DOI: 10.55692/D.18564.22.4

1.02 pregledni znanstveni članek
Prejeto: 13. 5. 2022

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Attempts at Justice during the Regime Change in Hungary

Povzetek

V letih po spremembi režima na Madžarskem se je razvila živahna politična in javna razprava o možnosti za zadostitev pravici glede zločinov, storjenih v desetletjih komunistične diktature. Zakon o pravičnosti, ki so ga predlagali poslanci vladajoče stranke, bi retroaktivno prekinil zastaranje za izdajstvo in naklepne uboje v primerih, ko režim iz očitnih političnih razlogov ni preganjal teh kaznivih dejanj. To bi bila ustavna priložnost, da se odgovorne za grozodejstva v petdesetih letih prejšnjega stoletja in povračilne ukrepe po revoluciji leta 1956 privede pred sodišče. Ustavno sodišče je zakon, ki ga je sprejel parlament, razveljavilo iz razlogov kontinuitete in pravne varnosti. Po oceni sodišča je retroaktivno zadržanje zastaranja nezdružljivo s pravno državo, zato je treba pravico uveljavljati po povsem drugi poti.

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KLJUČNE BESEDE: *Madžarska, zakonodaja, sprememba režima, ustavno sodišče, pravičnost*

Abstract

In the years after Hungary's regime change, a lively political and public debate emerged about the possibility of justice for the crimes committed during the decades of communist dictatorship. The Justice Act, introduced by governing party MPs, retroactively suspended the statute of limitations for treason and intentional homicide in cases where the regime did not prosecute these crimes for obvious political reasons. This would have provided a constitutional opportunity to bring to justice those responsible for the atrocities of the 1950s and the reprisals that followed the 1956 revolution. The law adopted by Parliament was annulled by the Constitutional Court on grounds of continuity and legal certainty. In its view, the retroactive suspension of the statute of limitations is incompatible with the rule of law and justice must therefore be pursued by a completely different route.

KEY WORDS: *Hungary, legislation, regime change, Constitutional Court, justice*

"*We did not bury the Soviet past. We just shoved the corpse into a corner, and covered it with sawdust, to let it rot on its own.*"

Vladimir Sorokin

More than three decades have passed since the fall of the communist dictatorships in Central Europe, and a little less time since the withdrawal of foreign, occupying forces. Even after such a long time, it is difficult to calmly, so to speak objectively, analyse or even recall these events. In my opinion, those years constituted a special, historic moment. One when a verdict could have been passed on communism as such.

However, that moment passed. If we look around in our immediate area, we can see that very few communist perpetrators were convicted in the 1990s. Yet, as Hugo Grotius put it, "a serious crime cannot go without punishment". However, in these cases it seemed that although there were victims and there was financial damage, those responsible could hardly be found. Indeed, if there is no perpetrator, it significantly reduces the perceived weight of the crime. These questions induced public disputes, seemingly unbridgeable at that time. The forked ways of this "transitional justice" increased the tension as well. What we usually call "transitional justice", is made up of five branches.

First, the rehabilitation of the victims condemned on a political ground. Second, the prosecution of communist crimes. Third, the recompensation – which includes the restitution of material property as well. Fourth, the symbolic restoration: removing statues, monuments and memorial plaques from public spaces, or changing the street names. And fifth, the

recompensation in the field of information. This latter means the handing over of the state security files to public archives.

Before describing the actual subject of this paper, I would like to clarify what we mean by 'doing justice' and why it was necessary to put the legal, informational and material "legacy" of the dictatorship's past on the political agenda in the former communist countries with varying intensity, but almost continuously, in the last decade of the 20th century and the beginning of the new millennium. It is not an exaggeration to say that communist and national socialist dictatorships were built on the denial of the development of European law, the European state ethos and Christian morality, as well as national cultures. The practical implementation of this denial was undertaken with coercive force. That is why terror and violence were the basis of totalitarian regimes. "*Terror was one of the most essential features of the modern communist system.* (...) *Throughout its existence, crime was one of the characteristics of the entire communist system.*"[2] Solzhenitsyn, an expert on the Soviet regime, described the inner workings of communism in this way: "*Violence cannot survive on its own, it is always intertwined with lies. There is a deep internal, natural blood relationship between them: there is nothing to cover violence but lies, and there is nothing to sustain lies but violence.* (...) *And as the lie crumbles, violence will reveal itself in all its repulsive nakedness, and, crippled by it, will soon fall.*"[3]

2 Stéphane Courtois, "A kommunizmus vétkei" [Sins of Communism], in: *A kommunizmus fekete könyve* [The Black Book of Communism], ed. Stéphane Courtois et al. (Budapest: Nagyvilág, 2000), 11.

3 Aleksandr Solzhenitsyn, "Előadás a Nobel-díj átadása alkalmából" [Lecture on the occasion of the Nobel Prize], in: "*Az orosz" kérdés a XX. század végén* [The "Russian" question at the end of the 20th century] (Budapest: Európa, 1997), 24.

Thus, in the sense of the above, the concept of 'doing justice' in a broader sense also covers all the measures and legislative or other attempts, which after the transition to democracy and the rule of law were aimed at exposing the crimes of the communist state dictatorship, compensating the victims legally, morally and financially, and holding the guilty accountable. As can be seen, 'doing justice' concerns many different areas of life, which of course presuppose different legal solutions. The common feature of the classical rules of justice is that they concern a specific group of persons. Depending on whether the legislation in question is intended to establish victim-centred or offender-centred justice provisions, the legislator defines the group of persons concerned as either victims or perpetrators of the dictatorship.

After that, let's look at the fate of two major legislative efforts during the first freely elected Hungarian parliament. The first proposal for the leglislation against communist crimes appeared in a program sheet of the Independent Forum of Jurists in 1989. In fact, it was not strictly on communist crimes (or what we mean under this term now) but it was aimed to examine the personal responsibility for the grave crisis in Hungary, in which the country suffered in 1989. The proposal de facto meant a complete purge among senior state officials and in the ranks of government administration. Nevertheless, this proposal remaind only as a draft.[4]

In March 1990, during the run-up to the elections, the conservative party (Magyar Demokrata Fórum) campaigned with the slogan: "Spring-clean!", so to say, sweeping out the

4 See "Levél a december 22-i tanácskozás feladatairól (törvényes igazságtétel)" [Letter on the tasks of the 22 December meeting (legal justice)], Független Jogász Fórum, accessed April 2, 2022. URL: https://fjf.hu/dokumentumok/30-level-a-dec-22-i-tanacskozas-feladatairol-toervenyes-igazsagtetel.

communists from public positions. Since this party won the elections and formed a coalition government, its parliamentary group of the MP's during the summer worked out a bill, called "Iustitia-plan". While nothing realy came true of this proposed legislation, there was still a demand for such a legislative act. Zsolt Zétényi[5] and Péter Takács[6] submitted a draft law a year later, which was named as the first *Act of Justice*. The core of the law would have been the circumventing of the period of limitations, saying that the State as such deliberately avoided the persecution of some crimes, and the State did it because of political motives. That's why the limitation period had not been started.[7]

5 Zsolt Zétényi (1941-) Hungarian lawyer, Member of Parliament between 1990 and 1994, Vice-Chairman of the Committee on Human Rights, Minorities and Religious Affairs. As vice-president, he took the fate of Hungarians living beyond the border to heart. He submitted a draft resolution on the Beneš decrees, for example, and interpellated on the issue of Hungarians deported from Northern Hungary after the Second World War.

6 Péter Takács (1941–) Historian, Associate Professor, Member of Parliament for the governing party (Magyar Demokrata Fórum, MDF 1990–1994).

7 Zsolt Zétényi, the former MP and lawyer who submitted the draft law, recalled the events thirty years later: "*The opening of accountability was a legal, moral and civilizational requirement, yet it did not cover all crimes committed by the authoritarian regime, originally it was only intended to punish homicide. Narrowing the scope of those concerned would, I intended, have facilitated its adoption and application. I expected all legislators and law enforcement officers of sound moral sense to agree in the protection of human life. The regime change itself was not so heady by then, perhaps 1989 was, but by 1991 there was a kind of apathy in society and Parliament had become a law factory. Necessary laws were passed, but one very important element was missing: a confrontation with the past, an identification with the fate of the nation. Conscious and damaging forgetting threatened. There was a saying at the time: »Putting up a sign on a*

According to the basic idea of the bill – and this is echoed in the explanatory memorandum of both bills – "*the prosecution of perpetrators of major crimes cannot be ruled out when the state creates itemised rules, but it violates them itself, in its own interest, and criminals rely on this miscarriage of justice, this terrorist behaviour, and after all, on their own culpable behaviour to gain advantage, namely by using the institutions of the state under the rule of law designated for other purposes, in order to avoid criminal prosecution*".[8] The purpose of the bill was therefore to (re)open the criminalisation of the indicated offenses – despite the fact that the state's criminal claim under the previous rules was already time-barred.

An example worth mentioning is the decision of the Czech Constitutional Court, which linked the concept of limitation to the fulfillment of the law enforcement obligation of the state. The decision of 21 December 1993, provided that the state must take action against former offenders and that support for communist criminals can no longer be continued. If the conviction or acquittal was for political reasons incompatible with the legal order of a democratic state, the period of limitation of the offense did not include the time elapsed since then (from 25 February 1948 to 29 December 1989). "*To understand the period of time which passed from the commission of their criminal acts as the*

public house at midnight saying it is a gentleman's casino does not make it a gentleman's casino.« Perhaps the situation was not that hopeless..." Zétényi Zsolt, „Elégtételként éltem meg, hogy az Alaptörvénybe került az igazságtétel" [I was satisfied that justice was included in the Constitution], interview by Kreft-Horváth Márk, *Magyar Nemzet*, 17 August 2021, 3.

8 2800. számú törvényjavaslat a Magyar Köztársaság büntető törvénykönyvéről szóló 1978. évi IV. törvény módosításáról [Bill No 2800 amending Act IV of 1978 on the Criminal Code of the Republic of Hungary].

running of a »limitation period« which was not permitted to run, would mean a quite paradoxical interpretation of a law-based state. That would be the validation of the type of »legal certainty« which the perpetrators of such criminal acts already had when they began their activities and which consists of state assured immunity from criminal liability. (…) [*T*]*he Constitutional Court gives priority to the certainty of civil society, which is in keeping with the idea of a law-based state*."[9] Legislators stressed that the Czech constitution is not value-neutral because it is subordinated to the values of the democratic system.

Returning to the Hungarian bill, the debate was naturally on the legal solutions available for this purpose, on their "nature", whether they were constitutional or could indeed be considered unconstitutional. One of the central questions in the discussions was whether the solution proposed by the drafters implemented some kind of (substantive) retroactive legislation or provided for the statutory declaration of the resting of a factor (also) classified as a factor of procedural law (the statute of limitations). Is it possible to create a regulation which, while respecting the "*principle of nullum crimen*", does not create new statutory definitions under criminal law, but "revives" criminal liability by referring to the intentional "non-enforcement" of the state's criminal claim?

The discussions resulted in a new version of the bill, which was basically and essentially the same, but with a few minor changes. According to the reasoning of the amended bill: "*Only offences which meet in all respects the legal requirements for criminal liability and which constitute an offence under the law in force at the time when they were committed may be prosecuted*

9 Decisions 1993/12/21 - Pl. ÚS 19/93: Lawlessness, Ústavní soud České republiky – oficiální webové stránky, accessed 4 April 2022. URL: https://www.usoud.cz/en/decisions/1993-12-21-pl-us-19-93-lawlessness.

under this Act. The legislator refrains from introducing ex post facto *offences*." On the question of the period of limitation, it states the following: "*In a state governed by the rule of law, the statute of limitations may expire because the law enforcement authorities do not become aware of the offence being committed, or they become aware of it but the measures taken to apprehend the perpetrator are not successful* (...) *The statute of limitations must therefore necessarily be preceded by the criminal claim of the state, which must be enforced by all legal means. Without this, no limitation period can run or expire*." However, as the reasoning continues, during the period in question, namely between 21 December 1944 and 2 May 1990[10] "*the totalitarian regime failed to prosecute crimes and even prevented or also retaliated against the prosecution of crimes the prosecution of which would have harmed its interests. Consequently, the prosecution of such crimes has only become possible in the new state system acting in accordance with the principle of the rule of law*." At the same time, the drafters of the bill also pointed out that there were several examples of the retroactive regulation of statutes of limitation after 1945 (in connection with war crimes and crimes against the people), but "*this way of retroactively regulating statutes of limitation does not conflict with the prohibition of retroactive regulation because both the statutory definition of the criminal offence and the associated sanction remained unaffected. Changing the time limit for punishability is not subject to an absolute prohibition*".[11]

10 The formation of the Provisional National Assembly on Soviet occupied territory at the end of the Second World War; and the date of setting up the new, freely elected democratic Parliament.

11 Törvény az 1944. december 21. és 1990. május 2. között elkövetett és politikai okokból nem üldözött súlyos bűncselekmények üldözhetőségéről [Law on the prosecution of serious crimes committed between 21 December 1944 and 2 May 1990 and not prosecuted for political reasons].

According to the reasoning, the bill only listed "*the most egregious acts contrary to humanity: homicide, military crimes involving the foregoing and treason (infidelity) as offenses to be persecuted*". The bill therefore (would have) declared the resting of the limitation period for these offenses, more precisely that if they were committed between 21 December 1944 and 2 May 1990, their limitation period would begin on 2 May 1990. However, the proposal did declare pardon for the (possibly) imposed sentence not in an exceptional but a general way ("*the punishment may be subject to unlimited mitigation*"), emphasising that "*the new Parliament is not driven by revenge or retaliation, but the spirit of lawfulness and justice*", as "*in most of these cases, the purpose of criminal prosecution is realised by naming the perpetrators and measuring their sins*".

The debate on the bill began in September 1991. It is worth giving a few words on the arguments for and against it that were heard in Parliament. The proposer, Zsolt Zétényi, explained that one of the concerns raised against the proposal was that it was contrary to the legal principle of non-retroactivity. However, he said that this problem should not arise as the proposal would only criminalise acts that were already criminalised at the time they were committed. On another objection, the MEP pointed out that since not all legal systems of all States recognise the institution of limitation, it could be said that it is not an essential element of the rule of law. Furthermore, it would be a violation of the rule of law if the perpetrators of serious crimes were not held accountable.[12]

12 "Az Országgyűlés plenáris üléseinek jegyzőkönyve 1990–2021." [Minutes of the plenary sessions of Parliament 1990–2021.], *Library Hungaricana*, accessed 11 April 2012, 756–760. URL: https://library.hungaricana.hu/hu/collection/ogyk_on1990_1990-1994/.

The MDF's lead speaker, Fábián Józsa13, asked whether the criminal law provisions could have retroactive effect. He pointed out that the acts covered by the bill were criminal offences at the time they were committed, but the state did not prosecute them for political reasons. Therefore, the proposal could not violate either the Constitution or the relevant provisions of the Criminal Code. In support of his arguments, he quoted the German jurist Hans-Heinrich Jescheck, who argued that the legal concept of limitation is based not only on the need for fairness and mercy, but also on the empirical fact that the passage of time makes it more difficult to conduct criminal proceedings.[14] The leader of the liberal opposition presented his party's position, which was not based on legal arguments, but focused on moral issues. He indicated that they disagreed with the proposal, considering its contents to be a bad instrument, inadequate to achieve the

13 Fábián Józsa (1957–) Hungarian lawyer, public administrator. He was a Member of Parliament (1990–1994), and between 1993 and 1994 he was State Secretary at the Ministry of the Interior.

14 The MEP also had harsh words for the political forces that rejected the proposal: "*Did we ever think a year and a half ago* (...) *that if we talk about historical justice in Hungary, we would be stirring up a hornets' nest? Could we have imagined that if we raised the issue of legal justice, the so-called liberal opposition would see it as a political showdown and would hasten to say that they did not want it? Would we have thought that, for example, if someone started to question the employment of former members of the party army, of the workers' guards, in this capacity, for the purposes of pension calculations, that prominent politicians – also from the benches of the liberal opposition – would say on radio and television that everyone in this country should be afraid? Would we have thought then, ladies and gentlemen, that at the start of the debate on this bill, which among other things is not secretly trying to bring to justice those responsible for the murderous massacres of 1956, two prominent members of the radical opposition (...) would speak out to get the matter removed from the agenda of the House?*" "Az Országgyűlés plenáris üléseinek jegyzőkönyve", 865.

goal. In their view, the scope of the bill is uncertain, as it is often difficult to determine which crimes were not prosecuted for political reasons and which were not prosecuted for other reasons. As he put it, "*I don't dispute that it would meet a sense of social justice if we could have some great, universal principle of punishment, if crime could always get its punishment, receive its punishment, if we could organise it, if we could solve it – but that's not the case!* (...) *It is not by chance that every code of law in the known history of mankind (...) has known the concept of the statute of limitations.* (…) *It is not by chance that these rules of limitation have been included, because even the most sacred attribute – we are building capitalism – private property, there is a limitation period, in the area of dispossession, of the loss of rights.*"[15] The Christian Democrats stressed that the issue addressed by the bill should not be treated as a purely legal issue, as the sense of justice is not a purely legal issue. They gave the example that society's sense of justice had also functioned correctly when the law allowed the crimes in question to go unpunished. They added that the adoption of the proposal would not result in a "witch-hunt", as the party's position was that the number of people who could be held accountable after its adoption would be 50. They also stated that they supported the adoption of the proposal on moral and ethical grounds.

The Parliament passed the law with the votes of the conservative parties on 4 November 1991. It was also a symbolic date, by the way, as it referred to the beginning of the Communist retributions and a new set of calamities for the nation. It was on this day in 1956 that Soviet troops began Operation Whirlwind, aimed to restore the former communist dictatorship in the country. So much for the symbols, however, in reality a very painful counterattack followed. The President of the Republic,

15 Ibid., 873.

Árpád Göncz[16], delegated by the left-liberal party, turned to the Constitutional Court to declare the law unconstitutional and to repeal it. Indeed, that's what happened. It is worth knowing that this Constitutional Court was established before the first free elections. Its President, *László Sólyom*17, personally led the work of the Constitutional Court aimed at repealing the Justice Act. The Constitutional Court stated in its decision: "*The Constitution does not (cannot) provide a subjective right to the enforcement of substantive justice* (…) *It is not possible* (…) *to set aside the fundamental guarantees of the rule of law on the basis of the historical situation and justice required by the rule of law. The rule of law cannot be enforced against the rule of law. Legal certainty based on substantive and formal principles should enjoy primacy over justice, which is always partial and subjective*."18 To summarise, from then on, this was referred

16 Árpád Göncz (1922–2015) Hungarian writer, translator, President of the Republic of Hungary from 1990 to 2000. He was sentenced to life imprisonment after the 1956 revolution but was released from prison after an amnesty in 1963. After the Second World War and during the revolution, he was a politician for the Small Farmer's Party, and during the regime change for the Alliance of Free Democrats (SZDSZ). His entire political carrier is disputed. First and foremost, there is no plausible explanation how he got the opportunity to learn English language *in the prison* and how he turned to be a widely accepted translator of literary works during the seventies.

17 László Sólyom (1942–) Hungarian jurist, university professor, full member of the Hungarian Academy of Sciences, member and first President of the Constitutional Court between 1989 and 1998, President of the Republic between 2005 and 2010.

18 For the Constitutional Court decision see online: "11/1992. (III. 5.) AB határozat", Hatályos Jogszabályok Gyűjteménye, accessed 13 April, 2022. URL: https://net.jogtar.hu/getpdf?docid=992H0011.AB&targetdate=&printTitle=11/1992.+%28III.+5.%29+AB+hat%C3%A1rozat&getdoc=1.

to, in a slightly roundabout way, as the Hungarian courts not delivering justice, but "law".[19]

Why was this bill successfully thrown out? Was it merely the result of the atmosphere, the hostile predominance in the media? Was it because of the embeddedness of the old left-wing, post-communist, or even sympathiser intellectuals? Or were perhaps too many people frightened by the fact that the post-1956 phase of the dictatorship in Hungary simply lasted too long, and people had to subsist in this long period as well? First of all, we need to know that the communist system after 1956, named the Kádár-regime after its leader, János Kádár20, was based on the spreading of responsibility. It implied involving as many people as possible, or at least gaining their tacit approval. Let's take a detour to make this statement clearer and easier to understand. In everyday life, the Kádár policy of "cooperatives" meant that the authorities offered a way out for those who simply wanted to live. This was precisely the aim of the communist power that was reorganising after fifty-six: to present itself as the embodiment of social cohesion, to sell the image of communism after some touching up and camouflaging it to suit political needs. In reality, of course, its main ambition was to combat 'nationalism', on the ideological, cultural and state security levels. But could there have been anti-nationalist nation-building? The short twentieth century began with the triumph of nationalism – that is, the creation

19 All of this is in interesting tension with the fact that law school graduates swear: "*I dedicate my life to the service of justice!*" This, as we know, is of course not a new phenomenon, nor is it a problem peculiar to Hungary.

20 János Kádár (1912–1989) Hungarian Communist politician, Minister of the Interior from 1948 to 1950, and de facto leader of the Soviet-style Communist regime from 1956 to 1988. The harsh repression following the 1956 revolution and the subsequent consolidation, the transition to a so-called 'soft dictatorship', were all to his credit.

of national unity in each country after the breakout of the First World War – and ended with the revival of national feeling in the Autumn of the Nations in 1989. Nationalism, and its more conservative and tolerant version, the national ideal, remained the most decisive group-forming and identity-shaping force in Europe. Marxism, with its many names, had to adapt to this. This was an impossible task, because whatever you call it – Bolshevism, Marxism-Leninism, Communism, Socialism – internationalism was one of the key elements of this ideology.

However, 'internationalism' is not a real reference point, and therefore, making a mockery of itself, the reference point for orthodox communism became the Soviet Union. In fact, the name Soviet Russia would have been a more accurate description of this state, even if its own anthem was 'free republics in alliance' and its main ideologists were unstinting in their emphasis on 'Leninist norms' in nationality matters. Thus, the world's communists had an internationalist duty to justify their allegiance to a hidden nationalism. As Kádár himself declared at the XXII Congress of the USSR Communist Party, "*the communist is above all characterised by his relationship with the Soviet Union*".21

Returning to the original line of thought it can be said that the survival of the Hungarian regime depended solely on the system of relations between the superpowers. In 1956, the Hungarian nation understood that it was allocated to the side of the communist superpower, and neither could it get out from there out on its own, nor would help come. So the Hungarians settled for survival, and let's face it, the

21 Huszár Tibor, ed., *Kedves jó Kádár elvtárs! Válogatás Kádár János levelezéséből, 1954–1989* [Dear, Good Comrade Kádár! Selection from the Correspondence of János Kádár, 1954–1989] (Budapest: Osiris, 2002), 191–192.

people enjoyed the practical benefits of being out of history. Actually, for Hungarians, retaliation and consolidation after the revolution meant that after a failed, dark half-century, they could leave the "grand stage of history" and be left alone.

In 1989 this came to an end and they returned to the "stage". This was of course cynically assessed in 1989 by Rezső Nyers22, a member of the communist party leadership and a minister for several years: "*both our decisions in '56 and our historical assessment were very time-bound and very controversial. As long as things went well*, [people] *tolerated this, but when trouble came, those who were tolerant became dissatisfied with it*".[23] Well, even in this cynical wisdom, there might have been some truth. The main factor, however, was that during the shift in the relations of the great powers in Europe, stability was the most important thing for the winners of the Cold War. This was not the first time that the West had favoured stability over the self-determination and national sovereignty of peoples. This, of course, was understandable from their point of view, but in 1989 and in the decade that followed it also meant that they made agreements with the former Central European elite. John O'Sullivan has put it this way: "*In Western Europe, private and public institutions, including those of the European Union, seemed much more inclined to cooperate with former communists than with former dissidents, both in politics and business*."[24] A more closely involved Polish activist, Ryszard Legutko, explains this

22 Rezső Nyers (1923–2018) Hungarian economist, politician, university lecturer. He was Minister of Food Industry and Finance of the Hungarian People's Republic, and Minister of State at the dawn of the regime change.

23 „Az idő nem nekünk dolgozik" - Magyar és szovjet pártdokumentumok ["Time does not work for us" – Hungarian and Soviet party documents], *Beszélő* 4, no. 2 (1999): 86.

24 O'Sullivan's foreword to his friend Legutko's book. Ryszard Legutko, *The*

as follows: "*To my unpleasant surprise, I discovered that many of my friends who consciously classified themselves as devoted supporters of liberal democracy* (…) *displayed extraordinary meekness and empathy toward communism*."[25] And: "*I experienced the same budding thought for the second time during Poland's postcommunist period, right at the very beginning of its existence in 1989. Anti-anticommunism was activated simultaneously with the rise of the new liberal-democratic system* (…) *and was almost immediately recognized as an important component of the new political orthodoxy that was taking shape. Those who were anticommunists were a threat to liberal democracy; those who were anti-anticommunist passed the most important and the most difficult entrance examination to the new political reality*."[26]

The newly regained national sovereignty of 1989 would have included judging our own perpetrators, according to our own laws. I wonder if by talking now about international law and an international court we are depriving ourselves of the opportunity to put our own house in order? Aren't we branding ourselves, as if with a branding iron, saying that these small countries are incapable of doing even this? Past failures, in my view, are now just an opportunity to write our own story.

Explaining this further, we can say that communism has left us a false legacy that will not stand the test of time. A legacy that must be interpreted as an attack on the core of our identity. They created the image that we were all part of the dictatorship, and at the same time they tried to create a new link with the empty slogan of 'socialist patriotism' instead of the traditional sense of national belonging. This in itself was of no use even then, but they added proletarian internationalism.

Demon in Democracy: Totalitarian Temptations in Free Societies (New York: Encounter Books, 2012), 9.

25 Ibid., 10.

26 Ibid., 11.

A certain version of all this, and at the same time a necessary corollary, was 'anti-fascism'. This ideo-political product seemed to represent, on the surface, the smallest common multiple. Labour's 'national communism', which in fact represented a kind of spontaneous revival of national feeling, was condemned. And the dictatorship imposed its own ideological message and form of identity on us by means of violence, blackmail and lies, in other words, by the very practice of political crime.

Finally, we must ask: what are we to do with this legacy? It is logical to conclude that there is no need for widespread trials and, given the passage of time, no possibility of them, which means that it may not be appropriate to deal with the former perpetrators in the criminal law, except in a few cases of major, flagrant or even symbolic value. However, the new national memory policy should respond to the arbitrary shreds of memory of the communist past as a kind of symbolic form of criminalisation, tangible in the community memory. *Damnatio memoriae* would thus be the negative but necessary part of the reconfiguration of our identity. In a turn of mathematical phrase: necessary but not sufficient. For the rest is up to us to discover common heroes and myths from the history of the twentieth century that are acceptable to all.

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Summary

This article is based on the spirit of the book 'It is not possible for a serious crime not to be punishable - Legal chapters from the history of justice and reparation in Hungary', published by the National Remembrance Committee in 2016 and edited by the author. Our aim was to give an insight into the political struggles and legal measures that shaped the will to rehabilitate and compensate the victims of the communist dictatorship in Hungary, in particular the Zétényi-Takács Act of 1991 and its annulment. The following questions were asked. *Is it possible to atone for decades-old wrongs, or even to translate what happened into the language of law? What led to the law in question finally getting caught up in the filter of the Constitutional Court, making the transition from dictatorship to democracy a remarkably controversial one?* In our view, the events of the last three decades justify the hypothesis that the principle of 'punishing the guilty is not a necessary condition for declaring the regime change complete' has not lived up to expectations. On the contrary. This issue is related to the fact that the communist period left a deep mark on the thinking and reflexes of Hungarian society.

As a framework for the essay, we also sought to answer the question of the possible connection between the communist legacy (or burden) and the fact that the nation was very late (and only symbolically) in restoring even that part of its sovereignty which was to judge its own perpetrators.

Poskusi dosege pravičnosti med spremembo režima na Madžarskem

Povzetek

Ta članek temelji na bistvu knjige Az nem lehet ugyanis, hogy súlyos bűntett ne legyen büntethető - Jogi fejezetek a magyarországi igazságtétel és kárpótlás történetéből (v slovenščini, Nemogoče je, da se hudega kaznivega dejanja ne bi dalo kaznovati – Pravna poglavja iz zgodovine pravičnosti in poprave krivic na Madžarskem), ki jo je leta 2016 izdal Madžarski odbor za nacionalni spomin, uredil pa avtor tega članka. Naš cilj je bil omogočiti vpogled v politične napore in pravne ukrepe, ki so zaznamovali voljo do omogočenja rehabilitacije in odškodnine žrtvam komunistične diktature na Madžarskem, zlasti vpogled v zakon Zétényi-Takács iz leta 1991 in njegovo razveljavitev. Zastavljana so bila naslednja vprašanja. *Je mogoče popraviti desetletja stare krivice ali celo prevesti to, kar se je zgodilo, v jezik prava? Kaj je privedlo do tega, da se je zadevni zakon na koncu znašel pod lupo ustavnega sodišča, zaradi česar je prehod iz diktature v demokracijo postal izjemno sporen?* Po našem mnenju dogodki zadnjih treh desetletij upravičujejo domnevo, da načelo, da »kaznovanje krivcev ni nujen pogoj za razglasitev spremembe režima kot dokončane« ni izpolnilo pričakovanj. Ravno nasprotno. To vprašanje je povezano z dejstvom, da je komunistično obdobje globoko zaznamovalo razmišljanje in odzive madžarske družbe.

V okviru eseja smo skušali odgovoriti tudi na vprašanje o morebitni povezavi med komunistično dediščino (ali bremenom) in dejstvom, da je narod zelo pozno (in le simbolično) obnovil tudi tisti del svoje suverenosti, ki naj bi sodil lastnim zločincem.