

# Criminal Law for the Czechoslovak Republic

Jabloucký, T.\*

JABLONICKÝ, T.: Criminal Law for the Czechoslovak Republic. *Právní obzor*, 101, 2018, special issue, pp. 60-82.

**Criminal Law for the Czechoslovak Republic.** The article is devoted to the efforts at a reform of criminal law in the Czechoslovak Republic, which after its foundation in 1918 had to cope with the problem of dualism of the criminal law system. Two different penal codes applied in the territory of the Czechoslovak Republic, which required the development of a fully Criminal Code valid for the whole Republic. The Commission for a Reform of the Czechoslovak Criminal Code was set up in 1920, whose members, the most important personalities of Czechoslovak criminal law science, elaborated in the period of 1921–1926 a very reform draft of the Criminal Code, striving to introduce the most recent knowledge from foreign legislative works, criminal law science and criminology to Czechoslovak criminal law. The new Czechoslovak Criminal Code was intended to more effectively protect society against crime, so the draft Criminal Code under the influence of the modern school of criminal law took into account in particular motivation and character of the offender. The draft brought a number of proposals for the reform. In the assessment of offences, it attached great importance to motivation of the offender, which was to become a new criterion for classification of offences to crimes and offences. The authors of the draft proposed to replace traditional bipartition of forms of culpability (intention and negligence) by tripartition. In the context of efforts at a reform of the Czechoslovak Criminal Code this paper also analyses the issues of the sentence of imprisonment and the death penalty. It ends with description of the fate of the draft Criminal Code from 1937, which – like the preceding draft Criminal Code from the period of 1921-1926 – was never codified.

**Key words:** criminal code, criminal law, culpability, death penalty, motivation of offender

## I. Heritage of Austria-Hungary

In Czech lands that had been part of Austria-Hungary before the foundation of the Czechoslovak Republic, the same Austrian criminal law as in early 19th century applied also after 1918, because it was largely based on the Austrian **Code on Criminal Offences and Serious Infringements of Police Regulations** from 1803,<sup>1</sup> a product of absolutism under the reign of the emperor Franz I (\*12 February 1768 – †2 March 1835). The Austrian Criminal Code from 1803 relied on the **relative criminal deterrence theory**, elaborated by the reformer<sup>2</sup> and “father”<sup>3</sup> of modern German criminal law Professor Paul Johann Anselm von Feuerbach (\*14 November 1775 – †29 May 1833),<sup>4</sup> whose teachings

\* JUDr. Tomáš Jablounický, PhD. Institute of State and Law of the Slovak Academy of Sciences in Bratislava.

<sup>1</sup> Gesetzbuch über Verbrechen und schwere Polizey-Uibertretungen. Patent vom 3. Sept. 1803. Wien: Johann Thomas Edlen von Trattner, 1803, 326 p. + 216 p.

<sup>2</sup> WETZELL, Richard F.: *Inventing the Criminal. A History of German Criminology, 1880–1945*. Chapel Hill – London: The University of North Carolina Press, 2000, p. 74.

<sup>3</sup> HELLER, Kevin Jon – DUBBER, Markus D. (eds.): *The Handbook of Comparative Criminal Law*. Stanford: Stanford University Press, 2011, p. 2; DUBBER, Markus D. – HÖRNLE, Tatjana: *Criminal Law. A Comparative Approach*. Oxford: Oxford University Press, 2014, p. 18.

<sup>4</sup> MARQUARDSEN: *Feuerbach: Paul Johann Anselm v. F.* In: Allgemeine Deutsche Biographie. Band VI. Leipzig: Verlag von Duncker & Humblot, 1877, pp. 731–745; *Feuerbach, Paul Johann Anselm*. In: Meyers

significantly influenced Austrian criminal legislation. According to Feuerbach's criminal theory of general prevention the purpose of cruel public punishments was to deter potential offenders by the psychological threat of punishment.<sup>5</sup> **The Penal Code on Crimes, Offences and Legal Infringements** from 1852,<sup>6</sup> drawn up by Professor Anton Hye von Glunek (\*26 May 1807 – †8 December 1894),<sup>7</sup> did not represent a significant reform of substantive criminal law.<sup>8</sup> This Austrian Penal Code from 1852 was conceptually not a new criminal law; it did not represent an original codification in the strict sense of the word, it was largely an amended, overworked revision or simple "new edition"<sup>9</sup> of the initial substantive law provisions of the preceding Penal Code from 1803,<sup>10</sup> as suggested by the name of this "new" Penal Code.<sup>11</sup> The Austrian Penal Code from 1852 was not replaced by updated criminal code<sup>12</sup> during the whole following period of Austria-Hungary; it was only gradually amended by special acts.

---

Großes Konversations-Lexikon. Band VI. VI., gänzlich Neubearbeitete und vermehrte Auflage. Leipzig – Wien: Bibliographisches Institut, 1904, p. 496; GRÜNHUT, Max: *Anselm v. Feuerbach und das Problem der strafrechtlichen Zurechnung*. Hamburg: W. Gente, 1922, 283 p.; FOLTIN, Edgar M.: *Feuerbach zum Gedenken*. In: Prager Juristische Zeitschrift, Jahrgang XIII., Nummer 18, Reichenberg, Verlag von Gebrüder Stiepel Gesellschaft, 2. Oktoberheft 1933, pp. 613–620; RADBRUCH, Gustav: *Paul Johann Anselm Feuerbach*. Wien: Verlag von Julius Springer, 1934, 221 p.; MERZBACHER, Friedrich: *Feuerbach, Paul Johann Anselm Ritter v.* In: Neue Deutsche Biographie. Band V. Berlin: Duncker & Humblot, 1961, pp. 110–111; NAUCKE, Wolfgang: *Paul Johann Anselm von Feuerbach. Zur 200. Wiederkehr seines Geburtstags am 14. November 1975*. In: Zeitschrift für die gesamte Strafrechtswissenschaft, Band LXXXVII., Berlin, Walter de Gruyter & Co., 1975, pp. 861–887; *Paul Johann Anselm Feuerbach*. In: VORMBAUM, Thomas (Hrsg.): *Moderne deutsche Strafrechtsdenker*. Berlin – Heidelberg: Springer-Verlag, 2011, pp. 361–363.

<sup>5</sup> FUCHS, Helmut: *Österreichisches Strafrecht*. Allgemeiner Teil I. VII., überarbeitete Auflage. Wien – New York: Springer, 2008, p. 10; GROPP, Walter: *Strafrecht Allgemeiner Teil*. IV., ergänzte und terminologisch überarbeitete Auflage. Berlin – Heidelberg: Springer-Verlag, 2015, pp. 45–46; MEIER, Bernd-Dieter: *Strafrechtliche Sanktionen*. IV. Auflage. Berlin – Heidelberg: Springer-Verlag, 2015, pp. 22–24.

<sup>6</sup> Code on Crimes, Offences and Legal Infringements No. 117/1852 of Imperial Law Gazette., published on 27 May 1852.

<sup>7</sup> *Hye Ritter von Glunek, Anton*. In: WURZBACH, Constant von: *Biographisches Lexikon des Kaiserthums Oesterreich*. Theil IX. Wien: Aus der kaiserlich-königlichen Hof- und Staatsdruckerei, 1863, pp. 458–461; *Dr. Anton Hye Freiherr v. Glunek*. In: Juristische Blätter, Jahrgang VI., Nr. 21, Wien, 27. Mai 1877, pp. 274–275; HUGELMANN: *Hye, Anton*. In: Allgemeine Deutsche Biographie. Band L. Leipzig: Verlag von Duncker & Humblot, 1905, pp. 526–547; *Hye von Glunek Anton Josef Frh.* In: Österreichisches Biographisches Lexikon 1815–1950. Band III. Graz – Köln: Verlag Hermann Böhlau Nachf., 1965, p. 22.

<sup>8</sup> STOOSS, C.: *Das österreichische Strafgesetzbuch. 1803 bis 1903*. In: Deutsche Juristen-Zeitung, Jahrgang VIII., No. 24, Berlin, Verlag von Otto Liebmann, 1903, p. 564.

<sup>9</sup> LAMMASCH, Heinrich: *Grundriß des Strafrechts*. IV., berichtigte und ergänzte Auflage. Leipzig: Verlag von Duncker & Humblot, 1911, p. 6.

<sup>10</sup> STOOSS, Carl: *Eine strafrechtliche Reform in Oesterreich*. In: Deutsche Juristen-Zeitung, Jahrgang VIII., No. 1, Berlin, Verlag von Otto Liebmann, 1903, p. 16.

<sup>11</sup> The Imperial Patent proclaiming and from 1 September 1852 putting into practice a new (later amended and completed by new provisions) edition of the Code on Criminal Offences and Serious Infringements of Police Regulations from 3 September 1803, as well as the only Penal Code on Crimes, Offences and Legal Infringements for the whole Empire (except for the Military Frontier) No. 117/1852 of Imperial Law Gazette, publisher on 27 May 1852.

<sup>12</sup> Most important drafts of the Austrian Penal Code: Hye's draft of the Penal Code from 1863–1867; Glaser's draft of the Penal Code from 1874; Schönborn's draft of the Criminal Code from 1889 and 1891; Hoegel-Lammasch's draft of the Penal Code from 1906; preliminary draft of the Penal Code from 1909.

The Hungarian **Penal Code of Crimes and Offences** from 1878<sup>13</sup>, stemming from a more liberal Hungarian period of the 1870s, applied in the territory of Slovakia, which had been part of Austria-Hungary until 1918. This Hungarian Criminal Code from 1878 then marked significant progress against Austrian criminal law. The Csemegi-Code<sup>14</sup> was in many respects more modern, among others because its author Károly Csemegi (\*3 May 1826 – †18 March 1899)<sup>15</sup> took as the basis the **Penal Code for the German Empire** from 1871.<sup>16</sup>

Both valid penal codes, the Austrian one from 1852 and the Hungarian one from 1878, were then taken over by the Czechoslovak system of criminal law, and in the Czechoslovak Republic they were applied dually, as amended, up to the middle of the 20th century, when the Criminal Code from 1950 was adopted.<sup>17</sup>

## II. Dualism of the criminal law system of the Czechoslovak Republic

After foundation of the Czechoslovak Republic in 1918 the Czechoslovak criminal law system in the territory of Czech lands was thus based on the initial Austrian Penal Code (older than 115 years), in the territory of Slovakia on the initial Hungarian Penal Code (older than 40 years). The **dual criminal law system** applied in the territory of the Czechoslovak Republic and its **two different penal codes contained many different penalties**, due to which perpetrators were often punished differently in the name of the same Republic. This situation alone sufficed to “undermine trust in the justness of judgments”.<sup>18</sup> **Criminal justice was hard to defend with a dual system of criminal law.**

The representatives of the criminal legal practice realised the unsustainability of this situation, but did not support a fundamental reform of Czechoslovak criminal law, claiming that legislative work should be limited to the technical aspect of unification of both valid penal codes. However, such **unification of criminal law was hardly acceptable from the technical aspect, because it involved two different concepts of criminal law**, which could not be simply bridged over stylistically. Professor Jaroslav Kallab saw in the fatalism hidden in such practical approach a serious problem and etiologically stated: “Our period has many unresolved social and moral issues. However, does it mean that we should sit back and wait until “it is resolved”? Who should do it? In this fatalism, in this escape from responsibility lies one of the most fatal diseases of our

<sup>13</sup> Legal article V/1878.

<sup>14</sup> *Csemegi-kódex*. In: Magyar Nagylexikon. Kötet V. C–Csem. Budapest: Magyar Nagylexikon Kiadó, 1997, pp. 826–827.

<sup>15</sup> WEISZ, Max: *Csemegi, Karl*. In: The Jewish Encyclopedia. Volume IV. New York – London: Funk and Wagnalls Company, 1903, p. 380; *Csemegi Károly*. In: Révai nagy lexikona. Kötet V. Csata–Duc. Budapest: Révai Testvérek Irodalmi Intézet Részvénytársaság, 1912, p. 43; *Csemegi Károly*. In: Magyar Nagylexikon. Kötet V. C–Csem. Budapest: Magyar Nagylexikon Kiadó, 1997, p. 826.

<sup>16</sup> Das Strafgesetzbuch für das Deutsche Reich vom 15. Mai 1871.

<sup>17</sup> Criminal Code No. 86/1950 Coll., of 12 July 1950.

<sup>18</sup> KALLAB, Jaroslav: *Reform of the Criminal Code*. In: Lidové noviny, Volume 28, No. 367, Brno, 27 July 1920 in the morning, p. 1.

era, which affects intelligentsia in particular.”<sup>19</sup> According to Professor Jaroslav Kallab, especially in a critical period, the criminal law scientists should not hide and wait for orders of someone else, because they are obliged to conduct a professional discussion and offer concrete solutions.<sup>20</sup> The postponement of a reform of Czechoslovak criminal law, while maintaining the existing legal situation, might be possible if the Czechoslovak Republic had a single – even though outdated – penal code. One – legislatively and technically well drafted – penal code could be maintain by interpretation or minor amendments at a more or less acceptable level, but this solution was unfeasible in the Czechoslovak Republic, which had two penal codes.<sup>21</sup> After 1918 people became aware that unity of the new-founded Czechoslovak Republic required elimination of the dual criminal law system, **but in spite of efforts at unification of criminal law the adverse effects of dualism of criminal law had persisted for several years.**<sup>22</sup>

The period after a four-year world war and foundation of the Czechoslovak Republic was in many respects a period of transformations, in which a lot of concepts regarded as unchangeable before World War I, were expected to give way to new, progressive ideas. However, **with the growing number of new-adopted Republic laws it increasingly became apparent that Czechoslovak criminal legislation cannot make do with the inadequate framework of outdated criminal law**, or even with adding criminal law novelties in the old penal codes. However criminal law practitioners, who had applied the old penal codes for their whole life, did not want to change these laws and their resistance to new criminal law concepts was the stronger the less they had followed changes in the development of foreign criminal law science and criminology, regarding perception of the issue of crime and punishment, made in the last decades. They explained their objections against a fundamental reform of the Czechoslovak criminal law by social uncertainty of the period, in which – according to them – “each work done on a new penal code means a waste of time and energy”,<sup>23</sup> they proposed to remove only the most flagrant discrepancies and otherwise to further wait for stabilisation of the social situation. However, according to Professor Jaroslav Kallab such waiting for a new criminal law with an idea that the new social order (still unknown) would establish its new criminal law, stemmed from “total ignorance of conditions of social development”,<sup>24</sup> because only fantasists could assume that a new social order would “just fall into their lap” and immediately solve all problems and eliminate all obstacles to a healthy social life.<sup>25</sup> Those who cared about actual progress had to actively work on the new social order instead of believing in miracles.

<sup>19</sup> KALLAB, Jaroslav: *Czechoslovak Criminal Code*. In: Lidové noviny, Volume 29, No. 257, Brno, 25 May 1921 in the morning, p. 1.

<sup>20</sup> Ibidem, p. 1.

<sup>21</sup> KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 36, No. 394, Brno, 5 August 1928 in the morning, p. 1.

<sup>22</sup> *Around the reform of criminal law*. In: Právník, Volume LXV, Prague, Právnícká Jednota in Prague, 1926, p. 463.

<sup>23</sup> KALLAB, Jaroslav: *Reform of the Criminal Code*. In: Lidové noviny, Volume 28, No. 367, Brno, 27 July 1920 in the morning, p. 1.

<sup>24</sup> Ibidem, p. 1.

<sup>25</sup> Ibidem, p. 1.

**In the new-founded Czechoslovak Republic the reform efforts in the area of criminal law revived and the need of a new, modern and genuinely Czechoslovak Criminal Code was gradually recognised.** However, as criminal law of every nation is “one of the most reliable measures of its cultural maturity”,<sup>26</sup> because it shows “on one hand, how it respects individual freedom, i.e. how it is protected against arbitrariness and wrongdoing of state power, and on the other hand, how energetically is the nation prepared to fight against those who menace its moral development by attacks against important interests, and which interests it considers as most important”,<sup>27</sup> the task to elaborate the first Czechoslovak criminal code was not simple at all. Fortunately, **at the time when it was founded, the Czechoslovak Republic already had excellent teachers and scientists of criminal law.** Already before World War I the founding generation couple of professors of Austrian criminal law at Faculty of Law of the Czech Charles-Ferdinand University, Alois Zucker (\*4 July 1842 – †1 October 1906)<sup>28</sup> and František Storch (\*13 September 1850 – †21 December 1924)<sup>29</sup>, was replaced by two members of the next generation, professors of Austrian criminal law August Miříčka (\*2 December 1863 – †1 February 1946)<sup>30</sup> and Josef Prušák (\*3 December 1873 – †22 February 1921).<sup>31</sup> The most original and influential Czechoslovak criminal law scientist and criminologist, Professor Jaroslav Kallab (\*24 June 1879 – †10 February 1942) joined them in 1913.<sup>32</sup>

### III. The Commission for a Reform of the Czechoslovak Criminal Code

Professor August Miříčka, who was called to manage legislative works in the area of criminal law, became a key personality of new Czechoslovak criminal legislation after 1918. Under the lead and significant influence of Professor Miříčka a **draft Czechoslovak Criminal Code** was to be elaborated to introduce **modern criminal theories** into Czechoslovak criminal law and thus detract from traditions of the legal order, which it should have replaced. The aim was to unify criminal law in the Czechoslovak Republic and to replace both outdated penal codes by a new one, where the authors tried to legislatively use the **newest knowledge of foreign legislative works, criminal law science and criminology** that had not been known yet at the time of elaboration of both valid penal codes.<sup>33</sup> Both penal codes in force, the initial Austrian code from 1852 and the initial Hungarian code from 1878, lagged in many respects behind the development of criminal law science and criminology and did not fulfil any more the new requirements

<sup>26</sup> KALLAB, Jaroslav: *Czechoslovak Criminal Code*. In: Lidové noviny, Volume 29, No. 257, Brno, 25 May 1921 in the morning, p. 1.

<sup>27</sup> Ibidem, p. 1.

<sup>28</sup> Archive of Charles University, Fund: Faculty of Law, reg. no. 193, Dr. Alois Zucker, 153 p.

<sup>29</sup> Archive of Charles University, Fund: Faculty of Law, reg. no. 166, Dr. František Storch, 164 p.

<sup>30</sup> Archive of Charles University, Fund: Faculty of Law, reg. no. 137, Prof. Dr. August MIŘIČKA, 252 p.

<sup>31</sup> Archive of Charles University, Fund: Faculty of Law, reg. no. 152, Dr. Josef Prušák, 117 p.

<sup>32</sup> Archive of Charles University, Fund: Faculty of Law, reg. no. 118, Dr. Jaroslav Kallab, 90 p.; Archive of Masaryk University, Fund: A 1 Rectorate MU, carton 82/668, Prof. Dr. Jaroslav Kallab – personal file.

<sup>33</sup> KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 36, No. 394, Brno, 5 August 1928 in the morning, p. 1.

of the theory and practice of criminal law. Therefore, the reform of Czechoslovak criminal law could not be limited to unification of both valid penal codes; **it was necessary to draw up a new, modern penal code.**

Works on the reform of Czechoslovak criminal law and on unification of both valid penal codes started on 14 June 1920 with a working meeting led by the Minister of Justice Dr. Alfréd Meissner (\*10 April 1871 – †29 September 1950).<sup>34</sup> Thanks to Professor August Miříčka **Commission for a Reform of the Czechoslovak Criminal Code** at the Ministry of Justice was set up at this meeting. Among others Professor Jaroslav Kallab, Dr. Albert Milota (\*8 April 1877 – †22 December 1940),<sup>35</sup> Professor August Miříčka and Professor Josef Prušák,<sup>36</sup> whose work was complicated by a serious disease ended by early death a few months later, became its members. Professor August Miříčka was elected chairman of the commission by unanimous vote of its members.<sup>37</sup> A number of fundamental issues of the reform were addressed and papers for General Part of the Criminal Code<sup>38</sup> were divided at meetings of the commission on 25 June 1920 and 6 July 1920.

#### **IV. Draft of General Part of the Penal Code of Crimes and Offences from 1921**

The first tangible result of work of the Commission was a **draft of General Part of the Penal Code of Crimes and Offences**, published by the Ministry of Justice in September 1921.<sup>39</sup> This draft, even though elaborated under the auspices of the Ministry of Justice, was not a governmental draft in the strict sense of the word; it was a work of the commission composed of excellent criminal law scientists (theoreticians) and officers of the Ministry of Justice. All members of this Commission for a Reform of the Czechoslovak Criminal Code worked on the draft Penal Code as a team, but instructions and advices of Professor August Miříčka were regarded as decisive from the very beginning. Professor Jaroslav Kallab could closely observe work of Professor Miříčka at legislative meetings of the commission and about importance of his leadership for success of these works he wrote: “Free of any dogmatic prejudices – maybe except for the issue of tripartition of forms of culpability and the subjective theory of attempt – that sometimes make the participation of professors-theoreticians in legislative works

<sup>34</sup> *Preliminary drafts of the Penal Code on Crimes, Offences and Legal Infringements. I. Drafts.* Issued by the Commission for Reform of the Czechoslovak Criminal Code. Prague: Ministry of Justice published, 1926, p. 5.

<sup>35</sup> Archive of Charles University, Fund: Faculty of Law, reg. no. 136, Prof. Dr. Albert Milota, 16 p.

<sup>36</sup> *Preliminary draft of General Part of the Criminal Code.* Issued by the Ministry of Justice of the Czechoslovak Republic. Ministry of Justice published, 1921, p. 3.

<sup>37</sup> MILOTA, Alb.: *Prof. Dr. August Miříčka. (To his 70th birthday.) III.* In: Journal of the Czechoslovak Criminal Law Society, Volume IX., No. 3, Prague, Czechoslovak Criminal Law Society in Prague, 1933, p. 72.

<sup>38</sup> *Preliminary drafts of the Penal Code on Crimes, Offences and Legal Infringements. I. Drafts.* Issued by the Commission for Reform of the Czechoslovak Criminal Code. Prague: Ministry of Justice published, 1926, p. 5.

<sup>39</sup> MIŘIČKA, A.: *Draft of the Czechoslovak Criminal Code.* In: *Právník*, Volume LXI., Prague, Právnícká Jednota in Prague, 1922, p. 1.

less desirable, armed by endless patience and conciliation, by the rare gift to quickly spot practical implications of a proposed formulation, and on the top by an extraordinary ability to express his ideas precisely, briefly and consistently in beautiful and correct Czech, he made an ideal chairman of legislative commissions, work under whom never made you tired, always encouraged you to deeper perception of your task, and brought you a kind of aesthetic satisfaction.”<sup>40</sup>

According to Professor August Miříčka the authors working on the draft of the Criminal Code always kept in mind the catchword: “Efficient fight against crime.”<sup>41</sup> The reform of the fight against crime was necessary in many respects, the issue of criminal policy was to find more effective penal means and measures necessary for this fight.

The new Czechoslovak Criminal Code was expected to intensively intervene into the social conditions and to give clear and solid guidelines for the future social development of nation – the question about it therefore represented a question, in which it was necessary to arouse “the broadest interest, so that points at issue can be solved by a substantive and peaceful discussion”.<sup>42</sup> When it completed the first part of its task, the Commission for a Reform of the Czechoslovak Criminal Code therefore proposed to the Ministry of Justice to publish the draft of General Part of the Penal Code of Crimes and Offences from 1921 together with explanatory report<sup>43</sup> and thus create conditions for a public and substantive discussion.<sup>44</sup>

## V. Low motivation of offender – a new criterion of classification of unlawful facts to crimes and offence

**The draft of General Part of the Penal Code of Crimes and Offences from 1921 classified unlawful acts to “crimes” and “offences” according to a new criterion, which was low motivation of the offender.**<sup>45</sup> The draft gave new content to the existing differentiation between crimes and offences by defining unlawful acts inspired by low motivation of the offender, as “crimes” and the other unlawful acts as “offences”. Unlike some other penal codes and drafts (especially the Swiss draft), the classification of unlawful facts to crimes and offences was maintained, so that “the real criminals could

<sup>40</sup> KALLAB, Jaroslav: *Prof. dr. August Miříčka celebrated his seventieth birthday*. In: Časopis pro právní a státní vědu, Volume XVII., Brno, Právnická Jednota Moravská in Brno, 1934, p. 132.

<sup>41</sup> MIŘIČKA, A.: *Draft Czechoslovak Criminal Code*. In: Právník, Volume LXI., Prague, Právnická Jednota in Prague, 1922, p. 1.

<sup>42</sup> KALLAB, Jaroslav: *Czechoslovak Criminal Code*. In: Lidové noviny, Volume 29, No. 257, Brno, 25 May 1921 in the morning, p. 1.

<sup>43</sup> *Preliminary draft of General Part of the Criminal Code. + Explanatory report to the “Preliminary draft of General Part of the Criminal Code” from 1921*. Issued by the Ministry of Justice of the Czechoslovak Republic. Ministry of Justice published, 1921, 27 + 46 p.

<sup>44</sup> *Preliminary draft of General Part of the Criminal Code*. In: Právník, Volume LX., Prague, Právnická Jednota in Prague, 1921, p. 320.

<sup>45</sup> J. V.: *Preliminary draft of General Part of the Criminal Code. J. V. (Prague) reports about lecture of Professor A. Miříčka held at meetings of Právnická Jednota in Prague on 21 and 27 October 1921*. In: Všehrd, Volume III., No. 2–3, Published by S. Č. P. “Všehrd” in Prague and Č. A. S. “Právník” in Brno, December 1921, p. 33.

be precisely distinguished and strictly separated from other persons who violate the penal code on an occasional basis”,<sup>46</sup> and this fundamental difference between crimes and offences runs “throughout the draft and forms a kind of its backbone”.<sup>47</sup> For the category of unlawful acts inspired by low motivation the draft maintained the existing designation “crime”, which was the people also used for “unlawful acts of higher intensity, offending its ethical and social feelings”.<sup>48</sup> Rather than the way and degree of infringement or imperilment of a legal interest, **the criterion of assessment whether the offender committed a crime or an offence should be the factor that triggered his antisocial conduct, i.e. motivation inspiring the unlawful act and the mindset manifested by it.**

**The initial draft of General Part of the Penal Code of Crimes and Offences from 1921 made a distinction between crimes and offences on the basis of the criterion of low motivation of the offender, but the revised draft from 1926 replaced – in the interest of more efficient criminal repression – the criterion of “low motivation” by the criterion of “low mindset” of the offender.** At the assessment of unlawful act an independent (isolated) assessment of motivation of the offender should have been replaced by examination whether motivation of the offence corresponds to overall character of the offender.<sup>49</sup> The revised draft from 1926 thus gained a suitable basis for classification of offenders into two categories: **offenders by nature** and **occasional offenders**.<sup>50</sup>

The idea to distinguish between unlawful acts on the basis of offender’s motivation was not new abroad, but the scope of its use in the draft of General Part of the Penal Code of Crimes and Offences from 1921 attracted attention.<sup>51</sup> **Low motivation of the offender should characterise despicable unlawful acts and also was a symptom of danger represented by the offender, because it manifested disposition of the offender, which could manifest itself by other unlawful acts.**<sup>52</sup> The draft of General Part of the Criminal Code imposed on judges to decide on potential low motivation of the offender, which inspired him to an unlawful act, and then to determine the sentence and method of punishment depending on the offender’s motivation.<sup>53</sup> The obligation of judges to

<sup>46</sup> MIŘIČKA, A.: *Draft of the Czechoslovak Criminal Code*. In: Právník, Volume LXI., Prague, Právnická Jednota in Prague, 1922, p. 2.

<sup>47</sup> Ibidem, p. 3.

<sup>48</sup> *Explanatory report to the “Preliminary draft of General Part of the Criminal Code” from 1921*. In: Preliminary draft of General Part of the Criminal Code. Published by the Ministry of justice of the Czechoslovak Republic. Ministry of Justice published. 1921, p. 2.

<sup>49</sup> *Preliminary draft of the Penal Code on Crimes, Offences and Legal Infringements. II. Explanatory report to the draft*. Prague. Ministry of Justice Publisher. 1926, p. 17.

<sup>50</sup> MIŘIČKA, A.: *How the idea of social defence proclaimed by the International Criminology Association influenced both valid and prepared criminal laws of the Czechoslovak Republic. (Papers submitted to the international congress M. S. T. in Brussels.)* In: Journal of the Czechoslovak Criminal Law Society, Volume I, No. 4, Prague, Czechoslovak Criminal Law Society in Prague, 1926, p. 90.

<sup>51</sup> SOLNAR, Vladimír: *Draft of the Criminal Code*. In: Právník, Volume LXV., Prague, Právnická Jednota in Prague, 1926, p. 242.

<sup>52</sup> Ibidem, pp. 242–243.

<sup>53</sup> KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 35, No. 130, Brno, 13 March 1927, p. 2.

examine motivation of offenders should also have contributed to a deepening of judicial activities.<sup>54</sup>

The draft of General Part of the Criminal Code should have expressed by different terms, that still distinguished between unlawful acts on the basis of objective weight (“heavier” vs. “lighter” unlawful acts), another, more important difference: **difference between unlawful acts taking into account the mindset and character of the offender**. The authors of the draft gave to these old and deep-rooted criminal legal terms a new meaning, because they were unable to find new, better terms for expression of the difference. In the draft they combined and completed some ideas of the Swiss draft – the Czechoslovak draft should not have distinguished (except for legal infringements) “lighter” and “heavier” unlawful acts. While in the old penal codes an unlawful act always had to be either a crime, or an offence, **according to the draft General Part of the Criminal Act the same unlawful act – in view of the different degree of low mindset of offenders and their characters – could be designated as a “crime” at one and as “offence” at another offender**. The “lightest” unlawful acts could be crimes and the “heaviest” unlawful acts could be offences. The draft did not use the difference between the terms “crime” and “offence” for designation of the difference between the individual categories of unlawful acts; it was used therein for designation of the difference between two methods of punishment – e.g. including the same unlawful act.<sup>55</sup> **The new classification of unlawful acts to crimes and offences had a large practical importance, it should be decisive for the method of punishment** – i.e. allow distinguishing between the really bad perpetrators, whose crimes manifested a despicably low mindset, and individuals who by their offences became victims of unfortunate concurrence of circumstances. However, Professor Jaroslav Kallab challenged this classification. In conformity with newer foreign legal concepts he regarded the classification of unlawful acts to crimes and offences – as acts punished more strictly and less onerously by courts – as impractical and redundant and proposed to designate them by a single name.<sup>56</sup>

## VI. Sentence of imprisonment

The draft of General Part of the Criminal Code wished to reserve the term “crime” to morally despicable unlawful acts and the term “offence” for unlawful acts not manifesting moral despicability of the offender. The authors of the draft thus wanted to build up a **penal system that would not only properly protect society from the**

<sup>54</sup> *Explanatory report to the “Preliminary draft of General Part of the Criminal Code” from 1921*. In: Preliminary draft of General Part of the Criminal Code. Issued by the Ministry of Justice of the Czechoslovak Republic. Ministry of Justice published, 1921, p. 2.

<sup>55</sup> KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 35, No. 130, Brno, 13 March 1927, p. 2.

<sup>56</sup> Kb., J.: *Some news in the draft Czechoslovak Criminal Code*. In: Lidové noviny, Volume 34, No. 370, Brno, 25 July 1926 in the morning, p. 2; KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 35, No. 130, Brno, 13 March 1927, p. 2.

**offender, but also sufficiently document the moral despicability of his offence by the type of sentence.**<sup>57</sup> The basic difference between the types of sentences of imprisonment was determined so that a crime, i.e. unlawful act inspired by low mindset (initially by low motivation), was punished by penalty of dungeon (dishonouring sentence), while the other unlawful acts (except for legal infringements), i.e. offences, were usually punished by penalty of jail (non-dishonouring sentence), representing an exclusion of the offender from society. Two possible methods of punishment should have enabled the main condition of efficient execution of sentence and the execution of a term of imprisonment should have been adapted to the purpose of punishment. If the court recognised the penalty of dungeon for an unlawful fact, the latter was designated as a crime. The penalty of dungeon was imposed for an unlawful act inspired by “gross selfishness, cruelty, idleness, impudence, malice or other low motive”.<sup>58</sup> The convict was to be improved by harsh discipline in the dungeon. In the jail the convict was only to serve the restricted freedom sentence and its main purpose was to exclude him from direct contacts with the external world and to adapt him to a life that he was to face after the release. Persons sentenced to dungeon should serve their sentences without coming into contact with those sentenced to jail. This measure should prevent the known prison plague, to which “often succumb incorrupt individuals being in contact with trained criminals for a few days”.<sup>59</sup> **The draft of General Part of the Criminal Code should protect from infection by crime those who committed an offence, but were not fully corrupt yet.** Many a convict namely became a real criminal due to the sentence of imprisonment.

To achieve their purpose sentences of imprisonment had to be reduced to cases where they were indispensable, because the main cause of failure of imposition and execution of the then sentences of imprisonment was that offenders of most varied characters were assembled in penitentiaries, to which the same sentence had different effects. Due to the differences in characters of offenders an excessive leniency of the sentence of imprisonment could mean an insignificant life episode or even a welcome temporary accommodation in winter for the real criminals, but its inadequate strictness could mean an “university of crime”, or even moral devastation for not fully corrupt convicts. The existing penal codes took into account the differences at determination of the term of punishment, but the differences in characters of offenders could not be captured merely by the length of the sentence of imprisonment, so they should differ also by the method of their execution. **The need to psychologically distinguish between different characters of offenders arose: ones were to be treated with required vigour and others should be spared from unnecessary suffering.** Inefficient execution of the sentence of imprisonment,

---

<sup>57</sup> Kb., J.: *Some news in the draft of the Czechoslovak Criminal Code*. In: Lidové noviny, Volume 34, No. 370, Brno, 25 July 1926 in the morning, p. 2.

<sup>58</sup> § 1 of the Criminal Code of Crimes and Offences. In: *Preliminary draft of General Part of the criminal code*. Issued by the Ministry of Justice of the Czechoslovak Republic. Ministry of Justice published, 1921.

<sup>59</sup> KALLAB, Jaroslav: *Fight against crime*. In: Lidové noviny, Volume 29, No. 291, Brno, 13 June 1921 in the morning, p. 1.

when criminals with character flaws,<sup>60</sup> for whom punishment was only a kind of “business risk“ to be taken into account “in actions”, came into contact with “morally sound” convicts, thus contributed to crime. In particular persons, whose unlawful act was not “a proof of permanent character flaw, but consequence of unfortunate concurrence of circumstances”, should have been spared from the sentence of imprisonment.<sup>61</sup>

All deficiencies of both valid criminal laws amplified **deficiencies in the execution of sentences that had been built on the concept of revenge**, according to which criminal justice was served by fulfilment of the requirement that penalty – regardless of the character of the offender – should be adequate to the objective element (nature) of the committed offence. The Czechoslovak draft of the Criminal Code – under the influence of newer criminal theories – should therefore have substantially differed in its view of the sense and purpose of punishment from existing Austrian and Hungarian criminal law built on older criminal theories, and it put more stress on the subjective element of offence (character of offender) than on its objective aspect (nature of offence). **The draft of General Part of the Penal Code of Crimes and Offences from 1921 and so-called “professors” draft of the Penal Code of Crimes and Offences from 1926 were based on the concept of criminal legal subjectivism** and proposed to punish nearly all incompetent attempted offences.<sup>62</sup>

The Austrian Criminal Code from 1803 was based on Feuerbach’s criminal theory of deterrence, because in the period of its origin the criminals were regarded as enemies of the social order and deterrence was the ultimate sense of punishment. However, over the last century the view of the sense of punishment substantially changed and the notion that “criminals should suffer so that others can draw a lesson from their suffering”<sup>63</sup> already contradicted modern criminal law. **The new Czechoslovak system of criminal law should have remedied society by its means, better protect against crime, and the punishment should not have been reduced to an instrument of deterrence or blind revenge.** According to newer criminal theories revenge alone never prevented and never will prevent further offences. The state could not make do with revenge function of punishment; the effects achieved by punishment could not be ignored any more. Criminal law could not be further presented only as a “sword punishing injustice but, on one hand, as a scale of social values to be protected in the new social order and, on the other hand, as a set of social measures, by which individuals unable to adapt to the new order should be made capable of it, or excluded”.<sup>64</sup>

<sup>60</sup> TAUŠEK, Pavel: *Aggressive convicts in the Bory penitentiary during the First Republic*. In: *České vězeňství*, Volume XIV., No. 6/2006, Prague, Prison Service of the Czech Republic, 2006, pp. 42–43.

<sup>61</sup> KALLAB, Jaroslav: *Penalties in the new Criminal Code*. In: *Lidové noviny*, Volume 29, No. 334, Brno, 7. July 1921 in the morning, p. 1.

<sup>62</sup> EYSSELT, E.: *Incompetent attempted crime*. In: *Právník*, Volume LXXXIII., Prague, Právnická Jednota in Prague, 1944, p. 327.

<sup>63</sup> KALLAB, Jaroslav: *Protection of society by criminal law*. In: *Lidové noviny*, Volume 29, No. 553, Brno, 5. November 1921 in the morning, p. 1.

<sup>64</sup> KALLAB, Jaroslav: *Reform of the Criminal Code*. In: *Lidové noviny*, Volume 28, No. 367, Brno, 27 July 1920 in the morning, p. 1.

Both valid criminal codes originated in a period when human equality was highlighted on different philosophical bases. The Austrian Criminal Code from 1803 was based on the philosophy of enlightened absolutism, the Hungarian Criminal Code from 1878 in turn carried traces of Hungarian liberalism of the 1870s. Czechoslovak criminal law thus always carried traces of heritage of the schools of thought of enlightened philosophy which, relying on the teachings on equality of all people, transferred this requirement to criminal law: whereas “people and hence also offenders are basically the same”, the punishment determined by law should be measured out according to the objective (external) aspect of the committed offence. This requirement of application of the concept of equality meant huge process for the development of criminal law upon its origin (e.g. elimination of the progressiveness of the penalty depending on the social status of the offender), but a deeper criminological research of psychological and social conditions of the conduct of offenders in the last decades of the 19<sup>th</sup> century showed that criminal law built on this foundation did not adequately protect society against crime. Based on an in-depth research of crime as a social phenomenon the criminologists concluded that **offenders are very different by their nature** and that enlightened theory basically mixed the principle of equality before the law with a false premise that people and hence also offenders are the same.<sup>65</sup> The consistent application of the concept of equal punishment of offenders – only because the external aspect of their offences is the same – was unfair and led to discrepancies that shook trust in criminal justice, because “it is unjust to treat the same people unequally, but also to treat different people equally”.<sup>66</sup>

The scientific dispute of leading representatives of the classic school of criminal law, in particular Professor Karl Binding (\*4 June 1841 – †7 April 1920), and of the modern (positivist, sociological) school of criminal law, in particular Professor Franz von Liszt (\*2 March 1851 – †21 June 1919), running in German criminal legal environment from the 1880s,<sup>67</sup> was not only a duel of these schools,<sup>68</sup> but also a fight for the nature of West European criminal law of the first half of the 20<sup>th</sup> century. This **competing of different schools of criminal law in the second half of the 19<sup>th</sup> century also influenced the development and change of criminal law opinions and views of the offender**. The punishment had been measured out for centuries according to social gravity of committed offence (objective aspect), regardless of the person (condition) of the offender (subject), however since the last decades of the 19<sup>th</sup> century the reform positivist school of criminal

<sup>65</sup> KALLAB, Jaroslav: *Fight against crime*. In: Lidové noviny, Volume 29, No. 291, Brno, 13 June 1921 in the morning, p. 1.

<sup>66</sup> KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 36, No. 394, Brno, 5 August 1928 in the morning, p. 1.

<sup>67</sup> FOSTER, Nigel – SULE, Satish: *German Legal System and Laws*. Fourth edition. Oxford: Oxford University Press, 2010, p. 31; DUBBER, Markus D. – HÖRNLE, Tatjana: *Criminal Law. A Comparative Approach*. Oxford: Oxford University Press, 2014, p. 17.

<sup>68</sup> VORMBAUM, Thomas: *Einführung in die moderne Strafrechtsgeschichte*. III. Auflage. Berlin – Heidelberg: Springer-Verlag, 2016, pp. 131–135.

law<sup>69</sup> had tried to place at the heart of interest criminal law instead of offence and importance of the offender.<sup>70</sup>

In the period between publication of the Austrian Penal Code from 1803 (1852), of the Hungarian Penal Code from 1878 and the draft of General Part of the Penal Code of Crimes and Offences from 1921 criminal law went through fundamental changes. Its historical development was marked by a gradual shift of focus to the subjective aspect of offence and by the gradual switch from a mere reaction to the offence to deliberate consideration of the character of the offender. The Criminal Code from 1852 was based on principles of the classic school of criminal law, which put the main focus on the offence. On the other hand, the **Czechoslovak draft of the Criminal Code, also under the influence of the modern (positivist) school of criminal law, takes into account rather the individual nature (character) of the offender.**<sup>71</sup> The view that offenders committing offences are different was also adopted by the authors of the Czechoslovak draft Criminal Act who, guided by the effort to draw up a criminal law effectively protecting society against crime, built up a set of penal measures that strictly punished the real criminals, whose defective character was a real source of danger for society (even if they were careful enough not to commit a serious crime), but also took account of persons, who committed offences under the influence (pressure) of unfortunate concurrence of external circumstances and therefore – as random offenders – were not dangerous for society: “A work-shy individual, who only troubles the whole community by his violent acts and who murders in cold blood for a penny, undoubtedly deserves a different punishment than a rejected lover who in fit of passion kills his rival; likewise a professional thief must be punished differently than an unreasonable girl who takes a jewel lying around in a flat to attract attention on her Sunday walk in the city.”<sup>72</sup>

The proof of inefficiency of existing criminal law system and a mockery of criminal justice were among others the fact that it allowed criminal courts to have their “regular clients”, who repeatedly appeared in courts, always returned to penitentiaries only to be released from them, and relapsed on the nearest occasion. For example it was individuals who “stumble through life, engaged in a permanent small battle with the legal system and for whom jail becomes a nice home where they regularly return, especially in winter”.<sup>73</sup> If courts had their wanderers and small thieves with thirty, forty or more penalties on their account, this chronic individual crime proved the malfunctioning of criminal law and the authors tried to capture it in the draft of General Part of the Criminal

<sup>69</sup> FERRI, Enrico: *La scuola positiva di diritto criminale*. Siena: Enrico Torrini, 1883, 55 p.

<sup>70</sup> SOLNAR, V.: *Offence and offender. (Notes to so-called “typology of offenders”)* In: *Právník*, Volume LXXXII., Prague, Právnícká Jednota in Prague, 1943, p. 1.

<sup>71</sup> KRONBERGER, Frant.: *Unification of preliminary searches and investigations*. In: *Právník*, Volume LXV., Prague, Právnícká Jednota in Prague, 1926, p. 433.

<sup>72</sup> KALLAB, Jaroslav: *Draft Criminal Code*. In: *Lidové noviny*, Volume 34, No. 167, Brno, 1 April 1926 in the morning, p. 1.

<sup>73</sup> KALLAB, Jaroslav: *Fight against crime*. In: *Lidové noviny*, Volume 29, No. 291, Brno, 13 June 1921 in the morning, p. 1.

Code.<sup>74</sup> **The draft paid special attention to the fight against offenders who committed offences repeatedly.** According to the proposed difference between crimes and offences it treated cases of relapse (so-called regression<sup>75</sup>) differently, e.g. in case of crime it regarded as “relapsed” an offender, who committed another crime inspired by the same low motivation and whose new crime therefore proved that previous punishment had not been sufficient to remedy his low character. Recidivism always increased the level of penalty by a level.<sup>76</sup>

The draft of General Part of the Criminal Code wanted to protect society against generally dangerous persons not only by a system of penalties, but also by introduction of security measures. These should have been used in the fight against crime in an extent adequate to the danger presented by these persons. The authors of the draft regarded initial costs of introduction of detention facilities, where generally dangerous individuals should have been kept until their remedy or recovery, as good investment: “Costs of the police, criminal courts and penitentiaries that now go to waste, because the court has to release work-shy or generally dangerous individuals or notorious drinkers after relatively short punishment knowing that they would have to be searched for by the police, convicted by the court and accommodated by the penitentiaries again in a couple of months, are expected to decrease in a couple of years. Not even speaking of damages that such individuals will repeatedly cause not only to property, but in particular to the moral level of the nation, when left at large.”<sup>77</sup>

**The draft of General Part of the Criminal Code clearly showed the intention of the authors to highlight the concept of effective treatment of offenders as much as possible.** However, many practitioners and the unprepared public objected that the draft was not suitable for discussion in the parliament, because it was a work of theoreticians, who are not strict enough. Some expressed the concern that because of concerns about the offender the interests of persons affected by unlawful acts had been forgotten, and highlighted that in a period when “public discipline had dramatically deteriorated due to the long war, the protection of society against crime required rather tightening than mitigation of penal measures”.<sup>78</sup> Such evaluation of the draft of General Part of the Criminal Code was based on a misunderstanding stemming from the impossibility to compare punishments recognised by the Czechoslovak draft with those of the old Austrian Criminal Code, originating from the era of absolutism. Transformation of the view of the function of criminal law in modern society put on the authors of the

<sup>74</sup> KALLAB, Jaroslav: *Protection of society by criminal law*. In: Lidové noviny, Volume 29, No. 553, Brno, 5. November 1921 in the morning, p. 1.

<sup>75</sup> *Recidivism (Regression of the offence)*. In: VESELÝ, František Xaver (ed.): General dictionary of legal terms. Volume IV. Prague: Author Published, 1899, pp. 44–45.

<sup>76</sup> KALLAB, Jaroslav: *Fight against crime*. In: Lidové noviny, Volume 29, No. 291, Brno, 13 June 1921 in the morning, p. 1.

<sup>77</sup> KALLAB, Jaroslav: *Precautionary measures in the future Criminal Code*. In: Lidové noviny, Volume 29, No. 423, Brno, 25 August 1921 in the morning, p. 1.

<sup>78</sup> KALLAB, Jaroslav: *Protection of society by criminal law*. In: Lidové noviny, Volume 29, No. 553, Brno, 5. November 1921 in the morning, p. 1.

Czechoslovak draft of the Criminal Code demands that significantly exceeded expectations placed on the authors of criminal laws in the 19<sup>th</sup> century, when both valid penal laws were elaborated.

## VII. Tripartition of forms of culpability

**The term “crime” in the history of criminal law developed up to moment when it was defined as unlawful act, punishable and culpable.**<sup>79</sup> The definition of culpability in the Czechoslovak draft of General Part of the Criminal Code was new and very interesting. After World War I first attempts at defining “conscious guilt” appeared in the German draft of the Criminal Code from 1919. But the authors of the Czechoslovak draft of General Part of the Criminal Code were much more courageous and the very fact that Professor August Miříčka became chairman of the Commission for a Reform of the Czechoslovak Criminal Code was a guarantee that traditional bipartition of forms of culpability would be changed.<sup>80</sup> Professor Miříčka was afforded an opportunity that is seldom afforded to innovative theoreticians of criminal law: to implement his theory of criminal law there where it can be applied best, but where proof of correctness becomes most delicate, i.e. in criminal law itself.

**As for the issue of culpability, Professor August Miříčka strived to remove from criminal law the residues of the principle of responsibility and for application of the principle of responsibility for blame.** The principle of responsibility for blame consistently applied by Professor Miříčka was equally consistently taken over by the draft of General Part of the Criminal Code from 1921. The Commission determining the internal (subjective) element of offences abandoned traditional definitions and solved this problem in fully new and original manner<sup>81</sup> by taking over Miříčka’s (according to his own proposal modified) proposal of tripartition of forms of culpability from his pioneer monograph *About forms of culpability and their legal regulation*.<sup>82</sup> **The draft of General Part of the Criminal Code from 1921 replaced two existing forms of culpability (intention and negligence) by new classification to three forms of culpability (tripartition), distinguishing among intention, conscious blame and negligence:** “Intentionally acts every person who wishes to cause a result indicated in the law. Consciously acts every person who knows all facts that criminalize his act. Negligibly acts every person who does not take care that he is obliged to take or which is necessary under the circumstances, whether he knows or does not know that his act may produce

<sup>79</sup> PRUŠÁK, Josef: *Study on participation*. Prague: Library of Compendium of Legal and State Sciences – Bursík & Kohout in Prague, 1909, p. 9.

<sup>80</sup> HAVLÍČEK, Josef: *Conscious conduct according to dual criminal law applied in the Czechoslovak Republic and conscious blame according to the preliminary draft of the Criminal Code and the Code of Legal Infringements*. In: *Právník*, Volume LXIX, Prague, Právnícká Jednota in Prague, 1930, p. 682.

<sup>81</sup> DRBOHLAV: *What are the forms of culpability according to the draft of the new Criminal Code?* In: *Právník*, Volume LXI, Prague, Právnícká Jednota in Prague, 1922, pp. 97–107, 140–148.

<sup>82</sup> MIŘIČKA, August: *About forms of culpability and their legal regulation*. Prague: Franz Joseph Czech Academy of Sciences, Folklore and Art published, 1902, 171 p.

the result indicated in the law (gross negligence).<sup>783</sup> **The draft of General Part of the Criminal Code from 1921 thus replaced two forms of culpability (bipartition) used in valid law and practice by clear tripartition,**<sup>84</sup> i.e. “a number extended against fictive bipartition, but substantially limited against the actual number of forms”.<sup>85</sup> According to members of the Commission tripartition introducing a fundamentally new regulation of culpability specified the limits between individual forms of culpability.

As valid criminal law still knew cases where a subject was hold responsible also for uncaused result,<sup>86</sup> the draft eliminated this responsibility, envisaged conscious blame as the basic form of blame and was consistently **built on the principle of responsibility for blame – rather than on the principle of responsibility for result.**<sup>87</sup> The new draft was based on the principle that only a result caused by the offender (at least by negligence) was decisive for punishment. However, tripartition of forms of culpability did not take roots in further development, later was subject to criticism<sup>88</sup> and fell into oblivion in Czechoslovak criminal law.

### VIII. The death penalty

The death penalty in the Czechoslovak Republic had been discussed since its foundation, because Czechoslovak criminal law enabled its infliction.

In connection with elaboration of the Czechoslovak draft of the Criminal Code the subject of penological considerations was among others the issue of admissibility, suitability or potential elimination of the death penalty. **However, the death penalty was an element of the Czechoslovak system of criminal law that could not be eliminated without endangering the validity of the other elements of this system. Elimination of the death penalty would have meant a waiver of punishment which very strongly affects imagination of many people.** The fear of the death penalty may deter a large number of potential offenders from committing the most serious crimes. The question therefore stood whether the state in that social situation could have waved this penalty at

<sup>83</sup> § 14 of the Penal Code of Crimes and Offences. In: *Preliminary draft of General Part of the Criminal Code*. Issued by the Ministry of Justice of the Czechoslovak Republic. Ministry of Justice published, 1921, p. 8.

<sup>84</sup> MIŘIČKA, A.: *Forms of culpability in the drafts*. In: *Časopis pro právní a státní vědu*, Volume IV., Brno: Právnická Jednota Moravská in Brno, 1921, p. 336.

<sup>85</sup> *Explanatory report to the “Preliminary draft of General Part of the Criminal Code” from 1921*. In: *Preliminary draft of General Part of the Criminal Code*. Issued by the Ministry of Justice of the Czechoslovak Republic. Ministry of Justice published, 1921, p. 6.

<sup>86</sup> KALLAB, Jaroslav: *The future Czechoslovak Criminal Code*. In: *Lidové noviny*, Volume 35, No. 130, Brno, 13 March 1927, p. 2.

<sup>87</sup> MIŘIČKA, A.: *Incompetent attempt and forms of culpability in the draft Criminal Code from 1937*. In: *Právník*, Volume LXXVI., Prague, Právnická Jednota in Prague, 1937, p. 389.

<sup>88</sup> E.g. HAVLÍČEK, Josef: *Conscious conduct according to dual criminal law applied in the Czechoslovak Republic and conscious blame according to the preliminary drafts of the Criminal Code and the Code of Legal Infringements*. In: *Právník*, Volume LXIX., Prague, Právnická Jednota in Prague, 1930, pp. 601–609, 633–638, 665–692, 697–711; LORENZ, M.: *Die Dreiteilung der Schuldformen und ihre Auswertung in den tschechoslowakischen Strafgesetzentwürfen von 1926. Eine dogmatisch-kritische Untersuchung*. Prag: Heinr. Mercy Sohn, 1930, 174 p.

all,<sup>89</sup> rather than whether punishment by death was admissible or suitable at all. But according to Professor Jaroslav Kallab removal of the death penalty from the Czechoslovak draft of the Criminal Code was subject to fulfilment of two conditions: 1) disregarding of social-psychical effects caused by World War I and the after-war situation (moral degradation),<sup>90</sup> 2) building of a new system of criminal law that will fight against crime more effectively than the existing system.<sup>91</sup>

The authors of the draft of General Part of the Penal Code of Crimes and Offences from 1921 omitted – because of their fundamental resistance to the death penalty – this absolute penalty from the catalogue of punishments (it was left in martial law), but they realized the complexity of socio-political processes and took into account that valid criminal laws and hence the death penalty would be maintained for many years.<sup>92</sup> In spite of the dark sides of the death penalty (e.g. its irreparability in case of a judicial error,<sup>93</sup> inhumanity toward a human being) their proposals for removal of the death penalty from legislation were not accepted.

The first execution in the independent Republic, carried out on 9 January 1923 in Táboř, aroused the interest of the lay and expert public in the issue of the death penalty; of course, criminal law scientists paid attention to this issue, too.<sup>94</sup> For example justification of the death penalty, evaluation of motivation effects of the death penalty, regularity of granting of pardon or measurement of argumentation forces of the defenders and opponents of the death penalty were the subject of intensive debates and deep considerations. Among others Professor František Storch<sup>95</sup> participated in discussions

<sup>89</sup> KALLAB, Jaroslav: *First execution in the Republic*. In: Lidové noviny, Volume 31, No. 14, Brno, 10 January 1923 in the morning, p. 1.

<sup>90</sup> Ibidem, p. 1.

<sup>91</sup> Ibidem, p. 1.

<sup>92</sup> Ibidem, p. 1.

<sup>93</sup> KALLAB, Jaroslav: *Crime and Punishment*. Prague: Jos. R. Vilímek Publishing House in Prague, (1915), p. 31; KALLAB, Jaroslav: *Substantive criminal law applied in Czech and Moravian-Silesian lands*. Prague: Melantrich, 1935, pp. 96–97.

<sup>94</sup> WEYR, František: *Death penalty*. In: Lidové noviny, Volume 30, No. 158, Brno, 29 March 1922 in the morning, p. 1; STRÁNSKÝ, Jaroslav: *Law and Pardon*. In: Scientific Almanac of Faculty of Law of Masaryk University in Brno, Volume I., Brno, Barvič & Novotný Publishing House, 1922, pp. 157–168; STORCH, Fr.: *Death penalty in the draft of the Czechoslovak Criminal Code from 1921*. In: Právník, Volume LXI., Prague, Právníká Jednota in Prague, 1922, pp. 161–168, 193–200; KALLAB, Jaroslav: *First execution in the Republic*. In: Lidové noviny, Volume 31, No. 14, Brno, 10. January 1923 in the morning, p. 1; ČAPEK, Josef: *About the death penalty*. In: Lidové noviny, Volume 31, No. 55, Brno, 1. February 1923 in the morning, pp. 1–2; –n–: *First execution in the Czechoslovak Republic*. In: Všeohr, Volume IV., No. 5–6, Prague, S. Č. P. “Všeohr” in Prague and Č. A. S. “Právník” in Brno, February 1923, p. 115; CHALUPNÝ, Ed. – KYPR, O. (eds.): *About the death penalty. Opinion poll*. Prague: Sociální služba, 1923, 198 p.; KALLAB, Jaroslav: *About the death penalty*. In: Časopis pro právní a státní vědu, Volume VI., Brno, Právníká Jednota Moravská in Brno, 1923, pp. 113–126; KALLAB, Jaroslav: *About the death penalty*. In: Lidové noviny, Volume 35, No. 148, Brno, 23. March 1927 in the morning, p. 1; MILOTA, Alb.: *Death penalty*. In: Všeohr, Volume VIII., No. 8, Prague, S. Čs. P. “Všeohr” in Prague, Čs. A. S. “Právník” in Brno and S. P. P. “Právník” in Bratislava, May 1927, pp. 217–219; SCHOLZ, O.: *Death penalty in the Czechoslovak Republic*. In: Journal of the Czechoslovak Criminal Law Society, Volume X., No. 1 and 2–3, Prague, Czechoslovak Criminal Law Society in Prague, 1934, pp. 2–10, 46–74.

<sup>95</sup> STORCH, Fr.: *Death penalty in the draft of the Czechoslovak Criminal Code from 1921*. In: Právník, Volume LXI., Prague, Právníká Jednota in Prague, 1922, pp. 161–168, 193–200.

about the death penalty; he expressed the concern that the desirable change of Czechoslovak criminal legislation in the form of abolition of the death penalty could occur before the change of the after-war situation and “especially the perverse perception of law by whole groups of population, causing the recent growth of crime”.<sup>96</sup> Professor Storch did not participate in the preparations of the Czechoslovak draft of the Criminal Code, but he applied for a membership of the commission for criminal proceedings. However, Professor František Storch died on 21 December 1924, before this commission could process a document prepared by the Commission for a Reform of the Czechoslovak Criminal Code. According to Professor Jaroslav Kallab “it was an irretrievable loss, because Storch would have been first called to guarantee in the criminal proceedings an effective fight against crime and an efficient protection of civil liberties against the predominance of the state power”.<sup>97</sup>

### IX. Draft of the Penal Code of Crimes and Offences from 1926

Works on the draft of a special part of the Criminal Code were finalised at a meeting of the Commission for a Reform of the Czechoslovak Criminal Code in July 1924 and on the basis of submitted comments<sup>98</sup> the Commission proceeded with careful revision of General Part from 1921.<sup>99</sup> The Commission last met in June 1925 and the explanatory report to the draft Criminal Code was prepared and last edited in summer of the same year.<sup>100</sup>

The recast draft of General Part of the Penal Code of Crimes and Offences from 1921 was completed by a special part, together with detailed explanatory work submitted to the Ministry of Justice<sup>101</sup> in 1925, published under the name *Preliminary drafts of the Criminal Penal Codes on Crimes, Offences and Legal Infringements* by the Ministry of Justice<sup>102</sup> in 1926 and distributed at Easter holidays.<sup>103</sup> The new version of the draft of General Part of the Penal Code of Crimes and offences from 1926 was basically identical with the draft of General Part of the Criminal Code from 1921, but it took into account some comments and objections against it. A special part containing the list of individual

<sup>96</sup> Ibidem, p. 161.

<sup>97</sup> KALLAB: *František Storch died*. In: Lidové noviny, Volume 32, No. 641, Brno, 23 December 1924 in the morning, p. 4.

<sup>98</sup> *Work of the Commission for a Reform of Criminal Law*. In: Journal of the Czechoslovak Criminal Law Society, Volume I., No. 1, Prague, Czechoslovak Criminal Law Society in Prague, 1925, p. 20.

<sup>99</sup> *Preliminary drafts of the Code of Crimes and Offences and the Code of Legal Infringements. I. Drafts*. Issued by the Commission for a Reform of the Czechoslovak Criminal Code. Prague: Ministry of Justice published, 1926, p. 6.

<sup>100</sup> Ibidem, p. 7.

<sup>101</sup> *Preliminary draft of the Czechoslovak Criminal Code*. In: Journal of the Czechoslovak Criminal Law Society, Volume I., No. 2–3, Prague, Czechoslovak Criminal Law Society in Prague, 1925, p. 67.

<sup>102</sup> *Preliminary draft of the Code of Crimes and Offences and the Code of Legal Infringements I. Drafts. II. Explanatory report to the draft*. Issued by the Commission for a Reform of the Czechoslovak Criminal Code. Prague: Ministry of Justice published, 1926, 94 + 215 p.

<sup>103</sup> –Ě.: *Preliminary draft of the Criminal Code*. In: Všechno, Volume VII., No. 9–10, Prague, S. Č. P. “Všechno” in Prague, Č. A. S. “Právník” in Brno and S. P. P. “Právník” in Bratislava, June–July 1926, p. 272.

unlawful acts and method of their punishment was attached to the revised General Part of the Criminal Code. This special part was fully new for the general public; in 207 paragraphs it summarised all subjects of criminal law previously regulated by the valid Penal Code and a non-transparent series of special acts.<sup>104</sup> **The draft of the Code of Crimes and Offences from 1926** contained 19 titles and 342 paragraphs.

Almost a year after the Ministry of Justice published *Preliminary drafts of the Code of Crimes and Offences and the Code of Legal Infringements*, the number of publications addressing this issues paper remained very modest and went basically unnoticed by the politicians.<sup>105</sup> The draft of the Code of Crimes and Offences from 1926 was also published in German and French versions<sup>106</sup> and thus made available to foreign experts for review. By its originality and abundance of reform proposals it attracted deserved attention of foreign experts. For example, Professor Berthold Freudenthal (\*23 August 1872 – †13 July 1929)<sup>107</sup> from Frankfurt, propagator of the American penological principles in Germany, gave a lecture on the fight against crime in the Czechoslovak draft of the Penal Code of Crimes and Offences from 1926 on 7 April 1927<sup>108</sup> in Prague. He concluded his lecture by pointing out to the interesting phenomenon that criminal law of many states in that period contained a conspicuously large number of legislative drafts, which however almost nowhere became laws.<sup>109</sup> According to Professor Freudenthal the Czechoslovak Republic could not have wished anything better than its “excellent and original draft”<sup>110</sup> to become a criminal code as soon as possible. Professor Freudenthal worked up an opinion on the Czechoslovak draft of the Penal Code of Crimes and Offences from 1926 at request of the Ministry of Justice of the Czechoslovak Republic, in which he noted that he regarded the draft as a whole as a “generous, well-elaborated and very authentic legislative work”,<sup>111</sup> meaning “a product of huge and simultaneously moderate progress”.<sup>112</sup> The period lived by them was designated

<sup>104</sup> *Preliminary draft of the Code of Crimes and Offences and the Code of Legal Infringements Offences*. In: Právník, Volume LXV., Prague, Právnícká Jednota in Prague, 1926, pp. 238–239.

<sup>105</sup> KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 35, No. 130, Brno, 13 March 1927, p. 2.

<sup>106</sup> *Draft of the Czechoslovak Criminal Code*. In: Právník, Volume LXVII., Prague, Právnícká Jednota in Prague, 1928, p. 102.

<sup>107</sup> HANEMAN, Frederick T.: *Freudenthal, Berthold*. In: *The Jewish Encyclopedia*. Volume V. New York – London: Funk and Wagnalls Company, 1903, pp. 508–509; *Death of Professor Freudenthal*. In: *Journal of the American Institute of Criminal Law and Criminology*, Vol. XX., No. 3, Chicago, November 1929, p. 325; LANG-HINRICHSSEN, Dietrich: *Freudenthal, Berthold*. In: *Neue Deutsche Biographie*. Band V. Berlin: Duncker & Humblot, 1961, p. 411; SCHMIDT, Eberhard: *In memoriam Berthold Freudenthal*. In: *Zeitschrift für die gesamte Strafrechtswissenschaft*, Band LXXXIV., Heft 4, Berlin, Walter de Gruyter & Co., 1972, pp. 865–869.

<sup>108</sup> *About crime and fight against crime in the Czechoslovak draft of the Criminal Code*. In: Právník, Volume LXVI., Prague, Právnícká Jednota in Prague, 1927, p. 230.

<sup>109</sup> *About crime and fight against crime in the Czechoslovak draft of the Criminal Code*. In: Právník, Volume LXVI., Prague, Právnícká Jednota in Prague, 1927, p. 231.

<sup>110</sup> *Ibidem*, p. 231.

<sup>111</sup> FREUDENTHAL, Berthold: *Draft of the Czechoslovak Criminal Code*. In: *Journal of the Czechoslovak Criminal Law Society*, Volume III., No. 3–4, Prague, Czechoslovak Criminal Law Society in Prague, 1927, p. 118.

<sup>112</sup> *Ibidem*, p. 118.

by Professor Freudenthal as a turbulent period rich in criminal-policy events, but “dominated more by drafts than by acts”.<sup>113</sup> He ended his opinion by a wish: “A ship carrying this draft is in full sail with a precious criminal-policy cargo. Let it enter a port some not very far-away day, to the good of its homeland and in the spirit of progress of science, which encircles the Globe in spite of national barriers.”<sup>114</sup>

The Ministry of Justice intended to submit the draft of the Penal Code of Crimes and Offences from 1926 to the parliament for discussion in 1928.<sup>115</sup>

## X. Draft of the Code of Criminal Procedure from 1929

**After its foundation the Czechoslovak Republic neither adopted a new Czechoslovak Code of Criminal Procedure, nor reformed whole parts of valid Codes of Criminal Procedure.** Instead it proceeded with small corrections of some paragraphs of old Codes of Criminal Procedure<sup>116</sup> in order to eliminate the most striking deficiencies, however without intention to change their overall structure.<sup>117</sup>

When the Commission for a Reform of the Czechoslovak Criminal Code elaborated a draft of the Criminal Code in 1925, the Ministry of Justice started works on the reform of Czechoslovak criminal proceedings. First it convened a meeting of law practitioners, who on 21 and 22 October 1925 took a position to some basic principles of the Code of Criminal Procedure, and their resolution was then handed over to the Commission for a Reform of Criminal Law, which had already started its work on second part of its assignment – a reform of the Czechoslovak criminal proceedings.<sup>118</sup> The reform was initially planned so that the new unifying Code of Criminal Procedure would be adopted when the old penal codes were still in force.<sup>119</sup>

The Commission for Unification of the Codes of Criminal Procedure at the Ministry of Justice pursued its work.<sup>120</sup> In 1927 it processed all regulations on ordinary criminal proceedings at all instances; special forms of criminal proceedings and some supplements left to be addressed.<sup>121</sup> In 1927 the Ministry sent the elaborated parts of the draft new

<sup>113</sup> Ibidem, p. 132.

<sup>114</sup> Ibidem, p. 132.

<sup>115</sup> KALLAB, Jaroslav: *Future Czechoslovak Criminal Code*. In: Lidové noviny, Volume 36, No. 394, Brno, 5 August 1928 in the morning, p. 1.

<sup>116</sup> For example, the Law of 23 May 1873 amending certain provisions of the Code of Criminal Procedure, No. 119 of Imperial Law Gazette and the Legal Article XXXIII from 1896 No. 1/1920 Coll. et seq., of 18 December 1919; Act No. 73/1924 Coll. et seq. of 18 March 1924 amending the provisions of the Code of Criminal Procedures on eligible participants of the public main proceedings; Act No. 31/1929 Coll. et seq. of 21 March 1929 amending the criminal laws and Code of Criminal Procedures.

<sup>117</sup> –ban.: *Reform of the Code of Criminal Procedure*. In: Všechno, Volume I., No. 5, Prague, Czech Lawyers' Society “Všechno”, March 1920, p. 78.

<sup>118</sup> *Reform of Czechoslovak criminal proceedings*. In: Journal of the Czechoslovak Criminal Law Society, Volume I., No. 2–3, Prague, Czechoslovak Criminal Law Society in Prague, 1925, p. 68.

<sup>119</sup> Ibidem, p. 68.

<sup>120</sup> *Reform of Czechoslovak criminal proceedings*. In: Journal of the Czechoslovak Criminal Law Society, Volume II., No. 1–2, Prague, Czechoslovak Criminal Law Society in Prague, 1926, p. 32.

<sup>121</sup> *Role of the Commission for Unification of the Code of Criminal Procedures*. In: Journal of the

Czechoslovak Code of Criminal Procedure together with explanatory report to the relevant experts, in particular to the Slovak Commission for a Reform of Criminal Law<sup>122</sup> for examination, which should have terminated by the end of November 1927 to allow its submission to the National Assembly by the government in spring 1928.<sup>123</sup>

During the presidency of Professor August Mířička the commission finalised the draft of the new Czechoslovak Code of Criminal Procedure in 1929, when the Ministry of Unification distributed a draft of the law introducing this new code.<sup>124</sup> **The draft of the Code of Criminal Procedure from 1929 was to unify the application of procedural criminal law in the whole territory of the Czechoslovak Republic.** The expert public had no major objections to the draft, so it was published in 1929 and should have been submitted by the government to the National Assembly for discussion in the same year.<sup>125</sup> This draft of the Code of Criminal Procedure was also discussed at members' meeting of the Czechoslovak Criminal Law Society, held on 11 December 1929 in Brno.<sup>126</sup>

Before the planned codification of the unifying draft of the Code of Criminal Procedure from 1929, a new Code of Criminal Procedure should have been adopted in autumn 1930.<sup>127</sup> In August 1930 Professor Jaroslav Kallab finalised the textbook of criminal proceedings,<sup>128</sup> providing a transparent overview of the valid Code of Criminal Procedure, taking into account the new draft of the Criminal Code. In this textbook Professor Kallab tried to explain the relatively rigid structure of the criminal proceedings as well as the relationship between the new code proposed by the draft and law applied in that period. For this purpose, he added to his interpretations quotations from existing law and from the new draft that according to him best explained changes proposed by the draft.<sup>129</sup>

---

Czechoslovak Criminal Law Society, Volume III., No. 1–2, Prague, Czechoslovak Criminal Law Society in Prague, 1927, p. 66.

<sup>122</sup> *Commission for Unification of the Code of Criminal Procedures*. In: Journal of the Czechoslovak Criminal Law Society, Volume III., No. 3–4, Prague, Czechoslovak Criminal Law Society in Prague, 1927, p. 144.

<sup>123</sup> *Role of the Commission for Unification of the Code of Criminal Procedures*. In: Journal of the Czechoslovak Criminal Law Society, Volume III., No. 1–2, Prague, Czechoslovak Criminal Law Society in Prague, 1927, p. 66.

<sup>124</sup> DRBOHLAV, Karel: *Subject-matter jurisdiction of criminal courts according to the law introducing the unified Code of Criminal Procedure*. In: Právník, Volume LXVIII., Prague, Právnícká Jednota in Prague, 1929, p. 233.

<sup>125</sup> –era–: *Prepared changes in criminal legislation*. In: Všehrd, Volume X., No. 9, Prague, S. Čs. P. "Všehrd" in Prague, Čs. A. S. "Právník" in Brno and S. Čs. P. P. "Právník" in Bratislava, May 1929, p. 265.

<sup>126</sup> E. O.: *Czechoslovak Criminal Law Society*. In: Všehrd, Volume XI., No. 4, Prague, S. Čs. P. "Všehrd" in Prague, Čs. A. S. "Právník" in Brno and S. Čs. P. P. "Právník" in Bratislava, January 1930, p. 125; HERRNRITT, Vilém: *Notes to the draft Code of Criminal Procedure*. In: Journal of the Czechoslovak Criminal Law Society, Volume V., No. 4, Prague, Czechoslovak Criminal Law Society in Prague, 1929, p. 97–107.

<sup>127</sup> KARÁSEK: *Codification works in 1930*. In: Všehrd, Volume XI., No. 5, Prague, p. Čs. P. "Všehrd" in Prague, Čs. A. S. "Právník" in Brno and S. Čs. P. P. "Právník" in Bratislava, February 1930, p. 157.

<sup>128</sup> KALLAB, Jaroslav: *Textbook of criminal proceedings applied in Czech and Moravian-Silesian lands*. Brno. Čs. A. S. Právník published, 1930, 283 p.

<sup>129</sup> Oma.: *Dr. Jaroslav Kallab: Textbook of criminal proceedings applied in Czech and Moravian-Silesian lands, taking into account the draft unified Czechoslovak Code of Criminal Procedure from 1929*. In: Všehrd, Volume XII., No. 1, Prague, S. Čs. P. "Všehrd" in Prague, Čs. A. S. "Právník" in Brno and S. Čs. P. P. "Právník"

However, both valid Codes of Criminal Procedure, the initial Austrian from 1873<sup>130</sup> and the initial Hungarian from 1896<sup>131</sup>, as amended, had been applied dually in the Czechoslovak Republic up to the middle of the 20<sup>th</sup> century, when the Code of Criminal Procedure from 1950<sup>132</sup> was adopted.

## XI. Draft of the Criminal Code from 1937

Further “progress” in the preparations of the Czechoslovak Criminal Code was made on 17 to 28 February 1936, when working sessions on revised General Part of the draft of the Czechoslovak Criminal Code<sup>133</sup> took place under the presidency of the Minister of Justice Dr. Ivan Dérer (\*2 March 1884 – †10 March 1973) at the Ministry of Justice. This new draft of the Criminal Code, relying on preliminary drafts of the Penal Code of Crimes and Offences and the Code of Legal Infringements from 1926, was published in early April 1937,<sup>134</sup> submitted to the ministries for comments<sup>135</sup> and distributed to relevant experts and professional organisations and institutions falling under competence of the Ministry of Justice.<sup>136</sup>

The main objective of the revised **draft of the Criminal Code from 1937** was unification of criminal law applied in the Czech lands (1852) and in Slovakia (1878), unification of fragmented criminal legal norms and merger of various amendments and bylaws. The draft contained 25 titles and 426 paragraphs and incorporated the Code of Legal Infringements. General part of the draft summarised general provisions on crimes, offences and legal infringements (tripartition of unlawful acts) and a special part contained classification of legal infringements to chapters to which they related.

Criminal law theoreticians and practitioners joined discussion about the draft of the Criminal Code from 1937, to which specialised literature reproached excessive conservatism and reticence to requirements of criminal law science.<sup>137</sup> The draft of the Penal Code of Crimes and Offences from 1926 was consistently built on the principle of responsibility for blame defended by the subjective theory. The new draft of the

---

in Bratislava, October 1930, p. 29.

<sup>130</sup> Law introducing the new procedure of the criminal court No. 119/1873 of Imperial Law Gazette, Published on 23 May 1873.

<sup>131</sup> Legal article XXXIII/1896.

<sup>132</sup> Act on Criminal Procedure (Code of Criminal Procedure) No. 87/1950 Coll., of 12 July 1950.

<sup>133</sup> *Preparation of the Czechoslovak Criminal Code*. In: *Právník*, Volume LXXV., Prague, Právnická Jednota in Prague, 1936, p. 215.

<sup>134</sup> K.: *New draft of the Czechoslovak Criminal Code*. In: *Právník*, Volume LXXVI., Prague, Právnická Jednota in Prague, 1937, p. 257.

<sup>135</sup> KEPERT, Josef: *New draft of the Criminal Code*. In: *Všehrd*, Volume XVIII., No. 9–10, Prague – Brno – Bratislava, S. Čs. P. “Všehrd” in Prague, Čs. A. S. “Právník” in Brno and S. Čs. P. P. “Právník” in Bratislava, June 1937, p. 386.

<sup>136</sup> K.: *New draft of the Czechoslovak Criminal Code*. In: *Právník*, Volume LXXVI., Prague, Právnická Jednota in Prague, 1937, p. 257.

<sup>137</sup> STEINER, Robert: *Draft of the Criminal Code from 1937 in the light of normative concept of blame*. In: *Časopis pro právní a státní vědu*, Volume XXI., No. 1, Brno, Právnická Jednota Moravská in Brno, 1938, p. 18.

Criminal Act from 1937 departed from the subjective theory,<sup>138</sup> refused to consistently apply the principle of responsibility for blame and **in some issues defended the principle of responsibility for result**, enforced by the objective theory.<sup>139</sup> As for the issue of culpability of attempted crime, the draft of the Criminal Code from 1937 wanted to maintain inculpability of absolutely incompetent attempt<sup>140</sup> and returned to traditional bipartition of forms of culpability (intention and negligence).<sup>141</sup>

The draft of the Criminal Code from 1937 as continuation of the draft Penal Code of Crimes and Offences from 1926 was another important attempt at a reform and modernisation of Czechoslovak criminal law, and together with the draft Code of Criminal Procedure from 1929 could have represented an important milestone in the history of Czechoslovak criminal legislation.

---

<sup>138</sup> KEPERT, Josef: *New draft of the Criminal Code*. In: Všeohrd, Volume XVIII., No. 9–10, Prague – Brno – Bratislava, S. Čs. P. “Všeohrd” in Prague, Čs. A. S. “Právník” in Brno and S. Čs. P. “Právník” in Bratislava, June 1937, p. 388.

<sup>139</sup> MIŘIČKA, A.: *Incompetent attempt and forms of culpability in the draft Criminal Code from 1937*. In: *Právník*, Volume LXXVI., Prague, Právnícká Jednota in Prague, 1937, p. 389.

<sup>140</sup> *Ibidem*, p. 390.

<sup>141</sup> *Ibidem*, p. 396.