DISCUSSION

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ABOUT THE HISTORY AND PRESENT OF THE RIGHT TO STRIKE IN THE CZECH REPUBLIC

Abstract:

The authors look into a current topic – history and present of the legal implementation of the right to strike in the Czech Republic. They introduce pieces of legislation that to some extent governed this right in the past and continue to govern it today. An important law, which established the right to strike during the Austrian-Hungarian period was the coalition act from 1870. This act was received in the Czechoslovak legal system by receiving standard No. 11/1918 Col. The article then chronologically introduces other pieces of legislation up until the present, when the fundamental document for the right to strike is the Charter of Fundamental Rights and Freedoms and the Act No. 2/1991 Col. on collective bargaining. However, a law governing strikes outside of collective bargaining is still missing. This should be fixed.

Keywords:

Right to strike, coalition law of 1870, act on colletive bargaining No. 2/1991 Col.

In the period of recurring strikes and demonstrations in the Czech Republic and abroad it would be interesting to look at the early laws governing strikes in Cisleithania, which included also Czech lands, and in the CSR, where the Cisleithania laws were applicable with certain changes and additions based on the Reception Act.

Strikes were included considered in legislation as early as in the middle ages. Recall the Mining Code of Wenceslaus II from early 14th century, which banned miner strikes.

Until the Criminal Code from 1787 strikes were considered to be exceptional crimes. This Criminal Code considered strikes to be administrative offences and the Criminal Code from 1803 took also this standpoint and indicated prosecution of strikes as offence against safety of property and wealth.[1])

This legal framework was an inspiration for another Criminal Code in 1852, which also banned strikes. Violation of this ban was considered to be an offence, the penalty according to article 481 of this Code being imprisonment

[1]) See MALÝ,K.: *Policejní a soudní persekuce dělnické třídy v druhé polovině 19. století v Čechách* [Police and judicial persecution of the working class in the second half of the 19th century in Czech lands], Praha 1967, p. 22. Here you can find a number of references related to strikes and the legal framework. K. Malý quotes the work of Zd. Šolle and J. Houser.

with duration between 8 days and 3 months. Article 77 forbade workers from enforcing better work conditions by jointly interrupting their work.

The Act No. 146/1854 governed strikes in the mining industry. Article 204 specifies that agreements of workers in mining and metallurgy aiming to achieve higher wages or better work conditions by refusing to work, resisting in service and other means, are crimes.

The striking workers were also sanctioned by the Trade Code – Act No. 227/1859. In article 131 this code specifies that transgressions against the Trade Code, which included also strikes, could be sanctioned, among others, by fines of up to 1,000 crowns or imprisonment up to three months.

The right to strike was not introduced until coalition act No. 43/1870.[2]) *Ad-hoc* coalition-agreements/Verabredungen/[3]) for the purpose of achieving a common goal, created by employees or employers, were permitted. However, if somebody would force workers to take part in a strike, he could be punished by imprisonment in the duration of 8 days to 3 months.

Article 2 of the coalition act stipulates as legally ineffective a) agreements of employers that aim to worsen the work conditions of workers by, for example, reducing wages[4]) and b) agreements of employees that could lead to interruption in work process with the aim of enforcing higher wages and better work conditions, c) agreements to support those, who insist on these agreements.

Article 3 declared that strikes are not punishable with the exception of certain actions during a strike that could be described as, for example, oppression.

The term „coalition" was in theory understood broader than the right of association because it included also the right to strike. At the time the coalition act was being prepared the term practically narrowed down to preparation and purpose of a strike.

The coalition act is often connected with emergence of unions[5]), although professional organizations existed before. It is somewhat simplified view, because coalition act was also applicable to short-term associations created to achieve certain goals – by employees or employers.

Although the coalition act legalized strikes, this right was nonetheless restricted by the applicable articles of the Trade Code and Mining Code. In some cases these permitted laying off employees without dismissal.[6])

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[2]) *Slovník* veřejného *práva československého [Dictionary of Czechoslovak Public Law]*, part IV, Prague 2000, p. 750. Compare with MALÝ, K.: *Dějiny českého a československého práva* do roku 1945 [History of Czech and Czechoslovak Law Until 1945], Prague2003, p. 307.

[3]) Slovník veřejného práva československého [Dictionary of the Czechoslovak Public Law], sv. II, Prague 2000, p. 197.

[4]) Clearly, the law here aims at cartel agreements of employers.

[5]) Compare www.odboryvaleo.cz

[6]) Compare with e.g. article 203 of the Mining Code or already mentioned article 131 of the Trade Code.

During the First Czechoslovak Republic it was the constitution of 1920 what became the basis for the right to strike besides the Coalition Act, although the constitution itself does not stipulate the right to strike, it does not ban it either. Article 114 stipulates only the right of association to protect and support work and economic conditions. Many experts consider this article to contain also the coalition right (e.g. E. Hácha).[7])

The Act 209/1921 Col. against oppression and for the protection of the freedom in associations[8]) revoked Article 3 of the Coalition Act, which ruled as criminal only certain actions during a strike. In the light of this Act, strikes were not generally banned, but they had to be within the limits given by the law.

According to Act No. 309/1921 Col., whoever causes physical harm, violates freedoms, honor, property or results of work, threatens to do so or consciously takes advantage of immediate distress or misuses his position is guilty of oppression.

However, strike falls into this category only rarely – if such actions against individual employees would be motivated nationalistically, religiously or politically.

The punishment in this case was imprisonment with duration between eight days and three months and in case guns were used by imprisonment between one and six months.

However, some groups of population were not permitted to strike; e.g. public servants, which was stipulated in profession-specific laws from 1914 and 1917. Both Acts, No. 15/1914 and 319/1917, were received also by the Czechoslovak legislation.

Related to strikes was also State Protection Act No. 131/1936. According to article 60 of this Act at times of defense measures it was possible to order minimum working times for persons in those areas, which are necessary for regular functioning of the society. This applied to, for example, medics and water and power supply organizations and organizations supplying daily necessities.

Failure to comply and strikes in these cases became *contra legem* and it was a sufficient reason for financial sanction and imprisonment.

The Dictionary of the Public Law analysis in detail the issue of strikes, e.g. in relation to factory committees and collective agreements.[9])

But let us focus now on theoretical and parliamentary discussions related to strikes and work interruptions by the employers.

Strikes were organized during the First Czechoslovak Republic that were reflected also in the parliament. In 1921 members of parliament Johanis and

[7]) The same, pp. 747-748.

[8]) Compare print 999, report of the constitutional committee for print 956, on resolution PS print 2832. The first election period of the parliament of CSR.

[9]) Slovník veřejného práva [Dictionary of the Public Law], quoted pp.755-759.

Brodecký et col. reacted to a strike of 17,000 bank clerks from Czech and German banks. The clerks were demanding profession-specific legislation („pragmatika"), which was received positively in the interpellation of Johanis and Brodecký. The interpellation demanded that the government answers how it was going to deal with this situation and pointed out that such profession-specific law would not threaten bank legislation, on the contrary – it would introduce in the banking sector „healthy conditions for clerks".[10])

Similar interpellations would appear again in the following years, as is documented by prints from the parliament. However, they were not answered thoroughly.

In the Czech Republic the right to strike is guaranteed with certain limitations (for example, judges cannot strike) by the Charter of Fundamental Rights and Freedoms. Also the Act No. 2/1991 Col. on collective bargaining and verdict of the Supreme Court in the CR from November 24th 2002, file number Cdo 2104/2001.

[10]) www.psp.cz/ etc., urgent interpellation of MPs Václav Johanis, Brodecký and others. Parliament session 1921, print 2499.