



Retribution decrees in Bohemia and Slovakia and difficulties related to their application

Radoslav Maskal', Cassovia realitas Košice, s.r.o., radomaskal@gmail.com

MASKAL', Radoslav. Retribution decrees in Bohemia and Slovakia and difficulties related to their application. Individual and Society, 2009, Vol. 12, No. 4.

The article is a summary of characteristic of London retribution decree and Retribution Act No. 33/1945 Col. of Slovak National Council in epoch of post war Czechoslovakia republic.

Retribution. London retribution decree. Slovak Retribution Act No. 33/1945 Col. of SNC. Slovak National Council. War crimes.

One of the characteristic point of each post war era included also determination of proceedings against the defeated side. Major problem of this study, taking into account wide scope of this problem doesn't include whole problem of post war retribution, but to focus at certain factors which affected creation and application of retribution decrees within Bohemia and Slovakia, but also difficulties related with people's court activities. Marxist authors dealing with post war retribution wrote in highly partial view about this topic, as they stressed the participation of communist party in punishing of war criminals.[1] After 1989 prevail opinions that retribution was a part of postwar struggle for power between communists and democracy - oriented parties. Because there are only several historical studies, in which authors focus on explanation of some factors related to this topic, this problem isn't so much discuss[2], it's important to explain how retribution functioned in our country and what problems there existed. Because of technical reasons we will deal with only several of them, which in certain measure affected whole situation in this period. Retribution decrees in Bohemia and Slovakia aroused from the international political situation in postwar Europe, characterized by effort of Allied Powers for strict punishment of Nazi war criminals and their allies.[3]

Exiled president Edvard Beneš announced in his speech in the State Council on 12th of November 1942 that punishment of war criminals is to be the one of the most important issues of the near future. He said: „After 1918 Western states left Austrian - Hungarian monarchy without any punishment. Now punishment of quislings and internal collaborators without mercy and hesitation will be responsibility of each member of the nation and state.“[4] Minister of justice of the Czechoslovak government in London Jaroslav Stránský submitted first application of retribution decree to E. Beneš in June 1943 and it was discussed on the several ministry sessions in autumn 1943. It caused lively discussion and finally it was returned to ministry of justice to be amended. One of the opponents Ladislav Feierabend wrote about his attitudes in his memories: „The issue of retribution decree should remove or intimidate pure patriots, who had to be in touch with Germans as the consequence of their position, in order to protect life of the citizens or prevent damages, which would be irreplaceable for the nation.“[5]

Initiative to issue of retribution decree wasn't idea of communist party members of State Council, but it had arisen from the democratic parties' members of the government. Major issue related to retroactivity of this decree. This act also included punishment of persons, who committed crimes against the Republic during a period of increasing danger within months before the war. Several supporters of legal continuity

of Czechoslovak Republic (CSR) announced, that there could be applied the Republic Protection act from 1923 and so it would be feasible to avoid any retroactivity of decree, which is not acceptable in modern legal system. Minister Stránský said in the Czechoslovak broadcast in BBC on 21th of November 1943, that „issue of the retribution decree had to be a principle of the retroactivity, because our normal penal law couldn't foresee events, which had happened in our countries after German occupation.“[\[6\]](#) Czechoslovak government issued basic decree on 21st of September 1944 with recommendations of State Council and president Beneš, who required decree to be limited for a period of one year and facilitated its amendments by post war government.

London retribution decree of president Beneš used a form of referring of previous legal acts and it has arisen from the theory of legal continuity of 1st ČSR, assuming on the standpoint, that Czechoslovak legislation validity continued during occupation of Czechoslovakia. Retribution in Bohemia could be partially reasoned by this measure without problem of retroactivity. Decree consisted of two parts.

First part (§§ 1 - 19) dealt with a definition of types of war crimes, committed by Nazis and their collaborators within period of increasing danger to Republic and within area of Czechoslovakia or also beyond this area on the Czechoslovak citizens, public and private property. It included ten types of criminal acts, divided into three categories: crimes against state,[\[7\]](#) crimes against persons[\[8\]](#) and crimes against property[\[9\]](#). Scope of punishment varied from 5 years up to capital punishment, depending on relevance of individual crime. Criminal act was characterized as retribution type of crime, if the criminal committed its crime in services or interest of Germany, which proved its collaboration motive.

Second part (§§ 20 - 33) dealt with special people's courts, which trialed all crimes related to the decree. Special people's courts carried out their activities in the tribunals, which consisted of five members. The chairman was professional judge, but other members were non - professionals. President of republic appointed professional judges on the basis of the government proposal from the list of persons, elaborated by district national committees (DNC). The government had to appoint non - professionals. Public prosecutors elaborated from the list by the DNC, carried out the prosecution. Retribution courts were supposed to decide within three days period, otherwise civil courts had to take over the cause. There was no appeal against sentence of retribution courts.[\[10\]](#) During negotiations of London exile government, Slovak national council (SNC) and Moscow exile representatives in March 1945 in Moscow they discussed about subject of war criminals punishment. Preparations of the government programme proposal and creation of new government was the main goal of negotiations. IX. Chapter of the Government Programme was discussed on 24th of March 1945. Moscow leadership of Communist party of Czechoslovakia introduced its own proposal of retribution decree to members of London government, which was prepared in January 1943. In comparison to London decree communist version specifies Protectorate and Slovak collaborating organizations and institutions, whose members should be put on trial. Communists were satisfied with incorporation of their demands into the government programme, but they also supported Slovak representatives, who pushed through an issue of their own decree. VI. Chapter of Košice Government Programme states as follows: „Czechoslovak government will consider in SNC a representative of state powers within Slovakia“, but there is also quoted, that „central government will provide for ordinary state tasks in the closest possible cooperation with SNC and Board of Appointees.“[\[11\]](#)

This decree implies that the issue of Slovak retribution decree was in accordance with Kosice Government Programme, because Slovakia had specific conditions within the framework of Czechoslovakia, but it had to accepted decrees of central government. Minister of Justice J. Stránský had criticized the Slovak decree during the government negotiations in Kosice on 28th of April 1945, as the chairman of retribution court was required to be a professional judge. Stránský was afraid, that international society won't accept institution of people's courts as competent courts of justice due to that fact.[\[12\]](#)

But late these worries become irrelevant, because of inclusion of non professional judges into the court tribunals was applied on lower levels in other countries, where retribution was carried out. For example, there were created special penal tribunals within liberated areas of Poland in September 1944, where the chairman was a professional judge and two other members were non professionals.[\[13\]](#)

Slovak Retribution Act No. 33/1945 Col. of Slovak National Council

SNC board dealt for a first time with Slovak retribution decree on 16th of April 1945. There has arisen a difference in opinions between Slovak Communist Party members and Democratic Party members, which referred to the retroactivity of retribution decree. Appointee of Justice Ivan Štefánik declared his opinion

in special commission, consisted of three lawyers (Takáč, Daxner, Štefánik), one representative of Communist Party (Púll) and Democratic Party (Pietor), that SNC should issue London retribution decree as its own act. But Act No. 1/1944 Col. of SNC revalidated legal acts of the Slovak State, in exception of those which were in conflict with republican - democratic spirit. Slovak Republic Protection act No. 320/1940 Col. was one of them. Application of Legal Act No. 50/1923 Col. was invalidated by its issue and thereby SNC couldn't pass retribution decree, which was based on the principle of legal continuity of ČSR.[14]

It's necessary to say, that retroactivity of penal laws, which was the basic problem at the definition of the Charter of International Military Tribunal was in contradicted with principle of nullum crimen sine lege (there is no crime without legal act). This principle has two means: as major guarantee of individual freedom of citizen and on the other hand defense of community against dangerous elements. There is a disputable fact of a major part of Slovak population considered the Slovak government a German collaborators and their activities a criminal act. Likely war criminals knew, that after defeat of Germany their acts could be trialed and because of they run away from Slovakia and they sheltered in Germany and in the other countries. Their judgment was considered as society defense and revenge to elements, considered dangerous for society.[15]

SNC unanimously passed Retribution Act draft on its session and issued it as Legal Act No. 33/1945 Col. of SNC related to punishment of fascist criminals, occupants, traitors and collaborators and establishment of people's justice. Even this act arisen from the London decree, in principal it was an original act, which has accepted specific situation in Slovakia during the World War II. But this Legal Act was prepared very hastily and with its flaw from the point of view of legislative technique and usual penal law principles. It is proved by letter of Gustáv Husák, Appointee of Interior to Anton Rašla, the prosecutor on trial with Jozef Tiso, dated from 1968, where it said: „... at that time - in April, when government offices commenced their activities in Košice, they began with preparations of retribution decree at Ministry of justice and they have arisen from the „London draft“ ... because at that time - in parallel it has started with preparations of the retribution act applicable within Slovakia. Besides that almost whole Slovakia territory was liberated and there was an urgent need for legal solution ...“[16]

Slovak communist representatives were afraid, that Czechoslovak government will issue London decree for whole area of Czechoslovakia, which was less strict against collaborators than Slovak Retribution Act.

This Legal Act was made up of 33 paragraphs, whose formulation seemed to be quite vague. First five paragraphs related to the factual definition of the crimes according to their degree of collaboration with Nazi war criminals. There was no appeal against decisions of people's courts. They were divided according to the jurisdiction authority into local, district and National court with authority within whole area of Slovakia. There existed people's courts in small towns and villages. Minister of Justice J. Stránský warned during negotiations of the government in April 1945 in Košice, that trials in small communities won't be recognized as legal courts of justice.[17] Active members of the Hungarian right wing political parties were also considered as war criminals, because their leaders proclaimed annexation of Southern part of Slovakia to Hungary. This act of collaboration was considered individually according to the specific offences or acts of the accused. Common rank membership wasn't considered as a penal act, but activities in leading positions of the Hungarian and German right wing political parties were considered more strictly. Communists pushed through an inclusion of participation in the war against the Soviet Union, public defamation of the Soviet Union and persecution of the Communist Party members to the Retribution Act. The main goal of this decision consisted in revenge for war persecution and liquidation of their political opponents. The majority of accused were Hungarians, which was in accordance with the principle of collective guilt of the Hungarians and Germans, laid down in the Košice Government Programme.[18]

Slovak Retribution Act didn't include legal acts of 1st ČSR, but it included some parts of the Soviet penal legislation, mainly principle of the wide participation of non professionals in the tribunals of retribution courts. Czech and Slovak retribution had many difficulties, which were related to some objective and subjective reasons. The most significant objective reasons, which affected activities of people's courts, included lack of professional judges, lack of experience with special justice, strong influence of the political parties on judges and lack of unity in the judgment of the same penal acts. Even both acts defined elementary principles of the judgment of war criminals, there weren't constituted clear rules as far as who, why and how to punish? Lack of unity in the judgment of penal acts was caused by too general definition of types of war crimes, which allowed inexperienced judges to trial under influence of emotions and temper provoked by injustices, committed on their relatives.[19]

Another problem of retribution in Slovakia and Bohemia consisted in the strong influence of the political parties' representatives on judges through their intimidation. National security arrested two judges Jozef Markovič and Viktor Pauliotti on the basis of the order of Jozef Ilčík, the head of 6th section of Department of Interior. It happened without recognition of Appointee of Justice Ivan Štefánik. It was due to fact, that both were members of penal tribunal, which decided in the case, which was troublesome for Communist Party. Appointee of Justice Ivan Štefánik warned Appointee of Interior Július Viktory in the letter, that this case is dangerous precedent and interference into performance of judge position: „Whole matter affected sensation in the judicial body, which may have negative influence on the perform of judge duties, even may threaten perform of justice.“[\[20\]](#)

Slovak press criticized influence of the political parties into course of retribution. It was proved by article of Ivan Bukovčan, who stressed on the fact, that in the partial results of retribution justice in Slovakia, out of total number 41, 44% of defendants were set free and 58, 56% were sentenced. There were two possible alternatives: 1. Almost half of people were put on trial were innocent, that means, that denunciation was spread in huge measure within Slovakia and informers confiscated flats, property, positions during their imprisonment, 2. people's tribunals set free almost half of guilty, they broke legislation due to corruption or political influence by which political parties wanted to protect their collaborators from being sentenced.[\[21\]](#) We consider the first alternative to be more probable. Lack of independent judges prevented from positive solution of this negative situation.

We have drawn several aspects of the retribution procedures in Bohemia and Slovakia after World War II. Even many difficulties affected course of retribution, this matter was considered necessary for national cleansing in postwar Czechoslovakia. We have tried to point out on injustice of political representatives and judges, which led to punishment not only true war criminals, but too many innocent people, whose only guilt was their patriotism. We think that retribution is warning for future to carry out punishment of criminal acts not based on emotions or political interests, but only and solely justice grounds.

Retribučné nariadenia v Čechách a na Slovensku a ťažkosti súvisiace s ich aplikáciou

Predstavitelia povojnovej Československej republiky si uvedomovali zodpovednosť za upevnenie štátu. Popri politickej a ekonomickej obnove republiky kládli dôraz aj na spravodlivé potrestanie vojnových zločinov. V tomto kontexte treba vnímať aj uzákonenie retribučných nariadení londýnskej emigrantskej vlády, resp. Slovenskej národnej rady, ktoré vychádzali z medzinárodných dohovorov. K významnej udalosti, formujúcej proces obnovenia republiky patrili Košický vládny program, ktorý bol podpísaný predstaviteľmi domáceho a zahraničného odboja v apríli 1945 v Košiciach. Edvard Beneš ako prezident obnovenej republiky stál na čele síl, ktoré sa usilovali prísne potrestať činiteľov 1. Slovenskej republiky na čele s prezidentom Jozefom Tisom. Slovenská národná rada stála na pozícii svojbytnosti slovenského národa pod českým patronátom. Z tohto uhla pohľadu treba vnímať jej retribučné nariadenie ako snahu o vysporiadanie sa s ľudáckym režimom. Príspevok prináša stručný náčrt vzniku a aplikácie retribučných nariadení londýnskej emigrantskej vlády, resp. Slovenskej národnej rady.

[\[1\]](#) For example publications of DAXNER, Igor. *Ludáctvo pred Národným súdom (1945 - 1947)* (People's party movement before National court (1945 - 1947)) Bratislava : SAV, 1961; BIANCHI, Leonard. *Ludové súdnictvo na Slovensku v rokoch 1945 - 1947* (People's justice in Slovakia in 1945 - 1947).). In: *Právnehistorické štúdie*, 12/1966, pp. 187-196. These monographs are characterized by their perception of retribution as a measure of the class struggle against compromised part of bourgeoisie.

[\[2\]](#) Slovak historian Marek Syrný in his study *Retribúcia ako mocensko-politický aspekt povojnového Slovenska* (Retribution as a power-political aspect in postwar Slovakia) explains difference in perception of retribution between communists and democrats. According by his opinion the Democratic Party leadership wanted to punish active representatives of 1st SR and not punish all members of war regime, who collaborated in passive way. Communists weren't interested in punishment for activities leading to collapse of 1st ČSR, but in strict revenge for the persecution of their members during 1st SR and also removal of all political opponents from the power struggle. SYRNÝ, Marek. *Retribúcia ako mocensko-politický aspekt povojnového Slovenska* (Retribution as a power-political aspect in postwar Slovakia). In: *Acta Historica Neosoliensia*, 6/2003. Banská Bystrica : UMB, pp. 142-143.

[3] First effort to punish Nazi war criminals was dealt with in Moscow declaration in 1943, where Allied Powers agreed to: 1. War criminals, who committed their crimes within certain territory, will be handed over to relevant country and put on trial according to valid legislation, 2. War criminals, whose crimes cannot be geographically localized, because they refer to several countries, will be sentenced according to common decision of Allied Powers. HEYDECKER, Joe - LEEB, Johannes. *Norimberský proces* (Nuremberg trial). Praha : Ikar, 2007, pp. 115.

[4] FROMMER, Benjamin. *Národná očista. Retribúcia proti nacistickým kolaborantom v povojnovom Československu.* (National cleansing. Retribution against Nazi collaborators in postwar Czechoslovakia). Cambridge : Cambridge University Press, 2005, pp. 65-66.

[5] FEIERABEND, Ladislav. *Politické spomienky* (Political memories). Catch 3. Brno : Atlantis 1994, pp. 168.

[6] KUKLÍK, Jan - NEMEČEK, Jan. *Proti Benešovi. Česká a slovenská protibenešovská opozícia v Londýne v rokoch 1939 - 1945.* (Against Beneš. Czech and Slovak Antibenes Opposition in London in 1939 - 1945). Praha : Karolinum 2004, pp. 274.

[7] Crimes against state included: crime of intrigue against Republic, crime of preparation of intrigue against Republic, crime of danger to security of Republic and crime of high treason.

[8] Crimes against persons included: theft, crime of enslavement, murder, serious body harm, child kidnapping, illegal limitation of personal freedom, extortion, threatening, forced labor recruitment, causing the freedom for faith of another person in case that was committed in the period of endangerment of Republic or interested or services of Germany for filling active crime based against human beings.

[9] Crime against property included intentional property damage, arson, robbery, fraud, abuse of grave need caused by national, political or racial persecution for enrichment purposed.

[10] Legal Code of the ČSR, ann. 1947, pp. 33-39.

[11] KLIMEŠ, Miloš. *Cesta ke květnu.* (Journey to May). Catch 1. Praha : Vydavatelstvo Československej akademie vied (Publishing house of the Czechoslovak Academy of Sciences - ČSAS), 1965, pp. 384.

[12] KOČOVÁ, Kateřina. *Mimoriadne ľudové súdy v Liberci a Litoměřiciach v rokoch 1945 - 1948* (Special people's courts in Liberec and Litoměřice in 1945 - 1948). Ústí nad Labem, 2001, pp. 9-10.

[13] RAŠLA, Anton. *Ľudové súdnictvo v Československu po 2. svetovej vojne ako forma mimoriadneho súdnictva* (People's courts in Czechoslovakia after World War II. as form of special justice). Bratislava : Slovenská akadémia vied (Slovak Academy of Sciences - SAS), 1969, pp. 66.

[14] RAŠLA, A. *People's courts...*, pp. 59.

[15] RAŠLA, A. *People's courts...*, pp. 63-64.

[16] RAŠLA, Anton - ŽABKAY, Ernest. *Proces s Dr. J. Tisom.* (Trial of Dr. J. Tiso), Bratislava : Tatrapress, 1990, pp. 30.

[17] JECH, Karel- KAPLAN, Karel. *Dekréty prezidenta republiky v letech 1940 - 1945. Dokumenty.* (Decrees of the President of Republic 1940 - 1945. Documents). Brno : Publishing house: Doplněk a Inštitút súčasnej histórie Akadémie vied Českej republiky (Doplněk and Current history Institute of Academy of Sciences of Czech Republic), 2002, pp. 250.

[18] ŠUTAJ, Štefan - ŠTEFANSKÝ, Michal. Aplikácia prezidentských dekrétov E. Beneša a nariadení Slovenskej národnej rady vo vzťahu k nemeckej a maďarskej menšine na Slovensku a ich medzinárodné súvislosti. (Application of the presidential decrees of E. Beneš and acts of SNC related to German and Hungarian minority in Slovakia and their international connections). In: *Slovensko a prezidentské dekréty Edvarda Beneša v kontexte nariadení Slovenskej národnej rady.* (Slovakia and presidential decrees of Edvard Beneš in the context of the Slovak National Council acts). Bratislava : Veda, 2006, pp. 35.

[19] For example the trial with catholic priest Ján Rekem on the District people's court in Trenčín, who hadn't committed any war crime, but put in prison. He mentioned in his memories that major aim of retribution didn't consist in the punishment of war criminals, but to strict revenge of communists and Protestants on the Catholic's for war injustices. REKEM, Ján. *Trenčianska väznica. Spomienky slovenského kňaza v bolševickom väzení.* (Trenčín prison. Memories of Slovak priest in Bolshevik prison). Trenčín : Ivan Štelcer, 1997, pp. 46.

[20] PEŠEK, Jan - LETZ, Róbert. *Štruktúry politickej moci na Slovensku v rokoch 1948 - 1989.* (The structures of power in Slovakia 1948 - 1989). Prešov : Publishing house of Michal Vaško, 2004, pp. 291.

[21] BUKOVČAN, Ivan. Ludové súdnictvo v rozpakoch. (People's justice in embarrassments). In: *Národná obroda*, 8. 12. 1946, ann. 3, n. 281, p. 3.