

## Chapter 4

# Legal imbroglio in the Protectorate of Bohemia and Moravia

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*Jan Seidl*

**F**or a long time, the Czech historiography of homosexuality, which was undertaken starting in the 1990s, focused on the period of the First Czechoslovak Republic (1918-38) and the communist period. The available sources concerning the First Republic consist mainly of several volumes of a magazine called *Hlas sexuální menšiny* (Voice of the sexual minority), which were published at the time. With respect to the communist period (1948-89), oral accounts have helped to make up for the shortage of written records. The Second World War, as far as the Czech homosexual context is concerned, was very much ignored or described in terms of generalisations about how hard it was for homosexuals sent to concentration camps wearing pink triangles. Such generalisations were sometimes qualified by the hypothesis that Czech homosexuals were, largely, able to live in relative peace as it was essentially the German people Nazi policy aimed to protect from homosexual decadence.

What were the mechanisms and conditions governing the persecution of homosexuality in the Protectorate of Bohemia and Moravia? Did the situation of homosexuals deteriorate in comparison with the previous period of the First Republic? What tools, both judicial (“ordinary” prisons) and extrajudicial (various types of deportation) were used to persecute homosexuals? These are the questions my research has addressed since 2008, and which has also given us insight into the everyday living conditions of homosexuals and their communities at the time.

The research sources used were the archives of the Criminal Court of the Protectorate of Bohemia and Moravia in Prague, where both registers and individual files are kept, and the archives of the German Criminal Court in Brno and of the Gestapo in Brno, where only a very small number of files concerning the persecution of homosexuality exist, which were inventoried by the Moravian provincial archives in Brno a few years ago. As regards the situation of homosexuals under the fully German legal system in force in the Sudetes, I shall refer mainly to the work of Jean-Luc Schwab, *Itinéraire d'un triangle rose* (Brazda and Schwab 2010), which tells the story of Rudolf Brazda (1913-2011), one of the last surviving men deported for homosexuality who, prior to his arrest, actually lived in the Sudetes, in the city of Carlsbad. With respect to Slovakia and Carpathian Ruthenia, research remains to be done.

I shall begin by examining the situation of Czech homosexuals before the occupation. Then I shall analyse the forms of legal and extra-legal persecution of homosexuals and how these forms of persecution changed during wartime. As well as their persecution, I shall examine the everyday lives of homosexuals in wartime and how a thriving community continued to exist, especially in Prague, even though the risk was much greater because the Protectorate was under the control of Nazi Germany.

The criminal law of the First Czechoslovak Republic was characterised by its duality. In the territory that, under the Austro-Hungarian Empire, had been part of Cisleithania (Bohemia, Moravia, Silesia), the old Austrian Criminal Code was used. In Slovakia and Carpathian Ruthenia (formerly part of Transleithania), on the other hand, the old Hungarian Criminal Code applied. The latter code was considerably more lenient towards homosexual acts between men and did not provide for any prosecution for such acts between women. This situation of duality was further complicated following the Munich agreements (autumn 1938), when the Sudetes border region was incorporated into Germany, Cieszyn Silesia into Poland and southern Slovakia into Hungary. In these occupied regions German, Polish and Hungarian law respectively was gradually brought into force, with varying results. The condition of homosexuals in the Sudetes immediately deteriorated with the application of paragraph 175.a of the German Criminal Code. Conversely, in Cieszyn Silesia homosexual acts were decriminalised, as such acts were not considered crimes under the Polish Criminal Code of 1932. The break-up of the rest of Czechoslovakia and the proclamation of the Protectorate of Bohemia and Moravia on 16 March 1939 merely added to this legal complexity, offering a unique case study of comparative history.

### **Legislative duality in the Protectorate**

No sooner was the legal duality of the First Republic brought to an end by the dissolution of the two halves of the Republic, than the Protectorate was faced with the introduction of new legislation on sexual relations between consenting adult men. But unlike the previous dual system, which had been based on a geographical territory, the new system was based on ethnic criteria. This meant that people living in the Protectorate who were declared to be ethnic Germans, that is to say, citizens of the Reich, fell within the scope of the Criminal Code of the Reich. Those, on the other hand, who were identified as belonging to a different ethnic group (mostly Czechs), came under the old Austrian Criminal Code. An exception existed, however, when a Czech and a German national were involved in an offence together. In such a case both men would fall within the scope of the Criminal Code of the Reich from 1941 onwards.

Examination of the records of the Criminal Court of Prague<sup>73</sup> show how judicial proceedings against individuals accused of homosexual practices evolved. A five-yearly breakdown of accusations under Article 129.b of the old Austrian Criminal Code between 1898 and 1943 – for the year 1943 it concerns only homosexuals prosecuted under the Protectorate's legal system – reveals a regular increase in persecution (Figure 5). Relatively moderate at first, in the early years of the First Republic, the number of arrests and convictions rose sharply under the German occupation. So while in 1903 only 40 arrests were made, in 1933 there were more than 80, and in 1943 over 200. Convictions followed

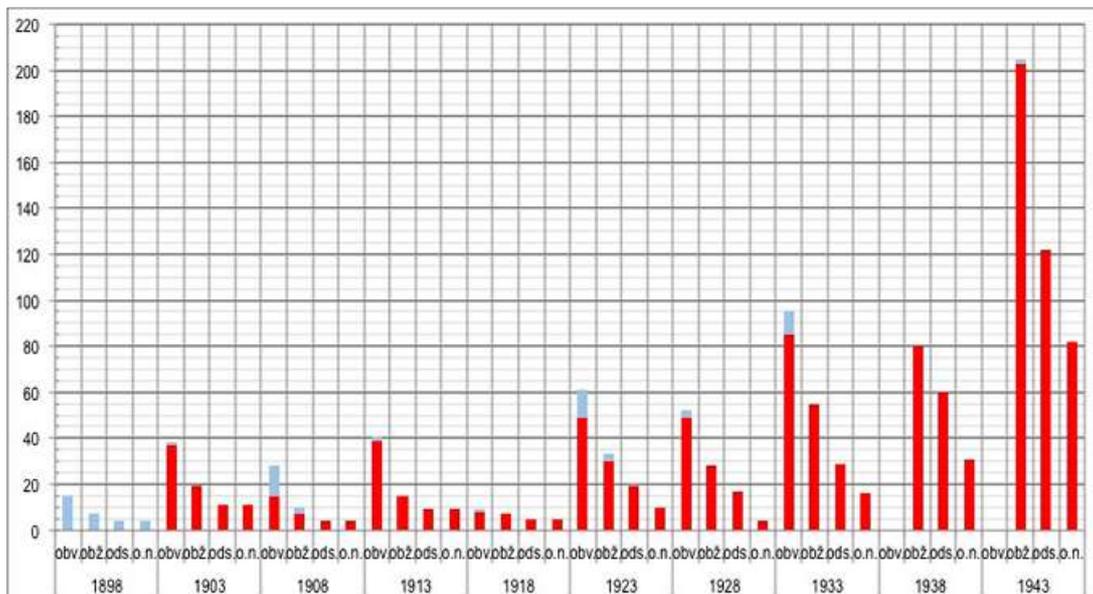
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73. Carried out with the help of my colleague Lukáš Nozar.

the same pattern: rare until 1933, they started to increase in 1938 – with 60 convictions – and rose dramatically with the war to over 120 convictions in 1943.

For women, who could also be prosecuted under the Austrian Criminal Code,<sup>74</sup> the pattern was similar although the numbers were much lower (Figure 6). There were more years with no charges at all at the beginning of the period (1898, 1903, 1913 and 1918) than from 1920 onwards when it is the case only for 1938. But as with men, the application of Nazi law caused the number of prosecutions to spike in 1943. Not only were there more convictions, the sentences were harsher, and both the average and the median prison sentence for homosexual behaviour increased sharply (Figure 7). Between 1898 and 1938 the average prison sentence never exceeded six months, but in 1943 it rose to 12 months, revealing a generally harsher approach to the conviction of homosexuals under the Nazi yoke.

**Figure 5: Rate of prosecution of homosexual behaviour of men, Prague Regional Criminal Court**



Key: number of arrests (obv.), individuals charged (obž.), convictions (ods.) and non-suspended sentences (o.n.)

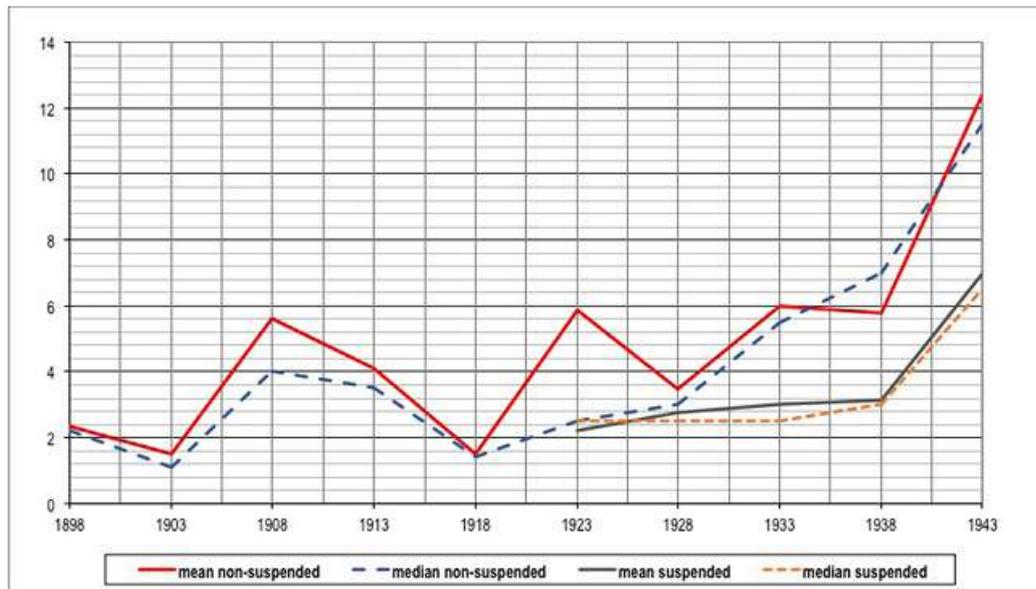
**Figure 6: Rate of prosecution of homosexual behaviour of women, Prague Regional Criminal Court**



Key: number of arrests (obv.), individuals charged (obž.), convictions (ods.) and non-suspended sentences (o.n.)

74. See the contribution of Johann K. Kirchknopf in this publication.

**Figure 7: Rate of prosecution of homosexual behaviour, Prague Regional Criminal Court**



Key: the different lines represent the mean and median prison sentences, suspended and non-suspended, expressed in months (in order from the top right to the bottom right of the figure: mean length of non-suspended sentences; median length of non-suspended sentences; mean length of suspended sentences; median length of suspended sentences).

Unfortunately, this data is not available for the whole Protectorate. According to the figures of the Statistical Office of the Reich, studied by Grau and Schoppmann, the total number of convictions in the Protectorate for violations of paragraph 175 of the German Criminal Code would have been 210 in 1941; 112 in 1942, including 24 citizens of the Protectorate, 86 Poles and Jews and 2 “pure race Jews”; and 48 in the first half of 1943, including 17 citizens of the Protectorate and 28 Poles and Jews (Grau and Schoppmann 1995: 209).

The above figures show the extent to which the criminal justice system of the Protectorate, while continuing to work in accordance with the structural frameworks of the First Republic (with the same Criminal Code and Code of Criminal Procedure), was led by the Nazi regime to adopt a harsher attitude towards homosexuals. This hardening of the judicial approach vis-à-vis homosexuals during the occupation and its association with the Nazi occupation made it possible for President Edvard Beneš, upon the liberation of Czechoslovakia in 1945, to proclaim the amnesty of prisoners convicted under paragraph 129.b of the law of the Protectorate.

A study of the six records of criminal proceedings kept by the Moravian provincial archives in Brno (referred to at the beginning of this chapter) provides a glimpse of the structural mechanisms of the German criminal justice system in the Protectorate and helps to compare them with those of the criminal justice system of the Protectorate.

The records show that a person tried under paragraph 175 of the law of the Reich could expect a much harsher sentence than if they had been tried for the same offence under the law of the Protectorate and paragraph 129.b. The former law was

always much less favourable to the accused, as a result of the accumulation of penalties applicable to each sexual partner, while the Criminal Code of the Protectorate applied the principle of absorption, and also because in the Criminal Code of the Protectorate there were no aggravating circumstances, such as prostitution or having sexual relations with a minor under 21 years of age, which were taken into account in the Third Reich. On the contrary, the Protectorate judge enjoyed a wide margin of appreciation. This factor is important considering that, according to the investigations carried out by the police authorities, relations between an adult man and a young man under 21 years of age were an extremely frequent occurrence and may even have accounted for a majority of cases in the Protectorate. The investigations also revealed that the principle of a pecuniary reward in exchange for sexual relations was very widespread (but it may be likely that relations in exchange for money were more systematically investigated by the police). Lastly, another specificity is that the Criminal Code of the Protectorate provided for the possibility of suspending a sentence, at least for offences committed prior to 3 May 1942. This was not possible under the law of the Reich.

The difference between the two legislations stems also from the Czechoslovak case law of the 1920s and 1930s. Throughout the First Republic certain lawyers and doctors sympathetic towards the homosexual emancipation movement had managed – especially through various appeals to the Supreme Court – to have the judicial practice amended to either release or suspend the sentences of offenders who had a medical certificate stating that they suffered from an “innate” form of homosexuality. This made it possible to obtain sentences much more lenient than those normally provided for by the law. This case law was not challenged during the occupation. The persistence of the relative tolerance of the pre-war period is even surprisingly manifest in the publication – in January 1942 by one of the principal personalities of the pro-homosexual movement of the First Republic, the lawyer František Čeřovský (1881-1962)<sup>75</sup> – of an article on the “Punishment of homosexuality” in the *Časopis policie a četnictva Protektorátu Čechy a Morava* (Magazine of the police and the military police of the Protectorate) (Seidl et al. 2014a: 117-18). In it he denounced the criminalisation of homosexual acts and called for a reform of the Criminal Code on the subject. The law was not amended, of course, but the article was not censored nor its author taken to task in any way.

## **Homosexuality and deportation**

Did the Nazis make use, in the Protectorate, of extrajudicial repressive measures, such as deportation to concentration camps? Among the files studied by Mark Cornwall (Cornwall 2008) and myself (five individuals tried by the courts of the Reich and three by the German Administrative Court in Prague), none mentioned deportation at the end of the sentence. The same applies to those tried by the courts of the Protectorate: there were no deportations to Nazi camps. Thus, subject to further research, it may be asserted that Czechs accused of homosexuality were not deported on that ground alone.

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75. Franz Schindler (2003) has produced a biography of František Čeřovský.

Several homosexuals were deported because of their political ideas and action, however. The priest Otakar Zadražil (1900-45), an Augustine monk from the monastery in Brno, was sentenced to death on the principal charge of collecting weapons, listening to Radio London and passing on information. His homosexuality was also explicitly taken into account, however, as a secondary charge. Although he seems to have organised a small homosexual resistance group at the monastery, he was the only one sentenced to death and executed (Černý 2014). Another case of a small resistance network whose members were linked together by their association with the homosexual subculture involved that formed in Prague around the lesbian couple Jarmila Řepásková (1911-83) and Ludmila Neumannová (1902-?). The sources are fragmentary, but it appears that they were deported as political prisoners for having sheltered an escaped prisoner, also a homosexual, in 1943 (Seidl et al. 2014b: 263-4).

There are also cases of homosexual members of the resistance who were imprisoned without the police or the judicial authorities ever knowing they were homosexuals. One such case was that of Jaroslav Němeček (1901-65), who in the 1930s was “press officer” of the Czechoslovak sexual reform league. In 1941 he was sentenced by the People’s Court of Berlin to 12 years’ imprisonment for having played an important role in the distribution of the Czech resistance journal *V Boj* (Seidl et al. 2014a: 107-8).

Lastly, some homosexuals were deported because of their Jewish origins. One of these was Fredy Hirsch (1916-44), who died in Auschwitz. A prominent member of the Jewish community of Prague and Theresienstadt, his mission was to improve the living conditions of children in the ghetto (Ondřichová 2001). Another was the lawyer Karl Fein (1894-1942) (Seidl et al. 2014a: 118-19), heir to Karl Giese, who had emigrated from Germany to Czechoslovakia (where he committed suicide in 1938), himself heir to Magnus Hirschfeld. While their homosexuality does not appear to have played a role in the deportation of these two men, the same cannot be said of Willi Bondi (1897-1941). A homosexual Jew from Brno, he was deported to Auschwitz in 1941, a few months before the beginning of the systematic deportation of Jews from that city. The reason for his early deportation was clearly his homosexuality.<sup>76</sup> In 2012, a *Stolperstein* (a commemorative plate), was cemented into the pavement outside the house he lived in, to commemorate his deportation.

Because of the complex profile of the individuals concerned, and the gaps in the sources, it is often difficult to determine exactly why they were deported. The following three cases put the hypothesis that there was no threat to the citizens of the Protectorate of being deported solely on the grounds of homosexuality into perspective.

The first case is that of František Kříž (1920-44), a premonstratensian novice who was expelled from his monastery and became an informer for the Gestapo, feeding them information about his former religious order. Considering him unreliable, the Gestapo had him deported “for homosexuality” to Buchenwald, where he was killed by other prisoners for being an informer. According to Jan Chvatík (2012) the German authorities took advantage of his double conviction by a court of the Protectorate, for homosexuality and theft, to get rid of him once he had served his sentence.

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76. Peter Barber, “Willi Bondi (1897-1941): a family perspective”, lecture given on 18 November 2012 in Brno, an audio recording of which is kept in the collections of the Society for Queer Memory in Prague.

The other two cases concern internments in labour camps run by the authorities of the Protectorate. There were several such camps, better known in the recent historical context as internment camps for Roma people. Because they were run by the Protectorate authorities, not the Reich ones, they occupy an important place in the current public debate of the Czech Republic, a remembrance controversy fuelled by the presence on the site of the former camp at Lety of a huge pig farm founded under the communist regime. In spite of the ongoing controversy, more than two decades later, the Czech Republic has still not closed the farm down. When they were set up, these labour camps were intended to house all sorts of people considered as vagabonds or “ne’er-do-wells”. Among them were two Czech homosexuals: Albin Pleva (1912-?) earned a living as a roving transvestite dancer and occasional prostitute; Bohumil Kosovský (1898-1987), a former activist in the Czechoslovak homosexual emancipation movement, held spiritist séances. These cases prove that extrajudicial persecution of Czech homosexuals did indeed exist when they were considered irredeemable.

### **Lifestyle changes in homosexual communities during the war**

The homosexual condition in the Protectorate was not only affected by aggravation of repression and the introduction of the German Criminal Code. Another – unexpected – factor was the dissolution of the pre-war Czechoslovak army when the Protectorate was established on 16 March 1939.

Various judicial records from before 1939 concern soldiers of that army who, while romantically involved with girlfriends back home, also shared moments of intimacy with homosexual men in the places where they were stationed, in exchange for money (Seidl et al. 2014b: 243-5). Many homosexuals are even believed to have preferred spending an evening with a soldier rather than an “ordinary” male prostitute, be it because they were attracted by the uniform or because they assumed soldiers would be more discreet because it was not in their interest to be unmasked as prostitutes and they would be less likely to have time to engage in blackmail attempts.

When the army was disbanded these former soldiers went back to their families and were soon replaced on the male prostitution market by other, even younger men, often barely fifteen years old, many of whom were poorly paid apprentices in need of extra cash. In Prague their main hunting ground was the Koruna shopping centre in Wenceslas Square (Seidl et al. 2014a: 57-9), a modern, early 20th-century palace that combined in one space a shopping arcade, a cafeteria on the ground floor and baths in the basement, all three of which were very popular at the time. This is where young men gathered in the hope of meeting potential clients. When they met a client and struck a deal sexual relations would take place in one of the bathing cubicles, or outside, on a nearby street corner or in one of the local parks. The curfew imposed at nightfall during the war shrouded the city in darkness, which considerably simplified these relations in the open air.

This type of homosexual intercourse already existed before the war, with blackmail by the young prostitutes as a corollary. One famous case made the news in 1926: the manslaughter of the ill-reputed prostitute and blackmailer Tonda Tričko (“T-shirt

Tony”) by a former client he was blackmailing. The court eventually found the murderer not guilty (ibid.: 153-4). With the war both prostitution and blackmailing escalated. The archives reveal that the longer the conflict went on and the standard of living of the population deteriorated, the more the German and the Protectorate police and courts focused their attention on combating blackmail by prostitutes of their clients rather than on punishing homosexual activities as such. The prostitutes were generally organised into gangs: an experienced leader around 20 years old would teach the younger recruits the tricks of the trade and send them out to “work”. Records reveal the cases of two gangs of blackmailing prostitutes who were all tried together, along with their clients and victims. In one case, that of the Karel Seifried gang (ibid.: 42-3), the blackmailing prostitutes were sentenced by a Protectorate court to much harsher prison sentences than their clients and victims. Interestingly, after 1945, the gang members concerned, who were still in prison, were denied amnesty because their convictions under the occupation had been in conformity with the laws of Czechoslovakia in terms of the length of the sentences pronounced, and the offences had not been committed with a view to liberating the Republic. In the second case the gang of Václav Bárta was sentenced to death by a German court, with immediate effect (Cornwall 2008). The German authorities wanted to show their determination to rid the nation of what the regime saw as a “scourge”.

To conclude with the Koruna shopping arcade, which features prominently in the judicial archives: it was one of the principal theatres of the sociability of homosexuals along with several bars in Prague. One was the U Zlatého bažanta (Golden Pheasant) bar (Seidl et al. 2014a: 93-5) in the Vinohrady district, whose doorman only let in clients he knew or who seemed to him to be “sufficiently” homosexual. There were also certain cafés that served as meeting places for homosexual men and women, such as the upmarket Evropa cafe in Wenceslas Square (ibid: 52-5). As for establishments catering more for a lesbian clientele, some sources suggest that this was the case of the Zdeňka (Sidonia) cafe next to Prague’s Denis railway station (ibid.: 38-9).

All in all, then, the homosexual scene, not only in Prague but also at least in Brno, lost little, if any, of its pre-war vibrancy. It may have been more risky to be a part of that scene, but many men and women carried on as before, oblivious to any increased risk. Many sources show evidence of carefree, even happy homosexual existences at the height of the occupation. However, as is only logical when one relies on judicial archives, this individual insouciance was soon dashed when the police caught up with them. Those who were fortunate enough to steer clear of the watchful eye of the German or Protectorate authorities left no traces in the archives and their story is largely untold.

The situation of homosexuals in wartime Bohemia and Moravia illustrates the complexity of the legislation systems in force in one and the same territory. The cases we have looked at more closely, from archives of the court of the Protectorate of Prague, show that justice was harsher towards homosexuals in wartime. This increased repression led to more arrests of both men and women. The length of the sentences pronounced also increased considerably. The research also reveals that the justice dispensed by the Reich in the Protectorate was harder on German offenders than that of the Protectorate on Czech offenders, largely as a result of the structural differences between the two legal systems. In a very large majority of cases Czech

“homosexuals” were sentenced to imprisonment, with very few cases of deportation to a labour camp in the Protectorate. Lastly, the archives show that Jewish homosexuals and homosexuals in the resistance movement were deported on both grounds. Much research still remains to be done, however, to paint a more accurate picture of the forms taken by the repression of homosexuality in the former Czechoslovakia.

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