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## *The Judiciary in the Protectorate of Bohemia and Moravia (1939–1945)\**

### Abstract

This paper discusses the justice system in the Protectorate of Bohemia and Moravia (1939–1945), a double-track system with two types of courts: autonomous (Czech) and Reich (German). Their jurisdiction was mostly determined by nationality. The Czech line of the judiciary faced a number of interventions by the occupying power (consisting, for example, in successful personnel purges), yet functioned without significant changes until the end of the Second World War. A system of German courts was established in the Protectorate, which in some cases also had jurisdiction over the Czech population.

**Keywords:** Protectorate of Bohemia and Moravia, Czech lands, judiciary, German justice system, Nazi law, criminal law

### 1. Introduction

The occupation of the Czech lands by the German Wehrmacht began on March 15, 1939, and the Protectorate of Bohemia and Moravia was declared the next day.<sup>1</sup> This paper focuses on the changes that took place in the justice system, which became the mainstay of the ruling totalitarian and occupation regime. The judiciary (especially the German justice system) and its decision-making activities during the Nazi occupation has not yet been systematically researched in detail in the Czech legal history literature and is still to be thoroughly analyzed in a monograph.<sup>2</sup> The author of this paper aims to at least partially explain the Protectorate justice system and the interventions that took place during

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<sup>1</sup> For the basic characteristics and operation of the Protectorate in the Czech literature, see e.g. Maršálek, *Protektorát*.

<sup>2</sup> The only work in this respect is the brochure Moravčík, *Organizace soudnictví*; and the article Vašek, “Počátky činnosti”.

its existence. To understand how the law functioned during this period, it is imperative to include a brief discussion of the very complex legal system of the Protectorate.

The legal basis for the Protectorate of Bohemia and Moravia was the Decree of the Führer and Reich Chancellor of March 16, 1939 (RGBl. I, p. 485). Its article 12 stipulated that:

The existing law in Bohemia and Moravia remains in force insofar as it does not contradict the assumption of protection by the German Reich.

As a result, the vast majority of laws and regulations were taken from the First and Second Czechoslovak Republics, a large part of which included adopted Austrian legislation.<sup>3</sup> Thus, the material continuity between the new legal system and that of the defunct Czechoslovak Republic was largely preserved. However, the adopted legislation had to be interpreted in the new state-law context in the spirit of the German nation concentrated in the will of the leader ascertained by national feeling.<sup>4</sup> Along with the legal system, most of the former State institutions that continued to exist (e.g., the President, the government, ministries, courts, local public administration bodies and police forces) were taken over from the previous period. In addition to these autonomous (Czech) bodies, a German occupation administration was also established in the Protectorate, mainly consisting of the Reich Protector (Reich Protector's Office), the State Secretary, the Oberlandrats (Supreme District Councilors) as local administration bodies, and the German judiciary and security forces (from 1943 onwards, also the German State Minister for Bohemia and Moravia).<sup>5</sup>

If we look at the legal system in force in the Protectorate as a whole, it is necessary to distinguish between Reich-German and "autonomous" legislation, since not only autonomous law (i.e., the adopted laws from the First and Second Czechoslovak Republic and newly issued legislation by the autonomous authorities) was in force in the Protectorate, as parts of Reich legislation were also introduced.<sup>6</sup>

The application of autonomous or Reich law usually depended on the nationality of the parties to the legal relations. Protectorate nationals (Czechs) were subject to the adopted laws of the Czechoslovak Republic together with the newly adopted Protectorate legislation after March 15, 1939. German state nationals residing in the Protectorate were in principle subject to German jurisdiction and also enjoyed the rights of nationals of the Protectorate of Bohemia and Moravia.<sup>7</sup> In some cases, however, the Germans living in the Protectorate were governed by Czech law (these were mainly regulations in the field of administrative law). It is thus necessary to stress, that the key concept of law

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<sup>3</sup> For a detailed analysis of the development of law in the Protectorate in contemporary literature, see Maršálek, *Protectorát*; Pasák, *Pod ochranou Říše*; Tauchen, "Právní řád a publikace"; Tauchen, *Das Protektorat*; or Schelle, Tauchen, *Recht und Verwaltung*.

<sup>4</sup> Maršálek, *Pod ochranou hákového kříže*, 124.

<sup>5</sup> For a detailed analysis of the state-law characteristics of the autonomous and occupation administrations, see Janečková, *Státoprávní uspořádání*; Maršálek, *Pod ochranou*; Maršálek, *Protectorát*; Tauchen, "Die Staatsverwaltung des Protektorats". Two older works by Šisler are also available, "Příspěvek k vývoji a organizaci", and "Studie o organizaci a působnosti".

<sup>6</sup> On the characteristics of the Reich law, see e.g. Mandl, *Právní soustava*; Nýdl, "Základy nacionálně-socialistické nauky"; Knapp, *Problém*; for more recent literature, see Tauchen, "Prameny práva".

<sup>7</sup> On the details of Protectorate and Reich citizenship see Emmert, "German Citizenship", 154.

in the Protectorate was the principle of personality of law. Citizenship, not nationality (ethnicity) played a role in this regard.

A distinctive feature of the Protectorate was the duality of its legal system, with the public administration, including the judiciary, being a double-track system.

## 2. The Autonomous (Czech) Judiciary and Related Interventions

### 2.1. Ordinary Courts and Their Relationship to the German Courts

After the establishment of the Protectorate of Bohemia and Moravia, the existing Czechoslovak court system continued to function with ordinary courts (district, regional, high and Supreme Court and Supreme Administrative Court) and specialized courts, which were to deal with only narrowly defined issues (e.g., labor or upper courts), being taken over from the previous period.<sup>8</sup> Only small and rather insignificant changes were made in the judiciary after 1939 (e.g., in the organization of certain regional courts).<sup>9</sup>

As with other public administration offices, public prosecutors, all judges and court officials who were inconvenient to the new regime (“they were unable to perform their office for reasons of public peace and order”) had to leave the judiciary in the first months of the Protectorate.<sup>10</sup> The purges in the judiciary mainly targeted Jews and supporters of communist or left-wing ideologies, and included judges, as well as the presiding judges of chambers (lay judges), jurors, receivers, mandatory administrators, court interpreters and experts. These personnel changes in the judiciary and state administration followed the changes in the staffing that occurred during the Second Czechoslovak Republic.

Czechoslovak military courts and military public prosecution offices were abolished as part of the process of liquidation of the Czechoslovak army.<sup>11</sup> Protectorate nationals who had previously been subject to the military court system (e.g., gendarmerie in addition to military personnel) were now subject to the generally applicable Protectorate criminal laws, or to Reich law if it applied in the given case. Thus, the Supreme Military Court was also abolished in November 1939. Pending cases were referred to the Supreme Court. The abolition of the military courts was followed by the abolition of the Military Criminal Law of January 15, 1855 (No. 19/1855 of the Reich Law Gazette) and the Military Criminal Procedure Code of July 5, 1912 (No. 131/1912 of the Reich Law Gazette).

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<sup>8</sup> An overview of legal history literature on the judiciary from 1939 is available in Tauchen, “Tschechoslowakei/Tschechien”. An overview of the courts active in the Czech lands until 1938 is given most recently in: Princ, *Soudnictví*; or Schelle, Bílý, *Dějiny českého soudnictví*. Also worth mentioning is the separate volume of the Encyclopedia of Czech Legal History devoted to the judiciary and which describes all the courts that were active in the Czech lands Schelle, Tauchen, *Encyklopedie, XIV. svazek, Soudnictví*.

<sup>9</sup> The text of the autonomous laws relating to the organization of the judiciary and civil and criminal procedural law, including a commentary, can be found in: Hoffmann, *Nové zákony a nařízení*.

<sup>10</sup> Government Regulation (No. 123/1939 Coll.).

<sup>11</sup> Government Regulation (No. 255/1939 Coll.).

Procedural law applied before the autonomous courts in the Protectorate did not undergo any far-reaching changes either. As regards the conduct of criminal proceedings before the Protectorate courts, the criminal procedure rules already in force were applied. In particular, the Austrian Adopted Code of Criminal Procedure of May 23, 1873 (No. 119/1873 of the Reich Law Gazette), and the Civil Procedure Code of August 1, 1895 (No. 113/1895 of the Reich Law Gazette) continued to apply in civil proceedings.

At the request of the German public prosecutor, the public prosecutor's offices and courts of the Protectorate had to surrender proceedings that had been initiated before them if German jurisdiction applied in the opinion of the German public prosecutor. If the office of the Protectorate did not consider that German jurisdiction could be applied, it could request a decision from the public prosecutor with the German High Regional Court. Under Article 5(5) of the Decree of the Führer and Reich Chancellor on the Protectorate of Bohemia and Moravia of March 16, 1939, the Reich Protector was entitled to appeal a final judgment of a Protectorate court and, in such a case, a German public prosecutor could bring an action before a German court. If the German court rendered a final decision in that case, the decision of the Protectorate Court was set aside.

In criminal cases heard by German courts, the police authorities, prosecutors and criminal courts of the Protectorate were obliged to take all actions (in accordance with Protectorate laws and regulations) that could clarify the state of the case, to arrest the accused, and to secure items intended for the commission of crimes where delay would be risky. The Protectorate's security authorities were mandated to inform the German police authorities and the competent German public prosecutor of their orders. If there was any doubt as to whether a criminal case belonged before the German courts or Protectorate courts, it was for the Protectorate criminal authorities to clarify the matter. If, however, it became apparent during the course of an investigation that a criminal case belonged before the German courts, the criminal authorities of the Protectorate had to immediately refer the proceedings to the competent German prosecuting authority.

The German courts in the Protectorate and the Protectorate courts were to directly provide each other with legal and official assistance. A German court could refuse to send files to a Protectorate court if contrary to the interests of the Reich. In its original wording, the Regulation on the Exercise of Jurisdiction in the Protectorate of Bohemia and Moravia contained a provision that such request and its supporting files could be written in the language of the requesting court or in the language of the requested court, based on the equality of the two languages. The equality of languages in this sense was abolished in September 1939, when letters of request could be drawn up exclusively in German.<sup>12</sup>

The general measure on the Criminal Register of 1940 was also important as it laid down the rules for information exchange between the Protectorate and Reich criminal registers.

Officials, workers and employees of the German authorities in the Protectorate, regardless of nationality, could be questioned by an autonomous court in matters relating to their service only with the written consent of the Reich Protector. Similarly, the con-

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<sup>12</sup> Tauchen, "Trestní právo v Protektorátu Čechy a Morava", 108.

sent of the Defense Commissioner of the Reich Protector was required when a member of the German Army (Wehrmacht) was questioned by Protectorate courts.

The security authorities of the Protectorate were permitted to carry out official interventions in buildings, rooms or facilities used by the German Army (Wehrmacht) or the Reich, NSDAP or one of its branches, or by the NSFK only with the prior consent of the German service post.<sup>13</sup>

As regards the extradition of criminals between the Protectorate and the German Reich, the extradition procedure in the original sense was abolished and replaced by a mere handover. The Protectorate court applied directly to the German police office with a request to arrange for the handover of the offender into the hands of a Protectorate authority. Handovers were also possible for misdemeanors. The authorities involved therefore communicated directly in these matters, which constituted an exception to the principle that Protectorate authorities would contact German authorities only through the Office of the Reich Protector. In this regard, mention may also be made of the German-Slovak extradition treaty of September 21, 1940, which governed extradition between the German Reich (including the Protectorate) and other legal assistance in criminal matters. An extradition treaty was also signed with Hungary.

Sentences imposed by German courts on members of the Protectorate of Bohemia and Moravia could not be served in penal institutions and prisons in the Protectorate.

By virtue of the Reich Protector's letter of March 20, 1940, the Protectorate authorities were obliged to inform the Office of the Reich Protector of the names of criminal court judges, while as a matter of principle German state nationals were not to be recruited for the offices of juror, senior lay judge and judge serving on the bench of a juvenile court in the Protectorate judiciary.<sup>14</sup>

As the Second World War, with all its consequences, placed increased demands on the economy, in both the old Reich and in the territories Germany occupied, it was assumed that people whose labor was needed in the interests of the war economy must not be deprived of their employment unless absolutely necessary. From 1942 onwards, the Minister of Justice could authorize the suspension and interruption of sentences not exceeding one year imposed by Protectorate courts on people whose labor was needed in the interests of the war economy.<sup>15</sup> Suspensions and interruptions of sentences were granted at the request of the convicted person, their family members or the authorities. However, a suspension or interruption of sentence could not be granted to a person who was to serve a sentence of more than one year or whose activities and conduct in private life posed a threat to the national community. The interruption of sentences was in stark contrast to the established trend of criminal repression, where, after the outbreak of the war, criminal legislation was considerably tightened up with the aim of eliminating and separating criminal elements from society. In this case, the demands of the war economy were given priority.

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<sup>13</sup> Regulation 1939 (RGBl. I., p. 754).

<sup>14</sup> Gazette of the Ministry of the Interior, Justice and Social and Health Administration of June 29, 1940, No. B-1253-27/6-40-2, on the participation of German state nationals as magistrates and lay judges in the Protectorate judiciary, published in the *Bulletin of the Ministry of the Interior* 7 (1940): 295.

<sup>15</sup> Government Regulation (No. 130/1942 Coll.).

The exercise of the right of pardon was also changed. Newly, this right could be exercised only in respect of crimes that fell within the jurisdiction of the Protectorate criminal courts.<sup>16</sup> The State President was given the right to grant amnesty and to decide on the exercise of the right of pardon for capital offenses. Otherwise, the right to grant pardons belonged to the Minister of Justice.

In August 1944, the Protectorate's criminal justice system was simplified following the Reich model, the primary purposes being to reduce staff numbers needed at the criminal courts, and to simplify and speed up criminal proceedings.<sup>17</sup> The regulation simplifying the Protectorate's criminal justice system affected not only the Code of Criminal Procedure but also the Criminal Code. Under this regulation, the cases in which the defendant was appointed counsel *ex officio* were limited, the prosecutor's duty to prosecute was further relaxed, the preliminary investigation was reduced and simplified, the indictment file was shortened and the prosecution procedure simplified, the main trial was expedited and simplified, appeals were limited, and sentencing in default of appearance was easier.

In the last months of the Second World War, the courts were ordered to postpone the hearing of civil cases if their disposition during the war was not urgent.<sup>18</sup>

In 1940, all judges had to take a new oath of allegiance, which read as follows:

I promise to obey Adolf Hitler, the Führer of the Greater German Reich, as the protector of the Protectorate of Bohemia and Moravia, to protect the interests of the Greater German Reich and the Protectorate, and to observe the laws and perform my duties conscientiously.<sup>19</sup>

If a judge refused, they were summarily dismissed. Disciplinary penalties for judges were significantly tightened, and judges (including those in retirement) could face prosecution for disciplinary transgressions.<sup>20</sup>

## 2.2. Supreme Courts

The Constitutional Court was established in 1921<sup>21</sup> and was based in Prague. During the First Czechoslovak Republic, the Constitutional Court only assessed compliance of laws with the 1920 Constitution. No complaints from citizens about violations of their rights guaranteed by the Constitution were dealt with by the Constitutional Court (this competence was entrusted to the Supreme Administrative Court). For this reason, its decision-making was very limited in scope. The Constitutional Court functioned from 1921 to 1931, when the first term of office of the constitutional judges expired. For the next six years, however, the political parties were unable to agree on whom to send to serve as constitutional justices, so the Court did not resume its activities until April 1938.<sup>22</sup>

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<sup>16</sup> Government Regulation (No. 389/1942 Coll.).

<sup>17</sup> Regulation of the Minister of Justice (No. 184/1944 Coll.).

<sup>18</sup> Regulation of the Minister of Justice (No. 183/1944 Coll.).

<sup>19</sup> Decree of the State President (No. 83/1940 Coll.).

<sup>20</sup> Government Regulation (No. 53/1943 Coll.).

<sup>21</sup> Act (No. 162/1920 Coll.).

<sup>22</sup> For more information about the Constitutional Court and its activities see Osterkamp, *Verfassungserichtsbarkeit*; or Langášek, *Ústavní soud*.



The position of the Constitutional Court became unclear after the occupation of the Czech lands. The decree of the Führer and the Reich Chancellor on the Protectorate of Bohemia and Moravia of March 16, 1939, did not address the Constitutional Court at all. Nor did other legislation issued by both the occupying and autonomous administrations prohibit further activity of the Constitutional Court after the change in political circumstances. The first plenary session after the establishment of the Protectorate took place on May 16, 1939, when the Constitutional Court decided on two petitions to declare two pieces of legislation unconstitutional. The situation developed to a point of absurdity when, two months after the establishment of the Protectorate, the Constitutional Court met to consider the conformity of the laws with the 1920 Constitution which, although not explicitly repealed, was in practice no longer in force.

The President of the Constitutional Court, Jaroslav Krejčí, sponsored an amendment to the Constitutional Court Act under the Protectorate government, approved by the government on June 6, 1939. However, it did not come into force, apparently due to the opposition of the Office of the Reich Protector.

The representatives of the occupying power did not realize they had forgotten to abolish the Constitutional Court until the summer of 1939. Officially, no legislation to abolish the Constitutional Court had been enacted, but the Constitutional Court did not meet from that summer. No justices were officially stripped of their mandates.<sup>23</sup>

The First Czechoslovak Republic also had the Electoral Court. This had been established in 1920<sup>24</sup> and decided on complaints concerning the lawfulness of elections to the National Assembly and municipal, district and regional self-governing bodies. The last decision of the Electoral Court concerned the validity of the elections to the Assembly of Subcarpathian Rus in February 1939. As the National Assembly was dissolved in March 1939, no further elections were held until the end of the Second World War and the Electoral Court's activities were suspended, as it had no cases. However, it was not explicitly abolished by any legislation during the Protectorate.

The Supreme Administrative Court was established in Prague on November 2, 1918.<sup>25</sup> One of its important competences was to rule on complaints from citizens about violations of their political rights. The Supreme Administrative Court ruled in all cases in which a person claimed they had been deprived of their rights by an unlawful decision or action of an administrative authority. The Supreme Administrative Court also ruled on certain conflicts of competence between public authorities.<sup>26</sup> The Supreme Administrative Court proved to be extremely useful in the interwar period and earned extraordinary merit for building the legal system of the new State.

The occupation of Czechoslovakia by German troops and the establishment of the Protectorate of Bohemia and Moravia did not affect the activities of the Supreme Administrative Court in any significant way in terms of legislation. Although the Nazis sought to unify administrative law throughout the Reich and to deny judicial protection of the public subjective rights of citizens against the State, the Supreme Administrative

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<sup>23</sup> Langášek, *Ústavní soud*, 166–9.

<sup>24</sup> Act (No. 125/1920 Coll.).

<sup>25</sup> Act (No. 3/1918 Coll.).

<sup>26</sup> For more information on the Supreme Administrative Court during the First Czechoslovak Republic see, e.g., Kliment, *Zákon*; Joachim, *Nový zákon*; or Novotný, “Nejvyšší správní soud”.

Court functioned throughout the entire existence of the Protectorate, and only certain areas were exempted from its competence. The former long-time first President of the Supreme Administrative Court himself, Emil Hácha, argued in a 1943 article for the preservation of the administrative judiciary and for the necessity of preserving the Supreme Administrative Court, which went against Nazi ideas.<sup>27</sup>

Thus, in some cases, the Supreme Administrative Court was not able to review the legality of issued administrative decisions at all and thus oppose the occupation regime.

In the first place, the Court could not review decisions of the German occupation administration, i.e., the German authorities that had been established in the Protectorate. These were primarily decisions of the Reich Protector or Supreme District Councilors (*Oberlandräte*). Aryanization, i.e., the confiscation of Jewish property, is an example of a decision issued by the Reich Protector or Supreme District Councilors that was excluded from the competence of the Supreme Administrative Court.<sup>28</sup> The number of decisions of the Protectorate's administrative authorities that could not be reviewed by the Supreme Administrative Court increased as time went on. Decisions that were not reviewable mostly concerned the functioning of the controlled war economy and forced and controlled labor.

In 1943, the Ministry of Justice began to prepare a major amendment to the Act on the Supreme Administrative Court and its Rules of Procedure intended to speed up the processing of complaints, make the entire administrative justice system more efficient, and reduce the number of judges in the extended chambers, thus saving manpower.<sup>29</sup> However, the amendment had not been adopted by the end of the war.

The decisions of the Supreme Administrative Court were newly prepared and subsequently published bilingually. In June 1942, by Order of the Reich Protector, a German, Dr. Walter Nobis, was appointed president of the Court, a position he held until 1944. The Supreme Administrative Court employed four judges of German nationality until the end of the war.<sup>30</sup>

The Supreme Court was established immediately after the declaration of the independent Czechoslovak State.<sup>31</sup> Its seat was initially in Prague but was moved to Brno in 1919. The Supreme Court ruled as the final instance in all contested and uncontested private cases decided in the second instance, where the law allowed an appeal. In criminal cases, the Supreme Court ruled as a court of annulment. As in the case of the Supreme Administrative Court, the Supreme Court was required to keep separate records from the German Reich and Slovakia after March 15, 1939. As a result of the changes in State law, judges of German, Slovak, Hungarian and Subcarpathian nationality also left the judiciary. From 1942, the collection of Supreme Court decisions in civil cases was published bilingually. For the duration of the war, the collection of decisions in criminal cases was published only in Czech.

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<sup>27</sup> Hácha, "Gedanken", 165.

<sup>28</sup> Tauchen, "Legislation on the Disposal".

<sup>29</sup> NA, Ministry of Justice-Addenda, file 2009, draft amendment to the Act on the Supreme Administrative Court.

<sup>30</sup> Tauchen, "The Supreme Courts", 227–50.

<sup>31</sup> Act (No. 5/1918 Coll.).



Unlike the Supreme Administrative Court, the jurisdiction of the Supreme Court was not restricted after the establishment of the Protectorate. The Supreme Court thus remained the highest instance for appeals against decisions of the Protectorate (autonomous) courts. Its jurisdiction did not extend to the German judiciary.

Supreme Court operation and personnel were significantly affected by the bombing of Brno on November 20, 1944, when several Supreme Court judges and employees were killed in an air raid.

### 2.3. National Court – a New Judicial Body

Immediately after the establishment of the Protectorate of Bohemia and Moravia, the question arose as to how to handle corruption cases from the first Czechoslovak Republic, as there was a perception among some members of the public that State property was being unlawfully appropriated without punishment. A decision was made to conduct a property audit of publicly exposed people to prove any misappropriation of property. This was to be done by a new judicial body called the “National Court.”<sup>32</sup> From a legal point of view, the fundamental problem was that the establishment of the National Court, its activities and the obligation of the Protectorate’s nationals to submit to its jurisdiction, were not based on any law and were not published in any official publication. The National Court with its seat in Prague was established by a decision of the National Partnership, the only permitted political movement in the Protectorate of Bohemia and Moravia.<sup>33</sup> The National Partnership was based on leadership (authoritarianism) and headed by President Emil Hácha.

The duty to submit to a property audit applied to people active in political or public life between October 28, 1918, and July 1, 1939. The purpose of the property audit itself, and the associated punishment of people who had enriched themselves by exploiting their own influence or that of other people or political parties, was to “restore the confidence of the nation in the purity of public life and in justice.”<sup>34</sup>

The property audit involved, for example, former members of parliament and senators, members of previous governments, leaders of political parties, local government leaders, senior civil servants and public servants, and people in leading positions in the economic sphere. The people whose property was to be audited were sent a declaration form stating that, “having regard to national discipline and civic honor,” they submitted to the proceedings and verdict of the National Court. They were required to submit to the National Court a statement of their property as of July 1, 1939, and the manner of its acquisition within a deadline of three months. Together with this statement, the audited people were required to submit a tax return and a declaration of consent for the Court to inspect bank accounts and deposits with monetary institutions, in order to verify the claims submitted.

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<sup>32</sup> For more details on the National Court see Tauchen, “Národní soud”.

<sup>33</sup> On the National Partnership see e.g. Gebhart, Kuklík, “Počátky”; or Večeřa, “Národní souručenství”.

<sup>34</sup> AKPR, National Court, file 73 I/2, letter of the National Court addressed to the Committee of the National Partnership, June 10, 1940.

The National Court consisted of five members, two from the Supreme Court, two from the Supreme Administrative Court and one from the Supreme Audit Office, which also presided over the National Court.

Proceedings before the National Court were governed by the Rules of Procedure issued by that Court itself. However, the rules were not published in any official material or released in print, so neither the people subject to the audit nor the public had the opportunity to consult the text.<sup>35</sup>

Proceedings before the National Court, by their nature, differed from ordinary criminal court proceedings, although many procedural steps were the same. First of all, there was no authority with a separate and well-defined scope of competence to make a report and substantiate it with concrete facts (i.e., the police or the public prosecutor's office, as is common in criminal proceedings). The absence of an investigative body thus made the proceedings considerably more difficult and slower since in most cases the Court had to obtain the information it needed to make a decision itself without any external initiative.

The proceedings before the National Court were secret. The President of the National Court assigned the incoming statements of property with annexes to individual judges as rapporteurs who opened the preliminary proceedings. In these preliminary proceedings, all the provided statements of property were examined and, if they were insufficient, the Court asked for them to be completed. A person whose property was audited was required to provide appropriate cooperation.

A session of the National Court began with a presentation by the judge-rapporteur, followed by the defense of the person whose property was audited. The President of the Court, the judge-rapporteur and the other judges were allowed to ask the people concerned questions about the subject matter of the hearing. After this oral hearing, the judges retired to deliberate and voted on the operative part of the judgment proposed by the judge-rapporteur. The judges ruled by a simple majority on the operative part of the judgment, which stated whether or not the person concerned had acquired their property by honest means.

A judgment of the National Court was final and not subject to appeal. If the National Court ruled that a person had not acquired their property honestly, the following penalties could be imposed: expulsion from the National Partnership, a call to resign from all public offices, and a call to return the property or part thereof not acquired honestly.

The National Court had received complaints as to its procedure from the very start, and later was openly criticized. There was some misunderstanding among the public of the mission, scope and actual powers of the institution. The National Court was not even competent to prosecute corruption yet continued to receive complaints and anonymous denunciations.<sup>36</sup> After the establishment of the Protectorate, the public expected that all the injustices that had taken place over the last twenty years would be eliminated at once and that the National Court would help in this regard, but it could never become this "savior" due to its lack of powers.<sup>37</sup>

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<sup>35</sup> AKPR, National Court, file 73, Rules of Procedure of the National Court of August 22, 1939.

<sup>36</sup> AKPR, National Court, file 73, information report of the President of the National Court on its competence and tasks for the National Partnership, April 1940.

<sup>37</sup> For example, the impossibility of forcing nationals to undergo a property audit using legal means became a subject of criticism. See the article "On the Debate on the National Court" published in the newspaper

On May 25, 1942, Emil Hácha, the leader of the National Partnership, received a letter from the Reich Protector signed by Karl Hermann Frank, calling for the liquidation of the National Court, which happened rather quickly afterwards, on June 30, 1942.<sup>38</sup>

The National Court, established by a decision of the Committee of the National Partnership, functioned from 1939 to 1942 as a court of honor and its judgments were merely declaratory. Although relatively high hopes were initially placed on it, the results of its work were lackluster since it failed to reveal a single case in which property had been acquired by dishonest means in the three years it was active. The work of the National Court itself was marred by a lack of information concerning both the proceedings before the National Court itself and the publication of its results.

### 3. German Judiciary in the Protectorate

The basic legal rules on the organization and jurisdiction of the German criminal courts were the Regulation on the German Judiciary in the Protectorate of Bohemia and Moravia (referred to in the literature as “Regulation I”),<sup>39</sup> and the subsequent Regulation on the Administration of Criminal Justice in the Protectorate of Bohemia and Moravia (RGBl. I., p. 754, referred to as “Regulation II”)<sup>40</sup> of April 1939.<sup>41</sup> These regulations were based on the fundamental principle that German state nationals – not only those inhabitants of the Protectorate who had become German state nationals, but German state nationals in general – were subject to German jurisdiction in the Protectorate of Bohemia and Moravia.<sup>42</sup> People who were not German state nationals were subject to German jurisdiction for criminal offenses:

- (a) covered by German criminal law;
- (b) prosecuted by way of private action if the action was brought by a German national.<sup>43</sup>

People who were not German state nationals were subject to the jurisdiction of the Protectorate unless the German judiciary was established through statutory provisions. The German jurisdiction was exclusive, with one exception – an offense prosecuted under Protectorate law and committed in a building, room or establishment used by the German armed forces or servicing the Reich, the NSDAP or one of its branches, or the

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*Národní výzva* [National Appeal], No. 21 of May 25, 1940: “[...] today, anyone who does not have a clear conscience can easily avoid the court. A dishonest man is surely better served by a newspaper announcement that he has breached national discipline rather than by a declaration that he has acquired his wealth dishonestly, with all the consequences that entails.”

<sup>38</sup> AKPR, National Court, file 78, report of the President of the National Court on the liquidation of the National Court to the State President, June 30, 1942.

<sup>39</sup> Regulation 1939 (RGBl. I., p. 752).

<sup>40</sup> Regulation 1939 (RGBl. I., p. 754).

<sup>41</sup> From German contemporary literature see Krieser, “Die deutsche Gerichtsbarkeit”; Bürkle, “Der Aufbau der deutschen Rechtspflege”; or Nüßlein, “Die deutsche Gerichtsbarkeit”.

<sup>42</sup> See § 6 of the Regulation 1939 (RGBl. I., p. 752).

<sup>43</sup> For cases of the application of German criminal law in the Protectorate see Tauchen, “Die Anwendung des deutschen Strafrechts”; Lorenz, *Das deutsche Strafrecht*.

NSKK. In such a case, the German prosecuting authorities were competent to investigate and decide, unless they handed the matter over to the Protectorate prosecuting authorities.

As in the German Reich, the following courts were established in the Protectorate to exercise German jurisdiction:

(a) The German district (official) courts (*Amtsgerichte*), the lowest link in the German justice system. These were established in České Budějovice, Brno, Německý Brod, Jičín, Hodonín, Jihlava, Moravská Ostrava, Olomouc, Pardubice, Plzeň, Prague and Strakonice. These German courts were assigned the districts of the former Czechoslovak regional courts, with which they essentially coincided.

(b) The German regional courts (*Landgerichte*) in Prague and Brno, which constituted the second instance. The territory of the German Landgericht in Brno included the German district courts in Moravia, while that of the German Landgericht in Prague included the district courts in Bohemia.

(c) The German Higher Regional Court in Prague (*Oberlandesgericht*).

(d) The German judiciary in the Protectorate of Bohemia and Moravia was also exercised by the Reich Court in Leipzig (*Reichsgericht*) and the People's Court in Berlin (*Volksgerichtshof*).<sup>44</sup>

The German courts in the Protectorate were reorganized in April 1941, and district courts were established in Hradec Králové and Tábor. The seat of the district court in Německý Brod was transferred to Kolín, from Hodonin to Uherské Hradiště and from Strakonice to Klatovy. The district of each German official court in the Protectorate was related to the district of the Oberlandrat in which the official court had its seat.

The difference in composition of the German district courts in the Protectorate and the Reich was that no lay judge courts were attached to the German district courts in the Protectorate. The lay element was thus excluded from decision-making.

In connection with the arrival of the acting Reich Protector Reinhard Heydrich in Prague in September 1941, the first civil state of emergency was declared in the Protectorate of Bohemia and Moravia, including martial law and martial courts. On September 29, 1941, Heydrich appointed members of the Gestapo as the presidents of the martial law courts. In addition to the chairman, two judges, a prosecutor and an interpreter took part in martial court sessions. These were Gestapo or Sicherheitsdienst officers. After the declaration of the civil state of emergency, the Gestapo detained hundreds of people thought to be involved in the anti-German resistance. The proceedings consisted of verifying the identity of the accused, while the facts of the case were not investigated very thoroughly and the defendants were not entitled to a defense. The sentences of the martial court were either acquittal, the death penalty or handing over to the Gestapo, which in practice meant deportation to the Mauthausen concentration camp. The martial court sent its judgment by teletype to Frank. For example, the Brno martial court, situated in the Gestapo building (the former Faculty of Law), sat from September to November 1941 and decided on nineteen cases, sentencing 142 men to death. In the entire Protectorate, from September 1941 to January 1942, the martial courts sentenced

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<sup>44</sup> The only recent publication dealing with the German judiciary in the Protectorate is Wnuck, "Recht-praxis im Protektorat".

over 400 people to death while over 2,000 were handed over to the Gestapo and sent to concentration camps. After the assassination of Heydrich, a second civil state of emergency was declared from May 27, 1942, until 7 p.m. on July 3, 1942 (VBl.RProt., p. 123 and p. 181). Martial law courts were established for crimes committed in direct connection with the assassination. These were cases of breach of the duty to communicate the circumstances leading to clarification of the attack. Failure to report important facts was punishable by the shooting of the perpetrator and his entire family, and confiscation of property. This was followed by a decree of the Reich Protector for the Defense against the Promotion of Acts Hostile to the Reich of July 3, 1942 (VBl.RProt., p. 182), which prosecuted with the death penalty any person who knew or, according to the circumstances, must have known of a person hostile to the Reich and provided them with assistance or harbored them, or if such person merely neglected to make a report to the authorities in due time. Forgery or falsification of identity cards was also punishable by death.<sup>45</sup>

A public prosecutor's office was established at every German court in the Protectorate. The German courts in the Protectorate of Bohemia and Moravia sought justice in the name of the German nation.

German courts had no judicial self-government as this had been abolished in the Reich as early as 1937, one of the many encroachments by the Nazis on the independence of the judiciary. The presidents of the courts no longer possessed powers of judicial self-government such as determining the work schedules of individual judges – these were now exercised by the presidents of the superior regional or higher regional courts. The Reich Minister of Justice was entitled to instruct the presidents of these courts about the principles for the allocation of individual cases among judges (Decree of March 20, 1935 – RGBL. I., p. 403). The absence of judicial self-government meant that the judiciary was subordinate to the executive branch, which directly decided which particular judge should be assigned to which case or removed from a case.

Only those lawyers who were admitted to one of these courts could appear before the German courts in the Protectorate. In proceedings before the district court and as counsel, lawyers admitted to a German court outside the Protectorate could appear without any special admission. A change was made in 1943, when defense before German courts in the Protectorate required admission, which was decided on by the President of the Higher Regional Court. The Reich Minister of Justice could empower lawyers who were authorized to appear before the courts of the Protectorate to represent and defend people of non-German nationality before the German courts in the Protectorate. Counsels admitted before a German court in the Protectorate were subject to the Reich Rules for Counsels and the Supplementing Regulations.<sup>46</sup>

Since the German judiciary in the Protectorate and the persecution of the Czech population are mostly associated with special courts and the People's Court, special attention should be paid to them.

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<sup>45</sup> For detailed information on martial law courts see Černý, "Soudy stanné"; Vašek, Štěpánek, *První a druhé stanné právo*; or Kukánová, "Příspěvek k dějinám".

<sup>46</sup> For details on the specifics of proceedings before German criminal courts in the Protectorate see Tauchen, "Zum Verfahren vor deutschen Strafgerichten"; Veselá, Lepšík, *Německé trestní řízení*; or Miříčka, Solnař, *Nová úprava trestního soudnictví*.



The special courts (*Sondergerichte*)<sup>47</sup> were one of the means used by the occupiers to “lawfully” suppress their political opponents. The special courts were established in the German Reich immediately after the Nazis seized power in 1933, and embodied one of the first legislative measures introduced by the new government in the new organization of German justice.

The powers of the special courts were continuously expanded, even to non-political crimes. By virtue of the decree of November 20, 1938 (RGBl. I., p. 1632), the public prosecutor was entitled, where crimes fell within the jurisdiction of jury courts or the lower courts, to bring an indictment before a special court if he was satisfied that, in view of the gravity and deplorability of the offense or the public outrage caused, summary conviction by a special court was necessary. However, the hearing of a case before a special court and its exclusion from the jurisdiction of the ordinary criminal courts had far-reaching consequences for the defendant.

The Regulation on the German Judiciary in the Protectorate of Bohemia and Moravia of April 14, 1939, did not establish special (extraordinary) courts (although it mentioned them) and transferred their jurisdiction to the Criminal Chamber of the German Regional Court in Prague and Brno. The special courts did not exist separately but were incorporated into the Regional Court. However, they had independent leadership and chambers.

The Decree of the Plenipotentiary General for the Administration of the Reich on the Jurisdiction of Criminal Courts, on Special Courts and on Other Rules of Criminal Procedure of February 21, 1940 (RGBl. I., p. 405) established a special court in Prague for the territory of the German Regional Court and in Brno for the territory of the German Regional Court in Brno.<sup>48</sup>

The special courts in the Protectorate were composed of three professional judges, with the president of the special court and its permanent members being appointed by the president of the Higher Regional Court in accordance with the principles laid down in the Act of November 24, 1937, on the Division of Activities in the Courts (RGBl. I., p. 1286). The president also decided on the division of the activities of the special courts.

No special public prosecuting authority was established for the special courts – cases were prosecuted by the public prosecutor’s office of the regional court with jurisdiction over the district where the special court had its seat.

The importance of the special courts grew after the start of the Second World War. They were expected to deal “with all vigor” with even the slightest breaches of war laws. Therefore, jurisdiction was transferred from the ordinary courts to the special courts. A special court was also competent to judge other crimes or offenses if the public prosecutor believed that conviction by a special court was necessary in light of the gravity or reprehensibility of the offense, due to the public outrage caused, or with regard to grave

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<sup>47</sup> The activities of the special courts in Prague and Brno have not yet been studied in detail by Czech or German legal history sciences. Thus, there is virtually no study dealing with the activities of these courts. Partial studies exist only on special courts in the Sudetenland, e.g. Anders, “Nationalsozialistische Wertvorstellungen”; or Anders, “Aus der Rechtspraxis nationalsozialistischer Sondergerichte”. In contrast to the Protectorate, the individual special courts in the Reich are well documented. On this see, for example, Kalmbach, “Das System der NS-Sondergerichtsbarkeit”, where are also given references to other literature.

<sup>48</sup> For more details see, e.g., Moravčík, *Organizace bezpečnostního aparátu*.



danger to public order or safety. The prosecutor's office could thus transfer any criminal case to a special court.

The special courts in the Protectorate judged Czech nationals regarding the commission of some serious criminal offenses, but mainly for the illegal possession of weapons, ammunition or explosives, for listening to foreign radio stations, for failure to report a crime, for machinations with ration cards, for smuggling goods to Slovakia, for "illegal pig slaughters" and for concealing grain. For example, the special court in Brno handed down a total of 477 death sentences during its lifetime, with 393 people actually executed in prisons in Pankrác in Prague, in Vienna and in Wrocław.

The People's Court (*Volksgesichtshof*) was also competent to prosecute Czech resistance fighters and anti-Nazi fighters, although it did not sit directly in the territory of the Protectorate. This tribunal, based in Berlin, first began its work on July 14, 1934. In 1940, matters relating to treason and high treason committed in the Protectorate were referred to the Higher Regional Court in Wrocław (or in Dresden and Litoměřice), where one chamber of the People's Court was situated.<sup>49</sup>

In some cases, the civilian population of the Protectorate could also be tried before German military courts (*Wehrmachtsgesichte*).<sup>50</sup>

The administration of civil justice in the Protectorate was governed by the Regulation of the Reich Minister of Justice of April 14, 1939, on the Administration of Civil Justice in Legal Matters in the Protectorate of Bohemia and Moravia (RGBl. I., p. 759), which set out the scope and conditions for the hearing of cases before German courts. Civil disputes, with the exception of enforcement, were decided by the German courts in the Protectorate if a German national was a party, if the matter was one of civil status, or if neither party was a national of the Protectorate. German courts also had jurisdiction for enforcement, bankruptcy and involuntary liquidation proceedings if the debtor was a German national. Uncontested proceedings were held before a German court if the party to the proceedings was of German nationality. The nationality of the party at the time the petition or action was filed was decisive for determining whether a Czech or German court in the Protectorate had jurisdiction. A change of nationality during the proceedings did not change the jurisdiction of the court. In the case of contested proceedings, a German national could also bring an action against a Protectorate national in a Czech court and not invoke the right to a hearing before a German court.

In July 1941, the intervention of the public prosecutor in civil court proceedings was allowed by the Act on the Assistance of the Public Prosecutor in Civil Legal Matters (RGBl. I., p. 383). The public prosecutor could thus refer to circumstances the court was required to consider from the perspective of the national community. In order to implement this objective, the public prosecutor could attend all hearings, at which he could present the facts and evidence. In the case of civil disputes that had already been finally decided, the Reich Prosecutor could apply to a Reich court for a retrial within one year of the final judgment if he considered that a retrial was necessary on grounds of special

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<sup>49</sup> For more information on the People's Court, consult the following works: Wagner, *Der Volksgesichtshof*; Wieland, *Das war der Volksgesichtshof*; Vlček, "Lidový soudní dvůr".

<sup>50</sup> Regulation (RGBl. I., p. 903).

importance for the national community. The Grand Chamber for Civil Matters decided on applications for retrials by issuing orders and, where appropriate, ordered retrials.<sup>51</sup>

## 4. Conclusion

Due to the prevailing legal dualism and the double-track nature of the justice system (and the system of public administration), the situation in the Protectorate of Bohemia and Moravia was very complex in legal terms. The Czech line of the judiciary faced a number of interventions by the occupying power (consisting, for example, in successful personnel purges), yet functioned without significant changes until the end of the Second World War. Since crimes against the Reich (treason, resistance, listening to foreign radio stations, and certain economic crimes) committed by Protectorate nationals (Czechs) were not tried in autonomous (Czech) courts but in German courts, Czech prosecutors were not obliged to prosecute them in court and Czech judges were not forced to try these cases. Therefore, Czech judges were not convicted after the end of the Second World War for collaboration with the Nazi regime in the so-called retributive trials that took place in Czechoslovakia between 1945 and 1948.

Although the German criminal courts in the Protectorate of Bohemia and Moravia significantly contributed to the suppression of any signs of resistance to the occupying power, they were not the main component of the Nazi terror apparatus. The key link in the suppression was the security authorities, who were in charge of all criminal investigations. The Gestapo disregarded the basic principles of criminal law and circumvented the standard course of criminal proceedings by exploiting the institution of so-called protective custody (*Schutzhaft*), which was nothing more than long-term internment in a prison or concentration camp.<sup>52</sup>

As in the rest of Nazi Germany, lawlessness, terror and oppression reigned in the Protectorate of Bohemia and Moravia (and not only during the two martial law periods). It is necessary to point out that there was a great difference between the de jure legislation in force and the de facto reality, where elementary principles of law were violated.

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<sup>51</sup> For details on the prosecutor's intervention in civil proceedings see Dávid, Tauchen, "Vývoj působnosti státního zastupitelství"; or Tauchen, "Staatsanwaltschaft", 209–22.

<sup>52</sup> For the latest data on the activities of the Gestapo during the Protectorate see especially Černý, *Brněnské Gestapo*; or Moravčík, *Organizace bezpečnostního aparátu*.

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