

THE JOURNAL PRÁVNÍK (THE LAWYER) IN THE YEARS 1948 – 1989

After the year of 1948, for the period of forty years our country deviated from a normal democratic development, on which it embarked after the Second World War. Political development affected almost all areas of social life. Law being one of the first ones. Therefore, we cannot wonder that political pressures manifested also in the contents the journal Právník. On the other hand, it must be appreciated that during the period of strong contempt for law, which the Marxist ideology was even about to abolish, the tradition of Právník was successfully maintained. And not only that. Its high professional level was, more or less, preserved, especially in the second half of the sixties of the twentieth century.

I. SINCE THE FEBRUARY COUP DÉTAT UNTIL FOUNDATION OF THE INSTITUTE OF LAW OF THE CZECH ACADEMY OF SCIENCES (1948 – 1955)

In its 88th volume, as of March 1, 1949, the journal received a face-lift, got a new publisher, but also new content. By merging until then existing journals Právní prakse (Legal Practice) and Právník, the „new“ Právník started to be published by the Association of Czechoslovak Lawyers with a new editorial board. An Editor in Chief became Viktor Knapp, a rising star of the new regime law and legal science, later professor at the Faculty of Law of the Charles University and an academician of the Czechoslovak Academy of Sciences, who remained to be a leading personage of Právník until his decease in 1996. Without any doubts it was a huge merit of Viktor Knapp, that he used his political influence of the head of Political Department of the Office of the President of the Republic, Klement Gotwald, to preserve our oldest legal journal and that Právník did not suffer the fate of other social science journals „of the bourgeoisie era“, which were repudiated after February 1948.

In the framework of this new concept, Právník set itself a goal „to assist legal public at the start during implementation of the five year plan in engagement within general creative efforts and bring both legal theory and legal practice nearer to the needs of working people in a spirit of new people’s legislation „.¹⁾ The fulfilment of this goal was to be achieved through the synthesis of until then used more like theoretical concept of the journal Právník and rather more practical concept of the journal Právní prakse (*Legal practice*). Probably in a spirit of the Marxist thesis on a dialectical unity of theory and practice, it

¹⁾ Právník 1949, no. 1., p.1an.

was supposed to bring such theoretical reflections, which „ought to popularize among wide legal public a socialist conception of law, as well as valuable reflections focused on practical needs of lawyers „.²⁾ The editorial of the first number of the „new“ Právník of March 1949 puts an emphasis, *inter alia*, on new orientation on the Soviet law and on the study of the Soviet legal literature. It criticizes that all of our until then legal literature was oriented to the West and almost unconditionally it stemmed from the German literature. “*The German idealist legal literature will be of no help to us, when getting acquainted with our new legal order and therefore we intend to familiarize our readers with the Soviet legal literature, as well as with the legal literature of the people’s democratic countries*”, concludes the editorial of the first number of Právník of 1949.

Invitations to bring pieces of knowledge of the Soviet legal science and the legal science of people’s democratic states were presently answered by a number of authors of the journal Právník.³⁾ Whatever their motives were, they flooded the pages of Právník by better or worse translations from the Russian language, abounding in many attributes of that period and references to (at that time valid) classics of official ideology.⁴⁾ There is no need of closer analysis, or generalization of such articles. In a similar spirit, some contributions in Právník were oriented after each change of political orientation in our history, albeit to other cardinal points. Serious thought over individual numbers of Právník from the beginning of the fifties should not lead only to simplistic condemnation of all those, who made political statements, or evaluations. As written about half a century later, by a legal historian and Rector of the Charles University, Karel Malý: „*the determining factor in behaviour was literary fear for life, which later on was replaced with fear for existence, position, career and a possibility to work*“.⁵⁾ There was definitely room for fear. The historian Karel Kaplan documented, *that in the years 1948 - 1953 over one hundred thousand people*

²⁾ ibidem.

³⁾ Along with each number of Právník, an extensive supplement containing translations of the Soviet works were published. P. MARŠÁLEK in his work „*Proměny české právní vědy 1945 – 1989*, [Metamorphoses of the Czech legal science 1945 – 1989]/IN: Malý, K., Soukup, L. (eds.), *Vývoj práva v Československu v letech 1945 – 1989*, [Development of law in Czechoslovakia in the years of 1945 – 1989], Praha, Karolinum 2004, p. 39 states, that at that time there were about 500 works altogether translated from the production of the Soviet legal science. Among those being the works of A.V. Venyediktov and S. Bratus (civil law). G.M. Svyerdlov (family law), A.J. Vyshinskiy [criminal law] and of many others.

⁴⁾ Also, these articles have their importance for understanding our legal history. Including opinions of some of the Soviet authors. Among others also J. Vyshinskiy "the designer" of the ill-fated Moscow political processes (e.g. BOGUSZAK, J., *K českému vydání Vyšinského otázek státu a práva*, [On the Czech edition of the Vyshinskiy’s issues of state and law] Právník 1952, no. 1, p. 126 an.).

⁵⁾ MALÝ, K., SOUKUP, L. (EDS.), *Vývoj práva v Československu v letech 1945 – 1989* [Development of law in Czechoslovakia in the years of 1945 – 1989], Prague, Karolinum 2004, p. 12.

were condemned for alleged political delicts, while forty thousand of them were committed to prison for more than ten years. Since October 1948 until January 1953, 232 persons were condemned to capital punishment, 178 out of them were put to death. ..To this number we also have to add several hundred thousand people, who were confined in labour camps (TNP), or they had to serve in auxiliary technical battalions (PTP)“.⁶⁾ At that time Právník, in principle, avoided this topic, as well as related issues. It is surely understandable that if even the slightest indication of criticism of such unlawful acts had been published, such authors would have immediately fallen into the categories mentioned by Kaplan. We can merely appreciate that those who defended, or glorified these appalling acts of lawlessness in Právník, represented only a small number of people and it was far from a general trend of this professional journal.

In 1952, the Czechoslovak Academy of Sciences was established, where significant position of legal science was successfully achieved. At that time it was not easy at all. The theory of scientific communism, which regarded creation of classless society as its nirvana, counted on law and therefore also legal sciences seizing to exist in communism. Therefore legal sciences were rather tolerated than politically preferred. Before founding the Czechoslovak Academy of Sciences, Viktor Knapp described this step in Právník as “clearly historical turning point“ for the development of legal science“.⁷⁾ „The development of a legal science, continues V. Knapp, “that we witness at this time, is thank to faculties, Legal institute of the Department of Justice and individual persons. The present Academy and the Royal Czech Society of Sciences cannot take the least credit for it“. Since its 92nd volume, as of January 1, 1953, Právník became a journal of the Czechoslovak Academy of Sciences. The editorial of the first double issue of the year 1953 defined Právník rather towards the area of theory, while stating that “it should extend its scope also to the fields outside justice, specifically to the theory of state and law, history of state and law, state and administrative law, to which it devoted insufficient attention up to that time. ...The tasks to serve everyday judicial practice will be in the future fulfilled by the journal Lidové soudnictví (the People’s Justice), which up to this time partially collided with Právník both through its topics as well as scope of interests“.⁸⁾ In no time, a discussion was held on the pages of Právník regarding further focus of the journal, while the discussion was basically instigated by the aspirant of the Moscow State University, Ivan Bystrina.⁹⁾ Ivan Bystrina subjected to sharp criticism the 91st volume of Právník of 1952 as

⁶⁾ KAPLAN, K, *NEKRVAVÁ REVOLUCE* [BLOODLESS REVOLUTION], TORONTO, SIXTY EIGHT PUBLISHERS 1985.

⁷⁾ KNAPP, V. Před zřízením Československé akademie věd [Before founding the Czechoslovak Academy of Sciences], *Právník* 1952, no. 10-11, p. 409-411.

⁸⁾ A leading article „K novým úkolům“ [“On new tasks”], *Právník* 1953, no. 1, pp 1-4.

⁹⁾ BYSTRINA, I., Nad minulým ročníkem Právníka [Over the last volume of Právník], *Právník*, 1953, no. 3-4, pp. 262 – 266.

a whole, as well as some of its articles.¹⁰⁾ Specifically, he blamed the Editorial Board of *Právník* for using insufficiently pieces of knowledge of the Soviet law, the Soviet legal science and works of J.V. Stalin. In its subsequent response, the Editorial Board could not well reject such politically sharp arguments of Ivan Bystřina, therefore they resorted to self-criticism.¹¹⁾ In particular, *Právník* responded by articles of Jiří Boguszak „Role of the socialist state and law in the light of Stalin’s teaching about character of economic laws under socialism“¹²⁾ and Viktor Knapp „*Law of continuous approximation to the Soviet example – the road sign for Czechoslovak lawyers*“.¹³⁾ Specifically, the Knapp’s article apparently better envisaged the perspective of time after death of J.V. Stalin and following the side-tracking of his comrades, when the goals required by Ivan Bystřina are not demanded to such an extent and he articulated a thesis that „we cannot mechanically transfer the Soviet experience to our conditions. However, he was not original in this idea. National Assembly Chairman Zdeněk Fierlinger also expressed a similar view in the same number of *Právník*.¹⁴⁾

Anyway, it was a germ of an idea, which about a decade later was to broke out into the "Czechoslovak way to socialism. Though, at the end of the day it did not broke out into it.

Compared to the previous volume the percentage of downright tendentious articles is decreasing in 1953. Nevertheless, some articles responded to events of that period, e.g. the obituary on J.V. Stalin and Klement Gottwald by the National Assembly Chairman, Zdeněk Fierlinger,¹⁵⁾ or an ode on the Slánský trial, signed by the General Prosecutor, Václav Aleš.¹⁶⁾ Despite this fact there is an attempt to shape a structure of individual issues of *Právník* into an expert framework. Apart from expert articles, we can found also the so-called "topical comments" (basically the news from scientific life), reports on new legal literature, as well as materials and documents column (e.g. regarding the above mentioned discussions on the focus of the journal, etc.). A similar trend can be also found in the volume of 1954. One of the expert articles, which engrossed attention of the author of these lines, was an essay by Vladimír Outrata "On the project of the so called „European political communities”,¹⁷⁾ which is one of the first works about developing European law.

¹⁰⁾ Especially the article of Ferdinand Boura „Sociologický objektivismus a naše právní teorie“ [“Sociological objectivism and our legal theory”], *Právník*, 1952, no. 12, p. 545 an.

¹¹⁾ Report on discussion in the Editorial Board regarding speech of the comrade Poskrebyshev on the XIX. Congress of the Communist Party of the Soviet Union, on the article published in "Izvestia" on overcoming delay of the legal science and on the article of the comrade Bystřina on the 91st volume of „*Právník*“, *Právník* 1953, no. 3-4, pp 266-270.

¹²⁾ *Právník* 1953, no. 3-4, p. 204an.

¹³⁾ *Právník* 1953, no. 3-4, p. 204an.

¹⁴⁾ The report „To face time-lag on our law”, *Právník* 1953, no. 3-4, p. 256 an.

¹⁵⁾ FIERLINGER, Z., Czechoslovak people in deep sorrow, *Právník* 1953, no. 1, p. 141an.

¹⁶⁾ ALEŠ, V., Zneškodnění Slánského bandy – těžká rána válečným štváčům [Disposing of the Slánský’s gang – a major blow to all warmongers], *Právník*, 1953, no. 1, p. 80 an.

¹⁷⁾ *Právník* 1954, no. 2, pp. 222-243.

At the turn of 1953 – 1954 a discussion was held on the pages of *Právník* regarding the so called „time-lag of the science of state and law”. It came out of a speech made by the First Secretary of the Central Committee of the Communist Party of Czechoslovakia, Antonín Novotný at the plenary session of the Central Committee of the Communist Party of Czechoslovakia on December 3 - 5, 1953. *Právník* describes in full details the atmosphere of the extended meeting of the Faculty Board of the Faculty of Law of Charles University held on December 21, 1953,¹⁸⁾ where Viktor Knapp in his main speech said the following: *“Actual workplaces of the Academy (there are only two in the field of law) have produced little. The Cabinet of international law has not published anything so far, the Cabinet of history admittedly produces, but it was criticized for its way of work, when publishing the book of professor Dr. Vaněček. It is necessary to speed up the building of other workplaces. ...The only Czech scientific journal is „Právník”, the scope of which is already for a long time insufficient for fulfilling these tasks. An important task is to increase publication opportunities.”* In a similar spirit and with an obvious intention to use the criticism on time-lag of legal science for establishment of one scientific workplace for the state and law sciences, Viktor Knapp appeared also at the fourth plenary session of the Czechoslovak Academy of Sciences, held on January 14 - 15, 1954 in the presence of the president of the Czechoslovak Academy of Sciences, Zdeněk Nejedlý, and apart from other things said:¹⁹⁾ *„We are familiar with such a type of a scientific worker, who covers up timidity by political geniality and hides the lack of creative courage behind phrases on whether this or that issue is politically mature enough to be resolved, although such a „politically immature“ issue is usually the most lively one in practice and it regularly causes the biggest problems in practice due to the lack of scientific processing.* In the conclusion of his speech, Viktor Knapp traced out as one of the major tasks of the VII. section of the Czechoslovak Academy of Sciences *“to accelerate preparation of own workplace for the fields of civil and family law, civil proceedings, criminal law, agrarian and cooperative law, as well as labour law, so that the Institute of law of the Czechoslovak Academy of Sciences can be established in the foreseeable future.* During the year of 1954, he repeated the same requirement for several times, surely not only on the pages of *Právník*.²⁰⁾ Nevertheless, a decision to establish the Institute of Law had been adopted by the Presidium of the Czechoslovak Academy of Sciences, already in

¹⁸⁾ *Právník* 1954, no. 1, p. 119an.

¹⁹⁾ O stavu a úkolech vědy o státu a právu [On the status of tasks of the state and law science], *Právník* 1954, no. 1, p. 189an.

²⁰⁾ KNAPP, V., Některé otázky o státu a právu ve světle X. sjezdu KSČ, [Some issues on state and law in the light of the X. Congress of the Communist Party of Czechoslovakia] *Právník* 1954, no. 3, p. 341-355.

May 1953. However its implementation was delayed for a long time.²¹⁾ Viktor Knapp was successful in his efforts to accelerate creation of the Czechoslovak Academy of Sciences workplace for legal sciences in 1954. The Institute of Law of the Czechoslovak Academy of Sciences was established as of February 1, 1955.

II. SINCE THE FOUNDATION OF THE INSTITUTE OF LAW OF THE CZECHOSLOVAK ACADEMY OF SCIENCES UNTIL THE ONE HUNDREDTH VOLUME. (1955 – 1961)

Právník became a journal of the Institute of Law of the Czechoslovak Academy of Sciences since its 94th volume in 1955. Since 1955 the structure of Právník stabilized in the form of Articles, current comments, materials and documents, as well as information about our and foreign literature (especially from the Eastern Bloc countries). There was a significant drop of politically oriented contributions in the "articles" column and more and more valuable expert articles from many fields of legal science started appearing.

In 1956 in the Soviet Union and shortly also in this country, it became clear, that J.V. Stalin effective ex tunc, seized to be a classic of the Marxism-Leninism, therefore he is looked upon as he never was one. After the XX. Congress of the Communist Party of the Soviet Union, where the new First Secretary N. S. Khrushchev enumerated Stalin's crimes, a crucial political discussion on recent past started in this country as well. Similarly as in the whole society, there was also a number of approaches in legal science. True Stalinists, but also careerists, who were connected with the criticized actions, and some were also responsible for them to a certain extent, wanted to avert prospective criticism, or limit it, at least. Those, to whom the Khrushchev's criticism gave a stimulus to articulate the already growing doubts about the regime, but not infrequently also about their own attitudes, differed from this group. Another group simply locked themselves in the ivory tower of expertise and waited, what would happen next.²²⁾ A fundamental contribution of Právník into this discussion was an essay by Viktor Knapp „For a higher theoretical level of legal science“.²³⁾ First and foremost, Viktor Knapp admitted a certain degree of self-criticism: *"The cult of personality was not the right method to control public affairs, which both in administration and justice led to raising "purposefulness" over legality. Which factually led to giving the security authorities more influence, than they were entitled to according to law and that these bodies became uncontrollable by the prosecutor's supervision. ...Legal science*

²¹⁾ KLABOUC, J., Diskuse o významu usnesení X. sjezdu KSČ pro československou právní vědu v VII. sekci ČSAV [Discussion on importance of resolutions of the X Congress of the Communist Party of Czechoslovakia for the Czechoslovak legal science in the 7th section of the Czechoslovak Academy of Sciences], *Právník*, 1954, pp. 629 – 633.

²²⁾ MLYNÁŘ, Z., *Mráz přichází z Kremle* [A frost comes from the Cremlin], Mladá fronta, Praha 1990.

²³⁾ *Právník* 1956, no. 5, pp. 385-401.

did not speak out against these things with sufficient energy, even where it could do so and this is where its co-responsibility lies. On the other hand he pointed out that there is danger of the so-called „turning coats”, which did not offer itself just once in our history and therefore in our legal science, but it was also used many times: “However, at the same time, it would not be good if any one of us wanted to reproach others with the preacher’s pathos for fostering the cult of personality and made himself look like he always knew it and fought against it. ...All of us have to face up to it honestly, deeply and many a time painfully and we all have to revise not only our own individual work, but also our work with others, as well as assessment of the work of others in such a way, so that incorrect working methods could be eliminated, but also the strengthening atmosphere of the cult of personality. However, this cannot be achieved by authors fanatically trying to delete the Stalin’s quotations from their manuscripts and fanatically rejecting what they would fanatically swear on half a year ago. Lastly, Viktor Knapp also warned about misusing criticism of the "cult of personality" by pseudoscholarly opinions: “Of course, it is possible, that in the heat of these discussions various vulgarizers, windbags and imposters will be trying to take advantage, when under the pretext of fighting against the cult of personality they will be trying to feather their own nest.”

In 1956, since the 95th volume, a regular section "From scientific life" starts to be published. This section provides interesting details on discussions in individual areas of a legal science, as well as information about defences of scientific works. As for expert articles, there is an engaging essay of a civilian Jiří Švestka "Some considerations about damage caused by maladministration in an official decision (Section 346 of the Civil Code) „²⁴), which at that time had not only juristic, but also a wider practical impact when re-evaluating illegal procedures from the preceding years.

As far as orientation of Právník on the international legal science is concerned, an interest in the Soviet legal science is clearly obvious in the fifties. From time to time there are references to legal literature of other people’s democratic countries, e.g. the East Germany, or Bulgaria. We do not find any information about the western scientific publications. It was not before the 97th volume of 1958, when the first fragments of the western law started to appear. Above all, it is an essay by Viktor Knapp "On West German theories on creation of ownership in the hands of workers „²⁵), in which the author basically came up with a well-informed explication of new property law theories of the West German law, this all being wrapped up in sentences about workers, Marxism and successes of socialistic countries. In the section „From scientific life“ we can find a piece of information about the visit of Viktor Knapp and an internationalist Rudolf Bystrický at the international colloquium on legal issues of trade among

²⁴) Právník 1956, no. 8, pp. 714-727.

²⁵) Právník 1958, no. 7, pp. 581-596.

countries with different economic systems on February 24 - March 2, 1958 in Rome.²⁶⁾ It follows from the report that our two delegates had to cope with relatively awkward questions on nationalization of enterprises including contingent compensation. Thanks to their legal, language²⁷⁾ and certainly also political erudition they obviously tackled with credit the questions of their western colleagues. Since the 97th volume *Právník* also brings abstracts in foreign languages for each article, mostly in Russian, sometimes also in German. *Právník* hereby sets out on a journey beyond borders of the people's democratic Czechoslovakia, however not beyond borders of the people's democratic camp.

In the course of 1959, the first more critical discussion was held on the pages of *Právník* regarding the status of law in society, especially on the concept of the so-called „socialist legality“. The main actors of the discussion were on one side Jiří Boguszak²⁸⁾ and Radim N. Foustka²⁹⁾ and on the other side Ivan Bystřina.³⁰⁾ Jiří Boguszak and Radim N. Foustka were trying to suggest that there were certain principles standing above law and legality, which must be respected during law-making. Of course, they could not have in their minds „the rule of law“, but they were quite in accord, when explaining that the concept of „socialist legality“ is not exhausted only by its compliance between „the will of the ruling class, will of the working people...and the given legal order“³¹⁾ but the application of law must correspond to the statute and that it even has to guarantee rights and freedoms of citizens. Moreover, Jiří Boguszak related the concept of legality also to law-making, which was something unprecedented up to that time.³²⁾ Ivan Bystřina took a decisive action against such heretic ideas. According to him, socialist legality cannot be understood in a purely juristic sense, but as „an extremely political activity“. If this discussion had been put to use, it would have been to the benefit of the new Constitution, which was

²⁶⁾ BYSTRICKÝ, R., Diskuse se západními právníky [Discussion with the western lawyers], *Právník* 1958, no. 6, pp. 563 – 568.

²⁷⁾ At his time, Viktor Knapp was one of those unique lawyers, who remarkably mastered several world languages at such a level that they could professionally discuss, write, as well as give lectures in these languages.

²⁸⁾ BOGUSZAK, J., Právní záruky socialistické zákonnosti v ČSR [Legal guarantees of socialist legality in the Czechoslovak Republic] *Právník* 1959, no. 2, pp. 113 – 134.

²⁹⁾ FOUSTKA, R. N., K pojmu socialistické zákonnosti [On the concept of socialistic legality], *Právník* 1959, no. 10, pp. 931 – 941.

³⁰⁾ BYSTRINA, I., K pojmu socialistické zákonnosti [On the notion of socialistic legality], *Právník* 1959, no. 8, pp. 693 – 709.

³¹⁾ PROCHÁZKA, V., K marxisticko-leninskému pojetí státu [On the Marxist and Leninist conception of state], *Právník* 1959, no. 7, pp. 577 – 614.

³²⁾ KNAPP, V., Teorie práva [Theory of law], Praha, C. H. BECK 1995, P. 212 OR ALSO MARŠÁLEK, P., *Proměny české právní vědy 1945 – 1989* [Metamorphoses of the Czech legal science 1945 – 1989], IN Malý, K., Soukup, L. (eds.), *Vývoj práva v Československu v letech 1945 – 1989* [Development of law in Czechoslovakia in the years of 1945 – 1989], Prague, Karolinum 2004, pp 42 - 43.

adopted in a festive way in July 1960. In fact, the new Constitution was prepared in haste, more like under political than expert pressures.

Since 1960, the Institute of Law of the Czechoslovak Academy of Sciences was renamed to the Institute of State and Law of the Czechoslovak Academy of Sciences. The office of a director continued to be held by Viktor Knapp. In our modern history, the year of 1960 is connected with adoption of the new Constitution of the Czechoslovak Socialist Republic. It cannot be said that a major discussion on the Constitution took place on the pages of *Právník* in its 99th volume. Its importance was summarized by Pavel Levit in the article „ O novou socialistickou Ústavu Československé republiky [For the new socialist Constitution of the Czechoslovak Republic]“³³⁾, basically as follows: „*The new Constitution intends to summarize and express results of the revolutionary reconstruction of the Czechoslovak economy and all social relations in one document, to confirm constitutionally the results of socialist revolution. In this sense, from the perspective of the so far economic and political development, the new Constitution is a balance of changes, through which our society and state went. Of course, the new Constitution is not only a sum of these changes, but it also brings new political, organizational and legal elements, where the constitution maker draws conclusions from the so far development, so that he can instigate new development on a higher level and create more effective tools for further socialist construction (this includes for example the provision on government bodies in Slovakia)*“.

The jubilee one hundredth volume of *Právník* in 1961 is not marked by any exceptional celebrations. A relatively chaste discussion on otherwise delicate topic appeared in the same year on the pages of *Právník*, i.e. the discussion on the leading role of the Communist Party, which was laid down in the new Constitution of 1960. An expert in constitutional law Zdeněk Jičínský and an expert in administrative law Pavel Levit in their article called „The Party – an organizer of construction of the socialist state „³⁴⁾ consider the leading role of the Party as a natural phenomenon and they attribute all negative development tendencies to the weakening of the leading role of the Party: „*Negative consequences of the cult of personality, dogmatism and other accompanying phenomena along with the anti-party activities of Slansky and his group led to violation of the Leninist standards of party life and impairment of true relations between the Party and the state.* Zdeněk Mlynář, a politologist, whose ideas significantly influenced reformatory processes in Czechoslovakia in the upcoming years, admittedly deduces in his first more significant article „A leading role of the Party in the development of socialist statehood „³⁵⁾ that the leading role of the Party is „*an objectively needed phenomenon*”, but the party “*failed*

³³⁾ *Právník* 1960, no. 6, pp. 489-495.

³⁴⁾ *Právník* 1961, no. 9, pp. 737-750.

³⁵⁾ *Právník* 1961, no. 5, pp. 385-401.

to bear this leading role"“.³⁶⁾ This interpretation keeps us just a step from an idea that „the party must earn its leading role", which was one of the foremost ideas influencing the so-called „Prague Spring”.

III. PRAGUE SPRING AND ITS EARLY SPRING (1962—1968)

The beginning of the sixties was associated with extensive recodification of basic legal branches in the Czechoslovak legal environment. In contradistinction to recodification of the early fifties, which was practically not reflected on the pages of *Právník*, this time the editorial board of *Právník* devoted quite a lot of attention to recodification works. A new column „On the preparation of new acts“ was introduced and in the beginning of 1962 there was a major discussion on focus of the Civil Code being prepared, especially its relation to the economic law and the Economic Code being prepared. Viktor Knapp responded in his Article „On the subject-matter of the socialist Civil Law“.³⁷⁾ to the Article of Zdeněk Kratochvíl „Subject-matter and system of the socialist civil law“.³⁸⁾ The subject of discussion of both authors were, in brief, three things: Universality of the Civil Code, a variance between the so-called „possessory“ and „consumer“ conception of the Civil Code and the issue of the so-called „unpaid services”. Although already in December, 1960, a resolution of the Central Committee of the Communist Party of Czechoslovakia clearly stipulated that the regulation of the Civil Code must be focused on „*everyday relations, into which citizens enter, while satisfying their material and cultural needs,*“³⁹⁾ i.e. rather the „consumer“ conception, Viktor Knapp was trying to argue also for the „possessory“ conception of the Code in preparation. Similarly, the said resolution decided that regulation of relations between socialist organization is not a part of the Civil Code. In spite of this, Viktor Knapp defended universality of the Civil Code and to the contrary he was strictly opposed to creation of the Economic Code. In both cases he had to face a political assignment, which necessarily led to his failure. However, history proved him right. Viktor Knapp was somewhat more successful in his argumentation against vague definableness of the institute of unpaid services. Even if his views on the Civil law were not heard by the makers of the Civil Code, they also had to acknowledge idleness of such a vague institute. Unpaid services were deleted from the final

³⁶⁾ In this at that time courageous idea, Zdeněk Mlynář refers *expressis verbis* to the speech of the First Secretary of the Central Committee of the Communist Party of Czechoslovakia, Antonín Novotný, at the nation-wide conference of the Communist Party of Czechoslovakia in 1956, quoted according to a theoretical journal *Nová mysl*, special issue, 1956, p. 26.

³⁷⁾ *Právník* 1962, č. 2, s. 202an.

³⁸⁾ *Právník* 1962, no. 1., p. 30an.

³⁹⁾ DVOŘÁK, J., *Development of the Civil Law*, IN: Malý, K., Soukup, L. (eds.), *Vývoj práva v Československu v letech 1945 – 1989* (Development of law in Czechoslovakia in the years of 1945 – 1989), Prague, Karolinum 2004, p. 481.

version of the Civil Code.⁴⁰⁾ The polemic over the conception of civil regulation, especially over the sense of the Economic Code continued in *Právník* also during the year of 1963. The entire polemic was finally discontinued by the political authorities, that made it impossible for *Právník* to publish faultfinding articles against new codification.⁴¹⁾

However, the 102nd volume of 1963, did not bring only a discussion on recodification of the Civil law and disputes about the Economic Code, but also a discussion, we could say, of more political weight. In the beginning of 1963, the Central Committee of the Communist Party of Czechoslovakia Commission for Investigation of „violation of the party principles and socialist legality during the period of the cult of personality“, led by Drahomír Kolder, the Secretary of the ÚV KSČ concluded its activity. Conclusions of the Kolder's Commission, which up to that time went probably to the furthest point, when describing unlawfulness of the fifties, but also when rehabilitating unjustly convicted persons,⁴²⁾ induced a wide discussion. Its reflection can be also found in *Právník*. Already on February 21, 1963 an extraordinary meeting of the scientific board for the state and law science took place, which was originally supposed to discuss outputs of the XII. Congress of the Communist Party of Czechoslovakia and set a research plan for the next seven years.⁴³⁾ In fact, the key topic was overcoming of consequences of the so-called „cult of personality“. Viktor Knapp, as the main speaker, pointed out in his criticizing of violation of socialist legality in the fifties, inter alia, that „socialist legality was understood as legality binding on a citizen and not binding on government authorities...a public interest was made a fetish and it was ignored that preservation of rights of citizens is not only in their individual interest, but it is also in the public interest“. He basically came from the aforementioned instigations, that were published in *Právník* already in 1952, i.e. that certain principles in the form of rights and freedoms of citizens should stand over socialist legality. Similarly, Zdeněk Mlynář, followed up in the discussion on some of his formerly expressed reflections on the leading role of the Party: „For the controlling practice of the Party sometimes leads to the replacing of organizations and to the feeling of the masses that participation in social organizations is useless,

⁴⁰⁾ Nonetheless in Section 225(1) of the finally enacted wording of the Civil Code, it is stipulated, that „services are provided as paid services, if not stipulated by this Code, or a special regulation, that these services are provided free of charge“, even if the unpaid services were deleted.

⁴¹⁾ MARŠÁLEK, P., *Proměny české právní vědy 1945 – 1989* [Metamorphoses of the Czech legal science 1945 – 1989] Malý, K., Soukup, L. (eds.), *Vývoj práva v Československu v letech 1945 – 1989* [Development of law in Czechoslovakia in the years of 1945 – 1989], Prague, Karolinum 2004, p. 43.

⁴²⁾ MLYNÁŘ, Z., *Mráz přichází z Kremle* [A frost comes from the Cremlin], Mladá fronta, Praha 1990.

⁴³⁾ Mimobádné rozšířené zasedání vědeckého kolegia ČSAV pro vědu o státu a právu [Extraordinary extended meeting of the scientific board of the Czechoslovak Academy of Sciences for the state and law science], *Právník* 1963, no. 6, p. 416an.

formal and things are being resolved somewhere else. Obviously he already thought about his later thesis of „socialist pluralism“, that ought not to be created among political parties as in the „bourgeois democracy“, but between the Communist Party and social organizations, for example of the youth, trade unions, etc. Similar ideas can be found also in the document called "Overcoming a consequence of the cult of personality and dogmatism in the science of state and law"⁴⁴⁾, published by the Editorial board of *Právník* as an output of scholar of the Institute of State and Law of the Czechoslovak Academy of Sciences. The document deeply criticized dogmatism, mechanical takeover of the Soviet experience and the party bureaucracy.

Criticism of the cult of personality in the beginning of sixties did not want to (and after all could not) exceed the framework of the leading role of one Party, without regard to whether the Party „deserves“ its leading role, or whether it is dictated from above. It even could not break the bounds of the centrally controlled economy, the domain of which *Právník* entered in 1964 by the poll "Political organization and law in the control of national economy"⁴⁵⁾ The first to express his opinion was Ota Šik, the designer of the Czechoslovak economic reform of the sixties: *"I believe that it is just the economic system of planned control, i.e. the system ensuring planned development, while taking full use of commodity relations by means of economic tools (prices, gross income of an enterprise, loan, interest, rewards and bonuses of workers, etc.), which will secure to a maximum extent the use of the widest initiative of the working people in enterprises, it will facilitate their real, informal participation in an economically progressive development of the reproduction process"*. Out of these statements, as well as other statements in *Právník*, it follows that nobody was seriously preoccupied with an idea of implementing principles of the western democracies and the real market economy.

It is beyond any doubts that in the sixties *Právník* attained considerable influence even within political circles. Probably, the biggest influence for the period of its existence. This was certainly a result of engagement of a prominent member of the editorial board, Zdeněk Mlynář, as a Secretary of the Legal Committee of the Central Committee of the Communist Party of Czechoslovakia, which was established in 1964. Zdeněk Mlynář described the main tasks of the Committee in *Právník*, as follows: *"The Committee is expected to discuss drafts of more material legal regulations (as well as stimulate such similar regulations), so that stronger legal relations are created, which are less liable to short term influences, in the status of basic bodies and organizations in socialistic society and also in the legal status of citizens"*⁴⁶⁾ The issue of legal status of citizens was a subject of numerous reflections on the pages of *Právník*

⁴⁴⁾ *Právník* 1963, no. 8, pp. 621-633.

⁴⁵⁾ *Právník* 1964, no. 6, p. 548an and no. 7, p. 635an.

⁴⁶⁾ MLYNÁŘ, Z., Vytvářet pevné právní zásady života naší společnosti! [To create strong legal principles of life of our society!], *Právník* 1964, no. 5, pp. 438 – 440.

and also in its 104th volume during the year of 1965. As put down by Jiří Boguszak and Zdeněk Jičínský: *“An important thing is to elaborate issues of subjective rights of citizens and their protection. The vulgar conception of relationship of an individual (or a group) and society, which either followed from linear unity of interests, or separated them mechanically and set them one against another, is overcome. Resolution of variances between these interests cannot consist simply in deciding in favour of the so-called universal interests, for the individual (and group) interests and variances associated with them cannot be abolished at a given stage of development. On the contrary, it is necessary to fix them by legal recognition of a universal interest in securing and protecting individual rights and interests, which correspond to socialist conditions ...”*⁴⁷⁾ However, the assessment of protection of human rights under socialism did not remain only at a general level, but a step was made towards their projection into specific areas of the law in force. Of course, the most sensitive was the criminal law, which served as the main tool for repression and limitation of basic rights and freedoms.

Similarly as in the previous year, Právník conducted a poll also in the year of 1965, this time on the topic of „Democracy and expertise of management”, or towards another up to that time problematic area of the relation between the citizen and power – Administrative law, especially regarding activities of government bodies and national committees.⁴⁸⁾ Poll questions put a special emphasis on the relation of the government bodies and management toward national economy. The poll started with a wider reflection of Jiří Boguszak and Zdeněk Jičínský, in which they emphasized two main problem areas: relation of non professional elected representatives of people towards the professional state mechanism and decentralization. *„Indeed, the superiority of representative corps over the executive, or administrative authorities, which clearly results from legislation“*, as put in the poll by Jiří Boguszak and Zdeněk Jičínský, *„means in many ways, sociologically speaking, dependency of elected representatives on a permanent, professional apparatus, which ascertains facts, works out source materials, prepares proposals and decisions“*. As to the issue of decentralization, they emphasized that *decentralization does not have to mean democracy“*. When seen in the context of history, these are definitely ideas, which did not lose their validity with the failure of a reformatory process at the end of the sixties, but also with the termination of socialism at the end of the eighties. This fact is also pregnantly illustrated in the poll reply by an economist Antonín Kerner, which was similarly true at that time, as is today. *“The decision-making on matters, which fall within responsibility of the lowest operating unit, moves upwards, because what if, for example, an operational unit low in the chain of command asked for something considered unauthorized in contra-*

⁴⁷⁾ BOGUSZAK, J., JIČÍNSKÝ, Z., K problémům socialistické zákonnosti [On the problems of socialist legality], *Právník* 1965, no. 3, p. 197an.

⁴⁸⁾ *Právník* 1965 no. 5, p. 446an., no. 6, p. 552an. and no. 7, p. 625 an.

diction to social interests? ...Quite often, we encounter that, for example an elected body approves of a many million investment project, while its decision is only based upon opinion of one designing facility, it does not have available a qualified expert opinion of research organizations, etc."

Continuation of all society discussion and democratization of politics and law in 1966 on the pages of *Právník* is strongly focused on issues of the division of power into the legislative, executive and judicial branches. Philosophical conception of judicial power is analyzed in Viktor Knapp's article „On justice“⁴⁹). As far as justice and justified limitation of freedoms of an individual are concerned, Viktor Knapp arrives at a conclusion that *"an objective prerequisite of justified limitation of freedoms of an individual, most of all consists in not thinking about resolving otherwise the variance between social interest in protection and assurance of freedom of an individual and other social interest at a given stage of social development and furthermore that the social harm resulting from limitation of an interest (to wit, another interest) of society was not smaller than the social harm resulting from limitation of an individual's interest.* Viktor Knapp hereby instinctively got nearer to the doctrine of proportionality of limitation, which was several years later developed by the European Community Law in a way, that it is given by the extent, when the pursued goal cannot be achieved by other (i.e. more moderate means).⁵⁰) There is a number of authors, who express themselves on the division of power in the socialist state. One of the more radical opinions for that time can be found in the article of Vladimír Klokočka „Constitutional problems of the socialistic system „⁵¹) who even introduces in the discussion the western, even Anglo-American element „checks and balances“: *„Today, it is also obvious that for the correct functioning of the political and state mechanism, the system of horizontal and vertical balances and checks is needed, which would not present a threat to the people's supremacy, but it would be its guarantee.* From this he deduces a distinct role of judicial control over executive power in the form of constitutional, as well as administrative justice. On the example of Yugoslavia, he documents that this model is not strange to the socialistic establishment, where the constitutional justice already worked at that time.

Since the beginning of 1967 a scientific task „Development of a political system in the socialist society“ was being solved in the Institute of State and Law under leadership of Zdeněk Mlynář.

The main outputs of the Mlynář's scientific task were not published in *Právník*, but in the journal *Stát a právo* [State and Law] and to a certain extent also in the Party journal *Nová mysl*. In *Právník*, this scientific task was rather projected into expert reflections. A big topic was the right of assembling and

⁴⁹) *Právník* 1966, no. 4, pp. 310-320.

⁵⁰) Compare with, e.g. the resolution of the European Court of Justice in the legal case 120/78 *Rewe-Zentrale Ag vs. Bundesmonopolverwaltung für Branntwein*, SbSD 1979, p. 649.

⁵¹) *Právník* 1966, no. 7, pp. 586-592.

associating in connection with the preparation of the respective act. There were several authors, who expressed themselves on the topic, especially the constitutionalists Pavel Peška⁵²⁾ or Václav Pavlíček⁵³⁾. The journal also describes a detailed discussion on these issues, held on March 21, 1967 at the Faculty of Law of the Charles University.⁵⁴⁾ Václav Pavlíček proposed to extend possibilities of judicial review not only to the right to associate, but also to the right to assemble. Pavel Peška drew a conclusion, especially *„regarding necessity of strict legal conditions for these rights both in the constitutional wording as well as in the political and administrative practice“*. Pavel Levit recommended to the next constitution-maker to *„to specifically formulate and elaborate also on some principles of the socialist conception of the right to assemble“*. The constitutionalist Bedřich Rattinger expressed himself on the issue of *„public interest“* with regard to inadmissibility of registration of associations, however, *on condition that the Act defines public interest in such a way, so that this notion cannot be a way out for arbitrariness*. The politologist František Šamalík expressed his disagreement with the standpoint of *„significant social organizations, that an extended application of the right to associate would lead to dissipating their energy ...on the contrary, artificial maintenance of monopoly does not contribute to democratization of social life“*.

A general feature of *Právník* in the years of 1948 – 1989 is the fact, that it was strongly politicized. Compared to other periods in its one hundred and fifty year existence, the influence of politics was exceptional. However, most of the time it was under the thumbs of the politics and scarcely ever it was given an opportunity to influence the politics, at least partially. It had this opportunity in 1964 – 1968, which however does not mean, that it would become a political periodical. It maintained quite high professional level, much higher than it had in the fifties and later in the seventies. However, the expert legal analyses in *Právník* indicate also basic doubts about that time reforms. Those, who carefully and consistently modelled possibilities of political and economic pluralism, as well as principles of the legal state and rule of law in the socialistic society, had to earlier, or later find out that, that at the end of the day they would create a model of democratic pluralism and market economy, which was in contradiction to the centrally planned economy in the state with one party monopoly. That they will arrive at a system of division of power and rule of law, which contradicts the very foundations of socialistic statehood and socialistic legality. With lapse of time, Zdeněk Mlynář himself indicated, that *„ref-*

⁵²⁾ PEŠKA, P., K ústavní problematice politických práv zejména práva společovacího [On the constitutional issues of political rights, especially the right to associate], *Právník* 1967, no. 7, pp. 585 – 591.

⁵³⁾ PAVLÍČEK, V., Problematika společovacího a shromažďovacího práva v ČSSR [Related issues regarding the right to assemble and associate in the Czechoslovak Socialistic Republic], *Právník* 1967, no. 7, pp. 592 – 607.

⁵⁴⁾ Discussion on principles of the Act on the right to assemble and associate, *Právník* 1967, no. 7, pp. 674 – 677.

lections on a political reform started to be in conflict with two basic problems: the problem of one ruling party and the problem of international consequences, which the prospective reform would induce in other countries of the Soviet bloc. Making these problems officially a topic of discussion within a research team in 1967 would mean to subject this entire team to a danger of termination.⁵⁵⁾

In the beginning of the seventies, the reform processes were condemned from the left as an attempt to „restore capitalism”. In a way, this was true, even if the reform communists not only did not want such a possibility, but they never admitted it before, or after. Later on, Zdeněk Mlynář himself wrote: *“I was a reform Communist and not a non communist democrat...I wanted to implement political power of the Communist Party not within the system of dictatorship, but within the system of pluralist political democracy“.*⁵⁶⁾ Reform Communists built on a premise that a majority of people in this country wanted to preserve socialistic system. However, there is not an exact proof for such a statement. At the end of the sixties the Communist Party of Czechoslovakia had more than one million members out of fourteen million Czechoslovakia and therefore it is not clear, whether the majority of non communist population of the Czechoslovak Socialistic Republic, but maybe even some „communists”, would vote for a different system in the election by ballot. In the beginning of the nineties, the reform processes were condemned again. This time it was from the right, as an attempt of "the third way", i.e. in practice unfeasible hybrid between socialism and capitalism. In a way, this was also true, but also partly. Zdeněk Mlynář admitted, *„that he based his reform reflections on socialist pluralism and believed, similarly as many others, that socialism can be reformed towards democratization of this system“.*⁵⁷⁾ On the other hand he believed that *“the Communist Party cannot lose its hegemony before functional mechanisms of a democratic system are created in practice”* and furthermore *“that such reform development would require about ten years, perhaps even a little bit more.”*⁵⁸⁾ He also expressed his doubts, whether it would had been possible in the framework of the political system reform, that he had proposed, to fully release freedom of expression, *„as in his opinion such measures would require more profound changes“.*⁵⁹⁾ However, we cannot resolutely assert that each intermediate stage between a directivesly controlled state and pluralist market economy would had been non functional, or unsuccessful, as it has never been possible to verify any part of it in practice.

The main topic of the 107th volume of *Právník* in the fateful year of 1968

⁵⁵⁾ MLYNÁŘ, Z., *Mráz přichází z Kremle* [A frost comes from the Kremlin], Mladá fronta, Praha 1990, p. 94.

⁵⁶⁾ *ibidem*.

⁵⁷⁾ MLYNÁŘ, Z., *Československý pokus o reformu 1968* [The Czechoslovak attempt for a reform in 1968], Index, Köln am Rhein, 1975, pp. 54 - 107.

⁵⁸⁾ MLYNÁŘ, Z., *Mráz přichází z Kremle* [A frost comes from the Kremlin], Mladá fronta, Praha 1990, p. 90.

⁵⁹⁾ *ibidem*, p. 94.

was federalization and preparation of the Constitutional Act on the Czechoslovak Federation. At the instance of Viktor Knapp, the member of the Presidium of the Czechoslovak Academy of Sciences and a Chairman of the Constitutional Committee of the National Assembly, the Scientific Board of Czechoslovak Academy of Sciences for the state and law sciences established a Committee on constitutional issues on March 27, 1968.⁶⁰⁾ At the same time, Právník was set a task to publish regular reports on activities of this Committee in a newly created column „On the preparation of the new Constitution“, as well as „generally all papers coming from this Committee“.⁶¹⁾ Thanks to Viktor Knapp, Právník was hereby given an opportunity to inform all those, who were involved in the preparation of the Constitution and those, who were deciding on it, about opinions of the scientific community. This was another „stellar moment“ for this journal, even if the last one for at least two decades. From the „On the preparation of the new Constitution“ column it follows, that the scientific community, similarly as the political representation, oscillated between two opinions: a tight federation and a dualistic federation. At the end, the middle standpoint logically won, which basically corresponded (following certain corrections adopted by the Czech representation) to satisfaction of significant requirements and interests of the minority (Slovak) nation; exorbitant division of economy was adjusted in favour of the federal centre, which had already been controlled by the Slovak representatives, two years later.

IV. PERIOD OF „CAREER MEASURES“ (1969 – 1973)

The editorial of the first number of the 108th volume of Právník in 1969, declared its support to the Action program of the Communist Party of Czechoslovakia, although it was clear that dark clouds were gathering over this basic and strategic document of the Prague Spring. „*The Editorial board considers it important to emphasize that in the future it intends to keep the long-term line of Právník as a journal, that resolutely stood against the police and bureaucratic concept of state...against replacing will and desires of the people with interests of a small power group, which leads to the abandonment of the journey of construction of the real socialistic society. The model of socialism, which our people wanted to build and to which the road was opened by the session of the Central Committee of the Communist Party of Czechoslovakia in January 1968, is of course not exhausted by implementing the goals, which were stated in the Action program...In this volume, as well as in the coming volumes, Právník would like to contribute to extension of knowledge that only this model of socialism is in this country capable of meeting the basic task of socialism as a new social order ...*“.⁶²⁾ In February 1969, the editorial board of Právník dissociated itself from invitations asking for „*analysis and check-up of laws*

⁶⁰⁾ Právník 1968, no. 6, p. 547an.

⁶¹⁾ Právník 1968, no. 6, p. 547an.

⁶²⁾ K novému ročníku Právnicka [On the new volume of Právník], Právník 1969, no. 1, pp. 1 – 3.

discussed by the National Assembly since January to August 1968“ and renovating of what is „in contradiction to the interest of working class, communist teaching and proletarian internationalism“.⁶³⁾ The Editorial board of *Právník* emphasized in its statement that they traditionally facilitated an expert discussion and that „for the entire lapsed period, none of the contributions sent to our Editorial board expressed, or provided grounds for the aforementioned concerns”.

In the area of the Constitutional reform, *Právník* continued in bringing information from the meeting of the Presidium of the Czechoslovak Academy of Sciences on constitutional issues, but also of newly established committees for the preparation of the Constitution of the House of People and the House of Nations of the Federal Assembly.⁶⁴⁾ Both committees considered the status after adoption of the Constitutional Act on Czechoslovak Federation in 1968 to be provisionary „not only from the perspective of legal documents, but also from the perspective of incompleteness of the Constitution, as well as from the perspective of expected constitutional rules on the Czechoslovak Federation, especially the constitutional act on courts and prosecutor’s office.“⁶⁵⁾ The issues relating to status of courts and the prosecutor’s office in the new federal system represented a major topic for discussions on the new Constitution in both constitutional committees of the Federal Assembly, but also in the Czechoslovak Academy of Sciences committee for the constitutional matters.⁶⁶⁾ Organization of courts and the prosecutor’s office was to be conformed to the federative arrangement of the country (which finally happened) and furthermore a system of constitutional justice was supposed to be created (which finally did not happen).

Because of the time distance between submission of the text for publication and its publication in *Právník*, the consequences of the change of political orientation after the April Plenum of the Central Committee of the Communist Party of Czechoslovakia in 1969, at which Gustáv Husák was elected the General Secretary, were manifested in the 109th volume of *Právník* in 1970. In 1970 *Právník* declared support to the new political line after the so-called „April Plenum”, but also to an idea of proletarian internationalism, which was an official title of the Brezhnev’s Doctrine, on the basis of which Czechoslovakia was occupied. A conference of directors of scientific legal institutes and legal journals of the European socialistic countries,⁶⁷⁾ held in Prague on March 3 - 5, 1970⁶⁸⁾, also contributed to practical fulfilment of this principle.

On the other hand, both in a legal science, as well as in the journal *Právník*,

⁶³⁾ *Právník* 1969, no. 2. p. 172.

⁶⁴⁾ *Právník* 1969, no. 9, pp. 748 - 751.

⁶⁵⁾ *Právník* 1969, no. 9, pp. 748 - 751.

⁶⁶⁾ *Právník* 1969, no. 9, pp. 718 - 719.

⁶⁷⁾ Czechoslovakia, Bulgaria, Hungary, German Democratic Republic, Poland, Romania and the Soviet Union.

⁶⁸⁾ *Právník* 1970, no. 6, p. 722.

a new, hidden direction appears: a study of the western legal and political systems, which did not proceed further even during the liberal sixties. As the later Director of the Institute of State and Law, the constitutionalist, Josef Blahož realistically wrote: *It is not a coincidence that since the beginning of the seventies, when the management of the Institute and its Party organization with the effective help of the scientific board of sciences of state and law of the Czechoslovak Academy of Sciences overcome consequences of the crisis period and endeavour for further expansion of creative and scientific work on the basis of Marxism-Leninism, one of the main trends of activities becomes research and criticism of bourgeois and revisionist opinions and conceptions of state and law. The main document for activities of the Institute in this period of consolidation, became the material of the Presidium of the Czechoslovak Academy of Sciences „The concept and career engagement of the Institute of State and Law of the Czechoslovak Academy of Sciences“*, adopted in September.⁶⁹⁾ Thus, under the veil of criticism, the Institute of State and Law, or as the case may be, *Právník* develop the study of law of not only the „capitalistic“ Western Europe, but also the „imperialistic“ United States. Viktor Knapp publishes an article „Big legal systems“⁷⁰⁾, clearly influenced by the Parisian scholar René David. Despite the fact that comparative jurisprudence was covered by some authors, including Viktor Knapp, in *Právník* already in the sixties, the seventies paradoxically bring bigger space for development of this discipline, which was even at that time labelled as non Marxist quasi-science. The contribution of the team of authors of the comparative jurisprudence department of the Institute of State and Law of the Czechoslovak Academy of Sciences „The contribution to criticism of the bourgeois theory of convergence in the area of sciences of state and law of the Czechoslovak Academy of Sciences“ proved that you could never be too careful. In fact it is a presentation of one of the first scientific outputs of the Czech legal comparative jurisprudence including the basis of its methodology, but also including its „defence mechanisms“, consisting in references to relevant Congresses of the Communist Party of the Soviet Union and the Communist Party of Czechoslovakia, as well as suitably selected statements of our and the Soviet representatives.

In the volume 111 of 1972, it is possible to notice strengthening of the science of the International Public Law. A number of important articles in the year of 1972 was written by Vladimír Kopal⁷¹⁾ or Miroslav Potočný⁷²⁾. The

⁶⁹⁾ BLAHOŽ, J., 30 let Ústavu státu a práva ČSAV [30 years of the Institute of State and law of the Czechoslovak Academy of Sciences], *Právník* 1985 no. 2, p. 115 an.

⁷⁰⁾ *Právník* 1971, no. 9, pp. 696 – 717.

⁷¹⁾ Eg. KOPAL V., Mezinárodněprávní ochrana bezpečnosti civilního letectví [International protection of civil aviation], *Právník* 1972, no. 9, p. 696 an. or Kopal, V., Smluvní úprava právního postavení Měsíce [Contractual regulation of the legal status of the Moon], *Právník* 1972, no. 12, p. 1070 an.

⁷²⁾ Eg. POTOČNÝ, M., K otázce prozatímního provádění mezinárodních smluv [On the issue of provisional execution of international treaties], *Právník* 1972, no. 5, p. 427an.

reference to the mentioned contributions does not mean that Právník still had not been strongly politicized even in 1972. Compared to the previous volume, it does not bring anything in orientation to „nouveau régime“ , that would be worth of mentioning. Albeit this is not a period, of which the Institute of State and Law and the journal Právník could be proud, it is fair to point out, that the atmosphere of that place was definitely less restrictive than for example at the Faculty of Law of the Charles University. It was a success to keep experts in the Institute and also around the journal Právník, who would be otherwise condemned to hell after 1969. As an example we can state Otmar Boček, who in his position of a Supreme Court Judge during the period of the Prague Spring significantly contributed to rehabilitation of unjustly convicted persons in the fifties.

V. WAYS-OUT FROM THE ATMOSPHERE OF THE SEVENTIES (1973 – 1979)

After the so-called „Velvet Revolution“, the seventies and eighties were called the „normalization“ and are presented in our today’s literature and publicism as the period of stagnation, inhibition and occupation so all that was done at that time automatically bore the minus sign. Moreover, this period is depicted as a „no-time period“ and greyness without any internal changes. In relation to the legal theory, it is possible, in this respect, to agree with the opinion of Zdeněk Jičínský who wrote that such a period had been reflected as the „cessation of tension between the legal theory and practice.“⁷³⁾ In the same spirit seems to be the comparison of Právník from the period before the Prague Spring and after it. The period of the so-called „normalization“ shows at least two fundamental milestones: the end of the seventies when the society’s relation to the regime but also the relation of the regime to the society changed after Charter 77, and a half of the eighties when changes in the Soviet Union under the presidency of Mikhail Gorbachev brought hope of reforms also for our country.

With respect to the context of the period, it is necessary to state that after the federalization of Czechoslovakia, the Slovak element started to strengthen more significantly in all areas of social life in the Czech countries. The General Secretary of the Central Committee of the Communist Party of Czechoslovakia and the first Slovak president of the republic from 1975, Gustav Husák, supported the involvement of the Slovaks, in particular in the federal authorities in Prague. However, this phenomenon was not shown much in Právník. In Slovakia, there existed the autonomous Slovak Academy of Sciences (there was no analogical Czech institution in the Czech countries) and its Institute of State and Law with own publication possibilities. In Právník, we can find some contributions written in Slovak, but there are not many of them. The Slovak authors

⁷³⁾ JIČÍNSKÝ, Z., *Právní myšlení v 60. letech a za normalizace* [Legal thought in the 60s and during normalization], Prospektrum, Praha 1992, p 150.

who contributed to *Právník* were, in particular, the internationalist Ján Azud, the chairman of the Scientific Board of Sciences on State and Law of the Czechoslovak Academy of Sciences Ján Pješčák, or the penalist Milan Čič.

A big topic of a half of the seventies is the issues of loosening the international tension (the so-called „détente“ policy) in connection with the preparation and implementation of the Helsinki Conference in 1975. In particular, the internationalist Vladimír Kopal responded to the topic in the article „With Peace and Safety”.⁷⁴⁾ He evaluated not only the existing course of the conference on the European safety and cooperation but also the bilateral agreements between the West Germany and Czechoslovakia or Poland which were signed at the beginning of the 70's. There are more⁷⁵⁾ similar analyses in the 113th volume of 1974, as well as analyses with respect to the topic of fundamental rights and freedoms. The attitude of the then Czechoslovak legal science to the issue of fundamental rights and freedoms was evaluated later by Zdeněk Jičínský in the way that he tried to prove that „*there are no serious deficiencies of such type in the existing Czechoslovak practice because no violation of citizens' rights and freedoms takes place in the state-political practice; on the contrary, it is the guarantor of their observance and security.*“ Remarkable is that Jičínský brought back the then opinion that „*the Constitution and laws of the Czechoslovak state are so advanced and perfect that there was no need for changing and amending them when in 1976, the Czechoslovak state ... make the international pacts on civil and political rights ... part of the Czechoslovak legal order. Their requirements formerly were, more fully and perfectly, contained in the valid standards of the Czechoslovak legal order.*“⁷⁶⁾ We heard similar arguments thirty years later in connection with the duty to implement some EC standards into our law. Some opinions may not be influenced by the period but by the people.

In the 114th volume of 1975, we can notice that *Právník* brings first articles on a new field of legal science, being the environmental law. In the article „Content of the Concept of Environment in the Czech law“⁷⁷⁾, Zdeněk Madar stems from the definition of environment „*being a complex of all parts (or components) of space (or the physical or substantive material reality, also the substantive world) which have a relatively direct affect (or are able to have an*

⁷⁴⁾ *Právník* 1974, No. 1, pp 1 – 16.

⁷⁵⁾ For example, PISK, Z., K mezinárodně právním aspektům systému evropské a světové kolektivní bezpečnosti [On international law aspects of the system of the European and world's collective security], *Právník* 1974, No. 8, p. 763 – 780 or PISK, Z., ČECH, J., Smlouva o vzájemných vztazích mezi Československou socialistickou republikou a Německou spolkovou republikou [Contract on mutual relations between the Czechoslovak Socialist Republic and the Federal Republic of Germany], *Právník* 1974, No. 10, pp. 914 – 923.

⁷⁶⁾ JIČÍNSKÝ, Z., *Právní myšlení v 60. letech a za normalizace* [Legal thought in the 60s and during normalization], Prospektrum, Praha 1992, p 189.

⁷⁷⁾ *Právník* 1975, No. 3, pp 121 – 132.

affect) on the considered person (on the considered people or considered social groups or society) – as well as on the so-called entity of the considered environment“ to which he assigns legal standards regulating such entity and his surroundings. The protection of environment in the international framework is dealt with by Gejza Menzer In the article „Issue of International Legal Principles of Protection of Environment within the Council for Mutual Economic Assistance.“⁷⁸⁾

As indicated above, several new, in our country yet unknown, legal fields were defined on pages of *Právník*, for example, the environmental law (Zdeněk Madar) or the Space law (Vladimír Kopal, Jiří Malenovský⁷⁹⁾, etc. It was less complicated to proceed *in extenso*. The procedure in the introduced fields, for example, the administrative or international law *in intenso*, would necessarily mean to bump into various taboos which could not be exceeded under the sanction of loss of a job or career. As written by Viktor Knapp In the article „Some Methodological Problems of the Science on State and Law“: „*The system of identification means is open. Thus, it does not lie only in the methods used or known today, but it accepts and integrates into itself methods taken from other (in particular exact) sciences or methods newly discovered.*“⁸⁰⁾ Based on this, Viktor Knapp develops, in particular, the logical and cybernetic aspects of getting to know the law, which was his main scientific contribution in the legal science at that time.

At the beginning of 1977, the execution of Charter 77 should have influenced, in someone's opinion, relationships inside the then political management. For example, a special reporter of New York Times Paul Hofmann reported as follows from Prague at the beginning of 1977: „*The local sources claim that supporters of the hard line in the Party's Central Committee put pressure on other sharp intervention – and maybe more arrests – in order to discourage other people from approving Charter 77, a manifesto requiring more civic and political freedoms. On the contrary, it is known that the Minister of Foreign Affairs Bohuslav Chňoupek encourages the moderate procedure in the interest of reputation of his country. He says that he is supported by reputable technocrats.*“⁸¹⁾ Even Zdeněk Mlynář wrote from the exile that the former chairman of the Federal Assembly Alois Indra was to say at a party's meeting that ten years after the Prague Spring, we should forgive one another, let bygones be bygones. Then, the reputable „hardliner“, the secretary of the Central Council of the Communist Party of Czechoslovakia, Vasil Biľak argued that the theory of „blue heaven“ according to which clouds would disappear and old sins would

⁷⁸⁾ *Právník* 1975, No. 4, pp 295 – 305.

⁷⁹⁾ MALENOVSKÝ, J., K pojmu „nebeských těles“ v kosmickém právu [On the notion of „celestial bodies“ in the Space law], *Právník* 1976, No. 2, p 107an.

⁸⁰⁾ *Právník* 1976, No. 10, p 873 – 894.

⁸¹⁾ HOFMANN, P., Czech Leaders Are Reported Split on how to Deal With Rights Issue, *New York Times*, 7 February 1977.

be forgotten could not be accepted.⁸²⁾ Such conclusions on partial disagreements in the Czechoslovak government, with respect to the responses to Charter 77, could not be verified on a trustworthy basis even at that time, the less today after more than thirty years. However, it is sure that in the direct reaction, the regime organized various hysterical actions against Charter 77. In *Právník*, it was an open letter to the Central Council for the Communist Party of Czechoslovakia signed by the chairman of the scientific board of sciences on state and law of the Czechoslovak Academy of Sciences Ján Pješčak: „*Together with the overwhelming majority of our society, we are offended by the pamphlet of self-invited critics of our socialist establishment, the so-called Charter 77, which the remainders of the revisionist and contra-revolutionary forces have lately presented to the public, in particular in the capitalistic press. The goal of such pamphlet of political dropouts is apparent: they want to dirty our socialistic state and its legal order, in particular the constitutional and social guarantees of civil rights, to impede endeavours of our workers for the creative implementation of the goals set by XV. Congress of the Communist Party of Czechoslovakia in the building of the developed socialist society.*“⁸³⁾

A special place in the extensification of a legal science of the seventies has the European law. At that time, the official doctrine recognized neither the European Communities nor the European law. The Soviet Union and most countries of the Council for Mutual Economic Assistance, including Czechoslovakia, considered the delegation of powers of the member states of the EC to the bodies of the Community to be contrary to the principles of the international law. The EC Commission objected that the Council for Mutual Economic Assistance did not have external powers comparable to the powers of the Community and could not thus be the appropriate partner in dealings with the EC.⁸⁴⁾ Such state lasted up to the second half of the eighties. The European law was perceived rather critically within the extensification of the international law. The most significant person in connection with the research of the European law (however such identification existed in Czechoslovakia of that time) was Pavel Kalenský. However, neither him could exceed the limits officially defined in 1978 as arises from his article „*Influence of Economic Cooperation of States of the Socialist Community on the Reconstruction of the Legal System of the International Economic Relationships.*“⁸⁵⁾ „*It is generally known,*“ explains correctly Pavel Kalenský, „*that the so-called European communities are built, from the institutional perspective, with strong elements of suprana-*

⁸²⁾ MLYNÁŘ, Z. ET AL., *Československo 1968, Polsko 1981 a krize sovětských systémů* [Czechoslovakia 1968, Poland 1981 and the crisis of the Soviet systems], Index, Köln am Rhein, 1983.

⁸³⁾ *Právník* 1977, No. 4, pp 411 – 412.

⁸⁴⁾ TOMÁŠEK, M., *Historické souvislosti vývoje českého práva při přípravě na vstup do EU* [Historical connections of development of the Czech law in preparation for access to the EU], *Legal Historical Study* No. 38, Praha, Nakladatelství Karolinum 2007, pp 249 – 277.

⁸⁵⁾ *Právník* 1978, No. 4, pp. 342 – 352.

tionality and in their foundation documents, they count, in particular in the Treaties of Rome of 1957 on the establishment of the European Economic Community, on the broad supranationality of the regulatory, executive and judicial powers. It is typical for them that such sovereignty of the member states ... more and more loses for the benefit of the powers of the surpanational bodies of these Communities.“ Whereupon, there exists a comparison: „Based on different, really contradictory bases and principles, the scientific and technical revolution and the process of international socialistic economic integration take place in the socialistic states associated in the Council for Mutual Economic Assistance.“

VI. IN THE SERVICES OF IDEOLOGY AGAIN (1980 – 1984)

As written by Zdeněk Jičínský at the beginning of the 90's: *„During the seventies, the power stemmed from the feeling of egoistic satisfaction which could be seen in the declaration of those years as „the most successful period of the socialist development in Czechoslovakia.“ However, at the end of the seventies, substantial holes started to be seen in the development openly admitted by some representatives of the regime in 1979 which started to deepen strongly at the beginning of the eighties. ... Instead of a motto on the permanent increasing of the level of life which has a key place in the official propaganda of the previous period, the motto of its maintenance and increasing of its quality was declared, which means, if we consider the specific nature of the language used by the regime, its decline, decrease.“⁸⁶⁾ The party management also monitors, with displeasure, the presentation of the Polish movement Solidarność, it is afraid, in particular, of the inspiration for Czechoslovak workers, and it can be even heard in 1981 that Czechoslovakia is prepared to return to Poland „the brotherlike international help“ together with other armies of the Warsaw Pact. The new American president Ronald Reagan declares the Soviet empire the „empire of evil“, and the „détente“ policy turns into the atmosphere similar to a new cold war. In such situation, the social sciences are more and more employed in the official ideology in the fight against the sharp international and intra-political situation. It concerned, of course, the sciences on the state and law and thus the journal Právník. As written by the then director of the Institute of State and Law and the Head editor of Právník Otto Kunz in the article „Anniversary of the Institute of State and Law of the Czechoslovak Academy of Sciences: „The profile of the Institute is thus defined strongly and on a long-term basis by the issues of the state, democracy, law and legality being the subject of the more and more sharpening ideological fight between socialism and capitalism in the world.“⁸⁷⁾ The legal science was prepared again to*

⁸⁶⁾ JIČÍNSKÝ, Z., *Právní myšlení v 60. letech a za normalizace* [Legal thought in the 60s and during normalization], Prospektrum, Praha 1992, p. 171.

⁸⁷⁾ Právník 1980, No. 12, pp. 1094 – 1102.

assume apologetic statements of the state practice and justify them theoretically, by which it again became “*ancilla potestatis*”.

Alongside studies on the western legal and political systems, including the system of the United States of America described by Josefa Blahož⁸⁸⁾ and Zdeněk Masopust⁸⁹⁾, Právník also starts to deal with the not yet explored area of the Chinese law. After Mao Ce-tung had died, there were significant changes in the Chinese society and the Chinese law at the end of the seventies.⁹⁰⁾ From the beginning of the eighties, Ladislav Křížkovský started to systematically write about the Chinese law. In 1980, his first article on such topic was published called „Constitution of the People’s Republic of China and Reality of Life of the Chinese Society.“⁹¹⁾

The lead article of the first issue of the 120th volume of Právník of 1981 has an eloquent name „Tasks of the Sciences on State and Law in 1981 – 1985.“⁹²⁾ The orientation of the research and thus of the journal Právník should be „*focused, in the seventh five-year period, in particular, on the main supporting direction devoted to the improvement of the political system, development of the socialistic statehood, democracy and law in the conditions of construction of the developed socialism in the Czechoslovak Socialist Republic. ... The existing conditions of the intensified ideological fight between the scientific socialist opinion and the bourgeois ideology were the reason for including another main scientific task devoted to the criticism of the bourgeois and revisionist concepts of the state and law and the political and constitutional system of a capitalist state.*“ We can find the specification of the goals so set in the lead article of the seventh edition of Právník of 1981 „XVI. Congress of the Communist Party of Czechoslovakia and Tasks of the Sciences on State and Law“.⁹³⁾ The task was, in particular, „*to include the Czechoslovak science on state and law in the integrated international socialistic basic social research ... The subject of the integrated research in this connection is, in particular, the socialist constitutionalism, problems of the creation of the socialist law, the socialist concept of human rights, the task of the socialist arbitration in the national economy of the socialistic countries, etc.*“

The march of time also brings the generation change. Also in Právník, after the generation of the fifties and sixties, there appeared young authors who later became the supporting representatives of their fields. At the beginning of the

⁸⁸⁾ For example, BLAHOŽ, J., Vztahy nejvyšších státních orgánů v USA [Relations of the supreme government bodies in the U.S.A.], *Právník* 1980, No. 12, p 1103an.

⁸⁹⁾ For example, MASOPUST, Z., O některých směrech současné nemarxistické kritiky teorií tzv. pluralitní demokracie [On certain directions of the current non Marxist criticism of theories of the so-called pluralist democracy], *Právník* 1980, No. 2, p 123an.

⁹⁰⁾ Compare in more detail TOMÁŠEK, M., *Dějiny čínského práva* [History of the Chinese law], Praha, Academia 2004.

⁹¹⁾ *Právník* 1980, No. 8, pp 755 – 762.

⁹²⁾ *Právník* 1981, No. 1, p 1an.

⁹³⁾ *Právník* 1981, No. 7, p 593an.

eighties these included the legal theorists Aleš Gerloch⁹⁴), the Dean of the Faculty of Law of the Charles University a quarter of century later, or Pavel Holländer⁹⁵), the deputy chairman of the Constitutional Court of the Czech Republic at the beginning of the following century, or the later professor of the international private law Monika Pauknerová.⁹⁶)

The 121st volume of 1982 brings, of course, many time-oriented contributions, in particular with respect to the conclusions of the XVI Congress of the Communist Party of Czechoslovakia.⁹⁷) At the beginning of March, an extensive conference on such topic was held participated in by the representatives of the partner workplaces of the Institute of State and Law from the East Germany and the Soviet Union. Based on the information in *Právník*, the Deputy Prime Minister Karol Laco, the chairman of the scientific board of sciences on state and law Ján Pješčák, the Dean of the Faculty of Law of the Charles University Josef Mečl, the director of the Institute of State and Law of the Slovak Academy of Sciences in Bratislava Milan Čič, the director of the Institute of State and Law of the Czechoslovak Academy of Sciences Josef Blahož, the director of the Institute for State and Legal Sciences of the German Democratic Republic Wolfgang Weichelt, and the representatives of the Institute of State and Law of the Academy of Sciences of the Union of Soviet Socialist Republics K. F. Sheremet V. J. Chirkin presented their contributions⁹⁸). The December issue of edition 1982 contains an obituary for the deceased Leonid Ilyich Brezhnev.⁹⁹)

The 122nd volume of 1983 remembers life anniversaries of two lawyers and peers, being seventy at that time – Gustav Husák and Viktor Knapp.¹⁰⁰) The *curricula vitae* of both these persons have at least one shared element: white

⁹⁴) GERLOCH, A., Několik úvah o metodologické problematice právní vědy [Several reflections on methodological issues of the legal science], *Právník* 1981, No. 7, p 600an.

⁹⁵) HOLLÄNDER, P., Problém normativní rozpornosti v právu, [A problem of regulatory inconsistency in law] *Právník* 1981, No. 9, p 782.

⁹⁶) PAUKNEROVÁ, M., Koncepce odpovědnosti dopravce v mezinárodních úmluvách [Conception of the forwarder's liability in international treaties], *Právník* 1981, No. 2 p 188an.

⁹⁷) Např. PJEŠČÁK, J., Další rozvoj věd o státu a právu ve světle závěrů XVI. sjezdu KSČ a XXVI. sjezdu KSSS [Further development of sciences of state and law in the light of conclusions of the XVI. Congress of the Communist Party of Czechoslovakia and the XXVI. Congress of the Communist Party of the Soviet Union], *Právník* 1982, No. 8, p 664an.

⁹⁸) PATEJDL, S., Konference vědeckého kolegia věd o státu a právu ČSAV na téma „Úkoly věd o státu a právu ve světle závěrů XVI. sjezdu KSČ a XXVI. sjezdu KSSS“, konané dne 4. března 1982 v Domě sovětské vědy a kultury v Praze [Conference of the Scientific Board on State and Law of the Czechoslovak Academy of Sciences on the topic „Tasks of Sciences on State and Law in the Light of Conclusions of XVI. Congress of the Communist Party of Czechoslovakia and the XXVI Congress of the Communist Party of the Soviet Union“ held on 4 March 1982 in the House of the Soviet Science and Culture in Prague], *Právník* 1982, no. 8, p. 661an.

⁹⁹) *Právník* 1982, no. 12. pp. 1045 – 1047.

¹⁰⁰) K sedmdesátým narozeninám soudruha Gustáva Husáka [To the Seventy Birthday of the comrade Gustav Husak], *Právník* 1983, No. 1, page 1an; Life Anniversary of the Academician Viktor Knapp, *Právník* 1983, No. 12, p 1138an.

places in the connections unsuitable at that time. The *curriculum vitae* of Gustav completely omits the period of his imprisonment in the fifties, the *curriculum vitae* of Viktor Knapp omits his involvement at the turn of the sixties and seventies after which he was put aside. The ways of both men – Gustav Husák and Viktor Knapp – must have been interwoven many times. It certainly happened at the end of the sixties when they both were the deputies of the Parliament, and maybe also at the beginning of the fifties when one of them was the president's officer and the latter the president's prisoner. It arises from the Knapp's memoirs¹⁰¹⁾ that their relationship was not warm, and the hypothesis exists that the Knapp's departure from the public office was connected with Husák's personal motives.

The article with respect to the life anniversary of Viktor Knapp also remembers his significant involvement in the area of legal informatics: „*V. Knapp showed his scientific innovatorship and sense of current issues in his monograph About the Possibility of Cybernetic Methods in Law (1963, also published in Russian and Italian) based on which he became one of the founders of the legal cybernetics in our country but also on the international scale*“.¹⁰²⁾ When I am writing these lines, the utilization of the Automated System of Legal Information (ASPI) and similar databases is a common part of the legal life. It thus cannot be forgotten that Viktor Knapp was at the creation of such system not only thanks to his publications in *Právník* but also as the head of the respective research team. Members of this team, for example Jiří Cejpek, Frantisek Cvrček, Jaroslav Krecht or František Novák, published many articles on the legal informatics in *Právník* during the eighties. The journal *Právník* thus contributed not only to the theoretical knowledge of the substance but also to the applicability of the respective knowledge in practice.

At the beginning of 1984, *Právník* strongly supported the fight against the „*crusade against communism officially declared in the speech of R. Reagan in the British parliament in June 1982*“ and against the so-called „reaganism“¹⁰³⁾. It also brought an obituary for the deceased general secretary of the Central Council of the Communist Party of the Soviet Union Jurij Andropov.¹⁰⁴⁾ *Právník* informs on the meeting of the directors of the Institute of State and Law of the Academies of Sciences of the Socialist Countries held in Moscow from 17 to 21 October 1983.¹⁰⁵⁾ According to the report, „*the head editors of scientific reviews in the area of state and law were accepted by the deputy of the head department of propaganda and agitation of the Central Council of the Communist Party of the Soviet Union S. Sevrjuk who pointed out, in particular, that it*

¹⁰¹⁾ KNAPP, V., *Proměny času*, Prospektrum, Praha 1998.

¹⁰²⁾ Životní jubileum akademika Viktora Knappa [Life Anniversary of the Academician Viktor Knapp], *Právník* 1983, No. 12, p. 1139.

¹⁰³⁾ Současná mezinárodní situace [Current International Situation], *Právník* 1984, No. 2, p. 113 – 115.

¹⁰⁴⁾ *Právník* 1984, No. 4, pp. 305 – 307.

¹⁰⁵⁾ *Právník* 1984, No. 4, pp. 383 – 385.

was necessary for the legal sciences to significantly contribute to the creation of the socialistic legal consciousness ... “ The stepped-up ideologization of *Právník* in the fall of the government of the Soviet gerontocracy was not beneficial at all for the expert level of the magazine. Nearly every edition was opened by an ideologically motivated lead article¹⁰⁶⁾ or an article of a Soviet author¹⁰⁷⁾. It is remarkable that we can find exceptions to this rule, for example, in some articles on the international law which was, at that time, one of the main tools of the ideological struggle. Such really expertly oriented exceptions are, for example, articles of Jiri Malenovský¹⁰⁸⁾ or Vladimír Týč.¹⁰⁹⁾

VII. THE ROAD TO „PERESTROIKA“ (1985 – 1989)

In 1985, the total tone of the 124th edition of *Právník* was tuned on the 40th anniversary of liberation of Czechoslovakia by the Soviet Army, as presented at that time, regardless the liberation of the western part of the country by an ideologically unsuitable army of the United States. It was the opportunity to balance in all fields of the legal science which was strongly reflected on pages of *Právník*. On the 30th anniversary of the establishment of the Institute of State and Law and with respect to the activity of *Právník*, being the magazine of such Institute, articles were written by Josef Blahož¹¹⁰⁾ and Milan Čič¹¹¹⁾. Josef Blahož avoids the excessive evaluation of the past and concentrates rather on the tasks of the basic research of the present and future: „*the former extensive conception of the basic research of the Institute of State and Law of the Czechoslovak Academy of Sciences which required that the Institute develop the*

¹⁰⁶⁾ For example, Z Provolání Ústředního výboru Komunistické strany Československa, Ústředního výboru Národní fronty ČSSR a Vlády ČSSR k 40. výročí vyvrcholení národně osvobozenického boje československého lidu a osvobození naší vlasti Sovětskou armádou [From the proclamation of the Central Committee of the Communist Party of Czechoslovakia, the Central Committee of the National Front of the Czechoslovak Socialist Republic and the Czechoslovak Socialist Republic Government regarding the 40th anniversary of culmination of the national liberating fight of the Czechoslovak people and liberation of the country by the Soviet Army] , *Právník* 1984, No. 8. p. 685.

¹⁰⁷⁾ For example, Zdokonalování sovětské demokracie v podmínkách zralého socialismu [Improvement of the Soviet democracy in the conditions of mature socialism], *Právník* 1984, No. 7, p. 585an. or TICHOMIROV, JU., A., Politickopravní problémy řízení společenských procesů [Political law issues in the management of social processes], *Právník* 1984, No. 12, p. 1077an.

¹⁰⁸⁾ MALENOVSKÝ, J., K problémům utváření a zjišťování obyčejových norem mezinárodního práva s přihlédnutím ke kosmickému právu [On issues of development and ascertaining of customary regulations of the International Law with regard to the Space Law], *Právník* 1984, No. 3, p. 265an.

¹⁰⁹⁾ TÝČ, V., K otázce vztahu mezinárodních smluv a čs. právního řádu [On the issue of a relation of international treaties and Czechoslovak legal order], *Právník* 1984, No. 9, p. 821an.

¹¹⁰⁾ BLAHOŽ, J., 30 let Ústavu státu a práva ČSAV [30 years of the Institute of State and Law of the Czechoslovak Academy of Sciences], *Právník* 1985, No. 2, p. 115an.

¹¹¹⁾ ČÍČ, M., Ústav štátu a práva Československej akadémie vied jubiluje [Anniversary of the Institute of State and law of the Czechoslovak Academy of Sciences], *Právník* 1985, No. 2. p. 120an.

scientific activity in all fields of science on the state and law are completely omitted". Milan Čič evaluates, in particular, the significance of the Prague Institute for the activity of the Institute of State and Law of the Slovak Academy in Bratislava of which he was the director but also its political significance: „*The thirty-year old Institute of the State and Law of the Czechoslovak Academy of Sciences evaluates, in the round anniversary, the results of its work, analyses its strengths and weaknesses it could not avoid. In particular, it sets new, more demanding tasks in the area of development of the theory, methodology of sciences, and formulates the goals for the eight five-year period with the aim of providing the results of the creative work to the bodies of the Communist Party of Czechoslovakia as a contribution to the endeavours for further improving the activity of the socialist political system and making it more efficient.*“

When the general secretary Konstantin Chernenko died in March 1985, Právník omitted the obituary for the first time after more than thirty years. Nothing special can be derived from this. Maybe the reflection of certain tiredness over the continuous changes – non-changes in the Soviet government which only prolonged agony of the Soviet empire. Maybe that is why the arrival of a new and young Soviet leader Mikhail Gorbachev in 1985 invoked much hope and secret wishes in the Czechoslovak society. The Gorbachev's „perestroika“ should have brought a fresh wind into the musty party apparatuses of the scientific workplaces and magazines. It was reflected in Právník only later, as will be shown below. In the professional circles, „perestroika“ was accompanied by scepticism and concerns about the possible consequences to let be allured by the new Soviet libertinism. However, certain scepticism did not dominate in Prague only. The reputable non-communist exile publicist and journalist Pavel Tigrid wrote at the end of the eighties: „... *not to rely on the Soviet wind to drive the smell and putrescence out of the domestic mew. Or maybe this way – not to count, as we do, on winning the lottery – if we happen to take; but we do not rely on it, do not connect out faith with it.*“¹¹²⁾

The first „perestroika-like“ contributions appeared in Právník in the 125th volume in 1986, for example, the article of the Soviet author V. J. Guliyev „*Theoretical Issues of the Socialist Self-administration*“ with many references to the thoughts and statements of Mikhail Gorbachev.¹¹³⁾ The original Czechoslovak opinions seem to be more conservative compared to the Soviet ones. For example, the extensive material of the Institute of State and Law of the Czechoslovak Academy of Sciences „*Significance of XVII Congress of the Communist Party of Czechoslovakia and XXVII Congress of the Communist Party*

¹¹²⁾ TIGRID, P., *Kapesní průvodce inteligentní ženy po vlastním osudu*, (Pocket Guide of Intelligent Woman through her own Desires) Praha, Odeon 1990, p. 297.

¹¹³⁾ Právník 1986, No. 11, p 964 an.

of the Soviet Union for Further Development of Science on the State and Law”¹¹⁴⁾ thoroughly avoids the word „perestroika“ and any other „new“ terminology. In his conclusion, he just carefully states: „*All areas of law, legal fields, must look for new ways to work with people, to break the surviving and erroneous ideas of the public of law, if there are any, and to encourage the corresponding, conscious approach to the standards of the socialist law, to their creation, application and check*“.

In the 126th volume of 1987, a remarkable issue is the renewal of the original Czechoslovak discussion about some system changes in our legal order. Since the main problem was the economic situation, and to discuss the economic base was less risky than to discuss, for example, human rights, Právník brings significant contributions to the discussion on the relationship of law and economics, from the more conservative opinions of, for example, Milan Čič¹¹⁵⁾ through certain signs of the possible regulatory loosening in the articles of Jaroslav Suchánek¹¹⁶⁾ or František Faldyna¹¹⁷⁾ up to the attempt at a more open discussion on the conception of the socialist ownership in the articles of Karel Čapek¹¹⁸⁾ or Viktor Knapp.¹¹⁹⁾ While, for example, J. Suchánek or F. Faldyna call for reforms or the partial loosening of the regulatory tools of management of the national economy, Karel Čapek or Viktor Knapp think over the essence of the legislation. In connection with the preparation of a new Constitution which should have come into force at the beginning of the nineties, Karel Čapek supported the constitutional regulation of types and forms of ownership from the state up to the cooperative through personal ownership. The concept of the private ownership remains to be a taboo. The anchorage of various types and forms of ownership was a fashion trend. It was discussed in the Soviet Union and became reality in China in the Constitution of 1982. However, it must not be forgotten that such a concept replaced the task of the civil law substitutable with difficulty which did not, in fact, exist, for example in China.¹²⁰⁾ For this reason, Viktor Knapp started thinking over the concept of the civil law. Simi-

¹¹⁴⁾ Právník 1986, No. 9, pp 789 – 810.

¹¹⁵⁾ ČÍČ, M., Socialistické právo – nástroj regulácie ekonomických vzťahov a procesov [Socialistic law – a tool for regulating economic relations and processes], Právník 1987, No. 10, p 830an.

¹¹⁶⁾ SUCHÁNEK, J., Socialistické družstevnictví v přestavbě hospodářského mechanismu (vybrané právní aspekty) [Socialistic cooperative system in the reconstruction of the economic mechanism (selected legal aspects)], Právník 1987, No. 10, p 835an.

¹¹⁷⁾ FALDYNA, F., K úloze hospodářského práva při přestavbě hospodářského mechanismu ČSSR [On the task of Economic law during reconstruction of the Czechoslovak Socialistic Republic economic mechanism], Právník 1987, No. 10, p 846an.

¹¹⁸⁾ ČAPEK, K., K problematice ústavněprávní úpravy socialistického společenského vlastnictví (podnět k diskusi) [On the issues of the Constitutional Law regulation of the socialistic common property (a stimulus for discussion)], Právník 1987, No. 9, p 786an.

¹¹⁹⁾ KNAPP, V., Cesty občanského práva (Monolog nad knihou Rozvoj sovětského občanského práva v soudobé etapě), [Roads of Civil Law (Monologue about the book "Development of the Soviet Civil Law in the current stage")] Právník 1987, No. 10, page 863an.

¹²⁰⁾ TOMÁŠEK, M., Dějiny čínského práva [History of the Chinese Law], Praha, Academia 2004.

larly to his articles of the beginning of the sixties he criticizes the concept of the Civil Code of 1964, as well as the existence of the Economic Code and economic law: „*We stem from the fact that in our country, we have an Economic Code which functioned in practice without any big problems for more than twenty years ... Does it mean the defence of the Economic Code or the economic law? Yes and No. Yes, considering the nearly twenty-five-year-old functioning of the Economic Code is the experience of practice which verifies the idea or corrects it. ...The section of the civil and economic law enrooted in the legal practice, but had no demonstrable influence on the development of the Czechoslovak national economy and nobody does even claim that it had such influence*“.

The conception of the 127th volume of *Právník* of 1988 shows that the discussion on the „perestroika“ of some mechanisms of the legal order and the relation of the law and economics did not develop much. The report on the session of the scientific board of sciences on the state and law of the Czechoslovak Academy of Sciences held at the beginning of 1988 is too abstract to derive whether there really was some move in the thinking.¹²¹⁾ Certain directions are indicated at this forum by the presented contribution of Viktor Knapp published separately in *Právník* as the part „Efficiency of Law and Efficiency of the National Economy.“¹²²⁾ Here, Viktor Knapp provides, among other things, the supertemporal sentence: *The relationship of efficiency of the law and efficiency of the national economy is conditioned not only by the quality of legal standards but also by their quantity (too big number of legal standards regulating the national economy becomes the qualitative element, being the deregulative element decreasing efficiency of the application of law to the national economy), and finally, last but not least, the adequacy of a legal standard as the means for managing the national economy.*“

A more essential contribution to the political aspects of the perestroika is an article of Jiří Grospič „Socialist Federalism and perestroika“.¹²³⁾ In the article, Jiří Grospič indicates, very carefully but pregnantly, the necessity of a balanced federation in the Czechoslovak conditions: „... *the provision of Article 4(4) of the Constitutional Act on Czechoslovak Federation stipulating the balancing of the economic and social differences between the Czech Socialist Republic and the Slovak Socialist Republic to be a significant task of the federation is positively overcome by the existing social democratic development. Even in this respect, it will be necessary to overcome old stereotypes, persistence in the economic and social policy, bring the qualitatively new substance into the conceptual and coordination functions of the state bodies ...*“ By the time of

¹²¹⁾ GERLOCH, A., JANSÁ, V., Teoretická rozprava vědeckého kolegia věd o státu a právu ČSAV k otázkám zvýšení efektivnosti práva a právní regulace [Theoretical debate of the Scientific Board for State and Law of the Czechoslovak Academy of Sciences on the issues of increasing effectiveness of law and legal regulation], *Právník* 1988, No. 4, pp 394 – 395.

¹²²⁾ *Právník* 1988, No. 4, p. 293an.

¹²³⁾ *Právník* 1988, No. 12, p. 1049an.

the termination of Gustav Husák's office of the General Secretary of the Central Committee of the Communist Party of Czechoslovakia in December 1987, the feeling of a bigger influence of the Slovak national bodies and Slovak representatives in the federal bodies persisted. For this reason, it was appropriate to deal with the balance of the Czech and Slovak institutions with the federal institutions in connection with the preparation of a new Constitution, as indicated by Jiří Grospič.

The similarity of some discussion topics on pages of *Právník* of the end of the eighties to the topics of the end of the sixties is not accidental but is, despite this, incomparable. As Mikhail Gorbachev said in connection with a question of one German journalist in 1986: "*The difference between the Prague Spring of 1968 and the perestroika is eighteen years*". The topics of 1968 moved in a different direction and the history after 1989 finally repudiated them completely. Moreover, unlike the end of the sixties there was neither any political demand for such discussion in *Právník*. Those who got involved in similar discussions in *Právník* did so *sponte sua*, knowing that it is a dangerous field for them as for those who had done so many times before.

At the same time, during 1989, some new topics aimed at the resolution of the issue of the relationship of economics and law, including the solution to the deepening crisis of the Czechoslovak economy, appeared in *Právník*. It was both the study of certain models of the „socialist entrepreneurship“ or the „socialist market economy“, including the possibilities to make use of the foreign investments in the existing legal conditions. The conceptual overview is provided, for example, in the article of Josef Bejček „Contradiction of the Possible and Real Application of the Economic Law in Economy“.¹²⁴⁾ The issue of foreign investments is dealt with in the article of Daniel Futej „State and Enterprises in External Economic Relationships“.¹²⁵⁾ It also seemed to be useful to analyse how similar problems were dealt with in other socialistic states where the economic reform proved to be successful. At that time, it was, in particular, the study of the model of the Chinese relationship of economics and laws which I participated in myself.¹²⁶⁾ If no essential social changes had been made in November 1989, the Chinese economic reform and the reform of the legal order connected with it could have been inspirative for the Czechoslovak conditions. However, its difficulty, in comparison with the People's Republic of China, was a completely different level of development of our legal order and legal thinking.¹²⁷⁾

¹²⁴⁾ *Právník* 1989, No. 11 – 12, p. 984an.

¹²⁵⁾ *Právník* 1989, No. 10, p. 908an.

¹²⁶⁾ Compare TOMÁŠEK, M., Kontinuita a diskontinuita ve vývoji čínského socialistického práva [Continuity and discontinuity in the development of Chinese Socialist Law], *Právník* 1989, No. 2, page 168 – 184.

¹²⁷⁾ Syllová, J., Zpráva o obhajobě kandidátské disertační práce JUDr. PhDr. Michala Tomáška [Report on defense of the candidate's dissertation of JUDr. PhDr. Michal Tomášek], *Právník* 1989, No. 11 – 12, pp 1116 – 1117.