

The Benes decree, the absolute, as if carved in marble?

Petition to the European Parliament

The main legislative authority, the National Council of the Slovak Republic (hereinafter: National Council) adopted decree 1487 of 2007 (hereinafter: Decree), which was an astonishing decision for the large part of the democratic public of the world.

The mentioned decree is incompatible with the concept of a united Europe in the 21st century and human rights – as set out in the following:

1. The ***preamble*** of the decree defines meaningless, seemingly great objectives, reminiscent of the ones which were typical for the Eastern European interstate relations in the Communist era, like „the intention to improve the good neighbourly relations with the Republic of Hungary”. On the one hand, there is an irresolvable contradiction between the declared intention and the actions; on the other hand it would be honourable to seek good (neighbourly) relations between the Hungarian and Slovaks, including the more than 600.000 Hungarian in Slovakia.

2. The Decree ***sets out in the first clause*** that the so called Benes decrees and the additional legal acts resulting in deprivation of rights (hereinafter collectively referred to as the Benes decrees) were adopted on the grounds of the international legal principles drawn up by the Conference of the Allied Powers in Potsdam. This corresponds to the truth to the extent that the Conference of Potsdam, by placing the question of the forced resettlement of Germans on the agenda, revived the – during World War II already failed – principle of collective guilt. The Conference of Potsdam was not called upon to decide on the essence of international legal principles and we have to emphasize the fact that it did not do so at all. There is no need to prove that the principle of collective guilt has never become a widely accepted legal principle, and that international law expressly rejects it. Even the incriminating decree – with the obvious intention to mislead the public – condemns the principle of collective guilt. The same collective guilt which completely pervaded contemporary (Czecho)Slovak policy against Hungarian and German minorities until 1944-1948 is, in a certain sense – because of its rigid adherence to the Benes Decrees – characteristic of Slovakian policy to this day. The intent to mislead becomes especially obvious in the statement of the

second clause of the Decree, which says that the Benes Decrees did not result in discriminative practice. The National Council of the Slovak Republic thus acknowledges that the Benes Decrees were discriminative in theory, but on the other hand denies all the humiliation and suffering the persons involved had to bear, solely because they declared themselves Hungarian and German. Historical facts cannot be denied even with the help of artful diplomacy, and there is no need to emphasize what kind of delicate field this is or to what kind of inappropriate associations this could lead. It was mostly “persons considered to be unreliable from the aspect of the state” who were subjected to the measures laid out by the Benes Decrees. From the state’s point of view, it was foremost the members of the Hungarian and German minority who were considered to be unreliable. Several Decrees are object-lessons already because of their titles, because they refer explicitly to the Germans and Hungarians (e.g. 13 of the 98 Decrees) as the subject of the decrees in question.

Without claim of completeness and in order to support the undeniable, you will find here some data on this:

- The (Czecho)Slovak authorities employed military and police forces for the deportations masked as public work in two cycles (including the ill, old people, pregnant women and students) – according to their own statistics – of 9247 and then 41.666 Hungarian persons (according to Hungarian estimations about 80.000 Hungarian were affected by the deportations) to the area of present Czech Republic on the grounds of the *Benes Decree 88/1945*. It was admitted that the aim was to exchange them with Slavic population, namely to change the ethnic map of Slovakia. (*Decree 28/1945* – only valid in the Czech parts of country

– supports this goal, which in the title already refers to the „settlement of Czech, Slovak and other Slavic farmers on the agricultural fields of Germans, Hungarians and those of other state enemies”), as does the fact that only a part of them could return to Slovakia years later, and mostly not to their previous home. We have to mention here that, at the time of their deportation, the Hungarians in Slovakia (accordingly the deported persons) were no longer Slovak citizens since they had been collectively deprived of their citizenship (on the basis of *Benes Decree 33/1945*);

- The entire wealth of the Hungarians in Slovakia, those of private persons, political parties, associations and other partnerships was confiscated on the grounds of *Decree Benes 108/1945* and the *orders 64 and 104 of 1945 adopted by the National Council* – after the *Benes Decree 5/1945* had already provided for the putting of asset under national guardianship (e.g. the National Council of Slovakia did not allow this – since the acquisition of property between the period of 1939-1944 by the fascist Slovak state and the Czech-Moravian protectorate was judged differently – to enter into force on the area of Slovakia; it adopted an own legislation with the same content: the *order 50 of 1945*). On the grounds of the *1945/4 presidential order of the National Council* e.g. 595.222 ha field (including 300.000 ha forest) was confiscated from the Hungarians (and in smaller part from Germans), which concerned 73.304 cases and 293 settlements inhabited by Hungarians! These properties were, of course, largely never returned to their lawful owners.

- Almost all the Hungarian schools were closed down. Moreover, this had been already decided on 6 March 1944, long before Benes, by the leading authority of the movement called the Slovak National Rebellion, which was also called the National Council of Slovakia (*the order 6 of 1944 by the National Council*). Of course, at that time (Czecho)Slovakia did not yet have control over the area of the former Upper Hungary (the present South Slovakia) with a Hungarian majority of about 90%, which had been given back to Hungary in a peaceful way, by the first Decision of Vienna (by the authorization of four powers – British, French, German and Italian – and by German-Italian arbitral order). But this did not bother anybody at that time (either).

- The Hungarians (and the Germans) were removed from state and other authorities, moreover even their private employment (*orders 69, 99 of 1945 by the National Council*) was fundamentally prohibited since they were defined as unreliable from the aspect of the state. Only Slavic, nationally and politically reliable persons could become judges, lawyers and notaries too (*order 82 of 1945 by the National Council*).

We could mention many other examples, since the legal acts resulting in deprivation of rights did not end with the elections for the temporary National Assembly, they rather increased (e.g. the Hungarian did not have neither active nor passive voting rights for the National Assembly on the basis of the law 28 of 1946). This must be mentioned because the temporary National Assembly with the *Constitutional law 57/1946* enacted the Benes Decrees and maintained their original scope.

The **third clause of the Decree** defines the real inducement, when it states that the legal relations and proprietary rights coming into existence as a result of the Benes Decrees (including the decrees of the competent Czechoslovak authorities and the orders of the National Council) are unquestionable, untouchable and unchangeable.

Legal basis:

When studying the Benes Decrees as an international legal problem, the secondary literature generally emphasizes that these Decrees could not get through the safety net of the present human right protection systems. On the other hand, they also state that international law does not acknowledge a retroactive effect. However, this cannot be declared for certain because, in relation with war crimes or those against nationalities (the current term for this is now crimes against humanity), international law itself departed from this principle. Additionally, they also breach some extremely important international legislation which was already in force at the time of the application of the Benes Decree.

The Benes Decrees are irreconcilable with the following:

- the UN Charter (which was not in force at the time, when the majority of the Benes Decrees were issued, but at the time of their application had already been in force), since Article 1 (3) of the Charter sets out in general – for Slovakia as well, as for all UN Member States – to promote and encourage respect for human rights for all without distinction;
- the Statute of the International Criminal Court: forced deportation or resettlement of the population is prohibited since the Nuremberg Trials on the grounds of the Statute of the then established International Military Tribunal and following this, according to Article 7 (1) d) of the Statute of the International Criminal Court (1998. Rome). Further, the Czechoslovak temporary National Assembly excluded the conviction of those guilty persons in a criminal procedure with the Act 115 of 1946, who committed war crimes and crimes against nationalities injurious to the Hungarian minority between 30 September 1938 and 28 October 1945. These war criminals could live their life freely and, if they are still alive they can exist under the legal protection that “they had recompensed for the actions of the invaders or their supporters”.
- the International Pact on Civil and Political Rights: it is not compatible with Article 2 (1-2) of the International Pact on Civil and Political Rights, especially with regard to the obligations set forth in it for national legislation to provide for the human rights mentioned in the Pact, and in case of breaching it, to provide for efficient legal remedy, and for the conditions set forth in Article 27, for measures ensuring the rights of minorities;
- the European Convention on Human Rights: it breaches the right to an effective remedy according to Article 13 of the European Convention on Human Rights, and Article 1 of the Facultative Protocol concerning the confiscation of property, since it provides for the protection of private property, and these proprietary rights still do not belong to the lawful owners or their descendents. The case law of the Court in Strasbourg determines a period of six months as deadline in case of denationalization (Benes Decrees), the legal protection must be requested via court proceedings within the mentioned deadline. This practice can be questioned, but according to our position, the incriminated – the deprivation of rights confirming – decree 1487 of 2007, adopted by the National Council of the Slovak Republic, justifies a procedure for legal remedy until 20 March 2008 in any case according to the European Convention on Human Rights.
- We would like to point out that the exclusion of the statute of limitations of property demands can indefinitely delay the resolution of this question.
- The Treaty of Maastricht on the European Union – amended by the Treaty of Amsterdam, Article 6 (F) (1)-(2). According to Article 6 (F) (2) of the Maastricht Treaty “the European Union shall respect fundamental rights, as guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”. That is why the Benes Decrees and the Decree of the National Council of the Slovak Republic also constitute a breach of the Treaty on the European Union.

The other argument supporting the apologists, is that this topic already belongs to legal history and no further legal relations are established on the basis of the Decrees. If the answer is that the Benes Decrees are not applied any more, we have to ask the following questions: what about those who had to stay in the present Czech Republic, the deported persons, about the erstwhile children who could not get education in their mother tongue for years, the lack of compensation for the confiscation of properties, the interpretation of law, which still considers the deprivation of rights between 1945-1948 unchangeable, and the court rulings which rejected the demands of properties or those concerning compensation. How is it possible that the perpetrators of war crimes and crimes against nationalities (crimes against humanity) can avoid being convicted in a European country? Thus, these shameful measures are still alive. Although they may no longer have influence in the so called applicable corpus of law, they certainly do affect the property title deeds, in the registration of the associations or enterprises, in the collective consciousness of the Hungarians in any case, and their confirmation proves the approach of the present Slovakia towards the Hungarian minority, and the concept on the envisaged future for the Hungarians (e.g. usage of names, the positive discrimination of settlements in the mountains concerning the budget, the language usage in official procedures etc.).

We have to emphasize that, despite all the Slovak efforts, the Benes Decrees are not part of the peace system, but an evil means of a nationalist state program to get rid of the indigenous minority. More than 60 years after the end of the Second World War there are no losers and winners, only wrongdoers and victims – namely human beings.

On the grounds of the above, the undersigned as citizens of the European Union or non EU citizen democrats,

would like submit the below

**Petition
to the European Parliament
concerning the persecution of the Hungarian and German citizens of the former Czechoslovak
Republic between 1945-1948 and the still applicable legal practice related to this**

We would like to request the Parliament to place on the schedule the question of the Benes Decrees, and other legal acts adopted by the Slovak National Council and other Czecho(Slovak) official authorities in the mentioned period, which severely discriminate the Hungarian and German minorities. The European Parliament shall examine whether these legal acts comply with the legal system of the European Union.

The Undersigned request, on the grounds of our commitment to fairness and the protection of human rights, that the members of the Hungarian and German minorities in Slovakia (as former part of the Czechoslovak Republic) receive, because of their persecution between 1945-1948, moral satisfaction and financial compensation, or other appropriate remedy for the human victims, physical sufferings and for the results of the financial damages caused to the social organizations (including public organizations and churches) of the minority (or those playing an important part in its life), its private entrepreneurs and private persons! By signing the present document we also support the concept of the Hungarian-Slovak reconciliation and all the movements and civil organizations (e.g. the petition of the “Never Again Polgári Társulás” civil organization and the associated Southern Slovakian civil organizations), which raise their voice against maintaining that infringement of rights and the legitimization of it.

We demand that the Parliament request Slovakia, in a resolution, to declare its still applicable incriminated legal acts – including the act which exclude the right for compensation related to unlawful actions before 25 February 1948 – null and void by the means of deregulation. Furthermore, we request that the Hungarian and German minorities of Slovakia shall be presented formal apologies for the injuries suffered as a result of aforementioned legal acts and legal practices, and because of the crimes caused by Slovakia (as a former part of the Czechoslovak Republic), and the Czechoslovak state; they shall receive adequate compensation for the confiscation of property and the mental sufferings. We request that Slovakia consider, as a sign of making amends, calling to account those citizens who have committed a crime against humanity and are still alive today.

We request that in case of lack of an appropriate answer, or if Slovakia maintains this massive infringement of human rights, the Parliament should launch an infringement procedure at the Council of the European Union because of the breach of Article 6 (1) of the Maastricht Treaty (as laid down in Article 7 of the Maastricht Treaty), and as final step suspend the rights of Slovakia as a European Member State.

I acknowledge the content of the petition, and express my approval by signing the petition form: