

## Benes Decrees Still Enforced in Slovakia

The Beneš Decrees were a series of laws drafted by the Czechoslovak government-in-exile during the occupation of Czechoslovakia in World War II. Issued by President Edvard Beneš between 21 July 1940 and 27 October 1945, they were retroactively ratified by the Interim National Assembly of Czechoslovakia. Subsequently, they were transposed into the Slovak legal order by decisions of the National Council of the Slovak Republic. Many of the decrees have been abolished or became obsolete since their adoption, however, some of them, which applied collective guilt to ethnic Germans and Hungarians for WWII in order to deprive them of their land and immovable property are still used today. Properties are being confiscated from minorities on the grounds that their ancestors should have lost their properties.

### Role of the Decrees in the EU Accession Process

The decrees also represented an important point of discussion in the EU accession process and the adoption of the EU Charter of Fundamental Rights. The European Commission held the position that should there be no ongoing legal effects resulting from the decrees, they are not contrary to EU law. It has to be noted, that pre-accession assessment of the decrees in relation to compatibility with EU law was conducted only as regards the Czech legal system, and the Slovak legal order never underwent such scrutiny.

The current discussions about the ongoing legal effects of the so-called decrees – exact term would be decisions – have been raised in relation to those legal acts, which enabled the confiscation of lands of ethnic minorities<sup>1</sup>. These National Council decisions were not abolished and remain part of the Slovak legal system and consequently, state authorities, national courts and civil law notaries are basing their decisions on these confiscation acts. Recent findings<sup>2</sup> prove that the legal acts relating to the expropriation of property are still capable of creating new legal effects.

### Legal Uncertainty Raises Risk of Renewed Application of the Principle of Collective Guilt

Due to this legal ambiguity, national authorities have launched a number of administrative and court procedures in recent years against national minority citizens in order to confiscate their inherited lands with reference to the decrees. The 1945 decision (law) on immediate confiscation is still regarded as valid and applied by the national authorities; furthermore, some guidance for its application is given to authorities and legal practitioners, such as civil law notaries in succession proceedings. However, court decisions vary and depend on the sole discretion of judges and authorities, thus creating legal uncertainty and going against the principle of the rule of law. In addition, expropriations, which could not have taken place during the concerned WWII period are also pursued today (on the same legal basis), creating legal uncertainty on the immovable property market and raising the clear risk of renewed application of the principle of collective guilt. From a European law perspective, the recent situation can lead to restrictions on the free movement of capital and serious breach of EU rule of law.

### Two Recent Cases

The 2020 Report of the Slovak Land Fund<sup>3</sup> revealed that hundreds of hectares of land have been seized by the Slovak state in recent years (2018, 2019 and 2020) in regions inhabited by ethnic Hungarians and Germans, under the Beneš decrees. The Land Fund admitted that it based its confiscation on archived land registry data. Without informing the owners or heirs, confiscation has been carried out randomly by searching for minority surnames. The value of the acquisitions is estimated at several million euros. In 2018, the Slovak Land Fund attempted to expropriate valuable land for the purpose of constructing the Bratislava D4 ring road motorway arguing that the state motorway company was not obliged to pay the owners for the needed parcels, as they had been confiscated (or should have been confiscated) by the state between 1945 and 1948, and were therefore state property.

1 "Decision No 104/1945 of the National Council of the Slovak Republic on the confiscation and accelerated redistribution of agricultural property owned by Germans, Hungarians and the traitors and enemies of the Slovak nation"

2 <https://ujso.com/benes-decrees-when-the-past-catches-up-with-the-present>

3 <https://pozfond.sk/wp-content/uploads/2021/08/SPF-v%C3%BDro%C4%8Dn%C3%A1-spr%C3%A1va-2020.pdf> (p. 113. Konfiskaty)

The Slovak state forest company also tries to confiscate privately owned land by referencing the Beneš decrees. The owners brought one of the cases (case *Bosits v. Slovakia*, 2020) before the European Court of Human Rights (ECHR). It concerned state proceedings against a decision of an administrative authority registering the applicant's ancestors as owners of property confiscated in 1945. The Slovak Supreme Court, following an extraordinary appeal by the Prosecutor General, had ruled in favour of the applicant. In its judgement, the ECHR considered the extraordinary appeal a breach of the right to a fair trial. The judgement decided only on the application of the extraordinary appeal procedure. A new, second judgment on the substantive aspects of the Slovak law concerning the property right is expected this year.

## European Parliament Actions

The European Parliament in Brussels has been dealing with the question of the applicability of the decrees mainly because of citizens' enquiries and petitions (see the two below, which are open). The decrees are mentioned in a minority and human rights context pointing out the ongoing legal effects of the above-mentioned WW II era legal acts, which were based on collective guilt and applied against ethnic minorities.

In 2014, the Committee on Legal Affairs adopted an opinion concerning the issue. It stated that the legal situation resulting from the decrees remains subject to judicial and administrative proceedings, and therefore further legal examination of the status and influence of the decrees, and related legislation within the framework of the Slovak legal system, might be warranted.

## Current Status in the European Parliament

The Committee on Petitions discussed the two petitions dealing with the decrees at its meeting on 26 January 2021. Members sympathized with the petitioners and expressed support for advancing the issue at the European level. As a follow-up to the discussions, the Committee on Petitions has forwarded the two petitions for an opinion by the European Parliaments' Committee on Civil Liberties, Justice and Home Affairs Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG) at the initiative of MEP Loránt Vincze.

## Position of the European Commission

The Commission maintains that the matter does not fall within the scope of EU law, it is a national competence and it is up to the Slovak authorities to ensure that the fundamental rights in accordance with their national law and international human rights obligations international human rights law.

### **1. Petition No. 0070/2012 by Imre Juhasz (Hungarian citizen), bearing 2 signatures, on a request for the repeal of Resolution 1483/2007 of the Slovak National Council concerning the inviolability of the Beneš Decrees**

#### **Summary of petition 0070/2012**

The petitioner refers to Resolution 1483/2007 of the Slovak National Council, which established that the Beneš Decrees issued between 1944 and 1948 were inviolable and incontestable. The petitioner points out that discrimination against the Hungarian and German minorities in Slovakia constitutes a contravention and flagrant violation of Articles 2 and 6 of the Treaty on European Union (TEU), the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. He therefore asks the European Parliament to take action to have the above Resolution repealed and calls for Slovakia's membership of the EU to be suspended if it continues its policy of violating human rights.

### **2. Petition No 2098/2014 by N. P. (Slovak citizen) on the Beneš decrees**

#### **Summary of petition 2098/2014**

The petitioner considers that the Beneš decrees infringe on the provisions of the Treaty on the European Union, of the European Convention for the protection of human rights and of the Charter of Fundamental Rights of the European Union.