

JUSTICE 2.0



International Crimes of the Communist Regimes

Cases for Further Investigation and Signal Litigation

**Using
International Criminal Justice**

European Parliament, Brussels
27 May 2015



The Platform of European Memory and Conscience

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This publication is dedicated to the memory of Zdeněk Boháč, founder of the initiative “Legal Settlement of Communist Crimes” which has united 17 democratic organisations of victims of Communism in the Czech Republic.

Written by Dr. Neela Winkelmann
Prague, May 2015

INTRODUCTION

When the newly constituted United Nations Organisation adopted the Universal Declaration of Human Rights on 10 December 1948, a charter driven by the need to prevent the repetition of the horrors of WWII, the Soviet Union and its satellite countries abstained from voting. From their seizure of power after WWII until their fall in 1989-1991, the Communist dictatorships in the so-called Eastern bloc violated all articles of the Universal Declaration of Human Rights on a daily basis, committing the worst crimes and atrocities against their own citizens. Until the fall of the regime, people living in the Eastern bloc were denied the most fundamental human rights: right to life, liberty and security of person, freedom from slavery, freedom from torture and inhumane treatment, equality before the law, right to justice, freedom of assembly, freedom of expression, freedom of movement, freedom of religion, right to own property, right to education, freedom to choose a profession, active and passive voting rights.... They lived in a permanent situation of lawlessness, state crime and fear, and that at a time regarded by the international community as a time of peace. During the Communist dictatorship in Europe, hundreds of thousands of innocent people were executed, killed or deported, millions were imprisoned, tortured or forced to perform slave labour and tens of millions of people were subjected to other unlawful and inhumane treatment or persecution.

We all know how the international community dealt with the perpetrators of National Socialism. After the end of WWII, the Nuremberg trials with the war criminals in Europe were staged. Truth about the crimes was documented and spoken, justice was - at least partially - delivered, the main perpetrators were sentenced and the international community previously torn by the war could successfully embark on the path of reconciliation. This road finally led to the establishment of the European Union in Western Europe as a zone of peace, freedom, democracy and prosperity.

In contrast, no comparable process of truth finding, justice and reconciliation was undertaken in the 25 years since the fall of Communism in Central and Eastern Europe. Nothing happened on the international level to start with, since the Communist regimes were not defeated with arms from the outside. And instead of delivering justice, the individual post-Communist countries in transition focused on other priorities.

As a result of the lack of an efficient truth finding and justice process, the post-Communist societies are not reconciling and healing well. The criminal deeds have not been documented properly, right and wrong have not been named and perpetrators have not been punished. Most of the surviving perpetrators, especially those in formerly high positions in the dictatorship, are leading comfortable lives, enjoying good social standing and retirement benefits based on their service to the totalitarian regime.

However, the international community has agreed on a fundamental right to justice for everyone. Article 47 of the Charter of Fundamental Rights of the European Union for example states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

There is one prominent group in the post-Communist societies which is still waiting to see its rights to justice materialise even for the gravest crimes - the surviving victims of Communism, who once counted millions and whose numbers are dwindling. More than 20 years after the fall of the Iron Curtain, in their appeal "Declaration 2012", forty-five organisations from nine countries called on the international community to finally address the issue of justice:

DECLARATION 2012

“Driven by a sincere effort to achieve legal redress for the crimes of Communism and redeem the immense suffering that affected millions of citizens under totalitarian Communist regimes, we request the legislative bodies of these countries and the authorities of the European Union to adopt effective legal norms that will allow just punishment of Communist criminals and the abolition of all benefits they still enjoy.”¹

The Platform of European Memory and Conscience responds to this appeal.

The Platform had began focusing on the paramount issue of justice for the Communist crimes even before its official establishment in October 2011. On 24-26 February 2010, a conference was held in Prague in the Senate and the Office of the Government of the Czech Republic with the title "Crimes of the Communist Regimes". Representatives of today's Platform Member organisations from post-Communist countries presented country reports about the extent and nature of the crimes, which they discussed with legal experts. It became clear that the Communist dictatorships committed international crimes, particularly crimes against humanity, in every country examined. This is no trivial matter, because crimes against humanity are not subject to statutory limitations and the perpetrators can and should be tried at any time, irrespective of the date when the crimes were committed.

As a next step, the Platform of European Memory and Conscience organised an international conference in the European Parliament in Brussels on 5 June 2012 with the title "Legal Settlement of Communist Crimes" which discussed the possible ways of attaining justice for the victims within the existing framework of international law. It turned out that the crimes committed by the Communist dictatorships do not fall within the primary jurisdiction of any of the existing international courts. As a consequence, the Platform issued a call for the establishment of a new supranational institution of justice which would try and sentence the perpetrators of the international crimes of Communism.

What followed were another almost two years of fundraising. Finally, on 1 June 2014, we were able to embark on a breakthrough pilot project: to research, analyse and identify at least six cases of previously untried international crimes performed, instigated, supported or at least tolerated by Communist regimes for which the perpetrators are still alive today, as well as witnesses and possibly victims. Today, we are proud to be able to present the results of our work in this publication and in the accompanying documentary film "*Justice 2.0*" and YouTube video clip directed at the international community.

The Platform of European Memory and Conscience is hereby bringing to the attention of the international community a two-digit number of cases for further investigation and signal litigation. They represent only a fraction of the international crimes committed under Communism and a fraction of the perpetrators who are still at large today.

¹ The Declaration 2012 was adopted on 17 January 2012 in Prague by representatives of 17 associations of victims of totalitarianism from the Czech Republic in the presence of Ambassadors (or their representatives) of European countries belonging to the former region of Soviet communist influence. Further signatories were gathered until 5 June 2012. See www.memoryandconscience.eu/declaration-2012

HOW WE APPROACHED THE TASK

To start with, we needed the best possible, highly qualified legal assistance. To this end, we established the International Legal Advisor Team of the Platform. We held a kick-off meeting on 29 July 2014 in Prague with a broad range of stakeholders from 14 countries, including a representative of the UN Special Rapporteur for the promotion of truth, justice, reparations and guarantees of non-recurrence, where we defined the project guidelines. Thereafter, we launched an international Call for Cases within the Platform which brought up potential cases for further analysis. Our team of researchers set out to gather documentation and archival records which we provided to the legal advisors for assessment. As soon as it was clear that we had sufficient evidence to create a documentary film, we launched a Call for a Film Team. A working meeting was held on 25-26 February 2015 in Prague, to ascertain the state of work and the remaining open questions. The film director and cameraman then set out to the various locations to record testimonies of witnesses of the crimes and to create the documentary film and a video clip. As a final step, this publication was put together with the help of those involved.

The International Legal Advisor Team of the Platform

The International Legal Expert Team of the Platform was established after our conference "Legal Settlement of Communist Crimes" in June 2012. For the project "International Justice for the Communist Crimes" we engaged four renowned scholars and one practitioner from both sides of the former Iron Curtain:

Prof. Dr. Dr. h.c. mult. Albin Eser, MCJ, Director emeritus of the Max Planck Institute for Foreign and International Criminal Law and former judge of the International Criminal Tribunal for Former Yugoslavia from Freiburg, Germany; Prof. Dr. Frank Meyer, Chair of the Department of Criminal Law and Criminal Law Procedure Including International Criminal Law at the University of Zürich, Switzerland; Dr. Roberta Arnold, Public Prosecutor in the Canton of Ticino, Switzerland; Doc. Dr. Jernej Letnar Čerňič, Assistant Professor of Human Rights Law at the Graduate School of Government and European Studies from Kranj, Slovenia and Dr. Nika Bruskinė from the Institute of International and European Union Law at the Faculty of Law, Vilnius University, Lithuania.

The definition of crimes we focused on and the principle of non-retroactivity

International crimes are not subject to statutory limitations, which means that their perpetrators can and should be tried at any time, even today. By definition international crimes have a systematic, widespread character, they violate universal values. They often result from widespread abuse of state power. They are subdivided into genocide, war crimes and crimes against humanity. For this project, we focused on one category only - crimes against humanity.

A fundamental principle in criminal law says that no crime was committed if it had not been previously defined by law (*nullum crimen sine lege praevia*). Crimes against humanity were defined in Art. 6 letter c) of the Charter of the International Military Tribunal in Nuremberg of 1945 and the so-called Nuremberg Principles became customary part of international law. Since the early 1950s, the provisions on crimes against humanity were applicable independent of an armed conflict. It is therefore plausible to conclude that the concept of crimes against humanity was foreseeable for potential perpetrators from this time on. Thus it is important to stress that the crimes which we focused on and identified in this project were crimes against humanity according to international law at the time when they were committed.

The Call for Cases

In the beginning of September 2014, we launched the following international Call for Cases which was addressed to all Member institutions and organisations of the Platform of European Memory and Conscience:

CALL FOR CASES

We are hereby issuing an urgent call to identify clearly presentable cases of crimes against humanity committed by the Communist dictatorships in Europe in the 20th century for which the perpetrators, witnesses and, if possible, also victims are still alive and able to testify.

Crimes against humanity are such crimes which were targeted against the civilian population and were committed in a widespread and systematic manner.

We are looking for cases which may fall into one of the following categories (not excluding other possibilities):

1. Killings along the Iron Curtain
2. Ethnic cleansing
3. Mass killings and extermination
4. Enslavement and slave labour
5. Deportations or forcible transfer of population
6. Extrajudicial killings, abductions, enforced disappearance of persons
7. Torture
8. Rape, enforced sterilization, enforced prostitution, or other grave sexual violence
9. Abuse of psychiatry, pseudo-medical “experiments” on prisoners

We are interested in identifying perpetrators in the entire hierarchy of power.

Please send suggestions of cases with their description on 1-5 pages in English to Dr. Neela Winkelmann at justice@memoryandconscience.eu by 30 November 2014.

The cases will be assessed by the International Legal Advisor Team of the Platform of European Memory and Conscience and six clear-cut cases will be presented to the public in May 2015 in the European Parliament in Brussels.

The purpose of the project is to raise awareness about the lack of justice for the international crimes of Communism and to initiate an international discussion about further steps.

The team of researchers

The collaborators who performed archival research and identified witnesses, victims and perpetrators in the project were: Miroslav Lehký, former investigator, Office for the Documentation and Investigation of Communist Crimes of the Czech Republic and today member of the board of the Ján Langoš Foundation from Slovakia; Ľubomír Morbacher, lawyer and historian formerly working for the Nation's Memory Institute in Slovakia; Miroslav Kasáček, Director of the civic association Memory from the Czech Republic; Luděk Navara, journalist, screenwriter and member of the civic association Memory from the Czech Republic; Martin Slávik, former employee of the Institute for the Study of Totalitarian Regimes from the Czech Republic; Vasil Kadrinov, Director of the Hannah Arendt Centre-Sofia from Bulgaria; Georgi Mihaylov, Chairman of the organisation Desehistory and his team from Bulgaria and Muzaffer Kutlay, Ph.D. candidate from the University of Kent in Great Britain.

The Call for a Film Team

At the beginning of February 2015, we launched an international Call for a Film Team. The purpose was to shoot and create a documentary film of 45-50 minutes and an accompanying YouTube clip of 2.5-3 minutes depicting testimonies of witnesses of international crimes of Communism. By the deadline of 18 February 2015, we received a total of 8 highly qualified entries, each of which would have satisfied our requirements. They came from Switzerland, Canada, Romania, three from Germany and one each from mixed Czech / US American and Czech/ Austrian teams. We decided to choose West German film director Stefan Weinert from Berlin, author of the acclaimed documentary films "Face the Wall" and "The Family" which deal with the Berlin wall and its victims.

The coordination and presentation of the project

Dr. Neela Winkelmann, Managing Director of the Platform of European Memory and Conscience, was responsible for the management and coordination of the project. The first public announcement of the ongoing project was made on 17 December 2014 at the conference "Temesvár 25" organized by László Tökés, Member of the European Parliament in Timisoara, Romania. The work in progress was further introduced at the conference of the Platform of European Memory and Conscience with the title "The Iron Curtain - Consequences of WWII" held in Budapest, Hungary on 5-6 May 2015.

From the beginning, the presentation of the results of the project was scheduled for a public event in the European Parliament in Brussels on 27 May 2015.

THE CRIMES WE IDENTIFIED

A brief overview of the situation in post-Communist countries

The response to the (albeit short) Call for Cases in this pilot project seems to reflect the state of awareness of and prosecution of the gravest crimes of Communism in the post-Communist countries today. From our Members in the Baltic states, we did not receive information about surviving perpetrators of crimes against humanity. The Baltic states have however, prosecuted several perpetrators for international crimes committed under Communism – e.g. the cases *Kolk and Kislyi vs Estonia*, *Kononov vs Latvia* or *Vasiliauskas vs Lithuania* which reached the European Court of Human Rights. In Poland, the Institute of National Remembrance (IPN), a Platform Member, is in charge of prosecuting crimes of both the Nazi and Communist regimes through its subsidiary, the Main Commission for the Prosecution of Crimes against the Polish Nation. The IPN has carried out 158 trials for crimes against humanity and 1 for genocide so far and has a standing record of 201 convicted perpetrators of Nazi and Communist crimes. In the Czech Republic, the work of the Office for the Investigation and Documentation of Communist crimes of the Police of the Czech Republic has led to sentences in about 40 cases since 1995; international law was however never applied and there is currently no significant prosecution of Communist crimes underway. There has not been any significant prosecution of Communist perpetrators in Slovakia. We had no ongoing prosecution reported from Germany. Nothing has been attempted so far concerning the prosecution of international crimes committed on the territory of Slovenia in the months following the end of WWII. In Bulgaria, there has been no noteworthy prosecution of Communist perpetrators. Positive developments are to be observed in Hungary and Romania which have started trying perpetrators for international crimes of Communism on the national level. In 2014, Hungary sentenced Béla Biszku, Minister of Interior in 1956, to prison for war crimes. He was found guilty of the killing of civilians during the 1956 uprising. In 2014, Romania opened a series of

trials against former directors of the Securitate (Communist state security) prisons, filing charges of crimes against humanity. The first perpetrator to appear on trial in 2015 is Alexandru Vişinescu, the second defendant is Ion Ficior. Charges against further five perpetrators have been filed by the Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile, also a Platform Member.

As a matter of principle, we do not wish to interfere with ongoing prosecution. Therefore we focused on cases where none is underway. In this pilot project, we were able to identify and analyse two main groups of crimes against humanity in which top-ranking perpetrators are alive today who have not been taken to court:

These are the killings along the Iron Curtain in former Czechoslovakia between 1948-1989 and the mass persecution, killings and deportation of the Turkish minority from Bulgaria in 1984-1989.

I.

KILLINGS ALONG THE IRON CURTAIN IN FORMER CZECHOSLOVAKIA BETWEEN 1948-1989

Between 25 February 1948 and 17 November 1989, a systematic and long-term killing of unarmed civilians including men, women, pregnant women and children took place on the borders of Czechoslovakia to West Germany and Austria. Refugees were killed on Czechoslovak territory while attempting to cross the border, or in pursuit while already on the territory of the neighbouring countries. People not even attempting to cross the border and unaware passersby close to the border in the neighbouring countries were killed too. The victims were of various nationalities - Czech, Slovak, East German, West German, Austrian, Polish, Hungarian, Yugoslav, French and other. They were killed by firearms, by land mines, by electrocution with high voltage current, being shot down while attempting to cross the border by air, by drowning and by specially trained dogs. The killings happened as a direct and intended result of state policy and national legislation of Communist Czechoslovakia.

More than 320 victims who died along the borders have been documented after 1989, based on archival records. The real number is very likely to be higher, as the practices and the record keeping especially at the beginning of the dictatorship are questionable.

The state policy and legislation of Communist Czechoslovakia

In post-WWII Czechoslovakia, The Agreement on the prosecution and punishment of the major war criminals of the European Axis was published in the Collection of Laws (No. 164/1947 Coll.) together with the Charter of the International Military Tribunal. Therefore, the definition of crimes against humanity became part of Czechoslovak law in 1947. Later, as of 1 January 1970, the Criminal Code expressly included murder committed as a crime against humanity among non-prescriptible crimes.

On 23 February 1948, two days before the Communist party seized total power in a coup, existing travel passports were abolished. From then on, travel to free countries was only possible with a permit by the State Security and attempts to escape the country were criminalised. The Border guard was enhanced and a network of civilian so-called helpers of the Border guards was set up. Between 1951-1989, the Border guard was subordinated to the Ministry of National Security, the Ministry of Defence, and finally the Ministry of Interior. In 1951, Act No. 69/1951 Coll. on the protection of the state borders was passed and based on it an Order of the Minister of National Security No. 70 of 14 July 1951 was adopted, which permitted the use of firearms against civilian persons. This legislation remained in force until 1989. Based on orders of the Commander in Chief of the Border guard Ludvík Hlavačka (1911-2005), mine fields were introduced along the borders in 1951, followed by triple wire fence barriers in 1952. By Hlavačka's further order of 12 June 1953, these fences were charged with electric current under 2,000-4,000 V. High voltage electricity was

used until 31 December 1965, resulting in the death of at least 100 people attempting to flee the country. To further illustrate the nature of the state policy, Minister of National Security Karol Bacilek (1896-1974) issued Secret Order No. 164/1952 based on which the people killed along the borders were to be buried in unmarked graves and their relatives were not to be informed. This order was in force until 1958. In the 1970s -1980s, specially trained “independently attacking dogs” were introduced at the borders. Their utilisation was regulated e.g. by order of the Commander in Chief of the Border guard No. 12/1985. The official aim of all these measures was initially to “liquidate” and later on to “render” the fleeing persons “harmless”. They were classified summarily as enemies, spies, saboteurs and later on as violators of the state borders.

The responsibility in the chain of command

In the totalitarian state, the constitution stipulated that the Communist party was the ruling force in society. The leadership of the Communist party, in particular its highest gremium, the Presidium of its Central committee (consisting of about 10-12 members in the 1980s) was informed about, regulated and decided about virtually everything. Members of the Presidium were key representatives of the Communist state. The Presidium convened once a week and decided on the work of the government and parliament, on important government decisions, proposed legislation and personnel issues. No strategic matter was left to chance or free will of the subordinated legislative, executive and judiciary bodies.

Analogously to the case of the German "*Mauerschützenprozesse*"², the trials of the perpetrators responsible for the killings along the Berlin wall, we are able to demonstrate, based on archival records, the clear chain of command leading from the decisions of the Presidium of the Central Committee of the Communist party of Czechoslovakia to the Minister of Interior to his deputy responsible for the Border guards to the Commander in Chief of the Border guards to the commanders of the seven individual brigades of the Border guards.

Figure 1: Geographic location of the Border guard units in the 1970s-1980s.

In the 1970s – 1980s, there were 7 brigades of the Border guards on the Czechoslovak state border with West Germany (356 km) and Austria (570 km). Each brigade had 3 battalions, each battalion had about 10 companies.



² In these trials, 151 perpetrators were sentenced between 1991-2004, among them 10 members of the Communist party leadership, 42 military commanders and 99 Border guard soldiers.

We have identified five relevant decisions of the Presidium of the Central Committee of the Communist party of Czechoslovakia, complete with attendance lists, dated 15 December 1971, 13 July 1973, 4 October 1979, 22 May 1981 and 7 January 1987, which set the details of the organisation, regulation and performance of duty of the Border guards, entrusting primarily the Minister of Interior with carrying out concrete measures to reach these goals. The Minister then issued orders and decrees to fulfill his tasks. The Deputy Minister, the Commander in Chief of the Border guards and the commanders of the individual Border guard brigades subsequently issued orders to their subordinates through the chain of command all the way down to the simple soldiers who had been drafted to perform their compulsory military service at the border. These inexperienced young men, around 20 years of age, were subjected to political indoctrination, permanent drill and stress. They were to prevent the fleeing persons from crossing the border at any cost. It was they who pulled the trigger and killed in the most cases.

Of course there was a strong feedback control mechanism in place. The decisions of the Presidium of the Central Committee of the Communist party were based on detailed reports about the activity of the Border guards for the previous years. The Presidium also received regular reports on the performance of the Border guard commanders and decided on their appointment and sustaining in office. We can prove that the leadership of the Communist party was informed about cases of killing civilians along the border. This is demonstrated e.g. by classified documents dated 31 August 1967 in which the Commander in Chief of the Border guards sends the report of the commander of the Border guard brigade Bratislava on the investigation of the killing of East German citizen Richard Schlenz on 27 August 1967 to the Central Committee of the Communist party; by the decision of the Presidium of the Central Committee of the Communist party of 10 April 1985 which takes note of the report by the Minister of Interior describing, i.a., the killing of František Faktor on 30 October 1984 upon crossing the Austrian border; or by the fact that the leadership of the party and state had to pay amends for the killing of West German citizen Johann Dick on West German territory close to the border on 18 September 1986. As a result of an international scandal, Czechoslovak Communist president Gustáv Husák had to apologize to West Germany and the state paid a compensation to Mr Dick's widow.

In summary, we claim that the entire chain of command, starting from the leadership of the Communist party of Czechoslovakia, knew or had a reason to know that as a result of the policies and regulations adopted by them, civilians were being killed at the borders.

The criminal responsibility of the perpetrators and participants

We argue that the persons in the chain of command were indirect perpetrators of, or as superiors responsible for, crimes against humanity. They were the masterminds of the regime on the state borders. They instigated, knew and by means of orders directed the simple soldiers who then, in performance of their duty, killed the fleeing civilians. The persons in the chain of command used the soldiers as tools. For successful interventions against the “violators of the state borders” the superiors rewarded the soldiers by material gifts such as wristwatches, by additional days of leave, or by monetary rewards. The soldiers who carried out the killings along the borders were then the direct perpetrators of crimes against humanity.

Living perpetrators and responsible persons

Based on archival research, we have carried out a complete personnel reconstruction of the commanders of the Czechoslovak Border guard brigades in the 1970s-1980s. Hereby we are presenting the very elementary chain of command, represented by highest-ranking persons who at the time of this publication are known to be alive and who are responsible for at least one killed fleeing person. We did not have the possibility to research whether all the listed commanders of the Border guard brigades are alive – however, we have proof for at least three of them, marked in red,

who are responsible for killings for which there are witnesses alive. In this scheme, we have omitted other levels of command (such as the deputies of the commanders in chief of the border guards and all ranks below the commanders of the Border guard units) and auxiliary bodies (such as the Military advisory council or the XIIIth Department of the Central Committee of the Communist party responsible for state administration and personnel issues).

To the perpetrators whom we know alive at the time of publication, we are attributing the potential minimal number of victims killed at the border during their office, based on published information³. We would therefore like to stress that the living perpetrators depicted here represent a “tip of the iceberg” of potential further living perpetrators of killings along the Iron Curtain in former Czechoslovakia.

Figure 2: Persons responsible for the killings along the Iron Curtain in the chain of command.
Names in **red** – alive at the time of publication, others – possibly alive.

Presidium of the Central Committee of the Communist Party of Czechoslovakia KSČ



Peter Colotka (*1925)
in office 1968 –1988
Prime Minister of Slovakia 1969-1988
27 killed people



Lubomír Štrougal (*1924)
in office 1968 –1988
Prime Minister of Czechoslovakia 1970-1988
27 killed people (+ 33 as Minister)



Milouš Jakeš (*1922)
in office 1981 – 1989
Secretary General of the Central Committee of the KSČ 1987-1989
8 killed people



Ministers of Interior



Lubomír Štrougal (*1924)
in office 1961 –1965
33 killed people



Vratislav Vajnar (*1930)
in office 1983 – 1988
8 killed people



František Kincl (*1941)
in office 1988 – 1989
2 killed people

³ PULEC, Martin: *Organizace a činnost ozbrojených pohraničních složek, Seznamy osob usmrcených na státních hranicích 1945–1989 (Organisation and activity of the armed border forces, Lists of persons killed on the state borders 1945-1989)*, ÚDV, Praha 2006. However, not all known victims are included in this publication, so e.g. Johann Dick, killed on 18 September 1986.



Deputy Ministers of Interior responsible for the Border guards



Ján Pješčak
(*1925)
in office 1973
1 executed person



Vladimír Hrušecký
(*1930)
in office 1979-1988
9 killed people



František Kincl
(*1941)
in office 1988



Stanislav Nezval
(*1941)
in office 1989-1990
2 killed people



Commander in Chief of the Border guards



František Šádek (*1921)
in office 1969-1982
17 killed people



Commanders of the Border guard brigades responsible for at least 1 killed civilian

11th Brigade Bratislava



Ondrej Šedivý (*1921)
in office 1962 - 1970
3 killed people



Viktor Gallo (*1931)
in office 1985 -1989
2 killed people

5th Brigade Cheb

František Okrouhlík (*?)
in office 1950 -1951

Ilja Marcij (*1921)
in office 1951

5th Brigade Cheb – continued



Lubomír Kroh (*1924)
in office 1956 – 1962



Jaroslav Janů (*1924)
in office 1962 – 1970



Jan Rychnovský (*1932)
in office 1970 – 1974



Miroslav Tůma (*1928)
in office 1976 – 1977



Josef Šabata (*1935)
in office 1976 – 1981



Ladislav Trávníček (*1942)
in office 1981 – 1988
3 killed people

12th Brigade Planá



Jaroslav Janů (*1924)
in office 1952 – 1953

9th Brigade Domažlice



Milan Liška (*1930)
in office 1973 – 1980

7th Brigade Sušice



Ladislav Machálek (*1939)
in office 1976 – 1990

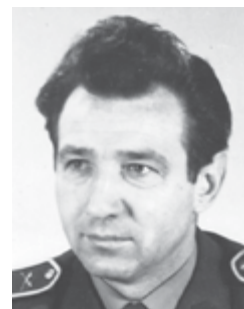
4th Brigade Znojmo



Jaroslav Janů (*1924)
in office 1970 – 1971



Jan Muzikář (*1934)
in office 1973 – 1980



Bohuslav Plevák (*1937)
in office 1980 – 1990

15th Brigade České Budějovice



Alois Kroupa (*1935)
in office 1980 -1990

Why was no justice done in the past 25 years?

After 1989, courts of the Czech Republic pronounced sentences in altogether 8 cases of killings along the border. Four people were found guilty, three of them lowest-rank soldiers, the fourth one an officer. The sentences were for murder, abuse of power in office and causing bodily harm leading to death, resulting in two unsuspended and two suspended prison terms.

In Slovakia, nobody has been punished for the killings until this day.

On 11 June 2008, 42 cases of killings along the Slovak-Austrian border were presented by the Nation's Memory Institute to the Office of the General Prosecutor for prosecution as crimes against humanity. The Prosecutor General however closed the file without raising charges.

On 16 June 2008, analogously, at least 246 cases of killings along the Czech-West German border were presented by a group of citizens to the Czech Supreme State Prosecutor for prosecution as crimes against humanity. The file is now with the Office for Documentation and Investigation of Crimes of Communism and no action has been taken until this day.

The reasons for the lack of prosecution are several. First of all, the judiciary and prosecuting authorities have not been cleansed of former perpetrators and collaborators with the dictatorship. Secondly, a legal continuity with the dictatorship was established and therefore it is argued that the defendants acted in accordance with domestic law valid at the time. Thirdly, there is a lack of political will and courage to change the situation on the national level.

We therefore claim that in the documented cases 25 years after the fall of the regime, we have hit a glass ceiling which does not permit efficient prosecution of the surviving perpetrators on the national level. We see the only possible road to attaining justice in these cases in employing international law and justice, with the help of the international community.

2.

THE MASS PERSECUTION, KILLINGS AND DEPORTATION OF TURKS FROM BULGARIA IN 1984-1989

Between 1984-1989, the Bulgarian Communist state implemented a repressive policy against its Turkish minority, tarned by the title "Revival Process", which consisted in a forced changing of names from Turkish to Bulgarian ones, followed by armed repressions and killings of protesters, resettlements of people within the country, their imprisonment in various prisons and in the concentration camp Belene, by forced emigration of selected people from the Turkish community and finally, the deportation of 370,000 people from Bulgaria across the border to Turkey.

People of Turkish origin were first forced to apply for new passports with new Bulgarian names. Violence was used against those who protested. In only a few months, about 850,000 people, representing almost one tenth of the Bulgarian population, were forced to change their names. Protest of the Turks continued through the years 1985-1989. About 1,000 people were imprisoned, another 4,000 were forced into internal displacement within the country, tens of people were shot and killed or wounded by the repressive forces particularly during demonstrations in December 1984-January 1985 and in May 1989. The policy took a turn on 29 May 1989 when the radio announced the opening of the borders to Turkey for the Turks to leave the country. The deportation lasted until the end of August 1989, when the Turkish government closed the borders for the lack of infrastructure and capacities for dealing with the refugees. Before leaving, the Turkish people were forced to sell their property at imposed prices and ethnic Bulgarians were resettled in the areas formerly inhabited by Turks.

After the fall of the Communist regime, half of those who emigrated returned to Bulgaria.

On 11 January 2012, the Bulgarian Parliament adopted a resolution condemning the “Revival Process” as a forced assimilation policy and apologizing to the Turkish minority.

While it needs to be stressed that in the second half of the 1980s, there was no explicit prohibition of assimilation of minorities in international law, there were international norms already in force which recognised certain relevant rights of minorities. It is evident that in the case of the Bulgarian “Revival Process”, the limits of admissibility of assimilation policies were transgressed.

The state policy and legislation in Communist Bulgaria

Compared to the situation in former Czechoslovakia, where a sizeable effort has gone into the elucidation of the killings along the borders since 1989, we have been able to research and assess the Bulgarian case less thoroughly in this pilot project. The reason is that formerly classified documents of the Communist regime have been made accessible only in the past several years in the COMDOS archive, and that the search in the archives and access to documents is not simple. Nevertheless, we have been able to delineate some crucial decisions and orders on which the “Revival Process” was based.

On 8 May 1984, the highest gremium of the Communist party, the Politburo⁴ of the Central Committee of the Communist party of Bulgaria adopted a decision to enact the “Revival Process” of assimilation of the Turkish minority in Bulgaria. The policy would consist of the prohibition of the use of the Turkish language, political and administrative measures to stop the practice of speaking Turkish in public places, the obligation to change Turkish names into Bulgarian ones, the restriction of the freedom of religion, forced displacement within Bulgaria, deportation towards Turkey and propaganda through films. Refusal to comply with this policy was repressed by force, protests were neutralised by the Bulgarian militia, Border guards and security forces.

For those protesting against the name changes, forced deportations were ordered as a punishment by an order of 7 August 1985 signed by Minister of Interior Dimitar Stoyanov, Prosecutor General Kostadin Lyutov and Chairman of the Supreme Court Ivan Velinov. 4,000 people were deported as a result.

After a number of people were shot and killed in demonstrations against the “Revival Process” in May 1989, Minister of Interior Georgi Tanev created a Central Operative Group for the Revival Process by an order of 25 May 1989. The Group was headed by Deputy Minister of Interior Grigor

⁴ Equals to Presidium in the Czechoslovak case.

Shopov. Its task was to assist in the Ministry of Interior in the carrying out of the Revival Process, among others in fighting against and neutralizing protests.

On 29 May 1989, the Bulgarian national radio announced the opening of the borders to Turkey for those who wish to leave the country. On 5 June 1989, the secretary of the Council of Ministers Ivan Shpatov issued instructions to the regional and district structures of the Communist party and administration on what the people may take with them when leaving the country.

In the strictly confidential transcript of the session of the Politburo on 6 June 1989, the Secretary General of the Communist party and *de facto* dictator Todor Zhivkov describes his plan to effect the migration of the maximum number of people, no less than 200,000, to Turkey, and that it is to happen without informing the public.

We also know that Minister of Interior Georgi Tanev issued a congratulatory order to his troops on 12 June 1989, after the killings of peaceful demonstrators in May 1989 took place, for having done a good job.

From several reports of the meetings of the Central Operative Group for the Revival Process in the summer of 1989, it follows that militia was employed, that the national railway company was used to transport people to Turkey, that soldiers were to ensure the loading and sealing of the second train with deportees and further that different tactics were tried in order to deport more people when the Turkish government stopped allowing the refugees to enter the country.

The responsibility in the chain of command

More research is needed to establish the full picture of the chain of command in this case. It seems clear however, like in the case of Czechoslovakia, that the key decisions were taken at the level of the Politburo of the Central Committee of the Communist party, probably even directly by the dictator Todor Zhivkov himself. It is further evidenced that two Ministers of Interior were actively issuing orders to execute the “Revival Process” and that Deputy Minister of Interior Grigor Shopov was in charge of the Central Operative Group which actively participated in the organisation of the final deportation of the Turkish minority.

The People’s militia, the Border guards and the security forces which took part in the violent acts against the Turkish minority were most likely subordinated to the Minister of Interior, such as was the case in other Communist countries.

The criminal responsibility of the perpetrators and participants

According to the available documents, it seems that the “Revival Process” was ordered by Todor Zhivkov as the head of state of Bulgaria. His policy was implemented and defended by numerous actors such as Prime Minister Georgi Atanasov, Minister of Interior Georgi Tanev and others. These people would qualify as indirect perpetrators or responsible superiors. More information is still required, however, about further indirect perpetrators or participants who enforced or supported this policy, as well as about the direct perpetrators of the concrete human rights violations.

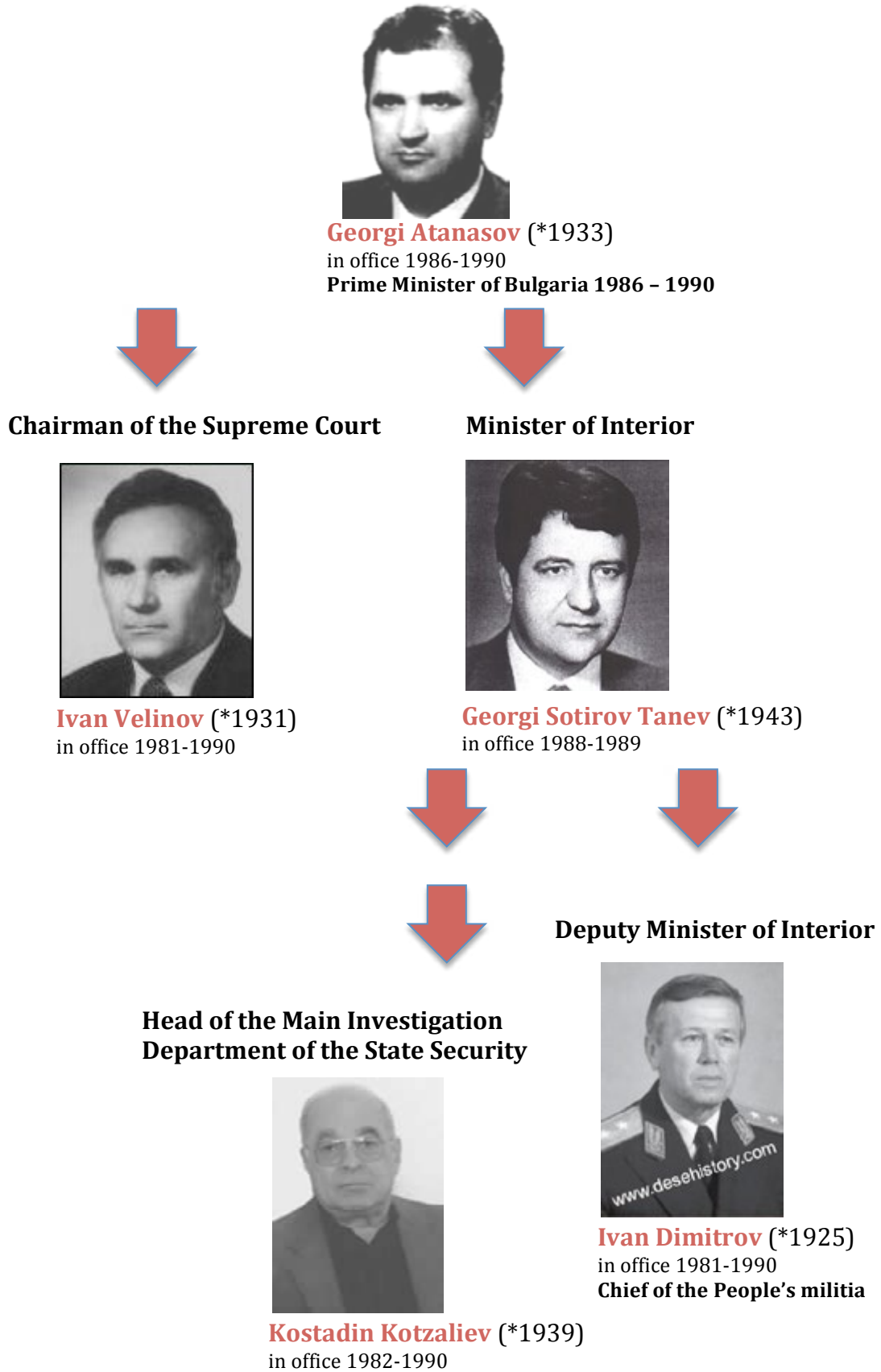
Living perpetrators and responsible persons

Based on information available to us, there are at least five top-ranking representatives of the political and administrative leadership of the Communist state alive as of now, whose active participation in the “Revival Process” is evidenced in archival documents.

The individual extent of criminal responsibility of these individuals needs to be subjected to further study and assessment.

Fig. 3: Some of the persons responsible for the mass persecution, killings and deportation of Turks from Bulgaria.

Politburo of the Central Committee of the Communist Party of Bulgaria BCP



Why was no justice done in the past 25 years?

In 1991, the Bulgarian judiciary started investigations into the “Revival Process” and the killings perpetrated between 1984 and 1989. In 1993, head of state Todor Zhivkov, former Prime Minister Georgi Atanasov and former Minister of Interior Dimitar Stoyanov were brought to court and charged with “crimes against national and racial equality”. In 1994, the Supreme Court returned the indictment to the Prosecutor’s Office, asking for further investigations. The Court demanded evidence which was impossible to gather: not only the complete list of those imprisoned but also testimonies from “all those who were still alive”. In December 1997, the prosecutors completed the list of 446 Turkish Bulgarians who had been imprisoned for opposing the “Revival Process”, and the testimonies of 312 of them on 48,000 pages. However, in April 1988, the Court again rejected the indictment – not all those still alive had been included. Then, in 1998, Todor Zhivkov died and in 1999, Dimitar Stoyanov. In December 2013, the case against Georgi Atanasov was still under investigation without any result⁵. This would clearly indicate similar obstructions to justice which we can see in the case of the Czech and Slovak Republics mentioned earlier.

CALL FOR JUSTICE 2.0

The Platform of European Memory and Conscience hereby calls on the international community to help instate justice for the international crimes of Communism. It is important to focus on the leaders, policy makers and senior executors of these crimes who have been evading justice for the last 25 years.

We are hereby calling on democratic countries to examine whether they could apply the principle of universal jurisdiction and prosecute the presented political functionaries and executives of the former Communist regimes for crimes against humanity in their national courts.

We are further calling on democratic countries to examine the possibility of creating a new supranational institution of justice – a tribunal or a new international court – which would try the Communist perpetrators for crimes against humanity.

The protection and promotion of human rights demand it. The following principle has been endorsed by the United Nations Commission on Human Rights: “It remains the rule that States have primary responsibility to exercise jurisdiction over serious crimes under international law. In accordance with the terms of their statutes, international and internationalized criminal tribunals may exercise concurrent jurisdiction when national courts cannot offer satisfactory guarantees of independence and impartiality or are materially unable or unwilling to conduct effective investigations or prosecutions.”⁶

⁵ This text quotes from GROSESCU, Raluca: *Master historical narratives and transitional criminal justice in post-Communist societies: Bulgaria, Germany and Romania in comparative perspective*, CAS working paper series, Issue 6, Centre for Advanced Study Sofia, Sofia 2014, p. 11-18.

⁶ Updated set of principles for the protection and promotion of human rights through action to combat impunity, Commission on Human Rights, United Nations, sixty-first session, 8 February 2005, E/CN.4/2005/102/Add.1., Principle 20.

About the Platform of European Memory and Conscience

The Platform of European Memory and Conscience is a non-profit international non-governmental organisation established in 2011 in Prague. It brings together currently 48 public and private institutions and organisations from 18 countries – 13 EU Member States (Sweden, Estonia, Latvia, Lithuania, Poland, Germany, Netherlands, Czech Republic, Slovakia, Hungary, Slovenia, Romania, Bulgaria), and further from Ukraine, Moldova, Iceland, Canada and the United States of America, which are active in research, documentation, awareness raising and education about the totalitarian regimes which befell Europe in the 20th century.

The Members of the Platform of European Memory and Conscience range from umbrella organisations of victims and witnesses of totalitarian persecution and umbrella organisations of émigrés from totalitarian countries, to museums, memorials, national memory institutions, archives, foundations and university centers, to non-governmental organisations active in education, awareness raising and memory work.

Through its Members, the Platform of European Memory and Conscience represents at least 200,000 European citizens and over 1,100,000 North American citizens with European roots.

The goals of the Platform of European Memory and Conscience are, among others:

- 1) to increase public awareness about European history and the crimes committed by totalitarian regimes and to encourage a broad, European-wide discussion about the causes and consequences of totalitarian rule, as well as about common European values, with the aim of promoting human dignity and human rights,
- 2) to help prevent intolerance, extremism, anti-democratic movements and the recurrence of any totalitarian rule in the future,
- 3) to work toward creating a pan-European documentation centre/memorial for victims of all totalitarian regimes, with the aim of commemorating the victims and raising awareness of the crimes committed by those regimes,
- 4) to support initiatives at the European level with a view to giving indiscriminate treatment to all crimes of genocide, crimes against humanity and war crimes, as well as to their victims,
- 5) to contribute to the education of young Europeans about the totalitarian regimes through the development of training courses, teaching curricula, programs and aids,
- 6) to strive to become a partner of the Council of the European Union, the European Commission, the European Parliament, the Council of Europe and other international organisations in seeking ways toward an honest and open appraisal of Europe's common totalitarian legacy,
- 7) to contribute toward deepening the integration of all European citizens, furthering the respect and understanding of the essential importance of democracy, human rights, European values and the rule of law in all of Europe with the goal of avoiding future threats to democracy,
- 8) to share and exchange knowledge, know-how and experience with institutions and organisations pursuing analogous goals in other parts of the world.



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