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# THE VALUE OF JUSTICE IN CZECHOSLOVAK CRIMINAL LAW NORMS IN THE 20TH CENTURY

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**Summary:** – 1. Introduction. – 2. Law versus Justice. – 3. Justice and the Function of Law. – 4. The Function of Law in the Retributive Judiciary in Slovakia. – 5. Final Evaluation.

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# THE VALUE OF JUSTICE IN CZECHOSLOVAK CRIMINAL LAW NORMS IN THE 20TH CENTURY

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**A**bstract The authors focus on the legal regulation of criminal substantive law rules and its development in the 20th century in the territory of Czechoslovakia. Specifically, the paper focuses on finding the value of justice in the substantive law provisions and looking for its value in judicial practice. In the conclusion of the paper, the authors consider the meaning of justice in criminal law rules and compare its value in historical and current criminal codes. Justice is not legally defined as an institution or a principle, and therefore, it is very difficult to seek the value of justice in legal branches. The authors present a new hypothesis that works with all kinds of sources of law, which, in their interconnection and agreement, should provide a test to show the value of justice. The authors work with a specific type of criminal law – post-war retribution criminal law. However, the humanities are not exact as science, so subjective evaluations are always present. The second stage of verification of correctness is identical or very similar to the textual and contextual interpretation of the sources of law. The value of justice is not determined by a numerical scale, so only a comparison of specific cases can give us answers as to whether criminal law has been applied more or less fairly in individual trial proceedings.

**Keywords:** justice, criminal law, functions of law, functions of criminal law, methodology of legal research

## 1 INTRODUCTION

*Justitia non novit patrem nec matrem,  
solum veritatem spectat justitia.*<sup>1</sup>

We begin this article with a quote that will be key in our argument, but we do not perceive this quote as a fact – we subject it to analysis and then answer the question of whether the law, particularly criminal law, has sought the truth throughout the last century and therefore, whether it was fair. Justice is a philosophical rather than a legal concept, and it will therefore first be necessary to clarify our approach to the concept of justice and to the content of that concept. The title of the article suggests a bit misleadingly that we will seek justice directly in

1 'Justice knows neither father nor mother, because it sees only the truth' in J Bouvier, 'A Law Dictionary, Adapted to the Constitution and Laws of the United States' (Childs & Peterson 1856) <<https://legal-dictionary.thefreedictionary.com/Justitia+non+novit+patrem+nec+matrem>> accessed 10 April 2021.

the texts of criminal law regulations in force in the territory of Czechoslovakia. The authors will primarily work with the material sources of law through which they will try to clarify the intention of the legislator. It is the material sources of law that tell us about the functions of criminal law in individual periods, which directly connects us to justice or to the perception of what was and was not fair at a particular time.

Formal sources of law themselves – criminal law regulations – will show us the possibilities of achieving the functions of law, but gnoseological sources of law – primarily the indictments and judgments – confirm or refute hypotheses based on material and formal sources of the formation of criminal law. However, the issue is very extensive, and it will not be possible to grasp it in its entirety in this article. Therefore, we decided that in the first part of the article, we will focus on the theoretical-philosophical and methodological basis of the article, which relates to the concept of justice, and in the second part of the article, we will point out a specific criminal law regulation, to which we apply our chosen methodological procedure. It is precisely this cyclical relationship between the sources of law and the functions of law that allows us to approach the knowledge of the value of justice in criminal law.

## 2 LAW VERSUS JUSTICE

Justice has always been a very popular concept, especially since the end of World War II. It is used in heterogeneous contexts and in various scientific disciplines (law, philosophy, sociology, economics, history, etc.), but it is also being adopted by the general public. The various social science disciplines overlap when examining justice, and so, the scientific conclusions of one discipline may be applicable in another discipline.<sup>2</sup> Evidence of the widespread use of the term justice is also found in its application with specific, identical attributes: ethical, political, economic, social, legal, environmental, historical, gender, etc. From another point of view, there is the use of the adjectives 'just' and 'unjust', which in themselves deliver a verdict (at least an ethical one).<sup>3</sup> However, the optics of the evaluator from the point of view of different criteria are not the main focus of this article. We will primarily think about the essentials of the content of the concept of justice and subsequently about the specifics of justice in (criminal) law.

First of all, it should be noted that justice is not only a question of rationality but also a problem of emotionality. In the words of Otto Weinberger: "The pursuit of justice is a task of search, a task for reason and heart."<sup>4</sup> However, in the same breath, we must present a follow-up, law-related statement: 'Ius appellatur non quia iustum est, sed quia iubetur', i.e., law is not called law because it is just (*iustum*) but because it is commanded (*iubetur*).<sup>5</sup> We are convinced of the correctness of both statements, even if they are not in clear harmony. While the first relies on the existence of a dual justice, consisting of the intellectual and logical side (*logos*) and the emotional side (*pathos*), the second statement places law in another position or fails to seek and point to the overlap between law and justice – it

2 An example is Hayek's critique of social justice, which also has implications for the legal sphere. Cf: L Krivošík, 'Sociálna spravodlivosť podľa Hayeka' (*Prave Spektrum*, 19 February 2004) <<https://www.prave-spektrum.sk/article.php?148>> accessed 10 April 2021; AF Hayek, *Právo, zákonodárství a svoboda. Nový výklad liberálnych princípů spravodlnosti a politické ekonomie* (2nd ed, Academia 1998).

3 Excessive use of the given term directly affects the process of law enforcement and the application of law, but not always in the positive sense of the word. For more details, see: M Hájek et al, *Praktiky ne/spravodlnosti: pojmy, slova, diskurzy* (1st ed, Matfyzpress 2007).

4 O Weinberger, *Inštitucionalizmus: nová teória konania, práva a demokracie* (1st ed, Kalligram 2010) 364.

5 K Rebro, *Latinské právnické výrazy a výroky*. (Iura Edition, 1995) 165.

explicitly relies on the regulatory and thus the intellectual side. But can law, as a creation of man, exist without emotionality? And if there is an emotional side to law, can we speak of proof of the existence of justice in it?

According to Ronald Dworkin, we can think of justice in terms of the theory of law-making, judicial decision-making, and in terms of the Compliance with Law Theory.<sup>6</sup> These three aspects can be perceived through the eyes of the legislator, judge, or citizen. Of course, all aspects are relevant, but we believe that the approach of the legislator and judge are most beneficial in assessing justice in the historical context – especially in criminal law, which we believe brings to the creation and later the application of law the most emotional side of all branches of law. As mentioned above, the legislator first explains the material sources when adopting a specific criminal law rule (or we could talk about the teleological and historical interpretation of the legal norm), then the content of the legal norm itself (grammatical, systematic, logical interpretation), and then the application of law by the judge is itself a kind of test of correctness (in our case, a test of justice).

## 2.1 How to Search for Justice in Law

We must understand legal justice in a broader context as part of justice in law. Justice in law thus contains two subsets: justice in the creation of law and justice in the application of law, or justice in law can be differentiated into: justice of law (the justice of one's own law) and legal justice (justice according to law).<sup>7</sup>

According to legal theory, there are several criteria by which justice can be sought in law.<sup>8</sup> We will not analyse the individual criteria in-depth, as this is a philosophical rather than a legal issue. To grasp justice in criminal law, it is enough for us to know only the basic requirements of each criterion. However, it is not easy to describe the basic problem in one or two sentences, so we decided to characterise the individual criteria with the following questions:

1. Absoluteness vs relativity – does time variability relativise the concept of justice and its understanding?<sup>9</sup>
2. Objectivity vs subjectivity – do we presume the objectivity or subjectivity of justice in law?<sup>10</sup>
3. Binariness vs graduality – what is the difference between the just, the less just, the unjust, and the very unjust?<sup>11</sup>

6 R Dworkin, *Když se práva berou vážně*. (1st ed, OIKOYMENH 2001) 8 or R Dworkin, *Taking Rights Seriously* (Harvard University Press 1977) 10.

7 The term 'legal justice' is also understood as justice in the judicial application of law. We understand the application of law as the process of identifying the process of justice. However, justice has a much wider impact. As Miloš Večeřa points out, legal justice is related to the motivation of human behaviour *secundum legem*, but especially to the application of law itself. However, the justice of one's own law is also a question of the justice of norm-making, in which the concepts of change, restitutive, retributive, distributive, and procedural justice are also applied. For more details, see: M Večeřa, *Spravedlnost v právu* (Masarykova univerzita 1997) 9, 174-175; R Procházka, *Dobrá vůle, spravedlivý rozum. Hodnoty a principy v soudní praxi*. (1st ed, Kalligram 2005) 137.

8 On the topic legal theory and legal and philosophical criteria, see: A Sen, *The Idea of Justice* (Harvard University Press 2009) 40-43; LL Fuller, *Morálka práva* (1st ed, OIKOYMENH 1998) 182-183; Z Kühn, *Aplikace práva ve složitých případech: k úloze právních principů v judikatuře* (1st ed, Karolinum 2002) 45.

9 Weinberger (n 4) 360.

10 On the topic in question, see: Sen (n 8) 41.

11 An example of graduality is, e.g., the Radbruch formula. J Chovancová, T Valent, *Filozofia pre právnikov* (Právnická fakulta UK v Bratislave 2012) 46.

4. Discursivity (universality of the concept and subjectivity) – how is it possible that both parties to a dispute can refer to justice?<sup>12</sup>
5. Non-autarky – is justice an autonomous and self-sufficient concept?
6. Cognitivist and non-cognitivist approaches – is justice definable?<sup>13</sup>

## 2.2 Functions of Criminal Law as a Reflection of Justice in Law

Even if we do not agree on whether it is necessary (or even possible) to define the concept of justice strictly, at the start of this article, we can at least point to some definitions of the term: 'Justice is a basic normative principle of human coexistence. It is an entrenched ideal in the social consciousness of the right, balanced and justified distribution of social values and burdens, rights and obligations, good and evil' (Aristotle)<sup>14</sup>; 'Justice is a constant and unceasing will to give to everyone everything that belongs to him/her' (Justinian)<sup>15</sup>; '... we consider justice to be the ideal standard, while law is an observable social phenomenon' (Nigel E. Simmonds)<sup>16</sup>; 'Starting from the areas of social life in which justice is applied, it can be said that justice refers to the distribution (or assignment, allocation) of certain values in social relations, whether they are positive or negative values' (Miloš Večeřa).<sup>17</sup> We do not present these quotes because we would like to evaluate them – quite the opposite. They all have one common defining element, and that is that justice does not exist in a vacuum. Thus, we can say that justice is not a self-sufficient and autonomous concept, the meaning of which is independent of the context and use of individual criteria. Justice is a relational concept, dependent on the relationship to the evaluated object (the non-autarky criterion<sup>18</sup>).

12 According to Pavel Holländer, the generality of the application of linguistic expressions that are not aimed at individualised entities is associated with a blur in defining the scope and content of concepts. The manifestation of the discursivity of the concept of justice is thus also the tension between the abstractness of the legal norm and the individuality of the case. This tension is a conflict between depersonalised, harsh justice and perfect, but not impartial, justice that seeks to capture the boundaries of the private world. However, in cases, due to inconsistent argumentation, there is often a *petitio principii* (author's note: it is a requirement of foundation or a logical error in the proof consisting in the fact that the conclusion is made from an assertion that has yet to be proved). P Holländer, *Ústavněprávní argumentace: ohlédnutí po deseti letech Ústavního soudu* (LINDE nakladatelství, s.r.o. 2003) 13.

13 On the topic in question, see: Aristoteles, *Etika Nikomachova* (Kalligram 2011) 130-133; D Hume, *O práve a politike* (Kalligram 2008), 62-63, 102, 123.

14 Aristoteles (n 13) 305.

15 D Miller et al, *Blackwellova encyklopedie politického myšlení* (CDK 1995) 494.

16 E Bárány, 'Spravodlivosť ako vzťahový pojem' (2015) 9 *Filozofia* 845-895, at 846.

17 Večeřa (n 7) 16.

18 The use of justice as a legal value in lawmaking is characterised by variable contexts that depend on the particular legal sector. Justice as a legal value has such a different meaning in criminal law and other meanings, e.g., in the commercial sector (e.g., in bankruptcy law). In criminal law, it has the most frequent character of restorative justice and goes in commercial law mainly for exchange justice, the manifestation of which is *cum grano salis*, e.g., the principle of fair trade. Justice as a legal principle that is applicable, e.g., when solving complex cases cannot be applied in isolation and independently of a specific type of proceedings.

### 3 JUSTICE AND THE FUNCTION OF LAW<sup>19</sup>

In our view, justice is followed by (or follows) other factors, which are the primary state establishment, regime, politics, economy, etc. Therefore, if we want to seek justice in criminal law, in our view, it will be best reflected in the functions of criminal law (we will discuss the connection between justice and the functions of law at the end of the subchapter). The functions of criminal law accurately reflect the specific time, interests of the state, and the protection of the state or society – in the end, it is precisely the functions of law that have changed most often depending on the historical period. The basic functions of criminal law are as follows:<sup>20</sup>

1. *Protective* – We can look at this in two ways – 1) criminal law is characterised as an extreme means of protecting society and occurs when other legal remedies have proved ineffective, or 2) it stands above all other functions of criminal law, although depending on the specific time, it may protect various interests, as indicated by the system of individual crimes arranged in the headings (e.g., in the current Criminal Code No. 300/2005 Coll., it is life and health, and in the past, for example, in the Criminal Code No. 140/1961 Coll., it was the protection of the state and, until 1989, also of the socialist establishment);
2. *Regulatory* – criminal law regulates social relations by establishing the conditions of criminal liability and impunity, enshrines the conditions for the imposition of punishments and protective measures, and establishes the conditions for the termination of criminality and punishment;
3. *Preventive* – the role of criminal law is to prevent and deter the commission of crimes and criminal activity in various forms. Today, these are mainly discussions, lectures, mass media, and possible public participation in court hearings; in the past, the preventive function was closely linked to the deterring or intimidating (what can be described as a re-education function) a potential perpetrator (e.g., the trial of war criminals after World War II) and then, it was directly associated with a repressive function (e.g., political 'monster trials' in the 1950s);
4. *Repressive* – criminal law aims to protect interests exclusively and individually by affecting the perpetrator of the crime by imposing a sentence or protective measure. In the past, it was mainly the imposition of very strict, sometimes even draconian punishments (the sinusoid of the repressive function is best observed when imposing punishments for crimes against the state). The repressive function is associated primarily with a protective function in relation to the state, without a democratic establishment (in addition to totalitarian regimes, which are obvious, we can also mention the trial of Slovak nationalists from the end of the 19th century to the beginning of the 20th century, i.e., the protective function

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- 19 In Czechoslovak history, we can seek justice expressed by the functions of law in the following norms:  
1. Criminal Code no. 117/1852 Coll.  
2. Statutory art. V/1878 (The Crimes and Offences Act)  
3. Act no. 50/1923 Coll. for the Protection of Republic  
4. Retribution Regulation č. 33/1945 Coll. of the Slovak National Council (SNR)  
5. Retribution Decrees of the President of the Republic no. č. 16/1945 Sb. and no. 17/1945 Sb. Coll.  
6. Act no. 231/1948 Coll. for the Protection of the People's Democratic Republic  
7. Criminal Code no. č. 86/1950 Coll.  
8. Criminal Code no. č. 140/1961 Coll.
- 20 K Malý, LSoukup, *Vývoj práva v Československu v letech 1945–1989* (Karolinum 2004) 54; A Milota, *Učebnice obojího práva trestního, platného v Československé republice: Právo hmotné* (Kroměříž 1926) 6.

in relation to Hungary, which was directly proportional to the repressive function against the nationalists, who endangered Hungarian integrity by their actions<sup>21</sup>).

5. *Retributive* – the role of criminal law is to redress guilt committed in retaliation, either in accordance with proportionality and legal principles (trial of war criminals after World War II) or without proper proportionality, where we can speak of revenge rather than retribution (political 'monster trials' in the 1950s<sup>22</sup>).<sup>23</sup>

The functions of criminal law in specific periods of the 20th century are very well mapped in the professional literature. To an independent observer, some of the functions may evoke either positive (protective function) or negative (repressive function) emotions. The importance of criminal law functions is not fixed. Over history, the functions changed – they developed in relation to the social establishment. Justice is sought differently in criminal law today, when the primary function of criminal law is protective, compared to post-war criminal law when the retributive function was the primary one.

In our opinion, however, it is not necessary to look emotionally at the functions of criminal law; rather, it is an obstacle. (Of course, the emotional element, in terms of a subjective view, is inseparable in humanities. But the emotions of the participants or monuments can be and many times are distorted by, for example, propaganda. This is an undesirable element that must be removed in research and the search for justice). Individual legal institutes or instruments of law often do not fulfil only one function of law, but several. Depending on the period, the quantitative representation of the institutes that are to achieve that particular function of law changes – and depending on that, the law also changes qualitatively, i.e., justice has been achieved in various ways.

In the present article, we will try to analyse justice in connection with the functions of law in the Slovak retributive judiciary.

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21 Slovak nationalists, as leading representatives of the cultural, social, political, and especially national life of Slovaks in the 19th century, faced many reprisals and oppression that had their roots in Hungarian state power. The most famous nationalist trial in the 20th century was that of Andrej Hlinka. However, court hearings in which he faced accusations of outrage, treason, subversion of the nation, etc., did not bring him to his knees; on the contrary, they created a halo of a national and fearless fighter for the rights of Slovaks. See also: PT Ivanov, *K černošovsko-ružomberškému procesu* (Pápežské knižtiskárny benediktínu Rajhradských 1908) 13-14; SH Vajanský, *Ružomberšký kriminálny proces* (Kníhtlačiarstvo-účastinársky spolok 1906) 91-102.

22 Monster trials were large-scale processes that took place under the Law for the Protection of the People's Democratic Republic from the late 1940s to the mid-1950s. The mission of criminal law was also emphasised by President Klement Gottwald in his speech at the Congress of Lawyers, where he said that the functions of criminal law are not based purely on understanding criminal law as a branch of law but pointed to it as a means of building a socialist society. He indicated that the path to socialism is a path of intensified class struggle, which was also fought by means of criminal law as a tool of repression. In general, it can be said that for criminal proceedings, especially in the 1950s, the provisions of the Criminal Procedure Code were often only dead letters and were not observed in practice, thus violating the fundamental rights and freedoms of the accused. Opponents of the communist regime in them were sentenced to long sentences or the death penalty according to pre-prepared scenarios. People were no longer considered living beings – they were just numbers, regardless of whether they were real opponents of the regime or fictitious ones.

23 Another is, e.g., a restorative function that perceives justice in criminal law as no longer merely a reaction of the state as a sovereign power to the commission of a crime in the form of acknowledging the guilt of the offender and imposing a sentence. The offence defined as harm caused to the state is increasingly understood as harm caused to an individual. Although the commission of a criminal offence leads to a violation of the law, restorative justice shows above all the disruption of relations in society. Restorative justice is fulfilled with the participation of the offender, the injured party, and society in trying to restore the broken relationships. However, as it is an answer to the world in the 21st century, there is no need to pay more attention to it in connection with this article.

## 4 THE FUNCTIONS OF LAW IN THE RETRIBUTIVE JUDICIARY IN SLOVAKIA

The post-war trial of war criminals from 1945 to 1948 in Slovakia<sup>24</sup> was a very specific process throughout Europe. The Czechoslovak Republic, like other countries, was based on international agreements concerning the prosecution of war criminals, as evidenced by the content of the Slovak retribution standard. Therefore, it was no coincidence that retribution regulations, not only in Czechoslovakia but also in other European countries, were based on the same legal pillars, which were: a) the use of false retroactivity in the form of stricter punishments for existing crimes; b) the use of true retroactivity in the form of the prosecution of crimes against humanity (genocide, forced labour); (c) the establishment of a people's judiciary; d) the imposition of the death penalty (for almost all retribution offences). Generally, the *ultima ratio* in criminal law was understood differently from the criminal law in force until World War II, when criminal law had primarily a protective, preventive, corrective, and ultimately repressive function. Retributive criminal law had primarily a retributive (retaliatory) function, which was accompanied by a repressive, protective, preventive, and corrective function. The retributive function was, of course, based mainly on the material sources of law,<sup>25</sup> which were later incorporated into Slovak legislation through specific legal instruments.

The primary source of retribution law in Slovakia was Retribution Regulation No. 33/1945 Coll. of the Slovak National Council on the punishment of fascist criminals, occupiers, traitors, and collaborators and on the establishment of a people's judiciary. In the following lines, we will focus only on those parts of the Retribution Regulation that contain retaliation or which reflected the primary, i.e., the retributive function of the Regulation. The specificity of the Regulation was as follows:

1. **Designation of offences** – expressed the goal and primary essence of retribution, which was already contained in the title of the Regulation, and thus cleansed the nation of fascist occupiers, domestic traitors, collaborators, traitors to the Uprising, and perpetrators of the regime. What was important was the 'extermination' of the 'Ludák'<sup>26</sup> core not only from political life but especially from the mind of the population;
2. **Crime could be of commission or omission** – it is often stated that the crimes under the Retribution Regulation could only commit crimes of commission, and

24 The Third Czechoslovak Republic, which emerged as a sovereign state after the end of the war, was not only the result of the policies of the victorious Western allies, but also an indication of the strength of the Czechoslovak ideal embodied in the First Czechoslovak Republic (1918-1938). However, at the conclusion of World War II, Czechoslovakia fell within the Soviet sphere of influence, and this circumstance dominated any plans or strategies for post-war reconstruction. Consequently, the political and economic organisation of Czechoslovakia became largely a matter of negotiations between Edvard Beneš and Communist Party of Czechoslovakia (KSC) exiles living in Moscow. In February 1948, the Communist Party of Czechoslovakia seized full power in a *coup d'état*. Despite the country's official name remaining the Czechoslovak Republic until 1960, when it was changed to the Czechoslovak Socialist Republic, February 1948 is considered the end of the Third Republic.

25 The punishment of war criminals and the prosecution of crimes committed during World War II are not categories separate from the rest of the law – they do not enjoy a privileged position. On the contrary, they fall within the framework of the historical development of mankind. The development and emergence of retribution legislation has been influenced by martial law, international law, and criminal law. On the Circumstances of the Origin of Retribution Legislation see: Moscow Declaration <<http://avalon.law.yale.edu/wwii/moscow.asp>> accessed 15 January 2021; St. James' Declaration <<http://images.library.wisc.edu/FRUS/EFacs/1942v01/reference/frus.frus1942v01.i0006.pdf>> accessed 15 January 2021; Morgenthau Plan <<http://smsjm.vse.cz/wpcontent/uploads/2008/10/sp27.pdf>> accessed 15 January 2021.

26 A 'Ludák' is a member of Hlinka's Slovak People's Party (Slovak: Hlinkova slovenská ľudová strana), a far-right clerofascist political party with a strong Catholic fundamentalist and authoritarian ideology. The Ludák regime combine elements from Nazi and fascist regimes.



therefore, the perpetrator's active action was necessary. This follows from the wording of the Regulation, which did not offer in its provisions such action that the perpetrator could commit crimes of omission. However, we know from the application practice of the National Court in Bratislava that, e.g., Jozef Tiso<sup>27</sup> was also convicted of failure to act, specifically for tolerating the Nazis' actions in the autumn of 1944, although he was aware from reports and private correspondence that the German occupying forces, with the help of the Hlinka Guard and Rodobrana,<sup>28</sup> were burning Slovak villages, thus committing offence of treason on the Uprising pursuant to section 4 letter b);

3. **Elasticity in subsuming actions under the facts of the offence** – especially in redefined crimes, i.e., those not regulated in pre-Munich criminal law. At first sight, it may seem that these were all the offences listed in the Regulation, but this is not the case. Actions considered criminal from the point of view of the Regulation could be divided into three categories: a) facts of the offence redefined in their entirety [e.g., betrayal of the Uprising pursuant to section 4 letter a)]; b) facts of the offence taken from pre-Munich legislation [e.g., the criminal offence of robbery and murder in the criminal offence of fascist occupation pursuant to section 1 letter b)]; c) facts of the offence redefined but similar in content to criminal offences in pre-Munich legislation [i.e., the action was not identical with the designation, but in terms of content and application practice, it was conspicuously similar to the previous legal regulation – e.g., the criminal offence of domestic treason pursuant to section 2 letter a) was identical in content with the criminal offence of a betrayal of the Republic (treason) pursuant to the first chapter (sections 1-3) of the Act on the Protection of the Republic No. 50/1923 Coll. as amended];
4. **The punishment of loss of civil honour and the punishment of confiscation of property were imposed whenever a person was convicted of any of the offences referred to in the Regulation;**
5. **Retroactivity** – the retroactive effect of the Regulation is closely related to points 1 and 4 and manifested itself as follows: a) actions which were not criminal at the time of their commission became criminal [betrayal of the Uprising under section 4, crimes against humanity under the offence of collaboration under section 3 (b)]; b) punishments for committing crimes known by pre-Munich legislation were increased [e.g., the criminal offence of collaboration under section 3 (a) was punished by death in aggravating circumstances, but under the Act for the Protection of the Republic, the same action, designated as military treason under section 6, was punished in aggravating circumstances by imprisonment for life];
6. **The inability of exculpation due to order-based action;**
7. **People's judiciary** – judges from the people in the panels (element of laicisation of the judiciary<sup>29</sup>), adaptation of the procedural aspect of retribution, so as to ensure the speed and efficiency of proceedings (under Part II of the Retribution Regulation and under the

27 Jozef Tiso (13 October 1887 – 18 April 1947) was a Slovak politician and Roman Catholic priest who was president of the war-time Slovak state, a client state of Nazi Germany during World War II.

28 Rodobrana (Nation's Defense) was a Slovak paramilitary organisation of the Slovak People's Party. The organisation existed officially from 1923 to 1927 in Czechoslovakia. It was a predecessor of the Hlinka Guard.

29 The Senate of the Court was presided over by a judge – a lawyer – and the remaining judges in the panels were from the people – without legal education. They were former partisans, communists, anti-fascist fighters, etc., so they represented the retributive aspect because they judged those who had oppressed them before.

implementing regulation of the Board of Ministers (*Zbor povereníkov*) No. 55/1945 Coll. of the Slovak National Council); the most challenged is, e.g., the absence of a proper remedy;<sup>30</sup>

8. **National Court in Bratislava** – was only a criminal court, designed so that the top personalities of Ľudák's party political life or domestic traitors were tried before it.

The winners' ideas about retribution justice and retribution in accordance with the law were thus formally fulfilled in Slovakia.<sup>31</sup> The retributive function of retributive legislation lay in the problem being treated even to this day – fulfilling post-war retaliation. This is because there is often a slight difference between the repressive and retributive functions (which is ultimately visible in the duality of opinions in the professional and popular science literature). It is only possible in judicial practice to verify whether the retributive judiciary truly fulfilled the notions of legal retribution and not the barbaric lynching that was typical of the Nazis. Ultimately, Edvard Beneš himself, in his second speech from London on 3 December 1939, entitled 'After the Student Massacres in Prague', spoke of legal retribution: '...We will have to correct and atone for everything again; it will not be about revenge, but about justice and redress'.<sup>32</sup>

*Although the retribution function was dominant, it did not push the remaining functions into seclusion – quite the contrary. The interconnectedness of all these functions is clearly visible in retribution legislation and the judiciary:*

- a) The protective function was best defined by the legislature's efforts to protect society from the atrocities and relics of World War II, to seek the fastest possible retribution (specific modification in proceedings, proceedings in the absence of the defendant, lack of a proper remedy) and subsequent societal recovery. At the same time, however, the legislator protected the perpetrators from obvious injustice (the very existence of retribution courts, the defence);
- b) The repressive function, which we have already mentioned, mainly consisted of increased and stricter punishments compared to the First Republic's criminal law, as well as confiscation of property and loss of civil honour as secondary punishments, but imposed on every convict. The repressive function also served as a corrective function for the perpetrators;
- c) The preventive function followed the repressive one in the sense that the legislature (initially the Allies during the war) thought about the future and tried to arrange the legislative framework of retribution so as to deter potential perpetrators of the same or similar atrocities as those committed by the Nazis;
- d) The satisfactory function has been linked to all the above functions. It was related to the protective one primarily in the form of redress for wrongs against the state (the break-up of Czechoslovakia, the domination of the totalitarian regime) but also against individuals or groups (genocide, Holocaust, looting, Aryanisation). The satisfaction of the victims was best seen through a repressive function – the combination of a satisfactory function (representing justice) and a repressive function (representing an instrument of law) that captures the function of retribution.

30 V Solnař, 'Sú prípustné tzv. mimoriadne opravné prostriedky proti rozsudkom mimoriadnych ľudových súdov a Národného súdu?' (1946) 3 *Právnik* 158-161, at 159.

31 Compare with the text of the London Agreement <<http://avalon.law.yale.edu/imt/imtchart.asp>> accessed 15 January 2021.

32 E Beneš, *Šest let exilu a druhé světové války: Řeči, projevy a dokumenty z r. 1938–1945* (Orbis 1946) 77.

#### **4.1 The Judicial Practice of the National Court in Bratislava**

We chose proceedings before the National Court in Bratislava as a sample. As mentioned above, retributive criminal law has linked all the functions of law, and therefore it is not always possible to clearly determine which instrument of law expresses a particular function. In this part of the article, we will look at the issue in a more comprehensive way, and thus we will look for legal and fair retribution in the judgments as part of the primary goal of judging war criminals.

After studying the judgments, we can conclude that, in contrast to the normative aspect of retribution expressed in the Regulation with a strong element of retaliation, the application practice of the National Court in Bratislava is marked mainly by finding the real guilt of the perpetrators. In addition to criminal liability, the judges also sought moral liability in the proceedings. In the judgments of the National Court in Bratislava, the following manifestations of justice can be found in the reasonings:

1. Reference to moral, religious, and national principles,
2. Historical and political context,
3. Strong elements of laicisation,
4. A combination of the sociological school of criminal law with the classical school of criminal law.

The reasonings of the judgments of the National Court in Bratislava were austere, almost purely legal, i.e., they relied mainly on the wording of the Retribution Regulation and related standards. Moral and religious aspects, which are particularly important in justifying retroactivity, were used only minimally in the reasonings, mostly as references to the Czechoslovak or Slavic history and national motifs. The Slovak Retribution Regulation defined crimes on the basis of a combination of a sociological school with a classical<sup>33</sup> one, especially due to the satellite position of the Slovak state and the Ludák regime, which expanded into all areas of everyday life. Therefore, it was important to designate crimes and convict perpetrators as 'domestic traitors', as it sounded more striking to label a perpetrator as a domestic traitor than to convict him of, e.g., betrayal of the Republic. However, the intention of the legislator was fulfilled only in the operative part of judgments and, in our opinion, inconsistently, and in the reasonings, the panels/chambers of the National Court focused only on the ascertained state and evidence.

The biggest problem in the proceedings before the National Court was the phenomenon of denying one's own responsibility for the actions committed and imposing it on others. This phenomenon was characteristically expressed in one of the last trials before the National Court in Bratislava, in the trial with Štefan Tiso<sup>34</sup> et al.:

33 Criminal offences in the Slovak Retribution Regulation were defined by a sociological school of criminal law (naming of the facts of the offences, consideration of the offender's personality) and a classical school of criminal law (since the facts of the offences were defined by subject and subjective side, object and objective side). The use of the sociological school of criminal law in conjunction with the rather specific and secularised text of the Regulation caused problems in judicial practice, but it was comprehensible to the general public (especially people's judges), pursuing the objectives of extraordinary people's courts. The offences defined in the Regulation were also challenged due to their vagueness, which ultimately resulted in their extensive interpretation, so that from the point of view of the opponents of retribution, Regulation no. 33/1945 Coll. of the Slovak National Council was draconian not only in its strict sanctions, but also in its extensive criminalisation. The discrepancy between the text of the Regulation and practice can be observed mainly from the decisions, where the court tried to get closer to the classical school of law (e.g., 'the offender committed the crime of domestic treason'). However, we by no means reject the sociological school of criminal law and even consider it to be a very important and immanent part of retribution.

34 Štefan Tiso (18 October 1897 – 28 March 1959) was a lawyer and president of the Supreme Court of the war-time Slovak state. He became Prime Minister (replacing Vojtech Tuka), Foreign Minister (also replacing Vojtech Tuka) and Minister of Justice (replacing Gejza Fritz) of the war-time Slovak state. He was a cousin of Josef Tiso.

It is a characteristic phenomenon in the representatives of the former regime that the leader Jozef Tiso in the trial against him imposed all the blame on the subordinates and the subordinates again almost all – with rare exceptions – in their trials on the leader, and there is this absurdity that we have murdered but we have no murderers, we had a fascist regime, and now, after its defeat, we do not have its creators.<sup>35</sup>

The National Court's reasoning in seeking justice often began, especially with the 'guilt'. Denial of guilt is, of course, an immanent part of most criminal cases to this day, and the post-war retribution judiciary is no exception. From the point of view of examining the issue, however, much more important is the shifting of responsibility to, in the political and military hierarchy, the higher positioned ('they decided on the direction of the Slovak state') or the lower positioned ('they carried out orders'; 'they voted in the Parliament'). The mutual blaming among the top political leaders was characteristic of the Slovak retribution. The National Court dealt with this problem in a trial with Jozef Tiso et al. as follows:

The blood shed by these criminals, this blood sticks to the hands of the accused and no matter how they wash it away, the traces of this blood and the smell from it, with which their conscience must be soaked, will never wash away. The blood shed, even though due to their subordinates and executors, and even without their direct orders and sometimes without their knowledge, falls on their heads, as they are primarily responsible for unleashing by their manifestations and conscious bearing of such methods the lowest instincts and passions in the bottom of human society that performed the terrorist and cruel work (of Katana).<sup>36</sup>

Most judgments refer in the reasonings to the so-called 'main trials' with Jozef Tiso, Alexander Mach,<sup>37</sup> Ferdinand Ďurčanský,<sup>38</sup> Vojtech Tuka,<sup>39</sup> and others. On the one hand, these judgments formed case-law in some parts, and on the other hand, they were to remain a memento of the time (see the preventive function of retribution law), which corresponds to their content but less to their type. Even though in the operative part of judgments *de facto* crimes against the state were listed first, we find few references to the historical and political legacy of the state – the interwar Czechoslovak Republic. It was very briefly mentioned in the judgment of Vojtech Tuka: 'The Czechoslovak Republic based on the principles of humanistic democracy and progress...'<sup>40</sup> The emphasis in the reasonings was mainly on the (Slovak) nation and actions against it, e.g., in the judgment of Alexander Mach:

35 Judgment in the criminal case of Š. Tiso et al. before the National Court in Bratislava, Slovak National Archive, the Fond Úradu predsedníctva SNR (The Fund of the Presidency of the Slovak National Council), Box no. 51, Tnľud 70/45.

36 Judgment in the criminal case of Š. Tiso et al. before the National Court in Bratislava, Slovak National Archive, Fond Úradu predsedníctva SNR (The Fund of the Presidency of the Slovak National Council), Box no. 438, Onľud 6/46, s. 228.

37 Alexander Mach (11 October 1902 – 15 October 1980) was a Slovak nationalist politician. Mach was associated with the far right wing of Slovak nationalism and became noted for his strong support of Nazism and Germany. Mach played a leading role in orchestrating the violence that followed the collapse of Czechoslovakia in March 1939 as head of the Slovak Office of Propaganda. He served initially as Propaganda Minister in the war-time Slovak state before holding the position of Interior Minister in the government of Tuka from 29 July 1940 until the state's collapse in 1944.

38 Ferdinand Ďurčanský (18 December 1906 – 15 March 1974) was a Slovak nationalist leader who served as a minister in the government of the Axis-aligned war-time Slovak state in 1939 and 1940. He was known for spreading virulent antisemitic propaganda, although he left the government before the Holocaust in Slovakia was fully implemented.

39 Vojtech Tuka (4 July 1880 – 20 August 1946) was a Slovak politician who served as Prime Minister and Minister of Foreign Affairs of the war-time Slovak state. Tuka was one of the main forces behind the deportation of Slovak Jews to Nazi concentration camps in German occupied Poland. He was the leader of the radical wing of the Hlinka's Slovak People's Party.

40 Judgment in the criminal case of V. Tuka before the National Court in Bratislava, Slovak National Archive, Fond Úradu obžaloby Národného súdu (The Fund of the Prosecution Office of the Slovak National Court), Box no. 14, Tnľud 7/46.

The accused and his accomplices betraying the nation, Slavism and the ideology of Christianity did not shy away from establishing contacts and relations with the age-old enemy of the Czechoslovak Republic and Slavism, with neo-pagan Germanism and its fifth colony, helping it to break the Czechoslovak Republic and thus make a new step into the world war.<sup>41</sup>

The Slovak legislator adopted its own retribution norms so that the Slovak nation could judge the representatives of the Ludák regime. Therefore, it is natural that the interest of judges was primarily to proclaim treason, i.e., the betrayal of the Slovak nation and related matters. At the same time, they fulfilled the interest in punishing criminals 'on behalf of the Republic and the Slovak nation'.

In terms of content, the most emotional verdict was delivered regarding Ján Šmigovský,<sup>42</sup> who was sentenced to death for the crime of betrayal of the Uprising under section 4 letter a), b), c). In the introduction, it contained a reference to the recent 'independent' Slovak past – the judges' intention was probably to point out the seriousness of political and military reality after 14 March 1939 and during the Slovak National Uprising, which the convict was fully aware of, but nevertheless remained true to totalitarian ideology:

A vassal of Germany, the Slovak state, frantically tried to maintain a semblance of independence and sovereignty, although it had to pay with blood, even by outrageous titles, and by both material and monetary values to its protector. Although the titled Slovak servants, enriching themselves in an unprecedented way at the expense of the nation as well as the protectors, tried to maintain the tinsel of independence and sovereignty, with the legend of a well-wishing great neighbour who selflessly and generously guarantees Slovakia's independence and inviolability ... When the war film was made Back from the Caucasus to the Tatras and cannons thundered already in the Carpathians ... the sclera fell off even from blind eyes and the face of a big neighbour lost the tinsel of nobleness, selflessness and loyalty even in the eyes of the blackest slaves, only servants remained loyal to the Germans, who thus identified with the regime, with their soul and interest that there was no way back for them.<sup>43</sup>

It may be said generally that all judgments in which the accused was found guilty of a crime of betrayal of the Uprising used emotionally coloured words and references to moral and national principles in the reasonings. Thus, increased attention of judges in the said offence can be observed, as participation in the Uprising under section 6 of the Retribution Regulation was mentioned as grounds for mitigating the sentence. We can talk about a kind of search for balance – i.e., if someone's sentence was commuted or forgiven on the basis of participation in the Uprising (e.g., Imrich Karvaš<sup>44</sup>), then the perpetrator had to be punished in an exemplary way for committing the crime of treason in the Uprising.

It is also worth mentioning the verdict delivered regarding Anton Vašek, who was sentenced to death for the crime of domestic treason under section 2 letter d) and the crime of collaboration under section 3 letter b), c). In the reasoning, the assessment of the 'Jewish problem', which was a burning issue in Slovakia for several decades, is especially important. The judges analysed the

41 Judgment in the criminal case of A. Mach before the National Court in Bratislava, Slovak National Archive, Fond Úradu predsedníctva SNR (The Fund of the Presidency of the Slovak National Council), Box no. 436, Tnúd 6/45.

42 Ján Šmigovský (2 May 1903 – 9 October 1945) was a Slovak soldier. He was the commander of the Nitra's military garrison, which was the only one that did not join the Slovak National Uprising, although it still refused to let the German army into its barracks.

43 Judgment in the criminal case of J. Šmigovský before the National Court in Bratislava, Slovak National Archive, Fond Úradu obžaloby Národného súdu (The Fund of the Prosecution Office of the Slovak National Court), Box no. 3, Tnúd 2/45.

44 Imrich Karvaš (25 February 1903 – 22 February 1981) was a Slovak economist and professor at the Slovak University (Comenius University) in Bratislava. With the establishment of the war-time Slovak state in 1939, he was appointed Governor of the Slovak National Bank.

issue in order to point out a fair conviction, although this was not necessary due to the convict's involvement in Aryanisation and deportations. From today's point of view and especially from the point of view of history or the collective memory of the nation, however, it would be important, as anti-Semitism did not disappear from the thinking of Slovak or Czechoslovak citizens upon signing the peace. In Slovakia, Aryanisation measures were not only a reluctantly accepted phenomenon in society (ultimately, the provisions of the so-called Jewish Code were stricter than the Nuremberg Laws) but the action was elevated to the natural law of the Slovak nation. The National Court did not complete the answer to the question in any judgment, so we only learn about racist quotations from various speeches of Slovak public officials, in which there were typical phrases such as 'Jews killed Christ', 'Jews are not Christians', and 'Christians have been murdering Jews since time immemorial'.<sup>45</sup> However, the verdict delivered concerning Vašek also contains an explanation of their nonsense and lack of justification and the origin of anti-Semitic thinking:

Racist theory stemming from Nazi selfishness in the name of which, being aware of its superiority – "Übermensch", Germanism embarked on a march to world domination with accompanying phenomena, lies, denial of principles, ruthlessness, cynicism and sadism, i.e., the complex of white disease of the twentieth century... The accused referred to Plachý, Štúr, Vajanský, Hlinka, who allegedly used in their programmes getting rid of the Jewish plague and therefore that (author's note: even during the war) the Slovak nation had to get rid of its time immemorial enemy and that it is an act of Christianity. They used the national pain felt vividly by the nation due to Slovakia being lopped by the Viennese Verdict, pointing out that the resigned territories were Hungarianized by the Jews, and this was said to be of great importance in setting borders...<sup>46</sup>

The excerpt from the verdict is not detailed or comprehensive, but points out that (according to the National Court) mass anti-Semitism in Slovakia did not begin to spread itself from the contemporary empirical experience of citizens – on the contrary, it was instilled from above at the right moment by the Ľudák representatives until it was generally accepted and adopted as the basis of totalitarian ideology.<sup>47</sup>

45 Judgment in the criminal case of A. Vašek before the National Court in Bratislava, Slovak National Archive, Fond Úradu obžaloby Národného súdu (The Fund of the Prosecution Office of the Slovak National Court), Box no. 18, TnLud 17/46.

46 Judgment in the criminal case of A. Vašek before the National Court in Bratislava, Slovak National Archive, Fond Úradu obžaloby Národného súdu (The Fund of the Prosecution Office of the Slovak National Court), Box no. 18, TnLud 17/46, s. 8.

47 However, it cannot be denied that anti-Semitism was widespread in Slovak society even before the war. Ľudovít Štúr and his whole generation considered the Jews to be the creators of the Slovaks' misery, alcoholism, and poverty: 'In order for the gentry to be able to better exploit its people, and thus to make the most of their poor skin, they took advantage of the Jews to whom they leased their property in this decline'. Ľ. Štúr, *Slovanstvo a svet budúcnosti* (Nitra 2015) 119. Although for this reason Štúr and his Štúrovci followers can be described as anti-Semitic, the difference between the nationalists' anti-Semitism and the Ľudáks' anti-Semitism was mainly in the motive and the manner of dealing with it – while nationalists wanted to achieve a better position for Slovaks through anti-Semitism (political rights and holding office were to be limited based on the Jewish faith), so the Nazi ideology and thus the Slovak Ľudáks only wanted general (albeit silent) consent to the adoption of anti-Jewish measures, the task of which was to massively deprive Jews of human rights and freedoms and later exterminate them. The two most important manifestations of Štúr's anti-Semitism are his two articles in the newspaper *Slovenskie národné noviny*. For more details, see: P Demjanič, 'Židia v listoch a publicistike Ľudovíta Štúra' (2016) 10 *Historia Nova* 34-47, at 40-41 <[https://phil.uniba.sk/fileadmin/fif/katedry\\_pracoviska/ksd/h/Hino10d.pdf](https://phil.uniba.sk/fileadmin/fif/katedry_pracoviska/ksd/h/Hino10d.pdf)> accessed 30 January 2021. Hungarian political liberals preferred Jews (because they were Hungarianised) to Slovaks, which was unacceptable to the Slovak nationalists. To this day, however, historians differ on whether Štúr's anti-Semitism was a purely political issue or based on personal conviction. There are a number of personal Štúr's letters, in which he has a neutral attitude towards Jews and Judaism (a letter to Ľudovít Semjan) and even a positive attitude (the contribution of Jews to human history). In their speeches, his Štúrovci followers often connected Jews and gentry, which could also stem from the fact that gentry were perceived among the people as Hungarianised oppressors of the Slovak nation, and Jews were to be placed on the same level. It is probable that Štúr's anti-Semitism and that of his generation were based on political motives, and therefore not on racial and religious intolerance. For more details, see: *ibid*, 40-41.

In conclusion, it is very important to express an opinion on the most discussed case in Slovakia – the trial of Jozef Tiso. The basic thesis is often that Tiso was convicted as a symbol of Slovak independence, which did not correspond to the profile of the restored republic. Jozef Rydlo, Milan S. Ďurica, Róbert Letz, Emília Hrabovec,<sup>48</sup> and many other authors call his conviction problematic because, according to them, he was convicted for the regime and ideology, and no emphasis was placed on real crimes against persons, especially of Jewish origin (since they were mentioned only in the last part of the indictment). The betrayal of the Uprising is not considered by the authors to be a 'real' crime, given that if the Czechoslovak Republic had not been restored after World War II and Slovakia had continued the path of independence created by the declaration of a war-state on 14 March 1939, those crimes would not be justified. We consider the above statements to be very serious, violating legal certainty, credibility, and thus also the function and functionality of the Slovak retributive judiciary. As regards the organisation of the indictment charges, it is not surprising that crimes against the state (primarily domestic treason and betrayal/treason of the Uprising) were mentioned in the first indictment charges. Crimes against the state were protected in the first place in the territory during the periods of feudalism and capitalism, during the interwar republic, and even until the adoption of the new Criminal Act no. 300/2005 Coll. effective from 1 January 2006. Therefore, we do not consider this remorse relevant. The protection of the state was simply more important than the protection of human life and health, which must be accepted as a historical and legal fact. As for Ludák ideology, it was, of course, assessed by the National Court – after all, we consider Nazism and fascism *de jure* to be totalitarian regimes, the promotion of which is forbidden and should be punished. Tiso was a symbol of the totalitarian regime in the territory of Slovakia, and no matter what we call the regime (Nazism, clericalism, Ludák regime), what is important is the content, which is immutable – it was an undemocratic regime that suppressed basic human rights and freedoms of political opponents and of Jews, which was built on the principle of the leadership and covered all the evil committed during the war under the guise of Catholic traditions and values. Evaluating the imposition of the death penalty for Jozef Tiso itself is a more difficult question. He never pleaded guilty and did not regret his actions. In this context, it is important to emphasise that Tiso was not only a politician but a Catholic priest (as he called himself) and thus was primarily a moral authority (ultimately, he was also perceived as such by the Slovak society). From the beginning of the trial, it was known that one of the three – Tiso, Mach, and Ďurčanský – would receive the death penalty and, together with the convict, the Ludák ideology would also be executed. Mach, as he himself stated in his memoirs, did not doubt that he would have been executed, as he belonged to the radical wing of the Ludáks.<sup>49</sup> In addition, Tiso was a priest, and Ďurčanský was tried in absentia. In the end, however, Tiso was executed, and, in our view, it was an understandable decision in accordance with the retribution function of retribution law, taken primarily in view of his political position. Just as the state symbols of totalitarian regimes were destroyed after the war, so too were the halos of the representatives of these regimes, and thus it was understandable that those with the highest positions and the closest connection to Germany were executed (in connection with the satisfactory and repressive function).<sup>50</sup>

48 Statements of the mentioned authors in the discussion TV session (STV) Sféry dôverných (Confidential spheres) <<https://www.youtube.com/watch?v=KFiZz8Ds4Yg&t=1496s>> accessed 25 February 2021.

49 A Mach, *Z ďalekých ciest* (Matica slovenská 2009) 32.

50 At the same time, we are not talking about a kind of Slovak uniqueness; the highest officials of satellite or occupied states were sentenced to death throughout Europe. Rather, the situation in the Czech lands was unique because the highest representatives of the Protectorate either committed suicide or died before a verdict could be passed on them.

## 5 FINAL EVALUATION

In this paper, we have tried to find a connection between the functions of law and justice in the example of retributive legislation in Slovakia. The authors chose this period because they have been studying it for a long time, and in-depth analysis was necessary to find the value of justice. The primary goal was to point out the close relationship between the functions of criminal law and the understanding of justice in the given period of time and subsequently to confirm the existence of 'functional functions' of law in judicial practice. The true nature of criminal law is revealed only through an analysis of the implementation of the law. The trial of criminals before the National Court in Bratislava is a controversial issue to this day, so we are aware that our approach to the evaluation of retribution and the interconnection or perception of the retributive function of retribution is not in accordance with all the opinions in Slovak society.

This opinion may be influenced by several factors: a) the clerical background of the war-torn Slovak state in connection with the persisting strong Catholic tradition, b) the perception of the Slovak state's declaration as exercising the Slovak nation's right to self-determination, c) linking retribution to the crimes of communism, d) the fact that Ludák traditions are still 'living' in today's Slovak society.<sup>51</sup> However, our task was not to evaluate the motives that lead part of society to find 'positive' features of the war-torn Slovak state. Through the analysis of material and formal sources of law and subsequent individual processes, we can describe the activity of the National Court in Bratislava as clearly retributive, with many formal shortcomings, but also fair.

Justice as a concept in criminal law cannot be defined. It is based on reason, knowledge, and experience. As we have already stated above, its value is specifically in the setting of adequate and reasonable limits by legislative activity and application practice, reflected in the functions of criminal law. The Retribution Regulation, as well as the decisions of the National Court in Bratislava, contained the value of retribution, justice, rights, and satisfaction, by which we can simply say that they fulfilled the mission of the Retribution judiciary legally and morally.<sup>52</sup>

51 These differences in the interpretation of history are related to the collective memory of the nation. According to H. Arendt, it is not possible to remove the collective memory from people in any way, because it is deeply engrained in them. The only way to come to terms with the history of the totalitarian regime and its representatives is to establish a new regime and remain silent. However, history is not connected primarily with law, but with psychology, sociology, culture, national consciousness, or the opinion of a group of people (crowd) – we call such a phenomenon collective (historical) memory. For example, if we asked people living in the Slovak Republic for their opinion of Jozef Tiso, it is certain that people from areas that fell to Hungary after the Vienna Arbitration would have perceived him differently from the people of Bratislava, etc. When young people listen to their grandparents talk about how 'it was good under Tiso' and say 'Tiso was a saint', they often take this view uncritically (not always due to a lack of knowledge of history or law) and even talk about Tiso as the first Slovak president (although he was not *de jure* president). However, the opposite is also true, when a grandfather who is a former partisan or a so-called white Jew talks about Tiso again to his grandchildren. Josef Tiso was a Catholic priest, which suggests that believers will stand on the side of Tiso the martyr rather than on the side of Tiso the criminal. For an objective assessment of the past, it is necessary to erase the collective memory and subsequently get rid of the nation's concealed guilt. For more details, see: G Schwanová, *Zamlčovaná vina* (Prostor 2004) 67-110.

52 In conclusion, we will borrow the words from the final speech of the Soviet Prosecutor Rudenko before the Nuremberg Tribunal: 'We know that civilization and humanity, democracy and humanity, peace and humanity are inseparable. But as fighters for civilization, democracy and peace, we strongly reject inhuman humanism, sensitive to executioners and indifferent to their victims'. In our opinion, he described the kind of retribution before the retribution courts. Judgment in criminal case of Š. Tiso et al. before the National Court in Bratislava, Slovak National Archive, Fond Úrad predsedníctva SNR (The Fund of the Presidency of the Slovak National Council), Box no. 51, Tnľud 70/45, s. 35.



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