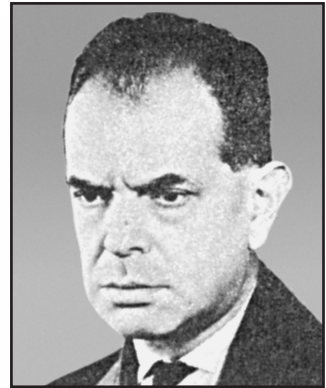


CONFERENCES AND REPORTS

Professor Viktor Knapp (1913–1996) – Juridical science in metamorphoses of time. International conference: Prague 12th–14th December 2013.

As a tribute to the centennial anniversary of the birth of Professor Viktor Knapp, the most important Czech lawyer of the second half of the twentieth century, the Faculty of Law of Charles University together with the Institute of State and Law of the Czech Academy of Sciences organized an international conference entitled “Viktor Knapp – Scientific work in metamorphoses of time”.

Viktor Knapp was born in Prague on 13th December 1913. During his secondary studies at a prestigious grammar school in Prague, he acquired a deep knowledge of logic based on Latin which became a prerequisite not only for his studies of foreign languages but also for his later logical approach to legal issues. In the 1930s, he was a collaborator of the famous newspaper *Literární noviny* connected with well known authors, journalists and intellectuals of pre-war Prague. This experience influenced the high quality of his writing. After graduation from the Faculty of Law of Charles University, as an officer in compulsory military service in the Czechoslovak Army he witnessed both the Munich crisis in September 1938 and occupation of Czech lands in March 1939. During World War II, a large part of his family suffered from the Holocaust, and Nazi legal ideology became the topic for his first major monograph *Problems of Nazi legal philosophy* published in 1947 shortly after his graduation from the Faculty of Philosophy of Charles University.



Like most leftist intellectuals Viktor Knapp joined the Communist Party of Czechoslovakia. His engagement in the office of first communist president Klement Gottwald has been and still is sharply criticized as well as his book *Ownership in the people's democracy* of 1953 introducing a Marxist concept of ownership to our legal system. On the other hand Viktor Knapp supported the influence of his pre-war professor Jan Krčmář on the new Civil Code of 1950 and contributed to the continuity of the oldest legal journal *Právník* (established in 1861). In 1951 he was appointed professor of civil law and in 1952 he became Corresponding Member of the newly established Czechoslovak Academy of Sciences. In the second half of the 1950s he was head of the Department of Civil Law at the Faculty of Law and Director of the Institute of State and Law of the Czechoslovak Academy of Sciences. During this very period, Viktor Knapp heavily contributed to the development of modern theory of civil law in our country.

In 1962 he was elected Full Member of the Czechoslovak Academy of Sciences. Two years later in 1964, he was elected Member of the National Assembly of Czechoslovakia. During Prague Spring in 1968, he was chairman of the Constitutional and Legislative Committee of the National Assembly. His book *Possibilities of using cybernetic methods in law* of 1963 is considered to be the first scientific monograph introducing computers in legal theory and practices. In 1967, he published an influential monograph entitled *Philosophical problems of socialist law* reflecting discussion preceding reform processes of Prague Spring. His role in preparing the Constitutional Act on Czechoslovak Federation 1968 is still considered to be crucial for further development of the settlement of Czecho-Slovak relations. After Soviet occupation on 21st August 1968, he was ousted from the Communist Party, had to leave his position as a Member of the Federal Assembly in 1971 and retired as Director of the Institute of State and Law of the Czechoslovak Academy of Sciences in 1973.

In the 1970s and 1980s, he was visiting professor at several universities in Austria, Italy, France, Germany and the United Kingdom. He was active in research in the areas of theory of law and comparative law. He became the best known Czech lawyer in Europe, maybe worldwide. In 1990, he was elected Vice-President of the Czechoslovak Academy of Sciences and appointed a member of the Legislative Council of the Government. He became involved in a new discussion on our Civil Code and prepared the draft of a modern Czech civil code which was later reflected by his students, such as Professor Karel Eliáš, in the new Civil Code of 2012. On the decline of his life, he published two major monographs: *Theory of law* (1995) and *Great legal systems* (1996). Professor Viktor Knapp died on 29th June 1996 in Prague.

I.

An opening ceremony to the conference was held on Thursday, 12th December 2013 in the historic premises of Charles University – Carolinum. In his opening speech, Dean of the Faculty of Law **Professor Aleš Gerloch** summarized the milestones in Viktor Knapp's life and research career. He underlined Viktor Knapp's device *non iurare in verba magistri* (do not swear on teacher's words) in the sense that no truth is supposed to be definitive and resistant to any doubt. Viktor Knapp was not a simple man in not simple times. Rector of Charles University **Professor Václav Hampel** welcomed participants of the conference and expressed his best wishes. Director of the Institute of State and Law of the Czech Academy of Sciences **Dr. Jan Bárta** reminded participants of the role of Professor Knapp during the process of founding the Czechoslovak Academy of Sciences in 1952.

The first keynote speech of the opening ceremony was delivered by **Professor Pavel Holländer**, former Vice-President of the Czech Constitutional Court. Professor Holländer analyzed the development of Viktor Knapp's ideas in legal philosophy. Viktor Knapp's first philosophical monograph on Nazi legal philosophy of 1947 is one of the first reflections on the legal doctrine of the Nazi regime (in West Germany the first works on this topic were published about 15 years later). Here Viktor Knapp performed a brilliant analysis of how a liberal *laissez-faire* state had been transformed into a dictatorial regime. At the same time, Viktor Knapp did not anticipate that the same could happen in the sense of transformation of a liberal *laissez-faire* state into a communist totalitarian regime. The system of law was in Viktor Knapp's eyes not a building inside a state, isolated from other social, economic or political influence. He systematically refused loopholes in law and rather sought methods of interpretation. This very approach brought him to several disciplines like cybernetics, semantics and comparative studies. In the late 1960s he formulated an approach to excessive handlings in law of the Stalin era through the idea that law can produce a retroactive corrective mechanism to moderate or even eliminate such excessive application of law. In his philosophical system Knapp was dependent on Marxist ideology and he did not have enough time to find alternative approaches. On the decline of his life, Knapp formulated a thesis that the role of a state is to protect liberty and at the same time to limit it.

The second keynote speaker **Professor Olga Ovečková**, Chairwoman of the Scientific Board of the Institute of State and Law of the Slovak Academy of Sciences, recapitulated Viktor Knapp's works on civil law. Among his most important monographs she classified his *Subject and system of Czechoslovak socialist civil law* (1959) and *Performance of obligations and other ways of their extinction* (1955). The most important value of his ideas on liability in civil law is considered to be the solution of the question whether liability is created together with creation of an obligation or whether it comes only with non-performance or violation of a duty or obligation. This provoked another broader question in Viktor Knapp's works concerning the relation of liability and prevention. She mentioned a theoretical approach of Viktor Knapp to the differences between mandatory and non-mandatory legal norms: while mandatory legal norms exclude the autonomy of law, non-mandatory legal norms on the contrary anticipate the autonomy of law.

II.

During the second day of the conference, the meeting was divided into four sections: Viktor Knapp – legal philosopher, Viktor Knapp – civil lawyer, Viktor Knapp – comparative lawyer and Viktor Knapp – founder of legal informatics. The participants presented about seventy contributions. Therefore it was impossible to consider all of them in this report due to limited space in this journal. The author would therefore like to express his apologies to those whose contributions are not mentioned below. All contributions *in extenso* will be published in a special compendium during 2014.

In the section on **legal philosophy**, **Professor Pavel Šturma** from the Faculty of Law of Charles University spoke about Viktor Knapp's theoretical conclusions on the relationship between equity and fairness with special regard to international law. Equity in international law can replace contractual provisions only with consent by contracting parties. He mentioned the application of the equity principle in case-law of international courts. **Dr. Eduard Bárány** from the Institute of Law of the Slovak Academy of Sciences characterized Viktor Knapp as a representative of legal positivism although in the early 1990s Knapp admitted the existence of suprapositive law. His concept of sociological perception of law reflects the thesis that law can influence only human beings and human beings only can influence the contents of law. Also Marxism as a reference doctrine for Viktor Knapp demonstrated the sociological implications of law. **Professor Michal Tomášek** from the Faculty of Law of Charles University discussed the contribution of Viktor Knapp to the theory and practice of legal translation. Knapp's concept of translation of legal language using a process of double interpretation in both language of departure and language of arrival has an important role in contemporary translation of European law in 24 official languages of the EU.¹ **Associate Professor Zdeněk Kühn** from the Faculty of Law of Charles University quoted several works of Viktor Knapp dealing with the role of judges. Particularly during the 1960s, Viktor Knapp analyzed the importance of case-law and the role of judges, although he insisted on grammatical interpretation of law rather than judicial interpretation.

The section on **Viktor Knapp as a civil lawyer** was introduced by **Professor Karel Eliáš** from the Institute of State and Law of the Czech Academy of Sciences and the main author of the new Czech Civil Code. Professor Eliáš discussed not only Knapp's book *Ownership in the people's democracy* of 1953 representing a sample of the Marxist approach to legal issues but also Knapp's *Theory of Law* of 1995, his last major book, which is in fact an excellent theory of civil law. Differently from much of his previous work, *Theory of Law* will have lasting significance along with some minor texts. Knapp, especially in the 1950s and 1970s, contributed to the ideologization of jurisprudence. His permanent resistance against the disintegration of civil law, emphasis on institutional interpretation of civil institutions and respect for the principle of *historia magistra vitae* are considered his lasting contributions.² An interesting contribution was presented by **Jan Kober** from the Institute of State and Law of the Czech Academy of Sciences on the attitude of Viktor Knapp to German civil law. Viktor Knapp did not follow the tradition of his predecessors like Professor Jan Krčmář, who studied law at German universities in order to get more acquainted with the at the time most modern theory of BGB. Knapp was confronted with German law in a negative sense during World War II and he was very well aware of the importance of Czech legal theory and Czech legal terminology. From the 1950s, he was permanently in research or pedagogic contacts with universities in both German states, Austria and Switzerland, a fact which contributed to his reputation as the best known Czech lawyer throughout Europe. **Professor Jan Dvořák** from the Faculty of Law of Charles University dealt with the principle of autonomy of will and its limits. He particularly focused on these limits in legal positivism represented by Viktor Knapp in contradiction to jusnaturalism. The aim of a contribution of **Associate Professor Karel Beran** was a critical reexamination of Viktor Knapp's approach to the theory of persons at law. He mentioned Knapp's article *On persons at law* of 1995 and its weak points of finding

¹ For more details see TOMÁŠEK, M. Viktor Knapp v bráně jazyků. *Právník*. 2013, Vol. 152, No. 12, pp. 1172–1183.

² For more details see ELIÁŠ, K. Civilista Viktor Knapp. *Právník*. 2013, Vol. 152, No. 12, pp. 1184–1196.

conclusions with regard to contemporary legal order and to Section 20 of our new Civil Code of 2012. **Associate Professor Michaela Hendrychová-Zuklínová** from the Faculty of Law of Charles University analyzed the role of Viktor Knapp in the general theory of rights *in rem*. This very topic became his destiny from the early 1950s when he was chairing a committee for rights *in rem* preparing the new civil code of 1950 up to the early 1990s when he was drafting a new civil code of Czechoslovakia which was never adopted. In his *Ownership in the people's democracy* of 1953 Viktor Knapp reflected the Soviet theory of ownership including the new concept of “arbitrariness” – “discretionary power” of an owner over his property. Such an approach was a skillful Soviet transformation of the German BGB concept of *dominium*. Viktor Knapp was always distinguishing between “ownership” and “ownership right”, which has permanently been a serious topic of Czech civil law theory. **Associate Professor Jan Pichrt** from the Faculty of Law of Charles University delivered a presentation on the relationship between civil law and labor law. He recapitulated the works of Viktor Knapp dealing with the topic of separation of labor law from civil law. He focused particularly on the weakening of contractual character of labor law relations in non-democratic countries, as reflected in Viktor Knapp's works. He concluded his presentation with remarks on the subsidiarity of the recent Labor Code to the Civil Code 2012 and on mandatory and non-mandatory norms regulating labor legal relations.

The first speaker of the section on **Viktor Knapp as a comparative lawyer**, **Associate Professor Josef Blahož** from the Institute of State and Law of the Czech Academy of Sciences, introduced Viktor Knapp as a founder of the Czech method of comparative law. Under a strong influence of Professor René David from Paris, Knapp introduced this methodology to our legal research in the late 1960s. **Professor Irena Pelikánová**, a Judge of the EU General Court in Luxembourg, recognized the contribution of Viktor Knapp to the general legal comparative method. For him, the comparative approach was not a legal discipline but really a method. The comparative approach is not a mere comparison of legal norms but their comparison in geographic, historical or other contexts. This is exemplified in the reference framework for private law in the EU where not only individual legal systems are subjected to a comparison but their context is taken into consideration as well. **Professor Michal Bogdan** from the University of Lund, Sweden, reminded that Viktor Knapp was the main author of the first *International Encyclopaedia of Comparative Law* of 1972. This encyclopedia was a description of legal systems of individual states. Later Viktor Knapp proceeded to a practical comparative method developing a crucial element of comparative law, *tertium comparationis*. A joint presentation by **Professor Richard Pomahač** and **Dr. Lenka Pítrová** from the Faculty of Law of Charles University reflected theoretical articles of Viktor Knapp on justice, fairness and equity published in the late 1960s in the journal *Právník* (The Lawyer). His ideas on the role of case-law in the Czechoslovak socialist legal system were at the time very innovative. Comparative law had an impact on legislative procedure renovating administrative justice in our country. The choice of continental dualist system reflects an institutional concept unfortunately more than a procedural concept.

The section on **Viktor Knapp as a founder of legal informatics** summarized the merit of Viktor Knapp as a pioneer of this discipline in our country. **Dr. František Novák** from the Institute of State and Law of the Czech Academy of Sciences characterized legal informatics as a process of using information technologies in legal research, during pedagogic process and in legal practices. Apart from his book *Possibilities of using cybernetic methods in law* of 1963, Viktor Knapp founded a laboratory for legal informatics; in the 1980s he launched preparatory work to create an automated system of legal information. **Dr. František Cvrček** from the Institute of State and Law of the Czech Academy of Sciences characterized Viktor Knapp as founder and designer of legal informatics as a special branch concerning the application of exact methods of investigating legal phenomena. Although Knapp's original ideas have been changed by the influence of rapid technology development, the basic orientation set up by him remains the same. It concerns the persuasion that exact procedures conducted with the cooperation of linguistics, mathematics and informatics can bring new views to the law in the area of theory as well as practice. The orientation of contemporary research of the study of the legal language, the legal ontology and the automatic processing of legal texts with linguistic support, which is provided by extensive legal databases in the Czech Republic, is aimed at the same target as

the similar projects in Europe and the USA. Viktor Knapp created a tradition which is still alive and is suitable to be followed.³ **Associate Professor Radim Polčák** from the Faculty of Law of Masaryk University in Brno mentioned the idea of Viktor Knapp that legal informatics should deal solely with the quantitative side of the matter. Information is contradictory to entropy and law is or should be an information system.⁴

III.

The third day of the conference was organized as a round table commemorating more the personal and human dimension of Viktor Knapp. **Professor Zdeněk Jičínský**, one of the closest collaborators of Viktor Knapp during the 1960s, attempted to respond to the criticism of Viktor Knapp's personality. The crucial question on this point is the attitude of Viktor Knapp to official power. We should not forget that twice during his life, Viktor Knapp was very close to being subject to the death penalty, the first time being during the Holocaust, and the second in the early 1950s. He was head of department in the Office of President Klement Gottwald where another head of department Ludvík Frejka (of Jewish origin like Viktor Knapp) was tried in a political process together with Rudolf Slánský and executed in 1952. Viktor Knapp was thus careful in expressing dissenting opinions and often flexible in moderating some of his standpoints in favor of political will. **Professor Václav Pavlíček** from the Faculty of Law of Charles University underlined that Viktor Knapp behaved as a gentleman in the difficult years of 1968–1969, warning his collaborators when he thought they were in any danger because of their activities during the Prague Spring. Professor Pavlíček considered the role of Viktor Knapp in the process of amending our Constitution after 1989. **Professor Jan Kuklík**, Dean Elect of the Faculty of Law of Charles University, analyzed the role of Viktor Knapp during the “two-year legal plan” of 1948–1950. Knapp's merit was that he invited his teacher and famous pre-war professor Jan Krčmář to assist during preparatory work for a civil code of 1950. Thanks to him this very code was a reasonable half-way between the central European legal tradition and Marxist concept of law. **Associate Professor Jan Wintr** from the Faculty of Law of Charles University analyzed the activities of Viktor Knapp as a Member of Parliament during 1964–1971. He stressed that as a Deputy, Knapp was not only very active in improving our legal order but was always in close contact with his constituency and his voters. **Dr. Antonín Lojek** from the Institute of State and Law of the Czech Academy of Sciences spoke about the young years of Viktor Knapp, in particular his studies at the Faculty of Law, including his exams, and his feelings and opinions on his teachers.

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At the end of the conference, **Professor Aleš Gerloch**, Dean of the Faculty of Law, concluded that Viktor Knapp had been a great personality of modern Czech juridical science thanks to his multidisciplinary approach and multiplicity of innovative ideas in legal research. He has influenced many generations of Czech and foreign lawyers but obviously has had a lot of critics. To one of them he once said: “If I wrote as little as you did I would not have anything to reevaluate.”

Michal Tomášek*

³ For more details see CVRČEK, F. Viktor Knapp a 50 let právní informatiky v ČR. *Právník*. 2013, Vol. 152, No 12, pp. 1219–1230.

⁴ For more details see POLČÁK, R. Pět tichých minut za Viktora Knappa. *Právník*. 2013, Vol. 152, No. 12, pp. 1231–1244.

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