

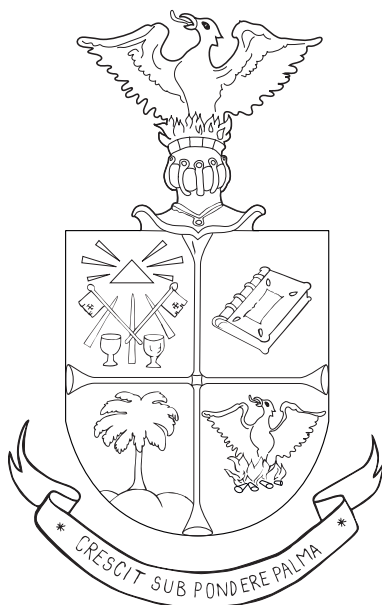
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CRIMES AGAINST THE REPUBLIC IN THE DRAFT OF CRIMINAL CODE OF 1926 AND 1937¹

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Abstract

The state of legal dualism in the field of criminal law had adverse effects on the state and its population after the establishment of the Czechoslovak Republic in 1918. The adoption of Austrian and Hungarian legislation was to be of a transitional nature only. The main objective of the ongoing processes was the unification of criminal law, which was to reflect the unitary character of the Czechoslovak Republic. The process of unification was to result, first of all, in the adoption of new criminal codes. The present paper analyses the issue of crimes against the Republic in the draft of criminal codes of 1926 and 1937. Crimes against the Republic were included in both drafts in their first title of the special part. The author also analyses the Protection of the Republic Act of 1923. The existing regulation of the Act in question was the precursor of the proposed legislation regarding crimes against the Republic in both drafts of the criminal laws.

Key words

crimes against the Republic, unification of criminal law, interwar Czechoslovak Republic, Czechoslovak criminal law, dualism of law

1. Introduction

After the establishment of the Czechoslovak Republic, on 28 October 1918, A. Rašín prepared the Act on the Establishment of an Independent Czechoslovak State, which was published under No. 11/1918 Collection of Laws and Regulations. This so-called reception norm stipulated in its Article 2 that “all existing provincial and imperial laws and regulations shall remain

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temporarily in force". The provisions of the reception norm meant for the newly established Republic a state of legal dualism or even trialism in the early days. Thus, after the establishment of the Republic there was Austrian legislation in force in Bohemia, Moravia and Silesia, particularly in relation to substantive criminal law this was Criminal Code No. 117/1852 of Imperial Code on crimes, misdemeanours and delicts and Military Criminal Code No. 19/1855 of Imperial Code. In the territory of Slovakia and Subcarpathian Ruthenia, the Hungarian regulations, especially Act Art. V/1878 – Criminal Code on crimes and misdemeanours and Act Art. XL/1879 – Act on Delicts² were reciprocated and applied.

The Austrian Criminal Code of 1852 was based on an earlier legislation of the Austrian Criminal Code on Crimes and Serious Police Crimes of 1803.³ Later attempts to recodify the Austrian Criminal Code were unsuccessful, and the various outlines of the criminal laws were not adopted.⁴ The 1852

- 2 The replacement of the terminology used in the Czechoslovak Republic occurred on the basis of Act No. 449/1919 Collection of Laws and Regulations on the statutory protection of the Czechoslovak Republic of 23 July 1919. According to Section 1 of this Act, the terms "Austrian", "Hungarian" and "Austro-Hungarian" were replaced in all laws and regulations by the terms/forms of the words "Czechoslovak" and "Czechoslovak Republic". The provision in question applied similarly to the terms "imperial", "royal", "imperial royal" and "imperial and royal".
- 3 In this context, see for example: KALLAB, Jaroslav: *Reforma trestního zákona (Reform of the Criminal Code)*. *Lidové noviny*, 1920, 28(367), 1. (July 27, 1920) – where the author states in connection with the Austrian Criminal Code of 1852 that "this Code, however, the legacy of the Bach era, was only a new edition of the Criminal Code of 1803. Provided we read it more closely, we see before us the whole social and political structure from the time of the Holy Alliance: not only the monarch but also his whole family float with a gloriole of »legitimacy« over the nations of humble vassals, in the law there still lies from the time of the Great French Revolution in all parts the fear of any movement which would manifest dissatisfaction with the state given by God and his advocates [...]"; JOKLÍK, František: *Katechismus rakouského práva trestního (hmotného) (Catechism of Austrian Criminal Law (substantial))*. Praha, Nakladatelství HEJDA a TUČEK, 1904, 12. – where the author states in connection with the Austrian criminal law that "however, this Code in the promulgation patent itself is only called a »new edition« of the Criminal Code of 3 October 1803. Thus, the present Criminal Code is actually more than 100 years old", or MIŘIČKA, August: *Trestní právo hmotné (část obecná i zvláštní) (Substantive criminal law (general and special part))*. Prague, Nákladem spolku československých právníků "VŠEHRD", 1934, 8. – where the author states that "this Code, valid until now, is thus only a revision of the Code of 1803."
- 4 The preliminary outline of the Austrian Criminal Code of 1909 was dealt with in more detail in his work, for example, by prof. Kallab. See: KALLAB, Jaroslav: *Trestní systém osnovy trestního zákonníku [Penal system of the Criminal Code outline]* [Special Imprint of the

Criminal Code thus became the basis for the regulation of substantive criminal law in Bohemia, Moravia and Silesia throughout the existence of the interwar Czechoslovak Republic. The Hungarian Criminal Code of 1878 was sanctioned on 27 May 1878 and promulgated in both national chambers on 29 May 1878⁵. The Hungarian Criminal Code, authored by the professor of criminal law Károly Csemegi, was considered to be more modern than the Austrian Criminal Code in many provisions. This comparison was based, firstly, on the fact that the law was adopted some 25 years later than the Austrian law. However, the main reason was the actual, in many ways more liberal provisions of the Hungarian Criminal Law and Criminal Code. The Hungarian criminal law was in several aspects more lenient than the Austrian one, reflecting already several more humane aspects of punishment, taking into consideration the offender's personality, or the methods of imposing and executing punishments.

The state of legal dualism in the field of criminal law after the establishment of the Czechoslovak Republic in 1918 had adverse effects on the state and its population. It was perceived negatively by both professional and lay circles.⁶ In fact, since the establishment of the new state, efforts have been under way to overcome legal dualism. The main aim of the ongoing processes was to unify criminal law. The unification was carried out by adopting new, partial criminal laws, which already had a unifying character and were valid for the entire territory of the state. However, these

“Právník”, 1910, 49(3-5)], Prague, Knihtiskárna Dr. Ed. Grégra a syna, 1910. In relation to attempts to recodify the Austrian Criminal Code, see also: VLČEK, Eduard: *History Dějiny trestního práva v Českých zemích a v Československu [History of Criminal Law in the Czech Lands and Czechoslovakia]*. Brno, Masaryk University, 2006, 35., JABLONICKÝ, Tomáš: *Pokus o reformu československého trestního práva – osnova trestního zákona z let 1921-1926 [An Attempt to Reform Czechoslovak Criminal Law – the Draft Criminal Code of 1921-1926]* (Právněhistorické studie, Vol. 43). Prague, Karolinum, 2013, 84., or CHALUPNÝ, Emanuel: *Reforma trestního práva s hlediska sociologického (Zvláštní otisk ze Sociologické revue) [Criminal law reform from a sociological point of view (Special reprint from the Sociological Review)]*, at own cost, Brno, Typia Book Printing House in Brno, 1932.

- 5 See eg: LACLÁVÍKOVÁ, Miriam–Švecová, Adriana: *Pramene práva na území Slovenska II [Sources of Law on the Territory of Slovakia II]* (1790–1918). Trnava, Typi Universitatis Tyrnaviensis, 2012, 531.
- 6 On some aspects of the takeover of state power, see e.g. PANDY, Dávid: *Polepšovacia výchova na území dnešného Slovenska od počiatku 20. storočia do druhej svetovej vojny (Corrective upbringing on the territory of today's Slovakia from the beginning of the 20th century to the Second World)*. Studia Iuridica Cassoviensia, 2021/9, 56-69.

processes were not dominant. The process of legal unification in the field of substantive criminal law was to result, first of all, in the adoption of a new criminal code – a new, joint criminal law. In the present paper, we will focus on the analysis of the efforts to unify substantive criminal law in the interwar Czechoslovak Republic – with reference to the systematic inclusion of crimes against the Republic in these proposals, as well as their anchoring in the adopted and effective criminal law norms.

2. Preliminary Outlines of the Criminal Code on Crimes and Misdemeanours and Act on Delicts of 1926

Work towards overcoming dualism in criminal law began in 1920. As early as 1921, the Outline of the General Part of the Criminal Code was drafted. The submitted outline of the general part of the Criminal Code on Crimes and Misdemeanours consisted of 132 paragraphs, its publication included an explanatory report and the general part of the Act on Delicts, which consisted of 17 paragraphs. However, this outline – as its name implies – did not yet have a specific part. It did not deal with the individual constituent elements of crimes. After work on the general part of the Criminal Code was completed in 1921, work began on the special part. Work on the special part was provisionally completed and revisions to the general part were commenced at a meeting of the Commission in July 1924.

The meetings of the Commission for the Reform of the Criminal Code came to an end in June 1925. The justification of the draft and the final works were drawn up during the summer of the same year. In 1926, the so-called professorial outline of the Criminal Code was published under the title Preliminary outlines of the Criminal Code on Crimes and Misdemeanours. This outline was submitted by the Ministry of Justice and was based on the outline drawn up in 1921. Detailed reasonings were attached to both parts of the draft laws (on Crimes and Misdemeanours as well as on the Act on Delicts). In the introduction to the publication of this outline, the Ministry of Justice distanced itself in some way from the proposal put forward. It stated that it was primarily the work of the authors themselves⁷. Although the Ministry made its officials available to them and paid the necessary

⁷ It was mainly about prof. Miříčka, who led the preparatory work, prof. Kallab and prof. Milota.

costs, it otherwise had no influence on the content of the outline.⁸ As stated by prof. Milota, “this caution with which the Ministry refused to take responsibility for the outline is understandable from a political point of view, especially because of the ideological contradictions that prevail in today’s society, which can also be seen in the political stratification of the National Assembly.”⁹ The summary was also published in German and French.¹⁰ The present editions in foreign languages were carried out with the intention that the draft could also be subjected to foreign expert criticism. As the Ministry for the Unification of Laws and the Organization of Administration stated in its opinion on the submitted outline, “The outline of the Criminal Code on Crimes and Misdemeanors and Act on Delicts are essentially based on completely new ideas that have dominated the science of criminal law in recent decades.”¹¹ The Criminal Code on Crimes and Misdemeanors of 1926 had 342 sections and was divided into general and special part. The general part had 135 sections and was divided into four titles, two of which were subdivided into further sections in view of the internal structure of the proposed Code. The special part of the Criminal Code (§136–§342) consisted of a total of 15 titles. Reports for the special part were divided among the members of the Commission. The report on crimes against the Republic was prepared by prof. Milota. Crimes against the Republic were in the draft Criminal Code of 1926 dealt with in a special part, Title V (§136–§150). The special part of the Criminal code was composed in such a way that the crimes in question constituted its first part – they were included in its first title. The outline of the Criminal Code regulated the following crimes: Con-

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- 8 Preliminary Outlines of the Criminal Law on Crimes and Offences and the Offence Act, I. Outlines, published by the Commission for the Reform of the Czechoslovak Criminal Law, Prague, at the expense of the Ministry of Justice, Prague, 1926, 5. The distancing of the Ministry of Justice from the ongoing work was also expressed in a letter addressed to the Ministry for the Unification of Legislation and the Organization of Administration dated 29. 50057/24), in which the Ministry pointed to the fact that, apart from providing support staff and procuring correspondence, it did not have any direct influence on the Commission or interfere in any way with its work – National Archives Prague, Ministry of Unification Fund, carton 119.
- 9 MILOTA, Albert: *Reforma trestního zákon v Československu [Reform of the Criminal Law in Czechoslovakia]*. Bratislava, Právnická jednota na Slovensku a Podkarpatskej Rusi, 1934, 9.
- 10 The French translation of the outline was published by the Czechoslovak Society for Criminal Law, the German translation was published by the Ministry of Justice.
- 11 National Archives Prague, Fund of the Presidency of the Ministerial Council, carton 1772 (no. 1845/1927/5).

spiracy against the Republic (§136), Preparation of Conspiracy against the Republic (§137), Endangering the Security of the Republic (§138), Treason (§139), Disclosure of State Secrets (§140), Association hostile to the State (§141), Defamation of the Republic (§142), Endangering Neutrality (§143), Conspiracy against a Foreign State (§144), Defamation of a Foreign State (§145). The given part of the Special Part of the Criminal Code has been supplemented, in addition to the regulation of the constital elements of crimes, by provisions relating to the imposition of sentences. These were: loss of honourable civil rights (§146), denunciation (§147), confiscation of property (§148), effective contrition (§149) and limitation (§150). The explanatory report of the draft Criminal Code on Crimes against the Republic reflected the “delicacy” of its treatment. According to the authors of the explanatory report, “the law must furthermore be as definite and unambiguous as possible, so that every citizen knows how far they can go in a political struggle without fear of coming into conflict with the Criminal Code.”¹² The various opinions required in the explanatory report were put into practice from 1923 onwards. That year saw the adoption of Act No. 50/1923 Coll. for the Protection of the Republic. The relevant parts of the Act on the Protection of the Republic in question were thus, in principle, incorporated into this title of the special part of the Criminal Code. The various amendments to the present draft thus arose mostly from the need to change the systematic arrangement or from certain special considerations which guided the draft.¹³

The draft Criminal Code of 1926 was not adopted. The preliminary outlines of the Criminal Code on Crimes and Misdemeanors and Act on Delicts did not become law. The processes that took place after its passage – which were intended to gather comments, suggestions, and insights that would subsequently be incorporated into the draft law – were not completed.¹⁴

12 Preliminary outlines of the Criminal Code on crimes and misdemeanours and the Act of Delicts, II. Reasoning of the outlines, published by the Commission for the Reform of the Czechoslovak Criminal Law, at the expense of the Ministry of Justice, Prague, 1926, 82.

13 *Ibid.*, 82.

14 By Decree of 26 March 1926 (No. 13344/26, case: Preliminary outlines of the Criminal Code), the Ministry of Justice sent two copies of the outlines of the Criminal Code to all ministries. At the same time, ministries were requested to send their comments to the Ministry of Justice by the end of the calendar year. In relation to this Decree, the National Archives of Prague, the Ministry of Justice Fund, in box 575 contain comments on the draft of Criminal Code, for example from the Ministry of Foreign Affairs, the

As one of the authors of the draft, Professor Kallab, said: "I do not know the opinions of politicians, but from practitioners we hear mostly sceptical opinions."¹⁵ Also with regard to other ongoing processes of unification of substantive criminal law, prof. Kallab stated in 1929 that "if the Ministry, without awaiting the further fate of the Criminal Code, now proceeds to reform criminal procedure and juvenile criminal law, it is obvious that it does not envisage that the Criminal Code can be enacted any time soon."¹⁶

3. Act on the Protection of the Republic

The Act on the Protection of the Republic (Act No. 50/1923 Collection of Laws and Regulations, dated 19 March 1923) was adopted as a reaction to the assassination of the Czechoslovak Minister of Finance, A. Rašín. The law was aimed against extremism and also introduced new constituent el-

Ministry of Public Works, the Chelčický Peace Society, the Ministry of National Defense, and the Presidium of the Supreme Regional Court in Prague, Judicial Board in Košice, Ministry of Public Health and Physical Education, Supreme Audit Office, Ministry of National Defense, Institute for Forensic Medicine, Charles University in Prague, Supreme Military Court in Prague, Ministry of Education and National Education, Presidium of the Supreme Court in Brno, Ministry of Railways, Ministry of Trade, Presidium of the Judicial Board in Bratislava, Directorate of Prisons of the Provincial Criminal Court in Prague, Moravian Medical Chamber, Notary Chamber in Brno, Advisory Board for Economic Affairs, State Trade Council, Medical Faculty of Masaryk University in Brno, Presidium of the Police Director Košice, the Provincial Administrative Committee, the Association of Czechoslovak Savings Banks or the Association of Voluntary Czechoslovak Fire Brigades (some comments on the draft Criminal Code can also be found in duplicate in the fund of the Ministry of Unification – note. author). At the same time, the Ministry of Justice compiled a list of all comments received. Part of such lists (of which there were eight in the first phase in total) was also a reference to articles published in professional journals and in the daily press. These lists were (together with the description of the reports) delivered to the individual members of the commission. The eighth elaborated list (No. 22310/29), which was sent out at the beginning of June 1929, thus contained in Part A (written opinions) a reference to a total of 50 works. In Part B (articles in professional journals) there was a reference to 129 such works. In part C (articles in the daily press) there was a reference to 53 articles - the National Archives of Prague, the Ministry of Justice Fund, cardboard 575. Another list of comments and articles (No. IX.) Was subsequently processed and sent out on June 15, 1932 (No. 28510/32) National Archives Prague, Fund Ministry of Justice, cardboard 2092.

15 KALLAB, Jaroslav: Překážky reformy trestního práva [Obstacles to criminal law reform]. *Lidové noviny*, 1929, 37(527), 1.

16 *Ibid*, 1.

ements of crimes. It regulated crimes against the Republic uniformly for its entire state territory. The law thus “filled a gap in the legislation, which had so far lacked provisions on the protection of the Czechoslovak state and its constitutional representatives.”¹⁷ According to Professor Milota – in his preface to the second edition of the commentary on the said law – the government’s outline of the law already emphasized in its brief commentary that the law was intended to eliminate obsolete regulations, built on the needs and constitution of the old state, which were not in line with the needs and constitutional set-up of the new state because they did not correspond to its democratic establishment.¹⁸ According to several authors, there was a lack of clear understanding of this law and it evoke several controversial reactions.¹⁹ Many of the controversial reactions stemmed from the need to properly balance the often partially conflicting interests – at the centre of which stood and operated this law. Thus, according to the explanatory report of the Constitutional Law Committee of the Chamber of Deputies of the National Assembly, “the regulation of criminal repression against attacks on the state, intended to change the state system, has always been one of the most delicate tasks of the Criminal Code. The Criminal Code of a nation which has adopted the principle of democracy as the main watchword of its constitution must adopt a position which is in some measure impartial. It must provide effective protection for the state establishment for which the majority of the nation stands, but it must not go so far as to make a just political struggle more difficult. From this consideration a twofold requirement for the criminal protection of our Republic becomes apparent. In the first place, repression must be effective and consistent; attacks on the security of the state must be repelled with strength and firmness. The dangerousness of individual attacks must be carefully considered, the less dangerous types must be separated from the more dangerous ones, and the state must not be afraid to apply even the most severe punishments

17 MALÝ, Karel et al.: *Dějiny českého a československého práva do roku 1945 [History of Czech and Czechoslovak Law until 1945]*. Praha, Leges, 2010, 338.

18 МИЛОТА, Albert: *Zákon na ochranu republiky [Act on the Protection of the Republic]*. Kroměříž, J. Gusek, 1930, 4.

19 For more details see e.g.: FENYK, Jaroslav–CÍSAŘOVÁ, Dagmar: *Medziválečné trestní právo a věda trestního práva v Československu [Interwar War Law and the Science of Criminal Law in Czechoslovakia]*. In: *Československé právo a právní věda v meziválečném období 1918-1938 a jejich místo ve střední Evropě [Czechoslovak Law and Legal Science in the Interwar Period (1918-1938) and Their Place in Central Europe]* (Volume 2). Prague, University Charles University in Prague–Karolinum Publishing House, 2010, 832.

to these dangerous types of attacks. On the other hand, however, punitive repression must not be prioritized. Only those activities that pose a real danger to the State shall be prosecuted and punished.”²⁰

The Act on the Protection of the Republic was internally divided into four titles. These were as follows: I. Conspiracy against the Republic, II. Defamation of the Republic and Attacks on Constitutional Officials, III. Threats to the peace of the Republic and its military security, and IV. Final Provisions. The first title (Conspiracy against the Republic) contained the regulation of 3 constituent subject matter elements, namely: Conspiracy, Preparation of Conspiracy and Endangering the Security of the Republic. The second title of the Code (Defamation to the Republic and Attacks on Constitutional Officials) regulated: Treason, Disclosure of State Secrets, Military Treason, Sentences for Certain Attacks on the Life of Constitutional Officers, Bodily Harm to Constitutional Officers, Conspiracy to Attack Constitutional Officers, Violence against Constitutional Officers or Personation of their Power, Insult to the President of the Republic and Failure to Report or Notify Criminal Enterprises. Title Three (Threatening the Peace of the Republic and its Military Security) regulated: Unlawful Arming, Disturbance of the General Peace, Incitement to Failure to Perform Lawful Duties or to Commit Criminal Acts, Approval of Criminal Acts, Association Hostile to the State, Dissemination of False News, Return of Members of the Former Ruling Family, or Encouragement of Such Return, Gross indecency, Aiding and Abetting or Supporting Military Crimes, Unlawful Recruitment of Troops, Unlawful Intelligence, Endangering the Defence of the Republic, Endangering the Public Administration by a Public Authority, Failure to Remove or Creation of Unlawful Monuments. Title Four (Final Provisions) regulated the provisions relating to the imposition of punishments, namely: Effective Contrition, Imposition of Sentence, Monetary Punishment and Confiscation of Property, Substitute Punishment out of Imprisonment, Seizure and Forfeiture, Loss of Honorary Civil Rights, Denunciation, and Suspension of the Periodical Press. The Republic Protection Act has been amended several times. These were, for example, Act No. 124/1933 Coll., Act No. 140/1934 Coll., Government Decree No. 20/1939 Coll., etc. Individual provisions of this Act were applied extensively in the jurisprudence of the courts during the inter-war Czechoslovak Republic.

20 LEPšík, Josef: *Zákon na ochranu republiky s důvodovou zprávou [Act on the Protection of the Republic with an Explanatory Report]*. Prague, Fr. Borový, 1923, 7.

4. The Outline of the 1937 Criminal Code

Efforts to reform substantive criminal law in the interwar Republic of the 1920s, aiming at the adoption of a unified Criminal Code, were not successful. As the years passed, the question of unification became more and more urgent, resonating in both professional circles and the general public. It was not until the mid-1930s – when a revised draft of the Criminal Code was drawn up – that more significant action was taken in this direction. It was primarily a (partial) reworking of the Preliminary Outline of 1926. The Government of the Czechoslovak Republic, at its meeting on 28 May 1935, decided to start immediate (re)working on the unification of the Criminal Code and the Code of Criminal Procedure. The unification efforts, which were under the auspices of the Ministry of Justice, this time (in contrast to the proposals of 1921 and 1926) – at the stage of drafting – took place without the direct participation of representatives of the academic community, whose activity had been crucial in the preceding years.²¹ The first stage of the unification processes was the drafting of the elaboration concerning the codification of criminal law. By Ministry of Justice Decree No 45230/35-16 of 3 September 1935, the first parts of the reports were sent for consideration.²² According to the record of the Ministry of Justice, this was a selection of basic, fundamental issues which were seen as the basis for all further work.

At this “written” stage of preparation, the Ministry of Justice requested the institutions to send their proposals/comments by means of written opinions. The fact that the Ministry of Justice initially set a really short deadline of six weeks for sending comments on the initial drafts is perhaps an indication of the intention to make the work go faster this time. The need to act quickly was therefore recognised by the Ministry of Justice. This fact was stated, for example, in one of the opinions/comments on the submitted reports, according to which “[...] *the Ministry of Justice places the greatest emphasis on speeding up the preparation of the new codification of criminal law, which is why the deadlines for submitting the reporters’ comments were set quite short. Consequently, it is not possible to see an exhaustive assessment in the attached statements on the general part of the outline [...].*”²³

21 In this context, in the professional file, in contrast to the common concept of the so-called “Professor’s Outline” (for the draft of Criminal Code of 1926), the term so-called “Official’s Outline” is also used for the draft of Criminal Code of 1937.

22 National Archives Prague, Fund Ministry of Justice, cardboard 2070.

23 General introduction of the comments on the general part of the outline of the Crimi-

In contrast to the unification work carried out in the 1920s, these processes were not received with such interest by in professional circles. Considerably less was written about the process of the unification of criminal law in professional periodicals, compared to the previous period.²⁴

During the final work on the drafting of the Criminal Code, the Ministry of Justice sent under No. 66667/36, the text of the special part of the draft Criminal Code and, under No. 67672/36, the recitals of the last 4 chapters that had not been discussed yet to the Ministry of National Defence, the Ministry of Unification, the Presidium of the Supreme Court and the Office of the Attorney General. The agenda for the next and final meeting was to be the discussion of the 4 chapters in question and the revision of the entire general and specific parts of the Code. The Ministry of Justice planned to convene the final meeting in January 1937. The final meeting on the Draft Criminal Code were held at the Ministry of Justice on 15-24 February 1937.²⁵

Under the title "Outline of the Law Enacting the Criminal Code", the draft was issued to the press in April 1937.²⁶ The draft was submitted for inter-ministerial comments and circulated to selected experts and professional organizations, corporations and institutions falling within the sphere of interest of the Ministry of Justice. The 1937 draft of the Criminal law consisted of a general and a specific part and comprised a total of 426 sections. In the process of unification of the criminal law, the administration of justice originally intended to issue the Code of Criminal Procedure first. The

nal Code, looking in particular at the Decree of the Ministry of Justice of 3 September 1935, no. 45230 / 35-16 (ad Pres. 1617/35), National Archives Prague, Fund Ministry of Justice, cardboard 2070, 1.

- 24 In this connection, see, for example: STEINER, Robert: *Osnova trestního zákona z roku 1937 ve světle normativního pojetí viny* [Outline of the Criminal Code of 1937 in the light of the normative concept of guilt]. *Časopis pro právní a státní vědu*, 1938, 21(3), 220-242.; KEPERT, Josef: *Nová osnova trestního zákona* [New Outline of the Criminal Code]. *VŠEHRD*, 1937, 18(9-10), 386-389. or MIŘIČKA, August: *Pokus nespůsobilý a formy viny v osnově trestního zákona z r. 1937* [Ineligible attempt and forms of guilt in the outline of the Criminal Code of 1937]. *Právník*, 1937, 76(7), 289-407.
- 25 In this phase of the preparation of the Criminal Code, a total of 4 meetings were held, on 17-20 February 1936, 18-26 May 1936, 12-17 October 1936 and 15-24 February 1937. on the final meetings held on the premises of the Ministry of Justice on 15-24 February 1937 is in the fund of the Unification Ministry – National Archives of Prague, Fund of the Ministry of Unification, cardboard 163 (No. 512/37).
- 26 The outline was sent to the comment procedure by a letter from the Ministry of Justice dated April 9, 1937, under no. 20.731-37.

unification of criminal procedural law was to be implemented earlier.²⁷ In the course of the preparatory work, it was gradually considered necessary to issue the Criminal Code together with the Criminal Procedure Code. „The more modest objectives set by the Judicial Administration in the field of substantive criminal law reform will in fact make it possible for the Criminal Code to be unified at the same time as the new Criminal Procedure Code, i.e. the formal, procedural criminal law.“²⁸ According to the authors of the proposal in question, „if they were not to enter into force at the same time, this would result in unforeseen problems in the transitional period and would make it unusually difficult to regulate the relationship between these codifications and the subsidiary criminal laws [...].“²⁹ Thus, it was assumed that the entire set of codifications of criminal law (it was also contemplated to issue the Act on the execution of sentences and security measures, the so-called Criminal Enforcement Code) – together with the common introductory law – would enter into force at the same time.³⁰ However, the serious social changes taking place in the Czechoslovak Republic in the autumn of 1938, which led to the dissolution of the Republic in March 1939, no longer allowed for the adoption of criminal laws.³¹

The draft of Criminal Code of 1937 regulated crimes against the Republic in its Title XI. Compared to the 1926 outline, there was a conceptual change in the first title of the special part of the Criminal Code – when crimes against the Republic, the security of the Republic and its international relations were jointly included in one title (this is how the name of Title XI was also formulated). The outline of the Criminal Code regulated the following crimes: Conspiracy against the Republic (§115), Preparation of Conspiracy against the Republic (§116), Endangering the Security of the Republic (§117), Return of a Member of the Former Ruling Family and Failure

27 Ibid.

28 *Explanatory Report Outline of the Act Issuing the Criminal Code*. Prague, Ministry of Justice, 1937, 165.

29 Ibid.

30 For more details, see also: *Protokol I. o jednání o osnově trestního zákona* (Protocol I. on Negotiations on the Outline of the Criminal Code), National Archives of Prague, Ministry of Justice Fund, Cardboard 2072.

31 In relation to the unification of the criminal law of the interwar Czechoslovak Republic, see also: FICO, Miroslav: *Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovnej Československej republiky [Fundamentals of criminal liability in the process of unification of the criminal law of the interwar Czechoslovak Republic]*. Košice, ŠafárikPress, 2020.

to Announce His Return (§118), Association Hostile to the State (§119), Sedition against the Republic (§120), Defamation of the Republic (§121), Insulting the President of the Republic (§122), Treason (§123), Disclosure of State Secrets (§124), Military Treason (§125 and §126), Espionage (§127), Endangering the Defence of the Republic (§128), Illicit Intelligence (§129), Endangering Neutrality (§130), Defamation of a Foreign State (§131).

This title of the Special Part of the Criminal Code was, such as the 1926 draft, supplemented by provisions relating to the imposition of sentences, in addition to regulating the constituent elements of the crimes. These were: Confiscation of Property (§132), Special Provisions for the Imposition of Punishment (§133), and Effective Contrition (§134). As we have already stated in the present paper, a uniform regulation of crimes against the Republic and its security was contained in the Act on the Protection of the Republic of 1923. In view of the fact that its regulation met the requirements of the government officials – the 1937 outline was limited to the transposition of this regulation. The outline made only such changes as arose from the necessity of adapting the provisions of the Protection of the Republic to the general provisions of the outline, and such changes as the necessity and expediency of which were further justified.³² As the authors of the explanatory report pointed out, the relatively minor changes also resulted from the advantage of the “rich case-law” of the Supreme Court of the Czechoslovak Republic, which deepened and established the interpretation of the various conceptual features of such crimes.³³

5. Conclusion

In the present paper we have elaborated on the problem of crimes against the Republic in the draft of Criminal Codes of 1926 and 1937. We have focused primarily on a brief description of the unification efforts, as well as the basic regulation of the facts of crimes against the Republic – in terms of their systematic classification in the drafts examined. Crimes against the Republic were classified in both proposals in their first title of the special part of the Criminal Code.

32 *Reasoning of the Outline of the Act Issuing the Criminal Code*. Prague, Ministry of Justice of the Czechoslovak Republic, 1937, 282.

33 *Ibid.*

We have also focused our attention on the Protection of the Republic Act of 1923, since its provisions provided the basic starting point of the subject matter on which the two Criminal Codes outlines under review were based. The provisions of the Protection of the Republic Act which were to be replaced by the provisions of the draft of Criminal Codes were to be repealed. However, this – also in view of the fact that no joint, unified Criminal Code was adopted during the interwar period of the Czechoslovak Republic – did not ultimately happen. Thus, the principal purpose of our work was to present for foreign readers the basic framework of the processes of unification of the criminal law in the interwar Czechoslovak Republic and the role of crimes against the Republic in this process. We thus see the present paper as a certain beginning of a series of publications – in which we will subsequently focus our attention on the application of individual provisions of the applicable criminal laws also regulating crimes against the newly established state and its territorial integrity.