

Resumé

Renewed Provincial Constitution from the year 1627 is legal document, codification of provincial law, issued as a result of the White Mountain overthrow of uprising. This fact determined considerably his character. Triumphant Emperor Ferdinand II. confirmed in it above all his position, the main purpose of the revision of the provincial law was the strengthening of the ruler's power. Fundamental and substantial changes brought Renewed Provincial Constitution especially in all areas of state, constitutional law and in political relations. The aim of ruler was to enhance his own position. As an absolutistic ruler became the sole holder of all state authority.

The object of this work was mainly organization of justice and procedural law, because Renewed Provincial Constitution regulated not only the constitutional issues, but also codified provincial (nobility) law. Regarding the judiciary, it is necessary to distinguish the organization of the courts under the judicial system configuration and operation of the courts alone. In the first case, we can see some continuity with the previous establishment, continued to maintain the principle of personality. Organization of courts kept its previous character, courts have stayed divided according pertinence to the separated social groups. Disputes of the nobility continued to belong before the Provincial Court, townfolk resolved their disputes before town's courts and subordinated subjects were before the courts of nobility on the estates. Three-degreed judicial system was established, second degree was constituted of Council of appeals in Prague and third degree constituted Czech office in Wien. From the judgments of all courts can be appealed through a revision to the king. As regards enforcement of the justice the changes was substantial, absolute monarch became the holder not only of all executive and legislative power, but even judicial. Renewed Provincial Constitution removed independence of the provincial judiciary, especially to the sacred sovereignty of the Provincial Court. For the source and the sole creator of any applicable law was considered an absolute reigning monarch. So far, an independent judiciary had to submit to the king, was performed on his behalf and judicial decisions was under a control of the state. In practice, this subordination meant responsibility of judges, announcing the judgments on behalf of the king and possibility of revision of judicial decisions.

Another consequence was the obligation of judges to follow the written law, which is meant to apply solely to the decision-making activities rules of Renewed Provincial Constitution. A subsidiary source of law became the codification of town law. If the judge came to the gap in

the law could decide to address only the monarch again. Application of uniform rules replaced an earlier freedom in discretion under the law customs or consideration of judges. As customary law and judicial findings gradually disappear and give way to written law, become the basic form of the law royal decision. This phenomenon can not be seen only negatively. Replacing an earlier freedom in discretion by uniform procedure in accordance with uniform rules of law brought about the unification of law, elimination of certain undesirable feudal survivals and ultimately requiring knowledge of law for judges.

Habsburg government brought with it the introduction of bilingualism in the courts. Apart from Czech language authorized Renewed Provincial Constitution use of German language, which in the next period completely displaced Czech from official life. As regards to procedural law, which belonged to private law haven't seen such rapid and significant changes. Private law was not affected by the political changes resulting from the onset of absolutism as much as public law. Renewed Provincial Constitution from the most part laid down the rules, already known from previous time, which were directed to a natural development and asking them to changes in society and economic development. Such changes included the introduction of the principle officiality that limited private initiative in the opening of criminal proceedings, where only the applicant could secure a defendant's presence in court. Other changes that corresponded to the long-term evolutionary trend was removing the existing oral and public form of the judicial process by written form. Proceedings came to be written in compliance with the principle „quod non est in actis, non est in mundo“. It brought with it closed character of the trial and absence of litigants and witnesses. This was a consequence of the strong influence of Roman law, the written process was a sign of Roman-canonical procedure. The main emphasis has shifted to the pre-trial proceeding, in which a complete material was gathered and all case had to be prepared in written form and the court then decided in the closed session only on the basis of these writings without the presence of the public. A trial representative became a necessity for a successful litigation.

Another feature of the ongoing bureaucratization of the judiciary, was need to replace the lay-judge by court officials with legal qualifications. Providing of legal assistance also changed. Speakers was replaced by professional attorneys, who could only carry out their activities under oath. Later, their number was limited and the laws began to require the exam on their knowledge of the law.