

University of West Bohemia

VILÉM KNOLL, DENISA KOTROUŠOVÁ
ANETA SCHWARZOVÁ, MARIÁN BYSZOWIEC
ORCID: 0000-0002-7294-6394; vknol@kpd.zcu.cz
ORCID: 0000-0001-7168-4989; dkotrous@fpr.zcu.cz
ORCID: 0009-0001-1440-6197; aschwarz@kpo.zcu.cz
ORCID: 0000-0002-7563-7028; marianb@kpo.zcu.cz

Service in a Foreign Army and Related Factual Basis of Criminal Offences in the Interwar Czechoslovak Criminal Law*

Służba w obcym wojsku i związane z nią przestępstwa w czechosłowackim prawie
karnym okresu międzywojennego

Generally speaking, the issue of service in a foreign army (whether legal or illegal) has probably accompanied mankind since the beginning of its organization. The emphasis on it is then further being put with the establishment of states. During the Middle Ages – especially from the 14th to the 16th centuries – the Czechs were among the sought-after mercenaries operating in the entire Europe, literally from the Baltic to Italy and from England to the Black Sea. However, Czech warriors were also active in the service of foreign states in more recent times and continue to be so to this day. The participation of Czechoslovak volunteers in the Spanish Civil War in the ranks of International Brigades (Brigadas Internacionales) or, a bit later, in a number of different armies, especially British, French and Polish, during World War II is well known. The departure of the Czechoslovak Brigade to Israel during the Israeli War of Independence is less known. Like many others, Czechs participated in many conflicts around the world in the ranks of the French Foreign Legion (Légion étrangère), in which they continue to serve to this day.

* The article was created as a part of the grant project of the University of West Bohemia no. SGS-2023-012 “Law in the Course of Time 4”, which is being solved at the Department of Legal History, Faculty of Law, University of West Bohemia.

Currently, Czech volunteers can also be found on the Ukrainian battlefield. In a number of cases their service has been duly legalised, in many other cases they have committed and are committing crimes by serving in foreign armies, for which some of them have been prosecuted and in some cases even convicted.

Despite the undoubtedly interesting historical development of the legal regulation of foreign military service, the following text focuses on the more recent period. In particular, we focus factually on the development of the legal regulation of three closely related offences. These are service in a foreign army, service in an enemy army and recruitment into foreign military service. Subsequently, the application of these regulations in practice will also be mentioned. Due to the maximum scope of the article, we focus on the development of this issue from the establishment of Czechoslovakia to the beginning of the period of unfreedom in 1938.

The existing legal order was adopted after the establishment of the Czechoslovak Republic in 1918¹. For the Czech lands, which until then had been part of Cisleithania, the Military Criminal Code on Felonies and Misdemeanours of 1855² was adopted in addition to the Civil Criminal Code of 1852³; both, of course, in their current at the time versions. Regarding the criminal offence of desertion, the Military Criminal Code mentioned in § 186 the punishability of foreign military or civil service acceptance by those who had been captured by enemies or had not returned from leave abroad⁴. Perpetrators could be, depending on other circumstances, sentenced to the death penalty – hanging (§ 191), heavy jail imprisonment from 5 to 10 years or imprisonment from 3 to 5 years (§ 196). The regulation originally applied only

¹ See Article 2 of the Act no. 11/1918 Sb. z. a n., On the Establishment of an Independent Czechoslovak State. On the territory of the newly established state, three (later two) legal orders were in force: the Austrian (Cisleithanian) one in the Czech land and the Moravian-Silesian land; the Hungarian (Transleithanian) one in the Slovak land and in the Carpatho-Ukrainian land; and until 1 May 1921 the German one in Hlučínsko region as well. In detail, see L. Vojáček, *První československý zákon. Pokus o opožděný komentář*, Praha 2018, especially pp. 157–184. Regarding the criminal law, the newest overview was created by V. Knoll and T. Pezl (*Continuity and Discontinuity of Czechoslovak Interwar Law: Basic Introduction of the Topic with an Example of Criminal Law*, “Krakowskie Studia z Historii Państwa i Prawa” 2022, vol. 15(2), passim).

² Act no. 19/1855 RGBl., Militär-Strafgesetz über Verbrechen und Vergehen.

³ Act no. 117/1852 RGBl., Strafgesetz über Verbrechen, Vergehen und Uebertretungen.

⁴ § 188 of the Act no. 19/1855 ř. z., Military Criminal Act on Crimes and Offences: “Důstojníci považují se kromě případů v § 186 uvedených za usvědčené z úmyslu, vyhnouti se na vždy vojenské službě, když svůj pluk, sbor nebo své dočasně určené nebo pobytné místo svémocně a tajně, nebo pod nepravou záminkou opustili, nebo když v případě své dovolené v tuzemsku dva měsíce, nebo v cizozemsku čtyři měsíce přes čas dovolené se zdrželi, potom v každém z těchto případů veřejným vyzváním třikrát byli obesláni a také na toto obesláni během stanovené lhůty ani se nedostavili, ani odůvodněně překážky svého návratu neprokázali. Zanechání nebo zaslání žádosti neb úpisu o vzdání se služby bez vydaného o tom vyššího povolení k vystoupení, nečiní žádného rozdílu v příčině naložení s uprchlým důstojníkem”.

to persons who had taken the military oath⁵. However, these provisions containing statutory accompanying rules should have ceased to apply as early as 1914 in connection with the entry into force of the Military Criminal Procedure Code of 1912, which introduced a free evaluation of evidence⁶. The Conscription Act of 1912 and the related conscription regulations did not contain provisions concerning the entry of citizens into foreign military service, except for the prohibition for inactive men, more precisely for military reservists⁷. That is why the regulation in Czechoslovakia was amended in 1920 by the newly issued Conscription Act of 1920, which explicitly stipulated that permission for Czechoslovak citizens to enter foreign military service could be granted by the President of the Republic at the request of the Minister of National Defence⁸. Another change brought about by the new Conscription Act was that military offences could now be committed not only by persons who had taken the military oath, but also by persons who had been part of the Czechoslovak military (defence forces) in general, e.g. gendarmerie officers⁹. Unauthorised entry into foreign military service was associated with the loss of rank and loss of entitlement to retirement pay, injury allowance and war allowance under other regulations. Non-commissioned officers were also threatened with the loss of rank. However, given the absence of a penalty in the Conscription Act, the offence was probably only punishable under Ordinance no. 198/1857 Coll., On the General Level of Punishment, under which the offender was liable to a fine of between 2 and

⁵ §§ 195–196 of the Act no. 19/1855 ř. z.: “§ 195 Kterak se trestají uprchlíci: a) Trestem smrti. Uprchlík, který vstoupil do válečných služeb u nepříteli nebo v tomto úmysl zběhl, avšak ještě dříve, než-li přešel k nepříteli, byl zadržen nebo později dopaden, budiž potrestán smrtí provazem. § 196 Potrestání uprchlíků: V těchto případech nastoupiti má místo trestu smrti zastřelením jako trest tří- až pětiletý žalář, který však, když toliko okolnosti v odstavci d) předešlého paragrafu uvedené trest smrti vylučují, lze až na desítiletý žalář zvýšiti; místo trestu smrti provazem, stanoveného v případě § 191 uznáno buď na těžký žalář od pěti do desíti let”.

⁶ That is stated in J. Lepšík, J. Beneš, *Vojenské trestní zákony Československé republiky*, Praha 1931, p. 191, § 186, footnote 1.

⁷ J. Vorel, *Branný zákon republiky Československé s brannými předpisy a jinými zákony a vládními nařízeními týkajícími se branné povinnosti*, Praha 1924, p. 50, footnote 1.

⁸ § 6 of the Act no. 139/1920 Sb. z. a n., Conscription Law of the Czechoslovak Republic: “Vstup československých příslušníků do cizích vojenských služeb: Povolení ke vstupu československých státních příslušníků do vojenských služeb cizího státu udílí president republiky Československé na návrh ministra národní obrany”. Cf. Chamber of Deputies Parliament of the Czech Republic, Digital Repository, Joint Czech-Slovak Digital Parliamentary Library, Czechoslovak National Assembly 1918–1920, Chamber of Deputies, *Explanatory Report on the Outline of the Czechoslovak Conscription Act*, print no. 2176, https://www.psp.cz/eknih/1918ns/ps/tisky/t2176_03.htm (access: 15.09.2023). Regarding the evolution of legal regulation of Czechoslovak citizenship, see e.g. J. Černý, M. Valášek, *České státní občanství. Ucelený výklad právních předpisů upravujících státní občanství České republiky v návaznosti na státní občanství ČSR, ČSSR a ČSFR*, Praha 1996.

⁹ § 142 of the Act no. 19/1855 ř. z., as amended by § 1 of the Act no. 9/1918 Sb. z. a n., Amending the Military Criminal Code and the Military Criminal Procedure Code. See J. Kallab, *Trestní právo hmotné platné v zemi české a moravskoslezské. Část obecná i zvláštní*, Praha 1935, p. 180.

200 crowns or imprisonment from 6 to 14 days¹⁰. Therefore, in 1927, a sanction was added to the Conscription Act for service in a foreign army, for which, unless the offence was more severely punishable, a fine of between 20 and 1,000 crowns was imposed as a misdemeanour¹¹. Military treason in the form of service in the enemy army was considered a more serious offence¹². It was not even possible to issue a permit for such a service. The detailed conditions for submitting an application for a permit to serve in a foreign army and the process of its processing were regulated by a government implementing regulation. Among the requirements of the application was a confirmation from the competent authority of the foreign state that the applicant would be accepted for military service if the permit was issued. The Ministry of Defence could, if necessary, consult the Ministries of the Interior and Foreign Affairs on the application. This implies that the application was considered not only from a purely military point of view but also from a civil security and international political one. If nothing prevented its processing and if it was worthy of consideration, it was submitted with a proposal for approval to the President of the Republic. Otherwise, the Ministry rejected it. The permission to join foreign military services was valid for three months, after which it expired. During the period of authorised foreign military service, the person concerned was exempted from performing conscription in Czechoslovakia¹³. Subsequently, the amended conscription regulations added, among other things, a rule according to which the permit expired when a state in whose service the citizen was serving entered into a state of war with Czechoslovakia or with allied states or states towards which Czechoslovakia maintained neutrality¹⁴.

¹⁰ J. Vorel, *Branný zákon republiky Československé s brannými předpisy...*, pp. 50–51, footnote 5; idem, *Branný zákon republiky Československé (ve znění novely z roku 1927) s brannými předpisy a jinými zákony a vládními nařízeními týkajícími se branné povinnosti*, Praha 1927, pp. 45–46, footnote 4.

¹¹ § 40 of the Act no. 139/1920 Sb. z. a n., as amended by § 10 subsection XXI of the Act no. 53/1927 Sb. z. a n., On the Annual Contingent of Conscripts, on the Replacement Reserve and on Certain Amendments to the Conscription Act: “Opominutí předepsaného hlášení a nedovolený vstup do cizích vojenských služeb: (1) Osoby, uvedené v § 32, bodu 1., 2., 4., 5. a 6., které opomenou se hlásiti podle ustanovení a toto opomenutí dostatečně neospravedlní, budou potrestány pro přestupek trestem na penězích od 20 Kč do 1000 Kč. (2) Stejně se trestá, není-li čin přísněji trestný, kdo bez povolení uvedeného v § 6 vstoupí do cizích vojenských služeb nebo v nich setrvává”. See J. Vorel, *Branný zákon republiky Československé (ve znění novely z roku 1927) s brannými předpisy...*, pp. 45–46; J. Lepšík, J. Beneš, *op. cit.*, pp. 824–825.

¹² J. Lepšík, J. Beneš, *op. cit.*, pp. 825, note 5.

¹³ § 5 of the Regulation of the Government of the Czechoslovak Republic no. 269/1920 Sb. z. a n., implementing the Conscription Act of the Czechoslovak Republic of 19 March 1920, no. 193 Sb. z. a n.; J. Vorel, *Branný zákon republiky Československé s brannými předpisy...*, pp. 48–51.

¹⁴ § 5 of the Regulation of the Government of the Czechoslovak Republic no. 141/1927 Sb. z. a n., issuing new conscription regulations; J. Vorel, *Branný zákon republiky Československé (ve znění novely z roku 1927) s brannými předpisy...*, pp. 101–105.

As far as civilian regulation is concerned, the service in a foreign army, or in an enemy army, was dealt with by the adopted Criminal Code under the crime of high treason¹⁵. Various forms of participation were also punishable¹⁶. The perpetrators faced the death penalty or, in the case of less serious participation, heavy jail imprisonment from 10 to 20 years or life imprisonment. The perpetrators were liable for the damage caused with all their property¹⁷. The regulation was changed by the Act on the Protection of the Republic, issued in 1923, according to which a Czechoslovak citizen who served in the enemy army during war was to be punished with heavy jail imprisonment from 3 to 5 years, and in a qualified case of particularly aggravating circumstances with heavy jail imprisonment from 5 to 20 years or life imprisonment¹⁸. The wide range of penalties was justified by the fact that, although the act of an individual did not usually have much effect on the outcome of a war, the rendering of services by an outstanding military leader could¹⁹. In assessing the offence, it was irrelevant whether the perpetrator had entered the service during war or remained in it after its outbreak²⁰. The crime could be committed only during wartime and for the benefit of the enemy. Wartime was a time associated with mobilisation. It began with its declaration and lasted until the date fixed by the demobilisation decree or until the end of the two months period elapsed after the decree was issued²¹. Service in the enemy army did not have to be only military; it could, e.g., be medical as well²².

¹⁵ § 58, letter c) of the Act no. 117/1852 ř. z., Criminal Act on Crimes, Offences and Misdemeanours. Cf., e.g., Chamber of Deputies Parliament of the Czech Republic, Digital Repository, Joint Czech-Slovak Digital Parliamentary Library, Czechoslovak National Assembly 1920–1925, Chamber of Deputies, *Report of the Constitutional-Legal Committee on the Government Bill (Print 3996) on the Protection of the Republic*, print no. 4021, https://www.psp.cz/eknih/1920ns/ps/tisky/t4021_03.htm (access: 16.09.2023).

¹⁶ §§ 59–61 of the Act no. 117/1852 ř. z.

¹⁷ § 59 of the Act no. 117/1852 ř. z.

¹⁸ § 6 of the Act no. 50/1923 Sb. z. a n., On the Protection of the Republic: “Vojenská zrada: (...) příslušník republiky, který za války koná službu v nepřátelském vojsku, trestá se za zločin těžkým žalářem od tří do pěti let, za okolností zvláště přitěžujících těžkým žalářem od pěti do dvaceti let nebo na doživotí”.

¹⁹ Chamber of Deputies Parliament of the Czech Republic, Digital Repository, Joint Czech-Slovak Digital Parliamentary Library, Czechoslovak National Assembly 1920–1925, Chamber of Deputies, *op. cit.*; J. Lepšík, *Zákon na ochranu republiky s důvodovou zprávou*, Praha 1923, p. 37.

²⁰ A. Milota, *Učebnice obojího práva trestního platného v Československé republice. Právo hmotné*, Kroměříž 1926, p. 77; A. Miřička, *Trestní právo hmotné. Část obecná i zvláštní*, Praha 1934, p. 206.

²¹ § 39 subsection 3 of the Act no. 50/1923 Sb. z. a n.: “Doba válečná počíná se dnem, kdy demobilisace podle demobilisační vyhlášky má být skončena, a není-li v ní uveden takový den, uplynutím dvou měsíců ode dne této vyhlášky”. See J. Lepšík, *op. cit.*, p. 38; A. Milota, *op. cit.*, p. 77; A. Miřička, *Trestní právo hmotné...*, p. 206.

²² J. Kallab, *op. cit.*, p. 143.

The recruitment into foreign military forces was dealt with in the adopted Military Criminal Code of 1855, which considered the illegal recruitment of troops as a crime against the war power of the state²³. It was understood as hiring of men who belonged to the army or its accompaniment for other than Czechoslovak war service, and hiring of men bound by oath to the Czechoslovak state to settle in a foreign country. It also included kidnapping of people for any of these purposes²⁴. In the first two cases, the perpetrator faced a sentence of imprisonment from 1 to 5 years. If he repeated or continued the offence or committed it during a time of threat to the peace, he was threatened with heavy jail imprisonment from 5 to 10 years. In the case of kidnapping people under similar aggravating circumstances, the penalty was heavy imprisonment from 10 to 20 years. If the crime was committed during wartime, the punishment was death by hanging. If it was committed during war for the benefit of another, but not enemy power, the penalty in the first two cases was heavy jail imprisonment from 5 to 10 years, and in the case of kidnapping people from 10 to 20 years²⁵. The attempt, aid and abetment of illegal recruitment of troops were also punishable²⁶. The Civil Criminal Code of 1852 punished for the crime of illegal recruitment those who, without special permission of the government, recruited anyone for the army of a foreign state or members of the army even just to settle in a foreign state. In addition, it also included cases of kidnapping people for any of these purposes. Military courts were competent to hear the cases²⁷.

²³ § 304 of the Act no. 19/1855 ř. z.: “O zločinech proti válečné moci státu. Za zločiny proti válečné moci státu považuje se: I. nedovolené najímání (...).” See A. Miříčka, *Rakouské trestní právo hmotné část zvláštní*, [Praha] 1912, p. 50.

²⁴ § 306 of the Act no. 19/1855 ř. z., as amended by the Act no. 449/1919 Sb. z. a n., On Legal Protection of the Czechoslovak Republic: “Nedovolené najímání vojska. Zločinem nedovoleného najímání vojska se proviní: a) kdo ve vlastním státě kohokoliv nebo v cizí zemi v oblasti, v níž je československé vojsko postaveno, muže, který náleží k vojsku nebo k jeho průvodu, najímá pro jiné válečné služby než pro československé nebo pro službu ve zbraní u vzbouřené strany; b) kdo muže, který je v tomto státě přísahou vázán, najímá třeba jen k tomu, aby se v cizí zemi usadil; c) kdo se dopustí loupeže lidí k tomu konci, aby jinému než československému vojsku přivedl brance nebo povstalcům spolubojovníka, nebo cizímu státu jako osadníka muže, který je k československé vojenské službě přísahou zavázán”. See J. Lepšík, J. Beneš, *op. cit.*, p. 295.

²⁵ §§ 307–309 of the Act no. 19/1855 ř. z.; J. Lepšík, J. Beneš, *op. cit.*, pp. 296–297.

²⁶ In detail, see §§ 310–312 of the Act no. 19/1855 ř. z.; J. Lepšík, J. Beneš, *op. cit.*, pp. 297–299.

²⁷ § 92 of the Act no. 117/1852 ř. z.: “Jak se naloží s těmi, kdo neoprávněně verbují: Kdo, nemaje k tomu povolení zvláštního od vlády, do jiné služby vojenské, nežli československé, lid verbuje, nebo kdo v čas války verbuje vojáky neb mužstvo služebné, k vojsku náležíté, i třeba jen proto, aby se osadili v cizích zemích, anebo kdo se takového času dopustí kradení lidí, aby vojsku jinému, nežli československému, přivedl rekruty, nebo cizímu státu osoby k vojsku náležíté za osadníky, dopustí se nedovoleného verbování, a vyšetřován i potrestán bude od soudů vojenských podle předpisů zvláštních o tom vydaných”. See A. Miříčka, *Rakouské trestní právo...*, p. 50.

These military and civilian criminal regulations were abolished in 1923 by the Act on the Protection of the Republic, which brought a new unified regulation of the crime of illegal recruitment. The factual basis of the offence was rather narrowed compared to the previous regulation. It continued to impose punishment on anyone who, without the permission of the government, recruited a Czechoslovak citizen for military service of a foreign power or who facilitated such recruitment. The perpetrator was threatened with imprisonment from 6 months to 5 years²⁸. However, if the offence was committed during wartime, harsher penalties under the existing Military Criminal Code remained in effect for military offenders. Military courts were competent to try these²⁹. The regulation also applied to cases where the perpetrator committed the recruitment in a foreign country provided that he himself was a Czechoslovak citizen³⁰. The crime could have also been committed outside wartime and for the benefit of any foreign state³¹. This was subsequently changed by the Act on National Defence of 1936, which repealed the relevant provisions of the Act on the Protection of the Republic. It made recruitment and its mediation punishable not only for the military service for the foreign power, but newly also explicitly for the service in a foreign armed or militarily organised corps, association or group. The penalty was set at the same level as in the Act on the Protection of the Republic. The stricter penalty rates under the Military Criminal Code for offences committed during wartime were also retained³². This factual basis of criminal offence was included in the Act on National Defence because it was factually related to the matter regulated therein and also because it should not have been included in the forthcoming new Criminal Code due to systematic reasons³³.

²⁸ § 22 of the Act no. 50/1923 Sb. z. a n.: “Nedovolené najímání vojska: Kdo bez dovolení vlády najímá příslušníka republiky pro vojenskou službu cizí moci nebo kdo najímání takové zprostředkuje, trestá se za zločin žalářem od šesti měsíců do pěti let”.

²⁹ § 37 of the Act no. 50/1923 Sb. z. a n.: “Stíhání osob vojenských. Ustanovení tohoto zákona platí také pro osoby podřízené vojenské soudní pravomoci. Pro činy spáchané za války zůstávají v platnosti přísnější trestní sazby stanovené trestními zákony vojenskými (...)”. See also § 41 subsection 3 č. IV of the same statute; J. Lepšík, *op. cit.*, pp. 130–132, 136–137; J. Lepšík, J. Beneš, *op. cit.*, pp. 296–299.

³⁰ Cf. § 38 of the Act no. 50/1923 Sb. z. a n. See J. Lepšík, *op. cit.*, pp. 90, 133.

³¹ A. Miříčka, *Trestní právo hmotné...*, p. 207.

³² § 176 of the Act no. 131/1936 Sb. z. a n., On Defense of the State: “Nedovolené najímání vojska: Kdo bez dovolení vlády najímá příslušníka republiky pro vojenskou službu cizí moci nebo pro službu v cizím ozbrojeném nebo na vojenský způsob organisovaném sboru, spolku nebo skupině, nebo kdo najímání takové zprostředkuje, trestá se za zločin žalářem od šesti měsíců do pěti let”. See also J. Lepšík, J. Beneš, *op. cit.*, coupons on the pp. 127, 128, 129, 130.

³³ J. Vorel, *Zákon o obraně státu s komentářem*, Praha 1936, p. 199.

Illegal recruitment, as well as military treason, were considered particularly reprehensible under the provisions of the Act on the State Prison of 1931. Therefore, the imprisonment imposed for them was to be executed in a state prison³⁴.

Fighting in a foreign military service was not considered problematic for years. On the contrary, it was considered a suitable way of earning a living, even among the nobility. The change gradually came about with the building of modern national states, in connection with the transition from mercenary armies to national or more precisely civic armies in the 18th and 19th centuries. However, the service against one's own country has always been punishable. The offence of service in a foreign army and related criminal offences, the regulation of which has been presented above, are not very frequent in practice. This is partially due to the fact that, especially before the rise of social networks and the possibility of locating mobile phones, in many cases it was quite difficult for the law enforcement authorities to detect and prove such activities.

The problem of serving in a foreign or enemy army first manifested itself at the very beginning of the Czechoslovak state. A considerable number of persons of German nationality with home rights in the municipalities of Czechoslovakia served in the ranks of the Reich German or Austrian army, or more precisely in the Volkswehr formations and the Sudeten German battalions subordinated to the Austrian or Reich German army, even after 28 October 1918. Their activity was mainly related to the short-term existence of German Austria (Republik Deutsch-Österreich). In an effort to address this situation and to reduce the number of armed opponents, the President of the Republic ordered on 22 July 1919 that no criminal proceedings should be brought against these persons for participation in foreign armed forces unless they had committed other offences and had withdrawn from these formations by 1 September 1919. This period was repeatedly extended, finally until 15 May 1920. At the same time, this amnesty was extended to persons who had served in German units in the Baltic, and who had fought against the Red Army and against the Latvian nationalists³⁵.

Another large group of people who came into conflict with the regulations prohibiting serving in and being recruited into foreign armies were the volunteers who chose to participate in the Spanish Civil War in the ranks of the International Brigades. As the preceding text shows, the volunteers should have obtained permission of the President of the Republic before joining the Spanish services, which was not done. Given Czechoslovakia's participation in the International Committee for the Control of Measures for Non-Intervention in Spanish Affairs (the

³⁴ § 1 subsections 1 and 3 of the Act no. 123/1931 Sb. z. a. n., On the State Prison. The conditions of execution of this punishment were stipulated in § 5 of the same statute.

³⁵ J. Šouša, *Právní úprava amnestie v letech 1918–1953 v českých zemích*, Pelhřimov 2019, especially pp. 127–128, 131–132.

so-called Non-Intervention Committee), it could not have been granted anyway. The recruitment campaign and the transfer of the recruited volunteers to Spain involved mainly representatives of the Communist Party of Czechoslovakia, including members of the Parliament. Apart from Czechoslovak citizens, they also arranged the transfer of Polish, Romanian and other foreign volunteers. The law enforcement authorities were very active in trying to punish the activities of the organisers as well as recruited volunteers³⁶. In doing so, they proceeded in particular in accordance with § 176 of the Act on National Defence and §§ 6 and 40 subsection 2 of the Conscription Act³⁷. However, as the 1937 reports of the police president Rudolf Charvát attest, hundreds of them were surveilled, arrested, interrogated and placed in detention for no more than a week. Although in many cases the factual basis was 100% established, none of the criminal proceedings ended in a conviction. The perpetrators were usually released soon afterwards and often resumed their activities immediately³⁸. In June 1937, in connection with the conclusions of the Non-Intervention Committee, an amnesty was being prepared for all persons who had gone to Spain to fight in the war. Failure to take advantage of the amnesty and continuing in related criminal activities were to be punished uncompromisingly and more severely. However, in the end it was not declared³⁹. According to the report of the police president from 13 May 1938, only four persons were convicted for participation in the recruitment campaign, and those convicted were pardoned on the basis of the amnesty of the President of the Republic of 16 April 1938⁴⁰. At least 1,500 Czechoslovak volunteers joined the ranks of the international brigades⁴¹. It is worth mentioning that Czechoslovak citizens – especially of German nationality – were also recruited for service in the nationalist army of General Francisco Franco⁴².

The Czechoslovak legislation on the issue of service in foreign or enemy armies, together with the related recruitment, was based on the previous Austro-Hungarian legislation. In the interwar period, it was changed several times in relation to changes in the national and international security and political situation.

³⁶ J. Nedvěd, „Verbování“ československých dobrovolníků do mezinárodních brigád a jejich cesty do Španělska, “Historie a vojenství” 2016, vol. 65(3), pp. 4–18, especially pp. 13–16; R. Gonda, *Postoj československé státní moci k rekrutování dobrovolníků do mezinárodních brigád ve Španělsku*, [in:] Z. Maršálek, E. Voráček a kol., *Interbrigadisté, Československo a španělská občanská válka. Neznámé kapitoly z historie československé účasti v občanské válce ve Španělsku 1936–1939*, Praha 2017, pp. 155–194.

³⁷ See the circulars of provincial offices in Brno and Prague from February 1937 quoted in R. Gonda, *op. cit.*, pp. 160–161.

³⁸ Quoted in J. Nedvěd, *op. cit.*, pp. 15–16; R. Gonda, *op. cit.*, pp. 180–181, 183.

³⁹ J. Šouša, *op. cit.*, pp. 242–243.

⁴⁰ R. Gonda, *op. cit.*, p. 181. Regarding this amnesty – primarily connected to the Sudeten German issue – see J. Šouša, *op. cit.*, pp. 243–247.

⁴¹ J. Nedvěd, *op. cit.*, pp. 8, 16.

⁴² *Ibidem*, p. 4.

In practice, however, despite the relatively widespread recruitment of volunteers for the Spanish Civil War, these were not very frequent offences.

REFERENCES

Archival primary sources

- Chamber of Deputies Parliament of the Czech Republic, Digital Repository, Joint Czecho-slovak Digital Parliamentary Library, Czechoslovak National Assembly 1918–1920, Chamber of Deputies, *Explanatory Report on the Outline of the Czechoslovak Conscription Act*, print no. 2176, https://www.psp.cz/eknih/1918ns/ps/tisky/t2176_03.htm (access: 15.09.2023).
- Chamber of Deputies Parliament of the Czech Republic, Digital Repository, Joint Czecho-slovak Digital Parliamentary Library, Czechoslovak National Assembly 1920–1925, Chamber of Deputies, *Report of the Constitutional-Legal Committee on the Government Bill (Print 3996) on the Protection of the Republic*, print no. 4021, https://www.psp.cz/eknih/1920ns/ps/tisky/t4021_03.htm (access: 16.09.2023).

Literature

- Černý J., Valášek M., *České státní občanství. Ucelený výklad právních předpisů upravujících státní občanství České republiky v návaznosti na státní občanství ČSR, ČSSR a ČSFR*, Praha 1996.
- Gonda R., *Postoj československé státní moci k rekrutování dobrovolníků do mezinárodních brigád ve Španělsku*, [in:] Z. Maršálek, E. Voráček a kol., *Interbrigadisté, Československo a španělská občanská válka. Neznámé kapitoly z historie československé účasti v občanské válce ve Španělsku 1936–1939*, Praha 2017.
- Kallab J., *Trestní právo hmotné platné v zemi české a moravskoslezské. Část obecná i zvláštní*, Praha 1935.
- Knoll V., Popl T., *Continuity and Discontinuity of Czechoslovak Interwar Law: Basic Introduction of the Topic with an Example of Criminal Law*, “Krakowskie Studia z Historii Państwa i Prawa” 2022, vol. 15(2), DOI: <https://doi.org/10.4467/20844131KS.22.013.15716>.
- Lepšík J., *Zákon na ochranu republiky s důvodovou zprávou*, Praha 1923.
- Lepšík J., Beneš J., *Vojenské trestní zákony Československé republiky*, Praha 1931.
- Milota A., *Učebnice obojího práva trestního platného v Československé republice. Právo hmotné*, Kroměříž 1926.
- Miříčka A., *Rakouské trestní právo hmotné část zvláštní*, [Praha] 1912.
- Miříčka A., *Trestní právo hmotné. Část obecná i zvláštní*, Praha 1934.
- Nedvěd J., „Verbování“ československých dobrovolníků do mezinárodních brigád a jejich cesty do Španělska, “Historie a vojenství” 2016, vol. 65(3).
- Šouša J., *Právní úprava amnestie v letech 1918–1953 v českých zemích*, Pelhřimov 2019.
- Vojáček L., *První československý zákon. Pokus o opožděný komentář*, Praha 2018.
- Vorel J., *Branný zákon republiky Československé s brannými předpisy a jinými zákony a vládními nařízeními týkajícími se branné povinnosti*, Praha 1924.
- Vorel J., *Branný zákon republiky Československé (ve znění novely z roku 1927) s brannými předpisy a jinými zákony a vládními nařízeními týkajícími se branné povinnosti*, Praha 1927.
- Vorel J., *Zákon o obraně státu s komentářem*, Praha 1936.

Legal acts

- Act no. 117/1852 RGBI., Strafgesetz über Verbrechen, Vergehen und Uebertretungen.
- Act no. 117/1852 ř. z., Criminal Act on Crimes, Offences and Misdemeanours.
- Act no. 19/1855 RGBI., Militär-Strafgesetz über Verbrechen und Vergehen.
- Act no. 19/1855 ř. z., Military Criminal Act on Crimes and Offences.

- Act no. 9/1918 Sb. z. a n., Amending the Military Criminal Code and the Military Criminal Procedure Code.
- Act no. 11/1918 Sb. z. a n., On the Establishment of an Independent Czechoslovak State.
- Act no. 449/1919 Sb. z. a n., On Legal Protection of the Czechoslovak Republic.
- Act no. 139/1920 Sb. z. a n., Conscription Act of the Czechoslovak Republic.
- Act no. 50/1923 Sb. z. a n., On the Protection of the Republic.
- Act no. 53/1927 Sb. z. a n., On the Annual Contingent of Conscripts, on the Replacement Reserve and on Certain Amendments to the Conscription Act.
- Act no. 123/1931 Sb. z. a n., On the State Prison.
- Act no. 131/1936 Sb. z. a n., On Defense of the State.
- Regulation of the Government of the Czechoslovak Republic no. 269/1920 Sb. z. a n., implementing the Conscription Act of the Czechoslovak Republic of 19 March 1920, no. 193 Sb. z. a n.
- Regulation of the Government of the Czechoslovak Republic no. 141/1927 Sb. z. a n., issuing new conscription regulations.

ABSTRACT

The topic of the article is service in a foreign army and the related factual basis of criminal offences of military recruitment into and service in an enemy army (military treason). These offences were regulated in Czechoslovak interwar law by the adopted Austrian-Hungarian law. The article presents the issue from the perspective of the law applicable in the territory of the Czech Republic today. Thus, it deals with the legal regulation adopted from Cisleithania. The offences in question were regulated by both military and civil criminal law. The original legislation was gradually supplemented, amended and partially unified by Czechoslovak legislation, in particular the Act on the Protection of the Republic of 1923 and the Conscription Act of 1927. The final part of the article outlines the issue of related post-war amnesties and the criminal prosecution of persons in connection with their service in the Spanish Civil War or with the organisation of their departure for such service.

Keywords: Czechoslovak criminal law; criminal offences; army; military treason; service in a foreign army; military recruitment; service in an enemy army

ABSTRAKT

Tematem artykułu jest służba w obcej armii i związane z nią podstawy faktyczne przestępstw werbowania do wojska i służby w armii wroga (zdrada wojskowa). Przestępstwa te zostały uregulowane w czechosłowackim prawie międzywojennym przez prawo recypowane z Austro-Węgier. W artykule przedstawiono problematykę z perspektywy prawa obowiązującego na obszarze współczesnej Republiki Czeskiej, a więc regulacji prawnej recypowanej z regionu Przedlitawia. Wymienione przestępstwa były regulowane zarówno przez prawo karne wojskowe, jak i przez prawo karne cywilne. Recypowana regulacja prawna była stopniowo uzupełniana i zmieniana oraz częściowo została ujednoczona przepisami czechosłowackimi, w szczególności ustawą o ochronie republiki z 1923 r. i ustawą poborową z 1927 r. Na końcu artykułu poruszono zagadnienie związanych z nią powojennych amnestii oraz ścigania osób w związku z ich służbą w hiszpańskiej wojnie domowej lub organizacją wyjazdów na taką służbę.

Słowa kluczowe: czechosłowackie prawo karne; przestępstwa; wojsko; zdrada wojenna; służba w obcym wojsku; najmowanie do wojska; służba w wojsku wroga