

## CONTEMPLATION OVER THE PUBLISHING HISTORY OF JOURNAL PRÁVNÍK

### 1. PRELIMINARY CONTEMPLATION

150<sup>th</sup> anniversary of *Právník* invites us to think about its birth and long life that will, as we sincerely hope, continue for at least another 150 years.

The new *Právník* was created from the initiative of Rudolf Thurn Taxis, Jan Jeřábek and Karel Jaromír Erben. One of the aims of the new journal was to make the case for the Czech language also within the context of legal culture and science. *Právník* was also intended to help in the development of the Czech state and legal consciousness.

On April 8<sup>th</sup> the newspaper *Národní listy* announced that a new juristic periodical *Právník* has been born and the newspapers also included the contents of the first issue.<sup>1)</sup> Thus *Právník* came to be a part of the Czech society.

When we look at the considerable number of articles and essays published in *Právník* since its birth in 1861<sup>2)</sup>, we see that majority of them deal with current legal issues of their times. Somewhat less frequent are essays and articles dealing with the history of law. Very rare are articles flexibly reacting to current political situation.

In the contents of the 1861 volume we would find no reflections on the February Constitution, there is no mention of Austro-Hungarian Compromise in the 1867 volume and December Constitution is mentioned by M.Havelka, but only in the following year<sup>3)</sup>. The 1871 volume contains nothing about Fundamental Articles and issues from 1890 do not mention the proposed separation agreement (Punktace).

At this time *Právník* prefers purely scholarly articles and, perhaps to avoid censorship, stays away from current state and legal topics. On the other hand we can say that frequently addressed topic of the Czech language fulfills the aim of increasing Czech consciousness within Austria.

The period of the First Republic reacts to the legal changes on the state level; however the editors of *Právník* focus consistently on scholarly topics. This is clear when we look at the articles published at the occasion of the birth of independent Czechoslovakia, but also at the articles dealing with the efforts to

<sup>1)</sup> *Národní listy* April 8<sup>th</sup> 1861, issue 96.

<sup>2)</sup> Cf. *Právník 1861-2006*, Praha 2007.

<sup>3)</sup> As for the year 1867, *Právnícká jednota*, which was publishing *Právník*, did react to the December Constitution – in his speech chairman M. Havelka reacted to the five constitutional laws that, among other things, meant equal treatment by courts, jury decisions in trials with criminal offenses and equality of languages, Cf. *Právník 1867*, p. 72.

redefine key branches of law. At the same time emphasis is put on presenting case law.

The period of the Second Republic and Protectorate is, for obvious reasons, not reflected on the pages of *Právník*. The authors focus on purely professional topics. This can be also said about the post-war period until 1948.

After February 1948 *Právník* becomes a tool of the ideology of those times. This influence is gradually decreasing during the sixties, only to grow considerably after the occupation in 1968. However, this did not limit the academic quality of many articles published during this period in *Právník*.

After 1989 the emphasis is once again put on the scholarly quality and on the discussion of new proposed laws.

But let us go back to the first issue of *Právník* from 1861. Jan Jeřábek<sup>4)</sup> uses legal historical perspective to formulate the program of the Czech state law in the area of the language development. He points out the fact that many historical legal monuments of the Czech Crown have been written in Czech as early as Rožmberk Book (*Rožmberská kniha*). He also mentions Vladislav Municipal Code (*Vladislavské zřízení zemské*), Koldín Town Code (*Koldínův městský zákoník*), Nine Books of Všehrd (*Všehrdovy Knihy devatery*) as well as records in the land books. After 1627 German was becoming the dominant language on state level but Jeřábek emphasizes implementation of the Imperial Code of Law (*Říšský zákoník*) in 1849 also in Czech, although it lasted only a few years. German language was dominant also within the University. Finally October Diploma from 1860 brought equality of both nations, which also meant equality of both languages.

Thurn Taxis in another pivotal article in the issue No. 1 from 1861 laid down the objective to cultivate natural and historical law in the most general sense. He thus stood above the petty quarrels of supporters of natural law and historical law, who were even trying to explain the efforts to achieve autonomy of Czech lands either in terms of natural or historical law.<sup>5)</sup> However, Taxis himself does not conceal his affiliation to the natural law.

M. Doležal is right when he points out the fact that after the change of editors in 1864, when *Právník* started being published once again after one-year-long pause<sup>6)</sup>, mostly positivistic articles appear in *Právník*. Attempts to discuss philosophical questions of law, so strong in the first two years, are cut short. There are no more discussions of historical and natural law. *Právník* after 1864 becomes a specialized periodical with high scholarly quality.

However, the year 1864 was a significant milestone in the development of

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<sup>4)</sup> JEŘÁBEK, J.: *Naše úloha*, *Právník* 1861, issue 1, pp. 1-6.

<sup>5)</sup> TAXIS, R.: *Právo přirozené a historické*, *Právník* 1861, issue 1, pp. 18-22.

<sup>6)</sup> The one year pause was perhaps caused by financial problems. However M. Doležal rejects this citing high numbers of subscribers. In his opinion the reasons were more likely to be political. Cf. DOLEŽAL, M.: *120 let časopisu „Právník“*, *Právník* 1981, p. 7.

Právník. In the initial declaration to the Czech lawyers it says among other things: “Every nation ... that wishes not to drown in this current, but to maintain its personality and become an acknowledged member of the great family of nations must take part in the noble struggle for enlightenment, must cultivate the fruitful fields of science.”<sup>7)</sup> Emphasis is again put on the Czech language.

The editors of Právník consider the following to be their mission:

1. Theoretical contributions, legal-historical essays and elaboration of ever-valid legal principles.
2. Practical articles that bring experience from civil and criminal law.
3. Critical articles based on Czech and foreign legislation.
4. Interesting observations from everyday life of lawyers, including advertisement of juristic vacancies etc.

The editorial board invites lawyers to contribute to the journal and subscribe. While the second, third and fourth points were successfully carried out the first point was somewhat neglected by the editors of Právník.

After 1918 Václav Hora clearly formulated the objectives of Právník and jurists in general in his article Coming of a New Era (Na prahu nové doby).<sup>8)</sup> He emphasized the need to involve jurists in the creation of new laws, because new state also needs new laws. Hora also called for educating new young lawyers and leading them to responsibility.

The next milestone in the development of Czechoslovakia, as well as Právník itself, was the end of the World War II in 1945, when lawyers, following the theory of continuity of President E. Beneš, put emphasis on preserving continuity.<sup>9)</sup>

Events of February 1948 and the following development, leading away from the democratic traditions, were reflected also on the pages of Právník. The topic of the day is the responsibility of lawyers in creating new socialistic law, role of national committees, Czechoslovak-Soviet friendship and its importance for the law, socialistic ownership, the need to overcome the bourgeois way of thinking, class struggle etc.

Along with the political liberalization in the sixties came a number of articles in Právník that brought interesting stimuli for further development of Czechoslovak statehood. Let us mention at least Fr. Šamalík, who in his article Relevance of Sociology for Science of State and Law (Význam sociologie pro vědu o státu a právu)<sup>10)</sup> emphasizes the importance of sociological methods in law and opens the door to deeper understanding of the law. Similarly V. Knapp

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<sup>7)</sup> Právník 1864, p. 1.

<sup>8)</sup> Právník 1919, p. 1 et seq.

<sup>9)</sup> Cf. for example NEUBAUER, ZD.: *Kontinuita našeho ústavního práva*, Právník 1945, p. 285 et seq., BUDNÍK, J.: *Kontinuita státu a práva československého*, Právník 1947, p. 136 et seq. and POŠVÁŘ, J.: *Kontinuita státu a práva československého*, Právník 1947, p. 256.

<sup>10)</sup> Právník 1963, p. 177 et seq.

contemplates using cybernetic methods in the law.<sup>11)</sup> These approaches would be previously perceived as bourgeois and unscientific. There is also an increasing number of juristic articles free of ideological moments.

The year of Prague Spring 1968 was too short to be projected into the prospective development of democratic Czechoslovakia. However, there are considerations of federalization of Czechoslovakia that occur again after its enactment also in the next volume.

Let us mention at least an article by J. Boguszak named Approach to Dealing with State Legal Relations of Czechs and Slovaks<sup>12)</sup> and an article by Vladimír Outrata called On the Questions of International Competence of Member States in Federative System.<sup>13)</sup>

After 1969 Právník more-or-less managed to avoid normalization ideology. A number of good juristic articles, theoretical and practical, were published mainly by teachers from the Charles University.

The editors-in-chief from 1945 to 1989 were:

Prof. Dr. Vladimír Solnař	(1945 – 1948)
Prof. Dr. Viktor Knapp	(1949 – 1961)
Dr. Ivan Bystřina, CSc.	(1962 – 1969)
Prof. Dr. Jiří Boguszak, DrSc.	(1970)
Dr. Jiří Grospič, CSc.	(1970)
Doc. Dr. Miloslav Doležal	(1971 – 1982)
Prof. JUDr. Otto Kunz, DrSc.	(1982 – 1983)
Doc. JUDr. Josef Blahož, DrSc.	(1983 – 1989)

Year 1989 brought also to Právník new directions and ideas about state development of Czechoslovakia and after 1992 about the Czech Republic. A number of articles on constitutionalism, legal consciousness, legal culture and philosophy and legal institutes in *de lege ferende* sense are published.

There appear essays challenging the notion of lawyers as dry and boring clerks. An example is M. Škop, who wrote an essay on The Works of Franz Kafka as Postmodern Legal Metaphor.<sup>14)</sup>

This also emphasizes the importance of raising young lawyers, who should not be narrowly specialized and thus marks a return to the best traditions of Právník, when historical legal and philosophical contributions would appear on its pages.

From 1989 the editors-in-chief were:

Doc. JUDr. Josef Blahož, DrSc.	(1989 – 1991)
JUDr. Milan Kindl, CSc.	(1992 – 2009)

<sup>11)</sup> KNAPP, V.: O možnosti použití kybernetických metod v právu, *Právník* 1963, p. 111 et seq. See also WEINBERGER, O.: O verifikaci právně kybernetických postupů, *Právník* 1968, p. 416 et seq.

<sup>12)</sup> Přístup k řešení státoprávních vztahů Čechů a Slováků, *Právník* 1968, p. 558.

<sup>13)</sup> K otázkám mezinárodní způsobilosti členských zemí ve federativním uspořádání, *Právník* 1968, p. 1031 et seq.

<sup>14)</sup> Dílo Franze Kafky jako postmoderní právní metafora, *Právník* 2004, p. 1225 et seq.

From 2010 the editor-in-chief is Prof. JUDr. PhDr. Karolina Adamová, DSc.

## 2. ABOUT THE FOUNDERS OF PRÁVNÍK

Three men that were behind the birth of *Právník* surely deserve more attention on the day we celebrate this anniversary. Karel Jaromír Erben (1811–1870)<sup>15)</sup>, known above all as author and collector of Czech fairy tales, worked, after his studies at the Prague faculty of law, at felony court, later at the fiscal office. In 1848 he was a member of the National Committee. He was editor of the newspaper *Pražské noviny* and he also collected important legal documents. For many years he was also the archivist of the city of Prague and for the public he provided access to old Czech legal documents.

His knowledge of the Czech language directly destined him to involvement in a new committee in Vienna that was supposed to elaborate Czech legal terminology.

His interest in the Czech legal language and Czech statehood lead him, together with J. Jeřábek and Rudolf Thurn Taxis, to the founding of journal *Právník*, where scholarly expertise was to be combined with sense for literary expression.

Jan Jeřábek (1831–1894)<sup>16)</sup> was a judge and later attorney at law. From 1872 to 1885 he was a member of the editorial board of the journal *Pokrok* and was contributing to *Národní listy*, among others. He also held many political offices. For example, from 1864 he was a member of the Czech land parliament.

Rudolf Thurn Taxis (1833–1904)<sup>17)</sup> was, besides criminal law, interested also in philosophy, which is clearly noticeable in his contributions to *Právník*. His expertise, linguistic and political focus lead him to supporting the Czech interests also internationally. In 1848 he became a member of the student legion in *Cohort of Gymnasists*. His signature can be also found under the Memorandum of Fr. L. Rieger from 1860 addressed to the Emperor and demanding more liberties for Czechs. Interestingly, he was also the first head of the choir *Hlahol*, which was certainly deserved as he was good bassist and music enthusiast.

These three men met in Taxis' palace to shape the journal *Právník*, which was to promote Czech language also in state bureaus and courtrooms. Erben was to be responsible for grammatical side of the new journal. Taxis remained on the editorial board until 1864, when publishing of *Právník* was taken over by *Právnícká Jednota*.<sup>18)</sup>

## 3. JEDNOTA PRÁVNICKÁ – EDITOR OF JOURNAL PRÁVNÍK

*Jednota právnícká* started publishing *Právník* in 1864. Together with the

<sup>15)</sup> NAVRÁTIL, M.: *Almanach československých právníků*, Prague 1930, pp. 92-93.

<sup>16)</sup> *Ibid.*, p. 177.

<sup>17)</sup> *Ibid.*, pp. 458-459.

<sup>18)</sup> Cf. ZAPLETAL, Vl.: *JUDr. Rudolf kníže Thurn Taxis*, *Pozitivní noviny*, 26. 06. 2007, [www.pozitivni-noviny.cz](http://www.pozitivni-noviny.cz)

founders of this periodical *Jednota právnická* perceived it as a platform for the development of Czech jurisprudence and Czech legal terminology. Also in the critical year 1918 they considered publishing *Právník*<sup>19)</sup>, with the support of Czech Academy of Sciences, Literature and Arts, to be one of their key tasks.<sup>20)</sup> The pages of *Právník* often contained very professional articles by theoretical law scholars as well as practitioners. *Jednota* used to organize talks given by Czech, Slovak but also foreign professors. On January 22<sup>nd</sup> 1920 an expert from Slovakia, Mr. Ráth, appeared for the first time in *Jednota*. As for foreign professors it was for example French professors Lapradelle and Lambert.<sup>21)</sup>

Václav Joachim in his article *Seventy Years of Právnícká jednota* notes:

“The revolution has also had negative consequences: professors of the Faculty of Law at the Charles University, the core of our lecturers, are now to large extent busy working for the state, travelling abroad etc., so they are not able to work for *Jednota* as much as before.”<sup>22)</sup>

*Jednota* also took part in the organization of the second scientific convention of Czechoslovak lawyers, which took place between May 30<sup>th</sup> and October 13<sup>th</sup> 1925 in Brno. *Jednota* maintained friendly relations with Moravian and Slovak organizations of lawyers.

In 1919 *Jednota* had 520 members and by 1924 the number increased to 601. However, due to the ensuing economic crisis the member base shrunk. Membership contribution increased in 1919 from 8 to 12 Kč, and it continued to grow, reaching 40 Kč by 1931. Journal *Právník* had within the period between 1918 and 1938 large number of subscribers, with the exception of the beginning of the thirties, when the economic crisis lead to drop in the number of subscribers, which also resulted in reduced budget for *Právník*.

In 1925 *Jednota* started publishing *Bulletin de droit Tchecoslovaque* as an international channel for Czech authors. It was intended to be published on quarterly basis, however for financial reasons the issues were delayed and in 1939 it ceased to exist for some time.

V. Joachim ended his article written on the occasion of seventieth anniversary of *Jednota právnická* with the words that to large extent remained only wish due to the war and events in 1948: “I end this brief review of the main milestones in the life of *Jednota* in the first 70 years of its existence with the wish that in the next 30 years it would be allowed to grow and develop itself in peace to reach its 100<sup>th</sup> anniversary in 1954 as an integral part of a happy, politically, econo-

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<sup>19)</sup> Printing matters related to *Právník* were handled by printing office Dr. Ed. Grégr a syn in Prague.

<sup>20)</sup> STUPKOVÁ, Marie: [www.jednotačeskychpravniku.cz/doc/historie.html](http://www.jednotačeskychpravniku.cz/doc/historie.html), Cf. reports on the activities of *Jednota* published regularly in *Právník*.

<sup>21)</sup> JOACHIM, VÁCLAV: *Sedmdesát let Právnícké jednoty* (, *Právník* 1934, issue 22, pp. 681 et seq.

<sup>22)</sup> *Ibid.*, p. 680.

mically and culturally consolidated and fully developed Czechoslovak state.”<sup>23)</sup>

The sphere of activities of Jednota in the area of jurisprudence was influenced by the legacy of one of its founders - professor Antonín Randa, who emphasized that lawyers should have feeling for justice. Jednota právnická was to help inciting this feeling in young lawyers.

At the beginning of the fifties the Ministry of Justice took over publishing of *Právník* and shortly after this the task was handed over to the Institute of State and Law, which publishes the journal until this day.

#### 4. THE ROLE OF TWO IMPORTANT FIGURES OF THE 19<sup>TH</sup> CENTURY IN PRÁVNÍK

In our contemplations over *Právník* we cannot forget to mention two prominent figures in the field: knight Antonín Randa (1834-1914) and Jakub Škarda (1828-1894).

An excellent citizen and expert on property law, Antonín Randa contributed between 1861 and 1914 to *Právník* by 28 articles. Immediately in 1861 he published in *Právník* an article On the Acquisition of Rights of Possession According to the Austrian Law.<sup>24)</sup>

With the exception of years 1874, 1880 and 1884, up until 1885 Randa contributed to *Právník* every year by one or more articles. For example in 1871 *Právník* printed in total seven contributions from Randa. In the following years the frequency of his contributions was decreasing. The last article Randa published in *Právník* was in memory of Josef Unger.<sup>25)</sup> Randa himself died the following year.

Prague attorney, politician and art enthusiast Jakub Škarda contributed to *Právník* mainly articles focusing on linguistic issues. In 1861 he published essay Czech Language at the Court.<sup>26)</sup> Another contribution of Škarda to the language issue was his article On Announcing the Land Laws.<sup>27)</sup>

#### 5. THE LONGEST-SERVING EDITOR OF PRÁVNÍK IN THE PERIOD OF AUSTRIA AND THE FIRST REPUBLIC, JOSEF LUKÁŠ.

Josef Lukáš was the editor of *Právník* from 1897 to 1933 and he therefore deserves medallion in the anniversary article. Josef Lukáš (1865-1935) was a head of department at the Ministry of Social Affairs, later becoming a professor of labor law at the Czech Technical University in Prague. He published mainly in the area of social insurance and insurance in general.

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<sup>23)</sup> Ibid., p. 691.

<sup>24)</sup> O nastupování v držbu dle práva rakouského, *Právník* 1861, pp. 193 et seq.

<sup>25)</sup> Josef Unger mrtev, *Právník* 1913, p. 297.

<sup>26)</sup> Česká řeč u soudu, *Právník* 1861, pp. 193 et seq.

<sup>27)</sup> O vyhlášení zákonů zemských, *Právník* 1866, pp. 521.

Many of his essays were published in *Právník*, where he has worked since 1897 as the editor. He only left his position there in 1933 and thus became the longest-serving responsible editor in *Právník*. In Navrátil's Almanac, Lukáš is mentioned, among other things, for his work in the social sphere and charity.<sup>28)</sup> At the occasion of Pasteur exhibition in Strasbourg in 1923 he organized an exhibition of the Ministry of Social Affairs, for which the Ministry was awarded the Grand Prix diploma and Lukáš was honored by the French president with the Legion of Honor. Lukáš also gave lectures in Jednota právnická.

## 6. AN ATTEMPT TO CREATE A FRENCH VERSION OF PŘÁVNÍK DURING THE FIRST REPUBLIC

From 1925 Jednota was also publishing *Bulletin de droit Tchecoslovaque*.<sup>29)</sup> The aim of this enterprise was to promote Czechoslovak legislation and laws of the ČSR abroad. Appointed editor was Jan Šimák. However, he was not able to fully devote himself to the task because he was assigned to join the embassy in Berlin. Some editing work was therefore carried out by M. Boháček.

*Bulletin*, with volume approximately equal to two printed sheets, was to be published four times per year at irregular times.

The first issue contained contemplation of K. Kadlec on the historical roots of Czechoslovak law. J. Hoetzel discussed Law on Regions (*župní zákon*), J. Srb wrote about preparations of the Civil Code and Fr. Čáda addressed the issue of lawyers associations and journals.

Journal *Právník* contained regularly reports on *Bulletin*, from which it followed that the editors were facing financial problems. Also because of this *Bulletin* was published irregularly.

M. Boháček presented in 1926, as one of the editors of *Bulletin*, during general meeting of *Právnická Jednota* in Prague report on the *Bulletin* since 1925. He informed that the professional community accepted *Bulletin* quite well. There were even subscribers from Holland.<sup>30)</sup>

Optimistic news from the twenties were replaced by less optimistic news later on. During general meeting of *Jednota* in 1933 C. Horáček presented report on *Bulletin* for 1932.<sup>31)</sup>

Among other things Horáček said that “further publishing of this journal, whose continuation is considered by *Právnická jednota* to be our duty, will be somewhat slower due to unfavorable circumstances. The editorial board intends to publish in *Bulletin* mainly works submitted by those Czechoslovak participants of the Congress of comparative jurisprudence that took place in the Hague in August 1932, for whom no other suitable forum was found...“<sup>32)</sup>

<sup>28)</sup> NAVRÁTIL, M.: *Almanach československých právníků*, Brno 1930, p. 7.

<sup>29)</sup> Cf. *Právník* 1925, pg. 523-524. Report on *Bulletin* printed here.

<sup>30)</sup> *Právník* 1926, pp. 681-682.

<sup>31)</sup> *Právník* 1933, p. 448.

<sup>32)</sup> *Ibid.*, p. 448.

C. Horáček also called attention to the fact that financial support from the Ministry of Foreign Affairs and from the Ministry of Justice to the Bulletin is limited and “for now it is uncertain whether an issue will be published in 1933”.<sup>33)</sup>

In 1934 it was again M. Boháček who delivered report on Bulletin for the previous year at the general meeting of Jednota. He pointed out persistent financial problems that caused one-year-long pause in publishing of the French version of the magazine. But he also expressed hope that with newly acquired support of the Rašín fund the first issue of the fourth volume would come out and contain, among others, also article celebrating the hundredth birthday of Antonín Randa<sup>34)</sup>. The fourth issue of fourth volume was not published until 1937.

From the accounting report for 1934 presented at the annual meeting of Jednota by Vl. Kubeš it follows that the support of the Ministry of Foreign Affairs for publishing of the French Bulletin was 4,000 Kč, the Ministry of Justice contributed 1,000 Kč and Rašín fund contributed 3,000 Kč. However, revenues for sold copies were in total only 338 Kč.<sup>35)</sup>

In 1936 M. Boháček again pointed out in his annual report on the Bulletin the delays in the publication of the journal caused by financial problems. Irregular publishing, in his words, “deprives this journal of the possibility to fulfill all functions as initially intended...”<sup>36)</sup>

Years 1936 and 1937 seemed to be more favorable from the point of view of the Bulletin. In 1937 the head of Jednota Joachim thanked M. Boháček and C. Horáček for their work and appointed new editors: B. Kučera and V. Kubeš.<sup>37)</sup>

Bulletin was being published even during the Protectorate and the World War II. There was just one more pause in the publishing; in 1969-1970. After that the Bulletin had been continuously published until 1990.

## 7. PRÁVNÍK AFTER 1989 AND FUTURE PERSPECTIVE

After 1989 Právník returned to the objectives laid out by its founders. It offers its readers the results of theoretical research and contains also disputes and contributions to current discussions. Besides presenting knowledge of the current law it also contains essays dealing with legal history. Thus it returns to the traditions of the second half of the 19<sup>th</sup> century and the period of the First Republic. Back then the links with the Czech legal history were emphasized also in Právník.

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<sup>33)</sup> Ibid.

<sup>34)</sup> Právník 1934, pp. 524-525.

<sup>35)</sup> Právník 1935, p. 687.

<sup>36)</sup> Právník 1936, p. 619.

<sup>37)</sup> Právník 1938, p. 448.

The Institute of State and Law at the Academy of Sciences of the Czech Republic also started publishing *The Lawyer Quarterly*, which continues on the tradition of the *French Bulletin* by its content, scope and objectives. Hopefully it will not have to face similar financial difficulties as its French predecessor.