

INTELLIGENCE SERVICES OF THE CZECH REPUBLIC: CURRENT LEGAL STATUS AND ITS DEVELOPMENT

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An adequate understanding of the nature of intelligence services within the Czech society – including professional circles – is still lacking. Perception of intelligence services by the general public and the media fluctuates between contempt and revulsion on one hand, and overstatement of their role and possibilities, on the other hand. In some extreme quarters, intelligence services are seen as mythological monsters, either fighting absolute evil, or themselves embodying this evil. In countries, recently freed from the dictatorship, intelligence services are in the public eyes constantly under suspicion to develop again into an abhorrent secret political police.

Although a large amount of factual data about intelligence and the current Czech intelligence services is available, it is widely dispersed. The primary purpose of this work is to collect and present the best available data about the institutional status and legal position of Czech intelligence services, with the aim of serving as an introduction to their study. This is especially important today, because many, especially in the media, criticize the work of the current Czech services, either in regard to various individual events, or as a whole, without fully understanding their background or context. The second purpose of this work, therefore, is to provide a more knowledgeable basis for evaluating the Czech intelligence services by both the professional and the general public.

This study is opened with:

- a) a general introduction to intelligence services; and
- b) brief recapitulation of recent history concerning the transformation of the security system of our country after 1989. The paper deals exclusively with national intelligence services, in the strict sense of the word (see below), and not with either military reconnaissance, nor specialized police units.¹

The study covers the legal situation as of summer 2006.

¹ The tasks to expose grave security threats (besides three Czech intelligence services – in the true sense of the word) are fulfilled also by special units of the Police of the Czech Republic and the Customs Office. In addition to their basic task of law enforcement in its criminal trial form, they possess some features, defining intelligence activities: to a certain extent their tasks overlap those of intelligence services. Some role of intelligence nature is played also by the Financial and Analytical Department of the Ministry of Finance of the Czech Republic (money laundering). This paper does not deal with the National Security Office (NBÚ – Národní bezpečnostní úřad), as this institution is not an intelligence service but a specific administrative office. The NBÚ, however, is a significant recipient of intelligence, concerning security vetting of physical and legal entities.

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BASIC FACTS ABOUT INTELLIGENCE SERVICES

Intelligence services are special state bodies, whose primary aim, effort, and mission is to protect the state and society by providing timely, objective, and quality intelligence information to elected state representatives and state administrative bodies. These institutions are special, as regards their methods of collecting information, as well as the spheres of interest on which they focus.

The successful execution of public authority and decision-making requires adequate information. Each state has an inherent right and duty to acquire, evaluate and use all available information important for national security, defence, protection of its constitutional system, and for significant national (political, security, economic, etc.) interests. Opponents or adversaries (foreign powers, terrorists, mobsters, subversive organizations, etc.), obviously do not make publicly known their activities (intentions, plans, information) against the interests of the state. Usual information sources, including the normal agencies of state and society are not sufficient to obtain such secret (latent) information, namely:

- activities and funds of state administration (including diplomacy);
- activities of regulatory and repressive agencies (especially the police);
- scientific and professional institutions;
- (instruments and institutions of non-governmental sector of open society, including free press.

Similarly, each state has a legitimate right and duty to protect its own information (intentions, classified information), its safeguarded values, and its infrastructures.

Politicians may be expected to make the right decisions and judgments, but only if they have been adequately informed.

Therefore, states establish specific instruments to collect the necessary classified information. These instruments are organizations called intelligence services, and they belong to the country's attributes of sovereignty. The state representative and the founder of intelligence services is the executive power, i.e., – the government (its executive branch, administration in the USA). The government is the "boss" of intelligence services and their principal customer (client, product recipient).

Intelligence services are vested with special powers. In their work they use specific intelligence methods. The nature of these methods may by right raise questions and disputes – from various moral, legal, and political viewpoints. A part of specific intelligence methods and procedures (the so-called "intelligence craft") rarely differs among countries, historical periods, and political regimes. All intelligence services have their operational, technical, analytical, and support units, using one of the basic instruments, that is, secret collaborators or – agents. They all use (though at technically different levels) instruments of communication, surveillance, control, and documentation. However, there is one major difference to be constantly kept in mind: the intelligence services of democratic states serve to protect the security of *civil society* against external and internal threats; similar services of authoritarian and totalitarian states serve to protect *regimes* (concrete power groups) and their potential expansionist goals. Totalitarian intelligence

services, therefore, are tasked to control the population and to persecute (in different times to different extents) opposition groups and individuals; they become a secret police. To define the differences between totalitarian and authoritarian countries (including various pseudodemocracies) on the one hand, and modern liberal democracies on the other hand, the most important criterion is the level of the rule of law.

In a very general definition, intelligence activity is a deliberate human activity comprising the secret collection and evaluation of classified or latent information of a counterpart or opponent. (This is normally done according to the adage: "To see and not to be seen; to hear and not to be heard; to know and not to show it."). Consequently, this information is to be used solely by its authorized recipient. The integral part of all intelligence activities is the protection of own classified facts. Other parts *may be* secret, preventative, and active interventions into the observed environment.

Activities of intelligence services are concerned with real as well as *potential* facts, situations, and conditions that may originate abroad or inside their own countries.

The basic principles, applied in the intelligence activities and services of democratic countries, are as follows:

- adherence to the Constitution and laws;²
- self-security and secrecy;
- need-to-know;
- effectiveness (i.e., to use open sources, before applying specific intelligence instruments);
- necessity and proportionality;
- preliminary caution (i.e., primary considerations of the worst possible impacts of chosen instruments; cautionary prognoses are one of the products of intelligence services);
- data protection.

The requirements of national security and the protection of the state may to a certain extent be inconsistent with well-established concepts of privacy, civil liberties, and civil rights. The state undertakes to guarantee these to its citizens. If an intelligence service of a counter-espionage nature does not have any specific authorization, it soon finds out that the intelligence protection of the state is very difficult. Vice versa, an intelligence service with unlimited powers can easily protect the state, but it can inflict inadmissible damage to the rights, liberties, and privacy of citizens. An agreement has to be searched and found in a democratic state, i.e., a balance between these divergent interests, in a politically and legally acceptable manner. It has to be clearly decided what is allowed and what is not. Activities of intelligence services in a democracy cause one important discrepancy that is difficult to resolve: if the government of a democratic country wants to maintain the approval and support of its public, voters, and taxpayers, it has to strive for openness and

transparency in state administration, and in the activities of its agencies. However, if intelligence services have to do their work *effectively*, some activity spheres should be – and stay – secret.

Three spheres should be kept secret, namely:

1. information on operations, sources, methods, procedures, and instruments;
2. identity of intelligence service personnel, and protection of their knowledge;
3. origin and details of intelligence information provided by foreign governments or foreign intelligence services.

Intelligence services are "secret services" just because the basic principle of their activities is to keep secret concrete tasks and those who carry them out, as well as the methods and tools used to fulfil those tasks. Intelligence services must maintain this principle of keeping these matters secret. They have to be able to guarantee the protection of the identity of their sources, and the protection of confidentially provided information. This is essential not just for the sake of these services and their personnel, but also for the sake of people from the "outside" who cooperate with them. This secrecy is unavoidable, as it is the only way to assure the human sources involved (including potential sources) of their own safety. Nobody would volunteer for collaboration with an intelligence service that is not able to prevent the publication of its sources.

The need to preserve the anonymity of service executives is linked to the above-mentioned facts. Operations, sources, etc., cannot stay secret, if the personnel are known to the public. Results and successes of intelligence services have often to remain secret, in order to ensure the collection of intelligence information in the future. The concrete knowledge and information of intelligence services must remain secret for a longer time, as their disclosure might reveal the focus as well as capability of existing collection systems. To sing the praises of the results achieved means that an opponent is enabled to take effective counter-measures, become more vigilant, and even change his *modus operandi*.

If a government is interested in the cooperation of its intelligence services with the services of other countries, it is absolutely necessary to preserve the secrecy of this exchange, including the information provided. Any piece of intelligence stays, in a sense "the property of the providing country", and must not be shared without the originator's approval. A reciprocal approach is expected in return.

The need-to-know principle means that persons who do not need specific information for their work, must not know it, and, on the contrary, those who need this information for their work must know it in a full extent (need to share). An application of this principle is the so-called compartmentalization, i.e., the division of knowledge, approaches, and competences, both horizontally and vertically.³

2 In the Czech Republic this is stipulated in Article 2 of the Constitution, and in Article 2 of the Charter of Rights and Freedoms; within our context it can be specified as an absolute requirement for intelligence services to act as a part of state power only in those cases, within limits and methods, stipulated by law.

3 Secrecy and the need-to-know principle contradict usual managerial rules, make the information flow difficult, and complicate organization management.

The effectiveness principle means that the assumed gain from any intelligence service activities should not be disproportionate to material costs for the collection of the relevant information, nor to the risk that this activity may cause embarrassment to the state, to the service itself, or to friends or allies. This principle also includes the requirement of timely submission, i.e., the information must be collected and submitted to their recipients in such a time framework that it may be used effectively.

The principle of necessity and proportionality⁴ means that intelligence services have to choose instruments that are proper and effective for the fulfilment of the concrete tasks within their competence. However, they must not infringe more than necessary upon the fundamental rights and liberties of involved persons. The use of specific intelligence instruments must always be subsidiary, i.e., applied only when the relevant result cannot be achieved in time by other (milder) means.

The principle of protection of collected data stresses the importance of data protection (especially personal data) against unauthorized manipulation, including the duty to save only the data necessary to fulfil the tasks given by law, and only for the necessary scope and time.

CATEGORIZATION OF INTELLIGENCE SERVICES

The most frequent and the most "logical" categorization, known even to laymen, is the categorization in accordance with the direction of their spheres of activity: counter-intelligence, and intelligence services.

Counter-intelligence services collect information about the intentions and activities in the territory of their own country that may endanger the sovereignty, territorial integrity, national security, constitutional order, classified information, and important economic interests of the state. They are primarily interested in terrorism, extremism, and other forms of politically and ideologically motivated violence. In some countries they are interested also in the information on organized crime. In contrast to investigative activities of police and other law enforcement agencies, when the counter-intelligence services (and other intelligence services to a limited extent) deal with the crime scene, they are authorized to collect information, although the crime has not happened yet. Counter-intelligence services focus their intelligence activities mostly to threats originating inside the state and their related risks. However, they also deal with threats coming from abroad, but directed and manifested within the country.

Summing it up: their mission is defence, i.e., protection against threats; prevention and reduction of risks; responses to "something that has already happened". They are active primarily in their own countries, focusing on the internal security of the state, the protection of their own classified information, safeguarded values, and infrastructures. Simply put: "We defend our own".

⁴ This principle, being one of the main pillars of a democratic state and rule of law, applies to the work of intelligence services in the sense formulated by the Constitutional Court of the Czech Republic, e.g., in its ruling published under No. 405/2002 Coll., and 98/2004 Coll. The Constitutional Court defined the "algorithm" of assessing the legality of interventions into the fundamental rights and freedoms, or assessing the conflict of two public interests (e.g., the interest in non-violation of fundamental rights and freedoms, and the interest in the protection of public order and the democratic constitutional system).

The most accurate Czech term is "*služby s vnitřní působností*" (services with internal competences)⁵, but the most common term is "*kontrarozvědné služby*". Traditional, but disappearing quickly, is the Czech short term "*defenzivní služby*" (defensive services); the usual synonyms are: *vnitřní služby* (internal services), *obrné zpravodajské služby* (defensive intelligence services). In different countries the following English terms are used: *security (intelligence) services, internal services, domestic intelligence services*.⁶

The well-established Czech term "*kontrarozvědka*" is misleading in that it often leads one into thinking that the main, or even exclusive, mission of this type of services is to carry out "*counter-espionage*" (activity directed against foreign intelligence activities in its own country, as well as disclosing and thwarting espionage for a foreign power).⁷ This is not so, as at present counter-espionage is only one of its many activities, not the prevailing one. The scope of its present activities is concerned with a wider scale of threats that have to be disclosed by intelligence activities. The usual term used around the world is security services (*bezpečnostní služby*). That is why the Czech service of this type is called Bezpečnostní infomační služba (Security Information Service). The downside of the term, "security services" (*bezpečnostní služby*), is the fact that it implies many meanings, and can be ambiguous outside of the proper context.⁸

External intelligence services (called "*rozvědné*" in Czech) collect information on foreign countries or information originating abroad. These services strive to find out the potential intentions of foreign countries, and non-state agents acting abroad. They are directed towards threats originating from abroad; their irreplaceable task is to share in protecting the political, economic, or even defence interests of their country abroad.

The most accurate Czech term for these services is "*služby s vnější působností*" (services with external competences). Synonyms are: "*rozvědky, výzvědné služby, vnější služby*". It can be said that they are espionage services in the narrow sense of the word. I consider their designation as "information services" an incorrect and inaccurate euphemism. The terms usually used in English are: *external, or (foreign) intelligence services*.

Summing it up: their mission is to a certain extent an offensive one, i.e., the collection of secret information relative to a foreign subject (or those acting abroad). Familiarly put: "We want to find out foreign secrets".

It is not sometimes possible to differentiate accurately the relations between intelligence and counter-intelligence/security activities, either in theory or practice. The defensive and offensive may touch, overlap, or sometimes even merge.

Another way to view intelligence services is to divide them according to their military or civilian functions.

5 The term used in the texts on legislation and political science.

6 Slavishly literal translation of "*kontrarozvědná služba*" from Czech into English as "*counter-intelligence service*" is incorrect because of a specific meaning of the term "counter-intelligence" in English.

7 Certain attractiveness of the term "*kontrarozvědka*" in a wider sense of the word (to counter = to oppose, contradict, parry, make a countermove) can be documented in its use in the Czech Republic in 1990s. A police unit, called "Service for the Exposure of Corruption and Serious Economic Crime", as well as its predecessor (Service for the Protection of Economic Interests) was routinely named by the media "economic counter-intelligence".

8 At present this term is used also for commercial subjects, providing guard, protection, and supervisory services, e.g., for banks, shops, etc. However, both meanings are now deep-rooted in Czech.

Military intelligence services deal (whether in a defensive or intelligence variant) with military matters: defence capabilities, defence industry, various aspects of military affairs (numbers, organization, state of preparedness, deployment, and armament of the army, or the terrain and the environment where it is necessary to act).

The somewhat misleading term "civilian"⁹ means that intelligence services so named do not deal with the above-mentioned military information. Instead, they deal with a wide range of political, security, and economic issues, except military ones. In a virtual pie-chart, the activities of civilian intelligence services, represented by one sector of the circle, would cover a larger area than the sector of the circle, representing military services.

It was not always so in the past. Intelligence services of the 19th century were explicitly military services.¹⁰ Later, in about the first half of the 20th century, some important world intelligence services began to emancipate gradually from their "military parents".¹¹

After 1945, many countries began a process of constituting their (civilian) intelligence services *outside* of their general staffs and ministries of defence; the American CIA, and the German BND are an examples. (Within the Soviet empire from the 1940s to 1980s – that is, in our country as well – the structure and status of services were copied from the Soviet model.)

Another way to categorize intelligence services is based on whether the results of the service's activities are important for the whole state, or whether they are intended for one of its institutions. According to this criterion, intelligence services may be divided into:

- central services, dealing with strategic tasks at a national level (protecting national security); these tasks are important for the national security, survival, or prosperity of the state as a whole;
- departmental intelligence agencies, serving as information and intelligence services supporting the function of their departments (narrower field of interest).

The latter may be applied to a large extent to military intelligence services. These are integral and inevitable parts of the armed forces of their countries. Their mission, especially at the tactical and operational levels, is direct support of combat activities and other operations; they are incorporated into a set of related activities, designated in NATO countries as C4ISR.¹² Therefore, in some countries alongside an "umbrella" strategic military intelligence service (mostly under the Ministry of Defence; when it is a part of the General Staff, it is usually designated as the 2nd Dept.) that manages other departments methodologically, there are independent intelligence services of a

9 Both civilian intelligence and counter-intelligence services apply a monocratic management and decision-making system, which is more explicitly expressed in comparison, e.g., to ministries; that is, a kind of "military organization and subordination"; its management tool is an order or its parallel; there is some military criminal liability for the violation of duties; in some countries (not in the USA or the UK) including the Czech Republic, civilian intelligence services still use military ranks, i.e., the sign of their military or police origin.

10 This does not apply fully to services of counter-intelligence type; they originated mostly within the interior ministries and police.

11 For example, the British Secret Intelligence Service (SIS) was and still is known under the name of MI6, the original designation of its organization form at the beginning of the 20th century (Military Intelligence Dept.6). The only exception at that period of a service of a definitely non-military origin was the Soviet KGB, or better its predecessors – Cheka, later GPU, OGPU, GUGB, NKVD, etc.

12 This is an American designation, copied in some countries. Four Cs represent a combination of "command, control, communication, computers", then "intelligence, security (sometimes: surveillance), reconnaissance".

"lower" standing, attached to individual branches of armed forces (army, air force, navy, or marines).¹³

To put it simply, as regards organization pattern, military intelligence services dealing with strategic intelligence are incorporated in ministries of defence ("umbrella" services); military intelligence services dealing with operational intelligence are subordinated to individual branches of armed forces and their HQs; intelligence units dealing with tactical intelligence (military reconnaissance) are integrated or otherwise attached to lower levels of military units.

I have to note that the above-mentioned categorization of intelligence services describes their roles, activities and competences, it does not mean that all these must exist in a single organization. While some countries may establish a separate organization (agency or service) for each one of the four basic functions of intelligence activities (foreign, domestic, military, and civilian), in other countries one organization may fulfil more functions, or, vice versa, each function may be shared by several organizations.

SITUATION IN THE WORLD SINCE 1990s

Traditional images of intelligence services as "cloak and dagger" organizations largely disappeared in the last quarter of the 20th century. Democratic states came to accept as their central concept the idea of fundamental human and civil rights, which has altered the behaviour of the state towards its citizens (principles of good governance). It includes a principle that individual civil rights may be violated only as an exception, when necessary to protect some other safeguarded interest (e.g., national security, etc.), and exclusively in accordance with law.¹⁴

The idea of constitutionally guaranteed human and civil rights means, essentially, that all the basic pillars and organs of state authority must be subjected to publicly apparent feedbacks and mutual control. Intelligence services, which are by nature subordinated to the executive branch, must be controlled by an external non-executive factor. It is evident that even if an intelligence agency has zero repressive or decision-making powers, it has at its disposal another powerful instrument – information.

In the sphere of intelligence services these concepts have recently been projected into unprecedented requirements:

- the determination of the position, mandate (competence) and powers of services by parliamentary legislation;
- continuous external oversight of services, by either parliamentary, or other bodies, independent of the executive;
- consistent de-politization of services, to guarantee non-partisanship;
- transparency, albeit limited (even towards the public), and accountability;
- separation of information activities from repressive activities.

¹³ Including intelligence and security/counter-intelligence services.

¹⁴ Fundamental rights and freedoms may be violated when it is necessary to protect other safeguarded interest, but, simultaneously, a condition must be met that the interest in the protection of the other safeguarded interest (e.g., interest in the protection of constitutional system) in the concrete case prevails over the interest in the inviolability of fundamental rights and freedoms.

This complex of "legal and political" alterations becomes apparent when contrasted to, for example, the former State Security of the previous Czechoslovak regime (Státní bezpečnost – StB) in which the status of its intelligence elements was only vaguely stipulated by legislation.¹⁵ It absolutely did not reflect the different nature of tasks of intelligence branches, StB, and other branches of the National Security Corps (Sbor národní bezpečnosti – SNB), responsible for public order, or participating in criminal proceedings. In this way, StB's intelligence components were integral parts of the repressive apparatus, including all related options and powers, which is definitely not the situation in the current Czech intelligence services. Competences and powers of StB's intelligence components, including the use of specific intelligence means, were not primarily defined by law, or other "regular" legal sources, but only by internal (ministerial) regulations. These could be obviously changed in a flexible way according to the needs of the ruling elite, underlining the nature of intelligence services as instruments,¹⁶ not to mention the exclusion of any independent and impartial oversight, or authorization mechanisms.

Simultaneously with legal and political changes by the end of the 20th century, other "period" changes occurred in the intelligence environment that significantly affect their *modus operandi*. These include especially the profound innovations in information and communication technologies.

Legal and political standards of the work of intelligence services in present democratic countries, and their external oversight is summed up in an excellent way in a complex study by Born and Leigh, 2005 [1].

About reasons, advantages, and pitfalls of external oversight of intelligence services read a brief study in Czech on oversight of intelligence services in democratic states, see List of Sources [2].

15 See, for example, § 4 letter a) of the Act No. 40/1974 Coll. on the National Security Corps, as well as § 3 paragraph 1 letter a) of the Act No.70/1965 Coll. on the National Security Corps.

16 See the really amazing preambles to both above-mentioned acts on the National Security Corps, which quite openly made it an instrument for the implementation of the policies of the Communist Party of Czechoslovakia (KSČ)!

CZECHOSLOVAKIA AND THE CZECH REPUBLIC – INITIAL SITUATION IN 1989 AND CONSEQUENT DEVELOPMENT

As stated above, there are four basic tasks of intelligence activities:

- offensive military intelligence,
- offensive foreign intelligence, the so-called "civilian intelligence service",
- defensive military counter-intelligence,
- defensive internal security service, the so-called "civilian counter-intelligence service".

In authoritarian and totalitarian countries individual intelligence elements violate fundamental human rights and freedoms to a different extent depending on the direction of their institutions. Oppression increases from the first one towards the last in the above-mentioned order. In these regimes, the counter-intelligence service changes from an intelligence service into a repressive secret police.

However, people in democracies impute to secret services a kind of political nature and impropriety; the measure of their concern corresponds to the above-mentioned order as well.

Prior to November, 1989, the above-mentioned roles were fulfilled in Czechoslovakia by the following organizations:

- Intelligence Service of the General Staff (Zpravodajská služba generálního štábu – ZSGŠ);
- 1st Directorate of the Federal Ministry of Interior (I. správa Federálního ministerstva vnitra – I. S FMV);
- 3rd Directorate of the Federal Ministry of Interior – Military Counter-intelligence (III. správa Federálního ministerstva vnitra (III. S FMV) – Vojenská kontrarozvědka – VKR);
- 2nd Directorate of the Federal Ministry of Interior (II. správa Federálního ministerstva vnitra – II. S FMV, which was the true State Security (Státní bezpečnost – StB) in the strict sense of the word).¹⁷

¹⁷ In different periods of its existence (1953 – 1990) the 2nd Directorate was alternatively merged with other directorates and then again separated. For the sake of this paper these details are not important, therefore, let us deal with it briefly. Since 1953 the 2nd Directorate had been the so-called "pure counter-intelligence", i.e. counter-espionage, it dealt with "external enemy". A reorganization of January 1964 merged it with other units, so the 2nd Directorate became the counter-intelligence in a wider sense of the word (its direction towards "external enemy" plus "internal enemy" plus "economy"). In July 1974 the "wider" 2nd Directorate was again split into a "narrower" 2nd Directorate ("pure counter-intelligence", in the strict sense of the word the "external enemy"), the 10th Directorate ("internal enemy"), and 11th Directorate ("protection" of economy). From October 1988 up to the end of StB's existence, the 2nd, 10th, and 11th Directorates were again merged into the 2nd Directorate, a counter-intelligence service in a wider sense of the word. In the years of 1980 – 1985 there existed also an "anti-terrorist" 14th Directorate. The main Slovak branch office should not be omitted – the 12th Directorate. Another intelligence service of the Communist regime was the Intelligence Directorate of the Main Directorate of Border Guards and the Protection of State Borders. Moreover, it is necessary to note that an official title of Directorates was "directorates of National Security Corps" ("správy SNB"); the designation of FMV is used deliberately to express their affiliation to the Federal Ministry of Interior.

After the revolution of 1989, the institutions in Czechoslovakia and the Czech Republic that took over the above-mentioned intelligence roles were as follows:

- ZSGŠ, since 1994 Military Intelligence Service (Vojenská zpravodajská služba – VZS);
- The Office for Foreign Relations and Information (Úřad pro zahraniční styky a informace – ÚZSI FMV), since 1994 ÚZSI;
- Military Defensive Intelligence (Vojenské obranné zpravodajství – VOZ);
- ÚOÚD FMV, since December 1990 FIS FMV, since July 1991 FBIS, since 1993 BIS ČR, since 1994 Security Information Service (Bezpečnostní informační služba – BIS).¹⁸

Since August 2005, as Acts No. 289 and 290/2005 Coll. came into force, the VOZ and VZS were merged into unified Military Intelligence (Vojenské zpravodajství – VZ).

I take the data on the last 15 years of the history of Czech intelligence services, among others, from the publications by Churaň [3], Zeman 2004 [4], Duchek [5], Bašta [6], Williams and Deletant [7], Pacner [8], as well as from relevant legislation, from web-sites of Czech services (see their URLs in the list of sources), and from my own archives.

BASIC FACTS ABOUT CZECH INTELLIGENCE SERVICES

We start the review of the status of Czech intelligence services with an explanation of *some* aspects of relevant legislation. However, the *letter* of the law does not suffice without further explanatory interpretation; the laws were enacted in various periods of time, some areas are not covered, sometimes different laws somewhat contradict each other; finally, legal parlance makes some relations even more obscure than clear for the laymen. Therefore, I try to expound them.^{19 20}

Characteristics of the Legal Status of Intelligence Services of the Czech Republic

The legal framework for Czech intelligence services is given by three laws.²¹ No one who wants to deal with this topic can do so without the educated knowledge of all three. The most

18 Abbreviations of BIS's predecessors are explained later in the text and their full names are given as well.

19 I do not quote the laws in text verbatim, and to the full; I prefer paraphrasing them in some places in a more comprehensive language.

20 During the autumn semester 2005 at the Faculty of Social Studies of Masaryk University Brno, within my course on intelligence, I gave my students full texts of three main laws on intelligence and asked them to seek out asymmetries and disproportions in legislation; at the same time, they had to put in writing which parts of the texts and which terms they did not understand. I received written answers of 35 motivated respondents; some answers I expected, some took me by surprise. I realized that the diction of the law, which is understood by just a few lawyers and colleagues from the intelligence branch, are not comprehensible for other "users" (including parliamentarians), if they do not know other legal contexts and common practice. I utilize my empirical knowledge in this text by explaining some parts of legal texts more in detail than other ones. Unfortunately, the format of the paper does not allow me to treat the matter in full.

21 Activities of Czech intelligence services are covered by more laws than those three main ones. However, we cannot pay more attention to them in this explanation. They are, namely: Labour and service acts: No.186/1992 Coll. on Terms of Service Employment of Members of the Police of the Czech Republic; No. 361/2003 Coll. on Terms of Service

important of the three is the Act No. 63/1994 Coll. on Intelligence Services of the Czech Republic (in its valid version), because it lists all three existing Czech intelligence services, namely – BIS, VZ, and ÚZSI, – and specifies their positions within the state apparatus; it is usually called the "umbrella" law.

The umbrella law stipulates that intelligence services are to "obtain, collect, and evaluate information (hereinafter "provide information") important for the protection of constitutional system, vital economic interests, security, and defence of the Czech Republic."²²

The law specifies the status and competencies of the services, appointment of their directors, coordination, control, national and international cooperation of services, tasking the services, submission of information by the services, and providing information for the services.

The law assumes the existence of internal statutes of individual intelligence services approved by the government, and specifies their activities and organization in detail; i.e., the existence of documents that define those matters which cannot be described in a legal (and public) standards, but which cannot be left to the will and imagination of services themselves.

The internal structure of Czech intelligence services is, to a certain extent, published on their websites (see the List of Sources); however, we do not comment these here, as they may change with time.

In accordance with § 11 of the Act No. 153/1994 Coll., intelligence services may require from public administration bodies necessary assistance and information, which is collected by these bodies in connection with the fulfilment of their tasks. The duty of these bodies to comply has vanished.²³ In general, here we find one of the weakest powers of an intelligence service in an international comparison of democratic countries. Only after many years of effort by the services, the legislators *partly* rectified this disproportion by an amendment (Act No.53/2004 Coll.).²⁴

In addition to this, the Security Information Service (BIS) and the Military Intelligence have their legal framework specified by special laws, namely the Act No. 154/1994 Coll. on the Security Information Service, and the Act No. 289/2005 Coll. on the Military Intelligence. The third Czech intelligence service – the Office for Foreign Relations and Information (ÚZSI) – does not yet have a law "of its own", and its status is defined only within the umbrella law (details below).

Employment of Members of Security Corps; No. 221/1999 Coll. on Professional Soldiers; No. 218/2002 Coll. on Service.

Another important law: No. 412/2005 Coll. on Protection of Classified Information and Security Clearance, replacing the until 2005 valid and many times amended Act No. 148/1998 Coll. on the same matter.

Others are: Acts No. 499/2004 Coll. on Records Keeping and Records Service; No. 140/1996 Coll. on Access to the Files Originated By Activities of the Former State Security as stipulated by the Act No. 107/2002 Coll.; Act No. 101/2000 Coll. on Protection of Personal Data; No. 127/2005 Coll. on Electronic Communications and amendments of some related laws; No. 29/2000 Coll. on Postal Services and amendments of some regulations; No. 218/2000 Coll. on Budget Rules and on amendments of some related laws; No. 219/2000 Coll. on Property of the Czech Republic and its Conduct in Legal Relations; No. 563/1991 Coll. on Accounting – special accounting standards; No. 61/1996 Coll. on Some Measures Against the Legalization of Yields from Criminal Activities and on amendments of related laws; No.106/1999 Coll. on Free Access to Information; No. 365/2000 Coll. on Information Systems of Public Administration.

22 See § 2 of the Act No. 153/1994 Coll.

23 According to the letter of the law the police enjoys a more advantageous position... The duty of state organs to comply with the demands of the police to provide information is set in § 47 of the Act No. 283/1991 Coll. on the Police of the Czech Republic.

24 Currently valid paragraph 2 of § 11 of the Act No. 153/1994 Coll.

There is an asymmetry in the institutional and legal status of individual Czech intelligence services. BIS is entirely independent of ministries; ÚZSI is a state institution, attached by its budget and property to the Ministry of Interior (see below); VZ is explicitly a *part* of the Ministry of Defence. An advantage of the two latter services lies in a fact that only one elected state representative is politically responsible for them, not a collective body. To a certain extent this can be explained as an expression of concern about the abuse of intelligence service powers; in this case a civilian counter-intelligence is the most logical "candidate" for this concern. However, I tend to believe that it is a product of the historical development of legislative amendments and the political atmosphere of the period in which they originated. I comment on other asymmetries later in the text.

SECURITY INFORMATION SERVICE

The Security Information Service (Bezpečnostní informační služba, hereinafter BIS) is a civilian counter-intelligence service, whose income and expenditures represent a separate chapter of the state budget.²⁵ The BIS director is appointed and removed by the government. Here it is necessary to stress the frequently discussed legal fact that BIS does not report to one politically responsible minister, and its "boss" is a collective body: the cabinet, consisting of 15 to 19 members. This fact is not altogether altered by government directives determining from time to time which minister should communicate with BIS more closely. Reasons of this situation could be somewhat elucidated by a following text on the BIS history.

BIS competences

BIS (§ 5 paragraph 1 of the Act No.153/1994) is required to provide information about:

- intentions and activities directed against foundations of democracy, sovereignty and territorial integrity of the Czech Republic;
- intelligence services of foreign powers;
- activities threatening the protection of classified information;
- activities whose consequences may threaten the security or important economic interests of the Czech Republic;
- organized crime and terrorism.

There are specific terms of employment concerning BIS members. Until today (August 2006), their service employment is specified by Part 4 of the Act No.154/1994; until a valid, but still dormant²⁶ Act No. 361/2003 Coll. on Service Employment of Security Corps Members comes into effect, which will then specify the issue.

The Chapter 2 of the Act No. 154/1994 defines the usage of "specific means for obtaining information",²⁷ i.e., the very thing that makes intelligence services what they are. (These places of the legal text are almost identically repeated in the Act No. 289/2005 Coll. on Military Intelligence). This special authorization stirs up a paramount public interest. Since it is often misunderstood, I will explain the provisions and context of the Act No. 154/1994 in detail.

BIS is an intelligence service with internal competences, but without any executive powers, i.e., the powers of repressive, law-enforcement agencies. BIS operatives may not arrest, interrogate, or carry out a house search, etc.; these acts are exclusively police work. Within the world context, the Czech Republic is one of those countries that have chosen, similar to Great Britain, Germany,

25 This means also that the *total* sum of BIS income and certain other items (category of capital expenditure, etc.) is not classified in contrast to both other services, and it is possible to find it in the published state budget; it is also published at the BIS web site.

26 The law specifies service employment of all security corps, that is, of all "armed" elements, except professional soldiers who have their own Act No.221/1999 Coll. on the issue. Since autumn of 2004, however, as a consequence of political turbulences, the Act No. 361/2003 has undergone a number of amendments, resulting in alterations and adjustments, and, primarily, postponements of its effect. It may even be assumed that it never comes into effect and becomes so a legislative rarity.

27 "Specific means for obtaining information" = methods of gathering intelligence. (Note for the English version).

Slovakia, and the Netherlands, a model of a total separation of counter-intelligence activities from repressive powers and criminal proceeding activities.

"Specific means of acquiring information" include "intelligence means" and the "use of services of persons acting for the benefit of BIS" (§ 6).

"Intelligence means" include (§ 7):

- electronic means,²⁸
- cover instruments and documentation,
- surveillance.

Electronic means (§ 8) includes technical means and devices, especially electronic, photographic and other appliances, used in a covert way, when contravening the fundamental rights and freedoms of citizens by

- searching, opening, examining or evaluating postal deliveries;
- interception, or registration of telecommunication, radio communication or a similar traffic, or acquiring data about this traffic (there are further, more specialized, technologies listed in the Act).

Another text in § 8 specifies: the implementation of electronic means, when there is no violation of the fundamental rights and freedoms of citizens, does **not** include:

- recording, listening, monitoring, and evaluating information, distributed in a way that allows an access of a group of people, not specified beforehand;²⁹
- using safety and guard systems;³⁰
- monitoring telecommunication, radio communication and similar traffic *without* intercepting its content, or acquiring data about this traffic.

The use of electronic means (in practice it is most frequently the interception of telephone conversations or intrusive surveillance with eavesdropping) is distinctly understood by the law as a significant penetration of the private zone protected by the constitutional system (see the Charter of Rights and Freedoms).³¹ The exceptional nature of the implementation of this authority by intelligence services is specified in the law, apart from other things, by requiring a fulfilment of certain conditions, followed by a written permit issued by a non-executive independent state authority, i.e., judiciary.

This permit for BIS is issued by Chairman of the Senate of the Supreme Court in Prague. It is issued on the condition that the exposure or documentation of activities to be covered by electronic means would be ineffective or substantially difficult or even impossible by using other means, and that the use of intelligence means does not violate the rights and freedoms of citizens beyond a necessary and inevitable limit. It may be said that the use of such a strong penetration into

28 Czech term „zpravodajská technika" literally translated would be „intelligence technology". It covers all procedures using electronic and other technical devices for interception of telecommunication and for intrusive surveillance, installations of bugs, etc. It is a rough equivalent for English "electronic surveillance". (Note for the English version).

29 For example, by a radio transmitter.

30 For example, sensors registering entries into guarded premises, as well as CCTV system in buildings.

fundamental civil rights as the interception, is allowed by the law only as *ultima ratio*, i.e., as a last resort, if there is no other possible way (this is usual in all civilized countries).

Laymen often do not differentiate between the interception by intelligence services and the interception by law enforcement agencies. The latter is, in some details, similar to the former (*ultima ratio*, permit by a judge), and substantially different in others. The Act No. 141/1961 Coll. on Criminal Proceedings (Penal Code), specifying the interception by law enforcement agencies, stipulates in § 88 the following: If there is a criminal proceeding in progress because of a grave and deliberate criminal offence, the judge may order an interception and recording of telecommunication traffic, when there are reasons to assume that they would contain important facts for the criminal proceeding.

The difference between "police interception" and "intelligence interception" may be briefly summed up as follows:

- the former strives to obtain a proof of a grave criminal act (listed explicitly in the Penal Code) that could be used in the consequent criminal trial;
- the latter strives to obtain an information concerning a concrete activity within the sphere of national security, *without* necessarily using the desired information for a criminal case.

Covert means and documents (§ 13, Act No. 154/1994) are not, in the strict sense of the word, the means for acquiring information, but only "instruments for keeping the means and activities secret". A covert document conceals the real identity of a field operative, or his BIS membership.

Surveillance is defined very briefly by the Act. No. 154/1994 (§ 14). The surveillance and its documentation is decided by the director or a head of a unit, appointed by him. The brevity and non-existence of surveillance definition breeds many misunderstandings, even in those who are informed.

The Czech term for physical surveillance - "*sledování*" - contains a lot of meanings, it is a very poly-semantic word; so using that word may be misleading. Moreover, its understanding in Czech is obscured by the usage of its rough English equivalent. This section (§ 14) simply means *physical surveillance*. Intelligence professionals and insiders know that direct physical surveillance is a secret visual observation and recording of movement of subjects and things in publicly accessible places. If I am observed in the street, or somewhere else in the open, somebody takes my picture, or records a timetable of my travels, this is not a violation of any of my fundamental civil rights -- ("outside I am exposed to the world"); – therefore, I cannot ask for protection against an unauthorized intervention in my privacy.³²

31 It defines the inviolability of privacy (Article 7), home (Article 12), post privacy and privacy of other documents and records, kept privately or sent by post or by a similar way, as well as privacy of messages transmitted by telephone, telegraph, or other similar facility (Article 13).

32 In case of Military Intelligence according to the Act No. 289/2005 (as well as the previous legislation on VOZ), the authority to approve physical surveillance lies with Minister of Defence! With regard to the nature of surveillance, as I explain it in the text, I considered the shift of the authority "upwards" to an elected state representative for superfluous and impractical as well.

A person acting for the benefit of BIS (§ 15) is the designation of secret collaborator (agent, informer). The legal specification of the most popular "intelligence tool" is very brief: A person acting for the benefit of BIS is a physical person, older than 18, who voluntarily and in a secret way provides services, meaning primarily providing information.

HISTORY OF PREDECESSORS OF CURRENT BIS

ÚOÚD

The 2nd Directorate (= StB) was abolished by the order of the federal Minister of Interior of February 15, 1990. The next day, in accordance with this order, the **Office for Protection of the Constitution and Democracy** (Úřad pro ochranu ústavy a demokracie – **ÚOÚD**) was established as *part* of the Federal Ministry of Interior. It existed from February 16, 1990 to December 18, 1990. More details on the transformation of civilian intelligence after 1989 are available in: Zeman 2004 [4].

ÚOÚD's first director was a reactivated former 1960s StB member, Zdeněk **Formánek** (b. 1928). Due to turbulences in the Ministry of Interior, he lasted only two months. Then a new Deputy Interior Minister, Jan **Ruml** (b. 1953), later Minister of Interior for many years, assumed the control of ÚOÚD. After the first parliamentary elections in June 1990, Ing. Jiří **Müller** (b. 1943)³³ was appointed to the post of director. Until the elections of summer 1992, Müller was also a deputy of the Czech National Council – concurrently with his post of ÚOÚD director. It was a sign of the revolutionary times, later this would definitely be unacceptable.

In this period (as well as later) counter-intelligence underwent painful external clashes and internal conflicts (see, e.g., Bašta [6]).³⁴

It should be stressed that during the existence of ÚOÚD and in the following stages (FIS, FBIS, BIS ČR), the majority of the former members of StB's executive branches was gradually dismissed in several waves of vetting and reorganizations, and replaced by a new personnel.

33 Circumstances of this earliest phase of BIS development are little known today, that is why I want in this detailed footnote to redeem a part of the debt: Jiří Müller, an important Czech dissident, became the ÚOÚD director after the 1990 elections. His nomination for this post was announced by President Václav Havel in his address to the Federal Assembly of the Czechoslovak Federal Republic; in the same address he justified the nomination of Ján Langoš for the post of Interior Minister.

Havel's original intention was to establish ÚOÚD outside of the Federal Ministry of Interior (FMV); at the time of appointments, ÚOÚD was still a part of the FMV. Thus Müller became Langoš's subordinate. Langoš recalled Müller from the post of ÚOÚD head on November 27, 1990. The reactions of the Federal Parliament and the Czech National Council were rather contradictory. Complex circumstances of the clash between Langoš's and Müller's concepts of the nature and management of the counter-intelligence, and of Müller's removal from office are not yet historically dealt with, and it is not within the possibilities of this text to describe them in more detail. The most serious disagreement was in the concept of the influence of Interior Ministry's executive power to the secret service status. Müller preferred the most distinct independence of the institution he led, and wanted to vest the political responsibility in the legislative power – I think that in that period it was an understandable idea, but essentially a wrong one. Without inclining to the popular notion of a good king and a bad advisor, my personal opinion is that an important reason of the conflict of both personalities is the inaccurate comprehension of this concept on part of Langoš.

34 For example: the detachment of surveillance and interception sections from ÚOÚD in October 1990; weakening of intelligence protection of economy; airing the concept disputes in the media; the struggle for the position of a Czech deputy director in 1991; the blunder with the list of journalists – StB agents; dismissal of new people – inconvenient critics; strong ideologization, etc.

FIS

In December 1990, according to the order of the then federal Minister of Interior, Langoš, the ÚOÚD was transformed into the **Federal Information Service** of the Federal Ministry of Interior (Federální informační služba FMV – **FIS** FMV), under the direction of Jiří **Novotný** (b. 1959). It existed from December 20, 1990 to June 30, 1991.

FIS was deprived of the ÚOÚD surveillance and interception sections, which were attached to the federal police. The new service had to build these sections anew.

FBIS – the Act and a New Status

In the first half of 1991, intensive work was put into a bill to specify the status of a civilian counter-intelligence. Memories of the methods of the former StB, as well as concerns about potential abuses by the new institution, led many important politicians (including newly recruited FIS members from the former dissent movement) to a political conviction that it was necessary to place the new service somewhere between the executive and legislative powers, at any rate, *as far as possible* from the Federal Ministry of Interior. The implementation of this idea was accompanied by further concept clashes, as well as by excitement concerning the introduction of lustration laws.

On May 29, 1991, the Federal Assembly of the ČSFR passed Act No. 244/1991 Coll. on **Federal Security Information Service** (Federální bezpečnostní informační služba – **FBIS**), an independent institution of the ČSFR. The act came into effect and the new institution was established on July 1, 1991; however, the split of the Czechoslovak federation gave it only a year and half of life.

Act No. 244/1991 (for a detailed analysis see in Sylllová [9], focused primarily on the parliamentary oversight issues) had certain features, whose later consequences, in my opinion, have persisted, to some extent, to this day.

In accordance with § 4 of the Act, the FBIS director answered to the Federal Assembly. This responsibility was not, however, complemented by the authority of the Parliament to appoint the director – he was appointed and removed by the President on the government's recommendation. FBIS had to cope with the complexities of the Czechoslovak federal constitutional system and to submit its reports to three governments (federal, i.e., Czechoslovak, then Czech and Slovak) and three parliaments!

The law specified the FBIS competences as follows: FBIS is an intelligence institution of the Czech and Slovak Federal Republic, fulfilling the tasks in *matters of internal order*, security of the state and its constitutional system. (In my opinion, a similar stipulation, stressing the internal competences of the service, is lacking in the current legislation).

FBIS provides information pertaining to:

- protection of constitutional order;
- activities of foreign intelligence services;
- foreign-sponsored terrorism;
- activities against state's security;

- protection of the state's economic interests.

Act No. 244/1991 specified intelligence means in less detail than the current legislation, however, essentially in the same way. The Office of Public Prosecution had the authority to approve wiretaps. For the first time the Czech law system introduced the term: *a person acting for the benefit of the service*.

The text of § 29 is interesting: In fulfilling its tasks, FBIS is entitled to require information from state institutions related to the fulfilment of its tasks within its competences. State institutions are *obliged* to provide required assistance and information, unless there are reasons defined by other legally binding regulations.

Further Development of FBIS After Independence

By the end of Novotný's tenure as FBIS director, criticism of his work was increasing. Therefore, at the beginning of 1992, the President of the Republic appointed JUDr. Štefan **Bačinský** (b. 1954) FBIS director, who previously had been a deputy of the Federal Assembly for VPN (Public Against Violence).

In the June 1992 elections, ODS (Civil Democratic Party) won the elections in the Czech Lands, and Mečiar's HZDS (Movement for Democratic Slovakia) in Slovakia. The inner political development in the summer of 1991 focused on preparations for the division of Czechoslovakia and the establishment of independent states. In the relation to FBIS, Mečiar required the unconditional removal of Bačinský.

In September 1992, JUDr. Pavol **Slovák**, former district police director from Čadca, assumed the office of FBIS director. In the same period, the internal structure of the service underwent reorganization. The present deputy director for the executive, RNDr. Vladimír Palko (lately the Slovak Interior Minister in the second Dzurinda's cabinet) managed the Slovak part of the service. The Czech part of the service was to be managed by a newly appointed deputy director, Stanislav Devátý, a well-known dissident and a Federal Assembly deputy for ODS.³⁵ The political profile of the Slovak part of the service's personnel made them adversaries of Mečiar's political direction, and they prepared to terminate their service employment by the New Year 1993. The cooperation of both parts of the service concentrated on the division of service's property.

On November 13, 1992, the Federal Assembly approved Act No. 543/1992 on FBIS Abolition. On October 22, 1992, the Czech National Council (ČNR) approved the Act No.527/1992 on the Establishment of BIS ČR. It was a hastily drafted bill, adopted with reluctance; the deputies were not satisfied with the law^{36 37}, and so they limited the legal existence of the new BIS ČR (the successor to the Czech part of the service) to a period ending by December 31, 1993.

BIS ČR

The new service with a new name **Security Information Service of the Czech Republic** (Bezpečnostní informační služba České republiky – **BIS ČR**) existed from January 1993 to July 29, 1994. (The prolongation of its existence was made possible by the amendment approved on

35 After assuming his office in FBIS, Devátý suspended his party membership.

36 It is necessary to note that the BIS Establishment bill was drafted by deputies, not the government.

37 It is interesting that Slovakia established its civilian intelligence service (SIS) as late as in March 1993 – in the beginning of the year there was a legal, and, to some extent, also a personal vacuum.

December 7, 1993, – Act No. 316/1993 Coll.). Stanislav Devátý (b. 1952) was appointed BIS ČR director.

Act No. 527/1992 defined BIS ČR for the first time as a *state institution*, then as an *armed security service*, and as a government agency with an independent relation to the state budget. BIS ČR was authorized to recommend to the government measures to enhance state security (§ 5). Competences of the service were copied from the previous FBIS competences, with a later addition of a competence concerning organized crime.

In accordance with § 7 of the Act, BIS ČR director should have been appointed by the ČNR Presidium on the government's recommendation.³⁸ BIS ČR was to be tasked by the government through its Prime Minister. The BIS ČR director had the right to take part in government's sessions.³⁹

Oversight powers of the Parliamentary Oversight Commission corresponded roughly to the previous as well as the current legislation, with one important exception: service members were entitled to complain to the oversight body in case they thought that they were being ordered to act beyond the service's competences, or even illegally.

The specification of "intelligence means" and persons acting for the benefit of the service was similar as the previous as well as the current legislation.⁴⁰ The § 29 on providing information for BIS ČR copied the previous FBIS legislation, i.e., the obligation of state administrative bodies to comply with the service's requests for information.

Lengthy text passages of the Act No. 527/1992 dealt with terms of service employment of BIS ČR members as, in contrast to FBIS, BIS ČR did not fall under the Act on the Terms of Service Employment of Policemen. It was one of the features of intentional discontinuity with the previous regime.

BIS

In the course of 1994, a new bill was drafted for intelligence services of the Czech Republic, this time covering all intelligence services, internal and external, military and civilian. The legislative activities resulted in the "umbrella" Act No. 163/1994 Coll., and a special Act No. 154/1994 Coll. on BIS. These have remained valid until today, with some amendments. Some provisions were transferred to the umbrella law (e.g., the placement of the service within the state apparatus, director's appointment, competences, presenting and requiring information). The special Act No. 154/1994 defines "specific means of collecting information", status of service members, parliamentary oversight of the service, terms of service employment, and other matters. Since that time, the service has been referred to as simply BIS, without the "ČR" sobriquet.

38 The construction of the Constitution of the Czech Republic, as well as real political and power circumstances at its formulation, practically annulled the role of President of the Republic in this matter.

39 This provision granted the director a right, similar to the current right of the Czech National Bank governor, and shifted him from the position of a high state official, almost to the level of a elected state representative. This situation (including salary category of the director) still survives in the current position of BIS "under collective superior".

40 Original authority to approve warrants for wiretaps was transferred by the amendment No. 316/1993 Coll. of December 7, 1993 from the Office of Public Prosecution to the Supreme Court. In this way the legislation achieved the level of present recommended international standards. The independence of judiciary is always higher than the independence of Prosecutor's offices, which are a special part of the executive power.

According to the new legislation, the BIS director is appointed by the government. Parliamentary influence is limited to preliminary discussion on the draft appointment (not approval) in the parliamentary Defence and Security Committee. In comparison with the previous situation, the powers of the Oversight Commission have been slightly weakened.

Further Events

Stanislav Devátý remained director during the effect of the Act. No.154/1994 Coll. However, Devátý had never been definitely appointed director; during all his tenure he had the sobriquet "provisional director". He resigned from his position in November 1996. The then coalition government of ODS – ODA – KDU/ČSL took a long time to choose a candidate to the free post, so that it would not "belong to any political party".

Finally, they decided for RNDr. Karel **Vulterin**, CSc. (b. 1947) who had no previous experience with either security community or state administration. He took his office in March 1997. After scandals, associated with allied relations, the government recalled Vulterin in January 1999. The search for a new director took a long time again.

In July 1999, the post was filled by PhDr. Jiří **Růžek** (b. 1952), former director of the Military Defensive Intelligence (VOZ).⁴¹

He resigned in May 2003. In June 2003, Jiří **Lang** (b. 1957), until then the BIS deputy director, became the new BIS director. He had been a BIS member since 1991.

Recapitulation of Directors of BIS and Its Predecessors:

Zdeněk FORMÁNEK (ÚOÚD director, February 16, 1990 – April 1990)

Jan RUML (ÚOÚD director, April – June 1990)

Ing. Jiří MÜLLER (ÚOÚD director, June – November 1990)

Jiří NOVOTNÝ (ÚOÚD director, November – December 1990; FIS director December 1990 – June 1991; FBIS director July – December 1991)

JUDr. Štefan BAČINSKÝ (FBIS director, January – August 1992)

JUDr. Pavol SLOVÁK (FBIS director, September – December 1992)

Mgr. Stanislav DEVÁTÝ (BIS ČR director, January 1993 – June 1994; BIS director, July 1994 – November 1996)

RNDr. Karel VULTERIN (BIS director, March 1997 – January 1999)

PhDR. Jiří RŮŽEK (BIS director, July 1999 – May 2003)

Jiří LANG (BIS director, June 2003 – up to the present)

(BIS deputy director, Ing. Jaroslav Jíra, was authorized to head the service as acting director in the intervals between Devátý and Vulterin, Vulterin and Růžek).

41 Before his post in VOZ, Růžek was a deputy director of ÚZSI; in the beginning of 1990's he was a ÚOÚD member.

MILITARY INTELLIGENCE

Military Intelligence (Vojenské zpravodajství – **VZ**) is defined by the Act No. 153/1994 Coll., and the Act No. 289/2005 Coll., as a **part** of the Ministry of Defence. Following the debate in the relevant committee of the Chamber of Deputies of the Parliament, the VZ director is appointed and removed by the Minister of Defence with the government's agreement. The law does not specify the VZ's budget, as VZ is not an independent organizational unit of the state. The use of "specific means for collecting information" is defined in Act No. 289/2005 almost identically⁴² with that on BIS. Also the provisions on parliamentary oversight are similar (with an important exception dealt with below). The tasks of VZ are fulfilled (primarily⁴³) by VZ members, with terms of employment of military professionals.

VZ's competences:

VZ (§ 5 paragraph 3, Act. No. 153/1994) provides information

- a) originating abroad and pertaining to the defence and security⁴⁴ of the Czech Republic;
- b) on intelligence services of foreign powers in the defence sphere;
- c) on intentions and activities against the defence of the Czech Republic;
- d) on intentions and activities threatening classified information within the sphere of the defence of the Czech Republic.

According to logical interpretation, spheres b) to d) are within the competences of the service's defensive element; while sphere a) is within the service's offensive element. Present legislation combines counterintelligence and intelligence services without differentiating the powers, tools, and means used in these different activities. (In the territory of the Czech Republic, the last so construed service was the StB.). There are no provisions, specifying the circumstances and conditions under which VZ can fulfil the tasks defined in § 5 paragraph 3, of Act No. 153/1994 Coll. in the territory of the Czech Republic; and, in fulfilling those tasks, what means it can use, and against what phenomena. (It is not possible to apply automatically the same rules for the foreign intelligence activities carried out in the territory of the "domestic" state, as for the security intelligence tasks.)

A less careful reader of the Act No. 289/2005 Coll. may believe that according to the new legislation the foreign intelligence element of VZ (former **VZS**) – in contrast to ÚZSI – is fully subject to independent parliamentary oversight by a relevant commission. This, however, is an error. After a careful study of the provisions under letters b) and c), paragraph 2, § 22 of the Act No.289/2005 Coll., and the provision in paragraph 3, § 5 of the Act No.153/1994 Coll. in its current version, as well as their mutual relation, it appears that these provisions contradict each other to

42 The only exception is surveillance, defined as "surveillance of persons and things", reminding the definition in the Police law, and being more comprehensible. I have mentioned the super-standard permission mechanism for surveillance above, in Note 32.

43 All intelligence services may also employ the so-called civilian employees in auxiliary professions, the prevailing majority of their personnel consisting of service members in accordance with acts on terms of *service* employment.

44 Present diction of this section allows now a certain overlapping of ÚZSI and VZ competences ("security of the Czech Republic"), this may in future cause some problems in the coordination of both services.

some extent, resulting in a conclusion that the intelligence part of VZ is exempt from the parliamentary oversight to a significant extent.

Understanding the meaning of *current* laws on VZ requires knowledge of the previous legislation and history of this service. Explicit mentions of counter-intelligence and foreign intelligence roles have entirely disappeared from the present wording of the law! *Without* this knowledge, the reader may be surprised to find in the text of the current Act No. 289/2005 Coll. the emphasis that VZ is a *unified* intelligence service.

A Special Body

At present, a unit subordinated to Military Intelligence is the in-depth reconnaissance unit, – the **601st Special Forces Group**. According to the web sites of VZ and the 601st group "the 601st Special Forces Group is directly subordinated to the Minister of Defence represented by the director of the Military Intelligence". Until autumn 2001, the existence of this unit had been kept secret.

"The mission of the 601st Special Forces Group emerges from generally defined tasks of special forces according to NATO documents, as well as from the definition of the Highest National Command.

Special reconnaissance – is the basis of all unit's operations. It serves for gathering information of strategic significance.

Assault actions – they are carried out in order to silence, destroy, or damage a strategic object of interest. These actions are of small (traps), medium (ambush), or great extent (gunfire raids) and newly also final guiding of precise ammunition to target.

Special tasks – in this group there is a whole complex of tasks fulfilled on the basis of the Czech Armed Forces Highest Command orders (e.g., rescue missions, assistance to the Ministry of Interior, etc)."⁴⁵

Before the Establishment of the Present VZ

The pre-Munich Czechoslovak Republic had military intelligence services of both kinds, – intelligence as well as counter-intelligence, under the 2nd Department of the General Staff. After WWII, an independent counter-intelligence service was established under Soviet influence, and later, after the February 1948 coup, changed into a monstrous repressive force in the form of Reicin's OBZ. In 1950s, in line with the Soviet paranoid security doctrine, the military counter-intelligence service was transferred to the Ministry of Interior and became a part of State Security. Later on, it was known as the **3rd Directorate**, – **VKR** (Vojenská kontrarozvědka). The Intelligence Service of the General Staff (ZSGŠ), also patterned on the Soviet system, remained under the Ministry of Defence. In a model inspired by the "KGB vs. GRU" relation, the ZSGŠ had often been an object (target) of the 3rd Directorate's activities. Institutional placement of both military intelligence elements became in the Communist regime entirely separated.

Following the November 1989 revolution, on April 1, 1990, the VKR (3rd Directorate of FMV) was transferred from the Ministry of Interior to the Ministry of National Defence (MNO) and

renamed the **Main Directorate of the Military Counter-intelligence of Ministry of Defence**. From July 1, 1990 it was renamed the **Directorate of the Military Defensive Intelligence of ČSA** (Czechoslovak Army), in Czech Vojenské obranné zpravodajství, **VOZ**. Later, this stage was called VOZ 1.

On October 25, 1990, the subsequent Minister of Defence, Luboš Dobrovský, suspended VOZ's activities, and ordered vetting (re-attestations) of its personnel, among other things, with the participation of Federal Assembly deputies. Since January 1, 1991, a part of the personnel constituted the so-called VOZ 2; the rest of the personnel went over to the newly established Military Police (Vojenská policie – VP). Efforts to provide the necessary legislation for VOZ⁴⁶ were based on similar reasons, such as concerns about potential abuse of a new civilian counter-intelligence. Another important, if not decisive, reason for the VOZ legislation was the need to put the functioning of VOZ (as well as the Military Police) in line with the Constitutional Act No. 23/1991 Coll., – the Charter of Fundamental Rights and Freedoms.

On January 29, 1992, the Federal Assembly of the ČSFR passed Act No. 67/1992 Coll., on Military Defensive Intelligence. It included parliamentary oversight of VOZ activities (similar to the commission for FBIS).

The Intelligence Service of the General Staff (under untouched original name Zpravodajská služba generálního štábu – **ZSGŠ**), remained unnoticed by politicians. There is practically no information about it in publicly accessible sources from that period. After the division of the Czecho-Slovak federation, the legal status of military services remained for some time unchanged.

A decisive measure concerning the existence of military intelligence services was the adoption of Act No. 153/1994 Coll. in summer 1994. This law defined the military intelligence service, which, at that time, was a novelty in comparison with other countries. The law apparently intended to combine again military defensive and offensive intelligence functions into one intelligence service, namely **Military Intelligence** (Vojenské zpravodajství – **VZ**), which was one of the three intelligence services of the state. This was, to some extent, marred by the existence of the previous act on the VOZ. This resulted in a strange asymmetry. Act No. 153/1994 in its original wording (i.e., from summer 1994 to summer 2005) set the following: "Military Intelligence (**VZ**) is formed by the Military Intelligence Service (**VZS**) and the Military Defensive Intelligence (**VOZ**)."

In the years 1994 – 2005, VZ was headed by one director (more or less a formal one with a miniature apparatus), accountable to the Minister of Defence. Directors of VZS and VOZ were subordinated to him only "from methodical point of view, and in the line of command", however, not in "the sphere of special activities of organizations led by them". This absurd managerial situation was further complicated by the fact that the VZS director (with the title of "chief", "inspector", or "director", depending on the period, see below a review of leading representatives of military services) was *simultaneously* subordinated in professional matters to the Chief of General Staff of AČR (Army of the Czech Republic), and the VOZ director was subordinated directly to the Minister of Defence.

45 According to: <http://www.601skss.cz/english/tasks.html> .

46 Among other things, the German legislation was an obvious inspiration.

In this situation, there existed a justified perception (often among elected state representatives, and obviously in the military and non-military public) that, despite the act, the Czech Republic has *four* intelligence services. A popular bon mot said: "There are three services in the act, four in reality, with *five* directors."

It is necessary to note that the merger of both services was not based on professional reasons only, but also on political party campaigns, always breaking up before elections, in which many politicians declared that there were too many services for such a small country⁴⁷; adding that they were going to reorganize intelligence services, some to be abolished, some merged. These campaigns did not add much stability to the intelligence community.

Roughly from 2002, the Ministry of Defence began to take steps towards internal reorganization and the gradual merger of both components. This process culminated in the adoption of Acts No. 289 and 290/2005 (amendment of Act No. 153/1994), whose result is the present state of affairs. The intended goal of this legislation is "to use effectively the possibilities of both its traditional components, i.e., intelligence and counter-intelligence, so that information output would be unified, resulting from the coordination of both mentioned constituents."⁴⁸ From about 2004, military intelligence had been undergoing a crucial change of personnel; VZ members, serving before November 1989, had to leave the service, with a delay of 10—12 years in comparison to civilian services.

Gradual changes in the status of military intelligence elements can be seen in the review of its leading representatives, given below (see the *titles* of directorial positions and very complex relations of subordination). The review has been compiled from VZ web sites, and corrected in details.

Leaders of the internal service - Military Defensive Intelligence (VOZ and predecessors), 1990 – 2005

Major General Ing. Josef ČERVÁŠEK (b. 1937).

Chief of the 3rd Directorate of SNB (subordinated to Federal Minister of Interior), from April chief of the Main Directorate of the Military Counter-intelligence of Ministry of Defence, from July 1, 1990 Chief of the Directorate of the Military Defensive Intelligence ČSA (subordinated to Minister of Defence), serving in these posts from September 1, 1989 to November 18, 1990.

Major General doc. Ing. Pavol GAVLAS, CSc. (b. 1942).

Chief of the Directorate of the Military Defensive Intelligence ČSA from November 1990 to January 1991.

Major General PhDr. Jan DUCHEK (b. 1940).

Chief of the Directorate of the Military Defensive Intelligence ČSA, from January 29, 1991. Director of the Head Office of the Military Defensive Intelligence of the Ministry of Defence

47 Hungary, a country of comparable size, has five intelligence services with clearly defined tasks.

48 VZ web site.

(MO), April 1, 1991—June 30, 1993. Subordinated to the Minister of Defence of the Czechoslovak Federal Republic (ČSFR), and later the Czech Republic (ČR).

Colonel of the General Staff Ing. Petr **LUŽNÝ** (b. 1954).

Director of the Head Office of the Military Defensive Intelligence MO, July 1, 1993—June 28, 1994. Subordinated to the Minister of Defence, ČR.

Colonel PhDr. Jiří **RŮŽEK** (b. 1952).

Director of the Head Office of the Military Defensive Intelligence MO, June 29, 1994—June 30, 1999. Subordinated to the Minister of Defence, and Director of the Military Intelligence.

Major General Ing. Jiří **GIESL** (b. 1950).

Director of the Head Office of the Military Defensive Intelligence MO, July 1, 1999—September 30, 2001. Subordinated to the Minister of Defence and in the given period also to the Director of the Military Intelligence.

From October 1, 2001 to April 30, 2004 he was simultaneously the Director of the Military Defensive Intelligence, as well as the Military Intelligence, i.e., an entity superior to VOZ.

Brigadier General Ing. Miroslav **KREJČÍK** (b. 1964).

Director of the Military Defensive Intelligence, from May 1, 2003 until the legal demise of VOZ on July 31, 2005. From April 2004 simultaneously appointed acting, from December 1, 2004 a full Director of the Military Intelligence, i.e., an entity superior to VOZ.

Leaders of the external service - Military Intelligence Service⁴⁹ (VZS and predecessors), 1990 – 2005

Major General Ing. Jan **KOZOJED** (b. 1940).

Chief of the Intelligence Directorate of the General Staff (GŠ) of the Czechoslovak Army (from January 1, 1993, the Army of the Czech Republic—AČR), January 4, 1990—February 2, 1993. Subordinated to the Chief of the General Staff of the Ministry of Defence.

Major General of the Police, Lieutenant General Ing. Radovan **PROCHÁZKA** (b. 1927).

Chief of the Intelligence Directorate of the GŠ AČR, February 1, 1993—September 30, 1993; the same post with the title: Chief of the Intelligence Department of the GŠ, October 1, 1993—December 31, 1994; the same post with the title: Inspector of the Military Intelligence Service of the GŠ, January 1, 1995—February 28, 1995. During the entire tenure subordinated to Chief of the GŠ AČR. (Then he took the post of the director of the Military Intelligence. See below).

Major General Ing. Petr **PELZ** (b. 1953).

Inspector of the Military Intelligence Service of the GŠ AČR, March 1, 1995—January 1, 1997. Subordinated to the Chief of the GŠ AČR, as well as to the Director of the Military Intelligence. From September 25, 1996, appointed acting head of VZ, i.e., an entity superior to VZS. (Then he took the post of the Director of the Military Intelligence. See below).

49 Names of institutions and their institutional placements have been changing in the course of time, documented by the following text about leaders of VZS and VZ.

Major General Ing. František **ŠTĚPÁNEK** (b. 1953).

Chief of the Section of the Military Intelligence Service and Radioelectronic Warfare of the GŠ (SVZSREB GŠ), January 1, 1997—October 31, 1997, the same post with the title: Chief of the Section of the Military Intelligence Service of the GŠ AČR (SVZS GŠ AČR), November 1, 1997—June 30, 2000; the same post with the title: Chief of the Section of the Military Intelligence Service of the GŠ (SVZS GŠ), July 1, 2000—December 12, 2000; the same post with the title: Chief of the Military Intelligence Service of the AČR (VZS AČR), January 1, 2001—April 30, 2001. The overall tenure: January 1, 1997—April 30, 2001. Subordinated to the Chief of the GŠ AČR, as well as to the Director of the Military Intelligence.

Brigadier General Ing. Andor **ŠÁNDOR** (b. 1957).

Chief of the Military Intelligence Service, May 1, 2001—July 25, 2002. Subordinated to the Chief of the GŠ AČR, as well as to the Director of the Military Intelligence.

Major General Ing. Josef **PROKŠ** (b. 1959).

Chief of the Military Intelligence Service, and Deputy Director of the Military Intelligence (NVZSI – ZŘVZ), August 1, 2002—April 30, 2003. Subordinated to the Chief of the GŠ AČR, from September 9, 2002 to the Minister of Defence, simultaneously in professional matters subordinated to the Director of the Military Intelligence. (Then he took the post of the Director of the Military Intelligence. See below).

Colonel Ing. Zdeněk **NOVÁK** (b. 1956).

Chief of the Military Intelligence Service and the Deputy Director of the Military Intelligence (NVZSI – ZŘVZ). Took the post on July 1, 2003 as an acting chief, fully appointed on August 15, 2003 until the VZS legal demise on July 31, 2005. Subordinated to the Director of the Military Intelligence.

Leaders of the umbrella service – the Military Intelligence (VZ), 1995 – 2006

Lieutenant General Ing. Radovan **PROCHÁZKA** (b. 1927).

Director of the Military Intelligence, March 1, 1995—November 1, 1996. Subordinated to the Minister of Defence.

Major General Ing. Petr **PELZ** (b. 1953).

Inspector of the Military Intelligence Service of the GŠ AČR. On September 25, 1996 appointed VZ acting head, full appointment on January 1, 1997, in the post until October 1, 2001. Subordinated to the Minister of Defence.

Major General Ing. Jiří **GIESL** (b. 1950).

Director of the Military Intelligence and simultaneously Director of the Military Defensive Intelligence (ŘVZ–ŘVOZ), October 1, 2001—April 30, 2003. Subordinated to the Minister of Defence.

Major General Ing. Josef **PROKŠ** (b. 1959).

Director of the Military Intelligence (ŘVZ), May 1, 2003—March 31, 2004. Subordinated to the Minister of Defence.

Brigadier General Ing. Miroslav **KREJČÍK** (b. 1964).

From April 1, 2004 appointed acting Director of the Military Intelligence, appointed full Director of the Military Intelligence on December 1, 2004, in the post at present. Subordinated to the Minister of Defence.

THE OFFICE FOR FOREIGN RELATIONS AND INFORMATION

The Office for Foreign Relations and Information (Úřad pro zahraniční styky a informace, hereinafter **ÚZSI**), is a civilian intelligence service. Its legal status is defined by the umbrella Act No. 153/1994 Coll.; there is no other specific act on **ÚZSI**.

ÚZSI's competence is to provide information originating abroad which may be important for the security and protection of the foreign-policy and economic interests of the Czech Republic. Such a brief definition of a basic mandate is quite common with intelligence services in the world. To gather information about foreign countries, however, collides with the legal orders of these countries. **ÚZSI**'s budget is a part of the budget of the Ministry of Interior. The **ÚZSI** Director is appointed and removed by the Minister of Interior with the consent of the government (without a consultation with Parliament, required by the law). The law stipulates parliamentary oversight of all intelligence services, including **ÚZSI**,⁵⁰ but as there has been no special act passed on the parliamentary oversight of these services (in 12 years!) that would have specified its scope and methods, this general provision of the umbrella law has not been implemented in practice.

The umbrella law does not specify "intelligence means" for **ÚZSI**'s activities. In § 18, it provides only those means for protection of **ÚZSI**'s activities that are necessary for fulfilling the tasks within its competence and are carried out in the territory of the Czech Republic: surveillance of persons and things; covert documents; safety and guard systems; and persons acting for the benefit of the service who have to be older than 18.

According to Act 153/1994, the terms of service employment of **ÚZSI** members are those of members of the Police of the Czech Republic.⁵¹ At the time of the inception of this law (1993), the terms of employment of intelligence officers represented a headache, and the solution, chosen at that time, was a makeshift solution, but the only possible provisional settlement. The fact that **ÚZSI** members are under terms of employment of the ČR Police members, defines only their position pertaining to labour law, but does not concern their competences. It means that they did not and do not fulfil any tasks of the ČR Police, they deal exclusively with intelligence tasks. As regards terms of employment, the Minister of Interior is the highest superior of **ÚZSI** members, but does not interfere with the **ÚZSI** personnel matters in practice; these are within the competence of **ÚZSI** director and other service officials.

HISTORY OF **ÚZSI**

By order No. 16 of the Minister of Interior, issued on January 31, 1990, all FMV security agencies of the former Czechoslovak Socialist Republic were disbanded by February 15, 1990, and their successor institutions established. The Communist intelligence service, the 1st Directorate of the National Security Corps (SNB), was replaced by a provisional **Intelligence Service of FMV**.

50 See: § 12, Act No. 153/1994 Coll.

51 § 17, Act No. 153/1994 specified **ÚZSI** members as members of the Police of the Czech Republic, called to service in **ÚZSI** by the Minister of Interior. This section was cancelled by a legislative error in the Act No. 290/2005. This situation will be rectified immediately after a new law on the terms of employment of security corps members comes into effect (Act No. 367/2003 Coll., it is valid, but not effective at present).

Until August 1, 1990, it was headed by JUDr. Přemysl **Holan** (b.1931), except for the short interval between May and June, when this post was taken by Col. Kubík, as decided by the then Minister of Interior, Sacher. The late Dr. Holan was one of the group of reactivated former officers of the 1st Directorate of the Ministry of Interior from 1960s, persecuted after the Soviet invasion of 1968. Afterwards, Dr. Holan took the post again. On September 1, 1990, he was replaced in this post by General Ing. Radovan **Procházka** (b. 1927), a soldier and activist of the anti-communist resistance, who spent a long time in prison in the 1950s. During his tenure, by December 21, 1990, a successor institution, namely the **Office for Foreign Relations and Information of FMV**, was established, with a very limited number of employees, and with new goals. Most members of executive components of the former 1st Directorate of SNB were gradually dismissed in several waves in the coming years.

Since 1990 there has been a thorough dismantling of the old intelligence service and the simultaneous development of a new service, together with a search for what its position might be, and how it might benefit the state. The scope of this process had no match in other post-communist countries. All officers of the former Communist intelligence service, acting abroad under diplomatic cover, were recalled from all Czechoslovak embassies. The liquidation of these stations resulted also in the discontinuation of their agent network. In the same way, the network of the illegal agents, operating abroad without diplomatic cover under a foreign identity, was dismantled.

After the split of the Czecho-Slovak federation, the federal ÚZSI was dissolved and — divided into a Czech and a Slovak part. From January 1993, its successor institution was established — the **Office of the Ministry of Interior of ČR for Foreign Relations and Information**. From January 15, 1993, it was headed by Oldřich **Černý** (b. 1946), English scholar, translator and script editor by original profession, and until this appointment, an advisor to President Havel in security matters.

The currently valid Act No. 163/1994, effective from July 30, 1994, established a successor organization — the **Office for Foreign Relations and Information** as an independent state institution, now outside the Ministry of Interior.

On August 30, 1998, Oldřich Černý was recalled by the Minister of Interior at his own request. From September 1, 1998 RNDr. Petr **Zeman** (b. 1947) was appointed ÚZSI director, a natural scientist by original profession, a Charter 77 signatory, and a BIS member from 1990 to 1998. On February 28, 2001, after two and half years, Petr Zeman resigned at his own request on health grounds. The next ÚZSI director, Mgr. František **Bublan** (b. 1951), a priest by original profession, a Charter 77 signatory, and a BIS member since 1991, took office on March 1, 2001 (later becoming Minister of Interior). Since October 2004, Karel **Randák** (b. 1955) has been ÚZSI director, since 1992 a BIS member, since 1996 a ÚZSI member.

ÚZSI AND THE MINISTRY OF INTERIOR

It is often said that ÚZSI falls under the Ministry of Interior. However, this statement would be adequate only until the effect of the Act No. 153/1994 Coll.

The present position of ÚZSI cannot be specified in this way. On the one hand, the ÚZSI Director is only accountable to the Minister of Interior — a government member, while the Ministry

of Interior, as an institution, provides certain services to ÚZSI. In accordance with § 51, the Act 219/2000 Coll. on Property of the Czech Republic and its Conduct in Legal Relations, ÚZSI is an independent organizational state unit,⁵² which is not generally known.

Another link to the Ministry of Interior is the fact that ÚZSI budget is a part of the Ministry's budget. This is a situation that should not undergo radical changes, because subsuming the budget of an intelligence service under a large department is a significant advantage. This is closely connected with a limited sphere of logistic activities carried out by the Ministry for ÚZSI (e.g., telecommunication in the Czech Republic's territory). These activities include an important property and buildings registration, as ÚZSI's buildings are hidden in a fair number of objects, owned by the Ministry of Interior.⁵³

With only a slight exaggeration, the current legal status could be described as follows: the Czech Interior Minister is politically accountable for the Ministry of Interior of ČR (including the Police, and Fire and Rescue Corps, subordinated to him), and, *in addition to that*, for ÚZSI. But the Interior Minister himself cannot task ÚZSI, this can be done only by the government as a whole.

ÚZSI's position in its link to the Ministry of Interior has grown as the result of both political and administrative development and the personal opinions of decisive elected state representatives in early 1990s. The then FIS counter-intelligence service had tried⁵⁴ to emancipate and to extricate itself from the Ministry of Interior, and this was followed by the Ministry's management with a certain measure of distrust. At that time, the intelligence service was discreetly dismantling the branches of the former Communist service abroad. The service was not the focus of attention of the political public, and the then Minister of Interior wanted to keep control over the service. After the establishment of the independent Czech Republic, these conditions were not changed, and this situation petrified during the drafting of the Act No. 163/1994.

Partial steps towards creating a more natural connection to the complex system of the Czech Republic's foreign relations⁵⁵ are the provisions of the ÚZSI statute, approved by the government, and the provisions of several inter-departmental agreements on the enhancement of the Foreign Minister's (and his Ministry's) influence on the formulation of tasks for ÚZSI. In practice, the provision on the submission of ÚZSI's information (in line with the Act No. 153/1994) is implemented in such a way that the information is immediately submitted to those who have required it, need it, or may need it. Obviously, the Minister of Interior is informed about the submission of this information.

In spite of this, the link of ÚZSI to the Ministry of Interior is a peculiar one, as the ÚZSI competences clearly do not correspond with the competences of the Ministry of Interior according to the competences law (the Act No. 2/1969 Coll. as amended). It is rather difficult to explain this specific situation to our foreign partners. Though upon first glance, existing legislation is unusual, it

52 For example, the Police of the ČR, or the Fire and Rescue Corps are not independent organizational units of the state.

53 So it is difficult to "compromise them in the Land Registry", as happened to BIS in the beginning of 2005.

54 I am not able to document the circumstances of this development, it is, to a certain extent, my speculative explanation.

55 ÚZSI has repeatedly proclaimed that about 60 to 70% of its information output is primarily intended for the Ministry of Foreign Affairs.

has not been detrimental to the functioning or legitimacy of ÚZSI that acts in practice as an independent state institution.

There have been more attempts to rectify the mentioned asymmetries, from the preparation of an amendment to the Act No. 153/1994 in spring 1997, to a recent unsuccessful effort⁵⁶ (at the turn of 2004) to link the modification of ÚZSI's position to the then-planned modification of Military Intelligence. ÚZSI took an active part in this legislative effort, trying to achieve not only a more comprehensive amendment of the Act No. 153/1994, but a separate law on ÚZSI as well.

⁵⁶ Failure of the professional legislative apparatus of the Parliament.

REFLECTIONS *DE LEGE FERENDA*

The change of the status and placement of all Czech intelligence services has been a subject of deliberations of politicians and state officials since 1997. There have been repeated debates about whether BIS should be subordinated to the Minister of Interior, who is responsible for internal security and order. In this case, BIS would be institutionally separated from the Ministry of Interior, without any police powers (patterned on the status of counter-intelligence services, in, for example, Germany and Great Britain). The concerns that led to the separation of FBIS from the Federal Ministry of Interior in 1991 are now considered outdated and unsubstantiated.

However, in such a model, ÚZSI should be politically subordinated to another member of the government. Any future changes, whether patterned after Great Britain and attached under the Foreign Secretary,⁵⁷ or under the Prime Minister, as in Germany, must always meet certain security conditions. These might seem petty details to politicians, but they hide a cloven hoof. The modification must not worsen the position of a service by ill-considered measures. The reform of the system of intelligence services is a subject of occasional debates, but, since it would require major modifications (the so-called big amendment), no political consensus has yet been achieved. Several detailed proposals have been drafted, but never submitted to Parliament. This has been caused by disputes among government departments, but primarily among various political parties and their factions.

In my strong opinion and in line with the politological recommendations of the most renowned institution of its kind: Geneva think-tank the Centre For the Democratic Control of Armed Forces, DCAF, e.g., in an accessible text [10, pp. 3-4], it is optimal to separate the tasks of intelligence and internal security services by institutions. Each should act in a different legal regime, and according to the authors' recommendations [10] it is not advisable to merge them into one organization. One mandate—one organization. The merger of military organizations is more acceptable than the merger of civilian services.⁵⁸ There are, however, opposite examples even in democratic countries (the Netherlands, Slovakia).

⁵⁷ Not under the *Ministry* of Foreign Affairs!

⁵⁸ In case they do not delve in political intelligence and do not double so the activities of other services.

LIST OF SOURCES

Used and recommended literature and its characteristics

[1] BORN, Hans and LEIGH, Ian, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*. Oslo : Publishing House of the Parliament of Norway, 2005. 143 pp. ISBN 92-9222-017-9. Accessible in electronic form at http://www.dcaf.ch/publications/making_intel.cfm.

[2] Anon. *Kontrola zpravodajských služeb v demokratických státech*. [Oversight of Intelligence Services in Democratic States] 2005. A study of ÚZSI members. Accessible at <http://www.uzsi.cz/index.php@show=001002007000.html>.

[3] CHURAŇ, Milan et al., *Encyklopedie špionáže. Ze zákulisí tajných služeb, zejména Státní bezpečnosti*. [Espionage Encyclopedia. From the Backstage of Secret Services, Mainly the State Security]. 2nd revised and complemented edition. Prague : Libri, 2000. ISBN 80-7277-020-9. 432 s. See the 1st edition – PEČENKA, Marek et al. Prague : Libri, 1993. ISBN 80-901579-1-2.

A basic publication in Czech for those interested in intelligence. The accuracy and timeline of the entries are obsolete in some places, the attention is focused mostly on the State Security (StB), however, the entries on Czech events and entities after 1989 are valuable, even though written with a certain sarcasm.

[4] ZEMAN, Petr, *Transformace zpravodajských služeb v Československu a České republice*. 2004. In VESELÝ, L. (editor), *Zkušenosti české transformace*. Praha, 2005. [Transformation of Intelligence Services in Czechoslovakia and in the Czech Republic. 2004. Part of a research project of the Ministry of Foreign Affairs of the Czech Republic No. RM 02/02/04, granted to the NGO "Man in Distress" and a part of a collective publication, in VESELÝ, L. (ed.), *Czech Transformation Experiences*, Prague, 2005.] Czech version is available in the Study section at www.strat.cz.

[5] DUCHEK, Jan, *Zpravodajské služby při tvorbě a realizaci bezpečnostní politiky*. *Vojenské rozhledy*, 2005, číslo 1, ročník 14 (46), s. 41-58. Praha [Intelligence Services in Formulation and Implementation of Security Policy, Military Review, Theoretical Magazine of the Army of the Czech Republic, Quarterly, 2005, No. 1, vol. 14 (46), pp. 41-58, Prague]: MOČR – AVIS. ISSN 1210-2392. Accessible at http://www.army.cz/avis/vojenske_rozhledy/_2005/rozhledy2005-1.pdf.

[6] BAŠTA, Jaroslav, *Koncepce bezpečnostní politiky 1989-1993*. *Dvuměsíčník Listy*, ročník XXII, 1993, č. 5, s. 58-75. Praha [Security Policy Concepts 1989-1993. Bi-monthly *Listy*, vol. XXII, 1993, No. 5, pp. 58-75]. ISSN 1210-1222. Identical text published also in the first edition of "Espionage Encyclopedia"; see Churaň.

The article is extra critical, the author, following his entry into the political opposition, focused only on the "blacker half of the truth".

[7] WILLIAMS, Kieran and DELETANT, Denis. *Security Intelligence Services in New Democracies: The Czech Republic, Slovakia and Romania*. Basingstoke and New York : Palgrave, 2001. ISBN 0-333-71372-9. 291 pp.

The first author deals with Czechoslovakia and the Czech Republic on pages 24 to 122. It is one of the few existing studies of the transition period, focused primarily on intelligence services. It covers the period until 2000. There is no other more complex work, not even in Czech. Williams's insight into Czechoslovak and Czech events is worthy of respect; moreover, in contrast to most Czech texts on the topic, it is not marked by a lack of distance. The author draws upon parliamentary documents and period press. However, I find a fault in this work in the too much confidence in the data from these sources; the author has not

probably been aware that the reports of Czech journalists are often of an activist nature, influenced by particular interests of groups or individuals. Therefore, it is not possible to agree with some of Williams's partial judgments.

[8] PACNER, Karel, *Československo ve zvláštních službách, Pohledy do historie československých výzvědných služeb 1914-1989*. [Czechoslovakia in Special Services. View of the History of Czechoslovak Intelligence Services, 1814-1989]. Prague : Themis, 2002. ISBN 80-7312-013-5. Vol. IV. 1961-1989, Chapter Nové služby – nové cíle [New Services – New Targets], pp. 651-678.

This extensive work of four volumes is a journalistic summary in a narrative style, using exclusive personal statements of former intelligence officers. The last chapter brings a brief recapitulation of successes and failures of post-November 1989 secret services.

[9] SYLLOVÁ, Jindřiška, Právní úprava parlamentních kontrolních mechanismů vůči zpravodajským službám v ČR (1990-2002). [Legislative Arrangement of Parliamentary Oversight Mechanisms for Intelligence Services in the Czech Republic (1990-2002)]. In PAVLÍČEK Václav et al. *Právo a bezpečnost státu*, [Law and Security of the State], Proceedings, Prague : Charles University Prague, Law Faculty, Vodnář Publishing House, 2002, pp. 83-97. ISBN 80-85889-55-2.

[10] Anon., *Intelligence Services and Democracy*. Working Paper Series, No. 13. Geneva, Geneva Centre for Democratic Control of Armed Forces, Switzerland, April 2002. (<http://www.dcaf.ch/docs/WP13.pdf>.)

LAWS

Laws concerning Intelligence Services, valid and effective at present

The Act. No. 153/1994 Coll. of July 7, 1994, on Intelligence Services of the Czech Republic as amended (118/1995 Coll., 362/2003 Coll., 53/2004 Coll., 290/2005 Coll.). (<http://www.sbcr.cz/cgi-bin/khm.cgi?typ=1&page=khc:SB94153A> .)

The Act No. 154/1994 of July 7, 1994, on the Security Information Service, as amended (amendment 160/1995 Coll., 155/2000 Coll., 309/2002 Coll., 362/2003 Coll., effective from January 1, 2005, 53/2004 Coll. (<http://www.sbcr.cz/cgi-bin/khm.cgi?typ=1&page=khc:SB94154A>.)

The Act No. 289/2005 Coll. of June 16, 2005, on Military Intelligence. (<http://www.sbcr.cz/cgi-bin/khm.cgi?typ=1&page=khc:SBA5289A>.)

It is appropriate to pay attention to the Act No. 290/2005 Coll. of June 16, 2005, as it amends other related norms, in addition to the Act 154/1994 Coll.

Former (non-valid) laws concerning Intelligence Services

The (Federal) Act No. 67/1992 Coll., of January 29, 1992, on Military Defensive Intelligence (as amended by the Act No. 153/1994 and the Act No. 88/1995 Coll.

The (Federal) Act No. 244/1991 Coll. of May 29, 1991, on the Federal Security Information Service and the Use of "Intelligence Means".

The (Federal) Act No. 543/1992 Coll., of November 13, 1992, on the Abolition of the Federal Security Information Service.

The Act of the Czech National Council No. 527/1992 Coll., of October 22, 1992, on the Security Information Service of the Czech Republic; its effect was prolonged by the amendment - the Act No. 316/1993 Coll., of December 7, 1993.

Other related and valid laws, especially those mentioned in the text

– to be found at <http://www.sbcr.cz/>.

The Act No.412/2005 Coll., of September 21, 2005, on Protection of Classified Information and Security Clearance.

The Act No. 361/2003 Coll., of September 23, 2003, on Terms of Service Employment of Security Corps Members, as amended.

The Act No. 221/1999 Coll., of September 14, 1999, on Military Professionals, as amended.

The Act No. 218/2000 Coll., of April 26, 2002, on the Service of State Employees in Administration Offices, and on Remuneration of These and Other Employees in Administration Offices (Service Act), as amended.

The Act No. 499/2004 Coll., of June 30, 2004, on Records Keeping and Records Service, and on the alteration of some laws, as amended.

The Act No. 140/1996 Coll., of April 26, 1996, on the Access to the Files Originated by Activities of the Former State Security, as amended by the Act No. 107/2002 Coll., of April 8, 2002.

The Act No. 101/2000 Coll., of April 4, 2000, on Protection of Personal Data, and on the Alteration of Some Laws, as amended.

[The Act No. 219/2000 Coll., of June 27, 2000, on Property of the Czech Republic and Its Conduct in Legal Relations, as amended.

The Act No. 186/1992 Coll., on Terms of Service Employment of Members of the Police of the Czech Republic, as amended.

The Act No. 127/2005 Coll. on Electronic Communications, and on the alteration of some related laws, as amended.

The Act No. 29/2000 Coll., on Postal Services and on the alteration of some regulations, as amended.

The Act No. 218/2000 Coll. on Budget Rules, and on the alteration of some related laws, as amended.

The Act No. 563/1991 Coll., on Accounting, as amended (special accounting standards).

The Act No. 61/1996 Coll., on Some Measures Against the Legalization of Yields from Criminal Activities, and on the alteration of related laws, as amended.

The Act No. 106/1999 Coll., on Free Access to Information, as amended.

The Act No. 365/2000 Coll., on Information Systems of Public Administration, as amended.

Websites of Czech Intelligence Services

www.bis.cz first entry to the web in 1996, more intensely from 1999

www.uzsi.cz website established in April 2002

www.vzcr.cz website established in January 2005

www.601skss.cz website established in February 2006

LIST OF ABBREVIATIONS

BIS	Bezpečnostní informační služba	(Czech) Security Information Service – <i>internal civilian service, from 1994</i>
BIS ČR	Bezpečnostní informační služba České republiky	Security Information Service of the Czech Republic – <i>internal civilian service, 1993 - 1994</i>
ČR	Česká republika	Czech Republic
ČSFR	Česká a Slovenská federativní republika	Czech and Slovak Federal Republic
FBIS	Federální bezpečnostní informační služba	Federal Security Information Service – <i>internal civilian service, from 1994</i>
FIS	Federální informační služba	Federal Information Service – <i>internal civilian service, a part of Ministry of Interior from 1990 - 1991</i>
FMV	Federální ministerstvo vnitra	Federal Ministry of Interior
KSČ	Komunistická strana Československa	Communist Party of Czechoslovakia
MV ČR	Ministerstvo vnitra České republiky	Ministry of Interior of Czech Republic
NBÚ	Národní bezpečnostní úřad	National Security Office – <i>administrative body for protecting classified information, from 1998</i>
SNB	Sbor národní bezpečnosti	National Security Corps – <i>unified police body of communist era</i>
STB	Státní bezpečnost	State Security – <i>a secret (intelligence + political police) part of SNB</i>
ÚOÚD	Úřad na ochranu ústavy a demokracie	Office for Protection of the Constitution and Democracy – <i>internal civilian service, a part of Ministry of Interior from 1990</i>
ÚZSI	Úřad pro zahraniční styky a informace	Office for Foreign Relations and Information – <i>civilian foreign intelligence agency, from 1990</i>
VKR	Vojenská kontrarozvědka	Military Counter-intelligence – <i>internal military service</i>
VOZ	Vojenské obranné zpravodajství	Military Defensive Intelligence – <i>internal military service, from 1990</i>
VP	Vojenská policie	Military Police
VZ	Vojenské zpravodajství	Military Intelligence – <i>military "umbrella" service, from 1994, "fully" from 2005</i>
VZS	Vojenská zpravodajská služba	Military Intelligence Service – <i>military foreign intelligence agency, from 1994</i>
ZSGŠ	Zpravodajská služba generálního štábu	Intelligence Service of the General Staff – <i>military foreign intelligence agency, predecessor of VZS</i>