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LIMITING THE RIGHT TO FREEDOM OF MOVEMENT AS ONE OF THE INSTRUMENTS OF POWER IN CZECHOSLOVAKIA IN THE 20TH CENTURY – “BEHIND CLOSED BORDERS – RESTRICTIONS IN 1945–1989 CZECHOSLOVAKIA”

Key words: emigration, borders, human rights, citizenship, passport, criminal law

Summary

The current article is dedicated to the subject of restrictions on the freedom of movement of citizens during the latter half of the past century as a result of the totalitarian communist regime. Unlike the usual purpose of borders, which is to protect the population from the enemy, in this case, the function of borders is different, namely, to prevent the population from leaving the state territory. This restriction on freedom of movement was a key tactic in maintaining control over the population, stifling opposition, and enforcing ideological conformity. The article summarizes the ways how these restrictions were legally addressed in constitutional, administrative and criminal law.

Introduction

The movement of people is one of their most important needs that have shaped humanity since the dawn of history. By moving from place to place, people have gained sustenance, fled from danger, whether in the form of natural disasters, diseases or enemies, or, conversely, acquired wealth. The restriction of this freedom has always been regarded as an extraordinary occurrence, contrary to the very nature of man. There are usually three (often intertwined) phenomena involved in this issue. The first is emigration – leaving the “mother” country, the country of origin or, literally, the homeland. Secondly, it is immigration that is connected with this matter, as it deals with the movement of people from one country to another with the intention of settling in the new country. Finally,

under certain circumstances, we can also identify the process of simple return of citizens to their country of origin. One of the main aspects pertaining to limiting the movement of the state population is the existence of borders. The idea of forming barriers between countries is as old as history itself. It has often taken on the form of natural borders, meanwhile, human-erected walls built to keep away the enemy or neighbour were known even in ancient times. Unsurprisingly, this phenomenon has survived until modern times. Borders constitute the opposite to freedom of movement. Over the last century, even if with some simplification, several periods can be distinguished, that determined the freedom of movement in Czechoslovakia.

- 1) The period between the creation of the new state in 1918, when the state borders were established on the basis of post-war international agreements (and the various national and cultural minorities that were in the original Austro-Hungarian confederation (Italians, Germans, Poles etc.) and the adoption of the Munich Agreement¹. During this period, emigration was seen as a means of forming new communities abroad in order to strengthen the Czechoslovak economy in the world. Such communities emerged in France, Argentina, and Canada, and expanded the previously established communities in the USA. In this process, the economic crisis naturally played a significant role. This period also saw the immigration of people of diverse nationalities, especially after the Russian Revolution in 1917. In total figures, about 230 000 residents left the Czech lands during the period from 1920 to 1939.
- 2) The next period can be defined as the period of transfer of the population, which was based on the Munich Agreement from border areas to the hinterland after the occupation of the Sudetenland by the Nazi Germany and the establishment of the Protectorate of Bohemia and Moravia.
- 3) The third period is determined by the end of the WWII and 1948 – the return of the people to their homeland. After World War II, the reshaping of national borders and population exchanges further contributed to population movement in Europe. During 1945–1947 some 2 820 000 Germans were transferred from Czechoslovakia to Germany or Austria in three (organised as well as spontaneous) waves. The whole displacement of the German and Hungarian population took place on the basis of international and subsequent national agreements. The gradual emigration of the Jewish population to the newly established state of Israel is not considered in the current article.
- 4) The fourth phase is represented by the long period from 1948 to 1989, with various stages of liberalisation and, conversely, the tightening of control of individual freedoms by the communist regime.

¹ See Lukes I., Goldstein E. *The Munich Crisis, 1938: Prelude to World War II*. Psychology Press, 1999. Available: <https://www.britannica.com/event/Munich-Agreement> [viewed 03.04.2024.].

1. Citizenship and passports

Of crucial importance in terms of the free movement of people is the question of citizenship, which has gradually become a necessary pre-condition for obtaining the travel document needed for legal travel and subsequent return to the country of origin.² Citizenship serves as a foundational element of a person's relationship with their home country and its society. To simplify this concept to the core, it testifies who we are, where we belong.

The legal concept of state citizenship was established in the Czech lands by the Austrian General Civil Code, Patent No. 946/1811. It regulated citizenship within the framework of personal rights of individuals. Considering the events of the last century, it should be stressed that the outbreak of the WWI marked a turning point in passport policy on a global scale. New requirements for this document emerged, more closely specifying the person of the bearer. The passport was required for security reasons when crossing borders (“protection against espionage”), and was a part of the control mechanisms regulating the migration of the workforce out of the monarchy, and later – ensuring the prevention of soldiers' defection from the front abroad or to the enemy lines. After the establishment of Czechoslovakia, citizenship was regulated by the Constitution of 1920 in Art. 4. Travel issues and the passport agenda were regulated by the newly adopted Government Decree No. 215/1921 Coll. on Provisional Regulations and Passports, which was succeeded by Act No. 55/1928 Coll. on Passports. The latter exhaustively specified the conditions (§ 7) under which the issuing of a travel document could be refused (e.g. the applicant's incapacity, criminal proceedings against the applicant involving a prison sentence of more than 14 days or a fine of more than 5 000 Kč). Obtaining a travel document was otherwise possible. Emigration was regulated by Act No. 71/1922 Coll., on Emigration, which contained a fairly liberal regulation declaring that emigration is free within the limits of the law. It is necessary to emphasise that emigration did not, in itself, result in the loss of citizenship and therefore in the subsequent impossibility to return to the Republic. It is remarkable that this legal provision, although interpreted and applied differently, remained in force until 1965, i.e. for more than thirty years. The first restrictions on the issuing

² Rychlík J. *Prekracování hranic a emigrace v Československu a východní Evropě ve 20. století* [Border Crossing and Emigration in Czechoslovakia and Eastern Europe in the 20th Century]. *Securitas Imperii*, 2016, No. 29, pp. 10–72; Polnar S. *Nedovolené opustění republiky v kontextu bezpečnostního práva* [Illegal leaving of the Republic in the context of security law]. *Securitas Imperii*, 2019, No. 1, pp. 224–253; Rychlík J. *Československo v období socialismu 1945–1989* [Czechoslovakia under Socialism 1945–1989]. Praha: Vyšehrad, 2020; Krátka L., Mucke P. (eds). *Za hranice služebně. Pracovní cesty z Československa do zahraničí v letech 1945 až 1989* [Abroad on business. Work trips from Czechoslovakia abroad between 1945 and 1989]. Praha: Karolinum a Ústav pro soudobou dějiny AV ČR, 2021; Krátka L., Mucke P. (eds). *Turistická odysea, Krajinou soudobých dějin cestování a cestovního ruchu v Československu v letech 1945 až 1989* [A Tourist Odyssey, Through the Contemporary History of Travel and Tourism in Czechoslovakia between 1945 and 1989]. Praha: Karolinum, 2018; Hanzlík J. *Československá emigrace očima tajných materiálů* [Czechoslovak emigration as seen through the secret materials]. *Securitas Imperii*, 2002, No. 9, pp. 269–306.

of travel documents appeared in connection with the events of the Spanish Civil War and then with the crisis of 1938, when a government decree prohibited persons subject to military conscription from travelling abroad. During March 1939, fundamental changes were introduced in the direction of restricting the free movement of people within the established Protectorate of Bohemia and Moravia and the Reich. Residents of the Protectorate were subject to Reich legislation, and the issue of travel documents soon became the responsibility of the German administration.³ The regaining of independence of the Republic in 1945 theoretically meant the return of freedom of travel in the former extent, but this freedom was very relative. During this period, Sec. 7 of the Act No. 55/1928 Coll. was given a new content in the sense that travel was permitted only in certain specific cases (national interest, etc.). The entire problem must be viewed in the broader historical context of the political events of the time. As the consequence of the communist seizure of power in the country on 25th February 1948, the so-called Ninth-of-May Constitution was adopted. It replaced the former democratic Constitution of 1920. Part one of this constitution defined the freedom of movement in the scope of Sec. 7: “(1) Every citizen may take up domicile or sojourn anywhere within the territory of the Czechoslovak Republic. This right may be restricted only in the public interest on the basis of the law. (2) The right to emigrate abroad may be restricted only on the basis of the law.”⁴ Although this provision superficially appeared democratic, the reality was different – both as regards the movement within the national territory and the travel abroad. The fear of a greater brain drain to other countries, as well as the manpower shortage caused by the war and post-war events, gradually led to radical restrictions on travelling abroad and the subsequent criminalisation of travelling without the appropriate state permission.⁵ Initially, this problem was regulated by the Act on the Protection of the People’s Democratic Republic, No. 231/1948 Coll. Sec. 40 entitled “Unauthorised leaving of the territory of the Republic and failure to obey a summons to return”: “A Czechoslovak citizen who, with the intention of harming the interests of the Republic, leaves the territory of the Republic illegally or, with the same intention, fails to obey a summons from the authorities to return to the territory of the Republic within a reasonable period of time to be determined by the authorities, shall be punished for the crime by a heavy prison sentence of between one and five years”. Very closely related to this was the following Sec. 41 “Damaging the interest of the Republic abroad”. At the beginning of 1949, a new Act No. 53/1949 Coll. on Passports was adopted, and the subsequent Decree of the Ministry of the Interior No. 439/1949 Coll. stipulated in Sec. 2: “Czechoslovak passports shall in principle be issued for the period of time strictly necessary

³ The passport agenda was regulated by Reich Decree of Ministry of the Interior Verordnung fuer Bohmen und Mahren, 1939, No. 20, pp. 139–141.

⁴ Constitutional Act of 9 May 1948, Constitution of the Czechoslovak Republic. Available: <http://czecon.law.muni.cz/content/en/ustavy/1948/> [viewed 04.04.2024.].

⁵ Kuklik J. Available: <https://www.bookport.cz/e-kniha/czech-law-in-historical-contexts-1336641> [viewed 04.04.2024.].

for residence abroad, for a maximum period of 5 years...". Sec. 5 explicitly stated that "There is no legal right to the issuance, extension of time and extension of the territorial validity of the Czechoslovak passport". This Act still considered illegal crossing of the state border an offence, which was penalized by a fine. The reasons for emigration were mainly the fear of political repression against former members of the RAF, the army, political opponents, etc. At the same time, concern for family and friends who would remain behind the curtain was often a motive for conformity. Many people emigrated before the onset of communism and soon afterwards. Gradually, restrictions of administrative nature which precluded free travel were adopted. As the opportunities to legally leave the state diminished, there was an increase in illegal border crossings – either accomplished or curbed in the phase of preparation. The emigration of unwanted individuals was encouraged with a certain purpose. Between 1948–1950, Biannual Legal Plan to rewrite and codify the entire legal order on new socialist principles was adopted. The legal system served the interests of the ruling party, and legal principles were applied in a way that protected the regime.

2. Total restriction of freedom of movement and its subsequent criminalisation

After the Communists came to power, there was a gradual change in society in connection with its already obvious focus on the Soviet Union. Soviet advisers were involved in the drafting of legislation, which thus acquired an anti-democratic character. The Ministry of Justice drafted a new Criminal Code No. 86/1950 Coll., Criminal Administrative Code No. 88/1950 Coll. and related procedural regulations (Criminal Procedure Code No. 87/1950 Coll., Criminal Administrative Code No. 89/1950 Coll.). The Criminal Code in Sec. 95 specified the offence of leaving the state, as follows: "(1) Whoever leaves the territory of the Czechoslovak Republic without permission shall be punished by imprisonment for one to five years. (2) A Czechoslovak citizen who fails to obey an official summons to return to the territory of the Czechoslovak Republic within a specified period of time shall be punished in the same way."⁶ The act of illegally crossing the border into a country of the so-called socialist bloc (Hungary, Poland) was usually treated as a misdemeanour.⁷ The definition of this offence was contained in Title I of the Penal Code and therefore classified as a crime against the foundations of the Republic, which shows that this offence was clearly assigned a political character. In this context, the influence of Soviet criminal law is manifest. Sec. 58 of the RSFSR Penal Code, from 1927, included counter-revolutionary

⁶ Zakon o trestnim rizeni soudnim (trestni rad) [Criminal Procedure Act (Criminal Code)], 01.08.1950. Available: <https://www.psp.cz/sqw/sbirka.sqw?cz=87&r=1950> [viewed 04.04.2024.].

⁷ Criminal Administrative Code No. 88/1950 of 12 July, section 100, punishes illegal crossing of state border without a valid travel document (unless it is a criminal offence) with a fine of up to 50,000 CZK or imprisonment of up to 2 months.

activities, espionage, terrorism, and various forms of anti-Soviet agitation.⁸ Penal Codes of other republics of the Soviet Union also had articles of similar nature. It was seen as politically necessary to adopt a special Act No. 69/1951 Coll. on the Protection of the State Borders, that in Sec. 1 stated: “In order to ensure the peaceful construction of socialism in our country, it is necessary to effectively protect the State borders against the penetration of all enemies of the camp of progress and peace. The protection of the State frontiers is therefore the duty of every citizen.”⁹ Gradual changes and a certain liberalization in this area occurred in connection with de-Stalinization, when passport policy was slightly liberalized. In 1956, the most controversial legal norms from the period of criminal repression, personified by staged political trials, were repealed (including the Criminal Code and the Code of Criminal Procedure), or amended so as not to allow blatant illegality within the law. Citizens were progressively allowed to travel without a special permission visa to the countries of the socialist bloc. A new period of historical development began with the adoption of the so-called socialist constitution in 1960. The Constitution of the Czechoslovak Socialist Republic (Constitutional Act 100/1960 Coll.), was the third constitution of Czechoslovakia, and the second of the Communist era, declaring “Socialism has triumphed in our country!” Sec. 4 claimed: “The guiding force in society and in the State is the vanguard of the working class, the Communist Party of Czechoslovakia, a voluntary militant alliance of the most active and most politically conscious citizens from the ranks of the workers, farmers and intelligentsia”¹⁰. In light of this theory, the right to freedom of movement is no longer enshrined in the constitution, nor is the right to leave the country. The new Criminal Act No. 140/1961 Coll. elaborated the definition of this offence in Sec. 109(1): “Whoever leaves the territory of the Republic without permission shall be punished by imprisonment for six months to five years or by corrective measures or by forfeiture of property. (2) A Czechoslovak citizen who remains abroad without permission shall be punished in the same way. (3) A person shall be liable to imprisonment for a term of three to ten years or forfeiture of property who (a) organises the act referred to in paragraph 1 or 2, (b) commits such an act although he has been subject to a special order to keep a state secret, (c) transports across the border a group of persons or re-exports persons who leave the territory of the Republic without authorisation, (d) commits an act referred to

⁸ Ugolovnyj Kodeks RSFSR redakcii 1926 [Criminal Code of the RSFSR 1926]. Edition 01.11.1956. Available: https://ru.wikisource.org/wiki/%D0%A3%D0%B3%D0%BE%D0%BB%D0%BE%D0%B2%D0%BD%D1%8B%D0%B9_%D0%9A%D0%BE%D0%B4%D0%B5%D0%BA%D1%81_%D0%A0%D0%A1%D0%A4%D0%A1%D0%A0_%D1%80%D0%B5%D0%B4%D0%B0%D0%BA%D1%86%D0%B8%D0%B8_1926/%D0%A0%D0%B5%D0%B4%D0%B0%D0%BA%D1%86%D0%B8%D1%8F_11.01.1956 [viewed 04.04.2024.].

⁹ Zakon o ochrane statnich hranic [Law on the Protection of State Borders], 31.07.1951. Available: <https://www.psp.cz/sqw/sbirka.sqw?cz=69&r=1951> [viewed 04.04.2024.].

¹⁰ Vladni navrh trestniho zakona [Draft Criminal Law]. Narodni shromazdeni Ceskoslovenske socialisticke republiky, 1960–1964 National [Assembly of the Czechoslovak Socialist Republic, 1960–1964]. 01.01.1962. Available: <https://www.psp.cz/sqw/sbirka.sqw?cz=140&r=1961> [viewed 04.04.2024.].

in paragraph 1 or 2 in a state of national emergency”¹¹. This offence is also referred to in Sec. 167, which concerns the issue of failure to prevent the offence. The threat of criminal punishment upon return to the republic was undoubtedly the reason why, in the past, there were very few returns of nationals back to the republic, even if they were potentially interested in returning. Emigration was not only a political problem but also a social issue throughout the Communist regime. The individual periods differed particularly in terms of the possibilities to emigrate. If a citizen emigrated, proceedings were held against him *in absentia*, and consequently that person lost the possibility of returning to his native country without risking arrest.¹² This so-called “strictness” of the criminal law was several times remedied or amended by amnesties granted by the President¹³, of the 13 that have been promulgated, only 4 were not related to the matter in question; 5 concerned the pardoning of the sentence without further conditions; 4 linked the pardoning of the sentence to further conditions, in particular – the return to the native country within a certain period of time.¹⁴

3. The border

One of the principal reasons for building a boarder is to ensure the safety of the inhabitants of the specific country by limiting the possibility of enemies to occupy or take over the country. In the case of the countries of the Socialist bloc, the purpose was different, namely, precluding the emigration of their own population from the state. Borders were heavily guarded and monitored to prevent defections, espionage, and infiltration by enemy agents. This led to the establishment of extensive border control measures, including checkpoints, patrols, and surveillance systems. After the Communist takeover in 1948, the most common direction of crossing the border was to the south towards Austria and Germany, which was often done on foot across the so-called “green border” with the help of local smugglers who knew the area. Gradually, various barriers were created in the form of a customs and later a border zone, which was guarded by the Border Guard. Act No. 286/1948 Coll. “On National Security” in Sec. 1(1) established the obligation of the national security authorities to protect the people’s democratic establishment, to guard the state borders, to ensure the safety of persons

¹¹ Ibid. Available: <https://www.psp.cz/sqw/sbirka.sqw?cz=140&r=1961> [viewed 04.04.2024.].

¹² Case No. 3, Tk 107/51: Sb. NS in issue number (volume) 3, 1952, p. 79: “Proceedings against a fugitive can be held only in such cases where the accused cannot be brought to trial because he is evading prosecution by staying abroad or by hiding. The following conditions must be fulfilled for such proceedings to be held: such proceedings may be held only against the person against whom the action has been brought, and only where that person cannot be brought to trial for one of the reasons mentioned above”.

¹³ Case No. 1, Tor 27/69Sb. NS in issue number (volume) 6, 1970 p. 277. Type: decision (Rt) of 25.02.1970.

¹⁴ Rokosky J. Amnestie 1960 [Amnesty in 1960]. Pamet a dejiny, 2011, No. 1, pp. 36–54.

and property, etc. Act No.69/1951 Coll. “On the Protection of the State Borders” determined the legal framework for the service of the Border Guard, which it placed on an equal footing with members of the National Security Corps (SNB) and the army. Detailed regulations specified the occasions when officers could use weapons. At the same time, work began on closing the border with engineer-technical security devices. Within two years, triple-walled wire barriers were built, the middle roadblock was under high voltage and the surrounding terrain was mined. The border was guarded by well-armed and trained units of the Border Guard, composed of politically reliable and qualified individuals determined to prevent refugees from reaching the free part of Europe by any means. The Border Guard maintained longitudinally ploughed and softened strips of earth along the wire barriers to reveal the footprints of trespassers. The roads in the vicinity of the checkpoints were secured with concrete spikes connected by steel cable, and anti-tank barriers were erected in some locations. These measures were aimed at preventing the attempts to break through the wire barriers by heavy trucks and various fortified vehicles. Apart from a brief period after the intervention of Warsaw Pact troops in Czechoslovakia as the result of the Prague Spring in August 1968, when security authorities at border crossings took a benevolent approach towards citizens, other legal and sub-legal norms restricted the freedom of travel. Government Decree No. 114/1969, which responded to the emigration wave after the army intervention, adopted further provisions that restricted freedom of travel and, by refusing or withdrawing travel documents, prevented Czechoslovak citizens from visiting relatives who had emigrated. Organised tourist tours abroad or work trips were used for emigration. However, the number of emigrations effected in this way was not substantial. Likewise, illegal border crossing was classified as a criminal offence in the Criminal Code No. 140/1961 Coll. until 1989. Between 25 February 1948 and 17 November 1989, the members of the National Security Corps and the Border Guard killed at least 286 civilians by shooting, electrocuting them on electric wire barriers, exploding landmines, tearing them apart with service dogs and executing other interventions on all sections of the Czechoslovak border.¹⁵ Thousands more were detained or injured by border guards and handed over for prosecution. As of 1976, this criminal conduct was in direct violation of Article 12, Part III of the International Covenant on Civil and Political Rights, which was legally binding for Czechoslovakia. Gradual changes occurred in connection with the so-called *perestroika* in the USSR and the leadership of A. Gorbachev. The right to leave the territory of the republic and to return to it at any time was to be included in the forthcoming constitution¹⁶. However, this did not happen as a result of the collapse of the communist regime in 1989.

¹⁵ Vanek P. Pohranicni straz a pokusy o prechod statni hranice v letech 1951–1955 [Border Guard and attempts to cross the state border in 1951–1955]. Praha: Ustav pro studium totalitnich rezimu, 2008.

¹⁶ Rychlik J. Prekracovani hranic a emigrace v Ceskoslovensku a vychodni Evrope ve 20. století [Border Crossing and Emigration in Czechoslovakia and Eastern Europe in the 20th Century], *Securitas Imperii*, 29, 02/2016. p. 44.

Czechoslovakia lost approximately some 420 000–440 000 people between 1948 and 1990, 500 000 in total (hence, including persons with authorization to leave and emigrate).¹⁷

Conclusions

1. Due to mobility restrictions in Czechoslovakia, emigration was tightly controlled and used as a tool of power during the Communist era to maintain political control over the population, as well as constituting a means of eliminating the opposition. The Communist Party played an unquestionable role in the whole process of state administration. To this end, administrative, constitutional, and especially criminal law was used to provide sanctions for those who did not comply with the system. The interpretation of legal norms was often extensive and led to harsher punishment of individuals
2. To exercise its power, the Party used not only the legal system but the police force, army and border guards, but above all – the organs of State Security¹⁸, which played a key role in controlling and surveilling the population. Passport controls were an essential part of any travel, even within the socialist bloc. Illegal means of emigration were the only possible ways of escape. As punishment these emigrants (in case of successful escape) automatically lost citizenship, private property that was in the country, and were usually subject to prison sentence.
3. The empirical experience of restrictions on freedom of movement and general surveillance of the population were typical features of totalitarian rule. The society had gradually come to terms with these restrictions and, in some cases, had learned to bypass them.
4. Despite various efforts of the regime to isolate the society from the rest of the developed world, it ultimately failed. The fall of the Iron Curtain marked a new stage in the development of the society.

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¹⁷ Drbohlav D., et al. The Czech Republic: on its way from emigration to immigration country. Idea Working Papers, No. 11, May 2009. Available: http://old.adapt.it/adapt-indices-a-z/wp-content/uploads/2014/08/idea_the_czech_republic_2009.pdf [viewed 04.04.2024.], p. 11.

¹⁸ Persak K., Kaminski L. Zacek P., Blazek P. (eds). *Cekiste. Organy statni bezpecnosti v evropskych zemich sovetkeho bloku 1944–1989* [Chekists. State Security Corps in the European Countries of the Soviet Bloc 1944–1989]. Praha: Academia, 2019.

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