# The incorporation of Roman law into Bohemian municipal law in the 16th century

by

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The history of Czech law, as well as legal history in other European countries, has encountered a phenomenon, which is simply and simplistically designated as the reception of Roman law.[1] However, the impact of ideas of Roman lawyers was not spread evenly over all branches of law. With regard to the history of law applicable to the Czech Lands, we find that while Roman law appears to have been insignificant in the law of the Lands, its impact upon municipal law was most pronounced. In particular, Roman rules were used to regulate the manufacturing and exchange of goods, and consequently most legal sources influenced by Roman law originated in this field. It should also be noted that even monarchs were ready to use Roman law, especially when attempting to strengthen their central powers. For example, Emperor and King Charles IV attempted to codify the law in 1355 in a book entitled *Codex Carolinus*, generally referred to since the 17th century as *Maiestas Carolina*[2]. The Code was intended to apply in all Czech Crown Lands – an aim in which it failed due to the resistance of the nobility. Another issue should be noted in this context, namely the concept of a law to protect the monarch (*crimen laesae maiestatis*) which was enacted by Ferdinand I, King of Bohemia, in 1549 after the defeat of the Estates Uprising. The application of Roman law in the law of the Lands failed primarily due to the resistance of the nobility who quite correctly considered such application to be an attempt to strengthen the power of the monarch. Besides, the formal perfection of Roman law had an impact upon the content of law books of authority outlining the domestic customary law of the Lands.[3]

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1 MIROSLAV BOHÁČEK: Das römische Recht in der Praxis der Kirchengerichte der böhmischen Länder im XIII. Jahrhundert, in: Studia Gratiana 11 (1967), pp. 273-304; FRANTIŠEK ČÁDA: K recepci v českém právu (Pokus o souhrn novějších výsledků) [On the Reception of Roman Law in Czech Law], in: Právník 71 (1932), pp. 8-14, 45-56.

2 Maiestas Carolina. Der Kodifikationsentwurf Karls IV. für das Königreich Böhmen von 1355. Auf Grundlage der lateinischen Handschriften (Veröffentlichungen des Collegium Carolinum, 74), ed. by BERND-ULRICH HERGEMÖLLER, München 1995; JIŘÍ KEJŘ: Maiestas Carolina v dochovaných rukopisech [The Maiestas Carolina in Extant Manuscripts], in: Studie o rukopisech 17 (1978), pp. 3-39; JOSEF HOBZEK: Maiestas Carolina a římské právo [Maiestas Carolina and Roman Law], Praha 1931; EMIL WERUNSKY: Die Maiestas Karolina, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germ. Abt. 9 (1889), pp. 64-103.

3 KAREL MALÝ: Dějiny českého a československého práva do roku 1945 [History of Czech and Czechoslovak Law until 1945], Praha 2003, pp. 107 -110.

It should not be forgotten that the principle of *ecclesia vivit lege Romana* was used in Bohemia as well as in the whole of central Europe; as a result, Church courts applied the Roman-Canon procedure, which in fact was a modified *cognitio extra ordinem*. Clerical officials cognizant of Roman law acted as chancellors[4] not only within the offices of bishops but also in the King's court.

The most significant impact of Roman law was seen within municipal law which established more convenient conditions for its reception; thus the most important legal documents originated in municipal law. During the middle ages, the laws of towns and cities in Bohemia as well as in other parts of Europe were defined by their founders and their assigned privilege. This period goes back to the 13th century and was greatly influenced by the so-called German colonisation (colonists coming mainly from the Holy Roman Empire were invited by Czech kings to settle in uninhabited areas of the country in return for various specific privileges). It is therefore not surprising that legal authorities were sought in the neighbouring German territory, mainly from the cities of Nürnberg and Magdeburg. Later, during the 14th century this led to the forming of "superior" cities within the kingdom of Bohemia that were allowed to communicate with the German legal authorities. In Bohemia it was the city of Litomerice, and in Moravia the city of Olomouc in which the so-called Magdeburg law was applied. The area of the Nürnberg law was represented by the Old Town of Prague in Bohemia, and in Moravia, the city of Brno. Gradually the law applied by the Prague Old Town became more significant and served as a basis for the drafting of legal books and Koldín's Code. Czech kings and other citizens felt uncomfortable with this dependence on foreign "outside" legal advice. As a result, this led to the adoption of an independent municipal code.

It has been generally assumed that the foundation of Prague University by Charles IV in 1348[5] gave a substantial impetus to the expansion of knowledge of Roman law in the Czech Lands. Such an assumption, although well-established, appears to be erroneous. The model of Bologna and Paris served as the inspiration for the establishment of Prague University: the organization of the University was taken from Bologna, and the content of the teaching from Paris. As the teaching of Roman law had been suppressed in Paris as a result of the issuance of the papal bull *Unam sanctam*, Roman law was not

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4 E. g. MIROSLAV TRUC: Rožmberské listiny a kancelář ve 14. století [The Rožmberk Instruments and Chancelor in 14th Century], in: Sborník archivních prací 22 (1972), pp. 54-134.

5 PETRA SKŘEJPKOVÁ: Die juristische Ausbildung in den böhmischen Ländern bis zum Ersten Weltkrieg, in: Juristenausbildung in Osteuropa bis zum Ersten Weltkrieg, ed. by ZORAN POKROVAC, Frankfurt am Main 2007, pp. 153-189; PETER MORAW: Die Juristenuniversität in Prag (1372-1419), verfassungs- und sozialgeschichtlich betrachtet, in: Schulen und Studium im sozialen Wandel des hohen und späten Mittelalters, ed. by JOHANNES FRIED, Sigmaringen 1986, pp. 439-486.

taught in Prague either. Nothing changed in this respect in Prague, even after the foundation of a separate juridical university (*universitas iuristarum*) in 1372.[6]

The Faculty of Law remained closed after the Hussite wars in the 14th century, and lectures on Roman law were only very occasionally delivered at the Faculty of Arts. We have knowledge that Scrivener Prokop[7] was lecturing on Roman law in the 15th century. A century later Mathias Molesinus, to take one example, was lecturing on Aristotle's Politics and, at the same time, introducing Justinian Institutions. In the 17th century, Rudolph Dodoneus started his lectures on the Justinian Code in 1624. The establishment of Karl-Ferdinand University in Prague in 1654, with the law faculty as one of its elements, represented a significant turning point.[8] Roman law, as applicable law of that time, became one of the basic subjects taught there.

Thus the routes along which the knowledge of Roman legal institutions and practice arrived in Bohemia were different. It was primarily Czech students studying at Italian and other foreign universities who started applying the knowledge they had gained in the Czech Lands. In addition, foreign experts, particularly from Italy, were invited to Bohemia in order to work there, such as Gozzius of Orvieto, whom we will meet later.

Let us have a closer look at some important legal documents which were substantially influenced by Roman law and which strongly reflected it. At first we will mention a source which, though initially not belonging to municipal law, was later to have a strong impact on municipal legal documents. This is *Constitutiones iuris metallici* – the Mining Code issued by King Wenceslas II. The Code was written between 1300 and 1305 and is more widely known as *Ius regale montanorum*.[9] Originally the Code was written for use in Kutna Hora – the centre of the silver mining industry in the Czech monarchy, but it was later also used in another mining town, Jihlava.

The Code is composed of older domestic legal regulations, applicable to the mining of precious metal, and of elements of Roman law. Not only are individual legal institutions and practices explained there, but also a certain systematization is present. The author of the Code was the Italian com-

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6 JIŘÍ KEJŘ: Právnická fakulta a právnická univerzita [Law Faculty and Law University], in: Dějiny Univerzity Karlovy 1347/48-1622 [History of Charles University 1347/48-1622], vol. I, Praha 1995, pp. 163-182; WENZEL WLADWOJ TOMEK: Geschichte der Prager Universität, Praha 1849.

7 VÁCLAV VANĚČEK: K právnickému dílu bakaláře Prokopa nejvyššího písaře Nového Města pražského [On the Legal Work of Baccalaureaus Prokop the Highest Scrivener of New Town of Prague], in: Městské právo v 16.-18. století v Evropě [Municipal Law in the 16th-18th Century in Europe], ed. by KAREL MALY, Praha 1982, pp. 299-302.

8 KAREL BERÁNEK: Právnická fakulta [Law Faculty], in: Dějiny Univerzity Karlovy 1622-1802 [History of Charles University 1622-1802], vol. II, Praha 1995, pp. 137-164.

9 GUIDO CHRISTIAN PFEIFER: Ius Regale Montanorum. Ein Beitrag zur spätmittelalterlichen Rezeptionsgeschichte des römischen Rechts in Mitteleuropa, Ebelsbach 2002.

mentator Gozzius of Orvieto, mentioned above. In compiling the Code, Gozzius applied his knowledge of Roman law, as is evidenced by the many Roman law terms often used in the text. The terms are used, in most cases, to denote certain relations, but the content of those relations is often not identical with those found in Roman law. The systematization of this Code is also very interesting: it is subdivided into four parts. Book One deals with persons, Books Two and Three focus on hills, i.e. the mines, and Book Four explains the judicial procedure. Generally speaking, the Code followed the model of Gaius' Tripartite, with one exception, namely that Gaius (as well as Justinian Institutions) dealt with things only in Book Two, and Books Three and Four were aimed at judicial proceedings and actions.

The Mining Code was written in Latin and later translated into the Czech language. It was translated into German twice and even into Spanish during the 16th century, which seems to suggest that its significance was very high.

With regard to the adoption of Roman law, one legal document written in Latin appears to be central to the development of law in Bohemia and Moravia. This document is usually called "The law book of Brno scrivener Jan" or sometimes also called the "Schöffenbuch".[10] The almost three hundred years of its application by legal practitioners undoubtedly prove the importance of this legal document. The author of the "Schöffenbuch" remains unknown until today, in spite of the assumption prevailing in the past that the document was written by the famous lawyer Jan of Gelnhausen. The only information on the author which is preserved in the oldest manuscript of the document reads *dominus Johannes notarius civitatis*. Obviously the writer was a male scrivener in Brno active sometime between 1343 and 1358. The Law Book itself is dated 1353 and contains records of the Brno court, which was composed of both professional and lay judges. The Book comprises 726 articles. It is arranged both according to subject-matter and alphabetically. Regulations of Roman and canon law are also included. The application of the Book was spread over Moravia at the end of the 14th and the beginning of the 15th centuries, and the Book was reprinted at the end of the 15th century. Its significance was supported by the fact that Emperor and King Rudolph II confirmed the Book in 1578 as Code. It was applied in Moravia until 1680 when it was replaced by Koldin's work.

The application of the Schöffenbuch was not confined to Moravia only. It could be found in Bohemia as early as at the end of the 14th century, Moravian Jihlava being the first town to use it. Other towns soon followed. It

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[10] MIROSLAV BOHÁČEK: Římské právní prvky v právní knize brněnského písaře Jana [Roman Legal Aspects in the Law Book of Brno Scrivener Jan], Praha 1924; IDEM: Ještě k římskoprávnímu obsahu brněnské právní knihy [More on the Roman Legal Content of the Law Book of Brno], in: Sborník prací z dějin práva československého k 50. narozeninám profesora Jana Kaprasa [Memorial Volume of Papers on the History of Czechoslovak Law Presented to Prof. Jan Kapras on the Occasion of his 50th Birthday], vol. I, Praha 1930, pp. 39-44.

was in Jihlava that Jan of Gelnhausen shortened the original text to only 287 articles. In the 15th century, the Law Book was used primarily in the area of Nürnberg law.[11] The shortened text was translated into the Czech language by Vit Tasovsky in the town of Kutna Hora in 1468, the Czech title being "Municipal laws which are used by miners". The Schöffenbuch later served as the basis for Brikci of Licsko to create his "Book of municipal laws"[12] in which the original text was adapted. This was the format of the Brno Law Book which had been used in Bohemia until the introduction of Koldin's work.

The Brno Book by scrivener Jan is built upon Roman law. It is primarily the mode of introducing individual legal issues which appears very interesting as it is reminiscent of the casuistic approach of Roman lawyers to their work. The Book is a collection of individual judicial decisions followed by commentaries.

A closer look at the wording of individual articles in the Schöffenbuch directs our attention particularly to the fact that the author of the Book must have been knowledgeable not only in Roman law as such, but had also mastered the text of the Justinian collections. All the volumes are quoted: not only Digests and Codex but also Novellae. Literal quotations can be found throughout the whole text. The list of direct quotations can be regarded as proof that Jan had not only obtained some knowledge of Roman law, but, more likely than not, that he had studied Roman law and had the Justinian texts at his disposal. *Constitutio Imperatoriam maiestatem* is quoted once. Institutions are quoted 22 times in various parts of the Book. Digests are quoted 132 times. Quotations from *Codex* can be found in 20 places, and from *Novellae* in three places. There are only a few quotations which show negligible or insignificant deviations from the original text.[13]

A few Roman legal precepts found in the Schöffenbuch will serve to illustrate the whole issue; it should be noted that these precepts are very often rather complicated: retention of possession by intention alone (*solo animo*), *praescriptio*, action for damage caused by water after it had fallen (*actio aquae pluviae arcendae*), instruments aimed at preventing imminent damage (*cautio damni infecti*, *operis novi nuntiatio*), *locatio conductio rei*, compensation for damage caused by an animal (*actio de pauperiae*) and many others.

The so-called Koldin's Codification of municipal law represents the most famous and successful collection of law created in the Czech state during the Estates period. The interest in a unification of municipal law was shown not only by towns and cities but, quite paradoxically, also by the nobility.

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[11] J.J. HANEL: O vlivu práva německého v Čechách a na Moravě [On the Influence of German Law in Bohemia and Moravia], Praha 1874.

[12] J. ANDRLE: Přirozené právo v zemském a městském právu stavovské monarchie [Natural Law in Estate and Municipal Law during the Estates Monarchy], in: Právník 8 (2001), pp. 807-826.

[13] BOHÁČEK: Římské právní prvky (see footnote 10).

Members of both higher estates, i.e. nobility and clergy, were in some cases subject to municipal law and tried by municipal courts. The judicial jurisdiction of towns and cities was established by the St. Wenceslaus Contract of 1517 which brought to an end disputes between the nobility and towns.[14] In addition to the existing general requirement for towns to unify their laws, which was prompted by the speedy economic growth, the fundamental impulse was provided by the issuance of the Assembly Resolution in 1523 which ordered a code of municipal law to be drawn up.

The first attempt to codify municipal law is represented by the book "Municipal laws" compiled by Brikci of Licsko mentioned above. It was completed in 1534. Formally, it was not an official codification but the book was published (printed) and was used by municipal courts as an aid containing the valid municipal law. It was, by nature, only a compilation and appears to have been quite inconvenient to use in some areas of legal practice.

After the defeat of the Uprising of the Estates in 1547 the monarch himself was extremely interested in the codification of municipal law. He considered the codification to be a tool for the strengthening of absolutism and control over the towns and cities that had been strongly engaged in the defeated uprising. On the other hand, towns and cities also considered the codification to be a tool for strengthening of their political and economic growth. The result of rather complex negotiations held during the Land Assembly and of preparatory work was a draft of "The municipal laws of the Czech Monarchy". The draft, submitted in 1558, contained 321 pages and was based on the laws of the Old Town of Prague. The whole procedure of the codification was most probably carried out by Pavel Kristian of Koldin who headed a team preparing the final draft in 1569.

Koldin[15] seems to be a typical representative of the Czech humanistic society of that time and his life and career deserve a brief note. He was born in 1530 in Klatovy, Southern Bohemia, in a burgher's family. He studied at Prague University, Faculty of Arts, since 1548, and was awarded the degree of bachelor, successfully passing his master's examination in 1552. He then acted as a teacher-rector in schools in Prague. Five years later the King raised him to the nobility and awarded him the noble attribute "of Koldin". At the same time he started his career as a professor at the University and acted as Dean of the Faculty of Arts between 1551 and 1552. A year later he left the university and became scrivener at the New Town of Prague; in 1565 Koldin

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[14] PETR KREUZ, IVAN MARTINOVSKÝ: Vladislavské zřízení zemské a navazující prameny. (Svatováclavská smlouva a Zřízení o ručnicích) [Vladislav Land Order and Coherent Sources. (St. Wenceslaus Treaty and Order on Muskets)], Praha 2007.

[15] JOSEF JIREČEK: Pavel Krystyán z Koldína [Pavel Krystyan of Koldin], in: Právník 15 (1876), pp. 181 ff.

became chancellor of the Old Town of Prague.[16] He died in 1589. Koldin belongs to the most important Czech lawyers in Czech history, particularly because of his significant participation in the codification of municipal law. His ability was founded on his excellent education, in addition his rich legal career and experience were also very important pre-requisites for the success of his work.

Let us get back to his Code. Although the Code was of a high quality it was not generally accepted until ten years after it had been completed. The delay was the result of the existence of two legal areas within municipal law (as mentioned before), namely Magdeburg law and Nürnberg law, and the resistance of two towns – Litomerice and Louny. The existing law of Litomerice was the so-called "superior law of the Magdeburg area in Bohemia".[17] In the end the proposal of the Council of the Old Town of Prague (where the Nürnberg law was applied) was enforced and the King sanctioned the Koldin text on 29th September 1579. The text was printed in the same year, and a year later (1580) the Appellate Court declared the Code to be binding on all courts. Litomerice maintained its resistance and persisted in refusing to adopt the Code; the town finally changed its approach in 1610, and it was only then that the "Municipal laws" applied in Bohemia as a whole. The extraordinary nature of this legislative document is substantiated by the fact that it was also used in Moravia from 1697 on.[18] Individual parts of Koldin's Code started to be replaced by absolutist codes in the late 18th century. The first step towards its abolition was the introduction of the Civil Code in 1786. The last part of Koldin's Code dealing with property law applied until 1811 when the "Allgemeines Bürgerliches Gesetzbuch" (ABGB) was adopted. The Koldin Code had been in force for a long time – 232 years in Bohemia and 114 years in Moravia.

In his work on the codification of municipal law, Koldin primarily, but not exclusively, used Roman law. We can find some regulations of canon law, the law of the Lands and, naturally, domestic law for which a shortened version of the Law Book of Brno scrivener Jan[19], used in the Old Town of Prague under the name of *Cursus civilium sententiarum*, served as background material.

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[16] JIŘÍ PEŠEK, M. SVATOŠ: Koldín a právní kultura pražských měst [Koldin and the Legal Culture of the Prague Towns], in: Městské právo v 16.-18. století v Evropě (see footnote 7), pp. 279-288.

[17] MALÝ: Dějiny českého a československého práva do roku 1945 (see footnote 3), pp. 107-110.

[18] FRANTIŠEK HOFFMANN: O překladech a rozšíření Koldínových práv městských [On the Translations and the Spreading of Koldin's Municipal Laws], in; Městské právo v 16.-18. století v Evropě (see footnote 7), pp. 257-266.

[19] See footnote 10.

The text of Koldin's codification[20] is primarily based on his perfect and detailed knowledge of Roman law. This can be seen not only in the content of individual provisions, but also in the organization of the whole document. The Code is subdivided into 58 chapters. The first two are of a general nature and deal with the issues of justice and the duties of the town council and councillors. The following 14 chapters focus on the organization and course of proceedings before municipal courts as well as arbitration procedure. Chapters 17 -19 concentrate on the law of persons and marriage. The next six chapters deal with testamentary and intestate succession. Property law covers a major part of the Code and is dealt with in chapters 26-44. One inserted chapter focuses on customs. The rest of the Code deals with criminal law; it constitutes a relatively large portion of the Code, evidenced by the fact that criminal law is contained in 13 chapters. Almost all areas of the legal life of towns and cities of that time are covered.

Roman law is mentioned or referred to in many parts of Koldin's work. Sometimes Koldin only takes general inspiration from Roman law, in other cases we can find the exact wording of the respective Roman regulation, including references to the relevant Roman sources. Similarity with, or resemblance to, Roman law is not consistent throughout the whole of Koldin's work: some parts have only a vague connection with Roman regulations, with legal concepts being ordered differently, and some parts do not follow the Roman pattern at all. Nevertheless, Koldin's Code is a testament to Roman law adoption in the Czech Lands in the 16th century and represents one of the most significant examples of the penetration of Roman law into the Czech law of that time. Moreover, not only private law institutions are tackled, as might have been expected, but the impact of Roman law can also be seen in respect of criminal law. Some typical examples are shown below as it would be impracticable, and beyond the scope of this article, to provide a comprehensive list of all references to Roman law in the Koldin Code.

The first chapter of the Code, entitled *De justitia et jure* [On justice and law] contains several Roman principles. First and foremost, Ulpianus' famous sentence *Praecepta iuris sunt haec: honeste vivere, alterum* non *laedere, suum cuique tribuere* [These are the precepts of the law: to live honestly, not to harm anyone, to give to another what his possession is][21] is translated into Old Czech and a slightly modified translation of these principles is used at another place in the Code.[22] The paragraph following [23] contains an extended paraphrase of the famous Celsus' statement *Ius est ars boni et aequi* as "Law is nothing but the art and distinction between the good and the bad, the equi-

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[20] Quoted from JOSEF JIREČEK: Práva městská království českého a markrabství moravského [The Municipal Laws of the Czech Monarchy and Moravian Margrave], Praha 1876.

[21] Ulp. D. 1, 1, 10, 1; KOLDIN A I. II (see footnote 20).

[22] KOLDIN A III, V.

[23] A II. I.

table and the inequitable, the modest and the non-modest."[24] Another general and famous principle included in the Code is *Ignorantia iuris non excusat*, paraphrased as: "No one may claim his ignorance of law and the lack of legal knowledge".[25]

The division of the law is recorded at the very beginning of the Code. Following the spirit of Gaius and Justinian Institutions, Koldin claims that private law is composed of *ius naturale*, *ius gentium* and *ius civile*, individual definitions of each corresponding with those contained in the ancient source.[26]

Elements of Roman law can not only be found in the initial parts of the Code, but have an impact on the whole text. Examples are the regulation of basic contracts, such as *mutuum* (loan for consumption contract) or *commodatum* (loan for use contract). Koldin repeats some characteristic features of Roman sales contracts, namely that it is sufficient for the formation of a contract if the parties agree on what is to be sold and what price should be paid, the price being set in money.[27]

The loan for use contract (*commodatum*)[28] is defined as the transfer of a thing for the use of another whilst the bailor retains the ownership of, or dominion over the thing loaned, i.e. the borrower just detains or possesses the thing. In addition, the relationship is fully gratuitous since any payment would change the contract into a lease. The construction of the *mutuum* contract[29] is also very close to that in Roman law, primarily in the fact that what is returned is of the same kind and quantity, and not the very same thing borrowed.

Roman law influenced not only those parts of the Code devoted to obligations, but also those dealing with criminal law. This finding may appear quite surprising, since the influence of Roman criminal law in the Czech Lands is said to have been marginal. That this was not so is documented in several sections of the Koldin Code. These are: provisions punishing the violation of sepulchres (*sepulchrum violatum*)[30] including the imposition of a fine upon the perpetrator, as was usual under Roman law. The more visible impact can be seen in the case of the crime called *plagium*.[31] This crime subsisted in the detaining of aliens, or as Koldin called it, the stealing of people, which is the same definition as was used during the Roman Republic.

Finally, one more part of the Code clearly suggests that Koldin must have had a very deep knowledge of the Digests, or their detailed Commentaries. This is the regulation against unlawfully causing harm to the property of

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[24] *Ius est ars boni et aequi* (Ulp. D. 1, 1, 1, 1).
[25] KOLDIN A III, IV.
[26] KOLDIN A III, V.
[27] KOLDIN G XXXV, I a II.
[28] KOLDIN H XXIX – XXXIII.
[29] KOLDIN H XXXIV – XXXVII.
[30] KOLDIN O III.
[31] KOLDIN O IV.

another called *De lege Aquilia* (On the law of Aquilius), i.e. the same title as the relevant book of the Digests has.[32] Not only did he copy the regulation contained in the Digests, but Koldin directly used quotations from the law of Aquilius[33] who had introduced it into the law of Rome. According to Koldin, liability for the damage required that the conduct having caused the harm must have been unlawful.

It should be noted that Koldin not only used the casuistic method in explaining the regulation, i.e. he used an identical approach as Roman lawyers, but also provided identical examples that can be found in the Digests.[34]

On the other hand, not all provisions in that chapter of Koldin's Code correspond to Roman law. The law of Aquilius is appended with provisions which are, in their nature, different from Roman law and do not relate to Aquilius, such as liability for damage caused by a wild animal[35], liability for the use of false weights and measures by merchants[36] or for things spilt or dropped[37]. Their construction differs from that contained in Roman law, as Koldin imposed liability upon persons present at the time the property was dropped causing the damage, whilst under Roman law, liability was possessed by the owner of the house or the landlord of the apartment unless the actual wrongdoer was traced.

The further impact of Roman law upon Koldin's Code may be illustrated by two specific areas. The first is the regulation of judicial procedure.

Koldin in Chapter VII entitled *De feriis* (On holidays, i.e. those days when no proceedings may be held) distinguishes various types of holidays. These were non-annual (regular) holidays and extraordinary (*repentivae*). Here the subdivision corresponds to that used in antiquity, but the feast is not pagan, but Christian. Koldin understands *conceptivae* as market and merchant days when no trial could be held. The same regulation applied in Roman law until the issuance of Hortensius Code in 287 BC. Courts did not sit on days designated as *rusticae* or *oeconomicae* – i.e. during harvest time. Roman law includes a similar proscription, with courts sitting only during the period called *actus rerum*. No trial was held during the period of intensive work in the fields.

Another interesting issue is Koldin's understanding of a contract of bailment. The section entitled *On things to be bailed or entrusted into custody*, i.e. Chapters XXXVIII to LII, deals with this concept. The basic content of such contracts is included in the first two articles of this section and is clearly and fully based on Roman law concepts, albeit with some

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[32] D. 9, 2.
[33] R XIV.
[34] E. g. R XVIII a XXV.
[35] KOLDIN R XXX.
[36] KOLDIN S IX. In ancient Rome this was dealt by *aediles*.
[37] KOLDIN R XXVII.

deviations. These were caused, among other things, by Koldin's none too reliable knowledge of this subject-matter in Roman law.

As an example we may look at following articles.

> H. XXXVII
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> I. *Depositarius*, or bailee, or gratuitous receiver is a person who receives into his custody a thing given to him in trust. On the other hand, *deponens* or bailor is one who leaves a thing in the custody of another.
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> II. The bailee must take due care of deposited things; he has a duty to return to the bailor, upon his request, the whole thing which he had received and deposited in trust, without any damage and in the condition in which the bailee received the thing.
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> H. XXXIX
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> I. A thing entrusted in custody or given in trust may be requested back at any time by the person who gave the thing into custody. Should the bailee refuse to return the thing or deny possession of the thing, he, if such behaviour is proven, will have not only to return the thing but will be considered dishonoured and disrespected. This will happen because the dispute arises from the conduct based on trust, i.e. as teachers of law say *ex contractu bonae fidei.*

As can be seen here, the regulation of Roman law is fully copied and all essential elements of the Roman bailment (or custody) may be found, such as gratuity, regulation of liability (except for one exception which follows), return of the thing upon request of bailor and also the bailee's loss of honour and respect should he refuse to return the thing. On the other hand we can indentify a gross misunderstanding of the content of classical Roman law concepts. *Ex contractu bonae fidei* was not tied to the contract being based on the trust of parties to the contract, as assumed by Koldin, but on the mode of resolution of disputes. *Actio depositi* belonged to the group of actions with the so-called free regime of hearing where all circumstances of the case were considered, as is clearly stated in the "Textbook" of Gaius[38] or Justinian Institutions[39]. Koldin prohibits the use of a thing in bailment[40] and deals also with sequestration.[41] Two moments are interesting with respect to alienation between Koldin's regulation and Roman law. The first one[42] deals with liability for things brought in relation to the performance of some trade, usually running a spa. Koldin provides that an employee is directly liable, and not his employer, as was provided under Roman law. Article H LI provides that liability for the things may be terminated by a unilateral declaration.

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[38] IV 62.
[39] IV 28.
[40] KOLDIN H XLII.
[41] KOLDIN H XLIII
[42] KOLDIN H L and LI.

The Code was written in the Czech language and a Czech and Latin table of contents was attached as well as a subject-matter index. The Code was published twenty times, including twice in the German language; it was also put into rhymes so that individual articles could be more easily remembered. Koldin himself published a so-called Brief summary[43] in 1581. It was an abstract of the Code – a brief summary of individual provisions serving as an exact interpretation of municipal law. Koldin's brother Jan Kristian continued the legislative activity, listing punishments to be imposed for individual breaches of municipal law.

Subsidiary applicability of Roman law at a general level was introduced by *Declaratories* and *Novellae*[44] in 1640 as attachment to the Renewed Land Order[45], i.e. as amendments and explanations to this basic rule. This was the form in which Roman law "lived" in the Habsburg Monarchy until the publication of the General Civil Code in 1811. Koldin's work was taken into consideration at the preparatory stage of drafting the outline of the *Codex Theresianus* at the end of the 18th century.[46] The original codification draft took into account the Koldin Code, primarily in its approach to the mutual relationship between the law and custom, subsidiary application of domestic Czech law, closing loopholes in legislation, interpretive rules, etc. This is another proof of the high quality and durability of Koldin's Code. As a result, Roman law was paid significant attention in the teaching at law faculties, where it was taught during the first two years of study on the basis of the Justinian collections. However, this is another part of history – the part preceding, to a certain extent, the establishment of Roman law as an historical and propaedeutic branch of law in the second half of the 19th century.

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43 Included in: JOSEF JIREČEK: Práva městská království českého a markrabství moravského (see footnote 20).

44 KAREL MALÝ, JIŘÍ ŠOUŠA, KLÁRA KUČEROVÁ: Deklaratoria a Novely Obnoveného zřízení zemského [*Declaratories* and *Novellae* of the Renewed Land Order], in: Vývoj české ústavnosti v letech 1618-1918 [The Development of the Czech Constitutionalism in the Years 1618-1918], Praha 2006, pp. 793-873.

45 KAREL MALÝ: Česká konfederace a Obnovené zřízení zemské – dvě české ústavy z počátku 17. století [Czech Confederation and Renewed Land Order – Two Czech Constitutions from the beginning of the 17th Century], in: Vývoj české ústavnosti v letech 1618-1918 (see footnote 44), pp. 30-44; FRANTIŠEK MATĚJEK: Účinky obnoveného zřízení zemského z roku 1628 na naše země [Effects of the Renewed Land Order from 1628 on our Country], in: Vlastivědný věstnik moravský 3 (1990), pp. 327-336.

46 VALENTIN URFUS: Koldínův zákoník a příprava osnovy rakouského Tereziánského kodexu [Koldin's Code and the Preparing of the Draft of the Theresian Code], in: Městské právo v 16.-18. století v Evropě (see footnote 7), pp. 331-340.

## Zusammenfassung

*Die Inkorporation des römischen Rechts in das Stadtrecht in Böhmen im 16. Jahrhundert*

Die Rezeption des römischen Rechts in den böhmischen Ländern war auf den verschiedenen Rechtsgebieten unterschiedlich ausgeprägt. Was das Landrecht betrifft, so scheiterte eine Übernahme des römischen Rechts am Widerstand des Adels. Auch die Gründung der Prager Universität im Jahre 1348 verhalf dem römischen Recht nicht zu einer stärkeren Verbreitung in den böhmischen Ländern. Die Lehre des römischen Rechts blieb im 14. Jahrhundert eine Ausnahme und erlangte auch in den folgenden Jahrhunderten keine größere Bedeutung. Erst im 17. Jahrhundert avancierte das römische Recht zu einem Hauptgegenstand an den Juristischen Fakultäten.

Demgegenüber war der römischrechtliche Einfluss im Stadtrecht groß, wie etwa das um 1305 von dem italienischen Kommentator Gozzius von Orvieto verfasste *Ius Regale Montanorum* belegt. Auch das als „Brünner Schöffenbuch“ (1353) bekannte Stadtrechtsbuch des Brünner Schreibers Johann, eine Sammlung einzelner Gerichtsurteile samt Kommentaren, legt aufgrund der wiederholten Zitate aus den *Digesta*, dem *Codex* und den *Novellae* nahe, dass der Verfasser grundlegende Kenntnisse des römischen Rechts besaß.

Eines der herausragendsten Beispiele für die Rezeption des römischen Rechts in den böhmischen Ländern im 16. Jahrhundert war die vom König sanktionierte Kodifikation von Stadtrechten des bedeutenden Rechtsgelehrten Paul Christian von Koldin (1579). Die Unterteilung des Privatrechts in *ius naturale*, *ius gentium* und *ius civile* hatte Koldin von Gaius und den Justinianischen *Institutiones* übernommen. Zudem zeigt seine Zusammenstellung, dass auch die Bedeutung des römischen Strafrechts anders als vielfach angenommen keineswegs unerheblich war. Die Gesetze zur Ahndung von Grabschändungen oder des Menschenraubs (*plagium*) weisen deutliche Parallelen zu römischrechtlichen Bestimmungen auf. Weitere Einflüsse aus dem römischen Recht bestanden in der Regelung gerichtlicher Verfahren sowie von Verträgen zur Besitzüberlassung. Teile der Koldinschen Kodifikation blieben bis 1811 in Kraft. In der Entwurfsphase des *Codex Theresianus* Ende des 18. Jahrhunderts fand die Kodifikation vor allem hinsichtlich des gegenseitigen Verhältnisses von Recht und Gewohnheit, der subsidiären Anwendung einheimischen böhmischen Rechts, der Schließung gesetzlicher Schlupflöcher, in Bezug auf Interpretationsregeln usw. Berücksichtigung. Daher kam der Lehre des römischen Rechts nun große Bedeutung an den Juristischen Fakultäten zu.