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Legal Aspects of the Position of Slovakia in the Newly Established Czechoslovakia in Vratislav Kalousek's Interpretation

Abstract

The following text examines the topic of unifying territories with disparate legal traditions as exemplified by Czechoslovakia during the first years of its existence and interpreted by Vratislav Kalousek (1883–1936), an unjustly forgotten clerk at the Ministry of the Interior, a lawyer and a contributor to inter-war legal magazines. He analyzed how the Czechoslovak law – drafted by the Czechoslovak officials of the Cisleithanian tradition – was implemented in the newly acquired lands, namely in Slovakia and in Carpathian Ruthenia. Vratislav Kalousek perceived the foundation of Czechoslovakia, based on uniting lands with a different history, as well as cultural, social and legal traditions, as a situation in which it was necessary to act swiftly, instead of slowing the process down with emphasis on accuracy typical for legal theory.

Keywords: Vratislav Kalousek, interwar Czechoslovakia, law system, dictatorship, Slovakia, Carpathian Ruthenia

Słowa kluczowe: Vratislav Kalousek, Czechosłowacja w okresie międzywojennym, system prawny, dyktatura, Słowacja, Ruś Karpacka

The hasty founding of new states in Central Europe in autumn 1918 represented a geopolitical change that affected the state law, as well as ordinary legislation. The process was rather specific as the newly established states united territories which had originally belonged to different political entities and had been subject to different jurisdictions. Until the signing of the peace treaties, there were doubts about particular territories and their unity with the newly established states. Several minor skirmishes or more substan-

tial clashes erupted in the region and these conflicts, too, made the integration of the law systems difficult.

The following text examines the topic of unifying territories with disparate legal traditions, as was the case of Czechoslovakia in the first years of its existence. Our aim is not to present a precise description of the process in which the new state was established but, rather, to present how it was perceived by Vratislav Kalousek. Vratislav Kalousek was an unjustly forgotten clerk at the Ministry of the Interior, a lawyer and a contributor to inter-war legal magazines.

Vratislav Kalousek (1883–1936) descended from an important intellectual family in Prague. His father, Josef Kalousek,¹ was a university professor of history who also specialised in the topic of history and development of the Czech state law.² After his law studies, Vratislav Kalousek worked as an officer at the county council in Mladá Boleslav and, following the declaration of Czechoslovak independence, he served at the Ministry of the Interior, first as a clerk, next as a deputy head and finally as the head of the legislative department.³ Thus he witnessed the birth of the Czechoslovak Constitution and other bills, drafted by Jiří Hoetzl's team; Jiří Hoetzl was a professor of administrative science and administrative law at the Faculty of Law, Charles University, and he fostered cooperation with professors of the Faculty of Law, Comenius University in Bratislava, e.g. Karel Laštovka.⁴ It was under Jiří Hoetzl's supervision that Vratislav Kalousek dedicated himself fully to scholarship,⁵ as he co-drafted the five-volume *Slovník veřejného práva československého* (*The Dictionary of Czechoslovak Public Law*), edited by Hoetzl, which still belongs among essential books on administrative law.⁶ In this way, Vratislav Kalousek methodologically embraced classic positivism based mainly on detailed collection and comparison of data. The chief stronghold of classic positivism was the Faculty of Law in Prague. It is necessary to note that at the time Vratislav Kalousek was writing his papers, professor František Weyr in Brno came up with a new, methodologically innovative approach to administrative law.⁷

Vratislav Kalousek, as a clerk at the Ministry of the Interior, collaborated on drafting new bills, passed in quite a quick succession after 1918. His subsequent legal explication and interpretation of the causes and consequences of the above-mentioned legal status is of a significant documentary value. Kalousek always looked for causality in law, using historic examples in his explications and attempting to discover points of contact with the previous form of law. Such an abrupt change as the establishment of Czechoslovakia created an interesting challenge for Kalousek's thinking. Foremost, he analysed how the

¹ On Josef Kalousek, Jiroušek, *Josef Kalousek*; Fabini, *Historik*.

² Kalousek, *České státní, passim*.

³ For more details see: Joachim, "Dr. Vratislav Kalousek", 257–9; Hoetzl, "Za Vratislavem Kalouskem", 468–70; Kojdecký, "Vratislav Kalousek", 28–9.

⁴ Jiří Hoetzl is also the author of textbook *Československé státní právo*, published in the publishing house Melantrich in 1934. In detail: Průcha, "K životu", VII–XXXII.

⁵ Vratislav Kalousek published mainly in magazines *Věstník ministerstva vnitra*, *Veřejná správa*, *Právní obzor*, *Sborník věd právních a ústavních*. For the list of his most significant texts see: Joachim, "Dr. Vratislav Kalousek", 257–9.

⁶ The dictionary was published in 1929–1948, it was re-published in 2000.

⁷ Weyr is i. a. the author of *Základy filosofie právní* (1920), *Soustava československého práva státního* (1921), *Teorie práva* (1936). Weyr and his career is in detail described in: Večeřa, *František, passim*.

Czechoslovak legislation – created by the Czechoslovak officials from the Cisleithanian tradition – was implemented in the newly acquired lands, namely in Slovakia and in Carpathian Ruthenia.⁸ Even after 1918, the Austrian laws were more or less effective in the Czech lands, whereas in Slovakia and Carpathian Ruthenia Hungarian customs/laws prevailed.

Our paper focuses mainly on the following texts by Kalousek: *Vznik státu Československého a jeho judikatura (The Establishment of Czechoslovakia and its Judicature)*,⁹ *O vojenské diktatuře na Slovensku a v Podkarpatské Rusi (On Military Dictatorship in Slovakia and Carpathian Ruthenia)*¹⁰ and *Nářízení pro Slovensko (The Decree for Slovakia)*.¹¹ The topic of linguistic unification of the legal order in its entirety, including amendments and the so-called re-issuing, is discussed in the text *O vyhlášení předpřevratových norem v jazyce státním (On Declaring Pre-revolutionary Regulations in the Official Language)*.¹² To analyze the differences between the legal regulations in the Czech lands and Slovakia and problems of their harmonization in Vratislav Kalousek's interpretation from the point of their development, we have to start with the last mentioned text. *O vyhlášení předpřevratových norem v jazyce státním (On Declaring Pre-revolutionary Regulations in the Official Language)* is one of Kalousek's last texts in which he examined the issue developed by so-called *Reception Act*¹³ – the original text of effective pre-revolutionary legal regulations was, as late as 1935, still largely in German and Hungarian, not in Czech or Slovak.

If there was a translation from before 1918 (especially translations of the Austrian Civil Code), it was possible to track a number of differences between the Czech version – not too many factual errors – and the Slovak version where the translations were scarce and rather imperfect.¹⁴ In Kalousek's opinion, the new edition should focus on translating the effective Hungarian legal regulations, “as the authentic text is inaccessible to the majority of the public and as the old administrative translations are inappropriate.”¹⁵ There is an interesting remark by Kalousek, relativizing the relationship between the legal theory and practice, to be found on the second page of the text. Kalousek says that accepting the regulations of the preceding state entity is not right from the point of view

⁸ To the topic of Kalousek's interpretation of acquiring Carpathian Ruthenia in detail: Jiroušek, “Připojení”, 189–200.

⁹ The Czechoslovak issue is also discussed in: Kalousek, “Státní znak republiky Československé”, where the causes of accepting the double-tailed lion into the national coat of arms are discussed more from the point of history and ideology. There was also a text focusing on differences in regional organizations in new lands: Kalousek, “Nástin historického”, 1–10). This text is more a summary of development from 1848, the situation after 1918 is not addressed there.

¹⁰ Kalousek, “Vznik státu”, 73–80, 91–113.

¹¹ Kalousek, *O vojenské diktatuře* (special edition of the magazine *Právní obzor* 11, 35 pages altogether, also published in parts: *Právní obzor* 11 (1928): 281–91, 321–32).

¹² Kalousek, *O vyhlášení* (published also in the magazine *Právník* 65, issue 5 (1936): 297–307, issue 6: 349–58).

¹³ It is article 2 of the act from October 28, 1918, number 11 of the legal code. According to this article: “all existing imperial and land laws and regulations are still in effect”.

¹⁴ *Ibid.*, 6, further also see note 15, 12.

¹⁵ *Ibid.*, 20.

of legal theory of succession.¹⁶ However, the speed by which the Republic was declared did not provide room for legal theory; the practice was what mattered.

Another drawback was the issue of language authenticity. Kalousek also pointed out another Czechoslovak peculiarity which was the consequence of unifying lands with disparate traditions in an effort to foster a joint identity – the so-called Czechoslovak language. The Czechoslovak language was declared the official administrative language by Act No. 122/1920 of the legal code. An in-depth analysis of this topic from the perspective of legal practice is, unfortunately, not available.¹⁷

The fact that Kalousek's main interest lay in comparing legal theory and practice in the revolutionary year of 1918, is apparent from his text *Vznik státu Československého a jeho judikatura* (*The Establishment of Czechoslovakia and its Judicature*). In the text, Kalousek outlined where his interest came from:

Until the end of the World War, legal issues connected with establishing new states had only academic importance for European lawyers. Major changes of the political arrangements in Central Europe where two new states Czechoslovakia and Poland emerged, gave those questions a different turn: theoretical questions became real questions which must be treated by the public authorities.¹⁸

Kalousek focused his attention on various topics. However, as far as our paper is concerned, his research on Czechoslovakia at the time of its foundation is quite interesting. In his text, Kalousek collected all available bills and administrative court decisions related to the topic. He refrained from voicing his own opinion on the question of whether the Czechoslovak sovereignty encompassed the whole area of the country as early as October 28, 1918, or whether it was gradually expanded as new regions were added. However, Kalousek presented evidence, based on the interpretation of the judicature by the Highest Administrative Court, that in the historical lands of the Czech Crown the sovereignty was real from October 28 (even in German provinces) but in Slovakia and Carpathian Ruthenia the process was gradual. Kalousek did not forget to assess briefly the situation in Slovakia during the Slovak Soviet Republic (he focused on it in one extensive study, see below) and in Cieszyn Silesia at the time of the plebiscite (one study of Kalousek is dedicated to the topic). There are other Kalousek's texts about the specific legal situation in Slovakia. A study called *Narizení ministra pro Slovensko* (*Ministry Decrees for Slovakia*) analyzed another peculiarity related to the union of Czech lands and Slovakia and stemmed from the need to deal with the existing situation quickly. In Slovakia, there was a position of the Minister Plenipotentiary for the Administration of Slovakia established, whose appointee was given – by the Government Act No. 64 of the legal code on exceptional provisional enactment in Slovakia of December 10, 1918 – “the procuration to issue regulations¹⁹ and to do everything to maintain order, to consolidate the situation and to secure a proper functioning of the state.”²⁰ This was an unprecedented situation, which responded to pressing needs (the Hungarian military presence in Slovakia); it was far from being an effort to strictly observe rules of legal theory. Kalousek

¹⁶ *Ibid.*, 2.

¹⁷ *Ibid.*, 3.

¹⁸ Kalousek, “Vznik státu”, 73.

¹⁹ “The regulations come into effect with his signature.”

²⁰ Kalousek, *Narizení ministra*, 3.

documented this reality by the fact that the act did not precisely define the Minister for Slovakia's powers²¹ and this raised doubts on whether all regulations were valid,²² whether they should be published in the legal code and whether the position was compliant with the Czechoslovak Constitution (the government should act on the principle of collectivity, the constitution, in fact, cancelled the position of this minister).²³

Due to his positivistic approach, Kalousek did not seek clear answers for those questions in the text, nevertheless, he concerned himself in detail with all decisions made by the Minister for Slovakia and he also discussed judicature. In the conclusion of his study, Kalousek comes to the statement that

[...] there is a major difference between the opinion of theory and practice on the Ministry of Slovakia's decree power. The legal science, in fact, states that Section 14 of the Act No. 64/18 of the legal code [...] was invalidated by the article IX of the introductory act for the constitution [...]. On the contrary, the practice does not seem to regard the Ministry of Slovakia's decree power as having been invalidated by the Constitution [...]. We do not desire to bridge the deep gap between theory and practice. We are content with the fact that we have mentioned such a gap.²⁴

The text *O vojenské diktatuře na Slovensku a v Podkarpatské Rusi* (*On Military Dictatorship in Slovakia and Carpathian Ruthenia*) was probably written by Vratislav Kalousek on the 10th anniversary of Hungarian Bolshevik army's invasion to Slovakia countered by Czechoslovak army units led by the representatives of the Entente military mission.²⁵ Kalousek was not motivated to describe the historic events, he was interested in the situation in eastern Slovakia and Carpathian Ruthenia between June 4, 1919, when Vavro Šrobár, the Minister Plenipotentiary for the Administration of Slovakia, gave the power to the army and it declared military dictatorship, and 1922, when the dictatorship was abolished in Carpathian Ruthenia and southern and eastern Slovakia. At first, Kalousek examined in detail the used terminology, mainly the term military dictatorship which had no tradition in Cisleithanian, Transleithanian or French law. He searched for the causes of the usage of the above-mentioned term and found them only in a throwback to similar historic events; the newly introduced system when

[...] the army took supreme power over public administration, [...] a military commander became the highest government official in the given area and was responsible for maintaining the order and allowed to use any necessary means [...] and was even allowed to change the law [...].²⁶

was not compatible with the Central European legal tradition, Kalousek maintained. The system was probably a result of the contemporary circumstances and of the participants' effort to name the new condition. Vratislav Kalousek considered whether the above-mentioned term had been used correctly or whether a different terminology should have been used but he pointed out that the need to solve the situation quickly and

²¹ *Ibid.*

²² *Ibid.*, 5.

²³ *Ibid.*, 6.

²⁴ *Ibid.*, 32.

²⁵ On the issue of military dictatorship, which is not discussed here, see e.g. Tomášek, *Nevyhlášená válka*, 158. On the topic of Entente missions, especially the departure of Italian units and their replacement by the French, see Helan, „Československo-italské“, 25–38.

²⁶ Kalousek, *O vojenské*, 4.

efficiently had not left any room for legal theory and detailed terminology. Furthermore, Kalousek went back to the term military dictatorship and on several pages he analyzed existing legal definitions and compared them with conditions in Slovakia and Carpathian Ruthenia in summer 1919.²⁷ Kalousek defined military dictatorship as “the execution of the executive power not foreseen by the constitution”,²⁸ and found a single reason for declaring it – a threat to the internal security of the state. Only in such conditions, it is permissible not to observe the legal order consistently. After the clarification of the terminology, Vratislav Kalousek proceeded to answer the question of whether the military dictatorship had been declared rightly or not. The main problem was the fact that there had been two acts effective at that place and time, both allowing to declare exceptional measures. They were the Act No. LXIII/1912 of the Hungarian legal code and Czechoslovak Act No. 64 of the legal code concerning the extraordinary provisional measures in Slovakia from December 10, 1918. Kalousek thought that the second of the above-mentioned acts had been adopted for political reasons as the Czechoslovak government had wanted to strengthen its political influence in the area.²⁹ It is crucial that there are “factual contradictions between the contents of the dictatorship and the contents of authorization in those two acts”.³⁰ Neither of the acts permitted the authorization of military commanders; only civilian administration could be authorized to rule, and it was also not permitted to issue measures *contra legem*. In reality, both acts were violated – the dictatorship was executed by the military and there were regulations issued *contra legem* both by the military and by the Minister for Slovakia.³¹ The situation – dangerously close to unlawful conduct – could have been corrected on June 20, 1919 when the Ministry for Slovakia issued a regulation referring to the Hungarian Act No. LXIII/1912 but the executive power in Slovakia was actually still held by military commanders, not by civilian authorities. Based on the steps taken, Vratislav Kalousek assessed the situation in Slovakia not as a “pure” dictatorship but as “a mixture of real dictatorship and extraordinary measures following the Act No. LXIII/1912”.³²

Vratislav Kalousek was indeed fascinated by the fact that “illegal” conditions (the collapse of the Habsburg monarchy and the emergence of successor states) could lead to a new law. He compares the military dictatorship to revolution, which became at that time rather a favorite tool in the thinking of European legal theorists. According to Kalousek, this “legal paradoxon” is possible only due to extraordinary times of dictatorships and revolutions as they express the will of the people and so the laws brought about by those activities can replace the existing legal code.³³

From what has been said, we can see that Vratislav Kalousek perceived the foundation of Czechoslovakia, consisting of uniting lands with disparate histories, cultural, social and legal traditions, as a situation in which it is necessary to act swiftly, not to slow down the process by the emphasis on accuracy, characteristic for legal theory. The time

²⁷ *Ibid.*, 13–17.

²⁸ *Ibid.*, 16.

²⁹ *Ibid.*, 19.

³⁰ *Ibid.*

³¹ *Ibid.*, 20.

³² *Ibid.*, 21.

³³ *Ibid.*, 24.

of great changes needs swift and efficient solutions, and in this perspective the theory and practice are quite distant from one another. The essence of newly established law order was that it was accepted by the society; and that the population believed in the character and justice of the law. The situation in Slovakia in 1918–1919 (or till 1922 when the non-functional military dictatorship was abolished) simply required those steps expressed by the Act No. 64/1918 of the legal code concerning the extraordinary provisional measures in Slovakia. It was quite different in the Czech lands where nearly no extraordinary event occurred (except of the Sudeten areas – “provinces” – which made an effort at separation³⁴) and the previous Cisleithanian legal code could have been adopted quite easily.

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³⁴ More details in e.g. Kopica, *Boj o pohraničí; Řeháček, Němci proti Československu*.

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