

CRIMES COMMITTED BY TOTALITARIAN REGIMES

Crimes and other gross and large scale human rights violations committed during the reign of totalitarian regimes in Europe: cross-national survey of crimes committed and of their remembrance, recognition, redress, and reconciliation

Reports and proceedings of the 8 April European public hearing on “Crimes committed by totalitarian regimes”, organised by the Slovenian Presidency of the Council of the European Union (January–June 2008) and the European Commission

Edited by
Peter Jambreč

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PREFACE

Lovro Šturm*

Europe rests on the ashes of totalitarian regimes. The area of freedom, security and justice we know today covers countries which in the 20th century, the “century of ideologies”, bore witness to what was then the greatest political, national and ideological schism and violence in all human history.

After the First World War, also known as the “primordial catastrophe of the 20th century”, at a time which was unmistakably marked by economic crisis, the political stage was taken by dictatorships – particularly in central and eastern European countries. This was the time that saw the rise of fascist and national socialist regimes and, from as early as the 1917 October Revolution onwards, of communist totalitarianism in the far east of Europe. With the end of the Second World War, however, and with it the demise of fascism and national socialism, communist totalitarianism seized power in the eastern and south-eastern European countries and remained there until as late as the end of the ‘80s.

The totalitarian regimes experienced by Europe in the past century managed to assume and strengthen their power not only through lies but also through mass murder, or, as we would call it today, crimes against humanity. A common expression for this is “gross and systematic violation of fundamental human rights”, which, as stated by the Convention for the Protection of Human Rights and Fundamental Freedoms, also includes the right to life. Many lives were taken without court proceedings and many guilty verdicts were passed by using discriminatory legislation without actual guilt being proven or a fair trial being enabled. The opponents of totalitarian authorities and of their laws were tortured and treated in an inhuman and humiliating way, and were sometimes forced to work in labour and concentration camps. What is more, totalitarian powers were also known for blatantly violating the freedom of expression, which was exposed to limitations, control and severe punishment if it criticised the system. Finally, such regimes were fundamentally characterised by discrimination on the grounds of sex, race, skin colour, language, religion, nationality, social origin and political conviction.

Unfortunately, the forms of totalitarianism we just mentioned were not copied from a textbook on political philosophy or legal history. They are real and they were experienced directly or indirectly by large numbers of Europeans who were born before the fall of the Berlin Wall.

Each country lived the 20th century in its own way: while some countries never saw totalitarianism, others had one or even two such regimes. What makes Slovenia special is that it is the only EU Member State to have experienced all three European totalitarianisms.

As we have seen, the 20th century was a difficult time for many countries. While they often came to be on separate sides, they all had their fair share of victims. To respect and nurture the general fundamental right to personal dignity of all victims is to prevent discrimination amongst the latter and guarantee their equal treatment. The right to personal dignity is one of the rare, if not the only fundamental personal freedom which does not expire together with human life in a physical sense, but must be respected after death.

This publication is a collection of papers from the hearing “Crimes committed by totalitarian regimes”, organised on 8 April 2008 by the Slovene Presidency of the EU Council and the European Commission, bearing in mind the framework decision on combating racism and xenophobia and the statement by the Council to organise a public European hearing on genocide, crimes against humanity and war crimes committed by totalitarian regimes.

In the Europe of today, we are well aware that violence and discrimination do not belong in a free and democratic society. We need nothing more than critical knowledge of the violence and injustice caused by the past century’s totalitarian regimes in Europe to understand the present and hope the 20th century will never happen again. History needs to be seen as it really is and not to be diminished. This is the only way for us to learn that violence, be it based on race, skin colour, religion, political conviction or nationality, cannot lead to the mutual respect and harmony that enable people to live side by side in peace.

* Prof Dr Lovro Šturm, Slovenian Minister of Justice.

This publication is the first written statement of its kind. Moreover, it reveals the need to deal with the burning question it covers in an ongoing way. As for the European Union, its commitment to lead the transparent and long-term process of revealing our common European history was confirmed by the framework decision on combating racism and xenophobia.

INTRODUCTION

Jacques Barrot*

I would like to begin by thanking all of you for being here today for this hearing on crimes committed by totalitarian regimes.

This is an important event. This is the first time that the European Union has brought together experts to address the issue of the crimes committed by totalitarian regimes in the Member States.

It is with great pleasure that I am picking up today where Vice-President Franco Frattini left off. All of us have a duty to try and construct a global vision of our history and the tragedies that have marked it.

Totalitarianism, in my view, represents a negation of the person.

You will all be aware of the Declaration by the Council of Ministers requesting that the Commission take up this issue. In order to meet that request, we need your knowledge and your experience. That is why the Commission and the Presidency of the Council have taken the initiative of bringing you together.

We are here today to listen to you. Our goal is to better understand how Member States have faced up to legacies of totalitarian crimes and what methods and tools they have used to deal with them.

Totalitarian regimes are always characterised by violations of the same fundamental rights and democratic principles on which the EU is based. Deportations, massacres, torture, inhumane treatment, genocide, crimes against humanity, war crimes, racism ... all these acts are the modus operandi of totalitarian regimes. They negate human dignity, the dignity of each human being.

Faced with such an inheritance, how can we ensure that these crimes and their victims are recognised? How can we establish the truth? How can we make that truth known, so that lessons can be learned and similar atrocities can be prevented from ever occurring again? The failure to recognise our chequered pasts will only feed feelings of injustice and serve to perpetuate hatred and conflict.

I am certain that this morning you will tackle all of these issues as well as the question of how to educate today's youth. How can we ensure that such crimes will not be forgotten? It is essential that the memory of these crimes be passed on from one generation to the next.

The question must also be asked whether the "old" EU Member States are fully aware of the tragic history of the majority of the "new" Member States. Greater awareness of this history may well be necessary. The expression "Your past is our past" should become a motto for us all.

Reconciliation is another topic that you will have the opportunity to discuss this afternoon. Recognition of crimes committed, and reconciliation, go hand in hand. You cannot have one without the other. There can be no reconciliation without recognition and unless recognition is accompanied by reconciliation, it is impossible to build a common future. Different Member States have used different methods to achieve such reconciliation. The views and experiences exchanged here concerning ways to promote reconciliation will undoubtedly be very enriching for us all.

The European Union is a living example of reconciliation. It should represent a source of inspiration and hope for all countries seeking to overcome the wounds and suffering of the past.

All countries, however, must find their own way of coming to terms with their past, of meeting the expectations of victims and their descendants, and of achieving reconciliation. The EU cannot do this for them.

What the EU can do is serve as an example, but it has little authority to act in this area. Its role is confined to facilitating the process by encouraging discussion, fostering the sharing of experience and best practice, and bringing the various players together.

Let me conclude by assuring you that the Commission intends to play its role to the full. Today's conference is proof of this.

* Jacques Barrot, Vice-President of the European Commission responsible for Justice, Freedom and Security. Speech before the Hearing on "Crimes committed by totalitarian regimes", Brussels, 8 April 2008.

All of the information gleaned here today will be analysed by the Commission. Because these issues are complex and important, it is essential that we move forward step by step rather than rushing ahead.

As requested, we will report to the Council two years after the Framework Decision enters into force. A political debate can then take place if the Council so desires.

Hopefully, we will end this day with a better understanding of the issues and a better understanding of each other.

Thank you very much for your presence here and for the contribution that you will make towards moving us all forward on the road to truth and reconciliation.

***I. HISTORY, CHARACTERISTICS AND CLASSIFICATION OF
TOTALITARIAN REGIMES***

Ronaldas Racinskas*

HISTORICAL JUSTICE FOR EUROPE: WHY, WHEN AND HOW?

1. Introduction

A unifying factor for Europe is the system of common values, based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law. Unfortunately the 20th century experience was a great contrast to those principles, marked by the establishment of two major totalitarian regimes, Nazi and Soviet-Communist, which were accompanied by violations of human rights and freedoms, by crimes of genocide, crimes against humanity, and war crimes.

During the first half of the 20th century, two totalitarian regimes emerged and sought to alter the political structure of the world through universal imposition of their ideologies. The first, and longest lasting, Soviet-Communism, was based on a pseudo-scientific theory of class struggle; the second, Nazi Germany, was based on racialist ideology. Europe and its nations suffered from both. Central and East European (CEE) countries suffered most because they experienced both Nazi and Soviet totalitarian regimes. Repressions and losses befell all its peoples. However, differences between the two regimes affected ethnic, social and political groups in different ways. Collective memories have been shaped accordingly.

The history of 20th century Europe was also marked by democratic freedom movements in Hungary, Czechoslovakia, Poland, Lithuania and other Baltic States. These movements' and peoples' determination to live in free democratic societies broke down the Soviet totalitarian system and opened doors for today's Europe without lines of separation.

Appropriate preservation of historic memory, assessment of the crimes of totalitarian regimes and their ideologies, as well as respect for the victims and freedom fighters, are very important for historical justice and for the sake of Europe's future.

Over more than 60 years Western Europe, evaluated and condemned the Nazi totalitarian regime. Although there is no end to the evaluation as it is an ongoing process, its clear perspective on the Nazi regime and its ideology has become an integral part of the identity of Europe and the Western world.

Most CEE countries and their societies were cut off from the Free World and the process of restoration of historical justice; thus they could not participate in historical, legal, and political debates. After they gained independence and a democratic political system was re-established there, CEE countries aspired to join the legal and value environment of a united Europe.

On the other hand, CEE countries experienced both the Nazi and the Soviet totalitarian regimes. Their experience bears a universal meaning because neither the Nazi regime nor the Soviet-Communist totalitarian system could be prevented from universal establishment by country borders. Besides, recent decades have revealed a large number of historical facts, vaguely known before, about the crimes by the totalitarian regimes, which need proper assessment.

Relations between a country and its history were managed differently, as every country follows its own way predetermined by its unique history.

However there are many things in common, which have a meaning and are significant in a broader context than an individual national history. The commonalities are universal in a sense that they add up to the experience of the whole Europe and humanity. This is the common experience that must be discussed, assessed, and become part and parcel of the European identity. Widespread European attitudes regarding Nazism already exist. What about Soviet Communism?

* Ronaldas Racinskas, Executive Director of International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania.

2. Two totalitarian regimes, two criminal ideologies – two different attitudes. Why?

Without presenting further arguments, it can be stated that some historical events are better known to mankind since they have acquired a universal meaning. This can be said about both positive, great historical events and about negative ones, such as crimes against humanity, war crimes and crimes of genocide. Some of them are, as if more important, better known, and have a universal meaning. Others are consigned to oblivion either because of incomprehension or by deliberate decision.

The victory over Nazi Germany led to universal condemnation of that regime and its ideology. In the democratic world, a broad evaluation of that system and its crimes, especially the Holocaust (or Shoah), was adopted. Very clear attitudes regarding Nazi ideology and crimes of that regime lie as a foundation-stone in the system of values of democratic states. It has universal meaning.

On the opposite side, the ideology of the Soviet-Communist regime and the crimes it committed have not been properly perceived and evaluated thus far. They have not acquired such a universal meaning, though objectively evaluating the scope and the numbers of victims, the crimes of the Soviet-Communist regime were much greater, it lasted longer, and affected more people.

The survival of the Soviet totalitarianism decades into the post-war period precluded an analogous assessment of its role in the start of the bloodiest conflict in human history and in repressions against its own population, as well as those in occupied nations. The transformation and break up of the Soviet-system was followed, in a way, by selective amnesia.

What are the reasons for such different perceptions of these two totalitarian regimes, and their crimes?

First, political reasons, because history is the politics of yesterday and politics of today is the history of tomorrow. History is always written by conquerors and winners. And they present historical events in a way they would like. That is the way history was, is and will be: a field of manipulation, subjective evaluation, interpretation. Even if there is an agreement concerning facts, there always will be controversy about interpretation. Some people say “do not politicize history and leave it for professional historians”. I very much agree with that, but the problem is that our recent European history (especially that part related to the reasons and results of the Second World War and Soviet-Communist totalitarian state) is already politicized and very one-sided. So it must be de-politicized and historical justice established.

Second, differences in collective memory, because it always involves emotions and we see the surrounding world through “coloured glasses”. And that “colour” depends on our education, objective knowledge, system of values, belonging to a certain social, ethnic or political group, collective memory and discourses in those groups, and also personal experience and beliefs. I would like to touch upon some aspects of that.

3. “Russian factor”

Today pro-Soviet (or pro-Russian) discourse prevails concerning the reasons and results of the Second World War. This prevailing one-evil discourse (or doctrine) can be formulated in brief as follows: In the fourth decade of the 20th century, the Nazi totalitarian regime headed by Hitler was established in Europe; seeking to conquer the world, it waged war in Europe, whereas the Western Allies and the Soviet Union liberated Europe from the Nazis. It seems that it is deliberately forgotten that in 1939 Soviets started World War Two as Nazi allies. A week after signing the Molotov-Ribbentrop pact in Moscow on August 23, 1939 (when Europe was divided between Stalin and Hitler), two totalitarian regimes, which were worthy of each other – the Nazi and Soviet-Communist – started the bloodiest war in human history.

But the beginning of the war in the collective memory of most Europeans is related only with the Nazi attack on Poland. However, obvious historical facts that the Red Army only a few weeks later attacked Poland from the east are publicly passed over in silence or as if unnoticed. Thousands of Polish officers killed in Katyń and other places have been forgotten. The fact that the Nazi and Soviet army commanders raised glasses of champagne together for the victory in Brest in the autumn of 1939 has also been forgotten.

Nazi Germany and the Soviet Union fought as allies for almost two years – this critical fact usually is swept away.

In most popular historiography, aggression by the Soviet Union against four Baltic countries is usually presented as a separate issue, unrelated to the Second World War and the secret agreement between two aggressors. Soviet aggression against Finland is known as *Finnish campaign* (*Finskaja kampanija*), but occupation and annexation of Lithuania, Latvia and Estonia even today are treated by some “experts” as their voluntary joining the Soviet Union, or at least a separate issue from World War Two.

Now let’s talk about another part of the myth – “liberation of Europe” by Soviets. Yes, Europe was liberated from the Nazi regime, but very differently in its West and East. The western part of Europe was really liberated by Western Allies and was able to enjoy free development. But in the eastern part – one totalitarian regime was replaced by another, one occupation by another, one type of concentration camps by another. “Liberation” was followed by plundering, violence, rape and massacre. Half of Europe, millions of people, found themselves behind the Iron Curtain and were destined to long decades of repression. In its “Resolution on the sixtieth anniversary of the end of the Second World War on 8 May 1945” (adopted on 12 May 2005), the European Parliament stressed “that for some nations the end of World War II meant renewed tyranny inflicted by the Stalinist Soviet Union” and that this was followed by “suffering, injustice and long-term social, political and economic degradation endured by the captive nations located on the eastern side”. But the myth that the Soviet army liberated Europe is still very popular and by all means is strengthened by Russia – the successor of USSR. To say more: today Russia is more and more affiliated with its Soviet past: the idea of “a glorious Soviet past” has become a consolidation factor for the Russian nation. That became a fundamental ideological ground of a new Kremlin political platform, and all attempts to at least open a dialog and discussion are obstructed by Russia.

Well, we can understand that for political reasons this is useful to Russia and its autocratic leaders. But why does this doctrine seem to be acceptable to the Western democracies also? Why do Western leaders toady up to Vladimir Putin? Do they not see and not understand that the present master of the Kremlin (the former employee of state security – KGB) chose an autocratic way of governing, and identification with the “glorious and victorious” Soviet past has turned into an identity that focuses all of Russia? It is much more difficult to give an answer to these questions. But I think it is worth considering why the doctrine of single evil is also acceptable to the democratic Western world.

4. Double standards regarding two totalitarian regimes

Western democracy and Western civilization rests on fundamental principals of liberty, democracy, respect for human rights and fundament freedoms – on moral grounds and a system of values. But in regard to Nazi and Soviet totalitarian regimes, we clearly see double standards. In relations with Russia and crimes of the Soviet regime, these fundamental grounds are not so strong. The so-called *real politique* dominates relations with Moscow and we often hear about “necessary” concessions. The typical example is 60th anniversary celebration of the end of World War Two in Moscow (where this war actually started in 1939). By participating in Putin’s propaganda show, respectful leaders of the world show their agreement to the Kremlin position, which humiliates victims of the Soviet totalitarian regime.

Perhaps Western States feel somewhat embarrassed admitting that first in Teheran, Yalta and then in Potsdam, they gave half of Europe into Stalin’s hands, and millions of people into the butchery of the Soviet-Communist regime. In the case of the Baltic countries, those agreements just enforced and legalized the Molotov-Ribbentrop pact legacy. It is true that by that time, Europe was tired of war and it needed peace at any price, and Stalin would have never given back the occupied territories of his own free will. But why today are we still afraid to admit this? This is a fundamental question of historical truth and a test for the grounds of Western democracy.

Critical thinking and self-evaluation are some of milestones of a democratic system. It has been proven many times by public recognition of mistakes in the past or rejection of principles not acceptable for democracy (like slavery, segregation of black people or brutal behaviour towards Native Americans – Indians, or colonialist politics) which had been norms for many years earlier.

I believe that open objective discussions organized at the European level, with evaluation and condemnation of the Soviet totalitarian regime, its crimes and ideology, should be the next positive example of critical thinking and will strengthen the grounds of European democracy. “Resolution 1481” (2006) of Parliamentary Assembly of Council of Europe and these hearings are first steps in that direction.

European political leadership and value-based decisions are in greatest importance. But it seems that most of these leaders do not recognize the importance of this process for Europe’s future. Some because they and their countries were happy not to experience Soviet atrocities and these “historical questions” are not simply important for them. But some, mostly left wing politicians, usually do not support the idea of condemning Soviet-Communist system because of their ideological proximity.

Political proximity of the Marxist-Communist ideology to the Western democratic left-wing parties most likely contributed to it. I must stress that on one hand, Western social-democratic ideology and principles of social solidarity and the welfare state have nothing to do with pseudo-scientific Communist ideology and the totalitarian anti-human practices of the Soviet totalitarian state. But on another hand, some theoretical-ideological proximity exists. So, softly speaking, the sceptical attitude of the representatives and leaders of left-wing parties in international organisations and forums when trying to suspend the initiatives to evaluate the ideology of the communist regime and its crimes leads us to this conclusion.

The position of the post-Soviet States also adds to the fact that thus far the communist regime, its ideology and crimes have not been properly evaluated yet. A large part of the political and economic elite of these countries has been rooted in that time period and they are not interested in raising similar issues.

Furthermore, “young democracies of Europe” lack maturity – they clearly fail to identify themselves in the historical process and are at a loss within the geopolitical context; issues of the long-term state strategy and values are practically not discussed in policy and public discourse; their elite is mainly concerned with material issues – solving short-term economic problems. Though value-based issues are difficult to grasp, it is in this sphere that the most intense competition, and even a struggle, is going on between the most powerful of the world for the brains of individual people, communities, entire states or even regions. Mature Western States understood it a long time ago and devote special attention to the value-based issues in their policies – dozens of institutions and “think tanks”, hundreds of ideologists who carry out the state commissions, are at work. Long-term strategies and conceptions are being devised for the implementation of which services of total administrative capacities of the state, and the diplomatic corps, in particular, are requested. When observing Russia’s policy, one can unambiguously state that it also clearly positions itself in this value-based space devoting special attention to the use of history within the geopolitical context.

Summarizing this part of my presentation: Europe is lacking determination and political leadership based on moral grounds. In my view, politics that are not based on moral considerations are, at the end of the day, not practical politics at all.

5. The concept of genocide

One of the arguments that Nazism and Soviet Communism cannot be treated at the same level relates to the concept of genocide. The “United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948” is taken as the standard of this concept. The Convention enumerates those groups against whom the activity committed is considered as the crime of genocide – they are national, ethnic, racial and religious groups. However, it should be noted that the definition of the very term *genocide* by its author Raphael Lemkin involved also attacks against political and social groups. Political groups also appeared in the “United Nations Resolution No. 96” (I) of 1946, in the draft of the “Convention” prepared by the *Ad Hoc* Committee. It was only at the last moment that with efforts of the Soviet Union and its satellites – other puppet communist regimes – no place was left in the final text of the Convention for repression against political groups. However, did dozens of millions of victims of the Soviet-Communist regime suffer less, or is the totalitarian communist regime less evil because of that? Does the modern world of the 21st century have to follow documents from Stalin’s time and spirit, dividing victims and crimes into ‘more’ or ‘less’ important on this

formal basis? Can Soviet totalitarian regimes just on these formal grounds therefore be regarded as lesser evil? I very much agree with famous Holocaust scholar Prof. Yehuda Bauer, who stated that “.../ victim is victim, murder is murder, torture is torture, and rape is rape. Starvation, pain, disease, and humiliation are the same, no genocide is more important than another one; no one is more victim than another one /.../”.

6. The Nuremberg Tribunal

Within this context, in 2006 the European Court of Human Rights made a very significant decision in the case of Estonia. It recognised Soviet occupation, and according to international law, identified the crimes committed by the regime as crimes against humanness. The decision also underlines that the principles of the Nuremberg Tribunal apply to Soviet crimes too. Court noted that “although the Nuremberg Tribunal was established for trying the major war criminals of the European Axis countries for the offences they had committed before or during the Second World War, the Court notes that the universal validity of the principles concerning crimes against humanity was subsequently confirmed by, inter alia, Resolution No. 95 of the General Assembly of the United Nations Organisation (11 December 1946) and later by the International Law Commission. Accordingly, responsibility for crimes against humanity cannot be limited only to the nationals of certain countries and solely to acts committed within the specific time frame of the Second World War. In this context the Court would emphasize that it is expressly stated in Article I (b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity that no statutory limitations shall apply to crimes against humanity, irrespective of the date of their commission and whether committed in time of war or in time of peace.”

7. How to change the situation of double standards in the perception of totalitarian regimes and how to overcome barriers?

For that we need:

- Clear political will;
- Moral grounds for political decisions;
- Open dialog;
- Legal framework;
- Institutional framework;
- Modern education.

Some aspects I already discussed earlier, but on some I want to elaborate.

7.1. Open dialog

The initiative of the European Commission is very positive steps in this direction. But the process should be continued and public debates should be stimulated on all levels and supported by the Commission and EU Member States.

7.1.1. The objectives and principal discussion topics of the public hearings and debates can be:

- **Historical and educational.** Presentation of the historical experience of various countries (which is vitally important to understand each other better):
 - Ideologies and doctrines of the communist and other totalitarian regimes;
 - The genocide crimes, crimes against humanity and war crimes of the regimes; the damage caused by the crimes and their scope;

- Crimes against peace;
 - Victims, criminals, collaborators and observers;
 - The role of communist parties;
 - The heritage of the totalitarian system and its overcoming;
 - General and specific characteristics of the totalitarian regimes.
- **Legal.** Discussions on the required EU legal instruments, their provisions, instrument drafting and examination.

7.1.2. Levels of hearings and public debates:

- Multilateral international conferences, which could provide the base for the permanent international forum;
- Regional conferences (covering the experience of one region or a few states);
- National conferences.

7.1.3. Forms of public hearings and debates:

- Scientific conferences, seminars, round table discussions and their rounds;
- Meetings with the victims and crime witnesses of the communist and other totalitarian regimes;
- Joint sessions of international and national commissions of historians;
- TV-bridges, involving the European channel EuroNews and national TV channels;
- The development of an internet portal;
- Study trips.

7.1.4. The members of hearings and public debates:

- The representatives of the national parliaments and governmental institutions;
- Scholars (historians, lawyers, political scientists, sociologists, etc.);
- The representatives of international and national commissions of historians;
- The representatives of research centres and museums;
- The participants of the historical events, the victims of terror carried out by the communist regimes, the organisations of victims of political terror, and witnesses;
- The staff of the European structures and the public sector of the Member States; diplomats;
- The representatives of the non-governmental organisations of human rights protections, etc.;
- Public figures (various groups: national, religious, professional).

7.2. Legal framework

Initiate discussions on the required EU legal instruments, their provisions, instrument drafting and examination. To draft the required framework legal instruments that would assign another status to the investigation of the crimes of the communist regimes (by expanding the concept of *genocide*) in order to acknowledge them as international crimes to which no limitations apply, while the extradition is enabled and the Member States are committed (recommended) to pay special attention to the following:

- Education on the crimes of the Communist and other totalitarian regimes;
- Memorialisation of the crime victims of the totalitarian regimes and the marking of the memorial sites;
- Formation of national museum expositions;
- Criminal prosecution or sanctions for:
 - Public support of the genocide crimes of the Communist and other totalitarian regimes;
 - Refusal to acknowledge these crimes;
 - Excessive derogation of these crimes;
 - The responsibility of the successors of the Communist States concerning the compensation of losses.

7.3. Institutional framework

For the effective continuity of the process, it must be institutionalized. And I would like to propose some initiatives:

- To initiate the establishment, under EU auspices, of the permanent international governmental Forum (Conference) for the investigation, memorialisation of and education on crimes committed by the Communist and other totalitarian regimes. The Forum could be convened biannually (annually). The participating EU delegations would discuss and coordinate joint actions in the Forum.
- To establish a European Fund for the initiation, encouragement and support of the European and national initiatives for memorialisation of genocide crimes of the Communist and other totalitarian regimes, crimes against humanity and war crimes, as well as the development of research and education projects.
- To initiate, and start the commemoration on the European level, of the memorial day for victims of the Communist totalitarian regime. It could be 23 August (Molotov-Ribbentrop Pact day).
- To establish European Institute for the research of the crimes of the Communist and other totalitarian regimes.
- To establish a European Museum on totalitarian regimes and for the victim homage.

Tunne Kelam*

SUGGESTIONS ON ASSESSMENT OF TOTALITARIAN COMMUNISM

Often, in dealing with significant periods of history, it is enlightening to look at the thoughts and opinions of those who were instrumental in making that history. Among the letters of US President Harry S. Truman¹ we find many statements which are helpful in making an assessment of totalitarian Communism today:

“Mr Molotov represents a totalitarian state – a police government. Really there is no difference between the government which Mr Molotov represents and the one the Czar represented – or the one Hitler spoke of. I am told that there are more than 15 million people in concentration camps and at slave labour in Russia today; and I am inclined to believe it. They are kidnapping Germans, they have Japanese, Lithuanians, Estonians, Latvians, Poles, Finns, and they are made to work against their wills.”²

“Now we are faced with exactly the same situation with which Britain and France were faced in 1938–39 with Hitler. A totalitarian state is no different whether you call it Nazi, Fascist, Communist or Franco Spain. The oligarchy in Russia /.../ is a Frankenstein dictatorship worse than any of the others, Hitler included. /.../ I went to Potsdam with the kindest feelings toward Russia – in a year and a half they cured me of it.”³

The European continent was tragically divided during the second half of the 20th century. While one part of Europe succeeded in creating a common path to democracy and economic recovery, the other part was abandoned for nearly half a century to a totalitarian power. Soviet military expansion enslaved numerous states of Central, Eastern and Southern Europe. The Baltic States were occupied and lost their pre-war statehood. Poland, Czechoslovakia, Hungary, Bulgaria, Romania, Albania, Yugoslavia (a kind of mini Soviet Union comprising the states of Slovenia, Serbia, Croatia, Montenegro, Macedonia), and East Germany were all subjugated during the second half of the 1940’s to Communist regimes. These countries were degraded to the status of Soviet satellites, they had to accept Soviet military bases and Red Army divisions which formed the basis of power for the local Communist dictatorships and crushed all attempts to restore freedom and democracy. The peoples of these satellite and occupied states were denied basic civil rights and economic freedoms; they were forced by the Kremlin to renounce the benefits of the Marshall Plan and thus were isolated politically, culturally and economically from the Western part of Europe.

In the first decade after 1945, approximately one million people were killed only in the Soviet “liberated” parts of Central and Eastern Europe; tens of thousands were arrested and deported. Popular discontent and uprisings (1953 Berlin; 1956 Hungary) were brutally suppressed. The failure of these attempts shows the isolation of these nations from the democratic West. Unfortunately Western powers did not support real change within the Soviet-controlled part of Europe. As a result, the division of Europe between the victors of World War Two established in Yalta and Potsdam remained in force. What happened on the eastern side of the Iron Curtain was from then on considered an internal matter of Stalin, Khrushchev and Brezhnev.

The post World War Two unification of Western Europe started as a result of lessons drawn from the devastation caused by the Nazi totalitarian state. Unification was also stimulated by the threat posed to the democratic system of Western Europe by an expansionist Soviet Union. But it was only the collapse of the USSR in 1991 which enabled the “other lung of Europe”⁴ to restart breathing with the oxygen of freedom, and opened the way to the unification of Europe as a whole. With the enlargements of 2004 and 2007, twelve formerly Soviet controlled countries of Central, Eastern and Southern Europe succeeded in rejoining the family of European nations – the family, to which they traditionally had belonged, based on a common European culture, civilization and historic experience.

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¹ Margaret Truman, *Harry S. Truman*, Pocket Books, 1973.

² *Ibid.*, Letter, 1946.

³ *Ibid.*, Letter, March 3, 1948.

⁴ Speech by Pope John Paul II to the European Parliament October 11, 1988.

Our current community of 27 EU Member States – a community which is already looking forward to the membership of half a dozen more post-communist countries from Southern Europe – is committed to taking responsibility for the future of the European community. In just the same way these 27 states have a common responsibility to address the heritage of Communist totalitarian regimes. This is not merely a question of nostalgia. In the 20th century, two totalitarian powers plunged Europe into a devastating war, committed massive crimes against humanity, carried out genocide, brutally suppressed European values and cultural tradition. In order to be sure that such ideologies never again ascend to power in Europe, it is imperative for the EU as a whole to analyze and draw conclusions from both totalitarian systems as well as from the experiences of tens of millions of Europeans from all walks of life who had their lives and futures crushed and blighted by these inhuman regimes.

As we see from President Truman's letters and countless other sources, Western nations have long had enough information to conduct this kind of analysis leading to a clear moral and political condemnation of totalitarian Communism. Unfortunately, a reluctance to carry this out – a reluctance even to use the correct terminology, to avoid using terms derived from Soviet propaganda – has already seriously impaired the development of genuinely democratic, rule of law societies in post-Communist countries.

Through the Cold War years policy-making concentrated on pragmatic forms of coexistence with the Communist system which was expected to last indefinitely. As a result, the West was unprepared for the collapse of the Soviet Union and reluctant to declare victory in the Cold War.

Western inability to behave as winners in the defeat of totalitarian Communism in 1991 – as was done after the defeat of the Nazi regime in World War Two – meant the waste of a great opportunity to guarantee a better future for all of Europe, and Russia itself, and remains the source of many of today's problems. Instead of welcoming and supporting the new democratic forces, the West turned its attention to economic issues and to preserving the stability of the old relationships. The old Communist elites were accepted as born again democrats and normal partners. Even the KGB made a "soft landing" into the new situation. Moral criteria were not applied and the responsibility of the Communist regime for crimes against humanity, the suppression of freedom and human rights, was not evaluated. This gave the Communist elites credibility, enabling them to continue political careers and to perpetuate their habitual non-democratic methods and practices.

Continued failure to condemn Communist crimes with an internationally authoritative verdict will perpetuate the gap between the West and millions of victims of Communist totalitarianism and their descendants. These people will eventually lose hope that justice will ever prevail. The nations that suffered under Communist regimes do not enjoy the same assurances of "never again" that the victims of the Holocaust have. Frustration of the hopes finally to see justice proclaimed and accepted on the international level will not disappear automatically – in real life these frustrations continue to find often irrational political outlets, including support for neo-Communist or radical populist movements. All this is a major handicap in the formation of robust civil societies in post-Communist countries. It is also one of the main sources of wide-spread cynicism, moral permissiveness and corruption.

While a comprehensive analysis and assessment of Communist totalitarianism has been delayed, it is certainly not too late to carry out this crucial mission. In this regard, it is useful to recall that the Holocaust was not defined as such nor brought to the forefront of international attention until 15 years after the end of World War Two in Europe, beginning with the 1960 Eichmann trial.

Practical steps to be taken

1. To generate political will to take a comprehensive approach to the problems of the totalitarian Communism on the same level as the crimes of Nazism.
2. To initiate conferences, workshops and various meetings with the goal of advancing better mutual understanding of 20th century history as well as integration of different historic perceptions. Participants in these events should include politicians, researchers and representatives of citizens from both parts of Europe.

3. To contribute actively to creating an international centre for the study of the totalitarian Communist regimes.
4. To support the establishing of a European Memorial Day to commemorate, on the European scale, the millions of victims of totalitarian regimes. One possible option would be 23 August 1939 – the day when two totalitarian dictators concluded a friendship pact and decided to launch the Second World War.
5. To contribute to the idea of preparing jointly new European history textbooks on 20th century history.
6. To be precise in terminology, avoiding repeating Lenin and Stalin’s propaganda that divided the world into “capitalist” and “socialist” camps. Using the correct name – Communist dictatorships – will clarify much muddled thinking about such Communist cover names as “former socialist countries”, “true socialism” etc. We should remember that some of the most hated enemies of Communists were the genuine social-democrats.

Communist totalitarian dictatorships worked for the annihilation of all rival political movements, regardless of whether they were situated on the left or the right of the political spectrum.

Jera Vodušek Starič*

THE MAKING OF THE COMMUNIST REGIME IN SLOVENIA AND YUGOSLAVIA

The formation of a communist state in post-war Slovenia and Yugoslavia has many aspects which must be considered, and it is not a simple task to give a short, but an overall picture. Actually, it consists of two main elements: the revolution and the formation of a socialist state.

The time span in which to analyse these problems should practically begin with the formation of the Communist Party of Yugoslavia (CPY). One should take into account all of its programs, declarations, policies and personalities in the 1920's, but especially the turn its policy took in the 1930's. In those years a new communist generation rose in the movement: a generation much more determined, disciplined and orthodox in its manner, schooled in Moscow that had precise and fixed views on the goals it meant to achieve and methods it was ready to adopt. This generation was then on the scene for many years after the Second World War, in Slovenia approximately until the end of the 1980's. It went through many challenges, but it never abandoned its basic philosophy. However, the most interesting and decisive was the period of the communist rise to power in the years 1944–46, that had the greatest impact on the character of the future regime in Slovenia and Yugoslavia.

In the beginning, it is necessary to determine the specifics of the Yugoslav case. It was a self-made revolution, which distinguished it from the rest of the Eastern European take-overs. This revolution took place in a multi-national country, and the national question played an important role in it. The national issue was also one of the main criticisms the CPY had against pre-war Yugoslavia, which had just barely started solving it on the verge of World War Two. The establishment of the Slovene and Croat Communist parties in 1937, not only showed the party's readiness to acknowledge the problem (even if it might have been only a matter of tactics), but it also gave the party a tactical advantage on the Slovene and Croat internal political scenes. The second main difference was, that the party had a strong, dedicated and disciplined party membership, although not so large, since it was an illegal party (with a selective cadre policy), with a leadership based at home and not in Moscow (or elsewhere). It was a party that was able to perform on its own, at the moment the situation was ripe. This does not mean it did not co-ordinate its moves within a broader cause of the so called *world revolution* (and ideological alliance) or that it did not look upon the Soviet Union (SU) as its natural ally.

The uprising in Yugoslavia in 1941, which was at the same time the beginning of a revolution, has already received no small measure of attention. Although most of it went to problems surrounding the events linked to activity of the Central Committee (CC) of the CPY and the central partisan leadership, the situation in Serbia and Croatia, the uprising in Lika, and the civil war that developed between the partisans and the chetniks¹ and less to some of its other aspects. We shall try to point out the latter, and not repeat the well-known facts.

The course of events in Slovenia in 1941 was somewhat different from that in the other parts of Yugoslavia, especially after it was cut off by the formation of the Independent state of Croatia (NDH) and divided by three occupiers. Immediately after the attack on Yugoslavia, the official Slovene political parties established a National Council, in order to deal with the forthcoming occupation of Slovenia. The Communist Party of Slovenia, being illegal, was not invited to join it. So the party established an organisation of its own at the end of April 1941, called the Anti-imperialist Front, together with the representatives of the leftist wings of the Christian Socialist movement (not a party, but a dissident wing of the predominant People's Party) and the Sokoli (Falcons, a nationalist sports organisation). A few representatives of the intelligentsia, well known for their activities promoting a 'Society of Friends of the Soviet Union' in the summer of 1940, also joined the Front.² The Yugoslav historiography, especially

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¹ I will try to avoid citing all the well-known literature on Yugoslavia in the Second World War, and bring to your attention some of the less known and newer works or editions of sources, especially those regarding Slovenia.

² These activities went on until December, when Josip Vidmar, the future president of the Slovene Liberation Front – OF, submitted a document that had almost 18,000 signatures for the establishment of the Society, to the Soviet embassy in Belgrade. These activities were organised by the same political groups that in 1941 joined the Anti-imperialist Front.

after 1948, always made it a point that these preparations (and the party meetings and proclamations of May 1941) were to show the independent party policy of a partisan uprising that took place before the attack on the Soviet Union.

These assertions are nowadays being contested. First, by the fact that any form of uprising can well be attributed to a general anti-occupational feeling, and not only to the party or the partisans. There were at least two motives that strongly incited these feelings in Slovenia: the actions of the Kulturbund³ and the German deportations of the civilian population, which started in June 1941. It is also important to know, that the Communist Party propaganda of that time, still stuck to its anti-imperialist stand, instigated by the policy of the Comintern after the Ribbentrop-Molotov pact. It was directed mainly against Great Britain.⁴ The party kept this up until 22 June 1941. The other point that is being made is, that whatever the communist activities were up to that date, they were not a general uprising. They were merely preparations, and the same was being done by other parties and groups, as well.

The uprising after 22 June 1941 was different; it was strongly in the hands of the party. This is already clearly to be seen from Tito's first report to the Comintern on the same day. He reported on how the party issued a call⁵ for an armed struggle against the fascist occupiers and was organising fighting groups throughout the country, led by *military-revolutionary committees*. What followed was a very outspoken revolutionary party line that lasted till mid 1942, in Slovenia until the fall of 1942. The CPY kept this stand regardless of the policy of the SU, which at the time withdrew its socialist slogans, replacing them with patriotic and nationalist ones. The telegrams coming from Moscow called for a united front with other patriot groups and parties. The CPY only partly complied. It did address its proclamations to the whole nation, saying this was a fight that involved everyone. It also tried to prevail on other parties to join the liberation movement. In this spirit, talks went on with Dragoljub Jovanović's Agrarian Party in Serbia, but with no outcome. However, the CPY addressed the communists separately, giving them instructions and keeping a close watch that the organisation it was putting up was under strict party control. For instance, political commissars were immediately introduced into the fighting groups. Even of greater importance was the fact that the party started to persecute the political efforts of the big pre-war parties and their outspoken politicians, right away. It contested the policy of the Yugoslav government in exile in London, and those back home who were faithful to it.

After the attack on the SU, Slovene communists publicly proclaimed that the time for the revolution has come (in the spirit of the world revolution). This proclamation already included a forewarning of a possible intervention against the revolution, as well. Shortly afterwards, they introduced the term white-guard for all those who opposed them. These were only meaningful details, but they clearly showed that the party was following the theoretical recipe from the obligatory party literature (the well-known "History of the VKP/b" from 1938 and the works of Lenin and Stalin). In mid-September the Liberation Front took a more energetic stand towards all those who did not join it. It introduced a decree, stating that all who left the liberation movement and organised their own groups, thus harming the liberation movement, were national traitors (beside collaborators, denouncers, etc.). The decree provided for a death penalty for such deeds, and the formation of extraordinary courts to pass sentences. In mid-August, the party also set up its own intelligence service, with a branch in charge of executions, and an armed militia, called the Narodna zaščita. The intelligence service (its original name was Varnostno-obveščevalna služba – VOS – Security and Intelligence Service), was the first of its kind in Yugoslavia, organised after the model of the one in the Soviet Union. Elsewhere they established it much later, in 1943.

Such Party moves did not go unnoticed by other political parties and groups in Slovenia. After their first enthusiasm over a joint liberation movement, they began asking questions about the status of the non-communists in such a united Liberation Front. The ones that had not joined it yet began demanding that the Front should be organised as a coalition of independent and equal parties.⁶ Disagreement on

³ The Kulturbund was a pro-Nazi organisation of the German minority in Slovenia, which welcomed the occupation of parts of Slovenia by Germany and gave to the occupation forces, lists of Slovene nationals to be deported either to concentration camps and labour in Germany, or to Serbia and the Independent state of Croatia.

⁴ Cf. Walter's (Tito's) telegrams to the Comintern in June 1941, published in Josip Broz Tito, *Zbrana dela (Collected works)*, vol. 7, Ljubljana 1981, pp. 18–25, 41 (this edition was preceded by one in Belgrade, the edition consists of volumes 1–29).

⁵ *Ibid.*, p. 42. Tito wrote this proclamation; after the meeting of the Central Committee of the CPY on 22 June 1941, others followed.

⁶ At the end of July 1941, the leadership of the Anti-imperialist Front of the Slovene people held a meeting and changed its name into the Liberation Front (OF). Then some of the liberal fractions and officers of the Yugoslav army already joined the movement, and later, at the beginning of August, another group of left-winged and pro-Soviet liberal intellectuals joined, while talks were held so that the young liberals and the moderate fraction of the Slovene People's Party also would join. *Dokumenti ljudske revolucije v Sloveniji (Documents of the People's Revolution in Slovenia)*, vol. 1, Ljubljana 1962, pp. 62, 64, 67.

the issue of the restoration of Yugoslavia was also present. The liberals reproached the communists for being against Yugoslavia, accusing them of separatism and of an intention to change Slovenia into a socialist republic of the Soviet Union.⁷ The partisan-Mihajlović conflict, just then arising in Serbia, would only enhance those disputes. Slovene liberals from different fractions defended the legitimacy of the exiled government in London, since it was for them a question of principle. They disbelieved and contradicted the partisan public statements and propaganda on Mihajlović's collaboration that reached Slovenia in late November 1941. Naturally, all of these disputes resulted in a split in the Slovene political scene. Further talks with the big pre-war parties about joining a united Front were abandoned. The liberal groups, that had already joined the Front, were expelled from it at the break of 1941–42. At the same time the communists put all sorts of pressure on their opposition, including executions of death penalties for exposed political figures, whom they considered to be traitors. This set the civil war on foot. It started gradually, with individual acts of violence by the VOS. Overt armed conflicts erupted in the summer of 1942. Such a situation then gradually led some, not all, anti-Communists to the unavoidable act of collaboration.

After the described split in the Slovene political scene, talks began between the liberals and the largest pre-war party in Slovenia – the SLS (Slovenska ljudska stranka, the Slovene People's Party). Both sides had a long history of differences and were traditionally opposed to one another.

The SLS also had its reservations towards a future reinstatement of Yugoslavia. However, the liberals gradually succeeded in persuading them to follow the policy of the exiled government in London on the line of the continuation of Yugoslavia. Together with other parties (the Socialists, a fraction of the Democrats, a fraction of the Christian Socialists and other minor groups) they established a political union, called the Slovene Alliance. In its program, the Alliance declared itself for the liberation of Yugoslavia as a federation, for a United Slovenia, for social changes and so on. The Alliance was in contact with the London government, the Slovene politicians in exile and other institutions, throughout the war. After the war, the secret police charged some of its members as agents of the British Secret Intelligence Service. Such accusations were customary for the political purges in post-war Eastern Europe. By my estimate, they were part of the ideological paranoia that kept looking for all kinds of connections and plots of world reaction aimed against the socialist states. For the same reasons, the archives regarding these issues have been unavailable, until now.⁸

The Alliance decided to keep trying to reach a settlement with the communists, which never happened. The status and dilemmas of the Alliance were similar to those of other pre-war parties elsewhere in Yugoslavia. Like the Croat Peasant Party (HSS) in Croatia, Mihajlović, and others, they stood for a policy of waiting for the Allies to invade the Balkans and then call their troops to an open fight against the enemy. In the meantime, they would provoke as few enemy reprisals as possible, but keep an organisation (also military) going. They also insisted that all political issues should be left open and settled after the war, with free elections. A similar policy was advocated by the exiled government in London. The communists, on the other hand, contested it strongly.

The Communist Party of Slovenia (CPS), then numbering over 1,000 members (without the Communist Youth – SKOJ), pressed for differentiation of the Slovenes from the very beginning. Because of this enforced and forceful differentiation, one of the leading Slovene historians on the Second World War, Prof Metod Mikuž, wrote that in Slovenia at that point, one cannot find quislings in the exact meaning of the word, but mainly counter-revolutionaries.⁹

The communist propaganda asserted that all *bourgeois parties* betrayed the liberation of the Slovene people, that the CPS was the only one worthy of trust, and only under its leadership was the future existence of the Slovene nation secure. They also proclaimed they were fighting for a United Slovenia; namely, the programme for the unification of all Slovenes (meaning also those living under Italy and Austria) was an old one that never failed to mobilise the Slovenes. In World War Two, when it again seemed to become reality, it became one of the main reasons for Slovenes to join the liberation fight, even to such an extent, that they were ready to disregard, undermine or underestimate the obvious revolutionary intentions of the communists in the Liberation Front.

⁷ Then there were definite idealistic ideas of Slovenia becoming a Soviet republic in a much enlarged USSR.

⁸ The archives of the secret police in Slovenia were not seized after the democratic elections, as in some other post-socialist countries. Thus, according to my knowledge of the missing materials, some are unavailable for the public and historians. The archives that were handed over to public archives contain only a lesser part of the material, mainly those regarding the period 1945–52.

⁹ M. Mikuž, *Pregled zgodovine NOB v Sloveniji (Review of the History of the Liberation Movement in Slovenia)*, vol. 1, CZ, Ljubljana 1960, p. 302.

The party propaganda also kept stressing that the future of the Slovene nation was bound to the future of the 'great Russian people', the Soviet Union and praised Stalin. The Slovene communists believed that world revolution was just about to erupt, that it was unavoidable. A revolutionary upheaval was imminent in Germany and this would end the anti-fascist coalition.¹⁰

Their belief was so strong, that even the signature of the mutual aid pact between Great Britain and the Soviet Union in May 1942, did not deter them. Boris Kidrič, one of the leading Slovene communists besides Edvard Kardelj, explained (at a Slovene party conference in July 1942) that the pact was only a slight postponement and we must be patient and wait for the moment when the SU will announce the fight for the sovietisation of the world.¹¹ Such an analysis naturally brought about the conclusion that the time has come for the second phase of the revolution and for open class struggle. Action followed: persecution and liquidation of the clergy, the opposition, etc., on ideological grounds started in Slovenia and in other parts of Yugoslavia (Hercegovina and Montenegro). So did the consequences of such a policy. There was a downfall of the movement in Slovenia. Now the parties inside the Liberation Front started to turn their backs on the communists. There was a serious decline in the numbers of the partisan forces all over Yugoslavia.¹²

The CPY was forced to abandon this revolutionary policy. However it did not do so for internal reasons only. It came also as a result of pressure from Moscow. This pressure originated from Soviet interests in keeping its good relations with the Western Allies. Moscow knew about all these military and political moves of the Yugoslav partisans, since Tito was in regular contact with the Comintern. He also made many allusions to political moves that would be useful for their common cause. At first their communication was indirect and slow, through Kopinič in Zagreb. But from 9 February 1941, there was a direct radio-link and political and military reports travelled back and forth daily. There was also a partisan radio station in Moscow, Radio Free Yugoslavia. For some time even the communication between the Slovene and Tito's Supreme headquarters travelled through Moscow.

The Western allies were in the dark regarding these links the partisans had with the Comintern at that time. The British kept trying to bring about a unification of the Tito and Mihajlović forces. But they met with several obstacles: their communications with the Allied missions in Yugoslavia were irregular, assessment of the situation in Yugoslavia was almost impossible, as was their co-operation with the ever disputing Yugoslav government in exile. At one point, their contacts with Yugoslavia were so low, that they tried to reach Mihajlović through the Russians (March 1942). They appealed to Moscow many times that it should try to discipline the partisans. In return they got elusive answers and delayed replies that the SU did not want to get involved in the partisan-chetnik quarrel.¹³ However, the Comintern did reprimand Tito because of his policy. On March 5 he got a message, that instead of a patriotic war, he was leading a communist partisan movement and carrying on sovietisation, it questioned his assessments of the co-operation of London with the Germans, reprimanded him for allowing a situation to arise in which the British succeeded in organising anti-partisan forces in Yugoslavia, which again was against the goal of their common communist cause. Other critical remarks followed in June (on behalf of accusations of partisan reprisals) and on August 9 (regarding sectarianism of the CPY and naming partisan units proletarian brigades). This criticism then travelled down through the hierarchy of the partisan movement in Yugoslavia, the name proletarian brigade was replaced by udarna brigada (shock brigade), and the policy changed to a broader patriotic one. It was, of course, only a tactical move, well known in the communist movement. At the same time the Soviet government gave a thorough explanation to the British government why it did not wish to back up Mihajlović and presented them a memorandum containing proof of his collaboration with the Germans.¹⁴ Slowly, the British began

¹⁰ This was prompted by the policy of the CC of the CP of Yugoslavia. At the turn of 1941–42, it assessed that, due to the Soviet victories on the eastern front and Stalin's speech on Nov. 7 1941, the war was going to end in a few months or at most in a year. Thus the time for class struggle was right (and the counter-revolution was uniting its forces), therefore we must fight it out with all means (J. B. Tito, op. cit., vol. 8, pp. 77, 218, 235, 236). In Slovenia talk of civil war also intensified.

¹¹ Bojan Godeša, "Priprave na revolucijo ali NOB" ("Preparations for a Revolution or a Liberation Fight"), *Slovenski upor 1941*, Ljubljana 1991, pp. 74–75.

¹² The same occurred in other parts of Yugoslavia. For example, by July 1942, Tito had a force of only about 3,800 men left, which was also partially due to the strong Italian offensive in May and June 1942.

¹³ The British-Yugoslav relations at the time are discussed in extent in: Mark Wheeler, *Britain and the War for Yugoslavia, 1940–1943*, CUP, New York 1980.

¹⁴ At this point we must agree with the points made by L. J. Gibianskij, *The Soviet Union and New Yugoslavia*, Moscow 1987, pp. 49–52, where he stresses that the partisan movement was receiving full support of the SU and not as some authors like to stress, especially after the 1948 split, that Moscow supported the Yugoslav London government in exile, i.e. Mihajlović, for practical political reasons.

to reconsider their policy towards Yugoslavia, with the well known outcome in 1943. However at the time, they still assessed that partisan propaganda was not objective evidence of the charges brought up against Mihajlović.

The change in the policy of the CPY reached Slovenia by autumn 1942. Moscow's criticism finally made the Slovene communists realise that the moment for world revolution was not yet ripe. They finally understood that they would have to put up with the Liberation Front – OF, for some time to come. For the first time in many years, they were ready to truly accept and meet the standards of a policy of a broad people's front (7th Congress of the Comintern) and apply them to the OF. This meant that they were prepared to meet some of the demands of the parties inside and outside the Liberation Front, demands they had previously turned down in 1941. The Slovene CP was now ready to renew its talks with the moderate parties outside the OF, the so-called "sredina" (the middle), i.e., parties, or parts of them, that had not joined either side in the civil war; (they kept that stand till the end of the war).¹⁵ The CPS was willing to accept a representative of the socialist party into the OF (namely F. Svetek, a renowned anti-Communist). At the same time, the CPS conceded a larger amount of freedom to other groups inside the OF (the Christian Socialists and Sokoli) and even established posts for three assistant political commissars in the army (one from each party), something that never happened before or since.¹⁶ These concessions went so far that they collided with the party line once more.

In January 1943, the politburo of the CPY sent Ivo Lola Ribar, a member of the Supreme command, as a delegate to Slovenia. His task was to strengthen the loose ties between the liberation movement in Slovenia and the CC of the CPY and to "broaden the Slovene narrow outlook" (which meant their self-sufficiency and isolation from the rest of Yugoslavia, for which the Slovene party was responsible). After he assessed the situation, Lola's primary criticism went to the Slovene CP. He admitted that the Slovene party tactics to encourage and give initiative to the OF had its positive aspects. It achieved an expansion of the partisan fight, but it also had its negative consequences. The "masses" in Slovenia were not tied to the party and the party was not the primary leader of the liberation fight. The masses did not recognise the party as the leader of the Liberation Front. He reported to the central leadership, that there was "rotten democracy" in the Slovene army and in the overall state of things, that fighting party sectarianism led the party to the other extreme.¹⁷

So, the CP of Slovenia tackled the problem of inner relations in the Liberation Front again. Again it reversed its policy, now for good. This was done under the watchful guidance of Kardelj, who was responsible for Slovenia and Croatia in the CC of the CPY. The Slovene communists reproached their partners in the Liberation Front (mainly the Christian Socialists), that they were promoting their own separate organisations inside the movement. They decided that they should prevent this, with all due strictness, and institutionalise their own vanguard role. In February 1943, Kidrič made it very clear: if their partners chose to establish their own political parties, the party would end all cooperation with them in the Liberation Front. The party would also be obliged, due to the stage their fight was in, to instantly liquidate such parties on the field.¹⁸ On March 1 The CPS made their political partners in the OF sign the so-called "Dolomitska izjava" (the Declaration of Dolomiti – a range of hills near Ljubljana where the political leadership was situated). The declaration determined that the communist party was, as leader of the liberation movement, the only party entitled to its own party organisation, while all other groups in the OF renounced their right to keep their own organisational structure, and agreed to be represented by a joint assembly of activists of the OF.

During these political turnovers, another element of the future was slowly springing up – the hierarchy of an alternative state system of liberation councils (in Slovenia, the committees of the OF), claiming their right of representation of the Yugoslav people. Only in July 1942, the leadership of the CPY (including Kardelj) had criticised the Slovene leadership for setting up a national liberation council with commissions (poverjenišтва, that were later established within AVNOJ as predecessors of the future ministries). Kardelj reported to Tito, that the Slovenes went so far as to appoint him some

¹⁵ After the war, most of its members stayed on in Slovenia and were later on persecuted by the UDBA and sentenced on different politically arraigned court trials.

¹⁶ B. Godeša, op. cit.

¹⁷ Ivo Lola Ribar, *Ratna pisma (War Letters)*, assembled by Jozo Petričević, Zagreb–Beograd 1978, pp. 197–199.

¹⁸ *Dokumenti ljudske revolucije*, vol. 5, pp. 458–459. These were Kidrič's directives sent to the party organisation in Ljubljana. They were mainly directed against the Christian Socialists inside the movement, categorically undermining any attempt to make a coalition out of the OF, instead of a unified organisation.

kind of “minister” and that this government of theirs was a great foolishness, a ridiculous operetta.¹⁹ However, what Kardelj, and later on Ivo Ribar - Lola, were basically opposed to, was the fact that the Slovenes were ‘proceeding at their own pace’, which he reported as “separatist dangers”. The way the CPY fought against such phenomena, was only to show how far it was prepared to go in its national policy, in spite of the general premises of this policy, that were set by Tito. In his famous article of December 1942 on the national question in Yugoslavia, he proclaimed national equality and the policy of ‘bratstvo i jedinstvo’ (brotherhood and equality).²⁰ The reaction of the CPY to Slovene initiatives and solutions, even if they later adopted them as their own, was just an anticipation of problems yet to come.

The politburo of the CPY changed its outlook on this issue at a meeting on 8 September 1942, ruling that the liberation councils were to become the new form of government. (The general form and jurisdiction of these councils had been already determined earlier by the so-called Fočanski propisi²¹). They were now to replace the pre-war, ‘old, bourgeois’ establishment. Now preparations began for the formation of a body called the “National committee of liberation of Yugoslavia”, whose purpose was to take the place of the government in exile in London. Such a decision of the Yugoslav party put the Soviet government on the spot again, regarding its relations with the Allies. Therefore the Comintern suggested to Tito, that he could form an all-Yugoslav political representative body, but merely a general political one and not one with executive and jurisdictional power. The Yugoslav leadership accepted this to a certain extent. They did not set up an alternative government (because of international circumstances, as Tito explained at the meeting), but just the Anti-fascist Council of People’s Liberation of Yugoslavia (AVNOJ). However, at its founding session in Bihać in November 1942, they spoke out very clearly about the nature of the revolutionary changes taking place in Yugoslavia. The Bihać meeting openly condemned the government in exile as a “popular (national) traitor” (izdajnik naroda) and proclaimed there would be no restoration of the pre-war regime.

This marked the end of the stage of revolutionary revolt and upheaval in the policy of the CPY, and the start of a new phase, of a gradual take-over of power, a process that went on until the elections of the Constituent Assembly in November 1945. It was by no means less revolutionary in its goals. It was just tactically more premeditated and refined, with a predominance of a policy based on the *raison d’état*. Its main characteristic was the formation of an alternative state system, which systematically undermined the pre-war political regime. It was to become a *people’s government*, based on *true democracy*. Revolution was not openly spoken of any more because of internal and international reasons. This meant that the CPY made concessions in order to achieve an international recognition for the transition. The process took into account, almost to the dot, the elements described in Lenin’s *State and Revolution*. Now the party and partisan leadership kept on emphasising the fight against the occupation forces, the struggle for the fatherland and the policy of ‘brotherhood and unity’. Analysing the main characteristics of this stage of the Yugoslav revolution, I have called it a ‘*revolution from above*’.²²

Such a policy was, of course, much more in harmony with the policy of the Comintern. The dissolution of the Comintern in May 1943 did not alter the contacts between the CPY and Moscow; the only change was that the telegrams were henceforth addressed to Georgi Dimitrov. Meanwhile the British policy towards the partisan movement changed in the spring of 1943, which was another good reason for the new behaviour of the partisans. At the same time, the CPY tried hard to show it was leading a clear and balanced national policy, and its commitment to Yugoslavia, since this too was tactically very opportune. In fact it was to be another successful alternative, this time to the never-ending

¹⁹ *Dokumenti ljudske revolucije*, vol. 2, pp. 323–324. Report of CPY politburo member E. Kardelj from 14 July 1942 to Ivo Ribar - Lola on the situation in Slovenia. Kardelj was very much against such a government at the time, although he did approve of promotion of the idea of national liberation councils in general and reported in the same letter that the elections into these councils strengthened “our positions” and that they were by character a special form of Soviets.

²⁰ Ivo L. Ribar, op. cit., p. 198 and J. B. Tito, *Zbrana dela*, vol. 13, p. 66. “The national question in Yugoslavia in the light of the national liberation movement.” Ivo Lola also pointed out that the Slovenes were the only ones in Yugoslavia to act as a whole and appoint delegates to the AVNOJ meeting in Bihać, while the rest of the Yugoslav representatives at the meeting were picked out and called by the Supreme command. He also pointed out some other signs and examples of such sectarianism, finding a cure for this in establishing closer ties between the Slovene and Croat partisans.

²¹ Fočanski propisi, Sarajevo 1981. They were a set of rules for the establishment and functioning of the local national liberation councils, written in Foča (then the capital of the partisan liberated territory) at the end of February 1942 by Moša Pijade. Some authors consider they originated from the Slovene form – the councils of OF. For many years to come, they were the basis of the so-called people’s democracy in Yugoslavia, representing a form of local administration and government.

²² The developments that follow hereof are discussed in detail in my book: Jera Vodušek Starič, *Prevzem oblasti 1944–1946 (The Take-over of Power in 1944–1946)*, Ljubljana 1992.

and futile Serbo-Croat disputes in the political circles of the Yugoslav government and politicians in exile.

Thus the first ZAVNOH (the Land Antifascist Council of People's Liberation of Croatia) met in Croatia in June 1943, and the second followed in mid-October. In Slovenia a meeting of the Slovene people's representatives gathered in October 1943 and elected the executive body of OF, which at the same time assumed the function of a supreme liberation committee. To sustain and popularise these steps, intensified party activity and party reorganisations followed. Party courses for the partisan leadership started, especially for political commissars. They were organised by the central committee of the CPY (Viša partijska škola CK KPJ) and on land (national) levels. The same went for other political work (organisation of antifascist women, youth, etc.). The party gave special attention to intensification of political propaganda against all those who had not yet made up their minds to join in, setting up special departments for propaganda. This new policy gained momentum slowly, mainly due to a large German offensive on the partisan forces, which lasted practically from January to June 1943 (caused by the threat of a possible Allied invasion in the Balkans). However, as the Italian collapse approached, it grew steadily.

In the months before September 1943, when it appeared that the war might be approaching its end, another initiative to reach a settlement between the partisans and the counter-revolutionary forces in Yugoslavia was made. The Soviet government, in spite of its ties with the partisan leadership, still formally refused to intervene. The British made yet another of their many requests to Moscow, asking in the spring of 1943 for Soviet assistance in establishing British-partisan contacts. However, Moscow's answer was still the same: no intervention into the chetnik-partisan relations was acceptable; it was an internal matter of the Yugoslav people, a problem for the Yugoslav government in exile to solve. The SU denied having any contacts with the partisans. Therefore the initiative came from King Peter. He gave a public statement that the Yugoslav government wished for a united action against the occupation forces. The government in London sent orders on these lines into Yugoslavia in mid-May, asking Mihajlović to drop any contacts with the occupying forces and quislings. A similar request went to Slovenia, to the Slovene Alliance, asking if it was possible to reach a settlement between the Alliance and the partisans, pointing out some leading personalities on both sides (again liberals and Christian Socialists), who would start the talks. Reciprocal killings should stop and both sides should start collaborating on the grounds of Slovene national unity in a federal Yugoslavia. The leaders of the pre-war Slovene parties welcomed this initiative and sent word to the partisans asking for talks with the OF.

But the answer of the CP of Slovenia was nebulous. They feared that an opening of a Balkan front would split the Slovene anti-fascists into a pro-Soviet and a pro-British camp. So they issued orders, to intensify the policy of drawing all the neutral elements into the Slovene Liberation Front, but not giving their political leaders any power in the OF. At the same time their 'opportunistic policy' (the policy of non-involvement on either side) received public disqualification daily. The party had no serious intention of taking up the proposed talks, but intended to use the proposals of the opposition for propaganda purposes.²³ This was part of a general policy in Yugoslavia that advocated incorporating the membership (the ranks) of pre-war parties into the liberation movement, thus cutting them off from their leadership and causing the disintegration of such parties. It was also convenient to win over politicians who were popular, by giving them symbolic, ephemeral positions. This policy was systematically carried on in the months to come. An example of it was also the beginning of the incorporation of the Hrvatska seljačka stranka (Croat Peasant Party) in Croatia, followed by the request that its members denounce their leader Dr Vladko Maček,²⁴ followed by harsh propaganda against him (he namely upheld the policy of postponing the uprising to the moment the allies disembarked in the Balkans). Tito's answer to King Peter's initiative, telegraphed to the Comintern on 16 April was in line with such a policy: the government in London should renounce Mihajlović and order the chetniks to join the liberation struggle.²⁵ His main motive was also to prevent the possibility of military and political interference of

²³ There were contacts between the OF and the so-called 'middle' at lower levels. These talks ended with reproaches to the OF – of communist terror inside the liberation movement and their 'crimes' (political murders) against the opposition. (*Dokumenti ljudske revolucije*, vol. 7, pp. 222–223, 605–607).

²⁴ J. B. Tito, *Zbrana dela*, vol. 16, pp. 66–67. On 14 August 1943, Tito sent a telegram to the CC of the CP of Croatia, stating also that he was against a Croat Peasant Party organisation inside the liberation movement. We can judge the importance of the political moment in Croatia (the talks and relations with the HSS) by the mere fact that Tito sent three additional members of the Politburo of the CPY, with instructions, to the Croat headquarters (Kardelj was already there).

²⁵ J. B. Tito, *Zbrana dela*, vol. 15, pp. 3–5.

the Western Allies (mainly Great Britain) in Yugoslavia, because he assumed and feared they would side with the 'bourgeois' political parties and obstruct the revolutionary process.

In Slovenia, the collapse of Italy resulted in a sizeable gain of territory by the partisans (as it did elsewhere: the Eastern Adriatic coast, parts of Macedonia, Bosnia, etc.). They held some of this territory only for a short spell, but some was never to be recovered by the Germans again. The arrival of the Germans into previously Italian-held territories caused a massive departure of people who feared them, into partisan ranks. But during the interregnum, the Slovene partisans made fierce attacks on their internal enemies, the white-guards and the chetniks or blue-guards (as the partisans called those who considered themselves the king's army). The latter were gathering their forces in order to join the Anglo-Americans, who they thought, were about to disembark in Istria. This, of course, was a wrong estimate. The partisans refused talks with them, militarily defeated them both, and put their captured leaders on trial in October 1943, while they secretly executed most of the soldiers. This meant the end of any possibility of future talks and compromises between the Liberation Front and the parties outside the liberation movement. The result was that the counter-revolutionary block ended up forming its united forces, the Slovene Home-guard, that stood under German protection. They did keep some illegal forces, as well, and illegal work went on communications with London). But all this was far from being as widespread as the partisan movement.

By the time the Allies agreed on a joint policy to support the partisan forces in Yugoslavia at the Teheran conference on 28 November 1943, which in reality meant the international recognition of the partisan fighting forces in Yugoslavia, the process of the formation of a new state was well under way. Now the partisans moved further and pressed for the recognition of their new political representative body, AVNOJ, which met at its second session in November 1943 and declared itself the supreme legislative body. It appointed its executive body, the National committee of the liberation of Yugoslavia (NKOJ), and issued decrees depriving the government in exile of the right to represent the Yugoslav people and proclaiming that Yugoslavia was to attain a democratic and federate rule.

From this point on, the post-war political system and its main features were set. The most important ones (the United Popular Front, the army, the police and the judiciary) were in place before the war was to end, which in practice meant the installation of the repressive apparatus of the new state, and the one and only political organisation that was to supplant the pre-war political party system. The CPY was now concentrated on a different set of problems: the future legal system, elections, people's councils, and political unity. Since it had no such experience of its own, it constantly looked to the Soviet Union for the right solutions. It gradually introduced a centralised state and party system, which was to be expected, due to the model it followed.

However, the AVNOJ meeting of November 1943 gave only the basic, general framework of the new state. Immediately following the session of AVNOJ, its Presidency passed a decree setting up the Commission for war crimes.²⁶ From that point on, it refrained from elaborating any more specific laws or rules or for that matter, aspects of the new state organisation. For example, it did not specify the rules on civil courts of law, leaving this sphere of activity to military tribunals.²⁷ The politburo of the CPY and the central leadership (which were mostly the same people) were doing this deliberately; they just kept the general legislation open for revolutionary measures, as need arose and time was right. What they did was to stimulate the lower levels – the land (national, future republic) leaderships – to carry on the formation of the new system. It thus happened that these land assemblies were the first to introduce some of the new laws. This process went the furthest in Slovenia and Croatia, one reason being that both lands had more elaborate legal traditions, going back to the Austro-Hungarian Empire, as did some other parts of Yugoslavia. After the first meeting of ZAVNOH in Croatia, Kardelj promptly wrote to Slovenia that they should follow the Croat example in the organisation of military tribunals and other decrees (confiscation and requisition of enemy property, compulsory surrender of goods, etc.), as well as in other aspects of the organisation of liberated territories. These legal matters were handled

²⁶ The exact name of this Commission and the ones set up on the lower levels was: The Commission for the Ascertainment of the Crimes of the Occupiers and their Accomplices. In Slovenia it was founded on 19 February 1944 at the first session of SNOS – The Slovene National Liberation Assembly (earlier the Slovene National Liberation Committee) founded on the basis of the decisions of the Second session of AVNOJ in Jajce, November 1943. In Croatia it was formed 18 May. These commissions originated from the policy of the Allies, adopted at the Moscow and Teheran conferences in October and November 1943

²⁷ The Slovene representative proposed in January 1944, that the NKOJ should appoint a Supreme state court and Supreme state prosecutor, so they could immediately start prosecuting and trying war criminals. This was another one of the measures (as a decree on the prosecution for treason and of the enemies of state), that were drafted, but not adopted.

differently in the rest of Yugoslavia. There the peoples councils, or even more simply – the partisan commands, passed judgment on civil and military matters. They based it on natural law, which was widespread in those parts of Yugoslavia before the war.

After the capitulation of Italy, lawyers met on the liberated territory (in conferences and congresses) in Croatia and Slovenia to debate the problems of the future legal system. At the same time, their leaderships passed several decrees, such as compulsory mobilisation (the partisan movement was not a voluntary one any more), with sanctions for avoiding it. These decrees defined the crimes of national treason and crimes against the people. Penal law and the judiciary, both in the forefront of political activity, had the task of protecting the so-called *accomplishments of the liberation movement*, meaning the revolution. The partisan authorities defined and listed the most important crimes, in order of priority: high treason, which was not only collaboration with the occupier, but the organisation of military forces outside the liberation movement or against this movement, as well; then ordinary treason (lesser deeds such as panic, other kinds of sabotage, obstruction of rules, etc.). The last, and least important ones, were crimes against personal safety and military transgressions. They also made it clear that the ‘old’, i.e. pre-war laws could not be the basis for passing judgment; but instead, judges should follow the spirit of the official and political decrees of the partisan movement. It was up to the judges to interpret and make use of them correctly. In the meantime, they were to translate and study Soviet laws, as well as the works of Vyshinsky. The principles of Soviet law were to be incorporated into the legal decrees and practised, such as: the ultra vires principle, the idea of social justness, as well as the principles of the Soviet policy of punishment – they introduced correctional labour, and later on, labour camps. Other aspects of law were neither then, nor later (in the immediate post-war period) of great importance.

A true legislative offensive followed the meetings of the Slovene National Liberation Assembly in February 1944 and the third session of ZAVNOH in May 1944. It went on until the fall of 1944, when the politburo of the CPY stopped it, for reasons we shall try to explain. By that time, the central partisan leadership was in Belgrade, from where it started to run the whole country.

Both assemblies acquired legislative powers, beside their political ones, powers that corresponded to those of AVNOJ (as did other lands, as well). Both appointed Legislative Committees that were to prepare new laws and regulations. They also passed decrees regarding the organisation and jurisdiction of people’s councils (narodni odbori, then narodnooslobodilački odbori), rules for their elections, decrees on civil courts of law, etc. Slovenia went a bit further and established its own institution of Chief Public Prosecutor, modelled on the Soviet example. Croatia took a different step, and prepared a Code of Criminal Law and a Code of Criminal Procedure, which was the sole such example in Yugoslavia for years to come. Both assemblies passed bills on peoples and citizen’s rights (the Croat one differing slightly, accentuating the rights of Serbs in Croatia). By electing such an Assembly, the Slovenes now had to determine a new role for their all-purpose Liberation Front. They transformed it into a purely political organisation that was to operate on the basis of political unity – the pre-war party system was being disqualified on a daily basis in the party propaganda. In the summer of 1944, elections of the people’s councils and local OF committees took place on the liberated territory. The Slovene assembly also set up its own intelligence service (based on the previous VOS). Now it was not a party service any more, but it became part of the commissariat (future ministry) of internal affairs. They even went so far as to make independent arrangements to obtain a loan from the Anglo-American military mission for these purposes.²⁸ A very similar process was going on in Croatia, where there was a specific situation in the organisation of the United People’s (or Popular) Front (JNOF – Jedinstveni narodnooslobodilački front, later called Narodni Front) regarding the position of the Croat Peasant Party.²⁹ Both lands were leading a policy of lenience (“politika širine”) towards the non-communists in the movement at the time. In Croatia it meant a policy against sectarianism and of respect for the demands of the Croat Peasant Party. In Slovenia, where such demands could not be made, it meant respecting the voice of the experts – the intelligentsia, which had massively joined the liberation movement after the capitulation of Italy. There was, of course, no talk of a reinstatement of a coalition within the Front, and there was no change in policy towards the parties outside the Front. Both leaderships stressed that there would be

²⁸ This encountered a harsh reaction from the central party leadership and Boris Kidrič was suspended and “isolated” (imprisoned) for a while, because of it, until matters were straightened out. He wrote a “self-critical” letter to the central leadership, pointing out his sincere allegiance to the Party (J. Vodušek Starič, op. cit., pp. 81–82).

²⁹ The relationship of the Croat leadership towards the Croat Peasant Party and their legislative autonomy, are in my judgement, the main reasons for relieving Hebrang of his functions in Croatia in October 1944.

democratic rule in the future (in Croatia, Hebrang had gone as far as to say that the liberation movement was not introducing communism), and a system based on law, accentuating “national” patriotism, etc. They both had their separate specific reasons for doing all this, but it mainly happened with the consent of their reciprocal leaderships and because of the fact, as Banac puts it, that they were “well away from the Politburo’s eye”.

This, of course, could not go unnoticed for long by the central leadership. Moša Pijade was the first to criticise the fact that Croatia and Slovenia were developing a state system, which disregarded the indispensable close contact between AVNOJ and the land assemblies and didn’t wait for the initiative to come from the centre. Such matters require a unified solution for the whole country, pointed out Pijade, and these discrepancies should be corrected immediately.³⁰ Tito did so very soon, to some extent. Other measures followed later. He disregarded the solutions of the Slovene and Croat Assemblies and passed two military decrees in May 1944 in his role as Supreme Commander. Both were important, because they gave a decisive tone to the nature of the communist take-over of power, which followed during the gradual liberation of Yugoslavia in the second half of 1944 and in 1945.

First, Tito issued a decree on 13 May creating a centralised intelligence service, called the Department for the Protection of the People, popularly called OZNA. Its primary intelligence task was to fight all those who were hostile to the liberation movement. OZNA became part of the military structure, being responsible directly to the Supreme Commander and his staff and to the committee for popular defence (future war ministry) of the central executive body, the NKOJ. It had a strict hierarchical organisation. The central Director became Aleksandar Ranković, the organisational secretary of the Politburo of the CC of the CPY. Land directors were responsible to him, and so on – all the way down to the local (and later also factory) commissars. Its members were strictly members of the communist party. OZNA was internally divided into sectors, later departments. At first there were only a four – but the one that was important on the internal political scene was at work from the very beginning. It covered the activities of other (*enemy*) political groups, those inside the liberation movement, as well as the so-called *remains of the bourgeois political parties*. It was the basis of OZNA’s functions as political police that continued well after the war. OZNA kept files on all potential and arrested opponents of the regime and it was from the very beginning exclusively responsible for the arrests and prosecution of *political crimes*. From then on it played a key role in interrogation and in the prosecution (it prepared all of the material) at the military and, later on, regular courts. There is evidence that the Soviet military mission suggested this reorganisation of the intelligence sector.³¹ It is also a well-known fact that Soviet officers came to help set up this organisation in the future republics and that future OZNA high officials went for training to Moscow in spring 1945.³²

Tito’s second decree was the Decree on Military Tribunals that came into force on 24 May. It introduced a unified system of military tribunals. It also expanded the jurisdiction of the military over all civilians responsible for crimes of war (which in Yugoslavia had a very broad definition), all enemies of the people (meaning in this case, all political opponents, as well as, i.e. those opposed to the *rule of the people*). In this way, Tito cut short all the dilemmas and discussions on the competencies of the future popular (civil) courts and war-crimes commissions. The decree introduced penalties such as correctional labour, hard labour, expulsion from the country and the loss of ‘citizen’s honour’ (meaning political and civil rights). There was no possibility of appeal, although higher courts had to approve death penalties. The decree also introduced the possibility of amnesty.³³ All the land (future republic) legislative bodies received orders to comply with this rule and drop their existing laws. Slovenia and Croatia had to do so by fall 1944.

Then other political steps followed, which overruled the Slovene and the Croat independent policies. First, letters arrived from the central leadership, criticising different aspects of their behaviour. Kardelj wrote to Slovenia many times in the spring, summer and fall of 1944, and he even visited both lands in August and September. The common denominator of all his criticism was a single word – nationalism. There was a special additional reason for the central politburo’s interest in Slovenia at the time. First, there was the threat again (as the party saw it) of an Anglo-American invasion in Istria; thus Kardelj rushed off to Slovenia in

³⁰ B. Petranović, M. Zečević, *Jugoslovenski federalizam*, vol. 2, Prosveta, Beograd 1987, p. 20.

³¹ D. Biber, “Allied and Soviet missions and intelligence services in the liberation movement”, *Borec*, XLIII/1–3, (1991), Ljubljana, p. 132.

³² OZNA was aided by special military units, called the KNOJ (Korpus narodne odbrane Jugoslavije – Popular defence Corps of Yugoslavia). By spring 1946, OZNA was gradually incorporated into the Ministries for Internal Affairs and it was renamed the Department for State Security – the UDBA (Uprava državne bezbednosti), with organisational and cadre continuity. The only part that remained with the military was the counter intelligence service – the KOS (Kontraobveščevalna služba).

³³ This decree was never made public. It was published for the first time in Tito’s most recent collected works, op. cit., vol. 20, p. 125.

August 1944. And secondly, the Allied troops were approaching Yugoslavia through Italy, and were expected to enter the province of Venezia Giulia, a territory also claimed by the partisans. The arrival of the Allies presented a constant threat (even when the invasion of Istria failed to happen) of the West interfering in the revolution. On 14 October, a delegation of the politburo of the CPY replaced Hebrang, as well as the president of the Croat Legislative Commission, Dr Čulinović, and others. A letter by Kardelj followed to the Slovene Politburo, clearly stating that the Slovenes are showing similar tendencies as in Croatia. These errors were not yet grave, he said, but you should cut down such tendencies in their roots. Then Kardelj made his point: only the Politburo of the CPY had an oversight of the whole situation, and they should all respect its initiative and decisions.³⁴

During this party and state centralisation, talks went on and two agreements were reached (in June and in November–December) with the president of the Yugoslav government in exile, Dr Ivan Šubašić. Tito's tactics were to postpone formation of the joint government for reasons of internal consolidation of the partisan power, but at the same time to gain international recognition. Thus, as the first meeting with Šubašić was approaching, the leadership of AVNOJ and the CPY restrained from elaborating the future system (as described above). After the June 1944 meeting, they concentrated on the liberation of Serbia in the fall of 1944, which had strong political implications for the partisans (the final defeat of the chetnik movement); in the meantime they also strengthened their grip over the whole country (also mentioned above). While doing all of this, they kept postponing Šubašić's next visit, when Tito was to sign an agreement with him on the future joint government. They finally signed the agreement in Belgrade in November 1944, with annexes in early December. This also, by no accident, followed the renowned meeting of Churchill and Stalin in Moscow (the Percentage Agreement). Therefore, the November agreement contained some concessions to Šubašić regarding the future system, especially the annex, which included guarantees for the freedom of organising political parties, for free elections, the distribution of power among the independent legislative, executive and judicial spheres, democratic organisation of the judiciary, respect for the laws of the country and arrangements for the interim period until the elections.³⁵ The same tactics went on after Šubašić returned to London in December 1944, postponing formation of the Tito-Šubašić provisional government. When the Allies intervened again (in the statement of the Yalta conference), the provisional government was finally set up on 8 March 1945. The partisan leadership welcomed all the diplomatic delays in the meantime, gaining time, and organising the central ministries in Belgrade, to which they appointed their political 'commissars' and cadres, and from which they cleansed unwanted personnel.³⁶ They conscientiously did that in the future Ministry of Foreign Affairs, for instance, knowing that Šubašić was to become foreign minister.

In March 1945 Kardelj took over the Constitutional Ministry, thus gaining strong party control over the preparation of the future elections, as well as the constitution. In February 1945, the central leadership also abolished all pre-war laws of Yugoslavia that were in conflict with the principles of the liberation movement, i.e. revolution, but never gave any further explanation which laws it meant. The presidency of AVNOJ set up a Supreme Court and Public Prosecutor of Yugoslavia and defined the hierarchical system for both institutions. The primary task of both institutions was to protect the *achievements of the liberation movement*. Meanwhile a new form of martial law was introduced – the Tribunals for the Protection of People's Honour (*sodišče narodne časti*). Protests from the opposition in Serbia and from Šubašić followed, stating that the Agreement was not being respected, but to no avail.

A very similar dynamic took place in the case of the renewal of the pre-war political parties, even though they were part of the Tito-Šubašić Agreement. They were constantly put down in favour of the policy of a unified popular front. The CPY tactically conceded the revival of some political parties. However, this was only in the case of Serbia, and only for as long as it was tactically opportune, to appease the fears and protests of the West. In Slovenia the question never even arose, as it never came up in Bosnia and Hercegovina or Macedonia (where there was an aversion towards the pre-war parties, all of them Serb).

³⁴ *Dokumenti centralnih organa KPJ (Documents of the central organs of the CPY), NOR i revolucija 1941–1945, Izvori za istoriju SKJ (Sources for the History of the Party)*, IC Komunist, Beograd 1987, vol. 20, pp. 275–280.

³⁵ It appears that Stalin gave support to Šubašić on these matters during the visit Kardelj and Šubašić paid to Moscow in November 1944. Stalin obviously insisted on democratic elections in Yugoslavia, saying that they should not try some revolutionary experiment or imitate the Soviet system. (D. Šepić, *Vlada Ivana Šubašića*, Globus, Zagreb 1983, p. 336.) That would be very much in accord with Stalin's general policy towards Yugoslavia, although it strongly disappointed Kardelj at the time (E. Kardelj, *Spomini (Memoirs)*, Ljubljana 1980, p. 68).

³⁶ As the partisan movement gradually took over the liberated parts of Yugoslavia, it issued many decrees, among them: those that suspended all administration personnel and submitted them to a thorough check. A detailed account on all these measures can be found in my book.

Croatia witnessed a constant pressure for the renewal of the Croat Peasant Party, but even Šubašić's efforts in this direction were not successful. In the meantime, members of the politburo of the CPY held meetings with eminent pre-war politicians, with the aim to individually win them over for the Popular Front. They also enhanced the policy of incorporating the membership of the parties into the unified Popular Front, on lower levels, as seen before. Contradictory as it may seem, the Tito-Šubašić Agreements helped a great deal; they gave semblance of state continuity and legitimacy to the regime changeover in Yugoslavia. They also produced another wave of massive enrolment into the partisan forces of those segments which, until then, had supported the legitimacy of the exiled government in London. They now thought that the Agreement changed the situation and assured future democracy. Even the Amnesties that Tito and the new state served in August and November 1944 were a means to achieve the same purpose. The policy of a united political front reached its peak at the First Congress of the Popular Front in August 1945. From then on, the pressure against any kind of opposition mounted, until the elections for the Constituent Assembly on 11 November. The collapse of the remaining opposition was only an anticipated outcome. Established on much the same principles (in political and all-Yugoslav terms), were unified trade unions and organisations for women and for youth; they were founded in the summer of 1945. All pre-war organisations, unions and societies that did not join in were soon banned by the state and republic Ministries of Internal Affairs.

Tito visited Moscow at two crucial moments of this last stage of the communist take-over of power in Yugoslavia. His first visit took place in September 1944, just preceding the partisan invasion of Serbia, and the second in April 1945, preceding the liberation of Croatia and Slovenia. We have a fairly accurate account of his talks regarding the international situation. However, all aspects of his talks in Moscow are not yet public, such as the content of discussions about the internal situation in Yugoslavia, the punishment of the quisling and counter-revolutionary troops, the role of the OZNA, the future of the revolution in Yugoslavia, and so on. That they did talk about these issues, we can tell from Tito's account at the First Congress of the Communist Party of Serbia in May 1945. A delegate asked when should we expect the second stage of the revolution, and Tito explained that he had discussed with Stalin the differences between the Soviet and the Yugoslav revolution (where there was not to be such a distinct move from its first to its second stage).³⁷

The arrests, purges, mass-killings and trials that followed the end of the war in May 1945, were thus just a continuation and implementation of the already established state system and communist rule. These measures had not been so harsh in those parts of the country that were liberated before the end of the war. One of the reasons being that implementation of the Agreements was still under the watchful eye of the Western Allies. Most remaining chetnik troops and their sympathisers in Serbia joined the partisan fight. Because of the presence of their pre-war politicians and political parties, the secret police OZNA kept its purges at a reasonably low level. The leadership also took into consideration the doubts of the Americans on the nature of Mihajlović's movement. For the same reason, some of the chetniks (those who fled Yugoslavia after the end of the war) were never handed over to the Yugoslav Army.

However, when the liberation of Slovenia and Croatia came about in May 1945, all of these scruples and tactical impediments did not exist any more. In May and early June came the mass killings of the counter-revolutionary (some also overtly quisling) troops that the British Army turned over or turned back from Austria. Among them were also a large number of civilians, their followers.³⁸ Meanwhile many people were arrested, among them all leading political figures of the past. They were brought to court, sent to labour camps or released and kept under the watch of OZNA. Until fall, martial law ruled and civil courts were under suspension. The authorities carried on a massive confiscation of property, basing it either on military court rulings or simple decrees. In Slovenia 90 % of all industry became state property by September. When the Nationalisation Law was passed in December 1946, the state already ran most of the economy. The new authorities did everything to strengthen their political grip. There was little attention given to matters of economy, the ideological transformation of the cultural sphere, etc. These matters came on the agenda in the next few years.

After the elections to the Constituent Assembly, these harsh measures subsided. However the party did not lessen its pressure on any eventual opposition. In Slovenia, it first cleansed (eliminated

³⁷ *Osnivački kongres KP Srbije (Founding Congress of the CP of Serbia)*, IIRP, Beograd 1972, p. 212. At that point, Stalin obviously agreed, probably for international reasons, that even a constitutional monarchy could be a phase in the transition into socialism. That is what Kardelj told the Slovene Politburo in June 1945.

³⁸ It is impossible to find out the exact number of those liquidated. Today the number reaches 14,531 Slovenes and an estimate 65,000 to 100,000 Croats (mainly the Croat Home-guard, which was the regular army and not ustasha forces). Among them were also civilians.

from functions) all those that did not agree with its measures. It dealt with the remains of ex-parties by staging big court trials. In Slovenia these were: at the end of 1945 against the ex-liberals, in 1946 against the leaders of the Catholic Church and the Home-guard, in 1947 against the so-called 'middle', and in 1948 against members of the Communist party itself. These big trials went on until 1952.

However, these actions were only the consolidation of the power of the CPY and CP of Slovenia. Both actually came into power during the war. In the first place, by aggressively giving tone to the liberation movement and later, by leaving no space for the opposition. When they gradually accomplished this, they turned towards the take-over of the state and all political institutions, remodelling them according to their needs. It can also be said that, in general, the CPY followed a leftist policy in all this. The Soviet Union and the Comintern tried to appease that orientation for reasons of its own. However, it sometimes appears that such a leftist policy soothed the Soviets as well, and that their reprimands were merely a performance for the benefit of the Anti-fascist Alliance. This was true only to a certain extent since they did not approve of the CPY's dedication to world revolution, even after the war. Kardelj, for instance, explained to the Slovene party leadership in late June 1945 that Trieste was the necessary stepping stone for the spread of the revolution into Central Europe. That meant the idea of a world revolution was not forgotten and there is just reason to believe that this was one of the many reasons for the Cominform split.

In conclusion, it should be pointed out that the take-over of power in Yugoslavia was a self-made revolution, modelled and influenced strongly by its only living example – the Soviet Union. It started early and for that reason it developed its main characteristics earlier than the rest of Eastern Europe. The best proof of this is Kardelj's discussion at the plenary session of the Central Committee of the CPY in April 1948. Surprised by the Soviet accusations, he said the following: the period from 1937 to 1941 was the time of the recovery of our party, the strengthening of the ties with the "broad masses", and preparations for an upheaval. During the war the party created a strong regular army, it became "steeled" and it implanted the deep faith in the Soviet Union, helping with its own hands, the strengthening of popular democracy in Eastern Europe. In the third period (after the war), the party liquidated capitalism and carried out agrarian reform and nationalisation. We have always fought for the promotion of socialism in our country, "for pure Marxism-Leninism". The Soviet Union always acknowledged us, and considered our help correct and useful. All this has not been a small issue in these past ten years.³⁹

The state that came out of such a revolution was a thoroughly centralised state, which soon embraced all of the other principles of a peoples' democracy, such as a centralized planning system, nationalization, state-owned economy, five year plans, a cadre CP, state functions closely interlaced with the communist party, Soviet advisers and strong economic and cultural ties with the Soviet Union and its satellites, etc. The promises regarding the national question were set aside; the national question was declared solved.

³⁹ Archive of Yugoslavia, Archive of the CC of the LCY, II/2.

Damjan Hančič* and Renato Podbersič**

TOTALITARIAN REGIMES IN SLOVENIA IN THE 20TH CENTURY

1. Introduction

Slovenia is the only member of the European Union to have gone through all three types of totalitarian regime in the 20th century: Fascism, Nazism, and Communism. On account of the considerable lack of knowledge among both the Slovene and the wider European public, the authors in this article devote a few more words to the latter.

The west of present Slovenia, which in 1920 with the Treaty of Rapallo became part of the Kingdom of Italy, was the first region confronted with the first totalitarian system – Fascism. Italian Fascism denied any national rights to Slovenes (also, Istrian Croats) and tried to Italianize them. The nationally conscious Slovenes, above all priests and educated people were exiled and moved towards interior of Italy. However, the Primorska region or Venezia Giulia, was inhabited by Italians from others parts of the country. Fascist terror increased more and more, year by year, and flourished between 1941–43, when Italy occupied part of post-war Slovenia (the Drava Province) the so-called Ljubljana region (Notranjska, Dolenjska, Ljubljana).

The next totalitarian regime which affected the Slovenes was German National Socialism. This first influenced a Slovene minority in Carinthia, which found itself within the borders of the Third Reich in March 1938 after the “Anschluss”. Educated Slovenes, particularly Slovene priests, were the most affected. When the Germans attacked Yugoslavia and occupied a large region of the post-war Slovene territory, the circumstances aggravated. (Gorenjska, Styria, part of Carinthia). In these areas they immediately undertook rigorous denationalizing measures, which included not only the deportation of educated Slovenes, but also of a major part of the Slovene population from various regions. Then these areas were populated by the German population.

At the end of 1941, the Nazis and the Italian fascist authorities jointly achieved the migration of the Germans from Kočevje area and colonized them to the region of the Sava and Sotla rivers; the Slovene population had already been removed. This ethnic cleaning of Kočevsko was completed after the war by the Slovene-Yugoslav communist authority.

The third and longest totalitarian system in Slovenia was Communism. Its beginnings go back to before World War Two (WWII), but its crucial influence became stronger after the occupation of Slovenia in the middle of 1941, when it started a communist revolution under the pretence of liberation struggle against the occupation. This is shown in the monopolization of the resistance movement and the liquidation of political opponents even in time of war. On account of this, it is hard to distinguish precisely between the liberation struggle and the communist revolution even today, because both occurred simultaneously. Although there were some definite differences in individual Slovene regions: civil war and revolution took place mainly in the Italian Ljubljana region, while in the northern, regions occupied by Germans and Hungarians the so-called second phase of the revolution occurred, which during wartime had been set aside, even though it had showed signs of “ideological” struggle or communist revolution.

On account of the post-war division of spheres of interest in Yalta in 1945, the former Yugoslavia, of which Slovenia was part, belonged to the Communist Bloc, and therefore the communist system could develop to its fullest extent. After the break with Stalin (the Com Inform) in 1948, the communist terror increased and in many ways exceeded the violence in the Soviet Union. From the beginning of the 50's the severe regime began to weaken because of the dependence of the Yugoslav political system upon American aid, although it remained totalitarian until it broke up in 1990, which showed in many different fields. Thus we can already in the mid-1980s find individual cases of political trials, not to mention ideological platforms in the school and educational systems. Throughout, the system swung between so-called “liberalism” or détente, and tension. The most important period of Communist liberalism was at the end of 1960s, after the fall of the Interior Minister, Aleksander Rankovič, but at the beginning of 1970s this was smothered, due to fear that the system could be remodelled as multi-party pluralism, and again began the “Leaden times”, which lasted until the middle of the 80's.

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2. Fascism

2.1. The Primorska Slovenes under Fascism (1919–43)

In accordance with a secret London treaty (26 April 1915), the Kingdom of Italy occupied the western part of Slovene national territory after the First World War. First, it was under martial law, and then from August 1919 it was headed by a civilian commissioner. Although the Italian authorities promised the Slovenes (and Istrian Croats) all the rights they enjoyed under the Austro-Hungarian authority, things soon began to change. After the peace treaty signed at Rapallo in November 1920, when Italy's border was moved considerably to the east, the large Slovene minority, more than 300,000 inhabitants of Venezia Giulia, a quarter of the Slovene national region, found itself separated from the central national body. The treaty did not bind Italy to respect Slovene and Croatian minorities, but ensured protection for Italian minorities in Dalmatia.

The first fascist violence began. In the summer of 1920 fascists burn down the National House of Trieste, the centre of various Slovene offices and associations, which meant the beginning of rough policies towards "tujerodec", foreigners (Italian: *alogeni*). When the fascists came to power 1922, the circumstances were aggravated. By this time, the Italian authority in Venezia Giulia had close, burnt down or destroyed 130 buildings registered as offices of Slovene cultural, educational and religious institutions.

Despite the difficult circumstances in Venezia Giulia, the Slovene and Croatian representatives, particularly members of Parliament, decided to remain loyal to Italy even after the arrival of Fascism; so they did not join the legal Aventin opposition, which in 1924 on account of protests against the murder of Deputy Matteotti withdrew from Parliament. Despite the formation with deputies of the German minority in Gornje Poadižje (South Tyrol), they were not successful in the parliamentary battle for protection of national rights for Slovenes and Croats. On the contrary, the fascists started in-depth denationalization of all national minorities also by legislative measures. The Slovene and Croatian minorities no longer existed as political subjects. Their representatives persevered in exile with help of the Congress for European nations under the presidency of former deputies Josip Vilfan and Engelbert Besednjak, and with this they helped to formulate general European political points on solving minority problems. It is true that at that time the majority of European countries were not greatly concerned with the rights of ethnic minorities in their own regions as long as they did not try to violate them in one way or another. The fascist policy of "ethnic improvement" was ruthless because national intolerance from time to time overlapped the real racism that was accompanied by the totalitarian measures of the regime.

Soon after the occupation the deportation of Slovene officials, teachers and national employees began, and under the fascist government, this increased even more. Thus from this region approximately 100,000 Slovenes and Croats were deported up to the beginning of the Second World War: the majority to Yugoslavia, more than 20,000 to South America.

In the desire for immediate assimilation, the fascist authorities interfered with the educational system, in 1923 adopting the *Gentilijeva* educational reform, which gradually abolished Slovene and Croatian schools in Venezia Giulia. Teachers were moved into the interior, were fired or banished to the Kingdom of Yugoslavia. In the same year, the Italianization of local names began, followed some years later by surnames and personal names, and in some places even names on tombstones. By the end of 1927 the fascists had dissolved all "Slav" associations and by the end of 1928 all Slovene and the Croatian periodicals were banned.

The national government even interfered in local self-government, because elected Slovene mayors were replaced by authorities called "representatives" (*podestà*).

At the beginning of the thirties the violence of the fascist authorities against Slovenes and Croats strengthened in the economic field, by means of various economic pressures and even more by the systematic confiscation of rural estates. These properties passed into the hands of "The institution for agricultural rebirth of the three Venetos", which was established in 1921.

Men and boys from the Primorska region had to join military campaigns (Ethiopia, Spain, Albania) as Italian national servicemen. At the beginning of the Second World War, they are found in every battlefield where the Italian army fought. Soon after the beginning of the Second World War, in 1940,

the Italian authorities decided to mobilize less reliable Slovenes (and also Istrian Croats) in so-called “labour battalions” (*battaglioni speciali*).

The only remaining means of preserving Slovene identity in the Primorska region was through Slovene priests, although the fascist denationalization did not spare the Catholic Church, either, because after the scattering and exile of leaders and educated people, the clergy took over the role of Slovene guidance in national awareness, according to their own tradition from the time of the Habsburgs. The persecution affected the lower clergy directly, because it was carried out by attacks and police measures. The church hierarchy in Trieste and Gorica were also under great pressure, because in the preceding decades the upper clergy had earned a great reputation for their loyalty to Austria and affection for their Slavic countrymen in Italian eyes. The key turning point in the subordination of the border Church, which thanks to Fascism followed the new relations between the country and the Church, was the elimination of Archbishop Frančiško Borjic Sedej from Gorica in 1931 and Bishop Luigi Fogar from Trieste in 1936. Their successors gave effect to the Vatican guidance on “Romanization” in the same manner as in other Italian countries with “foreign” communities and also in Europe, where related phenomena appeared. This guidance was intended to prevent interference of totalitarian and national governments in church affairs, and to unite believers around Rome to protect Catholic principles together, because in Holy See’s opinion, they were threatened by the new social phenomenon.

At the beginning of 1930s, the nationally minded Slovene clergy united in The Secret Christian-Social organisation, which was established with the union of Slovene Christian Socialists and professional organisations of the Slovene and Croat clergy – the so-called Christian-Social political association “Edinost” (which fought for the rights of Slovenes and Croats under Italy from the end of the First World War, and was dissolved in September 1928) and the Saint Paul Chamber of Priests. The organisation aimed at secret national-defensive action with declarative irredentist goals, and acted with a professional (paid) web of confidants school departments, libraries, a secret press and so on, all of which was, based on precise annual budgets, financed directly from a secret fund of the Foreign Ministry of the Kingdom of Yugoslavia. The secret Christian-Social Organisation sent budgets for approval to the Governmental Commission and the Foreign Ministry in Belgrade, but they were particularly justified by Dr Engelbert Besednjak personally.

In the Saint Paul Chamber of Priests in 1936, for example, there 276 Slovene and Croatian priests. They played the most important role in the actions of the Secret Christian-Social Organisation (in a practical sense), since its members they covered the whole region of Venezia Giulia.

The actions of the Slovene clergy in Venezia Giulia have a broader meaning, not merely local between the two wars. On the basis of ideal-political concepts bound together Catholic right and Fascism with rebellion. It stretches far in the European context, from relations between the radical right (Fascism) to political Catholicism, which were then current in many European countries. And in the Church, thirty years later, without doubt mention guidance, which was the object of discussion on the Second Vatican Council and after it (question of natural law by usage of native language in Church, enculturation etc.). The secret anti-fascist actions of the Slovene and Croatian clergy in Venezia Giulia between the two wars are a unique phenomenon according to European criterion.

In 1933, this organisation took its own census of Venezia Giulia. Merely this census under the fascist regime, carried out in Venezia Giulia by Slovenes and Croats alone and passed on to the Kingdom of Yugoslavia, shows a unique organisational and political phenomenon, which was at that time represented by the Secret Christian-Social Organisation in the Slovene and the Croatian region joined to Italy under the Treaty of Rapallo.

Among the earliest organizers of resistance against Fascism must be mentioned the illegal anti-fascist organisation “TIGR” (Trieste, Istria, Gorica, Reka) established before the war and organized in regions under Italy after the First World War. Between the wars, its members replied to fascist violence with arms. A clash of arms between “TIGR” and Italian gendarmes on the 13 May 1941 on Mala Gora near Ribnica claimed the first “TIGR” victim (Danilo Zelen). “TIGR”’s was the first armed rebellion against Fascism in Europe. Militant organizations “Orjuna” and “Borba” were also active, but it was “TIGR” which achieved the largest bloom in the region occupied Italy, until the partisan phenomenon appeared. Against the Slovene nationalists who actively resisted Italian nationalistic politics, the fascist authorities held two trials organized and conducted by the highest national political and juridical bodies. In the first trial in Trieste in September 1930, four Slovenes were sentenced to death by firing-squad and were put to death, and in the second trial in Trieste in December 1941 a similar fate met another four nationalists and one communist.

For the region under Italy the twenties and thirties years were a period of economic crisis, which did not relent until the policy of autarky began. To the problems of the European economy between the wars was also added the negative effects of the renovation and separation of Danubian-Balkan region, which were vital for the economy of Trieste. The substitution of Italian intervention did not succeed in stemming the unpleasant economic tide. Although the economic tide showed weak ties with hinterland, it was saved by deeper causes. Neither Italy nor the border economy could destroy it. Now the absurdity of imperialistic theories of Italian nationalism in Trieste and Venezia Giulia as the Italian base for the breakthrough toward Central-Eastern Europe and to the Balkan was attested. Capacity to develop was also stopped and standards of living were often reduced, particularly among the lower social classes, who were mainly Slovenes.

Fascism in Venezia Giulia attempted to destroy Slovene and Croatian identity. The politics of denationalization decimated the Slovene population in Trieste and Gorica, scattered many intellectuals and the middle class, and forced peasants into the proletariat. But the peasants stayed united in this field. The most stable effects fascist policies attained were when it implanted the equalisation of Italy with Fascism in Slovene minds and drove them up to reject almost everything which looked Italian, with rare exceptions (some people supported Fascism). Hostile relations towards Italy took over also the Slovenes in Yugoslavia, although in the thirties the ideology of fascist corporatism attracted some among the Catholic political classes.

2.2. Fascist occupation of part of the Slovene region 1941–43

The Italian military attack on Yugoslavia meant the summit of many years' fascist imperialistic politics towards the Balkan countries and the Danube basin area. This was a violation of the Briand-Kellogg Pact (27 August 1928), to which Italy was a signatory. In contravention of the provision on the international humanitarian law of war, which does not permit the annexation of territory by armed force, Italy expanded to the region of Ljubljana (Provincia di Lubiana). National and cultural autonomy was ensured approximately to 350,000 inhabitants of the region of Ljubljana by statute. Although the occupying authorities greatly strived for faster assimilation of the region with Italian fascist system and for subordination of its institutions and organizations as appropriate Italian. On account of political, cultural and economic appeal of Italy, home population should be gradually converted to Fascist and became enthusiastic about Italianism. The fascist occupiers at first believed that the Slovenes would be easily subjected under the impression of the more valuable Italian civilization, so the Italian occupying policies at first were relatively mild. They wanted to gain the affection of the Slovene population, particularly social elites.

The Slovenes, in comparison with Nazis first saw the Italian occupying regime as less evil, so some political forces cooperated with them, although they were not inclined toward Fascism: the majority of Slovenes trusted in the victory of the allied forces after the first doubt, and saw the future of the Slovene nation in an anti-fascist coalition.

The Italian occupying authority at first respected Slovene cultural and educational autonomy, and these institutions continued their work almost undisturbed. The long-term aim of the Italians was without doubt the Italianization of the country, which they wanted at first to be gradual and less harsh than Germanization. Everything began with a bilingual public administration, compulsory Italian in schools, and the establishment of the auxiliary fascist organisations. The Italian assumption of an "Italian occupation with cultural benefits", which would drive out inferior Slovene culture in the fascist corporatist society, met with resistance and soon ended in violence and the burning of houses. It reached its peak in the time of big Italian, so called, the Roshka offensive against the by the partisan occupied territory, between June and November 1942. It became characteristic of the Italians to shoot hostages and deport people to Italian concentration camps (Rab, Gonars, Visco, Renicel etc.); in alone Rab more than 1,000 Slovenes died in desperate circumstances, among them many women and children. The plans for mass deportations from the region of Ljubljana were formulated.

During the occupation the Italians judged more than 13,000 people and at least 3,500 were sentenced to many years' imprisonment; dozens of people were sentenced to capital punishment, and 145 hostages were shot. The Fascist violence against Slovenes lasted until the capitulation of Italy on 8 November 1943, when the territory of Ljubljana and Venezia Giulia were occupied by the Germans and the Operative Zone of the Adriatic Sea was established (*Operationszone Adriatisches Küstenland*).

3. Nazism

In opposition to democratic systems, which are based on the legal equality of all citizens, National Socialism was based upon inequality. Its foundation was subordination. The Third Reich was established on racially organized and legitimized society, where the “perfect” Germans should be united in the people’s community and where legislative implementation against “inferior” nations would be justified. Therefore, the foundation of National Socialism was racism. The laws which regulating this were the so-called “Nuremberg Laws”, which deprived Jews and Roma/Sinti of German citizenship. During the war they were exterminated in massive numbers. Other nations, particularly the Slavs, were also considered inferior people. After the occupation in April 1941, these laws also affected the Slovenes of Lower Styria, Gorenjska and the Yugoslav part of Carinthia (Mežiška dolina), and members of the Slovene minority in Austria Carinthia after the “Anschluss”, i.e., from March 1935. When Germany attacked Yugoslavia, all the ideological and practical arrangements for the execution of further policies in the regions occupied by Germany were in place.

3.1. The Carinthian Slovenes under Nazism (1938–45)

The forming operation of the national changes in Carinthia was aggravated from the middle of 19th century onwards and greatly exacerbated after the referendum in 1920, when the Carinthian Slovenes finally became a national minority in Austria. This country as the next two ones (from 1934, an authoritarian professional country, and from 1938 under the “Anschluss” within an expanded Nazi Germany), counted itself as German. All three tried to enforce national principles. Even before the “Anschluss” there existed the fundamental political consent that it is essential to solve minority problems by assimilation. The Vindišar theory, which was the constituent part of this tactic in the time of Nazism experienced great development and was used as the violence of denationalization against Slovenes in 1938–45. First, National Socialism allowed for the Germanization of related people – this of course stands only for those who did not cooperated in the Slovene organisations – on the other hand the Nazi authorities after the “Anschluss” prepared plans for “ethnic cleansing” of the South-Carinthia region. Thus the aim of the Nazis was the disappearance of the Slovenes as an autonomous ethnic group. The provisions of economic assimilation influenced on the assimilation as well. They immediately started with the education system, and abolished the remaining bilingual schools and Slovene textbooks. From the very beginning the Nazi regime also persecuted leading Slovenes in Slovene cultural, economic and political organisations, particularly Slovene priests.

In Carinthia, the Nazis deported, imprisoned or sent to concentration camps some 60 Slovene priests. Under pressure from the Nazi authorities the ordinary’s office of the diocese in Krško forbade the use of the Slovene language in the South-Carinthian region, which also belonged to the part of the diocese in Ljubljana, which was under German occupation.

In the middle of April 1942 the Nazi authorities entirely unexpectedly – they had only one hour to pack – deported 178 Slovene families, or 917 people, to an assembly camp in Žrelec near Gradec, to camps in the Brandenburg region and Franken region (Wassertrüdingen, Hagenbüchbach, Markt-Bibart, Glasow in Frauenaarach), from all nationally mixed regions of Carinthia. They were first registered, photographed, and given cards and metal plates with engraved numbers. Each family was given a special number. Thereafter, they were not known by their names, but only by corresponding numbers. They took their identities with such measures. They had to state the extent of their property, number of cattle, stores, equipment and agricultural tools and machines, and then with their signatures confirmed confiscation of their property to representatives of the German Office for colonization. Farms were divided directly between immigrants from the Kanal Valley for cultivation or were leased for national citizens and for members of different parties.

In this, as in other Nazi actions, local representatives of the Nazi party participated. Among them were a great many people who had mastered Slovene dialects, but for different reasons they identified themselves with the power of principles, with the dominating feature of German-national or Nazi group. However, some local representatives and people expressed their doubts at the suitability of this persecution, because they thought that assimilation was only a matter of time, and that violence was merely anti productive. The Carinthian Slovenes resisted both passively and actively in different ways, finally even taking an active role in the Liberation Front (OF) and support for the partisans.

3.2. The Nazi occupation of part of present-day Slovenia from 1941–45

In 1941 the Slovene region was occupied and divided by three forces: German, Italian and Hungarian. The largest part was occupied by the Germans: Styria, Gorenjska, and the 90 km by 10 to 15 km zone south from the River Sava in Dolenjska and four communities in the northwest of Prekmurje (Fikšinci, Kramarovci, Serdica, and Ocinje). For these regions Hitler chose the same occupying system as he had introduced in Alsatia, Lotaringia and Luxembourg. This means that he nominated “gauleiters” (leaders of some kind of administrative unit, in the former German and Austrian federal states, known as “gau”) and national deputies of neighbouring region as heads of the civil administration.

Nazi Germany began the most radical ethnic cleansing and took on the task of making a large part of Slovenia German. Hitler’s plans included the deportation of the Slovenes and colonization by the Germans of Kočevje and other regions which had stayed outside the region of German conquest after the occupation.

The German occupying unit which followed the orders of Adolph Hitler, with harsh brutality, “Make this land German again”, brought the regions of Gorenjska and Styria temporarily under civil administration with the centre in Klagenfurt and Gradec. But the desired formal inclusion in the Third Reich was not achieved. On 14 April 1941 the Germans introduced a civil administration by decree from Hitler. The administration of Gorenjska was taken over by “gauleiter” Dr Sigfried Uiberreither in Maribor, while the head of the civil administration in Bled was first the deputy of the Carinthian “gauleiter”, Franz Kutschera. And then, on 16 December 1941, a new gauleiter for Carinthia, Dr Friederick Rainer, was appointed, who then transferred the headquarters of the civil administration from Gorenjska to Klagenfurt. On Hitler’s orders to establish an operational zone in the Adriatic (with the region Friuli, Gorica, Trieste, Reka, Cvarner and Ljubljana) in September 1943, he also became high commissioner for this zone.

The Germans brought in their own officials. Higher Slovene officials were dismissed and some deported. With a decree enacted on 1 May 1942, Uiberreither dissolved all the district administrations in Styria and established the districts of Maribor, Ptuj, Celje, Trbovlje, Brežice and city district of Maribor. Ljutomer was combined with Radkersburg (Radgona).

The head of the civil administration for Gorenjska immediately put political commissioners at the head of the registered offices, who answered only to him and to whom he gave instructions. Juridical, post, railway, finance, labour and cadastral offices were subject to them. In Gorenjska 5 political commissioners were nominated (in Kranj, Škofja Loka, Radovljica, Kamnik and Litija). For political commissioners the Nazis chose people from the Reich, so national “folksdojčerji” from Slovenia were not put for these posts. All the commissioners were verified members of the Nazi party (NSDAP) who followed the advice of the “folksdojčerji” and even appointed them as advisers. The political commissioners took the administration from the hands of the Yugoslav *sreski* chiefs immediately on the arriving in their posts.

Reorganisation soon appeared. On account of shortages in the German bureaucracy and with the intention that people would be occupied in the same manner as in the region of former Austria, they established three rural districts (Kreis) in Gorenjska on 1 August: Kranj, Radovljica and Kamnik. These new districts were renamed in the provincial councillors (Landrat) on 1 February and were led by the political commissioners. The head of the civilian administration dissolved the Yugoslav municipal boards on 25 June and authorized the political commissioners to name mayors.

3.2.1. The measures for faster Germanization

In the first two years of occupation, the civil administration had before it Hitler’s order that the occupied region had to be Germanized and brought into the Reich. All efforts were subordinated to this aim, which the Nazis emphasized incessantly. Among the most fundamental measures for attaining this goal were the exiling of politically and racially unsuitable people, the strengthening of German nationality and the Germanization of racially and politically suitable Slovenes who would be allowed remain. For this purpose the Styrian Patriotic Union (*Steirischer Heimatbund*) was established in Styria, and in Gorenjska the Carinthian People’s Union (*Kärntner Volksbund*) which all Slovenes suitable for Germanization had to join. For young people there were special “sections” in these organisations.

During the first days of occupation the Nazis began to change the external appearance of the country. They removed the Slovene names of places, streets, factories and companies, replacing them with German. They also changed proper names and surnames. Posters were hung everywhere exhorting the population to learn German. Mayors in individual communities strove for the total Germanization of local names.

In the occupied territory of Lower Styria, the Nazis proceeded with Germanization and emigration on a wider scale and with more determination than in Gorenjska. Parallel with the first Germanization, they executed, arrested and exiled many nationally conscious Slovenes who were politically opposed to Nazism. The first arrests were in Maribor on 11 April 1942. Those arrested found themselves in jails and assembly and transit camps. Among them were people who took an active part in Yugoslav parties before the war. These were combatants of Maister, members of Falcon and Eagle, members of the Ciril Metod party, of the former National Defence, and the Slovene intelligentsia, priests, professors, teachers, lawyers and doctors – those capable of organizing resistance against the Nazis and their denationalizing policies.

Primarily the Germans intended to deport about 220,000 to 260,000 Slovenes from May to October in 1941. Together with those 17,000 people who avoided emigration by escaping to Italian territory, they exiled some 80,000, among them, 90.83 % of Slovene priests, 84.21 % of engineers, 66.18 % of professors, 45.20 % of doctors and pharmacists, 22.32 % of lawyers and notaries, 14.98 % of officials, 17.5 % of teachers, and 6.02 % of workers in economy. For the deportations by regular transport, the Nazis collected the arrested people in barracks in Maribor, in Castle Borl, in the Capuchin convent in Celje, in Šmartno near Slovenj Gradec, and in Rajhenburg (today's Brestanica), and Šentvid.

In the assembly camps the people were examined by special commissions and give a final assesment. Those marked *E – Fälle (Evakuierungsfälle)* were intended for deportation to Serbia or the Independent Country of Croatia (NDH). The first transport of Slovene deportees departed on 7 July 1941 from Slovenska Bistrica for Arandželovac in Serbia. From the assembly camp in Maribor eleven transports left in the first wave of deportations from 7 June to 4 July 1941. Within the first wave from Styria to Serbia and NDH (priests), 48 091 were deported. Then followed the second wave of deportations, which lasted from 11 to 26 July 1941. At that time, 9,833 people who had moved to Slovene Styria since 1914 were deported.

These transports drove to a place called Slavonska Požega. From Gorenjska, camp Št. Vid, five transports departed with 2,337 persons for Serbia from 6 to 10 July 1941. All the property of those deported was confiscated by the German Reich.

Parallel with the deportations to the south ran the arrangements for deportations to the north and the region of the old Reich. The Slovenes deported thence were believed susceptible to Germanization by the Nazis, because racially they were highly valued and politically they were intended for conversion. If this did not succeed, they would be deprived of their citizenship and sent to the concentration camps. This wave of deportation began on 23 October 1941 in Dobrova. People were first moved to the concentration camp at Rajhenburg. From there, between 24 October and 4 November twelve transports left for Lower Silesia; from 29 October to 1 November four transports went to Bradenburg March; from 2 to 4 November three to Hannover; from 6 to 9 November four to Thüringen, and from 10 to 19 November eleven to Saxony. All together there were 34 transports with 23,000 persons. From 23 November to 9 December there followed 19 transports with 9,500 persons: 13 to Würtemberg, six to Baden. Additional forced migration continued from 21 January 1941 to 5 February 1942, when 2,100 persons were sent to Baden and from 26 March to 30 July 1942, 2,000 persons were deported to Bavaria in Thüringen by four transports. In autumn 1941 arrangements for the exile of Slovenes from the Posavje region and Posotelje to the concentration camps in Volksdeutsche Mittelstelle (VoMi) took place. They wanted to deport the Slovenes from the zone near the rivers Sava and Sotla and populated region with Germans from Kočevsko, Besarabija, Dobrudže, the Kanal valley etc. All together, the Germans deported 36,000 Slovenes to Germany in 62 transports. Most of them were forced to work in German industry.

By the end of 1941 the Nazis had confiscated 1,011 buildings (houses, shops, inns) and building plots. By the end of 1943 this number had increased to 2,064 (this does not include the properties of Slovenes from the areas around the Sava and Sotla rivers, where almost every estate was seized).

The migration of pure Germans, “folksdojčerji”, as they were named, from the region of Kočevje – as foreseen in the treaty between Germany and Italy on 31 August 1941 – lasted from 14 November 1941

to 20 January 1942. Some moved into triangle of Brežice, where homes were abandoned and others into territory of the German Reich. 11,174 people migrated to the Lower Styria.

They also had a plan to colonize Gorenjska. This plan was in the form of a hedgehog. At first three colonies were to be established in the shape of hedgehog in Gorenjska: the first in the region between Radovljica and Jesenice, with the facility in Gorje, the second in the territory between Škofja Loka and Šmartno below Šmarna gora hill, with standing points in Šmartno, and the third between Domžale and Homec, with the standing points in Dob. This colonization was also intended to stem the rising tide of the partisan movement. Of all these plans, only the colonization of Gorje was begun, but was soon abandoned.

3.2.2. Offices for strengthening German nationality

The work of the Offices of Deputies of the National Commissioner for Strengthening German Nationality was tightly connected with the deportations of Slovenes. At first, their duty was the administration of the sizeable possessions of deported Slovenes and German colonization. For successful Germanization, the German occupying authorities intervened in the economy. Dr Uiberreither spared no pains to include the economy of Slovene Styria in the economy of Austria Styria and, therefore, in the Nazi economy. Thus, for example, in Slovene Styria in the first two years 112 industrial, 471 tradesmen's and 426 commercial plants, and 7,200 farms totalling some 115,000 hectares were confiscated.

Later on, the Office was given the additional task of deporting some Slovene groups which they believed susceptible to Germanization, and the relatives of partisans and executed hostages.

During the process of Germanization, the German occupying authorities dedicated special attention to children in kindergarten and schools. They established German-only kindergartens, and lessons in schools were in German only.

The German occupying authorities also undertook other Germanization measures, including the mass destructions of books, the abolition of Slovene associations and the confiscation of their estates. The occupier sought to destroy Slovene nationality with these measures. Newspapers like the *Marburger Zeitung* and *Styrian Master* (*Štajerski gospodar*) and cinema helped a great deal in promoting Germanization and enthusiasm for German nationality.

3.2.3. Racial and political evaluation

In the spring and summer of 1941 the Nazis marked politically and racially almost the whole population in the occupied region of Slovenia. Nowhere in the occupied territories was the examination as thorough as here. With the political evaluation they tried to eliminate all "persons hostile to Germans", and with the racial evaluation they wanted to prevent the inclusion in "the German people's community" of "racial unsuitable elements". Political grades were awarded from 10 to 5, and racial from I to IV (the best were I, 1). They evaluated each person separately and then gave political and racial grades for the whole family. On the basis of these two evaluations they assigned final grade: E (*evacuee*; deported in NDH or Serbia), V (*verbleibt*; stay home), A (*altreich*; deported to Germany).

The majority of the population was graded racially as III and politically as 3, which would for example mean deportation of more than half of the Gorenjska population. Since this kind of mass deportation was hard to execute, the criteria were slightly changed. They introduced the new grades of III+ and III-, whereupon only the families graded III- were assigned for deportation.

The emigration staff for Styria included the "Southeast SS Action Committee for the Racial and Colonization Central Office" (*Einsatzstelle Südost des Rasse- und Siedlungs-Hauptamtes SS*), which "evaluated" the population. In Lower Styria from 24 April to 15 September 1941, 312,252 persons were checked; 70,162 in the region of Sava and Sotla, and 42,520 persons, who settled here after 1914. "Racial examination" in Gorenjska was executed by the "Southeast Action Office" (*Einsatzstelle Süd-Ost*). This included 63,334 persons, with 14,086 families and 10,747 individuals without relatives. During the examination of the Gorenjska population the Nazis were quite surprised, because they discovered that these people had better racial grades (higher bigger percentage of pure Nordic and Phalian races) than in Slovene Styria, which was considered the more German region. On the basis of these results, almost half of the Gorenjska population had blue eyes.

3.2.4. Distribution of German citizenship

Although the Slovene occupied territory occupied was not formally joined to the German region, except the Mežiška Valley, the Germans issued a “Regulation for the acquisition of citizenship in the liberated region of Lower Styria, Carinthia and Carniola”. According to this decree, German citizenship was granted to Yugoslav citizens of German nationality which on fourteenth April 1941 (the date of regulation validity) had national rights in the territory. The regulation also introduced a second category of citizenship, so-called “German citizenship on recall”. In this category were persons who had “blood related to the German race”. In the last category were persons who did not have German citizenship and were known as “defenders of the German Reich”. They lost their status if they moved out of the country.

The decree was executed in spring 1942 in Styria and in Gorenjska in October 1941. This meant that “citizen on recall” had the same rights and duties as the population of the German Reich. This indicated that all citizens capable of work and fighting had to attend worker requisitions (*Arbeitsdienst*) and serve in the army (*Wehrdienst*). Therefore, in the following few weeks, military recruitment was carried out and many Slovene boys were sent to the fronts of the German Reich. This was a flagrant violation of international law. In the German military and paramilitary formations and in German labour service 150,000 men and women in Styria, Gorenjska and Carinthia were mobilised. And in 1942, 28,000 were mobilized from Lower Styria, and from Gorenjska, between 8,000 and 10,000 men. Many of them were sent to the eastern front. More than 10,000 people lost their lives. Many Slovenes deserted and joined illegal units – partisans and others.

Because of the occupiers desire to destroy the Slovene nation and efforts to annex Slovene territory to the German Reich, Slovenes resisted. There followed mass arrests of those whom the Nazis believed were collaborators of the resistance movement. They called them communist criminals, although they were merely collaborators with the Liberation Front or even members of Catholic resistance groups. They imprisoned them in the judicial prison in Maribor, in prison Stari Pisker, in prisons Celje, Ptuj and Brežice. Those arrested were interrogated and horribly tortured in prison and then shot as hostages or sent to concentration camps. They released only those whose guilt could not be proven. 1,590 people were killed, 1,508 men and 82 women. The number of those shot is even greater, because the Nazis did not always release the names of those shot.

The Nazis were not satisfied with killing hostages, because according to their beliefs, the families of hostages who were shot and partisans also had to suffer. In March 1942 they began arresting the relatives of these people. Since the National Liberation movement had become stronger and was growing more powerful, Himmler gave the order to eliminate the men and move the women to concentration camps, and to separate children from their parents and send them to special children camps. The Nazis deported the majority of Slovenes to the following camps: Dachau, Auschwitz, Ravensbrück, Mauthausen, with branches (for example, Ljubelj, where they built a tunnel), Buchenwald and Flossenbürg. Many died in the camps – some 1,772 in Auschwitz, 1,340 in Dachau and 971 in Mauthausen.

Towards the end of the war the Nazis, beside the relatives of partisans and hostages, also persecuted the relatives of deserters from the German army. German mobilization at the end of 1943 and especially in 1944 was not successful any more, so the German occupying authorities on 15 March 1944 issued a decree that the relatives of deserters must be persecuted regardless of whether they were partisans or merely in hiding. Those capable of work were sent to the forced labour camp at Strnišče, which was renamed a Camp for Penal-Labouring Workers – *Strafsonderdienstpflichtlager Sterntal*. Children and the old were sent to Stegersbach in Hungary at the end of 1944, and at the beginning of 1945, to Kobenz near Knittelfeld and Wetzeldorf near Gradec. During these arrests children were often separated from their mothers and were sent to different camps. Towards the end of the war, the Nazis arrested the relatives of deserters from the German army throughout Slovene Styria. According to surviving data, the majority were arrested and sent to the camps from the occupied region of Ptuj. During the persecutions, the Germans also stole and destroyed properties. They burned down many houses. Entire villages were burned down in Kozjansko.

In summer 1941, 597 exhausted and mentally deficient persons from the Lower Styria were “euthanized” by the Nazis in Austrian Hartheim.

3.2.5. Conclusion

Between 1941 and 1945 the German occupiers deported some 63,000 Slovenes from the occupied territories (Styria, Gorenjska and the Mežiška Valley), the majority of 45,000 to German banished camps, 10,000 to Croatia, and 7,500 to Serbia, while some 17,000 escaped from to the region of Ljubljana and elsewhere. We must not forget the 15,000 the Nazis sent to concentration and other camps (Dachau, Auschwitz, Mathausen, Buchenwald). More than 3,400 were shot as hostages.

In Gorenjska and Styria the Nazis consistently germanised all local names. They mostly took over names from the time of Austrian imperium, but in places they introduced partially or completely new names. And then just as later under communism, they often tried to leave out the word “Saint” or even the Saint’s name from places named after Saints.

In May, 1944, (after the occupation of Prekmurje, which was part of the Hungarian sphere from 1941) at Auschwitz, the majority of the Jewish community (about 550 people) from the Slovene region were murdered in the gas chambers.

The goal of Nazi politics in occupied Slovene territory was obvious: the ultimate elimination of the Slovene language from the territory and the disappearance of Slovenes as an independent ethnic group.

4. Communism

4.1. The period of the take-over of the Communists during the occupation (1941–45)

Communism in Yugoslavia, particularly in Slovenia, in contrast to Communism in others eastern countries, came to power by its own power, without the intervention of the Soviet army. This meant some kind of uniqueness in European space, so it is important to detail the very beginning of the Communists’ usurpation of authority within the framework of their organizing resistance.

4.1.1. Introduction

The communists took the initiative in organizing the resistance, at the end of April 1941 establishing the Anti-imperialist Front, renamed the Liberation Front after the attack on the Soviet Union. Actually, they continued the tradition of the pre-war people’s front movement and Friends of the Soviet Union Association. In the Liberation Front there were also Christian Socialists, part of the Falcon Liberation Gymnastic Association, groups of persons connected with culture and some other groups. The consequence was the establishment of partisan units and many acts of passive resistance. After the German attack on the Soviet Union in June 1941, the Slovenes were called to armed revolt. Because of the deep anti-occupation mood, the call met with a satisfying response. At the end of 1941, the Liberation front formed a programme based on immediate armed revolt as a necessity of existence and condition for national rebirth and irrecognition of dispensed Yugoslavia.

In the Italian occupied region a “liberated territory” was established in spring 1942, which extended to the suburbs of Ljubljana. As early as August 1941 the Security Intelligence Service (VOS) was established which was directly subordinate to the Communist Party and rather arbitrarily executed collaborators, supposed collaborators and enemies of the Liberation Front and the Communism.

Revolutionary violence in the liberated territory against peasants and fear of revolutionary victory led to the spontaneous formation of village guards and collaboration with the Italian occupiers. All this supported the establishment of Anti-Communist Units (*Milizia Volontaria Anticomunista*). The War of Liberation, therefore, was interwoven with civil conflict, which fatally divided the Slovene nation. In spring 1942, representatives of pre-war parties united in a Slovene alliance. The common basis of these united parties with differing political principles was counter-revolution. At the end of 1941, a programme was published, the so-called programme London Points, which talked about united Slovenia as a part of Federal Yugoslavia, with the king at the head, and a democratic, socially more just political system as then in the previous, decayed country. In relations with the occupiers they continued the politics of waiting for the right moment for resistance. Because of their desires to thwart development of the revolution, they decided on military/police collaboration with the Italians and later also the Germans.

4.1.2. The beginning of the Civil War and revolution: 16 September 1941

Those who wish to judge Slovene circumstances during the Second World War from the historical and legal point of view must answer a few basic questions, first of all about the actual situation and the actual activities of the Liberation Front (OF), the umbrella organisation of so-called “the National Liberation struggle”. The beginnings of the OF are not accurately documented, in complete contrast to the tradition of the Communists. First, on 26 April the ‘Anti-imperialistic Front’ (PIF) was founded, which in June 1941, following the German attack on the Soviet Union, was renamed the ‘Liberation Front’. It was clear from the very beginning that the struggle for total control was more important to the Communists than any struggle against the occupation. In October 1940, in Zagreb, Kardelj announced that, “/.../ the Communists start armed engagements with the occupier only if they see a chance for revolution”. It was decided in advance that they would fight against every group which planned resistance against the occupation. All the anti-communists would be destroyed later or (with pretended collaboration) compromised. The Communist party as initiator of this formation had the leading role and was by no means willing to give up this role or share it. The members of the PIF and the Liberation front (OF) never discussed equality of rights among collaborating groups or the appropriate division of tasks.

The most important regulations on which the Communists built their authority were passed on 16 September 1941 at the third session of the supreme plenum OF in Ljubljana: “Decree of the supreme plenum of the Liberation front of the Slovene nation must be resolved with in the Slovene National Liberation Committee”, the “Decree of the Slovene National Liberation Committee for the inclusion of Slovene partisan troops in the National Liberation partisan divisions of Yugoslavia”, the “Decree of the Slovene National Liberation Committee for the protection of the Slovene nation and its movement for liberation and union”, and the “Decree of Slovene National Liberation Committee on national taxes” and “Loan for freedom”. The most important and long-lasting were the first three decrees in particular.

At first the Supreme plenum proclaimed itself the Slovenian national Liberation Committee with a decree. The decree included three articles, of which the second was the most important, because it justified the monopoly and supreme authority of the OF. Immediately there arises the question as to who the OF were, and its constitutive groups of power, that it could speak and act in the name of the nation? During the war, it was impossible to hold an election or referendum. The legal pre-war parties or their elected representatives, the only ones with the right to appeal to the population, were not represented in the Liberation Front. In the plenum of the OF, besides the Party, there were “only splinter groups of former political parties and not the conservative Catholic side, which without doubt represented an important part of the nation”, wrote Dr France Bučar. The OF represented only the certain opinion in Ljubljana and its surroundings. The opinion of the rural regions was not reflected at all, particularly of those who were under German and Hungarian occupation. Therefore, the OF did not represent the majority of the peoples’ opinion, although the majority was hostile to the occupation. The KP, which dictated the intention of the OF, acted illegally before the war. At the beginning of the war the KPS had about 1,280 members and, according to others, nearly 1,000. Therefore the KPS was objectively too weak to impose itself or even appealed to the minds of the population. The KP was aware of this, which is why, at the beginning, on the basis of the enlarged OF, it hid under the very popular idea of liberation and watched carefully to put “the company” of the OF forward as a front organisation. People were enthusiastic about the idea of a meeting place of resistance. The majority of Slovenes was hostile to the occupators or just rejected them. And now, there suddenly appeared an organisation about which they knew little, but which promised to mobilize all “to the liberty-devoted Slovene combat teams, irrespective of which political and world point of view they had” and defied them. The inclination of the OF does not automatically mean the inclination of the KP. People at first did not even recognize the dominant position of the KP in the organisation. Therefore, the OF became a symbol of the struggle for liberation. The establishment of an organisation such as the OF was deemed legal, in contrast to the denial of the same right to other political parties and social groups. Anyone who did not agree upon the principles of the OF, which was led by the Communists, the article denied the right to resist the occupation outside the OF. Non-communist groups within the OF, which was named as the “allies” in the sense of Russian civil war by the party, in truth had an absolutely subordinated role. The Party – in Lenin’s sense – used them as a tool. At the beginning, the Communist would not be successful without “the allies”, because they offered a more extended platform to the Party. And when the Communists had

the whole situation under control with the NOB, “the allies” were not needed any more, so they were forced to sign the Dolomiti Declaration, with which they finally capitulated.

With this decree the leaders of the OF hardly obstructed the resistance of traditional parties. Obviously, they did not strive to resist the occupation as such, but to set up the basis for a Communist revolution. As early as at the end of August, the organizing secretary, Tone Tomšič, clearly said: “Those are mistaken who thought that the great Liberation Front of the Slovene nation is possible without the strong organisation of the Slovene KP.”

The second important decree was “The decree of the Slovene National Liberation Committee on the inclusion of Slovene partisan units in the national liberation partisan divisions of Yugoslavia”, which was at the same time the first “normative act” of the SNOO after its constitution. It stated that Slovene troops form Slovene military units with their own command structure and incorporate these units into “the National Liberation partisan divisions of Yugoslavia” under a central command. Some kind of completion was then “The decree of the Liberation Front of the Slovene nation on the establishment of National Guard”, which was published in the newspaper *The Slovene Reporter* on 17 October 1941.

This decree subordinated the National Guard (NZ) to the command of Slovene partisans units. The task of the NZ was the prevention of arrests, the requisition of food and cattle, the migration of Slovenes and colonization by foreigners, burning down villages etc. It was organized in villages, towns, factories, and companies. “Joining the National Guard is the duty of every man capable of bearing arms.” Besides its military authority, the SNOO would also gain penal authority with this decree. According to the estimation of the Republican Secretariat for Slovene Internal Affairs SR, this decree stated in 1976 “the first standards of material and procedural criminal law in the National Liberation war”.

The third decree with long-term consequences was “The decree of the Slovene National Liberation Committee (SNOO) on the defence of the Slovene nation and its movement for Liberation and Union”, which introduced a severe disciplinary and criminal system. This decree was therefore the basis of “the revolutionary judiciary”, until the Decree of Supreme Headquarters NOV in POJ on 24 May 1944 on courts-martial was issued and came into force on 30 August 1944. It created the conditions to act with reproaches of death and killing of the citizens who would not submit to the manipulation of the Liberation Front, under the word of “betrayal”.

“The protective decree” gave the SNOO judicial authority. It identified the future “liquidation”, the killing of Slovenes who did not follow the principles, commandments and orders of the OF, or the KPS. With this instrument all unwelcome enemies could be denounced as “traitors”. And it did not matter if they actually collaborated, or quite the reverse, acted against the occupation outside the OF.

“Traitors” could be sentenced to death after the decree “for the defence of the Slovene nation”. “Traitors” were informers, then Slovenes who entered “into relations with the dictators of the occupier or others enemies of the liberty of the Slovene nation” directly or indirectly. And finally, Slovenes who for their own benefits or the benefit of others, “mislead” “national troops to fight against the liberation of the Slovene nation”. On 31 January 1942, in *The Slovene Reporter*, the executive committee of the OF precisely defined and explained that it should be interpreted as “the sanctions /death penalty/ of this law refer to anyone responsible for the establishment of armed forces not formed within Slovene National Liberation partisan units and National Guard under the political and military leadership of the Liberation Front”. This meant that the death penalty threatened not only to those who mobilized “national forces” against the Liberation Front, but also those who used “national forces” for other purposes outside the OF.

All activities, and therefore also resistance were “self-interested” and directed to national liberation if they did not act in the framework of the OF, under Communist leadership and the partisan military. Besides the death penalty, other punishments were determined – confiscation of all property, destruction of property, “national boycott” (exclusion from society).

“The protective decree” envisaged special secret courts, but it did not mention how they should be constructed, who should be named to them, and how they were to act. It only defined that the process be quick, oral and secret, and that there was no appeal. Some important sentences were published in *The Slovene Reporter*, until it was seen that this had a very negative effect on people. Therefore Kardelj gave the order, on the proposal of Zdenka Kidrič, “that the names of killed denunciants should not be published anymore” except in “urgent cases”. From the published sentences we can find no particulars such as who passed the sentence, where and when. The names of the judges were known only to the executive committee of the OF. According to its judgment, this was a “typical form of revolutionary

judiciary, which demands constant watchfulness from the responsible holders of political authority, the integrity of members of the court and the ability to properly evaluate information about criminal offences". Therefore this statement already indicated the true character of these sentences. Victims were selected by the leadership of the Party and not the executive committee of the OF. It only gave orders for the circle of people from whom the Security Intelligence Service (VOS) as an executor of the Party selected the appropriate casualties. According to the published cases, the accusations were very general, and did not bother to cite concrete evidence. They were dictated by the needs of revolution. They did not consider the principles of the rule of law or humanitarian acts. The purpose of these "liquidations" was not a punishment for some concrete act, but the discouragement and intimidation of others. Only after the decision of the executive committee of the OF on 31 July 1942 in "liberated regions" – regions which the Italians had deserted and were then invaded by Partisans – was a "special judicial commission" established. It was to make judgements according to "the protective decree", but because of the hard fighting it could not act properly. Later, after 1943, some criminal acts under "the protective decree" were left to military courts. But these "revolutionary courts" were also based on the reports of the VOS. In autumn 1943 their representatives accepted the reports of the VOS about the alleged guilt of "the accused" as a valid proof of guilt without further deliberation.

On 24 October 1941 *The Slovene Reporter* published the "Warning" of the OF that "executions of traitors are matters of regular judicial operations, based on the decree of the SNOO. Neither so far nor in the future will there be unfounded death penalties and their execution." There are no proofs that these named courts even existed until the establishment of the partisan courts, but it is known who executed these so-called sentences – the VOS. And now again arises the question of legitimacy, in this case of the Security Intelligence Service (VOS) or the Intelligence and Security Service as it was named until May 1942. It was established by the political bureau of the KPS on August 1941. It was led by political bureau VOS, which on 10 February (upon the instructions of the CK KPJ) was renamed the Central Commission of VOS. The Central Commission was directly responsible to the CK KPS and CK KPJ. The VOS acted until 19 February 1944, when at the first session of SNOS in Črnomelj it was dissolved. The successor of VOS became OZNA.

Although the VOS had the title OF (VOS OF), which should emphasize party responsibility for the OF and documented that it served the whole National Liberation struggle (NOB), it was actually an exclusive body of the Party. The Liberation Front did not subsequently identify the VOS. Members of the VOS were exclusive members and candidates of the KP and the Communist Youth Organisation, SKOJ. The VOS answered directly and exclusively to the Central Committee of KPS and served the Party exclusively. They carefully hid certain information from "the allies", and later wrote special censored reports for them. The VOS was divided into three departments: the Mass Intelligence Service, Special Intelligence Service, and Security Service. The latter was some kind of executive body of the Intelligence Service. The units were organized on military lines and actions executed (sabotage actions and "liquidations") according to precisely defined plans. The units were manned by activists, supposedly brave and calm, but not reckless, ruthless, suitable and ready for total individual armed actions. The Security Service in Ljubljana executed house searches of obvious enemies of the NOB, stole their documents and records, destroyed printing offices, robbed weapons, equipment and money and, particularly, liquidated groups of people. By the end of the year 100 people had lost their lives. They were shot because of alleged denunciation and betrayal. Two were injured. In Ljubljana five so-called "sentences" were executed. On 4 December 1941 in Šiška among them was "liquidated" Fanouš Emmer, a rabid anti-communist and one of the first to expose the character of the Liberation Front at the time, when the majority of Slovenes had not even heard of the OF, and who organized an illegal group against the occupation which was to have united with Mihajlović. The execution of these "liquidations" failed three times, among them with General Leon Rupnik (25 September) and the Head of police Lovro Hacin (13 October). The VOS was very active the following year. They violently forced people to join the Partisans not only in Ljubljana, but also in the country. The causes of growing violence, which greatly increased in this period, lay in the conviction of the Communist Party that the war would be decided in 1942. During the war 4,000 civilians were killed by the Partisans. These were people, who represented ideological enemies for the Party. In Ljubljana in 1942, the VOS killed among many others the president of the Association of Industrialists, Avgust Praprotnik (20 February), academician Franc Župec (16 March) and Jaroslav Kikelj (18 March), priest and Prof Lambert Ehrlich (26 May). The last great actions in Ljubljana were the liquidations of the Ljubljana Police officer Kazimir Kukovič on 8

October 1942 (he died on the 10th) and former ban Dr Marko Natlačen on 13 October. They did not liquidate only opponents of OF in other organisations, but also allies. They obviously tried to prepare the ground for a later Communist take over.

But the records of the VOS show that the mentioned decrees were not so important – they were a kind of alibi to prove that they were acting legally. The prior Communist task was not the elimination of national traitors, but to lead people from the anti-communist side that represented a danger to their goals and to “social revolution”. The guilt of individuals did not play any part, but only if someone stood in the way of the goals set by the KP. And the most important were people’s beliefs that the liquidated person was guilty, because otherwise the danger that people would oppose the National Liberation movement could appear.

To summarize: from autumn 1941 in Slovenia there developed another level of activities – besides the occupation and resistance against the occupation, the level of Communist experiments in revolution and anti-communist resistance, led by representatives of pre-war legal parties was also formed. Therefore: parallel with the war of foreign forces against Yugoslavia and against the Slovene people, civil war broke, Slovenes against Slovenes. The monopoly and exclusive rights of the OF regarding the resistance poisoned the atmosphere among Slovenes at a time when unity of all forces against was urgent – whether socialist, Christian or liberal.

Therefore, 16 September 1941 is the day, when the Slovene National Liberation Committee (SNOO), announced the prevention of operations of all organisations and resistance groups outside the OF, and marks the formal beginning of the civil war and decades of concealed Communist guilt.

The provisions of 16 September 1941 were, at the second session of the Slovene National Liberation Committee on 1 November 1941, supplemented with another seven articles – on 21 December they finally added articles 8 and 9. These nine articles stood as the “9 basic articles” of the OF. They represented its programme, which was valid until the 1st Congress of the OF on July 1945 in Ljubljana.

4.2. Communism in Slovenia after the war

We must differentiate between two phases in the worst Communist repression after the war. First, we must remember the bloody battle with the Home Guard and other members of armed anti-communist and partly collaborationist units, the elimination of some most exposed anti-communists and bigger entrepreneurs (for example, culturist Narte Velikonja, industrialist Josip Benko) and the fight with the German minority on Slovene territory. Therefore, in autumn 1945 there were more than 3,500 Germans from Lower Styria and Prekmurje in prison or camps; 7,400–9,000 *folksdolčerja* and Slovenes who acted for the Germans in the war, but were deported between 1945–46 by the Slovene and Yugoslav authorities. Then follows the period from August 1945 until the middle of the 50’s, when terror weakened.

4.2.1. The Communist settlement with ideological opponents in the first post-war months

At the end of war, in May 1945, the Home Guard, at that time officially part of the Slovene army, together with many civilians (about 6,000) withdrew to (Austrian) Carinthia. They entered the occupied territory of British 5th Corps of the 8th army, which occupied Carinthia. The retreat of the Home Guard took place between 8–13 May 1945. The British settled them in Vetrinjsko polje (Viktring) near Klagenfurt in military and separate civilian camps. It is interesting that the British did not return the anti-communist units (Chetniks, Home Guard members from Primorska), who retreated into Friuli back to Yugoslavia. The British authorities began to return different anti-communists (Home Guard members, Chetniks, Ustashe, Croatian Home Guard) to Yugoslavia on 24 May. 11,000 Slovene soldiers (mostly Home Guard members) and about 600 civilians were returned. Some historians mention higher numbers, about 13,000. The British mostly assured them they would only transfer them to the camps in Italy. Although the Slovene anti-communist military and political leadership soon found that the returned Home Guard members had been transferred to Yugoslavia, they did not act effectively. They were probably guided by almost blind trust in the British political and military authorities, which grew during the war. They could not imagine that they could be extradited to the Yugoslav Communist and non-democratic authorities by a country with a rich democratic tradition and gentlemanly behaviour. Transports with trains to Yugoslavia continued until 31 May 1945, above all in two directions: Področja

(through the tunnel)–Jesenice and Pliberk–Dravograd–Slovenj Gradec–Celje–Teharje or Maribor–Celje–Teharje. Surrendered persons at Podrožca were imprisoned in Kranj, Škofja Loka and (the majority) in Ljubljana–Šentvid (at the former bishop’s seminary). Those surrendered at Pliberk were transported by train or went on foot to a camp at Teharje near Celje. Captured and surrendered Home Guard members were robbed, tortured and killed during the move.

On their return to Yugoslavia the Home Guard were divided into three groups: A (juveniles), B (mobilized from 1945) and C (the rest). All from groups C and the majority from group B were soon killed. Only in the camp at Teharje did they imprison 400 juveniles, who were released after August 1945, although many never returned home. They were killed on their way home by various groups and militias.

Immediately after the return of the Home Guard mass slaughter began, carried out by the Yugoslav OZNA with the help of KNOJ. The order to slaughter the returned was without doubt came from the highest authority in the Party. Prisoners were led to mass killing fields and usually shot in the neck and then thrown into karst caves, natural abysses, mines, tank ditches. So far, 450 post-war graveyards have been discovered in the Slovene regions. The majority of Home Guard members are buried in Kočevski rog, in deserted mine pits in Zasavje region (Trbovlje, Hrastnik), in anti-tank ditches near Celje, in abysses near Ljubljana etc. Most liquidations were executed in June 1945.

Up till now we do not know precise number of Home Guard members liquidated at the end of the war by the Partisans. The then Communist authorities drew up a list, but this “miraculously” vanished in the mid-80s. According to the numbers gathered during political emigrations, the number of victims is about 11,720. We must take into consideration also those who stayed home and did not retreat to Carinthia; therefore, the new Yugoslav authorities imprisoned or captured them later. Thus today the generally accepted number of Home Guard members and civilians killed is almost 14,000.

Therefore, according to its Bolshevik revolutionary justice, in 1945 the Communist powers committed judicial slaughter outside the courts on Slovene territory, about which it was forbidden to talk.

The next thing with which the KPJ finally strengthened itself and apparently legitimized its authority was the election to the constituent assembly on 11 November 1945, which was actually voting for future social regime. The arrangements for voting was not consider in the democratic sense, but went on in the shadow of pressures among differently thinking people and upon all who were not in the pro-Communist “People’s Front”, and continued under the supervision of its political police – OZNE. A high number of people who would have voted against the new authority in the elections were crossed off the electoral register. Therefore the results of the elections were known in advance, of course, in favour of the Communist Party. The authorities wanted an election that appeared democratic, but in the end they got some kind of referendum to decide on support for the ruling regime. Poll for the nominated People’ Front list was placed in polling stations, because they wanted to leave better impression This was intended for those who did not want to vote for the People’ Front. The poll was known as the “black poll”.

In 1945, Slovenia was gripped by a wave of confiscations, which followed the mass persecution of real and imagined speculators. In summer 1945 a special court known as “The Court for Slovene National Honour” was established. They carried out agrarian reform and divided the confiscated estates of landowners and the Church among small peasants and country people. By this means they got the poorer peasants on their side, but these small rural producers could not replace the fall in production which resulted from the destruction and nationalization of large land establishments.

4.2.2. Fake trials

In June 1945 group trials began against actual and imaginary opponents of the Communist system, particularly against representatives of cooperatives, banks and the economy. The authorities carried out numerous trials (Božič, Rupnik/Rožman, Bitenc) to compromise representatives of political opposition and the Catholic Church. Following the Soviet example, in summer 1947 the Slovene Party staged a great Stalinist political trial, the so-called Nagode trial (named after the first accused, Črtomir Nagode) in which 15 people were accused of treason and spying for Anglo-Americans. In May 1947, the Slovene secret police, the UDBA, arrested 32 highly educated intellectuals. Among them were Črtomir Nagode, Ljubo Sirc, Leon Kavčnik, Boris Furlan, Zoran Hribar, Angela Vode, Metod Kumelj, Pavla Hočever, Svatopluk Zupan, Bogdan Stare, Metod Pirc, Vid Lajovic, Franjo Sirc, Elizabeta Hribar; during the trial

they also arrested Franc Snoj. They were questioned and tortured for two months in Ljubljana prisons. The political bureau of the Central Committee of the KPS marked the arrested in public as “a handful of spies, class enemies, mercenaries from foreign countries, who had no political tenor and whose works are without any political basis to harm the people’s authority”. On 29 July, the trial against the 29 accused began, broadcast via special loudspeakers to the citizens on the streets of Ljubljana. After 13 days of trial, on 12 August, three of accused were sentenced to death by firing-squad, among them Črtomir Nagode, while the others received long prison sentences with forced labour and the removal of all citizen’s rights. Two of the accused committed suicide. In 1991, the Supreme Court of RS overturned the judgment against Dr Nagode and fourteen co-defendants. It was ascertained that the case was based upon false accusations and that this was an unfair trial against imaginary western spies.

From April 1948 to October 1949 the so-called Dachau trials were held (9 trials), before a military court or District Court against former internees at Buchenwald and Dachau. They were accused of collaborating with the Gestapo. After the war, they continued their spying and treacherous activities and carried out sabotage. All the accused were pre-war Communists, activists in the OF or Partisans, some of them even Spanish fighters. Others had senior positions, particularly economic. 15 were sentenced to death (11 were executed); three died in remand prison, 20 were sentenced to long terms of imprisonment. The Slovene political elite converted the trial against the accused into a real media spectacle. The trial was transmitted via loudspeaker and radio and fully published in newspapers. Now the Slovene Communists got ahead of the leaders of other Yugoslavian Republics, because nowhere else were there similar judicial performances. In Belgrade the initiators were even warned off.

At first, mass political trials took place, and later, political trials and sentences became rare. Throughout the whole totalitarian period political trials involved some 25,000 people, about 2 % of the Slovene pre-war population. The number of political prisoners between 1948 and 1988 numbered about 6,500 according to official statistics of the former Communist authorities, which means approximately a quarter of the people judged in court. Their actual number was even higher.

4.2.3. Trials of peasants – the confiscation of property and compulsory surrender of goods

Among the post-war trials before the Civil Court, trials against bigger farmers, “kulaki”, known as the “kulaški trials”, deserve special attention. They were also political in nature. They took place particularly between 1949–51, when the campaign for collectivization and so-called “socialization” was at its peak in Slovenia. This was during the establishment of agricultural cooperatives (KOZ), which was the Slovene variant of the Soviet “kolkhoz”. The adoption of the mentioned resolution and execution of collectivization in Slovenia and Yugoslavia were actually the consequences of the Yugoslav national and Party leadership upon reproaches from the Inform bureau that Yugoslavia does not build socialism, but just strengthened Yugoslav village capitalist elements. To counter such reproaches and prove its orthodoxy, the leadership of the KPJ decided to finally liquidate the private agricultural sectors, which they wanted to attain with collectivization. Its implementation was to be voluntary; however, besides strong propaganda urging membership of the cooperatives, the authorities also carried out various types of oppression. The worst was directed at the biggest farmers, who were considered as kulaki, according to the Soviet model, and were accused as main guilty for the failures of collectivization as the government had envisaged. Many received severe sentences in fake trials, and often confiscation of property was one of them. The trials of peasants and consequently the confiscation of their property were also held because of their failure to surrender products. During the period 1945 to 1952, when a system of rationing was introduced in Yugoslavia, the authorities specified how much produce, meat, fat, etc. was to be surrendered. Many peasants could not deliver the required quotas and in some cases following the compulsory requisitioning of produce, some peasants were left with nothing, not even for sowing. So peasants hid their produce and slaughtered animals illegally. Such peasants were accused of being saboteurs and speculators, under the laws of unlawful killing, speculation and economic sabotage. They came before the courts. Otherwise, the Civil Court handed down sentences of confiscation less frequently than the military court, the Slovene Court for National Honour and confiscation commissions. Only 1947 did the Civil Court hand down sentences of 290 confiscations of property.

The Communists changed the economic characteristics of property with drastic reforms, which meant the restriction of private property to a minimum. All these ended in 1953, when the authorities realized that these experiments had not succeeded. Then the land maximum was defined (10 hectares

of land, with some exceptions up to 30 hectares), which prevented remunerative production from farming.

By the end of 1945 the Communist authority had confiscated all important companies. This was done under the false accusation of “collaboration with the occupier”, often meaning that some companies even operated during the war. These were mainly German properties or the properties of persons of German nationality. The authorities chose a strategy of gradual suffocating the private sector to dispossess owners of the remaining private property. According to the principle of from large to small, the appropriation process of private properties was based on ideological and partly economic reflection in all three phases of nationalization (1946–48, 1948–50, 1958–63): from banks, insurance companies, industrial and building companies, hotels, cinemas, building plots, houses, apartments.

4.2.4. Terror directed against the population by the Communist Secret Police

All this terror was executed over OZNE by the Communist party. Its success was commended even by Tito who, in 1948, found that the essential elements for building socialism had been established. Among these elements were total command of the position and action of national security, the militia and UDBA. In 1948, for example, the latter arrested 6,985 people and a year later, 8,762. Meanwhile, in 1947, 57,184 letters arriving in Slovenia were examined and in 1950, 98,000. They succeeded in planting their informants almost everywhere, even in the church organisation. The secret political police of the Slovene Party spread into a well-structured expansive organism, whose tentacles extended into Trieste, Italy and Austria. In these countries the UDBA organized legal commercial companies as fronts for collecting information, under the formal ownership of their informants; at the same time this also generated income. The UDBA even organized illegal commerce.

The secret and violent actions of the OZNA or UDBA also enabled the regime to terrorise the public. The regime tried to create the appearance of the rule of law by issuing many different, even revolutionary laws and legal decrees, which actually confirmed that the rule of law was not possible. The judiciary was also subordinated to political authority, because the courts became a “body for the class struggle of workers against their class enemies”.

After the war there were numerous concentration camps (Teharje, Strnišče near Ptuj, Brestrnica, Hrastovec) and labour camps (Ljubljana, Medvode, Kočevje), and women’s labour camps in Rajhenburg and Ferdreng near Kočevje. Many convicts from Slovenia were also sent to Goli otok island in the Croatian Adriatic.

4.2.5. Escapes over the border

Up to the end of the nineteen-fifties, there were strict controls on the frontiers of Slovenia or Yugoslavia, just as on the other frontiers between the Eastern and Western Bloc. Later, after 1960, this regime weakened and the numbers of escapes over the border decreased, as foreign travel and economic migration were permitted. Before that, there were mass illegal escapes. According to data from the RSNZ, from the Slovene region between 1945 and the end of 1959, 34,256 people escaped, and 26,710 persons were caught when attempting to escape.

4.2.6. Relations with the Catholic Church

The Catholic Church in Slovenia represented the biggest “thorn in the flesh” for the Communist regime, because it was the only one which stayed organized outside the Party and had widespread support from the rather religious population. Therefore, on the one hand the Communists wanted to slander the Church in public, and on the other hand, destroy its economic basis. Only in Slovenia priests needed authority consents if during war they were not in their posts. Even those, who were deported or sent to concentration camps by the occupiers. Some 630 priests, monks, nuns and seminarists were imprisoned or in concentration camps. Many fake trials were held against Church representatives. Up to 1961, 429 trials took place (of about 1,000 priests); 329 were sentenced to imprisonment and nine to death – four death penalties were executed. The most important trial against the Church in Slovenia took place in 1946, before a military court in Ljubljana against the Bishop of Ljubljana, Dr Gregorij

Rožman, who in 1945 moved abroad. He was sentenced together with a very heterogeneous group who had nothing in common. Among them was SS General Erwin Rösener. The shadow of his guilt fell upon the less guilty or innocent.

At the same time, at the end of the forties and the beginning of fifties, the Yugoslav leadership tried to establish some kind of Catholic National Church on the model of the Orthodox Church. This Church would be cut off from Vatican and far more dependent upon the Communist regime. Therefore, at the beginning of fifties, diplomatic relations with the Vatican terminated.

The height of the persecution of the Church was in January 1952, when in Novo mesto the Bishop of Ljubljana, Anton Vovk, was covered in petrol and burned alive. And before this he had suffered numerous painful interrogations. That year, Christmas became Labour Day and no longer National Day. Religion in schools was forbidden and the Theological Institute was expelled from the University.

At the beginning of the sixties there was a gradual warming of relations between the Catholic Church and the Yugoslav or Slovene political leadership. The consequence was the reestablishment of regular diplomatic relations between the Holy See and Yugoslavia. And with this, the former Yugoslavia became the exception among the Communist countries. The Church here acted more freely, unlike the position in other East European countries, but it could declare on social and political questions in public. Believers were considered second-class citizens until 1990.

4.2.7. The specific features of the Yugoslav Communist model

Typical of Yugoslavia was the so-called Inform bureau dispute between the Yugoslav and Soviet leaderships, as a matter of fact, between Tito and Stalin. This dispute at first aggravated Communist violence: on the one hand, Yugoslavia sought to prove its correctness or orthodoxy and the devotion of Party to SZ, with stronger collectivization, and on the other hand they started to settle with those who in the dispute between Tito and Stalin took the latter's side. But then Yugoslavia or Slovenia began to open towards the West, because it had to get help from there, on account of the very bad economic situation. At the same time, so-called National Communism appeared – Tito's self-management, because, after the dispute with Stalin, the Communist ideologues had to find some "philosophical" excuse for their policies. Although this meant deviation from Stalinism, on the other hand, it retained all the characteristics of Communist totalitarianism until its end, and even after it, with some definite consequences. After the first wave of violence, when exemplary cases of judicial punishment and dismissals from employment appeared only from time to time, the society or rather, the people grew accustomed to lives in new circumstances. The pressure decreased at times, for example at the end of sixties, and in the seventies increased again – the Leaden years, although at the beginning of the seventies, Yugoslav socialism perhaps had a last chance to become more reliable. But then came the so-called "Tito letter", and the Party began to persecute liberals and technocrats. And soon occurred the old vocabulary about internal, external enemies, hostile emigration and clericalism. Precisely in the seventies there appeared a general social amnesia and with it, opportunism. This was the time of easy loans, higher living standards, open borders and membership of the Party for peace and quiet. At the same time, individuals could seize the opportunity to avoid demagogic campaigns in the press and imprisonment, to which were sentenced some political dissidents. This period also saw the ascent of small-time careerists who took up important positions after the destruction of the Liberal Party, together with the older and more severe Communist forces.

On the other hand, in the seventies, the general denunciation of "socially harmful elements" was considered a national virtue, as well as those articles which referred to criminal offences against the social regime according to the penal code. Most notorious was article 133, on "hostile propaganda", which stated that a citizen could insult the country orally, in writing or with signs. Until the end of the seventies, the country could announce some of its declarative principles as the truth. Precisely in this decade it gave the impression that its economic model had begun to live and give people the opportunity for greater prosperity. But the economic "success", which was based on loans (in 1947 Yugoslav debt amounted to \$2.7bn, in 1975, \$5 bn, and in 1980 \$18bn), started to disappear after Tito's death in 1980, when foreign aid declined. The economy began to languish; there were shortages of goods, everyday necessities and petrol. Strikes started and unemployment increased.

4.2.8. The establishment of the new Communist elite

In Slovenia in the first post-war years, a new power elite was formed which together with the leading part of the growing Republican and State office staff, gradually grew into the Communist “new class”. It was severe hierarchic organisation. The individual’s position in the authoritative and official scale decided not only their power and influence, but also their material position and privileges. The new authorities introduced a system of payment by function, instead of payment by qualification, which made it possible to reward leading individuals who did not have proper education, and at the same time the most eager devotees and adherents were given extra benefits (better apartments, a chance to shop in special stores, better quality medical benefits, the use of luxury holiday houses, using state-owned vehicles etc.). This was, of course, in opposition to Communist principles and the declared policy of reducing differences.

4.3. Typical cases of encroachment on human’s rights in Slovenia between 1945–90

The first period of tough repression after the revolutionary victory in 1945 indicates an obvious suppression of human’s rights. Direct and severe mass violations of human rights were typical and also essential freedoms were violated, often with brutal force. This was a period of revolutionary violence and terror needed for the Party to take power and gain strength. Therefore, for example, the authorities began to use so-called “temporary appointments of residence”, instead of the deprivation of liberty with criminal decisions. They were passed by an administrative body on political opponents, who were sent to concentration camps, and other suspicious or harmful persons to remote parts of the country. This was connected with numerous enforced displacements of people. This period lasted from 1945 to 1955. In this period the State was based on murder (wartime liquidations, mass slaughter of political opponents, post-war “clearing the ground” of class and military enemies, judicial murders), robbery or legal collective theft (wartime and post-war confiscations, nationalizations, agrarian reforms, dispossessions, confiscations of property), violence against the body, dignity and other essential human rights (police terror, illegal arrests, fake trials, forced labour in concentration camps, arbitrary political interventions in official relations, fear, deception and lies (indoctrination, the manipulation of public opinion, ideological violence, the misappropriation of history).

As regards the relation of the totalitarian system towards the principle of division of authority, the Yugoslav and with it also the Slovene constitutional system was the same as all the other totalitarian systems. In opposition to the tradition of European legal civilization, it did not put advance human rights and form clear legal restrictions on national authority and its violence. Therefore it opened the possibilities for arbitrary authority. In the Constitution of the SRS stood the principle of unity, which meant that the boundaries between the executive, judicial and legislative branches were not precisely defined. And therefore also relations of independence, inspection and collaboration connected with it.

According to the constitutional concept of a people’s democracy, which was defined by Communist ideology between 1945–53, authority in the State should belong to the people or to a representative body elected from among them. For practical reasons the Communist elite in Yugoslavia centred authority on the government, which was personally connected with the head of the Communist Party. The Party made excuses, as though the circumstances dictated constant powerful national interventions with political means and means of revolutionary pressure. Therefore it is not surprising that members of parliament met only twice a year. The Government took over legislative functions and all vital relations were arranged by decrees with legal force. The number of these decrees and their content attained large extensions. In the period from 1945–50, the Yugoslav government passed 345 decrees, and between 1950–53, 104 decrees. The Constitutional Act of 1953 did not allow such decrees any more, but in 1953 the government issued 80 more, in 1954 more than 40, and in the following years over 20 more each year.

The decisions of administrative bodies were not subjected to judicial review until the introduction of administrative dispute, which occurred after 1952. Regulations of administrative process for the administrative-legal activity of national bodies were used only after the year 1957, when the General Administrative Procedure Act was adopted.

4.3.1. Subordination of the judiciary to the Communist authorities

The unity of authority principle, which actually meant the monopolistic authority of the ruling Communist Party, centred on its Politburo, could not recognize the Courts as independent and autonomous state bodies. The pressures on judges were various, from the most brutal purges of judges and their re-education, to the later more refined form of subordination of the judicial branch of power. Already at a meeting of the temporary People's Assembly in July and August 1945 in Belgrade political adequacy of judges was demanded during a discussion about qualifications. The judges could be lawyers, but only under the condition that they were "boundlessly loyal". Therefore, when choosing between uneducated, but loyal legal laity and educated lawyers who are not loyal, the opportunity had to be given to the former. The primary task of the judiciary was the liquidation of political opponents and enemies, and not the solution of disagreements by legal means.

The purge of judges formally began with a decree of revolutionary authority on 31 October 1945 on availability of all state employees. With this decree the new authorities took into service only those who seemed suitable. Other judges were systematically re-educated by the new authority. The primary task was entrusted to the Ministry of Justice, which tried to influence the judicial cadre professionally and politically. Most significant is one of the resolutions from the Ministry of Justice conference with the presidents of District Courts in December 1947: "The Courts have to become the fighting body of people's authority. In our Courts we must educate new people, new cadres of socialist jurists with advanced, hardworking methods." Therefore the judge had also to be a political worker. The role played by the judicial branch in the period of "People's Democracy", is best illustrated by the comment of the president of the District Court in Gorica in 1950: "The juridical function as part of the united people's authority is very important in the transitional period from capitalism to socialism. This is during the dictatorship of the proletariat, when the point of the state forces is fixed against those elements which tried to prevent or obstruct our progress to socialism. The courts are also a body of the people's authority, which has dealt a blow with help of criminal judiciary to exploitative elements and harmful persons of all kinds. At the same time, they protect honest working citizens to work untroubled. Therefore it is important how the courts execute punishment politics, which has the task of influencing people who have committed crimes in a good way. Therefore, the right punishment politics is the best weapon in the hands of working people, which also serve as to re-educate people." The authorities imposed the repressive measures with the help of criminal judiciary.

4.3.2. Prevention of freedom to form political parties

Activity by any political party except the KPJ was impossible after the war. Although some of them existed for some years after the war and their activities were allowed according to the law. The agreement on the activities of political parties on the political level, between Tito and Šubašić (the representative of the Government of Yugoslavia in London) was achieved in 1944, with the third so-called Belgrade agreement. Otherwise, the formation of parties was allowed under a special act on associations, assemblies and public meetings from the formal-legislative view on 25 August 1945. This was valid until 1965, when it was replaced by the new primary assembly act. This 1965 act does not mention explicitly political parties, but it also does not forbid them. With temporary provisions defines that all established associations can continue with their work. But all parties were totally eliminated from political life and brutally repressed by repressive means. It is necessary to mention that the ruling KPJ or ZKJ was never formally legally registered and was therefore illegal. It is typical that the KPJ after taking power in 1945, used conspiracy and plots for some years. Prevention and suppression of the opposition were not only incompatible with the then Constitution, but also expressly illegal and meant the constant severe violation of human rights and privileges. Immediately after the Second World War, the Slovene political leader demanded and the UDV (Administration of State Security) executed precise reviews of the activities of all political parties in Slovenia. At first the methods were violent, then more subtle: repeated interrogations, psychological pressure, threats of legal action, blackmail regarding family members etc.

The authorities in Slovenia and Yugoslavia did not allow the formal existence of parties, as was the case, for example in East Germany or in Poland, but instead, it found some substitute in so-called social-political organisations, particularly in one of these, SZDL (Socialist Union of Working People).

4.3.3. Prevention of freedom of expression

The right of political union is closely connected with the right of freedom of expression, and particularly freedom of the press. Like the rest of the Communist regimes in Eastern Europe, the Communist regime in Yugoslavia or Slovenia also did not allow freedom of expression and all was subject to censorship.

The Party controlled all aspects of public life with the help of institutes, so-called “social-political suitability”, which enabled privileges and discrimination regarding the views of the world or political beliefs and activity.

In the 1980s a secret *Official Journal* began to be distributed, but only to certain important persons. The introduction of this secret journal was in clear opposition to the then constitutional principles of laws and other legal regulations, and thus in opposition to the concept of democratic rule of law. All together 618 editions of the secret *Official Journal* were published, while in the same period, 817 public *Official Journals* were published. There were also special secret general implementing regulations, which were never published and were never found in any secret *Official Journal*. They regulated certain matters in the field of national security.

A special form of human rights violation appeared in the Socialist Republic of Slovenia: the committees for general people’s defence and social self-protection. They were established for realization of policies, goals and tasks for social self-protection, for evaluations of safety circumstances and for the assurance of realization by the Constitution defined role and responsibility of Communist Union for protection of socialistic self-government relations. The Committees were established in companies, local communities, districts and at Republic level. The president of the District or Local Committee for General People’s defence and social self-protection was the president of the district Committee of the Communist Union. This system ensured UDBA/Party supervision of all important state and social institutions or all interesting fields about protection, with the help of a wide net of secret police under the patronage of the Communist party. All economic organisations, social services, associations and soldier-recruits were under control, irrespective of their location. The territorial organisation or division was very similar to the formal divisions of districts and local communities. In the safety area acted capillary network of the street commissioners and collaborators with special tasks.

Otherwise, the Communist party had also spread its own basic cells, known as essential organisations of the Communist Union, everywhere. They were present in all economic organisations, social services (schools, universities, health centres, hospitals, museums), in state and district administrations, in courts, and among prosecutors.

Therefore the Yugoslav and Slovene Communist Union several times determinedly insinuated that they had no intentions of moving away from the classic Leninist-Stalinist model or of changing the nature of their authority, although they often announced new reforms. They renounced them as soon as they threatened the leading role of the Party in society. Their followers were characterized and considered dangerous to the social regime. The Union never allowed self-government and decentralization to dominate over principles of democratic centralism.

Nevertheless, the bloody decay of Yugoslavia was the consequence of the mistaken and totalitarian policies of the post-war Yugoslav regime.

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Mateja Čoh*

CHARACTERISTICS OF THE JUDICIAL SYSTEM IN SLOVENIA BETWEEN 1945 AND 1951

1. Introduction

The Communist Party of Yugoslavia (CPY) began consolidating power immediately after the end of the Second World War. This was the period of so-called “people’s democracy”, which lasted until 1950 and was characterised by authority held by the people and the representative body elected from among their ranks – the “People’s Council”.¹ It was characterised by the unity of the authorities and democratic centralism. The new political elite (Communist Party) held the strings of legislative, executive and judicial power in its hands. Professional qualifications were not the only measure of fitness for performing certain functions; political suitability was more important. This was also evident in the organisation of the judicial system and in the elections of judges. In practice, the upholding of the principle of the unity of the authorities meant an interweaving of political and state authorities, since various political bodies carried out tasks, which are allocated to executive or judicial bodies in a parliamentary democracy. Extremely severe forms of violations of human rights and freedoms also occurred during this period.² These included mass illegal killings, the existence and operation of concentration and labour camps, the eviction of populations from their places of residence and violent seizure of property. The authorities in various ways reached into every area of social life, relying on the secret political police, the so-called Department of National Protection (OZNA) or State Security Administration (UDV). Established in May 1944, it acquired a significant role in connection with preparations for the seizure of power after the end of the war, when it played an important role especially in driving out collaborators with the enemy and opponents of the new system. It also played a very important role in the administration of justice, especially in interrogating suspects and investigatory procedures.

The second half of the 1940s was also characterised by numerous political and staged judicial proceedings against so-called “class enemies”. A large number of proceedings were held against farmers, merchants and tradesmen, industrialists, priests, people who were suspected of having collaborated with the enemy during the war or spied for Western intelligence services, and suspected members of the opposition. The courts imposed extremely harsh sentences. This was contributed to significantly by the organisation of the judicial system, and therefore in this paper we shall present the main characteristics of that system, the operation of military tribunals and the Court of Slovenian National Honour in the summer of 1945, the characteristics of judicial proceedings against members and supporters of illegal groups and the characteristics of proceedings against prominent farmers at the end of the 1940s.

2. Judicial proceedings in the summer of 1945

Regular civil courts had not yet been established in Slovenia in the summer of 1945. At the time, judicial proceedings were held before military tribunals, which also heard civilians, and before the Court of Slovenian National Honour.

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¹ Roman Ferjančič, Lovro Šturm, *Brezpravje – slovensko pravosodje po letu 1945 (Lawlessness – The Slovenian Judiciary after 1945)*, Ljubljana 1998, pp. 12–13 (hereinafter Ferjančič, Šturm, *Brezpravje*); Jerca Vodušek Starič, “Med ljudsko demokracijo in demokracijo” (“Between People’s Democracy and Democracy”), in: *Slovenija 1848–1998*, pp. 312–313; Jerca Vodušek Starič, *Prevzem oblasti 1944–1946 (The Seizing of Power 1944–1946)*, Ljubljana 1992, pp. 283–284 (hereinafter Vodušek Starič, *Prevzem oblasti*).

² Lovro Šturm, “O kratenju človekovih pravic in temeljnih svoboščin v Sloveniji v obdobju 1945–1990” (“On the Encroachment of Human Rights and Fundamental Freedoms in Slovenia 1945–1990”), in: *Temna stran meseca (The Dark Side of the Moon)*, pp. 65–112.

After the end of the war, the territory of Slovenia in a military sense was administered by the 4th Army, and a new organisation of military tribunals was established.³ In a report on the work of the military tribunals in July 1945, the Office of the Military Prosecutor reported that the tribunals had been established in order to complete “mass trials” as quickly as possible and thus satisfy the political directive.⁴ The military tribunals had begun to work intensively in June and pursuant to the *Decree on Military Tribunals* of 1944⁵ tried those who had been accused of having cooperated with the enemy during the war, those who had committed war crimes or treason, those who had been members of the enemy’s political organisations and military formations, and owners of industrial firms and other commercial institutions.⁶ The course of the proceedings was influenced by political instructions, which had been handed down by the Central Committee of the Slovenian Communist Party. The proceedings were prepared extremely quickly, as the courts completed their investigations within a few days of receiving the prosecution materials from the OZNA. The investigations, which were short and conducted quickly, were led by special investigators who also held the position of public prosecutor. This means that they both filed the indictment and prosecuted the case before the court. The collected evidentiary materials in the investigative procedures were for the most part incriminating and extremely deficient. Therefore the defenders, who were included in the proceedings only during the hearing and usually *ex officio*, had very limited opportunities to do any sort of work. We cannot speak of any meaningful preparation of a defence for the accused parties, and such proceedings constituted a violation of the defendants’ right to a defence. The hearings were usually short, and the verdicts were issued in as little as ten minutes.⁷ The military tribunals issued sentences of death, forced labour, eviction from residence and seizure of property. Many death sentences were issued, the majority of which were carried out, but their number is unknown, as the judicial authorities did not have any data on proceedings held before the military tribunals. The sentence of seizure of property was imposed on the owners of industrial and other companies, often in absentia. In the summer of 1945 the military tribunals ordered at least 685 property seizures, but this figure is not definitive. Members of German nationality were also put on trial. The consequence of these trials was the nationalisation of German property in Slovenia, and by the end of 1946 the Seizures Commission had ordered around 20,000 seizures of German property.⁸ In March 1945, the Central Committee of the CPS issued guidelines for the establishment of the Court of Slovenian National Honour, for proceedings, which the military tribunals did not hear. Similar courts were established in various other European countries, primarily in order to avoid vengeance by nationals against members of the occupying forces and their sympathisers.⁹

The Court of Slovenian National Honour was established by the *Prosecution of Crimes and Offences Against the Slovenian National Honour Act* at the beginning of June 1945, and individual five-member senates were formed in several Slovenian towns.¹⁰ At the end of June 1945, the President of the Court of Slovenian National Honour issued various instructions on the work methods and organisation of the Court. In them he stated that the work of the court should have the “character of a strike force” and that proceedings before the courts should be completed in the “shortest possible time”. Therefore he called on the judges to call as many cases as possible every day and to make them short and the proceedings fast. As a result, the senate of the Court of National Honour in Maribor heard around 30 to 40 cases per day.¹¹

³ *Official Journal of the Democratic Federation of Yugoslavia (OJ DFY)*, 65/45; Damjan Guštin, “Military Administration of Slovenian Territory”, in: *Recent Slovenian History* 2, pp. 839–840; Milko Mikola, *Confiscation of Property in Slovenia 1943–1952*, Celje 1999, pp. 93–94 (hereinafter Mikola, *Confiscation of Property*).

⁴ AS 353, Public Prosecutor’s Office of the Republic of Slovenia (AS 353), file 9, Report of the Public Prosecutor of the IVth Army, 26 July 1945; Vodušek Starič, *The Seizing of Power*, pp. 261–262.

⁵ Josip Broz Tito, *Selected Work. Book 20*, pp. 125–134.

⁶ Cf. Maribor Regional Archive (MRA), Military Tribunal, box 3, Sod 796/45, Sod 871/45, Sod 923/45, box 4, Sod 930/45, Sod 987/45.

⁷ Cf. MRA, Military Tribunal, box 2, Sod 331/45, box 3, Sod 796/45 and Sod 789/45, box 3, Sod 789/45.

⁸ Aleš Gabrič, “Liberation and the Establishment of the New Authorities”, in: *Recent Slovenian History* 2, p. 835; Vodušek Starič, *The Seizing of Power*, pp. 263–270; Milko Mikola, *Judicial Proceedings in the Celje Region 1944–1951*, pp. 92–94; Mikola, *Confiscation of Property*, pp. 13–162; Jože Prinčič, “Nationalising the Economy”, in: *Recent Slovenian History*, pp. 873–875.

⁹ Vodušek Starič, *The Seizing of Power*, pp. 187–188.

¹⁰ *Official Journal of the Slovenian National Liberation Council and National Government of Slovenia (OJ SNLC and NGS)*, 7/45. MRA, *Court of National Honour, Maribor 1945 (CNH)*, box 18.

¹¹ MRA, CNH, box 18, To the Comrade Judges of the Court of National Honour and Report, 19 July 1945.

The first trials before the Court of National Honour were begun on 4 July, and the senates handed down sentences until the end of August 1945, when the court was abolished.¹² During this time around 2,000 proceedings were heard, at which large groups of defendants were usually tried, so the precise number of persons convicted is not known. As in the trials held before the military tribunals, the OZNA played a significant role in the proceedings held before the Court of National Honour, and the proceedings were short. The court tried enemy collaborators and sympathisers, and people who had cooperated with them economically, politically, culturally and in any other way during the war. The Court sentenced all convicts to the dispossession of their citizen's and political rights; this meant that among other things the court deprived them of their right to vote and the right to perform civil service duties and occupations. In addition, it could also sentence them to forced labour and the seizure of property, the latter in 411 cases.¹³

In the proceedings held before military tribunals and the Court of National Honour, the requirements of a country under the rule of law were not taken into consideration. The entire procedure was a short one and the OZNA gathered only incriminating evidence. Thus the defendants did not have access to legal defence, and an indictment was as good as a sentence. The operations of these courts were also important for the authorities due to the sentences imposed, particularly the revoking of the right to vote from potential opponents of the new system and the seizure of property. This had long-term consequences, since the sentence of loss of citizen's and political rights also constituted a loss of voting rights. The convicts were removed from the voting registers, and thus were unable to participate in the elections of local authorities in August 1945 and in the November elections for the constitutional convention. When amnesty was declared at the end of August 1945, the sentences of property seizure and loss of political rights for the most part remained valid in their entirety. The revoking of voting rights through the decisions of the military tribunals and the Court of National Honour made it easier to cleanse the voting registers before the elections for the constitutional convention, and the seizure of property made the work of nationalisation easier.¹⁴

3. Organisation of regular courts

The foundations for the establishment of the judicial system after the end of the war had already been set during the war. A Soviet lawyer, politician and chief prosecutor at the Stalinist trials in the Soviet Union between 1938 and 1938 described its role as follows: "They have their own particular field and a special operating method, but in terms of their role, duties and objectives they do not differ in any way from other state authorities. /.../ A court is not a body that is non-political and independent of social events, but on the contrary is a body that is closely connected with the masses and with state policy in general. The courts are weapons in the fight against exploitation and the exploiters."¹⁵ After the war, this conception of the role of the courts was put into effect in Yugoslavia as well. The courts became merely a part of the unified and indivisible people's authority, which the Communist Party wanted to protect as much as possible as a basic attainment of the National War of Liberation. Therefore it viewed the courts as political and as bodies independent of any particular social event. Law and the legal system were in the hands of the politicians, and the courts adjudicated according to political directives.

In addition to the principle of unified authority, the creation and organisation of the courts after the end of the war were also influenced by the ideas of the discontinuity of the new legal order with the legal order of the Kingdom of Yugoslavia and of the possibility of electing judges and jurors. Yugoslav Communist Party ideologue Edvard Kardelj stated as early as October 1944 that it was unacceptable for the courts to rely on the old laws and the legal order of the Kingdom of Yugoslavia. Therefore in August 1945 a law was passed which introduced new regulation of the organisation and competences

¹² *OJ SNLC and NGS*, 29/1945.

¹³ Mikola, *Confiscation of Property*, pp. 146–148.

¹⁴ Aleš Gabrič, "Liberation and the Establishment of the New Authorities", in: *Recent Slovenian History* 2, p. 836.

¹⁵ AS 227, State Secretariat for Judicial Administration of the People's Republic of Slovenia (AS 227), I/1947, box 17/236, Application of Judicial Laws and Duties and Application of our Legitimacy.

of the courts. At the same time, elections for the National Liberation Councils were held, whose main duty was to elect judges and jurors.¹⁶ The courts thus became an electoral body of the state authorities.

Up to September 1945, when the courts began working, four laws regulating criminal offences were passed, the most important being the *Act on Criminal Offences Against the People and the State* and the *Act on Suppression of Prohibited Trade and Economic Sabotage*. The majority of sentences passed between 1945 and 1951 were issued pursuant to these two laws. These laws did not include the fundamental principles of criminal law of democratic countries, since criminal offences were not precisely defined, which made it possible to institute the criminal policy which suited the authorities at the moment.¹⁷ According to generally applicable legal principles, the laws regulating criminal offences would have to be component parts of the *Penal Code*, which was adopted only at the beginning of 1951. Therefore in January 1946 the judges received instructions that in cases where there were no suitable legal regulations, the courts were to adjudicate from the point of view of attainments of the National Struggle for Liberation;¹⁸ the most important element was the principle of unified people's authority. The role of judges in implementing the penal policy was therefore to protect the system of unified people's authority, where by the laws gave only a framework for adjudication. Judges who especially politically but also professionally did not conform to the new understanding of the role of the courts made numerous errors in adjudicating cases and were criticised for handing down excessively lenient sentences. The work of the courts was also criticised at the beginning of December 1945 by Edvard Kardelj, who stated that the courts had to "administer justice according to the Party's wishes. The OZNA must be /present/ in the courtroom."¹⁹ At the end of 1945 the campaign against the courts led to a cleansing of the ranks of judges, which occurred along political lines. It was carried out via the Ministry of Justice, and a large number of judges were replaced. The cleansing of the judges' ranks caused alarm among the judges, and some judges' positions were not filled.²⁰ The authorities solved the problem by introducing the seating of lay judges in the courts, i.e. judges without legal education. In this way they hoped to attract "politically solid people"²¹ to the courts. This meant that political criteria became more important than professional qualifications for seating judges, and that the lay judges were above all good and reliable political activists. Owing to numerous errors they were no longer elected after the fourth plenary meeting of the YCP in 1951.

The post-war judicial system was also characterised by the powerful role of public prosecutors. The principle of democratic centralism rose to particular prominence in the organisation and development of the public prosecutor's office, which in practice meant that public prosecutors were independent of the bodies of the authorities. In accordance with the law from 1946 the public prosecutor's office was a body of the Yugoslavian People's Assembly, i.e. a body of the highest legislative authority.²² Following the Soviet model, where the public prosecutor's office was directly connected to the Party, the Yugoslav authorities also established a direct connection between the public prosecutor's office and the Party, since most of the employees of the public prosecutor's offices were Party members. Thus the public prosecutor's offices were staffed mainly by political appointees from the very beginning. The connection between the public prosecutor's office and the Party was also underscored by the fact that the republican public prosecutors, who were Party members, participated in meetings of the Politburo

¹⁶ Jerca Vodušek Starič, "Background of Judicial Proceedings in Slovenia in the first Post-war Year", in: *Papers on Recent History*, 1–2/92, pp. 141–142 (hereinafter Vodušek Starič, "Background of Judicial Proceedings"); AS 227, Org/1947, file 1–22, No. 1/47, Report on the Work of the Ministry of Justice, 22 September 1945; Structure of the National Courts; Org/1947, file 23–33, No. 23/47–II, Topics for Lectures on the Organization of the Judicial System.

¹⁷ OJ DFY, 26/45 and 66/45; Ferjančič, Šturm, *Lawlessness*, p. 35.

¹⁸ AS 227, I/1946, box 8/148, Minutes of Meeting of Presidents of District Courts, President of the Supreme Court and leading functionaries at the Ministry of Justice, 21 January 1946 and Org/1947, file 54–87, Minutes of the Second Conference of Presidents of District Courts, 6 April 1946.

¹⁹ Aleš Gabrič, "Prosecution of Political Opponents", in: *Recent Slovenian History* 2, p. 861 (hereinafter Gabrič, "Prosecution of Political Opponents"); Lovro Šturm, *Background of the Slovenian Justice System*, Ljubljana 1995 (hereinafter Šturm, *Background of the Slovenian Justice System I*); Survey of the Work of the Ministry of Justice in 1947. AS 227, Organization/1947, file 54–87, Minutes of the Second Conference of Presidents of District Courts, 6 April 1946.

²⁰ AS 227, Org/1945, file 1401–1700, Report on the Work of the Ministry of Justice, 9 January 1946; I/1945, box 7/132, Minutes of the First Conference of Representatives of the Republics' Ministries of Justice 11 and 12 February 1946; AS 353, file 8, Monthly Report 1945, Report of the Penal Department, 15 January 1946.

²¹ AS 227, I/1946, box 8/148, Minutes of Meeting of Presidents of District Courts, President of the Supreme Court and leading functionaries at the Ministry of Justice, 21 January 1946 and Org/1946, file 1401–1700, Report on the Work of the Ministry of Justice, 9 February 1946.

²² *Official Journal of the Federal People's Republic of Yugoslavia (OJ FPRY)*, 60/46.

of the Central Committee of the CPS.²³ This means that we can also not speak of the independence of the public prosecutor's office and that the public prosecutor's office was in fact the institution in which the Party's influence had the greatest effect. This form of organisation of the public prosecutor's office also provided a strong assurance that judicial proceedings would proceed in the way that the Party envisioned. This was particularly characteristic of so-called political judicial proceedings.

At these proceedings the authorities treated political opponents as enemies of the people, and the most frequently prosecuted criminal offence was opposition to the new authorities. This criminal offence was investigated exclusively by the OZNA/UDV, and the main purpose of the trials was to establish the commission of "acts against the people" by political opponents and to revenge them.²⁴ They were tried pursuant to the *Act on Criminal Offences Against the People and the State*, in which various criminal offences were defined in general terms, and the law permitted adjudication following the principle of analogy. This means that individuals could be convicted of a criminal offence, which was merely similar and not equal to that which had been legally established. This greatly expanded the spectrum of criminal offences, which could be tried pursuant to this law. In addition to very harsh prison sentences and seizure of property, 211 convicts were executed on the basis of the courts' death sentences between 1945 and 1951, of whom 203 were political prisoners. The greatest number of political prisoners were executed in 1947 (42) and 1948 (43).²⁵

In the political trials in the first two years after the end of the war,²⁶ most of the people convicted were those whom the Party already considered to be political adversaries during the Second World War. The Party changed these tactics in 1947 with the Nagode Trial, when it began seeking revenge on former co-operators with the Liberation Front. In 1946, the OZNA/UDV directed its operations towards the opposition within the People's Front. At that time in Slovenia, they began to investigate Črtomir Nagode and his colleagues. At the trial in 1947, the court imposed extremely harsh sentences, including several death sentences, but only Nagode was executed. At the trial the defendants were presented as British spies, and not as opposition. The situation was similar at the Dachau Trials in 1948 and 1949, when more than 30 former prisoners from Dachau were sentenced, including 15 death sentences, and 11 were executed. At that time the authorities also took revenge on their own people, as several respected Slovenian pre-war communists were convicted.²⁷

4. Judicial proceedings against illegal groups

Between 1945 and 1950, around 35 larger illegal groups were operating which had arisen as a form of resistance to the measures of the authorities. The members of these groups were mostly farmers and people in hiding, and some were groups of people who had been sent into Slovenia through political emigration from the British-occupied area in Austria and Italy. Some of these groups were armed, and their members engaged in armed clashes with the UDV, the Army and the National Police.

These groups had an anti-communist orientation. The Party and the UDV asserted that the objective of their operations was to destroy the communist authorities and enable the return of King Peter II to Yugoslavia.²⁸ This was supposed to have been achieved through political, military, espionage and propaganda campaigns, which were also connected with foreign intelligence services. Their operations in Slovenia were supposed to have been supported and guided by emigrant intelligence centres in refugee camps in Austria and Italy.²⁹

²³ Ferjančič, Šturm, *Lawlessness*, pp. 28–29; Peter Kobe, "Criminal Law during the Dachau Trials", in: *The Dachau Trials*, p. 95, Josip Hrnčević, *Svjedočanstva (Record)*, Zagreb 1984.

²⁴ Vodušek Starič, "Background of Judicial Proceedings", p. 152.

²⁵ Zdenko Zavadlav, *Partizani, obveščevalci, jetniki (Partisans, Informers, Prisoners)*, Ljubljana 1996.

²⁶ The most significant were the Christmas trial of 1945, the trial of Home Guard General Leon Rupnik, his assistant Milko Vizjak, SS General Erwin Rösener, head of the police administration during the war Lovro Hacin, Ljubljana Bishop Gregorij Rožman and the leader of the Slovenian People's Party before the war Dr Miha Krek in August 1946 and the trial of Dr Friedrich Rainer et al. in July 1947.

²⁷ Gabrič, "Prosecution of Political Opponents", pp. 862–863; *Usoda slovenskih demokratičnih izobražencev (The Fate of Educated Slovenian Democrats)*, Ljubljana 2001; Ljubo Sirc, *Med Hitlerjem in Titom (Between Hitler and Tito)*, Ljubljana 1992; Vodušek Starič, *The Seizing of Power*; Martin Ivanič (ed.), *The Dachau Trials*, Ljubljana 1990.

²⁸ Cf. 5th Congress of the Communist Party of Yugoslavia, Ljubljana 1948 (5th Congress CPY), pp. 318, 321–322; AS 1931 Republican Secretariat for Internal Affairs of the Socialist Republic of Slovenia (AS 1931), GOC-NKKJ; Grum; Kornhauser; MRA, Maribor District Court, Ko 287/46, Ko 288/46, Ko 290/46; Nova Gorica Regional Archive (NGRA), Gorica District Court, K 41/49; K 62/50; Celje Historical Archive (CHA), Celje District Court, K 15/49.

²⁹ Cf. AS 1931, GOC-NKKJ.

The British and American occupation authorities in Austria, particularly the British Field Security Service and the American Counter Intelligence Corps, were aware of the operations of the intelligence centres and illegal groups. The members of some of these illegal groups crossed the Yugoslav-Austrian border; if they were apprehended, the Field Security Service interrogated them about why they were fleeing across the border and what the conditions were like in Yugoslavia. They were also frequently interested in data on the Army, the UDV and the Party.³⁰ In the UDV analyses there are several hints that they signed statements of cooperation with the Field Security Service, but at present this cannot be verified. The accusations of the UDV and the Party that the members of the groups operated following the instructions of foreign intelligence services also do not hold up, since it cannot be established from the available documents which intelligence services were involved (the Field Security Service and the Counter Intelligence Corps were not intelligence services!). Furthermore, neither the UDV, the public prosecutor's offices nor the courts explained what sort of intelligence, military or other data on the situation in Yugoslavia the individuals were supposed to have sent abroad. It is hard for us to imagine that the members and supporters of the illegal groups, who were mainly farmers, were actually in possession of information that constituted carefully protected state secrets.

The work of the illegal groups was not a political, military or religious movement, as presented by the authorities at the time, who skilfully took advantage of their existence. Under the pretext that the members and supporters of these groups were cooperating with intelligence centres in Austria or even with foreign intelligence services and attempting to destroy the communist regime, with the help of the UDV they eliminated a few serious and many more suspected "class enemies". The most common *modus operandi* of the UDV was to place an agent into an illegal group; according to various data some of their agents were even leaders of these groups.³¹ Mainly through their widespread agent and informer network in the field and agents within the groups, the UDV fairly successfully uncovered the operations of the groups and collected data on their members. They were less successful in capturing them, as many of the leaders and members of the largest illegal groups succeeded in escaping. Their greatest successes include the arrest of a member of the Main Intelligence Centre in Austria, Miodrag Mihajlović, and two couriers from the same centre. The UDV convinced Mihajlović and one of the couriers to work as collaborators.³²

The judicial proceedings against members and supporters of illegal groups were public, and they were tried pursuant to the *Criminal Offences Against the People and the State Act*. The criminal offences which the prosecutors accused the defendants of having committed on the basis of UDV materials were grounded in political fact and were without exception connected with current political and economic conditions in the country. This was also true of the courts. The entire investigative procedure was exclusively in the hands of the UDV, which used inhuman methods to gather only incriminating evidence, and like the public prosecutor's offices and the courts later on, uncompromisingly rejected any attempts to prove the innocence of the defendants. We believe that the UDV also planted incriminating evidence. This is proved by the need for retrials after 1991, in which the applicants often stated that they were tried on the basis of counterfeit documents.³³ Therefore it is disputable that the courts proved the defendants' guilt solely on the basis of their interrogations during the investigative procedure. Suspects did not have counsel during the investigative procedures. Legal counsel was included in the process only during the hearing, and in the majority of cases the court assigned them to the defendants *ex officio*. Therefore the lawyers rarely posed questions for the defendants, since they were unable to prepare adequately for the hearings; they received the indictments either just before the hearing or at the hearing itself.

The public prosecutors had the last word at the hearings. Documents show that the UDV, public prosecutor's offices and courts agreed on both the course of the judicial proceedings and the severity of the sentences.³⁴ The trials of members and supporters of the illegal groups were political and mostly staged.

³⁰ Cf. AS 1931, GOC-NKKJ; Kornhauser; Drčar; Serbec Gang. Public Record Office, Foreign Office, 1020/3178, List of all persons connected with the gang, 17 September 1947; Interrogation report: Franz Hautz, 8 September 1947; Interrogation report: Serbec Josef, 9 September 1947; Interrogation report: Slavko Jursic, 14 September 1947; Interrogation report: Alois Pozderek, 23 September 1947; Interrogation report: Martin Sainovic, 23 September 1947.

³¹ AS 1931, Palček gang; Franc Požar gang.

³² AS 1931, Serbec gang; GOC-NKKJ; Beginning and End of Gang Activity in Štajerska; Illegal Organization of Gangs – Analyses.

³³ Cf. NGRA, Gorica District Court, K 41/49, K 62/50; MRA, Maribor District Court, Ko 287/46, Ko 288/46, Ko 290/46, K 162/48; CHA, Celje District Court, K 300/47.

³⁴ Zdenko Zavavlav, *Crusaders: Matjaž's War in Slovenia*, Ljubljana 1991 (hereinafter Zavavlav, *Crusaders*); AS 1931, GROM; the Slan gang.

The largest and most important trial was that of Miodrag Mihajlović and 12 co-defendants, which was held in October of 1946 before the Military Tribunal of the 4th Army in Maribor. The purpose of the trial was to intimidate members and supporters of illegal groups in the field and to put on public display the “criminal activities” of the group members and the “against the people” clergy. The trial was also important because the court tried the representative of the emigration to Austria and the member of the Main Intelligence Centre, Mihajlović, the leaders of what were at the time the two largest illegal groups in Štajerska, two priests and members of several other illegal groups. They were sentenced to the loss of liberty for 15 years and the loss of citizen’s rights. Mihajlović was handed over to the military counterintelligence service after the trial.³⁵

Another important trial was the trial of 12 members of the Sernec illegal group, which was tried by the Military Tribunal of the 4th Army in Ljubljana in July 1947. This was one of the largest illegal groups, and also the only group that had come into Slovenia from Austria. The trial was prepared very quickly, as the UDV arrested the majority of the defendants at the end of June and the beginning of July 1947. They were accused of being “English spies”, whose terrorist and espionage activities were associated with the political emigration to Austria. The court condemned 7 of the defendants to death, but it is not known whether they were all executed.³⁶

According to UDV data between 1945 and 1949, 512 members of illegal groups were captured, of whom 114 fell in battle and 398 were tried, many of whom were sentenced to death. During the same period, the UDV captured more than 1,300 supporters of illegal groups and tried the majority of them.³⁷

5. Judicial proceedings against farmers

After the end of the war the Party guided the development of agriculture through several administrative measures. One of the first, which directly affected farmers, was compulsory purchases and compulsory delivery of surplus goods to the state. This means that the authorities precisely defined for farmers the amount of produce, products and livestock they had to cultivate and deliver to the state.³⁸ The compulsory purchases and deliveries were a major burden on farmers, and they resisted in various ways. One consequence of these policies was judicial proceedings against farmers, which began in the autumn of 1945, and by 1951 the courts had tried several thousand farmers.

The trials of farmers reached their peak between 1949 and 1951. At that time the position of farmers was strongly affected by the process of so-called socialist re-education of villages and the collectivisation of agriculture, which began in 1948, after the dispute with the Informbiro. In a resolution adopted by the members of the Informbiro in Bucharest, the CPY was labelled a “kulak party”, and its leaders were said to be pursuing a policy, which was hostile to the Soviet Union and its party. They accused the Yugoslav party of allowing the strengthening of capitalist elements in villages and pursuing a mistaken agricultural policy.³⁹ They therefore accused the Yugoslav Communist Party of straying from the Soviet model of building socialism, and therefore excluded them from the Informbiro (aka Cominform).

One of the consequences of the dispute was that the Party severely constrained its relations with farmers in order to demonstrate that the accusations in the resolution were not true. Under these circumstances the Central Committee of the CPY adopted a resolution to convene the Fifth Party Congress, which was held in Belgrade in July 1948. The delegates resolutely rejected all of the accusations of the Informbiro,⁴⁰ and Kardelj set the process of the socialist re-education of villages and the collectivisation of agriculture as the most important task of the CPY. In his opinion, this was to happen via the system of collectivisation. This meant assembling farmers into agricultural collectives,

³⁵ AS 1931, Skamlic gang; Zavadlav, *Crusaders*, pp. 91–92, 95–96.

³⁶ AS 1931, Sernec gang.

³⁷ AS 1931, *Beginning and End of Gang Activity in Štajerska and Illegal Organization of Gangs – Analyses*.

³⁸ Cf. Slavica Tovšak, *The Collectivisation of North-Eastern Slovenia as a Segment of Socialist Agricultural Policy 1945–1951*, Doctoral Dissertation, Maribor 2005.

³⁹ *History of the Association of Communists of Yugoslavia*, Ljubljana 1986, pp. 308–310 (hereinafter *History of the ACY*); Darinka Drnovšek, *Minutes of the Politbiro CK KPS/ZKS 1945–1954*, Ljubljana 2000, pp. 112–113 (hereinafter Drnovšek, *Minutes of the Politbiro*); Letter CC CPY and letter VCP(b), Ljubljana 1948; Mateja Režek, *Between Reality and Illusion*, Ljubljana 2005, p. 18.

⁴⁰ 5th Congress of the CPY, pp. 318–319.

which was supposed to occur according to the principle of voluntarily joining the collectives, under the watchful eye of the Party. The Yugoslav party adopted Lenin's theory of the social position and role of farmers: poor farmers or village poverty are obstacles to the working class, medium-sized farmers are their ally, and big rich farmers (kulaks) are a class enemy. On this basis Kardelj announced the imminent "liquidation of capitalist elements in villages", by which he meant primarily big and rich farmers – kulaks.⁴¹ Thus, like the large landowners in the Soviet Union after the October Revolution and the civil war, the large farmers in Yugoslavia became class enemies in villages who precluded the development of socialism, i.e. the collectivisation of agriculture.⁴² The battle against them was brought to a head by Yugoslav leader Josip Broz - Tito, who in the summer of 1949 labelled everyone who opposed socialism a kulak, whether they were landowners or not.

The implementation of this process in practice was set out in a special directive on accelerated collectivisation in villages through the establishment of agricultural collectives, which was adopted by the Central Committee of the CPY at the end of January 1949.⁴³ In it the party set the establishment of agricultural collectives, which were similar to the Soviet "kolkhozy" and were expected to develop according to the principle of voluntarism as the most important means for the socialist re-education of villages and the accelerated development of agriculture. In order to complete these tasks the Party foresaw the establishment of agricultural party commissions, whose main duty was to ensure that the party line was adhered to in the villages.⁴⁴ The Resolution had long-term consequences, since through its adoption the process of collectivisation of agriculture was begun in Slovenia as well, ushering in a period of the most severe repression of farmers.

The establishment of the collectives soon grew into a campaign in which the principle of voluntary inclusion was not upheld. Since the farmers did not want to join the collectives, the Party further intensified its policy, and raised farmers' taxes and obligations, while the courts imposed harsh sentences, "even up to seizure of property".⁴⁵ In addition, several injustices in the field were committed by certain activists, who used particularly violent methods "night-time searches involving forced entry into houses, occasionally while drunk, abusive language and threatening with weapons, threatening removal and socially beneficial labour, locking people in cellars, battery and other forms of abuse, removal of movable items /.../. In doing so the redeemers and activists /.../ did not proceed in this manner only against farmers who had not fulfilled their obligations, but also against those who regularly fulfilled them."⁴⁶

The biggest pressures on farmers occurred in 1949, when the largest collectives were once again established, and many farmers joined the collectives due to political and, especially, economic pressure. This also led to the strengthening of the resistance of farmers who wouldn't or couldn't fulfil the prescribed obligations. One consequence of this was the kulak processes, at which mainly large farmers (kulaks) were tried.⁴⁷ The courts tried them on the basis of the *Act on Suppression of Prohibited Trade and Economic Sabotage* and the *Founding Act of Agricultural Collectives*. For serious forms of criminal offences, both acts prescribed the sentence of seizure of property, and in the most severe cases the death penalty.⁴⁸ The first defined illegal trading, speculation and sabotage as punishable acts, while the second defined as criminal offences the obstruction and opposition of collectivisation, damage to collective property and operating to the detriment of collectives. The most important task of the courts in this regard was to ensure the correct implementation of penal policy. The public prosecutor's offices and the courts followed the party line and meted out particularly harsh sentences to large farmers.

⁴¹ J. Stalin, *The Questions of Leninism*, Ljubljana 1948, p. 51, 53, 261; 5th Congress of the CPY, pp. 340–355; 2nd Congress of the Communist Party of Slovenia, Ljubljana 1949 (2nd Congress CPS), pp. 196, 446–449.

⁴² "Maršal Tito je govoril makedonskim zadružnikom", *Kmečki glas*, 33, (11. avgust 1949), pp. 1–2.

⁴³ "Resolution on the basis tasks of the Party in the field of socialist re-education of the villages and acceleration of agricultural production", *Komunist*, 2 (March 1949) (hereinafter "Resolution").

⁴⁴ "Resolution"; AS 1589, Central Committee of the Association of Communists of Slovenia (AS 1589), box 38, a.e. 1185, Minutes of the meeting of 21 March 1950; a.e. 1202, Minutes of the conference of presidents and secretaries of authoritative agricultural party commissions, 13 October 1949.

⁴⁵ Milko Mikola, *Documents on Kulak Processes in the Celje Region*, Celje 1999, p. 4 (hereinafter Mikola, *Documents*); 2nd Congress CPS, p. 114.

⁴⁶ AS 353, box 5, Bulletin of the Public Prosecutor's Office of the People's Republic of Slovenia, 18 May 1950.

⁴⁷ Milko Mikola, "Post-war Forced Expropriation of property in Slovenia", in: *The Dark Side of the Moon*, p. 62; Archive of Dr Milko Mikola, *Manuscript of Ivan Pučnik*, 14 March 1989; Mirko Munda, *In the Name of the People*, Maribor 1990, pp. 132–134, 147 (hereinafter Munda, *In the Name of the People*).

⁴⁸ *OJ DFY*, 26/45, *OJ FPRY*, 56/46 and 49/1949.

The kulak processes were political processes, as their implementation was influenced by various measures of the authorities in the field of agriculture and the instructions of the Party and political leadership on their implementation. The courts imposed harsher sentences in these processes than in previous years and sentenced farmers to severe prison terms and monetary fines, and in most cases also to the seizure of their property. However, even during the time of the most severe repression against farmers, the presidents of the courts established that many of the property seizures were unjustified, and they warned against the improper practices of certain courts, which treated the sentence of seizure of property as an “accessory for faster establishment of agricultural collectives”. They emphasised that this punishment may not be the basis for establishing collectives,⁴⁹ but the exact opposite was true in practice. The seizure of property most often occurred so that the authorities could obtain necessary land, commercial structures and livestock, which they then allocated to the agricultural collectives. In this way they established collectives in places where they could not get farmers to establish them.⁵⁰ The courts handed down the greatest number of property seizures in 1949 and 1950, and large and medium-sized farmers were the most frequently sentenced.⁵¹ Thus through seizures a huge amount of arable land, vineyards and forests came under state ownership, as along with confiscated produce and livestock.

One consequence of the various pressures and measures applied by the authorities was that in the autumn of 1951 farmers began to leave the collectives and nearly stopped establishing new ones. The number of kulak processes was reduced, partially because in 1951 and 1952 the authorities gradually began to abolish administrative measures such as compulsory delivery and purchases. Despite this, the goal was not definitively abandoned, and in 1953 a new maximum landholding was established which determined how much arable land farmers could hold. Surplus land was expropriated and allocated to the General People’s Property Fund. Thus the class of large farmers was eliminated in Slovenia.⁵²

The question of the rehabilitation of farmers who had undergone kulak processes was posed in July of 1970 by Ivan Pučnik, a deputy in the Republican Assembly of the Parliament of the Socialist Republic of Slovenia. He stated that in carrying out the various measures, the authorities had also used methods through which gross injustices were committed upon individuals who voiced concerns about the inappropriate methods of the authorities. The Republican Public Prosecutor at the time, Dr Viktor Damjan, rejected Pučnik’s “hints about unjust sentences”, claiming that the courts had adjudicated according to the laws then in force, which he alleged were a reflection of the political and economic development of the country at the time. He rejected the possibility of the rehabilitation of the convicted parties and stated that the sentence of seizure of property would not be overturned.⁵³

6. Epilogue

The organisation of the judicial system after the end of the Second World War, which was a consequence of the monopolistic and totalitarian authorities of the Communist Party, paved the way for serious and systematic violations of human rights and freedoms. On the basis of the Constitution of the Republic of Slovenia of 1991, which guarantees human rights and freedoms, in the 1990s the Constitutional Court adjudicated the constitutionality of the laws regulating the criminal offences mentioned in this paper. One of the tasks of constitutional adjudication was to recognise historically proved violations of human rights and fundamental freedoms and to clearly define the various forms of encroachment of human rights, especially if they were a component part of the monopolistic Party authorities’ ways of controlling people.⁵⁴

⁴⁹ Šturm, *Background of the Slovenian Judicial System I*; Minutes of the sectoral conference with the presidents of the district courts in Maribor, 27 June 1949; Minutes of the conference with the presidents of the district courts, 4 March 1950; CHA, Celje Regional People’s Committee (Celje RPC), box 232, Report of the Celje District Court, 12 July 1949.

⁵⁰ Mikola, *Confiscation of Property*, p. 229.

⁵¹ Cf. MRA, Ljutomer RPC, box 381, Report of the president of the Ljutomer District Court, 18 August 1949 and 30 May 1950; Murska Sobota Regional People’s Committee (Murska Sobota RPC), box 545, Report of the president of the Murska Sobota District Court, 23 November 1950; box 546, Report of the president of the Murska Sobota District Court, 24 April 1951; Gornja Radgona (Gornja Radgona Regional People’s Committee), box 112, Report of the president of the Gornja Radgona District Court, 23 February 1950.

⁵² Mikola, *Documents*, pp. 5–6.

⁵³ Archive of Dr Milko Mikola, *Question of Deputy Ivan Pučnik*, 8 July 1970 and *Response of secretary of judicial administration*, 23 September 1970; Munda, *In the Name of the People*, pp. 133–134, 147.

⁵⁴ Lovro Šturm, “On the Encroachment of Human Rights and Fundamental Freedoms in Slovenia 1945–1990”, in: *The Dark Side of the Moon*, p. 67.

Except in the case of the *Act on Criminal Offences Against the People and the State*, the provisions of the laws were not in accordance with the currently valid constitutional and general legal principles recognised by civilised nations, inasmuch as due to their vagueness they provided a basis for arbitrary judgement. The most common deficiency is that criminal offences were defined in very general terms and allowed adjudication by analogy. The Constitutional Court decided which provisions could not be used and the manner in which unjust sentences issued on the basis of these regulations could be overturned.⁵⁵

In 1996, the National Assembly adopted the Redressing of Injustices Act,⁵⁶ which partially regulates the right to compensation for damages and rights to pension and disability insurance for former political prisoners and relations of victims of illegal post-war deprivation of life, the procedure for exercising these rights and the bodies which decide on these rights. This law also prescribes the special conditions for the procedure and for a reversal of final criminal verdicts. Article 3 of the Act states the provisions of various penal regulations, which were valid after the end of the war, on the basis of which the status of former political prisoners can be established. They include various provisions of the *Act on Suppression of Prohibited Trade and Economic Sabotage* of 1946 and the *Founding Act of Agricultural Collectives* of 1949. A total of 20,347 applications were submitted between 1997 and 2008, of which 19,204 cases have been resolved.

⁵⁵ Decree on Military Tribunals (Decisions and Resolutions of the Constitutional Court (Odlus) III, No. 33); Prosecution of Crimes and Offences against the Slovenian National Honour Act (Odlus VII/2, No. 176); Act on Criminal Offences against the People and the State (Odlus VII/2, No. 195); Act on Suppression of Prohibited Trade and Economic Sabotage (Odlus V/1, No. 31).

⁵⁶ Official Gazette of the Republic of Slovenia, No. 59/96.

Tamara Griesser Pečar

THE ROMAN CATHOLIC CHURCH IN SLOVENIA UNDER THREE TOTALITARIAN REGIMES

After the break-up of the Austro-Hungarian Monarchy in 1918, the Slovenes experienced three totalitarian regimes: fascism, national socialism and communism. All three left deep traces, but above all communism, because it lasted almost five decades. Fascism and national socialism as totalitarian ideologies and systems are met with disgust everywhere in the world – also in Slovenia – but the crimes committed in Slovenia by the communists are still regarded as altogether incomparable with the deeds of the fascists and national socialists.

The Roman Catholic Church had a very strong position in Slovenia because of its large number of believers. Under the Habsburg Monarchy, the Catholic Church was the state church. Until World War Two, it still had a strong influence on politics, but that changed completely under German occupation and during the communist regime. To some extent that was also true under fascism.

1. Between two World Wars

Until the end of the First World War, the Slovenes lived in different crown lands of the Habsburg Double Monarchy, most in the Cisleithanian part (Carniola, Styria, Carinthia, Trieste, Gorizia, the Slovene Littoral, Istria), but also in Transleithanian, above the River Mura (Prekmurje). To induce Italy to enter the war on their side, the Allied Powers (Great Britain, France and Russia) offered Italy in the secret Treaty of London on 26 April 1915 certain territories, including Gorizia and Gradiska, coastal area including the Slovene Littoral with a part of Inner Carniola, Trieste, Istria, Dalmatia and the Adriatic islands. That treaty was never recognized by the United States; President Wilson strongly opposed Italy's aspirations. Finally the border between Italy and the new South Slav state, "the Kingdom of Serbs, Croats and Slovenes", was decided by the Treaty of Rapallo on 12 November 1920. The compromise that was achieved, however, offered Italy territories with half a million Slovenes and Croats – more than a quarter of the territory which Slovenes considered to be their ethnic territory.

The border with Hungary was fixed in the Treaty of Trianon on 4 June 1920. The Treaty of Saint-Germain with Austria on 10 September 1919 determined that parts of Carinthia – the Meža Valley (Mießtal), the area around Dravograd (Unterdrauburg) and Jezersko (Seeland) – would go to the Kingdom of Serbs, Croats and Slovenes (renamed "Yugoslavia" in 1929), whereas the wider area around the Klagenfurt basin should be determined by a plebiscite that took place on 20 October 1920. When 59.04 % of the so-called "district A" voted to remain in Austria, and 40.06 % to remain in Yugoslavia, the Klagenfurt basin became part of Austria.¹

1.1. Fascism in Italy

The Julian March (Venezia Giulia, Julisch Venezien, Julijska Krajina), which included 350 communities with 901,364 inhabitants, 38 % Slovenes and Croats, was borderland systematically Italianized after the fascists took power. The fascists imposed the Italian language as the official language in public life. After educational reforms had been implemented in 1923, the Slovene language was cancelled in all educational programmes, and by 1928, all Slovene periodical publications were forbidden, as well as all educational and cultural institutions. Then the Ministry of Education gave orders that even religious instructions (Sunday schools) should be given only in Italian. In 1933 in the district of Venice, the use of Slovene was prohibited in churches, and in 1934, Slovene and Croatian monasteries in Julian March had to close. One after another, Slovene economic institutions also disappeared.

¹ For more about the Carinthia question: Tamara Pečar, *Die Stellung der slowenischen Landesregierung zum Land Kärnten 1918–1920*, Diss, Wien 1973.

Lower clergy was constantly a target of police measures and attacks; higher clergy was under constant pressure because of its favourable attitude towards the Slavic population. Finally the Archbishop of Gorizia Diocese, Frančišek Borgia Sedej (1931) and the Bishop of Trieste-Capodistria Diocese, Luigi Fugar (1936), were removed. Their successors carried through Vatican Romanization measures with bans on Slovene in religious ceremonies and in religious instructions.² But mainly because of the Catholic clergy, the Slovene identity in the Julian region was not lost. The relationship between the faithful and clergy on the one hand, and the Archbishops on the other, was rather strained. Although use of the Slovene language was illegal, Slovene priests secretly took care that Slovene books, newspapers, and songs were spread, and that children not only got lessons in religion, but also in their mother tongue. Religious lessons were transferred from schools to churches.³

1.2. National socialism in Austria

The situation of Carinthian Slovenes was difficult from the very beginning. Although the cultural life of the Slovenes could develop well at first, Catholic Austria under Kurt von Schuschnigg already let the German national circles, who were organised especially in “Kärntner Heimatdienst” and whose goal was to germanise Southern Carinthia, do as they wished. In 1938 after the “Anschluss” (annexation) of Austria to Nazi Germany, the germanization tendencies became considerably stronger. Directly after the “Anschluss”, the pursuit of Slovene priests began. In Austria, as in the Slovene Littoral, priests were considered proponents of Slovene national identity and guardians of Slovene language and culture – and therefore an obstacle to national socialist ideas. In 1939 Bishop Andreas Rohrachner took over the diocese. He did not have sympathy for Nazism, and Slovene priests trusted him more than his predecessor. Rohrachner sent quite a few situation reports to the Vatican. To keep Slovene priests in their home-parishes and to protect them, Rohrachner issued a very problematic decree, valid also in Upper Carniola after the invasion. He prohibited the Slovene language in church services. Immediately after the invasion of Yugoslavia, when the last scruples toward Slovenes were abandoned, the Gestapo arrested most of the Slovene priests in Carinthia, not only those who were working in the bilingual territory. As a result of negotiations between the Bishop’s office and the Gestapo, most of the priests were released by 28 April 1941. Those who had not been arrested were even allowed to stay in their home-parishes. The Nazi period in Carinthia was marked by the deportation of 60 Slovene priests, who were arrested and transported to concentration camps (Dachau, Mauthausen, Sachsenhausen/Oranienburg). Seven of them died in concentration camps or afterwards, due to mistreatment in German prisons or concentration camps.⁴

2. The war years: national socialism, fascism and communism

The Slovene territory – from 1929 Drava Banovina (Dravska banovina) – in the Yugoslav kingdom covered 15,036 km² and had, according to a census in 1921, 1,054,919 inhabitants. After the German invasion on 6 April 1941, the Axis powers occupied this territory and divided it, according to directives given by Hitler (on 3 and 12 April 1941) and an agreement between German foreign minister Joachim v. Ribbentrop and Italian foreign minister Conte Galeazzo Ciano, that specified those directives in Vienna (21–22 April 1941). The greatest part of Drava Banovina was occupied by the Germans – Lower Styria, the Meža Valley (Mießtal), Upper Carniola (Gorenjska) and a strip of land along the Sava River (Zasavje). Italians occupied Ljubljana, Inner Carniola (Notranjska), Lower Carniola (Dolenjska), White

² With these measures, interference of the totalitarian government in church matters should be prevented and the faithful should be united around Rome to protect Catholic principles. Milica Kacin Wohinz (ed.), *Slovensko-italijanski odnosi. Rapporti Italo-Sloveni. Slovenian-Italian Relations 1880–1956. Report of the Slovene-Italian Historical and Cultural Commission. Koper-Capodistria 25. julij- luglio-July 2000*, Nova revija, Ljubljana 2001, p. 132.

³ *Slovenian-Italian Relations 1880–1956*; Milica Kacin Wohinz, “Slovinci v Italiji”, in: Jasna Fischer et al (ed.), *Slovenska novejša zgodovina 1848–1990*, vol. 1, Mladinska knjiga, Ljubljana 2005, pp. 510–551.

⁴ Auguštín Malle, “Koroški Slovenci in katoliška cerkev v času nacizma”, in: *Volks- und staatsfeindlich: Die Vertreibung der Kärntner Slowenen 1942*, Drava–Hermagoras, Klagenfurt 1992, pp. 85–130; Tamara Griesser Pečar, “Staat und Kirche in Slowenien”, in: Lieve Gevers, Jan Bank (eds.), *Religion under Siege*, vol.1, *The Roman Catholic Church in Occupied Europe (1939–1945)*, Peeters, Leuven–Paris 2007, pp. 205–242; Tamara Griesser Pečar, *Cerkev na zatožni klopi. Sodni procesi, administrativne kazni, posegi “ljudske oblasti” v Sloveniji od 1943 do 1960*, Družina, Ljubljana 2005, pp. 25–26.

Carniola (Bela Krajina), and Hungary was given Prekmurje – except for four communities at the western part of the territory, that went to Germany. All three occupiers aimed at a quick formal annexation. The Italians passed the Autonomy-Statute on 3 May 1941; the Hungarians realized their formal annexation on 16 December 1941. The Germans who wanted to proclaim their formal annexation to the “German Reich” on 1 October 1941, first postponed it because of the installation of the new “Gauleiter” and “Reichsstatthalter” of Carinthia; later on they dropped the plan for an indefinite period of time because of activities by partisans, with which the Germans wanted to deal first. Only Meža Valley became part of “Reichsgau Carinthia” immediately.

The aspirations of the three occupiers were more or less the same: ethnical extermination of the Slovene nation. According to the means they used, however, living conditions differed in the three occupying zones considerably. But in reality, Slovenes could not have any illusions about their fate; reports from other occupied countries and the destinies of their national colleagues under fascism in Italy and national socialism in Carinthia spoke a clear language. Polish priests, who fled across Slovenia to Rome, also brought news about the Nazi crimes in Poland. And in the spring of 1940, the Bishop of Ljubljana Diocese, Dr Gregorij Rožman, received from Rome a copy of a report that Cardinal Avgust Hlond had written for the Pope. Rožman took care that it was translated and circulated in Slovenia.⁵

In Drava Banovina there were two dioceses: Ljubljana and Lavant, with its seat in Maribor. The Ljubljana Diocese, with 543,306 members, had 273 parishes; furthermore it administered two Carinthian parishes and a part of Gorizia Diocese. After the German invasion, the Ljubljana Diocese was divided between Germany and Italy. The greater part – Upper Carniola and territory along the Sava River with a total of 142 parishes – came under German occupation; the rest with the capital Ljubljana, the so-called “Province of Ljubljana” (Provincia di Lubiana), under Italian control. The German part of the diocese was administrated by the Bishop of Klagenfurt. The Lavant Diocese had 221 parishes with 638,786 adherents. Under its administration there were also three parishes of Seckau Diocese (Graz), two deaneries (Dravograd and Meža) of Gurk Diocese (Klagenfurt) and the Apostolic Administration Murska Krajina (Dolnja Lendava and Murska Sobota). The Germans occupied the whole Lavant Diocese. Parishes of the Gurk and Seckau Dioceses that had been under the administration of Lavant, returned to their original dioceses; the Apostolic Administration of Murska Krajina came under the administration of the Bishop of Szombathely in the Hungarian occupational zone.⁶

Fascism was never as hostile towards the Catholic Church as national socialism. In Slovenia, of course, the German occupiers systematically suppressed it and encouraged people to leave the church, because the Slovene Catholic clergy was considered as a hindrance to germanization plans. That was disclosed already in the report of the Reichssicherheitshauptamt (RSHA, Reich Security Head Office), written only a few days prior to Germany’s attack on Yugoslavia. One consequence was that, from the German occupied territories, 90.83 per cent of priests were expelled to Croatia and Serbia, or arrested and sent to various concentration camps. Religious life there almost stopped.⁷

2.1. German occupied territory

According to Hitler’s order to newly appointed Reichsstatthalter for Lower Austria, Dr Siegfried Uiberreither, to “make Lower Styria German again”, the Germans prohibited all Slovene political, cultural and religious institutions and banished Slovene even in church services. In Maribor (Marburg a. d. Drau), 202 associations and organisations were dissolved, 249 liquidated, whereas 17 had to change their names – mainly Slovene cultural institutions, religious organisations and foundations. Slovene property was confiscated, including Church property.

On 10 April 1941, there was a spectacular house search at the Bishop’s seat, in the Dome chapterhouse and parsonage. Soon after that, church property was confiscated. In Holy Week, even before the Germans took over the civil administration, the first priests were arrested by members of

⁵ Ilaria Montanar, *Il vescovo lavantino Ivan Jožef Tomažič (1876–1949). Tra il declino dell'impero Austro-ungarico e l'avvento del comunismo in Jugoslavia*, Chiesa e storia, vol. 5, CLV–Editioni liturgiche, Roma 2007, pp. 410–411; Tamara Griesser Pečar, “Slowenische katholische Kirche 1941–1960”, in: Jan Mikrut (ed.), *Die katholische Kirche in Mitteleuropa nach 1945 bis zur Gegenwart*, Dom Verlag, Wien 2006, p. 485.

⁶ France M. Dolinar, “Die Katholische Kirche in Slowenien im 20. Jahrhundert”, in: Dušan Nečak et al. (ed.), *Slovensko-avstrijski odnosi v 20. stoletju. Slovensko-österreichische Beziehungen im 20. Jahrhundert*, Historia 8, Oddelek za zgodovino Filozofske fakultete, Ljubljana 2004, p. 434.

⁷ Tamara Griesser Pečar, “Das Zerrissene Volk. Slowenien 1941–1945, Okkupation, Kollaboration, Bürgerkrieg, Revolution”, in: Christian Brunner, Wolfgang Mantl, Manfred Welan (eds.), *Studien zur Politik und Verwaltung*, vol. 86, Böhlau, Wien–Köln–Graz 2003, pp. 17–39.

the Kulturbund. The first wave of arrests began on 15 April. In Maribor, 300 persons were arrested by security police (Sicherheitspolizei), SA and Wehrmacht – mainly members of the Slovene intelligentsia, also clergymen. Because nearby prisons did not have enough space, those who had been arrested were concentrated in assembly camps, for example military barracks, or as in Celje in the Capuchin monastery. They were then brought to the Trappist monastery in Rajhenburg (Reichenburg), from where they were transported to Croatia and Serbia. On 5 July 1941, the first group of diocesan priests and members of religious orders was deported. From Lavant Diocese, a total of 366 clergymen were expelled to Croatia and some to Serbia. The situation in Upper Carniola and Zasavje was similar: 184 diocesan priests and 78 members of religious orders from Upper Carniola and some from Lower Carniola were sent to Croatia. Because Prekmurje was first occupied by Germans, Slovene priests there were also arrested, but could soon return home, that is, to the Hungarian zone of occupation.

Catholic clergymen were publicly insulted in front of their flocks; they were beaten, ridiculed, not allowed to read the Holy Mass in prison, and so on. Especially humiliating were the so-called compulsory exercises accompanied by beatings and threats. Priests were forced to clean lavatories with their bare hands and act as street scavengers. In Maribor they were attached like horses to wagons, and had to transport food for the prisoners. They were also forced to pull down the Serb Orthodox Church. Nazis then used photos for propaganda purposes.

On 16 April 1941, Bishop Tomažič addressed to “the Führer of the German Reich His Excellency Adolf Hitler” a declaration of loyalty in his name, in the name of the Roman Catholic population and clergy, in accordance with the Holy Bible. He begged Hitler and German authorities to respect the legitimate wishes of the Catholic population of both nationalities and to protect its existence. He ended with a prayer from Timothy’s letter (2,1) in which he urged prayer for all responsible authorities, so that “we can live a quiet life in piety and honour”.

Although the Bishop of Lavant, Ivan Tomažič, was completely powerless – he was practically confined at the bishop’s seat – he courageously protested several times against the treatment of his clergy verbally and in written form. For example, on 19 April 1941, from the Chief of the Civil Administration, Dr Siegfried Uiberreither, Bishop Tomažič wanted to attain the release of arrested priests, or at least better treatment for those arrested. Uiberreither turned his requests down brusquely. In his opinion, those arrested were political agitators. According to Uiberreither, “everything that stood in the Germans way had to disappear – priests too”. He made it quite clear that they would not tolerate Slovene teachers and officials, and announced that even in churches, only German will be allowed. The Bishop pointed out that German was already used everywhere where the German minority lived (Maribor, Celje and Ptuj) and suggested that at least for a transition period both languages be permitted. But Uiberreither was convinced that Slovenes in Lower Styria did not exist. Too clearly he said: “The German Reich doesn’t need those, who do not feel as Germans. They can find their place in Carniola, Croatia, Serbia ...” Tomažič’s intervention with the Gestapo commander was also unsuccessful.

On 14 May, Chief of “Heimatbund” Franz Steindl explained to the Bishop that Germany will never accept any Slovene minority in Lower Styria. All Slovenes would be deported, and German priests taking over the religious services would be forbidden to learn Slovene. Tomažič stated rather courageously: “I am here as a Bishop by the will of God, and I will fulfil my duty and safeguard my rights until I will be brought away by force or until the Pope gives me the order to resign.” He promised to act loyally but only if he would be able to do so according to Church teachings.⁸

To help the arrested, the Bishop even decided to join the Heimatdienst (10 June), and asked his clergy to do the same, in the hope that his clergy might be allowed to stay. The negative answer to his application came months later, on 29 February 1942.⁹ On several occasions he tried to intervene again. The Bishop of Graz, Dr Ferdinand Pawlikowski, also intervened with Uiberreither about the poor pastoral care of the faithful in Lower Styria, pointing out that only 90 out of 240 parishes had a priest.

Religious practices were severely obstructed in Upper Carniola and in Styria. The Bishop of Gurk Diocese, Dr Andreas Rohrer, sent five priests to Upper Carniola, which had jurisdiction over 131 parishes and about 200,000 believers. On religious holidays, up to 20 more priests helped to administer

⁸ Miloš Rybar, “Nacistični ukrepi zoper duhovščino lavantinske škofije 1941–1945”, in: *Zbornik ob 750. letnici Mariborske škofije*, Maribor 1978, pp. 44–102; Tamara Griesser Pečar, *Das Zerrissene Volk. Slowenien 1941–1945*, pp. 17–44.

⁹ Although formal annexation was not implemented, the Germans passed a decree regarding citizenship of people on the occupied territory that was put into practice in Upper Carniola in autumn 1941 and in Lower Styria in spring 1942. Slovene clergymen were put into the category of “protected dependants” (“Schutzangehörige des Deutschen Reiches”), which meant that they could not become members of the “Heimatbund”.

the sacraments. Bishop of Seckau, Dr Ferdinand Pawlikowski, first sent 12 priests; by March 1943, the number increased to 13. Every two weeks, 49 priests came to help in the parishes. Although it was strictly forbidden and dangerous, some of the German-speaking priests learned Slovene. Bishop Rožman also sent priests-volunteers secretly over the border to help in pastoral care. That was very dangerous work and German police searched for them.

Many deported priests later came back to Slovenia; some clergymen managed to escape their deportation and came to Ljubljana at once, seeking refuge in the diocese there. Through the intervention of Bishop Rožman with the Italians, 95 priests of Lavant Diocese were able to settle in the Province of Ljubljana. A number of priests was sent to concentrations camps – 20 from Lavant Diocese alone. Four priests died in Dachau, one in Mauthausen, and eight in the Croatian concentration camp Jasenovac. Ten clergymen were shot by Germans – most as hostages – and the Italians killed one.

Church properties, prebend (*praebenda*) and ecclesiastical goods (*Bona mensae*) were seized for the benefit of “Reichskommissar für die Festigung des deutschen Volkstums” (RKFDV: “Reich commissioner for reinforcing the Germanhood”). Whereas in Styria, churches remained for church services (though one was torn down, another used as a storeroom), in Upper Carniola also churches and parsonages were seized for the benefit of Reichsgau Kärnten or local political authorities. Properties of monasteries and religious orders were confiscated. From all the religious orders of women, only the Sisters of Mercy were allowed to remain, because of their work in hospitals. The Ljubljana Diocese lost forest properties (24,758.2 hectare). The oldest Slovenian high school, at the Institute of St. Stanislaus in Št. Vid (St. Veit), also owned and operated by the diocese, was confiscated. Students and their teachers were forced to leave their school in half an hour. (The Communists would close the Institute in 1945, but it reopened to a new generation of students decades later in independent Slovenia.) Schools in nearby Ljubljana, then under Italian occupation, remained open and classes could continue.

After the Italian capitulation on 8 September 1943, Germans occupied the Ljubljana Province. It became part of the “Operationszone Adriatisches Küstenland” (Operationzone Adriatic Littoral). Because of the negative attitude of the Nazi regime, Church activities for the benefit of the pursued were very much reduced. Bishop Rožman had no leanings towards the Germans; in October 1941 he even protested against what was going on in the occupied part of his diocese. But he was later accused of collaboration, because in the absence of German soldiers and officials, he celebrated a mass for the Homeguards (*slovenski domobranci*) just before they were forced to swear an oath on 20 April 1944 – and also because he attended a parade in front of the Church of the Holy Trinity (“*Cerkev Svete Trojice*”, known as the Nuns’ Church) on 30 January 1945. To him, the eternal welfare of individual souls was more important than political considerations.

2.2. Territory occupied by Italians

In the so-called Province of Ljubljana, the situation was essentially different. Political activities were prohibited, newspapers were censored but could publish in Slovene, cultural institutions and schools were allowed to continue their work. The relationship of Italian occupiers to the Church as an institution was completely different from that of the German occupation. The Catholic Church could continue with its activities almost without disturbance and was therefore able to help many people.

Bishop Tomažič was not able to help his clergy. The only one who could do something was the Bishop of Ljubljana, Dr Gregorij Rožman. Already in May 1941, he had asked the Vatican to request that the Italian government intervene with the German government on behalf of the arrested Slovene clergy in the German occupied dioceses of Ljubljana and Lavant. His colleague Bishop Tomažič asked him explicitly to do so for his diocese. But finally the Italian ambassador had to inform the Vatican on 20 October 1942 that the interventions in Berlin had not been successful.

The Bishop of Ljubljana intervened for numerous people with Italian authorities directly and through the Vatican: children, Jews, clergymen, people under arrest, prisoners of war, Yugoslav officers, hostages, people condemned under death sentences, internees in Rab (*Arbre*), Treviso (*Monigo*), Renicci, Gonars. To date, some 1,500 names of people for whom the Bishop personally intervened, can be identified. To those names we must add his interventions for groups that are not specified by numbers or recorded by names. We can definitely state that he intervened for at least 2,000 persons. Recently documents have been found that had been given to Dr Alojzij Vrtačnik (a lawyer assigned to the Bishop’s trial), documentation that later disappeared after that trial. Those documents certainly give a more

precise picture of the Bishop's interventions, completing documentation in the state archive (Arhiv Slovenije). The Bishop's secretary, Dr Stanislavs Lenič, testified that sometimes up to 50 petitioners came to the Bishop on a single day and that he helped them regardless of their political convictions. Among many documents, a letter written by Gastone Gambarra, the Commander of the Italian XI. Army corps, on 26 April 1943 testifies that 122 internees were freed because of the Bishop's intervention. But the Italians noticed soon that the Bishop did not discriminate in his interventions, so Grazioli ordered his subordinates to treat the Bishop's interventions as anyone else's, because Bishop Rožman intervened for those who were unworthy.¹⁰

The position of the two Bishops towards the occupation forces did not differ considerably. It was strictly a legalistic posture regarding the obligation of obedience to authorities, which originates from the word of God (Romans 13,1-2). Church authorities took the same position towards the Communist authorities after the war.

Bishop Rožman visited the Italian High Commissioner, Emilio Grazioli, on 22 April 1941. He addressed a declaration of loyalty to the High Commissioner after the publication of the Statute of Autonomy on 3 May 1941. The High Commissioner forged it and directed it to Mussolini. Grazioli's text was published in the press and was written in terms that the Bishop himself would never have used. Rožman actually only emphasized free development in the cultural and religious spheres, and promised loyalty and sent his blessing for the efforts of the authorities for the good of the people. The falsification was so effective that, even today, many publications continue to use it as proof of Rožman's collaboration.

Rožman condemned the occupiers twice. On 24 October 1941, he addressed a letter to the clergy in which he complained about the devastation of that part of his diocese occupied by the Germans, that all Church property was confiscated, religious people of both genders ejected from their institutions, 193 members of secular clergy expelled from 148 parishes, and that about 200,000 of his people were without spiritual care. In September 1942 he handed over to Grazioli a memorandum of twenty points, in which he criticized Italian means of repression. Grazioli was furious, telling the Bishop that he would have arrested anyone else but him for such a memo. The Ljubljana Bishop wanted to condemn the Italian authorities even from the pulpit, but the Pope advised him, during his visit in Rome in May 1942, not to do so because in such case the Italians would likely isolate him somewhere inside Italy, leaving the people of Ljubljana with no one to help them.

The Bishop and Church dignitaries wanted people to survive the war with as few victims, and with as little damage, as possible. Rožman was convinced that for such a small nation, armed struggle against occupation forces was of no use and doomed to fail: because great sacrifices could bear no real relationship to any possible partial successes. And as it would be revealed later, various drastic (violent) acts of resistance in Slovenia changed nothing as far as the power and strength of occupying forces was concerned the subsequent withdrawal and total defeat of the enemies had nothing to do with those acts within the occupied area. Not much could be done to weaken the military and political position of power of the occupiers. Certainly the value of armed resistance, as a sign and symbol of national self-assertion and rejection of injustice, should not be overlooked, but the question must be put: in what proportion that positive signal effect could stand to release the pain of the civil population. And if, under such hopeless circumstances, the immense number of human victims that had been provoked, was acceptable. Was it acceptable to put up with catastrophes of such a dimension for the Slovene people only to attain a certain moral appearance or perhaps even to give the (Communists dominated) "Liberation front" a good starting position for taking power later on? This was the question that the Bishop of Ljubljana believed must be asked, and he answered: "No."

2.3. Territory occupied by Hungarians

Hungary denied the existence of the Slovene nation too. The Slovenes in Prekmurje were, according to Hungarian interpretation, "Vendi" and for that reason the first announcements published were in "Wendish", a Slovene dialect. Topographical names and official notices in Slovene were removed and replaced by Hungarian, and family names magyarized. Offices, educational institutions and schools had

¹⁰ See more: Tamara Griesser Pečar, France Martin Dolinar, *Rožmanov proces*, Družina, Ljubljana 1996, pp. 151–173, 253–270; Tamara Griesser Pečar, "Rožmanova posredovanja pri okupatorju", in: Edo Škulj (ed.), *Rožmanov simpozij v Rimu*, Mohorjeva, Celje 2003, pp. 301–314; NŠAL, Zapuščina škofa dr. Gregorija Rožmana, Prezidijski arhiv.

to give up their Slovene books, which were then burned. In Murska Sobota, a whole scientific library was set on fire. All Slovene associations were dissolved, Slovene teachers lost their job, and only a few local (native) pedagogues were allowed to stay. Many patriotic Slovenes were arrested, especially intellectuals and priests. Slovenes who were not native to Prekmurje were expelled, deported to other regions, or put in camps within Hungary.

Bishop Jožef Grösz demanded from Slovene priests unquestioning loyalty toward the Hungarian state and cooperation with authorities – and preaching the Gospel in a language that people understood – in his opinion, that was not Slovene but “Wendish”. He moved several Hungarian chaplains to Slovene parishes, although there were enough Slovene priests available and several Slovene priests were transferred within Hungary because of national reasons. He prohibited the Slovene ritual-book. The Hungarians did everything to alienate the dialect from standard Slovene. Nevertheless in Tišina, Pertoči and Markovci, in District (Dekanija) Murska Sobota, they went on praying in dialect and in other Slovene parishes; in all parishes of District Lendava, they prayed in Slovene.

Although there was such enormous pressure coming from church superiors, Slovene priests in Prekmurje demanded the use of Slovene. On the occasion of the Bishop’s visit to Lendava on 13 July 1941, on the initiative of vicar-general Ivan Jerič, 31 Slovene priests signed the so-called “Resolution of Lendava”. Later on 11 priests of District Murska Sobota joined them. They demanded respect of the minority rights, which the Hungarian Royal Constitution granted all nationalities in 1919, and so also use of mother tongue in school and church, free development of cultural organisations, libraries, publishing of newspapers and books, and so on. In Hungary the use of Slovene was considered treason, although there was no legal basis for that. Jerič found himself three times in court, once because of treason – his trial was stopped in 1944.

2.4. The Communist revolution

A special problem in examining the Second World War years in Slovenia is that two levels of events must be taken into consideration: on one side, a resistance by suppressed against their suppressors, but also overlapping this, a fight within and among the suppressed about the right goal, about the right path of liberation, about the state system and social system under which Slovenes should live after the war. In other words, in Slovenia there was occupation and resistance, as well as revolution and counter-revolution. The two levels cannot be separated. The communist party, rather weak in numbers but experienced in underground work – having been a forbidden party in Yugoslavia since 1920 – saw in the occupation, the only chance to gain power. For that reason, a sort of umbrella organisation of resistance named the “Liberation Front” was organized, through which communists were able to win several leftist groups to their side. The “Liberation Front”, which at first could only develop in the Italian occupation zone, monopolized the resistance against the enemy already by 16 September 1941, and declared everyone organized outside the “Liberation Front” to be a traitor – including those who worked underground against the occupiers. And such traitors had to be sentenced to death – after condemnation by an obscure secret court that actually never existed. In that way, many patriotic Slovenes, also Church representatives, were “liquidated” by the “Security and Intelligence Service” (called VOS). It was recruited solely out of members of the communist party and communist youth organization SKOJ, and was directly and exclusively responsible only to the Central Committee of the Communist party. The inhabitants of the Province of Ljubljana, especially the peasants, suffered not only because of Italian attacks on their lives and property, but also because of the partisan’s attacks. The two often alternated. One day the Italians burnt their houses down, drove their cattle away and sent many to Italian concentration camps; the next day the partisans arrived and punished the same people for collaborating with Italian occupiers. Among the victims of communist violence during the war, there were 46 diocesan priests and 6 priests belonging to different religious orders. In comparison to the red violence: the occupiers killed on the whole Slovene territory, including the Slovene Littoral, 24 diocesan priests and 10 priests of religious orders.¹¹

For Church representatives, the fact that the communist-dominated “Liberation Front” monopolized the resistance (with its murderous sanctions against so-called traitors), raised a special dilemma. On one side, the Church detested the violation of human rights and measures of repression as well as the brutal

¹¹ France Martin Dolinar, “Duhovniki v primežu revolucije”, in: Janvit Golob et al. (ed.), *Žrtve vojne in revolucije*, Državni svet, Ljubljana 2005, pp. 65–66.

dictatorship of all the occupying forces; on the other side, Marxism and Bolshevism were incompatible with the doctrines of Christianity. In addition to that, the communists, like the occupiers, used aggressive, power-oriented violence (not limited to what was dictated by self-defence and liberation), which Church authorities could in no case accept.

3. The post-war period: communism

After the end of World War Two, the communist regime applied tremendous pressure on the Roman Catholic Church. Until that “people’s regime” finally collapsed in 1990–91, the Catholic Church was its internal enemy number one, because it remained the only organization that was not controlled by the communist party, and had great influence on the population. First the regime tried to eliminate the Church as it did the political opposition, but when it recognized how deeply Catholic Church was rooted in the population, it changed tactics. It tried to discredit Church representatives in the eyes of the faithful using all possible means, regardless of how morally dubious they were. The communist government regarded religion as a symbol of a reactionary past. Already in November 1945, an internal report of the Ministry of Interior characterized the Church as “the backbone of the opposition”,¹² and the last “Manual for police work” in 1985 described the Church as the main inner enemy that needed special attention. Police manuals of 1970 and 1985 explicitly listed the efficient local control of priests and significant laypersons as one of the most important police tasks.¹³ In the period from 1945 to 1990, the so-called People’s government accompanied Church representatives and outstanding catholic laymen. The principle of separation of state and church that became part of the new Yugoslav constitution in 1946 was used in a negative sense as exclusion of the Church from public life. But of course the legal status of the Catholic Church in particular was not only determined by generally known, published legal rules, but also – above all – by other confidential regulations that were part of a parallel secret legal system.¹⁴

Immediately after the end of World War Two, the communist regime started carrying out measures against the Church as an establishment and against individual priests, monks, nuns and all openly religious people. They used house searches, housing restrictions, and deletions from voting registers; they limited religious education and closed down church schools; they implemented agricultural reforms and nationalization; they limited religious press; they fired nuns from schools and hospitals, even though there were no replacements for them, and used mass arrests and court trials. Army chaplains, monks and theologians, who were serving with the Home-guards, and later turned over by the British in Austrian Carinthia to the Yugoslav military authorities, were interned in camps Št. Vid and Teharje. Most ended up at the numerous killing grounds across Slovenia. A total of 36 priests were killed after the war, between 1945–47: 33 diocesan priests and 3 priests of religious orders, 30 consecrated persons (27 laymen and 3 nuns) and 54 students of theology.¹⁵

The period from May 1945 to 1961 was a period of total loss of rights for the Catholic Church and the biggest physical and psychological attacks against its representatives in Slovenia. The most notorious physical attack was the burning of the Ljubljana Auxiliary Bishop, Anton Vovk in Novo Mesto in January 1952. During that time, 630 diocesan priests, members of religious orders and students of theology were arrested, 429 priests had been put on trial (out of around 1,000), 339 of those were sentenced to jail and 73 had to pay a fine. Their sentences were uncommonly high – some were sentenced even several times – while murderers and robbers got much less. Nine Slovenian priests, a Croatian priest (by Ljubljana court martial), one Salesian Assistant and one Sister of Mercy from Slovenia (in Tuzla) were also sentenced to death. Four priests were executed: two sentenced in the so-called Christmas trial in 1945 and two in 1949. Three priests and a member of the Salesian order, who had been imprisoned in Dachau concentration camp, were immediately arrested after their return by the communists. Henrik Goričan who was convicted in the Christmas trial in 1945 to 15 years of prison with forced labour, was in 1948 condemned to death on the same charge as in 1945.¹⁶

¹² AS 1931, Letna poročila RSNZ, 067722, 1. 11. 1945.

¹³ Lovro Šturm, Ljuba Dornik Štrubelj, Pavle Čelik, *Navodila za delo varnostnih organov v SR Sloveniji*, Viri, vol. 21, Arhivsko društvo Slovenije, Ljubljana 2003, p. 138, 167.

¹⁴ Lovro Šturm, *Church-State Relations and the Legal Status of Religious Communities in Slovenia* (STU-FIN 7/3/2004), pp. 609–610; Lovro Šturm (ed.), *Cerkev in država*, Nova revija, Ljubljana 2000, p. 349.

¹⁵ France Martin Dolinar, “Duhovniki v primežu revolucije”, pp. 65–66.

¹⁶ Tamara Griesser Pečar, *Cerkev na zatožni klopi*, pp. 103–105, 132–138.

According to the pattern of the Kočevje-trial in October 1943, which was the first of the communists' politically arranged trials, a number of trials against Church representatives followed. There were collective trials against so-called enemies of the new regime, into which was included also Catholic clergy (the Christmas trials, Rupnik/Rožman trials, Bitenc trials). They also staged a number of mass trials against religious orders and diocesan priests: Franciscans, Jesuits, Lazarists, Sisters of Mercy, Magdalene Sisters, Littoral clergymen and other diocesan priests. Often the trials against Church representatives were deliberately staged on or close to Church holidays (the Christmas, Lenič, Kragelj trials). The trials were not in line with the legal norms of democratic states. During the countless interrogations, often held at night, the accused were forced (also by being put in dark cells and solitary confinement) to sign false statements. They were not given an opportunity to consult their legal counsel; some met their lawyers at the trial for the first time. Their defenders were helpless, their suggestions were immaterial. Indictments and sentences were pre-arranged, based on false evidence or testimony, while witnesses and documents speaking for the defendant were ignored by the court. Sentences frequently included the confiscation of all chattels and real estate. As a result of sentences of individuals, property of several religious orders (Sisters of Mercy, Lazarists in Celje, School Sisters in Slovenjska Bistrica, Magdalene Sisters, Ordo Teutonico, Jesuits) was confiscated as well.

The judiciary was in the hands of the governing Communist Party and only tried to realize party goals. The judges had to be devoted to the people and socialism. Security agencies (such as OZNA and UDBA) violated basic human rights if the needs of the Communist Party so dictated. With constructed and false materials, UDBA (until March 1946 it was called OZNA, the State Security Administration) leaned on priests, monks and nuns, theologians and their relatives and friends. Many were forced to cooperate. It impeded the flow of new priests. Religious education was intentionally made difficult, then impossible, banned from schools in 1952; that same year, the Theological Faculty was excluded from the University of Ljubljana. Attempts to economically ruin the Church were made. A very effective method of repression was also taxation. When the regime allowed church-collections, they were taxable. This happened only in Slovenia, where tax authorities worked hand in hand with secret police.

For their activities, priests required governmental approval. In Slovenia, each priest who had to leave his post during the war – even if he had been exiled, imprisoned or interned in a concentration camp – needed a permit to continue his work. To divide the Church, separate the priests from bishops, play diocesan leaderships against each other, and minimize the influence of Vatican, the political authority, with the help of the secret police established the Cyril and Methodius Society for Catholic Priests (CMD) on 20 September 1949. The regime gave CMD members some material benefits: modest pensions, social insurance, lower taxes, travel relief, and so on.

Even though the constitution ensured freedom of conscience and religion, there was no religious freedom. The government abused the “division between church and state” to exclude priests, monks and faithful from public life. It banned all public manifestations of faith in Slovenia and limited religious print media, while at the same time supporting strong anti-religious and anti-church propaganda and strongly pressuring the religious laity. In schools, Marxist atheist ideology was the foundation of all education and upbringing.

Church dignitaries lived under enormous pressure from regime authorities and secret police. Bishop Rožman left his Ljubljana Diocese in May, 1945. *In absentia* Bishop Rožman was convicted and sentenced to eighteen years of prison and hard labour, and his citizenship was revoked. His deputy was the Vicar-General – from 1946 onwards – Auxiliary Bishop Anton Vovk, who became his successor (1959). Bishop Anton Vovk was subjected to long and tiring interrogations – especially during the night – by the secret police for many years. On 20 January 1952, at the train station in Novo Mesto, an organized mob poured gasoline on him and set him on fire. Because of the negative echo worldwide, one of the attackers received a suspended sentence of ten days. Against Dr Maksimilijan Držečnik (who was ordained as Auxiliary Bishop in 1946, named Apostolic Administrator in 1949, and in 1960 became the residential Bishop), the regime tried to set up a trial, but could not decide on the basis for it. A trial against the priest in Ribnica on Pohorje, Alojzij Vrhnjak, who was in 1949 sentenced to eight years of prison with hard labour, was an attempt to morally discredit him. After part of the Gorica Diocese was added to Yugoslavia on 15 September 1947, Dr Franc Močnik was first named the Apostolic Administrator in Solkan. He was chased across the border by a mob hired by the Communist Party of Slovenia on 12 October 1947. His successor was Dr Mihael Toroš, Apostolic Administrator in Pula and Poreč. Toroš at first cooperated with the authorities, and even signed a statement of cooperation, believing that

he would get much for his administration. After the Tolmin process, which ended with harsh sentences, he was very disappointed. He became a strong opponent of the communist government. Jože Pogačnik was sentenced twice to long prison terms with forced labour, before he succeeded Vovk in the Ljubljana Diocese in 1963.

Convicted priests and other consecrated persons served their sentences in 1945 and 1946 in penal camps in Kočevje and Teharje. Later they were moved to the Ljubljana Penal-Correctional Facility (PCF) on the street "Miklošičeva ulica"; in Maribor, they were moved to the PCF in Pobrežje (only for those sentenced to more than six months of imprisonment) and they were sent to work camps, erected near various work and construction sites. Priests were put to work in Žale building apartments; in Novo Mesto, working the quarry; in Medvode, constructing a hydroelectric plant; in Ljubljana-Šiška, in the factory Litostroj; in Tacen, in the police school. In the penal camp Šternthal (Strnišče), priests laboured in a gravel plant and worked on the construction of a factory for bauxite and aluminium; in Ig, they farmed. Priests were also put to work copying registers and philharmonic music sheets, and translating books. Nuns were mostly kept in Ferdreng camp, PCF Begunje, PCF Rajhenburg, and in the prisons of the Škofja Loka castle. They (all) worked on the construction of New Belgrade and on the building of the Brotherhood and Unity Highway.

Priests, monks, nuns and theology students were imprisoned in unbearable conditions: the degradations of the wardens, often in solitary confinement, inadequate nutrition, dirt, insects, lack of beds and covers, appalling medical care, the cold and so on. Questioning and pressure from interrogators did not cease.

Numerous sacral objects and properties – churches, chapels, shrines and monuments, crosses, cemeteries – were desecrated, destroyed or demolished under some 'scientific' pretense. After the cessation of diplomatic relations with the Vatican (1952), a number of chapels, shrines and monuments were systematically destroyed. Here some examples: All 26 churches in the enclosed area Kočevska Reka disappeared, most between 1953 and 1956. The Church of St. Martin in Poljane above Škofja Loka, designed by the Baroque architect Gregor Maček, was demolished in 1954 because it was blocking the view of the mountains. The Carmelite church in Selo was demolished in 1951 because of renovations to the road "Zaloška cesta". The Church of St. Joseph was confiscated in 1949 and given to the company Vesna Film. In the same year, the Church of Mary of Succour, a property of the Order of the Cross, was confiscated and given to the Old Catholic parish, along with the hospital church of the Holy Cross, which was transformed into a mechanic workshop for bed and wheelchair repairs. The pilgrimage church of Holy Mary on Ptujška Gora was removed from sacral use in 1952 and changed into a museum. Only after several years of protests and appeals, it was returned to sacral use in 1957. Because of the planned Seventh Congress of the League of Communists of Yugoslavia (1958), the exhibition center grounds (Gospodarsko Razstavišče) were enlarged and the church of St. Christopher was demolished. Plečnik's Church of Sts. Cyril and Methodius was, after years of protests, moved to another (hidden) place.¹⁷

Until 1961, 1,411 priests had been given administrative punishments, 95 received short prison sentences – 1,450 days altogether – and 1,316 had to pay fines – altogether 5,315,000 dinars. The reasons for administrative punishments were numerous: prohibited rites and events outside the church (such as processions), spreading false information, breaking the Law on the Legal Status of Religious Communities, violations of public peace and order, economic reasons, unlawful collections, church bell-ringing, disrespect of state institutions, illegal printing, traffic violations and others. In 1951, administrative punishments were especially numerous because of "illegal teaching of religion". Because priests did not have a license to give religious instruction in schools, they instructed children in churches and presbyteries. But then in 1952, religion was banned from schools and moved to churches and presbyteries.¹⁸

After 1961, pressure on clergy somewhat decreased and relations slightly improved after the re-establishment of diplomatic relations between Yugoslavia and the Holy See in 1966. But considerable pressure was exerted upon religious laymen, especially teachers, professors and civil servants. Many teachers who lived according to their religious beliefs had great problems and were removed from schools. The basis of all education in schools was Marxist atheistic ideology. Although free profession of religion was constitutionally guaranteed after 1970, free exercise of religion was not allowed in public.

¹⁷ Tamara Griesser Pečar, *Boj proti veri in cerkvi (1945–1961)*, Družina, Ljubljana 2008.

¹⁸ Tamara Griesser Pečar, *Cerkev na zatožni klopi*, pp. 104, 635–684. The situation after 1961 still must be researched.

Dainius Žalimas*

THE NEED FOR EQUAL TREATMENT OF NAZI AND SOVIET CRIMES

On 19 April 2007, the EU Justice and Home Affairs Council adopted the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (hereinafter – the Framework Decision). The Framework Decision seeks to approximate criminal legislation in the field of combating racism and xenophobia. *Inter alia* it shall impose the obligation on Member States to establish criminal responsibility for public condoning, denial and gross trivialisation of crimes of genocide, crimes against humanity and war crimes, including crimes defined in Article 6 of the Charter of the Nuremberg International Military Tribunal, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin (para. 1(d) of Article 1 of the Framework Decision). Thus one can state that by the Framework Decision, all crimes of genocide, crimes against humanity and war crimes committed by the Nazi regime before and during the World War II have been condemned at the European level, as all the EU countries are committed not to tolerate public condoning, denial and gross trivialisation of those crimes and equally protect the dignity of their victims. However, the Framework Decision does not cover crimes committed by the Soviet totalitarian regime that brought no less harm and suffering to Europe. Therefore victims of the Soviet totalitarian regime remain outside legal protection at the European level.

This shortcoming has been actually acknowledged in the Statement of the EU Member States (hereinafter – the Statement) adopted together with the Framework Decision. The EU Council declared that the Framework Decision was limited to crimes committed on the grounds of race, colour, religion, descent or national or ethnic origin, i.e. it did not cover crimes committed by totalitarian regimes on other grounds, including political convictions and social status. However, the Council found it necessary to deplore all these crimes, and instructed the Commission to examine whether an additional instrument is needed to cover the crimes of genocide, crimes against humanity and war crimes committed by totalitarian regimes and directed against persons defined by reference to criteria other than race, colour, religion, descent and national or ethnic origin. This hearing on crimes committed by totalitarian regimes is mentioned among the tools to be used by the Commission in pursuing its task.

Therefore I think that the main purpose of this hearing is to start dealing with the issue of an additional legal instrument on crimes committed by totalitarian regimes. I will provide arguments why, and what additional instrument is needed.

First, I do not think that in Europe there is any doubt on the very fact whether crimes of genocide, crimes against humanity and war crimes had been at all committed by Communist totalitarian regimes, in particular by the Soviet Union. As it follows from the Statement, the EU Council does not have any such doubt either. On the contrary, the Member States have expressly acknowledged these crimes by deploring them. In addition, we can not neglect the approach expressed by another authoritative and wider European institution – the Parliamentary Assembly of the Council of Europe. At least twice it passed resolutions regarding international condemnation of crimes committed by communist totalitarian regimes (e.g., resolutions No. 1481(2006) and 1096(1996)). In those resolutions, the Parliamentary Assembly of the Council of Europe expressly acknowledged the fact of massive crimes and violations of human rights committed by the Communist totalitarian regimes in Central and Eastern Europe, including “individual and collective assassinations and executions, death in concentration camps, starvation, deportations, torture, slave labour and other forms of mass physical terror, persecution on ethnic or religious grounds, violation of freedom of conscience, thought and expression, of freedom of the press, and also lack of political pluralism”. The Parliamentary Assembly of the Council of Europe in its 25 January 2006 Resolution No. 1481(2006) on the need for international condemnation of crimes of totalitarian Communist regimes also noted that these “crimes were justified in the name of the class struggle theory and the principle of dictatorship of the proletariat. The interpretation of both

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principles legitimised the ‘elimination’ of people who were considered harmful to the construction of a new society and, as such, enemies of the totalitarian Communist regimes”. This implies acknowledgment at the European level of crimes of genocide, crimes against humanity and war crimes committed by communist totalitarian regimes on various grounds, including racial, ethnic or religious hatred, political convictions or social status.

The Parliamentary Assembly of the Council of Europe has also stressed the need for moral assessment and condemnation of crimes committed by Communist totalitarian regimes, and called for a clear position of the international community on the tragic past. Thus, the first argument why we need an additional legal instrument dealing with the crimes committed by Communist totalitarian regimes is the need for the same moral and legal assessment and condemnation of the Communist crimes as those of the Nazi regime. If at the European level we agree to persecute those who publicly condone, deny or grossly trivialize the Nazi crimes then, acting consistently and in line with the approach of the Parliamentary Assembly of the Council of Europe, we should set the same standard of treatment of those who publicly condone, deny or grossly trivialize the Communist crimes. I would like to stress here that I am calling for equal condemnation of crimes and equal persecution of those who try to justify them, rather than for condemnation of activities of all communist parties, including those democratically participating in the political life of many EU Member States and not involved in commission of crimes of totalitarian regimes. I think we should concentrate our attention only on the crimes committed by Communist totalitarian regimes rather than on dealing with the broader issue of communism because crimes of genocide, crimes against humanity and war crimes deserve condemnation and persecution, notwithstanding who are their perpetrators or what kind of ideology lies behind these crimes.

In addition, I would like to point out that from a legal point of view, the Communist totalitarian regimes in the Baltic States had been imposed from outside by the foreign State (the USSR) that had occupied their territory committing aggression. Therefore, contrary to some other European States, this regime in the Baltic States had not been internal; it was rather an alien occupation regime. I do not think either that the fact of the 1940 Soviet aggression against the Baltic States and their subsequent occupation can be doubted. I can recall the consistent policy of non-recognition of the illegal annexation of the Baltic States which had been pursued by the majority of democratic States, including current EU Members. That policy was reflected *inter alia* in the 13 January 1983 Resolution of the European Parliament which expressly condemned the occupation of the Baltic States committed pursuant to the Molotov-Ribbentrop Pact; it was also noted in this Resolution that “the Soviet annexation of the three Baltic States has still not been formally recognised by most European States and the USA, Canada, the United Kingdom, Australia and the Vatican still adhere to the concept of the Baltic States”. Similarly, in the 29 September 1960 Resolution No. 189(1960) on the Situation in the Baltic States on the Twentieth Anniversary of their Forcible Incorporation into the Soviet Union, the Parliamentary Assembly of the Council of Europe noted that “this illegal annexation (of the Baltic States) took place without any genuine reference to the wishes of the people” and that “the independent existence of the Baltic States is still recognised de jure by a great majority of the Governments of the nations of the free world”. In the 28 January 1987 Resolution No. 872(1987) on the Situation of the Baltic Peoples, the Parliamentary Assembly of the Council of Europe reiterated its position that “the incorporation of the three Baltic States into the Soviet Union was and still is a flagrant violation of the right to self-determination of peoples, and that it remains unrecognised by the great majority of European States and many members of the international community”. Moreover, the Grand Chamber of the European Court of Human Rights, in its 16 March 2006 Judgment in the *Ždanoka v. Latvia* case, expressly noted that the Baltic States lost their independence “in 1940 in the aftermath of the partition of the Central and Eastern Europe agreed by Hitler’s Germany and Stalin’s Soviet Union by way of the secret protocol to the Molotov-Ribbentrop Pact, an agreement contrary to the generally recognised principles of international law”. In the same Judgment, the European Court of Human Rights also stressed that in June 1940 “the Soviet army invaded” the Baltic States and the ensuing annexation of these states by the Soviet Union was orchestrated and conducted under the authority of the Communist Party of the Soviet Union (the CPSU), the local communist parties being satellite branches of the CPSU. The Court followed the same reasoning and statement of facts in the 19 February 2008 judgment in the case of *Kuolelis, Bartoševičius and Burokevičius v. Lithuania*: “Following an ultimatum to allow an unlimited number of Soviet troops to be stationed in the Baltic countries, on 15 June 1940 the Soviet army invaded Lithuania. The Government of Lithuania was removed from office, and a new government was formed under

the direction of the Communist Party of the Soviet Union (hereafter ‘the CPSU’), the USSR’s only party. On 3 August 1940, the Soviet Union completed the annexation of Lithuania by adopting an act incorporating the country into the USSR, with Lithuania being called the ‘Soviet Socialist Republic of Lithuania’ (the ‘LSSR’). The Government of the LSSR was appointed and controlled by the Communist Party of Lithuania (‘the CPL’), a regional branch of the CPSU.” Thus, it is obvious that the European Court of Human Rights considers the 1940 annexation of all the Baltic State to have been illegal; meanwhile the reference by the Court to the June 1940 Soviet armed invasion implies recognition of the aggression against the Baltic States and of the illegal occupation as the result of the invasion.

Keeping all that in mind, one cannot dispute the crimes of aggression and genocide, crimes against humanity and war crimes committed by the Soviet Union against the Baltic States and their peoples. In this connection, I would like particularly to quote the 1946 Judgment of the Nuremberg Tribunal in which an aggression was characterized as “the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole”.

Second, it is generally recognised that condemnation of crimes is essential to their prevention. In particular this is important to the gravest crimes such as aggression, genocide, crimes against humanity and war crimes. Obviously, persecution of those who are trying to deny or justify these crimes ensures their condemnation and prevention. Therefore, after adoption of the Framework Decision, a paradoxical situation has been created where crimes committed by the Nazi regime seem to be more condemned than the same crimes committed by the Soviet regime. The fact that public condoning, denial and gross trivialisation of the latter crimes were not covered by the European legislation might create an impression that these crimes had been less grave and they did not deserve the same strong condemnation at the European level. However, today we are facing increasing attempts from some neighbouring countries to glorify the Soviet past, to justify and deny the Soviet aggression against the Baltic States, as well as their subsequent occupation, to deny crimes of genocide, crimes against humanity and war crimes committed by the Soviet Union. I can provide one striking example showing how similar are these attempts to the arguments of the Nazi criminals presented during the Nuremberg Tribunal proceedings to justify aggressions against foreign states. Nowadays Russia is trying to justify and deny the Soviet aggression against the Baltic States on the ground of their alleged consent with military invasion and subsequent annexation. Similarly, the Nazi criminals tried to justify aggression against, and annexation of, Austria, Czechoslovakia and many other countries by their alleged consent or even desire to unite with Germany. However, the Nuremberg Tribunal considered these kinds of arguments (in particular, those justifying the “Anschluss” of Austria) to be “really immaterial for the facts plainly prove that the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered.” Apparently the same can be said about Russian arguments justifying and denying aggression against the Baltic States.

Thus, keeping that in mind, it is essential to apply the same legal standards for denial and justification of the crimes committed by the Communist totalitarian regimes. Otherwise, those who glorify these regimes and their crimes may be given a wrong signal regarding their activities.

Third, the following argument in support of equal treatment of the Nazi and the Soviet crimes at the European level is universality of the Nuremberg principles (the customary international law principles recognised in the Charter of the Nuremberg International Military Tribunal and the jurisprudence of this Tribunal). The universal validity of these principles has already been recognized by the European Court of Human Rights. The Court emphasized the universality of the Nuremberg principles in its 17 January 2006 decision on admissibility in the case of *Kolk and Kislyiy v. Estonia* and in the 24 January 2006 decision on admissibility in the case *Penart v. Estonia*, stating that “responsibility for crimes against humanity cannot be limited only to the nationals of certain countries and solely to acts committed within the specific time frame of the Second World War”. The Court also noted that the Nuremberg principles and their universal validity were perfectly known to the Soviet Union, which was a founder of the Nuremberg Tribunal and an original member of the United Nations.

That implies that the same legal standards have to be applied in dealing with Nazi and Soviet crimes. Consequently, public condoning, denial and gross trivialisation of the latter crimes should not be tolerated as well.

Fourth, one of the purposes to prosecute public condoning, denial and gross trivialisation of crimes of genocide, crimes against humanity and war crimes is to protect the dignity of victims of these crimes. Applying on *mutatis mutandis* basis the reasoning of the Hungarian Constitutional Court (the 9 May 2000

Decision on constitutionality of prohibition of the Nazi and the Soviet symbols) we can also underline the need to protect the dignity of communities which suffered from repressions of Communist totalitarian regimes. In line with this reasoning, both public use of totalitarian symbols and public justification or denial of totalitarian crimes may be regarded as offensive to the dignity of members of any group who suffered from repressions.

Thus the Framework Decision might lead to deplorable discrimination between victims of different totalitarian regimes. As I mentioned before, all crimes of genocide, crimes against humanity and war crimes must be equally treated. The dignity of all their victims, including communities which suffered from totalitarianism, must be equally protected. As emphasised by the Parliamentary Assembly of the Council of Europe in its 25 January 2006 Resolution No. 1481(2006), “those victims of crimes committed by totalitarian Communist regimes who are still alive or their families, deserve sympathy, understanding and recognition for their sufferings”. Otherwise the current different regulation provided in the Framework Decision inevitably leads to the impression that victims and communities suffering from the Soviet regime deserve only a minor level of legal protection of their dignity. That kind of discrimination is unacceptable in any democratic society; it is not compatible with European values either.

Finally, what kind of additional instrument is needed to remove this shortcoming. I think the best way here is to amend the current Framework Decision, which has as its purpose, to combat racism and xenophobia. We can reinterpret the concept of xenophobia, keeping in mind its original meaning. Actually the word “xenophobia” consists of two Greek words, i.e. *xenos* meaning “alien” and *phobos* meaning “fear”. Therefore the original meaning of xenophobia is a fear, hostility and hatred of anything alien; it can denominate any hatred or persecution of different people. Thus the concept of xenophobia may include not only crimes against persons defined by reference to race, colour, religion, descent or national or ethnic origin, but also the same crimes committed on the grounds of different political convictions or social status. Any such hatred has to be equally condemned and persecuted. That is why the specific experience of the new EU Member States can be seen as the reason to reinterpret the concept of xenophobia so as to include other grounds than only race, colour, religion, descent or national or ethnic origin. We can keep in mind also the fact that the elimination of people by the Soviet regime on the ground of their political convictions (disagreement with and resistance against the totalitarian regime) or social status, by the same token, aimed at elimination of politically active people belonging to certain group or nation. In other words, actually these crimes of the Soviet regime had the aim to eliminate all the group or nation by suppressing any resistance and subjugating this group or nation. Therefore crimes of genocide, crimes against humanity and war crimes committed by the Soviet regime can be regarded as pursuing the same aim to eliminate whole national, ethnic and religious groups.

In conclusion, I think that the best solution is to delete references to grounds of race, colour, religion, descent or national or ethnic origin in the text of Article 1 of the Framework Decision, thus including the crimes of genocide, crimes against humanity and war crimes committed by all totalitarian regimes, including the Nazi and Soviet regimes. All such crimes deserve the same condemnation and all their victims should be equally protected. There is no compelling reason to keep the current situation when public condoning, denial and gross trivialization of only certain crimes of genocide, crimes against humanity and war crimes is punishable at the European level.

Vytautas Landsbergis*

HYPOCRISY OF DISCRIMINATION AMONG VICTIMS OF TOTALITARIAN CRIMES

What is starting today is an extremely important action of the Commission to be welcomed with our most sincere gratitude, as a better Europe is our common goal.

Knowledge and awareness of newly presented facts may appear in a limbo of social indifference, if no valuation exists. The essence of the crimes of totalitarian states and governments may be lost, if we try to reach “full extent”, with various margins, immediately instead of seeking to make an autopsy of the phenomenon of totalitarianism in its worst seed and actuality.

Here we are at a one of the last, special circles of hell.

That very circle is defined by crimes perpetrated against humanity, which means deliberate mass killings of people on the grounds of their difference from the killers. A desire for crimes against humanity, a “final solution” for an entire group of millions of people was called the Holocaust.

Perverse doctrines, allegedly justifying such campaigns of annihilation, could expose, as the grounds for action, racial, national, religious or social differences, but what was really common for all these doctrines was inhuman hatred towards other humans. – They do not deserve to live! Such a simple decision was employed by various fundamentalists in Europe, Asia, Africa, etc. Among all, by Communists and their pupils – executioners, servants for the system of oppression and destruction. If you would call that ideo-emotional mechanism of behaviours not “inhuman” but bestial hatred to “the others”, in many cases that word “bestial” would not be a wrong description.

In line with the above-mentioned range of crimes, there are also war crimes. During the war they were being perpetrated to murder the unarmed detainees or helpless civil population. Often with bestial cruelty, as well. Look, please, at the distributed booklet on the massacre in Rainiai and remember Katyn, where tens of thousands war prisoners have been executed on the order of Joe Stalin and his gang.

To launch an aggressive war, with the aim to destroy your neighbour, turn its country into ruins and cemeteries, and afterwards annex it in line with premeditated “revolutionary” or “national” benefits, such action certainly appears to be the greatest war crime. Conspirators of the assault and decision makers are the gravest criminals. Sometimes they were hanged, sometimes granted monuments. Strangely, the defeated Nazis in Nuremberg were forgiven for this crime. Joachim von Ribbentrop was not sentenced for starting the deadliest war, only for the other crimes.

How could it happen?

The Nuremberg trial started under the Soviet ban to touch upon issues of conspiracy against nations – against humanity – which was the beginning of aggression against Poland and Finland, and then that so destructively annihilating war followed. Therefore, the Nazis appeared forgiven in advance for the international conspiracy to attack Poland, since the Soviets were left out of responsibility for attacking Finland and invading other Baltic States.

What happens now, when we go ahead from the previous common maxims to an even greater number of real events?

The first counter-reaction to be met is the question: for what sake, gentlemen, should we move those ashes and bones, aggravating the so slowly healed wounds?

The response was given a hundred years ago by Polish writer Stefan Zeromski after he was accused in a similar way. “National wounds have to be disturbed to bleed again and again to prevent them from being covered by crusts of knavery.” Justice *per se* is another reason. I would say, the lack of justice for the killers kills justice.

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Another easily provided counter-reaction is the preventive demand of transparency: what killer do you have in mind? Rich or poor, big or little? We pragmatic politicians will consider the crimes only after clarification. See, we do not want more problems.

Then dual standards kill all the standards. We are against all forms of discrimination; therefore discrimination of innocent victims should be an especially outrageous stance. Anyway, it happens. Some victims of war crimes are calling for justice loudly while some others are lying buried in silence.

Discrimination of victims is completed by that of killers. Perpetrators of crimes against humanity are treated discriminately alongside their nationality and ideology. Some think that a shot across the skull by a Nagan-gun in the hand of an NKVD–KGB executioner was less painful for the victim than that exercised by a Walter-gun in the hand of an SS man. The same wrong tradition of discriminatory valuation and judiciary is exercised concerning the techniques used by the terminators.

Gas chambers to kill thousands and tens of thousands of human beings were a diabolic invention of the German Nazis, from engineers to political leadership. Another industry of extermination was built and used by Soviet Bolsheviks, also from well-managing executioners of the Gulags to political leadership. The main machinery there, besides shooting, was a combination of Arctic cold and organized starvation exercised by bosses of that entirely exhausting slavery and most often senseless labour. Millions were killed in enormously vast chambers of helplessness, from horizon to horizon, where deadly torture lasted a bit longer than gas. From over 130,000 civilians brutally taken from their occupied country Lithuania to distant and hostile areas of the occupying USSR, only some 30 percent survived to return home. Who killed the remaining? Who killed millions of Ukrainians during the artificial famine called Holodomor, which was intended to break down the vitality of national peasantry and clear the area for future resettlements? Similarly, the area around today's Kaliningrad was cleansed in a military and administrative action before and after the Potsdam Conference. Chechnya was cleansed even a bit earlier, in 1944, during Stalin's action, which was recently condemned by the European Parliament as genocide.

The aim of this first hearing, starting today as the initial step in a process, should be to overcome hypocrisy and help Europe to have a more true and moral judgement of the greatest criminal tragedies of the 20th century.

For what sake, gentlemen? To this I have just responded. Europe must live in respect to itself.

II. TOTALITARIAN CRIMES: CROSS-NATIONAL SURVEY

Heinrihs Strods

CRIMES COMMITTED IN LATVIA BY THE OCCUPATION REGIMES OF THE USSR AND GERMANY (1940–90)

The crimes committed by the *Bolshevik USSR* occupation regime (1917–90) and by the German National Socialist regime (1933–45) were based on two misanthropic ideological doctrines of the 19th century – racism and the class struggle. The goals of both regimes were achieved through the (*Bolshevik*) *Workers' Party*¹ established by the *Russian Social Democrats* in 1903, and through the National Socialist German Workers' Party (NSDAP)² established in 1920. Both parties officially proclaimed themselves the only ruling parties provided by law – the Bolsheviks in the Union of Soviet Socialist Republics (USSR) in 1924, and the NSDAP in Germany in 1933. Both of these totalitarian parties committed genocide, crimes against humanity and war crimes (in Russia since 1917, in Germany since 1933). In the Republic of Latvia, the party of radical Communists (Bolshevik and antidemocratic), practically led from Russia, was declared a seditious organisation and prohibited. After the USSR occupied Latvia in 1940, this small subversive organisation (with only about 400 members in 1939) came to power in Latvia by order of the Central Committee of the Bolshevik Party in the USSR and under the protection of the Red Army. Latvia's Communist Party was considered a branch of the Russian Communist Party and was financed from Moscow. It was dominated by Russified Latvians from the USSR and its ranks were filled with a large number of soldiers. The leadership of the Communist Party (nomenclature) together with the leadership of the Russian Bolshevik Party (nomenclature) were responsible for the Bolshevik crimes in Latvia.

After the occupation, three groups, with distinct approaches regarding the occupational forces, developed in Latvian society – the silent majority, the collaborators and the differently-minded. Although relations among these groups changed in terms of numbers, all three continued to exist throughout the 50 year period of the totalitarian occupation. Agitation and propaganda, political prosecution and interference with private life were directed towards the differently-minded, who were, to a great extent, advocating the idea of an independent Latvia. A statement of the crimes committed by both totalitarian regimes is difficult to make due to four reasons. First, is the version of history made by the winners of the Second World War in the years 1943–45. Second, is the mythology of World War Two history, and of the post-war period created by the propagandists of the Communist Party. Third, is the short, only ten-year period of scientific research since the renewal of independence in 1991. Fourth, is the inaccessibility of important historical sources from the occupation period in Russian archives.

World War Two was the first war in the history of the world, which ended not only with victories and defeats of the states in conflict, but also with the proclamation of losers as war criminals. On the eve of the International Military Tribunal at Nürnberg, several agreements were made between the victorious powers not to mention their own war crimes (Katin, Dresden, secret Protocols of the Molotov-Ribbentrop Pact, and others). That winners' version is still valid when the history of the Second World War is explained, especially in Russia, even today still excluding Bolshevik crimes in the same way as in 1945.³ Soviet propaganda did everything possible to show the crimes of Nazi Germany as horrible as possible and to connect them with the local population.⁴ At the same time, nothing was said about genocide against Jews with great numbers of victims, and their crimes against humanity in their own country and in other occupied countries were completely concealed.⁵

The Bolsheviks conducted no serious research on the Holocaust. No one was allowed to speak or write about the supreme crime of the Bolsheviks – the concentration camp gulag and the persons detained

¹ *Geschichte der kommunistischen Partei der Sowjetunion. The second, amended edition*, Riga 1963, p. 56.

² H. Kammer, E. Bartsch, *Lexicon Nationalsozialismus*, Reinbek bei Hamburg 1999, p. 164.

³ I. Feldmanis, "Tribunal Nürnberg: a fortunate event in history or a parody of a just court?", *Geschichte Lettlands*, 3, Riga 2006, pp. 84–87.

⁴ A. Ezergailis, *Nazi Soviet Disinformation*, Riga 2005.

⁵ K. G. Karlsson, "Holocaust, Soviet Terror and Historical Consciousness", in: *Pakta zona*, Riga 2003, pp. 2–28.

in such camps.⁶ According to Article 58, Item 10, of the Russian penal code, just to speak about that meant 5–10 years of imprisonment in a concentration camp for acting against the Soviet agitation and propaganda.⁷

Following the victory of the peaceful anti-communist revolution in Central and Eastern Europe in 1988–91, and the breakdown of the totalitarian regime in the USSR, research of the Nazi and Bolshevik crimes, without lies, began from scratch. The work was to be conducted by individual experts. Systematic research began ten years ago; in Latvia, the research programme of Latvian historians and occupation museums started in 1998.

As is well known, the USSR was a very centralised empire, and thus all the most important historical documents of the countries occupied by the USSR were mainly kept in Russian archives. Some documents in Russian archives are now accessible to researchers, while the most important libraries with historical sources of the occupation – the Russian Presidential Archives, the Central Archives of the Russian Defence Ministry and many others have to date not been available. Thus, the research of the occupation period in Latvia cannot be completed, because the archives of the relevant structures (Security Service, Ministry of Defence and others) were either brought to Moscow or destroyed.

In terms of organisation, research of both totalitarian occupation regimes in Latvia is carried out at three levels – at the State level (the Commission of the Historians of Latvia, the State Archives of Latvia, the Commission for the Assessment of Damage and Loss, the Institute of History of the University of Latvia), at the level of public organisations (the Museum of the Occupation of Latvia, the Union of Latvian Politically Repressed), and at the level of private researchers of local history. The research work is conducted by highly qualified historians. Habilitated doctors of history, doctors and professors of history, masters and bachelors of history, 20 researchers in total, are engaged in the project. In the Commission of the Historians of Latvia, half of the members are from Latvia (12) and the other half (12) are foreign researchers. In addition, several researchers from Europe, America and Russia participate in the research work of the Commission and of the Occupation Museum, in scientific conferences, discussions and in compilation of materials.⁸ The research completed so far is divided in three parts – monographic research⁹, collections of writing¹⁰, and compilations of documents¹¹. Many articles have been published. Three out of twenty-two published books are devoted to the Holocaust. Several monographies on the Holocaust have been published (Prof A. Ezergailis, E. Anders). In the State Archives of Latvia, a register was compiled with the names of all Jews who suffered in the Holocaust. Several international scientific conferences in Riga were devoted to research on the Holocaust and the crimes of totalitarian communism. The research results and the collections of documents are predominantly issued in the Latvian language with summaries in English, German and Russian, while some books have also been published in English¹² and Russian. On 30 May 2006, the Saeima (Parliament) of Latvia and the Cabinet of Latvia passed resolutions to set up a Commission, with the mandate to investigate and clarify the places of mass graveyards of victims killed by the USSR Bolsheviks, and to assess the number of victims and the scope of damage caused by the occupation forces to the State of Latvia and to its people. The Commission is composed of several historians, demographers, economists and environmental experts. A 2007 agreement between Latvia and Russia provides for mutual search for, and research, of graveyards. Latvian historians, together with historians from neighbouring countries, including Russia and Ukraine, endeavour to do away with the myth of history spread by censorship and totalitarian regimes.

In this short survey, I highlight a number of crimes committed in the Latvian Soviet Socialist Republic (LSSR) in the period 1940–90 which cannot be classified as acts of racism and xenophobia, but shall rather be characterised as crimes against humanity and genocide. It was a strategic, well-planned mass destruction of people without any trial, with pre-planned political convictions and religious persecutions. Just as the occupation forces of the communist crimes arrived from the USSR,

⁶ *Перечень данных, запрещенных к опубликованию в открытой печати, радио и телепередачах*. Strictly confidential, Moscow 1970.

⁷ In the years 1954–90, 249 persons were sentenced for that in Latvia. (*Надзорные производства Прокуратуры СССР*, 58/10, March 1953–1990, Moscow 1999.)

⁸ Prof Dr E. Oberlenders, Prof Dr A. Ezergailis, Prof A. Sokolovs, Dr A. Kokurins, Dr T. Hiio, Dr A. Anuškauskas, Dr A. Bubnis, Dr M. Kotts, et al.

⁹ A. Ezergailis, *The Holocaust in Latvia, 1941–1944*, Washington–Riga 1996.

¹⁰ *Schriften des Ausschusses der Historiker Lettlands. Volumes 1–22*, Riga 2000–2008; *Jahresbuch des Okkupationsmuseums Lettlands. Volumes 1–8*, Riga 2000–2007.

¹¹ *Die Weggebrachten. 14. Juni 1941*, Riga 2001; *Die Weggebrachte. 25 März 1949. Volume I–II*, Riga 2007; *Martrilogium der Staatsangehöriger Lettlands. In Vjatlæg. 1938–1956*, Riga 2006.

¹² Prof Dr E. Oberlenders, Prof Dr A. Ezergailis, Prof A. Sokolovs, Dr A. Kokurins, Dr T. Hiio, Dr A. Anuškauskas, Dr A. Bubnis, Dr M. Kotts, et al.

the substance and form of crimes were imported from the USSR, where they had been perfected in the years 1920–30. The envisaged mode of destruction of the Baltic population resembled the form of the Great Terror in the USSR in 1937–38, with orders and instructions given to the authorised and to others; secret arrests, according to special lists, performed immediately and simultaneously; detention with no trial or sentence. The politics of ethnic political consolidation which started in the USSR in 1937–38, then continued in the Baltics in the ten-year period of 1940–49 in three great campaigns, in which predominantly the local ethnic population (Ukrainians, Lithuanians, Letts) was punished, and to a much lesser extent, also the Soviet ethnics or those who were trying to approximate it.

The arrests and detention of the political and military elite without trial began immediately after the arrival of the Red Army in Latvia on 14 June 1940, i.e. even before Latvia was annexed on 5 August 1940, and continued throughout the occupation year which people remember as the “ghastly year” due to the numerous totalitarian crimes of the Communists. The entire Latvian Government was imprisoned – 68 (out of 100) members of the former Latvian Parliament, many intellectuals and functionaries; the nation was left without their leaders. In total, 23,094 (1.15 %) inhabitants were detained and exiled without any court decision in 1940–41, of which 10,255 (44.5 %) were shot in detention or died in exile.¹³ The biggest crimes against humanity by the Communist occupation were committed on 14 June 1940 and 25 March 1949 in the great *campaigns* of deportation against the Latvian population (Table 1).

Table 1:

Mass deportations of Latvian citizens to Siberia on 14 June 1940 and 25 March 1949

		14 June 1940 ^I		25 March 1949 ^{II}		Total	
		Number	%	Number	%	Number	%
1	Men	5,902	38.5	11,316	26.9	17,218	29.9
2	Women	4,820	31.4	19,822	47.0	24,642	42.9
3	Children aged 7–16	2,132	13.9	7,619	18.1	9,751	16.9
4	Children under 7 years	2,482	16.2	3,368	8.0	5,850	10.2
5	Total	15,336	100.0	42,125	100.0	57,461	100.0
6	Of total Latvian citizens	0.79 %		2.8 %		3.59 %	

Notes from the table:

^I Upon the Resolution of the Central Committee of the USSR Communist party and the Council of People’s Commissars of 14 May 1941.

^{II} Upon the Resolution of the USSR Ministers Council of 29 January 1949, Nr. 390–138, strictly confidential.

On 14 June 1940 and 25 March 1949, violent mass deportations of Latvian citizens took place, based on the decisions taken by the top political powers of the USSR, and carried out with the utmost brutality by the USSR People’s Commissars (ministers). Just in these two great campaigns of Soviet power, 57,461 people, aged one to ninety years, were exiled from Latvia to Siberia.¹⁴ On the basis of lists of names prepared by the Communist party, the Commissar of the Interior and the Security Services, individuals and families (13,248 families on 25 March 1949) were secretly deported by occupation forces without any presentation of charges and/or court decision.¹⁵ In deportations on 14 June 1941, men (5,263 in number) were separated from their families before being enclosed in cattle wagons. They were brought to concentration camps or imprisoned. In the places of detention, 3,441 (65.4 %) of these

¹³ H. Strods, “Die Hauptformen des Genozids in Lettland, 1940–1985”, *Praxis des kommunistischen Totalitarismus und Genozids in Lettland. Konferenzmaterialien*, Riga 1992, p. 18. (H. Strods “Main Forms and Goals of Genocide in Latvia from 1940 to 1985”, *Practice of Communist Totalitarianism and Genocide in Latvia. Conference materials*, Riga 1992, p. 18.)

¹⁴ On 25 March 1949, 3,368 children aged under 7 and 744 people aged above 80, were deported. On their way to Siberia, 229 persons died, of which 174 were over age 60 and 33 children under 5. (A. Abolina, “Structural analysis of deportation of 25 March 1949”, *Die Wegebrachten. 25. März 1949. Volume I*, Riga 2007, p. 189.)

¹⁵ *Die Wegebrachten. 25. März 1949. Volume I*, Riga 2007, p. 180.

detainees died due to torture or inhumane treatment, about 700 (13.3 %) were shot and only some 20 % returned later to Latvia.¹⁶ Table 1 shows that 24,642 (42.9 %) women and 5,850 (10.2 %) children, aged one to seven years, suffered mass deportations in 1941 and 1949; 70 % of the exiles were women and children under 16 years of age.¹⁷ The occupation forces sent all those people to possible death. During the deportation of 25 March 1949 alone, 229 persons died on their way to Siberia, mainly the elderly and children (Table 2).

Table 2:

Numbers regarding the 229 Latvian citizens who died in transport to Siberia (March–April 1949)¹⁸

Under and including 1 year of age		2–16 years old		10–60 years old		60–80 years old		Above the age of 80	
Number	%	Number	%	Number	%	Number	%	Number	%
21	9.2	15	6.6	18	7.9	122	53.3	52	23.7

Latvian citizens, including children, were imprisoned in 44 concentration camps, or placed in forced settlements (colonies) in the USSR, especially in the areas of Krasnoyarsk, Omsk and Tomsk. Of those 44 concentration camps, exact data have so far been available for the concentration camp Vjatka in the Kirov area; 3,500 Latvian political convicts were imprisoned there in the years from 1938 to 1950, i.e. 11.7 % of all prisoners in that camp. Table 3 shows that 2,373 Latvian citizens lost their lives during their imprisonment – 14.8 % of all who died in the camp. In the same time period, 236,062 persons were killed in the death camp Buchenwald. When comparing the death rates of Latvian citizens in Vjatlag and Buchenwald in the years 1938–45, Russian historian V. Veremejev came to the conclusion that the death rate of Latvian citizens in Vjatlag was, in percentage terms, five times higher than in Buchenwald¹⁹ (Table 3). And Buchenwald was generally considered a death camp, whereas Vjatlag was regarded by many as a labour and re-education camp (ИТЛ) similar to the other concentration camps of the Soviet Union. We shall, however, pursue a uniform understanding and a uniform assessment of the crimes of both totalitarian regimes.

Table 3:

Number of persons who lost their lives in Vjatlag and Buchenwald (January–March 1938–45)²⁰

No.	Year	Number of Latvian citizens who died in Vjatlag	Total number of persons who died in Vjatlag	Total number of prisoners who died in Buchenwald
1	1938	5	2,000	771
2	1939	45	1,060	1,235
3	1940	4	340	1,772
4	1941	407	1,810	1,522
5	1942	1,280	9,090	2,898
6	1943	569	5,630	3,516
7	1944	60	1,380	8,644
8	1945	3	103	13,056

¹⁶ J. Riekstins, “Deportation des 14 Juni 1941 in Lettland. Deportation des 14 Juni 1941 – crimes against humanity. Materialien der internationalen Konferenz, 12.–13. Juni 2001”, in: *Schriften des Ausschusses der Historiker Lettlands. Band 6*, Riga 2001, pp. 21–25. (J. Riekstins, “The Deportation of June 14, 1941 in Latvia. The Deportation of June 14, 1941 – Crime Against Humanity. Materials of the International Conference, June 12–13, 2001, Riga”, in: *Writings of the Commission of Historians of Latvia. Vol 6*, pp. 21–25.)

¹⁷ I. Zalite, S. Eglite, “Strukturanalyse der Deportation vom 14. Juni 1941. Deportation vom 14. Juni 1941 – Verbrechen gegen die Menschheit. Materialien der internationalen Konferenz, 12.–13. Juni 2001, in: *Schriften des Ausschusses der Historiker Lettlands. Band 6*, Riga 2001, pp. 40–50. (I. Zalite, S. Eglite, “Structural Analysis of the Deportation of June 14, 1941. The Deportation of June 14, 1941 – Crimes Against Humanity. Materials of the International Conference, June 12–13, 2001, Riga”, in: *Writings of the Commission of Historians of Latvia. Vol 6*, p. 40–50.)

¹⁸ *Die Weggebrachten. 25. März 1949*, Riga 2007, p. 189.

¹⁹ *Martirologium der Staatsangehöriger lettlands in Vjatlaa, 1938–1952*, Riga 2001, pp. 38–39.

²⁰ Card files of specific lists in Vjatlag, now card files Kartei of the Russian Ministerial Office ГУИИ К–231 (Collection of V. Veremejev). *Бухенвальд. Документы и сообщения*. Издательство Иностранной литературы. Moscow 1962, p. 77.

Total number of dead	2,373	21,453	33,414
Total number of prisoners	3,500	90,000	236,062
Death rate	67.8 %	23.8 %	14.2 %
Death rate of Latvian citizens in comparison to Buchenwald	477.5 %		

Both systems of totalitarian destruction – the Bolshevik Gulag and the Nazi concentration camp – were operating on the basis of pre-planned inhumanity. In terms of killing people, the Bolshevik system of gulags greatly outperformed the Nazi's destruction system.

In the second half of the 20th century, the Soviet Union continued the policy of “opening Russia's window” on Europe through the Baltics, the policy initiated in the beginning of the 18th century by Emperor Peter I. The local populations from Latvia and Estonia were exiled and Russians and other peoples from the Soviet Union were settled on the territory. The same can be noted in the forced deportations of 25 March 1949: among the 42,125 deported from Latvia, 40,176 persons, i.e. 95.4 % of the deported, were Latvians, although Latvians at that time made 62 % of total population in Latvia. Only 790 Russians (1.9 %) were exiled, although the number of Russians in Latvia then amounted to approximately 30 %. The Soviet Union made every effort, similar to the Nazis who tried to do away with the representatives of the “lowest race” in the Baltics, to exterminate Latvians. They used, however, some other methods and brought into the country about 900,000 Russians; the Russian population of 10 % in 1935 increased to 41.9 %, ²¹ that is by four times. In the same period, the number of Latvians in Latvia fell from 1.5 million (80 %) in 1935 to 1,387,757 (52 %) in 1989. For that reason also, the Latvians and the Estonians are the only nations in Europe that have not yet reached the number of population from the beginning of the 20th century. Can there be any doubt, then, that genocide and ethnocide were committed?

An essential part of the Soviet regime was the atheistic dictatorship aimed at the persecution of all beliefs. It was conducted and executed by the agitation and propaganda leaders of the Central Committee of the Bolshevik Party – the Council for the Affairs of Religious Cults of the USSR, whose branch office operated in Latvia. Table 4 shows, that supported by the Central Committee of the Latvian Communist Party, they closed 118 churches (about 25 % of all churches in Latvia), and subjected 189 priests (about 30 %) to political repression – shot, imprisoned or exiled; the churches were turned into stock houses, factories or clubs. Considering that each church community comprised at least 1,000 people, it means that by imprisoning the priests of such communities, and by closing the churches, the Communist totalitarianism prohibited about one third of a million (approximately 15 %) citizens from going to church. In 1960, 655 religious communities and 440 priests operated in Latvia; more than 100 (22.7 %) of these priests had spent several years in camps and prisons. ²²

Table 4:

Communist crimes against religion in Latvia, 1940–90²³

No.	Denomination	Closed churches	Priests: imprisoned, exiled, shot
1	Lutheran	66	37
2	Catholic	5	76
3	Orthodox	29	56
4	Baptist	11	15
5	Roman Catholic	7	5
Total		118	189

²¹ P. Zvidrins, I. Vanovska, *Letten*, Riga 1992, p. 57.

²² LVA, 101. f., 24. apr., 54.a l., pp. 138–146.

²³ State Archives of Latvia, Inventory 1419, Catalogue 3, File 265, p. 31.

USSR Bolshevism committed mass crimes against humanity in Latvia by punishing hundreds of thousands merely for their social origin and political conviction, exiling them from the occupied territories. The USSR Bolshevik regime, like the National Socialist regime, persecuted people for their social and national origin, religious belief and political conviction, that is, for reasons not dependent on the persons themselves or, in other words, for their “indigenous sin”.

We have to reject the opinion that political persecutions of people stopped after Stalin’s death. In the period from 1954 to 1985, 2,451 persons were arrested and sentenced for political crimes in Latvia²⁴, of which 249 (10 %) for agitation and propaganda against the Soviets. In total, 188,923 persons (9.45 %) were politically persecuted in Latvia²⁵ by Bolshevik occupation forces in the years from 1940 to 1985. That would be equal to 7.3 million political prisoners in Germany in 1938 (out of 69.3 million). Of all political detainees, 54,000 persons were later sentenced (28.6 %).²⁶

Table 5:

Number of people politically persecuted by two totalitarian regimes in Latvia, 1940–91

No.	Regime	Number	Of all Latvian citizens (%)	Victims of Nazism and Communism (%)
1.	Politically persecuted by the Nazis (1941–44)	80,000	4.0	29.7
2.	Politically persecuted by the Bolsheviks (1940–41, 1944–91)	188,923	10.4	70.3
Total		268,923	14.4	100.0

Table 5 shows that during both totalitarian regimes, nearly one-third of a million Latvian citizens were politically punished (shot, killed in a concentration camp or imprisoned). The Bolsheviks persecuted more than twice as many people (10.4 %) as the Nazis (4 %). A large portion of the politically punished families served their punishment in Siberia in special settlements (colonies) controlled by the USSR IeTK–VDK. Regretfully, the Western democracies have to date not condemned the crimes committed by the Bolsheviks in the period 1940–80, and remain reluctant at least to recognise those crimes as legally equivalent to the Nazi’s crimes.

All crimes against humanity and the genocide committed by the Bolshevik regime were executed by criminal organisations: VK(b)P (PSKP), Central Committee, Politburo, Secretaries (leaders) of Committees at state, regional and local levels, who represented 7–10 % of Party members. With regard to Latvia, there were some 20,000 such organisers of genocide who to date have not been publicly condemned, yet alone convicted or punished. In Latvia, eight persons have been sentenced life imprisonment for genocide crimes, and one person for war crimes – all of them leaders or executives of the then power structure. The leaders and organisers of the Bolshevik crimes from the nomenclature of the SU Communist Party, however, have so far remained without condemnation and punishment.

When analysing the common and the different characteristic features of either totalitarian regime in relation to political persecution of the Latvian civil population, we can state that, first, both regimes punished people by virtue of attributes they could not change – the Nazis for their race, the totalitarian Communism – primarily for their social origin. Second, both criminal regimes punished whole families, including women, children and the elderly. Third, both regimes also destroyed people with forced labour. Fourth, both criminal regimes usually punished political prisoners in large groups and secretly, without a trial. Fifth, the Nazis punished approximately one third, and the totalitarian Communists approximately two thirds of the politically repressed. Sixth, the Bolsheviks did not only deprive the politically repressed of their own freedom, but also limited the freedom of their selected close relatives with regard to their lodgings, education, profession, and travel abroad for all of their lives. Consequently,

²⁴ H. Strods, “Hauptnormen und Ziele des Genozids in Lettland vom 1940–1985”, *Praxis des kommunistischen Totalitarismus und des Genozides in Lettland. Konferenzmaterialien*, Riga 1992, p. 19. (H. Strods, “Main Forms and Goals of Genocide in Latvia from 1940 to 1985”, in: *Practice of Communist Totalitarianism and Genocide in Latvia. Conference materials*, Riga 1992, p. 18.

²⁵ I. Zalite, *Repressive Action of the Communist Regime and its Consequences in Latvia*, p. 1. (Computer of TDSC).

²⁶ “Data from the State Archives of Latvia. Sal.”, in: A. Plakans (ed.), *Experiencing Totalitarianism. The Invasion and Occupation of Latvia by the USSR and Nazi Germany, 1939–1991*, 2007, p. 374.

the number of political victims in Latvia is twice as large (about 500,000) as the number of political detainees. What was at stake in Latvia during the occupation by Germany and the USSR was either “the final solution” by the Germans or the annihilation of the “class enemy” by the Bolsheviks.²⁷

After the peaceful anti-Communist revolution, the countries in Central and Eastern Europe that had been subject to the Bolsheviks regained their factual equality. Their legal equality was re-established with accession to the European Union, whereas their spiritual equality remains to be recognised because of the still existing assessment of values established by the Yalta–Teheran conferences and by the Nürnberg Tribunal, in which the crimes against humanity committed by the Bolsheviks had not even been mentioned. However, the crimes committed by Bolshevism have caused equally relevant and severe damage to the nations of the EU. In order to achieve spiritual equality for the EU Member States in the Central and Eastern Europe, it is indispensable that an international legal document will be adopted, clearly defining their position also in relation to the crimes of the totalitarian Communism, and stating the following:

1. The democratic Communism of Western and Southern Europe has to be differentiated from the Communism of Central and Eastern Europe, designating the Communism of Central and Eastern Europe as totalitarian Communism (Bolshevism).
2. The political crimes of the Bolsheviks were committed without trial and sentence of court, staged by totalitarian communists, punishing not only individuals but rather whole families, including six-month old babies and persons above 80 years of age.
3. The crimes of totalitarian Communism in Central and Eastern Europe are to be included in the list of crimes against humanity and genocide.
4. All states considering themselves democratic shall open all their archives to researchers 30 years after the occurrence of the events in question.
5. Similar to the Agency on Racism and Xenophobia, an Institute for the research of totalitarianism in Central and Eastern Europe shall be established with branch offices in all countries under the Bolshevik regime, and the activities of such Institutes shall be supported.
6. Scientific discussions in the European Union shall continue with the aim of establishing equal understanding of crimes committed by either totalitarian regime in Europe, and to reach common understanding on the basis of which, opinions can be brought into accord, and result in reconciliation.

Appendix

Crimes committed by the USSR and Germany in Latvia, 1940–91 Illustrations in Tables 1–5:

1. Mass deportations of Latvian citizens to Russia in 1941 and 1949.
2. Latvian children and the elderly who died on their way to Siberia in March–April 1949.
3. Mortality of prisoners in the concentration camp Vjatlag and Buchenwald, 1938–46.
4. Bolshevik crimes against religion in Latvia, 1940–90.
5. Latvian citizens, politically repressed by Nazism and Bolshevism, 1940–90.

²⁷ H. Strods, “Das braune Genozid und rote Genozid in Baltikum, 1940–1950: das Gemeinsame und Unterschiedliche”, *Geschichte Lettlands*, 4, Riga 1995, p. 40; H. Strods, “Die Hauptformen des Genozids in Lettland, 1940–1985”, *Acta Baltica*. XXIX–XXX, Königstein in Taunus 1992, p. 246.

Jaan Tamm* and Helle Solnask**

POLITICAL REPRESSION IN THE 1940'S AND 1950'S IN ESTONIA

A number of events that took place in Estonia during 1939–45, although recorded by historians, are still not familiar to the general public and there is much confusion as to the development and reasons for such a turn in history.

The immediate negative impact of the Molotov-Ribbentrop Pact, signed on 23 August 1939, for the Republic of Estonia were the military bases imposed by Soviet Russia, which resulted in bringing over 10,000 Soviet soldiers to Estonia from 18 October 1939 onwards. The soldiers were positioned in coastal areas and various ports. As a result, thousands of local inhabitants were relocated.

Between 15 October 1939 and 15 May 1940, the majority of Baltic Germans living in Estonia (a total of 12,660 people) were forced to abandon their homes, and were relocated to the territory of Poland.

On 17 June 1940, the Soviet Army occupied the whole territory of Estonia. This was followed by large-scale arrests and deportations of the population.

On 19 July 1940, Commander-in-Chief of the Estonian military, Johannes Laidoner, was deported to Russia. On 30 July, Konstantin Päts, President of Estonia, faced the same fate. By 4 July 1940, 1,200 former state officials and military personnel had been deported to Ussolag in the region of Perm.

Following the decision of the Communist Party from 14 May 1941 to “get rid of the socially alien element” in the occupied Baltic States, 10,157 people were deported from Estonia on 13–14 June 1941, half of them women or children.

After war broke out between Germany and Russia on 21 June 1941, approximately 50,000 Estonians were forced to join the Red army, from whom 32,187 were taken to Russia. Over 10,000 of these men died in the forced labour camps in Russia.

When the German occupation started in August 1941, new exterminations followed. With the frontier coming closer towards the end of the war, mass deportations began. On 26 September 1943, the population behind Lake Peipsi and the town Narva was evacuated. On 25–31 January 1944, the Germans cleared the whole town of Narva from its population of over 20,000 civilians. The last deportation took place in October the same year, when 2,500 local people from the island Saaremaa were taken to Germany. Parallel to the military activities on the German-Russian frontier, the Soviet military systematically kept destroying the historic cities of Estonia that had already been abandoned by the German troops. The cities of Narva, Tallinn, Tartu and Pärnu were severely bombed; these medieval Hansa towns were turned into ruins, killing hundreds.

These events have left a deep impression on the population of Estonia, and their reflections continue to haunt the civil society with the unspeakable terror that they left on the minds and memories of the survived.

A number of countries faced similar destinies in the 1940s and the 1950s.

On the occasion of the 15th year anniversary of locating the burial place of Konstantin Päts, first President of Estonia, and in memory of the victims of mass repression and deportations during 1939–1945, the Estonian Heritage Society organised an international conference “Archaeology of Terror” in Tallinn on 20–21 October.

The conference was preceded by a memorial service at Metsakalmistu, where President Päts now rests, and by the opening of a photo exhibition “The Return of the President, Burashevo 1988–1990”.

Speakers included experts from several European countries: Lithuania, Poland, Latvia, Finland, Hungary, Russia, the Ukraine and Estonia. The conference was opened by Arnold Rüütel, President of the Republic. Trivimi Velliste, Member of the Estonian Parliament, made an introduction to the conference with his presentation “Estonian Heritage Society as Bearer of National Memory”. Matti Päts, grandson of the first president Konstantin Päts attended the conference and gave a speech “The return of my grandfather”. Conference delegates included Dr Jaan Tamm “Archaeology of Terror

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in Estonia”, MA Peep Pillak “Expeditions to Burashevo in 1989–1990”, Ülo Puustak “President of Estonia rests at home”, Peeter Olesk “Economic anatomy of terror”, Dr Urbanavicius, Dr Garmus and Dr Jankauskas “Clandestine burials of the KGB victims in Vilnius, Tuskulenai site”, Dr Slawomir Kalbarczyk “Exhumation as a source of knowledge about crimes committed by Soviet occupants on Polish citizens”, Dr Guntis Zemitis “Latvian experience in terror archaeology”, Dr Helena Ranta “Identification of the victims of mass repression”, Prof Halmy Keve Kund “Exhumation of the corpse of Imre Nagy”, Prof Razumov “The Estonian victims of Stalinist repression during the 1930’s in Russia”, Vello Salo “Mass repression in Estonia in 1944–1949”.

The conference was supported by the European Commission and the Ministry of Economic Affairs, Estonia.

A mutual feeling at the conference was that the topic of political repressions should not be forgotten, but rather on the contrary – the topic is vital and actual also today. The Estonian Heritage Society will continue the discussion of the recent history of the eastern part of Europe, a follow-up conference “Political repressions in the 1940’s and 1950’s” will take place on 21–22 August this year, bringing together speakers from Estonia (including Estonians in exile and now living abroad), Latvia, Lithuania, Poland, Hungary, Sweden, the Ukraine. It will help create a better understanding of the fairly recent history of several countries who suffered from political repressions during and after the Second World War. The conference will take place at the National Library in Tallinn.

The conference speakers include:

- Dr Jaan Tamm, Estonian Heritage Society, “Prison camps in Estonia 1940–1955”,
- MA Peep Pillak, Estonian National Archives, “Estonian volunteers in the Finnish army, who Finland extradited to the Soviet Union”,
- Dr Mati Mandel, Estonian History Museum, “The fate of Admiral Pitka and his resistance group”,
- Olev Ott, Sweden, “Deportations in 1940 and Estonians in exile – overviews presented in Swedish school textbooks”,
- Mrs Sandra Kalniete, MP Latvia, “Divided History of Europe”,
- Prof Aigi Rahi-Tamm, University of Tartu, “Deportations in Estonia in 1941–1951”,
- Prof Meelis Maripuu, Estonia, “Prison camps in Estonia during the German occupation”.

Presentations are expected also from Poland, Byelorussia and Lithuania. The conference proceedings will be published in a book. The conference working languages will be Estonian and English. The conference is supported by the Education, Audiovisual and Culture Executive Agency of the EC and the Estonian Ministry of Culture. It will be free of charge for participants.

The aim of the conference is to contribute to the preservation and commemoration of the victims of deportation and mass repression, to disseminate the understanding of the complex history of Estonia, and to improve the knowledge of the present and future generations on the period 1939 to 1955. In the light of recent rapid developments as Estonia has joined the European Union and NATO, the younger generation especially is not keen to know or remember the more “distant” history, which, however, has significant impact on the whole development process, and present day, not only in Estonia, but similarly on many other East European countries. Crimes committed by all totalitarian regimes need to be recognised as crimes.

Dalia Kuodyte

LITHUANIAN VICTIMS OF COMMUNIST OCCUPATION

There never has been such a difficult period in the thousand-year long history of Lithuania as the second half of the twentieth century. It is not marked by achievements in the country's economy and culture, but by inter-changing occupations. 1940 and 1941 – the first Soviet occupation – brought the first arrests, killings, the destruction of the Lithuanian army, and the first deportations to the remote uninhabited places in Siberia. 1941 to 1944 – the Nazi occupation, brought the annihilation of the Litvaks' community, the Lithuanian Jews', (200,000 people were killed, 96 % of that community). The second Soviet occupation lasted from 1944 to 1990. It was marked by several waves of deportations and the ten-year-long Lithuanian partisan war against the Soviet occupation. Agriculture was destroyed by the collectivisation, religion was ousted by atheism and history was falsified – the roots of mentality were damaged. Damages caused by fifty years behind the Iron Curtain has no material expression. In 1990, when independence was re-established, society had to come to terms with the past, and to find some ways of reconciliation. But we were not always successful. Why? My speech – contains just a few remarks on this.

When we speak about our experience in trying to achieve reconciliation, we have to begin with the specific situation of the Baltic States, in the context of the eastern and central European countries. The basic difference is – in the Baltic States besides the problems of national reconciliation, there is an international level, marked by the Soviet occupation in 1940. However, it is necessary to emphasise one more difference. The status of the Baltic States people who suffered under the regime is different from the status of the people of Russia who also suffered under a totalitarian regime. The latter suffered at the hands of their own authorities, while the people of the Baltic States were victims of the occupation regime. Even though in both cases, crimes were committed, the difference is essential.

The demise of the Soviet Union happened a long time ago. The Russian Federation, claiming to be its successor, could also be considered to have assumed its responsibilities, including reconciliation. In this case, reconciliation is possible only on the background of one condition and one principle. It is necessary that all the sides concerned strive for it and that they all keep to one simple principle, which is – the truth, and nothing but the truth. In cases when one side denies obvious facts and uses propaganda for an argument, which is a form of lie, its intention to reconcile is more than doubtful.

For many years, Russia has been denying the fact of the occupation and annexation of Lithuania, although it was recognized in the 1991 treaty signed by Lithuania and Russia. The denial of this basic fact distorts of the picture of the processes which took place in Lithuania at that time. Otherwise absurd statements lead to the effect that 150,000 Lithuanian people asked to be deported to Siberia without hope to return, or, even more, to survive under the most adverse conditions. As well as 200,000 political prisoners were considered ordinary criminals and were kept isolated in hard labour camps for decades. We consider such a treatment of the inhabitants of the occupied country as a crime against humanity. The killing of 20,000 Lithuanian partisans who fought for Lithuania's independence is considered a war crime. Consequently, it is difficult to expect understanding and reconciliation unless these facts are recognized.

We can often hear that the past should be forgotten, crimes should be forgiven, we should think about the future. However, one-third of the Lithuanian population (about one million out of 3.5 million) suffered from the occupation and we cannot forget it. In Lithuania, there is a whole generation which still cannot speak calmly about their broken childhood and their youth in Siberia, in hard labour camps, about the members of their families who were perished, about the lost opportunities to receive a decent education; and about not fearing that you will be taken for an enemy in your homeland and deported again.

A few years ago, the Genocide and Resistance Research Centre of Lithuania, in cooperation with psychologists of the Vilnius University, carried out research in order to investigate how the lives of victims, the political prisoners and deportees, are influenced by their painful past. The investigation demonstrated that the victims experienced the same psychological trauma with long-lasting consequences

as did the prisoners of the Nazi concentration camps and ghettos. It is important to understand that there is only one way to help them to feel better, which is to hear them out and to recognize their special status. And most important thing is to tell the whole truth, to denominate everything by their real names: occupation must be called occupation, a collaborator must be called collaborator, and a traitor must be called a traitor. Just one example – several years ago when attempts were made to close the former KGB archives, there was a great wave of society protests. The law had to be amended, and the archives became available again for researchers and for all interested in the history of this period.

Therefore, the cornerstone of the national reconciliation is to evaluate the crimes of the totalitarian communistic regime, brought about by the occupation, on political, legal and historical levels.

Over eighteen years of independence, the institutions which carry out fundamental research of the processes that took place during the years of occupation, were established. They also run memorial and educational projects. Based on historical research, several laws which define the status of the freedom fighters, deportees and political prisoners, and the state's support for them, have been adopted. There are also laws on the responsibility for the genocide, war crimes and crimes against humanity.

However, the situation is not so good at the legal level. It is increasingly more difficult to carry out justice – every day we have less and less potential witnesses and potential criminals. Over those years a legal action has been started in 213 cases of genocide and crimes against humanity, but only 17 of them have been taken to court. Taking into consideration that about 50,000 persons collaborated with the occupation regime, the numbers mentioned are inconsiderable. However, the numbers of those who will be sentenced or imprisoned are not so important. The most important thing is that attempts are being made to tell the truth.

I have heard the victims' opinion that they do not demand revenge and that it is not difficult to forgive. They ask for only one thing: the organizers, perpetrators and collaborators must admit their fault and apologize for it. But no apologies have been made. Sometimes attempts are made to present the issue as if the victims themselves were to be blame for everything. This issue can be characteristic of all post-communist countries. Therefore historical and psychological research, not only on the national level, is very important.

Today, after the first hearings on the experiences of the countries who suffered under totalitarian regimes, it can be stated that there are many differences. However, there is at least one common thing: every totalitarian regime is an evil. First it must be recognized. Then it would be possible to take the first steps which are necessary to avoid such evil in the future. An institution at the European level, which would coordinate research of the totalitarian regimes in various countries, generalize them and present recommendations for the further actions and programs, should be established. In this way the motto "one Europe – one history" would be more concrete.

It is hard to expect that quick solutions can be found after the discussions which have just started. We realize that it's a long process. But I believe that time will come when the international community will realize the truth about the crimes committed against the people of Lithuania and other Baltic States. And they must be evaluated as the Nazi crimes have been evaluated as well.

Maciej Korkuć*

POLAND – THE VICTIM OF TWO TOTALITARIAN REGIMES

Poland was the first country to take up arms to oppose the territorial claims and policies of the leader of Nazi Germany, Adolf Hitler. The country's armed defence in 1939 marked the beginning of the Second World War.

However, the specificity of Poland's tragic destiny was that the country became the target of aggressive attacks by two large totalitarian states at that time. As a consequence of a secret protocol annexed to the Ribbentrop-Molotov Pact, which was signed on 23 August 1939, the Nazi invasion of 1 September 1939 was followed by the USSR army attack on Poland from the East which began on 17 September.

Nazi crimes against Polish citizens, mostly of Polish nationality or Jewish, on the territory under occupation, are well known all over the world. The Auschwitz concentration camp established by the Nazis stands as a symbol in this respect. Its first inmates were Poles arrested in the Małopolska region, but soon the camp was transformed into a centre for the annihilation of Jews brought there from all over Europe.

Murders, repression and enslavement, which became an everyday reality in Polish towns under Soviet occupation, are much less well-known. Various social groups and nationalities fell victims to this system of oppression.

Ultimately, Soviet Russian occupation covered an area of 201,000 km² – more than a half of the country's territory, and an area over six times as large as Belgium. In breach of international law and Polish-Soviet bilateral agreements, the communist system began to be installed in the Soviet-occupied part of the country. This involved terror and destruction of entire groups of the local population which opposed the communist authorities.

In total, 110,000 people were arrested at that time in acts of everyday terror. Moreover, in the years 1940–41 the Soviets organised four mass deportations of Polish people to the steppes of Kazakhstan and labour camps in Siberia. These operations took place in February, April and June 1940 and in May and June 1941. In total, at least 320,000 Polish citizens fell victims to such actions (according to some estimates this figure might have even been as high as 1,000,000). Deportations were carried out in inhuman conditions. Locked in cattle wagons, deprived of sanitary facilities and food, deportees died during their journey east, which lasted several weeks. Survivors were let out in the middle of the Kazakh steppes or were sent to slave conditions in labour camps.

One of the events of the extermination of Poland's elites was the Katyń Massacre. It was an act of mass slaughter committed on the direct orders of Stalin and the Political Bureau of the Central Committee of the Communist Party of the Soviet Union. In March 1940, Stalin issued an order to execute 14,700 Polish officers and Prisoners of War detained in the Kozielsk, Starobielsk and Ostaszków camps and 11,000 prisoners kept in prisons in Eastern Poland under Soviet occupation.

The action focused on the destruction of intelligentsia, the clergy, officials, army and police officers. In this respect, the Soviets cooperated with the Nazis who carried out similar actions on Western Poland which was under Nazi occupation. This campaign was named "the AB Action" which in the years 1940–41 was coordinated also in the form of the Gestapo and the Soviet NKVD meetings, organised in Kraków, Zakopane and other localities and held in a friendly atmosphere.

It should be noted that, contrary to Hitler and Stalin's intentions, legitimate structures of the Polish State continued to operate in exile during the entire period of World War Two, which ensured the continuity of the state authorities. These structures were established in accordance with the Constitution of the Republic of Poland then in force and were recognised by most of the countries of the world. The Government of the Republic of Poland, appointed by the President of Poland temporarily relocated to France, Poland's ally at that time, and after the defeat of France, to the United Kingdom.

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The structures of the Polish Underground State developed in the occupied country and remained in contact with the government in exile. The civil and armed units of the Underground State were organised in all regions, districts and communes of the country in order to be able to restore the country's public administration immediately after the end of the occupation. Clandestine structures of education, the judiciary and civil services were built. The underground army (known as the Home Army) numbered over 350,000 soldiers and became part of the armed forces of the anti-German coalition. It was trained for attacks on the Nazi German occupying forces and in actively seeking to liberate Poland.

After the German invasion of the USSR in 1941, the entire territory of Poland fell under Nazi German occupation. Stalin was forced to restore diplomatic relations with Poland. Moscow renewed its obligation to respect the sovereignty of Poland.

The situation changed after Soviet victories on the Eastern Front. The Red Army began to approach the territory of pre-war Poland. The USSR wanted to decide freely about the future of Polish society, so it once again broke diplomatic relations with Poland, while at the same time preparing itself for the establishment of its own communist administration in the country.

When returning within the pre-war borders of the Republic of Poland, Stalin knew that for the building of communism in Poland it would be necessary not only to get rid of the German administration, but also to destroy the legitimate administration of the Polish Underground State. He was determined to suppress Polish aspirations for independence at any cost.

In 1944, most of the territory which was under Soviet occupation in the years 1939–41, was again incorporated into the Soviet Union. Stalin appointed the so-called Polish Committee of National Liberation (PKWN) created by the communist regime in Moscow to take power in the territory of Poland which gradually fell under Soviet rule. Within a few months, the Committee protected by the Red Army, declared itself the government of Poland. The military and civil structures of the Polish Underground State, regardless of their substantial military and intelligence support to the Red Army in its struggle with the Germans, were ruthlessly eliminated by forces under the Soviet security and counter-intelligence command.

At the conference of the "Big Three" in Yalta in 1945, Stalin achieved international recognition of his occupation of the Eastern territories of Poland, i.e. almost the entire area occupied by the Soviets in 1939 on the basis of the Ribbentrop-Molotov Pact. The USSR also succeeded in making the Western superpowers withdraw their diplomatic support of Poland's government in exile, in exchange for the free election promised to be organised within Poland's new borders. However, the retreat of the Red Army from Poland was not ensured. As a result of its continuing presence and reign of terror, free elections never took place in Poland under Communist rule. In 1947, the election was held in an atmosphere of terror and repression. The election results were rigged in the course of an operation supervised by a special group of Soviet Ministry of Interior apparatchiks who were sent to Poland from Moscow under the command of Colonel Aron Palkin. In the years that followed, opposition was ruthlessly destroyed and the public's aspirations paralysed by successive waves of terror.

The tragedy of Poland's situation after 1944 was that Soviet repression was imposed on a country which had not been an ally of Nazi Germany. To suppress Polish aspirations for independence, hundreds of thousands of people who fought against the Nazis during World War Two were repressed, even though they could not have been accused of supporting the Nazis with any reasonable justification.

Mass murders and acts of terror took place across the whole of post-war Soviet-occupied Poland. On top of that, deportations to labour camps in the USSR continued and many soldiers of the Resistance and civilians were arrested. That period is still known in Russia as "the liberation of Poland by the Red Army", in which nearly 100,000 people were sent to Soviet labour camps or gulags as they are also known.

In many cases, acts of communist terror even surpassed the bestiality and cruelty of those committed by the Nazis. The symbol of that time is the "Augustów round-up", in which during a few days in July 1944 over 2,000 people from a small area were arrested, including women and children. Of them, more than 600 never returned to their homes. In this way any resistance against the communist authorities was suppressed, even though the authorities did not enjoy public support.

Like the Nazi system, the communist system of terror needed a network of labour camps within the country. Former Nazi German camps were used and new camps were also built. The fact that German Konzentrationslager Auschwitz did not cease to operate even after its liberation by the Red Army is symbolic. It remained in use for many months as a camp in which new inmates were kept in inhuman

conditions – this time under the Soviet NKVD and communists. In nearby Jaworzno, a small former Nazi German concentration camp (part of KL Auschwitz), the Central Labour Camp was established, to become a place of torment and death of thousands of inmates of various nationalities, including members of Polish independence organisations, as well as Ukrainians and Germans.

Years later, one of the authors associated with the communist authorities described the operational methods used by the Soviet secret police: “Specific methods involved secret arrests, kidnapping people from the streets or other places, with no witnesses and without informing anyone about the arrest. /.../ This NKVD method of arresting people was frequently practised. The society lived in fear and uncertainty as to what would happen the next day. When leaving home no one could be sure that he would return. If, as a result of torture during interrogation, a person secretly arrested died, he was buried at a randomly chosen place with no notice given to anyone, even the prosecution bodies. In this manner, many people disappeared without a trace. /.../ Anyone arrested was treated as an outlaw.”¹

Hundreds of thousands of people fell victims of terror during the Communist period, despite its motto “the struggle for peace and socialist democracy”, as ironic as it may sound. Every act of rebellion against the authorities from the end of World War Two to the period of the Solidarity movement in the 1980’s ended with a new period of repression and new victims. The entire machinery of the state, including the communist judicial system, formed new chains in the system of repression and enslavement.

The leadership of the communist party shared the responsibility for all acts of the apparatus of terror, some of which fully deserve to be called crimes against humanity. The units of the Soviet Army stationed in Poland permanently from 1944 until their withdrawal in the early 1990’s served as an element of the system aimed to intimidate people.

For Poland, the war, which began with the invasion of Nazi Germany and the communist USSR in September 1939, ended 50 years later – in 1989. Its social, demographic, economic and political effects are still to be seen.

¹ H. Dominiczak, *Organy bezpieczeństwa PRL 1944–1990*, Warsaw 1997, p. 55.

Marius Oprea

THE *SECURITATE* LEGACY – TERROR IN ROMANIA

The legacy of the *Securitate*, the brutalities and the arsenal of violations of the rights of man that made up the “cutting edge of the sword” that the latter used to support the Communist party in its fight to impose Marxism and Leninism, whether of Stalinist leanings, or even, later, domestic leanings (Dej, Ceausescu) are not fortuitous. The ideological foundation of violent acts directed against the enemies of the communist regime had already been established by the writings of V. I. Lenin, an ideologist which has never been amended by any party activist or by any Romanian “rescuer”: “The necessary feature, the *sine qua non* condition of the dictatorship of the proletariat lies in the violent repression of the exploiting class, and consequently in the violation of pure democracy, i.e. the equality and freedom granted to this class.”¹

Romanian communists applied Leninist dogma and its later interpretations to the letter, at the time of Stalin, Khrushchev or Brezhnev. Of course there were differences – and not always negligible ones –, but that never cast doubt on the position of Romania within the politico-military block, founded on Marxist-Leninist doctrine. Whether of Stalinist or Maoist tendencies (during the last years of Dej), of Khrushchevian inspiration (during the first years of the Ceausescu regime), Castrist or North Korean, leaning towards collaboration with Middle Eastern socialism or towards the regimes that manifested themselves as the cruellest dictatorships (the Pol Pot regime or those of African countries with whom Ceausescu had forged strong friendships), Romanian communism asserted, throughout all eras, the same ideological basis, common to all these regimes and at the same time unknown to their own people.

Romanian communism promoted the same type of institutional construction, built on repression and on the primacy of ideology concerning the well-being of its own people. The much-discussed gesture made by Ceausescu not to allow the Soviet army to enter Romanian territory during the difficult days of the Prague Spring was not an active act of dissidence against this system, simply because there is no common measure between this gesture and that of the communist leaders of Czechoslovakia which led to the national identity crisis of communism. The country was soon governed exclusively by a dictator who imposed the culture of his personality, exercising his power through the intermediary of the party machine and the *Securitate*, whilst conferring upon him, to mask his true face, a caricature of nationalism. In fact, Romania in the 1980s was not very different to Romania in the 1950s, when Soviet advisors were in charge of all matters and the country was full of *Sovromes* (enterprises created to despoil the country in favour of the Soviets). Romania’s national wealth continued to be wasted in the same outrageous way, but this time it was no longer to profit Moscow, but for the plans of the megalomaniac dictator and those who supported them, for ideological reasons, not yet clearly distinct from the former ones.

There was only weak opposition against this policy, cruelly repressed by the *Securitate*, the summit of a repressive triangle having as its base the communist party, and at its sides, for support, the judicial system and the Militia. The *Securitate* was hand in glove with the system which “obstructs or suppresses judicial activity and transforms the government into an active agent in the fight for power”, because it devoted itself to state terrorism, according to the definition given by the Argentinean political expert Ernesto Garzon Valdes, following an analysis of South-American totalitarian practices.² The three elements of state terror theorized by Garzon were widely used by the Romanian *Securitate*. They consisted firstly of the practice of violence, by abusive arrests, imprisonments, illegal even with regard to the communist legislation, and by the torturing of political opponents. Secondly, the State institutions proceeded to organise a black-out of public information, thus imposing control and monopoly over it, and thirdly the process of control and manipulation of population was increased by the development by the political police of an enormous network of informants. Violence, the passing in silence of information and control were the tools used by the *Securitate* to maintain the communist regime. These three elements of State terror represented at the same time a legacy used by the current post-communist regime to maintain as large a part as possible of the former system.

¹ V. I. Lenin, *The Infantile Sickness of “Leftism” in Communism*, Romanian edition: P. C. R., 1948, p. 31 (second edition).

² Ernesto Garzon Valdes, “El terrorismo de estado”, in: *Revista de estudio políticos*, No. 65, Madrid 1989.

In my presentation, I am going to concentrate on the most inhuman element: the exercising of State terror by violent means, because this is the point which has particularly traumatized the whole society, causing deep wounds that are difficult to heal.

Imposed by violent means, characteristic of a regime of occupation, Romanian communism was strengthened and perpetuated on a repressive base. The analysis of administrative processes of the political police during the Romanian communist totalitarian regime proves that brutality was raised to the level of a state policy, in the name of “class war” and provoked a long-term reflex, a “rendering commonplace” of evil, maintained by the political police machine. The majority of the population, terrorised by the omnipresence and violence of this machine, re-learned to live under an occupying regime, and also unfortunately revived a tradition of a way of life long practised by Romanians throughout history. Unlike in the past, the severity imposed by Soviet-Communist occupation of Romania, which is also true for the other countries covered by the Iron Curtain, were harder, and the violence more efficiently managed. The role of imposing this harshness fell, in the case of Romanian communism, to the *Securitate*, as the main instrument of State terror. Paradoxically – but not fortuitously –, the term *securitatea* (security) was chosen, which usually expresses a state of comfort and the absence of troubles provoked by interference in the private life of the citizen, to name an institution that actually devoted itself to the limiting of the rights of man, to the point of nullifying them. And all this to support the State-Party, in the name of the dictatorship of the proletariat and the construction of socialism.

But how could this have happened? This is a rhetorical question that has often been asked in the shocking times following the reversal of the communist regime. A possible answer was offered some time before, in 1985, in an essay by a dissident from East Germany, Jens Reich, a renowned professor of bio-mathematics, who explained this by “the loss of consciousness in the shadow of STASI”, the political police of the German Democratic Republic. In his text, entitled *Security and cowardice: the cockroach under the lamp glass*, he remarks that the power of the regime came from the control exercised by the *Securitate* on the processes of fear, because “next to fear imperceptibly slides cowardice in the face of authority, the constraint of behaving well, being in the line, accompanied at the same time by a deft going back into one’s shell: a mixture between submission and the reflex of playing dead. The *Securitate* maximised its efficiency by its very existence, and not by its actions. It triggered a subtle mechanism of self-censure in the consciousness, manifested as a reflex system, nipping in the bud any fragmentation, preventing the outbreak of possible conflicts with system.”³

Before a description of the stifling atmosphere of the 1980s, and the refining of this self-censure, the author evokes the brutal repression against all opposition during the two first decades after the death of Stalin. On the one hand, the annihilation of all contestation of the regime was pursued, not only of the foundations of its legitimacy but also the standards to be observed in daily life. On the other, violence was supposed to obtain the formal adherence of the rest of the population (those who had escaped the concentration camps or imprisonment) for the benefit of the communist authorities and the State-Party policy.

Violence would maintain the state of broadcast fear. The management of such fear, the result of brutal means of repression against the adversaries of the Romanian communist regime, proved to be so efficient that it created an image of an evil power, truly supernatural, for the *Securitate*. Fear, first cultivated and then maintained by the political police, to the benefit of the communist power, had the same effects as monarchic absolutism two centuries before and Nazism in the mid 20th century. Despite the fact that the number of those who had direct dealings with the *Securitate* is quite small with respect to the total population, the majority of the population was in extreme fear of this institution. Even if, after Stalin’s death, for a brief period of three years, there was a remission of brutalities by the repressive machine, they acted even more ruthlessly and with more violence between 1957 and 1959 and increased people’s feelings of insecurity. Continual surveillance led to fear leaving the prisons and forced labour camps and going into the streets. It entered homes to reach, after two decades of reinforcement of the regime, the performance of a manipulation that no longer needs virulent repression. In the mid 1960s, anti-communist resistance in Romania was almost wiped out. The regime had been accepted and seen as an integral part of the daily universe by a large majority of the population, its principles accepted and taken on as legitimate by an even larger number of citizens in comparison with the time at which communism was established. Repression had ceased to be obvious, instead impregnating daily life. Evil became the norm after two decades of administration of violence, carried out with scientific rigour.

³ Jens Reich, “Sicherheit und Feigheit – der Käfer im Brennglas”, in the volume *Staatspartei und Staatssicherheit*, under the coordination of Siegfried Suckut and Walter Süß, Ch. Links Verlag, Berlin 1997.

The memories of former political prisoners⁴ show us the many facets of the *Securitate* brutalities during the first two decades of its operation. “For dogs, a dog’s death”, proclaims a Stalinist slogan, thus illustrating the toughness of the terrorist policy held by the communist authorities against those who opposed the totalitarian regime. The *Securitate* conformed to this: violence, various forms of torture, once known outside the concentration camps and prisons, often frightened former prisoners, as it did those who were free. The *Securitate* used inhuman treatment applied to prisoners, of a violence exercised for a long time during the 1950s, to teach toughness. This proved to be useful to State violence developed later to control society and black out information. Midnight arrests, the fact of not knowing for years on end what had happened to prisoners, the imprisonment of innocent people contributed to an increase in citizen’s insecurity.

In the arsenal of cruelty of the regime of Soviet-Communist domination, torture played a particularly important role, having repercussions on a social level, as a psychological factor, because arousing fear is a means of subjugating citizens. Torture also aimed to attain immediate objectives, by obtaining information considered to be useful by the machine of repression. A document classified as strictly secret was kept in the archives of the former Central Committee of the Romanian Communist Party, dating from the first of November 1967. In it all of the so-called “inappropriate methods”, used before 1964 by the investigators of the *Securitate* are listed. They were divided into four categories, in the following way:

1. The use of corporal punishment and prolonged under-nourishment to obtain accusatory declarations.
2. Moral pressure, used to constrain those under investigation to declare what they were ordered to declare.
3. The falsification of declarations given by those under investigation and the use of false letters to make them admit certain facts.
4. The writing of declarations in the absence of those under investigation or the recording of imaginary answers that the prisoners were forced to sign.⁵

Psychological torture was widely used during the investigation and the imprisonment. Lena Constante, former prisoner with Patrascanu, member of the Communist party, brutally investigated even after the death of Stalin, declared in 1967, in front of the official representative of the Central Committee: “I was threatened with the arrest of my parents; I saw the investigator write the order in front of me, and also make a telephone call. He then told me that he would leave me to think about it until the next day. Terrified at the thought of my parents being arrested, I said to myself that I do what he asked and lie.”⁶ The falsification of declarations during investigations or the forcing of prisoners to sign declarations concerning untrue acts, but that were supposed to justify new arrests, amplified the effects of moral torture, by creating a feeling of guilt towards those incriminated by these false accusations. After 1953, the investigations maintained this pattern in general. Investigators and those investigated continued to play their roles: “The imaginary facts that each prisoner made themselves guilty of was to give a picture of action organised against the Soviets, the Party and the State. The chief investigator asked the questions, but also prepared the answers for each accused person, taken separately, who could be found in his office”, told a former *Securitate* investigator.⁷ The problem consisted of obtaining the confirmation of this pre-established guilt. That is why physical torture was used, testimonies of which extend over thousands of pages. We will mention, using the document quoted earlier, just some of the means of torture whose use was recognized in 1967–68 by former agents of the *Securitate*. It is also necessary to explain that these means were approved and sometimes they were even used under the surveillance of the chief investigator or other high-ranking persons. Torture did not mean simply over-zealousness; it was a task falling to all officers and sub-officers of the *Securitate*, as soon as they

⁴ See the bibliographical retrospectives concerning the memoirs of former political prisoners on the theme Anti-communist resistance in Romania, published in the review *The Archives of Totalitarianism*, 5/4 (1994), pp. 244–266; 6/1 (1995), pp. 250–287, 7/2 (1995), pp. 202–221, 8/3 (1995), pp. 237–246, 9/4 (1995), pp. 203–220, 10/1 (1996), pp. 215–241, 11–12 (1996), pp. 221–233, a review published by the National Institute for the Study of Totalitarianism, Bucharest.

⁵ Documents concerning inappropriate measures used in the investigation of Lucretiu Patrascanu case, the Archive of the Executive Committee of the R.C.P., dossier No. 264, tome XX, pp. 343–363. The document was published in full (see Marius Oprea, *The Platitide of Evil. A documented history of the Romanian Secret Services – 1949–1989*, Polirom, Iasi 2002, pp. 332–358).

⁶ *Ibid.*, p. 352.

⁷ *Ibid.*, p. 356.

joined. In 1967, a commander in the secret police related a similar scene, not forgetting to add that he had not taken an active role in it: “We took the prisoner for the investigation and we asked him to take off all his clothes. After that, under threat of being shot if he did not admit his criminal activities, we took him into the cellar of the kitchen next to the prison. There he was thrashed until he was bleeding, according to the instructions of the chief investigator. I saw the prisoner once again after about two hours, they were bringing him back, he was almost unconscious. He was bleeding, his flesh was torn, and he was screaming at the top of his voice. The chief investigator held that being thrashed when naked had particular psychological effects for the investigation.”⁸

Another method used, according to the declaration of the same officer, was to tear out hair, by rolling one lock of hair after another around one’s finger: “I was witness to this when an officer tore out a third of the white hair /of the prisoner/, from around his ear, in one single session”, he told.⁹

The method of constraint used in most cases, according to the depositions of former officers of the Secret Services, was punishment applied to the soles of the feet and the palms of the hands. The prisoner was bound and a bar of iron was passed through the ties. Hanging from this bar, the prisoner was struck with a strap of leather until he fainted – a procedure that the investigators called cynically *rôtissoire*. The inventiveness of the torturers knew no limits and the victims did not resist the means used. Aurel Florian, former social democrat militant,¹⁰ explains the torments of one of his cell-mates until his death during the investigation: “The torturers surpassed themselves to find punishments! They pulled out his nails, they beat his testicles, they burnt his body with their cigarettes. Once, when they took him, blood was pouring from his feet, it made pools: they stabbed him in the thighs and put salt on the gaping wounds. Each day they came to take him, put the handcuffs on him, bound his feet and put an iron bar between the hands and feet, a bar that they fixed between two desks. Hanging like this, they beat him senseless. It was clear that he would not survive. More than one week had passed since his arrest and his body was covered in bruises. During one night, they came to get him once again; it was for the last time. I learnt later that the torturers, drunk, had burst open a testicle, they had put salt on it and then they beat him to death.”

Information about the brutality of the arrests and ways of investigation went beyond the prison walls, but also the borders of the country. In the exiled Romanian press they wrote: “Arrests are usually made at night. Under the pretext of having received a complaint, several policemen, dressed in plain clothes, proceed to make a detailed search of the person’s home to find ... arms. As they don’t find anything incriminating, they make deceitful excuses, saying that it was probably a false accusation and nevertheless asking the citizen to go with them to the police station *for a short declaration*. Taking the statement sometimes takes months and years, without the family having news of the person who had disappeared, forgotten somewhere, in the *Securitate* cellars or in some prison. The most usual criticisms are to have listened to *imperialist* radios or to have read books that have been published in the *capitalist world*. For the first step of the investigation, the prisoner is treated gently. They are promised a *pardon* if they make a *full and honest* declaration. In the second step, however sincere the declaration is, they are beaten and tortured for not having divulged everything. They are beaten with an iron bar on the soles of the feet, subjected to the manège under the surveillance of trained dogs or placed on burning steel plates to convince them to make full testimonies. In this way, the torturers include the denunciation and the implication of as large as possible a number of people in the circle of the accused.”¹¹

Extremely brutal means were only abandoned for a brief period of time in the history of the *Securitate*. For example, three years after Stalin’s death and at rare times, when international protests put the regime in a difficult situation, in particular after Romania was made part of the United Nations Organisation in 1955, there were temporary improvements in the treatment of prisoners in the concentration camps and prisons and the causing of deaths during investigations was avoided. The effects of these measures did not last, and the machine of the *Securitate*, dedicated, through the selection and training of its agents, to brutal repression, went back to its old habits.

⁸ Ibid., p. 349.

⁹ Ibid., p. 350.

¹⁰ Interview carried out in April 1992 in Tîrgu Mures, where Mr Aurel Florian, who, at the time of these writings, was the head of a local subsidiary of the Social-Democrat Party (which has no liaison with the present government party; it was only later that the party took the name of the traditional political formation of Romania between the wars).

¹¹ The journal *România*, V/55 (January–February 1951), published by the Romanian National Committee, New York.

It has been held that in 1980s there was no use of this arsenal of specific methods by the *Securitate*. Nothing of the sort. The case of the engineer Gheorghe Ursu, has become famous. He died after being tortured in the cells of the secret services on 17 November 1985 for having written a diary in which he made fun of the Ceausescu spouses.¹² Actually all dissidents from the 1980s have related that they were subjected to brutal investigations, the only difference with respect to the Stalinist years being milder conditions of detention. There was also recourse to excessive violence, borrowed from the Stalinist arsenal, against the rebel workers in Brasov, on 15 November 1987. I have collected more than 50 testimonies concerning the how the investigation of these workers took place. One of the workers arrested that day told us: “I didn’t think that I was capable of enduring such a thrashing. I fell, but that didn’t stop them beating me, they even beat my feet. After that, they lifted me up, tied me up, hands behind my back, to the ring fixed to the wall and they continued to beat me for hours and hours. I think I fainted, because they threw water onto me to bring me round; they untied me and ordered me *to write*. I couldn’t write, I was trembling too much. I was so shaken that I couldn’t even slap them in the face. I was taken to cell 4, in the basement; and the following day we were all taken out into the hall and lined up. Comrade Cebuc, the party representative, came accompanied by some generals: *Let me see that ... the devil take you, you have brought shame on Brasov*. They passed in front of us and spat in our faces. I lost at least twelve or thirteen kilos in seven or eight days. I was beaten every day and they stopped me sleeping. The officers who dealt with me behaved badly. An educated person does not kick you in the stomach, and doesn’t beat you with the legs of a chair until they break. We had the impression that it was an experiment that they were playing out a violent scene from films that they had seen. In Bucharest, bad treatment was rather traditional. They beat you in the kidneys, only in the kidneys. They tied you up, blocking you in a certain position and they didn’t beat you with rubber sticks, they were too soft, but with chair legs. Or they liked to squeeze your fingers in the door until the blood spurted out under the nails ...”¹³ Two of the imprisoned workers died shortly after they were freed and most of the people investigated, although young at that time, suffer from kidney, stomach and liver problems due to the internal injuries provoked by the violence of the *Securitate* agents.

The *Securitate* and its officers maintained the same violent behaviour particular to the political police; they just lessened it slightly because it was no longer possible to keep it secret. In the long term, the practice of violence by the State directed against its subjects, in order to maintain the power of the communist politico-military body, was a way for the despotic authority to go forward in daily life. By around 1989, the *Securitate* had long become a banal evil.

¹² *The Black Book of Communism*, under the coordination of Stéphane Courtois, Editions de Humanitas, Bucharest 1998, p. 775 (Addenda).

¹³ The testimony is by the worker Gheorghe Gyerko, from Brasov, of Hungarian nationality. His wife Eniko also told what the family had to suffer: “All the ordeal of my family started on 19 November. In the evening, my husband didn’t come home. A few days later, two officers came to our home, announcing to me that my husband was detained and that the things in the house were to be impounded. They prepared a report and forbade me to sell or to damage the now public items, because they were to be auctioned. After two weeks, my husband was brought back by two agents of the *Securitate*. He was very weak, his face was drawn.” After their possessions were taken away, the Gyerko spouses were deported to another town, having an obligatory domicile in a home for single people. The same experience was shared by 60 of the participants in the anti-communist revolt of the Brasov workers (see Marius Oprea, Stejarel Olaru, *The unforgettable day: 15 November 1987 – Brasov*, Polirom, Iasi 2002, pp. 113–114).

Tamás Stark

A TOPIC DOOMED TO OBLIVION: FOREIGN PRISONERS IN SOVIET CUSTODY – WITH SPECIAL REGARD TO THE FATE OF HUNGARIAN CIVILIAN INTERNEES

I like to watch a documentary series on the history of World War Two on the National Geographic channel or on the Discovery channel. All of these movies finish with the celebration of victory over Nazi Germany. People gathered cheerfully to celebrate peace and victory in London, New York, Paris ... These widely circulated documentaries often forget to state that about half of Europe remained silent on 'VE-Day'. The arrival of the Soviet army in Riga, Vilnius, Tallin, Budapest, and even in Warsaw, signalled the beginning of another, new occupation, and the commencement of arresting and deporting civilians in great numbers to the Soviet Union. On 'VE-Day', the people in these cities had misgivings about how they would fare in the future.

On 8 April 2008, at the European hearing entitled "Crimes Committed by Totalitarian Regimes" the former Lithuanian Minister for Foreign Affairs, Ms Sandra Kalniete, said that in the West, people thought in clichés about the history of the Second World War and the post-war period. It is a commonplace to say that 'good' people won the war, and that 'wrong' people were defeated and they deserved their fate. There is no place for Eastern Europe in this black and white concept. Even historians are devoted to this oversimplified view. Other colleagues spoke about the double standard in the Western analysis of the history of World War II. The meanings of such words as 'occupation', 'liberation', and 'victory' are not necessarily the same even in Western Europe and Eastern Europe. Their experiences of the war and, consequently, the memory of war time are quite different.

I have experienced personally that many Western scholars do not understand this difference. For them, World War II has only one interpretation of the war, and the history and memory of the war years are indivisible. In 2000, I was honoured to be involved in an international research project of the European Science Foundation (ESF) entitled "Occupation in Europe: the impact of National Socialist and Fascist rule". The research objectives of this programme were to study the immediate impact of war and occupation on the lives of the occupied peoples, and the consequences of war and occupation during the first phase of post-war reconstruction.

When I was invited to join this project, the group already had been decided that the four years' long programme would focus on the German and Italian occupation; consequently, the impact of Soviet occupation in Eastern Europe would not be studied. Nevertheless the programme was productive, and valuable publications such as articles, essays, and books were milestones of its success. The project gave a unique opportunity to the mainly young colleagues from every segment of Europe to work together.

What is even more important is that the project brought together historians from the 'Western' and the 'Eastern' parts of Europe. Consequently, this project gave us a chance to write essays and books that reflected the special viewpoints of Eastern European scholars. I wrote on 'chances' and 'opportunities'. In practice, we could not make the most of the opportunity. For various reasons, it was difficult to involve colleagues from the Eastern part of Europe. To my knowledge, nobody represented Ukraine, or the Baltic and Balkan States. Consequently, Eastern European historiography remained underrepresented, and most of the workshops and publications focused on the Western European experience. Therefore, this project could not function as a platform for Eastern European historians to describe their views on World War Two, in general, and on the character of the Nazi and the Soviet occupations, in particular.

Within the framework of the project, six teams were organised, each team studying the history of the war years and the early post-war period from a different aspect. I was proud to be the co-leader of the team which dealt with the World War II-related forced migrations.

This was not a new research topic. Since the early 1950s, dozens of classic works have been written on the subject. Two common aspects pertained to these books: they focused on the problem of displaced persons, population transfers, and the expulsion of the Germans; all were published in Western Europe and the USA.

As a team, we tried to point to the common roots of different types of population movements and to emphasize the connections among events which appear initially not to connect with each other. We tried to give a complex picture which included all these elements of migrations plus components which were not yet studied intensively, such as the migration of forced labourers and their repatriation. We agreed that 'forced labour' was a special form of migration during the war, provoked by the German and Soviet need to exploit at the highest possible level all resources available in the occupied countries. Nevertheless, team members thought that we did not need to deal with the history of German, Poles, Hungarian, and Romanian POWs and civilian internees who were captured by the Red Army and who were transported to the Soviet Union. They argued that their story did not fit within the framework of the ESF project. On the other hand, however, the fate of Soviet POWs in German custody and the history of forced labourers who were transferred to Germany from various regions of occupied Europe were in the focus of the team's interest.

Insisting on the 'official' framework of this project was evidence that my Western European colleagues did not understand that, without studying the fate of German, Polish, Hungarian, and Romanian forced labourers in the Soviet Union, we could not give a whole picture on war-related migration. However, this topic was not eliminated totally. Our book on the World War II related migrations, to be published at the end of this year, will include the history of Hungarian prisoners, if not the forced labourers of other Eastern European countries.

The fate of foreign prisoners, soldiers, and civilian internees could be a topic doomed to oblivion, because its exposure would necessitate revising the currently formulated and accepted 'Western' views of the Second World War's end, and put the onus on the Soviet leadership for the mass extinction of Hungarians and other prisoners. My experience with the ESF team and my familiarity with the work of Western historians suggest that the Western world generally agrees that scholars and politicians do not need to deal with the wrongs committed by the Soviet Union, since these wrongs are seen to be balanced – and even blotted out – by the Soviet Union's participation in the defeat of Nazism. The subject of Soviet captivity barely appears in international scholarship, and the scholarly researcher or interested lay public face a scarcity of serious works and monographs. Yet the topic has a huge and, by now, almost completely accessible source material.

Russian archives are more or less open. Also, important documents concerning the fate of prisoners can now be perused in published document collections. In addition to the Russian and Hungarian archival sources, dozens of personal accounts have appeared as books or in journals since the collapse of Communism.

From my research using these various sources, I have concluded that the hundreds of thousands of Hungarians and other foreign prisoners held captive in the Soviet Union should not be regarded as 'prisoners of war' but as forced labourers. Among the pieces of evidence to support this usage is the fact that the Soviet leadership had established a camp system as early as the very beginning of the war, in September, 1939, which was intended for accommodating and utilizing the work not only of captured enemy soldiers, but also of civilians.

On 19 September 1939 – that is, a few days after the invasion of Poland by the Soviet Union – the People's Commissar of the Interior, Lavrentiy Beria, issued a decree about setting up a new forced-labour camp system for prisoners of war and foreign internees. The new camp system, called the Directorate for the Affairs of Prisoners of War and Internees of the Commissariat for the Interior, was referred to in Soviet documents as UPVI (*Upravleniyija Voennoplennih i Internirovannih*). According to Soviet sources, 380–390 thousand people were deported from the Eastern European territories annexed between 1939 and 1941 to the inner territories of the Soviet Union. However, some Polish historians say that nearly one million people, mainly civilians were deported from Polish territories alone.¹ The fact that the camp system was set up in an early phase of the war shows that the Soviet leadership did not differentiate between civilians and soldiers, and that the war served the purpose of supplying Soviet work-force demands as well as expanding the Communist regime.

In addition, the combining of forced labour with reparation claims derived from the Soviet system. During British Foreign Secretary Anthony Eden's visit to Moscow in December 1941, Stalin already was making clear to the British delegation that, after the war, the Soviet Union would claim not only

¹ See for instance: Z. S. Siemaszko, *W sowieckim osaczeniu*, London 1991; W. Wielhorski, *Los Polakow w Niewoli Sowieckiej*, London 1956; K. Sword, *Deportation and Exile. Poles in the Soviet Union 1939–1948*, MacMillan, London 1994.

financial reparations but also restitutions in kind. In August 1943, a committee was set up within the Soviet Commissariat for Foreign Affairs to make a detailed plan for the ‘Soviet reparations program’. This committee was led by Ivan Mayski, the former Soviet ambassador to London. On 24 November 1943, after the Western allies approved of German reparations to be paid partly in the form of forced labour, the ‘Governmental Reparations Committee for the Damages Caused to the Soviet Union by Hitler’s Germany and its Allies’ was also established. The first plans elaborated by the Mayski committee already included the idea that using prisoners for the reconstruction of the destroyed areas would constitute part of the reparations. Stalin made it explicit both in Yalta and at the Potsdam Conference, too, that he wanted to make soldiers of enemy countries in captivity work on the territory of the Soviet Union, in order to compensate for – at least partially – the tremendous losses of human and financial resources which the Soviet Union suffered.

Besides the Soviet intent to obtain forced labourers, including civilians, deportations were also motivated by the intentions of exercising collective punishment and political cleansing. In the course of the huge population transfer programs carried out between 1942 and 1944, considerations of internal security and the policy of collective retaliation were both represented. Up until June 1942, 1.2 million Germans were deported to Central Asia and Siberia, and the number of those who were taken to the camp-worlds of GUPVI and GULAG by force involved perhaps several tens of thousands. Under the – in fact, groundless – Soviet charges of ‘cooperation with the German invaders’, that is, based on the principle of collective responsibility, a total of about 900 thousand Karachais, Kalmyks, Ingush, Chechens, Balkarians and Crimean Tatars were removed from their homeland and resettled in the Asian regions of the Soviet Union between November 1943 and June 1944. In November 1944, the Meshets, Kurds, and Hemchins living alongside the Turkish border joined those numbers. These latter groups were also resettled to Siberia on an ethnic basis and out of inner and border security considerations.

The practice of collective punishment and that of cleansings carried out on an ethnic and class basis resumed in Eastern Europe in 1944 and 1945 in the same manner as they had occurred in 1941. In 1944 and 1945, the forward surging Soviet military forces opened the path leading to the exploitation of the defeated countries’ material and human resources.

In Romania, the subjects of deportations were, first of all, those refugees who moved to the contemporary territory of Romania from North Bukovina and Bessarabia, regions which were part of Romania during the war. Since these regions were incorporated into the Soviet Union at the end of the war, Soviets considered those civilians who fled from the former Romanian territories to be their citizens. According to official data of the Romanian Armistice Enforcement Commission, 56,450 such persons were forcibly repatriated during the period from 23 August 1944 to 30 September 1946. (Of this total, 38,352 were Bessarabians, 8,198 were Bukovinians and 9,900 persons were originated from the area east of the Dniester River.²) According to Viorel Achim, a Romanian scholar, the actual number of deportees was even higher, since out-transportations were carried out even after September 1946.

Most of the refugees were not transported to their former homelands but to labour camps or forced residences in the inner regions of the Soviet Union. So, in reality, ‘repatriation’ meant actions to collect forced labourers. This conclusion was admitted by the Deputy Chairman of the Allied (Soviet) Control Commission himself, General Vladislav P. Vinogradov. When the Chairman of the Romanian Armistice Enforcement Commission, Savel Radulescu asked Vinogradov to delay the ‘repatriation’ on 30 December 1944, the Soviet general said the following: “The work force is so necessary to us that we can not delay (the repatriation).”³

The available sources contain no information as to when Stalin gave instructions to deport ethnic Germans of a working age living in the occupied territories. In a report of the People’s Commissar of the Interior, Lavrentiy Beria, dated 24 November 1944 and written for Stalin, Beria wrote about having started preparations for such a deportation. By that time, the NKVD officers sent to the 2nd, 3rd, and 4th Ukrainian Fronts had already estimated how many persons could be deported from each particular area.

Originally, Beria calculated only the male workforce. But in directive No. 7161 of the State Defense Committee, issued on 16 December 1944 and ordaining the start of the deportations, the

² Viorel Achim, “Romania and the Refugees from Bessarabia and Northern Bucovina after 1944”, *Annali dell’Istituto storico italo-germanico in Trento*, XXIX (2003), p. 679. The author refers to two sources: Veaceslav Stăvilă, “Populația Basarabiei în perioada celui de al doilea război mondial”, *Revista de Istorie a Moldovei*, 3 (1993), p. 686.

³ *Ibid.*, p. 683.

transportation of women is also included. This ill-famed document, quoted in several scholarly papers since 1989, included this declaration:

“... All German men aged 17–44 and German women aged 18–30 who live in the territories of Romania, Hungary, Yugoslavia, Bulgaria and Czechoslovakia liberated by the Red Army must be mobilized and directed to work in the Soviet Union. The NKVD and specifically Comrade Beria is to be assigned the supervision of mobilization. The NKVD is to be in charge of organizing transit camps, the admission of mobilized persons, the establishment and launching of marching columns, and overseeing their guard en route. Charged with ordering the mobilization of the Germans in accordance with the articles of this provision are, in Hungary, Comrades Malinovsky and Tolbuchin, in Czechoslovakia Comrade Petrov, or it is to be done via military commanders and on authority of the front commander.”⁴

The deportation of the ethnic Germans in Southeastern Europe was controlled by three persons: Colonel-General Arkadi Apollonov, head of the main internal troops directorate of the NKVD, Lieutenant-General Moisei Sladkevic, deputy head of the main internal troops directorate of the NKVD, and Brigadier General Ivan Gorbatiuk, head of the office for rear security of front armies. (General Gorbatiuk had already had experience in mobilizing crowds as, a year earlier; he had controlled the deportation of the penalized Caucasian peoples, the Karachais, Ingush, and Chechens, to central Asia and Siberia.) The three generals called on the Military Council of the 2nd and 3rd Ukrainian Fronts, and on 26 December 1944 they put a detailed plan on Beria’s desk. They were planning to collect the Germans from the Yugoslavian and Hungarian territories that had been kept under occupation by the 3rd Ukrainian Front between 28 December 1944 and 5 January 1945. The Germans of working age were supposed to be captured in the hinterland of the 2nd Ukrainian Front that is in the territory east of the Danube River between 1 and 10 January. The corralling of German nationals in Romania and Transylvania was planned to take place between 10 January and the beginning of February.

In reality, the performance of this action followed the plans only in rough fashion. In Yugoslavia, the ‘mobilization’ of Germans capable of work started on 23 December 1944. According to both Soviet and German sources, 11,000–12,000 persons were deported by the 14 of January. In the second half of January, the rounding up of yet another contingent of 10,000 deportees was started, but the action had to be halted due to the worsening situation at the front.⁵

In Romania, the deportation of those Germans capable of work who had not fled with the retreating German troops took place between 11 January and 2 February 1945. The arrests were ordered by Lieutenant General Vladislav Petrovich Vinogradov, the representative of the Allied Control Commission in Bucharest, on 3 January 1945, but the execution was left essentially to the Romanian authorities. On the Soviet side, a squad of 1,500 NKVD executives took part in rounding up ethnic Germans. Presumably, the Romanian authorities had long prepared for these actions, because they registered the German nationals remaining in the country at the end of August and again in October 1944. The consequent arrests were carried out on the basis of these lists of registration.

The total number of deported Germans was about 70,000, according to Soviet sources. Most of the deportees lived in the provinces of Timis and Mures. Roughly the same total is given by German sources.⁶

Presumably, these figures did not include those who were deported from northern Transylvania, which was under Soviet administration at the time. The deportation of the Saxons living there was carried out within the framework of deportations in Hungary. Although the directive of the Soviet State Defence Committee issued on 16 December 1944 expanded deportations to the territories of Czechoslovakia and Bulgaria, too, Soviet sources say only a few hundred Germans in these countries were capable of work and, thus, transported to labour camps in the Soviet Union.

⁴ Pavel Polian, *Against Their Will: The History and Geography of Forced Migrations in the USSR*, Central European University Press, 2004, pp. 250–252.

⁵ Pavel Polian, *Against Their Will: The History and Geography of Forced Migrations in the USSR*, p. 259; John R. Schindler, “Yugoslavia’s First Ethnic Cleansing”, in: Steven Béla Várdy and T. Hunt Tooley (eds.), *Ethnic Cleansing in 20th-century Europe*, Boulder, CO 2003, p. 367.

⁶ Pavel Polian, *Against Their Will: The History and Geography of Forced Migrations in the USSR*, p. 260. The number of deportees was 75,000, according to the following German sources: *Das Schicksal der Deutschen in Rumänien*, Weltbild Verlag, Augsburg 1994, p. 80E; Georg Weber, *Die Deportation von Siebenbürger Sachsen in die Sowjetunion 1945–1949*, vol.1, Köln–Weimar–Wien 1995. The number of deportees ranged between 75,000 and 80,000, according to Günter Schödl, *Land an der Donau*, Berlin 1995, p. 596.

The Soviet camp administration registered 541,000 Hungarian ‘prisoners of war’. According to Hungarian sources, however, the total number of Hungarians in Soviet custody might have exceeded 600,000. About one third of the prisoners captured were civilians.⁷

On the basis of contemporary documents from various Hungarian regions and from eyewitnesses’ accounts, I have come to the conclusion that civilians were arrested in the territory contemporary territory of Hungary in two waves. The first wave took place two or three days after the Soviet takeover of a given major settlement. The Soviet forces rounded up civilians for communal reparation work. In most cases, the unsuspecting civilians were gathered into concentration camps and then deported to the Soviet Union via Romanian transit camps. Most of the Hungarian cities were hit by the first wave of arrest. The population of Budapest suffered the most from the deportation. The number of civilians captives in Budapest is estimated by Hungarian scholars as between 50,000 and 100,000, depending on which Soviet report they base their calculations.⁸

The second wave of arrests began late December 1944. It was a carefully planned operation directed against the ethnic Germans within the framework of the directive of the State Defence Committee issued on 16 December 1944. Theoretically, deportations targeted German nationals, but the overwhelming majority of those interned were not Germans. Most civilians were deported from the areas with purely Hungarian populations, i.e., from the northern and the eastern counties, as well as from the middle parts of the country. In the campaign against German nationals in some regions, the total adult male population was “mobilized”. There were dozen of villages from which Hungarian females were deported, too. According to Soviet sources, altogether 32,000 “ethnic Germans” were rounded up and transferred to the Soviet Union in the framework of the campaign.⁹

While the primary intent for the deportation carried out within the present-day boundaries of Hungary was to provide a labour force, internment in the territory Hungary gained between 1938 and 1941 also served to weaken Hungarian communities.

The Fourth Ukrainian Front released its Resolution No. 0036 on 12 November 1944, which stated that, in Carpatho-Ruthenia, “Hungarian and German service-age nationals are living in numerous localities, who like enemy soldiers, must be arrested and sent to prison camps ...”¹⁰

In a report from 17 December 1944, the commander of the NKVD troops securing the resolution of the Fourth Ukrainian Front, Major-General Fagayev, wrote that: “Between November 18 and December 17, NKVD details arrested altogether 22,951 individuals in the area of Carpatho-Ruthenia and transferred them in prison camps. The purging operation continues on the home front ...”¹¹ According to local historians, however, the total number of deportees reached 40,000.

The deportations from Carpatho-Ruthenia were carried out at the same time as the Communist Party of Transcarpathian Ukraine began to propagate the reunion of the region with Ukraine. Although this region had never belonged to Ukraine, on 26 November 1944, the First Congress of the Peoples’ Committees of Transcarpathian Ukraine adopted a resolution to join to the Soviet Union. Presumably, with this deportation, the Soviet authorities intended to intimidate the non-Slavic, mostly Hungarian population, who accounted for about 30–35 percent of the total population of about 600,000. In January, the deportation continued in south-eastern Slovakia, a region that had belonged to Hungary after 1938. In this region, as in Carpatho-Ruthenia, Hungarian males were rounded up and deported to the Soviet Union.

Over and above this review of the various waves of “mobilizations”, I have endeavoured to bring to light the motives and plans of the Soviet military leadership in charge of the deportations. The cases that were laid bare indicate that the Soviet special units captured and transferred part of Hungary’s civilian population on the basis of prepared plans and quotas for various sections of Hungary.

From my reviews of the tales of survivors, it is evident that life in the Soviet camps, the prisoners’ quarters, and working conditions varied greatly. Camps were usually surrounded by a triple wire fence. Day and night there were guards in the watch towers and along the fences. Initially, inmates stayed in bunkers dug into the ground, and later, they stayed in communal wooden barracks. These barracks had

⁷ Tamas Stark, *Magyar foglyok a Szovjetunióban (Hungarian Prisoners in the Soviet Union)*, Lucidus Kiadó, Budapest 2006, pp. 108–110.

⁸ Zalán Bognár, “Egy csata utóélete”, *Studia Carolinensia*, 1/1 (2000), pp. 78–81; Krisztián Ungváry, *Budapest ostroma*, Corvina Kiadó, Budapest 1998, p. 274.

⁹ Pavel Polian, *Against Their Will: The History and Geography of Forced Migrations in the USSR*, p. 260.

¹⁰ György Dupka, Alexei Korsun, *A “Malenykij Robot” a dokumentumokban (Documents on the Deportations of Hungarians from Carpatho-Ruthenia)*, Intermix Kiadó, Ungvár–Budapest 1997, p. 71.

¹¹ *Ibid.*, p. 28.

three tiers of bunks, with a 60 cm. wide space per prisoner. In most camps, the prisoners slept on wooden boards, but in some places, straw bags served as mattresses. In contrast to transit camps, barracks could usually be deloused, but cockroaches still plagued the prisoners. Inmates worked 10–14 hour days. In theory, on Sundays, they were exempt from work, but the commanding officers would find work for them on these days too. There were places where prisoners got unsubstantial wages, but it was not a general practice. The prisoners who had the best chances for survival were those able to work as skilled labourers in some factory or farm. However, the majority of prisoners worked in mines, cleared forests, or did road and railway construction. The worst conditions were in the Gulag camps, where condemned prisoners were held. The three most notorious camp districts (Vorkuta, Norilsk, and Kolyma) were located north of the Arctic Circle. Survivors remember winter temperatures often reaching -60° C, and even worse was the constant wind. In the Far East, the Taiset camp deserves mention, where the prisoners began to build the Baikal-Amur railway (BAM), hailed as the construction project of the century.

As a result of the poor living and working conditions and the insufficient provisions in the Soviet camps, many of the prisoners became sick, and close to a third of the prisoners perished. It emerges from the prisoners' accounts that the mass mortality was not only caused by the general post-war destitution. Multitudes died as a consequence of the typically Soviet-style disorganization, corruption, and disregard for human life.

Through the contacts with local residents in the workplaces, prisoners got acquainted with the everyday life in the Soviet Union. The memoirs demonstrate authentically and in detail how theft became an organic part of Soviet life. Formerly high-ranking Soviet party functionaries reiterated this quite openly in Kolima: "... they told us that the whole system here is unadulterated cheating, stealing, and lies. /.../ anyone who doesn't understand this, is bound to fail and die. One cannot live any differently in this country. /.../ It is almost compulsory, because whoever doesn't do it is doing it the wrong way ..."¹²

The movement, exchange, and circulation of objects and assets were not ensured by selling and buying, or by simple barter, but by theft. The guards stole from the prisoners and vice versa; the prisoners stole from one another and from their workplace. The Hungarian officer brigade-leader stole from his subordinates; the Soviet higher authority stole from the prisoners when he sold the quilted jackets that were meant for them. The "free" workmates stole in the same way, as did the gate-keepers and the overseers.

The survivors could not talk about their experiences in the Soviet Union. On their return to Hungary, they were threatened with being recaptured and taken back to the camps if they talked. The prisoners, the majority of whom returned in 1947 and 1948, would soon find out for themselves that, in contrast to what they had hoped for, it was not freedom that awaited them at home; the system that was being built in Hungary was one they had already experienced in Soviet captivity.

¹² Interview with Gulag survivor Kálmán Bálintfi, manuscript in the possession of the author, pp. 49–50.

Boris Mlakar

REPRESSION OVER THE SLOVENIAN PEOPLE BY THE GERMAN NAZISM

1.

With its position on the supremacy and dominance of the Germanic race, and especially with its attitude about the historical mission of the great German nation, the National Socialist ideology would leave little opportunity for Slavic nations in the event of full dominance in Europe, or the establishment of the so-called Nazi New Order. The theory of the German “Lebensraum”, which in Hitler’s vision was only possible to ensure in the territory of Central and particularly Eastern Europe, small Slavic nations in Central Europe were predestined for Germanisation or expulsion to the East, while the territory they inhabited was to become subject to German colonisation. In accordance with the “Generalplan Ost”, the Slavic populations living in the eastern part of Europe would be pushed towards the Urals or even beyond, turning into a source of cheap labour, or even a slave labour force, in the future Nazi New Order. The Nazi authorities thus wanted to push the racial and political division between the Slavs and Germans as far to the Eurasian east as possible, thus securing permanent security and the future of the Germanic race.¹

In the light of its settlement area, especially hard blows in this context were dealt to the Slovenian nation, which had been forced ever since the second half of the 19th century to face fierce German imperialism as well as the concrete pressure of Germanisation, although initially especially by the German national forces within the Austro-Hungarian Empire. Ambitious nationalistic German ideologues thought it humiliating that the small Slovenian nation should block German access to the Adriatic or Mediterranean in general. Accordingly, then, Slovenians should be Germanised or at least gradually assimilated into the German political society. Nazism adopted and utterly radicalised all these ideas and plans, setting it as a short-term goal to politically and ethnically erase the Slovenian nation from the face of the earth during the Second World War. Immediately after the occupation of a great part of the Slovenian territory, the new Nazi administration thus launched the strictest denationalisation measures. But since events in general did not fully follow the Nazi plan, it was no coincidence that Heinrich Himmler ordered, in the spring of 1942, that the treatment of the Slovenian occupied territory be included in the “Generalplan Ost”, according to which massive deportations of the Slavic population and the final colonisation of Germans were to take place only after the end of the victorious war.²

2.

German nationalists made special efforts to germanise the Slovenian population in the southern parts of Carinthia and Styria in order to achieve an “indisputable” German character, invoking in the process the so-called unity or indivisibility of the land. This became especially prominent in the events immediately following the disintegration of the Austro-Hungarian Empire in 1918, when Lower Styria was attached to the newly established country of Southern Slavs, while the plebiscite kept Southern Carinthia within the territory of Carinthia and thus a part of the First Austrian Republic. Regardless of the promises about national equality made by the plebiscite, German national pressure toward Carinthian Slovenians did not stop in the period between the two world wars. German nationalists tried to diminish the Slovenian national resistance by inventing the so-called “Windischers”, an ethnic and cultural category set between Slovenians and Germans. Their position did not improve in the years

¹ Mark Mazower, *Hitler's Empire. Nazi Rule in Occupied Europe*, London 2008, pp. 556–558; Norman Rich, *Hitler's War Aims. The Establishment of the New Order*, II, New York 1974, p. 421.

² *Slovenska novejša zgodovina. Od programa Zedinjena Slovenija do mednarodnega priznanja Republike Slovenije 1848–1992 (Recent Slovenian History. From the United Slovenia Programme to the International Recognition of the Republic of Slovenia 1848–1992)*, 1, Ljubljana 2005, p. 588.

in an authoritarian country; moreover, after the “Anschluss” of Austria to the German Reich in 1938 they were the first Slovenians to face the totalitarian Nazi regime. Nationalistic German publishers and ideologues, earlier undercover Nazis, could now make public and official the justifications and announcements that there would be no room for Slovenians in Carinthia in the future. The principal figure of this group was Alois Maier-Kaibitsch, who as the leader of the “Kärntner Heimatbund” and the National Office in Klagenfurt, openly threatened the representatives of the Slovenian community with extermination. Several prominent individuals were imprisoned or exiled. The new Nazi authorities thwarted the operation of Slovenian economic and cultural organisations, although they were formally abolished only after the attack on Yugoslavia, when their assets were confiscated. All Slovenian public events were prohibited as well. The remaining bilingual schools were abolished, and for some time priests could only teach religion in Slovene outside schools. The Bishop of Klagenfurt then succumbed to Nazi pressure and prohibited religious services in Slovene, transferring most Slovenian priests to the German territory. In order to speed up Germanisation, the authorities in the bilingual territory established a dense network of German kindergartens. Immediately upon the “Anschluss”, Nazis arrested priest and former politician Vinko Poljanec, who then died due to maltreatment in prison, thus becoming the first victim of the Nazi violence toward Carinthian Slovenians.³ It should be mentioned that of all lands in the new German Reich it was Carinthia that supported the Nazi regime most strongly. Regardless of the negligible support of the home country, Yugoslavia, which was itself under Nazi pressure, some Carinthian Slovenians took up different forms of passive and active resistance; among others, about 200 young men fled to Yugoslavia from mobilisation to the Wehrmacht.

In August 1941, Himmler announced the expatriation of nationally conscious Carinthian Slovenians, 200 families, which was related to an earlier agreement between Italy and Germany on the emigration of the German population from Italy, according to which the Germans from Val Canale were to settle in the territory of the exiled Carinthian Slovenians. This exile was supposedly demanded by the Carinthian German public as an urgent measure.⁴ In the spring of 1942, the Gestapo, in cooperation with the Gaugrenzlandamt (District border land office), composed a list of 1,220 nationally conscious Slovenians. In April of the same year, 917 of these people, from 178 families, were displaced via the assembly camp in Žrelec (Ebenthal) to camps in Brandenburg and Franken.⁵ After the occupation of Slovenia the emerging resistance movement spread slowly but steadily among Carinthian Slovenians. Nazi authorities tackled it with great determination and cruelty. After having discovered the network of supporters, as well as deserters from the Austro-Hungarian army during the First World War, a special senate of the so-called People’s Court from Berlin sentenced 35 people in April 1943 in Klagenfurt; 13 were sentenced to death and decapitated on 29 April 1943 in Vienna. One of the major crimes was committed by SS unit members just before the end of the war, when they burnt the Peršman mountain farm on 25 April 1945 and killed 11 family members aged from 8 months to 77 years.⁶

3.

As regards the Slovenian ethnic territory, which was part of Yugoslavia between the two world wars and constituted the territory of Dravska Banovina before the Second World War, German nationalistic aspirations were not suspended either. The relevant revisionist activity flourished, especially in the towns of Graz and Klagenfurt, close to the border. The patriotic, ethnological, linguistic or statistical articles of individual publishers, as well as scientists, consistently maintained and even enhanced the

³ Avguštin Malle, “Vloga koroških katoličanov v tretjem rajhu” (“The Role of Carinthian Catholics in the Third Reich”), in: *Koledar Mohorjeve družbe v Celovcu (Calendar of Mohorjeva Society in Klagenfurt)*, 2006, pp. 113–118; Teodor Domej, “O ponemčevanju južne Koroške za časa nacizma in odmevi nanj (1938–1942)” (“On Germanisation of Southern Carinthia During Nazism, and the Responses To It (1938–1942)”), in: *Narodu in državi sovražni. Pregon koroških Slovencev 1942 (Adversaries to the Nation and to the State. Prosecution of Carinthian Slovenians 1942)*, Celovec/Klagenfurt 1992, pp. 210–229.

⁴ Archives of Slovenia, AS 1827, Committee for the identification of the crimes of the occupying armies and their helpers, t.e. 75, Excerpt from the hearing of Friedrich Rainer, pp. 3–5; Tone Ferenc, *Quellen zur nationalsozialistischen Etnationalisierungspolitik in Slowenien 1941–1945 (Sources on Nazi Denationalisation Policy in Slovenia 1941–1945)*, Maribor 1980, pp. 232–233; *Meldungen aus dem Reich 1938–1945 (Reports from the Reich 1938–1945)*, Bundesarchiv Koblenz 1983, No. 250, p. 3157.

⁵ Valentin Sima, “Die Vertreibung von Kärntner Slowenen 1942”, in: *Narodu in državi sovražni*, pp. 133–209.

⁶ Karl Stuhlpfarrer et al., *Ne pozabimo/Gegen des Vergessen (Let us not forget)*, Klagenfurt/Celovec 2008; Tone Zorn, “Tridesetletnica krvavega procesa v Celovcu” (“Thirty Years from the Bloody Klagenfurt Process”), *Vestnik koroških partizanov (Carinthian Partisan News)*, 6/2–3 (1973), pp. 77–84.

revisionist demands towards Slovenians and towards their settlement area by statements that Lower Styria as well as Carniola were, if not ethnically clean German lands, at least part of the German national and cultural space. This led to the logical conclusion that this territory should be annexed to the Austrian lands of Styria and Carinthia, and thus integrated into Austria and as such into the great German Reich. But these were not just efforts of isolated or overbearing individuals; participating in them were also different national, party and civil establishments, the most prominent being the Südostdeutsches Institut (South-Eastern German Institute) located in Graz.⁷ After the “Anschluss”, these organisations in Graz and Klagenfurt drew up and addressed to the Nazi government several memoranda which required, without embellishment, the integration of parts of the Slovenian territory into the German Reich. Especially active in such efforts were Helmut Carstanjen from Graz and the aforementioned Maier-Kaibitsch from Klagenfurt.⁸

Synchronised and hand-in-hand with this was the process of Nazification of the German minority in Slovenia, which was especially apparent in the operation of its umbrella organisation the Schwäbisch-deutscher Kulturbund (Swabian-German Cultural Union). The members of the minority attended courses which educated them in the Nazi spirit; at the same time they performed intelligence tasks for Nazi organisations and authorities in Styria and Carinthia. These tasks did not only concern military information but also information on Slovenian civil establishments and lists of nationally conscious or anti-German Slovenians. Both in objective and in subjective terms, these activities constituted effective and planned preparation for the later occupation of Lower Styria and Upper Carniola.⁹

After the undeclared war on 6 April 1941, the forces of the fascist Axis occupied the small territory of Dravska Banovina in a few days. In the territory occupied by the German army, members of the Kulturbund played the role of the fifth column by helping in the occupation, their armed groups often having taken over even before the arrival of the German army and arrested prominent Slovenians. In the west and northwest, the invading German units were helped by Italian units, for Mussolini wanted to take part in the division of Yugoslavia. In the beginning, Germans occupied Prekmurje as well, but left it to the Hungarian occupying forces with the exception of some municipalities in the west. A precise plan for the division of the Slovenian territory, and thus its further fate, was laid out by Hitler himself on 14 April 1941. Germans occupied Upper Carniola and Lower Styria, Italians the so-called Ljubljana Province in the southern part of Slovenia, while Prekmurje in the extreme east fell under Hungary. All three occupiers set it as their goal to destroy the Slovenian nation as an ethnic and political entity, each selecting slightly different tactics to achieve this. Although the Italians and to a certain extent the Hungarians counted on the disappearance of Slovenians in the long run, they immediately opted for formal annexation of the occupied territories to their countries, naturally in contravention to international law.

The Nazis were more thorough in this respect, setting it as their goal to erase all traces of the Slovenian nation in their occupied territory within but a few years. Such explicit instructions on Germanisation were also declared by Hitler on a visit to Maribor on 27 April 1941. They wanted to begin by getting rid of all undesirable people in the territory, unifying the local administration with that of the neighbouring lands of Styria and Carinthia, where the occupied territories were supposed to be annexed, and to formally as well as practically resolve the issue of citizenship of the present population.¹⁰ Similarly as in the occupied territories of Alsace, Lorraine and Luxembourg, the Nazis appointed a “Gauleiter” of the neighbouring Austrian lands as head of the presumably temporary civil administration. In Lower Styria it was the Styrian Gauleiter Sigfried Uiberreither, while in Upper Carniola it was Franz Kutschera, who was replaced by Friedrich Rainer at the end of 1941. According to Himmler’s instructions, the heads of the civil administration were to implement appropriate measures and prepare both regions for formal and legal annexation to the Reich. After the first wave of intense denationalisation measures the annexation ceremony was planned for 1 October 1941; then the date was postponed to 1 January 1942 and later by another six months, also due to increasingly strong resistance. However, at a certain point this was no longer discussed, and the formal annexation never happened.

⁷ Christian Promitzer, “Täterwissenschaft: das Südostdeutsche Institut in Graz” (“Perpetrator Studies: The South-Eastern German Institute in Graz”), in: *Südostforschung im Schatten des Dritten Reiches (Southeast Research in the Shadow of the Third Reich)*, München 2004, pp. 93–113.

⁸ Tone Ferenc, “Spomenice o nemških ozemeljskih zahtevah v Sloveniji leta 1940” (“Memoranda on German territorial requests in Slovenia in 1940”), *Zgodovinski časopis (Historical Gazette)*, 29/3–4 (1975), pp. 219–246.

⁹ Dušan Biber, *Nacizem in Nemci v Jugoslaviji 1933–1941 (Nazism and Germans in Yugoslavia 1933–1941)*, Ljubljana 1966, pp. 229–251.

¹⁰ Tone Ferenc, “Položaj slovenskega naroda ob okupaciji leta 1941” (“The Situation of the Slovenian Nation Upon Occupation in 1941”), in: *Narodu in državi sovražni*, pp. 26.

Nevertheless, formal and legal reasons did not stop the occupying authorities from thoroughly changing or replacing the then Slovenian administration, school system, etc., thus integrating the occupied regions into their social, political and cultural system in every respect. All existing political parties and associations were, of course, abolished, as well as the existing administrative structure; instead of districts, the Nazis organised prefectures headed by political commissars or land councillors.

All mayors and public servants were also replaced, including the lowest positions. Their places were taken by civil servants from the Reich (especially from Austria) and credible members of the Nazi Party, while lower posts were occupied by local Germans; only in the case of a thorough shortage of civil servants were native Slovenians (“Windischer”) considered suitable. The administration functioned exactly as it did in the German Reich, while political life under this totalitarian system was of course controlled by the Nazi Party with the omnipresent divisions of the police and the security service.

The main goal of Nazi rule, however, was the thorough ethnic cleansing and Germanisation of the population, and the fully German character of the occupied territories, achieved as soon as possible. To this end, the new authorities foresaw and started implementing a number of measures. The first was, of course, the complete removal of everything with a Slovenian character, either externally, formally or substantively. Thus all Slovenian societies were abolished, along with political, civil and economic associations and establishments, and property was confiscated. All Slovenian public signs were replaced with German signs, and personal and geographical names were germanised; in some cases even previously established German geographical names were replaced by new, “more German” designations. All Slovenian schools were abolished, Slovenian printed material was forbidden and the population was called upon to hand over all Slovenian books to the authorities; the Nazis ended up burning more than two million Slovenian books. To make the population learn German and abandon Slovene as soon as possible, the Nazis established new kindergartens, organised a great number of German courses and generally built an elaborate system of Germanisation intended to cover all people from childhood to late old age. Teachers and childcare providers were brought from Austrian territories, and children and youth were made members of Nazi political and sport organisations. Slovene was almost completely banished from churches as well, which was not difficult in view of the fact that most Slovenian clergy were displaced to the territory of the Independent State of Croatia. Members of the Orthodox Church were persecuted and their churches were pulled down, which of course did not apply to Protestants, who were the only members of the German minority in Lower Styria. All church property was confiscated, and the Maribor Bishop Ivan Tomažič was practically confined to house arrest.¹¹ The principal organisations intended to promote Germanisation and Nazification were the Styrian Patriotic Alliance (Steirischer Heimatbund) in Lower Styria and the Carinthian People’s Union (Kärntner Volksbund) in Upper Carniola. It was not a coincidence that these two organisations admitted all members of the *Kulturbund*, who immediately took the leading role. It was not a coincidence, either, that some of the leading roles in the process of Germanisation were taken by the well-known nationalist ideologues Carstanjen and Maier-Kaibitsch, who became regional leaders of the Volksdeutsche Mittelstelle in Graz and Klagenfurt, respectively. Himmler designated the heads of both civil administrations as persons empowered for the strengthening of German identity.¹²

The occupied Slovenian territory was the only area in Europe where Nazis implemented a detailed racial and political assessment of the whole population, which was connected with the awarding of citizenship, although this issue was fully irrelevant according to international law. Due to understandable opportunism, the majority of the population of Styria and Carinthia joined the Styrian Patriotic Alliance and the Carinthian People’s Union. Nobody believed, however, that entry was voluntary, so the authorities carried out a “perlustration” of the population, i.e. its racial and political assessment. Thus the spring and summer saw the respective assessment of all members of the Styrian Patriotic Alliance, and of the entire population in Upper Carniola. Racial marks ranked from I (very good) to IV (racially inappropriate), while political marks ranked from A (prominently pro-German) to E (prominently anti-German). The most common marks were III (average) in the racial and C (indifferent) in the political aspect. On this basis, most of the applicants were admitted as temporary members of both organisations,

¹¹ Miloš Rybář, “Nacistični ukrepi zoper duhovščino lavantinske škofije 1941–1945” (“Nazi Measures against the Clergy of the Lavantine Diocese”), in: *Zbornik ob 750-letnici mariborske škofije 1228–1978 (Miscellany on the 750th Anniversary of the Maribor Diocese)*, Maribor 1978, pp. 44–102.

¹² Tone Ferenc, “Položaj slovenskega naroda ob okupaciji leta 1941” (“The Situation of the Slovenian Nation Upon Occupation in 1941”), pp. 21–22, 29.

while about a quarter of the applicants were rejected. Of course, permanent membership was granted to the members of the Kulturbund and the German minority. Membership in the Styrian Patriotic Alliance and the Carinthian People's Union accordingly precluded the level of citizenship granted by the German authorities on the basis of the decree of Herman Göring of 14 October 1941. Thus, the members of the German minority acquired German citizenship in retrospect, as of 14 April 1941. The temporary members of both organisations acquired German citizenship which could be revoked, while all others were considered so-called "protégés" of the German Reich. While "revocable citizens" had the option to become full citizens in ten years, the "protégés" faced a rather uncertain destiny; they had to go to forced labour to German farms or labour camps, and even faced the possibility of sterilisation.¹³

Membership in both organisations proved fatal for male members in a certain sense. The Nazis first included all male members between 18 and 45 years of age in a semi-military formation, the Wehrmannschaft, where they were supposed to train for military service. Soon it began to be used to suppress the Partisan movement, thus playing a part in the Germanisation of the population. Although, as has been said, both occupied regions were eventually not integrated into the Reich in the formal legal sense, the heads of the civil administration introduced in the spring of 1942 compulsory service for all men in the National Labour Service RAD (Reichsarbeitsdienst) and in the Germany army. At least 38,000 males had been forcibly mobilised to the RAD and the German army by the end of the war.¹⁴

The principal measures by which the Nazi authorities intended to change the ethnic character of the occupied territories were the mass expulsion of Slovenians, on one hand, and the settlement or colonisation of Germans on the other. According to Himmler's guidelines of April 1941, between 220,000 and 260,000 people were to be displaced, which was almost a third of the population then living under the German occupiers in Slovenia. The expulsion was to be carried out in a very short space of time, by October 1941, and therefore within five months and in four waves: first the expulsion of highly nationally conscious Slovenians, especially the intelligentsia and members of the leading strata; then immigrants after 1914 (1918); in the third wave the deportation of the population living near the border; and in the fourth the expulsion of those Slovenians not admitted to the Styrian Patriotic Alliance or Carinthian People's Union for racial or political reasons. Deportations were launched in early June 1941, starting with the first wave of exiles, who were sent to Serbia. The Nazis generally assumed that all the exiles would be sent to Serbia, except those supposedly suitable for Germanisation, who would be sent to Germany. However, sending exiles to Serbia was later made difficult because of the local resistance movement, so the Nazis then redirected them to the territory of the Independent State of Croatia, and finally mainly to Germany. The third wave of exiles from the border belt at the south-eastern border of Styria was thus displaced between October 1941 and July 1942 to various German camps under the auspices of the Volksdeutsche Mittelstelle. In summer 1942, Himmler ordered the cessation of the expulsion of Slovenians from Lower Styria for national and political reasons. For Upper Carniola he had ordered this in August 1941, and of course postponed it to the post-war period. Later, the only exiles to Germany were relatives of Partisans and hostages that had been killed.¹⁵ The exiles to Serbia were mostly kindly received by the native population, while those deported to German camps had to work hard as a cheap labour force, experiencing constant transfers from camp to camp.¹⁶ Occupying authorities confiscated the property of all exiles for the benefit of "consolidating the German identity", which, together with confiscation and expropriation from the other categories of the Slovenian population, also caused major material damage.¹⁷ In total, the Nazis deported 7,200 Slovenians to Serbia, about 10,000 to Croatia, and 37,000 people from the border belt as well as about 8,000 relatives of hostages and Partisans to Germany. If we add another 17,000 people who fled to the Ljubljana Province from the danger of expulsion, around 80,000 Slovenians from the German occupation area were driven from their homes. However, since the Nazis were not able to fully realise all planned expulsions of Slovenians, the colonisation and settlement of Germans had to be limited and

¹³ Tone Ferenc, *Nacistična raznarodovalna politika v Sloveniji v letih 1941–1945 (Nazi Denationalisation Policy in Slovenia in 1941–1945)*, Maribor 1968, pp. 744–771.

¹⁴ Marjan Žnidarič, Jože Dežman, Ludvik Puklavec, *Nemška mobilizacija v Sloveniji v drugi svetovni vojni (German Mobilisation in Slovenia in the Second World War)*, Celje 2001.

¹⁵ *Slovenska novejša zgodovina 1848–1992 (Recent Slovenian History 1848–1992)*, 1, pp. 586–588.

¹⁶ Tone Ferenc, "Izgnanci kot cenena delovna sila nemškega rajha" ("Exiles as a Cheap Labour Force of the German Reich"), *Zgodovinski časopis*, 25/1–2 (1971), pp. 47–59.

¹⁷ Milko Mikola, "Nacistične zaplembe zemljiških posesti na območju celjskega okrožja 1941–1945" ("Nazi Confiscation of Real Estate in the Area of the Celje District 1941–1945"), in: *Celjski zbornik 1987 (Celje Yearbook 1987)*, Celje 1987, pp. 149–188.

adjusted accordingly. Thus they only managed to settle, in the border belt by the Sotla and Sava rivers from which most Slovenians had been exiled, about 11,000 Germans from the area of Kočevje, i.e. from Ljubljana Province.

The onset of the Slovenian Resistance in Lower Styria and Upper Carniola, considered by the German occupiers as German lands, provoked severe violence. During anti-Partisan actions, the occupying police units burnt down villages and massively put people in prisons, where they were often subjected to torture. It is estimated that the Nazis placed about 30,000 inhabitants of both regions in prisons and camps.¹⁸ One of the most drastic measures in this regard was mass shooting of hostages, which the Nazis began as early as the end of July 1941. Regardless of the initial judgments of a special court, the decisions on executions were then mostly imposed by the competent commander of the security police and security services, acting under the authority of the head of civil administration. Hostages to be shot were selected from among imprisoned Partisans and in particular from among other people who had been arrested for suspected cooperation with the Partisans or their family members. Usually these were disproportionate retaliation measures upon the actions of the resistance movement; first, edicts with the lists of shot hostages were made public, while towards the end of the war the shootings took place unannounced. Five or ten hostages were shot for each German killed; the worst Nazi atrocity was committed in February 1945 when they hung 100 people in the Celje District in retaliation for the liquidation of a Nazi functionary.¹⁹ A total of 1,900 hostages were killed in Lower Styria and at least 960 in Upper Carniola. An additional tragic dimension to the shooting of hostages was that of the so-called “stolen children”. The children of the relatives of hostages, Partisans or their arrested relatives were taken away by the Nazis and sent, through special camps, to Germany to be re-educated. Babies were taken over by the Lebensborn society within the SS and then placed in German families for adoption. The number of stolen children was about 600; with some exceptions, children who had disappeared without a trace, most of them returned to their homeland after the war.²⁰

Nazi violence with the destruction of human lives did not begin, however, with measures to prevent or destroy the resistance movement. In spring 1941, the Nazis, acting on their racist motives in the context of “euthanasia”, took 583 mentally ill and physically disabled persons from the relevant institutions in Lower Styria, on the basis of “expert” decisions of German doctors, and executed them at Hartheim Castle near Linz.²¹

4.

After the signing of the ceasefire with Italy in 1943, the German army occupied the rest of the Slovenian ethnic territory, therefore the Ljubljana and Littoral regions. According to Hitler’s idea, the Nazis united these regions with the neighbouring Italian and Croatian lands in the so-called “Adriatic Littoral” operation zone; it was headed by the head commissar appointed by Hitler, the previously mentioned Friedrich Rainer. Besides organising self-protection from the Communist movement and mobilising economic capacities for the German Reich, Rainer’s main task in this area was to manage and reconcile the nationality situation. For this purpose and most probably for mostly tactical reasons, Rainer allowed all nationalities in these regions, including Slovenians, cultural and lower administrative autonomy and the formation of their own militia units.²² Furthermore, Rainer declared compulsory military service for the whole population, where servicemen had the opportunity to opt for different military and police units, as well as for participation in the construction of the fortification line against the potential invasion of the Allies in the northern Adriatic. An increasing problem for the Nazi government was the increasingly strong Partisan movement, while the German army needed a peaceful area behind them and secure communications in the direction of the Italian front. This caused severe anti-Partisan fighting, either in the form of major and long-lasting offensives or in

¹⁸ *Slovenska novejša zgodovina*, 1, pp. 780.

¹⁹ Milan Ževart, *Stranice pri Frankolovu (Stranice near Frankolovo)*, Ljubljana 1981.

²⁰ Silvo Terčak, *Ukradeni otroci (Stolen Children)*, Ljubljana 1962.

²¹ Tone Ferenc, “Nacistična ‘evtanazija’ v Sloveniji leta 1941” (“Nazi ‘Euthanasia’ in Slovenia in 1941”), in: *Prispevki za zgodovino delavskega gibanja (Contributions to the History of the Workers’ Movement)*, 15–16/1–2 (1975–1976), pp. 97–119.

²² *Akten zur deutschen auswärtigen Politik 1918–1945 (Files on German foreign policy 1918–1945)*, Serie E: 1941–1945, Band VI, Göttingen 1979, pp. 520–535; Boris Mlakar, *Slovensko domobranstvo 1943–1945: ustanovitev, organizacija, idejno ozadje (Slovenian Militia 1943–1945: Establishment, Organisation, Ideological Background)*, Ljubljana 2003, pp. 83–145; Maurice Williams, *Gau, Volk und Reich. Friedrich Rainer und der österreichische Nationalsozialismus (District, Nation and Reich. Friedrich Rainer and Austrian National Socialism)*, Klagenfurt 2005, pp. 163–199.

the form of minor purging actions as well as abrupt invasions of smaller units in the Partisan rear area. This fighting was conducted by the operative staff for the destruction of bands located in Trieste and Ljubljana and headed by SS Generals Erwin Rösener and Odilo Globocnik. This brought great suffering to the civilian population, and thus Slovenians from the Littoral region often experienced disproportionate or extreme violence at the hands of German police and SS units. The most heinous cases were the burning of the village of Strmec and the slaughter of its male inhabitants in the autumn of 1943, and the burning of the villages Komen and Rihemberk and the deportation of all their inhabitants to Germany in the winter of 1944.²³

In Trieste, a special SS unit, headed by General Globocnik and earlier involved in the destruction of Jews in Poland, organised the only extermination concentration camp in this part of Europe, situated in the so-called “Rice Factory” (Risiera di San Sabba). Murdered and cremated in it were several thousand Slovenian, Italian and Croatian antifascists as well as many Italian Jews.²⁴ Regarding the latter, it has to be stressed that their pursuit by the Nazis began immediately after the occupation of the Slovenian territory. They were rather sparse in this region (Lower Styria and Upper Carniola), especially as wealthy individuals; a bigger population lived only in Prekmurje, precisely in Lendava, and therefore in the territory occupied by Hungarians and integrated into Hungary in 1941. Insofar as they did not manage to withdraw abroad or to the Ljubljana region occupied by Italians, they were arrested and taken to concentration camps, all their property confiscated. After the subversion in 1944, when Hungary was occupied by the German forces, the same destiny befell the Prekmurje Jews. A similar thing happened to most Jews in Ljubljana after the city was occupied by Germans in September 1943. In total, Nazis killed 550 Slovenian Jews during the war, almost 400 of whom lost their lives in Auschwitz.²⁵

5.

The toll of the few years of Nazi rule taken on the Slovenian nation was more than tragic, although it is clear that the majority of the most brutal violence was carried out as part of the Nazi efforts to limit or stop the population from supporting the resistance movement. If we ignore the great material damage caused by the Nazi authorities by exploiting Slovenian industrial capacities, by confiscating property, by burning down dozens of Slovenian villages and the general plundering during war operations, let us at least mention the most painful aspect, the human victims of Nazi violence among Slovenians. As a part of reprisals for partisan activities, German units burnt down entire villages, in some cases killed the entire male population in the process and sent the rest to concentration camps. We have mentioned a few of such cases, but the event which resounded most in the Slovenian space was the first of its kind, the destruction of the village of Dražgoše in Upper Carniola, which the occupiers razed after the end of the operations in January 1942. In “purging” the territory, some units, usually SS units, committed particularly despicable acts of war, such as decapitation or extraction of the eyes of prisoners of war.²⁶

Throughout this time the repressive Nazi authorities shot around 3,500 hostages, military and police units killed about 7,500 people during purges and reprisals, around 2,000 died in exile, and over 8,000 in concentration camps (mostly in Auschwitz, Dachau and Mauthausen). If we add more than 9,000 Partisans killed in combat with German units and fully neglect other war situations in which Slovenian people died, the Nazis, in the period 1941–45, directly claimed at least 32,000 lives in the territory of today’s Slovenia, which constitutes more than 2 % of the then population. If we, however, speak about the victims of the entire Slovenian nation, we must add to the above number many victims among Slovenians nowadays constituting the minority in Austrian Carinthia and in the hinterland of Trieste and Gorizia in Italy. Furthermore, the victims of the German occupation should include those Slovenians who were,

²³ Dorica Makuc, *In gnojili boste nemško zemljo (And You Will Fertilise the German Soil)*, Gorizia 1990; Tone Ferenc, “Okupatorjev požig vasi Strmec” (“Burning of the Village of Strmec by the Occupiers”), *Borec (The Combatant)*, 23/11 (1971), pp. 677–683.

²⁴ Joseph Poprzeczny, Odilo Globocnik, *Hitler’s Man in the East*, Jefferson, London 2004, pp. 335–351.

²⁵ Damjan Hančič, Renato Podbersič, “Nacionalsocialistično in komunistično preganjanje Judov na Slovenskem” (“National Socialist and Communist Persecution of Jews in Slovenia”), in: *Hitlerjeva dolga senca. Nacionalsocialistično državnoterroristično in rasistično preganjanje prebivalcev Slovenije in njegove posledice v Titovi Jugoslaviji (Hitler’s Long Shadow. National Socialist and State Terrorist Persecution of the Inhabitants of Slovenia, and its Consequences in Tito’s Yugoslavia)*, Klagenfurt 2007, pp. 175–188.

²⁶ Tone Ferenc, “Dva od njih so obglavili s sekuro: okupatorjev zločin v Idrijskih Krnicah” (“Two of Them Were Decapitated with an Axe: the Crime of the Occupiers in Idrijske Krnice”), *Borec*, 29/10 (1977), pp. 517–550.

contrary to the provisions of international war law, mobilised to Wehrmacht and killed on German fronts throughout Europe and Northern Africa, among whom there were at least 10,000 victims.²⁷

²⁷ Tadeja Tominšek Rihtar, "Imenski seznam žrtev druge svetovne vojne in neposredno po njej (1941–1946)" ("Name List of the Victims of the Second World War and Immediately Afterwards"), in: *Hitlerjeva dolga senca*, pp. 161–173.

Gorazd Bajc*

CRIMES COMMITTED BY THE FASCIST REGIME IN THE SLOVENE TERRITORY

1. Introduction

There is a number of works in the Slovene, Italian, English and other languages describing denaturalization measures employed by the Fascist regime, its assimilation pressure, aggression, war-time atrocities and consequences of World War Two (WWII) that began in the Slovene territory on 6 April 1941. Many aspects have been thoroughly studied and documented.

Even if the Fascists came in power in October 1922, the north eastern part of Italy – i.e. the region of Venezia Giulia encompassing the Slovene region of Primorska and the Slovene-Croatian region of Istria – had to face Italianization and violence against Slovenes (and other non-Italians) since the end of World War One (WWI) (October 1918). The region was occupied by the Italian army in the beginning of November 1918. The Italian authorities immediately introduced Italianization measures and started committing violence against Slovenes and Croats. The atrocities culminated in the arson of the National House (Narodni dom) in Trieste (the Slovene cultural, economic and political centre) on 13 July 1920, which was followed by the devastation of other Slovene, Croatian, left-wing and workers' centres. The Treaty of Rapallo signed by Italy and Yugoslavia on 12 November 1920 determined the demarcation line between the two states, and allowed Italy to annex Venezia Giulia in January 1921. The total number of Slovenes living in Italy, including Venetian Slovenes who had been subjugated to the Kingdom of Italy as early as 1866, thus increased to 360,000, while the number of Croats rose to 160,000.

2. Fascism in the Slovene territory before WWII (1922–41)

When Fascists ascended to power, the imperialist expansion of the Italian state became the primary concern of the official Italian foreign policy, which they did not even try to hide. With Yugoslavia being perceived as an obstacle to the Italian expansion to the east, its disintegration became one of the priorities of the Fascist foreign policy. In order to realize their imperialist plans, the Fascists firstly needed an ethnically “pure” hinterland. The high number of Slovenes (and Croats) living in Venezia Giulia thus posed a special problem to nationalist and irredentist circles at national and local levels.

The ascent to power enabled the Fascists not only to legalize, but also to radicalize their denaturalization policy after they had already committed many acts of violence that had caused great harm to the Slovene community.¹ The implementation of the Fascist legislation seriously threatened the key elements of the Slovene national survival: schooling, culture, toponyms, names and surnames, the press, economy, social, political and community life (associations). As part of the overall Fascist policy and legal order, such legislation indeed gradually introduced dictatorship across the entire Italian national territory, yet its implementation was most radical in Venezia Giulia.

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¹ Data are taken mostly from: Lavo Čermelj, *Slovenci in Hrvatje pod Italijo med obema vojnama*, Slovenska matica, Ljubljana 1965; Narodna in študijska knjižnica Trst, Odsek za zgodovino in etnografijo (Trieste National and Study Library, Department of History and Ethnography), fascicle HI/Zakoni (hereinafter: NŠK OZE, HI/Z). Historical surveys: Gorazd Bajc, Egon Pelikan, “Od konca prve do začetka druge svetovne vojne (1918–1941)”, in: *Na oni strani meje*, Založba Annales, Koper 2004, pp. 59–92; Stefano Bartolini, *Fascismo antisloveno*, I.S.R.Pt, Pistoia 2006; Milica Kacin Wohinz, Jože Pirjevec, *Zgodovina Slovencev v Italiji*, Nova revija, Ljubljana 2000; Milica Kacin Wohinz, *Prvi antifašizem v Evropi*, Lipa, Koper 1990.

2.1. Schooling²

Among the most evident Fascist legal measures against the Slovenes was gradual abolition of the use of Slovene in primary schools. The Royal Decree No. 2185 of 1 October 1923 legalized (Giovanni Gentile's) school reform, which brought the modernization of the out-of-date system of primary education to Italy, and the abolition of schools using a non-Italian language as the language of instruction to national minorities. On the basis of the reform, the decree stipulated that since the 1923–24 school year classes in the first grade of all primary schools would be taught in Italian only. In the next year, the decree also applied to the second grade and so on, so that eventually at the end of the 1928–29 school year the Slovene and Croatian languages were no longer used in primary schools, while the only private Slovene school in Trieste was closed down at the beginning of the 1930–31 school year in accordance with another royal decree. The only non-Italian primary school in Venezia Giulia that continued to hold classes in the pupils' mother tongue was the one run by the Serbian Orthodox congregation. Gentile's reform closed down as many as 444 Slovene schools attended by 50,000 pupils.³

Needless to say, it also came as a terrible blow to Slovene teachers from the Primorska region, forcing almost 1,200 teachers to stop teaching at more than 300 schools. Some were transferred to schools in inland Italy, while the majority emigrated to Yugoslavia. Some 200 were even persecuted by the police.⁴ In addition to Gentile's reform, one should also mention the Legislative Order No. 2300 of 24 December 1924 that provided for the dismissal of teachers who had not behaved in accordance with the government's political instructions. Not surprisingly, the order could be interpreted in an almost arbitrary manner. Finally, the Primary School Act No. 577 of 5 February 1928 confirmed that Italy was home to only one nation speaking only one language. Slovene secondary schools suffered the same fate as their primary counterparts partly owing to Gentile's reform and partly to some other local decrees.⁵

In 1926, the king disbanded the Association of Slovene Teachers. The Act No. 2247 of 3 April 1926 established a special organization for education of young people, in accordance with which the upbringing of children was not in the hands of the parents, but primarily the state. As a result, children were enrolled in Fascist youth organizations (Balilla, Piccole italiane, Avanguardisti, Giovani italiane, Giovani fascisti, etc.), while schools introduced introductory military education.⁶ The act also prohibited the circulation of Slovene books and the schooling of children abroad, prescribing severe punishment for the offenders.⁷ The Higher Education Act No. 1592 of 31 August 1937 hindered secondary school graduates who completed their secondary education in Yugoslavia from enrolling at Italian universities.⁸

Until 1927, Slovene priests were still allowed to hold Sunday school (reduced to an hour per week) in Slovene. In 1928, the Italian Ministry of Education however demanded that Sunday school be only in Italian.⁹ With religious teaching being held in schools, Slovene and Croatian priests decided to transfer it into churches.¹⁰

According to the estimation by Lavo Čermelj,¹¹ the abovementioned measures robbed more than 100,000 Slovene and Croatian children in Venezia Giulia of the possibility of attending classes in their mother tongue.

2.2. Associations

Fascist pressure gradually brought thriving Slovene community life to a standstill (in the beginning of 1924, Slovenes still had around 400 societies and associations). In 1924, the Udine Prefecture

² In addition to the aforementioned bibliography, also see the following publications: Drago Pahor, "Pregled razvoja osnovnega šolstva na zahodnem robu slovenskega ozemlja", in: *Osnovna šola na Slovenskem 1869–1969*, Slovenski šolski muzej, Ljubljana 1970, pp. 235–337; Adriano Andri, Giulio Mellinato, *Scuola e confine*, IRSML–FVG, Trieste 1994, pp. 129–135, 183–206.

³ NŠK OZE, HI/Z, Seznam/2 in Področja/3; Čermelj, *Slovenci*, op. cit., p. 50.

⁴ Minka Lavrenčič Pahor, *Primorski učitelji, 1914–1941*, NŠK OZE, Trst 1994.

⁵ Čermelj, *Slovenci*, op. cit., pp. 52–56; NŠK OZE, HI/Z, Seznam/6, 13 and Področja/3.

⁶ NŠK OZE, HI/Z, Seznam/6, 15, 17 and Področja/3, 5; Čermelj, *Slovenci*, op. cit., pp. 70–75.

⁷ Čermelj, *Slovenci*, op. cit., p. 60; NŠK OZE, HI/Z, Področja/3.

⁸ NŠK OZE, HI/Z, Seznam/18.

⁹ Čermelj, *Slovenci*, op. cit., p. 57.

¹⁰ More details in: Egon Pelikan, *Tajno delovanje primorske duhovščine pod fašizmom*, Ljubljana, Nova revija, 2002.

¹¹ Čermelj, *Slovenci*, op. cit., p. 60.

hindered the operation of Slovene associations in the Gorizia district by quoting an old Austrian act and suspending their operation until the approval of their rules, which was continually deferred. Their operation was also limited by the Act No. 2029 of 26 November 1925 stipulating severe penalties and providing for the dissolution of associations that had not observed the formalities (e.g. translated their rules of operation into Italian, submitted a detailed list of members, etc.). Punishment (dismissal from a civil service position) was also provided for those who were members of unregistered or disbanded associations. Not surprisingly, the Act resulted in the abolition of many Slovene associations. Their operation was further limited by the Act No. 1486 of 6 August 1926 governing the organization of public events in the fields of sport, culture, and the like. In order to participate in the organization of any type of public event, one had to obtain approval of a special regional commission several months in advance.¹² And so what happened with increasing frequency was that the authorities banned events and general assemblies of associations announced in advance or postponed them until a later date, which could also happen in the last minute. Eventually, on 9 October 1926, when the Gorizia Drama Society should have presented the first night of their new play, they issued an order prohibiting all public events scheduled for that year.¹³

The enforcement of the restrictive legislation was accompanied by a number of attacks on the premises of Slovene associations. To mention just one: on 4 November 1926, a Fascist group attacked and ransacked the premises of the “Zveza prosvetnih društev” (Association of Educational Societies) (the umbrella organization of nationally aware liberal Slovenes in the Gorizia district).¹⁴ The Public Security Act No. 1848 adopted two days later imposed new restrictions on the operation of Slovene associations by prohibiting public performance and publication activities, which in practice led to the suppression of their operation. In accordance with Article 215, the authorities disbanded another 30 (Slovene and Croatian) associations and confiscated their property as they had supposedly operated in contravention of the national legislation.¹⁵

The Acts No. 5 and 6 of 9 January 1927 banned all organizations and youth associations except those run by the Fascists. Formally, membership in Fascist organizations was voluntary, but the Royal Decree No. 6 of 9 January 1927 stipulated that scholarships, excursions and other benefits could only be enjoyed by members of Fascist organizations.¹⁶ This period also saw the establishment of Italian private schools intended for foreign-born citizens that were free of charge, recreational centres, summer and health camps, the introduction of mandatory language courses for grown-ups and professional and agricultural courses, and an increased offer of cultural and sport events.¹⁷

February 1927 witnessed a partial release of tension,¹⁸ which however lasted only until that summer. On 8 July 1927, Mussolini adopted a memorandum in response to the needs of district Fascist secretaries in Venezia Giulia for coordinated and harmonized implementation of the programme related to foreign-born citizens. On the basis of the memorandum, on 19 July 1927 the Ministry of the Interior sent the Venezia Giulia prefects the strictly confidential Circular no. 3832 stipulating that all remaining Slovene associations be dissolved by 1 October 1928 at the latest. As a result, the majority of still existing associations were disbanded by the end of 1927. Eventually, in September 1928 the Fascists also suppressed the most important Slovene association, i.e. the “Edinost” (Unity) Political Society in Trieste.¹⁹

2.3. Political life

In 1928, the Act No. 1019 of May 17 and its single text No. 1993 of 2 September decreed that the whole country be a single electoral district with a single list of candidates nominated by the Grand Council of Fascism. As a result, Slovenes and Croats living in Venezia Giulia remained without their political representatives in public life.²⁰

¹² Čermelj, *Slovinci*, op. cit., pp. 95, 105, 106, 108, 109; NŠK OZE, HI/Z, Seznam/5, 6, 11 and Področja/9, 10, 12.

¹³ *Edinost*, October 10, 1926.

¹⁴ Gorazd Bajc, “Goriško obdobje Zorka Jelinčiča (1924–1930)”, in: Zorko Jelinčič, *Nad prezrtjem in mitom*, Planinska zveza Slovenije–Planinsko društvo, Ljubljana–Tolmin 2000, pp. 98–99.

¹⁵ Čermelj, *Slovinci*, op. cit., pp. 109, 110; NŠK OZE, HI/Z, Seznam/10, 11 and Področja/10, 12, 20.

¹⁶ NŠK OZE, HI/Z, Seznam/12 and Področja/3, 4.

¹⁷ Čermelj, *Slovinci*, op. cit., pp. 62–66.

¹⁸ *Edinost*, February 8 and 9, 1927.

¹⁹ Milica Kacin Wohinz, *Narodnoobrambno gibanje primorskih Slovencev 1921–1928*, Lipa/ZTT, Koper–Trst 1977, pp. 529–533; Čermelj, *Slovinci*, op. cit., pp. 111–117; NŠK OZE, HI/Z, Seznam/12 and Področja/12.

²⁰ NŠK OZE, HI/Z, Seznam/13 and Področja/1; Čermelj, *Slovinci*, op. cit., p. 36.

2.4. The press

When Fascists came in power, physical attacks on Slovene printing houses, censorship, confiscation of Slovene newspapers, fabricated indictments and show trials were joined by persecution based on legal norms. The Act No. 3288 of 15 July 1923 stipulated that editors-in-chief had to be approved by prefects. The latter had the right to revoke their approval after they had issued a second warning in the same year, which in practice meant that they possessed the power to suppress the newspaper as they were not obliged to deliver a favourable opinion on a new editor-in-chief.²¹ The Order No. 1062 of 19 October 1923 issued by the Udine prefect required that since 21 October all foreign language newspapers published in the Udine region were obliged to translate all headlines and articles into Italian, with translations being published in the same font. Soon afterwards (i.e. on 22 October and 23 October respectively), the Trieste and Pula prefects issued similar orders.²²

The increasing limits imposed on the Slovene press were further strengthened by the Act No. 2307 of 31 December 1925 stipulating that the owner and director of a newspaper were obliged to settle all fines and administrative costs arising from violations of publishing rules, with their printing machines and materials and other property serving as their guarantee. With the situation becoming more and more intolerable, the majority of Slovene newspaper houses had to close down, while some transferred their operation across the border to Yugoslavia as that was the only way of preserving it.²³

The remaining Slovene press was suppressed when the Royal Decree No. 384 of 26 February, 1928 came into force, stipulating that all editors-in-chief had to be entered in a special official register of journalists and publicists. The registration was the prerequisite for occupying the position of director or editor-in-chief. No Slovene could meet that requirement as the applications were viewed by the Fascist trade union that turned down all Slovene applicants. 4 September and 17 November 1928 thus brought the ban on publishing *Edinost* and *Goriška straža* respectively. By January 1929, the Fascists managed to suppress all Slovene and Croatian periodicals, and in 1930 they also wiped out the Catholic press.²⁴

Gorizia was the only town in Venezia Giulia where it was still possible to publish certain Slovene books with Italian covers. In April 1934, the Minister of the Interior issued an order imposing preventive censorship on non-periodicals. In accordance with it and another order of 28 December the printer and the publisher had to submit several copies to the prefect and could not start selling them without his written approval. As a result, many Slovene and Croatian books were confiscated.²⁵

2.5. Violence and policing arrangements

Fascism brought about an increase in repression and physical violence. In March 1923, the Blackshirts were replaced by the Voluntary Militia for National Security (*Milizia volontaria per la sicurezza nazionale – MVSN*), which was in 1928 incorporated in the Fascist army. The MVSN squads were best organized in Venezia Giulia.²⁶ Their most notorious act of violence was committed on December 27, 1936, when they forced the Slovene conductor and composer Lojze Bratuž, who had taught children to sing Slovene songs, to drink motor oil combined with petrol; he died on 16 February 1937.

In 1926, the Fascists established OVRA – special secret Fascist police for repression of anti-Fascism. The Fascist regime engaged police, intelligence and security services in its anti-Slovene campaign. Legislation enabled it to persecute and imprison political adversaries on the basis of no evidence, merely “out of suspicion”. The Public Security Act of 1926 namely allowed the Fascists to administer “preventive” punishment to or to carry out police measures against individuals who opposed the regime even if they possessed no concrete evidence of their guilt. The following measures could be taken: 1) *diffida* = warning (the aim of which was to warn an individual to stop pursuing certain behaviour or action); 2) *ammonizione* = admonition (which followed “*diffida*” and indicated that the individual was not allowed to leave his home without notifying the police nor was he allowed to frequent public places, such as bars, and had to observe the curfew from sunset till dawn); 3) *confino* =

²¹ NŠK OZE, HI/Z, Seznam/3 and Področja/13; Čermelj, *Slovenci*, op. cit., p. 127.

²² NŠK OZE, HI/Z, Seznam/2 and Področja/13; Čermelj, *Slovenci*, op. cit., pp. 126–127.

²³ NŠK OZE, HI/Z, Seznam/4 and Področja/13; Čermelj, *Slovenci*, op. cit., pp. 127–128.

²⁴ NŠK OZE, HI/Z, Seznam/13 and Področja/13; Čermelj, *Slovenci*, op. cit., pp. 98, 132–133.

²⁵ Čermelj, *Slovenci*, op. cit., pp. 140–142; NŠK OZE, HI/Z, Seznam/15 and Področja/14.

²⁶ Kacin Wohinz, *Prvi antifašizem*, op. cit., p. 115.

confinement (deportation to islands or other solitary places under police surveillance). Such preventive punishment was administered to many Slovenes suspected of action against the regime.²⁷

The acts of 1926 governing national security introduced the death penalty for opponents of the regime. Thus the Act No. 2008 of 25 November 1926 established the Special Court for State Protection (Tribunale speciale per la difesa dello Stato) in charge of trials against defendants accused of crimes against the state. The Court operated until the fall of Fascism when it was abolished by the new Italian Prime Minister Pietro Badoglio (dependent on the Anglo-Americans) with the Government Decree of 29 July 1943. The Court processed 167 cases against 800 anti-Fascists from Venezia Giulia, of which 544 were of Slovene or Croatian nationality: 476 were sentenced and 68 released. It administered 47 death penalties, with 36 defendants being Slovene or Croats. Out of them, 26 people were shot: 22 Slovenes and 4 Croats. 4 death penalties were changed to life imprisonment, 6 to death penalty in absence. During the trials, 3 defendants committed suicide and 3 went insane. The two largest and most notorious trials against Slovenes were the first (the first part took place between 1–5 September 1930 in Trieste, and the second between 4–5 December 1931 in Rome) and the second (2–14 December 1941 in Trieste) Trieste trials.²⁸

2.6. Slovene in public use, place and personal names

On the basis of the Royal Decree No. 440 of 18 February 1923, many Slovene and Croatian employees were dismissed for not providing a sufficient guarantee that they would loyally perform their work. Naturally, the evaluation of loyalty was in the hands of their superiors. The Royal Decree No. 1921 of 14 September 1923 included similar provisions. The Act No. 2300 of 24 December 1924 provided for the dismissal of every official or civil servant who had not acted in accordance with the political will of the government or offered a sufficient political guarantee or whose children attended Slovene schools or universities in Yugoslavia. It was enough to give a Slavic name to your newborn baby to be dismissed. Many Slovenes occupying civil servant positions in Primorska and Istria were thus dismissed, retired or transferred to Italy.²⁹

The Royal Decree No. 1921 of 1923 provided the legal basis for the dismissal of judges who were not fluent in Italian,³⁰ while the Royal Decree No. 1796 of 15 October 1925 ultimately prohibited the use of Slovene and Croatian in all courts of law.³¹

The Act No. 337 of 4 February 1926 and its amendments of 25 June (Act No. 1262) enabled the Fascists to carry out most drastic measures at the local level as it annulled the autonomy of municipalities with a population lower than 5,000 people. In accordance with the Royal Decree No. 1910 of 3 September 1926, its provisions also applied to all municipalities that were not run by elected mayors but by the so-called podestas, i.e. municipality chief officers appointed by the government who were no longer accountable to the municipality inhabitants but to the local prefect instead. Podestas were usually Fascists or in rare cases Slovenes who accepted the new regime. In line with the new act of March 1934 governing municipalities and regions, the prefect also appointed the municipal council. In 1926, the Fascist government adopted an act on regions stipulating that regional councillors and president were no longer elected by the people, but were appointed by the government on the suggestion of the Minister of the Interior. Fascism also annulled the last form of autonomy that remained to the Slovene and Croatian communities: it prohibited the use of Slovene and Croatian in municipal premises and allowed only the employment of Italian municipal staff. The Act No. 1019 of 1928 excluded all Slovene and Croatian MPs from the list of candidates for civil service.³²

On 1 December 1922, the Prefect of Venezia Giulia decreed that all inscriptions, bills, price lists and the like in bars and restaurants had to be bilingual, with the Italian text being written first. On December 26, the Prefecture issued a decree regarding street signs and inscriptions on all municipal premises and institutions. The Royal Decree No. 352 of 11 February 1923 imposed a four times higher tax on all public inscriptions in a non-Italian language. The Royal Decree No. 1035 of 14 November 1931 stipulated that the tax be five times higher.³³

²⁷ Čermelj, *Slovinci*, op. cit., pp. 242, 281–289; NŠK OZE, HI/Z, Seznam/10.

²⁸ *Enciklopedija Slovenije*, Mladinska knjiga, Ljubljana 1987–2002, No. 9, p. 159.

²⁹ NŠK OZE, HI/Z, Seznam/3, 4, 6 and Področja/9; Čermelj, *Slovinci*, op. cit., pp. 93, 94.

³⁰ NŠK OZE, HI/Z, Seznam/3.

³¹ NŠK OZE, HI/Z, Seznam/5, 6 and Področja/6, 7; Čermelj, *Slovinci*, op. cit., p. 83.

³² NŠK OZE, HI/Z, Seznam/6, 7, 13 and Področja/1, 2; Čermelj, *Slovinci*, op. cit., pp. 41–45.

³³ NŠK OZE, HI/Z, Seznam/1, 2, 14 and Področja/7, 8; Čermelj, *Slovinci*, op. cit., pp. 88, 89.

In March 1923, the first Prefect of Venezia Giulia notified all mayors and civil servants that a ministerial decree prohibited the use of local languages, with Italian being the only official language.³⁴ The Royal Decree No. 800³⁵ of 29 March 1923 then replaced several-century-old Slovene and Croatian toponyms with mostly newly-coined Italian names. Eventually, Italianized names of Slovene places, rivers, mounts, etc. gained ground, and Italian was determined the only official language to be used in all public and private matters, on public signs and memorials.

The Act No. 17 of 10 January 1926 stipulated that the change of surnames also applied to company names. The Royal Decree No. 494 of 7 April 1927 (according to which the Royal Decree No. 17 and the Act No. 898 of 24 May 1926 valid for South Tyrol also applied to Venezia Giulia) called for the Italianization of family names. According to certain data,³⁶ as many as 115,000 Slovene family names were Italianized.

In accordance with the Act No. 383 of 8 March 1928 (incorporated into the Royal Decree No. 1238 on 9 July 1939), it was prohibited to give newborn babies funny or immoral names or names that would offend the public opinion. In other words, it was prohibited to give one's children Slovene names. Moreover, Article 3 of the said Act provided for the Italianization of Slovene baptismal names used by grown-ups,³⁷ authorizing local population register offices to autonomously translate Slovene and other names into Italian. As estimated,³⁸ in Trieste and Gorizia there were as many as 75 % of Slovene names Italianized. The Fascist regime also introduced special registers of Italianized surnames. According to Lavo Čermelj who based his estimation on such registers,³⁹ there were at least half a million persons whose surnames were Italianized.

2.7. Economy

The Fascist ascent to power increased the pressure on Slovene economy. Until the formal imposition of dictatorship, the most serious threat was posed to the ownership rights of Slovene municipalities in Venezia Giulia since the Royal Decree No. 1122 of 23 May 1924 had severely limited their operation. They had to obtain approval for any type of construction or excavation and for cutting woods, while the military authorities had the right to expropriate private property or to demolish a certain building at any time. In addition, the Royal Decree No. 751 of 22 May 1925 and other Fascist measures gave a severe blow to Slovene peasants who had made a living from the common village property (owned by the village or agrarian community) for ages (while granting a number of benefits to Italian tenants).⁴⁰

As for labour rights, the Act No. 563 of 3 April 1926 assigned the exclusive responsibility to select workers to Fascist trade unions, which meant that employers could hire only workers proposed by Fascist trade unions. That same year saw the adoption of the Act No. 747 of 6 May stipulating that members of the Italian Bar Association were allowed to appoint only one half of the members of the board, while the other half had to be nominated by the Fascist barristers' union. Furthermore, the Act No. 2268 of 23 December 1926 decreed the dismissal of all sailors of Slovene and Croatian nationalities working on Italian vessels. In accordance with a decree adopted in next January, the dismissal also applied to port workers, miners from the Idrija mercury mine, etc.⁴¹

In the field of economy, denaturalization reached its peak in the 1920s. In 1921, the Institute for Agrarian Revival (Ente per la rinascita Agraria delle Tre Venezie) launched an expropriation campaign and organized auction sales that sold numerous land estates and populated them with Italian tenants as part of the so called "ethnic amelioration" programme.⁴² The plan also envisaged the resettlement of certain population categories to inland Italy or African colonies, which was thwarted by the war. The Act No. 1770 of 1927 and several other measures caused additional damage to the aforementioned common village property.

³⁴ NŠK OZE, HI/Z, Seznam/3 and Področja/7.

³⁵ NŠK OZE, HI/Z, Seznam/2 and Področja/15; Čermelj, *Slovinci*, op. cit., pp. 148–150 (According to Čermelj, this was Royal Decree No. 900).

³⁶ NŠK OZE, HI/Z, Seznam/7, 8 and Področja/8, 15, 16.

³⁷ NŠK OZE, HI/Z, Seznam/13; Področja/17; Čermelj, *Slovinci*, op. cit., pp. 161–162.

³⁸ *Enciklopedija Slovenije*, op. cit., No. 4, p. 187.

³⁹ Čermelj, *Slovinci*, op. cit., p. 154.

⁴⁰ NŠK OZE, HI/Z, Seznam/4, 14 and Področja/17, 19; Čermelj, *Slovinci*, op. cit., pp. 167, 168, 174–187.

⁴¹ Čermelj, *Slovinci*, op. cit., pp. 96–99; NŠK OZE, HI/Z, Seznam/8, 9 and Področja/10, 11.

⁴² NŠK OZE, HI/Z, Področja/18.

The decisive blow to Slovene economy was delivered in the form of financial aid cancellation. In 1928, the Fascists dissolved the Management and Supervisory Boards of Slovene Cooperative Associations in Trieste and Gorizia. The former was composed of 140 cooperatives (of which there were 86 credit unions) with a total membership of 45,000, while the latter joined together 170 cooperatives (including 70 credit unions) with a total membership of 47,000. The Act No. 375 of 12 March 1936 and the Royal Decree No. 1400 of 17 July 1937 provided for the state's complete nationalization and loan concentration, as well as for exclusion of any foreign capital. The remaining Slovene financial institutions and credit unions were either abolished or forced to merge with their Italian counterparts.⁴³

2.8. Ecclesiastical conditions

Interestingly, it was in the field of religion that the Slovene language witnessed the longest use. Eventually, the policy pursued by the civil authorities accompanied by the silence of the Vatican City and the local church hierarchy (in particular after the Lateran Treaty of 1929) had an increasingly stronger and faster impact on this area of people's life. Gradually, the Fascists managed to replace bishops who were friendly to Slovenes and Croats with those who were loyal to the regime, and persecuted Slovene and Croatian priests. In 1933, they prohibited the use of Slovene in churches in the Venezia district (to which the Vatican City did not object), and in 1934 they closed down all Slovene and Croatian monasteries in Venezia Giulia.⁴⁴

3. Fascism in the Slovene territory during WWII

On 6 April 1941 Yugoslavia was invaded, partitioned and occupied. The Italians occupied the Slovene regions of Dolenjska and Notranjska and united them into the Ljubljana Province (Provincia di Lubiana). On 3 May 1941 the Province was formally annexed to Italy, by which the Italians violated international law according to which it was not allowed to annex an occupied territory prior to the signing of the peace treaty.

In the spring of 1941, the Italian territory populated by Slovenes thus expanded by some 4,550 square km, while the number of Slovenes living within Italian borders rose from almost 319,000 to around 700,000. The census conducted by the Italian occupational authorities on 31 July 1941 showed⁴⁵ that the Ljubljana Province's population totalled 339,751, of which there were 318,773 Slovenes (93.8 %), 13,580 Germans, 5,053 Croats, 511 Serbs, 1,376 citizens of other nationalities (including some Jews), and only 458 Italians.

The invasion of Yugoslavia did not change the administrative and political system of Venezia Giulia nor the Fascists' negative attitude towards the Slovene and Croatian national communities. The military and civil authorities expected "Slovene irredentism" to gain ground, and their fear must have facilitated the preservation of police control along the former Rapallo border. In order to suppress the Slovene resistance, the Fascists formed special police groups that "distinguished themselves" with their cruelty. In mid-February 1942, they launched major and minor offensive operations, while in the beginning of spring 1942 they started carrying out repressive measures (they burned down villages and hanged civilians).⁴⁶ Certain Fascist functionaries justified their acts by quoting Mussolini's speech delivered to his military commandants on 31 July 1942⁴⁷ in Gorizia in which he stressed that he was not against the expulsion of all Slovenes.

In the meantime, the Fascists administering the Slovene territory lying to the east of the Rapallo border pursued a milder occupational policy in comparison with their German and Hungarian allies. They somehow paid respect to Slovene cultural and educational institutions as they wanted to win the sympathies of the population, which they partly did for some time.⁴⁸ Even if certain Slovene intellectuals collaborated with the Italians in the beginning, the relations soon cooled down owing to the state of war and Partisan actions. The Italian occupiers increasingly modelled themselves on

⁴³ NŠK OZE, HI/Z, Seznam/17 and Področja/17, 18; Čermelj, *Slovenci*, op. cit., pp. 169, 173. More details in Milan Pahor, *Lastno gospodarstvo jamstvo za obstoj*, Trst, SDGZ, 1998.

⁴⁴ More details in: Pelikan, *Tajno delovanje*, op. cit.

⁴⁵ Davide Rodogno, *Il nuovo ordine mediterraneo*, Bollati Boringhieri, Torino 2003, p. 114.

⁴⁶ Tone Ferenc, *Neupogljivi zakon Rima (La legge inflessibile di Roma)*, Društvo piscev zgodovine NOB, Ljubljana 2004.

⁴⁷ Tone Ferenc, *La provincia 'italiana' di Lubiana, documenti 1941-1942*, IFSML, Udine, Doc. No. 91.

⁴⁸ E.g. Bojan Godeša, *Kdor ni z nami, je proti nam*, CZ, Ljubljana 1995, pp. 73-107.

Germans and their drastic repressive methods, and methodically introduced cruel measures, which however only gave new momentum to the Slovene resistance. The Fascist repression affected not only supporters of the national liberation movement, but also the entire population. In 1942, almost all municipalities within the Ljubljana Province imposed a curfew, which was not lifted until the very end of the Italian occupation. Later on, they prohibited bicycle riding, hunting, and use of weapons (even to game wardens), kept the inhabitants under strict surveillance by using special lists, and kept a close watch on them when they used public transport, etc.⁴⁹

In September 1941, the Ljubljana Province High Commissioner Emilio Grazioli issued an order regarding confinement and the establishment of an extraordinary court.⁵⁰ As a result, around 600 people were confined during 1941 and 1942. With the entire occupied territory witnessing strained relations, on 19 January 1942 Mussolini authorized the army to maintain law and order and to be in charge of armed departments of the civil authorities.⁵¹

The notorious Circular 3 C (Circolare 3 C) issued by the High Command of the 2nd Army Group on 1 March 1942 introduced new strict measures against members of the resistance and their supporters: shooting of hostages, internment, arson and demolition of buildings and entire settlements.⁵² In the Ljubljana Province, the first two villages were burned down on 19 March 1942, and were followed by so many others that, according to the most distinguished expert in this topic Tone Ferenc,⁵³ it was impossible to count them all.

At the end of April 1942, the civil and military authorities of the Ljubljana Province had the first hostages shot, and had altogether 146 people killed until January 1943. In comparison with the number of people sentenced to death and killed as hostages, the number of people shot without trial (“*passati per le armi*”) was incomparably higher. The majority of them were not prisoners of war who were usually shot after being captured, but civilians. The Italian army shot large groups of innocent people during its operations, e.g. during the large offensive lasting from July till November 1942. According to the recently gathered data, the number of such victims in the Ljubljana Province exceeded 1,500.⁵⁴

With the situation getting worse and worse, on 24 August 1942 Emilio Grazioli proposed the Ministry of the Interior the following potential measures, which were so cruel as those carried out by the German occupier in northern Slovenia: “The problem posed by the Slovene population can be solved in the following manners: 1) by annihilation, 2) by resettlement, 3) by elimination of hostile elements through a harsh righteous policy of rapprochement that would first lay foundations for useful and fair cooperation and then provide a platform for assimilation, which however can be achieved only in the course of time.” He continued by suggesting that if Rome opted for mass internment of Slovenes, the area should be repopulated with Italians, with the resettlement of the Slovene population starting “in the Slovene zone extending across the border”.⁵⁵ Fortunately, the state of war thwarted Grazioli’s proposals.

Nevertheless, more than 7 % of the Ljubljana Province population was subject to internment. From February 1942 until September 1943, the Italian police, *carabinieri* and the army captured and deported to Italian concentration camps several groups of people, starting with individuals captured during police raids carried out in February and March 1942 in Ljubljana, and continuing with former Yugoslav officers and non-commissioned officers, immigrants from Venezia Giulia, relatives of Partisans, unemployed people, university and secondary school students, Jews, etc. The Italian occupational authorities designate certain areas from which the Slovene population should have been wiped out. Thus more than 20,000 male and female Slovenes from the Ljubljana Province were interned in concentration camps in Gonars near Palmanova, Monigo and Visco near Treviso, Chiesanuova near Padua, Renicci along the Tiber and in other places. Among the most notorious camps was that of the Rab (Arbe) island featuring the highest

⁴⁹ E.g. Tone Ferenc, “Slovenci pod Italijo 1941–1945”, in: *Na oni strani meje*, Založba Annales, Koper, pp. 93–110. Cfr. Ferenc, *La provincia*, op. cit., Doc. No. 53, 61, 62.

⁵⁰ Tone Ferenc, *Rab-Arbe-Arbissima*, INZ–Društvo piscev zgodovine NOB, Ljubljana 2000, Doc. No. 11, 13, 15; Tone Ferenc, “*Ubija se premalo*”, INZ–Društvo piscev zgodovine NOB, Ljubljana 1999, Doc. No. I/3.

⁵¹ Ferenc, *Slovenci pod Italijo*, op. cit., p. 100.

⁵² Ferenc, “*Ubija se premalo*”, op. cit., Doc. No. II/3.

⁵³ Ferenc, *Slovenci pod Italijo*, op. cit., p. 100.

⁵⁴ Ferenc, “*Ubija se premalo*”, op. cit.

⁵⁵ Ferenc, *La provincia*, op. cit., Doc. No. 97.

mortality rate owing to inhuman living conditions.⁵⁶ The precise number of all Slovene victims of the Italian occupation will never be known.⁵⁷

Unfortunately, the fall of Fascism in Italy (25 July 1943) brought almost no relief to Slovenes. With the exception of the Fascist administration of the Ljubljana Province, all other structures were preserved. There was no major release of internees from the concentration camps or political prisoners from prisons in the Ljubljana Province or Italy. On the contrary, they still served as places of internment of anti-Fascist and rebellious persons. The capitulation of Italy on 8 September 1943, however, did turn the power relations upside down. While Italy reached the peak of its territorial conquest at the onset of war, 8 September 1943 marked the beginning of the reverse period. With war achievements being largely annulled, even the preservation of the pre-war borders became questionable.

On 10 September 1943 the territory encompassing the Provinces of Udine, Trieste, Gorizia, Pula, Rijeka and Ljubljana saw the establishment of the Operation Zone of the Adriatic Littoral (Operationszone Adriatisches Küstenland). Owing to his friendly and opportunistic relation with Mussolini, Hitler did not want to annex it to Germany during the war as he most probably expected that the annexation would be met by a fierce Italian response. Even if the Germans left the fate of the region open waiting for more favourable conditions, they nevertheless wanted to preserve part of it for themselves. Officially, Italy was pushed aside in the Adriatic Littoral, while in reality it could send its troops to the area and mobilize them under German surveillance. Helped by the armed Italian quisling formations, the German occupier committed numberless acts of severe violence (wholesale slaughter of hostages, arsons of settlements, slaughter of civilians, deportation to labour and concentration camps located in the Third Reich, forced mobilization of the workforce in order to carry out construction works, etc.).⁵⁸

⁵⁶ More on camps: Ferenc, *Rab*, op. cit.; Božidar Jezernik, "Italijanska koncentracijska taborišča za Slovence med 2. svetovno vojno", *Borec*, 557–558 (1997), Ljubljana; Carlo Spartaco Capogreco, *I campi del duce*, Einaudi, Torino 2004; Alessandra Kersevan, *Un campo di concentramento fascista, Gonars 1942–1943*, Comune di Gonars/Kappa Vu, Udine 2003; Alessandra Kersevan, *Lager italiani, Pulizia etnica e campi di concentramento fascisti per civili jugoslavi 1941–1943*, Nutrimenti, Roma 2008.

⁵⁷ According to some authors, their total number exceeded 13,000 (Alberto Buvoli, "Il fascismo nella Venezia Giulia e la persecuzione antislava", in: *Venezia Giulia 1943/1945, Foibe e deportazioni, Quaderni della Resistenza*, 10 (1998), pp. 26–27) excluding people who died because of the consequences of the occupation.

⁵⁸ Gorazd Bajc, *Operacija Julijska krajina*, Založba Annales, Koper 2006, pp. 35–40, 307–320.

Ljubo Sirc*

TOTALITARIAN FEATURES OF THE JUDICIARY IN THE REPUBLIC OF SLOVENIA (1945–90): DISREGARD FOR THE RULE OF LAW

In *The Economist* Charlemagne quoted a European Foreign Minister: “We even question its /Slovenia’s/ moral right to demand that neighbours like Serbia face up to their history; Slovenia is in a ‘precarious position’ because it has ‘not admitted all the wrongs’ from its communist past, allowing ex-apparatchiks to remain in positions of power after 1991.”¹

In *Frankfurter Allgemeine* Karl-Peter Schwarz wrote: “Personally as well as mentally, continuity dominates. Thus far, the Slovene Parliament has not made up its mind to condemn communism ... Judges who used to pass political judgments continue to judge and journalists who approved of them, continue writing leaders.”²

Karl Popper wrote: “The first point is that you cannot make a free-market society from the top down. What you can and what you should do under all circumstances, what every government has a duty to do, is to try to establish the rule of law ... Even Napoleon knew he had to establish a Code if there was to be a free-market society.”³

1. The description of facts

1.1. The list of mass-graves in Slovenia

There is now a comprehensive list of mass-graves in Slovenia enumerating the 571 mass graves discovered and listed so far. The compilers are Prof Mitja Ferenc and Dr Jože Dežman, Director of the Museum of Recent History, Ljubljana. There is also a Commission for the Rectification of Wrongs.

The number of victims (corpses) in each grave is not given. One of the highest figures is 15,000 in a tank trench near Maribor. The total number is estimated to be between 150,000 and 200,000.

The nationalities of those murdered are also indicated.

The Croats are probably the most numerous, and made up of two categories: they all came to Slovenia in 1945 trying to escape to the West from the communist-led National Liberation Army (NLA). Some 40,000 must have been the Nazi-sponsored Croat fascists (Ustashe). In contrast some 100,000 would have been forcibly mobilised Croat soldiers, whose predominant loyalty was to the pre-war Croat Peasant Party leader, Vladko Maček. The Nazis put pressure on him in 1941 to become the figurehead of newly founded Independent State of Croatia, but he refused and spent the war confined to his farm. At the end of the war, Maček escaped to the West and died in the United States.

During the war, Maček’s associate Košutić tried to liaise with the NLA, but the communist leaders arrested him instead of trying to cooperate with the Croat Peasant Party in the struggle against the Nazis.

The second group, found in the graves, are the so-called Slovene Home-guards. This group was the result of the Liberation Front manoeuvres in Slovenia at the end of 1941 and the beginning of 1942. The Liberation Front first proclaimed that nobody would be allowed to fight the occupiers outside this Front and began killing persons who tried to organise other resistance groups. Later, they even proclaimed the beginning of “class war” and started to attack villages, accusing the peasants of being “kulaks”. Understandably, the peasants began defending themselves and ended up under the protection of Germans who were less of a threat to them than the Communists.

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¹ *The Economist*, 8 December 2007.

² *Frankfurter Allgemeine*, 10 December 2007.

³ Karl Popper, *The Lesson of this Century*, Routledge, London–New York 1997, p. 31.

The acceptance of such protection was very inept and unfortunate, but it would have required extraordinary political guile to cope with both the class-war and the simultaneous European war.

The Slovene “kulaks”, organised as Home-guards, tried to take refuge with the British Army in Carinthia. The British expected civilised behaviour in handing them back, whereupon most of them were killed by the Communists.

A smaller group of Slovene soldiers, who had accepted Mihajlovič’s command in fighting the Germans, was killed in 1943 by the communist Partisans.

Furthermore, Serbs and Montenegrins escaping from the NLA through Slovenia were caught and assassinated.

Similarly, the NLA put to death groups of German prisoners of war whom they captured.

Another category included members of the German minority in Slovenia, often with women and children, as also seen in other cases.

A vital question is: who did all the killing? And perhaps an even more important question: who ordered the murdering? These questions need an answer, particularly if one looks at a map of Slovenia, even with only one third of the mass-graves marked on that map.

The answer is straightforward, and what is more, inevitable. Anybody can guess what it is, but it becomes particularly striking when given by Mitja Ribičič - Ciril, at the time of the killing a high-ranking Slovene political policeman and then later Yugoslav Prime Minister and even Yugoslav Vice-President in Tito’s presidency. His answer is: “The massacre of quislings was in all likelihood ordered by Tito and the highest officers.”⁴

In other words, the order was given by the highest dignitaries of the Yugoslav Communist Party, while the execution was done by their Communist underlings, although much care was taken to conceal their identity.

Whoever reads the description of the corpses in the mass graves (above), will immediately have doubts about the description of all those murdered as “quislings”. That description becomes even less persuasive if one reads the report on a number of partisans either murdered by Ribičič himself or on his orders. This demonstrates that those victims were under suspicion of being “blue-ones” (i.e. nationalists) instead of communists, – sufficient grounds to kill them when they joined the partisans in Styria, although they had been recruited by fervent communists.⁵

Even more horrifying is the story of the murder of the twelve parachutists sent by the British to Slovenia to help the partisans in their struggle. They were simply qualified as “imperialist agents” and murdered on orders, or at least with the knowledge, of a colleague of Ribičič, Viktor Avbelj - Rudi, who was a political commissar in the area of Trieste.⁶ In the same way, the British liaison officer Major A. F. Hesketh Pritchard was killed because he wanted to go to Austria, which was reserved for the Soviets.

One of the results of the mass-murders in Slovenia was the crippling and elimination of the Croat Peasant Party, representing some 80 % of Croat voters before the war, and of the Slovene People’s Party, representing some 60 % of voters in Slovenia.

1.2. Bias of the judiciary in the Republic of Slovenia

The two political policemen, described earlier as participating in the killing of the partisan suspect for not being pro-communist, Mitja Ribičič - Ciril and Viktor Avbelj - Rudi, also played a role in the post-war judicial persecution of non-communist politicians and friends of the West.

When Stalin ordered in 1947 the elimination of democratic opposition in Eastern Europe, three trials were staged in Yugoslavia, one of them in Ljubljana. (British reactions to this trial, and a description of it as part of the East European suppression of democratic opposition, have been included as appendices to this article). In the Ljubljana trial, Avbelj acted as State Prosecutor and Ribičič as chief of investigators. One defendant, Črtomir Nagode, was sentenced to death and executed, two more were sentenced to death but the sentence commuted to twenty years in prison, and 12 were sentenced to long prison terms. Among the defendants were two former members of the wartime Yugoslav Government in Exile that had been based in London.

⁴ *Republika*, 22 May 1994.

⁵ See Jože Pučnik, *Zgodovina organov za notrante zadeve v Sloveniji (History of the Political Police in Slovenia)*, 1996, p. 292.

⁶ See John Earle, *The Price of Patriotism*, The Book Guild, Sussex, England.

In spite of their membership in the political police and their roles in the killing of political opponents and staging trials, Ribičič and Avbelj remained leading officials around whom young communists assembled. Among them was Milan Kučan, whose first position was as leader of Communist Youth; as such he participated in the suppression of the students' protests in 1968. Later, when Ribičič was Chairman of the Workers' Alliance of Slovenia, Kučan was appointed its Secretary. In 1978, Kučan was promoted to the Chairmanship of the Slovene Parliament at Ribičič's recommendation. In 1982, when Ribičič went to Belgrade to join the Communist League leadership, Kučan accompanied him. They both returned to Slovenia in 1986, Ribičič to retire and Kučan to become President of the Slovene League of Communists.⁷

Thus, Kučan was the leader of the Slovene Communists when communism collapsed in Europe. In Slovenia, DEMOS (the Democratic Opposition of Slovenia) formed a government, separated from Yugoslavia, and for a few years was generally influential. Yet, Kučan succeeded in being elected President of the country, while Ribičič's son Ciril became the transitional leader of the League of Communists, eventually renamed the Social-Democratic Party.

After a few years of Western democratic influence, Kučan's Social Democrats together with Liberal Democrats (the renamed Communist Youth) took over the parliament. In the mid-1990's, when this body had to form a new Constitutional Court, it unsurprisingly elected communist judges as Kučan had put forward all the candidates.⁸ One of the new constitutional judges was Ciril Ribičič, Mitja's son.

The atmosphere in Slovenia in the 1990's is best shown by the half-page death announcement of Viktor Avbelj - Rudi after he committed suicide in 1993.⁹ President Kučan, Prime Minister Drnovšek, and President (Speaker) Rigelnik of the Parliament signed Avbelj's obituary. Despite Avbelj's past in the political police, they proclaimed "glory to his memory".

Before 1989, a Marxist moral-political orientation was considered an essential qualification for a judge. However, as no judges were dismissed, those with this 'qualification' remain *in situ*. It is hardly surprising, therefore that Prime Minister, Janez Janša expressed the following view of the Slovene judiciary: "Those who have ruled Slovenia almost without interruption for the last 60 years, succeeded in establishing during that time a special one-party judicial system controlled by their own power ... They dominated everything – from professorships at the universities to prison guards ... This network has never been fully dismantled. The judiciary reform of 1994 even attempted to rebuild it in some way ... Perhaps measures such as the European Union has recently demanded from Bulgaria could help ..."¹⁰

Peter Jambrek, Slovenia's judge in the European Court of Human Rights until 1998, is of a similar opinion as quoted in *Delo's* Saturday supplement.¹¹

On the other hand, Milan Kučan, who as President selected Constitutional Court judges, has maintained close contact with other political policeman, such as Zdenko Roter, who had specialised in the persecution of priests, and Stane Saksida, who explained Kučan's idea of 'civil society' when Forum 21 was set up.¹² Forum 21 is to teach Slovenes – supposedly confused by the multi-party system – how to run their country.

1.3. *Ex post facto* changes in law

It is not just that courts in Slovenia are neither impartial nor independent; it was the legislative branch, i.e. the Slovene Parliament, that violated the principle of no retroactive legislation, in 1998.

A description of how the legal provisions were altered *ex post facto* in 1998 is contained in the Order (Sklep) of the Higher Court in Ljubljana¹³ English translation: "The first instance Court adopted the view that the legal basis for the solution of this case is contained in the Act on the Implementation of Penal Sanctions (Official Gazette of the Socialist Republic of Slovenia 17/78 – 8/90 and of the Republic of Slovenia 12/92). Simultaneously it adopted the view that financial claims were included in the confiscation pronounced with the criminal sentence issued by the depending party, i.e. the State. Regarding these claims, the first instance court was of the opinion that the accused party was held to retribute whatever the claimant himself could have recovered under normal circumstances.

⁷ *Mladina*, 31 August 1993, p. 23.

⁸ *Mag*, 3 January 2007, p. 28.

⁹ *Delo*, 7 April 1993.

¹⁰ *Demokracija*, 31 June 2006.

¹¹ *Delo*, 9 December 2006.

¹² *Delo*, 10 June 2004, p. 5.

¹³ Dated 16 April 1999, No II Cp 326/97, p. 8.

Before the appellate court could decide on the appeal, there occurred in our state an alteration of the law in this area. In the meantime, an Act on the Temporary Suspension of the Implementation of some Provisions of the Act on Denationalisation (ZDEN) and the Act on the Implementation of Penal Sanctions (ZIKS) was adopted on the basis of which all legal procedures pertaining to such cases would rest *ex offio* (until 20/12/97). Subsequently, the Act on the Alteration of the Act on a Temporary Suspension of the Provisions of ZDEN and ZIKS was introduced (Official Gazette of the Republic of Slovenia 87/97) which extended the period of suspension till 31/3/98. Thereafter, the now valid Act on Amendments and Supplements to the Act on Implementation of Penal Sanctions was adopted and tested regarding its constitutionality by the Constitutional Court that ruled on this matter by means of a Decision No. U-I-60/98, published in the Official Gazette of the Republic of Slovenia 56/98. Since the valid Act on the Implementation of Penal Sanctions provided that the amendments should be applied also to those proceedings which started before the introduction of the Act, but have not been concluded in a legally binding way hitherto, this case has to be decided according to the valid and amended ZIKS (Art. 3 of the Act quoted). Since the amended Act has altered the provisions determining the comprehensiveness, form and limitations with respect to the restitution of property confiscated in criminal trials concluded in a legally binding way before 31/12/1958, while the penalty of confiscation was set aside on the basis of extraordinary legal procedures, it is necessary to distinguish between various kinds of claims by the claimant with precision, as the legal basis for the decision on these claims depends on this distinction.”

The above text, taken from the order of the Higher Court of Ljubljana, dated 16 April 1999, provides an illustration of the complete disregard for human rights and legal principles by the Slovene legislation and judiciary.

Eight years after the quashing of the 1947 sentence on Ljubo Sirc and his late father Franjo Sirc, the appellate court referred back to the first instance court, a case for compensation for confiscated property which was submitted six years earlier, and which the first instance court ruled on three years earlier.

The reason for the delays was the chopping and changing of the pertinent law by the Slovene Parliament in opposition to all internationally accepted principles, especially that retroactivity of legal rules is not permissible and that persons in the same situation should be treated equally.

2. Relevant international law

2.1. Independent and impartial tribunals

Partisans of the present state in the Republic of Slovenia will naturally claim that the activities of the courts in the country were legitimate since they were carried out by bodies that had been appointed according to law.

However, appointment, according to valid law, is only one condition for legitimacy. Art. 6 (1) of the Convention for the protection of Human Rights and Fundamental Freedoms provides *inter alia*: “In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”¹⁴

In *Findlay v. United Kingdom* the European Court of Human Rights stated that: “In order to establish whether a tribunal can be considered as ‘independent’, regard must be had *inter alia* to the manner of appointment of its members and their terms of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence.

As to the question of ‘impartiality’, there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect.”¹⁵

¹⁴ Art. 6 (1) of the Convention for the protection of Human Rights and Fundamental Freedoms, Rome 1950.

¹⁵ EHR 221, 1997, para. 73.

This pronouncement makes it clear the Slovene courts are neither ‘independent’ nor ‘impartial’. It cannot be expected that they would judge fairly. Perhaps one or two judges with a communist past may be overlooked, but more than this becomes senseless. It should not be forgotten that the totalitarian party to which they belonged staged show trials and ordered mass murders without court proceedings.

2.2. Prohibition of retroactivity

In Article 155, the Constitution of the Republic of Slovenia prohibits retroactive validity of legal provisions. The second paragraph of Article 155 reads: “A legal act only may provide that its individual provisions have a retroactive effect if such an effect is required by a public need and if such an effect does not disturb acquired rights.” The conjunction “and” rather than “or” means that both conditions have to be fulfilled rather than one of them only.

Although this Article conforms with an internationally accepted legal principle, there is no equivalent Article in the European Convention of Human Rights, so much so that the Grand Chamber had to fall back on an interpretation of Article 1 (Protection of Property) of Protocol No. 1 to the Convention when confronted with the problem in *Draon v. France*.¹⁶

Paragraph 86 of this Case declares that “section 1 of the Law of 4th March 2002” breaches Art. 1 of Protocol No. 1 to the Convention “in so far as its concerned proceedings pending on 7th March 2002 the day of its entry into force. In other words, a new Act must not alter the provisions concerning a proceeding pending on the day of its entry into force.

Furthermore, in its paragraph 79, the Case also deals with so-called proportionality, i.e. with “the assessment whether the contested measure respects the requisite fair balance and, notably, burden on the applicants”. It gives the following reply: “In this connection, the Court has already found that the taking of property without payment of an amount reasonably related to its value will nominally institute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 of the Protocol No. 1 only in exceptional circumstances.”

It should be added that the Court (Grand Chamber) assesses under paragraph 91: “Regard being had to its finding of violation concerning the applicants’ peaceful enjoyment of this possession (see paragraph 86 above), the Court does not consider it necessary to examine the applicants’ complaint under Article 14 of the Convention taken together with Article 1 of Protocol 1 to the Convention.” Retroactive legislation can also be questioned because its causes different treatment of persons who are supposed to be treated equally under the law that is then changed in retrospect.

3. Application to a prominent case

From the preceding arguments, it follows that the workings of the Slovene judiciary became clearly questionable after 1998, i.e. after the *ex post facto* alteration of the restitution and denationalisation law, and after the election of new, predominantly communist judges to the Slovene Constitutional Court.

These unjustified changes in consequence apply to the restitution and denationalisation case of the family Sirc. In fact, Ljubo Sirc and his father Franjo Sirc were involved in the Slovene Supreme Court show trial of Nagode and co-defendants in 1947, mentioned in Appendix I B. Ljubo Sirc was sentenced to death and remained in prison for seven and a half years after the sentence was first commuted to 20 years forced labour. Franjo Sirc was sentenced to ten years, but died in November 1950.

In January 1991 the Nagode trial sentence was quashed by the Slovene Supreme Court, which entitled the family Sirc to restitution, viz. compensation for the property confiscated by the sentence now abolished as being the result of a show trial.

At that time, there were two valid sources of Slovene Law on restitution and compensation:

- The Act on the Implementation of Penal Sanctions providing for the full restitution of, or compensation for, the property confiscated, if the sentence is quashed;

¹⁶ ECHR 1513, 2003.

- The Act on Denationalisation of 1991 which provides for full restitution or compensation at approximately the value of property in the market.¹⁷

Yet, the Sirc case was complicated by the fact that the entire Sirc property had been confiscated earlier, i.e. in June 1941, by the invading Germans who occupied Kranj, the location of Sirc property in northwestern Slovenia. The occupiers liquidated the Sirc textile factory, sold the machinery and inventories of raw materials and finished goods, and installed a production of rocket component parts in the existing building. The rocket production was stopped in autumn 1944, and the buildings burned down in 1945.

At the end of the war in 1945, legislation was passed for restitution of, or compensation for, property (confiscated by German occupiers) to the rightful owners: “Section 1 of the 1945 Yugoslav Act on the Treatment of Property which Owners were obliged to abandon during the Occupation or of Property appropriated by the Occupying Forces or their Collaborators (*Zakon o ravnanju z imovino, katero so lastniki morali zapustiti med okupacijo, ter z imovino, katero so jim odvzeli okupator ali njegovi pomagači*, Official Journal of the Democratic Federative Yugoslavia, no. 36/45, and of the Federative People’s Republic of Yugoslavia, no. 105/46) provided for immediate restitution of confiscated property (immovable and moveable assets, rights, enterprises with machinery and stock, etc.) to its owners. It also entitled the owners to claim compensation for damage to the property and for income or profit realised from the property by third parties. Pursuant to Section 2 (amended to become Section 5), compensation for such income and profit was to be qualified in accordance with the civil law, i.e. the law of tort.”¹⁸

Franjo Sirc submitted the required requests for restitution or compensation with the appropriate district courts, but before any final decision could be taken, the communist confiscation took place. Hence, what the communist authorities confiscated was mostly claims for restitution or compensation. In the early 1990’s, when all the required submissions had been launched, the courts and, in one instance, administration, were working rather smoothly. Restitution to the Sirc family included the family house, a small building on a minute part of the factory ground, the ground floor of a house nationalised when owned by Mrs Sirc and two parts of a garden without the third, and best, part.

Even more significantly, the so-called contentious proceedings dealing with parts of Sirc property which was confiscated in 1947 under a general formula without individual confiscation orders, came to a partly successful end at the Ljubljana provincial court on 23 November 1996 under I P 355/95. The judge granted compensation of approximately \$1 million for “Russian cotton” and “Turkish cotton” plus some machinery. She, however, refused compensation for textiles which the German Commission sold to various merchants saying that such compensation was the responsibility of the German occupants. However, the Act on the Treatment of Property seized by the occupants (UE DFJ 25/5/1945) provides precisely that the legal owner is entitled to request compensation from the buying merchants. Both parties appealed.

Yet, before the Higher Court in Ljubljana could react to the appeals, the legal changes occurred (described in the Order of this Court quoted under Part I C, above), thus opening the question of *ex post facto* legislation.

4. Application to the European Court of Human Rights

Ljubo Sirc first wrote to the Secretary General of the Council of Europe on 13 August 1998 and then submitted to the European Court of Human Rights (ECHR) an application form that was duly filled-in on 25 October 1998. The file number is 44580/93.

The applicant quoted as relevant the following Articles of the European Convention of Human Rights: Article 6, Article 14, Article 1 of Protocol 1 and Article 3 of Protocol 7, especially complaining about retroactive legislation, reasonable time, and the moral political qualification of the judges in Slovenia. The application to the ECHR was submitted after an appeal to the Slovene Constitutional

¹⁷ This text is clearly stated in the Final Decision issued by the European Court of Human Rights of 22 June 2006, under No. 44580/98, *Sirc v. Slovenia*.

¹⁸ The preceding paragraph is printed in both the Partial Decision of 16 May 2002 and the Final Decision of 22 June 2006 by the Third Section of the European Court of Human Rights.

Court, demanding prohibition of the *ex post facto* alteration of the law on restitution, which was rejected.

Since the domestic proceedings were not interrupted by the application to ECHR, the Applicant reported about twice yearly to the European Court on these proceedings, including his comments and pleas. More than one hundred pages of text and over 200 documents have been sent to the Court and are accessible to the public, as deposited with the Registrar under Article 40, paragraph 2 of the Convention.

That flow of information to the Court was interrupted by a Partial Decision by the Court on 16 May 2002, i.e. almost four years after submission of the application. It was accompanied by a questionnaire for the Slovene State Attorney and the Applicant. The State Attorney insisted on the need for the Applicant to “exhaust all domestic remedies.”

The Applicant in turn stated in his submissions of 1 July 2003 and 21 April 2004, *inter alia*, that the ECHR should declare his application admissible because all effective domestic remedies have been exhausted, in particular as the Slovene Constitutional Court itself has pronounced on the *ex post facto* alteration of law and on artificial prices; and the Applicant has not had a fair and public hearing within a reasonable time by an independent and impartial tribunal.

What effective domestic remedies are there against the decisions of the Constitutional Court confirming Acts of Parliament, and against the general bias of judges, especially judges of the Constitutional Court? The European Court should have decided on the merits of the case as submitted. Instead, the Third Section disregarded the facts that the Slovene Court were biased and dependent, and that the law on restitution after confiscation and the denationalisation was changed *ex post facto*.

It further dismissed the factual objections against the judgment by the Slovene Constitutional Court in the so-called contentious proceedings and declared such objections inadmissible in its Final Decision of 22 June 2006. It needs repeating that the wrong facts “confirmed” by the Third Section were “first established” by the biased and dependent Slovene Constitutional Court.

All that remained after adoption of this doubtful decision by the Third Section was the complaint against “unreasonable time” of more than 15 years.

5. Conclusions

A judgement by a partial and politically dependent Court, using law adopted *ex post facto*, cannot be considered valid.

At least it requires a careful analysis.

As it will transpire under scrutiny, the Third Section itself has somewhat strange features. It was normally presided over since 2004 by the Slovene judge Boštjan Zupančič who, however, was not presiding when the Sirc case was considered for the second time. But he was a member of the Chamber when the Partial Decision was taken in 2002, and the fact that he is the regular presiding judge implies that his views influence his fellow judges, and are reflected in their way of operating.

His views certainly need to be taken into account by anyone concerned with the working of his usual chamber.

After six months in Strasbourg, Judge Zupančič stated: “As a matter of fact, there is a deep abyss at the European Court of Human Rights between Western and Eastern thinking, especially as a sizeable part of the former is still caught up in the bourgeois legal mentality.”¹⁹

The attention of the then ECHR President, Luzius Wildhaber, was drawn to the language used by Judge Zupančič, but he did not consider that it disturbed the *Unité de doctrine* of the Strasbourg Court.

Soon afterwards Judge Zupančič again explained his low opinion of the Western “yuppie” law in a lengthy article in the *Delo* supplement.²⁰

When 13 years of the Slovene constitution were celebrated, Judge Zupančič – by then President of the Third Section of the European Court – proclaimed that judges should be allowed to disregard “legal

¹⁹ *Delo*, 14 May 1999.

²⁰ *Delo*, 3 January 2000.

formalism” which only causes delays, and “use their judicial power”. This speech reported in *Delo*²¹ seems to mean that judges should have the right to decide issues according to their own lights.

“The rule of law cannot depend on the magnanimity of a state regime”, Zupančič continued. This appears to mean that governments and parliaments may well decree that confiscated property be returned, yet the (Marxist) judges have every moral and political right to refuse and judge accordingly. In fact, the leading Slovene professor of criminal law, Ljubo Bavcon, supported the Slovene deputy human rights Ombudsman when he claimed that property was not a human right at all.²²

Furthermore, the ad hoc Slovene judge in the ECHR Sirc case, Rajko Pirnat, was the Slovene Minister of Justice when the 1947 Sirc sentence was quashed in 1991. If it was up to him that Sirc first had to appeal for restitution of property, Pirnat did not answer his draft request.

On the basis of the preceding argument, the Applicant puts forward the following (draft) request:

1. That a panel of five judges of the Grand Chamber ECHR should accept the request for the referral of this case to the Grand Chamber because it raises serious questions affecting the interpretation and the application of the Convention and two protocols thereto; simultaneously, the case raises issues of general importance in view of the character of the communist regime in Eastern Europe for fifty years.

2. The serious questions affecting the interpretation and application of the Convention and the protocols thereto are:

- If a judiciary or a last instance national court is accused of being biased and/or dependent, in line with Article 6, this point has to be decided first when the case is submitted to the European Court
- It has to be assumed, if the accusation is accepted, that the domestic remedies have been exhausted.
- If a judiciary or a last instance national court is decided by the European Court to be biased and or dependent, their decisions and judgments must not be considered valid, but both facts and legal questions have to be re-examined and a new decision or judgment passed.
- If national law has been made worse, the party to which the more favourable law applied, must be judged under the original law and the case should be admitted without delay in the European Court, if the change of law has been confirmed by the highest court of the country concerned.

3. Should it be confirmed that either a national judiciary or the last instance national court of a country is biased or dependent, and/or that the national law has been worsened *ex-post facto*, and that deterioration has been confirmed by the last instance national court, the European Court, possibly the Grand Chamber, has to establish the factual situation anew and apply the original national law in a new judgment.

Arguments about biased and or/dependent courts or about *ex post facto* deterioration of law cannot be declared inadmissible.

²¹ *Delo*, 24 December 2004.

²² *Delo*, 27 January 1995.

Appendices

Appendix A: Foreign office documents on the 1947 show trial²³

1. From Foreign Office to Belgrade, 15 August 1947

Waddams, vice-consul Ljubljana 1945, considers he may be the diplomatic representative referred to in the trial, as both Furlan and Sirc were the only people who helped him to get the Ljubljana consulate going when he first opened it. He considers this the probable reason for their sentence.

2. British Consulate, Ljubljana to British Ambassador Belgrade, 22 August 1947

A brief reading of the newspaper reports, however, will suffice to make it clear that the trial was first and foremost a gigantic political propaganda stunt whose double aim was first to show Britain and America as the irreconcilable enemies of the new Yugoslavia, and second, finally to frighten off anyone who might still think that it is possible to associate with officials of the Western countries and get away with it.

3. Observations on the trial of Prof Furlan, July–August, 1947

In the second place, he (Furlan) has been, since the end of the war, friendly with the British Consul at a time when, for fear of the consequences, the majority of the people of Ljubljana have not dared to have any social contact with British personnel. In this context, it is interesting to note that the third death sentence was passed on Ljubo Sirc, who was the only other person among the accused to be friendly with the British Consul. It would, therefore, suggest that friendliness is itself taken for espionage, for which the perpetrator must pay the highest penalty. Virtually no other person, besides Furlan and Sirc, dared to behave openly as the friend of the British Consul.

4. British Embassy, Belgrade to Western and Southern Department, London, 17 December 1952

Remark: Sirc' mother asked for affidavits from former British personnel in Ljubljana to the effect that their contacts with Ljubo Sirc were exclusively social. Eventually she was given such affidavits but still did not quite dare to use them.

Text: 3. We should ourselves be glad to do anything possible to assist Ljubo Sirc. The Secretary of State intended to mention his case to Mr Kardelj last September ... (signed) Chancery.

5. Memo from Waddams to Tufton Beamish and on to the Foreign Office, 21 April 1954

Things there (Slovenia) are getting better, no doubt. But in respect of these two people, Professor Boris Furlan and Ljubo Sirc, both of whom were sentenced because of their refusal to betray their friendliness to Britain, the recent professions of the Yugoslav Government are scarcely lived up to.

²³ Public Records Office, London, FO 371/67466, 46305 and FO 371/102257, 46477.

Appendix B: Note on the 1947 show trial involving Franjo Sirc

In 1947, Stalin ordered the elimination of democratic politicians in Eastern Europe. In her book *Faust's Metropolis* (Berlin), Alexandra Richie describes the events:

In 1947, the communist party seized power in Hungary after forcing the resignation of the Nagy government. In Bulgaria Petkov, the leader of the opposition was hanged; in Romania Maniu, leader of the Peasant Party, was sentenced to life imprisonment, and in Poland Mikolajczyk, leader of the non-communist opposition, was forced to flee to the West. By February 1948 a Soviet plot had brought about the capitulation of President Benes, who handed power to the communists.

Yugoslavia is not mentioned because in 1948 Stalin inexplicably turned on Tito, whereupon the West tended to sweep Tito's communist crimes under the carpet. Yet Tito was a fervent Stalinist and did not fail, in spite of his solemn promise to Churchill and the appropriate agreements with the Yugoslav Government-in-Exile in London, to stage three trials of the Yugoslav democratic opposition to fulfil Stalin's wishes.

If proof is needed, a leader in *The Times* of 27 August 1947 headed "Petkov and Furlan", connected the Bulgarian Petkov with the Slovene Furlan, a co-defendant of Franjo Sirc in the Ljubljana Yugoslav trial. Indeed Furlan and Franjo Sirc's son were both sentenced to death, although the sentences were not carried out, while a third co-defendant, Crtomir Nagode, was killed, as was Petkov.

The British Foreign Office Archives quote Kardelj, Tito's second-in-command, as saying: "Our opponents, when they are brought to court, must be punished, and so punished that they will be harmless for ever."

Disregarding Franjo Sirc, who was put on trial with the above-mentioned because of his son's activities, some of the co-defendants were Slovene politicians who had been members of the London-based Yugoslav government in exile and returned home believing the assurances Tito gave Churchill. Other defendants belonged to an ad hoc left wing nationalist group assembled in 1941 to join the communist-organised Liberation Front. This group was expelled from the Liberation Front at the beginning of 1942 because it opposed a communist ruling that nobody was allowed to fight the enemy outside the Liberation Front, under penalty of death.

In fact, Franjo Sirc's son Ljubo escaped to Switzerland in order to warn the Allies about this perverseness of communism, but nobody would listen. He returned to Yugoslavia after Tito's agreement with the Yugoslav Government-in-Exile sponsored by Churchill. After serving in the partisan Fifth Overseas Brigade and the VIII Corps Artillery, Ljubo Sirc was used as a Slovene government interpreter and met most foreigners in Ljubljana at that time.

The group tried to link up with democratic opposition leaders in Belgrade and Zagreb, but discovered that Tito would not allow any opposition activity. For purposes of revolutionary terror, the attempts at organising a democratic opposition were branded espionage and conspiracy against the state. In the words of British diplomats, Boris Furlan and Ljubo Sirc were selected to be sentenced to death "because they dared to behave openly as friends of the British Consul". To make matters worse, Ljubo Sirc also inquired about the fate of the crew and passengers of two American airplanes shot down over Slovenia in 1946 on Tito's orders.

As to the trial itself, the British Consulate in Ljubljana reported to the British Ambassador in Belgrade on 22 August 1947:

A brief reading of the newspaper reports, however, will suffice to make it clear that the trial was first and foremost a gigantic political propaganda stunt whose double aim was first to show Britain and America as irreconcilable enemies of the new Yugoslavia, and second, finally to frighten off anyone who might still think that it is possible to associate with officials of the Western countries and get away with it.

Of course, the communists knew full well that Franjo Sirc had no contact with the British or Americans in Ljubljana and was not involved with any attempt at democratic opposition. Yet he was a successful pre-war entrepreneur providing employment and higher wages with higher productivity. In the eyes of the communist leaders whose views were distorted by their doctrine, entrepreneurship was exploitation and hence criminal. Strangely enough, this idea prevails to this day so that the bulk of the property confiscated as a punishment has not yet been returned to the family. This is an additional reason for the Sirc family to want the property back, as a clear sign that it was not acquired by Franjo Sirc's exploitation but through entrepreneurship in the service of a better living standard for all.

Milko Mikola*

COMMUNIST CONCENTRATION CAMPS AND LABOUR CAMPS IN SLOVENIA

In his paper, the author deals with concentration and labour camps established in Slovenia under Communist rule after the end of the war in Slovenia in 1945. Concentration camps were established already in May 1945 and were filled with members of the German and Hungarian national minorities, captured members of the Slovenian Home-guard (“domobranstvo”) and members of military units from other Yugoslav regions who fought against the partisans. The treatment of internees in these camps was as cruel as in the Nazi concentration camps. In certain Communist concentration camps, for example, such as the camp in Teharje and at the Bishop’s institutes (Škofovi zavodi) in Št. Vid nad Ljubljano, the great majority of internees were killed without any trial. In the autumn of 1945, concentration camps in Slovenia were abolished. Communist labour camps in Slovenia were established already in 1945. These were camps for forced labour and were called “penal camps”. In 1949, “correctional camps” and camps for socially beneficial labour called “working groups” were established. All these labour camps were abolished in the beginning of 1951, when new criminal legislation, free of the concept of forced, correctional and socially beneficial labour, was adopted.

1. Introduction

The first concentration and labour camps in the Slovenian territory were set up by German occupation forces during World War Two (1941–45) and were then massively established by the Communist authorities after the war ended. First, concentration camps were set up, all of which were established by the Communist authorities in May and June 1945, with the exception of one camp that had been set up as early as April 1945. They were established by OZNA (Department for Protection of the Nation), the secret political police of the Communist Party of Yugoslavia/Slovenia. The first concentration camps were intended for interning members of the German and (partly also) Hungarian national minorities, and for those Slovenians who were suspected of collaborating with the occupation forces. Next, concentration camps were established for those members of the Slovenian Home-guard and civilians, who had surrendered to, or were captured by, British forces occupying Austrian Carinthia, and whom the British turned over to Yugoslav military authorities in May 1945. Because the majority of the returned Home-guards and civilians from these camps were killed without any court trial, these concentration camps in reality represented “death camps or destruction camps”. In Slovenia, concentration camps existed until the autumn of 1945, and in other Yugoslav republics until 1948.

The Communist rulers began to set up labour camps in Slovenia already in 1945, when several camps for forced labour were established. Except one camp that was established immediately after the liberation, all the rest were set up shortly thereafter, from former concentration camps that, in September 1945, OZNA handed over for management by the Ministry of the Interior Affairs of the People’s Republic of Slovenia. Until January 1946, forced labour camps were called “penal camps” and later on, “institutions for forced labour”. They were abolished by October 1946, and convicted persons then served their sentences of forced labour in “penal – correctional institutions” (KPD). Labour camps in Slovenia were re-established in 1949, when labour camps for correctional labour and labour camps for socially beneficial labour began to be set up. The Communist authorities used the expression “working groups” for these types of camps. Labour camps in Slovenia were ultimately closed down in 1951, when the new criminal legislation banned sentences of forced, correctional and socially beneficial labour.

2. Concentration camps

No sooner were the Nazi concentration camps closed down in Slovenia in 1945 than new, Communist camps, sprang up. Until the introduction of democratic changes many years later, little was

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known about these camps in Slovenia. For the Slovenian Communist authorities, they were officially non-existent and could not be discussed in public for half a century. In Slovenian history, these camps are still not called “concentration” camps; usually only the expressions “camps” or “gathering camps” is used. Historians tried to avoid the expression “concentration camps” mainly because of associations with Nazi concentration camps, but their ‘avoidance’ is inappropriate because it does not correspond to the historical facts. Proof that these were indeed concentration camps in the true meaning of the word is most authentically found in rare documents preserved from that time, which use those very words. The expression “concentration camp” is met when we read the documents of OZNA which established those camps. That expression was also used by party officials and the highest representatives of Slovenian authorities at that time.

The treatment of internees also shows that these were in fact concentration camps. Testimony shows that the way these internees were treated did not differ much from the way that internees in Nazi concentration camps were treated, because they were exposed to the cruellest forms of physical and psychological violence.¹ The cruellest treatment of internees was recorded in concentration camps for members of the Slovenian Home-guard and civil refugees who had been returned to Slovenia from Austrian Carinthia. For most of them, their only exit out of these camps was at the place of their execution, for which reason they may justly be called “death camps or destruction camps”. Many internees from certain other concentration camps in Slovenia were taken to places of execution and many internees perished in these camps due to the poor and miserly rationed food, poor hygienic conditions and contagious diseases.

Establishing Communist concentration camps in Slovenia was directly related to the “cleansing” campaign that OZNA began to implement with the aid of those units belonging to the Corpus of National Defence (KNOJ) immediately after the war ended.² The victims of “cleansing” were for the most part the members of the German and (partly also) Hungarian national minorities and those Slovenians who were suspected of collaboration with the occupation forces and were placed on OZNA lists. By the end of 1944, OZNA had at its disposal, records and lists for a total of 17,750 persons.³ Subsequently, these records and lists continued to be supplemented. The majority of those people placed on these lists were destined for arrest or even liquidation. Within the framework of implementing the “cleansing” campaign, OZNA, in cooperation with the members of KNOJ and the National Militia, took most arrested persons to prisons or straight to concentration camps, while some of them were liquidated immediately after arrest; only very few arrested persons were released. The report of the OZNA officer in charge of the district of Celje on 29 May 1945 states, for example, that in all 15 counties of that district, a total of 1,004 persons were arrested, of whom 272 were sent to concentration camps. In the county of Celje-city, OZNA arrested 563 persons by the end of May, of whom 159 were sent to concentration camps.⁴

With regard to the people who were interned in these concentration camps, the Communist concentration camps in Slovenia can be divided into the following three groups:

- Concentration camps for members of the German national minority;
- Concentration camps for members of the Hungarian national minority;
- Concentration camps for Home-guards and civilians.

2.1. Concentration camps for members of the German national minority

Establishing concentration camps for members of the German national minority in Slovenia was directly related to implementation of their expulsion.⁵ In compliance with the thesis on the collective responsibility of the entire German national minority for Nazi crimes committed upon the members of

¹ The accounts of former internees of the Communist concentration camps in Slovenia are published in the publication Milko Mikola (ed.), *Documents and Testimonies on Post-war Concentration Camps in Slovenia*, 1st and 2nd part, Ministry of Justice of the Republic of Slovenia, Ljubljana 2007, 2008.

² See Jera Vodušek Starič, “Taking Power After the War and the Role of OZNA – Settlement of Accounts”, in: *Collection of papers Slovenia in 1945*, Ljubljana 1996, pp. 93–110.

³ Ljuba Dornik Šubelj, *Department for the Protection of the Nation for Slovenia*, Ljubljana 1999, p. 119.

⁴ ARS, Unit for dislocated material II, SOVA microfilms, series V-1, U 0000007, Work report by OZNA for the city of Celje, 30 May 1945.

⁵ Implementation of the expulsion of members of the German national minority from Slovenia after the Second World War is dealt with by Tone Ferenc, “‘Germans’ in Slovenia during the Second World War”; and a paper by Božo Repe, “‘Germans’ in Slovenia after the Second World War”. Both papers were published in the publication *“Germans” in Slovenia from 1941 to 1945*, Scientific Institute of the Faculty of Philosophy, Ljubljana 1998.

the Yugoslav nations, the leadership of the Democratic Federal Yugoslavia adopted a political decision on the expulsion of all members of that minority from Yugoslavia, and on the confiscation of their property, already in the autumn of 1944. Based on that political decision, a special decree was adopted on 21 November 1944 by the Presidency of the Anti-fascist Council of National Liberation of Yugoslavia (AVNOJ), by which all property of persons of German nationality in the territory of Yugoslavia was confiscated and passed into state ownership. That decree was also published on 6 January 1945 in the Official Gazette.⁶ However, a decree on deprivation of citizenship to persons of German nationality in Yugoslavia was never published – although according to the opinion of some historians, the AVNOJ Presidency also supposedly adopted it on 21 November 1944, but there is no proof of it.

In order to implement the decision on the expulsion of members of the German national minority from Yugoslavia, 70 concentration camps⁷ were established in the territory of Yugoslavia in the period from 1944 to 1948. In Slovenia, such concentration camps were established only in Strnišče near Ptuj, in Hrastovec, near Sv. Lenart in Slovenske gorice, in Brestrnica near Maribor, in Studenci near Maribor and in Teharje near Celje. In addition to these concentration camps, there were a few more so-called “gathering bases”, from where the internees were led to the concentration camp Strnišče near Ptuj and in other concentration camps (described above). Such gathering camps were, for example, in Kamnica near Maribor and in Tezno near Maribor.

The central concentration camp for members of the German national minority was established in Strnišče near Ptuj. In addition to members of the German national minority, it was also filled with members of the Hungarian national minority from Prekmurje and those Slovenians who were suspected of collaboration with occupation forces. Precise data on the number of internees in the concentration camp Strnišče near Ptuj is not available, but it is estimated from 10,000 to 12,000 people. In that camp, prisoners were subject to different forms of the worst physical and psychological torture, starvation and contagious diseases, so that many died as a consequence. Most fatalities were among the young children and the elderly. Some historians estimate, in that concentration camp, from 800 to 1,000 internees died, or were shot, or killed in some other manner.⁸ The only written source testifying to the deaths of internees in the camp are preserved letters that the management of the concentration camp Strnišče near Ptuj had been sending to the Parish Rectory Sv. Lovrenc na Dravskem polju.⁹ They contain surnames and names of dead internees who were deported from the camp to be buried. Among them were children only a few months old, and men and women over eighty years old. In addition to their names and surnames, the letters provide their birth data and the cause of their death. The most frequent causes of death were dysentery, diarrhoea and old age infirmity.

Many internees were killed already upon their arrival at the concentration camp in Strnišče near Ptuj, with no trial. The latest discoveries of posthumous remains of internees who were killed show that most of them were killed in the woods opposite the entrance to the camp.¹⁰ One former OZNA officer, Zdenko Zavadlav, says that a larger number of prisoners from that camp were taken to Pohorje, where they were shot and buried in already dug graves. Nor did they spare the sick (such as those suffering from typhus).¹¹ Prisoners in other concentration camps were treated in the same manner as members of the German national minority in the concentration camp Strnišče near Ptuj.

2.2. Concentration camps for members of the Hungarian national minority

The first measures by the Slovenian Communist authorities against the members of the Hungarian national minority in Slovenia were taken immediately after the liberation of Prekmurje at the beginning of April 1945. At that time, OZNA, with the cooperation of KNOJ units, arrested those Hungarians who, during the occupation, became members of the Hungarian nationalist party, called the Party of Arrow-like Crosses (Nyilaskeresztes Párt). These “nyilaši” were interned in the concentration camp Filovci, which was the first post-war concentration camp in the territory of Slovenia, because it was established already at the beginning of April 1945. The interning of “nyilaši” was followed in 1945

⁶ Official Gazette of Democratic Federative Yugoslavia, No. 2/1945.

⁷ *Labour Camp Válpovo 1945–1946, Documents*, Adapted by Vladimir Geiger, Osijek–Essegg 1999, p. 8.

⁸ Darja Lukman Žunec, “Post-war camp Strnišče”, *Večer*, 6 May 1996.

⁹ They are kept by the Parish Rectory Sv. Lovrenc na Dravskem polju.

¹⁰ “New graves discovered in Kidričevo”, *Delo*, 25 September 2007.

¹¹ Zdenko Zavadlav, *From the Diary of an OZNA Member from Maribor*, Založba za alternativno teorijo, Maribor 1990, pp. 91–93.

by the expulsion of the Hungarian population from the territory of Lendava district. According to indications by OZNA representatives for the county of Lendava, the district OZNA Maribor deported 225 Hungarian families¹² from 18 villages to the concentration camps Hrastovec and Strnišče near Ptuj with the assistance of KNOJ members on 9 July 1945. The document referring to the expulsion of the Hungarian population, dated 15 July 1945, indicates that a total number of 558 Hungarians¹³ were expelled from the individual mixed-nationality villages in the area of Lendava county. Of those 558 interned Hungarians, 35 % were children (all younger than 15 years), 44 % women and 21 % men.¹⁴ The treatment of the members of the Hungarian national minority in these concentration camps was not considerably different from treatment of the German national minority.

2.3. Concentration camps for the Slovenian Home-guard and civilians

A special group among the concentration camps in Slovenia were camps which interned members of the Slovenian Home-guard and civilians who were turned over to the Yugoslav military authorities by British forces occupying Austria at the end of May 1945. According to some data, the British handed over to Yugoslav military authorities over 11,000 captured and disarmed members of the Slovenian Home-guard and around 600 civilians¹⁵ in Austrian Carinthia in the period between 27–30 May 1945. Because the Slovenian Communist authorities did not acknowledge the status of war prisoners to the captured Home-guards, they were treated in an extremely cruel manner and against all the existing international conventions on the treatment of prisoners of war. The camps where they were held were not prisoner camps but concentration camps. The two largest concentration camps were for the Slovenian Home-guard members, and for members of other military formations in the territory of Yugoslavia who fought against the partisans during the war: Teharje and Škofovi zavodi in Št. Vid nad Ljubljano. The third but much smaller concentration camp of this kind was also in the castle of Škofja Loka. As stated above, all these camps were “death camps or destruction camps”, because the great majority of war prisoners and civilians interned in them were deported to their places of execution without any preliminary trial. According to the most recent findings, around 14,000 Slovenians were killed after the war. However, if members of different military formations and civilians from other Yugoslav regions are added to the number of Slovenians killed, the number of people who were killed in the territory of Slovenia after World War Two is probably more than 100,000. That figure also includes all those who were killed without being first placed in a concentration camp, the majority of which were Croatian Ustashe (“ustaši”) and Croatian Home-guards (“domobrani”) who surrendered to the Yugoslav army in Austrian Carinthia and in Slovenia. They were shot and buried in anti-tank trenches in the vicinity of Maribor and Celje without any trial.

The extent of the killings of captured members of different military formations and of the civilian population in Slovenia after the end of the war in 1945 is demonstrated by the fact that, up to now, around 600 hidden mass graves have been recorded in the territory of Slovenia. Killings were the most massive at the end of May and beginning of June, 1945. Internees from the concentration camp in Št. Vid nad Ljubljano were taken by train and cattle wagons to Kočevje and from there by trucks to selected hidden locations in the forests of Kočevski Rog. Larger Karst abysses were chosen as the places of execution. A certain number of internees from the concentration camp Teharje were killed in its immediate vicinity, but the majority was killed in the neighbourhood of Stari Hrastnik, Trbovlje and Laško. Many were killed there and thrown into caves produced by mining, while some were thrown into deserted mining shafts. Of several thousands of internees in the concentration camps Teharje, Št. Vid nad Ljubljano and Škofja Loka, only a smaller number of civilians and juvenile Home-guards survived. These were released after the amnesty that was declared on 3 August 1945.

¹² Tone Ferenc, op. cit., p. 134.

¹³ The original document is kept by József Biró and its facsimile is published in the publication: Milko Mikola (ed.), *Documents and Testimonies on Post-war Concentration Camps in Slovenia*, Ljubljana 2007.

¹⁴ The data is indicated by a former internee of the concentration camp Hrastovec, József Biró, in his testimony, published in the publication *Lendavski zvezki lendvai füzetek 16., Miért? Zakaj?*, Lendva/Lendava 1998, p. 30.

¹⁵ Boris Mlakar, *Slovenian Home-guard 1943–1945, Establishment, organisation, conceptual background*, Slovenska Matica, Ljubljana 2003, p. 511.

2.4. Abolishment of concentration camps in Slovenia

Slovenia was the only one among the Yugoslav Federal Republics where all concentration camps were abolished already by autumn 1945. In the rest of Yugoslavia, that happened much later, since the last concentration camps for members of the German national minority were abolished only in 1948. Thus on 12 May 1946, the Federal Minister for Interior Affairs Aleksandar Ranković issued the Instructions on the organisation of life and work in concentration camps for the German civilians.¹⁶ This raises a question about the reasons for the abolishment of concentration camps in Slovenia already in autumn 1945. According to the opinion of some former high OZNA representatives, this was for the most part the result of the approaching elections into the Yugoslav constitutional assembly; in their opinion, the existence of these camps could be used by “reactionary forces” for their propaganda before the elections. Because Slovenia was the only Yugoslav republic bordering on the Western countries, its Communist rulers could not cover up the existence of the concentration camps. In September 1945, OZNA handed over the majority of abolished concentration camps to the Ministry for Internal Affairs of the People’s Republic of Slovenia, which changed them into camps for forced labour. Whereas the members of the German national minority were expelled from Yugoslavia/Slovenia after the abolishment of concentration camps, the majority of other surviving internees were released. Those internees whom the authorities did not intend to release, despite the declared amnesty, were relocated to the concentration camp or penal camp for forced labour in Brestrnica near Maribor. From there they were taken to Pohorje, where they were killed in the woods without any trial; such killings went on until January 1946.

Although the concentration camps in Slovenia were abolished in autumn 1945, the danger of their re-establishment at some later point of time had continued to persist for many years, until the fall of Communism. It is evident from two accidentally discovered documents that the Communist rulers intended to re-establish camps in the years 1967 and 1968.¹⁷ At that time, there were three concentration camps foreseen for the entire Slovenia, where around 1,000 persons, including around 100 women, would be interned in the case of “emergency circumstances”.

3. Labour camps

3.1. Categories of labour camps and reasons for their establishment

In Slovenia, three categories of labour camps existed after the war:

- Camps for forced labour;
- Camps for correctional labour;
- Camps for socially beneficial labour.

The first post-war labour camps in Slovenia were established in 1945 for convicted persons that the courts condemned to deprivation of freedom with forced labour. These were called “penal camps”, but from January 1946 onwards, they were referred to as “institutions for forced labour”. All these camps were abolished by autumn 1946, and those convicted to deprivation of freedom with forced labour served their sentence from then on in penal-correctional institutions (KPD). Labour camps started to be re-established in 1949. These were camps for correctional labour and camps for socially beneficial labour, to which official terminology of those times referred as “working groups”. These labour camps were most massively established in the period from 1949 to 1950, when sending convicted persons to correctional and socially beneficial labour reached its peak. The majority of convicted persons who went through different labour camps was sent there for political reasons and represented political prisoners.

¹⁶ ARS, AS 1267, 1/38, Instructions on the organisation of life and work in the concentration camps for German civilians, 12 May 1946.

¹⁷ The two documents were discovered in the archives of the Ministry of Justice of the Republic of Slovenia in 2007.

The Slovenian Communist authorities tried to present the labour camps as institutions for re-education of convicted persons. In the report of the Administration for Implementation of Sentences for 1949 the following can be read: “We used labour as a means of education with the purpose to arouse a correct attitude towards the labour in convicted persons and at the same time to re-educate them in a political sense, because physical work was closely linked with political re-education, mostly by means of lectures, by which we presented to the convicted persons the importance of production for the achievement of a five-year plan and socialism, and the importance of the socialist social order for the man.”¹⁸ The report of the Administration for Implementation of Sentences of 15 June 1950 states that physical work, educational work and cultural work were used as the means of re-education.¹⁹ The above report emphasizes that all these three forms of work as re-educational means are “tightly interlinked, which is indispensable if we want to instill in the convicted persons the correct, i.e. socialist approach or attitude to work.”²⁰ “It is indispensable to show to the convicted persons”, continues the report, “in parallel to their work, the advantages of the socialist social order ...”²¹ Production and physical work was deemed to be the most appropriate and the most effective means of re-education of convicted persons. As stated by the annual report of the Administration for Implementation of Sentences for the year 1950, the physical work was “most closely linked with the political re-education, particularly with the political study and lectures, by which the convicted persons were shown the importance of the socialist social order for a working man and the purpose of production for successful implementation of a five-year plan; for this purpose we also extensively used, in addition to study groups and lectures, radio broadcasting and with this aim furnished the penal-correctional institutions in Ljubljana, Maribor and Rajhenburg with audio equipment”.²²

Persons convicted to the forced, correctional and socially beneficial labour were “re-educated” in labour camps and other penal-correctional institutions also by “cultural and educational work”, in addition to physical work. It was, however, always important that everything was ideologically set in the right direction. The drama groups in these institutions were required, for example, to “show on the stage the people required by our social order, i.e. the working man, fighter for socialism, our labour efforts and success in implementing the tasks of a five-year plan and the building of socialism”.²³ The texts of the songs that the convicted persons were allowed to read and recite²⁴ were of the same type. The convicted persons could not choose the books that they wanted to read within their cultural-educational work; only such materials as were ideologically appropriate and that were considered to have a re-educational effect were available. The list of books in the library of the working group engaged in socially beneficial labour in Strnišče at Ptuj indicates that they included above all the works of Marx, Engels, Lenin, Stalin, Plehanov, Kardelj and Josip Broz - Tito. The above list does not contain belletrist literature.

Although political re-education of the convicted persons did represent one of the reasons for the establishment of labour camps in Slovenia, it was by no means the main and sole reason for that. In fact, economic reasons played the main role in their introduction. The state needed vast quantities of cheap labour after the war to begin reconstruction and for implementation of the first five-year plan of the so-called capital construction. In addition to war prisoners, the persons convicted to forced, correctional and socially beneficial labour represented the cheapest labour force that the state could exploit in the worst manner. They were used above all for the heaviest and most dangerous work in various construction sites, such as, for example, in the construction of factory facilities, hydropower plants, roads, bridges, railways, etc. Therefore it was not a coincidence that the existence of labour camps coincided with the period of reconstruction implementation (1945–46) and later on with the period of the first five-year plan implementation (1947–51). Many major economic facilities in Slovenia, such as, for example, Litostroj (Titovi zavodi) in Ljubljana, hydropower plants Moste-Žirovnica and Medvode, the factory for bauxite and aluminium Kidričevo, all built in the first five-year plan period, were largely built by the work of persons convicted to forced, correctional and socially beneficial labour.

¹⁸ ARS, AS 1267, sign. arh. of the unit:13/620, Annual report of the Administration for Implementation of Sentences for 1949.

¹⁹ ARS, AS 1267, sign. arh. of the unit:9/507, Report on certain problematic issues in terms of implementation of 15 June 1950.

²⁰ Ibid.

²¹ Ibid.

²² ARS, AS 1267, sign. arh. of the unit: 14/621.

²³ ARS, AS 1267, sign. arh. of the unit:9/507, Report on certain problematic issues in terms of implementation of 15 June 1950.

²⁴ Ibid.

All such construction sites in fact represented large labour camps. This was wilfully concealed all through the post-war period and Slovenian historical books presented the construction of the above facilities as great “work victories” and as “important economic achievements of socialism”. Such large construction facilities did of course demand a large labour force, ranging from manual workers to experts; therefore the courts and administrative authorities massively issued sentences of forced, correctional and socially beneficial labour. Among those receiving such sentences prevailed so-called class enemies such as former entrepreneurs, large farmers (“kulaki”), priests, etc.; there were also many workers and professionals (technicians and engineers). In order to achieve the highest possible productivity, management of labour camps introduced the so-called brigade system, norm work and particularly competition as the “highest form of the socialist attitude to work”.²⁵ In this manner camp management achieved its goals: that persons convicted to forced, correctional and socially beneficial labour “voluntarily” and considerably exceeded the already high working norms.

The system of exploiting these convicted persons was cruel and inhuman, even more so if we take into consideration that among the convicted persons, many of them were not fit for physical work. The administrative authorities had no reservations, particularly in issuing the forcible administrative sanction of socially beneficial labour, because they imposed such sanctions also on people who were elderly, sick, pregnant and even disabled. Excessive labour, poor alimentation, poor health and hygienic conditions, and physical and psychological mistreatment of convicted persons in labour camps resulted not only in their exhaustion or illness, but often also in death. Some convicted persons also died because of frequent work accidents, since their security was not well provided for. So in 1949, seven persons died while serving sentences of correctional labour, and in 1950, six convicted persons died. The reasons for their death are not stated.

3.1.1. Camps for forced labour

Camps for forced labour that were officially called “penal camps” were established in Slovenia soon after the war ended in 1945. Their establishment was directly related to trials against so-called enemies of the people that were massively conducted before the military local courts and before the Slovenian National Honour Court in July and August 1945. After the abolishment of military local courts and the Slovenian National Honour Court at the end of August 1945, the criminal justice over civilians was taken over by the civil courts that could issue to the convicted persons sentences of deprivation of liberty with forced labour under the existing criminal legislation. The military courts alone sentenced several thousands of people to forced labour sentences in the period from July to August 1945. Such multitudes of convicted persons could not, of course, be accommodated in prisons; therefore the Communist authorities foresaw the establishment of the so-called “penal camps” already prior to the implementation of mass trials for the persons convicted to forced labour. The first penal camp was established by the Military Court of IV Military Zone at the Command of the town of Kočevje.²⁶ However, not even this penal camp was enough for the multitudes of persons convicted to forced labour; therefore the establishment of new penal camps was planned. In light of this, the military and court department of the Military Zone of IV Army called on the local military courts, by a special circular letter of 6 June 1945, to search for appropriate places where new penal camps could be established. With respect to the locations of such camps, here were some instructions: “The most appropriate locations would be larger castles or military barracks that are located in the vicinity of railways and places where the labour force of convicted persons will be exploited, for the purpose of transporting the convicted persons to the place of work most rapidly and without special difficulties.”²⁷

New penal camps for forced labour were then established in the same locations where former concentration camps had stood. In the period from 1945–46, the following four penal camps for forced labour existed in the territory of Slovenia:

- Penal camp Kočevje;
- Penal camp Teharje;
- Penal camp Brestrnica near Maribor;
- Penal camp Studenci near Maribor.

²⁵ ARS, AS 1267, sign. arh. of the unit: 9/507, Report on certain problematic issues in terms of sentence implementation of 15 June 1950.

²⁶ ARS, Main Headquarters of Slovenia, box 122, Map I, Circular of the military court department of Military Zone of IV Army at commanding posts of areas and commanding posts of towns from 6 July 1945.

²⁷ Ibid.

On 1 September 1945, OZNA handed over the above penal camps to the Ministry for Internal Affairs of the Federal Slovenia²⁸ At this Ministry, the Department for Serving Sentences was established for their management. The preserved entries of convicted persons in individual penal camps indicate that over 6,500 convicted persons served sentences of forced labour until the abolishment of these camps in 1946, of these:

- In penal camp Kočevje 1,932 convicted persons;
- In penal camp Teharje 1,385 convicted persons;
- In penal camp Studenci near Maribor 2,768 convicted persons;
- In penal camp Brestrnica near Maribor 431 convicted persons.

Camps for forced labour formally existed until January 1946, when they were renamed “institutions for forced labour”.²⁹ However, only the names of these penal institutions were changed, because they still kept all characteristics of labour camps. Under the name of “institutions for forced labour”, they existed until the autumn 1946, when the last of them were abolished. The abolishment of penal camps did not imply, however, the abolishment of the forced labour sentence. Issuing the sentence on forced labour remained valid until 1951. However, rather than in penal camps, the convicted persons from then on served such sentences in “the penal-correctional institutions”. The courts in Slovenia issued this sentence massively until its abolishment, which is shown by the data indicating that just in the period from 1947 until the end of 1950, more than 8,000 persons received this sentence.³⁰ The number of all persons in Slovenia who were sentenced to forced labour after 1945 was close to 15,000.

3.1.2. Camps for correctional labour

Camps for correctional labour started to be established in the spring of 1949, when the new Yugoslav criminal legislation introduced a new category of sentences called “correctional labour”. That sentence replaced the former sentence of forced labour without deprivation of liberty. Correctional labour was considered the basic principle of political re-education of convicted persons.³¹ Serving this sentence was aimed at “averting the convicted person from repeating the criminal act, at re-educating him/her, to get him/her used to work discipline and capacitate him/her for work in the new social order”.³² This sentence was issued to the convicted persons by both the courts and administrative authorities for internal affairs in local, municipal and regional people’s committees. The courts issued this sentence for certain criminal acts and the administrative authorities for certain minor offences. The courts were entitled to issue the sentence of correctional labour lasting up to two years and the administrative authorities only up to three months. Among the persons convicted to forced labour and the persons sentenced to correctional labour, the vast majority were sentenced for political reasons. The sentence of correctional labour was issued by the courts only in the years 1949 and 1950, because it was abolished in January 1951. In those two years, the courts and administrative authorities for internal affairs sent a total of 6,816 convicted persons to serve the sentence of correctional labour in labour camps (working groups).³³ The following numbers of people were sent to labour camps in 1949 and 1950:³⁴

Year	Court sentence of correctional labour		Administrative sentence of correctional labour		Total	
	M	F	M	F	M	F
1949	1,598	479	1,111	360	2,709	839
1950	1,076	308	1,534	350	2,610	658
Total	2,674	787	2,645	710	5,319	1,497

²⁸ The prisons and penal institutions were placed under the Ministry for Internal Affairs of LRS or the Republic Secretariat for Internal Affairs until 1967, when they passed under the Republic Secretariat for Justice.

²⁹ ARS, AS 1267, sign. arh. of the unit 1/33, Circular Letter of the Ministry for Internal Affairs of the People’s Republic of Slovenia on the implementation of sentence of 14 January 1946.

³⁰ ARS, Ministry of Justice of the People’s Republic of Slovenia, Criminal Statistics for 1947, 1948, 1949 and 1950.

³¹ Ibid.

³² ARS, AS 1267, sign arh. of the unit:1/72, Provisional Rules on the house order in the working groups of correctional labour.

³³ ARS, AS 1267, sign. arh. of the unit.

³⁴ Ibid.

The first camps for correctional labour were established in April 1949 and they were officially called “working groups”. For the entire territory of Slovenia, two administrations of correctional labour working groups were established, one with headquarters in Strnišče near Ptuj and one with headquarters in Kočevje.³⁵ The working group for women was established in Ferdrenk in Kočevsko. Camps for correctional labour were located in places where major construction works were underway and then were relocated to new locations – building sites – after the completed construction of the planned facilities. The working time of persons convicted to correctional labour was 8 hours. The convicted persons were free to leave the camp after the working time. They were remunerated in money for the work performed but only if they reached a certain norm.

Camps (working groups) for correctional labour in Slovenia were abolished at the beginning of 1951, when the sentence of correctional labour was abolished by the new criminal legislation.

3.1.3. Camps for socially beneficial labour

Camps for socially beneficial labour began to be established in July 1949. Their establishment was directly linked with the introduction of socially beneficial labour that was introduced by the Offences against Public Order and Peace Act of 11 May 1949.³⁶ Socially beneficial labour represented a compulsory administrative criminal sanction issued by the administrative authorities for internal affairs for a certain category of offences. Commissions for Minor Offences were established for the issuing of these sanctions at the local, municipal and regional people’s committees. Party authorities played an important role in deciding who shall be sent to the socially beneficial labour. In 1949, the numbers sent to socially beneficial labour reached a peak when the Commissions for Minor Offences issued such sentences to 1,900 persons.³⁷ Because even the authorities acknowledged that the commissions for offences were greatly exaggerated, they were forced to intervene and released a few hundred convicted persons in 1949. In 1950, the number of persons sentenced to socially beneficial labour was reduced to 80 and in 1951 to 43.

The compulsory administrative sanction of socially beneficial labour had an extreme class implication. Its victims were above all those who were treated by the Communist rule as the enemies of the new social order, i.e. the so-called people’s rule. In the opinion of the Communist authorities, these were above all members of the former capitalists (“entrepreneurs”), larger farmers (“kulaki”), clergy and all those who criticised Communist rule or expressed sympathies with the countries of Western democracy. The first three camps (working groups) for socially beneficial labour were established in July 1949. For male convicted persons, such camps were established in Ljubljana (working group for the construction of Litostroj factory) and in Strnišče near Ptuj (working group for the construction of the bauxite and aluminium factory), and for female convicted persons, such a camp was established in Ferdrenk in Kočevsko. When both factories were built in April 1950, the male camps in Ljubljana and Strnišče near Ptuj were abolished and the convicted persons were transferred from there to the working group Medvode, where they were building a hydropower plant. A large labour camp for socially beneficial labour was also established at the building site of the hydropower plant in Moste at Žirovnica. Before the winter, the women were transferred from Ferdrenk first to the castle of Škofja Loka and from there to the penal-correctional home in Rajhenburg, where they established a working group for socially beneficial labour.

Because of the extremely severe regime in the camps for socially beneficial labour, these labour camps can be compared with Stalin’s gulags. Upon their arrival, the hair of the convicted persons was cut to the skin, any contact with other convicted persons in the camp were forbidden and they went to work in groups led by armed guards. The immediate supervision over them was carried out by guards whom the camp managers usually recruited from among common criminals. Those guards treated them in a cruel manner and even beat them. The women were tortured also by having to stand assembled in the sun for longer periods of time, which caused some of them to lose consciousness. The camps (working groups) for socially beneficial labour were abolished in 1951. When they were released, the convicted persons had to sign a statement that they would not tell anyone where they had been all that time and what they had been doing there.

³⁵ ARS, AS 1267, sign. arh. of the unit: 1/72.

³⁶ Official Gazette of the LRS, No 16/1949.

³⁷ ARS, AS 1931, technical unit 1440, Report of the Ministry for Internal Affairs of LRS for 1949.

4. Survey of concentration camps in Slovenia in 1945

4.1. Concentration camps for members of the German national minority

- Strnišče near Ptuj
- Hrastovec near Sv. Lenart in Slovenske gorice
- Studenci near Maribor
- Brestrnica near Maribor
- Kamnica near Maribor
- Tezno near Maribor
- Teharje near Celje

4.2. Concentration camps for members of the Hungarian national minority

- Filovci in Prekmurje
- Hrastovec near Sv. Lenart in Slovenske gorice
- Strnišče near Ptuj

4.3. Concentration camps for members of the Slovenian Home-guard

- Teharje near Celje
- Škofovi zavodi in Št. Vid nad Ljubljano
- Škofja Loka

5. Survey of concentration camps in Slovenia from 1945 to 1951

5.1. Camps for forced labour – penal camps (1945–46)

- Kočevje
- Teharje near Celje
- Studenci near Maribor
- Brestrnica near Maribor

5.2. Camps for correctional labour – working groups (1949–51)

- Strnišče near Ptuj
- Kočevje
- Rogoza near Maribor
- Prestranek near Postojna
- Pšata near Ljubljana
- Inlauf near Borovec in Kočevsko

5.3. Camps for socially beneficial labour – working groups (1949–51)

- Strnišče near Ptuj
- Litostroj, Ljubljana
- Žale, Ljubljana
- Medvode
- Moste near Žirovnica
- Rajndol near Kočevje
- Ferdrenk in Kočevsko
- Škofja Loka
- Rajhenburg

Mitja Ferenc*

SECRET WORLD WAR TWO MASS GRAVES IN SLOVENIA

In 2008, we are commemorating the 63rd anniversary of the victory over fascism and the end of World War Two. In Slovenia, having cooperated in the victorious coalition of the allied forces, we are still facing the heritage of the past – the consequences of actions which, during and after that War, left our soil full of secret mass graves. These graves are a consequence of post-war mass and individual killings, without trials; in the years 1945–46, as well as wartime graves that harbour the remains of members of the armed formations of anti-Partisan forces and civilians. In a broader sense, secret graves also encompass all those from 1945–46 in which soldiers and civilians are buried who could not, or were not allowed to, have their own graves.¹

According to official data, there are 3,986 wartime graves and mass graves in Slovenia from World War Two²; that data did not, and still does not, include the secret mass graves. Only in the past few years have active search and investigation been initiated. The numbers known up to now are shocking: 571 other graves have already been recorded by the year 2008.

As in many other warring countries, post-war events in Slovenia included vengeance by the victors over the defeated. On Slovene soil, that vengeance was especially bloody, for Slovenia, lying in the north-western corner of Yugoslavia, was home ground for various groups of military formations.³ The Second World War in Europe ended on the night of 9 May 1945, when the German army, in its steady retreat from Yugoslavia, left western Croatian towns and started its retreat through Slovenia. To avoid Yugoslav capture, the German army and especially a multitude of anti-Partisan units of different nationalities moved through Slovenian territory towards Austria. They were also joined by many civilians. Their leaders used propaganda to inflame fear and cause people to flee from the Partisans. Out of fear of the Yugoslav army and the new regime, they intended to surrender to the English and Americans, whom the huge multitude of refugees, leaving their homes, expected would implement the international Conventions on Prisoners of War.

Until 14 May 1945, British troops accepted into captivity thousands of Ustashe, Croatian Home guards, (and Serbian, Slovene, and other) soldiers and civilians. At this time they were issued with an order by the Allies' Headquarters for the Mediterranean, located in Caserta, to hand over all Yugoslavs, who had cooperated with the armed forces of Germany, to Tito's authorities, as well as not to receive any more units from Yugoslav territories. The main body of retreating soldiers of the Independent State of Croatia, as well as of retreating Croatian civilians, were affected by the decision while still on Slovene territory. Due to British pressure, a throng of people numbering into the thousands, surrendered to the Yugoslav army on 15 May 1945 near Pliberk (Bleiburg) in Austria. The return of those refugees captured at Pliberk, via the Drava Valley towards Croatia, was accompanied by mass executions, primarily of the Ustashes and Home-guard officers – it is still known in Croatia's collective memory as "The Bleiburg Tragedy" and "Križni put" or "Marševi smrti". Most of those people, who had already

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¹ The problem of secret mass graves was presented in more detail by the author at the exhibition *Hidden and Concealed. Hidden graves 60 years after the end of World War II* in Celje in May 2005 and later in larger Slovene cities as well as in the homonymous monograph.

² Ministry of Labour, Family and Social Affairs (hereinafter ML), Information on the state of affairs in the area of wartime mass graves for the Session of Government of the RS, 07/29/1999. In official data, higher numbers appear as well.

³ Slovenia witnessed an appearance of various armed military forces fighting alongside German forces in the last period of the war. The low number of Slovene Chetniks was therefore strengthened by Chetnik formations (around 5,200) coming to Slovenia's Primorje and Istra at the end of 1944 and beginning of 1945. Furthermore, approximately 6,000 members of the Serbian Volunteers Corps ("Ljotičevci") and around 1,500 members of the former Serbian State Guard ("Nedičevci") arrived. Many civilians and family members also arrived with them. These troops intended to defend themselves from Tito's army in Slovenia in order to later conquer occupied Yugoslav territories from "free" Yugoslav soil. If they were not to succeed, they planned to surrender to the Anglo-Americans, whom they expected to disembark on Istra. Because this did not happen, the forces that were caught by the last days of war in Primorje and Istra fled from the encroaching Yugoslav armada across the Soča into Italy and surrendered to the British army on 5 May. They were disarmed and interned in camps but not handed over to Tito's army; Hrvoje Magazinović, *Kroz jedno mučno stoljeće*, Split 2002, pp. 186–187; Branko Latas: The Defeat and Destruction of the Chetnik Counter-revolution in the Concluding Period of the War, in: Dušan Biber (ed.), *The End of World War II in Yugoslavia*, in: *Borec*, 38, (1986), pp. 748–758; Jozo Tomasevich: *Četnici u drugom svjetskom ratu 1941–1945*, Zagreb 1979, p. 385.

managed to cross the Austrian border, were returned to Yugoslavia by British authorities between 18–24 May 1945, where any trace of many returnees was lost. The Croats were followed by members of the Serbian Volunteers Corps and the Montenegrin Chetniks. Last in line were the Slovenes: between 28 and 31 May, about 10,000 Slovene Home guards and a few hundred civilians were returned.⁴

The captives were driven to camps in Slovenia, the largest of them being Šentvid nad Ljubljano and Teharje pri Celju. After short hearings, captives of Slovene nationality were divided into groups A, B, and C. Captives from group C – they represented the majority – were soon murdered.⁵ For the most part, captives from Šentvid were transported by train to Kočevje, and from there on, with trucks to the abysses of Kočevski Rog; the captives from Teharje were mostly transported to mine crevasses of Stari Hrastnik. Captives of other nationalities were mostly separated according to the districts of their residence, so that knowledgeable people siding with the Partisans were better able to identify them and seal their fate. Those who served in the German army, or armed forces under its command, or cooperated with it, and had stayed in Slovenia, were in mid-May summoned by the new authorities to report.⁶ They were put in camps and the closest municipal or local OZNA prisons.⁷ The same procedure with a milder regime awaited them. The OZNA locked away a large part of the German minority, Slovenes suspected to have cooperated with the occupying power, relatives of Home guard members, Slovene civilians who voluntarily accepted German citizenship during German occupation and others. Austrian civilians of Slovene nationality were also illegally transported over from the Austrian part of Koroška.⁸ From the camps and regional prisons, the captives were taken to nearby killing fields.

Most of the mass killings were carried out from May to July 1945; among the victims were mostly the “returned” (or “home-captured”) Home guards and prisoners from other Yugoslav provinces. In the following months, up to January 1946 when the Constitution of the Federative People’s Republic of Yugoslavia was passed and OZNA had to hand the camps over to the organs of the Ministry of the Interior, those killings were followed by mass killing of Germans, Italians and Slovenes suspected of collaborationism and anti-communism. Individual secret killings were carried out at later dates as well.

The decision to “annihilate” opponents must have been adopted in the closest circles of Yugoslav state leadership, and the order was certainly issued by the Supreme Commander of the Yugoslav Army Josip Broz - Tito, although it is not known when or in what form. Executions of Slovenes were mostly carried out by selected units and individuals of Slovene OZNA and KNOJ (Corps of People’s Defence of Yugoslavia); on the other hand, the executions of Croats, Serbs and Montenegrins were mostly carried out by members of the Yugoslav Army from other parts of Yugoslavia, who also participated in the killings of Slovenes. At the time, the killings of some thousands of people in only a few days would have been impossible to organise without the support of the highest politicians and military commanders. The brutal and severe treatment of prisoners of war was, without a doubt, influenced by events that happened during the war: occupation, collaboration, resistance and civil war, as well as the tendency of the victors, after but also already during the war, to settle scores with opponents of the

⁴ Compare the number of returned in: Anthony Cowgill, Thomas Brimelow, Christopher Booker, *The Repatriations from Austria in 1945. The Report of an Inquiry*, London 1990 and the supplementary material Cowgill Inquiry, *The Documentary Evidence*, London 1990, KP 309, p. 299 (according to this report 12,196 Croats, 8,263 Slovenes, 5,480 Serbs and 400 Montenegrins were handed over to Yugoslav authorities between 18–31 May); John Ivan Prcela, Dražen Živić, *Hrvatski holokaust*, Zagreb 2001, (hereinafter *Hrvatski holokaust*), pp. 67–80 (a total of 24,600 Croats returned from camps).

⁵ More about the handing over of Home guards can be found in: Boris Mlakar, *Slovene Home Guards: 1943–1945. The Founding, Organization, Ideological Background*, Ljubljana 2003; Tamara Griesser Pečar, *Divided Nation*, Ljubljana 2004; also in sources referenced in the annotations, as well as: Tone Ferenc, “Post-War Mass Killings 1945–46”, in: *Encyclopaedia of Slovenia*, 16, Appendix, Ljubljana 2002, pp. 166–167.

⁶ Archive of the Republic of Slovenia II, f. 18/I part., Proclamation of the YA, GS of Slovenia, Command for Municipality of Ljubljana. “1. All members of the German Army and all former German units in service of the occupier have to report to the nearest municipal Command or other organs of our army with all their weaponry, at the latest one week after the posting of this proclamation. All who shall not report by the stated date are as of that day considered outside the scope of the law ...
3. All hiding of members of the former German Army and non-German units in German service and all concealment of data about those members will be punished according to military law in military courts ...”

⁷ OZNA (Division for the Protection of the People); the Yugoslav service fighting the so-called interior enemy of new Yugoslavia, established in 1944 and subordinate to the Supreme Commandant of the Partisan Army Josip Broz - Tito or his deputy Aleksander Rankovič and the Leaderships of individual federal units. The executive armed body of the OZNA was the Army of State Security (VDV) and afterwards the units of the Corps of National Defence of Yugoslavia (KNOJ). After the end of the war, OZNA and KNOJ have, by order of the Yugoslav Centre, carried out the so-called purification: out-of-court killings of the arrested or returned (by the English authorities from Austria) members of anti-Partisan formations, and other opponents of the new Yugoslav authorities.

⁸ Police Administration Slovenj Gradec, criminal indictment, 30. 5. 2002; Othmar Mory, *Liescha/Leše – 1945. Stätte des Grauens und des Gedenkens. Der Versuch einer Zusammenfassung des Geschehens um die Verschleppung von Kärntner Zivilpersonen im Mai 1945*, Bleiburg 2002.

revolution, resulting in a radical removal of actual and potential opponents. Psychological factors, e.g. a desire for revenge, also played a major role.

In all wars, there are victors and defeated, and in many wars, different forms of post-war vengeance takes place. The revenge taken by the victors over the defeated in Slovenia was in many ways unique. First, it was unique by the extremely high number of victims who were killed “after the war had ended”. The exact number of victims lying in secret graves will probably never be known. The Republic of Slovenia has in the past few years succeeded in preparing a name-list of all residents of Slovenia who died a violent death in the Second World War and immediately afterwards. Judging by the available data, of about 84,000 people who died by January 1946, around 15 % or about 13,960, were individuals killed after the war ended. Among those 13,960 people were 12,587 Home guards, 160 Slovene Chetniks, and 1,127 civilians – all killed after the war had ended.⁹ Trying to answer the question of how many Croats and people of other nationalities were killed in Slovenia, and where their remains could be found, is even more difficult. As there is almost no primary archive material about the killings, the mass graves, or the number of victims, and due to very rare excavations of posthumous remains, to estimate or even to determine such a number could all too soon become a subject to manipulation, reaching unprecedented levels.

A second particularity that must be understood is that even after 60 years, the defeated still do not have marked graves. For most of them, it is not even known where they lie, and they never received a burial worthy of a human being. Crimes were exacerbated by forced silence and suppression of the right to a grave. Mass graves, individual graves and their victims simply “did not exist”. Mass graves were razed to the ground, covered, destroyed. The graves of German and other occupiers and their helpers had to be destroyed and any trace of them removed under an order accepted on 18 May 1945 by a directive of the Federal Ministry of Domestic Affairs, and dispatched, in its entirety or adapted, to lower authorities by individual federal ministers. The directive was applied even in later years because it was repeated on federal- and republic-levels in August 1946, and to a certain extent it was also upheld by the Law on Funeral and Burial Services.¹⁰

History proves that concealment of crime cannot remain hidden forever. The fate of the victims did not remain a public secret. Prisoners who escaped from camps and prisons, and foremost people who were saved from the killing fields, have reported about events to their relatives and friends; their fate was much written about in the literature of emigrant politicians. In Slovenia and Yugoslavia, it was forbidden to talk about this subject, and therefore, earlier generations did not settle the question of wartime and post-war killings and the secret mass graves of the victims, as would be proper in a democratic country that would show equal piety to all its citizens. The broader Slovene public was reminded of the question of wartime and post-war killings at the conciliation solemnity in Kočevski Rog in July 1990; the question of a public and revered memory of secret victims was already addressed by Spomenka Hribar in 1984.¹¹

The “discovery” of mass graves already started in the beginning of 1990’s but was soon stopped. The problem was dealt with by people and associations outside competent state authorities. At the time, different municipal commissions were established in individual municipalities and applied various methods to tackle the problem. Generally, they soon stopped functioning and they mostly worked on determining the circumstances of the executions and less on searching and marking the locations in the field or checking reliability. Much was accomplished in the area of researching the backgrounds of post-war killings by the commission of inquiry of the National Assembly of the Republic of Slovenia, which collected the statements of many participants.¹² An important step in bringing this subject back into public awareness and memory have been the so-called parish-plaques with engraved

⁹ *Slovene recent history. From the program of Unified Slovenia to the international recognition of the Republic of Slovenia. 1848–1992*, 1, Ljubljana 2005, pp. 790–795.

¹⁰ Off. gaz. SRS, no. 34/1984; Article 35 of the Law on Burial and Funeral Services, abolished a few days in advance of the conciliation solemnity in Kočevski Rog in 1990, stated: “It is forbidden to erect signs, inscriptions, pictures and symbols denoting affiliation of the deceased to hostile movements directed against the National Liberation Army of Yugoslavia or their hostile activities against the social organisation of the SFYR, on cemeteries.”

¹¹ Spomenka Hribar, “Guilt and sin”, in: *Kocbek’s Collection*, Ljubljana 1987, pp. 11–68.

¹² Refer to material of the Investigative Committee for Research of Post-War Killings, Legally Doubtful Proceedings, and Other Similar Irregularities (the so-called Polajnar Committee, established on 30. 7. 1990, and the so-called Pučnik Committee, established on 5. 7. 1993) and to Jože Pučnik, “Mass Post-War Killings”, in: Drago Jančar (ed.), *The Dark Side of the Moon. A Short History of Totalitarianism in Slovenia 1945–1990*, Ljubljana 1998, pp. 39–52.

names of about 14,000 victims.¹³ Since 1995, police and the public prosecutor's office have been, with intermittent spells of higher or lower intensity, working on project *Reconciliation*, whose intent is to search for evidence of criminal liability of persons involved in crimes that do not fall under the statute of limitations (war-crimes, genocide). The project has not met expectations from the criminal law perspective. Even if the police were not able to collect enough relevant evidence to indict a single person, at minimum the police recorded a lot of important testimony, which was of great help to the public and to everyone working on the subject of secret mass graves.¹⁴

Methodical record-keeping¹⁵ of mass graves only began in 2002, accompanied by a huge response in the media triggered by discovery and excavation of 431 victims from two shafts in Zgornja Bistrica in Štajerska. Questions about when the Government will acquire a list of those locations, and when and how it will start to manage them were ever more frequently asked. The government of Slovenia issued a statement committing itself and other governmental bodies to do all in their power to find mass graves, mark them, and, where necessary, to relocate the posthumous remains.¹⁶ The government assigned seven tasks to the newly established Governmental Committee for Settlement of Questions on Secret Mass Graves (Governmental Committee), including "recording of data about the number and locations of mass graves of representatives of the non-victorious side of World War II – the collected records will later serve the standardization of the mass graves".¹⁷ By the end of 2007, Mitja Ferenc had catalogued 571 secret mass grave locations, with the cooperation of experts on individual grave sites, criminal investigators, victims' relatives and others.¹⁸ The research did not only include post-war murder sites, but incorporated all secret graves, including those from wartime as well as mass graves of those who fell in the war's closing combat, which were not taken care of or were not known.¹⁹ Because these mass graves did not "exist", any search for them, and research of them, is complicated after so many decades. Written records of post-war murders are rare, and about their locations, even more rare. This leaves us with no choice but to rely on oral sources and to determine the locations in the field according to the oral data.

The management of mass graves is impossible, or at least seriously limited, due to the lack of legislation. The Law on Wartime Graves was passed only in June 2003 and was supposed to identically regulate, within the framework of the competent ministry (Ministry of Labour, Family and Social Affairs), the safeguarding²⁰ of all mass graves of all people killed during or because of the war. But its broad implementation is still being blocked due to differing opinions of parliamentary parties about the inscriptions on the monuments.

The locations of posthumous remains can be divided into four groups. The largest group are pits that had to be specifically excavated for the execution and concealment of crimes. Around 450 of the recorded mass graves belong to this group. They can be found all around Slovenia, even in very inappropriate places. They are mostly located in light forests, forest clearings or on forest edge meadows as well as on locations which were later used as ponds, scrap heaps, parking lots, orchards; on outer walls of cemeteries, riverbanks, rivulets, steep slopes, even near small chapels etc. Some of the sites were revealed by nature, others were uncovered during construction work or by relatives and associations searching for them, but only very few of them were opened under planned operations, with the exception of the mass graves of German and Italian soldiers which are being continually relocated under agreements with both countries.²¹

¹³ *Parish Memorial Plaques*, 1st book, Ljubljana 1995; 2nd book, Ljubljana 2000.

¹⁴ An analysis of the completed work has been conducted in a report to the prosecutor's office by the Senior Criminal Inspector and leader of the project 'Reconciliation' Pavel Jamnik; Pavel Jamnik, "Project Reconciliation": *Findings of the Police Investigations of Post-War Killings: Final Report*, Ljubljana 2004. Police conducted around 850 interviews and sent about 60 reports and 11 criminal indictments to the prosecutor's office.

¹⁵ Records of every mass grave site contain nine different sets of data: identification, description, location, sources and literature, photos, comments, cadastre, oral sources and extracts (in total 29 different categories).

¹⁶ Statement of the government of the Republic of Slovenia about a wholesome plan to manage mass graves of post-war mass killings, and at the passing of the Law on Wartime Mass Graves, 22. 11. 2001.

¹⁷ Decree of Establishment of the Governmental Committee for Settlement of Questions on Secret Mass Graves, 33. session of the Government of the RS, 21. 6. 2001.

¹⁸ Mitja Ferenc, Recording of Secret Mass Graves in RS, as of 31. 12. 2007. A computer database is in the archives of the author, the Ministry of Culture and the Ministry of Labour, Family and Social Affairs.

¹⁹ The few rare mass graves that were already relocated during the war or after it or whose posthumous remains were partly extracted and reburied elsewhere, have also been recorded, as according to the Law on Wartime Mass Graves.

²⁰ Official Gazette RS, No. 65/2003.

²¹ Agreement between the governments of the Republic of Slovenia and the Italian Republic on the management of wartime graves, Off. Gaz. RS, International Agreements, no. 10/1997; Agreement between the governments of the Republic of Slovenia and the Federal Republic of Germany on wartime graves, Off. Gaz. RS, International Agreements, no. 6/1999; MD, Agreement between the governments of the Republic of Slovenia and the Republic of Croatia on management of wartime graves, Draft.

The second group of secret mass graves consists of mineshafts and shelters. 15 have been recorded. The most well known and infamous is the shaft Sveta Barbara near Laško, while the most victims lie in mining crevices of Stari Hrastnik, harbouring Bosnian and Montenegrin Chetniks and Slovene Home guards.

The third group consists of anti-tank and other previously excavated shafts. 16 have been recorded but despite being often mentioned, only two have been partially investigated – at Tezno near Maribor and near Celje. Other shafts are also known between Brežice and Dobova, near Mislinja and Slovenj Gradec, in Bistrica ob Sotli, etc.

The last group of secret mass graves are karst abysses. Speleologists have recorded human posthumous remains in different conditions in close to 100 abysses.²² Some of the abysses are fully uncovered so that anybody descending into the abysses would step on human bones, while others were mined in order to conceal traces. Unfortunately there are also those that have been filled with garbage now covering the posthumous remains. Those same remains were partially or entirely taken out of about 10 abysses. In 2007, systematic probing of karst abysses/mass graves started²³ and in September 2006, the first systematic investigation of a mined karst abyss (Brezno pri Konfinu 1), as well as the extraction and analysis of 88 victims' remains, were carried out.

Research has so far shown that, in Slovenia, military secret mass graves prevail in number. It is only true for Slovene victims that the number of civilian grave sites are more numerous whereas military mass grave sites hold more victims. The most numerous, where estimations legitimately reach one thousand or multiple thousand victims, are both abysses in Kočevski Rog: Jama pod Macesnovo Gorico with predominantly Slovene victims and Jama pod Krenom where seemingly, persons of other nationalities besides Croats and Serbs are located.²⁴ The following are also counted among the more numerous: Stari Hrastnik with Chetniks and Slovene Home guards, the mineshaft Sveta Barbara in the cave Huda Jama, mass graves in Bistrica ob Sotli, in Krakovski gozd and all anti-tank shafts in which mostly Croats are buried. In the abysses of plain Trnovska planota mostly Italians but also Slovenes from the area surrounding Gorica have been executed. Some were even transported to the karst caves from the areas of Trst and Koper. The karst abysses, especially the ones that were mined and the ones that we did not yet manage to discover are still shrouded in mystery regarding the number of victims, e.g.: cave Ušiva jama in Kočevski Rog. With the help of a recently rediscovered list of mass graves, we now know that more than 1,300 German soldiers lie buried in 120 locations in Ilirska Bistrica and its surroundings.²⁵ The largest and most numerous mass grave in Slovenia is Tezno near Maribor with victims of mostly Croatian nationality. Part of the shaft was systematically investigated during highway construction works in 1999. Over only 70 meters, there were more than 1,100 corpses or 18 corpses per meter.²⁶ In August 2007, test-drilling of the shaft showed that over 900 additional meters of the shaft contain corpses which could amount to around 15,000 victims.²⁷

The secret graves are only with difficulty receiving the first modest markings. 60 years after World War Two, it is agreed that all persons who lost their lives in the war, or because of it, have the right to a name and a grave, and that settlement of the mass graves question would mean a return of civilised norms to Slovene society. The question of searching for, researching and managing secret mass graves often intertwines with questions of guilt and sin; namely, with questions of who committed these crimes, who will be held responsible for them, who is guilty of the killings, etc. We can understand that even nowadays, these questions cause political strife and conflicting views of past events, but the question of managing secret mass graves should be clearly separated from all other topics. The right to a decent grave is a matter of humanity and civilisation, and should not be connected to the question of who won and who was defeated. If we continue to deal with the disorder of secret mass graves as we have up to now, the question of the winners and the defeated will easily be overturned by the judgment of our posterity, that all of us were defeated. That could only happen because, even 63 years after World

²² Speleological Association of Slovenia, Cadastre of Caves.

²³ Andrej Mihevc, *Report on Assessment of Existence and Extent of Secret Wartime Graves in Karst Caves*, September–November 2007, elaborate.

²⁴ Mitja Ferenc, "A Bow to Slovene Victims at a Wrong Memorial Place", in: *Mythical and Stereotypical in Slovene Perspectives of History*, pp. 153–164.

²⁵ Mitja Ferenc, "... Graves are razed and overgrown. (List of graves of enemy soldiers, fallen in the time of NOV in the area of Ilirska Bistrica)", *Contributions to recent history*, 1 (2004), pp. 160–168.

²⁶ Police Administration Maribor, Report of the District Attorney on Excavations, 12. 7. 1999; Institute of Forensic Medicine, Expertise.

²⁷ Mitja Ferenc, "Secret mass grave at Tezenski gozd", *Uncut*, RTV Slovenia, 10. 10. 2007.

War Two, we have not been able to join political will, the sensitivity of family members, and renewed scientific efforts to change these circumstances and finally manage these mass graves.

Milko Mikola*

COMMUNIST REPRESSION OF “INTERIOR ENEMIES” IN SLOVENIA

In the greater part of this paper, the author deals with individual repressive measures that Communist rule imposed in Slovenia in the period from the end of the war in 1945 until the beginning of the 1950s. In this period, the Communist authorities in Slovenia implemented all the forms of repression that were typical of states with Stalinist regimes. In Slovenia, it was a time of mass killings without court trials, and of concentration and labour camps. Property was confiscated, inhabitants were expelled from Slovenia/Yugoslavia and their residences, political and show trials were carried out, religion was repressed and the Catholic Church and its clergy were persecuted. At the beginning of the 1950s, Communist rule in Slovenia abandoned these forms of repression but was ready to reapply them if it felt threatened. Thus the regime set up political and show trials against certain more visible opponents later. In the case of an “emergency situation”, even the establishment of concentration camps was planned in Slovenia in 1968, where around 1,000 persons, of whom 10 % were women, would be interned for political reasons.

1. Some general features

Dealing with Communist repression in Slovenia should have as a basis the fact that the second or AVNOJ (AVNOJ) Yugoslavia, part of which was Slovenia, was a totalitarian state. As in other Communist countries, the Communist Party in Yugoslavia and thus also in Slovenia established a power monopoly that enabled it to fully master all spheres of economic and social life, including by means of revolutionary violence. After having forcibly subjected all authorities and other social institutions, it also endeavoured to fully subordinate every individual. In principle, the totalitarianism of Communist rule did not allow the assertion of those fundamental human rights and freedoms that are indispensable for bringing democracy into force and ensuring the freedom of every individual. Because Communist rule could stay in power only through force, it was indispensably based on the use of excessive repression against its own citizens. The level of repression depended on the level of endangerment: the more the regime felt threatened, the more severe the repression. In terms of the intensity of implementing repression and violating human rights and freedoms, Communist totalitarianism in Slovenia should be divided into the following two periods:

- The period from the end of the war in 1945 until the beginning of the 1950s;
- The period from the beginning of the ‘50s until the fall of Communism.

It was characteristic of the first period that Communist rule in Slovenia used Stalinist methods, and therefore it may be designated as a period of Stalinism. The Communist Party of Yugoslavia, and thus the Communist Party of Slovenia, was “one of the most radical of all Eastern European Communist parties, because it gravitated most to the Soviet socialist pattern.” The consistent imitation of Stalinist patterns of rule was most clearly evident in the repression against the actual and potential adversaries of Communist rule – “interior enemies”. In the period from the end of war in 1945 until the beginning of the ‘50s, Communist repression in Slovenia reached such vast dimensions that we may speak about state terrorism over its own citizens, to whom not even the right to life was granted. This period was characterised by mass killings without court trials, concentration and labour camps, forced deprivations of property, deportations of inhabitants and political and show trials, to list only some of the more explicit forms of violence in those times.

These and other repressive measures in Slovenia were abolished only after the final break with Stalin and Stalinism. The most important step in this direction was made by abolishing the existing Stalinist criminal legislation, which took place in January 1951 with the adoption of a new criminal code.

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This code no longer included certain criminal acts that had existed in the criminal legislation, and it also did not include certain of the severest sentences. The abolishment of the harshest forms of repression was followed by certain other more liberal political changes, which, however, the Communist Party (the League of Communists from 1952 on) was ready to implement only to the extent that it did not threaten its power monopoly. However, as soon as it began to feel threatened, it banned the liberalisation policy and got back to the old, well-worn patterns. So from the '50s until the fall of Communism, periods of liberal changes were always followed by a fresh enforcement of "iron rule" in Slovenia. Nevertheless, since the beginning of the '50s, repression in Slovenia never again reached the past level.

Here the question arises of why the Yugoslav or Slovenian Communists decided to abolish some of the most typical Stalinist methods at the beginning of the '50s at all. The reasons for these changes did not lie in a sudden awareness of how amiss such methods were or in their readiness to relinquish them forever. They were in fact forced to make certain liberal changes, also reflected in the abolishment of the most brutal repressive measures, by the difficult international situation in which Yugoslavia found itself at the end of the '40s and the beginning of the '50s. At that time, the Yugoslav Communist leadership became involved in a difficult conflict with Stalin's Soviet Union and its satellites – the dispute with the Informbiro. Because it felt greatly threatened, the Yugoslav Communist leadership was forced into contact with the West and asked the West for economic and military aid, which was provided. It is assumed that the Western countries imposed conditions for providing economic and military aid to Yugoslavia, demanding that its leadership renounce some of the most acutely repressive measures. This condition was not excessively demanding for the Yugoslav Communists, because during that time the further use of some former means of repression was no longer necessary. For strategic reasons, the West did not want Yugoslavia to be subordinated to Moscow, so it was willing to provide aid when it was no longer threatened by military aggression after Stalin's death in 1953. The purpose of this help was to maintain, at any price, the necessary economic and political stability in Yugoslavia, which was expressed in the slogan of the American diplomats as "keeping Tito afloat". The great economic assistance that Yugoslavia was receiving from the West until Tito's death in 1980 and afterwards the raising of enormous loans enabled Yugoslavia to keep its social standard at a much higher level than in countries with so-called "real socialism". This in turn also ensured social peace.

Under such conditions, there was indeed no need for greater use of repression. This, however, did not mean that the Communist regime was not ready to use it again if it believed it was necessary. Yugoslavia, and consequently Slovenia, remained a totalitarian state, despite certain liberal changes, until the fall of Communism. The main support structure of Communist rule remained its political secret police. Until March 1946, this was the Department for Protection of the Nation (OZNA), followed by UDBA (State Security Administration) until 1967 and the State Security Agency (SDV) after 1967. The secret police took care that the "interior enemies" were constantly under control and that due sanctions were taken against them in a timely manner. The secret police let the judicial authorities deal with them, from time to time carrying out political and show trials against the most dangerous of them. One victim of such a trial was the most important Slovenian dissident, Dr Jože Pučnik, later a leader of the Democratic Opposition of Slovenia (DEMOS). To deal with the most dangerous opponents, the Communist authorities were also ready to use military courts, as was the case in 1988 in the "trial against the four" in Ljubljana, in which J. Janša, I. Borštner, F. Zavrl and D. Tasič (the JBTZ Affair) were condemned for their "hostile activities". In the case of a so-called emergency situation, the Communist regime in Slovenia planned the establishment of concentration camps for imprisonment of its most dangerous enemies. A recently discovered document shows that during the 1967–68 period, they specifically planned the establishment of four concentration camps, where around 1,000 persons would be interned for political reasons, among them 100 women.¹

2. Survey of some of the most typical forms of communist repression in Slovenia in the period 1945–51

As was already mentioned, the Communist authorities in Slovenia, in the period from the end of war in 1945 until the beginning of the 1950s, instituted certain forms of repression against the "interior enemies" that were typical of states with Stalinist regimes, such as:

¹ The document was discovered in the archives of the Ministry of Justice of the Republic of Slovenia in 2007.

- Mass killings without court trials;
- Establishing concentration camps;
- Establishing labour camps;
- Forced deprivations of liberty;
- Implementing political and show trials;
- Deportations of inhabitants from the state and their place residence;
- Determining place of residence;
- Suppression of religion and persecution of the Church and clergy.

3. Mass killings without court trials

The Communist repression in Slovenia reached its peak in the first months after the war ended in 1945 with the carrying out of mass killings without court trials of so-called “national enemies”. As already implied in the term “killings without a court trial”, these were killings carried out without any proceedings before a court and without establishing the guilt of the individual victims. The victims of killings without a court trial were killed only due to their status, because for the victorious Communist Party in the civil war they represented the “national enemies” with whom the Communist regime decided to settle accounts once and for all. This happened despite the fact that military courts existed in those times in Slovenia that could judge alleged perpetrators of war crimes and other criminal acts in accordance with the provisions of the Regulation on Military Courts of the Supreme Headquarters of the National Liberation Army and POJ (Partisan Detachments of Yugoslavia – PDY) of 24 May 1944. According to this regulation, which was still applicable during those times, only military courts were competent to issue death sentences. By implementing killings without a court trial, the Slovenian Communist authorities also grossly violated their own regulations on criminal justice.

One of the central issues raised in this context is the question of who adopted, and when, the decisions on implementation of the mass killings that occurred in Slovenia after the war. On 14 May, Supreme Commander Josip Broz - Tito sent a telegram to all his subordinate headquarters saying that the killing of prisoners should be stopped and that the Geneva Convention should be respected.² The Main Headquarters of the Yugoslav Army had already called attention to respecting the Geneva Convention on 3 May in its order on the treatment of prisoners of war.³ However, despite this injunction, both prisoners of war and civilians were killed massively at the end of May and in the first half of June 1945 in Slovenia. Tito’s telegram on respecting the Geneva Convention was later revoked; however, it could only be revoked by the person who issued it in the first place, i.e. Tito himself. He could probably not have taken such an important decision alone, as it had to be adopted by the core party leadership, i.e. the Politburo of the Central Committee of the Communist Party of Yugoslavia. Because it also consisted of representatives of the Communist Party of Slovenia, the responsibility for such a decision also lay with its leadership. The most frequently given reason for its adoption was the straining of relations between Yugoslavia and the Western allies, resulting from the Yugoslav military occupation of Trieste. Because there existed the possibility of armed conflict with the British and Americans, the captured adversaries supposedly represented a great interior threat to Yugoslav Communist rule, and therefore the regime decided to liquidate them. This liquidation was entrusted to the Department for Protection of the Nation (OZNA), which was established on 13 May 1944 under the model of the Soviet NKVD. The OZNA was not only a military intelligence service, but at the same time also represented the political secret police of the Communist Party. The OZNA carried out mass killings without court trials with the help of members of the National Defence Corps (KNOJ).

The killings without a trial were most massive in the first months after the war in 1945 and continued until the beginning of 1946. How extensive these killings were is illustrated by the fact that 581 hidden graves of victims of post-war killings without a court trial have thus far been found in the territory of Slovenia. The figure will undoubtedly increase considerably given that the recording of hidden graves has not yet been concluded. These are mostly graves in which a large number of victims (in some cases even several thousand) were buried. For these mass killings, anti-tank trenches (near

² Bakarić warned Tito that the things were getting out of control, *Jutarnji list*, 27 October 2007.

³ Ibid.

Maribor, Celje and Dobrova) were used, also including Karst chasms and caves (in Kočevsko and Primorska), abandoned mine shafts and hollows produced by coal mining (Zasavski rudarski revirji – Zasavje mining grounds) and bunkers, as well as anti-aircraft shelters (Slovenska Bistrica). Under the order of the then authorities, all such graves were levelled out and covered up.

Among the victims of post-war killings without a court trials in the territory of Slovenia were members of all Yugoslav nations, but the majority were Croatians. The military units of the “ustaška” Independent State of Croatia (Nezavisna država Hrvatska – NDH), together with a multitude of civilian refugees, moved in May 1945 across the Slovenian territory towards Austria in order to surrender themselves to the British. The majority succeeded in pushing through to Pliberk (Bleiburg) in Austrian Carinthia, but the British military authorities forced them to surrender to the Yugoslav units on 15 May. After their surrender, they were led on foot across Slovenia to Croatia and beyond. During the march, they were killed en masse and exposed to great suffering, and therefore the Croatians named this march the “Križni put” – the “Way of the Cross”. Mass killings of captured Croatian soldiers and civilian refugees began in the Slovenian territory. The greatest number were killed and buried in the anti-tank trench in Tezno near Maribor, where there are the largest mass graves of the post-war period, not only in Slovenia but most probably in all of Europe. The extent of these mass killings is testified to by the fact that during highway construction between 7 April and 22 June 1999, 60 meters of the former anti-tank trench were dug up in the Tezno woods and 19 bodies on average were discovered per meter along the length of the trench, totalling 1,179 bodies.⁴

The same destiny that befell the Croatians who surrendered to the Yugoslav Army on the way to Pliberk was also suffered by members of various military formations from Slovenia (“home guards” – “domobranci”) and other parts of Yugoslavia (“četniki, nedičevci, ljotičevci”), and civilian refugees who managed to reach Austrian Carinthia and there surrender themselves to the British. The British received them and placed them in a camp in Vetrinjsko Polje, assuring them that they would be transported to prison camps in Northern Italy. However, the British broke their promise and began to turn them over to the Yugoslav military authorities in the second half of May. The latter transported them by train to Slovenia, together with civilians who were also turned over by the British, and interned them in camps in Št. Vid nad Ljubljano, Škofja Loka and Teharje, from where they were taken to be executed after a few days. They did not even spare the wounded, the disabled and the sick.⁵ The victims of post-war killings without a court trial also included members of different military formations and civilian refugees who were captured in Slovenia even before they managed to retreat to Austria. These victims were first placed in camps and then the majority of them were killed. A special category of victims of post-war killings without court trials were civilians who were arrested in their homes on the basis of lists already compiled. Some were killed immediately upon their arrest and some were taken to concentration camps and prisons and later executed.

Because documents that would detail the total number of victims of such post-war killings in Slovenia are not available, the real figure is only assumed. It is estimated, mainly on the basis of graves discovered up to now, that around 100,000 captured members of different military formations and civilians from all parts of Yugoslavia were killed without a court trial in Slovenia. However, detailed data are available for such victims in the territory of Slovenia. According to the most recent data from the Institute of Contemporary History in Ljubljana, which is engaged in a research project to establish the number of casualties in the Second World War and in post-war violence in Slovenia, the following numbers of people were killed without a trial after the war:

- 12,431 “domobranci”
- 170 policemen from the Ljubljana region;
- 156 Slovenian “četniki”;
- 48 Slovenians mobilised into the German army;
- 21 members of Italian collaborator units;
- 1,076 civilians;
- 372 persons of non-identified war status.

⁴ Mitja Ferenc, *Covered up and hidden from the eyes, Hidden graves 60 years after the end of World War II*, Celje 2005, p. 55.

⁵ More about it: *Without mercy, the wounded, the disabled and the sick post-war prisoners in Slovenia*, Lovro Šturm (ed.), Nova revija, Ljubljana 2000.

According to the above data, which are still only provisional, a total of 14,274 persons were killed without a trial in Slovenia after the war. If we take into account that this research is still underway, the above numbers will certainly be much higher upon completion of the project. The great loss that these 14,274 victims represented for the Slovenian nation may be ascertained more accurately if the number of persons killed without a court trial in Slovenia is compared to the number of those that were killed without a trial in France in the post-war period. In France, the killings of “collaborators” without a court trial after the war were the most massive in all of Western Europe and their number amounted to around 10,000 persons. It should be taken into account, however, that France then had 42 million inhabitants and Slovenia not even a million and a half.

4. Establishing concentration and labour camps⁶

4.1. Concentration camps

The Communist regime began to set up concentration camps in Slovenia immediately after the war ended in May 1945. Some were even established in the same locations where the German occupying forces had set them up for Slovenians during the war. The first concentration camps were intended for interning members of the German and partly also Hungarian national minorities. The largest such camp was in Strnišče pri Ptuj (now Kidričevo), where there had already been a German concentration and labour camp during the war. Around 10,000 persons were interned there, mostly members of the German minority from all over Slovenia, who were then supposed to be deported to Austria. In addition to members of the German national minority, the camp was also filled with members of the Hungarian national minority from Prekmurje and Slovenians who had been arrested for alleged collaboration with the occupying forces during the war. Concentration camps for the German national minority in Slovenia were also established in Hrastovec pri Sv. Lenartu, Slovenske Gorice, Brestrnica pri Mariboru, Studenci pri Mariboru and Teharje pri Celju.

When the British military forces returned in the second half of May 1945, the captured Slovenian home guards and members of military formations from other parts of Yugoslavia and civilian refugees to Slovenia, the Slovenian authorities interned them in concentration camps in Teharje, Št. Vid nad Ljubljano, Škofja Loka and Kranj. Because mainly war prisoners were imprisoned in these camps, these camps should in fact have the status of prison camps. However, the Slovenian military authorities did not acknowledge these people the status of prisoner of war and did not treat them in accordance with the Geneva Convention. In these camps, war prisoners and civilians were exposed to hunger, thirst and torture, and finally the majority were killed without a court trial. Apart from the prisoners of war, these camps were also filled with numerous civilians, mainly women, children and older people. The great majority of these people suffered the same destiny as the prisoners of war.

The Communist authorities abolished concentration camps in Slovenia in autumn 1945, mainly because of the approaching elections to the constitutional assembly of the Democratic Federative Yugoslavia. The majority of concentration camps were transformed into penal camps for forced labour.

4.2. Labour camps

In Slovenia, around 20 labour camps existed in the period 1945–51. First the Communist regime set up penal camps for persons whom the military courts had sentenced to deprivation of liberty with forced labour. The first such camp was established in Kočevje immediately after the war, and later such camps were also set up in Teharje, Brestrnica and Studenci. In these penal camps, more than 6,500 convicted persons served the sentence of forced labour. Under the name “penal camp”, these labour camps existed until January 1946, when they were renamed “institutions for forced labour”. They were abolished by October 1946 and those persons sentenced to forced labour were then sent to “penal-correctional institutions (KPD)”.

⁶ The post-war concentration and labour camps established in Slovenia are more extensively dealt with in the author’s paper published in this collection.

New labour camps began to be established in 1949. These were correctional camps and camps for socially beneficial work, officially called “working groups”. Such labour camps were set up in locations where major facilities such as factories, power plants, etc. were built. Convicted persons were sent to these camps mainly by the administrative authorities for internal affairs based on the Offences Against Public Order and Peace Act, which was adopted in Slovenia on 11 May 1949.⁷ Within the people’s committees, special “offence commissions” were established that were responsible for issuing the criminal sanction of socially beneficial work. The basic Party cells had an important role in deciding who should be sent to correctional and socially beneficial work. In 1949, the courts and administrative authorities sent 2,709 men and 839 women to serve the sentence of correctional labour, and in 1950, they sent 2,610 men and 658 women.⁸ In 1949, the administrative authorities (offence commissions) sent 1,900 persons to socially beneficial work, in 1950, 80 persons and in 1951, only 43 persons.⁹

The main purpose of establishing these labour camps was to exploit convicts for hard labour in reconstruction and construction of major economic and other facilities that were part of the first five-year economic plan. Political convicts prevailed in labour camps, and the authorities believed that they needed to be politically re-educated. Therefore, special emphasis was placed on their political re-education in labour camps. The circumstances in these labour camps were similar to those that we know from the description of Stalin’s gulags in the Soviet Union.

Convicted persons were sent to labour camps until the beginning of 1951, when the new Yugoslav penal code abolished the sentences of forced, correctional and socially beneficial work.

5. Forced deprivation of property

In accordance with Marxist-Leninist doctrine, Communist rule in Slovenia in the first few post-war years implemented a series of forcible denationalisation measures, by which it mainly intended to destroy the private economic sector and thus create the conditions for the emergence of state or social property. The most important forcible deprivations of property were carried out in the period from 1945 to 1948 with the implementation of:

- Confiscations;
- Agrarian reform;
- Nationalisation of private economic entities.

All the above denationalisation measures under Communist rule not only represented extremely brutal interference with the right to private property, but also one of the worst forms of repression. The largest and most violent interventions were carried out through confiscations. Other measures (agrarian reform and nationalisation) in fact only supplemented denationalisation measures. How extensive this denationalisation measure was is demonstrated by the fact that around 26,000 confiscations of property were proclaimed after the war in Slovenia. Confiscations were accompanied by other forms of aggression on the owners of the confiscated property: court prosecutions, being sent to labour camps and even killings. Because confiscations represented the most brutal interference of the Communist regime with private property, we will hereinafter limit ourselves to this form of interference.

Confiscation was the forcible deprivation of property for the benefit of the state without compensation. Confiscations were most massive in the years 1945 and 1946, when the confiscation of the property of so-called national enemies was carried out. The legal framework for these confiscations was the Decree of the AVNOJ Presidency on the transition of the enemy’s property into state ownership from 21 November 1944.¹⁰ This Decree was aimed at all “German property” that was located in the territory of Yugoslavia/Slovenia. “German property” was property belonging to persons of German nationality and the property of the German Reich and its citizens. Confiscation of this property was considered a form of war reparation for the damage caused by the German occupying forces. In order to

⁷ Official Gazette of the People’s Republic of Slovenia, No. 16/1949.

⁸ Archives of the Republic of Slovenia (ARS), AS 1267, sign. of the archive unit 14/620 and 14/621.

⁹ ARS, AS 1931, technical unit 1440, Report of the Ministry for Internal Affairs of the LRS for 1949.

¹⁰ Official Gazette of Democratic Federative Yugoslavia, No. 2/1945.

issue and enforce the confiscation, the sole statement that a person was of German nationality or a citizen of the Third Reich was sufficient. Because the guilt of such a person did not need to be established, such confiscations were not ordered by the courts but by the administrative authorities, i.e. confiscation commissions. These commissions issued 20,293 decisions on the confiscation of “German” property from August until the end of December 1945. These confiscations affected members of the German minority in Slovenia, as they lost all their property and were expelled from Slovenia.

During the period from 1945 to 1946, the property of those who were killed during the war by the partisan resistance movement was also confiscated as the property of “national enemies”. The administrative authorities confiscated their property on the basis of Article 28 of the Act on Confiscation of Property and Implementation of Confiscation of 9 June 1945.¹¹ The actual guilt of the person whose property was confiscated was not ascertained at all. The following principle applied: a person who was killed by the partisans was guilty, and proof of his/her guilt was his/her liquidation. There were 3,600 confiscations ordered in Slovenia.¹²

Likewise, the administrative authorities confiscated the property of those whom they deprived of citizenship. These were almost exclusively people who had lost their citizenship because they did not want to return to Yugoslavia after the war or who had emigrated from Yugoslavia. In the second case these were mostly economic emigrants. The administrative authorities for internal affairs began to implement confiscations of property on the grounds of deprivation of citizenship in 1949, and implemented them into the sixties. By 1952, the property of 545 persons had been confiscated in this manner.¹³

In the period from July to August 1945, military courts and the Court of the Slovenian National Honour issued numerous confiscations of property as a side sentence on convicted “national enemies”. During that time, the above courts sentenced more than 1,500 persons¹⁴ to confiscation of property. An important share in issuing confiscations was also held by the courts of civil jurisdiction (district and local), which in the period from 1947 to 1951 issued the following number of confiscations:¹⁵

Year	1947	1948	1949	1950	1951
Number of confiscations	290	496	730	351	90

6. Implementation of political and show trials

The Communist authorities also abused the judiciary in order to settle accounts with their actual and potential opponents (“interior enemies”). By implementing the revolutionary principle of the “unity of powers”, the judiciary in Slovenia lost the status of an independent branch of power and as a result lost its independence as well. It became an instrument in the hands of the Communist Party and its means for implementation of repression.¹⁶ The concept of the role of courts as understood in those times is demonstrated by the report of the President of the District Court in Celje from 1948, where he wrote, among other things: “.../ Beyond doubt the court is a fighting body that has to combat the class enemies. It should be particularly attentive to the remains of capitalism that may emerge in any form, it should take care of covered up enemies who act in a refined manner against the interests of the people and who in a covert way, either directly or indirectly, serve and support international reactionary forces via different channels. The court must be a sharp weapon in the hands of the working people, by which they fight against the enemies and for the victory of socialism /.../”¹⁷

Immediately after the war, criminal justice in Slovenia was carried out by military courts and the Court of the Slovenian National Honour. Before that, in July and August 1945, mass trials against the

¹¹ Official Gazette of Democratic Federative Yugoslavia, No. 40/1945.

¹² ARS, KUNI, archive box 2, general matters, paper by Milan Lemež on the issues of national property.

¹³ ARS, Republic Secretariat for Internal Affairs, A-13-0, Reports for the years 1949, 1950, 1951 and 1952.

¹⁴ Lists of persons sentenced to confiscation of property. The lists were issued by the Commission for administration of national property in 1945.

¹⁵ ARS, Ministry of Justice of the People’s Republic of Slovenia, Judicial Statistics for 1947, 1948, 1949 and 1950.

¹⁶ The work by Roman Ferjančič and Lovro Šturm examines the post-war revolutionary criminal justice in Slovenia. *Lawless state, Slovenian justice after 1945*, Nova revija, Ljubljana 1998.

¹⁷ Historical Archives of Celje, MLO Celje, box 197, sign. of the archive unit: 1293, Reports of the District and Local Courts of Celje.

“national enemies”, charged with having committed certain criminal acts during the war, were carried out. These courts operated until the end of August 1945, when criminal justice was taken over by the regular courts of civil jurisdiction. The courts of civil jurisdiction continued with political trials, only that national enemies were now replaced by the “class enemies”, who included above all manufacturers, merchants, tradesmen, larger farmers (“kulaki”) and clergy. The majority of these trials were not only political, but also show trials, which means that they were carried out in compliance with a scenario prepared in advance. The courts were only entrusted with the task of implementing such trials. The accused were judged in accordance with special revolutionary laws, among which we should mention above all the Act on Criminal Acts Against the Nation and the State, which was modelled after a similar act from Soviet criminal legislation. All trials in which the accused were judged on the basis of this Act were of a political nature.

According to data available to the leadership of the League of Communists of Slovenia, “around 7,000 persons were sentenced for serious political offences during the National Liberation War and during the revolutionary transformation of our society”.¹⁸ The persons sentenced in these trials were political convicts. The authorities of those times used the same expression and kept them filed in special records called the “records of political convicts”. Records for 5,475 political convicts have been preserved,¹⁹ however, the actual number of political convicts was much larger, because the preserved records of political convicts do not include records for the clergy, farmers and merchants who were condemned during the first post-war years in political and show court trials. There were several thousand such political convicts. The most infamous political and show trials were the so-called Christmas Trial, Nagode Trial, Rožman Trial and Dachau Trials. In political and show trials, courts issued extremely severe sentences to the condemned persons: deprivation of liberty with forced labour, confiscation of property and even death. Reliable statistical data on the number of these and other sentences issued in Slovenia are available only for the period after 1947, when criminal statistics started to be kept. Since that year and until 1951, when these sentences were abolished, the courts in Slovenia issued the following number of sentences:²⁰

Type of sentence issued	Number of sentences issued					
	1947	1948	1949	1950	1951	Total
Death penalty	42	52	30	19	-	143
Life imprisonment	?	19	9	7	2	37
Deprivation of citizenship	3	2	1	3	-	9
Deprivation of liberty with forced labour	1,802	2,836	1,778	1,622	-	8,038
Deprivation of liberty	4,505	4,988	2,920	2,479	3,984	18,876
Forced labour without deprivation of liberty	2,822	-	-	-	-	2,822
Correctional labour	-	3,275	2,988	2,693	529	9,485
Loss of political and individual citizenship rights	859	995	786	750	163	3,553
Loss of state or other public job	17	/	/	/	/	17
Prohibition of performing a certain job and occupation	62	331	66	17	3	479
Confiscation of property	290	496	730	351	90	1,957
Financial penalty	3,646	2,827	1,596	1,627	2,026	11,722
Deportation	-	163	142	27	6	338

¹⁸ Information from 14th session of the Presidency of the Central Committee of the League of Communists of Slovenia from 29 January 1979 on security situation and 1. operation of opposition forces in Slovenia, published in a publication by Božo Repe, *Sources on democratisation and independence of Slovenia* (Part I: Opposition and the Power), Sources 17, Ljubljana 2002, Document No. 1, p. 11.

¹⁹ The records of political convicts were discovered in 2007 in the archive of the Ministry of Justice of the Republic of Slovenia that handed them over to the Archives of the Republic of Slovenia.

²⁰ ARS, Ministry of Justice of the People’s Republic of Slovenia, Judicial Statistics for 1947, 1948, 1949, 1950 and 1951.

How severe the criminal justice in Slovenia was during that period is indicated by the fact that in 1984 only 51 convicted persons were “justified”.²¹

Mass implementation of political and show trials ceased in Slovenia after 1951, because they were no longer needed, since the Communist authorities had for the most part already gotten rid of the “class enemies” by then. The only exception was trials against Catholic priests, which continued until the mid-‘50s. The reasons for this are to be found in the fact that the Communist ruled did not succeed in subjugating the Catholic clergy and still considered them the most dangerous representatives of the “reactionary forces”.

7. Deportations of inhabitants from the state and place of residence

In Slovenia and certain other Yugoslav republics (Croatia and Serbia), the Communist regime immediately after the war ended in 1945 started with mass deportation of members of the German national minority from the state.²² Yugoslavia took this road although the allied forces at the Potsdam Conference had not given explicit permission to do that as they had done in the case of Poland and Czechoslovakia. It is estimated that around 9,000 members of the German national minority were deported from Slovenia after the war and approximately 16,000 retreated to Austria even before the end of the war. Their deportation was carried out in several stages that followed one another from May 1945 until March 1946. First they were expelled directly to Austria, but when the British occupying forces in Austrian Carinthia and Styria refused to accept them, they were expelled to Hungary and from there the Soviets transferred them to their occupied zone in Austria. The majority of members of the German national minority were gathered in special camps before they were deported. The central gathering camp for members of the German national minority from all over Slovenia was in Strnišče (now Kidričevo). Because of the suffering to which the internees in this camp were subjected - and the same applied also to all other “gathering” camps in Slovenia – this camp was in fact a concentration camp.²³ The camp in Strnišče was also officially called “Concentration Camp Strnišče”.

Post-war criminal legislation also allowed the expulsion of inhabitants from their places of residence, which was foreseen as “a security measure” against those persons who were “obviously a threat to the public peace and order”. They were issued by both the courts and the administrative authorities for internal affairs. The victims of this measure were not only individuals but also whole families and in particular cases even all inhabitants of a village. Most people were expelled from the areas bordering on Austria and Italy. The authorities expelled the population from these areas because they wanted to close down these two borders hermetically and in this manner prevent illegal crossings. In order to at least formally justify this repressive measure, which is strongly reminiscent of the expulsions of Slovenians carried out by the occupying forces during the war, the usual practice of the authorities was to accuse such persons of having contacts with emigrants or even acting for the benefit of the intelligence services of Western countries. The reasons for the expulsion of families in some cases could be quite banal. For example, in 1949 a family from Bled was expelled to Kočevsko only in order to enable the authorities to seize their house because it was located too close to Tito’s Vila Bled.²⁴ The majority of expelled families were deported to Kočevsko, where after the deportation of Germans in winter 1941–42, vast areas remained totally deserted. In September 1947, several families from Zgornjesavska Dolina (Rateče, Podkoren, Srednji Vrh, Mojstrana)²⁵ were expelled there. In July 1949, several families from Kranjska Gora were also moved to Kočevsko. Deported

²¹ Archives of the Republic of Slovenia, AS 1267, sign. of the archive unit 13/619, Annual Report of the Department for Implementation of Sentences for 1948.

²² The issue of deportation of members of the German national minority from Slovenia is dealt with by the papers of the Slovenian historians published in the Collection: Dušan Nečak (ed.), *“Germans” in Slovenia 1941–1955*, Scientific Institute of the Faculty of Arts, Ljubljana 1998.

²³ The living conditions and treatment of internees in Strnišče and other similar camps in Slovenia is described by some former internees in their accounts published in Milko Mikola (ed.), *Documents and testimonies on post-war concentration camps in Slovenia*, Ministry of Justice of the Republic of Slovenia, Ljubljana 2007.

²⁴ Archives of the Ministry of Justice of the Republic of Slovenia, Commission for Implementation of the Redressing of Injustices Act, file No. 714-01-2932/98.

²⁵ Fric Razinger, “Deported to Kočevje”, *Borec, Magazine for History, Literature and Anthropology (Revija za zgodovino, literaturo in antropologijo)*, 47 (1995).

families could only take with them the necessary furniture, clothes, food and one cow.²⁶ They were allotted a place in the deserted villages of Kočevje. Because they were forbidden to move about freely, they had to get special permits from the local authorities for movement outside their place of residence. They had to work in state economies and state estates. The majority of them returned from Kočevsko to their homes only in the beginning of the '50s. After returning home they could move back to their homes, but these were no longer their property because they had been confiscated.

The inhabitants of the Prekmurje village of Petišovci (85 % were of Hungarian nationality) were simply deported by the authorities in December 1948 and in April 1949 without being provided with substitute homes.²⁷ In addition, they were also expropriated because the authorities planned to pump oil on their land.

The new Yugoslav criminal law of 1951 did no longer included the issuing of “a security measure” of expulsion from one’s place of residence, so the courts stopped passing such sanctions. However, the administrative authorities for internal affairs could still issue such sanction on the basis of the Public Order and Peace Act, because this Act included the issuing of this “security measure” even after 1951. The new Act on Criminal Offences against Public Order and Peace from 1959 also included such sanction.

8. Determining place of residence

The “interior enemies” against whom Communist rule was particularly harsh also included the so-called members of Informbiro (“informbirojevci”). For the most part, these were Communists who had been accused of having opted for Stalin in the conflict between the leadership of the Communist League of Yugoslavia and the rest of the Informbiro member states that took place in 1948. According to the estimated number given by local party organisations, there were 1,154 recorded members of Informbiro²⁸ in Slovenia. At first, they were prosecuted only by the courts, but from January 1952 they were also prosecuted by the authorities for internal affairs. An administrative “security measure” was used against them, by which they could be sent to live in a certain place for a period of 6 months to two years. The legislative basis for implementation of this measure was Article 5 of the amended Public Order and Peace Act of 17 December 1951²⁹ which entered into force in the middle of January 1952. A special body, the Offence Panel, was established to issue this administrative sanction at the Ministry of the Interior of the People’s Republic of Slovenia, which issued a decision to the person against whom this sanction was taken, determining a place of residence for such person for a fixed period of time. For men, the determined place of residence was Mermer in the district of Senj, which, however, did not exist at all. Mermer was in fact a company on the island of Goli Otok, where the prisoners had to work. Goli Otok was one of the most horrible concentration and labour camps in Yugoslavia. For women, the camp was set up on the island of Sveti Grgur.

9. Suppression of religion and prosecution of the Church and clergy

Although the federal and republic constitutions guaranteed the freedom of religious belief, religion was repressed in Slovenia after the war because Communist rule, in accordance with its ideology, set itself the aim of eradicating religion in the shortest possible time. The extremely intolerant and even hostile attitude to religion held by the Slovenian Communists was demonstrated by the words of Franc Leskošek - Luka, who at the meeting of the Local Committee of the Slovenian League of Communists of Celje said, among other things: “We are the opponents of religion. We know that religion is a stupid thing. It serves to frighten the people. Religion in the 20th century is not part of our reality anymore. This

²⁶ Ibid.

²⁷ Vida Štefan, “Deportation of the inhabitants of Petišovci”, *Oil mining, On the 45th anniversary of INA Nafta Lendava*, Cultural Community of the Municipality of Lendava, Lendava 1990, pp. 24–32.

²⁸ Aleš Gabrič, “Informbiro in Slovenia”, *Contributions to the Recent History*, XXXIII/1–2 (1993), Ljubljana, p. 173.

²⁹ Official Gazette of the People’s Republic of Slovenia, No. 40/1951.

is a thing that was valid 500 years ago, but today it is a stupidity /.../'³⁰ A logical consequence of this view was not only repression of religion but also prosecution of the Catholic Church and other religious communities and their believers. The Communist regime paid the greatest attention to the Catholic Church (hereinafter: Church). Because it was by far the most numerous and most influential among all the religious communities in Slovenia and because the Communist authorities could never subject it to their rule, they considered it “interior enemy number one” until the fall of their power.

The period of the worst persecution of the Church in Slovenia was the period from the end of the war until the beginning of the '50s. In this period, the authorities deprived the Church of the major part of its property via agrarian reform and confiscations, while simultaneously exercising severe pressure on the clergy. The political secret police – State Security Administration – had an important role in the persecution of the clergy. The Communist Party also involved judicial bodies in the implementation of repression of the Church and clergy. After the war, political and show trials against priests and monks followed one after the other before military and civil jurisdiction courts. There they were issued sentences of deprivation of liberty with forced labour, confiscation of property and deprivation of political rights, while a few priests were even sentenced to death and executed. Many priests were imprisoned without ever having been sentenced. In the first post-war decades, almost every other priest in Slovenia spent at least one day in prison and some of them were even imprisoned several times.³¹ According to the Commission for Religious Issues in 1955, 319 priests were convicted in Slovenia in the period from 1945 until 1995; they were mostly sentenced to imprisonment, but four death penalties were issued as well.³² A great number of priests were also punished after the war by the administrative authorities for internal affairs. In the period from 1945–55, 1,033 priests were punished in Slovenia, of these 969 with fines and the rest with imprisonment.³³ The administrative authorities for internal affairs (Commission for Offences) most frequently sent the priests to be “re-educated” in the camps for socially beneficial labour. Despite partial normalisation of relations between the state and the Church, priests continued to be persecuted after 1966. In 1966, 1967 and 1968, there were 14 priests involved in criminal proceedings and 121 priests in administrative proceedings.³⁴

Particularly in the first post-war years, the Communist authorities left the priests to be persecuted by the most fanatical activists, who were free to intimidate them and even physically attack them. There were cases when such party activists simply expelled the priests and forbade them to return to their parish. In some cases, for example in Medvode and Bizeljsko, such persecution ended with the murder of a priest. One such deed of these extremists was the attempted murder of the Ljubljana assistant Bishop, Anton Vovk, who was drenched with gasoline and set on fire on a train in the railway station in Novo Mesto on 20 January 1952, and barely survived the severe burns. These extremists desecrated and destroyed sacral buildings (chapels, crosses and churches) without being liable for their deeds and without being punished. The persecution authorities usually deliberately looked the other way in these cases.

In parallel with these repressive measures against the clergy, the Communist regime also carried out repression against believers. Teachers and professors of religious belief were particularly threatened – they were asked to abandon their world-view or leave the teaching profession.³⁵ Many of them lost their jobs because of their religious beliefs. However, even more students were expelled from school on the grounds of their religious belief. The victims of these sanctions were for the most part students at teachers' colleges. In the teachers' college in Maribor, the teaching staff took under scrutiny thirty students for their “political inappropriateness” in February 1952 and expelled two of them from all schools, expelled one female student from the teachers' college and advised the rest of them to leave the college on a voluntary basis.³⁶

Under Communist rule, not only were the Church, priests and believers persecuted, but also and even more so, other churches or religious communities. Among the most persecuted were Jehovah's Witnesses (“jéhovci”). They were persecuted even in the eighties, mostly because they refused to bear arms and did not want to participate in military service in accordance with their religious beliefs.

³⁰ Historical Archives of Celje, Local Committee of the Slovenian League of Communists of Celje, box 1, sign. of the archive unit: 2.

³¹ “Roter's interrogators”, *Family (Družina)*, a magazine), 19 October 2003, interview with Dr Tamara Griesser Pečar, p. 8.

³² Mateja Režek, “The issue of religion is the issue of liberating the Church from the Vatican. Relations between the State and the Catholic Church in the period 1949–1953”, *Historical Paper (Zgodovinski časopis)*, 3 (1999), p. 375.

³³ Ibid.

³⁴ Lovro Šturm, Ljuba Dornik Šubelj, Pavle Čelik, “Instructions for the work of security bodies in the Socialist Republic of Slovenia”, Sources 21, Ljubljana 2003, document 2.8, p. 132.

³⁵ More about it: *Religion, Church and School in the documents of municipal committees of the Slovenian League of Communists of the Historical Archives of Celje*, Milko Mikola (ed.), Celje 2003. The publication was published by the author with the support of Mohorjeva družba, Celje.

³⁶ Janez Pastar, “Year 1952 at the Maribor Teachers' College”, in: *130 Years, Anthology of III. Gymnasium Maribor*, Maribor 1993, pp. 12–69.

***III. TRANSITIONAL JUSTICE:
PROSECUTION AND REDRESS OF INJUSTICE***

Lauri Mälksoo*

REPARATION AND RECONCILIATION IN INTERNATIONAL LAW: THE VIEW OF AN ESTONIAN LAWYER

I fully support the idea that has been expressed a number of times during this hearing: that reconciliation is one of the most important goals when dealing with past crimes. I am also thankful for the opportunity to sit at the same table and discuss with our Russian academic colleagues. I wish we would do that kind of debating more often, more collaboratively and more constructively. I would not be prepared to accept the idea that Estonian and Russian legal scholars and historians would only be able to discuss these difficult matters with the participation of a third party or institution, only with 'Europe' as mediator.

Reconciliation cannot emerge in a vacuum, in the lack of dialogue. In order to ask for forgiveness, you need to know for what forgiveness is asked. In order to be able to forgive you need to be asked to forgive. Reconciliation cannot usually go around the question of the historical truth. On the basis of the truth as established by historians, certain normative conclusions can and must be drawn by lawyers. In interstate relations, the law that forms the basis of drawing this kind of normative conclusions is public international law.

The law is already there. It was established when the London Agreement was signed by the Allied Powers in August 1945. In that agreement, for the purposes of the Nuremberg trial, the following three crimes were defined: crimes against peace, crimes against humanity and war crimes. Moreover, in 1948 the United Nations defined and prohibited the crime of crimes: genocide.

Some of the definitions of crimes included elements that seemed politically motivated already when they were adopted. For example, the definition of crime against humanity in the London Agreement included the so-called "nexus to war" ("Crimes against humanity: namely, murder, extermination, enslavement, deportation or other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."). Later on, the nexus was abolished in international criminal law. However, the nexus was clearly there for the purposes of the Nuremberg trials. Can it be that the political importance of the nexus included avoiding asking the question whether Joseph Stalin did not extensively practice these horrible things in his own country much before World War II broke out? But altogether, the definition of crimes against humanity, as it was adopted in 1945, was a huge step forward for international law. One may also welcome the fact that the nexus to war has been deleted from its definition, for example in the Rome Statute establishing the International Criminal Court.

The other problematic definition was and is that of genocide. William Schabas, the foremost authority in this field of law, has described the *travaux préparatoires* of the 1948 Genocide Convention: the reasons why social and political groups were left out of the definition were essentially political. The USSR argued that the definition of the crime of genocide was tailored to fit the Nazi crimes solely.

The Aristotelian maxim of justice is that similar cases must be treated alike. If Stéphane Courtois and his colleagues are even approximately right about the number of the victims of Communist regimes over the 20th century, it is strange that such a large number of victims cannot be qualified with the help of the definition of the crime of crimes. In order to kill that many people in so many different places, there had to be a lot of *mens rea* and intent to kill there. Excluding political and social groups from the definition of genocide certainly did look unjust when Pol Pot slaughtered millions of his own people in Cambodia. However, the definition of genocide in the 1998 Rome Statute has still not been changed in comparison with the 1948 definition. Nevertheless, a number of states such as France and Estonia, for example, have included social and political groups (murdering with the intent to destroy *any* group) in the definition of genocide in their respective Criminal Codes. The silence of the definition on the international level has at least been corrected in the domestic setting.

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Minor defects and shortcomings notwithstanding, the law is, as I already mentioned, already there. In the time of the Cold War, it was politically possible to freeze the question of applying the law to acts of the victorious USSR. Similar cases were not treated alike. When Nazi Germany attacked Poland on 1 September 1939, it was an aggressor; when the USSR attacked Poland on 17 September 1939, it was on a liberating mission. When Hitler forced Czechoslovakia to surrender with the threat of war, he committed aggression; when Stalin did the same with the three Baltic republics in June 1940, he was merely preparing to defend his country in the face of approaching Nazi aggression. When Hitler deported civilians, he committed crimes against humanity; when Stalin did so, it was all a Soviet internal affair.

No one voluntarily accepts to play the role of collateral damage. When the Cold War ended, it became clear that it was not possible to uphold such contradictions as described in the paragraph above any longer. Western governments emphasized more clearly the fact that the Baltic States had been illegally occupied and annexed by the USSR from 1940 to 1991. The European Court of Human Rights has also clearly recognized the fact of the Soviet occupation of Estonia, Latvia and Lithuania in the admissibility cases of *Kolk, Kislyi and Penart v. Estonia* (2006). In the same cases, the Strasbourg court has accepted that the Nuremberg definitions of crimes are indeed universal. These definitions of crimes were previously used for persecuting Nazi criminals but they can equally be applied to acts committed by others, even including victorious powers.

So far, the government of the Russian Federation has denied that any illegal occupation might have been carried out by the USSR in the Baltic States. All Baltic attempts to prosecute individuals who deported civilians in the Baltic States, for example, during the Soviet mass deportation of 25 March 1949 – almost four years after the end of World War II in Europe – have been seen as unfriendly and revisionist by the Russian government. But it is only the application of the very same standard of international law, nothing more or less.

To sum up previous remarks, of the three types of making reparation in the international law of state responsibility – restitution, compensation and satisfaction – the latter is probably the most needed in the cases of mass crimes organized by governments, including occupying governments. Reconciliation is not possible based on historical distortions such as: that the Baltic nations joined the USSR voluntarily, and that there were no crimes such as executions or deportations in the Baltic States at all, or if there were any, then all Soviet people suffered in the same way. Occupation, the destruction of already established nation states in 1940, created a specific context to the Soviet crimes in the Baltic nations. This context is determined by international law. And of course there is otherwise no exclusivity in the suffering of the Baltic nations; we are all in favour of condemning Stalin's regime's crimes against the Russian and other Soviet peoples as well.

Thus, reconciliation remains a very important and perhaps the most important goal in the process of dealing with the past – reconciliation based on historical truth and satisfaction.¹

¹ For further and more detailed reading on these topics by the author, please consult: *Illegal Annexation and State Continuity: the Case of the Incorporation of the Baltic States by the USSR. A Study of the Tension between Normativity and Power in International Law*, Martinus Nijhoff, Leiden–Boston 2003; “Soviet Genocide? Communist Mass Deportations in the Baltic States and International Law”, *Leiden Journal of International Law*, 14 (2001), pp. 757–787; “Von der Demokratie bis zur Diktatur – ein verborgener Dialog zwischen Artur Tölelid Kliimann und Carl Schmitt”, *Der Staat*, 43 (2004), pp. 57–82; “The Definition of Genocide and the Role of Soviet International Lawyers: Reflections on the Socialist Legacy in International Law”, *Baltic Yearbook of International Law*, 6, Martinus Nijhoff, Leiden–Boston 2006, pp. 111–124.

Dariusz Gabriel

PROSECUTION OF NAZI AND COMMUNIST CRIMES IN POLAND

1. The Commission for the Prosecution of Crimes against the Polish Nation to execute the investigation function of The Institute of National Remembrance

Following Poland's regaining independence in late 80's of the last century, after the first partially free elections in June 1989, the judiciary, as represented by the Government of the Republic of Poland, faced the challenge of full recognition and punishment of Communist crimes.

The Commission, proceeding with the activity performed by the former Central Commission for Investigation of Nazi Crimes in Poland (Główna Komisja Badania Zbrodni Hitlerowskich w Polsce), based on the Act of 4 April, extended in 1991 both the subject-matter and the time scope of investigation and prosecution of crimes. It included, as one of the objects of interests, investigations concerning deportation of soldiers of the Home Army (Armia Krajowa) and other independent forces, as well as inhabitants of the Eastern Borderlands (Kresy Wschodnie) of the 2nd Polish Republic, into the USSR, with respect to crimes committed by officers of the Military Intelligence (Informacja Wojskowa) and the Ministry of Public Security of Poland (Ministerstwo Bezpieczeństwa Publicznego), pacification of the Polish land between the Vistula and Bug rivers, as well as other crime to be defined as war crimes and crimes against humanity.

It was vital to develop new legal regulations to provide for typology of cases of unjust behaviour and acts by the authorities of the Communist state against the citizen. It was necessary to specify the term "Communist crime" with respect to a penal and legal tool which would comprise one of the elements of recognition and punishment of Communist system.

The Act of 6 April 1984 on the Central Commission for Investigation of Nazi Crimes in Poland (Główna Komisja Badania Zbrodni przeciwko Narodowi Polskiemu), as binding at that time (Dziennik Ustaw /*The Gazette*/ of 14 April 1984, No. 21, Item 98, as amended), did not grant The Institute of National Remembrance (Instytut Pamięci Narodowej) a possibility to deal with crimes committed after 1956, thus narrowing the time census until 31 December 1956, and, at the same time, affording a statutory definition of the Stalinist crime as one committed to the detriment of an individual or group of individuals, in the period until 31 December 1956 by the authorities of the Communist state or provoked or connived at by them. The regulations of the Act did not either provide for a basic function: execution, within reasonably prompt time limits, of criminal proceedings against persons who are suspected of committing Stalinist or Nazi crimes. The reason for this was a procedural difficulty, wherein substantive decisions – ones concluding the proceedings – were issued by a public prosecutor, which resulted in lasting proceedings and was likely to violate the right of the victim to have the perpetrator tried within reasonable time limits. The society perceived each year of impunity of perpetrators of crimes of the Communist system as incapability and perplexity of the state. The Constitution adopted by the highest authority of the Republic of Poland – the National Assembly – in Article 44, defines the requirement for the period of prescription with respect to crimes, not prosecuted for political reasons, committed by public officers or ordered by them, which were suspended until such reasons cease to persist.

Therefore, both the Government of the Republic of Poland and MP's bills, as well as the Extraordinary Commission on consideration of draft acts concerning granting general access to the archives and documentation of the former state security authorities, which was established by the Sejm (the lower house of the Polish Parliament) of the 3rd Term on 23 April 1998, aimed to prepare a legal regulation on the level of a Parliamentary Act, that would satisfy the requirement, as imposed by the Constitution, as well as take account of the will of the Legislative.

The subject-matter of the work by the Extraordinary Commission was considering a need to include in the proceeded Act, that the activity of The Institute of National Remembrance should cover the period following the year 1956 as well, so that perpetrators of all Communist crimes that had not been recognised up to that moment, could be prosecuted on the grounds of the penal code by the judiciary.

It was, and still is, obvious that unpunished crimes, resulting from the essence of the political and legal system ruling in Poland in the years 1944–89, were being committed by officers of the Communist regime throughout the period in question. Thus the Act, as drafted by the Extraordinary Commission, specified the course of prosecution of Communist crimes within the period between 1939 and 1990, neglecting the term of the Stalinist crime.

The Extraordinary Commission resulted in the Sejm of the Republic of Poland passing the Act of 18 December 1998 on The Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation (Instytut Pamięci Narodowej – Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu).

1.1. The Commission for the Prosecution of Crimes against the Polish Nation

The preamble of the Act on The Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation, indicates the foundations and leading principles that this jurial act was supposed to satisfy. These principles include, as follows:

- Keeping in memory the vast number of victims, enormity of losses and damage inflicted upon the Polish Nation during the Second World War and after its ending;
- The Polish Nation’s patriotic tradition of waging a fight against occupants, Nazism and Communism;
- The deeds of Poles performed in order to re-establish independent Poland and to secure freedom and human dignity;
- The obligation to prosecute crimes against peace, humanity as well as war crimes;
- As well as the duty to express gratification and make compensation in order to redress all the injustice done by the State as a result of violating human rights.

Moreover, the legislator included in the preamble that they believed that unlawful acts of the authorities against its nation neither should be hidden under cover nor should be forgotten.

The Act on The Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation entered into force in 1999. In 2000 the Central Commission for the Prosecution of Crimes against the Polish Nation was established, as an investigation department of the Institute. Its prosecutors launched and carry out investigations concerning crimes committed with respect to persons of Polish nationality or Polish citizens of other nationalities, which were defined as non-limited with respect to the period of prescription, as well as ones concerning Communist crimes committed in the period from 17 September 1939 to 31 July 1990.

The Central Commission for the Prosecution of Crimes against the Polish Nation, as well as the Branch Commissions for the Prosecution of Crimes against the Polish Nation, operates in cities wherein Courts Of Appeals are domiciled. Prosecutors of the Central Commission supervise investigations run by prosecutors of the Branch Commissions.

The Act stipulates that investigations are carried out based on the provisions of the Polish Code of Criminal Procedure, by prosecutors employed at The Institute of National Remembrance. Simultaneously, full commitment was secured by the Institute’s prosecutors with respect to investigating crimes, as defined in the Act, which was effected by means of the organisational exclusion of such persons from the structures of the public prosecution authorities. The organisational placement within the structure of The Institute of National Remembrance aimed also to exclude putting political pressure on the Institute’s employees.

The objective scope of crime prosecution was specified in Article 1 Point 1 Letter a of the Act, indicating that such acts are included as committed with respect to persons of Polish nationality or Polish citizens of other nationalities in the period from 1 September 1939 until 31 July 1990, that constitute:

- Nazi crimes;
- Communist crimes;
- Other crimes against peace, humanity, as well as war crimes.

The legislator defined the term “Communist crime”, as per the Act, via Article 2 Clause 1, specifying the Communist crime as an act committed by an officer of the Communist state within the period from 17 September 1939 until 31 July 1990 that consists in application of repression or other form of violation of human rights with respect to individuals or groups of individuals, or connected with application of the same, as constituting a crime according to the Polish penal act, as binding in the period within which it was committed. Communist crimes include acts committed by such officers within the period, as defined in the previous sentence, that bear the essential of a prohibited act, as defined in Article 187, 193 or 194 of the Ordinance by President of the Republic of Poland of 11 July 1932 – The Penal Code, or Article 265 Clause 1, Article 266 Clauses 1,2 or 4, Article 267 of the Act of 19 April 1969 – The Penal Code – committed against documents, as per Article 3 Clauses 1 and 3 of the Act of 18 October 2006 on disclosure of information about documents of the security services of the years 1944–90, as well as the content of such documents, to the detriment of the persons to whom such documents pertain.

The Legislator stipulated that in order that an act should satisfy the essentials of a Communist crime it is required that the following elements be jointly met, as included in the subjective and objective scope of the term “Communist crime”.

These elements imply that:

- The act was committed by an officer of the Communist state;
- The act was committed within the period from 17 September 1939 until 31 July 1990;
- The act consisted in application of repression or other form of violation of human rights with respect to individuals or groups of individuals, or connected with application of the same;
- The act constituted a crime according to the Polish penal act, as binding in the period within which it was committed.

The abovementioned conditions, as defined by the provisions of the Act on The Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation, do not introduce a new generic type of crime but define, in a binding way, the criteria which should be fulfilled by such crimes which have already been defined within the sources of law – the Penal Codes, so that they should be assigned the essentials of Communist crimes.

Also, the term “officer of the Communist state” was defined, stipulating that it is a public officer, as well as another person who was subject to such level of protection as the one that was assigned to a public officer, in particular a state official or a person assigned a managerial position within a statutory body of the Communist party.

The Act, in Article 3, defined the term of “crime against humanity”, specifying that such crimes include, in particular, crimes of genocide, as the Convention on the Prevention and Punishment of the Crime of Genocide, as adopted on 9 December 1948, as well as other acts of grave persecution or oppression due to their status as members of a particular national, political, racial or religious group, provided these were committed by public officers or provoked or connived at by the same.

The Act specifies that crimes included in the objective scope of the Act, consisting, as per the international law, crimes against peace, humanity or war crimes, are not subject to limitation with respect to the period of prescription.

Following the process of development of the investigation department of The Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation, in the years 2000–07, prosecutors of the Institute carried out, in aggregate, 4,927 proceedings pertaining to Communist crimes, Nazi crimes, crimes against peace, humanity and war crimes.

An overall number of 198 acts of indictment were brought into court, out of which 197 dealt with persons accused of Communist crimes.

2. The Vetting Office of The Institute of National Remembrance

Our country has launched some legal regulations that aimed to disclose work or service for the security authorities of the former totalitarian Communist state, or secret, informed and voluntary

collaboration with these authorities of persons who exercise public functions or apply to exercise such functions, as well as to disclose, in general, the content of documents produced by the former security services. Such activities are termed as vetting (lustration). The referent legal regulations are included in two fundamental acts:

- The Act of 18 December 1998 on The Institute of National Remembrance – the Commission for the of Crimes against the Polish Nation (Dz. U. */The Gazette/* of 2007, No. 63, Item 424);
- The Act of 18 October 2006 on disclosure of information about documents of the security services of the years 1944–90, as well as the content of such documents (Dz. U. */The Gazette/* of 2007, No. 63, Item 425).

The Code of Criminal Procedure is used, as an auxiliary tool, too, as well as some statutory regulations concerning administrative procedures and administrative court proceedings.

Disclosure of the content of documents of the former security services is effected on two planes:

1. On the general, administrative and archival plane, wherein the content of the archives of the former security services is disclosed;
2. On the individual, administrative and court plane, wherein the past is disclosed of people, who exercise public functions or apply to exercise such functions.

All activities within the scope, as defined herein, are executed by President of The Institute of National Remembrance, alongside with the Vetting Office (Biuro Lustracyjne) and the Branch Vetting Offices, as subordinated to the central office, which have been included within the structure of The Institute of National Remembrance. Activities pertaining to individual court vetting proceedings are performed by a separate prosecution department which consists of prosecutors employed at the Vetting Offices.

Ad 1. In this scope, The Institute of National Remembrance (the Vetting Office) publishes lists of persons within the three so-called Thematic Directories:

- List of persons who were being worked out, including people about whom the former security authorities gathered information in a secret way and applying operational means;
- List of persons who held managerial positions in the party and state authorities in the former totalitarian state;
- List of officers of the former security services who worked for or exercised a function within these authorities.

Moreover, President of The Institute of National Remembrance publishes in the Public Information Bulletin (Biuletyn Informacji Publicznej, BIP) information concerning documents of the former security services and the contents thereof with respect to the categories of public figures, as specified in the Act. One should also mention that in case of public figures included in the publications of Public Information Bulletin of the Institute, each citizen has the right to familiarise him-/herself with the archives. Rendering such documents accessible, and in particular denying such access, is subject to court and administrative supervision.

Ad 2. Persons who exercise public functions or apply to exercise such functions are obliged to submit a statement in which they declare whether they worked or performed service within the secret service authorities of the former totalitarian state or whether they collaborated, in a secret, informed and voluntary way, with these authorities. The categories of public functions, as incumbent, as well as the range of persons involved, have been determined by means of the referent statutory act, and have lately been reviewed by the Constitutional Tribunal of the Republic of Poland. Veracity of a vetting statement is subject to verification by the Vetting Offices. Verification of statements concerns people who have declared that they did not work for, provide services to or collaborate with the former secret services, and is performed in a twofold manner:

- The administrative and archival stage. This initial stage implies verification, by means of the filing system, if a referent person appears in documents of the former security services.
- The prosecution and court stage. In case it is established that there are records concerning a referent person in the archives of the former security services, a prosecutor, having analysed

these, resolves whether, in the light of the archives, the veracity of the statement should be viewed as questionable. If this is the case, he/she notifies the person concerned of the same and appoints the day by which the person has the right (not obligation) to explain his/her position. The Prosecutor becomes also involved in a quasi-procedure aiming to prepare the vetting proceedings, as per the principles defined in the Code of Criminal Procedure. Following completion of the action, the prosecutor resolves whether or not to apply to the court to ascertain inveracity of the vetting statement in question, or to state that there are no grounds on which such a petition should be filed. In case a petition is filed with the court, the case is examined by a common court of law, as per the provisions of the Code of Criminal Procedure.

Irrespectively of the abovementioned, administrative procedure of verification of vetting statements, each citizen, as concerned, has the right to initiate the court proceedings. Every person who has been wrongly accused of collaboration with the former security authorities is entitled to petition that the court proceedings be initiated, wherein people who have not submitted a statement are now obliged to do so.

In any case, following completion of the proceedings, the court adjudges whether the referent vetting statement was truthful or not. If inveracity is pronounced of the referent vetting statement, as submitted, the court rules prohibition on exercising public functions for a period of 3–10 years.

One should underline that the abovementioned activities, as based on the new legal regulations, have only been initiated. The administrative-archival sphere of publications is already quite advanced, although, due to the significant extent of the activities, it is difficult to make predictions as far as conclusion of the same is concerned. With respect to the individual and court scope of the procedure, it is fair to say that it was only on 14 March 2008 that the deadline expired to submit statements by persons who currently exercise public functions, which means that we are actually facing the initial phase of activities in this respect. We should not forget, however, that a significant deal of verification was done under the previous act, and in case of court decisions which have already been made; the procedure concerning verification of veracity of statements will not be repeated.

3. The Office for Preservation and Dissemination of Archival Records of The Institute of National Remembrance (Biuro Udostępniania i Archiwizacji Dokumentów Instytutu Pamięci Narodowej) is involved in performance of the following tasks:

The task to file and grant access to documents produced by the Polish and foreign state security bodies in the years 1939–89 is included within the constitutional obligation concerning the public authorities, as defined in Articles 61 and 51 of the Polish Constitution. Abiding by these provisions, as well as the regulations included in the Act on The Institute of National Remembrance, the Institute has to consider the requirements of the acts on protection of classified information, protection of personal data, the national archives and disclosure of information about documents of the security services of the years 1944–90, as well as the content of such documents. These tasks are performed by the Institute via its archival department, which consists of the Office for Preservation and Dissemination of Archival Records, the Branch Offices for Preservation and Dissemination of Archival Records, as well as dissemination and archiving departments within the branch offices.

The archives of The Institute of National Remembrance comprises at present over 86 running kilometres of files. By means of a comparison: the whole of the state archives in Poland is, altogether, 236 km. The process of collecting files, initiated by the Office for Preservation and Dissemination of Archival Records in the second half of 2000, and by local units in 2001, has now been completed. The Institute was obliged to take over documentation produced by the following state security authorities:

1. The Department of Public Security of the Polish Committee of National Liberation (Resort Bezpieczeństwa Publicznego Polskiego Komitetu Wyzwolenia Narodowego);
2. The Ministry of Public Security of Poland (Ministerstwo Bezpieczeństwa Publicznego);
3. The Committee for Public Security (Komitet do Spraw Bezpieczeństwa Publicznego);

4. Organisational units reporting to the bodies listed in Points 1–3;
5. Organisational units of the Security Service of the Ministry of Internal Affairs (SluzbaBezpieczenstwa Ministerstwa Spraw Wewnętrznych), as well as its local units in voivodeship (regional), powiat (county) and equivalent headquarters of the Citizens' Militia (Milicja Obywatelska), and in voivodeship (regional), powiat (county) and equivalent offices of internal affairs;
6. The Reconnaissance Department of the Border Guard Forces (Zwiad Wojsk Ochrony Pogranicza);
7. The Main Directorate of the Military Internal Service (Zarząd Główny Służby Wewnętrznej) of military units of the Ministry of Internal Affairs, alongside with its subordinates;
8. The Information of the Polish Army (Informacja Wojska Polskiego), the Main Directorate of Information of the General Command the Polish Army (Zarząd Informacji Naczelnego Dowództwa Wojska Polskiego), the Management of Information of the Polish Army (Kierownictwo Informacji Wojska Polskiego), the Main Directorate of Information of the Polish Army (Główny Zarząd Informacji Wojska Polskiego), alongside with their respective subordinates;
9. The Military Internal Service (Wojskowa Służba Wewnętrzna);
10. The Main Directorate II of the General Staff of the Polish Army (Zarząd II Sztabu Generalnego Wojska Polskiego);
11. Other services of the Armed Forces dealing with operational and reconnaissance or investigation activities, including ones working for particular arms and located in military districts.

The state security authorities, as per the Act, are to be considered also units of the Ministry of Internal Affairs which, by law, were subject to dissolution on establishment of the Office for State Protection (Urząd Ochrony Państwa), as well as their predecessors and bodies and military and civil authorities of foreign countries whose tasks were similar to those of the entities listed in Points 1–11.

The Act on The Institute of National Remembrance defines precisely the final dates of documents, as produced by these authorities, to be submitted to the Institute from, e.g., the Internal Security Agency and the Intelligence Agency transfer documents, data collections, registers and card files produced no later than by 6 May 1990, and in case of the archives of the Military Information Services – until 31 December 1990. The time limits, as specified in the Act, required that time-consuming archival activities be undertaken connected with separation of the documentation (e.g. into documents from the Internal Security Agency dated by 6 May, which were to be transferred to the Institute, and ones produced later, to be retained at the Agency's disposal), frequently creation of a new file and its preparation anew. The work was done officers of the state protection services.

The Institute of National Remembrance should also obtain a part of the state archives, kept by Director of the National Archives (Archiwa Państwowe), mainly copies of files of the Polish Workers' Party (Polska Partia Robotnicza) and the Polish United Workers' Party (Polska Zjednoczona Partia Robotnicza) which deal exclusively with the state security authorities – so it is not about obtaining the whole of the archival resources.

The files of the state security authorities, as taken over by The Institute of National Remembrance, include mainly operational documents alongside with personal files and files of secret collaborators, documents concerning contact spots and conspiratorial flats, operational contact files, control and investigation files with “anti-state”, “espionage” and “sabotage-subversion” cases, as well as files with “object-problem” cases. A large part of the documentation comprises dossiers of officers of the Ministry of Public Security of Poland, Security Service and the Citizens' Militia, civil employees and military professionals of the Ministry of Internal Affairs. As far as the Police archives, the Institute obtained mainly files of officers of the Ministry of Public Security of Poland and the Citizens' Militia until 1954, and the Ministry of Public Security of Poland and the Security Service until 1990, as well as a significant number of files of the administrative authorities (e.g. investigation records in the years 1944–54, reports, normative documentation), and passport files. The latter comprise the largest archival collection. Altogether, the department of archives of The Institute of National Remembrance has gathered ca 43 km of passport files, including almost 7 kilometres to be accessed at the Office for Preservation and Dissemination of Archival Records, whereas another 36 km are kept in the Branch Offices for Preservation and Dissemination of Archival Records.

The documents originating in the Ministry of Internal Affairs include ones belonging to the organisational entities of this ministry and produced in connection with their activities, which do not constitute operational materials and dossiers. One should also mention documents of the security

authorities that were produced in connection with the key events in the history of the Peoples' Republic of Poland: the Poznan June 1956, the March 1968, the December 1970 protests, the 1976 protests in Radom and Ursus, the establishment of the Independent Self-governing Trade Union "Solidarity" and the Martial Law, as well as ones pertaining to fighting against the Polish democratic opposition. A part of the resources comprises collections of legislative acts concerning state security authorities (e.g. ordinances, resolutions, decisions, orders, circular letters, and personal orders). Some of the files, as obtained by the Institute, are in the form of microfilms.

Documents of the military security services comprise materials handed over mainly by the Military Information Services. These were received exclusively by the Office for Preservation and Dissemination of Archival Records. These groups of archival records comprise mostly operational documentation and dossiers of officers and civilians employed by the military security services (the Information of the Polish Army, the Military Internal Service and the Main Directorate II of the General Staff of the Polish Army). The Office for Preservation and Dissemination of Archival Records has also other records produced by the military security services, including files of military courts and prosecutor's offices, handed over by the Central Military Archives (Centralne Archiwum Wojskowe), the archives of the Ministry of National Defence (Archiwum Instytucji Ministerstwa Obrony Narodowej), the archives of the Polish Air Forces and Air Defence (Archiwum Wojsk Lotniczych i Obrony Powietrznej), and the archives of the Polish Land Forces (Archiwum Wojsk Ladowych) in Warsaw, as well as the National Archives of the Capital City of Warsaw.

Another file group is made of documents obtained from the archives of the Correctional Service of Poland (Sluzba Wiezienna). These comprise mainly penitentiary files of persons who were victimised by the state for political reasons, including people sent to internment camps under the Martial Law. The Office for Preservation and Dissemination of Archival Records has obtained files from the Main Directorate of the Correctional Service of Poland (Centralny Zarzad Sluzby Wieziennej) and from units reporting to the District Inspectorate of the Correctional Service of Poland (Okregowy Inspektorat Sluzby Wieziennej) in Warsaw, whereas the Branch Offices received files originating from other district inspectorates.

The archival resources of The Institute of National Remembrance are also made up of case files of people who were repressed for political reasons, produced by common courts of law and public prosecutor's offices. Most of them come from the 70s and 80s of the 20th century.

A slight portion of the stock comprises materials delivered by individuals by means of donations. These materials deal with important events in the history of the state and nation. Sent or handed over in person, they frequently constitute most valuable personal memorabilia.

In order to grant access to as many documents as possible of the ones produced by the state security authorities, a simplified mode of file preparation was applied, which was reduced to listing the files by electronic, and thus more precise, means.

Following the 2007 amendment of the Act on The Institute of National Remembrance and the Act on disclosure of information about documents of the security services of the years 1944–90, as well as the content of such documents, access to the documents contained within the archives of the Institute has become a general right. Limitation with respect to access to the files concerns only people who used to employees, officers or secret informers or operational aids. Such persons have the right to access materials that concern themselves, excluding ones that were produced in connection with the work, service or undercover collaboration. Moreover, such persons are not entitled, as opposed to the other applicants, to receive copies of documents or personal data of employees and officers of the Communist state security authorities. Each citizen has also acquired the right to access documents pertaining to public figures, as listed in the Act on disclosure of information about documents of the security services. The Institute of National Remembrance is obliged to publish, in the Public Information Bulletin, information about documents, as collected by itself, concerning public figures. General access to such data will be safeguarded via publication thereof on the Internet. Irrespective of the electronic form in which to access documents concerning public figures, everyone may familiarise him-/herself, on submission of a referent application form, with these in person in one of the 11 Branches of the Institute. What is crucial, apart from access to documents concerning public figures, each citizen may apply to be granted access to data concerning people who performed managerial functions in the Polish Workers' Party, the Polish United Workers' Party, the United Peoples' Party (Zjednoczone Stronnictwo Ludowe) and the Democratic Party (Stronnictwo Demokratyczne), as well as ones who were members

of the Council of Ministers of the Communist state in the period until 23 August 1989. Each citizen may also access copies of files of these vetting proceedings which have concluded with a binding resolution. The amended Act on The Institute of National Remembrance grants the right to access the archival documentation collected within The Institute of National Remembrance to journalists, subject to approval by President of The Institute of National Remembrance.

At present, the most important task for the archival department of the Institute is development of an IT system which will facilitate greatly then use of the preserved documents. To start with, in autumn 2006, an integrated database was prepared and launched including information on record references of files kept within 15 branches of the archives of The Institute of National Remembrance in the country. At present, the database is available, apart from the Institute archivists, also to all persons who have been granted approval to access documents retained by the Institute. Simultaneously, work has begun on digitalisation of the card file resources, as well as – in co-operation with the state security services – review of the so-called restricted set, which should enable reduction of the size of the collection.

Ekaterina Salkova*

ON REHABILITATION AND REMEDY MEASURES IN BULGARIA FOR PERSONS REPRESSED FROM 1944 THROUGH 1989

1. Introduction

Prior to the substantial response to the questions, we would like to note our persuasion that the use of the term “totalitarian crimes” is inappropriate because of a contradiction in terms related to the basic principles of penal law. The principle of the individual penal responsibility is a positive result of the development of law through the centuries. It is hardly believable that any lawyer would admit the possibility of commitment not only of a violation but even of a crime by a non-personified group. On the other hand, as “totalitarian regime” is a notion of vague content being colloquial rather than a legal term, should it be used in a legal act? The term “regime” as a legal one characterizes the form of the government of a state, where as the government includes both the ones, who are being governed and the ones that exercise power. By using the phrase “crimes, committed by totalitarian regimes” one might admit a coincidence of the subject of the crime (the offender) and the object of the offence. The crimes were committed by particular representatives of the government – high-level and operational officials against certain persons, who also were part of this regime. Furthermore, in numerous cases repressions were exercised by one official representative against another. In case of such absence of clarity concerning the content of a term and its legal meaning, would it be reasonable to apply it in an international act or a legal act of a European institution? Wouldn't it be more acceptable to use a non-contradictional legal term such as “crimes, committed during totalitarian regimes”, but crimes committed by individual officials? We are of the opinion that the term “illegal repression”, which is being used under the Bulgarian law for compensation of persons, who have suffered damages as a result of actions against them during the totalitarian regime, would be more correct. By the abovementioned opinion we join the efforts of the international community to undertake the necessary measures for prevention of crimes against peace and mankind, as well as the serious violations against human rights, accepted as a course of action of an entire political regime. Bulgarian people, having recently gone through such a regime, have understanding for all persons oppressed due to their political beliefs and/or their religious faiths. The sensitivity of Bulgarian people to repressive measures motivated the adoption of laws of international importance, some of them being: the Declaration of the Grand National Assembly of April 5, 1991 for Cease of the Cruel Repressions Against Kurdish People, the imposing of embargo against numerous states (Uzbekistan, Zimbabwe, Burma (Myanmar) in line with the general positions of the Council of the European Union, the resolutions of the UN Security Council and the Organization for Security and Cooperation in Europe.

2. Awareness and understanding of repressions

Almost immediately after the change of the totalitarian regime (10 November 1989) in the Republic of Bulgaria, the National Assembly passed in January 1990 a series of decisions to eliminate the consequences of infringement of the parliamentary order, related to the policies of repressions against opposition parties and their representatives. With the adoption of a decision of 15 January 1990 on rehabilitation of political organizations and persons, object of repressions for political reasons, the National Assembly condemned political, judicial and administrative repressions, committed after 1 January 1946 “as a blatant infringement of the parliamentary democracy and violation of the constitutional rights of citizens”. With the same decision, the National Assembly declared the political and civil rehabilitation of many active political figures and declared illegal and void the administrative deeds, according to which, Bulgarian citizens have been detained in arrests or in camps for political

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reasons. The National Assembly entrusted the Chief Prosecutor with the execution of investigations for clarification of the circumstances related to the death of prominent political activists, ordered the revision of verdicts through inspection of legal compliance and ordered the Ministry of Finance to take measures for remedy of persons, who sustained repressions. The National Assembly continued to issue consequent decisions (of 6 March 1990, 30 March 1990, etc.) for political and civil rehabilitation and initiated respective proceedings on behalf of the Chief Prosecutor, the Supreme Court, the Ministry of Internal Affairs and the Ministry of Finance for respective investigation, abolishment of verdicts, abolishment of administrative acts and compensation of persons affected by repressions. A special parliamentary committee was instituted to consider and decide on urgent issues, related to deviations and infringements in the state, public and economic life that was broadening the circle of rehabilitated persons including those interned in camps.

In 1992 the Act on Restitution of Immovable Property to Bulgarian Citizens of Turkish Origin, Emigrating in the Republic of Turkey and Other States in the period May–September 1989 was passed thus continuing the activity initiated according to Cabinet of Ministers' Decree No. 170 of August 1991 for elimination of damages due to the forceful change of personal names.

The Bulgarian society sought the optimal approach for elimination of damages from repressive measures, committed in the near past by applying these measures in an environment of public dialogue.

The road to peace doubtlessly passes through the inner peace of the remedied victims of repression. This could be achieved by declaring the repressions as a breach of law and compensating the sustained damages. In addition to the numerous decisions of the National Assembly and its committees in 1990, five months after the beginning of democratic changes in the Republic of Bulgaria, the Cabinet of Ministers passed Decree No. 38 of 28 April 1990 for the recognition of the right on compensation for persons, imprisoned on political charges with or without verdicts or sentenced to death by execution or who have lost their lives during investigation or while arrested in prisons, as well for the heirs of these persons.

In addition to the commissions for revealing the dossiers, central and regional commissions were established according to the Act for Political and Civil Rehabilitation of Repressed Persons (APCRRP), of 1991, who identified as illegal the repressions during this period due to origin, political convictions or religious faiths. Lack of formal documents was replaced by testimonies of witnesses. The commissions were composed of representatives of repressed persons and governmental institutions.

The currently acting Central Commission was established on the principle of party affiliation of repressed persons and government institutions. Since the act was passed, numerous amendments (last amendment of 7 March 2008) expanded the scope of persons to benefit rehabilitation and various forms of compensations for damages. With the aim to encompass all kinds of repressions, the act included all kind of repressions, found up to now, committed due to origin, political convictions or religious faiths of the victims: sentenced in penal lawsuits, arrested illegally, interned in camps, mobilized to forced labour, dismissed students, persons, repressed by forceful change of personal names, vanished without trace, forcibly replaced to the Soviet Union, moved and interned to other settlements, refugees, murdered, perished in prisons, detention cells and similar facilities, persons with higher and semi-higher education, who were forcibly employed for low-qualified work with construction sites and husbandry, persons deprived of pension entitlement and the heirs of such persons.

The Act for Political and Civil Rehabilitation of Repressed Persons provides for various rights of the persons:

1. Right to rehabilitation – according to Article 1;
2. Right to lump sum compensation (for material and non-material damages) – Articles 2 and 3;
3. Right to recognition of work record – Article 7;
4. Right to survival pension – Article 8;
5. Right to monthly supplement to pensions – Article 9.

The right to rehabilitation according to Article 1 of the Act shall arise *ex lege*, pursuant to the law itself, according to which “political and civil rehabilitation shall be declared ...”. In this way, the moral remedy of persons will not depend on the issue of a specific act. The right to remedy and supplement to pensions could be exercised upon petition of the entitled person. The established order is aimed to

prevent abuses, related to obtaining budgetary transfers on behalf of persons, who were not affected by the actions, defined in the law and simultaneously to achieve full remedy of the really repressed persons by providing compensation for their grief and sorrows. In the period between 1990 and 1996, about 120 thousand persons have been compensated by decision of the municipal councils, the central and regional commissions, (according to Ahmed Hussein, MP, who introduced into the Parliament the bill for amendment and supplement of the Act). After 2004, the newly established Central Commission considered some 7,400 applications for recognition of repressions on the basis of declarations of witnesses due to lack of formal documents.

Pursuant to the Act for Declaring the Communist Regime in Bulgaria as Delinquent, the leadership and members of the leading apparat of the Communist Party, the ruling party in this period have been declared guilty of “the conscious breach of fundamental human rights and freedoms; unprecedented violations against the members of the XXVth National Assembly and the innocent persons, sentenced by the so called ‘Peoples’ Tribunal’ ... the violation of religious freedoms; the continuous terror against non-conformists to the government system and entire groups of the population ...”. The act declared the communist regime responsible for “systematic breach of fundamental human rights, by oppressing entire political, social, religious and ethnic cohorts of the populations”. Texts of the Act show, however, that political revenge in Bulgaria is not yet under full control – in addition to the admission of a series of real facts, foreign actions were also attributed to the regime – the defendants before the Peoples Tribunal after World War II (WWII) were found guilty and the proceedings were executed under the control and the strong ascendancy of the Allied Control Commission. Further, pursuant to a decision of the Tehran Conference of 1943, the main defendants, who designed and implemented the internal and the foreign policy of the Bulgarian Government should have had to appear at a hearing of an international court, but were returned from Moscow upon request of the state prosecutor. Well known is the “bullet in the head” option of Franklin Roosevelt and Sir Winston Churchill for war-criminals without access to lawsuit. A conclusion is to be derived that revenge, immediately after WWII and after the changes in 1989 should be managed by the most efficient means to resolve such type of conflicts, that is reconciliation. With the aim to achieve that, Bulgaria activated a series of measures for declassifying the dossiers of the former State Security. Whether the result from the procedure of revealing the dossiers is positive or negative is still questionable. Following long-year debates, two acts were passed: in 2001 the Act for Access to Documents of the Former State Security and the Former Intelligence Department of the Army General Staff, and in 2007 – the Act for Access and Declassification of Documents and Identification of the Affiliations of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian Peoples Army. Pursuant both laws, the specially constituted commissions act as independent state authorities. The second act stipulates the establishment of a centralized archive of documents of the State Security and the Intelligence Services of the Bulgarian Peoples Army. Whether measures of the type, pursued almost 20 years after the changes were the desirable pathway to progress and whether an adverse impact is in store, is a pending question for the Bulgarian society. The society fears that the most prominent State Security agents destroyed their dossiers and, currently, the archive contains only the dossiers of those, who worked for the intelligence and the counter-intelligence, which maintain the population’s security and ability to counteract to terrorist actions, attacks to cultural heritage and identity.

3. Raising the public awareness

Modern history of Bulgaria is doubtlessly a matter, included in the History subject in schools. Given the unaccomplished process of building up the pupils’ personalities, knowledge about this period should be delivered cautiously and without extremities. Controversial historical events normally cause differentiation of public opinions, and the goal should be not to give a next reason for splitting the society and an impetus to revenge, but to consolidate efforts of the youth for activities to the benefit of the society. Therefore, the admission of the facts should be supported by explanation of the negative consequences of extreme actions. In addition to the History textbooks, even more details on the near past are topical in historical research, the media, books and movies. Literature, journalistic reports and art products present particular facts of the secret archives of the State Security and even of Russian archives, related to Bulgarian policy in the period 1944–89. Quite important information is offered by

books like *Bulgaria in the Secret Archive of Stalin*, *Over Glowing Coal*, *The Communist Legal System* and many others. A significant number of repressed persons published their stories in the press and books, describing their lives. Numerous organizations of repressed persons were registered in Bulgaria with the main goal to inform the society about the lives of known dissidents and repressed persons and their support. Regular debates and commemorations were organized and one of the last monuments was opened at the place that became notorious for repressions – the camp in Belene.

4. Foreign experience lessons

At this stage, the long way of Bulgaria to reconciliation could be positively evaluated. The admission immediately after the changes on behalf of the supreme national institution – the National Assembly, of the misfeasance of the regime defused desires for taking the matters into individual hands and did not permit bloodsheds for revenge. The compensations for repressed persons restored their confidence in the democratic order. The negative experience from this approach should be shared: alleged false witnessing. The release of state financed benefits to persons, who sustained legally stipulated repression due to their criminal offences on the ground of falsified declarations of witnesses, provokes a feeling of injustice in persons, who are aware of how things are. Often, the following question arises: “Should we again have privileged ‘active fighters’?” On the other side is the anger of repressed persons, who feel scorned while the check of the authenticity of facts submitted on their behalf is ongoing. The law’s positive role is the sieving of facts, thus, admitting any repressions as illegal, but remedying only those proven. Unavoidably, the authorities will further face criticism from both sides, as it is hardly possible to avoid the controversy of all incoming demands. In this respect the Roman rule, that settlement by extrajudicial agreement is preferable to resolving disputes by court adjudication, is applicable. Public awareness in this aspect is crucial not only concerning legislative measures, but also concerning their application. Only publicity and explanation could prevent further contradictions between individuals and social groups. Bulgarian experience in revealing the former State Security dossiers is controversial. On the one hand the long period before opening the dossiers allowed a part of them to disappear. On the other hand, namely the length of the elapsed time allowed emotions to fade out and prevent eventual aggressive attacks on behalf of affected close relatives after revealing the persons, whose reporting to the authorities caused their tragedies. Time worked in favour of reconciliation.

There is much evidence for reconciliation in Bulgaria – the scope of entitlement of repressed persons was expanded by the Government of the Bulgarian Socialist Party that is identified as the successor of the Communist Party, but is increasingly promoting liberal motions in all aspects of government, including economy. The National Assembly adopted on 9 September 2004 a Declaration on the occasion of the 60th anniversary of the introduction of the communist regime in Bulgaria that condemns once again the arbitrary acts, violence and mass murders, downtrodden human rights and constitutional principles, repressions of entire ethnic and religious groups. It could not be denied that the Bulgarian society is not evading the solution of the problems related to confrontation between separate groups of the population, but is consequently seeking ways for their solution. Whether the right answers were found is a matter of the check of time.

Doubtlessly, the will and the responsibility of the ruling parties to prevent new public controversies should be appreciated. The first prerequisite for a right solution is the acceptance of different opinions. The second prerequisite is learning the lessons of history. Different states, where similar stages of development passed, approached the issue differently: to forgive and forget the past, to achieve national reconciliation, peace and stability (the former “Red Khmers” – President of Pol Pot’s regime – Khieu Samphan), amnesty for the political offenders due to imminent civil war in case of legal actions (the Cambodian Prime-Minister Hun Sen), judicial pursuits (at national and international level) and sentencing those found guilty. Correlated to remedy, reconciliation is a more effective approach as it is centre positioning both – the victim and the doer. Namely the establishment or restoration of a dialogue between the parties in the conflict, the creation of a feeling of responsibility and taking over responsibility on behalf of the doer, the remedy of the damages, the reconciliation of the parties in the conflict, the elaboration of sustainable solutions are the means and the ways to a better future while stigmatizing the mistakes of the past. The role of the EC is to prevent conformism as well revenge from

passing over to next generations. Conformism would awake bitter feelings in the souls of persons and their successors, who were repressed for their pro-liberation spirit. Bitterness might trigger renewed wishes for historical revenge that is a vehicle of highly destructive potential. The only rational approach is reconciliation that deserves good will on both sides.

Carlos Closa*

TRANSITIONAL JUSTICE IN SPAIN

1. Historical background

Between 1936 and 1939, after a military rebellion, Spain suffered a bloody civil war in which two bands fought viciously each other. The Fascist forces led by General Franco won the war and this gave way to a dictatorship which lasted 40 years and whose specific contours have been disputed to the point that some distinguished scholars (Juan J. Linz) have coined the concept of authoritarianism for referring to it. The features of the regime such the lack of political liberties and rights; the mass repression and an unofficial “soft” ideology /National Catholicism/ set it apart from the totalitarian model, even though the historical evolution of the regime was progressive evolution from a quasi totalitarian to an authoritarian and, at the end, dictatorship. Differently to other European countries, there were no occupying powers which could lead a de-nazification process or elimination of authoritarianism. On the contrary, the USA sponsored in 1955 the Spanish accession to the UN as part of a deal with the USSR, whilst European democracies kept very critical with the regime (for instance, they rejected Spain as an EEC associated state already in 1964 on the grounds of lack of democracy and disrespect for human rights). Only the death of Franco in 1975 allowed for a successful transition to democracy.

2. Spanish model of transitional justice

The pressing objective of the Spanish transition was to achieve a peaceful conversion of the Franco regime into a democratic system. Peace and democratization overcame any other consideration among these, justice and transitional justice. Most actors excluded a radical rupture with the former regime favouring instead its evolution. For this, transition required the incorporation of formerly excluded and/or repressed and/or exiled collectives. Thus, the first measure adopted, a general amnesty law in 1977, had the objective of inclusion and making a new start rather than restoring memory, asserting the dignity of victims or any of the traditional goals of transitional justice. In fact, critics of the Spanish process use the word amnesia linked to the word amnesty. Truly speaking, it was not a policy of “forgetting” but, rather, a policy of not explicit (and public) remembering. The fear to any involution, easily made felt by a vigilant military which had not renounced to its former political role within the authoritarian regime, together with the fear to the return of a division of the country along the civil war cleavage, acted as powerful deterrents for any significant attempt of transitional justice. Differently to later processes, there was no a true and/or reconciliation commission. There were no trials for any crimes committed by the authorities of the dictatorship. Nor there was a process of depuration and many of Franco’s military and administrative allies and supporters retained their post and some remained in positions of power. In this way, the burden of reconciliation was unevenly distributed: in front of the guarantees for the persons affected to the Franco regime, its victims did not obtain any justice or even recognition. Reconciliation was basically understood as a joint negotiation of the present.

The few efforts in the direction of justice and recognition came about in a piece mail, not integrated approach and often in a non public or even semi clandestine form. They never occupied the centre of the political stage. Measures referred, on the one hand, to the recognition of material entitlements for deprived categories of persons because of their relation with the Republican side and, on the other hand, to symbolic measures. As for the first, actuations had had a sense of equalising or equiparing situations for enjoying certain social entitlements which were already available for those identified with the Franco side during the Civil War and Spaniards in general. Only those identified with the Republic were

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excluded. The first of these were the pensions for the mutilated who were not considered “Gentlemen mutilated for the defence of the motherland” (1976). This definition of subjects was insufficient and later on pensions were explicitly recognised for mutilated ex-Republican fighters (1982). In 1984, the services and rights to pensions of Republican servicemen (army, police, etc.) were recognised as well the entitlements deriving from these. Then, it came the recognition of pensions, health care and social assistance for widows and children of people death during the Civil War (1978). This law did not target specifically any of the sides and it had a generalist character. The most complete measure so far was the provision for a state compensation for those imprisoned because of any of the situations foreseen in the 1977 law (in 1990). The striking thing is that the law which created those entitlements was hidden within the Accompanying Law to the General Budget Law (a kind of umbrella law which was historically used in Spain for approving pending issues not strictly linked to the budget).

As for the symbolic dimension, there was no official line and the politics was that of a non-official memory. In 1981, the Law on the National Coat of Arms and the decree that developed it obliged to remove the Francoist coat of arms from public buildings and offices in three years. The central administration accomplished the removal of dictatorship signs relatively soon (even though some remained). In parallel, some local councils and autonomous communities were particularly active in removing symbols of the dictatorship, such as statues, plaques, street names, etc. As a paradigmatic case, the birth town of the dictator, Ferrol, had eliminated in 1979 the reference to the Caudillo from its name (the town was called Ferrol del Caudillo). These interventions were very important since the largest amount of symbolic elements had a local dimension. In 1996, the Spanish Parliament recognised the role of the International Brigades (foreign volunteers who enlisted to fight in favour of the Republic), granting them Spanish nationality¹ and organising a public homage in the seat of the Congress. However, according to Aguilar, there was only a monument dedicated to the reconciliation of both sides, and it was inaugurated in 1985 after recycling a former one of 1840 which honour Spanish combatants against French invaders in 1808.

3. The change of environment

In 2002, the Spanish Parliament approved unanimously the condemnation of the Franco Regime. Facing increasing pressures, the PP conservative government agreed to support the initiative as a mechanism for closing any additional claims. Several sectors of civil society did not consider these measures sufficient and the pressure increased for more comprehensive one. When the socialist party won the 2004 elections, it created a Commission for the Study of the subject and the drafting of a law on the issue became a distinctive objective for the legislative term. Several factors influenced this turn towards a more comprehensive approach.

- The demonstration effect from other cases, such as the Latin American process, mainly Argentina and Chile. The paradigmatic case of South Africa which has influenced processes elsewhere does not seem to be widely known by Spanish actors and its influence does not seem to be highly relevant in a direct form. In all these case, the creation of Commissions for Truth was a central element and, as it has been already mentioned, in Spain there was never been an “official” process of fact finding and truth. Rather than anything else, this absence was perceived by some as an attempt to silence certain citizens or, even worse, to hide truth.
- Additionally, there was a more positive international climate on the issue, with the creation of ad hoc tribunals for war crimes in the ex-Yugoslavia and Rwanda. Moreover, in 2006, a Report of the Parliamentary Assembly of the Council of Europe denounced the grave violations of human rights committed in Spain between 1936 and 1975. The Resolution recommended, among other things, the creation of a Commission of Truth.
- The affirmation of the principle of universal jurisdiction led Spanish judges to become involved in similar processes in Latin America, in cases such as Chile (with the attempt to process General Pinochet), Argentina or Guatemala (with additional demands pending on cases such as Tibet and

¹ Royal Decree 39/1996 19 January 1996.

- Congo). There was obviously an inconsistency of Spanish legislation and, worse, the pending threat that at a certain point victims of Spanish dictatorship would seek redress in Spanish justice.
- The pressure of civil society. Facing the silence of the authorities and equipped with the know-how derived from international experiences, a large number of civil society NGOs became active in the field. Their objectives were very varied and, among these, the Asociación para la Recuperación de la Memoria Histórica (Association for the Recovery of the Historical Memory) became one of the most representatives. These NGOs could also frame their demands on the orthodox language of transitional justice, claiming knowledge of truth and recognition.²
 - Finally, the growing importance of the Victims of Terrorism in Spain provided a conceptual context in which society and law makers were more receptive to the claims of these collectives. The assumption of the basic dignity of all victims immediately led to a reevaluation of the victims of the Civil War and dictatorship.
 - A generational factor. Last but not least, the change in political leadership had some influence. Many of these leaders were third generation from civil war actors and felt a sense of detachment with the inherent risks which the transition generation could have seen in an extended process of transitional justice. Additionally, the advanced age of the remaining directly involved persons required addressing the issue as soon as possible if direct victims were to see the results.

4. The 2007 Law on recognition of rights and measures for those who suffered persecution or violence during the civil war and the dictatorship

The more positive environment did not mean that the measures proposed by the Socialist government did find widespread acceptance. To start with, the main opposition party, the Conservative PP, strongly opposed the law, with its leader claiming that he would propose its derogation when he won the elections.³ These views against were also largely shared by conservative sectors, media and intellectuals,⁴ who saw in the law an attempt to break the spirit of transition or an attempt to re-write history. Even sectors close to the socialist (and even senior figures within the parties) had second thought on the initiative. For instance, the leading Spanish newspaper *El País*, closely associated with PSOE and with the generation of the transition, argued that many of the law's objectives could be achieved through other means.⁵

Being the PSOE a minority government, it had to rely on support from a number of other small parties, all of which wanted to see specific issues reflected in the law. The problem for crafting a consensus was that the most radical ones (and firmest supporters of the government) wanted measures that clashed strongly with the most moderate views, whose participation would be required to secure the legitimacy that a broad consensus would provide.⁶ The whole process was followed with a large debate in the media (mainly press) and prompted passionate reactions. One of the most symbolic ones was the 'war of pass away announcements', in which families of death persons rivalled in blaming opposed bands for the killings.

Although the official name of the law was Law by which rights are recognised and extended and measures are established in favour of those who suffered persecution or violence during the civil war and the dictatorship, it became commonly known and referred to as the Law on Historical Memory, to the point that even government members used this designation. This shows the capability of some NGOs and public opinion leaders to capture the conceptual stage and win the meaning battle.

² Survivors did not claim revenge but recognition. See, for instance, the report of American journalist Victoria Burnett on Spanish repressed communist Marcos Ana Bill in "Spanish parliament aims to end 'Amnesia' about civil war victims", *The New York Times*, October 27 2007. See also Joaquim Sempere, "Memoria histórica y consolidación democrática", *El País*, 31 January 2007.

³ Nevertheless, the PP voted in the parliamentary commission almost 1/3 of the proposed articles.

⁴ See, for instance, Miguel Herrero de Miñón, drafter of the Spanish constitution and former General Secretary of the PP "Historia y memoria", *El País*, 24 October 2007.

⁵ *El País*, leading article, 18 October 2007.

⁶ See among leftish criticism, Joaquim Sempere, "Memoria histórica y consolidación democrática", *El País*, 31 January 2007.

4.1. Purpose

The explicit purpose of the law was to give full and definitive (sic) response to the demands of those citizens who had suffered the consequences of civil war and dictatorship. It aimed also to honour and redeem permanently all those who directly suffered the injustices and offences committed for different political or ideological reasons or due to religious beliefs. It must be underlined that the law aimed at closing the process of transitional justice and, because of this perception, some NGOs denounced it as a ‘Law of Final Point’.⁷ It must be also noticed that the law included within its scope a reference to religious belief: this was a demand of the Catalan Nationalist CiU who wanted the law to cover the excesses against priest and nuns in the Republican side.

4.2. Contents of the law

1. Recognition: the law established the right of all citizens to moral reparation and the recovery of their personal and family memory (a wording that places this within the private domain rather than as a public objective). Sentences, sanctions etc, of the Francoist repressive tribunals are recognised and declared as radically unjust, as well as the exile that in many cases was the only option for Republicans. From this follows the right of victims to obtain an official Declaration of reparation and recognition. Some of the initial drafts foresaw a Commission of Notables who would be in charge of issuing these declarations,⁸ being this one of the most criticised aspects of the law.

2. Illegitimacy of sentences: all sentences and trials of the Francoist repressive courts are declared illegitimate and the laws that created them are expelled from the legal order with the effect that no administrative authority can claim them. This was one of the most contentious points, with some experts demanding the adoption of the model of the 1998 German Law of suppression of unjust sentences of Nazism. For the suppression to be effective, the same author argued, a list of unjust dispositions and judicial or other organs who applied them was required.⁹

3. Improvement of benefits already recognised: these were also extended to the citizens who died defending democracy between 1 January 1968 and 6 October 1977. Other additional benefits for specific collectives were the recognition of the possibility for International Brigades volunteers to obtain Spanish nationality without renouncing to their own. Also, the Victims Associations had their role recognised and eventually, the authorities could grant those honours.

4. Measures for identification and location of victims: one of the driving forces behind the process was the deep impact and effect on public opinion that had the spontaneous but growing actions (either by families or NGOs) for exhumation and recovering the remains of persons killed by the Francoist repression. These actions moved in a semi a-legality: no norm regulated them and families and associations requested permission to authorities to proceed. Normally, no response was provided, so actions were carried through without opposition, without authorisation and without economic support. Through the law, the authorities commit themselves to somehow participate in processes of exhumation and identification of victims. Although the wording is unclear, it seems that the leading role belongs to families of victims and NGOs.

5. Symbolic policy: the law proposed, along former initiatives, the removal of signs and symbols that glorify the military uprising, the Civil War or Dictatorship. Private commemorations with no glorification purposes and signs and symbols with artistic or architectonic-religious value are excluded. The most important among these symbols is the so-called Valley of the Fallen, a mastodontic basilica and monument built by Franco and in which he himself and the founder of the Spanish fascist party, the Falange, are buried. Public funds sustain both the monument and the church and Republican prisoners worked in its construction. For some, the Valley was itself a symbol of reconciliation (sic), since deaths from both sides were buried there and it had historical value.¹⁰ For others, its re-conversion was unavoidable.¹¹

6. Memory related measures: these measures revolved around the existing institution in the city of Salamanca, which will become a Historical Memory Documentary Centre and General Archive of the

⁷ For instance, Amnesty International, *El Mundo*, 22 October 2007.

⁸ Some victims claimed that the Declaration was the same as a humiliating “certificate of good conduct”, Sempere, op. cit.

⁹ Joan J. Queralt, “Desmemoria histórica”, *El País*, 5 January 2007, p. 26

¹⁰ See Juan A. Mayor de la Torre, “La verdad del Valle”, *El País*, 8 May 2005.

¹¹ Paloma Agui, “Una reconversión inevitable”, *El País*, 8 May 2005.

Civil War. Additionally, as a novelty, the law foresaw the acquisition of funds and narrations of oral history.

The law did not satisfy several actors. To start with, several NGOs criticised it because of its limited reach and timid attitude. Victims, intellectuals and leftist parties shared these views. On the other side of spectrum, similar critical stances were adopted by the conservative forces and intellectuals, as well as the Catholic Church which, in an unprecedented manoeuvre, beatified 498 priest killed by Republican forces on 27 October in coincidence with the parliamentary process of the bill.

In parallel, some other initiatives had been carried through either by the Autonomous Communities (for instance, in 2005, the Andalusia government created the figure of the Commissariat for the Recovery of Historical Memory) or civil society NGOs (thus, in Valencia, a number of NGOs created a Commission of Truth with regional reach).¹² This shows that the initiative was deemed insufficient but also that it triggered further claims.

5. Issues to be extracted from the Spanish experience

5.1. Purpose of the exercise

Spain has not faced an official fact finding and truth exercise (the removal of misleading historical accounts), which has been nevertheless the object of intense and passionate academic and political debates. One of the difficulties revealed by the Spanish process is that, in divided societies, an aspiration may exist to expel lies and false accounts from the history. However, interpretations may reconstruct the sense of facts and it seems *a priori* difficult to obtain a consensus on what truth is. The language of “truth” seems to posit difficulties. It seems that the moral value assigned to the facts linked to truth may be perceived as highly superior to facts with no consideration of truth (without their falseness being established). Hence, the exercise is more a competence for gaining recognition for own accounts.

The axis of the Spanish experience has focused by and large on the reparation of victims. Recognition has had a more timid presence and what victims have consistently demanded is, precisely, recognition. As an example, oral history (the recollection of oral accounts) has come to the agenda only a very late stage.

Likewise, identification of perpetrators has not played a central role (or even, no role at all) in the Spanish process. Despite foreign involvement, the origin and development of crimes is linked to Spanish perpetrators, no different in nationality, race or any other “distinctive” feature. Large involvement at several levels made that any process may potentially affect large sectors of society.

5.2. The difficulty of common history

What the Spanish experience shows is, precisely, the enormous difficulty of providing a common understanding of history. At the European level, this requires a proper integration of all regimes and situations which could have breach the basic values of the EU (democracy, respect for human rights, rule of law, etc.). If at the more sophisticated level of academic accounts there may be great difficulties, these are even greater to generate narratives popularly shared. To put an example, some of the disputes features of Spanish authoritarian regime (such as anticommunism) may not be regarded so negatively when facing other historical contexts.

5.3. Scope

Basically, processes of transitional justice are within given nation states and communities. If the process becomes an inter-state one, several difficulties may appear. One specific problem for defining a broad European process is the temporal and geographical scope, since are the victims the one that with their claim primarily identify these. In European history, several processes could be included within the mechanism of transitional justice. Thus, colonization affects several European countries. Also,

¹² *El País*, 10 February 2007.

aggressive policies against other communities in the past (such, for instance Armenians in Turkey) or religious struggles shape a very complex context.

5.4. Relativism of certain concepts

Finally, a last question to be taken into account is the relative criminal position of certain figures. Whilst negationism (the denial of Holocaust) is typified as a crime in countries such as Germany (and there are some advances in this direction in Europe), the Spanish constitutional court has established that merely questioning the fact can not be considered a crime in Spain.

Jože Dežman

COMMUNIST REPRESSION AND TRANSITIONAL JUSTICE IN SLOVENIA

In the 20th century, the leaders of the seemingly most civilized countries of Europe were capable of unleashing the most debased murderous passions of their citizens. The epicentre of totalitarian massacres during and after the Second World War was Eastern and Central Europe. In the European totalitarian crescent, Poland and the Baltic States were victims of National Socialism and Stalinism; Germany and Austria were agents of National Socialism and Germany was also the victim of Stalinism; the Soviet Union was an agent of Stalinism; Yugoslavia, and also Greece, were victims of Fascism and National Socialism and agents of Stalinism; among the countries with a high percentage of dead population in the totalitarian victimological centre of Europe were also Hungary and Romania. Compared to the countries in the totalitarian crescent of Europe, which lost around five percent of their population (but some also more than ten percent of their population), losses of Italy, France, the United Kingdom and the United States of America were around one percent of their respective populations.¹

Characteristic of the territory now known as the ‘Alps-Adriatic’ region of Europe, are the strained relations that followed dissolution of the Austro-Hungarian Empire – six nations competing for the same territory (Italians, Friulians, Austrians, Hungarians, Slovenians, Croats).² Those tensions broke out immediately after the end of the First World War.

Among all European countries, Slovenia experienced the most intensive activities of all three forms of totalitarianism on its territory from the end of the First World War until the dissolution of Titoism.³

1. Totalitarian machines

Let us mention briefly Fascism, National Socialism and Titoism in Italy, Austria and Slovenia.⁴ Three Christian nations, with nationalist tendencies, were infected with totalitarianism. The descent into barbarism has comparable structural elements:

- Abuse of national sentiment to carry out racial and class revolutionary projects;
- Cult of a great leader, who permits his fanatics to murder, steal and lie;
- Dictatorship of one party;
- Militarization of society, police state – almighty secret political police;
- Collectivism, subjection of the citizen to the totalitarian state;
- State terrorism with systematic abuses of basic human rights;
- Aggressive assumption of power and struggle for territory.

However, their paths to power were different, their lengths of rule and dissolution were different, and modern reactions are different. The characters, criminals and crimes were being covered-up in Italy and Austria and Slovenia. Slovenia lived in the lies and half-truths of the Titoistic system for preserving and developing revolutionary heritage. Austria avoided the truth with the myth of Austria as the first victim of National Socialism and Italy is only now starting to confront the crimes of Fascism.

¹ Nial Ferguson, *The War of the World – History’s Age of Hatred*, London–New York–Toronto 2006, http://en.wikipedia.org/wiki/World_War_II_casualties.

² Helmut Rumpel, “Verlorene Geschichte. Der Kampf um die politische Gestaltung des Alpen-Adria-Raumes”, in: Andreas Moritsch (ed.) *Alpen-Adria. Zur Geschichte einer Region*, Celovec–Ljubljana–Dunaj 2001.

³ Perhaps it could be compared with Greece, but there the period of the Second World War and the civil war, with activities of Fascism, National Socialism and Communism, lasted less than a decade.

⁴ Even though the Hungarian occupier’s goals for ethnic cleansing were no less extreme, there was no significant partisan movement developed there during the Second World War and thus no revolution. After the War, the Titoists were less brutal to the Hungarian minority than to the German and Italian.

In Slovenia, it is possible to comparatively explore the consequences of three totalitarianisms. Fascism, National Socialism and Titoism were more focused on terrorizing the unarmed inhabitants of Slovenia than fighting each other.⁵ Fascism lags behind in the trampling of civilians, but National Socialism and Titoism are quite evenly matched, e.g. Titoistic concentration camps in the Bishop's institutes in Šentvid near Ljubljana and in Teharje were more destructive to Slovenians than National Socialistic death camps. Because the basic goal of Titoists was to win the civil war, they killed many more unarmed Slovenians than armed occupying soldiers.⁶

Activities of secret political police agencies were destructive; however, the Titoist police definitely surpassed those of the Fascists or the National Socialists. In 1946, there was one employee of the secret political police per 1,200 inhabitants of Slovenia; if active informants are included, that number rises to one per every 282 inhabitants. Several hundreds of thousands of people were affected by the constant spying and denouncing; mass paranoia reigned.

Destroying national wealth is where Bolshevism, due to its long-term systematic dissolution of the market economy, agriculture and natural environment, caused more damage than Fascism or National Socialism. A lot of long-term damage was also caused by the Bolshevik permanent persecution of democracy, religion and Church, with its collectivistic cages and repression of free innovation.

Totalitarian terror directly impacted several hundreds of thousands of people. The basic criminal categories were killing unarmed people, forcibly migrating the population, mass arrests, internments, plundering of wealth, abuse of currency changes, taxing, ... etc. Those crimes and the violations of basic human's rights were mostly perpetrated by National Socialism, primarily in the first two years of the War, and Titoism, the darkest moments of which lasted until the mid-1950s.

Table:

Fatalities caused by totalitarianisms in Slovenia⁷

	Fascism	National Socialism	Titoism
Inhabitants of Slovenia directly killed by ^I	>6,000	>40,000	< > 30,000
Part of unarmed inhabitants of Slovenia out of total casualties	>3,000	>25,000	>25,000
Interned, imprisoned, deported, fugitives ^{II}	>100,000 ^{III}	>200,000 ^{IV}	>150,000 ^V

Notes from the table:

^I Tadeja Tominšek Rihtar, "List of names of victims of the Second World War and directly after it (1941–1946)", in: *Hitlerjeva dolga senca (Hitler's Long Shadow)*, Celovec 2007. The number of victims of Titoism is an estimation based on data on the number of killed unarmed Slovenians and anti-communist unit members who fell fighting partisans, data on murdered prisoners of war and civilians after the War, victims of show trials, members of the anti-communist movement killed in skirmishes and revenge actions and killed on the borders, prisons and camps ...

^{II} Statistical data of committees for uncovering crimes of the occupiers shows that the fatalities of war crimes (not including killed or wounded partisans) in Slovenia number 35,488, and 32,747 persons were wounded, and 264,054 were interned or arrested, 332,289 in total. In Yugoslavia there were 505,182 casualties of war crimes, 384,089 were wounded and 1,750,032 were arrested and interned. *Zločini protiv čovečnosti i međunarodnog prava – Nirnberška presuda u dokumenti o genodiciu*, Belgrade 1992, p. 270.

⁵ Around 20,000 partisans fall in combat, perhaps more than 2,000 members of the Slovenian anti-communist units and a few thousand Slovenians forcibly mobilized into the occupiers' armies – less than one third of all casualties.

Losses of the inhabitants of Slovenia because of the occupation, resistance, civil war and Stalinist revolution	Losses of the occupying forces fighting Slovenian partisans 1941–1945
> 90,000 – more than six percent of the population	< 5,000

There is such a relationship in Yugoslavia as well. The casualties of the inhabitants of Yugoslavia were around one million, and less than 30,000 Italian and German soldiers died until August, 1944, when the Red Army entered Yugoslavia (Klaus Schmieder, *Partisanenkrieg in Jugoslawien 1941–1944*, Hamburg–Berlin–Bonn 2002, p. 589).

⁷ Slovenian democratic parties decided on the tactic of waiting when Slovenia was invaded. When the partisans started killing civilians en masse (by the spring of 1942, the communist secret political police, the partisan units and the political leadership of the partisan movement killed more than a thousand civilians without any trials), the armed anti-communist resistance sprang into being, first in collaboration with the Italians and after Italy capitulated, with the Germans. According to partisans, the anti-communists units on their own or with the occupiers, killed more than 12,000 partisans and collaborators of the partisan movement. See: Silvo Grgič, *Zločini okupatorjevih sodelavcev (Crimes of the occupier's collaborators)*, III/2, Ljubljana 2002, pp.1081–1098.

- ^{III} Fugitives from the area that became Italian after the First World War, those persecuted during the Second World War, especially inhabitants of the Ljubljana province (prisoners, the internees, exiles), those mobilized in the Italian Army.
- ^{IV} Exiles, fugitives, prisoners, internees, forced and slave labourers, those forcibly mobilized into the Wehrmacht and paramilitary units.
- ^V Political emigration, escaped and exiled members of the German and Italian minorities, illegal refugees through the Iron Curtain to the West before 1960, and in Slovenia or Yugoslavia, prisoners, internees, exiles, slave labourers. If we include racial discrimination against the groups stigmatized by the regime (relatives of repressed victims, those forcibly mobilized into the occupiers' armies, surviving members of the anti-communist camp) and the class struggle (aristocracy, middle classes, farmers) and the war against religion and church (especially church hierarchy and also many believers), there was no person remaining who had not experienced the red terror first hand.

2. The system of preserving and developing revolutionary heritage

After the Second World War, the communist partisan movement was part of the victorious global anti-Fascist coalition and had won the civil war against the Slovenian anti-communists. Slovenia gained territory⁸ and received limited status as a republic in the second Yugoslavia.

The ethnic image of Slovenia changed under Titoism. More than 50,000 members of the German and Italian minorities were exiled or decided to emigrate, more than 20,000 Slovenians fled communism or decided to emigrate for economic reasons to the West. More than 200,000 migrants from other Yugoslav republics moved to Slovenia.⁹

The basic goal of the victorious communists was to execute the Bolshevik revolution. The period 1945–60 was the time of the worst offensives in the party's civil war against Slovenia and its population. This was the time of the implementation of the Leninist-Stalinist revolutionary model (one-party dictatorship, systematic violations of human rights). There were numerous breaking points. In the second half of the 1950's, the hard revolutionary model became developmentally impossible, the characteristic Yugoslav crises began, the centre of the development/dissolution of Yugoslavia at the end of the 1950's and the beginning of the 1960's moved towards increasingly strained relationships between the Yugoslav nations and economic crises.

All these processes carried a heavy ideological burden, implanted by Titoism onto Yugoslav and Slovenian society with the so-called system of preserving and developing revolutionary heritage. It was the basic element of the formation of the leading elite of Titoism, called the 'new class' by Milovan Djilas. The new class was formed from members of the Communist Party (since 1952: the League of Communists) – league of communists, the so-called revolutionary avant-garde, and the League of Veterans' Associations, a veteran organization of the partisan movement.

Members of the Communist Party/League of Communists assumed all leading positions in the society. A typical party member was a man, with a better job or a leading function, with a good wage and access to other benefits. So many party members were functionaries, and very few manual labourers or farmers. The leading party was both a magnet and a source of disappointment. Between 1950 and 1977, almost 124,000 members were accepted into the League of Communists of Slovenia¹⁰, and 68,000 left the party or were expelled.

The leading positions in the party were, almost to its dissolution, held by the partisan veterans who carried out the revolution. The partisan army veterans and partisan co-operators from the Second World War were joined in 1948 in the League of Veterans' Associations. Even though numerous partisan veterans left the party, their loyalty to the regime was ensured by numerous privileges.

⁸ Slovenia 1941: 15,849 square kilometres.

Territory gained in 1947: 4,143 square kilometres.

Territory gained in 1954: 263 square kilometres.

Slovenia 1954: 20.255 square kilometres.

⁹ Population of Slovenia from 1945 grew from around 1,500,000 to 2,000,000, where it is now.

	Number of members	Percentage of population
1941	1,200	< 0,1
1945	8,500	0,6
1954	49,000	3,4
1965	70,000	4,3
1978	110,000	5,8
1982	126,000	6,7
1988	110,000	5,6

In Slovenia in 1948, when it was formed, the League of Veterans' Associations had 120,000 members in 792 local branches. Data from 1953 reveals that less than 45,000 were soldiers; others were members of the political organizations of the partisan movement. The number of members of the League of Veterans' Associations rose to 157,000 by the year 1973, and 86,000 had their years of participating in the partisan movement officially recognized towards their retirement funds, some even had the years doubled. In 1996, more than 50,000 partisan veterans received bonuses with their pensions; in 2007, around 27,000 partisan veterans received around 61,000,000 Euros of bonuses to their pensions.

The system of privileges, developed all throughout Titoism, gave partisan veterans access to numerous benefits, from assuming leading positions without adequate education, advantages in schooling, employment, apartments, to numerous local and republic rents, decorations, free transport. There was a special parallel health system in place for them. Between 1970 and 1980, apartments were allocated to more than 16,000 fighters, around 2,000 received loans to build houses and almost 10,000 loans to adapt apartments or houses. The veterans also had priority in buying confiscated houses and apartments.

After World War Two, the League of Veterans' Associations was taking care of "12,228 children under the age of 15, 7,769 were children of fallen soldiers and 4,533 victims of Fascist violence and 950 children without both parents." They received help in schooling and other forms of social help; they were helped in their jobs and careers.¹¹

The members of the new class also ensured numerous advantages for their children. Titoism could not authentically criticise Fascism and National Socialism, as many of their victims later became victims of Titoism.¹² Titoism eliminated many victims of Fascism and national Socialism from collective memory and did not ensure that the victims would receive the restitution that belonged to them from successor states.

The people mobilized into the occupation armies and paramilitary formations were most severely deprived. More than 200,000 were mobilized and more than 15,000 died.

The illegal mobilization of the population of the occupied Slovenia was the biggest National Socialist crime against the inhabitants of Slovenia - considering the number of the mobilized and the number of the fatalities and of those disabled. Because the fatalities were mostly young men without families, the demographic losses were very extensive as well. Slovenians were forcibly mobilized only into the Wehrmacht. Most deserted or allowed themselves to be caught. Many of those on leave deserted and joined the partisans in Slovenia, Many also joined the overseas brigades and Yugoslav units established in the Soviet Union. They helped strengthen the partisan army and contributed to its victory.

Titoism not only did not condemn National Socialism for this violation of international law, and severe consequences, but it also discriminated against the victims. The government did not maintain the graves of the dead; there was no room for them in collective memory; they were not recorded and were not allowed to have memorials. Those mobilized were given the title 'Nazi soldier', national traitor. The mobilized, or the relatives of the fallen or the disabled were not allowed to receive German rents.

An important part of the national history, the majestic epic with many tragedies and many great rebellious acts, was repressed. For example, Stanislav Mikšič and Edvin Mekinda deserted and told the Red Army about the German preparations before the Battle of Kursk. However, Yugoslavia demonstrated no recognition of this act.

It is not yet known how many of the mobilized did not return home for fear of violence, choosing instead to remain in the West.

The internees of the National Socialist concentration camps were, after the Second World War, accused of being Gestapo or Western imperialistic agents, following the Stalinist model. Preparing for the so-called Dachau trials, the secret political police operatively researched 7,380 Slovenians and 2,144 foreigners by March 1948. In the nine show trials before the court martial and the district court in Ljubljana, 34

¹¹ *50 let delovanja Zveze združenj borcev in udeležencev narodnoosvobodilnega boja Slovenije (50 years of existence of the League of Veterans' Associations and participants in the National Liberation Struggle of Slovenia)*, Ljubljana 1998.

¹² Jože Dežman, "Hitlerjeva dolga senca" ("Hitler's Long Shadow"), in: Jože Dežman, Hanzi Filipič (eds.), *Hitlerjeva dolga senca – nacionalsocialistično državnoterroristično in rasistično preganjanje prebivalcev Slovenije in njegove posledice v Titovi Jugoslaviji*, Klagenfurt–Ljubljana–Vienna 2007.

former internees, members of camp committees in Dachau and Buchenwald, were convicted. The accused were broken by severe torture, three died during the investigation, eleven were sentenced to death and executed. The dates of death and the locations of the graves remain unknown to this day. The dark shadow of the Dachau processes lay on the Slovenian internees until the end of the second Yugoslavia. Those sentenced in these trials were politically rehabilitated by the 10th Congress of the League of Communists of Slovenia in April 1986.

National Socialists murdered more than 550 Slovenian Jews. When the survivors returned to Slovenia from the camps, some had their property confiscated through various pretences in the show trials. Some emigrated to Israel.

More than 80,000 Slovenians exiled from their homes by the Germans to the Balkans or to Germany or who fled from them (around two thousand died) were not given war victim status in Titoism.

The totalitarian connection of National Socialism and Titoism is even more strongly reflected in the fate of the Roma people. The first prisoners in the Gestapo prison in Begunje were the Roma from Gorenjska (Upper Carniola), who were later exiled. Some of the Roma were killed by the National Socialists in concentration camps. In Ljubljana, which belonged to the Italian occupational zone, the partisans assaulted the Roma. From the 350–400 Roma living around Ljubljana, the partisans killed at least 160 in only 70 days, between 10 May and 22 July 1942. Among them were women (some pregnant) and children.¹³

Tito's Yugoslavia did keep a record of the war damages; but for many of them (whether caused by the partisan opponents or partisans themselves); it did not even try to arrange for restitution. Among them are mostly damages to property and especially those affecting social groups who were destined for extinction, according to the Bolshevik class war logic. So many entrepreneurs and farmers could only hope for restitution. Even today, the material war damages are a hot topic in the discussions among their victims and the state.

3. Taboo and its dissolution or the Slovenian bases for transitional justice

Mystifying the crimes of the occupiers, Titoism covered its own crimes. The taboo to hide the crimes of Titoism was meant to conceal the War-time and post-War murders of civilians and prisoners of war without trials. Their graves were levelled and in Slovenia it was forbidden to talk about their fate. Repressive organs controlled the burials sites and the living were strictly forbidden to mention the victims or the graves.

The so-called system of preserving and developing revolutionary heritage was used by the Communist Party to implement a monopoly on the Truth. In the name of brotherhood, unity and equality, intolerant militarization and caste discrimination of the living and the dead reigned. The Bolshevik 'gods' divided the world of the dead into party heaven and party hell.¹⁴ The acknowledged dead were holy for the party cult of the dead and the graves of the ignored and their memory was erased.

As well as the dead, the living were divided. The partisan survivors and the relatives of the holy dead were given commemorations and rents. The surviving partisan opponents and their relatives and children of the despised dead were forced to remain silent, were denigrated and were without recourse to law.

The murders were followed by confiscations and additional taxation; the relatives of the murdered were physically and mentally tortured and treated as second class citizens. The relatives of the taboo

¹³ Jože Dežman, Hanzi Filipič (eds.), *Hitlerjeva dolga senca (Hitler's Long Shadow)*, Klagenfurt–Ljubljana–Vienna 2007.

Party heavens – victims acknowledged by the party	Category of victims	Party hell – victims ignored /concealed by the party
>20,000	Partisans	<2,000
>20,000	Civilians	<8,000
	Forcibly mobilized in the occupators' armies	<15,000
	Slovenian anti-partisan units	>15,000
	Non-Slovenian inhabitants of Slovenian ethnic territory	>3,000
>45,000	Total	>40,000

dead were one of the many second class groups (middle classes, aristocracy, farmers, democrats, priests and the faithful ...); in many cases they were treated as internal enemies and political emigration (secret political police kept files on around 20,000 political emigrants) was treated as an external enemy. The racist discrimination haunted especially the children of the murdered all the way until the dissolution of Titoism; those consequences burden many of the survivors to this day. Suffering poverty, beatings and denigration, they were not given help in school or given scholarships, and many were not allowed access to education; they were usually given bad jobs with no chance of promotion. Because they were not allowed to mourn, and most do not know where their close relatives lie buried; many suffer from grief disorders.

4. Critical confrontation with the crimes of Titoism

Critical treatment of the criminal heritage of Titoism has marked the processes of independence and democratization in Slovenia; numerous elements of transitional justice were also implemented after Slovenia gained independence.

The suitable basis for the just and expert study of totalitarianisms is legal research. For Slovenia, Dieter Blumenwitz performed such an overview¹⁵; the Titoist lawlessness was also treated by the Constitutional Court of the Republic of Slovenia in a series of decisions.¹⁶

There were many epistemological breakthroughs, as we are now slowly realizing the vast breadth of totalitarian violence against Slovenia, and also what part we Slovenians took in the totalitarian regimes as collaborators or perpetrators.

Slovenia can confidently present its endeavours to implement transitional justice. In the Slovenian transitional-justice model, there are several measures comparable to attempts elsewhere, and it is characterized by a number of innovative initiatives, by the large numbers of people involved and by the great significance of these processes for the democratization of Slovenia. Because of Slovenia's relatively small size and marginality, those processes were carried out mostly with inter-personal Slovenian definitions, calculations, re-evaluations and confrontations. With new scientific discoveries, civil-social initiatives, political accelerations and decelerations, at least some areas of Slovenian transitional justice also began to be noticed internationally.

An overview of reconciliatory initiatives and methods cannot be complete yet, however in his statesman-like gestures, Jože Pučnik especially stands out.¹⁷ The Slovenian parliament was not capable of accepting the condemnation of communism, adopted by the Council of Europe, because of the strength of the parties defending the Titoist heritage; however the parliamentary committee led by Jože Pučnik did manage to carry out a basic investigation of Titoist crimes.

During the 1980's, there was a great resonance to the call by Spomenka Hribar to accept all of the dead into national memory and to create an obelisk of reconciliation. The communists sentenced in the so-called Dachau processes were exonerated by the League of Communists. The media started publishing data on the crimes of Titoism. The peak of these attempts before Slovenia gained independence was the reconciliatory mass in Kočevski Rog in June 1990.

Rebellion against Titoistic abuses of fake history to maintain one-party dictatorship, against the police state, against systematic violations of human rights, were always present in the Slovenian political emigration and among part of Slovenians abroad. That resistance was in various ways alive in Slovenia as well – especially various forms of resistance by those impacted by the most severe forms of Titoistic violence (from murders of their relatives, confiscations of property, collectivization of agriculture, fight against religion and church, dissenting party members or veterans ...). Following the increasingly obvious crisis of Titoism and the disintegration of its foundations (economic and political bankruptcy of self-management, the death of Josip

¹⁵ Dieter Blumenwitz, *Occupation and Revolution in Slovenia 1941–1946 – International Legal Study*, Klagenfurt–Ljubljana–Vienna 2005.

¹⁶ Gašper Dovžan, Urška Tekavec, *Temne strani slovenske pravne preteklosti v luči slovenske ustave (Dark Sides of the Slovenian Legal Past in Light of the Slovenian Constitution): argumenti Ustavnega sodišča Republike Slovenije o hudih, množičnih in strukturnih kršitvah človekovih pravic in svoboščin v Sloveniji v času prevlade ideologije in prakse komunizma 1945–1990*; introduction by Peter Jambrek and Lovro Šturm, Ljubljana 2001.

¹⁷ Overview of some reconciliatory ideas and acts, cf.: Jože Dežman, *Spravna mavrica, S spravno ljubeznijo iz rdeče ledene dobe (Reconciliatory Rainbow, With Reconciliatory Love out of the Red Ice Age)*, Klagenfurt–Ljubljana–Vienna 2005.

Broz, the dissolution of the League of Communists of Yugoslavia and the Yugoslav Federation, the waning of the Non-Alignment Movement ...) was one of the basic processes of independence and democratization of Slovenia in the 1980s – the process of justice, truth and reconciliation.

A majestic proof that Slovenian society rejected the Titoist model of revolutionary and totalitarian violence was the war to defend the independent Republic of Slovenia in June and July 1991. Any research will point out a number of examples of numerous Slovenians acting to prevent bloodshed. The Slovenian success is that much more poignant when we compare the number of victims during the Slovenian independence war and the number of victims in the Balkan wars of the 1990's, following the Slovenian war.

Unburdened by the bloody maelstrom of the most recent Balkan wars, Slovenians were able to pay more attention to the traumatic burdens of the Second World War and the Stalinist revolution. The first of the issues, always present in the establishment of the Titoist taboo and its dissolution, was the issue of concealed burial sites, and the victims and their killers.

There also exists an intensive reconciliatory friction on a personal, familial or communal level. We should especially stress the experiences of the relatives of the concealed and denigrated victims of Titoism, who through forgiveness and reconciliatory love, transcended hate and violence. The relatives of victims and others, who did not allow themselves to be abused by the Titoist absence of conscience, are great examples of anti-totalitarian resistance. Many of the hurt, who did not let themselves break under the pressure of the crimes, robberies or lies, have desire for reconciliation, for forgiveness.

The discussions between the defenders of Titoism and their critics have greatly impacted the transitional years in Slovenia.

The most ambitious attempt to systemise the crimes, systematic violations of human rights and the characteristics of Titoist totalitarianism was the project *Temna stran meseca – Dark Side of the Moon*.¹⁸ The cultural-political projects of confrontation with the totalitarian heritage were developed mostly by Jože Pučnik and Lovro Šturm.

A lot of Slovenian and international attention was paid to the project of the cross-border confrontation of the views on National Socialism and Titoism from the Austrian or Carinthian side and the Slovenian side, *Under the Swastika and the Red Star*, led by Alfred Elste and Jože Dežman.

The international space was again entered by the translations into German by Tamara Griesser Pečar and Dieter Blumenwitz, with the financial help from the Bernik family, dealing with the state of Slovenia.

The online collection of articles about contemporary Slovenian history, published after 1990, will include more than 20,000 units. We should especially mention the continuity and quality of writings by Ivo Žajdela and the group of writers for the magazine *Zaveza* – let us especially mention the editor and the author of astute editorials, Justin Stanovnik, the writers of life's tales Vanja Kržan, Janko Maček and Tine Velikonja. A special voice of the public, when public opinion towards the totalitarian past was formed and when a suitable cause-effect understanding was sought for complex processes, was Alenka Puhar in her journalistic and book publications. We cannot individually mention the numerous people who publicly demanded to resolve the many issues and exposed them to the masses, nor can we list all books and other publications that transformed public memory and consciousness and moved epistemological and ethical borders (e.g. *Assumption of Government* by Jera Vodušek Starič, and to mention a few authors of documentary movies: Filip A. Dobrina, Marko Čadež, Jože Možina, Miran Zupanič). There were also numerous books published that treat individual villages, parishes and municipalities. Among the localities, Šentjošt should be mentioned, as it preserves the tradition of the initial anti-communist armed resistance.

The numerous testimonies are very valuable as well. The archive of the Committee for the Execution of the Law on Restitution of Injustices can show us the breadth of the history of systematic violence and violations of human rights, which was never recorded in Titoist archives. This is the unwritten history, the intangible heritage, which has to be recorded and written down so we can understand the struggle of our ancestors and their power to survive. A great project to present this heritage is the show "My Story" on Radio Ognjišče, which has been broadcast every week for a couple of years.

¹⁸ Drago Jančar (ed.), *Temna stran meseca (Dark Side of the Moon. A Short History of Totalitarianism in Slovenia 1945–1990)*, Ljubljana 1998.

There were numerous important translations published in Slovenia, mostly edited by Aleksander Zorn.

We could also list a series of literary and artistic works that try to work through the burden of totalitarian history. Pater Marko Ivan Rupnik, who is the author of the mosaics in the Redemptoris Mater Chapel in the Vatican, included three stones from the graves of three girls murdered by the partisans in the mosaic. He created reconciliatory mosaics in the chapels Pod Krenom and in the Institute of St. Stanislav.

Slovenian politics has not yet concluded discussions on the heritage of Titoism. According to the decision by the Constitutional Court, the parliament has to adopt changes in the Law on the Victims of War Violence, and there are changes necessary in the Law on War Burial Sites. Even though the parliament was not capable of passing the suggested reconciliatory declarations or the suitable resolutions of the Parliamentary Assembly of the Council of Europe, de-Titoisation is intensive. It should be noted that the parties originating from the League of Communists or the League of Socialist Youths deny their roots by starting their history after the dissolution of Titoism – Social Democrats in 1992 and Liberal Democracy in 1994.

Governmental committees dealing with mass murders and concealed burial sites and killing grounds began their work in 1990. First, they dealt with reconciliatory rituals and arranging some burial sites. Archaeological research and identification of victims started when Jože Dežman became head of the committee in 2005.

The police are pursuing the criminals and gathering data on them with the police action Reconciliation (Sprava), led by Pavel Jamnik. By 2008, the police managed to file two named criminal indictments against the suspects of the imprescriptible war crimes. The processes against both indicted persons ended with the rejection of the investigation suggestion that was filed by the State Prosecution. Even though the Slovenian judiciary was not capable of convicting any of those guilty for the murders, the indictment against Mitja Ribičič, former president of the Yugoslav Government and the League of Communists, was a very important event.¹⁹

Slovenian and international reactions to these activities were quite strong. The media were quite interested with presentations of the Slovenian investigations at a European conference of criminalists and prosecutors in The Hague.²⁰ There the basic characteristics of the crimes with which we are dealing were defined by Jože Dežman: “Killing civilians and prisoners of war after the Second World War is the greatest massacre of unarmed people of all times in Slovenian territory. Compared to Europe, the Yugoslav communist massacres after the Second World War are probably right after Stalinist purges and the Great Famine in the Ukraine. The number of those killed in Slovenia in the spring of 1945 can now be estimated at more than 100,000, Slovenia was the biggest post-War killing site in Europe. It was a mixture of events, when in Slovenia there are retreating German units, collaborator units, units of the Independent State of Croatia, Chetniks and Balkan civilians; more than 15,000 Slovenian inhabitants were murdered as well. Because of its brevity, number of casualties, way of execution and massiveness, it is an event that can be compared to the greatest crimes of communism and National Socialism.”

Even without predicting the politics of the Slovenian and other governments who have unburied dead in Slovenia, we can be sure that the process of research, excavations and burials of victims cannot be stopped.

5. Denationalization, restitution of injustices, annulment of Stalinist trials

The areas of transitional justice that are especially connected to the restitution of injustices that were suffered by the victims and their relatives are the return of property, annulment of show trials

¹⁹ To learn more about the falsification created by the Senate of Judges of the Supreme Court in Ljubljana to not allow the continuation of the investigation in the Ribičič case, read: Jože Dežman, “Spravni temelji slovenskega osamosvajanja ali kje je meja med Slovenijo in Srebrenico?” (“Reconciliatory Foundations of Slovenian Independence or where is the Border between Slovenia and Srebrenica?”), *Studia historica Slovenica – journal for humanistic and social studies*, 1–2 (2007).

²⁰ Presentation by Pavle Jamnik and Jože Dežman at the 5th meeting of the European Network of contact points in respect of persons responsible for genocide and crimes against humanity, the Hague, 17 March 2008.

and legally unsubstantiated sentences, acceptance of the so-called war laws and police and judicial prosecution of the criminals.

Numerous issues remain open, connected mostly with the package of the so-called war laws. We already mentioned the Law on War Burial Sites. According to the Constitutional Court²¹ the Slovenian parliament should change the Law on Victims of War Violence so that those persons, who were killed by the partisans without their guilt having been proven and without proper procedure, would also be awarded the status and the rights of victims of war violence.

The property of victims of Titoist terror was as a rule confiscated, so an important part of transitional justice processes is connected to denationalization. The restitution of confiscated property is now being concluded. Out of 39,642 filed denationalization demands, 38,604, or 97.4 percent, were legally concluded.

The Committee of the Government of the Republic of Slovenia for the Execution of the Law on the Restitution of Injustices, led by Janez Lukač, has been active for more than ten years; but because of Titophillic extremists' activities, it remained very marginal for the first few years. During the mandate of the government of Janez Janša, it was finally enabled to work effectively. The Committee has so far resolved 18,696 applications. Instead of 858 applications per year, which was the Committee's average between 1997 and 2004, it resolved on average 4,731 applications per year between 2005 and 2008.²²

More than 2,000 people sentenced in political show trials have been rehabilitated.²³

6. Instead of a conclusion

Slovenian transcendence of the burdens of the past is intensively being developed in Slovenian and international space, and has very strongly impacted the transitional processes in Slovenian society. Under many criteria, Slovenia can be compared to, or even surpasses, many examples of various committees and state interventions to transcend the burden of the criminal past (e.g. in South Africa, South America, Spain ...).²⁹ There is still a lot of work that we and many other European countries need to do to transcend the burdens of the totalitarian 20th century.

²¹ Directive about the findings of incompatibilities of the Law on Victims of War Violence and the Constitution and about the Rejection of Initiatives, p. 12489, Number: U-I-266/04-105, Ljubljana, 9 November 2006.

²² *Attained goals of the Ministry of Justice in the mandate 2004–2008*, online publication 22 July 2008.

²³ I would like to thank Marko Šorli from the Supreme Court for the estimate on the number of rehabilitations. Lovro Šturm reported at the meeting in the State Council in November 2003 (Lovro Šturm, "Žrtve vojne in revolucije" ("Contribution to the discussion Victims of War and the Revolution"), Ljubljana 2005, p.187.): "In Slovenia the state decided to use an individual approach, to change each unjust sentence individually. So far this possibility /.../ was used by around three thousand people."

Pavel Jamnik*

POST-WORLD WAR TWO CRIMES ON THE TERRITORY OF SLOVENIA: POLICE INVESTIGATION AND PROOF REGARDING CRIMINAL OFFENCES THAT DO NOT FALL UNDER THE STATUTE OF LIMITATIONS

1. Introduction

After changes in the political system in Slovenia in 1990, experts started investigating criminal offences perpetrated by the Yugoslav authority that do not fall under the statute of limitations. On 1 January 1995¹, the police started investigating post-war mass killings, and that date can be considered as the day when the new Slovenian state recognised the post-World War Two events as crimes that do not fall under the statute of limitations. According to data collected so far, the territory of Slovenia witnessed the killing of about 100,000 people in the first months after the war ended. Most of the victims were of other Yugoslav nationalities and were captured in Slovenia fleeing from the Partisan army. According to that data, at least 15,000 of the murdered were of Slovenian nationality.

The police and the prosecution viewed three questions as most significant:

- Is it possible, after so many years, to find enough criminal evidence incriminating the perpetrators;
- Can the perpetrators be traced;
- Regarding the question of identifying victims: if identification by name and surname of victims is not possible, then at least an identification in the broader sense, i.e. their ethnic, religious and social affiliation.

The work was set on two levels: the Police established a special working group for investigating the post-war mass killings, as part of Project Reconcilian (*SPRAVA*), and the Government established a government commission for the registration, exhumation and arranging of the concealed gravesites.

2. Legal framework for the investigation of post-war killings

To prevent concerns about individual legal definitions of criminal offences hindering the investigation of post-war killings, we proceeded from the view that first we need to clear the air regarding all important factual circumstances of the individual killings, and then we needed to ascertain whether there were indications of criminal offences for which criminal prosecution does not fall under the statute of limitations, in accordance with Article 116 of the Penal Code. In this way, we avoided premature questions about the possibility of criminal prosecution of any traced perpetrators, or about what sort of a criminal offence was involved.

When we were gathering the initial information on the gravesites, we needed to find data in accordance with the requirements of the Penal Code.

According to Article 116 of the Slovenian Penal Code, the following criminal offences are regarded as those which do not fall under the statute of limitations:

- Genocide, in accordance with Article 373;
- War crimes against civil populations, in accordance with Article 374;
- War crimes against the injured and the ill, in accordance with Article 375;

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¹ Dokument MNZ UKS št.0221/8-E-23 z dne 3. 1. 1995.

- War crimes against prisoners of war, in accordance with Article 376;
- War crimes committed with prohibited means of combat, in accordance with Article 377;
- Associating and incitement to genocide and war crimes, in accordance with Article 378 of the Penal Code.

Regarding the following criminal offences:

- War crimes against civil population, in accordance with Article 374;
- War crimes against the injured and the ill, in accordance with Article 375;
- War crimes committed with prohibited means of combat, in accordance with Article 377 of the Penal Code; it is important to note that these criminal offences may only pertain to the period during the war or the armed conflict. Due to the fact that the killings under investigation were executed after the war ended and also after the end of armed combat, it was not possible to prosecute perpetrators for these criminal offences, although all other legal indications for these offences were present.

Those who ordered, executed or were involved in post-war killings in any other way, committed the following criminal offences:

- Genocide, in accordance with Article 373 of the Penal Code;
- War crimes against prisoners of war, in accordance with Article 376 of the Penal Code;
- Associating and incitement to genocide and war crimes, in accordance with Article 378 of the Penal Code. It is also clear that the prosecution pertaining to all the criminal offences (for example, murder) which were not defined by the Penal Code as offences that do not fall under the statute of limitations, became obsolete.

The most important of all the criminal offences committed by the perpetrators of post-war killings is genocide from Article 373 (1) and (2) 373 of the Penal Code. This criminal offence is based on the Convention on the Prevention and Punishment of the Crime of Genocide, dated 9 December 1948. The Convention was therefore adopted after the post-war killings. However, the Martens Clause was valid in that time; it was included already in the Hague Convention IV of 1907. The Martens Clause is a universal rule of international regular war legislation according to which members of the combatants and the civilian population shall at all times remain under the protection and authority of the principles of international law, derived from established custom, from the principles of humanity and from the dictates of public conscience, even in cases when the handling with these categories of persons is not specifically regulated by international war legislation. Therefore, this provision can serve as a basis on which to build in proving the fact that, with post-war killing of all categories of enemies, some perpetrators committed the criminal offence of genocide from Article 373 (2) and (1) 373 of the Penal Code. Victims of these killings were members of those social and political groups which joined the opponents of the partisan movement or the opponents of the newly established communist regime.

Some groups of victims should, in view of their status, be defined as prisoners of war. The post-war killings or the post-armed conflict killings of prisoners of war are regulated by Article 376 of the Penal Code, namely as war crimes against prisoners of war. Included in this category are the members of the German army. However, there are different views regarding the question of whether members of the Home-guard who were captured and returned in Vetrinje can be categorised as prisoners of war, for the international case-law offers no answer in this regard. When we started to investigate the post-war killings, we did not pay attention to this question. It is irrelevant for the prosecution due to the fact that, in executing these people, the perpetrators committed a criminal offence that does not fall under the statute of limitations.

This is the framework that is provided by the Penal Code for the detection of elements of crimes against humanity and international law. The procedures pertaining to persons that are allegedly familiar with post-war killings are regulated by the Criminal Procedure Act and the Police Act.

3. Proving criminal offences that do not fall under the statute of limitations

Under the communist regime, data on the majority of gravesites and victims were protected in the records of the Secret Police – the State Security Service. Unfortunately, all those documents were destroyed in 1990. The remaining documents were revised and contain no data that could incriminate those who executed or ordered the killings.

The Police and the prosecution therefore had to start working on individual gravesites, and find the person responsible for the killings by means of identifying the victims and the command responsibility of the political police (Department for Protection of the People, 'OZNA' at that time) or the military unit operating in the area of the gravesite.

Due to the age of data pertinent to the investigation, certain problems that pertain to proving the offence arose:

- Today, the youngest person who could have been involved in the killings (actually performing the execution) is around 80 years old, and the commanding staff is at least a few years older;
- According to the information gathered, the people who could provide useful data or were even involved in the killings will not testify to their own detriment;
- With regard to evidence, there are no useful witnesses to the executions (those who witnessed them or were themselves victims, are either deceased or will not cooperate because they were involved in the killings).

Because the killings were executed in the framework of the military and civilian authority, i.e. at the state level, they were executed conspiratorially as a military operation. And this again brings about new insurmountable obstacles with regard to proving responsibility for the killings:

1. On the territory of Slovenia there were, at the end of the war, units which executed most of the killings, and these units originated in other parts of Yugoslavia and were subordinate to the supreme Yugoslav command, and not to the command at the level of the republic, Slovenia. However, both factions executed the killings.

2. Due to the interwoven authority functions and destroyed documents, it is impossible to prove whether a federal military unit or the Slovene civil authority with its political police (Department for Protection of the People, OZNA), is responsible for individual killings.

3. If the evidence brings us to the arresting officers, there is a new set of objective questions:

- The arresting officer only brought the arrestee to the assembly centre or prison. The person in charge of the prison, who, in light of their function, could be held responsible, or at least the person who was familiar with the arrestees' fate, is already dead today or can not be proven to have held a commanding function in the relevant time period. (The commanding officers were subject to frequent changes and the date of the killing is unknown.)
- The person arrested never returned to their home, they were executed. However, we do not know where this person was taken after the arrest, nor do we know the location of the grave and by whom and when the killing took place.
- We are also faced with the opposite situation: we have the bodies, but do not know who these people were and from where they were brought.
- In the most complicated cases (which are very common in view of the gravesites found), the persons were brought to the assembly camps. In this case we are dealing with many people interacting with the victims; however, in most cases these two groups do not know each other:

1. one person makes the arrest,
2. the arrestee is interrogated by another person,
3. the arrestee is transported to the prison or the assembly centre by a third person or persons,
4. here the arrestee is interrogated by a fourth person,
5. the fifth person or persons are involved in the transport to the place of execution,
6. the sixth person or persons execute the victim.

7. Besides all those who had direct contact with the victim, there are also the persons who decide on the execution. And these were the persons who were the subject of our investigation. Preserved documents regarding the command responsibility of these persons in the actual camp in the actual time period are crucial for the identification of these persons and for proving the connection with the victims. These documents are, however, non-existent. The few camp victims still living do not know those responsible.

We are therefore faced with the situation where we have no documents on the execution of the killings, and we can not prove guilt by gathering information from the people. At the same time, we have numerous gravesites and human bones proving that the killings actually took place. We can only ascertain that, in the framework of the investigation of post-war killings in Slovenia, 600 discovered gravesites and tens of thousands of victims do not suffice to prove that at least one still living person was responsible for criminal offence(s) that does not fall under the statute of limitations.

The police have so far conducted several thousand interviews, 12 exhumations of gravesites and filed two criminal complaints against known perpetrators, but the prosecution's request for initiation of an investigation was rejected in both cases.

Despite the failure to prove the perpetrator's involvement in the criminal offence, the findings of the police with regard to events in the first month after the war were important to shed some light on the historic events.

Based on the data gathered during the investigation it was possible, for the first time, to reconstruct the groups of victims and identify the methods of execution. Also relevant to the matter at hand is that, from the data gathering at individual gravesites, some perpetrators on the institutional level came to the surface: it became evident which killings are the responsibility of the Slovenian OZNA and which killings were performed by the Yugoslav Army units penetrating the Slovenian territory.

4. Categorisation of gravesites and the victims²

Based on the time of origin, we divide the gravesites and the graves into three basic groups. Within these groups, we can distinguish between subgroups according to their status and social affiliation; these groups were treated differently due to their status. The gravesites and the victims can be categorised as follows.

4.1. Inter-war executions

4.1.1. Individuals

Based on the decree "Odlok Glavnega štaba NOV in POJ o postavitvi rednih brigadnih in odrednih vojaških sodišč" (decree regarding the establishment of military courts) of October 1943, the VOS units conducted arrests and tried, before so-called military courts, individuals who were accused of collaborating with the occupier, of treason or of resisting the partisan fight. Some documents pertaining to these executions or at least to people who were executed, are in the Archives of Slovenia. However, not all executed persons were tried based on the adopted decree.

4.1.2. Gravesites containing several bodies

This group includes the killings of groups of people during World War Two. The same applies both for the civilians and for individuals, however, the group of occupying soldiers includes executions of captured soldiers and is not the result of military conflict:

- Of occupying soldiers;
- Of Slovenian civilians;
- Of anti-partisan units;

² Pavel Jamnik, "Akcija sprava": ugotovitve policijskega preiskovanja poveljnih pobojev: zaključno poročilo, Ljubljana 2004.

4.2. Gravesite containing the victims of the final military conflicts

In the last days of World War Two, there were military conflicts in the Northwest and Northeast of Slovenia; many people were killed. Due to the fact that both sides were sovereign regarding military tactical possibilities and decisions to engage, the victims of these conflicts can not be regarded as killings against the principles of war. The situation in Koroška is a bit more specific; there, the fleeing civilians joined the soldiers. However, these conflicts, in which both soldiers and civilians were killed, must still be regarded as military conflicts – the final military conflicts.

4.3. Post-war killings

When the communists gained control of the government, Slovenia witnessed the so-called “cleansing within”, in which the authorities systematically arrested and prosecuted all ideological opponents.

4.3.1. Individuals

1. Civilians and employees. These are the people who disappeared at work or somewhere on the way, and there is no data regarding their possible arrest and detainment in one of the camps or prisons.
2. Released arrestees. These are the people who were released from assembly camps or from prisons, and upon arriving home, were captured and killed by local authorities or individuals. It is not clear whether these were ordered killings or if they were merely the result of vengeance due to old resentments and economic interests; the authority of that time could have prevented such killings.

4.3.2. Mass gravesites

1. Defeated occupying forces. Individual partisan units executed groups of captured German soldiers immediately after the military conflicts. The responsibility is on the side of individual partisan units which captured the soldiers or on the side of the town command, since the town command commanded also the partisan units in its area.
2. The fleeing groups of “ustashe”, “chetniks” and other soldiers from the Yugoslav area and the civilians. During the liberation of Slovenia, the 3rd and 4th Yugoslav Armies penetrated through our territory. Their destinations were Koroška and Trieste. After the military conflicts ended, the Yugoslav army, together with Slovenian units, intercepted or captured several thousand fleeing members of military formations that fought against the partisans during the war. These fleeing units were accompanied by their relatives, civilians. According to the data gathered, the Yugoslav army members captured and executed the fleeing soldiers and the civilians. There is no information regarding special selections pertaining to these killings. Some say that these selections could include separating the “ustashe” from the Croatian Home-guards; “ustashe” were executed immediately. The next possible selection was among the Croats, the Serbs and the Montenegrins. According to findings now available, some of the Croats were taken over by the Croatian partisans and led on foot towards Zagreb (the Croats refer to this trail as “Križev put”); during the walk individual executions were performed. Part of the column that made it to Croatia was executed there (for example at the Jazovka cave and elsewhere). So far we have not managed to retrieve data regarding the transfers of the Serbs and Montenegrins; they were allegedly executed on the territory of Slovenia. Some members of the captured units, above all minors, were included in Yugoslav army units and were used for locating fleeing refugees or even for executions. The commanding authority in the executions was OZNA within the Yugoslav Army. It is possible that individual Slovenian units were involved in the killings; however, their members had no say in the executions.
3. Members of the Home-guard, returned from Koroška. The consideration of most of the military formations of the Slovenian Home-guard is special because its members were returned from Koroška, where they had fled after the end of the war. Among them, there were many civilians returned by the British from Koroška. The returned Slovenian members of the Home-guard were received or taken over by the Yugoslav Army members; they were assisted by the Slovenian units. The executions started during the transport (for example behind the Karavanke Tunnel), without any selections. In Slovenia, the members of the Home-guard were put in assembly camps in Kranj, Škofja Loka, Teharje and

Šentvid. Control over them was taken over by the Slovenian OZNA. The prisoners were interrogated and divided into groups A, B, and C (some groups were executed in Gorenjska – in the surroundings of Škofja Loka and Kranj). The commanding authority with regard to the prisoners was the Slovenian OZNA, and in assembly camps there were also members of other nations within the Yugoslav Army who helped with the executions. However, the Yugoslav Army did not divide the prisoners into groups and did not interrogate them. The division into groups A, B, and C was carried out by the Slovenian OZNA, and the transfers were performed partly by the KNOJ units and partly by the Yugoslav Army units. The executions in Rog and other places of execution were, according to our findings, carried out by unidentified Yugoslav Army units and Slovenians. At the same time that Slovenian members of the Home-guard were executed in Rog, the executors also killed some Croatian “ustashe” or members of the Home-guard and probably some members of other nations. The executed injured people also belonged to this group. There were two groups: one group consisted of the transported injured (they were intercepted in the vicinity of Radovljica and returned to Šentvid; allegedly they were executed in Brezarjevo brezno or Koščakovo brezno), and the other group consisted of the injured from the military hospital in Ljubljana (they were executed in the pit at Konfin I).

4. Civilians arrested in Slovenia, persons in hiding and part of the group of people returned from Koroška by the British. Immediately after the people's power gained control and in most of Slovenia after 9 May 1945, OZNA, based on the lists prepared in 1943 by VOS, started arresting people who were allegedly anti-NOB or national traitors. OZNA was a centralised organisation. In each town, it had commissariat led by a commissar with subordinate OZNA members. At the same time, it established civil branches, so-called local people's committees (KLOs) that helped the OZNA arrest and locate people in hiding. The KLO and the OZNA also called on those who did not join the Partisans to report with the local people's committees where they were interrogated (by the KLO and OZNA members). These people were then either released or captured by OZNA. All bigger towns had prisons or some sort of assembly centres where these people were interrogated by the OZNA members. Some of the detainees were sent to the main camps in Šentvid, Teharje, Maribor, Novo Mesto, Murska Sobota and also to smaller or specialised camps in Štemtla, Ajdovščina etc. (depending on the vicinity of the camps). Some of the arrestees were released and some were taken to execution sites in the vicinity of assembly centres or prisons. Their fate was in the hands of OZNA commissariat competent for individual areas, and the decision was confirmed by the Slovenian OZNA command.

Those who were transported to the main camps, Šentvid and especially Teharje were, merely because the local commissars sent them “forward”, regarded as enemies of the people (the “sending forward” depended on the availability of local prison space). The people in local prisons and assembly camps were interrogated (the records of these interrogations are partly kept for the Štajerska region, yet only for those who were not executed). The people who found themselves in local prisons and the main assembly camps were taken to execution sites in the vicinity. Slovenian OZNA managed the camps and controlled the fate of these people, with the support and protection of KNOJ units.

All those who were arrested in their local places in May, June, and some even in July 1945 belong to this group; they never returned home. These gravesites are the most numerous. They contain from a few to a few hundred bodies (in case of the prisoners executed in Teharje), but most gravesites are believed to contain a few dozen bodies. It is impossible to determine the exact number of the people executed. Without a doubt we can include all those Slovenians that were arrested by OZNA, local committee members and KNOJ in May and June and in July, and the group that was arrested in Koroška, Tržaško area and Goriško area before the partisan army retreated from Koroška and Trieste.

5. The German minority, the so-called Kulturbund. This is a special group of people, estimated at a few thousand members that were arrested and treated in the same manner as group 3; however, most of the members of this group were evicted and sent to Austria because the authorities could not accuse them of collaborating with the occupier. This group included the wealthier population of Štajerska. When eviction to Austria was no longer possible, the people from Štertal (Strnišče), Brestanica and Maribor prisons were executed in January 1946 on Pohorje. Slovenian OZNA was in charge of the arrests, interrogations and selections. KNOJ was probably also involved in the executions.

4.4. No available data on the executed people

This group includes the investigated gravesites for which the police, despite having gathered all available data, found it impossible to discover the identity of the buried victims.

Marius Oprea

ABOUT IDEOLOGIES, INSTITUTIONS AND DEATH¹

On 24 April 2007, somewhere in Romania eighteen people climbed a mountain in search of the mortal remains of six youngsters who, it was supposed, had been shot in the head by political police (*Securitate*) forces on the night of 19 March 1950. The victims' only "guilt" was that of having refused to serve in the army – a fellow citizen, otherwise their friend, informed the *Securitate* against them. It was an era of reprisals by the Romanian political police directed especially against the rural population, in order to somehow "pacify" that segment of society, as well as to assure the state's share of crops and the success of the collectivisation process. As a matter of fact, those six youths did not have any guilt in relation to the regime as such, since they had not manifested hostility, in any way, towards the People's Democracy.

That crime captured my attention many years ago – I had investigated the case by means of archival research already in 1992. At that time, details related to that multiple killing were the subject of a case file submitted by the Military Prosecutors Office of Cluj (a municipality in the northwestern part of Romania). However, in the meantime the respective file had been closed due to lack of material evidence. The decision of the prosecutors in charge: "We can not proceed with the investigation of the two alleged perpetrators /members of the platoon that executed the six young people/ because we do not have the mortal remains, we do not have any evidence that the crime was committed, except for some declarations of villagers and a few concise archival documents." In the meantime, through the logistical support of the Institute for the Investigation of Communist Crimes in Romania (IICCR)², we started an expedition to bring the remains of the executed youths' bodies "to the surface", so that the juridical process could finally be pursued. Now we *do* have valid material proof for that particular crime committed in the spring of 1950.

I remember that human society was, and still is, highly agitated upon seeing photographs showing ten thousands of piled-up dead bodies in Nazi concentration camps. It was precisely that terrifying image of cruel death that made parents who, in one way or another, had been accomplices to the Holocaust, respond to the question burning on the tips of their children's tongues: "And you, where were you at that time?" In my opinion, this was practically how the social debate around the issue of who was to blame for the crimes of Nazism was initiated during the 1960's and 1970's. I truly believe that a similar process will take place in Romania when it comes to crimes of communism. The moment will come when, for example, my son will ask me: "And you, where were you when all that happened?" Nonetheless, it will take considerable time before the necessary information about the full criminal nature of the communist regime in Romania will have been accumulated. It may take years, first having not only registered testimony from former political prisoners, but also having a considerable number of penal cases filed, on the basis of which former *Securitate* officers and activists of the Communist Party can be summoned.

It is just a beginning. You may argue: how could you reasonably take legal proceedings against the crimes of an entire regime, on the basis of the mortal remains of six executed individuals? I repeat: this is only a beginning.³ The power of the case described above lies in its 'exemplary function' – a model for what is possible and for how we should act in the future. The testimony already recorded is staggering. As a matter of fact, we are not speaking about simple testimony in terms of transcribed oral histories, but about declarations of witnesses before criminal investigation officers who participated in the exhumation expedition. The dead bodies of the six youngsters were buried by their parents.

¹ Translation of an adapted version of the essay "Despre ideologii, institutii si moarte" in *Căietele Echinox, Gulag și Holocaust*, vol. 13, Cluj 2007.

² The IICCR was established in January 2006 with Government Decree No. 1724/2005 as its legal basis. The author of this article is President of the Institute.

³ Until now, the IICCR has undertaken several investigative missions which included the location, exhumation and identification of mortal remains of the communist regime's victims. In March 2007, for example, experts of the Institute together with representatives of the Military Prosecutor's Office located the places where are possibly buried the corpses of former political detainees who were kept in labor camps situated in the region Insula Mare a Brailei (southeast Romania) and died in the 1950's. A number of similar special investigative missions is planned to take place in the summer and fall of 2008.

The father of one of the victims did not take part in this sinister ritual of collective burying – he was not in the country at the moment of the tragic event. But on another day, a member of the executing platoon walked to the daughter of that particular father, the victim's sister. I reproduce a fragment of her statement: "In /.../ March 1950, I was at school and at noon, when sent home together with the other children, that *Securitate* officer was waiting at the entrance. I recall with exactitude what happened then as well as the phrase he addressed to me: 'You, go and tell your father to get John's belt and cap' – meaning the objects that belonged to my brother ... And he said that with an ironic tone of voice. I told my father what I was asked to tell him, but I can't remember who went to get those things nor from which person. What I know for sure is that those objects were brought home and I saw that cap of my brother, a cap made out of lamb leather which he wore at that time, as it was the beginning of spring. I recall that cap having bullet holes in the part where it meets the forehead, and it was stained with blood. We all presumed that he was shot – I remember for it marked my childhood and all members of my family. Furthermore, I recall that after some time my father went to bury my brother, leaving the body at the spot where he had been buried initially by those men who shot him. My brother was a tall and stout guy, with long chestnut-blond coloured hair ..."

Now I come back to the central idea of my *exposé*. Beyond the obvious fact of establishing a particular criminal act, I sincerely believe in the importance of the above-described method for revealing historical truths – its power to positively influence the course of events. Evidence of this nature, often carrying a strong symbolic burden, will be instrumental in demonstrating that the crimes committed by totalitarian communist regimes should be considered crimes against humanity, similar to what happened in relation to the Holocaust phenomenon. Arguments in favour are (1) the cruelty of the criminal acts themselves and (2) the fact that they were ordered by higher state authorities and, subsequently, executed also by state institutions. For some time already, I have striven for official acceptance in Romania of the qualification "crimes against humanity", for all those illegalities and abuses committed in Romania under communist rule. Obviously, in this way the juridical ground for charging perpetrators would be significantly consolidated.⁴

Irrespective of our focus, the Holocaust or crimes of communism, in the end our purpose is one and the same: reconciliation with the past. Romanian society still has a long way to go. I mention just one obvious argument to support my statement. In a country which at least officially has condemned its communist past, the average monthly social pension which a former *Securitate* officer is awarded nowadays amounts to approximately seven times the state financial compensation that a former political prisoner receives for each year of imprisonment (!). Under such conditions, it is simply difficult to speak about any expectations in terms of reconciliation. When, for example, we have data which prove that some hundreds of former *Securitate* officers acted as political police and continue to receive substantial military pension allowances from the Romanian state – the state which simultaneously recognises the guilt of these individuals in relation to abuses during communism's reign.

The IICCR attempts to bring some light to such situations which, in my opinion, constitute a serious obstacle for Romanian society in coming to terms with its recent history. I would even speak of a certain complicity of the Romanian state in maintaining social tensions related to the legacy of the communist past. It is high time to separate chaff from wheat, to effectively establish who is to be charged, and to summon these individuals, in order to somehow make them pay for their wrongdoing. Investigation by means of contemporary archaeology could turn out to be an important instrument in this respect. Subsequently, it is our duty to make an appeal to public conscience; to present to our descendants the images, data, documents – proofs – related to all those crimes and abuses. Otherwise, we may risk being confronted by shame when our children will ask us that question: "And you, what have you done to change matters?"

⁴ Although Romania ratified on 15 September 1969 the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (and in 2000, the related European Convention), the stipulations of this international convention have not been transposed accordingly into the national Penal Code until now. The completion of Title XI of the code (Offences against peace and mankind) with a new article – Crimes against Humanity – is imposed – the definition of these types of crimes should be identical to the one used in the Statute of the Military Tribunal of Nuremberg (art. 6, lit. c).

***IV. REMEMBRANCE, RECOGNITION AND PUBLIC
AWARENESS OF TOTALITARIAN HISTORY***

Andreja Valič

IS IT WISE TO DISCUSS THEMES THAT HURT?

1. Case study – living in three totalitarian regimes

Her name was Ivana Rustja. She was born in 1901 in a small village near Gorizia, which at that time was part of the Austro-Hungarian Empire. When World War One started, her family and everyone in the village were deported because of the nearby Isonzo front.

After the First World War, the village and the whole territory of today's western Slovenia became part of Italy, where in 1922 Mussolini and the fascists came into power. Ivana had to learn Italian and she was only allowed to speak her mother tongue at home and in church. All newspapers, schools, names and surnames had to be Italian, and Slovenians were prosecuted only because of their nationality.

In 1924, Ivana married Victor, a young general practitioner. A proud Slovenian intellectual, who had studied in Prague and Graz, Victor became suspicious of the fascists. Put under continuing pressure, Ivana and Victor decided to immigrate to Yugoslavia. After they left Italy, they weren't allowed to return to their homes even for the funerals of their parents.

Ivana and Victor found their new home in the northern part of Slovenia, which was occupied by German troops in 1941 when the World War Two started on the Slovenian territory. Ivana, Victor and their four children had to speak German in public, their surname and names were changed into German, all newspapers and books were printed in German, a young German teacher permanently stayed in their house, their children went to German schools, and their oldest son was mobilised into the German army and sent to France.

After the Second World War, communists took power in Yugoslavia and Slovenia. Victor was a Slovenian patriot, a good Catholic and a doctor who helped people regardless of their political opinion. The new communist authorities decided that Victor was a dangerous person. Likewise, more than 15,000 other Slovenians, so called "enemies of the state", mostly young men, women and children, were killed after World War Two without trials in more than 500 places in Slovenia.

Victor was killed in May 1948, in a stormy night when he cycled to one of his patients. The official cause of death was "an accident", although everyone in the neighbourhood knew the names of his communist murderers. Ivana was left alone with four sons. She had to accept the false story of the accident; otherwise her sons would not be allowed to go to the university, and who knew what might happen to them. Ivana never married again. She died in 1994.

This is the story of my grandmother and my grandfather. Their whole story in detail was revealed to me and my brothers only after the fall of the communist regime in Slovenia in 1990.

My generation learned at school about the fascism and nazism that caused so much suffering in the Slovenian territory, but we knew almost nothing about the communist violation of human rights. Most of the stories were hidden, untold, swept under the carpet, probably because it was safer that way. Many people in Slovenia have been telling their stories from the totalitarian communist regime even now with fear and anxiety. Victims and their prosecutors have been united in the dreadful conspiracy of silence ...

Slovenians went through the turmoil of deep historical changes in the 20th century and we survived all three totalitarian regimes, as the case of my grandparents has shown.

After World War Two, until 1991, Slovenia was one of the six republics in communist-led Yugoslavia. During this period, massive violations of human rights were a basic component of the system. At the end of the Second World War, over 15,000 Slovenians were killed without trial by the new communist authorities. In the following years, pressure was applied on many people to conform with the wishes of the communist regime, costing many their freedom, their dignity and for some much more.

In the late 1980's, a period of deep economic and political crisis occurred. When Yugoslavia dissolved into several new states, Slovenia emerged in 1991 as a democratic, vibrant new state, and developing a healthy and active civil society. After independence in 1991, human rights became one

of the central concerns of Slovenian democratic society. Political pluralism has become a common standard of living in Slovenia. Respect for human rights is an objective of civic education, ethic and social studies curricula and also one of the main objectives of the history curriculum.

2. Discussing themes that hurt

My intention is not to talk about crime and punishment; I would like to discuss if it is wise to talk about things that hurt.

My answer is YES, and I practise collection and analysis of oral history of the 20th century with my students very often. This method gives students the possibility to experience and look at the lives of ordinary people; it offers the story which is sometimes missing when we speak about historical processes and events; it gives students information on people that are usually not spoken about; it offers a different point of view (in comparison with mass media, historians, history books etc), it gives students the possibility to practice key historical concepts like continuity and change, chronology and narrative, causation. It develops the key historical skills (formulating relevant questions, examining historical issues, evaluation of sources, structuring of information, critical analysis, reaching some conclusions etc).

3. The role of education and history education

Dealing with topics that might hurt (i.e. controversial and sensitive issues) was an essential part of the project “Human Rights and History Education” that lasted from 2005 to 2008, organized in cooperation with the Slovenian History Teachers’ Association, the Ministry of Education and Sport of Slovenia, and EUROCLIO – European Standing Conference of History Teachers.

We have been mindful of this question: how best to tackle this vital topic with young people in order to create responsible and active citizens who value, respect and defend human rights?

It is important to consider how education can encourage young people to become active, positive participants in civil society who value their rights and responsibilities as part of the democratic process. History and history teaching have much to contribute to this process, and to the promotion of social cohesion, international understanding, and respect for diversity and human rights.

Teaching about the violation of human rights in the past and occasions where they have been violated and protected, especially in the totalitarian regimes, raises a series of interesting questions:

- What can history show about the awareness of, and respect for, human rights in the past?
- What can we ‘learn’ cases where human rights have been violated?
- How do different historical periods, different societies, different cultures demonstrate important messages about human rights?
- How does the teaching of history contribute to the promotion of positive values about human rights among young people?
- How much coverage of human rights issues is given in the history curricula and textbooks of different parts of Europe and what constitutes ‘good’ or even ‘best’ practice in teaching about human rights?
- How can we learn from each other in preparing young people to be active, engaged citizens in a 21st century global society?

Within the project “Human Rights and History Education”, we tried to:

- Provide professional development for the participants.
- Share the Slovenian experience including case studies about the totalitarian regime in Slovenia.
- Discuss and develop guidelines and present examples of good practice in human rights education.

- Establish discussion opportunities for history teachers from different countries and traditions.
- Stimulate and assist history teachers' organisations in setting up and carrying out national and international initiatives regarding sensitive issues concerning human rights issues and history teaching.

The project resulted in an increased awareness of, and broadened outlook regarding European and international perspectives of history education and human rights issues, practical recommendations, papers, teaching materials, and guidelines published both online and in print related to human rights issue in history teaching.

Among the outcomes of the project were:

- Full training courses with lectures, best practice workshops, discussion groups and on-site education for participants, from a range of European countries, with opportunities to:
- Share good practice related to human rights education in a multicultural Europe;
- Consider teaching material design, pedagogic technique, and professional implications;
- Debate how to raise awareness of the importance of human rights education in school history;
- Engage with a Europe-wide survey on the impact of a human rights issue on the development of history curricula; on practical approaches to history education and on international outlooks regarding human rights issues;
- Take part in school visits and active workshops.
- A public relations campaign in the media in Slovenia, and beyond, on the importance of history in schools for responsible citizenship and positive human rights education.
- A printed and online "Conference Bulletin" and other publications.

The project "Human Rights and History Education" is doubtless a good example of a successful approach on the European level in how to deal with themes that might hurt.

4. Knowing is a tool for understanding and reconciliation

One of the most important goals of history education has been helping young people to understand the present. It is true that controversial and sensitive topics could divide society, nations, and states, emotionally distress and strengthen the bias. There is always fear and risk that dealing with these topics in the educational process would open old wounds and start dividing people again.

But, on the other hand, controversial and sensitive topics are a useful tool which enables students and pupils to understand the basic nature of history as a science: almost every historical event, process, personality could be interpreted differently. The truth is not revealed by itself. History does not exist until it is created. Human life is constant changing, and within this process, history and knowledge about the past have been changing as well. This does not mean that every generation reveals new history, but every generation reveals different history and asks different questions.

It is important to seek ways of answering these questions together. Education plays a very important role in this process, and history education has one of the main roles. The EU should be aware of the importance of strengthening and re-thinking the common European values, as well as attitudes towards the violation of human rights and crimes by totalitarian regimes. As the historian and member of the European parliament Bronislav Geremek said: "Europe is a construction of the future, which has to know and understand the lectures of its sad history." Knowing and understanding is of vital importance if we want the common European project to be successful.

Girts Valdis Kristovskis*

THE NEED FOR A REAPPRAISAL OF THE EUROPEAN HISTORY

First, I would like to express my thanks for having the opportunity to participate at the 1st European Hearing on “Crimes Committed by Totalitarian Regimes”, which was organised by the Commission and the Presidency of the European Council, on the initiative of Justice Commissioner Frattini.

I would like to emphasise that, as someone from Eastern Europe – Latvia, the general attitude of “old, democratic Europe” to questions relating to reflection on historical events, which took place around the time of World War II, is not acceptable to me. That was a time when two totalitarian regimes, namely Nazi Germany and the Stalinist Soviet Union, collaborated and started war, destroying a whole group of democratic European States. Among those states were the Baltic States. Millions of people suffered. They were transferred to, and incarcerated in, the death camps of both totalitarian regimes. In this way, several tens of millions of people in the USSR and its occupied territories were annihilated. The destruction of nationally minded and patriotic people at the hand of the exterminating power of the USSR continued long after Nazi Germany was crushed. Thousands of people in the Baltic States, using partisan methods, continued to fight the occupation forces for more than ten years after the end of World War Two. Many hoped that the Western democracies would help the Baltic States to regain their independence, giving them the chance to return to Western values, their cultural and a democratic environment. However, the Western democracies, taking account only their own interests and fearful of the military power of the USSR, accepted at length – for over half a century – the subjugation of the nations of Eastern Europe, and their societies, to the whims of the Communist regimes. We will have the opportunity to ascertain the consequences of this Western ideology for a long time.

Even today, nearly 20 years after the collapse of the USSR, there continues a denial of the crimes of Stalinist Communist regimes. Especially absurd is the fact that Nazi crimes are condemned, but Communist crimes are justified (or excused), or are grossly trivialised. Unfortunately, even today, Russia still endeavours to justify the repressions in the Baltic States, both in the pre-war and post-war periods, as having been essential. That cannot be permitted. Such double standards destroy the prestige of the European Union, lead to disbelief and are contradictory to the stated aims of the Berlin Declaration adopted last year which provides inter alia that “the unnatural division of Europe is now consigned to the past. European integration shows that we have learnt the painful lessons of a history marked by bloody conflict”.

Yes – it is true that the deceased are no longer able to defend themselves. However, to the ears of those, who are still alive, but suffered at the hands of the repressive communist regimes in the states of Eastern Europe, phrases such as those in the Berlin Declaration, a document supposedly espousing values, sound like cheap lies. A whole lot of questions arise from this. What was intended by the Berlin Declaration? What has today’s Europe concretely learned from its painful past? You will ask why?

Let me give you an example. Last year the EU Justice Ministers reached agreement on a Framework Decision on combating certain forms and expressions of racism and xenophobia.

It deals with such crimes as incitement to hatred and violence and publicly condoning or grossly trivializing crimes of genocide, crimes against humanity and war crimes: “/.../ as defined in the Statute of the International Criminal Court (Articles 6, 7, 8) and also crimes defined by the Tribunal of Nuremberg (Article 6 of the Charter of the International Military Tribunal, London Agreement of 1945).”¹

The Framework Decision underlines, that “Member States will ensure that such conduct may be punishable by imprisonment”.²

The reference to the Nuremberg Tribunal unmistakably shows that it relates only to Nazi crimes.

But at the same time, the Framework decision underlines, that “it does not cover crimes committed on other grounds e.g. by totalitarian regimes”.³

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¹ Framework decision on Racism and Xenophobia, Council of the EU, Luxembourg, 19 April 2007 8665/07.

² Framework decision on Racism and Xenophobia, Council of the EU, Luxembourg, 19 April 2007 8665/07.

³ Framework decision on Racism and Xenophobia, Council of the EU, Luxembourg, 19 April 2007 8665/07.

Commenting on this, the International Herald Tribune wrote: “Fearing that the legislation could be hijacked by groups trying to right historical wrongs, a majority of EU countries rejected a demand by the formerly communist Baltic countries that the law criminalize the denial of atrocities committed by Stalin during Soviet times.”⁴

Such is the understanding of today’s Europe! How should those people feel, who suffered under the Soviet totalitarian regime and who are still alive today? Today they too are inhabitants of EU Member States, and thus citizens of the European Union.

Thanks goes to Commissioner Franco Frattini, who as a political gesture promised that the EU would organize public hearings on the “horrible crimes” of the Stalin era. It is only thanks to his initiative and courage that we had the opportunity on 8 April 2008 to be participants at this historic Public Hearing.

Taking advantage of this, and as a Member of the European Parliament from Latvia, and as the head of the European Parliament Initiative Group, I ask Commissioner Barrot and the specialists from the European Commission’s Civil Justice, Fundamental Rights and Citizenship Directorate to accept and familiarise themselves with the documents drafted by our Initiative Group, which were distributed during the Hearing. They characterise our efforts to lay a foundation and solutions to the renewal of the truth and justice of European history. I invite you, in your future work which Commissioner Barrot promised to continue, to make use of our proposals. One of our aims was to help the Commission attain a greater knowledge of the various aspects related to these issues and to identify the relevant subject matter, and also to prepare proposals to assist the Commission in working successfully. Another of our aims is to achieve the reconciliation of society, to overcome those contradictions which still evoke enmity in those who suffered under the communist regimes, and those who themselves were perpetrators. That is not simple. One can only reconcile if one knows what is being reconciled, and if before hand, there has been a clear attempt to establish the facts. That brings about the necessity to achieve a great degree of objectivity, similar to that which France and Germany were able to achieve over World War Two.

Some European politicians prefer to wash their hands of these issues and take the expedient line by saying – “let’s leave history to the historians”. That is in complete contradiction to the stated aims of the Framework Decision, which imposes criminal responsibility for publicly condoning or grossly trivializing crimes of genocide, crimes against humanity and war crimes. Nazi crimes have been evaluated by judicial means; if they are grossly trivialised, it is possible to have them appropriately evaluated judicially and to impose criminal liability. However, if in relation to Soviet totalitarian crimes, or crimes committed by totalitarian regimes in other European States, one uses only historical assessments, then one can confidently predict that the evaluations of historians will neither be consistent politically, nor judicially.

This shows that it is essential to have a more authoritative method of analysis. Such a method would endeavour to give a legal basis to the evaluation of recent history, especially those cases which are politically contradictory or distorted.

I would also refer you to the “On the United Europe – United History Initiative at the European Parliament” document of the EP Initiative, which reflects recommendations of EP deputies.

In my view:

1. The Commission must adopt a new law, which unequivocally reflects the truth, and a reference to the crimes of totalitarian communist regimes must be incorporated into existing European laws. The historical truth about the events of Europe’s recent undemocratic past and the crimes of the Stalinist Soviet regime must not be left out from a Framework Decision on combating certain forms and expressions of racism and xenophobia.
2. The undemocratic past of European States can be evaluated by legal means, e.g. by using the established legal principles and precedents of international and national courts. For example, in the judgment of the European Court of Human Rights versus *Streletz, Kessler and Krenz* (senior officials of the GDR), it was stated that “if the GDR still existed, it would be responsible from the viewpoint of international law, for the acts concerned”.⁵ The Court also underlined that “Democratic States can

⁴ International Herald Tribune, EU adopts prohibition on Holocaust denial, but national laws can take precedence, 20 April 2007.

⁵ European Court of Human Rights, Judgements in the cases of *Streletz, Kessler and Krenz v. Germany* and *K.-H. W. v. Germany*, Summary of the judgments, 22. 03. 2001.

/.../ apply the law, even previous law, only in a manner which is inherent in the democratic political order”.⁶ Judge Levits also pointed out that “at least since the time of the Nuremberg Tribunal, that conception of the democratic order has been well understood in the world and it is therefore foreseeable for everybody”.⁷

European politicians, the Commission and others may learn from these judgments.

If the Commission and Council, the Parliament and Member States apply the same principle, Stalin’s crimes have to be included in the Framework decision.

3. I invite you to view the documentary film *The Soviet Story*, which premiered at the European Parliament the day after the European Hearing on “Crimes Committed by Totalitarian Regimes”. In the film, some of Europe’s and Russia’s most eminent historians and social commentators, as well as Members of the European Parliament, express their views about Soviet totalitarian crimes and of the necessity that these crimes are recognised as such. The film assists in showing the obvious similarities between the Soviet and Nazi crimes, both in the performance and execution of the deeds, and also in their scale.

The Danish historian, professor Bent Jensen, writes about the “loss of memory” in the West in the 20th century in his book about the Gulag: “Although the Western world knew about these crimes at the time when they were committed, their reaction was negligible. In fact – many helped to conceal these facts. Even today the genocide committed by the Communists has remained in the shadow of the Nazi genocide, notwithstanding the scary and shocking similarities of both regimes.”⁸

Europe is still partly a hostage to that version of history, which was developed by the Soviet regime. How long will that last?

Europe has a moral obligation to come to terms with this and to develop an appropriate policy. I believe that we have a duty to build a platform from which a reappraisal of European history can be promoted, ultimately resulting in EU documents which reflect truth and justice.

I sincerely hope that the Slovenian Presidency, the European Commission, the Member States and the Council will look attentively at these proposals, which are very relevant vis-a-vis truth, justice and reconciliation between people and in the interests of Europe’s future.

⁶ European Court of Human Rights, Judgements in the cases of *Streletz, Kessler and Krenz v. Germany* and *K.-H. W. v. Germany*, Concurring opinion of Judge Levits, 22. 03. 2001.

⁷ European Court of Human Rights, Judgements in the cases of *Streletz, Kessler and Krenz v. Germany* and *K.-H. W. v. Germany*, Concurring opinion of Judge Levits, 22. 03. 2001.

⁸ Bents Jensens, *Lielais Gulags, Apgāds Atēna, vāka citāts*, 2007.

Harro Bebert*

ACTIVE REMEMBRANCE AND REGIONAL IDENTITY: EUROPEAN UNION PROMOTION OF AN INTERNATIONAL PROJECT WITH PARTICIPANTS FROM BOHEMIA, EICHSFELD AND UPPER SILESIA

1. Preface

The German Institute at the Eichsfeld Borderland Museum and its partners in Poland and Czech Republic have been advised by the European Union Office of the EACEA, Action 4 “Active European Remembrance”, that the international project they have applied for is considered to be on a high conceptual level. The focus of its content suggests that it will contribute to European integration within a specific area of active remembrance. Financial support from the European Union makes it possible for the Institute of the Borderland Museum Eichsfeld and its partners to establish the foundation for a network of people from Central European regions who are active in the field of memorials and remembrance. The decisive impetus for the transnational project occurred in the spring of 2007 at the University of Katowice. At a meeting on March 28, 2007, Polish, Czech, and German museum administrators as well as scientists (from the fields of history, Germanics, and law) agreed to participate actively in the preparation and implementation of the EU project.

2. The Institute at the Eichsfeld Borderland Museum (GLM) as Initiator of the EU Project

Since its establishment in the year 2000, the Institute at the Eichsfeld Borderland Museum¹ has become a regional and national place of learning that is open to the world. This is evident from the fact that the political education and other pedagogical activities practiced here promote the democratic aspects of active remembrance not only for youth and adults from Germany. Increasingly, the Institute has also become involved in generating the interest of youth and adults from the Eastern and Central European neighbours of the Federal Republic of Germany. All participants in seminars are invited to think about the inhumane border constructed by the German Democratic Republic at the beginning of the fifties in the past century. The learning process takes place through interaction with authentic structures (buildings for checking a person’s identity, barriers, border fence ...) and the exhibits of the borderland museum.

In addition to a variety of exhibits, the Borderland Museum includes the “memory of the landscape” in its pedagogical work. Authentic border structures are closely connected to valuable biotopes that developed in the area near the border that was emptied of its inhabitants. In regard to the biotope, the intention is to preserve it within the area of the “Green Strip” of approximately 1,390 km along the former border. In addition to the direct viewing of historical objects, increasing importance is being given to the “oral” conveyance of historical developments. The Institute organizes conversations with witnesses from the era (including victims of the border administration). There is a library in the Institute at GLM, where many DDR publications are held, together with publications dealing with totalitarianism. The library holdings now consist of more than twenty-two thousand volumes.

The Institute’s educational goal of organizing the place of learning “Borderland Museum Eichfeld” under more than regional and national aspects corresponds to the European Union Project’s commitment to “active European remembrance”. Young Europeans are to be offered cultural building blocks they can use in shared learning in a united Europe of human rights, democracy, and ecological sensitivity.

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¹ www.bildungsstaette-grenzlandmuseumeichsfeld.de.

On this conceptual foundation, the Institute at the Borderland Museum Eichsfeld has succeeded, since the year 2003, in implementing a series of international youth projects. Meetings for young people, especially with Polish students and youth from Upper Silesia, were organized in German schools. This resulted in a number of impulses for lasting contacts between the students of the two countries.

3. Integrative goals of the international EU project

The planned European Union project, which aims to assist German, Polish, and Czech partners in cooperating in a transnational network, is to be implemented under the EU Program Action 4, “Europe for citizens – promoting active citizenship in Europe”. An international symposium dedicated to this goal will take place from 10–13 June 2008, in Teistungen. Through this international conference the organizers hope to intensify the exchange of experience in the culture of remembrance, in order to call attention to the innovative efforts in the pedagogical work of museums. The focal point of the symposium will be discussion of questions regarding the interaction between regional, national and European-wide aspects. The following themes belong to this focus:

- Remembrance in respect to the victims of war and fascist persecution during the time of the Second World War (1939–45);
- Remembrance regarding the resistance against the Communist dictatorship during the Cold War;
- Remembrance regarding the fall of the border administration in Europe during the time of the attempts to gain freedom and reforms, up to the democratic revolutions at the end of the 1980’s and the beginning of the 1990’s;
- Remembrance in the context of a lasting ecology for the safekeeping of the “memory” of the landscape.

Beyond that, the overall aim of the planned symposium consists in giving the public a more sensitive understanding of the epochal achievements of the Eastern and Central European people in establishing a united and democratic Europe. It is our desire, in this connection, that the museums and places of remembrance dedicated to the more or less peaceful revolutions of 1989–90 should not merely see themselves as the “multipliers” of a regional and national remembrance culture but also, being situated at the authentic places of resistance against totalitarianism in Central and Eastern Europe, see themselves as part of an overall European culture of remembrance, and continue to develop in this direction. The growing network of institutions of remembrance plays an important part in the humanist cultural heritage of Europe by emphasizing the democratic tradition in the struggle against fascism and Stalinism, and the fight for freedom, democracy, and human rights.

Against this background, our EU project will contribute to the success of the ensemble of museums and remembrance centres in increasingly presenting themselves as regional learning centres of democracy. In their work of political education, the staff of these institutions will receive support from the universities, colleges, and research institutes. Only in this way can scientifically based concepts be developed for democratic remembrance culture and for the analysis of the mechanisms of totalitarian systems.

As the experiences in old and new democracies demonstrate, remembrance culture is not a purpose in itself. Its real goal is to inspire citizens, and especially young people, to admire civilian courage in history as well as in active democracies today. This means that the target audience of active remembrance needs to become active itself. The audience should be motivated to participate more intensely in the implementation of exhibit projects, including the documentation of interviews with the witnesses of history, thematic photo series, phonotheques, videos, and theatre projects. Youth should participate in history workshops. When the creativity of young people is integrated into the work of museums and places of remembrance, many opportunities open up for a dialogue between generations and for keeping the memory of the downfall of totalitarianism and the rise of democracy in Europe alive.

Our concern, finally, is facilitating the give and take that arises from the manifold interaction between professional representatives of remembrance work and people whose biographies are painfully connected to memories of totalitarianism.

This complex beginning is to be realized in the symposium of 10–13 June 2008, at the Institute of the Borderland Museum in Teistungen. On the basis of the Polish, Czech, and German representatives' own local success, the participants will discuss, in a lively exchange of ideas and experience, how to exhibit the historical aspects of a constitutional democracy, on a national and European scale, that are inextricably intertwined with the memories of the successful struggle against fascism, Stalinism, and party dictatorship.

4. Lasting results

First, the above-mentioned international symposium should not only offer seminars and forums for discussion but also include workshops in which actions and projects (i.e. exhibits, excursions, scenic offerings, photo galleries) will be organized. We will be looking for model projects that take into consideration the interaction between cognitive and emotional aspects of political education. New paths are to be found, to show how the memory of willing sacrifice in the struggle against totalitarianism can generate motivation for a vibrant European society. The regional and national memories of the European Union should not be belittled but, instead, be enriched by reference to the overcoming of totalitarianism in Europe and beyond.

Second, we believe there is a good chance that in the June 2008 symposium new impulses for educational concepts and projects, joint exhibitions, and communication via the Internet will be discussed. This should help to establish political education at museums and places of remembrance in an even more differentiated manner, and more closely oriented to its audience. The proponents of remembrance who work within the network are expected to increase their work with the public in their regions and countries. Already, plans are being made to ensure a broad response in the media and the Internet. In extensive contacts with the media and on our own website, we will state that establishing a “network of places of remembrance” serves to promote European values and the achievements of democratic society. We know that the speakers at the symposium in Teistungen (Eichsfeld) will favour themes that illustrate the memory of the great quest for liberty and democracy of the Eastern and Central European people. Last year in Katowice, and in the spring of 2008 in Opava, representatives of the field of remembrance and museology, as well as sculptors, met to prepare for the symposium. In this framework, there were a number of interesting suggestions which were used in the creation of our joint website www.comemo.de.

Third, at the start of the EU project, a conceptual perspective was established for a “Central European excursion path” intended, foremost, to attract high school students. Here we would specifically like to make use of what we learned from innovative projects for youth, in order to plan the stages and destinations of the excursion path. Summing up, we want to stress that all partners – whether in Bohemia, Upper Silesia, or in Eichsfeld – have offered new ideas for political education and working with the planners of exhibitions. Our team from the GLM Eichsfeld Institute experienced this during a three-day excursion to Opava in Czech Republic and a visit at the Youth Institute in Auschwitz in March 2008. Our international project is not limited to the organization of the above-mentioned Symposium 2008 but can already count on a vibrant structure of networking and communication.

5. Sum total

Everywhere in Europe, different types of remembrance activities have developed to demonstrate democratic traditions that show specific facets of an all-European identity. The above European Union project would like to take this into account by promoting the interaction between the citizens and organizations of civilian society in Central Europe. An exchange of experiences across the borders shall serve this purpose within a network of places of remembrance that show the anti-fascist and anti-totalitarian struggle for the establishment of democracy and human rights. The cooperating German, Polish, and Czech partners, who participated in the successful application to the European Union in Brussels in 2007, are aware that an international comparison of methods for the development of remembrance of anti-fascist and anti-totalitarian struggle is a more and more important prerequisite for the safe-keeping of democratic values in a united Europe.

Toomas Hiio*

“VERGANGENHEITSBEWÄLTIGUNG”

The question of recognising and understanding crimes against humanity, war crimes and genocide, committed during and after World War Two by the authorities of Hitler's Germany and Stalinist Soviet Union has several aspects, which we have to keep in mind. European nations have different experiences in this context and we have to accept these experiences.

Why is it important at all to tell about these crimes? The answer is, of course, that we want to avoid such crimes in the future. 63 years have passed since the end of World War Two. But we have seen in our recent past how crimes against humanity became possible in a European country, which seemed so peaceful only some years earlier.

It could be asked, and has been asked, why we are dealing only with crimes against humanity committed in Europe, if most events of genocide, crimes against humanity and war crimes in the 20th century took place outside Europe? The answer might be that in Europe we are currently dealing with our own past, our common past, and we have to clear our records first. It is not a good answer, but an honest treatment of the worst things in our history could be a good example for others.

Before the end of the Cold War, the treatment of history in Eastern and Western blocs was different. Most of us went to school during this time and some of the prejudices of these years are still alive today.

Every country has its own tradition of teaching history in school. Therefore the experiences are also different. After World War Two, forgetting the bad times was a political choice for a while in some countries in order to avoid possible conflicts within the society. This has occurred in Italy, but also in France and even in Germany. It holds some truth that treatment of the history of the war years needs some 'time distance', in the sense that it is easier to speak about bad times when the generation that directly participated in the events, has left active life, particularly active political life.

Today almost 20 years have passed since the collapse of the Eastern Bloc and the Soviet-time rulers in Eastern Europe, both on the national level as well as on the local level, and the admirers of Soviet politics in Western Europe are leaving, or have already left the political scene. Everything has its legacy, but nobody can avoid change.

At the end of March 2008, a number of Swedish scholars published an open letter against a Swedish state-sponsored institution *Levande historia* (Living History Forum). The problem: the Living History Forum has begun a project to introduce into Swedish curricula and textbooks the history of Communist crimes. Scholars are protesting against possible political influence of the Government in changing the school curricula. The Swedish Living History Forum concludes its programme of teaching the history of Communist regimes with a sentence: "Under dictatorship the writing of history is always in the service of the state." The scholars, who are protesting against the new programme of teaching the history of Communist crimes, are using the same sentence against the Living History Forum itself. But Swedish scholars also refer in their open letter to problems which have arisen, for example, from the French Parliament criminalising the denial of genocide against Armenians. The teaching of history seems to be a political issue even in the very old democracies with long traditions of freedom of speech.

Here we arrive at a question: whether there can be an official history, whether a state, or a number of states, or even the whole European Union could agree, at the political level, what is our history? The question of the so-called rewriting of history belongs to this context, too. I will come back to this topic later.

There are some specific issues in Eastern Europe worth paying attention to in this context. Most of the Eastern European States are younger than the Western European countries. The Eastern European nations became independent and sovereign mostly at the end of the First World War. History, the contemporary history, has always been an important part of the identity of our nations and statehood. Therefore the contemporary history has always been an important part of our school curricula.

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Contemporary history, but more precisely, a pseudo-historical scheme, was also an essential part of the self-identification of the Soviet system. In Estonia and the other Baltic States, for example, it was very important for the Soviet authorities to present that the takeover and annexation of independent Baltic States in 1940 was not an annexation, but the result of a peaceful revolution of the working people, who realised in such a way their long-time dream of living in the working class paradise under Joseph Stalin.

In this way we became aware of at least two different ways of interpreting history. One, which was taught in school and was written in textbooks, and which our teachers themselves did not really believe in. And another one, which was told by parents and grandparents, and which we read in prohibited books – the history as it really happened. Perhaps for most of the Western European pupils, history was only one among the many subjects taught at school, like chemistry or mathematics. For us it has been something much more important.

Therefore some of us even today are afraid of the possible term “official history”, because we know the worst meaning of this term. What could be the difference between history “the way it really happened”, and some sort of “official history”? We cannot deny what happened. We could only try to find some common understanding about why it happened.

Eastern European countries have gained experience of changing public awareness and also school curricula during the past 15 years. New schoolbooks have been published without former Soviet-time falsifications. Of course, sometimes the pendulum-effect could not be avoided, but it was normal in these circumstances, and it will be a question in the not too distant future, when results of the most recent historical research will find their way into new textbooks.

The “Vergangenheitsbewältigung” or overcoming the past was one of the issues on the negotiating table before new Member States could join the EU and NATO. One of the most important questions was treatment of the Holocaust. In the Soviet historical scheme, the victims of the “German fascists and their handlings” were defined as Soviet citizens and citizens of the other countries. Of course, among scholars, the killing of Jews during World War Two was not a secret. But it was not mentioned in textbooks, because it did not fit in the scheme.

At least regarding this issue, Eastern Europe very quickly joined the modern public and academic historical discussion and has included the history of the Holocaust in the school curricula. So I suppose that no big problems would arise if the history of Communist regimes was included in the school curricula of the European countries now.

What could be the common framework of understanding? The common framework is constituted by the international conventions. Genocide, war crimes and crimes against humanity in European and world history are topics which need more public awareness. Nazi crimes and Communist crimes are two sides of one coin, and the killing or deportation of innocent civilian population is always a crime. In January 2006 the European Court of Human Rights stated that “responsibility for crimes against humanity cannot be limited only to the nationals of certain countries and solely to acts committed within the specific timeframe of the Second World War. In this context, the Court would emphasise that it is expressly stated in Article I (b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity that no statutory limitations shall apply to crimes against humanity, irrespective of the date of their commission and whether committed in time of war or in time of peace.”¹

We are living in a modern world which is covered by the World Wide Web. Every schoolboy has an opportunity today to visit billions of websites: neo-Nazi, neo-Communist, revisionist etc. among them. History is popular and there are thousands of websites and internet forums devoted specifically to World War Two, glorifying the uniforms, arms, victorious battles etc. of one or another side or both. Therefore the teaching of contemporary history is of immense importance. The teaching of history has to give the background knowledge for everybody to understand what has happened and why. Without relevant teaching of history, only websites and movies remain, and to choose between them would be and will be complicated for young people. The choice, however, is crucially important, because many of these websites present wrong or even intentionally misguided information. Not to speak at all in schools about the crimes of history is not a sound choice. International crimes cannot be justified and everyone must know it, everyone must learn it.

¹ Council of Europe, European Court of Human Rights, Fourth Section, Decision as to the Admissibility of Application no. 23052/04 by August KOLK and Application no. 24018/04 by Petr KISLYIY against Estonia, sitting on 17 January 2006 as a Chamber, p. 9.

Public awareness and textbooks need historical research behind them. We have had the experience of 60 years of research in World War Two history and one might hold the opinion that all is accomplished already. Yet that is not the case. In the sense of historical research, history will never be completed and every new generation will write their own books. The history of World War Two and post-war history is a special issue. First, because of historical arguments used by both sides during the Cold War. Second, because all historical works published in the Eastern Bloc before its collapse were published under strong supervision and censorship of the party apparatus. Free research of the history of the Soviet Union and Eastern Bloc has lasted less than 20 years and much work remains to be carried out.

The issue of opening closed archives has a great importance here. History has never remained unwritten only due to closed archives. If some archives are closed, some historical experience could be excluded from the historical narrative or is simply replaced by some other experience. To illustrate it, I would like to quote a Russian military historian Igor Ivlev, who described the situation in December 2007 in the Russian monthly *Military-Historical Archives*:

“Today most of the publications in Russia on the history of World War Two are written on the basis of the archive materials of the former enemy. Bookstores are full of beautiful publications about the former enemy. One can find everything – from the albums of enemy uniforms to the memoirs of never surrendered enemy commanders, including the overviews of the orders of battle of the German Army and the biographies of the all famous functionaries of the Third Reich. The books about the victorious Red Army occupy only a small space on the bookshelves of historical literature. Most of them are the new editions of the memoirs of Red Army generals published in the Soviet time.”²

Finally I would like to draw your attention to a Joint Declaration of the Presidents of Poland and Estonia dated 18 March 2008. The Presidents call upon European States to come together to create an independent international commission, appointing internationally recognized Europeans – respected scholars, senior politicians and others – to study and assess Communist crimes against humanity and violations of human rights. The aim of such a commission should not be to condemn or pass judgement on individuals, for it would not be a court; the aim should be to explain what was done to a quarter of the citizens of Europe, to judge the system, whose long-lasting effects are with us even today. The Presidents call upon the Governments of Europe to negotiate a legal instrument for the creation of such a commission and its working procedures. The Presidents hope that the countries of Europe, those countries who have suffered as well as those who managed to remain democratic, will participate in this important endeavour to search for moral right and justice. I think that the proposal of the Presidents is worthy of our consideration and active participation in the establishment of such a commission.³

² Igor Ivlev, “Таить нельзя открыть”, *Военно-исторический архив*, 96/12 (2007), p. 46.

³ See Joint Declaration of the Presidents of the Republic of Poland and the Republic of Estonia, 18 March 2008, <http://www.president.ee/en/duties/statements.php> (last visited 28 April 2008).

Łukasz Kamiński*

AN OVERVIEW OF EDUCATIONAL ACTIVITIES WITH RESPECT TO CRIMES COMMITTED BY TOTALITARIAN REGIMES: THE POLISH EXPERIENCE

1. Poland and totalitarian regimes: a historical outline

For fifty years, from 1939 to 1989, Poland was overwhelmed by two totalitarian systems: the Nazi and the Communist ones. At first, during World War II, the whole country was directly occupied by Germany (1939–45) and the Soviet Union (1939–41). Millions of Polish citizens fell prey of crimes committed by the occupiers: mass deportations and displacements, executions, imprisonment in German concentration camps and Soviet Gulag, etc. The Polish Jew community underwent almost total extermination.

After the war, nearly a half of the Polish state was incorporated into the Soviet Union. The rest of the country was imposed the Communist system. Mass repressions comprised an element of everyday life for many years. After 1956, the system was gradually evolving, however, it did not completely lose its totalitarian features, aiming to put the society under omnipresent control and subject Poles to indoctrination. The overall number of fatalities of the system is estimated at 50 thousand, hundreds of thousands faced imprisonment and were forced into labour camps, and still more fell prey to repression of other kinds.

One should remember, however, that the Polish experience includes not only the tragic ordeals of the nation exposed to crimes, as committed by the totalitarian systems, but also the vital experience of resistance to them. During World War II, it was connected with the Polish Underground State, the armed combat by the Home Army (*Armia Krajowa*), the tragedy of the Warsaw Uprising. Following the end of the war, dozens of thousands of the armed underground continued to withstand the system (the last underground soldier was only killed in 1963), participants in the political conspiracy and the legal (until 1947) opposition. In the years 1945–48, strikes and demonstrations were staged on a large scale. The next decades featured recurrent outbreaks of social protest, suffice it to recall the events of 1956, 1968, 1970, 1976 and 1980, as well as the unprecedented phenomenon of the “Solidarity” movement, which engaged a majority of the society and did not yield to the oppression of the Martial Law which was introduced on 13 December 1981.

2. The Institute of National Remembrance – The Commission for the Prosecution of Crimes against the Polish Nation

Despite the fact that after the fall of Communism in Poland the matter of accounting for the past was widely discussed, the state authorities did hardly anything to put this idea into practice. As late as December 1998, the lower house of the Polish Parliament, known as the Sejm of the Republic of Poland, adopted the act establishing The Institute of National Remembrance – The Commission for the Prosecution of Crimes against the Polish Nation (in spite of the objections of the post-communist party and its allies). After the veto of the President, Aleksander Kwaśniewski, was overridden, the law came into force in 1999. However, the Institute did not start operating until the second half of 2000.

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The preamble of this act states that by establishing the Institute the Sejm aimed at the following:
“Keeping in memory the vast number of victims, enormity of losses and damage inflicted upon the Polish Nation during the Second World War and after its ending,

- The Polish Nation’s patriotic tradition of waging a fight against occupants, Nazism and Communism;
- The deeds of Poles performed in order to re-establish independent Poland and to secure freedom and dignity;
- The obligation to prosecute crimes against peace, humanity as well as war crimes;
- The duty to express gratification and make compensation in order to redress all the injustice done by the State as a result of violating human rights, as we believe that unlawful acts of the authorities against its nation neither should be hidden under cover nor should be forgotten.”

The main objective for the Institute’s operation is investigating the repressive system from 1939 to 1989 and diverse forms of resistance to totalitarianism, as well as making the files available to the wronged and prosecuting Nazi and Communist criminals.

The Institute of National Remembrance is headed by a body composed of 11 members, called the Council. The Institute’s Council decides upon the lines of work, enacts the statutes, rules and regulations, as well as expresses an opinion on current work. The most important task of the Council, however, is choosing a candidate for the President of the Institute. It is necessary for a candidate to obtain the constitutional absolute majority of votes in Sejm (that is two thirds of the votes cast) and the consent of the Senate in order to become the President of the Institute. The President of the Institute of National Remembrance enjoys wide immunity. He/she directs the work of the Institute on a daily basis nominates and hires employees, and, once a year, is obliged to report on the Institute’s work to the Sejm.

Initially, it turned out to be extremely difficult for candidates to obtain the majority of two thirds of votes. Thus, the process of electing the first President lasted over one year. Finally, Prof Leon Kieres, a lawyer, was appointed as the first President of the Institute. Now this position is held by Prof Janusz Kurtyka, a historian, who was previously the Director of the Institute’s Branch Office in Krakow.

The first years of the institute’s existence were spent on its structuring and organising its work. The buildings had to be redecorated, the staff employed, and, most importantly, the archival resources had to be taken from hitherto holders, such as state security services, the Police, courts and public attorneys’ offices. The Institute has gathered more than 85,000 running meters of files altogether. It has been one of the greatest operations of that sort conducted in the history of Poland so far.

Right now the process of establishing the structure of The Institute of National Remembrance is featuring its final stage. Apart from the Headquarters located in Warsaw, there are 11 regional branch offices and 7 delegations. Together they employ about 1,800 people.

Both the Headquarters and Branch Offices were initially divided into three basic divisions:

- The Chief Commission for the Prosecution of Crimes against the Polish Nation;
- The Office for Preservation and Dissemination of Archival Records;
- The Public Education Office.

The first division continues the works of the former Chief Commission for the Prosecution of Nazi Crimes in Poland which existed even before 1989. It employs 100 public prosecutors (appointed by the Minister of Justice), who carry out investigations in the field of Nazi crimes, communist crimes and war crimes as well as crimes against humanity.

The Office for Preservation and Dissemination of Archival Records deals with gathering and rendering accessible documents created by the Nazi and Communist structures of security apparatuses as well as other repressive bodies (e.g. courts) in the years 1939 through 1990. The documents are made available to victims and wronged persons (i.e. people who were victimised) as well as researchers (historians, political scientists, etc.) and journalists. The great majority of documents are available to the public now. But several hundred running meters of files have, due to state security reasons, been stored within a special fund the access to which is restricted. This fund contains mainly the documents

of the foreign intelligence of the Communist security apparatus. The fund is systematically surveyed in order to make more files available.

The Public Education Office, which is the third division, carries out research in the field of the history of Poland from 1939 to 1990 and conducts educational activities (see below).

In 2007, due to an amendment to the act, another department, the fourth one, was established within the institute: The Vetting Office. It deals with verification of vetting (lustration) statements, as submitted by the most important person in the country, as well as publication, on the Internet, of lists of officers of the Communist security services, members of the Communist party and victims of the state repression.

3. The educational activity of The Institute of National Remembrance

The Public Education Office of the Institute of National Remembrance, alongside with its branches throughout the country, is involved in a widespread research, educational and publishing activity.

Scientific research is done within 10 nationwide and a number of regional and individual research programs. These include both the period of World War II (crimes committed by the Nazi and Soviets occupiers, the Holocaust, the Polish Underground State, relationships between Poles and other nations) and the time of the Communist dictatorship (crimes committed by the Communist system, activity of the Communist security and repression services, the armed underground, the opposition and social resistance, crises of the Communist system, etc.). Results of the research are presented at scientific conferences, as staged by the Institute, many of which are of international character (e.g. in 2007, 45 conferences were held, including 7 international ones). These are also disseminated by means of the Institute's scientific periodicals (*Pamięć i Sprawiedliwość – Remembrance and Justice* and *Aparat represji w Polsce Ludowej – The Apparatus of Repression in the Polish People's Republic*), other scientific papers (altogether over 2,000 scientific articles to date), as well as in the book form. The Institute of National Remembrance has published more than 300 books so far, including monographs, document editions, memoirs, photographic albums, etc. Among the latest publications, it is worth mentioning the monumental *Atlas podziemia niepodległościowego 1944–1956 (Atlas of the Independence Underground 1944–1956)* which documents the activity of the anti-Communist conspiracy. A few books have been published in the English language, including the *Handbook of the Communist Security Apparatus in East Central Europe 1944–1989*, developed by an international team of researchers.

The Public Education Office of The Institute of National Remembrance becomes engaged as well (also by means of financial support) in a wider-scale documenting activity performed by external partners. Two projects may serve as an example here which aim to produce a complete list of names of the fatalities of the German and Soviet occupation during World War II.

Educational activities are numerous. A large number of these are addressed to teachers and students of secondary schools. All secondary schools receive the popular scientific monthly "Biuletyn IPN" (*Institute Newsletter*) including various aspects of the newest history of the country. Each edition features a DVD with a documentary. Every year, The Institute of National Remembrance stages a few competitions for school students, aiming to encourage knowledge of history. 12 educational packages have been published of different content (e.g. the Holocaust, the Polish-Ukrainian relationships, the Martial Law), including aids to be used in class (photographs, copies of documents, maps, etc.), as well as exemplary lesson scenarios. Employees of The Public Education Office run hundreds of lessons and deliver hundreds of lectures at schools. The so-called "training lessons" are organised, too, during which experienced teachers instruct their colleagues how to teach the difficult issues of the modern history. A number of workshops and training courses for teachers are offered every year.

Many educational activities are wide-scaled. At present, almost one thousand schools have applied to participate in the project "I'll Tell You about the Free Poland". In the course of its implementation, students will familiarise themselves with the modern history of the country, prepare their own projects and – following professional instruction – record accounts by history witnesses (participants in the Resistance during World War II and the post-war conspiracy, members of the anti-Communist opposition).

The Public Education Office of The Institute of National Remembrance stages exhibitions which are addressed to the public. So far more than 150 of these have been on, wherein most of them are presented many times, at a number of localities throughout Poland. Some exhibitions have been translated into other languages and presented in most European countries and the USA. All new exhibitions are now accompanied by catalogues. Outdoor exhibitions, staged within major city locations, are particularly popular.

Employees of the Public Education Office have co-authored dozens of documentaries and hundreds of TV programmes dedicated to the modern history of Poland, and have offered expert historical advice on a number projects of this kind. The Polish Television Theatre has recently produced some shows based on facts, as depicted by the historians of The Institute of National Remembrance. This proves to be a particularly effective method of popularisation of knowledge, reaching the public.

One should mention large-scale co-operation with the press, dailies and monthlies in particular. Employees of the Public Education Office have published over 2,000 popular scientific articles so far. Some periodicals feature special historical inserts prepared in collaboration with The Institute of National Remembrance.

The Internet has been used on a larger scale since last year. Some projects have their own websites, e.g. “Following the Traces of Crime”, described below. Two popular scientific portals have been launched dealing with the Martial Law (www.13grudnia81.pl) and the March of 1968 (www.marzec68.pl). They feature popular historical studies, witness accounts, documents and multimedia materials (clips, photographs, recordings). It is also possible to download selected scientific publications by The Institute of National Remembrance. Both portals have already won much recognition on the part of visitors.

The Public Education Office is also engaged in a number of documenting activities. There are two nationwide projects. One, called “Notations”, deals with digital recording of hours of accounts made by history witnesses – victims of the totalitarian systems. A film library, produced in this way, will be rendered accessible for educational and scientific purposes in the future. The other project – “Following the Traces of Crime” – aims to locate and document (in the form of photographs or video recordings) places, as preserved, connected with the Communist terror, e.g. detention facilities, prisons, scaffolds of execution, victim burial sites. Some of these places still bear traces of crimes that have been committed there (wall inscriptions made by prisoners, traces of bullets, etc.). Alas, more and more places like this undergo degradation and the repression reminders are being devastated.

The Institute of National Remembrance, performing its scientific and educational activity, co-operates widely with schools, universities, statutory and local authorities, NGO’s, veteran associations, museums and such like. Collaboration with international partners is crucial, too. Partner co-operation with Czech, Lithuanian, German, Slovak and Ukrainian institutions has proved particularly vivid.

Updates on the Institute’s operations is to be found on the website of The Institute of National Remembrance, at www.ipn.gov.pl.

4. Some conclusions resulting from the experience of The Institute of National Remembrance

The activity of The Institute of National Remembrance indicates that the operation model based on an institution combining the archives of crimes of totalitarian systems, the prosecutor’s department running investigations, and the research and educational activity, proves efficient. International co-operation, run on a constant and systematic basis, is crucial in this respect.

The Polish experience shows that full recognition and punishment of crimes committed by totalitarian regimes requires the following:

- Undertaking attempts to identify and prosecute perpetrators, based on the principle of non limitation of crime of genocide, war crimes and crimes against humanity, as well as prolongation of the period of prescription in case of other crimes;
- Granting free access to records produced by totalitarian regimes (in particular by the Nazi and Communist parties and the Nazi and Communist security apparatuses, courts, etc.) to victims and researchers;

- Conducting wide-scale scientific research of crimes committed by totalitarian regimes, as well as resistance to these systems;
- Launching and implementing numerous educational activities, based on results of scientific research, comprising, among others, proper exposure of the subject of crime in school curricula, providing students and teachers with appropriate teaching material, organising competitions for young people in order to encourage interest in history, popularising the subject by means of publications, staging exhibitions, producing documentaries, opening websites, etc.;
- Commemorating crimes and victims of crimes within the Public Space (monuments, memorials, museums, protection of crime sites against degradation and devastation);
- Removing from the Public Space symbols connected with totalitarian regimes (street names, monuments, etc.);
- Adequate honouring of victims of totalitarian regimes, both on the symbolic plane (nullification of illegal acts by totalitarian regimes: e.g. court sentences, awards and honours, etc.), and the material one (compensation, provision for appropriate living standards, social benefits, proper medical care), recording evidence (accounts) by victims of totalitarian regimes for generations to come.

5. The European perspective

Activities similar to the ones undertaken by The Institute of National Remembrance are performed in all post-Communist states. These are executed by both state agencies, as established for this purpose, and museums, research centres, as well as NGO's. There are, however, significant differences as to the level of research of crimes committed by totalitarian regimes; the same pertains to the scope of educational activities, as undertaken there. There is no doubt that all states of the European Union, in particular the western ones, are much more aware of the Nazi crimes than the Communist ones. The "old" EU countries only occasionally undertake to popularise knowledge of the Communist totalitarianism, such activities are dispersed too.

As far as legal undertakings, such as the Framework decision on Racism and Xenophobia, are undoubtedly very important, however, they may not replace institutional activities, in particular with respect to scientific research and public education. It seems necessary that a plane be established on which to provide for constant co-operation of respective institutions dealing with crimes of totalitarian regimes. This would serve to exchange experiences, as well as to undertake joint ventures in the field of scientific research and education which, in turn, could lead to establishment of the Museum of the Two Totalitarianisms.

The experience of the two totalitarian regimes – the Nazi and the Communist ones – is one of the most significant European experiences of the 20th century. On the one hand, it is an example of barbarous crimes and violation of basic human rights, but, on the other, it is a lesson in unparalleled heroism, uncompromising defence of basic values. We have to learn this lesson: we owe it to the victims, ourselves and the generations to come.

Stephan Parmentier*

RESEARCH, TEACHING AND CONSULTANCY IN THE FIELD OF TRANSITIONAL JUSTICE AND HUMAN RIGHTS

1. Background

Debate about serious human rights violations and international crimes committed in the past usually starts during times of political transition, when societies are moving away from authoritarian rule to more democratic forms of government. At such times, new political elites are openly confronted with a fundamental question: how to address the heavy burden of their dark past. This classical question inevitably arises after the end of war-time situations, as witnessed in the aftermath of both the First and the Second World Wars. In recent decades, however, the question proved equally alive, as posed in most countries of Latin America in the 1980's, in all countries of Central and Eastern Europe in the 1990's, and in several countries in Africa and Asia during the last 10 years.

Since the 1990's, academics and policy-makers have grouped together these issues under the general heading of "transitional justice". Originally defined as "the study of the choices made and the quality of justice rendered when states are replacing authoritarian regimes by democratic state institutions"¹, it has been broadened in recent years to include "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation"². Transitional justice has thus become a catch-all notion to depict all sorts of strategies, mechanisms, institutions and procedures to deal with legacies of mass abuse, whether as part of a political transition, or related to mature democracies.

The first studies on transitional justice at the Catholic University of Leuven were initiated in the mid-1980 by Emeritus Prof Luc Huyse, founding director of what was then called the Law and Society Institute, which concentrated on the study of law, legal systems and legal professions "in context". Over the years, that institute developed an extensive research agenda from an interdisciplinary perspective. It was transferred in 2007 to the newly established Leuven Institute of Criminology (hereinafter 'LINC' or 'the Institute') and is continued under the heading of the Institute's Research Line on Political Crimes, Human Rights and Human Security, coordinated by Prof Stephan Parmentier.

The following paragraphs provide a summary overview of the research, teaching and consultancy on transitional justice and human rights undertaken at the Leuven Institute of Criminology. More detailed information is found on the general website of LINC³ or on the specialized website on transitional justice⁴. All remarks and suggestions are very welcome, of course.

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¹ R. Siegel, "Transitional Justice. A Decade of Debate and Experience", *Human Rights Quarterly*, 20 (1998), pp. 431–454, 431.

² United Nations, Security Council, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General to the Security Council, 23 August 2004, S/2004/616, p. 4.

³ www.law.kuleuven.be/linc.

⁴ www.transitionaljustice.be.

2. Research

Research on transitional justice at Leuven has paid particular attention to the various strategies and mechanisms available to successor elites to deal with gross and massive human rights violations and other injustices committed by the previous regime, including criminal prosecution by national courts and international tribunals, establishment of truth commissions, and design of reparation and reconciliation policies. Further attention goes to the functioning of the administration of (criminal) justice and to the role of legal professions and civil society organisations.

Completed research projects include the following:

- Collaboration and repression after World War Two in Belgium, and Life after punishment in Belgium, France and the Netherlands, both conducted by Prof Luc Huyse (funded by the Research Fund of the K. U. Leuven, (1986–95).
- Dealing with the past in Central Europe after the demise of communism, conducted by Prof Luc Huyse (1993–95).
- Young democracies and the choice between amnesty, truth commissions and prosecution, with case-studies of Ethiopia after the Menghistu regime and post-Apartheid South Africa, conducted by Prof Luc Huyse (funded by the Belgian Agency for Development Cooperation and the Flemish Inter-University Council, 1996–2000).
- Comparing the truth commissions in South Africa and Guatemala, conducted by Prof Stephan Parmentier (1998–2000).
- The International Right to Reparation for Victims of Gross Human Rights Violations, from a legal and a socio-legal perspective, under the supervision of Prof Paul Lemmens (K. U. Leuven) and Prof Stephan Parmentier and in collaboration with Prof Marc Bossuyt, Prof Koen De Feyter and Prof Filip Reyntjens (University of Antwerp), (funded by the Research Funds of the K. U. Leuven and the University of Antwerp, 2000–04).
- Victim Organisations and the Politics of Reparation, with a case-study on Rwanda, doctoral research (Heidy Rombouts) under the supervision of Prof Koen De Feyter (University of Antwerp) and Prof Stephan Parmentier (funded by the Research Fund of the University of Antwerp, 2000–04).
- Reparation for Violations of Human Rights under International Law, doctoral research (Pietro Sardaro) under the supervision of Prof Paul Lemmens (K. U. Leuven) and Prof Stephan Parmentier (funded by the Research Fund of the K. U. Leuven, 2001–05).
- Dealing with the past in Guatemala. The long road to reparation and reconciliation, research by Prof Stephan Parmentier in preparation of an international expert seminar in Leuven (with funding from the Flemish Inter-University Council, 2005–06).
- The politics of restorative justice in the South African transition, research by Prof Stephan Parmentier and Prof Elmar Weitekamp (University of Tübingen), in preparation of an international conference in Cape Town, in collaboration with the University of Cape Town and the Centre for the Study of Violence and Reconciliation in Johannesburg (funded by the Flemish Inter-University Council, the Royal Danish Embassy, and the South African Ministry of Justice, 2006–07).⁵
- As part of the Brussels Group against impunity and for international justice, Prof Stephan Parmentier and Prof Jan Wouters (K. U. Leuven) are co-authors of the “Brussels Principles Against Impunity and for International Justice”, published in: *Combating Impunity*, X (2002), Proceedings of the symposium held in Brussels from 11 to 13 March 2002, Bruylant, Brussels (multilingual edition Français-English-Nederlands-Español).⁶
- Em Prof L. Huyse is the co-editor of two reference works on aspects of transitional justice: D. Bloomfield, T. Barnes, L. Huyse (eds.), *Reconciliation after Violent Conflict. A Handbook*, International Idea, Stockholm 2003; L. Huyse, M. Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, International Idea, Stockholm 2008.⁷

⁵ www.globus-socialjustice.be/rjsa.

⁶ www.amnesty.be.

⁷ www.idea.int.

- Over the past ten years Prof Stephan Parmentier has supervised several Master's theses dealing with aspects of transitional justice, e.g. truth commissions in the middle of a conflict, with a case study of Colombia; civil society in search of truth and democracy, with experiences from Chile, El Salvador and South Africa; the mixed tribunal in Sierra Leone combined with the truth and reconciliation commission; the right to reparation for victims of the Spanish civil war; philosophical underpinnings of the right to reparation; the reintegration of child soldiers in African countries.

Ongoing research projects at the Leuven Institute of Criminology include:

- Mass Victimisation and Restorative Justice. In search of the possibilities and the limits of restorative justice in the context of truth commissions, with a case-study of South Africa, doctoral research (Kris Vanspauwen) supervised by Prof Stephan Parmentier and Prof Elmar Weitekamp, University of Tübingen (funded by the Flemish Fund for Scientific Research, 2003–07).
- Mass Victimisation and Restorative Justice. In search of the position of restorative justice in an integrated approach to mass victimisation in post-conflict situations, with case-studies in Bosnia Herzegovina and Serbia, doctoral research (Marta Valinas) supervised by Prof Stephan Parmentier and Prof Elmar Weitekamp, University of Tübingen (funded by the Research Fund of the K. U. Leuven, 2004–08).
- Cultural Context and Transitional Justice. The role of non-Western legal traditions in dealing with gross human rights violations in post-conflict situations, with a case-study of Guatemala, doctoral research (Lieselotte Viaene) under the supervision of Prof Eva Brems (U. Ghent) and Prof Stephan Parmentier (funded by the Flemish Fund for Scientific Research, 2006–09).
- Prosecutorial Policies of International Tribunals, research under the supervision of Prof Jan Wouters (K. U. Leuven) and Prof Stephan Parmentier, Prof Filip Reyntjens (University of Antwerp), Prof William Schabas (National University of Ireland at Galway), Prof Claus Kress (University of Cologne), Prof Kai Ambos (University of Göttingen), and Prof Luc Reydamms (University of Notre Dame) with funds as Scientific Research Network from the Flemish Fund for Scientific Research, 2006–10.
- Justice after Transition and the Jurisdiction of International Criminal Tribunals, with a case-study of the DR Congo, doctoral research (Jean Migabo Kalere) supervised by Prof Stephan Parmentier (since 2003).
- State Reparation for Systematic Racial Discrimination, with a case-study of Sri Lanka, doctoral research (Gayathri Fernando) supervised by Prof Stephan Parmentier (since 2003).
- The International Criminal Investigation and the Formation of Collective Memory in Post Conflict Societies. An analysis of investigation processes and an epistemology of war crimes, doctoral research (Hiroto Fujiwara), supervised by Prof Stephan Parmentier and Prof Frank Verbruggen, K. U. Leuven (since 2004).
- Mass Victimization and Restorative Justice in Colombia: pathways towards peace and reconciliation, doctoral research (Isabella Bueno) supervised by Prof Stephan Parmentier and Prof Elmar Weitekamp, University of Tübingen (funded by the Council for Development Cooperation of the K. U. Leuven, since 2007).
- Prof Stephan Parmentier serves as the co-general editor of a new international book series on Transitional Justice (together with Prof Jeremy Sarkin, University of the Western Cape and Tufts University at Boston, and Prof Elmar Weitekamp, University of Tübingen), launched in 2007 and published by Intersentia Publishers, Antwerp, Belgium. The series is intended to cover the rapidly growing field of transitional justice practice and research in a coherent framework and is interdisciplinary in nature, including the fields of law, political sciences, sociology, criminology, anthropology and other social sciences.⁸
- Prof Stephan Parmentier is one of the founding members of the Research Group on Human Rights and Transitional Justice, set up in 2006 at the Faculty of Law and intended to foster all types of research relating to human rights in the large sense of the word. Other members are Prof Marie-Claire Foblets, Prof René Foqué, Prof Paul Lemmens, Prof Frank Verbruggen and Prof Jan Wouters (all of the Faculty of Law).

⁸ www.intersentia.be.

- Prof Stephan Parmentier is a Board Member of the Leuven Centre for Global Governance Studies, set up in 2007 to encourage interdisciplinary research on topics related to globalization, governance processes and multilateralism, with a particular focus on the following areas: trade and sustainable development; peace and security; human rights, democracy and the rule of law; and the European Union and global multilateral governance.⁹

3. Upcoming research will include

- Reconciliation in Divided Societies, with a case-study of the truth commission in Peru, doctoral research (Andrea Diaz) supervised by Prof Stephan Parmentier (funded by the Council for Development Cooperation of the K. U. Leuven, as of October 2008).
- Strategies available for securing reparation for victims of gross human rights violations of the past, with attention to the organisation of judicial systems, the role of the legal profession, and the impact of civil society.
- Developing empirical instruments to assist post-conflict countries and organisations working with them to make progress in the areas of truth, accountability, reparation and reconciliation.
- The relationship between human rights and human security in a globalising world.

4. Teaching

- Prof Stephan Parmentier has been teaching a specialised course on Political Crimes and Transitional Justice in the Master's programme in Criminology since its inception in 1999.¹⁰
- In 1997 Prof Paul Lemmens (K. U. Leuven) and Prof Stephan Parmentier initiated the annual "Summer Course in Human Rights", set up with the purpose to offer a two-week advanced training in the field of human rights to experienced researchers and professionals from all over the world, including countries from the South. The Summer Course is a common initiative of the Faculty of Law at the K. U. Leuven and the Netherlands School of Human Rights Research in Utrecht, joined in 2002 by Northwestern University School of Law in Chicago, USA (Prof Stephen Sawyer) and in 2005 by the University of Notre Dame Law School in South Bend, USA (Prof Doug Cassel). It has received funding from, *inter alia*, the European Commission, the Belgian and Dutch Ministries for Development Co-operation, the Belgian Ministry for Foreign Affairs, the Flemish Inter-University Council, and a number of private organisations and foundations.¹¹
- Between 2002 and 2006 Prof Stephan Parmentier and Prof Elmar Weitekamp (University of Tübingen) served as the European co-ordinators of the project "GLOBUS: Social Justice and Human Rights in the Era of Globalisation" between five Western European universities (K. U. Leuven-coordinator, U. Sheffield, U. del Pais Vasco-San Sebastian, U. Greifswald, U. Pau) and seven Canadian universities (U. Regina-coordinator, Simon Fraser; U.-Vancouver, U. Montréal, U. Windsor, St. Thomas U., Central Mennonite U.-Winnipeg). This project was aimed at exchange of students, researchers and teachers among the participating institutions and was funded by the European Commission in Brussels and Canada's Human Resources Department in Ottawa.¹²
- Since the spring of 2006, Prof Stephan Parmentier has been actively involved in organising intensive courses on transitional justice, with Prof Paul Lemmens, Prof Frank Verbruggen and Prof Jan Wouters (K. U. Leuven), and in close collaboration with the Brussels office of the International Centre for Transitional Justice (Mark Freeman). The "Essentials Course on Transitional Justice" is a three-day intensive course covering the essential themes, mechanisms and case studies to deal with the crimes of the past, and is aimed at busy professionals, assisting them to conceive and implement transitional justice policies and programs that are in line with international best practices.¹³

⁹ www.globalgovernancestudies.eu

¹⁰ www.law.kuleuven.be

¹¹ (www.law.uu.nl/english/orm/summercourse)

¹² www.globus-socialjustice.org.

¹³ www.ictj.org.

5. Consultancy

- At the request of the Flemish development agency VVOB, Prof Luc Huyse and Prof Stephan Parmentier have evaluated a project by the Centre for Study of Violence and Reconciliation for human rights education and building a human rights culture in South Africa (1997–2000).¹⁴
- Since 1999 Prof Stephan Parmentier serves as an advisor to the non-governmental organisation Guatebelga, set up to combat impunity for serious human rights violations in Guatemala and to support the process of democratisation.¹⁵
- Mrs M. Schotsmans, research associate at the Institute, has served as the head of the Legal and Reconciliation Unit of the Truth and Reconciliation Commission in Sierra Leone in 2003. Her main expertise is in victim issues, partly in the context of universal jurisdiction laws, through extended stays in Rwanda, Chad and other countries with Avocats Sans Frontières (Lawyers Without Borders) and the Fédération Internationale des Droits de l’Homme (FIDH).¹⁶
- Dr Heidi Rombouts, research associate at the Institute, currently works at the Belgian Technical Cooperation and is in charge of capacity building for justice systems in developing countries, with a special emphasis on Central African countries.¹⁷
- Em Prof L. Vandekerckhove, full time professor of sociology and former director of the Law and Society Institute, has been a visiting professor at the University of Liberia, and has represented the Faculty of Law in the K. U. Leuven University Council for Development Cooperation.

¹⁴ www.csvr.org.za.

¹⁵ www.guatebelga.be.

¹⁶ www.asf.be; www.fidh.org.

¹⁷ www.btccctb.org.

Sandra Kalniete

DIVERGENCES WITHIN EUROPEAN POLITICS WITH REGARD TO COMMUNIST TOTALITARIANISM

First, I would like to express my gratitude to the European Commission and the Slovenian Presidency of the European Union for organising this hearing on “Crimes Committed by Totalitarian Regimes”. More particularly, I would like to thank the President of the European Commission, Mr Jose Manuel Barroso, and the Vice-President, Mr Franco Frattini, whose personal commitment made the holding of this European hearing possible. It is the first European attempt at such a high political level to have a debate about the crimes of totalitarianism in Europe in the 20th century. This European hearing must become the cornerstone of the evaluation process of the political, legal and historical aspects of totalitarian communism. It is imperative in order to go beyond the consequences of the Iron Curtain in the consciousness of Europeans, to unify and render coherent, the still divided and contradictory history of Europe.

In 1991, with the collapse of the Soviet Union, it seemed clear that there would be no further obstacle to the truth coming out about the crimes of communism and to their condemnation. In fact, we, who in Eastern Europe and the Baltic States, were subjected to the oppression of communist totalitarianism, realised that the quest for justice, recognition of the truth and the condemnation of communism was meeting resistance in the corridors of power of Western democracies, in academic circles and in society in general.

However, debates on post-war European history were inevitable and today that history is the basis of much dissensions among Europeans. The heated nature of discussion proves that we have not yet managed to “de-ideologise” history and that we are pursuing the political battles of the last century in this 21st century.

Until Enlargement, the post-war history of Europe was clear. To simplify, its concept was based on two mainstays – the Second World War (the winners – good and bad – and the losers) and Franco-German reconciliation (the building of the ‘common European home’). The true implications of the Iron Curtain had no place in this carefully balanced history.

After Enlargement, Europeans discovered with astonishment that for Eastern Europe and the Baltic States, 1945 was not a magical year. Indeed for us, the end of the war was not a liberation, but the beginning of another tyranny, the replacing of the Nazi totalitarian regime by the Soviet totalitarian regime. For Europeans from the East and the Baltic States, the war continued until the fall of the Berlin Wall and the retreat of the Red Army from Eastern Europe and the Baltic States. The last consequences of the war were wiped out on 1st May 2004, when the Europe divided by the Iron Curtain was reunified. In the same way, the majority of Europeans did not understand that the dichotomy between “winners” and “losers” seems too simplistic for us. Our experience proves that all winners are not “good” and that all losers are not “bad”. And those who were neutral, alternatively occupied by belligerents, did not fit into this binary scheme of things.

It is uncomfortable for Europeans to recognise that the building of the common European home was partly made possible by decisions taken at the Tehran Conference (1943) and the Yalta Conference (1945), when the victorious Allies accepted that the freedom of Eastern Europe and the Baltic States was to be sacrificed to the Soviet Union. The quasi-official version of post-war European history mentions but little about the ravages that followed these Allied decisions on the peoples and states left behind the Iron Curtain. These decisions left a free hand to Stalin in the Soviet Union and his henchmen in the states of Eastern Europe to carry out their repression on a grand scale. The figures show that the extreme extension of the Gulag and the large increase in the number of people deported after the war reached a paroxysm around 1950.

Today each pupil in the West knows that Nazism represents Evil. They know this because, after the war there was a systematic de-nazification and the creation of a political, legal and social framework to prevent the return of totalitarian ideologies in Europe. The result of this great work is that today the majority of Europeans are conscious of the importance of thwarting at the roots any manifestation of racism, xenophobia, nationalism, religious intolerance and anti-Semitism.

In exactly the same way, Europeans today should know about the crimes of the Soviet totalitarian regime: because they are also part of the common history of our continent. Seventeen years separate us from the end of the Cold War, but European society has progressed little in terms of comprehension of the atrocities and perversion of totalitarian communism and it has not broached the real scale of its crimes. Testimonies of victims and the horrors of Stalin's regime revealed by the archives provoke a far less profound disgust than the Nazi atrocities. Even if, after the collapse of the Soviet Union, these facts were known in academic circles, very few researchers devoted themselves to their study in comparison with those who carry out research into Nazism.

Until 1990, the lack of interest concerning the tragedy of Eastern Europe and the Baltic States could be attributed to lack of information. At that time the information available in the West was limited to Solzhenitsyn's book *Gulag Archipelago* and lesser-known testimonies of Soviet renegades. After 1990, progressively, Soviet archives were opened to Russian and foreign researchers. In Russia and in the West, many studies were published, but the documentation of the horrors of the Stalinist regime did not succeed in interesting Europeans.

That lack of interest can, in part, be explained by a different perception of time in the two reunited parts of Europe. In Western society, the Second World War and its consequences are part of a past that is completely over, that has been lived through, discussed, condemned and set in history books. In Eastern Europe and the Baltic States, that process is just beginning. We, on the other hand, are still in the present, in a present that has been delayed by a silence imposed for five decades, in a time when thousands and thousands of people can finally talk about their traumatic experiences. This frustrating discrepancy gives motivation and a particular strength to claims for historical justice.

That lack of interest by Western society is clearly perceived by the media, publishers and the world of cinema. There are almost no written accounts, programmes, films or documentaries about what happened behind the Iron Curtain. There are very few translations of books written in Eastern Europe or the Baltic States on this theme. We can see this in any large bookshop: the shelf devoted to Nazism and the Holocaust is infinitely larger than the one reserved for the few works about communist totalitarianism and the Gulag. I was able to appreciate the difficulty of getting publishers interested when after a year of prospecting, by a happy chance; I succeeded in finding a publisher for the French translation of my book *With Dancing Shoes in Siberian Snows*.

One of the reasons for the lack of interest is the shortage of visual images publicly available to Western media. Even if the visual information found in Soviet archives is less abundant than that found in the archives of the Third Reich – communists were more careful than the Nazis and avoided leaving visual proof – this limited photographic and cinematographic iconography is insufficiently disseminated in Europe. Thus, moving visual representations are lacking that were, in their time, so important to unmask the Nazi atrocities, and which became embedded in the still fresh memories of those who had lived through the war. In the absence of a visualisation that feeds the imagination, the crimes of communism do not have the concrete nature that triggers empathy and shared emotion.

Western politicians, whether from the right or left, bear in part the responsibility for this indifference by society: their ambiguous attitude with regard to Soviet totalitarianism, in the past and today, does not give clear signals about the perversity of totalitarian communism. As long as there is no political will to call things by their name, indifference will be perpetuated.

The issue regarding attitudes towards evaluation of communist totalitarianism is particularly sensitive for the socialist and communist family. Notwithstanding incriminating evidence, the left, for decades, looked for explanations and justifications for the Soviet terror. Still today, communists are not the only ones who do not want to recognise their mistakes in the evaluation of communist totalitarianism. That same evasive attitude can be found among socialists.

When in 1997 the book *The Black Book of Communism* was published in France, there were strong protests from the socialists in power. Prime Minister Jospin did not hesitate to state that the number of victims of communism was exaggerated.

In May 2005, the socialist group in the European Parliament abstained in the vote for a resolution dealing with the 60th anniversary of the end of the Second World War. They could not admit that, for Eastern Europe and for the Baltic States, the end of the war was not a liberation, but the beginning of another tyranny. They adopted a similar attitude in January 2006 at the Parliamentary Assembly of the Council of Europe concerning Resolution 1481 on "the necessity to condemn totalitarian communist regimes". Even the facts laid out in the report of the Political Committee of the European Parliament did

not make them change their opinion. That report states that between 1917 and the present day, the most cautious estimations reach 94.5 million dead, due to the repression and the terror of the Soviet regime and other communist regimes.

However, in the attitude of parties on the right concerning communism, we also find inconsistencies. While criticizing the cruelty and shortcomings of communist regimes, they avoided recognizing the shadowy sides of this ally and winner of the Second World War, such as the enlargement of the concentration camp system of the Gulag without waiting for the end of the war and the liberation of the victims of Nazi concentration camps. Similar incoherencies between word and deed can be found throughout the Cold War, when loud proclamations were made about liberty, democracy, the constitutional state and the rights of man, while at the same time contracts were signed with the USSR, China and other states in the socialist camp that reinforced these regimes and prolonged their existence. During the 7 last years of the Soviet Union, the West allocated it loans of 45 billion dollars!

The conflict between pragmatism and great principles was accentuated in the politics of the right during the Gorbachev years. Western leaders Margaret Thatcher, Helmut Kohl, and George H. W. Bush, were mainly concerned about the collapse of the world system of bipolar security. That seemed to them more important than the opportunity, and the historical occasion, to renew democracy in the territory of the “Evil Empire” and to free the enslaved peoples of Eastern Europe and the Baltic States from captivity.

The divergences of politicians with regard to communist totalitarianism were accentuated before the Council of Europe in April 2007 in Luxembourg, where the Framework Law against Racism and Xenophobia was adopted. Poland and the Baltic States requested that the crimes against humanity perpetrated by Stalin’s regime be included in the Framework Law, so that, all over the EU, it would be forbidden to justify, deny or trivialise them. After long discussions, their request was rejected.

Even if the EU Declaration in Berlin says that “the integration of Europe has proved that we have learned lessons from our history made up of bloody conflicts and suffering”, the debates on the Luxembourg decision are a shining example of the difficulty for some politicians on the right and the left (and those holding high-level positions at the EU) to admit that the concept of post-war European history is incomplete and does not reflect the reality of the present EU. Discussions in diplomatic corridors and in the press on the Polish and Baltic States’ proposals show an unpleasant aspect of some “true” Europeans: smugness. Our request that justice be rendered for us was considered as an anti-European attitude that did not correspond to European values.

The evasive attitude of European politicians has yet another explanation: Russia. Russian politicians and diplomats use various techniques, including economic pressure to avoid a condemnation of communism becoming widespread in EU policy with its political, legal and possibly financial consequences. Contrary to Germany where, after the war, de-nazification took place, the process of “de-bolshevikisation” was stopped before it started. Putin has often underlined that Russia is not responsible for crimes perpetrated by the USSR in Eastern Europe and the Baltic States, while expressing his consideration for the heroism of Stalin and regretting that the greatest geopolitical catastrophe of the 20th century had taken place – the collapse of the Soviet Union. Today 20 % of the inhabitants of Russia consider that evidence of the scale of the terror is false and see in Stalin a positive hero. Monuments have even been erected to the glory of this mass torturer. During this time, perpetuation of the memory of the victims is left to the victims themselves and the State does not give any financial support to “Memorial” or other organisations for political prisoners.

During the last decade, reconciliation and repentance became an important event in relations between states. More and more, peoples and states are looking at their past and reconsidering the offences previously justified by reasons of state. Ways to reconcile ourselves with our history and our neighbours are diverse. The *mea culpa* of Germany for Nazi crimes made it one of the most democratic countries in Europe. Other states would need more time to break the post-war silence. It was only in 1995 that Chirac recognised the responsibility of France in the help given to the Nazis in the implementation of the Holocaust in France. After Chirac, Clinton regretted slavery in the United States. Blair considered that it was time to proffer excuses to the Irish people for British colonialism and the great famine in the 19th century. John Paul II went the furthest back in the past in asking pardon for the Crusades. In Latvia too, after the restoration of independence, there has been a profound process of recovery and re-evaluation of history.

Reconciliation and repentance help not only to normalise relations between states, but also help the state and the people to free themselves of past ghosts, and to be reborn for the future. In this perspective,

the refusal of Russia to re-evaluate its responsibility in the role of communism and Bolshevism in 20th century history in Europe, and in Russia, is alarming. Russia is being transformed into an authoritarian state where the idea of the identity of the people and the state is based on three concepts: the inheritance of the Tsar's Empire, the military power of Stalin and the status of great power in oil and gas. Russian foreign policy uses confrontation more and more. In Russia's relations with Europe, neighbouring states and the United States, the elements of a strong-armed policy are reappearing.

On 12 June 2007, in Washington, the monument to the memory of victims of communism was inaugurated. The President of the United States, members of both houses of Congress, the finest of Washington's political and academic elite were present. President George W. Bush declared: "We are erecting this memorial because we have a duty to bear witness to future generations concerning the crimes of the 20th century and to ensure that they never happen again. In this sacred place, we recall the great lesson of the Cold War: freedom is a precious value that is not guaranteed; evil is a reality and it must be fought against; if they have an opportunity, men driven by hostile and pitiless ideologies will commit ineffable crimes and will kill millions."

We Europeans must also be conscious of our duty to bear witness concerning the crimes of the 20th century for future generations. I am convinced that the millions of victims of the Siberian Gulag, those in Budapest, Prague and from Solidarity, have a right to a detailed and systematic investigation establishing the political, legal and historical aspects of Soviet totalitarianism. That is why this European hearing on crimes committed by totalitarian regimes must not remain a unique and isolated event. This hearing must be the start of a process of investigation and evaluation of the most pitiful pages of 20th century European history.

To conclude the session today, we participants must send a petition to the European Commission and to European politicians, inviting them to create an international Commission for the evaluation of crimes committed by totalitarian communism. We must ask them to create an international research institute that, in collaboration with the Member States of the EU, would study and document the political, legal and historical aspects of totalitarian communism. Victims of this regime are still alive. They can still give testimony, but it is very urgent to collect their testimonies, because their number decreases every day. The studies of this institute will form the basis of a programme funded by the European Union for education and the conservation of memory.

We, participants in today's European hearing, must invite the European Commission and the European Parliament to decide on the opening in Brussels of an Iron Curtain museum and the erection of a monument to the memory of victims of totalitarian communism. The museum and the monument must remind Europeans that we must not be naïve and believe that this could never happen again. We must be conscious that if it happened once, it can happen again. Rwanda, Sudan, Srebrenica, and Kosovo prove this. It happens each time that a group with an ideological stranglehold and its brutal power de-humanises our fellow citizens, our neighbours, our opponents, demonising them into evil beings that do not deserve their human rights.

Europe must take into account all our history, document it and prepare political and legal processes on an international level to prevent recurrences of totalitarianism at the roots, without sparing ideologies.

Wojciech Roszkowski

NOTES ON THE OPEN ISSUE OF UNITED EUROPEAN HISTORY

1.

I would like to thank Commissioner Frattini and the organizers of this hearing for this initiative that goes in line with the expectations of many Members of the European Parliament. We have even initiated a working group on “United Europe – United History” aiming at the broadening of the European historical perspective after the recent enlargements of the European Union. You can find more information on this group in the document that we have distributed here.

There is much talk of our common European identity these days. But the representatives of the new member countries very often encounter ignorance about the East European experience with communism and the unwillingness of some to learn about this experience. Common identity requires at least an attempt to learn about each other. How can there be a common identity when in many countries and in many a political milieu, the truth about communist totalitarian crimes is ignored and the history of East Central Europe is distorted? When the contemporary Russian government denies that on 17 September 1939, the Soviet Union committed an unprovoked act of aggression against Poland, violating four international agreements of which Moscow was a signatory, nobody even knows these events. Why do we so often hear about the “Polish concentration camp” of Auschwitz and never hear about the German concentration camp of Dachau or the Austrian concentration camp of Mauthausen? Why did the Swedish daily *Dagens Nyheter* claim that the Katyn Forest Massacre was committed by the Nazis, when there is no doubt whatsoever that the Polish officers were killed by the Soviet NKVD? Are these manifestations of “our common European identity”?

There can be no understanding and no trust between nations without a minimum loyalty to truth and justice. The way we treat history is a direct manifestation of our credibility.

I hope this hearing will be a beginning and not the end of the educational and legal works of European institutions on the totalitarian legacy, both Nazi and Communist. The idea to celebrate the Day of Remembrance of the Nazi and Communist Totalitarian Crimes on 23 August, the anniversary of the ill-famed Hitler-Stalin Pact of 1939 deserves full support. The future of this initiative may be one proof of the will of united Europe to deal with its past.

2.

Just two brief comments on what was said before. First, regarding the struggles of West European Communist Parties for democracy. Democratic communism never existed. There were Communist parties in Western Europe that were allowed to exist, taking benefit from Western democracy. But whether they would maintain democracy after winning an election is an open question. What we know, however, is that these parties openly supported the Soviet Union during the Cold War, whitewashing Soviet crimes. Let me remind you that in 1939, all Communist parties of Western Europe supported the Hitler-Stalin Pact and that in 1948, Mr Thorez and Mr Togliatti claimed that in case of war with the Soviets, true Communists should side with the invaders. So contemporary Western Communist parties have no grounds to teach us democracy.

Second, as to the European Cultural Foundation: I hope its proceedings are based on basic cultural values, on truth and justice. What else can it be based on? But we have a problem with the Charter of Fundamental Rights, and especially with its Article 21, which forbids discrimination of “political and any other opinion”. Should we then tolerate lies?

3. End note

This was clearly a political meeting and the conclusions drawn here will be political. I am afraid that during our proceedings, we were gradually losing sight of the main topic. I am afraid we are divided between those who want to deal with the issue, and those who say this is not so easy and that everything possible is being done.

The German-French reconciliation was based on values. We admire this pattern of action but we are now told that things are more complicated. I would like to refer to what Ms Valič said at the beginning. Hers was a clear-cut case story. There was truth in it. Pontius Pilate once asked what truth was and the price for this question was life. I still hope there will be some continuation of our proceedings with more concrete results.

Thomas Hiio

POSSIBLE COMMON EUROPEAN HISTORY SCHOOL TEXTBOOK: ITEM NOT LISTED IN AGENDA – REACTION TO PRESS REPORTS¹

1. Line to take

This is an interesting suggestion which merits consideration on how it could be developed. The LLP could support initiatives in this area. At the same time we would need to proceed with some caution and to be clear about the purpose of any such initiative.

2. Speaking points

I fully support the thinking behind the idea, that we should move away from narrow, nationalistic or ethnocentric interpretations of history and that we should make space for the learning of history which can help to highlight our common heritage.

However, I am sure we would all agree that we should not seek to put forward a single European narrative to the exclusion of other narratives. It is preferable to promote an approach to history teaching which takes into account Europe's diversity and which fosters an awareness of multiple perspectives and the point of view of others. History should at times focus on the European and the global level, sometimes on the national and often on the local level as well.

Supporting networking among practitioners, including both academics and schoolteachers, the production of teaching materials, exchanges of thinking about teaching and research methods – all of these would facilitate such an approach and would seem to me to be the best way to proceed.

The LLP programme is available to support networks in this area – it has done so in the past – and it should be in a position to support imaginative ideas in this area in the future. In this context, Madame Chair, it would be useful to me to hear more about some of the interesting bilateral activities which have already taken place between German and France and Germany and Poland.

3. Background note

There have been reports in the press (UK, Poland and Germany) that Mrs Schavan, with the support of Mrs Merkel and of the Commission, is “to push for the publication” of “a new school history book for the whole European Union” at the Heidelberg meeting.

The press commentaries have been at best neutral, at worst quite critical.

The Presidency informs us that Mrs Schavan is not pushing the idea at Heidelberg, but it is not clear whether she will refer to it, and in any event there may be questions from journalists and there is also some indication that the idea might in any event be taken up by the Polish Minister.

We understand that the idea was first addressed in a press query at the press conference following the Council meeting on 16 February.

The Commission has supported a number of multilateral history education networks or initiatives, for example:

- Euroclio, the European standing conference of history teachers, which aims to support the development of history teaching so that it strengthens peace, stability, democracy and critical thinking;

¹ Formal Meeting of the European Ministers of Education in Heidelberg, 1–2 March 2007.

- A Thematic Network on History, involving 77 European University Faculties or Departments, which has as a medium-term objective “investigations on the possibility to write History in a European way”;
- A study on initial training of history teachers.

The Council of Europe has for many years made substantial efforts to support similar processes, including producing a guide for teachers on multiperspectivity in history teaching and, in the context of democratic stabilisation processes (sometimes with funding from the Commission), organising a series of regional initiatives such as in South-Eastern Europe or the Black Sea region to promote history teaching in a manner which fosters mutual understanding and reconciliation.

There have also been a number of bilateral initiatives such as the Franco-German *Histoire/Geschichte*, a textbook for use in upper secondary schools in both France and Germany, or German-Polish cooperation in which the Commission has not been directly involved but whose objectives we could certainly support.

However, it is worth making the point that support for such activities does not imply an objective of trying to create a single overview interpretation of history. Indeed, given the very different historical experiences of Europe’s citizens, it is hard to imagine that a European text or a common syllabus would ever become dominant to the exclusion of national, local and regional perspectives. A European approach could play a useful role in opening up the minds of students to the need to consider alternative viewpoints and different perspectives on events; in this respect it could well be worth exploring. The creation of course materials which would open students up to a European focus on history could be supported by the LLL programme.

Finally, one interesting initiative is the *Making of Europe* Series. The series editor is Jacques Le Goff, one of the best historians living, and the books are for the university market. The Making of Europe series is the result of collaboration between five European publishers: Beck in Germany, Blackwell in Great Britain and the United States, Crítica in Spain, Laterza in Italy and le Seuil in France. These are among the best academic publishers in their respective countries. The series adopts a common European perspective on history, not the juxtaposition of several national ones. The series covers the central themes in the history of the European peoples and their cultures. Each book is published in all five languages at the same time.

Emanuelis Zingeris

TRANSITION FROM THE “GULAG EMPIRE” TO THE WESTERN CIVILISATION – ISSUES OF REMEMBRANCE AND EDUCATION

In Eastern Europe, knowledge about repressions is as incidental as it is in Western Europe. Despite institutions set up in a wish to learn what happened during the Soviet occupation, information hardly finds its way into a European routine. The tragedy lies not only in the reluctance of Western Europe to learn about the Soviet regime crimes, but also in the fact that while fighting for its welfare, Western Europe finds little space for historical and humanitarian issues. Besides, as time flies, nostalgia for “their youth without problems” cloaks the memory of middle-aged and aged people, when half a litre of milk cost 13 kopecks and you need not care for your life as others did it for you under the socialist dictatorship. The legacy of millions of victims of Communism is still waiting for artistic personification, for its Spielberg, Andrzej Wajda, for their *Schindler's List*. A young man from Central Europe feels that Communism wronged his parents and therefore he is a second-grade European. When he walks along the streets of London, Paris and Brussels, he does not know who is to blame. New and old EU members are becoming increasingly more similar, but Eastern European people subconsciously continue to feel the five-decade long injustice and particular humiliation they experienced. The approach of Central and Western Europeans to racism and xenophobia might be the same.

In an effort to complement the Soviet and Nazi occupation experience which has already found its way to educational programmes, the International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania has established over 40 Tolerance Centres in secondary schools so they help the children realise the extent of the communist crimes through learning the fates of individual persons. This includes learning about the crimes committed by the Nazi occupation in specific towns. Certainly, the students are reminded of this during the official state days as well. For instance, Lithuania commemorates the Black Ribbon Day on 23 August when the Ribbentrop-Molotov Pact was signed. The Genocide Centre established in Lithuania hosts a number of extensive programmes on 13 June. The Centre has also established a KGB Museum with what were formerly torture cells, which are now very popular with visitors. The Grūtas Park in Druskininkai, which holds the idolatry sculptures of Lenin, Stalin and others, provides an hour or two of merriment for thousands of visitors. There is a canteen in the Park, where visitors may enjoy the meals distributed in small portions into Soviet plates made of aluminium, and Soviet sausages, which may evoke a variety of emotions starting with contempt and finishing with nostalgia. This sculpture museum is mainly sarcastic in tone, though. It does not create that sense of menace which was at heart of human existence in the USSR, where everyone were ready to hear a knock on the door at any moment and expect the fatal meeting with their “friends” from the security force.

Unfortunately, Lithuania has no all-inclusive Anne Frank diary of Soviet times. But it does exist, in decay among thousands of archives: in Bucharest, Prague or Vilnius. For this history to reach the level of perception by the entire EU, we have to set up the EU Foundation to investigate, and raise awareness about, the crimes committed by the totalitarian regimes as well as report on and personify the lives of the people who suffered.

Here, I remember my classmate Ms Kristina Žiurkevičiūtė at the Atheism Class (or the exercise on religion denial), who boldly stood up to say: “My granny and I go to church on Sundays.” The teacher dressed up in sportswear from the German Democratic Republic cried out: “Kristina, please sit down, for nobody asked you.” Actually, all children were secret churchgoers and Kristina had better merely kept quiet and lied in the way all others did as they were taught. Instead, Kristina remained standing and asked to make a record in a large red book that she was going to church on Sundays together with her grandmother, since her parents were sent into exile. This happened in 1964, quite a “relaxed time”: the bas-relief of Vladimir Lenin above the ‘Atheism/Lying teacher’ was shining with traces of the sponge thrown by the pupils. As for me, I was in a better position as a Jew, since nobody would make enquiries about my religious loyalty. So, Kristina was standing there alone insisting: “Please write in your book that I am a churchgoer.” Then, the teacher turned to the audience of pupils, mostly children

of believers' families: "Well, children, it is for you to decide, because now you can see the reason for your future problems." Encouraged, the children beat Kristina Žiurkevičiūtė during the break for being "an outsider" and for her failure to submit to the key condition entailed by Soviet system: hypocrisy and lying. Consequently, two weeks later she was sent to another school to prevent her "from poisoning the atmosphere in the class". Those were the good years of the Brezhnev period in Kaunas, the city of my childhood.

I recently met an elderly man in Washington, who shared with me his recollections about the mid 1970's, when he was involved with the smuggling of Beatles music through the ports of the Soviet Union. Some of the honourable guests present are well aware of the times, when we used to retype the works of George Orwell and perhaps American Kremlinologists, while listening if there was anyone at our door from the plainclothes unit to make a search of our flat.

We cannot afford to leave the previous epoch without assessment, since unidentified, it tries to repeat itself in new and, occasionally, monstrous forms. On the old European continent, Lithuania has a 700 km long border with the State of Belarus, ruled by Lukashenko, the last European dictator, who tries to maintain the features of the former Soviet regime. That border, by the way, is longer than the one between France and Spain. And it is only 30 kilometres away from Vilnius. Behind it, new monuments to the old Chekka Chairman Felix Dzerzhinsky are being erected and political opponents disappear in broad daylight. After a brief period of freedom, the society in Minsk is filled again with fear. All mass media is controlled by state. Gifted young people studying at law universities are lured with work for repressive KGB (the name is also intact) structures. This takes place in 2008. This is Europe too. So, while learning about this in Lithuania, we sometimes feel roughly the way people felt in Switzerland during the Second World War.

The Lisbon Treaty, which, I hope, we will soon ratify, commits us to live in the new Solidarity of Europe. Upon my coming here, I stopped at the Lithuanian-Polish border to cross it back and forth, which I did with interest, driving among abandoned checkpoints, which were the tremendous fortifications in the Soviet times only 18 years ago. Now I watched the farmers serenely pasturing their cattle on the field there.

The Republic of Lithuania initiated this first debate, since we believe the new European solidarity could make the old European States aware about what happened to us in the second half of the 20th century.

The civil society of the European Union cannot be civil, if it is unable to recognise the signs which led to the isolation of that part of the continent. Truly, I have to think how I shall explain to my daughter Ester, why she, a girl from Vilnius, is less important to the EU than say, some Ester from Paris, her same age. And my son Dovydas, a graduate from Vilnius University, will he not take up a window cleaner's job in London as a second-class labourer? After all, before the Molotov-Ribbentrop conspiracy, the potential of Estonian society, for example, was higher than that of Finnish, while the level of development of the Czech society outstripped that of Spanish and a number of its other Western neighbours.

For 50 years, Central Europe and the Baltic States have been forced to lead a daily struggle against the reality imposed on them by the might of the Soviet army, instead of creating or competing with the English, French and Germans who remained in the success zone on the other side of the Iron Curtain. We were forbidden even to know what had been going on in our independent states before the war. As a student, I could not search, in the sealed archives, with which parties my relatives were affiliated in inter-war Lithuania. We just whispered about that within the family. All books published before 1944 were taken out of library use when the Soviet army entered the Baltic States. We were isolated not only from the free world of the second half of the 20th century, but also from our free past. We used to say: "This neighbour graduated from the Technical University in Brussels before the war; that artist was staying in Montmartre before the war." They seemed to be the surviving ambassadors of the free world. WE ARE FREE now.

The Republic of Lithuania initiated this process and expresses gratitude to the European Commission for the support given to this matter in order to ultimately find out how it could have happened that half of Europe's nations had been surrendered to an unprecedented regime denying human dignity and individuality, enforced by Soviet Moscow through local collaborators.

In my capacity of Chairman of the Subcommittee on Cultural Heritage of the Council of Europe, I travelled to many capitals and I have learned about an upsurge in the cultural communities of writers,

artists and architects in Central Europe before the Nazi and Stalin regime got hold of the region. In the 1920s, the spread of stylistic influences in arts in Central Europe was nearly concurrent with the spread of these styles in the West, and the cultural exchange between the Central Europe and Baltic States on the one hand, and Berlin, London, and Amsterdam on the other was thriving. There was a regular exchange of intellectuals, scholars and specialists. A host of knowledge-thirsty people travelled to and fro between these countries. The exchange of European visionary parties was in place. In 1920 my grandmother, owner of the “Komerција” hotel in Kaunas, the provisional capital of Lithuania, used to go to Berlin, Paris, and the then European Königsberg once in three weeks. There were adventurers too: two renowned artists from Kaunas hired a carriage with two horses in harness and went on tour to Vienna and Paris. Equipped with Lithuanian passports and European souls they felt quite at home in the all-encompassing and thrilling European vision that was very similar among people in the great European capitals.

The first attempt to build Europe has failed of course. My recent investigation into the records of interrogations by the KGB in Vilnius led me to documents attesting to repressions truly extraordinary, including some facts which sound like a sheer stretch of imagination. Just a little example: residents of independent Lithuania, who subscribed to Paris and London publications in the pre-war period, were sentenced by the Soviets to long years of imprisonment, which means an act, which was punishable in USSR where censorship ruled, was made also punishable for the citizens of another state – pre-war Lithuania – and those people were tried as if they had been the subjects formerly of the Communist Soviet Union. Pre-war membership of the Lithuanian Christian People’s or Social Democratic Parties was found punishable after the war, in the period of the Soviet occupation. In other words, the state that occupied us did not recognise the free life we had formerly enjoyed. So, building upon the message left to us by the pre-war Europeans, whose free will the Nazi and Soviet camps had so violently attempted to extinguish, we state that Europe is free again. It is Europe where we will find out what was going on, how British and American diplomatic services during the Potsdam Conference could be noting down in their reports that the area of bloody dictatorship would extend from Bulgaria to Warsaw. Western governments must have been well informed what Moscow intended to do with the Central Europeans.

Part of the Western elite knew only too well that half of Europe, which had been an essential part of Western civilisation for centuries, would now be coerced to form a part of the Gulag Empire. Therefore, we now have to be more and more involved in the process of coming together and learning more about each other, a process where both the old and the new EU Member States should participate. Apart from creating more room in English and French minds to feel for the past hardships and specific conditions of their new neighbours, this will also aid us in the process of establishing a new EU security construction; armed with this new tool we will be able to immediately recognise manifestations of threat given by the totalitarian or authoritarian regimes, regardless of whether they come from China or Belarus. There should be joint efforts of Europeans to recognise these dangers to Europe. We need to make sure the new European generations have the tools making them aware of apparitions of the old Communist dictatorships.

Proposals by the Lithuanian delegation to the conclusions of the European hearing on Crimes committed by totalitarian regimes

The Berlin Declaration, the compromise agreement on the Framework Decision on Racism and Xenophobia and the Statement by the Council of 19 April 2007, which deplores crimes committed by totalitarian regimes, as well as the reflection of the overall agreement on racism and xenophobia in the June 2007 European Council Conclusions underline a political commitment by the EU to appraise the crimes committed by all the totalitarian regimes at the European level.

Therefore, the first European hearing on crimes committed by totalitarian regimes, totalitarian regimes, the Nazi and the Soviet, which brought violations of human rights and freedoms, genocide, war crimes and crimes against humanity, recognizing the need to increase awareness about the second, often forgotten part of Europe’s history, and to ensure its evaluation and recognition on equal footing with the history of Western Europe, recognizing the need to develop a common approach towards crimes committed by totalitarian regimes, whereby an anti-totalitarian stance would become a part of common European identity and common system of values, invites the Member States and the respective EU institutions:

1. To ensure continuity of the process of evaluation of the totalitarian crimes, thus bringing deeper understanding of the meaning, extent and consequences of the crimes committed by the totalitarian regimes, as well as preventing recurrences of totalitarian rule;
2. To establish a special international commission to investigate and evaluate the crimes committed by the Communist and other totalitarian regimes in Europe;
3. To establish a European Foundation to promote public awareness at the EU level, to develop cultural and educational projects, and to provide support for European and national research and educational projects;
4. To declare 23 August (the day the Molotov-Ribbentrop pact was signed) the European day of commemoration of the victims of totalitarian regimes and start its commemoration at the European level; to consider construction of a memorial for the victims of totalitarian regimes in order to rehabilitate, and appropriately memorialise, victims of these crimes;
5. To consider establishing a European Museum on Totalitarian Regimes;
6. To ensure the principle of equal treatment and non-discrimination of victims of all the totalitarian regimes.

How do we see the future of evaluation of the totalitarian regimes in Europe, with regard to the mentioned proposals?

First, every country has to issue an official report adopted by its Government or Parliament.

In the run-up to the 40th anniversary of the Prague Spring and the 20th anniversary of the *Sajūdis* Independence Movement, as well as the 70th anniversary of the inopportune Ribbentrop-Molotov Pact, it is particularly important for us to take a closer look at the past, which forms part of our lives, partly spent under totalitarian regimes. It is crucial to evaluate the past and turn the memories of the living victims into meaningful moral guidelines for young EU citizens.

Kathinka Dittrich van Weringh*

PROMOTING PUBLIC AWARENESS OF TOTALITARIAN CRIMES

“On your knees!” shouted a Civil Guard as he struck me. This was during a raid at the University of Barcelona in Franco’s Spain. “Up, forward!” I felt deeply humiliated, physically and mentally.

A few years later, during the Soviet era, when I was working as the founding director of the Goethe-Institute in Moscow, a Jewish friend and journalist begged me: “Do not say anything on the phone, let’s talk on the street where we are not overheard and taped.” Fear had become an inherent part of her thinking.

“Oh, you are German, but you are quite nice.” That was said by a casual café-acquaintance during my years in New York, a city with many immigrants from Hitler’s Germany. I remained silent and felt discriminated against.

And when I ran the Goethe-Institute Amsterdam in the Netherlands – a country, of course, occupied by Germany in World War II – I was paid the probably well-meaning ‘compliment’: “Kathinka, you are not really German, you are like us.”

“Is Europe so important for you that you would die for it?” a Serbian publisher recently wanted to know, enquiring about my attitude as Chair of the Board of the independent European Cultural Foundation. “No!” I answered. A vision should never turn into fanaticism.

These few personal examples may indicate how complex is the seemingly simple question before us – How are we to promote public awareness of totalitarian crimes? – and also the likelihood that possible answers will be influenced by personal experience. And when critical investigations into past and present totalitarian crimes are being conducted, I find it essential to ask “Why?” and “For whom?” before approaching the big issue of how they should be dealt with.

1. Why, then?

To commit proven criminals against humanity to their just punishment, on the basis of human rights agreed Europe-wide, with all the legal consequences? A Hitler, Stalin, Salazar, Franco, Milošević, had they survived; a Mladić, Pinochet, Saddam Hussein, and many other less publicly known figures? Yes, this is a matter for the courts of justice.

However, ‘eminent’ criminals are as rare as eminent heroes of resistance. Life simply is not black and white. The majority of people move in a grey, often ambivalent zone, preoccupied by personal interests, their daily joys and sorrows, but also by a readiness to help. Hannah Arendt opened our eyes to the ‘banality of evil’.

We should also take a closer look at the various motives of private individuals and public figures that lived under totalitarian regimes in Europe and now want to have their former surveillance files opened – or kept firmly shut. That ‘the truth must come to light’ is a convincing argument, but the truth has many faces. Another very good argument is that victims should be acknowledged and compensated. Well, yes, if the victim and the perpetrator can be clearly distinguished. But ulterior motives sometimes lurk behind politically correct and even often honestly meant arguments. Wherever people are trying to come to terms with their totalitarian past – in Nazi Germany and Nazi-occupied countries (up to 1945), in Portugal, Greece and Spain (up to 1974–75), in the Soviet Union and Soviet-occupied/‘supervised’ countries (up to 1989), and elsewhere – envy and malice will also play a role, as will defensive nationalistic attitudes and personal careerism. The latter will have a better chance where the public prosecutor and the Ministry of Justice are one and the same. But not only there. During my time at university in Hamburg in the 1960’s, I once asked a fellow student “Why do you study law?” The answer: “To dig up Nazi criminals and so earn a lot of money quickly.” I shall never forget it. To beat political criminals using their own means? Does the aim sanctify the means?

* Kathinka Dittrich van Weringh, Chair of the Board of the European Cultural Foundation.

2. Why else?

To learn from history, in the sense of the oft-proclaimed slogan: “Never again!?” I have serious doubts about that. Experiences are not transferable. History does not repeat itself in the same shape. For many young people, names like Alexander the Great, Napoleon, Hitler, Stalin are school-taught abstractions, and the many totalitarian regimes around the world today are very, very distant. Still, history and, above all, the histories of European nations, can help us all to grasp just what atrocities people are capable of, and also grasp that, under totalitarian regimes (whether national or colonial, ideologically driven or power driven, total or partial) all moral and cultural norms can simply be swept away.

3. Again, why then?

Because we all, irrespective of our age, background or education, have some experience of how humiliation, fear, discrimination and fanaticism affect us and how we must try to deal with that. This is true even though today in Europe our lives are exposed to much less threat and danger. Becoming aware of our own knowledge and experience of such powerful negative emotions could build a bridge to the much more ferocious past and give hope for the future. This is a cultural approach – the basis of my further deliberations.

4. For whom?

For all of us, then, in an intergenerational dialogue.

5. The ‘how?’

How do we confront the emotional legacy of totalitarianism? That depends on the individual’s point of view. For me, personally, this view is open to the possibility of reconciliation. My parents reconciled themselves to the fact that I could not be born on our family estate in Pomerania, and that my godmother who lived there took poison because the Russians were said to be *ante portas* at the end of World War II. When I was a small child the wonderful tales of my Russian-speaking grandfather evoked my love for this wide, emotional and contradictory country: Russia.

In my experience, the most convincing ways of dealing with these very different totalitarian pasts are not of an official or political or Sunday-sermon nature and should not be directed to reason alone. Humiliation, fear, discrimination, fanaticism cannot be explained only rationally, neither yesterday nor today.

There are many supportive ways of nourishing this process of investigation and reconciliation. The societies or nations involved must take the first steps. This is a mid- to long-term exercise, as we have learned from the aftermath of totalitarianism in Western Europe; and the same will be true for Central and East European EU Members, which have had less time to come to terms with their totalitarian regimes. In this painful process, the European Commission has a very important supportive and complementary role.

6. What measures are possible?

To erase the past by demolishing all totalitarian monuments and symbols is not the way forward. Hate on the one side and destructive despair on the other are not good guides for the future. Like it or

not, we have to live with our past. And do we not want to explain to our children who it is sitting on that iron horse, or who is hiding behind that wall inscription? Memories have to be tangible to be understood and to build a bridge to the present.

Monuments that memorialise new totalitarian crimes can be convincing if they convey the emotional message. The Jewish Museum in Berlin does this, while the Imperial War Museum in London leaves many questions open. I am ambivalent about new memorial days. Not only because of the predictable speeches: I also wonder about the attitude of young people. Two years ago, a Czech writer told me: “The minds of my parents were captured and paralysed by the Nazi occupation. Mine was imprisoned by the Soviet regime. It was difficult to communicate. My children do not care about either.”

Research, especially cross-border research, is important. Hard facts need to be presented at a time when populist movements east and west, north and south of Europe attempt to condone, deny or grossly trivialise war crimes, crimes of genocide, and crimes against humanity. But will the hearts of the next generation be moved by thousands of dissertations? The findings have hardly entered the very few cross-border history schoolbooks that do exist. I allow myself this critical remark because I, too, wrote a dissertation on an aspect of this topic.

Cultural and artistic means, using present-day technological possibilities, might get us further.

For instance, the winner of the *Palme d’Or* and the FIPRESCI Award at last year’s Cannes Film Festival, the Romanian film *4 months, 3 weeks and 2 days*, deals with abortion on the surface but in reality reveals the mechanisms, shortcomings and atrocities of everyday life during the dictatorship of Ceausescu. Likewise, the Oscar-winning German film *The Life of the Others* meticulously scrutinises the work of the secret police in the former German Democratic Republic.

7. What role for the EU?

Comparable but not necessarily award-winning films deserve more financial support for Europe-wide distribution by the Commission. Distribution is the weakest part of the EU’s Media Policy.

Novels, too, can lead to greater understanding more effectively than cold facts and figures. I dare to say this even though I am an historian. Just recall *La sombra del viento* (*The Shadow of the Wind*), in which Carlos Ruiz Zafón brings the times of Franco in Barcelona to life; or *Het verdriet van België* (*The Sorrows of Belgium*) by the great Flemish writer Hugo Claus, who died recently; or *Die Blechtrommel* (*The Tin Drum*) by Günter Grass; or the haunting novel about humiliation, fear and power struggles during the dictatorial times in Albania, *The Successor*, by Ismael Kadare, not exactly a dissident but a great writer; or *De Brug* (*The Bridge*) in which Dutch author Geert Mak subtly but emphatically evokes the multicultural togetherness of people around the Galata Bridge in Istanbul, thereby convincingly questioning the oft-heard cliché that Islamic means fanatic and that means totalitarian.

Comic books – in print and on the internet – are popular and deserve mention. Think of *Persepolis – une enfance en Iran* (*A childhood in Iran*) by Marjane Satrapi; *Die Suche* (*The search*), a comic series on the Holocaust, commissioned by the Berlin Anne Frank Centre and realised by the Dutch cartoonist Eric Heuvels, and which is now a set text in history lessons in some schools in Berlin and in North Rhine-Westphalia.

Translations of relevant titles – especially translations from and into smaller language-areas in the broader Europe – deserve more support than hitherto. There is also a need for professional training schemes for translators in these countries, especially in Central and Eastern Europe. A collection of best practices of pedagogical projects dealing with the very different totalitarian pasts in the broader Europe should also be envisaged: again, a task that no nation can or will do by itself.

Many more artistic examples could be listed, from photo/video/computer art to city planning, monument protection, the performing arts, the fine arts and other fields. Take just one example: in Barcelona’s *Circulo de Arte*, Goya’s deeply moving drawings *Pinturas negras* (*The Horrors of War* – the Napoleonic wars of 1812–1816) are now exhibited in dialogue with the drawings *Wir sind nicht die Letzten* (*We are Not the Last Ones*) made by the Italian-Slovenian artist Zoran Mušič in Dachau concentration camp.

8. Specific measures for the EU

The EU could help spread the word about such examples, and support cross-border exhibitions and screenings where these are wanted. In line with its goal of peaceful togetherness in the broader Europe, it could link the past with the present in a reconciling way, help people to understand the historical scars of the other, make them cross mental and physical borders, by:

- Providing more and better mobility schemes;
- Easing visa conditions for Europe's neighbours;
- Giving even more incentives for cross-border (especially West-East) cooperation, and for such joint working processes as the forthcoming youth-video 'Stranger Festival' (www.strangerfestival.com);
- Extending more and sustained support for information tools that facilitate cross-border cooperation: a unique example deserving greater EU support is LabforCulture (www.labforculture.org), initiated by the European Cultural Foundation (www.eurocult.org) and realised through a public-private partnership; LabforCulture has recently set up an artists-curated interactive platform called 'Victims Symptom' (www.victims.labforculture.org) which deals graphically and reflectively with various forms of oppression, humiliation, fear, discrimination and fanaticism;
- Increasing its cultural budget in close cooperation with other Commission departments.

It remains to be seen how forward-looking will be the secretariat of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (created in March 2008, and composed of public and private representatives of 25 EU Members thus far) and to what extent it will be able to enter into a constructive dialogue with central European countries that are less occupied with the Holocaust than with the crimes of the Soviet (especially Stalin) era.

The handling of past totalitarian crimes must not lead to a new divide between East and West in Europe: that would be tragic. In a meeting in Warsaw in April 2008, I was met with accusations from many Central European voices along the lines of: "You have worked on 'your holocaust' for many years and have now developed a certain emotional distance, you are only preoccupied with yourselves, but our Soviet-caused wounds are still bleeding, and you (Western Europeans) are not willing to accept this fact." Let us take such comments seriously.

Humiliation, fear, discrimination, fanaticism will not disappear from this earth. But we can all help a little to ensure that fewer people will say: "Oh, you are German, Russian, Serbian, Chinese, Japanese, American, Bolivian ... but you are quite nice." In order to approach this goal (without ever reaching it fully) let's follow the principle of the musical *My Fair Lady*: "Don't say it, do it."

V. RECONCILIATION: ON HANDLING THE TRAUMATIC PAST

Ana Filipa Vrdoljak*

REMEMBERING AND RECONCILIATION: AN INTERNATIONAL LAW PERSPECTIVE

In matters of justice and rule of law, an ounce of prevention is worth significantly more than a pound of cure.¹

1. Introduction

Most states are going through or have gone through periods of “transition” which have involved a collective confrontation with past painful events. However, since the 1990s, there has been a proliferation of legal and non-legal mechanisms created to promote reconciliation and accountability in post-authoritarian or post-conflict societies.² These mechanisms have been heavily influenced by (and have influenced) international law norms in the field of human rights, humanitarian law and international criminal law. Failure to address promptly and effectively the lingering impact of gross violations of human rights law or serious violations of international humanitarian law impact on victims directly but diminish the enjoyment of these norms and the integrity of the rule of law for the society generally.

Three discernible trends can be extracted from these developments. First, there has been an increased and concerted effort to fight impunity including the rejection of wholesale amnesties. Second, this has been translated into various obligations on states concerning serious violations of human rights including the right to know, the right to justice and the right to a remedy and non-recurrence. Third, this in turn, has led to the reinforcement of the rights of victims of these violations to a remedy and reparations. These three components are interrelated and mutually reinforcing in any efforts towards reconciliation and the restoration of the rule of law.

This is a brief introduction to a growing body of international standards and broad discourse being produced at the international level, as a response to the lessons learned since the 1990s. The chapter is divided into two parts. In the first part, I consider the significant and definite shift in international society towards fighting impunity in respect of serious crimes under international law since the end of the Cold War. To this end, I examine the obligation on states to hold perpetrators of such violations to account, the definition of serious crimes and the reconfiguration of the role of amnesties and vetting in post-authoritarian and post-conflict societies. In the second part, I outline the practical consequences of satisfying this obligation upon states which includes the right to truth attained through commissions of inquiry and the preservation of archives; the right to justice; and the right to reparations and non-recurrence for victims and the broader community alike.

2. Combating impunity

The efforts towards accountability for serious crimes under international law are fundamental for the restoration of the rule of law and functioning of an effective legal order – not a hindrance to

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¹ The Rule of Law and Justice in Conflict and Post-Conflict Societies, Report of the Secretary-General (‘2004 Rule of Law Report’), UN Doc.S/2004/616, para. 4.

² See for example, 2004 Rule of Law Report, UN Doc.S/2004/616; Updated Set of Principles for the Protection and Promotion of Human Rights through Act to Combat Impunity (‘2005 Updated Set of Principles to Combat Impunity’), 8 February 2005, UN Doc.E/CN.4/2005/102/Add.1; and Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res.60/147 of 16 December 2005, UN Doc.A/Res/60/147 (‘2005 Basic Principles and Guidelines on Reparations’).

it. This premise was recognised at the close of the Second World War in Europe with the Nuremberg trials and has been revisited again by the international community after the end of the Cold War.³ The UN Secretary-General has noted: “Justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another. The question, then, can never be whether to pursue justice and accountability, but rather when and how.”⁴ The effective realisation of these processes is aimed at holding perpetrators of serious violations to account, providing justice to victims, fostering reconciliation through the countering extremism and reducing the possibility of recurrence, and restoring confidence in public institutions.⁵

Through the increasing articulation, influence and enforcement of human rights, international humanitarian law and international criminal law norms, there has been a significant evolution in the obligation of states to investigate, prosecute and punish the perpetrators of serious crimes in international law. For our present purposes, three elements of obligation to combat impunity in international law are considered:

- Accountability of perpetrators in judicial and non-judicial fora;
- The place of so-called totalitarian crimes within the matrix of enumerated serious crimes under international law;
- The role of amnesties and vetting.

2.1. Justice and accountability

International law requires states to investigate through criminal, administrative or disciplinary proceedings ‘serious crimes under international law’ and to charge, try, and if found guilty, sentence perpetrators to appropriate penalties and to make reparations to the victims.⁶

This obligation is contained in the UN Charter, and international human rights and international humanitarian law instruments. Article 55 of the UN Charter provides that: “/T/he United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁷ All Member States must take joint and separate actions to collaborate with the United Nations to achieve this purpose (Article 56). In pursuance of this goal, the Vienna Declaration and Programme of Action arising from the 1993 World Conference on Human Rights expressed its concern for the impunity of perpetrators of human rights violations and requested that the Commission on Human Rights investigate the issue which gradually led to standard-setting measures.⁸ Various international humanitarian law and international criminal law instruments, to which the EU Member States are party, require state parties to investigate and prosecute

³ See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945, 82 UNTS 279; 59 Stat. 1544; 3 Bevens 1238, 39 AJIL(supp) 257 (1945); Charter of the International Military Tribunal, 82 UNTS 279; 59 Stat. 1544; 3 Bevens 1238; 39 AJIL(supp) 258 (1945); and Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, 3 *Official Gazette Control Council for Germany* 50-55 (1946); and Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, 29 July 1950, 5 UN GAOR Supp. (No. 12) at 11, U.N. Doc. A/1316 (1950); 1950 ILC Yb 374, vol. II; 44 AJIL 126 (1950).

⁴ 2004 Rule of Law Report, UN Doc.S/2004/616, para. 21.

⁵ 2004 Rule of Law Report, UN Doc.S/2004/616, para. 38.

⁶ 2005 Updated Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Definitions A and B. See also Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, GA res. 3074 (XXVIII), 28 UN GAOR Supp. (30A) at 78, UN Doc. A/9030/Add.1 (1973).

⁷ Charter of the United Nations (‘UN Charter’), 26 June 1945, entered into force 24 October 1945, 59 Stat. 1031; TS 993; 3 Bevens 1153.

⁸ Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, 12 July 1993, UN Doc.A/CONF.157/23, Part II, para. 91.

serious violations.⁹ Likewise, numerous multilateral human rights instruments require the prosecution and punishment of perpetrators of serious violations through the provision of effective remedy for victims and freedoms against torture and slavery.¹⁰ The European Union and some Member States have taken action to augment their compliance with these obligations both at the national level and through mutual assistance.¹¹ The Council had stated in 2003 that these crimes “must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation.”¹²

The modalities and requirements for the right to justice are detailed below.

2.2. Serious crimes under international law

The obligation to investigate and prosecute covers acts which are described as “serious crimes against international law”. Including grave breaches of the Geneva Conventions and Additional Protocol I, genocide, crimes against humanity and other internationally recognised human rights which when violated states are required to penalise, like torture, slavery, extrajudicial executions and enforced disappearances.¹³

The crimes of totalitarian regimes fall within the ambit of existing international law instruments. Indeed, the crimes of genocide and crimes against humanity were criminalised by the international community in the mid-twentieth century as a direct response to the atrocities perpetrated by totalitarian regimes in Europe against their own nationals and the nationals of occupied territories.¹⁴ The instrument governing the trial of the major Nazi war criminals in Nuremberg defined “crimes against humanity” as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in furtherance of or in connection with any crime within the domestic law of the country where perpetrated”.¹⁵ The subsequent indictment charged the defendants with “deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied

⁹ See Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, entered into force 12 January 1951, 78 UNTS 277, arts.4 and 5; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (‘Geneva Convention I’), 14 August 1949, entered into force 21 October 1950, 75 UNTS 31, art. 49; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (‘Geneva Convention II’), 12 August 1949, entered into force 21 October 1950, 75 UNTS 85, art. 50; Geneva Convention relative to the Treatment of Prisoners of War (‘Geneva Convention III’), 12 August 1949, entered into force 21 October 1950, 75 UNTS 135, art. 129; Geneva Convention relative to the Protection of Civilian Persons in Time of War (‘Geneva Convention IV’), 12 August 1949, entered into force 21 October 1950, 75 UNTS 287, art. 146; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (‘Protocol I to Geneva Conventions’), 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3, art. 86(1); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (‘Protocol II to the Geneva Conventions’), 8 June 1977, entered into force 7 December 1978, 1125 UNTS 609 and *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeal Chamber Judgment, 2 October 1995, paras.128–137; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘Torture Convention’), 10 December 1984, entered into force 26 June 1987, GA res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984); 1465 UNTS 85, arts. 4–5 and *Bosnia and Herzegovina v. Serbia and Montenegro* (‘Genocide case’) ICJ Reports 1997, para. 449; International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, entered into force 18 July 1976, 1015 UNTS 243; G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc.A/9030 (1974), art. 4; Rome Statute of the International Criminal Court (‘Rome Statute’), 17 July 1998, entered into force 1 July 2002, UN Doc.A/CONF.183/9; 2187 UNTS 90, preamble and art. 1; and International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, not in force, UN Doc.A/RES/61/177, art. 6.

¹⁰ See Universal Declaration of Human Rights (‘UDHR’), 10 December 1948, GA res. 217A (III), UN Doc A/810 at 71 (1948), art. 8; International Covenant on Civil and Political Rights (‘ICCPR’), 16 December 1966, entered into force 23 March 1976, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc.A/6316 (1966); 999 UNTS 171, arts. 2, 3, 6–9; and Convention for the Protection of Human Rights and Fundamental Freedoms (‘ECHR’), 4 November 1950, entered into force 3 September 1953, ETS 5; 213 UNTS 221, arts. 2, 3, 4, 5 and 13.

¹¹ See Council Decision 2003/335/JHA of 8 May 2003, Official Journal L 118, 14/052003 P.0012-0014; Decision 2002/494/JHA of 13 June 2002, Official Journal L 167, 26/06/2002 P.0001-0002; Human Rights Watch, *Universal Jurisdiction in Europe: The State of the Art*, 8/5(D) (June 2006).

¹² Council Decision 2003/335/JHA of 8 May 2003, Official Journal L 118, 14/052003 P.0012-0014.

¹³ 2005 Updated Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Definitions, B.

¹⁴ See M. C. Bassiouni, *Crimes Against Humanity in International Criminal Law*, Martinus Nijhoff, Dordrecht 1992, pp.176–191; W. A. Schabas, *Genocide in International Law: The Crimes of Crimes*, Cambridge University Press, Cambridge 2000, pp. 24–42.

¹⁵ Charter of the International Military Tribunal, art. 6(c). This was elaborated upon and included in the Rome Statute of the International Criminal Court, art. 7. Included in crimes against humanity, persecution is defined as “against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ..., or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court”.

territories in order to destroy particular races and classes of people ...”¹⁶ The UN General Assembly resolution on Genocide adopted just after the Nuremberg judgment in 1946 stated that “genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices – whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, *political* or any other grounds – are punishable”.¹⁷

Genocide was recognised as a crime in international law independently of crimes against humanity most clearly with the adoption of the Convention on the Prevention and Punishment of Genocide by the General Assembly on 9 December 1948. However, this instrument also defined genocide as the intent to destroy national, racial, ethnical or religious groups – the word “political” having been dropped.¹⁸ Raphael Lemkin, known as the architect of the Genocide Convention, had not been enthusiastic about the inclusion of political groups in the definition.¹⁹ Nonetheless, he viewed the plight of peoples in Baltic countries during the Soviet occupation during this period as coming within his conceptualisation of genocide.²⁰ Despite several intervening opportunities to alter the definition of genocide to include political or social groups in the intervening sixty years, the international community has consistently refused to do so.²¹ It is important to recall that most, if not all, such acts perpetrated against a political or social groups, would be covered by the definition of “persecution” falling within crimes against humanity.

2.3. Amnesties and vetting

The campaign to combat impunity is inextricably tied to the question of amnesties. Today, while it acknowledges the amnesties are a legal concept which can foster peace and reconciliation, the United Nations maintains that they cannot be granted for international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law.²² The gradual rejection of wholesale amnesties has evolved over the last three decades with their overturning by regional human rights courts and domestic courts seeking to enforce human rights norms.²³

While blanket amnesties were no longer acceptable, it was equally acknowledged that comprehensive prosecution was neither feasible nor advisable to achieve the political goals related to reconciliation.²⁴ International human rights law requires states to undertake a good faith effort to combat impunity in respect of gross violations.²⁵ A similar interpretation has been made in respect serious violations of international humanitarian law and the amnesty provision contained in 1977 Additional Protocol II of the 1949 Geneva Conventions covering internal conflicts.²⁶

In a related matter, vetting of the public service of post-conflict or post-authoritarian societies of persons responsible in past abuses especially from the ranks of the police, army and judiciary is also viewed as crucial to the process of reconciliation and reinforcement of the rule of law.²⁷ Vetting is the assessment of individual’s integrity, to decide upon their ability to hold public office and is based on personal conduct. Therefore, it must be distinguished from wholesale dismissal or disqualification based on political affiliation or association with a prior regime. Instead, legitimate vetting respects the

¹⁶ *France et al. v. Goering et al.* (1946) 22 IMT 203, pp. 45–46.

¹⁷ Resolution on the Crime of Genocide, G.A. res. 96(I) of 11 December 1946.

¹⁸ Schabas, *Genocide*.

¹⁹ UN Doc.E/447, p. 22.

²⁰ Raphael Lemkin Papers, New York Public Library, Rare Books and Manuscripts Section, Box 2, Folder 16 (Ukraine, Soviet Genocide).

²¹ See for example, Rome Statute of the International Criminal Court, art. 6. However, the domestic penal codes of various countries, including Slovenia (Penal Code (1994), Chapter 35, art. 373(2)), define genocide to include political groups: see Schabas, *Genocide*, p. 141.

²² Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Doc.S/2000/915, para. 22.

²³ See Revised Final Report on The Administration of Justice and the Human Rights of Detainees: Question of Impunity of Perpetrators of Human Rights Violations (Civil and Political) (Joint Report), UN Doc.E/CN.4/Sub.2/1997/20/Rev.1, paras. 1–6; and 2004 Rule of Law Report, UN Doc.S/2004/616, para. 10.

²⁴ Independent Study on Best Practices, including Recommendations, to Assist States in Strengthening their Domestic Capacity To Combat All Aspect of Impunity (‘Orentlicher Report’), UN Doc.E/CN.4/2004/88, paras. 28ff; and UN Doc.E/CN.4/2005/102, para. 50.

²⁵ D. Orentlicher, ‘Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency’, *International Journal of Transitional Justice*, 1/1 (2007), 10 at 14.

²⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 8 June 1977, entered into force 7 December 1978, 1125 UNTS 609; and *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber, 2 October 1995, Case No. IT-94-1, para. 134.

²⁷ 2005 Updated Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Principle 36(a); and E/CN.4/2005/102, para. 68.

concerns of victims and the alleged abuser's right to due process and non-discrimination, and operates publicly and in accordance with international human rights standards.²⁸

3. Obligations of states

Any action by states towards combating impunity, restoring the rule of law and promoting reconciliation can only be done by a multidimensional and integrated approach which addresses the past, the present and the future. To this end, the United Nations has identified three core rights which are fundamental to these aims: the right to know, the right to justice and the right to reparations and non-recurrence.²⁹ Whilst these principles were initially attached to individual victims, they clearly foster processes which address broader societal concerns. These various mechanisms – in differing combinations depending on the national needs of each state – are designed to facilitate collective efforts to address the legacy of past, large scale abuses, emphasise accountability, attain a measure of justice, and foster reconciliation.

3.1. The past: the right to know

The inalienable collective right of every people to know the truth concerning “past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations; to the perpetration of those crimes”, is fundamental to preventing revisionism or denial, and facilitating non-recurrence of human rights abuses.³⁰ The duty to remember runs in tandem with the right to know. There is a duty to preserve collective knowledge of the history of oppression which forms part of a people's heritage and the communal memory of this past from extinction.³¹ The right to truth also has an individual dimension. Victims and their families have an imprescriptible right to know the circumstances of the violation and the fate of the victim and location of their bodies in case of death or disappearance.³²

Two primary vehicles are enunciated and elaborated to achieve to realise this collective and individual right: commissions of inquiry (truth commissions); and preservation and access to archives. From Africa to Europe, South America to Asia over the last two decades, commissions of inquiry have been established to address past human rights abuses.³³ Experience has shown that various factors are necessary to maximise the effectiveness of this mechanism to realise the collective and individual right to truth. The commission's role should extend beyond fact-finding to encompass recommendations for legislative reform and other modes of combating impunity and fostering reconciliation.³⁴ However, it does not replace civil, administrative or criminal courts especially in establishing individual criminal responsibility. Nonetheless, it must necessarily protect the rights of persons implicated in the abuses; and guarantee the dignity and safety of victims and witnesses.³⁵

The commission's terms of reference and composition must be defined following broad public consultation, especially with victims and survivors.³⁶ The independence, impartiality and competence of the commission must be ensured by: guaranteeing the competence, expertise and independence of its members; granting necessary immunities and privileges for the members against civil or criminal proceedings; providing of adequate resources; and ensuring adequate representation of women and

²⁸ 2004 Rule of Law Report, UN Doc.S/2004/616, para. 52; and United Nations Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States. Vetting: an operational framework*, United Nations, New York–Geneva 2006.

²⁹ See 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1 developed in response to the 1993 Vienna Declaration and Programme of Action, UN Doc.A/CONF.157/23, Part II, para. 91.

³⁰ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Principle 2; and UN Doc.E/CN.4/2004/88, paras. 14–23 and E/CN.4/2005/102, paras. 17–25.

³¹ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Principle 3.

³² *Ibid.*, Principle 4. See Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), 4 November 1950, entered into force 3 September 1953, ETS 5; 213 UNTS 221, art. 3.

³³ 2004 Rule of Law Report, UN Doc.S/2004/616, para. 50. See generally United Nations Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States. Truth Commissions*, United Nations, New York–Geneva 2006.

³⁴ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Principle 12.

³⁵ *Ibid.*, Principles 9 and 10.

³⁶ *Ibid.*, Principle 6.

others particularly vulnerable to suffering human rights abuses.³⁷ At a minimum, the terms of reference must: allow it to investigate “all persons alleged to have been responsible for violations of human rights and/or humanitarian law, whether they ordered them or actually committed them /and facilitated them/, acting as perpetrators or accomplices, and whether they are public officials or members of quasi-governmental or private armed groups with any kind of link to the State, or of non-governmental armed movements”; priority should be given to serious crimes under international law especially those against vulnerable groups; enable it to call on the assistance of law enforcement authorities to obtain oral and documentary evidence; protect potential witnesses; preserve evidenced for possible future legal proceedings; and maintain and provide access to the commission’s archive with limitations in respect to disclosing confidential information.³⁸

Preservation and accessibility to relevant archives is essential to the right to know and duty to remember.³⁹ Records of past human rights violations are integral to maintaining the collective memory and must not be destroyed, removed, hidden or tampered with. The obligation extends to third states which are expected to cooperate and restore archives. In addition, access must be granted to victims and their families to enable them to realise their rights to remedies and reparations; to alleged perpetrators to mount a defence; to the commissions of inquiry to facilitate their work; to persons engaged in historical research subject to restrictions concerning privacy and security of victims and witnesses. Access cannot be denied on grounds of national security except where prescribed by law and denial is subject to independent review. Persons named in the archives are entitled to be notified, access the record and challenge the accuracy of the information through a right of reply, with that reply being included in the archive. Special attention must be paid to the archives of places of detention or places where serious human rights and humanitarian law violations took place, particularly where their existence had been previously denied.

3.2. The present: the right to justice

States should take “prompt, thorough, independent and impartial” investigations of breaches of human rights and international humanitarian law and perpetrators should be charged, tried and appropriately punished.⁴⁰ States have the primary obligation to investigate and prosecute serious crimes under international law; however, where they are unable or unwilling to do so, they must cooperate with international or internationalized tribunals.⁴¹ For states whose judiciary has been decimated due to armed conflict or authoritarian rule, experiences at the international level have led to a move away from international tribunals like the ad hoc International Criminal Tribunal for the former Yugoslavia to mixed tribunals or internationalized tribunals like the ones established in Sierra Leone or Lebanon.⁴² Also, there has been a proliferation of domestic initiatives like the establishment of specialised civilian courts, prosecutorial offices, police units and so forth to investigate serious human rights violations.⁴³ Military tribunals must not try violations of human rights law.⁴⁴ This must be undertaken by ordinary domestic courts, or in the case of serious crimes under international law by international or internationalized courts.⁴⁵

The right to justice overlaps with the victim’s right to equal and effective access to judicial remedy.⁴⁶ While the state has primary competence in prosecution of perpetrators, victims and their families

³⁷ Ibid., Principles 7 and 11.

³⁸ Ibid., Principles 8 and 13.

³⁹ Ibid., Principles 14 to 18. Archives are defined as “collections of documents pertaining to violations of human rights and humanitarian law from sources including (a) national governmental agencies, particularly those that played significant roles in relation to human rights violations; (b) local agencies, such as police stations, that were involved in human rights violations; (c) state agencies, including the office of the prosecutor and the judiciary, that are involved in the protection of human rights; and (d) materials collected by truth commissions and other investigative bodies”. Ibid., p. 6.

⁴⁰ Ibid., Principle 19. See generally United Nations Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States. Prosecution initiatives*, United Nations, New York–Geneva 2006.

⁴¹ Ibid., Principle 20. States should also adopt effective domestic laws to enable them to exercise universal jurisdiction in respect of such crimes in accordance with treaty and customary law. They must exercise this obligation in respect of persons against whom there is credible evidence and if they do not to extradite them to face trial before an international tribunal: Principle 21.

⁴² See generally United Nations Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States. Maximising the Legacy of Hybrid Courts*, United Nations, New York–Geneva 2008.

⁴³ E/CN.4/2004/88, para. 41.

⁴⁴ E/CN.4/Sub.2/2002/4.

⁴⁵ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Principle 29.

⁴⁶ 2005 Basic Principles and Guidelines on Reparations, UN Doc.A/Res/60/147, paras. 12–14.

should be able to commence private prosecutions, individually or collectively.⁴⁷ To render access to justice effective for victims, states are required to disseminate information through public and private avenues about the remedies available for gross violations of human rights law or serious violations of humanitarian law; provide proper assistance to victims seeking access to remedies; render available all appropriate legal and diplomatic modes to facilitate exercise of this right; minimise the impact of proceedings on victims (especially victims of sexual assault) through the provisions of counselling, advising about the court proceedings, their role and the outcome of the proceedings, modifying rules of procedure and evidence, minimize inconvenience to victims and their families, shield their privacy and protect them from intimidation and retaliation; and permitting non-governmental organisations to institute and participate in criminal proceedings on behalf of victims.⁴⁸

States must not adhere to rules which foster impunity. In particular, there are limitations on the grant of prescription, statute of limitations, amnesties and right to asylum in respect of serious crimes under international law; and where they impinge on victims' right to reparations.⁴⁹ Full disclosure or the defence of justification, superior orders and official status cannot be used to avoid prosecution and only go to sentencing.⁵⁰

Judicial independence must be guaranteed in accordance with the dictates of the rule of law. However, where a judge has been appointed unlawfully because of allegiances they can be relieved of their duties subject to the opportunity to challenge their dismissal and when removed replaced subject to the principle of parallelism.⁵¹

The right to justice is intimately tied to the right of victims (and their families and dependants) to reparations and non-recurrence.

3.3. The future: the right to reparations and non-recurrence

States have a duty to provide victims of violations of international human rights law and international humanitarian law with reparations (substantive component) and the ability to pursue redress against the perpetrator (procedural component).⁵² A victim has been defined as persons who have "individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions" that are gross violations of human rights law or serious violations of international humanitarian law. The definition encompasses the immediate family and dependants of the direct victim who have also suffered harm.⁵³ The right to remedies for victims incorporates: equal and effective access to justice; adequate, effective and prompt reparations for harm sustained; and access to relevant information concerning violations and reparation mechanisms.⁵⁴

Victims should have access to "readily available, prompt and effective" remedies through criminal, civil, administrative or disciplinary proceedings, including those available at the international and regional levels.⁵⁵ These mechanisms should be accessible on an individual and collective basis. Victims and civil society (particularly women and minorities) should be involved in the development and implementation of reparation programmes. These programmes can be legislative or administrative mechanisms funded by international and national sources.⁵⁶

⁴⁷ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add. 1, Principle 19.

⁴⁸ E/CN.4/2004/88, paras. 43–44; and 2005 Basic Principles and Guidelines on Reparations, UN Doc.A/Res/60/147, paras. 12–13; and 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Principle 33.

⁴⁹ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add. 1, Principles 22–24. See also Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968, entered into force 11 November 1970, G.A. res. 2391 (XXIII), annex, 23 U.N. GAOR Supp. (No. 18) at 40, UN Doc.A/7218 (1968); 754 UNTS 73.

⁵⁰ *Ibid.*, Principles 27–28.

⁵¹ *Ibid.*, Principle 30.

⁵² *Ibid.*, Principle 31. See UDHR, art. 8; ICCPR, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination ('CERD'), 21 December 1965, entered into force 4 January 1969, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 UNTS 195, art. 6; Torture Convention, art. 14; Additional Protocol I to the 1949 Geneva Convention, art. 91; and Rome Statute of the International Criminal Court, arts. 68 and 75. See generally United Nations Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States. Reparations Programmes*, United Nations, New York-Geneva 2008; D. Shelton, *Remedies in International Human Rights Law*, Second edition, Oxford University Press, Oxford 2005.

⁵³ 2005 Basic Principles and Guidelines on Reparations, UN Doc.A/Res/60/147, para. 8.

⁵⁴ *Ibid.*, para. 11.

⁵⁵ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add. 1, Principle 32 (subject to the restrictions on prescription outlined in Principle 23).

⁵⁶ *Ibid.*

States must provide victims with “adequate, effective and prompt” reparation proportional to the gravity of the violation and harm sustained by them.⁵⁷ Reparations cover restitution, compensation, rehabilitation, satisfaction, and guarantees for non-repetition. Restitution is the primary mode of reparation and is designed to restore the victim to the position they were in prior to the violation. It includes restoring liberty, identity, family life and citizenship, enjoyment of other human rights, restoration of property and employment. Where restitution is not possible or adequate, victims are entitled to compensation where such loss is economically assessable. This head of reparations includes physical or mental harm; lost opportunities such as employment and education; material loss like loss of earnings; moral damage; and costs for legal, medical, psychological and social services.⁵⁸ Similarly, rehabilitation aims to restore the dignity and reputation of victims and includes provision of medical and psychological care, and social services.⁵⁹

The remaining two remedies – satisfaction and guarantees of non-repetition – encompass redress not only for the individual victims but are structured to facilitate societal efforts to remember, resist revisionism and prevent future gross violations of human rights norms or serious violations of humanitarian law.

For the victims, satisfaction includes the cessation of ongoing violations; public disclosure and verification of the facts of the violations in a way that does not threaten the safety and interests of victims or witnesses; the disclosure of the circumstances of those that have disappeared or were abducted and their location and return; and official declaration restoring the reputation, dignity and rights of the victims.⁶⁰ When there victims have been killed, their remains must be recovered, identified and returned to the families of the victims. For the society at large and the process of reconciliation, satisfaction should include judicial sanctions against the perpetrators; inclusion of an accurate account of past violations in the public domain, especially in educational materials; and commemorations to victims and memorial days.⁶¹

The guarantee of non-repetition has the ability to have the most far-reaching impact in efforts towards the reestablishment of the rule of law and reconciliation within post-authoritarian and post-conflict societies. This remedy can include review and reforming of laws which contributed to the violations; removal or barring from public office of perpetrators of violations; ensuring that civilian proceedings comply with international human rights law including standards of due process, fairness and impartiality; strengthening the judiciary; effective civilian control of the military, security and police forces and educating them in human rights and humanitarian standards; ensuring that all public servants adhere to codes of ethics; protecting legal, medical and health-care professionals, journalists, and human rights defenders; promoting and implementing mechanisms for preventing, monitoring and resolving social conflicts; and institutional reforms and measures necessary to “ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions”.⁶²

4. Concluding remarks

The European experience of restoring rule of law and reconciling peoples within societies following authoritarian regimes and armed conflict has a lengthy history and continues to the present day. However, the lessons learned in Europe and other regions throughout the world highlight that the task is a holistic and integrated one incorporating the accountability of perpetrators through prosecutions and vetting; access to justice and reparations for victims; and truth-finding and institutional reform for the whole society. However, the UN Secretary-General has noted that whilst the experiences of other states and

⁵⁷ 2005 Basic Principles and Guidelines on Reparations, UN Doc.A/Res/60/147, para. 15.

⁵⁸ *Ibid.*, para. 20.

⁵⁹ Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final Report, 2 July 1993, UN Doc.E/CN.4./Sub.2/1993/8, p. 57.

⁶⁰ 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add. 1, Principle 34.

⁶¹ 2005 Basic Principles and Guidelines on Reparations, UN Doc.A/Res/60/147, para. 22. See generally K. R. Esnor, M. Trüno I Salvadó, *International Experience of Days of Remembrance and Reflection. Healing Through Remembering*, Belfast 2006, available at <<http://www.healingthroughremembering.org>> (accessed 4 April 2008).

⁶² 2005 Set of Principles to Combat Impunity, UN Doc.E/CN.4/2005/102/Add.1, Principles 35 to 38; 2005 Basic Principles and Guidelines on Reparations, UN Doc.A/Res/60/147, para. 23.

communities are an important guide, they should only be used as a springboard for local deliberations and solutions.⁶³

Realistically, given the distribution of competences within the European Union and the experiences of other societies and international organisations going through similar processes, the role of European Commission in these processes is twofold. The primary responsibility for initiating and sustaining any process of reconciliation must lie with the Member States, with the Commission acting as a facilitator.⁶⁴ When undertaking this role, the Commission should continue the work commenced during the accession process, in its promotion and monitoring of adherence to human rights standards and the rule of law.

Taken together, the standards developed at the international level over the last decade of intensive local experiences of rebuilding societies after conflict and authoritarian regimes, seek to reveal the truth about past human rights violations, halt and reverse their lingering legacies and hopefully, diminish the likelihood of their recurrence in the future.

⁶³ 2004 Rule of Law Report, UN Doc.S/2004/616, Summary.

⁶⁴ *Ibid.*

Mikhail Narinski*

CRIMES OF TOTALITARIAN REGIMES: IN THE SEARCH FOR RECONCILIATION WITH THE PAST

I would like to point out that I can only welcome and support the intention of the European Commission to again condemn the crimes like genocide, crimes against humanity and war crimes. There is no excuse for those crimes, and it is desirable that necessary assurances are provided so that similar actions would be prevented now and in the future. The Russian nations fully experienced the cruelty of totalitarian regimes: Stalinism, which carried out mass repression on citizens of its own country; German Nazism and Italian Fascism, which carried out policies of aggression and total expansion, genocide and enslavement of the inhabitants in occupied territories.

First, I would like to point out some methodological remarks.

The very term “totalitarianism” was coined during the Cold War period and causes disputes among sociologists, politologists and historians. Therefore, the formulation “crime of the totalitarian regime” also raises certain doubts. From the scientific point of view, it is not entirely correct and narrows the subject of our discussion too much. It does not include the crimes under the “Vichy” regime in France, “the Salo Republic” in Italy, Pavelić’s Ustasha regime in Croatia, the Szalasi regime in Hungary and several others. That is why we can more precisely talk about crimes of the “totalitarian and authoritarian” regimes, or, as some participants in the discussion proposed, “non-democratic regimes”.

My second remark is associated with the fact that some participants in the discussion, it seems to me, do not always talk about “communism” and “communist crimes” without blame. Communism is a complex historical phenomenon, which includes also learning, ideology, communist parties with their followers, and political regimes, which committed serious crimes under communist slogans. Does this give us the basis to condemn German communists who died in Nazi torture chambers? Does it give us the basis to condemn communists – participants of the resistance during the Second World War? It seems not.

What will it take to overcome the totalitarian past and reach “reconciliation with the past”?

It seems to me that the first necessary condition for this is a firm conviction of the crimes of totalitarian and authoritarian regimes. In relation to this, I would like to point out that democratic Russia condemned the crimes of Stalinism from the viewpoint of politics, ideology and law. An example of a firm conviction of the crimes of Stalinism became the statement by the State Duma of the Russian Federation on 2 April 2008 to “the memory of the victims of the 1930’s in the territory of USSR”.

Rejecting those crimes associated with hunger of people according to the ethnic principle, the State Duma stated: “By remembering the hunger victims of the 1930’s in the territory of USSR, the deputies of the State Duma firmly condemn the regime that neglected human lives to achieve economic and political objectives, and state that any and all attempts to repeat the totalitarian regimes, which neglected the rights and lives of their citizens, in the countries, which became part of the Soviet State, were unacceptable. The Russian nations independently brought down and cast off totalitarian and authoritarian social systems and took the path of building a democratic country governed by the rule of law. It is no coincidence that the following is emphasised in the Constitution of the Russian Federation: ‘A human being, his or her rights and obligations are the highest value. Recognition, observation and protection of rights and freedoms of a human being and a citizen – is an obligation of the state.’”¹

We have to take into account that totalitarianism is not just a particular state and political regime but also a society with its apparatus and collective psychology. To achieve “reconciliation with the past”, it is absolutely necessary to change not just the political system but also the psychology of masses, to affect the entire society. It is necessary to clearly present before society the issue of modernisation cost, which is implemented with totalitarian regimes. We have to show the inappropriateness of statements like “but roads were built under Hitler, or but there was order under Stalin”.

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¹ The Constitution of the Russian Federation. Article 2, Moscow 1993, p. 4.

We cannot identify Stalinism with the Soviet nation together with this. By rejecting the methods of Stalinism and condemning its crimes, it wouldn't be credible to deny the firm contribution of the Soviet nation in the liberation from Fascism in the Second World War. Precisely the countries of the aggressive Fascist bloc were the aggressors in the Second World War, which brought so much suffering and misery to the peoples of many different countries.

When strongly condemning the crimes of totalitarian and authoritarian regimes, it is necessary not to shake the existing norms of the international law but make sure that they are strictly observed and strengthened. There is no excuse for the participants in the Nazi organisations, which were recognised as criminal by the Nuremberg Court, for example, the SS.

The most important element of the "reconciliation with the past" is to establish the human dignity of the victims of past crimes, their rehabilitation, and creation of mechanisms for reparation possibilities.

A lot of work has been done in this direction in Russia. The first measures were adopted already in the Soviet Union, soon after the death of Stalin. On 4 May 1954, the presidium of the Central Committee, Communist Party of the Soviet Union (CC CPSU) adopted a decision on an overview of all matters for all persons who were convicted for "contra-revolutionary crimes" by judicial as well as non-judicial authorities. At that time, all these people were either in prison or in exile in special settlements. Committees were established in order to implement this decision. The Central Commission was presided over by the State Prosecutor General of USSR, R. A. Rudenko. The Commission concluded its activities in March 1956. The work began in May 1954 and considered the matters concerning 337,183 people. For 153,502 people, the decisions on termination of procedure, shortening of the statute of limitations, and pardon of exile were adopted and the order "On amnesty" was applied.² Unfortunately, these commissions remained within "socialist rules of law" and they were not able to carry out full rehabilitation of the victims of Stalinist repression.

During the preparation and execution of the 20th CPSU Congress (February 1956), political decisions on implementation of further rehabilitation of the victims of Stalinist repression were adopted. In January 1956, the ordinance of the CC CPSU Presidium on "establishing party committees by the CC CPSU" was adopted, which were sent to the camps. The Supreme Soviet USSR Presidium authorised them to consider the matters concerning people who were serving sentences for crimes of political nature, offences by official duty (official offence) and on-the-spot decision-making regarding their acquittal.³ According to this ordinance, the operation concerning the rehabilitation was transferred to the party-political sphere. These commissions considered the matters for more than 170,000 people until October 1957, whereby more than 100,000 people were freed from prisons.⁴

November 1956 brought about rehabilitation for nations who were exposed to Stalinist forced migrations to the Eastern parts of the country during the Second World War. The CC CPSU Presidium ordinance was adopted "establishing the national autonomy of the Kalmyk, Karachai, Balkar, Chechen and Ingush nations".⁵ The Chechen, Ingush, Balkar, Karachai and Kalmyk were no longer deportees and were allowed to return to their native soil. At that time the Kalmyk, Karachai-Cherkess, Kabardin-Balkar, and Chechen-Ingush autonomous regions were established. In 1967, the founding and constitutional rights of the Crimean Tatars were published; however, various obstacles were created concerning their return to the Crimea.

More firm measures to bring back justice concerning the victims of mass repression were adopted during formation of the Russian federation as an independent country. In April 1991 the Russian law "on rehabilitation of nations who suffered repression" was adopted. The law intended full rehabilitation of the Russian nations, whom the Stalinist regime exposed to "the genocide and calumnious attacks". The law declared: "Rehabilitation of all RSFSR nations who suffered repression, recognition of all repressive actions against these nations as unlawful and intolerable."⁶ The law was directed into full return of justice concerning all nations who suffered repression. The law was amended by the order of the RF President "on immediate measures for rehabilitation of the Russian Germans" (21 February 1992).

² O. V. Lavinska, *Documents of the State Prosecutor on the rehabilitation process of the victims of the political violence between 1954 and 1956 – National Archives*, 2007, p. 3.

³ A. A. Fursenko (ed.), *Presidium CC CPSU, 1954–1964, Part 2: Ordinances, 1954–1958*, Moscow 2006, p. 194.

⁴ *Rehabilitation: How Did It Happen. Part 2: February 1956–beginning of 1960's*, Moscow 2003, p. 193.

⁵ *Ibid.*, pp. 199–203.

⁶ *Official messages of the Congress of People's Deputies and the Supreme Soviet of RSFSR*, No. 18, 2 May 1991.

The most important was the law “on rehabilitation of victims of political repression”, which was adopted on 18 October 1991. The introductory part to the law declared: “During the Soviet rule millions of people were the victims of totalitarian state’s self-will, suffered under the repression because of political and religious beliefs, and social, national and other reasons.”

The Supreme Soviet condemned the terror and mass persecution of its nation for many years as incompatible with the idea of law and justice; it expressed deep sympathy with the victims of unfounded repression, along with their relatives and close family members, and declared that it has a firm intention to acquire realistic guarantees to ensure legality and human rights.

The objective of this law is the rehabilitation of all victims of political repression who have been exposed to such repression in the territory of the Russian Federation since 25 October (7 November) 1917, recovery of civil rights, elimination of all other consequences of self-will, and the assurance that material and moral damages shall be repaid in accordance with the available possibilities.⁷

The law included a wide definition of “political repression”; it described the circle of persons who may be rehabilitated, defined the method of rehabilitation, determined the right of rehabilitated persons to receive monetary compensation, and to acquire some other relief. The quoted law settled the issue of justice recovery in relation to the victims of unfounded political repression, pointed the way to elimination of consequences of self-will, determined the manner and amount of possible compensations.

The search for “reconciliation with the past” proposes expansion of objective information on authoritative and totalitarian regimes and their crimes. Russian historians have done a lot of work in this direction. Collections of documents were published, which disclose the decision-making process during Stalinism, mechanisms of mass repressions, functioning of the GULAG system (Main Directorate of Corrective Labour Camps), investigation of the Orthodox Church representatives, and anti-Semitic campaign methods revealed in Stalin’s last stage of life. All these documents are available to the researchers, as well as to ordinary readers. A visible result of joint activities of the Russian and Polish historians is the publication of documents in four volumes, which highlight the shooting of professional soldiers in Katyn in the spring of 1940. In March 2008 the international conference on the topic of “Totalitarian and authoritarian regimes in Europe” was organised at the Moscow State Institute of International Relations. The conference participants discussed common moves and character specifics of totalitarian and authoritarian regimes. Much attention was paid to analysis of the crimes of non-democratic regimes from the viewpoint of international law.

It is important that the truth about the past is handed over to the youth, who are often poorly informed about the crimes of Stalinism. Here, means of mass information play an important role, together with school education. Two television programs aired in 2007, which present the fates of GULAG prisoners: *Lenin’s Last Will* based on the work by V. Šalam and *The First Circle* based on the work by A. Solzhenitsyn, may be considered achievements of Russian television. These television programs encouraged the interest of viewers.

It is obvious that every country created its own complex programme for education of non-tolerance towards political aggression, nationalism and xenophobia. Within this context, it is important that following the rule of law, respect of democratic principles and human rights become rooted in the society. It seems that the European Commission could create general recommendations in this direction. The truth about the past is not supposed to separate but to unite the Europeans as the victims of criminal acts committed by authoritarian and totalitarian regimes.

In conclusion, I would like to mention that the “EU Justice and Home Affairs Council Framework Decision” refers to the fight against certain forms and expressions of racism and xenophobia. The occurrence of nationalism and xenophobia has been becoming a serious threat in a number of European States, including Russia. Decisive actions against the phenomena like racism, nationalism and xenophobia are required.

⁷ Official messages of the Congress of People’s Deputies and the Supreme Soviet of RSFSR, No. 44, 31 October 1991.

Guy De Vel*

THE ROLE OF EUROPEAN INSTITUTIONS IN THE PROCESS OF RECONCILIATION

I would first of all like to thank the Slovenian Presidency and the Commission of the European Union for having invited me to this hearing which, I hope, will contribute to promoting a spirit of trust and reconciliation not only in the Union but all over our continent.

Allow me to explain that I am speaking as an independent expert and in no way represent the Council of Europe, where I worked for 35 years. I will, however, refer extensively to the incomparable experience of that organisation in the building, since 1949, of a Europe based on the constitutional state (*Rechtsstaat*), the rights of man and democracy, on the ruins left by totalitarianism.

During this hearing we have followed, with the greatest interest, speeches and discussions on the “Recognition of crimes committed by totalitarian regimes”: How to improve knowledge of them and how to heighten public awareness? Allow me on this subject to make a brief aside and to remind you that in 2000, the Committee of Ministers of the Council of Europe adopted a Recommendation (R 2013) “On a European policy regarding communication of archives” which should make it easier to establish the facts. We have also been informed about certain national experiences – many quite varied – concerning reconciliation in order to learn from successful experiences. All through this hearing we have thought with much emotion about these millions of victims that totalitarian regimes have left behind them, and of which some, still alive, bear witness to this unacceptable horror.

The moment has come, however, to broach the subject of our last session; how, despite these horrors and suffering, can we reach reconciliation? How to prevent the resurgence of totalitarian regimes or rampant nationalism? Because let us not forget, as Tocqueville said “Democracy is a fragile plant that deserves all our care ...”

Curiously, while the Council of Europe has contributed so much to reconciliation, its Parliamentary Assembly, in two Resolutions (one in 1996 (1096) “relating to the measures for dismantling the legacy of former communist totalitarian regimes”, the other in 2006(1481) on the “necessity for international condemnation of these crimes”), gives indications concerning the way to help countries to free themselves of their totalitarian legacy, at the same time respecting the constitutional state, but only deals fleetingly with reconciliation.

It declares international condemnation of these crimes, expresses its compassion for the victims, its understanding, and recognizes their suffering while considering, it is true, that “the clear position adopted by the international community will encourage reconciliation to be pursued ...”.

I will therefore concentrate particularly, due to my personal and professional experience, on the role that European institutions can play in reconciliation.

I belong to the generation whose childhood was marked by the crimes of Nazism that also left victims in my own family. After the war, we lived through reconciliation – sometimes difficult – recognised by the creation in 1949 in Strasbourg of the Council of Europe. In its Statutes, its founders declare themselves to be “unshakably attached to the spiritual and moral values that are the joint heritage of all peoples and are at the basis of the principles of individual liberty, political freedom and the pre-eminence of the law, upon which all true democracy is founded”.

World conflict was unfortunately followed by decades of cold war and our continent remained torn apart by an Iron Curtain, swept away in 1989 by the wind of freedom that blew across our continent. The Council of Europe was then progressively able to welcome new democracies, at the same time assisting them with indispensable reforms, and to continue its work of reconciliation all over our continent; with 47 members it now reunites all countries in Europe except Belarus. This considerable geographical enlargement did not take place without difficulties and was even punctuated by crises, in particular in certain countries or regions having been part of the Soviet Union or Yugoslavia. The Council of Europe saw itself therefore once again confronted with an enormous task of reconciliation. Totalitarian organisations had to be dismantled and to be replaced by pluralist democracies.

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I would like to underline that many programmes of assistance for democratic reform were carried out jointly with the European Union – the two institutions sharing the same values – and contributed to paving the way for new Members to join the Union. The Council of Europe and the European Union are therefore in themselves examples of reconciliation and prove, as laid out in the Berlin Declaration of 25 March 2007, that we have learned the painful lessons of a history marked by bloody conflicts. It is true then, as much for the Council of Europe as for the Union, that the legacy of totalitarian regimes poses several problems but that the aims of transition, guided in particular by the ‘Copenhagen Criteria’ were and still remain clear:

- To create pluralist democracies, founded on respect for the rights of man, for the constitutional state and for minorities.
- To establish a climate of trust in these countries as well as in their relations with others.
- To ensure that the collapse of totalitarian organisations does not leave a place for oligarchy, criminality and corruption.
- To avoid social fracture or conflict between generations.
- To avoid punishment of the guilty of those former regimes taking place in a spirit of vengeance rather than justice and to be vigilant that procedures respecting the constitutional state and the rights of man be applied to them.
- To consolidate social protection in order to prevent nostalgia for “former regimes”.

It is in this spirit that the Council of Europe, in synergy with the Union, has worked since the fall of the Berlin wall, also learning lessons from the process of transition and reconciliation that it had previously favoured in Greece, Spain and Portugal.

Our work was directed to and must continue to be directed to several issues.

1. Programmes of cooperation in democratic reforms

In the context of our hearing, this work concerns, above all, institutional and legislative reforms; Constitutions (thanks to the remarkable work of the Venice Commission), electoral laws, penal and civil codes, civil or penal procedure, working of the judicial system and the penitentiary system, law and administrative procedures allowing citizens to defend themselves against the State, laws concerning lawyers, public prosecutors, the media, minorities, NGOs, etc.

We know however that this legislative and institutional process must be accompanied by a transformation of mentalities; someone spoke of a “transformation of hearts and minds”. Without this, the best legislation will go unheeded and reconciliation will be very difficult!

For this reason, reforms must be – and have been – accompanied by bilateral or multilateral programmes of training for the judicial professions in the widest sense of the term – from judges and public prosecutors to prison guards or policemen – so that they be put to work in a truly democratic spirit.

The multilateral meetings organised by the Council of Europe for these professions contributed much to establishing a climate of trust and reconciliation between European countries and within the countries themselves. It was not, however, easy to be able, in the 1990s, to bring policemen from both sides in Bosnia-Herzegovina together for training. Or to bring together in Moscow in 1997 Public Prosecutors from all member countries of the Council.

I would also like to bring your attention to the programme concerning the Political Schools, to which the Commission contributed, and that played an essential role in training the political classes of young democracies. Democracy is indeed also a question of political culture!

2. Education

But it is not enough to train active professions; young generations must be educated in a spirit of respect for democratic values and institutions.

Teaching history is crucial in this regard; young people must be informed and made aware of the crimes of totalitarian regimes, the suffering of the victims, the dangers of resurgence of totalitarian ideologies and regimes, but this must be in a spirit of reconciliation and not of vengeance. The work of European institutions concerning the teaching of history must be encouraged, and projects such as the Franco-German manual can be an example for this.

Programmes such as ERASMUS, allowing students to get to know other countries and other cultures can also play a very important role. Finally the role of the media in heightening awareness is clear, as is that of cross-border cooperation to which European institutions have dedicated so many efforts.

3. The role of international judicial instruments

The essential instruments guaranteeing and promoting democracy, the constitutional state, and the rights of man, can not only contribute to ensuring that those who committed crimes in totalitarian regimes be the object of fair proceedings, but also to compensation for victims respecting the constitutional state. They can also, through their high moral and legal value, favour – on a national level and on a European level – a climate of trust and reconciliation.

It is clear that the role of the European Court for the Rights of Man is crucial in this regard; several arrests – of which some are recent – relate to totalitarian crimes and there is no doubt that the Court will continue to carry out its task of “guardian of European public order” in this domain, including so-called ‘lustration’ procedures, that do not fall within the subject of this session but must comply, with respect for the constitutional state, to the very strict criteria that the Parliamentary Assembly of the Council of Europe attempted to define in its Resolution 1096. It must be recognized that these quite diverse experiences of ‘lustration’ have not always been conclusive nor contributed to reconciliation. The same goes for the question, a very delicate one in certain countries, of the return of property to people from who it had been confiscated, that the experts in Strasbourg (and especially the Venice Commission) have had to examine several times and that have also led to decisions of the Court.

The Council of Europe and the European Union must pursue their efforts together so that all the states in our continent become Parties to the treaties, as well as to the monitoring procedures relating to the rights of man and the constitutional state, minorities, the fight against torture, racism, xenophobia, etc. In this context one can only regret that the 1974 Strasbourg Convention concerning the non-applicability of statutory limitation to crimes against humanity and war crimes was, thirty years later, ratified by only three states and signed by three others! The fact that Bosnia-Herzegovina has just signed it seems to me however highly significant and encouraging.

The Commissioner for the Rights of Man at the Council of Europe, through his work and his very respected reports, also contributes to national and international processes for reconciliation. In the same way the new Fundamental Rights Agency, that the Union has just created in Vienna could, in synergy with the Council of Europe, promote better knowledge and a better awareness of questions relating to these rights. It could, through its ‘NGO platform’ associate civil society to its work by favouring the awareness of citizens in order to avoid any resurgence of totalitarian ideologies. Allow me – last but not least – to point out that the subscription of the European Union to the European Convention of the Rights of Man would be a strong political signal to countries in our continent that are not members of the Union!

4. Conclusions

Having, since the fall of the Berlin wall, been very committed to cooperation in reforms for the more recent members of the Council of Europe – including those who would later become members of the Union – I would like to conclude by sharing a few personal thoughts:

Since 1989, European institutions have had to face an unprecedented challenge; to extend their democratic values to the whole of our continent. This does not happen in one day; it can even take decades and must be done in synergy and dialogue with the countries concerned and accepted by their citizens, which necessitates this “transformation of hearts and minds” that cannot be imposed from above, whether it be by Brussels or Strasbourg and even less so from outside Europe!

The elimination of the remains of totalitarian regimes, justice for victims, and punishment of the guilty must absolutely go together with reconciliation, whether on an international or a national level where each country must find its own way. Reconciliation can sometimes be slow and require patience because totalitarian regimes have made and left millions of victims. These victims or their families long for justice. This justice can only be rendered while respecting the constitutional state and the rights of man that the European institutions must continue to promote tirelessly.

Procedures in a spirit of vengeance or exacerbated nationalism run the risk not only of prejudicing reconciliation but also of giving rise to nostalgia for “former regimes” or even favouring their resurgence. It is indispensable, on the other hand, that victims see their suffering recognized.

Knowledge of the history of totalitarian regimes and their crimes must therefore be promoted not only on a national level but also on a European level. And yet this question is too often considered by our older member countries as only a concern to the east of our continent. The Iron Curtain no longer exists physically but it has a tendency to endure in people’s minds; to ignore or neglect to deal with the problems encountered by more recent democracies is not only contrary to European solidarity but dangerous because a resurgence of totalitarian ideologies would seriously compromise freedom and peace in Europe and would certainly also make new victims! Let us not forget history, but let us not forget either that we are the ones who are creating the history of our era!

Marianne Birthler

RECONCILIATION AND TOTALITARIAN CRIMES: WHICH LESSONS CAN BE DRAWN FROM A SUCCESSFUL EXPERIENCE?

How quickly civil structures and a constitutional state can be destroyed has become evident a number of times during the 20th century. It has also become as evident how difficult the way back is. They say it is relatively easy to make fish soup from an aquarium; however, to reconvert the fish soup into an aquarium is much more complicated.

The end of a dictatorship is associated with profound political and social changes. The path towards a functioning democracy and constitutional state is long. It is a necessary step that previous rulers are replaced, and at best, a democratically legitimised political power takes over, however, it is merely the first step on a long route. 20th-century-Europe has plenty of examples to offer: the National Socialist rule of the Germans, the communist rule of 40 years and the foreign rule in many of its countries, as well as the dictatorships in Spain, Greece, Portugal and Italy. A lot of time went by in too many instances, before the truth about the crimes was revealed, therefore, the victims or their relatives were no longer able to obtain reparation.

What does a society need after the end of a dictatorship, on its path towards a life of freedom, justice and human dignity?

Which social processes are necessary after the end of a dictatorship in order to facilitate peace within the society and to limit damage which continues to have an effect?

Which political frame conditions are necessary? Which laws or regulations are necessary along with which material efforts?

Which role do society's civil structures and initiatives play? How can they be encouraged?

These general questions are supplemented with a few more specific, however not less important questions:

How does a society treat its victims of despotism? Are they rehabilitated? Do they receive any compensation? Are they and their fates given public attention?

Are those responsible made accountable? Are the perpetrators put on trial? Are their names made known? Are inspections carried out in order to remove previous collaborators from important offices and positions?

Are the archives opened and is the previous knowledge of the regime made accessible to the public? Are there any efforts to research the power structures? How is such knowledge published?

Which forms of publicly dealing with the past exist? Is the opposition to the dictatorship appreciated? Is there a public commemoration of the victims? Are the stories of the victims and of the opposition collected and stored for generations to come?

Which attitude does the "silent majority" take: Does it express solidarity with the former rulers because it benefited from the conditions and remained silent with respect to the crimes? Are there attempts to glorify the past? Or, does the public side with the previously politically persecuted – be it due to sympathy or due to feeling guilty?

Lack of civil courage, love of liberty, civic-mindedness and democratic self-confidence are all part of the disastrous consequences which continue to have a long lasting effect. What encourages people to use their newly gained freedom for themselves and for the common good?

Efforts of accounting for the past are, at times, in danger of being politically or partly politically exploited. Which precautions are to be taken?

Questions upon questions. The answers to those questions will always turn out differently. The experience of individual countries is not transferable. However, it is worth mutually recognizing such an experience, especially as Europe continues to unite.

"Every country has its own 20th century" was what I recently read in an appeal by *Memoriale* which encouraged people to respectfully deal with the different, even contrasting, political experience. This surely does not only apply to the memories of dictatorships, wars and civil wars, but also to dealing with these memories.

This Panel is subject to the motto of reconciliation. It is not by accident that I have not yet mentioned this term.

Reconciliation is a gift. It happens in relationships and stands at the end of a single, most hurtful process. It requires that injustice be addressed, that those responsible repent and that their victims are prepared to forgive. Such a beneficial process enables both the victims and offenders a new, liberated life.

Even alienated people or population groups can reconcile: What kind of Europe would we have today if its people had not reached out to Germany in reconciliation after the horrors of the National Socialist crimes?

However, unfortunately, the term “reconciliation” is often used carelessly, and yes, is even abused. For the sake of an alleged reconciliation, the offenders are not made accountable, the sufferings of the victims are not specified, and the truth is hidden in inaccessible archives. However, to remain silent about the past, to renounce retribution, contradicts reconciliation. Reconciliation, which intends to manage without truth, is just a foul peace.

In Germany, we are confronted with the task to come to terms with two very different totalitarian regimes. This occasionally results in tensions, which I have no time to address here. However, I am convinced that the effort to come to terms with the communist rule has to do with the deficits concerning this matter after 1945. Never again were the victims to wait decades for their redemption, never again were the former elite to unrestrictedly continue their careers.

It would go beyond the scope of this discourse to tell the stories of all institutions in Germany, which, at a great thematic breadth, dedicate themselves to the reconciliation of the Communist SED-dictatorship.

The Stasi Records Office I direct is the largest institution. It disposes of approximately 170 kilometres of files of the GDR’s Secret Police, and through its work, essentially contributes to personal and social reconciliation processes.

However, it is only part of a network, consisting of central and regional institutions, along with state and private institutions. For example, I would like to mention the Foundation for the Reconstruction on the SED Dictatorship, numerous private archives and reconciliation initiatives, as well as victim associations and counselling centres. The activity of these institutions is complemented by the Laws for the Cleansing of SED-Sponsored Injustice, which above all, govern the rehabilitation and indemnification of the formerly politically persecuted.

Most of them do not owe their existence to political decisions, but to civic commitment. This also applies to the Stasi Records Office: The protection of the files and their access goes back to the time of the peaceful revolution and the occupation of the Stasi-offices in numerous cities of the GDR. Only great public pressure resulted in the governments of the GDR and the Federal Republic to include a provision in the Unification Treaty, according to which the files would also remain open in the united Germany.

Two fundamental principles characterized the Stasi Document Law, on which basis my office is working: the right of the public to inspect the files and the protection of personal rights. It is self-evident that there is, to some extent, tension between the two. However, experience of more than 16 years shows that practical solutions were definitely found. At that time, it was particularly disputed whether the victims of the Ministry for State Security and the public had the right to know the names of the perpetrators. People feared that there would be acts of revenge. However, no such acts were made known.

The right of every person to inspect all existing Stasi documents about themselves is of special significance. Since then, 1.6 million people have made use of their right by filing corresponding applications. The demand for inspecting the files is unalteredly high. During the year 2007 only, we received more than 100,000 applications for inspecting the records.

The Stasi documents we manage are used on a large scale by scientists and publicists to research the power structures of the GDR. Legal rules, which stipulate the weighing of the public interest against the protection of personality rights regarding each individual case, apply to the release of the documents.

The scientists of our office concentrate on researching the structure, effect and methods of the Ministry for State Security. Numerous publications have been issued, which have become standard works of GDR historiography.

Still, there is a gap in Germany between the existing knowledge about the GDR’s system of power and the publicly spread information. Thus, one of the focal points of our work is to inform the public,

and especially, the young generation, i.e. mainly through exhibitions, events and educational material for schools.

For many years, inspecting civil service employees took up an important part of our work, today, only employees in high ranking positions are subject to regular inspections. However, through scientific research and media, time and again, individual cases become known and it is apparent that a large part of the public still disapproves of former Stasi employees being in important positions in politics, administration, sports or media.

Some former spies use judicial means to fight against their names being revealed. Such a case is currently being tried before the local court in Zwickau / Sachsen.

Certainly, it is too early to come to any conclusions, and, we cannot empirically prove that the path we embarked on in Germany was better than a path without reconciliation and access to the files.

Before I get to what we might have reached, I would not like to conceal any of the deficits or unsolved problems:

While many victims of the Communist regime live on the breadline despite compensation for wrongful imprisonment and a special pension, former state officials and state officers receive decent pensions.

Apart from the shoot-to-kill at the Berlin Wall, there was hardly any criminal prosecution of communist crimes.

Still, there is a lack of knowledge about the SED dictatorship. Only some teachers are interested in these topics.

Still, there is a certain tendency toward trivialization.

Nevertheless, we have managed to achieve plenty with our work:

The past of the GDR not kept quiet is a public topic which is often passionately discussed. This part of our history is entering the fields of art and culture more and more.

The victims were able to resolve their fates by means of the files of the Ministry for State Security. They were rehabilitated and received compensation.

Politics and administration saw an extensive replacement of their personnel.

Extensive research provides us with insights into the mechanisms of a dictatorship – this might help to more appreciate freedom and democracy.

By means of secured knowledge, the legends and historic lies can be contrasted with facts.

The stories of courage and resistance, as well as of the victims, were saved from being forgotten.

I would like to answer the question, which conclusions could be drawn from our experience for Europe, with caution: The individual conditions, as well as the cultures, are just too different. However, before I make any suggestions, please let me express a request: Provided that I see things correctly, the German term “Vergangenheitsbewältigung” [process of coming to terms with the past] is on its best way of making an international career, which I find highly regrettable. The term “Vergangenheitsbewältigung” suggests that our past does not refer to our own painful history, but to an enemy which needs to be conquered and defeated – and, at least I hope, that this is not the manner in which we intend to deal with our past in Europe. Thus, I would like to ask that this term is not provided with an international platform.

Now, let me mention a few practical suggestions:

The archives – as far as they could be saved – must be made available to research and reconciliation.

Reconciliation must not be exploited politically or partly politically. Hence, a strict compliance with constitutional principles is imperative. Furthermore, the institutions established for reconciliation must be protected against political interests and interventions.

Europe needs the reminiscence of its liberation movements. I can assent to the statements by Mr Emanuelis Zingeris, according to which anti-totalitarian attitudes should be or should become an integral part of European values. As regards Germany, it can be said that since then, the memory of the resistance against the National Socialists has definitely contributed to the formation of democratic and liberal values.

The resistance against any form of dictatorship in Europe, including the revolts against them, are a purely important European heritage, which needs to be preserved and passed on to future generations.

It would be absolutely desirable to establish an institute for the reconciliation of European dictatorships and the experience of post-dictatorial transformation.

Secondly, a European foundation for the reconciliation of communism could be an inspiration, facilitate the transfer of experience and methods, connect reconciliation initiatives, as well as be of support where they have difficulties due to political reasons.

As a first small step, it would be desirable to have an office at the European level, which collects best-practice examples, translates them into other languages and makes them internationally available. Special focus could be given initially to examples from the field of education and schools.

I would like to conclude by sincerely thanking the initiators of this hearing – I think it is an accomplishment which is an important political signal that should urgently be continued.

Renata Uitz*

INSTEAD OF SUCCESS: HOPE FOR TRUTH – AT BEST

1. An uneasy introduction

The organizers of the European hearing on the crimes of totalitarian regimes asked me to give an account on ‘success stories’ of reconciliation, and coming to terms with the totalitarian past, in post-Communist Central Europe, with special emphasis on the Hungarian experience.

Coming from Hungary, few tasks sound more ambiguous. Hungary is a land of no reconciliation. The two dominant political forces are divided by a deepening rift – over the proper reading of the totalitarian (the Nazi and the Communist) past. This “war over pasts” commenced at the dawn of the transition to democracy, in the summer of 1989, when the ruling Communist elite and the emerging political forces faced the need to situate themselves along a continuum of relevant traditions for the purposes of defining their paths into the future. Unfortunately history did not supply Hungarians with a set of unambiguous heroes and events which could be fitted along a grand narrative of uncontested memory.

As István Rév explains so well, the transition itself in 1989 has been a non-event, with no genuine days to commemorate or celebrate.¹ Democratic transition in Hungary commenced when prominent figures of the Communist Party openly suggested that the 1956 counter-revolution might have been a revolt or indeed an uprising. The most cataclysmic event of the summer of 1989 had been the reburial of the Imre Nagy, the executed prime minister of the 1956 uprising. The reburial turned out to be the largest anti-Communist demonstration, displaying enormous support for transition from the old regime, which nonetheless has happened largely independent of the Roundtable Talks (i.e. the forum where a blueprint for transition to democracy was being carefully drafted). The emerging vocabulary of “revolt”, “uprising” or – increasingly – “revolution”, together with the image of Imre Nagy might appear as suitable material for a founding myth for a new regime to be built on the ruins of a Communist system, which emerged in the tracks of Soviet tanks suppressing the dissenting voices of 1956. There is only one problem. Imre Nagy would have been a perfect martyr or hero for the emerging democracy of 1989, had he not died remaining faithful to his convictions as a Communist. A negotiated and peaceful regime change is difficult enough to narrate as a heroic epos to begin with – but with the last true believer of the evil system as its protagonist?

From this truly post-modern scenario, no master narrative emerges. Hungarian public memory is the comfortable home of the millennial heritage of St. Stephen, together with the constitutional achievements of the anti-Habsburg 1848 revolutionaries and the interwar rule of Admiral Horthy, and certainly the achievements, heroes and memories of the 1956 revolution. In the years that followed, participants of the political scene built such strings of events into founding myths that suited their own aspirations. The true successors of duelling heroes have been competing themselves for exclusive rights to inhabit the public space in any matter of daily politics ever since.

In light of this somewhat dramatic introduction, I rush to admit that this national experience – which I happen to be the most familiar with – deeply influences my perspective on the issues to be explored in my paper. Instead of providing a systematic overview of a select few national experiences on coming to terms with the past, I hope to concentrate on a those issues and problems which are central for exploring and explaining the current state of affairs in several post-communist democracies. Since by trade I am a lawyer, primarily I am interested in the contributions that constitutions, constitution makers and constitutional players (including governments, political parties and courts) make in ensuing social and political developments.

At first I will recall a few familiar yet important reminders about how constitutionalism and the rule of law do not automatically deliver justice after grave past injustices. Rather, well-known examples demonstrate that the language of the rule of law can be and was used by constitutional courts to justify

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¹ See István Rév, *Retroactive Justice. The Prehistory of Post-communism*, Princeton University Press, Princeton 2005.

completely different outcomes in similar contexts, thus creating the impression that the most basic rules of the new regimes can be bent in politically charged situations to fit the needs of the players on the scene, without little regard to the victims. Thereafter I will explore how transitional justice measures contributed very little, and relatively rather late, to learning about the former regimes. In this paper I will use the example of lustration laws and the regulation of access to the files of Communist secret services to illustrate this point. To the extent such a truth seeking dimension is instrumental to coming to terms with the past and ultimately, to reconciliation, this shortcoming has serious consequences which reach beyond the confines of the transitional justice paradigm.

In the present paper I argue that the processes which – at least in their underlying rhetoric – were meant to bring about justice for past injustices perpetrated by the previous regimes failed to achieve reconciliation and coming to terms with the past. At their highest point of success they shed light on some of previously unknown aspects of how a given Communist regime functioned. Nonetheless, the truth seeking function of these processes (if there was any sincerely meant truth revealing function implanted in them) was overcast by the political agendas of the players which introduced and operated them. Given these constraints and shortcomings, transitional justice measures² were incapable of achieving an intelligible relationship with the even the most horrendous sequences of past events.

This failure of transitional justice measures at delivering reconciliation seemingly did not affect the ability of post-Communist democracies to join the ranks of established democracies in international organizations where participation is conditioned upon respect for democracy, constitutionalism, the rule of law, and the protection and promotion of human rights. It remains to be seen, however, if young democracies with unsettled memories of traumatic pasts will be able to function at their best without arriving at a proper understanding of the conditions and causes of their own coming into existence. The rising popularity of political forces, which do not adhere to the ideals marking the achievements of these new democracies, call for reconsidering the significance of the failure to seek meaningful reconciliation and coming to terms with the wrongs and wrongdoers of previous oppressive regimes.

2. On the indicators of success in handling the traumatic past in the retroactive justice cases

Societal reconciliation or coming to terms with the grave injustices of a previous regime are among those developments which determine the success of a constitutional regime in the long run. With the emergence of post-Communist democracies, there is a serious temptation to talk about how the Communist past was successfully overcome in this region. After all, these still young democracies have joined the Council of Europe, NATO and even managed to live up to stringent accession criteria which in turn granted them admission to the European Union. These are true success stories, suggesting that the quality of constitutional democracy in these countries has been convincingly high over a relatively long stretch of time. Since these countries came out of rather repressive regimes, one is easily left believing that they managed to successfully overcome the heritage (baggage) of their difficult and less glamorous pasts.

Nonetheless, this reassuring picture seems to be somewhat in conflict with reports on recent flares of yet another round of revengeful lustration taking place in the Czech Republic, then in Poland and Romania at the threshold of the 21st century.³ Nor is it heartwarming to watch dramatic accounts about violent street protests in Hungary wherein demonstrators talk not so much of alternative roadmaps to a better future, but of a – or more precisely: of the one – proper understanding of the past. These incidents suggest that the past has still not settled in the hearts and minds of the voters, and of their elected representatives in Central Europe. Instead, fragments of this past are constantly being re-positioned in the

² In this paper I use this phrase loosely, mindful of the characteristics of various national experiences, to refer to retroactive criminal trials, lustration and compensation (restitution) measures. In the Central European vocabulary, truth commissions and amnesties are not included in the array of transitional justice measures. Furthermore, and rather regrettably, access to the files of the former secret services (an issue to be discussed below) is typically not discussed in the transitional justice literature in and on Central Europe.

³ For an insightful account of the Polish lustration wars see Wiktor Osiatynski's editorial in *The New York Times*, "Poland Makes Witch Hunt Easier", January 22 (2007), at http://www.nytimes.com/2007/01/22/opinion/22osiatynski.html?_r=1&oref=slogin, which also appeared in *The International Herald Tribune* as "Poland's Witch Hunt", January 22 (2007), at <http://www.iht.com/articles/2007/01/22/opinion/edwiktor.php>.

political spectrum of the day, they are re-claimed and re-interpreted by participants of institutionalized and outdoor politics almost two decades after the regimes changed for the better. Instead of “coming to terms with the past”, one encounters on a daily basis how a fragile version of a past moment is dragged in, to legitimize or explain an equally frail decision in the ever-changing domestic political space.

The extended moment of the regime changes is worth taking a sharper look, at least because the much hailed “negotiated transitions” of post-Communist democracies (which with the notable exception of Romania meant that democracy arrived without serious bloodshed) were not conducive to lasting social harmony. Sociologists and political scientists followed the trail of the losers of transition in all countries to explain voter behaviour and soaring indexes of trust in democratic and political institutions. It is not fashionable anymore to talk about the “transition-consensus” even in academic circles, rather, – at least in Hungary – the contemporary discourse on public affairs yields to an exploration of whether such a transition consensus ever existed.

Negotiated transitions are different from revolutions in many ways which cannot be explored here. Most importantly for present purposes, in post-Communist Europe’s negotiated transitions, “victims” and “perpetrators” of the outgoing regime sat face-to-face at the roundtable, contemplating together the foundations of the new regimes. Each side had their fears and expectations influence their negotiating positions on questions like the manner and timing of general elections, the form and structure of the new government, the number of seats in various agencies and boards. What was to be decided at the roundtable, and what was left for afterwards, is also of importance for understanding certain decisions made by the first democratic governments.

Such crucial strategic decisions and the consequences of unexpected events cannot be analyzed here. Suffice it to say that as a result of these negotiations, the newly emerging democratic governments on the one hand, shared the responsibility for the consequences of some of these founding decisions, and on the other had, were facing all these consequences together with the tasks which had befallen upon them in the straightjacket of legal and constitutional continuity with their totalitarian predecessors. As a result of this continuity, the new democracies succeeded not only into gigantic debts and international organizations, but also into the wrongs and all the injustices perpetrated by their predecessors. As this paper intends to show, the struggle over inventing memory and the lack of success cannot be properly understood without properly accounting for this technical nuance.

Phrases like “coming to terms with the past” (“Vergangenheitsbewältigung”) or reconciliation, are fuzzy terms. By nature they are subject to multiple competing understandings and famously withstand legal definition. And indeed it is doubtful whether such complex processes of dealing with traumatic past events can ever be institutionalized – or at least instigated – by legal regulation, e.g. transitional justice measures. For the purposes of the current paper, this question is all the more interesting since it is by now well established that the requirements of constitutionalism and the rule of law play controversial roles in transitional justice contexts. Ruti Teitel’s well-known argument in *Transitional Justice* accommodates most transitional justice measures in a rule of law paradigm, claiming that these legal rules amount to a sui generis genre of the rule of law. For Teitel, in times of transition to democracy, the ordinary institutions and premises of the rule of law do not function.⁴

Teitel’s theory was informed by numerous court decisions in which references to the rule of law and its commandments were abundant. Hungary may pride itself in an early constitutional court decision where the ‘rule of law ordinary’ was protected in the face of attempts to introduce retroactive criminal punishment (via lifting the statute of limitations) for crimes which were not prosecuted for political reasons under the previous regime.⁵ The sponsors of the retroactive criminal justice bill argued that the “rule of law cannot be used to shield injustice”.⁶ Invoking the principle of the rule of law enshrined in the Constitution (Article 2.1), the basic premise of the Constitutional Court’s reasoning was that of the legality of transition and of constitutional continuity between the previous regime and the emerging democratic system. As a result the Constitutional Court could not allow for the imposition of retroactive criminal justice measures even in such cases – with which the new regime cannot be associated in moral terms.⁷

⁴ Ruti Teitel, *Transitional Justice*, Oxford University Press, Oxford 2000.

⁵ 11/1992 (III. 5.) AB decision. The full title of the Hungarian retroactive criminal justice bill was “On the Prosecutability of Grave Crimes Committed Between 21 December 1944 and 2 May 1990, Which Were Not Prosecuted for Political Reasons”.

⁶ On quote in János Kis, “Az első magyar Alkotmánybíróság értelmezési gyakorlata / The first Hungarian Constitutional Court’s interpretation practice”, in: Gábor Halmai (ed.), *The Constitution Found? The First Nine Years of Constitutional Review on Fundamental Rights*, INDOK, 2000, p. 61.

⁷ The incident is described in H. Schwartz, *The Struggle for Constitutional Justice in Post-communist Europe*, The University of Chicago Press, Chicago 1999, p. 100.

A year after the decision of the Hungarian Constitutional Court, the Czech Constitutional Court approved the constitutionality of the Law on the Illegality of the Communist Regime and Resistance to It.⁸ In addition to lifting the statute of limitations to allow for the prosecution of crimes committed between 25 February 1948 and 29 December 1989 which for political reasons were not prosecuted (Article 5), the law denounced the Czech Communist regime as ‘illegal and contemptible’ (Article 2(1)) and declared the Czech Communist Party a criminal organization (Article 2(2)). The Czech constitutional justices, in their very first decision upheld the law, arguing that there was a discontinuity of values between the Communist regime and the new regime. According to the Czech justices the ordinary logic of legal certainty could not be invoked in the case: “/.../ (t)his ‘legal certainty’ of offenders is /.../ a source of legal uncertainty to citizens (and vice versa). In a contest of these two types of certainty, the Constitutional Court gives priority to the certainty of civil society, which is in keeping with the idea of a law-based state.”⁹ Upon such considerations, the Czech Constitutional Court decided to uphold the law on the illegality of the Communist regime.

The rule of law in ordinary courts, however, took the side of the alleged perpetrators, and not of the victims. Despite the Czech Constitutional Court’s clear stance on legal continuity and moral (value) discontinuity with the Communist regime, Czech ordinary courts were reluctant to follow this path in cases where criminal charges against the highest ranking Communist Party and government officers were presented before them.¹⁰ In 1997 the Superior Court of Prague found that the statute of limitations has run out and refused to convict Milos Jakes and Josef Lenárt, who were charged with treason for their role in inviting the Soviet military invasion to suppress the 1968 Prague Spring.¹¹

Apart from noting that the rule of law did not command a particular resolution (or its opposite), one will also find that the leaders of the Communist regimes did not usually stand trial, and even the ones who did, then ended up with convictions for actions which tell little about why the Communist regimes were so unbearable for so many of their inhabitants. The seemingly never ending prosecutions, in which old and feeble looking one-time leaders were dragged before courts were not conducive to learning more about the past and understanding the previous regime better. Demonstrations by sympathizers supporting the cause of the accused were not unprecedented. The prosecutors and courts of justice of the new regimes appeared more incompetent, than principled. After all, how much does a prison sentence for embezzlement in the amount of \$24 million from public funds to buy 67 Western cars and 72 apartments for relatives and friends tell about life in Bulgaria under Todor Zhivkov?¹²

3. Lustration, file access and truth seeking: reflections on failures

Without doing justice to this most complex segment of literature, it would suffice to repeat that “coming to terms with the past” and reconciliation cannot be imagined without setting straight at least the most important components of the historical record heavy with a complex web of systemic injustice, major traumas and relatively minor invasions of liberty. Thus, when talking about the success of transitional justice attempts, one needs to reflect on the truth-seeking potential of transitional justice attempts in post-Communist Central Europe. Before going into detail about achievement in truth-seeking, it is important to point out that criteria of validation differ for lawyers, historians, archivists

⁸ Act no. 198/1993 (9 July 1993). The full text of the Czech law is available in English in Neil Kritz (ed.), *Transitional Justice, How Emerging Democrats Reckon with Former Regimes*. vol. 2, Country Studies, US Institute of Peace Press, Washington DC 1995, p. 366 et seq.

⁹ Pl. ÚS.19/93.

¹⁰ See Eliska Wagnerowa, “The Effects of the Decisions of the Constitutional Court in Relation to Other Jurisdictions”, at <http://www.concourt.am/hr/ccl/vestnik/2.24-2004/wagnerowa.htm>.

¹¹ Milos Jakes was the first (general) secretary of the Czechoslovak Communist Party at the time of the Velvet Revolution of 1989. Jozef Lenárt carried numerous high positions in the Czechoslovak Communist Party, including that of prime minister between 1963–1968. The first indictment on Jakes was thrown out in 1995, due to formal shortcomings. On the 1997 proceedings see “Constitution Watch – Czech Republic”, *East European Constitutional Review*, Fall 1997. The two officials were acquitted again in 2002 (see RFE/RL Newsline, 24 September 2002), and the Czech government gave up their prosecution for treason in 2003. Yet, in 2003 they both stood as defense witnesses in the trial of Karel Hoffmann, who was also charged for treason in relation to the events of 1968. See <http://www.rferl.org/newsline/2003/06/3-CEE/cee-030603.asp>.

¹² Figures from “Ousted Bulgarian Gets 7-Year Term For Embezzlement”, at <http://query.nytimes.com/gst/fullpage.html?res=9E0CE2DA1E3FF936A3575AC0A964958260> (5 September 1992).

and psychologists (just to name a few of the potentially relevant disciplines here.) However, no criterion of validation can be applied without proper access to the sources of information. Therefore, at best, lawyers should aspire to create such legal frameworks which assist in meaningfully preserving the source and form of this information, and do not prevent access to (and, thus, a better understanding of) the record on even the most regrettable and traumatic segments of the past.

Regrettably – with the notable exception of Germany – access to the files generated by numerous actors of the Communist regimes, or even only to the files of the Communist secret services, has not been on the top of the agenda of the new regimes. In the early years the emphasis was on lustration or de-communization, i.e. on excluding the echelons of the former oppressive regime from the governmental elite of the new one. Lustration laws were typically focusing on exposing the agents and – more dubiously – the collaborators of the Communist secret services, without paying much attention to where and from whom the information of collaboration came from. The weaknesses of lustration laws became readily apparent in most countries which adopted them. Constitutional courts typically could not stop the political steamroller of de-communization. The rule of law was made to yield again to temporary measures of exception.

It has become normal for former collaborators of the Communist secret services to pass lustration procedures only to be exposed in the press by political opponents at a convenient subsequent date. Lustration procedures were also extended and redesigned according to the momentary political needs of the ruling political powers of the day. The most notorious recent lustration attempt is the former Polish government's move to expand the scope of the lustration law, well beyond the reach of the previous law, and beyond the *stricto sensu* political sphere. Former Polish prime ministers¹³ refused to adhere to the reinvented procedure as they found it humiliating. When the Polish Constitutional Tribunal declared the new law unconstitutional, Chief Justice Jerzy Stepien stated that “a state based on the rule of law should not fulfil a craving for revenge instead of fulfilling justice”.¹⁴

An imagined alternative to lustration, the so-called “agent lists” have for a long time been a center of popular fascination. The most recent wave of exposure in Slovakia¹⁵, Poland¹⁶ or Hungary¹⁷ had a much broader audience than in previous cases due to the publicity potentials of the World Wide Web. What distinguished the Slovak example from the others is that in Slovakia, publishing the data of communist secret police agents and collaborators is part of the normal operations of the National Institute of Memory (Ústav Pamati Národa), while in the other countries, the lists emerged as a result of uninvited private contributions – attracting unusual interest and stirring considerable animosity in the public sphere.¹⁸ The Slovak solution in its current form does contribute to setting the record straight and – directly and indirectly – to a better understanding of the past. While the emerging agent lists in early 2005 also prompted several actors on the Hungarian scene to assemble a more reliable record on the agents and prominent collaborators of the Communist secret services,¹⁹ it is crucial to see the most important difference between the Slovak and the Hungarian case. Imagining that the same amount and

¹³ Poland's first post-Communist prime minister Tadeusz Mazowiecki, and former Prime Minister and Minister of Foreign Affairs of Poland Włodzimierz Cimoszewicz both refused to sign the statements required by the new law, claiming that the aim of the new procedure was simply to humiliate others. See <http://www.polskieradio.pl/zagranica/news/arttykul51621.html> (April 26, 2007). Mazowiecki's refusal followed Bronisław Geremek's speech in the European Parliament.

¹⁴ Quoted in English from “Poland's anti-communist law ‘unconstitutional’”, *The Daily Telegraph*, May 12 (2007), <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/05/12/wpoland12.xml>. See also Parliamentary Assembly of the Council of Europe Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems at para 12, emphasizing that “Revenge may never be a goal of such measures, nor should political or social misuse of the resulting lustration process be allowed. The aim of lustration is not to punish people presumed guilty – this is the task of prosecutors using criminal law – but to protect the newly emerged democracy.” As available at <http://assembly.coe.int/Documents/AdoptedText/TA96/RES1096.HTM>.

¹⁵ The Slovak Institute of National Remembrance started publishing the files of secret service collaborators in 2004. In the case of Slovakia, the situation is further complicated because of the Czechoslovak heritage of the services.

¹⁶ See in 2005, the Wildstein list, published by journalist Bronisław Wildstein (then working for *Rzeczpospolita*) of 240,00 names – <http://www.dw-world.de/dw/article/0,1564,1480985,00.html>.

¹⁷ In early 2005 a so-called agent list was posted (including 219 names and a signature ‘Expert 90’) on the website [angelfire.com](http://www.angelfire.com/zine2/szakerto90/) (<http://www.angelfire.com/zine2/szakerto90/>). The list appeared in the aftermath of the scandal in the autumn of 2004, in which it was revealed that Péter Medgyessy, the freshly elected Prime Minister of the Hungarian Socialist Party had been a counter-intelligence agent. The news were shocking mostly because PM Medgyessy safely obtained a lustration clearance before.

¹⁸ The English language website of the Institute is accessible at <http://www.upn.gov.sk/v2/index.php?page=about-nations-memory-institute>.

¹⁹ At the peak of the scandal in early 2005 (mentioned at note 18, above), the Hungarian weekly *Heti Világgazdaság* posted its comprehensive and critical ‘agent dossier’ at <http://hvg.hu/ugynok.aspx> (in Hungarian). In the academic community the effort was pioneered by the historians of the 1956 Institute. See their Hungarian language portal at http://www.rev.hu/rev/html/hu/ugynok/_ugynok.html.

quality of information surfaced in both countries (a hypothesis which cannot be tested here), it still remains to be the case that in Slovakia, transparency and truth-seeking was fostered by the state, while in Hungary, what was achieved is still the result of defiant private action. The symbolic significance of the willingness of the state to expose its past wrongs can hardly be underestimated in the context of coming to terms with a past heavy with governmental wrongdoing.

As an important detail adding flavour to the current discussion, one has to recall that in the course of the smooth transition to democracy, secret services files – which themselves are of doubtful integrity and credibility – remained for too many years under the guardianship of the now democratic secret services. As the jurisprudence of the European Court of Human Rights starts to reveal, in the early lustration procedures the files of the Communist secret police were treated by the democratic institutions (by the national secret services as well as by the courts) as if containing national secrets of the democratic regimes. Victims' rights to study their own files were seriously limited by legal safeguards put in place by the new regime in order to preserve "secrets" accumulated by its predecessor.²⁰

The foregoing is not to suggest that the files preserved from the archives of the former secret services, and then transferred to national institutions of remembrance, will be useful for criminal prosecutions (nor do I intend to suggest that the prosecution of agents or collaborators of secret services would be conducive to coming to terms with the past in any of these democracies). Countries which tried to use the files for criminal prosecutions saw "evidence" contained in those files "wither away" in court.²¹ It only furthers the confusion that more often than not, Communist spies are sought for crimes against the regime, only to reveal that the relevant regime is not that easy to nail for the purposes of criminal prosecution.²²

The files of the Communist secret services, as preserved in these archives or institutes of remembrance, can be used for a purpose other than lustration or criminal prosecutions. These files, even in the compromised, fragmented and often barely intelligible form in which they have been preserved, contain important information on how the Communist regimes worked on a daily basis, on both a small and large scale. They contain information which cannot be revealed by putting the surviving secret service chiefs or Communist party chiefs on criminal trial. Granting meaningful access to these files is an important and indispensable first step on the road to coming to terms with the past and – hopefully – achieving reconciliation. Here "meaningful access" stands for (a) access not only for victims but also to professionals of history and memory, i.e. to historians, and also psychologists and sociologists and (b) access to more than the well-familiar sheets of paper on which line after line is covered by the black ink of the dutiful censor acting to protect national secrets and the personal data of secret service officers and other collaborators.

Meaningful access also entails attributing proper significance to one's findings. The Polish Supreme Court, for instance, acted in an exemplary fashion when – instead of mechanically taking note of the fact of enrollment as an indicator of collaboration – it decided to take into account what exactly a collaborator was doing after enrolled by the secret services.²³ This probably is the most challenging task considering that the archives themselves host information and disinformation in the same dossier, with much of the information generated by secret police personnel eager to generate useful data – in order to prove how indispensable they are. Agent reports are full of insignificant details on the subjects' daily lives – amassed in pain-stakingly amazing quantities. It is not surprising that prosecutions based on these files drag on, and often lead to frustratingly minor results. In such an environment, it is already an achievement to convict someone in 2003 for 6 years imprisonment for assisting the 1968 Soviet invasion in Prague by blocking radio broadcasts.²⁴

²⁰ See *Turek v. Slovakia*, Application No. 57986/00, Judgment of 14 February 2006, *Bobek v. Poland*, Application No. 68761/01, Judgment of 17 July 2007 and *Matyjek v. Poland*, Application No. 38184/03, final on 24 September 2007.

²¹ The case of Pavel Minarik in the Czech Republic who has been in and out of court for 15 years for allegedly planning to explode the headquarters of Radio Free Europe in Munich is an instructive example here. See <http://www.praguepost.com/articles/2006/06/21/aging-secret-police-haunted-by-prosecutions.php> and http://www.axisglobe.com/print_news.asp?news=10927.

²² Consider here the case of General Kuklinski.

²³ See the decision of the Supreme Court in 2002 in the case of Marjan Jurczyk, where it was established that he was a useless collaborator all along. The fact that Jurczyk signed the enrollment form did not make him into a collaborator by the terms of the lustration law. As described in English in "The Politics of Memory in Poland", *Lavinia Stan*, (2006), pp. 23–24, available at <http://www.stfx.ca/pinstitutes/cpcs/studies-in-post-communism/Stan2006.pdf>.

²⁴ Karel Hoffmann was sentenced to 6 years in prison for such a role in 2003. The case was prepared by the Czech Office for the Documentation and Investigation of the Crimes of Communism. As reported at <http://www.state.gov/g/drl/rls/hrrpt/2003/27833.htm>. He started his prison sentence at the age of 80. See <http://www.radio.cz/en/article/56873>. The case statistics of the Office – with the names of the successfully prosecuted – are available in English on line at <http://www.mvcr.cz/policie/udv/english/pripady/index.html>.

Meaningful access to Communist secret police files is certainly not the only means to (re-)establish the record, but it is an important vehicle in this process. It is a vehicle over which lawyers seem to exercise disproportionately powerful controls, whether acting in the name of protecting the personal data of those mentioned in the records, or in order to protect national security (a concern which is at least questionable in the case of these files which were collected by secret police of antidemocratic regimes engaged in large-scale human rights violations).

The quality of the public discourse on revelations unearthed from these files tells much about a polity's readiness to face its past. In many post-Communist democracies, it has become a pattern for exposed collaborators to defend themselves by explaining how their actions in the particular circumstances contributed to defending the "nation" from the Soviets, from complete demise, or to defending the target person from others who might report on her in a more harmful fashion. Alternative explanations – such as one's young age or fear of torture – are presented in the contemporary discourse, second order justifications with low pedigree, and are often dismissed from a moral high ground which is not sensitive to the harsh realities faced by the victims. A series of even the most well-intended misconceptions come to hinder the public discourse on how the Communist system operated in its own true logic. It might be worth recalling, that in the post-Communist context, dialogue might still entail a real exchange between victims and perpetrators, although examples of sincere encounters and reflections are rare – at least in Hungary.²⁵ This is a unique opportunity, which will disappear with the slow passage of time. It is crucial to keep in mind that missing this moment also means missing yet another opportunity for repentance, for forgiveness, and ultimately for reconciliation.

Sadly, courts of law are dragged to take part in these national self-denial and disinformation sessions every time widely published findings from secret police records get contested in defamation cases. Ironically, the files which are not useful for establishing the collaborators' guilt or innocence in a criminal case become her best friend in defending her honor and good name from accusations of collaboration. Discussing judicial pronouncements in such cases comes to replace honest exploration and unhindered reflection on the participants' roles in regrettable events.

4. By way of conclusion

Uncomfortable as it sounds, once the rhetorical veil of achievements is pierced, it becomes apparent that the majority of post-Communist democracies rose to international recognition as stable and reliable constitutional democracies without having meaningfully confronted their totalitarian pasts, without having accounted for the grave and shallow wrongs their states committed, perpetrated or simply let happen, and without having ever seriously engaged in a laborious and painful process of societal reconciliation. These are very strong claims. Many might feel the need to interject, either to call to our attention positive national examples where steps were taken towards the above aims, or to add that the overall success of post-Communist constitutional democracies makes these critical remarks largely obsolete. My goal is definitely not to question national achievements. Post-Communist democracies have unquestionable achievements, which are truly amazing in the light of their challenging national pasts. And apparently, this rather weak record on coming to terms with the past and in seeking reconciliation did not prevent them so far from becoming successful members of the most prestigious international organizations.

It is exactly due to the *success* of post-Communist democracies that, in conclusion, I feel the need to point out an important – though subtle – link between the missed or failed reconciliation in a post-totalitarian polity and the quality of constitutional democracy. When talking about quality of democracy, I do not mean how Communist successor parties are still in national parliaments (since they obtained sufficient support in fair and free elections), nor do I plan to lament any further on meager compensation laws which were more humiliating than reassuring for the victims of Communist wrongs. Rather, I hope to draw attention to declining public trust in the democratic and political sphere, in which (for lack of a better word) populist voices are destined to obtain a rather disturbing appeal around Central Europe.

²⁵ For an exemplary exchange, see the one between Sándor Tar, a writer who reported on his patron and mentor János Kenedi (a leading figure of the underground opposition) for years to the Hungarian secret police. Their exchange of notes in the public press was an event which offered much hope in Hungary.

What makes flirts with populism disconcerting is not simply that violent masses take to the streets. The lasting problem is that in the course of these developments, the public discourse environment becomes incapable of hosting a rational, informed exchange on matters of public concern. Narratives on the wrongs of the communist past are replaced by empty rhetoric ornamented by canonized stock phrases – flashing the imagery of friend and foe in ahistoricized emblems of good and evil. Attempts at drawing alternatives and introducing distinctions are silenced as detrimental and malicious.

Such developments may be overcome by realizing the importance of coming to terms with the past and recognizing the utility of generating incentives for reconciliation. Although such attempts might take public figures' sincere admission concerning their past dealings and affiliations, this is not too high a price to pay for living not only in a post-Communist (and post-modern) constitutional democracy – but in a decent society. To quote Avishai Margalit from *The Ethics of Memory*:

“A constitution is a constitutive part of a community's shared memory. /.../ (I)t is not true that the only emotions which fit the democratic spirit are the those directed at the future, like hope. Democracy can and should include backward-looking emotions and attitudes as well, such as forgiveness and gratitude. The reason is that democracy, too, is a systematically ambiguous term. It means, minimally, a technique for changing the government without violence, but it also means a full-fledged way of life. And as a way of life, it needs to build among citizens a tradition of loyalty to their shared constitution, institutions, and fair procedures.”²⁶

²⁶ Avishai Margalit, *The Ethics of Memory*, Harvard University Press, Boston 2002, p. 12.

CLOSING REMARKS

Jonathan Faull*

The initial challenge for the Commission and the Slovenian presidency was to gather you all here with your different points of view and various fields of expertise. This in itself is a success. This issue has now been discussed for the very first time at the EU level.

The full detail of your debates cannot be summed up here. We are going to have to digest and analyse all this information and valuable material – a further challenge given the intensity of the discussions and the abundance of ideas.

We draw four general conclusions from these debates:

- First, the feeling that the Member States in Western Europe should be more sensitive to the tragic past of the Member States in Eastern Europe. We should examine this deficit of recognition if we want to avoid the Union being divided on matters such as these, which should actually unite us. We must work together to eliminate this deficit and to help stimulate remembrance and understanding of the past, especially as the witness generation fades away.
- My second conclusion is that truth is a prerequisite for reconciliation. The spirit of reconciliation, on which the European Union is based, is as important now as it was after the Second World War. We have heard today that reconciliation with the past is important to build a common future. The experiences of reconciliation recounted today show how complex this task is, but also that there is reason to be optimistic.
- The third conclusion is that there are many different ways of dealing with the issues of recognition and reconciliation. Member States have adopted different approaches according to their history, culture and institutional and legal systems. There is no one-size-fits-all model and each Member State must find whichever one best suits its circumstances.
- Finally, the debates reveal that there are considerable expectations placed on European Institutions, which are called upon to get more involved in these issues.

The aim of this hearing was to listen, and it is too soon for me now to make comments on the ideas and proposals that some of you have put forward today. I have taken note of this call for greater European involvement on these issues. The Commission is prepared to play its role in fostering a culture of reconciliation based on the respect of fundamental rights.

To avoid any misunderstanding, it is important to remember that the European Union cannot replace Member States in this task. As Vice-President Jacques Barrot stressed this morning, the European Union has very few powers in this area. The role of the EU is to facilitate this process by encouraging discussion, fostering the sharing of experience and best practices, and bringing the various players together.

Many of the initiatives presented today are beyond the EU's powers.

That said, the Commission will be continuing the process set in motion by the Council declaration of April 2007. As you know, the Commission must report to the Council two years after the Framework Decision on Racism and Xenophobia enters into force.

We will now analyse the debates and all the contributions received.

It is therefore important for those who have not already done so to submit their written contributions before 15 May 2008. This will enable the Slovenian presidency to issue a publication on the subject.

The Commission will examine how existing Community programmes can be further used to raise awareness of these issues across Europe.

The Commission also intends to launch a study to gain a factual overview of the various methods, legislation and practices used in the Member States to deal with the issue of remembering totalitarian crimes. We will contact you to gather all the necessary contributions and flesh out the ideas put forward.

* Jonathan Faull, European Commission, Director General, Directorate-General for Justice, Freedom and Security. Summary of closing remarks before the Hearing on "Crimes committed by totalitarian regimes", Brussels, 8 April 2008.

END-NOTE FROM THE EDITOR

Peter Jambrek*

The book comprises 43 texts prepared in various forms for the European public hearing on “Crimes committed by totalitarian regimes”, which was organised jointly by the Slovenian Presidency of the European Union (January–June 2008) and the European Commission, held on 8 April in Brussels. In addition, it includes preface, written by the Slovenian minister of Justice, and former President of the Slovenian Constitutional Court, Prof Lovro Šturm, introduction by the Vice-President of the European Commission Mr Jacques Barrot, and closing remarks by the Director General of the Commission’s Directorate-General for Justice, Freedom and Security, Mr Jonathan Faull. Appended are the statement signed by some of the participants at the European Hearing on its possible contributions, and the January 2008 Initiative on the “United Europe – United History”. The book closes the index of names and items.

Texts were edited for English language and typography mainly, end-notes were transformed into foot-notes, and article sections were put into the uniform shape as to their titles and numbers. Where available, elements of authors’ CV’s were footnoted following indication of their names.

As to their style of writing, contributions to this volume are rather heterogeneous: Some represent written versions of authors’ discussions at the European Hearing; others take the form of a report or an article written before or even after the Brussels conference. Some follow the style of an article prepared for publication in a scientific journal; others come closer to the form of a speech or an essay. In this sense, we admit, the publication does not follow a uniform pattern. And hope that the ensuing incongruity of forms of expression may even be a welcome addition to the riches of ideas published in the volume.

After careful reading and re-reading of the contributed texts, a five-fold structure of the book evolved. It appeared convenient to introduce the volume by general, conceptual and historic articles, where characteristics and comparisons of distinct totalitarian systems are discussed. Only thereafter a cross-national survey of totalitarian crimes, the main theme of the symposium, seemed appropriate. Following the conceptual, descriptive and comparative chapters, the publication turns from the past towards the present. The ways of dealing with the traumatic European history were ordered into three sequential chapters after weighting the prevalent emphases of the paper, sometimes with hesitation: the first one dealing with specific instruments of transitional justice (e.g., prosecution, investigation, reparation, rehabilitation, redress), the second one directed towards issues of public remembrance, recognition and awareness, and the last one to the process of reconciliation.

Two articles about reconciliation seem properly juxtaposed at the very end of the last chapter of the book: the one pointing to lessons that may be drawn from successful experiences, and the other one, turning in disbelief from the success stories to the hope for truth, at best.

* Peter Jambrek, Professor of international and constitutional law of human rights at the European Law Faculty in Nova Gorica, Slovenia. He received his PhD degree at the University of Chicago and was teaching law and sociology until 1990 when he was appointed judge and president of the Slovenian Constitutional Court. He served on the bench of the European Court of Human Rights (1993–98) and was a member of the Venice Commission (1991–2008). At the present he is a member of the scientific committee of the European Union Agency for Fundamental Rights.

APPENDICES

“UNITED EUROPE – UNITED HISTORY” INITIATIVE OF THE 22 JANUARY 2006 CONFERENCE ORGANISED AT THE EUROPEAN PARLIAMENT

Bearing in mind that:

1. The European Union is a community of nations with different, and frequently conflicting, histories. There have been injustices committed and bloody wars fought in Europe for centuries but the EU of 15 has managed to overcome the difficult past. This was so not because the West Europeans have forgotten their history but because they have reassessed it and because they have found common values to share.
2. With the extension of the European Union a number of East European countries have been included along with their different historical experience. While the main problem of the 20th century history for Western Europe might have been the overcoming of Nazism, for Eastern Europe it is also important to overcome the totalitarian Communist past.
3. Whatever is common in the European Union is based on the concept of truth. The wider the scope of a common understanding of our difficult past is, the stronger the European identity will be. France and Germany were the first to start reconciliation on the grounds of common economic interest but also through a sincere reconsideration and overcoming of their bad history.
4. History is important because the way history is presented tells a lot about credibility of those who present it.
5. The contemporary neglect of history teaching in Europe poses a threat to the common values elaborated in the decades of the EU development. Historical amnesia is not the way to prevent an instrumental use of history. It may rather draw closer the moment when ghosts of historical reclaiming will be awoken.

A group of MEPs – Tunne Kelam from Estonia, Girts Valdis Kristovskis from Latvia, Vytautas Landsbergis from Lithuania, Wojciech Roszkowski from Poland and Gyoergy Schoepflin from Hungary – initiated foundation of a working group on “United Europe – United History”.

On 22 January 2008 a conference was organized at the European Parliament during which a mission statement of these five MEPs was presented along with a resolution on formation of a Working Group “United Europe – United History”. The resolution has so far been initially signed by 50 MEPs which allows tabling it as an EP draft resolution.

“United Europe – United History”: a mission to consolidate a common memory

(Wojciech Roszkowski, Gyoergy Schoepflin, Tunne Kelam, Girts Valdis Kristovskis, Vytautas Landsbergis)

The 2004 enlargement of the European Union has thrown up a new problem: what is the full history of Europe? What is to be included in this history, especially when it comes to the most recent period, since 1945? And how is Europe to deal with its different histories? If those many historical experiences are not brought into a single, sufficiently broad European history, the European present will be more difficult to understand as Europeans will remain partial strangers to one another, making communication and cooperation significantly harder.

It is sometimes believed that good international or intercommunity relations require a certain deal of forgetting about history. We do not share this opinion. Conflicts may result from opposite interests or from contradictory interpretations of the past. But if interpretations are neglected and the past is pressed into a jar of forgetting, misinterpretations may, sooner or later, cause explosions anyway. Before 2004 nations of the European Union that have gone through many twists and turns of their historical relations have generally managed to minimize the historical fallout among themselves. This was not because they have forgotten their past but because they have reassessed it and have found more common values to share. But new Member States that joined after 2004 have brought new historical experience, new grievances and complaints, so far ignored in the West. Equally, they have not shared in the process of

“constructing Europe”, hence their experience of the shared values of Europe is bound to be thinner and so is their understanding of the informal rules and meanings. West Europeans seldom recognize this disadvantage and make few allowances for it.

Although there may be a certain variety of legitimate opinions, whatever is common in Europe is based on a common understanding of truth and what are the legitimate ways of reaching this truth – debate, discussion, the collision of ideas. The wider the scope of a common understanding of our difficult past is, the stronger the European identity will be. France and Germany were the first to start reconciliation, not only on the grounds of common economic interest but also on the grounds of common understanding of the fact that bad history can only be overcome through its sincere reconsideration. This process required a conscious effort of will, a determination that as Europeans, they could construct a shared future through a better understanding of their shared past. It is time now to follow this path, to return to this conscious effort of will and to try to incorporate the historical memory of the twenty seven Member States into a broader, as common as possible, vision of the past. At the same time, there must be recognition that there will always be considerable variation in the national narratives of the European past.

So why is history important today? Simply because the way history is being presented tells a lot about credibility of those who present it. Major distortions of history and denials of past wrongdoings always come as a warning sign for other partners. The most cogent and thoroughgoing way to achieve this is to reappraise the history of Europe from the perspective of human rights. The concept of human rights derives quintessentially from the European experience, it has taken a long struggle to establish it and violations of human rights have taken place in every part of Europe.

The mission of the European Parliament informal working group on truth, justice and reconciliation should be:

1. To establish principles for the evaluation of historical developments;
2. To define the time and space framework of its considerations;
3. To plan its proceedings;
4. To specify the possible effects of its proceedings.

As to point one, we suggest the following principles:

- There must be a thorough and sincere recognition of facts.
- There must be a respect for a minimum common ground of principles, such as the respect for human rights and international obligations.
- There should not be a collective responsibility.
- There must be a respect for proportions. One should not too easily compare events and developments of different nature and scale. But also one must bear in mind that even one individual innocent victim is a victim.
- In court procedures one must apply the principle *lex retro non agit*. But the international community has now developed concepts, such as human rights, aggression, war crimes or genocide without a prescription, which are useful for evaluation of the past. Legal consequences can only result from action that was legally defined at that time, if only the “law” and subsequent law enforcement was not dealt by an unlawful, criminal regime; so, the said concepts are necessary points of reference for contemporary moral assessments.

As to point two, we suggest that the 20th century should be the time frame and geographical Europe, including, for historical reasons, the USSR-Russia and Turkey, should be the space frame.

As to point three, we suggest the group should initiate a statement of case studies to be examined (open for future extension) and it should launch professional studies on these cases aimed at reaching formal conclusions. We consider them as not exclusively wrongdoing and crimes, but also or even at first – the cases of cooperation among nations and solidarity for a better future.

As to point four, we suggest, firstly, the group should select cases that should be either:

- sent to the International Court of Justice, or should be
- examined by a special Tribunal, or should be
- publicized in the media and promoted as necessary in the European Union schools.

Secondly, the group should promote the discussion for establishment of general and legal principles how a democratic state should deal with the legacy of undemocratic or totalitarian past.

Thirdly, the group should initiate the establishment of an European institute which should promote the awareness of the common European History which also includes the experience of new member state and which should investigate past wrongdoings in order to strengthen the European identity and the consciousness of democracy and human rights.

The formation of our group would go in line with the Council declaration of 19 April 2007 dealing with crimes of genocide, crimes against humanity and war crimes, as well as with activities aimed at condoning, distorting or trivializing these crimes.

Draft Resolution on Formation of a Working Group “United Europe – United History”
(Wojciech Roszkowski, Gyoergy Schoepflin, Tunne Kelam, Girts Valdis Kristovskis, Vytautas Landsbergis)

- A. Considering that the European Union is based on certain common values.
- B. Considering that justice belongs to these fundamental values and that a sound historical knowledge is necessary to the exercise and promotion of justice.
- C. Considering that a broad common historical memory would be a strong unifying factor and that the lack thereof is an obstacle in the construction of a stronger and more compact Union.
- D. Considering that ignorance and false clichés in the historical memory of Europeans may create room for nationalistic or other abuses of historical remembrance.
- E. Considering the fact that present perceptions of past abuses and atrocities are an important part of contemporary debates on democracy.
- F. Considering that without due reflection and re-examination of historical experience past abuse may have an important impact on present international relations.
- G. Considering that the overcoming of bad historical legacies is possible, as the case of France and Germany after 1945 clearly shows.
- H. Considering that the recent extension of the European Union has added a new dimension to the European historical heritage.
- I. Considering that it is possible to work out common principles to assess historical developments, such principles formulated in the Briand-Kellogg Pact of 1927, the UN Declaration of 1948, the European Convention of Human Rights of 1950, the Helsinki Final Accord of 1975, as well reference to other international obligations.
- J. Considering that the denial of debate on past atrocities and abuses increase the risk of their repetition.

We, the undersigned:

1. Believe that a comprehensive reassessment of European history will strengthen the European integration since a better future may only be built by means of a better understanding of the shared past.
2. Share the view that there is one historical truth but that there exist various opinions about this truth. A sincere exchange of these opinions in the spirit of mutual understanding and quest for reconciliation should lead to the elaboration of a wider and more common historical memory among Europeans.
3. Are of the opinion that although parliaments cannot change history, they should draw attention to the consequences of historical presentations and teaching.
4. Wish to establish a working group “United Europe – United History” to deal with the most important developments of the European 20th century history, including unrecognized or forgotten crimes or other abuses of human rights and other international obligations, with the purpose of:

- a. specifying these developments with regard to their significance,
- b. careful fact finding,
- c. assessment of the responsibility,
- d. undertaking, where necessary, legal steps,
- e. promotion of results in the media and in schools,
- f. establishment of an European research institution to continue and expand these activities.

Excerpts from the “United Europe – United History” Conference held at the European Parliament on 22 January 2008

“People who share a past are better capable of acting together in the present. This proposition obviously applies to Europe. Integrating Europe self-evidently means political action in the present, with aspirations in the future. Logically European integration, therefore, should be firmly anchored in a particular European idea of the past.

Some of this does exist, especially when it comes to European institutions but very little of this resonates with the wider public, for whom Europe is either a desirable or an undesirable abstraction. What is needed therefore is a way of structuring Europe’s past to give recognisability as European by the great majority, as something that affects the great majority. However, another issue is raised by this idea. Any European history of Europe worthy of the name must bridge the deep gulfs – reflecting real experience – that different parts of Europe regard as key aspects of their European pasts.” (Gyoergy Schoepflin)

“Let’s remember that after the removal of the dictatorial regimes in South Africa, Chile and even in Germany, truth, justice and reconciliation commissions were established. In this way, those who had suffered received at least moral recompense /.../ The past of undemocratic European States can also be evaluated by legal means, e.g. by using the established legal principles and precedents of international and national courts /.../

The Danish historian, professor Bent Jensen, in his book about the Gulag, speaking about the ‘loss of memory’ in the West in the 20th century, says: ‘Although the Western world knew about these crimes at the time when they were committed, their reaction was negligible. In fact – many helped to conceal these facts. Even today the genocide committed by the communists has remained in the shadow of the Nazi genocide, notwithstanding the scary and shocking similarities of both regimes.’” (Girts Valdis Kristovskis)

“The current community of 27 EU Member States – a community which is already looking forward to the membership of half a dozen more post-communist countries from Southern Europe – is committed to take a common responsibility to address the heritage of Communist totalitarian regimes. This is not merely a question of nostalgia. In the 20th century, it took two totalitarian powers to plunge Europe into a devastating war. These two dictatorships committed massive crimes against humanity, carried out genocide, brutally suppressed European values and cultural traditions. In order to be sure that such ideologies never again ascend to power in Europe, it is imperative for the EU as a whole to analyze and draw conclusions from both totalitarian systems as well as from the experiences of tens of millions of Europeans from all walks of life who had their lives and futures crushed by these inhuman regimes.” (Tunne Kelam)

“As Karl Popper said, a true presentation of history would be possible only if we were able to reconstruct the whole of it. We are in fact doomed to /.../ make choices as to what was important and what was not and what the meaning of historical events was. Scholars have at their disposal certain rules and methods of avoiding historical distortions. Let me mention but a few of them. First, their ambition should be to precisely specify the issue. Second, they should explore a representative body of evidence. Third, they should carefully measure and compare the importance of historical phenomena. Fourth, they should not draw conclusion of the *pars pro toto* nature. Fifth, they should specify criteria of assessment of historical evidence. Sixth, they should take into account various dimensions of historical reality and various points of view and carefully judge which are relevant and which are not. Seventh, they should apply logical reasoning. The only problem is whether politicians are willing to use these methods.” (Wojciech Roszkowski)

“We have a multitude of national histories in Europe rather than a sum of them. Too often, if not always, national histories were denouncing each other or, at least, competing between themselves in disputable arguments outside of proper, if any, self-criticism. To put such a variety into a comprehensive basket seemed impossible and able to bring nothing but a multinational mess. If we prefer message to mess, new approaches are to be called to emerge.

The call is now coming from the new understanding of the European entity as Union. Positively softened retroactivity of views may emerge here. Most of previous internationally treated conflict-building cases, especially those based on territorial and ethno-territorial grounds, have already lost their burning radioactivity and, therefore, the splitting force.” (Vytautas Landsbergis)

STATEMENTS BY THE COUNCIL TO BE INSERTED IN THE MINUTES OF THE COUNCIL AT THE TIME OF ADOPTION OF THE FRAMEWORK DECISION

Justice and Home Affairs Council Luxembourg, 19–20 April 2007

On (date) the Council of Ministers has adopted a Framework Decision on Combating certain forms and expressions of racism and xenophobia by means of criminal law. The aim of this Framework Decision is to approximate criminal law provisions and to combat racist and xenophobic offences more effectively by promoting a full and effective judicial cooperation between Member States.

The Framework Decision deals with such crimes as incitement to hatred and violence and publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes. The Framework Decision is limited to crimes committed on the grounds of race, colour, religion, descent or national or ethnic origin. It does not cover crimes committed on other grounds, e.g. by totalitarian regimes. However, the Council deplors all of these crimes.

The Council invites the Commission to examine and to report to the Council within two years after the entry into force of the Framework Decision, whether an additional instrument is needed, to cover publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin such as social status or political convictions.

The Berlin declaration adopted on 25 March 2007 stated that “European integration shows that we have learnt the painful lessons of a history marked by bloody conflict”. In that light, the Commission will organize a public European hearing on crimes of genocide, crimes against humanity and war crimes committed by totalitarian regimes as well as those who publicly condone, deny, grossly distort or trivialize them, and emphasizes the need for appropriate redress of injustice and – if appropriate – submits a proposal for a framework decision on these crimes.

7/04/2008

HEARING
CRIMES COMMITTED BY TOTALITARIAN REGIMES
8 APRIL 2008

9.00- Welcome

9.30- 10.00 - OPENING SESSION

- **Jacques BARROT**, Vice-President of the European Commission

- **Robert MAROLT**, State Secretary, Ministry of Justice of the Republic of Slovenia

10.00-13.15 - RECOGNITION OF TOTALITARIAN CRIMES

10.00 -11.30 **Session 1: How to improve knowledge about totalitarian crimes?**

(What methods can be used at the national level to shed light on the full extent of totalitarian crimes and their victims (e.g. opening of archives, testimonies, investigation committees) and on how these operate? Are there any general common trends in the various approaches on this subject?)

Moderator: Sandra KALNIETE (LV) (Former European Commissioner, Former Minister of Foreign Affairs of Latvia)

Introductory presentations:

Emanuelis ZINGERIS (LT) (Member of the Lithuanian Parliament)

Andreja VALIC (SI) (Historian)

Debate

11.30- 11.45 - Coffee break

11.45 -13.15 **Session 2: How to promote public awareness about totalitarian crimes?**

(Which tools should be used: education, historical studies, media, books, film, debates, events, celebration, monuments etc.? What approaches should be used for younger generations? How can we preserve historical memory? What is the role of the EU?)

Moderator: Pierre MAIRESSE (European Commission, Director, Directorate-General Education and Culture)

Introductory presentations:

Toomas HIIO (EE) (Estonian International Commission for the Investigation of Crimes against Humanity)

Henrihs STRODS (LV) (Historian)

Kathinka DITTRICH VAN WERINGH (DE) (European Cultural Foundation - Amsterdam)

Debate

13.15- 14.45 – Buffet Lunch (Salon rouge, first floor Charlemagne premises)

14.45-18.45 - RECONCILIATION AND TOTALITARIAN CRIMES

14.45 - 17.15: **Session 3: What lessons can be drawn from successful experiences?**

(What are the experiences of reconciliation which could be used as positive examples? What lessons can be drawn from national experiences?)

Moderator: Peter JAMBREK (SI) (Professor, Member of the Venice Commission)

14.45-15.45 National experiences (I)

Introductory presentations:

Carlos CLOSA MONTERO (ES) (Centre for Political and Constitutional Studies, Member of the Venice commission)

Renata UITZ (HU) (Assistant professor of Comparative Constitutional Law)

Dalia KUODYTĖ (LT) (Director General of the Genocide and Resistance Center of Lithuania)

Debate

15h45-16h - Coffee break

16.00-17.15 National experiences (II)

Introductory presentations:

Ljubo SIRC (SI) (Centre for Research into Post-Communist Economies)

Marianne BIRTHLER (DE) (Federal Commissioner for the Records of the State Security Service of the former GDR)

Mikhail NARINSKY (RU) (Historian)

Debate

17.15-18.45 **Session 4: How to achieve reconciliation?**

(What are the conditions and instruments for achieving reconciliation (judicial action, extra-judicial and other non legal processes? Are there common trends on the methods to use? Is there evaluation of the existing instruments? What is the role of the EU?)

Moderator: Francisco FONSECA MORILLO (European Commission, Director, Directorate-General for Justice, Freedom and Security)

Introductory presentations:

Guy DE VEL (BE) (Independent expert, former Director General of Legal Affairs, Council of Europe)

Ana Filipa VRDOLJAK (European University Institute - Florence)

Pedro BACELAR de VASCONCELOS (PT) (Public Law Professor at the University of Minho)

Debate

18.45-19.00 – CONCLUSIONS

Jonathan FAULL (European Commission, Director General, Directorate-General for Justice, Freedom and Security)

Venue: European Commission, Charlemagne building (Salle Lord Jenkins), rue de la Loi, 170; Brussels

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**Contribution of the 1st European hearing on
“Crimes Committed by totalitarian regimes”
Brussels, 8 April 2008**

At the Justice and Home Affairs Council of the European Union on 19 April 2007, Member States reached political agreement on a Framework Decision on combating certain forms and expressions of racism and xenophobia.

Taking into consideration that the Framework Decision *inter alia* covers only public condoning, denying or gross trivialising of the crimes committed by European Axis countries during WWII, the Council in its statement has envisaged that in the future a further exploratory work needs to be done in order to ensure an equal treatment of all totalitarian crimes.

The Council also agreed that the Framework Decision should be accompanied by a Council declaration with the aim to organize a public European hearing on crimes of genocide, crimes against humanity and war crimes committed by other totalitarian regimes *inter alia* totalitarian communist regime.

Although the nations of Europe, which have suffered from both totalitarian crimes committed by Nazi regime and the totalitarian communist regimes, have carried out a huge work to overcome the consequences, there is still work to be done at EU level.

Most Central and Eastern European countries and their societies were cut off from Free World and the process of restoration of historical justice, thus they could not participate in historical, legal, and political debates. After they regained their independence and a democratic political system was re-established there, CEE countries aspired to join the value and legal space of the united Europe.

Appropriate preservation of historic memory, assessment of the crimes of totalitarian regimes and their ideologies as well as respect for the victims and freedom fighters are very important for historical justice and sake of European future and prevention of the crimes against humanity. The importance of European wide recognition of all historical aspects of modern Europe was also mentioned in the Berlin declaration. Heads of several Member States of EU have already underlined the moral and political importance of these questions.

Crimes of the totalitarian regimes have caused essential damage for people of Europe, which experienced both totalitarian regimes during WWII. Therefore a resembling approach has to be made taken and all necessary actions should be carried out at the European level to eliminate the possibility for regeneration of any totalitarian regimes, including communist regime. The Public Hearing is one of the first steps in European level to achieve this goal. Hence it is necessary to indicate further actions at European level:

- 1) **to formulate a common approach** regarding crimes of totalitarian regimes, *inter alia* totalitarian communist regime. Raise an EU-wide awareness of the totalitarian communist crimes, which would be based on step-by-step promotion of comprehension to these crimes in order to clearly define

- European-wide attitude towards the crimes of the totalitarian communist regime;
- 2) **to ensure continuity of the process of evaluation of totalitarian crimes**, thus bringing deeper understanding of the meaning, magnitude and consequences of crimes committed by totalitarian regimes as well as preventing recurrences of totalitarian rule;
 - 3) to initiate an **establishment under EU auspices of a permanent governmental Forum** (Conference), which inter alia would take note of all the initiatives regarding the investigation and the evaluation of the crimes committed by the communist and other totalitarian regimes in Europe. National reports on totalitarian crimes from all the Member States should form an initial basis for the discussions;
 - 4) **to establish a European Foundation** to promote public awareness at the EU level, to develop cultural and educational projects, and notably to provide support to networking of national research institutions specialised in the subject of totalitarian experience, to provide support for the European and national research and educational projects;
 - 5) to ensure a clear international legal framework regarding a **free** (unrestricted by the relevant governments and political implications) access **to the Archives containing the information on the crimes of the totalitarian regimes**;
 - 6) to consider establishing a **European museum on totalitarian regimes and a memorial for the victims of totalitarian regimes** in order to rehabilitate and appropriately memorialise victims of these crimes;
 - 7) to declare **the European day of commemoration of the victims of totalitarian regimes** (e.g. the 23rd of August - the day the Molotov-Ribbentrop pact was signed) and start its commemoration at the European level;
 - 8) to ensure **the principle of equal treatment and non-discrimination of victims of all the totalitarian regimes**.

Participants of the Public Hearing invite the European Commission and the Presidency to inform the Council of Ministers of the results of this Public Hearing.¹

¹ Contribution of the 1st European hearing on “Crimes committed by totalitarian regimes” was signed at the Hearing by more than 40 participants.

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