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"Socialist Legality" and Interference in the Independence of the Judiciary in the 1950s[1]

Abstract

This article focuses on changes to the legal system made in the period from February 1949 onwards in connection with the so-called legal biennial in Czechoslovakia, namely in substantive and procedural criminal law. On one side, such changes were aimed at bringing the Czechoslovak legal system closer to the Soviet model and thus providing tools for fighting the enemies of the Communist Party, whether perceived or real. These consisted of, for example, changes to the merits of individual crimes, in particular of the crime of high treason. Another goal was to control bodies involved in criminal proceedings and thus ensure decision-making in accordance with the party line, for example by the mass implementation of the institute of lay judges. Furthermore, the article focuses on compliance with, or rather mass violations of, socialist legality in criminal proceedings, from arresting individuals, through their unlawful detention, to filing lawsuits and deciding on guilt and punishment for alleged crimes – in political trials – or actually committed crimes – for example, while attempting to recruit informants and collaborators for various security forces. The article further points out that in many cases the decisive factor and driving force behind criminal proceedings was representatives of the Communist Party, who controlled, directed, and otherwise interfered with the independence of the judiciary, public prosecution bodies, security and other state agencies, both to the detriment of, or the other way round (and more often) for the benefit of, selected individuals.

Keywords: Czechoslovakia, continuity of law, criminal law, independence of justice, political trials, socialist legality

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The crucial event for the development of post-war Czechoslovak society, not just for the independence of the judiciary and changes in criminal law, was the so-called Victorious February, or the seizure of power by the Communist Party in the 1948. In autumn 1948, the Communist Party set itself the goal of a comprehensive re-enactment of the legal system, including criminal law, to "better suit" a socialist society. The model for the new norms of substantive and procedural criminal law was the legislation of the Soviet Union.[2]

In the same year, 1948, substantive and procedural law standards were adopted, bringing in partial changes to existing legal regulations. Specifically, Act No. 231/1948 Coll., on the Protection of the People's Democratic Republic, was adopted, which, amongst other things, changed or expanded the merits of the crime of high treason, which newly protected the people's democratic system,[3] in contrast to the previous legal regulation stipulated by Act No. 50/1923 Coll., on the Protection of the Republic, which it replaced. The new legislation also explicitly provided for capital punishment, amongst other things, in cases where the high treason committed significantly threatened the people's democratic system.[4] Therefore, it was significantly stricter than its previous regulation. And it was the very crime of high treason for which individuals, primarily but not exclusively, were accused in political trials in Czechoslovakia.

Political trials can be defined as criminal proceedings held against specific individuals or groups of individuals, often based on alleged criminal activity, which are initiated, organized, and managed, including in terms of the outcome of the criminal proceedings – i.e. the sentence imposed – by representatives of political power instead of the relevant law enforcement bodies. Political trials corresponding to the definition above were organized mainly after the aforementioned Victorious February.[5] The charge of high treason became a tool not only against political opponents of the new regime,[6] but also against the so-called internal enemy within the Communist Party of Czechoslovakia itself.[7] These political trials were intended, amongst other things, to justify in the eyes of the public the "purges" of politically "unreliable" individuals (including from amongst the security forces and the judiciary), to moderate voices directed against criticism of the

[2] More details to this so called legal biennial and connected changes e.g. in Bláhová [*et al.*], *Právnická dvouletka*; Švantner "Právnická dvouletka."

[3] See: Section 1 (1) lit. b) of the Act No. 231/1948 Coll. Cf. e.g. Vieska, *Zákon na ochranu*.

[4] Section 1 (3) lit. b) of the Act No. 231/1948 Coll.

[5] Representatives of the Communist Party of Czechoslovakia were attempting to initiate political trials even before 1948, for example against representatives of the Democratic Party in Slovakia, due to their alleged collaboration with pro-Nazi groups having the goal to subvert Czechoslovakia. Cf. Kaplan, Paleček, *Komunistický režim,* 14. Summary of political trials is provided in two volumes of the Encyclopedia of Czech legal history, see: Schelle, Tauchen, *Encyklopedie českých právních dějin VIII*; Schelle, Tauchen, *Encyklopedie českých právních dějin IX*.

[6] For example in the trial against Ms. Milada Horáková. Kaplan, *Největší politický proces*; Kaplan, *Druhý proces*; Formánková, Koura, *Žádáme trest smrti!*; Slušný, "Proces s Miladou Horákovou (1950);" Synek, *Mám klid ve svém svědomí*.

[7] For example the trial against the leadership of the anti-State conspiracy center headed by Mr. Rudolf Slánský. More details for example see: Kaplan, *Zpráva o zavraždění*; Slušný, "Proces s Rudolfem Slánským (1952);" Kalous, "Proces s Vladimírem Clementisem (1952);" Schling, "Proces s Ottou Šlingem (1952);" Hanzlík, "Proces s Bedřichem Reicinem (1952);" Slánská, *Zpráva o mém muži*.

reforms being adopted, or to suppress opposition to the new regime.[8] The decision-making practice of the courts also had significant influence on the success of political trials. Although the people's democratic system became protected at the criminal level as late as by the aforementioned law, based on contemporary case law, the crime of high treason was also applicable to actions that individuals had allegedly committed before the Act itself came into effect. For example, as it results from the decision of the Supreme Court of March 1950, in the case of alleged collusion with a foreign power within the meaning of Section 1 (2) of Act No. 231/1948 Coll. on the Protection of the People's Democratic Republic, it did not matter whether the individual who had allegedly committed such an act had actually carried out any activity corresponding to the merits of the crime of high treason during the period when this Act was in force. Subsequently, to commit the crime of high treason, it was sufficient to meet merits of the act within the meaning of the provisions of Section 1, (1) and (2) of Act No. 231/1948 Coll., on the Protection of the People's Democratic Republic, while Act No. 50/1923 Coll.[9] still applied, which logically provided for no protection of the people's democratic system. Such an interpretation represents a flagrant violation of the principle *nullum crimen sine lege* stipulated in Article IV of Act No. 117/1852 Coll., on Crimes, Offences and Misdemeanours, as subsequently amended (effective as of August 1, 1950, in Section 12 of Act No. 86/1950 Coll., the Criminal Code).

Adapting interpretation of legal regulations in the way detailed above, or in the case of the need to achieve an extensive interpretation of certain legal norms and legal institutes, would probably be impossible without necessary personnel changes in the judiciary.[10] In this context, the crucial influence came from adopting Act No. 319/1948 Coll., on Opening Justice to the General Public, which widely introduced the institute of lay judges while staffing courts, in connection with Act No. 320/1948 Coll., on the Territorial Organization of Regional and District Courts. In this context it should be noted that this institute was not completely new to the legal system, or even to criminal proceedings, as lay judges were included, for example, in local people's courts pursuant to the Decree of the President of the Republic No. 16/1945 Coll., on the Punishment of Nazi Criminals, Traitors, and their Accomplices, and on Extraordinary People's Courts, or in Act No. 232/1946 Coll., on Jury Trials. The lay element in the judiciary was after all present also in pre-war Czechoslovak legal regulations, as we can point out, for example, the representation of the public in labour disputes pursuant to the provisions of Act No. 131/1931 Coll., on the Judiciary in Disputes arising from Employment, Service,

[8] Kaplan, Paleček, *Komunistický režim*, 37.

[9] "For the issue of guilt from the perspective of the crime under Section 1, (2) of Act No. 231/1948 Coll., it does not matter whether the defendant, after accomplishing a conspiratorial plot against the Republic, which occurred while Act No. 50/1923 Coll. was in effect and which represents a continuing offence, was also carried out while Act No. 231/1948 Coll. was in effect, for any specific activity that would be capable of endangering any of the legal assets specified in Section 1 (1) of this Act." Rozsudek Nejvyššího soudu ze dne 23. března 1950, sbírka soudních rozhodnutí a stanovisek Nejvyššího soudu v čísle vydání (svazku) 5. 6th year 1950, 228 (č. 156): Available Online: https://www.aspi.cz/products/lawText/4/200506/1/2 (accessed: 13.09.2025).

[10] Until February 1948, the Ministry of Justice was not in the hands of the Communist Party; until the coup, the Minister of Justice was Mr. Prokop Drtina, a member of the Czechoslovak National Socialist Party – for more details, for example, see: Koutek, "Říkali mu Pavel Svatý."

and Apprenticeship Relationships (Labour Courts Act), but also the participation of the public in criminal justice in proceedings pursuant to Act No. 48/1931 Coll., on Juvenile Criminal Justice, or the participation of lay judges at the State Court pursuant to Act No. 51/1923 Coll., on the Protection of the Republic, which decided on criminal offences pursuant to Act No. 50/1923 Coll., on the Protection of the Republic.

As mentioned above, Act No. 319/1948 Coll., on Opening Justice to the General Public, stood apart from the above-mentioned regulations as to the extraordinary large mass of lay judges. As for criminal proceedings, the competent courts were the district, regional, state, and supreme courts,[11] which decided upon cases, unless otherwise provided by law, in panels with a predominance of lay judges, namely in district courts and regional courts in the first instance in three-member panels, consisting of one professional judge and two lay judges, while in the case of appeal proceedings, the regional court decided in a five-member panel consisting of three lay judges and two professional judges.[12] The panels of the State and Supreme Court had five members, consisting of two professional judges and three lay judges,[13] unless the proceedings concerned appeals or extraordinary appeals before the Supreme Court pursuant to the provisions of Section 23 of Act No. 232/1948 Coll., on the State Court. Only a person who was – amongst other conditions[14]–reliable in terms of loyalty to the State and devoted to the idea of the people's democratic system could become a lay judge,[15] which was also reflected in the oath of the professional judges and lay judges according to Act No. 270/1948 Coll.[16] Due to the numerical superiority of lay judges over professional judges, the centre of gravity of decision-making was shifted in all instances.[17] The obvious intention of the Act on Opening Justice to the General Public was to exclude from decision-making, or possibly to override, professional and, from the perspective of the new regime, unreliable judges appointed before February 1948, in order to ensure the political correctness of decision--making, which was supposed to have the facade of legitimacy and legality.[18]

[11] Section 64 of Act No. 319/1948 Coll.

[12] Section 2 and Section 6 of Act No. 319/1948 Coll.

[13] Section 8 of Act No. 319/1948 Coll., and Section 21 of Act No. 232/1948 Coll.

[14] For example pursuant to Section 12 of Act No. 319/1948 Coll.: "Professional judges, actuaries (officials) of public prosecution offices, notaries public, attorneys-at-law, defence attorneys in criminal matters, and clergy may not be appointed as lay judges." Pursuant to Section 5 (2) of Act No. 232/1948 Coll., only a person "knowledgeable in the law" could become a lay judge, which condition was not defined in any way by the legal regulation. This vague legal concept could subsequently be interpreted as per the power apparatus' needs.

[15] Section 11 of Act No. 232/1948 Coll.

[16] Section 2 (1) of Act No. 270/1948 Coll.: "I swear on my honour and conscience that I will be faithful to the Czechoslovak Republic, its people's democratic system, its President and its Government, that, being bound only by the legal order of the people's democracy, I will observe the laws and regulations of the Czechoslovak Republic and interpret them in the spirit of the Constitution and the principles of the people's democratic system, I will make decisions impartially and to my best knowledge, I will not allow anything to distract me from the diligent and conscientious fulfillment of duties of the judicial office, and I will strictly observe official confidentiality and in all my actions I will always have in mind only the benefit of the Republic and its people. So I swear."

[17] For example, just in November 1949 71,180 lay judges were summoned to decision-making. Vorel, Šimánková, Babka, *Československá justice II*, 173.

[18] Vorel, Šimánková, Babka, *Československá justice I*, 334–5.

Another essential regulation for criminal proceedings was Act No. 232/1948 Coll., on the State Court. It established a special judicial body to deal with the most serious crimes against the people's democratic system, or more specifically, its competences included decisions on: "criminal acts under the Act of 6 October 1948, No. 231 Coll., on the Protection of the People's Democratic Republic; on crimes, if the law provides for capital punishment or sentence of imprisonment for more than ten years; on other crimes or misdemeanuors, if the public prosecutor (Section 12) proposes proceedings to be held by the State Court; however, if proceedings on the matter has already been initiated at a court otherwise having jurisdiction, such a proposal may only be filed until the court reaches the point of deciding on a judgment."[19] It was the very State Court that was entrusted with decision-making in, amongst other things, political trials in the first instance. The importance of this court for political leaders was also evident from the selection of professional judges for its staffing, while politically uncooperative judges were forced to leave.[20]

From February 1948 on, there was an apparent effort by the executive authorities, and by extension by the political secretariat of the Communist Party of Czechoslovakia, to interfere in criminal proceedings, which they significantly influenced, completely in breach of the applicable law, and such tendencies were fully demonstrated in political trials. We can hardly omit the significant influence on the legality of criminal proceedings and their procedure of the official arrival of Soviet advisors to the State Security, which was one of two independent components of the National Security Corps – the police forces of the Czechoslovak Republic.[21] This happened at the end of 1949 based on the invitation of leading representatives of the Czechoslovak Republic, the President, Klement Gottwald, and the Prime Minister, Rudolf Slánský.[22] One of the consequences of the activities of assigned Soviet advisors was the expansion of the existing range of illegal practices of the State Security Service while conducting criminal proceedings, including the method of preparing and "producing" political trials from the Soviet Union. Consequently, they reshaped its personnel composition, organization, concept, and methods along the lines of the Soviet model.[23]

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[19] Section 17.1 of the Act No. 232/1948 Coll.

[20] Vorel, Šimánková, Babka, *Československá justice I*, 16.

[21] Regulated in Act No. 286/1948 Coll. The State Security Service then represented the non-uniformed units of the National Security Corps, under the direct supervision of the Ministry of National Security. Janák, Hledíková, Dobeš, *Dějiny správy v českých zemích*, 568. For more details on the development of the State Security Service in the after-war era, see for example Soukup, "Počátky organizace státní bezpečnosti;" Kaplan, *Nebezpečná bezpečnost*; Žáček, Blažek, "Československo;" Kalous, "Státní bezpečnost."

[22] It should be added that international pressure from the Eastern Bloc countries, including the Soviet Union, to find an internal enemy also played a significant role in this case. In more details, for example, the letter from the Secretary General of the Hungarian Workers' Party and Prime Minister of the Hungarian People's Republic, Mr. Matyás Rákosi, to the President of the Czechoslovak Republic, Klement Gotwald, dated September 3, 1949, or conversations held between the Chief of the Czechoslovak State Security Service and the Secretary General of the Polish United Workers' Party and President of the Polish People's Republic, Mr. Bolesław Bierut, and others on September 7–8, 1949, see: Vorel, Šimánková, Babka, *Československá justice I*, 232.

[23] Kaplan, *Sovětští poradci v Československu*, 17–42. From the extensive literature on the issue of Soviet advisors and illegal investigative procedures, for example Kaplan, *StB o sobě*; Bárta, "My jsme rozhodnuti zneškodnit každého," 12–22; Bárta, Kalous, "Já ti dám komunistickou spravedlnost," 51–65; Kalous, "Ve

One of the most significant interventions of the executive branch into the judiciary in 1949 was without any doubts the prevention of activities of investigating judges at the State Court and district courts, i.e. criminal courts of the first instance, based on the instructions of an executive branch body. Specifically, in April 1949, investigating judges were "abolished" at the State Court based on the instruction from the Ministry of Justice, and in September of the same year, investigating judges were also "abolished" at district courts based on instruction from the Ministry of Justice. This fact was in direct contradiction, amongst other things, with the above mentioned Act on Opening the Justice to the General Public, which explicitly provided for the institute of an investigating judge.[24] As to the official justification: the decision was allegedly made due to the prolongation of investigation activities of investigating judges and the outdated nature of this institute; however, in this case it was merely a substitutive reason. Although the Minister of Justice, Mr. Alexej Čepička,[25] was aware of the illegality of such a procedure, he insisted that control over investigation cannot pertain to judicial authorities. Given that in some cases the investigative courts pointed out, for example, illegal investigations and illegal detentions, their further activities had to be stopped. In this context it should be noted that the institute of investigating judges could not be abolished by a sub-statutory regulation or even less so based on mere instruction, without amending the relevant law – the Criminal Procedure Code in its contemporary wording. However, based on the above mentioned instructions, the functions of investigating judges were actually not performed.[26]

This fact had a fundamental impact on the legality of conducting the preliminary proceedings, specifically the preliminary investigation, i.e. the part of the criminal proceedings until filing an indictment, which had to be mandatorily conducted, amongst other things, in the case of serious criminal activity, i.e. a crime "for which the law provides for capital punishment or a sentence of imprisonment for more than five years, and in proceedings against an absent person."[27] Due to this fact, the preliminary investigation could not even be conducted, because the investigating judge was its central figure (*dominus litis*), as they usually conducted the preliminary investigation personally and directly based on the principle of the search (inquisition) in order to identify the perpetrator of the crime, clarify the merits, and obtain evidence both in favour and against the perpetrator, and to this end they performed individual acts (or, as the case may be, through the court and security authorities, i.e. the National Security Corps, based on a request).[28]

Moreover, the absence of investigative judges at district courts and State Courts had negative impacts on the possibility of detaining persons suspected of committing a crime and their possible prosecution.

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službách sovětských poradců"" 78–83; Pulec, "Nezákonné vyšetřovací metody příslušníků": 149–167. See also documents in Vorel, Šimánková, Babka, *Československá justice I*, 334–5, 173–336, esp. 290–310.

[24] Pursuant to Section 19 of Act No. 232/1948 Coll.: "The Chairman of the State Court shall establish the necessary number of investigating judges from amongst professional judges serving at the State Court."

[25] For more details on this person, see Zítek, Pažout [*et al.*], *Lexikon*, 54–8.

[26] Vorel, Šimánková, Babka, *Československá justice I*, 177–80.

[27] Section 75 (1) of Act No. 319/1948 Coll.

[28] Section 96 of Act No. 119/1873 Coll.

An arrest warrant had to be issued against a person suspected of committing a crime punishable by a sentence of imprisonment for 10 years or capital punishment,[29] pursuant to the provisions of Sections 175 and 176 of Act No. 117/1852 Coll., on Crimes, Offences and Misdemeanours, as subsequently amended. Based on such an arrest warrant, the security authorities could then legally restrict – or deprive – a person of their personal freedom. Another possibility that came into consideration was the provisional detention of a person suspected of having committed a crime, where such a person could be prosecuted and detained by the security authorities (or judicial authorities not having jurisdiction in the matter), in the case of:

(a) pursuant to Section 175 No. 1, i.e. "if the perpetrator was caught in the act itself, or immediately after it, or with the weapon used in the act or other things resulting from the crime, etc."

(b) or pursuant to Section 175 Nos. 2, 3, and 4, i.e. "if the perpetrator was preparing to flee, or there was a risk of their fleeing due to the sentence severity, or if there was a risk that they would influence witnesses, experts, or accomplices with the aim of thwarting the clarification of the criminal offence, or if there was a risk that they would continue in the the criminal activity or complete the unfinished criminal offence, etc.," whereas in the case under letter (b) the cumulative condition – threat of danger due to default – had to be met.[30]

In the case of detention of a person suspected of committing a crime, based on the legal regulation of provisional detention, the person thus detained had to be immediately questioned by the authority that carried out the detention and, if the reasons for their detention had not ceased to exist, they had to be brought before the investigating judge within 48 hours,[31] who was to question the accused and, if necessary, decide on their detention, no later than within 24 hours, similarly as in the case where the person was detained on the basis of a written arrest warrant.[32]

If we take this legal regulation as a basis, it is clear that, due to the absence of investigating judges' activities, persons provisionally detained could not be taken into proper pre-trial detention, although in the case of the crime of high treason, or more precisely, in the case where it was possible to impose capital punishment or a sentence of imprisonment for 10 years for the committed crime according to criminal regulations, the order of pre-trial detention was mandatory. However, the law did not allow for replacement of the investigating judge's decision by the decision of another authority, whether judicial, executive, or legislative.[33] Persons detained and suspected of the most serious criminal activities, such as high treason, could therefore be temporarily detained, but they could no longer be legally placed in pre-trial detention, as the right to issue such detention decisions pertained to investigating judges at the State Court.[34] After the elapse of the above-mentioned three-day period, the accused would have to be released based

[29] Furthermore, for example, in the case when the perpetrator was caught in the very act of committing a crime or immediately after it, or there was a risk that the perpetrator would flee or influence witnesses or experts or continue in the criminal activity, see: Section 175 Act No. 117/1852 Coll.

[30] Section 177 of the Act No. 117/1852 Coll.

[31] Section 178 of the Act No. 117/1852 Coll.

[32] Section 179 of the Act No. 117/1852 Coll.

[33] Section 180 of the Act No. 117/1852 Coll.

[34] Section 17 of the Act No. 232/1948 Coll.

on the legal regulations, otherwise they would be unlawfully deprived of their personal liberty. Otherwise, we could hypothetically consider a situation that a member of the security forces themselves may have committed the crime of the unlawful restriction of personal liberty pursuant to the provisions of Section 93 of Act No. 117/1852 Coll., on Crimes, Offences and Misdemeanours, as subsequently amended.

This flagrant violation of criminal law was only eliminated as late as by the adoption of a comprehensive re-enactment of the criminal law, specifically Act No. 87/1950 Coll., on Criminal Proceedings (Criminal Procedure Code); effective as of 1 August 1950, which abolished the institute of the investigating judge, whose tasks (including supervising legality compliance) were assigned to a prosecutor – i.e. a public prosecution authority – according to the new Criminal Procedure Code.

As already stated above, the result of the legal biennial was, amongst other things, the adoption of new codes of substantive and procedural criminal law. In 1950, the aforementioned new Criminal Code No. 86/1950 Coll. was adopted, which was characterized by the abandonment of Central European legal culture and a shift towards the Soviet criminal law, which was reflected, for example, in the very concept of a crime, or rather in its substantive and formal concept, when in order to commit a crime, it was not enough to fulfil the formal elements of the criminal act, but it was necessary for the perpetrator's actions to be dangerous to society. The danger of the act to society was interpreted with regard to the purpose of the criminal law to protect the People's Democratic Republic, its socialist development, the interests of both the working people and other individuals, towards whom it was supposed to serve as an education to observe the principles of socialist coexistence. From this it is rather clear that the Criminal Code had a clearly class character. One of the positive points for the Criminal Code may be seen in the fact that it did not adopt the Soviet doctrine of analogy in the criminal law, i.e. analogy to the detriment of the offender. It is also important to emphasize the purpose of the punishment specified in the Criminal Code, which was, amongst other things, to neutralize enemies of the working people.[35]

Pursuant to the newly adopted Criminal Procedure Code, i.e. Act No. 87/1950 Coll., Criminal Procedure Code,[36] the prosecutor became a crucial figure in the preparatory proceedings. As mentioned above, th tasks of investigating judges were assigned to this public prosecution authority since the entry of this law into force.[37] In order to fulfil the assigned tasks, the prosecutor was to conduct the investigation, in accordance with the provisions

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[35] Cf. Filipovský, Tolar, Dolenský, *O obecné části trestního zákona* or Šimák, Dolenský, Pindryčová, *Trestní zákon*. To this Act, its drafting, and adoption, for example, see: Gřivna, "Trestní právo hmotné," 561–7; Bláhová [*et al.*], *Právnická dvouletka*, 195–220.

[36] For more details on this issue, see: Gřivnová, Gřivna, "Trestní právo procesní," 584–7; Bláhová [*et al.*], *Právnická dvouletka*, 221–50.

[37] "The task of the prosecutor and the court in criminal proceedings is to ensure that the laws of the People's Democratic Republic are observed and that they are applied in accordance with interests of the working people. The task of the military prosecutor and the military court is also to protect the combat capability of the armed forces and the discipline and order established therein, to empower the command's authority and thereby contribute to ensuring the defence of the homeland. The task of the prosecutor in criminal proceedings is mainly to hold preparatory proceedings, to ensure that perpetrators are punished fairly, and to ensure that the sentences imposed on them are enforced." Section 2.1 et 2.2 of Act No. 87/1950 Coll. For more details on the issue of the prosecution office development at this time, see: Vlček, "Vývoj prokuratury," 388–90; Lata, "Prokuratura;" Schelle, "Prokuratura socialistická," 634–42.

of Section 77 of Act No. 87/1950 Coll., Criminal Procedure Code, from the moment they learned about the crime until the moment when all the circumstances of the crime, i.e. whether a crime had occurred, who is its perpetrator, etc., are sufficiently established. From this point of view, the investigation held by the prosecutor was an optional stage of the preparatory proceedings,[38] since the crime could already have been sufficiently established at the moment the prosecutor learned of it.[39] It is certain, however, that in political trials, such as the trial against Ms. Milada Horáková or the Trial against the leadership of the anti-State conspiracy center headed by Mr. Rudolf Slánský, that the prosecutor did not hold an investigation at all (the prosecutor's office was not even informed of the alleged crimes), whereas the preparatory proceedings were entirely in the hands of the State Security Service and such criminal proceedings were not even subject to any legality control by the prosecutor within the meaning of Section 2.1 of Act No. 87/1950 Coll., Criminal Procedure Code.[40]

Hypothetically speaking, the absence of investigation, as an optional stage of the preliminary proceedings, may not have caused fatal consequences in relation to the legality of the criminal proceedings. However, the participation of prosecutor in other procedural acts was absolutely necessary, for example, if the accused was to be arrested,[41] which could have occurred on the basis of an arrest warrant issued by the court at the prosecutor's request.[42] If no arrest warrant was issued, the National Security Corps authorities could:

(a) make an arrest even without such warrant, provided that the accused was caught in the act or immediately afterwards during their pursuit, etc.;[43]

(b) detain the accused, provided that one of detention grounds existed[44] and there was a risk of default, and these two conditions must be met cumulatively.[45]

For example, regarding the "arrest" of Mr. Rudolf Slánský, which was supposed to take place on the night of November 23–24, 1951, we know from available archival materials that it occurred based on decision of the President of the Republic, Mr. Klement Gottwald, namely based on instructions, or rather after pressure, of representatives of

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[38] Pursuant to the provision of the Act No. 87/1950 Sb., on Criminal Procedure, all authorities and bodies were obliged to immediately notify the prosecutor of facts indicating that a crime had been committed.

[39] Dolenský [*et al.*], *Trestní řízení*, 174; Vorel, Šimánková, Babka, *Československá justice I*, 179.

[40] Vorel, Šimánková, Babka, *Československá justice I*, 187.

[41] The Criminal Procedure Code did not recognise any difference between "suspect" and "accused," or rather, it merely worked with one term: accused. Cf. e.g. Section 97.2 of Act No. 87/1950 Coll.: "The arrest warrant shall specify the crime of which the accused is suspected and the reason for the arrest. If the whereabouts of the accused are unknown, the arrest warrant shall also include a description of the accused."

[42] Section 97.1 of the Act No. 87/1950 Coll.

[43] Section 98 of the Act No. 87/1950 Coll.

[44] Section 96 of the Act No. 87/1950 Coll.: "If the accused is suspected of a criminal offence for which the law provides for capital punishment, life imprisonment, or temporary imprisonment, the lower limit of which is at least ten years; if there are facts justifying the concern that the accused would flee, in particular because their identity or place of residence cannot be immediately established, or because of the high sentence which they expect to be imposed; that they would influence witnesses or co-accused or that they would otherwise obstruct the clarification of facts relevant to the criminal proceedings, or that they would commit a crime they already committed again, or that they would commit a crime that they have attempted, or that they would commit a crime that they threatened to commit."

[45] Section 99 of the Act No. 87/1950 Coll.

the Soviet Union.[46] The arrest itself was carried out by the then Deputy Minister of National Security, Mr. Antonín Prchal[47], and a member of the State Security Service, Mr. Bohumil Doubek[48], and Mr. Slánský was transported to Ruzyně Prison, where he was interrogated. On November 24, the political secretariat of the Central Committee of the Communist Party of Czechoslovakia decided on approval of the arrest of Mr. Slánský and on labeling him a "traitor and imperialism agent."[49]

However, both in the case of arrest pursuant to the provisions of Section 98 and in the case of detention pursuant to the provisions of Section 99 of the Act No. 87/1950 Coll., Criminal Procedure Code, the mandatory procedure pursuant to the provisions of Section 100 of this Act should have been followed, i.e. the accused should have been questioned (immediately) and subsequently brought before the prosecutor, who should have decided on their release or detention, which did not happen in the case of Mr. Rudolf Slánský. We know from available documents that the accused in political trials were illegally restricted in their personal freedom without any decision on detention by prosecutor, or that such decision was made only several months after the "detention or arrest" (or the decision was issued by an authority that was not competent in the matter – the State Security Service itself). Although the Act No. 87/1950 Coll., similarly to the previous legislation, provided for mandatory pre-trial detention in cases where the perpetrator of a crime faced the threat of sentence of imprisonment for at least ten years or capital punishment, the decision on detention pertained to the prosecutor only and not to any other body or authority. The illegal procedure of the State Security Service in restricting the personal freedom of individuals can be further demonstrated in the case of Mr. Otto Fischl, who was tried and sentenced to death as an alleged member of the anti-State conspiracy center headed by Mr. Rudolf Slánský.[50] According to the case file, he was restricted in his personal freedom based on an arrest warrant dated June 29, 1951 issued by the Ministry of National Security, specifically Lieutenant Mr. Vojtěch Kozel from the State Security Service Command.[51] It is clear from this very fact, that the above-mentioned act – the arrest warrant – was not issued by the competent person, i.e. the chairman of the panel pursuant to Section 97.1 of the Act No. 87/1950 Coll., Criminal Procedure Code. At the same time, the prosecutor's application to issue an arrest warrant in the sense of the above-mentioned provision is absent from the personal file in question – the file contains only an application by Sergeant Mr. Jan Procházka, officer of Department 2014 of Sector 2, State Security Service Command, dated June 11, 1951, proposing the arrest of Mr. Otto Fischl and asking the State Security Service Command to decide on the arrest method.[52] According to the written material, Mr. Otto Fischl was

[46] Kaplan, Kosatík, *Gottwaldovi muži*, 102–3; Slánská, *Zpráva o mém muži*, 34–5. On the personage of Rudolf Slánský most recently Chadima, *Rudolf Slánský*.

[47] About his person e.g. Kalous [*et al.*], *Biografický slovník*, 151–3.

[48] About his person e.g. Blažek [*et al.*], "Tváře vyšetřovatelů," 69–70; and particularly Kaplan, *StB o sobě*.

[49] Kaplan, *K politickým procesům*, 105.

[50] For more details on this issue, for example, see: Byszowiec, "Proces s Vedením."

[51] ABS, fond MNB, sign. MNB–3, Fischl Otto, část 1. Osobní spis, 23, rozkaz k zatčení č. A-123-503-51 ze dne 29.06.1951.

[52] *Ibid*., 15–22.

finally arrested based on the report on arrest and personal search on June 30, 1951,[53] while the decision on detention was issued by the State Prosecutor's Office in Prague on November 22, 1951, almost five months after his arrest.[54] Furthermore, it should be noted that applications for detention and decisions on detention usually only contained limited justification regarding the need for detention.[55]

A typical way of the Communist Party's interference in criminal proceedings in the case of political trials, the most important ones in particular, was that the wording of the indictment was discussed in the political secretariat, which also reviewed its wordings,[56] before it was officially submitted to the court. For example, in the Trial against the leadership of anti-State conspiracy center headed by Mr. Rudolf Slánský, the initial version of the indictment, drafted by State Security Service officers under the guidance of Soviet advisors, was considered unconvincing and inconclusive, as the indictment was based solely on the defendants' testimonies.[57] This probably reflects the fact that Soviet advisors participated in the trial preparation, applying methods and procedures of Soviet production of political trials. In this regard, reference can also be made to Soviet jurisprudence, in particular the publication *The Theory of Judicial Evidence* by Mr. Andrei Vyshinsky, who, amongst other things, worked as a prosecutor during the so-called Moscow Trials. On one hand, this book criticizes bourgeois criminal law, which was allegedly considered confession of the accused as crucial evidence, while he considers such attitude incompatible with socialist legality and socialist criminal law, in particular, with the obligation to seek evidence both to the detriment and to the benefit of the accused. On the other hand, he states that in political trials, the statements of the accused necessarily take on the character and significance of the main, most important, and decisive evidence.[58] Due to dissatisfaction with the wording of the indictment, its revision was drafted, and its final text was then allegedly drafted by a commission composed of leading representatives of the political secretariat of the Central Committee of the Communist Party of Czechoslovakia based on its resolution.[59]

Similarly, in political trials, prosecutors,[60] or even defense lawyers for the accused,[61] were selected by the secretariat of the Central Committee of the Communist Party of Czechoslovakia. Furthermore, the political secretariat also approved the composition

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[53] *Ibid*., 38.

[54] *Ibid*., 42, rozhodnutí o vazbě č. j. 9 SPt-I-729/51/a ze dne 22.11.1951.

[55] *Ibid*., 41. For the context of detentions, compare, for example, the note criticizing shortcomings of applications for detention extension, filed in ABS, fond MNB, sign. MNB–100, Materiály z Ruzyně, část 6, Prodlužování vazeb 1955, 177–8.

[56] Vorel, Šimánková, Babka, *Československá justice I*, 17.

[57] Kaplan, *Kronika komunistického Československa*, 337.

[58] Cf. Višinskij, *Theorie soudních důkazů v sovětském právu*.

[59] Kaplan, *K politickým procesům*, 132.

[60] For example ABS, fond MNB, sign. MNB–100, Materiály z Ruzyně, část 7, Situační zprávy z vyšetřování případu Slánský, Návrhy na opatření dokumentačních materiálů – zpráva sekretariátu ministra národní bezpečnosti KM–30117 K/52 ze dne 29.7–8, 1952, s. 241. See: e.g. Kaplan, *K politickým procesům*, 128: "On August 27, 1952. – The political secretariat of the Central Committee of the Communist Party of Czechoslovakia discussed a proposal to appoint a chief prosecutor in the trial against Mr. Slánský [*et al.*]. It passed the proposal for the appointing of Mr. JUDr. Josef Urválek as the main prosecutor."

[61] Kaplan, *K politickým procesům*, 132.

of the State Court panel for the upcoming trial.[62] For example, in the case of the Trial against the leadership of anti-State conspiracy center headed by Mr. Rudolf Slánský, even the composition of the Supreme Court panel, which would have decided on any appeal filed by defendants was approved in advance.[63]

In the 1952 alone, more than 1,600 people were called before the State Court in Prague and were tried for the crime of high treason. Of this number, the vast majority of defendants were actually found guilty of this crime.[64] The negligible difference between the number of accused and convicted is striking at first glance. However, based on knowledge of methods applied by the State Security Service, forced confessions and political apparatus influences on the judiciary and other bodies, not only law enforcement bodies, are unfortunately no longer too surprising. The State Security Service, under the leadership of Soviet advisors, disregarded the legal framework and violated even the most basic regulations on protection of the accused. These violations were of such a nature that the very State Security Service members were actually committing criminal activities against these individuals, whether by restricting their personal freedom in violation of legal regulations or as a result of methods applied while enforcing their imprisonment and interrogation. The political secretariat of the Central Committee of the Communist Party of Czechoslovakia then, in contradiction with the then valid and effective legal regulations, interfered with the criminal proceedings, as it virtually also decided who would be kept alive and who would be sentenced to death. To prove this, let us state a few random decisions from January 1952: "January 3, 1952 – approved the request of the prosecution to propose capital punishment in the following cases: Mr. František Slepička, Mr. Alois Jaroš, Mr. Josef Prouza.[65] January 10, 1952 – approved the request of the prosecution to propose capital punishment in the following cases: Mr. Jan Hošek, Mr. Jaroslav Dvořák, Mr. Emanuel Rendl, Mr. Josef Liška, Mr. Petr Čížek.[66] January 23–25, 1952 – approved the request of the prosecution to propose capital punishment in the following cases: Mr. Rutkovský, Mr. Ertel, Mr, Dobrovský, Mr. Pavel Babík. January 23–25, 1952 – approved that the Prosecutor General Office should propose refusal of the appeal of Mr. Karel Strmiska, Mr. Josefa Kminka, Mr. Josef Macaj and propose the confirmation of the capital punishment."[67] Needless to say, these proposals were granted not only by the prosecution.

However, not all state authorities interventions into criminal proceedings had negative aim – that is, punishing the perpetrator or neutralizing the class enemy, as we know it from political trials. A lesser-known are interventions into criminal proceedings in the opposite sense, i.e. with the aim to mitigate or even to prevent the punishment of the perpetrator of a crime. The reasons leading various authorities to influence criminal proceedings in this way were of very varied nature. However, many cases involved persons

[62] *Ibid.*, 130: "October 29, 1952 – The political secretariat of the Central Committee of the Communist Party of Czechoslovakia approved the proposal for composition of the court panel in the Trial against the anti-State conspiracy center"…

[63] Kaplan, *K politickým procesům*, 133. More closely to the persons of prosecutors and judges Zítek, Pažout [*et al.*], *Lexikon*.

[64] Vorel, Šimánková, Babka, *Československá justice I*, 160.

[65] Kaplan, *K politickým procesům*, 112.

[66] *Ibid.*, 113.

[67] *Ibid.*, 115.

who were used or could be used by the State Security Service or other Czechoslovak security or intelligence services. The interventions concerned, for example, preventing their prosecution or punishment for their problematic activities during World War II or, conversely, for acts they committed after liberation in border regions, but also for acts they committed in connection with their work for the relevant security forces. It was also related to the fact that in order to create a "solid and thorough agent network," according to the opinion of the head department of internal intelligence, Mr. Štěpán Plaček, as presented at the meeting of the heads of the regional offices of the State Security Service in March 1948, it was necessary to use "compromised persons who can be immediately recruited and their activities can be subsequently monitored and controlled." However, the truth is the definition of "compromised persons" primarily meant those who were politically compromised from the perspective of the new regime – that is, members of non-communist parties.[68]

Let us present three examples of such cases. The first one concerns Mr. Rudolf Rokos, ex-member of the Revolutionary Guards in Liberec, whereas he used its members to form so-called Secret Police Section and later, based on assignment from the secretariat of the Communist Party of Czechoslovakia, so-called Political-Intelligence Section at the Ministry of the Interior. Pretending to be police officers they obviously committed criminal acts, including various repressions, property enrichment, as well as torture and even murder of the German population. Their activities were ended based on complaint from the local Red Army commander. Mr. Rokos was arrested along with some of his associates and criminal proceedings were initiated against him, focusing primarily on property crimes. He was arrested on August 16, 1945 in Liberec, from where he was transported to Prague. Shortly afterwards, however, he was released, probably based on intervention of the commander of Liberec Revolutionary Guard with the Minister of National Defense, Mr. Ludvík Svoboda, and criminal prosecution against him was discontinued in March 1946.[69] Second example is Mr. Miloš Cettl, who was a Gestapo informant and collaborator in the film industry during the Nazi occupation.[70] In May 1945 he fled to Italy. He was wanted for his wartime offenses from September 1, 1945, and an respective arrest warrant against him was issued on December 5, 1945. Although he was arrested and interrogated by the State Security Service on April 25, 1946, he was released on October 3. He was recruited by the security authorities around the middle of the same year to cooperate and, after his release, he was sent abroad, where he worked in Italy, Switzerland, Austria, Germany, and perhaps even Hungary. However, he was also active on Czechoslovak territory.[71] On April 22, 1947, a notice of offense against national honor was delivered to the Internal Security Department of the Central National Committee of the Capital City of Prague. The relevant Criminal Investigation Commission stopped the proceedings on October 20, 1948.[72] He did not suffer any punishment for his activities

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[68] Bílek, "Agenturní centrála Státní bezpečnosti," 139. With regard to the issue of recruiting cooperators see: e.g. Bílek, "Zavazuji se dobrovolně." With regard to the issue of the interesting fate of Mr. Štěpán Plaček – Kalous, *Štěpán Plaček*.

[69] Padevět, *Český bestiář*, 170–1. In more details – with references to sources archived in the Security Forces Archive – Ryklová, *Revoluční gardy*, particularly 61–3.

[70] For his activities during the occupation, see: Padevět, *Český bestiář*, 218–28.

[71] *Ibid.*, 228–30.

[72] *Ibid.*, 233.

during the occupation.[73] As part of his activities for the State Security Service, he probably repeatedly crossed borders illegally, while also transporting other people across them (whether faked or for real). As part of criminal proceedings, the State Prosecutor's Office in Prague became interested in him in summer 1949, which led to his arrest. However, the State Security Service Command informed the prosecution that it could not take action against him due to higher interests and recommended his exclusion from the upcoming trial by the prosecution. Subsequently, in December of the same year, his file got "lost" while being hold by the State Security Service and on January 30, 1950, the criminal proceedings against him were discontinued.[74] The third example is Mr. Kurt Wilfer, former Abwehr collaborator from the 1930s and a leading Sicherheitsdienst official in Prague during the occupation, running a successful informant network and working closely with the Gestapo, who was sentenced in the 1948 to merely 5 years in prison, in principle only for SD membership and not for specific retributive crimes. However, in May 1952, he was secretly detained by the State Security Service and recruited for cooperation under the threat that otherwise a criminal complaint would be filed against him for facts that not yet known during the retribution proceedings. He was used mainly amongst former members of the German security forces, including abroad. However, he was eventually sentenced to 10 years in prison on November 2, 1966, for his wartime actions, which were gradually coming to light, but in the 1971 was allowed to emigrate to the Federal Republic of Germany.[75]

However, there were also cases having an international dimension. One of such less known cases from 1950s is solution to criminal law implications of the repatriation of Czechoslovak citizens from Vietnam. They were members of the French Foreign Legion and got captured or defected to the Viet Minh during the Indochina War. During this war, over 2,000 Czechoslovak citizens served in the Foreign Legion, of whom more than 137 were captured or deserted.[76] Most of them left Czechoslovakia illegally after February 1948.[77] In addition to serving in a foreign army, many of them also faced punishment in Czechoslovakia for illegally crossing the state border.[78] The Vietnamese side commenced negotiations on repatriation in June 1950, negotiating with the Czechoslovak

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[73] Due to his collaboration he was merely banned from working in the film industry by decisions of the disciplinary board of the Union of Czech Film Workers in 1945 and 1946. *Ibid*., 229.

[74] *Ibid*., 231. He was eventually shot dead by a border patrol while attempting to cross the state border on January 23, 1951, when he tried to lead several people across the border not based on instructions of the State Security Service, but for a fee, see: *ibid*., 236–7.

[75] For more details on his fate and the fate of some members of his agency network, see: Státník, "Agenti nacistických bezpečnostních složek." For more details on other similar cases, see: Kalous, "Využívání agentů."

[76] So far the most accurate – but still only preliminary – data, which is based on materials archived in the Security Forces Archive and in Centre de documentation historique de la Légion étrangère Aubagne, were offered in Kudrna, *První vietnamská válka*, 41–2, 251–67 (list of Czechoslovak killed and dead during the First Vietnam War 1945–1954), 268–71 (list of Czechoslovak Deserters in 1949–1951(54)). See: e.g. Kudrna, *Bojovali a umírali*, 6, 213, 372–4; Kudrna, "Akce 'Vietnam'," 23. On the participation of Czechoslovak citizens in this war, in addition to the works of Mr. Ladislav Kudrna and sources cited therein, see: e.g. Plachý, "Vojáci 'špinavé války'," 81–4.

[77] Kudrna, *Bojovali a umírali*, 213; Kudrna, "Akce 'Vietnam'," 23; Kudrna, *První vietnamská válka*, 17, 29.

[78] For more details on the respective legal regulation see: Rychlík, "Překračování hranic a emigrace," 22–5.

authorities mainly through representative bodies in China. Similarly to negotiations with other people's democratic countries (Poland, Hungary, Romania, and East Germany), the Vietnamese government demanded benevolent treatment of repatriates, ideally without any punishment. Since the Vietnamese side wanted to use the case in propaganda with the aim to boost desertions from the Foreign Legion and its weakening. For implementation of repatriation, the Ministry of Foreign Affairs needed the approval of the Ministry of National Security, which was issued in individual specific cases.[79]

Between the 1951 and 1954, 31 former legionnaires of Czechoslovak origin were repatriated by Vietnam to Czechoslovakia in four transports.[80] Four citizens who arrived with the first transport in March 1951 were arrested, but on June 13, based on a decision by the Ministry of National Security, they were released, with the understanding that no criminal charges would be filed against them. They were only abused for propaganda purposes through a press conference.[81]

A total of 21 repatriates returned in their homeland with the second transport.[82] Upon arrival in April 1952, they were immediately imprisoned and subsequently an investigation was initiated against them for crimes of service in a foreign army and illegal departure from the Republic (Sections 102 and 95 of the Act No. 86/1950 Coll., Criminal Code). Although the investigation was concluded in November, the final decision on their fate was still postponed despite repeated requests from investigators. Due to international political importance, key decisions were not made through the normal procedure within the framework of criminal proceedings, but at the level of an inter-ministerial commission. However, the matter was not submitted to the political secretariat of the Central Committee of the Communist Party of Czechoslovakia, although this option was also considered. Representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of National Defense, the Ministry of National Security, as well as the President's Office participated in the complex political negotiations. During their course, the more moderate ideas of the Ministry of Foreign Affairs, which aimed to please the Vietnamese side and use the matter for propaganda purposes, clashed with the stricter view of the Ministry of National Security. At the same time, there was an effort to apply the same attitude towards repatriates as already implemented in the German Democratic Republic, Hungary, and Romania, where, however, repatriates were mostly released. The President of the Republic, Mr. Antonín Zápotocký, personally intervened in the negotiations at the request of some repatriates. Finally, the requests of the Vietnamese side for the release of repatriates prevailed.[83]

In April 1953, criminal charges were finally filed against the repatriates. However, law enforcement bodies proceeded based on the aforementioned political decision. In

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[79] Kudrna, *Bojovali a umírali*, 243–50.

[80] *Ibid*., 250. For more details on repatriation, see: 243–89; Kudrna, *První vietnamská válka*, 41, 272–4 (list of members of repatriation transports).

[81] ABS, fond MV-V, vyšetřovací spis a. č. V–190 MV, Poláček Jan a spol., akce "Vietnam;" Kudrna, *Bojovali a umírali*, 245–6; Kudrna, "Akce 'Vietnam'," 23–43, particularly 40–1; Kudrna, *První vietnamská válka*, 272–4 (list of members of repatriation transports), here 272; see: e.g. Kudrna, "Propagandistické využití," 184–8.

[82] For more details on this transport in particular, see: Kudrna, *Bojovali a umírali*, particularly 257–88; see: e.g. Kudrna, *První vietnamská válka*, 272–4 (list of members of repatriation transports), here 272–3.

[83] Kudrna, *Bojovali a umírali*, 258–60, 266–8, 273–8.

eight cases involving deserters, criminal proceedings were discontinued on the grounds that the danger of their actions to society was negligible.[84] In the case of Mr. Ervín Páleš, who after deserting from the Foreign Legion participated in the fighting as a member of the Vietnamese National Liberation Army, the senior military prosecutor did so on August 21, 1953. The senior military prosecutor stated that Mr. Páleš, by fighting for the other side "at least partially made up for the grave betrayal he committed against our people and against the people of our friend, the Vietnamese nation, through his activities in the French Foreign Legion."[85] It is a paradox, that service in one foreign army – ideologically correct one – became, in principle, a mitigating circumstance in the case of punishment for service in another foreign army – ideologically (but not factually or internationally legally) hostile one. The prosecution of seven other deserters, who did not participate in the fighting on the other side, was subsequently stopped by the senior military prosecutor based on the decision of the President of the Republic of September 19, 1953, by which he granted their request for pardon.[86]

In the end, only thirteen repatriates were convicted. On September 28, 1953, twelve of them were sentenced to imprisonment for thirteen months to two years and to payment of criminal proceedings costs for serving in a foreign army and, in part, for illegally leaving the Republic.[87] However, based on the amnesty of the President of the Republic of May 4, 1953, their sentences were reduced by one year and, by offsetting the time they served in custody, they were released.[88] The last one – Mr. Pavel Gubáni – who also committed desertion from the Czechoslovak army with a weapon, was sentenced in a separate trial on October 15, 1953, to three years' imprisonment. Even in his case the sentence was reduced, based on the amnesty, by one year, the time he served in custody was taken into account, and he was finally released on December 17, 1953, with a three-

[84] The fates of these Czechoslovak deserters were processed in particular, see: Kudrna, "Živí záviděli mrtvým," particularly 42–52; see: e.g. Kudrna, *Bojovali a umírali*. In this context, it is interesting that at some stages, prosecution was considered not for the act of serving in a foreign army, but for serving in an enemy army (Section 78 of the Criminal Code), cf. Archiv bezpečnostních složek, Sekretariát (ministra národní bezpečnosti) ministra vnitra, I. díl, Sekretariát ministerstva NB, sign. A 2/1 i.j. 1907, Repatriace z Vietnamu, zajatci z francouzské cizinecké legie, Osoby navrátivší se z Vietnamu (Informace pro soudruha náměstka ministra Baudyše – Repatriace z Vietnamu z 5. 2. 1952, č. S-7636/40 taj.–52), 2.

[85] ABS, fond MV–V, vyšetřovací spis a. č. V–190 MV, vyšetřovací spis a. č. V–1666 MV, Skupinový spis státněbezpečnostního vyšetřování proti Pavlu Gubánimu a společníkům, zastavení trestního stíhání Ervína Páleše ze dne 21.08.1953, s. 3; ABS, Sekretariát MV, I. díl, Kabinet ministra NB, sign. A 2/1 i.j. 1645, Navrátilci z Vietnamu, zajatci francouzské cizinecké legie, občané ČSR – trestní stíhání 1953, Osoby navrátivší se z Vietnamu – zpráva o výsledcích soudního řízení (návrh odpovědi ministra národní bezpečnosti na dotaz prezidenta republiky z 24.08.1953); Kudrna, *Bojovali a umírali*, 285. More details to his activities as member of Viet Minh in Kudrna, *Bojovali a umírali*, 160–3.

[86] ABS, fond MV–V, vyšetřovací spis a. č. V–190 MV, vyšetřovací spis a. č. V–1666 MV, Skupinový spis státněbezpečnostního vyšetřování proti Pavlu Gubánimu a společníkům, usnesení o zastavení trestního stíhání ze dne 26.07–081953; Kudrna, *Bojovali a umírali*, 285.

[87] ABS, fond MV–V, vyšetřovací spis a. č. V–190 MV, vyšetřovací spis a. č. V–1666 MV, Skupinový spis státněbezpečnostního vyšetřování proti Pavlu Gubánimu a společníkům, rozsudek Vyššího vojenského soudu Praha sp. zn. T 46/53 II z 28.07–081953; ABS, Sekretariát MV, I. díl, Kabinet ministra NB, sign. A 2/1 i.j. 1645, Navrátilci z Vietnamu, zajatci francouzské cizinecké legie, občané ČSR – trestní stíhání 1953, Osoby navrátivší se z Vietnamu – zpráva o výsledcích soudního řízení (návrh odpovědi ministra národní bezpečnosti na dotaz prezidenta republiky z 24.08.1953); Kudrna, *Bojovali a umírali*, 286.

[88] Kudrna, *Bojovali a umírali*, 287.

years probation.[89] A similar procedure was followed in the case of six other legionnaires who were repatriated to Czechoslovakia in two transports in 1953 and 1954, whereas Hungary showed interest with regard to two of them.[90]

Based on this we can follow, how in these cases the law enforcement bodies, namely the courts and the military prosecutor's office, failed to act independently, on the contrary, they acted completely in line with conclusions resulting from political negotiations between senior representatives of the State administration.

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[90] Shortly to fates of the repatriates from these transports in Kudrna, *Bojovali a umírali*, 248–9, 250; Kudrna, "Čechoslováci jako cizinečtí legionáři," 53; Kudrna, "Akce 'Vietnam'," 23, pozn. č. 4; Kudrna, *První vietnamská válka*, 272–4 (list of members of repatriation transports), here 273–4.

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