

Slovak legal science before 1918

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VOZÁR, J. Slovak legal science before 1918. *Právní obzor*, 101, 2018, special issue, pp. 1-7.

Slovak legal science before 1918. The subject of this article is work of important Slovak lawyers on laying foundation of Slovak legal science before 1918. I refer to the situation of legal science and position of lawyers in Austrian and Hungarian regions of the monarchy. In my work I analyse the most important law publications and articles in Slovak language published before 1918.

Key words: first years of cultivation of Slovak legal science, Slovak legal terminology

Introduction

The subject of this article is work of important Slovak lawyers on laying foundation of Slovak legal science before 1918. Before we start let me compare the situation in the Austrian regions of the monarchy. When comparing the situation of legal science and position of lawyers in the Austrian regions of the monarchy with Hungary, we compare two incomparable worlds. Czech lawyers were two generations ahead of their Slovak colleagues in building of science, terminology and Czech universities. The Czech law magazine *Právník* was founded already in 1861,¹ the Law no. 24/1882 established two universities in Prague: The Royal and Imperial German Charles-Ferdinand University and the Royal and Imperial Czech Charles-Ferdinand University, where students could be taught in Czech language already during the existence of Austria-Hungary. So-called “Pražák’s decree” from 1886 provided that since 1887 judgments of the higher regional court delivered in Czech matters would be directly formulated in Czech language, rather than translated into German as before.² In parallel with introduction of the Czech language at the Czech higher regional court the dictionary *Deutsch–böhmisch juristische Terminologie, German-Czech Legal Terminology*³ appeared. In

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¹ MASOPUST, Z. (ed.) *Law and state on pages of Právník: 150 years of the Czech law magazine*. Prague: Institute of State and Law of AS CR, 2011. 453 p.

² BIANCHI, L. et al. *History of state and law in the territory of Czechoslovakia in the period of capitalism 1848 - 1945. Volume I*. Bratislava: SAS published, 1971, p. 233.

³ *Deutsch – böhmisch juristische Terminologie: German- Czech legal terminology*. Prague: Josef Zeidler, 1887. 379 p.

the first years of development of Slovak legal science, a group of experts in civil law headed by Antonín Randa⁴, Josef Stupecký⁵ and Emanuel Tilsch was taking leave from Czech civil law⁶.

The situation in Slovakia was diametrically different. Slovak Faculty of Law and Slovak legal terminology did not exist and Slovak law magazine was founded one year before the revolution. The institutional idleness was replaced by work of thoughtful Slovak lawyers.

1. First years of cultivation of Slovak legal science

1.1. Law articles and publications of Augustín Ráth

Slovak lawyers served to their people not only as advocates in common legal disputes, but also as defenders against criminal manipulations at registration of Slovak electors, at pre-election and post-election persecutions, etc.⁷ Lawyers were those who started to cultivate legal science as well. Vladimír Fajnor in his work recalls the numerous articles of I. Dérer, M. Krno, L. Mičátko, Ľ. Bazovský, Ľ. Medvecký, and in particular scientific works of E. Stodola and A. Ráth.⁸

A. Ráth showed interest in scientific work already as a lawyer, as proved by many of his works. Ráth's theoretical paper called simply *Law* will capture an attentive reader's attention in many respects, but especially by the width of theoretical knowledge of A. Ráth. The list of literature contains nearly 50 works, in particular of German and French authors, including such jewels of legal thinking as publications of Rudolf von Ihering *Kampf um's Recht, Zweck im Recht*, or *Jurisprudenz des täglichen Lebens*. He started his work by saying that the concept of law was hard to squeeze in a short definition, so instead of it he presented a brief summary of development of law *per summos apices*.⁹ Classification of law to public and civil, objective and subjective, positive and natural was regarded by A. Ráth as the search for categories to which "we want to squeeze phenomena in which law is embodied."¹⁰ He pointed out that old nations such as Greeks had many genially conceived legal establishments.¹¹ He highly praised the Romans for not having regarded the ideal of decent and good law as unfeasible and mankind for having applied the legal principles, that had been advocated by the emperor Marcus Aurelius Antonius and his genial philosophers, for two thousand years.¹² He ended his

⁴ Antonín Randa (*8 July 1834 Bystřice nad Úhlavou – †6 October 1914 Dobřichovice). For more see NAVRÁTIL, M. *Almanac of Czechoslovak lawyers*. Prague: M. Navrátil, 1930, pp. 365–369.

⁵ Josef Stupecký (*11 November 1848 Prague – †27 August 1907 Šumava.) *Ibid.*, pp. 426–427.

⁶ Emanuel Tilsch (*8 April 1866 Opočno – †7 August 1912 Prague.) *Ibid.*, p. 459.

⁷ FAJNOR, V. Work of Slovak lawyers before revolution and in the first decade of the Republic. In *Právny obzor*, 1928, No. 9, p. 707.

⁸ *Ibid.*

⁹ RÁTH, A. Law. In *Slovenské pohľady*, 1905, No. 9, p. 546.

¹⁰ *Ibid.*, p. 549.

¹¹ *Ibid.*, p. 546.

¹² *Ibid.*

paper with the thought: “Development and gradation, both qualitative and quantitative, are possible, desirable and necessary in law like in everything that is human. We talk about legal humour, feeling and sense. There are issues that correctly=legally and hence justly can be solved only by a sharp-witted lawyer; his work resembles that of an artist, bringing together psychology and history of the subject.”¹³ According to scientific literature the coverage of the addressed subject by A. Ráth was sufficiently wide for the period, in which he lived, but also according to the present stringent criteria.¹⁴

His first monograph was a work entitled *Rights between a man and a woman in Hungary*.¹⁵ Augustín Ráth was inspired to its writing by the lack of information about Hungarian law in Austrian regions of the monarchy and by the growing natural interest in law applied in the other part of the monarchy: “With the growing political influence, natural weight and importance of the Hungarian part of the monarchy toward Austria, the interest of people living behind the border in our legal life grows and foreign experts increasingly turn their attention to Hungary.”¹⁶ This monograph is ground-breaking from several aspects. It is the first scientific work written in Slovak language. Augustín Ráth by it revealed the potential of Slovak to become a full-value specialised and scientific language. This work is remarkable also because it was written by a lawyer from a small rural town, who did not need it for his performance of his profession. On the contrary, it meant a considerable time and financial burden for a lawyer. He published the monograph at his own cost and by his act he looked far behind the horizon. Bohuš Tomsa evaluating Slovak legal science wrote: “Dr. August Ráth, initially lawyer and since 1921 professor of civil law at the new-founded Slovak Faculty of Law in Bratislava, was the first Slovak lawyer who strived to perform really individual scientific work independently from those who succumbed to denationalisation. Led already during his study by Professor Kajuch in Budapest and by the slavacist Kadlec in Prague, he later became a genuine founder of Slovak law literature.”¹⁷

Now we come back to the monograph that A. Ráth divided into three parts:

- Personal relationship (legal consequences of marriage)
- Property issues during life;
- Norms of succession of spouses, especially widow inheritance after the death of a husband.

This monograph also contains many interesting decisions of Curia and legal opinions in marital matters. For illustration I will mention at least some of them:

1. “A man has the right to choose the town and dwelling room, but only if he covers the needs of household”.¹⁸

¹³ *Ibid.*, p. 549.

¹⁴ POTE MRA, M. Paper to the thought profile of Slovak lawyers in 1901 – 1918. In *Právny obzor*, 1972, No. 6, p. 564.

¹⁵ RÁTH, A. *Rights between a man and a woman in Hungary*. Prague: Author published, 1906. 59 p.

¹⁶ *Ibid.*, p. 3.

¹⁷ TOMSA, B. *Theory of legal sciences*. Prague: Vše hrd, 1946, p. 132.

¹⁸ RÁTH, A. *Rights between a man and a woman in Hungary*. Prague: Author published, 1906, p. 13.

2. *“Malicious abandonment of husband, performed consciously and without a legal ground, shall be regarded as desertion and woman in this case is not entitled to the legal benefits of alimentionation.”*¹⁹

3. *“A woman should be helpful to her man and to run a house alone, which is both her obligation and her right. Of course, only work adequate to her condition may be expected from a woman.”*²⁰

The core part of the work is devoted to explanations of the matters of matrimonial property. The author analyses the exclusive property of wife, dowry, “donatio proper nuptias” (counter-dowry) and co-acquisition (property acquired by both spouses). Co-acquisition was one of the most problematic institutes of Hungarian private law with fundamental controversies in the judicial practice and legal science. Many of them are presented also by Augustín Ráth, e.g. problem of the class nature of co-acquisition and its extent: *“According to valid law co-acquisition only applies to the commons – former subjects – and to town population, i.e. it does not apply to aristocracy and honoratiore, except where the source of co-acquisition is property of woman (cum enim substantia uxorea radix et fundamentum acquisitionis fuerit). It means that the principle as quaestio facti, where “radix” starts and ends, should be left to judicial interpretation, which applies it to both men and women. At actual state of affairs, the question is whether property acquired by a woman through intellectual work is the subject of co-acquisition?”*²¹

At the time of publication of the monograph *Rights between a man and a woman in Hungary* A. Ráth probably did not realise that by this work he had laid foundation of cultivation of legal science in Slovak language. The importance of this work was recognised later by another important Slovak lawyer of that period V. Fajnor, who short after the revolution wrote: *“I also want to draw attention to the precious work of A. Ráth entitled “Rights between a man and a woman in Hungary”, which appeared in Volume VI. of “Compendium of Legal and State Sciences,” and later in 1906 as a special reprint by Alojs Wiesner in Prague. I can only recommend you this brochure that is not available yet, although it contains a lot of purely historical and polemical material. Ráth’s paper is the more valuable that it contains partial translation of first text of “Draft of Hungarian Civil Code” from 1900 into Slovak language. This draft is based on living law and also its parts not corresponding to present law provide a valuable help to a Czech expert in civil-law to easily grasp the peculiarities of marital property law in Slovakia, especially the theory of co-acquisition, which is regarded as the most difficult part of Hungarian civil law.”*²²

The work proves that the young lawyer A. Ráth not only had thorough knowledge of the material, but also was prepared in terms of methodology, his student Š. Luby said.²³ We welcome the fact that the work is written in Slovak language. The author was aware

¹⁹ *Ibid.*, p. 11.

²⁰ *Ibid.*, p. 14.

²¹ *Ibid.*, p. 36.

²² FAJNOR, V. Marital property law in Slovakia. In *Právny obzor*, 1920, No. 1, pp. 4-5.

²³ LUBY, Š. Personality and work of prof. Dr. August Ráth. In *Právny obzor*, 1942, No. 2-3, p. 42.

of the limits of Slovak legal terminology in that period and explained some terms in Czech language. Before writing the monograph Augustín Ráth understood how important it was to develop legal terminology in Slovak language: “*I would like to draw attention to this poignant issue and to highlight existing deficiencies and the need, firstly, to collect good and original popular expressions and designations for legal concepts, secondly, to take over suitable expressions from other Slavonic languages that correspond to the spirit of Slovak language, and thirdly, to develop a new Slovak terminology.*”²⁴

In the following part of this work A. Ráth points out to different Hungarian legal terms and searches for their Slovak equivalents or helps himself with Czech or German legal terminology.²⁵ Augustín Ráth was the first Slavonic author who used Slovak language also for scientific purposes. He often found terms that are still used (e.g. defendant, cession, lost profit, tenure, claim, expropriation).²⁶ The search for adequate legal terms was probably the most difficult task, because legal regulations had not been issued in the Slovak language in that period. On 4 March 1849 the Imperial Patent for publication of general legal regulations was issued, according to which the Imperial Code would be published in all everyday languages used in the country. Slovak was also to be included among these languages, but the reality was different. According to regulations implementing this code German was first mentioned as everyday language; Italian was mentioned on the second, Hungarian on the third and Czech (in both the Moravian and Slovak literary language) on the fourth place. As a result, Czech texts of imperial laws also contained explanatory Slovak terms.²⁷ This situation lasted for more than three years, until Regulation of the Ministry of Justice no. 51/1853 of the Imperial Laws Collection provided that only German text of the laws was authentic.²⁸

Augustín Ráth became a member of the team working on one of the most renowned dictionaries in the Czech Republic – *Otto's Encyclopaedia* – in 1907. He processed the entry “*Modern constitution*” for this dictionary. However, on eighteen pages he described not only valid constitutional acts, but also a substantial part of the Hungarian legal system. Under this entry we can find among others information to the Legal Article no. XLIV from 1868 on equality of nationalities. He describes in detail laws relating to religion and organisation of Churches, he affects so-called “industrial laws”, laws in the area of agriculture, competition, bankruptcy law or law for promissory notes. In the part devoted to Hungarian commercial law he indicates that Law no. XXXVII/1875 was drafted under the influence of German law and contained many translated paragraphs of this law. He paid special attention to criminal law.²⁹ In this connection he did not forget to point out to the abuse of criminal law against other nations living in the territory of Hungary: “*Unpleasing*

²⁴ RÁTH, A. From law. In *Slovenské pohľady*, 1901, No. 10, p. 593.

²⁵ *Ibid.*, p. 593-596.

²⁶ *Ibid.*, p. 594-595.

²⁷ KLIMENT, J. Czech as a language of laws published in Slovakia after 1848. In HEXNER, E. (ed.) *Homage to dr. Karel Laštovka on the occasion of his sixtieth birthday*. Bratislava: PF UK, 1936, pp. 218-220.

²⁸ *Ibid.*, p. 219.

²⁹ RÁTH, A. Modern constitution (from 1867). In *Otto's Encyclopaedia. Volume XXVI: (U – Vusin)*. Prague: J. Otto, 1907, pp. 89-90.

for non-Hungarians is among others Chapter 6, §§ 171–174 on railing or provocations against constitution, laws, authorities and officers. However, it disregards the actual situation, i.e. whether somebody was provoked or whether the provocation was expressed by an unlawful act. The court arbitrarily decides whether the incriminated conduct is provocative or able to provoke someone. On such occasions the court is increasingly inclined to a decision less favourable for the defendant, as proved by experience over many years when patriots were sent to the jail for their press articles or statements.”³⁰

In his paper he noted that Magyarization of other nations was not a domain of the central government, but that it penetrated also into the policy of local authorities: “A zhupa ceased to be a bastion of national freedom and renitent force against central authorities. Its leader appointed by the government and acting as its confidant with broad discretionary powers is – drastically spoken – a political agent of the government.”³¹

1.2. Works of Emil Stodola and Vladimír Fajnor

The second work from the area of law in Slovak language was published in 1915. The author was another important Slovak lawyer of that period Emil Stodola and his work was entitled *Contemporary Hungarian legal system – First legal article from 1911 with supplements*. This work could not have escaped attention of A. Ráth, who commented its publication as follows: “Before all other ornaments of national spirit and life I place works that cut out of granite of science the cornerstones of our Slovak existence. Our poverty is not material; great good of self-government and self-education gives richness and full life to a nation. Therefore, the work of Emil Stodola is important and precious.”³² He also noted that terminologically it would be more appropriate to talk about court rules instead of a contemporary code of procedure and added: “The issue of our legal terminology is always topical and its solution cannot be imagined otherwise than as all forces of the nation will join and prepare for a birth of a big fetus.”³³

Emil Stodola published this work at his own cost. It should have served as a useful aid to Czech colleagues in performing executions between Austria and Hungary. The author points out to the news brought by this code of procedure, in particular extension of powers of district courts and larger freedom of courts when taking evidence. The appeals system was maintained, with a possibility to request the Royal Court or Curia Regis (depending on the value of dispute) for a review of judgement. The monograph ends with a short Hungarian–Slovak vocabulary. Emil Stodola separately indicated some deviations between Czech and Slovak legal terms.

Another important Slovak lawyer of that period – Vladimír Fajnor – started to publish specialised law articles in the new-founded magazine *Slovenský Peňažník*. Already in its

³⁰ *Ibid.*, p. 89

³¹ *Ibid.*, p. 79.

³² RÁTH, A. “Elements” of Emil Stodola. In *Slovenský denník*, 8 April 1915, p. 1.

³³ *Ibid.*

first volume he published four articles. Three of them were devoted to continuation of the amendment of the Enforcement Law proclaimed in the Regional Code as Legal Article XVI from 1908 and put into life by Regulation of the Minister of Justice no. 19.900/1908. As an experienced lawyer he tried to analyse consequences of this amendment for financial institutions. He noted that previous Hungarian Enforcement Law left too much room to a crafty debtor to drag the enforcement procedure out almost forever. It causes high costs of legal proceedings which menaced the very essence of enforcement.³⁴

When writing articles, he used a comparative method to highlight the differences between the current and previous legal situation. He analysed the influence of the amendment on movable and immovable property. He pointed out to so-called “*bidding hyenism*”, when a dummy bidder put a bid although he could not afford to pay the bidding price. In this way immovable property was auctioned off forever and the debtor could continue to use it.³⁵

In the last part of his articles on the amendment of the Enforcement Law he referred to a phenomenon that is still well-known – the courts rather take the side of the debtor than that of the financial institution.³⁶

Finally, V. Fajnor evaluated the whole amendment by the words: “*But when we summarise the news brought by the amendment and their probable consequences, we can say with satisfaction that the economic impact on loans provided by financial institutions, which are our main focus in this magazine, will be not nearly as disastrous as some, mostly loan sharks, drummed*”.³⁷

In his article *Tax reform*, he pointed out to the influence of the new tax reform in the following areas:

- Tax on interest and rent,
- Tax on stock companies and cooperatives;
- Tax on earnings.

Having analysed the new tax legislation, V. Fajnor said that “*this news will gain only increase the tax burden for many taxpayers*”.³⁸

Conclusion

We respectfully submit that monographs of A. Ráth and E. Stodola analysed above together with contributions from A. Ráth and V. Fajnor can be regarded as the first attempts at cultivation of modern legal science in Slovakia. The real development of Slovak legal science occurred with the appearance of the first law magazine *Právny obzor* in 1917 that was founded by E. Stodola with new dynamics after foundation of the Czechoslovak Republic.

³⁴ FAJNOR, V. Amendment of the Enforcement Law. In *Slovenský Peňažník*, 1909, p. 10.

³⁵ FAJNOR, V. Amendment of the Enforcement Law (continuation). In *Slovenský Peňažník*, 1909, p. 28.

³⁶ FAJNOR, V. Amendment of the Enforcement Law (completion). In *Slovenský Peňažník*, 1909, p. 47.

³⁷ *Ibid.*, p. 48.

³⁸ FAJNOR, V. Tax reform. In *Slovenský Peňažník*, 1909, No. 8, p. 145.