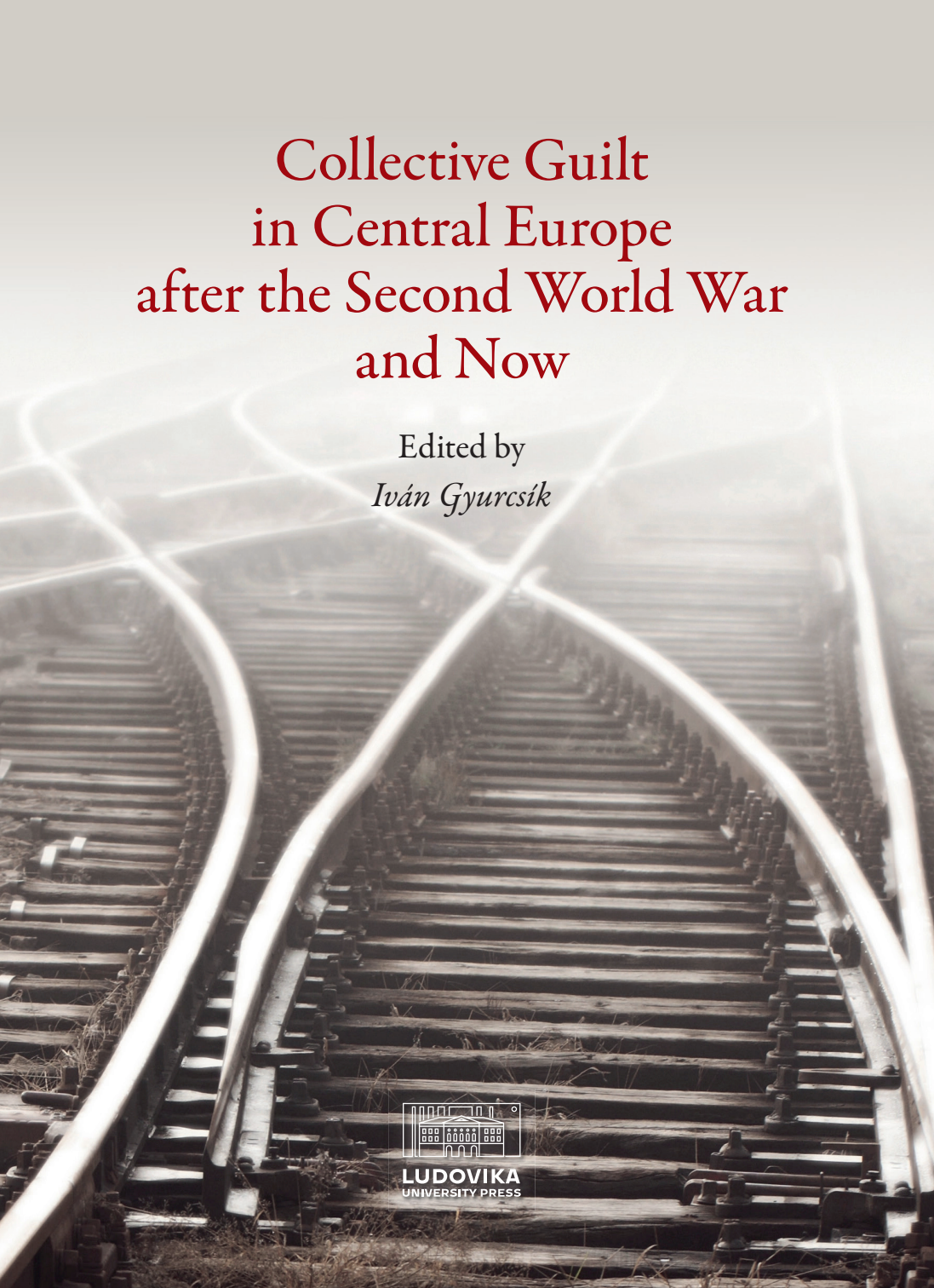
Collective Guilt in Central Europe after the Second World War and Now

Edited by

Iván Gyurcsík



LUDOVIKA
UNIVERSITY PRESS

Collective Guilt in Central Europe
after the Second World War and Now

Collective Guilt in Central Europe after the Second World War and Now

Edited by
Iván Gyurcsík

LUDOVIKA
UNIVERSITY PRESS
Budapest, 2024

This volume is based on the presentations delivered at the international conference on "Collective Guilt in Central Europe after the Second World War and Now" organised by the Minority Policy Research Group of the Ludovika University of Public Service (LUPS) in Budapest on 8 November 2023.

Consultant
Tibor Várady

Editor
Iván Gyurcsík

Editorial assistants
Noémi Nagy, Balázs Tárnok

Authors

Alfred de Zayas
János Fiala-Butora
Iván Gyurcsík
Tamás Korhecz
Tamás Lönhárt
Réka Marchut
Juraj Marušiak
Ján Rychlík
Balázs Vizi

Manuscript closed: 12 February 2024

Published by the Ludovika University of Public Service
Ludovika University Press
Responsible for publishing: Gergely Deli, Rector

Address: HU-1083 Budapest, Ludovika tér 2.
Contact: kiadvanyok@uni-nke.hu

Managing Editor: Kata Inzsöl
Copy Editor: Zsuzsánna Gergely
Proofreader: Ágnes Resofszki
Layout Editor: Angéla Fehér

Printed and bound in Hungary.

DOI: https://doi.org/10.36250/01228_00

ISBN 978-963-653-142-3 (hardback)
ISBN 978-963-653-143-0 (ePDF) | ISBN 978-963-653-144-7 (EPUB)

Contents

Foreword

This volume is based on the presentations delivered at the international conference on "Collective Guilt in Central Europe after the Second World War and Now" organised by the Minority Policy Research Group of the Ludovika University of Public Service (LUPS) in Budapest on 8 November 2023. The focus of the conference was collective guilt and responsibility in our immediate region, Central Europe, after the Second World War. This policy had long-term effects not only on the demographic, especially ethnic, national and linguistic diversity of the region, but also on legal relations through the confiscation of the private property of ethnic individuals.

The conference aimed to contribute to the academic dialogue on the historical and international legal aspects of the post-WWII state policy of collective punishment of ethnic groups, and to highlight and discuss its implications for today's Central Europe. We are grateful to the speakers and authors for their valuable contributions both at the conference and in this volume. The conference programme reflected a broad approach to the topic and succeeded in exploring different interpretations of collective guilt.

Minority rights and minority policy are of great historical and contemporary importance in Hungary and in Central Europe: there are 13 national minorities living in Hungary, and several million Hungarians belong to minorities beyond our borders in the neighbouring countries.

Ludovika University of Public Service is one of the most important knowledge centres in Central Europe in the fields of civil service, public administration, diplomacy, security, military, law enforcement, water management, law enforcement and public safety.

At the Ludovika University of Public Service, minority issues have always been an important topic in legal, social, human rights, security and international terms. Human rights and minority policy issues are primarily the speciality of the Faculty of Public Governance and International Studies, where minority

issues are dealt with in several courses. The Doctoral School of Public Governance and International Studies welcomes dissertation topics related to human rights and minority protection.

Minority issues are also included in our research portfolio. The researchers of the Minority Policy Research Group (MPRG), the organiser of the conference, also conduct research on the legal and political status of national and ethnic minorities. The Research Group examines minority policy from national, regional and global perspectives in the light of the new challenges of the 21st century. This work is crucial because it assembles and shares knowledge of different European disciplines and practices, and it also enriches minority protection and minority policy making in new ways.

I am convinced that this volume will contribute to the international academic debate on human and minority rights and to a deeper understanding of mechanisms of collective guilt in forming the legal and political landscape of today's Central Europe.

Gergely Deli
Rector of the Ludovika University of Public Service

Iván Gyurcsík

Introduction

The Minority Policy Research Group of the Ludovika University of Public Service was established in October 2022 by scholars and researchers – lawyers, historians, sociologists, social scientists – of our university who are interested in minority policy studies.

Several members of our research group are working on the issue of collective guilt in our region from a legal, historical and social science perspective. This was one of the reasons why we decided to organise an international experts conference on the issue of collective guilt in our region after the Second World War and to examine how it was dealt with in the different states after the democratic changes of 1989–1990.

The other reason was that, besides good practices of reconciliation and cooperation, there were cases where shadows of the past appeared in different forms, reflecting elements of collective guilt. Therefore, we thought that it would contribute to the academic discourse to invite experts and ask for their views on different aspects of collective guilt and on specific cases in our region.

We focused on issues related to the Hungarian minority communities in former and current neighbouring countries, Czechoslovakia/Slovakia, Romania, Yugoslavia/Serbia and the Germans in Hungary.

Allow me to make a few introductory remarks. Since biblical times, we have witnessed various forms of collective guilt, collective responsibility and collective punishment, which have appeared through the 20th century to the present, in world wars and post-war periods, and have been particularly linked to totalitarian regimes.

After 1989, with the joining of the countries of the region to the Council of Europe, the signing of bilateral treaties and the accession to the EU and NATO, the issue of minority rights was officially considered legally settled.

DOI: https://doi.org/10.36250/01228_01

With the help of invited experts, we would like to present some examples of the implementation of the principle of collective guilt against certain communities in the region, from the post-World War II period to the difficult reconciliation process after the democratic changes of 1989–1990.

What happened after 1945 and then after 1989, and where are we now?

Majority nations and national minorities experienced freedom in 1989 together rather than apart, in opposition to each other in Central Europe. During the past hundred years, for the first time, an unprecedented opportunity has arisen to settle and rethink the relationship between majority nations and national minorities within the framework of freedom and democracy.[1]

I would like to raise three issues connected to the question of collective guilt: the need for apology, the practices of reconciliation and addressing the issues of the past.

APOLOGIES

We would like to bring examples of apologies from the region, without going into the types, forms, limitations, advantages and disadvantages of such acts. We should be clear that if well prepared and accepted by all parties, it can be the first step on the long road to reconciliation. Prior to an apology, it is important that the party/parties acknowledge their own responsibility for past grievances and contribute to the mutual building of trust through the act of apology. Depending on societal, political or the historical context in case of severe past grievances and wrongdoings, the failure to apologise may perpetuate conflicts into the future.

I picked 5 examples from the region: from Hungary, Serbia, the Czech Republic and Slovakia:

[1] Gyurcsík 2021.

1. The Hungarian National Assembly expressed its apology concerning collective grievances of the German minority in Hungary (1990).[2] Katalin Szili, Speaker of the Hungarian Parliament, in November 2007 in the Parliament, apologised for the deportation of Germans in Hungary.[3] The National Assembly's Resolution on the Day of Remembrance of the Deportation of Germans in Hungary No. 88/2012 declared 19 January as the day of remembrance.[4]
2. The Statement of the Serbian Parliament on 21 June 2013 condemned the atrocities committed against the Hungarian civilian population of Vojvodina in 1944–1945.[5]
3. The President of the Czech Republic, Václav Havel's address at Charles University, Prague (17 February 1995) "Czechs and Germans on the Way to a Good Neighbourship", on the transfer of the German population.[6] On 24 August 2005, the Czech Government of Jirí Paroubek passed a resolution apologising to all those who "actively fought fascism or suffered under Nazi rule" during World War II.[7]
4. The Slovak National Council adopted a Declaration on the expulsion of Carpathian Germans (12 February 1991).[8]

[2] 35/1990. (III. 28.) OGY határozat a magyarországi német kisebbség kollektív sérelmeinek orvoslásáról [Parliament Resolution 35/1990 (III. 28.) on the redress of collective grievances of the German minority in Hungary].

[3] Museum Digital 2021.

[4] 88/2012. (XII. 12.) OGY határozat a magyarország németek elhurcolásának emléknapjáról [Parliament Resolution 88/2012 (XII. 12.) on the day of remembrance of the deportation of Germans in Hungary].

[5] *Šesto vanredno zasedanje Narodne skupštine Republike Srbije u 2013* [Sixth Extraordinary Session of the National Assembly of the Republic of Serbia 2013]. 21 June 2013.

[6] Václav Havel s. a.

[7] Deutsche Welle 2005.

[8] Vyhlásenie Slovenskej národnej rady k odsunu slovenských Nemcov Schválené Slovenskou národnou radou uznesením z 12. februára 1991 číslo 78 [Statement of the Slovak National Council on the expulsion of the Slovak Germans approved by the Slovak National Council by Resolution No 78 of 12 February 1991].

5. The letters of the Hungarian and the Slovak Catholic Bishops' Conferences was read out during the Holy Mass on reconciliation and cooperation in Esztergom on the 29th of June 2006, the main message of the letters was: "We forgive and ask forgiveness."[9]

The apologies of Presidents, Parliaments, Prime Ministers or church authorities were important symbolic gestures. The time that has passed since these decisions showed us their practical contribution to the reconciliation process.

PRACTICE OF RECONCILIATION

After 1989, parallel to the processes of economic and political integration in Western Europe – after German unification and the break-up of the Soviet Union – the Central European system of basic treaties and bilateral minority treaties came into existence, in which Hungary sought to secure and expand the minority rights of Hungarians living in neighbouring countries.

Reconciliation programmes initiated with neighbouring countries in the context of Euro-Atlantic integration have been inspired by the experience of the French–German reconciliation process[10] (cross-border economic cooperation; compiling a joint history textbook; youth links; networks of twin settlements, etc.) and also by the Austrian–Italian type of solution, which resulted in the South Tyrol model.[11] But because of different historical and structural conditions, foreign examples of reconciliation were applicable only partially.

Since the 1990s, these initiatives have been based on three pillars on the Hungarian side:

[9] Mátraverebély–Szentkút Nemzeti Kegyhely 2006; Magyar Katolikus Püspöki Konferencia 2006; ENRS 1965; Polish History 1965; *Reconciliation for Europe* s. a.

[10] Chemins de Mémoire 2019.

[11] Autonome Region Trentino–Südtirol 1946.

1. mutual historical reckoning
2. mutual recognition of the collective rights of minorities
3. elaboration of historical apologies, rehabilitation and restitution[12]

We expect with great interest the views of our experts on these issues as well.

The steps taken to reach this objective shows also a variety of possibilities, let me mention one of them.

The Czech–German Future Fund started its activities in 1998 with the aim of promoting mutual trust, meetings and cooperation between Czechs and Germans. It was established by the German–Czech Declaration on Mutual Relations and their Future Development of 21 January 1997.[13] It launched a program for the Compensation of forced labourers and for the victims of National Socialism. They had Working Groups e.g. on "Social and Economic Policy", "European and Foreign Policy", "Dialogue without Taboos" and "Places of Memory", organised the by Czech–German Discussion Forum.

Other possible programs to increase mutual knowledge about the neighbours, trust-building focusing on the younger generation, Joint Committees of Historians, Cross Border Cooperation, partner cities, intense, civil dialogue, joint history books could contribute to the process. We have to realise that reconciliation is a long term process and it may take several years to reach the satisfactory positive results.

TO ADDRESS THE ISSUES OF THE PAST

Let me give you only one quotation in conclusion from the complex set of issues of the region:

"It is impossible to live freely, equally and fully with the feeling of unjust punishment and wrongful accusation. Re-legitimising the post-war collective

[12] Bárdi 2023: 382.

[13] German–Czech Declaration on Mutual Relations and their Future Development of 21 January 1997.

punishment of our ancestors is not conducive to the desire to build a harmonious country together, and this resolution will only create one dysfunctional unworkable pseudo guarantee to a non-existent threat."[14] These are the words of one of the Hungarian politicians from Slovakia expressed in 2007 after the National Council of Slovakia adopted its resolution on the inviolability of post-war documents on the post-World War II settlement in Slovakia.[15] The document, which condemned the principle of collective guilt but stated that the post-war decisions of the representative bodies of the Czechoslovak Republic and the Slovak National Council – which formulate collective guilt of the Hungarians as well – are not the cause of discriminatory practice and no new legal relations can arise on their basis today.

The representatives of the Hungarian minority suggested the adoption of a similar document of moral apology as happened in 1991 in the case of the Carpathian Germans by the Slovak National Council,[16] and suggested in 2007 the adoption of a document on mutual reconciliation[17] by both the Hungarian and the Slovak Parliament to overcome the grievances of the past. This step is still missing.

This is the case not only in Slovakia, we can find unsettled questions also elsewhere.

There is room for the academic discussion to elaborate and contribute to the creation of mutual conditions to help it happen. These steps can strengthen our cooperation, our region as well during these challenging times.

Thank you for your kind attention, I wish you a fruitful discussion and inspiring conference.

[14] József Berényi's statement. See ČTK–SITA 2007.

[15] Resolution 533 of the National Council of the Slovak Republic of 20 September 2007 on the inviolability of post-war documents on the post-World War II settlement in Slovakia.

[16] See *Új Szó,* 1 April 1992: 4; see also Az MKDM és az Együttélés képviselőinek nyilatkozattervezete a kollektív bűnösség elvének elítéléséről, Pozsony, 1992. január 31: 427–428.

[17] Infostart 2007.

REFERENCES

35/1990. (III. 28.) OGY határozat a magyarországi német kisebbség kollektív sérelmeinek orvoslásáról [Parliament Resolution 35/1990 (III. 28.) on the redress of collective grievances of the German minority in Hungary]

88/2012. (XII. 12.) OGY határozat a magyarországi németek elhurcolásának emléknapjáról [Parliament Resolution 88/2012 (XII. 12.) on the day of remembrance of the deportation of Germans in Hungary]

Autonome Region Trentino–Südtirol (1946): *Gruber–Degasperi–Abkommen.* Online: www.region.trentino-s-tirol.it/codice/accordo_d.aspx

Az MKDM és az Együttélés képviselőinek nyilatkozattervezete a kollektív bűnösség elvének elítéléséről, Pozsony, 1992. január 31. In Popély, Árpád – Simon, Attila (eds.): *„Akaratunk ellenére…", Dokumentumok a csehszlovákiai magyarság történetéből 1918–1992.* Somorja: Fórum Kisebbségkutató Intézet, 2020, 427–428.

Bárdi, Nándor (2023): Historical Reconciliation. In Bába, Iván (ed.): *An Encyclopaedia of Diplomacy. A Hungarian Handbook of International Relations.* Volume I. Budapest: Kairosz, 382–383.

Chemins de Mémoire (2019): *A Story of Franco–German Reconciliation.* Online: www.cheminsdememoire.gouv.fr/en/story-franco-german-reconciliation#:~:text=The%20signatories%20of%20the%20Franco,the%20purposes%20of%20an%20exemplary2

ČTK–SITA (2007): *Benešove dekréty sú nedotknuteľné.* 20 September 2007. Online: https://domov.sme.sk/c/3495979/benesove-dekrety-su-nedotknutelne.html

Deutsche Welle (2005): Prague Apologizes for WWII Expulsions. *DW,* 25 August 2005. Online: www.dw.com/en/prague-apologizes-for-wwii-expulsions/a-1690921

ENRS (1965): *Letter of Reconciliation of the Polish Bishops to the German Bishops.* Online: https://enrs.eu/news/letter-of-reconciliation-of-the-polish-bishops-to-the-german-bishops#:~:text=Letter%20from%20the%20Polish%20Roman,history%20of%20Polish%2DGerman%20reconciliation

German–Czech Declaration on Mutual Relations and their Future Development of 21 January 1997. Online: www.mzv.cz/file/198499/CzechGermanDeclaration.pdf

Gyurcsík, Iván (2021): Minority and Democracy? In Bába, Iván – Gyurcsík, Iván – Kiss Gy., Csaba (eds.): *Central Europe 2020. A Hungarian Perspective.* Kőszeg: Institute of Advanced Studies, 89–121.

Infostart (2007): Kevés az esély a Magyar–szlovák megbékélési nyilatkozat elfogadására. *Infostart,* 12 September 2007. Online: https://infostart.hu/kulfold/2007/09/12/keves-az-esely-a-magyar-szlovak-megbekelesi-nyilatkozat-elfogadasara-148101

Magyar Katolikus Püspöki Konferencia (2006): *„Megbocsátunk és bocsánatot kérünk" – Szentmise a szlovák–magyar kiengesztelődésért* ["We forgive and ask forgiveness" – Holy Mass for Slovak–Hungarian Reconciliation]. 29 June 2006. Online: https://regi.katolikus.hu/cikk.php?h=577

Mátraverebély–Szentkút Nemzeti Kegyhely (2006): *„Megbocsátunk és bocsánatot kérünk".* Online: https://szentkut.hu/megbocsatunk-es-bocsanatot-kerunk

Museum Digital (2021): *A magyarországi németek elűzetése a 2. világháború után* [The Expulsion of Germans in Hungary after World War II]. 19 January 2021. Online: https://hu-themator.museum-digital.org/ausgabe/showthema.php?m_tid=818&tid=826&ver=standalone

Polish History (1965): *Letter of Reconciliation of the Polish Bishops to the German Bishops.* Online: https://polishhistory.pl/letter-of-reconciliation-of-the-polish-bishops-to-the-german-bishops/

Reconciliation for Europe (s. a.). Online: https://reconciliation.eu/reconciliation-for-europe/

Resolution 533 of the National Council of the Slovak Republic of 20 September 2007 on the inviolability of post-war documents on the post-World War II settlement in Slovakia. Online: www.nrsr.sk/web/?sid=nrsr/dokumenty/vyhlasenia

Šesto vanredno zasedanje Narodne skupštine Republike Srbije u 2013 [Sixth Extraordinary Session of the National Assembly of the Republic of Serbia 2013]. 21 June 2013. Online: www.parlament.rs/%C5%A0esto_vanredno_zasedanje_Narodne_skup%C5%A1tine_Republike_Srbije_u_2013._godini_.18947.941.html

Václav Havel (s. a.): *Selected Speeches and Writings of Václav Havel.* Online: http://old.hrad.cz/president/Havel/speeches/index_uk.html

Vyhlásenie Slovenskej národnej rady k odsunu slovenských Nemcov Schválené Slovenskou národnou radou uznesením z 12. februára 1991 číslo 78 [Statement of the Slovak National Council on the expulsion of the Slovak Germans approved by the Slovak National Council by Resolution No 78 of 12 February 1991]. Online: www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/v_k-odsunu-nemcov.htm

Alfred de Zayas

Collective Guilt and Collective Punishment

INTRODUCTORY REMARKS

The continued practice of branding other countries and peoples collectively guilty for past or on-going crimes has not abated. The imposition of collective punishment in the form of mass expulsions, blockades and unilateral coercive measures[1] entails retrogression in terms of civilisation and human rights. We see the narrative of collective guilt and collective punishment in the context of the wars in Ukraine, Nagorno Karabakh and now in Gaza. We see it in the practice of hybrid war in the form of unilateral coercive measures, wrongly called sanctions, which invariably punish the entire populations of targeted countries collectively and unjustly. Such punishment is an expression of the *animus dominandi* of some countries that are intent on forcing other nations and peoples into subordination by bullying and terror. This is a form of neo-imperialism or neo-colonialism, which has been recognised as such and condemned by the United Nations General Assembly and UN Human Rights Council on repeated occasions, most recently in Human Rights Council Resolution 48/7 "Negative impact of the legacies of colonialism on the enjoyment of human rights".[2]

From the moral and religious perspective, the concepts of collective guilt and collective punishment contravene the imperatives of civilised existence, which necessarily requires the practice of mutual respect, tolerance, forgiveness,

[1] See UN General Assembly Resolutions 77/214 and 78/202, UN Human Rights Council Resolutions 52/13 and 54/15. See also UN (s. a.a); Weisbrot–Sachs 2019.

[2] UN Human Rights Council Resolution 48/7.

DOI: https://doi.org/10.36250/01228_02

reconciliation, the recognition of the brotherhood and sisterhood of the human family,[3] the hope for a *modus vivendi* in friendship and international solidarity.[4]

From the historical perspective, collective guilt has been a ubiquitous weapon in the cognitive warfare against perceived or imagined adversaries. Among the bogus justifications for holding whole populations responsible for the crimes of their governments is the wrong premise that the people in the targeted countries bear responsibility by tacitly accepting or even supporting the crimes imputed to their governments. But can this be substantiated?

Over the ages, minority groups have also been accused of the most abstruse crimes, e.g. causing disease or poisoning wells. Europe has a long history of incitement against different peoples, including Jews, Roma, Sinti, Slavs, "Untermenschen", Germans, Serbs, Afghans, Muslims, Africans, migrants, etc.

Collective guilt frequently uses scapegoats in order to simplify the narrative and hide the root causes of problems. It is easy to assign guilt to a particular ethnic, linguistic or religious group. Yet, collective punishment has also been directed against "heretics", e.g. during the Albigensian crusades of the 12th–13th centuries against the Cathars in France, where punishment tended to be indiscriminate. Among its many massacres, we recall the extermination of the civilian population of the city of Beziers on 22 July 1209, where it is reported that the papal envoy Arnaud Amalric said "kill them all, God will know his own". "Caedite eos. Novit enim Dominus qui sunt eius." As many as 14,000 persons may have been killed, including the faithful and non-heretical Christians who had unwisely refused to flee the city.

Most European wars show the impact of propaganda in making soldiers and civilians alike hate the adversary, who is vilified and demonised. The Thirty Years War saw massacres and atrocities based on collective punishment. Catholics against Protestants, Protestants against Catholics. Eight million

[3] Matthew 5–7; Matthew 6: 14–15: "For if you forgive other people when they sin against you, your heavenly Father will also forgive you. But if you do not forgive others their sins, your Father will not forgive your sins." John 8: "Neither do I condemn you. Go, and from now on do not sin anymore."; Fricke 2011.

[4] UN (s. a.b); UN 2023a.

Europeans died. Interestingly enough, the Peace of Westphalia of 1648 was not a peace of *vae victis,* was not a Carthaginian peace, but actually decreed for amnesty and oblivion by virtue of Article 2 of the Treaties of Münster and Osnabrück.[5]

The War of the Spanish Succession was similarly vicious, ending with the Treaty of Utrecht[6] of 1713. Alas, the autonomy of the Catalan people, which was supposed to be respected, was crushed by the genocidal policies of the new Bourbon King, Philippe d'Anjou, grandson of Louis XIV, who devastated Barcelona and established a terror regime of collective punishment against the Catalan people.[7] The *animus dominandi* of the Bourbon monarchy in Spain has not abated, and three centuries after the Treaty of Utrecht, the Catalans still want their self-determination and resent collective punishment from Madrid.

Many pogroms against Jews occurred in Europe during the Middle Ages, the Renaissance period and the 18th century Enlightenment. Such mass violence took place not only in tsarist Russia, Ukraine and Poland[8] during the 19th and 20th centuries, but also in Western Europe, where Jews were marginalised, excluded, dehumanised, demonised, blamed for "desecration of the host", the black death of the 14th century and for other pandemics,[9] and subjected to mass expulsion.

The collective guilt mindset is generated not only by governments, but is aided and abetted by superstition and sometimes instrumentalised by chauvinistic groups and organisations. It builds on popular myths and caters to latent fears and insecurities in society. The incitement to hatred is waged before, during and after armed conflicts. Indeed, many wars have been preceded by deliberate and systematic incitement to hatred of the adversary. Hitler's

5 De Zayas 2000.

6 Full text of "The Peace of Utrecht: A Historical Review of the Great Treaty of 1713–14, and of the Principal Events of the War of the Spanish Succession".

7 Alcoberro i Pericay 2010.

8 "From 1918 to 1921, more than 1,100 pogroms killed over 100,000 Jews in an area that is part of present-day Ukraine." Tenorio 2021; Arnold 2016; Judge 1995; Weinberg 1992; Aronson 1990.

9 Glazer-Eytan 2019; Winkler 2005.

war on the Jewish people was largely based on fake news and fake history, on a caricature of the Jewish people. Alas, many Germans allowed themselves to be indoctrinated. But many did not.

The Jews of the Warsaw ghetto suffered untold indignities until they rebelled in May 1943. At its height, there were 460,000 Jews in the ghetto, but gradually the Jews were transported to extermination camps, notably Treblinka. The Nazis were merciless in their destruction of the ghetto and the punishment of the Jewish insurgents. Such hatred invariably breeds more hatred.

Collective guilt can turn against any group of people. Perpetrators can become victims of a reverse collective guilt syndrome. After the end of the Second World War, the Germans were held collectively guilty for Nazi crimes. Revenge was overwhelming: 14–15 million ethnic Germans were expelled from their 700 year homelands in East Prussia, Pomerania, Silesia, East Brandenburg, Bohemia, Moravia, Hungary and Yugoslavia, resulting in at least two million deaths,[10] some who were direct victims of violence, rape and even torture, and those who lost their lives as a result of the expulsion, which was accompanied by exposure to inclement weather, cold, lack of food and medicine.[11] This was the greatest mass expulsion known in European history, and it was collective punishment on a grand scale. There was no attempt to establish any personal guilt, millions of anti-Nazis were expelled on the sole criterion of being German. A purely racist measure backed up by decisions taken by Stalin, Churchill and Roosevelt already at the conferences of Tehran and Yalta, and concretised in the Potsdam Protocol of 2 August 1945. Even worse than the expulsion was the decision signed in Yalta on 11 February 1945 by Churchill, Roosevelt and Stalin to collectively punish the Germans by extracting from them "reparations in kind",[12] which were defined as the use of German labour, in other words, the reintroduction of slave labour in post-war Europe. According to Kurt Böhme of the German Red Cross, the Germans "recruited" and forcibly transferred to

[10] Reichling 1986; de Zayas 1977; de Zayas 1994: 155–156.

[11] De Zayas 2012.

[12] Barron 1955: 979. See also Böhme 1965.

the mines in the Urals and Workuta, the "Verschleppten" suffered the greatest losses among the Germans of the East, and as many as 40% of those abducted never came back.[13]

The British publisher and human rights activist Victor Gollancz described the treatment of the German civilians as follows: "If the conscience of men ever again becomes sensitive, these expulsions will be remembered to the undying shame of all who committed or connived at them [...]. The Germans were expelled, not just with an absence of over-nice consideration, but with the very maximum of brutality."[14]

Robert Hutchins, President of the University of Chicago, deplored the crimes being committed in the name of the victorious allies, commenting: "The most distressing aspect of present discussions of the future of Germany is the glee with which the most inhuman proposals are brought forward and the evident pleasure with which they are received by our fellow citizens."[15]

One would have thought that the enormity of the crime committed against Germans in the years 1945 to 1949, just because they were Germans, would have created a precedent to abolish forever the horror of mass population transfers. Yet, in the 1990s, the world witnessed the obscenity of ethnic cleansing in Yugoslavia, which gave the UN Security Council the opportunity to establish the International Criminal Tribunal for the Former Yugoslavia. Even the judgments of the ICTY did not end our addiction to collective guilt paradigms. Whereas in the 1940s and 1950s the Germans were universally seen as collectively guilty for the Nazis, now in the beginning of the 21st century, many people perceived the Serbians as collectively guilty for Slobodan Milošević.

Collective mass expulsions occurred in September–October 2023 when Azerbaijan forced the 120,000 Armenians of Nagorno Karabakh to leave their millennial homelands and flee into Armenia.[16] And today, as we read

[13] Böhme 1965.
[14] Gollancz 1946: 96.
[15] *Time,* 21 May 1945, 19.
[16] Scheffer 2023.

these lines, Palestinians are being expelled from their homes in Gaza, a matter of genocide, currently before the International Court of Justice, which issued provisional measures of protection on 26 January 2024.[17] What is happening in Gaza is not unlike what happened to the Jews of the Warsaw ghetto.[18] When the hapless Jews rebelled against the Nazi oppression, the Nazis exterminated them. Today over 26,000 Palestinians have been killed, and there is no end in sight. This is the second Nakba.[19]

Alas, the spirit of collective guilt and collective punishment is not disappearing from the world. We see collective punishment against entire civilian populations in the blockades imposed against people considered unilaterally by some countries dangerous or hostile. One of the worst expressions of collective hatred is the imposition of unilateral coercive measures ostensibly against governments, but in reality against peoples. Such unilateral coercive measures constitute a new form of warfare, hybrid warfare, non-conventional warfare – which kills as viciously as bullets. The principal practitioners of UCMs are the United States, the United Kingdom and the European Union. Such UCMs have been imposed on countries opposed to the unipolar world demanded by the U.S. To make matters worse, those countries that impose UCMs dare invoke human rights in order to justify the unjustifiable. It is no less than a sacrilege, a blasphemy, to falsely accuse the victims of UCMs of bearing responsibility for human rights violations. This moral reversal does render the UCMs legitimate, but the tactic is aimed at making UCMs more "palatable" by claiming that the measures are intended to bring about an improvement in human rights observance by inducing a democratic change of government.[20]

17 International Court of Justice (s. a.a).
18 Democracy Now 2023; Laiq 2023.
19 UN (s. a.c).
20 De Zayas 2021; Jazairy 2019.

LEGAL PERSPECTIVES

In 1975, long before the phenomenon of ethnic cleansing in Yugoslavia, I published an article in the *Harvard International Law Journal,* outlining the necessity to adopt a convention banning mass expulsions.[21]

I explained that from a legal perspective, the concepts of collective guilt and collective punishment are contrary to general principles of law,[22] and essentially negate the fundamentals of the administration of justice and the rule of law, which stipulate the principles of human dignity, integrity of the person and equality of treatment. In particular, collective punishment violates Articles 14 and 26 of the International Covenant on Civil and Political Rights, which stipulate the presumption of innocence,[23] the requirement of trial and judgment by an independent tribunal and the prohibition of discrimination.

The artificial concept of collective guilt is used to justify collective punishment,[24] as, for instance, the destruction of private property or the forced transfer of populations.[25] However, collective punishment is specifically

[21] De Zayas 1975. This article was subsequently published in Spanish and German translations.

[22] Statute of the International Court of Justice, Article 38.

[23] Cf. Article 6 of the 1977 Second Additional Protocol to the Geneva Conventions of 1949: "2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular: (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence; (b) no one shall be convicted of an offence except on the basis of individual penal responsibility."

[24] The Practical Guide to Humanitarian Law (s. a.).

[25] The study on the rules of customary International Humanitarian Law published by the ICRC in 2005 prescribes that: "Rule 129: (a) Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. (b) Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand."

prohibited in Article 50 of the 1899 and 1907 Hague Conventions on Land Warfare, which stipulates:

"No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."[26]

Article 46 stipulates: "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated."

Similarly, by virtue of Article 33 of the Fourth Geneva Convention of 1949:

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."[27]

Such war crimes must be investigated and prosecuted pursuant to Article 147 of the Convention.[28]

Rule 130 provides that in connection with an international armed conflict, States may not deport or transfer parts of their own civilian population into a territory they occupy.
Rule 131 prescribes that in case of displacement in the context of an international or a non-international armed conflict, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition and that members of the same family are not separated.
Rule 132 states that in international and non-international armed conflicts, displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.
Rule 133 finally prescribes that the property rights of displaced persons must be respected at all times and all places. Population movements sometimes lead individuals outside their own country. In such cases, they are protected by international refugee law.

[26] IHL Databases (s. a.).

[27] Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

[28] Article 147: "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected

All of this was highly relevant in the prosecutions before the ICTY of Serbian and Croatian commanders for mass expulsions of Serbians carried out by Croats in the Krajina and mass expulsion of Bosnians and Croatians carried out by Serbs. Unfortunately, there was very little discussion about the fundamental principles of human dignity and the right of all peoples to self-determination.

THE MASS EXPULSION OF ETHNIC GERMANS IN 1945–1949

The right to one's homeland is a human right.[29] The right to national self-determination, today recognised as *jus cogens* (peremptory international law), of necessity must embrace the right to one's homeland, because self-determination cannot be exercised if one is driven from one's homeland. Moreover, the right to one's homeland is a precondition to the exercise of most civil, political, economic, social and cultural rights.[30] The Germans of Bohemia and Moravia (frequently referred to as Sudeten Germans), whose ancestors had resided there for seven centuries, were denied self-determination in 1919, notwithstanding their repeated appeals to the Paris Peace Conference, and notwithstanding the recommendations of the American expert, Harvard Professor Archibald Cary Coolidge, who at Paris proposed attaching the territories in question to Germany and Austria in 1919.[31] Whereas the Treaties of Versailles, St. Germain and Trianon promoted the self-determination of Poles, Czechs and Slovaks, this was done at the expense of denying self-determination to Germans and

person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

29 KIMMINICH 1989; KIMMINICH 1990; DE ZAYAS 2001.

30 On 6 August 2005 the former UN High Commissioner for Human Rights, Dr. Jose Ayala Lasso, said in Berlin: "...the right to one's homeland is not merely a collective right, but it is also an individual right and a precondition for the exercise of many civil, political, economic, social and cultural rights." See DE ZAYAS 1977: 404–406.

31 Memorandum by Professor A. C. Coolidge. 10 March 1919.

Hungarians. Judged by today's standards, their claim to self-determination was comparable to that of the Kurds, the Tamils, the Kosovars, the Abkhazians, the Southern Ossetians, the Crimeans, the Sahraouis, the Southern Cameroonians, the Bubis of Bioko/Fernando Po, the Luchuans of Okinawa,[32] the Sudanese and many others.

Although the right to national self-determination was not part of peremptory international law in 1945, the expulsion of 14–15 million ethnic Germans was already illegal by standards of the then applicable norms of international law, and the treatment of the expelled Germans doubtlessly entailed war crimes and crimes against humanity. The Hague Regulations on Land Warfare appended to the Hague Convention IV of 1907 were applicable during the Second World War. Articles 42–56 limit the powers of occupying nations and guarantee protections to resident populations, in particular the privacy, honour and rights of the family, as well as private property (Article 46). Collective punishments are forbidden (Article 50). Thus, any mass expulsion implies a major violation of The Hague Regulations. Moreover, pursuant to the Martens Clause,[33] which formulated minimal standards of warfare as early as 1899, "cases not included in the Regulations" would necessarily have to be judged in the light of the "laws of humanity", which means that expulsions of civilians, accompanied by mass killings and complete expropriation of property would undoubtedly be illegal.[34] The Martens Clause was then – as the later Nuremberg War Crimes Tribunals illustrated – a binding principle of international law. Therefore, those responsible for the expulsion of the

[32] YouTube 2021.

[33] This particular achievement in international law, later cited in several international conventions as well as judgments by international courts, was conceived by the Russian Diplomat of German–Estonian heritage, an international legal authority, Friedrich Fromhold Martens (1845–1909). See Ticehurst 1997.

[34] The Martens Clause stipulates: "Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." Preamble to the 1899 Hague Convention II.

Germans cannot invoke the then absence of specific international law on population transfers in order to justify the expulsion. In his *Ethics* Baruch Spinoza observed that "nature abhors a vacuum".[35] International lawyers agree that there cannot be a "legal black hole" when it comes to the over-arching principles of human rights law. Up until 9 December 1948, international law did not contain a specific and explicit ban of genocide. Yet nothing could make the Holocaust compatible with international law, even in the absence of a positive norm of black letter law.

The mass expulsion of 14 million Germans cannot be interpreted as a form of legal reprisal, for wartime reprisals can be undertaken only under very narrow and well-defined conditions subject to principles of proportionality that underlie the international legal order. These conditions were not met at the time of the earlier expulsions of ethnic Germans up until 8 May 1945. However, the bulk of the expulsion took place after the end of the war, making the legal concept of reprisal *a priori* inapplicable to this event. The expulsions furthermore violated customary international law as well as treaty obligations protecting minority rights assumed by Poland, Czechoslovakia, Hungary and Yugoslavia in 1919. The denial of the right to return of German refugees similarly constituted violations of international law.

The verdict of the International Military Tribunal at Nuremberg rightly condemned the expulsions perpetrated by the Nazis against Poles, mainly from the Posen and Pommerellen ("Westpreußen") regions and against Frenchmen from the Alsace as war crimes and crimes against humanity.[36] International law has *per definitionem* universal applicability, and therefore the expulsions of ethnic Germans by Poland, Czechoslovakia, Hungary and Yugoslavia, measured against the same standard, similarly constituted war crimes and crimes against humanity.[37]

[35] De Spinoza 2005.

[36] International Military Tribunal (Nuremberg), Judgement of 1 October 1946.

[37] In his *Memoirs,* Konrad Adenauer writes: "Misdeeds have been committed loathsome enough to stand alongside those committed by the German National Socialists."

Today international law is very explicit in prohibiting expulsions. Article 49 of the Geneva Convention IV of 12 August 1949, respecting the protection of civilians in time of war, forbids forced resettlement. Article 17 of the second additional protocol of 1977 expressly prohibits expulsions even in local, sovereign domestic matters. In peacetime, expulsions violate the UN Charter, the Universal Declaration of Human Rights of 10 December 1948, the Human Rights Covenants of 1966 and the International Convention on the Elimination of All Forms of Racial Discrimination. Likewise they breach the Fourth Protocol of the European Convention for the Protection of Human Rights and Basic Freedoms, Article 3 of which reads: "1) No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. 2) No one shall be deprived of the right to enter the territory of the state of which he is a national"; and Article 4 which stipulates "collective expulsions of aliens is prohibited". In war and peace, expulsion and deportation represent crimes within the purview of international law. In accordance with Article 8 of the Statute of the International Criminal Court of 1998, expulsions constitute war crimes, and according to Article 7, they constitute crimes against humanity. In some cases, they can amount to genocide pursuant to Article 6.

Under some conditions, expulsion and deportation can qualify as genocide. According to Article II of the UN Convention on the Prevention and Punishment of the Crime of Genocide dated 9 December 1948, genocide is defined by acts or actions intended to destroy a certain national, ethnic, racial or religious group in whole or in part, by killing members of these groups or by imposing unendurable living conditions or by committing offenses such as mass expulsions. In the light of the "intent to destroy a national, ethnic, racial or religious group" and the mental and physical stress accompanying expulsions, they can be categorised as genocide.

This intention to wipe out specific populations was the goal of both Edvard Beneš in Czechoslovakia and Josip Broz Tito in Yugoslavia, a fact sufficiently documented in their speeches and decrees. This mental prerequisite qualifies the expulsion of the Germans from these countries as genocide. This opinion

is strongly supported by prominent professors of international law including Felix Ermacora and Dieter Blumenwitz.[38] The genocidal character of the expulsions is underscored by the racial targeting of the victims, independent of any personal guilt or responsibility. Indeed, the ethnic Germans were expelled on the basis of their ethnic origin and not because of their personal conduct. As a consequence, there is an obligation for everyone ("erga omnes") not to recognise the consequences of the expulsion. The pseudo-principle of the "normative power of facts" is inapplicable in case of genocide or after a crime against humanity. Here the general principle of law (ICJ Statute, Article 38) *ex injuria non oritur jus* (out of a violation of law no right can emerge) takes precedence.

The UN General Assembly, in its Resolution 47/121 of 18 December 1992, categorised "ethnic cleansing", which was then taking place in Yugoslavia, as "a form of genocide".[39] This Resolution was confirmed and strengthened by many subsequent resolutions.[40] Even the ICTY categorised certain acts of "ethnic cleansing" in the former Yugoslavia as genocide, namely the massacre at Srebrenica in 1995. In its judgment in the case of *Bosnia and Herzegovina vs. Federal Republic of Yugoslavia* of 26 February 2007, the International Court of Justice confirmed that the massacre of Srebrenica constituted genocide. On the basis of this judgment, it can be asserted that the expulsion of the Germans, accompanied by hundreds of thousands of murders and rapes, necessarily constituted genocide, since the Russian, Polish, Czechoslovak, Hungarian and Yugoslav politicians and military commanders manifested their intent to destroy, "in whole or in part", the German ethnic group "as such". Moreover, the manner of implementation of the "population transfer" was considerably more severe and inflicted more casualties than the "ethnic cleansing" perpetrated in the former Yugoslavia. Certainly the killings that accompanied the Brünn Death March, the massacres at Nemmersdorf, Metgethen, Allenstein,

[38] Blumenwitz 2002; Ermacora 1992.

[39] UN 1992.

[40] GA Resolution Nos. 48/143 of December 1993, 49/205 of December 1994, 40/192 of December 1995, 51/115 of March 1997.

Marienburg, Saaz, Postelberg, Aussig, Prerau, Filipova and at several thousand other places in addition to the massive number of deaths in the camps at Lamsdorf, Swientochlowice, Theresienstadt, Gakovo, Rudolfsgnad and in several hundred other camps constituted crimes against humanity and were manifestations of genocidal intent.

The current genocide unfolding in Gaza is a form of collective punishment against the entire Palestinian population, who are being blamed for individual crimes committed by Hamas officials. The "intent" to destroy them "in whole or in part" is documented on pages 57–70 of the legal brief presented by South Africa to the International Criminal Court. The provisional measures order of 26 January 2024 is based on this evidence.[41]

CONCLUSION

As the Israeli war on Gaza progresses, it appears more and more that the intent is to ethnically cleanse the area, to force the 2.4 million population of Gaza to migrate to Egypt or Saudi Arabia. The UN Secretary General has called for an immediate ceasefire in Gaza.[42] The High Commissioner for Human Rights Volker Türk is in the Middle East trying to mediate.

Collective guilt does not exist. Collective punishment is contrary to every system of law. Let us hope that the Palestinians and Israelis will find a *modus vivendi,* and that all sides will abandon all thoughts of collective guilt of Palestinians for the crimes committed by Hamas, and the thought of collective guilt of all Israelis for the crimes committed since 1947 against the Palestinian people by successive Israeli governments, and the crimes being committed today by the Netanyahu regime.

What humanity most urgently needs is a change of mindset, a recommitment to the spirituality of the Universal Declaration of Human Rights, a readiness to break the vicious circle of reprisals and counter-reprisals.

41 UN 2024; International Court of Justice (s. a.b).

42 UN 2023b.

In his drama *Piccolomini,* Friedrich von Schiller reminds us: *Das eben ist der Fluch der böse Tat, dass sie fortzeugend Böses muss gebähren.*[43]

That is the curse of evil deeds, that they continue generating evil.

REFERENCES

Alcoberro i Pericay, Agustí (2010): The War of the Spanish Succession in the Catalan-speaking Lands. *Catalan Historical Review,* 3(3), 69–86. Online: https://doi.org/10.2436/20.1000.01.40

Arnold, Richard (2016): *Russian Nationalism and Ethnic Violence. Symbolic Violence, Lynching, Pogrom, and Massacre.* London: Routledge.

Aronson, I. Michael (1990): *Troubled Waters. The Origins of the 1881 Anti-Jewish Pogroms in Russia*. Pittsburgh: University of Pittsburgh Press.

Barron, Bryton ed. (1955): *Foreign Relations of the United States. Diplomatic Papers. The Conferences at Malta and Yalta, 1945*. Washington, D.C.: United States Government Printing Office.

Blumenwitz, Dieter (2002): *Rechtsgutachten über die Verbrechen an den Deutschen in Jugoslawien 1944–1948.* München: Verlag der Donauschwäbischen Kulturstiftung.

Böhme, Kurt (1965): *Gesucht Wird.* München: Deutsches Rotes Kreuz.

Democracy Now (2023): "Politics of Memory": Masha Gessen's Hannah Arendt Prize Postponed for Comparing Gaza to Warsaw Ghetto. *Democracy Now,* 15 December 2023. Online: www.democracynow.org/2023/12/15/politics_of_memory_masha_gessens_hannah

De Spinoza, Benedict (2005): *Ethics.* Ed. and trans. by Edwin Curley. London: Penguin Books.

De Zayas, Alfred M. (1975): International Law and Mass Population Transfers. *Harvard International Law Journal,* 16(2), 207–258.

De Zayas, Alfred M. (1977): *Nemesis at Potsdam. The Anglo-Americans and the Expulsion of the Germans. Background, Execution, Consequences.* London: Routledge.

De Zayas, Alfred-Maurice (1994): A *Terrible Revenge. The Ethnic Cleansing of the East European Germans, 1944–1950.* New York: St. Martin's Press.

[43] *Die Piccolomini – 5. Aufzug, 1. Auftritt.*

De Zayas, Alfred M. (2000): Westphalia, Peace of (1648). In Bernhardt, Rudolf (ed.): *Encyclopedia of Public International Law.* Volume IV. North-Holland: Elsevier, 1465–1469.

De Zayas, Alfred M. (2001): *Heimatrecht ist Menschenrecht. Der mühsame Weg zu Anerkennung und Verwirklichung.* München: Universitas.

De Zayas, Alfred (2012): *50 Theses on the Expulsion of the Germans from Central and Eastern Europe 1944–1948.* Berlin: Verlag Inspiration.

De Zayas, Alfred (2021): Unilateral Coercive Measures Are Illegal and Counter-productive. *Schweizer Standpunkt,* 3 October 2021. Online: https://schweizer-standpunkt.ch/news-detailansicht-en-recht/unilateral-coercive-measures-are-illegal-and-counter-productive.html

Die Piccolomini – 5. Aufzug, 1. Auftritt. Online: www.friedrich-schiller-archiv.de/wallenstein-text/die-piccolomini/5-aufzug-die-piccolomini/5-aufzug-1-auftritt-3/#-google_vignette

Ermacora, Felix (1992): *Die sudetendeutschen Fragen. Rechtsgutachten.* München: Langen Müller.

Fricke, Christel ed. (2011): *The Ethics of Forgiveness. A Collection of Essays.* New York – Abingdon: Routledge.

Glazer-Eytan, Yonatan (2019): Jews Imagined and Real: Representing and Prosecuting Host Profanation in Late Medieval Aragon. In Franco Llopis, Borja – Urquízar-Herrera, Antonio (eds.): *Jews and Muslims Made Visible in Christian Iberia and Beyond, 14th to 18th Centuries.* Leiden: Brill, 40–69.

Gollancz, Victor (1946): *Our Threatened Values.* Published by the author.

Jazairy, Idriss (2019): Unilateral Economic Sanctions, International Law, and Human Rights. *Ethics and International Affairs,* 33(3), 291–302. Online: https://doi.org/10.1017/S0892679419000339

Judge, Edward (1995): *Easter in Kishinev. Anatomy of a Pogrom.* New York: New York University Press.

Kimminich, Otto (1989): *Das Recht auf die Heimat.* Bonn: Kulturstiftung der Deutschen Vertriebenen.

Kimminich, Otto (1990): *Die Menschenrechte in der Friedensregelung nach dem zweiten Weltkrieg.* Berlin: Gebr. Mann Verlag.

LAIQ, Jawid (2023): Two Defiant Ghettoes: Kin of the Oppressed of Warsaw Have Become the Oppressors of Gaza. *Scroll.in,* 12 December 2023. Online: https://scroll.in/article/1059834/two-defiant-ghettoes-kin-of-the-oppressed-of-warsaw-have-become-the-oppressors-of-gaza

Memorandum by Professor A. C. Coolidge. 10 March 1919. The New Frontiers in Former Austria–Hungary. Papers Relating to the Foreign Relations of the United States, the Paris Peace Conference, 1919, Volume XII. Online: https://history.state.gov/historicaldocuments/frus1919Parisv12/d87

REICHLING, Gerhard (1986): *Die deutschen Vertriebenen in Zahlen.* Bonn: Kulturstiftung der Deutschen Vertriebenen.

SCHEFFER, David (2023): Ethnic Cleansing Is Happening in Nagorno-Karabakh. How Can the World Respond? *Council on Foreign Relations,* 4 October 2023. Online: www.cfr.org/article/ethnic-cleansing-happening-nagorno-karabakh-how-can-world-respond

TENORIO, Rich (2021): 20 Years Before the Holocaust, Pogroms Killed 100,000 Jews – Then Were Forgotten. *The Times of Israel,* 21 December 2021. Online: www.timesofisrael.com/20-years-before-the-holocaust-pogroms-killed-100000-jews-then-were-forgotten/

TICEHURST, Rupert (1997): The Martens Clause and the Laws of Armed Conflict. *International Review of the Red Cross,* 37(317), 125–134. Online: https://doi.org/10.1017/S002086040008503X

WEINBERG, Robert (1992): The Pogrom of 1905 in Odessa: A Case Study. In KLIER, John D. – LAMBROZA, Shlomo (eds.): *Pogroms. Anti-Jewish Violence in Modern Russian History.* Cambridge: Cambridge University Press, 248–289.

WEISBROT, Mark – SACHS, Jeffrey (2019): *Economic Sanctions as Collective Punishment: The Case of Venezuela.* Center for Economic and Policy Research. Online: https://cepr.net/images/stories/reports/venezuela-sanctions-2019-04.pdf

WINKLER, Albert (2005): The Medieval Holocaust: The Approach of the Plague and the Destruction of Jews in Germany 1348–1349. *Federation of East European Family History Societies,* 13, 6–24.

YouTube (2021): *Self-determination for Okinawa–Ryukyu.* Interview with Alfred de Zayas, retired UN expert. Online: www.youtube.com/watch?v=DFgGpMiLJvc

Primary sources

1977 Second Additional Protocol to the Geneva Conventions of 1949. Online: https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977?activeTab=undefined

Full text of "The Peace of Utrecht: A Historical Review of the Great Treaty of 1713–14, and of the Principal Events of the War of the Spanish Succession". Online: https://archive.org/stream/cu31924027872021/cu31924027872021_djvu.txt

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949. Online: www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf

IHL Databases (s. a.): *Regulations: Art. 50.* Online: https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/regulations-art-50?activeTab=undefined

International Court of Justice (s. a.a): *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel).* Online: www.icj-cij.org/case/192

International Court of Justice (s. a.b): *Application Instituting Proceedings.* Online: www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf

International Court of Justice (1996): *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro).* Judgment of 11 July 1996. Online: www.icj-cij.org/case/91/judgments

International Military Tribunal (Nuremberg), Judgement of 1 October 1946. Online: www.legal-tools.org/doc/45f18e/pdf/

Statute of the International Court of Justice. Online: www.icj-cij.org/statute

The Practical Guide to Humanitarian Law (s. a.): *Population Displacement.* Online: https://guide-humanitarian-law.org/content/article/3/population-displacement/

UN (1992): *The Situation in Bosnia and Herzegovina: Resolution Adopted by the General Assembly.* Online: https://digitallibrary.un.org/record/158781

UN (2023a): UN Expert Calls for Declaration on the Right to International Solidarity. *Press Release,* 23 October 2023. Online: www.ohchr.org/en/press-releases/2023/10/un-expert-calls-declaration-right-international-solidarity

UN (2023b): Secretary-General Urges Security Council to Call for Ceasefire in Gaza, Declaring That Humanitarian Situation Is Now at 'Breaking Point'. *Press Release,* 8 December 2023. Online: https://press.un.org/en/2023/sc15518.doc.htm#:~:text=The%20Secretary%2DGeneral%20went%20before,of%20the%20United%20Nations%20Charter

UN (2024): UN World Court Calls for Prevention of Genocidal Acts in Gaza. *UN News,* 26 January 2024. Online: https://news.un.org/en/story/2024/01/1145937

UN (s. a.a): *Sanctions Research Platform.* Online: https://sanctionsplatform.ohchr.org/search?f1=author&as=1&sf=title&so=a&rm=&m1=e&p1=UN.+General+Assembly+%2878th+sess.+%3A+2023-2024%29&ln=en

UN (s. a.b): *About International Solidarity and Human Rights.* Online: www.ohchr.org/en/special-procedures/ie-international-solidarity/about-international-solidarity-and-human-rights

UN (s. a.c): *About the Nakba*. Online: www.un.org/unispal/about-the-nakba/

UN General Assembly Resolution 40/192 of December 1995

UN General Assembly Resolution 48/143 of December 1993

UN General Assembly Resolution 49/205 of December 1994

UN General Assembly Resolution 51/115 of March 1997

UN General Assembly Resolution 77/214

UN General Assembly Resolution 78/202

UN Human Rights Council Resolution 48/7

UN Human Rights Council Resolution 52/13

UN Human Rights Council Resolution 54/15

I. Collective Guilt in Czechoslovakia

Jan Rychlík

The Confiscation and Restitution of Agricultural Property of Persons of German and Hungarian Nationality in Czechoslovakia

By the Decree of the President of the Republic of 21 June 1945 (No 12/1945 Coll. of Laws), the agricultural property of all persons of Hungarian and German nationality, irrespective of their citizenship, was confiscated with immediate effect and without compensation. The decree was valid only in the Czech lands. In Slovakia according to the Decree of the Presidium of the Slovak National Council of 27 February 1945 (No 4/1945 Coll. of Decrees of SNR), only the agricultural property of persons of German ethnic origin was confiscated; agricultural property of persons of Hungarian ethnic origin was confiscated only if they did not have Czechoslovak citizenship on 1 November 1938 and owned more than 50 hectares of land. Later, however, the confiscation was extended to all land owned by Hungarians in Slovakia (Decree No 64/1946 Coll. SNR). In Autumn 1948, by Decree No 26/1948 Coll. SNR, the land up to 50 hectares was to be returned to Hungarians, whose Czechoslovak citizenship was restored. Due to the forthcoming forced collectivisation, this decree was only partly realised. By Act of 21 May 1991 "On the regulation of ownership relations to land and other agricultural property" (No 229/1991 Coll.), the restitution applied only to property transferred to the state or other legal persons between 25 February 1948 and 1 January 1990. By this act, the majority of Hungarians and Germans were excluded from restitution. But in Slovakia, restitution of land belonging originally to Hungarian owners up to 50 hectares was possible according to Decree 26/1948, which remained in force.

DOI: https://doi.org/10.36250/01228_03

FIRST LAND REFORM

To understand the issue of confiscation and restitution of agricultural property in former Czechoslovakia, some historical background must first be clarified. The hegemon of political life in inter-war Czechoslovakia was the "Republican Party of Farmers and Peasants", generally referred to as the "Agrarian Party", which was its original name in the period before the First World War. On 16 April 1919, the Agrarian Party pushed through the Agrarian Reform Act (No 215/1919 Coll.),[1] by which all arable land belonging to a single owner or to the same co-owners (e.g. spouses) with an area exceeding 150 hectares, or all land (forests, pastures, pond land, etc.) with an area exceeding 250 hectares, was seized by the state. This land was parcelled out and allocated mainly to peasants/farmers in return for compensation, while some of it was also allocated as larger estates. Until the land was taken over and parcelled out by the state, the original owner could continue to farm it, but could not sell or mortgage it without the consent of the State Land Office (*Státní pozemkový úřad* – SPÚ) and had to pay a special tax on it. The original owner was therefore still listed in the land register as the legal owner, but with a note that the land had been seized. After the state took over the land, the original owners were entitled to financial compensation, which was, however, below the market price. The land reform was never completed. In the mid-1930s, when less than half of the land seized by the state had been taken over, the reform was suspended. The land not yet taken over by the state and not distributed was left to the original owners for a period of twenty to thirty years, with restrictions on ownership, and only after that time was it to be eventually taken over and distributed.[2]

The reform had two goals: it was to create strong and self-sufficient family farms whose owners would be the voter base of the agrarian party, and it was to break up large landownership. Although outwardly the reform did not have a nationalist sting, in practice it mainly affected former German and Hungarian noble landlords. In the south of Slovakia and the southwest of

[1] Collection of Laws (Sbírka zákonů – Sb).

[2] Rychlík 1988: 135–136.

the former Subcarpathian Rus (i.e. in the southwest of the territory of today's Ukrainian Transcarpathia), the national focus of the reform was quite obvious: land was allocated mainly to Czech and Slovak colonists in order to break up the compact Hungarian settlement.[3]

After the Vienna Award (2 November 1938), the territory of southern Slovakia and southern Subcarpathian Rus fell back to Hungary, then on 15 March, after the temporary dissolution of Czechoslovakia, Hungary annexed the rest of Subcarpathian Rus. The Hungarian Government revised the Czechoslovak land reform in the acquired territories. Most of the Czech and Slovak colonists were expelled from the territory, and their landed property was transferred to the Hungarian state. The Ministry of Agriculture had several options for dealing with the land thus acquired: it could return it to the original owner from whom it had been taken by the Czechoslovak reform, it could reallocate it, or it could confirm the original allocation. Even this revision of the land reform was never completed.[4] The revision was proclaimed *null and void* after 1945, when the ceded territories returned to restored Czechoslovakia.

CONFISCATIONS AFTER THE SECOND WORLD WAR

The possibility of a new land reform, which would mainly affect German and Hungarian owners, was discussed by the exiled Czechoslovak Government in London during the war. On 19 September 1944, the Minister of Agriculture, the Slovak agrarian Ján Lichner, submitted a draft decree on the establishment of a land office, with the explanatory memorandum speaking of the need for a new regulation of land relations. The proposal also received support from the exiled leadership of the Communist Party of Czechoslovakia (KSČ) in Moscow, led by Klement Gottwald. The reform was to be aimed at the land ownership of "Germans, Hungarians and traitors to the nation" in the first phase, and only later at the land of other owners above a certain area. The program of radical

[3] Simon 2008: 229–247.

[4] Rychlík 1989: 194–196.

nationalist agrarian reform thus conceived was included in the program of the first post-revolutionary coalition government of the National Front, which was announced in Košice on 5 April 1945.

In 1945–1946, the state law connection of Slovakia with the Czech lands was relatively loose, which was also reflected in the legislative sphere. Different regulations regarding land confiscation were in force in the Czech lands than those in Slovakia. In the Czech lands, the Decree of the President of the Republic of 21 June 1945 (No 12/1945 Coll.) was in force, according to which the agricultural property of all persons of Hungarian and German nationality (e.g. nationality in the ethnic sense), irrespective of their citizenship, traitors and enemies of the nation, and joint-stock or other companies (in practice: any legal persons) serving the German war effort or "fascist and Nazi purposes" was confiscated with immediate effect and without compensation. In order to determine the German or Hungarian nationality of an owner, the declaration of nationality in any census after 1929 was decisive. Only persons of German and Hungarian nationality (e.g. of German and Hungarian ethnic origin[5]) who had taken an active part in the struggle for the restoration of the independence and territorial integrity of the Czechoslovak Republic were exempted from confiscation. It was therefore not enough for persons to have behaved loyally towards the Czechoslovak Republic, and even mere punishment by the occupying power was not enough. In this respect, the decree was much stricter than the subsequent Constitutional Decree of 2 August 1945 (No 33/1945 Coll.) on the regulation of the citizenship of persons of German and Hungarian nationality. According to this decree, persons who had become citizens of the German Reich or the Kingdom of Hungary during the period of non-freedom (e.g. between 29 September 1938 and 4 May 1945) automatically lost their Czechoslovak citizenship.[6] However, there was an exception for persons

[5] The term "nationality" (národnost/národnosť) means in Czech and Slovak ethnicity or ethnic origin, not citizenship (in Czech and Slovak: občanství/občianstvo).

[6] Germans and Hungarians living in the then independent Slovakia during the Second World War usually had Slovak citizenship, but this did not help them after the war. Decree No 33/1945 Coll. explicitly stipulated that persons of German and Hungarian nationality,

who had accepted citizenship under duress and against their will, and for persons who had themselves taken part in the struggle for liberation or suffered persecution at the hands of the occupying power; in addition, persons who had been deprived of citizenship could apply for its restoration. Also, Decree 108/1945 Coll. concerning confiscation of other (non-agricultural) property did not require active participation in the liberation struggle to be exempted from confiscation.[7]

The situation in Slovakia was somewhat different. It was necessary to somehow reflect the fact that Slovakia was an independent state in 1939–1945, it was not occupied by the German army until the end of August 1944, and in the aftermath of the outbreak of the Slovak National Uprising (29 August 1944), local Hungarians and Germans fought in the rebel army and partisan units. According to the Decree of the Presidium of the Slovak National Council (*Slovenská Národná Rada* – SNR[8]) of 27 February 1945 (No 4/1945 Coll. SNR), the agricultural property of persons of German nationality, regardless of citizenship, and of persons of Hungarian nationality was confiscated if they did not have Czechoslovak citizenship on 1 November 1938 and owned more than 50 hectares of land. The property was therefore confiscated mainly from Hungarians who came to Slovakia after the Vienna Award and the annexation of southern Slovakia to Hungary (these persons were deported to Hungary as undesirable foreigners after 1945). Persons of German nationality could also keep their land property if they took an active part in the anti-fascist resistance. The property of traitors to the Slovak nation was confiscated, which mainly

unless they had lost their Czechoslovak citizenship by being granted German or Hungarian citizenship, would lose their Czechoslovak citizenship on the date the decree came into force, i.e. on 2 August 1945.

7 Rychlík 1998: 11.

8 The Slovak National Council (*Slovenská národná rada* – SNR) was originally founded as an underground organisation during the Second World War; after the outbreak of the Slovak National Uprising, it functioned as a revolutionary parliament and after 1945 as a legislative body for Slovakia. After the adoption of the Constitution of the Slovak Republic, it was transformed into the National Council of the Slovak Republic *(Národná rada Slovenskej republiky)* on 1 September 1992.

meant persons who, after the occupation of Slovakia by the German army, actively collaborated with the German military authorities or actively fought against the rebel army. Decree No 4/1945 Coll. SNR was further supplemented and partially amended by Decree No 104/1945 Coll. SNR. According to this decree, the outline of which was drawn up by Martin Kvetko, the commissioner (i.e. minister of the regional Slovak government) for agriculture and land reform, a maximum of 50 hectares could be exempted from confiscation if the land was owned by a mixed-nationality family.[9]

The Czechoslovak Government originally envisaged the forced displacement of both ethnic Germans and ethnic Hungarians, but the Victorious Powers did not agree with the displacement of Hungarians. The matter was to be resolved through bilateral negotiations. On 27 February 1946, a Czechoslovak–Hungarian agreement on population exchange was signed, according to which the Slovak Hungarians were to be evicted to Hungary in exchange for Slovaks living in Hungary, whose number was estimated by the Slovak authorities to be at least half a million. The Slovak National Council therefore considered that the property rights of ethnic Hungarians should no longer be taken into account. Therefore, by Decree No 64/1946 Coll. SNR the Decrees No 4/1945 Coll. SNR and 104/1945 Coll. SNR were amended, and all land ownership of Hungarians was extended by confiscation.

On 26 May 1946, elections to the Constituent National Assembly were held in Czechoslovakia. In the Czech lands, the Communist Party of Czechoslovakia (*Komunistická strana Československa* – KSČ) won the elections, winning over small peasants and landless farmers by rationing land in the borderlands, while in Slovakia, the right-wing Democratic Party (*Demokratická strana* – DS), which was essentially the Slovak branch of the pre-war agrarian party, won. After the DS victory in Slovakia, the central government in Prague, in which the Communists had the main say, severely restricted the autonomy of the Slovak authorities. On 11 July 1947, the Constituent National Assembly (ÚNS[10])

[9] Rychlík 1993: 398.

[10] The Constituent National Assembly was to draw up a new "people's democratic" constitution to replace the existing constitution of 29 February 1920. The new constitution was

approved a set of laws submitted by the Minister of Agriculture, the Slovak communist Július Ďuriš. The most important of these was the Law on the Revision of the Land Reform (No 142/1947 Coll.), according to which the land left to the original owners for twenty to thirty years during the pre-war land reform was to be confiscated and parcelled out. Ten months later, on 25 February 1948, the Communists staged a coup d'état in Czechoslovakia and established their unlimited dictatorship. On 21 March 1948, the obedient remainder of the ÚNS deputies voted for two laws: an amendment to the law on the revision of the land reform (No 44/1948 Coll.) and on the new land reform (No 46/1948 Coll.). According to these laws, it was possible to confiscate land over 50 hectares or any land on which the owner did not work himself. The nationality of the owner no longer played any role.[11]

Meanwhile, attempts to exchange the population between Czechoslovakia and Hungary failed: it turned out that the number of Slovaks in Hungary was much smaller than the (Czecho)Slovak authorities had claimed. In addition, the Slovak peasants in Hungary, living mainly in the fertile Békés County, were usually already integrated into the Hungarian environment and showed little interest in moving to Czechoslovakia. Those who came to Slovakia did not end up getting any land anyway. Since Czechoslovakia could only evict as many Hungarians as Slovaks coming from Hungary to Slovakia, it was obvious that the vast majority of Hungarians would remain in Slovakia. There was a need to regulate their status and property relations in some way. The situation was intolerable: although Hungarians continued to live in their houses and work in their fields, both, including virtually all movable property, belonged *de jure* to the state. Moreover, they lost their Czechoslovak citizenship and thus all political rights and the possibility of working in the state or public administration or state enterprises. That is why, first of all, a government decree of 13 April 1948 (No 76/1948 Coll.) extended the period within which persons deprived of Czechoslovak citizenship could apply for its reinstatement. By Act

approved on 9 May 1948, after the communist takeover. It remained in force until 11 July 1960, when it was replaced by the so-called socialist constitution.

[11] Rychlík 1993: 407–409.

of 25 October 1948 (No 245/1948 Coll.), all persons of Hungarian nationality with permanent residence in the territory of the Czechoslovak Republic were reinstated with Czechoslovak citizenship if they had held it on 1 November 1938 and were not citizens of another state. By Decree No 26/1948 Coll. SNR of the Board of Trustees (i.e. the Slovak regional government), persons of Hungarian nationality were restored land and other agricultural property up to an area of 50 hectares, provided that it was in the possession of the state. However, other immovable property not directly related to agricultural production often had to be purchased by the original Hungarian owners at the residual price from the National Restoration Fund (*Fond národní obnovy* – FNO), which administered unallocated confiscations.

The regulation of the status of the rest of the German minority in Czechoslovakia took a different course. No property was returned to them; they had to buy back their original houses from the FNO. It was only in 1953 that Czechoslovak citizenship was returned to all ethnic Germans living on the territory of Czechoslovakia by Act No 34/1953 Coll.

However, the return of some of the confiscated agricultural property to the Hungarian owners did not take place in practice anyway, because before this could happen, forced collectivisation began in Czechoslovakia in 1949. Virtually all the inhabitants of Czechoslovakia had definitively lost their agricultural property by 1960, and their nationality was no longer relevant.[12]

Communist Czechoslovakia was one of the countries with developed agriculture. Czechoslovakia maintained only a minimal private sector in agriculture (unlike Poland and Yugoslavia). The main type of agricultural enterprise was the Unified Agricultural Cooperative or JZD (in Slovakia called the Unified Peasant Cooperative – JRD), but there were also a large number of state farms. The JZDs were in fact not cooperatives in the true sense of the word, as their activities were controlled by the state.[13]

[12] Rychlík 2014: 200.

[13] Act No 122/1975 Coll., § 2. Although Act No 90/1988 Coll. abolished direct proceedings, the state reserved the right of control (§ 5), which was often the same in practice.

Under communism, both JZD and state farms operated on land belonging to the state and on land owned by private individuals. State land in Czechoslovakia was already quite extensive before the communist period. After the establishment of Czechoslovakia, the state owned the former imperial grand estates and the land property of the Habsburg–Lorraine family, which was confiscated without compensation. The Land Reform Act of 1919 also allowed the state to keep the confiscated land for itself if it was not allocated to eligible claimants. Similarly, land confiscated and unallocated from land reforms carried out between 1945 and 1948 was transferred to the state. In the 1950s, the state land fund then grew to include confiscated land of persons convicted of crimes against the state, whether real or fabricated, and land and other agricultural property confiscated through administrative proceedings for failure to meet the obligatory supplies of agricultural products.

Land in communist Czechoslovakia was not allowed to be alienated, i.e. the owner was not allowed to sell it or donate or encumber it. He could only transfer it to the Czechoslovak state. Yet in Czechoslovakia, unlike in the USSR, land as a whole was not expropriated.[14] During the forced collectivisation in the 1950s, farmers joined cooperatives with land, but nominally it remained their property and passed to their legitimate heirs. According to a government decree of 21 September 1955, any owner of land who did not cultivate it himself was obliged to hand it over to a socialist organisation for free use, i.e. usually a JZD or a state farm, while his *de jure* ownership rights continued.[15] Therefore, even by leaving the village for the town, or by leaving the cooperative or state farm for another occupation, the property rights of the original owner and his heirs did not cease unless he expressly transferred the land to the state. It is true, however, that the state authorities tried to expand the state land fund under various pretexts and, in particular during inheritance proceedings, persuaded heirs to voluntarily give up land, from which they had no use anyway, to the state.

[14] Act No 123/1975 Coll. as amended by § 63 of Act No 90/1988 Coll.
[15] Government Decree No 50/1955 Coll. Cf. Act No 123/1975 Coll.

RESTITUTION OF LAND AND OTHER AGRICULTURAL PROPERTY AFTER 1989

After the fall of the communist regime in November 1989, the issue of restitution of agricultural property was not initially on the agenda. It was not until the beginning of March 1991 that the government submitted to the Federal Assembly[16] a draft law "on the regulation of the relationship to land and other agricultural property".[17] This envisaged that former owners or their heirs would be restored to ownership of land or other agricultural property if they had lost it after the February coup as a result of a decree of forfeiture, if the decree had been annulled, or if the property had been confiscated in the land reform but the owners had not been paid the compensation envisaged by law. Land could not be transferred to foreigners, and not even to Czechoslovak citizens living permanently abroad: the condition for a restitution claim was Czechoslovak citizenship and permanent residence in Czechoslovakia (the requirement of permanent residence was later abolished by the Constitutional Court as being contrary to the equality of citizens before the law). The return of landed property was possible only up to the area determined by the 1919 land reform, i.e. up to 150 hectares of agricultural land or 250 hectares of land in general, and only if the land was owned by the state or a municipality and if it was not built upon,

[16] The Federal Assembly (in Czech: *Federální shromáždění* – FS, in Slovak: *Federálne zhromaždenie* – FZ) was established as a result of the federalisation of the Czechoslovak state in 1968 and replaced the existing National Assembly with effect from 1 January 1969. It had two chambers: the House of the People (in Czech: *Sněmovna lidu* – SL, in Slovak: *Snemovňa ľudu* – SĽ), which originally consisted of 200 (but from 1990 only 150) members elected nationwide, and the House of Nations (in Czech: *Sněmovna národů,* in Slovak: *Snemovňa národov* – SN), which consisted of 75 members each in the Czech and Slovak Republics. The approval of both chambers was required for the adoption of a law, and for a given area of legislation, a majority of both the Czech and Slovak parts of the House of Nations had to vote in favour of the proposal (the so-called principle of minority veto). The Federal Assembly ceased to exist with the dissolution of the Czechoslovak state on 31 December 1992.

[17] Archives of the Parliament of the Czech Republic (AP CR), f. FS ČSFR, VI. election period, prints, print 393.

and in case of buildings only if they had not lost their original structural and technical character through reconstruction. If it was not possible to return the original land, other land owned by the state was to be transferred to the owner or monetary compensation was to be paid. The original owner had to claim the return of the land within three years.

The issue of the relationship to former owners with Hungarian nationality in Slovakia, who, like ethnic Germans, lost their property before 25 February 1948, e.g. before the communist coup, became a problem with the upcoming land law. It got stuck on the political principle of not restituting property that had been transferred to the state before the February communist takeover. The principle that the date of 25 February 1948 was an insurmountable limit for restitution, which was enshrined in all restitution laws, was a categorical requirement of the federal government of Marián Čalfa, which did not intend to interfere with the confiscation decrees of the early post-war period (inaccurately referred to as the "Beneš Decrees").[18] The problem was, however, much more complex. First of all – as we already know – the post-war decrees of the President of the Republic laid down different conditions for retaining or returning Czechoslovak citizenship to persons of German or Hungarian nationality, and different conditions for retaining or returning property to such persons, whether landed or otherwise. Therefore, many Germans or Hungarians regained their Czechoslovak citizenship, but not their property.[19]

The Czech public was, of course, particularly sensitive to the issue of the German minority, and mob psychosis caused people to lose sight of the fundamental fact that the issue was not the property of those Germans who had been forced to leave for Germany, but only the few members of the German minority who remained in Czechoslovakia and had Czechoslovak citizenship. Even more complicated was the position of the Hungarian minority, which

[18] The term is factually incorrect, because although President Edvard Beneš issued the decrees in his own name, they were prepared and approved by the government and, in Slovakia, the consent of the Slovak National Council (the Slovak legislative body), resp. of its presidency, was required.

[19] Rychlík 1998: 11–12.

remained in Czechoslovakia as a whole and regained Czechoslovak citizenship *en masse* in 1948. Members of the Hungarian minority, unlike the Sudeten Germans, could hardly be accused of any betrayal of the republic, because they behaved loyally in the autumn of 1938. The argument that Germans had taken German citizenship and served in the German army during the Second World War was often demagogically used against the restitution claims of the members of the German minority, although ethnic Germans were granted Reich citizenship automatically and could not avoid serving in the German army. In case of Hungarians, however, this was not applicable at all: in fact, ethnic Slovaks living in southern Slovakia also obtained Hungarian citizenship and served in the Hungarian army, notwithstanding the fact that Slovakia was an independent state during the war and the Slovak army also fought against the USSR on the Eastern Front. Nevertheless, the Slovaks did not have their land or other property confiscated after the war, but only after 1948, and they could now claim their property back. But these obvious facts were apparently noticed by very few people in Slovakia at the time. Just as in the Czech lands there were fears of returning property to the Sudeten Germans, in Slovakia, there existed a mob psychosis, fanned by nationalists and communists alike, with both talking about "returning property to Hungarian irredentists".

Regarding the problem of the Hungarian minority, already at the meeting of the Special Agricultural Commission in early 1991, the Hungarian deputies of the coalition parties *Spolužitie* and *Maďarské kresťanskodemokratické hnutie* (MKDH)[20] demanded that the property of Hungarians confiscated between 1945 and 1946 should be included in the restitution, provided that the original owner had not committed any crime against the Czechoslovak state and had regained Czechoslovak citizenship. The same proposal was later presented in the constitutional law committees of both houses. Members of the right-wing Slovak National Party (*Slovenská národná strana* – SNS) opposed the motion and began to loudly use terms such as "irredentism",

[20] Hungarian name: Együttélés and Magyar Kereszténydemokrata Mozgalom.

"fascism", etc., without commenting on the substance of the matter. On the other hand, the Slovak historian Ján Mlynárik, a member of the Public Against Violence party (*Verejnosť proti násilu* – VPN), suggested that the restitution should include former citizens of not only Hungarian but also German nationality, and of course only those who had not committed crimes against the Czechoslovak state. A part of the VPN deputies (the part that later formed the Movement for a Democratic Slovakia – Vladimir Mečiar's HZDS, e.g. *Hnutie za demokratické Slovensko*) demanded that the Federal Assembly should not deal with the issue at all and leave the whole matter to the Czech and Slovak National Councils, i.e. that the restitution problem should be dealt with in both republics on the basis of local legislation.[21] This was rejected by the Hungarian deputies and the liberals of the VPN, who were well aware that such a proposal was impassable in the SNR.

A solution was eventually found, albeit a compromise one. The historian Jan Rychlík, called in as an expert (the author of this study), pointed out that the decree of the Board of Trustees No 26/1948 Coll. SNR from autumn 1948, according to which the original owners were to be returned property in the ownership of the Czechoslovak state up to an area of 50 hectares, provided that their Czechoslovak citizenship was returned to them, was technically still in force. Therefore, reference to the decree of the Board of Trustees was to be incorporated into the law, i.e. those members of the Hungarian minority who should have been returned their property already in 1948 were included in the restitution. Other cases were to be dealt with by the laws of the national councils, i.e. the republican parliaments, which would be expressly empowered

[21] As a result of the federalisation of the Czechoslovak state, the Czech National Council (*Česká národní rada* – ČNR) was established in the summer, alongside the existing Slovak National Council (*Slovenská národná rada* – SNR), as the legislative body of the Czech Republic. By analogy, from 1 January 1969, both republics also acquired their governments as executive bodies. After the division of Czechoslovakia, the existing Czech National Council became the Chamber of Deputies of the Parliament of the Czech Republic.

by the Land Act.[22] The chairman of the agricultural commission, MP Václav Humpál, put the proposal to the vote, and all but one of the SNS MPs were in favour of including a reference to Decree No 26/1948 Coll. SNR in the text. As regards the authorisation for the national councils, the MKDH MPs insisted that restitution should be dealt with directly by federal law, and so their proposal was included in the minutes first.

About a month later, a joint meeting of the constitutional law committees of the House of People and the House of Nations was held under the chairmanship of both its chairmen, Vladimir Mikule and Milan Čič. At this meeting, a newly formulated Article 21 was included in the text, based on the demands of the Hungarian Independent Initiative (*Maďarská nezávislá iniciativa* – MNI),[23] to include members of the Hungarian minority in general, provided they were Czechoslovak citizens and had not committed crimes against the Czechoslovak state, in the restitution. During the Constitutional Law Committees' deliberations on 25 March, an expanded paragraph was again proposed in the text, extending restitution to persons of German nationality/Czechoslovak citizens. These were persons whose landed property had been confiscated under Decree No 12/1945 Coll. but who had not lost their Czechoslovak citizenship under Decree No 33/1945 Coll. or whose citizenship had been restored no later than under Act No 34/1953 Coll. and who were permanently resident in the territory of the Czechoslovak Federal Republic on the date the law came into force. The restitution of land property of persons of Hungarian nationality whose land was confiscated in 1945–1946 was similarly dealt with, provided that they had not lost their citizenship or had acquired it retroactively at the latest pursuant

[22] I myself have styled the relevant paragraph as follows: "The ČNR and the SNR shall regulate by law the manner of restitution of persons of Hungarian and German nationality if they have never committed any crime against the Czechoslovak state, have retroactively acquired Czechoslovak citizenship pursuant to Act No 245/1948 Coll. or Act No 34/1953 Coll., unless this has already been done earlier, and were living permanently on the territory of the Czechoslovak Republic on the date of the entry into force of this Act."

[23] In Hungarian: *Független Magyar Kezdeményezés* (FMK). MNI–FMK changed into Hungarian Civic Party (*Maďarská občianská strana – Magyar Polgári Párt* – MOS–MPP) in 1992.

to Act No 245/1948 Coll. It did not pass during the vote, however, due to the differing opinions of the constitutional law committees of the two chambers, and was therefore not included in the final text. On 26 March 1991, a meeting was held on the final wording of the Government's draft Land Act, which finally included only a reference to the validity of the Regulation of the Board of Trustees No 26/1948 Coll. SNR. One of the rapporteurs announced that the text had been discussed by the Government of the Slovak Republic and that it agreed with the solution.[24]

Already at the 12th meeting of the Slovak National Council, some deputies asked for clarification as to how it was possible that, without the knowledge of the Slovak National Council and the Slovak Government, an amendment had been added to the draft law on the regulation of land ownership relations, shifting the limit of restitution in Slovakia from 1948 to 1945. The Slovak Government discussed the matter on 26 March. Prime Minister Vladimír Mečiar informed the ministers in a completely tendentious manner: he did not say that the proposal was to concern only those citizens of Hungarian nationality whose land had already been legally returned by the post-February Board of Trustees. Nevertheless, the ministers were not unanimous in the vote, and at least part of the government agreed with the solution,[25] which apparently gave rise to the distorted information presented in the Constitutional Law Committees of the Federal Assembly that the Slovak Government agreed with the proposal. However, at a press conference after the Slovak Government meeting on 26 March 1991, Mečiar accused the "federal authorities" of having added, without the knowledge of the SNR and the Slovak Government, §21 to the government's draft land law, according to which it was proposed to revise the confiscation decrees after 1945, which would supposedly result in the return of property to Germans, Hungarians and national traitors. Moreover, the proposal was said to concern only the Slovak Republic. Mečiar, who spoke of an attempt to "rehabilitate fascism", once again demagogically used the "Hungarian card" in his fight against the Federal Assembly.

[24] Rychlik 1991: 6.

[25] Lidove noviny 1991: 2.

It goes without saying that the Hungarian Independent Initiative, whose political committee met on 27 March 1991, the day after the Slovak Government met, publicly opposed Mečiar's claim through its secretary-general, Károly Tóth.[26] Andrej Javorský's commentary "Who Hunts in the Paragraphs?" in *Verejnosť,* representing the position of the VPN, rejected Mečiar's claim of "rehabilitation of fascism" and set the matter straight.[27] But regardless of this, the Federal Assembly was discredited in the eyes of a part of the Slovak public as a body that favoured Hungarians and wanted to return land to the Hungarian nobility and irredentists.

The dispute over the final wording of the draft law could not be resolved in committee, and therefore it was put back on the agenda of the plenary. The Land Act was discussed by the Federal Assembly at the 14th joint session of the House of Peoples and the House of Nations on 5 April 1991 (print 547).[28] The bill did not pass, and the meeting finally decided to reconsider the bill in the Economic Committee with amendments. Eventually, on 21 May 1991, the proposal was again on the agenda of the 5th day of the 15th session of the Federal Assembly,[29] which on the same day approved the Law "On the regulation of ownership relations to land and other agricultural property" (No 229/1991 Coll.). In terms of the concept and scope of property subject to restitution, the law was a compromise: the obliged persons were the state or a legal entity, except for enterprises with foreign participation or foreign States. The scope of the persons entitled was extended to siblings or their children if there were no living heirs in the direct line. The condition was Czechoslovak citizenship and permanent residence in the territory of the Czech and Slovak Federative Republic. Restitution applied only to property transferred to the state or other legal persons between 25 February 1948 and 1 January 1990, in an exhaustively defined manner, primarily by confiscation,

[26] Tóth 1991: 2.
[27] Javorský 1991: 2.
[28] Minutes of the 14th joint meeting of the SL and SN, May 1991.
[29] Minutes of the 15th joint meeting of the SL and SN, 21 May 1991.

donation or distress sale, or deprivation without compensation. Land could not be handed over if it had been built on, except if the building did not hinder agricultural production, if a right of personal use had been established over the land (which, in the communist period, actually replaced the ownership right of the user), or if there was a garden or cottage colony, physical education and sports facilities, or a cemetery on the land. In such a case, alternative land could be provided. Other agricultural property that could not be returned was eligible for compensation. As regards the dispute concerning the claims of the Hungarian minority in Slovakia, although it did not make it into the law, it was settled by reference to the inviolability of any other legislation, "e.g. the Regulation of the Board of Trustees No 26/1948 Coll. SNR". The law empowered the national councils to enact their own laws to deal with the partial redress of property injustices according to the regulations in force in each republic and thus affecting Germans and Hungarians. Agricultural cooperatives were not affected by the law: their transformation was left to a separate law.[30]

It soon became apparent that the path outlined by the law to redress the property injustices of the Hungarians was not viable. As a rule, members of the Hungarian minority did not get their land or other agricultural property back, because the land registers noted that it had been confiscated on the basis of a 1945–1946 SNR decree as the land of traitors or enemies of the state. This was interpreted by the land authorities as meaning that the former owners were guilty of crimes against the Czechoslovak state and were therefore not entitled to restitution. The Land Act had, in fact, more flaws. On 18 February 1992, the issue of land restitution was therefore referred back to the plenary of the Federal Assembly.[31] This time the passions had cooled down. In particular, the amendment to the law abolished the restriction that restitution was to apply only to up to 150 hectares of arable land or 250 hectares of land in general. Thus, even land seized under the First Land Reform Act was to be restored if

[30] Act No 42/1992 Coll. Cf. also Statutory Measure of Federal Assembly No 297/1992 Coll. and Act No 496/1992 Coll.

[31] Minutes of the 20th joint meeting of the SL and SN, 18 February 1992.

the owner had it registered in his name in the land register. It should be added that the Democratic Left Party (*Strana demokratickej ľavice* – SDĽ) and HZDS disagreed with this provision and, after the establishment of the independent Slovak Republic, pushed for the restriction of restitution to 150 and 250 hectares respectively.[32] The restitution of land where this was to be done under the 1948 decree of the Board of Trustees was directly included in the amendment. In addition, the law directly empowered the Czech National Council to adopt a law restoring property to persons of German nationality, provided that they had not offended against the Czechoslovak state, were permanently living in the territory of the Czechoslovak Republic, and had regained Czechoslovak citizenship by 1953 at the latest.[33] Although the power for the SNR to deal with the restitution of the property of persons of Hungarian nationality who were not covered by the provisions of Decree No 26/1948 Coll. SNR was not expressly included in the amendment, nothing prevented the SNR from adopting such a law. However, nothing of the kind occurred.

The ethnic aspects of the restitution process were again evident in mid-April. On 14 April 1992, the plenary session of the Federal Assembly decided on another amendment to the Land Act, this time submitted as a motion by 62 right-wing deputies, mainly from the Christian Democratic Party (*Křesťansko-demokratická strana* – KDS), the Christian Democratic Union – Czechoslovak People's Party (*Křesťansko-demokratická unie – Československá strana lidová* – KDU–ČSL), and the Christian Democratic Movement (*Kresťansko-demokratické hnutie* – KDH).[34] The proposal was intended to extend restitution to churches and religious societies, since in the original Act No 229/1991 Coll., such land was blocked until a special legal norm was issued. During the discussion, an interesting point emerged: the proposal did not address the restitution claims

[32] Act No 186/1993 Coll. SR (Collection of Laws of the Slovak Republic – *Z. z., Zbierka zákonov Slovenskej republiky*).

[33] Act No 93/1992 Coll. I personally formulated the mandate for the CNR, and it was identical to the one I had proposed a year earlier in the Constitutional Law Committees of the FS. See Rudé právo 1992: 1–2; Adamičková–Könige 1992: 1–2.

[34] Minutes of the 22nd joint meeting of the SL and SN, 14 April 1992.

of the Slovak Evangelical Church of the Augsburg Confession, the Reformed (Helvetic) Church (Calvinists) and the Jewish Religious Community. It also quickly became clear why: the property claims of the Slovak Protestants could not be resolved without simultaneously addressing the claims of the Reformed Church (Calvinists). However, this church in Slovakia consisted of 90% ethnic Hungarians,[35] and the property of the church was mostly confiscated as "Hungarian" already in 1945–1946. No Slovak political party wanted to hear anything about its restitution. The restitution of the property of the Jewish Religious Community in turn reopened the question of Aryanisation under the Slovak state. A number of people were involved, including the Bishopric of Spiš, headed by Bishop Ján Vojtaššák.[36] There was no willingness among the Czech MPs – with the exception of the Christian parties – to restitute church property. It was a bill for which the minority veto did not apply during the vote, and a simple majority of the deputies of both houses was sufficient for approval. However, the Catholic Church's restitution claims were opposed not only by the deputies of the OH, HZDS and SDĽ, who claimed that the property of the Catholic Church originally belonged to the state,[37] but also by five Hungarian deputies, who explicitly conditioned their support for the proposal on the extension of restitution to other churches in Slovakia. The motion by 62 MPs was rejected. The restitution of property to the churches

[35] Pešek–Barnovský 1997: 17–18; Pešek–Barnovský 1999: 28.

[36] In the trial against Bishops Ján Vojtaššák, Michal Buzalka and Pavel Gojdič, which took place on 10–15 January 1951 before the State Court in Bratislava, Vojtaššák was accused of having acquired the Baldov Spa by means of Aryanisation. Vojtaššák defended himself by saying that it was a purchase for the Bishopric of Spiš. See *Proces proti vlastizradným biskupom Jánovi Vojtaššákovi, Michalovi Buzalkovi a Pavlovi Gojdičovi* 1951. As we know today, the trial was rigged and therefore all accusations should be treated with great caution. I have not had the opportunity to verify the truth of the allegations about the Aryanisation of the Baldov Spa by the Bishopric of Spiš. The Slovak lawyer Katarína Zavacká published in the article *Nie je hrdina ako hrdina* (Zavacká 2001: 6) a part of a letter of the Spiš Chapter to the Central Economic Office (No. 6497/41 of 4 February 1941), in which it is requested "to buy the Baldovce Spa in the ownership of Ing. Ladislav Fried, a Jew from Levoča".

[37] Rychlík 1992b: 5.

was only addressed in independent Slovakia as part of the efforts of Vladimir Mečiar's government to win their support. The restitution process was renewed in 2005–2006, but has not been fully completed to date. In the Czech Republic, the restitution of the property of churches and their settlement with the state only took place in 2012 (Act No 428/2012 Coll.).

A bill addressing the restitution claims of Czech Germans was submitted to the Czech National Council as a parliamentary initiative. It provoked (as expected) negative reactions and great emotions among the Czech public, similar to the alleged return of land to "Hungarian irredentists" in Slovakia a year earlier.[38] For example, *Rudé právo* reported on the proposal under the telling headline "Will the Settlers in the Borderlands Give Back Their Land?"[39] This was a demagogic question intended only to arouse further emotions: settlers in the borderlands were not threatened, because the restitution concerned, of course, only land property held by the state or in the use of JZD.[40] It is also interesting that no one asked why property was confiscated in 1945 from persons who had not lost their Czechoslovak citizenship and who were, therefore, recognised by the state as having done nothing wrong. The Czech National Council approved the law on 15 April 1992, and emotions quickly subsided.

In the end, the issue of restitution of minority property was indeed dealt with differently in the two republics. Members of the German minority in the Czech Republic, unless they had been displaced after the war and had regained their citizenship by 1953, had their landed property returned to the same extent as to the Czech owners. However, compared to the total number of members of this minority in 1945, this was only a fraction of the population, as the vast majority of them were living in the Federal Republic of Germany in 1991 and had German citizenship, thus being excluded from restitution. In Slovakia, on the other hand, members of the rest of the German minority were not included in the restitution at all, unless their property was left to them

[38] Rychlík 1992a: 9.
[39] Götzová–Hoffmann 1992: 1.
[40] Act of CNR No 243/1992 Coll.

immediately after the war. Members of the Hungarian minority in Slovakia were included in restitution if they had not committed any crimes against the Czechoslovak State and had regained their citizenship by 1948 at the latest, but only up to an area of 50 hectares and only if the land was still owned by the State in 1948, i.e. if it had not already been allocated to Slovak applicants under the land reform before that date. Given that the number of members of the Hungarian minority in 1945 did not change substantially in 1991, the problem in Slovakia was much more acute.

The compensation of members of the Hungarian minority was a subject of dispute in independent Slovakia in the following years, and it complicated cooperation with Hungarian parties within the governmental anti-Mečiar coalition after 1998. The Hungarian Coalition Party (*Strana maďarskej koalície* – SMK)[41] demanded that the so-called unidentified land held by the state be transferred to the municipalities. It could be assumed that these were confiscations from former Hungarian owners. The transfer to the municipalities, which usually have a Hungarian majority in southern Slovakia, opened the way for compensation for the original owners. The ruling coalition, especially the SDĽ, rejected this proposal, for which the Hungarian Coalition Party refused to support the planned constitutional amendment in early 2001. The issue remains unresolved to this day.

REFERENCES

Adamičková, Naďa – Königová, Marie (1992): Prolomila se zásada restituční harnice 25. 2. 1948. *Rudé právo,* 20 February 1992, 1–2.

Archives of the Parliament of the Czech Republic (AP CR), f. FS ČSFR, VI. election period, prints, print 393. Online: www.psp.cz/eknih/1990fs/tisky/t0393_01.htm

Götzová, Jitka – Hoffmann, Zdeněk (1992): Budou osídlenci v pohraničí vracet půdu? *Rudé právo,* 11 April 1992, 1–2.

[41] In Hungarian: *Magyar Koalíció Pártja* – MKP.

Javorský, Andrej (1991): Kto loví v paragrafoch? *Verejnosť,* 29 March 1991.

Lidove noviny (1991): Premiér Vladimír Mečiar k zákonu o půdě: nepřijatelný paragraf. *Lidove noviny,* 27 March 1991.

Minutes of the 15th joint meeting of the SL and SN, 21 May 1991. Online: www.psp.cz/eknih/1990fs/slsn/stenprot/015schuz/s015045.htm

Minutes of the 20th joint meeting of the SL and SN, 18 February 1992. Online: www.psp.cz/eknih/1990fs/slsn/stenprot/020schuz/s020102.htm

Minutes of the 22nd joint meeting of the SL and SN, 14 April 1992. Online: www.psp.cz/eknih/1990fs/slsn/stenprot/022schuz/s022009.htm

Pešek, Jan – Barnovský, Michal (1997): *Štátna moc a cirkvi na Slovensku 1948–1953.* Bratislava: Veda.

Pešek, Jan – Barnovský, Michal (1999): *Pod kuratelou moci. Cirkvi na Slovensku v rokoch 1953–1970.* Bratislava: Veda.

Proces proti vlastizradným biskupom Jánovi Vojtaššákovi, Michalovi Buzalkovi a Pavlovi Gojdičovi (1951). Bratislava: Tatran.

Rudé právo (1992): Restituce zemědělského majetku rozšířeny o další okruh osob. *Rudé právo,* 19 February 1992, 1–2.

Rychlík, Jan (1988): Pozemková reforma v Československu v letech 1919–1938. *Vědecké práce Zemědělského muzea,* 27 (1987–1988), 127–148.

Rychlík, Jan (1989): Pozemková reforma z let 1919–1936 a změny v pozemkové držbě za druhé světové války. *Československý časopis historický,* 37(2), 192–197.

Rychlík, Jan (1991): Jak to bylo s paragrafem 21 návrhu zákona o půdě. *Fórum,* 16/1991.

Rychlík, Jan (1992a): Jak to bylo s dekrety prezidenta Beneše. *Lidové noviny,* 24 April 1992, 9.

Rychlík, Jan (1992b): Ako to bolo s cirkevným majetkom. *Slobodný piatok,* 8 May 1992, 5.

Rychlík, Jan (1993): Pozemková reforma na Slovensku v rokoch 1945–1950. *Historický časopis,* 41(4), 394–401.

Rychlík, Jan (1998): Pozemková reforma v českých zemích v letech 1945–1948. In Rašticová, Blanka – Rychlík, Jan (eds.): *Zemědělství na rozcestí 1945–1948.* Studie Slováckého muzea 3, Uherské Hradiště, Slovácké museum, 7–13.

Rychlík, Jan (2014): Collectivization in Czechoslovakia in Comparative Perspective. In Iordach, Constantin – Baukämper, Arnd (eds.): *The Collectivization of Agriculture in Communist Eastern Europe. Comparison and Entanglements.* Budapest – New York: Central European University Press, 189–203.

Simon, Attila (2008): *Telepesek és telepes falvak dél-Szlovákiában a két világháború között.* Somorja: Fórum Kisebbségkutató Intézet.

Tóth, Károly (1991): Stanovisko politického výboru MNI. *Verejnosť,* 29 March 1991.

Zavacká, Katarína (2001): Nie je hrdina ako hrdina. *Sme,* 4 August 2001.

Juraj Marušiak

The Retributive Justice in Czechoslovakia after WWII and its Impact on Bilateral Relations between Slovakia and Hungary between 1993 and 2023

The Case of the "Beneš Decrees"[1]

The topic of the article is the role of the so-called Beneš Decrees in the formation of bilateral relations between Slovakia and Hungary, as well as between Slovakia and the members of the local Hungarian minority after 1993. In addition to traditional actors, such as, according to Rogers Brubaker, members of national minorities, their "external homeland" and the country in which they live, these relations are also influenced by integration processes and the action of international institutions, nowadays especially the EU. The EU's current position is that it regards the resolution of past issues as an internal matter for its member states or for bilateral resolution between individual states. The article points to the fact that although the joint action of Slovakia and Hungary in the EU and in the Visegrád Group has long contributed to the diminishing relevance of controversial issues of the common past, it is the integration processes that may contribute to their re-escalation in the short term. The differentiated expectations of EU membership also affect the quality of bilateral relations of its member states. The relevance of research on post-1993 Slovak–Hungarian relations, based primarily on legal norms but also on statements by representatives of the political elites of both Slovakia and Hungary, has an increasing relevance in the context of the forthcoming further enlargement of the EU to include the states of Southeastern Europe and the former USSR.

[1] This article was supported by the APVV project No. APVV-21-0237 and VEGA 2/0068/23.

DOI: https://doi.org/10.36250/01228_04

INTRODUCTION

After the dissolution of the Czechoslovak Republic in 1939 and the establishment of the Czechoslovak government-in-exile in London in June 1940, which was part of the so-called Provisional State System, President Edvard Beneš gained the ability to issue decrees with the force of law. However, he could issue them only on the government's proposal and after a hearing of the Council of State. Their validity was limited by the existence of the Provisional State, i.e. until it was possible to convene the National Assembly as the supreme legislature. For this reason, the term "Beneš Decrees" is inaccurate, and does not do justice to the nature of the documents adopted, reducing them to the decision of one man alone. They became part of the Czechoslovak legal order, as well as the legal order of the successor states of the former Czechoslovakia, as a result of the so-called ratihabition by *Constitutional Act No 57/1946 Coll.* Since they met with no opposition in the then Constituent National Assembly, they can be regarded as an object of consensus and one of the key elements of the legitimacy of the regime that established itself in Czechoslovakia after 1945.

It is possible to use the term "Beneš Decrees" only as a conventional expression. Their purpose was to restore the state sovereignty of Czechoslovakia, but also to punish those who committed aggression against Czechoslovakia or supported, approved and cooperated with hostile powers.[2] Thus, the "Beneš Decrees" should be understood as acts of transitional justice, as an act of ending the regimes that were in force on the territory of the Czechoslovak Republic after 1938, but also as acts establishing the legitimacy of the post-1945 Czechoslovak Republic's organisation. It is important to stress, the terminology used in the "Beneš Decrees", such as "Germans, Hungarians, traitors and collaborators" or "Germans, Hungarians and other Enemies of the State" express the collective guilt of the whole group of the Germans and the Hungarians without exception.

Transitional justice comprises criminal justice, truth-telling, reparation and institutional reform – four core elements in a "comprehensive" approach.[3]

[2] Beňa 2002: 15–18.

[3] Gissel 2022: 859.

However, the above postulates are valid especially in conditions when the change of the regime, power relations had a consensual, negotiated character based on the pact between the "old" and "new" elites. This was not the case in 1945, when the new arrangement of the Central European region was shaped on the basis of the results of the war. Not only the nature of interstate relations between Czechoslovakia and Hungary, but also the relations between the Czechoslovak state representing the majority population and some of its minorities had the character of a relationship between winners and losers. In such cases, the notion of "truth-telling" should be interpreted as the formulation of an official interpretation of the events of the previous period, not as the result of negotiation and political dialogue.

The so-called Beneš Decrees included legal norms regulating criminal sanctions of an individual and collective nature, property sanctions in the form of confiscations, expatriation (deprivation of citizenship) and transfer of population. The principle of collective guilt was applied on an ethnic basis to the population of German and Hungarian nationality. In the present paper, "nationality" is understood in an ethnic sense, not as citizenship. This term was used by the Czechoslovak legislation after 1918 to refer to national minorities and had a similar meaning to that used in the Hungarian Nationalities Act of 1868. In addition to the aforementioned "Beneš Decrees", the Slovak National Council's[4] decrees also represented acts of transitional justice. In case of members of the Hungarian minority, in 1945, the property sanctions applied primarily to the so-called "anyás", i.e. persons who did not have Czechoslovak citizenship on 1 November 1938, i.e. the day before the signing of the Vienna Award, and whose property was confiscated. Those persons of Hungarian nationality who had Czechoslovak citizenship before the Vienna Award had their property confiscated if it exceeded an area of 50 hectares and up to that area.[5] However, the provisions of Decree No 104/1945 Collection of Orders

[4] The Slovak National Council was the legislative body in Slovakia, when it was a part of Czechoslovakia (1944–1992). Since 1993, the name of the supreme legislative body in Slovakia is *National Council of the Slovak Republic*.

[5] Beňa 2002: 72–78.

of the Slovak National Council (paragraph 1) were soon repealed and replaced by Decree No 64/1946 Collection of Orders of the Slovak National Council on 14 May 1946, according to which the agrarian real estate of every person of German and Hungarian nationality was confiscated immediately and without compensation, regardless to their citizenship. In this case, there was no 50 hectares restriction in case of Hungarians, which means all German and Hungarian agricultural property was confiscated. In the immediate aftermath of the liberation, the principle of collective guilt was established after the adoption of the so-called *Košice Government Programme* in April 1945. This government was established by the National Front of Czechs and Slovaks – a bloc of communist and non-communist forces that participated in the anti-fascist resistance. The National Front was also the only institutional framework within which political parties could legally operate. The principle of the presumption of guilt was applied to members of the German and Hungarian minorities. According to the Government Programme, confirmation of citizenship and possible return to Czechoslovakia was necessary, even in case of those who had Czechoslovak citizenship before the Munich Agreement of 1938 and

> "already before Munich, actively fought against Henlein and Hungarian irredentist parties and for the Czechoslovak Republic, who after Munich and after 15 March were persecuted by the German and Hungarian state authorities for their resistance and struggle against the local regime and for their loyalty to the Czechoslovak Republic and thrown into prisons and concentration camps or who had to flee abroad from the German and Hungarian terror and taken part in the active struggle for the restoration of Czechoslovakia" (Article VIII).[6]

Other inhabitants of German and Hungarian ethnicity lost their citizenship and could again opt for Czechoslovakia. The Government Programme stressed their applications being considered individually, however, the Czechoslovak post-war governments did not intend to elaborate such procedures. However, it should be noted that the "Beneš Decrees" were not only about the collective

[6] Košice Government Programme 1945.

punishment of communities accused of participating in armed aggression against Czechoslovakia in 1938–1939 or during the Second World War, but also about the implementation of the concept of ethnically pure states, with as few members of ethnic minorities as possible.

President Edvard Beneš assumed that the victorious powers would agree to the expulsion of the Hungarian minority. The Potsdam Declaration of 2 August 1945, however, regulated only the removal of Germans from Poland, Czechoslovakia and Hungary, while the question of the status of ethnic Hungarians living in Slovakia was left to a bilateral agreement between Czechoslovakia and Hungary. The Peace Treaty with Hungary of 10 February 1947, to which Czechoslovakia was also a signatory, saw the status of ethnic Hungarians in Czechoslovakia resolved in a similar vein. Since this did not happen, the next steps were to try to force their assimilation through the so-called re-Slovakisation, or "population exchange" on the basis of the bilateral Czechoslovak–Hungarian agreement of 27 February 1946, taking place between 1946 and 1949. These measures did not bring the expected result. The situation in the period 1945–1948 was downright absurd. The exact number of citizens affected by the repressive legislation on the basis of ethnicity is difficult to identify, as the first post-war census was not taken until September–October 1946, i.e. at the time of the displacement of the German population and the "population exchange" between Czechoslovakia and Hungary. Moreover, the implementation of the census was in the hands of the Commission for Nutrition and Supply and its probable purpose was to collect socio-economic data, as evidenced by its name – "conscription of ration recipients", while it did not collect data on the ethnicity of the population.[7] Since in 1930 members of the Hungarian minority accounted for 17% of the total population of Slovakia and Germans accounted for 4% of the total population,[8] even after taking into account the effects of the "population exchange" and the expulsion of Germans, this could still have been 10–15% of the population in 1948. There

[7] Šprocha–Tišliar 2022: 315–316.
[8] Šprocha–Majo 2016: 50.

were no cultural and educational institutions and no schools with Hungarian as the language of instruction. The situation of the Hungarian minority changed only at the turn of 1948–1949, when citizens of Hungarian nationality regained Czechoslovak citizenship and had some of their land, but not other property, returned to them. However, the process of land restitution already fell within the period of forcible collectivisation of agriculture, therefore it was not actually completed.[9]

This paper seeks to answer the question of the role of the so-called Beneš Decrees in contemporary Slovak–Hungarian relations. To what extent do they influence their character? The question posed a problem not only at the level of bilateral relations between Czechoslovakia and Hungary, but also within the national framework. The classical research framework for the study of minority issues is a "triadic nexus" by Rogers Brubaker involving "three distinct and mutually antagonistic nationalisms", which includes the members of the minority community, the country in which they live (i.e. Czechoslovakia and after 1993 the Slovak Republic), and the so-called external homeland (kin-state), i.e. in this case Hungary.[10] After 1989, its new component became the international organisations, such as the Council of Europe, the Organization for Security and Cooperation in Europe and the European Union. Therefore, especially in Central and Eastern Europe, it is appropriate to add another vertex to the original "triadic nexus" and speak of a quadratic relationship.[11] The issue of the "Beneš Decrees" will thus be studied in the context of interactions at the national, Slovak, bilateral (Czecho) Slovak–Hungarian level, but also at the level of regional cooperation within the Visegrád Group, and at the level of international organisations such as the Council of Europe and the European Union.

[9] Šutaj 1993: 136–137, 151–152.
[10] Brubaker 1996: 4–6.
[11] Smith 2002.

Both Slovakia and Hungary define their relations on the basis of bilateral documents, as well as on the basis of their shared membership in the EU and NATO, as allied and even "friendly". Their post-1989 and post-1993 cooperation has a multidimensional character, characterised by intensive trade and the building of border infrastructure. At the same time, both states participate together with the Czech Republic and Poland in the activities of the Visegrád Group, however, especially in the 1990s, but also in the later period, the overall atmosphere in their relations was marked by tension and mutual distrust, which was instrumentalised by the political elites in both states in mobilising the electorate. The relations between Slovakia and Hungary are an example that the mere fact of EU and NATO membership does not diminish the importance of relations at the bilateral level. European integration has largely been examined in the existing literature from an institutional perspective, but as Frank Schimmelfenig and Thomas Winzen point out, European integration is accompanied not only by homogenising but also differentiating practices, in which concerns about national sovereignty and identity play a significant role.[12] These issues represent the political and value aspects of integration. Research on the issue of "differentiated integration" is primarily examining relations at the level of relations between the nation state and the EU institutions. However, the different images of the world, as well as different ideas about the roles and future of European integration, also have an impact on the relations between individual EU Member States. In the context of EU integration, it can be assumed that it should also include the creation of a favourable atmosphere for the resolution of conflicts in bilateral relations, in favour of the formation of a consciousness of mutual solidarity and common interests. The aim of this paper is to identify to what extent this assumption can be confirmed in the case of bilateral relations between Slovakia and Hungary.

[12] Schimmelfennig–Winzen 2014.

THE ROLE OF THE "BENEŠ DECREES" IN THE STATE FORMATION OF THE CZECHOSLOVAK SOCIALIST REPUBLIC

The principle of collective guilt applied to members of the Hungarian and German minorities remained present in Czechoslovak political and legal practice even after the establishment of the communist monopoly of power in February 1948. Although the civil rights of the members of the Hungarian minority were restored at the end of 1949, they regained their Czechoslovak citizenship, and, to a limited extent, they had their property restituted, the new Czechoslovak *Constitution of 9 May* retained its anti-minority stance.[13] The diction of its preamble was primarily anti-German and anti-capitalist ("When then both our nations were threatened with destruction from the new imperialist expansion in the criminal form of German Nazism, here again – as once in the Hussite Revolution the landed gentry – now also betrayed by the new ruling class, the bourgeoisie."). The preamble emphasised that in 1938 the external enemy was aided by "the descendants of foreign colonists, settled among us and enjoying all democratic rights equally with us under our Constitution". The new state was declared to be Slavic, but at the same time "free from all hostile elements". While the new constitution formally guaranteed political and civil rights, it made no mention of the existence of national minorities. Nevertheless, members of the Polish, Ukrainian and Hungarian minorities were granted certain rights in language use, national culture and education at the primary and secondary school level.

The situation in the area of legal recognition changed only after 1960, when the new *Constitution of the Czechoslovak Socialist Republic* was adopted,[14] which legally recognised the existence of Polish, Hungarian and Ukrainian nationalities (Article 25). It did not contain direct references to the retributive decrees of the period immediately after the Second World War, nor did it explicitly define any ethnic communities as hostile. Despite the existence of a treaty base with other Soviet bloc states, the principle that nationality

[13] Act No 150/1948 Coll.
[14] Act No 100/1960 Coll.

policy remained the exclusive domain of each country had been applied.[15] Thus, minorities continued to be perceived as a potential source of threat. Even though the 1960s did not represent a significant encroachment on minority rights, there was an absence of formal legal regulation of the issue. The actual level of protection of minorities by the state was based on political decisions. In addition, these decisions were only to a limited extent consulted with representatives of minority communities. National minorities, called by Czechoslovak legal documents "nationalities" did not act as political actors; attempts by state-recognised representations of their cultural associations to act as their political representation were suppressed. The fundamental principle was the reduction of national differences to questions of language use in various spheres of public life. This principle, which in the USSR was referred to as the "policy of rapprochement and unification of nationalities", was the basis of the Constitution of the Czechoslovak Socialist Republic and the practices of its ethnic policies in the period between 1960 and 1968.[16]

Controversial issues of the recent past in national relations, including political persecution after the Second World War, have remained a taboo topic. The situation changed only as a result of the political detente in the spring of 1968, when on 12 March, the Central Committee of the Csemadok (Czechoslovak Hungarian Workers' Cultural Association), a single Hungarian, ethnic-based association in the Communist Czechoslovakia, focused predominantly on the cultural needs of Hungarian minority members, issued a statement demanding, in addition to the territorial reorganisation of districts and regions in southern Slovakia, the adoption of collective rights for minorities, bilingual signs, proportional representation in public administration and state bodies, and the condemnation of collective guilt and the crackdown on Hungarians after the Second World War.[17] In parallel with the preparation of the federal arrangement of the previously unitary Czechoslovakia, work began on the drafting of a constitutional law on the status of nationalities. However, this issue

[15] Šutaj 2015: 118–119, 126–128.
[16] Marušiak 1999.
[17] Šutaj 2009: 200.

took a back seat in the context of the forthcoming federalisation. The relevant constitutional law[18] was approved on 27 October 1968,[19] but the advent of the so-called "Normalisation" regime, the essence of which was the restoration of central control of society by the Communist Party of Czechoslovakia, was not followed by the drafting of lower legal norms that would guarantee the implementation of the relevant provisions. At the same time, the end of the brief period of liberalisation brought an end to the discussion of national relations at the official level for the next two decades.[20]

However, the debate about the period 1945–1948 resonated in the environment of the independent Hungarian intelligentsia. The book by Kálmán Janics, a physician and minority activist, *Roky bez domoviny. Maďarská menšina na Slovensku po druhej svetovej vojne 1945–1948* [Years Without a Homeland. The Hungarian Minority in Slovakia after the Second World War 1945–1948],[21] who was dismissed from the leadership of Csemadok at the beginning of the 1970s precisely because his articles dealt with the subject, contributed to this.[22] However, the demand for a revision of the so-called Beneš Decrees was not itself a priority of the unofficial structures in the Hungarian community. Not much reference to it was present in their documents, whether in the period of dissent or in the period immediately during the fall of the communist regime in November–December 1989. The reason for this was their controversial nature, which could provoke conflicts between the Slovak and Hungarian parts of the democratic opposition in Slovakia and, of course, could also create a pretext for the criminalisation of Hungarian minority activists. On the other hand, the unresolved issues of the past constituted an obstacle to dialogue at the level of the representatives of the Slovak and Hungarian anti-communist exile.[23]

[18] Act No 144/1968 Coll.
[19] Šutajová 2019.
[20] Marušiak 2008; 2015.
[21] Janics 1994.
[22] Csáky 2012.
[23] Marušiak 2015.

SLOVAK–HUNGARIAN RELATIONS AFTER 1989 – BETWEEN ALLIANCE AND RIVALRY

The issue of the status of minorities, including conflicting issues from the past such as the Beneš Decrees, became part of the political agenda almost immediately after 1989. In fact, concerns about overt territorial revisionism disappeared, but instead the practices, called by some authors, e.g. Michael Stewart, Hungary's "soft revisionism" emerged,[24] the essence of which is to build institutional links between the Hungarian state and members of Hungarian minorities in neighbouring states. These practices can be defined as discursive, which include, for example, the statements by the first freely elected Hungarian Prime Minister that he considers himself, "in spirit [...] to be the Prime Minister of 15 million Hungarians",[25] i.e. including ethnic Hungarians living in the neighboring states, and hard institutional relations in the form of dual citizenship, or the inclusion of political representatives of Hungarian minorities in neighbouring states in Hungarian state bodies, as exemplified by the establishment of the Carpathian Basin Forum of Deputies. At the same time, Slovakia and Hungary are united by common strategic priorities in the field of foreign policy, namely EU and NATO membership, as well as multidimensional cooperation within the V4.

The issue of the "Beneš Decrees" was also revived in connection with internal political issues, when, for example, during the existence of the federal Czechoslovakia, the date of 25 February 1948, i.e. the date of the establishment of the monopoly power of the Communist Party of Czechoslovakia, was established by consensus of the majority of the political forces as the limit for judicial and extrajudicial rehabilitation, including the property restitution. While in case of the descendants of the Sudeten and Carpathian Germans, the majority of the members of these communities were small groups of the population as a result of their expulsion, this regulation limited the restitution claims of the members of the Hungarian minority who remained in Slovakia. The only exception was

[24] Stewart 2003.

[25] Waterbury 2010: 5.

Act No 282/1993 Coll. on the reconciliation of property losses to churches for the restitution of church property and property of Jewish religious communities, who were dispossessed after 1938 as a result of racial persecution.[26]

This example also shows that the issue of the "Beneš Decrees" is not only about problematic property claims but stems from the different ways in which Slovakia and Hungary perceive their past. While for Hungary the adoption of the Treaty of Trianon in 1920 as a national tragedy remains a key point in modern history,[27] Slovakia considers the 29th of August the anniversary of the 1944 anti-fascist uprising, but also the day of the founding of the Czechoslovak Republic on 28 October 1918 remains the symbolic date of the "beginning" of its modern history. The status of a national holiday is also given to 8 May as the Victory over Fascism Day, which is a way for the political elites of contemporary Slovakia to distance themselves from the Slovak state in 1939–1945. Different historical narratives are also an obstacle to finding points of convergence in the interpretation of the common past.

Especially the period before the accession to the EU was marked by rivalry between the two countries and Hungary's attempts to raise the issue of the status of the Hungarian minority in Slovakia in the international fora. This was also manifested by considerations about the possible blocking of the Slovak Republic's accession to the Council of Europe in 1993. Some issues related to the status of the Hungarian minority were the subject of criticism of Slovakia by Hungary and the Hungarian minority representation, but some of the more radical Hungarian politicians also raised the issue of the revision of the so-called Beneš Decrees.[28]

However, the issues related to the so-called Beneš Decrees have fallen among the second-range questions. The priority agenda in Slovak–Hungarian relations became the issues of cooperation in connection with the integration of both states into the European or Euro-Atlantic structures, as well as current problems. At the interstate level, these were, for example, issues related to

[26] Benešove dekréty a Slovensko 2002.

[27] Sadecki 2020.

[28] Leško 1993: 16–17; Pástor 2011: 145.

the bilateral Slovak–Hungarian interstate dispute over the construction of a hydroelectric dam on the Danube, while at the national level, the disputes were mainly about the linguistic rights of minorities. After 1993, a number of laws were adopted allowing bilingual designation of towns and villages as well as the writing of names and surnames in minority languages. However, the Slovak side continued to refuse recognition of collective minority rights, which was raised by Hungary, but also by some representatives of the Hungarian minority in Slovakia.

On the other hand, the atmosphere in relations between the Hungarian minority and the majority population was exacerbated by the adoption of the 1995 Act on the State Language of the Slovak Republic, which did not regulate the status and possibilities of using minority languages. However, unresolved issues from the past did not prevent Slovakia and Hungary from adjusting their bilateral relations with the adoption of the Treaty on Good Neighbourliness and Friendly Cooperation between the Slovak Republic and the Republic of Hungary in March 1995.[29] Thus, both sides gave priority to cooperation on pragmatic issues, while those issues that could divide them fell into the background, although they did not disappear from the daily agenda and had a great influence on the overall atmosphere of mutual relations. At the same time, the political representation of both Slovakia and the Czech Republic considered the issue of the "Beneš Decrees" a proxy problem in connection with the disputes of most Central European states with Austria, which rejects the use of nuclear energy, or the dispute between Slovakia and Hungary regarding the completion of the Gabčíkovo–Nagymaros dam and hydroelectric power station.[30]

The sensitivity of the topic of the so-called Beneš Decrees is also confirmed by the fact that discussion of them was not possible even during the political representation of the Hungarian community in Slovakia in the government coalition in Slovakia in 1998–2006,[31] respectively in the governments of

[29] Pástor 2011: 162.
[30] Kmeť 2005: 436.
[31] Hamberger 2008: 118.

Iveta Radičová (2010–2012) and Robert Fico (2016–2020), when the Slovak–Hungarian party Most–Híd was a part of them. Once again, the issue also gained international importance in the period immediately preceding the accession of both Slovakia and Hungary to the EU. At the time, Hungary preferred a competitive approach towards the other states in the region, with its leaders believing that cooperation with other states could be an obstacle to rapid integration.

This was helped by the warnings of then European Commissioner for Enlargement Gunter Verheugen in 2001 that if some candidate state was ready to join but for Poland, the EU will not wait for Poland. In that period, alternatives were raised of a "small enlargement" of the EU by a few states, as opposed to the alternative that was put forward at the end of 2002, when only the accession of Bulgaria and Romania among the candidate states was postponed. However, German officials have corrected Verheugen's statement. Then Hungarian Prime Minister Viktor Orbán raised the issue of "waiting for Poland?" with which he had success, for example, with French President Jacques Chirac. This approach on the part of some EU Member States has contributed to weakening the cooperation of the candidate countries and to strengthening their individual, even competitive, approach during the pre-accession negotiations. Hungary relied on a potential coalition with Austria, where a coalition of the ÖVP and FPÖ was in power at the time and the CDU–CSU was expected to win the German parliamentary elections. One of the consequences was the raising of controversial issues that could favour Hungary over other EU countries. Cooperation within the V4, which to a large extent was also about coordinating pre-accession negotiations, thus became redundant for Hungary from this perspective. Therefore, Viktor Orbán unexpectedly attacked his three Visegrád partners at once in February 2002 at the European Parliament. "It is now expected that 10 candidate countries will join the EU at the same time in 2004. But if serious problems were to emerge in any of them, the others should not wait for it." The MEPs said he was clearly referring to Poland, as Poland was the only country that was so important in the eyes of the current EU Member States that its unpreparedness could

cause enlargement to be delayed. At the same time, in the same speech, Viktor Orbán unexpectedly joined Austria in demanding that the Czech Republic and Slovakia annul the post-war decrees of Czechoslovak President Edvard Beneš. In response to an interpellation by German MEP Jürgen Schröder concerning the Czech Republic's accession to the EU, Orbán described them as laws incompatible with European law: "It is therefore very difficult for me to imagine that a country could join the Union maintaining such special laws that differ from Union legislation. We expect these decrees to be deleted from the legislation of the Czech Republic and Slovakia."[32]

The reaction of the Czech Republic, Slovakia, but also Poland, which rejected the revision of the Beneš Decrees, especially after the CDU–CSU candidate for Chancellor of Germany Edmund Stoiber expressed the demand for the abolition of the so-called Bierut Decrees, caused the old member states to reconsider their approach, and they sent a clear signal that they are interested in the admission of all ten candidate states.[33] Viktor Orbán's initiative was rejected at the level of EU leaders and at the same time resulted in a crisis of Visegrád cooperation, which was only overcome in 2003. The question referred to above also concerned, explicitly or implicitly, the so-called AVNOJ decrees – i.e. Slovenia and Croatia. The decrees issued by the AVNOJ (Anti-Fascist Council for the National Liberation of Yugoslavia), a provisional revolutionary government representing the pro-communist resistance against the German, Italian and Bulgarian occupation of Yugoslavia, also applied the principle of collective guilt, especially against the German and Italian minorities in the country. On the other hand, they did not mention the question of the "Stalin's decrees", i.e. the expulsion of the German population from the todays Kaliningrad region. At the same time, however, Viktor Orbán's speech showed that his aim was not to resolve controversial issues and real traumas from the past, but to instrumentalise the issues of the "Beneš Decrees" to achieve a more significant strategic objective; to make Hungary the country best prepared for EU membership, unlike its other partners and neighbours in the region.

[32] Marušiak 2005: 278–281.

[33] Cordell–Wolff 2005: 80.

The draft resolution on EU Enlargement in the European Parliament in June 2002 in the part affecting Slovakia did not contain any reference to what had come to be known as the "Beneš Decrees" issue, nor did it contain proposed alterations affecting the status of ethnic minorities, which had been discussed by the Foreign Affairs Committee of the European Parliament.[34] The resolution expressed the hope that if Slovakia kept up its current pace of preparation and negotiation for entry, it would become an EU member in the first wave of expansion. For Slovakia it was important that although the European Parliament challenged the country to improve the way in which the law on the use of minority languages was used in practice, the minority issue as a whole ceased to be a target of criticism from abroad.

While Slovak politicians on the one hand refused to countenance the annulment of the Beneš Decrees, on the other they did not wish to inflame the situation. When the Czech Parliament on 24 April 2002 approved a declaration on the unalterable nature of the decrees,[35] the head of the Slovak ruling coalition Party of Civic Understanding (SOP), Pavol Hamžík, proposed the same. His proposal drew support from the opposition Movement for Democratic Slovakia (HZDS) and the Slovak National Party (SNS), but other government parties were against it.[36] Slovakia and the Czech Republic thus took an identical position on the problem of the "Beneš Decrees", considering them valid, but not effective anymore. In justifying their position in relation to these documents, both Slovakia and the Czech Republic argue the context of the Second World War and the events that immediately preceded it, i.e. the Munich Agreement of 1938 and the Vienna Award of 1938–1939, which conditioned the adoption of the "Beneš Decrees". At the same time, the Ministry of Justice of the Slovak Republic stated that "the effectiveness of the Beneš Decrees ceased at the latest by Constitutional Act No 23/1991 Coll., which established the Charter of

[34] European Parliament 2002.
[35] Kopp et al. 2002.
[36] Marušiak 2005: 284.

Fundamental Rights and Freedoms. In contrast, the validity of the Beneš Decrees continues to exist".[37]

"BENEŠ DECREES" AFTER THE EU ACCESSION

After 2002, the issue of the Beneš Decrees practically ceased to be a European policy issue and shifted more significantly to the domestic policy and bilateral agenda, despite the fact that this issue is periodically raised by Hungarian and, to some extent, German and Austrian representatives in the European Parliament. It revived again after 2006, when Slovak–Hungarian relations deteriorated both domestically and bilaterally after the rise of the Smer–SD-led coalition with the participation of the SNS and HZDS parties. In this situation, an ethnic cleavage was formed in Slovak politics on a number of issues, when ethnically Slovak and Hungarian parties stood against each other on fundamental issues – e.g. on the issue of international recognition of Kosovo, but also on the issue of the Beneš Decrees, which this time, however, was raised on the floor of the Slovak Parliament, by the proposal of the MPs of the Hungarian Coalition Party to compensate the citizens of the Slovak Republic of Hungarian nationality who had been taken to forced labour in the Czech borderlands. The compensation was to be both moral and financial. In response to this proposal, in 2007 the National Council of the Slovak Republic adopted *Resolution No 533/2007* on the immutability of the decrees,[38] whose wording was similar to the document adopted in 2002 by the Chamber of Deputies of the Parliament of the Czech Republic. Although the adoption of the document was initiated by members of the coalition of the Slovak National Party, after a parliamentary debate and the incorporation of amendments, it was also supported by members of those opposition parties that had worked together with the Hungarian Coalition Party in the government coalition between 1998 and 2006. On the one hand, the document rejects the principle of collective guilt, but at the same time it

[37] Benešove dekréty a Slovensko 2002.
[38] NCSR 2007a.

also rejects "attempts to question and revise laws, decrees, treaties and other post-war decisions of the Slovak and Czechoslovak authorities which would imply a change in the property and legal post-war arrangement". It notes that the above decisions were taken as a result of the Second World War and the defeat of Nazism, and were based on the principles of international law represented by the conclusions of the Potsdam Conference in 1945. It also states that

> "the post-war decisions of the representative bodies of the Czechoslovak Republic and the Slovak National Council are not the cause of discriminatory practice, and no new legal relations can arise today on the basis of them", but that the legal and property relations created by those decisions are "unquestionable, inviolable and immutable".[39]

Practically without much response from the media and political elites, there was an exchange of letters between the representatives of the Slovak Bishops' Conference and the Hungarian Bishops' Conference in June 2006, inspired by the gesture of the Polish bishops towards the German bishops in 1965, in which they drew attention to the mutual wrongs of the past. "Our memory preserves the many wounds we have inflicted on each other", the Slovak bishops' letter states, while the Hungarian bishops' letter says: "We recall with special pain those cases when Hungarians have harmed Slovaks or Slovak communities." Both letters contained the wording, taken verbatim from the letter as mentioned earlier of the reconciliation Pastoral Letter of the Polish Bishops to their German Brothers: "We forgive and ask for forgiveness!"[40]

Alongside this, there were also proposals for a political declaration that would bring a moral closure to their conflicts. The proposals so far have failed. As a rule, they were made unilaterally, not the result of a joint proposal that could not be interpreted by one side as a victory at the expense of the other. One such example was the draft declaration submitted by the Hungarian Coalition Party "Together and Sincerely" to the Speakers of the Parliaments of both

[39] NCSR 2007a.

[40] List Episkopatu Polski 1965; Biskupi Slovenska a Maďarska 2006.

countries in September 2007. The proposal had the support of some members of the Christian Democratic Movement (KDH). Although it was not made public in advance, the party leadership informed the media in advance of its content, including the proposed date for the adoption of the declaration, which was to be Europe Day 8 May 2008. The Hungarian Parliament should express regret for the *Magyarisation* of the Slovaks around the turn of the 19th and 20th centuries. In the context of Slovak–Hungarian relations, *Magyarisation* means intentional, state driven policy aimed to transform Hungary into the Hungarian (Magyar) nation state based on ethnic principles by the assimilation of non-Magyar ethnic group members. It should also be critical of the policy of the Hungarian Government after 1938, when Hungary incorporated the southern part of Slovakia, and of Hungarian participation in the invasion of Czechoslovakia by the armies of the Communist states in August 1968. In the Hungarian Coalition Party's (SMK) view, the Slovak party should express regret, for example, over the violation of the rights of Hungarians after 1918 or over the deportation of Hungarian minority citizens to the Czech parts after 1945, and the application of the principle of collective guilt, i.e. including the consequences of the "Beneš Decrees".[41] The way in which the proposal was presented provoked a negative reaction from the representatives of the Slovak Republic. It had not been discussed in advance with the Slovak and Hungarian sides. Therefore, the Minister of Foreign Affairs of the Slovak Republic, Ján Kubiš, declared that the proposal of the Hungarian Coalition Party was not aimed at reconciliation but was confrontational in nature.[42]

As I mentioned earlier, the dispute over the "Beneš Decrees" was a concomitant of the growing tension in Slovak–Hungarian relations, both bilaterally and domestically. This period began at the end of the first government of Ferenc Gyurcsány, when in April 2005 the issue of the revision of the "Beneš Decrees" was raised by the Hungarian State Secretary András Bársony, which resulted in the cancellation of the planned visit of the Slovak Prime Minister Mikuláš

[41] ČTK 2007.
[42] SITA 2007.

Dzurinda to Budapest. The Slovak–Hungarian dispute over the "Beneš Decrees" was "verbalised by various political actors in Hungary representing both parts of the ideological spectrum", which, according to Tomáš Strážay, was "not only perceived very sensitively by the Slovak political elites; they are also a source of tension in Slovak–Hungarian bilateral relations and in the broader region of Central Europe".[43] The Hungarian Status Law (The Act of Hungarians Living Abroad) 2001, regulating the principles of Hungary's policy towards Hungarian minorities in neighbouring states, conceived as extra-territorial, presupposing direct material support of members of Hungarian minorities in neighbouring states by the Hungarian state and the issuance of relevant certificates (so-called 'Certificate of Hungarian Nationality' and 'Certificate for Dependants of Persons of Hungarian Nationality') issued by the Hungarian state on the territory of neighbouring states, considerations about the territorial autonomy of regions inhabited by members of the Hungarian minority, or the use of the term "Felvidék" by some representatives of the Hungarian community in southern Slovakia managed to integrate political forces in Slovakia from different, often contradictory, political camps.[44] In that period, an "ethnic cleavage" began to take shape in Slovakia, whose presence became more visible with the adoption of the Slovak parliamentary resolution on the status of the Serbian province of Kosovo in 2007. In this resolution, deputies of the National Council of the Slovak Republic refused to recognise Kosovo's forthcoming unilateral declaration of independence.[45] This document, although seemingly unrelated to the case of the "Beneš Decrees", also points to a key priority of the Slovak Republic's foreign policy, which is the inviolability of the international order and borders established after the Second World War, as it referred to the principles of the UN Charter.

At the same time, since 2007, there have been indications of interest at the level of the Prime Ministers of Slovakia and Hungary for a dialogue on

[43] Strážay 2005: 56.

[44] Albertie 2003: 1000; Stewart 2003; Strážay 2005.

[45] NCSR 2007b.

contentious issues at the level of historians through the implementation of the project of a common history textbook. On the Slovak side, however, the situation was complicated by the participation of the SNS in the government, whose nominee, Ján Mikolaj headed the education ministry. On the other hand, the work intensified after the Deputy Prime Minister of the Slovak Republic, Dušan Čaplovič assumed patronage over the project. In 2009, the Prime Ministers of the Slovak Republic and Hungary, Robert Fico and Gordon Bajnai, also supported the project. Despite the verbal support for the project from the political elites and despite the fact that work on the final editing of the joint Slovak–Hungarian historical texts began as early as 2011,[46] the publication was not published even until 2023.

The course of the disputes over the "politics of memory" between Slovakia and Hungary is characterised by little willingness on the part of both states to reconsider their previous positions, despite the cooperation of historians and the verbal declarations of the will of the representatives of the governments of both states to reach a common approach to resolving the disputed issues of the past. Political leaders are thus sending contradictory signals. The interest in resolving disputed issues from the past, presented in bilateral and multilateral forums, is accompanied by confrontational steps and statements and by raising contentious issues, e.g. in connection with the so-called "Beneš Decrees". This process also takes place on the floor of international institutions, e.g. in the European Parliament, where they are also supported by some conservative MEPs from Germany and Austria.

CONCLUSIONS

The issue of the Beneš Decrees and unresolved issues from the past regularly recur in the discourse on Slovak–Hungarian relations at multilateral, bilateral

[46] Šutaj 2014: 13–15.

and national levels. Both the Slovak and Hungarian sides missed the window of opportunity that was created after the political changes of 1989–1990. Some of the declarations from this period co-determined the nature of the bilateral relations of the states concerned with the later independent Slovakia. This is the case, for example, with the Slovak National Council's statement of February 1991 on the expulsion of Slovak Germans, which highlighted the role of the German minority in the development of Slovakia, and condemned the principle of collective guilt, applied in the expulsion after the Second World War also to "innocent hard-working people". "These German fellow citizens suffered for those who served Nazism on behalf of the German minority in Slovakia", the statement reads.[47] The symbolic power of commemorating the historical aspects of mutual relations was realised most of all by Prime Minister Ján Čarnogurský among the Slovak leaders of the time. In his speech at the meeting of the Carpatho-German Compatriot Association in Karlsruhe on 2 June 1991, he highlighted the moments that united Slovak and German societies, e.g. the participation of members of the German ethnic group in the development of the towns in the former Central Slovak ore mining area and in the Spiš region in the eastern part of Slovakia, and at the same time, he asked the representatives of the German compatriots for help in order to make Slovakia "for the first time in its history a fully-fledged part of Europe".[48] He also addressed a gesture of reconciliation to the citizens of the Czech Republic when he condemned the expulsion of Czech citizens in 1939: "The expulsion of the Czechs at a time when the Czech part of the state was collapsing under the onslaught of Germany is a black stain on Slovak history." He spoke these words on his own behalf, not on behalf of the Slovak Republic.[49]

This condition has various causes. Unlike Germany, which derives its current identity from its distancing from the Nazi past and defines it as such also through broadly conceived policies of reconciliation towards neighbouring

47 SNR 1991.
48 Čarnogurský 1997: 183–184.
49 Čarnogurský 1997: 190.

states, but also, for example, towards Israel and, most recently, towards Tanzania as a former German colony,[50] Hungary favours self-victimising narratives focusing its official memory politics on the wrongs caused by the Trianon Peace Treaty, especially when, after 2010, its designation as "Trianon peace dictate" became part of the rhetoric of Hungary's official representatives.[51] In case of the Hungarian minority in Slovakia, however, it must be acknowledged that this is a segment of the population that was affected not only by the repression associated with the establishment of the communist regime, but also by repression due to their ethnicity, with the Hungarian population in most cases regaining Slovak or Czechoslovak citizenship. The fact that they can only make restitution claims to a limited extent compared to the majority population is a source of feelings of injustice and discrimination.

The attempt to Europeanise the issue of reparations for post-war repression on an ethnic basis has failed because it would affect too many states and would ultimately destabilise the entire EU. The problem can therefore only be resolved at national or bilateral level. At the same time, moral compensation for the victims must, as in case of German–Czech or German–Polish relations, be the result of reciprocal gestures; Slovak–Hungarian reconciliation cannot be imposed unilaterally, as was the case, for example, with the SMK proposal in 2007. It also cannot be accompanied by a policy of "soft revisionism". Both partners must be convinced that they are perceived by the other side as equal actors.

At the moment, the issue seems to be gradually slipping into the background. This is due not only to the change of generations, but also to the passage of time and the change of political paradigm. The parties that were active participants in ethnic polarisation in Slovakia have either been gradually marginalised, resulting in the absence of ethnic Hungarian parties in the Slovak parliament since 2020 (while the more radical component – SMK – has been out of the Slovak parliament since 2010), or they have weakened their anti-minority agenda, which is the case of the SNS.

[50] Deutsche Welle 2023.

[51] E.g. see Hungarians mark the Day of National Unity 2012.

The issue of reconciliation, understood as the closure of conflicting chapters of common history, cannot be resolved on the basis of unilateral steps. On the other hand, raising these issues is necessarily confrontational, as the starting positions of the two states are contradictory. The thesis of the unbroken continuity of Hungarian statehood, as expressed also in the current Fundamental Law of Hungary (2011), is not in direct contradiction with the identity of the Slovak Republic, which claims the heritage of the Czechoslovak Republic, created in 1918. Czechoslovak statehood largely emerged in opposition to the Hungarian state, of which Slovakia was an integral part until 1918. This is one of the reasons why even contemporary Hungary considers the territorial changes after 1918, codified by the Trianon (1920) and Paris (1945) Peace Treaties, its territorial losses. However, this is only minimally present in Austria, which after 1918 rejected the thesis of continuity with the defunct Austro–Hungary.[52] Therefore, the debate on the common past will most likely resemble a dialogue of the deaf for a long time to come.

At the same time, the example of Slovak–Hungarian relations after 1993 has shown that the presence of common interests, such as the integration of the two states into the EU before 2004, but also the close cooperation within the Visegrád Group in later years, contribute to improving the mutual perception of the two states only to a limited extent. The example of the "Beneš Decrees" shows that despite close cooperation within the EU, Slovakia and Hungary have not been able to close controversial issues from the past. In the long term, their importance is gradually declining in favour of solving more current problems, but they remain present on the agenda of bilateral relations, all the more so because in Slovakia's case they are also an internal political problem. The events of 2001–2002 and 2006–2007 also suggest that their importance may even increase in moments of crisis and, despite the identical foreign policy orientations of both states, may significantly damage the atmosphere in bilateral cooperation.

[52] Vyhnánek 2013: 55.

The example of Slovak–Hungarian relations shows that despite the declared common interests and strategic goals, each member state of the European Union brings its own perception of itself and its neighbours when it joins. This is subsequently reflected in the development of relations between EU Member States. The relevance of the Slovak–Hungarian experience and the study of the position of actors at national, sub-state and European level can be beneficial in the context of further EU enlargement to include the states of Southeastern Europe, Ukraine, Moldova and Georgia. Their complicated histories and relations with their neighbours will have an impact on the internal dynamics of the EU's development, but also on the shape of its foreign policy, as it happened after the 2004–2013 enlargement.

The period after 1989, but also the first decade of the Slovak Republic's and Hungary's membership of the EU, can be described as a missed opportunity. That period was characterised by a trend towards de-borderisation, i.e. the weakening of the importance of state borders while respecting the sovereignty and equality of individual actors. This created the right conditions for the closure of conflicting issues from the past, as evidenced, for example, by trends in the development of Czech–German or German–Polish relations, where controversial issues of the past are being put on the back burner. On the contrary, their confrontational raising has always created tendencies of re-borderisation, of questioning the need for mutual cooperation at bilateral and regional level. Currently, the dominant trends of re-borderisation of political discourse, reinforced by the aggression of the Russian Federation against Ukraine, as well as the tendencies to close the borders during the periodically recurring refugee crises since 2015, do not create the preconditions for a constructive discussion of the issues related to the past. Similarly to the German approach to these issues, the most appropriate way to close this conflict phase of Slovak–Hungarian relations, both at the national and bilateral level, will be to historicise it. That is to say, the moment when the issues cease to evoke the threat of demands for financial compensation and, even indirectly, implicitly, fears of a possible challenge to the existing state borders.

REFERENCES

Albertie, Christin J. (2003): The Act of Hungarians Living Abroad: A Misguided Approach to Minority Protection. *Michigan Journal of International Law,* 24(3), 962–1007.

Beňa, Jozef (2002): *Slovensko a Benešove dekréty.* Bratislava: Belimex.

Benešove dekréty a Slovensko (2002). Bratislava: Ministry of Justice of the Slovak Republic.

Biskupi Slovenska a Maďarska: Odpúšťame a prosíme o odpustenie! (2006). Bratislava: Konferencia biskupov Slovenska, 23 June 2006.

Brubaker, Rogers (1996): *Nationalism Reframed.* Cambridge: Cambridge University Press.

Constitutional Act No 57/1946 Coll.

Constitutional Act No 23/1991 Coll.

Cordell, Karl – Wolff, Stefan (2005): *Germany's Foreign Policy Towards Poland and the Czech Republic. Ostpolitik Revisited.* London – New York: Routledge.

Csáky, Pál (2012): *Magyar sorsok V. – Feloldozás.* 4 November 2012. Online: https://csakypal.eu/magyar-sorsok-v/

Čarnogurský, Ján (1997): *Videné od Dunaja.* Bratislava: Kalligram.

ČTK (2007): SMK navrhla slovensko-maďarské uzmierenie. *Pravda,* 7 September 2007. Online: https://spravy.pravda.sk/domace/clanok/154971-smk-navrhla-slovensko-madarske-uzmierenie/

Deutsche Welle (2023): German president apologizes for colonial crimes in Tanzania. *DW,* 1 November 2023. Online: www.dw.com/en/german-president-apologizes-for-colonial-crimes-in-tanzania/a-67274176

European Parliament (2002): European Parliament resolution on the state of enlargement negotiations COM(2001) 700, 13 June 2002. Online: www.europarl.europa.eu/doceo/document/TA-5-2002-0317_EN.html

Gissel, Line Engbo (2022): The Standardisation of Transitional Justice. *European Journal of International Relations,* 28(4), 859–884. Online: https://doi.org/10.1177/13540661221120980

Hamberger, Judit (2008): Strana maďarskej koalície v slovenskej vláde. In Fazekas, József – Hunčík, Péter (eds.): *Maďari na Slovensku (1989–2004): Súhrnná správa. Od zmeny režimu po vstup do Európskej únie.* Šamorín: Fórum Inštitút pre výskum menšín, 117–136.

Hungarians mark the Day of National Unity (2012). Ministry of Public Administration and Justice of Hungary, 5 June 2012. Online: https://2010-2014.kormany.hu/en/ministry-of-public-administration-and-justice/news/hungarians-mark-the-day-of-national-unity

Janics, Kálmán (1982): *Czechoslovak Policy and the Hungarian Minority 1945–1948.* New York: Columbia University Press.

Janics, Kálmán (1994): *Roky bez domoviny. Maďarská menšina na Slovensku po druhej svetovej vojne 1945–1948* [Years Without a Homeland. The Hungarian Minority in Slovakia after the Second World War 1945–1948]. Budapest: Püski.

Kmeť, Norbert (2005): Viktor Orbán a Benešove dekréty. In Poláčková, Zuzana (ed.): *Slovensko–české vzťahy v kontexte strednej Európy.* Bratislava: Veda, 435–445.

Kopp, Milan – Táborská, Martin – Hromádka, Martin (2002): Sněmovna jednomyslně přijala usnesení k dekretům. *iRozhlas,* 24 April 2002. Online: www.irozhlas.cz/zpravy-domov/snemovna-jednomyslne-prijala-usneseni-k-dekretum_200204241456_mkopp

Košice Government Programme [Košický vládní program] (1945). Prague: National Archive (March 1945). Online: https://test.nacr.cz/wp-content/uploads/2021/04/labyrint-1945-Kosicky-vladni-program.pdf

Leško, Marián (1993): *Slovenské tango z roku jeden.* Bratislava: Perex.

List Episkopatu Polski do Episkopatu Niemec (1965). Archiwum Archidjecezjalne Warszawskie. Online: https://jp2online.pl/obiekt/list-episkopatu-polski-do-episkopatu-niemiec

Marušiak, Juraj (1999): Udalosti v roku 1960 ako demonštrácia sily komunistického režimu. *Politické vedy,* 2(4), 90–146.

Marušiak, Juraj (2008): The Normalization Regime and its Impact on Slovak Domestic Policy after 1970. *Europe–Asia Studies,* 60(10), 1805–1825.

Marušiak, Juraj (2015): The Nationalizing Processes in Slovakia 1969–1988. The Case Study of Hungarian Minority. *Central European Papers,* 3(1), 88–107. Online: https://doi.org/10.25142/cep.2015.006

NCSR (2007a): *Uznesenie Národnej rady Slovenskej republiky z 20. septembra 2007 o nedotknuteľnosti povojnových dokumentov k usporiadaniu pomerov po II. svetovej vojne na Slovensku.* Bratislava: National Council of the Slovak Republic, 20 September 2007. Online: www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/v_uznesenie533-20070920.rtf

NCSR (2007b): *Vyhlásenie Národnej rady Slovenskej republiky k riešeniu budúceho štatútu srbskej provincie Kosovo.* Bratislava: National Council of the Slovak Republic, 28 March 2007. Online: www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/v_ku-kosovu309-20070328.rtf

Pástor, Zoltán (2011): *Slováci a Maďari.* Martin: Matica slovenská.

Sadecki, Andrzej (2020): *The Long Shadow of the Treaty of Trianon. Hungary's Struggles with the Past.* Point of View, no. 80. Warsaw: Centre for Eastern Studies.

Schimmelfennig, Frank – Winzen, Thomas (2014): Instrumental and Constitutional Differentiation in the European Union. *Journal of Common Market Studies,* 52(2), 354–370. Online: https://doi.org/10.1111/jcms.12103

SITA (2007): Kubiš: SMK vôbec nejde o zmierenie. *Pravda,* 13 September 2007. Online: https://spravy.pravda.sk/domace/clanok/155044-kubis-smk-vobec-nejde-o-zmierenie/

Smith, David J. (2002): Framing the National Question in Central and Eastern Europe. A Quadratic Nexus? *Global Review of Ethnopolitics,* 2(1), 3–16. Online: https://doi.org/10.1080/14718800208405119

SNR (1991): *Vyhlásenie Slovenskej národnej rady k odsunu slovenských Nemcov.* Slovak National Council, 12 February 1991. Online: www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/v_k-odsunu-nemcov.htm

Stewart, Michael (2003): The Hungarian Status Law: A New European Form of Transnational Politics? *Diaspora: A Journal of Transnational Studies,* 12(1), 67–101. Online: https://doi.org/10.1353/dsp.2011.0056

Strážay, Tomáš (2005): Nationalist Populism and Foreign Policy: Focus on Slovak–Hungarian Relations. *Slovak Foreign Policy Affairs,* 6(1), 47–59.

Šprocha, Branislav – Majo, Juraj (2016): *Storočie populačného vývoja Slovenska II.: populačné štruktúry.* Bratislava: Infostat – Centrum spoločenských a psychologických vied SAV – Univerzita Komenského v Bratislave.

Šprocha, Branislav – Tišliar, Pavol (2022): The Post-War Population Conscription in Slovakia in 1946. *Demografie,* 64(4), 313–326. Online: https://doi.org/10.54694/dem.0309

Šutaj, Štefan (1993): *Maďarská menšina na Slovensku v rokoch 1945–1948.* Bratislava: Veda.

Šutaj, Štefan (2009): Slovenskí Maďari a rok 1968. In Londák, Miroslav – Sikora, Stanislav (eds.): *Rok 1968 a jeho miesto v našich dejinách.* Bratislava: Veda, 194–209.

ŠUTAJ, Štefan (2014): Slovensko–maďarské historické paralely a konflikty (národné dejiny v stredoeurópskom kontexte) alebo o písaní spoločných slovensko–maďarských textov. *Kor/ridor. Szlovák–Magyar Történeti Folyóirat,* 1(2), 9–18.

ŠUTAJ, Štefan (2015): *Maďarská menšina na Slovensku po roku 1945*. Košice: UPJŠ.

ŠUTAJOVÁ, Jana (2019): *Zákon o národnostiach a Rada vlády Slovenskej socialistickej republiky pre národnosti (predstavy a realita)*. Košice: UPJŠ.

VYHNÁNEK, Ján (2013): *Rakúsko–Uhorsko. Nástupníctvo a identita*. Bratislava: Atticum.

WATERBURY, Myra A. (2010): *Between State and Nation. Diaspora Politics and Kin-State Nationalism in Hungary*. New York: Palgrave Macmillan.

János Fiala-Butora

The Lasting Impact of the Beneš Decrees in Slovakia[1]

The Beneš Decrees, laws punishing the German and Hungarian communities of Czechoslovakia after the Second World War, are usually described as a historical phenomenon. This article shows that recently they have become a current legal issue after Slovak authorities have started applying the decree on confiscating property against current owners of property in Slovakia. There are several legal avenues for how confiscations can currently take place. The most famous example was exposed by the case of Bosits v. Slovakia, decided by the European Court of Human Rights in 2020. However, some other forms are more frequent and less transparent. Not only are these procedures contrary to Slovak law, but they are also taking place in a very different legal context compared to the post-war era. Slovakia as a member of the European Union is bound by the EU Treaties, and is a signatory to human rights treaties that protect the right to property and freedom from discrimination. Confiscations on the basis of ethnicity, applying the principle of collective guilt, constitute a severe violation of these norms. The Beneš Decrees affect the present not only through confiscations; they serve as the ideological basis for the current relationship between the majority and minorities in Slovakia. To overcome them, the first step should be quantifying the problems they have caused, to be able to offer specific suggestions on how these could be remedied.

[1] This research was supported by grant no. NKFIH 134962 of the National Research, Development and Innovation Office of Hungary and by grant no. 1341-03-03 VOICES of the SASPRO2 program of the Slovak Academy of Sciences.

DOI: https://doi.org/10.36250/01228_05

INTRODUCTION

The so-called Beneš Decrees have always been a thorny issue in the relationship between Slovaks and Hungarians, both within Slovakia and internationally. Laws adopted after the Second World War punishing ethnic Hungarians in Slovakia on the basis of the principle of collective guilt continue to haunt current political discussions, because they continue to be resented by those affected.[2] Their importance notwithstanding, they were always discussed as a historical issue, as events that happened in the past. This viewpoint was challenged by recent developments, which show that the Decrees continue to affect property relations in Slovakia, among others by creating new property rights.

In what follows I will not deal with the history of the Beneš Decrees. This has been done by others.[3] Rather, my analysis aims to understand how the Beneš Decrees live on with us in the 21st century, how they affect Slovak–Hungarian relations and the situation of the Hungarian minority in Slovakia – and what could be done to make them truly historical documents, a thing of the past.

THE BENEŠ DECREES AS A HISTORICAL PHENOMENON – THE "YEARS WITHOUT A HOMELAND"

The Beneš Decrees are the collective name given to the laws that regulated the status of the Hungarian and German minority communities in Czechoslovakia during and after the Second World War.[4] They were issued by President Edvard Beneš in exile in London between 21 July 1940 and 27 October 1945, to substitute the legislative work of the Czechoslovak Parliament, which was not in session. The presidential decrees were ratified by the Provisional Czechoslovak National Council on 6 March 1946, thus their legality was

[2] Marušiak 2015.

[3] Vadkerty 2001; Szarka 2005; Gabzdilová-Olejníková et al. 2005; Popély et al. 2007; Šutaj 2008; Kollár 2010.

[4] Janics 1979.

subsequently recognised. On the territory of Slovakia, the Decrees operated through the decrees of the Slovak National Council, with the changes contained in the latter decrees.

In a broader sense, all decrees issued by President Beneš are "Beneš Decrees". Most of these dealt with issues of economic and political reconstruction of the war-ravaged country, with transport, social, administrative and other matters. In a narrower sense, as a symbol of post-war injustice, the term "Beneš Decrees" refers only to those decrees of the President and the Slovak National Council that regulated the status of the German and Hungarian minorities.

The decrees affecting these two minority communities are based on the principle of collective guilt. Persons of Hungarian and German ethnicity were deprived of their citizenship, their property was confiscated, their pensions were cancelled and they were dismissed from their jobs. All persons were presumed guilty and affected accordingly; German and Hungarian educational, cultural and social organisations were banned and their property was confiscated. Germans were unilaterally expelled. This was approved by the Allied Powers at the Potsdam Conference in 1945, but not the confiscation of their property without compensation.[5] In the course of the expulsions, a significant number of people (estimated at between 20,000 and 250,000) were victims of pogroms and murders.[6]

The Allied Powers did not approve of the expulsion of Hungarians, so the Czechoslovak authorities used various reprisals against them to pressure Hungary to accept a full-scale population exchange. In this context, about 44,000 persons were deported to the Czech parts of the country for forced labour, and about 90,000 persons were expelled to Hungary in exchange for approximately 73,000 persons of Slovak ethnicity who volunteered to be resettled in Slovakia. The Hungarians who remained in Slovakia were pressured to declare Slovak ethnicity as part of the "Reslovakisation" process. Hundreds of thousands of them did so – many of them later returned to their Hungarian ethnicity.

[5] Center for Legal Analyses 2000.

[6] De Zayas 1994: 152.

The reprisals lasted until 1948, when a Communist takeover of the government resulted in Czechoslovakia becoming a member of the Communist bloc. The application of the Decrees was discontinued, and Hungarians regained their citizenship – but not their property. The state soon nationalised all private property, and individual ownership lost relevance. But no wrongdoing was acknowledged, the persons affected were not rehabilitated, and no apology was issued for the wrongs they had suffered. The community did not become an equal, state-constituting part of Czechoslovakian society, but was given a tolerated status with limited minority rights. The state formally broke with its policy of 1945–1948, and never provided compensation or other redress to those affected. Official policy simply treats the Decrees as a closed step in the past, with no current legal effect.

THE BENEŠ DECREES AFTER 1989

After the fall of Communism in 1989, the state allowed the restitution of property nationalised during the communist years by adopting the so-called restitution law.[7] However, this law does not apply to land confiscated under the Beneš Decrees. Thus, the state did not consider the confiscation of property on the basis of ethnicity in 1945–1948 to be an unjust step that should be redressed. This approach is also the basis of the second restitution law adopted in 2003, which was still in force when Slovakia joined the EU.[8]

During the EU accession process, the Beneš Decrees were criticised for allowing the confiscation of property on the basis of ethnicity, which is incompatible with the EU Treaties.[9] The European Commission examined the relationship between the Decrees and the EU legal order in the Czech Republic, and in the so-called Frowein Report came to the conclusion that if

7 Jablonovský 2010: 3.
8 Gyeney–Korom 2020: 315.
9 Bagó 2018: 56.

the Decrees are no longer applied, they are not contrary to EU law.[10] In other words, past breaches are not investigated by the EU because they fall outside the temporal scope of the EU Treaty; current breaches are not known to the EU; and the EU does not question the continuing consequences of past breaches in order not to prevent the accession of the Czech Republic and Slovakia.

Since 2012, a petition has been pending before the European Parliament's Committee on Petitions, seeking the abolition of the Beneš Decrees. In this procedure, the Slovak representation, across governments, has consistently held the position that because the Decrees are no longer applied, they are not contrary to EU law.[11] However, the first part of the claim was severely challenged in 2019, which casts serious doubt on the second part.

THE LEGAL STATUS OF THE BENEŠ DECREES IN THE 21ST CENTURY

The Beneš Decrees are laws that had a legal effect for a specific period of time. Between 1945 and 1948, the citizenship, pensions and property of Hungarians in Czechoslovakia were confiscated, they were subjected to forced labour and deported. After 1948, such actions did not take place, so in this sense, the Decrees are indeed dead law.

But this does not mean that the Decrees have no legal effect currently. First, they may serve as a legal basis for compensation claims. If the measures were cancelled without ever being declared as unjust, they could be still challenged by those affected. For example, a person forced into forced labour may request compensation for the harm suffered.

The situation is even clearer in the case of confiscation of property. President Beneš's decrees on confiscation of property were implemented in Slovakia by decrees of the Slovak National Council. The most important of these was Decree No 104/1945 of the SNC on the confiscation and early distribution of

[10] Frowein et al. 2002.

[11] Slovak Government 2013.

agricultural land of Germans, Hungarians, and the traitors and enemies of the Slovak nation.[12] On the basis of the decree, the ethnic Hungarians and Germans lost their land with effect from 1 January 1945.[13] As its name indicates, the decree penalised persons convicted of anti-state offences, including Slovaks and Hungarians, but also sentenced persons of German and Hungarian ethnicity to loss of property purely on the basis of their ethnicity. Only a small number of Germans and Hungarians were exempt from the confiscations, who could prove their active resistance to Nazi authorities – for example, by participation in the Slovak National Uprising of 1944.

This decree is still in force today and is still used for confiscation of assets – both claims seem surprising, because they are not known to the public. The Slovak Ministry of Justice is aware that the decree is in force, and they confirmed this in writing.[14] The fact of confiscation of assets is not publicly known, but it is demonstrably happening, and anyone can easily verify it.

The case of Bosits v. Slovakia

Since the fall of Communism, Slovak courts have not returned property confiscated under the Beneš Decrees to its original owner. The relevant legislation on restitution simply does not allow this, and unlike in the Czech Republic, the Constitutional Court of Slovakia has not taken a position on whether deprivations of property in 1945–1948 are compatible with modern human rights standards.[15] In the Czech Republic, several former German owners have sued for the restitution of their property, and a case is currently pending against the family of the Grand Duke of Liechtenstein.

[12] Nariadenie Slovenskej národnej rady č. 104/1945 Zb.

[13] Hungarians initially only lost their land above 50 hectares. This rule was amended by Decree No 64/1946 of the SNC on 14 May 1946, which extended the confiscated property to all land owned by Hungarians.

[14] Ministry of Justice of the Slovak Republic 2020b.

[15] Ústavní soud ČR, 1995 and 1998.

In Slovakia, very different types of trials have taken place, with reports in the Hungarian press in Slovakia since the early 2000s claiming that the Beneš Decrees are the basis for the present confiscation of property or the refusal to return property. These reports did not gain wider coverage, because the legal grounds of these events were not entirely clear from them. The media breakthrough came with the *Bosits v. Slovakia* decision of 19 May 2019 of the European Court of Human Rights, which concerns one such case. As the case can be described as typical, it is important to understand its details.

Miklós Bosits's grandfather owned a 35-hectare forest in the village of Váradka (Varadka), near Bardejov in northern Slovakia. Because he had Hungarian ethnicity, in 1946 the local district office issued a confiscation order for his name. However, this order was not served on him because the district office assumed that he had left for Hungary (in fact he continued to live in Prešov [Eperjes] for the rest of his life). On the basis of the order, a court decision in 1947 deprived him of all his real estate, including the forest land in question. However, for unknown reasons, this confiscation was not entered in the land register by the land registry office, and the land was still in Bosits' name at the time of the communist takeover in 1948. The registration was probably delayed due to a lack of capacity at the land registry.

After the fall of Communism, Mr Bosits asked for the forest to be returned to him, on the basis that it had been nationalised by the communist regime. In 1995, the state land settlement process, known in Slovak as ROEP (*Register obnovenej evidencie pozemkov* [Revised Land Register]), was launched in Slovakia. This was completed in the Bardejov district in 2000. At that time, the 1946 confiscation order and the 1947 court decision were found in the archives, but the district office did not accept them as valid because it was clear from the file that they were not served on Mr Bosits in the past, which was contrary to the procedural rules applicable in 1946–1947. Bosits was therefore reinstated as the owner of the forest land in question. This ROEP decision was also accepted by the local representative of the state company Forests of the Slovak Republic *(Lesy Slovenskej republiky),* which participated ex officio in the ROEP procedure.

Mr Bosits died in 2006, and the forest was inherited by his grandson Miklós Bosits and three other descendants who live in Hungary and are Hungarian citizens. They were properly registered as the new owners of the forest by the Bardejov District cadastral office.

In the meantime, a planned investment increased the value of the forest. Therefore, instead of buying the forest or expropriating it (with compensation), the Forests of the Slovak Republic took steps to acquire it on the basis of the Beneš Decrees. First, they tried to convince the Bardejov District cadastral office to confiscate the land on the basis of the confiscation order, i.e. to register the state as the owner on the property title. The cadastral office refused to do so. They pointed out that confiscation would be illegal, and the Forest company knew this, as the ownership of the same land had already been confirmed in the ROEP procedure, and the Forest company had accepted Bosits's ownership.

In 2009, the Forests of the Slovak Republic state company filed a lawsuit against Miklós Bosits and the three other heirs, asking the court to declare that the state is the owner of the forest land in question, since it was confiscated from Bosits's grandfather in 1946. On 9 November 2011, the Bardejov District Court dismissed the action, stating that the land had never been legally confiscated from Bosits's grandfather. On appeal by the Forest company, this decision was confirmed by the Prešov Regional Court on 6 September 2013. The Forest company could not submit further remedies, and the case was closed.

However, the Forest company turned to the Prosecutor General's Office of the Slovak Republic. The Prosecutor General has the possibility to intervene in closed civil proceedings by means of an extraordinary remedy, the so-called extraordinary appeal on points of law *(mimoriadne dovolanie)*. The Prosecutor General did so on 4 September 2014, when he asked the Supreme Court to annul the first and second instance court decisions in the case.

The Supreme Court ruled in favour of the Forest company in its decision 4 MCdo 12/2014 of 29 September 2015. The court found that the forest should be considered as if it had been confiscated in 1946 "in order to preserve the prestige of the State". In so doing, the court effectively confiscated with retroactive effect the property of Bosits's grandfather, which became the property

of the state with effect from 1946. The court remitted the case back to the first instance court for a new judgment in line with the Supreme Court's reasoning.

Miklós Bosits, however, filed a constitutional complaint against the intervention of the Prosecutor General, claiming that his procedural rights had been violated. This complaint was rejected by the Constitutional Court on 8 June 2016, accepting the reasoning of the Supreme Court. Bosits then lodged a complaint with the European Court of Human Rights in Strasbourg. On 19 May 2020, the European Court ruled in his favour,[16] stating that the intervention of the Prosecutor General in a case that had already been closed violated the applicant's right to a fair trial under Article 6 of the European Convention on Human Rights. The European Court was unable to examine the confiscation of assets itself, as the issue was still pending before the domestic courts. However, the decision points to the fact of confiscation and its legal basis. It also mentions the specific domestic court decisions, which clearly show that confiscation of property under the Decrees is indeed possible in Slovakia at present.

The Slovak Government has handled the case by trying to interpret the European Court's decision very narrowly.[17] The statements have focused on the question of the powers of the Prosecutor General, while failing to say in what proceedings these powers were exercised. Minister of Justice Zuzana Kolíková also received specific questions on the Decrees in the form of letters and parliamentary interpellations, but she answered them in a way that did not require her to take a position on the issue of the Decrees.[18]

Other confiscations taking place currently

In parallel with the Bosits decision, partly before and partly after it, another set of cases concerning land under the newly built D4 highway received a lot of publicity. Podunajské Biskupice is today part of the city of Bratislava, but in

[16] Bosits v. Slovakia 2020.
[17] Ministry of Justice of the Slovak Republic 2020a.
[18] Kolíková 2020.

1945 it was an independent village, almost entirely populated by Hungarian speakers. Due to the ethnic composition of the population, almost the entire area of the municipality was subject to confiscation under the Beneš Decrees. However, only a small part of the confiscations were in fact carried out. Much of the land had been built on by the state under communism or cultivated by the local cooperative.

A few years ago, however, the state started to build the D4/R7 motorway, which connects to the capital's motorway network just outside Bratislava, heading east towards Žitný ostrov (Csallóköz), a region with a large Hungarian population. The first section, to Holice (Egyházgelle, Dunajská Streda/Dunaszerdahely district), was opened in 2020.

The land under the motorway became valuable after it was taken out of cultivation. Several residents applied to have land in their ancestors' names and previously thought to be worthless to register in their names in a supplementary inheritance procedure. The National Highway Company (*Národná diaľničná spoločnosť* – NDS) accepted the newly announced claims and made preliminary agreements with the heirs to purchase the land from them.

This is when the Slovak Land Fund (*Slovenský pozemkový fond* – SPF) intervened. It instructed the Highway Company to stop the acquisitions, claiming that the lands in Podunajské Biskupice were subject to the Beneš Decrees and therefore belonged to the state. The local notaries were ordered to stop inheritance proceedings, and the Bratislava cadastral office started to confiscate land under the motorway in administrative proceedings. This was not possible in all cases, so several lawsuits were also filed to have the courts order confiscation. There are currently around 50 lawsuits pending. Some of the people concerned are very determined; if the state does confiscate their land, they are willing to apply to international fora. These confiscation proceedings were reported in the Hungarian and Slovak press.[19]

[19] Czímer 2020a; Czímer 2020b; Czímer 2020c; TASR 2020.

Based on the information available so far, the Land Fund is systematically searching archives for possible confiscation orders affecting to the land under the motorway. On several occasions, completely false confiscation orders have been used, for example when the same order was used to confiscate the property of several local residents with the same name. Valid orders are often also not suitable for confiscations under domestic law, for example, because they do not have the address of the person concerned on them, so they were evidently not served on the person back in the day. But the Land Fund goes even further, often confiscating land without a confiscation order if it is believed that the original owner was Hungarian or German. The publicised cases led to the discovery that several parcels of land had already been confiscated in previous years in cooperation with the cadastral offices, typically the property of former German owners who have no local heirs because they have been expelled from the country. The scandals have led to the emergence of some heirs living in Austria or Germany, which is when these anomalies were discovered.

Anyone can verify the existence of confiscations by using the online property register. Many property titles show that the state was registered as owner in recent years, where the reason for registration is a confiscation order from 1946 or 1947. Examples from the Podunajské Biskupice cadastre alone are 7922, 7881, 7920, 7871, 7909, 7912, 7915, 7925, 7930, 7931, 7938, 7944, 7873, 7907, 7916, 7920, 7924, 7928, 7932, 7933, 7934, 7935, 7941, 7945, 7949, 7952, 7958, 7961, 7964, 7965, 7966, 7967, 7969, 7973, 7852, 8297, 1645, 3644, 3646, 8389, 7118, 5398, 7728.

However, the fact of confiscation of assets is still denied by the state and is not known to the public and the professional public. One reason is that the allegation is very serious and goes against the constitutional foundations of the Slovak legal system. There is currently no political will, political or legal authority for such a violation. How is this possible and how can the state try to justify it?

Confiscations in practice

To analyse the legal impact of current confiscations, we must first understand how the above mentioned Decree No 104/1945 was implemented. While the Decree in principle confiscated land from all persons of German and Hungarian ethnicity, it was implemented by individual decisions. The local national committees prepared a list of persons of Hungarian and German ethnicity. These lists were often completely arbitrary, with persons being added to the list because they had a Hungarian- or German-sounding name, or simply based on unverified statements of others. On the basis of the lists, an individual decision, a so-called confiscation order was issued in an administrative procedure, stating that the person was subject to the decree on the basis of his ethnicity and therefore lost his property. According to the rules of administrative procedure in force at the time, Government Decree No 8/1928 on Administrative Procedure, for the order to become final, it had to be served on the person concerned, who could appeal against it. In practice, appeals were of little importance because they were rarely successful. There were a few exceptions, for example when someone contested that his ethnicity had been wrongly established, for example, because he had been confused with another person, or if the person could prove that he was exempt from the decree because he was an active anti-fascist activist, for example, by taking part in the Slovak National Uprising. After the decision became final, a court ruling declared that the person lost his or her property specified in the decision. The Land Registry implemented the court order by registering the state as the new owner of the property on the property titles. Part of the land thus transferred to state ownership was then allocated to Slovak settlers, while the rest remained in state administration.

The description above shows how confiscations took place in principle: this is how the public authorities wanted to proceed. However, due to the chaotic situation after the war and the lack of qualified administrative cadres, the procedures were carried out with many errors. Very few bureaucrats had legal qualifications, and the persons affected were often in unknown places, for example, because they were prisoners of war as soldiers of the Hungarian

army or had disappeared. As a result, often no attempt was made to serve the orders, and alternative methods of service were not used (e.g. appointment of a guardian, service by public notice). Many proceedings were also delayed, and by 1948, when the confiscations were stopped, there were many properties for which confiscation orders had already been issued but the proceeding was not yet concluded, the new owner was not yet registered on the property titles. Some of the confiscated land had already been managed by their new owners, the Slovak settlers, some of whom were registered as owners, but others were not. In 1948, by Government Decree No 26/1948, owners of Hungarian ethnicity who had regained their Czechoslovak citizenship were given back their land up to 50 hectares, but this was still only a decision in principle, and the vast majority of the old–new owners did not manage to register this land in their own name. In 1948, after the state nationalised all agricultural property, private ownership lost its importance, and the state did not put property titles in order. Therefore, there were many properties where confiscation or restitution was pending: a decision in principle or a first decision had been issued but the process had not been completed.

Property titles after 1989

After the fall of Communism, Czechoslovakia decided to return property confiscated by the Communist regime. Law No 229/1991 on restitution of land was adopted,[20] but it only applies to property confiscated between 25 February 1948 and 1 January 1990. Thus, it is not possible to claim back property confiscated under Decree No 104/1945 mentioned above or under any other Beneš decree. A similar solution has been adopted in the second Land Restitution Act No 503/2003,[21] which was adopted in the now independent Slovakia.

[20] Zákon č. 229/1991 Zb. o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku [Act No 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property].

[21] Zákon č. 503/2003 Z. z. o navrátení vlastníctva k pozemkom [Act No 503/2003 Coll. on the restitution of ownership of land].

Since the state did not update records of property ownership under communism, the situation was completely unclear. Many of the owners who were registered in 1948 had died and their heirs were not registered as the new owners of property. Slovakia initiated a procedure to clarify and settle property titles, the so-called ROEP procedure, with the so-called Property Settlement Act No 108/1995.[22] In this procedure, the situation of each parcel of land was examined, comparing the data recorded in the register with the reality, to bring the register in line with the actual legal situation. This procedure was completed by a decision of the local district offices for each cadastral area.

The ROEP process was often not handled by lawyers, but was outsourced to companies, who sometimes acted in a completely arbitrary manner when deciding whom to consider the rightful owner. This is particularly relevant in case of properties falling under the Decrees. In some districts, the results of confiscation orders were taken into account, therefore anyone who appeared as the owner of a parcel but a confiscation order had been issued to his name in 1945–1948 was "deprived" of the property – the state was registered as the owner. In other cases, the original Hungarian owners were registered as the owners. Situations where property confiscated under a decree was given to Slovak settlers and then nationalised from them by the state were also handled randomly. In some cases, the original Hungarian owner was registered as the owner, in others the Slovak settler, and in some cases, both were registered as full (100%) owners. These examples also show that the outcome of the ROEP process was often arbitrary, without central guidance. As no individual decisions were taken, the entries do not create new ownership, nor do they formally constitute confiscation of property, yet they form the basis of the current public register. The result, the determination of ownership, can be challenged in court.

[22] Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom [Act No 180/1995 Coll. on Certain Measures for the Arrangement of Land Ownership].

The legal status of present confiscations

The unclear and unresolved property relations are the key to understanding the legal status of current property confiscations. No one knows how many properties were confiscated by the authorities in the ROEP process, i.e. in how many cases was the state registered as the owner instead of the original Hungarian owners. It is important to note that this type of confiscation is contrary to domestic law: since the properties concerned were not confiscated until 1948, they remain legally the property of the Hungarian owners, even though confiscation orders had already been issued. Moreover, even if the confiscation had been completed, the vast majority of the persons concerned would be entitled to recover their property under Decree No 26/1948, or at least its part up to 50 hectares.

However, even more important is the fact that the international legal context has completely changed since 1945–1948. When in the present the state is entered as the new owner of a property, the state implements a confiscation order issued in 1945–1948. In the short post-war period, confiscation on the basis of ethnicity through the principle of collective guilt was partly approved and partly tolerated by the international community. However, this is not the case in the present era. Currently, the application of the principle of collective guilt is not compatible with the European Convention on Human Rights, whose Article 1 of Protocol No. 1 protects the right to property. The state cannot raise any compelling reason as to why it needs to deprive Miklós Bosits or other Hungarian owners of their land. The fact that their ancestors were of Hungarian ethnicity hardly constitutes a legitimate aim.

The application of the Decrees did not end after the ROEP procedure. There are still many old confiscation Decrees in the archives that the authorities can discover and use, either openly or secretly, to deprive ethnic Hungarian or German owners of their property. As these proceedings are often brought against owners who do not even know about their property (e.g. it is in the name of their grandparents or great-grandparents, or they live abroad), such

cases are rarely made public. Occasionally, however, the authorities will take action against someone who disputes the issue, and it is then reported in the press that another confiscation has taken place.

It is difficult to estimate the size of the area that could be affected, and how much further confiscation may be imposed by the state. Large estates were already confiscated immediately after the war, so the current proceedings concern small parcels of land. Based on figures published by Štefan Šutaj, the land that was confiscated under the Decrees but not given to other persons, and was therefore under state administration in 1948, can be estimated at 337,000 ha.[23] As a significant part of this land had not been legally confiscated before then, this is an upper limit to the estimate of how much land may still be affected. The lower limit, based on the property confiscations of 2019–2020, is around 50,000 hectares (taking into account that the confiscations have affected districts of Bratislava and Senec, with fewer Hungarian-speaking residents, and that other parts of southern Slovakia have a higher proportion of affected land). Thus, we can estimate the amount of land that has been, is being and will be confiscated by the state under the Decrees since the fall of Communism between 50,000 and 337,000 hectares. Importantly, confiscations can take place at any time, there is no time limit and exempt land. In practice, however, this will typically take place when a parcel of land becomes valuable, for example, because of road construction or other development.

Types of confiscations

There are some typical types of property confiscation. The first type concerns developers or the state who want to acquire land and find that the owners are of Hungarian ethnicity, and instead of buying the land, they start an archival search to see if they can find a confiscation order issued to the name of the original owner. If such a confiscation order is found, the confiscation order is

[23] Popély et al. 2007: 40.

implemented in an administrative procedure, i.e. the state is registered as the owner and the land is then bought from the state at a price below cost.

A modified version of the previous case takes place where the state cannot be registered as the owner in an administrative procedure. For example, the cadastral office refuses to register the state, pointing out that it would be illegal to confiscate someone's property on the basis of a confiscation order that was not implemented by the authorities in 1945–1948. In such cases, the state bodies – typically the State Land Fund or the Slovak Forestry Company – initiate a property lawsuit. This is not common because it raises public awareness of the issue, but it does happen for valuable properties. The Bosits case is an example.

In many cases, government agencies are proactive and systematically enforce confiscation orders that they find. These processes are repeated in waves, for reasons currently unknown. Managerial decisions or capacity constraints likely influence when agencies have the opportunity to research new archival sources. Possibly, relevant confiscation orders may be found during archival research. In 2019–2020, the cadastral offices in Bratislava and Senec secretly registered around 250 such confiscations. These properties were transferred to the state in 2019 and 2020, on the basis of Decree No 104/1945.

The fourth group includes cases of inheritance and supplementary inheritance proceedings. If it is discovered that the original owners may have been subject to the Beneš Decrees, public notaries can stop the inheritance proceedings, the state authorities confiscate the property from the testator, and then the inheritance proceedings continue without the property concerned. The heirs often do not even know that other parcels of land were part of the inheritance than those included in the final decision. Public notaries have received several written instructions from the Chamber of Notaries instructing them that in case of Hungarian and German heirs, they should first inquire at the State Land Fund whether the properties are not covered by the Beneš Decrees, and if they are, the Land Fund will take steps to enforce the Decrees, i.e. confiscate the properties, and then the inheritance proceedings will continue without these properties. In one such written instruction, the Ministry of

Finance instructs the Chamber of Notaries to proceed in this way in the case of heirs of Hungarian nationality, since their ancestors are likely to have been resettled and therefore if they have any real estate assets left in Slovakia, they are likely to be subject to the Beneš Decrees.[24]

The fifth group includes cases where Slovak individuals enforce their property claims arising from the Decrees. These are persons to whom the confiscated Hungarian land was allocated by the state, but who were not registered as owners until 1948. In such cases, the original Hungarian owner is the rightful owner by law. There are, however, examples of descendants of the affected Slovak settlers enforcing the Decrees, i.e. trying to register the confiscations and then registering themselves as owners on the basis of the decision on the allocation of the land. There have also been lawsuits, which have received a lot of attention when the concerned defendant was a municipality or other legal entity.

The common feature of the above types of confiscation is that they are illegal even under Slovak law. Cadastral offices register the state as the owner of a property on the basis of confiscation orders. However, confiscation orders are not in themselves enforceable documents. They had to be implemented by a court decision in 1945–1948, since the confiscation order only stated that a person was of Hungarian or German ethnicity, but neither identified the person, for example by date of birth, nor specified the property to be confiscated – these details were added in the court decisions. However, the judicial step is now simply skipped by the authorities. The confiscation orders do not contain the information required by the cadastral law (e.g. date and place of birth of the owner). Both the cadastral offices and the State Land Fund are aware of these problems, and the procedures are therefore carried out in secret. The cadastral offices sometimes refuse to register the confiscation orders, and in such cases they receive an instruction to proceed from the central cadastral office, the Office of Geodesy, Cartography and Cadastre of the Slovak Republic *(Úrad geodézie, kartografie a katastra Slovenskej republiky).*

[24] Ministry of Finance of the Slovak Republic 2005.

How do the Slovak public authorities explain these procedures? The simple answer is that they do not, they are secret precisely because they would not stand the test of publicity. However, it appears from the occasional statements that the authorities consider land held by Hungarian owners between 1945–1948 state property, and if it is still owned by them or their descendants, they portray it as a simple property registration problem. In their view, they are only bringing the registry into line with the real legal situation, since in principle all property should have been confiscated from Hungarian persons until 1948.

However, this position has no legal basis. First, the conditions for confiscation were already strict in 1945. The decision in principle, the issuing of the Decrees, did not in itself deprive the owners of their property. It had to be implemented by individual decisions, following due process. If this did not take place, there could be no question of confiscation. If the procedure was completed now, confiscation is taking place currently. Second, the properties confiscated from Hungarian persons in 1945–1948 were returned to the original Hungarian owner (up to 50 hectares) by Government Decision No 26/1948 – again, this was a decision in principle, no actual restitution took place, but this is the real legal situation with which the land register should be brought into line.

Third and most importantly, even if the authorities were to complete the confiscations in compliance with the domestic law, they would be in serious breach of the human rights conventions that Slovakia has now ratified and adopted, because the confiscations are based on ethnicity-based collective guilt. The authorities are aware of this, which is why they are conducting these proceedings in secret, bypassing the public, in an administrative procedure, without even informing the persons concerned. Court proceedings that attract more attention rarely take place, mostly in case of high-value properties where property interests are involved.

The consequence of secret proceedings is that even the rules that the authorities themselves have set up are being broken. Sometimes, property is confiscated on the basis of manifestly false confiscation orders – for example, on the basis of similarity of names. It is simply assumed that if there is a confiscation order for a person called Alajos Kovács, then the property of another Alajos Kovács

(his cousin) living in the same village must also be confiscated, as he must be Hungarian. Moreover, there are also examples where, in the absence of confiscation orders, it is only inferred from other circumstances that someone was Hungarian, and therefore his property can be confiscated (e.g. there is an indication in the archives that he attended a Hungarian school, or belonged to the Reformed Calvinist Church, or was a member of a Hungarian social or political organisation). This is completely absurd, since not only is there no legal basis for confiscating property, but there is also no investigation at all into whether the confiscation order issued for the person is missing for a reason. For example, the person might have been exempted from confiscation because of his participation in the Slovak National Uprising.

OTHER CURRENT IMPACTS OF THE BENEŠ DECREES

Confiscation of property does not only cause property damage to Hungarian residents. They very sharply pit against each other the Hungarian and Slovak communities, as they show that the ideology of 1945–1948 is still guiding inter-community relations. This includes the fact that Hungarians are not equal members of the state, even in terms of formal equality before the law. This has a very serious impact on the Slovak legal system itself and on the enforcement of constitutional norms. The authorities are circumventing constitutional guarantees in secret, often without judicial review. The state tolerates these actions because they are directed against the Hungarian community. However, such practices undermine the rule of law in the country. If assets can be confiscated secretly and illegally, what limits are there on targeting the assets of other groups? If the law is no longer a barrier, what will stop the overreach of the state? The Slovak nation is paying a heavy price for restricting the rights of the Hungarian community: it is undermining the legal security of all its citizens.

The impact of the Beneš Decrees is most obvious in the case of land confiscations, because the current application of the law directly relies on the Decrees in administrative and judicial decisions. However, the current

impact of the Decrees is much broader than this, and it fundamentally shapes Slovak–Hungarian relations in Slovakia. The Decrees in 1945–1948 had a clear purpose, which was not hidden by the official bodies. As the officials of the Ministry of Internal Affairs declared in their justification for the re-slovakisation program in 1946: "We want to be, and we will be, a nation state of Slovaks and Czechs."[25] The message was also clear to the public, Slovaks and Hungarians equally understood that Slovakia was no longer a homeland for Hungarians.[26] Confiscation of property was only one measure how the authorities turned the country into a (Czecho)Slovak national state. The other elements were the expulsion of Hungarians and the forcing of those who remained into an asymmetrical situation, i.e. the relegation of the Hungarian language to an unequal position and its banishment from the official sphere. The relatively tolerant minority policies of the First Czechoslovak Republic (1918–1938) were replaced by a state practice that restricted minority rights and curtailed the enjoyment of minority culture. These culminated in the period of 1945–1948, but while expulsions and confiscations of property stopped, the unequal treatment of minorities continued. The communist regime dismantled and repressed the national education, culture and economic development of the areas inhabited by Hungarians.[27]

These policies have clear parallels to the present. Slovakia's Constitution is based on the primacy of the Slovak ethno-national community. This is most evident in the much-criticised Preamble, but is not restricted to that issue.[28] Article 6 of the Constitution declares Slovak the state language, a provision implemented by the State Language Act of 1995, which states that the Slovak language takes primacy over other languages. This is reflected in several specific provisions that restrict the use of Hungarian and other minority languages.[29]

[25] Gyönyör 1990: 46.
[26] Gyönyör 1990: 33.
[27] Popély 2023.
[28] Fiala-Butora et al. 2018.
[29] Fiala-Butora 2012.

The similarity with the 1945–1948 period is striking. On 18 December 1947, the Office of the Commissioner for Internal Affairs issued its proclamation No 20.415/3-V/3-1947, published in the Official Gazette under No 2/1947, which contained provisions aimed at preserving the purity of the Slovak language. It was implemented only in the Hungarian-inhabited regions, with an anti-Hungarian edge.[30] After the communist takeover of 1948, no legal norms regulated the use of the official language, but this was not a sign of tolerance.[31] The Hungarian language was placed in an informal, tolerated position, not prohibited in the private sphere, but with very limited use in the public sphere. For example, signs depicting the names of municipalities remained monolingual Slovak. Hungarian-language press and publishing existed, but was subject to constant restrictions by the authorities. The post-1945 legislation therefore represents a sharp break with the practice of the First Czechoslovak Republic, and the post-1948 legislation continues this spirit, not returning to the pre-1938 practice.

The roots of today's language regulation can be found here. Moreover, there are many signs that Slovakia still defines itself as a Slovak nation state. This can be seen in the administrative division of the country, which has led to the creation of districts and regions where Hungarians form a majority in as few units as possible (2 districts out of 79, none of the 8 regions). Or the educational legislation, which does not recognise the Hungarian school network as a separate, autonomous organisation with its specific characteristics and needs. This leads to several problems from a methodological, linguistic and school maintenance point of view, and ultimately to the disappearance of a significant number of Hungarian schools. Similarly, "culture" for the state is essentially Slovak, Slovak-language culture. Hungarian and other minority cultures receive disproportionately less support and even less recognition from the state.

[30] Gyönyör 1990: 34.
[31] Gyönyör 1990: 76.

These examples show that the acceptance of asymmetry is deeply embedded in society.[32] None of the Slovak political parties questions the national status quo, and none proposes to overcome it. Political parties representing the Hungarian community in Slovakia adopted the strategy of improving the system in small steps, which is tantamount to its legitimisation. That the constitutional setup is fundamentally wrong and that a modern European state should be based on equality of citizens, including equality of language and culture, is no longer a matter of debate.

It is difficult to see the current national setup as anything other than the consequence of the fact that the primacy of the Slovak nation and the exclusion of the Hungarian nation is such a visceral historical experience of the entire political community that they cannot distance themselves from it. Whatever the political debates are about on the surface, they cannot break through this mental block. There is no other way to do this but to bring to the surface, in the form of collective national group therapy, the beliefs that lurk deep down, so that they can be examined and debated in the light of day. This means confronting the issue of the Beneš Decrees.

CAN THE BENEŠ DECREES BE OVERCOME?

The Beneš Decrees are not simply the historical antecedent and cause of today's ethnic tensions. To this day, they serve as a justification for the current restriction of the rights of Hungarians in Slovakia and the asymmetrical structure of the state. They are based on the ideology that the Hungarians received what they deserved for their crimes. Without this ideological underpinning, the suffering caused by the Decrees would be incomprehensible and unjustifiable. Gyönyör recognised this very precisely in 1968.[33] If the punishment was justified, maintaining the situation is, even if not just, understandable. On the other hand, if the punishment was unjustified and based on false premises, it seriously

[32] Fiala-Butora 2013.

[33] Gyönyör 1990: 71.

undermines not only the present system, but also confronts the Czech and Slovak nations with a serious moral reckoning: they cannot blame others for the suffering they have caused, they must see in it their own responsibility.

This reckoning presents the Slovak public with a difficult task. If the Decrees are publicly discussed, it becomes widely known that the Hungarian minority in Czechoslovakia was not guilty, especially collectively and to such an extent as to justify the retaliation it suffered after the war. Rather, it was the consequence of the Czechoslovak Government's national goals and the recognition of the situation that, as victims of Nazi Germany, they had a unique opportunity to carry out ethnic cleansing that would be a blatantly grave violation in a democratic state, in peacetime, and unthinkable in other circumstances. This grave assessment can only be mitigated if it can be somehow presented as part of the fight against Nazism. This approach was not very persuasive in its own time, and is even less sustainable in the present era of modern historiographical research. Immediately after the Second World War, the German philosopher Karl Jaspers developed four categories of "guilt": criminal, political, moral and metaphysical.[34] Each of these categories is subject to different considerations, has a different consequence and entails a different "punishment". But the fate of Hungarians in Czechoslovakia after the Second World War cannot be justified by any of these; only if we make the community's sins appear more serious than they in fact were. This is why Slovakia tries to maintain the parallel between the targets of the Decrees and Nazi Germany.

If this fig leaf is lost, the Beneš Decrees will be a very serious moral low point in Czech and Slovak history. This is a difficult situation to deal with. Historical research makes it easier to understand the past, but does not automatically result in reckoning with it. Reassessing the issue has consequences, both for the relationship with the past and for Slovak–Hungarian relations today, and thus also for the constitutional order. In this case, very serious consequences.

[34] Jaspers 2000.

These are also evident from the reactions of Slovak officials. They cannot accept the reality of the continuing application of the Decrees, because it means that Slovakia is still applying ethnic-based confiscations that are a worthy successor to the Nuremberg racial laws. This is a serious allegation that the accused is trying to deny until possible. Similar reasons explain the European Commission's cautious position: if it is true that Slovakia is still applying the Decrees, this is not only a serious violation of EU law and a worldwide scandal, but could also call into question Slovakia's EU membership, since the existence of the Decrees was a contentious issue of inclusion, which the European Commission has already settled.[35] If it turns out that a mistake was made, the consequences could be very serious. It is in everybody's interest to try to avoid such a situation if possible.

The political gravity of the issue is illustrated by the apparent inconsistency in the way the victims of the Decrees are treated by the state. On 12 February 1991, the Slovak National Council issued a statement deploring the deprivation of citizenship and deportation of Germans in Slovakia.[36] A similar statement has not yet been made towards the Hungarian minority, or at least towards the Hungarian deportees. This differentiation can be explained by the different political situations of the two ethnic groups: Germans have virtually disappeared from Slovakia; apologising to them has no practical consequences. This step will only benefit Slovakia, because there is no one to demand that past mistakes are corrected. Hungarians, on the other hand, continue to live here and are important players in Slovak political life. The gesture towards them has consequences, real political consequences, because it entails not only reparations for past sins, but also a radical transformation of the current majority–minority relationship.

[35] Scheu–Pál 2023.

[36] Vyhlásenie Slovenskej národnej rady k odsunu slovenských Nemcov Schválené Slovenskou národnou radou uznesením z 12. februára 1991 číslo 78 [Statement of the Slovak National Council on the expulsion of the Slovak Germans approved by the Slovak National Council by Resolution No 78 of 12 February 1991].

Perhaps the first step towards a settlement is to take stock of the Decrees' consequences. In other words, the Hungarian community in Slovakia needs to be clear about what it demands in compensation for the Decrees. For example, individual compensation could be paid for property confiscated from individuals. For the property of Hungarian organisations, the community could be compensated with a financial fund to support Hungarian educational and cultural organisations. Individual rehabilitation (including posthumous) and at least symbolic individual compensation could be provided to those who were deported for forced labour. All Hungarians who lost their citizenship, pensions, property, etc. as an effect of collective punishment would be entitled to symbolic individual rehabilitation, in which the state would express its regret that they were treated as war criminals.

The above elements are separable and not dependent on each other. They may include monetary components, but they do not need to. If they do, the proposal should quantify them by indicating what would be accepted as fair compensation, and how many people may be affected; for example, only those still alive today, or also their descendants?

As a first step, the state should set up a commission of inquiry to assess the extent of the damage caused and estimate the level of compensation. Without this, we cannot know precisely what we are discussing when we talk about "abolishing" or overcoming the Decrees. It is this uncertainty that is currently making it very difficult for the Slovak side to find the political will to discuss a settlement. Without a clear understanding of what the Hungarian community wants, it is impossible to negotiate, let alone achieve a breakthrough. Indeed, no responsible leader would issue a blank cheque. In contrast, specific demands are always more digestible than unfounded fears.

The alternative would be to continue to ignore the Decrees. That attempt failed, when after decades of silence, the Decrees came back to haunt us, not only in spirit but also with specific legal consequences. Therefore, we need to confront both the Hungarian and Slovak public opinion with the events that

took place between 1945–1948, in order to overcome their effect. Only in this way can we achieve that the Beneš Decrees become a truly historical document, that their only effect remains that we learn from them.

REFERENCES

Bagó, Zoltán (2018): Az Európai Unió és a Beneš-dekrétumok. *Köztes-Európa,* 10(2), 43–65.

Bosits v. Slovakia (2020): European Court of Human Rights, application no. 75041/17, judgment of 19 May 2020. Online: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Bosits%22],%22itemid%22:[%22001-202463%22]}

Center for Legal Analyses (2000): *Memorandum on the Beneš Decrees.* Bratislava: Kalligram Foundation. Online: http://pdc.ceu.hu/archive/00001015/01/benes_decrees.htm

Czímer, Gábor (2020a): Az állam a Beneš-dekrétumokra hivatkozva a puszta névrokonság alapján ma is koboz el földeket. *Új Szó,* 6 August 2020. Online: https://ujszo.com/kozelet/az-allam-a-benes-dekretumokra-hivatkozva-a-puszta-nevrokonsag-alapjan-ma-is-koboz-el

Czímer, Gábor (2020b): Az állam egy állítólagos kitelepítési listára hivatkozva kobozna el földeket. *Új Szó,* 13 August 2020. Online: https://ujszo.com/kozelet/az-allam-egy-allitolagos-kitelepitesi-listara-hivatkozva-kobozna-el-foldeket

Czímer, Gábor (2020c): Érzi a szlovák kormány, hogy nem lenne elegáns a Beneš-dekrétumok alapján elkobozni a D4-es alatti értékes telkeket. *Új Szó,* 1 July 2020. Online: https://ujszo.com/kozelet/erzi-a-szlovak-kormany-hogy-nem-lenne-elegans-a-benes-dekretumok-alapjan-elkobozni-a-d4-es

De Zayas, Alfred (1994): *A Terrible Revenge. The Ethnic Cleansing of the East European Germans, 1944–1950.* New York: St. Martin's Press.

Fiala-Butora, János (2012): A magyar nyelv jogi helyzete Szlovákiában. In Eplényi, Kata – Kántor, Zoltán (eds.): *Térvesztés és határtalanítás.* Budapest: Nemzetpolitikai Kutatóintézet, 144–171.

Fiala-Butora, János (2013): A szlovák nyelvhasználati szabályozás elemzése Szlovákia nemzetközi kötelezettségvállalásainak tükrében. In Tóth, Károly (ed.): *Nyelvi jogok.* Somorja: Fórum Kisebbségkutató Intézet, 71–105.

Fiala-Butora, János – Pap, András L. – Śledzińska-Simon, Anna (2018): "Intimate Citizenship" and Illiberalism: Lessons from Hungary, Poland and Slovakia. *Anti-Discrimination Law Review,* 1(3), 40–68. Online: http://real.mtak.hu/92887/1/13_intimate_citizenship.pdf

Frowein, Jochen A. – Bernitz, Ulf – Lord Kingsland (2002): *Legal Opinion on the Beneš Decrees and the Accession of the Czech Republic to the European Union.* European Parliament, Directorate-General for Research, Working Paper No. 10–2002, Luxembourg. Online: www.europarl.europa.eu/studies/benesdecrees/pdf/opinions_en.pdf

Gabzdilová-Olejníková, Soňa – Olejník, Milan – Šutaj, Štefan (2005): *Nemci a Maďari na Slovensku v rokoch 1945–1953 v dokumentoch I.* Prešov: Universum.

Gyeney, Laura – Korom, Ágoston (2020): Ingatlanok kárpótlása: Beneš-dekrétumok az uniós jog szemszögéből – Az 1948 előtti kisajátítás érintettjeinek jogi helyzete a lex specialis elve alapján. *Kisebbségvédelem,* (Special Edition), 315–338.

Gyönyör, József (1968): Az ártatlanok védelmében. *Új Szó,* 12 April 1968.

Gyönyör, József (1990): *Mi lesz velünk magyarokkal?* Pozsony: Madách.

Jablonovský, Roman (2010): Genéza právnej úpravy reštitúcií na území Slovenskej republiky. In *Dny práva – 2010 – Days of Law, 1. ed.* Brno: Masaryk University, 1536–1558.

Janics, Kálmán (1979): *A hontalanság évei.* Pozsony: Madách.

Jaspers, Karl (2000): *The Question of German Guilt.* Trans. by E. B. Ashton. New York: Fordham University Press.

Kolíková, Mária (2020): *Mária Kolíková's letter to the political party Spolupatričnosť–Összefogás,* no. 24734/2020/10, 1 July 2020.

Kollár, Katalin (2010): A csehszlovákiai kisebbségek jogfosztása a II. világháború után. In *Az állam és jog alapvető értékei I.* Győr: Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola konferenciája, 201–210.

Marušiak, Juraj (2015): The Nationalizing Processes in Slovakia 1969–1988. The Case Study of Hungarian Minority. *Central European Papers,* 3(1), 88–107. Online: https://doi.org/10.25142/cep.2015.006

Ministry of Finance of the Slovak Republic (2005): *Letter to the Chamber of Public Notaries of the Slovak Republic,* 30 November 2005.

Ministry of Justice of the Slovak Republic (2020a): Európsky súd pre ľudské práva rozhodol v prípade Bosits v. Slovenská republika. *Press Release,* 19 May 2020. Online: www.justice.gov.sk/tlacovespravy/tlacova-sprava-2821/

Ministry of Justice of the Slovak Republic (2020b): Email on the validity of Decree No 104/1945, 29 July 2020.

Nariadenie Slovenskej národnej rady č. 104/1945 Zb. o konfiškovaní a urýchlenom rozdelení pôdohospodárskeho majetku Nemcov, Maďarov, ako aj zradcov a nepriateľov slovenského národa

Nariadenie Slovenskej národnej rady č. 64/1946 Zb., ktorým sa mení nariadenie o konfiškovaní aurýchlenom rozdelení pôdohospodárskeho majetku Nemcov, Maďarov, ako aj zradcov a nepriateľov slovenského národa

Popély, Árpád (2023): A magyar kisebbség a pártállami évek Csehszlovákiájában 1948–1989. In Romsics, Ignác (ed.): *A magyar kisebbségek 100 éve.* Kolozsvár: Komp-Press, 181–191.

Popély, Árpád – Šutaj, Štefan – Szarka, László (2007): *Beneš-dekrétumok és a magyar kérdés 1945–1948.* Gödöllő: Attraktor.

Scheu, Harald Christian – Pál, Ádám (2023): The Return of the Old Ghosts? The So-called Beneš Decrees and the European Protection of National Minorities. *Europa Ethnica,* 80, 57–67.

Slovak Government (2013): Government of the Slovak Republic, Information Concerning Petition No 0070/2012 on the Beneš Decrees and the Resolution of the National Council of the Slovak Republic No 533 adopted on 20 September 2007, 25 January 2013.

Šutaj, Štefan (2008): *Magyarok Csehszlovákiában 1945–1948 között.* Budapest: Lucidus Kiadó.

Szarka, László ed. (2005): *Jogfosztó jogszabályok Csehszlovákiában 1944–1949*. Komárom: MTA Etnikai-Nemzeti Kisebbségkutató Intézet Kecskés László Társaság.

TASR (2020): Gyimesi: Benešove dekréty sú stále živé. Dochádza ku konfiškácii na základe národnosti. *Sme,* 26 June 2020. Online: https://domov.sme.sk/c/22434774/juraj-gyimesi-upozornil-na-konfiskaciu-majetku.html

Ústavní soud ČR (1995), Nález Ústavního soudu ČR, PL ÚS 14/94 (8.3.1995)

Ústavní soud ČR (1998), Nález Ústavního soudu ČR, I. ÚS 14/98 (22.9.1998)

Vadkerty, Katalin (2001): *A kitelepítéstől a reszlovakizációig.* Pozsony: Kalligram Könyvkiadó.

Vyhlásenie Slovenskej národnej rady k odsunu slovenských Nemcov, Schválené Slovenskou národnou radou uznesením z 12. februára 1991 číslo 78 [Statement of the Slovak National Council on the expulsion of the Slovak Germans approved by the Slovak National Council by Resolution No 78 of 12 February 1991]. Online: www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/v_k-odsunu-nemcov.htm

Zákon č. 229/1991 Zb. o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku [Act No 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property]

Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom [Act No 180/1995 Coll. on Certain Measures for the Arrangement of Land Ownership]

Zákon č. 270/1995 Z. z. o štátnom jazyku Slovenskej republiky [Act No 270/1995 Coll. on the State Language of the Slovak Republic]

Zákon č. 503/2003 Z. z. o navrátení vlastníctva k pozemkom [Act No 503/2003 Coll. on the restitution of ownership of land]

II. Collective Guilt in Hungary, Romania and Yugoslavia

Réka Marchut

The Issue of Responsibility for the Expulsion of Ethnic Germans from Hungary

In the period between 1946 and 1948 approximately half of the Germans of Hungary (220,000 people) were settled to the American and Soviet occupation zones of post-war Germany. These events were part of a larger international process in which millions of Germans were forced to flee their homes in Northern and Eastern Europe, as well as Poland and Czechoslovakia. Post-war Hungary, as one of the countries on the losing side of the war, after 1945 was in a ceasefire status, accordingly was not a sovereign state. As a result, the expulsion of the Germans from Hungary could take place only with an international mandate under the supervision of the Allied Control Commission. International politics played a key role in the preparation and the authorisation of the expulsions, and this was no different in the summer of 1946, during the execution of the expulsions. Furthermore, international politics was decisive also in the context of the tense relations between the United States and the Soviet Union, when the expulsions were temporarily retarded. Finally, international politics had influence on the expulsions also in the summer of 1947, when forced migration to the Soviet occupation zone of Germany began without the consent of the Western Allied Powers. The aim of the study is to present and analyse these complex processes.

INTRODUCTION

It is well known that the forced migration of Germans in the territory of Central and Eastern Europe was carried out in the name of post-war retribution. The Allied Powers had been planning to solve the issue of minorities this way since

DOI: https://doi.org/10.36250/01228_06

the outbreak of World War II.[1] In a 1943 report on the peace negotiation attempts of Kállay's Hungarian Government, the British Foreign Secretary praised Hungary for stroking a blow against the German minority in Hungary by depriving SS volunteers of their Hungarian citizenship, and thus shifting them to Germany.[2] However, the expulsion of Sudeten Germans and Silesian Germans in particular had already been discussed and supported by both the Soviet Union and the United Kingdom. In this context, it is clear that the post-war expulsion of the Germans occurred both in victorious and defeated states. The main concern was revenge and the prevention of future problems.

During the war, it was the Soviet Union that suffered the greatest financial and human losses. As outlined from 1943 onwards and stipulated in the Percentages Agreement of October 1944,[3] this area would inevitably become part the Soviet sphere of influence. In the autumn of 1944, as the Soviet troops advanced massively, the post-war fate of the Germans became clear: at the political rally of the Smallholders' Party (Kisgazdapárt) held in Pécs, Hungary on 28 November 1944, Ferenc Nagy was the first of the party leaders to raise the issue of the expulsion of the Germans.[4]

THE ROAD TO THE POTSDAM CONFERENCE

However, this issue only came to the foreground in the spring of 1945, after the German troops had been driven out of the country. It was mainly in

1 Seewann 2000: 183–198.

2 Memorandum by the Head of the Department for Central Europe of the British Foreign Office on the principles of British policy in terms of Hungary (London, 22 September 1943). See Juhász 1978, document no. 71; Gecsényi–Máthé 2008: document no. 92.

3 In October 1944, Churchill met the Soviets in Moscow and proposed a division of control over Eastern European countries, dividing them into spheres of influence. Churchill and Stalin agreed that there would be a 90% British influence in Greece, a 90% Soviet influence in Romania and an 80% Soviet influence in Hungary and Bulgaria. For Yugoslavia, they agreed on 50–50%. Churchill 1949.

4 Kis Újság 1945: 3. See Zielbauer 1996: 154.

the press that the parties demanded a radical solution to the German issue, namely expulsion. At the time of the first press releases of these statements, the Department for Ethnicities and Minorities of the Hungarian Prime Minister's Office warned that such press releases should be banned, as they could be very damaging to the foreign affairs of the country:

> "The issue of expelling an ethnic group living in a particular country is never to be solved by the host country alone. Unilateral expulsion or even population exchange – a possibility and even a necessity in Hungarian–German relations – is only possible with the consensus of the two countries involved; moreover, expelling the Germans can only be carried out with the prior consent of the victorious Allied Powers. It is possible that the removal of the Germans from the Carpathian basin is also on the political agenda of the victorious Allied Powers. Therefore, before implementing the Hungarian initiative, it would be useful to find out the relevant intentions of the Allied Powers in advance and wait for them to take the lead, or at least the Hungarians should try to act together with the other interested states in the Danube Basin in this very important matter and submit a joint request to the Allied Powers."[5]

The issue of the expulsion of Germans from Hungary was discussed at the inter-party meeting on 14 May.[6] Minister of Foreign Affairs János Gyöngyösi explained that it was absolutely necessary to know whether the Allied Powers regarded the responsibility of the Germans to be an international issue or an internal matter of the affected countries. Gyöngyösi hoped that a resolution of the Allied Powers would shift the responsibility away from the Hungarian Government. Following the inter-party conference, the Hungarian Government appealed to the Allied Powers for the expulsion of the Germans;

[5] Magyar Nemzeti Levéltár Országos Levéltára [National Archives of Hungary] (hereinafter: MNL OL) XIX-A-1-n Miniszterelnökség Nemzetiségi és Kisebbségi Osztályának iratai [Documents of the Nationality and Minority Department of the Prime Minister's Office], box 1, 530/1945.

[6] The minutes of the inter-party meeting was published in Horváth et al. 2003: 46–69, and recently in Marchut–Tóth 2022: 166–190.

however, according to a British report of 9 July, on 12 May, Minister of Foreign Affairs János Gyöngyösi had already asked Sir Alvary Gascoigne, the British diplomat then serving in Budapest, about his government's opinion on the expulsion of some 200,000 Swabians.[7] At that time, London had not yet made a statement on the issue. Gyöngyösi also contacted Arthur Schoenfeld, the U.S. representative in Hungary, who told Gyöngyösi that although he did not know the U.S. Government's position, it would certainly not agree with any mass deportation, only with the punishment of war criminals.[8]

After the meeting, historian and publicist István Borsody published in *Szabad Szó* an article entitled "A sváb kitelepítés nemzetközi szempontjai" [The International Aspects of the Swabian Resettlement], in which he wrote that the resettlement of the Germans was a matter of domestic politics; the only subject of debate is which category of Germans it should apply to. "It would be absolutely advisable" – Borsody wrote – "to handle the resettlement of the Hungarian Swabians not only as a Hungarian matter, but as a general international matter."[9]

After the meeting, Minister of Foreign Affairs Gyöngyösi raised the issue of expulsion to the Allied Control Commission orally and later in writing; he called for the expulsion of 200,000 to 300,000 Germans to the Soviet occupation zone of Germany.[10] On 24 May, the British Government expressed the view that

7 According to the 1941 census, there were 477,491 native German speakers and 303,419 persons of German nationality living within the Trianon borders of Hungary. See KSH 1976.

8 Biewer 1992: 983–993.

9 Borsody 1945. Three and a half decades later Borsody published an article in *Új Látóhatár* (Borsody 1981). Based on the comparison of these two writings, we can say that Borsody took a very consistent position in this matter (the rejection of collective responsibility, the resettlement is primarily a matter of foreign policy, as well as the decisive role of the Soviet Union). First among Hungarian historians, Borsody described that Hungary came to the intervention of the Czech Edvard Beneš to deport the Germans; however, he wrongly considers that all this happened regardless of the request of the Hungarian Government.

10 MNL OL XIX-J-1-j Külügyminisztérium Békeelőkészítő Osztályának iratai [Documents of the Peace Preparatory Department of the Ministry of Foreign Affairs] II/28. In Balogh 1982: 85. See the minutes of the oral meeting sent to the Soviet Government in Marchut 2014: 352; see also: Fülöp 2011: 51; Tóth 2018: 297–298.

the expulsion of Germans from Hungary was less urgent than their expulsion from Poland and Czechoslovakia. Then, on 14 June, Gascoigne reported in a telegram that, although some members of the Hungarian Government would have wished to expel the whole German population of Hungary, still, only the fascist Germans were to be expelled.[11]

From the head of the U.S. political mission in Budapest, Gyöngyösi had received a memorandum of the U.S. Government on the issue of expulsion of Germans from Czechoslovakia. In this, the Americans stated that any expulsion of any group of people could only be carried out on the basis of international conventions and that Washington disapproved any expulsion based on collective guilt.[12] In its reply to the memorandum, the Hungarian Government opposed the collective persecution of Hungarians in Slovakia, while stressing the need to severely punish war criminals.[13]

On 9 July, Gyöngyösi negotiated with Soviet Ambassador Georgy Maximovich Pushkin in Budapest – the latter claimed that the expulsion of the Germans was a difficult task because Germany was in a difficult economic and demographic situation. Gyöngyösi was surprised by the hesitation of the Soviet Union, because, as he said, it contradicted the Soviet suggestions presented until then.[14] In his 1953 memoirs,[15] István Kertész, then Head of the Peace Preparatory Department of the Ministry of Foreign Affairs of Hungary, also referred to the strong Soviet pressure, tangible in the first months of 1945. However, no reference was made to this in the sources published after the Potsdam Conference, since if there had been any pressure, it would certainly have served as a reference to the Hungarian Government. Yet, even if there was no coercion or pressure, there must have been a suggestion, as we have a number of other

[11] Biewer 1992: 983–993.

[12] MNL OL XIX-J-1-n Külügyminisztérium Gyöngyösi János irathagyatéka [Ministry of Foreign Affairs, Archive of János Gyöngyösi].

[13] MNL OL XIX-J-1-n Külügyminisztérium Gyöngyösi János irathagyatéka [Ministry of Foreign Affairs, Archive of János Gyöngyösi].

[14] MNL OL XIX-J-1-j SZU Tük. [Confidential documents of the Soviet Union] 1945 – IV-100.2. In Baráth–Cseh 1996: 86; Szűcs 1997: 58–74.

[15] Kertész 1953: 8.

sources suggesting this fact.[16] The aforementioned British report of 9 July stated that according to the position of the Soviet Government, the expulsion should be as broad as possible. In one of his notes, Geoffrey Wedgwood Harrison, a member of the German Department of the British Foreign Office, wrote that the Soviet Union considered the expulsion of the Germans to be its historic mission. As Harrison wrote, the Anglo-Saxon position was quite different, "however, we must admit that we are not in a position to prevent it [i.e. the expulsion – author's note]. The best we can do is to try to ensure that it is well organised and as humane as possible, without imposing an intolerable burden on the occupying authorities in Germany".[17] Harrison's position was supported by, among other historians, Theodor Veiter and Alfred-Maurice de Zayas. According to Veiter, the Soviet Union's interest was the resettlement of the Germans, to create a cordon sanitaire on the occupied territories.[18] Zayas also confirms this in his works.[19]

THE ISSUE OF GERMAN MINORITIES AT THE POTSDAM CONFERENCE

The Allied Powers made it clear that they were the only ones to decide about the expulsion of the Germans. In Potsdam, the issue of the Germans from Czechoslovakia, Poland and Hungary was indeed discussed together. The expulsion of the Germans was opened for discussion by Churchill at the ninth meeting. Naturally, the situations of the Germans in Czechoslovakia, Poland and Hungary were given a different priority. The main focus of the negotiations was on Czechoslovakia and Poland, discussing Hungary only additionally, as there "the matter was obviously less urgent".[20] According to the minutes of the

16 British report of 9 July 1945. In Biewer 1992: 983–993.
17 Biewer 1992: 1003–1004. The quote is the author's translation from German.
18 Veiter 1987.
19 De Zayas 1987; de Zayas 1989.
20 Biewer 1992: 979–982.

conference, the expulsion of Germans from Hungary was clearly negotiated upon the request of the Hungarian Government. In Germany, the refugees and the expelled from Czechoslovakia and Poland were already creating a difficult situation, mainly due to supply problems, so the Anglo-Saxons were not interested in forcing Hungary to carry out the expulsion. According to the minutes written by the Soviet delegation, Sir Alexander Cadogan, British Permanent Under-Secretary of State for Foreign Affairs made the following statement on the issue of Germans in Hungary: "There is another issue of minor importance: the issue of the expulsion of a certain number of Germans from Hungary. I understand that the Hungarian Government wishes to relocate a certain number of Germans living in Hungary to Germany."[21] So, the British acknowledged the legitimacy of the Hungarian request; however, they themselves did not force the expulsion.

On 28 July, the American delegation raised the issue of the expulsion of Germans from Czechoslovakia. The British delegation indicated that the question was not only the expulsion of Germans from Czechoslovakia, but also from western Poland and Hungary. The Soviet delegation proposed to present the issue to the three ministers after its pre-processing by a preparatory committee. In accordance with this proposal, a corresponding committee was formed, with the participation of George F. Kennan (United States of America), Geoffrey W. Harrison (United Kingdom), Arkady Sobolev and Vladimir Semyonov (Soviet Union).

On the third staff meeting of 31 July, the U.K. was represented by Prime Minister Clement Attlee and Foreign Secretary Ernest Bevin. The sixth item on the agenda was the expulsion. The attendees agreed to try to get the British proposal accepted by the Soviets at the Foreign Ministers' meeting in the afternoon. Thus, the part of the document on the expulsion of Germans was drafted by the English-speaking countries and this is what they wanted to get approved by the Soviets. Initially, the Soviets objected to the British proposal, which would have imposed an expulsion moratorium until the German Allied

[21] Biewer 1992: 1729.

Control Council would examine the situation. Soviet Minister of Foreign Affairs Vyacheslav Mikhailovich Molotov pointed out that the document could easily be misunderstood by the governments concerned and that the issue could not be decided without these. Joseph Vissarionovich Stalin also expressed his doubts concerning the proposal, saying that it was not enforceable. The Anglo-Saxons, on the other hand, insisted that the expulsions had to be halted until the German Allied Control Council discussed the issue.[22] After a lengthy debate, the proposal was adopted on the same day. On the following day, Harrison wrote about the negotiations to the Foreign Office: "The negotiations were not easy – negotiations with the Russians are never easy."[23] He also reported that Sobolev had called the expulsion of the Germans from Czechoslovakia and Poland a historic mission, which the Soviet Union did not wish to prevent at all. Cannon and Harrison rejected this, stating that since they could not prevent mass expulsions [in German terminology: "wilde Vertreibung" – author's note], they sought to make sure it would be carried out in an organised and humane manner.

It is clear from the wording that – though the resolution does not stipulate collective punishment – it does allow both individual and collective evaluation. This decision was obviously adopted in this form because there was no consensus among the Allied Powers on this issue, and there was a great tension between the Soviet and Anglo-Saxon positions.

THE INTERPRETATION OF THE POTSDAM AGREEMENT

Considering the interpretation of the tripartite pact, its coercive or permissive nature was unclear to Hungary. One question was whether the expulsion was the implementation of the Potsdam decisions or rather an act requested by the Hungarian Government, approved by the Allied Powers. The other question

[22] Biewer 1992: 1948–1992.

[23] Public Record Office London FO 371/46811. Published in de Zayas 1987: 126–127.

was whether the resolution forced a collective judgement. The answer to these questions was crucial in terms of both interior and foreign affairs.

From the point of view of the interpretation of the decision, the period between 1945 and 1948 can be divided into three periods:

1. August 1945 – December 1945 (Potsdam – expulsion decree): a period of dilemmas, clashing positions
2. January 1946 – August 1946 (beginning of the implementation of resettlement – American–Hungarian agreement of 22 August 1946): a period of warning by the Allied Powers
3. September 1946 – June 1948: Potsdam as reference to continue the expulsion

Deciding whether the Convention was coercive or permissive was a problem only for Hungary. In Czechoslovakia and Poland, this was not a matter of discussion, as in both countries, the expulsion of the Germans had already begun long before the Potsdam Conference. Having been victorious countries, both could act as judges, while Hungary, as a defeated country subject to cease-fire, could take foreign affairs decisions only with the consent of the Allied Powers. An essential provision of the Potsdam Agreement was that, while in Czechoslovakia and Poland the national governments were in charge of the expulsion, in Hungary it was the Allied Control Commission. The Allied Control Commission of Hungary was established by the armistice agreement of 20 January 1945 and guaranteed Soviet hegemony by stipulating that its chairman could only be a Soviet (as Hungary was at war directly with the Soviet Union), thus Moscow had the final word in important political issues. This is why, following the Potsdam mandate, the Allied Control Commission did not even negotiate with the Minister of Foreign Affairs – the competent authority, given the international nature of the issue – but with Minister of the Interior Ferenc Erdei.

Radio Prague stated in relation to the Potsdam Agreements, that the verdict of the three powers on the resettlement of Germans from Czechoslovakia was a resounding triumph of Czechoslovak politics. There was no such manifestation on the Hungarian side. The most radical press release on the positive nature of

the Potsdam decisions was published by the peasant politician Imre Kovács, entitled "Gyönyörű elégtétel" [Beautiful Satisfaction]:

> "In Potsdam, at the conference of the leading statesmen of the Allied Powers, it was decided to resettle the Germans in Hungary to their homeland, Germany. This issue can no longer be politically categorised. Now it is no longer a question of expelling only the volksbundist, fascist Germans from the country, but all Germans, in accordance with the Potsdam decisions, regardless of their political views, whether they were loyal, whether they followed Hitler or tried to resist the Third Reich's temptations. [...] The National Peasants' Party received a beautiful satisfaction. Here, on this crucial question, too, its position was correct. The Hungarian people can also see from this that their interests are defended and served to the fullest extent, so let them trust the National Peasants' Party, because it will never deviate from the path of historic Hungarian politics."[24]

There is a fundamental difference between the Czechoslovak radio broadcast and the statement of the Peasant Party: while the Czechoslovak Government credited the Potsdam decision as its own success, Imre Kovács only indicated that his party's position is the same as that of the Allied Powers, and therefore his party shows the right way. It is important to consider this together with the fact that Hungary was facing elections in that autumn, and this line of thought was a powerful argument in the National Peasants' Party campaign.

The communist press organ, *Szabad Nép* also supported the binding nature of the Agreement and emphasised with pleasure that the Allied Powers' decision must be enforced. They wanted to get rid of not only the "volksbundists" – using the terminology of the time – but also the Swabians, collectively.[25] In the social democrat *Népszava* we can read that the Potsdam decision obliged the countries concerned to resettle the Germans living on their territory.[26] At the same time, in another article, it was noted that the Potsdam Final Act facilitated the Hungarian Government's work, and that "the Hungarian

[24] Kovács 1945: 1.
[25] Szabad Nép 1945: 3.
[26] Szilágyi 1945.

nation, the new Hungarian democracy, is deeply pleased to welcome the historic decisions of the Potsdam Conference. We all turn with a sense of gratitude to the peace of the world, to democratic progress, great and wise champions of human rights and freedom: Stalin, Harry S. Truman and Attlee."[27] The Smallholders' Party and the Civic Democratic Party did not take a position in August regarding the three power decision.

Two days after the Potsdam decision, the British Foreign Office sent a telegram to the Embassy in Budapest stating that, though it had been agreed at the Potsdam Conference that the expulsion of the Germans from Poland, Czechoslovakia and Hungary had to be carried out, the Czechoslovak Government, the Polish Provisional Government and the Allied Control Commission in Hungary was requested to cease any further expulsions until an appropriate notice from the German Allied Control Council to the governments concerned. The text of the agreement had to be officially handed over by General Oliver Pearce Edgcumbe.[28]

As stated in the aforementioned memoirs of István Kertész, the Hungarian Ministry of Foreign Affairs received the text of the Potsdam Agreement only much later, we do not know exactly when.[29] All we know is that the final draft was not known at the session of the Council of Ministers held on 13 August, which obviously made the adoption of the agreement considerably more difficult. The first official notification was received by the Hungarian Government on 9 August from Marshal Kliment Yefremovich Voroshilov, through the intermediary of the Chairman of the Allied Control Commission, Lieutenant General Sviridov.[30] The fact that the first information came from the Soviets clearly showed that Hungary was under the rule of the Soviet Union and not the U.S. or the U.K. Voroshilov said that 400,000–450,000 Germans were

[27] Népszava 1945a: 1.
[28] Biewer 1992: 1012.
[29] Kertész 1953: 11.
[30] MNL OL XIX-A-1-n Miniszterelnökség Nemzetiségi és Kisebbségi Osztályának iratai [Documents of the Department of Ethnicities and Minorities of the Prime Minister's Office] box 2, 970/1945.

to be expelled from Hungary and that the Hungarian Government had to present an appropriate schedule within 2–3 days.[31] The Marshal also said that though selecting the individuals to be expelled was at the sole discretion of the Hungarian Government, the Soviet Government called for a rigorous procedure. Evidently, this instruction was very ambiguous. Considering the fact that the government did not know the exact wording of the Agreement, the weight of the decisions made by the Council of Ministers is obvious. While before the Potsdam Agreement, the Hungarian negotiator had been Minister of Foreign Affairs Gyöngyösi, after its ratification, the Soviets negotiated the matter of the expulsion only with Erdei. On 10 August, Erdei drafted a proposal to the Council of Ministers, stating the following:

> "In accordance with the decisions made at the Potsdam Conference and, more specifically, considering Marshal Voroshilov's message, the possibility of a more rapid and radical procedure has arisen. Hungary has now an opportunity to get rid of the ethnic group – which has played an important role in bringing the country to its present state – more thoroughly and faster."[32]

So Erdei was talking about an opportunity. The preparatory material for Minister Gyöngyösi was written by István Kertész. In his note, Kertész called for caution. He pointed out that the position of the Allied Powers was unclear. If the decision insisted on collective retribution, the Allied Powers were to communicate this in writing, in a reference document.[33] Kertész's arguments were very similar to those of Gyöngyösi, proclaimed at the 14 May inter-party meeting, i.e. the Hungarian Government was not in a position to take responsibility. Of course, this did not mean that the government did not want the expulsion, just that it did not want to

[31] MNL OL XIX-A-1-n Miniszterelnökség Nemzetiségi és Kisebbségi Osztályának iratai [Documents of the Department of Ethnicities and Minorities of the Prime Minister's Office] box 2, 970/1945. See also Tóth 1993: 21; Zinner 2004: 62.

[32] MNL OL XIX-A-1-n Miniszterelnökség Nemzetiségi és Kisebbségi Osztályának iratai [Documents of the Department of Ethnicities and Minorities of the Prime Minister's Office] box 2, 970/1945.

[33] Minutes of the Council of Ministers, 13 August 1945. In Szűcs 1997: 58–74.

take sole responsibility for it. This was also the view of Minister for Reconstruction Ferenc Nagy: "It is our long-standing wish to get rid of the harmful masses of Swabians and Germans as soon as possible and I am glad that we now have this opportunity at an international level."[34] In May, State Minister Mátyás Rákosi stated that the expulsion of the Germans from Hungary could not be brought into line with the fate of the Hungarian minority in the neighbouring countries. Later, at the August session of the Council of Ministers, he called attention to the need to avoid such a connection. As everyone but him had claimed the same thing in May, we can conclude that this connection had always been a great fear of all realistic Hungarians – not without any reason. Although at the Potsdam Conference, the Allied Powers did not discuss the possibility of expelling Hungarians from Czechoslovakia, after the conference, the Czechoslovak Government claimed that after the expulsion of the Germans from Hungary, there would be space enough for ethnic Hungarians designated to be expelled from Czechoslovakia. Czechoslovak Minister of Foreign Affairs Vladimír Clementis told Soviet Deputy Foreign Affairs Minister Andrei Vyshinsky: "The Hungarian Government claims that Hungary is technically unable to find a place for 200,000 Hungarians from Czechoslovakia. We find this argument incomprehensible [...]. According to the Potsdam Agreement, Hungary can expel 400,000 Germans to Germany without paying reparations for their property."[35] Vyshinsky replied: "Will there be enough space for 200,000 Hungarians from Czechoslovakia in Hungary if they expel 500,000 to Germany? I think so."[36]

The decision of the Council of Ministers of 13 August was that the Hungarian Government considered the expulsion of the Germans to be necessary of its own free will. However, in his notes, István Kertész wrote that the Hungarian Government would carry out the expulsion of the Germans upon Soviet request. The headcount reported by Voroshilov – 400,000–450,000 – was interpreted as a ukase.

[34] Minutes of the Council of Ministers, 13 August 1945. In Szűcs 1997: 58–74.
[35] Borsody 1981: 104.
[36] Borsody 1981: 104.

On 18 August, Minister of the Interior Erdei and State Secretary Mihály Farkas met Sviridov, who complained that the Hungarian cabinet had attributed the need for the expulsion to Voroshilov, and he tried to shift the responsibility to the Hungarians. In Sviridov's opinion, the expulsion of the Swabians was a Hungarian issue, its method and extent were to serve the benefit or the detriment of Hungary. As he stated, all those claiming to be German had to be expelled, irrespective of what party they belonged to – previously or at the time. "Do not show any mercy in this issue! They must be swept out with a steel broom!" – said Sviridov.[37] The lieutenant general demanded a strong-arm policy from Erdei and put him in charge of the implementation. He also made Erdei understand that he would negotiate in the future only with him:

> "The expulsion of the Swabians is the task of the Minister of the Interior; ultimately, the Minister of the Interior cannot solve too many issues by listening to all opinions, but must indeed consistently follow his own political agenda; thus, the Ministry of the Interior is not a democratic body, but a revolutionary and dictatorial one."

Lieutenant General Sviridov also noted that "too much discussion will not lead to an end, as the more you discuss an issue, the less you decide".[38] The lieutenant general also assured Erdei that the expulsion of the Germans would not entail the expulsion of the Hungarians from the Felvidék (the former Upper Hungary), i.e. Czechoslovakia.

THE DECISION OF THE GERMAN ALLIED CONTROL COUNCIL AND THE EXPULSION DECREE

However, the forthcoming elections overshadowed the expulsion of the Germans. The next significant step was the decision of the German Allied Control

[37] MNL OL XIX-B-1-n 1945 – 6 – 20290. In Baráth–Cseh 1996: 88–92.
[38] MNL OL XIX-B-1-n 1945 – 6 – 20290. In Baráth–Cseh 1996: 88–92.

Council of 20 November 1945, setting the number of people to be expelled from Hungary to the U.S. occupation zone of Germany to 500,000. Note that both Hungarian politicians and Hungarian historiographers refer to a resolution or decision, whereas German historiographers use the term 'plan' or 'draft'. This high headcount meant an upper limit of the Germans to be expelled, so the Allied Powers did not take a clear position on collective retribution this time either, but rather left the possibility open.

Népszava reported on the content of the decision two days after it was adopted.[39] On the same day, Imre Csatár in *Szabad Nép* emphasised that the Swabian question demanded a solution: "According to the decision of the Potsdam meeting of the Allies, the German minority must be deported from our country. The decision of the Allied Powers therefore makes it mandatory for us to solve this issue at its root, which cannot tolerate postponement from a special Hungarian point of view."[40]

On 30 November, the Hungarian Allied Control Commission informed the Hungarian Government of the German Allied Control Council's decision. At the meeting of the Allied Control Commission held two days earlier, Voroshilov had said that the Hungarians would probably expel 500,000 Germans. The representatives of the Anglo-Saxon powers – notably Lieutenant General William Key and General Edgcumbe – did not object to this at all.[41] In his note to the Allied Powers of 30 November, Minister of Foreign Affairs Gyöngyösi stressed that in Hungary, the principle of individual assessment was to be applied and that they were to expel only just over 200,000 Germans. The note from the Minister of Foreign Affairs stated that "it would be against the convictions of the government of democratic Hungary to expel Hungarian citizens purely on ethnic grounds. The government deplores this as well as

[39] Népszava 1945b: 1.
[40] Csatár 1945: 3.
[41] Minutes, 28 November 1945. In Feitl 2003: 111–112.

any and all forms of collective punishment."[42] However, the position of the Minister of Foreign Affairs was not shared unanimously by all Hungarian decision-makers. On 10 December, the Allied Control Commission met to discuss the practical steps of the expulsion. On the next day, Voroshilov handed over Key's letter to the Hungarian Government, in which the headcount of the expelled was set to 300–400,000.[43] Some representatives of the Hungarian Government understood this figure as the number of those to be expelled to the American zone, while the rest of the Germans had to be transferred to the other occupation zones. Obviously, this interpretation was wrong, because the November draft clearly stated that all Germans from Hungary would be transferred to the U.S. occupation zone of Germany.

At the government session of 22 December 1945, the advocates of collective retribution prevailed, and thus, on the basis of collective assessment, Decree 12.330/1945 M.E., the expulsion decree was issued. Its preamble included the following: "In its capacity stipulated in Article 15 of Act 1945:XI, the Ministry, in implementation of the decision of the Allied Control Council of 20 November 1945 on the resettlement of the German population of Hungary to Germany, has issued the following decree: [...]."[44] Thus, the Hungarian Government issued the decree referring to the decision of the German Allied Control Council.

The U.S. Government protested immediately after the publication of the decree. This protest was accepted by Voroshilov, and the government was ordered to amend the preamble, however, without any effect. On 30 August 1946, the Hungarian Government was forced to issue a government statement, claiming the following:

[42] MNL OL XIX-A-1-n Miniszterelnökség Nemzetiségi és Kisebbségi Osztályának iratai [Documents of the Department of Ethnicities and Minorities of the Prime Minister's Office] box 2, 970/1945.

[43] Minutes, 10 December 1945. In Feitl 2003: 116–117; Tóth 2018: 485.

[44] Decree 12.330/1945 M.E. of the Provisional National Government on the resettlement of the German population of Hungary to Germany. *Magyar Közlöny,* (211), 29 December 1945.

"The Potsdam Agreement gave the Hungarian Government the opportunity to resettle the German population to Germany. The Hungarian Government, wishing to use the opportunity, has reached an agreement with the interested American military government, under which the resettlement will be carried out in an organised and humane manner."[45]

THE CHANGE IN THE ATMOSPHERE OF INTERNATIONAL POLITICS

International politics played an important role not only in the preparation of the expulsion, but also in its implementation. The expulsion of the Germans from Hungary is usually divided into two phases: the first phase lasted from January 1946 to June 1947, when the Germans were expelled to the American zone of Germany; the second phase took place from August 1947 to June 1948, when the expulsions targeted the Soviet occupation zone of Germany. These two waves of expulsions were not simply the results of domestic affairs, but were shaped rather by the international political forces and processes.

In Potsdam, in the summer of 1945, the Allied Powers considered cooperation to be important and did not want to risk it. By early 1946, the momentum for wartime cooperation had been broken in a growing atmosphere of antagonism. This was clearly expressed in Churchill's speech held in Fulton on 5 March of the same year, in which he made it clear that the Iron Curtain was coming down in Europe. In the international situation of the second half of 1946, the issue of minorities was no longer being discussed, due to conflicting interests. This situation served as a background for stopping the expulsion of the Germans from Hungary to the American zone.

In this light, we can see the truth of the summary report of the Hungarian Ministry of Foreign Affairs prepared in October 1946, which reads as follows:

[45] Szabad Szó 1946: 1.

> "Raising the problem of international minority protection faced countless obstacles [...]. A more serious obstacle was the reluctance of the Allied Powers from any kind of minority guarantee [...]. Each Allied Power individually sought to exclude the influence of the other Allied Power as much as possible within its own sphere of interest. However, placing the protection of minorities on an international basis would have opened up a wide space for the mutual intervention of the Allied Powers."[46]

Obviously, one could not speak about international minority protection at a time when there was forced migration of the order of millions in Europe, all this with the full agreement of the Allied Powers. At the same time, in the second half of 1946, the international situation was already such that this issue was not disturbed by the tensions between the spheres of interest, and this process explains the halting of the resettlement of Hungarian Germans to the American zone, as well.

In June 1946, a Hungarian delegation led by Ferenc Nagy visited Washington. Of Germany's former allies in Central and Eastern Europe, the United States' government received only the Hungarian delegation. Why? Because the communist takeover had already happened everywhere in the region, but for Hungary. On 22 August, the Hungarian Government could still reach an agreement with the Americans on the continued expulsion. However, the speech made by U.S. Secretary of State James F. Byrnes in Stuttgart (6 September 1946) marked a turning point in Washington's attitude towards Germany, in which he restated the aims of the U.S. occupation of Germany. In his speech, Byrnes declared that the American occupation would last as long as it was necessary.[47] Then, the 76-page Clifford–Elsey report of 24 September 1946 stated that the maintenance of the alliance with the Soviet Union was impossible and outlined the possibility of a third world war.[48] This report had a great impact on Truman. In this light, it is fully understandable that the Americans refused to accept further Germans from Hungary, a part of the Soviet sphere of influence.

[46] Gecsényi–Máthé 2008: 1252–1260.
[47] Horváth et al. 2013: 50–51.
[48] Clifford–Elsey Report 1946.

Three days after issuing the Clifford–Elsey report, Soviet Ambassador to the United States Nikolai Novikov telegraphed Molotov that the United States was preparing for war, and that the possibility of war against the Soviet Union had been raised.[49] By the autumn of 1946, the idea of taking united action against the Germans, conceived during World War II, had radically changed. By then, Washington had abandoned its isolationist foreign policy, which was most evident in the German issue.[50] The point was not to accept the "guilty" Germans any more, but rather to maintain the dividing line, the Iron Curtain, as Churchill had put it. Even though the agreement of 2 December 1946 to create the Bizone was still conceived in the spirit of the Potsdam Conference, in fact, it was the first step in the process of dividing Germany into two parts. Thus, the American zone, to which the German Allied Control Council allowed the expulsion of Germans from Hungary in November 1945, ceased to exist economically on 1 January 1947.

Nevertheless, the views of the Hungarian political elite on foreign affairs were insufficient to understand the altered state of international affairs. This explains why, even in the spring of 1947, the Potsdam Agreement and the agreement of August 1946 were still the main reference points for the negotiations of the Hungarian Government with the U.S.

Important reasons for the suspension of the expulsion were, in addition to the changes in large-scale politics, the difficult economic and social situation of Germany – results of the war losses and the forced migration of millions of Germans. In 1946, the U.S. Government commissioned former U.S. President Herbert Hoover to assess the pressing economic problems. Hoover produced dozens of reports, mainly on famine and serious agricultural problems. He pointed out that millions of Germans were dying of malnutrition.[51] These reports justified the economic unification of the British and American zones and served also as a preparatory material for the Marshall Plan, announced in mid-1947. Just as the suspension of the expulsion of the Germans from Hungary

[49] Novikov 1946.
[50] Borhi 2005: 87–88.
[51] Hoover 1949: 83–97.

should not be seen as a mere decision of the participants of large-scale politics, neither is it sufficient to consider the Marshall Plan to be a result of an economic decision. Obviously, its direct antecedent was the Truman Doctrine, announced on 12 March 1947, which aimed to strengthen Washington's position in Europe by means of an aid programme for Greece and Turkey, in order to limit the influence of the Soviet Union.

All the aforementioned political and economic reasons led to the suspension of the expulsion of the Germans. However, the U.S. authorities had always referred only to economic reasons and, in the winter of 1946–1947, to humanitarian reasons – the latter was obviously a pretext, since in January 1946, they did not feel that starting the expulsion was inhumane at all.

This led to a vast domestic and international political pressure on the Hungarian Government. On the one hand, the Paris Peace Treaty of 10 February 1947[52] had confined the country to a territory smaller than that declared in the Treaty of Trianon; on the other hand, the practical implementation of the Czechoslovak–Hungarian population exchange agreement of 27 February 1946 began in the spring of 1947, while internal, land-reform-related resettlement was still underway. Partly due to this and partly due to the expected continuation of the expulsions, the Germans to be expelled were forced to live together, causing a lot of tension in the settlements concerned. Thirdly, the arrest of Béla Kovács, the Secretary General of the Hungarian Smallholders' Party on 25 February 1947 indicated that the Soviet Union was no longer waiting for Hungary and wanted to Sovietise the country. The government had to prove that it wanted to get rid of the "fascist elements". It was the combination of these processes that prompted the Hungarian Government to resume the expulsion.

Between December 1946 and August 1947, the issue of ethnic Germans in Hungary was discussed six times at the sessions of the Allied Control Commission.[53] Contrary to large-scale politics, there was an Anglo–Soviet agreement on this issue that prevailed over the American position. With the exception

[52] About the Paris Peace Treaty see Fülöp 2011.

[53] Feitl 2003: 23 December 1946, 10 February 1947, 4 March 1947, 20 March 1947, 16 April 1947, 15 August 1947.

of the session of 15 August, Edgcumbe very sharply criticised the attitude of the American authorities and repeatedly called on Brigadier General George Weems to lobby at his government for continuing the expulsion. This was not the only issue in which the British foreign policy did not support the Americans at the Allied Control Commission in Hungary. This was the case with the change of government in June 1947, as well. The reason for this was the sympathy of the British Labour Government with the Soviet Union. When Britain sent troops to fight the Greek communists, the British public and press protested.[54]

On 10 February 1947, Sviridov mediated between the Hungarian Government and Weems. When he asked about the resumption date of the expulsion, Weems replied that he had no information on the matter and would check with the American authorities. After doing so, in a letter of 17 February, Weems wrote that the Americans were proposing a Hungarian–American conference on the issue in Berlin.[55] That was a very telling proposal: it showed not only that the Americans considered the government of Ferenc Nagy to be their negotiating partner, but it also evidenced that the Americans wanted to reach an agreement excluding the Soviets and the British, and that the only way to do this was to hold the conference in Berlin, not in Budapest. Obviously, both the British and the Soviets objected to this and were extremely indignant; as the possibility of a conference was raised, they proposed to hold it in Budapest, with the presence of the British and the Soviets, which, of course, the Americans did not agree to. The issue was only raised at the session of the Allied Control Commission held on 20 March, but the prime minister also wrote directly to Weems, requesting resumption of the expulsion as soon as possible, as "[the] Potsdam decision gave the Hungarian Government the right to expel the native Swabian population to Germany, specifically, to the territory occupied by the USA". In this letter, Nagy applied for a meeting to be held in Budapest. On the other hand, General Weems, in his reply to the Allied Control Commission written on the same day and to the Hungarian Government on 27 March, rejected the idea of a Budapest conference and considered the resumption

[54] Borhi 2005: 126–127.

[55] Feitl 2003: 313; Zinner 2004: 105.

of the expulsion to be unfeasible within a year.[56] A day later, the German Allied Control Council informed Sviridov that the expulsion would be halted indefinitely.

The last session of the Allied Control Commission to discuss the expulsion of Germans to the U.S. zone was held on 16 April 1947. However, no decision was taken – neither at this meeting, nor at the Moscow Conference of the Council of the Ministers of Foreign Affairs. The United States' negative position was strongly influenced by the unfolding conspiracy against the political elite of the Smallholders' Party of Hungary.

The turning point of the events was the visit of State Minister Mátyás Rákosi to Moscow on 27 April. The communist leader made a specific request to the Soviet Union to contribute to the expulsion of the Germans to the Soviet zone. Molotov was surprised by the request, but did not decline it.[57]

By May 1947, Ferenc Nagy was naturally no longer interested in the restart of the expulsion, he rather focused on the attack against his party. On 2 June, the Prime Minister resigned, and so did his Minister of Foreign Affairs János Gyöngyösi. This prevented the resumption of the expulsion to the U.S.-controlled zone.

THE NEGOTIATIONS WITH THE SOVIETS

On 10 June 1947, the Prime Minister of the newly-formed government, Lajos Dinnyés suggested that his government should file requests concerning the resumption of the expulsion to the authorities of the other German occupation zones. On 11 June, Minister of the Interior Rajk wrote to the Allied Control Commission requesting the expulsion of the Germans not only to the American

[56] MNL OL XIX-A-1-j Miniszterelnökség iratai [Documents of the Prime Minister's Office] box 116, 4223/1947. See also ZINNER 2004: 106.

[57] ZINNER 2004: 108–110.

zone of Germany, but also to the Soviet zone.[58] At the session of the Council of Ministers held on 12 June 1947, Rajk announced that he had submitted a request to the Soviets to allow the expulsion to the zone occupied by them.[59] The Soviets did not decline the request, but required the Hungarian Government to submit a written justification to the Allied Control Commission. This was then written by Prime Minister Lajos Dinnyés. Against this backdrop, General Edgcumbe's lack of information is completely incomprehensible, as at the meeting of 15 August he was surprised to learn that Hungary was going to expel 45,000–50,000 Swabians to the Soviet occupation zone of Germany and that the Soviet Government had agreed to this. The previous united position of the British and the Soviets came to an end. At the meeting, Edgcumbe wished to monitor the implementation of this process, following the practice from the previous expulsion operations. General Sviridov dismissed the request in a single sentence: "[...] there is no need for the British and American representatives to control the expulsion of the Swabians to the Soviet occupation zone of Germany, as this expulsion is being controlled by the Soviet military authorities."[60]

Even though the Potsdam Agreement clearly stipulated control by the Allied Control Commission, in August 1947, this was no longer of any importance. Controlling the implementation of the expulsion by the Allied Control Commission was problematic also due to the fact that the Commission was dissolved on 15 September 1947. This raises the interesting question of international law as to whether the expulsion had to be halted after that date or not. At that time, law did not matter anymore – it was power that was decisive.

[58] MNL OL XIX-A-1-j Miniszterelnökség iratai [Documents of the Prime Minister's Office] box 116, 7384/1947.

[59] Zinner 2004: 110.

[60] Feitl 2003: 360.

CONCLUSIONS

The numerical balance of the expulsion is as follows: about half of the Germans in Hungary (180,000 to 220,000) were expelled to Germany, of which 50,000 were resettled to the Soviet occupation zone and the rest to the U.S. one. Hungarian sources confirm the smaller data, and the German sources the larger. The Hungarian number is closer to reality, because the German figures include the refugees and evacuees in 1944, because from their point of view they and the expelled were considered "Flüchtling".[61]

After all, the Hungarian Government's intention to expel the Germans from Hungary met the will of the Allied Powers, and after the Potsdam Agreement, the question was "only" who should bear the responsibility. It would have been embarrassing for the Hungarian Government to take the responsibility for the expulsion openly, mainly because it would have served as a real precedent for the fate of the ethnic Hungarians of Czechoslovakia. The country's leaders had no choice but to emphasise the coercive nature of the Allied Powers' decisions. They had to cling to these arguments to spare the Hungarians living abroad from collective punishment. Looking back over the past decades from a historian's perspective, it is evident that the Potsdam Agreement was not binding, but the then Hungarian politicians could not publicly acknowledge this. The Potsdam Agreement was an opportunity to expel the Germans preserving the ambiguous nature of the positions of the Allied Powers.

The question of responsibility tends to come up in different discourses. Is it the Hungarian Government or the Allied Powers that are responsible for the expulsion? I think the question is much more complex than that. The main responsibility lies with the National Socialist Germany, which, in order to implement its own concept of "living space" (Lebensraum), used the Germans of Southeastern Europe. I agree with Finnish historian Pertti Ahonen, who wrote:

[61] Marchut 2014: 259.

> "Admittedly, two wrongs do not make a right, and even the enormity of Nazi crimes by no means morally justifies the excesses of the expulsions. But in the end it would be difficult not to agree with Wolfgang Benz's conclusion that 'the National Socialist policy was the cause of the misfortune that befell upon the [German] victims of flight and expulsion at the end of the Second World War'."[62]

National Socialist Germany could have done so because the post-war peace treaties – made by the Allied Powers – shaped the European borders in such a way that the possibility of the next world war was encoded in them. The governments of the Horthy regime subjected everything to their revisionist goals, including the Germans in Hungary. The enormous social and political upheaval between the two world wars reinforced the so-called "kuruc"[63] historical-political thinking, and made a large part of the society anti-German. This stratum provided the social basis of the new system established in 1945, which made them economically interested in the expulsion. Responsible were the Germans in Hungary, who were in favour of the National Socialist ideology and Adolf Hitler. And, of course, a serious responsibility lies with the post-World War II Hungarian governments and the Allied Powers who saw the solution to the "German question" in forced migration.

REFERENCES

Ahonen, Pertti (2003): *After the Expulsion. West Germany and Eastern Europe 1945–1990.* New York: Oxford University Press. Online: https://doi.org/10.1093/acprof:oso/9780199259892.001.0001

Balogh, Sándor (1982): *A népi demokratikus Magyarország külpolitikája 1945–1947.* Budapest: Kossuth Könyvkiadó.

[62] Ahonen 2003: 24, where he refers to Benz 1995: 55.

[63] Kuruc refers to a group of armed anti-Habsburg insurgents in the Kingdom of Hungary between 1671 and 1711. The term "kuruc" is used in the patriotic and chauvinistic sense, as well.

Baráth, Magdolna – Cseh, Gergő Bendegúz (1996): A SZEB és Magyarország 1945 nyarán. *Társadalmi Szemle,* 51(5), 80–93.

Benz, Wolfgang (1995): Der Generalplan Ost: Zur Germanisierungspolitik des NZ-Regimes in den besetzten Ost-Gebieten, 1939–1945. In Benz, Wolfgang (ed.): *Die Vertreibung der Deutschen aus dem Osten. Ursache, Ereignisse, Folgen.* Frankfurt am Main: Fischer, 45–57.

Biewer, Gisela (1992): *Dokumente zur Deutschlandpolitik.* Series II, Volume 1/1–3. *Die Konferenz von Potsdam.* Frankfurt am Main: Bundesminister des Innern.

Borhi, László (2005): *Magyarország a hidegháborúban. A Szovjetunió és az Egyesült Államok között, 1945–1956.* Budapest: Corvina.

Borsody, István (1945): A sváb kitelepítés nemzetközi szempontjai [The International Aspects of the Swabian Resettlement]. *Szabad Szó* [Budapest], 17 May 1945, 1.

Borsody, István (1981): Potsdam és a magyarországi németek kitelepítése. *Új Látóhatár,* 32(1), 103–119.

Churchill, Winston (1949): *The Second World War.* Volume II. *Their Finest Hour.* Boston: Houghton Mifflin Company.

Clifford–Elsey Report (1946): *American Relations with the Soviet Union.* Online: www.trumanlibrary.gov/node/312694

Csatár, Imre (1945): Gyökeres megoldást követelünk a sváb-kérdésben! *Szabad Nép,* 22 November 1945, 3.

Decree 12.330/1945 M.E. of the Provisional National Government on the resettlement of the German population of Hungary to Germany. *Magyar Közlöny,* (211), 29 December 1945

De Zayas, Alfred-Maurice (1987): *Anmerkungen zur Vertreibung der Deutschen aus dem Osten.* 2nd edition. Stuttgart–Berlin–Köln–Mainz: Kohlhammer Verlag.

De Zayas, Alfred-Maurice (1989): *Nemesis at Potsdam. The Expulsion of the Germans from the East.* 3rd edition. Lincoln: University of Nebraska Press.

Feitl, István (2003). *A magyarországi Szövetséges Ellenőrző Bizottság jegyzőkönyvei 1945–1947.* Budapest: Napvilág Kiadó.

Fülöp, Mihály (2011): *The Unfinished Peace. The Council of Foreign Ministers and the Hungarian Peace Treaty of 1947.* Trans. by Thomas J. – Helen D. DeKornfeld. New York: Columbia University Press.

Gecsényi, Lajos – Máthé, Gábor (2008): *Sub clausula 1920–1947.* Budapest: Közlöny Kiadó.

Hoover, Herbert (1949): Report to the President 18 March 1947. In Hoover, Herbert: *Addresses upon the American Road 1945–1948.* Toronto – New York – London: D. Van Nostranu Company, 83–97.

Horváth, Jenő – Paragi, Beáta – Csicsmann, László (2013): *Nemzetközi kapcsolatok története 1941–1991.* Budapest: Antall József Tudásközpont.

Horváth, Julianna – Szabó, Éva – Szűcs, László – Zalai, Katalin (2003): *Pártközi értekezletek. Politikai érdekegyeztetés, politikai konfrontáció 1944–1948.* Budapest: Napvilág Kiadó.

Juhász, Gyula (1978): *Magyar–brit titkos tárgyalások 1943-ban.* Budapest: Kossuth Könyvkiadó.

Kertész, István (1953): Die Vertreibung der Deutschen aus Ungarn. Eine Studie zur Nachkriegsdiplomatie. *Südost-Stimmen,* 3(5).

Kis Újság (1945): Ki kell telepíteni a hazai svábságot. *Kis Újság,* 18 April 1945, 3.

Kovács, Imre (1945): Gyönyörű elégtétel. *Szabad Szó,* 18 August 1945, 1.

KSH (1976): *Az 1941. évi népszámlálás 2. Demográfiai adatok községek szerint.* Budapest: Történeti Statisztikai Kötetek.

Marchut Réka (2014): *Töréspontok. A Budapestkörnyéki németség második világháborút követő felelősségre vonása és annak előzményei (1920–1948).* Budapest–Budaörs: MTA Társadalomtudományi Kutatóközpont – Budaörsi Passió Egyesület.

Marchut, Réka – Tóth, Ágnes (2022): *A magyarországi németek II. A modern nacionalizmus kialakulásától a rendszerváltozásig (1790–1993).* Budapest: Magyar Nemzeti Levéltár Országos Levéltára.

Népszava (1945a): A potsdami találkozó eredményei. *Népszava,* 4 August 1945, 1.

Népszava (1945b): A Szövetséges Ellenőrzőtanács határozata: decemberben megkezdik az Ausztriából, Csehszlovákiából, Magyarországról és Lengyelországból kiutasított németek áttelepítését. *Népszava,* 22 November 1945, 1.

Novikov, Nikolai (1946): *Telegram from Nikolai Novikov, Soviet Ambassador to the US, to the Soviet Leadership.* 27 September 1946. Online: https://digitalarchive.wilsoncenter.org/document/telegram-nikolai-novikov-soviet-ambassador-us-soviet-leadership

Seewann, Gerhard (2000): Britische Quellen zum Vertreibungsprozeß vor und nach Potsdam. In Seewann, Gerhard: *Ungarndeutsche und Ethnopolitik Ausgewählte Aufsätze.* Budapest: Osiris, 183–198.

Szabad Nép (1945): Ki a svábokkal Magyarországról! *Szabad Nép,* 23 August 1945, 3.

Szabad Szó (1946): Szeptember 2-án folytatódik a svábok kitelepítése. *Szabad Szó,* 30 August 1946.

Szilágyi, Lilla: Németek Magyarországon. *Népszava,* 5 August 1945, 3.

Szűcs, László (1997): *Dálnoki Miklós kormányának (Ideiglenes Nemzeti Kormány) minisztertanácsi jegyzőkönyvei, 23 December 1944 – 15 November 1945.* Volume B, Budapest: Magyar Országos Levéltár.

Tóth, Ágnes (1993): *Telepítések Magyarországon 1945–1948 között. A németek kitelepítése, a belső népmozgások és a szlovák–magyar lakosságcsere összefüggései.* Kecskemét: Bács-Kiskun Megyei Levéltár.

Tóth, Ágnes (2018): *Dokumentumok a magyarországi németek történetéhez 1944–1953. Quellen zur Geschichte der Deutschen in Ungarn 1944–1953.* Budapest: Argumentum Kiadó.

Veiter, Theodor (1987): Potsdamer Abkommen und Vertreibung. In Meissner, Boris – Veiter, Theodor (eds.): *Das Postdamer Abkommen und die Deutschlandfrage.* II. Teil: *Berliner Deklaration und Sonderfragen.* Wien: Wilhelm Braumüller Universitätsbuchhandlung.

Zielbauer, György (1996): *A magyarországi németek elhurcolása és elűzése. Válogatott szemelvények a korabeli magyar sajtóból 1944–1948.* Budapest: Országos Német Önkormányzat.

Zinner, Tibor (2004): *A magyarországi németek kitelepítése – Die Aussiedlung der Ungarndeutschen.* Budapest: Magyar Hivatalos Közlönykiadó.

Archival sources

Magyar Nemzeti Levéltár Országos Levéltára [National Archives of Hungary] (MNL OL)

MNL OL XIX-A-1-j Miniszterelnökség iratai [Documents of the Prime Minister's Office]

MNL OL XIX-A-1-n Miniszterelnökség Nemzetiségi és Kisebbségi Osztályának iratai [Documents of the Department of Ethnicities and Minorities of the Prime Minister's Office]

MNL OL XIX-J-1-j Külügyminisztérium Békeelőkészítő Osztályának iratai [Documents of the Peace Preparatory Department of the Ministry of Foreign Affairs]

MNL OL XIX-J-1-n Külügyminisztérium Gyöngyösi János irathagyatéka [Ministry of Foreign Affairs, Archive of János Gyöngyösi]

Tamás Lönhárt

Transylvanian Communities Subjected to Collective Traumas and Retorsions in 1944–1947

Reflections on Post-1989 Politics of Memory and Transitional Justice in Romania

In the time of the Second World War, territorial dispute and the policy of "coercive reciprocity" actively induced by the governments of two neighbouring states – Hungary and Romania – had their tragic impact upon the communities of Transylvania. In that region, Hungarians, Romanians, Germans and Jews had cohabitated for centuries. Transylvania, splitted as a consequence of the Second Vienna Award between Hungary (Northern Transylvania) and Romania (Southern Transylvania), in the year 1944 was the scene of four major successive events that redefined the fate of all its communities: the German military occupation of Hungary, the Holocaust in Northern Transylvania, the successful change of allies made by Romania, the passing of the Soviet military war front. The historic documents recorded the atrocities and traumas, in a period of time marked also by the state of war between Hungary and Romania. In that context, collective guilt and punishment were used also by the Soviet military authorities, and the new Romanian Government: that included deportation of German nationals, interning camps, sequestration of properties and other discriminatory legislative measures introduced against Hungarians and Germans. On the other hand, the atrocities made by the so-called "Maniu Guards" were followed by Northern Transylvania being used by the Soviet Union as a tool of political blackmail for establishing a Communist-led government in Romania. The traumatic experiences of the communist totalitarian regime had their impact on the Romanians and

DOI: https://doi.org/10.36250/01228_07

the national minorities – Hungarians, Germans, Jews, etc. Before and after 1989, the reflections in the collective memory of the historical past were used and abused by conflicting political legitimating discourses. The memories of those collective traumas are also part of the contemporary politics of memory, as were to be addressed also by post-1989 transitional justice and reconciliation process. The present study tries to analyse some aspects of these complex realities.

INTRODUCTION

In the present study, written as part of the Minority Policy Research Group's effort to address the complicated phenomena of immediate post-WWII political usage of "collective guilt", analysed in the context of the political transitions in Central and Eastern Europe, and the enduring impact of these realities on present day state–minority relations in our region, I tried to construct a case study focusing mainly on the Hungarian community in Romania. While I analyse the sources regarding the 1944–1947 historical realities, I also had to assess the new context of post-1989 narratives based on present-day politics of memory, and the involved communities' identity discourses. I also had an interest to integrate reflections on the impact of these phenomena on the general process of transitional justice in post-1989 Romania.

To address these complex realities, this study reunites three levels of analysis: first, the *referential level,* reconstructing the historical realities that had their direct formative impact upon all Transylvanian communities between 1944 and 1947. These experiences were influenced by the usage of "collective guilt" and "collective punishment" generated in the closing period of the war and the immediate post-WWII era. Also, these experiences structured state – national minorities as well as contending political elites – national minorities relations in immediate post-WWII Romania. After constructing the referential level, based on critical analysis of historical sources, which led us to answer the question of what happened from a historical perspective, we proceeded to build the second, *symbolic level,* aimed to answer the question of

how historical realities are remembered and represented as part of the "collective memory" of the communities involved, integrated in their present-day identity narratives. These representations are also part of the politics of memory discourse of the current political elites, represented by state organised memorial events, educational materials and manuals, media, etc. This part of our analysis is also to argue the relevance of concurring political legitimating discourses, which polluted the context of present-day interpreting of the historical events. The third level of analysis dedicated to these complex phenomena is to focus on their impact on post-1989 *transitional justice and reconciliation process*. That is a very complex issue that might represent the subject of an entire separate study. One must be aware of the relevance of discursive construction of a political community, which is to integrate also the national minorities' perspective of the frequently traumatic common experiences of the 20th century in all Central and Eastern European nation states. By that very complex process of re-evaluating our common past, it is important to identify the victims, as well as the responsible decision-makers and perpetrators, completed by the identifying and legal codifying of rights for reparatory claims. This entire process needs active political will in order to become a strong-built reconciliation process between all parts, and a real "Healing of Memory".

COLLECTIVE TRAUMAS AND CONFLICTING MEMORIES OF SECOND WORLD WAR TRANSYLVANIAN COMMUNITIES

The Hungarians, as well as the German communities (including Saxons and Swabians), were settled mainly in three regions: Transylvania, Partium (a separate region, built mainly of Szatmár and Bihar counties), and Banat, which before 1918 were the Eastern, relatively underdeveloped parts of the Austro–Hungarian Monarchy. Those regions were incorporated in the Kingdom of Romania after the Peace Conference following the First World War. For the new nation state, these territories were an important source of economic and social modernity, dominated by towns with certain industrial

and communication infrastructure. The rural Transylvania was dominated by the ethnic Romanian community, although the cities and towns were until the second half of the 20th century still dominated by Hungarian, German and Jewish ethnic communities. The rural population was driven by a market-aimed production of goods (using bank loans, networks of associations, transport of goods through railways, etc.) towards preparing the grounds of capitalistic mentalities and bourgeois ways of life in the first decades of the 20th century.

The concurring Hungarian and Romanian nation-building processes and the repeated resettling of the international system in the first half of the 20th century already led to three successive changes of the Hungarian–Romanian borders, directly involving Transylvania: first in 1918–1920, as Transylvania was integrated in the interwar Romania, then in 1940–1944, when Transylvania was split in two halves (Southern Transylvania remained part of Romania, Northern Transylvania was reintegrated in Hungary), and once again in 1944–1947, when Northern Transylvania occupied by the Soviet Army was disputed, and finally regained by Romania. These geopolitical changes led to conflicting experiences of Transylvanian communities. The Romanian elites of Transylvania, confronted with the consequences of the Second Vienna Award (30 August 1940), rethought their priorities in terms of reuniting with their interwar political rivals from the previous decades in order to restore the Romanian nation state's sovereignty over the entire region. As a consequence, the inner Romanian political debate over the controlling of local resources and panels of administrative and political influence was suspended after 1940, and the anti-Hungarian agenda became a national priority.

In the meantime, the Hungarian community in Transylvania had to meet the challenge of being half-cut by the Second Vienna Award: the Northern Transylvanian community had to meet the restoring of Hungarian authority, which was a process not free of diverging perspectives.[1] The post-WWI generations of Transylvanian Hungarians that affirmed their political beliefs in the late 1930s and the beginning of the 1940s were not all embracing the

[1] Sárándi 2016.

conservative beliefs of either the interwar Hungarian National Party[2] or the new post-1940 Hungarian central government and its local representatives. For them, expressing their frustrations towards the social and economic challenges in the 1930s was relevant. The critical narrative sometimes appeared in agrarian, socialist and even communist forms of public discourse. The need for economic and social reform in the once again Eastern peripheries of the Hungarian Kingdom was dominating their agenda. In Southern Transylvania, the local Hungarian community became deposed by all its political and economic influence, without any position to negotiate with the central government: that was a consequence of the post-Second Vienna Award relations between Romania and Hungary, marked by the policy of "coercive reciprocity".[3] That Hungarian community was once again seen by the Romanian central government as an inner source of destabilising the state that had to be put under surveillance and neutralised.

As early as 22 November 1940, Marshal Ion Antonescu declared to Adolf Hitler that Romania was to be a trusted ally of Germany in a war against the Soviet Union.[4] On 22 June 1941, the same political and military leader of Romania gave a daily order to the Romanian Royal Army for specifying that they entered into war with the Soviet Union also in order to regain all territories lost in 1940, especially referring to Northern Transylvania. Later in July 1941, the Romanian Royal Army was ordered to pass the Dniester river and advance on Soviet territory even after regaining the territories lost by Romania a year before. The decision was motivated with the Romanian claim for Northern Transylvania as it could be a result of its loyal dedication in support of Germany's war effort on the Eastern Front of the Second World War.[5] That was the logic that influenced the decision of Hungary to enter into war against the Soviet Union, allied with Germany following 27 June 1941. Hungary and Romania competed for Transylvania as both were allied with Germany in the Second

[2] Murádin 2019.
[3] L. Balogh 2013a; Lönhárt 2008: 157–161.
[4] Constantiniu 2002: 181.
[5] Constantiniu 2002: 98–99.

World War. Both tried to impress their major ally by formulating cries against each other on the basis of negative treatment of nationals subjected by the other state as minorities after the Second Vienna Award. The traumas heightened on the level of local Hungarian and Romanian communities in Transylvania, as in Berlin, there were worried considerations regarding the enmity between their two wartime allies. Romania considered to exit the Second Vienna Award: that was a unilateral decision, officially communicated to the Foreign Ministry in Berlin and Roma on 19 and 29 September 1941.[6] It was followed by the decision to deploy in Transylvania a German–Italian Commission (named Altenburg–Roggeri), which had made inquiries about the claimed atrocities and traumas of the local Romanian and Hungarian communities between 17 and 27 October 1941. In this way, Germany and Italy tried to keep the relation between Hungary and Romania under control.[7] Transylvanian communities were already subjected to the two states' territorial dispute and "coercive reciprocity" policies during the Second World War.

The turn of the military fate against the Axis Powers' alliance on the Eastern Front in 1943 led to parallel secret talks and separate peace projects of both Hungary and Romania, which led to German military occupation plans "Margarethe I" aimed against Hungary, as well as "Margarethe II" against Romania.[8] The first plan was put into action on 19 March 1944, as a result of which Hungary's sovereignty was severely breached.[9]

One of the most severe consequences was the Holocaust in Hungary, the major impact of which was also present in Transylvania, carried out in close cooperation by the Hungarian authorities and the German occupier together from April to July 1944. The role of Prime Minister Döme Sztójay, and its government's ministers and administration servants is unquestionable: László Endre and László Baky[10] were two of those dedicated and convinced

6 L. Balogh 2023b: 152.
7 L. Balogh 2013b: 104–105.
8 Traşcă 2005: 223–228.
9 Ránki 1968.
10 See the most recent analysis in Veszprémy 2019; Kádár–Vági 2013.

anti-Semites whose role in organising and perpetrating the Holocaust are undeniable and convincing for anyone studying the issue. However, decades after the holocaust, the new politics of memory focuses mainly on the German occupier's responsibility, represented on the ground in 1944 by members of the RSHA, led by Edmund Veesenmeyer, especially deployed for coordinating the Holocaust in Hungary, overshadowing the Hungarian state officials' responsibility. The immediate post-war moment was marked by István Bibó's study[11] on the sources and post-1944 presence of anti-Semitism in Hungary after the Holocaust. Decades later, Róbert Győri Szabó could publish an excellent analysis shedding light on the obscure motivation of Communist Party related officials in prolongation and political usage of anti-Semitic convictions and feelings in Hungary after 1945.[12]

At the same time, the Marshal Ion Antonescu-led Romanian political decision-makers decided in late 1943 to end the concentration and labour camps network and repatriate the surviving deportees from the "Trans-Dniestrian" ("Transnistria") territory,[13] a former Soviet Union land under Romanian military occupation, where the Holocaust was organised and perpetrated after 1941.[14] From November 1943 to March 1944 there was a direct effort by the Romanian Government to cover up the Holocaust, which was then only partly revealed by the post-WWII trials on genocide and crimes against humanity.

The only immediate post-WWII monograph on the Holocaust in Romania, authored by Matatias Carp[15] in 1948, never reached the public; it was banned and hidden in the secret fond of state libraries as early as the year of its publication. The copies that had already been sent to bookshops were ordered to be returned and destroyed.[16] In the official post-1948 hegemonic historical narrative imposed by the communist regime, the communists and

[11] Bibó 1986 [1948]: 621–797.
[12] Győri Szabó 1997.
[13] Solonari 2021.
[14] Ioanid 2019: 291–367, for the redeployment of survivors from Transnistria after the end of 1943 see Ioanid 2019: 446–457.
[15] Carp M. 1993 [1948].
[16] Wiesel et al. 2005: 342.

their "fellow travellers" were considered the main victims of the forced labour and extermination policies during the Second World War, thus falsifying the historical truth on the Holocaust. This was the case with the Mihail Roller-led Romanian historical discourse of the Stalinist era, as well.[17] In the later period of the communist regime, the Nicolae Ceauşescu-led new nationalist discourse also eluded to face the reality of the Romanian Holocaust. The Transnistrian scenery was overshadowed by a "historical narrative" in which the Holocaust was present only in Northern Transylvania, carried out by the "Horthyst-Fascist Hungarian occupier". This turned all attention away from what happened in Romania under the Marshal Ion Antonescu-led political regime between 1941 and 1944, identifying only the responsibility of the Hungarians for the Holocaust in 1944. From the late 1970s and through the 1980s, a "selective rehabilitation" and reintegration of ultra-nationalist and often anti-Semitic personalities in the Romanian cultural scenery of the Ceauşescu era took place. In the 1980s, a silent recuperation even of Marshal Ion Antonescu's figure was part of that contorted reality, which provoked the reaction of Soviet officials.[18]

The post-1945 transitional justice was represented by special courts, which were instituted on the basis of the Soviet model, and were named People's Tribunals. With the notable exception of the trial of the leaders of the Marshal Ion Antonescu regime in May 1946, these special courts focused mainly on the Northern Transylvanian Holocaust, and less on the same realities perpetrated under Romanian authority during the Second World War. The press campaign surrounding these trials insisted on the collective guilt of Germans and Hungarians for crimes against humanity and atrocities during the Second World War. Analysing the process of post-war transitional justice, it may be observed that there is a major quantitative difference between the activity of the People's Tribunal in Kolozsvár–Cluj (relevant for the cases

[17] Wiesel et al. 2005: 343–344.

[18] Wiesel et al. 2005: 350–354. See the reactions stirred by Marin Preda's *Delirul*. The works signed by Iosif Constantin Drăgan, Mihai Fătu and Ion Spălățelu, Gheorghe Buzatu are to be focused on for an analysis of these realities of late Romanian Communist regime's narrative on Marshal Ion Antonescu's regime and Holocaust.

regarding Northern Transylvania under Hungarian authority before the fall of 1944), compared with the People's Tribunals for the territories of Romania including Southern Transylvania. The People's Tribunal in Kolozsvár–Cluj had 481 sentences pronounced of which 370 were of Hungarian nationality, 83 of German nationality, 26 Romanians and 2 of Jewish identity (for collaboration), consisting of 30 death penalties and 52 hard labour for life, as also a total of 1,204 years of prison sentences pronounced.[19] That is to be compared with the People's Tribunals for the rest of Romanian territories including Southern Transylvania, with a total of 187 sentences pronounced, 48 death penalties of which only 4 were executed, the others commuted to hard labour for life, most of them pronounced "in absentia" of the convicted persons.[20] For example, at the trial of the responsible individuals for the Odessa and Dalnic pogroms, held at the People's Tribunal in Bucharest and closed on 22 May 1945, only one death sentence was pronounced, later commuted to life prison (for General Macici, who later died in prison in 1950), and the remaining 28 sentences were for prison between one year and for life.[21] Most of those sentenced in the following period of time were released by the amnesties pronounced in 1962 and 1964.[22]

An important element of the post-1989 new politics of memory was the interest of the new generation of historians for the Holocaust in Romania. They reached an important and symbolic success by blocking the public campaign, which aimed to rehabilitate Marshal Ion Antonescu as a "national hero". That campaign was assumed publicly in the 1990s by leading figures of the ultra-nationalist extreme right political parties, also associated with the Ceauşescu regime's propaganda in the last decade of the Communist regime, like Corneliu Vadim Tudor, Adrian Păunescu, Iosif Constantin Drăgan, Gheorghe Buzatu, etc. In 2000, Corneliu Vadim Tudor entered the final turn of Presidential

[19] Wiesel et al. 2005: 320.
[20] Wiesel et al. 2005: 320–321.
[21] Wiesel et al. 2005: 320.
[22] Wiesel et al. 2005: 321.

elections, but his success was blocked by a negative vote, generating electoral gain for its counter-nominee, Ion Iliescu.

As elected President of Romania, the same Ion Iliescu made a decree in 2003 for the establishment of an International Committee Investigating the Holocaust in Romania. The committee led by Elie Wiesel made its Final Report in 2004.[23] Following its official enactment, the Holocaust organised and perpetrated by the Romanian Government between 1941 and 1944 became clear to the public, including the events in Transnistria, the pogroms in Iaşi, Odessa, etc. That event led to a major change in the previously hegemonic discourse, which only focused on the Holocaust in Northern Transylvania. Since 2005, the new politics of memory assumed the responsibility of Romanian nationals for the Holocaust, instituting the study of that historical event in the public education network, editing manuals, supporting also the initiatives of Holocaust Memorials in different cities of Romania.

OBJECTS OF SOVIET POLITICAL INTEREST, SUBJECTS OF COLLECTIVE TRAUMAS AND PUNISHMENTS: TRANSYLVANIAN COMMUNITIES AND THE PASSING OF THE SOVIET MILITARY WAR FRONT

As a direct consequence of the successful turn of sides executed by the Romanian Royal Army, led by King Michael I on 23 August 1944, and the failure of Regent Miklós Horthy-led Hungary to leave the German alliance on 15 October 1944, a state of war occurred between Romania on one side, and Germany allied with Hungary on the other side. Transylvania became the scene of war and destruction.[24]

The passing of the Soviet military war front through Transylvania from September to late October 1944, produced turmoil and collective traumas: people seeking refuge, heading towards West; deportations by the Soviet

[23] Wiesel et al. 2005: 7.

[24] Ravasz 2002.

occupying forces on the basis of ethnic identity of individuals subjected to punishment as a community accused by "collective guilt", such as the case of the German ("Swabian") community deported to the Soviet Union's forced labour camps, mainly in the Donbas area and from the Szatmár region (the historical Northwestern frontier zone of Transylvania);[25] local atrocities which had an ethnically relevant interpretation already in that period, like those involving the so-called Maniu Guards in the region named traditionally Székelyföld – Ținutul Secuiesc (Szeklerland, Eastern part of Transylvania).

Right after the signing by Romania of the Treaty of Armistice with the Allied Powers on 11 September 1944, in the context of active war between Romania on one side and Germany allied with Hungary on the other side, parallel with the advancing of the Soviet and Romanian armies in Transylvania, the General Sănătescu-led Romanian Government had instituted measures for interning in special camps the Hungarian and German male population between the age of 16 to 60 years. That measure had rooted in the decision to enact collective punishment against Germans and Hungarians as "foreign nationals belonging to an enemy power". The Government also considered to withdraw the citizenship of those seeking refuge from the advancing war front in parallel with the withdrawal of German and Hungarian military from Transylvania, identifying them as "presumed enemies" ("inamici prezumați").[26]

The properties and goods of the "presumed enemies" were sequestrated and put under the control of a special commission directly set by the Romanian Government, on the basis of Act 498 of 3 July 1942 regarding the regime of individuals related to enemy states, being at war with Romania. Act 644 of 19 December 1944 completed the series of decrees on Hungarian and German properties and goods that entered under Romanian state control, which remained as such even when those seeking refuge returned to Transylvania after the passing of the war front, becoming subjects of collective punishment. As a direct consequence, an important part of the Hungarian and German communities lost all resources for living, and they were also excluded from

[25] Pintilescu 2020: 421–427; Baier 2019: 149–172; Gheorghiu 2019: 173–186.
[26] Vincze 1999: 29–32; Vinţeler–Tetean 2014: 346–347.

the land reform enacted in Romania on 23 March 1945. All the properties of Hungarian and German individuals, together with all state-owned properties of Hungary and Germany came under the control of the CASBI (Casa Bunurilor Inamice – House of Enemy Goods), an institution organised officially by Decree 91/1945 of 10 February 1945.[27]

Through complementary legislative measures issued on 25 April 1945, the new Communist-led government of Petru Groza maintained the control instituted by CASBI, and the loss of properties and goods owned by individuals who were seeking refuge from Northern Transylvania in Fall 1944, even if they returned to the region in 1945. The economic effects of instituting collective punishment against the Hungarian and German communities in Transylvania lasted at least until 1953 – a period when the nationalisation of properties had already been enacted in Communist-led Romania. In this way, all goods were definitely lost by those who suffered of the consequences of the collective discriminatory legislation instated in 1944–1945.

The passing of the war front led to other collective traumas, which were later used by the Soviet Union in its direct political interest. Following the advance of the Soviet Army in Sepsiszentgyörgy – Sfântu Gheorghe, Csíkszereda – Miercurea Ciuc, Gyergyószentmiklós–Gheorghieni (September 1944), Marosvásárhely – Târgu Mureş (in early October 1944), the Romanian authorities were already set to be re-instituted. On 10 October 1944, a Commission for the Administration of the Liberated Transylvanian Territories began its activity, led by a close relative of Iuliu Maniu, Ionel Pop, who was nominated by the Romanian Government. On 11 October 1944, as the Soviet Army entered Kolozsvár–Cluj, neither the Romanian Royal Army, nor the representatives of the Romanian administration were allowed by the Soviet Military Commandment to be deployed there.[28] The Soviet authorities later ordered the withdrawing of Romanian local administrative bodies also from the parts of Northern Transylvania, where they were already allowed to settle in September–October 1944. That was followed by the episode

[27] Vincze 2000: 20–23.

[28] Vincze 1999: 30–31.

of special administration of Northern Transylvania under Soviet military authority[29] – which was a side-effect of direct Soviet interfering in the political build-up of Romania beginning with the fall of 1944. The aim of that action was revealed to the central Romanian authorities on 12 November 1944, and it was followed by the claim that the return of Romanian authorities in Northern Transylvania could happen only after a "real democratic" government was set up in Bucharest. The "democratic" nature of that future government had to meet the Soviet criteria, as defined by Stalin.

The question of Transylvania became the tool of political blackmail against the Romanian Government, installed by King Michael after the successful turn of arms on 23 August 1944. With that major event, the traditional political elite could re-legitimate itself, eluding a communist takeover as the Soviet Army advanced through Romania. That evolution had to be "corrected" in favour of Soviet political interests: they sustained the forming of a political coalition led by the Communist Party, which contested the government that resulted from Romania's change of sides of wartime alliances. Paradoxically, the Communist Party was part of the coalition government, and also contesting it through direct action against its local administrative bodies, taking control over the regions of Moldova and Northern Transylvania in the immediate aftermath. By ousting the official Romanian government's administrative bodies, deployed to Northern Transylvania as the war front advanced towards West,[30] the Soviet commandment aimed to use the re-establishment of Romanian authority over that region as a bargaining chip for the establishment of a new, Communist-led government in Romania. This finally materialised on 6 March 1945 by the forming of the Petru Groza cabinet,[31] without any democratic consulting of the Romanian people. That reality conflicted with the terms of the Yalta Agreement concluded by the Allies on 11 February 1945.

[29] For the special administration set under Soviet Military control in Northern Transylvania see Sălăgean 2002; Țârău 2005; Nagy–Vincze 2004; Lönhárt 2008: 166–179.

[30] Vinţeler–Tetean 2014: 302–306.

[31] Țârău 2005.

Analysing the historical records regarding that period of time, which directly impacted the inter-ethnic realities in Northern Transylvania, one has to observe that the Soviet military commandment had referred to anti-Hungarian atrocities in direct relation to the decision taken to oust the already set Romanian administration from Northern Transylvania.[32] Those events are also represented in the collective memory of the Hungarian community as a collective trauma that marked its identity narrative since 1944 – recalled as the terror of the "Maniu Guards". The most known atrocities happened in Szárazajta – Aita Seacă, Csíkszentdomokos– Sândominic, the wave of terror later reaching Egeres–Aghireş (Kolozs–Cluj county) and Gyanta–Ginta (Bihar–Bihor) county. The Maniu Guards constituted also the subject of an investigation at Romanian government level, as Prime Minister General Sănătescu directly questioned Ionel Pop, the leader of the Commission for Establishment of the Romanian Administration in the Liberated Territories of Transylvania, already at the meeting of the Council of Ministers held on 13 November and then on 20 November 1944.[33] The events reconstructed by the historians, revealed in studies published after 2006, show that in the first weeks of September 1944, in the pages of the Romanian Peasant Party-related periodicals named *Tribuna* and *Ardealul,* a series of articles were published, which instigated for a revenge campaign against the Hungarian community in Northern Transylvania.[34] In September 1944, already 9 paramilitary units of "volunteers" were formed in Brassó–Braşov, Bucureşti, Petrozsény–Petroşani.[35] The editors of the periodical *Ardealul* had the initiative to form the Iuliu Maniu Corp of Volunteers, led by Mihai Popovici and Ionel Anton Mureşeanu. Constantin Puşcariu, Gabriel Ţepelea, Corneliu Coposu, Leon Botişiu and Ion Groşanu were also involved in the organising activity. According to the periodical *Ardealul,* the Corps of "Volunteers" was re-uniting 5,400 individuals; other sources mentioned an even

[32] The Official Record of the meeting of the General Sănătescu-led Government on 13 November 1944. In Ciucă 2012: 164–177.

[33] See the official records in Ciucă 2012: 164–181, 270–271, 274–275, 283.

[34] Benkő 2012: 119.

[35] Benkő 2012: 119.

greater number, 17,000.[36] Between 1 September and 17 October 1944, several armed groups of volunteers were directed towards the Hungarian-inhabited Northern Transylvanian territories, led by unit leaders Cornel Bobancu, Ion Groşanu, Captain Bădulescu, Mihail Depărăţeanu, Alexandru Rupa, Constantin Dudescu, "lieutenants" Barză, Marieş and Nestor, etc.[37] In the meantime, the periodical *Desrobirea,* edited by Valer Ceuca, supported by Victor Cerghi Pop and Eugen Sibianu,[38] related to the re-established Romanian authorities in Northern Transylvania, began a press campaign for a sustained military action against Hungarian "partisans" in the back of the already advanced war front, followed by the actions of the "volunteer units" of former gendarmes and policemen fled from Northern Transylvania to the territory that remained under Romanian sovereignty after 1940. The historical records have shown that the "volunteer unit" led by Gavrilă Olteanu was directly involved in the atrocities against Hungarian civilians in Szárazajta – Aita Seacă, Csíkszentdomokos–Sândominic, Gyergyószentmiklós–Gheorghieni, which set an atmosphere of a "reign of terror" in the Székelyföld – Ţinutul Secuiesc.[39]

These circumstances, marked by collective trauma experienced by the Hungarian community in Transylvania, were even decades later interpreted by the collective memory of that community as a historical moment when they became existentially threatened. The traumas were not outspoken, and were not followed by steps of representative leaders of the Romanian national majority towards symbolic exemption by and reconciliation with the Hungarian community, prior to 1989.

Already in late 1944, the intervention of the Soviet military commandment, motivated by its political interest, created the perception among the Hungarian community that its existential interest was saved by the Soviet interfering. After that, the Soviet military intervention led to a successful political blackmail, instituting in March 1945 a Communist-led government in Romania. A new

[36] Benkő 2012: 120.
[37] Benkő 2012: 120.
[38] Benkő 2006: 214.
[39] Benkő 2006: 214–221; Benkő 2012: 122–126, 130–134.

discourse emerged on the collective traumas experienced in Transylvania in the fall of 1944. The Romanian Communists were to be identified as a political partner for the Hungarian minority's representatives, as well as the warrantors of Romanian national interest, because they succeeded in re-establishing Romanian sovereignty over the entire region of Transylvania after March 1945. At the Peace Conference of Paris in 1946, the Soviet Union sustained the Romanian new government as a rightful sovereign and a warrantor of the inter-ethnic pacifying in Transylvania. That discourse was mirrored by the Hungarian community's pro-Communist leaders' narrative after 1945.

The memory of the atrocities made by the "Maniu Guards", and the claim for moral justice for the victims were an important part of the post-1989 identity narrative of the Hungarian national minority's representative leaders in Romania. There were also public efforts to integrate the memory of those events as part of a new post-communist politics of memory. The publishing of a White Book[40] regarding the collective traumas of the 1944–1945 period, edited by Hungarian intellectuals after the new atrocities, which happened in March 1990 in Marosvásárhely – Târgu Mureş, was an important part of the symbolic discourse of the Democratic Alliance of Hungarians in Romania. Memorials were to be inaugurated only after one more decade in public squares of the localities where the atrocities had happened.

Stalin rewarded the establishment of a Communist-led government in Romania by deciding to return Northern Transylvania under the sovereignty of the Romanian state, announced by his telegram issued on 9 March 1945. That historical moment was symbolically marked by the Communist-led government's first meeting on 13 March 1945 in Kolozsvár–Cluj. The festivities dedicated to the "return of Transylvania to Romania" were set in the presence of King Michael, and the delegations of the embassies of the Allied Powers. On that occasion, a memorandum was handed to Petru Groza arguing for the integration of already set regional self-governing bodies in the new Romanian state administrative system. It showed that one of the indirect consequences

[40] Gál et al. 1995.

of the Soviet ingerence in 1944–1945 was the flourishing of an autonomist discourse in Northern Transylvania, an important idea in the agenda of the post-war local Hungarian elite. Parallel with the idea of a possible partial revision of the Hungarian–Romanian borders at a future peace conference, some of the Hungarian leaders showed a certain interest for territorial autonomy, viewed as an administrative solution for integrating the part of the Hungarian community, which was to remain in Romania.

In 1945, a new legitimising discourse was inaugurated by the Communist-led government in Romania: it promoted the government as the "pacifier" of inter-ethnic relations, representing "warranty for real democracy and peaceful integration" of the Hungarian community, and for the legal codifying of its collective rights in the future – an illusion projected by the official propaganda on all its channels. That led to the myth of a Communist-led new regime representing a trustful political ally for the Hungarian community, and of Prime Minister Petru Groza "a true friend of the Hungarians".[41]

But the CASBI was functioning unaltered after the Communist-led government was established in Romania. Act 645 of 14 August 1945 stipulated that even those who had been Romanian citizens prior to the Second Vienna Award (30 August 1940), and who had been seeking refuge in Northern Transylvania, even if they never renounced their Romanian citizenship, were not to automatically regain their right to their properties. Instead, they were to be paid by the new owners a price set in very inflated 1945 currency that worth nothing as compared with the nominal value of the properties lost.[42]

In contrast, the traditional Romanian political parties – forming the political opposition to the establishment of the communist regime, and first of all the Iuliu Maniu-led Romanian Peasants' Party – was the subject of political propaganda, which demonised them as "war mongers", "blood thirsty", "ultra-nationalist", "pro-Fascist" and "xenophobic". This image served well the Communist-led government in isolating, de-legitimising, then eliminating its main opposition from public life. That discourse, referring to the "Maniu

[41] Vincze 1999: 71–77.

[42] Robotos 1997: 78.

Guards", led to the idea that the National Peasants' Party and its leader Iuliu Maniu were responsible for the ousting of the Romanian authorities from Northern Transylvania by the Soviet Military Commandment in Fall 1944. In turn, the Communist-led coalition was the only warranty for regaining the entire Transylvania by Romania after the Second World War.

The trial of Marshal Ion Antonescu and the leaders of the wartime political regime was an important part of the post-1945 transitional justice. The Communist-led government was concerned by the possibility of symbolically associating the political parties of the opposition with the belated wartime regime accused of treason, economic disaster, war crimes, crimes against humanity, and collaboration with the German wartime "occupier" of Romania. That political aim was served by calling Iuliu Maniu, the leader of the National Peasants' Party to testify in front of the People's Tribunal in that trial held in May 1946.[43]

In the time between the election fraud of 19 November 1946 and the ousting of King Michael of Romania on 30 December 1947, the communists eliminated the political opposition. Iuliu Maniu and the leaders of the National Peasants' Party were caught in a trap set in June 1947 by the communist-controlled Secret Services. They were arrested and attempted to leave Romania and form a government in exile. From that moment on, Iuliu Maniu and the National Peasants' Party was accused with "conspiring against National interest", "serving foreign power interference".[44] After that moment, leading representatives of the new political regime stated publicly that the same leader of the political opposition was involved also with the atrocities in Northern Transylvania in the fall of 1944. For decades, that became part of the discourse aimed to de-legitimise Maniu's political legacy, and to frame a negative image of the political alternative to the Communist-led government as part of the enduring politics of memory. In this way, the entire public discourse for at least four decades was set to change the collective memory of the Romanians in accordance with the interest of the communist regime.

[43] See the deposition of Iuliu Maniu in the trial of Marshal Ion Antonescu in Cracă 1995: 261–302.

[44] Ciucă 2001.

THE HUNGARIAN COMMUNITY AND THE ESTABLISHMENT OF THE COMMUNIST REGIME IN ROMANIA

Public opinion about the collective traumas experienced by the Hungarian community in Romania in the times of the communist regime was overshadowed by the post-1989 discourse, which had established a reinterpreting of history in which the Hungarian community was directly involved in and benefited of the establishment of a Communist-led government in 1944–1945. There was no place for the sufferings and collective traumas of the Hungarians, which were dominant elements of that community's collective memory regarding the decades of the belated Romanian communist regime.

The new politics of memory as set after December 1989 was dominated by a discourse that identified those responsible for the establishment and perpetrating of a totalitarian regime as being foreign to the Romanian nation: the Soviet occupier, as also Hungarian and Jewish ethnic minority-related elements. According to that discourse, the Romanian ethnic majority was identified primarily with the role of the victim.

The analysis of the historical process that led to the establishing of a communist regime in Romania, assuming the responsibility of representatives belonging to the Romanian ethnic majority, and integrating in that new discourse also the collective traumas and suffering experienced by the national minorities of Romania between 1944 and 1989, was inaugurated after entering the new millennia. After winning the elections of 2004, the new President of Romania, Traian Băsescu set by a presidential decree a Committee for the Analysis of the Communist Dictatorship in Romania. The Final Report of that Presidential Committee was edited in 2006. It was to be the central document of a legislative act, which identified the communist regime as criminal, which led to the reinterpreting of legal responsibilities, also of the necessity of moral and material compensations for the victims.

That moment marked also the end of the former politics of memory, which had put the responsibility for the communist regime on national minorities and led to a more well-balanced and historical evidence based narrative on

the realities of that era. However, the role played by a part of the Hungarian political representatives in the establishment of the communist regime in Romania between 1944 and 1947 is still a controversial issue in contemporary historiography. As there is interest to analyse the political options of the representatives of the Hungarian national minority in post-WWII Romania, one must not overlook that the local Hungarian community's experiences in first half of the 20th century, having been for the first time integrated in the new Romanian nation state, have also influenced the community's post-1944 identity discourse and perspectives.

Between 1918 and 1922, the traditional leaders of the Hungarian community were set to build an organisation, which was conceived as a representative, integrating and inner structuring frame of all the community: the Hungarian Union, holding the economic, social and political functions of the former Hungarian state institutions, a representative and an integrative body in constitutional terms of the Hungarian community in the new Romanian a state. The Hungarian Union was not to be reduced to the status of a political party, but it was designed to integrate the Hungarians from the territories of the new Greater Romania as a state-constituting national community with collective rights. Also, it had to integrate the different plural political options of the Hungarian community, serving as an "inner parliament" of that national community. The leaders of the Hungarian community wanted to claim collective rights granted by the new Wilsonian world order. But the Hungarian Union was banned by the Romanian Government, and the Hungarian community's political integration had to be reframed on the basis of a political party: the Hungarian National Party (Országos Magyar Párt).

The Hungarian elites were constantly attentive towards the traditional churches and the educational system in the native language as the two main pillars of a strategy of ensuring the cultural reproduction of the community. There was no legal frame for keeping the Hungarian-language schools within the general state-subsidised educational system in the interwar Romania – the state granted and organised only Romanian-language education for all citizens. Education in the Hungarian language became possible only as a tolerated

network of schools subsidised by the traditional churches, assimilated as a secondary structure of private education without the right to graduation and issuing diplomas. Under these circumstances, the traditional churches of the Hungarian community had to organise and sustain the educational system in Hungarian language, the main pillar of the cultural reproduction of the very identity of that community.

The radical land reform introduced in Romania also had its impact, furthering a generalised sense of instability and frustrations.

The Hungarian elites in Transylvania were following with interest the tensions between the local Romanian elites vs. the central political and administrative elites in the interwar years. The local Romanian elites were frustrated by gradually losing control over the region's resources, frustrated by the policies of the ruling National Liberal Party centralising policies. Organised around the old cadres of the Romanian National Party, a representative structure of the ethnic Romanians of Transylvania, led by Iuliu Maniu, united with the National Peasants' Party in 1926, and created the main opposition force to the ruling National Liberal Party. But they could form government only after the economic depression had harshly impacted Romania, claiming decentralised administration, pro-middle class economic policies, and favouring a new agrarian-industrial profile for the economy, with a certain openness to the Western financial investors. After 1932, due to the interventions of King Charles II and marked by inner conflicts, the National Peasants' Party had definitely lost ground in front of the national centralising elites, and an increasingly authoritarian monarchy.

The 1930s also witnessed the rise of political radicalism, including not only radical right-wing organisations, but also the communist party and its "fellow travellers". That ideological projection was evaluated by some Hungarian intellectuals as an opportunity for eluding the clash between antagonist nationalisms, identified as such through the lenses of their own specific interpretations of Soviet reality, constructed on the basis of propaganda resources. Before the Second World War, Marxism–Leninism was embraced as a political discourse of challenging the authority of the state. The political ideas of the

Transylvanian rooted political activists of the Communist Party were deeply embedded in the illusory image of equalitarian socialism and of a vision about a Soviet Union learned from propaganda leaflets. They believed that after the setting of a Communist regime, the country will be the home of peacefully coexisting nations. They believed in the model of the Soviet Union, but they were seduced by a political propaganda set image of a never existing "reality".[45]

The post-1945 realities of Romania were defined first of all by the process of political regime change, and the subsequent social, economic and cultural transformations, which had their impact through a wide range of empiric experiences on every part of the contemporary society. These experiences included dislocation, restriction, persecution, limitation, mobilisation, indoctrination, etc. All that process developed under the aegis of coercive measures of a gradually established totalitarian regime. These transformations between 1945 and 1947 led to a centralised totalitarian state, following the Soviet model, enacted through policies that after 1948 had their impact on all parts of the society, including individuals belonging to national minorities in Romania.

However, the first direct experiences in 1944–1945, after the passing of the Soviet war front, were perceived in a very different register. Initially, the communist leaders put in place a so-called National Front strategy, announcing a program of post-war national rebuilding, combined with a call for unaltered sovereignty over the regained territories, and a new land reform (enacted on 23 March 1945 by the new Communist-led government) to build their new image anchored in larger Romanian national claims.

In parallel, a new discourse was assumed by the new Communist-led government: Petru Groza, an important representative of the new regime, propagated a discourse about assuming the integration of different national minorities, preserving their collective identity through state-subsidised educational and cultural institutions, codifying these national minorities collective rights as part of a future political reality, and even the confederating of all neighbouring nation states and the "spiritualisation of the frontiers".[46]

[45] Vincze 1999: 263–269; Lönhárt 2008: 140–147.

[46] Lönhárt 2008: 227–248.

The Communist Party also devoted considerable attention to mobilising different parts of the society through mass organisations, representing various groups, which still nurtured the representation of their particular interests, by integrating them into a system of goals suitable to the criteria of the National Front strategy. The Hungarian People's Union (Magyar Népi Szövetség, hereinafter MNSZ) – a mass organisation of the Communist Party – was actively supported to gain a hegemonic position inside the Hungarian community. The Communist Party treated the MNSZ as the only representative organisation of the Hungarians, whereas the leaders of the MNSZ intended to use the collaboration with the Communist-led government for promoting their interest to represent the Hungarian national minority in a Communist-led new Romania. They were controlled and directed from within by members of the Communist Party of Romania, present in the leadership of the MNSZ, and by outside pressure paired with the insistence on unity of interest, as well as various obliging gestures.

The leaders of the MNSZ tried to build a certain political capital by offering support to the Communist-led coalition in the key moment of late 1945, when the new Communist-led government of Romania, set up as a result of Soviet political pressure and direct political interference, was put under international pressure for not being representative. The MNSZ released an official positioning act, edited on 17 November 1945 in Marosvásárhely – Târgu Mureş, which recognised the unaltered Romanian sovereignty over all territories regained in 1944–1945, claiming that the interests of the Hungarian community inhabiting also those territories were best to be served by granting rights and institutionalising the integration of the national minority in the new "real democratic" constitutional-legal frame of Romania.

The new Communist-led government, aiming to elude any discussions on a partial revision of borders at the following peace conference, switched the paradigm of public debate to a political and legal integrating of the Hungarian ethno-cultural minority in Romania. These were the motivating ideas behind the public narrative of the Groza Government on institutionalising collective

rights and integrating the network of educational and cultural institutions of the Hungarian community in Romania before 10 February 1947.

That strategic collaboration was later evaluated as having been exceptionally beneficial for the Hungarian community.[47] The official discourse on optimising inter-ethnic relations had been promoted instead of the traditional territorial controversies, institutionalising through the new constitutional-legal framework the collective rights of ethnic Hungarians, guaranteeing representation and equal status for that community by political means in Romania.

The Hungarian-language educational network, subsidised by the Romanian state, was also institutionalised in the immediate post-war years (including the establishment of the Bolyai University of Kolozsvár–Cluj). That was seen as of vital importance for the cultural reproduction of the Hungarian community in Romania.

For all that in change, the MNSZ offered an official declaration on behalf of the Hungarian community in Transylvania, integrated in the documentation presented by the Romanian delegates at the Paris Peace Conference in 1946. By that strategic alliance, they succeeded to build up and preserve an entire network of cultural and economic institutions, to position their representatives in the administrative bodies at local and regional level, and to change an important part of the legislation regarding the minority's interest.

These were the cornerstones of their plan to integrate the Hungarian national minority in the post-1945 Romania. In that regard, the MNSZ was a double faced political organisation: on the one hand, it assumed the representation of a national minority, on the other hand, it served as a mass organisation of the Communist Party, inducing the mobilisation of the Hungarian community for sustaining the new regime. That second function, which gradually became the single relevant identity after the political regime change became consolidated.

In the meantime, the Communist leaders changed their paradigm and became very interested in building a new Romanian national legitimacy. The party changed its name already in October 1945 (from the Communist Party of

[47] For an evaluation of the Groza Government's policies towards the Hungarian community see Lönhárt 2008: 227–301.

Romania to Romanian Communist Party), and received the ethnic Romanian worker Gheorghe Gheorghiu-Dej as its new leader, nominated by Stalin, as the group of leaders who recently returned from Moscow stepped back for a while. Part of that new image of the Romanian Communist Party was also the idea that it had regained Transylvania for Romania. That was reinforced by the government's active engagement in dissolving the special administrative structures built under the Soviet military controlled administration of Northern Transylvania, stigmatising the autonomist group, consisting mainly of left-wing Hungarian intellectuals, social-democrats and communists (represented by Lajos Jordáky, István Lakatos and Géza Pásztai, etc.).[48]

An unpredicted reality was the activation of political opposition to the leaders of the MNSZ after the act of official positioning issued on 17 November 1945. That declaration regarding the Transylvanian question unleashed a wave of protest in the first half of 1946. The "internment camps" instituted in the fall of 1944 were still not disbanded – the one set in Barcaföldvár–Feldioara, near Brassó–Braşov, led to an increased state of anxiety and indignation that marked the post-war Hungarian public opinion. The issue of citizenship of those who fled as the war front passed in the fall of 1944 but later returned was still not resolved before 1947. The impact of the new land reform law of 1945 was negatively perceived from the perspective of Hungarian individual, communitarian and institutional interests. The Hungarian properties and goods remained sequestrated on the basis of the CASBI. These realities formed a main stream of Hungarian public opinion that had led to an open demonstration on 30 June 1946 against the leaders of the MNSZ, which promoted their "success" as an ally of the Communist-led government of Romania. That open act of defiance was set as a counter-demonstration to the official closing act of the congress of the MNSZ held in Székelyudvarhely – Odorheiu Secuiesc.

In that moment, inside the Hungarian community all the prerequisites existed for a real public debate on the strategy to be adopted for representing the community interest. These contesting groups organised around the leaders

[48] For a profile of that group see the introductory study to Nagy–Vincze 2004.

of the traditional cultural and economic organisations: Áron Márton, bishop of the Roman Catholic Church of Transylvania, Pál Szász, Ede Korparich, Ádám Teleki, Alajos Boga, Géza Nagy, etc. They had contested the MNSZ's legitimacy as the sole representative of the community. Áron Márton criticised the MNSZ's "success propaganda" as counterproductive and opposed publicly the communist regime's educational policies.[49] There were also contacts with the traditional Romanian political parties – the National Peasants' Party and the National Liberal Party –, which remained sporadic, and the negotiations for an agreement before the 1946 elections were unfinished.

But those who represented alternative positioning had never reunited; they were kept on the periphery of the official media, and soon eliminated from public life. They failed to counterbalance the overwhelming influence in the public media of the MNSZ sustained by the Communist-led government, which kept dealing with the alternative groups from a dominant position. In the end, the MNSZ succeeded in gaining the votes of the majority of the Hungarian community at the elections held on 19 November 1946. The leaders of that mass organisation were changed, those who raised real concerns – as Gyárfás Kurkó, the first President of the MNSZ – were eliminated, subjected to political repression. The later nominated leaders remained loyal to the Romanian Communist Party until the dissolving of the organisation in 1953.

By signing the peace treaties in Paris on 10 February 1947, the unaltered sovereignty of the Romanian state upon the entire territories lost to Hungary in 1940 was once again re-established. The Communist-led new People's Republic of Romania was set up as soon as the monarchy was abolished, and King Michael of Romania was dethroned on 30 December 1947. After that moment, the Hungarian community's economic, cultural and social associations came under the control of the MNSZ, which was reduced to the role of a Communist-led mass organisation. These structures were gradually dissolved in the centralised structures of the party-state.

[49] See also Marton–Nemes 1996: 139–151; Fülöp–Vincze 1998: 60; Lönhárt 2008: 318–320.

That was happening in parallel with the process of redefining the new institutional cadres set to integrate the Hungarian minority in the new People's Republic of Romania: after adopting the 1948 constitution, an administrative reform following the Soviet model was introduced. The country was divided into regions and their subdivisions, the "raions" in 1950–1951. Then, as a structural part of a new 1952 Constitution, a Hungarian Autonomous Region was established in 1952. That meant that in Romania, the Soviet model of "administrative integration" of the Hungarian national minority was introduced as a consequence of the consolidation of the communist regime. All illusions of the post-1944 transitory period were fading, as frustration heightened because of the new social, economic and cultural policies of the one party-state in Romania.

The leaders of the Romanian Communist Party decided that the institutionalisation of control over the Hungarian national minority had to enter a new phase, which meant: total subordination that was to be carried out in the shortest time possible. The MNSZ – since it could not set its own agenda of representing the Hungarian minority, and it could act only as a "mass organisation" for mobilising the Hungarian community to engage in the project of a "new society" – was finally forced to disappear in 1953. That was the logical conclusion of a newly established totalitarian regime that considered its primary interest the annihilation of any alternative source of legitimacy and autonomous identity, be it collective or individual.

In the trials set on stage in 1949 and again in 1952, members of the communist leadership also became victims of the repression, along with the leading personalities of the traditional political, ecclesiastical, economic, cultural elite. One can see the parallel between the imprisonment and trial of Áron Márton, the Roman Catholic bishop of Transylvania, and Gyárfás Kurkó, former leader of the MNSZ. From that moment on, the one-party system, the party-state's central government and its local bodies were to be the only institutional cadres for any political representation.

The nature of the Romanian political regime throughout the 1950s remained in its key elements a Stalinist totalitarian regime, most influenced by the Soviet

model.[50] The forced industrialisation and urbanisation process, mainly consisting of planned re-location of a major part of the population from the rural landscape to the new urban peripheries, settled in state owned new quarters of blocks-of-flats, working in state-owned new industrial plants, was the core of transforming a dominantly rural society into an industrialised socialist society. That was coupled with a "cultural revolution", which aimed to create a "new communist conscience" – based on class identity, and solidarity with the Soviet Union – to be institutionalised as a hegemonic identity narrative of the society. The end of the communist social engineering project had to be the creation of a "new man", anchored in a "new working class", subject of the new "socialist society". Establishing centralised state control over the educational and cultural institutions was carried out as part of a developing "cultural revolution" that had to meet the main aims of social engineering plans. That also entailed the de-structuring of all traditional cultural and educational institutions, and eliminating the traditional cultural elites and value system. All of that, as part of the social engineering process, had to result in a new society of individuals, dispossessed from all means to preserve and reproduce their traditionally inherited identities and values.

Projected and planned through the hegemonic control of the party-state, that process also led to a total intolerance by the ruling power elite towards traditional national symbols, as well as religious, regional and local identities, as alternative sources of a self-defining collective identification.

In concordance with that ideologically-based plan of social engineering, the Hungarian minority was to be redefined not as a community with a self-organising dimension and subject to collective rights, but as a set of individuals viewed as citizens of the new Romanian People's Republic. All citizens were projected as one political nation, constructed of individuals with an identity defined only according to the ideological categories of "social class" and "class warfare". Regarding the cornerstones of that new identity narrative, the syntagm "national in form, socialist in content" defined precisely the relation between

[50] Tismăneanu 2005.

the values to be assimilated by all members of the society, and the national language and culture, tolerated only as forms of communicating the new content. The outcome had to be a mass society identified with the ideological call, integrated in the "socialist nation" without any specific individual or collective differentiation. The only specificity of language – the members of the former Hungarian national minority being referred to as "Hungarian-speaking workers" in the second stage of the communist regime in Romania – was to be tolerated for a transitory period on the road to communism.

CONCLUSIONS

By analysing the role and the complex relation of different representative groups of the Hungarian community to the establishment and consolidation of the communist regime in Romania, one has to observe the discrepancy between the facts confirmed by the analysis of the historical records, showing plural options and opposing political actions, and the discursive collective blaming of that same national minority as a whole of being responsible for the setting of that totalitarian regime. The author of this present study considers that one cannot conclude based on the tactical motivation of a group of the political representatives of that Hungarian community in 1944–1945, even if they gained a dominant position in relation to other groups inside the Hungarian community, that the nominated national minority had embraced or benefited only of the establishment of the communist regime in Romania. On the contrary, by analysing the historical records, one has to realise that there were collaborators and victims within the Hungarian community, and the final logic of the process itself meant the elimination of the representatives of that community's interest in the paradigm of a totalitarian communist regime. The repressive dimension is also relevant regarding the Hungarian community, already in the 1950s, which intensified in the later decades, before 1989, with the Nationalist Neo-Stalinist self-legitimation of the system. As a concluding idea, we have to see the complexity of options and trajectories of

groups and individuals under the new communist regime, equally relevant for the Romanian society, as well as for the Hungarian minority. Collective guilt and blaming based on ethnicity is totally non-relevant and in contradiction with the historical records-based analysis of the establishment and functioning of the communist regime.

As analysing the current historiography, one has to assess the post-2006 turn, which led to a much complex and fair view of the historical realities. The current general view of the most recent analysis stated that individuals and groups of the Hungarian community as a national minority, as also those belonging to the Romanian national majority itself, can be both identified with victims and also the perpetrators of the Communist regime – a historical reality which is to be assumed in its complexity. Assuming publicly that historical reality is a prerequisite for a reconciliation process to become possible.

REFERENCES

Baier, Hannelore (2019): Deportare, deposedare, discriminare 1944–1948. In Traşcă, Ottmar – Anghel, Remus Gabriel (eds.): *Un veac frământat. Germanii din România după 1918.* Cluj-Napoca: Institutul pentru Studierea Problemelor Minorităţlior Naţionale, 149–172.

Benkő, Levente (2006): És mit mondanak a levéltári források? Adalékok az 1944. Szeptember 26-i szárazajtai magyarellenes mészárláshoz. *Székelyföld,* 10(1), 213–252.

Benkő, Levente (2012): Hideg napok Székelyföldön. Adalékok a Maniu-gárda történetéhez, háromszéki és csíki útjához. *Székelyföld,* 16(8), 118–135.

Bibó, István (1986) [1948]: Zsidókérdés Magyarországon 1944 után. In *Válogatott tanulmányok.* Volume II. Budapest: Magvető, 621–797.

Bottoni, Stefano (2007): *Transilvania rossa. Il comunismo romeno e la questione nazionale (1944–1965).* Roma: Carocci Editore.

Carp, Matatias (1993) [1948]: *Holocaust Romániában. Tények és dokumentumok a romániai zsidók pusztulásáról 1940–1944.* s. l.: Primor Kiadó.

CIUCĂ, Marcel-Dumitru ed. (2001): *Procesul lui Iuliu Maniu*. Volumes I–II. Bucureşti: Editura Saeculum.

CIUCĂ, Marcel-Dumitru ed. (2012): *Stenogramele Şedinţelor Consiliului de Miniştri. Guvernarea Constantin Sănătescu. Vol. II (20 octombrie – 29 noiembrie 1944)*. Bucureşti: Editura Saeculum.

CONSTANTINIU, Florin (2002): *1941. Hitler, Stalin şi România. România şi geneza operaţiunii "Barbarossa"*. Bucureşti: Univers Enciclopedic.

CRACĂ, Ioana ed. (1995): *Procesul lui Ion Antonescu*. Bucureşti: Editura Eminescu.

FÜLÖP, Mihály – VINCZE, Gábor eds. (1998): *ReVizió vagy autonómia? Iratok a magyar–román kapcsolatok történetéről (1945–1947)*. Budapest: Teleki László Alapítvány.

GÁL, Mária – GAJDOS BALOGH, Attila – IMREH, Ferenc (1995): *Fehér Könyv az 1944. őszi magyarellenes atrocitásokról*. Kolozsvár: RMDSZ.

GHEORGHIU, Laura (2019): Comunitatea germană în perioada comunismului timpuriu, 1945–1960. In TRAŞCĂ, Ottmar – ANGHEL, Remus Gabriel (eds.): *Un veac frământat. Germanii din România după 1918*. Cluj-Napoca: Institutul pentru Studierea Problemelor Minorităţilor Naţionale, 173–198.

GYŐRI SZABÓ, Róbert (1997): *A kommunista párt és a zsidóság Magyarországon (1945–1956)*. Budapest: Windsor Kiadó.

IOANID, Radu (2019): *Holocaustul în România. Distrugerea evreilor şi romilor sub regimul Antonescu 1940–1944*. Iaşi: Editura Polirom.

KÁDÁR, Gábor – VÁGI, Zoltán (2013): *A végső döntés. Berlin, Budapest, Birkenau 1944*. Budapest: Jaffa Kiadó.

L. BALOGH, Béni ed. (2013a): *Kiszolgáltatva. A dél-erdélyi magyar kisebbség 1940–1944 között*. Csíkszereda: Pro Print Könyvkiadó.

L. BALOGH, Béni (2013b): *Küzdelem Erdélyért. A magyar–román viszony és a kisebbségi kérdés 1940–1944 között*. Budapest: Akadémiai Kiadó.

LIPCSEY, Ildikó (1998): *A Romániai Magyar Népi Szövetség az önfeladás útján (1944–1953)*. Budapest: Possum Kiadó.

LIVEZEANU, Irina (1998): *Cultură şi naţionalism în România Mare 1918–1930*. Bucureşti: Editura Humanitas.

LÖNHÁRT, Tamás (2008): *Uniunea Populară Maghiară în perioada instaurării regimului comunist în România (1944–1948)*. Cluj-Napoca: Editura Argonaut.

MARTON, József – NEMES, István eds. (1996): *Márton Áron írásai és beszédei*. Gyulafehérvár: s. n.

MIKÓ, Imre (1990): *Huszonkét év. Az erdélyi magyarság politikai története 1918. december 1-től 1940. augusztus 30-ig.* Budapest: Optimum.

MURÁDIN, János Kristóf (2019): *"Mindent Erdélyért!" Az Erdélyi Párt története 1940 és 1944 között.* Kolozsvár: Sapientia Kiadó.

NAGY, Mihály Zoltán – VINCZE, Gábor eds. (2004): *Autonómisták és centralisták. Észak-Erdély a két román bevonulás között (1944 szeptember – 1945 március).* Kolozsvár–Csíkszereda: Pro Print Könyvkiadó.

PINTILESCU, Corneliu (2020): Minoritatea germană. In COROBCA, Liliana (ed.): *Panorama comunismului în România.* Iaşi: Editura Polirom, 421–440.

RÁNKI, György (1968): *1944. március 19. Magyarország német megszállása.* Budapest: Kossuth Könyvkiadó.

RAVASZ, István (2002): *Erdély ismét hadszíntér 1944.* Budapest: Petit Real Könyvkiadó.

ROBOTOS, Imre (1997): *Pengeváltás. A csapdákat nem lehet elkerülni.* Nagyvárad: Literator Könyvkiadó.

SĂLĂGEAN, Marcela (2002): *Administraţia sovietică în Nordul Transilvaniei (noiembrie 1944 – martie 1945).* Cluj-Napoca: Centrul de Studii Transilvane, Fundaţia Culturală Română.

SÁRÁNDI, Tamás ed. (2016): *Levezényelt visszacsatolás. A magyar katonai közigazgatás Észak-Erdélyben, 1940.* Csíkszereda: Pro Print Könyvkiadó.

SOLONARI, Vladimir (2021): *Imperiul-satelit. Guvernarea românească în Transnistria 1941–1944.* Bucureşti: Humanitas.

ŢÂRĂU, Virgiliu (2005): *Alegeri fără opţiune. Primele scrutinuri parlamentare din Centrul şi Estul Europei după cel de-al Doilea Război Mondial.* Cluj-Napoca: Editura Eikon.

TISMĂNEANU, Vladimir (2005): *Stalinism pentru eternitate.* Iaşi: Editura Polirom.

TRAŞCĂ, Ottmar (2005): Ungaria, România şi planurile militare germane „Margarethe I" – „Margarethe II" septembrie 1943 – martie 1944. In CARP, Cornel (ed.): *România în contextul internaţional la sfârşitul celui de-al Doilea Război Mondial.* Bucureşti: Editura Centrului Tehnic-Teritorial al Armatei, 223–228.

VESZPRÉMY, László Bernát (2019): *Gyilkos irodák. A magyar közigazgatás, a német megszállás és a holokauszt.* Budapest: Jaffa Kiadó.

VINCZE, Gábor (1999): *Illúziók és csalódások. Fejezetek a romániai magyarság második világháború utáni történetéből.* Csíkszereda: Státus Könyvkiadó.

VINCZE, Gábor (2009): *Gúzsba kötött kisebbség. Magyarok a 20. századi Romániában*. Nagyvárad: Partium Kiadó.

VINCZE, Gábor ed. (2000): *Magyar vagyon román kézen. Dokumentumok a romániai Magyar vállalatok, pénzintézetek második világháború utáni helyzetéről és a magyar–román vagyonjogi vitáról.* Csíkszereda: Pro Print Könyvkiadó.

VINȚELER, Ovidiu – TETEAN, Diana eds. (2014): *Problema transilvană. Disputa teritorială româno–maghiară şi URSS 1940–1946. Documente din Arhivele Ruseşti.* Cluj-Napoca: Editura Eikon.

WIESEL, Elie – FRILING, Tuvia – IOANID, Radu – IONESCU, Mihail E. (2005): *Raport Final. Comisia Internațională pentru Studierea Holocaustului în România*. Iaşi: Editura Polirom.

Tamás Korhecz

The Past and Present of Collective Guilt in Yugoslavia – Some Legal Issues Related to Rehabilitation and Compensation with Special Emphasis on the Practice in Serbia

The persecution and collective punishment of ethnic Germans, as well as part of ethnic Hungarians at the end of and immediately after the Second World War in Yugoslavia represents a shameful and sad moment in the European history. After the collapse of communism within the process of transitional justice, successor states of Yugoslavia enacted a legal framework for the rehabilitation and compensation of persons deprived from their life, property and liberty by totalitarian communist authorities without due process of law. Slovenia, Croatia and Serbia demonstrated no genuine determination to offer rehabilitation, compensation and reparation for Germans and Hungarians deprived from their life, liberty and property based on collective guilt and punishment. However, the situation in mentioned states differs substantially. Despite the vague provisions of the relevant laws and shortcomings in their application in practice, the rehabilitation and reparation of ethnic Germans and ethnic Hungarians persecuted and punished based on collective guilt is a living reality only in Serbia. Altogether more than two thousand ethnic Germans or their descendants claimed rehabilitation, which was granted to the majority of them.

INTRODUCTION

Collective guilt, or more precisely, collective punishment has been present in human history mainly as an acceptable revenge against all members of a particular group (members of an ethnic, linguistic or racial group, citizens

DOI: https://doi.org/10.36250/01228_08

of a state, etc.) for wrongdoings committed against the members of another group, irrespective of the involvement and responsibility of the individual (member of the group) in those specific wrongdoings. It was legitimate to burn and slaughter villages of the enemy, including civilians, women and children, as retaliation after successful battles conquering hostile territories. Only after the evolution of international law and recognition of basic human rights, offering universal protection of basic rights and freedoms for all individuals, including the establishment of international systems of protection of individual human rights, has the institution of collective punishment become gradually unacceptable. The protection of basic human rights and freedoms is not consistent with the idea and practice of collective punishment, with the persecution and deprivation of someone of his/her individual basic rights (right to life, liberty or property), based on the fact that the individual is linked to the perpetrator of a crime or for wrongdoing by common race, ethnicity, citizenship or class belonging. Responsibility should always be individual, or, as justice Jackson stated in *Korematsu v. United Sates* case: "Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable."[1]

However, the idea of individual responsibility and guilt was not universally accepted, even in Europe, in the 20th century. After the Second World War, the principle of collective punishment was most dramatically applied between 1944–1950, when approximately 12–15 million ethnic Germans were deprived of their basic rights to life, liberty and property in Poland, Czechoslovakia, Hungary, the Soviet Union, Yugoslavia and other Eastern and Central European countries.[2] This essay focuses on the issue of rehabilitation and reparation of individuals having suffered persecution based on collective punishment after the Second World War in Yugoslavia. I will elaborate and analyse the legal frameworks established in three successor states of Yugoslavia – Slovenia, Croatia and Serbia – mainly at the end of the 20th

[1] Toyosaboru Korematsu v. United States 323 US 214 (1944).

[2] De Zayas 2006; Douglas 2012.

century and in the early 21st century, which intended to ease the consequences of collective punishment committed by the Yugoslav Communist authorities shortly after the Second World War.

This paper is divided into five sections. After this introduction, the second section briefly summarises the historic facts related to the expulsion and collective punishment of the German national minority in the former Yugoslavia, as well as the collective punishment of persons belonging to the Hungarian national minority in three villages in Bačka, Vojvodina province, Serbia–Yugoslavia. In the third section, the analyses of the legal frameworks on the rehabilitation and compensation of the victims of the communist regime in Slovenia, Croatia and Serbia will be provided, with a focus on the rehabilitation of expelled Germans after the Second World War. The fourth section is related to the practice of rehabilitation and reparation in Serbia, including the application of the relevant law by the administration and courts. The fifth, final section contains some conclusions and general remarks related to the rehabilitation and compensation of the deprived Germans and Hungarians in Post-Yugoslav countries.

COLLECTIVE PUNISHMENT OF THE GERMANS IN YUGOSLAVIA, AND OF THE HUNGARIAN INHABITANTS OF SOME VILLAGES IN THE BAČKA REGION OF SERBIA AFTER THE SECOND WORLD WAR

Germans in the Kingdom of Yugoslavia and during the occupation of Yugoslavia between 1941–1945

After the dissolution of the Austro–Hungarian Monarchy in late 1918, and the formation of the Kingdom of Serbs, Croats and Slovenians (hereinafter: the Kingdom of Yugoslavia)[3] in December 1918, large territories of former Austria

[3] The Kingdom of Serbs, Croats and Slovenians officially changed its name in 1929 to Kingdom of Yugoslavia.

and Hungary became part of the newly established South Slavic state. Half a million autochthonous ethnic Germans, and roughly the same number of ethnic Hungarians became national minorities in the new state.[4] The German national minority was living overwhelmingly in the present territory of Serbia (Vojvodina province), but also in relevant numbers in the present territory of Croatia (Slavonia region) and Slovenia (region around the town Maribor). Despite international guarantees, the new state was not ready to implement the policy of tolerance and cultural diversity towards new national minorities, including Germans.[5]

The new state was not ready to treat equally Germans and titular South Slavic nations: their language and culture received no state support, and their political organisation and representation was often obstructed, in some periods even banned.[6] Although, not without difficulties, Germans in the Kingdom of Yugoslavia managed to gradually establish their umbrella organisation, the *Kulturbund,* which gathered almost the entire German population in the Kingdom of Yugoslavia. The Kulturbund had the goal to become the universal representative of the German national minority not only in the area of culture, but also in economy and politics. From the 1930s onwards, after the Nazis took power in Germany, Kulturbund was increasingly banded to Germany, and became a tool of its imperialistic national socialist politics. It is to be mentioned here, that despite the often hostile government policy toward minorities in the Kingdom of Yugoslavia, Germans in Yugoslavia were an economically and culturally progressive and strong community, superior to other ethnic groups. Among the Germans, the literacy rate was higher than the average, they owned disproportionately large parts of agricultural land, they led lots of successful financial enterprises, they were often the best manufacturers in their towns and

4 According to the 1931 census, in the Kingdom of Yugoslavia, the mother tongue of some 499,000 persons was the German language, while the mother tongue of 468,000 persons was the Hungarian language. See Republički Zavod Za Statistiku 1945.

5 The Kingdom of Serbs, Croats and Slovenes (Yugoslavia) in 1919 signed a bilateral treaty with the League of Nations on minority protection, the Treaty of Saint-Germain-en-Laye.

6 Janjetović 2009: 143, 154, 158, 159, 163, 167.

villages, etc.[7] Germans constituted a strong and vital community, publishing many private German-language daily newspapers and periodicals and maintaining more than 700 private cultural, educational, sport and humanitarian associations.[8] In the eve of the German aggression against the Kingdom of Yugoslavia, the Kulturbund, with the help of Nazi Germany, was taking part in the training of the German youth to support and assist the German invasion.[9] Some paramilitary units (Deutsche Mannschaft) were armed with weapons seized from the surrounding Yugoslav military, and they made the advance of German forces more efficient in the April 1941 Yugoslavian Blitzkrieg.[10]

After the surrender of the Yugoslav Army, the state was occupied and divided by the Axis powers. The most numerous part of the German national minority in the Kingdom of Yugoslavia lived on the territory of the present Vojvodina province (formerly it was a part of Hungary within the Austro–Hungarian Monarchy). This territory was divided into three parts. The Bačka region was reunited with the Kingdom of Hungary (Ally of the Nazi Germany), therefore Germans in Bačka remained in the position of national minority, however, in this period under Hungarian rule. The Banat region of the Kingdom of Yugoslavia remained under German military occupation, however, it formally became part of the Serbian puppet state led by General Milan Nedić. Actually, Germans in Banat were a self-governing community, economically and politically dominating the Banat region. Via Kulturbund, they were closely linked to German military authorities. The active-age German male population was mobilised into SS units, but without gaining the citizenship of the German Reich. In the third part of Vojvodina, in Srem, local Germans together with Germans in Slavonia–Croatia and Germans in Northern Bosnia became part of the semi-independent Nezavisna Država Hrvatska (Independent State of Croatia, hereinafter: NDH). The NDH legally guaranteed strong privileges to the German minority, however, their actual position was not as strong as in

7 Janjetović 2009: 117, 128, 136; Pavlica 2005: 198.
8 Janjetović 2009: 211.
9 Janjetović 2009: 287–289.
10 Pavlica 2005: 293–295.

the Banat.[11] German men in the NDH were also mobilised in various German military formations, mainly SS units, outside the military command of the NDH. The Germans in Slovenia, after the 1941 split of the present territory of Slovenia between Italy (South) and Germany (North), mainly became citizens of the Third Reich, sharing the fate of other Germans in the Nazi state.

Hungarians in the Kingdom of Yugoslavia and during the occupation of Yugoslavia between 1941–1945

As it was mentioned earlier in this paper, the Hungarian national minority in Yugoslavia also suffered partial collective punishment after the Second World War. Hungarians, similarly to ethnic Germans, became a national minority in the Kingdom of Yugoslavia after the dissolution of the Austro–Hungarian Monarchy. The number of Hungarians in the Kingdom of Yugoslavia was over 460,000, and they were overwhelmingly concentrated in the Bačka (Bácska) and the Banat (Bánság) region of the present-day Vojvodina province, Serbia. After the April 1941 collapse of the Kingdom of Yugoslavia, the Kingdom of Hungary annexed the Bačka region, where the largest number of the Hungarians lived. Other Hungarians mainly remained outside the Kingdom of Hungary, having no privileged position at all. During January 1942, the Hungarian military and police forces initiated massive raids (known as "razzia") in South Bačka, around the town of Novi Sad and in the so-called Šajkas district in order to destroy the Communist-led sporadic rebellion. The military action had turned into the brutal slaughter of Serb and Jewish civilians in Novi Sad, and the villages of Čurug (Csúrog), Mošorin (Mozsor) and Žabalj (Zsablya).[12] The overall civil casualties of the raid amounted to 4,000 civilians, including women and children. The military action of the Hungarian Army and Police units was partly committed with the assistance of local Hungarians. This is usually qualified by historians as the darkest and most dishonest military action ever committed

[11] Janjetović 2009: 312–314.
[12] A. Sajti 2004: 275–282.

by the Hungarian armed forces. It is worth mentioning that the cruel atrocities of the Hungarian armed forces in Bačka (Bácska) were promptly condemned by influential opposition political leaders in the Hungarian National Assembly, moreover, commanding officers of the "razzia" were convicted and sentenced to prison by the military court of the Kingdom of Hungary during the Second World War.[13] The Hungarian Government also began to pay compensation to the families of Serb civilian victims.[14] Despite these unusual positive actions of the Hungarian state authorities, the "razzia in Bačka" served as a basis for the collective punishment of the entire Hungarian population of three villages in Bačka after the Second World War.

The fate of Germans in Yugoslavia after the liberation in 1944–1945

The military situation of the German armed forces and their allies on Yugoslavian soil deteriorated a lot soon after Romania and Bulgaria changed sides in the late summer of 1944. Subsequently, the troops of the Josip Broz Tito-led Yugoslav communist liberation movement, backed by Soviet military units, advanced swiftly from the East, liberating Banat, Bačka and Belgrade, the Yugoslav capital city, in September–October 1944. Although Germans were in substantially different positions in the various regions of Yugoslavia, their leaders began to organise gradual evacuation of all German civilians towards Germany alongside with military troops all over the occupied Yugoslavia. Often, the command from Berlin for the evacuation came at the last minute, when the Soviet or Partisan troops were almost in the neighbourhood, next to German homes.[15] Despite organised preparation by the leadership of the Kulturbund, the evacuation was not always successful. Some German civilians deliberately stayed in their houses, refusing to leave their traditional agricultural enterprises. The Germans remained in their homes mostly in Bačka, which used to belong

[13] A. Sajti 2004: 302–303.
[14] A. Sajti 2004: 304–306.
[15] Janjetović 2009.

to Hungary during the Second World War. On the other hand, the situation in Slovenia and partially in Croatia (Srem and Slavonia) was substantially different. The German armed forces held their positions in Croatia and Slovenia until April or even after the 8 May 1945 capitulation of Germany, therefore, the advance of the Allied forces was not as rapid, thus letting more time for the preparation for evacuation. Altogether, out of half a million ethnic Germans, from the autumn of 1944 approximately 200,000 remained on Yugoslav territory, came under the jurisdiction of Soviet and Yugoslav authorities; the majority managed to flee.[16]

As we mentioned earlier, many German civilians in the Banat, and even more in the Bačka region, stayed in their homes in October 1944, when Soviet and Partisan troops seized/liberated their villages and towns. Immediately after they seized these settlements, the liberators, mainly communist partisans, killed without trial thousands of persons, allegedly enemies of the communists, including more than 6,700 Germans, partially as a revenge for Nazi crimes against local Serb populations during the Second World War.[17] The retaliations against Germans, but also against other potential enemies of the new communist power, were made easier with the order of Josip Broz Tito, who established military administration in Bačka, Banat and Baranja. The military administration was justified with, among others, sufferings caused to Yugoslav people by the occupying forces and aliens settled on these territories, as well as with the goal to guarantee the Yugoslav (South Slavic) character of the territory.[18] The mass killings were executed or at least ordered by the feared political police of the partisan liberation movement, the OZNA.[19] The executions, most often carried out without any formal trials, were promptly followed by various "law-based" repressions and collective punishments against

[16] Wildmann 2015: 297.

[17] Janjetović 2009: 349–350.

[18] A. Sajti 2004: 320–321.

[19] OZNA is an abbreviation of the Odeljenje za Zaštitu Naroda [Department for People's Protection]. It was established by the order of Josip Broz Tito in May 1944, based on the model of the Soviet political police "NKVD".

all ethnic Germans in Yugoslavia, including Germans staying on the territory of Yugoslavia, Germans evacuated from Yugoslavia along with the withdrawing German military and Germans living in their homes in still occupied territories under German control. The legal repression began with the Decision on the transition of enemy property to state property, adopted by the provisional government of the new communist Yugoslav authorities on 21 November 1944.[20] Article 1 of the Decision provided:

> "With the day of the coming into force of this Decision, the following property is transferred to state property: [...] All property of persons belonging to the German nationality, with the exception of those members of the German nationality who fought in the units of the Peoples' liberation army and partisan units [...]"

Article 3 specified the property transferred to state property:

> "In accordance with this Decision, property includes immovable and movable things and rights, like lands, houses, furniture, forests, mining rights, factories with all machines and products in magazines, stocks, associations, funds of all kind, all kind of cash money, intellectual property [...] and all rights related to previously enumerated objects."

From the quoted provisions of the Decision, which was implemented immediately after its enactment, it is clear that all Germans in Yugoslavia, with the exception of those few fighting on the side of Tito's partisans, lost literally everything they owned or possessed. According to reliable sources, only the agricultural land confiscated from Germans pursuant to this Decision amounted to 637,000 hectares, from which 389,000 hectares were in Vojvodina.[21] The deprivation of property was formalised with subsequent individual

[20] Odluka o prelazu u državnu svojinu neprijateljske imovine, o državnoj upravi nad imovinom neprisutnih lica i o sekvestru nad imovinom koju su okupatorske vlasti prisilno otuđile (1944). The decision was enacted on 21 November 1944 and was formally published in the official gazette on 6 February 1945.

[21] Gulan 2018.

administrative decisions of the new local authorities (Narodni odbori), based on Article 30 of the 1945 Law on Confiscation.[22] Although the 21 November AVNOJ Decision did not explicitly deprive all civil rights from ethnic Germans in Yugoslavia, it was interpreted by authorities in a way that all civil rights of Germans, including citizenship rights, were suspended.[23] When the number of killings and executions gradually diminished from November 1944 onwards, the remaining ethnic Germans, mainly children, women and elderly men were forced to leave their confiscated homes and were placed in detention camps.[24] From late 1944 onwards, dozens of such detention camps were established during the military administration. The detention camps were usually organised from quarters of some villages, previously overwhelmingly populated by Germans. The camps were crowded, had no food supply, medicines and basic hygienic circumstances, and the inmates there died in large numbers from various infections and other diseases. Only in Vojvodina, around 140,000 ethnic German civilians were forcibly placed in these camps.[25] Before the establishment of the detention camps, more than 10,000 Germans had been transported to forced labour to the Soviet Union.[26]

The detention camps were established provisionally, where the remaining Germans had to wait for their planned expulsion to Germany. Namely, Yugoslav authorities made substantial diplomatic efforts in early 1945 to ensure the consent of the Allies for the collective expulsion of ethnic Germans from Yugoslavia. However, in the Potsdam Conference, the Allies rejected Yugoslav claims to treat the German minority in Yugoslavia in the same way as in the case of the USSR, Czechoslovakia, Poland and Hungary.[27] This way, the provisional detention camps began to function as permanent labour camps from which

22 Anić 2007.
23 Pavlica 2005: 227.
24 Pavlica 2005: 227; A. Sajti 2004: 322; Janjetović 2009: 351.
25 A. Sajti 2004: 323.
26 Janjetović 2009: 352.
27 Janjetović 2009: 354.

Germans were daily sent to various agricultural, industrial and other works without salary for years. The camps were dissolved gradually from 1946 onwards; the last ones were dissolved in 1948. Those who survived the brutal conditions in the camps gradually emigrated to Austria and Germany where they joined their family members or relatives. The number of Germans perished in these camps in Vojvodina can be measured in tens of thousands. According to reliable sources, only in the Jarek camp near Novi Sad, between December 1944 and April 1946, over 6,400, mainly ethnic Germans died from starvation, or from various diseases.[28]

It must be mentioned that the fate of Germans outside the present-day Vojvodina province of Serbia was a bit different from those living in parts of the former Yugoslavia, which today belong to Croatia and Slovenia. Although the collective punishment, the deprivation of property and civil rights equally struck these Germans as well, German civilians awaited partisan liberators in much smaller numbers. Namely, the Srem front, near the line of the present state border between Serbia and Croatia, remained firm until April 1945, giving more time for ethnic German civilians to move towards West, towards Germany in time. However, after the collapse of the Srem front in May 1945, few camps were established for the remaining German civilians in Slavonia, for example in Valpovo and Josipovci.

Based on various sources, we can estimate that approximately 200,000 ethnic German civilians remained on territories controlled by the new communist Yugoslavian authorities. Some 40,000 of them were killed, or more often died in camps. After they were released, the majority gradually emigrated to Austria and Germany, joining those ethnic Germans who fled Yugoslavia during the war. A small proportion of Germans stayed in Yugoslavia, often hiding their origin and identity in the Socialist Yugoslavia.

[28] Csorba 2011.

The fate of Hungarians in Yugoslavia after the liberation in 1944–1945: The collective punishment of the Hungarian inhabitants of Čurug, Žabalj and Mošorin

As previously mentioned, during the Second World War, the members of the Hungarian national minority in Yugoslavia concentrated mainly in Bačka and Banat. Bačka, along with a part of Baranja (Baranya), Croatia and Prekmurje (Muraköz), Slovenia, were reunited with the Kingdom of Hungary, while the Yugoslav Banat remained formally part of Serbia, but under German military administration and with the domination of Volksdeutschers. Smaller numbers of Hungarians also lived in the Srem region and Slavonia, within the NDH.

In October 1944, after Soviet and Yugoslav partisan forces pushed out German (and in Bačka, Hungarian) military forces from Bačka and Banat, during the established military administration, thousands of Hungarians were executed by the OZNA, overwhelmingly without trials. The retaliation was usually sporadic in Banat and much more massive in Bačka, where local Hungarians were not sympathising with the occupying authorities during the Second World War.

The above mentioned Decision of the new Yugoslav authorities on the confiscation of enemy property of 21 November 1944 had not deprived all ethnic Hungarians of their property, as opposed to what was the case with the Germans, however, it allowed for the confiscation of the property of all inhabitants who were declared war criminals, and enemies of the People by the new administrative and judicial authorities. Those executed in late 1944 without trial, were often, after their death, declared to be war criminals, or the enemies of the People by various authorities, and they were deprived of their property based on the Decision of 21 November 1944.

After numerous executions of ethnic Hungarian civilians, mainly in late 1944 in Bačka, the new Yugoslav authorities decided to implement further retaliations against the Hungarian population in three villages in early 1945. The

new communist authorities in Vojvodina enacted decisions declaring war criminals the entire ethnic Hungarian (and German) population of Čurug, Žabalj and Mošorin.[29] These decisions were enacted upon the request of the local Serb population, and included not only the Hungarians, but also the relatively small ethnic German inhabitants of these villages. The decisions declared all ethnic Hungarian and German inhabitants war criminals, including women and children, but excluded those fighting in partisan units. Their legal consequences were expulsion and deprivation of property based on the already mentioned Decisison of 21 November 1944.[30] The decision of 22 January was implemented promptly, and ethnic Hungarians from Čurog and Žabalj (around 3,900 persons) were forced by partisan guards to march on 23 January, in an extremely cold winter day, to the Jarek detention camp, where they provisionally joined the ethnic German inmates.[31] The Hungarians from Mošorin were deported at the end of March 1945.[32] The Hungarian inmates were held in the Jarek camp until June 1945, when they were transferred to other labour camps, where the living conditions were much easier. Before the expulsion, a few hundred Hungarian inhabitants of these villages were executed. It is to be mentioned that those local Hungarians, who actively participated in or supported the mass murders in the 1942 "Razzia", mainly fled the territory before the partisans arrived in October 1944, hence the revenge usually hit "small fishes" or innocents.

[29] Odluka Komisije za utvrđivanje zločina okupatora i njihovih pomagača u Vojvodini broj Str. Pov. 2/1945 od 22. januara 1945; Odluka Zemaljske komisije za utvrđivanje zločina okupatora i njihovih pomagača u Vojvodini od 26. marta 1945.

[30] Odluka o prelazu u državnu svojinu neprijateljske imovine (1944): Article 1, paragraph 3.

[31] A. Sajti 2004: 324.

[32] Csorba 2011: 22.

THE REHABILITATION AND COMPENSATION OF THE VICTIMS OF THE COMMUNIST REGIME IN SLOVENIA, CROATIA AND SERBIA AFTER 1991, WITH SPECIAL FOCUS ON PERSONS DEPRIVED OF THEIR BASIC RIGHTS AS A COLLECTIVE PUNISHMENT AFTER THE SECOND WORLD WAR

The Fall of the Berlin Wall and the collapse of Socialist totalitarian regimes in Eastern and Central European states at the beginning of the 1990s opened the issue of the so-called "transitional justice", or as some authors formulated, the legal confrontation with the totalitarian past.[33] All post-socialist states had to develop their legal frameworks in a way to allow for those who suffered deprivation of their basic human rights to claim rehabilitation and compensation or the re-establishment of their property rights. Beyond rehabilitation and compensation, transitional justice often involved the opening of the archives of the political police, determining the judicial or political responsibility of those violating basic human rights, etc. The Council of Europe made important efforts to set standards regarding the legal confrontation with the totalitarian past, primarily via Resolution 1096 of the Parliamentary Assembly.[34]

The situation in the former Socialist Yugoslavia was even more complicated because the collapse of socialism went hand in hand with the falling apart of the Yugoslav federation, and with civil wars between 1991 and 1999. The collective punishment of ethnic Germans by the communist authorities after the Second World War was obviously among the most widespread and cruelest violations committed by the authorities of the former totalitarian Yugoslav state. On the other hand, for various reasons, the collective punishment of ethnic Germans and their potential rehabilitation and compensation were among the most sensitive issues of the transitional justice in all of these three successor states of former Yugoslavia. First, the collective punishment of the German national minority, their detention in camps, massive expulsion, and the

[33] Samardžić 2021: 130.

[34] Council of Europe Parliamentary Assembly 1996.

deprivation of their property was a taboo during the 45-year long socialist period of Yugoslavia. History books usually lacked information on this topic. What was most often written in history books is that Germans left their homes together with Nazi troops at the end of the Second World War. Historians dealing with the topic during the socialist period had indeed an apologetic standing towards the retaliation against German civilians, and their collective punishment, generally concluding that they got what they deserved. In such circumstances, the rehabilitation and compensation of ethnic Germans generated negative sentiments of the general public, primarily on the side of the dominant nations. In addition, the properties confiscated from ethnic Germans had enormous material value; returning them, or just providing compensation for them could be a serious burden to the state budgets.

Laws on special rehabilitation and compensation in Slovenia

The Republic of Slovenia, the most developed socialist republic of the former federal Yugoslavia, gained independence after a short military conflict with the Yugoslav Peoples Army in 1991. The transition of Slovenia was relatively smooth and quickly managed by the former, reformed Slovenian communists, without much social turbulence. Among the first laws adopted by the independent Slovenia, the National Assembly of Slovenia enacted the Law on Denationalisation of State Property.[35] The Law on Denationalisation stipulates that former owners can take back their immovable properties, or can get compensation if their property was nationalised without just compensation in the first two decades of the socialist Yugoslavia. Among the previously enlisted laws, the AVNOJ Decision of 21 November 1944 was explicitly mentioned. The Law on Denationalisation specifies that moveable assets cannot be denationalised, except some of those with special historical, artistic or cultural value.[36] Restitution in kind is excluded in cases when the immovable thing serves public interest, or if it became a private property lawfully. For the compensation of deprived

[35] Zakon o denacionalizaciji, Uradni list Republike Slovenije 27/1991.

[36] Zakon o denacionalizaciji 1991: Article 17.

ethnic Germans, those provisions of the Law on Denationalisation are the most relevant that define the categories of persons who are eligible for compensation. According to these provisions, as a general rule, only those persons can get their property back who had Yugoslav citizenship at the time of nationalisation or confiscation of their property.[37] Exceptions include "not Yugoslav" citizens, who were fighting on the side of the anti-fascist coalition, or were displaced because of their confession.[38] A further requirement for former Yugoslav citizens is that Slovenian citizens are eligible for denationalisation in the country of citizenship of the former property owner.[39] The constitutionality of the above mentioned law was contested via several initiatives launched by individuals of German and Austrian ethnicity. They claimed, among others, that the requirement of having Yugoslav citizenship at the time of confiscation unconstitutionally discriminates against all Germans who faced collective punishment after the Second World War. In its decision, the Constitutional Court upheld the constitutionality of the contested provisions, claiming that those provisions were *prima facie* ethnically neutral, and that measures of retaliation against Germans were widespread in many countries of Eastern Europe, and they shall be measured according to the standards of the time when they were enacted, and not according to the current standards of human rights.[40]

Among other important pieces of the Slovenian legislation related to the rehabilitation of the victims of the Yugoslav communist regime we may find the Law on the Victims of War Violence and the Law on the Reparation of Injustices.[41] The Law on the Victims of War Violence stipulates various rights and benefits for Slovenian citizens, victims of the Second World War, harmed by (German, Italian and Hungarian) occupying forces between 6 April 1941 and 15 May 1945, but also for the victims of the Yugoslav Military intervention in

37 Zakon o denacionalizaciji 1991: Article 9, paragraph 1.
38 Zakon o denacionalizaciji 1991: Article 9, paragraph 2.
39 Zakon o denacionalizaciji 1991: Article 9, paragraph 4.
40 Ustavno Sodišče Republike Slovenije, Odločba št. U-I-23/93 datum 20.3.1997.
41 Zakon o žrtvah vojnega nasilja, Uradni list Republike Slovenije 63/1995; Zakon o poravi krivic, Uradni list Republike Slovenije 59/1996.

Slovenia in the period between 25 June and 18 October 1991. Exceptionally, the victim status may be recognised for those civilians, citizens of Slovenia, who suffered violence caused by the Yugoslav partisans or other allied forces, but with substantial restrictions. Namely, the status of war victim is recognised only in case of children, whose parents lost their lives due to coercive or violent measures of those forces, or, in case of refugees, who had to leave their homes at least for three months, hence their homes or resident buildings were destroyed or looted by violent acts of partisans or other allied military forces.[42] In both cases, the status of victim of war violence could be recognised only under the condition that these persons were not cooperating voluntarily or professionally with occupying forces, that is, aggressors.[43]

The Law on the Reparation of Injustices is the third Slovenian law which had a connection with serious human rights violations committed by Yugoslav communist-socialist authorities during the Second World War, or in the years immediately after that. This law primarily aims to offer remedy in the form of paying damages to victims, political prisoners, and to the relatives of those persons who lost their lives unlawfully after May 1945 on the territory of Slovenia. If the status of political prisoner or victim is granted in accordance with this law, the concerned has the right for damages, and the beneficiary and the Republic of Slovenia shall conclude a settlement on the compensation.[44] The recognition of the status of political prisoner or the status of victim belongs to the competence of a special commission of the Slovenian Government. The commission decides upon the written and reasoned request of the victim (relative) within one year, with the obligation to collect evidences. There is no right to appeal against a negative decision, but judicial review is prescribed against the final decision.[45] The person whose status of political prisoner was

[42] Zakon o žrtvah vojnega nasilja 1995: Article 2a.
[43] Zakon o žrtvah vojnega nasilja 1995: Article 2a.
[44] Zakon o popravi krivic 1996: Article 5, paragraph 2.
[45] Zakon o popravi krivic 1996: Article 18.

recognised by the commission is entitled to submit a revision claim to a regular court and ask for the annulment of the court decision.[46]

Based upon the above analysis of Slovenia's legal framework on the rehabilitation and compensation of the victims of the totalitarian Yugoslav state, one can conclude that this legal framework almost completely excludes from the remedial measures ethnic Germans collectively punished and deprived of their basic rights after the Second World War.

Laws on special rehabilitation and compensation in Croatia

In Croatia, the laws on compensation and rehabilitation of the victims of the totalitarian state were also enacted in the 1990s, shortly after Croatia became an independent state. In this respect, two pieces of the legislation should be mentioned: the Law on the Rights of Former Political Prisoners,[47] and the Law on Compensation for the Property Taken under Yugoslav Communist Rule (hereinafter: Law on Compensation).[48] The former law regulates the status of political prisoners who were imprisoned because of their political conviction and because they fought for the independent Croatia, therefore, this law has nothing to do with the rehabilitation of deprived ethnic Germans.[49]

However, the second piece of legislation of the Sabor (National Assembly of Croatia) aims to remedy injustices for a wider scope of persons. The Law on Compensation stipulates as a general rule that confiscated, nationalised or otherwise taken property by the totalitarian state shall be returned to the former owner (or his/her descendant), upon a formal claim, in its current condition. Restitution in kind of movables is generally excluded, except movables, which are of special cultural, historical or artistic value.[50] If restitution

[46] Zakon o popravi krivic 1996: Article 21 and 22.

[47] Zakon o pravima bivših političkih zatvorenika, Narodne novine RH 34/1991.

[48] Zakon o naknadi za imovinu oduzetu za vrijeme jugoslovenske komunističke vladavine, Narodne Novine Republike Hrvatske 92/1996.

[49] Zakon o pravima bivših političkih zatvorenika 1991: Article 2, paragraph 1.

[50] Simonetti 2003: 116.

in kind is not the option, the former owner is entitled to compensation in state stocks, but the compensation is limited to 500,000 Euros. The most important provisions of the Law on Compensation related to the collective punishment of ethnic Germans are those, which define the categories of persons eligible for compensation. The original text of the Law on Compensation excluded from compensation all persons who had no Croatian citizenship in the moment of the enactment of the law.[51] This provision actually excluded the vast majority of ethnic Germans who were deprived after the Second World War. These provisions were contested in 1996, shortly after their enactment, before the Constitutional Court of Croatia. The Constitutional Court declared some provisions unconstitutional in its 1999 Decision.[52] The Constitutional Court reasoned that a citizenship-based distinction between former owners is not acceptable constitutionally in the area of private law and property rights.[53] The Constitutional Court decided that these provisions shall nevertheless remain in force until the legislator amend them. The subsequent amendments of the Law on Compensation in 2002 put Croatian citizens and foreigners on equal footing in the process of restitution and compensation and provided new deadlines for those applicants who were excluded by the original provisions. According to the current provisions, only those applicants are excluded whose compensation was regulated by international/bilateral agreement.[54] Former owners were originally entitled to submit a claim for restitution of property until 30 June 1997, however, for some categories of claimers (new descendants), the deadline was prolonged with the above mentioned amendments until 7 January 2003. Although the Law on Compensation does not expressly mention the AVNOJ Decision of 21 November 1944, from the provisions of the Law it is clear that it allows for the compensation for the property confiscated from ethnic Germans based on that Decision, as well. First, the Law on Compensation

[51] Zakon o naknadi za imovinu oduzetu za vrijeme jugoslovenske komunističke vladavine 1996: Article 9, paragraph 1.

[52] Ustavni sud Republike Hrvatske Odluka i rešenje br. U–I 673/1996 od 21.04.1999.

[53] Odluka i rešenje br. U–I 673/1996 1999: Section 7/2.

[54] Simonetti 2003: 116.

explicitly enumerates the Yugoslav Law on Confiscation of 1945,[55] which, in its Article 30, paragraph 1, specifies that People's Committees will enact individual decisions on confiscation of the property of ethnic Germans provided by the AVNOJ Decision of 21 November 1944.[56]

The above analysis suggests that the Law on Compensation, after the intervention of the Constitutional Court, at least *prima facie* does not exclude the ethnic Germans collectively deprived of their property by Yugoslav authorities after the Second World War from restitution and compensation. However, the actual process is far from being effective and smooth. Despite that the proceedings of compensation and restitution have been pending for more than two decades, a large proportion of the cases of deprived ethnic Germans have not yet been completed. Croatian authorities often reject applications for restitution on the ground that the compensation of applicants from Germany is regulated by international agreements.[57] Considering that the vast majority of deprived ethnic Germans from Yugoslavia was settled in Germany, many cases of compensation are still pending before the public administration and various courts in Croatia.[58]

Laws on special rehabilitation and compensation in Serbia

Last of the three analysed countries, the Republic of Serbia began facing the legal consequences of its totalitarian past only after the fall of the regime of Slobodan Milošević and the dissolution of the federation between Serbia and Montenegro in 2006.[59] The most important pieces of the Serbian legislation in relation to rehabilitation and restitution are the following: the Law on

[55] Zakon o konfiskaciji i o izvršenju konfiskacije, Službeni list DFJ 40/1945, 70/1945.

[56] Zakon o naknadi za imovinu oduzetu za vrijeme jugoslovenske komunističke vladavine 1996: Article 2.

[57] Zakon o naknadi za imovinu oduzetu za vrijeme jugoslovenske komunističke vladavine 1996: Article 10, paragraph 1.

[58] Peček 2020.

[59] Slobodan Milošević lost power after the presidential elections and mass demonstrations in September–October 2000; however, the legal confrontation with the totalitarian heritage

Rehabilitation of 2006,[60] the Law on Property Restitution and Compensation of 2011,[61] the second Law on Rehabilitation of 2011,[62] and the 2016 Law on Eliminating the Consequences of Property Confiscation of Holocaust Victims Who Have No Living Legal Heirs.[63]

The first Law on Rehabilitation stipulated the process of rehabilitation of those persons who were deprived with or without judicial or administrative decision of their life, liberty or other rights because of political reasons from 6 April 1941 until the enactment of the Law, provided that the person had domicile on the territory of Serbia.[64] District courts had the competence to decide the applications for rehabilitation, and appeal to the Supreme Court was only permitted if the application for rehabilitation was rejected.[65] The critics of this law pointed out several shortcomings. First, that it encompassed a very long period of time, including when Serbia was occupied between 1941–1945, and also periods when Serbia had no elements of totalitarianism. Second, the law had not clarified the notion of "political reason" behind the violation of rights. Third, the law allowed every interested person to apply for rehabilitation, even without the consent of the victim. If the court accepted the claim for rehabilitation, it declared the former court decision null and void, along with all legal consequences of that former court decision, including confiscation of property. If the person was without court or administrative decision deprived of life, liberty or other rights because of political reasons, the decision on rehabilitation only declared the violation of rights committed by authorities.[66] It is noteworthy that the decision, which invalidated all consequences of former

was delayed until the fate of the federation of Serbia and Montenegro was finally resolved in 2006.

60 Zakon o rehabiltaciji, Službeni glasnik RS 33/2006.

61 Zakon o vraćanju oduzete imovine i obeštećenju, Službeni glasnik RS 72/2011.

62 Zakon o rehabiltaciji, Službeni glasnik RS 92/2011 [Law on Rehabilitation, Official Gazette of the Republic of Serbia no. 92/2011].

63 Zakon o otklanjanju posledica oduzimanja imovine žrtvama holokausta koje nemaju živih zakonskih naslednika, Službeni glasnik RS 13/2016.

64 Samardžić 2021: 138.

65 Samardžić 2021: 143.

66 Zakon o rehabilitaciji 2006: Article 5.

decisions enacted for political reasons, did not create the right to claim damages or to restitute the confiscated property. The Law on Rehabilitation simply stipulated that the issue of compensation and damages will be regulated by a separate law.[67] The 2006 Law on Rehabilitation generally had little to do with the rehabilitation of ethnic Germans, because the vague term "for political (ideological) reasons" did not cover punishments based on the ground of nationality, religion or ethnicity, which was covered only in the 2011 Law on Rehabilitation.[68]

The 2011 Law on Rehabilitation contains a much more detailed regulation. The 2011 Law on Rehabilitation provides for the rehabilitation of any persons who were by court or administrative decision, or without that, deprived from life, liberty or other rights on political, national or religious grounds on the territory of Serbia by Serbian or Yugoslav authorities, or by Yugoslav authorities outside Serbia if the victim had domicile in Serbia or Serbian citizenship.[69] The new Law on Rehabilitation excludes the responsibility of the Republic of Serbia for the violence and atrocities committed by the occupying forces during the Second World War on the territory of Serbia.[70] Rehabilitation is excluded for members of military occupying forces who lost their lives in military clashes during the Second World War in Serbia and also for members of occupying forces if they committed war crimes.[71] However, the law makes it possible to these persons to prove that despite existing documents on their responsibility, they were not involved in war crimes.[72] The first instance procedure shall be initiated by the victims or their close relatives (if they are not alive) before high courts following the rules of a non-contentious procedure. The state prosecutors are obligatory parties in the procedure, representing Serbia. If state prosecutors oppose the rehabilitation of the applicant-victim,

67 Zakon o rehabilitaciji 2006: Article 8.
68 Samardžić 2021: 149.
69 Zakon o rehabilitaciji 2011: Article 1, paragraph 1.
70 Zakon o rehabiliticiji 2011: Article 1, paragraph 5.
71 Zakon o rehabilitaciji 2011: Article 2, paragraph 1–2.
72 Zakon o rehabilitaciji 2011: Article 2, paragraph 3.

the presentation and examination of evidence will take place before a court. The court can reject the application for the rehabilitation or render a decision on the rehabilitation. Parties participating in the rehabilitation procedure can appeal to the Court of Appeal against the first instance decision. The effect of the rehabilitation decision is that the administrative or court decision becomes completely or partially null and void, or if the violation was made without a formal decision, the legal consequences of such act become null and void. The rehabilitated person can take back the property confiscated as a result of the annulled decision or other act, in accordance with the 2011 Law on Property Restitution and Compensation. Furthermore, the rehabilitated person can claim the recognition of pension rights and rehabilitation damages.[73] The amount of rehabilitation damages (pecuniary and non-pecuniary) shall be determined by a special commission, or in case of dispute, by courts in civil litigation.[74] The final deadline for initiating rehabilitation procedures was 15 December 2016.

The 2011 Law on Property Restitution and Compensation (hereinafter: Law on Property Restitution) regulates in detail the restitution and compensation of property taken by the totalitarian state after the Second World War. The provisions of the Serbian Law on Property Restitution demonstrate many resemblances with the relevant laws of Slovenia and Croatia. Restitution is possible primarily in case of immovable property, restitution in kind is the primary method used, compensation in state stocks (in limited amount) is an alternative, if restitution in kind is not possible (the property serves public interest, or it became private property of third parties based on valid legal transaction). The restitution procedure belongs to the competence of the Agency for Restitution, and it is an administrative procedure. The Ministry of Finances delivers second instance decisions, whereas the Administrative Court is responsible for the judicial review of the final administrative decisions.

Major differences between the compared laws are related to cases where restitution is excluded. Namely, the Law on Property Restitution stipulates that

[73] Zakon o rehabilitaciji 2011: Article 26.

[74] Zakon o rehabilitaciji 2011: Article 27.

foreigners can get their property back only in case of reciprocity between Serbia and the foreign state. Furthermore, compensation is excluded if the foreign state accepted the duty for compensation for property by an international agreement, or, if the foreign state accepted the duty of compensation with domestic law even without an international agreement, or if the individual received compensation for the taken property from a foreign state even without a legal ground. The compensation is also excluded for persons who were serving in forces occupying Serbia in the Second World War. The final deadline for claiming restitution was March 2014.

The above analysis suggests that the Serbian legal framework is the less restrictive towards the rehabilitation and compensation of ethnic Germans deprived of their rights after the Second World War based on the principle of collective guilt. However, the possible discrepancies between some provisions of the Law on Rehabilitation and the Law on Property Restitution can cause problems in the application of the law in practice. Furthermore, other restrictions stipulated by the Law on Property Restitution can also result in inconsistencies in the process of application. These ambiguities will be presented and analysed in the next section of this paper, devoted to the practical implementation of the legal framework in Serbia.

SYMBOLIC MEASURES OF RECONCILIATION AND PRACTICAL APPLICATION OF THE LAW IN SERBIA

The largest number of ethnic Germans in Yugoslavia before the Second World War inhabited the present territory of the Republic of Serbia, more precisely, the territory of the present Autonomous Province of Vojvodina. Unlike their counterparts in Croatia and Slovenia, a relatively large proportion of Germans in Vojvodina remained in their homeland after the communist partisans took control over their villages and towns in the autumn of 1944. They were soon placed into detention camps, and their impressive private property was confiscated promptly. All these reasons have made the process of reparation

particularly sensitive in Serbia. For the above reasons, it is important to analyse the practical process of rehabilitation, reconciliation and compensation in Serbia in a separate section. Firstly, those political and symbolic measures of Serbian authorities will be elaborated that served, and still serve, the reconciliation and rehabilitation process regarding the collective punishment of ethnic German and Hungarian civilians. Secondly, the practical application of the relevant legal framework concerning the rehabilitation and reparation will be elaborated, focusing on the practice of public administration and courts, and pointing out some specific legal-interpretational issues hampering the effective application of the relevant law.

Political and symbolic measures of Serbian authorities regarding rehabilitation and reconciliation

The fall of the so-called "Milošević regime" in Serbia opened the gate before the process of European integration of the country that had been isolated by the international community almost for a decade. Membership in the Council of Europe obliged Serbia to accept international human rights standards, but also to take measures within the process of transitional justice, facing the totalitarian heritage. Among other important issues, this process required to properly address the massive collective punishment and persecution of ethnic Germans as well as ethnic Hungarians after the Second World War, both on the symbolic (political) and the legal level. What made the situation in Serbia slightly different compared to other Eastern and Central European countries is that Serbia entered this process with a decade long delay. Among all the Serbian authorities, the first steps and measures were taken within the Assembly of the Autonomous Province of Vojvodina. The Decision Abolishing the Principle of Collective Guilt and Responsibility was enacted in the Vojvodina provincial parliament in early 2003.[75] Consequently, in the same year, a special working

[75] The decision was enacted with the unanimous vote of the Assembly of AP Vojvodina on 28 February 2003. See Bozóki 2017: 37–38.

body was established for the registration of all civil victims in Vojvodina in the period between 1941–1948.

The symbolic political measures in Vojvodina were followed by some similar measures on the level of the Serbian Government. In 2009, the Serbian Government established a State Commission for the identification of secret graves in Serbia from September 1944 onwards.[76] The State Commission prepared a register of victims killed in the first months of the communist rule, buried in those secret graves. According to the findings, the number of executed persons was 35,000, while 24,000 died in camps. These numbers include all victims of the communist partisans after the liberation, not only ethnic Germans and Hungarians.[77] It is noteworthy that on the spots where the largest detention camps for ethnic Germans existed, appropriate monuments were built with the assistance of Serbian authorities. Such monuments stand in Knićanin (Rudoflsgnad) and Gakovo (Graumarkt).

The political-symbolic gestures towards the persecuted ethnic Hungarians were mainly accomplished within the so-called "Serb–Hungarian reconciliation process", which had its dynamic phase between 2008 and 2014. The process involved the establishment of an inter-academic mixed commission of historians with the aim to find the truth about the atrocities committed in the 1944–1945 period. The process was finalised with mutual gestures of forgiveness in 2013. The National Assembly of Serbia adopted a resolution condemning atrocities against innocent Hungarian civilians in 1944 and 1945.[78] Finally, on 26 June 2013, the presidents of both countries payed tribute to the innocent victims before the newly constructed monument in Čurug, symbolising the suffering of innocent ethnic Hungarian victims massacred in 1944 and 1945, and also in the Memorial Museum Topalov, where Hungarian soldiers executed hundreds of Serb civilians in January 1942.[79]

[76] Cvijić 2011.
[77] Bozóki 2017: 15–16.
[78] Resolution enacted on 21 June 2013.
[79] Vajdaság Ma 2013.

Application of the legal provisions regarding rehabilitation and reparation

As we already mentioned in the previous parts of this paper, the Serbian legal framework on rehabilitation and reparation of victims of the prosecution of ethnic Germans and Hungarians was accomplished in 2011. Although the Serbian legal framework was much more liberal towards the rehabilitation and reparation of persecuted ethnic Germans and also Hungarians, as compared to the laws in Slovenia and Croatia, the practical application of laws was far from being smooth and efficient. More than a decade after the enactment of the relevant laws, the process of rehabilitation and compensation is far from being accomplished. Among the reasons hampering the process of rehabilitation and reparation, one can identify the ambiguous wording of some provisions of the Law on Rehabilitation and the Law on Property Restitution, as well as the non-consistent practice of courts and administration. There are two major problematic issues when it comes to the interpretation and application of the relevant provisions. The first one concerns the exclusion from the right to property compensation of soldiers who served in military forces occupying Serbia during the Second World War, and the actual effects of the court decisions rehabilitating former soldiers regarding the property compensation claims. The second problematic issue is related to the possibility to claim rehabilitation for a person declared to be a war criminal, or the enemy of the people, primarily in cases when the person was executed without any court decision, and was subsequently declared a war criminal or the enemy of the people.

The dilemmas related to the property compensation claims of former occupying soldiers

From the beginning of the process of rehabilitation and reparation, there was a dilemma around the question whether the relevant provisions of the Law on Property Restitution exclude the compensation for all former soldiers serving in the armies, which occupied Serbia during the Second World War,

or the restriction applies only to those soldiers, who committed war crimes. Furthermore, interpretation ambiguities occurred also in cases where the soldier, previously declared a war criminal, was rehabilitated by court based on the Law on Rehabilitation. The problem in practice was partially due to the fact that both laws regulate this question but not in the same way. While Article 5 of the Law on Property Compensation generally excludes all former members of the occupying armies from the process of restitution and compensation,[80] the Law on Rehabilitation specifies that only those occupying soldiers cannot be rehabilitated who committed war crimes, and only these former servicemen are excluded from the property compensation according to the Law on Property Restitution, as well.[81] Furthermore, the Law on Rehabilitation stipulates that rehabilitation and reparation is available also for persons who prove before courts that they did not commit any war crimes, or participate in war crimes, despite former decisions declaring them to be war criminals.[82]

Until 2017, the Agency for Restitution and the Ministry of Finance, as a second instance administrative authority, rejected all restitution claims of former owners and their descendants, where the former owner served in any kind of military unit connected to armies occupying Serbia. Such interpretation led to massive rejection of compensation claims of ethnic Germans deprived of their full property based on the AVNOJ Decision of 21 November 1944, since the vast majority of active-age male ethnic Germans were conscripted into the German army or local militias during the Second World War. This practice changed after the cornerstone decision of the Administrative Court of Serbia, which unequivocally interpreted the relevant provisions of the two laws in the following way: if a former occupying soldier was rehabilitated in accordance with the Law on Rehabilitation, the effects of such rehabilitation

[80] Zakon o vraćanju oduzete imovine i obeštećenju 2011: Article 5, paragraph 3 (3) stipulates that persons serving in occupying forces acting on the territory of Serbia during the Second World War, including their descendants are excluded from the rights to restitution and compensation.

[81] Zakon o rehabilitaciji 2011: Article 2, paragraph 2.

[82] Zakon o rehabilitaciji 2011: Article 2, paragraph 3.

are that all consequences of the former decisions should be abolished, including the confiscation of property, hence the rehabilitated soldiers, even those who had been formally declared war criminals, have the right to property restitution or compensation.[83] Although in the above case, the rehabilitated person was not an ethnic German, this interpretation of the Administrative Court had an impact on all pending cases involving former ethnic Germans as well, hence from 2017 onwards, the application for property compensation of former German soldiers were admitted by the Serbian administration, more precisely by the Ministry of Finance.[84]

The dilemmas related to the rehabilitation of executed civilians, consequently declared to be war criminals

Another group of controversial cases is related to the rehabilitation of persons executed by the partisans (mainly by OZNA) in the first days or weeks after the liberation in 1944. These persons were thereafter often declared to be war criminals by military courts or, more often, by the State Commission for the Determination of Crimes Committed by Invaders and Their Supporters (hereinafter: State Commission for War Crimes). Various regional units of the State Commission for War Crimes functioned as investigation administrative bodies, deciding and evidencing persons committing crimes, between 1944 and 1948.[85] In sum, the State Commission evidenced 17,500 invader soldiers who committed or participated in war crimes, and 8,500 domestic citizens.[86] In many rehabilitation procedures before courts, descendants initiated the rehabilitation of executed civilians, who were declared war criminals after their execution by the State Commission for War Crimes. The relevant provisions of Article 2 of the Law on Rehabilitation are not unequivocal in terms of whether the

[83] Decision of the Administrative Court U-2847/2015 of 2 December 2016. 4.

[84] In practice, the Agency for Restitution continued for a while to reject such applications, but the Ministry of Finance reversed.

[85] Grahek Ravaničić 2013: 154.

[86] Grahek Ravaničić 2013: 162.

rehabilitation is excluded for civilians who are declared war criminals, or only to occupying soldiers who are declared war criminals. In the light of paragraph 1 of Article 2, the second interpretation seems to be valid, while paragraph 2 of the same article may suggest that even civilians can be excluded from the rehabilitation.[87]

Some decisions, where the courts rejected the rehabilitation, were brought to the Constitutional Court via constitutional complaints. In the majority of these cases, the Constitutional Court upheld the position of the lower courts, accepting that civilians who were declared war criminals by the State Commission for War Crimes are excluded from rehabilitation, even in cases in which the act qualified as participation in a war crime was a denunciation, which is hardly an act of war crime. This elastic approach to the notion of war crimes and assistance in war crimes in the 21st century, abolishing executions without a court ruling, was criticised by dissenting judges.[88] In some other cases, the Constitutional Court declared null and void some decisions of the lower courts rejecting claims for the rehabilitation of persecuted or executed civilians without proper reasoning.[89]

Despite the vague provisions of the relevant laws, taken together with the sometimes inconsistent interpretation of those provisions by the administration and courts, one may conclude that the relevant documents disclose that the rehabilitation and reparation of ethnic Germans and ethnic Hungarians persecuted and punished based on collective guilt is a living reality in Serbia. Altogether more than 2,000 ethnic Germans or their descendants claimed rehabilitation, among them hundreds were executed without a trial.[90] The majority

87 Korhecz 2019: 9–10.

88 Ustavni sud Republike Srbije Odluka br. Už-8199/2016 od 15. septembra 2018. [The Constitutional Court of Serbia, Decision no. Už-8199/2016 of 15 September 2018 with dissenting opinion of the Judge]; Korhecz 2019: 10.

89 Ustavni sud Republike Srbije Odluka br. Už-4668/2015 od februara 2018 [The Constitutional Court of Serbia, Decision no. Už-4668/2015 of February 2018] and Ustavni sud Republike Srbije Odluka br. Už-1016/2017 od 20. maja 2011 [The Constitutional Court of Serbia, Decison no. Už-1016/17 of 20 May 2021].

90 Samardžić 2021: 231, 234.

of them achieved rehabilitation. The most important case was conducted by the High Court in Sombor,[91] where 113 collectively punished and executed ethnic Germans were rehabilitated within one procedure.[92] Although the number of rehabilitated, collectively punished Hungarians is fewer, their cases were also often finished with success, moreover, in some cases non-pecuniary damages for suffering pains in the detention camps were also rendered by courts.[93] The rehabilitation of collectively punished Germans and Hungarians led to decisions on restitution and compensation, returning to former owners and their descendants the property confiscated after the Second World War. According to the documents of the Agency for Restitution, substantial property was given back to applicants from Austria and Germany, mainly to descendants of "Volksdeutschers–Donauschwaben", whose property was confiscated on the basis of the AVNOJ Decision of 21 November 1944. For example, the German citizens claimed back altogether 10,904 hectares of agricultural land in Vojvodina, out of which 1,652 hectares are already returned.[94] The citizens of Austria claimed back altogether 6,736 hectares of agricultural land in Vojvodina, out of which 1,581 hectares are already returned.[95] If we compare the amount of restituted agricultural land with the amount of land owned by ethnic Germans in Vojvodina before the Second World War, the difference is obvious. However, if we take into account that in case of more than 90% of the land no restitution claims were initiated, and if we compare the figures with the figures in Slovenia and Croatia, this number does not seem that low after all.

91 Viši sud u Somboru: Rešenje Reh. Broj 105/2012 od 5.8.2013.
92 Samardžić 2021: 224, 230.
93 Bozóki 2017: 239.
94 Agencija za restituciju 2022: 84–88.
95 Agencija za restituciju 2022: 81–84.

CONCLUDING REMARKS

The persecution and collective punishment of ethnic Germans, as well as part of ethnic Hungarians at the end of and immediately after the Second World War in Yugoslavia represents a shameful and sad moment in European history. During the 1990s, after the fall of the totalitarian socialist regimes in Eastern and Central Europe, circumstances required the facing with the totalitarian past, including the persecutions and property deprivations committed by totalitarian states. These measures included symbolic-political gestures, but also various legal measures, including reparation, restitution and compensation for victims. The tragic dismemberment of the socialist Yugoslav federation, accompanied with violent nationalism and civil wars, made the ground fragile for measures facing the totalitarian Yugoslav heritage. The military conflict on Yugoslav soil served as a proper ground for new crimes and collective punishments, and not the facing with past crimes and reparation of the victims. Even after the conflicts, the legislative measures serving the potential rehabilitation and reparation of persecuted ethnic Germans in Slovenia and in Croatia proved to be restrictive, hampering rehabilitation and reparation. The peaceful transition in Serbia began with a serious delay, but the enacted legislative framework for the potential rehabilitation and reparation of persecuted ethnic Germans and ethnic Hungarians was more favourable for the victims. Furthermore, it was accompanied with symbolic and political measures and gestures serving reconciliation. However, the process of rehabilitation and pecuniary reparation in Serbia had proved to be cumbersome, partial and protracted.

There are various potential reasons and causes for such experiences in the countries of former Yugoslavia, but among them, one for sure is there, the unpopularity of the reparation for past mistakes and wrongdoings in general, and concerning ethnic Germans in particular. Political decision-makers are working for popularity and votes, and paying damages from the pockets of citizens for the mistakes of the past is not among the popular measures, at least not in the eyes of the majority.

REFERENCES

Agencija za restituciju (2022): *Restitucija u Republici Srbiji. Izveštaj povodom 10 godina rada Agencija za restituciju (od 2012 do 2022. godine).* Online: www.restitucija.gov.rs/doc/10godina-radaAgencije-za-restituciju.pdf

Anić, Tomislav (2007): Normativni okvir podržavljenja imovine u Hrvatskoj/Jugoslaviji 1944–1946. *Časopis za suvremenu povjest,* 39(1), 25–62.

A. Sajti, Enikő (2004): *Impériumváltások, revízió, kisebbség. Magyarok a Délvidéken 1918–1947.* Budapest: Napvilág Kiadó.

Bozóki, Antal (2017): *A háborús bűnösség terhe. Eltörölték, megszüntették?* Budapest: Keskenyúton Délvidéki Tragédiánk 1944–45 Alapítvány.

Cvijić, Vuk Z. (2011): Masovna streljanja 1944–45: Oznine knjige "streljanih". *Cins,* 28 July 2011. Online: www.cins.rs/masovna-streljanja-1944-45-oznine-knjige-streljanih/

Csorba, Béla (2011): Járéki haláltábor. *Keskenyúton,* 30 July 2011. Online: www.keskenyut.hu/page/234/art/337/akt/1/html/jareki-halaltabor.html

De Zayas, Alfred-Maurice (2006): *A Terrible Revenge. The Ethnic Cleansing of the East European Germans, 1944–1950.* New York: St. Martin's Press.

Douglas, Raymond M. (2012): *Orderly and Humane. The Expulsion of the Germans after the Second World War.* New Haven – London: Yale University Press.

Grahek Ravaničić, Martina (2013): Ustrojavanje organa nove vlasti: Državna/Zemaljska komisija za utvrđivanje zločina okupatora i njihovih pomagača – organizacija, ustroj, djelovanje. *Historijski Zbornik,* 66(1), 149–172.

Gulan, Branislav (2018): Umiru čekajući restituciju i EU.... *Makroekonomija.org,* 11 April 2018. Online: www.makroekonomija.org/0-branislav-gulan/sudbina-oduzete-imovine

Janjetović, Zoran (2009): *Nemci u Vojvodini.* Beograd: INIS.

Korhecz, Tamás (2019): A bírósági ítéletek felülvizsgálata az alkotmányjogi panasz intézményén keresztül Szerbiában – a rehabilitációs ügyek alkotmánybírósági felülvizsgálata. *Alkotmánybírósági Szemle,* (2), 2–11.

Pavlica, Branko (2005): Sudbina Nemaca u Jugoslaviji. *Anali,* 53(2), 196–236.

Peček, Robert (2020): Pravo državljana SR Njemačke na povrat oduzete imovine. *Informator,* 7 February 2020. Online: https://informator.hr/strucni-clanci/pravo-drzavljana-sr-njemacke-na-povrat-oduzete-imovine

Republički Zavod Za Statistiku (1945): *Stanovništvo po veroispovesti i maternjem jeziku po popisu od 31. marta 1931, Pregled po opštinama*. Beograd 1945. Online: https://publikacije.stat.gov.rs/G1931/Pdf/G19314001.pdf

Samardžić, Stefan (2021): *Rehabilitacija političkih osuđenika. Istraživanje prvih deset godina postupaka rehabilitacije u Republici Srbiji.* Beograd: Službeni glasnik.

Simonetti, Peter (2003): Pravila denacionalizacije u Republici Hrvatskoj. *Anali,* 51(1–2), 109–126.

Vajdaság Ma (2013): Csúrog: Közös államfői főhajtás az ártatlan áldozatok emléke előtt. *Vajdaság Ma,* 26 June 2013. Online: www.vajma.info/cikk/vajdasag/15661/csurog-kozos-allamfoi-fohajtas-az-artatlan-aldozatok-emleke-elott.html

Várady, Tibor (2016): *Weltgeschichte und Alltag im Banat.* Wien: Böhlau Verlag.

Wildmann, Georg (2015): *Donauschwabische Geschichte. Flucht – Vertreibung – Genozid. Der Leidensweg ab 1944*. München: Donauschwabishe Kulturstiftung.

Primary sources

Council of Europe Parliamentary Assembly (1996): Resolution 1096 (1996) Measures to dismantle the heritage of former communist totalitarian systems. 27 June 1996. Online: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16507

Odluka Komisije za utvrđivanje zločina okupatora i njihovih pomagača u Vojvodini broj Str. Pov. 2/1945 od 22. januara 1945 [Decision of the Commission for Determining the Crimes Committed by the Occupiers and their Supporters in Vojvodina, no. 2/1945 of 22 January 1945]

Odluka o prelazu u državnu svojinu neprijateljske imovine, o državnoj upravi nad imovinom neprisutnih lica i o sekvestru nad imovinom koju su okupatorske vlasti prisilno otuđile [Decision on the transition of enemy property to state property, on the state administration of the property of absent people and on the sequestration of property forcibly alienated by the occupying authorities], Službeni list DFJ br. 2/1945

Odluka Zemaljske komisije za utvrđivanje zločina okupatora i njihovih pomagača u Vojvodini od 26. marta 1945 [Decision of the Land Commission for Determining the Crimes Committed by the Occupiers and their Supporters in Vojvodina of 26 March 1945]

Toyosaboru Korematsu v. United States 323 US 214 (1944)

Upravni sud Republike Srbije U-2847/2015 od 2. decembra 2016 [Decision of the Administrative Court U-2847/2015 of 2 December 2016]

Ustavni sud Republike Hrvatske Odluka i rešenje br. U–I 673/1996 od 21.04.1999 [The Constitutional Court of Croatia, Decision no. U–I 673/1996 of 21 April 1999]

Ustavno Sodišče Republike Slovenije, Odločba št. U-I-23/93 datum 20.3.1997 [Decision of the Constitutional Court of Slovenia no. U-I-23/93 of 20 March 1997]

Ustavni sud Republike Srbije Odluka br. Už-4668/2015 od februara 2018 [The Constitutional Court of Serbia, Decision no. Už-4668/2015 of February 2018]

Ustavni sud Republike Srbije Odluka br. Už-8199/2016 od 13, septembra 2018 [The Constitutional Court of Serbia, Decision no. Už-8199/2017 of 13 September 2018]

Ustavni sud Republike Srbije Odluka br. Už-1016/2017 od 20. maja 2011 [The Constitutional Court of Serbia, Decison no. Už-1016/17 of 20 May 2021]

Viši sud u Somboru: Rešenje Reh. Broj 105/2012 od 5.8.2013 [High Court in Sombor, Decision no. Broj 105/2012 of 8 August 2013]

Zakon o denacionalizaciji, Uradni list Republike Slovenije 27/1991 [Law on Denationalisation, Official Gazette of the Republic of Slovenia no. 27/1991]

Zakon o konfiskaciji i o izvršenju konfiskacije, Službeni list DFJ 40/1945, 70/1945 [Law on Confiscation and on the Execution of the Confiscation, Official Gazette of the Democratic Federal Yugoslavia no. 40/1945, 70/1945]

Zakon o naknadi za imovinu oduzetu za vrijeme jugoslovenske komunističke vladavine, Narodne Novine Republike Hrvatske 92/1996 [Law on Compensation for the Property Taken in the Period of the Yugoslav Communist Rule, Peoples Gazette 92/1996]

Zakon o otklanjanju posledica oduzimanja imovine žrtvama holokausta koje nemaju živih zakonskih naslednika, Službeni glasnik RS 13/2016 [Law on Eliminating the Consequences of Property Confiscation of Holocaust Victims Who Have No Living Legal Heirs, Official Gazette of the Republic of Serbia no. 13/2016]

Zakon o poravi krivic, Uradni list Republike Slovenije 59/1996 [Law on the Remediation of Injustices, Official Gazette of the Republic of Slovenia no. 59/1995]

Zakon o pravima bivših političkih zatvorenika, Narodne novine RH 34/1991 [Law on the Rights of Former Political Prisoners, Peoples Gazette 34/1991]

Zakon o rehabiltaciji, Službeni glasnik RS 33/2006 [Law on Rehabilitation, Official Gazette of the Republic of Serbia no. 33/2006]

Zakon o vraćanju oduzete imovine i obeštećenju, Službeni glasnik RS 72/2011 [Law on Property Restitution and Compensation, Official Gazette of the Republic of Serbia no. 72/2011]

Zakon o žrtvah vojnega nasilja, Uradni list Republike Slovenije 63/1995 [Law on the Victims of War Violence, Official Gazette of the Republic of Slovenia no. 63/1995]

Balázs Vizi

Concluding Remarks – Collective Punishment, Human Rights and Conflict Resolution

This conference on collective guilt went beyond just offering interesting insights on the historical context of certain punitive actions that affected many communities in Central and Eastern Europe after the Second World War. The presentations and discussions also highlighted the present-day legal and political effects of these events. From a broader perspective, we may say that for a long time in history, collective punishment was part of conflicts and even emerged in conflict resolutions as well. As our keynote speaker Professor De Zayas pointed out, collective punishment is and was often part of warfare, and it is deeply rooted in social attitudes and prejudices. Even if we have seen various attempts for breaking with this legacy already as early as the Westphalian peace treaties in 1648, we had to witness horrible examples of collective punishment, mass deportations, genocide, deprivation of human rights, etc. even in the 20th and 21st century. Apparently, political manipulation and indoctrination recurrently reinforce hatred and discrimination against one or another group of the society that may result in creating a social attitude in which collective punishment becomes an acceptable tool for revenging previous injustices. As Bibó quoted (or invented) an old proverb from the Middle East, "no one is more inclined to commit injustices than someone, who sees him/herself as innocent victim of injustices".[1]

If collective guilt is so much deeply rooted in a wider social context, how can we understand what it entails under international law? From a strictly legal stand, collective punishment is a concept deriving from the law of armed conflict. It describes the punishment of a group for an act allegedly committed

[1] Bibó 1990: 588.

DOI: https://doi.org/10.36250/01228_09

by one of its members and is prohibited in times of armed conflict. Article 33 of the 4th Geneva Convention in 1949[2] gives a clear statement on this: "No protected person may be punished for any offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property is prohibited." Not only the Geneva Conventions, but also the practice of international criminal court procedures confirm that international criminal law focuses on individual responsibility only and denies any collective character of criminal responsibility. So, from a legal point of view, in the context of armed conflicts, the issue seems to be properly addressed. Still, the other side of the same coin is missing: human rights instruments do not explicitly address collective punishment. Consequently, there is a genuine gap in the protection of affected groups in situations outside of or short of armed conflict.

However, as the presentations of this conference proved, the imposition of collective punishment has been witnessed in situations outside armed conflict as well, and such actions, tragically, are not only part of our human history, but also an experience of our days.

After the Second World War, deprivation of property, of citizenship, and mass deportations were introduced against Hungarians and Germans living in Czechoslovakia, and similar measures were applied also in post-war Yugoslavia under Tito as we could see in Professor Korhecz's presentation. And yet, as we all know, these tragic experiences and memories of the post-WWII Tito era could not prevent similar tragedies to happen in the 1990s wars during the break-up of Yugoslavia and even today elsewhere.

What makes these actions even more threatening is that there have been clear examples when those who agreed to apply collective punishment were convinced of contributing to social justice, creating a more peaceful society. In a broader context, the elimination of German minorities from Central Europe after the Second World War was seen as a lasting and appropriate

[2] Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 U.N.T.S. 973.

solution for preventing future conflicts in the region, as Réka Marchut's presentation proved it.

Regarding the long shadow of the so-called Beneš Decrees, both Professor Rychlík and Professor Marušiak highlighted the symbolic position that these post-war legal measures have in the modern history of Czechoslovakia and its successor States, the Czech Republic and Slovakia. In Slovakia, attempts for a historical reconciliation were only partly successful. Largely fruitful initiatives were launched regarding the Carpathian Germans, when in 1991 reconciliatory declarations were adopted in the Slovak Parliament. But no such initiative was made vis-à-vis the Hungarian minority living in Slovakia, and as Professor Fiala-Butora proved it convincingly in his presentation, despite the officially declared historical character of these restrictive measures, there are many examples for their application even today that result in land confiscations or other restrictions.

But even without legal uncertainties, historical memory may have present-day implications. As Professor Lönhárt pointed it out in a Romanian context, even the identification of perpetrators and victims can be debated for long decades, as it happens in Romania regarding the evaluation of the tragic events of the Second World War.

Can we simply conclude from the presentations of this conference that we can learn from history, but we only learn that we never learn from history? Or should we be a bit more optimistic?

Against this background, I believe we need to take a look at the legal circumstances in which these events and actions took place in Central Europe and how international law developed in the past decades in this field. In our region, most cases of collective punishment were introduced during or immediately after the Second World War, when the major international instruments on human rights and humanitarian law were not yet adopted. It can be argued that the traumas of the Second World War created a feeling of strong revenge that led decision-makers to the adoption of such collective restrictive measures. But we also know that during these years many atrocities were committed or tolerated by State authorities that went far beyond the legal measures adopted

on collective punishment. It seems to be clear that under international treaties, such as the Geneva Conventions or the most important human rights treaties (i.e. the International Covenant on Civil and Political Rights, the European Convention on Human Rights, etc.) adopted after 1949, there has not been any legal basis for applying such measures based on collective guilt. That is true, even if we know that international human rights treaties do not directly address this question.[3] Nevertheless, there are a few statements from which we may derive that States do have a responsibility to prevent collective punishment and address its consequences. The UN Human Rights Committee in its General Comment 29[4] explicitly mentioned certain elements of "the international protection of the rights of persons belonging to minorities" that "must be respected in all circumstances", such as the prohibition of genocide, the principle of non-discrimination and the prohibition of deportation or forcible transfer of population constituting a crime against humanity.[5] In specific cases, when under a state of emergency Turkey apparently applied collective punitive measures against Kurdish villages, the European Court of Human Rights also stated that there cannot be any justification for so serious ill-treatment of innocent people.[6] What may be important here is that while such actions may violate international human rights obligations,

> "human rights law at present is unable to encompass the particular wrong done by collective punishment, the imposition of sanctions on a group as such for an act allegedly committed by one or some of its members, leaving affected groups not only without protection, but without tools to bring about change and seek redress for collective punishment".[7]

3 Klocker 2020.

4 CCPR/C/21/Rev.1/Add.11 General Comment No. 29: States of Emergency (Article 4), 31 August 2001.

5 CCPR/C/21/Rev.1/Add.11 General Comment No. 29: States of Emergency (Article 4), paragraphs 13 (c)–(d).

6 *Yöyler* v. *Turkey* (Merits and Just Satisfaction) no. 26973/95, Court (Fourth Section), 24 July 2003.

7 Klocker 2020: 66.

Regarding the historical injustices in Central and Eastern Europe, it would be difficult to argue that States have any legal obligation under international law to compensate collectively the victims of such injustices. Nevertheless, States today do have an obligation to refrain from the application of collective discriminative legal measures. In this context, addressing the lasting consequences of collective punishment is not only a political, but also a legal question. There may be a need to realise and understand a certain logic of reparative actions in every post-conflict situation. Recognition of the facts, moral compensation and material compensation are equally important elements in this.

First of all, as it was recurrently highlighted in most of the presentations of this conference, there cannot be any reconciliation without recognition – the injustices committed by the State against a certain group or minority shall be recognised as an injustice, even if it is seen as part of turmoiled historical events. As a consequence, the elimination of normative collective restrictions from the legal system is inevitable. Even if – for any political or historical reason – such norms are still present in the legal system, State authorities should certainly refrain from referring to or applying them in present-day circumstances. A similarly important element is to face the moral consequences; no one can expect a true social reconciliation between different groups of the society without an apology from State authorities, even if long time has passed since these actions. There should also be government initiatives to raise awareness of the events, and to open public discussion on the consequences of collective punishment with the participation of the victims or their descendants. What seems to be the most problematic question, and what often hinders the previous steps, is that of legal material compensation. How to restore property, what costs will the State face if it recognises such injustices committed in the name of the State? These are certainly very difficult, complex and delicate issues, but it is also true that the question of material compensation may only be the last step and not the first one. It seems to be reasonable to argue that if there is a chance to recognise injustices and to address the moral aspects, a consensus may be reached on material compensation as well.

But before any of these three legal–political steps can take place, the academia also has an outstanding responsibility to open forgotten issues related to historical injustices and initiate discussions. I believe this conference proved to be a useful forum for genuine dialogue between various academic fields and different narratives. Hopefully such academic discussions could lead to influencing the public discourse, and potentially also reconciliation.

REFERENCES

Bibó, István (1990): A nemzetközi államközösség bénultsága és annak orvosságai. Önrendelkezés, nagyhatalmi egyetértés, politikai döntőbíráskodás. In *Válogatott tanulmányok*. Volume IV. Budapest: Magvető.

CCPR/C/21/Rev.1/Add.11 General Comment No. 29: States of Emergency (Article 4), 31 August 2001

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 U.N.T.S. 973

Klocker, Cornelia (2020): *Collective Punishment and Human Rights Law. Addressing Gaps in International Law.* Abingdon: Routledge.

Yöyler v. *Turkey* (Merits and Just Satisfaction) no. 26973/95, Court (Fourth Section), 24 July 2003

Notes on Contributors

Alfred de Zayas is a former UN Independent Expert on the Promotion of a Democratic and Equitable International Order (2012–2018), senior lawyer with the UN Office of the High Commissioner for Human Rights, Secretary of the UN Human Rights Committee and Chief of the Petitions Department. Dr Zayas studied history and law; he holds a Juris Doctor degree from Harvard Law School and a PhD in modern history from the University of Göttingen. A retired member of the New York and Florida Bar, Dr Zayas is author of 12 books and more than 200 scholarly articles. With his book, *Building a Just World Order,* he won the 2022 International Book Award in the category of Law.

János Fiala-Butora is a Lecturer at the University of Galway (Ireland), a Senior Research Fellow at the Centre for Social Sciences (Hungary), and a Marie Curie Fellow at the Slovak Academy of Sciences. He is a graduate of Harvard Law School, LL.M. '10 and S.J.D. '16. His research focuses on international human rights law, particularly the rights of national minorities, rights of persons with disabilities, international litigation and ethnic conflicts. As a human rights lawyer, he actively consults with governments on their human rights laws and policies, advises a number of Council of Europe and UN bodies, and has brought landmark litigation before international tribunals on topics such as the right to vote, linguistic rights, the so-called Beneš decrees, freedom from ill-treatment and others.

Iván Gyurcsík is Rector's Adviser for Regional Cooperation at Ludovika University of Public Service, and Head of the Minority Policy Research Group. He worked at the Ministry of Foreign Affairs of Hungary between 2001 and 2022. Academic background: international relations (Corvinus University of Budapest, PhD; Université Libre de Bruxelles, MA); law (Comenius University, Bratislava, JUDr.; Central European University, Budapest, LL.M.). His fields of research are international relations, regional cooperation, Central Europe, minority rights and minority policy.

Tamás Korhecz is Full Professor at the Novi Sad seated Dr Lazar Vrkatić Faculty of Law and Business Studies of the Union University, and judge at the Constitutional Court of Serbia. Earlier he was elected MP in the Assembly of the Autonomous Province of Vojvodina and President of the Hungarian National Council in Serbia. In 2012, he received the Special

Award of the Slovak National Council in Serbia, and the Lőrincz Csaba Award of the Pro-Minoritate Foundation in Budapest in 2013. Dr Korhecz is also an honorary Professor of the Óbuda University in Budapest.

Tamás Lönhárt is Associate Professor at the Babeş-Bolyai University (Kolozsvár–Cluj, Romania) at the Faculty of History and Philosophy, and Head of the Department of Distant Learning of History in Hungarian Language. Dr Lönhárt is Founding President of the Buza László Association for International and Regional Studies. He is also Visiting Professor at the Eötvös Lóránd University (ELTE) in Budapest. Dr Lönhárt is author of several books and studies, specialised in East-Central European political transitions in the 20th century, political integration of minorities in contemporary East-Central Europe, Post-Cold War International Relations and the geopolitical structure of East-Central Europe.

Réka Marchut is a Research Fellow at the Centre for Social Sciences, Institute for Minority Studies. She is a historian focusing on Hungarian and East-Central European ethnopolitics of the 20th century. She earned her PhD in history from the Eötvös Loránd University in 2013. She is interested in various aspects of ethnopolitics: the history of German minorities from Hungary and Romania, the diplomatic relations between Hungary and Romania in the interwar period, the etnopolitics of the Little Entente states, the forced migrations in East-Central Europe after WWII. Her previous book publications are: *Töréspontok. A Budapest környéki németség második világháborút követő felelősségre vonása és annak előzményei (1920–1948)* [Breakpoints. The Prosecution of the Germans in the Budapest Area after the Second World War and its Antecedents (1920–1948)] and *Kisebbségi kérdések a magyar–román diplomáciai kapcsolatokban (1920–1931)* [Minority Issues in the Hungarian–Romanian Diplomatic Relations (1920–1931)].

Juraj Marušiak is a political scientist of a Slovak–Polish descent. Dr Marušiak has worked for the Institute of Political Science of the Slovak Academy of Science since 1996. Currently he is Senior Research Fellow at the Institute of Political Science (since 2022, he is the Director of the Institute), and Assistant Professor at the Comenius University in Bratislava at the Faculty of Social and Economic Sciences. In 2013–2021, Dr Marušiak was a member of the Presidium of the Slovak Academy of Sciences. His native tongue is Slovak and Polish, but he also speaks English, Russian, German, Serbian and Ukrainian.

Jan Rychlík is a Czech historian and an expert in modern history of Slavic nations. Currently Dr Rychlík is Professor at the Faculty of Philosophy of Charles University in Prague, and at the Faculty of Natural Sciences and Humanities of the Technical University of Liberec. Earlier he was also affiliated at the Faculty of Philosophy of the University of St. Cyril and Methodius in Trnava, Slovakia and the T. G. Masaryk Institute in Prague. Dr Rychlík was Visiting Research Fellow among others in London, Skopje, Sofia, Tampere and Ottawa. He received his PhD in 1985 in Sofia, he was appointed as a Full Professor of Czech history in 2003. Dr Rychlík's research specialises in modern Czech and Slovak history, nation-building, dissolution of multi-ethnic states, ethnic conflicts, land reform issues and modern history of Central, Eastern and Southeastern Europe.

Balázs Vizi is Associate Professor at the Department of International Law, Faculty of Public Governance and International Studies of the Ludovika University of Public Service and Research Professor at the Institute for Minority Studies, Centre for Social Sciences (Budapest). He received his PhD in 2006 from the University of Leuven (KUL). He has specialised in international human and minority rights law. He is author of several publications on minority issues in the context of the European integration and co-editor of several books on minority rights protection. His recent works include the *Research Handbook on Minority Politics in the European Union* (co-edited with Tove Malloy), Edward Elgar, 2022.

This book contributes to the academic debate on collective punishment–guilt in Central Europe in the post-World War II era and its consequences to the present.

In this region, most collective restrictive measures were introduced during or immediately after World War II, in an atmosphere of trauma and revenge.

The book is premised on the need to realise and understand the logic of reparative actions in every post-conflict situation. Recognition of the facts, moral compensation and material compensation are equally important in this process.

The articles in this volume address not only the legal and moral questions, but also touch upon the problems of historic reconciliation and material compensation. All these issues still pose today a challenge to academic research, and influence long-standing political debates on collective guilt.

9 789636 531423