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Fundamental Rights in Czechoslovakia between 1920 and 1938: Their Doctrinal Theorizing and Judicial Application

Abstract

The article presents an overview of the problem of fundamental rights during the First Czechoslovak Republic and focuses especially on the role played by the fundamental rights catalogue of the 1920 Czechoslovak Constitutional Charter. Section 2 presents the 1920 catalogue itself, methods of specification and of limitations of rights (usually by particular laws) and postulates continuity with pre-1918 Austrian and Hungarian law. Section 3 is dedicated to opinions of Czechoslovak legal doctrine (mainly Czech authors) on the role of the 1920 catalogue. Section 4 examines the case-law of the Supreme Administrative Court protecting fundamental rights and tries to show that some fundamental rights were applied directly by this Court and that direct application sometimes leads also to a limited form of constitutional review of pre-1918 law.

Keywords: First Czechoslovak Republic, Czechoslovak Constitutional Charter of 1920, Czechoslovak Supreme Administrative Court, direct application of fundamental rights, theoretical critique of fundamental rights, Jiří Pražák, Jiří Hoetzel, František Weyr, Jaroslav Krejčí

1. Introduction

This article presents an overview of fundamental rights issues during the First Czechoslovak Republic (officially dating from October 1918 till September 1938) and focuses especially on the role played by the fundamental rights catalogue of the 1920 Czechoslovak Constitutional Charter. The next section presents the catalogue itself, methods of specification and limitations of rights (usually by particular laws) and postulates continuity with pre-1918 Austrian and Hungarian law. Section 3 is dedicated to opinions of Czechoslovak legal doctrine (mainly Czech authors) that can be roughly divided into three groups: Mainstream scholarship that, in general, recognized the importance of fundamental rights as limits for legislators (but did not pay to these rights specific attention), sceptical opinions perceiving fundamental rights as theoretically

flawed and thus tending to limit their practical importance too and finally the smallest group of scholars (in fact only Jaroslav Krejčí) who put greater emphasis on fundamental rights as an expression of especially important value for modern constitutions. The last, fourth section examines the case-law of the Supreme Administrative Court (*Nejvyšší správní soud*, hereinafter referred to as SAC) protecting fundamental rights and tries to show that some fundamental rights were applied directly by this Court (i.e., outside of a framework of particular laws or regulations) and that this direct application sometimes leads also to a limited form of constitutional review of pre-1918 law.

By focusing on the 1920 fundamental rights catalogue, this article does not deal with problems of minority rights (rights of Czechoslovak national minorities) that were especially important for multinational Czechoslovakia after 1918.[1] Many findings presented in this article were already published by the author in the Czech language.[2]

2. Fundamental Rights Catalogue in the Fifth Part of the 1920 Czechoslovak Constitutional Charter: A Continuity with Pre-1918 Past

Czechoslovak National Assembly adopted the first permanent Czechoslovak Constitutional charter (*Ústavní listina*, hereinafter referred to as "the Constitution") No. 121/1920 Sb. on February 29, 1920, and from its entry into force (March 6, 1920), it replaced the Provisional Constitution (*Prozatímní ústava*) No. 37/1918 Sb. One of the differences between both constitutional texts is the fact that the Provisional Constitution did not include any catalogue of fundamental rights.[3] Between 1918 and March 1920, the catalogue of fundamental rights of the Austrian December Constitution (*Dezemberverfassung*) from 1867 (fundamental Law No. 142/1867 RGBl.) and Hungarian laws (*törvénycikk*) and ministerial decrees (*rendelet*) concerning fundamental rights[4] were used instead. This situation was a direct consequence of the very first law adopted by Czechoslovakia in 1918 (Law No. 11/1918 Sb.), stating that previous laws and regulations (i.e., Austrian law in Czech, Moravian and Silesian territory, i.e., in former Cisleithania, and Hungarian law in the territory of Slovakia and Carpathian Ruthenia, i.e., in former Transleithania) had to remain in force provisionally. However, we have to also keep in mind that after the outbreak of WWI, rights from the 1867 catalogue were suspended by regulation

[1] For the general overview of minority rights (and situation of national minorities) in Czechoslovakia see e.g., Petráš, *Menšiny*.

[2] Šejvl, "Základní práva", 977–1003; Šejvl, "Když se práva berou vlažně", 109–26.

[3] National Committee (*Národní výbor*) who elaborated the Provisional Constitution prepared also fundamental rights catalogue (that included also social rights, e.g., right to work and right to unemployment benefits). However, this catalogue was not adopted. See Kuklík, *Příběh*, 53ff.

[4] As it is well known, there was no unified catalogue of fundamental rights in Hungarian law before 1918. Instead, mainly decrees regulated many fundamental rights in a piecemeal fashion. Occasionally, there were also in pre-war Hungary adopted laws specifying some fundamental rights, like law on press No. XIV/1914 or law on religious freedom No. XLIII/1895. See e.g., Bianchi, "Bürgerliche Freiheitsrechte", 19ff; Péter, *Hungary's Long Nineteenth Century*, especially 281ff; Schweitzer, "Die Freiheitsrechte", 669–96.

(*Verordnung*) No. 158/1914 RGBl. (issued on the basis of famous Law No. 66/1869 RGBl. on a state of necessity and according to Art. 20 of 1867 catalogue) and this suspension remained in force until the end of August 1919.[5] Nevertheless, between 1919 and 1922, we can find more than fifty decisions of SAC applying rights from the 1867 catalogue.

Fundamental rights provisions formed the fifth part of the Constitution covering Arts. 106 to 127 of the Constitution. The content of this part can be summarized as follows: Art. 106 guaranteed equality before the law. One of the peculiarities of the Constitution was that it also had the second provision on equality before the law in its Art. 128 that had essentially the same meaning as Art. 106 § 2. The reason why two almost identical provisions were included lies in the fact that both provisions were more or less faithful translations of articles of the 1919 (minor) St.-Germain peace treaty[6] guaranteeing the rights of national minorities in Czechoslovakia (Art. 106 § 2 was a translation of Art. 2 § 1 of the treaty, Art. 128 was a translation of Art. 7 §§ 1 to 3 of the treaty). Also, Art. 106 formed a part of the fifth part of the Constitution, but Art. 128 opened the sixth part of the Constitution dedicated to the rights of national minorities. In the judicial practice of SAC, however, both articles were used somewhat interchangeably.

Arts. 107 to 111 and Art. 116 guaranteed personal freedom and right to property. In particular Art. 107 guaranteed personal freedom in general, Art. 108 freedom of residence and freedom of business and gainful employment, Art. 109 right to property, Art. 110 freedom to leave the country (to emigrate), Art. 111 prescribed that taxes and punishments can be imposed only on the ground of law (i.e., by ordinary laws adopted by the National Assembly and by government regulations based on these laws) and Art. 116 guaranteed secrecy of correspondence.

Art. 112 guaranteed inviolability of the dwelling (*Hausrecht*) and business premises, Art. 113 freedom of the press, freedom of assembly and freedom of association, Art. 114 freedom of trade unions and professional associations (*Koalitionsfreiheit*), Art. 115 right to petition (political petitions to National Assembly).

Arts. 117 to 120 guaranteed freedoms of expression, research, arts and education: Art. 117 was about freedom of expression in general, Art. 118 guaranteed freedom of scientific and artistic expression, Art. 119 stated that public education must be organized as not being in conflict with scientific knowledge and Art. 120 provided that private educational institutes can be established only in accordance with laws.

The topic of Arts. 121 to 125 was religious freedom: Original government proposal of these articles included the constitutional basis for separation between church and state (*odluka církve od státu*), but it was not adopted (because of disapproval of parties close to the Catholic Church) and separation thus never materialized in the First Republic.[7] Instead, Art. 121 guaranteed religious freedom in general, Art. 122 guaranteed this

[5] See regulations (*nařízení*) No. 296/1919 Sb. and No. 489/1919 Sb. In the territory of former Transleithania many fundamental rights were suspended according to Law No. LXIII/1912 enabling for such a suspension in a time of war.

[6] Treaty concluded between Allied powers and Czechoslovakia signed September 10, 1919, in Saint-Germain-en-Laye, published as No. 508/1921 Sb.

[7] For discussions in the Constitutional Committee of the National Assembly (*Ústavní výbor*) and final rejection of separation by the Assembly itself see Kuklík, *Příběh*, 166ff and 218ff.

freedom equally for Czechoslovak citizens and foreigners, Art. 123 prohibited forcing anyone to religious rituals, Art. 124 guaranteed equality of all religions and Art. 125 stated that religious practices could be prohibited only if they violated public order or public morality.

Art. 126 stated that marriage and family are under the special protection of laws and had no normative significance. Finally, Art. 127 was the only provision of the fifth part that established a duty because it provided the constitutional basis for compulsory military service.

It is generally assumed that the model for the 1920 catalogue was the 1867 catalogue[8] that was, in turn, almost identical to the catalogue of 1849 (*Grundrechtspatent*, No. 151/1849 RGBl.).[9] *Grundrechtspatent* was indirectly influenced by the liberal German constitutional thinking from the *Vormärz* period, thinking that probably influenced Austrian liberals after 1861.[10] However, neither published motives for the Constitution itself (*důvodová zpráva*, *amtliche Begründung*)[11] nor articles by Jiří Hoetzel (professor of administrative law working for the ministry of interior and the leading author of the Constitution)[12] mentioned 1867 catalogue as a direct source of 1920 catalogue. Instead, both sources emphasized especially French and American influences. However, this stance is understandable from the point of view of an ideology of the newly independent state that in general, wanted to at least symbolically "negate" continuity from the past that was sometimes perceived as an oppressive one.[13]

But a closer look at the provisions of the 1920 catalogue shows us, indeed, many similarities between both catalogues: Art. 106 is a more detailed provision than Art. 2 of 1867 catalogue; Art. 107 has similar wording as Art. 8 of 1867 catalogue; Art. 108 is similar to Art. 6 of the 1867 catalogue; the wording of Art. 109 does not differ significantly from Art. 5 of 1867 catalogue; Art. 110 is more laconic than Art. 4 of 1867 catalogue; Art. 112 is similar to Art. 9 of the 1867 catalogue; Art. 113 only partly resembles Arts. 12 and 13 of 1867 catalogue; Art. 115 is almost identical to Art. 11 of the 1867 catalogue; Art. 116 has the similar wording as Art. 10 of the 1867 catalogue; Art. 117 has its counterpart in Art. 13 of 1867 catalogue; freedom of scientific research and education in Arts. 118, 119 and 120 differs significantly from Art. 17 of the 1867 catalogue and a similar conclusion can be said about Arts. 121–125 about religious freedom, which are in general more liberal than Arts. 14–16 of 1867 catalogue. In contrast to the 1867 catalogue, the Constitution did not include an explicit right to free choice of occupation (Art.

[8] See e.g., Vavřínek, *Základy. Díl I*, 198; Vaněček, *Dějiny*, 412; or today Klavík, "Občanská práva", 437, 438.

[9] Eduard Sturm, rapporteur of *Reichstag* for 1867 catalogue, admitted that despite his efforts, catalogue of 1867 was essentially the same as *Grundrechtspatent* of 1849. See Neschwara, "Eduard Sturm", 22ff; Brauneder, *Die historische Entwicklung*, 20.

[10] For the ideological influence of German liberal constitutionalists before 1848 on Austrian liberals after 1861 (especially on Adolf Pratobevera, Austrian minister of justice between 1861 and 1862) see Cerman, "Všeobecná práva", 1097–108.

[11] Published, e.g., in Peška, *Československá ústava*, 403ff.

[12] Hoetzel, "Poznámky", 215ff; Hoetzel, "Ústavní listina", 21ff.

[13] The general position of Czech politicians and public figures towards 1867 catalogue from the time of its adoption till the end of the monarchy was in general not very favourable – according to them, especially Art. 19 of the catalogue did not protect enough Czech language rights that were in the centre of their nationalist endeavour (next to their struggle for recognition of traditional rights of Czech Kingdom).

18 of 1867 catalogue) but e.g., Hoetzel believed that freedom of gainful employment in Art. 108 has a similar meaning,[14] and also SAC used Art. 108 to protect freedom of occupation (see below). Rights of national minorities (that were very important, given the multinational character of Czechoslovakia) mentioned in Art. 19 of the 1867 catalogue were missing too because the Constitution dedicated the whole sixth part of its text to these minority rights. (Because this article focuses only on fundamental rights, the issue of national minority rights falls outside of its scope.) On the other hand, the Constitution guaranteed some rights that were not included in the 1867 catalogue, in particular Art. 111 and Art. 114.

Differences between the 1867 catalogue and the 1920 catalogue can be partially explained by the discussions that took place during the drafting process of the catalogue. We are informed about these discussions, especially by Hoetzel then[15] and today by Jan Kuklík: e.g., Art. 109 (right to property) stated that ordinary law of the National Assembly could enable expropriation even without compensation because, in April 1919, Czechoslovakia decided on land reform (*pozemková reforma*) that expropriated many big landowners;[16] *Koalitionsfreiheit* in Art. 114 was a major change from previous Austrian law that prohibited workers' unions and punished workers' strikes[17] (civil liability of workers for damages caused by a strike, however, remained in Czechoslovak law); Art. 120 § 1 limited the establishment of private educational institutions because many anti-clerical politicians wanted to control the potential establishment of religious private educational institutes (especially those run by the Catholic Church); a similar motive led to Art. 119;[18] programmatic Art. 126 was directly influenced by the German 1919 Weimar constitution. There were also some important changes to fundamental rights that were not part of the text of the 1920 catalogue, e.g., Art. 9 of the Constitution granted voting rights to women, and it was also commonly accepted that women could be members of political parties and other political associations in spite of the fact that Art. 30 of Law No. 134/1867 RGBl. on associations stated otherwise (and it was not explicitly changed); the right to a lawful judge was guaranteed by Art. 94 § 2 of the Constitution.

However, not only lists of rights included in both catalogues were similar: Resemblance also covers more general methods of limitations of rights. Like in 1867, many provisions granting rights in 1920 usually stated that these rights could be enjoyed only within limits set by applicable laws (ordinary legislative acts of National Assembly)[19] or more specifically set by penal laws[20] or (on the other hand) limits could be set "on the ground of

[14] Hoetzel, "Ústavní listina".

[15] Hoetzel, "Československo. Ústava", 483ff.

[16] For the discussion on expropriation in Constitutional committee see Kuklík, *Příběh*, 167. Landowners were in general compensated according to Law No. 329/1920 Sb., but with exceptions introduced by § 9 of Law No. 215/1919 Sb. (e.g., property of members of House of Habsburg-Lorraine was expropriated without compensation).

[17] See Law No. 43/1870 RGBl. that abolished many penal restrictions of *Koalitionsfreiheit*, but at the same time declared null and void any contracts between employers forcing employees (typically by halting production) to accept employers' demands (usually lower wages) and *vice versa* any contracts on strikes or contracts between entrepreneurs to the detriment of consumers.

[18] For discussions about these provisions on education in Constitutional committee see Kuklík, *Příběh*, 166.

[19] Arts. 109, 110, 117, 120.

[20] Arts. 118, 113 § 2.

law" (i.e., not only by laws of National Assembly, but also by government regulations),[21] or by general legal provisions respectively.[22] In its practice, SAC sometimes differentiated very carefully between situations when a particular right could be limited by laws on the one hand or on the grounds of law on the other.[23] However, in the case of freedom of assembly in Slovakia and Carpathian Ruthenia, where this freedom was regulated only by some Hungarian decrees (and therefore not by law), SAC decided that limits posed by these pre-1918 decrees remained in force.[24]

The Constitution also limited the use (enjoyment) of some rights by providing that their use could not violate public order or public morality[25] and also stipulated that particular laws would be adopted to specify (concretize) some rights.[26] And indeed, many laws were adopted to specify or limit rather general provisions of the 1920 catalogue:

The most important among these laws was probably the constitutional Law No. 293/1920 Sb., specifying conditions for personal freedom in Art. 107, freedom of residence in Art. 108, inviolability of the dwelling in Art 112 and secrecy of correspondence in Art. 116. This law *inter alia* regulated conditions for a judicial arrest (after judicial warrant only, within 24 hours, arrested person must be released or taken before a judge) and for an administrative arrest[27] (arrested person must be released after 48 hours or taken before an administrative authority), granted police powers to command somebody to stay in a certain place (according to Law No. 108/1873 RGBl.) or to avoid some places (according to Law No. 88/1871 RGBl.), specified conditions of house search (usually after judicial warrant only with exceptions provided by special laws) and also specified that secrecy of correspondence can be violated only based on law (in former Cisleithanian territory Law No. 42/1870 RGBl.). From this short overview, it is clear that the role of this constitutional law was similar to Law No. 87/1862 RGBl. protecting personal freedom and No. 88/1862 RGBl. protecting inviolability of the dwelling (*Hausrecht*) (both laws formed a part of the 1867 catalogue according to its Art. 8 and 9).

The second most important law limiting fundamental rights was (ordinary) Law No. 300/1920 Sb. on extraordinary measures (*mimořádná opatření*) that enabled suspension of rights in Arts. 107, 112, 113 and 116 and also suspension of the above-mentioned constitutional Law No. 293/1920 Sb. in the case of war or civil unrest that would endanger state unity, its democratic and republican form, Constitution or public order. Once again, the role of this law was the same as the famous above-mentioned Law No. 66/1869 RGBl. However, it is not necessary to discuss the content of this law in detail because (despite the fact that it was a very strong limit to constitutionally recognized fundamental rights taking into account that it provided for suspension not only by government regulations but also by police orders) this suspension was used in the history of the First Republic only once in December 1920 and the second use was ordered only in September 1938 (time of army mobilization, when the state was in danger) in the very

[21] Arts. 107, 109 § 2, 111.

[22] Art. 108.

[23] See e.g., Decision No. 12741/1937 Boh. A.

[24] See e.g., Decisions No. 3730/1924 Boh. A, 4475/1925 Boh. A, 6103/1926 Boh. A.

[25] Arts. 108, 113 § 2, 122 and 125.

[26] Arts. 107, 112, 113 § 3, 116 and 120.

[27] The main legal bases for administrative arrests and punishments was famous Regulation No. 96/1854 RGBl. (*Prügelpatent*), abolished in 1928.

end of the First Republic. This makes a difference because, before 1918, suspensions under Law No. 66/1869 RGBl. were rather common.

Other ordinary laws specifying or limiting fundamental rights were Law No. 61/1918 Sb., abolishing noble titles (and thus concretizing Art. 106), Law No. 71/1922 Sb. on emigration with its regulation No. 170/1922 Sb. (specification of Art. 110). Press freedom in Art. 113 was specified by Law No. 6/1863 RGBl. on the press as amended and the above-mentioned Hungarian Law No. XIV/1914 on press. Press freedom and general freedom of expression were also limited by Law No. 50/1923 Sb., on the protection of the Republic that punished, e.g., publishing any false news endangering state security and public order or publishing any articles encouraging any form of sedition. Freedom of association and of assembly in Art. 113 was specified by the above-mentioned Law No. 134/1867 RGBl. on associations, by specific Law No. 253/1852 RGBl. and by Law No. 135/1867 RGBl. on the right to assembly; in former Transleithania, particular legal norms were arranged by many Hungarian decrees. Art. 114 was specified especially by Law No. 309/1921 Sb. against oppression (*útisk*) that protected *Koalitionsfreiheit* against attacks by other private associations (i.e., trade unions were protected against attacks by employers' cartels etc.) and by Law No. 141/1933 Sb. on cartels (regulating associations with compulsory membership). Finally, Arts. 121 to 125 on religious freedom mainly remained, in general, the same as before 1918, i.e., they were specified especially by *Maigesetze* like Law No. 68/1874 RGBl. on state recognition of some churches and religious associations (in spite of the fact that the Constitution did not make a difference between churches recognized by state and not recognized by the state), Law No. 50/1874 RGBl. on provisions regulating external relations of Catholic Church and by above-mentioned Hungarian Law No. XLIII/1895; the most important change in Czechoslovakia was probably Law No. 96/1925 Sb. on mutual relations between confessions (regulating e.g., confessions of children born in inter-confessional marriages, burials etc.). However, a minor part of the Czechoslovak doctrine was of the opinion that Law No. 68/1871 RGBl. and part II of Law No. XVIII/1895 were abolished by the Constitution itself, because they contradict Art. 124 (providing equality between confessions).[28] But the Czechoslovak government, after 1918, issued some regulations based on Law No. 68/1871 RGBl. and SAC also applied this law (see below in section 4).

From this overview of limiting and specifying laws, we can derive a conclusion that some continuity with former Austrian (and Hungarian) past can be clearly established because of the method of specification (constitutional Law No. 293/1920 Sb. had a similar function as laws No. 87/1862 RGBl. and 88/1862 RGBl.; Law No. 300/1920 Sb. is an analogy of Law No. 66/1869 RGBl.) and because many important Austrian and Hungarian laws (and decrees) specifying fundamental rights survived in the First Republic legal order.

It also means that fundamental rights were, as a rule, applied mainly indirectly (within limits set by laws or regulations), which is one of the main differences from today's situation when fundamental rights are generally applied directly, and their indirect application is perceived as an exception. However, the general fact of indirect application of fundamental rights does not mean that some rights of the 1920 catalogue were not

[28] See e.g., Laštovka, "Ústava o poměru", 230ff.

capable of being applied directly as I would like to show below in section 4 of this article. But first, I would like to present the opinions of Czechoslovak scholars on the legal significance of fundamental rights.

3. Opinions of Czechoslovak Scholars on the Legal Significance of Fundamental Rights

Almost all scholars writing in the First Republic about fundamental rights considered themselves to be legal positivists: Fundamental rights were, for them, the creation of positive law (the Constitution) and we cannot find among them any adherent of natural law – conception of fundamental rights as natural rights (that still persisted, e.g., among German liberal constitutionalists of *Vormärz* period) was for them clearly outdated. Scholars' opinions on fundamental rights can be roughly divided into three groups: (1) Mainstream scholars; (2) Scholars that criticized and underestimated fundamental rights and finally; (3) Scholars who, on the other hand, put a stronger emphasis on them and regarded them as an essential element of modern constitutions.

The mainstream opinion can be generally described as follows: Fundamental rights are, from the legal point of view, relevant but do not possess some "higher" or "more elevated" position in comparison to other constitutional provisions. It is also possible to say that for mainstream scholars, fundamental rights were not an important topic – they commented on the rights catalogue in the same way as they commented on other parts of the Constitution. For example, Bohumil Baxa (constitutional law professor in the newly created Brno faculty) or Václav Joachim (public lawyer working for the ministry of interior) in their writings on the Constitution, treated the issue of fundamental rights only very briefly.[29] Any theorizing of fundamental rights was, for mainstream scholars, unnecessary – the wording of the Constitution was the most important thing. They understood fundamental rights usually as a limit for legislators (National Assembly cannot adopt ordinary laws violating them); some of them (e.g., Hoetzel) placed them under the protection of the Constitutional Court (*Ústavní soud*, hereinafter referred to as CC)[30] (but the role of CC in fundamental rights protection was rather limited – see below in section 4). Because they usually commented on the Constitution article by article, they classified fundamental rights into several categories according to their legal significance: for example, Zdeněk Peška (constitutional law professor in the newly created law faculty in Bratislava) distinguished rights that could be directly applied without necessary specification by any laws, rights that set limits to National Assembly as a legislator, rights empowering National Assembly to legislate without giving it limits and finally "rights" without any legal significance (often called "programmatic provisions" or "legislator's

[29] Baxa, "Ústavní listina", 39ff; Joachim, *Naše ústava*, 76ff. Baxa in his article on the 10 years anniversary of the Constitution did not mention fundamental rights at all. *Cf.* Baxa, "Deset let", 33ff.

[30] Hoetzel, "Nejnovější české písemnictví", 365ff.

monologues").[31] Franz Adler, a constitutional law professor in Deutsche Universität Prag, elaborated on a similar classification.[32]

However, there were some mainstream scholars who dedicated more attention to fundamental rights in their writings: Cyril Horáček Jr. focused in his 1925 article on the judicial application of fundamental rights and thus turned the attention to the fact that some rights were directly applied by SAC.[33] More interesting is the example of Jaromír Sedláček (civil law professor in Brno), who tried to apply fundamental rights also in civil law:[34] According to Sedláček, it is necessary to seriously take Art. 1 of the Constitution that directed all state bodies to respect the Constitution, including fundamental rights catalogue. This rule must be interpreted in connection with § 7 of the Civil Code (ABGB), referring, *inter alia,* to natural law principles. Sedláček proposed that this referral in § 7 should be understood as a referral to the 1920 catalogue, which means that fundamental rights must be respected even by private contracts parties (because the state delegated to them the creation of specific legal norms in the form of private contract and thus private contractors are in the same position as state authorities.) For this reason e.g., Art. 106 (equality before the law) must have an influence on the position of the father as a head of a family (§ 91 of ABGB), Art. 114 (*Koalitionsfreiheit*) ensures the binding character of collective agreements (between employers and employees) and Art. 117 (freedom of expression) prevents negotiating clauses in work contracts that would bind its parties to be members of a particular political party or adherent of a particular confession. Therefore it is possible to say that Sedláček (in contrast to all other mainstream scholars who perceived fundamental rights as a limitation of state power) was an early adherent of fundamental rights application in private law – a position not very common in the first half of the 20th century.

The second group of scholars perceived the concept of fundamental rights as an essentially flawed concept without solid theoretical ground and criticized it. For this reason, some scholars of the second group limited their practical significance. A critique of the concept of fundamental rights had a tradition dating back to the writings of Jiří Pražák, the founder of Czech public law doctrine in the last quarter of the 19th century. Pražák's position can be summarized in the following way:[35] Fundamental rights are only "legislator's monologues" (phrase popularised by him), i.e., without any legal significance, because their main function is to limit a state towards an individual's "natural freedom." But because the state is under the rule of law (*Rechtsstaat*), it can act towards individuals only on the basis of law and thus, limits posed by fundamental rights are useless – in the sphere not regulated by laws, individuals have their "natural freedom" unimpaired and this freedom can be theoretically extended *ad infinitum* because we can always specify various "moments" of this freedom (e.g., freedom of movement can be specified as the freedom to go for a walk etc.) and therefore catalogues of fundamental rights do not contribute to it at all. Moreover, taking into account the fact that many fundamental rights can be themselves applied only within limits set by particular laws,

[31] Peška, *Československá ústava*, 294ff.
[32] Adler, "Grundriss", 108ff.
[33] Horáček ml., "Právní význam", 148ff.
[34] Sedláček, "Ústavní listina", 88ff.
[35] See especially Pražák, *Rakouské právo, Díl I, Část III*, § 178ff, 47ff.

it is the content of these laws that is important for the delimitation of individuals' "natural freedom," not the fundamental rights catalogue. Pražák was therefore also sceptical about the direct application of fundamental rights. It is questionable whether Pražák's opinions were influenced by a generally negative stance of Czech political elites towards the 1867 catalogue (see above),[36] or whether he was influenced by the opinions of his contemporary German constitutionalists like Paul Laband, who also denied legal significance to fundamental rights (and who was also of the opinion that the list of rights can be extended *ad infinitum*).[37] Be it as it may, Pražák's critique was "copied" without any major changes e.g., by František Vavřínek (constitutional law professor in Prague) in his writings on Austrian constitutional law[38] and critique remained essentially the same also in his book on Czechoslovak constitutional law.[39] Other scholars like Jan Říha[40] or Kazimír Čakrt[41] were, in general, also of the same opinion.

For a potential Polish reader of this article, it can be interesting to note that also Polish constitutional lawyer Maciej Starzewski in his monograph on Czechoslovak Constitution[42] expressed a rather sceptical opinion on the role of fundamental rights in the Czechoslovak constitutional system and also used similar reasons as Pražák and his "succesors." For Starzewski, the fundamental rights catalogue in *Rechtsstaat* can be legally significant if a violation of this catalogue can be a ground for an individual complaint towards SAC. But in Czechoslovak law, SAC can decide only whether particular administrative decisions or (general) government regulations are in conformity with ordinary laws (i.e., legislative acts of the National Assembly) and does not have a special power to exercise constitutional review; there is also no special complaint protecting fundamental rights specifically (see below sections 4 and 5). For these reasons, the protection of fundamental rights before SAC does not differ from the protection of other public rights by this Court – therefore fundamental rights catalogue is not legally significant because it does not "add" any further protection for individuals. Starzewski discusses another possibility, why fundamental rights can be significant for individuals, namely protection of them by CC. But the Constitution, according to Starzewski, usually does not really limit legislators because almost all of the fundamental rights can be applied only indirectly, i.e., within limits set by particular ordinary laws (see above in section 2). There are, however, exceptions, when even the 1920 catalogue can provide "barriers" even to a legislator, in particular Arts. 113, 114, 115 and Arts. 121 to 125. We can thus conclude that although Starzewski belonged to sceptical scholars of the second group, he attached a legal significance to some rights from the 1920 catalogue, namely to those rights that created limits or "barriers" to ordinary legislation. In section 4 below, we will see how these limits were applied by SAC.

Pražák's critique was upheld and also elaborated by František Weyr,[43] who was not only public law scholar but also one of the most distinguished Czech legal philosophers

[36] This opinion is suggested by Cerman, "Všeobecná práva".
[37] Laband, *Das Staatsrecht*, § 16, 134.
[38] Vavřínek, "Výklad dnešního státního zřízení", 503ff.
[39] Vavřínek, *Základy, Díl II*, 5ff.
[40] Říha, "Organisace státu", 276
[41] Čakrt, "Základní práva", 671.
[42] Starzewski, *Konstytucja*, 157–64.
[43] See especially Weyr, *Soustava*, 75ff, 337ff.

(Weyr's normativism was a specific Czech "version" of Kelsen's pure theory of law). Weyr doubted whether a sphere of individuals' "natural freedom" could be understood as rights because this sphere was only a "negative one," i.e., a sphere that was not regulated by positive law: According to Weyr, it is not possible to construe this sphere in juridical terms (typically in terms of legal rights), because it cannot be understood juridically, since it is outside of the sphere of juridical knowledge.[44] Weyr was also sceptical of the opinion that fundamental rights could limit the National Assembly as a legislator (opinion of mainstream scholars) because, for Weyr, there was no difference between the National Assembly as the creator of the Constitution and as the creator of ordinary laws – it was the same assembly and difference between ordinary laws and constitutional laws (including the Constitution) was only a difference in the quorum for the adoption of both types of laws.[45] Thus it is neither realistic to expect that the same assembly can protect fundamental rights (by rights catalogue) and to violate them (by particular laws), nor it is possible from a juridical point of view because, according to Weyr, it is "unthinkable for the lower, delegated norm-creator to have a different will that the superior norm-creator."[46] In spite of the fact that in 1927 Weyr changed his opinion[47] and started to differentiate between the National Assembly as the creator of the Constitution and as a legislator, he did not change his sceptical views on fundamental rights.[48] This theoretical position also influenced Weyr's comments on particular rights from the fifth part of the Constitution, when he claimed that almost all of these articles were without any legal significance, either because they set only principles, not rules (like e.g., Art. 106), or they could be limited and specified by ordinary laws (see above), or they guaranteed something that was in itself self-evident (like e.g., Art. 109).[49]

Finally, there is the smallest third group of scholars who attached higher importance to fundamental rights (than mainstream scholars) not only on a theoretical level but also in practice. In fact, this group is represented only by Jaroslav Krejčí, a very prolific constitutional law scholar who was also CC secretary from its establishment in 1921 and its president from spring 1938.[50] His work shows clearly a constant inspiration from modern trends, especially French and German constitutionalism (not neglecting also American influences). His opinions on fundamental rights can be described not only on the basis of his book on this topic (the only First Republic monograph dedicated to fundamental rights),[51] but also taking into account his books on the principle of legality,[52] constitutional

[44] Weyr, *Teorie práva*, 193.

[45] Weyr, *Soustava*, 228ff.

[46] Weyr, *Teorie práva*, 126.

[47] Weyr, "La question", 72–88.

[48] See not only Weyr, *Teorie práva* quoted above, but also Weyr, *Československé právo*, especially 66ff and 248ff.

[49] Weyr, *Soustava*, 341ff; Weyr, *Československé právo*, 250ff.

[50] In modern Czech history Krejčí is, however, remembered especially as minister of justice of the Second Republic (authoritarian state existing from October 1938 till the German occupation in March 1939) and Prime Minister during Protectorate of Bohemia and Moravia (*Protektorat Böhmen und Mähren,* in fact German puppet "state" existing between March 1939 till the end of the WWII) from January 1942 to January 1945.

[51] Krejčí, *Základní práva*.

[52] Krejčí, *Zásada právnosti*.

review[53] and many articles. In spite of his own "leaning" towards normativism and his initial opinion that fundamental rights can be freely abolished by the National Assembly as the creator of the Constitution,[54] later (in 1937) Krejčí arrived to the conclusion that at least some fundamental rights cannot be abolished (*nezrušitelná*) even by Constitution itself.[55] Krejčí arrived to it not by changing his legal positivist orientation but by emphasizing the democratic character of the Czechoslovak Republic: If the Republic wanted to remain democratic (a very acute requirement in the context of growing authoritarian tendencies in Central Europe after 1933), it must also guarantee freedom of discussion and deliberation as a necessary precondition of democracy. And freedom of discussion, in turn, presupposes freedom in general that is expressed by many fundamental rights (Krejčí explicitly referred to personal freedom, freedom of expression, press freedom, freedom of assembly, freedom of scientific research and *Koalitionsfreiheit*).

The second important moment in Krejčí's thinking was the emphasis he put on the constitutional review as a means of fundamental rights protection, not only in the form of review by CC (not surprisingly, taking into account his position within the Court), but also by the general judiciary. In his book on the principle of legality, he claims that there is a theoretical principle stipulating that every lower norm must be in conformity with a higher norm and therefore, every norm that violates the Constitution is invalid *ab initio*.[56] Therefore general judiciary should theoretically respect and declare this kind of invalidity – unless it is stated otherwise by constitutional law.[57] The problem with the Constitution was that it really stated otherwise – the Constitution provided for the exclusive competence of CC to decide on the constitutionality of ordinary laws and regulations[58] and prohibited constitutional review of the general judiciary.[59] Therefore in his book on constitutional review, he concluded that some provisions of Law No. 162/1920 Sb. on CC were violating the Constitution itself[60] and at the same time, he proposed *de lege ferenda* that the concentration of constitutional review in the "hands" of CC had to be abandoned and a new model of "diffusive," "deconcentrated" or "incident" constitutional review by general judiciary had to be established.[61]

These closing opinions of Krejčí lead us directly to the problem of judicial application of fundamental rights in the next section.

[53] Krejčí, *Principy*.
[54] Krejčí, *Základní práva*, 20 and 35.
[55] Krejčí, "Positivně-právní předpoklady", 129ff.
[56] Krejčí, *Zásada právnosti*, 20.
[57] *Ibidem*, 34.
[58] Art. II of the constitutional law introducing the Constitution (*uvozovací zákon*) stated that CC reviews whether Czechoslovak laws are in conformity with the Constitution.
[59] Art. 102 of the Constitution stated that courts can review whether regulations (*nařízení*) are in conformity with (ordinary) laws. Judicial review of ordinary laws was in general prohibited, but courts could review whether laws were properly promulgated.
[60] Krejčí, *Principy*, 88ff.
[61] *Ibidem*, 121ff.

4. Fundamental Rights Protection By Supreme Administrative Court: Direct Application of Freedom of Association and Religious Freedom as a Tool for a Limited Constitutional Review

On the basis of Krejčí's opinions, we can arrive at the conclusion that CC was not a proper "forum" for the judicial application of fundamental rights. There are various reasons for it, but I do not want to explain all of them here in detail. It is sufficient to mention the lack of specific individual complaints procedure (that could be a tool of rights protection for individuals), institutional weakness (CC did not have any permanent members because all of its justices could be at the same time judges of apex courts like Supreme Court (*Nejvyšší soud*) or SAC, attorneys, advocates or even ministers) and finally the fact that from 1931 till May 1938 CC was literally "vacant" because after the lapse of ten years tenure of the first justices (from 1921 till 1931) no new justices were appointed.[62] Thus, if we want to find examples of judicial application of fundamental rights, we have to study the case-law of the other Court of public law – SAC.

The Court was a "copy" of former Austrian Verwaltungsgerichtshof because Law No. 3/1918 Sb., on SAC,[63] brought (with minor changes) to Czechoslovak legal order also Law No. 36/1876 RGBl. establishing this Austrian Court.[64] As it has been already explained above, when an individual claimed that individual administrative decisions (*rozhodnutí*) or general administrative measures (*opatření*) violated her rights, SAC was competent to decide on the legality of these decisions and measures and incidentally also on the legality of regulations (*nařízení*). Therefore when individuals claimed that laws or regulations were not in conformity with the Constitution, the Court rejected this kind of application,[65] thus respecting Art. 102 of the Constitution prohibiting the general judiciary from constitutionally reviewing laws or regulations.

From 1920 till the end of the First Republic in 1938, there were around 240 decisions of this Court applying fundamental rights when individuals claimed that their rights from the 1920 catalogue were violated by an individual administrative decision or by general administrative measure (directly concerning their rights). Some articles of the 1920 catalogue were not applied at all – there are no cases on Arts. 112, 116, 118 and 119. The vast majority of the Court's decisions applied articles 107, 108 (especially freedom of occupation), 109 (especially conditions of expropriation), 111, 113, 117 and 121 to 125. Because these articles of the 1920 catalogue were mainly capable of being applied only indirectly, SAC usually controlled whether conditions for the application of specific laws were fulfilled (e.g., whether punishments and taxes were really imposed by

[62] On CC in general and on these aspects see, e.g., Osterkamp, *Verfassungsgerichtsbarkeit*; Langášek, *Ústavní soud*.

[63] Because SAC was known for delays and backlog of cases, Law No. 3/1918 Sb. was replaced by Law No. 164/1937 Sb. to make Court's functioning more effective. However, the whole institutional "design" and Court's competences remained the same. See, e.g., Hácha, "Poznámky", 1.

[64] For the process of formation of *Verwaltungsgerichtshof* see e.g., Olechowski, *Die Einführung*.

[65] See e.g., Decision No. 12129/1936 Boh. A.

a particular law or regulation according to Art. 111, whether freedom of expression was really limited by law according to Art. 117, etc.). Nevertheless, we can also find cases directly applying some provisions of the 1920 catalogue. This section tries to present some of them.[66]

Looking at the wording of provisions of the 1920 catalogue (and the wording was the most important element according to mainstream scholarship), we can conclude that some provisions of the 1920 catalogue were capable of direct application, namely some paragraphs of Arts. 113, 114, 115, 119 and 121 to 125. However, not all of them were applied by SAC – e.g., there were only two decisions applying Art. 114, one decision mentioning Art. 115 and no decision on Art. 119. On the other hand, we have more cases on Art. 113 § 2 (that specified reasons for the dissolution of an association) and on Arts. 122 to 125 concerning religious freedom.

Art. 113 § 2 stated that an association could be dissolved only if its activity violated a penal law or was against public order (*veřejný pokoj a řád*). In spite of the fact that the rather vague term "public order" was used,[67] Court's decisions in 1922 and 1923 clearly indicated that these reasons were of exhaustive nature and ordinary laws or regulations could not "add" new ones.[68] In my opinion, the most interesting decision among these early cases is Decision No. 2241/1923 Boh. A concerning dissolution of a Hungarian association by decision of special minister for the administration of Slovakia. Because the minister grounded the dissolution on one provision of Hungarian Ministry of Interior Decree No. 1508/1875 B. M. (Decree regulating the establishment of associations from 1875, but published only in 1898), the Court had to check whether the reasons for dissolution were in conformity with Art. 113 § 2 of the Constitution. The Court found that the reasons in the Decree were wider than in Art. 113 § 2 and thus not only annulled the minister's decision but also decided that Art. 113 § 2 itself partially annulled (derogated) this decree. The decision on partial annulment of a decree for not being in conformity with the Constitution was possible only because of Art. IX of the above-mentioned introductory law to the Constitution: This article *inter alia* explicitly stated that laws and regulations not in conformity with the Constitution (or in conflict with the republican form of the Czechoslovak state) were invalid from the moment when the Constitution had entered into force. Thus, the Court also provided some limited form of constitutional review with respect to fundamental rights, but only towards measures adopted before the Constitution had entered into force. Decision No. 2496/1923 Boh. A repeated the same conclusion concerning the same decree.

Not only this Hungarian Decree was partially annulled by the Constitution, but also pre-1918 Austrian law: First implicitly in its decisions No. 4081/1924 Boh. A and No. 8803/1930 Boh. A and finally explicitly in its Decision No. 12937/1937 Boh. A. the Court arrived at a conclusion that Art. 113 § 2 also derogated (and replaced) § 24 of Law

[66] It is necessary to note that the first present-day work on application of 1920 catalogue by SAC was probably written by Jiří Klavík. See Klavík, "Občanská práva".

[67] The Court specified this term especially in Decisions No. 3803/1924 Boh. A, No. 4081/1924 Boh. A, No. 8384/1930 Boh. A or No. 9561/1931 Boh. A; the most detail explication of public order was in Decision No. 4488/1925 Boh. A.

[68] See especially Decisions No. 1679/1922 Boh. A, No. 2117/1923 Boh. A, No. 2372/1923 Boh. A, No. 2766/1923 Boh. A, No. 2883/1923 Boh. A, No. 2951/1923 Boh. A, No. 3370/1924 Boh. A.

No. 134/1867 RGBl. on associations. This example of constitutional review of previous Austrian law was, however, not very important from the practical point of view because the reasons for the dissolution of an association contained in § 24 of the 1867 law were essentially the same as the reasons contained in Art. 113 § 2.[69]

If we look at cases on direct application of Arts. 122–125 on religious freedom, we have to admit that in comparison to decisions on the dissolution of associations (around 40 decisions between 1922 and 1938), they are less numerous (only 17 decisions) and only in three cases individuals claiming violation of fundamental rights were successful. The most important was, in my opinion, Decision No. 8963/1930 Boh. A concerning the closing of Jewish prayer room by a decision of Nitra district authority (*okresní úřad*). The authority based its decision on one provision of Hungarian Decree No. 4249/1905 V. M. and therefore, the Court had to examine whether provisions of this Decree are in conformity with Arts. 122, 123 and 125 that were (in Court's opinion) directly effective. The Court found that closing of prayer room was against Art. 122 (because it limited freedom of religious rituals guaranteed to all Czechoslovak inhabitants) and although the Court was prepared to annul the Decree, it did not do it (because, in Court's opinion, the Decree did not give power to the authority to close the prayer room).

Other cases directly applying articles on religious freedom, however, usually did not lead to any success of applicants and also did not provoke partial derogation of legal provisions: In Decision No. 6147/1926 Boh. A (when SAC was again invoked by the Nitra Jewish community), the Court stated that ritual slaughter of animals probably was a religious ritual,[70] but at the same time endorsed administrative powers to prohibit these slaughters for sanitary reasons; in Decision No. 1661/1922 Boh. A, the Court upheld validity of Law No. 50/1874 RGBl. (empowering state authorities to regulate some external relations of the Catholic Church) and explicitly stated that relations between the state and Catholic Church were not affected by Arts. 121 to 125 at all and thus remained the same as before 1920; in Decisions No. 10451/1933 Boh. A and No. 11279/1934 Boh. A the Court upheld the validity of Law No. 7/1895 RGBl. that *inter alia* prescribed duties of some persons to pay contributions to some Catholic parishes; similar duties laid down in pre-1918 Hungarian law were also upheld by Decision No. 5609/1926 Boh. A. These examples show us that specific relation between state and Catholic Church (that was typical for pre-1918 Austrian and Hungarian law) remained in existence also in Czechoslovak law, despite Art. 124 guaranteeing equality of all religions.

From today's perspective, SAC also applied rather restrictively the term "forcing somebody to religious ritual" (practice prohibited in Art. 123), when e.g., in Decision No. 2280/1923 Boh. A stated that compulsory religious education is not against this prohibition.[71] However, Law No. 226/1922 Sb. introduced later exceptions to this duty.

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[69] Czechoslovak scholars were also of similar opinion: e.g., Václav Dusil, specialist on law of associations and judge of SAC, wrote that both provisions were essentially the same (Dusil, *Československé právo spolkové*, 57ff) and Weyr thought that reasons in Art. 113 § 2 were even wider than reasons in § 24 (Weyr, *Soustava*, 362ff).

[70] For this conclusion see also Decision No. 8388/1930 Boh. A.

[71] In Decision No. 295/1920 Boh. A, the Court stated that compulsory baptism is not against Art. 14 § 3 of 1867 catalogue.

From these two examples of direct application of the 1920 catalogue, we can conclude that SAC was not only capable of directly applying fundamental rights (if the wording of a particular article of the 1920 catalogue was sufficiently clear and did not refer to some specific laws or regulations), but it also exercised a form of limited constitutional review of pre-1918 laws or regulation – a practice that was enabled by Art. IX of introductory law to the Constitution. However, a direct application was rather an exception and constitutional review of pre-1918 legal measures was also very exceptional.

5. Conclusion

This article tries to show that fundamental rights provisions in 1920 Constitutional Charter were rather similar to pre-1918 Austrian catalogue of fundamental rights and many of these rights were specified or limited by similar laws (and sometimes by the same laws). Mainstream Czechoslovak legal scholars usually understood the 1920 catalogue as a limit to the legislator but did not pay it some particular attention: Their position, however, did not differ significantly from scholars from other countries – times when fundamental rights would be perceived as a leading idea expressing the constitutional value of utmost importance, were still far away. Sceptical positions towards fundamental rights provisions (manifested mainly by "successors" of Jiří Pražák) also did not differ significantly from similar positions in other countries (e.g., while normativist thinkers Kelsen and Weyr embraced the idea of democracy, they both shared their distrust to fundamental rights catalogues). Notable exceptions represent some ideas of Cyril Horáček Jr. (who focused on the judicial application of fundamental rights), of Jiří Sedláček (who was one of the early proponents of fundamental rights application in private law) and of Jaroslav Krejčí, who argued that many fundamental rights are non derogable even by the Constitution itself and suggested reforms of the rather "defunct" or "paralyzed" judicial review by CC. After pointing out that CC's role in fundamental rights protection was really limited, this article focuses on the judicial application of the 1920 catalogue by SAC: Some provisions of the catalogue were applied by SAC directly (i.e., without the necessity of specifying laws or other legal measures). Examples of case-law applying Art. 113 § 2 of the Constitution (on the dissolution of associations) and Arts. 121 to 125 (on religious freedom) show that these articles were applied effectively; this application also sometimes led to a specific and rather limited form of constitutional review (when thanks to Art. IX of introductory law to the Constitution SAC could decide on partial derogation of pre-1918 law).

British historian Alan J.P. Taylor wrote in the 1940s about the Habsburg monarchy:

> The Austrian citizen after 1867 had more civic security than the German and was in the hands of more honest and more capable officials than in France or Italy; in fact, he had an enviable existence, except that the state lacked national inspiration, and the dynasty could find no "mission" to replace this.[72]

[72] Taylor, *The Habsburg Monarchy*, 138ff.

I do not want to evaluate the correctness of Taylor's observations. Still, similar words can be, in my opinion, also said about the Czechoslovak First Republic: 1920 catalogue of fundamental rights without a doubt contributed to the fact that the state was a functioning democracy that submitted itself to the authoritarian government only under the external pressure after October 1938 (much later than other Central European states) and these rights also provided civic security to its citizens (no matter what was their nationality). But national inspiration (or rather an aspiration) of the Czechoslovak nation (the idea of Czechoslovakism) was clearly not very attractive to other nationalities and, after all, led to the fall of the First Republic (after the infamous Munich Agreement). We can only speculate what would have been a role of fundamental rights in Czechoslovak legal doctrine and judicial practice if the young state had had more time to develop towards modern trends of European constitutionalism.

Bibliography

Legal sources

1508/1875 B. M. eln. számú körrendelet, az egyletek tárgyában.
1895. évi XLIII. törvénycikk a vallás szabad gyakorlásáról.
1912. évi LXIII. Törvénycikk a háború esetére szóló kivételes intézkedésekről.
1914. évi XIV. törvénycikk a sajtóról.
4249/1905 V. M. a vallás- és közoktatásügyi m. kir. minister 1905 évi 4249. eln. számú rendelete valamennyi törvény hatósághoz, kízárólag orthodox hitközségekben fölmerlülö viszályos kérdéseknek az autonom válatasztott bíróság elé tartozásáról.
Gesetz betreffend die Errichtung eines Verwaltungsgerichtshofes (No. 36/1876 RGBl.).
Gesetz betreffend die gesetzliche Anerkennung von Religionsgesellschaften (No. 68/1874 RGBl.).
Gesetz in Betreff der Regelung der polizeilichen Abschaffung und des Schubwesens (No. 88/1871 RGBl.).
Gesetz über das Strafverfahren in Presssachen (No. 6/1863 RGBl.).
Gesetz über das Vereinsrecht (No. 134/1867 RGBl.).
Gesetz über das Versammlungsrecht (No. 135/1867 RGBl.).
Gesetz zum Schutze der persönlichen Freiheit (No. 87/1862 RGBl.).
Gesetz zum Schutze des Hausrechts (No. 88/1862 RGBl.).
Gesetz, wodurch Bestimmungen zur Regelung der äußeren Rechtsverhältnisse der katholischen Kirche erlassen werden (No. 50/1874 RGBl.).
Gesetz, wodurch, unter Aufhebung der §§. 479, 480 und 481 des allgemeinen Strafgesetzes, in Betreff der Verabredungen von Arbeitgebern oder Arbeitnehmern zur Erzwingung von Arbeitsbedingungen, und von Gewerbsleuten zur Erhöhung des Preises einer Waare zum Nachtheile des Publicums, besondere Bestimmungen erlassen werden (No. 43/1870 RGBl.).
Gesetz, womit auf Grund des Art. 20 des Staatsgrundgesetzes R.G.Bl. No. 142, die Befugnisse der verantwortlichen Regierungsgewalt zur Verfügung zeitweiliger und örtlicher Ausnahmen von den bestehenden Gesetzen bestimmt werden (No. 66/1869 RGBl.).
Gesetz, womit ergänzende Bestimmungen zum §. 36 des Gesetzes vom 7. Mai 1874 (R.G.Bl. No. 50), betreffend die Bedeckung der Bedürfnisse katholischer Pfarrgemeinden, erlassen werden (No. 7/1895 RGBl.).

Gesetz, womit polizeistrafrechtliche Bestimmungen wider Arbeitsscheue und Landstreicher erlassen werden (No. 108/1873 RGBl.).
Kaiserliche Verordnung, wodurch eine Vorschrift für die Vollstreckung der Verfügungen und Erkenntnisse des landesfürstlichen politischen und polizeilichen Behörden erlassen wird (No. (96/1854 RGBl.) (Prügelpatent).
Kaiserliches Patent über die durch die constitutionelle Staatsform gewährleisteten politischen Grundrechte (No. 151/1849 RGBl.) (Grundrechtspatent).
Kaiserliches Patent, wodurch neue gesetzliche Bestimmungen über Vereine (Vereinsgesetz) angeordnet werden (No. 253/1852 RGBl.).
Nařízení vlády republiky Československé, jímž se provádí zákon čís. 71 Sb. z. a n., o vystěhovalectví (No. 170/1922 Sb.).
Nařízení vlády republiky Československé, jímž zavádí se odchylky od platných zákonů (No. 296/1919 Sb.).
Nařízení vlády republiky Československé, jímž zrušuje se suspense čl. 8, 9, 12 a 13 státního základního zákona ze dne 21. prosince 1867, č. 142 ř. z., o všeobecných právech státních občanů vyslovená nařízením vlády republiky Československé ze dne 6. června 1919 (No. 296 Sb. Z. A n., No. 489/1919 Sb.).
Smlouva mezi čelnými mocnostmi spojenými i sdruženými a Československem, podepsaná v Saint-Germain-en-Laye dne 10, září 1919 (No. 508/1921 Sb.).
Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder (No. 142/1867 RGBl.).
Ústavní zákon o ochraně svobody osobní, domovní a tajemství listovního (podle §§ 107, 112 a 116 ústavní listiny) (No. 293/1920 Sb.).
Verordnung des Gesamtministeriums, womit Ausnahmen von den bestehenden Gesetzen verfügt werden (No. 158/1914 RGBl.).
Zákon na ochranu republiky (No. 50/1923 Sb.).
Zákon o kartelech a soukromých monopolech (kartelový zákon) (No. 141/1933 Sb.).
Zákon o mimořádných opatřeních (No. 300/1920 Sb.).
Zákon o nejvyšším správním soudě a o řešení kompetenčních konfliktů (No. 3/1918 Sb.).
Zákon o nejvyšším správním soudě (No. 164/1937 Sb.).
Zákon o převzetí a náhradě za zabraný majetek pozemkový (zákon náhradový) (No. 329/1920 Sb.).
Zákon o prozatímní ústavě (No. 37/1918 Sb.).
Zákon o ústavním soudě (No. 162/1920 Sb.).
Zákon o vystěhovalectví (No. 71/1922 Sb.).
Zákon o vzájemných poměrech náboženských vyznání (No. 96/1925 Sb.).
Zákon o zabrání velkého majetku pozemkového (No. 215/1919 Sb.).
Zákon o zřízení samostatného státu československého (No. 11/1918 Sb.).
Zákon proti útisku a na ochranu svobody ve shromážděních (No. 309/1921 Sb.).
Zákon, jímž se mění a doplňují zákony o školách obecných a občanských (No. 226/1922 Sb.).
Zákon, jímž zrušují se šlechtictví, řády a tituly (No. 61/1918 Sb.).
Zákon, kterým se uvozuje ústavní listina Československé republiky (No. 121/1920 Sb.).

Studies

Adler, Franz. *Grundriss des tschechoslowakischen Verfassungsrechtes*. Reichenberg: Gebrüder Stiepel, 1930.
Baxa, Bohumil. "Deset let ústavy republiky Československé". *Moderní stát* 3 (1930): 33–43.
Baxa, Bohumil. "Ústavní listina ČSR a vliv cizích ústav". *Sborník věd právních a státních* 21 (1921): 1–40.

Bianchi, Leonard. "Bürgerliche Freiheitsrechte in Ungarn im Zeitalter des Dualismus". *Studia Iuridica Auctoritate Universitatis Pecs* 48 (1966): 19–26.
Brauneder, Wilhelm. *Die historische Entwicklung der modernen Grundrechte in Österreich*. Wien: Verlag für Geschichte und Politik, 1987.
Cerman, Ivo. "Všeobecná práva státních občanů v prosincové ústavě". *Právník* 156 (2017): 1097–108.
Čakrt, Kazimír. "Základní práva". In *Slovník národohospodářský, sociální a politický. III. díl*., ed. Emanuel Chalupný, 671. Praha: Janáček, 1933.
Dusil, Václav. *Československé právo spolkové*. Praha: Aventinum, 1924.
Hácha, Emil. "Poznámky k novému zákonu o nejvyšším správním soudě". *Právní prakse* 2 (1937): 1–7.
Hoetzel, Jiří. "Československo. Ústava. Práva a svobody, jakož i povinnosti občanské". In *Slovník národohospodářský, sociální a politický. I. díl*., ed. Emanuel Chalupný, 483–4. Praha: Janáček, 1929.
Hoetzel, Jiří. "Nejnovější české písemnictví veřejnoprávní". *Parlament* 1 (1921–1922): 365–8.
Hoetzel, Jiří. "Poznámky k ústavní listině republiky Československé". *Věstník ministerstva vnitra republiky Československé* 2 (1920): 129–35.
Hoetzel, Jiří. "Ústavní listina Československé republiky". *Sborník věd právních a státních* 20 (1920): 1–25.
Horáček ml., Cyril. "Právní význam základních práv občanských (Předneseno dne 16. dubna 1925 v Právnické Jednotě)". *Sborník věd právních a státních* 25 (1925): 148–58.
Joachim, Václav. *Naše ústava*. Praha: Vesmír, 1921.
Klavík, Jiří. "Občanská práva a svobody (1918–1938)". In *Encyklopedie českých právních dějin, IV. svazek N–O*, ed. Karel Schelle, Jaromír Tauchen, 437–50. Plzeň: Aleš Čeněk, 2016.
Krejčí, Jaroslav. "Positivně-právní předpoklady demokratického státního zřízení". *Moderní stat* 10 (1937): 129–39.
Krejčí, Jaroslav. *Principy soudcovského zkoumání zákonů v právu československém*. Praha: Moderní stát, 1932.
Krejčí, Jaroslav. *Základní práva občanská a rovnost před zákonem*. Praha: Moderní stát, 1929.
Krejčí, Jaroslav. *Zásada právnosti státních funkcí a zásada zákonnosti správy*. Praha: Moderní stát, 1931.
Kuklík, Jan. *Příběh československé ústavy 1920 I. Příprava a přijetí* ústavní *listiny*. Praha: Karolinum, 2020.
Laband, Paul. *Das Staatsrecht des Deutschen Reiches*, 3rd edition. Freiburg: Akademische Verlagsbuchhandlung von J.C.B. Mohr, 1895.
Langášek, Tomáš. *Ústavní soud Československé republiky a jeho osudy v letech 1920–1948*. Plzeň: Aleš Čeněk, 2011.
Laštovka, Karel. "Ústava o poměru náboženských společností ke státu". *Právny obzor* 5 (1922): 226–33.
Neschwara, Christian. "Eduard Sturm, Rechtsanwalt aus Brünn, 'Schöpfer' der österreichischen Grundrechte?". *Journal on European History of Law* 5 (2014): 18–25.
Olechowski, Thomas. *Die Einführung der Verwaltungsgerichtsbarkeit in Österreich*. Wien: Manz, 1999.
Osterkamp, Jana. *Verfassungsgerichtsbarkeit in der Tschechoslowakei (1920–1939)*. Frankfurt am Main: Vittorio Klostermann, 2009.
Peška, Zdeněk. *Československá ústava a zákony s ní souvislé. I. díl*. Praha: Československý kompas, 1935.
Péter, László. *Hungary's Long Nineteenth Century. Constitutional and Democratic Traditions in a European Perspectives. Collected Studies*. Leiden–Boston: Brill, 2012.

Petráš, René. *Menšiny v meziválečném* Československu. Praha: Karolinum, 2009.
Pražák, Jiří. *Rakouské právo veřejné. Díl první: Právo ústavní. Část třetí: Ústava říšská*. Praha: Jednota právnická v Praze, 1898.
Říha, Jan. "Organisace státu a státní moci v republice Československé". In *Politika. Co má věděti o Československé republice každý občan. Díl II a III.*, ed. Zdeněk Tobolka, 267–305. Praha: Československý kompas, 1925.
Sedláček, Jaromír. "Ústavní listina a občanský zákoník". In *Naše právo. Sborník k šedesátému výročí založení spolku československých právníků „Všehrd"*, ed. František Čáda, 88–94. Praha: Všehrd, 1928.
Schweitzer, Gábor. "Die Freiheitsrechte". In *Die Entwicklung der Verfassung und des Rechts in Ungarn*, ed. Gábor Máthé, 669–96. Budapest: Dialóg Campus, 2017.
Starzewski, Maciej. *Konstytucja Republiki Czechosłowackiej*. Kraków: Krakowska Spółka Wydawnicza, 1926.
Šejvl, Michal. "Základní práva očima československé meziválečné právní vědy". *Právník* 157 (2018): 977–1003.
Šejvl, Michal. "Když se práva berou vlažně: Přímá aplikace katalogu základních práv z Ústavní listiny v judikatuře prvorepublikového Nejvyššího správního soudu". *Právník* 158 (2020): 109–126.
Taylor, Alan J.P. *The Habsburg Monarchy 1809–1918: A History of the Austrian Empire and Austria-Hungary*. London: Hamish Hamilton, 1948.
Vaněček, Václav. *Dějiny státu a práva v Československu do r. 1945*, 2nd edition. Praha: Orbis, 1970.
Vavřínek, František. "Výklad dnešního státního zřízení království a zemí na říšské radě zastoupených". In *Česká politika. Díl druhý, část první. Ústava mocnářství rakousko-uherského*, ed. Zdeněk Tobolka, 451–772. Praha: Jan Leichter, 1907.
Vavřínek, František. *Základy práva ústavního. Díl I*. Praha: Všehrd, 1920.
Vavřínek, František. *Základy práva ústavního*. *Díl II*. Praha: Všehrd, 1921.
Weyr, František. "La question de la délégation de puissance législatif". *Revue internationale de la théorie du droit* 1 (1927): 72–88.
Weyr, František. *Soustava československého práva státního*, 2nd edition. Praha: Fr. Borový, 1924.
Weyr, František. *Teorie práva*. Brno–Praha: Orbis, 1936.