

PRINCIPLES OF THE NEW CZECHOSLOVAK CRIMINAL LAW

Erich Schmied

This study surveys the development of Czechoslovak criminal law from the Communist revolution of February 1948 up to the present. The changes in the law were carried out parallel with the development of Soviet criminal law. It is demonstrated in particular how the break with Stalinism affected Czechoslovak criminal law. The result of this legal development was the new „socialist“ criminal law, which went into force on 1 January 1962. It was introduced under the guiding principle of „socialist legality“. Lenin and the first Soviet ideologists still cherished Utopian ideas of the abolition of state and laws. However, the nihilistic legal tendencies were soon abandoned; first the thesis of a „revolutionary consciousness of law“ was advanced, and finally a strict legal positivism was arrived at. In the principle of „socialist legality“ which was developed in the process, the law was oriented to Party policy, with all its dynamic. The core of this policy is the class struggle, and the law, too, is placed in the service of it. The class character of the criminal law is reflected above all in the penal system. In meting out punishment, the „class-conscious“ judge must conscientiously examine the „class profile of the offender“. The result of this examination is to establish whether and to what degree „an act which endangers society“ is involved. The dogmatically still undefined concept of danger to society is at the heart of „socialist“ criminal law. Czechoslovak criminal law is explicit about the purpose of punishment. The idea of education and amelioration is placed in the foreground, although what is

actually involved is rendering harmless, deterrent and political intimidation. In view of the declared purpose of punishment, the double-track system of punishment and security measures (protective measures) appears to be obscure, especially since „ameliorative measures“ are counted among the punishments. Special sections are devoted to the penal system and to probation (conditional conviction, conditional release). Probation is measured almost exclusively by the standard of work performed. This involves the danger that the institutions of probation can be misused for the exploitation of labor. Allegedly, the „social organizations“ intervene in the penal proceedings in the service of probation. They can also assume a „guarantee for the improvement of the offender“. It must be feared — from the standpoint of the constitutional state — that these institutions serve only to strengthen the ruling political party, at the expense of justice. Even more serious is the repression of the regular criminal jurisdiction by the so-called local people's courts, which have their origin in the Comrades' Courts established in accordance with the Soviet model. With such a gradual abolition of the protective functions of the law and jurisdiction, the principle of the separation of powers is abandoned. But if the making of legal decisions is regarded only as a branch of the indivisible state power wielded by the Communist Party, then there can be no truly independent judges.

In the last section it is shown what Czechoslovak legal doctrine understands by the independence of judges and how this view is to be appraised in the light of the standards of our concepts of the constitutional state.