

THE HISTORY OF THE FORMATION OF SOCIOLOGY OF LAW OF THE CZECH REPUBLIC

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Abstract. The scientific article is devoted to the discovery and analysis of the historical preconditions for the occurrence and formation of the Czech School of Sociology of Law. It explores basic sociological and legal theories and conceptions of T. Masaryk, E. Khalupny, I.A. Blahy , V. Kubesh and others, works of which have historical and legal significance for the development of the sociology of law as a science and the establishment of its independent status.

Key words: Sociology, Sociology of Law, Czech Republic, History of Sociology of Law of the Czech Republic, Sociological and Legal Conceptions, T. Masaryk, I.A. Blaha, E. Khalupny, V. Kubesh.

Introduction.

Investigation of the basic social and legal theories in the territory of the Czech Republic, from the nineteenth century to the present has historical and legal significance for the development of the sociology of law as a science and

asserting its independent status. Social factors and social conditionality of rights have been the subject of research by many Czech scholars in the field of general sociology and sociology of law.

At the same time, the *aim of the work* is to study the historical and legal significance for the development of the sociology of law as a science and asserting its independent status.

The *methodological basis of the study* was the worldview dialectical, general scientific and specific scientific methods of cognition of the History of the Formation of Sociology of Law of the Czech Republic.

Presentation of research results.

Tomash Masaryk (1850-1937) is considered to be the founder of Czech sociology. He was a Czechoslovak statesman, philosopher, sociologist and educator, the first president of the Czechoslovak Republic. His theoretical work was devoted to a deep analysis and resolution of issues of contemporary society at the time: the problems of democracy and humanism, justice, morality and politics, the rights of nations to self-determination, the role and place of «small» peoples and states in the world. Well-known works of the scientist in the field of sociology are «Sketch of Sociological Analysis» (1886), «The Hand of Sociology», «The Essence and The Method» (1900-1901), «Natural and Historical Law» (1900) and others.

Masaryk defines sociology as «the science of the organization and development of human society, its natural consensus and conditions of existence, the laws of social movement and historical development». Two factors are important to society - statics and dynamics. Static means are forces that support society (the impact of nature on society, family circumstances, etc.). Dynamics also means the progress and development of social actors (law, religion, morality, science). The scientist emphasizes social statics and emphasizes that only those who deny the existence of laws in public life are against sociology. In his writings Masaryk often refers to the concept of «nature», which he understands as a law that is part of all key concepts. Politics, too, is a natural phenomenon, so it must set goals that will be natural to both people and society. The components of «human nature» are the mind and the will: society consists of gifted by nature, so social progress depends on conditional development, will and mood, harmony of theoretical and practical aspects of society. All these elements collectively form the so-called order, and social progress can only occur on the basis of this order. [9, p. 58-59]

Masaryk was a supporter of sociological critical realism, which is based on the assertion that there is no pre-formed knowledge about the nature of social reality in advance. Only patience, systematic observation and critical analysis are prerequisites for understanding and perceiving social reality. According to the scientist, «justice» provides order in a state where every citizen has a specific task, by virtue of which he takes his position in society. Masaryk's progressive views have had a significant impact on both Czech and Slovak sociologists. He was the

founder of the first sociological seminar in Czechoslovakia, and his scientific work has left a significant contribution to the development of a number of sociological and political theories of Europe and the USA.

The sociological and legal concepts of Masaryk were continued by **Emmanuel Khalupny** (1879-1958). He studied the relationship between sociology, philosophy and law, sought to create accurate sociological terminology and sociological methodology. He was a co-founder of the Institute of Sociology (1942), co-founder, and later chairman of the Sociological Society of Masaryk (1925), a member and vice-president of the International Institute of Sociology in Paris (1934-1935). Khalupny is the author of such works as «Sociology» (9 volumes), «The Fates of Czech Sociology» (1918), «Sociology and Philosophy of Rights and Morals» (1929), and «Sociology for All» (1948).

The studies of the scientist in the field of sociology of law are based on Austrian and Czechoslovak law, laws and other normative documents, legal logic and practice, in particular, and case law, which make it possible to study directly the facts of life and circumstances. He emphasized that anyone who wants to know the right must «live, feel, suffer, and create».

Khalupny saw the distinction between law and morality, which is merely a form of objectification of law, paid considerable attention to trade-offs in the legal sphere, which depend on the formal nature of law and are formed directly in the process of becoming law under the influence of political processes or in various conflict situations.

The above provisions were reflected in the work of Halupna's *Sociology and Philosophy of Law and Morality*, which is the first monographic work of Czech sociology of law and includes more than 196 examples of civil, criminal and administrative law jurisprudence. [2]

The scientist studied the discrepancy between law and morality, and between legal justice and moral aspirations. Abuses generated by the right of the dominant class show how the law achieves formal, not real, perfect justice. Moral principles can only be applied by law if the law allows it.

There is no strong link between law and morality and it is necessary to distinguish between the two categories, since some elements of law can have a purely unethical, immoral meaning. The right can be moral only when the law directly refers to morality, or turns to «justice», in to the synthesis of moral and legal elements. [1, p. 63]

Khalupny developed the theory of the absence of purely legal phenomena, since they are always mixed with other phenomena (political, economic, etc.), investigated the influence of subjective sentiments on objective law.

In his view, the purpose of the law is to ensure peace, security and the protection of a complex and volatile society that enables it to function properly. Law is the product of civilization (culture). This definition is based on a scientist's view of sociology as a science of civilization or culture.

The main features of the law are reduced (different laws are used in each state), form (the proportion of which is used by compromise), straightforward and rational (the law tries to use the real, using schemes to regulate relations that require use).

While the law acts externally, morality acts on the person internally, influences his conscience, motives. The law soothes, creating legal certainty and worrying about morality.

As one of the few leading Czech sociologists of his time, Khalupny was well-known in the international arena, and a number of his works have been translated and published in English, French and other languages.

Inocentii Arnosht Blaga (1879–1960) - a leading sociologist, philosopher, educator, psychologist, political scientist and cultural scientist, editor of the «Sociological Review» magazine, founder of the Brno Sociological School. His major works are «City: Sociological Research» (1914), «The Philosophy of Morality» (1922), «Ethics as Science» (1947), and «Sociology» (1968).

The scientist understood sociology as the science of social phenomena. Social phenomena are a manifestation of the human community under the pressure of collective needs. This pressure causes the so-called «orderly functioning», which is the result of a common need for the coexistence of the human community [3, p. 216].

Blaga considers law to be a social phenomenon and one of the most influential means of social order. It is supported by organized authority and sanctions which, where appropriate, may be enforced by the use of coercive physical means.

Law has individual and social roots. Individual roots are contained in the most anthropological essence of people, and social emerge in the result of the needs of human coexistence. Law is determined by the social environment - population growth, economic level, division of labor, politics, public opinion, etc.). At the same time, public opinion performs not only political but also legal, judicial and moral functions, which force the authorities and the right to listen to it. The legal condemnation of the offender is followed by social condemnation, which makes legal punishment much more difficult, since being in the center of negative social attention is more unbearable than being deprived of liberty and benefits.

Blaga imitated the critical realism of Masaryk, and his teachings and influence led to the emergence of the Brno School of Sociology, whose representatives viewed the sociology of law as a relationship between society and law, representing the process of their interaction. The main elements that were studied in the framework of the school were the mutual relations between law and society, the mechanism of law enforcement and the role of law in society. [9, p. 62]

Vladimir Kubesh (1908-1988) - Czech scientist, sociologist, lawyer, professor at the Department of Civil Law and Philosophy of Law, Dean of the Law Faculty of Masaryk University in Brno.

Kubesh was a supporter of the normative-legal theory, and in his creative work there is a considerable number of scientific treatises on philosophy and sociology of law. The scientist understood the sociology of law as the basic application of sociological methods in jurisprudence [13, p. 302].

The main tasks of the sociology of law, the scientist attributes: the study of the main causes and factors that cause the emergence of new legal rules, the study of the effects of new legal rules on public life, the reaction of people's behavior on legal rules; study of economic and social component of existing rule of law, study of the connection between economy and law; study of the real law and order; solving the problem of justice thorough sociological studies of legal certainty, legal efficiency and human freedom. [13, p. 291-299].

Based on the specification of the main tasks of legal sociology, Kubesh gives the following definition of the sociology of law - a science that examines the economic, social and political factors of the emergence of general and individual legal norms, peculiarities of the influence of economic factors on the law; social and political sphere, changes in social functions of legal institutions, examines the existing law and order, its effectiveness and ability to solve problems of justice, security and freedom; explores the dialectical synthesis of ideas that constitute the quintessence of the «legal» in the social understanding of the community of people, where the motivational and educational role of the law acts. [13, p.301]

During the communist regime, Czech sociology was proclaimed a bourgeois science and its institutional basis was abolished. Only in the 60-ies of the twentieth century begins restoration of sociological thinking.

In the 1970s, some topics on the sociology of law at the Faculty of Law in Brno began, and in the early 1990s sociology began to be taught as a core subject. [5]

The lecturers of Brno faculty of Masaryk **Milosz Vechera** and **Martina Urbanova** published a joint textbook «The Basics of Sociology» and a collection «Lectures on the Sociology of Law» in the mid-1990s.

In 1996, the work of Associate Professor at the Law Faculty of **Yiri Prieban** of Charles University, «The Sociology of Law: A System-Theoretical Approach to Modern Law», was published.

Significant contributions to the development of contemporary Czech sociology of law and its historical background have been made by **Pavel Hungr**, **Karin Kuhn** and **Stanislav Balyk**. Their materials relate to the analysis of contemporary sociological jurisprudence and its historical part, in particular the legal practice of Khalupny.

Conclusion.

The Czech School of Sociology of Law underwent a long process of institutionalization, formed as a separate scientific direction and undoubtedly established itself as an independent discipline and created its own paradigm. It obtained the status of compulsory academic discipline, which is included in the curricula of state educational institutions.

At the present stage, sociological and legal studies are conducted within the framework of the Czech Sociological Association in the form of periodic interdisciplinary seminars and conferences. The main scientific developments in the sociology of law are published in «The Sociological Journal» (Sociologický časopis), professional legal publications.

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