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## *New Fundaments of the Czechoslovak Civil and Criminal Procedural Law after 1948<sup>1</sup>*

### Abstract

The development of procedural law and the overall framework of the administration of justice after 1948 took in many respects previously unknown forms. First of all, the convergence of civil and criminal procedural law in some aspects (e.g. the role of prosecutors) is a characteristic feature of the period, whereby the elements of non-contentious proceedings were extended even to adversarial proceedings, as a result of which the principle of searching for material (objective) truth became a characteristic principle for both civil and criminal proceedings. The deformations introduced after 1948 included also the abandonment of a separate labor justice system and administrative justice system (from 1952) in Czechoslovakia, when, on the one hand, the resolution of labor law disputes was entrusted to autonomous authorities at workplaces, and on the other hand, the Supreme Administrative Court was abolished in 1952 as allegedly conflicting with the sovereignty of the people, who were deemed to rule through the executive bodies and offices. Paradoxically, the arbitration, which is traditionally based on extra-judicial dispute resolution, was significantly weakened – it was only allowed for international business relations. Instead, a special, state-controlled arbitration was created for national business and economic relations – so called state arbitration, or economic arbitration, as a special system parallel to the judiciary. Thus, all in all, the judicial power and its competences were significantly curtailed in the observed period – in favor of mechanisms controlled by the executive and the Communist Party. These deformations became even stronger after 1960, when socialism was allegedly reached in Czechoslovakia, according to the wording of the 1960 Constitution. Further development brought another simplification of procedural law, whereas the administration of justice was to a yet even greater extent entrusted to extra-judicial bodies.

**Keywords:** procedural law, Czechoslovakia, criminal procedural law, civil procedural law, arbitration, labor justice, administrative justice

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## Introduction: Changes in procedural law in 1948

Due to the continuity of law, even after 1945 Czechoslovakia continued to rely on the legal framework of former Hungarian laws (in Slovakia) and Austrian laws (in Czechia), along with legal regulations adopted during the First Czechoslovak Republic (1918–1938). In Slovakia, the regulations originating from the wartime Slovak State (1939–1945) generally remained in force as well, while in the Czech part of Czechoslovakia, laws from the wartime period were considered null and void.

Concerning the procedural law specifically, due to the fact that almost all unification efforts (to overcome the dualism of former Austrian and former Hungarian law) from the interwar era failed, the only significant regulation that applied uniformly across Czechoslovakia was Act No. 100/1931 Zb. on civil non-contentious litigation. This Act was thereby traditionally based on principles different from those of contentious litigation, including principles of officiality, and of material truth.<sup>2</sup> Contentious litigation (Civil Procedure Code), as well as the regulation of criminal procedure (Criminal Procedure Code), remained further-on dualist, though.

Another round of unification efforts started shortly after 1948, when the Communist Party of Czechoslovakia seized power to rule for the following 40 plus years. As early as in 1948, a so-called legal biennial project started – bringing about the unification and re-codification of all major codes, including the Civil and Criminal Procedure Codes. Interestingly, during this project, the principles that previously governed non-contentious litigation began to be applied to contentious civil litigation proceedings as well, making it thus more similar to criminal law than ever before. As a result, the distinctions between various types of proceedings partially disappeared, although the theoretical distinction was never fully abandoned.<sup>3</sup> Still, this evolution even led to ideas of introducing a general procedural law, or general “court law,” being based on the same principles throughout various branches and disciplines of procedural law.

Concerning the organization of the judiciary, the year 1948 brought important changes in this regard as well. Act No. 319/1948 Zb. introduced several significant changes. First of all, all extraordinary courts and most arbitration courts were abolished. A two-instance system<sup>4</sup> replaced the previous three-instance system, whereas jurisdiction rules were simplified. A new appellate remedy, the complaint for the preservation of law, was introduced, which could only be filed by the general prosecutor.<sup>5</sup>

Given the preference for material or objective truth, default judgments were eliminated,<sup>6</sup> as well as the binding nature of the parties’ concurring claims. This means that while previously the court had to accept the concurring claims of the parties even if

<sup>2</sup> Češka [et al.], *Československé občanské právo*, 40.

<sup>3</sup> *Ibid.* We find it explicitly applied also in the classic textbook from 1989. –Indeed, even in the period of the socialist era, the level of the most prominent proceduralists was characterized by high erudition and following foreign trends. See the works: Macur, *Základní otázky právní*; Macur, *Občanské právo*.

<sup>4</sup> See also: Příbelská, “Historický vývoj,” 368–9.

<sup>5</sup> Kabát, “Dvadsaťpäť rokov,” 727.

<sup>6</sup> The default judgment was repealed in § 52.2b of Act 319/1948 Zb., under the slogan of the fight against formalism. See Lavický [et al.], *Moderní civilní proces*, 143.

it was clear that they did not correspond to the objective truth,<sup>7</sup> the new regulation was aimed at strengthening the principle of material truth, meaning that the court was not bound by concurring claims of the parties. The principle of material truth was particularly evident also in the *ex officio* evidence taking, which required the courts to consider even the facts that were not presented by the parties.<sup>8</sup>

All of this together points to a new role of the courts and of procedural law in Czechoslovakia under the Communist rule – namely the role of courts as bodies of state control, exerting new additional tasks – of an educational and supervisory role, aiming at a fast reaching of the final stage of the history of mankind – communism. Still, where possible, the courts were to be circumvented and replaced by extra-judicial dispute resolution mechanisms, which were handier for the Party, being easily controlled and supervised.

In the following pages, we will delve into greater detail with respect to all the above phenomena, introducing thus the legal experiment taking place in Czechoslovakia of the 1950s, peaking in the 1960s.

## 1. The new era of civil procedure begins...

### 1.1. Civil Procedure Code of 1950: The new principles of civil procedure

The new Civil Procedure Code No. 142/1950 Zb. was one of the successful outcomes of unification and re-codification efforts of the legal biennial project. This Code followed all the trends mentioned in the introduction to this paper. Primarily, it was the Soviet model<sup>9</sup> that was manifested in the adoption of the principle of material truth, as well as in the deepening of prosecutorial interventions into the proceedings, thereby weakening the dispositive principle being traditionally at the heart of civil dispute resolution. To name some of the new elements, the means of proof were expanded, allowing various new methods of uncovering the truth. E.g., the interrogation of parties, which was previously considered only as supporting evidence, was now given greater significance.<sup>10</sup> On the other hand, the oath as a means of proof was abolished.<sup>11</sup>

<sup>7</sup> Števček [*et al.*], *Civilné právo procesné*, 122.

<sup>8</sup> Kabát, “Dvadsaťpäť rokov,” 726. According to the Explanatory Memorandum, “[...] the weakening of the principle of deliberation and the admission of novelties in appellate proceedings [...] guarantees the people’s judges the possibility of finding the material truth at any time, i.e. at any period of the proceedings. Novelty in appellate proceedings will not be prejudicial to the expeditious hearing of the case; the court may prevent dilatory litigation by other more appropriate means (cf. at §§ 40–48).” [https://www.psp.cz/eknih/1948ns/tisky/t0160\\_04.htm](https://www.psp.cz/eknih/1948ns/tisky/t0160_04.htm) (accessed: 11.12.2024).

<sup>9</sup> Its model was the 1923 Code of the Soviet Union. The 1923 Code as well as the 1964 Code were based on the principle of the strong role of the judge, the principle of material/objective truth, and the strong position of the prosecutor. Caenegem, “History of European Civil Procedure,” 100.

<sup>10</sup> Češka [*et al.*], *Československé občanské právo*, 41.

<sup>11</sup> See the Explanatory Memorandum to § 101: “The curriculum is based on the principle that a member of a socialist society rightly conceives of civic honor. Therefore, the draft does not introduce either an oath or

Within the appellate proceedings, the remedies of appeal and complaint were newly based on the principle of full appeal – hence, both the factual situation as well as the legal evaluation could have been reassessed, allowing the court to modify the decision of the lower court.

Furthermore, in response to the excessive “bourgeois disintegration” of the civil procedure, the integration of civil court proceedings was newly emphasized. This is why there was claimed to be no fundamental distinction between contentious and non-contentious litigation in the new Civil Procedure Code.<sup>12</sup> The principle of material truth was namely to be equally applied to both types of litigation. However, the Civil Procedure Code of 1950, in its second part, still regulated some differences and deviations from the general rules of civil procedure, in specific areas which roughly equal former non-contentious litigations. Special rules were thus provided for the following areas of civil procedure:

- (a) marital affairs;
- (b) trusteeship;
- (c) guardianship;
- (d) adoption;
- (e) parental power over children;
- (f) deprivation of freedom in healthcare institutions;
- (g) declaration of death;
- (h) inheritance;
- (i) judicial cancellation of documents;
- (j) judicial custody;
- (k) rent;
- (l) national insurance; and
- (m) some other matters, including promissory notes and checks, as well as warrant proceedings.

Furthermore, there were additionally special regulations governing proceedings related to the land registry, business registry, and to voluntary auctions, as being “matters that did not necessarily require a court involvement.”<sup>13</sup>

The integration efforts in the civil court proceedings was further demonstrated by the inclusion of arbitration proceedings,<sup>14</sup> execution (enforcement) proceedings,<sup>15</sup> and

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an affirmation. It would be inconsistent with the principle of substantive truth if the credibility of testimony were to be guaranteed by an oath or an express affirmation.” *The Government’s Civil Procedure Bill* (Press 510). [https://www.psp.cz/eknih/1948ns/tisky/t0510\\_13.htm](https://www.psp.cz/eknih/1948ns/tisky/t0510_13.htm) (accessed: 11.12.2024).

<sup>12</sup> In theory, however, the differences have been acknowledged – see a more detailed discussion, e.g. in Stavinohová. *Problém diferenciacie*.

<sup>13</sup> Rubeš [et al.], *Komentár k občianskemu*, 54.

<sup>14</sup> According to the Explanatory Memorandum: “The undeniable advantages of arbitration have so far been enjoyed predominantly by the capitalist sector in its own interest. The draft preserves these advantages, but only to the benefit of the socialist sector, which appears in the limitation of the range of persons who can conclude an arbitration agreement. These will mostly be property disputes, the speedy and informal resolution of which will also be in the interests of the proper implementation of the Single Economic Plan. As art. 3 of the draft excludes, of course, those disputes between national undertakings the settlement of which is to be entrusted by a special law to state arbitration.” [https://www.psp.cz/eknih/1948ns/tisky/t0510\\_22.htm](https://www.psp.cz/eknih/1948ns/tisky/t0510_22.htm) (accessed: 11.12.2024).

<sup>15</sup> According to the Explanatory Memorandum: “The general provisions contained in the first part of the curriculum, i.e., the duty of the court to be an adviser to the workers, the participation of the public

bankruptcy proceedings, (which was formally abolished and replaced by the so-called forced liquidation<sup>16</sup>) into the Civil Procedure Code of 1950.<sup>17</sup> Similarly, the international procedural law was also incorporated into the Code of 1950.<sup>18</sup>

The theoretical starting point of the 1950 procedural code was thus clearly the idea that civil court proceedings should be constructed as a single, unified procedural law. This idea was there to stay even in the new re-codification wave of the civil procedure in 1963, marking the end of the era of the popular democratic legal system and transitioning to the new, socialist era of the legal system.

## 1.2. Civil Procedure Code of 1963: Socialist concept of civil procedure

The Civil Procedure Code of 1950 was replaced in the second wave of codification during the 1960s, specifically in 1963, by the new Civil Procedure Code No. 99/1963 Zb. (hereinafter referred to as CPC). This was very much built up on the models introduced in the same period by the recodification of Soviet Civil Procedure, setting the directions for other countries of the Soviet Block to follow. In legislative optimism of coming close to reaching communism, this new Code was characterized mostly by the general idea of the further simplification of law. Thus, while the Code from 1950 contained 678 sections, the CPC from 1963 had only 376 sections. However, this reduction was also due to the fact that some aspects that were previously regulated by the CPC were now transferred to special Acts of the Parliament. Thus, in addition to the CPC, other important acts regulating civil procedural law included: the Act No. 97/1963 Zb. on international private and procedural law (which remains in effect until today in Slovakia), Act No. 98/1963 Zb. on arbitration proceedings in international commercial relations and on the enforcement of arbitration awards, the Act

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prosecutor, the principle of substantive truth, the ex officio procedure in the initiated proceedings and other general provisions, also apply to the enforcement proceedings, unless the curriculum provides for exceptions in individual cases.” [https://www.psp.cz/eknih/1948ns/tisky/t0510\\_18.htm](https://www.psp.cz/eknih/1948ns/tisky/t0510_18.htm) (accessed: 11.12.2024).

<sup>16</sup> The enforcement regulation in the CPC of 1950 included three types of enforcement proceedings: (1) Execution of the decision to enforce monetary and non-monetary performance; (2) Execution of the decision regarding the upbringing of minor children; (3) Liquidation of assets (now referred to as bankruptcy, but according to the 1950 law, it was termed “forced liquidation”). Češka [et al.], *Československé občanské právo*, 52.

<sup>17</sup> Schelleová [et al.], *Civilní proces*, 59. According to the Explanatory Memorandum: “An executory liquidation replaces [...] the existing bankruptcy. Bankruptcy and insolvency in the previous system were typically capitalist devices. Financially powerful creditors had the decisive say.” [https://www.psp.cz/eknih/1948ns/tisky/t0510\\_18.htm](https://www.psp.cz/eknih/1948ns/tisky/t0510_18.htm) (accessed: 11.12.2024). And next: “What an enforcement liquidation has in common with the existing bankruptcy is that the satisfaction of creditors is governed by similar principles. [...] The settlement procedure has not been taken over by the outline at all. Debtors have often used it to their advantage to fraudulently manipulate some creditors to the detriment of others. The people’s democratic state has no interest in keeping insolvent or overextended private entrepreneurs as codecision-makers in economic affairs. For the socialist sector there are other means than settlement at the expense of creditors.” [https://www.psp.cz/eknih/1948ns/tisky/t0510\\_19.htm](https://www.psp.cz/eknih/1948ns/tisky/t0510_19.htm) (accessed 11.12.2024).

<sup>18</sup> According to the Explanatory Memorandum: “Act No. 41/1948 Sb., on international and inter-regional private law and on the legal status of foreigners in the field of private law, means the summarization of the regulations of a substantive nature into one law and their systematic arrangement. However, it is precisely this comprehensive enactment of substantive rules of private international law that directly necessitates a similar comprehensive enactment of rules of a procedural nature.” [http://www.psp.cz/eknih/1948ns/tisky/t0510\\_21.htm](http://www.psp.cz/eknih/1948ns/tisky/t0510_21.htm) (accessed: 11.12.2024).

No. 95/1963 Zb. on State Notaries and Proceedings before State Notaries (Notarial Order), and, after 1989, even a special Execution Order. The CPC No. 99/1963 Zb., e.g., did not include the provisions on inheritance proceedings or judicial custody matters, since these issues were newly regulated in the Notarial Order. The new CPC also lacked specific regulations on matrimonial matters, establishing or denying paternity, tenancy issues, relations with foreigners, and other matters previously governed by the 1950 Code, since all of the above issues were now regulated in separate laws.<sup>19</sup> Thus, there was a substantial disintegration of the civil procedural law taking place, going somewhat in the opposite direction if compared to the 1950 ideals. Still, it was only a formal disintegration into various acts, while retaining and strengthening the main principles of the unified civil procedure with almost no distinction between contentious and non-contentious litigation. In line with the idea of a unified civil procedure as well as its simplification, the new code did not even include special sections that were present in the previous Code, regulating deviations from general procedural rules in the areas of former non-contentious litigation. The differences between contentious and non-contentious litigation thus became yet more blurred. Even the historical concept of a court action previously used in contentious litigation was replaced – by the “proposal to initiate proceedings.”

The simplification was clearly visible in various areas of civil procedure law. For example, separate remedies of appeals and complaints were consolidated into a single remedy of an appeal. As a result, complaints were abolished. The form of decisions was also simplified, with judgment being the only form of decision in the matter itself.<sup>20</sup> Resolutions were now issued only in the procedural sense, to regulate the trial process itself.<sup>21</sup>

Besides simplification, the procedure was also to become closer to lay people and the society in another way. The introduction of the new concept of “socialist procedural law” was namely characterized also by another specific feature – the so-called educational (instructive) role of the courts. This included interviews with citizens<sup>22</sup> or issuing warnings for socialist organizations.<sup>23</sup> The instructive duty of the courts was significant

<sup>19</sup> According to the Explanatory Memorandum: “The decision to detain in a closed institution will be entrusted to the national committees under the Health Care Act.” See: *Government Proposal*. [https://www.psp.cz/eknih/1960ns/tisky/t0147\\_08.htm](https://www.psp.cz/eknih/1960ns/tisky/t0147_08.htm) (accessed: 11.12.2024).

<sup>20</sup> *Ibid.*

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

<sup>22</sup> “The court will invite to an interview a citizen who fails to fulfil his or her obligations to family, fellow citizens or society. At the interview, which may also be attended by other citizens concerned or by representatives of the relevant collective of workers from the workplace or place of residence, the court shall have the opportunity, in a completely informal manner, to obtain clarification of the circumstances of the cases and to guide the person who is not fulfilling his obligations, or even interfering with the rights of another, in an appropriate educational manner, in particular by means of an agreement, to continue to fulfil his obligations voluntarily and to cease interfering with the rights of another. The result of such an interview should normally be a moral commitment by the citizen in the form of a promise to voluntarily fulfil his obligations and to refrain from unjustified interference with the rights of another. The fulfilment of the promise is monitored by the court, if necessary, with the help of social organizations and national committees.” *Ibid.*

<sup>23</sup> “If the court finds deficiencies in the activities of an organization, especially those that could lead to violations of citizens’ rights and thus possibly to disputes later on, it shall draw the organization’s attention to them. The curriculum ensures that the organization actually addresses the warnings and does not leave them unanswered. In the event that the organization fails to respond to the court’s notice, the court would communicate the identified deficiency to a superior authority or bring it to the attention of another state body, such as the public prosecutor’s office or the people’s control body. The court’s dispute prevention

both procedurally and substantively, ensuring that workers, “due to their lack of general or legal education, would not suffer harm as to their rights.”<sup>24</sup>

A unique feature of this approach was also the right of the national committee (local administrative body) and socialist organizations to participate in civil court proceedings. This was related to the thesis of the withering of the state and the strengthening of society at the state’s expense. A local national committee could even initiate proceedings, or join an ongoing proceeding. In contrast, socialist organizations could only join ongoing proceedings and could not initiate the proceeding themselves.

This new concept of “civil procedure” and “civil procedural law” was thereby deliberately distinguished from proceedings related to commercial and economic matters, which fell under different branches of law, outside of “civil procedure.” The term “civil procedure” itself, according to contemporary definitions, included the following types of proceedings:

- (a) civil court proceedings;
- (b) proceedings before the state notary;
- (c) proceedings before arbitrators;
- (d) proceedings before arbitration commissions of trade unions, production cooperatives or unified farming cooperatives; and finally
- (e) proceedings before the conciliation bodies of the trade unions or production cooperatives.<sup>25</sup>

The jurisdiction of courts in civil matters thus applied to cases arising from civil, labor, family, and cooperative relations, unless other authorities were designated to decide on them, such as in letters (b) to (e) – above.

Still, there were also other bodies that handled some civil cases on the basis of the principle of “divided jurisdiction” meaning that decision-making in certain matters was shared between courts and other authorities, the court acting only if the proceeding before the other bodies failed. These included:

- (a) labor disputes according to the Labor Code of 1965;
- (b) disputes between farming cooperatives and their members and workers;
- (c) disputes over remuneration in connection with inventions, improvements and industrial designs;
- (d) claims for compensation for damage according to the Hunting Act;
- (e) claims arising from the post office’s liability under the Post Office Act.<sup>26</sup>

Out of the various specific subsystems of socialist civil procedure, we shall focus here in greater detail only on the labor justice, arbitration proceedings and administrative justice, with these being the areas where the deviation from the traditional pre-1948 system of justice was the most visible.

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procedure is quite informal and does not need to be bound by strict rules. Therefore, any court is also competent here.” *Ibid.*

<sup>24</sup> Nový, “Občanské právo procesní.”

<sup>25</sup> Češka [*et al.*], *Československé občanské právo*, 12. Even before non-judicial bodies, the theory distinguished between contentious and non-contentious proceedings. Litigious proceedings were proceedings before the ROH, whereas non-litigious proceedings were proceedings before the notary public. *Ibid.*, 16.

<sup>26</sup> *Ibid.*, 83.

### 1.3. Labor justice – from labor courts to commissions controlled by courts

The interwar Czechoslovakia had a long tradition of special labor courts. After World War II, in 1947, Act No. 105/1947 Zb. was adopted, which introduced the restoration of labor courts starting from January 1, 1948.<sup>27</sup> However, at the end of the day, the actual restoration did not happen due to subsequent events. The coup d'état of February 1948 and the adoption of the Constitution on May 9, 1948, namely, had a significant impact on labor law and the adjudication of labor disputes. By the Act No. 319/1948 Zb., labor courts were abolished. In fact, all special courts, including labor courts and various forms of arbitration courts, were abolished, and their jurisdiction was largely transferred to the district courts, with these being the first instance courts. The decision to transfer labor disputes to general courts was thereby justified by the participation of lay judges (judges from among the people, without legal education and training) in general courts, providing thus allegedly a guarantee of a fair trial for a worker as a weaker party. On the other hand, labor disputes involving civil servants were to be newly handled by arbitration commissions established by national committees (local administration bodies).<sup>28</sup> Subsequently, this model was then taken over also for the other types of labor disputes, when arbitration commissions were set up even in enterprises and factories. Still, the courts retained exclusive jurisdiction in labor disputes involving: (a) the establishment and termination of employment and claims arising therefrom; (b) the establishment and termination of membership in a production cooperative or JRD (Joint Agricultural Cooperatives), and related claims; (c) disputes between senior staff and representatives of cooperatives; (d) other labor disputes (with certain legal exceptions), if the claim was asserted after the end of the employment relationship; (e) disputes regarding an organization's claims against a former worker; (f) disputes that could be decided by a commission, but the commission was not established at the workplace; (g) disputes related to a special contribution for miners under the Act No. 98/1987 Zb.; and finally (h) disputes from the employment relationship concluded between citizens.

The arbitration commissions of the Revolutionary Trade Union Movement (ROH), or of the JRD, and of the production cooperatives were used in the remaining types of labor disputes, with them being considered independent, impartial, and authoritative bodies, capable of providing protection and resolving labor disputes without the need to involve civil courts. The proceedings before the commissions could nevertheless be described as similar to the court proceeding. Only the venue was different – typically taking place at the commission's headquarters within the organization (cooperative) where it operated. Otherwise, timeframes and deadlines within the procedure were regulated in the same way as in the Code of Civil Procedure, although there were also “instructive” deadlines, the non-observance of which did not lead to procedural consequences (e.g., the deadline for delivering a decision). The basic principles of the procedure before the committees were similar to those before the courts: the principle of material truth, the principle of contradiction, the principle of disposition, the principle of publicity, orality, directness,

<sup>27</sup> Stach, *Pracovní soudnictví*, 5.

<sup>28</sup> Ridzoň, “Pracovnoprávne súdnictvo,” 64–70.

collective decision-making, and of procedural economy. Of course, also principles such as the free assessment of evidence, equality, etc., were also applied.

The aforementioned principle of shared jurisdiction was applied with regard to the jurisdiction of the commission and of the civil courts, i.e., if the relevant commission was in place within the organization, the courts could only hear these disputes if the dispute had not been finally resolved by the commission.

The participation of the prosecutor and of the national committee within the proceeding was always allowed, both before the court as well as before the commission. They could also file a motion to cancel the commission's decision due to the violation of law.

A valid decision on the merits or the approval of a settlement between the disputing parties had the effects of a court decision and was legally enforceable. However, if within 30 days from the start of the proceedings before the commission there was no settlement reached or a decision proclaimed on the merits of the case, and one of the participants suggested that the matter be referred to the court, the proceedings were considered frustrated. In this case, the commission was obliged to send the file to the district court under whose jurisdiction the commission was based and to notify the participants of the proceedings without undue delay of this action. If the commission did not fulfill this obligation, the participant had the option to turn directly to the court. The court proceedings would then begin on the day the matter reached the court.<sup>29</sup>

Similarly, should the party not be satisfied with the decision of the commission, ordinary remedies against the commission's decision were objections. Timely submission of objections led to the termination of the proceedings and the jurisdiction of the court was to take place instead. Once objections were submitted, they could not be withdrawn, as the termination of the proceeding occurred automatically upon filing the objection. Extraordinary remedies included proposals for cancellation due to subsequently discovered serious circumstances and proposals for cancellation due to violations of legal regulations.

Only much later, in 1970, the Conciliatory Commissions for Labour Disputes were established. These carried out conciliation proceedings with respect to claims arising from the employment relationship and from agreements on work performed outside the employment relationship, regardless of whether the employment relationship or the relationship established by the agreement was still in effect, provided that one of the parties of the employment relationship had requested it. However, as to their jurisdiction and competence, only disputes related to the correctness of employment certificates, the content of reports on work activity, and proposals for the cancellation of disciplinary measures were discussed by this body. Commissions were established in organizations with at least 100 employees. In smaller organizations, commissions were set up if requested by the trade union organization. The number of commission members was determined by agreement between the workers committee and the organization, with the minimum number set at seven members.

The conciliation procedure meant that the parties, through mutual proposals and counterproposals, tried to reach a settlement. If the settlement was not reached, the commission then decided on the dispute. If a decision was not issued or a settlement was not approved within 30 days from the submission of the proposal, and the participant

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<sup>29</sup> Hamulák, Schronk, Minčíč, *Pracovní soudny poriadok*, 36 ff.

requested that the dispute be referred to the court, the commission was required to send the file material to the district court and to inform the participants about it.<sup>30</sup>

Act No. 84/1972 Zb. on inventions and the Decree No. 93/1972 Zb. provided similar procedural tools of the protection of – employees, regarding their right to remuneration for inventions, improvement proposals, and industrial designs. The bodies to decide on these disputes were:

- the committee of the ROH basic organization;
- the committee of the movement of inventors and improvers;
- the conciliation committee of the production cooperative.

The costs of the proceedings were covered by the organization under which the conciliation proceedings took place. The result of the proceedings was expected to be the conciliation. If conciliation did not occur within 320 days from the submission of the proposal to start the conciliation proceedings, the participant could request that the dispute be referred to the court, or they could contact the court directly.

To sum up, with respect to labor courts, there was a clear attempt to keep the dispute resolution in the hands and at the level of local commissions created in the workplace mostly, but there was always an option preserved to have the decisions of the committees reviewed by the courts in the end, while the courts still retained some important jurisdiction as to the employment disputes even besides the existing committees.

#### 1.4. Traditional and new forms of arbitration

Arbitration proceedings in their traditional sense were governed during the period after 1948 first by the Civil Procedure Code of 1950 and then by the Act No. 98/1963 Coll. on Arbitration in International Trade Relations. As the name suggests, arbitration under this Act was permitted only if one of the parties was a Czechoslovak legal entity and the case involved international trade relations; it was not allowed between natural persons. This specific form of alternative dispute resolution (and simultaneously a type of civil procedure) could take place before *ad hoc* arbitrators or before a permanent arbitration court. For the purpose of deciding disputes arising from such trade relations, the Arbitration Court of the Czechoslovak Chamber of Commerce and Industry in Prague was established. Although the seat of the court was in Prague and oral proceedings were conducted there, they could also be held in Bratislava or elsewhere in Czechoslovakia if necessary; proceedings abroad, however, required the consent of the parties.

Disputes were decided by a three-member arbitration panel unless the parties agreed that a single arbitrator should decide the case. Proceedings were single-instance, non-public, and, with the parties' consent, could also be conducted exclusively in writing without an oral hearing, provided the submitted documents sufficed for the decision. Proceedings concluded with the issuance of an arbitral award on the merits or a resolution on termination of the proceedings. The award had to be adopted by a majority of the arbitrators, drawn up in writing, signed by at least the majority of arbitrators, and delivered to the parties or their representatives personally or by registered mail. Justification

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<sup>30</sup> *Ibid.*, 44.

of the award was required unless otherwise agreed by the parties. A final award had the legal effect of a court decision and was enforceable. A settlement between the parties, reached in arbitration, was likewise enforceable.

An application to annul the arbitral award was a special remedy in arbitration proceedings. It was to be filed with the district court in whose jurisdiction the arbitral award was issued. The court decided on the application by judgment, which could either dismiss the application or annul the award. If the court annulled the arbitral award due to the invalidity of the arbitration agreement, it would itself continue the proceedings if at least one party requested so. If it annulled the award for another reason, the arbitration agreement remained valid, and any party could initiate new proceedings before the arbitrators. However, the original arbitrators were automatically disqualified from deciding on the same matter. Recognition and enforcement of foreign arbitral awards were fundamentally subject to the condition of reciprocity under the law.

Besides this “traditional” type of arbitration, there was, however, also a specific type of arbitration established for internal, domestic economic disputes between state-owned undertakings.<sup>31</sup> This was reflected in the establishment of so-called **state arbitration** and later **economic arbitration**,<sup>32</sup> which involved removing commercial or economic disputes from court jurisdiction, assigning them to specialized state-run arbitration bodies. These were thereby a prime example of how, on one hand, all these extrajudicial dispute resolution mechanisms were to prove the proclaimed idea of the state’s “withering away,” while, on the other hand, rather than a voluntary decision by disputing parties, to submit their disputes to a non-judicial body, in fact, all these “special” dispute resolution entities were actually strictly controlled and dominated by the Communist Party and the state power.

### 1.5. Administrative justice after 1948

After the end of the Second World War, the Czechoslovak Republic inherited two Supreme Administrative Courts: one with the tradition of the interwar Republic, with its seat in Prague, and the other with the tradition from the wartime Slovak State, with its seat in Bratislava. A solution was sought to resolve this situation. In 1946, the Ministry of Interior proposed that the court in Bratislava be considered a branch of the Prague court<sup>33</sup> to ensure the unity of management and jurisprudence. However, unity was not reached by this at all. New solutions to the existing duality had to be searched for.

The problem was perceived yet more serious when the court’s adherence to legality became soon problematic, especially in sensitive issues such as the confiscation of the property of war criminals.<sup>34</sup> After the Communist Party took power, its negative attitude towards reviewing the decisions or procedures of public authorities became fully evi-

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<sup>31</sup> See Acts 99/1950 Zb. and 121/1962 Zb.

<sup>32</sup> Galanda, “Historický a právní rámec rozhodcovského konania,” 26–7.

<sup>33</sup> National archive in Prague. Fonds Právní komisie (Legal Committee) of ÚV KSČ 1945–1955, cardboard 82.

<sup>34</sup> For example, the court annulled the Ministry of Agriculture’s decision from January 30, 1946, which rejected the appeal of Dr. Josef Collaredo–Mannsfeld, who had been designated as a person of German nationality and therefore subject to confiscation decree No. 12/1945 Zb. See Županič, “Mezi dvěma ohni,” 245.

dent. It was believed that the bodies of the executive power made decisions based on the will of the working class, meaning they could not make incorrect or illegal decisions. Their decisions, as those of the sovereign people, were supposed to be unexamined, unchallenged and unreviewed.<sup>35</sup> These and other reasons led the new state power to oppose the existence of the Supreme Administrative Court.<sup>36</sup>

The Act No. 319/1948 Zb. thereby already eliminated almost all the public-law judiciary, with the temporary exception of the patent court and the Supreme Administrative Court.<sup>37</sup> Still, under Act No. 166/1949 Zb., the Supreme Administrative Court was to be permanently moved to Bratislava, resulting in the transfer of Prague judges to Slovakia, seen actually as a punishment for the Prague judges for their decision-making.<sup>38</sup> However, a report from 1950 on the court's activities revealed that most Czech employees were unwilling to move to Bratislava (up to 60% did not live in Bratislava). The court was thus constantly understaffed. According to the report, the court could handle only one-third of its projected caseload per year.<sup>39</sup> Overall, the administrative justice system, particularly the activity of the Supreme Administrative Court, appeared to be suffering and was prospectively condemned to extinction or merger with the general judiciary. This was actually in line with the trend towards integrating all types of civil procedure (especially contentious and non-contentious proceedings) into a single code of civil procedure.<sup>40</sup> Therefore, this argument was used by the respective re-codification body<sup>41</sup> to abandon not only the division between contentious and non-contentious litigation,<sup>42</sup> but also to do away with the administrative judicial proceedings in the 1950 Civil Procedure Code.

Albeit still being recognized under the 1948 Constitution, administrative justice had almost no place in the 1950 Civil Procedure Code — its role was minimal. Judicial review of decisions of state administration bodies was only allowed in exceptional cases. For example, under Act No. 280/1949 Zb. on territorial planning and construction, a person who disagreed with a decision by the state administration on expropriation and compensation could ask the court to review the decision. Additionally, according to § 394 of the 1950 Civil Procedure Code, district courts had the jurisdiction to review decisions related to assessments by the Central National Insurance Company and related disputes over insurance. The Code also recognized the mandatory judicial review of decisions made by psychiatric institutions regarding the involuntary placement of a mentally ill person in such an institution. The institution had to notify the court within 48 hours of the detention, and the court had the power to either authorize or deny the detention.<sup>43</sup>

Still, the Constitutional Act No. 64/1952 Zb., adopted two years later, did not foresee any future for the administrative judiciary at all. It was namely argued that administrative justice was unnecessary because the state and the citizen were seen as not having

<sup>35</sup> Zoulik, "K problematice správného soudnictví," 514.

<sup>36</sup> See also Boleček, "Inštitút správneho súdnictva v historickom kontexte," 55–78.

<sup>37</sup> *Draft legislative plan for the recodification of civil procedural law*, 47.

<sup>38</sup> Mazanec, "Zánik bývalého Nejvyššího správního soudu," 159 ff.

<sup>39</sup> National archive in Prague. Fonds Právní komise (Legal Committee) of the ÚV KSČ 1945–1955, cardboard 92.

<sup>40</sup> Schelleová [et al.], *Civilní proces*, 59.

<sup>41</sup> Bláhová [et al.], *Právnícká dvouletka*, 14.

<sup>42</sup> Rubeš [et al.], *Komentár k občianskemu súdному poriadku*, 54.

<sup>43</sup> *Draft legislative plan for the recodification of civil procedural law*, 49.

conflicting interests. The Supreme Administrative Court was thus believed to have lost its justification and was formally abolished by this Act, with the prosecutor's office replacing it through the mechanism of overseeing the activities of all public bodies. A judicial review of only some selected decisions by administrative bodies was transferred to the general court system.<sup>44</sup>

The issues of the administrative judiciary were not regulated even in the 1960 Constitution of the Czechoslovak Republic, published under No. 100/1960 Zb. Only Article 98 (4) of this Constitution, in its amended version effective before 1989, contained provisions stipulating that the jurisdiction of courts to review the legality of administrative decisions should be laid down in law. However, no special administrative courts were created.<sup>45</sup> Judicial review of administrative decisions thus became a constitutionally regulated institution, but without any specific legal enforcement. The legislator did not adopt a general clause to allow for the review of all administrative decisions, instead relying on the enumerative principle. This meant that only the control of precisely determined types of administrative acts ultimately fell under the jurisdiction of the general courts.

In addition, Article 102(1) of the Constitution also stipulated that "when performing their duties, judges are bound by the legal order of the socialist state, i.e., laws and other legal regulations," which effectively meant that judges were bound not only by laws but also by government regulations, ministerial decrees, and acts of national committees. Consequently, they had no authority to review these for their legality; on the contrary, they were obliged to make decisions in accordance with them, even if they recognized these as contrary to the Constitution or other laws.<sup>46</sup>

Ultimately, the position of the administrative judiciary was not adequately regulated even in the CPC No. 99/1963 Zb.<sup>47</sup> Only a few narrowly determined types of decisions were subject to judicial review, including:

- decisions of local national committees that rejected the correction of voters lists;
- decisions of the Pension Office and regional national committees in matters of pensions;
- decisions of the regional health insurance administration in matters other than health insurance;
- disciplinary measures in labor law and cooperative farming law;
- decisions of the national committees on the institutional care for the mentally ill;
- decisions of the customs directorate regarding the customs value of commercial goods.<sup>48</sup>

Additionally, later, depending on the changing legislation, courts also decided on the suspension or dissolution of voluntary organizations, the press rights, and the prohibi-

<sup>44</sup> Števček [et al.], *Civilné právo procesné*, 538.

<sup>45</sup> *Ibid.*, 538–9.

<sup>46</sup> *Draft legislative plan for the recodification of civil procedural law*, 49.

<sup>47</sup> "a proceeding in which the decision of another authority is reviewed is necessarily of a mixed nature: it is both an appeal proceeding and (from the point of view of the court) a proceeding at first instance. It is from this special nature of proceedings for review of decisions of other authorities that the Rules of Procedure are based..." *Government Proposal*.

<sup>48</sup> Češka [et al.], *Československé občanské právo*, 223.

tion of political parties.<sup>49</sup> However, in most cases, the legality of administrative decisions was primarily overseen by the prosecutor's office. The independence of the prosecutor's office was thereby rightly questioned, with critiques pointing additionally also to deficiencies such as the fact that prosecutors lacked the power to annul illegal acts of administrative bodies.<sup>50</sup>

Still, even some contemporary authors pointed out that in the rest of the civilized world administrative justice continued its existence.<sup>51</sup> Even in socialist countries such as the USSR, Bulgaria, Romania, and Yugoslavia, all decisions of administrative authorities were subject to judicial review, with some exceptions. In Poland and Hungary, review was allowed for a specific set of administrative decisions, but this was still a broader number than the one that applied in Czechoslovakia.

Therefore, already in the 1960s, there had been ongoing discussions regarding reforms to the administrative judiciary and the supervision of legality in administrative proceedings in Czechoslovakia.<sup>52</sup> It was increasingly recognized that the administrative judiciary was a distinct type of legal procedure, separate from civil and criminal procedures.<sup>53</sup> During one of these debates, Dr. Pipek, a representative of the prosecutor's office, proposed a solution where citizens could initiate proceedings through the prosecutor's office, which would bear the costs of reviewing public administration acts. On the other hand, if citizens approached the courts directly, they would bear the costs themselves.<sup>54</sup> However, no changes were made to the regulation of the administrative judiciary or the control of administrative actions until 1989, although discussions on this topic resurfaced particularly shortly before the fall of the Communist Party regime in 1989.<sup>55</sup>

## 2. Criminal justice

### 2.1. Criminal trials as a repression tool

The history of Czechoslovakia in the second half of the 20th century confirms a well-known fact: in non-democratic totalitarian regimes,<sup>56</sup> criminal law (both substantive and procedural) primarily served to consolidate and perpetuate the regime, systematically

<sup>49</sup> Mikule, "Místo správního soudnictví v soustavě prostředků k zajištění zákonnosti správy," 865.

<sup>50</sup> *Ibid.*, 868.

<sup>51</sup> Macur, *Soudnictví a soudní právo*, 95.

<sup>52</sup> Černý, "Pokud soud přezkoumává," 3 ff.

<sup>53</sup> Zoulík, "Úvaha nad některými problémy," 138.

<sup>54</sup> *Ibid.*, 136. A record from the appearance of Dr. Pipek is reported in: Mikule, "Semínář Socialistické akademie o správním soudnictví," 108. See also Pipek, "Několik poznámek a podnětů k soudnímu přezkoumávání správních rozhodnutí," 321 ff.

<sup>55</sup> Mikule, "Nová úprava správního řízení a soudní kontroly správních aktů v Bulharsku," 429 ff.; Kopecký, "Soudní přezkoumávání správních rozhodnutí v NDR," 471 ff.

<sup>56</sup> Classifications, definitions and interpretations of recent (roughly 20th–21st century) non-democratic political regimes (states) vary. In general, two basic types are distinguished – authoritarian and totalitarian regimes. However, these types are only Weberian ideal types that do not fully capture the complexity,

adapting to its needs and interests. This was certainly true also for the criminal law of the People's Democratic Czechoslovakia (1948–1960). The law was openly considered a tool of class struggle, specifically aimed at combating opponents of the people's democratic political regime. This struggle took on a very aggressive form, justified by Stalin's thesis that criminal repression against opponents of the transformation from capitalism to socialism (communism) should be intensified to accelerate and complete the process.

The people's democratic regime in Czechoslovakia thus extensively circumvented, violated, or manipulated criminal law to its advantage, as demonstrated by numerous political trials (especially the ones occurring between 1948 and 1953), which were marked by fabricated evidence, violent coercion of often innocent persons to confess, and judicial murders.<sup>57</sup>

The judges themselves were thereby expected to lose any semblance of objectivity:

Only a judge equipped with Marxist-Leninist teachings will be capable of interpreting the legal order in the spirit of the Constitution and the people's democratic system, not a judge who might, following previous methods, seek a detailed answer to every issue in a legal provision or its commentary.<sup>58</sup>

This was to be achieved by placing political science – Marxism-Leninism – as the first subject of the professional judicial exam, which the candidate had to pass first.<sup>59</sup>

This evolution peaked in 1950, when the Criminal Code, Criminal Procedure Code, Administrative Criminal Code, and Administrative Criminal Procedure Code were adopted together. From among these, in what follows, we will examine the Criminal Procedure Code from 1950 and from 1961 solely, focusing thereby both on the institutional framework of criminal justice as well as the legal regulation of criminal proceedings and its evolution.

## 2.2. Institutional framework of the criminal justice system

Starting with the institutional framework of criminal justice, the main legal basis for this was the Constitution of the Czechoslovak Republic of May 9, 1948, adopted as Constitutional Act No. 150/1948 Zb.<sup>60</sup> (hereafter referred to as the "Constitution"). The Constitution addressed certain institutional aspects of criminal proceedings. Above all, it enshrined the independence of judges conducting civil or criminal trials.<sup>61</sup> However, it should be emphasized that this judicial independence (and impartiality) was significantly limited, not only by the regime's influence over the judiciary but also by the Constitution itself. According to the Constitution, judges were namely required to follow the legal

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specificity and dynamics of their empirical (historical) correlates. For more details see Linz, *Totalitarian and Authoritarian Regimes*.

<sup>57</sup> Kuklík [et al.], *Vývoj česko-slovenského práva 1945–1989*, 146 ff.

<sup>58</sup> Glos [et al.], *Zákon o zlidovění soudnictví a souviselé zákony a nařízení*, 10.

<sup>59</sup> Zavacká, "Právo, sůdy, advokácia a prokuratúra na začiatku totality," 23–6.

<sup>60</sup> In this paper we quote from the official text of the Constitution of the Czechoslovak Republic of May 9, 1948 (Constitutional Act No. 150/1948 Zb.).

<sup>61</sup> Art. XI (1) of the Constitution.

order,<sup>62</sup> but this legal order was systematically adapted to meet the needs and interests of the regime. Additionally, judges were also bound to follow the principles of the people's democratic regime<sup>63</sup> in interpreting laws and regulations.<sup>64</sup> This severely restricted their ability to make independent and impartial decisions. Moreover, the Constitution's provision on the separation of the judiciary from state administration was not fully realized.<sup>65</sup> Finally, the Constitution's provision that judges could not hold other paid positions was subject to exceptions outlined in the law.<sup>66</sup> Many judges were additionally also members of the Communist Party, which undoubtedly influenced their decision-making.

According to the Constitution, criminal law was to be applied by the general courts, extraordinary (i.e., exceptional) courts, which were supposed to function only temporarily and act only in criminal matters established by law, military criminal courts, and finally the national committees, which were local executive bodies responsible for so-called criminal administrative proceedings.<sup>67</sup> The Constitution stipulated that the courts would, as a rule, hear and make decisions in senates<sup>68</sup> composed of professional and lay judges,<sup>69</sup> who were equal to each other when making decisions.

Based on Act No. 319/1948 Zb., the general courts conducted criminal proceedings with three-member senates responsible for hearing criminal cases, consisting of the chairman, who was a professional judge, and two associate judges, who were lay judges from the people. However, if the death penalty or imprisonment for more than ten years was to be imposed, the decision was to be made by a five-member senate, consisting of two professional judges (one of whom was the chairman of the panel) and three lay judges. Regional courts acted in criminal matters as courts of appeal or as courts of first instance. In the first case, five-member senates (the chairman and one other professional judge plus three judges from the people) decided, while in the second case, three-member senates (the chairman as a professional judge, and two lay judges) decided. Judges from the people also participated in the five-judge senates of the Supreme Court, composed of three professional judges and two lay judges, except when these senates decided on an extraordinary remedy – a complaint for a violation of the law, filed by the General Prosecutor.<sup>70</sup>

Act No. 319/1948 Zb. also redefined the prosecutor's office as a public prosecution body. Specifically, it established district prosecutor's offices and regional prosecutor's offices.<sup>71</sup> Still, the organization of courts and the prosecutor's office underwent numerous developments during the subsequent period.

The exceptional (extraordinary) judiciary authorized by the Constitution was represented by the State Court located in Prague, regulated by Act No. 232/1948 Zb. on the State Court, following Act No. 231/1948 Zb. for the protection of the People's Democratic Republic. The latter of the laws defined criminal acts directed against the state and its ex-

<sup>62</sup> Art. XI (3) of the Constitution.

<sup>63</sup> Sec. 36 (1).

<sup>64</sup> Sec. 143.

<sup>65</sup> Sec. 138 (1).

<sup>66</sup> Sec. 141 (3).

<sup>67</sup> Sec. 135.

<sup>68</sup> Sec. 140 (1).

<sup>69</sup> Sec. 140 (3).

<sup>70</sup> Kuklík [et al.], *Vývoj česko-slovenského práva*, 635–6.

<sup>71</sup> *Ibid.*, 636.

ternal or internal security or against international relations (until the adoption of the new Criminal Code in 1950); at the same time, it established penalties for these acts. The State Court was competent to hear crimes that were punishable by the death penalty or a prison sentence of more than ten years, as well as on crimes proposed to be tried before the State Court by the public prosecutor,<sup>72</sup> who was labeled as a special, so-called state prosecutor.

Criminal proceedings before the State Court were initiated by the chairman of the panel after the indictment file was delivered to him from the state prosecutor's office. If there was no doubt about the competence of the State Court or the validity of the indictment, the chairman of the panel had the defendant placed in custody and arranged for the indictment file to be delivered to him within 24 hours. The chairman of the panel then set the date for the main hearing, which was open to the public, except for cases provided by law. The defendants should have had at least three days to prepare for the main hearing. They also had the right to defense; in some cases, an attorney had to be assigned to the defendant. Thereby, to ensure a smooth process before the State Court, according to Sec. 26 of the Act on the State Court (232/1948 Zb.), only attorneys included in a special list compiled by the Ministry of Justice and the Ministry of Defense could act as defense lawyers before this court.

An appeal against the judgment of the State Court was possible, and it could mainly lead to the mitigation or cancellation of the imposed sentence. A renewal of proceedings was allowed as an extraordinary remedy. However, the State Court Act used the presence of judges from the people even when deciding on remedies,<sup>73</sup> which, given their pro-regime stance, could influence their decision against the convicts.

Act No. 87/1950 Zb. on criminal court proceedings (Criminal Procedure Code),<sup>74</sup> being an outcome of the legal biennial,<sup>75</sup> then re-adjusted the jurisdiction of the state prosecutor and of the State Court to crimes which were punishable by the death penalty, life imprisonment, or temporary imprisonment, the lower limit of which was at least ten years.

Another landmark in the development of criminal justice and prosecution was the year 1952, when, on the basis of four legal regulations,<sup>76</sup> district courts were replaced by people's courts, and the State Court was abolished, with its agenda being transferred to the regional courts. Still, lay judges from the people were retained in the courts, being elected just like professional judges.<sup>77</sup>

In 1953, the Criminal Procedure Code was amended<sup>78</sup> in reaction to the four legal regulations affecting the criminal process from the previous year.<sup>79</sup> In 1953, the jurisdic-

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<sup>72</sup> Sec. 17 of the Act on the State Court.

<sup>73</sup> Title Three of the Act on the State Court.

<sup>74</sup> Act No. 87/1950 Zb. on criminal court proceedings (Criminal Procedure Code).

<sup>75</sup> See Bláhová, *Rekodifikace trestního práva*.

<sup>76</sup> These laws were: Constitutional Act No. 64/1952 Zb. on Courts and Public Prosecution; Act No. 65/1952 Zb. on Public Prosecution; Act No. 66/1952 Zb. on the Organization of Courts; Act No. 67/1952 Zb. amending and supplementing the Criminal Procedure Code.

<sup>77</sup> Kuklík [et al.], *Vývoj česko-slovenského práva*, 637–8.

<sup>78</sup> Decree of the Minister of Justice on the complete wording of the Code of Criminal Procedure, No. 1/1953 Zb.

<sup>79</sup> Constitutional Act No. 64/1952 Zb. on Courts and Public Prosecution; Act No. 65/1952 Zb. on Public Prosecution; Act No. 66/1952 Zb. on the Organization of Courts; Act No. 67/1952 Zb. amending and supplementing the Code of Criminal Procedure.

tion of the national committees deciding on offenses in criminal administrative proceedings was also changed. Based on Act No. 102/1953 Act., which amends and supplements certain provisions of the criminal administrative procedure code, the national committee no longer decided on certain more serious offenses. Instead, these matters were referred to the people's court, at the initiative of the district prosecutor.<sup>80</sup>

In 1956, a new Criminal Procedure Code was issued in the form of Act No. 64/1956 Zb.,<sup>81</sup> followed by Act No. 65/1956 Zb. on the Prosecutor's Office<sup>82</sup> and Act No. 66/1956 Zb., which amends and supplements the law on the organization of courts.<sup>83</sup> Under the new legislation, the first instance proceeding was to be held at the general criminal court, which continued to be called the people's court. The regional court acted in the first instance on criminal offenses under the first chapter of the special part of the Criminal Code from 1950<sup>84</sup> and under the Peace Protection Act, for which the law established the death penalty or a prison sentence, the lower limit of which was at least five years. It also dealt with criminal acts such as subversion of the Republic, terror, vandalism, and sabotage (Sections 79a, 80a, 84, and 85 of the amended Criminal Code from 1950).<sup>85</sup>

The Act No. 65/1956 Zb. about the Prosecutor's Office stipulated that:

[...] the supreme supervision over the preservation of socialist legality is carried out by the general prosecutor on behalf of the state; he guards, enforces, and strengthens socialist legality, especially by overseeing the correct and uniform use and observance of laws and other legal regulations throughout the Republic, regardless of any local differences and influences. It educates citizens to accurately and consistently observe laws and other legal regulations, to protect socialist property, to maintain work discipline, to fulfill their duties in the defense of the state, and to observe the rules of socialist coexistence.<sup>86</sup>

Similarly, Act No. 66/1956 Zb., which amends and supplements the law on the organization of courts, stipulated that "courts ensure that laws and other legal regulations are accurately and consistently observed and that they are used in accordance with the interests of the working people. That's why they also draw the attention of the competent authorities to the deficiencies they have found in this regard."<sup>87</sup> The cited excerpts from these laws can thereby – despite their wording – be still seen as an effort to increase the legality of criminal proceedings, which was a response to the previous years, during which such legality was largely absent.

Finally, Act No. 36/1957 Zb. on the election of judges and judges from the people adjusted the status of judges. Judges of the people's court – both professional and lay – were elected by the district national committee for three years. The professional and lay judges of the regional court were elected by the regional national committee, also for three years. Judges were thereby responsible for their activities to the national committee

<sup>80</sup> Act No. 102/1953 Zb., amending and supplementing certain provisions of the criminal administrative law.

<sup>81</sup> Act No. 64/1956 Zb. on Criminal Court Proceedings (Criminal Procedure Code).

<sup>82</sup> Act No. 65/1956 Zb. on the Public Prosecutor's Office.

<sup>83</sup> Act No. 66/1956 Zb., amending and supplementing the law on the organization of courts.

<sup>84</sup> Act No. 63/1956 Zb., amending and supplementing Criminal Code No. 86/1950 Zb.

<sup>85</sup> Sec. 9, 12, 13 of the Criminal Procedure Code No. 64/1956 Zb.

<sup>86</sup> Sec. 1 of the Act No. 65/1956 Zb.

<sup>87</sup> Art. 1 (2) of the Act No. 66/1956 Zb., amending the Act on the organization of courts.

that elected them. This body could remove them from the office, meaning that the judges were actually not independent.<sup>88</sup>

These principles were retained also in the future, when the re-codified Criminal Code (140/1961 Zb.) and Criminal Procedure Code (141/1961 Zb.) were enacted, marking a transition from people's democracy to socialism, whereby there was a significantly milder approach in criminal law taken – believing in the citizens self-governance and self-discipline, after the class struggle was over.

### 2.3. Criminal procedure

As far as the criminal procedure is concerned, already the 1948 Constitution had enshrined certain principles of the criminal procedure, which theoretically served to guarantee the matter of legality, but the contemporary practice did not sufficiently respect this. Specifically, these principles were:

- *Nullum crimen, nulla poena, et nullus processus criminalis sine lege*<sup>89</sup> (No crime, no punishment, and no criminal procedure without the law);
- The arrest of a person suspected of committing a crime who was not caught in the act was possible only based on a written and justified arrest warrant issued by a judge. This order must have been served upon arrest or within 48 hours of arrest;<sup>90</sup>
- Placing an arrested or detained suspect in custody was possible only for reasons established by law and for a maximum of 48 hours;<sup>91</sup>
- The accusatory principle (*nemo iudex sine actore*) and the defendant's right to defense were to be respected;<sup>92</sup>
- All criminal proceedings before the court had to be public (except for cases stipulated by law);<sup>93</sup>
- Judgments in criminal cases were always announced publicly.<sup>94</sup>

The first comprehensive legal regulation of the criminal procedure was thereby again the result of the so-called legal biennial (1948–1950), which laid down the foundations of the new legal order of the People's Democratic Czechoslovakia.<sup>95</sup> Specifically, procedural criminal law was codified by Act No. 87/1950 Zb. on Criminal Procedure (Criminal Procedure Code) (hereinafter referred to as the “Criminal Procedure Code of 1950”).

In the Criminal Procedure Code of 1950, more significant Soviet influences (e.g., a strong procedural position of the prosecutor) can be observed.<sup>96</sup> There was no regulation of the presumption of innocence (although the right of the accused and defendant to

<sup>88</sup> Kuklík [et al.], *Vývoj česko-slovenského práva*, 638.

<sup>89</sup> Cf. Sec. 3 and 35 of the Constitution.

<sup>90</sup> Sec. 3.2 of the Constitution.

<sup>91</sup> Sec. 3.3 of the Constitution.

<sup>92</sup> Sec. 144.4 of the Constitution.

<sup>93</sup> Sec. 144.1 of the Constitution.

<sup>94</sup> Sec. 144.3 of the Constitution.

<sup>95</sup> Kuklík [et al.], *Vývoj česko-slovenského práva*, 122 ff.

<sup>96</sup> *Ibid.*, 158.

defend themselves was included<sup>97</sup>), and other general principles of the criminal procedure were absent. This Code was primarily a tool of power by which the people's democratic regime, in the interest of its consolidation and survival, carried out the repression of opposition activities, and disciplined the population to ensure their loyalty, obedience, and cooperation. This follows from the first paragraph of the Code, according to which its purpose is to ensure that crimes are properly detected and their perpetrators punished according to the law, which all citizens have the right and duty to help to enforce. Furthermore, criminal proceedings were designed to educate citizens to be vigilant against the enemies of the working people and other disruptors of their construction efforts.<sup>98</sup>

The Criminal Procedure Code of 1950 further defined the roles of the prosecutor and of the court in criminal proceedings. Both the prosecutor and the criminal court were tasked with ensuring that the laws of the People's Democratic Republic were obeyed and applied in accordance with the interests of the working people. The primary responsibility of the prosecutor in criminal proceedings was to conduct preliminary investigations, oversee the fair punishment of offenders, and ensure that the sentences imposed on them were carried out. The court's role in criminal proceedings was to make fair decisions regarding criminal offenses (with both professional and lay judges equally obliged to fulfill this task).<sup>99</sup>

According to the Criminal Procedure Code of 1950, the first phase of the criminal process was thereby the preliminary proceedings, which involved a comprehensive investigation into the circumstances of the case. This investigation was conducted by the prosecutor in cooperation with the authorities of National Security (the police). The result of the preliminary proceedings could be the filing of an indictment by the prosecutor in court.<sup>100</sup> After the indictment was filed, the criminal trial proceeded to its second phase: the main trial in court. The accused was entitled to at least three days to prepare for the main hearing. This period began after the accused was served with the summons for the main hearing and the indictment. The main hearing was public (albeit there were some statutory exceptions), and its essential part was the proper taking of evidence. The hearing ended with closing speeches by the defense and the prosecution. In the prosecutor's closing speech, they specifically addressed the level of danger posed by the crime to the society and the possibility of rehabilitating the offender through punishment. After the closing arguments, the trial panel retired to deliberate and to reach a verdict. The judgment could only address the act specified in the indictment (though the court was not bound by its legal qualification in the indictment), and only evidence presented during the main hearing could be considered (as per the principle *quod non est in foro, non est in mundo*).<sup>101</sup> An appeal against the publicly announced judgment of the district or regional court (but not the supreme court) was allowed as a regular remedy with suspensory effect. The absolute prohibition of *reformatio in peius* did not apply

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<sup>97</sup> Sec. 41–47 of the Criminal Procedure Code of 1950.

<sup>98</sup> Sec. 1 of the Criminal Procedure Code of 1950.

<sup>99</sup> Sec. 2 of the Criminal Procedure Code of 1950.

<sup>100</sup> Title Two of the Criminal Procedure Code of 1950.

<sup>101</sup> Title Three of the Criminal Procedure Code of 1950.

when deciding on a judgment contested by an appeal.<sup>102</sup> Extraordinary remedies included complaints for violation of the law and retrials.<sup>103</sup>

The Criminal Procedure Code of 1956 (Act No. 64/1956 Zb. on Criminal Procedure) amended the 1950 Code in certain ways. It shared the same purpose as its predecessor, but unlike the 1950 Code, it enshrined also the fundamental principles of the criminal procedure,<sup>104</sup> which significantly enhanced the legality of criminal trials at the time.

The prosecutor was obliged to prosecute all criminal acts of which they were made aware (except in cases allowed by law). Thus, the prosecutor initiated criminal proceedings (or preliminary investigations) *ex officio* as soon as they became aware of circumstances justifying this. Criminal prosecution before the courts was possible only based on an indictment filed by the prosecutor. This was ensuring the separation of the indictment process from the court trial.

The person against whom criminal proceedings were carried out had to be informed at each stage of the proceedings about their procedural rights, enabling them to fully exercise their defense and choose a defense lawyer. All law enforcement authorities were obliged to enable the exercise of these rights. The right to defense and other procedural rights of the accused/defendant were to be properly respected throughout the entire criminal process, which represented a positive change compared to the Criminal Procedure Code of 1950, although in practice, this often remained more of a proclamation.

As a rule, criminal cases were decided by senates including lay judges, who were equal to professional judges when making decisions. The verdict was a collective decision made by the members of the panel, rather than by an individual judge, which theoretically enhanced its objectivity (correctness, justice). However, in fact, the presence of lay judges and their involvement in decision-making were intended to facilitate the control of professional judges by the public. Still, the professional as well as the lay judges were expected to decide independently, bound only by the legal order. This reflected the principle of legality.

Until guilt was determined by a final judgment of the court, the individual against whom criminal proceedings were conducted could not be considered guilty. This enshrined the presumption of innocence.

Police and prosecutors conducted and collected evidence *ex officio* or at the request of the parties, ensuring that all circumstances relevant to the case were properly clarified. In doing so, they were required to consider both the circumstances testifying against the accused and those in their favor with equal care. The confession of the accused did not absolve law enforcement authorities from the duty to examine and verify all the circumstances of the case based on the available evidence. The thorough collection and taking of evidence was namely expected to ultimately lead to the discovery of the so-called material (objective) truth, which served as the basis for judicial decision-making.

Evidence was provided by the statements of witnesses, experts, and the accused, which were presented in court by questioning these individuals. Exceptions were allowed only by law. The court evaluated the evidence according to the inner conviction

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<sup>102</sup> Title Four of the Criminal Procedure Code of 1950.

<sup>103</sup> Title Six of the Criminal Procedure Code of 1950.

<sup>104</sup> Sec. 2 of the Criminal Procedure Code of 1956.

of the judges, based on careful consideration of all the circumstances of the case, both individually and in aggregate. This was a free evaluation of the evidence principle.

At the main and appeal hearings, and during public sessions, the public could only be excluded in cases expressly permitted by law. Criminal proceedings were namely meant to be public, ensuring public oversight of the courts and law enforcement bodies, as well as educating and disciplining the public.

These principles were hence the most significant contribution of the Criminal Procedure Code of 1956. But the evolution did not stop there.

## 2.4. The socialist era of legal optimism: The way forward and back

Concerning the following evolution, in the 1960s the new Criminal Procedure Code of 1961 was introduced, to reflect the interests of the new socio-economic situation in Czechoslovakia – namely that of reaching socialism. The aim of the new law was to protect the Czechoslovak Socialist Republic, socialist property, the rights and legitimate interests of citizens, and to educate for the proper fulfillment of civic duties and compliance with the rules of socialist coexistence.

According to Jičínský,<sup>105</sup> the Code from 1961 was a substantial change for the better in comparison with the previous one. Under the Criminal Procedure Code (141/1961 Coll.), namely:

- (1) crimes could be heard by lay local people's courts (in the workplaces) under certain conditions;
- (2) the principle of presumption of innocence was guaranteed;
- (3) all law enforcement authorities should proceed in such a way that they take into account the rights and freedoms of citizens guaranteed by the 1960 constitution;
- (4) one of the basic principles was the principle of objective truth and orality in proceedings before the court;
- (5) the principle of free evaluation of evidence according to internal conviction applied to both the court and the prosecutor;
- (6) the possibility of interference by socialist organizations in proceedings was introduced;
- (7) if the matter was decided by the lay local people's court, criminal proceedings were no longer possible;
- (8) criminal proceedings should have an educational effect in all their phases;
- (9) the *in dubio pro reo* principle was applied;
- (10) unproven guilt had the same relevance as proven innocence;
- (11) law enforcement authorities should control each other.

The 1961 Criminal Procedure Code thus emphasized the principle of defense, and improved the application of the principle of objective truth.<sup>106</sup> Still, the prohibition of *reformatio in peius*, which applied to the appealed verdict, was very insufficiently regu-

<sup>105</sup> Jičínský, *Právní myšlení*, 51–52.

<sup>106</sup> Císařová, "Trestní právo."

lated, and even here it was circumvented by means of a complaint for violation of the law, which could be filed by the prosecutor general, or the minister of justice.<sup>107</sup>

As a novelty, this Criminal Procedure Code introduced also the cooperation with socialist organizations, which could alert the law enforcement authorities to cases of violations of socialist legality and thus give a motion to the initiation of criminal prosecution. They could also suggest that the court, in order to deepen the educational effect of criminal proceedings, hears the case at the workplace of the accused or at his place of residence. The court was thereby supposed to cooperate with socialist organizations in ensuring the participation of workers in court hearings. This was all an attempt by the authorities to prove that criminal law was being brought closer to the public and to emphasize the abilities of the citizens to self-administer even the criminal justice, just like it was the case with some civil disputes. In line with this idea was also the fact that the basic organization of the ROH operating at the workplace of the accused, or the unified peasant cooperative of which the accused was a member, could also offer to take over the guarantee for the correction of the accused. They could thus exert oversight of the criminals to try to educate them to respect the law and to re-integrate them into society.

This was all intended to prove that the state was indeed withering away and that the society and citizens on their own were able to take over the tasks of former mechanisms of the protection of the socialist regime. However, important changes had to be introduced in this respect very soon, since it was immediately clear that these expectations were overly optimistic – the lay peoples' courts at the workplaces were not functional, and when the democratization process in the Czechoslovak society ultimately leading to the so-called Prague Spring had to be stopped by the intervention from the Soviet Union in 1968, further repressions and state control were again necessary in order to stabilize the rule of the Communist Party in Czechoslovakia.

## Conclusions

The experiment of the political representatives of the Communist Party and their loyal legal professionals brought about important changes to the Czechoslovak system of justice and procedural law – be it the civil or the criminal procedure. The overall aim was the simplification, unification, as well as efficient use of the procedural law to reach the goals of the Party. In order to follow these aims, significant deviations from the basic principles of procedural law were introduced – be it in civil or criminal procedural law.

First of all, the convergence of civil and criminal procedural law to a certain degree is characteristic of the law after 1948, when the elements of non-contentious proceedings were extended also to adversarial proceedings, as a result of which the principle of searching for material (objective) truth, became characteristic even for the contentious civil procedure. In addition, the competence of courts was very limited. The previously separate labor justice system and the administrative justice system were abolished. Instead, non-judicial bodies such as prosecutors, arbitrators or other legal professions, as

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<sup>107</sup> Šámal, “K úpravě trestního,” 324–9.

well as lay commissions, were established to take over the former court tasks. This was to prove that the state is withering away – however, in fact, all the bodies were strictly under the control of the Party, hence providing them even better tools to interfere into the decision-making process than in the case of the formerly independent courts.

Still, in criminal law, the situation was somewhat different – since it would be impractical to shift the punishment of class enemies to extra-judicial bodies; instead, the procedural law was changed to an extent that it did not resemble the classical criminal law and criminal procedure at all. This is the reason why after the end of the first wave of the monster (show) trials in the mid-1950s, improvement in this field had to be introduced in order to do away with the previous excesses and return to at least a formally civilized criminal procedure. Still, with the transition to socialism in 1960, another wave of experiments took place in the criminal procedure, in fact trying to actually follow the models of civil justice and to transfer some of the criminal proceedings onto lay people's courts active in workplaces, together with bringing lay organizations into the proceedings. However, these ideas proved to be premature and had to be scratched early on in the 1960s. Most of the experiments from the 1948–1968 period thus proved to be not viable and their consequences had to be painstakingly removed in the following periods.

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