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## The Draft of the Military Criminal Code and the Law of the Czechoslovak Legion in Russia

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Projekt kodeksu karnego wojskowego oraz prawo Legionu Czechosłowackiego w Rosji

### INTRODUCTION

The period of involvement of Czechoslovak legionnaires in the Russian Civil War (1918–1920) is the source of a number of topics worthy of academic research. Among them is a unique legal system that has been completely unexplored for a hundred years, which the legionnaires were forced to create in a situation of being completely cut off from their command after the start of hostilities with the Bolsheviks.

This paper aims to explore one of the topics that particularly resonated in the environment of legionary justice in the second half of 1918, namely the creation of its own military criminal code. This was supposed to replace the law in force for the Legion, which was theoretically supposed to be applied, but in fact it was not available to the legionary courts, and these thus had to proceed, at best, based on the memory of the few legally educated judges, and at worst, to create a completely improvised judicial law.

The primary sources on which this text is based are the archival records of the Czech Military Historical Archive (Vojenský historický archiv) in Prague containing original documents of the Legal Department of the Branch of the Czechoslovak National Council in Russia (Právní odbor Odbočky Československé národní rady v Rusku) and the Corps Court (Sborový soud; Supreme Court of the Czechoslovak Army in Russia). Among other things, these documents include regular reports

on the functioning of the Legal Department and the courts, correspondence and, in particular, the original draft of the Legionary Criminal Code. Furthermore, for the purposes of this paper, the book *Judiciary in the Czechoslovak Army in Russia*<sup>1</sup> proved to be very useful, which is actually a brief set of memories and legal opinions of JUDr. Viktor Svoboda, who held the position of Chairman of the Legal Department of the Branch of the Czechoslovak National Council in Russia between 1918 and 1920 and was therefore a central figure in the legionary legal system. Auxiliary sources are contemporary books dealing with legions in general, such as *Czechoslovak Legions 1914–1920* by Milan Mojžíš<sup>2</sup>.

Work on the draft of the Legionary Criminal Code began at the end of the summer of 1918 as a joint work of the Legal Department, the legionary courts, and the Branch of the Czechoslovak National Council in Russia. By the end of the year, a draft code of 190 articles was drawn up. It was divided into a general part and a special part, which was further divided into 16 chapters discussing different types of crimes.

The draft was supposed to be submitted for approval to the legislative body of the Czechoslovak Legion in Russia, the Assembly of the Czechoslovak Revolution (Sněm československé revoluce), but this was never elected and convened. The beginning of 1919 brought a fundamental reorganization of the army and its subordination to the law in force in the newly established Czechoslovakia, which had the effect of postponing the draft legionary code indefinitely. However, due to the insufficient supply of the legionary courts in Siberia with collections of laws from Czechoslovakia, the draft saw an unexpected resurrection when it was used by the Corps Court as the central source for the so-called Previews (*Náhledy*) – a resolution that was created as a provisional substitute for the criminal code for those courts that did not have an adequate code at their disposal. Previews were used to some extent up until the departure of the Legion from Russia in 1920.

## CZECHOSLOVAK LEGION IN THE RUSSIAN CIVIL WAR

The Czechoslovak legionnaires<sup>3</sup> entered 1918 in an uneasy spirit. After the Battle of Bakhmach<sup>4</sup>, which enabled their retreat from Ukraine before the

<sup>1</sup> V. Svoboda, *Soudnictví v čsl. vojsku na Rusi*, Praha 1924.

<sup>2</sup> M. Mojžíš, *Československé legie 1914–1920*, Praha 2017.

<sup>3</sup> To learn more about the history of the First Czechoslovak Resistance and Czechoslovak legions, see e.g. J.P. Wiśniewski, *Od „Czeskiej Drużyny” do Korpusu Czechosłowackiego. Czesko-słowackie formacje wojskowe w Rosji w latach 1914–1916*, “Przegląd Historyczno-Wojskowy” 2014, no. 4, pp. 25–50; K.J. McNamara, *Dreams of a Great Small Nation*, New York 2016.

<sup>4</sup> The Battle of Bakhmach was a clash over the strategic railway junction, after which it is named. The goal of the Czechoslovaks was to hold the city long enough for the evacuation of the Czechoslovak Army Corps by rail. Units of the 2<sup>nd</sup> Czechoslovak Rifle Division, supported by local

advancing German army, they entered Siberia. At this time, the Legion was declared an autonomous part of the French Army and the transfer of its members to France through Vladivostok was planned<sup>5</sup>.

The journey was prolonged by disputes with local Bolshevik administrative bodies caused by mutual distrust, which eventually turned into an open conflict after the so-called Chelyabinsk incident<sup>6</sup>. The legionnaires subsequently became involved in the Russian Civil War – first only to break through to Vladivostok, later as active supporters of the White Forces and the vanguard of the expected intervention by the Entente Powers<sup>7</sup>.

The fight in which the Legion found itself was very specific due to the conditions of Siberia – it took place along the Trans-Siberian railway, required high mobility, and their enemy was often guerrilla groups scattered across the taiga<sup>8</sup>. Moreover, for most of 1918, the legionnaires were only in limited contact with their command in France (later in the newly formed Czechoslovakia)<sup>9</sup>.

Although 1918 was marked by successes in the fight against the Red Army, the overwhelming force against which the legionnaires and the White Forces stood eventually gained the upper hand, and during 1919 many previous victories were erased<sup>10</sup>. Ultimately, the advance of the Bolsheviks and the indecisiveness

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Red Army soldiers, clashed here with the 91<sup>st</sup> and 224<sup>th</sup> German Infantry Divisions. The fighting lasted from 8 to 13 March 1918 and claimed 45 dead on the Czechoslovak side and around 300 dead on the German side, with the Legionnaires eventually managing to evacuate successfully to the east. See M. Mojžiš, *op. cit.*, p. 76.

<sup>5</sup> B. Klípa, K. Pichlík, J. Zabloudivá, *Českoslovenští legionáři (1914–1920)*, Praha 1996, pp. 138–139.

<sup>6</sup> On 14 May 1918, there was a rift between prisoners of war of the Central Powers, returning from prison camps, and Czechoslovakian legionnaires, who were waiting at the Chelyabinsk railway station for the opportunity to continue their journey east. One of the prisoners threw a piece of iron from a passing train at a legionnaire of the 6<sup>th</sup> Rifle Regiment, which hit him in the head and knocked him unconscious. Legionnaires, believing their comrade to be dead, stopped the train and executed the culprit. An unarmed delegation of Czechoslovaks who went to explain the incident to the local Soviet was arrested without questioning, as was the officer who went to negotiate their release. After three days without any explanation from the local Bolshevik leadership, the legionnaires occupied the town, freed their captives, and then retreated back to the railway station. Although the incident resulted in no further casualties, it served as a pretext for the Bolshevik leadership in Moscow to arrest representatives of the Czechoslovak National Council and issue an order to shoot any Czechoslovak found with a weapon. This was taken by the legionnaires as a de facto declaration of hostilities. See M. Mojžiš, *op. cit.*, p. 82.

<sup>7</sup> B. Klípa, K. Pichlík, J. Zabloudivá, *op. cit.*, pp. 174–181.

<sup>8</sup> M. Mojžiš, *op. cit.*, p. 102.

<sup>9</sup> This is evidenced, e.g., by the fact that the first reaction from the French command did not reach the French liaison officers at the Legion until 20 June 1918, i.e. a month after the outbreak of hostilities with the Bolsheviks. See B. Klípa, K. Pichlík, J. Zabloudivá, *op. cit.*, p. 180.

<sup>10</sup> M. Mojžiš, *op. cit.*, p. 102.

of the Great Powers to intervene led to the decision to withdraw the legionnaires home, an undertaking which was not completed until the fall of 1920<sup>11</sup>.

During the entire period of its operation in Siberia, the Legion had to largely take care of all its non-combat needs, whether it was industry<sup>12</sup>, medical facilities or justice. In the case of the latter, this meant its own system of courts and an improvised legal system<sup>13</sup>.

### LEGAL SYSTEM OF THE CZECHOSLOVAK LEGION AND ITS SHORTCOMINGS

The beginnings of the unique legal system of the Czechoslovak legionnaires in Russia can be traced back to January 1918, when it was decided that the French military disciplinary code<sup>14</sup>, which was to be used in the army, did not meet the needs of the Legion, and so an original disciplinary code was introduced in its stead by Order no. 15 of 19 January 1918<sup>15</sup>.

The independent judiciary of the Czechoslovak Legion in Russia was established in March 1918 on the basis of two orders from the corps command, which created regimental courts, train courts (both as equal types of first-instance courts) and field courts (as second-instance courts) – the Order no. 25 issued on 9 March 1918 and the Order no. 38 issued on 31 March 1918<sup>16</sup>. This two-instance system existed until the beginning of 1919<sup>17</sup>, when the legionary justice system was reorganized into a three-instance system (at the lowest level were regimental courts, followed by divisional courts, and the supreme link of the system was the Corps Court)<sup>18</sup>.

As far as the law used by the courts is concerned, the development here was gradual.

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<sup>11</sup> *Ibidem*, p. 112.

<sup>12</sup> More on this topic, see D. Brádlarová, *Vojáci nebo podnikatelé?*, Praha 2018.

<sup>13</sup> V. Svoboda, *op. cit.*, pp. 16–18.

<sup>14</sup> Décret du 25 août 1913, portant règlement sur le service intérieur des corps de troupe d'infanterie et du génie, <https://gallica.bnf.fr/ark:/12148/bpt6k6563902x/f142.item.texteImage> (access: 22.08.2023).

<sup>15</sup> V. Svoboda, *op. cit.*, p. 16.

<sup>16</sup> Rozkazy čsl. vojsku na Rusi 1917–1918, <https://www.digitalniknihovna.cz/dsmo/view/uuid:8d5a17df-e97b-4772-a926-c42292cbad93?page=uuid:9ceaaf47-fd23-11ea-9758-001b63bd-97ba> (access: 22.08.2023).

<sup>17</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva o činnosti Právního referátu za rok 1919*, p. 98.

<sup>18</sup> V. Svoboda, *op. cit.*, pp. 24–25.

In the first months after the establishment of the independent legionary courts, they had no written law and few (if any) legally educated judges<sup>19</sup>. The courts thus resorted to a series of improvisations<sup>20</sup>, which were to be given legitimacy by the fact that the judges were elected from among the soldiers who fell under their jurisdiction (in the field courts, some judges were not elected, but appointed – these were legally educated judges, and by appointing them the Legal Department tried to ensure that a professional element was represented at least in each senate of the second-instance courts)<sup>21</sup>.

We do not have much information about how well or poorly legionary law functioned in the improvised state of the first half of 1918, but it is clear that the situation was becoming unsustainable<sup>22</sup>. It was generally accepted that the army should adhere to the law of a state, but the Russian one was out of the question because of its autocratic nature, and books of French or Austrian law were not available in Siberia<sup>23</sup>.

The First Congress of the Czechoslovak Army<sup>24</sup>, which took place in July and August 1918, attempted to establish the foundations of written legionary law (it adopted the Statute of Field Courts and a new disciplinary code)<sup>25</sup> and decided on the creation of the Assembly of the Czechoslovak Revolution, a legislative body that was to approve legislation applicable to Czechoslovak Legion in Russia<sup>26</sup>.

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<sup>19</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva právního odboru ze dne 16. ledna 1919*, p. 98.

<sup>20</sup> V. Svoboda, *op. cit.*, p. 32.

<sup>21</sup> *Ibidem*, p. 18.

<sup>22</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva právního odboru ze dne 1. září 1918*, p. 98.

<sup>23</sup> Sběrka důležitých dokumentů 1. odboje, Vojenský historický archiv, *Zločinnost v československém vojsku*, p. 1.

<sup>24</sup> The First Congress of the Czechoslovak Army was an elected assembly whose task was to democratically resolve a number of issues facing the Czechoslovak Legion in Russia. Among other things, it elected new members to the Branch of the Czechoslovak National Council in Russia, approved several legal regulations and established the Order on the Organization of the Czechoslovak Revolutionary Movement in Russia (a quasi-constitutional law that established own elected legislative, executive and judicial bodies for the Czechoslovak movement in Russia). See Řád o organizaci československého revolučního hnutí na Rusi, [in:] Řády a resoluce 1. sjezdu československého vojska, [https://web2.mlp.cz/koweb/00/04/04/13/96/rady\\_a\\_resoluce\\_1\\_sjezdu\\_cekoslov\\_vojska.pdf](https://web2.mlp.cz/koweb/00/04/04/13/96/rady_a_resoluce_1_sjezdu_cekoslov_vojska.pdf) (access: 22.08.2023).

<sup>25</sup> See Řády a resoluce 1. sjezdu československého vojska...

<sup>26</sup> The Assembly of the Czechoslovak Revolution was supposed to be the legislative body of the legionary self-government in Siberia. It did not have a fixed number of members, instead it depended on the number of electoral districts (each regiment and each smaller unit that numbered at least eight hundred men formed districts, all Slovaks uniformly had their own district). Although elections to the Assembly were already announced in some units, in the end it was never called due to the reorganization of the army, which took place at the beginning of 1919 and reflected the establishment of independent Czechoslovakia and the integration of the Czechoslovak Legion in

Although the Congress adopted several fundamental regulations, the legionary courts remained without a criminal code to follow and had to rely on the legal sense of the judges and what the legally educated judges remembered from Austrian law<sup>27</sup>.

In this situation, it was decided that a new Legionary Criminal Code would be drawn up, in the creation of which would take part the courts, providing insight into their decision-making practice, the Legal Department and the Branch of the Czechoslovak National Council in Russia<sup>28</sup>.

### THE LEGIONARY CRIMINAL CODE AND ITS CREATION

Unfortunately, no records have been preserved about the exact date of the decision to create the criminal code, but it can be said with a great deal of certainty that work on it began at the earliest during the Congress, i.e. most likely in August 1918<sup>29</sup>.

The central role in the creation of the code was assumed by the Legal Department, whose chairman was JUDr. Viktor Svoboda<sup>30</sup>. In the context of the Czechoslovak Legion in Russia, the Department acted as a kind of analogue of the Ministry of Justice. It also had an overview of all legally educated members of the army<sup>31</sup>, which it used both to appoint judges and to work on legal regulations<sup>32</sup>.

The main authors of the emerging criminal code were Dr. Josef Hrnčič, investigating judge at the 2<sup>nd</sup> Rifle Division, Dr. Bohuš Kynych, assistant head of

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Russia into the army of this state. For more, see J. Řepka, *II. sjezd československého vojska na Rusi*, Praha 1928.

<sup>27</sup> V. Svoboda, *op. cit.*, p. 32.

<sup>28</sup> *Ibidem*, p. 33.

<sup>29</sup> We can say with certainty that the task of creating this code is already mentioned in the Report of the Legal Department of 1 September 1918. See Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva právního odboru ze dne 1. září 1918*, p. 98.

<sup>30</sup> JUDr. Viktor Svoboda – before the war he worked as a legal trainee in Vyškov, as a member of the Austro-Hungarian army he was captured by Russians in September 1915. He joined the Legion from a prison camp in the summer of 1917. In the summer of 1918, he was elected to the Branch of the Czechoslovak National Council in Russia and became chairman of its Legal Department, which he remained at the head of even after the reorganization in 1919. He was a leading figure in the legal system of the Legion in Russia and consistently advocated that this system was not arbitrary but maintained firm principles. In the interwar period, he worked as a lawyer. After the occupation of Czechoslovakia, he became involved in resistance activities and was executed by the Gestapo in 1942 for participating in the resistance. See V. Svoboda, *op. cit.*; *Sbírka dokumentace Oddělení vydávání osvědčení MO ČR*, Vojenský historický archiv, *Spis č.j. 26620/1960*.

<sup>31</sup> It is important to note that the lack of trained lawyers meant that the Legal Department considered law students with only a few completed semesters, or persons who before the war worked in official positions where knowledge in the field of law was required, to be legally educated.

<sup>32</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva právního odboru ze dne 1. září 1918*, p. 98.

the Legal Department, and Dr. Josef Patejdl, vice-chairman of the Branch of the Czechoslovak National Council in Russia. These men created the initial draft of the code, which was then circulated to the courts, which had the task of providing their comments, supplemented by their experience in dealing with individual criminal acts listed in the draft code<sup>33</sup>.

After incorporating the comments of the courts and under the supervision of the Legal Department, a criminal code of 190 paragraphs was finally created<sup>34</sup>. It consisted of a general part of 40 paragraphs and 16 chapters of a special part, with each chapter numbering the paragraphs starting again from one<sup>35</sup>.

The general part begins with a section defining the range of persons to whom the criminal law was intended to apply – specifically, it was supposed to be members of the Czechoslovak army, its prisoners, prisoners of war who work for the army or are transported together with it and “all persons brought before Czechoslovak military courts in the cause of the crimes for which they were accused before Czechoslovak courts”<sup>36</sup>. Furthermore, the law specifies that for members of the army, its scope also extends to the time before their entry into the Legion (in this case, it even allows them to be convicted again for a crime for which they were convicted once before, if they did not serve their sentence yet)<sup>37</sup>.

The law recognizes a total of five types of punishment<sup>38</sup>:

- death penalty<sup>39</sup>,
- prison sentence,
- inclusion in the labor section,
- degradation or deprivation of office,
- fine.

A prison sentence and a sentence of inclusion in a labor section automatically entailed degradation and the loss of active and passive voting rights<sup>40</sup> (in the case of a sentence of less than ten years, however, voting rights were restored after the sentence was served)<sup>41</sup>.

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<sup>33</sup> Sbíрка důležitých dokumentů 1. odboje, Vojenský historický archiv, *Zpráva o činnosti Právního odboru Odbočky Československé národní rady v Rusku ze dne 16. ledna 1919*, file *Zpráva o činnosti právního odboru*, p. 1.

<sup>34</sup> V. Svoboda, *op. cit.*, p. 33.

<sup>35</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Návrh vojenského trestního zákoníku*, k. 98.

<sup>36</sup> *Ibidem*, § 1.

<sup>37</sup> *Ibidem*, § 2.

<sup>38</sup> *Ibidem*, § 21.

<sup>39</sup> § 22 prohibits the death penalty to a person who was under the age of 21 at the time of the crime and orders it to be replaced with a prison sentence of a maximum 20 years.

<sup>40</sup> *Ibidem*, § 25.

<sup>41</sup> *Ibidem*, § 26.

The draft code also contained options for toughening the punishment, namely dishonorable discharge<sup>42</sup>, further demotion with withdrawal of the right to promotion for up to six months and loss of the right to vote (for those punishments that were not automatically associated with this toughening)<sup>43</sup> and a paragraph describing the options for toughening the prison sentence specifically<sup>44</sup>.

Paragraph 34, which introduces the institute of conditional sentencing<sup>45</sup>, appears to be truly revolutionary by the standards of lawyers educated in Austria. Austrian law, which logically was to some level source of inspiration for the drafters of the criminal code (as far as is known, none of them worked in the field other than Austrian or Hungarian law), did not use this institute<sup>46</sup>. However, the legionary courts have used conditional sentencing since their establishment, and according to the memories of Viktor Svoboda, this was done based on the inspiration of the French disciplinary code<sup>47</sup>.

Furthermore, the general part of the code has dealt with standard definitions of terms that are commonly encountered in similar regulations – attempt to commit a crime<sup>48</sup>, circumstances excluding criminal liability<sup>49</sup>, definitions of intent<sup>50</sup> and negligence<sup>51</sup>, etc. Principles of criminal law also appear, but they are placed relatively randomly (e.g. the principle of *ignorantia iuris non excusat* is placed in § 12 between the definition of malicious intent in § 11 and negligence in § 13)<sup>52</sup>.

As for the inspirations, only a limited degree of inspiration from Austrian criminal law can be observed in the general part of the draft of the Legionary Criminal Code, mainly in the field of terminology, which is logically identical to contemporary Czech translations of Austrian criminal regulations. The Legionary Code is significantly more concise (the general part of the Austrian Criminal Code has over 50 sections, which are also more extensive, the general part of the Austrian Military Criminal Code has 140 significantly more extensive sections), which is

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<sup>42</sup> This punishment originally existed in legionary law as a separate one and was overused by legionary courts, as evidenced by the fact that the army had to actively intervene and start cancelling these punishments or enabling their cancellation. See Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Cirkulář správce Náborového, Vojenského a Právního odboru ze dne 3. září 1918 č. 15*, p. 97.

<sup>43</sup> § 29 of the Návrhu vojenského trestního zákoníku.

<sup>44</sup> *Ibidem*, § 30.

<sup>45</sup> *Ibidem*, § 34.

<sup>46</sup> Cf. Zákon č. 117/1852 ř. z., o zločinech, přečinech a přestupcích and Zákon č. 19/1855 ř. z., vojenský trestní zákon o zločinech a přečinech.

<sup>47</sup> V. Svoboda, *op. cit.*, s. 36.

<sup>48</sup> §§ 4–6 of the Návrh vojenského trestního zákoníku.

<sup>49</sup> *Ibidem*, § 7–9.

<sup>50</sup> *Ibidem*, §§ 10 and 11.

<sup>51</sup> *Ibidem*, § 13.

<sup>52</sup> *Ibidem*, § 11–13.

due to the fact that it uses significantly simpler definitions and omits a number of details (e.g. the Austrian Military Criminal Code devotes three paragraphs to the execution of the death penalty<sup>53</sup> and several paragraphs to the execution of the prison sentence<sup>54</sup>, which the Legionary Code does not deal with at all).

As for other inspirations, the only other laws available to the law makers were Imperial Russian law and French law. The Russian one was strictly rejected for its autocratic nature and was used only as a starting point for the selection of military crimes listed in the draft<sup>55</sup>, even though there existed a theoretical exception that could be taken into account if it was more favorable to the offender<sup>56</sup> (however, there are no records of this exception being used in the creation of the code). To a lesser extent, French law (the military disciplinary code) was used, which, as already mentioned, was manifested by the insertion of the institution of conditional conviction.

The special part of the code consisted of 16 chapters. These go gradually from typically military crimes<sup>57</sup>, through crimes committed by or against public authorities and the resistance movement<sup>58</sup>, followed by crimes against ‘moral decency’ (sexual crimes)<sup>59</sup>, against family<sup>60</sup>, personal dignity, freedom, health and life<sup>61</sup>, and property crime<sup>62</sup>.

Starting with the military crimes, the first chapter dealt with crimes against military duty<sup>63</sup>, the second with crimes committed on the battlefield<sup>64</sup>, the third with crimes against the good reputation of the army<sup>65</sup>, and the fourth with crimes

<sup>53</sup> §§ 22, 45 and 46 of the Zákon č. 117/1852 ř. z.

<sup>54</sup> §§ 23–25 of the Zákon č. 19/1855 ř. z.

<sup>55</sup> V. Svoboda, *op. cit.*, p. 32.

<sup>56</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva o činnosti právního referátu za rok 1919*, p. 98.

<sup>57</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Hlavy I.–IV. Návrhu vojenského trestního*, p. 98.

<sup>58</sup> *Ibidem*, hlavy V–X.

<sup>59</sup> *Ibidem*, hlava XI.

<sup>60</sup> *Ibidem*, hlava XII.

<sup>61</sup> *Ibidem*, hlavy XIII–XV.

<sup>62</sup> *Ibidem*, hlava XVI.

<sup>63</sup> Specifically, these were various types of defection, disobeying orders, breach of duty and insulting a superior.

<sup>64</sup> These were crimes of espionage, sabotage, disclosure of military secrets, cowardice and looting of the dead and wounded.

<sup>65</sup> These were crimes of public drunkenness, participation in and operation of gambling, the unauthorized wearing of decorations, insulting religion, and damage to cemeteries, and here we also find the unspecific crime of ‘violating the honor of the Czechoslovak army’, which could be used by the courts in cases that were not explicitly listed in this (relatively brief) chapter of the code. The criminal act of violating the honor of the Czechoslovak army can be found in judgments quite often, although it was never officially included in the law of the Czechoslovak legions. Cf. the decisions

committed in or against guard duty<sup>66</sup>. Chapters I, II, and IV contain most of the few provisions of the code that allow for the death penalty<sup>67</sup>.

Moving on to crimes committed by or against public authorities, the draft of the criminal code began this area with chapter V, dealing with crimes committed by public official<sup>68</sup>. It was followed by a chapter dealing with crimes against official authority, which contained another of the crimes for which the death penalty can be imposed<sup>69</sup>. Chapter VII then dealt with crimes against the Czechoslovak revolutionary movement<sup>70</sup> (the paradox is that by the time the code was completed, this entire chapter, perhaps with the exception of the last paragraph<sup>71</sup>, would be out of date, because at that time independent Czechoslovakia had already been established) and chapter VIII dealt with crimes against the bodies of the Czechoslovak revolutionary movement in Russia<sup>72</sup> (as indicated by hand-made modifications in the original draft, originally only crimes against the Assembly were included, but later the chapter was expanded to also protect other elected

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of the courts in Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, p. 100.

<sup>66</sup> These were different types of unauthorized leaving of guard duty, unauthorized release of a prisoner, insulting a guard and assaulting a guard.

<sup>67</sup> In the case of chapter I, the death penalty was for defecting to the enemy, repeatedly disobeying an order in front of the enemy, or leading multiple soldiers to disobey an order in front of the enemy. In chapter II, this punishment is reserved for the crime of espionage, sabotage (but only if it led to the ‘destruction or capture of Czechoslovak or allied troops’). Chapter IV prescribes the death penalty as the punishment for fatally assaulting a guard.

<sup>68</sup> This mainly involved various violations, non-fulfillment or misuse of official powers. This chapter also contained the criminal offenses of accepting and offering bribes, revealing official secrets and neglecting the care for subordinates.

<sup>69</sup> This chapter contains the criminal offense of insulting a troop commander, but it also focuses on various types of rebellion against the commander and the authorities, or inciting others to do so. As the most serious crime of this category, the draft code considered rioting by a large number of people, which had to be dispersed using force – such an act allowed the leaders of the riot to be punished with the death penalty.

<sup>70</sup> This chapter contains a brief list of crimes (it contains only five paragraphs) against the movement for the declaration of an independent Czechoslovakia. All the criminal acts listed here have the essence of undermining the activities of this movement, and with the exception of the last one, they are described very generally (undermining the liberation movement, spreading false information about the liberation movement, etc.). The last paragraph is clearly aimed at Bolshevik agitators moving among the legionnaires, as it makes it a criminal offense to spread dissension by inciting hatred towards a social class or a religious or political group.

<sup>71</sup> This was the crime of spreading dissension by inciting hatred towards a social class or a religious or political group. See Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, § 5 *Hlavy VII. Návrhu vojenského trestního zákoníku*, p. 98.

<sup>72</sup> These included crimes related to interfering with the work of elected bodies and members of elected bodies and disrupting and influencing elections. The chapter also contains a special provision in § 9 that anyone who has been convicted of any of the crimes listed in it automatically loses the right to vote ‘until the end of the war’.

bodies of the movement operating in Russia). The last two chapters of this area, chapters IX and X, dealt with obstructions of justice<sup>73</sup> and crimes against the authenticity of documents and securities<sup>74</sup>.

Offenses against moral decency<sup>75</sup> dealt with by chapter XI were most extensively described not in terms of the number of paragraphs, but in terms of their length. The authors obviously tried to leave as little room for interpretation as possible, and compared to other chapters, they went into detail when describing crimes.

Chapter XII, containing only four brief paragraphs, is the shortest chapter of the special part of the code. It deals with crimes against the family and marriage<sup>76</sup>.

The part of the code dealing with crimes against personal honor<sup>77</sup>, personal freedom<sup>78</sup>, bodily safety<sup>79</sup> and property crimes<sup>80</sup> consisted of chapters XIII to XVI. Just as with the previous two chapters, this was a group of crimes that we could generally find in common criminal codes both contemporary and today and it contained the last three crimes for which death penalty could have been imposed – premeditated murder<sup>81</sup> and robbery resulting in death or committed by an armed gang<sup>82</sup>.

A general look at the special part shows that here the authors have completely abandoned the inspirations of both Austrian and French law. A similar structure

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<sup>73</sup> In the first paragraph, this chapter applied the crimes against elected representatives, mentioned in the previous chapter, also to judges, court officials and public prosecutors. This was followed by the crimes of perjury, intentional failure to prevent a crime, hiding a wanted person (relatives of the given person could not commit this crime), helping to escape from custody, divulging court secrets and exerting pressure on a judge.

<sup>74</sup> This included forgery of official documents, securities and money.

<sup>75</sup> This mainly included crimes that today would be classified as crimes in the sexual area – various types of sexual abuse, rape, but also, for example, enticing sexual intercourse under the promise of marriage, pimping, prostitution, sexual intercourse with a person of the same sex or an animal, or unauthorized accommodation women in the barracks.

<sup>76</sup> These were the crimes of double marriage, adultery (prosecutable only at the request of the deceived spouse) and abduction of a wife or dependent person by force or cunning for the purpose of intercourse.

<sup>77</sup> This includes the crimes of false accusation, defamation (initiation of criminal prosecution by the injured party was necessary here), mockery and threats.

<sup>78</sup> These were crimes of deprivation of personal liberty, kidnapping and extortion.

<sup>79</sup> This chapter included simple murder and premeditated murder as two separate crimes, as well as the crimes of challenging to a duel, willful bodily harm, negligent bodily harm, careless handling of a weapon and several types of the crime of public endangerment.

<sup>80</sup> This chapter dealt with theft, robbery, unauthorized use of another's property, damage or destruction of entrusted state property, fraud and usury.

<sup>81</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, § 1 Hlavy XV. *Návrhu vojenského trestního zákoníku*, p. 98.

<sup>82</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, § 8 Hlavy XVI. *Návrhu vojenského trestního zákoníku*, p. 98.

cannot be found here, crimes are classified differently, definitions are different, many crimes that we would find in other contemporary codes are omitted, others are generalized. It would be possible to speculate that some crimes have the same penalty rate or the same decisive facts are used as in the Austrian criminal codes<sup>83</sup>, but these are such exceptional cases that one can rather lean towards the opinion that it is a coincidence.

Overall, one can observe the authors' efforts for maximum brevity and<sup>84</sup>, in the case of a number of criminal offenses, an aim to leave as much room as possible for judicial interpretation.

On the issue of punishments, one can also generally observe a significant moderation of the authors of the draft code. Most crimes carry a maximum sentence of five years in prison, often not even that (rather under one year)<sup>85</sup>. Longer sentences are rare, and although the death penalty is allowed for several crimes, it is used incomparably less frequently than in the Austrian Military Criminal Code<sup>86</sup>.

The specific day when the final draft of the code was submitted for final approval is not recorded, but it is already mentioned in the report on the activities of the Legal Department on 16 January at the latest<sup>87</sup>. It was supposed to be passed by the Assembly, which, however, had still not been elected by then (elections had only been called in a few units), so it could not be convened. Thus, the code remained only a draft until February 1919, when the army was shaken by the changes brought by the Minister of War, General Milan Rastislav Štefánik<sup>88</sup>.

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<sup>83</sup> An example of this can be the crime of violent fornication (rape), which we would find in § 125 of the Austrian Criminal Code, § 404 of the Austrian Military Criminal Code and in § 1 of chapter XI of the draft of the Legionary Criminal Code. In all three cases, the basic penalty rate is set at 5–10 years in prison. Both Austrian codes also provide for a longer prison sentence if the injured person was killed, the legionary code does not recognize such a possibility (according to it, such an act would be classified as murder).

<sup>84</sup> For comparison, the Austrian Criminal Code had almost 600 paragraphs, the Austrian Military Criminal Code 800 paragraphs, the French Military Criminal Code over 400 paragraphs. The draft of the Legionary Criminal Code had only 190 paragraphs.

<sup>85</sup> If we take chapter I as an example, there are 20 crimes, of which in only six cases the code allowed a punishment exceeding one year and only in three cases exceeding five years.

<sup>86</sup> The Austrian Military Criminal Code allows for a fairly extensive use of the death penalty, allowing it under certain conditions for a large number of military crimes.

<sup>87</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva právního odboru ze dne 16. ledna 1919*, p. 98.

<sup>88</sup> Originally the son of a Slovak evangelical pastor, he worked as an astronomer in France from 1904. After the beginning of World War I, he joined the French Air Force as a volunteer and at the turn of 1915 and 1916 he joined the Czechoslovak resistance movement. Together with the later Czechoslovak presidents T.G. Masaryk and E. Beneš, they formed the central trio of the resistance abroad, with Štefánik acting as the leading voice of the Slovaks in this movement and as a central military figure (he held the rank of general at the time). In addition, he brought to the resistance a number of connections in high places in the French and Italian armies. After the establishment of

## THE FATE AND SECOND LIFE OF THE DRAFT CODE

February 1919 brought a shock to the Czechoslovak Legion in Russia in the form of Order of the Minister of War no. 588. Its detailed analysis is beyond the scope of this work, but in brief it meant that the Legion in Russia was included in the regular Czechoslovak army and accordingly its self-governing bodies (including the Assembly) were abolished<sup>89</sup>. This caused an uproar and resistance among the legionnaires, which culminated in the uprising of several units in Irkutsk<sup>90</sup>.

Order no. 588 was part of a wider reorganization of the legion in Siberia, which had been underway since January 1919<sup>91</sup>. Its side effect was that the army and its courts were to be governed by the legal system in force in Czechoslovakia and not by its own regulations<sup>92</sup>.

That should have been the end of the story of the Legionary Criminal Code, which, it seemed, should no longer be needed. However, the reality turned out to be different.

In order for the regulations valid in Czechoslovakia to be used, it would be necessary to supply them to the justice system in Siberia, ideally in the form of a collection of laws. Unfortunately, despite the urgency of the Legal Department, only one copy of the collection was delivered from Czechoslovakia for the entire year 1919<sup>93</sup>. The courts thus found themselves in a deadlock situation where, on the one hand, they were strictly ordered to follow the military criminal code (which Czechoslovakia, as the successor state of Austria-Hungary, took over from Austrian law), on the other hand, they had no way of familiarizing themselves with it. A temporary solution was found in the use of the Austrian Criminal Code (which was also adopted by Czechoslovakia), which was obtained in such a quantity that at least part of the courts were supplied with it<sup>94</sup>.

The Corps Court eventually had to intervene in the situation. This Court was staffed exclusively with legally educated judges who were supposed to have an overview of the applicable law, and for a long time it was overwhelmed by requests from lower courts for advice on how to proceed in each case in order to comply with the requirement of following Czechoslovak law. After much hesitation, on

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independent Czechoslovakia, he held the position of Minister of War, but in a tragic irony of fate, he never visited the liberated state, as he died in a plane crash on 4 May 1919 on his way there. See D. Vácha, *Prokletá magistrála*, Praha 2019, pp. 15–18.

<sup>89</sup> *Ibidem*, pp. 115–116.

<sup>90</sup> *Ibidem*, pp. 101–105.

<sup>91</sup> M. Mojžiš, *op. cit.*, p. 102.

<sup>92</sup> RL-Sbor.soud-Rusko-Trest-zál 1919–1920 Spisy, Vojenský historický archiv, *Usnesení sborového soudu S-2/19 ze dne 19. května 1919*, p. 4.

<sup>93</sup> Ministerstvo vojenství – oddělení v Rusku, voj. správa-právní odbor, Vojenský historický archiv, *Zpráva o činnosti právního referátu za rok 1919*, p. 98.

<sup>94</sup> *Ibidem*.

19 May 1919, the Corps Court proceeded to issue Resolution S-2/19, later known as Previews of the Corps Court<sup>95</sup>.

Previews began with an introduction, which was an explanation of the reasons for their creation and a defense of their position within the legal system. This was followed by 29 untitled paragraphs and nine named chapters with separately numbered paragraphs<sup>96</sup>.

The introduction began by explaining why the court felt the need to create the Previews and that they were issued only out of necessity and are not meant to replace the law. The Court explained that this resolution was intended to be a guide to courts that have no other applicable written law available, and that it was not to be considered judicial law-making, but it should be accepted only as any case law of the Supreme Court in the continental system. The resolution also contained a relatively extensive defense of why using it was not a violation of the *nullum crimen sine lege* principle – although the provisions of the Previews were not the exact wording of the law in force in Czechoslovakia, the Court assumed that the ratio of the soldier to the army and the state is more or less the same throughout Europe and, therefore, if the judges created the Previews based on their experience and the codes available to them, the regulations are more or less identical<sup>97</sup>.

The following 29 paragraphs describe the military crimes and crimes committed by or against public authorities that we might encounter in chapters I–VI of the original draft of the Legionary Criminal Code. The definitions are very similar, but there are significantly fewer crimes listed here, which is caused by the fact that several crimes are often condensed under one paragraph. Penalty rates are set differently, usually more severely (sentences between five and ten years are significantly more common)<sup>98</sup>.

However, where the connection with the original draft of the Military Criminal Code is most obvious are the following chapters. Here, the Previews take over the verbatim text of chapters VII–XVI of the draft, including the numbering of the chapters (there are 29 untitled paragraphs, which are followed by chapters numbered starting from VII, each of which again has separately numbered paragraphs)<sup>99</sup>.

The Previews, together with the Austrian Criminal Code, remained the central guide for the courts in the field of criminal law, although as time went on the code became more accessible and the Previews receded into the background

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<sup>95</sup> RL-Sbor.soud-Rusko-Trest-zál 1919–1920 Spisy, Vojenský historický archiv, *Usnesení sborového soudu S-2/19 ze dne 19. května 1919*, p. 4.

<sup>96</sup> *Ibidem*.

<sup>97</sup> *Ibidem*.

<sup>98</sup> *Ibidem*, §§ 1–29.

<sup>99</sup> *Ibidem*, hlavy VII–XVI.

as a mere supporting source<sup>100</sup>. With them, the last reverberations of the planned own criminal code of the legionnaires in Russia gradually disappeared, and with the liquidation of the legionary justice system, connected with the evacuation of the Czechoslovak Legion from Siberia, the draft fell into oblivion.

## CONCLUSIONS

The emergence of a specific legal system of the Czechoslovak Legion in Russia provides a unique opportunity to examine the birth of a unique improvised law in non-standard conditions – in the middle of a raging war, with a lack of inspirational sources and with only a small number of legally educated persons.

In these conditions, the Legion's own military criminal code was created. In the situation of a lack of regulations by which the courts could follow their decisions, the creation of a criminal code seemed to be a logical step, and so at the end of the summer of 1918, legislative work began under the supervision of the Legal Department of the Branch of the Czechoslovak National Council in Russia.

During the autumn and winter of 1918, a relatively brief military criminal code of 190 paragraphs was created. Although its creators were mainly educated in contemporary Austrian law, they took only the bare minimum from it. Likewise, they were marginally inspired by French military law, from which the institute of conditional sentencing was taken over, and Russian law, which was used as a starting point for the selection of military crimes listed in the draft. Apart from these inspirations, the main source for the creation of the code was the organically formed practice of legionary courts and the own creative activity of the authors of the code.

The final work was divided into two parts – general and special, with the general being further divided into 40 paragraphs and the special part into 16 chapters of varying length, each of which was further divided into paragraphs numbered again from one. The chapters of the special part were ordered from military crimes, through crimes committed by or against public officials, crimes against the Czechoslovak resistance movement and its bodies, and then followed by crimes against dignity, health, securities, property, etc.

The drafted code was ready to be put into effect, but the change in the situation, caused mainly by the creation of independent Czechoslovakia, led to the fact that the legislative body that was supposed to adopt it was not elected at all and instead the legionary justice system was subordinated to the law of the Czechoslovak Republic.

Insufficient activity of the state, which led to an insufficient supply of the courts in Siberia with collections of laws, however, caused that the supreme court

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<sup>100</sup> V. Svoboda, *op. cit.*, p. 33.

of the legionary justice system was forced to issue a resolution in May 1919, which tried to provide the courts with guidance in their decision-making so that they were not left to their own improvisation. These were the so-called Previews – in theory a mere resolution, in practice a manifestation of judicial law (although its text itself strictly rejected this), which in many respects had the structure of a law and was significantly (largely word for word) based on the draft of the Legionary Military Criminal Code.

In conclusion, it is appropriate to add that although the Legionary Military Criminal Code never came into effect and even later it cannot be traced that it had an influence on the development of later law, it is still an interesting example of the creation of modern law with only minimal resources, so to speak, from a scratch. It provides a unique insight into the functioning of lawmakers in a very specific situation and into the effort to fill the legal vacuum where the chaos of war has created it. The fact that it was necessary to create it at all also points to the unsatisfactory functioning of pure organic judicial law-making.

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### ABSTRACT

The article presents the reasons for the creation, content and fate of the draft of the military criminal code developed for the needs of the Czechoslovak Legion in Siberia at the time of its involvement in the Russian Civil War. After introducing the historical background of the Legion's activity in Russia, it summarizes the functioning of the improvised legal system that the legionnaires, cut off in Siberia from their command in Europe, had to create and maintain. Subsequently, the paper deals with the reasons for the necessity of creating a new criminal code in the middle of a civil war and the process of its creation, as well as a brief summary of the content of the individual parts of the draft. The last chapter sheds light both on the reasons why the code did not come into effect in the end, and on the "second life" that was breathed into it by the Corps Court (the Supreme Court of the Czechoslovak Army in Siberia) in its resolution S-2/19. In addition to general history books dealing with the Czechoslovak legions, the sources for this article were, in particular, archival materials of the Legal Department of the Branch of the Czechoslovak National Council in Russia, containing, among other things, the original draft of the code, and the book-published memoirs of Viktor Svoboda, chairman of the Legal Department.

**Keywords:** Czechoslovak Legion; military criminal code; Russian Civil War; Czechoslovakia; Viktor Svoboda

### ABSTRAKT

W artykule przedstawiono przyczyny powstania, treść i losy projektu kodeksu karnego wojskowego opracowanego na potrzeby Legionu Czechosłowackiego na Syberii w czasie jego zaangażowania w rosyjską wojnę domową. Po wprowadzeniu do historycznego tła działalności Legionu w Rosji opisano funkcjonowanie improwizowanego systemu prawnego, który legionieści, odcięci na Syberii od swojego dowództwa w Europie, musieli stworzyć i utrzymać. Następnie omówiono przyczyny konieczności stworzenia nowego kodeksu karnego w środku trwania wojny domowej oraz proces jego tworzenia, a także krótko podsumowano treść poszczególnych części projektu. Ostatni rozdział rzuca światło zarówno na powody, dla których kodeks ostatecznie nie wszedł w życie, jak i na „drugie życie”, które tchnął w niego Sąd Korpusu (Najwyższy Sąd Armii Czechosłowackiej na Syberii) w swojej uchwale S-2/19. Oprócz powszechnie znanej literatury historycznej dotyczącej czechosłowackich legionów źródłami do niniejszego artykułu były w szczególności materiały archiwalne Wydziału Prawnego Oddziału Czechosłowackiej Rady Narodowej w Rosji, zawierające m.in. oryginalny projekt kodeksu, oraz opublikowane w formie książkowej wspomnienia przewodniczącego Wydziału Prawnego Viktora Svobody.

**Słowa kluczowe:** Legion Czechosłowacki; kodeks karny wojskowy; rosyjska wojna domowa; Czechosłowacja; Viktor Svoboda