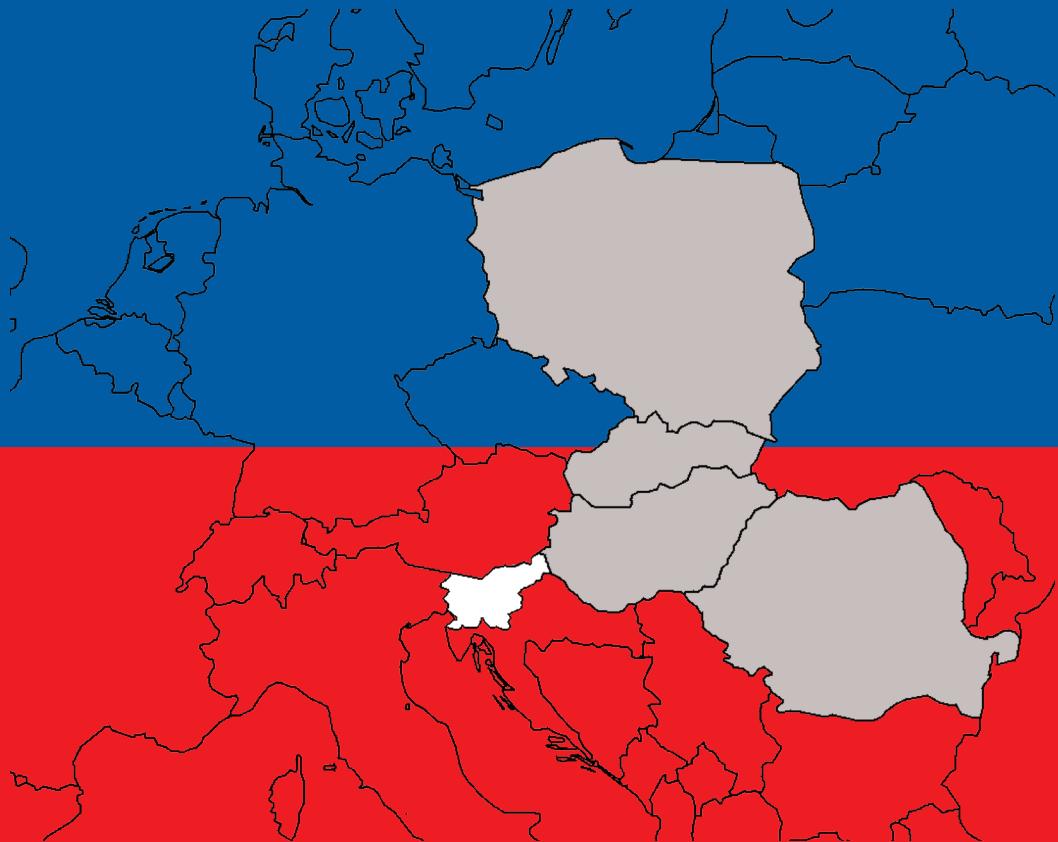


Mednarodna znanstvena konferenca ob evropskem dnevu spomina na žrtve vseh totalitarnih in avtoritarnih režimov

## **Navidezna sprava: tranzicijski procesi v srednji in vzhodni Evropi v primerjalni perspektivi**

International scientific conference on the European Day of Remembrance for Victims of Totalitarian and Authoritarian Regimes

## **Illusive Reconciliation: Transitional Processes in Central and Eastern Europe in a Comparative Perspective**



Ljubljana, 23. avgust 2021



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- 9.00–9.10 **OTVORITEV**  
*dr. Tomaž Ivešič*, direktor Študijskega centra za narodno spravo
- 9.10–9.30 **UVODNI NAGOVORI**  
*Alojz Kovšca*, predsednik Državnega sveta Republike Slovenije  
*Janez Janša*, predsednik Vlade Republike Slovenije

### PRVI PANEL – SLOVENIJA

- 9.30–9.50 **dr. Peter Jambrek**, Nova univerza (SI)  
Evropska politična kultura zavračanja vseh totalitarizmov dvajsetega stoletja – komunizma, fašizma in nacionalnega socializma
- 9.50–10.10 **dr. Jernej Letnar Černič**, Nova univerza (SI)  
Tranzicijska pravičnost od Trsta do Monoštra: med utopijo in resničnostjo
- 10.10–10.30 **dr. Janez Juhant**, Teološka fakulteta Univerze v Ljubljani (SI)  
Zahtevna pot človeškosti: pravno-politične, sociološke, psihološke in teološke podlage sprave
- 10.30–10.50 **dr. Matic Batič**, Študijski center za narodno spravo (SI)  
Slovensko-italijanska sprava: smo že na cilju ali še na poti?
- 10.50–11.10 **Razprava**
- 11.10–11.40 **Odmor**

### DRUGI PANEL – SREDNJA IN VZHODNA EVROPA

- 11.40–12.00 **dr. Łukasz Kamiński**, predsednik Platforme evropskega spomina in vesti (PL)  
Spoprijemanje s komunistično preteklostjo – izkušnja Poljske
- 12.00–12.20 **dr. Anemona Constantin**, Univerza v Bukarešti (RO)  
Prispevek zgodovinarjev k spravi s preteklostjo v Romuniji (2003–2006)
- 12.20–12.40 **dr. Peter Jašek**, Nation's Memory Institute (SK)  
Pomiritev s komunističnim režimom – primer Slovaške
- 12.40–13.00 **dr. Áron Máthé**, Committee of National Remembrance (HU)  
Trenutek v zgodovini, ki je minil: možnosti tranzicijske pravičnosti na Madžarskem med spremembo režima in njegovo zapuščino
- 13.00–13.20 **Razprava in sklepne misli**
- 13.30 **ZAKLJUČEK**

## PROGRAMME OF THE CONFERENCE

09:00–09:10 **OPENING**

*dr. Tomaž Ivanič*, director of the Study Centre for National Reconciliation

09:10–09:30 **INTRODUCTORY ADDRESS**

*Alojz Kovšca*, president of the National Council of the Republic of Slovenia

*Janez Janša*, prime minister of the Republic of Slovenia

### FIRST PANEL – SLOVENIA

09:30–09:50 ***dr. Peter Jambrek*, New University (SI)**

European Political Culture of Rejection of All Totalitarianisms of the Twentieth Century – Communism, Fascism and National Socialism

09:50–10:10 ***dr. Jernej Letnar Černič*, New University (SI)**

Transitional Justice From Trieste to Szentgotthárd: Between Utopia and Reality

10:10–10:30 ***dr. Janez Juhant*, Faculty of Theology, University of Ljubljana (SI)**

A Demanding Path to Humanity: The Legal and Political, Sociological, Psychological and Theological Bases of Reconciliation

10:30–10:50 ***dr. Matic Batič*, Study Centre for National Reconciliation (SI)**

Slovenian-Italian Reconciliation: Have We Already Reached the Goal or Are We Still on the Way?

10:50–11:10 **Debate**

11:10–11:40 **Break**

### SECOND PANEL – CENTRAL AND EASTERN EUROPE

11:40–12:00 ***dr. Łukasz Kamiński*, president of the Platform of European Memory and Conscience (PL)**

Dealing with Communist Past – the Polish Experience

12:00–12:20 ***dr. Anemona Constantin*, University of Bucharest (RO)**

The Contribution of Historians to the Reconciliation with the Past in Romania (2003–2006)

12:20–12:40 ***dr. Peter Jašek*, Nation's Memory Institute (SK)**

Coming to Terms with the Communist Regime – the Slovak Case

12:40–13:00 ***dr. Áron Máté*, Committee of National Remembrance (HU)**

A Moment in History that Passed: Possibilities of Transitional Justice in Hungary During the Regime Change and its Legacy

13:00–13:20 **Debate and concluding thoughts**

13:30 **CONCLUSION**

## Uvod

Ob 30. obletnici osamosvojitve Republike Slovenije, 25-letnici Zakona o popravi krivic ter 80. obletnici začetka druge svetovne vojne na Slovenskem je ob predsedovanju Republike Slovenije Svetu Evropske unije v drugi polovici leta 2021 napočil ugoden trenutek za pravnozgodovinski premislek o tem, kaj je do sedaj že bilo storjeno na področju sprave, poprave krivic, kaznovanja krivcev, odgovornih za teptanje človekovih pravic, in s tem stanja vladavine prava v nekdanjih socialističnih državah.

Leta 1996 je parlamentarna skupščina Sveta Evrope sprejela resolucijo o merilih za demontažo dediščine nekdanjih komunističnih totalitarnih režimov (Resolucija 1096 (1996)), ki je med drugim predvidevala nastanek pluralnih demokracij, ki naj bi temeljile na vladavini prava in spoštovanju človekovih pravic. Ob tem je resolucija svarila pred neuspelo tranzicijo in njenimi posledicami. Pozvala je tudi k pregonu zločincev v skladu z zakonodajo, da bo zadoščeno pravici in ne maščevanju. Med drugim je resolucija predvidevala tudi sprejetje zakonov o popravi krivic ter denacionalizaciji. Obe področji naj bi šli z roko v roki s kaznovanjem krivcev za hude kršitve človekovih pravic. Desetletje kasneje, leta 2006, je parlamentarna skupščina Sveta Evrope sprejela resolucijo o potrebi po mednarodni obsodbi zločinov, ki so jih storili komunistični režimi (Resolucija 1481 (2006)). Resolucija je opozorila, da v mnogih primerih zločinci še vedno niso stopili pred sodišča in da posledično prihaja v javnosti do zmanjšanja zavedanja o komunističnih zločinah ter da tudi komunistične stranke oziroma njihove naslednice niso storile ničesar, da bi se javno distancirale od zločinov, storjenih v času komunizma.

Ob prvem slovenskem predsedovanju Svetu Evrope (2008) je v Bruslju potekala velika mednarodna konferenca, namenjena ugotavljanju zločinov in kršitev človekovih pravic, ki so jih povzročili totalitarni režimi v različnih evropskih državah. Referati so bili objavljeni v monografiji *Crimes Committed by Totalitarian Regimes* (ur. Peter Jambrek). Leta 2009 je Evropski parlament sprejel resolucijo o evropski zavesti in totalitarizmu, v kateri je, sklicujoč se na temeljne pravne akte o spoštovanju človekovih pravic, obsodil vse totalitarne in avtoritarne režime in pozval k razglasitvi 23. avgusta (dan podpisa sporazuma Hitler – Stalin oziroma Ribbentrop – Molotov) za evropski dan spomina na žrtve vseh totalitarnih in avtoritarnih režimov. Od takrat pa do danes je bilo sprejetih še več resolucij in izjav (med drugim na primer varšavska izjava s 23. avgusta 2011, skupna izjava vladnih predstavnikov držav članic EU z dne 23. avgusta 2018 v počastitev spomina na žrtve komunizma, Resolucija Evropskega

parlamenta o pomenu evropskega zgodovinskega spomina za prihodnost Evrope (2019/2819(RSP) itd.), ki so vse spodbujale k raziskovanju totalitarizmov, tranzicijski pravičnosti, kaznovanju storilcev zločinov in popravi krivic, pa tudi k nacionalni ter širši evropski družbeni spravi.

Republika Slovenija je na omenjenih področjih storila nekaj pomembnih korakov, začenši s procesom denacionalizacije, sprejetjem Zakona o popravi krivic (letos oktobra bo minilo 25 let od njegovega sprejetja) in izplačevanjem odškodnin ter ustanovitvijo več parlamentarnih in vladnih komisij (na primer Preiskovalna komisija o raziskovanju povojskih množičnih pobojev, pravno dvomljivih procesov in drugih tovrstnih nepravilnosti, Komisija za reševanje vprašanj prikritih grobišč, Komisija Vlade Republike Slovenije za izvajanje Zakona o popravi krivic itd.). Kljub temu so sadovi dela slabši od pričakovanj. Postopki denacionalizacije so potekali zelo dolgo in nekateri še danes niso zaključeni. Zakon o popravi krivic je kar leto dni čakal na nastanek v njem predvidene komisije, ugotovite Preiskovalne komisije o raziskovanju povojskih množičnih pobojev niso bile sprejete itd. Storilci zločinov in odgovorni za teptanje človekovih pravic v času nekdanjega režima niso bili obravnavani na slovenskih so-diščih, saj so obtožnice zoper njih padle. Tako je nedokončan tudi proces sprave, ki je v slovenski družbi sicer različno konceptualiziran; nekateri menijo, da je dovolj že priznanje (najočitnejših) zločinov, za druge bi bilo treba vsaj še sodno procesirati odgovorne, za tretje pa tudi vrednostno obsoditi prejšnji komunistični sistem v celoti.

Kje smo torej danes na področjih sprave, tranzicijske pravičnosti, poprave krivic in obsodbe zločinov prejšnjega komunističnega režima? Zdi se, da smo v Sloveniji od jasne obsodbe nekdanjega režima precej daleč, s tem pa se oddaljuje tudi tako želena narodna sprava, morda pa smo malce bližje zastavljenim ciljem pri popravi krivic. Vsekakor je to problematika, ki v slovenskem prostoru še vedno buri duhove. Prav zato še toliko bolj kliče k ustrezni akademski razpravi, ki mora temeljiti na vrednotah, ki jih izpostavljajo prej omenjene evropske resolucije, pa tudi na zavezaniosti dialogu. To je tudi namen znanstvene konference, na kateri bodo domači in tuji referenti osvetlili današnje stanje na omenjenih področjih z zgodovinsko-pravnega vidika, obenem pa bodo razmere na Slovenskem umestili v širši primerjalni kontekst srednje in vzhodne Evrope. Na ta način posvet ne bo prispeval le k ugotavljanju stanja na tem področju v slovenski družbi, temveč bo ponudil tudi pogled na primerljive izzive, s katerimi se spoprijemajo (ali so se spoprijemali) v drugih nekdanjih komunističnih državah.

dr. Tomaž Ivešić, direktor Študijskega centra za narodno spravo

## Introduction

With the 30th anniversary of independence of the Republic of Slovenia, 25th anniversary of the Redressing of Injustices Act, 80th anniversary of the beginning of the Second World War in Slovenia and with the Slovenian Presidency of the Council of the EU, a perfect moment has arrived for reflecting upon the historical and legal results already achieved on the fields of reconciliation: redressing injustices, the punishment of responsible persons for human rights violations of, and the present-day state of the rule of law in ex-communist states of East-Central and South-East Europe.

In 1996 the Parliamentary Assembly of the Council of Europe adopted Resolution 1096 (1996) titled “Measures to dismantle the heritage of former communist totalitarian systems”, which, among others, anticipated the establishment of plural democracies, which would be based on the rule of law and the respect of human rights. The resolution also warned against failed transition and its consequences. It called for the lawful criminal prosecution of perpetrators of human right violations, so that instead of revenge, justice would be served. The Resolution also envisioned the passing of several laws dedicated to redressing injustices and de-nationalization, as the authors understood both areas as complementary to the criminal prosecution. A decade later, the Parliamentary Assembly of the Council of Europe adopted Resolution 1481 (2006) regarding the “Need for international condemnation of crimes of totalitarian communist regimes”. This resolution warned that in many cases perpetrators had still not faced justice and as a result, public awareness of crimes has reduced, and the communist parties or their political successors have done nothing to publicly distance themselves from the crimes committed under those communist regimes.

Under the first Slovenian Presidency of the Council of the EU in 2008, an important international conference was organized in Brussels, whose aim was to recognize human rights violations and crimes committed under the totalitarian regimes across Europe. The papers were published in an edited volume titled *Crimes Committed by Totalitarian Regimes* (ed. Peter Jambrek). In 2009 the European Parliament adopted the “Resolution on European conscience and totalitarianism” in which, with a reference to the basic legal documents regarding the respect of human rights, all totalitarian and authoritarian regimes were denounced. Furthermore, the resolution called for the acceptance for the 23rd of August (the day the Ribbentrop-Molotov (Hitler-Stalin) pact was signed) as the European Remembrance Day of the Victims of Totalitarian and Authoritarian Regimes. Since then, there have been many other resolutions and declarations (e.g. the Warsaw Declaration from 23 August 2011,

a joint statement of the representatives of government of EU member states from 23 August 2018 in honoring the memory of the communist victims, Resolution of the European Parliament (2019/2819(RSP)) titled the Importance of European remembrance for the future of Europe, etc.), which all called upon the research of totalitarianism, transitional justice, punishment of perpetrators and the redressing of injustices, but also toward national and wider European societal reconciliation.

The Republic of Slovenia has taken some important steps in the mentioned fields, starting with the denationalization process, passing the Redressing of Injustices Act in 1996 and paying retributions to the victims, and with the establishment of several (Parliament and Government) Commissions which investigated communist crimes, mass graves etc. However, the results achieved so far have been worse than expected. Procedures of denationalization have taken too long, and some have still not ended to this day. The Commission provided by the Redressing of Injustices Act was established only a year later and the findings of the Parliamentary Research Commission for researching the post-war mass graves were not accepted in the Slovene parliament. The perpetrators and the ones responsible for the mass human rights violations under the communist regimes have never stood trial. The process of reconciliation has not been finished because its meaning varies widely among different sectors of Slovene society: some argue that it would be enough to only acknowledge (the most evident) crimes; for some it is only necessary for the perpetrators to stand trial; while for others, denouncing the former communist regime in general should be above all else.

Where are we today regarding reconciliation, transitional justice, redressing of injustices and the denunciation of the crimes of the communist regime? It seems that in Slovenia we are far from a clear denunciation of the former regime, and therefore also from the much longed for and needed reconciliation. However, maybe we are closer to the goals of redressing injustices. Certainly, such topics still seem to be controversial in the Slovenian public area. For these reasons these issues call for a proper academic discussion, which needs to be based on the values, described in the mentioned European resolutions, but also the commitment to dialogue. This is the aim of our conference, which will gather leading domestic and foreign scholars to reflect today's situation on the mentioned subjects from a historical and legal perspective, and to frame the Slovenian experience in the context of Central and Eastern Europe. In this way, the academic conference will not only contribute new insights on the situation in Slovenia, but will also provide a comparative perspective on the selected cases from other former communist states.

Dr Tomaž IVEŠIĆ, Director at the Study Centre for National Reconciliation

## Evropska politična kultura zavračanja vseh totalitarizmov dvajsetega stoletja – komunizma, fašizma in nacionalnega socializma

### Povzetek

Temo načrtovane mednarodne konference o »navidezni spravi« lahko razumeamo tudi kot follow-up dogodka in knjige iz leta 2008 – v času predsedovanja Slovenije EU, ko je bil prof. dr. Lovro Šturm pravosodni minister slovenske vlade. Zato sodi tudi v okvir letošnjega slovenskega predsedovanja EU. Tema gotovo spada v širši okvir razprave o vladavini prava (rule of law).

Spominjam na posebno tematsko številko revije Dignitas, št. 11-12 (2001), avtorjev Gašperja Dovžana in Urške Tekavec *Temne strani slovenske pravne preteklosti v luči slovenske ustave: argumenti Ustavnega sodišča Republike Slovenije o hudih, množičnih in strukturnih kršitvah človekovih pravic in svoboščin v Sloveniji v času prevlade ideologije in prakse komunizma 1945–1990: zgodovinski uvod v komentar slovenske ustave*. V komentarju preambule ustave pa sem v Šturmovem KURS iz leta 2002 na strani 33, robna številka 9, omenil, da »TUL v preambuli ugotavlja, da SFRJ ne deluje kot pravno urejena država, da se v njej hudo kršijo človekove pravice, nacionalne pravice in pravice republik in da ne omogoča rešitve politične in nacionalne krize. /.../ US je v številnih sodbah podrobno analiziralo in ocenilo različne vidike kršenja človekovih pravic, načela pravne države in načela prepovedi diskriminacije v bivšem nedemokratičnem sistemu. Sistematični pregled teh ustavnosodnih argumentov je predstavljen v uvodni knjigi pričajočega komentarja (glej Dovžan/Tekavec).« Videti je, da ji je bil status uvodnosti h KURS pripisan samo v mojem avtorskem komentarju, ker ga urednik v svojem predgovoru ne omenja.

Resolucijo Evropskega parlamenta z dne 2. aprila 2009 o evropski zavesti in totalitarizmu je Lovro Šturm kot urednik dopolnitve Komentarja ustave RS sicer uvrstil na začetek KURS, čeprav se je slovenski zakonodajalec z njo samo »deklarativno seznanil«. Obe knjigi gotovo nadgrajuje novejša knjiga Jožeta Možine (Slovenski razkol – okupacija, revolucija in začetki protirevolucionarnega upora, 2019) in še marsikaj drugega, na primer Z lepilom na podplatih Celjske Mohorjeve družbe iz leta 2020 urednika profesorja Štuheca.

Vse pozornosti je vredna naslednja izhodiščna in prodorna ideja, ki se vleče skozi več prispevkov knjige *Crimes committed by totalitarian regimes*, urejene

in izdane leta 2008 na podlagi javne razprave, ki jo je 8. aprila 2008 organiziralo slovensko predsedstvo Sveta EU: Razpravo o ideji je uvedel v svojem nagovoru podpredsednik Evropske komisije Jacques Barrot, tedaj odgovoren za področje pravičnosti, svobode in varnosti v EU. Gre za vprašanje zgodovinske pravičnosti za Evropo, ki naj bi bila dejavnik, ki združuje Evropo ob spoštovanju skupnih vrednot svobode, demokracije, človekovih pravic in vladavine prava.

V primerjavi z drugimi državami članicami EU so srednje- in vzhodnoevropski narodi trpeli največ in najdalj zato, ker so jih zatirali tako nacistični in fašistični kot tudi komunistični režimi. Od tod izvirajo dvojni standardi spominskega ocenjevanja teh totalitarnih režimov in zločinov, ki so jih zagrešili. Ne more biti sporno, da so prav te različne izkušnje zahodnih na eni strani ter srednjeevropskih in vzhodnoevropskih narodov na drugi delile narode EU, namesto da bi jih združevale. Ronaldas Racinskas piše tudi o »politični bližini marksističnokomunistične ideologije zahodno-evropskim demokratičnim levim političnim strankam« (glej 3. odstavek na strani 16 citirane knjige, objavljene leta 2008).

O tem pišejo v navedeni knjigi zlasti Ronaldas Racinskas (s. 13), Dainius Žalimas (s. 81), Vytautas Landsbergis (s. 85), Maclej Korkuč (s. 101) in številni profesorji iz baltiških držav, Poljske, Madžarske, Slovenije in drugi. V sklepni besedi je Jonathan Faull, direktor direktorata za pravičnost, svobodo in varnost, povedal (s. 297): »Zahodna Evropa bi morala biti bolj občutljiva za tragično preteklost držav članic v Vzhodni Evropi. Preučevati bi morali ta deficit pripoznanja, če se želimo izogniti Uniji, ki je o teh stvareh razdeljena, namesto da bi bila ta vprašanja v resnici tista, ki naj bi nas združevala.«

Od tu izvirajo tudi različne percepcije o preteklosti in sedanjosti glede vladavine prava in svobode izražanja – zgodovina in izkušnje so različne. O teh vrednostnih opredelitvah EU sicer ne more sprejemati odločitev, lahko pa spodbuja razprave in vpliva na razumevanje. Tudi to je bila sklepna misel javne razprave in zaključkov navedene knjige. Upravičeno lahko domnevamo, da je od opisanih različnih zgodovinskih izkušenj, spominov in političnih kultur odvisno tudi aktualno stanje medijev in vladavine prava v srednji in vzhodni Evropi ter javni diskurz o tem: Če in ker je v Sloveniji velika večina medijev ter njihovih novinarjev in urednikov levo usmerjena, potem in zato so prizadevanja levih strank in levih medijev za lastno svobodo v resnici zahteve za ohranitev njihove zgodovinske in tranzicijske leve pristransnosti, v škodo pravice vseh nelevih (zlasti v totalitarizmu in med tranzicijo v manjši meri indoktriniranih) bralcev in poslušalcev do nepristranskih informacij in komentarjev in s tem do pristne in dejavne demokracije. Podobno lahko razmišljamo o sodstvu in o sodnikih v

tranzicijski Sloveniji ter v drugih srednje- in vzhodnoevropskih državah članicah EU, seveda mutatis mutandi glede na državo in njeno ljudstvo.

Dragoceni in upoštevni so nadalje razmisleki o profilu evropske levo-liberalne in slovenske levo-tranzicijske opcije. Gotovo je na vrhu evropske levice bila že takoj po koncu hladne vojne sprejeta odločitev o tovariškem objemu, spremetu in kultiviranju postkomunistov v okviru zahodne socialne demokracije. Vzporedno z izginevanjem moči evropske levice v enaindvajsetem stoletju, tudi zaradi izgube njene delavskorazredne volilne baze, je njena trda politična opcija krpanje mreže svojega volilnega telesa z drugimi, novimi skupinami in sloji potencialnih volivcev: migranti, postkomunisti, kulturnimi marksisti, LGBT in drugimi. Vendar – reakcionarna in restavracijska usmerjenost slovenske postkomunistične levice presega vse tihe dogovore po padcu železne zaveso o civilizacijskem poslanstvu zahodnoevropske levice v razmerju do postkomunistov.

Zahodna liberalna levica je vsaj v slovenskem primeru vidno in prepričljivo pristranska. Komaj je tudi z vidika leve socialnodemokratske in socialistične ideologije mogoče na odprtji mednarodni politični sceni soglašati z ekscesi slovenske tranzicijske, zlasti skrajne levice, ki se vrača vidno in instinkтивno k svojim totalitarnim izvorom, kot so: končni cilj oblasti monopolne partije, razredno in avantgardno sovraščvo, redukcija demokracije na medijski agitprop, teror avantgardnih odredov na ulicah in v medijih, napovedi nadomestitve »neučinkovitih« mehanizmov parlamentarne demokracije z »ljudsko vstajo« in »ljudsko skupščino«, z vlado v sestavi predstavnikov socialnih gibanj, demonstracijami, kamenjanjem, sežiganjem poslanskih stolčkov, grožnjami z likvidacijo, aktiviranjem rezervistov iz kadrovske sestave bivše partije, promocijo komunizma kot ideologije in sistema (sic!), farsično ponavljanje fašističnih, boljševiških in nacističnih tehologij prevzema oblasti – revolucija, državni udar, zasedba parlamента, v bistvu teror.

Kolaboracija, celo identifikacija zahodne levo-liberalne socialdemokracije s tem slovenskim ekscesom je na črti preloma, ki je neizbežna. Aktualni Verfassungsblog exchange in drugi – Vera Jourová, Guardian, Deutsche Welle, Politico, Sophie in 't Veld – so značilni primeri te razločevalne linije. Vsak od omenjenih je vreden konkretnje osvetlitve, vsi skupaj pa eksemplarične in sistemske osvetlitve oziroma analize, komentarja in razlage. Evropska socialna demokracija se mora odločiti, ali se bo distancirala od totalitarizma kot takega, torej od vseh njegovih zgodovinskih realnih režimov, ali samo od fašizma in nacizma, tako da bo istočasno dopustila svojo identifikacijo s komunizmom, realnim socializmom in njegovimi današnjimi restavracijami, ki niso samo farsične.

## **European Political Culture of Rejection of All Totalitarianisms of the Twentieth Century – Communism, Fascism and National Socialism**

### **Abstract**

The topic of the planned international conference on “illusive reconciliation” can also be understood as a follow-up of an event and book from 2008 – in the time of Slovenian presidency of the EU, when Prof dr. Lovro Šturm, was the Minister of Justice of the Slovenian government. It therefore falls within the scope of this year’s Slovenian EU Presidency. The topic is certainly a part of the broader context of the debate on the rule of law.

I recall a special issue of Dignitas magazine, No. 11-12 (2001), by the authors Gašper Dovžan and Urška Tekavec, titled *Dark Sides of Slovenian Legal History in the Light of Slovenian Constitution: Arguments of the Constitutional Court of the Republic of Slovenia Relating to Grave, Mass and Structural Violations of Human Rights and Freedoms in Slovenia During the Period of Domination of the Ideology and Practice of Communism 1945–1990: a Historic Introduction to the Commentary on the Slovenian Constitution*. In my commentary on the preamble to the Constitution in Šturm’s KURS (Slovenian acronym for publications titled *Commentary on the Constitution of the Republic of Slovenia*) from 2002, I mentioned on page 33, runner 9, that Basic Constitutional Charter in preamble concludes that the SFRY does not act as a legally regulated state, that it gravely violates human rights, national rights and rights of the republics and that it does not allow for a solution to the political and national crisis; that in many judgements, the Constitutional Court has analysed and assessed in detail various aspects of violations of human rights, principles of rule of law and of non-discrimination in the former undemocratic system; that a systematic review of these constitutional arguments is presented in the introductory book of the present commentary (see Dovžan/Tekavec). It seems that the introductory status to KURS was only attributed to it in my original commentary, since the editor does not mention it in his foreword.

Lovro Šturm as the editor of the amendment to the Commentary on the Constitution of the Republic of Slovenia added the European Parliament Resolution of 2 April 2009 on European Conscience and Totalitarianism to the beginning of the KURS, although the Slovenian legislator had only “declarative knowledge”

of it. Both books are certainly enhanced by a recent book by Jože Možina (Slovenski razkol – okupacija, revolucija in začetki protirevolucionarnega upora, 2019) and many other publications, for example *Z lepilom na podplatih*, published in 2020 by the Hermagoras Society, with professor Štuhec as the publication's editor.

The following baseline and breakthrough idea, contained in various writings collected in a book titled *Crimes committed by totalitarian regimes*, edited and published in 2008, based on a public hearing organized by the Slovenian Presidency of the EU Council on 8 April 2008, is deserving of all attention: the then Vice-President of the European Commission, Jacques Barrot, who was responsible for the area of justice, freedom and security in the EU, introduced the hearing on the idea in his address. It is a question of historic justice for Europe, which is supposed to be a factor that unites Europe while respecting the common values of freedom, democracy, human rights and the rule of law.

Compared to other EU Member States, the Central and Eastern European nations suffered the most and the longest, due to the fact that they were oppressed by the Nazi and Fascist regimes as well as by the Communist regimes. Hence the double standards of remembrance-based assessment of these totalitarian regimes and the crimes they have committed. It cannot be disputed that the very different experiences of the Western nations, on the one hand, and the Central and Eastern European nations, on the other, have divided the peoples of the EU rather than united them. Ronaldas Racinskas writes also about “the political proximity of the MarxistCommunist ideology to the Western European democratic left political parties” (see paragraph 3 on page 16 of the cited book, published in 2008).

In the mentioned book, it is in particular Ronaldas Racinskas (p. 13), Dainius Žalimas (p. 81), Vytautas Landsbergis (p. 85), Maclej Korkuć (p. 101) and numerous professors from the Baltic States, Poland, Hungary, Slovenia and others that write about this. In the afterword, Jonathan Faull, Director General of Justice, Freedom and Security, states (p. 297): “Western Europe should be more sensitive to the tragic past of the Member States in Eastern Europe. We should examine this deficit of recognition if we want to avoid the Union being divided on matters such as these, which should actually unite us.”

This is where various perceptions of the past and the present concerning the rule of law and freedom of expression stem from – history and experiences vary. While the EU cannot adopt decisions on these attributions of value, it can stimulate debate and influence understanding. This was also the concluding thought

of the public hearing and the conclusions of the above book. It is reasonable to assume that the current state of the media and the rule of law in Central and Eastern Europe as well as the public discourse surrounding it depends on the different historical experiences, memories and political cultures described above: if and because in Slovenia the vast majority of the media, their journalists and editors are left-wing, then and therefore the efforts of the left-wing parties and the left-wing media for their own freedom are in reality demands to preserve their historical and transitional left-wing bias, to the detriment of the rights of all the non-left-wing readers and listeners (especially, in totalitarianism and during the transition, the less indoctrinated) to impartial information and commentary, thus, to a genuine and active democracy. We can think in a similar way about the judiciary and the judges in the transitional Slovenia and in other Central and Eastern European Member States of the EU, mutatis mutandis as to the country and its people.

Further, it is valuable and relevant to reflect on the profiles of the European liberal left and Slovenian transitional left options. Right after the end of the Cold War, a decision must have been made at the top of the European left regarding a comradely embrace, acceptance and cultivation of post-Communists within the framework of a Western social democracy. Parallel with the disappearance of power of the European left in the twenty-first century, also due to the loss of its labour-class electoral base, its hard political option is to mend the net of its electorate with other, new groups and strata of potential voters: migrants, post-Communists, cultural Marxists, LGBT and other. However, the orientation towards reactionism and restoration of the Slovene post-Communist left goes beyond all silent arrangements following the fall of the Iron Curtain regarding the Western European left's civilizational mission in relation to the post-Communists.

The Western liberal left is visibly and convincingly biased, at least in Slovenia: from the perspective of the left social democratic and socialist ideologies it is, on the open international political scene, hardly possible to agree with the excesses of the Slovene transitional, especially the extreme, left, which is returning visibly and instinctively to its totalitarian origins, such as monopoly government as the ultimate goal, class and avant-garde hatred, reduction of democracy to media agitprop, avant-garde squad terror in the streets and in the media, announcements of the replacement of "ineffective" parliamentary democracy mechanisms by means of "popular uprising" and "people's assembly", with a government co-composed of representatives of social movements, with demonstrations, stoning, burning of seats of the members of parliament, liquidation

threats, activation of reservists from amongst the former Party staff, promotion of Communism as an ideology and system (sic!), farcical repeating of fascist, Bolshevik and Nazi technologies of seizure of power – revolution, coup d'état, occupation of parliament, in fact, terror.

Collaboration, even identification of the Western liberal left social democracy with this Slovene excess is approaching an inevitable breaking point. The current Verfassungsblog exchange and others — Vera Jourová, Guardian, Deutsche Welle, Politico, Sophie in 't Veld — are typical examples of this breaking point. Each of them deserves a substantial exposure and all of them an exemplary and systemic exposure or analysis, commentary and interpretation. European social democracy has to decide whether to distance itself from totalitarianism as such, that is to say, from all its historical real regimes, or just from Fascism and Nazism by simultaneously allowing its identification with Communism, real socialism and its current restorations, which are more than just farcical.

## Tranzicijska pravičnost od Trsta do Monoštra: med utopijo in resničnostjo

### Povzetek

Tranzicijska pravičnost ostaja v slovenski družbi več kot trideset let po padcu nedemokratičnega režima tabu tema. V osrčju slovenske države, njenih državnih ustanovah, univerzah, zavodih in podobnih ustanovah je tranzicijska pravičnost, z redkimi izjemami, nezaželena tema. Praznina je še posebej izstopajoča na področju prava, predvsem zaradi pasivnosti slovenskega pravosodja pri obravnavanju temnih poglavij slovenske polpretekle zgodovine. Slovenska država je bila pred tridesetimi leti ustanovljena tudi zaradi sistematičnega kršenja človekovih pravic in temeljnih svoboščin. Ustavno sodišče RS je po njeni ustanovitvi v številnih odločbah ugotovilo, da je nekdanji režim sistematično in vsesplošno kršil človekove pravice in temeljne svoboščine. Če sta ustava kot najvišji akt slovenske države in ustavno sodišče kot najvišji varuh človekovih pravic ob sodila kršitve človekovih pravic v času nedemokratičnega režima, redno sodstvo njunih ugotovitev ni izpeljalo v konkretnih kazenskih zadevah. Slovensko pravosodje v zadnjih desetletjih ni želelo oziroma ni bilo zmožno obravnavati preteklih kršitev človekovih pravic in temeljnih svoboščin. V treh desetletjih slovensko sodstvo ni spoznalo nikogar za individualno kazensko odgovornega za številna hudodelstva zoper človeštvo na celotnem slovenskem ozemlju in za številne druge sistematične kršitve človekovih pravic. Večina neposrednih in posrednih storilcev ni in ne bo nikoli odgovarjala za svoja dejanja. Ostanki njihovih številnih žrtev še vedno ležijo zakopani v slovenskih gozdovih, travnikih, jamah itd. Po drugi strani je Vrhovno sodišče RS v desetletjih po demokratizaciji razveljavilo nekaj tisoč nepoštenih pravnomočnih kazenskih sodb režimskega sodišča iz prejšnjega režima, čeprav ne vseh nepoštenih sodb. Vrhovno sodišče RS denimo ni razveljavilo sodbe v zadevi I Ips 306/2009 glede nepoštene sodbe iz kengurujskih kočevskih procesov v oktobru 1943, zaradi česar je zadeva trenutno v odločanju Ustavnega sodišča RS.

Tranzicijska pravičnost v slovenski družbi po drugi strani ni enoznačna zgodba. Zakonodajna in izvršilna veja oblasti sta v zadnjih treh desetletjih le storili nekaj pomembnih korakov naprej. V prvem desetletju življenja slovenske države je državni zbor sprejel Zakon o popravi krivic. Na njegovi podlagi je Komisija za izvajanje Zakona o popravi krivic v zadnjih desetletjih številnim žrtvam kršitev človekovih pravic v nedemokratičnim režimu podelila odško-

dnine, status nekdanjih političnih zapornikov in status po vojni pobitih oseb ter žrtvam všela čas samovoljnega odvzema prostosti v njihovo pokojninsko dobo. Izvršilna oblast je z ustanovitvijo in podporo Komisije za reševanje vprašanj prikritih grobišč omogočila vsaj delno evidentiranje in ureditev nekaterih večjih grobišč. Nekaj pozitivnih zgodb tranzicijske pravičnost lahko tako vendarle najdemo tudi v slovenski družbi, čeprav ostaja še veliko za postoriti.

Tranzicijska pravičnost v slovenski družbi od Trsta do Monoštra je zato med idealizmom in resničnimi danimi možnostmi. Slovenska družba je nekatere ukrepe tranzicijske pravičnosti lahko lažje uresničila kot druge. Jasno je, da so ukrepi tranzicijske pravičnosti za najhujše kršitve človekovih pravic v slovenskem sodstvu izostali. V svojem prispevku se posvečam vprašanjem prihodnosti tranzicijske pravičnosti v slovenski družbi. Kakšna mora biti prihodnja vloga institucij demokratične in pravne države pri spodbujanju ukrepov tranzicijske pravičnosti v slovenski družbi? Ali lahko sedanje in prihodnje generacije v institucijah slovenske pravne in demokratične države prispevajo k primerni obravnavi preteklih kršitev ter pomirjenju in sobivanju v slovenski družbi?

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## **Transitional Justice From Trieste to Szentgotthárd: Between Utopia and Reality**

### **Abstract**

After more than thirty years from the fall of the undemocratic regime, transitional justice remains a taboo topic in Slovenian society. At the core of the Slovenian state, its public institutions, universities, institutes and similar establishments, transitional justice is, with few exceptions, an undesirable topic. The void is particularly prominent in law, mainly due to the passivity of Slovenian judiciary in dealing with the dark chapters of Slovenian recent history. Thirty years ago, the Slovenian state was founded because of the systematic violation of human rights and fundamental freedoms, among other reasons. Following its establishment, the Constitutional Court of the Republic of Slovenia found in numerous decisions that the former regime had systematically and universally

violated human rights and fundamental freedoms. Although the Constitution, as the highest act of the Slovenian state, and the Constitutional Court, as the highest Ombudsman, condemned human rights violations during the undemocratic regime, the ordinary judiciary did not follow their findings in actual criminal cases. In recent decades, Slovenian judiciary has not sought or could not address the past violations of human rights and fundamental freedoms. In three decades, the Slovenian judiciary has not recognized anyone as individually criminally responsible for numerous crimes against humanity throughout Slovenia and for many other systematic violations of human rights. Most direct and indirect perpetrators are not and will never be held accountable for their actions. The remains of their numerous victims are still buried in Slovenian forests, meadows, caves, etc. In the decades after the democratization, the Supreme Court of the Republic of Slovenia did, however, annul several thousand unfair final criminal judgements of the previous regime's courts, albeit not all of the unfair judgements. For example, the Supreme Court of the Republic of Slovenia did not annul the judgement in case I lps 306/2009 regarding the unfair judgement from October 1943 at the „kangaroo court“ of the Kočevje Processes, which is why the case is currently being decided by the Constitutional Court of the Republic of Slovenia.

Yet, transitional justice in Slovenian society is not clear-cut. The legislative and executive powers have in the last three decades managed to also take some important steps forward. In the first decade of existence of the Slovenian state, the National Assembly adopted the Redressing of Injustices Act. On its basis, the commission for the implementation of the act has in recent decades awarded compensation, status of former political prisoners and status of post-war killed individuals to many victims of human rights violations in the undemocratic regime and counted the time of the victims' arbitrary deprivation of liberty in their pension qualifying period. With the establishment and support to the Commission on Concealed Mass Graves, the executive power has made it possible to, at least partially, register and put in order some of the major gravesites. Some positive stories of transitional justice can, thus, still be found in Slovenian society, although much remains to be done.

Transitional justice in Slovenian society from Trieste to Szentgotthárd is therefore situated between idealism and real given options. Slovenian society has been able to implement certain transitional justice measures more easily than others. It is clear that the transitional justice measures for the most severe violations of human rights have been left behind by the Slovenian judiciary. In my conference contribution, I focus on the issues of the future of transitional justice

in Slovenian society. What should the future role of democratic and rule of law institutions in promoting transitional justice measures in Slovenian society be like? Can present and future generations in the institutions of the Slovenian rule of law and democracy contribute to proper treatment of past violations and to reconciliation and coexistence in Slovenian society?

## **Zahtevna pot človeškosti: pravno-politične, sociološke, psihološke in teološke podlage sprave**

### Povzetek

Judovsko-krščansko izročilo kot bistvena podlaga zahodni civilizaciji je z grško modrostjo in rimskim pravno-političnim redom uveljavilo v zahodni družbi podobo človeka kot osebe. Določa ga dostenjanstvo, tj. popolno spoštovanje njegeve enkratnosti in nedotakljivosti. Družbenim ureditvam in njihovim izvrševalcem nalaga, da takšno mesto človeku kot svobodnemu bitju popolnoma in brez omejitev zagotavlja. Z novoveškimi revolucionarnimi posegi se je pravni okvir zaščite osebe po eni strani utrjeval in poglabljal, po drugi pa je družbeno politično doživel strahotne pretrese, posebej z jakobinsko in komunističnimi revolucijami. Bistveni premik se je zgodil, ko si je novoveški človek svojo bogupodobnost in z njo povezano odgovornost Bogu (nasilno) prisvojil. Odslej ni več vladarjev po Božji volji, človek ni odgovoren več Bogu, sam si jemlje pravico odločati nad (drugim) človekom. Višek te usurpacije oblasti pomenijo totalitarni režimi, posebej komunistična revolucija. Formulo človekovih pravic kot zaščito človekovega dostenjanstva totalitarni režimi izključijo in človeka prepustijo na milost in nemilost njihovi samovolji. Po besedah Justina Stanovnika je komunizem racionalna volja sistematično uničiti vsako drugačnost, kar pomeni izstop iz dosedanja civilizacije z vsemi strahotnimi posledicami tega koraka.

**Sprava** je sestavni del judovsko-krščanskega evropskega izročila. V novejšem času imamo primere političnih praks udejanjanja tega procesa: Evropska zveza (EZ) je po volji ustanoviteljev nastala kot spravni proces – nič več vojne, narodi sodelujejo. Nemčija je storila korak k spravi v odnosu do Poljske: Brandt je v Varšavi 7. decembra 1970 pokleknil pred *Spomenikom junakov geta* in prosil odpuščanja. Južnoafriške komisije (JA) so bile administrativno soočenje storilcev in žrtev. Koraki so torej politično-pravni kot v primeru EZ in JA ali osebno-simbolni: Brandt in nemški škofje v odnosu do poljskih. Takšna dejanja vključujejo tudi določeno političnopravno prakso, ljudje se ne morejo in ne smejo več obnašati drug do drugega izključevalno, pač pa jih vključevalni verski in empatično-človeški simboli vabijo k dialoškemu urejevanju medsebojnih zadev.

Pravno-politični vidik predpostavlja, da **ustanove kot naslednice nekdanjih izvajalk nasilja priznajo zločin in pravno-politično označijo krivce zanj**: V slovenski zakonodaji so se doslej zavestno izogibali imenovati žrte

revolucije: govori se o izvensodnih pobojih, ne pa o storilcih/zločincih iztrebljanja nasprotnikov med vojno in po njej. Žrtve naj bi bile le žrtve vojne. Zato slovenska zakonodaja žal še ne priznava žrtev komunistične strani oziroma strani OF, kar bi pomenilo zakonsko označitev komunistično-partizanske strani ne kot edinega, vendar pa pomembnega krivca za velik del zločinov med in po vojni. Razlog za to nepriznavanje odpira **sociološki vidik**: Težko je zanikati zgodovinska dejstva, še težje pa je priznati lastne ali zablode prednikov, kar bi pomenilo posredno zanikanje z revolucijo pridobljenih privilegijev ter opustitev vzdrževanja lažne časti zločincem. Najočitnejše nasprotje tega je postavljaliti jim spomenike, jim dajati medalje kot nosilcem ali podpornikom zatiralskega sistema (Z. Roter, J. Stanovnik, T. Ertl). Takšna družbeno-politična praksa žal vzdržuje stanje revolucije in še naprej dopušča zanikanje oziroma nepriznavanje žrtev omenjenih storilcev.

**Psihološki** vidik odpira odstranjevanje dolgotrajnega propagandno-političnega pohabljanja osebne in družbene zavesti: zločinci ne morejo ostajati junaki prevladujoče ustvarjene družbene zavesti, žrtve pa krivci (izdajalci, negativci, zgodovinski premaganci). Najgloblji vidik in razlog sprave, ki poteka sicer prek že omenjenih, tj. pravno-politične, sociološke in psihološke ravni, pa je **teološki**. Gre za popolno spoštovanje dobrega imena vsakogar kot od Boga ustvarjenega bitja. Paradoksnje je, da varujemo pravice ne vem kakšnih posebnih, lahko tudi umetno ustvarjenih skupin, ne priznavamo pa pravic žrtev, nerojenih otrok, ranjencev, brez dokazov krivde pobitih. **Izvensodno iztrebljanje nedolžnih je pomenilo ne le kršenje osnovnega človeškega dostojanstva**, pač pa tudi takratnih ustreznih vojnih zakonov, ki so ščitili ranjence in ujetnike. Propagandno-politični stroj pobijanja je deloval na manihejski dvojnosti: protirevolucionarji – slabi, nazadnjaški, revolucionarji – dobri, napredni. Služil je komunistični eliti kot propagandno-teroristični ustroj boja za absolutno oblast in izključevanje drugačnih. Te nedemokratične usedline še vedno delujejo ne le na osebni ravni, pač pa tudi na ravni javnosti in demokratičnih ustanov, medijev in vzgoje in celo prek pravnega sistema, kar odpira problem neenakosti vseh pred zakonom. Zato je nujno priznanje ustreznih evropskih resolucij in zagotavljanje pravnega varstva za vsakega človeka. Odločilna je demokratična kultura, ki vsakomur dopušča, da se lahko kot oseba enakopravno vključuje v vse družbene procese in ima v vseh pogledih ustrezno družbeno zaščito. Vsi vidiki sprave so tesno povezani med seboj, vsak izmed njih pa je konstitutivni temelj uspešnega spravnega procesa v družbi in uveljavitve demokracije v državi in družbi.

## **A Demanding Path to Humanity: The Legal and Political, Sociological, Psychological and Theological Bases of Reconciliation**

### **Abstract**

The Judeo-Christian tradition as a key foundation of Western civilization has, through Greek wisdom and Roman legal and political order, established in Western society an image of human as a person. **The human as a person** is determined by dignity, i.e., full respect of their uniqueness and inviolability. It obliges social regulations and their enforcers to ensure such a place to the human as a free being, completely and without restrictions. With early modern revolutionary interventions, the legal framework for the protection of a person has, on the one hand, consolidated and deepened. On the other hand, it has seen terrible social and political upheavals, especially with the Reign of Terror and the communist revolutions. A significant shift occurred when the early modern human (forcefully) appropriated the likeness of God and the associated responsibility. From then on, there are no rulers by God's will, the human is no longer responsible to God: it is the human who takes the right to decide over (another) human. Totalitarian regimes, especially the Communist revolution, represent the culmination of this usurpation of power. The formula of human rights as the protection of human dignity is excluded in totalitarian regimes and the human is left at the mercy of the regimes' arbitrariness. According to Justin Stanovnik, Communism's rational will is to systematically destroy every differentness, which means withdrawing from the civilization to date, with all the terrible consequences of this step.

**Reconciliation** is an integral part of the European Judeo-Christian tradition. There are recent examples of political actions of putting this process into practice: following the wishes of its founders, the EEC was created as a reconciliation process – no more war, the nations cooperate. Germany has taken a step towards reconciliation with Poland: in Warsaw, on 7 December 1970, Brandt knelt in front of the Monument to the Ghetto Heroes and asked for forgiveness. The South African Truth and Reconciliation Commission (TRC) enabled the administrative confrontation of the perpetrators and victims. The steps are therefore political and legal as in the case of the EEC and TRC, or personal and symbolic, as in the case of Brandt and German bishops in relation to the Polish. Such acts also include certain political and legal practices: people cannot and

must not any longer behave toward each other in an exclusionary manner but are invited by inclusive religious and empathic symbols to regulate their mutual affairs dialogically.

The legal and political aspect assumes that **institutions as successors of former perpetrators of violence recognize crimes and legally and politically label its perpetrators**. Slovenian legislation has so far consciously avoided naming victims as the victims of the revolution: it speaks of extrajudicial killings rather than of perpetrators/criminals exterminating opponents during and after the War. The victims are supposedly only the victims of war. Unfortunately, the Slovenian legislation therefore **does not yet recognize the victims of the Communist side or the side of the LF (Liberation Front of the Slovene Nation)**, which would mean a legal labelling of the Communist-Partisan side – not as the only but as an important culprit for a large part of the crimes committed during and after the war. The reason for this non-recognition opens up a sociological aspect: it is difficult to deny historical facts, but it is even more difficult to recognize one's or one's ancestors' own delusions, which would mean an indirect denial of privileges gained by means of revolution and a waiver from maintaining criminals' false honour. The most obvious contrast to this is erecting monuments of them, giving them medals as institutions or supporters of an oppressive system (Z. Rotter, J. Stanovnik, T. Ertl). Regrettably, such socio-political practice maintains the state of the revolution and continues to allow the denial or non-recognition of the victims of the above perpetrators.

The psychological aspect opens up the elimination of the long-standing propagandist and political maiming of personal and social consciousness: criminals cannot remain the heroes of the prevailing created social consciousness, and the victims cannot remain the guilty (traitors, negatives, historical losers). The most profound aspect and reason for reconciliation, which is performed at legal and political, sociological and psychological levels mentioned above, is **theological**: it is a matter of full respect for everyone's good name, as God-made beings. It is paradoxical that we are protecting the rights of some special, perhaps artificially created groups, but we do not recognize the rights of victims, unborn children, wounded people, people killed without evidence of guilt. **The extrajudicial extermination of the innocent was not only a violation of basic human dignity** but also of the then appropriate war laws that protected the wounded and prisoners. The propagandist and political killing machine worked on the Manichean dualism: counter-revolutionary – bad, reactionary; revolutionary – good, advanced. It served the Communist elite as a propagandist and terrorist structure of the fight for absolute power and the exclusion of those who were in any way

different. These undemocratic deposits still operate not only on a personal level, but also on the level of the public, democratic institutions, media and education, and even through the legal system, which opens up the issue of inequality of everyone before the law. It is therefore absolutely necessary to recognize the relevant European resolutions and to ensure legal protection for every human being. A democratic culture is crucial, allowing everyone to be equally involved as a person in all social processes and to have adequate social protection in all respects. All aspects of reconciliation are closely interlinked and each of them is a constitutive foundation of a successful reconciliation process in society and of the establishment of democracy in the country and society.

## **Slovensko-italijanska sprava: smo že na cilju ali še na poti?**

### Povzetek

Slovenci in Italijani sodijo med tiste evropske sosedske narode, katerih medsebojne odnose vse do danes močno zaznamuje breme preteklosti, še posebej dogodkov od druge polovice 19. stoletja dalje. V času vzpona nacionalizmov kot politične ideologije je etnično mešano ozemlje od Julijskih Alp do Jadranskega morja postalo polje slovensko-italijanskega konflikta, ki je temeljil na nasprotujočih si političnih inspiracijah obeh narodnosti. Narodnostna nasprotja, močno prisotna že v času Habsburške monarhije, so svoj vrhunec dosegla po koncu prve svetovne vojne, ko je bilo severno-jadransko sporno ozemlje z Rapalsko pogodbo priključeno tedanji Kraljevini Italiji, ki je začela z načrtno politiko italijanizacije. Slednja je dosegla svoj vrh po nastopu fašističnega režima Benita Mussolinija leta 1922, ki je vodil politiko načrtnega etnocida. Po letu 1943 se je spirala nasilja obrnila proti delu lokalnega italijanskega prebivalstva, ki je postal žrtev nasilja partizanov in jugoslovanske vojske. Večina italijanskega prebivalstva, ki je po pariški mirovni pogodbi leta 1947 ostala znotraj jugoslovenskih meja, se je odločila za izselitev v Italijo.

Dediščina teh dogodkov vse do danes zaznamuje slovensko-italijanske odnose. Vprašanje sprave med narodoma zato vse do danes dopušča različne interpretacije, predvsem pa se zdi nujno upoštevati različne vidike, od mednarodnega in institucionalnega do zasebnega. Te razlike moramo tudi upoštevati pri preseganju zgodovinsko pogojenih antagonizmov. Brez dvoma je do največjih pozitivnih premikov prišlo predvsem na mednarodni ravni, kjer je bila že leta 1975 s t. i. Osimskimi sporazumi dosežena sporazumna rešitev mejnega vprašanja. Od leta 2004 pa sta Slovenija in Italija tudi zavezniško povezani v okviru Evropske unije in zveze NATO. Na institucionalni ravni je bilo dolgo verjetno najbolj pereče vprašanje slovenske manjštine v Italiji, kjer je bil leta 2001 dosežen pomemben preboj s sprejetjem t. i. »zaščitnega zakona za Slovence v Italiji,« italijanski manjšini v Sloveniji pa je prav tako zagotovljeno pravno varstvo.

Precej drugačno pa se zdi stanje na drugih ravneh, kjer strasti še vedno burijo predvsem različne interpretacije preteklosti, predvsem v povezavi z značajem prej izpostavljenega nasilja. Tesno je s tem povezano vprašanje kolektivnega spomina oz. spominskih politik. Zdi se, da smo na tem področju še daleč od

sprave, saj prav spomin na pretrpljene zgodovinske krivice predstavlja enega osrednjih delov kolektivne identitete prebivalstva na obeh straneh meje. Na tej podlagi se lahko še naprej uspešno širi nezaupanje ter ohranajo stereotipi in predsodki. V razpravi se bom zato podrobnejše posvetil prav problematiki zgodovinopisja, ki lahko deluje kot eden od dejavnikov utrjevanja, pa tudi preseganja zgodovinsko pogojenih delitev. V tem kontekstu se kot posebej smiselna kaže uporaba nekaterih modernih metodoloških pristopov, predvsem transnacionalne zgodovine, s katerimi lahko presežemo paradigma zaprtih nacionalnih skupnosti, ki je prevladovala v preteklosti. Prav na tem pa temeljijo tudi nacionalistični diskurzi, ki različne nacionalne skupnosti razumejo kot kohezivne kolektivne subjekte, ki so, odvisno od perspektive, bodisi žrtve bodisi izvajalci nasilja.

**Dr Matic Batič**, Study Centre for National Reconciliation (SI)

## **Slovenian-Italian Reconciliation: Have We Already Reached the Goal or Are We Still on the Way?**

### **Abstract**

Slovenes and Italians are among those neighboring European nations whose mutual relations are still strongly marked by the burden of the past, especially events from the second half of the 19th century onwards. At the time of the rise of nationalism as a political ideology, the ethnically mixed territory from the Julian Alps to the Adriatic Sea became a field of Slovene-Italian conflict, based on the conflicting political aspirations of both national communities. Ethnic antagonisms, already present during the Habsburg Monarchy, culminated after the end of World War I, when the disputed northern Adriatic territory was annexed by the Treaty of Rapallo to the Kingdom of Italy, which began a planned policy of Italianization. The latter reached its peak after the rise of the Fascist regime of Benito Mussolini in 1922, who pursued a policy of planned ethnocide. After 1943, the spiral of violence turned against a section of the local Italian population that fell victim to violence by partisans and the Yugoslav army. After the Paris Peace Treaty of 1947, the majority of the Italian population remaining within the Yugoslav borders decided to emigrate to Italy.

The legacy left by these events marks Slovenian-Italian relations, allowing for different interpretations of reconciliation between the two nations to this day. Significant differences can be observed in the international, institutional, and private aspects of these relations, and above all else, these need to be taken into account when trying to overcome historically conditioned antagonisms. Undoubtedly, the greatest positive shifts occurred mainly at the international level, where as early as 1975 the border issue was resolved with the Osimo Treaty. Since 2004, Slovenia and Italy have also been allied in the framework of the European Union and NATO. For a long time, the most pressing issue at the institutional level has probably been that of the Slovene minority in Italy. In this regard, significant breakthrough was achieved in 2001 with the adoption of the „Protection law for Slovenes in Italy.“ Moreover, Italian minority in Slovenia is also guaranteed legal protection.

The situation on other levels seems to be quite different, however, as passions are still mainly aroused by different interpretations of the past, especially in connection with the nature of the violence perpetrated in the inter- and post-World War II period. Closely related to this is the issue of collective memory and commemorative policies. We seem to be a long way from reconciliation in these areas, as the memory of the historical injustices suffered is one of the central parts of the collective identity of the population on both sides of the border. On this basis, mistrust can continue to successfully spread, and stereotypes and prejudices persist. In the discussion, I will therefore focus in more detail on the issue of historiography, which can act as one of the factors of consolidation, as well as of overcoming historically conditioned divisions. In this context, the use of some modern methodological approaches can prove to be exceptionally useful, particularly transnational history, which can overcome the paradigm of closed national communities that has prevailed in the past. The idea of cohesive collective communities is also a basis of nationalist discourse, according to which, national communities act as cohesive collective entities as either victims or perpetrators of violence.

**Dr Łukasz Kamiński**, President of the Platform of European Memory and Conscience (PL)

## **Dealing with Communist Past — the Polish Experience**

### **Abstract**

The Polish case is specific because dealing with the communist past began even before the fall of the communist system. Thanks to the strength of the Solidarity movement, several memorials to the victims of communist crimes were erected in 1980-1981, especially to those killed during the mass protests in 1956 and 1970. In the underground, a number of books and articles on officially forbidden topics of recent history were published in the 1980s.

Paradoxically, this made the process of coming to terms with the communist past difficult immediately after 1989 - many activists of the anti-communist opposition felt that the matter was already at least partly settled. Of course, the most important reason was the nature of the Polish changes, which were based on negotiations with the communists and not on overthrowing the regime. Moreover, it was believed that dealing with the past was not the most important issue to be addressed. Economic, social, and political reforms were considered more urgent.

This is not to say, however, that nothing happened during this time in this area. Symbolic changes were most extensive - in 1990 alone, 1,864 streets were renamed and many monuments to communist „heroes“ were removed. The possibility of rehabilitation of unlawfully convicted persons was introduced. Thanks to changes in the law it became possible to prosecute the perpetrators of crimes committed during the Stalinist period (1944-1956). Several investigations were also launched into crimes committed in the next period.

However, the results were disappointing. Throughout the decade less than 100 perpetrators were brought to justice. There was also a lack of symbolic justice: the state supported research on the communist dictatorship to a very limited extent, many archives remained inaccessible, and only a few NGOs conducted educational activities. This caused growing dissatisfaction, especially among the victims and their families.

The situation changed with the establishment of the Institute of National Remembrance (IPN), which began its real activities in 2000. The new institution quickly became not only one of the largest archives in Poland, but also the largest

institute studying modern history (1939-1989) and popularizing knowledge about it. The prosecution division was less successful, but the number of cases submitted to the courts increased significantly nonetheless. In 2007 IPN received a new task - to conduct lustration. In 2011, it launched a campaign to search for unknown burial places of victims of communist terror, exhume and identify them. Further changes came in 2016, when, on the one hand, the period that IPN examines was extended (1917-1989), and on the other hand, the institution was entrusted with new tasks, including those concerning monuments and war cemeteries.

Although more than 30 years have passed since the collapse of the communist system in Poland, the process of dealing with the past is not yet finished. It is accompanied by disputes and discussions. The Polish experience, with its successes and failures, can nevertheless be a point of reference because of its complexity. Above all, it shows that the slogan of dealing with the communist past does not have to be just an unrealistic postulate, but can become a reality.

**dr. Łukasz Kamiński, predsednik Platforme evropskega spomina in vesti (PL)**

## **Spoprijemanje s komunistično preteklostjo – izkušnja Poljske**

### **Povzetek**

Primer Poljske je poseben, saj se je tam spoprijemanje s komunistično preteklostjo začelo še pred padcem komunističnega sistema. Zaradi moči gibanja Solidarnost je bilo v letih 1980–1981 postavljenih več spomenikov žrtvam komunističnih zločinov, zlasti ubitim med množičnimi protesti v letih 1956 in 1970. Znotraj podtalnih gibanj so v osemdesetih letih izšle številne knjige in članki o uradno prepovedanih temah novejše zgodovine.

Paradoksalno je, da je to otežilo proces pomiritve s komunistično preteklostjo takoj po letu 1989. Številnim aktivistom protikomunistične opozicije se je na mreč zdelo, da je zadeva že vsaj delno rešena. Seveda je bil najpomembnejši razlog narava poljskih sprememb, ki so temeljile na pogajanjih s komunisti in ne na rušenju režima. Poleg tega je bilo prisotno tudi prepričanje, da soočanje s preteklostjo ni najpomembnejše vprašanje, ki bi ga bilo treba obravnavati. Gospodarske, socialne in politične reforme so veljale za nujnejše.

To pa vseeno ne pomeni, da se v tem času na tem področju ni zgodilo nič. Najbolj obsežne so bile simbolične spremembe: že samo leta 1990 so preimenovali 1864 ulic in odstranili številne spomenike komunističnim »junakom«. Uvedena je bila možnost resocializacije nezakonito obsojenih oseb. Zaradi sprememb zakona je postal mogoče preganjati storilce kaznivih dejanj, storjenih v stalinističnem obdobju (1944–1956). Začelo se je tudi več preiskav o zločinah, storjenih v naslednjem obdobju.

Rezultati so bili, žal, razočarajoči. V desetletju je pred sodiščem odgovarjalo manj kot 100 storilcev kaznivih dejanj. Manjkalo je tudi simbolne pravičnosti: država je le v zelo omejenem obsegu podpirala raziskave o komunistični diktaturi, številni arhivi so še vedno bili nedostopni, izobraževalne dejavnosti pa je izvajalo le nekaj nevladnih organizacij. To je povzročilo vse večje nezadovoljstvo, zlasti med žrtvami in njihovimi družinami.

Razmere so se spremenile z ustanovitvijo Inštituta nacionalnega spomina (IPN), ki je začel izvajati svoje dejanske dejavnosti leta 2000. Ta nova ustanova je hitro postala ne le eden največjih arhivov na Poljskem, ampak tudi največji inštitut za študij sodobne zgodovine (1939–1989) in popularizacijo znanja o njej. Oddelek za pregon je bil manj uspešen, vendar se je število zadev, predloženih sodiščem, kljub temu znatno povečalo. Leta 2007 je IPN prejel novo nalogu: izvesti lustracijo. Leta 2011 je začel kampanjo iskanja neznanih grobišč žrtev komunističnega terorja in ekshumacijo ter identifikacijo žrtev. Dodatne spremembe so se zgodile leta 2016, ko se je po eni strani podaljšalo obdobje, ki ga preučuje IPN (1917–1989), po drugi strani pa so bile zavodu zaupane nove naloge, vključno s tistimi, ki zadevajo spomenike in vojna pokopališča.

Čeprav je od zloma komunističnega sistema na Poljskem minilo več kot 30 let, se proces spoprijemanja s preteklostjo še ni končal. Spremljajo ga spori in razprave. Kljub temu je izkušnja Poljske s svojimi uspehi in neuspehi lahko referenčna točka zaradi svoje zapletenosti. Predvsem pa kaže, da slogan spoprijemanja s komunistično preteklostjo ni nujno le nerealen postulat, ampak lahko postane resničnost.

## **The Contribution of Historians to the Reconciliation with the Past in Romania (2003–2006)**

### **Abstract**

In the aftermath of 1989, Romania engaged in a reconciliation with the past process through several transitional justice mechanisms: trials of former communist officials responsible for abuses and crimes against humanity, rehabilitation laws of the former political prisoners and Holocaust survivors, reparations, lustration, rewriting of history textbooks and historian commissions. While a wide range of studies on these mechanisms generally divide them into penal and symbolic measures of dealing with an authoritarian past during the democratization process, new empirical investigations revealed the interactions, connections and links between these two strands. They showed that often, revising the historical narrative enabled the new democratic regimes to adopt penal measures and norms such as the “crimes against humanity” legal category which allow them to increase accountability. By the same token, judicial verdicts against former perpetrators of political crimes and abuses often have set up new historical narratives about the past. For these reason, the official narrative about the former regime constitutes a central dimension of transition to democracy process. However, building a consensual storytelling about the problematic past is not always an easy task to achieve. In Romania, it took several decades to build one. The process was particularly difficult given the fact that the two pasts – fascist and communist – reemerged at the same time after 1989. The comparison between Communism and Fascism was since then, the subject of numerous public debates and intellectual controversies that sparked within the public arena during the 1990s. These debates brought to the fore a memorial competition between competing and mimetic discourses on Holocaust and Gulag.

This paper looks at this complex process through the lenses of the history of two commissions: The International Commission for the study of the Holocaust in Romania (CISHR) (2003) and The Presidential Commission for the analysis of the communist dictatorship in Romania (CPADCR) (2006). The two commissions were set up on the initiative of two Romanian presidents - Ion Iliescu for the former and Traian Băsescu for the latter. Both commissions were composed by a majority of historians and analyzed two main episodes of the national history: the participation of Romania to the Second World War and to the Holocaust (1938-1945) and the communist period (1947-1989). In their conclusions,

the CISHR stressed that during the Second World War, Romania participated in the Holocaust and is responsible for the death of 280,000-380,000 Jews and 11,000 Roma, while the CPADCR established that the communist regime in Romania was, from the beginning to the end, „illegitimate and criminal“. Released in 2004 and 2006, the conclusions of the two massive expertise reports were adopted by Romanian officials and represent, since the mid-2000, the official discourse of the State on its fascist and communist pasts. Consequently, several measures to be discussed, have been adopted in the field of education, criminal law and memory since 2003; the Romanian State understood this way to demonstrate his commitment to the democratization process. However, these measures are less consensual than they appear, and do not instantly produced the announced appeasement either among the political and intellectual elites or among the population. The question arises if the two reports are actually the sign of a successful national reconciliation, or they remain the narrow vision on the past, of a small group of intellectuals and politicians. By analyzing the specific contribution of historians to the reconciliation with the past in Romania, the presentation seeks to formulate an answer to this enquiry.

**dr. Anemona Constantin**, Univerza v Bukarešti

## **Prispevek zgodovinarjev k spravi s preteklostjo v Romuniji (2003–2006)**

### Povzetek

Po letu 1989 je Romunija začela proces sprave s preteklostjo z več mehanizmi tranzicijske pravičnosti: sojenji nekdanjim komunističnim funkcionarjem, odgovornim za zlorabe in zločine zoper človečnost, zakonodajo za rehabilitacijo nekdanjih političnih zapornikov in preživelih žrtev holokavsta, odškodninami, lustracijo, pisanjem zgodovinskih učbenikov na novo in komisijami zgodovinarjev. Čeprav te mehanizme različne študije, ki so jih raziskovale, na splošno delijo na kazenske in simbolne ukrepe obravnavanja avtoritarne preteklosti med procesom demokratizacije, so nove empirične raziskave pokazale interakcije, povezave in vezi med temo skupinama. Pokazale so, da je revizija zgodovinskega diskurza novim demokratičnim režimom pogosto omogočila

sprejemanje kazenskih ukrepov in norm, kot je pravna kategorija kaznivih dejanj zoper človečnost, s katerimi lahko povečajo odgovornost. Podobno so se s sodbami proti nekdanjim storilcem političnih kaznivih dejanj in zlorab pogosto oblikovali novi zgodovinski opisi preteklega dogajanja. Uradni diskurz v zvezi z nekdanjim režimom je zato osrednja razsežnost tranzicije v proces demokracije. Vendar oblikovanje sporazumne pripovedi o problematični preteklosti ni vedno lahka naloga. V Romuniji se je oblikovala več desetletij. Proces je bil zlasti težaven, ker sta obe preteklosti – fašistična in komunistična – znova prišli na dan hkrati, in sicer po letu 1989. Od takrat je bila primerjava med komunizmom in fašizmom tema številnih javnih razprav in intelektualnih polemik, ki so se v javnosti razplamtele v 90. letih. S temi razpravami se je v ospredje prebilo spominsko »tekmovanje« med konkurenčnima in mimetičnima diskurzoma o holokavstu in gulagu.

V tem referatu je ta kompleksen proces obravnavan skozi prizmo zgodovine dveh komisij: Mednarodne komisije za preučevanje holokavsta v Romuniji (CISHR) (2003) in Predsedniške komisije za analizo komunistične diktature v Romuniji (CPADCR) (2006). Komisiji sta bili ustanovljeni na pobudo dveh romunskih predsednikov – prva na pobudo Iona Iliescuja, druga pa na pobudo Traiana Băsescuja. Obe komisiji sta bili sestavljeni večinoma iz zgodovinarjev in sta analizirali dve bistveni epizodi v zgodovini naroda: sodelovanje Romunije v drugi svetovni vojni in pri holokavstu (1938–1945) ter komunistično obdobje (1947–1989). Komisija CISHR je v svojih sklepih poudarila, da je Romunija med drugo svetovno vojno sodelovala pri holokavstu ter je odgovorna za smrt 280.000–380.000 Judov in 11.000 Romov, komisija CPADCR pa je ugotovila, da je bil komunistični režim v Romuniji od začetka do konca »nezakonit in zločinski«. Sklepe obeh obsežnih strokovnih poročil, objavljenih v letih 2004 oz. 2006, so romunski funkcionarji sprejeli. Od sredine prvega desetletja 21. stoletja so ti sklepi uradni državni diskurz o romunski fašistični in komunistični zgodovini. Posledično je bilo po letu 2003 sprejetih več ukrepov, ki jih bomo obravnavali, in sicer na področju izobraževanja, kazenskega prava in zgodovinskega spomina, kar je romunska država razumela kot dokaz o svoji zavezanosti procesu demokratizacije. Vendar ti ukrepi nimajo tako širokega soglasja, kot se zdi, ter v nasprotju z napovedmi niso takoj zadovoljili niti politične in intelektualne elite niti prebivalstva. Poraja se vprašanje, ali sta poročili dejansko znak uspešne narodne sprave ali ostajata le ozek pogled majhne skupine intelektualcev in politikov na preteklost. Z analiziranjem specifičnega prispevka zgodovinarjev k spravi s preteklostjo v Romuniji želim v tej predstavitvi izoblikovati odgovor na to vprašanje.

## **Coming to Terms with the Communist Regime - The Slovak Case**

### **Abstract**

In my paper, I would like to focus on the latest development in Slovakia regarding the progress of reconciliation with the communist regime. For several years, this process was without any relevant results – the criminal liability for the communist crimes was not on the agenda, the redressing of injustices vaded in the shadows. In fact, the process of the coming to terms with totalitarian past started immediately after the fall of the communist regime (1989) by solving the most urgent duties in this respect – the rehabilitation of former political prisoners, compensation for victims and property restitution. Several laws were adopted. It is important to emphasize that such process has several levels – especially legal, economic, and even moral. Especially in early 1990s, the attempts of “drawing a thick line” under period of communism prevailed, which strongly affected this process.

Judicial settlement with the past was poor. Nobody was taken into responsibility and sentenced for the share on the communist crimes. For example, Nation's Memory Institute filed several motions to the General Prosecutor Office of Slovak Republic, but none of those motions resulted in a court trial. Prosecution either did not commence or was stopped. One example, which stands for all: the case of the communist official Vasil Bil'ák, who was accused of treason for the signatory of so-called invitation letter prior to the 1968 occupation, but long-lasting trial ended without the conviction in 2011. The trial started in March 1991 and lasted 20 years. The file from the process has more than 23,000 pages. The formal reasons for the Bil'áks acquittal was the impossibility of the hearing of witnesses (most of them were death) and the missing of the original of the so-called invitation letter (that Russia refused to release). We can symbolically consider this (none) judgment as a summit of inconsistency of the process of coming to the terms with the totalitarian history in Slovakia, especially at the level of the punishment for the crimes of communism in Slovakia. Vasil Bil'ák was also in the people's narrative considered as a traitor and one of the main culprits of the communist totalitarianism. The sentence of the trial that relieved Bil'ák, became later springboard for his rehabilitation, which peaked by the unveiling of his memorial table in his native village Krajné Bystré in February 2015.

During the last two years, situation has dramatically changed. In 2019, the Slovak government recognized the 30th anniversary of the fall of the communism

as an important milestone in the modern Slovak history and provided financial support to several commemorative or scientific events, which took place in the country. In 2020, the National Council of the Slovak republic adopted the law that give the former political prisoners of the communist regime one-off financial contribution (symbolically 1989€) and increase their pension. In 2021 (in recent weeks) the law that will decrease the pension of the former State Security officials and member of the communist government, as well as the members of the Central Committee of the Communist party. I will examine the laws in detail and explain the public discussions which accompanied the passing of the laws.

**dr. Peter Jašek**, Nation's Memory Institute (SK)

## **Pomiritev s komunističnim režimom – primer Slovaške**

### **Povzetek**

V svojem prispevku bi se rad osredotočil na najnovejše dogajanje na Slovaškem v zvezi z napredkom pri spravi s komunističnim režimom. Ta proces je bil nekaj let brez pomembnih rezultatov – kazenska odgovornost za komunistične zločine ni bila na dnevnom redu, popravljanje krivic je bilo potisnjeno v ozadje. Pravzaprav se je proces soočanja s totalitarno preteklostjo začel takoj po padcu komunističnega režima (1989) z reševanjem najnujnejših nalog v zvezi s tem: resocializacijo nekdanjih političnih zapornikov, odškodnino za žrtve in vračanjem premoženja. Sprejetih je bilo več zakonov. Pomembno je poudariti, da ima tak proces več stopenj – zlasti pravno, ekonomsko in celo moralno. Predvsem v začetku devetdesetih let so prevladovali poskusi »potegniti debelo črto« pod obdobjem komunizma, kar je močno vplivalo na ta proces.

Sodna poravnava s preteklostjo je bila slaba. Nihče ni odgovarjal ali bil obsojen zaradi svoje vloge pri komunističnih zločinah. Na primer: Inštitut nacionalnega spomina je vložil pri slovaškem generalnem tožilstvu več predlogov, vendar nobeden od teh predlogov ni imel za posledico sprožitev sodnega postopka. Pregon se ni začel ali je bil ustavljen. Naslednji primer govori za vse. Gre za primer komunističnega uradnika Vasila Biľaka, ki je bil obtožen izdaje zaradi podpisa tako imenovanega povabilnega pisma pred okupacijo leta 1968, vendar se je dolgotrajno sojenje leta 2011 končalo brez obsodbe. Sojenje se je začelo

marca 1991 in je trajalo 20 let. Sodni spis postopka obsega več kot 23.000 strani. Uradni razlogi za Biľakovo oprostitev so bili nezmožnost zaslišanja prič (večina jih je bila mrtvih) in neposedovanje izvirnika tako imenovanega povabilnega pisma (ki ga Rusija ni hotela objaviti). To (ne)sodbo lahko simbolično smatramo kot vrh nedoslednosti procesa pomirjanja s totalitarno zgodovino na Slovaškem, zlasti na ravni kaznovanja zločinov komunizma na Slovaškem. Vasil Biľak je v ustni zgodovini veljal za izdajalca in enega glavnih krivcev komunističnega totalitarizma. Sodba, ki je razbremenila Biľaka, je pozneje postala odskočna deska za njegovo resocializacijo, vrhunec katere predstavlja odkritje njegove spominske mize v njegovi rodni vasi Krajné Bystré februarja 2015.

V zadnjih dveh letih so se razmere dramatično spremene. Leta 2019 je slovaška vlada označila 30. obletnico padca komunizma za pomemben mejnik v sodobni slovaški zgodovini in finančno podprla več spominskih in znanstvenih dogodkov v državi. Leta 2020 je Državni svet Slovaške republike sprejel zakon, po katerem so nekdanji politični zaporniki pod komunističnim režimom prejeli enkratni finančni prispevek (simbolično 1989 €) in povišanje pokojnine. Leta 2021 (v zadnjih tednih) je bil sprejet zakon, ki bo znižal pokojnino nekdanjim uradnikom državne varnosti in članom komunistične vlade, kot tudi članom osrednjega odbora komunistične partije. Podrobno bom preučil zakone in pojasnil javne razprave, ki so spremljale sprejetje zakonov.

## **A Moment in History that Passed: Possibilities of Transitional Justice in Hungary During the Regime Change and its Legacy**

### **Abstract**

What happened in 1989? Was it a kind of a revolution or was it a regime change, or was it a transition? What shall we think about the Communist Dictatorships in Central-Europe? Were they a sort of a legal state? Or were they just based on pseudo-legality? If they were not legal states, what about the torrential state debts and about the international conventions they joined before? (E.g. the Organization for Security and Co-operation in Europe). How can we sort out criminal acts and legal actions? How can we make a difference between the efforts to maintain the dictatorships and the everyday *raison d'état*?

When, before the free elections, the last party-state government started the nullification process, some other questions arose. Who are to be clarified of the charges upon he or she had been sentenced?

These were sharp questions that Hungary faced in 1990's. These questions induced public disputes, seemingly unbridgeable at that time. The forked ways of this „transitional justice” increased the tension as well. What we usually call „transitional justice”, is made up of five branches.

First, the rehabilitation of the victims condemned on a political ground. Second, the prosecution of communist crimes. Third, the recompensation – here I mean restitution of material property as well. Fourth, the symbolic restoration: removing statues, monuments and memorial plaques from public spaces, or changing the street names. And fifth, the recompensation in the field of information. This latter means, handing over the state security files to public archives.

Now, I would not even dare to go in detail about all the above. I would only like to present the fate of two major legislative efforts during the term of the first freely elected parliament of Hungary.

The first proposal for the legislation against communist crimes appeared in a program sheet of the Independent Forum of Jurists in 1989. In fact, it was not strictly on communist crimes (or what we mean under this term

now) but it was aimed to examine the presonal responsibility for the grave crisis in Hungary, in which the country suffered in 1989. The proposal *de facto* meant a complete purge among senior state officials and in the ranks of government administration. Nevertheless, this proposal remaind a draft.

In March 1990, during the run-up to the elections, the conservative party (Magyar Demokrata Fórum) campaigned with the slogan: „Spring-clean!”, so to say, sweeping out the communists from public positions. Since this party won the elections and formed a coalition government, its parliamentary group of the MP's during the summer worked out a bill, called „Iustitia-plan”. While nothing realy came true of this proposed legislation, there was still a demand for such a legislative act. Zsolt Zétényi and Péter Takács submitted a draft law a year later, which was named as the first Act of Justice. The core of the law would have been the circumventing of the period of limitations, saying that the State as such deliberately avoided the persecutio- on of some crimes, and the State did it because of political motives. That's why the limitation period had not been started.

Three factual situations were present in the law's draft: homicide, treason and bodily injury causing death. But, the bill also stated that the if the verdict should be based on this act, the verdict can be commuted indefinitely.

The Constitutional Court, following the initiative of its head, László Sólyom ruled out this law, nullifying the first effort. This Court did not accept the reasoning about the time lapse, and stated that the limitations are valid.

The second effort came in 1993. Now only Zsolt Zétényi drafted the bill. This was a softer version of the first one, saying that in the factual situations above, which happened to take place between 1944 and 1989, the Prose- cutor's office starts the process, the court concludes the case, but at the end, the court sets forth the exclusion of criminal liability because of the time lapse, the limitations. This was also ruled out by the Constitutional Court.

My paper presents the political fights and the legacy of these disputes which left a scar on the Hungarian national memory.

## Trenutek v zgodovini, ki je minil: možnosti tranzicijske pravičnosti na Madžarskem med spremembo režima in njegovo zapuščino

### Povzetek

Kaj se je zgodilo leta 1989? Je bila to nekakšna revolucija ali sprememba režima ali tranzicija? Kako naj razumemo komunistične diktature v Srednji Evropi? So bile nekakšna pravna država? Ali pa so temeljile samo na psevdozakonitosti? Če niso bile pravne države, kako je potem z ogromnimi državnimi dolgovi in mednarodnimi konvencijami, ki so se jim prej pridružile? (Npr. Organizacija za varnost in sodelovanje v Evropi). Kako lahko ločimo kazniva dejanja od zakonitih? Kako lahko razlikujemo med prizadevanji za ohranitev diktature in vsakdanjim nacionalnim interesom (*raison d'état*)?

Ko je pred svobodnimi volitvami zadnja enostrankarska vlada začela postopek za uveljavljanje ničnosti, so se pojavila še nekatera druga vprašanja. Koga je treba razbremeniti obtožb, na podlagi katerih je bil obsojen?

To so bila ostra vprašanja, s katerimi se je Madžarska soočala v devetdesetih. Povzročala so javne spore, ki so bili v tistem času na videz nepremostljivi. Razcepljene poti te »tranzicijske pravičnosti« so tudi povečale napetost. Kar običajno imenujemo »tranzicijska pravičnost«, sestoji iz petih vej.

Prvič, rehabilitacija žrtev, obsojenih iz političnih razlogov. Drugič, pregon komunističnih zločinov. Tretjič, kompenzacija – s tem mislim tudi na povrnitev materialne lastnine. Četrтиč, simbolična obnova: odstranitev kipov, spomenikov in spominskih plošč iz javnih prostorov ali spremenjanje imen ulic. In, petič, kompenzacija na področju informacij. Slednje pomeni predajo tajnih (varovanih) državnih dokumentov javnim arhivom.

V podrobnosti o vsem zgoraj zapisanem se trenutno ne upam spustiti. Predstavl bom le vidik dveh pomembnih zakonodajnih prizadevanj v času prvega svobodno izvoljenega parlamenta Madžarske.

Prvi predlog za zakonsko ureditev proti komunističnim zločinom se je pojavil v programske listu neodvisnega foruma pravnikov leta 1989. Pravzaprav ni šlo zgolj za komunistične zločine (ali za to, kar si danes predstavljamo pod tem izrazom), ampak je bil namenjen preučitvi osebne od-

govornosti za hudo krizo na Madžarskem, ki jo je država trpela leta 1989. Predlog je *de facto* pomenil popolno čistko med višjimi državnimi uradniki in v vrstah vladne uprave. Kljub temu je ta predlog ostal le osnutek.

Marca 1990 je v času pred volitvami konservativna stranka (Magyar Demokrata Fórum) vodila kampanjo s sloganom »Pomladno čiščenje!«, s čimer se je nanašala na svoj cilj pometanja komunistov z javnih položajev. Ker je ta stranka zmagala na volitvah in sestavila koalicijsko vlado, je njena skupina poslancev poleti pripravila predlog zakona, imenovan »Iustitia-plan«. Čeprav se predlagana zakonodaja ni uresničila, je še vedno ostala težnja po takem zakonodajnem aktu. Zsolt Zétényi in Péter Takács sta leto pozneje vložila osnutek zakona, ki so ga oklicali za prvi »Pravični Zakon«. Jedro zakona bi predstavljal izognitev rokov zastaranja, saj naj bi se država namerno izogibala preganjanju nekaterih zločinov zaradi političnih motivov. Zato zastaralni rok ne bi začel teči.

Besedilo zakona je govorilo o treh konkretnih okoliščinah: umor, izdaja in telesne poškodbe, ki so povzročile smrt. Toda v besedilu je bilo zapisano tudi, da bi bilo v primeru izreka sodbe na podlagi tega dejanja mogoče kazensko trajno znižati.

Ustavno sodišče je na pobudo svojega predstojnika Lászla Sólyoma ta zakon zavrnilo in izničilo prvo prizadevanje. Sodišče ni sprejelo obrazložitve glede časovnega zamika in je navedlo, da so roki veljavni.

Do drugega prizadevanja je prišlo leta 1993, ko je osnutek zakona pripravil le Zsolt Zétényi. Ta je predstavljal mehkejšo različico prve. Po tej različici bi tožilstvo začelo postopek v zgoraj opisanih okoliščinah, ki so se zgodile med letoma 1944 in 1989, sodišče pa zaključilo zadevo, s tem da bi na koncu izključilo kazensko odgovornost zaradi časovnega zamika oz. zastaralnega roka. Tudi to različico je ustavno sodišče zavrnilo.

Moj prispevek predstavlja politične boje in njihovo zapuščino, ki je pusnila brazgotino v madžarskem narodnem spominu.

## Avtorji

**Prof. dr. Peter Jambrek** je diplomiral na Pravni fakulteti Univerze v Ljubljani in doktoriral na sociološkem oddelku Univerze v Chicagu (ZDA). Trenutno je profesor ustavnega prava in prava človekovih pravic na Fakulteti za državne in evropske študije in na Evropski pravni fakulteti v Sloveniji. Svojo akademsko kariero je začel na Pravni fakulteti Univerze v Ljubljani, kjer je predaval v letih 1965–2000. Kot gostujoči profesor je predaval na Univerzi v Pittsburghu (Pittsburgh, ZDA, 1989), Univerzi v Virginiji (Charlottesville, ZDA, 1982), Univerzi v Zambiji (Lusaka, Zambia, 1973–1975), v poletnem semestru leta 1976 pa je bil raziskovalec na Centru za mednarodne zadeve, Harvard University (Boston, ZDA). Bil je član znanstvenega odbora Agencije Evropske unije za temeljne pravice in član Evropske komisije za demokracijo skozi pravo (“Beneška komisija”) od 1991 do 2008. Bil je sodnik (1990–1998) in predsednik (1991–1993) Ustavnega sodišča Republike Slovenije in sodnik Evropskega sodišča za človekove pravice (1993–1998). Je avtor in urednik številnih knjig, monografij in člankov s področja človekovih pravic in evropskega prava, kot tudi s področja sociologije. Opravljal je številne funkcije v mednarodnih in v slovenskih znanstvenih in univerzitetnih združenjih. Med letoma 1987–1991 je prispeval k osamosvojitvi Slovenije in k razvoju njene ustavne demokracije kot eden od avtorjev slovenskega nacionalnega programa (Nova revija, št. 57) leta 1987, kot urednik in soavtor prvih osnutkov slovenske ustave (1988–1991), in kot eden od ključnih pobudnikov za plebiscit o osamosvojitvi Slovenije (1990).

**Prof. dr. Jernej Letnar Černič** je redni profesor za pravo človekovih pravic, državno pravo in upravno pravo na Fakulteti za državne in evropske študije in Evropski pravni fakulteti Nove univerze. Do sedaj je objavil številne prispevke v slovenščini, angleščini, španščini, italijanščini in romunščini. V zadnjih letih je objavil tri znanstvene monografske publikacije in sicer: »The Impact of European Institutions on the Rule of Law and Democracy: Slovenia and Beyond. Oxford, Hart (Bloomsbury), 2020« (v soavtorstvu z Matejem Avbljem in Gorazdom Justinekom); »Slovenija na razpotju: geneza varstva človekovih pravic v slovenski družbi«, Kranj: Nova univerza, Fakulteta za državne in evropske študije, 2018 in »Corporate accountability under socio-economic rights«, Oxon; New York: Routledge, 2019, ter knjigo v soavtorstvu in uredništvu: »The Future of Business and Human Rights : Theoretical and Practical Considerations for a UN Treaty«, Cambridge; Antwerp; Portland: Intersentia. 2018 (z Nicolasom Carrillo-Santarelli). Njegova dela so bila citirana v poročilih organizacije Združenih narodov, Evropskega parlamenta in Sveta Evrope, v odločbah slovenskega Ustavnega sodišča ter akademskih študijah na vseh koncih sveta. Od študijskih

let naprej deluje v različnih vlogah v slovenski in globalni civilni družbi, pri čemer sodeluje pri številnih domačih in mednarodnih človekoljubnih projektih.

**Prof. emeritus Janez Juhant**, študij v Innsbrucku, duhovnik od 1974; mag. filozofije (1972) in teologije (1976) ter dr. filozofije (1978); od 1994 redni profesor, od 2015 zaslužni profesor Teološke fakultete Univerze v Ljubljani. Knjige: Krekovo berilo; Zgodovina filozofije: stari in srednji vek; Človek v iskanju svoje podobe: filozofska antropologija; Globalisierung, Kirche und postmoderner Mensch; Občutek pripadnosti; Im Feuer der europäischen Ideenzüge: Slowenien; Etika I: na poti k vzajemni človeškosti; Idejni spopad: Slovenci in moderna; Idejni spopad 2: Katoličani in revolucija; Za človeka gre; Človek in religija; From Ethical Person to Dialogical society: Challenges of Global Society. Okoli sto znanstvenih razprav in poglavij v mednarodnem in domačem okviru, član združenj in prejemnik nagrad.

**Dr. Matic Batič** je magistriral iz zgodovine in nemškega jezika na Univerzi v Ljubljani leta 2015. Leta 2020 je uspešno zaključil doktorski študij na Fakulteti za humanistične študije Univerze na Primorskem z zagovorom doktorske disertacije z naslovom »Italijanizacija kulturne krajine v Goriški pokrajini od konca prve svetovne vojne do kapitulacije Italije«. Od leta 2015 do 2020 je bil zaposlen na Znanstveno-raziskovalnem središču Koper, od 2021 pa nadaljuje svoje zgodovinske raziskave na Študijskem centru za narodno spravo v Ljubljani. Njegovi raziskovalni interesi se nanašajo na različna vprašanja povezana z zgodovino severno-jadranskega območja v 19. in 20. stoletju. Primarno raziskuje obdobje med svetovnima vojnoma, zlasti v povezavi s problematiko fašizma na tem območju in ideološko pogojenimi posegi v lokalno kulturno krajino, pa tudi kulturno in publicistično dejavnost nemško govoreče skupnosti. Sodeloval je na številnih mednarodnih znanstvenih konferencah in doslej objavil več znanstvenih člankov v različnih zgodovinskih revijah in zbornikih (npr. »Borderlands of Memory«, ki je izšel pri založbi Peter Lang leta 2019).

**Dr. Lukasz Kamiński** je zgodovinar, čigar specializacija je zgodovina komunizma in protikomunističnega upora. Je docent na univerzi v Vroclavu. Od 2000 do 2016 je delal na Inštitutu za nacionalni spomin, od 2011 do 2016 kot njegov predsednik. Od leta 2017 je predsednik Platforme evropskega spomina in vesti. Je tudi sourednik (z Grzegorzem Waligóro) publikacije Zgodovina solidarnosti (v 6 zvezkih, 2010).

**Dr. Anemona Constantin** je podoktorantka na raziskovalnem inštitutu ICUB Univerze v Bukarešti. Doktorat znanosti s področja političnih ved je pridobila na pariški univerzi Nanterre (2019). Njena dela preučujejo preobrazbe romunskega

intelektualnega polja po letu 1989, javne razprave o fašizmu in komunizmu, ki so se v vzhodni Evropi pojavile v postsocialističnem obdobju, in (ponovno) zapisovanje nacionalnih zgodovin v Romuniji, Bolgariji in Republiki Moldaviji v času po padcu Berlinskega zidu. Njena doktorska in podoktorska dela so potekala v okviru več mednarodnih projektov: The Criminalisation of Dictatorial Pasts in Europe and Latin America in Global Perspective (2016–2019), ki sta ga sofinancirala programa Les passés dans le présent (Labex, CNRS, Francija) in Care for the Future (AHRC, Združeno kraljestvo), in Transnational Justice and Memory in Global Perspective (2018–2020) Univerze v Bukarešti. Najnovejše publikacije: Anemona Constantin, »L’enseignement de l’histoire du communisme à l’Est: Bulgarie, Roumanie, République de Moldavie«, Passés Futurs, št. 9, julij 2021. Anemona Constantin (z Valentynom Behrom, Muriel Blaive, Laure Neumayer, Matějem Zomboryjem), »An anti-communist Consensus: The Black Book of Communism in Pan-European Perspective«, Revue d’études comparatives Est-Ouest, št. 2-3, 2020.

**Dr. Peter Jašek** je študiral zgodovino na Filozofski fakulteti Univerze v Trnavi. Od leta 2009 je delal kot raziskovalec na Inštitutu nacionalnega spomina. Od leta 2018 je bil direktor Oddelka za znanstveno raziskovanje na Inštitutu nacionalnega spomina. Njegovo raziskovanje se je osredotočalo na slovaško zgodovino v 20. stoletju, zlasti na leto 1968 na Slovaškem, na obdobje tako imenovane normalizacije (70. in 80. leta) in na padec komunističnega režima na (Češko)Slovaškem. Je urednik številnih konferenčnih zbornikov in avtor prispevkov, objavljenih na Slovaškem in v tujini. Je soavtor raznih razstav, ki se osredotočajo na sodobno zgodovino Slovaške.

**Dr. Áron Máthé**, zgodovinar, je namestnik predsednika Madžarskega odbora za spomin na žrtve holokavsta. Od leta 2001 do 2012 je delal za muzej Hiša terorja (Terror Háza Múzeum), kjer je bil kustos in raziskovalec, pozneje pa vodja raziskovalnega oddelka. Od leta 2012 do 2014 je bil raziskovalec in analistik pri fundaciji Századvég. Sodeloval je pri ustvarjanju nacionalnega avdiovizualnega arhiva, edinstvenega nabora posnetkov ustne zgodovine. Prav tako je soustvarjal številne razstave, npr. stalne in začasne razstave v muzeju Hiša terorja, Muzeju holokavsta na jugu Madžarske in muzeju Emlékpont, ki služi kot opomin na dobo socializma. Njegove publikacije vključujejo: Magyar Tragédia 1944-1947 (társszerző) (Madžarska tragedija 1944-1947) (2011), A zuglói nyilasok pere (Sojenje nacistom iz predmestja Zugló) (2014). »Az nem lehet, hogy súlyos bűntett ne legyen büntethető« (Poglavlja iz pravne zgodovine v prehodnih letih/zgodovinska pravičnost) (2017), A nyilaskereszt árnyékában (Teorija in praksa madžarskih nacistov) (2019), Vörös karszalag – ideiglenes

karhatalmi osztagok 1944-1945-ben (Rdeči trak na rokavu – milice v vmesnem obdobju) (2020); A beszéd – Apponyi a magyar ügy védelmében (forgatókönyv társszerző) (film o predstavitevi Alberta Apponyija v Parizu 1920; soavtor scenarija) (2020.)

## Authors

**Peter Jambrek, PhD.**, graduated from the Faculty of Law at the University of Ljubljana and obtained a Ph.D. from the Department of Sociology at the University of Chicago (USA). He currently holds the chair of constitutional law and human rights law at the Faculty of Government and European Studies and at the European Faculty of Law in Slovenia. He began his academic career at the Faculty of Law, University of Ljubljana, where he lectured between 1965 and 2000. As visiting professor, he lectured at the University of Pittsburgh (Pittsburgh, USA, 1989), University of Virginia (Charlottesville, USA, 1982), University of Zambia (Lusaka, Zambia, 1973–1975), and in the summer semester of 1976, he was a researcher at the Center for International Affairs, Harvard University (Boston, USA). He was a member of the Scientific Committee of the European Union Agency for Fundamental Rights and a member of the European Commission for Democracy through Law (“Venice Commission”) between 1991 and 2008. He was a judge (1990–1998) and the president (1991–1993) of the Constitutional Court of the Republic of Slovenia and a judge at the European Court of Human Rights (1993–1998). He has authored and edited numerous books, monographs and articles on human rights and European law, as well as sociology. He has held numerous positions in international and Slovenian scientific and university associations. Between 1987 and 1991, he contributed to the independence of Slovenia and to the development of its constitutional democracy as one of the authors of the Slovenian national programme (*Nova revija*, issue 57) of 1987, as the editor and co-author of the first drafts of the Slovenian constitution (1988–1991) and as one of the key instigators of the plebiscite on the independence of Slovenia (1990).

**Jernej Letnar Černič, PhD.**, is a full professor of Human Rights Law, State Law and Administrative Law at the Faculty of Government and European Studies and the European Faculty of Law of the New University. He has published

numerous papers in Slovenian, English, Spanish, Italian and Romanian. In recent years, he has published three scientific monographs, namely: “The Impact of European Institutions on the Rule of Law and Democracy: Slovenia and Beyond. Oxford, Hart (Bloomsbury), 2020“ (co-authorship with Matej Avbelj and Gorazd Justinek); “Slovenija na razpotju: geneza varstva človekovih pravic v slovenski družbi”, Kranj: New University, Faculty of Government and European studies, 2018; „Corporate accountability under socio-economic rights“, Oxon; New York: Routledge, 2019; and “The Future of Business and Human Rights: Theoretical and Practical Considerations for a UN Treaty”, Cambridge; Antwerp; Portland: Intersentia. 2018 (co-authored and edited, the other author being Nicolás Carrillo-Santarelli). His works have been cited in reports by the United Nations, European Parliament and Council of Europe, in decisions of the Slovenian Constitutional Court and academic studies all over the world. From his student years onwards, he has been active in various roles in Slovenian and global civil society, participating in numerous domestic and international humanitarian projects.

**Janez Juhant, PhD.**, studied in Innsbruck; priest since 1974; MA in Philosophy (1972) and Theology (1976) and PhD in Philosophy (1978); at the Faculty of Theology of the University of Ljubljana full professor since 1994, Professor Emeritus since 2015. Books: Krekovo berilo; Zgodovina filozofije: stari in srednji vek; Človek v iskanju svoje podobe: filozofska antropologija; Globalisierung, Kirche und postmoderner Mensch; Občutek pripadnosti; Im Feuer der europäischen Ideenfüge: Slowenien; Etika I: na poti k vzajemni človeškosti; Idejni spopad: Slovenci in moderna; Idejni spopad 2: Katoličani in revolucija; Za človeka gre; Človek in religija; From Ethical Person to Dialogical society: Challenges of Global Society. Approximately 100 scientific discussions and chapters in international and domestic environment, member of associations and prize winner.

**Matic Batič, PhD.**, received his MA in History and German Language from the University of Ljubljana in 2015. In 2020, he successfully completed his doctoral studies at the Faculty of Humanities of the University of Primorska, defending his doctoral dissertation titled »Italianization of the cultural landscape in the Gorizia region from the end of World War I to the capitulation of Italy«. From 2015 to 2020 he was employed at the Science and Research Centre Koper, Slovenia. Since 2021, he has been continuing his historical research at the Study Centre for National Reconciliation in Ljubljana, Slovenia. His research interests concern various issues associated with the history of the North Adriatic area in the 19th and 20th centuries. In particular, he researches the interwar period,

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**Łukasz Kamiński, PhD.**, historian, specializing in history of communism and anticomunist resistance. Assistant professor at University of Wrocław. 2000-2016 in the Institute of National Remembrance, 2011-2016 as its president. Since 2017 president of the Platform of European Memory and Conscience. Co-editor (with Grzegorz Waligóra) of the history of Solidarity (in 6 volumes, 2010).

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**Peter Jašek, PhD.**, studied history at the Faculty of Arts at the University of Trnava. Since 2009 worked as a researcher at the Nation’s Memory Institute. He served as a director of the Department of the scientific research at the Nation’s Memory Institute since 2018. His research focused on the Slovak history in the 20th century, especially on year 1968 in Slovakia, period of so-called normalization (70s and 80s), fall of the communist regime in (Czecho)Slovakia. He is an editor of the several conference proceedings and an author of the papers

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