

CONFERENCES AND REPORTS

A report from the conference on the injured party and victim of crime from the criminal law and criminological perspectives

On Wednesday 26 September 2012, a conference was held at the Charles University of Prague Faculty of Law, dedicated to one of the most discussed contemporary topics in criminal law – victims and injured parties. The conference titled *The injured party and victim of crime from the criminal law and criminological perspectives* was organized by the Faculty of Law of the Charles University in Prague and the Czech Criminological Society under the auspices of the dean of the faculty Prof. Aleš Gerloch.

The conference was held in relation to the currently discussed Czech Government's Victims of Crime Bill, which reflects the development of the legal status of victims of crime in the European Union law and complexly regulates the rights of victims of crime, the financial aid to victims of crime and the relation between the state and subjects that provide services to victims of crime. The bill introduces new institutions to the Code of Criminal Procedure and repeals the current Act on Providing Financial Aid to Victims of Crime.

The conference was well attended by members of professional community, providing a venue to exchange knowledge and experience among academics and practitioners. Speeches were given by members of the Faculty of Law of the Charles University in Prague, the Czech Criminological Society, the Institute for Criminology and Social Prevention, the University of West Bohemia in Pilsen, The Police Academy of the Czech Republic and other universities in the Czech Republic and Slovakia. Further, representatives of the Probation and Mediation Service of the Czech Republic and victim-oriented non-profit organizations attended the conference, as well as judges, policemen and other experts in the field, counting more than one hundred expert participants altogether.

The main topics were the new Victims of Crime Bill, victimology and victimological research in the Czech Republic, and the support for victims of crime. Participants were greeted by the dean of the Faculty of Law of the Charles University in Prague Prof. Aleš Gerloch. The opening speech was given by Prof. Jiří Jelínek, the head of the department of criminal law at the Faculty of Law in Prague, followed by Mr. Miroslav Scheinost from the Institute of Criminology and Social Prevention and Mr. František Korbel from the Ministry of Justice of the Czech Republic.

The main authors of the Victims of Crime Bill, Prof. Pavel Šámal and Mr. Tomáš Gřivna from the Faculty of Law of Charles University, presented the bill and the practical benefits it brings. In the area of victimology and victim support, Ms. Ludmila Čírtková from the Police Academy presented a paper on expert opinions on victims of crime, Mr. Pavel Štern from the Probation and Mediation Service described experiences from restorative justice projects in the Czech Republic, and Ms. Petra Vitoušová from the White Circle of Safety commented on vulnerable victims of crime, their identification, needs and limits of support.

Mr. Vladimír Pelc from the Faculty of Law of Charles University presented an interesting paper on the right of the injured party to restitution of unjust enrichment. From among other interesting contributions by the members of this faculty, we can name Ms. Diana Gíbalová's paper on the restitution of immaterial harm in criminal process and Ms. Katarína Danková's presentation on the definition and procedural status of victims of crime in the comparative context. The authors of this report, Mr. Igor Barilik and Mr. Lukáš Bohuslav, presented on victims of genocide before the Extraordinary Chambers in the Courts of Cambodia and on comparative analysis of providing financial aid to victims of crime respectively.

The conference was organized with the financial support of the research project of the Charles University in Prague PRVOUK 06 – Public law in the context of Europeanization and globalization. Additional financial support was kindly provided by the law firm Becker & Poliakoff. Papers presented

at the conference were published in a monograph, at the publishing house LEGES. The publication of the book was sponsored by the law firms Becker & Poliakoff and Pejchal & Nespala, s.r.o.

We can conclude that the aim of the conference to provide venue to expert discussion was fulfilled, as the high-profile speakers delivered very interesting speeches before a wide professional audience and a lively discussion followed. We take this opportunity to extend thanks to everyone, who contributed to this successful event, particularly all the participants that had submitted their papers and the sponsors of the conference. Last but not least, special thanks are due to the organizers of the conference for their invaluable help. It was their hard work and commitment that made this high quality event possible.

Igor N. Barilik*

Lukáš Bohuslav**

A great anniversary of the General Commercial Code

Just like last year, when we celebrated the 200th anniversary of the General Citizen's Code, commonly known as the ABGB, this year we commemorate the 150th anniversary of the Commercial Code. Both these codifications are closely related not only through the period in which they were created, but also by their mutual relationship. Because this Code was a part of our legislation until the middle of the last century, which is almost a hundred years, we should recall at least some of the half-forgotten moments that show its origins. Moreover, the history of this codification has a lot to do with the economic and, even more so, political history of the entire Central European area, because this codification was later accepted as one of the common laws of the German Confederation.

The efforts to create a separate Austrian codification can be seen throughout the entire first half of the 19th century and we can divide it into three phases. The first one begins with a letter from the Cabinet on the 18 February 1809. This document was addressed to the court committee of the legal department (Hofkommission in Justizsachen)¹ that was assigned the task of preparing a draft of the Commercial Code. Named as the responsible officer for this assignment was a councilor of the Lower Austria's Commercial and Exchange Court, Johann Michael von Zimmerl.² The planned Commercial Code was to comprise five books. The preliminary works on the first book were completed in 1814. However, the elaborated proposal, containing the legal framework for the commercial relationships, was never published. The codification works were interrupted never to continue with a second book and, due to the size of this area of interest, the attention of the government focused on the Exchange Law that was to be treated with priority. The situation was the same also for Lower Austria's neighbor Prussia. In 1816 this legal area was finally codified and published. In 1833 the previous work on the Commercial Code was reviewed and the outcome was an Exchange Code for the German and Italian lands.

The second phase of codification works was in Austria launched in 1842. The Court Committee was given the task of creating the Commercial Code based on existing foreign laws (French *Code de commerce* from 1807), existing particular regulations, as well as on the outcomes of a questionnaire sent to important businessmen, state's institutions and representatives of commerce in large cities of the monarchy. Received testimonials were mostly related to the corporate law and bookkeeping.

* Mgr. Igor Barilik, MSc., Faculty of Law, Charles University, Prague

** JUDr. Lukáš Bohuslav, Faculty of Law, Charles University, Prague

¹ This court committee was a descendant of the former Hofkommission in Gesetzsachen.

² Johann Michael von Zimmerl, (29 August 1758 Niederösterreich - 5 February 1830 Wien) was a prominent Austrian theorist and practitioner, elevated in 1800 by the Emperor Franzis I to nobility, who was dedicated to this preparations in particular between 1809 and 1816. He wrote a number of essays and guides dealing with the questions of the exchange law and exchange practice.

Let us remind here that the same mechanism was used also to carry out unification works during the First Republic.³ Unlike the previous one, this proposal contained only legislation on the Commercial Law in the narrow sense. This Code was to complement the ABGB into the area of commercial activities, it was therefore to be in relation to the ABGB as *lex specialis*. It was printed in 1849 and it comprised 10 parts.⁴

After the March Constitution the works still continued. The intention was to create a centralized state - the entire empire was to constitute a homogeneous area with uniform legislation. After Schmerling's government fell codification works in this area were discontinued.

The third phase of codification works on the Commercial Law started in 1853, when a new proposal was created at the Ministry of Commerce based on a text printed four years earlier. The Minister of Commerce, von Bruck, aimed to create a Greater German customs union in Central Europe under Austrian leadership. For this reason he signed in 1853 in Berlin a Prussian-Austrian customs agreement that was to precede a large (Pan-German) customs union. Before it could be created Austria was to modify its economic situation, customs system and legislation in the commercial area and harmonize these areas with more advanced German states. The proposal issued in 1853 was two years later (1855) revised by the Ministry of Justice and published. The Imperial Council even created a special committee that was to revise the text again. This way another, slightly modified proposal (already fourth) was created and printed in 1857.

However, in the meantime Bavaria proposed at the Imperial Council in Frankfurt on 21 February 1856 the establishment of a special committee responsible for creating a Commercial Code that would be common for all states of the German Confederation.⁵ Based on this proposal the Federal Convention of German states passed a resolution on the 17 April 1856 that established a special committee comprising representatives from all German federal states. The situation in the German Confederation was very complicated - in the mid-19th century as many as 59 different exchange laws, including nine from the 17th century and thirty-one from the 18th century, were valid throughout the confederation (omitting areas that were using the French law). A conference organized in order to pass the Commercial Code started in early 1857. In spite of the initial disagreements regarding the place of the conference, in the end it took place in Nuremberg - a more-or-less neutral place considering the political rivalry of Austria and Prussia within the Confederation.

All 21 states were represented at the conference and together they had 17 votes⁶ carried by representatives of the land governments, lawyers and important businessmen from all states of the Confederation.⁷ The legislation covering the topics from the area of Maritime Law were prepared by 15 states with 11 votes.⁸ The number of participants was not constant and it was subjected to changes, nevertheless, each of the member states had only one vote even when represented in the negotiations by several representatives. A representative of one state representing also other subjects could only carry one vote.⁹ Bavarian minister von Ringelmann, who started the conference, was also presiding over the conference as the first president (later Mr. von Mulzer became the president). This was basically a honorary function held by a representative of the hosting state.¹⁰ Elected second president, Dr. Franz von Raule, held this position almost continuously throughout the duration of codification

³ Related to that e.g. SKŘEJPKOVÁ, P. Pokusy o unifikaci v oblasti obchodního práva v letech 1918–1938. In: Malý, K., Soukup, L. *Československé právo a právní věda v meziválečném období (1918–1938) a jejich místo ve střední Evropě*. Karolinum, Praha 2010, p. 974 an.

⁴ BERGFELD, CH. Handelsrecht. In: Coing, H. (ed.). *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*. 3. Band, Das 19. Jahrhundert. München, 1986, p. 3046.

⁵ HAHN, O. *Das Handelsrecht nach dem allgemeinen deutschen Handelsgesetzbuch*. Stuttgart 1869–1875, p. 32.

⁶ Some states shared one vote.

⁷ Regarding the assembled representatives see THÖL H. *Das Handelsrecht*. Leipzig, 1875, p. 58 an.

⁸ See THÖL, H. *Das Handelsrecht*. Leipzig, 1875, p. 58 an.

⁹ See von STUBENRAUCH, M. *Handbuch des österreichischen Handels – Rechtes*. Wien, 1863, p. 14 an.

¹⁰ See von STUBENRAUCH, M. *Handbuch des österreichischen Handels – Rechtes*. Wien, 1863, p. 17.

works.¹¹ His function was very important because in the absence of the first president it was he who presided over the negotiations and in case of a tie his vote was decisive - *votum decisivum*. The second Austrian presidency was the result of an agreement between the two most powerful states of the Confederation - Austria and Prussia. The negotiations of the committee were based on an extensive draft of the Code elaborated and submitted by Prussia (Entwurf eines Handelsgesetzbuches). Based on an agreement of the Prussian and Austrian sides the committee was to take into consideration the last two Austrian ministerial proposals of Commercial Code from 1855 (Ministerial Proposal) and 1857 (Revised Proposal)¹² that were created by Austrian experts independently of other states in the Confederation. The conference formed two committees. The first one was responsible for editing the text and, more importantly, keeping protocols from the negotiations. The second committee was responsible for the actual creation of the legislative and linguistic aspect of texts. Detailed protocols from all sessions of the committee were kept by the secretary - the judge of Nuremberg's regional and municipal court Johannes von Lutz. The negotiations had three stages, each reading took about six months. The first reading of the proposal took place between the 21 January 1857 and the 2 July of the same year. The second reading includes the period from 15 September 1857 to 3 March 1858. The third and the last reading lasted from 29 October 1860 to 12 March 1861. Between the second and the third readings (26 April 1858 and 22 August 1869) a committee working on the Maritime Law legislation held sessions in Hamburg.

The proposal of the Commercial Code was declared completed during a ceremonial Federal assembly on 12 March 1861. To illustrate the contemporary atmosphere surrounding this event let us convey the concluding words from one of the participants "may (the outcome of) our joint work, commenced with love, with determination and persistence, constitute the basis of Unification...". In spite of the initial discussions the Federal assembly decided by a majority to pass a resolution on the 31 May 1861 that recommended member states to promptly adopt the Code unabridged, as approved.¹³ The Commercial Code was first adopted in Prussia by a law from the 24 June 1861. Between 1861 and 1865 it was adopted in the form of land codes by all member states of German Confederation as the Allgemeines Deutsches Handelsgesetzbuch (ADHGB). In 1870 the Supreme Commercial Court (Reichs-Oberhandelsgericht) was established, initially for Northern Germany, later for the entire German Empire.

Cisleithania adopted the Code on 17 December 1862 by the Act No. 1/1863 and it became effective on the 1 July 1863.¹⁴ In our part of the monarchy the Code remained valid, with various amendments, until the middle of the last century, when it was replaced by the socialistic Civil Code and later by the Economic Code. Our new Commercial Code, passed in 1991, was in many ways inspired by this "Austrian" model. Certain changes in the area of commercial law are undoubtedly introduced also by the new Civil Code. But also this new Civil Code acknowledges Austrian legal heritage, which is therefore very important part of our recent legal history.

Petra Skřejpková*

¹¹ Was the president of the Imperial and Royal Commercial Court in Vienna.

¹² Published in 1857.

¹³ Von HAHN, F. *Commentar zum Allgemeinen deutschen Handelsgesetzbuch*. Braunschweig 1871, p. 24 an.

¹⁴ See e.g. PAZOUREK, J. *Obchodní politika*. Praha 1916; RANDA, A. *Das österreichische Handelsrecht*. 2. issue, Vienna, 1911.

* JUDr. Petra Skřejpková, Ph.D., Faculty of Law, Charles University, Prague