

The Institutional Framework and Methods of the Implementation of Soviet Legal Ideas in the Czechoslovakia and Hungary during Stalinism

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Abstract

The main topics of paper are the institutional framework and methods of the implementation of Soviet legal ideas and solutions during Stalinism (1949-1956). The paper concentrates on the situation in Czechoslovakia and Hungary. After the short introduction, which is dealing with the history of comparative law in these countries, follow the main part, which focuses on the concrete instruments of Soviet “legal assistance” in post-war Central and Eastern Europe. Among these instruments played dominant role the legal faculties in Budapest and Prague with their departments of Soviet law, further the ministries of justice with their legal institutes and the academic journals of affected countries. Final part of paper describes the process of constitution-making in Czechoslovakia (1948) and Hungary (1949).

Key words: academy of sciences, codification, communist parties, constitution, Czechoslovakia, Hungary, law, legal assistance, legal transplants, ministry of justice, Stalinism

Introduction

The discipline of comparative law began to take shape during the long 19th century. Its institutionalisation had a number of milestones. For instance, the first university department devoted to a comparative study of jurisdiction was founded in 1831 in France. However, the *Société de la législation comparée* was only established in Paris somewhat later, in 1869. The same city also hosted the first conference on comparative law in 1900. Further important

institutions of comparative law were created between the two world wars. The interwar period was one of the golden ages of **classical** comparative law. Those years saw the creation of the *Académie internationale de droit comparé* (AIDC), which has been organising international conferences on comparative law every for years ever since.¹ The first of those conferences took place in 1932 in The Hague.

During that period, Central European lawyers also played a role in the development of comparative law. Actually, Hungarian **scholars** were significantly more active in the field than their Czechoslovakian colleagues. Elemér Balogh, a Hungarian theorist who had left the country in 1919, played an important role in the creation of the International Academy of Comparative Law.² Other Hungarian jurists also made efforts to contribute to the international scholarly scene.³ In the Czechoslovakia of the time, whose legal theory was characterised by a combination of legal positivism and strict normativism,⁴ there was no intensive interest in comparative law between the two world wars.⁵ No university courses were offered in the comparative law, and no Czechoslovakian lawyers attended **the specialised comparative international congresses before the Second World War**, either. **The situation was similar in the period between 1945 and 1948 too.**⁶

The situation of the until then popular field of comparative law changed radically after 1945, and even more so after 1948–49, when, under the leadership of the Soviet Union, the so called *Eastern bloc*, also known as the *socialist camp*, was formed with the aim of becoming an alternative pole. The Soviet Union, the first socialist country in the world, had already existed

¹ For the process of institutionalisation, see KNAPP, Viktor: *Velké právní systémy. Úvod do srovnávací právní vědy*. C.H. Beck, Praha, 1996, pp. 8-10. (further Knapp, Viktor: cit. op. l.)

² Prof. Elemér Balogh (1881-1955) obtained doctoral degree in law as a student of the Faculty of Law of the Royal University at Budapest on 23rd November, 1903. Balogh, who **had supported** the civil platform during the Hungarian Autumn Revolution in 1918, had to emigrate from Hungary. Between 1922 and 1928 he was the professor of Roman and Comparative Law at the University of Kaunas in Lithuania. Later he taught in Berlin, USA, Kanada and France. Between 1938 and 1947 Balogh lived in South Africa, where worked as lecturer at University of Johannesburg. Then he lived shortly in England and from 1947 to 1955 in Paris. Balogh was always very active **in European academic circles**. His main topic was Roman law and comparative law. See HAMZA, Gábor: *Elemér Balogh (1881-1955) The Scholar of European Reputation of Roman Law and of Comparative Law*. http://www.kre.hu/portal/doc/sic/2008/sic3_008_hamza.pdf

³ SZABÓ, Imre: *A jogösszehasonlítás szocialista elmélete (The Socialist Theory of Comparative Law)*. Akadémiai Kiadó, Budapest, 1975, p. 67.

⁴ **Czechoslovakia had four faculties of law at that time: the Czech and German faculty in Prague, one faculty in Brno and one in Bratislava. Prague cherished the tradition of legal positivism, Brno that of legal normativism.**

⁵ KNAPP, Viktor: cit. op. l. (*Velké právní systémy...*) p. 9.

⁶ BLAHOŽ, Josef: *Zakladatelský význam díla Viktora Knappa pro právní komparatistiku v České republice*. In: Viktor Knapp v Československé akademii věd. In: Viktor Knapp. Vědecké dílo v proměnách času. Ed. Gerloch, Aleš. Plzeň, Aleš Čeněk, 2014, p. 426.

between the two world wars, but the international discipline of comparative law took little notice of its legal system. In actual fact, many specialists did not consider the rules that were in effect there to be law at all. But it became difficult to maintain that ignorance after World War II, although it took a while before Western legal theory recognised socialist law as a distinct legal system.

The decisive shift took place in the 1960's, with René David's famous work, *Les grands systèmes de droit contemporains*, playing a key role in the process of recognition.⁷ The book, along with a certain degree of consolidation of the political relations between the capitalist West and the socialist East, and the ensuing appearance of various convergence theories, urged politicians and scientists to rethink their fundamental assumptions.⁸ All of that lent new impetus to the many branches of research in comparative law – not only in the West, but also in the Eastern bloc, which began to exhibit an interest in furnishing its own explanations of the essence of its solutions to foreigners. That, however, required a scholarly dialogue with the outside world. But this is a later story, which is irrelevant from the point of view of the current article.⁹

However, during the difficult years of the Cold War in the early 1950's, the study of comparative law was very much on the defensive in the Central and Eastern European region. More precisely, opportunities to perform comparisons with Western countries grew scarce and the emphasis shifted to the study of the Soviet model and the necessity to introduce some Soviet legal solutions. But those processes fall more in the category of legal transplants (or perhaps the peculiar – and unilateral – migration of legal notions) rather than comparative law. These years represented the worst period in the history of communist dictatorship and state socialism in Central Europe. The following paper would like to present the institutional framework and various methods of how the Soviet legal solutions were transplanted into the national law in communist Czechoslovakia and Hungary.

⁷ DAVID, René: *Les grands systèmes de droit contemporains (Droit comparé)*, Paris, Dalloz, 1964, pp. 630 [Précis Dalloz].

⁸ About this process see PÉTERI Zoltán: *A jogösszehasonlítás kelet-közép-európai centruma*. Állam- és Jogtudomány, LI. évf. 2010 No. 1. p. 77. Prof. Zoltán Péteri was for a long time the coordinator of the external cooperation at the Institute of State and Law of the Hungarian Academy of Sciences in Budapest. Later he was the head of the Comparative Law Department at this Institute.

⁹ PERJU, Vlad: *Constitutional Transplants, Borrowing, and Migrations*. In: The Oxford Handbook of Comparative Constitutional Law. Eds.: Rosenfeld, Michel – Sajó, András. Oxford University Press, Oxford, 2012. p. 1304-1327.

The Soviet legal model and the Central European countries before 1948

The Soviet political and legal system was born during the Russian revolution and the ensuing cruel civil war between 1917 and 1921. In this process the Marxist-Leninist ideology played a crucial role, together with the effects of the First World War and the civil war. Despite the declared aims of Bolshevik anti-nationalism and anti-traditionalism, the Russian political and social traditions were also very important.¹⁰

The Bolshevik project of state-building and legal transformation was unique and ambitious, but its impact in the interwar period was very limited, at least in the official sphere. Only the extremely underdeveloped Mongolia followed the Soviet example.¹¹ Apart from Mongolia the Soviet Union did not have allies and good friends. But the radical left revolution and its representatives were not alone. The 20th century saw at least three similar political experiments or projects – the short-lived Soviet Bavaria, Hungary and Slovakia in 1919.¹²

The most elaborated of these was the Hungarian experiment between March and August of 1919. Hungary adopted a new socialist constitution and totally restructured her system of government. The constitution of 1919 was the first written constitution in Hungarian legal history and the second Soviet-type constitution in the world after that of Soviet Russia (1918). Naturally, the roots and predispositions of the Russian and Hungarian post-revolutionary Soviet constitutions were very similar, but this similarity was not the result of a simple process of copying.¹³ The Hungarian Bolsheviks (especially the former war-prisoners) were well acquainted with the basic principles of their Soviet colleagues, but the Soviet model was as yet far from being mature at that time. The Soviet practical lawyers and legal scholars

¹⁰ About the birthing of Soviet legal and political system see BOSIACKI, Adam: *Utopia, władza, prawo. Doktryna i koncepcje „bolszewickiej” Rosji 1917-1921*. Liber, Warszawa, 1999, p. 401

¹¹ The Bolshevik Red Army overran Mongolia in the course of its campaign against the Russian „whites” (especially ataman baron Ungern-Sternberg) in Siberia and the Far East. This action provided the background to the very interesting experiment of establishing Socialism in the predominantly nomad society in Asia. See OBRUSÁNSZKY, Borbála: *Mongólia a XX. században*. Múltunk, 2002, No. 47.

¹² The extremely short-lived Slovak experiment (three weeks) was only an “appendix” to the Hungarian Councils Republic and the consequence of the campaign of Hungarian Red Army. ORMOS, Mária: *A Tanácsköztársaság nemzetközi környezete*. In: 1919. A Magyarországi Tanácsköztársaság és a kelet-európai forradalmak. Eds. Krausz, Tamás – Vértes, Judit. L’Harmattan – ELTE BTK, Kelet-Európa Története Tanszék. Budapest, 2010, p. 9-16. and In: HAJDU, Tibor: *A Tanácsköztársaság mint a közép-európai forradalom része*. In: In: 1919. A Magyarországi Tanácsköztársaság és a kelet-európai forradalmak. Eds. Krausz, Tamás – Vértes, Judit. L’Harmattan – ELTE BTK, Kelet-Európa Története Tanszék. Budapest, 2010, p. 17-24.

¹³ SZABÓ, Imre: *A jogösszehasonlítás szocialista elmélete (The Socialist Theory of Comparative Law)*. Akadémiai Kiadó, Budapest, 1975, p. 163.

formulated the basic norms and principles of the new model only by the early 1920s. The Hungarian revolutionaries were in 1919 real partners of the Russian Bolsheviks and not dependent vassals of Moscow. They had similar aims, mentality and political background.

The Hungarian Bolshevik experiment (Hungarian Soviet Republic) was very short-lived (only 133 days). However, Admiral Miklós Horthy's counter-revolutionary regime encompassed a much longer period (1920-1944). Obviously, this regime persecuted the communists. The Hungarian communists worked in illegality or were in emigration. The impact of the radical left and Soviet ideas on the population was very limited.

The situation in Czechoslovakia was basically different. The new democratic state did not have direct experience with communist revolution, white counterrevolution and civil war. The Communist Party of Czechoslovakia enjoyed a legal status and was a relatively integrated part of the political system. This party had strong intellectual background in the Czechoslovak society. Communists had legal journals, members of parliament, sport-clubs etc. But they did not have the direct experience with socialist state-building and transformation of law. It is possible that a number of legal scholars had leftist orientation but the majority of the Czechoslovak legal profession was moderate. Czechoslovakia between 1919 and 1938 did not even know the notion of political emigration, which was born only in the period of Second World War. London became the center of president Edvard Beneš and his government;¹⁴ to Moscow it was the leaders of the Communist Party of Czechoslovakia (shortly KSČ) that emigrated.

The experience of the Czechoslovak emigrant politicians from Moscow was more limited than the experience of the Hungarian communist emigrants, who spent there 15-20 years.¹⁵ But this fact did not have a big impact on the problem of Soviet legal assistance in post-war Czechoslovakia and Hungary.¹⁶ Its influence was important in the political sphere. The

¹⁴ This government included the communist politicians too.

¹⁵ Ergo, the integration of the Hungarian communists into the Soviet life and political system in the interwar period was more intensive. Béla Kun, the leader of Hungarian radical left revolution in 1919 became a member of the leadership of Komintern, Jenő Varga became the director of Academic Institute of World Economy and the later world-known György Lukács worked at the Institute of Maxism-Leninism. See APOR, Balázs: *Magyar emigránsok Szovjetunióban*. RUBICON 2008. No. 1. p. 49. The Soviet legal carrier was not very typical among the Hungarian emigrants in the Soviet Union.

¹⁶ Most famous radical left scholar with legal degree and legal scientific background was Elek Bolgár (1883-1955). Bolgár dealt with sociology before the First World War. He was attached to the communist movement in 1918 and during the Hungarian Bolshevik revolution worked as ambassador to Vienna, later as deputy foreign minister. Then he lived in emigration (Vienna, Moscow) for 25 years. Balogh arrived in Hungary with the Soviet Red Army in 1945. From 1946 he was a lecturer in Budapest and he worked at the Hungarian Foreign Office. Balogh was deputy minister, later he served as ambassador to Prague and London. Subsequently he became a

transformation of the legal system was implemented primarily by the domestic lawyers under the leadership of Communist Party.

The institutional and scientific background of the “legal transplantation” of Soviet law between 1948 and 1955

The great importance attributed to the Soviet model of state organisation and legal solutions in the Central and Eastern European region under Moscow’s rule, and in particular in Czechoslovakia and Hungary, is best attested by the fact that during those years the prestigious Charles University of Prague established a separate **Department of Soviet State and Law**. The Budapest Faculty of Law also had a similar department during that time. The Department of Soviet Law was headed by László Névai (1914-1983), who had graduated back in 1936, joined the Communist Party in 1942 and began to teach at the Budapest Faculty of Law in 1946. Later he headed the Department of Civil Procedural Law.¹⁷

The introduction of Soviet law into the curriculum in Budapest after the Second World War is a very interesting story. It started in the early period of communist rule in Hungary, but before the crucial year of 1948. Ferenc Nagy as prime minister¹⁸ of the coalition government initiated the introduction of Soviet law for the first time in 1946.¹⁹ Therefore the Faculty of Law in Budapest organised the Soviet law seminar and László Névai became the lecturer in

dean of the Faculty of Humanities in Budapest. He taught at the Faculty of Law, where was head of department. Bolgár published about history of diplomacy, worker movement, legal sociology and electoral law. See http://mult-kor.hu/20090313_bolgar_elek and <http://mta.hu/tortenetitar?PersonId=27701> further MOLNÁR, Erik: *Bolgár Elek*. Akadémiai Értesítő, 1955.

¹⁷ See ARGEJÓ, Éva: *Az 1956-os forradalom és megtorlás az ELTE Állam- és Jogtudományi Karán (The 1956 revolution and reprisal at the Faculty of Political Science and Legal Theory of the Eötvös Loránd University)*. Múltunk, 2013. p. 131, footnote no. 36.

¹⁸ Ferenc Nagy was the prime minister of Hungary between February 1946 and July 1947. The smallholder politician was active in the Hungarian parliament in the interwar period, too. His political background was the agrarian Hungarian Smallholder and Civic Party. Later he lived as a political emigrant in the USA – Nagy was here one of the leaders of Hungarian anticommunist emigration. See TARJÁN M. Tamás: *1979. június 12. Nagy Ferenc miniszterelnök halála*. RUBICONLINE. http://www.rubicon.hu/magyar/oldalak/1979_junius_12_nagy_ferenc_miniszterelnok_halala/

¹⁹ See SCHWEITZER, Gábor: *A „Pázmánytól” az „Eötvösig.” Adalékok a budapesti jogi fakultás történetéhez (1945-1950)*. Múltunk, 2011. No. 4. p. 36.

this course.²⁰ This time Névai prepared his book for habilitation and the title of this book was *The legal system of Soviet Union*.

The Czechoslovak Academy of Science, which was born in 1952 also established a separate research unit (so-called “cabinet”) with the same profile, though it later merged with the Institute of State and Law of the Czechoslovak Academy of Sciences.²¹ This research unit was led by professor Vladimír Procházka who was a famous communist legal expert at that time.²² Procházka participated in the drafting of the new Czechoslovak people’s democratic constitution from 1948.²³ (About this process see later.) Then he was for a short time Czechoslovak ambassador in Washington.

Procházka always maintained very good relations with Václav Kopecký, a very dangerous Stalinist politician in 1950s. Later Procházka returned to Prague (from Washington) and he was one of the eight lawyers – the first members of Czechoslovak Academy of Sciences.²⁴ Logically, his political and academic position was very strong in the first years of communism in Czechoslovakia.

The new Stalinist political regimes that became securely entrenched in both countries in 1948 and 1949 devoted a great deal of attention to ensuring that the lawyers who had qualified previously in the bourgeois law schools of Czechoslovakia and Hungary become acquainted with the achievements of Soviet political science and legal theory. This was necessary not only because of the complete reorganisation of the legal systems but also because of the accelerated codification work that was being done. It was largely due to the latter reason that the Czechoslovak and Hungarian ministries of justice began to have the Soviet literature translated and made copies of the translations available to legal theorists. This was particularly important from the perspective of the civil and criminal law codification that was beginning at the time. Naturally, the legislators had to follow the pattern and the spirit of the Soviet system once they became available in that manner.

Besides the organs of the communist parties it was the ministries of justice that played the central coordinative role in the process of implementing Soviet legal patterns in

²⁰ Ibid. pp. 36-37.

²¹ KNAPP, Karel: *Význam sovětské právní vědy pro vývoj socialistické právní vědy a marxistického právního myšlení v Československu*. Právník, Vol. XCVI, 1957. No. 9, p. 818 (hereinafter Knapp, Viktor: cit. op. II.)

²² See KNAPP, Viktor: *Proměny času. Prospektrum, Praha, 1998, p. 137.*

²³ See *Komentované dokumenty k ústavním dějinám Československa. II. 1945-1960*. Ed. Gronský, Ján. UK – Karolinum, Praha, 2006. p. 329. footnote No. 2.

²⁴ See KNAPP, Viktor: *Proměny času. Prospektrum, Praha, 1998. p. 137.*

Czechoslovakia and Hungary. Firstly some information about the ministries of justice in the two countries. The first minister of justice in communist Czechoslovakia was Alexej Čepička (who later became the „dangerous” minister of defence).²⁵ He was followed by the Slovak journalist Štefan Rais.²⁶ Both were graduated lawyers from the interwar period, but this time they represented a very bad form of Czechoslovak Stalinism.

The Ministry of Justice played an important role in the process of „legal transplantation” in Hungary, too. From 1945 to 1950 this ministry was led by István Ries (former barrister), who had been for a long time a member of the Social Democratic Party. Only later, after the Second World War and the fusion of the Communist Party with the social democrats, did he join the Communist Party. The Hungarian communist secret police arrested him in the summer of 1950 and Ries died during the cruel interrogation.

The new Hungarian minister of justice became Erik Molnár, who had earned a degree from the Faculty of Law in Budapest but he was above all known as a famous Marxist historian. Before the 1944 he worked as a barrister. Molnar held various government posts between 1945 and 1956. In the 1950s he was minister of justice two times (1950-1952, 1953-1956).²⁷

The changes in the personnel of the ministries were radical in this period. The new communist regime dismissed many old civil servants and professionals. But the new regime also needed professionals with legislative experience because in 1949 the process of the complex recodification of law was started. For this work the transformed ministries established special scientific institutes (Institute of Law in Prague and Institute of State and Law in Budapest) and professional commissions from among the old (but politically loyal) and new (communist) legal scholars. In keeping with the spirit of the time representatives of the working class were also included in this project.²⁸

The knowledge of the Soviet law and Soviet institutional solutions was more or less obligatory for these institutions. For the implementation of these goals the work of Russian translators proved to be indispensable. The Soviet legal norms and the works produced by the Soviet legal science had to be translated. The ministries of justice organized “voluntary”

²⁵ Alexej Čepička (1910-1990) in the interwar period worked in the barrister office in Ostrava. Since 1929 he was a member of the Czechoslovak Communist Party. He was the husband of the daughter of Klement Gottwald (the first communist president and communist leader). He was minister of justice from 1948 to 1950. See PERNES, Jiří - POSPÍŠIL, Jaroslav - LUKÁŠ, Antonín: *Alexej Čepička – šedá eminence rudého režimu*. Brána. Praha, 2008.

²⁶ Štefan Rais (1909-1975) – Slovak communist journalist and Czechoslovak minister of justice between 1950 and 1953. He studied in Prague in early 1930-s. Rais was the minister in the period of big Stalinists processes. See VOREL, Jaroslav, ŠIMÁNKOVÁ, Alena et kol.: *Československá justice v letech 1948–1953 v dokumentech. Díl I.*, ÚDV, Praha 2003.

²⁷ About his life and scientific carrier see RÁNKI György: *Molnár Erik*. Akadémiai Kiadó. Budapest, 1971.

²⁸ KNAPP, Viktor: *Proměny času*. Prospektrum, Praha, 1998, p. 120-122.

trainings and courses for legislators, too. Unlike other spheres of public administration we do not have yet information about the Soviet advisers in the process of legal codification, at least in respect of Czechoslovakia.²⁹

The personal contacts with Soviet scholars and colleagues were very limited because the “iron curtain” existed not only between the socialist states and the western countries, but also between the socialist countries and Soviet Union.³⁰ These contacts were more or less occasional. There were more intensive contacts between the scholars and legislative civil servants living in the neighbouring people’s democracies. Czechoslovakia had relatively intensive contacts with Poland, especially during the codification of their civil and family law.³¹

The process of the implementation of Soviet legal solutions into the national law was an interesting practical and theoretical research issue for the lawyers and scholars. Even Viktor Knapp, one of the most talented Czech lawyers in the postwar period,³² formulated in 1953 the *Law of the permanent approach to the Soviet model*. In this paper Knapp cited Klement Gottwald as the father of this idea. According to Knapp this law was a scientific law, which was valid especially in the people’s democracies.³³ The Soviet law is the permanent source of inspiration for the Central and Eastern European socialist lawyers, but this law is not the subject to the legal *propedeutika* (e.g. as Roman law) within the legal education. The implementation of this model had to be creative. The methodological consequences of this theory were the following: 1. Every socialist lawyer had to study Soviet law as a methodological assumption for his/her work. 2. Everybody had to know the peculiarities of the national law. 3. The preservation and conservation of these peculiarities was unnecessary and detrimental. These peculiarities are not substantive, their character is predominantly formal and temporary.³⁴

²⁹ KUKLÍK, Jan et kol.: *Vývoj československého práva 1945-1989*. Linde, Praha, 2009, p. 126.

³⁰ KNAPP, Viktor: *Proměny času*. Prospektrum, Praha, 1998, p. 219.

³¹ KUKLÍK, Jan et kol.: cit. op. 126.

³² Viktor Knapp (1912-1996) was born in Prague and studied at the Charles University of Prague. After the Second World War Knapp worked as civil servant. From 1948 to 1954 he had an important position in the office of the president. He became the professor of civil law, but he proved to be influential in the sphere of legal theory, too. From 1954 he started his academic carries at the Czechoslovak Academy of Sciences. Knapp was the director of the Institute of State and Law between 1955 and 1973. From 1964 to 1971 he represented the electoral district Krnov in parliament. He was (as a reformer) very active in 1968 – e.g. he participated in the process of the federalization of Czechoslovakia. After 1969 the new political course did not sympathize with him. The last active period of his life started after 1989. Knapp is the author of high number of publications in the field of civil law, legal theory, constitutional law, comparative law and legal cybernetics too.

³³ KNAPP, Viktor: *Zákon stálého přibližování sovětskému příkladu – ukazatel cesty československých právníků*. Právník, 1953. No. 3-4. p. 220-221.

³⁴ Ibid. p. 225.

Naturally, this theory was born in the hardest period of Central and Eastern European Stalinism and its historical validity was very limited. This theory may have helped its author in his carrier. This concept was predominantly ideological and political but we have to interpret it in the historical context. Later Knapp played a more positive role in the development of Czechoslovak law – e.g. as protagonist in the revival of comparative law from 1960-s. But it is a different story.

Experience and the results of the institution-building and Soviet „legal assistance” in Czechoslovakia and Hungary

About the process of codification of the new law we have information from scientific literature³⁵ and from memoirs, too. At the same time, it is interesting that in his memoirs published after the change of regime,³⁶ Viktor Knapp, who had played an active role in the civil law codification of 1950, did mention the influence of Soviet law and legal theory, but also made it clear that the work was performed by Czechoslovak scholars who didn't want to simply copy the Soviet model, but laboured to elaborate their own system while taking the Soviet model into account. Knapp did not mention any Soviet advisors.³⁷

A contrary example was cited by academician Imre Szabó in one of his books published in the 1970's – at the time, he was considered one of the paramount theoreticians of socialist comparative law. He mentioned the Czechoslovak and Polish family acts adopted in 1950 as pieces of legislation that, in his view, were such mechanical copies of their Soviet predecessor that eventually they had to be replaced by new laws that were better adopted to the social conditions of Czechoslovakia and Poland.³⁸

In summary, the most important task of the Czechoslovak “legislative two-year plan” dated 1948–50 was to prepare and introduce the major laws that govern the most important areas of life.³⁹ During that time, in Czechoslovakia almost 500 Soviet books and papers were

³⁵ See footnote 28.

³⁶ But Knapp wrote his memoirs just before the Czechoslovak Velvet Revolution (November 1989).

³⁷ KNAPP, Viktor: *Proměny času*. Prospektrum, Praha, 1998, p. 121.

³⁸ SZABÓ, Imre: *A jogösszehasonlítás szocialista elmélete (The Socialist Theory of Comparative Law)*. Akadémiai Kiadó, Budapest, 1975, p. 232.

³⁹ KUKLÍK, Jan et kol.: cit. op. p. 122-128.

translated, an impressive performance in its own right.⁴⁰ But that feat was probably strongly motivated by the atmosphere of fear that began to permeate the entire region. The other – and rather similar – instrument of the rapid transplantation of Soviet legal thinking and solutions was the establishment of a separate periodical by the state entitled *Sovětská věda – Stát a právo* (*Soviet Science – State and Law*), which only published translations of Soviet legal literature. In Hungary very similar role was played by the *Szovjet Jogi Cikkgyűjtemény* (*Collection of Papers from Soviet Law*), starting in 1951.⁴¹

In addition, the Czech *Právník* (*Lawyer*), one of the oldest and most prestigious legal periodicals of Central Europe, also began to publish a supplement with a similar purpose in 1951. A total of 29 Soviet scholarly articles were published, totalling 286 pages.⁴² (On the other side, the publications of the scholars from Western countries were very rarely. The first articles from western lawyer *Právník* published only in 1959!)⁴³

The case of *Právník* is interesting from other points of view as well. The first number of *Právník* was issued in 1861. In 1949 this journal was 87 years old. The socialist transformation started in March 1949, when the more theoretical *Právník* was united with *Právní praxe* (practical legal journal). As the new editor-in-chief Viktor Knapp was appointed, a very talented young lawyer. He was simultaneously the chief of the political department of the office of Klement Gottwald, the first Czechoslovak communist president. This personal fact may have been very important for the survival of the *Právník*. This period was very hostile towards law and lawyers. The publishing house was firstly the *Union of Czechoslovak Lawyers*,⁴⁴ then (from 1951) a responsive organ for publishing was the Institute of Law, established by the Ministry of Justice.⁴⁵ Later the journal became the organ of the Institute of State and Law of Czechoslovak Academy of Sciences.

It is interesting – though ultimately understandable in view of the secluded world of the Soviet Union – that more intense personal relationships between the scholars working at institutions of legal theory only began to form in 1956. The legal committee of the

⁴⁰ BYDŽOVSKÝ, Ladislav: *Pomoc sovětské právní vědy při tvorbě československého právního řádu*. *Právník*, 1957. No.10.

⁴¹ The journal *Állam- és Jogtudomány* (*State and Law Science*), which is the organ of Institute for Legal Studies of the Hungarian Academy of Sciences started only in 1958.

⁴² KNAPP, Viktor: cit. op. II. 816. o.

⁴³ TOMÁŠEK, Michal: *Právník v letech 1948 – 1989*. In: *Právo a stát na stránkách Právníka*. Ed. Masopust, Zdeněk. ÚSP AV ČR, Praha, 2011. p. 120. Author of this article was Paul Bastid, professor and politician from France. Topic of his paper was the new French constitution.

⁴⁴ Jednota československých právníků.

⁴⁵ Tomášek, Michal: *Právník v letech 1948-1989*. In: *Právo a stát na stránkách Právníka*. Szerk.: Masopust, Zdeněk. ÚSP AV ČR, Praha, 2011. p. 110. and p. 113.

Czechoslovakian Academy of Science, for instance, did a three-week introductory tour in Moscow, Leningrad and Kiev. Roughly around the same time, certain works of jurists from Czechoslovakia, and, naturally other socialist countries, began to be translated into Russian, followed by publication in the Soviet Union.⁴⁶

The training of undergraduates and aspirants (today PhD students), today known as doctoral students, from Czechoslovakia and, naturally, Hungary and other ‘brotherly countries’ in the Soviet Union was another matter. During the first half of 1950, it was already quite common for people to absolve all their university training in the Soviet Union. Clearly, directly or indirectly, that also contributed to the ‘legal transplantation’ of Soviet law and legal thinking.

The situation was similar in Hungary. The translation of Soviet legislation and scholarly works was also a priority in Hungary after 1949. There as well, the Ministry of Justice played a definitive role in the work. On 22 October 1949, the Ministry of Justice produced an interesting document entitled *The main aspects of the five-year political science and legal theory plan*. One of its sections featured the following sentence: “*The focus of scientific research needs to be shifted from the universities to the Institute of Political Science and Jurisprudence.*” The planned institute was to consist of four organisational units: a department of jurisprudence, a department of public administration, a separate documentation department, which was to concentrate its efforts “... *on the documentation of material from the Soviet Union and the people’s democracies, and in addition from the West...*”. That department was going to employ 4-6 officials.⁴⁷ Naturally, the new institute was also to have its own library.⁴⁸

The institute, whose beginnings I will discuss in greater detail shortly, was established in practice at the beginning of 1950. The Hungarian Ministry of Justice, to which it was subordinated, monitored its **activities** closely and urged that it be established as soon as possible. According to the original plans, “*The task of the Institute, as far as human resources management is concerned, is to find our jurists, to train scholars in a planned fashion, to*

⁴⁶ Ibid. p. 818.

⁴⁷ Az ötéves állam- és jogtudományi terv főbb szempontjai (*The main aspects of the five-year political science and legal theory plan*), 22 October 1949, Archives of the Hungarian Academy of Science, II. O. 164/1

⁴⁸ The new institute built a rather valuable library – though, paradoxically, not using new material, but rather material from the libraries of the law schools and the Faculty of Law at the Debrecen University that had been closed down shortly before. To this day, it remains an almost unique collection.

*organise the work of jurists working at universities and to establish scholarly working groups”.*⁴⁹

The results of the previous few months and further tasks were discussed at a meeting at the end of March 1950 at the Ministry of Justice; the emphasis shifted from the institute's role in basic research to the services that it was to provide to the ministry and other government bodies. At that meeting, a list of the Soviet material to be translated was also approved.⁵⁰ The significance of the documentation department is evidenced by the first report of the institute about the period October 1949 to March 1950, which discussed the department in its very first section. That is not in the least surprising, as according to the report, in effect the operation of the entire institute began with the organisation of the documentation department. The department immediately compiled a bibliography of the Soviet specialist literature to be procured. Procurement had already been started using various channels.⁵¹ Another similar document also mentioned that the collection of material from, and research of the other people's democracies had also been started. The weight of that topic was also indicated by the fact that Section I of the document entitled *Report about the work of the Institute of Political Science and Legal Theory, 2nd half of 1951*⁵² bore the following title: *In the field of the processing and dissemination of the results of Soviet legal theory*. Section II was about the experiences of other people's democracies.

The role of Soviet patterns and legal assistance during the constitution-making in 1948 and 1949

It follows from the foregoing that the ministries of justice of the two Central European people's democracies attached great significance during those years to the dissemination of

⁴⁹ See page 1 of the document referenced in footnote 47.

⁵⁰ Jegyzőkönyv, felvéve 1950. március hó 29-én deli fél 12 órai kezdettel Ries István igazságügyminiszter hivatali helyiségében, az Állam- és Jogtudományi Intézet igazgatótanácsának első üléséről. Akadémiai Levéltár, II.O. 164/1. (Minutes, recorded on 29 March 1950, beginning at 11.30 a.m. at the office of István Ries, Minister of Justice, about the first meeting of the board of directors of the Institute of Political Science and Legal Theory. Archives of the Hungarian Academy of Science, II.O. 164/1.)

⁵¹ Report about the operation of the Institute of Political Science and Legal Theory between October 1949 and the end of March 1950.

⁵² Report about the work of the Institute of Political Science and Legal Theory, 2nd half of 1951. Archives of the Hungarian Academy of Science II. O. 164/6. The author wishes to thank Gábor Schweitzer for providing the archival sources quoted herein, but found by him.

the Soviet body of legislation to their own specialists in legal theory and in particular in the codification of legislation as fast as possible. We have also seen an outline of the infrastructure of that entire process. Naturally, that dissemination yielded quick results in many areas. In 1957, on the 40th anniversary of the Great October Revolution, the periodical *Právník* published a number of articles, already referenced in the present paper, which concerned the assistance that Soviet legal scholarship had provided to Czechoslovak lawyers. One of those papers emphasised the following major areas of law and items of legislation: the Constitution of 1948, the codification of civil, criminal and family law, the transformation of the system government, in particular as regards the public prosecutor's office, the courts of law and the administration of councils.⁵³ The article didn't mention the role of Soviet advisors directly, it rather referenced the importance of Soviet specialist literature and "tried and tested solutions". It is also interesting that joint scholarly conferences were not mentioned at all.

In actual fact, the adoption of the Constitution of May 1948 in Czechoslovakia only followed the pattern of the 1936 Stalinist Soviet constitution partially. Interestingly, though interspersed with excuses, this was even mentioned in the above-mentioned 1957 paper. Naturally, the author of the paper began by noting that during the preparation of the new constitution, the Czechoslovak experts had learnt a great deal from the experiences of the 1936 Soviet constitution, but added that they also had to take into account the historical development of the Czechoslovak state, and incorporate the national and democratic revolutionary transformation that followed 1945,⁵⁴ and its consequences, in the new constitution. As a result, the assistance of Soviet scholarship was more pronounced in the regulation of other legal areas.⁵⁵

Indeed, the 1948 Czechoslovak people's democratic constitution was created in somewhat different conditions **in comparison with** the 1949 Hungarian or the 1952 Polish ones. Work on the new text began in 1946, with the participation of several renowned legal scholars who had already contributed as experts to the 1920 liberal democratic constitution.⁵⁶ That had still been

⁵³ BYDŽOVSKÝ, Ladislav: *Pomoc sovětské právní vědy při tvorbě československého právního řádu*. *Právník*, 1957, No. 10. pp. 819-823.

⁵⁴ The Czechoslovak political terminology of that period used very often this notion for **characterizing** the political processes **between the liberation of the country in 1945 and the communist victory in 1948**.

⁵⁵ BYDŽOVSKÝ, Ladislav: cit. op. p. 820.

⁵⁶ The most famous among them were probably František Weyr, Alfred Meissner and Jiří Hoetzl. KUKLÍK, Jan et kol.: cit. op. p. 66.

a coalition period, and the president of the country was still Edvard Beneš.⁵⁷ The coalition government of the communist and civic parties, led by Klement Gottwald was formed after the election in 1946.⁵⁸ The adoption of a new constitution was a crucial point of the program of the Czechoslovak coalition government. According to the original political plans the new constitution had to follow the positive traditions of the Czechoslovak constitution from 1920 and had to accept the results of the post-war “national and democratic revolution.” The main questions of the constitution-making were the following: recognition of the new system of national committees (the Czechoslovak form of soviets in the Soviet Union), acceptance of nationalization in the economy and the legal solution of the sensitive Czech-Slovak problem.⁵⁹ Securing the special alliance with the Soviet Union was also very important. This program was supported by every member of the coalition government.

For the preparation of the draft the Czechoslovak National Assembly created a special commission with 36 members. Each relevant party had proportional representation there. General rapporteur of this commission was the communist Vladimír Procházka. The chairman of this commission was a member of the Czechoslovak Social Democratic Party.

The Czechoslovak Communist Party had at that time its own special constitutional commission, which prepared its project of constitution. This project carried weight because the communists comprised the strongest party in the parliament.⁶⁰ This plan displayed marked similarities with the constitution adopted in the May 1948 both in its structure and wording,⁶¹ but the version prepared in the National Assembly by coalition parties was partially different. The communist project from 1946 was not the simple copy of the Soviet Stalinist constitution from 1936, because it was based on the postwar circumstances in Czechoslovakia.

The non-communist parties attacked the nationalisation of the economy and tried to preserve the institution of Constitutional Court, which enjoyed a respected tradition in prewar

⁵⁷ But Edvard Beneš as a last civic president did not sign the text of the new constitution and resigned from his position. KUKLÍK, Jan et kol.: cit. op. p. 118.

⁵⁸ The Czech and Slovak communists had in the government 7 plus 2 positions, Slovak democrats 4, Czechoslovak National Socialist Party (non nazi!) and Czechoslovak People's Party 4-4 ministers too. The Social democrats had only 3 ministers. See KUKLÍK, Jan et kol.: cit. op. p. 64-65.

⁵⁹ PROCHÁZKA, Vladimír: *Ke vzniku ústavy 9. května*. Právník 1958. No. 5. p. 367-368. (cit. op. l.)

⁶⁰ The Czechoslovak Communist Party had there 114 mandates, the National Socialists had 55 mandates, the People's Party 46 mandates and the Slovak Democrats 43 mandates. The Social Democratic Party together with the Slovak Party of Work had 39 mandates. The Freedom Party from Slovakia had only 3 mandates. See. KUKLÍK, Jan et kol.: cit. op.p. 64.

⁶¹ Ibid. p. 369.

Czechoslovakia.⁶² Between the big blocks there existed at that time approximately 30 differences – 30 points for discussion.⁶³ The position of these parties in the process of constitution making became from day-to-day weaker. The National Socialist Party sympathized with the project of the new constitution from 1947. The author of this project was professor Vladimír Kubeš from Brno. Kubeš was a national socialist expert for constitution-making. Later the Czechoslovak People's Party became sceptical to the official project of the constitution, too.

The three influential non-communist parties represented in parliament resigned from taking part in the further process of constitution-making on 18th February 1948. This fact was declared by the minister of education (Jiří Stránský). This was the beginning of the intense political crisis within the Czechoslovak government, which resulted in the total communist victory.

When, in February 1948, the Czechoslovak communists took power, the draft of the constitution was essentially complete.⁶⁴ As the new rulers did not wish to miss the symbolic date set for the adoption of the new constitution (9 May 1948, celebrated as Victory Day in the Soviet Union and as the day of the Soviet liberation of Prague in Czechoslovakia), they didn't have enough time left for a major redrafting of the text.

The preservation of the original draft of the constitution by the Czechoslovak communists after February 1948 could be attributed to other – more or less political-ideological – reasons as well. Klement Gottwald, who was at that time prime minister and also the leader of the Communist Party declared that the country did not need to skip a necessary stage of development. The draft prepared in the parliament by the common commission more or less reflected the ideas and goals of the communists. A large number of elements of the communist constitutional project from 1946 were incorporated into the draft prepared in February 1948. The communists did not need big and radical changes in the text – they wished to show the continuity between two national and democratic revolutions of 1918 and 1945.⁶⁵

⁶² PROCHÁZKA, Vladimír: cit. op. I. p. 372.

⁶³ PROCHÁZKA, Vladimír: *Ústava devátého května a její první výročí*. Právník, 1949 (March) No. 3-4. p. 103. (Procházka, Vladimír: cit. op. II)

⁶⁴ PROCHÁZKA, Vladimír: cit. op. II. p. 103-104.

⁶⁵ See PROCHÁZKA, Vladimír: cit. op. II. p. 373. Remark: „National and democratic revolution” was a very popular notion for the description of the events of 1918 and 1945 in the political terminology of those years.

Professor Vladimír Procházka, who was an influential legal expert in this process later highlighted on two occasions (1949, 1958)⁶⁶ the differences between the Soviet constitution of 1936 and Czechoslovak constitution of 1948. The different character of the two constitutions was no problem for him, on the contrary, he pointed out these differences in his articles. This position could be presented openly only when it coincided with the official policy of the Communist Party.

There is no reason to wonder that between the Soviet model and the Czechoslovak constitution there were important similarities. This fact was noted by Procházka and also by the current Czech literature. The biggest differences between the original draft of February 1948 and the final text of the constitution of May 1948 could be found in the preamble and in the first part of normative constitutional text. The incoming communist power changed the articles about the nationalisation of the economy and introduced its own version of national committees (Czechoslovak organs of communist local government).⁶⁷

These points represent the main priority of the communists in the process of constitution-making. The role of this party was dominant in the last phase. The central organs of the Communist Party were very active between February and May 1948. In fact, it was the Central Committee of the Communist Party that was able to make the crucial decisions concerning the chapters of the constitution, the parliament possessed only a subordinated position in this respect. The main coordinator between the central committee and the parliament was Vladimír Procházka. The parliament adopted unanimously (246 MPs) the text on 9 May 1948 in the Vladislav Saal of the Prague Castle.⁶⁸

The massive influence that timing could have on the fate of individual documents is also demonstrated by the circumstances of the drafting and the adoption of the August 1949 Hungarian people's democratic constitution.⁶⁹ The Hungarian constitution was only adopted a

⁶⁶ See the above-cited articles by professor Procházka.

⁶⁷ KUKLÍK, Jan et kol.: cit. op. p. 118. and Procházka, Vladimír: cit. op. II. p. 374.

⁶⁸ KUKLÍK, Jan et kol.: p. 118.

⁶⁹ This constitution was the first written constitution in Hungarian constitutional history. Before 1945 Hungary (like the UK) possessed only a so-called organic „historical constitution,” comprising the corpus of different fundamental laws regulating the most important spheres of public life. (See SCHWEITZER, Gábor: *Fundamental Law – Cardinal Law – Historical Constitution: The Case of Hungary since 2011*. p. Journal on European History of Law. Vol. 4. 2013. No. 1. 124-125.) The Hungarian radical left regime adopted the Socialist Federative Soviet Constitution of Hungary in 1919, but it was valid only for a very short time. This document did not become a part of the traditional Hungarian constitutional thinking. The new democratic regime after the Second World War adopted the complex Law No. I. from 1946 on the Republic of Hungary, which served as temporary constitution during 1946 and 1949. But this document dealt dominantly with the structure of the state. The regulation of human rights was limited in this document.

little more than a year after the Czechoslovakian one, but in very different circumstances and therefore with different results.

The process of Hungarian constitution-making was very short. The idea of the adoption of a new constitution was first raised in 1948 on the congress, which united the Hungarian communists with the social democrats. The Hungarian people's democratic constitution was adopted on 18th August 1949 by the parliament elected in May 1949. This election was the first of a "new type" of (formal) voting in postwar Hungary. Accordingly every member of parliament voted for the new constitution.⁷⁰

The Hungarian government led by Mátyás Rákosi formally appointed a special commission for the preparation of a new constitution, but in fact the draft of the constitution was produced by two professionals who worked at the Ministry of Justice at the time, János Beér and Imre Szabó.⁷¹ Both of them used the Soviet Constitution of 1936⁷² as the basis for their work. The editors preparing the text actually had to explain and justify every single significant divergence from the Soviet pattern.⁷³

The complex draft was ready by 5th August 1949. Then followed a four-day (!) general discussion about this text involving all citizens of Hungary. The discussion in the commissions of the Hungarian parliament took only 15 minutes, then followed the plenary session. Next day the constitution was adopted. The new text of the constitution was published in the official journal on 20th August 1949.⁷⁴ This constitution-making was very short and effective!

In a 1989 TV documentary about the Hungarian Constitution, Imre Szabó specifically recalled the consultation at which the authors of the draft had to present the project and then justify divergences individually at a high-level political forum.⁷⁵ There were several people in the audience who actually held copies of the 1936 Soviet Constitution or its Hungarian translation. Minister of Defence Mihály Farkas in particular was making every effort to

⁷⁰ See *Alkotmánytan*. Ed.: Kukorelli, István. Osiris-Századvég, Budapest, 1994, p. 34.

⁷¹ *Magyar alkotmánytörténet (Hungarian Constitutional History)*. Ed.: Mezey, Barna. Osiris, Budapest, 1996, p. 388.

⁷² Which was formulated, as is widely known, by Nikolai Bukharin and Karl Radek, who were later executed, and by the legal scholar Pashukanis. Ibid. p. 388.

⁷³ *Magyar alkotmánytörténet*. Ed.: Mezey, Barna. Osiris, Budapest, 1996, p. 388.

⁷⁴ Ibid. p. 388.

⁷⁵ Documentary entitled "... elveszett alkotmány ..." (... *the lost constitution* ...), MTV, 1989. Excerpt from the interview with Imre Szabó.

remain ‘consistent’ and he insisted on the Soviet text.⁷⁶ Under such conditions, any further Soviet professional advice or ‘legal aid’ became completely superfluous.

According to Szabó’s memoirs, Mátyás Rákosi was making haste to complete the draft, because he wanted the constitution to be adopted on 20 August, the anniversary of Kingdom of Hungary’s foundation in the Middle Ages. This would have resulted in shifting the emphasis of the 20 August holiday from Saint Stephen and the foundation of the state to the ‘Celebration of Bread’ and ‘Constitution Day’. Work on the draft had actually been started in early March 1949, and the draft for discussion was complete by the beginning of August. It is interesting that Rákosi had no objections to the parts about the rights of citizens, he probably didn’t see them as significant.

The situation was even more interesting in the case of the Polish Constitution adopted in 1952. Stalin himself requested a Russian translation of the text and in several places entered his own comments in the documents, suggesting ‘improvements’.⁷⁷ Obviously, it would have been quite difficult not to include them. ‘Luckily’, the Polish already had some experience with the Polish constitutional activities of great foreign personages – in 1807, Napoleon himself had made them a gift of an imposed constitution produced – actually in French – for the Grand Duchy of Warsaw, a country he had created.⁷⁸

However, the spread of Soviet patterns in the region had its own internal dynamic. The process varied in intensity and sometimes even in direction. In a later piece of writing, Imre Szabó, as an active eyewitness of the events of the era, divided the relatively short period from 1949 to 1956 in Hungary into two parts.

In the first part (1949–1953), Soviet legal solutions were being copied mechanically in effect. They even attempted to introduce institutions that were quite peculiar or accidental within Soviet law. The official explanation was that the Hungarian people’s democracy had had no experience about those topics, so they had to adhere to the model strictly.⁷⁹ But the actual explanation had a great deal more to do with the political system and the general atmosphere of those years. That also happens to be true of the second period (1953–1956), when, as a

⁷⁶ See the documentary referenced in the previous footnote.

⁷⁷ *Polskie Konstytucje*. Wydawnictwo Sejmowe, Warsaw, 2007. pp. 12-13.

⁷⁸ *Ibid.* pp. 4-5.

⁷⁹ SZABÓ, Imre: *A jogösszehasonlítás szocialista elmélete (The Socialist Theory of Comparative Law)*. Akadémiai Kiadó, Budapest, 1956, p. 166.

reaction to the ‘copying’ of previous years, an emphasis on national aspects and solutions emerged once more.

Naturally, the effect should not be overestimated, as those variations took place within the context and political praxis of 1950’s communist ideology. The differences between the two periods were clearly also connected to the conflicts between Mátyás Rákosi⁸⁰ and Imre Nagy, and the ideological context of those conflicts. The death of Josif Vissarionovich Stalin in 1953 should also be taken into account. In Czechoslovakia, there wasn’t such a marked change in the first half of the 1950’s, but by the second half of the decade, criticism of servile copying and **mechanical** repetition also became acceptable there.⁸¹ In scholarly literature, the emphasis shifted to a considered learning process. **But that was the beginning of a new era in the history of Eastern European socialism.**

⁸⁰ Mátyás Rákosi was the first secretary of the Hungarian communist party and the main Stalinist. Imre Nagy was the prime minister of Hungary between 1954 and 1956. Despite of his emigrant experience in the interwar Soviet Union, he became a reformist and patriot. The new regime led by János Kádár and established after the Hungarian revolution in 1956 executed him in 1958.

⁸¹ See KNAPP, Viktor: cit. op. II (see footnote 5).