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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.

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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.

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