CZECH INHERITANCE LAW AND THE SIGNIFICANCE OF TRADITION

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Abstract: *The article deals with the importance of the Czech-Austrian legal tradition in Czech inheritance law, particularly with the inter-war recodification (1920–1938) and the contemporary literature. In the first part it analyses the inspirational sources of new inheritance law in general. Next part describes the course of the recodification works in the inter-war era. The third part of the article analyses the scope and particular form of the First Republic inspiration. The last part describes personalities and literature of inheritance law until the middle of the 20th century.*

The last recodification of Czech private law (2000–2012), finished by issuance of the new Civil Code (Act No. 89/2012 Sb.), built on the Czech-Austrian legal tradition represented by the interwar proposals from 1931 and 1937. The comparisons suggest that the recodification of inheritance law followed a super revision proposal (1931) even more than the government bill (1937), in some institutes it coincides with the (West) Galician Civil Code (1797), which became the direct precursor of the General Civil Code – ABGB (1811).

Keywords: *Inheritance law; Civil Code; recodification; civil law jurisprudence; ABGB; Galician Civil Code; comparative law*

1. INTRODUCTION[1]

From a historical-comparative perspective, inheritance law occupies an exceptional position. Traditionally, it links the personal and property dimensions, and therefore also reliably reflects the extent of social change and shifts in legal thinking. Based on the interpretation of the recent dispositions, general interpretative rules for legal action have been formulated in Roman legal science, and to this day the inheritance law is characterized by the most special interpretative provisions and assumptions. The specific status of inheritance law is reflected in legal education, where it traditionally closes the whole area of private law.[2]

The importance and position of inheritance law is illustratively reflected in its legal development in the Czech lands. Prior to the issuance of the General Civil Code (*ABGB*) of 1811, the patent on hereditary succession (No. 548/1786 JGS) was promulgated, its regulation was applicable to all subjects, irrespective of their social class, and it was basically incorporated into the final version of the Code (except for the deterioration of the position of illegitimate children). The area of inheritance law has undergone significant changes in the era of World War I (by partial amendments of 1914 and 1916), in the second half of

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[2] Newer literature, cf. WELSER, R. (ed.). *Erbrechtsentwicklung in Zentral - und Osteuropa*. Wien 2009; WELSER, R. (ed.). *Zivilrecht. Die Reform des österreichischen Erbrechts*. II/1; II/2. Wien 2009; 2010; DUTTA, A. *Warum Erbrecht? Das Vermögensrecht des Generationenwechsels in funktionaler Betrachtung*, Tübingen 2014; SÜß, R. (ed.). *Erbrecht in Europe*. 3rd ed. Angelbachtal 2015, and SALÁK, P., HORÁK, O. et al. *Law of Succession in the Middle-European Area*. Cracow, 2015.

the 20th century (from Act No. 266/1949 Sb., through Act No. 40/1949 Sb., to the so-called "big amendment" No. 509/1991 Sb.) and as expected, also in the last recodification of Czech private law, by issuance of the new Civil Code (No. 89/2012 Sb., so-called *"OZ"*). This was mainly due to the Czech-Austrian legal tradition represented by the interwar proposals from 1931 and 1937, as well as the contemporary literature.

In the following explanation, we will first deal with the inspirational sources of new inheritance law in general (chap. II), we will also describe the course of the recodification works in the inter-war era (chap. III), the scope and particular form of the First Republic inspiration (chap. IV) and, last but not least, personalities and literature of inheritance law until the middle of the 20th century (chap. V).[3]

2. ORIGINS AND INSPIRATIONAL SOURCES OF INHERITANCE LAW

The main grounds for recodification of Czech private law (and inheritance law in particular) were according to explanatory note *convention* (respect for the tradition of Central European legal thinking, comparison with the European legal and cultural convention) and *discontinuity* (a discrepancy with the intellectual world of socialist law).[4]

The main source of inspiration is the government draft of the Civil Code of 1937 to modernize the General Civil Code of 1811 (hereinafter *ABGB*). At the same time, however, a number of foreign legal regulations have also been taken into account: in connection with the explanatory note we can specifically mention the Swiss regulation (for the agreement on succession), the German regulation or the Italian regulation (in the so-called "privileged wills"). Direct inspiration, however, was found even in Roman law, namely in the institute of legacy, in the regulation of the so-called "Falcidian Quartet" (*Quarta Falcidia*), which the traditional civil codes did not assume.

Last but not least, the 2012 Civil Code also followed up on its immediate predecessor, the Civil Code of 1964 (particularly in the acquisition of inheritance and the lineage) and indirectly on Soviet law (succession of cohabiting persons or the distinction made between major and minor forced heirs).

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[3] We also follow up on some of our older articles published in the magazine *Ad Notam*: DADUOVÁ, M., HORÁK, O. Nové dědické právo a meziválečná rekodifikace [New inheritance law and inter-war recodification]. *Ad Notam*. 2016, Vol. 22, No. 1, pp. 8–12; HORÁK, O., ROSENKRANZOVÁ, O. Česko-rakouská civilistika a dědické právo [Czech-Austrian civilization and inheritance law]. *Ad Notam*. 2016, Vol. 22, No. 6, pp. 21–23; HORÁK, O., OSINA, P. Případ Riggs v. Palmer a jeho význam pro české (dědické) právo [The case of Riggs v. Palmer and its significance for Czech (inheritance) law]. *Ad Notam*. 2017, Vol. 23, No. 1, pp. 18–21, and HORÁK, O. K. A. Martini a první moderní úprava dědického práva. Ke 220. výročí (západo)haličského občanského zákoníku [K. A. Martini and the first modern regulation of the inheritance law. To the 220th anniversary of the (West) Galician Civil Code]. *Ad Notam*. 2017, Vol. 23, No. 6, pp. 8–11.

[4] Cf. ELIÁŠ, K. et al. *Nový občanský zákoník s aktualizovanou důvodovou zprávou a rejstříkem* [*New Civil Code with updated explanatory report and index*]. Ostrava, 2012, pp. 48 etc., ELIÁŠ, K. Inspirativní síla Všeobecného zákoníku občanského v návrhu občanského zákoníku pro Českou republiku [Inspirational power of the General Civil Code in the draft of the Civil Code for the Czech Republic]. In: Milana Hrušáková (ed.). *200 let ABGB – od kodifikace k rekodifikaci českého občanského práva. Sborník z mezinárodní vědecké konference* [*200 Years of ABGB – From Codification to Recodification of Czech Civil Law. Proceedings of the International Scientific Conference*]. Prague, 2011, pp. 16–29, p. 28.

3. INTERWAR RECODIFICATION OF CIVIL LAW

3.1 Proposals and their creators[5]

After the establishment of Czechoslovakia, the preparation of a new Civil Code was soon considered. The main reason was the fact that, after the reception of the existing law, there were two different legal regulations (so-called "legal dualism"[6]), which, moreover, were based on different sources. While the Austrian *ABGB* was reciprocated in the Czech Republic, Hungarian common law (reflected in the form of settled court practice) was adopted in Slovakia and Carpathian Ruthenia (apart from special legal regulations, e.g. Art. XVI/1876 concerning the disposition of property upon death). Six different ways of legislative unification (from the mere re-issuance of *ABGB* to the creation of a completely new code[7]) should have been considered at the time.

The Ministry of Justice originally wanted only to translate the *ABGB* as amended and to extend its validity to the entire territory, but the experts asked for more profound changes. Following the special committee deliberations, it was decided that the existing civil code should be only "modified and upgraded".

Five subcommittees were appointed for the revision, the members were professors from Prague Faculty of Law: Jan Krčmář (introductory clause, general part of the law of obligations), Miloslav Stieber (real rights) and Emil Svoboda (inheritance law), from the German Faculty of Law Bruno A. Kafka (family law) and Egon Weiss (special part of the law of obligations); Stieber and Weiss were legal historians. In addition to the official representatives of the Ministry of Justice and the Ministry of Unification (especially František Rouček, who later became a professor at the Bratislava Law Faculty), selected representatives from among judges, lawyers and notaries had also been appointed members of the subcommittees. Besides prof. Svoboda, the councillor of the High regional court Balcar, the president of the notary chamber dr. Batěk, the lawyers, dr. Hammer and dr. Krýsa, the public notary dr. Schäfer and the councillor of the High regional court dr. Soukup were the members of the subcommittee, they revised inheritance law, titles 8–15 of the second part of the *ABGB*.

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[5] Most recently, SALÁK, P. et al. *Historie osnovy občanského zákoníku z roku 1937. Inspirace, problémy a výzvy* [*History of the Civil Code Outline of 1937. Inspiration, problems and challenges*]. Brno, 2017, and SALÁK, P. Tschechoslowakei: Rekodifizierung des Bürgerlichen Rechts. In: M. Löhnig – S. Wagner (eds.). *"Nichtgeborene Kinder des Liberalismus"? Zivilgesetzgebung im Mitteleuropa der Zwischenkriegszeit*. Tübingen: Mohr Siebeck, 2018, pp. 91–147. From a broader perspective: HORÁK, O. Dějiny kodifikace soukromého práva v českých zemích [History of Codification of Private Law in the Czech Lands]. In: F. Melzer – P. Tégl (eds.). *Občanský zákoník – velký komentář. Svazek I – § 1-117 Obecná ustanovení* [*Civil Code - Great commentary. Volume I - § 1-117 General Provisions*]. Prague, 2013, pp. XXVII-LVII (there is also other literature).

[6] In Hlucinsk, which was acquired under the Versailles Peace Treaty, German law was still valid for a transitional period, so we can even talk about trialism.

[7] Cf. LUBY, Š. Unifikačné snahy v oblasti československého súkromného práva v rokoch 1918-1948 [Unification efforts in the field of Czechoslovak private law in 1918–1948]. *Právny obzor* [*Legal Horizon*]. 1967, Vol. 50, No. 6, pp. 571–586; more recently. GÁBRIŠ, T. Teoretické a metodologické východiská unifikácie práva v 1. ČSR [Theoretical and methodological bases of unification of law in 1. Czechoslovakia]. In: *Sborník příspěvků z konference Monseho olomoucké právnické dny* [*The Proceedings of the Monse Conference in Olomouc*]. Olomouc, 2006, pp. 232–252.

Subcommittees started their activity at the end of 1920 and in 1921 the work of the subcommittees of prof. Krčmář and prof. Svoboda were finished (other subcommittees in 1923). The results were published by the press (in the case of inheritance law for the first time in 1921 and for the second time in 1924),[8] in order to give the expert public the opportunity to comment on them. A special committee of Slovak lawyers established in Bratislava by the Unification Ministry dealt also with the proposals valid on the territory of Slovakia and Sub-Carpathian Russia.

Further work was reserved for the supervisory commission, which was expected to create a single unit from the proposals of subcommittees, and to take into account the criticisms (let us mention at least the extensive opinions of the Supreme Court). The members of the commission became the representatives of the individual subcommittees, the representatives of the ministries and the already mentioned Slovak commission. The works took place between 1926 and 1931, with the break of prof. Krčmář as Minister of Education. A total of 321 meetings were held, and the super-revision proposal (also referred to as *SN/31)* on the scope of 1353 sections was published at the end of 1931 together with the explanatory note.[9] Furthermore, an inter-ministerial commentary procedure was carried out instead of the traditional written form, because of the acceleration of the works at the joint meetings of the participating central offices between 1934 and 1935 (32 meetings).The results of these meetings, as well as suggestions from the professional public, had to be incorporated into the proposal again by the supervisory commission. Due to the death of two members of the commission (Stieber and Kafka), professor Jaromír Sedláček from the Faculty of Law in Brno and Ernst Swoboda from the German Law Faculty of Prague were newly appointed. Professor Krčmář was the head of the commission.

Editorial work began in November 1935 and lasted until March 1936 (30 meetings).The final editing of the texts was carried out by the secretariat under the chairmanship of the chairman of the commission. The government approved the draft of 1369 sections (hereinafter *VN/37*) on December 4, 1936, supplemented on March 3, 1937, and submitted to two chambers of the National Assembly on March 15, 1937 (Parliamentary press no. 844, the Senate press no. 825).[10] After preliminary debate, the proposal was discussed in a joint subcommittee established by the constitutional committees of two chambers (45 meetings) from the end of September 1937 to July 1938. However, in the complicated international and domestic situation at the end of the 1930s, the new Civil Code failed to be approved.

3.2 Foreign inspiration

Interwar recodification took into account a number of different sources of inspiration (domestic and foreign), whose representative list is provided in the explanatory note. The

[8] SVOBODA, E. (ed.). *Dědické právo. Návrh subkomitétu pro revisi občanského zákoníka pro Československou republiku* [*Inheritance law. Proposal of the Subcommittee on the Revision of the Civil Code for the Czechoslovak Republic*]. 2nd ed. Prague, 1924.

[9] *Zákon, kterým se vydává všeobecný zákoník občanský. Návrh superrevisní komise* [*The act establishing a general Civil Code. Draft of the super-commission.*], Part I. Wording of the Act. Part II. Explanatory note, Prague, 1931.

[10] *Vládní návrh zákona, kterým se vydává občanský zákoník* [*Government bill to issue the Civil Code*]. Prague, 1937; also available from: *http://www.psp.cz/ eknih/1935ns/ps/tisky/t0844_01.htm* and *http://www.senat.cz/ information/z_historie/tisky/ 4vo/tisky/T0425_01.htm* (the Senate press is not paged, but it is clearer).

utmost consideration should be given to the views of legal science (54x), foreign codes especially to German *BGB* (23x) and to Swiss *ZGB* (9x), however, several sources are often mentioned at the same time.[11]

There were only two inspirations mentioned in the field of inheritance law in the explanatory note: 1) § 577 of *VN/37* returned to the Roman principle *exheredatus partem facit ad minuendam*, according to which the share of the disinherited person results in the reduction of the obligatory share of the other heirs (similarly § 1645 of *OZ 2012*), whereas according to the *ABGB* (§ 767), the share of the disinherited person was not taken into account in the calculation of the obligatory share; and 2) § 635 of *VN/37* considered the specification of the rights and obligations of the executor of the will in accordance with the German or Swiss Code, but in the end it did not happen.

However, there were undoubtedly more cases, for example, dr. Voslář presented another seven inspirations by foreign regulations in his lecture in the Moravian Legal Unity, especially the Swiss *ZGB*: 1) in § 385 of *VN/37* a foundation may become an heir or a beneficiary according to the *ZGB* model or *BGB* (similarly § 1478 of the OZ); 2) § 428 of *VN/37* cancels mutual wills based on the French *CC* or the *ZGB* (§ 1496 of the *OZ*); 3) in § 450 of *VN/37* abolition of the agreement on succession by the last disposition based on *BGB* and *ZGB* (§ 1590 OZ); 4) in § 453 of *VN/37* presumption of substitution according to *BGB* (as in § 1508 of the OZ); 5) section 459 of *VN/37* removes the distinction between immovable property and movable property in the custodial succession based on the model of *ZGB* (as in § 1515 para. 1 *OZ*); 6) in § 546 *VN/37* the inheritance rejection in the form of *BGB* and *ZGB* (same as § 1633 para. 1, first sentence, OZ); 7) in § 562 of *VN/37* suppression of differences between the different categories of legitimate children in the form of the *ZGB* (according to the explanatory note it should correspond to Hungarian common law).[12]

3.3 Post-war development

Recodification work continued after the war, when the Ministry of Justice wrote up comments from a joint parliamentary subcommittee, and in 1946 (in the form of lithography), the amended draft was issued as an *Act on general private law (Civil Code)* for further professional judgment (*NS/46)*. There were hopes to enact it, however, they were too small due to great social shifts, and completely passed away after the communist coup.[13]

An entirely new Civil Code (Act No. 141/1950 Sb.) was eventually prepared in the framework of the so-called "legal biennial". It also followed the Czech-Austrian legal tradition, but Slovak (Hungarian) law was taken into account more. The regulation of the inheritance law was 1) considerably simplified, which may be positively perceived (for example, in

[11] GÁBRIŠ, T., ŠORL, R. Občianske právo na Slovensku a unifikácia právneho poriadku v období prvej Československej republiky (1918-1938) [Civil Law in Slovakia and Unification of the Law in the First Czechoslovak Republic (1918–1938)]. In: K. Malý – L. Soukup (eds.). *Československé právo a právní věda v meziválečném období (1918–1939) a jejich místo ve střední Evropě* [*Czechoslovak law and legal science in the interwar period (1918–1939) and their place in Central Europe*]. St. 2. Prague, 2010, p. 694.

[12] VOSLAŘ, J. Dědické právo v osnově občanského zákona [The inheritance law in the civil law outline]. *Časopis pro právní a státní vědu* [*Journal for Law and State Science*]. 1938, Vol. 21, 1938, pp. 347–370.

[13] The proposal was published in the Slovak version in *Právný Obzor* in 1947–1948 (unfortunately only in § 1245) and in 1947 also in its own form (in complete form). Cf. LUBY, S. (ed.). *Československý občiansky zákonník a slovenské súkromné právo* [*Czechoslovakian Civil Code and Slovak Private Law*]. Bratislava, 1947. 343 pp.

device or collation), 2) in some cases fundamentally changed, but often in accordance with long-term developmental tendencies and opinions of interwar juridical science (approximation of inheritance and the liability for the debtor's debts to the amount of inheritance) or 3) completely omitted as obsolete (e.g. mystical testament or pupil substitution).

3.4 Critique of Proposals

In the interwar period, only a "cautious" *ABGB* revision was sought, but the period discussions within the commissions or in the professional literature had a much wider scope and still can be inspiring for us. Above all, there were the changes that emerged from the parliamentary debates between 1937 and 1938 and the remarks of the Slovak Committees after 1945, which represent not only the first criticisms of the 1937 government bill, but also indirectly the new Civil Code.

Although the changes made by the subcommittee were not essential, the government bill was improved and, to a certain extent, anticipated later development. From the inheritance law, let us mention at least three interconnected examples: 1) strengthening the autonomy of the will for incapacity to inherit – in addition to the remission of the "defective" acting by the testator, there was the possibility of remission (after the deceased's death) by the one who was hurt (§ 386 *NS/46*); 2) enhancement of the protection of the heirs from the insolvency of the deceased – unless otherwise stated in the inheritance, the heir applied for the reservation of the inventory and was liable only to the amount of inheritance (§ 614 *NS/46*); 3) strengthening the protection of the legatee – if the legatee had an obligation to contribute to the payment of debts and other compulsory expenditure and he has already accepted the legacy, the deduction should be made according to the value of the legacy at the time of the acceptance and the benefits which had already been obtained from it; in terms of cost and aggravation, he should be regarded as the honest holder (e.g. *ABGB* § 693 or *SN/31* § 615 par. 2). The provision was broadened and completed by the Parliament subcommittee: if the legatee has stolen the legacy or the benefits, he should have contributed to the value he received from them, and in the case nothing from the legacy, benefits or the value was left, he was discharged from the obligation (509 § *NS / 46*). We can find a similar phenomenon in the case of donation in *OZ* (§ 2078) and in this way it could also be possible to interpret the existing regulation of legal obligations of the legatee (§ 1630 paragraph 2). But in practice, however, it will be rather a rare case.

4. COMPARISON OF THE GOVERNMENT BILL (1937) AND THE CIVIL CODE (2012)

4.1 Method, examples, results[14]

The measure of inspiration can be assessed mainly by the actual comparison of individual inheritance provisions of *OZ* and *VN/37*. Valuable information is also provided by

[14] A detailed comparison of the individual provisions was given in the diploma thesis: DADUOVÁ, M. *Meziválečná rekodifikace jako inspirační zdroj nového dědického práva [Interwar recodification as an inspiring source of the new inheritance law]*. In: *Theses.cz* [online]. 26. 1. 2015 [2019-10-15]. Available at:<https://theses.cz/id/j1bqi9>.

a detailed explanatory note and other publications by the principal creator of the Civil Code.[15] Based on the comparison, which reflected primarily a content, three categories of provisions were chosen: 1) completely identical (e.g. the definition of the decedentęs estate or the numerous provisions of the legacy), 2) partially identical – regulation of a particular institution is only broadened in comparison with *VN/37* (e.g. waiver of right to inherit) and (3) different – either on the grounds that *VN/37* did not contain the provisions at all (e.g. limitation of the amount of legacy by the Falcidian Quartet according to § 1598 of the *OZ*), or they were contrary to the content (e.g. in the case of the legacy of the claim under § 1617 of the *OZ)*.

We have found out that 134 out of the 246 inheritance provisions of the *OZ*, correspond to the provisions of *VN/37* completely, 57 inheritance provisions in part, there are overall 191 provisions, which were inspired by *VN/37* (78 % match). Of course, this is indicative: it could change according to the chosen method and in particular the individual assessment of conformity; however, it has its informative value. In the following interpretation we will then focus on individual institutes in more detail. We will stick to the system of new regulation, which also builds on the interwar bills.

The regulation is the same as 70 % of the introductory provisions of the inheritance law. The basic terms are defined identically and the definition of inheritance titles is the same, too. However, a significant diversion can be seen in the regulation of the acquisition of rights of inheritance: the so-called *"hereditas iacens"* was not accepted, when the heir acquired the inheritance through a court and, on the contrary, it followed the existing civil code, whereby the inheritance is acquired by the death of the deceased.[16] Regulation of inheritance incapacity is partially modified (*OZ* requires the explicit waiver by the testator, according to *VN/37* implausible waiver suffices).On the other hand, the regulation of waiver of rights of inheritance, which was omitted in the 1950 Civil Code , was almost literally adopted.

In the case of regulations of the last dispositions (a will and agreement on succession), there is roughly a 74 % match with the government bill, but the *OZ* has also been inspired by a number of foreign models, especially the German Civil Code. One example is the so-called "privileged will" or will with relief when, e.g. in the so-called "village will" (signed before the mayor) the *OZ* was inspired by the German *BGB* and in so-called "military will" (recorded by military commander), especially by the Italian Civil Code, but overall ex-

[15] Cf. esp. ELIÁŠ, K. Základní pojetí návrhu úpravy dědického práva pro nový občanský zákoník [Basic concept of the proposal for the amendment of the inheritance law for the new Civil Code]. *Ad Notam*. 2003, Vol. 9, No. 5, pp. 97–104.

[16] The related problems were highlighted, and after returning to the Austrian pattern, it was called back in the early 1990s (cf. MIKEŠ, J. Úvahy nad právní úpravou dědění [Considerations over the legalization of inheritance]. *Právo a zákonnost* [*Law and Legality*]. 1991, Vol. 39, No. 8, pp. 446–455). It seems, however, that the practice of acquiring an inheritance approximates the Austrian tradition (cf. SPÁČIL, J., ŠEŠINA, M. Nabývání dědictví a vlastnické žaloby dědiců v novém občanském zákoníku. [Acquisition of inheritance and ownership actions of heirs in the new Civil Code]. *Právní rozhledy* [*Legal Outlooks*]. 2015, Vol. 23, No. 2, pp. 39–44, who convincingly show that the death of the testator becomes the inheritance of the heirs' community and the particular heir by the court's decision); legislation has at least occurred in tax law (see § 239a of Act no. 280/2009 Sb., The Tax Code), where, for the purposes of tax administration, the legal fact is viewed as if the deceased had lived until the day before the end of the probate proceedings.

planatory note mentions, besides the inspiration by *VN/37*, the inspiration by more than ten foreign codes.[17] The *OZ* newly regulates the agreement on succession, which becomes the most powerful heirloom, it follows the model of the *ZGB* in Switzerland (under the *ABGB* and the interwar proposals only spouses, or fiancé could make an agreement on succession).

It made a remarkable follow-up on the interwar recodification of substitution and custodial succession (94 % match). Again, these are old-fashioned institutes, whose regulations were omitted by the previous Civil Code (in practice, however, substitution was recognized).

In the case of legacy, the match is up to 95 %. The *OZ* deviates from the Austrian tradition, in particular, by the establishment of the Falcidian Quartet (§ 1598 *OZ*), which provides the heirs with at least a quarter of their inheritance that is not charged with a legacy.

The legal lineage (66 % match), extended to six classes, was based on existing law (e.g. the inclusion of cohabitants), and foreign models, in particular the German or Russian Civil Code, rather than the *VN/37*.

Regulation of the mandatory part or, respectively, the protection of the forced heirs and the disinheritance, on the contrary, is more connected to the interwar recodification (83 % match). Unlike the Austrian tradition, however, the parents were not included among the forced heirs (unfortunately, it was rejected by the legislative council of the government for civil law in the discussion of the factual intent),[18] the position of the descendant of the disinherited descendant has fundamentally changed[19] and, in addition, during the further recodification, collation, or offsetting to the obligatory part and the inheritance (in particular, the collation of the gift to third parties was completely abolished). The *VN/37* was also significantly bound by the right of certain persons to maintenance (full match of 80 %, while 20 % are provisions which only extended regulation of the *VN/37)*.

It is possible to see how significant the interwar recodification was in the regulation of the transfer of the estate to the heir (e.g. in the legal regulation of debt transfer, reservation of the inventory and separation of the estate), as well as the diversion and inspiration by foreign codes, or by previous legal regulation (*OZ* no longer refers to the inheritance applications applied until 1950). On the contrary, the existing legislation has been preserved, with the argument that "the inheritance is more often accepted rather than rejected" and

[17] Cf. ELIÁŠ, K. et al. *Nový občanský zákoník* [*New Civil Code*], pp. 635f. In greater detail: ELIÁŠ, K. Privilegované závěti a osnova českého občanského zákoníku [Privileged wills and outline of the Czech Civil Code]. In: Vilém Knoll (ed.). *Pocta Stanislavu Balíkovi k 80. narozeninám* [*Tribute to Stanislav Balik for the 80th birthday*]. Pilsen, 2008, pp. 79–90.

[18] ELIÁŠ, K. *Základní pojetí návrhu úpravy dědického práva* [*Basic Concept of the Proposal for Adjustment of Inheritance Law*], p. 102.

[19] According to the *ABGB* (§ 779-780 or in the wording of *ErbRÄG 2015* § 729 (3)), *SR/31* (§ 687-688), *VN/37* (§ 589-590) and even *OZ/50* (§ 552), as well as the German *BGB* (§ 2333), the Swiss *ZGB* (article 478) and the Polish *KC* (Article 1011), these descendants inherit or are entitled to the forced share. According to *OZ 2012* (§ 1646 (3)), which was rather inspired by *OZ/64* as amended by the 1991 amendment (§ 469a (2)), the Constitutional Court /ref: I. ÚS 295/10) has recently notified its unconstitutionality (obiter dictum), even the descendants of a (living) disinherited descendant do not inherit if the deceased does not show any other will. They should, however, be entitled to the forced share (cf. §§ 1483, 1643, 1645 and 1649).

that "formalities are to be demanded as little as possible by private individuals".[20] The last comparative institute was the alienation of the legacy, where it is possible to find a complete consensus again with *VN/37*. The explanatory note refers only to the Swiss *ZGB*.[21]

4.2 Open questions

The comparisons suggest that the recodification of the inheritance law followed a super revision proposal of 1931 even more than the 1937 government bill. In particular, we can mention the rule which was transferred from the *ABGB* (§ 726) to *SN/31* (§ 648), but no longer to *VN/37* (§546), according to which a legatee becomes an heir (§ 1633 of the *OZ*), or the rule which was taken from *ABGB* (§ 667) into *SN/31* (§ 598), but *VN/37* (§ 485) enshrined contrary rule (presumed debt settlement), according to which the legacy of the same amount as the testator's debt, both belong to the legatee (§ 1617 of the *OZ*).

From among less important distinctions, we can mention for example, disinheritance due to conviction of the heir for "a criminal offense committed in circumstances of a perverse nature" (§ 1646 of the *OZ*), which amounts more to *SN/31* (§ 677) than to *VN/37* (§ 578), which states "for a crime that indicates the perverse nature".[22]

The new inheritance law undoubtedly builds on the interwar recodification, which came to parliamentary debate eighty years ago, but in some institutes it coincides with the *(West) Galician Civil Code* (1797), which became the direct precursor of *ABGB* in 1811 so called "*Urentwurf*"). In particular, we can mention the inheritance contract as a general inheritance title (*OZ* § 1582)[23] or the distinction between adult and minor forced heirs (*OZ* § 1643),[24] both of which were changed when finalizing the *ABGB*.

It is also important to recall that the individual versions of the new Civil Code have gradually evaded their interwar patterns, which is evident especially in the regulation of the forced share: in the original bill of 2005 professor Eliáš not only assumed the Austrian standard of protection of the forced heirs, but even increased it; on the other hand , in the course of the recodification, there was a significant weakening of their position - not only by reducing the amount of the forced share itself (which is secondary), but also by a number of other changes, especially the right to withdraw a gift shortening the forced share, which is familiar with all the traditional European civil codes (see, for example, Articles 920 and 924 *CC*, § 951 and 952 *ABGB*, § 2325 and 2329 *BGB*, 527 *ZGB*).

[20] ELIÁŠ, K. et al. *Nový občanský zákoník* [*New Civil Code*]. p. 684.

[21] Ibid., p. 702.

[22] According to criminal code, the offense is divided into felonies and misdemeanours, and the misdemeanour is to be understood as a reason for disinheritance, for example, the abuse of animals (§ 302). In greater detail: KARHANOVÁ, M. Dědická nezpůsobilost a vydědění vs. přečiny a zločiny [Incapacity to inherit and disinheritance vs. felonies and misdemeanours]. *Ad Notam*. 2011, Vol. 17, No. 4, pp. 7–11.

[23] In greater detail: STARÝ, M. Manželská dědická smlouva a její historické kořeny [Marriage hereditary contract and its historical roots]. In: *Civilnoprávne inštitúty a ich historická reflexia vo svetle moderných kodifikácií* [*Civil law institutes and their historical reflection in the light of modern codification*]. Banská Bystrica, 2016, pp. 273–283.

[24] However, in our law, this was done under OZ 1950 (§ 551) and OZ 1964 (§ 479) under the influence of Soviet law. Cf. resolution on § 422 of RSFSR 1922. In greater detail: PROCHÁZKA, J. *Občanský zákon Ruské sovětské federativní socialistické republiky* [*The Civil Law of the Russian Soviet Federative Socialist Republic*]. Prague, 1946, p. 105.

At the beginning of the recodification works, the inspiration of the First Republic proposals could be as much as 85 %.

5. PERSONALITIES AND LITERATURE OF INHERITANCE LAW UNTIL 1950

5.1 Introduction

In our interpretation, besides the approximation of key publications from the era of the General Civil Code, we will also focus on introducing contemporary civil law.[25] In principle, we can divide it into three periods: 1) the founding period (to the First World War), 2) the peak period (interwar), and 3) the crisis (war and post-war period). In the following, we will deal with the situation until 1938/39, in the era until 1948 no more work in the area of inheritance law has arisen (both textbooks and commentaries were repeated releases).[26]

5.2 The Founding period (until 1918)

First it was necessary to lay down the institutional foundations: in the framework of the changes in 1848, the teaching of law in the Czech language was temporarily successful, in 1861 the Czech stool for Austrian civil law was re-established and a new magazine *Právník* [*Lawyer*],[27] was established, which later became the press authority of the newly established *Právnické jednoty v Praze* [*Legal Unity in Prague*] (1864), and in 1882 Prague University was divided into Czech and German; it was a period of preparation (until 1882) and consolidation (1882–1918). Antonín Randa was the main personality of the period of law studies, and other important civilians of that period were Randa's pupils Josef Stupecký and Emanuel Tilsch; historicism was a determining scientific direction.

A) The first person who lectured inheritance in the Czech language on the university grounds was Vendelin Grünwald (1812–1885). He studied law in Vienna (graduated in 1842), where he worked as an educator at Count Harrach and then in law. At the Faculty of Law in Prague he lectured civil law in 1850–1854 on the basis of an imperial permit, which granted him the same rights as the habilitated associate professors. Among others, he lectured also the history of inheritance law in the countries of the Austrian monarchy. Between 1848 and 1850, he translated, together with K. J. Erben, J. Jireček and J. Neubauer,

[25] From legal biographical works, cf. NAVRÁTIL, M. (ed.). *Almanach československých právníků: životopisný slovník čs. právníků, kteří působili v umění, vědě, krásném písemnictví a politice od Karla IV. počínaje až na naše doby* [*Almanac of Czechoslovak lawyers: biographical dictionary of Czechoslovak lawyers who worked in art, science, literature and politics from Charles IV. starting till our time*]. Prague, 1930, and SKŘEJPKOVÁ, P. (ed.). *Antologie československé právní vědy v letech 1918–1939* [*The Anthology of Czechoslovak Legal Science in 1918–1939*]. Prague, 2009. Currently there are intensive works on extensive project *Encyklopedie českých právních dějin* [*Encyclopedia of Czech legal history*] (chief editors K. Schelle and J. Tauchen), which is divided into many volumes, two of them will contain biographical medallions (see: http://www.encyklopedie-pravni-dejiny.cz/).

[26] To articles cf. database TAUCHEN, J., KAZDA, J. (eds.). Bibliografie vybraných právnických časopisů a sborníků 1918–1989 [Bibliography of selected legal journals and proceedings 1918–1989]. In: *Informační systém Masarykovy univerzity* [online]. [2019-10-15]. Available at: <https://is.muni.cz/el/1422/podzim2013/EL032/um/index.html>.

[27] In the Digital Library of the Academy of Sciences of the Czech Republic there are available editions of the periodical from 1861–1837, Vol. 1-75 (available from: kramerius.lib.cas.cz).

the General Civil Code into Czech (however, the translation was not printed). In 1853, he began to give an account of the Austrian inheritance law in a commentary form. Of the three planned workbooks, only the first (108 pp.), dealing with § 531-646 of the Civil Code (on inheritance law, on testamentary dispositions, and in particular on wills, and on substitution and custodial succession), was published.[28] He also published in magazines.[29] Due to his little prospect of gaining a professorship, he moved to České Budějovice in 1854, where he was engaged in advocacy and later became involved in political life (he was repeatedly a deputy of the Provincial Assembly and the Council of the Reichs) and he had greatly contributed to the support of education in southern Bohemia.

B) Antonín Randa (1834–1914)[30] and Josef Stupecký (1848-1907) were rather marginalized in the inheritance law. This was due to the fact that Joseph Unger, who set out the program of Austrian civil law, systematically elaborated in addition to the general part also the inheritance law,[31] and Randa therefore focused his attention primarily on substantive law. From inheritance law he wrote only one larger and two minor treatises on legislative projects[32] and partly touched upon in the context of the interpretation of the acquisition of property rights.[33] Stupecký was primarily concerned with the law of obligations; he dealt with inheritance law only within his lectures[34] and partly also in the treatise on illegitimate children.[35]

Only at the beginning of the 20th century did the attention of the Czech civil law also turn to the inheritance law. The emphasis must be placed primarily on Emanuel Tilsch

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[28] GRÜNWALD, V. *Právo dědické podlé obecného zákonníka občanského s výkladem jakož i přípravným a historickým úvodem* [*The right of inheritance under the General Civil Code with interpretation as well as a preparatory and historical introduction*]. Prague, 1853.

[29] GRÜNWALD, V. O původu i o studium obecného občanského zákona [On Origin and Study of General Civil Code]. *Časopis českého Museum* [*Magazine of the Czech Museum*]. 1850, Vol. 24, pp. 81–90 and 286–296.

[30] Newer cf. *Prof. Dr. Antonín Randa: zakladatelská osobnost pražské civilistiky: sborník prací k 175. výročí narození a 95. výročí úmrtí* [*Prof. Dr. Antonín Randa: Founding Personality of Prague Civil Law: Proceedings dedicated to 175th Anniversary of Birth and 95th Anniversary of Death*]. Prague, 2009; ELIÁŠ, K. Osobnost Antonína Randy a jeho vliv na české soukromé právo [Antonín Randa's Personality and his Influence on Czech Private Law]. *Právník* [*Lawyer*]. 2014, Vol. 153, No. 10, pp. 811–815; VELEK, L. Antonín Randa očima svých současníků [Antonín Randa by the eyes of his contemporaries]. *Právník* [*Lawyer*]. 2016, Vol. 155, No. 8, pp. 673–688.

[31] UNGER, J. *System of österreichischen allgemeinen Privatrechts VI. Das österreichische Erbrecht*. Leipzig, 1894. In: *Max-Planck-Institut für europäische Rechtsgeschichte* [online]. [2019-10-15]. Available at: <http://dlib-pr.mpier.mpg.de/m/kleioc/0010/exec/ books/%22213233%22>.

[32] RANDA, A. *Der Erwerb der Erbschaft nach österreichischem Recht auf Grundlage des Gemeinen Rechtes: ein Beitrag zur Beurtheilung des österreichischen Entwurfs eines Gesetzes für den Erbschaftserwerb vom Jahre 1866.* Wien, 1867. 149 pp.; id. Vládní osnova zákona, kterýmž se upravuje nabývání dědictví. Zpráva komise „právnické jednoty", zřízené k tomu, aby dala své zdání o jmenované právě osnově [The government's outline of the law governing the acquisition of inheritance. The report of the "Legal Unity" Commission, set up to give its appearance to the just-out outline]. *Právník* [*Lawyer*]. 1868, Vol. 8, pp. 125–134; id. Úvaha o návrhu uherského práva dědického [Reflection on the proposal of Hungarian inheritance law]. *Právník* [*Lawyer*]. 1888, Vol. 28, pp. 325–333.

[33] RANDA, A., KASANDA, V. *Právo vlastnické dle rakouského práva v pořádku systematickém* [*Right of ownership under Austrian law in systematic order*]. 7. ed. Prague, 1922 (reprint: Wolters Kluwer, 2008), pp. 193 and 197ff.

[34] STUPECKÝ, J. *Odkazy dle rakouského práva občanského* [*References under Austrian Civil Law*], 1898; *Rodinné fideikomissy* [*Family fideikomissy*], 1905; *Rakouské právo dědické* [*Austrian Inheritance Law*], 1907.

[35] STUPECKÝ, J. *Legitimace dětí nemanželských podle práva rakouského: poznámky k §§. 160-162. zák. obč.* [*Legitimation of illegitimate children according to Austrian law: comments on §§. 160-162. of Civil Code*]. Prague, 1897. 32 pp.

(1866–1912),[36] who apart from the obvious lithographic script[37] also prepared a comparative monograph on inheritance law,[38] where he elaborated the principles of inheritance law, the conditions for the inheritance of succession and the legal succession. On the basis of this, he was appointed a regular professor.

The reason why Tilsch decided (after the habilitation work on lien and a monograph on the influence of new procedural laws on civil law, on the basis of which he was appointed an extraordinary professor) for inheritance law is not quite clear: in his law practice he did before the university career, he apparently did not meet the inheritance issue much, the book did not precede any preparatory studies, and the articles published by him would suggest rather the choice of the topic of bond law.[39] Probably more circumstances were involved: the inheritance problem has been systematically ignored in our academic environment since the time of Grünwald, in the Austrian literature there were well processed materials (Ofner, Pfaff-Hofmann[40]), and a comparative approach to which Tilsch had very good language skills (apart from the obvious German and Latin, he actively mastered French, Italian and English, passively Polish, Russian, and Spanish) could be applied to an increased degree. Finally, the considered revision of the Civil Code could also play a role,[41] which was finally made in the form of three partial amendments from 1914-1916.

Tilsch's considerations may still be inspirational: for example, the notion and extent of the estate (pp. 46 and following) and special claims (pp. 56 and following), the issue of representation (pp. 88 and 96 and following) and the legal status of descendants of non- descendant (pp. 98 and following) due to incapacity to inherit, disinheritance and surrender (refusal to inherit), or the extent of the law of inheritance (pp. 107 and following). It must also be stressed that the issues raised by him were corrected in later amendments.

Further, we must also draw attention to the publications of the Romanists on inheritance law, in particular to Josef Vančura (1870–1930), who was habilitated on the basis of the work on usucaption and subsequently became an extraordinary professor on the basis of the work on praelegatum. In the closing chapters of both works he also devoted himself

[36] In greater detail: HORÁK, O. Emanuel Tilsch a česká civilistika [Emanuel Tilsch and Czech civil law]. *Právník* [*Lawyer*]. 2016, Vol. 155, No. 4, pp. 299–309.

[37] TILSCH, E. *O fideikommissech* [*On fideikommiss*], 1905, 1908 and 1911; *Právo dědické* [*Inheritance Law*], 1906, 1908 and 1911.

[38] TILSCH, E. *Dědické právo rakouské se stanoviska srovnávací právní vědy* [*Austrian Inheritance Law with Comparative Legal Science Opinions*]. Part 1. Prague ,1905 (reprint: Wolters Kluwer, 2014). Cf. Review of Stupecký. *Sborník věd právních a státních* [*Proceedings of Legal and State Sciences*]. 1907, Vol. 7, pp. 360–362.

[39] In essence, along with the monograph, Tilsch published his introductory part on the principles of inheritance law in the faculty magazine: TILSCH, E. Úvod do práva dědického [Introduction to the law of inheritance]. *Sborník věd právních a státních* [*Proceedings of Legal and State Sciences*]. 1905, Vol. 5, pp. 261–278.

[40] OFNER, J. (ed.). Der Ur-Entwurf and the Berathungs-Protokolle des Oesterreichischen Allgemeinen Bürgerlichen Gesetzbuches. Bd. I-II. Wien, 1889. In: *SUB Göttinger Digitalisierungszentrum* [online]. [2019-10-15]. Available at: <http://gdz.sub.uni-goettingen.de/gdz>; PFAFF, L., HOFMANN, F. Commentar zum österreichischen allgemeinen bürgerlichen Gesetzbuche. Bd. I and II. Wien, 1877–1887. In: *Universität Salzburg* [online]. [2019-10-15]. Available at: <http://www.uni-salzburg.at/index.php?id=29049>.

[41] In 1904 a review committee was appointed under Unger's presidency, and Randa, to whom Tilsch devoted his work, was also a member.

to newer law (general, Austrian, and German).[42] Otakar Sommer was habilitated by a work on *dies cedens*, which he connected even more closely with modern civil law.[43]

Last but not least we can mention from this period in the area of peasant inheritance law publications of economist František Fiedler (1858–1925)[44] or judge Alois Cerman (1864–1929).[45]

5.3 The peak period (from 1918 to 1938/39)

After 1918 new academic institutions were established - in addition to the traditional law faculties in Prague (Czech and German), the Brno (1919) and Bratislava (1921) law faculties began to operate. In addition, a number of new journals were created, in the area of inheritance law it was *České právo [Czech law]* published by the Czechoslovak Notaries Association issued in 1919–1943 and 1946–1948 (28 years).

The most famous representatives of interwar civil law include professors Jan Krčmář, Emil Svoboda, Jaromír Sedláček and František Rouček; positivism was the determining scientific direction, especially in the form of the so-called "normative theory" (pure legal law) at the Brno Law Faculty. Inheritance law, unfortunately, was somewhat part of their interest.

Jan Krčmář (1877–1950) is considered to be the most important personality of interwar civil law.[46] He, as the first Czech lawyer, literally worked out the whole system of civil law and also took a leading role in the recodification of civil law. However, he dealt with the Inheritance Law only in two short periods: on the one hand, after studying, before focusing on private international law; further in the era of the First World War in connection with the interpretations of *ABGB's* amendments.[47]After 1918, he dealt with inheritance law only

[42] VANČURA, J. *Usucapio pro herede. Studie z práva římského [Usucapio pro herede. Study from Roman Law]*. Prague, 1897. In: *Digitální knihovna Právnické fakulty MU* [online]. [2019-10-15]. Available at: <https://digi.law.muni.cz/handle/digilaw/14177>; id. *Praelegát dle práva římského [Praelegatum according to Roman law]*. Prague, 1902. In: *Digitální knihovna Právnické fakulty MU* [online]. [2019-10-15]. Available at: <https://digi.law.muni.cz/handle/digilaw/210>.

[43] SOMMER, O. *Dies cedens v právu římském* [*Dies cedens in Roman law*]. Prague, 1913; id. Dies cedens. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung,* 1913, Vol. 34, Issue 1, pp. 394–401.

[44] FIEDLER, F. *Zemědělská politika. Sv. 2. Právo dědické v zemědělství* [*Agricultural policy. Vol. 2. Inheritance law in agriculture*]. Praha, 1899.

[45] CERMAN, A. *Zvláštní dědická posloupnost v usedlosti rolnické v Čechách dle zákona ze dne 7. srpna 1908 č. 68 z. z. [Special inheritance sequence in the peasant homestead in Bohemia according to law from 7 August 1908 No. 68 Coll.]*. Kamenice nad Lipou, 1909. In: *Digitální knihovna Právnické fakulty MU* [online]. [2019-10-15]. Available at: <https://digi.law.muni.cz/handle/digilaw/13561>, edited German edition from 1910 (special print *Zeitschrift für Notariat und freiwillige Gerichtsbarkeit in Österreich,* 1909, Nr. 42-51).

[46] In greater detail: KUKLÍK, J. *Profesor Jan Krčmář. Pozapomenutá osobnost pražské civilistiky* [*Professor Jan Krčmář. A forgotten personality of Prague civil law*]. Prague, 2008.

[47] KRČMÁŘ, J. Povinný díl a darování [Forced share and donation]. *Právník* [*Lawyer*]. 1901, Vol. 40, pp. 822–828 and 853–860; id. O substituci fideikomisární k dílu povinnému [On fideicommissary substitution of the forced share]. *Právnické rozhledy* [Legal Outlooks]. 1902, Vol. 3, pp. 119–121, 129–130, 141–143 and 154–156; id. Poznámky k dědickému právu dílčí novely k občanskému zákonníku [Remarks on the inheritance law of a partial amendment to the Civil Code]. *Právník* [*Lawyer*]. 1915, Vol. 54, pp. 201–209; id. Příspěvky k výkladu reformovaného práva občanského [Contributions to interpretation of the reformed civil law. K dědickému právu třetí novelly a řádu o zbavení svéprávnosti. To the inheritance law of the third amendment and the order for the waiver of lawfulness]. *Právník* [*Lawyer*]. 1918, Vol. 57, pp. 1–12 and 49–61.

marginally, for example in the context of reflection on the reform of civil law.[48] In terms of inspiration, his textbook on inheritance law[49] has still retained its importance and also some partial interpretations, e.g. on the nature and effects of an inheritance agreement (or § 1253 *ABGB,* today § 1585 of the *OZ*).[50]

Jaromír Sedláček (1885–1945), the most famous civilian of the inter-war era, was famous for his editorial and authorial share on a large six-part commentary.[51] The only bigger work on inheritance law was his opinion on the reform of inheritance law at the time of recodification.[52]

He also participated in the Czech edition of the heirloom law book by Robert Mayr-Harting (1874–1948), in which he revised the German translation and supplemented the Czech literature.[53] Versatile František Rouček (1891–1952), whose main field of interest was business law, quite successfully commented inheritance legal provisions in a great commentary, along with František Štajgr (1895–1972),[54] an expert in procedural law.

Among the interwar scholars, Tilsch's closest pupil and later successor Emil Svoboda (1878–1948), was the most devoted to inheritance law: a study on the interpretation of legal proceedings served as a basis for his habilitation,[55] in 1919 he became the editor of the newly established notary magazine *České právo* [*Czech law*] and during the interwar recodification he was an officer of the subcommittee on inheritance[56] and later also a member of the review committees. He was interested in philosophy, he was an excellent speaker and stylist, unfortunately his literary activity was not exhaustive: be-

[48] KRČMÁŘ, J. Několik poznámek k chystané reformě práva občanského [Several comments on the forthcoming reform of civil law]. *Sborník věd právních a státních* [*Proceedings of Legal and State Sciences*]. 1920, Vol. 20, pp. 35–59, [2019-10-15]. Available at: <https://archive.org/details/sbornkvdprvn20univuoft>.

[49] KRČMÁŘ, J. *Právo občanské. V. Právo dědické* [*Civil law. V. Inheritance Law*]. Prague, 1930, 2nd ed. 1933; 3rd ed. 1937 (reprint: Wolters Kluwer, 2014). He extended his lithographic *Základy přednášek o právu občanském* [*Foundations of Civil Law Lectures*], while the *Právo dědické* [*Inheritance Law*] was first established in 1905.

[50] Ibid., pp. 41–48.

[51] SEDLÁČEK, J., ROUČEK, F. (eds.). *Komentář k československému obecnému zákoníku občanskému a občanské právo platné na Slovensku a v Podkarpatské Rusi* [*Commentary on the Czechoslovak Civil Code Civil and Civil Law applicable in Slovakia and Sub-Carpathian Russia*]. I-VI. Prague, 1935–1937 (reprint: Codex Bohemia, 1998; Wolters Kluwer, 2014).

[52] SEDLÁČEK, J. Poznámky k navrhované reformě dědického práva [Comments on the proposed reform of inheritance law]. *Vědecká ročenka právnické fakulty Masarykovy university v Brně* [*The Scientific Yearbook of the Faculty of Law of the Masaryk University in Brno*]. 1923, Vol. 2, pp. 148–155.

[53] MAYR, R. *Soustava občanského práva. Kniha pátá: právo dědické* [*Civil Law System. Book 5: Inheritance law*]. Brno 1927 (reprint: Wolters Kluwer, 2019).

[54] SEDLÁČEK, J., ROUČEK, F. (eds.). *Komentář k československému obecnému zákoníku občanskému a občanské právo platné na Slovensku a v Podkarpatské Rusi.* III. (§§ 531-858.) [*Commentary on the Czechoslovak Civil Code Civil and Civil Law applicable in Slovakia and Sub-Carpathian Russia*]. Prague, 1936. 680 pp.

[55] SVOBODA, E. *Vůle vnitřní a vůle projevená právním činem* [*Internal Will and Will Expressed by Law*]. Prague, 1911, and id. Problém vůle v rakouském právu dědickém [The problem of will in Austrian law of inheritance]. *Právník* [*Lawyer*]. 1921, Vol. 51, pp. 195–206 and 257–284.

[56] *Dědické právo: návrh subkomitétu pro revisi občanského zákoníka pro Československou republiku* [*Inheritance law. Subcommittee proposal for revising the Civil Code for the Czechoslovak Republic*]. Prague, 1921, 2nd ed. 1924.

sides the repeated edition of the textbook on inheritance law[57] we can mention only a few shorter articles that originated mainly in connection with the preparation of the re-codification.[58]

The most important author of literature relating to inheritance was Antonín Hartmann (1864–1947), trade union leader of the Ministry of Justice in the inter-war era. He has prepared comments on procedural rules and manuals on substantive law, and his collection of patterns can also be inspiring.[59]

Last but not least, we will mention some "Brno" works of government bill: two sophisticated studies were prepared by the Financial Prosecutor and the Government Councillor in Brno Josef Voslař (1874–1956),[60] several inspirational articles on the law were also contributed by the Brno specialist in Romance languages Jan Vážný (1891–1942).[61]

While Voslař's works clarify the inspirational sources of the government bill from 1937 and indirectly the new Civil Code, Vážný's articles convincingly show the anachronism of some contemporary solutions, when the legislator formally and without understanding accepted Roman rules, for instance criticized unlimited liability for debt, and recommended "the heir's responsibility for the asset's debts".[62]

The habilitation work of Miroslav Boháček (1899–1982) on the issue of the annulment of the Roman law legacy is still applicable.[63]

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[57] SVOBODA, E. *Dědické právo* [*Inheritance law*]. Prague 1921, 2nd ed. 1926, 3rd ed. 1946.

[58] Cf. SVOBODA, E. K revisi občanského zákoníka: Vpočtění věna, Hodnota pozůstalosti, Právo vdovské, Beneficium inventarii [To the Revision of the Civil Code: Dowry Calculation, Value of Inheritance, Widow's Right, Beneficium inventarii]. *České právo* [*Czech law*]. 1921–22, Vol. 3, pp. 1–3, 41–44, 91–94 and 101–106 (also an imprint); as well as SVOBODA, E. *Výbor prací z práva občanského a z právní filosofie: k šedesátým narozeninám prof. Dr. E. Svobody* [*Selection of works from Civil Law and Legal Philosophy: to the 60th Birthday of Prof. Dr. E. Svoboda*]. Prague, 1939.

[59] HARTMANN, A. (ed.). *Nesporné řízení* [*Undisputed proceeding*]. Prague, 1926, 2nd ed. 1931; id. (ed.). *Vzory soukromoprávních smluv a prohlášení a podání v nesporných věcech* [*Patterns of private-law contracts and declarations and submissions in non-contentious cases*]. Prague, 1935; id. *Poslední pořízení* [*Last Disposition*]. Prague 1935; id. *Zákonná dědická posloupnost a projednání pozůstalosti v zemích české a moravské* [*Legal inheritance and examination of estate in Czech and Moravian countries*]. Prague, 1937.

[60] VOSLAŘ, J. *Doporučuje se zavésti povinný díl pro vdovu a opraviti § 700 obč. zák. (dvorní dekret ze dne 23. května 1844 čís. 807 ř. z.)?* [*It is recommended to introduce forced share for the widow and to repair § 700 of the Civil Code. (Court Decree of May 23, 1844, No. 807, Sb.)?*]. Brno 1925. 37 pp. (Second Congress of Czechoslovak Lawyers in Brno, Section I, Civil and Commercial Law, Question 3, Work 2); id. Dědické právo v osnově občanského zákona [Inheritance law in civil law]. *Časopis pro právní a státní vědu* [*Journal for Law and State Science*]. 1938, Vol. 21, pp. 347–370.

[61] Cf. VÁŽNÝ, J. Pojem práva dědického a účelnost jeho dnešní struktury [The concept of inheritance law and the usefulness of its present structure]. *Právny obzor* [*Legal Horizon*]. 1923, Vol. 6, pp. 97–103; id. Římské právní ideje v občanském zákoníku a v osnově [Roman legal ideas in the Civil Code and in the outline]. *Časopis pro právní a státní vědu* [*Journal for Law and State Science*]. 1933, Vol. 16, pp. 171–186.

[62] VÁŽNÝ, J. *Pojem práva dědického…* [*The notion of inheritance law…*], pp. 100–101.

[63] BOHÁČEK, M. *Ademptio legati. Příspěvek k nauce o zrušení odkazů podle práva římského* [*Ademptio legati. Contribution to the doctrine on the abolition of legacy according to Roman law*]. Bratislava, 1925.

5.4 The crisis period (after 1938/39)

In the war and post-war period, only a few new civilian works on inheritance law were issued, most of them being supplementary editions.[64] On the contrary, a number of original Romance works were prepared at this time, by the First-Republic Professors Vážný and Boháček[65], as well as by their younger colleagues, Josef Klíma (1909–1989) and Milan Bartošek (1913–1996), where the overlapping of the existing law was missing.[66]

6. CONCLUSION

The creators of the new Civil Code were most closely related to the Czech-Austrian civilian tradition, mediated by interwar proposals and periodical literature, in the modification of the inheritance law (compliance with the 1937 Civil Code government bill is approximately in 78 % of the provisions).

Whether such a range and, in particular, the way of the follow up was the right choice, will show with more time (but nowadays some parts seem unnecessarily complicated or de facto obsolete). Enhancing the purchasing freedom and restoring some traditional institutes (such as legacy) will be perceived by the general public as being mostly positive; other returns (such as debt adjustment and inventory reservations) will rather be criticized, as was the case in the inter-war era. However, a major problem is the failure of some traditional institutes to take over (especially the removal of the gift for shortening the forced share).

Finally, the undisputed advantage is the possibility of inspiration with contemporary Czech and modern Austrian literature and jurisprudence. Nevertheless, a contemporary professional discussion can be valuable not only for the interpretation and understanding of the new regulation, but also for the *de lege ferenda* considerations.

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[64] Cf. CERMAN, A., CERMAN, J. *Rolnické právo dědické podle čes. zem. zákona č. 68/1908 o dědické posloupnosti v usedlosti střední velikosti v Čechách a podle paragrafů 39 až 49 přídělového zákona č. 81/1920 o dědické posloupnosti v rolnické nedíly [Peasant inheritance law according to Czech provincial law. Act No. 68/1908 on succession in a medium-sized farmstead in the Czech lands and in accordance with sections 39 to 49 of Act No. 81/1920 on succession in a peasant nook]*. Prague, 1939. In: *Digitální knihovna Právnické fakulty MU* [online]. [2019-10-15]. Available at: <https://digi.law.muni.cz/handle/digilaw/13432>. From the new regulation, cf. CERMAN, J. *Zemědělské právo dědické: (výklad I. dílu zákona ze dne 3. července 1947 č. 139 Sb. s texty zákona, osnov a vzorci protokolů a vyřízení)* [*Agricultural Inheritance Law: (Interpretation of Part I of the Act of July 3, 1947, No. 139 Sb. with the texts of the law, the outlines and the patterns of the protocols and the settlement)*]. Prague, 1948.

[65] Cf. VÁŽNÝ, J. *Pupilární substituce ve vývoji římského práva* [*Pupillary substitution in the development of Roman law*]. Prague 1940; id. K § 609 obč. zákona [To § 609 of the Civil Code]. *Časopis pro právní a státní vědu* [*Journal for Law and State Science*]. 1940, Vol. 23, pp. 11–17; id. Quasipupilární substituce [Quasipupillary substitutions]. *Časopis pro právní a státní vědu* [*Journal for Law and State Science*]. 1940, Vol. 23, pp. 183–190; id. Historicky významné paragrafy občanského zákoníka [Historically significant paragraphs of the Civil Code]. *Časopis pro právní a státní vědu* [*Journal for Law and State Science*]. 1941, Vol. 24, pp. 275–298 (to § 808 of the OZO and excursus on fideicomisicary substitution); BOHÁČEK, M. Několik poznámek k problému pupiliární substituce [Several comments on the problem of pupillary substitution]. *Sborník věd právních a státních* [*Proceedings of Legal and State Sciences*], 1942, Vol. 42, pp. 114–143.

[66] BARTOŠEK, M. *Senatusconsultum trebellianum. Příspěvek k vývoji universálních fideikomisů a zásady zůstavitelovy disposiční volnosti [Senatusconsultum trebellianum. Contribution to the development of universal fideicomisary and the principle of the testator's freedom of disposition]*. Prague, 1945. In: *Digitální knihovna Právnické fakulty MU* [online]. [2019-10-15]. Available at: <https://digi.law.muni.cz/ handle/digilaw/7122>, and KLÍMA, J. *Querella inofficiosi testamenti. Příspěvek k vývoji nepominutelných práv dědických* [*Querella inofficiosi testamenti. Contribution to the development of the rights of forced heirs*]. Prague, 1947.