship between the principles of freedom, equality and human dignity in the private law throughout history that differs from country to country. Even the principle of *pacta sunt servanda* is limited by a number of restrictive conditions that have evolved over time (e.g. consumer protection). Taking another example, the current principles of criminal law – *nullum crimen sine lege, nulla poena sine lege,* the prohibition of retroactivity to the disadvantage of the offender, the principle of liability for fault (*nullum crimen sine culpa*), or procedural principle *in dubio pro reo* – are, in turn, the outcome of the Enlightenment movement and of the 18th century thought.

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[24] *Ibidem*, p. 39–58, 65–72, 79–99.

[25] J. Kolárik, T. Gábriš, *Chronologický alebo retrospektívny výklad práva: K možnostiam výučby právnych dejín* [in:] *Acta Iuridica Sladkoviciensia II*, Sládkovičovo 2011, p. 57–68.

[26] J. Llompart, *The Geschichtlichkeit der Prinzipien*, Frankfurt am Main 1976. Quoted from: J. Wintr, *Říše principů: Obecné a odvětvové principy současného českého práva*, Praha 2006, p. 47–49.

Past law and its principles are therefore not only to be approached with modern eyes, but also must always be fitted into the proper historical context and regarded through the prism of historical legal thinking. Such an approach – **the legal historical method itself** – was applied also in the edition of the Provisional Judicial Rules.

5. Case study: Legal historical method applied in edition of Provisional Judicial Rules

5.1. Provisional Judicial Rules and the Judex-Curial Conference

The Provisional Judicial Rules of the Judex-Curial Conference were elaborated in the Spring of 1861 in order to resolve the constitutional and legal deadlock between Austria, namely the Emperor, and the Hungarian Kingdom. This situation arose as a result of a disagreement between the two opposing constitutional paradigms of the Emperor and Hungarian political elites. The Emperor considered as constitutional and legal his centralist power, while the Hungarians considered as legal Hungary's historical constitution and the liberal and parliamentarist standards that were introduced in the March Constitution of 1848 (also known as April Constitution, or April laws, from the date of their signing by the Ruler).

While the imperial constitutional paradigm temporarily triumphed after the defeat of the Hungarian revolution in 1849, the Emperor extrapolated the consequences also into the Hungarian legal system. He made an effort to upgrade, or rather to create a completely new Hungarian legal system. His efforts were threefold: to extend the territorial scope of Austrian law to the territory of Hungary; to issue a new common legislation for the whole Empire; and to issue regulations tailored specifically to Hungary. In all the three cases, however, it was law that was alien and completely different from the law valid until that time in the Hungarian Kingdom. The Emperor's aim was primarily to strengthen the unity of the Habsburg Empire by using the method of unification of law, fully derogating the Hungarian law in the process.

Only when the Emperor's centralist and absolutist efforts suffered a defeat in the international military and diplomatic field at the end of the 1850s, did Francis Joseph I start a dialogue with the Hungarians with the intent of reaching a consensus between the two opposing constitutional and legal paradigms. The constitutional and legal division of the two opposing positions was ultimately resolved by a series of two compromises. The first compromise was reached in legal terms in 1861 by the creation of the Provisional Judicial Rules. The second, when after a neo-absolutist regime had been temporarily re-established between 1861 and 1865, the Emperor and the Hungarians managed to reach the compromise in constitutional terms (*Ausgleich*) in 1867.

The issue of continuity or discontinuity of law in Hungary in 1861, after the collapse of the Austrian unitarist constitutional paradigm, was to be resolved by a special legal conference under the leadership of the Hungarian Judge Royal (in Latin *iudex curiae)*. Therefore the Emperor ordered by a cabinet memorandum of 20 December, 1860,

addressed to the Prime Minister, Count Rechberg,[27] to renew the activity of the Royal Supreme Court as the Hungarian Supreme Court, under the chairmanship of the Judge Royal. He also ordered the Royal Chancellor Vay to invite appropriate persons, who would have been competent to make proposals, regarding the new organization of the Hungarian judiciary and of the whole system of law, to the Conference.[28]

The government in Vienna initially tried to convince Francis (Ferenc)[29] Deak to accept the role of *iudex curiae,* but failed. Subsequently, Count John (János) Cziráky was appointed, but he soon gave up and the task fell on the shoulders of the Count George (György) Apponyi.[30]

The persons attending the Conference, as finally chosen by Chancellor Vay, comprised besides the President Apponyi and the Secretary George (György) Ráth,[31] twenty-three members of the court known as the Seven-Lords Board, nineteen attorneys, five representatives of the business industry, and several politicians, professors, mining experts and ecclesiastical dignitaries.[32] The most important among them were the politician Francis (Ferenc) Deák, Balthasar (Boldizsár) Horváth (later he became the Minister of Justice), Lawrence (Lőrinc) Tóth – author of several legal works, Coloman (Kálmán) Ghyczy – one of the authors of the Constitution of March 1848, and Gusztáv Wenzel, renowned law school professor.[33]

In terms of legal status, the Conference was not an official body of state or government, rather it was only an *ad hoc* body with tasks set by imperial mandate – **to create proposals for restoration and new organization of the judicial system in Hungary, and to identify and develop legal standards appropriate for Hungary**.[34] The competences of this body were not even apparent to the actual Conference members, who were not sure whether their charge was to work on a bill, or to merely express a general opinion on the legal system, which was to be applicable in Hungary.

In order to formulate conclusions, the Judex-Curial Conference inevitably had to address crucial and controversial issues – namely the abolition of feudal legal institutions and the relevance of the March Constitution of 1848 and the imperial laws of the 1850s.[35] As succinctly summarized by F. Mádl, the central issues of the debates were mainly mat-

[27] Count Johann Bernhard von Rechberg und Rothenlöwen (1806–1899), Austrian Foreign Minister between 1859–1864, the Austrian Prime Minister between 1859–1861.

[28] R. Šorl, *Prekonanie neoabsolutizmu v Dočasných súdnych pravidlách* [in:] *Stát a právo v období absolutismu*, eds. K. Schelle, L. Vojáček, Brno 2005, p. 196–197.

[29] The historical spelling was "Ferencz".

[30] A. von Kecskeméthy, *Ein Jahr aus der Geschichte Ungarns: Vom 20 October 1860 bis zur Einführung des Provisoriums*, Wien 1862, p. 40.

[31] The proceedings of the conference were published under the title *Az országbírói értekezlet törvénykezési tárgyában* (Pest 1861).

[32] Cf. G. Béli, *Magyar jogtörténet: A tradicionális jog*, Budapest–Pécs 2000, p. 313; and *Magyar jogtörténet*, ed. B. Mezey, Budapest 2004, p. 133. Cf. G. Rath, *Az Országbirói Értekezlet a Törvénykezési Tárgyában. I.*, Pest 1861, p. VII–VIII.

[33] A. Horvath, *a magyar magánjog történetének alapjai*, Budapest 2006, p. 63.

[34] R. Šorl, *Prekonanie*..., p. 197.

[35] Similar historical experience and solutions were established under the Art. LXII/1791. See: t. Gábriš, *Návrh obchodnoprávnej úpravy regnikolárnej deputácie in juridicis* [in:] *Stát a právo v období absolutismu*, eds. K. Schelle, L. Vojáček, Brno 2005, p. 175–194.

ters of succession, aviticity, and fideicommissum – i.e. the property issues of Hungarian feudal landowners.[36]

Within the actual negotiations at the Conference, the members were divided into seven specialized sub-committees which were to prepare proposals concerning individual legal issues and areas:

1) private law and land registry;
2) criminal law and press law;
3) urbarial, land police[37] and un-binding laws;[38]
4) bill of exchange, commercial and bankruptcy laws;
5) orphans' issues[39] and non-contentious competence of courts;
6) attorneys and notaries regulations;
7) mining law.[40]

The actual plenum of the Judex-Curial Conference held a total of eighteen meetings between 23 January and 4 March 1861 before it successfully developed a final draft.[41] The outcome of the activities of the Conference was a special treatise, called the Provisional Judicial Rules (PJR), the legal nature and content of which is the subject of special interest in our commentary to the source edition.

The PJR had a total of eight parts that did not correspond exactly to the subject areas of the above-mentioned seven sub-committees in charge of the final draft of the PJR:

1) civil (private) law and civil procedure;
2) criminal procedure;
3) bill of exchange law;
4) bankruptcy;
5) commercial law;
6) urbarial law;
7) mining law;
8) regulations on Attorneys and Public Notaries.

The literature has consistently stated that the PJR did not include regulation of administrative law.[42] This is not an entirely accurate statement, especially on account of the absence of a distinction between the administration and the judiciary in that period – when regulating procedural and organizational issues, administrative and judicial powers were often combined, especially in the area of the mining law. Thus, administration (administrative law) was also regulated to a certain extent by the PJR.

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[36] F. Mádl, *Kodifikation des ungarischen Privat-und Handelsrecht im Zeitalter des Dualismus* [in:] *Die Entwicklung des Zivilrechts in Mitteleuropa (1848–1944)*, eds. A. Csizmadia, K. Kovács, Budapest 1970, p. 102.

[37] The land police was a general administrative authority responsible for supervision of non-interference with the rights of owners of agricultural land.

[38] Meaning: freeing the former villeins from their obligations towards their former landlords.

[39] These were finally solved by special arrangements outside the PJR.

[40] K. Schelle, L. Vojáček, *Právní dějiny na území Slovenska*, Ostrava 2008, p. 186.

[41] Š. Luby, *Dejiny*..., p. 104.

[42] F. Sivák, *Dejiny štátu a práva na území Slovenska do roku 1918*, Bratislava 1998, p. 148; M. Ferencová, *Zabezpečenie pohľadávok zriadením záložného práva v historickom vývoji* [in:] *Zabezpečenie pohľadávok a ich uspokojenie*, Bratislava 2002, p. 190.

Regarding a comprehensive look at the proposed conclusions in the PJR, it is often claimed that the PJR was anchored on three or four basic principles.[43]

1) **fundamental restoration of the Hungarian law in the state as of 1848**;
2) **maintenance of the validity of Austrian land registry law and the law governing the disposal of real estate (this principle is sometimes divided into two separate principles in the literature[44])**;
3) **maintenance of the validity of the Austrian General Mining Act**.

However, as we will point out below, one should also make note of **the preservation of parts of aviticity patent, the urbarial patent and two un-binding patents, and one should also distinguish a special category of "amendments" as wholly new modifications instituted by the PJR**. This also relates to the widespread, but incorrect claim that continuity between the Hungarian law of 1848 and the law of 1861 was ensured by the PJR.[45] This is not true at all since, in fact, a **"discontinuous restoration"** was introduced. It was a restoration of the law as of 1848 which respected some Austrian laws and the effects introduced by the previous Austrian law in the territory of Hungary ("continuity"), and in addition, many changes and amendments and completely new arrangements were introduced.

The fact of discontinuous renewal (restoration) of Hungarian law after 12 years, no matter how positively it was perceived by the population of Hungary, was also marked by the **return from written law to law which was often unwritten, customary**, expressed largely in settled judicial practice, with major feudal remnants. The following decades were therefore necessarily marked by the codification efforts, resulting in a number of partial codification attempts and numerous polemics in the literature. Restored Hungarian law willy-nilly had to undergo the inevitable modernization that subsequently occurred, especially by means of case law.[46] Nevertheless, a positive aspect was that this judge-made modernization was perceived and politically interpreted as voluntary and not forced upon Hungary, as had been the case with the Austrian law before 1861.

At the same time, although Hungary was generally insisting on cleansing its law from the Austrian remnants in 1861, some of the original Austrian laws were assumed and declared valid for Hungary. It preserved only a minimum of the then valid Austrian law – the rules which governed the free disposal of immovable property, registration of ownership of these, law linked to abolition of villeinship, and the already mentioned Austrian Mining Act. These were the only exceptions to the general principle of the restoration of Hungarian law to the status quo of the years 1848–1849.

In the everyday legal practice, this judicial compromise did not cause major problems. One may admit that the PJR clearly stated what law applied in Hungary, and this was the starting point for further modernization and the development of the Hungarian legal system into a form which was assumed in 1918 by Czechoslovakia. Hence, the PJR, with

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[43] F. Sivák, *Dejiny…*, p. 148.

[44] For example: *Pramene práva na území Slovenska II (1790–1918)*, eds. M. Laclavíková, A. Švecová, p. 246.

[45] F. Sivák, *Dejiny…*, p. 148.

[46] M. Laclavíková, A. Švecová, *Kodifikačné snahy súkromného práva v dualistickom Uhorsku (s dôrazom na testamentárne a manželské majetkové právo)* [in:] *Kodifikační geneze soukromého práva a její myšlenkové zázemí*, Plzeň 2011, p. 162 ("Acta Historico-Iuridica Pilsnensia").

their important restorative, receptive and reform character provided the basis for the application of Hungarian legal concepts concerning, for example, newly created institutes such as branch inheritance and related issues, such as widow's right and widow's inheritance, in the territory of Slovakia until 1950. In the area of property law, branch property was introduced as a new type of property. The PJR is at the same time the cause of the fact that in family law, in Slovakia in effect until 1950, the wife brought into the marriage a dowry and paraphernum, and in return received from her husband a dower. For the same traditional legal reasons in Slovakia until 1950 former aristocratic spouses did not acquire assets into joint ownership during the marriage, but essentially only the husband acquired the exclusive ownership in the marriage. Finally, the PJR was also responsible for the fact that, based on its authority the general mining law of Austrian origin was applicable in the territory of Slovakia until 1957.

5.2. Legal nature of the Provisional Judicial Rules

In assessing the legal nature of the PJR, the literature used to claim that it never became law because Parliament in 1861 was not created legally (representatives were not elected under the electoral law enacted as part of the March Constitution of 1848) and because the monarch, Francis Joseph I, had not yet been crowned (his coronation took place in 1867). Therefore the legislative process could not be successfully completed.

The PJR was approved by the Lower House of the Assembly **on 22 June, 1861** and by the Upper House on *1 July, 1861*. However, both Houses **adopted** it only by a **resolution**. *On 20 July, 1861* the Emperor (as uncrowned Hungarian King) expressed his approval of the PJR as well. The Supreme Court **by an ordinance of 23 July announced that the PJR would be used as a permanent directive until further legislation was enacted**. It is precisely due to these multiple acts of approval that there is disagreement about the nature of the PJR in terms of formal sources of law – whether it was legally binding at all, and if so, whether by virtue of customary law, or as an act of parliament, judicial precedent (i.e. a decision by the Supreme Court to be followed by all lower courts), or as a source of law *sui generis*.

It definitely could not have been an Act of Parliament because the rule was that "Parliament shall decide and the ruler shall approve" as stated in Art. XII/1790–1791[47]. However, as mentioned above, neither the parliament (Diet) nor the ruler met the formalities required by Hungarian constitutional law. The October diploma of 1860 convened the Hungarian parliament under Article I/1608, and not under Article V/1848 (March Constitution).[48] This was not acceptable for the Hungarians. Additionally, the Monarch was not officially crowned, and finally, the actual approval of both Houses of Parliament and by the Monarch did not take the form of enacting law, but only the form of a kind of resolution.

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[47] E. Štenpien, *Dejiny súkromného práva v Uhorsku*, Košice 2011, p. 34.

[48] T. Olechowski, *Das Oktoberdiplom 1860: Ende des Neoabsolutismus und Wiederauferstehung des Föderalismus in Österreich* [in:] *Jogtörténeti Tanulmányok X.*, eds. G. Béli, C. Herger, Z. Peres, Pécs 2009, p. 156–158.

It was not a governmental regulation either, since the power to issue regulations belonged at that time to the king, and even though he expressed his written consent, under Article XII/1790–1791 it was expressly forbidden to use regulations instead of acts of parliament; thus the regulations could only serve to implement and execute laws.[49] The PJR could therefore in no way be perceived only as an execution of an act of parliament due to its content – especially the completely new norms introduced into the PJR by the Judex-Curial Conference.

The PJR could also not be considered a judge-made law (as mistakenly claimed by Wenzel), since the Supreme Court did not yet possess the competence to create binding judge-made law, when on 23 July, 1861 it approved the PJR as a directive. The Supreme Court itself, in the decision no. 79, expressed its view that the PJR was only a temporary directive for judges, and that the rules contained therein may therefore at any time be set aside by the decision of the Curia (Supreme Court).[50]

The PJR was also **not to be considered a custom**, because it did not meet the basic requirement – long-term usage – as a definitive feature of a custom. The rules expressed in the PJR were (apart from the rules taken over from Austrian law and rules restored from Hungarian law) previously non-existent, newly created rules, which started to be used overnight, from the moment of their approval by the highest bodies of the Hungarian Kingdom. On this account, Štefan Luby claimed that these standards started to be binding from the date on which the Houses of the Parliament, the ruler and the Supreme Court approved them (usually in particular the resolution by the Supreme Court, which was chronologically the last, is emphasized in this respect).[51] This moment of acquisition of binding force by the PJR was also recognized by Almási. According to him, the PJR as well as Tripartitum, were from the legal point of view considered **customary law, even though they were not created by private but rather by a public act** – the courts began to apply a treatise that had no authority of a source of law. The procedure is roughly the same as when establishing the custom in private law, but the custom here consists in not only one, but rather in a set of normative sentences.[52] Szladits and Reiner similarly recognized that the PJR applied from the moment of its approval by the Supreme Court, i.e. from 23 July, 1861, as confirmed by later case law of the Supreme Court, while recognizing that it is an exceptional way to create customary law, as a sort of **"public customary law"**. Such a formation of customary law is certainly not considered a standard way by authors who reject it. They see as a solution that the PJR derives its authority from the joint constitutive act of the highest authorities of legislative and judicial power, and therefore consider the PJR to be **a source of law *sui generis***, which by its nature is said to be closest to customary law.[53] For example, Zlinszky argued that the PJR is a source *sui generis*, distinct from an act of parliament and customary law, a theory

[49] G. Máthé, *Die Lehre der ungarischen heiligen Krone: Paraphrase* [in:] *Die Elemente der ungarischen Verfassungsentwicklung: Studien zum Millenium*, eds. G. Máthé, B. Mezey, Budapest 2000, p. 14.

[50] Š. Luby, *Obyčajové právo a súdna prax (Civilistická štúdia zo slovenského práva)*, Bratislava 1939, p. 110–112.

[51] *Ibidem*, p. 49.

[52] A. Almási, *Ungarisches Privatrecht. I. Band*, Berlin–Leipzig 1922, p. 18. *The JKK erlangte ihre Quellenkraft durch eine ebenfalls öffentlich-rechtliche juristische Handlungskette ihrer beständigen allgemeinen Anwendung*. *Ibidem*, p. 20.

[53] R Šorl, *Prekonanie…*, p. 198.

to which Luby was somewhat inclined.[54] He claimed that the PJR **was established in a regulatory process of its own kind**, which did not meet the conditions of enacting an act of parliament, a regulation, customary law, or judge-made binding decisions.[55] Nevertheless, his conclusion in 1939 was that the prevailing opinion on the legal nature of the PJR was that it was made binding by virtue of customary law, although the text of customary law had been written down before the conditions of becoming customary law were met.[56]. Luby here refers also to Kolosváry and Almási according to whom the PJR became legally binding by virtue of customary law after a certain period of use. Luby's **conclusion therefore was that under the prevailing opinion the PJR became legally binding by virtue of customary law, in a process *sui generis***.

The only solution here is the **recognition of the exceptional situation** which dominated in Hungary between 1861 and1867; it was the period between neoabsolutism and another *provisorium*, **a period of "limited constitutionalism"**. Under such conditions **it was not possible to meet the formalities of official legislation. Thus the PJR could become binding only *de facto* – through the power of persuasion**. However, after a period of several years of settled case law it can be argued that the PJR **transformed from the actual source of judicial decision-making into customary law**. This landmark transformation from the effective source of judicial decisions to customary law is not connected to any specific date, for example, the year 1867, although this claim could be supported by the political declarations of 1867, when an opinion denying the legitimacy of laws from the period between 1849 and the *Ausgleich* (1867) was officially proclaimed.[57] That would negate even the legality of the PJR from 1861, while it would not prevent the PJR from becoming legally binding as customary law after 1867 due to the previous judicial practice lasting from 1861 – thus as a legitimized and legalized customary law.

Another potential milestone of transition of the PJR to the nature of customary law could be the year 1896, when the PJR was included in the millennium edition of *Corpus Iuris Hungarici* (official collection of Hungarian laws). It is probably no mere coincidence that this happened 35 years after the adoption of the PJR since the traditional Hungarian period of limitation *(praescriptio),* representing the conceptual component of customary law, was 32 years (i.e. until 1893).

To sum up, *fons auctoritatis* as a **source of legitimacy of the PJR until 1867, eventually until 1893–1896** could therefore be **the authority of the supreme state bodies and of the Supreme Court, whereby the PJR constituted a sort of "soft law" recommendation, or factual material source that inspired the creation of a formal customary law. After these years (1867, 1893–1896) *fons auctoritatis* as a source of legitimacy, but also of legality of the PJR, could be the customary law** as a result of settled judicial practice since 1861.

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[54] Š. Luby, *Obyčajové právo a súdna prax (Civilistická štúdia zo slovenského práva)*, p. 111–112.
[55] *Ibidem*, p. 110.
[56] *Ibidem*, p. 111.
[57] B. Mezey, *Počiatky modernej uhorskej väzenskej správy*, trans. E. Štenpien, Prešov 2011, p. 173.

5.3. The importance of the PJR for the legal system in the 19th and 20th centuries

The PJR represents a historical source of particularly significant importance for the development of law in Hungary and also in Slovakia. In previous chapters we have pointed out in detail the most interesting and the most problematic aspects of their adoption process and their legal nature.

The PJR itself in § 1 of Section I explained that it was formulated in the interest of legal continuity – meaning not the continuity of the Hungarian law, but rather continuity with the previous legal situation (under Austrian law). At the same time, however, in relation to the years of 1849–1860 there was a partial discontinuity since the Hungarian law as of 1848 was largely restored, and many provisions of the previous period have been fully or partially derogated.

The PJR is therefore at the same time an expression of continuity and discontinuity of law. The **continuity has been threefold**:

a) continuity in terms of partially preserving (taking over) Austrian law;
b) "so-called continuity, meaning in fact restoration" of Hungarian law (in fact discontinuity with the years 1849–1860, but also with 1848 due to partial reception of Austrian law and various new amendments introduced to the PJR); and
c) continuity in terms of preservation of legal deeds, their effects and legal relations (i.e. protection of acquired rights).

Discontinuity was manifested equally in relation to the law as of 1848 as well as in relation to the law of the years 1849 to 1860. This was the result of a unique combination of receptions, derogations, restoration, and introduction of completely new rules.

In this sense, it is necessary to correct and clarify the Hungarian and Slovak literature and its widespread conclusions about three or four basic principles of the PJR[58] and to formulate the conclusions as per the Austro-Hungarian compromise anew, where one can discern four different directions, in which the PJR moved:[59]

a) the first is the characterization as a restoration of Hungarian law (bill of exchange, bankruptcy law);
b) the second is the partial preservation of Austrian law from the period of Bach's absolutism in force, such as parts of the ABGB, aviticity patent, urbarial patent and two un-binding patents as well as a regulation on land registry and the mining law;
c) the third is the derogation of Austrian laws, such as Criminal Code and Code of Criminal Procedure, Provisional Civil Procedure Code, parts of aviticity patent, and a majority of the ABGB; and
d) the fourth group represents the newly created and accommodated rules, mainly in the area of civil procedure, law of succession and criminal law.

[58] Sivák points out to three principles (renewal of Hungarian law, preservation of the Austrian mining law and land registry and the Austrian regulation of disposal with real estate), because he combines the third and fourth into one. F. Sivák, *Dejiny…*, p. 148.

[59] *Magyar jogtörténet*, ed. B. Mezey, p. 134.

Such a compromise – with intentionally unexplained questions of legality and legitimacy in relation to the past – was the secret of success within this judicial *Ausgleich*. In fact, despite the apparent nature of a compromise, this truly meant victory for the Hungarian general rejection of Austrian law, while nonetheless maintaining in practice certain Austrian standards and effects of acquired rights.

At the same time, however, one should not forget that this was also a compromise within Hungarian society itself – between the post-feudal landowning classes and the bourgeoisie. This compromise of their interests has resulted in some half-hearted solutions and the conservation of certain anachronistic feudal institutes in force in our territory until the mid-20th century. For example, the PJR is still mentioned in ordinance no. 107/1950 Coll. on the full text of the Presidential Decree on the nationalization of mines and some industrial enterprises, where the PJR was applicable law at that time. According to § 1 of this Ordinance,

> (1) As of the date of notification of this decree, the following is nationalized:
> 1. Businesses governed under the general mining law, businesses and rights to search and extract resins, mining authorizations under § 5 of the Mining Act and the rights of landowners under the heading of § l Art. I part VII of the **Provisional Judicial Rules** of 1861, in force in Slovakia.

Reference was made here to the mining rights and authorizations under the then still valid PJR and the Austrian General Mining Act, which remained in force up to 1957. Only in 1958 was it repealed by the Act no. 41/1957 Coll. on utilization of mineral resources (the Mining Act). In its § 58 the new act provides as follows:

> (1) Upon entry into effect, all regulations set forth in this Act shall expire **as well as customary law on matters governed by this Act**.
> (2) In particular, the following are repealed:
> 1. **General Mining Act declared by patent of 23 May 1854 no. 146** as well as **rules amending it**, and any and all pertinent implementing regulations issued.

Similarly, the Civil Code no. 141/1950 Coll. established in its § 568 as late as in 1950:

> (1) On 1 January 1951 all **provisions on matters governed by this Act, including customary law, whether resulting from court decisions or from other sources,** are repealed**.**
> (2) In particular, the following are repealed: […]
> 3. Article XXII/1802 and Art. XIII/1807, on re-introduction into the possession of persons forcibly displaced
> 4. Article VIII/1840 on the inheritance order of villeins; […].

Even though the PJR is not explicitly mentioned here, still, the repealing provisions undoubtedly apply also to the PJR – as customary law, law arising from court decisions, or as any "other source" of law.

The transitional and final provisions of the Mining Act of 1957 were those which definitively removed from the law in force in the territory of Slovakia the final remnants of the PJR. However, it is not quite true that the PJR is gone completely and definitely from the Slovak legal and judicial practice. Still, in the 21st century, in matters of private law, in particular in matters concerning the acquisition of real estate property and inheritance law, the PJR appears before the courts of the Slovak Republic in the arguments and

submissions by the parties, and in the reasoning behind court judgments – in particular for the purposes of clarification of ownership transfers before the 1950s.

The most recent judicial decision in this respect is the judgment of the Supreme Court of the Slovak Republic, 1 Sžr 90/2011, which refers to the arguments of the parties in respect of the rules of succession, inheritance groups and their order in the PJR:

> […] in its entirety points to the defendant's argument in his reply to the claimant's statement (leaf 100) that at that time the succession law in our country was regulated by the Provisional Judicial Rules proposed by the Judex-Curial Conference in 1861, according to which first the offspring should inherit, and the spousal inheritance followed only if there were no offspring and only concerning some property.

In general, however, we must admit that the PJR has nowadays lost relevance for practicing lawyers. Rather than practical significance, the edition of the PJR and its research represent a contribution to the theory of law and legal history of various legal branches, the modern foundations of which were laid down by the PJR in the Hungarian Kingdom and in Slovakia. The importance of the PJR has been so far neglected and overlooked by Slovakian legal historians – probably because of the language barrier, since the original language was Hungarian. The prepared edition of this historical legal source with commentary nevertheless compensates for previous deficiencies, finally allowing for the PJR to be fully appreciated in scholarly investigation in Slovakia.

6. Conclusion

The paper attempted to point to the methodology applied in the latest edition of a historical legal source in Slovakia – the edition of the Provisional Judicial Rules of the Judex-Curial Conference of 1861. Besides offering examples of application of various purely historical and purely legal methods, a detailed case study of the application of a legal historical method was offered. The elaboration, legal nature and importance of the source were explained in both its contemporaneous as well as in the current contexts.

Streszczenie

Edycja Zasad Stosowania Prawa Konferencji „Judekskurialnej" z 1861 r. i metodologia edycji źródeł historycznoprawnych

W latach 1849–1860 prawo węgierskie w tradycyjnej formie zostało zastąpione nowym systemem prawa zbudowanym na podstawach proweniencji austriackiej. W trakcie Konferencji „Judekskurialnej" w 1861 r. prawnicy oraz politycy podjęli decyzję o przezwyciężeniu 12 lat absolutyzmu i centralizmu doby Bacha oraz zdecydowali o odtworzeniu tradycyjnego węgierskiego systemu prawnego, z uwzględnieniem zmian dokonanych w marcu 1848 r. (konstytucja z marca 1848 r.) przy jednoczesnym utrzymaniu (częściowej recepcji) nowoczesnych regulacji austriackich, a także wprowadzeniu zupełnie nowych unormowań, w szczególności w zakresie postępowania cywilnego oraz prawa spadkowego. Dlatego też ogromne znaczenie Zasad Stosowania Prawa, przyjętych w 1861 r., jest

oczywiste. Niemniej z żalem przyznać trzeba, że to ogromnej wagi dla nauki historii prawa źródło nie zostało wyczerpująco opracowane w języku słowackim do 2013 r. Edycje tekstów źródłowych, będące publikacjami wielkiej wagi także dla historyków prawa, mają dłuższe tradycje na Słowacji i dawniej w Czechosłowacji. W szczególności należy wymienić takie pozycje, jak: *Diplomatár* pod redakcją Marsina, *Regestár* Sedláka oraz nowsze wydania legend pod redakcją Sopko, a także kronik pod redakcją Marsina. Nie do przecenienia jest znaczenie wielotomowej serii Sources on the History of Slovakia and the Slovaks, spośród której na uwagę zasługują następujące pozycje: Peter Blaho, Jarmila Vaňková (wyd.): *Corpus Iuris Civilis: Digesta*; Erik Štenpien (wyd.): *Tripartitum*; Rudolf Kuchar (wyd.): *Žilinská právna kniha [Žilina Legal Book]*; Miriam Laclavíková, Adriana Švecová (wyd.): *Pramene práva na území Slovenska I. (od najstarších čias do roku 1790) [Sources of law in Slovakia I. (From earliest times to 1790)]*; Miriam Laclavíková, Adriana Švecová (wyd.): *Pramene práva na území Slovenska II. (1790–1918). [Sources of law in Slovakia II. (1790–1918)]*. Doświadczenia płynące z prac edytorskich nad opublikowanymi ostatnio na Słowacji tekstami źródłowymi wskazują, że źródła pochodzące z różnych epok wymagają użycia rozmaitych metodologii, a czasem nawet rozpatrywania w kontekście poszczególnych gałęzi nauki. Dla przykładu można wskazać, że w zależności od tego, czy istnieje jeden egzemplarz danego tekstu źródłowego, czy też jest wiele różnych kopii, dociec trzeba zależności między poszczególnymi egzemplarzami, celem wychwycenia ewentualnych omyłek pisarskich lub nowelizacji. Co więcej, komentowanie tekstu źródłowego, często spisanego w języku obcym, stawia przed autorem inne wymagania niż interpretowanie obowiązujących obecnie regulacji prawnych. Dlatego też historia prawa dysponuje swoistą metodologią. Ma to związek z faktem, że nauka historii prawa jest interdyscyplinarna, są dla niej bowiem właściwe metody zarówno nauki historii, jak i prawa, przy czym metody stosowane w historii prawa są różne od czystych metod historycznych oraz prawniczych. Prawo dawne zawsze musi być mianowicie ukazywane w kontekście danych czasów i nie może być rozpatrywane wyłącznie w ujęciu terminologii i zasad współczesnego prawa; raczej powinno być postrzegane przez pryzmat myśli prawnej danych czasów. Takie właśnie podejście – metodę historyczną – zastosowano przy najnowszej słowackiej edycji Zasad Stosowania Prawa.