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Polish and Czechoslovak Retribution against Germany, 1945-1949: A Comparison¹

This article aims at making a comparative analysis of the process of post-war retribution, in the period 1945-49, against war criminals and their collaborators during World War II in Poland and Czechoslovakia. It seeks to present both the basic legal and institutional solutions adopted to settle wartime scores by the authorities in Warsaw and Prague, and to highlight the similarities and differences in the course of this process in both countries. An important element in this analysis is also the attempt to answer the question: How did the different occupation experiences of these two countries, and the changing internal and international situation in 1945-1949, affect the course of each in “cleansing” themselves of their respective criminals and collaborators?

This text is based primarily on Polish, Czech, Slovakian, German and English publications on wartime guilt and its post-war punishment which took the form of retributive justice in both countries. These secondary sources are complemented by archival materials held by Poland’s Institute of National Remembrance. As might be expected, Polish subject literature is concentrated on the Polish experience and contains few works on the post-war trials of criminals and collaborators in other countries, Czechoslovakia included.²

As a starting point for further discussion, I propose to give a short outline of the experience of the German occupation and its contingent terror and collaboration, in Poland and Czechoslovakia, in 1939-1945. Although both

1 This article was written as part of the research project: “*Punishment, memory and politics: Retribution against the past since the World War II*”, financed by the National Science Center (project: DEC-2013/10/M/HS3/00577).

2 See Piotr Maciej Majewski, *Niemcy Sudeccy 1848-1948: Historia pewnego nacjonalizmu* (Warsaw, 2008); Łukasz Jasiński, ‘Powojenne rozliczenia w Czechosłowacji 1945-1948: Proces prawny i tło polityczne’, *Pamięć i sprawiedliwość*, 2 (2014), 253-81.

countries fell victim to the aggression of the Third Reich at a similar time, each of them had a very different experience under German occupation.

After the Munich Agreement, which sanctioned the partition of Czechoslovakia, the elimination of the state of the Czechs and Slovaks by the Third Reich was a matter of time.³ German aggression against Czecho-Slovakia, as it was now called, became a fact, when on 15 March 1939, the Wehrmacht marched into Prague, meeting no resistance, and President Emil Hácha, blackmailed by Hitler, signed a document subjugating his country to the Third Reich. The Germans immediately established the Protectorate of Bohemia and Moravia (*Protektorát Čechy a Morava*), which could be defined as a sort of transitional occupied vassal state in advance of its total incorporation into the Reich.⁴

The initial partial autonomy enjoyed by the Czechs was gradually reduced by the Germans, until it virtually disappeared. In 1939-1945, the society of the Protectorate was highly polarized. The opposite poles attracted on the one hand ardent collaborators, and on the other, members of the resistance movement. Between them was "the silent majority" of ordinary people.⁵ Throughout the whole period of existence of the Protectorate, the Germans had "a carrot and stick" approach, oscillating between attempts to gain popular support and sympathy, and severe repressions and terror. Several symbolic events are particularly significant here: the brutal crackdown on protests of 28 October 1939 in Prague, and the reprisals after the student demonstrations of 15 November 1939, related to the death and funeral of the student Jan Opletal, injured on 28 of October. As a consequence, the German authorities closed the universities and arrested large numbers of students.⁶ The events that came to symbolise German terror in the Czech lands were the mass arrests and executions, notably the destruction of the villages of Lidice and Ležáky in May 1942, after the assassination of Reinhard Heydrich, the Acting Reich Protector of Bohemia and Moravia.⁷

The Slovak war experience of 1939-45 was quite different, which was to affect the subsequent process of retribution. On 13 March 1939, the previous Prime Minister of the autonomous Slovak government, the priest Jozef Tiso, under Hitler's pressure, proclaimed the formation of a separate Slovak

3 Wiesław Dobrzycki, *Historia stosunków międzynarodowych 1815-1945* (Warsaw, 2004), 459-60.

4 Pavel Maršálek, *Pod ochranou hákového kříže: Nacistický okupační režim v českých zemích 1939-1945* (Prague, 2012), 240-1.

5 Maršálek, *Pod ochranou hákového kříže*, 136.

6 Additionally, nine leaders of student organisations were executed by firing squad. See more in Detlef Brandes, *Die Tschechen unter deutschem Protektorat*, vol. 1, (Oldenburg-Munich-Vienna, 1969), 83-9.

7 Brandes, *Die Tschechen*, 260-6.

State (*Slovenský štát*). The newly created state was a satellite collaborator of the Third Reich.⁸ On the other hand the Slovak National Uprising of August-October 1944 was quelled by the Germans with bloodbaths in the countryside. As a result of the activities of the Security Police, SD operational groups, and counter-insurgency units, more than 5,000 people were murdered.⁹

Notwithstanding the Czech and Slovak experiences with German terror, it should be emphasised that the scale of war crimes committed in Poland was incomparably greater than anything experienced on the Veltava and the Danube. Even before the attack on Poland on 1 September 1939, Hitler and his entourage undertook steps to determine the future nature of the war and occupation. On 22 August 1939, during a meeting with the Wehrmacht general staff, the leader of the Third Reich defined the goals and methods of the campaign to be conducted against Poland. It was supposed to not only defeat Poland, but also to “physically destroy the enemy”. In order to complete this task, Hitler ordered his forces to attack brutally, without mercy.¹⁰ As observed by Anthony Beevor, for Hitler, the campaign in Poland, as well as its direct consequences, in many respects constituted an introduction to the later *Rassenkrieg*, a racial war against the USSR.¹¹

The guidelines approving aggressive actions and crimes remained binding and operative until the end of the war. It is not possible to list here the whole catalogue of German crimes committed in Poland in 1939-1945. All social groups in Poland fell victim to terror, expropriation and other types of crimes.¹²

The Jewish community in Poland was also exterminated, along with – given that German-occupied Poland was where the Germans located their extermination camps – a greater part of European Jewry. According to Raul Hilberg, an outstanding researcher into these issues, more than 2,600,000 people were killed in the extermination camps alone.¹³ This figure does not include the victims of the massacres, and executions carried out as from September 1939, and starvation, as well as the diseases plaguing the ghettos. According to various estimates, World War II caused the death of c. 2.7-3

8 Martin Lacko, *Dwuramienny krzyż w cieniu swastyki: Republika słowacka 1939-1945* (Lublin, 2012), 153.

9 Stanislav Mičev (ed), *Slovenské Narodné Povstanie 1944* (Banská Bystrica, 2009), 158-63.

10 Mark Mazower, *Hitler's Empire: Nazi Rule in Occupied Europe* (Warsaw, 2011), 105.

11 Anthony Beevor, *The Second World War* (New York, 2012), 36.

12 See Czesław Madajczyk, *Polityka III Rzeszy w okupowanej Polsce* (Warsaw, 1970); Richard C. Lukas, *The Forgotten Holocaust: The Poles Under German Occupation, 1939-1944* (Poznań, 2012); Timothy Snyder, *Bloodlands: Europe Between Hitler and Stalin* (Warsaw, 2011).

13 Raul Hilberg, *The Destruction of the European Jews*, vol. 3, (Warsaw, 2013), III2.

million Polish Jews. However, the exact number of Polish Jews who lost their lives in the Soviet-controlled areas is yet to be determined.¹⁴

The brutal nature of the German occupation and the unheard of scale of the crimes that were committed were also a shock to the investigators who, as from 1944, had been preparing for the first war crime trials in Poland. Jerzy Sawicki, a prosecutor in the trial of the Majdanek death camp staff, held on 27 November – 2 December 1944 in Lublin, was so shocked by the scale of the crimes committed there that, in his summing up, he stated: “I feel helpless when I say the words ‘death penalty’ in this room. The [legal – Ł] measures are miniscule in face of such crime.”¹⁵

Regardless of the differences in the wartime experiences of the two countries, the Germans were responsible for numerous brutal crimes in the last months of the war in Polish, Czech and Slovak lands without distinction. Crimes committed against captives in concentration camps deserve closer attention, especially the “death marches” that accompanied their evacuation from Poland and the Protectorate of Bohemia and Moravia.¹⁶

Other kinds of crimes committed in the Czech lands in the last months of the war included executions by firing squad of Czech political prisoners in the Small Fortress in Terezin. Other examples of crimes committed in the last days of the war included executions of civilians and the destruction of the town hall in Prague’s Old Town during the uprising in May 1945.¹⁷

In the context of post-war retributions, and especially the investigations concerning German war crimes, “Special Action 1005” (*Sonderaktion 1005*) deserves mention. This was the German code name for their attempt to conceal any evidence of the crimes they had committed as from 1942. The removal of evidence included the exhumation of mass graves and burning the bodies.¹⁸

The first place of mass incineration of bodies was the extermination camp in Chełmno on the river Ner. This method was used to remove evidence of the murder of Jews of the Łódź ghetto when the decision came to close it.

14 Grzegorz Berendt, ‘Straty osobowe polskich Żydów w okresie II wojny światowej’, in Wojciech Materski and Tomasz Szarota (eds), *Polska 1939-1945: Straty osobowe i ofiary represji pod dwiema okupacjami* (Warsaw, 2009), 72-5.

15 Tadeusz Cyprian, Jerzy Sawicki, and Mieczysław Siewierski, *Głos ma prokurator* (Warsaw, 1966), 28.

16 More information on the “death marches” can be found in David Blatman, *The Death Marches: The Final Phase of Nazi Genocide* (Cambridge-London, 2011).

17 Benjamin Frommer, *National Cleansing: Retribution Against Nazi Collaborators in Postwar Czechoslovakia* (Cambridge, 2005), 41-2. More information on the uprising in Prague and the German crimes committed in its course is available in Stanislav Kokoška, *Praha v květnu 1945: Historie jednoho povstání* (Prague, 2005).

18 Jens Hoffmann, “Das kann man nicht erzählen”: *Aktion 1005 – Wie die Nazis die Spuren ihrer Massenmorde in Osteuropa beseitigten* (Hamburg, 2013), 82-5.

This strategy was reproduced at other extermination camps: Sobibór, Belżec and Auschwitz-Birkenau.¹⁹

“Special Action 1005” was continued in subsequent years in other mass execution sites in Poland. From the beginning of 1944, “Special Action 1005” was carried out in the Podlasie region. In the summer of 1944, special commando units initiated the removal of evidence of war crimes in the sub-Carpathian region near Rzeszów and Przemyśl. The large-scale incineration of bodies was also carried out by the Germans during the suppression of the Warsaw Uprising.²⁰

It may be assumed that these evidence-hiding initiatives hindered the work of Polish investigators examining individual cases of war crimes and mass execution sites. In this respect, the investigators and prosecutors from Czechoslovakia certainly had an easier task, in that during the war in Bohemia, Moravia and Slovakia, “Special Action 1005” was not implemented.

The issue of punishing criminals and collaborators was a Polish and Czechoslovakian policy issue long before the end of World War II. Indeed, the authorities in exile of the two countries closely cooperated in their efforts to alert international opinion to the horror of it all, mobilising the Allies to prepare for the future redress of German crimes. On the initiative of both cabinets, on 13 January 1942, in St. James’s Palace in London, the representatives of Belgium, Czechoslovakia, France, Greece, Luxembourg, the Netherlands, Norway, Poland, and Yugoslavia issued a special declaration, referred to as the “Declaration of St. James’ Palace”. This was a historical moment in which for the first time, the need to punish the perpetrators of war crimes as a major war goal of the signatory states was openly stated.²¹ Referring to the provisions of the Hague Convention, the signatory states announced firm actions aimed at pursuing and bringing to justice the perpetrators of war crimes, and with the promise of ensuring that sentences are carried out.²² Subsequently, both Poland and Czechoslovakia were to play an active role in the United Nations War Crimes Commission (UNWCC).²³

Both the Polish and Czechoslovakian authorities in exile also gave deep consideration to the form of future retribution against the Third Reich. The result of the works of the Polish government in London was announced on

19 Hoffmann, “*Das kann man nicht erzählen*”, 224-31.

20 For more details see: Tomasz Szarota, “Zacieranie śladów zbrodni: Zapomniana karta dziejów II wojny światowej”, *Zeszyty Historyczne*, 160 (2007), 66-77; Tadeusz Klimaszewski, *Verbrennungskommando Warschau* (Warsaw, 1984), 24.

21 Ariel J. Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (Chapel Hill-London, 1998), 15.

22 Joe J. Heydecker and Johannes Leeb, *Der Nürnberger Prozeß* (Warsaw, 2006), 79.

23 Tadeusz Cyprian and Jerzy Sawicki, *Ludzie i sprawy Norymbergi* (Poznań, 1967), 51.

30 March 1943; this was the Decree of the President of the Republic of Poland “On penal liability for war crimes”. This was the first detailed legal act in this field, adopted by a state belonging to the anti-Nazi coalition. Notably, the decree spoke of the need to make the leaders of the Third Reich and the perpetrators of the most serious crimes answer for their actions before an international tribunal established by the Allies, while other perpetrators should be made to stand trial before the courts of countries where they had committed their crimes, on the basis of local laws.²⁴

The work effects of the Czechoslovakian government in exile could be seen considerably later. Although the first draft of the decree on retributive justice was ready by June 1943, it was approved more than a year later, in October 1944, after numerous discussions and revisions. However, President Beneš delayed signing this document, being of the opinion that the decree’s content should first be consulted with representatives of the resistance movement in the country. Beneš revised his view at the beginning of 1945, as a result of the growing pressure of the Communist Party of Czechoslovakia. The decree, creating the legal grounds for retribution, was finally signed by Beneš at the end of February and passed into law on 6 March 1945, not long before the flight of the representatives of the government in exile to Moscow for negotiations with the communists.²⁵

Regardless of the efforts of the governments in exile and the structures of the resistance movements in Poland and Czechoslovakia, the breakthrough and the actual beginning of the retribution processes in both countries was marked by the arrival of the Red Army and the end of the German occupation. The leading position in this field should be attributed to the Polish side, and more precisely, to the Polish Committee of National Liberation (Polski Komitet Wyzwolenia Narodowego), dominated by communists. On 31 August 1944, the PKWN issued a Decree “On the penalty envisaged for fascist-Nazi criminals responsible for murder, the abuse of civilians and prisoners of war, and traitors of the Polish Nation”.²⁶ This legal act was amended many times and was binding throughout the Stalinist period. The *August Decree*, as it was called, was to become the longest binding decree in post-war Poland.²⁷

The *August Decree* was to be enforced by courts established especially for that purpose. On the strength of the Decree of the Committee of 12 Septem-

24 Franciszek Ryszka, *Norymberga, prehistoria i ciąg dalszy* (Warsaw, 1982), 108-12.

25 Jasiński, *Powojenne rozliczenia w Czechosłowacji 1945-1948*, 258-9.

26 Journal of Laws of the Republic of Poland (Dziennik Ustaw-Dz. U. – further: JoL); JoL (1944/4/16).

27 Piotr Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej 1944-1956* (Warsaw, 2004), 176-7. A more detailed view on the “August Decree” is available in Andrzej Paczkowski’s opening article.

ber 1944, Special Criminal Courts were established. They were to be made up of three-member panels (a judge and two jurors representing “the people”). In total, ten such courts were to operate in Poland. They were supposed to follow a simplified procedure according to which the date of the hearing was to be fixed within forty-eight hours of indictment, and the verdict was to be delivered immediately after the panel’s so-called judicial conference. Appeals against sentences were not envisaged, and the Courts themselves were directly answerable to the Head of the Department of Justice of the Polish National Liberation Committee.²⁸

The Special Criminal Courts were wound up in October 1946, when their competencies were transferred to district courts. In the statistical perspective, the achievements of these Special Criminal Courts were as follows: as a result of more than 4,500 cases, 2,471 criminals were sentenced, including 631 sentenced to death.²⁹ In total, between 1944 and 1951, 16,000 people, mainly Polish citizens, were sentenced under the *August Decree*. It is estimated that only 34% of those sentenced for war crimes under the *August Decree* were people of German nationality.³⁰

From the very beginning, Polish retribution policy had a certain characteristic element, initially absent in the legal and institutional order of Czechoslovakia between 1945 and 1949: namely special research and documentation institutes and committees of inquiry, targeted on investigating and gathering evidence of German crimes. These institutions arose along with the front line moving westwards across Polish territories.

In August 1944, along with the Soviet authorities, the PKWN established the Polish-Soviet Extraordinary Committee for Examination of German Crimes in Majdanek.³¹ Similar institutions sprang up shortly thereafter, such as the Commission for the Examination of German Crimes in Białystok. In September and December 1944, two commissions of this type were also set up in Warsaw: one covered the area of the Warsaw Voivodship, the sec-

28 Elżbieta Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec: 1946-1950*, vol. 1, (Warsaw, 1991), 8-9.

29 Edmund Dmitrów, *Niemcy i okupacja hitlerowska w oczach Polaków: Poglądy i opinie z lat 1945-1948* (Warsaw, 1987), 234. Other data can also be found, indicating that the Special Criminal Courts issued rulings against 3954 people. At the same time, it is interesting to analyse the percentage of cases before Polish courts in particular years related to the *August Decree*. These were: in 1948-2.1%, in 1949-1.2%, in 1950-1.3%, and in 1952-0.5%. See Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski*, vol. 1, 18-9.

30 Quoted after: Joanna Lubecka, ‘Karanie niemieckich zbrodniarzy wojennych w Polsce’, *Zeszyty historyczne WiN-u*, 34 (2011), 11-44, 21.

31 Alina E. Gałan, *Okręgowa Komisja Badania Zbrodni przeciwko Narodowi Polskiemu w Lublinie 1944-1999* (Lublin, 2010), 43-4.

ond, the city of Warsaw itself.³² On 29 March 1945, the Commission for the Examination of German Nazi Crimes was set up in Oświęcim (Auschwitz – and further referred to as the Auschwitz Commission).³³

On the same day, the Main Commission for the Examination of German Crimes in Poland was established by resolution of the Home National Council (Krajowa Rada Narodowa). Its scholarly and investigative rights were later codified by reference to the KRN Decree of 10 November 1945.³⁴ Interestingly, the authorities in Prague waited until 1946 before setting up a special commission to investigate war crimes. Unfortunately, as opposed to the Polish Main Commission, the details of this institution's operations and achievements remain unknown. Its functions were probably quickly taken over by the special working groups in the Czechoslovakian Ministry of Internal Affairs.³⁵

While in Poland the form of retribution was shaped only by the communists supported by Stalin, in Czechoslovakia it came after protracted negotiations between two centres of power: the government in London led by President Edvard Beneš, and the communists supported by Moscow.³⁶ In addition, presenting a *fait accompli*, in the already liberated Slovak lands, on 15 May 1945, the 'plenum' of the Slovak National Council (*Slovenská Národná Rada*)³⁷ issued Decree No. 33 "On punishing fascist criminals, occupants and traitors, and the establishment of people's courts".³⁸ This document was

32 Czesław Pilichowski, *Działalność i wyniki pracy Głównej Komisji i Okręgowych Komisji Badania Zbrodni Hitlerowskich w Polsce 1944/45-1980* (Warsaw, 1980), 8; Archive of the Institute of National Remembrance (further: AINR), GK 162/141, *Sprawozdanie Komisji dla zbadania zbrodni niemieckich w Warszawie z dnia 20 lipca 1945*, 20.

33 Ryszard Kotarba, 'Okręgowa Komisja Badania Zbrodni Hitlerowskich w Krakowie 1945-1953', *Krzysztofory: Zeszyty Naukowe Muzeum Historycznego Miasta Krakowa*, 17 (1990), 66-74, 67.

34 JoL 1945/51/293.

35 Kateřina Kočova and Jaroslav Kučera, "Sie richten statt unser und deshalb richten Sie hart." Die Abrechnung mit deutschen Kriegsverbrechern in der Tschechoslowakei, in Norbert Frei (ed), *Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen, 2006), 438-73, 471.

36 Frommer, *National Cleansing*, 77.

37 The Slovak National Council was established in 1938, and operated underground as the main Slovak resistance movement authority, made up of representatives of the democratic and communist parties. It took active part in the preparations for the uprising in Slovakia. In 1944, it declared its existence openly in Banská Bystrica and acted as a surrogate government in areas controlled by the insurgents. Its representatives also participated in negotiations with the government in London and the communists in Moscow on the status of Slovaks in post-war Czechoslovakia. See Anna Josko, 'The Slovak resistance movement', in Victor S. Mamatey and Radomír Luža (eds), *A History of the Czechoslovak Republic 1918-1948* (Princeton, 1973), 362-383, 371-5.

38 Marek Syrný, *Slovenski Demokrati '44-48: Kapitoly z dejín demokraticke strany na Slovensku v rokoch 1944-1948* (Banská Bystrica, 2010), 274-5.

produced by the leader of the Slovak Communist Party, Gustáv Husák, who wrote the whole text in one evening.³⁹ In view of this, the government in the already liberated Prague decided to revoke the previous February Decree and adopt new legal regulations.

It resulted in a situation where the form of retribution was mainly determined by two different legal acts, applicable in Czech and Slovak lands. The basis for retribution in the Czech territories⁴⁰ was “Decree No. 16 of the President of the Republic of 19 June 1945 concerning the punishment of Nazi criminals, traitors and their helpers and establishing extraordinary people’s courts”, popularly known as “The Great Retribution Decree”.⁴¹ This legal act covered four groups of crimes that were significantly broader than the provisions of the Polish equivalent. “The Great Retribution Decree” differentiated crimes against the state, against persons, against personal possessions and property, and extended to (criminally motivated) denunciation.⁴² Each of these extremely broad categories was then fleshed out in detail, which constituted another difference as compared to the Polish *August Decree*. It should be enough to say that these four categories covered altogether twenty-two types of crimes. Their list was partly influenced by past experiences of the Czechs related to the activities of Sudeten Germans and their SdP party (*Sudetendeutsche Partei*) before the Munich Agreement.⁴³

Cases examined on the strength of the “The Great Decree” were, like in Poland, the province of special Extraordinary People’s Courts which operated in 1945-1948. Twenty-four such Extraordinary People’s Courts operated in Czechoslovakia.⁴⁴ Taking into account the difference in size between Poland and Czechoslovakia, the network of special courts designed to judge criminals and collaborators was significantly denser in Czechoslovakia than in Poland.

The sessions of the Extraordinary People’s Courts were to be held in five-member Senates. The heads of these Senates always had to be profes-

39 Mečislav Borák, *Spravedlnost podle dekretu: Retribuční soudnictví v ČSR a Mimořádný lidový soud v Ostravě (1945-1948)* (Ostrava, 1998), 82-3.

40 The term Czech lands should be understood as part of the Third Republic, covering the historic lands of Bohemia, Moravia and Silesia. Slovakia, as mentioned above, had separate legal regulations on post-war retributive justice.

41 Borák, *Spravedlnost podle dekretu*, 444.

42 Kočova and Kučera, “Sie richten statt unser und deshalb richten Sie hart”, 448; Eva Janečková, *Proces s protektorátní vládou* (Prague, 2012), 40-1.

43 The first category included such crimes as: attacks on the Republic or participation in their preparation, posing a threat to the Republic’s security, treason and betrayal, acts of violence against constitutional state authorities, membership in the SS and similar organisations, leadership of the NSDAP or SdP and similar organisations, supporting the National Socialist movement. See Frommer, *National Cleansing*, 80.

44 Borák, *Spravedlnost podle dekretu*, 48.

sional civil or military judges appointed by the President. Like in Poland, the composition of these courts was also to include people from outside the judiciary, so-called “people’s judges”, nominated by political parties and sworn in by local government representatives.⁴⁵ One similarity to the Polish Special Criminal Courts was the simplified procedure. Proceedings in particular cases could last no longer than three days, on pain of being referred to the common courts. Judges issued rulings at closed sessions, directly after the hearings. Like in Poland, appeals against sentences were not envisaged.⁴⁶

“The Great Retribution Decree” formed the basis for punishing criminals and collaborators in the Czech lands. It was complemented by “Decree No. 138 of the President of the Republic concerning the punishment of some offenses against national honour”, adopted on 27 October 1945, referred to as “The Small Retribution Decree”. This provision was introduced with the aim to judge crimes that were not covered by “The Great Decree”. This included, first of all, the punishment of attitudes and behaviour in 1938-1945 considered offensive to the national feelings of Czechs and Slovaks, and which provoked public outrage.⁴⁷

The provisions of “The Small Retribution Decree” aroused widespread criticism due to the fact that it left the examination of cases not to the courts, but to local government bodies called District National Committees. They could decide on imposing fines of up to one million korunas, hand down prison sentences for up to one year or publicly stigmatise those found guilty as charged, which was referred to as “public punishment”.⁴⁸ At the same time, District National Committees were obliged to appoint special committees of inquiry tasked with investigating individual cases of people suspected of violations specified in “The Small Decree”. This complex two-tier procedure caused many complications in practice.⁴⁹

Because “The Small Retribution Decree” contained very imprecise and vague terms of reference like national honour, before it passed into law, the Minister of Internal Affairs issued special guidelines on how to interpret its provisions.⁵⁰ They included a list of specific examples of collaboration and behaviour offensive to national honour.⁵¹

In Poland, an equivalent of “The Small Retribution Decree” may be, in a sense, the Decree “On penal liability for deviation from Polish national-

45 Frommer, *National Cleansing*, 444-446.

46 Ondřej Koutek, *Prokop Drtina: Osud československého demokrata* (Prague, 2011), 193.

47 Borák, *Spravedlnost podle dekretu*, 48.

48 Koutek, *Prokop Drtina*, 195.

49 Pavel Kmoch, *Provinění proti národní cti* (Prague, 2015), 152-5.

50 Kmoch, *Provinění proti*, 105-6.

51 *Ibid.*, 107-8.

ity during the war of 1939-1945", issued on 28 June 1946 by the Council of Ministers. This legal act particularly enabled the punishment of people who registered themselves on the German People's List during the war (*Deutsche Volksliste*). Under this Decree, such persons could be sentenced to ten years in prison. The list of immediately applicable penal instruments was complemented by fines, loss of civil and civic rights, or confiscation of property.⁵²

Cases involving major Nazis were examined by the Prague Extraordinary People's Court. It sentenced, among others, Karl Hermann Frank, the former secretary of state in the Office of the Protector and the Minister of Bohemia and Moravia. He was sentenced to death and executed on 22 May 1946.⁵³ Czechoslovakia did not establish a special tribunal for trying only the major government representatives of the Third Reich responsible for the terror in Czech lands.

In view of the number of cases examined by the Extraordinary People's Courts, "The Great Retribution Decree" was extended twice before being finally revoked on May 4, 1947 which, by the same token, marked the end of the Extraordinary People's Courts. The parliamentary debate concerning the end of retribution was the most turbulent debate in the period of 1945-1948.⁵⁴ At the time of expiry of the decrees on retribution, three hundred and thirty-four proceedings were still in progress. Considering the above reservations, in total, the Extraordinary People's Courts sentenced 21,342 people, 19,888 of whom were sentenced to imprisonment for various lengths of time including 741 to life sentences and 713 were sentenced to death.⁵⁵

Attention should also be paid to the issue of the impact of the expulsion of Germans on the process of redress in Czech territories. In view of the fact that this was a priority for the government in Prague, in July 1946, the Czechoslovakian Parliament adopted legal solutions enabling the opting out of conducting court proceedings when the defendants were expelled from the country. On the same basis, the Ministry of Justice could rule on the commutation or remission of a penalty, or the stay of execution.⁵⁶ Therefore, the issue of bringing to justice many people of German nationality (mainly Sudeten Germans) was partly sacrificed on the altar of the more urgent priority, to expel and be rid of the hostile German minority. This was one of the

52 JoL 1946/41/237. For more details on this decree see Andrzej Paczkowski's article in this volume.

53 Koutek, *Prokop Drtina*, 197.

54 *Ibid.*, 263.

55 These statistics were included in Minister Prokop Drtina's speech in Parliament, constituting a summary of the previous retributions, and differ slightly from the data contained in the monthly court reports sent to Prague. The reason for this discrepancy has yet to be determined. See Borák, *Spravedlnost podle dekretu*, 72.

56 Kočova and Kučera, "Sie richten statt unser und deshalb richten Sie hart", 457-8.

vital elements of the formation of a new order, not only in Czechoslovakia, but throughout Europe.⁵⁷ It is estimated that nearly fifteen thousand proceedings initiated before the Extraordinary People's Courts were terminated so as to allow their expulsion from Czechoslovakia.⁵⁸

Meanwhile, in Poland, the dilemma of whether Germans should be expelled instead of standing trial was basically non-existent because most German perpetrators and collaborators escaped as soon as the ground began to shift under their feet in early spring 1945.⁵⁹

It should be recognized that post-war retribution in Slovakia was of a more specific character. Its form was shaped by the Decree of May 15, 1945, which, as compared to legal acts related to the Czech part of the country, distinguished five groups of crimes. The reason for this was the different wartime experience of the two halves of the country, such as treason in regard of the uprising of 1944, and provisions concerning foreigners in military formations fighting the Red Army, other Allies and partisans.⁶⁰ It addressed additional issues such as supporting Hlinka's Slovak People's Party and the Hlinka Guard, the mainstays of Slovakia's Nazi puppet regime, and the problem with those whose behaviour was considered improper, for example, those who forced others to work in support of German interests. These offences were punishable by up to two years' imprisonment and from two to fifteen years of deprivation of civil rights, or a public reprimand. In a sense, this Slovakian article was the equivalent of the Czech Small Retribution Decree.⁶¹

Retributive justice in Slovakia was to be dispensed by People's Courts, which – like in the Czech lands and in Poland – were based on the concept of “people's judges” and simplified procedures. As opposed to the Czech solutions, they were supposed to function on three administrative levels: district, county, and state courts.⁶²

The balance of retribution in Slovakia was much smaller than in Bohemia and Moravia. Although 20,550 people were brought before the courts, only 8,058 were sentenced. The death penalty was delivered in sixty-five cases, twenty-nine of which were carried out. Sixty percent of the convicts were of Hungarian nationality, which was typical of the post-war retribution in Slovakia. Only twenty-nine percent of the sentences related to Slovaks.⁶³

57 For more details see: Philipp Ther, *Ciemna strona państw narodowych: Czystki etniczne w nowoczesnej Europie* (Poznań, 2012), 266 *et seq.*

58 Frommer, *National Cleansing*, 259.

59 Zofia Wóycicka, *Przerwana żałoba: Polskie spory wokół pamięci nazistowskich obozów koncentracyjnych i zagłady 1944-1950* (Warsaw, 2009), 176-7.

60 Igor Daxner, *Ludactvo pred Národným Súdom 1945-1947* (Bratislava, 1961), 39.

61 Borák, *Spravedlnost podle dekretu*, 84-5.

62 Kočova and Kučera, “Sie richten statt unser und deshalb richten Sie hart”, 455.

63 *Ibid.*, 455-6.

Both in Poland and in Czech and Slovak lands, apart from special courts, there were extraordinary tribunals tasked with sentencing either major Third Reich figures extradited by the Allies to the scenes of their crimes, or the more eminent collaborators. However, significant differences could be observed between these judicial authorities.

In Poland, the Decree of the Council of Ministers of 22 January 1946 established the Supreme National Tribunal. In 1946-1948, seven trials of the main German criminals extradited to Poland were held before this special court.⁶⁴ Interestingly, no trial concerning collaboration was ever brought before this Tribunal.⁶⁵

The equivalents of this Polish Tribunal operating in Prague and Bratislava were of different nature and purpose. The National Court, based in Prague, was established by the Decree of President Beneš of 19 June 1945. It was supposed to try the former President of the Protectorate of Bohemia and Moravia, Emil Hácha (which never took place),⁶⁶ members of the Protectorate's government, and persons considered to be major collaborators. The National Court examined thirty-six cases against eighty persons. Sixty-five people were sentenced, and fifteen acquitted. Eighteen people were sentenced to death, fifteen of whom were actually executed.⁶⁷ The most famous trial, running from 26 April to 31 July 1946, was that of ministers in the successive collaborationist cabinets. Two prime ministers of the Protectorate also ended up in the dock: Jaroslav Krejčí and Richard Bienert.⁶⁸ Ultimately, relatively

64 People sentenced by the Tribunal included: former *Gauleiter* of Warthegau Arthur Greiser, commandant of the camp in Płaszów Amon Göth, head of the Warsaw District Ludwig Fischer, chief security police officer Josef Meisinger, head of the Ordnungspolizei in Warsaw Max Daume, Warsaw county governor Ludwig Leist, commandant of KL Auschwitz Rudolf Höss, 40 staff members of KL Auschwitz, *Gauleiter* of the Reich District Gdańsk-Western Prussia Albert Forster, and Chief Executive of the General Government Josef Bühler. For more details see: Izabela Borowicz and Maria Pilarska (eds), *Główna Komisja Badania Zbrodni przeciwko Narodowi Polskiemu: Informator* (Warsaw, 1997), 8.

65 Janusz Wróbel and Marek Słojewski, 'Zbrodnie sądowe z oskarżenia o kolaborację z nazistami. Procesy kierownictwa PKB, "Startu" i Okręgowego KWP przed Sądem Wojewódzkim w Warszawie', in Witold Kulesza and Andrzej Rzepliński (eds), *Przestępstwa sędziów i prokuratorów w Polsce lat 1944-1956* (Warsaw, 2001), 85-108, 85-6.

66 Due to Hácha's ill-health, the attempts to interrogate him were unsuccessful. The former President of the Protectorate died on 27 June 1945 in prison hospital in Pankrace, Prague. See Mariusz Surosz, *Pepiki: Dramatyczne stulecie Czechów* (Warsaw, 2010), 165.

67 Prokop Drtina, *Na soudu národa: Tři projevy ministra spravedlnosti Dr. Prokopa Drtiny o činnosti mimořádných lidových soudů a Národního soudu* (Prague, 1947), 25.

68 Janečkova, *Proces s protektorátní vládou*, 108.

mild prison sentences were handed down, with no death sentences, which sparked heated discussions and controversies.⁶⁹

While the Polish Tribunal was set up only to sentence the main German criminals and the National Court in Prague only tried collaborators, the Council functioning in Bratislava, on the strength of the Decree of 15 May 1945, dealt with both categories of defendants. The most famous trial before the National Council in Bratislava was undoubtedly that of the German-sponsored President, Fr. Jozef Tiso. During the proceedings, running from 2 December 1946 to 15 April 1947, the defendants in the dock, apart from Tiso, included the Minister of Internal Affairs and the Head of the Hlinka Guard, Alexander Mach. The former Slovak Minister of Foreign Affairs, Ferdinand Ďurčanski, was tried *in absentia*, as he fled to Argentina before the end of the war. The trial in Bratislava ended with Tiso being sentenced to death. The same sentence was delivered *in absentia* to Ďurčanski. Alexander Mach was sentenced to thirty years in prison.⁷⁰

The National Council in Bratislava also examined cases of high-ranking officials of the Third Reich. The 3 December 1947 marked the end of the trial of general Hermann Höfle, who led the suppression of the uprising in Slovakia of 1944, and of Hanns Elard Ludin, the Third Reich's ambassador in Bratislava. Both defendants were sentenced to death.⁷¹

It is impossible to conduct a full and thorough comparison of the Polish and Czechoslovak retributive justice schemes against those deemed to have been wartime criminals without referring to geopolitical realities and indicating the twists and turns of internal policy in both countries. As a result of World War II, both Poland and Czechoslovakia ended up in the Soviet-dominated half of Europe. However, the internal situations in both countries differed. In Poland, from the very beginning, the dominant role was played by the communists of the Polish Workers' Party. They implemented the gradual policy of sovietisation of Poland and destruction of both the anti-communist underground and the political parties trying to conduct legal opposition activities. The main example of such actions was the disruption of the Polish Peasant Party, led by the former Prime Minister of the government in exile, Stanisław Mikołajczyk.⁷²

69 Janečkova, *Proces s protektoratni vladou*, 185.

70 Ivan Kamenec, *Tragédia politika, knižna a človeka (Dr. Jozef Tiso 1887-1947)* (Bratislava, 1998), 138.

71 Daxner, *L'udactvo pred Národným*, 178-85.

72 On the disruption of the Polish Peasant Party and the political concepts of S. Mikołajczyk see Andrzej Paczkowski, *Stanisław Mikołajczyk, czyli kłeska realisty: Zarys biografii politycznej* (Warsaw, 1991), 138; Janusz Gmitruk, *Rola dziejowa Stanisława Mikołajczyka* (Warsaw, 2007), 50-61.

As from 1945, the Ministry of Justice was in the hands of the Polish Workers' Party activist Henryk Świątkowski. At the same time, the communists commenced actions designed to manipulate the retribution policy in order to eliminate any opponents of the new system. For this purpose, they used the provisions of the *August Decree*. As from 1946, this Decree contained a provision on punishing affiliations with any "political group which operated in the best interest of the German State". This clause was invoked in many trials of officers and soldiers of the Home Army on fabricated charges.⁷³ The provisions of the *August Decree* were thus incorporated into the propaganda of the Polish Workers' Party on the notion that the Polish communists and units of the People's Guard and the People's Army were at the forefront of the struggle against the Third Reich, while the Home Army were alleged to have stood "with their arms at ease" during the war.⁷⁴ An excellent example of the expedient exploitation of the provisions of the *August Decree* was the case of Kazimierz Moczarski, an officer of the Bureau of Information and Propaganda of the Home Army High Command and the District Directorate of Underground Resistance in Warsaw; he received the death sentence in 1952 in the Directorate trial, which was commuted to life imprisonment.⁷⁵ The example of Moczarski, who was actually imprisoned in 1945, deserves special attention. During the investigation, he was subjected to wide-ranging physical and mental chicanery and abuse, one of which was placing him in one cell with the SS general responsible for the destruction of Warsaw's Jewish ghetto, Jürgen Stroop. This was supposed to humiliate the Home Army officer. Moczarski then described this experience in his book *Conversations with an Executioner*. In the end, Moczarski was released in 1956, as a result of de-Stalinisation, and officially rehabilitated.⁷⁶ The situation in Czechoslovakia in 1945-1948 was different, during the so-called Third Republic. Despite the considerable influence of the communists, they had to share their power with the democratic parties. In addition, important functions were performed by politicians who returned from exile, led by President Beneš.⁷⁷ The Ministry of Justice was entrusted to the charge of Prokop Drtina, who was not associated in any way with the communists. On the other hand, like in Poland, the communists, controlling the Ministry of Internal Affairs and the special internal security services, strove to influence the course of retribution,

73 Dmitrów, *Niemcy i okupacja hitlerowska w oczach Polaków*, 183-6.

74 Marcin Czyżniewski, *Propaganda polityczna władzy ludowej w Polsce 1944-1956* (Toruń, 2005), 178-9.

75 Wróbel and Słojewski, 'Zbrodnie sądowe z oskarżenia o kolaborację z nazistami', 85-6.

76 For more details see, e.g.: Anna Machcewicz, *Kazimierz Moczarski: Biografia* (Kraków, 2009).

77 Jerzy Holzer, *Europa zimnej wojny* (Kraków, 2012), 78-9.

so as to compromise their political opponents. However, Minister Drtina, up until the communist *coup d'état* of 1948, defended the independence of the judiciary.⁷⁸

An excellent example of the tension between the Ministry of Justice and the Ministry of Internal Affairs in Prague in the years before the communist *coup d'état* was the so-called Vladimír Krajina scandal. It also constitutes a manifestation of the manipulations of the special services officers subordinate to the communist Václav Nosek. The excuse given for these actions were activities allegedly intended to prosecute and punish German criminals and collaborators. Vladimír Krajina, one of the top members of the non-communist resistance movement during the war, became the secretary general of the Czech National Socialist Party (accidental coincidence of names with the German Nazi Party) after the war, which constituted the most dangerous political rival of the Communist Party of Czechoslovakia. StB, political police officers answerable to Minister Nosek, falsified the transcript of Karl Hermann Frank's interrogation, which contained information on the apparent cooperation of Krajina with Germany. The case was ultimately clarified and dismissed by way of a special investigation ordered by Minister Drtina.⁷⁹

Notwithstanding this case, the Ministry of Justice, up until 1948, received information on a greater number of cases, in which courts examined persons accused on the basis of false testimonies of former Gestapo officers held by the StB. The detained Nazis, in exchange for their cooperation in incriminating political opponents of the communists, were promised release from arrest and Czechoslovakian citizenship. They were also often given better food and better conditions than other prisoners.⁸⁰

This state of continuous tension between the communists, striving to expand their influence at any cost, and the representatives of other parties, trying to retain the attributes of a democratic rule of law, was a typical feature of the Third Republic. As was noticed by the Czech researcher Jiří Kocian, Czechoslovakia of 1945-1948 was, to a large extent, a "guided democracy".⁸¹

The intention to use retribution as a tool to fight political opponents fully came true in Czechoslovakia only after the communist *coup d'état* of February 1948. On 2 April of that year, an act was adopted, resuming the process of retribution. It reactivated the Extraordinary People's Courts, which, this

78 Koutek, *Prokop Drtina*, 240-80.

79 Benjamin Frommer, 'Retribution as Legitimation: The Uses of Political Justice in Postwar Czechoslovakia', *Contemporary European History*, 4 (2004), 489-90.

80 Koutek, *Prokop Drtina*, 250.

81 Jiří Kocian, 'System polityczny w Czechosłowacji w latach 1948-1989', in Jacek Bruski, Eduard Maur, Michał Pułaski, and Jaroslav Valenta (eds), *Mezi dvěma transformacemi: Československo a Polsko v letech 1947 (1948)-1989* (Prague, 2001), 43-81, 45.

time, functioned on the same terms in both halves of the country. As opposed to the first wave of retributions, the new authorities appealed to the undefined notion of “people’s justice” and to the need to look at retribution through the optic of social classes.⁸² It marked the beginning of the so-called “second retribution”, carried out up to the end of 1948.

The proceedings before the Extraordinary People’s Courts, once the Communist Party of Czechoslovakia had fully monopolized power, had little to do with the principles of a state of law. Investigations were frequently rigged by StB officers, and testimonies were extorted by means of blackmail or physical violence.⁸³ At the same time, the authorities in Prague introduced changes in the law, sanctioning the principles of “people’s justice” at the disposal of the communists and eliminating an independent judiciary.⁸⁴ According to approximate data, roughly two thousand people were sentenced under the “second retribution”.⁸⁵

Despite all of the above listed differences, the epilogue of the retribution scheme against Nazi criminals and their collaborators was very similar in Poland and Czechoslovakia. As from autumn 1948, there was a significant drop in the number of retributive proceedings in both countries. In 1948-1949, the authorities in Warsaw almost completely suspended the operations of the Main Commission for the Examination of German Crimes, and at the same time changed its name to the Main Commission for the Examination of Hitlerite Crimes in Poland.⁸⁶ In the immediate post-war decade, characterized by Stalinist models in internal policies and by the escalating East-West conflict, the issue of examination and prosecution of wartime crimes was relegated to the status of a peripheral interest of the authorities in Warsaw and Prague.

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Comparisons of the post-war retribution schemes against World War II criminals and collaborators in Poland and Czechoslovakia lead to several conclusions. Despite their completely different ethnic structures, political traditions and wartime experiences, both countries adopted similar retributive justice models. Both established special judiciaries based on simpli-

82 Borák, *Spravedlnost podle dekretu*, 76-7.

83 Kateřina Kočova, ‘Trestní spisy mimořádného lidového soudu v Liberci jako pramen k dějinám druhé světové války’, in Olga Fejtová, Václav Ledvinka, and Jiří Pešek (eds), *Evropská velkoměsta za druhé světové války, každodennost okupovaného velkoměsta: Praha 1939-1945 v evropském srovnání* (Prague, 2007), 547-81, 548-9.

84 Kocian, *System polityczny w Czechosłowacji w latach 1948-1989*, 55.

85 Borák, *Spravedlnost podle dekretu*, 79-80.

86 Czesław Pilichowski, *Badanie i ściganie zbrodni hitlerowskich 1944-1974* (Warsaw, 1975), 32-3.

fied procedures, without the possibility of appeal and with panels of judges and jurors, the latter not being professional jurists but “representatives of the people”. Warsaw, Prague and Bratislava had special tribunals tasked with trying their major Nazi criminals and collaborators. Finally, all three retributive schemes – Polish, Czech and Slovak – were gradually employed in the struggle against the independence-minded democratic opponents of the Soviet-sponsored communists. While there were certain differences in approach stemming from different traditions and wartime experiences, there were also undeniable similarities determined by the transition from Nazi to Soviet dictatorship.