Metamorphoses of Czechoslovak Military Justice After World War II[1]

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Abstract:
The study examines the development of Czechoslovak military justice after 1945. The subject of the analysis is mainly the organisational structure of military prosecutors' offices and courts. The text discusses the issue of military justice in its broader sense. The subject of the analysis also includes other authorities that played an important role in the criminal proceedings regarding acts committed by military personnel. These concern the search activities of commanders and investigative activities of intelligence and security authorities in the context of pre-trial criminal proceedings. The article also deals with the issue of the development of the military prison system and the problem of crimes committed by members of the Soviet army on Czechoslovak territory after 1968. In the context of international criminal law, mention is also made of the activities of General Bohuslav Ečer, who significantly affected the character of the prosecution of Nazi war crimes between 1945 and 1948 and thus wrote one of the most important chapters of Czechoslovak military justice after World War II. In general methodological terms, the author describes the development of the organisational structure of military judicial bodies in the context of the political developments in Czechoslovakia, including legal developments, specifically in the field of substantive and procedural criminal law. The final part provides a general overview of the basic development tendencies following 1989 and the dissolution of the Czech and Slovak Federative Republic, set within the context of the current global security situation.

[1] The author personally presented the fundamental ideas of the present study at the international conference "Československá justice 1948–1989 jako pilíř režimu" ("Czechoslovak Justice 1948–1989 as a Pillar of the Regime"). The conference was held under the auspices of the Institute for the Study of Totalitarian Regimes on 14 October 2024 in the conference hall of the Senate of the Parliament of the Czech Republic and the paper was presented under the title "Vývoj vojenské justice v letech 1950–1989" ("The Development of Military Justice in the years 1950–1989"). However, the content of the topic has been deepened and specified more broadly in selected respects to meet the publication requirements of the journal *Legal History Studies*.

Keywords: military justice; military prosecutor's offices; military courts; field courts-martial; military criminal law; international criminal law; Nazi war crimes; Czechoslovakia

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1. Terminological Introduction

An analysis of the Czechoslovak military justice system from the early 1950s until the events of November 1989 requires the definition of some basic concepts. In the general understanding, the question of military and field court-martial justice often merges. The existence of military courts is linked to peacetime, when the exercise of jurisdiction over military persons or members of militarily organised corps (and exceptionally civilians) is firmly linked to a certain territorial district or circuit of the given judicial body. In contrast, the temporary system of field court-martial justice is characteristic for various states of threat to the external security of the state or during mobilisation, it especially applies during a state of war. The various levels of field courts-martial do not have fixed circuits, but exercise criminal jurisdiction in the area of military operations and adapt their locations to the actual course of the front between the units of the belligerents.[2] The reasons for this extraordinary procedure are obvious. Transportation of the accused, witnesses and evidence to the battlefield or directly to peacetime facilities for a permanent military court is not an option in a critical wartime environment because of its inefficiency and potential threat to the combat capability of front-line troops.

Moreover, military justice as such can be understood in a double sense. In narrower terms, such justice involves only military courts. In a broader sense, we also include military prosecution bodies, i.e., in the period under review, military prosecutor's offices. The question can also be structured in particular by defining the authorities carrying out investigative acts or acts in the sense of those preceding criminal proceedings themselves. Here we might include, for instance, activities that enabled the command authorities to collect documents for the filing of a criminal complaint, which became the initial act to carry out further criminal proceedings. The present paper is based on this broader concept, and within the group of military judicial authorities it includes investigators of military prosecutor's offices, investigators of military security and intelligence forces, and the searchers of military commanders. Applying this extensive approach is also supported by the construction of a socialist-type prosecutor's office, which was intensively reflected in the activities of military prosecutor's offices from the 1950s onwards.[3] In the socialist legal system, the military prosecutor was not only the prosecutor of criminal offences committed by military persons, but also the supervisory authority in their investigation, they guarded socialist legality in the armed forces and participated in the clarification of extraordinary events in

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2 STAZSKO, D. *Vojenské soudnictví po II. světové válce*. [Military judicial system after II. World war]. Brno, 2013. Thesis. Masaryk University, Faculty of Law, p. 8.

3 Until 1952, the prosecutor's office was under the Ministry of Justice. From 1953 it formed an independent department of the Czechoslovak state administration. See: ZÍTEK, A. – PAŽOUT, J. et al. *Lexikon nejvyšších představitelů československé justice a prokuratury v letech 1948–1989.* [Lexicon of the highest representatives of Czechoslovakian judicial system and prosecution in years 1948–1989]. Prague: Ústav pro stadium totalitních režimů, 2019, p. 8.

the Czechoslovak People's Army (abb. ČSLA). In the spirit of the communist regime, the military prosecutor's offices implemented the principles of the so-called socialist criminal policy, which was based on the ideas of Marxism-Leninism and the political line of the Communist Party of Czechoslovakia (abb. KSČ).[4]

Last but not least, it is not possible to ignore the fundamental question of what kinds of crime the Czechoslovak military justice system prosecuted. It was far from military crime in the narrow sense of the word, which is understood as an act that poses a threat to discipline and combat readiness in the armed forces. In this sense, typical objective elements (regardless of the specific legislation) might be desertion, self-imposed separation, violence against a superior, insubordination, or insult among soldiers. These were so-called military crimes by definition, in the narrow sense. However, the nature of the regime established after February 1948 meant that the prosecution of military persons very often concerned so-called anti-state crimes, which the socialist penal codes systematically classified as crimes against the republic. Moreover, the range of offences committed by members of the armed forces could also, in essence, contain factual elements of a crime. Very often these were property or economic crimes, crimes against life and health (murder, bodily harm), or directed against freedom and human dignity (e.g. rape).

The question of the development and importance of military (field) justice does not belong to the far past. This is not a useless antique of military or legal history. The critical security situation in Europe and the global world generates a permanent increase of the military and armed forces in most countries of the world. In this broad context, the military justice is an important tool for maintaining discipline and order in any army, regardless of the form of government in this or that country. For this reason, as well, it is necessary to recall the Czechoslovakian military justice in the form in which it operated since the end of World War II. till the middle of the 90s of the last century. Last, but not least, this is the military justice which is supposed to force law, justice and legality in the armed forces. Its absence in present Army of the Czech Republic has negative effects on other areas as well. It is precisely military justice, that is supposed to promote democratic values in an environment considered to be a little bit unfree.

2. The Development of Military Justice 1945 to 1950 in the Context of the International Situation

The starting point for reflecting on the nature of socialist military justice system is undoubtedly 31 December 1945. On this day the state of conscription[5] ended and the system of Czechoslovak field court-martial justice as it was shaped by the conditions of the Second Czechoslovak Resistance Movement finally ceased to exist. The transformation of the system of field court-martial justice created a two-tier system, with the courts of the "First Bench" acting in the first tier, while the second tier was represented by the Supreme Military Court together with the General Military Prosecutor's Office. It was not until 1 January

4 PICHLER, A. Obecná východiska trestní politiky v ozbrojených silách. [General principles of criminal policy in armed forces]. *Vojenská prokuratura: bulletin Hlavní vojenské prokuratury*. [Military prosecution: Bulletin of Main military prosecution office]. 1982, Vol. 24, No. 5, p. 35.

5 Vládní vyhláška ze dne 11. prosince 1945 o ukončení stavu branné pohotovosti státu č. 162/1945 Sb. [Government Decree of 11 December 1945 on ending the state of conscription No. 162/1945 Coll.].

1948 that a system of three instances was established. The regional military courts became first instance courts. In the respective countries, the higher military courts acted as second instance bodies. In the third and highest instance, the Supreme Military Court then ruled. All three instances formed a separate judicial system.[6]

The development of military justice in the transitional period from 1945 to 1948 is inextricably linked with the professional activities of the General of the Judicial Service, Prof. JUDr. Bohuslav Ečer (1893–1954). It is beyond the scope of the present study to describe the entire professional life of this important figure in Czechoslovak international and criminal law. Bohuslav Ečer, as a participant in the Second Czechoslovak Resistance Movement, was instrumental in punishing Nazi crimes against peace and crimes against humanity. His name is associated with the formulation of the most important provisions of the Charter of the International Military Tribunal.[7] The creation of this extraordinary judicial institution was sanctioned by the London Conference of the "four powers", held from June to August 1945. Bohuslav Ečer introduced three principles into the text of the charter, which can be described as its basic provisions. First and foremost, he sought to punish membership in state terrorist organisations, which included the SS (Schutzstaffel), the SA (Sturmabteilung) and the Gestapo. Bohuslav Ečer considered these Nazi organisations to be criminal entities. Their membership was based on the legal fact of voluntary entry, and their members could not, therefore, absolve themselves of the crimes they committed by claiming that they were merely carrying out the orders of their superiors. In other words, membership in these organisations became a crime in itself, the defense of arguing on the orders of a superior was ineffective for these criminals and they were to be punished according to the principles of collective criminal responsibility.[8] Ečera's historical contribution also consisted in formulating the criminality of preparing and starting a war of aggression and in a precise definition of the objective elements of war crimes and crimes against humanity.

In May 1945, the Czechoslovak government bestowed on Bohuslav Ečer the rank of colonel of the judicial service and in February of the following year the rank of general of the same service. He became a member of the Czechoslovak Armed Forces in active service with special tasks and service credentials. He can be described (with mild exaggeration) as a Nazi "hunter" because he was the head of the Czechoslovak search service in the territory of occupied Germany. The main aim of its work was to track down and bring back to the Czechoslovak Republic (abb. ČSR)[9] for the purposes of legal proceedings all Nazi criminals who had committed war crimes there during World War II. Bohuslav Ečer's "biggest catch" was none other than the former State Secretary of the Office of the Reich Protector in the Protectorate of Bohemia and Moravia, SS-Obergruppenführer

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6 SCHELLEOVÁ, I. – SCHELLE, K. et al. *Soudnictví: historie, současnost a perspektivy.* [Judicial system: history, present and future]. Praha: EUROLEX BOHEMIA, s. r. o., 2004, p. 169.

7 STRAKA, K. Generál justiční služby prof. JUDr. Bohuslav Ečer. [General of judicial service prof. JUDr. Bohuslav Ečer]. In: Kol. *100 let právní služby.* [100 years of law service]. Praha: Ministry of Defence & the Armed Forces of the Czech Republic – Military History Institute Prague, 2018, p. 21.

8 EČER, B. *Právo v boji s nacismem*. [Law in battle with Nazism]. Brno: Knihovna Zář. Knižnice politické výchovy, 1946, p. 51.

9 This name was used for the common state of the Czechs and Slovaks from 1918 to 1938 and from 1945 to 1960.

and Police General Karl Herman Frank. Frank was tracked down in American custody in Wiesbaden, Germany. At the end of May 1945, Karl Herman Frank initially believed that as a political prisoner of the United States government he would not be tried in Czechoslovakia and thus his life would be spared.[10] Thanks to the work and legal argumentation of Bohuslav Ečer, however, Frank was eventually extradited to Czechoslovakia, where he was brought before the extraordinary people's court in Prague and, following the pronouncement of the death sentence, executed.[11]

As a top specialist in the field of international criminal law, Bohuslav Ečer headed the Czechoslovak delegation to the International Military Tribunal in Nuremberg for two years. His official assignment in summary was as Envoy Extraordinary and Minister Plenipotentiary, Czechoslovak Delegate to the United Nations War Crimes Commission of Inquiry and chairman of the Czechoslovak delegation to the trial of the main German war criminals at Nuremberg. Bohuslav Ečer participated in the formulation of the prosecution and always defended the interests of Czechoslovakia in punishing Nazi war crimes. Czechoslovakia, like other new states in Europe after the First World War, was liberal towards the Germans and initially took a too lenient attitude towards Nazi crimes. Therefore, the Czechoslovak government in London prepared a draft decree on the punishment of Nazi criminals.[12] Bohuslav Ečer understood well aware that setting these statutory standards would have an retroactive effect that would be otherwise inadmissible. It concerned allowing exceptions to the principles of *nullum crimen sine lege* and *nulla poena sine lege*, principles that had been achieved by liberal revolutions against tyrannical autocrats. This special procedure justified in peacetime the unimaginable scale of Nazi war crimes masked by legal norms. Through their crimes, criminal legislation and illegal administration, the Nazis had established a state of *vacuum juris* that allowed the retroactive and effective use of retributive legislation.[13] Bohuslav Ečer took the position that strict adherence to these legal principles would make it completely impossible to prosecute Nazi criminals and thus in its consequences amounted to a denial of all justice.

In addition to Karel Hermann Frank, Bohuslav Ečer personally interrogated other former top Nazi leaders. These were Reichsmarschall Hermann Göring, Field Marshal Wilhelm Keitel, former Minister of Foreign Affairs Joachim von Ribbentrop and the first Nazi to serve as Reich Protector in Bohemia and Moravia, Konstantin von Neurath. It was mainly to Ečer's credit that the Nuremberg verdict described the occupation of Czechoslovakia as having been prepared long before the Munich Agreement was negotiated. According to the findings of the Nuremberg court, Munich was only one stage of the conquest of the First Czechoslovak Republic, which culminated on 15 March 1939.[14] In 1947, Bohuslav Ečer became a member of the fifteen-member bench of judges of the International Court

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10 EČER, B. *Jak jsem je stíhal*. [As I was prosecuting]. Praha: Naše vojsko 1946, pp. 186–187.

11 DUDÁŠ, M. *Bohuslav Ečer: český lovec nacistů.* [Bohuslav Ečer: Czech Nazi hunter]. Praha: Academia, 2019, p. 104.

12 Dekret presidenta republiky o potrestání nacistických zločinců, zrádců a jejich pomahačů a o mimořádných lidových soudech č. 16/1945 Sb. [Decree of the President of the Republic on the Punishment of Nazi Criminals, Traitors and their Abettors and on Extraordinary People's Courts No. 16/1945 Coll.].

13 EČER, B. *Vývoj a základy mezinárodního práva trestního*. [Development and basis of international criminal law]. Praha: Právnické knihkupectví a nakladatelství V. Linhart, 1948, pp. 132–133.

14 EČER, B. *Norimberský soud*. [Nuremberg trial]. Praha: Orbis, 1946, pp. 325–326.

of Justice in The Hague. After February 1948, however, he lost all his posts, was forced to return to communist Czechoslovakia and was persecuted. He was prevented from teaching at the Faculty of Law in Brno and only his sudden death due to multiple myocardial infarctions saved him from arrest and investigation by State Security (abb. StB). Bohuslav Ečer was to become one of the central figures in the fabricated trial of former Social Democratic Party officials in Brno. His connections in the West, his activities during the war and his activities with international judicial institutions became the basis for the fabricated accusation.

The repression of Ečerś person can serve as a clue to further questions. The class nature of the justice system and the repression of the founding period of the Czechoslovak communist regime also corresponded with the existence of the State Court, which acted as a special court from 24 October 1948 until 31 December 1952, on the basis of the Law for the Protection of the People's Democratic Republic. For persons subject to military jurisdiction, a military chamber and a military division of the State Prosecutor's Office were established. Acting as an officer of this special prosecutor's body was, among others, Lieutenant Colonel JUDr. Karel Vaš (1916–2012), the main architect of the judicial murder of Divisional General Heliodor Píka (1897–1949).[15] If criminal proceedings were conducted exclusively against a military person, the President and two members of the Chamber had to be military judges, and two soldiers were also appointed as judges of the people.[16] The issue of military jurisdiction was also reflected in the activities of the State Court in another way. In the case of criminal proceedings regarding the external security of the state, the member of the chamber was a military judge. Furthermore, if there was even one military person among the accused in a joint criminal proceeding before the State Court, the presiding judge or a member of the bench had to be a military judge and the people's judge had to be another military person.

The development of military justice after 1950 was profoundly affected by the so-called legal biennium (1949–1950). This was a political and legal campaign of the regime after the February coup d'état which aimed at issuing new codes for all the main branches of the Czechoslovak legal system. It was intended to put legal relations in a people's democratic society on a new footing and thus bring them into line with the notions of hegemony of the communist elite of the time. In terms of military justice, the old Austrian-Hungarian Military Criminal Code on Crimes and Offences No. 19/1855, Reich Law Gazette and the Austrian-Hungarian Military Criminal Code No. 131/1912, Reich Law Gazette, thus expired. From the point of view of substantive and procedural criminal law, uniform regulations without state exceptions, i.e. identical codes for civil criminal courts and military judicial authorities, began to apply to all Czechoslovak citizens.[17] Thus, on 1 August 1950,

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15 PALEČEK, P. (ed.). *Justiční vraždy a mučení: vojenská rozvědka a justice o sobě.* [Judicial murder and torture: military intelligence and judicial system on themselves]. Brno: Amerfo, o. p. s. in cooperation with the Moravian Museum, 2020, pp. 192–193.

16 Ust. § 21 odst. 2 zákona ze dne 6. října 1948 o státním soudu č. 232/1948 Sb. [Reg. § 21 (2) of the Act of 6 October 1948 on the State Court No. 232/1948 Coll.].

17 POLÁŠEK, Z. Vývoj předpisů o vyšetřování na úseku vojenské justice. [Development of regulation of investigation in section of military judicial system]. *Praxe vojenských vyšetřovatelů a prokurátorský dozor nad vyšetřováním.* [Practice of military investigators and prosecutors' supervision over its investigation]. 1961, Vol. 3, No. 9, p. 18.

the Criminal Code No. 86/1950 Coll.,and Code of Criminal Procedure No. 87/1950 Coll., came into force. The provisional organisation of the military justice system was regulated by the new Code of Criminal Procedure, specifically in its sections 302 to 317. The aforementioned provisions contained the basics of the organisation not only of military courts but also of military prosecutor's offices and included such innovations of socialist justice as the institution of judges from the people and the conditions of military justice.

3. Search as a "Pre-Trial" Stage of Criminal Proceedings?

The question of searching for the crimes of military persons is connected with the legislation of the 1950s and with the concept of military justice in a broader sense, i.e. not only in terms of the activities of military courts and prosecutor's offices. According to the contemporary concept, military prosecutors had to cooperate with commanders in fulfilling their mutual duties. Therefore, by order of the Minister of Defence, the institution of searchers was established. Their task became the detection and investigation of crimes committed by members of the military and cooperation with the military prosecutor in criminal proceedings. The question of determining the ratio of searchers to commanders and military prosecutors was dealt with in the internal Ministry of National Defence (abb. MNO) Directive for Searchers (Pom-práv-1) of 1953.[18] The framework was created by the provisions of Section 76 of the Code of Criminal Procedure, according to which searches concerning criminal offences committed by members of the security forces could be carried out by their superior or other authorised body. All military commanders had to ensure that crimes committed by subordinate units were correctly identified and properly assessed on the basis of the evidence gathered. For this purpose the commander designated from among their subordinates capable and competent officers, whom they personally appointed in the appropriate order. The appointed searchers had to have both the required professional erudition and political reliability, as understood at the time.

Individual search operations included a variety of criminal procedural activities, in particular interviewing witnesses, requesting expert reports, securing physical evidence, inspecting a crime scene, conducting searches of homes and persons, conducting "confrontations"[19] and, last but not least, interviewing suspects. The searcher could also order the seizure of postal items destined for a suspect. They then consulted with the relevant military prosecutor and coordinated with them the procedural activities. The searcher filled out official reports on the actions carried out. Upon completion of a search, the searcher presented all materials to the commander and briefed them on the final report. These documents could reveal that suspicions were false and that there was no wrongful conduct. If, however, the case was related to a disciplinary offence, the commander dealt with the matter themselves. In the case of reasonable suspicion of a crime having been committed,

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18 Vojenský ústřední archiv – Správní archiv Armády ČR (VUA – SA AČR) Olomouc. [Central military archive – Administration archive of CZ Army Olomouc]. Archiv ČSLA, inv. jednotka 4924. Služební pomůcky Československé armády. Směrnice pro vyhledavatele (Pom-práv-1). Praha: Ministry of National Defence, [Archives of ČSLA, inv. unit 4924. Service aids of Czechoslovakian army. Ordinance for search officers]. 1953.

19 A confrontation in criminal proceedings is considered to be a means of gathering evidence where two testifying persons are brought face to face. The purpose of this act is to verify the veracity of their respective statements.

criminal proceedings were continued. The searcher then prepared a criminal complaint based on the commander's instructions. The notification was sent to the relevant junior military prosecutor by the commander themselves, who also signed it. In terms of context, it can be concluded that the function of searchers replaced to some extent the activities of the investigators of military prosecutor's offices, who held an important place in the criminal process only after 1957 (except for investigations of the most serious crimes against the Republic). This fact was also reflected by internal army regulations.[20] However, the legislation allowed for the initiation of criminal proceedings by the commander or their designated searcher, particularly in a procedural situation where the military prosecutor's offices had not yet initiated an investigation.[21]

4. Investigations Under the Responsibility of Military Intelligence and the Security Authorities

In the broader concept of military justice, the author also includes the issue of military security and the intelligence agencies, which played an important role in criminal proceedings for crimes committed by military persons throughout the period 1948 to 1989. This is a very broad issue, which exceeds the aim and focus of the present paper.[22] If we focus on illegalities in criminal proceedings against military persons, it was here that the most favourable conditions for violating the law prevailed after 1945. And this is also relevant to the context of "socialist" legality distorted by the era. It was the military investigating authorities who acted in the "pre-trial" or figuratively understood "non-procedural" stage of the criminal proceedings, i.e. in particular until the filing of the criminal complaint. The roots of this system can be found in the so-called General Svoboda's Army (officially the 1st Czechoslovak Army Corps in the USSR) between 1944 and 1945. It was here that the bodies of the Defence Intelligence Service (abb. OBZ) were established under the leadership of the infamous Lieutenant Bedřich Reicin, under the obvious supervision of the Soviet NKVD (People's Commissariat for Internal Affairs).[23] On 1 April 1946, the DIS was transformed into the 5th Division of the MNO Headquarters. In effect, it was merely a terminological change to give the public the impression that the OBZ, which was still notorious for numerous illegalities after May 1945, had been dissolved.

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20 VUA – SA AČR Olomouc. Archives of the ČSLA, [Archive of ČSLA]. inv. unit 4923. Příručka pro vyšetřovatele ozbrojených sil (Práv-51-1). Praha: Generální prokuratura – Hlavní vojenská prokuratura, [Handbook for investigators of armed forces (Práv-51-1). Prague: General prosecutions office – Main military prosecution office], 1958, pp. 8–9.

21 VUA – SA AČR Olomouc. Library of the ČSLA, inv. unit 678. Vyhledávání a vyšetřování trestných činů v Československé lidové armádě (Práv-1-3). Praha: Ministerstvo národní obrany, [Search and investigation of criminal acts in Czechoslovakian people's army (Práv-1-3). Prague: Ministry of national defence]. 1965, pp. 12–13.

22 The author of this text defended his dissertation on this topic at the Faculty of Law of Charles University in Prague entitled *Výšetřování protistátní trestné činnosti příslušníků československé armády v letech 1948 až 1989.* [Investigation of anti-state criminal activites of member of Czechoslovakian army in years 1948 till 1989]. (manuscript closed on 31 May 2018). Selected fragments of the present text are (loosely) based on his work.

23 HANZLÍK, F. *Vojenské obranné zpravodajství v zápasu o politickou moc 1945–1950.* [Military defence intelligence in fight for political power 1945–1950]. Praha: Office for the Documentation and Investigation of the Crimes of Communism, 2003, p. 20.

Another transformation took place on 15 August 1950, when the Main Information Administration (abb. HIS) of the MNO was established under the leadership of Reicin's successor, General Josef Musil. Following the revelation of the first wave of illegalities, HIS MNO was transformed into the Military Intelligence Command, which became part of the Ministry of National Security on 1 April 1951. The last major organisational change took place in September 1953, when the Main Administration of Military Counterintelligence (abb. HS VKR) was established as part of the Ministry of the Interior (MV) and the StB. Police activities in the field of military counterintelligence were placed under the 6th Administration of the MV.[24] A partial reform of criminal procedural law in 1957 became a certain insurance against violations of legality in the military intelligence service,[25] the synonym of which was the so-called "Domeček", or "Little House" (a prison – or rather torture chamber – of the OBZ and HIS in Prague's Hradčany).

With the new Code of Criminal Procedure, prosecutorial supervision in pre-trial criminal proceedings and other guarantees of socialist legality were strengthened. However, only on 1 February 1964 were the StB Investigations Administration and the StB Investigations Department established in VKR. Between 1974 and 1990, the StB Investigations Department at VKR gained a relatively high degree of procedural independence[26] and showed a greater degree of professionalism compared to the 1950s. Systemic violence in investigations could no longer be applied under the conditions of normalisation, and an increasing number of VKR investigators received legal or at least law-oriented education (the National Security Corps College had been functioning since 1974). The VKR, however, remained a political police force seeking to exercise counterintelligence control over the armed forces, particularly countering the penetration of what was perceived at the time as ideological division.

5. Changes in the Organisation of Military Prosecutor's Offices and Courts

On 1 August 1950, the system of regional and higher military courts ceased to exist. Only the foundation of the Supreme Military Court in Prague was preserved from the original system. Military jurisdiction continued to be exercised by lower military courts, higher military courts and the Supreme Military Court. In field court-martial proceedings, the existence of lower and higher courts-martial was assumed. Lower and higher military

[24] ŽÁČEK, P. – BLAŽEK, P. Československo. [Czechoslovakia]. In: PERSAK, K. – KAMIŃSKI, Ł. – ŽÁČEK, P. – BLAŽEK, P. Čekisté: orgány státní bezpečnosti v evropských zemích sovětského bloku 1944–1989. [Chekist's: body of state security in European nations of soviet block 1944–1989]. Praha: Academia, 2019, p. 287.

[25] BURSÍK, T. – PAŽOUT, J. Odbojové, opoziční a nonkonformní aktivity v komunistickém Československu a jejich trestněprávní postihy – základní charakteristika. [Resistance, opposition and nonconform activities in communist Czechoslovakia and their criminal punishments]. In: BURSÍK, T. – PAŽOUT, J. (eds.) – PORTMANN, K. – VILÍMEK, T. *Třídní (ne)spravedlnost: proměny politicky motivované trestněprávní perzekuce v Československu v letech 1948–1989*. [Class (in)justice: changes of politically motivated criminal persecution in Czechoslovakia between 1948–1989]. Praha: Ústav pro studium totalitních režimů, 2020, p. 16.

[26] This is evident, for instance, from the Statute of the 3rd Administration of the National Security Corps – Military Counterintelligence from 6 April 1983, where StS investigators in the MCI are explicitly named alongside "ordinary" members of the VKR [online]. [cit. 2024-11-03]. Retrieved: https:// https://www.ustrcr.cz/data/pdf/rozkazy/orstb71-89/vkr_9_1983.pdf.

courts were established and abolished, and their seats and circuits, as well as the seat of the Supreme Military Court, were determined by the President of the Republic as Commander-in-Chief of the Armed Forces.[27] The Supreme Military Court exercised jurisdiction over the entire territory of the Czechoslovak Socialist Republic, with all lower and higher military courts falling under its jurisdiction, and it also supervised all field courts-martial in the event of a state of war. In the corresponding seats of the military courts of this three-instance system, the lower ones were active, along with the higher military prosecutors and the General Military Prosecutor. The Higher Military Court in Prague was established in January 1951 in connection with the establishment there of them First Military District.[28] In the same year, the Second Military District in Trenčín was established, where a higher military court was also established. This fact conveniently demonstrates the connection between the local organisation of military justice and the current dislocation of troops. With effect from 1 January 1953, the competences of the abolished Supreme Military Court were taken over by the Military Collegium of the Supreme Court of the CSSR.[29] As early as 1 April 1952, the General Military Prosecutor was replaced by the Chief Military Prosecutor as one of the Deputy General Prosecutors of Czechoslovakia.

From 1952 and 1953, the military justice system became less and less clear, which was connected with the search for an optimal functional model. From 1 January 1952, special military courts were designated for members of the Border Guard (abb. PS),[30] the Internal Guard (abb. VS) and the National Security Corps (abb. SNB). The SNB was further divided into the aforementioned StB and the criminal-public order service Public Security (abb. VB). The system of military courts for members of the security forces consisted of a higher military court and prosecutor's office in Prague together with lower military courts and prosecutor's offices in Pilsen, Prague, Brno and Bratislava. With the exception of Pilsen, there were two separate courts in the case of lower military courts, one for members of the SNB and the other for members of the PS and StB. Moreover, after 1952, we can observe the characteristics of double dualism within military justice. In the first sense, there were courts for members of the Czechoslovak People's Army (the name of the army after 1954, abbreviated as ČSLA)[31] and for members of other security forces. In the second sense, dualism was manifest in the operation of military courts not only according to territorial structure, but also according to membership in a particular military chain of command. In addition, some lower military courts and prosecutor's offices operated in relation only to certain infantry, mechanised or tank divisions. This unclear system resulted, for example,

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27 Ust. §§ 302 a 303 zákona ze dne 12. července 1950 o trestním řízení soudním (trestní řád) č. 87/1950 Sb. [Reg. §§ 302 and 303 of the Act of 12 July 1950 on Criminal Procedure (Code of Criminal Procedure) No. 87/1950 Coll.].

28 FIEDLER, J. *Lexikon ČSLA: svazy a svazky*. [Lexicon ČSLA: unions and folders]. Praha: Euromedia Group, 2020, p. 194.

29 Ust. § 22 zákona ze dne 30. října 1952 o organisaci soudů č. 66/1952 Sb. [Reg. § 22 of the Act of 30 October 1952 on the Organisation of Courts No. 66/1952 Coll.].

30 Ust. § 2 zákona ze dne 11. července 1951 o ochraně státních hranic č. 69/1951 Sb. [Reg. § 2 of the Act of 11 July 1951 on the Protection of State Borders No. 69/1951 Coll.].

31 BÍLEK, J. – LÁNÍK, J. – MINAŘÍK, P. – POVOLNÝ, D. – ŠACH, J. *Československá lidová armáda v koaličních vazbách Varšavské smlouvy: květen 1955 – srpen 1968*. [Czechoslovakian people's army in coalition ties of Warsaw treaty: May 1955 – April 1968]. Praha: Ministerstvo obrany České republiky, 2008, p. 17.

in a situation in which there were a total of five (!) different military courts and prosecutor's offices at the Brno garrison.

A major departure from the illegality of the founding period of the ČSLA regime took place on 1 January 1957, which significantly influenced the normal official activities of Czechoslovak military justice. The new Code of Criminal Procedure came into effect, according to which the investigation of crimes committed by military persons was carried out not only by investigators of the VKR, but also by the aforementioned investigators of the military prosecutor's office.[32] This was a reaction to the 1956 national conference of the Communist Party, which concerned the observance of so-called socialist legality by the SNB, the prosecutor's office and the courts. The principal idea of the new Code of Criminal Procedure was to strengthen prosecutorial supervision in pre-trial criminal proceedings, to ensure that the principle of presumption of innocence was observed, to emphasise the educational aspect of the activities of law enforcement agencies, and to ensure their work was subject mutual review.[33] The investigators of the military prosecutor's offices were recruited from the ranks of military prosecutors, and their sole task became the investigation of crimes and the implementation of the necessary evidence in accordance with the Code of Criminal Procedure. The procedural work of an investigator from the prosecutor's office became subject to scrutiny[34] by the competent military prosecutor.[35]

Gradually, the competence of investigators of the military prosecutor's office was extended to the investigation of suicides, attempted suicides and other violent deaths of soldiers, as well as to all cases in which the death of a person was caused by the criminal act of a person subject to the jurisdiction of military courts.[36] The new procedural measures led to a gradual increase in the standard of investigations, especially in terms of speed and the administrative standard of the documentation. The investigators of the military prosecutor's office significantly promoted the evidential completeness of case files, the persuasiveness of the entire criminal proceedings, and thus the fairness of the military courts' decisions. The significant shift of investigated cases to military prosecutors occurred on a wider scale especially after 1960.[37] The investigation segment was established in this

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32 Ust. § 172 odst. 1 zákona ze dne 19. prosince 1956 o trestním řízení soudním (trestní řád) č. 64/1956 Sb. [Reg. § 172 (1) of the Act on Criminal Procedure (Code of Criminal Procedure) No. 64/1956 Coll.].

33 GŘIVNOVÁ, P. – GŘIVNA, T. Trestní právo procesní. [Criminal procedural law]. In: BOBEK, M. – MOLEK, P. – ŠIMÍČEK, V. (eds.). *Komunistické právo v Československu: kapitoly z dějin bezpráví*. [Communist law in Czechoslovakia: chapters from history of injustice]. Brno: Mezinárodní politologický ústav, Masarykova univerzita, 2009, p. 587.

34 The fact that officers who had attained a university degree in law were already serving as investigators in military prosecutor's offices was a favourable prerequisite for conducting background checks. See: NOVÁK, Karel. Dozor vojenského prokurátora nad vyšetřováním prováděným vyšetřovateli vojenské prokuratury. *Praxe vojenských vyšetřovatelů a prokurátorský dozor nad vyšetřováním*, 1961, Vol. 3, No. 9, p. 30.

35 Ust. §§ 30 až 32 zákona o prokuratuře č. 65/1956 Sb. [Reg. §§ 30 to 32 of the Prosecutor's Office Act No. 65/1956 Coll.].

36 VUA – SA AČR Olomouc. Archives of the ČSLA, inv. unit 2068. Směrnice pro vyšetřování trestných činů v Československé lidové armádě (Sm-práv-2). Praha: Ministerstvo národní obrany, [Ordinance for investigation of criminal acts in Czechoslovakian people's army (Sm-práv-2). Prague: Ministry of national defence]. 1962, pp. 4–5.

37 SAMEK, J. Pět let vyšetřovatelského aparátu vojenské prokuratury. [Five years of investigation apparatus of military prosecution]. *Praxe vojenských vyšetřovatelů a prokurátorský dozor nad vyšetřováním.*

form in the organisation of the Czechoslovak military prosecutor's offices until 1989, and was not significantly influenced by changes in the regulation of substantive criminal and procedural law.

Permanent re-dislocation changes in the distribution of ČSLA units and brigades naturally forced continuous changes in the organisational structure of the military judicial bodies. On 1 January 1959, military courts and prosecutor's offices were again partially reorganised. A Higher Military Court in Tábor was established and two military circuit courts exempted from the Higher Military Court in Prague fell under its subordination. On 30 September 1960, the Higher Military Courts in Prague and Košice were abolished and on 1 October of the same year, the Higher Military Court in Příbram and the lower military circuit court in Prešov were established. In the large and traditional military garrisons of Prague and Brno, where multiple military district courts were located, the existing courts marked with the Arabic numeral "1" had jurisdiction for ground troops and the Arabic numeral "2" had new unit jurisdiction for air defence units of the states (abb. PVO). These elite military units, which guarded the airspace of the Czechoslovak agglomerations, included units of the air force, anti-aircraft missile artillery, and anti-aircraft barrel artillery. As of 1 September 1961, a separate 7th Army PVO was also constituted, whereas it was a mixed operational union of air defense units of the state and air forces.[38] Already in the autumn of 1960, the Prague Higher Military Court and the military circuit courts in Prague and Brno were set aside for these elite units. These new arrangements applied by analogy to the organisation of military prosecutor's offices.

These detailed adjustments to the organisation of military justice were of course carried out within a constitutional framework. The Constitution of the Czechoslovak Socialist Republic (abb. ČSSR)[39] effective from July 1960 stated that the judiciary was administered by elected and independent courts, which included the Supreme Court, regional and district courts, military courts and local people's courts. The appointment of military courts was carried out in accordance with special regulations. Military court panels consisted of judges performing judicial activities as their profession and judges functionally active outside their employment. But they were equal in their decision-making.[40] At the beginning of July 1961, a new law on the organisation of courts came into force.[41] Military circuit courts and higher military courts formed an integral part of the judicial system. The military circuit court or higher military court was always composed of a chief, deputy and other judges. Military courts could also naturally adjudicate in chambers. The chambers of the military circuit courts were composed of a professional judge and two ordinary judges. The chambers of the higher military courts consisted of a professional judge and two judges when the higher military court ruled as a court of first instance. If it ruled as a court of second instance, it consisted of three professional judges and two ordinary judges. In other cases,

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[Practice of military investigators and prosecutors' supervision over its investigation]. 1961, Vol. 3, No. 9, pp. 3–4.

38 FIEDLER, J. Lexikon ČSLA: svazy a svazky. [Lexicon ČSLA: unions and folders]. p. 204.

39 This name was used for the joint state of Czechs and Slovaks from 1960 to 1989.

40 Články 98 až 100 ústavního zákona č. 100/1960 Sb., Ústava Československé socialistické republiky (Articles 98 to 100 of the Constitutional Act No. 100/1960 Coll., Constitution of the Czechoslovak Socialist Republic).

41 Zákon o organizaci soudů č. 62/1961 Sb. [Act on the Organisation of Courts No. 62/1961 Coll.].

the chamber of the higher military court comprised three professional judges. The chief of a military court could preside over any of its judicial chambers. This functionary continued to monitor the decision-making of all the chambers of the military court and was tasked with unifying case law. Last but not least, the chief organised and directed the work of the military court. The chief was also supposed to take care of the professional and political education of subordinate judges and other judicial staff. The chief of the higher military court then arranged for the supervision of the higher military court on the judicial activities of the subordinate circuit courts.[42]

The system of Czechoslovak military justice was also influenced by other fundamental changes in the regulation of criminal law after 1 January 1962. From the substantive point of view, Act No. 140/1961 Coll., i.e. the new Criminal Code, came into force. Chapter I (Offences Against the Republic) and Chapter XII (Military Offences) were of particular importance for the exercise of military jurisdiction under the conditions of authoritarian socialism during the Novotný presidency. The procedural acts of the military justice bodies were then fundamentally influenced by the new Act No. 141/1961 Coll., on Criminal Procedure of the Judicial Code (Code of Criminal Procedure). The CSPA, as a dynamic social system, also underwent other re-dislocations that, from 1 February 1966, forced a fundamental revision of the entire system of military courts and prosecutor's offices, namely its first and second instances. After this date, military circuit courts in České Budějovice, Hradec Králové, Brno, Olomouc, Bratislava and Prešov became the courts of first instance. Two higher military courts in Příbram and Trenčín judged over them in the second instance. Of course, there were also the respective military prosecutor's offices at both levels.

In 1965, a new law on prosecutor's offices came into force, which survived the events of November 1989.[43] According to it, the Chief Military Prosecutor's Office was declared part of the General Prosecutor's Office of the ČSSR. The seats, circuits and powers of higher military prosecutor's offices and military district prosecutor's offices were determined by the Attorney General of the ČSSR in agreement with the Minister of National Defence. The Chief Military Prosecutor directed the activities of the Chief Military Prosecutor's Office and, through higher military prosecutors and military circuit prosecutors, the activities of higher military prosecutor's offices and military circuit prosecutor's offices.[44] As early as the second half of the 1950s, the prosecutor's office regulations imposed on all military prosecutors the duty to maintain contact with the commanders of military units and other armed forces in their circuits and to assist them in establishing military discipline, order, the combat capability of the armed forces, and indivisible command authority. At the working meetings which higher military prosecutors regularly convened, they also invited the relevant chief of the higher military court and sometimes also the commanders

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42 SCHELLE, K. – BÍLÝ, J. *Dějiny českého soudnictví*. [History of Czech judicial system]. Praha: WOLTERS KLUWER ČR, a. s., 2018, pp. 379–380.

43 Zákon o prokuratuře č. 60/1956 Sb. [Act No. 60/1965 Coll. on Public Prosecutor's Offices].

44 PLUNDR, O. *Organizace justice a prokuratury*. [Organization of judicial system and prosecution]. Praha: Orbis, 1964, p. 139.

of the individual parts of the armed forces.[45] During conscription by the state, the law provided for the existence of higher and lower field court-martial prosecutor's offices.[46]

The only tangible result of the Prague Spring reforms of 1968/69 can be considered the creation of a federal form for Czechoslovakia on 1 January 1969.[47] All the subsequent regulations of the seats of military courts and prosecutor's offices respected this federal division of the state. On 1 January 1970, the system of military judicial bodies was established in the form that characterised the entire period of normalisation ending in November 1989. In this respect, the system continued to apply according to which the President of Czechoslovakia established and abolished military courts and determined their jurisdiction.[48] This was subject to the specific territorial circuit, affiliation to a part of the armed forces (a specific unit), and also the functional classification of the military person.

While maintaining the three-instance judicial system, the Military Collegium of the Supreme Court (abb. NS) of the ČSSR and the Chief Military Prosecutor's Office operated at its apex. In addition to the Military Collegium, the Supreme Court of the ČSSR also had civil and criminal collegia. The positions of presidents of the collegia were held by the deputy presidents of the NS ČSSR. The Military Collegium of the NS ČSSR primarily took positions on the correct interpretation of laws and other legislation. The Military Collegium obtained its opinion on the appropriate interpretation of laws and regulations by analysing and evaluating the decision-making activities of subordinate military courts. Members of all the collegia of the NS ČSSR had the right to attend the meetings of the collegia of the Supreme Courts of both republics, to participate in the deliberations of the regional courts and the higher military courts, and to familiarise themselves with various analytical materials related to the decision-making activities of the courts. The Military Collegium then used the knowledge obtained to take a position. In particular, the Military Collegium monitored the activities of all lower military courts for the purpose of the general supervision of decision-making.

The President of the Military Collegium represented the President of the NS ČSSR in all military matters. The President was also obliged to prepare reports on the activities of the Military Collegium for the plenary of the NS ČSSR. The President of the Military Collegium organised and directed all its activities, which concerned primarily its analytical activities. The President also monitored the decision-making activities of the chambers of the Military Collegium, suggested to their members generalisations from the decisions of the military courts, and drew attention to deficiencies in decision-making practice.

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45 ŠTAJGR, F. – PLUNDR, O. *Organisace justice a prokuratury*. [Organisation of judicial system and prosecution]. Praha: Orbis, 1957, p. 173.

46 Ust. § 30 odst. 1 zákona č. 60/1965 Sb., poslední věta. [Reg. § 30 (1) of Act No. 60/1965 Coll., last sentence].

47 Ústavní zákon ze dne 27. října 1968 o československé federaci č. 143/1968 Sb. [Constitutional Act of 27 October 1968 on the Czechoslovak Federation No. 143/1968 Coll.].

48 Until 1 May 1992, military courts were established on the basis of the order of the President of the CSSR of 3 January 1966 (!) on abolishing existing military courts and establishing new ones. Supplements to this order were also later issued on 7 March 1969 and 28 January 1970. The President's authorisation was based on Act No. 36/1964 Coll., on the organisation of courts and the election of judges (Zákon č. 36/1964 Sb., o organizaci soudů a volbách soudců). On this see: OŽĎAN, P. *Vojenská justice v České republice*. [Military judicial system in Czech Republic]. Praha, 2018. Rigorous thesis. Charles University, Faculty of Law, p. 22.

Members of the Military Collegium also prepared reports on the activities of the collegium, which they addressed to the President. They also prepared reports on the effectiveness of laws and other legal regulations and documents for reports on the state of socialist legality in the field of military justice, which were submitted in summary form to the plenum of the NS ČSSR. Members of the Military Collegium of the ČSSR also gave suggestions for the drafting of new legislation and selected decisions that were subsequently published in the *Sbírka soudních rozhodnutí a stanovisek* (Collection of Judicial Decisions and Opinions).[49]

Under the Military Collegium of the NS ČSSR and the Chief Military Prosecutor's Office, there were then three higher military courts and prosecutors' offices in Příbram, Tábor and Trenčín. In the first instance, a total of ten military circuit courts and prosecutor's offices carried out official activities (Prague, Hradec Králové, Plzeň, České Budějovice, Litoměřice, Brno, Olomouc, Bratislava, Prešov and Bánská Bystrica). Military circuit courts in the Czech Socialist Republic were subject to higher military courts in Příbram and Tábor. The military courts in the Slovak Socialist Republic were subsequently placed under the Higher Military Court in Trenčín. In the Czech part of the federation, it mainly concerned combat units of the so-called Czechoslovak Front within the so-called Western Military District. In the Slovak half of the federation, it was primarily the rear-guard units of education, logistics and other services.

Higher military courts acted fundamentally as courts of first and second instance. Generally, the jurisdiction of these courts was determined at first instance by the nature and higher seriousness of the offences committed, and also by the specificity of the function in which the military person committed the offence. In the first instance, higher military courts also decided on selected crimes committed by civilians. As courts of second instance, they decided on ordinary appeals brought against the decisions of military circuit courts. Military circuit courts generally tried misdemeanours and offences committed by persons subject to the jurisdiction of the military courts, with the exception of those offences which in the first instance fell within the jurisdiction of the higher military courts. If the degree of danger to society of specified offences was low[50] and disciplinary action could also be expected to be sufficient, the military circuit court could leave the matter to the competent commander or chief to exercise disciplinary action. That was the end of the criminal proceedings.

The above rules were modified by the so-called unit principle. This principle modified the territorial principle in particular in that tank and motorised artillery divisions, plus heavy artillery brigades, were subject to certain specialised military courts and prosecutor's offices. The unit principle was based on the assumption that dealing with the offences committed by certain units exhibits a similar *modus operandi* and is thus related professionally, personally and locally. Thus, the military circuit court in Prague had priority jurisdiction over the 311th Heavy Artillery Brigade and the 1st Tank Division. The military circuit court Bratislava then made a priority case for the 13th Tank Division. Prior to the territorial principle, the principle based on personal jurisdiction was also applied in preference to the territorial principle. Specifically, the higher military courts in Příbram

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49 PLUNDR, O. – HLAVSA, P. *Organizace justice a prokuratury: 5. podstatně přepracované a doplněné vydání*. [Organization of judicial system and prosecution]. Praha: Panorama, 1987, pp. 93–94.

50 This was a joint and later a special provision on criminal liability in Section 294 of Act No. 140/1961 Coll., the Criminal Code (ustanovení paragrafu 294 zákona č. 140/1961 Sb., trestní zákon).

and Tábor were competent for the commanders of ČSLA regiments, their subordinate officers and their superiors. Similarly, the Higher Military Court in Trenčín was designated for chiefs of administrations and independent departments of the Federal Ministry of the Interior (abb. FMV),[51] chiefs of regional administrations of the FMV, chiefs of administrations of the PS, their deputies, commanders of Civil Defence (abb. CO) battalions, and all their superiors.

The powers and competences of military courts as federal courts were stabilized in the second half of the 1980s. These were judicial bodies, exclusively criminal, under whose jurisdiction were soldiers on active service, members of the militarily organised and other corps as provided for by law, if they were on active service. Last but not least, members of the Corps of Correctional Education (abb. SNV) were subject to Czechoslovak military courts. Persons who became members of the armed forces after being called up for special service, persons designated to perform personal acts for the needs of the armed forces and, last but not least, prisoners of war were also subject to military courts. The party army of the ČSLA, which can be considered the People's Militia, was not subject to military courts.[52] Exceptionally, civilians could also be subject to the jurisdiction of military courts[53] if they had committed certain crimes related to the military or the external security of the state. These were the crimes of wartime treason, service in a foreign army, refusal to serve in the armed forces, espionage, endangering state secrets, endangering state secrets to the detriment of the status of the world socialist system, and if they endangered an important interest of the defence of the homeland.

The Administration of Military Courts (abb. SVS) of the Ministry of National Defence (abb. MNO) or the Federal Ministry of National Defence (abb. FMNO) of the ČSSR played an vital role in normalisation. It was an independent and autonomous unit of the FMNO, headed by the Deputy Minister of the MNO ČSSR. The defence of the republic as a whole belonged to the exclusive competence of the ČSSR. Therefore, the administration of justice in relation to military courts as federal authorities was entrusted to the FMNO. The Federal Minister of National Defence exercised the administration of the judiciary in relation to military courts to the extent exercised by the Ministers of Justice of the individual republics vis-à-vis republic courts. The Federal Minister of National Defence was also entitled to lodge a complaint for violation of the law in relation to final decisions of military courts and the Chamber of the Military Collegium of the Supreme Court of the ČSSR. This could have happened in a situation where, in the course of the administration of justice (in particular in the course of carrying out background checks), the Minister found that the legal conditions allowed and justified this procedure. The Minister of National Defence of the ČSSR was also responsible for the administration of the Military Collegium of the

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51 In connection with the adoption of the law on the establishment of the Czechoslovak federation, major organisational changes occurred in the Ministry of the Interior and its subordinate security forces. On 1 January 1969, the transformation of the MI into the FMI began. On the same date and for the same state-law reasons, the Federal Ministry of National Defence was established.

52 PLUNDR, O. – HLAVSA, P. *Organizace justice a prokuratury: 5. podstatně přepracované a doplněné vydání*. [Organization of judicial system and prosecution]. pp. 88–89.

53 Úplné znění zákona o trestním řízení soudním (trestní řád), jak vyplývá z pozdějších zákonných změn a doplňků č. 148/1973 Sb. [Act on Criminal Procedure (Code of Criminal Procedure) – full text of the Act as resulting from subsequent statutory amendments and supplements No. 148/1973 Coll.].

Supreme Court of the ČSSR and exercised it through the President of the Military Collegium in agreement with the President of the Supreme Court of the ČSSR.[54]

The Chief of the SVS acted as the military superior of all soldiers in the administration and all soldiers in the military justice system, including the Military Collegium of the Supreme Court. This possibility arose from the fact that the Minister of National Defence could assign some of their administrative executive powers to the Chief of the SVS. The Chief of the SVS also modified the rules of procedure for military courts by their own instructions. They last did so in 1975.[55] Two generals, sixteen officers, two enlistees and four civilian employees worked at the SVS MNO ČSSR.[56] In terms of the organisation of the work of the SVS, there were general, control, and information divisions. The scope of work included judicial administration in a broad sense, dealing with financial issues, judicial statistics, unifying case law and dealing with related professional issues. In relation to these administrative functions, all subordinate military courts were then divided into administrative and professional divisions, i.e. judicial departments and court offices. The largest higher military court was the one in Příbram, with one General, twenty officers and twelve civilian employees. The military circuit court in Prague had a similar position at the first level, with a total of nine officers and thirteen civilian employees.[57] The ČSLA command had also prepared tables for lower and higher field courts-martial courts during the normalisation period, in case of war. To the lower field court-martial, it was planned to assign five officers, one warrant officer, and five enlistees. In the higher field court-martial there was one General, six officers, one warrant officer and five enlistees.

6. What Has Not Been Mentioned, but Is Interrelated …

The issue of the exercise of Czechoslovak military jurisdiction between 1968 and 1991 is closely linked to the question of the so-called Soviet agenda. In simple terms, it relates to criminal activity of members of the Central Group of Soviet Forces (abb. SSkSV), which was stationed in the ČSSR and the Czech and Slovak Federative Republic (abb. ČSFR)[58] after 21 August 1968. Questions of criminal jurisdiction were summarised in the ninth article of the Treaty on the Conditions of the Temporary Stay of Soviet Troops on the

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54 PLUNDR, O. – HLAVSA, P. *Organizace justice a prokuratury: 5. podstatně přepracované a doplněné vydání*. [Organization of judicial system and prosecution]. p. 120.

55 Instruction No. 2/1975 Coll. of 25 July 1975 of the Chief of the SVS of the Federal Ministry of National Defence (Instrukce č. 2/1975 Sb. ze dne 25. července 1975 náčelníka SVS federálního ministerstva národní obrany) was repealed on the basis of the provisions of Article 44 of Decree No. 389/1992 Coll. of the Federal Ministry of Defence on the Rules of Procedure for Military Circuit and Higher Military Courts (Ust. § 44 vyhlášky federálního ministerstva obrany o jednacím řádu pro vojenské obvodové a vyšší vojenské soudy č. 389/1992 Sb.).

56 TROJÁNEK, J. *Vojenské soudnictví 1945–1989*. [Military judicial system 1945–1989]. Brno, 2011/2012. Bachelor thesis. Masaryk University, Faculty of Law, pp. 26–27.

57 STAZSKO, D. *Vojenské soudnictví po II. světové válce*. [Military judicial system after II. World war]. p. 48.

58 This was the name of the joint federal state of Czechs and Slovaks from 1990 to 1992 under the Constitutional Act of 20 April 1990 on the name change of the Czechoslovak Federal Republic No. 101/1990 Coll. (Ústavní zákon o změně názvu Československé federativní republiky č. 101/1990 Sb.).

Territory of the ČSSR of 16 October 1968.[59] The Czechoslovak legal system, courts, prosecutor's office or other competent authorities were all applied to proceedings concerning criminal offences committed by persons belonging to Soviet troops and members of their families. Crimes committed by Soviet soldiers were investigated by the Czechoslovak Military Prosecutor's Office and dealt with according to the original legislation by the authorities of the Czechoslovak military justice system. In contrast, Soviet military courts, prosecutor's offices, and other authorities conducted criminal proceedings against persons assigned to the SSkSV and their family members in situations where the commission of crimes was directed against the USSR or where members of Soviet troops committed crimes in the performance of their official duties on the premises of permanent Soviet garrisons. The judicial authorities of both parties could assume jurisdiction upon request, and such requests were to be considered "benignly". This procedural situation was connected with the question of mutual legal assistance in matters concerning the temporary stay of Soviet troops and which naturally also concerned criminal matters. This issue was covered by a special intergovernmental agreement of 7 February 1969.[60]

In the course of 1969, the Czechoslovak military courts dealt with criminal offences committed by Soviet soldiers on a fairly regular basis. These included, for instance, the consequences of traffic accidents caused by them or the unauthorised use of a weapon during the dramatic August days of the previous year. The Soviet side initially had no serious objections to this procedure. However, there were numerous procedural delays in the proceedings due to disparities between Czechoslovak and Soviet law, the need for interpreters, or the provision of Soviet witnesses. In the end, the Czechoslovak Military Prosecutor's Office acquired a specific role within the so-called "Soviet agenda". This was a series of crimes committed by Soviet soldiers on the territory of Czechoslovakia against Czechoslovak interests or individual citizens. The Czechoslovak Military Prosecutor's Office conducted an investigation into these matters without bringing charges before the Czechoslovak Military Court. In the 1980s, the Czechoslovak investigators of prosecutor's offices carried out acts in close cooperation with the Soviet military prosecutors' authorities, exclusively at the circuit level.[61] A criminal case was subsequently handed over to an authority of the Soviet Military Prosecutor's Office, which only informed the

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59 Vyhláška ministerstva zahraničních věcí o Smlouvě mezi vládou Československé socialistické republiky a vládou Svazu sovětských socialistických republik o podmínkách dočasného pobytu sovětských vojsk na území Československé socialistické republiky č. 11/1969 Sb. [Decree of the Ministry of Foreign Affairs on the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Union of Soviet Socialist Republics on the conditions of the temporary stay of Soviet troops on the territory of the Czechoslovak Socialist Republic No. 11/1969 Coll.].

60 Vyhláška ministra zahraničních věcí o Dohodě mezi vládou Československé socialistické republiky a vládou Svazu sovětských socialistických republik o poskytování vzájemné právní pomoci ve věcech spojených s dočasným pobytem sovětských vojsk na území Československé socialistické republiky č. 20/1969 Sb. [Decree of the Ministry of Foreign Affairs of 22 February 1969 on the Agreement between the Government of the Czechoslovak Socialist Republic and the Government of the Union of Soviet Socialist Republics on the provision of mutual legal assistance in matters connected with the temporary stay of Soviet troops on the territory of the Czechoslovak Socialist Republic No. 20/1969 Coll.].

61 ŽIŽKA, P. (2024, September 17). *Trestná činnost příslušníků sovětských vojsk v jurisdikci Vojenské obvodové prokuratury Olomouc za rok 1988.* [Criminal activity of members of soviet armies in jurisdiction of military circuit prosecution office of Olomouc in year 1988]. [Paper presented at the conference Armed Forces and the Czechoslovak State]. University of Defence, Brno.

Czechoslovak side about how the case had been procedurally settled.[62] For this reason, for example, in 1989 no charges were brought before a Czechoslovak military court against a soldier belonging to the SSkSV.[63]

The question of the development of Czechoslovak military justice is also linked to the question of military prisons. In general, after World War II, military penal institutions and military prisons were part of the military justice system. Military penal institutions were used for the execution of prison sentences longer than one year. In the case of military prisons, these were for shorter sentences or the execution of remand and provisional detention. After 1945, military prison facilities were under the control of the First Division of the Fourth (Legal) Department of the MNO. After 1 January 1948, military prisons became part of regional military courts at the headquarters of brigade and division headquarters. A military penal institution was then located in Mírov until the end of September 1949. It is worth mentioning in this context the most dramatic period of the post-February 1948 purges in the army, when the city of Opava can be considered the centre of the Czechoslovak military prison system. On 1 October 1949, after the re-organisation of the military prison system, the only central penal institution in Czechoslovakia was established there, with a capacity of up to six hundred inmates.[64] In October and November of the following year, 1950, about one hundred and fifty military veterans of the first and second Czechoslovak resistance were concentrated here, serving prison sentences, some of them for life, as part of the communist repression. External security was provided by officers and soldiers on active service, while the actual guarding of prisoners was provided by members of the Prison Guard Corps.

From the autumn of 1950, the military prison system was managed by the prosecutor's and prison departments of the Main Judicial Administration of the MNO.[65] Military detention centres were subordinated to lower military prosecutors who served in lower military courts. Already on 1 August of the same year, three military disciplinary companies were established in Mimoň, Město Libavá and Lešt', which fell directly under the command of the military areas. At the end of 1952, the Opava military penal institution and all other military prisons were abolished. The basis for this procedure was an agreement between the Ministry of National Defence and the Ministry of National Security. From 1953, the execution of punishment of military persons for military offences was concentrated in disciplinary and correctional companies and battalions. Thus, only the execution of detention in the case of less serious crimes in garrison prisons under the control of the

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62 LATA, J. Prokuratura. [The Prosecutor's offices]. In: BOBEK, M. – MOLEK, P. – ŠIMÍČEK, V. (eds.). In: *Komunistické právo v Československu: kapitoly z dějin bezpráví*. [Communist law in Czechoslovakia: chapters from history of injustice]. Brno: Mezinárodní politologický ústav, Masarykova univerzita, 2009, p. 886.

63 TOMEK, P. – PEJČOCH, I. *Černá kniha sovětské okupace: sovětská armáda v Československu a její oběti 1968-1991*. [Black book of soviet occupation: soviet army in Czechoslovakia and its victims 1968–1991]. Cheb: Svět křídel, 2018, p. 23.

64 JANÁK, D. *Kapitoly o československém vězeňství 1945–1955: historické souvislosti, právní základy a politické aspekty*. [Chapters on Czechoslovakian penitentiary system 1945–1955: historical context, basis of law and political aspects]. Opava: Silesian Museum, 2002, pp. 50–51.

65 JANÁK, D. *Kapitoly o československém vězeňství 1945–1955: historické souvislosti, právní základy a politické aspekty*. [Chapters on Czechoslovakian penitentiary system 1945–1955: historical context, basis of law and political aspects]. pp. 50–51.

respective military prosecutors was retained from the military prison system. To complete the view of the military prison system, it is worth mentioning the existence of camps for German prisoners of war after 1945, and in particular the Soviet camp for captured German citizens at the mines in Jáchymov, where the Soviets controlled the mining of uranium ore.[66] However, repression in the Czechoslovak army after 1948 is also related to the detention of military personnel in forced labour camps[67] or the establishment of auxiliary technical battalions between 1950 and 1954.[68] In particular, the regime of the forced labour camp for former soldiers in Mírov, which was built on the site of the original penitentiary, did not differ much from permanent imprisonment facilities in its emphasis on the thorough isolation of politically "unreliable" inmates.[69]

7. Historical Background and Perspectives of Czech Military Justice

The development of Czechoslovak military justice after World War II cannot be separated from the overall context of the political and legal development of this turbulent phase in modern Czechoslovak history. This remnant of the system of estate judiciary or, in a broader sense, of the personality of the law, followed all the vicissitudes of the changes to our post-war legal system. On the other hand, it also exhibited some particularities. These primarily concerned the interconnection of the organisation of the military judicial bodies with the re-dislocation changes in the army organism, which reflected not only the strategic interests of the state leadership, but also the specific form of operational plans. In the 1950s and 1960s, an optimal model of the system was obviously being sought, which was not exempt from experiments and interim mistakes. The formation of the federation and the subsequent normalisation after 21 August 1968 stabilised the military justice system into the approximate form in which it was also able to survive the change in political conditions after 17 November 1989. In the case of military prosecutor's offices, their system underwent a total of fourteen re-organisations between 1 January 1946 and 1 January 1970, which was also criticised in the contemporary academic literature.[70] Based on these facts, a balanced combination of unit and territorial jurisdiction was considered the solution. The demise of the ČSFR, the establishment of the successor republics, and the trend towards smaller, professional armies thereafter definitively closed this chapter of our post-war legal development.

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66 On this serious matter, see: TOMEK, P. *Československý uran 1945–1989: těžba a prodej československého uranu v éře komunismu*. Praha: Office for the Documentation and the Investigation of the Crimes of Communism, 2000.

67 Zákon o táborech nucené práce č. 247/1948 Sb. [Act on forced labor camps No. 247/1948 Coll.].

68 On this serious matter, see: BÍLEK, J. *Pomocné technické prapory: o jedné z forem zneužití armády k politické perzekuci.* [Support technical battalions: on one of the forms of abuse of army for political persecution]. Prague: Office for the Documentation and the Investigation of the Crimes of Communism, 2002.

69 TOMEK, P. (ed.). *Tábor nucené práce Mírov ve vzpomínkách plukovníka in memoriam JUDr. Františka Masaříka.* [Force labour camp Mírov in memories of colonel in memoriam JUDr. František Masařík]. Praha: Ministry of Defence & the Armed Forces of the Czech Republic – Military History Institute Prague, 2017, pp. 11–12.

70 MLČOCH, Z. Vývoj organizace vojenských prokuratur [Development of an organization of the military prosecution]. *Vojenská prokuratura: Bulletin Hlavní vojenské prokuratury.* [Military prosecution: Bulletin of Main military prosecution office]. 1988, Vol. 30, No. 2, p. 78.

After 1 January 1993,[71] the new Army of the Czech Republic had to do without this specific legal tool for maintaining military discipline and order rather abruptly. Noting its costliness and inefficiency, the system of military courts and prosecutor's offices was abolished at the end of 1993.[72] In the neighbouring Slovak Republic they survived considerably longer. There, military courts were abolished at the end of March 2009[73] and the military prosecutor's offices at the end of October 2011. In the Czech Republic, some of the powers of the policing bodies of the Military Police, exercised in their performance of criminal proceedings, can be regarded as a remnant of military judicial activities.[74] At least in theory, the possibility of establishing military judicial authorities[75] in the event of a state of emergency or state of war is recognised, following a relevant change in legislation.[76] The globally deteriorating security situation, the violent transition to a multipolar world order, and armed conflicts requiring the reconstruction of combined arms armies[77] do not preclude the reconstruction of military justice as outlined in the rough terms in the present paper. The main purpose of presented text was to describe the roots and original forms of military justice connected to the former Czechoslovakia. Naturally, it was impossible to avoid the deformation of our socialist law, which also shaped the activities of the military judicial authorities. However, in the case of resuming their activities, it will be appropriate and necessary to know the past legal and organizational regulation and to use the gained experience in positive and negative sense.

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71 See: Zákon České národní rady ze dne 21. prosince 1992 o Armádě České republiky a o změnách a doplnění některých souvisejících zákonů č. 15/1993 Sb. [Reg. § 15 of the Act of the Czech National Council on the Army of the Czech Republic and on amendments and supplements to certain related acts of 21 December 1992 No. 15/1993 Coll.].

72 The Act on Courts and Judges No. 335/1991 Coll. (Zákon o soudech a soudcích č. 335/1991 Sb.) regulated the activities of the military judiciary in a relatively detailed manner, specifically in its provisions in §§ 20 to 25.

73 Act of 11 February 2009 amending Act No. 757/2004 Coll. on Courts and amending and supplementing certain Acts (Zákon o súdoch a o zmene a doplnení niektorých zákonov č. 757/2004 Z. z.), as amended by Act No. 517/2008 Coll. (Zákon č. 517/2008 Z. z.) and amending and supplementing certain Acts, No. 59/2009 Coll. (Zákon č. 59/2009 Z. z.)

74 Ust. § 4 odst. 1 písm. a), b) Zákona o Vojenské policii a o změně některých zákonů (zákon o Vojenské policii) č. 300/2013 Sb. [Reg. § 4 (1) (a), (b) of the Act on Military Police and on Amendments to Certain Acts (Military Police Act) No. 300/2013 Coll.].

75 The possibility of establishing higher and lower field courts-martial continued until 1 April 2002, when Act No.6/2002 Coll., on Courts, Judges, Judges and the State Administration of Courts and on Amendments to Certain Other Acts (Courts and Judges Act) (Zákon o soudech, soudcích, přísedících a státní správě soudů a o změně některých dalších zákonů (zákon o soudech a soudcích č. 6/2002 Sb.) came into force.

76 KOUDELKA, Z. Vojenská justice v ČR. [The Military judicial system in CZR]. *Vojenské rozhledy.* [Military overview]. 2009, Vol. 18, No. 2, p. 83.

77 See: Article 83 *Bezpečnostní strategie České republiky 2023.* [Security strategy of Czech Republic 2023] [online]. [cit. 2024-11-02]. Retrieved: https://mocr.mo.gov.cz/images/id_40001_50000/46088/Bezpecnostni_strategie_Ceske_republiky_2023.pdf.