

THE PRÁVNÍK JOURNAL AT THE TIME OF ORDEAL (1938 – 1945)**I.**

Writing about the “Právník” journal between 1938 and 1945 seems to be an unpleasant task. These seven years belong to the least delightful time in our history. The nation found itself almost at the bottom of its existence and only a hairline kept it from its total destruction. This period covered the so-called Second Czechoslovak Republic and the Protectorate of Bohemia and Moravia. In particular, the dense atmosphere of the latter was full of oppression, fear and hopelessness, and the Právník could not be free of such ambiance.

The Právník was affected by both the Second Republic and the Protectorate, but each of them produced different and specific impacts. The Second Republic lasted for about six months immediately following the Munich disaster in September 1938 and finished by the German occupation in March 1939. The Second Republic represented an absolute diversion from the values installed by the First Republic and its statehood, as well as an attempt to construct an authoritative national state looking for an accord with Nazi Germany. On the other hand, the Protectorate was built upon the regime of occupation and totalitarianism, which was imposed upon us and was supposed to result in the Germanization of the Czech Lands.¹⁾

In both periods of our history, the Právník journal, as well as other periodicals, was exposed to a political and ideological pressure varying in sources, means and intensiveness. The Second Republic, partly spontaneously, partly in consequence of the Nazi pressure, attempted to reach certain understanding with Germany. The Munich loss was the primary reason for such approach, supported by the consequential increase of right-wing and nationalistic forces blaming the system of the First Republic and its foreign policy orientation for the national catastrophe. That turn did not need to be supported by an extreme censorship in media, however the censorship developed and was fully functioning.

In the time of the Protectorate, the Právník journal and other printed media found themselves in the claws of the Nazi propaganda and censorship. Nazi

¹⁾ For more details see RATAJ, J.: O autoritativní národní stát. Praha 1997. MARŠÁLEK, P.: Protektorát Čechy a Morava. Praha 2002.

representatives understood printed media as a tool for influencing the masses (ideological indoctrination) and manipulation rather than a source of information. Their oppression was intensified through the perfectly functioning system of censorship. This system was double-tracked: one line was autonomous (Czech) within the Protectorate, the other stemmed from the Nazi occupation.²⁾ With time, the pressure upon periodicals exerted by the Nazis was complemented with the internal pressure exercised by Czechs. The latter was applied by Czech collaborators headed by Emanuel Moravec, Minister of Education and National Enlightenment, as well as some activist journalists. Their objective was to incorporate, through printed media, the Czech Lands into the Nazi Empire (i.e. to implement the imperial idea). It was unimportant whether printed media were periodicals or non-periodicals, entertaining, professional or specialist.³⁾

This found many contributors to newspapers, journals or magazines in an absolutely unsustainable situation where they had to choose to either adapt to the regime and write, or not to adapt, or to even openly resist, which resulted in their exclusion from being potential contributors, or even to their persecution. This simple choice might have been complicated by the fact that if one's existence was fully dependent on the publishing of his or her texts, or if a person was publicly known, the Nazis tried to force the person to write in the spirit of their ideology, i.e. in the Nazi's favour. These two categories of contributors were deprived of a real free choice, which should be kept in mind when considering their activities.

One more factor played an important role, namely whether the printed medium was a periodical with many readers or whether it was a publication instrument with a limited impact upon, for example, a narrow professional group. The more readers there were from amongst the wider population, the more the Nazis maintained intensive interest in influencing and pressuring. Such German "attention" brought in usually the same result: the media were filled up with Nazi ideology and propaganda and were subject to disdain and being accused of Nazi collaboration. As a result, the number of readers declined, or even worse – the readers started boycotting the medium.⁴⁾

The purpose of my article is to answer the question whether the *Právník* journal collaborated with the Nazis and to what extent the years of ordeal affected its contents, i.e. whether the journal preserved its former scholarship standing.

²⁾ See KONČELÍK, J., VEČEŘA, P., ORSÁG, P.: *Dějiny českých médií 20. století*. Praha 2010, p. 89 et seq. For more details see GEBHART, J., KÖPPLOVÁ, B., KRYŠPÍNOVÁ, J. et al.: *Řízení legálního českého tisku v Protektorátu Čechy a Morava*. Praha 2010.

³⁾ *Tři roky v Říši*. Praha 1942, p. 14 et seq.

⁴⁾ Boycotting was a popular form of the anti-Nazi revolt.

II.

Before we start browsing through yellowish pages of the *Právník* the concept of collaboration should be considered. There are certain definitional issues relating to the term. Antinomies linked with the term of collaboration were pointed out by V. Mastný in his work entitled *Protektorát a osud českého odboje* (The Protectorate and the Destiny of the Czech Revolt).⁵⁾ The question posed by Mastný is what perspective collaboration should be seen from – whether subjective or objective – and how rigid we should be in its evaluation.

Mastný argues that, during the Protectorate, everyone “collaborated” in order to survive. “Work and the exercise of other social functions maintained by themselves the organism of the society serving the needs of the oppressor.” He infers that an “objective” understanding of collaboration remains without any use. He defines collaboration on a “subjective” basis: “In a narrower sense, the concept of collaboration should be confined to situations where a free choice existed, i.e. a possibility of personal engagements in activities aimed most likely in favour of the enemy, or a possibility to refrain from such acting.” Mastný points out that “potential consequences of such activities were not usually immediately clear and individuals could have had various reasons for their decision.” Rather exceptionally they wished to serve the enemy, more often they intended to gain benefits for themselves or the nation. Mastný concludes that collaboration possessed many shades, which makes its just assessment quite difficult.

Mastný’s conclusions can be essentially maintained although several critical notes should be added. Tying collaboration solely with situations where the freedom of choice exists can appear to be rather problematic. Everyone knows that the freedom of choice in totalitarian regimes is often only ostensible. One cannot very often choose in such systems. Obedience of the public is guaranteed through the existence of extensive coercive arrangements, the rule governing through terror. People are intimidated and subject to consistent indoctrination from their early childhood. Persons hostile to the official regime often struggle just to survive: they can be subject to systematic liquidation.⁶⁾

These facts lead us to partially moderate our rigidity when assessing the behaviour of some collaborating people. Collaboration resulting from fear and aimed at survival can be condemnable but understandable. A better picture will be shown by collaboration motivated by attempts to save and protect close people or the nation (so-called state collaboration). The reason for that is an altruistic motive of collaborators. However, what should not be forgiven is collaboration aimed at saving oneself on account of the others or a massive

⁵⁾ MASTNÝ, V.: *Protektorát a osud českého odboje*. Praha 2003, p. 11 et seq.

⁶⁾ For details see BALÍK, S., KUBÁT, M.: *Teorie a praxe totalitních a autoritativních režimů*. Praha 2004.

support of the enemy without any adequate counter-value rendered by the enemy (e.g. releasing a large number of prisoners facing death from concentration camps). No excuse should be made for collaboration with the enemy due to ideological congruity or for money: no forbearance should be shown.

We can hardly support Mastný's thesis that consequences of collaboration are not always obvious. The idea that, during WWII, people were unaware of what they were doing and what consequences they could have expected cannot be accepted. Most of these people acted with a proper knowledge of substance and circumstances. They knew that by serving the Germans they maintained a felonious and terrorist regime with ambitions to rule the world. The only mistake on their part was that they miscalculated the vitality time of the Nazi rule. Collaborators very often overestimated it. The awareness of unlawfulness of collaboration with the enemy and of its consequences is a significant condition for someone being blamed of collaboration. To a certain extent, the awareness is more important than the intent to collaborate. The intent to collaborate need not be, as suggested earlier, a pre-condition for collaborating. A collaborator may be a person who originally does not want to collaborate when trying to achieve other objectives – e.g. to save the nation: concessions by the enemy are bought for services exceeding the significance of the enemy's concessions and having negative side-effects such as causing detriment to foreign resistance movement.

Summarily, collaboration with the Nazi regime during World War II represented a specific reaction to the German occupation and dangers resulting therefrom. It was a reaction to the pressure by the occupying regime – terror, intimidation, as well as seducing to collaboration.⁷⁾ Collaboration was a phenomenon affecting all social layers. However, it was not a mass movement. In any case, it was an extreme reaction as was its counterpart – the resistance movement. Most inhabitants became neither collaborators nor participants in the national resistance movement: they created a silent majority.⁸⁾

Despite its internal variation and relatively small volume, collaboration played a significant role in the Nazi constituted Protectorate Bohemia and Moravia. There were four ways Germans used collaborators: (1) as a means of oppression against the autonomous representation of the Protectorate, i.e. State President Hácha and the Protectorate Government although Germans did not intend to replace them with collaborators, particularly by Czech fascists; (2) as propagators of the “imperial idea”, i.e. ideology emphasizing the ancient affiliation of Bohemia and Moravia to the Empire (collaborating journalists);

⁷⁾ For an outline of the Nazi occupation policies, in particular of individual forms of terror, see the book entitled *Český lid proti fašismu*. Praha 1983, p. 57 et seq.

⁸⁾ KŘEN, J., KURAL, V.: *Ke smyslu českého protifašistického odboje*. Historie a vojenství 1965, p. 35 et seq.

(3) as their actors in the administration and economy of the Protectorate; and (4) as informers and squealers (these were recruited particularly from the fascist organization Vlastka “the Flag”). The use of collaborators in the Protectorate, particularly during the first years of occupation, did not reach the extent usual in other countries governed by the Nazis on a satellite principle, i.e. with the assistance of so-called “Fifth Column”.⁹⁾

Let us have a look at the activities of the *Právník* journal during the Nazi occupation through the prism of the above-analysed conclusions. The *Právník* as the oldest Czech legal journal and the platform of the Czech jurisprudence was not excluded from Nazi attention. Although more than ten legal journals existed in Czechoslovakia at that time only a few dealt with law in the widest scope of topics, and enjoyed the long tradition and respect among the legal public comparable to that of the *Právník*.¹⁰⁾

Between 1938 and 1945 (volumes 77-84) the *Právník* contained many texts relating to legal issues reflecting the situation in Germany and the Protectorate. There were a large number of reviews of German legal literature published, particularly during the first years of occupation. Information on German legislation and case law of German courts was regularly published.

The first extensive article analysing Nazi law of that time was published as early as in 1939, i.e. in the period of the Second Republic. The article entitled *Základy nacionálně-socialistické nauky právní* [The foundations of national socialist jurisprudence] was written by Bohumil Nýdl (*Právník* 1939, p. 1 et seq., p. 100 et seq.). By its nature it was not a traditional scholarly article but only an extended review of the book by Rudolf Bechert “Grundzüge der Nationalsozialistischen Rechtslehre” (Leipzig 1938). B. Nýdl explained his writing the article by his motivation to become more familiar with foreign law, to reflect a new political orientation of the Republic and to provide to the public information on the law in Germany. His style was purely informative without expressing any personal positive or negative opinions, which was typical of most articles and reviews dealing with German issues.

The same style was used in many articles dealing with the situation in the Empire or the Protectorate. Authors usually provided an extensive description of the existing legal status and refrained from any evaluation (see, for example, Jurášek, S.: *Právní a hospodářské postavení židů v Říši*. [Legal and economic

⁹⁾ On Nazi occupation regimes see GLETTLER, M., LIPTÁK, L., MÍŠKOVÁ, A. (eds.): *Nacionálně-socialistický systém vlády*. Bratislava 2002. See also Nekola, M.: *Hitlerovi satrapové*. Praha 2008.

¹⁰⁾ See VANĚČEK, V.: *Literatura právnická*. In: *Československá vlastivěda*. Díl X. – Osvěta. Praha 1931, p. 252 et seq.

position of Jews in the Empire] *Právník* 1939, p. 480 et seq., 558 et seq.; *Právní a hospodářské postavení židů v Protektorátě Čechy a Morava*. [Legal and economic position of Jews in the Protectorate Bohemia and Moravia] *Právník* 1940, p. 391 et seq., 452 et seq.; Siblík, J.: *Daňový systém v Říši*. [Tax system in the Empire] *Právník* 1941, p. 113 et seq.; Solnař, V.: *Trestní právo německé a protektorátní*. [Criminal law in Germany and the Protectorate] *Právník* 1942, p. 93 et seq., 132 et seq.; Eysselt, E.: *Trestní předpisy v úpravě rasové otázky*. [Criminal legislation on the regulation of racial issues] *Právník* 1942, p. 139 et seq., 164 et seq.; Solnař, V.: *Asimilace trestních řádů platných na území Velkoněmecké říše*. [Assimilation of criminal procedure codes effective within the Great German Empire] *Právník* 1943, p. 240 et seq.). The occurrence of such articles declined with time. Volumes 83 (1944) and 84 (1945) lack any of those. Articles published at that time deal exclusively with legal issues and could have been published any time, not only during occupation.

The Nazi conception of a constitutional nature of the Protectorate was admitted by František Štajgr in his article *Protektorátní a německé civilní soudy Protektorátu* [Protectorate and German civil courts in the Protectorate] (*Právník* 1940, p. 169 et seq.); Štajgr argued with those who opposed German ideas. An open support of the Nazis was expressed by Miloš Šebor in his work *K novým zásadám veřejné správy* [On new principles of public administration] (*Právník* 1941, p. 74 et seq.); Šebor declared the leader's type of state as the climax of the legal development and highly appreciated changes brought in by Hitler's decree of 28 August 1942 simplifying public administration.

Insufficient criticism can be seen in an absolute majority of reviews of German books published in the *Právník* during the war. Their authors resign on the traditional principle that the reviewer's task is to disagree. This is why even long reviews are rather annotations informing in detail of the Nazi legal doctrine. Exceptionally, pro-Nazi reviews can be found. As an example of such flattering is the review of the book "Rassen- und Erbpflege in der Gesetzgebung des Reiches" by W. Stuckart and R. Schiedermaier (Leipzig 1942), published in the *Právník* in 1942 (p. 182 et seq.); the review was subscribed by the letter S. The reviewer saw the eugenics legislation of the German Empire as a "perfect pattern" for the Protectorate.

One of the most problematic pro-German acts of the *Právník* was the publication of Heydrich's photo in a black frame soon after his assassination in 1942 followed by the text: "SS-Obergruppenführer Heydrich died in consequence of a murderous attack. The Deputy Imperial Protector in Bohemia and Moravia and the Head of the Security Police and Security Service SS-Obergruppenführer and Police General Reinhard Heydrich died in one of Prague's hospitals in the morning of June 4 as a result of serious injury suffered during a murderous attack committed against him on May 27." This obituary appears to have been published under pressure and fear and resembles similar obituaries in other periodicals published at that time, but, despite its brevity it should not be fully pardoned.

Demonstration of anti-German resistance can also be found. In addition to the above-mentioned Tomsa's review, a presentation by the President of the Lawyers' Union Václav Joachim, delivered on the occasion of the 75th anniversary of this organization, deserves mentioning. In his speech Joachim reminded the audience that the Union's premises at the Charles University Law Faculty building "had been taken and made unavailable". He considered the substance and tasks of a state and law: "Not orders but service, not power but morals are the true basis of a state. Taken from the citizens' perspective: not slavery but loyalty and faithfulness are the strongest pillars of a state and law... State and law have an ideal mission: to lead beyond the hassle and conflicts of a daily life, to balance its harshness and insufficiencies with the perspective of higher social, economic and cultural justice, particularly to curb the arrogant and to support the weak. We Czech lawyers maintaining this ideal conception of law connected with deep and ardent love to the nation and especially to its language remain today, and will remain in the future whatever may happen, faithful followers of the founders of the Union in 1861." (Právník 1940, p. 58 et seq.) The words of Professor Joachim were in full opposition to legal nihilism applied by the Nazis.

Sometimes it is necessary to look for the critical approach to occupation between the lines. For example, in the article "Law, state, culture" the Imperial Minister Frank appears to have said: "Brutality, arbitrariness, violence and tyranny created the basis of many states; no state had been kept viable by these means." (Právník 1941, p. 326).

Should we answer the question whether the Právník collaborated with the Nazis the conclusion would be partially in the affirmative. There were only a few expressly activist contributions but they should not have been written. Nor did the honourable professors of law need to intensively review books produced by the Nazis: they should have better abstained from writing at all. An uninvolved tone of some works, lacking any evaluating feature and attempting to conceal behind the curtain of legality where an opposition should have been expressed, cannot be taken in favour of anyone or anything, particularly of the oldest Czech law journal. Very rare demonstration of anti-German resistance on the pages of the Právník cannot counter the overall negative impression.

On the other hand, not all activities during Nazi occupation can be considered irrespective of the social context of that time. This perspective shows that the Právník had never slipped down to the level of uniform press and pro-Nazi propaganda published by Orbis. The Právník preserved exclusively rational and unemotional character. The approaching German defeat caused the number of articles dealing with German law to decline and almost disappear. The Právník did not become a tribune for Germany oriented activists among lawyers. Such people, recruited usually from Hácha's stable (e.g. J. Kliment), openly supported the servant position of the Czech lands in their relations with the Empire, deformed St. Wenceslas's tradition in a pro-Germany spirit and represented real shame to the legal profession (at least in comparison with lawyers who died in German gallows or concentration camps or got actively engaged in the resi-

stance).¹¹⁾ The *Právník* undoubtedly made good if compared with other law journals printed at that time. Its position, however, was much harder because it dealt with the widest scope of law including issues closely connected with politics and ideology and not only with purely technical topics. What should be positively perceived is that the journal had never leaned toward any form of anti-semitism.

Unlike some other law journals, the *Právník* survived Nazi occupation although its extent was minimized and some compromises must have been made with respect to the occupying power. The question is pending whether the survival was not for a very high price, or whether the survival was at any price. Contributors to the journal, preserving a portion of the Czech culture, either asked no such question, or, if they did, their answer was wrong. As a result they got to the same position as their journal did.

III.

The second issue I intend to deal with is whether the *Právník* preserved its earlier high standard also between 1938 and 1945. I would argue that the response can be mostly inferred from the extent to which the journal served German occupiers and their ideology. There are other significant parameters to take into account: the quality of articles, the reputation of contributors, the balanced composition of the journal, the number of readers and the reaction of the critics. Much was predetermined by the scholarly, financial and technical background of the journal.

The *Právník* as a journal devoted to the science of the state and the law was published by the Lawyers' Union in Prague with support by the Czech Academy of Sciences and Arts. Financial subsidies were regularly provided by the Rašín Fund, the Ministry of Justice and sometimes the National Bank. It was on the merit of these sponsors that the budget deficit was balanced in the years when it was necessary, without any radical increase in the journal purchase price.¹²⁾ The scholarly quality of the journal was guaranteed by three highly reputed academics in their capacity as editors-in-charge: civilist Bedřich Andres, administrativist Jiří Hoetzel and penalist Vladimír Solnař. In 1943 the trio was extended by Associate Professor Emilán Ledrer, senior departmental coun-

¹¹⁾ See VANĚČEK, V.: *České právnictví za kapitalismu*. Praha 1953, p. 176. The author recalls a sad destiny of Professor B. Baxa and J. Vážný who died as a result of Nazi persecution, and that of A. Wenig-Malovský, who was sentenced to life imprisonment. He also appreciates the activities of some Communist lawyers who participated in the national resistance and paid for their anti-occupation attitude with imprisonment or even their life.

¹²⁾ *Právník* 1940, p. 302 et seq. *Právník* 1942, p. 90 et seq., 217 et seq. *Právník* 1943, p. 231. *Právník* 1945, p. 217.

sel at the Ministry of Justice, and, in 1944, by Associate Professor Karel Gerlich who died in an accident in November of that year. In 1944 the journal was governed by the board of editors to which all the above-mentioned belonged. The position of editor-in-chief was held by V. Solnař.¹³⁾

The scope of the journal was significantly reduced due to the war and necessary austerity measures regarding paper. At the end of 1941 the number of issues was reduced to eight. In 1943 some extension could be seen: the journal moved from eight issues, 36 (including cover) pages each to 10 issues, 40 pages each. The reasons for this extension was that the *Právník* took over the tasks of two other law journals whose publishing was stopped, namely the Collection of Sciences of State and Law and the Journal for Legal and State Science.

The following sections were in every issue: Analytical Articles, From the Practice of Law, Literary News, From the Lawyers' Union, Diary, and from 1941 Chat Room. The focus of the journal was on analytical articles, i.e. original scholarly papers whose extent was up to several dozens of pages; topics covered all branches of law. The section From the Practice of Law dealt with an analysis of case law and administrative decisions. Literary News contained reviews of both Czech and foreign literature. Reports on activities and management of the Lawyers' Union were published in the section entitled From the Lawyers' Union. Diary concentrated on topical issues, obituaries and new legislation. Chat Room covered discussions on selected topics.

What was the direction of the *Právník*? Between 1938 and 1945, i.e. volumes 77-84, about 14-21 analytical articles were published a year; they mostly dealt with practical, sometimes also theoretical, issues of all branches of law except for constitutional law. Branches represented by editors-in-charge were rather voluminous – civil, administrative and criminal law. The orientation to the practice of law, and particularly to its topical issues, was quite likely determined by two reasons. First, the *Právník* could deal with substance free of the influence of politics and ideology: it did not need to openly solicit with the occupying regime. Secondly, practical orientation was convenient to a significant number of readers – particularly law practitioners. A certain role might have been played by the normativism disseminated by the Brno Law Faculty and appreciated by lawyers: law should be cut from politics and free of any ideological impact. The Brno School therefore blocked the way to the legal theory and practice of totalitarian and authoritative regimes.¹⁴⁾

¹³⁾ Some of these lawyers are dealt with in more details in SKŘEJPKOVÁ, P. (ed.): *Antologie československé právní vědy v meziválečném období (1918-1938)*. Praha 2009.

¹⁴⁾ For details see BOGUSZAK, J.: *Vzestup právnictví a některá úskalí*. In: Klíma, K., Jirásek, J. (eds.): *Pocta Jánů Gronsému*. Plzeň 2008, p. 51 et seq.

The absence of constitutional topics may have been caused by the wish of Germans that such topics not be covered. As is well known, Hitler's decree on the Protectorate of Bohemia and Moravia promised more in certain provisions than was admitted by the Nazis after the occupation and fostering their power in the occupied territory. They were not interested in having constitutional issues discussed in periodicals – whether the Protectorate was an entity under international law or whether it was of a state nature. In any case, the deficient number of such articles in the *Právník* was perceivable and clearly visible if compared to other law journals (e.g. *Všehrd*)¹⁵). The first extensive article on a constitutional topic – the state and legal nature of the Protectorate of Bohemia and Moravia – was published in the *Právník* as late as in 1940; it was an abstract of the lecture delivered by Dr. Stuckart, the state secretary of the Imperial Ministry of the Interior and co-author of Hitler's decree, entitled *Führung und Verwaltung im Krieg*. It was an official German interpretation of the rights of the Protectorate, which can be called “minimized” or “annexing” (resulting from Nazi intentions with respect to the Protectorate).¹⁶)

Whilst the absence of articles on constitutional law can be somehow justified, the non-existence of articles in legal history – except for reviews, anniversaries and obituaries – can hardly be explained. From the second half of the 19th century, legal history belonged to the most developed branch of our jurisprudence and the quality of the *Právník* could have been significantly increased. Jubilees or obituaries, such as that relating to legal historian Professor Rauscher and predicting his work to become quickly out-of-date, were insufficient.¹⁷) This situation could be appreciated only by the Nazis as Czech legal historians would have been reminded of old traditions of Czech statehood and fostered Czech national conscience. This is what Czech legal history had been doing since its very beginning.¹⁸)

The practical orientation of most articles in the *Právník* resulted in that most of them were not of a timeless nature. Most of them were solving recent problems and reflected on legislation; some were complemented with a historical introduction, a comparison with legal systems other than German was less frequent. Only few contributions were of a supertemporal nature and built upon scholarly study (see, for example, Solnař, V.: *In dubio pro reo*. *Právník* 1940, p. 230 et seq.; Štajgr, F.: *Pojem a třídění vad v civilním řízení*. [The concept and

¹⁵) See KOJECKÝ, J.: *Protectorát Čechy a Morava. Úvaha ze srovnávací pravovědy*. *Všehrd* No. 4/1939.

¹⁶) *Právník* 1940, p. 224 et seq. (article “Správa říše ve válce”).

¹⁷) *Právník* 1941, p. 30.

¹⁸) See URFUS, V.: *Právní dějiny na pražské právnické fakultě*. Praha 2000.

classification of defects in civil proceedings] *Právník* 1940, p. 313 et seq.; Krčmář, J.: *Vysvětlivky k pojmu smluv pracovních*. [Explanations on the concept of the employment contract] *Právník* 1941, p. 1 et seq.; Solnař, V.: *Trestný čin a jeho pachatel*. [The crime and its offender] *Právník* 1943, p. 1 et seq., 42 et seq.; Štajgr, F.: *Ustanovení typu 2. věty § 7 občanského zákoníku a důkazní břemeno*. [A provision of the type of 2nd sentence sec. 7 of the Civil Code and the burden of proving] *Právník* 1944, p. 13 et seq., 49 et seq.; Ledrer, E.: *Použití a důkaz cizího práva*. [The application and evidence of foreign law] *Právník* 1945, p. 37 et seq., 77 et seq.). Some authors published a series of articles on relating topics (e.g. E. Eysselt on the issues of attempted crime in 1944). The scholarly production of the *Právník* was negatively affected by the fact that not many debates among authors were held on the pages of the *Právník* (the exception was an article by Eusselt and Solnař entitled *Podvod – pouze majetkový delikt?* [Fraud – only a wrong against property] *Právník* 1942, p. 226 et seq.)

Other sections of the *Právník* referred to recent topics of various kinds. They could be a valuable aid for the practical application of law as a significant portion was devoted to the German legal system (legislation, case law and literature). Sometimes quite specific contributions were published. For example, in 1940, in his extensive literary report entitled “Telepathy in legal literature” Josef Hoffmann accused Professor František Rouček of plagiarism. The issue was a copying of the list of laws.¹⁹⁾ One contribution of a more feuilleton nature, whose style went beyond the regular journal stylesheet, was published in the Diary section in 1941. A short essay entitled “The legal order and the film” contained complaints against the caricature of law in movies, which is detrimental to the “popular sense of law”.²⁰⁾

Although the *Právník* offered a lot of practically applicable information and sometimes also theoretical works, the number of readers was declining. In 1938, 1436 copies were distributed, the following year only 1127. Between 1940 and 1941, a further decrease was seen – 1026. In 1942 a moderate increase could be seen – 1036, but one year later the number fell again down to 1018. A better situation could be seen in 1944, when the number of copies reached 1099.²¹⁾ The number of sold copies is traditionally considered a significant indicator of the quality of a journal, though this criterion not always fully applies. The sales of the *Právník* were affected by the split of Slovakia in 1939 and the cut-off of

¹⁹⁾ *Právník* 1940, p. 281 et seq.

²⁰⁾ *Právník* 1941, p. 111.

²¹⁾ *Právník* 1940, p. 302 et seq. *Právník* 1942, p. 90 et seq., 217 et seq. *Právník* 1943, p. 231. *Právník* 1945, p. 217.

its market. The overall situation in the Protectorate also produced negative impact on the sales since excessive lawlessness generated a decline in people's interest in the law, particularly German law.²²⁾

Despite the declining number of readers The *Právník* still enjoyed good reputation in the eyes of competing law journals. A special issue of the Collection of Sciences of State and Law can be an example; the title was *Význam „Právníka“ v osmdesáti letech* [The significance of the *Právník* during eighty years] and was published in 1942. It was a special tribute to the *Právník* journal summarizing the long history and valuable contribution to Czech legal culture. Such an act need not be commented on.

Generally we can say that the *Právník* journal did not preserve its high pre-war scholarly standard during the occupation. Needless to add it was not a period in favour of scholarship. Taking the overall situation into account it should be admitted that the standard was relatively high, which was not negligible.

IV.

The end of the Nazi occupation was brought in by allied troops liberating Czechoslovakia in May 1945. The *Právník* journal made a formal full stop after the occupation by the following ceremonial declaration: “Sun started shining over our liberated fatherland. The period of the deepest humiliation and harshest oppression terminated. Every citizen learnt a lesson how to esteem the legal order protecting the dearest property of the mankind: the freedom of person, property, and honour. The *Právník* journal, which never failed during the monstrous lawlessness during the occupation, will cooperate, in compliance with its famous tradition, to re-install a dignified legal order to the honour and fame of our dear homeland.”

This proclamation published in the *Právník* in 1945 on page 109 constituted a fresh start. It was clear that the Republic would be built upon new foundations and that the *Právník* would actively participate in that construction through relevant discussions. Despite all this, the cut-off of the *Právník* from its existence in the time of non-freedom could not be fully complete. The past left many theoretical and practical issues relating to the occupation, surmounting its consequences, sentencing Nazi criminals, making good of wrongs, as well as the question of continuity or discontinuity of the legal order. The *Právník* could not but participate in the solving of all those issues. Between 1945 and 1948 there were many valuable articles published. Let us recognize, for example, of

²²⁾ A moderate increase in the sales in 1944 was mostly caused by a declining number of articles on German law and by taking over the readers of stopped law journals.

the following: Neubauer, Z.: *Kontinuita našeho ústavního práva*. [Continuity of our constitutional law] *Právník* 1945, p. 285 et seq.; Neumann, K.: *Odčinění křivd československým veřejným zaměstnancům*. [Repairing wrongs against Czechoslovak civil servants] *Právník* 1946, p. 221 et seq.; Hoffmann, J.: *Československý a „slovenský“ právní řád*. [Czechoslovak and “Slovak” legal order] *Právník* 1946, p. 293 et seq.; Vošta, L.: *O německé okupaci českých zemí za druhé světové války*. [On the German occupation of the Czech lands during WWII] *Právník* 1947, p. 65 et seq.; Budník, J.: *Kontinuita státu a práva československého*. [Continuity of the Czechoslovak state and law] *Právník* 1947, p. 136 et seq.; Štajgr, F.: *Odstranění rozhodnutí civilních soudů z doby nesvobody*. [Removing decisions of civil courts from the time of non-freedom] *Právník* 1947, p. 152 et seq. a Beckmann, R.: *Hitlerova válka proti Československu ve světle mezinárodního práva*. [Hitler’s war against Czechoslovakia in the light of international law] *Právník* 1948, p. 140 et seq. These papers fully revealed that the liberated legal science approximated the high pre-war standards.

However, the future did not provide much chance to the revived jurisprudence. New totalitarianism was approaching.

Summary

The period between 1938 and 1945, i.e. the period of the Second Czechoslovak Republic and Nazi occupation, represented one of the most difficult periods in its history. It was almost impossible to preserve its clean slate and high pre-war scholarly standard particularly under Nazi occupation when the journal faced political and ideological pressure, censorship and the risk of persecution.

How did the *Právník* come through the ordeal? Did it collaborate with Germans? There were many texts published during the period under consideration, which dealt with issues relating to Germany or the occupation. Particularly during the first years of occupation German legislation and case law were analysed and German publications were massively reviewed. An absolute majority of contributions was written in a strictly rational and unemotional style, free of any evaluative features. Only a minimum of contributions showed pro-Nazi affinity. However, the *Právník* did partially collaborate with the occupiers. It survived only due to its compromises with occupational regime. Its contributors concealed themselves behind the curtain of legality and disinterested tone, where they should have expressed their opposition or chosen not to write at all. They tried to save the *Právník* as part of Czech culture but failed to ask a question whether the price paid was not too high, or whether the journal was worth saving in such a format at all. However, the *Právník* had never become a real servant of Germans, it had never run low to the level of uniform press or pro-Nazi propaganda. The journal had never provided space for pro-German activists and had never leaned toward any form of anti-semitism. It stood its test in comparison with other law journals.

One more question should be answered, namely whether the *Právník* preserved its earlier high scholarly standard. The journal published during occupation in a reduced form due to the lack of paper, presented primarily practically oriented, less frequently theoretical, texts covering all branches of law – except constitutional law and legal history (with some exceptions). This provided a chance to avoid topics linked with politics and ideology and to avoid soliciting with Nazi. Only few contributions were of a supertemporal and scholarly nature, built upon a comparison with legal systems other than German. However, the volume of information contained in the journal

could have been useful for the legal practice. All factors suggest that the *Právník* failed to preserve its high pre-war standard; but it managed to preserve relatively a good standard when considering all the circumstances and time not favouring scholarship at all. This should definitely not be belittled.