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NATIONAL REPORT OF THE CRIMES OF COMMUNISM IN SLOVENIA

1. THE PERIOD OF THE COMMUNIST TAKE-OVER DURING THE OCCUPATION (1941-45)

For six centuries the Slovenian lands had been the part of the Austro-Hungarian Empire, which disintegrated after the World War I. According to the will of the Paris Peace Conference and the world super powers the majority of the Slovenian lands in 1918 entered the first Yugoslavia. The western part belonged to Italy and the west-northern part belonged to Austria. During the World War II in Slovenia (1941–1945) there were occupation, resistance, revolution, collaboration and the civil war. After the Axis attack on Yugoslavia on 6th April, 1941, Slovenia was occupied by Italy, Germany and Hungary. After the Italian capitulation in September, 1943, Germany added the Italian Slovenian territory into the Operational Zone Adriatic Littoral. After the German occupation of Hungary, the Third Reich occupied the whole of Slovenia. All three occupying countries had the same goal: to Italianize, Germanize and Hungarize the Slovenians and assimilate the occupied territories.

Communism in Yugoslavia, particularly in Slovenia, in contrast to Communism in others eastern countries, came to power without the intervention of the Soviet army. This meant some kind of uniqueness in European space, so it is important to detail the very beginning of the Communists' usurpation of authority within the framework of their organizing resistance. The leadership of the Communist Party of Yugoslavia with Josip Broz Tito as a leader became extremely Stalinistic before the Second World War. In October 1940, at a conference in Zagreb, one of the communist leaders, the Slovenian Edvard Kardelj announced that, "...the Communists start armed engagements with the occupier only if they see a chance for revolution."

At the end of April 1941 the Slovenian communists as a part of the Yugoslav communist organization, established the Anti-imperialist Front (PIF=Protiimperialistična fronta). PIF was

renamed in to the Liberation Front (OF=Osvobodilna Fronta) after the German attack on the Soviet Union. In the Liberation Front there were also Christian Socialists, part of the Sokol (Falcon) pan-national gymnastic movement, groups of persons connected with culture and some other groups.

The beginnings of the Liberation Front (OF) are not accurately documented, in complete contrast to the tradition of the communists. First, on April 26 the 'Anti-imperialistic Front' was founded, which in June 1941, following the German attack on the Soviet Union, was renamed the 'Liberation Front'. It was clear from the very beginning that the struggle for total control was more important to the communists than any struggle against the occupation.

It was decided in advance that they would fight against every group which planned resistance against the occupation. All the anti-communists would be destroyed later or (with pretended collaboration) compromised. The Communist Party (KPS) as an initiator of this formation had the leading role and was by no means willing to give up this role or share it. The members of the 'Anti-imperialistic Front' and the Liberation Front never discussed equality of rights among collaborating groups or the appropriate division of tasks.

The German attack on The Soviet Union on 22nd June, 1941, provoked Yugoslav and Slovenian communists to start fighting against the occupation and to enact the Bolshevik revolution. As early as August 1941 the Security Intelligence Service (VOS) was established, which was directly subordinate to the Communist Party and rather arbitrarily executed collaborators, supposed collaborators and enemies of the Liberation Front and the Communism.

By the end of the year 1941 one hundred people had lost their lives. They were shot because of alleged denunciation and betrayal. People were violently forced to join the Partisans not only in Ljubljana, but also in the country. The causes of growing violence, which greatly increased in this period, lay in the conviction of the Communist Party that the war would be decided in 1942. During the war four thousand civilians were killed by the Partisans. These were people, who represented ideological enemies for the Party. In Ljubljana in 1942, the VOS killed among many others the president of the Association of Industrialists, August Praprotnik, academicians Franc Župec and Jaroslav Kikelj and Professor Lambert Ehrlich. The last great actions in Ljubljana were the liquidations of the Ljubljana Police officer

Kazimir Kukovič on October 8, 1942 and former ban (political leader of Dravska banovina) Marko Natlačen on October 13. They did not liquidate only opponents of OF and other organizations, but also allies. They obviously tried to prepare the ground for a later Communist take over.

By the spring of 1942, partisans murdered several thousand civilians, prompting the anti-communists to start armed resistance, collaborating with the Italians and after Italy capitulated in September, 1943, with the Germans. Even during the war, more than 12,000 people became victims to the civil war¹, and including more than 15,000 killed civilians and prisoners of war after the end of Second World War in the spring of 1945, there were more than 30,000 direct victims of the civil war.²

In the Italian occupied region a "liberated territory" was established in spring 1942, which extended to the suburbs of Ljubljana. Revolutionary violence in the liberated territory against peasants and fear of revolutionary victory led to the spontaneous formation of village guards and collaboration with the Italian occupiers. All this supported the establishment of Anti-Communist Units ("Milizia Volontaria Anticomunista"). The War of Liberation, therefore, was interwoven with civil conflict, which fatally divided the Slovene nation.

In spring 1942, representatives of pre-war parties united in a Slovene alliance. The common basis of these united parties with differing political principles was counter-revolution. At the

1

Killed by	partisans	anticommunists
1941	115	
1942	1980	328
1943	2649	715
1944	2453	2587
1945	400	600
Together	7597	4230

Jože Dežman, *Communist repression and transitional justice in Slovenia*, in: Crimes Committed by Totalitarian Regimes, Slovenian Presidency of the Council of the European Union, Ljubljana 2008, 198-199.

2

Killed by	partisans	anticommunists
1941 – 1945	<> 7.500	<> 4.500
After WWII	<> 18.000	< 100
Together	> 25.000	> 4.500

Jože Dežman, *Communist repression and transitional justice in Slovenia*, *Crimes Committed by Totalitarian Regimes*, Slovenian Presidency of the Council of the European Union, Ljubljana 2008, 198-199.

end of 1941, the so-called programme London Points was published, which talked about united Slovenia as a part of Federal Yugoslavia, with the king at the head, and a democratic, socially more just political system as then in the previous, decayed country. In relations with the occupiers they continued the politics of waiting for the right moment for resistance. Because of their desires to thwart development of the revolution, they decided on military/police collaboration with the Italians and later also the Germans.³

On September 16, 1941, the Slovene National Liberation Committee (SNOO), announced the prevention of operations of all organisations and resistance groups outside the OF. This day marks the formal beginning of the civil war and decades of concealed communist guilt.

The provisions of September 16, 1941 were, at the second session of the Slovene National Liberation Committee on November 1, 1941, supplemented with another seven articles – on December 21 they finally added articles 8 and 9. These nine articles stood as the “nine Basic Articles” of the OF. They represented its programme, which was valid until the first Congress of the OF on July 1945 in Ljubljana. But the records of the VOS show that the mentioned decrees were not so important - they were a kind of alibi to prove that they were acting legally. The prior Communists task was not the elimination of national traitors, but to lead people from the anti-communist side which represented a danger to their goals and to “social revolution”. The guilt of individuals did not play any part, but only if someone stood in the way of the goals set by the KPS. And the most important were people's beliefs that the liquidated person was guilty, because otherwise the danger that people would oppose the National Liberation movement could appear.⁴

At first the OF Supreme Plenum proclaimed itself the Slovenian National Liberation Committee with a decree. The decree included three articles, of which the second was the most important, because it justified the monopoly and supreme authority of the OF. Immediately there arises the question as to who the OF were, and its constitutive groups of power, that it could speak and act in the name of the nation? During the war, it was

³ Dieter Blumenwitz, *Okupacija in revolucija v Sloveniji (1941-1946)*, International study, Celovec/Klagenfurt 2005.

⁴ Tamara Griesser-Pečar, *Razdvojeni narod*, Mladinska knjiga, Ljubljana 2004; Bojan Godeša, *Kdor ni z nami je proti nam : slovenski izobraženci med okupatorji, Osvobodilno fronto in protirevolucionarnim taborom*, Cankarjeva založba, Ljubljana 1995; Bojan Godeša, *Priprave na revolucijo ali NOB?*, in: Slovenski upor 1941, Ljubljana 1991.

impossible to hold an election or referendum. The legal pre-war parties or their elected representatives, the only ones with the right to appeal to the population, were not represented in the Liberation Front. In the plenum of the OF, besides the Party, there were “only splinter groups of former political parties and not the conservative Catholic side, which without doubt represented an important part of the nation”. The OF represented only certain opinion in Ljubljana and its surroundings. The opinion of the rural regions was not reflected at all, particularly of those who were under German and Hungarian occupation. Therefore, the OF did not represent the majority of the peoples' opinion, although the majority was hostile to the occupation. The KPS, which dictated the intention of the OF, acted illegally before the war. At the beginning of the war the KPS had about 1280 members and, according to others, nearly 1000. Therefore the KPS was objectively too weak to impose itself or even appealed to the minds of the population. The KPS was aware of this, which is why, at the beginning, on the basis of the enlarged OF, it hid under the very popular idea of liberation and watched carefully to put “the company” of the OF forward as a front organisation. People were enthusiastic about the idea of a meeting place of resistance. The majority of Slovenes were hostile to the occupiers or just rejected them. And now, there suddenly appeared an organisation about which they knew little, but which promised to mobilize all “to the liberty-devoted Slovene combat teams, irrespective of which political and world point of view they had” and defied them. The inclination of the OF does not automatically mean the inclination of the KPS. People at first did not even recognize the dominant position of the KPS in the organisation. Therefore, the OF became a symbol of the struggle for liberation. The establishment of an organisation such as the OF was deemed legal, in contrast to the denial of the same right to other political parties and social groups. Anyone who did not agree upon the principles of the OF, which was led by the Communists, the article denied the right to resist the occupation outside the OF. Non-communist groups within the OF, which was named as the “allies” in the sense of Russian civil war by the party, in truth had an absolutely subordinated role. The Party - in Lenin's sense – used them as a tool. At the beginning, the Communists would not be successful without “the allies”, because they offered a more extended platform to the Party. And when the Communists had the whole situation under control, “the allies” were not needed any more, so in March 1943 they were forced to sign the Dolomiti Declaration, with which they finally capitulated.

With this decree the leaders of the OF hardly obstructed the resistance of traditional parties. Obviously, they did not strive to resist the occupation as such, but to set up the basis for a

Communist revolution. As early as at the end of August 1941, the organizing secretary, Tone Tomšič, clearly said: “Those are mistaken who thought that the great Liberation Front of the Slovene nation is possible without the strong organisation of the Slovene KP.”

All activities, and therefore also resistance were “self-interested” and directed to national liberation if they did not act in the framework of the OF, under Communist leadership and the partisan military. Besides the death penalty, other punishments were determined - confiscation of all property, destruction of property, “national boycott” (exclusion from society).⁵

“The protective decree” envisaged special secret courts, but it did not mention how they should be constructed, who should be named to them, and how they were to act. According to its judgment, this was a “typical form of revolutionary judiciary, which demands constant watchfulness from the responsible holders of political authority, the integrity of members of the court and the ability to properly evaluate information about criminal offences.” Therefore this statement already indicated the true character of these sentences. Victims were selected by the leadership of the Party and not the executive committee of the OF. It only gave orders for the circle of people from whom the Security Intelligence Service (VOS) as an executor of the Party selected the appropriate casualties. According to the published cases, the accusations were very general, and did not bother to cite concrete evidence. They were dictated by the needs of revolution. They did not consider the principles of the rule of law or humanitarian acts. The purpose of these “liquidations” was not a punishment for some concrete act, but the discouragement and intimidation of others. Only after the decision of the executive committee of the OF on July 31, 1942 in “liberated regions” – regions which the Italians had deserted and were then invaded by Partisans – was a “special judicial commission” established. It was to make judgements according to “the protective decree”, but because of the hard fighting it could not act properly. Later, after 1943, some criminal acts under “the protective decree” were left to military courts. But these 'revolutionary courts' were also based on the reports of the VOS. In autumn 1943 their representatives accepted the reports of the VOS about the alleged guilt of 'the accused' as a valid proof of guilt without further deliberation.

⁵ Metod Mikuž, *Pregled zgodovine NOB v Sloveniji I-V*, Cankarjeva založba, Ljubljana 1960-1973; *Dokumenti ljudske revolucije v Sloveniji I-X*, Inštitut za zgodovino delavskega gibanja (I-VII), Arhiv Republike Slovenije (VIII-X), Ljubljana 1962-2005; Marjan Žnidarič, *Do pekla in nazaj*, Muzej narodne osvoboditve, Maribor 1997; Bojan Godeša, *Priprave na revolucijo ali NOB*, in: *Slovenski upor 1941* (ed. Ferdo Gestrin, Bogo Grafenauer, Janko Pleterski), Ljubljana 1991, 69-85.

The VOS acted until February 19, 1944, when at the first session of SNOS (Slovene National Liberation Council) in Črnomelj it was dissolved. The successor of VOS became Department for National Protection (OZNA).

Although the VOS had the title OF (VOS OF), which should emphasize party responsibility for the OF and documented that it served to the whole National Liberation Struggle (NOB), it was actually an exclusive body of the Party. The Liberation Front did not subsequently identify the VOS. Members of the VOS were exclusive members and candidates of the KPS and the Communist Youth Organization, SKOJ. The VOS answered directly and exclusively to the Central Committee of the Communist Party of Slovenia and served the Party exclusively. They carefully were hiding certain information from "the allies", and later wrote special censored reports for them.

The VOS was divided into three departments: the Mass Intelligence Service, Special Intelligence Service, and Security Service. The latter was some kind of executive body of the Intelligence Service. The units were organized on military lines and actions executed (sabotage actions and "liquidations") according to precisely defined plans. The units were manned by activists, supposedly brave and calm, but not reckless, ruthless, suitable and ready for total individual armed actions. The Security Service in Ljubljana executed house searches of obvious enemies of the communist partisan movement, stole their documents and records, destroyed printing offices, robbed weapons, equipment and money and, particularly, liquidated groups of people.

2. COMMUNIST RULE ESTABLISHED IN SLOVENIA

Differentiation should be made between two phases in the worst Communist repression after the World War II. First, we must remember the bloody battle with the Home Guard and other members of armed anti-communist and partly collaborationist units, the elimination of some most exposed anti-communists and bigger entrepreneurs (for example, culturist Narte Velikonja, industrialist Josip Benko) and the fight with the German minority on Slovene territory. Therefore, in autumn 1945 there were more than 3,500 Germans from Lower Styria and Prekmurje in prison or camps; 7,400–9,000 "Volksdeutsche" and Slovenes who acted for the Germans in the war, but were deported between 1945 and 1946 by the Slovene and

Yugoslav authorities. Then follows the period from August 1945 until the middle of the 50's, when terror weakened.⁶

At the end of the war, in May 1945, the Home Guard ("domobranci"), at that time officially part of the Slovene army, together with many civilians (about 6000) withdrew to (Austrian) Carinthia. They entered the occupied territory of British 5th Corps of the 8th army, which occupied Carinthia. The retreat of the Slovene Home Guard took place between May 8 and May 13, 1945. The British settled them in Vetrinjsko polje (Viktring) near Klagenfurt/Celovec in military and separate civilian camps. It is interesting that the British did not return the anti-communist units (Chetniks, Home Guard members from Primorska), who retreated into Friuli back to Yugoslavia.

The British authorities began to return different anti-communists (Home Guard members, Chetniks, Ustaši, Croatian Home Guard) to Yugoslavia on May 24. 11,000 Slovene soldiers (mostly Home Guard members) and about 600 civilians were returned. Some historians mention higher numbers, about 13,000. The British mostly assured them they would only transfer them to the camps in Italy. Although the Slovene anti-communist military and political leadership soon found that the returned Home Guard members had been transferred to Yugoslavia, they did not act effectively. They were probably guided by almost blind trust in the British political and military authorities, which grew during the war. They could not imagine that they could be extradited to the Yugoslav Communist and non-democratic authorities by a country with a rich democratic tradition and gentleman behaviour.

On their return to Yugoslavia the Home Guard were divided into three groups: A (juveniles), B (mobilized from 1945) and C (the rest). All from groups C and the majority from group B were soon killed. Only in the camp at Teharje did they imprison 400 juveniles, who were released after August 1945, although many never returned home. They were killed on their way home by various groups and militias.

Immediately after the return of the Home Guard (domobranci) mass slaughter began, carried out by the Yugoslav OZNA with the help of military units (KNOJ=Korpus narodne obrambe Jugoslavije). The order to slaughter the returned was without doubt came from the highest

⁶ »Nemci« na Slovenskem 1941–1955 (ed. Dušan Nečak), Znanstveni inštitut Filozofske fakultete, Ljubljana 2002.

authority in the Party. Prisoners were led to mass killing fields and usually shot in the neck and then thrown into karst caves, natural abysses, mines, tank ditches. So far, more than five hundred post-war graveyards have been discovered in the Slovene regions. The majority of Home Guard members are buried in Kočevski rog, in deserted mine pits in Zasavje region (Trbovlje, Hrastnik), in anti-tank ditches near Celje or in abysses near Ljubljana. Most liquidations were executed in June 1945.

Up till now we do not know precise number of Home Guard members liquidated at the end of the war by the Partisans. The then Communist authorities drew up a list, but it vanished in the mid-eighties. According to the numbers gathered during political emigrations, the number of victims is about 11,720. We must take into consideration also those who stayed home and did not retreat to Carinthia; therefore, the new Yugoslav authorities imprisoned or captured them later. Thus today the generally accepted number of Home Guard members and civilians killed is almost 14,000.⁷

Therefore, according to its Bolshevik revolutionary justice, in 1945 the Communist powers committed judicial slaughter outside the courts on Slovene territory, about which it was forbidden to talk.

In 1945, Slovenia was gripped by a wave of confiscations, which followed the mass persecution of real and imagined speculators. In summer 1945 a special court known as the "Court for Slovene National Honour" was established. They carried out agrarian reform and divided the confiscated estates of landowners and the Catholic Church among small peasants and country people. By this means they got the poorer peasants on their side, but these small rural producers could not replace the fall in production which resulted from the destruction and nationalization of large land establishments.

The next thing with which the Communist Party of Yugoslavia (KPJ) finally strengthened itself and apparently legitimized its authority was the election to the constituent assembly on

⁷ Boris Mlakar, *Slovensko domobranstvo 1943-1945 : ustanovitev, organizacija, idejno ozadje*, Slovenska matica, Ljubljana 2003; John Corsellis, Marcus Ferrar, *Slovenia 1945 : memories of death, and survival after World War II*, London-New York 2005; Janez Zdešar, *Spomini na težke dni : beg iz teharskega taborišča*, Založba Družina, Ljubljana 2005; *Slovenska novejša zgodovina - II. del* (ed. Jasna Fischer et. al.), 836-839, Inštitut za novejšo zgodovino, Mladinska knjiga, Ljubljana 2005, 836-839; Jerca Vodusek Starič, *Prevzem oblasti 1944-1946*, Cankarjeva založba, Ljubljana 1992, 242-248; *Vetrinjska tragedija*, Zgodovinski odsek pri glavnem odboru Zveze slovenskih protikomunističnih borcev, Cleveland 1960; Tomaž Kovač, *V Rogu ležimo pobiti*, Buenos Aires 1968.

November 11, 1945, which was actually a vote on the future social regime. The first elections in the second Yugoslavia were marked by election fraud and mass removals of voting rights. Although after World War II women received voting rights, the only candidates available were those checked by the Party and the secret political police. The Communists used elections as a confirmation of their domination. In reality, people voted without having a genuine voting right. The arrangements for voting was not consider in the democratic sense, but went on in the shadow of pressures among differently thinking people and upon all who were not in the pro-Communist "People's Front", and continued under the supervision of its political police – OZNA. A high number of people who would have voted against the new authority in the elections were crossed off the electoral register. Therefore the results of the elections were known in advance in favour of the Communist Party. The authorities wanted an election that appeared democratic, but in the end they got some kind of referendum to decide on support for the ruling regime. Poll for the nominated "People' Front" list was placed in polling stations, because they wanted to leave better impression This was intended for those who did not want to vote for the People' Front. The poll was known as the "black poll". First free post-war elections in Slovenia were hold only in April 1990.

In June 1945 group trials began against actual and imaginary opponents of the Communist system, particularly against representatives of cooperatives, banks and the economy. The authorities carried out numerous trials to compromise representatives of political opposition and the Catholic Church.

Following the Soviet example, in summer 1947 the Slovene Party staged a great Stalinist political trial, the so-called Nagode trial (named after the first accused, dr. Črtomir Nagode) in which fifteen people were accused of treason and spying for Anglo-Americans. In May 1947, the Slovene secret police, the UDBA, arrested 32 highly educated intellectuals. They were questioned and tortured for two months in Ljubljana prisons. The political bureau of the Central Committee of the KPS marked the arrested in public as "a handful of spies, class enemies, mercenaries from foreign countries, who had no political tenor and whose works are without any political basis to harm the people's authority". On July 29, the trial against the twenty-nine accused began, broadcast via special loudspeakers to the citizens on the streets of Ljubljana. After thirteen days of trial, on August 12, three of accused were sentenced to death by firing-squad, among them dr. Črtomir Nagode, while the others received long prison sentences with forced labour and the removal of all citizen's rights. Two of the accused

committed suicide. In 1991, the Supreme Court of the Republic of Slovenia overturned the judgment against Nagode and fourteen co-defendants. It was ascertained that the case was based upon false accusations and that this was an unfair trial against imaginary western spies.⁸

From April 1948 to October 1949 the so-called Dachau trials were held (nine trials), before the military court or the District Court against former internees at Buchenwald and Dachau. They were accused of collaborating with the Gestapo. After the war, they "continued their spying and treacherous activities and carried out sabotage". All the accused were pre-war Communists, activists in the OF or Partisans, some of them even fighters in the Spanish Civil War. Others had senior positions, particularly economic. Fifteen were sentenced to death (eleven were executed), three died in remand prison, twenty were sentenced to long terms of imprisonment. The Slovene political elite converted the trial against the accused into a real media spectacle. The trial was transmitted via loudspeaker and radio and fully published in newspapers. Now the Slovene Communists got ahead of the leaders of other Yugoslav Republics, because nowhere else were there similar judicial performances. In Belgrade the initiators were even warned off.⁹

At first, mass political trials took place, and later, political trials and sentences became rare. Throughout the whole totalitarian period political trials involved some 25,000 people, about 2 per cent of the Slovene pre-war population. The number of political prisoners between 1948 and 1988 numbered about 6,500 according to official statistics of the former Communist authorities, which means approximately a quarter of the people judged in court. Their actual number was even higher.

Among the post-war trials before the Civil Court, trials against bigger farmers ("kulaki"), known as the "kulak trials", deserve special attention. They were also political in nature. They took place particularly between 1949 and 1951, when the campaign for collectivization and so-called "socialization" was at its peak in Slovenia. This was during the establishment of agricultural cooperatives (KOZ), which was the Slovene variant of the Soviet "kolkhoz". The adoption of the mentioned resolution and execution of collectivization in Slovenia and Yugoslavia were actually the consequences of the Yugoslav national and Party leadership

⁸ Aleš Gabrič, *Opozicija v Sloveniji po letu 1945*, in: *Prispevki za novejšo zgodovino*, št. 2, Ljubljana 2005, 97-120.

⁹ Boro Krivokapić, *Dachauski procesi*, Prosveta, Beograd 1986; *Dachauski procesi* (ed. Martin Ivanič), Komunist, Ljubljana 1990.

upon reproaches from the Informbureau that Yugoslavia does not build Socialism, but just strengthened Yugoslav village capitalist elements. To counter such reproaches and prove its orthodoxy, the leadership of the KPJ decided to finally liquidate the private agricultural sectors, which they wanted to attain with collectivization. Its implementation was to be voluntary; however, besides strong propaganda urging membership of the cooperatives, the authorities also carried out various types of oppression. The worst was directed at the biggest farmers, who were considered as "kulaki", according to the Soviet model, and were accused as main guilty for the failures of collectivization as the government had envisaged. Many received severe sentences in fake trials, and often confiscation of property was one of them.¹⁰

The trials of peasants and consequently the confiscation of their property were also held because of their failure to surrender products. During the period 1945-1952, when a system of rationing was introduced in Yugoslavia, the authorities specified how much produce, meat, fat, etc. was to be surrendered. Many peasants could not deliver the required quotas and in some cases following the compulsory requisitioning of produce, some peasants were left with nothing, not even for sowing. So peasants hid their produce and slaughtered animals illegally. Such peasants were accused of being saboteurs and speculators, under the laws of unlawful killing, speculation and economic sabotage. They came before the courts. Otherwise, the Civil Court handed down sentences of confiscation less frequently than the military courts, the Slovene Court for National Honour and confiscation commissions. Only in 1947 did the Civil Court hand down sentences of 290 confiscations of property.

The Communists changed the economic characteristics of property with drastic reforms, which meant the restriction of private property to a minimum. All these ended in 1953, when the authorities realized that these experiments had not succeeded. Then the land maximum was defined (ten hectares of land, with some exceptions up to thirty hectares), which prevented remunerative production from farming.

By the end of 1945, the Communist authority had confiscated all important companies. This was done under the false accusation of "collaboration with the occupier", often meaning that some companies even operated during the war. These were mainly German properties or the

¹⁰ Milko Mikola, *Zaplembe premoženja v Sloveniji 1943-1952*, Zgodovinski arhiv Celje, Celje 1999; Mateja Čoh, *Organizacija in delovanje ilegalnih skupin v Sloveniji ter njihov pregon v letih 1945-1952*, doctoral dissertation, Maribor 2004; Mateja Čoh, *Ozadje sodnih procesov proti članom in podpornikom ilegalnih skupin v Sloveniji med letoma 1945-1952*, in: *Časopis za zgodovino in narodopisje*, book 3-4, Maribor 2008, 89-113.

properties of persons of German nationality. The authorities chose a strategy of gradual suffocating the private sector to dispossess owners of the remaining private property. According to the principle of from large to small, the appropriation process of private properties was based on ideological and partly economic reflection in all three phases of nationalization (1946-1948, 1948-1950, 1958-1963): from banks, insurance companies, industrial and building companies, hotels, cinemas, building plots, houses, apartments.

The fighting fist of the Bolshevik revolution was the Administration of National Security (UDBA), the secret political police (1944 the Department for National Protection – OZNA, from 1946 onwards, the Administration of National Security – UDBA, from 1969 onwards, the Service of National Security - SDV). It led a civil war by using all available means to attack political opponents as the enemies of the people at home and abroad. All-powerful and omnipresent, it restricted the freedom of thought and completely established a totalitarian regime. In 1946 there was one member of UDBA per 1200 inhabitants of Slovenia (including the active informers, there was one member of UDBA per 282 inhabitants). Hundreds of thousands of people were affected by the constant spying and denunciations, creating an atmosphere of general distrust.

The success of OZNA was commended even by Josip Broz Tito (1892-1980) who, in 1948, found that the essential elements for building socialism had been established. Among these elements were total command of the position and action of national security, the militia and UDBA. In 1948, for example, the latter arrested 6,985 people and a year later, 8,762. Meanwhile, in 1947, 57,184 letters arriving in Slovenia were examined and in 1950, 98,000. They succeeded in planting their informants almost everywhere, even in the church organisation. The secret political police of the Slovene Party spread into a well-structured expansive organism, whose tentacles extended into Trieste, Italy and Austria. In these countries UDBA organized legal commercial companies as fronts for collecting information, under the formal ownership of their informants; at the same time this also generated income. UDBA even organized illegal commerce.

The secret and violent actions of OZNA and UDBA also enabled the regime to terrorise the public. The regime tried to create the appearance of the rule of law by issuing many different, even revolutionary laws and legal decrees, which actually confirmed that the rule of law was

not possible. The judiciary was also subordinated to political authority, because the courts became a “body for the class struggle of workers against their class enemies”.

After the war there were numerous concentration camps (Teharje, Strnišče near Ptuj, Brestrnica, Hrastovec) and labour camps (Ljubljana, Medvode, Kočevje), and women's labour camps in Rajhenburg and Ferdreng near Kočevje. Many convicts from Slovenia were also sent to Goli otok Island in the Croatian Adriatic.¹¹

Up to the end of the nineteen-fifties, there were strict controls on the frontiers of Slovenia or Yugoslavia, just as on the other frontiers between the Eastern and Western Bloc. After 1960, this regime weakened and the numbers of escapes over the border decreased, as foreign travel and economic migration were permitted. Before that, there were mass illegal escapes. From Slovenia between 1945 and the end of 1959, 34,256 people escaped, and 26,710 persons were caught when attempting to escape.

The Catholic Church in Slovenia represented the biggest “thorn in the flesh” for the Communist regime, because it was the only one which stayed organized outside the Party and had widespread support from the rather religious population. Therefore, on the one hand the Communists wanted to slander the Church in public, and on the other hand, destroy its economic basis. Only in Slovenia priests needed authority consents if during war they were not in their posts. Even those, who were deported or sent to concentration camps by the occupiers. Some 630 priests, monks, nuns and seminarists were imprisoned or in concentration camps. Many fake trials were held against Church representatives. Up to 1961, 429 trials took place (of about 1,000 priests); 329 were sentenced to imprisonment and nine to death – four death penalties were executed. The most important trial against the Church in Slovenia took place in 1946, before a military court in Ljubljana against the Bishop of Ljubljana, Gregorij Rožman (1883-1959), who in 1945 moved abroad. He was sentenced together with a very heterogeneous group who had nothing in common. Among them was SS General Erwin Rösener. The shadow of his guilt fell upon the less guilty or innocent.

¹¹ *Dokumenti in pričevanja o povojnih koncentracijskih taboriščih v Sloveniji*, ed. Milko Mikola, Ministrstvo za pravosodje, Ljubljana 2007; *Dokumenti in pričevanja o povojnih koncentracijskih taboriščih v Sloveniji - II. del*, ed. Milko Mikola, Ministrstvo za pravosodje, Ljubljana 2008; Aleš Gabrič, *Informbirejstvo na Slovenskem*, in: *Prispevki za novejšo zgodovino*, št. 1/2, Ljubljana 1993, 163-175.

At the same time, at the end of the forties and the beginning of fifties, the Yugoslav leadership tried to establish some kind of Catholic National Church on the model of the Orthodox Church. This Church would have been cut off from the Vatican and turned to be dependent upon the Communist regime. Therefore, at the beginning of fifties, diplomatic relations with the Vatican terminated.

The height of the persecution of the Church was in January 1952, when in Novo mesto the Bishop of Ljubljana, Anton Vovk (1900-1963), was covered in petrol and burned alive. And before this he had suffered numerous painful interrogations. That year, Christmas became Labour Day and was no longer National Day. Religion in schools was forbidden and the Theological Institute was expelled from the University.

At the beginning of the sixties there was a gradual warming of relations between the Catholic Church and the Yugoslav or Slovene political leadership. The consequence was the reestablishment of regular diplomatic relations between the Holy See and Yugoslavia. And with this, the former Yugoslavia became the exception among the Communist countries. The Church here acted more freely, unlike the position in other East European countries, but it could declare on social and political questions in public. Believers were considered second-class citizens until 1990.¹²

3. TYPICAL CASES OF ENCROACHMENT ON HUMAN RIGHTS

The basic goal of the victorious communists was to execute the Bolshevik revolution. The first period of tough repression after the revolutionary victory in 1945 indicates an obvious suppression of human's rights. Direct and severe mass violations of human rights were typical and also essential freedoms were violated, often with brutal force. This was a period of revolutionary violence and terror needed for the Party to take power and gain strength.

¹² Tamara Griessen Pečar, *Cerkev na zatožni klopi : sodni procesi, administrativne kazni, posegi "ljudske oblasti" v Sloveniji od 1943 do 1960*, Založba Družina, Ljubljana 2005; Tamara Griesser Pečar, France M. Dolinar, *Rožmanov proces*, Založba Družina, Ljubljana 1996; Stanislav Lenič, *Stanislav Lenič - življenjepis iz zapora*, Mohorjeva založba, Celovec, Ljubljana, Dunaj 1997; *Cerkev na Slovenskem v 20. stoletju*, (collection of scientific papers), Založba Družina, Ljubljana 2002; ed. Milko Mikola, *Religija, cerkev in šola v dokumentih občinskih komitejev ZKS Zgodovinskega arhiva Celje*, Zgodovinski arhiv Celje, The first and the second book, Celje 2003; Lovro Šturm, Ljuba Dornik Šubelj, Pavle Čelik, ed. France M. Dolinar, *Navodila za delo varnostnih organov v SR Sloveniji (Instructions for work of security organs in SR Slovenia)*, Viri št. 21, Archives Association of Slovenia., Ljubljana 2003.

Therefore, for example, the authorities began to use so-called “temporary appointments of residence”, instead of the deprivation of liberty with criminal decisions. They were passed by an administrative body on political opponents, who were sent to concentration camps, and other suspicious or harmful persons to remote parts of the country. This was connected with numerous enforced displacements of people. This period lasted from 1945 to 1955. In this period the State was based on murder (wartime liquidations, mass slaughter of political opponents, post-war “clearing the ground” of class and military enemies, judicial murders), robbery or legal collective theft (wartime and post-war confiscations, nationalizations, agrarian reforms, dispossessions, confiscations of property), violence against the body, dignity and other essential human rights (police terror, illegal arrests, fake trials, forced labour in concentration camps, arbitrary political interventions in official relations, fear, deception and lies (indoctrination, the manipulation of public opinion, ideological violence, the misappropriation of history).

As regards the relation of the totalitarian system towards the principle of division of authority, the Yugoslav and with it also the Slovene constitutional system was the same as all the other totalitarian systems. In opposition to the tradition of European legal civilization, it did not put advance human rights and form clear legal restrictions on national authority and its violence. Therefore it opened the possibilities for arbitrary authority. In the Constitution of the Socialist Republic of Slovenia stood the principle of unity, which meant that the boundaries between the executive, judicial and legislative branches were not precisely defined. And therefore also relations of independence, inspection and collaboration connected with it.

According to the constitutional concept of “people's democracy”, which was defined by Communist ideology between 1945 and 1953, authority in the State should belong to the people or to a representative body elected among them. For practical reasons the Communist elite in Yugoslavia centred authority on the government, personally connected with the head of the Communist Party. The Party made excuses, as though the circumstances dictated constant powerful national interventions with political means and means of revolutionary pressure. Therefore it is not surprising that members of parliament met only twice a year. The Government took over legislative functions and all vital relations were arranged by decrees with legal force. The number of these decrees and their content attained large extensions. In the period from 1945–1950, the Yugoslav government passed 345 decrees, and between 1950 and 1953, 104 decrees. The Constitutional Act of 1953 did not allow such decrees any more,

but in 1953 the government issued 80 more, in 1954 more than 40, and in the following years over 20 more each year.

The decisions of administrative bodies were not subjected to judicial review until the introduction of administrative dispute, which occurred after 1952. Regulations of administrative process for the administrative-legal activity of national bodies were used only after the year 1957, when the General Administrative Procedure Act was adopted.¹³

The unity of authority principle, which actually meant the monopolistic authority of the ruling Communist Party, centred on its Politbureau, could not recognize the Courts as independent and autonomous state bodies. The pressures on judges were various, from the most brutal purges of judges and their re-education, to the later more refined form of subordination of the judicial branch of power. Already at a meeting of the temporary People's Assembly in July and August 1945 in Belgrade political adequacy of judges was demanded during a discussion about qualifications. The judges could be lawyers, but only under the condition that they were "boundlessly loyal". Therefore, when choosing between uneducated, but loyal legal laity and educated lawyers who are not loyal, the opportunity had to be given to the former. The primary task of the judiciary was the liquidation of political opponents and enemies, and not the solution of disagreements by legal means.

The purge of judges formally began with a decree of revolutionary authority on October 31, 1945 on availability of all state employees. With this decree the new authorities took into service only those who seemed suitable. Other judges were systematically reeducated by the new authority. The primary task was entrusted to the Ministry of Justice, which tried to influence the judicial cadre professionally and politically. Most significant is one of the resolutions from the Ministry of Justice conference with the presidents of District Courts in December 1947: "The Courts have to become the fighting body of people's authority. In our Courts we must educate new people, new cadres of socialist jurists with advanced, hardworking methods". Therefore the judge had also to be a political worker. The role played by the judicial branch in the period of "People's Democracy", is best illustrated by the comment of the president of the District Court in Gorica in 1950: "The juridical function as

¹³ Mateja Čoh, *Characteristics of the Judicial system in Slovenia between 1945 and 1951*, in: Crimes committed by totalitarian regimes (ed. Peter Jambreč), Slovenian Presidency of the Council of the European Union, Ljubljana 2008, 61-70; Jerca Vodušek Starič, *Med ljudsko demokracijo in demokracijo*, in: Slovenija 1848-1998, Pokrajinski muzej, Maribor 1998, 312-313.

part of the united people's authority is very important in the transitional period from capitalism to socialism. This is during the dictatorship of the proletariat, when the point of the state forces is fixed against those elements which tried to prevent or obstruct our progress to socialism. The courts are also a body of the people's authority, which has dealt a blow with help of criminal judiciary to exploitative elements and harmful persons of all kinds. At the same time, they protect honest working citizens to work untroubled. Therefore it is important how the courts execute punishment politics, which has the task of influencing people who have committed crimes in a good way. Therefore, the right punishment politics is the best weapon in the hands of working people, which also serve as to re-educate people". The authorities imposed repressive measures with the help of the criminal judiciary.

Activity by any political party except the KPJ was impossible after the war. Although some of them existed for some years after the war and their activities were allowed according to the law. The agreement on the activities of political parties on the political level, between Josip Broz Tito and Ivan Šubašič (the representative of the Government of Yugoslavia-in-exile in London) was achieved in 1944, with the third so-called Belgrade agreement. Otherwise, the formation of parties was allowed under a special act on associations, assemblies and public meetings from the formal-legislative view on August 25, 1945. This was valid until 1965, when it was replaced by the new primary assembly act. This 1965 act does not mention explicitly political parties, but it also does not forbid them. With temporary provisions defines that all established associations can continue with their work. But all parties were totally eliminated from political life and brutally repressed by repressive means. It is necessary to mention that the ruling KPJ or ZKJ was never formally legally registered and was therefore illegal. It is typical that the KPJ after taking power in 1945, used conspiracy and plots for some years. Prevention and suppression of the opposition were not only incompatible with the then Constitution, but also expressly illegal and meant the constant severe violation of human rights and privileges. Immediately after the World War II, the Slovene political leader demanded and the UDV (Administration of State Security) executed precise reviews of the activities of all political parties in Slovenia. At first the methods were violent, then more subtle: repeated interrogations, psychological pressure, threats of legal action, blackmail regarding family members etc.

The authorities in Slovenia and Yugoslavia did not allow the formal existence of parties, as was the case, for example in East Germany or in Poland, but instead, it found some substitute

in so-called social-political organisations, particularly in one of these, Socialist Union of Working People (SZDL).

The right of political union is closely connected with the right of freedom of expression, and particularly freedom of the press. Like the rest of the Communist regimes in Eastern Europe, the Communist regime in Yugoslavia or Slovenia also did not allow freedom of expression and only free expression of opinions was subject to censorship.

The Party controlled all aspects of public life with the help of institutes, so-called "social-political suitability", which enabled privileges and discrimination regarding the views of the world or political beliefs and activity.

In the 1980's a secret Official Journal began to be distributed, but only to certain important persons. The introduction of this secret journal was in clear opposition to the then constitutional principles of laws and others legal regulations, and thus in opposition to the concept of democratic rule of law. All together 618 editions of the secret Official Journal were published, while in the same period, 817 public Official Journals were published. There were also special secret general implementing regulations, which were never published and were never found in any secret Official Journal. They regulated certain matters in the field of national security.

A special form of human rights violation appeared in the Socialist Republic of Slovenia: the committees for general people's defence and social self-protection. They were established for realization of policies, goals and tasks for social self-protection, for evaluations of safety circumstances and for the assurance of realization by the Constitution defined role and responsibility of Communist Union for protection of socialistic self-government relations. The Committees were established in companies, local communities, districts and at Republic level. The president of the District or Local Committee for General People's defence and social self-protection was the president of the district Committee of the Communist Union. This system ensured UDBA or party supervision of all important state and social institutions or all interesting fields about protection, with the help of a wide net of secret police under the patronage of the Communist party. All economic organisations, social services, associations and soldier-recruits were under control, irrespective of their location. The territorial organisation or division was very similar to the formal divisions of districts and local

communities. In the safety area acted capillary network of the street commissioners and collaborators with special tasks.

Otherwise, the Communist party had also spread its own basic cells, known as essential organisations of the Communist Union, everywhere. They were present in all economic organisations, social services (schools, universities, health centres, hospitals, museums), in state and district administrations, in courts, and among prosecutors.

Therefore the Yugoslav and Slovene Communist Union several times determinedly insinuated that they had no intentions of moving away from the classic Leninist-Stalinist model or of changing the nature of their authority, although they often announced new reforms. They renounced them as soon as they threatened the leading role of the Party in society. Their followers were characterized and considered dangerous to the social regime. The Union never allowed self-government and decentralization to dominate over principles of democratic centralism.¹⁴

Nevertheless, the bloody decay of Yugoslavia was the consequence of the mistaken and totalitarian policies of the post-war Yugoslav regime.

4. ASSESSMENT OF CRIMES IN TERMS OF INTERNATIONAL LAW

Crimes Against Humanity are defined as murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated".¹⁵

War crimes are "violations of the laws or customs of war"; including "murder, the ill-treatment or deportation of civilian residents of an occupied territory to slave labour camps, "the murder or ill-treatment of prisoners of war", the killing of hostages, "the wanton

¹⁴ Damjan Hančič, Renato Podbersič, *Totalitarian regimes in Slovenia in the 20th Century*, in: Crimes Committed by Totalitarian Regimes, Slovenian Presidency of the Council of the European Union, Ljubljana 2008, 39-60; Andreja Valič, *Is it wise to discuss themes that hurt?*, v: Crimes Committed by Totalitarian Regimes, Slovenian Presidency of the Council of the European Union, Ljubljana 2008, 219-221; *Temna stran meseca - kratka zgodovina totalitarizma v Sloveniji 1945-1990* (ed. Drago Jančar et al.), Nova revija, Ljubljana 1998; Peter Vodopivec, *Od Pohlinove slovnice do samostojne države*, Založba Modrijan, Ljubljana 2006.

¹⁵ Nicolas Werth, Karel Bartošek, Jean-Louis Panné, Jean-Louis Margolin, Andrzej Paczkowski, Stéphane Courtois, *The Black Book of Communism: Crimes, Terror, Repression*, Harvard University Press, 6.

destruction of cities, towns and villages, and any devastation not justified by military or civilian necessity".¹⁶

The law of war is a body of law concerning acceptable justifications to engage in war (*jus ad bellum*) and the limits to acceptable wartime conduct (*jus in bello*). The law of war is considered an aspect of public international law (the law of nations) and is distinguished from other bodies of law, such as the domestic law of a particular belligerent to a conflict, which may also provide legal limits to the conduct or justification of war.¹⁷

Human rights are rights belonging to a human on the basis of his/her humanity, namely rights, which are not "conferred" to a human by the State, but – because a human historically existed before the State – he/she had been granted those rights prior the State and the State has only to positive legally organize, concretize and protect them.

After World War I – because of the turn towards the total State – significant deterioration of the idea of human rights started and reached the limit in National Socialism.

4. 1. Slovenia after April 6, 1941

After the German attack on Yugoslavia (April 6, 1941) the situation in Slovenia during WW II was extremely complex. A relatively small territory, where Slovenes live, was in 1941 occupied by three forces, Germany, Italy and Hungary. All three followed more or less the same objective, namely to ethnically destroy the Slovenian nation.

During WW II the international war law was equally valid for all parties, for members of the occupying forces as well as for the civilian population in the occupied territory. Despite thinking about unilateral legal privilege of the resistance against the aggressor's country during WWII that privilege was absolutely limited by the international humanitarian laws of war.

As the KPS (Communist Party of Slovenia) in 1941 expected an imminent end of war and a revolution, at that period of time its tactic was very offensive and it devoted much more attention to the preparation of the proletarian revolution as to the co-operation with allies within the national liberation movement.

¹⁶ Ibid., 5.

¹⁷ http://en.wikipedia.org/wiki/Laws_of_war

During WWII the KPS took over the strategy of the Communists in the Spanish Civil War and in addition to partisan units set up its own security and intelligence organization. As early as August 1941 the Security Intelligence Service (VOS, later UDBA) was established, which was directly subordinate to the Communist Party.

After the first wave of brutal methods, UDBA began to apply subtler methods: multiple interrogations, psychic pressure, threats by courts, blackmail with pressure on family members or professional colleagues and friends, persecution, and in particular, denunciation among people who belonged to the same circle, belief and party, which was called 'differentiation'.¹⁸

Thus, UDBA was influencing activities inside individual groups, or directing them, and at the same time informing its superiors and leading political forums (the Central Committee of the Slovenian Communist Party, the Politburo and the Supreme Committee of the Liberation Front) about the activities and temperament of previous political groups, church circles, ministries, etc.¹⁹

4. 2. Typical human rights violations in Slovenia

If we put the Slovenian events on the ground of the implementations stated above under the international legal assessment, we find out that the communist regime committed numerous human rights violations in the pursuit of its objective – to disable political opponents.

Although the communists tried to give the impression that their conduct is legally legitimate by issuing "laws" and regulations, it soon became clear that the intentions were not to punish acts, but to punish the beliefs that were not in accordance with the »objectives of the national liberation struggle«. That the law played only a subordinate role and was treated as available, is illustrated in particular by the following statements: "The jurist and even the judge has to follow the society, social development, step by step, even if the legislator himself with his own norms could not as accurately and as quickly follow this development to include every state of development in the legal norm."²⁰

¹⁸ Jerca Vodušek Starič, *Prevzem oblasti po vojni in vloga OZNE – obračun*, in: *Slovenija v letu 1945, Zveza zgodovinskih društev Slovenije*, Ljubljana 1996, 93–110.

¹⁹ *Ibid.*, 96.

²⁰ Griesser - Pečar, *Razdvojeni narod*, 411.

Violation of elementary human rights by the Communists was taking place throughout the whole war and post-war period.

Violation of the right to life and physical integrity

By torturing political opponents and executing them during the war and post-war killings carried out without the judicial process, communist rulers violated the right to life and physical integrity, as expressed in Article 3 and 5 of the Universal Declaration of Human Rights from 1948.²¹

Violation of the right to personal freedom

With arbitrary arrests they violated the right to personal freedom, which is one of the fundamental human rights since the Habeas Corpus Act and is protected in the Article 9 of the Universal Declaration of Human Rights. With unlawful deprivation of liberty, detention and accommodation in labour and concentration camps, the Article 1 of the Universal Declaration of Human Rights was violated.

Violation of the right to human dignity

Violation of human dignity is every act that makes the victim a bare object of the State, by humiliating, stigmatizing, prosecuting and banning him. With interventions into physical integrity of individuals (tortures, humiliations) Article 1 of the Universal Declaration of Human Rights was violated.

Violation of property rights

The post-war nationalization of property of political opponents and imaginary enemies presents a violation of the Hague Convention on land warfare from 1907, annexed to the Hague Convention (IV) Respecting the Laws and Customs of War of 1907. The Hague Convention on land warfare provides comprehensive protection of private property by prohibiting robbery in Article 47 and seizure (confiscation) in Article 2 Paragraph 46.

²¹ It was adopted and proclaimed by the General Assembly of the United Nations on December 10th 1948 with the Resolution No. 217A.

Confiscations carried out arbitrarily were the rule in Slovenia. Expropriation without compensation violates the international law in particular when it aims at the destruction of livelihood of the affected.

Violation of the right to citizenship

With the suppression of citizenship from disliked parts of the population Article 15 of the Universal Declaration of Human Rights was violated.

Violation of fundamental legal rights

Violation of the rights of defendants to be heard before issuing a decision on the factual and legal aspects of things and provide defensive funds and thus breach the presumption of innocence, punishment without stating the legal basis, and show trials presents a violation of the Paragraph No. 2, Article 11 of the Universal Declaration of Human Rights.

A special form of violating human rights and fundamental freedoms in the former state was the existence of a secret code of law. Formally, the Socialist Federal Republic of Yugoslavia had two forms of secret legislation: the *Tajni Uradni list SFRJ* (Secret Official Gazette of SFRY) and special secret subsections of laws. The secret official bulletin titled *Uradni list SFRJ – zaupno glasilo* commenced publication in 1980. It was sent to various recipients; their number ranged from 22 to approximately 40 recipients all over the country. The introduction of a secret official bulletin of the Socialist Federal Republic of Yugoslavia was in obvious conflict with the constitutional principles at that time in the publication of laws and other legal regulations. In 1981 all Yugoslav republics, including the Socialist Republic of Slovenia, introduced secret official bulletins. Since 1 June 1980, when the first copy of the secret official bulletin was issued, a total of 618 copies were published. If we compare this number with the number of ordinary publications of the general Official Gazette of SFRY, in this period in a total number of 817, we can see that it was an extremely complex part of legal regulation. The legal acts from the secret official bulletin of SFRY included 55 laws.²² It should be pointed out that

²² Lovro Šturm, *Fenomen tajne zakonodaje v nekdanji Socialistični federativni republiki Jugoslaviji*, in: Vestnik JU 27, Ljubljana 1991, 3-4.

secret regulations of a general nature and wider scope were applicable early on and in force prior to the secret official bulletins.²³

From the regulatory aspect, the regulations on state security, internal affairs and social self-protection that were in force at that time, along with the already mentioned secret implementing regulations, opened up to the political secret police unlimited possibilities for the violation of human rights.

4. 3. The Yugoslav Constitution of 1946

The Yugoslav Constitution of January 31, 1946, granted equality of citizens irrespective of gender, nationality, race and religion; active and passive voting right; freedom of conscience; freedom of creed on the basis of Church and State separation; freedom of opinion and the press; freedom of assembly and demonstrations; person and housing inviolability; freedom of arts and sciences.

The Yugoslav Constitution contained a provision under which the granted rights may be limited when applied to undermine the constitutional order in antidemocratic purposes. Practice showed that the interpretation of the loss of fundamental rights was entitled to the undercover police and other security authorities, who used this provision in the interests of the Communist Party.²⁴

4. 4. Minimum standard of Human Rights

Already at the beginning of WW II we can prove a minimum standard of human rights that was regarding the international law binding for all States.

This standard derives from the war objectives as identified by the Allies (Atlantic Charter, Declaration of Tehran and Yalta), furthermore from the norms of international humanitarian law of war, which actual value was confirmed with the case-law of the Allied war crimes tribunal and was extended to crimes against humanity, and finally the Universal Declaration

²³ Franc Testen, *Trije primeri, ki kažejo na nekatere značilnosti prava v obdobju samoupravne socialistične demokracije*, in: Podjetje in delo, št. 24, Ljubljana 1998, 1098 and following.

²⁴ Karel Zalar, *Yugoslav Communism : a critical study*, Washington 1961, 131.

of Human Rights, which to a large extent confirmed human rights from the Charter of the United Nations. The Yugoslav constitution of 1946 also – nominally recognized human rights.

Already the internationally renowned Slovenian law professor Dr. Leonid Pitamic recorded in his book »Država« of 1927 (English version: *A treatise on the state*, 1933) a minimum standard of human rights: 1. physical freedom; 2. spiritual freedom; 3. economic freedom; 4. the principle of equality. Among others he also wrote: "It appears that the positive law has two presumptions: power and morality. Between these two conditions there will always be a state of tension; when tension becomes too strong, it results in fight. The purpose of forming and proclaiming human rights was to prevent the fight."

4. 5. Resume

Regarding the situation in Slovenia in the years from 1941 to 1953, when most of the crimes were committed we note as follows:

- the Liberation Front (OF) attacks on the Slovenian population are to be recognized as ordinary criminal acts until the confession of Tito's partisans as the belligerents side, and are to be assessed in accordance with the then existing criminal law;
- in organizing the Yugoslav statehood after the war for the communist side a minimum standard of human rights from the law of peace was binding, thus heavy and systematic violations of it may be prosecuted as crimes against humanity;
- severe war crimes and crimes against humanity are also genocide. Systematic persecution and liquidation of parts of the population meets the real objective of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.²⁵

We can ascertain the existence of the international and domestic legal basis for the prosecution of perpetrator of crimes against humanity in the Slovenian territory. The statement can be supported by the existence of the so-called Martens clause, contained in the Preamble of the Second Hague Convention (29 July 1899) and the Preamble of the Fourth Hague Convention, indicated that where no specific provisions existed, the

²⁵ Blumenwitz, *Okupacija in revolucija v Sloveniji (1941–1946)*, 174.

principles of international law as they resulted from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience must be used.

The Chamber of the District Court of Republic of Slovenia in Ljubljana²⁶ also dismissed the reasoning of the investigating judge that the provisions of the Slovenian criminal code concerning crimes against civilian population could not apply retroactively since those acts were not proscribed and criminalized at the time they were committed.

By allowing exceptions to the principle of legality the international community recognized that protecting the rights of victims of crimes against humanity and international law was even more important than the principle of legality. This also indicated the existence of general principles of law recognized by civilized nations that allowed exceptions to the principle of legality.²⁷

5. CRIMES AND PERPETRATORS OF CRIMES UNDER THE COMMUNIST REGIME IN SLOVENIA

5. 1. Legal situation

The Slovenian judiciary derives from the relics of the judiciary of the former totalitarian Communist regime. At the time of the independence of Slovenia judges' mandates have been automatically extended into life tenure until their retirement. There a number of allegations of corruption of various judges which remain unanswered. As a consequence, public trust in the Slovenian judiciary remains very low. A number of politicians are therefore calling for abolition of judges' life tenure. In this way, it is necessary to protect judicial independence and impartiality of each individual judge through annual public statement showing judges' property, assets and income. It must be noted that incumbent majority of judges at all levels of the courts in Slovenia have started their careers during the totalitarian communist regime.

²⁶ See Chamber Decision of District Court, Ks 962/2006, 27 June 2006.

²⁷ *Ibid.* Para. 25.

5. 2. Legal qualification of massacres in the Slovenian territory as crimes against humanity

Massacres in the Slovenian territory after Second World War can be qualified as crimes against humanity. The question as to whether the Slovenian criminal law from the period after the independence, in its relations to crimes against international law, has adapted to or is more in line with international criminal law standards, can be answered in the sense that Slovenian Criminal Law adopts an approach enshrined in the Statute of the International Criminal Court and even extends the definition of some crimes beyond the definition enshrined in the ICC Statute.

This section argues that there are strong moral grounds and possibly legal grounds for prosecuting crimes against humanity committed in Slovenia after the Second World War. As noted, the governmental commission for Settlement of Hidden Mass Graveyards has so far found between 500 and 600 hidden mass grave sites on the territory of Slovenia. In order to identify if the acts committed after the Second World War on Slovenian territory would qualify as crimes against humanity, it necessary to first identify the crimes against humanity. To be classified as a crime against humanity, all crimes must satisfy particular common criteria, referred to as the chapeau elements: firstly the conduct must be committed as part of a widespread or systematic attack directed against a civilian population and secondly, the perpetrator has to know that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

The first common element is the most important; that the conduct was committed as part of a widespread or systematic attack directed against a civilian population. Trial Chamber of International Criminal Court for former Yugoslavia held in *Tadić* that: 'It is now well established that the requirement that the acts be directed against a "civilian population" can be fulfilled if the acts occur on either a widespread basis or in a systematic manner. Either one of these is sufficient to exclude isolated or random acts'²⁸. The term 'population' does not refer to the entire population. Rather, 'the "population" element is intended to imply crimes of a collective nature and thus exclude single or isolated acts which, although possibly constituting war crimes or crimes against national penal legislation, do not rise to the level of crimes

²⁸ ICTY, *Prosecutor v. Tadić*, IT-94-1 "*Prijedor*" (Trial Chamber), 7 May 1997, Sect. VI.D.2.(b).ii.a <http://www.un.org/icty/tadic/trialc2/judgement/index.htm>, last visited 5 April 2007.

against humanity’.²⁹ For crimes to be considered crimes against humanity there must be an association with a widespread or systematic attack. According to the ICC Elements of Crimes, the widespread or systematic attack must be carried out ‘pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population.’³⁰ Crimes committed on Slovenian territory may fulfil these criteria since they were directed at part of the civilian population and they have been committed on a widespread basis or in a systemic manner. More specifically, the massacres have been committed throughout territory of Slovenia in a systematic manner in three months following the end of the Second World War. They can be described as a widespread and systematic in the light of the fact that they were committed throughout Slovenian territory and over a longer period of time. As it has been noted earlier, almost six hundred hidden mass graves have been so far found. These are widely documented historical facts, which as such do not appear controversial or disputed. In other words, it may be argued that described attacks formed part of official state policy against the political opponents.

Secondly, the perpetrator of crimes against humanity merely has to have knowledge of the existence of a wider attack, of the broader context in which his crime occurs.³¹ There is no requirement of a specific intent for their actions to form part of that widespread or systematic attack or to contribute to the attack’s objectives, nor is there a requirement of knowledge of the policy behind the attack. It would be very difficult to argue that high Communist officials as *de facto* government at the time at territory of Slovenia had no knowledge of any crimes committed in the territory of Slovenia. Despite this, it is equally difficult to identify or prove that a particular person gave instructions or had knowledge of existence of attacks.

Yet even if the Prosecution in *Prosecutor v. Ribičič* recognized the killings after the Second World War as crimes against humanity, it had to prove the elements of the crimes against civilian population under Slovenian criminal law and not under international criminal law. It appears that would be possible. It is highly unlikely that a former high Communist official will ever be prosecuted for a crime against humanity, given the high requirement in the

²⁹ ICTY, *Prosecutor v. Tadić*, Sect.VI.D.2.(b).ii.

³⁰ Elements of Crimes, Article 7, Introduction para. 3, p. 116. *Rome Statute of the International Criminal Court*, (2002) 2187 UNTS 90.

³¹ ICTY, *Prosecutor v. Tadić*, para. 656.

chapeau elements of the crime being a part of a widespread or systematic attack, which is hard to prove in the absence of documented evidence even though the remains of killed person are still found every week in the remote Slovenian forests.

Alternatively, it is submitted that it would be difficult to argue that persons massacred after the Second World War constituted one of the protected groups (national, ethnical, racial or religious group) within the meaning of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.³² For example, the Prosecution Office first decided to charge Mitja Ribičič with the crime of genocide under article 373 of the Criminal Code of Republic of the Slovenia. At the later stage, it legally modified the request for investigation into alleged crimes against the civilian population under article 374 of the Slovenian Criminal Code.³³

However, under the Criminal Code of Slovenia crimes of genocide committed with intention to destroy, in whole or in part, a national, ethnical, racial, religious group, and also if those acts are committed against a social or political group. Article 373 of the Criminal Code of Slovenia defines crime of genocide under the chapter on criminal offences against humanity and international law. Paragraph 2 of Article 373 the Criminal Code of Slovenia states that an individual can also be punished for crimes committed against a social or political group, which is wider definition than the one found in the Genocide Convention.³⁴ The Prosecutor decided not to bring charges for genocide since it would be more difficult to prove direct intent of the allegations and alleged perpetrator, especially due to the lack of any documents or witnesses. However, it appears that charges against Mitja Ribičič could have been brought also for crime of genocide since specific intent to systematically destroy a particular political group might have been present.

5. 3. Types of jurisdiction (ordinary or special), Applicable procedures. (There is any protocol for the procedures, specific laws regulating them, etc.)

³² Convention on the Prevention and Punishment of the Crime of Genocide Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 *entry into force* 12 January 1951, in accordance with article XIII.

³³ See *Article 374 of the Slovenian Criminal Code*.

³⁴ Paragraph II of Article 373 of the Criminal Code of Republic of Slovenia reads as follows: ‘The same punishment shall be imposed on whoever commits any of the acts under the previous paragraph against a social or political group’.

There have been only two cases brought for alleged totalitarian communist crimes before Slovenian criminal courts in the newly democratic Slovenia. It must be noted that there have been several cases decided just after Second World War against alleged Nazi and fascist criminals but we will refrain from analyzing those case at this stage as those judicial processes failed comply with fundamental human rights guarantees. The most notorious case was *Prosecutor v Mitja Ribičič*.

Mitja Ribičič was the first former official of Slovenian Communist Party to be charged in Slovenia for crimes against humanity since the end of the totalitarian regime in 1990. Documents found in the Slovene National Archive reportedly alleged that in 1945 Mitja Ribičič helped draft a list of 217 people for execution. Mitja Ribičič, was a deputy head in the Slovenian branch of Yugoslav secret police (OZNA) under Yugoslavia's post-war Communist leader, Josip Broz Tito. The OZNA was responsible for eliminating political opponents under totalitarian regime. Mitja Ribičič worked as a delegate until 1983 in the Slovenian Socialist parliament, in the Yugoslav federal parliament, and president of the Yugoslav Communist Party.

The Slovenian Interior Ministry official investigated post-Second World War killings and had investigated Mitja Ribičič's involvement since 1994. However, 'only in 2005 he had "chanced upon new documents in the state archives" that helped to make the case against the former security official.'³⁵ According to the new documents, the Slovenian authorities claimed that 'Ribičič's 'armed group' not only targeted soldiers, but also murdered civilians viewed as collaborators and disposed of their bodies in mines and ditches.'³⁶ The order for the liquidation of those civilians may have derived from the head of the provincial OZNA branches, but the orders would had to have had approval from Ljubljana and possibly Belgrade branch of the Communist Party.

On 13 May 2005, the Slovenian police filed a criminal complaint for genocide against Mitja Ribičič for his role in the massacres which took place in the aftermath of World War II on the territory of Slovenia. The 86-year-old Ribičič was suspected of having ordered the murder of 217 people without trial while he was deputy head of the Slovenian branch of the Yugoslav

³⁵ Reuters, 25 May 2005, quoted in Prevent Genocide International, <www.preventgenocide.org/news-monitor/2005may2.htm>, last visited 10 November 2008.

³⁶ International Relations and Security Network, <www.isn.ethz.ch>, 27 May 2005, Prevent Genocide International, <www.preventgenocide.org/news-monitor/2005may2.htm>, last visited 10 November 2008.

communist secret service (OZNA). This was the first time that the police had made genocide charges in relation to reprisal killings of the Yugoslav communist regime. In April 2006, the prosecution amended the qualification of the criminal act and eventually filed a request for judicial investigation for acts of ‘crimes against civilian population’ pursuant to Article 374, Paragraph 1 of the Slovenian Criminal Code.³⁷

On 21 April 2006, the Supreme State Prosecutor's Office of Slovenia presented the investigating judge of the District Court of Ljubljana with a request to open a judicial criminal investigation against Ribičič for his alleged involvement in these crimes. The prosecutor based his request upon an annotation next to some of the names on the list of detainees who had been executed, which read: ‘in line with the approval of comrade Major Mitja’.

In Slovenia, a judicial criminal investigation was the first phase of a formal criminal procedure. To open the judicial investigation, the prosecution needed to show probable cause that the suspect had committed a particular criminal act. Judicial investigation was led by the investigating judge and its outcome was either the filing of the charging document and thus the commencement of a trial, or the procedure was to be terminated. If the investigating judge considered the prosecution's request for opening a judicial criminal investigation unfounded, he or she needed, pursuant to Article 169(VII) of the Criminal Procedure Act, (Slovenia), to submit the matter to the respective district court for decision.

After examining the written documents and questioning the suspect, the investigating judge held that there was no basis for instituting criminal proceedings against Ribičič. First, the investigating judge argued that Ribičič could not be tried for crimes against humanity since Article 3 of the Criminal Code provided that the perpetrator of a criminal offence was subject to the statutory provisions applicable at the time the offence was committed. The investigating judge held that crimes against humanity committed on Slovenian territory in the months following the end of World War II were, at that time, not proscribed and criminalized in domestic criminal law or at the international level. Additionally, the investigating judge justified her opinion on the basis of Article 28 of the Constitution of Slovenia³⁸, prohibiting retroactivity in criminal law. The investigating judge strictly applied the principle of legality

³⁷ Official Gazette of the Republic of Slovenia, št 63/1994, (Slovenia) (‘Criminal Code’).

³⁸ Official Gazette of the Republic of Slovenia Nos 33/91-I, 42/97; 66/00.

and the prohibition of retroactivity of criminal law, and ruled that since the crimes had been committed before the Criminal Code entered into force, its provisions could not be applied. Alternatively, the investigating judge held that the prosecutor failed to present evidence amounting to probable cause that Mitja Ribičič had played a significant role in issuing the orders for the commission of mass killings. The investigating judge opined that no strong evidence had been submitted indicating Ribičič's influence on deciding whether a certain group of people should be killed. The annotation ‘with approval of Major Mitja’ could have been interpreted in different ways; it probably meant that Ribičič had reviewed a particular case and ordered it to be entered into the register of detainees. The register itself was only a transcript of data and there was no information in the evidence submitted as to who initially kept it, nor did it contain any signature of the suspect. Further, none of the documented testimonies indicated that Ribičič played a crucial role in the extra-judicial killings. The investigating judge also criticized the prosecutor for requesting the appointment of expert witnesses—historians—who would have determined whether there were sufficient grounds for opening the investigation against the suspect.

The Chamber of the District Court of Republic Slovenia in Ljubljana examined the appeal filed by the Supreme State Prosecutor and analysed the decision of the investigating judge of the District Court.³⁹ It dismissed the reasoning of the investigating judge that the provisions of the Slovenian criminal code concerning crimes against civilian population could not apply retroactively since those acts were not proscribed and criminalized at the time they were committed. By allowing exceptions to the principle of legality the international community recognized that protecting the rights of victims of crimes against humanity and international law was even more important than the principle of legality. This also indicated the existence of general principles of law recognized by civilized nations that allowed exceptions to the principle of legality.⁴⁰ Article 15(2) of the International Covenant on Civil and Political Rights and the general principles it referred to were binding upon Slovenia but prohibited retroactive incrimination for all other acts. Accordingly, the exceptions to the prohibition of retroactivity in criminal law were allowed in certain instances. In the case at hand there existed a formal legal basis for instituting criminal proceedings for the alleged acts.⁴¹ It also

³⁹ See Chamber Decision of District Court, Ks 962/2006, 27 June 2006.

⁴⁰ *Ibid.* Para. 25.

⁴¹ *Ibid.* Para. 33.

noted that Article 24 of the Rome Statute of the International Criminal Court does not apply in this case.⁴²

In the request for the opening of an investigation, the Prosecutor submitted that Registry of Detainees Nr. 7 detailed 11,966 persons between 1945 and 1946. Out of the 11,966 names and cases, a substantial number of cases were dealt with by ‘comrade Mitja’. More specifically, the document entails annotations ‘in line with file comrade Mitja’ next to the names of 5,830 persons.⁴³ The Registry of Detainees document included next to each person’s name a short description of the status of that person such as whether individual belonged to the Home Guards, the Wehrmacht, was a partisan deserter or a person forcibly enlisted in the German army. This document enabled categorization in three documents: execution, release, adjudication. This description allowed the individuals to be allocated to three different categories: those who were to be executed, those who were to be released, and those who were to be put on trial. On the basis of this information, the Supreme State Prosecution constructed the case that the suspect was responsible for that kind of categorization of people. This categorization influenced what happened to persons following the distribution of Registration of Detainees document. Additionally several witnesses confirmed Ivan Maček, as head of the Slovenian Section of the Security Police, and Mitja Ribičič, as assistant of head of the Slovenian Section of the Security were the persons mainly responsible for allocating the final destination of arrested persons.

The Prosecution described the alleged execution of 217 people as part of a policy of a widespread attack on that part of the civilian population which refused to join the Communist led National Liberation Movement. Victims of extrajudicial execution after II World War were defined as such by the victorious Partisan National Liberation Movement. The Prosecutor also submitted that while the decision concerning extrajudicial killings at the Federal Yugoslav Level, but it was carried out by local forces of the Slovenian Component of the Yugoslav Secret Police. It must be noted that on 25 June 1946, Edvard Kardelj, the high Slovenian official in the Yugoslav Communist Party in Belgrade, informed the president of the Slovenian regional government, Boris Kidrič, that ‘there is no reason to be as slow as until

⁴² Rome Statute of the International Criminal Court., 2187 U.N.T.S. 90, *entered into force* 1 July 2002. Article 24.

⁴³ See: Chamber Decision of District Court, Ks 962/2006, 27 June 2006, at para. 24.

now in cleansing in the future’.⁴⁴ It is disputed what ‘cleansing’ meant, but it most likely refers to extra-judicial killings carried out by the Yugoslav Communist Party.

The Court has confirmed that historical overview of international treaties to support the textual interpretation of Article 374 (crimes against civilian population) drawing the conclusion that crimes against humanity are incriminated not only in times of war but also in times of peace crimes.⁴⁵ International treaties adopted in the 19th and 20th century showed that crimes against the civilian population were at first criminalized only during wartime but gradually became proscribed also when committed in time of peace.⁴⁶ The first codifications of international humanitarian law were the Hague Convention (II) Respecting the Laws and Customs of War on Land (29 July 1899),⁴⁷ and Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex⁴⁸. The Preamble of the Second Hague Convention and the Preamble of the Fourth Hague Convention also included the so-called Martens clause, which indicated that where no specific provisions existed, the principles of international law as they resulted from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience must be used. This clause indicated the beginning of what was in recent times often referred to as the general principles of law recognized by civilized nations, a wording used, *inter alia*, in Article 7(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms.⁴⁹ The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (‘London Charter’) proscribed crimes against humanity also during peacetime.⁵⁰ Moreover, they placed themselves above the domestic laws as they criminalized acts even when those were not considered criminal acts pursuant to domestic law. This constituted an important exception from the principle of legality as known in various legal systems. The principle of legality was codified in Slovenia

⁴⁴ Ibid. At para. 25.

⁴⁵ Chamber Decision of District Court, Ks 962/2006, 27 June 2006, 15.

⁴⁶ Ibid. para 14.

⁴⁷ Hague Convention (II) Respecting the Laws and Customs of War on Land (29 July 1899), entered into force 4 September 1900 (‘Second Hague Convention’).

⁴⁸ Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land (18 October 1907) 36 Stat 2277; 1 Bevans 631; 205 Consol TS 2773; Martens Nouveau Recueil (3d) 461, entered into force 26 January 1910 (‘Fourth Hague Convention’).

⁴⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS 222; 312 ETS 5, entered into force 3 September 1953 (‘ECHR’ Para. 15-16).

⁵⁰ The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (8 August 1945) 82 UNTS 279, entered into force 8 August 1945 (‘London Charter’).

in Article 28 of the Constitution, and Article 3 of the Criminal Code.⁵¹ It also noted that the general principles by civilized nations can also be a legal source⁵² and that the decision also makes the conclusion that provisions of international treaties allowing for exceptions from the principle of legality on the basis of general principles of law are legal.⁵³

The Court did pinpoint to the widespread or systematic attacks against the civilian population when discussing the crime against humanity, although it indirectly referred to this requirement by ascertaining that there had been a plan, in which the accused participated, of eliminating the political opponents. The Court also confirmed that the victims had been civilians.

As to the issue of whether probable cause had been established, the standard had not been met by the prosecution. Thus the request for judicial investigation was rejected. The evidence submitted did not demonstrate that Ribičič had participated in issuing orders of execution against the opponents of the regime.⁵⁴ As correctly noted by the investigating judge, the prosecutor had requested the appointment of expert witnesses to provide evidence which should already have been presented to the court in order to justify the opening of a judicial investigation in the first place.⁵⁵ It could thus be inferred that the prosecutor himself implicitly recognized that he did not have sufficient evidence to show probable cause that Mitja Ribičič had committed the alleged crimes.

Further, the High Court examined the District Court’s conclusion and held that the evidence for opening the investigation should have included an answer to the question of who or which organ has accepted a decision on massacring the opponents of the Resistance movement controlled by the Slovenian Communist Party. It should have addressed question concerning which decision have been made by Yugoslav leadership of Communist Party and OZNA and which decision have gone through hierarchically lower organs of Slovenian Communist Party. Since those arguments and evidence were missing from the decision, the Court concluded that investigation could not be opened. However, the court failed to provide exact reasoning for its decision. However, the High Court agreed with the Chamber decision of the District Court and denied a request to open an investigation in the conduct of Mitja Ribičič. The High Court

⁵¹ Chamber Decision of District Court, Ks 962/2006, 27 June 2006, at para. 22.

⁵² Ibid. Para. 20.

⁵³ Ibid. Para. 19.

⁵⁴ Ibid. Para. 36-54.

⁵⁵ Ibid.

confirmed that it could have been legally feasible to prosecute the defendant for crimes against humanity even though they were not criminalized at the time they had committed. It held that the District Court rightly established that those alleged crimes went against the basic principles of humanity.

5. 4. The Nulla crimen principle v. prosecution of crimes against humanity

The nullum crimen, nulla poena sine praevia lege principle, or the ex post facto prohibition, means that a statute criminalizing an act or creating a new offence or imposing a stricter punishment for an existing crime cannot be applied retroactively to acts committed prior to its enactment. In other words, a statute criminalizing an act or creating a new offence or imposing a harsher punishment for an existing crime cannot be applied retroactively to acts committed prior to its enactment. According to the Investigating Judge of the District Court in Ljubljana, crimes against humanity after the Second World War in 1945 were not yet proscribed and criminalized; therefore Mitja Ribičič cannot be prosecuted. The District Court of Ljubljana rightly rejected the reasoning of the investigating judge that crimes against humanity were not criminalized in Slovenia in the aftermath of World War II, noting that the prohibition of retroactivity did not apply to the most horrendous crimes.

The court, however, overlooked that crimes against humanity had already been prohibited in Slovenian legislation at the time the alleged acts in this case were committed⁵⁶, certain provisions, including those on war crimes and genocide, met the criteria set by international and domestic criminal law and could be applied by the courts in Slovenia. It followed that this possibility of criminal prosecution had not expired due to statutory limitations and in proceedings based on extraordinary legal remedies. As was concluded in the Constitutional Court's Decision on the Decree on Military Courts, The Constitutional Court of the Republic of Slovenia in its decision on the Decree on Military Courts recognized that already provisions of the Decree on Military Courts of 24 May 1944 ('Decree'), criminalized war crimes and crimes against humanity irrespective of whom they were committed by and it was not meant by the victor used for trying the vanquished.⁵⁷ Furthermore, Decision on the Decree on Military Courts, demonstrated that the constitutional practice of Slovenia enabled the use of general principles recognized by civilized nations. This decision dealt with the application

⁵⁶ The Constitutional Court of Republic of Slovenia, U-I-6/93, 1 April 1994.

⁵⁷ Ibid.

of the Decree on Military Courts, and the Law on Establishment and Jurisdiction of Military Courts in the Yugoslav Army,⁵⁸ and stipulated that the provisions of the Decree which violated general principles of law recognized by civilized nations could not be applied. It is important to underline that the Decree applied during the first months after the War, when most massacres were committed. Hence, the Constitutional Court held that this Degree of Military Courts provides a sufficient legal basis for prosecuting crimes against humanity after the Second World War on Slovenian territory and it is not necessary to rely on prohibitions set in customary international law.

5. 5. Amnesty or leniency programs

Republic of Slovenia has not formally adopted any amnesty legislation for totalitarian crimes. Amnesties may serve a legitimate and lawful purpose, namely that of ending or preventing conflict. The ending of an armed conflict or the transition from an oppressive regime may certainly be said to constitute an important interest of a State. In a similar vein, if one were to recognize the effective functioning of the national judicial system to qualify as such an interest, the national and international prosecutions in situations of mass crimes cannot be the only means to safeguard that essential interest against the grave and imminent peril of collapse or deadlock. However, a moral recognition of totalitarian crimes committed appears to be required for amnesties to have any affect.

In short, it seems that non-prosecution of those responsible for totalitarian crimes in Slovenia amounts to informal amnesties, however without any recognition of those responsible for the crimes committed. Such situation amounts to absurdity, as it *de facto* gives amnesty to responsible perpetrators but without requiring that they recognize that they committed heinous crimes. Such approach undermines efforts for achieving catharsis of the Slovenian society and hinders reconciliation between different groups in the Slovenian society.

5. 6. Statistics available on type of sentences (economic, political or criminal sanction)

No judicial sentences have been so far delivered in the Republic of Slovenia. The lack of sentences can be explained through very few prosecutions and general reluctance to pursue

⁵⁸ Official Gazette DFY, No 65/45 (‘Military Courts Law’).

criminal or even civil responsibility of those persons allegedly responsible for totalitarian crimes.