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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

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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.

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