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PÁL HORVÁTH: THE DEVELOPMENT OF SOCIALIST LAW

BUDPAEST, 1984. 575 pp.)

This practitioner of legal history and comparative law of international renown undertakes in this, his most recent monograph, to elaborate the topic based on *interdisciplinary* research. A thorough and detailed analysis of the development of socialist law has been lacking in both Hungarian and international legal studies up to the present day. Strangely enough, so bourgeois jurists – viewing the development of the socialist legal system from the outside as it were – have considered it their task to analyse the above topic in the form of a kind of conspectus. In this respect, without making any claim to completeness, let us refer to the work of René David published a few years ago in Hungarian[1]. To the majority of bourgeois comparative legal, socialist law is merely *one* of the legal fields in the world. In the second edition of handbook written by Konrad Zweigert and Hein Kötz,[2] the socialist legal field (Rechtskreis) receives only 61 pages. Naturally, this does not mean that independent studies or monographs on socialist law do not exist in bourgeois literature. Only a brief reference is made here to the works of Berman, Böckeförde, David-Hazard, Dekkers, Schlesinger and Westen. However, none of these works approaches the questions of the establishment and development of socialist law in the complex manner that Pál Horváth employs in his book. For methodological objections may also be raised against the type of representation which discusses this topic torn from its historical context. Furthermore, a false picture is presented to the reader if the author of a monograph or study examines the varions legal branches independently of each other. A typical example of this method of representation is the work of Zweigert and Kötz mentioned above which – though this follows from the subject of the book too as the authors wish to introduce their readers into the terrain of private law – presents a survey of the main characteristics of the civil law of the socialist *Rechstkreis* without offering any passing view of the political structure.[3]

Pál Horváth breaks with this „tradition". In the first chapter of his work he surveys prehistory of the socialist type of law – and not „legal field" – from the Commune of Paris up to the Great October Socialist Revolution. In this section of his book, he points out that the socialist type of law represents something new qualitatively as compared to the earlier legal systems. This novelty lies in the comparison with Anglo-Saxon law just as to that with the bourgeois legal systems created in the wake of the French Revolution – legal system here meaning the positive law of a given state. Naturally, the author does not wish to deny that there are significant differences between the system of Common Law and the legal systems based on Roman law. It is

[1] David, R.: The great legal systems of the present. Comparative law. Bp. 1977.
[2] *Zweigert, K. – Kötz, H.:* Einführung in die Rechstvergleichung auf den Gebiete des Privatrechts. I–II. Bd. 2. neubearb. Aufl. Tübingen, 1984.
[3] See *Zeigert–Kötz:* op. cit. I. Bd. p. 332 and ff.

sufficient to point out in this connection that while in the case of Common Law the Judge made Law is prevalent, in the field of the *origo* – Roman law – the leading role is played by the jurist's ruling *Juristenrecht,* to use the German term.[4]
Casuistry or in other words, the also significant difference in casuistic method may be traced back to this highly important difference. The problem of precedent appears in a completely different way in Roman law and in Anglo-Saxon law, which has been pointed to so well by Buckland, McNair, Schiller, Stein, Dawson and Peter.

Specific legal features are characteristic of the eastern part of Europe. The law and legal system of this region still display several signs of belated social development.[5] It is in the regions of Central and Eastern Europe that this bourgeois element of legal gropus possessing specific features, a part or more exactly a sub-type of which is the otherwise heterogeneous law pertaining of the Russian empire. To map the law of the Russian empire is of special significance for Hungarian researchers since the law of the Austro-Hungarian Monarchy, heterogeneous as a consequence of different legal systems – reference could also be made to the prussian-German legal territories too – displays parallel features to law in tsarist Russia in Several respects. In this region, the institutions of feudal law are very closely intertwined with the elements of modern bourgeois law.

A specific way of codifying law is characteristic of the legal system of Russia in the last century. It was during the reign of Nicolas I that the Collection of Laws of Speransky *(Polnoie Sobranie Zakonov Russiiskoy Imperii)* was published. This collection, containing approximately 35,000 laws (regulations), compreises the legal regulations from 1649 (the year the *Sobornoie Ulozienie* cume into effect) up to the accession of Nicolas I in 1825, in no fewer than 45 volumes. The essence of „codification" was not changed very much by the fact that in 1835 Speransky, including in a kind of system, fomded on viewpoints that are not ovenexact, the material of the legal regulations, at the same time omitting the outdated ones, published the valid codification work (Svod Zakonov Rusiiskoi Imperii). The *collectio legum* – to use a modern term – consisting of 15 volumes and comprising approximately 40 000 articles, contains the regulations of almost all legal branches. It includes the sphere of common law along with administrational law, private law as well as procedure law. It also contains criminal law. In actual fact, only *ius militare* and *ius ecclesiasticum* are omitted in this collection. In the field of private law, however, the intention of changing and modifying became obvious to an increasing extent. A specific means to that effect was constituted by the remarks *(primetsania)* issued by the competent judiciary forums, possessing *vigor legisn.* In our view, this mode of law-making is strongly reminiscent of the novel law-making mechanism of the principate and age of absolute imperial power of Imperium Romanum when compared to earlier periods, insofar as there too the decisions of the ruler, „theoretical directives" inspired by the „apparatus of offices" became an integral part of legal sources.[6] The continuously supplemented *Svod Zakonov* remained formally valid up to the victory of the Great October Socialist Revolution, constituting the basis of Russian law.

[4] See a summary of recent literature in Vacca: Contributo allo studo del metodo caistico del diritto romano. Milanó, 1982. passim.

[5] See *Horváth P.:* The main trends of the legal development of East and Central-European peoples (with special regard to the legal development of the neighbouring peoples). Budapest, 1968. pp. 353–374 and 395–426. Also Horváth: An introduction to the basics of comparative legal history. Bp. 1979. pp. 301–315.

[6] See *Vacca:* op. cit. p. 37 and ff.

In relation to the *Svod Zakonov* – without indulging in a detailed analysis of this collection – the question of analogy with the law of the modern age (the capitalist period) may also be raised. An answer is not difficult to give: the closest „intellectual relative" of this collection is the *Preussisches Allgemeines Landrecht* of 1794, also cahracterized by an irrationally exaggerated casuistic approach[7]. This parallel is obviously no accident. The soil is identical in the case of both „legal works", they are codices created in the same region. This example might almost be a pradigm of why it is correct to think in terms of the category of the Central and East European region proposed by the author; signs of acceptance of this concept, by the way, are to be encountered in the works of other researchers too (e.g. Geilke), albeit not in such an explicit form. In the last third of the past century there were further factors exerting an influence on Russian law, referred to as the „weakest link in the chain" of the bourgeois type of law, and its uncertainty (determined by the specific forms of codification). In the author's view, they were influenced in a decisive manner by the appearance of monopolies.

The groving strength of Russian and international monopolies exerted a significant influence even on the legal system of countries otherwise relying more or less on a constitutional structure. That effect was even stronger in the Central and East European regions where unequivocally negative tendencies were concealed. Therefore it was not by accident that this process had a very adverse effect on the progressive trend of feudal-capitalist law.

Pál Horváth makes convincing references to the manifold economic and social changes going hand in hand with this process of monopolization. He also points out that this process was an effective instrument in solving concrete political tasks. The restructuralization of conditions in Europe, favourable to Russia, taking place in the last third of the last century, resulted in the tsarist system, wishing to break out of its economic isolation, relied to an increasing extent on the support of foreign capital (primarily French), frequently lendere harsh conditions. Naturally, that phenomenon had the appropriate diplomatic consequences. The cancellation of the article containing adverse conditions in the Paris peace conference that concluded the Crimean war constituted an undoubtedly very significant impulse for the economic decelopment of Russia. For economic infiltration was dependent upon orientation in foreign politics. In relation to legal development, however, there was no special sign of a concrete economic orientation playing a role beyond certain general symptoms. For example, the invasion of French capital did not result in the taking over of the institutions of French law even in the terrain of commercial law, closest in connection with the economic sphere. So the *Code de Commerce* was not adopted in Russia in spite of the fact that the Russian state had established its closest relations with France.

Following the victory of the Great October Socialist Revolution, its consequence of fundamental importance became the changes that occured in the approach of the

[7] For a summary of the *Pressisches Allgemeines Landrecht*, see *Vieacker*, F.: *Privatrenchtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen Entwicklung*. 2. neubearb. Aufl. 331. seq.

overwhelming majority of the population to law. For it is the specific feature of Russian history that the *ius scriptum* was familiar to the agricultural population in very exceptional cases only. A further problem was that the overwhelming majority in society had a negative approach to law from the outset. In the works of several great figures of Russian literature (primarily Tolstoy) the concept is worded *expressis verbis* that the law is some kind of instrument for the verification of evil. Thus, following the victory of the October Revolution lawmakers had a double task to cartend with: on the one hand, they had to create a new law, not merely to reform a few legal institutions, on the other they had to diamtrically transform the approach of society to law. So they had to create new things qualitatively in two respects in the period following the victory of the revolution.

This process related to the revolution is inseparably linked with the changes that occured in the structure of the state. In the second part of his book dealing with the establishment of the Soviet law and constitution, Pál Horváth presents the main features of this highly complex process. He lays great emphasis, for example, on the significance of the 5th Pan-Russian Soviet Congress which created the first Soviet constitution. In addition, he discusses in detail the formation of the state mechanism of a federal character.

In the part concentrating on the opportunities for the system of councils of the people and socialist law to gain ground, the author devotes special attention to concrete political events. Thus he also traces the trend in international politics. In his discussion of this issue, he refers, for example, to the economic policy significance of the Geneva Conference of 1922. Thus the reader receives the appropriate information the process of the political preparation of the Soviet constitution of 1924. In what follows the author analyses in detail the development that occurred in Soviet civil law in this period. He dates the full development of direct efforts to create order in law to the year 1922, as a result of which increasingly more condices were created. It was in this year that the Civil Code of the Russian Republic was issued – it came into effect on January 1, 1923 – although its creation was hindered by the switch-over to the New Economic Policy.

When examining the characteristic features of the codified Soviet civil law, it must be emphasized that the Civil Code did not break completely with the system of the civil (private law) codes that, in a sense, representied a model. This is well documented by the fact that the Soviet-Russian Civil Code also contains a general part which contains regulations concering legal subjects, legal objects and legal affairs, essentially in harmony with the tradition of the pandects. The part on substantive law contains very significant new features, as it regulates the new property categories in accordance with the socialist social-economic transformation. The part on the law of obligations contains furthermore the articles pertaining to commercial companies as well. The part of the Civil Code on inheritance law is of a much lesser scope, creating order in a system of institutions of inheritance law different from the traditional ones, in harmony with the reforms of the October revolution concerning inheritance law. Finally, we have to emphasize the outstanding role played by the general clauses in this review too; they represent a new phenomenon – in addition to their increased

importance – because they settle the practice of rights in accordance with their nature, mostly on a political basis (e. g. Civil Code Par. 1 and Par. 30.). In accordance with this intention, the Soviet-Russian Civil Code breaks in a spectacular manner with the Kantian apriori formalism which analyses the incorporation of general clauses in works of law by essentially allowing absolute significance to legal formalism. In this connection reference should be made to several bourgeois jurists who break with a precept connected mainly to the name of Kant (e.g. Savigny).[8] As a consequence, the BGB is familiar with the concept of general clauses too (e.g. Par. 242.). All this, naturally, does not gainsay the fact that it is precisely in Soviet civil law legislation that the general clauses receive a qualitatively new role.

In further parts of his work („The Soviet state and law in the period of laying down social-economic bases of socialism", „The Soviet state and law in the period of the Second World War, restoration and the completion of building socialism", and finally „The constitutional and legal order of developed socialism"), the author follows the same method as in the chapters discussed relatively fully in this review. Thus a survey of the historical events is followed by the analysis of the main features of the structure of the state and only afterwards are we presented with the main features of the individual legal branches. In surveying the field of civil law, outstanding importance is attached to the principles of civil legislation coming to force in the period of developed socialism (1961). These Principles give a new impulse to recodify the civil law of the individual Soviet Republics, to which significance is attached to the Civil Code of the RSFSR originating from 1964. Naturally, the question of internal legal unification is raised in the Soviet Union too, the most important undoubtedly being of civil law. When compared with the legal development of the United States, also based on a federal system, different features are displayed by Soviet law since the republics of the Soviet Union preserve their national characteristic features within the legal sphere too. Thus the form of legal sources similar in character to the „Principles", serving the purpose of legal unification, cannot be compared to the construction of „uniform laws" known in the United States. It is remarked only in passing that legal unification of that type fails to reach its goal demonstrated by the fact that even the Uniform Commercial Code (UCC), otherwise of very great economic significance, is not applied in all the states. Furthermore, Soviet legal unification is following a route different from that of France the Bourgeois Revolution or that of Germany after 1871 where the elimination of legal disunity was carried out by creating large legal in the field of private law as well. Thus the promotion of legal unification taking into account national characteristics is undoubtedly the result of the establishment of the new type of (socialist) state.

A review is limited uniscope and is thus unable to present even a sketchy survey of all the state and legal constructions included in Pál Horváth's monography (which may indeed be looked upon as a handbokk). Therefore could not undertake to draw

[8] For Kant and Savigny on the general clauses, see in recent literature *Behrends, O.:* Geschichte, Politik und Jurisprudenz in F. C. v. Safignys System des heutigen römischen Rechts. In: *Römisches Recht in der europaischen Tradition.* Ebelsbach, 1985. p. 198 ff.

a complete picture either. However, it may be concluded even from this sketchy that we have been presented with a monograph which is equally new both the Hungarian and foreign literature and which really deserves the attention of the reader.