The Protection of Privacy Rights and Professional Secrecy in the First Czechoslovak Republic (1918–1938)

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Abstract:
The protection of personality and the legal aspects of maintaining professional secrecy have a complicated history of development in many countries of the world. The evolvement of privacy rights and the protection of professional secrecy remain fairly known in the period of the First Czechoslovak Republic (1918–1938) in both contemporary and historical legal scholarship, despite a substantial number of cases were heard before the courts of the First Czechoslovak Republic upon the said subject. The research shows, that the protection of various privacy-related rights was anchored by different norms of the Civil Code, the Penal Code and other legislative acts; several outstanding court cases heard before the Supreme Court of the First Czechoslovak Republic displayed that the most frequent violations of this type were defamations, privacy violations and insults to the honor of the deceased. In some other cases, the Supreme Court discussed the issues of inviolability of letter correspondence and the admissibility of evidence containing a professional secret.

Keywords: Law of the First Czechoslovak Republic (1918–1938); right to private and family life; professional secrecy; defamation law; protection of personality rights

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Introduction

Relatively little is known about the protection of personality rights and the protection of professional secrecy in the First Czechoslovak Republic (1918–1938). For the matter of brevity, let us call them "privacy rights" for the necessity of the given article. The legislation, which provided protection of privacy rights was contained in various provisions

of the Austrian Civil Code of 1811 and the Criminal Code of 1852, which remained acting in the Czech lands of the First Czechoslovak Republic (and were previously acting in Cisleithania), and also included the legislative provisions, enacted already in the First Czechoslovak Republic, and occasionally, the provisions of other laws, to which we will turn below. The violation of privacy in terms of publication of the facts belonging to the person's private life was anchored in § 489 of the Penal Code of 1852, upon which the Supreme Court of the First Czechoslovak Republic had explicitly commented in its 1927 and 1929 judgments.[1,2] Those days, the old Austrian law had involved defamations (libels), violations of privacy, as well as violations of professional secrecy; several issues were attributed to the protection of honor and piety towards the deceased. Since many legislative acts, adopted in Habsburg-era Austria (pre-1867) and the Dual Monarchy period (1867–1918) remained acting in the Czech lands of the First Czechoslovak Republic, the jurisprudence of the Austrian Royal Supreme Court (*K.K. Obersten Gerichts- und Cassationshof*) will be considered and discussed in the article, including a number of judgments from other jurisdictions. The research involves both civil and criminal cases, and so, for the means of referring to cases adjudicated by the Supreme Court of the First Czechoslovak Republic, hereinafter the author will refer to the case in number, indicating it either as civil case, or a criminal case before the number. The judgments of other courts will be rendered as of their original. The article has the two following aims, namely:

- to indicate the legislation, upon which the professional secrecy, or the right to privacy were violated (if they were violated);
- to provide an overall theoretic discussion on privacy rights and their origination;
- to discuss the case law of the Supreme Court of the First Czechoslovak Republic (1918–1938) in cases on violations of privacy rights, and to observe the case circumstances and the legal positions of the Supreme Court of the First Czechoslovak Republic in such cases in terms of applying respective legal norms governing the protection of privacy rights and professional secrecy. Where appropriate, judgments and legal inferences of the Austrian Royal Supreme and Cassation Court will also be observed. The article features references to cases adjudicated by the courts of different other states, where necessary.
- Upon the structure of the article, the paper is constructed as follows:
- the cases relating to the protection of one's name and image;
- the cases relating to privacy rights and violations of honor and defamations;
- cases concerning disrespect to deceased persons;
- cases relating to protection of letter correspondence;
- cases relating to professional secrecy and relating to admissibility of evidence, containing a professional secret.

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1 Nejvyšší soud Československé republiky, Rozh. ze dne 28. února 1927, Zm II 148/26, Čís. 2678. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1928, roč. 9, s. 151–157.

2 Nejvyšší soud Československé republiky, Rozh. ze dne 21. září 1929, Rv II 275/28, Čís. 9198. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa společnost s r.o., 1930, roč. 11, s. 1133–1136.

The article uses the following research methods:

1) Historical-legal method. Apparently, being an article concerning the application of certain legal norms and rights in a historical period, the author strives to search for the roots of privacy rights in the law of the First Czechoslovak Republic, to discuss the case law of that time, and occasionally to compare the legal positions of different courts in cases, adjudicated approximately in the same time period, or earlier.
2) The method of content analysis. The author provides a comment of many judgments, discussing case facts and the resolution of the case by the courts. This research method foremostly applies to the case law of the Supreme Court of the First Czechoslovak Republic, as well as occasionally to notable judgments of the Austrian Royal Supreme and Cassation Court and occasionally the courts of other states.
3) The comparative method. The comparative method is also applicable within the discussion of historical case law. Despite the main focus is upon the jurisprudence of the Supreme Court of the First Czechoslovak Republic, many judgments of the Austrian Royal Supreme and Cassation Court are cited and discussed, as well as several notable judgments from other states. The choice of the judgments of other courts is presupposed by the following: 1) the Austrian courts have applied mainly the same legal norms (especially the norms of the 1811 Civil Code and the 1852 Criminal Code) as the Supreme Court of the First Czechoslovak Republic did later; 2) the judgments of the courts of other countries have demonstrated a peculiar legal position in terms of resolving a certain case, or coincided with the legal position of the Supreme Court of the First Czechoslovak Republic, which resolved an analogous case.

1. Overall issues of protecting personality rights. Protection of one's name and image

1.1 The emergence of right to privacy

The Civil Code of 1811 contained a number of legislative provisions relating to the protection of personality – § 16 for the overall right to personality, and § 43 relating to the right to file a lawsuit for injunction (and damages) for an unauthorised use of the aggrieved party's name – in fact, the latter provision was applied by the Supreme Court of the First Czechoslovak Republic in litigation relating to an unauthorised use of plaintiff's surname in the firm's name,[3] protection of patent rights in the name of an enterprise, which carried the name of the founder,[4] and were referred in privacy-related cases as well.[5] Since the civil law in the First Czechoslovak Republic was initially founded upon Austrian law, and was later amended by the legal acts, proclaimed by the Czechoslovak parliament, it is

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3 Nejvyšší soud Československé republiky, Rozh. ze dne 2. října 1923, Rv I 829/23, Čís. 2985. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1925, roč. 5, s. 1509.

4 Nejvyšší soud Československé republiky, Rozh. ze dne 21. prosince 1925, Rv I 964/25, Čís. 5577. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1926, roč. 7, s. 1859–1861.

5 Nejvyšší soud Československé republiky, Rozh. ze dne 1. prosince 1933, Rv I 904/32, Čís. 13070. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1934, roč. 15, s. 1359–1361.

sound to discuss the gist of personality rights, which existed in old Austrian law in overall, since these were used and later applied in the First Czechoslovak Republic. Moreover, after the collapse of Austria-Hungary and the emergence of the First Austrian Republic, the civil law of First the Austrian Republic remained the same (and the 1811 Civil Code is acting in the Austrian Republic at present day), whereas the provisions of the Civil Code concerning personality rights also remained mainly the same, notwithstanding newer legislative amendments relating to privacy rights. The legal scholars argue whether the personal rights ("*Recht der Persönlichkeit*") could be actually shaped in one, single right, protecting the right to personality, especially taking into consideration that other legal provisions of the Civil Code and a number of other laws have already provided such legal protection to certain spheres of private life.[6] Cornelson (2020) suggests that the roots of the said right could be found in pandect literature, namely the work of Franz Elden von Zeiller (1802), who had spoken on the "right to personality".[7] In fact, Zeiller in his "*Das natürliche Privat-Recht*" derived the right to personality from §§ 2–6 of Codex Theresianus (1766), which was the actual forerunner of the 1811 Civil Code, classifying the "right to personality" as the foremost and the highest right, from which all the other rights derive, and calling the "right to personality" as a right to claim dignity of a mindful, freely-acting creature.[8] What is interesting, the concept of "*Recht der Persönlichkeit*" in the legal systems of the XIX century was very misty, and frequently had very different meanings. For instance, in old German law, courts occasionally used this term referring to legal entities in terms of litigation involving enterprises.[9] The early privacy theory, shaped in the term "*Persönlichkeitsrecht*" was rather known in old German law pandects of the late XIX century, usually covering a very broad spectrum of personal and non-transferrable rights, such as liberty, inviolability of the person and dignity.[10] The "right of personality", as other authors claimed, seemed to be of fairly recent origin (as of the XIX century), was seemingly unknown in Ancient Roman law, and its scope was yet undefined and not clearly established to be described as a definite and solid right.[11] At the same time, R. von Jhering (1866) speaks that the right to personality had actually existed in Roman law, and its sense mainly lied in the sphere of personal freedom.[12] It is complicated to say did the "penumbral" concept of the right to personality (i.e. as it was mentioned by Gareis (1877)) has the same meaning as the contemporary right to privacy has. For instance, the provision of § 823 (1) of the German Civil Code of 1896 states that "Everybody, who deliberately, or due to negligence, encroaches

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6 CORNELSON, M. *Vertragliche Haftung bei Verarbeitung personenbezogener Daten unter besonderer Berücksichtigung immaterieller Schäden*. Dissertation. Wien: Institut für Zivilrecht, 2020, S. 11–12.

7 *Ibidem*, p. 11.

8 ZEILLER, F. *Das natürliche Privat-Recht*. Wien: Christian Friedlich Wappler und Beck, 1802, S. 49, § 40.

9 Obertribunal zu Stuttgart, Erkenntnis vom 29 October 1850. In: SEUFFERT, J. A. (Hrsg.). *Archiv für Entscheidungen der obersten Gerichte in den deutschen Staaten*. *Dritter Band.* München: Literarisch--artistische Anstalt der J. B. Gotta'schen Buchhandlung, 1851, S. 428–430, Entscheidung Nr. 374.

10 GIERKE, O. *Deutsches Privatrecht. Erster Band. Allgemeiner Teil und Personenrecht*. Leipzig: Verlag von Duncker & Humblot, 1895, S. 707–708.

11 GAREIS, C. Das juristlichen Wesen der Autorrechte, sowie des Firmen- und Markenschußes. In: BUSCH, F. B. (Hrsg.). *Archiv für Theorie und Praxis des Allgemeinen Deutschen Handels- und Wechselrechts*. Berlin: Carl Heymann's Verlag, 1877, S. 185–210.

12 JHERING, R. *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*. *Th. 2, 1 Abt.* Zweite verbesserte Auflage. Leipzig: Druck und Verlag von Breitkopf und Härtel, 1866, S. 289–290.

upon the life, body, health, freedom, property or another right of another person, is obliged to compensate the other person damages, caused by this". At the same time, in a 1902 judgment, which featured a dispute relating to blacklisting of factory workers, the German Supreme Court held, that the protection of their privacy/honour is not encompassed in the sense of the wording of "another right" of § 823 (1) of the Civil Code.[13] In the same year, a district court in Berlin held that § 823 (1) of the Civil Code could not be a legal foundation for recovering damages in a lawsuit by a theatre actress whose photograph was used for advertising of hair dye without her authorization.[14]

Privacy rights were also discussed in terms of the right to one's image by H. Keyßner (1896), who considered the said right as a constituent of the right to personality.[15] J. Kohler (1893) gave a considerable contribution to the field of privacy law, discussing it in different sectoral approaches, involving the right to name (1891),[16] the right to confidentiality of correspondence (1893),[17] and the right to one's image (1903).[18] For instance, in terms of the right to one's name ("*Namensrecht*"), J. Kohler described it as a personal right of a citizen, who may demand that no one could use his or her name for confusion and misrepresentation or in an other unauthorized way, and the object of such right is the person's identity itself; Kohler accentuated on different case law, originating from such countries, as England, France, Italy and the United States, where the courts granted the lawsuits of plaintiffs, whose names were used without their consent or misappropriated.[19] It should be denoted, that both Austrian Civil Code of 1811 (§ 43) and the German Civil Code of 1896 (§ 12) provided legal protection of one's name. The German Supreme Court in the case of Graf Zeppelin (1910), where plaintiff sued the defendant company for an unauthorized use of his image and name for advertising tobacco goods (the judgment was in favor of plaintiff), claimed that an unauthorized use of a name is not bound to a mere misappropriation of someone's name, but it also exists when such name is unauthorizedly used for advertising, marking goods and on advertising signs.[20] The court used the term "*Namensrecht*" ("Protection of the name"), and the same legal provision was applied in civil litigation, where the dispute featured an unauthorized use of the name of a legal entity (usually an enterprise), but not a certain person,[21] whereas the term "*Namensrecht*" was already referred in case law by the courts in the 1890s in commercial disputes of

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13 Reichsgericht, VI Zivilsenat, Urt. v. 29 Mai 1902, VI 50/02. In: *ERG Zivilsachen Bd. 51*, S. 369–385, Entscheidung Nr. 86. See in particular at p. 372–378.

14 Langesgericht Berlin I, 21. Februar 1902, reported in: KOHLER, J. *Das Eigenbild im Recht*. Berlin: J. Guttentag, Verlagsbuchhandlung, 1903, S. 38–46.

15 KEYßNER, H. *Das Recht am eigenen Bilde*. Berlin: J. Guttentag, Verlagsbuchhandlung, 1896, S. 26–27.

16 KOHLER, J. Das Individualrecht als Namenrecht. In: KOHLER, J. – RING, V. (Hrsg.). *Archiv für Bürgerliches Recht. Fünfter Band.* Berlin: Karl Heymann's Verlag, 1891, S. 77–110.

17 KOHLER, J. Das Recht an Briefen. In: KOHLER, J. – RING, V. (Hrsg.). *Archiv für Bürgerliches Recht. Siebenter Band.* Berlin: Karl Heymann's Verlag, 1893, S. 94–149; this work was also reprined as a book as: reprinted as: KOHLER, J. *Das Recht an Briefen.* Berlin: Carl Heymann's Verlag, 1893.

18 KOHLER, J. *Das Eigenbild im Recht*. Berlin: J. Guttentag, Verlagsbuchhandlung, G. m. b. H., 1903, S. 66.

19 KOHLER, J. Das Individualrecht als Namenrecht. In: KOHLER, J. – RING, V. (Hrsg.). *Archiv für Bürgerliches Recht. Fünfter Band.* Berlin: Karl Heymann's Verlag, 1891, S. 77–110.

20 Reichsgericht, II Zivilsenat, Urt. v. 28 October 1910, Rep. I L. 688/09. ERG Zivilsachen Bd. 74, S. 308–313, Entsch. Nr. 86.

21 Reichsgericht, II Zivilsenat, Urt. v. 9 Dezember 1904, Rep. II. 61/04. ERG Zivilsachen Bd. 59, S. 284–287, Entsch. Nr. 79.

misappropriating the name of persons as well.[22] Hence, the right to privacy was not recognized as a general right at first, but the courts had frequently afforded protection upon other legal foundations.

The privacy theory in old Austrian law of the XIX century was closely associated with the publications in the press.[23] According to an anonymous publication in "*Juristliche Blätter*" (1881), a violation of privacy under § 489 of the Criminal Code was considered as a type of violation of honor, which were made by the means of press. Technically, it was the same private criminal complaint for a defamation, with a difference that the proof of truth could not be a defense. In case the publication referred to some features, which could identify the person to whom it was related in theory, but did not refer to the person by name, then the burden of proof lied upon the complaining party.[24] The old Austrian jurisprudence showed that the criminal complaints for libel and violations of privacy were mainly lodged because of various publications in the press, for instance, because of publications alleging that the complainant was an alcoholic,[25] or behaved dishonestly and impiously.[26] The right to privacy in terms of photographs (as it was called "*Recht am eigenem Bild*" in old German law), was relatively lesser-known in case law, but the Austrian law afforded protection on the depicted person's copyright upon § 13 (2) of 1895 Law on Copyright (see discussion on legislation and case law below);[27] this law remained acting in the First Czechoslovak Republic (1918–38). The application of § 13 (2) of the 1895 Law on Copyright as a legal foundation for a complain for an unauthorized use of one's image could be found in the jurisprudence of the Royal Supreme and Cassation Court in the case No. 7810 (judgment of June 20, 1904),[28] and the case Rv. VII. 23/13, collection No. 6354 (judgment of March 18, 1913).[29]

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22 Landesgericht Hamburg IV, Urt. v. 22 Juni 1895, Oberlandesgericht Hamburg III, Urt. v. 30 Januar 1896. In: *Hanseatische Gerichtszeitung. Handelrechtliche Fälle. Siebzehnter Jahrgang (Neunzwanzigster Jahrgang der Handelgerichtszeitung)*. Hamburg: Otto Meißner, 1896, S. 85–94, Entsch. Nr. 34.

23 [Author unbekannt] Der Schuβ des Privatlebens in Strafrechte, *Juristliche Blätter. Eine Wochenschrift*. 1881, (3. April), Nr. 14, S. 173–176.

24 *Ibidem*, S. 173–176.

25 K.K. Oberster Gerichts- und Cassationhof, Entsch. vom 11. Jänner 1908, Ziffer 14629 / Entscheidungen des k.k. Obersten Gerichts-als Kassationhofes, veröffentlicht von der k.k. Generalprokuratur. In: NOWAK, R. (Hrsg.). *Sammlung der Plenarbeschlüsse und Entscheidungen des k.k. Oberster Gerichts- als Kassationhofes, Neue Folge, X. Band. (Entscheidungen Nr. 3383–3501.)*. Wien: Manzsche k.u.k. Hof-Verlags- und Universitäts-Buchhandlung, 1909, S. 100–102, Entscheidung Nr. 3421.

26 K.K. Oberster Gerichts- und Cassationhof, Entsch. vom 24. Juni 1905, Ziffer 6625 / Entscheidungen des k.k. Obersten Gerichts-als Kassationhofes, veröffentlicht von der k.k. Generalprokuratur. In: NOWAK, R. (Hrsg.). *Sammlung der Plenarbeschlüsse und Entscheidungen des k.k. Oberster Gerichts- als Kassationhofes, Neue Folge, VII. Band. (Entscheidungen Nr. 3010–3125.)*. Wien: Manzsche k.u.k. Hof-Verlags- und Universitäts-Buchhandlung, 1906, S. 239–240, Entscheidung Nr. 3089.

27 Gesetz vom 26. December 1895, betreffend das Urheberrecht an Werken der Literatur, Kunst und Photographie. RGBl. 1895, Nr. 197, S. 667–675. (in Czech language: Zákon č. 197/1895 ř. z., o autorském právu k literárním, uměleckým a fotografickým dílům.)

28 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 24. Juni 1904, Ziffer 7810, Entscheidungen des k.k. Obersten Gerichts-als Kassationhofes, veröffentlicht von der k.k. Generalprokuratur. In: NOWAK, R. (Hrsg.). *Sammlung der Plenarbeschlüsse und Entscheidungen des k.k. Oberster Gerichts- als Kassationhofes, Neue Folge, VI. Band. (Entscheidungen Nr. 2884–3009.)*. Wien: Manzsche k.u.k. Hof-Verlags- und Universitäts-Buchhandlung, 1905, S. 235–239, Entscheidung Nr. 2976.

29 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 18. März 1913, Rv. VII. 23/13. In: PFAFF, L. – SCHEY, J. – KRUPSKY, V. (Hrsg.). *Sammlung von Zivilrechtliche Entscheidungen des k.k. Obersten*

1.2 The practice of the Supreme Court of the First Czechoslovak Republic relating to the application of § 43 of the Civil Code

The Supreme Court of the First Czechoslovak Republic has resolved a number of cases which related to the protection of one's name. In the civil case no. 2895 (judgment of October 2, 1923), the plaintiff and the defendant were general partners of the firm "L. & W." (whereas the letters standed for their surnames), and worked together until October 1921, but after the partnership was dissolved with the defendant taking over all assets and liabities, he continued the business not changing the firm's name, and thus, the plaintiff's surname remained in the firm's name, despite he did not authorize it, and filed a lawsuit against the defendant in order to prohibit him the use of his surname in the firm's name. Defendant did not deny that he used the plaintiff's surname, but he claimed, that he did not cause any harm to plaintiff in terms of an arbitrary personification of someone's name. The Supreme Court denoted, that defendant used the plaintiff's surname in the company's firm in breach of § 24 (2) and § 27 of the Code of Commerce of 1897, and held, that it is a certain "pleonasm" in terms of an unauthorised use of one's name, and according to § 43 of the Civil Code, the proprietor of the name, which was used without consent, could file a lawsuit against the wrongdoer. The courts of all three instances found for plaintiff.[30] Here we may recall a considerably earlier case from England, Routh v. Webster (Judgment of January 28, 1847), where the plaintiff's name was used in a prospectus made by the defendants, the provisional directors of which were engaged in transportation business, and the plaintiff was designated as one of the company's trustees (whereas, in fact, he wasn't). The Rolls Court (per Langdale, L.) held, that the injunction has to be imposed on the unauthorised use of the plaintiff's name.[31] Another example of the application of § 43 of the Civil Code by the Supreme Court of the First Czechoslovak Republic was the civil case no. 13070 (Judgment of December 1, 1933). The defendant, an editor of a weekly newspaper, mentioned the plaintiff with is address in the rubrics "*Advokáti*" ("Attorneys"). The plaintiff was already subject to a disciplinary misdemeanor because of publishing inadmissible advertising, and he had previously forbidden defendant to publish any information concerning plaintiff's attorney's practice, even if merely naming plaintiff. The first-instance court found for defendant, holding that freedom of press may be only bound to the law, and the editor may act, and determine what to publish in these bounds; and in terms of § 43 of the Civil Code, there was no abuse of using the plaintiff's name for any benefit of the defendant, and the said advertising publication had nothing, which could be contrary to good morals (§ 1295 of the Civil Code). The first-instance court added, that the Law on Protection from Unfair Competition of 1927,[32] provided that anyone who acted in breach of good morals of fair trade by behaviour, which could harm the concurring party,

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Gerichtshofes. *Fünfzigster Band. Neue Folge, XVI. Band.* Wien: Manz'schen k.u.k. Hof-Verlags u. Universitäts-Buchhandlung, 1915, S. 258–259, Entscheidung Nr. 6354.

30 Nejvyšší soud Československé republiky, Rozh. ze dne 2. října 1923, Rv I 829/23, Čís. 2985. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1925, roč. 5, s. 150.

31 Routh v. Webster, 10 Beav. 561 (28.01.1847) In: BEAVAN, Ch. (ed.). *Reports of Cases in Chancery, Argued and Determined in the Rolls Court during the time of Lord Langdale, Master of the Rolls. Vol. X. 1846, 1847.* London: William Benning and Co., 1849, pp. 561–563.

32 Zákon č. 111/1927 Sb. z. a n., o ochraně proti nekalé soutěži.

could be subject to liability, but there was no signs of unfair trade in the publication, nor it could be held, that a copyright violation occurred, since a name itself could not be a subject of copyright, as such, nor it was a sort of a trademark (and it was not mentioned or claimed to be one), or any other misuse occurred. The appellate court found for plaintiff, stating that this lawsuit is grounded on basis of § 1295 (2) of the Civil Code, establishing, that the defendant acted against good morals by publishing the defendant's name in the newspaper, and knowing that it would cause harm to the plaintiff (and hence, according to the finding of the appellate court, the defendant acted deliberately), also denoting that the plaintiff had forbidden defendant to do so previously. The Supreme Court decided to reinstate the judgment of the first-instance court, hallmarking procedural errors.[33]

1.3 The protection of right to one's image: comparative case law

The right to one's image, upon which, for instance, a photographer could not distribute or sell photographs of the depicted person without the depicted person's consent, or, for another instance, a company could not use the person's image for advertising goods without consent, was coined in the second part of the 19th century law and jurisprudence throughout Europe and United States. § 13 (2) of the Austrian Law on Copyright of 1895,[34] which also continued acting in the First Czechoslovak Republic, provided that both the photographer and the depicted person had a joint copyright in the photograph, and the violation of such copyright should be regarded as a criminal misdemeanor. There is not much jurisprudence in terms of the right to one's image in the case law of Austria-Hungary or the First Czechoslovak Republic, so let us discuss the existing case law regarding related situations in overall. In the civil case no. 6354, (collection of Pfaff, Schey and Krupský), Judgment of March 18, 1913, a man applied to the plaintiff, who was engaged in commercial production of photographs, and agreed to make a photograph of him, later allowing the plaintiff in writing to exhibit and copy the images. Later, this photograph of the man (who later deceased), came to defendant company as a copy in a diminished quality, which desired to distribute the photograph, whereas the heirs of the deceased man had allowed the company to do so. Plaintiff was dissatisfied with such situation, having lodged a lawsuit for a copyright violation against the defendant company, having won on first instance, but losing on appeal; the Supreme Court reinstated the decision of the first-instance court, providing a number of explanations concerning the plaintiff's copyright and the validity of the deceased man's heirs in terms of providing permission to the defendant company relating to the distribution of the photograph. The Supreme Court found, that the consent of the deceased man was given explicitly to the plaintiff, and thus it could not be extended to any other persons; since the deceased man wrote, that he would allow the plaintiff permitted the image (of him) to be displayed, and the copies of the image to be sold, than the Court hallmarked, that it is what § 40 of the Law on Copyright of 1895 provided, namely an exclusive right of publishing and reproducing the work of art (in this case – the

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33 Nejvyšší soud Československé republiky, Rozh. ze dne 1. prosince 1933, Rv I 904/32, Čís. 13070. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1934, roč. 15, s. 1359–1361.

34 Gesetz vom 26. December 1895, betreffend das Urheberrecht an Werken der Literatur, Kunst und Photographie. RGBl. 1895, Nr. 197, S. 667–675. (in Czech language: Zákon č. 197/1895 ř. z., o autorském právu k literárním, uměleckým a fotografickým dílům.)

photograph). Concerning the joint copyright, the Court outlined, that notwithstanding the fact, that the legislation afforded the protection of the depicted person, it did not deprive the photographer of rights as well, and the man, who ordered the photograph of him to plaintiff, did not provide any directions to the heirs concerning it; hence, the exclusive right to the publication and reproduction was only of plaintiff.[35] A notable case showing how the right to one's image could be protected by an aggrieved party was the Royal Supreme and Cassation Court's criminal case no. 7810 (collectional nr. 2976), judgment of June 27, 1904. Defendant, who was the complainant's employer, accused the complainant in embezzelment and had produced a circular to his clients concerning the complainant, adding the complainant's photographic portrait, which he had left at a shop; somehow, defendant illegitimately took possession over this photograph and made a copy of it, later inserting it into the circular. The complainant proceeded with a private prosecution complaint against defendant, succeeding in redress only at one of the provisions of Law on Copyright of 1895 (namely, § 52); both parties appealed to the trial court's decision. According to the facts of the case, outlined in the judgment of the Royal Supreme and Cassation Court, there was a criminal case opened against the complainant for embezzelment, and the parties agreed for settlement, and there was a condition upon which the complainant would discharge his complaint for a copyright violation, which was committed by the defendant, and the defendant, by his side, would discharge his civil lawsuits against the complainant, and the complainant would be acquitted; but at the same time, the criminal case against complainant was not closed, as the acquitting judgment was impugned by the public prosecutor, and defendant did not fully discharge the civil claims, and hence, it could not be concluded that the settlement agreement really took place. So, according to these circumstances, the Supreme Court found that the defendant's nullity complaint, lodged under § 281 (9) of the Code of Criminal Procedure of 1873, was void. The complainant claimed, that there was a violation of §51 of the Law on Copyright of 1895, namely a deliberate encrhoachment to copyright. The Supreme Court admitted, that § 13 (2) and § 52 (3) indeed provide a joint copyright to both the author of the photograph and the person depicted on it, both of which are original rights. The Court denoted, that under § 21 of the Law on Copyright of 1895, a "copyright violation" should mean any unauthorised disposition of a work, the copyright of which is reserved for the author, in terms of photographs, the encroachment on the right, provided in § 40 of the Law on Copyright of 1895 is punishable under § 51 of the Law on Copyright of 1895. The Supreme Court said, that it could not be estimated, that the defendant actually had not "published" the photograph to the public, or had exhibited it, but the defendant "distributed" it in the sense of the law. The Court concluded, that the defendant had a material interest in distributing the said publication, and as of the facts established by the lower court, the distribution was commercial; moreover, it was clear, that the distribution of the circular including the portrait of the complainant was done without his consent and such wrongful acts were enough to constitute a misdemeanor in the sense of § 51 of the Law on Copyright of 1895. Hense, the appellate court decision was

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35 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 18. März 1913, Rv. VII. 23/13. In: PFAFF, L. – SCHEY, J. – KRUPSKY, V. (Hrsg.). *Sammlung von Zivilrechtliche Entscheidungen des k.k. Obersten Gerichtshofes*. *Fünfzigster Band. Neue Folge, XVI. Band.* Wien: Manz'schen k.u.k. Hof-Verlags u. Universitäts-Buchhandlung, 1915, S. 258–259, Entscheidung Nr. 6354.

quashed, and the trial court decision was reinstated.[36] Hence, the old Austrian law allowed the protection of personality rights in terms of a depicted person in the photograph on basis of a joint copyright, belonging to the author of the photographic portrait, as well as the person, depicted on it. According to the position of the Royal Supreme and Cassation Court in the civil case no. 6354 (Judgment of May 18, 1913), the consent of the depicted person to use it's copyright should be estimated as any other contractual agreement according to the law of obligations, as provided by § 16 of the Law on Copyright of 1895.[37] A similar position could be found in an English judgment of Pollard v. Photographic Company (Judgment of November 30 / December 21, 1888), where a woman sued the defendant company for using her photograph as a Christmas card in a photographic shop for advertising purposes, winning the case on basis of the common law theories of implied contract and breach of confidence. There, the Chancery Division of the High Court of Justice (per North, J.), held, that when a client enters into legal relationships with the photographer to produce certain photographs of the client, there exists an implied contract between the client and the photographer not to use the said photographs for any other purposes, which were not agreed before, without the depicted person's consent, and the employment of the photographer by a client should also be regarded as a kind of confidential employment, and reproducing the portrait of the person for other purposes than supplying the photographs to the person, who had ordered it. At the same time, the "dual copyright", which could be found in Austrian law, was completely different in English law, according to which the copyright was not of the person which had performed the photograph, but of the depicted person, unless such a copyright was reserved by agreement in writing, but having no official registration, the person could not benefit or sustain a lawsuit under the provisions of the Copyright (Work of Art) Act (25 & 26 Vict. c. 68, section 1), and as the Court (per North, J.) assumed, the copyright issue was not invoked by plaintiff's counsel as a ground for the action against the defendant, but the Court emphasized, that the lack of registration would not deprive plaintiff from redress upon common law theories (what is interesting, the Court synonymically used the term "breach of faith" referring to the tort of breach of confidence – in earlier English common law, cases relating to breaches of trade secrets were adjudicated upon the grounds of a breach of confidence/faith).[38,39] An order for a portrait, which was based upon a photography, or an order for a photography from a client to

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36 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 24. Juni 1904, Ziffer 7810, Entscheidungen des k.k. Obersten Gerichts-als Kassationhofes, veröffentlicht von der k.k. Generalprokuratur. In: NOWAK, R. (Hrsg.). *Sammlung der Plenarbeschlüsse und Entscheidungen des k.k. Oberster Gerichts- als Kassationhofes, Neue Folge, VI. Band. (Entscheidungen Nr. 2884–3009.)*. Wien: Manzsche k.u.k. Hof-Verlags- und Universitäts-Buchhandlung, 1905, S. 235–239, Entscheidung Nr. 2976.

37 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 18. März 1913, Rv. VII. 23/13. In: PFAFF, L. – SCHEY, J. – KRUPSKY, V. (Hrsg.). *Sammlung von Zivilrechtliche Entscheidungen des k.k. Obersten Gerichtshofes*. *Fünfzigster Band. Neue Folge, XVI. Band.* Wien: Manz'schen k.u.k. Hof-Verlags u. Universitäts-Buchhandlung, 1915, S. 258–259, Entscheidung Nr. 6354.

38 Pollard v. Photographic Company, (1888) 40 Ch. D. 345; [1888 P. 2775.] (Nov. 30 / Dec. 21, 1888). In: HEMMING, G. W. (ed.). *The Law Reports. Cases determined in the Chancery Division and in Lunacy, and on appeal therefrom in the Court of Appeal / Vol. XL. 1889.* London: Printed and Published for the Council of Law Reporting by William Clowes and Sons, Limited, 1889, pp. 345–354.

39 See the following cases:
(1) Yovatt v. Winyard, 1 Jac. & W. 394 (May 15, 1820) In: JACOB, E. – WALKER, J. (eds.). *Reports of Cases Argued and Determined in the High Court of Chancery, during the time of Lord Chancellor Eldon.*

a photographer was viewed as a contract for fulfilling work, which was firmly established in earlier Austrian case law,[40] and later in the jurisprudence of the First Czechoslovak Republic.[41]

2. Violations of privacy, protection of honour and defamations

2.1 Overall remarks

As it was held before, the protection of the right to privacy in the First Czechoslovak Republic was provided by a rather complicated set of norms, inherited from Austrian law (Civil Code of 1811 and Criminal Code of 1852). In this chapter, the author is going to present various issues of protection of personality rights, associated with the overall right to privacy, such as an unauthorised publication or revelation of the facts of the person's private life and defamations (libels, slanders). Veselý (1899) commented, that in Royal Austria, the publication of the private facts in printed press was considered a violation per se, though the perpertrator was not punished, in case specific circumstances induced him to do so; in terms of specific circumstances of such publication, the Supreme Court of the First Czechoslovak Republic explained in it's civil case no. 9198 (1929), that the publication of private facts in order to avert further litigation, commenced because of a defamation, could not be accounted as specific circumstances, which could justify such violation).[42] As it was mentioned above, the provisions of the Criminal Code (§ 489) protected the facts concerning the prospective aggrieved parties' private life from disclosure, and on May 15, 1895, Ferdinand von Schönborn, who was the Minister of Justice, introduced a circular to three district courts in terms of hearing cases on privacy violations, where he denoted to regret to find, that in such court proceedings, the details of the parties' private life are often revealed within questioning, or the proceedings in overall by the speech of witnesses and parties to the proceedings. Hence, he concluded that the judges should dismiss the questions, the answers to which could reveil the details of private life.[43] If we turn to the interpretation of privacy violations in the Austrian law of the XIX century, the courts had to define whether the said facts fell under the scope of the violation of privacy. For instance, in the judgment

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Vol. I. – 1819, 1820. 59 Geo. III., 60 Geo. III., and 1 Geo. IV. London: A. Strahan, Law-Printer to the King's Most Excellent Majesty, 1821, pp. 394–395.
(2) Morison v. Moat, 9 Hare 241; 20 Law J. Rep. Chanc. 513 (Aug. 5th, 6th and 20th, 1851) In: HARE, T. (ed.). *Reports of Cases Adjudged before the High Court of Chancery, before Right Hon. Sir George James Turner, Vice-Chancellor. Vol. IX. 1851 to 1853: 14 to 16 VictoriÆ*. London: W. Maxwell, Law Bookseller and Publisher (Late A. Maxwell & Son), 1853, pp. 241–267.

40 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 12 März 1891, Nr. 2258. In: PFAFF, L. – SCHEY, J. – KRUPSKY, V. (Hrsg.). *Sammlung von Zivilrechtliche Entscheidungen des k.k. Obersten Gerichtshofes*. *Neunundzwanzigster Band.* Wien: Manz'schen k.u.k. Hof-Verlags u. Universitäts-Buchhandlung, 1895, S. 151–152, Entscheidung Nr. 13652.

41 Nejvyšší soud Československé republiky, Rozh. ze dne 25. října 1921, R I 1284/21, Čís. 1259. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1923, roč. 3, s. 722–723.

42 Nejvyšší soud Československé republiky, Rozh. ze dne 21. září 1929, Rv II 275/28, Čís. 9198. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1930, roč. 11, s. 1133–1136.

43 O požadavku šetření soukromého a rodinného života před soudy. *Právník. Časopis věnovaný vědě právní i státní, jejž vydává Právnická jednota v Praze*, 1895, roč. 34, s. 373– 374.

of the Royal Supreme and Cassation Court no. 10310 (1865), several waiters published some information in a journal regarding the facts that their employer has mistreated them, who lodged a criminal complaint under § 488, 489 and 491 of the Criminal Code; the court of appeals found that no details of private life were actually revealed (the trial court found that it was), and the said material contained only information about the employer as a tradesperson, and rather his relationships with the employees, nor was the proof of the truth introduced; but the Royal Supreme and Cassation Court found, that the material actually did reveal information containing private facts, finding that the application of § 489 by the trial court was justified.[44] It should be also denoted, that a complaint on a privacy violation in Austrian law allowed a survival of action by the next of kin of the deceased complainant (but in such case, the alleged offense was qualified under the provisions of defamation, namely, § 489 and § 495, whereas the former provision punished for a defamation, and the latter – for an insult to honor of a deceased person).[45] It has to be clarified, that under § 490 of the Criminal Code, the defendant could not be held liable if proving the veracity of the published information (relating to § 487 and 488 of the Criminal Code); however, in terms of § 489, the defendant would not be allowed to prove the veracity of the published information – that is, truth would not be a defense in such case. Such difference in terms of allowing the defendant to prove truth in complaints upon libel and privacy violations was outlined and commented upon by the Supreme Court of the First Czechoslovak Republic in the criminal case no. 2678 (1927), to which we will turn below – for instance, in this case, the confusion complaint related to the interrogation of whether the publication actually contained facts of private life of the persons, to whom the publication was related.[46] Interestingly, the celebrated American scholars Warren and Brandeis (1890) in their influential article "*The Right to Privacy*" also accentuated that the truthfulness of the facts revealed should not be a defense.[47]

2.2 The right to privacy, defamation law and the concept of public interest in the judgments of the Supreme Court of the First Czechoslovak Republic

After the Amendment to the Press Law (widely known as "*Tisková novela*") was enacted in 1924,[48] several changes in terms of complaining and prosecution for defaming publications were enacted. § 4 of the Amendment to the Press Law provided, that a prospective

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44 K.K. Oberster Gerichts- und Cassationshof, Entsch. v. 13. Dezember 1865, Ziffer No. 10310. In: GLASER, J. – ADLER, L. – KRALL, K. – WALTER, J. (Hrsg.). *Sammlung strafrechtlicher Entscheidungen des k.k. obersten Gerichts- und Cassationhofes. Zweiter Band.* Wien: G. J. Manz'sche Buchhandlung, 1873, S. 323, Entscheidung Nr. 1121.

45 K.K. Oberster Gerichtshof, Entsch. v. 6. November 1891, Ziffer No. 11353. In: *Entscheidungen des K.K. Obersten Gerichts- und Cassationhofes in Civil- und Strafsachen, veröffentlicht von dem k.k. Obersten Gerichts- und Cassationhofe in der Beilage zum Verordnungsblatte des k.k. Justizministeriums. VIII. Jahrgang. 1892. Nr. 704 bis 845*. Wien: Kaiserlich-Königlichen Hof- und Staatsdruckerei, 1892, S. 29–32, Nr. 722.

46 Nejvyšší soud Československé republiky, Rozh. ze dne 28. února 1927, Zm II 148/26, Čís. 2678. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1928, roč. 9, s. 151–157.

47 WARREN, S. D. – BRANDEIS, L. D. The Right to Privacy. *Harvard Law Review*, 1890, Vol. 4, No. 5, pp. 193–220, see in particular at p. 218.

48 Zákon č. 124/1924 Sb. z. a n., o změně příslušnosti trestních soudů a odpovědnosti za obsah tiskopisů ve věcech křivého obvinění, utrhání a urážek na cti.

defendant could not be prosecuted for a misdemeanor (i.e. libel) in case the publication has pursued a considerable "public interest" (and apparently, it was for the courts to define whether there was such public interest in a publication, and whether no other rights were violated – see, for instance, the comment to the criminal cases of the Supreme Court no. 2678 (Judgment of February 27, 1927) and no. 5139 (Judgment of November 26, 1934) in this article below). The term "*public interest*" ("*veřejný zájem*" in Czech language) was also discussed by the Supreme Court of the First Czechoslovak Republic in cases relating to protection of honor and freedom of the press. For instance, in the criminal case no. 2182 (Judgment of November 18, 1925), defendant published an article about the existence of malpractice in the governance of a district administration, which was printed, upon his claims, as a response to an offensive article in a different journal, where several local political parties were blamed in sabotaging the work of a district administrative commission for ignoring an open hearing; it was also known, that the parties opposed the appointment of the complainant as the chairman of the said commission. The defendant was acquitted from liability for a criminal misdemeanor under § 488, § 491 and § 493 of the Criminal Code, and complainant appealed to the Supreme Court, which decided to remand the case to the trial court for further consideration, explaining the application of certain provisions of the Press Amendment. Upon § 4 of the Press Amendment, the law guaranteed relief from liability for a criminal misdemeanor (i.e. defamation), even in case the publication was offensive in fact, if the motive of the publication lied primordially in the protection of public interest. The Court also denoted, that according to the report of the Constitutional Committee, the aim of the said provision lies in the press' motive in such publications to protect public interest, but not for the interest of making scandals, adding, that the situation, when the offender had a motive in such press publication, different from protecting public interest, should be distinguished from the first situation, and thus, in such case, the offender will not be exempt from liability. According to the findings of the Constitutional Committee, the precise aim of § 4 presupposes, that critique, which has good intentions and is used for public interest, must not be constraint; but at the same time, the legislator considered, that the freedom of press may be abused by unfair elements, and that's why the term "*především*" ("*primordially*" in English) was used in the norm of the first paragraph of § 4. According to the circumstances of the case, the complainant and the defendant were apparently in conflict. The Supreme Court outlined, that it would not be enough to say, that the article did "also" consider some aspects of public interest, since in order to be exempt from liability for the publication, it has to be clearly established that the prospective defendant in the case would provide critique, encroaching the honor of a different person explicitly according to public interest. This demand, according to the Supreme Court, was not fulfilled by the court below, and so, when the trial court would review the case again, its task would be to define of whether did defendant act to protect public interest, or in the opposite, whether the defendant had used an opportunity (that is, by publishing such article) to infame the complainant as a political opponent. The Supreme Court also said, that several circumstances could assist in order to determine this: 1) what were the personal and political relations between the complainant and the defendant; 2) did defendant publish any other articles, where he defamed complainant? (would it look like a continuation of a "press fight" between the parties?); 3) whether the rights of the political parties taking part in the district administrative commission after reviewing the case of malpractice in

the commission already protected by the fact they had opposed to appointing complainant as a chairman of the commission?; 4) was it necessary to protect the interests of the said parties further by producing this publication? So, the Supreme Court held to remand the case to the trial court for further consideration.[49]

Another notable consideration of public interest was provided by the Supreme Court in the criminal case no. 3354 (Judgment of December 20, 1928): here, the Court's main explanation in terms of public interest lied in the issue, that the *public interest* has to be determined from an objective point of view, and it would not be enough to be justified solely from the point of the defendant, that a publication was of public interest. So, the circumstances of the case were the following. Defendants had published an article about the private complainant, a member of a political party. According to the case circumstances, defendants wrote an article upon an upcoming congress of a political party, where its future activities were to be discussed, finding themselves that outlining the events surrounding political parties were in public interest (the lower court, besides, approved their position), making defaming statements about the complainant, whom, accoring to the complaintants appeal to the Supreme Court, the defendants had a considerable interest to turn to infamy (later, the Supreme Court discussed a complicated subject – could it be held, that public interest might *coincide* with the interests of the publishers, and if so, could a defaming publication may be "innocent"?). Defendants had claimed to ascertain the veracity of their statements by using photographs and phonograms of the writings belonging to the defendant (the legitimacy of obtaining these materials was not discussed in the judgment), which the defendants believed to be as copies, taken from the original documents. In addition, defendants had also referred to the events relating to the complainant, which occurred over ten years before the action was commenced, and mentioned the events of negotiations of complainant, and an another deputy with a nobleman in July, 1914 right before the outbreak of World War I. By the judgment of March 21 and March 30, 1928, the Municipal Court of Brno had acquitted defendants from charges under § 488 and § 491 of the Criminal Code. The Supreme Court decided to uphold the complainant appeal, overturning the judgment of the Municipal Court of Brno, and remanding the case back to the said court for a new decision. The lower court found, that the defendants' article could be judged as such to be of public interest. The Supreme Court denoted, that defining innocence under § 4 of the Press Amendment Law is a legal determination – that is, the court has to assess of whether the motive for the publication bears the character of public interest, and to establish whether this motive was primordially pursued by the defendants, and did it prevail over the other motives. The Supreme Court outlined, that in the case at stake, public interest has to be determined objectively, and not from the mere view of the defendants, who produced the article. Complainant emphasized, that not all interest relating to political parties should be considered as public interest, though he admitted that the public interest may occasionally coincide with subjective interest; to this claim, the Supreme Court agreed, that it may really be so, and by such argument, the Supreme Court found that the complainant contended that although the subjective interests of the

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[49] Nejvyšší soud Československé republiky, Rozh. ze dne 18. listopadu 1925, Zm I 596/25, Čís. 2182. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1926, roč. 7, s. 668–670.

defendants seemed to be only to infame the complainant, but it could have coincided with public interest in general, and an opposite view, held the Court, could bring to a deplorable result, since holding otherwise, many people and political parties could be deprived of the privilege, guaranteed under § 4 of the Press Amendment Law. Hence, the lower court had to determine of whether the public interest was the primordial motive for producing the publication, or the public interest was a pretended one, being only veiled under the label of public interest. The Supreme Court hallmarked, that the fact one of the defendants had the written materials in his possession for already several years before the publication took place, whereas the complainant's appeal to the Supreme Court did not refer to this circumstance in detail (moreover, it was reviewed by the Municipal Court of Brno), only referring to the defendants' subjective interest in producing the publication. However, the Supreme Court accentuated, that the Municipal Court could use one circumstance as a proof of probability in the case, namely the events occurring over a decade ago – the Municipal Court of Brno had itself interrogated, whether it could be an "insult to honor" in beforehand, and the Supreme Court reminded, that § 4 of the Press Amendment Law did not provide protection to publications containing facts going beyond a specific case, and the Court also reminded that the Constitutional Legal Committee mentioned, that some acts may be exempt from the privilege of § 4, if the defendant pursued a goal, which was different from public interest, such as revenge, humiliation of the opponent or personal benefit. In such view, the Supreme Court ruled to annul the contested judgment and remand the case to the court of first instance.[50]

In the criminal case no. 2678 (Judgment of February 27, 1927), another case concerning press publications and the issue of public interest, the defendant, being a newspaper editor, published an article relating to both complainants on April 25, 1924. This article told a story concerning a local priest, who married a school teacher, who "brought him a dowry of a school administration". Later, the defendant denoted in his appeal to the Supreme Court, that it was not merely a fact of [the both complainants'] private life, but rather a reflection of a disorder, which would spoil public morality and undermine the trust in the school's administration and the confidence of a clergyman, invoking the issue of public interest. On May 6, 1924, the complainants applied to the District Court of Nový Jičín, lodging two criminal complaints upon an alleged violation of § 488 of the Criminal Code in terms of a provisional search for a misdemeanor committed by an unknown person, demanding to question the responsible editor, and to search the house in order to find the manuscript. Complainants also intended to file a civil lawsuit against the author of the article for a defamation, and in case the author had not been found (the author was not found), they would demand to punish the editor. The defendant editor refused to testify; the representative of the complainants asked to punish the editor under § III of the Law of October 15, 1868, as the editor refused to testify and the search remained without result. Later, the District Court of Nový Jičín decided to transfer the case to the Chamber Court of Olomouc upon the defendant's pleading, joining two criminal cases in one for a joint review, upon the foundation of Section 28 of the Press Amendment Law, which was already in force. At trial, defendant claimed that

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50 Nejvyšší soud Československé republiky, Rozh. ze dne 20. prosince 1928, Zm II 173/28, Čís. 3354. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1929, roč. 10, s. 790–796.

he was the author of article, but the publication contained truthful statements, and upon his view, was made in public interest. On the other hearings, the defendant represented the appropriate evidence, which he found to be suitable for confirming the facts of the publication. Later, the defendant's counsel impugned the subject-matter of the court to hear the defendant's case, since it was a misdemeanor related to the Press Law, and pleading to transfer the case to municipal court. The proceedings lasted over a year, when the defendant was convicted by the judgment of January 27, 1926. Defendant impugned the judgment both upon the grounds of law and procedure. In terms of the violation of the right to privacy, the Supreme Court denoted, that the first-instance court had previously established, that the disputed publication actually contained information concerning the complainants' private life, and according to § 490 of the Criminal Code, the proof of truth is not a defence in a case of privacy violation; the Court also hallmarked, that the Press Amendment Act of 1924 had no goal to abstain from the legal protection of the right to privacy, which was, moreover, mentioned in the explanatory report to the law. The Supreme Court also mentioned, that defendant did not manage to prove the truth of the statements, and later, in his appeal, the defendant criticized the first-instance court decision, that the first-instance court had recognise and estimate the evidence of probability. At the same time, the Supreme Court outlined, that the defendant did not manage to prove the existence of public interest in the article, and the defendant ought to do that, especially, since the disputed article contained the facts of the complainants's private life, the proof of truth of which is not admissible. The defendant's appeal was dismissed.[51]

In the criminal case no. 4300 (Judgment of October 14, 1931), the case considered a violation of privacy disclosing that the aggrieved party was mentally-ill in the press, which could, to a certain extent, also concern the issues of the confidentiality of medical information (though apparently, not disclosed by a physician or other medical personnel). The complainant was aggrieved by the fact that a newspaper named him to be mentally-ill, and the complainant was not responsible before the criminal law. The Supreme Court ruled to dismiss the defendant's complaint against the judgment of September 19, 1930 of the Municipal Court of Tábor, which convicted him under § 489 of the Criminal Code (thus, for a violation of privacy). The defendant contended, that he did not reveal any private facts of the aggrieved party, but only blamed complainant to be mentally ill, which should be overviewed under § 491 of the Criminal Code, which does not exclude a proof of truth to constitute a defense. However, the it was known to the lower court, that the complainant indeed was mentally-ill and was not responsible before the criminal law, and since the defendant blamed him exactly in being mentally-ill, the defendant's acts were reviewed under § 489, § 490 of the Criminal Code, since the defendant's publication mentioned the facts of the complainant's private life. The Supreme Court also outlined, that the proof of truth in terms of the facts of private life is also excluded from the point of view of public interest in the sense of the Press Amendment Law of 1924. The complainant was ridiculed in public, being blamed in suffering from a mental illness, so the Supreme Court held, that the proof of truth would be excluded even in case the defendant's acts could be observed under § 491 of the

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51 Nejvyšší soud Československé republiky, Rozh. ze dne 28. února 1927, Zm II 148/26, Čís. 2678. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1928, roč. 9, s. 151–157.

Criminal Code. Defendant also contended, that he only encroached upon the complainant's public appearence, but not upon his honor, but the Supreme Court held it would nevertheless be of such encroachment; and defendant also claimed, that the complainant's mental condition, making him not responsible before the criminal law would not let him to file a criminal complaint himself, but the Supreme Court held, that the mere fact of complainant's illness did not deprive him of his personal honor, and there was no indication, that the complainant was deprived of his rights and so he could complain only with the help of a legal representative. Hence, the Supreme Court ruled to dismiss the defendant's appeal.[52]

The Supreme Court of the First Czechoslovak Republic repeatedly ruled in cases relating to violations of honor and dignity in the course of various legal relations. In the civil case no. 1081 (1921), the Supreme Court of the First Czechoslovak Republic ruled in case relating to a defamation of a worker. The plaintiff was employed by the defendant as a director of a factory on a three-year term; plaintiff left his workplace ahead of time on basis of § 26 (4) of the Trade Assistants Law (1910),[53] namely because of a defamation of a worker, and lodged a lawsuit against his employer on the basis of § 29 of the Trade Assistants Law (1910). Plaintiff claimed that defendant called him negligent, and humiliated him. The courts of first and second instances dismissed the plaintiff's claim, finding that upon § 26 (4) of the Trade Assistants Law (1910), the necessary condition of terminating the employment contract should be a considerable defamation – that is, such wording of the defamation should not be a single, "isolated" defamation, and finding that defendant did not behave that way, and the defendant's statement cannot be claimed to be out of the sense of ordinary critics. Moreover, the latter statement was made when the plaintiff was already out of employment, and the other statement of the plaintiff, as it was found, were too generalized to be proved in terms of their actual sense. The Supreme Court dismissed the appeal, holding, that the defamation must be properly proved, and a generalized statement regarding the employer's behavior could not be considered in terms of § 26 (4) of the Trade Assistants Law (1910); the Court also explained that despite the text of the Law mentions insults to honour in plural, the Court said, that even a single insult to honor is enough, in case such is mentioned in the legal provisions. Not being necessary as a defamation which would be a criminal misdemenour, the Court explained that the defamation in such case should be of such severe nature, that would render further employment relationships impossible. The Court said, that the defendant's statements were indeed criticizing, but it could not be held, that such were of that nature to constitute a serious insult to honor. The appeal to the Supreme Court was dismissed.[54]

The Supreme Court also ruled on the issue of defamation within business relationships in the civil case no. 6852 (Judgment of March 1, 1927), where the Court provided a number

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52 Nejvyšší soud Československé republiky, Rozh. ze dne 14. října 1931, Zm 1 918/30, Čís. 4300. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1931, roč. 13, s. 510–511.

53 Gesetz vom 16. Jänner 1910, über den Dienstvertrag der Handlungsgehilfen und anderer Dienstnehmer in ähnlichen Stellung (Handlungsgehilfengeseß). RGBl. 1910, Nr. 20, S. 41–47. (in Czech language: Zákon č. 20/1910 ř. z., o obchodních pomocnících a jiných zřízencích v obdobném postavení.)

54 Nejvyšší soud Československé republiky, Rozh. ze dne 7. června 1921, Rv I 88/21, Čís. 1081. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1923, roč. 3, s. 389–390.

of important explanations on the application of legal provisions in the relation to the legal protection of workers. The plaintiff was employed as the representative of the defendant company, and was resigned from work because of his letter to the defendant company, which was allegedly defamatory – in the letter, the plaintiff had written, that he had established, that the company did not possess significant confidence among the customers due to the poor quality of the goods of the defendant company, and due to an inadequate behavior of the company's representatives; he also wrote desired to be paid in advance, claiming that "good companies behave this way", as well as a travel remuneration. After the letter was received, the plaintiff was soon dismissed from work. Plaintiff sued for payment of service benefits, but the courts of the first and second instances rejected his lawsuit on basis of § 27 (6) of the Trade Assistants Law of 1910. Plaintiff appealed to the Supreme Court, pointing out, that he did not intend to harm the honor of the company, but he was worried about the reputation of the company among the clients, and only reflected the reasons of the customers' mistrust in the company, and he claimed, that the letter he had written, did not contain any insults in the meaning of § 27 (6) of the Trade Assistants Law of 1910; he also contended that a single insult (even had it actually happenned) would not become a legal foundation of his dismissal, and that such insult should have occurred in public to become such, and he had been working for a very short time in the company, and when he wrote the letter, did not know the officials of the company, and he claimed he had no intention to defame them anyhow. The Supreme Court rejected his appeal, and explained, that the wording of § 27 (6) of the Trade Assistants Law of 1910 indeed used a plural form, but it cannot be inferred that only repeated insults to honor may become a legal foundation of a person's dismissal – on the contrary, held the Court, a single insult to honor is sufficient, but it must be a serious one, and it should be considered serious, when the behavior of the business assistant towards the employer is of such nature, that would exclude any successful work altogether between the parties, and the legislation did not bound such defamations only to the ones committed in public, and the defamation misdemeanour in the sense of criminal law is not necessary; the provisions of § 27 (6) of the Trade Assistants Law of 1910 considered any insult to honor, and it was not decisive relating to whether the company officials had actually read the plaintiff's letter, or they hadn't; the Supreme Court also underlined, that the fact plaintiff had written a letter of such a content, having worked in the company for a short period of time, would even more aggravate the insult to honor he did, as defendant's representatives were apparently aggrieved to read such impious statements, which would apparently preclude both parties from working together.[55]

3. Protection of the honor of deceased persons

3.1 Observations concerning the legal status of a deceased person in Continental law

Personality rights also exist in terms of protecting the honor of deceased persons, as well as the legal protection of maltreating a deceased person. In Continental law, the theories

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[55] Nejvyšší soud Československé republiky, Rozh. ze dne 1. března 1927, Rv I 1810/26, Čís. 6852. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1928, roč. 9, s. 373–375.

concerning the legal status of a deceased person and its protection are regrettably lesser known than the analogical theories in common law jurisdictions, where both the courts and legal scholars had long ago agreed that there may be no property in a corpse;[56] a Canadian judgment from 1911 has established, that there may be property in a deceased body, subject to the obligations that a person possessing it would undertake – that is, the close relatives have to take a short-term possession of preparing the body of the deceased so as to provide a decent burial.[57] Let us provide some insight to the issues of the legal status of a cadaver (corpse) in the system of Continental law, beginning from scholarly literature. The Austrian lawyer and legal scholar J. Unger (1856) in his work on Austrian private law found, that a corpse is a property of no-one, and so the clothes the corpse is dressed on and the chattels intact are no-one's property (that is *res extra commercium*, apparently not *res nullius*, since the latter belongs to any object that could be owned, despite not having an owner), but he added, that upon certain circumstances a corpse or skeleton still could become *res intro commercium*. Under ordinary circumstances, in case a tortfeasor would attempt to steal such things from a grave, the tortfeasor would be charged not for theft, but rather for a desecration of a grave (that is, since a charge for theft is put only in case a thief has stolen somebody's property, in case the offender, for instance, had stolen a corpse or some adjacent chattels to it, the offender technically committed a desecration of a grave, but not a theft, since a corpse is not an object of property and thus could not be stolen from a legal point of view).[58] The Swiss lawyer C. E. Cramer (1885) denoted in his doctoral dissertation that the vast majority of old pandects and scholarly works indicated that a body of a deceased person has to be recognized as *res extra commercium*, upon which no legal transactions could be made.[59] In his work, Cramer referred to the pandect of the German legal scholar C. G. Wächter (1880), the view of whom also cast a light on the legal status of a deceased person. Wächter categorized a corpse among the things, which are *res extra commercium*, and claimed, that a body of a deceased person could be no-one's property, and the same could be held about things, that are given to the grave, which could not be seized, and it would be tortious to behave indecently to such things. At the same time, Wächter denoted that parts of the skeletons occasionally could exist in trade according to the everyday life customs.[60] According to the inferences of Cramer, a body of a deceased person is completely excluded from private

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56 See, for instance,
[J. F. H.] The Nature of Rights in a Dead Body. *Columbia Law Review*, 1926, Vol. 74, No. 4, pp. 404–407.
LORSHBOUGH, W. H. The Disposition of Will of One's Body After Death. *North Dakota Law Review*, 1945, Vol. 22, No. 4, pp. 272–281.
KRAUSKOPF, B. J. Law of Dead Bodies: Impeding Medical Progress. *Ohio St. L. Journal*, 1958, Vol. 19, pp. 455–475.
HERNANDEZ, T. K. The Property of Death. *University of Pittsburgh Law Review*, 1998, Vol. 60, pp. 971–1028.

57 Miner v. C.P.R., Court of Appeal of Alberta (Canada). *A.L.R. (Alberta Law Reports)*, 17 June 1911, pp. 408–422; see particularly at p. 414.

58 UNGER, J. *System des österreichischen allgemeinen Privatrechts. Erster Band*. Leipzig: Breitkopf und Härtel, 1856, S. 369.

59 CRAMER, C. E. *Die Behandlung des Menschliches Leichnams im Civil- und Strafrecht. Inaugural--Dissertation zur Erlangung der juristlichen Doctorwürde der hohen staatwissenschaftlichen Fakultät der Universität Zürich, vorgelegt von Carl Erwin Cramer aus Zürich*. Zürich: Orell Füssli & Co, 1885, S. 23–27.

60 WÄCHTER, C. G. *Pandekten (Th. 1)*. Leipzig: Breitkopf und Härtel, 1880, S. 276–277 (§60, III).

law (*res extra commercium*), since it is impossible to be acquired in any order, it cannot be seized or bequeathed.[61] He also outlined, that the use of the corpses for number of legitimate purposes, such as for medical examination, cannot be observed as any kind of a desecration of a corpse.[62] The German legal scholar, Wilhelm von Blume (1914) in his treatise on the law relating to the deceased claimed, that the law regulates the order, lodging and dividing the rights between the living people; the deceased have no rights and apparently have no interest in them, hence it would be more correctly to say about the "honor of the deceased"; at the same time, whereas the corpse cannot be a subject of law, it may be an object of law – for instance, it is an object of the protection of criminal law (which is well depicted in case law) and to different administrative law regulations – i.e. in terms of transporting corpses and their interment, as well as of civil law – in terms of its preparation of interment, covering its expenses, etc.[63] In fact, administrative disputes relating to issuses of the interment of deceased persons were heard before the Supreme Administrative Court of the First Czechoslovak Republic, for instance, in terms of the reimbursement of costs for the interment of poor deceased persons,[64] or the permission of interment of the deceased in cemeteries, which were considered to be filled.[65] The Czech lawyer F. Vesely (1896 and 1897) provided a thorough discussion of different Austrian legal acts of the XVIII–XIX centuries governing the operation of cemeteries and the issues of interment of the deceased, also admitting that cremation, presupposing that the remains were kept in an urn at the surviving spouse's home was already legitimate and admissible.[66,67] In the judgment of February 4, 1896 (case no. 1238), the Royal Supreme and Cassation Court established, that cemeteries could not be alienated, could not be seized, and are *res extra commercium.*[68] At the same time, it could be estimated from the practice of the Austrian Royal Supreme Administrative Court, that religious communities could be the owners of cemeteries (from the view of property law), and the local authorities could decide to close a cemetery in case a local sanitary council established, that the maintenance of the said cemetery violated public health regulations.[69] Church authorities and local

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61 CRAMER, C. E. *Die Behandlung des Menschliches Leichnams im Civil- und Strafrecht. Inaugural--Dissertation zur Erlangung der juristlichen Doctorwürde der hohen staatwissenschaftlichen Fakultät der Universität Zürich, vorgelegt von Carl Erwin Cramer aus Zürich*. Zürich: Orell Füssli & Co, 1885, S. 64.

62 *Ibidem*, S. 66–67.

63 BLUME, W. Frage des Totenrechts. *Archiv für das Civilistische Praxis*, 1914, Jhrg. 112, Nr. 1, S. 367–427 (see particularly pp. 372–374).

64 Nejvyšší správní soud Československe republiky, Nález ze dne 6. února 1924. In: BOHUSLAV, J. V. (ed.). *Sbírka nálezů Nejvyššího správního soudu ve věcech administrativních*, Praha: Právnické vydavatelství v Praze, 1929, roč. 6, s. 350–352, č. 3217.

65 Nejvyšší správní soud Československe republiky, Nález ze dne 11. května 1928. In: BOHUSLAV, J. V. (ed.). *Sbírka nálezů Nejvyššího správního soudu ve věcech administrativních*, Praha: Právnické vydavatelství JUDr. V. Tomsa, 1929, roč. 10, s. 525–527, č. 7271.

66 VESELÝ, F. X. *Všeobecný slovník právní. Díl druhý*. Praha: [nákl. vl.], 1897, s. 508–511.

67 VESELÝ, F. X. *Všeobecný slovník právní. Díl druhý*. Praha: [nákl. vl.], 1897, s. 407–410.

68 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 4. Februar 1896, Ziffer 1238. In: LINKS, E. (Hrsg.). *Die Rechtsprechung des k.k. Obersten Gerichthofes, etc. Zwölfter Band.* Wien: Plaut & Comp, 1897, S. 123–126, Entsch. Nr. 4492.

69 K. K. Verwaltungsgerichtshof, Erkenntniß vom 5. November 1886, Ziffer 2855. In: BUDWINSKI, A. (Hrsg.). *Erkenntnisse des k.k. Verwaltungsgerichtshofes. X. Jahrgang 1886.* Wien: Manz'schen k.k. Hofverlag- und Universitäts-Buchhandlung, 1886, S. 607–610, Erkenntniss Nr. 3237.

communities also litigated in terms of property rights in the churches and cemeteries;[70] hence, they could possess actual property rights in cemeteries. In this case, the sense of *res extra commercium* seems to be rendered rather in the meaning that the cemeteries could be used only upon their actual destination (that is, the burial of the deceased), the ownership could not be easily changed, and the cemetery could not be seized as other property for debts etc. In Hungarian law cemeteries were not considered *res extra commercium*, and they were the property either of the municipalities, or the parishes; in the latter case, the parish authorities had to undertake necessary measures to fulfill the requirements of the legislation – both in terms of property rights (that is to be registered in the soil register), and in regard with the requirements of public health legislation in relation to cemeteries.It should be denoted, that there were considerable precautions for a legitimate exhumation: for instance, it was forbidden to conduct any exhumations of the graves for over 30 years, wherein the deceased had died due to contagious diseases; upon the early cemetery regulations of 1771 and 1777, it was not allowed to inter the deceased in cemeteries during epidemics.[71] It could be estimated, that the sphere of funeral and the preparation of the cadaver for the burial is of very highly-personal nature: in the judgment of May 29, 1893, the Austrian Royal Supreme and Cassation Court (case no. 6330), whih was a dispute between a local community and a mansion owner, who blocked the path through which funeral proceedings went through by custom, the Court held, that: "The arrangement and performance of a funeral service on the occasion of the demise of a community member, that is, the blessing and the transfer of the corpse from the home to the place of burial is the responsibility of the relatives of the deceased and not a municipal matter"; in this case, the local community did not manage to prove that it had property rights to the cemetery, and so, the appeal was dismissed.[72] The Supreme Court of the First Czechoslovak Republic found in the civil case no. 10379 (Judgment of December 10, 1930), that the cemeteries should not be considered as *res extra commercium*,[73] and later, in the civil case no. 11176 (Judgment of November 21, 1931), the Court has established that a tombstone is excluded from trade as *res extra commercium*, though under certain circumstances, it could be observed as a chattel.[74] Despite the legal status of a corpse is relatively seldomly discussed in civil law, the author would like to present the legal positions of the Supreme Court of the First Czechoslovak Republic in a number of cases casting light upon this subject, as well as comment upon a judgment of the Austrian Royal Supreme and

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70 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 6. Oktober 1886, Nr. 8559. In: UNGER, J. – WALTHER, J. – PFAFF, L. (Hrsg.). *Sammlung von Civilrechtlichen Entscheidungen des k.k. obersten Gerichtshofes. Dreiundzwanzigster Band.* Wien: Carl Gerold's Sohn, 1888, S. 492–495, Entsch. Nr. 10722.

71 CSECSETKA, S. *Magyarhoni Evangélikus Egyházjogtan. Harmadik Kötet*. Pozsony: [?], 1892, pp. 877–881 (§169).

72 K. K. Obersten Gerichts- und Cassationhof, Entsch. vom 29. Mai 1893, Nr. 6330. In: PFAFF, L. – SCHEY, J. – KRUPSKY, V. (Hrsg.). *Sammlung von Zivilrechtliche Entscheidungen des k.k. Obersten Gerichtshofes*. *Neunundzwanzigster Band.* Wien: Manz'schen k.u.k. Hof-Verlags u. Universitäts-Buchhandlung, 1895, S. 713–714, Entscheidung Nr. 14046.

73 Nejvyšší soud Československe republiky, Rozh. ze dne 10. prosince 1930, R I 874/30, Čís. 10379. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1931, roč. 12, s. 1621–1623.

74 Nejvyšší soud Československe republiky, Rozh. ze dne 21. listopadu 1931, R I 930/31, Čís. 11176. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1931, roč. 13, s. 1373–1374.

Cassation Court of 1910 and the judgment of the Supreme Court of the First Austrian Republic of 1931.

3.2 The concept of the honor of the deceased in the judgments of the Supreme Court of the First Czechoslovak Republic

In a number of judgments in civil and criminal cases, the Supreme Court of the First Czechoslovak Republic discussed different issues relating to bodies of deceased persons (cadavers). For instance, in the criminal case no. 2370 (Judgment of May 12, 1926), which will be discussed below in more detail, the Court refers to a corpse, as a "lifeless and emotionless subject".[75] In several cases relating to criminal misdemeanors concerning indecent behavior relating to corpses and graves, the Supreme Court of the First Czechoslovak Republic compared the gist of the misdemeanor to § 122 of the Criminal Code, which prohibited maltreatment of items used for religious service.[76] Since the items *res sacrae* (to which the remains also belonged to) were considered *res extra commercium*,[77] it would be logical to assume that the body of a deceased person should also be regarded as such. The Czech lawyer and attorney Emanuel Tilsch (1866–1912) in his work on hereditary law (1905) mentioned that in the earlier times, the personal chattels of deceased people used to be maintained as sacred items, which became *res extra commercium* and in case of cremation, were burned with the body of their deceased owner, or were buried with his body in the grave in case of an ordinary funeral.[78] E. Tilsch emphasized that such an attitude to these chattels was rather driven by commodity superstitions that these things still belonged to the deceased owner, and they would "revenge" to anybody who would touch them.[79] The Supreme Court of the First Czechoslovak Republic in the criminal case no. 5283 (Judgment of April 27, 1935) commented upon a very similar situation: the two defendants, who were employees of a crematorium, were charged for a theft for taking away gold and golden teeth, found in the ashes after the cremation. One of the defendants, who took away most of the items, did not argue he actually wanted to sell them. The Supreme Court established, that the crematorium had contracted with the heirs of a deceased man to conduct the cremation and to provide the ashes to the deceased man's relatives, but had no rights in terms of the golden items: such items belonged to the estate, as such contract did not give a right to take any items into possession to any third party; there was no evidence that the items could anyhow belong to the defendant, and were *hereditas jacens* (that is,

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75 Nejvyšší soud Československé republiky, Rozh. ze dne 12. května 1926, Zm II 609/25, Čís. 2370. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1927, roč. 8, s. 284–285.

76 1) Nejvyšší soud Československé republiky, Rozh. ze dne 22. září 1922, Kr I 639/21, Čís. 925. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1924, roč. 4, s. 398–399.
2) Nejvyšší soud Československé republiky, Rozh. ze dne 12. května 1926, Zm II 609/25, Čís. 2370. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1927, roč. 8, s. 284–285.

77 VESELÝ, F. X. *Všeobecný slovník právní. Díl druhý*. Praha: [nákl. vl.], 1897, s. 281–282.

78 TILSCH, E. Úvod do práva dědického. *Sborník věd právních a státních*, 1905, roč. 5, s. 261–278, see in particular pp. 262–263.

79 *Ibidem*, s. 262–263.

these items belonged to the estate of the deceased before they were accepted by the heirs). Hence, the defendant's complaint was dismissed.[80]

The Supreme Court of the First Czechoslovak Republic provided its overall views in terms of honor of the deceased in the judgment of September 6, 1930 (civil case no. 10124). There was a litigation in relation to a writing on a tombstone of the defendant's son, who had tragically died in an accident, being a victim of an ambulance machine in early 1929, as it was stated upon the tombstone writing. The voluntary rescue company, the plaintiff, demanded from the defendant to remove the writing from the tombstone that the demise of the deceased was caused by the ambulance. The court of first instance upheld the claim, rejecting the defendant's objection in relation to the inadmissibility of viewing the case in the scope of civil law, finding that the dispute falls under the scope of civil law; the court of appeals quashed the said judgment on basis of confusion under § 477 (6) of the Code of Civil Procedure (that is on basis of intricate case circumstances), ruling that only the norms of public law (that is administrative law) apply in the dispute at stake in terms of the content of the engraving's inscription, and that only administrative bodies could provide help for those affected by such words, in case the violation does not involve the norms of criminal law, and that it would be necessary to apply to the administrative bodies. The court also discussed the public law nature of cemeteries, which, upon the court's view, are not only governed by the norms of public law and cemetery statutes, but in moral terms as well; in terms of private law, such relationships could relate to aims not related to burials (which is the primordial function of the cemeteries), but to the use and maintenance of the cemeteries. Whereas the disputes in relation with the latter are in the sphere of private law, the cemetery administration and other bodies may intervene in case the maintenance of the graves, tombstones etc., could cause violations of public order; and so, the installation of engravings and their look is also governed by public law, and only public law norms may recognize the said to be improper, and the administrative authorities may prevent from installing improper writings, or to demand their removal upon the request of an aggrieved party. The court of appeals also referred to the previous case law of the Austrian Royal Supreme and Cassation Court, which had excluded the engravings as *res extra commercium* (for instance, in one of the cases, to which the court referred, to wit, in its judgment of 3 September 1895, Judgment Nr. 10563 / Glaser-Unger collection no. 15562, volume no. 33, the court held, that a tombstone could not be an object of a mortgage);[81] so, the court of appeals found, that the foundation of Art. 1330 of the Civil Code was not suitable in the dispute at stake. However, the Supreme Court decided to renew the judgment of the first-instance court, finding that it is not only the competence of the cemetery administration to compel defendant to remove the writing, and the public nature of the cemetery is not decisive in terms of the place where the violation occurred, but the Court found, that the plaintiff had a right a lodge such civil lawsuit in terms of the acting Civil Code,

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80 Nejvyšší soud Československé republiky, Rozh. ze dne 27. dubna 1935, Zm I 961/34, Čís. 5283. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1936, roč. 17, s. 183–185.

81 K.K. Oberster Gerichts- und Cassationhof, Entscheidung vom 3. Sept. 1895, Nr. 10563. In: PFAFF, L. – SCHEY, J. – KRUPSKY, V. (Hrsg.). *Sammlung von Zivilrechtliche Entscheidungen des k.k. Obersten Gerichtshofes*. *Dreiundrreißster Band.* Wien: Manz'schen k.u.k. Hof-Verlags u. Universitäts-Buchhandlung, 1899, S. 411–412, Entscheidung Nr. 15562.

regardless of the demands (i.e. plaintiff requested to remove the writing, but not repayment of damages), adding, that plaintiff could complain (and hypothetically could succeed in his complaint) to administrative authorities regarding the claimed violation, but plaintiff was nevertheless not anyhow deprived to litigate in terms of civil law. The Supreme Court decided to renew the judgment of the court of first instance.[82] The litigation upon this case did not end, and the case went to the Supreme Court one more time (Judgment of November 10, 1932, civil case no. 12079), where the Court held, that the said writing on the tombstone does not make any harm towards the plaintiff's honor. The court of first instance had ordered the defendant to remove the writing from the tombstone, and the court of appeals found for defendant. Since the plaintiff had, as previously, based the claim upon § 1330 of the Civil Code, this provision presupposed, that the writing could undermine the credit, the income and the future of the plaintiff, to which neither the appellate court, nor the Supreme Court agreed. The Supreme Court outlined, that the court of appeals had already denied that the tombstone writing would undermine the plaintiff's credit, income and future, and the appellate court found, that the said tombstone writing was rather called to sympathy from the passers-by than to defame the plaintiff in a certain manner. Hence, the judgment of the appellate court remained in force.[83]

Interestingly, the position of the court of appeals in the 1930 judgment also involved a passage in terms of the role of the administrative authorities to prevent acts which insult the dignity of the deceased. To a certain extent, this passage could be the comprehended in terms of the protection of deceased person's dignity – in this case it relates to a deceased person. Interestingly, this dispute did not present a situation, where a private person litigated against an another private person, or a legal entity for insulting a deceased relative, regarding whom an impious writing was made, but reverse. The the legal protection of the sanctity of sepultures, gravestones and adjacent surroundings was previously well-established in the Austrian law of the XIX century. Later on, the Supreme Court of the First Czechoslovak Republic adjudicated a number of cases relating to desecration of graves and violation of honor of the deceased, which will be commented upon below.

3.3 Observations concerning the legal status of a deceased person in comparative case law: judgments the Austrian Royal Supreme and Cassation Court of 1910, the Supreme Court of First Austrian Republic of 1931

The jurisprudence of the Supreme Court of the First Czechoslovak Republic on the protection of the honor of the deceased is quite substantial, the overall findings relating to the honor to a deceased person we have already observed in the court's jurisprudence above. In addition to the jurisprudence of the Supreme Court of the First Czechoslovak Republic, let us observe the legal status of a deceased person through the prism of comparative case law

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82 Nejvyšší soud Československé republiky, Rozh. ze dne 6. září 1930, R I 532/30, Čís. 10124. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1931, roč. 12, s. 1120–1123.

83 Nejvyšší soud Československé republiky, Rozh. ze dne 10. listopadu 1932, Rv I 669/31, Čís. 12079. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1933, roč. 14, s. 1253–1254.

by using the cases adjudicated by the Austrian courts, since these courts had applied the same Civil Code provisions, as did the Supreme Court of the First Czechoslovak Republic.

Not much case law defining the legal status of a deceased person existed in old Austrian law, and the legal definitions thus could be found in various civil cases, where the legal status of a deceased person (corpse) was discussed rather because of certain peculiarities of the case. In the Royal Supreme and Cassation Court's judgment of March 9, 1910 (case no. Rv V 2438/9), a man, whose wife had drowned, announced a reward to the ones, who could manage to find her corpse. Plaintiff, who heard of the announcement, managed to find the body of the deceased woman on a bank of the river with some jewellery on it, and apart from the reward, he received 10 per cent of the costs of the jewellery, but was refused to be recovered its full amount, which he later demanded at a court, managing to win over the lawsuit at first instance. The trial court found, that the valuable chattels were attributed as lost ones in terms of the deceased woman's heirs in the sense of § 388 of the Civil Code, but the appellate court found that under § 388 of the Civil Code the lost things could be considered as really lost only if it is apparent they did not belong to anybody, which is inapplicable in this case, and plaintiff could only benefit from the reward he had received; the appellate court held, that it could be estimated, that the deceased woman still possessed the jewellery before the bequest was opened. Despite the Royal Supreme and Cassation Court dismissed the plaintiff's appeal, the court made a conclusion that the estimation of the fact that the deceased woman still possessed the jewellery in the sense of § 309 of the Civil Code, was not correct. §§ 309 and 310 of the Civil Code require the subsistence of will and mind, and under § 16 of the Civil Code, only persons may enjoy possession of property. After the demise of the person, the property of the person loses its plenipotentiary – i.e. the owner; a deceased person has neither a will, nor mind, and so it cannot be a subject of possessing or retaining property. In terms of plaintiff's complaint, the court held, that lost things are lost only if they are not maintained under anybody's custody, and according to the announcement of the widower, the reward was given only for finding the deceased body, but not any relating chattels; apparently, the plaintiff could demand a reward for his work in finding the deceased body under § 1152 of the Civil Code. However, since he had already received it, he had nothing to claim.[84]

The judgment of the Supreme Court of the First Austrian Republic in the case 3 Ob 219/31 (Judgment of May 19, 1931) casts light on the legal status of a body of a deceased person. This was a dispute between a woman (plaintiff) and her son-in-law (defendant): plaintiff's daughter (and the defendant's wife) had died in early 1929, and her body was interred in a grave, which the plaintiff had rented, and where her deceased husband was buried as well. Later, the plaintiff bought a burial lot, having decided to receive an exhumation order allowing to rebury the deceased relatives there; the local authority would approve exhumation depending on the relative's consent, but the defendant firmly objected, and claimed that he, as the closest of kin, had the right to decide in terms of burial. Hence, the matter was resolved in a court. Defendant objected to the lawsuit, claiming

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84 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 9 März 1910, Rv V 2438/9, Entscheidungen des k.k. Obersten Gerichtshofes in Zivil- und Justizverwaltungssachen, veröffentlicht von diesem Gerichtshofe. In: NOWAK, R. (Hrsg.). *Sammlung von Entscheidungen des k.k. Obersten Gerichtshofes in Zivilsachen. Neue Folge, XII. Band.* Wien: Manzsche k.u.k. Hof-Verlags- und Universitäts-Buchhandlung, 1912, S. 163–166, Entscheidung Nr. 1335.

inadmissibility of the claim and stating that a corpse is *res extra commercium* and thus could not be and object of any trade-related transactions. Though the trial court found for plaintiff, establishing that the parties had already agreed to conduct the burial as it was initially made, the court agreed with the defendant's position in terms of res extra commercium in relation to a corpse: the court said, a body of a deceased person is not subject to any trade transactions because it is inconsistent with the feeling of piety in the sense of § 878 of the Civil Code, and the refusal of defendant from the bequest does not change the situation, since a corpse cannot be a part of bequest, and hence, the type of burial is the right of the closest of kin, but not the right of the deceased (in the sense of § 531 of the Civil Code). In terms of the defendant's position concerning his right to dispose of the body of his deceased wife, the court held, that this right to possession is limited for the purposes of burial and forbidding other persons to have any impact in such terms, and the defendant, as a closest of kin, had such right, but since he had agreed with plaintiff, the court had to resolve, what was meant under the defendant's consent and the contract they made according to it. Therefore, having consented to the burial proposed by the plaintiff, the defendant hereby agreed to give the grave to plaintiff's possession; if plaintiff decided to exhumate the corpses of the said deceased relatives for reburial at a new lot, it is a matter of an improvement of burial. The appellate court found for defendant. Firstly, the court of appeals upheld the trial court's conclusion, that the spouse, as next of kin, has higher priority than the forbearers, and hence has the right to organize the funeral, and despite this right was not precisely specified in the provisions of the Civil Code, this right derived from the legal nature of marriage itself (§ 44 of the Civil Code). According to the findings of the trial court, the defendant had expressly consented to the burial of his deceased wife, agreeing with the plaintiff. But the plaintiff's consent to the burial of his deceased wife did not mean the consent to the exhumation, and hence, the defendant was not obliged to consent to exhumation or to tolerate it according to the fact he had earlier consented to the burial at the place agreed with the plaintiff. The Supreme Court dismissed the appeal. The Supreme Court found, that the court of appeals correctly established, that the defendant's consent for burial at the place agreed with the plaintiff did not mean to go so far as to consent for exhumation. In terms of the right to possession of a corpse, the Supreme Court outlined, that this right may be recognized only in terms of fulfilling the duties, as a family right for taking care of the body of a deceased person. The right to dispose of the grave from the side of plaintiff does not give path to a lawsuit against the defendant in order to make him agree to a reburial. In terms of the question of who from the relatives should maintain care of the deceased, there is no strict order, and the answer to this question is defined by the tightness of the relationships, which existed in each case (the defendant had never been blamed to behave impiously towards his wife) but the Court denoted that the main guiding principle is the preservation of the peace of the deceased ones. The Court concluded, that when it appeared from the case circumstances, the family members had agreed upon a certain place for the burial, the previously mentioned condition could be disregarded only upon some compelling circumstances.[85]

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[85] Oberster Gerichtshof, Entscheidung vom 19. Mai 1931, 3 Ob 219/21. In: *Entscheidungen des österr. Obersten Gerichthofes in Zivil- und Justizverwaltungssachen. Veröffentlicht von seinen Mitgliedern. XIII. Band. Jahrgang 1931*. Wien: Druck und Verlag der Österreichischen Staatsdruckerei, 1931, S. 471–475, Entsch. Nr. 127.

Hence, upon the judgments discussed above, the inferences concerning the legal status of a body of a deceased person may be defined as follows:

- A body of a deceased person is *res extra commercium*;
- A deceased person cannot be a subject of civil rights (i.e. possessing or owning property), having no physical possibility to demonstrate either mind, or will;
- The things, which are attributed to the deceased person (i.e. jewellery) are not considered to be no one's or lost things (see also the judgment of the Supreme Court of the First Czechoslovak Republic of April 27, 1935 in the criminal case no. 5283 in this respect);
- The right to possession of a body of a deceased person extends only to the postmortal care of the body in terms of preparing for funeral;
- There is no precise definition of who should maintain care for the body of a deceased relative, but it primordially depends upon the relationships that existed between the relatives and the deceased person;
- As a general rule, in such cases, the peace of the deceased must be foremostly respected.

3.4 The case law upon § 306 of the 1852 Criminal Code

3.4.1 The judgments of the Austrian Royal Supreme and Cassation Court

F. Vesely (1898) had provided a substantial discussion concerning the legislative framework of the functioning and handling of cemeteries in Austrian law, including issues of criminal liability for misdemenours that related to cemeteries;[86] § 306 of the Criminal Code imposed punishment for damaging the graves, desecration of graves, removing corpses or their parts and mistreating corpses. A handlful of cases overviewing the meaning of this criminal code provision were resolved by the Austrian Royal Supreme and Cassation Court, and later, the Supreme Court of the First Czechoslovak Republic has also adjudicated a number of peculiar cases under § 306, having provided additional legal inferences in terms of the application of this provision. It should be denoted, that the provision of § 306 of the Criminal Code was not applied in any case of disclosing the graves solely upon the fact of its opening as such: for instance, in the case no. 7047 (Judgment of August 1, 1885), the Royal Supreme and Cassation Court found, that in case a grave-digger, who was asked to dig a grave by a priest, opened a grave to check whether the corpse had already decomposed, and being in short of time to dig a new grave in cold weather, could not be accused of a criminal misdemeanor under § 306 of the 1852 Criminal Code.[87]

A number of cases reviewed in cassational order by the Austrian Royal Supreme and Cassation Court in 1880s and 1890s was cited by F. Vesely (1896),[88] one of such cases is definitely worth commenting because of unusual case circumstances. In the case no. 15498 (Judgment of March 9, 1883), collection of Nowak, Coumont and Schreiber, Vol. 6, case no. 519, the first defendant called the second defendant, and told him, that a deceased

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86 VESELÝ, F. X. *Všeobecný slovník právní. Díl druhý*. Praha: [nákl. vl.], 1897, s. 508–511

87 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 1 August 1885, Nr. 7047. In: NOWAK, R. (Hrsg.). *Plenarbeschlüsse und Entscheidungen des k.k. Obersten Gerichts- als Cassationshofes, Achter Band. Entscheidungen Nr. 751–900.* Wien: Manz'sche k.u.k. Hofverlags- u. Universitäts-Buchhandlung, 1887, S. 229–230, Entsch. Nr. 860.

88 *Ibidem*, S. 510–511.

man, who had lived nearby, as he claimed, was a vampire (or a supernatural creature similar to it), and thus, it was necessary to terminate the strength of this "creature" – and otherwise, the creature would leave its sepulture, haunt the town, and take the lives of all of its inhabitants; in order not to make it happen, someone had to hammer nails into the "vampire's" body, and do a number of other dreadful acts with the deceased "vampire's" body. The second defendant turned to a grave-digger (the third defendant), who agreed to do this, and shortly after the burial of the deceased man, he did exactly what the second defendant had told him to do in the presence of the second defendant, who assisted him with tools and instructions, as well as a man, who was a spectator to all that happenned. The first defendant later claimed, that it was the second defendant and the grave-digger (the third-defendant), who told they wanted to "operate" the deceased, and he told them, that he would not wish to be related to it, and he did not believe in such superstitions. The public prosecutor brought accusations against the three defendants under § 306 of the Criminal Code, the court found them guilty, and only the first defendant appealed against the decision. Defendant claimed, that the element of malice or wantonness was missing in his actions, however the Court explained, that this provision referred only to the clause relating to the damage to the graves, but was not applied to other acts, mentioned in § 306 of the Criminal Code. The Court also explained, how the term "maltreatment" should be understood, since the term "maltreatment" in the sense of a living person involves the meaning of a physical harm, but a cadaver may actually not feel it, hence, the application of the term "maltreatment" should be understood in such context, that if committed upon a living person, would also constitute a wrongful act in the sense of maltreatment. The Supreme Court dismissed the defendant's complaint.[89]

The Royal Supreme and Cassation Court had earlier explained in its case no. 3879, Judgment of June 19, 1875 (Nowak, Coumont and Schreiber, Vol. 1, case no. 71) that the sense of § 306 should be understood in such way, that any person committing wrongful acts under the provision of the said norm thus commits a criminal misdemenour, which also does not actually depend on the ownership of the grave, and the fact that people may commit such misdemenour in a manner of self-help (in that case, the accused claimed that he had been an owner of the grave, where a different deceased person had been interred there, and so, the accused, without any authorisation, disinterred the grave and left the body of the deceased person nearby), could only be regarded as a mitigating circumstance, noting, that the provision of § 306 prohibited the afore-mentioned acts in general, not distinguishing whether the one who did the desecration was the owner of the grave, or a third party. The Supreme Court explained the provision, that "the piety to the deceased needs to be preserved, and the corpse is not to be insulted by disturbing its resting place"; the judgment of the first-instance court, which acquitted the defendant was overturned. The Court also mentioned, that in this provision, the legislature was guided by the concerns of public health, in order to prevent the spread of infectious and decomposition substances,

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89 K.K. Oberster Gerichts- und Cassationhof, Entsch. vom 5. März 1883, Ziffer No. 15563. In: NOWAK, R. – COUMONT, E. – SCHREIBER, K. (Hrsg.). *Plenarbeschlüsse und Entscheidungen des K.K. Cassationhofes veröffentlicht im Auftrage des k.k. Oberster Gerichts- als Cassationhofes, Bd. 6, Entscheidungen Nr. 501–600*, Wien, 1884, S. 33–36, Entscheidung Nr. 519.

and thus the legislature ordered that such desecration could be legitimately conducted only after an official approval, which did not take place in the case at stake.[90]

3.4.2 The judgments of the Supreme Court of the First Czechoslovak Republic

The Supreme Court of the First Czechoslovak Republic also gave its explanation regarding the application of § 306 of the Criminal Code in a number of judgments, which we will discuss below. In the criminal case no. 925 (Judgment of September 22, 1922), the misdemenour was committed when defendant and an another man were carrying a coffin with the body of a deceased person. Within the time they carried it, they quarreled about how the coffin should be placed; the defendant twisted and slid the said coffin in such manner, that the body was repeatedly hit inside, which outraged bystanders passing by. The first-instance court, which condemned the defendant, found that he acted intentiously and knowingly; defendant appealed against this decision, but the appeal was dismissed. The Supreme Court explained, that "mistreatment" in the sense of § 306 cannot be attributed in the same sense, as the term "mistreatment" could be understood relating to living persons, and so, the sense has to be understood compared to § 122 (b) of the Criminal Law (relating this comparison, see a more detailed explanation in the next case below). The Court also denoted, that the misdemenour, which falls under § 306 of the Criminal Code, does not only violate the religious feelings, but also feelings of humanity, good morals and piety which family members express towards their deceased relatives, cannot be violated.[91]

In the criminal case no. 2370 (Judgment of May 12, 1926), the defendant was convicted for jumping at a coffin of a deceased person, and in his appeal, he claimed, that his acts could toll to an insult to the decased (which were considered as a criminal misdemenour under § 491, § 495 of the Criminal Code, but not § 306, since the disposition of this provision presupposed only a direct mistreatment of a corpse. The Supreme Court dismissed the defendant's appeal and gave the explanation of how the said provision should be understood. The Supreme Court reiterated, that the mistreatment of a deceased person cannot be understood in an analogical way of that it could be understood in terms of a living person, and held that such inviolability – if talking about a corpse – is not a legal asset protected under § 306, but rather a matter of morals and piety, which living people have to the deceased ones, similarly of how the criminal law protects the religious sentiment against mishandling of items for religious services (§ 122 (b) of the Criminal Code); thus the misdemenour does not directly presupposes that the offender somehow wrongly and impiously acts directly with a corpse, but it is enough if the action somehow applies to it, and so, by committing such misdemenour, the offender hurts the feelings of others. So, in case

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90 K.K. Oberster Gerichts- und Cassationhof, Entsch. vom 19. Juni 1875, Ziffer No. 3879. In: NOWAK, R. – COUMONT, E. – SCHREIBER, K. (Hrsg.). *Plenarbeschlüsse und Entscheidungen des K.K. Cassationhofes veröffentlicht im Auftrage des k.k. Oberster Gerichts- als Cassationhofes, Bd. 1, Entscheidungen Nr. 1–100*, Wien, 1876, S. 350–353, Entscheidung Nr. 71.

91 Nejvyšší soud Československé republiky, Rozh. ze dne 22. září 1922, Kr I 639/21, Čís. 925. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1924, roč. 4, s. 398–399.

the offender made a "touch" of the corpse, even in an indirect way, which violated public order, the acts of defendant fell out of the scope of § 491, 495 of the Criminal Code.[92]

In terms of interpreting the provisions of § 306 of the Criminal Code, the Supreme Court of the First Czechoslovak Republic also gave a significant ruling in its criminal case no. 5667 (Judgment of September 3, 1936). The case facts were the following: defendant, a woman, tore out the flowers, which were planted on the grave of a deceased child of the defendant's relatives (and where the defendant's other deceased relatives were interred), from the motive of revenge; then, the defendant instead planted other flowers, and took the flowers and replanted them at her own garden. She was convicted for a misdemenour by the trial court under § 306 of the Criminal Code, as a breach of public peace, in conjunction with § 171 and § 460 of the Criminal Code, as an offence for theft. Defendant objected to the conviction, claiming she did not anyhow damage the grave, and that she considered herself to be the co-owner of the grave, and her deceased relatives were interred there, and that once, the family likewise tore off the flowers she herself had planted earlier. The Supreme Court explained, that the term "cemetery" meant everything, which was directly or organically related to the graves, established to mark the burial of a deceased person, or to express the sentiment of the surviving ones towards the deceased person (here, the Court reiterates its own findings in the criminal case no. 5125, Judgment of November 13, 1934;[93] and the findings of the Austrian Royal Supreme and Cassation Court of in its case no. 3265, Judgment of June 7, 1889;[94] this principle was also commented by Vesely (1896)).[95] Hence, the legal protection of the criminal law also involved the flowers, as one of the most frequent symbols of piety, which is expressed towards the deceased. The Court further explained, the respect of piety of the deceased, whose external expression may be seen in the decoration of the grave, which is insulted by the misdemeanor, which is committed to the decoration (even though not the grave itself – as in the case at stake), is a legal asset, which is protected by the law. So, the focus of punishment for committing the aforesaid misdemeanor lies not only in damaging the grave itself, but doing any change to the grave, which could offend the religious feelings, morals and piety, in case such action happenned due to malice and arbitrariness; such feelings are hence affected by tearing the flowers from the grave, which the defendant did in the case at stake, and the acts of the defendant (initially tearing off the flowers, then planting new ones) showed willfulness, or malice. The trial court found that the defendant's motive of committing the misdemeanor was revenge, as she claimed, that the family had previously done the same to the flowers she had planted herself. The Supreme Court also noted, that the damage to the grave should be accounted as a malicious one, in case it is intentional, and

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92 Nejvyšší soud Československé republiky, Rozh. ze dne 12. května 1926, Zm II 609/25, Čís. 2370. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1927, roč. 8, s. 284–285.

93 Nejvyšší soud Československé republiky, Rozh. ze dne 13. listopadu 1934, Zm II 129/33, Čís. 5125. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: JUDr. V. Tomsa, Právnické vydavatelství v Praze, 1935, roč. 16, s. 400–402.

94 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 7. Juni 1889, Ziffer No. 3265. In: NOWAK, R. – COUMONT, E. – SCHREIBER, K. (Hrsg.). *Plenarbeschlüsse und Entscheidungen des K.K. Cassationhofes veröffentlicht im Auftrage des k.k. Oberster Gerichts- als Cassationhofes, Bd. 11, Entscheidungen Nr. 1201–1350*, Wien, 1890, S. 70–71, Entscheidung Nr. 1232.

95 VESELÝ, F. X. *Všeobecný slovník právní. Díl druhý*. Praha: [nákl. vl.], 1897, s. 508–511.

unauthorised; and since the defendant did not put up a defense at first instance, that she was to co-owner of the grave, and so was entitled to make such changes, this fact was a circumstance, which was not decisive for the assessment; the Court further held that the existing testimony showed that defendant had quite bad relationships with the family, and what had happenned to the flowers the defendant had planted before did not exonerate the defendant from the misdemeanor – the same could be said about the defendant's claim that she had been the co-owner of the grave. The Court also discussed the explanatory of the § 306, para. 2 of the Criminal Code, which punished the perpetrators, who stole movable things from the cemeteries: by removing things from the grave, the offender also commits damage to the grave; but the offender, who acted only with the motive of *profit*, cannot be charged under this provision in addition to the charges for committing theft. The Court also denoted, that the term "malicious intent" does not differ from the sense of § 171 of the Criminal Code with the words pronounced as "for one's benefit", which would mean a permanent removal of a movable thing from the owner by an another person, who does not own this thing – and this is what the defendant had actually done. In cases of theft, it was not necessary to monetize the stolen item for the defendant which would show that the misdemeanor is committed: it was enough to establish that the item had an exchange value, which, according to the findings of the trial court, constituted ten Krones. Finally, by assessing the facts, the Court found that the trial court did not err in convicting defendant under § 306; § 460 (§ 306, para. 2) of the Criminal Code, finding, that the defendant, in addition of the motive of damaging the grave (out of revenge, as it was mentioned before), also removed the flowers for her own benefit, and thus, two legal goods were violated, which were subordinated under the said provisions of the Criminal Code; hence, the appeal was dismissed.[96]

4. Secrecy of correspondence

4.1 Overall observations

The protection of the secrecy of correspondence (those days, it mainly concerned letters) as well as the protection of professional secrecy (the case law of the First Czechoslovak Republic was very rich with cases dealing with breaches of commercial secrets) was elaborated back in Austrian law in the second half of the XIX century and was later augmented with the normative-legal acts adopted already in the First Czechoslovak Republic. Vesely (1897) made a substantial insight in respect with the law on secrecy of correspondence. The December Constitution of 1867 provided the protection of the inviolability of letter correspondence (§ 10),[97] prohibiting unauthorised opening or retention of sealed documents, had there been an actual malicious intent to violate the correspondence secrecy. Old Austrian law classified the violation of correspondence as a criminal misdemenour, distinguishing the person of the offender (and the defendant at a court) by officials, whose violation of correspondence secrecy was classified as an abuse of office under § 101

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96 Nejvyšší soud Československé republiky, Rozh. ze dne 3. září 1936, Zm I 1291/35, Čís. 5667. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: JUDr. V. Tomsa, Právnické vydavatelství v Praze, 1937, roč. 18, s. 315–319.

97 Základní zákon státní č. 142/1867 ř. z., o obecných právech občanů státních v královstvích a zemích v radě říšské zastoupených.

and § 103 of the 1852 Penal Code, and less strict criminal liability was imposed on third persons.[98] Vesely (1897) has denoted the intentional nature of violating correspondence secrecy from the subjective side of the criminal misdemenour.[99] An upcoming law on protection of letter correspondence was introduced on April 6, 1870,[100] and was enacted in Cisleithania on April 9, 1870,[101] and the prosecution, under § 1 of the law, occurred as a consequence of an official duty; the sanction presupposed an imprisonment up to 6 months in to a fine of 500 zlaty, or an imprisonment up to three months.[102] J. Kohler (1893), who provided a comparative analysis of legislation and case law on letter correspondence secrecy, stated, that the gist of the letter lies in its confidentiality, as the letter should be regarded as a certain written statement which is bound to be disclosed and is designated for a limited circles of adressees.[103]

Additionally, some notable comments concerning letter secrecy upon the provisions of the said law were given by August Finger (1895). Finger mentioned, that only the documents under seal are afforded the legal protection, and only sealed communications, which are written communications between one person and another, were likewise afforded legal protection; this could not be held concerning unlocked letters; the way the letter was "locked" did not matter. As a matter of addressees, Finger (1895) explained, that the law presupposed the protection of a certain written communication, addressed to a restricted circle of recipients; a violation of the provisions of the said law was expressed by preventing the designated person from acquainting with its contents, illegitimately disclosing, or stealing correspondence from the objective side of the said criminal misdemeanor.[104] In another case, a wrongful acquisition of letters for the defendant's own benefit where the latter was interested not rather in the said appropriation of the letter, but in the content, was considered as a theft (§ 460 of the 1852 Criminal Code): for example, in the case heard before the Austrian Royal Supreme and Cassation Court in 1889 (case no. 8410, Judgment of October 25, 1889 / case no. 1279 of Nowak, Coumont and Schreiber collection), defendant wrongfully obtained two letters with horse lottery tickets, intended for another person, and was accused only for stealing the said letters, but not in appropriating them.[105] The Austrian Royal Supreme and Cassation Court has referred to the institute of letter correspondence secrecy as "*Briefgeheimnis*" (that is the secrecy of letters in English) in the case no. 3147 (15604), Judgment of December 18, 1905.[106] There is some preserved

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98 VESELÝ, F. X. *Všeobecný slovník právní. Díl druhý*. Praha: [nákl. vl.], 1897, s. 256–259.

99 *Ibidem*, s. 256–257.

100 Gesetz vom 6. April 1870 zum Schuße des Brief- und Schrifengeheimnisses, RGBl 1870, Nr. 42, S. 71–72.

101 Zákon č. 42/1870 ř. z., pro ochranu tajnosti listů a písemností.

102 *Ibidem*.

103 KOHLER, J. Das Recht an Briefen. In: KOHLER, J. – RING, V. (Hrsg.). *Archiv für Bürgerliches Recht. Siebenter Band.* Berlin: Karl Heymann's Verlag, 1893, S. 101.

104 FINGER, A. *Das Strafrecht / Zweiter Band*. Berlin: Carl Heymans Verlag, 1895, S. 164–167.

105 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 25. Oktober 1889, Ziffer No. 8410. In: NOWAK, R. – COUMONT, E. – SCHREIBER, K. (Hrsg.). *Plenarbeschlüsse und Entscheidungen des K.K. Cassationhofes veröffentlicht im Auftrage des k.k. Oberster Gerichts- als Cassationhofes, Bd. 11, Entscheidungen Nr. 1201–1350*, Wien, 1890, S. 181–183, Entscheidung Nr. 1279.

106 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 18. Dezember 1905, Ziffer No. 15604, Entscheidungen des k.k. Obersten Gerichts-als Cassationhofes, veröffentlicht von der k.k. Generalprokuratur In: NOWAK, R. (Hrsg.). *Sammlung der Plenarbeschlüsse und Entscheidungen des k.k. Oberster Gerichts- als*

case-law legacy in terms of applying these provisions in Cisleithania.[107] In one of these cases, adjudicated by the District Court of Chrudim in appellate order in 1896, a merchant (the defendant) received a letter with a check for 30 empty crates from an enterpreise, but defendant's name was erroneously written, and the actual check was not destined to him. Having no clue what the letter meant, the merchant shew the letter to a worker of his enterprise. Defendant was later charged for violating the secrecy of correspondence. The appellate court held, that defendant could not be acquitted, since when he had learned that the letter was not destined to him, he had either to send the letter upon a correct address, or return the letter to the post office, or to the sender, albeit it could not be held that the defendant knowingly disclosed the letter which belonged not to him.[108] The district court of Chrudim has adjudicated an another case on violation of secrecy of correspondence in 1902. In this case, two police officers were investigating the circumstances of a suicide, which a man committed at a local tavern, and disclosed the letters, which were found nearby the deceased. According to the findings of the trial court, which acquitted the defendants, they acted in the interest of the investigation, which they had been told to conduct, and hence, it could not be said, that they deliberately disclosed the letters. However, after the appeal of the prosecution office, the appellate court decided to quash this decision and put a fine on the defendants, finding that the disclosure of letters by officials is only permissible in case of a search, or an arrest, and no court order for letter disclosure was given, and in the case at stake there was no conditions under which the officials could legitimately disclose the letters.[109] The 1920 Czechoslovak Constitution, namely § 116 (1) guaranteed secrecy of letter correspondence, the second provision specified, that the law shall provide the detalisation of the application of the institute of letter correspondence secrecy.[110] The 1920 Constitutional Law "On protection of personal liberty, the liberty of domicile and correspondence secrecy (on the basis of the Constitution's provisions, §§ 107, 112 and 116)", § 11 of which guaranteed the confidentiality of letter correspondence, and the exceptions could be provided by the legislation.[111]

4.2 The judgments of the Supreme Court of the First Czechoslovak Republic of 1922 and 1929

The Supreme Court of the First Czechoslovak Republic dealt with several cases relating to the secrecy of correspondence, also having provided an explanation of how legal provisions relating to confidentiality of letter correspondence applied. In the criminal case no.

Kassationhofes, Neue Folge, VIII. Band. (Entscheidungen Nr. 3126–3245.). Wien: Manzsche k.u.k. Hof--Verlags- und Universitäts-Buchhandlung, 1907, S. 56–61, Entscheidung Nr. 3147.

107 See the following:
(1) Rozsudek c. k. krajského jako odvolacího soudu v Chrudimi ze dne 2. září 1896 č. 8920 tr. *Právník. Časopis věnovaný vědě právní i státní, jejž vydává Právnická jednota v Praze*, 1896, roč. 35, s. 747–748.
(2) Rozsudek c.k. krajského jako odvolacího soudu v Chrudimi ze dne 22. května 1902 Bl. 164.2. *Právník. Časopis věnovaný vědě právní i státní, jejž vydává Právnická jednota v Praze*, 1903, roč. 42, s. 317–318.

108 Rozsudek c. k. krajského jako odvolacího soudu v Chrudimi ze dne 2. září 1896 č. 8920 tr. *Právník. Časopis věnovaný vědě právní i státní, jejž vydává Právnická jednota v Praze*, 1896, roč. 35, s. 747–748.

109 Rozsudek c.k. krajského jako odvolacího soudu v Chrudimi ze dne 22. května 1902 Bl. 164.2. *Právník. Časopis věnovaný vědě právní i státní, jejž vydává Právnická jednota v Praze*, 1903, roč. 42, s. 317–318.

110 Zákon č. 121/1920 Sb. z. a n., kterým se uvozuje ústavní listina Československé republiky.

111 Ustavní zákon č. 293/1920 Sb. z. a n., o ochraně svobody osobní, domovní a tajemství listovního.

853 (Judgment of May 20, 1922), defendant, the director of the bank branch "A" in Brno was convicted for opening and messenging the content of the letter, which was addressed to the main office of the bank "B" in Brno, but was delivered to the main office of the bank branch "A" in Prague. The trial court, convicting the defendant by its judgment on March 4, 1921 under § 1 of the Law of April 6, 1870, had established, that the letter was delivered to the bank branch "A" in Brno on March 9, 1920, referred to the Bank "B" headquarters in Brno; defendant affirmed receiving the letter, which was opened in the bank by one of the employees, and only while reading it, he had acknowledged that the letter was not addressed to his bank; later, the defendant called the director of the main office of the Bank "A" in Prague and told him the content of the letter and gave a notarized copy of the letter, upon the acceptance of which the Ministry of Finance's Bank Department was also acknowledged. The trial court established that the gist of the defendant's misdemeanor lied not only in merely opening the letter, but also in relation to its further illegitimate use, and the way the defendant used the letter further underlined that he had maliciously breached the letter correspondence. Defendant impugned this judgment to the District Court of Appeals of Brno, which aquitted him by the judgment of May 23, 1921. The court of appeals established, that the trial court had erroneously found the defendant's acts following the opening of the letter as tortious; the court underlined, that only § 1 of the Law of April 6, 1870could be applied in such situation,[112] as the letter was not anyhow sealed, but in fact, was delivered the same day to the correct address; the fault of the defendant depended not only on the fact of disclosing the envelope illegitimately, but in the malice of such disclosure; according to the facts, which were established by the trial court, the envelope was opened by the defendant mistakenly, as it was delivered to the wrong bank, and it was not properly established, who actually opened the letter; though commonly letters were opened by defendant and the vice-director, it was not established that the defendant was actually the person, who opened the letter, and even in case it could be the defendant himself, who could have opened the letter, it was not proved that it had been done maliciously. The Supreme Court did not agree with the position of the Court of Appeals. The Supreme Court explained, that opening a letter from an unknown person, which was erroneously conducted, is illegitimate, and hence not rather an unintended disclosure by an unauthorised person is criminally punishable, but an intended violation of correspondence secrecy by an unauthorised disclosure. From § 1 of the Law of April 6, 1870, the essence of the misdemeanor lies not in an illegitimate opening of the letter and a malicious violation of correspondence secrecy, but the latter element must be a follow-up to the foremost one. The Court reckoned up the historical development of the law in the times of Royal Austria, when the letter correspondence secrecy was safeguarded both by the December Constitution of 1867, and the 1870 law, the report to which hallmarked that the disclosure (in order to be tortious) must be conducted maliciously; later, letter correspondence secrecy gained its legal safeguards in the Czechoslovak Constitution and legislation in the early 1920s; so, the *ratio legis*, as the Court concluded, was the protection of correspondence, but not the package, and if it is proved that someone had unauthorisedly opened a letter, and afterwards maliciously disclosed its content, than it is an apparent letter correspondence

112 In this judgment, the Supreme Court referred to the Royal Austrian law on letter correspondence secrecy and according to the date it was adopted (April 6, 1870).

secrecy violation. The Supreme Court also denoted, that the text of the 1870 law was initially typed in German language, and the Czech translation of § 1 differed from it (the Court here mentioned, that the element of malicious letter correspondence violation was omitted). The Supreme Court had also outlined, that the appellate court erred in terms of establishing that there was no evidence of who had actually disclosed the letter. Defendant and the vice-director (who was also a witness in the case) were the people dealing with the correspondence (which was not denied by them), though defendant claimed he did not know, who had disclosed the letter. The vice-director claimed they arranged their duties in a way that one signs the consignments, and the other opens the letters. Here, the Supreme Court hallmarked, that it is of no importance of who had actually opened the letter, but who had ordered to do that; it was proven, that the letter was delivered by a wrong address, namely to the Bank "A.", and in any case, the content of the letter was designated for the institution's representative, and if more than one person could be acquainted with the letter's content, and had it been wrongful, than both would be liable; according to the conclusions of both of the courts below, it was the defendant, who had received the letter, being an official of Bank "A", and so, it was the defendant, who had accepted the letter, regardless of the fact, had it been defendant himself, or that the letter was opened anyhow else. Hence, the Supreme Court ruled to restore the judgment of the first-instance court.[113]

Another notable example of jurisprudence, relating to both letter correspondence secrecy, and issues of right to privacy and defamation, is the criminal case of the Supreme Court of the First Czechoslovak Republic no. 3532 (Judgment of June 20, 1929), where the Court concluded, that the defendant's threat to disclose the content of private letters would also fall under the scope of § 1 of the Law of April 6, 1870.[114] The defendant was convicted for threatening to unveal the content of a bundle of letters, which concerned his sister; defendant told his sister, that unless she had signed a statement he demanded (defendant had a property dispute relating to an ownership of a piano and tried to compel his sister to sign a document indicating that she is going to be a witness, who was expected to confirm, that the defendant was the owner of the piano, but not a woman he argued with concerning the ownership of the piano), he would send the letters to her fiancee, which would disclose information on her private life, and claimed he would tell him that she wanders at night. The sister of the defendnat refused to do so, and instead, she said she would testify at the court that the woman was the actual owner of the piano (this fact was seemingly well-known to her). The woman lodged a criminal complaint against the defendant, and later testified against him as well. According to the lower court's findings, the defendant's threat to do so not only constituted an encroachment on her honor, but also could endanger her entire further life, and that the aggrieved party (defendant's sister) was at a severe fear that the defendant could fulfill what he had claimed to do, and the court had also recognized the defendant's threats as such that could justify such fear. Defendant impugned the judgment, having filed a confusion complaint, claiming, that the lower court did not establish, what actually had been in the content

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113 Nejvyšší soud Československé republiky, Rozh. ze dne 20. května 1922, Kr II 157/22, Čís. 853. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1924, roč. 4, s. 283–288.

114 In this case, the Supreme Court also referred to the Royal Austrian law on the protection of secrecy of correspondence of April 6, 1870.

of the letters, and why the aggrieved party's fear was justified, and the court did not hear certain witnesses, etc. The Supreme Court explained, that there is no demand from the side of the law that the aggrieved party should have a "justified fear", the objective "justification" of the defendant's threat is enough, in case the fear, arosen by the defendant's threat, continued for a substantial period of time, and denoted, that the impression of how did defendant's threat impact the aggrieved party was decisive, and since the court below made a conclusion that it had a considerable impact on the aggrieved part, then the conclusion was justified. The Supreme Court also examined the defendant's complaint in terms of disclosing the letters' content, who had contended, that it was not hazardous towards the aggrieved party; the lower court's examination only displayed that the letters' content was objectionable, but no details were provided; the Supreme Court siad, that in such terms there might be a gap, but the lower court's judgment was not defective owing to this, as defendant also said he would disclose that she wandered at nights. The defendant had been not only convicted of § 98b of the Criminal Code, that is a threat to harm one's honor, but also of § 1 of the Law of April 6, 1870, and also impugned the conviction under these provisions, that by opening and retaining these letters, it was a sort of elder brother's "guardianship" to the sister, who was about to be married; the Supreme Court denoted, that the complaint only related to exercising supervisory rights, and the factual basis of the violation that defendant, according to the lower court's conclusions, intending to disclose the content of the letters (to the fiancee of the aggrieved party), had also stolen them. Hence, the defendant's complaint was dismissed.[115]

5. Violations of professional secrets, testimonial privilege, admissibility of evidence which contained a professional secret

5.1 Overall observations

In this chapter, we will observe the existing jurisprudence of the Supreme Court of the First Czechoslovak Republic in terms of violations of professional secrecy and the issues of admissibility of evidence, which contained a professional secret, as well as its historical routes in Austrian legislation and case law. The article does not include the discussion in terms of commercial secrets, except for the ones which concerned one's personal data (i.e. Judgment of the Supreme Court f the First Czechoslovak Republic in the civil case no. 4653, February 10, 1925); at the same time, the Supreme Court's civil case no. 9570 (Judgment of January 24, 1930), a list of pawn shop members (which contained their personal information) was considered to be confidential, and could be reviewed only by authorized officials, but none of the pawn shop members (who could hypothetically file a lawsuit for a privacy violation) were plaintiffs in the case.[116] The Code of Civil Procedure of 1895 and the Code of Criminal Procedure of 1897 continued to be acting in the First Czechoslovak Republic, and both of them, namely § 321 (5) of the Code of Civil Procedure

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115 Nejvyšší soud Československé republiky, Rozh. ze dne 20. června 1929, Zm II 412/28, Čís. 3532. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1930, roč. 11, s. 372–375.

116 Nejvyšší soud Československé republiky, Rozh. ze dne 24. ledna 1930, Rv II 300/29, Čís 9570. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1931, roč. 12, s. 112–114.

of 1895 and § 151 (1) of the Code of Criminal Procedure of 1897 respectively provided a testimonial privilege allowing not to testify concerning facts, which the representatives of professions, which presupposes the obligation of maintaining professional secrecy, have acquired during the exercise of their profession (lawyers, notaries, court employees, physicians, pharmacists, judges, banking employees, post officials etc.). There also were other legal norms, which provided a testimonial privilege to certain professions, most of which were aged. The testimonial privilege and the duty of secrecy concerning people of certain professions was regulated by different normative-legal acts, which were adopted in the XVIII–XIX centuries, which have a considerable historical background. In some occasions, the attorneys were released from the obligation to provide evidence: the Court Act of 1781, enacted by the Royal Decree No. 12 (April 9, 1781), § 141 (section "c"), provided, that those, who were, or still were the legal friends (i.e. attorneys) of the witness presenter in the case, were, inter alia, withdrawn as witnesses.[117] At the same time, the Royal Decree No. 497 (November 24, 1785), section "e", provided, that the attorney, who was a legal friend of a concurring witness presenter in a court dispute, could not be withdrawn as a witness.[118] The Attorney Law of 1868, § 9, provided, that the attornes is obliged to maintain secrecy concerning the entrusted matters, and the embrace of which the attorney was exempt from testifying, had to be determined by the codes of procedure, but the attorney was not obliged to testify in civil cases.[119] These provisions were discussed in the case law of the Austrian Royal Supreme and Cassation Court,[120] and the case law of the Supreme Court of the Fist Czechoslovak Republic, acting as a court of appeals in the criminal matters relating to judges, attorneys and notaries, which gave a profound explanation concerning the scope and meaning of the solicitor's secrecy obligation.[121] The Royal Decree No. 123 (March 8, 1791) provided that court empoyees could not be assigned as witnesses in a specific court case, and the testimony should not be admitted concerning items, which was learned by them during the exercise of their profession or items, concerning which

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117 Hofdekret vom 9ten Aprill 1791 (Nr. 12). In: *Leopold des Zweiten, Romischen Kaisers, Geseße und Verfassungen im Justiz-Sache*. Wien: Aus der kaiserlich-königlichen Hof- und Staats-Uerarial-Druckerei, 1817, S. 6–78.

118 Hofdekret vom 24sten November 1785 (Nr. 497). In: *Joseph des Zweiten, Romischen Kaisers, Romischen Kaisers, Geseße und Verfassungen im Justiz-Sache. Jahrgang von 1785 bis 1786*. Wien: Aus der kaiserlich-königlichen Hof- und Staats-Uerarial-Druckerei, 1817, S. 138.

119 Gesetz vom 6. Juli 1868, womit eine Advocatenordnung eingeführt wird. RGBl. 1868, Nr 96, S. 274–282 (in Czech language: Zákon č. 96/1868 ř. z., kterým se zavádí advokátní řád.)

120 See the following cases:
(1) K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 3. November 1886, Nr. 12306. In: UNGER, J. – WALTHER, J. – PFAFF, L. (Hrsg.). *Sammlung von Civilrechtlichen Entscheidungen des k.k. obersten Gerichtshofes. Vierundzwanzigster Band.* Wien: Carl Gerold's Sohn, 1889, S. 495, Entsch. Nr. 11230.
(2) K.K. Oberster Gerichts- und Cassationshof, Entsch. vom. 24. April 1888, Ziffer No. 4539. In: LINKS, E. (Hrsg.). *Die Rechtsprechung des k.k. Obersten Gerichthofes, etc. Erster Band.* Wien: Plaut & Comp, 1889, S. 351–353, Entsch. Nr. 198.

121 Nejvyšší soud Československé republiky, Rozh. ze dne 11. února 1930, Ds I 8 a 9/29. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1931, roč. 12, s. 682–684.

they had given an oath to maintain secrecy.[122] Upon the Notary Law of 1871,[123] § 37, the notaries were obliged to maintain secrecy in terms of the negotiations, held before them, and ensure, that the notaries' assistants also follow this rule. However, notaries were not given a privilege not to testify. Interestingly, the French Court of Cassation in its judgment of July 23, 1830 concluded that the notaries do not possess a testimonial privilege akin to lawyers.[124] Physicians and pharmacists were bound to professional secrecy, the violation of which was punishable under § 498 and § 499 of the Criminal Code respectively. In the Kingdom of Hungary, the "Simplified Procedure" Code (*Sommás Eljárás*), § 86 (4) provided, that a witness could legitimately refuse to testify at a court in case his/her answer to the question could breach professional secrecy, especially relating to lawyers, notaries and physicians, unless they were released from their duty of confidentiality, or, under § 86 (5), in case the answer to such question could otherwise breach a technical or commercial secret.[125] The Royal Hungarian Supreme Court has clarified in the case I. H. 51/96 (judgment of January 27, 1897), that a witness, which was brought from the side of one of the parties to the proceedings could not refuse from testifying on the foundation of the duty to maintain confidentiality.[126] In one of the earlier cases, this court mentioned, that the duty of an official's secrecy did not cease after the person had resigned from the capacity of an official, and it had to be maintained for the entire person's life without any restrictions of time, or position the person had acquired.[127] The Bill of May 4, 1895, establishing the Budapest Royal Criminal Court (*Budapesti Királyi Büntetö Törvényszék*), § 204 (1) held, that priests could not be questionned of what had been communicated to them in confession under the seal of confessional secrecy.[128]

As it was mentioned before, the secrecy of the legal profession was discussed in old Austrian case law, to which we may briefly turn. For instance, in the civil case no. 12306

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122 Hofdekret vom 8ten März 1791 (Nr. 123). In: *Leopold des Zweiten, Romischen Kaisers, Geseße und Verfassungen im Justiz-Sache*. Wien: Aus der kaiserlich-königlichen Hof- und Staats-Uerarial-Druckerei, 1817, S. 22.

123 Gesetz vom 25. Juli 1871, betreffend die Einführung einer neuen Notariatsordnung, RGBl. 1871, Nr. 75, S. 161–204. (in Czech language: Zákon č. 75/1871 ř. z., kterým se zavádí nový notářský řád.); see also: *Die Notariätsordnung vom 25. Juli 1871, sammt allen darauf bezuglicher Verordnungen und den grundläßlichen Entscheidungen des obersten Gerichtshofes*. Sechste, vermehrte Auflage. Wien: Manz'sche k.k. Hof-Verlags und Universitäts Buchhandlung, 1878, S. 38.

124 Cour de Cassation (France), 23 Juillet 1830, Recueil Sirey 1828–30 I, 562–563. In: DEVILLENEUVE, L. M. (ed.). *Recueil Général des lois et des arrets. 1re série. 1791–1830. 9° Volume. An 1828–1830.* Paris: Bureaux de l'Administration, 1831, pp. 562–563.

125 HERCZEGH, M. *Magyar Sommás Eljárás és Fizetési Meghagyás. 1893: XVIII. és XIX. Törvényczikkek*. Budapest: Franklin-Társulat Magyar Irodalmi Intezét és Könyvnyomda, 1894, pp. 142–143.

126 Magyar Kir. Curia I. H. 51/96. 1897 január 27., A Magyar Kir. Curia Felülvizsgálati Tanácsa Által a Sommas Eljárásról Szóló Törvény (1893: XVIII: TCZ.) Alapján Hozott. Összeállitotta Dr. Fabiny Ferencz. II Kötet (1896, 1897); (222–459. sz. Határozatok). Budapest. Franklin-Társulat, Magyar Irodalmi Intezét es Könyvnyomda, pp. 187–188, Határozás Nr. 330.

127 Magyar Kir. Curia, 1889 május 29. 10923. sz. a., Döntvénytar. Kiadja a "Jogtudományi Közlöny" Szerkesztósége. Uj folyam. XXIII. Kőtet. (LI. Folyam). Budapest. Franklyn-Társulat, Magyar Irodalmi Intezét es Könyvnyomda, pp. 182–184, Határozás Nr. 74.

128 1895. évi május hó 4-én. 869. szám. Törvényjavaslat, a budapesti királyi büntető törvényszék felállitásáról. Az 1892. Èvi Február hó 18-ára Hirderett. Országgyüles Képviselőházának Irományai. XXVI. Kötet. Hiteles Kiádas. Budapest. Pesti Könyvnyomda-Részvéni-Társasag, 1895, pp. 117–261 (see particularly at p. 166).

(Unger, Walther and Pfaff collection, Vol. 24 case no. 11230), Judgment of November 3, 1886, the plaintiff, who was represented by lawyer A., submitted an application to the guardianship court in order to adopt a minor; the court requested the lawyer A. to provide facts concerning the prospective adoptee, to which the lawyer refused, referring to the confidentiality between him and his client; however the guardianship court insisted on it under a potential punishment, and the court of second instance had confirmed this decision; however, the Supreme Court quashed the judgment of the first-instance court, ascertaining, that the requested information belonged to those, which was acquired in the course of exercising the lawyer's profession according to § 9 of the Attorney Law of 1868.[129] In an earlier case, the civil case no. 1273 (Judgment of February 1, 1876, Glaser, Unger and Walther collection, Vol. 14, case no. 6012), which was an inheritance dispute, plaintiff, who impugned the validity of the will, claimed she had not found the will, having searched the table thorougly, whereas the act of demise, being made upon the eighth day after the testator's death, certified, that the will was found at once. The notary, acting in that case as a court plenipotentiary, refused to testify concerning the circumstances and the peculiarities of the drawer, where it was found, claiming that he had already officially reported the facts of the case. The courts of all three instances have declined to accept his refusal; the Supreme Court said, that his duty to secrecy covered the issues of what occurred in his office, but not when he was asked to testify by a court, and the provisions of the Royal Decree No. 123 (March 8, 1791) related only to information, which is to be kept secret in public interest, but the case at stake (that is, the inheritance dispute) was not of such nature.[130]

5.2 The practice of the Supreme Court of the First Czechoslovak Republic in cases relating to the protection of professional secrecy

According to the case law of the Supreme Court of the First Czechoslovak Republic, it may be assumed, that such professions, as post officials,[131] bankers,[132] and pawn shop managers,[133] priests,[134] newspaper editors were also bound to professional secrecy,[135] which

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129 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 3. November 1886, Nr. 12306. In: UNGER, J. – WALTHER, J. – PFAFF, L. (Hrsg.). *Sammlung von Civilrechtlichen Entscheidungen des k.k. obersten Gerichtshofes. Vierundzwanzigster Band.* Wien: Carl Gerold's Sohn, 1889, S. 495, Entsch. Nr. 11230.

130 K.K. Oberster Gerichts- und Cassationshof, Entsch. vom 1. Februar 1876, Nr. 1273. In: GLASER, J. – UNGER, J. – WALTER, J. (Hrsg.). *Sammlung von Civilrechtlichen Entscheidungen des k.k. Obersten Gerichthofes. Vierzehnter Band. Zweite Auflage.* Wien: Carl Gerold's Sohn, 1882, S. 50–51.

131 Nejvyšší soud Československé republiky, Rozh. ze dne 3. listopadu 1925, Rv II 448/25, Čís. 5422. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1926, roč. 7, s. 1584–1585.

132 Nejvyšší soud Československé republiky, Rozh. ze dne 17. ledna 1930, R I 20/30, Čís. 9530. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1931, roč. 12, s. 46–47.

133 Nejvyšší soud Československé republiky, Rozh. ze dne 10. února 1925, R I 99/25, Čís. 4653. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1926, roč. 7, s. 234–235.

134 Nejvyšší soud Československé republiky, Rozh. ze dne 9. listopadu 1928, Zm I 377/28, Čís. 3320. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1929, roč. 10, s. 725–729.

135 Nejvyšší soud Československé republiky, Rozh. ze dne 16. dubna 1925, Zm II 18/25, Čís. 1951. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1927, roč. 7, s. 199–200.

was rather based upon trust between the parties of the legal relationships, and occasionally, the witnesses, refusing to testify upon the principle of their obligation to maintain professional secrecy, have mentioned that they were not released from their duty to maintain confidentiality by their employers, assuming that such procedure actually existed.[136] So, let us review the Court's jurisprudence in relation to the subject of professional secrecy.

In the civil case no. 4653 (Judgment of February 10, 1925), the Supreme Court of the First Czechoslovak Republic dealt with the problem of what information should be recognized as a commercial secret in terms of a bank. A witness, who was a bank procurator refused to testify in a case of whether the defendant had a claim, or a deposit in the bank (under § 321 (5) of the Code of Civil Procedure). The trial court upheld his refusal, whereas the court of appeals did not find his refusal to be legitimate, as the question to the witness concerned the existence of the defendant's assets for the aim of proving the location of assets; the defendant himself mentioned the connection with the bank in various documents, and found no actual trade secret violation within the meaning of such a question. The Supreme Court ruled to renew the judgment of the trial court. The Court explained, what information should, and what should not be regarded as a professional secret in relation to a bank. The fact that a tradesperson had a bank account at a certain bank cannot be observed as a trade secret in any case, but this is not the same, if speaking about an interrogation of whether the account is active, or passive. Here, the Supreme Court held the following: "Whether the account was active, or passive at a certain time, must be considered a purely private matter, relating to the closest internal business relationship between the client and the bank, whereby the client may have a significant interest precisely in the state of his account remaining secret to the public at a certain time […]". As it was not actually disputed of whether defendant had an account in the bank, as such, but whether the said account was active, hence, the witness was entitled to refuse to testify on basis of § 321, para. 5 of the Code of Civil Procedure of 1895.[137] Concerning banking secrecy, it should be denoted, that in the Supreme Court of the First Czechoslovak Republic's judgment in the civil case no. 4653 (Judgment of February 10, 1925) the fact of the tradesperson's account status in the bank was also referred to as a trade secret, which the bank director refused to disclose in court (for instance, in England, the legal foundation of the institute of banking confidentiality lied in legal precedent, upon which, the bank employees could not disclose the information concerning the accounts (and attributed information) of their customers, unless the law provided such necessity,[138] and already in the XIX

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136 See the following cases:
(1) Nejvyšší soud Československé republiky, Rozh. ze dne 3. listopadu 1925, Rv II 448/25, Čís. 5422. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1926, roč. 7, s. 1584–1585.
(2) Nejvyšší soud Československé republiky, Rozh. ze dne 17. ledna 1930, R I 20/30, Čís. 9530. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa, společnost s r.o., 1931, roč. 12, s. 46–47.

137 Nejvyšší soud Československé republiky, Rozh. ze dne 10. února 1925, R I 99/25, Čís. 4653. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1926, roč. 7, s. 234–235.

138 In doctrine, see, for instance, the following:
(1) WALKER, J. D. *A Treatise on Banking Law*. London: Stevens and Sons, Law Publishers and Booksellers, 1877, p. 33.

century, the English courts have recognized the banker's duty to maintain confidentiality concerning the customer's accounts, as a legal duty).[139] In an another case relating to testimonial privileges, the Supreme Court's civil case no. 5422 (Judgment of November 3, 1925), there was a dispute relating to the repayment of a purschasing price, where one of the defendant's proposals to call a witness, who was a postman, whom he asked to testify, and whom he knew personally and with whom he had a previous telephone conversation. The defendant denoted, that the postman talked with him on a private affair, but not as an official, and the postman himself refused to testify on basis of his duty of confidentiality on basis of § 321 (3) of the Code of Civil Procedure, and was not released of confidentiality; the postal office also confirmed that he was not released of confidentiality. According to the postman's testimony, he was on his official duty when the defendant and the postman had a telephone conversation. The Supreme Court agreed with the position of the court of appeals in the case, which outlined, that when the official is on duty on a telephone station, he does not become a private person, and thus, is not released from the duty of confidentiality, and the fact that the defendant was acquainted with the postman did not change the situation, hence, the appeal was dismissed.[140]

In 1933, the Law on Protection of Honor was adopted, which brought significant novels in the field of defamation law, making substantive legislative amendments to various issues of insults to honor.[141] In 1934, the Supreme Court of the First Czechoslovak Republic heard a very complicated case (criminal case no. 5139, Judgment of November 26, 1934), which involved the question of insult to honor, the right to privacy, public interest and the issue of commercial secrecy in one single case. The defendant wrote a newspaper article, which concerned problems in the management in a vegetable and fruit cooperative, and that complainant (who filed a criminal complaint against the defendant) was incompetent to govern the municipal affairs, and to be a mayor of the municipality. The trial court convicted the defendant under § 2 of the Law on the Protection of Honor, but the Supreme Court decided to annul this decision and remanded the case to a trial court for a new decision. Firstly, defendant complained, that the proving evidence was not provided by the Central Association of Czechoslovak Cooperatives in Prague; the Supreme Court outlined, that under § 7 (2) of the Law on the Protection of Honor, the proof of truth is

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(2) Confidential Relationship between Banker and Customer. *The Yale Law Journal*, 1924, Vol. 33, No. 8, pp. 859–862.

(3) MERRITT, R. J. Banks and Banking: Florida Adopts a Duty of Secrecy. *University of Florida Law Review*, 1970, Vol. 22, No. 3, pp. 482–486.

In jurisprudence, see, for instance, the following:

(1) Tournier v. National Provincial and Union Bank of England [1924] 1 K.B. 461 (pp. 461–488) (November 9, 12; December, 17, 1923), particularly at pp. 472–473.

(2) Eckman and Others v. Midland Bank Ltd. And Another, [1973] I.C.R. 71 (pp. 71–81) (National Industrial Relations Court, November, 28; December, 7, 1972), particularly at pp. 77–78; [1973] Q.B. 519 (pp. 519–529), see particularly at p. 525, as well as in other law reports.

139 Hardy v. Veasey and Another (1868) L.R. Ex. 107 (Court of Exchequer, January 24, 1868). In: ANSTIE, J. – CHARLES, A. (eds.). *The Law Reports: Court of Exchequer*. London: Printed for the Council of Law Reporting by William Clowes and Sons, 1868, pp. 107–113.

140 Nejvyšší soud Československé republiky, Rozh. ze dne 3. listopadu 1925, Rv II 448/25, Čís. 5422. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1926, roč. 7, s. 1584–1585.

141 Zákon č. 108/1933 Sb. z. a n., o ochraně cti.

inadmissible only in cases, when the facts of private and family life of an aggrieved party were communicated by the offender, unless the exceptions, provided in § 7 (2) (a), (b) and (c) took place, though – as the court denotes, this was not the case at stake, as violations of privacy would mean a disclosure the facts from the personal life of certain persons, but not an enterprise, even if the affairs, mentioned in the publication were internal ones. But what relates to defamations, § 6 (2)(a) of the Law on the Protection of Honor provided, that such publication is not a criminal misdemeanor, if it is possible to prove, that the published facts are truthful, and § 6 (2)(b) held the same for proved circumstances upon which the published facts could be considered as truthful ones. In such case, held the Court, the impunity was applicable only in case there was a) a matter of public interest; b) a private interest, which it was necessary to defend, but the latter, held the Court, had nothing to do with the case at stake, as the defendant was not a member of the said cooperative, and was not directly affected by the problems in its management. The judgment, by which the defendant was convicted, held that the afore-mentioned problems in the management were an internal matter of the said enterprise, to which the Supreme Court did not agree. The Supreme Court denoted, that defendant focused his publication through the view of the municipal savings bank, which repeatedly gave loans to the enterprise, and thus the interest of the bank was that it should not suffer losses from some kind of incorrect management; since the municipality governed the said bank and had to cover its losses by the increase of municipal surcharges, and hence the situation affected both the bank and the citizens living in the town. The Court also explained, that the public interest had to be determined at the moment of the publication – for instance, as the Court held, the fact that the cooperative managed to pay out the loan to the Municipal Savings Bank, did not change the given situation; it was decisive as whether it was resolved at the moment of the publication. Hence, here the Supreme Court evaluated the publication from the view of public interest in the situation, which was described in it. Next, the complainant did not dispute that there were problems with managing the fruit and vegetable cooperative, evidenced by defendant, and it was proved by the findings by the auditor of the Central Association of Czechoslovak Cooperatives in Prague; however, this evidence was rejected, when the Association refused to disclose such facts to the court, and the trial court, as mentioned in the Supreme Court's report, cited § 12 of the Act on Revision of Earning and Economic Communities and other Associations (1903) and § 27 of the Ministerial Decree No. 134 (1903),[142,143] upon which the auditors are bound to secrecy in terms of facts, which they have learned during the audit. The Supreme Court found, that the trial court erred by doing so: no matter where the defendant received the finding, the court, which decided upon the matter, could not refuse to use this finding in order to prove the veracity, or the probability, as under the provisions of the Law of Criminal Procedure, namely § 143, 151 and 153,

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142 Gesetz vom 10. Juni 1903, betreffend die Revision der Erwerbs- und Wirtschaftsgenossenschaften und anderer Vereine. RGBl. 1903, Nr. 133, S. 409–411. (in Czech language: Zákon č. 133/1903 ř. z., o revizi družstev a jiných spolků.)

143 Verordnung des Justizministeriums und des Ministeriums des Innern im Einvernehmen mit dem Handelsministerium vom 24. Juni 1903, womit Durchführungsvorschriften zum Geseße, betreffend die Revision der Erwerbs- und Wirtschaftsgenossenschaften und anderer Vereine, erlassen werden. RGBl. 1903, Nr. 134, S. 41–422. (in Czech language: Nařízení č. 134/1903 ř. z., kterým se provádí zákon o revizi družstev a jiných spolků.)

the Association had no right to refuse to provide the documents to the court, which was hearing the criminal case. The Court explained, that anything could be provided as proof, which may be necessary for the court, apart of that means, forbidden by the law; the law does not forbid to use a finding, as evidence for managing a certain enterprise, even if it contains a commercial secret, as nobody is released from the obligation to testify, and even a commercial enterprise would be required to provide the necessary documents for the court hearing a criminal case, even when it may be a misdemeanor in the sense of § 2 of the Law on the Protection of Honor, adding that the word "anyone", who is to provide the necessary documents for the court hearing a criminal case upon the demand, in the sense of § 143, also relates to legal entities as well; in the case at stake, held the Court, the auditor's conclusion was necessary to be viewed, as the court could evaluate whether the facts provided by the defendant in the publication were true, and the only way to verify its content was to read the said document. The defendant, who lodged his confusion complaint upon § 281 (4) of the Code of Criminal Procedure, also claimed that he could submit documents approving various other violations of managing the municipal menage, but the Court held, that in order to admit the said proposals, there are no allegations in the publication which need to be founded on basis of the proof of veracity: in the article, defendant mostly wrote about the incompetence of the complainant, but none was written in terms of concrete violations in the municipal menage, and hence, explained the Court, in case the defendant confined the foundation of his blame by certain acts, which, according to his claim, messenged to the reader, would justify the blame, then he is thereby confined to the said acts when proving the veracity. So, the Court found, that the said decision has to be annuled because of the errors, but at the same time, the confusion complaint by the defendant was dismissed; the case was remanded for further review to the trial court.[144]

6. Inferences

The protection of privacy in the First Czechoslovak Republic was based upon different legal provisions, both upon the legislative acts adopted in Habsburg Austria and Dual Monarchy period in the XIX and early XX century, as well as the newly adopted laws. The development of privacy law in civil law jurisdictions, upon the author's research, could be characterized with particular protection of personal rights, which may represent a certain aspect of private an family life. Such statement could be reflected in both academic literature, legislation and case law. The exploration of existing case law makes the author come to a conclusion, that the concept of privacy primordially lied in the sphere of protecting one's honor from insults and encroachments, which could be well-observed in various cases on defamations, privacy violations and insults to honor of deceased persons, as well as issues relating to professional secrecy, which mainly related to testimonial privilege. The protection of one's name and image received its legislative anchoring in § 43 of the Civil Code and § 13 (2) of the Law on Copyright of 1895 (which continued to be acting in the First Czechoslovak Republic), whereas the regulation of media law was also amended by the laws, which were adopted in the First Czechoslovak Republic, namely the Amendment

144 Nejvyšší soud Československé republiky, Rozh. ze dne 26. listopadu 1934, Zm II 387/34. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: JUDr. V. Tomsa, Právnické vydavatelství Praha, 1935, roč. 16, s. 425–429.

to the Press Law in 1924,[145] and the Law on the Protection of Honor, in 1933.[146] The term for the right to privacy, which was referred to in similar cases, was pronounced "*Soukromy zivot*" in Czech language (in English: "Private life"), whereas the term for the protection of privacy, referred to in legislation (§ 490 of the 1852 Criminal Code) and in the XIX century and early XX century Austrian case law,[147] pronounced in German language as: "*Privat- und Familienleben*" (in English: "Private and family life"). These terms were used to refer primarily to privacy violations, though both Austrian case law,[148] and the jurisprudence in the First Czechoslovak Republic display that the criminal complaints on personal rights violations could be lodged upon allegedly violated criminal code provisions (§ 489 of the 1852 Criminal Code).[149] In terms of the misdemeanors relating to the maltreatment of graves and cadavers, the Supreme Court of the First Czechoslovak Republic referred to such terms, as humanity, good morals and piety to deceased ones, and held that an insult to deceased should be treated as if they were alive, and that maltreatment in terms of a grave also could be compared to maltreatment of items for religious services in the sense of § 122 (b) of the Criminal Code.[150] The Supreme Court of First Czechoslovak Republic has also heard a number of outstanding defamation cases, which have involved a qualified defamation relating to workers (e.g. civil cases no. 1081, Judgment of June 7, 1921 and no. 6852, Judgment of March 1, 1927).[151,152] Another set of cases involved misdemeanors on secrecy of correspondence,[153] as well as issues of professional secrecy in terms of testimonial privilege and admissibility of evidence, such as banking (commercial) secrecy (civil case no.

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145 Zákon č. 124/1924 Sb. z. a n., o změně příslušnosti trestních soudů a odpovědnosti za obsah tiskopisů ve věcech křivého obvinění, utrhání a urážek na cti.

146 Zákon č. 108/1933 Sb. z. a n., o ochraně cti.

147 K.K. Oberster Gerichts- und Cassationshof, Entsch. v. 6. November 1891, Ziffer No. 11353. In: *Entscheidungen des K.K. Obersten Gerichts- und Cassationhofes in Civil- und Strafsachen, veröffentlicht von dem k.k. Obersten Gerichts- und Cassationhofe in der Beilage zum Verordnungsblatte des k.k. Justizministeriums. VIII. Jahrgang. 1892. Nr. 704 bis 845*. Wien: Kaiserlich-Königlichen Hof- und Staatsdruckerei, 1892, S. 29–32, Nr. 722.

148 *Ibidem*.

149 Nejvyšší soud Československé republiky, Rozh. ze dne 14. října 1931, Zm I 918/30, Čís. 4300. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: JUDr. V. Tomsa, Právnické vydavatelství Praha, 1931, roč. 13, s. 510–511.

150 See the following cases:
1) Nejvyšší soud Československé republiky, Rozh. ze dne 22. září 1922, Kr I 639/21, Čís. 925. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1924, roč. 4, s. 398–399.
2) Nejvyšší soud Československé republiky, Rozh. ze dne 12. května 1926, Zm II 609/25, Čís. 2370. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1927, roč. 8, s. 284–285.

151 Nejvyšší soud Československé republiky, Rozh. ze dne 7. června 1921, Rv I 88/21, Čís. 1081. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa společnost s r.o., 1923, roč. 3, s. 389–390.

152 Nejvyšší soud Československé republiky, Rozh. ze dne 1. března 1927, Rv I 1810/26, Čís. 6852. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství JUDr. V. Tomsa společnost s r.o., 1928, roč. 9, s. 373–375.

153 See the following cases:
(1) Nejvyšší soud Československé republiky, Rozh. ze dne 20. května 1922, Kr II 157/22, Čís. 853. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1924, roč. 4, s. 283–288.

4653),[154] as well as different issues of privacy and professionan secrecy violations in the criminal case no. 5139, (Judgment of November 26, 1934), which involved a number of potentially violated rights of the complainant, namely right to privacy, insult to honor, an alleged breach of commerical secrecy, as well as involving the issue of freedom of press and public interest to the article, published by the defendant.[155] The Supreme Court of the First Czechoslovak Republic has also paid attention to the issue of public interest in the context of different press publications in some other cases, for instance, in the criminal case no. 2678 (Judgment of February 27, 1927).[156] The review of the practice of the Supreme Court of the First Czechoslovak Republic in matters, relating to privacy rights and professional secrecy displayed that such cases were not that rare, and the breaches occured in different spheres of societal life, and the existence of a considerable amount of legislation and case law depicts that the privacy rights and professional secrecy received substantial legal safeguards in the legal system of the First Czechoslovak Republic.

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(2) Nejvyšší soud Československé republiky, Rozh. ze dne 20. června 1929, Zm II 412/28, Čís. 3532. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: JUDr. V. Tomsa, Právnické vydavatelství Praha, 1930, roč. 11, s. 372–375.
Nejvyšší soud Československé republiky, Rozh. ze dne 28. února 1927, Zm II 148/26, Čís. 2678. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1928, roč. 9, s. 151–157.

154 Nejvyšší soud Československé republiky, Rozh. ze dne 10. února 1925, R I 99/25, Čís. 4653. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1926, roč. 7, s. 234–235.

155 Nejvyšší soud Československé republiky, Rozh. ze dne 26. listopadu 1934, Zm II 387/34. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: JUDr. V. Tomsa, Právnické vydavatelství v Praze, 1935, roč. 16, s. 151–157.

156 Nejvyšší soud Československé republiky, Rozh. ze dne 28. února 1927, Zm II 148/26, Čís. 2678. In: VÁŽNÝ, F. (ed.). *Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních*, Praha: Právnické vydavatelství v Praze společnost s r.o., 1928, roč. 9, s. 151–157.