

# **THE ISSUE OF PRIVATE PROPERTY RESTITUTION IN THE INTERSTATE RELATIONS: THE SUDETEN GERMAN CASE**

By  
Evgeniya Egupova

Submitted to  
Central European University  
Department of Political Science

In partial fulfillment of the requirements for the degree of Master of Political  
Science

Supervisor: Professor Matteo Fumagalli

Budapest, Hungary  
2008

## **Abstract**

Little has been written about the important aspects for international relations of the private property restitution issue of in Europe and, in spite of its salience, this issue did not receive extensive coverage in the relevant literature. Most if not all restitution legislation in the countries of Central and Eastern Europe excludes most of the victims of expropriation who for various reasons had to change their citizenship. The absence of the restitution mechanisms for such persons may possibly results into tensions on the interstate level. This thesis aims at filling some of the gap in the relevant literature as it explores the case of the Sudeten Germans expelled from Czechoslovakia between 1945 and 1948 with their property being expropriated under the Beneš Decrees. The analysis concentrates on the relations between Germany and Austria (as the host states for the Sudeten minority) on one side and the Czech Republic on the other. Despite the fact that it would be natural for Austria and Germany to promote rights of its citizens, the Sudeten German restitution claims has never been a priority in the foreign policy of the two countries. To resolve this apparent contradiction the thesis argues that advocates of the Sudeten German rights have possessed low degree of influence on the domestic level. Nevertheless, manipulation of the issue by the political forces in all three countries has been complicating interstate relations. The comparative analysis of Czech-German and Czech-Austrian relations provides the evidence in favor of the main argument and allows tracing influence of the private property restitution issue on these relations.

## **Acknowledgements**

I would like to thank my academic supervisor Matteo Fumagalli for his support and guidance through my research. I would also like to show appreciation to my academic writing instructor Thomas Rooney for his valuable comments in writing this thesis. I am very grateful to Todd for his corrections and fresh outlook on the subject; to Žofia, Aleksandra and Irina for their readiness to help and answer my questions; and to my mother, Marina Egupova, for her constant support.

## Table of Contents

Abstract.....	ii
Acknowledgements .....	iii
Table of Contents .....	iv
Introduction.....	1
Chapter 1: Czech-German Relations between 1918 and 1948: Origins of Controversies .....	12
1.1 Creation of Czechoslovakia. German status: from dominating power to the national minority.....	13
1.2 Incorporation of the German Minority into a Slavic State.....	16
1.3 Radicalization of the German minority.....	20
1.4 Occupation of Bohemia and Moravia: growing Czech discontent.....	23
1.5 Post-war Reconstruction of Czechoslovakia. The Beneš Decrees and Population Transfers .....	25
Chapter 2: Theories of Reparative Justice and Their Implications for the Restitution in the Post-Socialist Countries. Property Restitution in the Czech Republic and the Sudeten German Question. ....	31
2.1 The Debates on the Subjects of Restitution .....	31
2.2 The Rectification Principle.....	34
2.3 Persisting Injustices .....	37
2.4 Evolution of the Restitution Concept in the International Law.....	39
2.5 Current legislation on restitution issues in the Czech Republic and Sudeten German question. ....	41
Chapter 3: The Sudeten German Question as an Obstacle to the German Reconciliation Policy towards the Czech Republic.....	49
3.1 Relations with the Eastern Neighbor: German Reconciliation Policy.....	49
3.2 The First Attempts to Reconcile .....	54
3.3 Property Claims and “Right to Homeland” as Factors Deteriorating the Relationships. Crisis of the Mid-1990s .....	57
3.4 Greatest Degree of Understanding: The Czech-German Declaration of 1997.....	59
Chapter 4: Austrian Foreign Policy towards the Czech Republic: Opportunities for Protection of the Sudeten German Interests .....	67
4.1 Relations with the Eastern Neighbor: Austrian Security Provision .....	68
4.2 Late Reaction to the Sudeten Problem.....	69
4.3 Sudeten Issue as a Part of the National Policy in Austria.....	70
4.4 Links between the Restitution Problem and the EU Accession .....	71
4.5 Restitution of the Sudeten German Property: a Goal of National Policy or an Obstacle to It.....	74
Conclusion .....	76
Bibliography.....	80

## Introduction

The process of private property restitution<sup>1</sup> in Central and Eastern Europe (CEE) was launched in the beginning of the 1990s. The restitution process primarily was the result of collapse of the communist system, which was accompanied by a full-fledged process of privatization<sup>2</sup> and re-privatization of economies. Thus private property restitution – including all transfer of the property rights from the state to private persons – became a part of the larger process of denationalization (Blacksell and Born 2002, 178). Although the process of restitution is considered to be over in most of the states of Eastern Europe, this only concerns the citizens of those states. There are still a significant number of former owners and their heirs spread all over the world seeking to regain properties expropriated by authoritarian regimes of the 20<sup>th</sup> century. Since this process involves citizens of different countries the issue of restitution has moved on to a new level: from national affairs to interstate relations. Unresolved issues may potentially lead to complications of such relationships.

The issue of restitution – as an attempt to remedy historical injustices – is a part of the scholarly discussion on reparative justice. According to Thompson (2001) the question of reparative justice is being brought up if “injustice has occurred or at least if people believe that it could occur”. In the case of CEE; however, this question mainly considered injustices committed by the communist regimes (Karadjova 2004, 326). It is a natural development for the countries that are in the process of transition as the new regimes try to distinguish

---

<sup>1</sup> In this work the term “restitution” is used in the Western law interpretation (as opposed to Soviet and post-Soviet law). It generally denotes compensation for damages or losses caused by illegal actions, by means of restoring the state that had existed before such actions were committed. Restitution can be accomplished in kind (if it is possible), which means restoration of the property rights on existing houses, land, buildings, etc. If all the expropriated property cannot be restored, the international law allows for returning of the properties of approximate equal value (substitution) (Marysheva 2004).

<sup>2</sup> Privatization is the process of transferring the property from the state to private persons. On the international level the relationship between the state and foreign investors, as well as between the state and its citizens, are regulated by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocol No. 1 of 20 March 1952, appended to the Convention. The Protocol declares the principle of private property protection. Besides these two documents, the international law does not provide for specific regulations of the privatization processes (Shumilov 2001, 248)

themselves from the past regimes. The main objectives of the process in CEE were defined by different authors as 1) remedy for past injustices, 2) compensation for the harm done by previous unjust regimes (Swain 1999, 1201), and 3) restoration of the confidence of public opinion towards private property (Karadjova 2004, 326-328). It is clear that the general assumption in CEE was to concentrate on the injustices which occurred during the communist regimes. However, in such countries as the Czech Republic and Slovakia the periods when historical injustices eligible for remedies occurred may be extended to the regimes between 1938 and 1948 as victims of expropriations continue to deem them as injustices (Blacksell and Born 2002, 183).

Waldron creates a broader scope for definition of the objectives of restitution. He argues that an individual's identity is shaped in terms of one's ability to establish what are the acts and events that took place in the past that influenced this identity, as well as in terms of being able to distinguish between the memories of what actually happened, wishes, fantasies, and other ideas of the events (or experiences) that did not necessarily happen. He continues on saying that memory is equally important to the communities as well as to individuals. Neglecting historical records affects communities through individuals and vice versa. In the former case the damage is done to the individual identity and thus to the community, which it sustains. And vice versa, neglecting historical records for the community hurts individuals as their identities, to some point, are shaped by the communities (Waldron 1992, 6). Thus restitution (as an act performed by the authorities) may represent communal remembrance:

Quite apart from any attempt genuinely to compensate victims or offset their losses, reparations may symbolize a society's undertaking not to forget or deny that a particular injustice took place, and to respect and help sustain a dignified sense of identity in memory for the people affected (Waldron 1992, 6).

The important characteristic of any injustice is that once it has been committed it continues to exist until it is stopped or remedied. In case of property restitution in the CEE the

injustice of expropriation persists; legal and institutional arrangements continue to perpetuate the existing order as long as the rights for the property are not restored to all the original property owners. If this is not done it would mean that expropriation (injustice) continues (Waldron 1992, 14-15). The perception of the injustices committed by previous regimes clearly exists among the citizens of the CEE countries. Coupled with the fact that some of these perceived injustices were not rectified to the present (as in case of victims of the Beneš Decrees, particularly the Sudeten Germans), it creates an urgent need for restitution.

The process of restitution is considered to be a closed issue for many countries in CEE. However, because of the limitations included in the restitution legislation, i.e. laws referring only to those with citizenship of a respective country, this question is settled on the domestic level. The controversies continue to exist on the international level. This thesis will examine some of those controversies and argue that moral obligations to rectify past injustices are not necessarily primary factors that define state foreign policies. On the contrary, the definitive factors have pragmatic nature. Those may refer to influence of the certain political forces or the degree of consistency of the restitution claims to the general goals of the foreign policy of the state. Such pragmatic considerations may influence the behavior of the states on the international arena to a greater degree than moral obligation to resitute do.

Most of the works devoted to the restitution issue discuss the legislation in Eastern European Countries and its successes and failures (Barkan 2000; Blacksell and Born 2002; Brada 1996; Karadjova 2004; Kritz 1996; Kupka 1992; Simoneti 1993; Swain 1999; Turnock 1998). As a rule there are several challenges that define the framework of discussion of the restitution attempts in the region: defining actions of the previous regimes that should make up ground for a restitution claim; setting principles of eligibility for restitution; defining the period of time to be considered, to which a claim is related; limiting the size and scope of

restitution; and choosing the form of restitution (in kind or compensation) (Blacksell and Born 2002; Karadjova 2004, Barkan 2000, 114).

When the problem of influence on interstate relationship is discussed this is primarily from the perspective of treatment of national minorities, the kin abroad (Barkan 2000; Blacksell and Born 2002; De Zayas, 1994; Marrus 1985). Concerning the question whether to favor individual claimants or minority groups, countries tend to give priority to the former ones. In some cases both individuals and legal persons are eligible for restitution, but there are no specific provisions for religious or ethnic minorities. This is the case, for example, for Czechoslovak Law on Extrajudicial Rehabilitation (Karadjova 2004, 341). Despite the fact that the inclusion of minorities into national legislation would help in rebuilding identities and reinstating them into social and cultural life of the society, the countries would hesitate to directly compensate them because they often fail to distinguish between private and communal properties. In addition, the lack of recognition for minority groups is important because, as some authors point out (Karadjova 2004, 341), such restitution creates “positive discrimination”, which has a crucial impact on formation of a new democratic society.

In the restitution literature, very little attention is paid to the impact that private property restitution has had on interstate relationship. Generally states are reluctant to satisfy claims of both physical and legal foreign persons. Therefore, most of the Eastern European legislation includes the requirement of citizenship for all persons claiming restitution (Karadjova 2004, 349). There are several reasons for this: it is difficult to properly identify owners; states tend to protect the interests of their own nationals; and foreigners are usually perceived as people who might export capital and as “not deserving” reparation as they allegedly suffered less injustices during the communist era (Karadjova 2004, 349). When the requirements of citizenship exist in the state legislation the issue of property restitution



becomes primarily the matter of domestic policies. Nevertheless, exclusion of foreigners from the process of restitution may affect the relationship between the restituting country and country of citizenship of claimants. Thus the main goal of this research is to fill the gap in the literature by exploring specific influences unresolved private property restitution issues have on the interstate level and how these tensions are resolved.

One of the cases when interstate relations are deeply affected by the question of restitution is discussed by Barkan (2000) and Karadjova (2004). It is the case of American citizens of Czech origin claiming restitution of their property in Czech Republic. As Czech legislation excluded foreigners from the process of restitution those Czechs who were naturalized in the US and thus lost their Czech citizenship became automatically excluded from the process as well. The United States of America (US) reacted to this negatively and tried to intervene on behalf of its citizens. The dispute was settled by the end of 1990s when “foreigners” received their citizenship. However, this was done in a way that they still were not able to get involved in the process of restitution (Barkan 2000, 129).

Another such case is that of the Sudetenland Germans<sup>3</sup>: ethnic Germans who used to inhabit Bohemia and Moravia-Silesia in Czechoslovakia and Poland. Large numbers of them were expelled and resettled after World War II as they were perceived to be Nazi collaborators. The property of the expelled Germans was expropriated under the Beneš Decrees (Phillips 2001, 173). The fact that the Beneš Decrees have not yet been repealed leaves many Sudeten claims for restoring of their property rights unsatisfied. This issue has seriously complicated the Czech-German relationship (Barkan 2000, 135), and some tensions have arisen between Poland and Germany because of the same problem. Although Poland still

---

<sup>3</sup> All Germans settled in Czech lands were named Sudeten after the mountain range on the north of Bohemia and Moravia. After World War II this term was used to denote those Germans who were residing within the borders of the first Czechoslovak Republic (1918-1938) (Jenne 2007, 212). For the purposes of this work the term will be used in the second meaning because concentrates on interstate dimension of the relationship between the Czechs and the Germans, which current work is exploring.

does not have a well-defined restitution legislation it seems to be much closer to formulating criteria for restitution for Sudetes than the Czech Republic. Besides, communication is taking place mostly on at a nongovernmental level through non-governmental and non-profit organizations (Barkan 2000, 135).

In case of Czech-American relations, American citizens received a chance to reapply for Czech citizenship only by the time the filling period for restitution claims had been closed. Obviously many issues remained unresolved but it is unlikely that there will be any further changes in the Czech restitution law because most of the property that once belonged to current American citizens has already been either privatized or restituted to the family members who remained Czech citizens (US Department of State). However, when it comes to discussion of German-Czech and Austrian-Czech, relations the question of restitution of property expropriated from Sudeten Germans in Czechoslovakia under the Beneš Decrees between 1939 and 1945 seems far from being closed. Cases regarding property restitution are being brought to the Czech courts by members of the Sudeten German minorities of Austria and Germany.

The process of property restitution is closely connected to the discussion of the Beneš Decrees. As a rule, the former issue is considered as a part of the latter (Waters 2006; Nagengast 2003; Phillips 2001; Handl 1997). There are 15 out of 143 decrees adopted by the Czechoslovak president Beneš that are debated. They deal with the status of all the persons disloyal to Czechoslovak state. The majority of those disloyal persons were considered to be ethnic Germans or Hungarians. An overall set of decrees and other legislative acts provided for:

- confiscation of the property belonging to persons who identified themselves as German or Magyar during the census of 1929 (Nagengast 2003, 336) without compensation<sup>4</sup>;
- denaturalization of ethnic Germans with the exception of those who could demonstrate loyalty to the state<sup>5</sup>;
- forced labor denaturalized persons<sup>6</sup>;
- trial in absentia for those committed treason against Czechoslovakia during German occupation<sup>7</sup>;
- amnesty for those who committed any act between September 30, 1938 and October 28, 1945, which was to contribute to the Czech and Slovak struggle against or reprisals for the actions of the occupying forces and which were in the breach with existing legislation (Waters 2006, 71-72)<sup>8</sup>.

There is no agreement, however, whether the Beneš Decrees provided for expulsions of ethnic minorities from the territory of Czechoslovakia. The Czech Republic insists that population transfers were authorized by the allies through signing the Potsdam agreement on August 2, 1945, which provided for “humane and orderly fashion” of the population transfers (Naimark 2001, 117). However, the responsibility of Czechoslovakia for the expulsions cannot be discarded completely. Even though the winning powers were aware of the “wild

---

<sup>4</sup> Decree no. 12 of June 21, 1945, on the Confiscation and Expedited Allocation of the Agricultural Property of Germans, Hungarians, Traitors and Enemies of the Czech and Slovak Nations; Decree no. 28 of July 20, 1945; Decree no. 108 of October 25, 1945, on the Confiscation of Enemy Property and National Restoration Funds; Decree no. 5 of May 19, 1945 reversing a number of property transactions that occurred during the period of German occupation on the basis of religious beliefs or nationality and providing for expropriation of enterprises from the persons seen as unreliable to the state (Waters 2006, 72).

<sup>5</sup> Decree no. 33 of August 2, 1945 Concerning the Right to Czechoslovak Citizenship of Persons of German and Hungarian Nationalities.

<sup>6</sup> Decree no. 71 of 1945

<sup>7</sup> Decree no. 16 of June 19, 1945; Decree no. 137 of October 27, 1945

<sup>8</sup> Provisional National Assembly Law no. 115 of May 8, 1946 Concerning the Legality of Actions Connected to the Struggle to Recover the Liberty of Czechs and Slovaks.

expulsions” taking place in Czechoslovakia and kept a blind eye on it (Waters 2006, 75), it was still an independent and conscious decision carried out by Prague.

Under the conditions when neither governments of Austria and Germany nor the Sudeten Germans recognize the legality of the Beneš Decrees (Barkan 2000, 134) and when at the same time these Decrees have never been repealed, it is logical to conclude that perceived injustices committed by the Beneš’ government never ceased to exist. As a result, Bonn/Berlin and Vienna have been working towards achieving abrogation of the Beneš Decrees (Nagengast 2003; Suppan 2006; Waters 2006). And since expropriations of the Sudeten German private property are among such injustices the natural development would be that Germany and Austria adopt restitution claims as a part of their foreign policy towards the Czech Republic. Such a development is also expected to take place because of the states’ obligations to protect interests of their citizens (Kopstein 1997, 66), which members of the Sudeten German minorities are. Bearing in mind genuine interest of the host states to protect property rights of the Sudetes it would be logical to assume that the accession of the Czech Republic to the European Union (EU) would be welcomed by Austria and Germany exactly because the EU would provide a framework allowing for resolution of the restitution problem (Pehe 2004, 44).

Although the necessity to repeal the Beneš Decrees was emphasized by the governments of Austria and Germany (Suppan 2006; Phillips 2001), the particular goal of property restitution has not become a priority of the state foreign policy. This thesis will argue that the Sudeten German property restitution issue contradicted the general line of foreign policy of both Vienna and Bonn/Berlin towards Prague. The salience of the issue has been dependent on the political strength of the Sudeten German interest advocates. That is why in Germany – where the Christian Social Union of Bavaria (CSU) was a merely regional party –

satisfying the Sudeten Germans' property claims has never been a part of the foreign policy agenda. In Austria, on the contrary, the Freedom Party (FPÖ) managed to obtain sufficient support on the whole territory of the country in order to promote interests of the expellees on the national level. However, as soon as the popular support for the party exhausted the issue became "peripheral and private" (Waters 2006, 96).

Studying the case of the Sudeten Germans led to formulating the following research questions:

1. What are the motivations for Czech Republic to avoid repealing the Beneš Decrees with respect to restitution to Sudetenland Germans? What is the official justification of the country's position?
2. What political parties and interest groups have been the primary advocates of the Sudeten German interests within Austria and Germany? What influence have they had on the process of state policy making?
3. In what way did the private property restitution complicate the accession of Czech Republic to the EU? Why did accession still happen even though the issue was not completely settled?
4. What actions have the countries involved in the dispute been undertaken in order to normalize these relationships?
5. What mistakes have been made during the process of dispute settlements that did not allow resolution of the issue?
6. What impact did the issue of the Sudeten property restitution have on the politics within Austria and Germany?

The current research concentrates on three countries: the Czech Republic, Germany and Austria. The Czech Republic is the main respondent to the claims of the Sudetenland

Germans affected by the Beneš Decrees because, first of all, the country is the legal successor of Czechoslovakia and, second, unlike in Poland or Slovakia the government plays the leading role in the process of settlement of restitution issues (as opposed to non-governmental organizations), while taking the most radical stand. Germany and Austria are considered as they are the host countries for the Sudeten German minorities and thus are to protect their rights as citizens.

Regarding the timeframe, the research is limited to the period between 1938 and 1948 and the period from 1990 to the present. The first period is crucial for the purposes of this research as during this time the most important events happened (the Nazi occupation of Bohemia and Moravia and expulsions of the Sudeten Germans) that provoked the adoption of the Beneš Decrees and, therefore, they may help to explain incentives for such legislation. The second period under examination starts in 1990 when the first laws on restitution were adopted in Czechoslovakia. This is the time when heated debate on remedying past injustices, particularly property restitution, took off in post communist countries of CEE. In this study methods of historical narrative, process tracing and comparative analysis were used.

The first chapter of this thesis covers the period from 1918 to 1948. The aim is to explore how relations the Czechs and the Germans living on the territory of Bohemia and Moravia developed from peaceful co-existence to bitter animosity, which resulted in removal of the whole German minority from the territory of the Czechoslovak state. The historical overview allows establishing the source of the conflict in the Czech-German and the Czech-Austrian relations and seeing what particular events define claims and counterclaims of the countries at the present stage.

The second chapter describes the current situation, that is legislation adopted in the Czech Republic in order to resolve the problem of restitution. It also examines the

considerations of the Czech government and practical reasons excluding the Sudeten Germans from the process of restitution. The chapter provides a closer look at some of the theoretical issues of reparative justice. It concentrates on such questions as who is to be compensated and what should be the form of compensation (in-kind or financial). Also it is shown how in the light of theoretical considerations the current Czech legislation is designed.

The final chapter examines the process of negotiations between the Czech Republic and Austria and between the Czech Republic and Germany. It analyzes the Sudeten Germans' claims to the Czech Government, the Czech reaction and counterclaims, joint action of the parties to stabilize the relationships, and domestic political conditions. The last chapter also analyzes diplomatic documents and press statements of all parties involved in the debates in an attempt to make sense of the latest developments regarding restitution claims of the Sudeten Germans.

## **Chapter 1: Czech-German Relations between 1918 and 1948: Origins of Controversies**

Before proceeding with the analysis of current Czech-Austrian and Czech-German relations it is important to discover the sources of the animosity between the Czechs and the Sudeten Germans. In order to establish these sources one needs to analyze the period between 1918 (the creation of the First Czechoslovak Republic) and 1948 (the end of the expulsions). These events are crucial for understanding motivations of Czech Republic, Germany and Austria for taking a certain position in the debates on the issue of the Sudeten German property restitution. Of course, the main events that in fact provided for the existence of the debate on mutual recognition of responsibility for atrocities and crimes were the Nazi occupation of Bohemia and Moravia and the expulsion of the Sudeten Germans from the Czech territories. Both periods were accompanied by violence and property expropriations. And if the compensation for the victims of Nazi occupation does not provoke too many controversies<sup>9</sup> as Germany considered this issue in the light of its own sense of guilt, the question of compensation for the Sudeten German expellees is much more complicated, first of all, because the Czech Republic does not recognize illegitimacy of the Beneš Decrees. Thus the following analysis of the historical developments is aimed at establishing the reason for the difference between the position of Austria and Germany and the one of the Czech Republic on the compensation issue.

Czechs and Germans had been living side by side for more than 700 years on the territory of Bohemia and Moravia (Paul 1981, 32). What then led to the development of such strong anti-German sentiments among the Czechs by the end of World War II that it became possible (or even desirable) to expel several million people living there for ages? The current

---

<sup>9</sup> From 1953 to 1997 Germany spent some 100 billion DM to the victims of Nazi regime and in 1998 it established a new fund of USD 110 million to compensate for Jewish victims living in CEE and countries of the former Soviet Union (Phillips 2001, 177-178).



chapter explores developments in the relations between Czechs and Germans in the area of Sudetenland that led to such a result. Also it explores Czechoslovak government policies and behavior of minority lobby states – Germany and Austria – as factors that directly affected radicalization of the German minority within the borders of Czechoslovakia<sup>10</sup>.

Character of Czech-German relations depends on a degree of support the German minority would get from Austria and Germany in its secessionist position. Thus the chapter will have a look not only at internal situation of Czechoslovakia but also give an account of international events. It is evident that right after the creation of Czechoslovakia as an independent state in 1918 the German minority was radicalized because of its downgraded status. However, up until the end of 1920s it moved towards greater incorporation into the state and society. This was first of all the result of Austria and Germany avoiding irredentist claims and the Czechoslovak government taking the non-oppressive position. The situation changed with the economic crisis in the beginning of 1930s that resulted in German conviction of discriminatory policies by the host state. Coupled up with aggressive German policies, it led to minority re-radicalization. The occupation of Bohemia and Moravia led to emergence of bitter sentiments among Czechs. The antagonisms between the two nations were exacerbated to such an extent that it resulted into the Sudeten German transfers. Below a brief account of the historical accounts is provided.

### ***1.1 Creation of Czechoslovakia. German status: from dominating power to the national minority.***

The independent republic of Czechoslovakia was established in 1918 after more than three hundred years of German and Austrian domination (Luža 1964, 1). The country was a

---

<sup>10</sup> The term “lobby state” is borrowed from the work of Erin K. Jenne (2007) on the theories of minority radicalization. It denotes a state as an external patron of a minority. Such a state takes irredentist stance and thus supports separatist moods of a particular minority. According to Jenne’s theory the more credible signals of interventionist intents such a patron shows, the more radicalized a minority becomes. In case of German Minority in Czechoslovakia, lobby states were Germany and Austria as their people and Sudeten Germans had common ethnic grounds and in general represented pieces that were meant to constitute common pan-German state.

long narrow piece of land with the kind of landscape that made it difficult to preserve state and national integrity. Strong mountain frontiers of Bohemia and Moravia-Silesia in the West provided these territories with natural barriers that allowed for the existence of a separate geographical unit within the borders of one country. These natural borders did not correspond to ethnic boundaries as the population consisted of Czechs and Germans living in many cases in “mixed German or Czech regions, linguistic enclaves, or as dispersed individuals” (Luža 1964, 3). The coexistence of the two nations has been often characterized by competition on whose authority is to be established over the territory. The desire to dominate the territories of Bohemia and Moravia-Silesia to some extent stems from them being rich with natural resources and occupying an important geopolitical position in the heart of Europe. However, as Wiskemann (1967) puts it, the explanation of bitter struggle between the Germans and the Czechs lies in “geographical unity of its own”- conditioned by the specific landscape – that inevitably creates unity among those who inhabit these lands. In this context Czechs perceive themselves as heirs of *Přemyslids’* Kingdom and are proud “to appear as a Slavonic vanguard in Central Europe (Wiskemann 1967, 2). In German minds Bohemia is a part of historically German land as well as Saxony, Bavaria and Austria, and Prague is seen as one of the greatest cities in the Holy Roman Empire of German Nation (Wiskeman 1967, 2). Therefore, the Czechs are seen by the Germans more as a small Slavic minority in the midst of German-speaking world (Wiskemann 1967, 2).

The Germans, who settled in these territories later than Czechs, were ethnically related to central and Northern Bavarian, East Franconian, upper Saxon, and Silesian tribes. By being included into a state separated from Germany by mountains ethnic German groups were drawn together (Luža 1964, 2). At the same time the lack of geographical compactness split the Germans into eight territorial fragments separated by Czech language speaking territories. Because the Germans in Czechoslovakia did not have a political center of their own, Prague

and Brno became their capitals. Separate German districts were linked together by the Czech central area thus forming a natural territorial unity (Luža 1964, 3).

In the second half of the nineteenth century the impetus for German industrial development was provided by the natural conditions: the mountainous territories of northwestern Bohemia were rich with mineral, forests and pasture lands but they had much less agricultural lands than Czech-settled territories (Luža 1964, 5). Thus the German capital was mainly responsible for industrial development in the Habsburg Empire, which allowed for German domination: they held positions of management and ownership and possessed a disproportional share of the region's wealth. Lack of command of the German language would cut a person off from better paid positions in civil service and prestigious occupations (Jenne 2007, 58). Additionally, the Germans had electoral advantages in the Bohemian Diet and the *Reichsrat*. As members of the parliament were elected through the system of curiae based on the property qualifications, naturally the Germans were disproportionally overrepresented in both bodies. The specific design of proportional representation allowed them to make sure that Slavs could not over vote Germans and Italians in the *Reichsrat* as well as to secure their own veto in Bohemian Diet (Wiskemann 1967, 52-53). Thus German dominance in Bohemia and Moravia-Silesia under the Austro-Hungarian Empire stemmed from their dominance on the national level.

After the disintegration of the Empire Sudeten industrialists, landowners, and the broad middle class chose to stay within Czechoslovakia as it had stronger economy and was more likely to protect private property than Germany or Austria (Jenne 2007, 57). The latter two had strong communist movements, which the Sudeten Germans saw as a threat to their positions. In addition, it would have been simply inefficient to break existing economic and commercial ties with the Czechs. And finally if the Sudetenland had been annexed by

Germany it would have faced with competition from stronger industries of the Reich (Jenne 2007, 58). On the other hand, the loss of World War I by Germany and ruined plans for establishment of the pan-German state created frustration among the Sudeten Germans who in an instant turned from being an influential political power into a national minority in a Slavic state (Wiskemann 1967, 82). This frustration was exacerbated by the Germans' assumption that the Czechs would use their new powers in order to redress political and economic inequalities that they suffered under the Empire (Jenne 2007, 58).

### ***1.2 Incorporation of the German Minority into a Slavic State***

The newly created state of Czechoslovakia found itself split in terms of the orientation on the international arena. On the one hand, the Czechoslovak government opted for an alliance with those powers that played a defining role in existing system of international relations and thus were able to guarantee stability and independence for Czechoslovak state (Luža 1964, 27). France was considered such a guarantor. On the other hand, the Sudeten Germans, encouraged by proclamation of nations' right for self-determination by the Russian Communist Party and American President Wilson, were seeking for Austrian and German support in their secession claims (Wiskemann 1967, 82). With the encouragement of these states, provisional governments were created in Reichenberg, Drumau, Troppau, and Znaim of the Sudetenland. Further transitional agreements were to be made in order to facilitate the process of the Sudetenland incorporation into a greater German nation-state (Wiskemann 1967, 83). It soon became evident that in the situation, which emerged after the War, neither Austria nor Germany were able to provide direct assistance for the Sudeten Germans in resisting the Czechoslovak government and coping with food shortages in these territories. In addition, disapproval of Bohemian and Moravian secession by Allied forces to a great degree constrained aspirations of Germany and Austria (Jenne 2007, 59). Still the hope of at least indirect support remained as both countries promised to apply to international Powers for

“territorial adjustments on the grounds of mismatched ethnic and political boundaries” (Jenne 2007, 60).

Meanwhile the secessionist attitudes of the Sudeten Germans could not but provoke “irritation” among the members of Czechoslovak Government. As a result it started to emphasize nationalist sentiments. President Tomáš Masaryk stated in his message to Parliament on 22 December 1918 that the Republic had to be created by the Czechs. He also characterized Germans as colonists and reiterated that Sudetes had always been supportive of the idea of pan-Germanism (Luža 1964, 32). He further emphasized that Czechoslovakia would not allow for secession of Bohemia, nevertheless, it was necessary to ensure that the Germans enjoyed “complete national rights and civil equality” (Luža 1964, 32). After careful consideration of geographical, strategic, political and economic factors the Sudeten leadership decided that it would be more beneficial for the Sudetenland to remain within the borders of the Czechoslovak state. Negotiations between the Sudeten delegation led by Josef Seliger and the Czech government finished with signing the St. Germain Treaty on 10 September 1919 that guaranteed the rights of minorities (Wiskemann 1967, 93). Further such rights were secured in a series of state laws that provided German minorities with much of the local administrative power, cultural and education institutions in proportion to the population (Luža 1964, 34).

Despite these concessions to ethnic minorities, the Sudeten Germans still felt as if they were discriminated by the Czech majority. The problem was that the German loss in World War I and downgraded Sudeten political status created frustration among the Sudeten Germans. In its turn such frustration led to general apathy among minority members and German self-exclusion from Czechoslovak national decision making process over important political and economic issues (Luža 1964, 34; Jenne 2007, 64). As a result, several laws were

adopted that had an overall negative impact on the German minority. For example, the Land Control Act (1919) redistributed land from larger landholder to landless peasants. The irony was that most wealthy landholders were of German nationality. Thus the Germans were primarily those who lost from this reform while the Czechs and the Slovaks were the main beneficiaries (Wiskemann 1967, 150-160). The most troubling was the language law of 1920 that made Czech the official state language. If the Czechs were able to speak German, the Germans generally did not have good command in Czech, which immediately posed a threat of losing jobs for those Germans who held civil servant positions (Wiskemann 1967, 120). This created an impression of Czech discriminatory attitudes among the Germans. At the same time Austria and Germany, experiencing vulnerability of their positions on the international arena, withdrew themselves from the discussion of the Sudeten issue (Jenne 2007, 64-70). Lacking external support the Sudeten Germans preferred to abstain from radicalizing their demands while maintaining a degree of group mobilization due to persisting deep ethnic cleavages (Jenne 2007, 70).

Thus in order to protect their own positions the Germans found it necessary to increase their participation in the national process of decision making. In the first national election in April of 1920 German parties won 72 seats in 300-member Chamber of Deputies and 37 seats in 150-member Senate (Wiskemann 1967, 122; Jenne 2007, 67). Their campaigns were based on gaining autonomy for the Sudetenland, which reflects the salience of the ethnic issue. In general, despite some mistrust towards the minority, which not so long ago threatened armed resistance against the state, the Czechoslovak Government expressed willingness to cooperate with Sudeten representatives. Such attitudes allowed the Germans to believe that pursuing regional autonomy was still viable (Jenne 2007, 70). As a result, the German fraction in the national Parliament was split between those who favored cooperation with the Czechs (German Social Democratic Party – DSAP) and those who were against it (Sudeten German

Party – SdP). The positive results of 1924 communal elections for activists (while negativists suffered losses) demonstrated general support of the idea of cooperation by the German population of Czechoslovakia (Jenne 2007, 70). Thus at this point the Sudetenland suspended its separatist claims.

The Locarno accords of 1925 further increased the degree of German cooperation with the Czechs and thus provided for greater minority incorporation into Czechoslovak society. In accordance with the Locarno regulations Germany guaranteed inviolability of its borders with Belgium and France. However, the Eastern borders were not consolidated. Also, despite efforts of Edvard Beneš aimed at establishing favorable (for Czechoslovakia) security arrangements, only France concluded a bilateral treaty with Czechoslovakia that would allow her to come to aid in the case of aggression by a third country. Thus should have a conflict between Czechoslovakia and Germany occurred neither Britain nor Italy would have official justification for military aid (Bogaturov 2000, 104). Czechoslovakia found herself in a situation, in which it was not guaranteed protection from German intervention. As a result, the national Government had to constrain itself in implementing discriminatory policies against Sudeten population in order not to irritate Germany. At the same time Germany, who was seeking opportunities to reduce its reparations and demilitarize the Rhineland, had to reduce its expansionist ambitions (Bogaturov 2000, 108). Thus, the German minority in Czechoslovakia, on one hand, continued to lack support from its lobby state; on the other, it did not suffer oppression from the Czechoslovak state. As a result, ethnic cleavages lost much of their salience while the economic component of Czech-German relations became a priority. Attitudes of the majority of the Sudeten Germans were favorable to cooperation, which was demonstrated by growing support for activist parties (Jenne 2007, 74).

Intensification of cooperation allowed the Germans to finally enter the national Government in 1926 (Luža 1964, 10). Common economic interests allowed for coalition formation between the Right-wing Czech and German parties while the Left-wing coalesced in order to oppose the governing coalition (Jenne 2007, 74). Thus during the period between 1925 and 1929 a relative degree of accommodation of the German ethnic minority into the Czechoslovak state could be observed.

### ***1.3 Radicalization of the German minority***

The economic crisis of 1931 changed the situation dramatically: at this point the Sudeten Germans again took a strong secessionist stance. First of all, assets of the majority Czechoslovak German banks were frozen because of German and Austrian financial collapse in 1931 (Wiskemann 1967, 182). Then the economic crisis reached its peak in 1933. It negatively affected volumes of trade, which by 1938 failed to recover. For a country that was heavily dependent on export and foreign trade this crisis had grave consequences. In addition, it changed commodity composition of exports: the share of textile declined in the foreign trade volume while the share of metal industry increased (Luža 1964, 13). Ironically, heavy industry that consequently started to recover at a rapid pace was predominantly located in the Czech regions while the main export industries such as glass, textile and china were located in the German areas. The latter failed to recover despite governmental efforts to fix the situation, eventually leading to the deterioration of living standards in the area: rise of unemployment, wage decrease, and inflation (Luža 1964, 14). Despite the fact that such a situation resulted from the objective conditions in the international market, average Germans failed to understand it. The differences between the Czech and the German areas led to the Germans blaming the Czechs for the economic conditions (and discrimination), over which the latter did not actually have any control (Luža 1964, 14-15).



Additional discontent of the Sudeten Germans arose because of the demographic situation. As noted, before the end of the nineteenth century German capital was prevalent in industrial development. As a result, the situation in the predominantly German region of northwest Bohemia was that wages here were higher than in the Czech parts, industrial growth rate was increasing, and the territory experienced shortage of German labor, especially because they tended to abandon inferior posts in this area and move to better paid positions in Austria. These conditions stimulated Czech immigration and an abundant supply of cheap labor. Thus from 1880 to 1930 the Czech minority in the northwestern region of Bohemia increased from 8.03 percent to 35 percent (Luža 1964, 5). Coupled with declining birth rate and general drop in the number of the Germans after 1918, this development made many Germans believe that such a situation was created by the Czech nationalist policies (Luža 1964, 5).

At the same time, even though Germany was still reluctant to encourage irredentism among the Sudeten Germans out of fear of antagonizing the Great Powers, frequent and open contacts of Sudeten Nazis started to raise suspicions about Hitler's expansionist intentions towards the East (Jenne 2007, 78). Feeling some support from their lobby state the German minority started to mobilize along ethnic lines. This trend towards remobilization became pronounced in 1935 when Konrad Henlein's SdP, which built its campaign around the demand for autonomy, won more than 60 percent of the minority vote at the elections that year (Wiskemann 1967, 206). At this point the demand for cultural and linguistic autonomy that was popular in the 1920s was suspended in favor of demand for national autonomy (Jenne 2007, 80). Furthermore, the development logical for the process of ethnic mobilization took place: the construction of inter-ethnic governmental coalitions was hampered. As Henlein realized that in order to maintain support of his constituents he has to stay out of national government, which became very unpopular among the Sudeten Germans.

Consequently, the SdP broke off negotiations with the Czech and the German parties over forming a government coalition (Jenne 2007, 80).

Further developments in the international arena only strengthened the secessionist attitudes of the Sudeten Germans. The most important factor was that Germany started to pose a threat to its Eastern neighbors. The remilitarization of the Rhineland, the treaty between Germany and Austria, and quite an indifferent reaction of Britain and France persuaded Central European states that they could not count on the Great Powers for protection from Germany. Thus Czechoslovakia was now facing the Reich from a position of weakness, which lowered its bargaining leverage vis-à-vis the German minority (Jenne 2007, 80). Given the interventionist intent of the lobby state and conciliatory position of the Czechoslovak state, Henlein realized that moderation was no longer viable for Sudeten politics (Jenne 2007, 82). Despite all promises of the president Beneš and prime minister Hodža to satisfy all requirements of the Sudeten German minority their proclamations were perceived as “government propaganda” (Jenne 2007, 83). In order to reduce Sudeten radicalism Beneš and Hodža tried to address minority discontent by offering welfare relief and civil service employment (Jenne 2007, 83). However, taking into consideration unfavorable to Germans economic and demographic developments in the area these measures seemed to be a late treatment. Especially it was so because the German bargaining position was unprecedentedly strong at that point. This position was strengthened even further as the lobby state continued to signal its interventionist intent through Hitler’s public speeches condemning Sudeten oppression and foretelling *Anschluss* in 1938 (Jenne 2007, 87). Under these conditions Czechoslovak government put even more efforts in appeasing the German minority. Realizing its strength the SdP would meet any concession of the government with another demand (Wiskemann 1967, 258).

Naturally, there was no unanimous support for irredentism among the ordinary German population. Refusal to cooperate with the Czechs could be economically inefficient because of established commercial ties and supply sources. Realizing that, Henlein attempted to satisfy all possible preferences of the population. One of the ways was offering financial incentives for allying with the party. Since the SdP basically controlled all local governments in the region entering the party would open the doors to better paid jobs and business contracts (Jenne 2007, 85). SdP also used scare tactics. For example, it would spread the rumor throughout the Sudetenland about Hitler's inevitable invasion. Out of fear of possible prosecution that would follow the invasion many moderate Germans chose to join Henlein's party (Jenne 2007, 85). Other tactics included commercial boycotts and threats by employers to fire employees if they oppose the SdP. No wonder that under such pressure Sudeten German moderates either joined the SdP or left the country (Jenne 2007, 86). On 22 March 1938 the German Agrarian Party under the leadership of Gustav Hacker merged with the SdP. On March 24 the German Christian Socialist Party suspended its activities while its deputies and senators joined the SdP coalition in the Parliament. Only the Social Democrats did not abandon their program. Nevertheless, the overwhelming majority of the Sudetenland population threw their support for the SdP (Kohut 1991).

#### ***1.4 Occupation of Bohemia and Moravia: growing Czech discontent***

Henlein's aim was to present the Sudeten Germans as an oppressed minority to the international community. This image was exploited by Hitler, who saw the Sudeten question as a justification for German penetration into Central Europe (Jenne 2007, 87; Kohut 1991). At the same time Great Britain and France saw a new war as highly undesirable. Thus they preferred to pursue policy of appeasing the aggressor, which made them receptive to claims in favor of the Sudetes. On 28 September 1938 at the conference in Munich Britain, France, Italy and Germany (Czechoslovakia was neither invited nor consulted) signed an agreement

stipulating that Czechoslovakia had to cede the Sudetenland to Germany (Kohut 1991). An international commission consisting of representatives of Germany, Italy, Britain, France and Czechoslovakia was to supervise a plebiscite in order to determine a final border. Britain and France guaranteed new borders against unprovoked aggression, while Germany and Italy would join this guarantee only in the case of a settlement of minority problems in Poland and Hungary (Kohut 1991). The Munich agreement resulted in the Reich occupying approximately 38 percent (29,000 sq km) of combined territory of Bohemia and Moravia with 2.8 million Germans, 750,000 Czechs and Slovaks living on this territory (Luža 1964, 158; Kohut 1991).

Annexation of parts of Bohemia and Moravia left the Second Republic of Czechoslovakia lacking its natural borders and having lost its system of fortifications (Kohut 1991). Under these conditions the country remained virtually indefensible. On 15 March 1939 Hitler invaded Czechoslovakia facing no resistance. On March 16 he proclaimed Bohemia and Moravia a protectorate of the Third Reich (Kohut 1991).

The Czechs considered German occupation of Bohemia and Moravia as a period of brutal oppression. Memories of independence and democracy made it even more painful (Kohut 1991). Under the supervision of the first Reich protector, Baron Konstantin von Neurath, German rule was moderate. Czechs were allowed to maintain the government and the political system (Kohut 1991). However, after student demonstrations of protest and unrest in October and November of 1939 the Germans retaliated by mass arrests of politicians, students, and teachers. On November 17 all universities and colleges of the protectorate were closed while students were sent to work (Kohut 1991).

Under the new protector, Reinhard Heydrich (appointed in the fall of 1941), a much more radical policy was implemented: the Czech government was reorganized and Czech

cultural organizations were closed (Kohut 1991). Under Heydrich's successor, Colonel-General Kurt Daluege, mass arrests and executions took place, as well as extermination of the village of Lidice. Starting in 1943 under the authority of Karl Hermann Frank, German Minister of State for Bohemia and Moravia, around 30,000 Czech laborers were sent off to Germany. All non-military industries were prohibited in the protectorate (Kohut 1991). Overall Czech losses from prosecutions and deaths in concentration camps are estimated to be between 36,000 and 55,000. Compared to other nations these are considered to be relatively minor losses. However, almost all of the Jewish population of Bohemia and Moravia was annihilated (Kohut 1991).

Nazi occupation of Bohemia and Moravia and atrocities committed by the regime resulted in strong negative attitudes that the Czechs had towards Germans. In the shorter run, it resulted in the "wild" expulsions of the group of population that was associated with odious occupants. In the long run, the occupation provoked a number of complicating circumstances in the present Czech-German and Czech-Austrian relations such as the Czech demand to repeal the Munich Agreement and persuasion that the Sudeten Germans came to the region with the Nazi regime and thus had to be expelled (Nagengast 2003, 341).

### ***1.5 Post-war Reconstruction of Czechoslovakia. The Beneš Decrees and Population Transfers***

After his resignation as president of Czechoslovakia, Beneš and other Czechoslovak exiles gathered in London and organized a government-in-exile (Kohut 1991). Beneš' main aim was to achieve international recognition of Czechoslovak state in its pre-Munich frontiers (Luža 1964, 223; Kohut 1991). On 21 July 1940 Great Britain recognized the Czechoslovak provisional government and a year later on July 18 both Britain and the Soviet Union recognized the Czechoslovak state, which was the last step on the way to repudiation of the

Munich Agreements (Luža 1964, 225) and establishing “political and legal continuity of the First Republic and Beneš’ presidency” (Kohut 1991).

During the last years of War, Beneš was implementing the foreign policy oriented towards the East. In 1943 he traveled to Moscow where he concluded the Soviet-Czechoslovak treaty of alliance (Paul 1981, 30). Beneš’ plan was to maintain balance between capitalist West and socialist East that would guarantee Czechoslovakia’s positions on the international arena (Paul 1981, 30). American president Franklin D. Roosevelt earlier had assured Beneš of his support. Now the Czechoslovak president was seeking the Soviet alliance in order to avoid a postwar communist putsch encouraged by the Soviet Union (Kohut 1991). He achieved these ends by means of bringing to Prague exiled Czechoslovak communists led by Klement Gottwald. Cooperation with the communists was complicated by their reluctance to accept more moderate approaches and quite vague vision of the future (Paul 1981, 31). Beneš established favorable relations with the communists in Moscow by offering such concessions as nationalization of heavy industry and creation of local people’s committees after the end of the War. He also gave them key governmental positions in March 1945 (Kohut 1991).

The postwar reconstruction of political, economic, and social order was taking place under the conditions of bitter divisions between the Czechs and the Germans that had been widening since creation of the First Republic and were exacerbated by the War (Paul 1981, 32). Initially the Czechoslovak attitude towards the settlement of the German question was that “the Germans responsible for the war and its crimes should be tried and sentenced, while the German workers and peasants should be re-educated” (Naimark 2001, 113). By this time the Sudeten Germans gained the reputation of anti-Czechoslovak and pro-Hitler sympathizers because of the overwhelming support of Henlein’s party (Naimark 2001, 112). Finally, the

insults of Munich, the loss of Czechoslovak independence and the atrocities of the war created such a degree of anti-German nationalism among the Czechs that the government could hardly resist it (Naimark 2001, 114). Therefore, both Beneš and Gottwald called for expulsion of more than three million of the Germans from the Czech lands.

In this radical spirit there were a number of rigorous decrees adopted regulating German expulsion (later became widely known as the Beneš Decrees). The government order of 17 May 1945 prescribed smaller food rations for the Germans (Luža 1964, 269). They had to wear special white armbands. They were prohibited “to use public means of communication,” “change their residence or visit places of public amusement.” Shopping was allowed only at certain hours (Luža 1964, 270). Later the Decree of the President of the Republic of 19 September 1945 introduced compulsory labor conscription in order to restore the country after the war and to improve the state of economy (Luža 1964, 270). All functionaries of the Nazi Party and the SdP and all members of SS and FS were declared criminals as well as “those who supported the Nazi regime, or consented to or defended the Nazi government” (Luža 1964, 270). The decree of the president of 19 June 1945 established a system of Extraordinary People’s Courts in order to try cases of such individuals. The decree of 2 August 1945 established that all the Germans who acquired the Reich citizenship lose their Czechoslovak one. Under the German occupation all German nationals automatically would become the German Reich citizens, which meant that all members of the German minority in the Sudetenland were no longer citizens of Czechoslovakia. However,

only those Germans who were able to prove that they had remained loyal to the Czechoslovak Republic, that they had never committed any offense against Czech or Slovak people, and that they had earlier participated actively in the struggle against Nazism or suffered under Nazi terror could apply for Czechoslovak citizenship (Luža 1964, 271).

According to the decrees of 19 May, 21 June, and 25 October 1945 all German property was expropriated without compensation. Only those who qualified under the decree

of August 2 were exempted (Luža 1964, 271). It meant that virtually all movable and immovable property of the Reich or its citizens was confiscated. Such property was either redistributed directly to individuals or nationalized (formally “placed under temporary national management”) (Luža 1964, 271). Those Czechs and Slovaks who were associated with the Nazi regime were equated with the Germans in their status (Luža 1964, 271).

Strong anti-German sentiments existing among the Czechs resulted in so called “wild” deportations. The time that the Germans were given in order to pack up and leave was very little, sometimes it did not exceed 15 minutes. They were allowed to take only minimum belongings. Often they were threatened and subjected to violence (Naimark 2001, 117). Such deportations made many Germans flee to the territories of Silesia, Austria, Bavaria, and Saxony, which were perceived as safe (Naimark 2001, 117). The international community sanctioned the transfers in general; however, at the Potsdam conference the United States, Britain and the Soviet Union called for Czechoslovakia to conduct them in “a humane and orderly fashion” (Naimark 2001, 117).

The organized transfers started in January 1946; they took place till the end of the year. Further transfers were accomplished only in order to unite families (Luža 1964, 283-287). During this period around 1.4 million Germans were resettled to the American zone of occupation and 650,000 to the Soviet zone (Luža 1964, 286-287). Over 100,000 were transferred by the German former sister parties of Czechoslovak Social Democrats and Communists and some 30,000 Germans immigrated individually (Luža 1964, 287). Even though transfers organized “in humane and orderly fashion” significantly decreased the number of atrocities suffered by the Germans, property requirements still created immense hardships. The transferees were basically stripped off of all their property except 500 or 1000 Reichsmarks and 50 to 100 kg of personal belongings (Luža 1964, 290).



Having taken a look at the history of relationships between the Czechs and the Germans on the territory of Bohemia and Moravia one can see that they are quite responsive to developments in the international arena. It appears that the German minority in Czechoslovakia radicalizes during the periods of time when its lobby states, Germany and Austria, have a strong international position. Such a reaction takes place because the national minority finds credible support to its secessionist claims when irredentist states exercise a great degree of influence in international relations system. At the same time threatening the position of the lobby states vis-à-vis host government of Czechoslovakia halts oppression actions of the latter. This circumstance allows for more freedom in laying claims on behalf of the Sudeten German minority. Thus the degree of antagonisms between the Czechs and the Germans to a great extent depends on the strength of lobby states and intensity of oppression from the host state.

Also the history of the Czech-German relations shows that the incorporation of the German minority into a Slavic state is in fact possible. Clearly the process of incorporation and peaceful co-existence is traceable during the second half of 1920s when the Locarno agreements eliminated guarantees for Czechoslovakia from German expansion, which provided for conciliatory mood of the government. At the same time German and Austrian international positions were precarious, which did not allow the German minority in the Sudetenland to hope for external support. Thus it did not have any other choice but to improve relations with the host state. Possibly, peaceful co-existence of the two nations could have continued with different degrees of minority radicalization. However, at the critical point, which can be considered to be the Munich agreement, history took a turn that inevitably led to tragic events of population transfers. During the period of occupation of Bohemia and Moravia, Czech discontent with German policies reached the point when the government could not undertake any milder policies because that would have lead to dangerous social

unrest. Thus in order to appease its own citizens the Czechoslovak government had to resort to the radical measures of removing the irritating element, which took form of transfers of more than three million ethnic Germans from Czechoslovakia.

The expulsions of the Sudeten Germans and their property expropriation under the provisions of the Beneš Decrees created a heated debate on the necessity to compensate for persisting injustices. There was a hope that the legislation on remedying past injustices and particularly on restitution of private property adopted in Czechoslovakia after the collapse of communism and inherited by the Czech Republic would address these injustices. However, continuing debates on the issue of restitution between Austria and Czech Republic and between Germany and Czech Republic indicate the opposite. Current legislation aimed at remedying past injustices and its pitfalls are discussed in the next chapter.

## **Chapter 2: Theories of Reparative Justice and Their Implications for the Restitution in the Post-Socialist Countries. Property Restitution in the Czech Republic and the Sudeten German Question.**

The fall of communism in the CEE resulted into a full-fledged process of property denationalization. The restitution to all groups of population became the part of the discussion of this larger process. Obviously one of the questions was how to reconcile modest state budgets suffering from general economic recession characterizing the process of transition with a substantial number of potential restitution claims. Thus the legislators of the CEE countries had to decide on who is to be restituted, what is the time of expropriations that makes the property eligible for restitution, and the form of restitution (in-kind or financial compensation).

This chapter overviews the main theoretical considerations that affect legislators choosing one way or another to resolve these issues. It further explores how these theories are applied in particular case of Czechoslovakia during the formation of the restitution legislation, and discusses the manner in which the issue of the Sudeten German property was treated within the discussion of on restitution in the country in general. Also it overviews existing legislation on restitution, and it gives an account of the procedures that allow for exemption of the Sudeten German property from the categories eligible for compensation. Justifications for the decisions of the Czechoslovak legislators are explored as well. And finally, this chapter explains what Prague's motivation for refusing to restitute Sudeten German property is.

### ***2.1 The Debates on the Subjects of Restitution***

One of the main puzzles within the issue of restitution is who is eligible for restoration of rights/compensation. Thompson (2001) distinguishes three categories of claims from such persons:

1. Claims of individuals who themselves were victims of injustices (basic moral and legal idea).
2. Claims by members of the community for injustices done to the community itself.  
This principle is particularly applied to the cases of the Roman Catholic Church (Poland, Hungary and Czech Republic) (Barkan 2000, 121-125), Sudetenland Germans in the Czech Republic and Poland (Barkan 2000, 135), and the Jewish communities in most of the countries.
3. Claims of the individuals who are descendants of the victims of injustices. The controversy here is that descendants were not directly affected by the injustices; therefore they do not seem to be eligible for restitution. Nevertheless, in certain situations the descendants have an opportunity to claim that past injustices had an effect on them and therefore they are eligible for restitution.

It is possible to claim that they have themselves been damaged by the injustice, in other words, they suffer from its effects. As George Sher (1979) puts it “descendants of victims of injustice ought to be restored to the level of well-being that a related group of persons would have had if the injustice had not been done”. According to his view claims for remedying recent injustices are more valid than those that aim to remedy injustices that happened long ago. The important characteristic of the claim is whether the damage inflicted upon the descendant is regarded as the “automatic effect of the initial wrong act”(Thompson 2001, 117). Such an automatic effect should satisfy several criteria:

1. such an effect is a casual one, for which the perpetrator of injustice can be reasonably held responsible;
2. there was no independent action or failure to act that could possibly provoke such an effect.

Also the descendants may become entitled to claim the property expropriated from their ancestors because of their status as heirs of the victims. However, the problem with the inheritance principle is that the entitlement to reparation is not inherited. Nevertheless, the descendants can still lay eligible claims because of the fact that they as heirs are deprived of the property that would otherwise have been theirs if the injustices had not been done. In other words the right to possession is being violated (Thompson 2001, 120). This allows for claims even if there was no particular harm done to the heirs.

The important condition for the claim to be eligible for satisfaction is that they should be in consistency with Nozick's principle of rectification: either expropriated possessions are restored or compensation is provided equivalent to the value of the possessions (Nozick 1974, 153). Thompson argues that the principle of rectification does not satisfy the demand for acknowledging injustice or apology as it makes no difference "between dispossession caused by injustice and dispossession that results from a mistake – a belief that something was unowned when this was not so" (Thompson 2001, 121). In the countries of CEE for the purposes of restitution this principle is applied in the narrow sense. The scale, subjects and timeframes of restitution are defined in a way that claims can only concern the injustices done by certain regimes. So every case of restitution should be regarded as an act of acknowledgement of an injustice.

Another controversy that complicates the process of restitution is that rights to possession and transfer are regarded as resistant to extinction (Thompson 2001, 121). In that case many claims for rectification become invalid. For example, Thompson mentions that "in many cases forebears possessed what they did only because of a previous injustice – the dispossession of earlier owners and the developments that occurred because these owners were dispossessed" (Thompson 2001, 121). Nozick makes an attempt to resolve this problem

by suggesting that a society should provide benefits for the worst off (Nozick 1974, 231). This can hardly be a solution to the problem as descendant do not necessarily belong to the group of the least well off (i.e., Romanian king Mihai I, who as well laid the claim for restitution) or they may demand the reparation for injustices but not to compensate for their poverty (Thompson 2001, 121).

The problem of inheritance becomes more acute as the time passes because the original owners die and the number of claims laid by their forbearers thus rises. However, the time between the injustice and the claim may cause other complications, which are discovered during the discussion of Nozick's rectification principle.

## ***2.2 The Rectification Principle***

One of the key principles that allow to say of holdings of a person are just is Nozick's principle of rectification of injustice in holdings. If in the past first two principles of justice outlined by him (justice in acquisition and justice in transfer) were violated supposedly thorough investigation is to produce this principle of rectification, which is aimed at restoration of just holdings.

This principle uses historical information about previous situations and injustices done in them (as defined by the first two principles of justice and rights against interference), and information about the actual course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of holdings in the society. The principle of rectification presumably will make use of its best estimate of subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized (Nozick 1974, 152-153).

Nozick's approach is criticized by Waldron, who recognizes the main problem in the necessity of drawing conclusions on the basis of assumptions (Thompson 2001, 122). In other words, it is difficult to say in what way people would exercise their free will. However, for Waldron the most important is not the fact that the behavior cannot be predicted. In fact,

predictions are made all the time. Even the best predictions that can be made do not have undisputable moral authority for the conclusions that would be drawn with regard to the issue of restitution (Waldron 1992, 10). But Waldron reasons that some broader inferences can still be made. Supposedly, a person possesses some holdings that allow him to enjoy a certain level of utility. Apparently, when expropriation happens the person stops enjoying it. So it is natural to assume that the utility would have remained at least on the same level if expropriation had not occurred. Faintly any person (not only a “rational chooser”, as Waldron puts it) is likely to voluntarily enter a transaction that would make him/herself worse off. In that case any transaction had it been volunteer will leave the person at least not worse off than (s)he had been before it began. But if in reality the transaction makes the person worse off his/her original rights for the holdings being expropriated have to be restored. The same conclusions can be drawn with regard to the descendants of the dispossessed person as well as with regard to the person who perpetuated expropriation and his/her descendants: “if the injustice had not taken place, the descendants of those who suffered it would be better off than they are and descendants of those who perpetrated it would be somewhat worse off than they are. So a transfer from the latter to the former seems justified” (Waldron 1992, 11).

However, there is a problem, which persists not only in theoretical discussion but in practice as well and complicates the process of restitution. It is a problem of interconnection between the transactions that Waldron calls “contagion of injustice” (Waldron 1992, 12). Rectification does not concern those who are connected to the expropriated property. An injustice affects not only its immediate victim but also others who are not related to the tainted property through the price mechanism. Waldron gives an example of Maori tribe (Waldron 1992, 12). The situations when low cost of unjustly acquired property affects the price of any other similar piece of property exist in CEE too.

Thompson interprets this “indeterminacy thesis” in terms of burden of proof (Thompson 2001, 122). She points out that people’s actions and choices may be evaluated on the basis of evidence. Waldron further insists that as the time passes the evidences lose their definitive power. Therefore, it requires proof. But who does this burden rest on: those to claim restitution or those who oppose it? Thompson concludes that most likely Waldron believes it rests on the claimants because of the “contagion of injustice” problem, which means that effects of an injustice spreads over time and influences the lives both of those who are involved in the process of rectification and those who are not. He seems to support the idea of burden of proof resting on claimant because it appears to have less negative influence on persons not related to expropriated possessions than when those who oppose claims are trying to prove their point (Thompson 2001, 122).

Another problem belongs to the theoretical sphere. As mentioned above for the purposes of the counterfactual approach a person is considered a rational chooser. However, Waldron points out that people often act to their own disadvantage (Waldron 1992, 12). As a rule those who commit volunteer acts are held responsible for the results of these acts. So the difficulty with the rational choice predictions is that rational choosers are idealized actors and specific real situations do not have to be confined to the hypothetical constructions.

On the other hand, hypothetical rational choice is essential to our normative thinking about justice. Modern contractarian theories consist almost entirely of asking what the people of a society would have agreed to in the way of institutions governing the distribution of resources, had they been consulted. But it is characteristic of such approaches that they are holistic, systemic, and structural rather than local and specific in their conclusions and recommendations (Waldron 1992, 13).

Therefore, the whole society is evaluated but not a specific situation between specific actors. In that sense equal application of rational choice principles creates unequal treatment of people in different settings. Waldron describes this issue as “particularly acute” because the reparations may have “a wide effect on holdings across the board” (Waldron 1992, 13).



### ***2.3 Persisting Injustices***

As it was noted before, once injustice has been committed it continues to exist until it is stopped. According to Waldron it is easy to remedy for past injustices, such as expropriations, if we talk about the original owner as it would be just enough to restitute properties that were expropriated (Waldron 1992, 14-15). However, difficulties emerge when the original owner died and there is nobody to restitute to. Of course, there is always the question about the descendants who would inherit the property. But there is another controversy, which involves counterfactual speculations complicating the process of restitution (Waldron 1992, 15).

Partial solution of the problem with the original owner being dead would be considering the expropriated property to belong to a group of people or to the community. In this case a group that has existed for decades has a right to claim its property back. Certainly, this approach is not complicated with the issues of counterfactuals but then there is an issue of rights capable of “fading” in their moral importance “by virtue of the passage of time and by the sheer persistence of what was originally a wrongful infringement” (Waldron 1992, 15). Waldron mentions doctrines of law of property and criminal procedures, according to which after several generations certain injustices are not to be corrected (Waldron 1992, 15). Even though it seems unfair to deny a claim because of the mere fact of dispossession it is still done because of practical reasons. This includes procedural complications when it is difficult to establish how an injustice occurred. Non-procedural complications concern the fact that people build certain plans and expectations and expectations around their holdings. If they possess those holdings long enough they may even organize their lives and economic activities around it without much care about the entitlement. In that case redistribution of the property for the purposes of reparative justice may be “costly and disruptive” (Waldron 1992, 16).

In case of CEE this problem made the governments to choose whether to restitute in kind or by means of payment of money. Karadjova stresses the necessity to find balance between ends (restitution) and means to realize it (Karadjova 2004, 336). The controversy is between moral and economic aspects: remedy for past injustices or a complete a transition to market economy.

In most cases, the decision to embrace restitution was taken on the basis of political and historic factors. States that wanted a definitive break with the previous regime and that were more eager to remedy injustices rather than only to accelerate the development of free market opted for restitution in kind; on the other hand, those which emphasized the necessity of foreign investment (and the achievement of swift economic improvement) have chosen the past of reparation (Karadjova 2004, 336).

The case of Hungary demonstrates how the priority can be given to privatization. Hence the country opted for partial compensation (Karadjova 2004, 336). The government preferred to pursue “public interest” which required minimal uncertainties regarding property rights. This decision had a positive effect (or at least no negative effect) on privatization as all the claims were directed against the state and thus properties could be freely and legitimately sold. Also reparation considered to be “fairer” than restitution in kind because everybody would be treated as equals and because it doesn’t have to consider whether restitution in kind is possible (Balcksell and Born 2002, 183).

However, restitution in kind offers more advantages with regard to moral issues. Advocates of the restitution in kind argue that since it helps to address past injustices it prevents future disparities as such injustices may lead to commission of new crimes (Kritz 1995, xxvii). Also restitution in kind provides some advantages for the potential beneficiaries. They prefer restitution in kind as it plays both material and symbolic roles (strengthens feelings of identity and serves as a mean of reinstatement and fulfillment for minority groups) (Karadjova 2004, 339). Besides restitution of property is by definition to entirely restore the rights for something that was lost and can be considered as a full and final settlement of any

claim. That is why many Eastern European countries, including the Czech Republic and Slovakia, went for this option (Blacksell and Born 2002, 183).

The other reason for rights to fade arises from their nature. According to the theories of historical entitlement formulated by John Locke and later by Robert Nozick there is a sort of intimate relationship that is being established between a person and an object while the former works with it and modifies it. That way the object becomes a part of a personality. But if it is taken away from the person for a long period such an intimacy may disappear (Waldron 1992, 17). However, Waldron contests this theory by saying that it does not explain how property rights thus acquired can be transferred through sale or gift from one person to another without taking away a part of personality from the original owner (Waldron 1992,17). Neither the dilemma was resolved by Nozick (Nozick 1974, 230).

It is clear that when injustices are committed they damage individuals (directly and indirectly) and society as a whole (as in case with communal remembrance). Persisting injustices lead to the persisting damages. Therefore, it is obvious that injustices should be remedied in order to ensure the existence of a healthy society and its members. It is not that clear how the reparation has to be accomplished in order to satisfy all the affected parties. Neither of the theories by Locke, Nozick or Waldron provides a definite solution to the existing moral dilemmas. We rather get a lot of aspects that should be paid attention to in the course of restitution. In practical terms it means that instead of looking for a universal approach every situation should be considered in its particular circumstances.

## ***2.4 Evolution of the Restitution Concept in the International Law***

Understanding of property restitution has been evolving along with the norms of international public law. Prior to World War II subjects of international law were considered to be only sovereign states. Therefore, reparations, restitution, compensations and other forms

of remedies could take place only with respect to a state as a sovereign actor within the system of international relations (Williams 2007, 1). Unprecedented atrocities of World War II led to the development of international human rights law protecting persons and establishing individual responsibility for the war crimes (Williams 2007, 3). Accordingly, principle of states' exclusive rights for remedies in case of wrongful international acts was undermined. Individuals were granted the rights "to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (Universal Declaration of Human Rights (UDHR), Article 8). Further individual rights for remedy were consolidated by the International Covenant on Civil and Political Rights (ICCPR) and by regional conventions such as the American Convention on Human Rights (ACHR), the European Convention on Human Rights (ECHR), and the African Charter on Human and Peoples' Rights (ACHPR) (Williams 2007, 3).

The conception of restitution as an inter-state phenomenon assumes deprivation of the assets that can be returned in kind to their former owners. However, in the humanitarian law violations described in the key document on the issue, UN Reparation Principles<sup>11</sup>, are not confined just to deprivations. Typically they refer to infringement on such intangible values as "life, liberty, human dignity, and mental or physical integrity" (Williams 2007, 1). Thus the classic notion of restitution is only indirectly relevant to the remedies for such infringements, which is established on the case-by-case basis but not presumed. In addition, because of the violations taking place both for tangible assets and intangible values restitution is melted into a broader concept of reparations. Nevertheless, when it comes to the situations where violations of international law result into a loss of "recoverable material assets" the narrow classic notion of restitution is used (Williams 2007, 5). Particularly, restitution in that sense has become an integral part of the remedying process of human rights violations related to the

---

<sup>11</sup> Basic principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/147 (March 21, 2006)

case of displacement of persons as those involve expropriation of movable and immovable property, which represents recoverable material assets (Williams 2007, 5).

### ***2.5 Current legislation on restitution issues in the Czech Republic and Sudeten German question.***

The unification of Germany in 1990 allowed the country to gain a new status in the system of international relations. After a long period of aligning its foreign policy with the aspirations of Great Powers – the US and the Soviet Union – united Germany finally turned not only into a geographical but also political and economic center of Europe (Bazin 1999, 1). In addition, the collapse of communism in the countries of CEE in 1989 and the transition to a new system of social relations allowed Czech-German relations to move to a different stage. Both countries were looking forward to establishing friendly relations. The aim of Czechoslovakia was to establish stable relationships with the capitalist West, while for Germany it was important to harmonize relationships with its Eastern neighbors<sup>12</sup>. Such harmonization would require resolution of the issues, which appeared during World War II and the post-war period. The key issue was mutual recognition of the suffering of both the Germans and the Czechs during annexation, war and expulsions (Phillips 2001, 6). Particularly rancorous was the problem of the Munich Agreement. Prague's demand to repeal the Munich Agreement for the Sudeten Germans meant returning to the status quo ante World War II (Barkan 2000, 135). Obviously, it was impossible without restitution of the property expropriated from the expellees under the Beneš Decrees. Additionally, restoring property rights of individual members of the minority group would help to overcome "the moral and psychological stigma of the collective punishment," which was constructed by the Beneš Decrees (Barkan 2000, 135). Naturally, the Sudeten Germans hoped that on the wave of restitution acts covering the property expropriated under the communist regimes their property rights would be restored as well. However, this was not the case in

---

<sup>12</sup> More on the reconciliation policy of Germany in the following chapters

Czechoslovakia/Czech Republic, where property expropriated by the Beneš Decrees was not covered by the restitution legislation.

The primary reason for undertaking any kind of actions aimed at restitution is to remedy past injustices. The word “restitution” – derived from Latin *rēstituere* (rebuild) – denotes returning into the original state. In case of private property restitution, those are the property rights that are being returned in their original state. There is a question, however, what is considered to be an injustice. In the countries of CEE this question transformed into who committed an action so it is considered to be injustice and moreover deserves restitution. After the collapse of the communist system the governments were preoccupied with moving towards the new system of socio-economic relations. Therefore, the old regimes should have been proclaimed illegitimate and the actions done by these regimes should have been reversed. In Czechoslovakia, one reason for denouncing the communist regime was its perceived responsibility for devastation of the country’s economy (Kupka 1992, 299). Under the Austro-Hungarian Empire the territories of Bohemia and Moravia-Silesia were home to highly developed industries (Luža 1964, 4). After the disintegration of the Empire Czechoslovakia inherited these industries and became one of the leading economic powers of Europe. Socialist economic policies led to the decline of the industries (Swain 1999, 1201). Thus 40 years of communist rule has been presented as an aberration.

The only way to compensate for economically wasted years was deemed to be complete restitution (Swain 1999, 1201). Act No. 198/1993 on the Illegality of the Communist Regime and Resistance to it of the Czech Republic served the purposes of clearly identifying the communist regime as an unjust one. Even though the Act is more of a declaration than a piece of practical legislation (Obrman 1993, 587) it adds to existing restitution laws by once again restating the limits of restitution. It states that

the Communist Party of Czechoslovakia, its leadership and members are responsible for the system of government in this country in the years 1948-1989, and particularly for the systematic destruction of the traditional values of European civilization, for the conscious violation of human rights and freedoms, for the moral and economic ruin combined with judicial crimes and terror against advocates of different opinions, and replacement of a prospering market economy with command management, the destruction of the traditional principles of ownership, the abuse of training, education, science and culture for political and ideological purposes, and the careless destruction of nature (Czech Republic 1993, Act No. 198/1993).

Thus the legislation of Czechoslovakia and later the Czech Republic excessively concentrates on the illegality of the communist regime and the actions that were committed by it. Of course, the main restitution laws were adopted before the Act on Illegality of Communist Regime. And by then they defined the timeframes for remedying the injustices. However, in this realm the importance of the Act No. 198/1993 is that it solidified this decision making for further adjustments even more difficult.

Initially, the new Czechoslovak government did not see restitution as a sound economic policy that would help to address issues of decollectivization and denationalization of private property. This was the result of confusion over property rights. The problem was that during the 1980s only 7.5 percent of the means of production in Czechoslovakia were privately owned (Kupka 1992, 297), which would significantly complicate the process of property rights restoration. Also it seemed complicated to determine the property eligible for re-privatization or available for restitution (in kind) (Kraus 1992, 575). The attitudes changed when it came to the demands for rehabilitation of the political prisoners. As a rule the punishment would include expropriation of possessions, hence rehabilitation required at least some form of compensation if not full restoration of property rights.

On 2 October 1990 the Federal Assembly of Czechoslovakia passed Law No. 403/1990 on the Mitigation of the Consequences of Certain Property Losses (“Small Restitution Law”). It established the principle of in kind (physical) restitution when feasible

(Kraus 1992, 576). In order to avoid conflicts with other countries over the landed property occupied by foreign diplomatic and consular missions and eligible for restitution, Law No. 403/1990 was amended by Law No. 458/1990, which provided only for financial compensation for such property (Kupka 1992, 302). And finally this issue was settled by Law No. 137/1991 allowing persons qualified for restoration of rights for this type of property to seek for in-kind restitution after 15 April 1991; however, such persons had to let this property for consulate or diplomatic missions for at least 10 years. The same 10 year condition referred to property that at the time of restitution is used for “the needs of public health and social welfare services” (Kupka 1992, 302). This legislation covered around 70,000 small businesses and apartment buildings nationalized during the period from 1955 to 1961 (Kraus 1992, 576).

The Law No. 87/1991 on Extrajudicial Rehabilitation (“Large Restitution Law”) adopted on 21 February 1991 goes further defining the decisive period as from 25 February 1948 (when the power passed to the Communist Party officially) to 31 December 1989 (Kupka 1992, 303). But unlike the Small Restitution Law, the Extrajudicial Rehabilitation Law clearly stated that persons eligible for restitution are those who possess Czechoslovak citizenship and have their permanent place of residence in the country (Czech and Slovak Federal Republic, Act No. 87/1991). Finally, the Land Restitution Laws were adopted in May and December 1991, regulating process of restoring property rights on the land that was collectivized during 1950 (Kraus 1992, 576).

By adopting restitution laws in the early 1990s, the Czechoslovak government tried to demonstrate that it is committed to upholding private ownership rights (Neff 1992, 579). Nevertheless, objective conditions such as limited state budget would halt the restitution process. Additionally, for Czechoslovakia as a country being in general economic recession after the collapse of the socialist system restitution would bring significant budget



expenditures in the near future (Kupka 1992, 301). According to the estimations of the Czechoslovak Deputy Prime Minister Pavel Ruchetsky, the total cost of restitution/compensation would be some 21 billion koruny (USD 840,000,000) (Obrman 1990, 585). This might have outweighed the benefits of re-establishing an institute of private ownership in the long run. In addition, restitution would have hampered the process of privatization and investing (Kupka 1992, 301). Also the legislators had fears that courts would be choked by the flow of restitution claims, as well as cartographic and geodetic agencies would not be able to digest documents for confirmation of former ownership (Kupka 1992, 301; Obrman 1990, 584). Therefore, it was natural for Czechoslovakia to opt for certain limitations in terms of subjects of restitution and timeframes of the expropriations that are eligible for remedying.

With regard to timeframes, the date of communists established their monopoly of power was very convenient. Officially it happened in February 1948. However, most nationalization acts took place between May 1945 and February 1948 under the government of Edvard Beneš. These expropriations included the property of more than three million Sudeten Germans expelled from Czechoslovakia as “collaborators and traitors” of the Nazi regime during occupation of Bohemia and Moravia. Apart from that the businesses expropriated under Beneš decrees had to be compensated for but never were (Cepl 1991, 581). That is why there were bitter debates in the Parliament whether to establish decisive period from February 1948 or extend it back to May 1945 (Kraus 1992, 577; Cepl 1991, 581). As it is clear from the adopted acts lawmakers rejected the 1945 proposal. There are several reasons for this.

First of all, the legislators had to consider technical and economic feasibility of the restitution initiatives (Kupka 1992, 304). The inclusion of the period from 1945 to 1948

would add several million potential claimants to already existing ones. This would only have exacerbated the difficulties of the restitution process that legislators feared so much: additional pressure on the budget, extended period of claim considerations (hampering privatization and investments), and bottlenecking in the courts. However, there were ethical considerations as well, that to some extent influenced the decision on restitution legislation. The problem was that a lot of property confiscated under the Beneš Decrees was acquired through “the Nazi’s policy of Aryanization of Jewish property or for other reasons connected with war” (Cepl 1991, 582). Apparently, this way of obtaining property cannot be considered legitimate, thus possession of this property is illegitimate, which in its term excludes the right for restitution. In addition, the issue of Sudeten German property was considered an explosive one as there was a threat that it would provoke a debate over the responsibility for the war and other sensitive issues (Cepl 1991, 582).

Another reason for excluding cases of expropriation that took place before 1948 was the question of political legitimacy. In fact, there is no need to rectify the actions of the Beneš’ government as they cannot be strictly considered injustices. The acts of nationalization that took place between 1945 and 1948 were carried out by the legitimate government. All the actions were undertaken in accordance with presidential decrees and Czechoslovak Constitution of 1920 (Cepl 1991, 582; Karadjova 2004, 331). Repealing such a decision would create a negative precedent allowing any subsequent government to declare all the actions of previous governments invalid (Cepl 1991, 582), which could never be considered an acceptable situation.

The only groups that were allowed for restitution and compensation for the cases that took place before 1948 were Jewish communities and organizations. Under Law No. 212/2000 they were allowed to lay claims for restoring rights over the property expropriated

during the period from 23 September 1938 to 8 May 1945 (Karadjova 2004, 330). Even though this law brought up more claims for consideration, the issue of Jewish property was still less controversial than the one on the Sudeten German possessions. The main reason for Czechoslovak legislators not to include the Sudeten Germans into the group of persons eligible for private property restitution was the desire to avoid complications in the relationship with the states protecting the interests of those once deprived of their property. In case of the Sudeten Germans such states are Germany and Austria.

Nevertheless, despite the intensions of the Czechoslovak and later the Czech government to avoid tensions with these states it was not successful. A severe political and diplomatic crisis erupted between the Czech Republic and Germany in 2002 when the Czech Prime Minister Milos Zeman referred to Sudeten as “Hitler’s fifth column” (Karn 2006, 35; Barkan 2006, 7). Such a statement even led to a cancellation of the summit on the EU accession of the first-wave candidates (Karn 2006, 36). More recently, in October 2007, representatives of Austrian political parties, except for the Greens, released a document that called on Czech and Slovak parliaments to reopen a dialogue on the Beneš Decrees and reconsider questions of remedying historical injustices (CTK News Agency, October 18, 2007). And in January 2008 the Czech member of European Parliament Vladimir Zelezny expressed some concerns about tensions between the new EU treaty and the Beneš Decrees in the area, which refers to the Charter of Human Rights (CTK News Agency, January 22, 2008). Although EU accession of the Czech Republic was not blocked either by Germany or Austria and legal experts assert that EU legislation is not valid retroactively (CTK News Agency, January 22, 2008) unresolved restitution problems continue to stir up the debate and invoke bitter sentiments both on the inter-state level and on the level of EU.

At the moment legislation of the Czech Republic prohibits the Sudeten Germans expelled during the period from 1945 to 1948 and their heirs from laying the claims for their expropriated property. In this situation the reaction of Germany and Austria is negative as under such conditions their citizens continue to suffer the injustices. This issue has become a matter of manipulation both on the domestic and international level. The ways, in which it has been resolved, are discussed in the following sections of this research.

## **Chapter 3: The Sudeten German Question as an Obstacle to the German Reconciliation Policy towards the Czech Republic**

The current chapter explores the development of Czech-German relations from the beginning of the 1990s when the issue of restitution became salient in the countries with formerly communist regimes. It analyses how the Sudeten property issue has fit the whole set of foreign policy goals of Germany.

Despite Germany's belief that injustices done to the Sudeten Germans under the Beneš Decrees continue to exist, Bonn/Berlin has not been striving to achieve restitution of the Sudeten property by the Czech Republic as a part of the rectification process. The reason is that for Germany the existence of this problem continuously has been representing a very unpleasant obstacle to the general policy of reconciliation, which it has been pursuing towards its Eastern neighbors. This resulted from the fact that it has been creating unnecessary irritation for the government and the society of the Czech Republic making establishment of harmonious relations virtually impossible. Thus the emphasis on the issue of the Sudeten property restitution heavily depends on the foreign policy goals of the state.

In its turn, formulation of the foreign policy heavily depends on who is in power at the moment. Thus whether restitution becomes a priority of the national governments depends on the amount of political influence the advocate of the Sudeten property rights has within the country. In Germany, CSU could not get enough influence over the process of policy making. That is why the property restitution question was always secondary to the goal of reconciliation with Eastern neighbors.

### ***3.1 Relations with the Eastern Neighbor: German Reconciliation Policy***

The issue of the Sudeten property restitution has not become the defining cause for German relations with the Czech Republic. In most cases claims of property rights restoration

laid by the Sudeten Germans have been promoted by the CSU party of Bavaria. Naturally, it is so because overwhelming majority of Sudeten Germans transferred from Czechoslovakia settled in the State of Bavaria; therefore, they and their descendants constitute significant part of population of Bavaria<sup>13</sup> – the only region of Germany where the CSU operates – thus it is in the interest of the party to win votes of this minority. Interests of this group regarding their property have never become a national issue. Sudeten claims do not coincide with the general German policy line towards Czech Republic.

Developments in the debate over the Sudeten issue should be considered in light of the politics of reconciliation that Germany launched after its unification in 1990. The broadest understanding of the reconciliation process encompasses restoration of friendly and harmonious relations. With respect to the states, reconciliation represents establishment of the climate of mutual trust and confidence on the societal and official levels. Reconciliation *per se* does not mean resolution of all the existing inter-state conflicts. It rather allows for the creation of an environment which would be favorable for addressing such conflicts. From this definition it is obvious that in order for reconciliation to take place there should be a precondition of ongoing mistrust, fear and/or hatred between the people of the reconciling states (Phillips 2001, 172). Reconciliation may take place through emphasis of existing common interests. When shared interests are not fully recognized on the personal level, their mere existence does not create the necessary level of trust. Therefore, there should be other means used in order to generate enough sympathy and empathy. Under such conditions the emphasis is put on psychological factor, particularly the role of victimhood (Phillips 2001, 172).

---

<sup>13</sup> According to survey of 1994 almost 25 percent of twelve million of Bavaria's population identified themselves as Sudeten Germans (Nagengast 2003, 336)

In Czech-German relations pragmatic considerations have proven to be insufficient for establishing an atmosphere of trust. The most likely reasons for bitter animosity between the Czechs and the Germans are the events between 1938 and 1946 – the Nazi occupation of Bohemia and Moravia and the “wild” expulsions under the Beneš Decrees – when both the Czechs and the Sudeten Germans suffered deaths and hardships, including forced resettlements and expropriations of possessions (Kopstein 1997, 62; Waters 2006, 71). All the period, no matter which party had authority over the region, was characterized by numerous murders and atrocities. In addition to this, the Czechs’ animosity towards the Sudeten Germans is exacerbated by the fact that the overwhelming majority of the Sudetenland’s population supported German occupation of Bohemia and Moravia (Phillips 2001, 175). Although it is widely believed that the Czechs did not suffer nearly as much as the Poles did, the negative image of Germans is perpetuated by the memories of the War (Waters 2006, 62). Under such conditions in the process of reconciliation mere pragmatic considerations have to be complemented by actions aimed at changing attitudes of population. In the case of relations with the Czech Republic, the psychological factor central to the German policy of reconciliation is mutual forgiveness (Phillips 2001, 173).

The sense of guilt in German society and German elites happened to be the precondition that allowed for initiation of the reconciliation process. To some extent external efforts aimed at the cultivation of this sense through emphasis of Holocaust and German responsibility for the crimes and atrocities of the War contributed to the fact that Bonn/Berlin has a more pronounced sense of guilt than, i.e. Japan. At the same time such construction is reinforced by the emphasis on the sense of victimhood among the communities of the neighboring states (Phillips 2001, 173).

Initially, the policies of reconciliation pursued by Konrad Adenauer were aimed at the West stemming from the necessity to reduce allied control over all spheres of German social, political and economic life and initiate the process of the country rehabilitation (Phillips 2001, 174). Later the reconciliation principle was incorporated into *Ostpolitik* aimed at normalization of relations between West and East Germany in order to create preconditions necessary for eventual reunification (Unger 1991). Arguably, after the unification the need for reconciliation ceased to exist. However, actions of Bonn/Berlin with respect to the country's Eastern neighbors indicate that Germany still adheres to the principles of reconciliation politics. Particularly, in relationship with the Czech Republic Germany demonstrates a high degree of flexibility and openness for compromise by signing a key agreement in 1997 and supporting the Czech accession to the EU.

It was essential for the German policy of reconciliation to build up mutual trust and confidence between its own population and that of the Czech Republic. In order to achieve this purpose it was necessary to overcome antagonisms, which had accumulated since the time of Nazi occupation and adoption of the Beneš Decrees. Construction of the sense of victimhood – not only within the German community but even more importantly within the Czech society – allowed for the existence of positive feelings necessary to fight these antagonisms. During the Cold War, Bonn put some effort and financial support into constructing the sense of victimhood. First of all, it was done on the cultural level by showing “private memories and expellee ‘war stories’” in popular writings, textbooks and films. Depicting losses and sufferings during the expulsions constituted a significant part of the Sudeten German image (Kopstein 1997, 65). On the organizational level the support for the Sudeten Germans was provided through institutionalization of this population group. Adenauer's government established the Federal Ministry for Expellees, Refugees, and War Damaged with the main responsibility of caring for the interests of expellees. Also the



Sudeten Germans were themselves encouraged to create interest groups based on their region of origin. Such expellee organizations enjoyed financial support during the Cold War and continued receiving this support after the unification. Thus the Sudeten *Landsmannschaft* developed into a strong federally financed political lobby (Kopstein, 1997, 65).

However, property restitution claims laid by the Sudeten Germans (with the assistance of the Sudeten German expellee organizations) whose image had already acquired features of victims could hamper the process of reconciliation. The problem with them is that the Czechs had anxieties about being possibly deprived of their private property including houses and lands that might have been redistributed after the repeal of the Beneš Decrees (European Report, June 8, 2002). Although German expellee organizations do not demonstrate a high degree of unity there are at least two demands that all the organizations share. First, it is possibility of returning to their “homeland.” And second, they require restitution of property expropriated (as they claim) illegally by the Beneš Decrees (Kopstein 1997, 65). Their claims, to a certain extent, refer to “restoring the pre-war situation” (Williams 2007, 18). Such proposals are viewed by the Czech public as attempts to re-impose potentially explosive conditions that resulted into ethno-political conflicts during the World War II and post-war years (Williams 2007, 18). Under such conditions the process of reconciliation simply stumbles upon the property restitution claims.

Indeed, in the beginning of the 1990s intolerance of the political climate in Czechoslovakia significantly complicated the process of rapprochement between Prague and Bonn making this case “the most difficult in all of East Europe” (Nagengast 2003, 337). With respect to the statement by Václav Havel containing a personal apology for the injustices committed by Prague against the Sudeten Germans after World War II, a poll taken in June 1990 in Czechoslovakia showed that only three political parties in the country (the Slovak

Christian Democratic Movement, the Slovak Democratic Party and the Czech Beer Party) supported it (Nagengast 2003, 337). Following general public fear of the German claims for property<sup>14</sup> state politicians and media adopted rhetoric labeling the German minority claims as revanchists and a “stab in the back of democracy” (Nagengast 2003, 336). Naturally, there was no stable ground for constructing the concept of victimhood while such sentiments continued to exist in the Czechoslovak society.

The main peculiarity of the German position on the Sudeten German restitution issues is that its policy is directed outward and aimed at constructing a certain image on the international arena in order to achieve its own foreign policy goals (namely harmonizing relationships with Eastern neighbors). The problem is that restitution claims hamper the implementation of reconciliation policy as they create unnecessary irritation for the counterpart. In addition, the German position at the international arena in the mid-1990s could be characterized as a guarantor of democracy and prosperity that it deemed necessary to project eastwards, which required harmonization of relationship with its Eastern neighbor.

### ***3.2 The First Attempts to Reconcile***

After the collapse of communism Bonn discovered opportunities for establishing the relations with the Eastern neighbors based on the principles different from those of the Cold War (Phillips 2001, 175). In 1992 Germany and Czechoslovakia concluded a Treaty on Good Neighborliness and Friendly Cooperation. For the two countries this treaty was a possibility to resolve long-standing issues that had been complicating the relationship between the neighbors since the end of World War II. But for the Sudeten German this treaty presented a hope that their claims for property restitution would be resolved, especially after the adoption

---

<sup>14</sup> There is a fear among the Czech citizens that they might be deprived of their property because of the claims by some three million Sudeten Germans. This fear is exacerbated by the fact that during the post-war period the expellees constituted the wealthiest population group in the area, which significantly increases the cost of the property potentially eligible for restitution (European Report, June 8, 2002).

of Czechoslovak restitution laws limiting property rights restoration only for those who suffered expropriations after 1948 and who possessed Czech or Slovak citizenship (Nagengast 2003, 337).

The Treaty did not resolve the property issue directly; however, it did set the framework for the future discussion of the issue. First of all, it set the terminology for identifying the processes that took place on the territory of Bohemia and Moravia during Nazi occupation and during the Beneš presidency. In the preamble of the Treaty the word “expulsion” was used instead of “population transfers” both for Czechs resettled during 1938-39 and Germans deported from Czechoslovakia during 1945-46 (Phillips 2001, 176). If the Sudeten Germans of Bavaria found use of this word one of the few valuable points in the Treaty, for Prague this term resulted into additional debates during the ratification process (Nagengast 2003, 337). Václav Klaus expressed some criticism over this wording and pointed out that in current context and in the light of unresolved property issues it may be interpreted as an open road for legal restitution claims (Nagengast 2003, 337).

In line with its reconciliation policy Germany formally supported “Czechoslovakia’s efforts to join European Community” (Nagengast 2003, 337), which delighted Prague with its strong desire to move away from the socialist East to the West. At the same time Bonn could not but offer some conciliation to the Bavarian CSU representing a strong political lobby for the interests of Sudeten Germans. First, it had to exclude the clause annulling all Sudeten property claims in Czechoslovakia from the Treaty (Ryback 1996, 172). Second, the letters exchanged by German and Czechoslovak foreign ministers were appended to the Treaty, which, on one hand, declared that in case of Czech integration into the European community the Sudeten Germans would enjoy increased opportunities for their unimpeded resettlement to Czechoslovakia (Phillips 2001, 177). On the other, a letter by the German foreign minister

Hans-Dietrich Genscher explicitly stated “This treaty does not deal with property questions” (Ryback 1996, 172). Such behavior of Bonn resulted from the complications created by the property issue. In such case, the government would have preferred not to raise this question in order to avoid irritating Prague. In the other, a strong lobby from the Bavarian CSU forced it to maneuver between interests of its own citizens and the international partner. In such a difficult situation, where finding balance is hardly possible, Germany preferred to refuse discussion of the issue at all.

Clearly even in the beginning of the 1990s when the issue of property restitution was the most salient during the whole period since the collapse of communism, the Sudeten claims did not become the defining motif of German foreign policy towards Czechoslovakia. Property claims have been mostly pushed for by the political party of Bavaria that draws its electoral support from more than three million of those who claim to be of the Sudeten German origin. This trend of regional support could be traced during a vote on the 1992 Friendship Treaty in *Bundesrat*: out of sixteen German states only Bavaria voted against it. Nevertheless, the Czechoslovak government and general public saw this as a symbol of the German revanchism (Nagengast 2003, 338). The essence of Czech-German relations after 1989 could be described by the statement of Czech foreign minister Josef Zielenec: “*ano, ano – ne, ne*”, which Ryback (1996) explains as “Yes to good neighborly relations, yes to economic cooperation, but no to opening ‘closed chapters’ of history, and no to any discussion of property restitution”.

### **3.3 Property Claims and “Right to Homeland” as Factors Deteriorating the Relationships. Crisis of the Mid-1990s**

Although initially Czech-German relations showed all signs of rapprochement<sup>15</sup> the demands from the Sudeten German organizations for restitution and reparation indirectly supported by German officials<sup>16</sup> led to the deterioration of relationship. Thus on 17 February 1995, Václav Havel delivered a speech in Charles University in Prague where he reiterated his regret for the expulsions of the Sudeten Germans; however, he did not fail to label the expellees who cooperated with Nazi Germany as those who “turned not only against their fellow citizens, against Czechoslovakia as a state and their own status as citizens of that state; they turned against the very foundations of humanity itself. They embraced a perverted racist ideology and began immediately to apply it in practice” (Havel 1995). In this way he constructed the perception of threat for the past Czechoslovak state from the ethnic minorities (Williams 2007, 18). In light of this, Havel called upon the signing parties to distance themselves from the past. He established the ground for cooperation by welcoming Germans “as guests who esteem the lands where generations of their forefathers once lived, who tend sites to which they feel bound and work together with our citizens as friends” rejecting, however, any possible restitution claims as “an effort to set the vicious circle of never-ending tribal retaliation in motion again” (Havel 1995).

The tensions between Bonn and Prague reached their peak when in March 1995 the Constitutional Court of Czech Republic made its decision on the case brought by the Sudeten expellees disagreeing with the decisions of lower level Czech courts ruling against restitution of the homes lost prior to 1945 (Williams 2007, 19). In addressing the challenge to the

---

<sup>15</sup> For example, in January 1990 the new Czechoslovak foreign minister, Jiri Dienstbier stated: “In the joint European home, we now have the historic opportunity to remove the last taboos and to announce reconciliation [with the Sudeten Germans]” (Nagengast 1996, 336); later that year President Václav Havel and President Richard von Weizsäcker exchanged apologies on the state visit (Waters 2006, 79).

<sup>16</sup> Former German Finance Minister and chairman of the CSU, Theo Waigel, labeled the party as a “lawyer” of Sudeten Germans’ legitimate positions; the Minister of the Interior and from 1993 Minister-President of Bavaria, Edmund Stoiber (whose wife in fact was an expelled Sudeten German), provided extensive rhetoric backing for Sudeten German interests (Nagengast 1996, 336).

Presidential Decree No. 108 of October 25, 1945 the Court not only reaffirmed its constitutionality but explained its decision by attributing collective responsibility to the whole German minority for its majority supporting Nazi occupation (Ryback 1996, 173). This decision ruled out the possibility of restitution for the Sudeten expellees on the basis of collective guilt that no other European nation ever applied even to the events of the World War II (Ryback 1996, 173).

Bonn reacted to this ruling of the Czech Constitutional Court by laying certain counterclaims. Thus German Foreign Minister Klaus Kinkel in his speech in front of the *Bundestag* stated that as no nation has a “monopoly on truth” Czechs have to acknowledge their own crimes like the Germans did (Ryback 1996, 174). In May 1996, for German Finance Minister Theo Waigel to even speak at the annual conference organized by the Sudeten German groups, exacerbated the existing tensions by making strongly pro-Sudeten comments (Gibian 1996, 11).

By the mid-1990s the tensions between the Czech Republic and Germany existed due to the following issues:

1. Demands for compensation. The Czech Republic saw compensations for Nazi victims as a necessary condition for establishment of friendly relations with Germany. As for Germany, even though it had recognized its obligations to victims in general, its policy towards Prague was closely linked with Czech obligations towards the Sudeten Germans (Handl 1997, 152).
2. Legality of the Sudeten German transfers/expulsions. The Czechs perceived population transfers as a part of the post-war settlement, which had been authorized by the Potsdam agreement. On the contrary, Germany saw expulsions as unlawful acts of the Czech government; also it did not recognize the Potsdam agreement as binding

and thus legitimating expulsions. Consequently, Germany believed that restitution claims of the Sudeten Germans are legitimate while Czechs did not (Barkan 2000, 134).

3. Constitutionality of the Beneš Decrees. From the Czech point of view the Decrees were legal acts by the democratically elected president based on existing constitution. Although they are not repealed they do not have any effect. Bonn perceived these acts as illegitimate or in conflict with the norms of international law (Handl 1997, 152).

These issues defined the framework for the continuing discussion of the Sudeten property restitution issue. The lack of consensus on each of the three issues led to the situation where it was impossible to start the process of compensating expellees.

### **3.4 Greatest Degree of Understanding: The Czech-German Declaration of 1997**

Despite the existing controversies Prague and Bonn signed The Czech-German Declaration on Mutual Relations and their Future Development on 21 January 1997 evidence that both parties were interested in achieving progress in the relations. For the Czech Republic the rationale was quite evident as Prague's need for German support was crucial for the country's accession to NATO and the EU. In addition, Havel's government deemed it necessary to improve the attitude of the Czech public towards Germany in order to avoid resistance to the EU accession (Handl 1997, 152). And obviously mere practical reasons made the Czech Republic seek for harmonization of relationships with Germany: by 1996 the latter had become one of the most important economic partners of Prague<sup>17</sup>. As regards to Germany, it continued to pursue its policy of reconciliation with its Eastern neighbors. In that sense the Czech Republic remained the only one who the reconciliation process was complicated with (Handl 1997, 153). After the unification Germany again found itself in the

---

<sup>17</sup> 31.8% of Czech export was directed to Germany, while German share in Czech imports constituted 25.8% and 30% in foreign direct investments (Handl 1997, 164).

center of Europe remarkably representing the model of democracy. The role of democratic guarantor and geographical position resulted for Bonn into the natural obligation to perform the functions of stabilization and democratization on the continent (Bazin 1999, 1). From the practical point of view Germany turned out to be the chief commercial partner between the EU members and countries of CEE. Its total share in trade turnover constituted 52%<sup>18</sup>. German investments totaled 19% (the largest share) of all foreign direct investments into countries of CEE (Bazin 1999, 3). Geopolitically, for Germany, which had long been exposed to hostile powers, it was extremely important to find itself surrounded by allies (Cohen 1999). However, it was more important to be surrounded not only by friends but by stability. As a German foreign policy expert, Karl Kaiser, put it, Germany was obliged to project stability eastward (Cohen 1999). Under such conditions, it is natural that Bonn sought normalization of the relations with the Czech Republic. On its part Prague was interested in appeasing Germany as a country that has political muscles to block Czech joining the European community. The troublesome issue that hampered movement towards compromise was the issue of Sudeten property. Therefore, the declaration on reconciliation of 1997 was carefully worded in order to resolve the existing tensions and mute the discussion of Sudeten property problem.

The Declaration represented purely the expression of political will of Germany and the Czech Republic; it was not a treaty or legal act, and thus it did not have any binding force and did not have to be ratified. Nevertheless, both countries found it necessary to ask for consent of the Parliaments in order to “add long-term political importance” to the document (Handl 1997, 156). The declaration passed through the Bundestag relatively easily even despite the opposition of the Sudeten lobby represented by the CSU (Kopstein 1997, 72). It also passed easily through the Czech Senate; however, only passage of a supplementary resolution stating

---

<sup>18</sup> While for Italy and France it was 17% and 8% respectively



that the Declaration will not deal with any questions of the Sudeten property and claims regarding the homeland allowed the document to be approved by the lower house of the Parliament (Kosptein 1997, 73).

The declaration on reconciliation consisted of a preamble and eight articles. In the text of declaration Germany expressed its full support for the Czech Republic's accession to the EU and NATO (Preamble), both states expressed their determination for closer cooperation under the condition that the past is clearly defined to recognize "cause and effect in the sequence of events" (Article 1). Germany recognized its responsibility for the Munich agreement of 1938 and expulsion and suffering of Czech nationals, while expressing its regret for these events (Article 2). At the same time the Czech Republic declared that it regrets suffering and injustices that were inflicted upon people by "the forcible expulsion and forced resettlement of the Sudeten Germans from the former Czechoslovakia after the war as well as by the expropriation and deprivation of citizenship" and also "in view of the fact that guilt was attributed collectively" (Article 3). However, it is necessary to note that Prague never apologized for expulsions and expropriations per se. It only regretted atrocities and crimes that accompanied the process (Waters 2006, 87). Importantly in Article 5 both sides recognized the injustices of the past but emphasized that they belong to the past and thus priority is the development of understanding and friendly relations oriented towards the future. So the relationship should not be burdened "with political and legal issues which stem from the past". Also the common "Fund for the Future" was established that had financing the projects of mutual interest<sup>19</sup> as its main aim. Since Germany recognized its "obligation and responsibility towards all those who fell victim to National Socialist violence", this Fund was designed to especially benefit such victims (Article 7).

---

<sup>19</sup> The projects of mutual interest include youth encounter, care for the elderly, the building and operation of sanatoria, the preservation and restoration of monuments and cemeteries, the promotion of minorities, partnership projects, German-Czech discussion for, joint scientific and environmental projects, language teaching, and cross-border cooperation

The fourth article turned out to be the most offensive to the Sudeten Germans – even though it was the most carefully worded (Kopstein 1997, 72) – because it basically indicated reluctance of both the Czech and the German governments to consider the restitution. However, for Bonn it represented an elegant solution of the conflict between reconciliation policies and interests of the expellees (citizens of Germany whose interests should be protected by the state). The statement that “each side remains committed to its legal system and respects the fact that the other side has a different legal position” allowed the German government to formally act as an advocate of the Sudeten German rights while in fact giving up any practical way to pursue this objective (Kopstein 1997, 72).

Practically, the Czech-German Declaration of 1997 was beneficial for the national governments of both countries. On one hand, it allowed the Czech Republic to get the endorsement for its accession to the EU and NATO from one of the strongest payers in the region. On the other hand, Germany managed to move further on the path of reconciliation with its Eastern neighbor. The problem of the declaration was that the goals were achieved at the expense of the Sudeten Germans, whose claims were moved down the political agenda. As the Czech Foreign Minister pointed out, the declaration was a guarantee that Bonn would not support the restitution demands and that the document was a political and legal “full stop” to the past (Handl 1997, 159). Another point in the declaration provided the Czech Republic with the space to maneuver in the relationship with Germany. It refers to the understanding of the term “expulsion”. For Germans this process unconditionally represents an unlawful act, while Czechs recognize only the excesses as those that were “contrary to elementary humanitarian principles as well as legal norms existing at that time” (Article 3). Therefore, expulsions and expropriations under the Beneš Decrees were never condemned as injustices but, according to a leader of *Landsmannschaft* Franz Neubauer, “regretted in ambiguous formulations” (Cowell 1996).

The situation for expellees worsened even further after the SDP-Green victory at the elections of 1998. Gerhard Schroeder's government had little support from the Sudeten Germans; therefore, it did not have a reason to consider minority rights in the process of improvement of the Czech-German relations (Nagengast 2003, 340). The lack of support became immediately evident when Sudeten national umbrella organization Bund der Vertriebenen had its federal subsidies cut (Nagengast 2003, 340).

Sudden improvements in the political status of Sudeten minority were brought by the Czech Social Democrats' and Civic Democrats' decision to exploit anti-German nationalist sentiments of the Czech population during the parliamentary elections of 2002. In January of 2002 Czech Prime Minister Miloš Zeman called the Sudeten Germans "Hitler's fifth column that destroyed Czechoslovakia as the only island of democracy in Central Europe" (Suppan 2006, 5). After such a statement Chancellor Schroeder cancelled his trip to the Czech Republic scheduled in March. To make things even worse in May Zeman declared that the Sudeten Germans should have felt lucky that they had not been sent into concentration camps (The Economist, May 25, 2002). Basically, his speeches reflected the mainstream attitudes of the Czech population towards expellees and the Beneš Decrees. As *Der Spiegel* explains, in 2002 majority of the young Czechs was convinced that the Sudeten Germans had come to Czechoslovakia at the time of occupation in 1938 and deserved to be expelled (Nagengast 2003, 341). German and Austrian politicians did not protest in the same harsh language; however, Edmund Stoiber (Bavarian Minister President and at that point of time Germany's Chancellor candidate) hinted that Czech accession to the EU might not become a case if the Beneš Decrees were not repealed (Country Monitor, June 3, 2002). And the leader of the Austrian Freedom Party Jörg Haider initiated a petition that demanded Austrian government to veto Czech accession to the EU for the same reason (Erlanger 2002).

In this situation it is obvious that the Sudeten German issue can be manipulated by the political forces. It has not only been used by the FPÖ in Austria and CSU in Germany to win the votes of the Sudeten Germans representing a significant part of population. It also gave an opportunity to Prague to exploit anti-German sentiments existing in the Czech society, once again to win votes. However, Prague faced the similar problem that Bonn would face, which was how to balance domestic policies with the interests on the international arena. If the Czech Republic had chosen to try to win elections by means chosen earlier there would have been a fair chance for the Sudeten issue to be further promoted by Austria and Germany. However, the Czech government opted for normalization of the relations with the countries that represented significant political force in Europe and could in fact influence the process of Czech accession to the European community.

The attempt to resolve the crisis was made by the German Foreign Minister Joschka Fischer. He met with the Czech Foreign Minister Jan Kavan in order to give a joint interview to Czech television on 20 February 2002. Kavan reiterated that the Beneš Decrees are a part of Czech legislation but at the same time they are a part of history: even though they were not repealed they do not have any legal effect. The comments by Fischer contained denial of any connection that the German government could make between the Beneš Decrees and Czech accession to the EU. He proclaimed that European expansion is at the top of priorities for Berlin (Nagengast 2003, 341). Further actions and proclamations of both governments were completely in consistency with these statements. The Czech Parliament indicated that the country was determined to close the discussion of the Decrees by passing a resolution in April 2002, which stated that the Beneš Decrees do not have any legal significance and property relations arising from these decrees are not to be challenged. Right before Czech accession to the EU, during Schroeder's visit to Prague in September 2003 the Prime Minister Vladimir Spidla declared that the Czech-German dispute over the Beneš Decrees and expulsion of the

Sudeten Germans was the matter of past (Waters 2006, 87). Therefore, by the time the Czech Republic joined the EU none of its institutions renounced the Decrees that would allow for change in the property relations, nor did any of the institutions engage in any act of restitution (Waters 2006, 88).

In August 2005 the Czech Parliament unanimously adopted a declaration where it expressed its appreciation to those Germans who opposed the Nazi regime during the occupation and regretted that “some of these people did not receive the appreciation they deserved” (Waters 2006, 80). The issue of the property restitution for Sudeten Germans expelled from Czechoslovakia in 1945-46 up to this moment remains unresolved. The evidence to that is a number of claims aimed at restoring rights for the property expropriated under the Beneš Decrees brought to the courts of Czech Republic (CTK News Agency, February 12, 2008; February 25, 2008). However, after Czech accession to the EU the issue lost its salience and now does not draw as wide as response among politicians as during the mid-1990s. This has partly resulted from the fact that political parties and groups promoting interests of the Sudeten Germans lost the lever that allowed them to influence the Czech Republic. That is the possibility to condition the EU accession on the resolution of the restitution issue. At the same time these political forces lost part of their influence on the process of national policy making. Bearing in mind the general line of German foreign policy aimed at maintaining harmonious relations with its Eastern neighbors it is natural that the Sudeten property restitution issue is low on current agenda although it remains unresolved.

In conclusion it has to be said that the Czech-German relations have been carried out in the spirit of cooperation and neighborliness since the beginning of 1990s. This period is characterized by a number of agreements and joint statements aimed at harmonization of the relations and resolution of existing controversies. Such fruitful relations were possible

because of the interest of the both sides in rapprochement. The Czech Republic had an interest in winning the support of one of Europe's most influential powers in its accession to the EU and NATO. Also Germany and the Czech Republic are tied by strong economic links (Bazin 1999, 3). As for Germany its goal was reconciliation with its last neighbor in the East with who the relations had not yet been harmonized (Nagengast 2003, 337). For that the government has been pursuing the policy, which implies among all construction of the notion of victimhood as opposed to widely recognized German responsibility for the atrocities of World War II (Phillips 2001, 172). Recognizing unlawfulness of Sudeten German expulsion would be the perfect opportunity to demonstrate that the Germans experienced suffering as much as the Czechs did. Recognition of maltreatment of the Sudeten Germans under the Beneš Decrees could have been less of a problem if a repeal of the decrees had not led to the necessity of restitution, which the Czech Republic did not have neither resources nor public approval for. So it strongly objected restoration of property rights for Sudeten Germans expelled during 1945-46. That is why Czech legislation on restitution excluded those whose property was expropriated prior to 1948 and who did not have Czech citizenship.

Thus Germany faced a difficult task of balancing between the necessity to achieve recognition by the Czech Republic of its responsibility for the expulsions of 1945-46 and avoid opening the way for restitution claims. The situation was complicated by a quite powerful political lobby advocating the Sudeten German interests. The solution was found in simple refusal to discuss the issue of property. While the Treaty and the Declaration stated the importance of mutual understanding and recognition of both sides of their responsibility for the crimes of the War and post-war period concomitant letters and resolutions clearly indicated the question of property restitution is not to be discussed by the parties (Kopstein 1997, 72).

## **Chapter 4: Austrian Foreign Policy towards the Czech Republic: Opportunities for Protection of the Sudeten German Interests**

Like Germany Austria never recognized the legality of the Beneš Decrees. Similarly, for the most time since the beginning of 1990s the Sudeten German property restitution claims have not become the priority for the national foreign policy. However, after taking closer look at the Czech-Austrian relations it becomes evident that Austria has treated the issue of restitution differently than Germany.

This chapter focuses on the developments in the Czech-Austrian relationships since 1990. It examines the ways the issue of restitution has been treated depending on its consistency with the national foreign policy goals during this period. This chapter also provides a comparative analysis of the Czech-German and the Czech-Austrian relations, which allows identifying factors that result into differences in the positions of the two countries on the Sudeten German property restitution issue.

As it was mentioned before, Germany has been committed to the policy of reconciliation with its Eastern Neighbor and Sudeten restitution claims proved to be an obstacle to implementation of this policy. Austria, on the contrary, during the period from 2000 to 2002 was committed more to the protection of rights and interests of its citizens than to establishment of frictionless relations with the Czech Republic. At this point property restitution for the Sudeten Germans became one of the goals of Austrian foreign policy (which was never the case for Germany). Like in German case, the attention paid to the issue of the Sudeten property restitution on the interstate level proved to depend on the foreign policy goals of Vienna.

However, the changes in the alignment of political powers in Austria at a certain point led to changes of the priorities for the national policies and thus allowed for protection of the

Sudeten German property rights. In 2000 the Freedom Party of Austria managed to win enough support to become an equal partner in the ruling coalition, which allowed it to include the Sudeten issue into the governmental program and thus lifted the issue to the level of national politics.

#### ***4.1 Relations with the Eastern Neighbor: Austrian Security Provision***

In Austria's case, one can hardly talk about a purposeful policy of reconciliation in the sense that Germany attributed to it. The sense of guilt indeed is present in Austria. Thus in March 2008, Barbara Prammer, the president of National Council of Austria pointed out that the country bears shared responsibility for the atrocities committed by the Nazi regime. She emphasized that the perception of Austrians being forced to commit crimes was in fact a "fiction of history" that was constructed after the defeat in World War II (Kole 2008). But for Austria, more than 50 years the issue of restitution has not been of great importance. For the most part it was considered to be a matter of Czech-German relations (Suppan 2006, 4). To some extent the amount of attention paid to the claims of the Sudeten Germans may be attributed to the size of the group. While in Germany the number of those who identified themselves as Sudeten German totaled up to three million, in Austria Sudeten group was 250,000 people (Suppan 2006, 34).

The salience of restitution issue increased in Austria in the second half of the 1990s. Partly it was the result of changed strategies of the FPÖ of Jörg Haider, which up until 2002 has been a primary advocate of the Sudeten German interests. Austrian accession to the EU in 1995 and further expansion of the Union to the East provided for more intense discussion of the Sudeten problem. The FPÖ managed to increase its constituency from 5 to 27% from 1986 to 1999 (Johnson 2000, 12). Naturally, it increased its political influence and received more levers in order to promote Sudeten German interests.



The specificity of the approach to the issue of property restitution in Austria is that it is framed into a “security policy” of the FPÖ. This policy was formed under the conditions of Austria’s increased subjective insecurity during the 1990s. The collapse of communism in the East and Austria’s accession to the EU brought a considerable degree of modernization to the country, which threatened low-income groups, the less skilled and the less educated. Thus security and protection of the citizens’ interests become one of the most important values in Austrian society. The FPÖ repeatedly appeals to these values in order to win necessary votes (Johnson 2000, 11). Protection of the Sudeten German interests fits the set of issues considered by the party. Therefore, the Sudeten property restitution may be viewed as one of the goals of Austrian foreign policy (at least for the period when the FPÖ played an equal role as a partner in the ruling coalition), as opposed to being a bothering side-effect of the German policy of reconciliation.

So the main difference between German and Austrian approach to the Sudeten German restitution issues is that for the latter it is connected to the policy directed inward and promoting domestic values. The absence of clearly stated and purposeful reconciliation politics allows Austria to avoid controversies that define the behavior of Germany. In addition, in the mid-1990s Germany found itself in the position of a guarantor of democracy and prosperity in Europe – which created a necessity of relationship harmonization with the neighbors, – while Austrian society experienced growing perception of increased vulnerability. Therefore, Sudeten claims for restitution of property seem to be more consistent with the foreign policy promoted by the state in Austria than it is for Germany.

#### ***4.2 Late Reaction to the Sudeten Problem***

Unlike Germany, Austria did not develop an optimistic image of mutual understanding and cooperation with the Czech Republic. As mentioned earlier the greater salience was attributed to the question of restitution only by the second half of the 1990s. The Czech-

German Declaration served, *sui generis*, as a catalyst for the Austrian reaction to the Czech position on the issue of the Sudeten German property restitution. This document immediately evoked criticism from the Austrian specialists in international law. For example, Otto Kimminich made several points contesting the reasonability of the Declaration. He found:

1) that the resolution of the Council of the League of Nations from January 10, 1939 also recognized Germans (mostly German Jews, Social Democrats, and Communists) as refugees from the “Sudetenland;” 2) that on the basis of the German-Czechoslovak Citizenship Treaty of November 20, 1938 the Sudeten Germans mostly became foreign citizens; 3) that international law prohibits the confiscation of foreign property without compensation; and 4) that the Hungarian Foreign Minister János Gyöngyösi successfully protested at the beginning of 1947 against the insertion into the Paris Peace Treaty, as demanded by Foreign Minister Jan Masaryk, of an article justifying expulsion and forced evacuation. (Kimminich 1997)

The initial response to the developments of the Czech-German relations and discussion of the Sudeten property issue came from Austrian local governments. The first was Upper Austrian government that issued a resolution in the fall of 1998 calling upon the Austrian federal government to open negotiations on repealing the Beneš Decrees with Prague because the regional government deemed these decrees unjust (Suppan 2006, 4). Shortly after, in spring 1999, governments from a number of Austrian diets issued resolution with similar requests. Finally, National Council of Austria passed a resolution reiterating the demands by regional governments (Suppan 2006, 4).

### ***4.3 Sudeten Issue as a Part of the National Policy in Austria***

The circumstances were such that the federal government of Austria turned out to be highly responsive to the demands on behalf of Sudeten Germans. The point was that after the elections of 1999 the FPÖ and Wolfgang Schüssel’s People’s Party (ÖVP) each won 52 seats in the National Council of Austria. Even though the historical coalition partner of the ÖVP Social Democratic Party of Austria (SPÖ) won 65 seats it went into opposition. The negotiations between the ÖVP and the SPÖ over the formation of the coalition failed. At the same time both the ÖVP and the FPÖ indicated that they will not tolerate the SPÖ minority

government. Under such conditions the coalition between the ÖVP and the FPÖ became possible (Johnson 2000, 15-16). Eventually, in spite of the threat of diplomatic quarantine coming from fourteen EU member states the coalition was formed. Thus the FPÖ (as a coalition partner) acquired leading role in the government.

Just exactly in line with the party program in early February 2000 Jörg Haider stated that the Sudeten German expellees deserved restitution from the Czech Republic. Although not officially stated, he hinted that Austria would veto Czech accession to the EU. Moreover, he claimed that the Sudeten Germans were as entitled to compensation as the survivors of the Holocaust (Frank and Kettmann 2000). In addition, in response to the resolutions of the local Austrian governments and the Parliament calling for negotiation with Prague on the Beneš Decrees, the coalition included demand for reparation for the Sudeten Germans in its program (Radio Prague, February 11, 2000). This action of the national government transferred the issue of the Sudeten German property from the level of interest groups or regional lobby organization on the level of national policy. This is the peculiarity of the Austrian case that distinguishes it from Germany. In the latter the interests of expellees in the government were mainly represented by the Bavarian CSU, merely regional party. Although the CSU has a sister party Christian Democratic Union (CDU) that operates in the rest of the country the restitution claims were neither promoted on the country-wide basis nor became a part of an official governmental policy. On the contrary, the German government for the most part has been trying to avoid the discussion of the property issues in order to benefit its reconciliation policy.

#### ***4.4 Links between the Restitution Problem and the EU Accession***

Finally, it needs to be noted that to some extent the debate between Austria and the Czech Republic was linked to the accession of both countries to the EU. After its accession Austria found itself in a position where it gained the levers that allowed Vienna to exercise

pressure over Prague. Namely Austria came into possession of the right to veto Czech accession to the EU. On various occasions Austrian politicians (like German ones) hinted that the issue of restitution should be tied to the process of the EU accession (European Report, March 6, 2002; March 16, 2002; April 13, 2002; April 20, 2002). In April 2003 during the meeting of Thomas Klestil and Vaclav Klaus in Vienna, the Austrian President officially stated that the issue of the Sudeten Germans had not been yet resolved “in a satisfactory manner” (Radio Free Europe/Radio Liberty, April 24, 2003). The Resolution by the Czech Parliament of April 24, 2002 on the irrevocability of the Beneš Decrees infuriated the FPÖ and provoked angry reaction from Peter Westenthaler, parliamentary leader for the party, who repeated the threat that Austria would not allow the Czech Republic into the EU if the Decrees were not repealed (Cameron 2002).

However, linkage of Czech accession to the EU to repeal of the Decrees was never an official governmental policy in Austria. Moreover, Vienna even approved Czech accession without requiring any acts of restitution of the Sudeten German property (Waters 2006, 25). It is not surprising as the FPÖ’s coalition partner the ÖVP repeatedly proclaimed that the Czech Republic joining the EU should not be conditioned on the abrogation of the Decrees (Radio Prague, July 29, 2000; Cameron 2002). In addition, after the elections in November 2002 the FPÖ’s share of the votes fell from 27% (in 1999) to 10% (Freedom House). Again the ÖVP failed to re-establish a coalition with the SPÖ and failed the negotiations with the Greens. Thus the Freedom Party was included in the coalition but obviously it lost its influence and was not able to shape state policy in the run-up to accession (Freedom House).

Additionally, the EU put certain pressure on the right-wing politicians of Germany and Austria by launching an independent study, which indicated that “neither the confiscations of German and Magyar property provided for in the Beneš Decrees nor the expatriations violated

EU law, as this could not be made retroactive”. The study also showed that the law of 8 May 1946, which abolished punishment for crimes against Germans and Hungarians, “did not stand in the way of the accession of the Czech Republic to the EU” (Suppan 2006, 38). Also EU officials called upon the Czech Republic to negotiate the issue of the Beneš Decrees with Berlin and Vienna (Pehe 2004, 44).

According to the political analyst Jiri Pehe (2004) Czech accession to the EU may be even useful for the resolution of the restitution issue as it provides for the framework for discussion of the issues where more than one nation is involved. No matter whether this statement is true the fact is that similar to Czech-German relations the debate over restitution to the Sudeten Germans became less intense after the Czech accession. One reason is that neither Austria nor Germany is able to exercise veto power in order to block actions of Czech Republic any more since the accession has already taken place. Lack of the lever weakens their bargaining position, which in its turn negatively affects the desire of the countries to engage into the discussion. Partly, the issue is muted because political parties that have been representing the Sudeten German interests do not exercise much of political influence. In Austria it is the case because the Freedom Party continued to lose its support after the unsuccessful elections in 2002. Even though in March 2004 Jörg Haider was re-elected as a governor of Carinthia, the party won only 6% votes at the elections to European Parliament in June (Freedom House). After such a poor performance most of the party members left and established the Alliance for the Future of Austria (BZO), which is now the junior partner of the ÖVP in the ruling coalition (Freedom House). Apparently, it is not able to exercise as much influence as when being a part of coalition formed in 2000. And in Germany, policies of the CSU are subjected to those of the ruling party of the CDU, which does not have the Sudeten property issue at the top of its agenda.

#### ***4.5 Restitution of the Sudeten German Property: a Goal of National Policy or an Obstacle to It***

It is obvious that Czech-German interaction with regard to repeal of the Beneš Decrees and the Sudeten property restitution have been more intense and richer with mutual documents signifying understanding and cooperation than Czech-Austrian interaction. First of all, it is conditioned by the time period during which it took place. Despite the fact that Nazi occupation of Bohemia and Moravia and later expulsion of the Sudeten Germans affect both Czech-German and Czech-Austrian relations Vienna started to pay attention to the expellee issue only during the second half of the 1990s. Primarily it was the result of perception that the Beneš Decrees were a matter between Prague and Bonn/Berlin (Suppan 2006, 4). By the time Vienna found it necessary to engage in the discussion of the expellee problem, Germany and the Czech Republic concluded a treaty on neighborly relations and signed a declaration on reconciliation.

Austria seems to be more radical in its policies with respect to the Sudeten German issue. The difference between it and Germany was that Vienna pursued not the policy of reconciliation but the policy of security. Growing perception of insecurity in Austrian society allowed the Freedom Party of Austria to win wider support because it managed to emphasize its dedication to protection of interests of Austrian citizens (Johnson 2000, 11). Protection of the Sudeten German minority was among the party's priorities. Because of the wide support the Freedom Party managed to become an equal partner of the governing coalition. That allowed for the restitution of the expellees' property to be included into the coalition program and thus become a part of the national policy, which never happened in Germany where main advocate of Sudeten rights, the CSU, always remain the regional party. Even though its sister party the CDU is now a ruling party the restitution issue does not occupy a noticeable place on its agenda as the Sudeten Germans are not part of its electorate.

With regard to the EU accession neither Austria nor Germany had any real intention to tie the demand to repeal the Beneš Decrees to the Czech accession. For Germany it was obvious as the EU expansion to the East has always been close to the top of its political agenda and no political force in the country gained enough influence in order to subject it to the goal of the Sudeten German property restitution. In Austria by the time of accession in 2004 the FPÖ lost its support and thus political influence; even though the party remained a partner of the ruling coalition it is still the role of a junior partner. Thus the Czech Republic managed to join the EU without resolving the issue of restitution for the Sudeten Germans. With the Czech accession Germany and Austria lost important levers that would strengthen their bargaining positions vis-à-vis the Czech Republic. However, it is believed that the EU can provide a framework for the resolution of such controversial issues that involve more than one nation (Pehe 2004, 43). If that is the case, Germany, Austria and the Czech Republic should take advantage of this opportunity and work on a solution of the Sudeten problem as it continues to stir up the debates and evokes bitter sentiments among the citizens of all three countries.

## Conclusion

The legislation adopted by the Beneš' government during the period of 1945-46 is one of the factors that have been complicating the Czech-German and the Czech-Austrian relations even after several changes of the regime in Czechoslovakia. This complication continues to exist as the Beneš Decrees have never been repealed by the different Czechoslovak or the Czech governments. The problem is that not only the Sudeten Germans – the primary victims of these Decrees – but the governments of Austria and Germany do not recognize the legality of this legislation (Barkan 2000, 134). Therefore, the injustices committed by the Beneš' government never ceased to exist. That to the same extent refers to expropriation of the private property of the Sudeten Germans who were expelled from Czechoslovakia between 1945 and 1948.

The fact that the Sudeten Germans not only are citizens of Germany and Austria but also constitute a significant share of the population of these countries had to have a certain impact on the formulation of the foreign policy implemented by Bonn/Berlin and Vienna towards Prague (Kopstein 1997, 66). Namely, the Austrian and German attempts to press for abrogation of the Beneš Decrees (Nagengast 2003; Suppan 2006; Waters 2006) should have included the pursuit of the Sudeten claims for private property restitution. Furthermore, according to this logic, the Austrian and German reason to welcome the Czech accession to the EU would have been the opportunity to resolve the restitution issue within the framework provided by the Union (Pehe 2004, 44).

Nevertheless, as the current work shows, the Sudeten property restitution issue has not become a priority of the national foreign policy either for Austria or for Germany, even though the necessity to repeal the Beneš Decrees in general was emphasized by both countries (Suppan 2006; Phillips 2001). The exception was the period between 2000 and 2002 when the



Austrian government included restitution for the Sudeten Germans into their official program (Frank and Kettmann 2000). The reason for that is the influence of the main advocates of the Sudeten rights (The Freedom Party of Austria – FPÖ; and the Christian Social Union of Bavaria – CSU) on the domestic level. The German specificity of the Sudeten question is that the expellees mainly settled in Bavaria. The CSU, which operates exclusively in this region, fights for the votes of the Sudeten Germans as they represent a significant share of the local population. Even though the CSU has the Christian Democratic Union (CDU) a sister party operating in the rest of the country, the latter is not interested in directly promoting the Sudeten Germans' interests. In Austria, on the contrary, the FPÖ operated on the whole territory of the country. It protected the interests of the expellees as a part of its more comprehensive “security policy” aimed at the different groups of population across the country (Johnson 2000, 11). The party was able to promote its agenda on the national level only when it gained enough support to become an equal partner in the ruling coalition in 2000. However, when the FPÖ lost its support in 2002 it was not able to set the state foreign policy, which is why protection of the Sudeten property rights disappeared from the Austrian agenda.

Similarly, in Germany, the CSU did not have enough impact to set the agenda on the national level. The main goal of the German foreign policy was reconciliation with its Eastern neighbor, especially with the Czech Republic (Phillips 2001). However, since this policy required establishment of mutual trust and confidence (Phillips 2001, 171), the restitution issue was in contradiction to it, as Sudeten claims would lead to irritation and fears among the Czech public that they might lose their property since it was designated for restitution (European Report, June 8, 2002). Therefore, Bonn preferred to mute the restitution issue by explicitly stating during signing the documents of mutual understanding and friendship with the Czech Republic that these documents will not deal with it (Handl 1997, 159).

With respect to the Czech accession to the EU, the CSU and the FPÖ as well as several politicians stated that the accession should be conditioned on the resolution of the restitution issue (Radio Prague, July 29, 2000; April 25, 2002). Nevertheless, because of the primary German and Austrian interest in the EU expansion eastwards, the claims of restitution again entered into contradiction with the state foreign policies. And since the political powers advocating for the Sudeten interests did not get wide spread public support in the run-up to the Czech accession, the Czech Republic entered the Union without any official objection either from Germany or Austria (Waters 2006, 96). And currently the Sudeten advocates have not managed to win support sufficient for setting the foreign policy agenda. That is why the issue of the Sudeten German property is not among the priorities for the national governments of Germany and Austria even though the claims are still being brought to the Czech courts.

The analysis of the Sudeten German case within the framework of discussion on property restitution allowed tracing the impact of this issue on the interstate relations. The novelty of this research is that it extends the field of discussion from domestic policies and legislation (Barkan 2000; Blacksell and Born 2002; Brada 1996; Karadjova 2004; Kritz 1996; Kupka 1992; Simoneti 1993; Swain 1999; Turnock 1998) to an international level. At the same time the present research concentrates on the discussion of protection of individual rights of citizens rather than treatment of national minorities, which is the common spread framework for discussion of the restitution issue and its impact on interstate relations (Barkan 2000; Blacksell and Born 2002; De Zayas, 1994; Marrus 1985).

The analysis of the Czech-German and the Czech-Austrian relations allowed identifying what may be the implications of unresolved property restitution issues on state foreign policies. However, unlike most of the works concerning the Sudeten German case

(Waters 2006; Nagengast 2003; Phillips 2001; Handl 1997), this analysis does not concentrate on the wider issue of the Beneš Decrees but rather on the particular aspect of it.

Having said this it has to be concluded that the discussion of the property restitution issue and its impact on the interstate relations does not only concentrate on moral obligations to rectify past injustices. Moreover, as the Austrian and German cases show moral considerations are not the primary factors that define state foreign policies. Rather they are practical factors – such as influence of the certain political forces or the degree of consistency of the restitution claims to the general goals of the foreign policy of the state – that influence the behavior of the states in the international arena. As long as moral issues do not find their way to general public support or coincide with the pragmatic considerations that influence formation of the state policies, there is no reason to expect any change. State foreign policies will be dominated by realist thinking and this will prevent the restitution issue to be resolved on the interstate level. The chances for settlement of this issue are likely to increase only when its advocates gain enough of political muscle to promote it on the national level or when the situation on the international arena affects foreign policy goals in a way that they become consistent with the restitution claims.

## Bibliography

- Another Obstacle to Enlargement? 2002. *Country Monitor*, June 3.
- Austria's People's Party supports Czech EU entry. 2000. *Radio Prague*, July 29. <http://archiv.radio.cz/news/EN/2000/29.08.html> (accessed March 29, 2008).
- Barkan, Elazar. 2000. *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: W.W. Norton & Company Ltd.
- Bazin, Anne. 1999. *Germany and the enlargement of the European Union to the Czech Republic*. EUI Working Papers. Florence : European University Institute.
- Blacksell, Mark, and Karl Martin Born. 2002. "Private Property Restitution: the Geographical Consequences of Official Government Policies in Central and Eastern Europe," *The Geographical Journal* 168, no. 2 (June): 178-190.
- Bogaturov, Alexey, ed. 2000. *Sistemnaya Istoriya Mezhdunarodnyh Otnoshenii* (Systemic History of International Relations). Vol. 1, *Sobytiya 1918-1945* (Events of 1918-1945). Moscow: Moskovskii Rabochii.
- Brada, Josef C. 1996. Privatization is Transition – Or Is It? *The Journal of Economic Perspectives* 10, no. 2 (Spring): 67-86.
- Cameron, Rob. Freedom Party Furious over Beneš Decrees Resolution. *Radio Prague*, April 25. <http://www.radio.cz/en/article/27283> (accessed March 29, 2008).
- Cepl, Vojtech. 1991. A Note on the Restitution of Property in Post-Communist Czechoslovakia. *Journal of Communist Studies* 7, no. 3: 368-375. Quoted in Kritz, Neil J. 1995. *Country Studies*. Vol 2. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. With a foreword by Nelson Mandela, 581-585. Washington, DC: United States Institute of Peace Press.
- Cohen, Roger. 1999. Germany Tries to Adjust All Its Neighbors Become Friends. *The New York Times*, March 14.
- Cowell, Alan. 1996. A German-Czech Pact on Wartime Abuses. *The New York Times*, December 11.
- The Czech-German Declaration on Mutual Relations and their Future Development, signed on January 21, 1997. [http://eudocs.lib.byu.edu/index.php?title=Czech-German\\_Declaration&printable=yes](http://eudocs.lib.byu.edu/index.php?title=Czech-German_Declaration&printable=yes) (accessed March 29, 2008).
- Czech and Slovak Federal Republic: Law on the Mitigation of the Consequences of Certain Property Losses, Act No. 403/1990. October 2, 1990.
- Czech and Slovak Federal Republic: Law on Extrajudicial Rehabilitation, Act No. 87/1991. February 21, 1991.

Czech Constitutional Court Rejects Property Claim. 2008. *CTK News Agency*, February 25.

Czech High Court Rejects German Restitution Claims. 2008. *CTK News Agency*, February 12.

Czech MPs Reject Dialogue with Austria on Postwar Decrees. 2007. *CTK News Agency*, October 17.

Czech President Sends Mixed Signals in Vienna. 2003. Radio Free Europe/Radio Liberty, April 24, Vol. 7, No. 78. <http://www.rferl.org/newsline/2003/04/3-cee/cee-240403.asp> (accessed March 29, 2008).

Czech Republic: Act On the Illegality of the Communist Regime and resistance to It, No. 198/1993. July 9, 1993.

De Zayas, Alfred M. 1994. A terrible revenge: the “ethnic cleansing” of the east European Germans, 1944 – 1955. New York: St. Martin’s Press.

Erlanger, Steven. 2002. Austrian Rightist Is Working On His Comeback. *The New York Times*, February 7.

European People’s Party Campaigns for Its Prague Pals. *European Report*, March 6. EU/Czech Republic section.

EU and Zeman Seek To Consign Beneš Decrees to history. *European Report*, April 13. EU/Czech Republic section.

EU Treaty Cannot Be Applied Retroactively – Czech Experts. 2008. *CTK News Agency*, January 8.

Frank, Maurice and Steve Kettmann. Haider's German Echo. Mother Jones, February 24. <http://www.motherjones.com/news/feature/2000/02/haider.html> (accessed March 29, 2008).

Freedom House, Inc. <http://www.freedomhouse.org>

Gibian, George. 1996. Germans, Czechs and One Brave Man: Transcending Nationalism. *The New Leader*, June 3.

Grabbe, Heather. 2002. The Benes Decrees: Implications for EU Enlargement. Center for European Reform. [http://www.cer.org.uk/pdf/briefing\\_enlargement.pdf](http://www.cer.org.uk/pdf/briefing_enlargement.pdf) (accessed March 29, 2008).

Handl, Vladimir. 1997. “Czech-German Declaration on Reconciliation,” *German Politics* 6, no. 2 (August): 150-167.

Havel, Vaclav. 1995. Speech “Czechs and Germans on the Way To a Good Neighbourship” delivered in Charles University, Prague, on February 17 [http://old.hrad.cz/president/Havel/speeches/1995/1702\\_uk.html](http://old.hrad.cz/president/Havel/speeches/1995/1702_uk.html) (accessed March 29, 2008).

Healing Beneš Wounds Without Fanning Accession Flames. *European Report*, April 20. EU/Czech Republic section.

Jenne, Erin K. 2007. *Ethnic Bargaining: The Paradox of Minority Empowerment*. Ithaca: Cornell University Press.

Johnson, Lonnie R. 2000. *On the Inside Looking Out: An Essay on Austria's New ÖVP-FPÖ Government, Jörg Haider, and Europe*. Minneapolis: The Center for Austrian Studies.

Karadjova, Mariana. 2004. Property Restitution in Eastern Europe: Domestic and International Human Rights Law responses. *Review of Central and Eastern European Law* 29, no. 3: 325-363.

Karn, Alexander M. 2006. Depolarizing the Past: The Role of Historical Commission in Conflict Mediation and Reconciliation. *Journal of International Affairs* 60, no. 1 (January): 31-42.

Kimminich, Otto. 1997. The International Legal Implications of the Czech-German Declaration. *Češi a Němci*: 196-206. Quoted in Suppan, Arnold. 2006. *Austrians, Czechs, and Sudeten Germans as a Community of Conflict in the Twentieth Century*, 3-4. Working Papers. Minneapolis: The Center for Austrian Studies.

Kohut, Zenon E. 1991. Czechoslovakia: Chapter 1D. Problem of Dissatisfied Nationalities. In *Countries of the World*. Bureau of Electronic Publishing. eLibrary. Proquest CSA. US Department of State. <http://elibrary.bigchalk.com> (accessed March 29, 2008).

Kole, William J. 2008. Austria Marks Anniversary of Nazi Takeover. *Waterloo Region Record*, March 13.

Kopstein, Jeffrey S. 1997. The politics of national reconciliation: Memory and institutions in German-Czech relations since 1989. *Nationalism and Ethnic Politics* 3, no. 2 (June): 57-78.

Kraus, Michael. 1992. *Settling Accounts: Postcommunist Czechoslovakia*. American Political Association. Quoted in Kritz, Neil J. 1995. *Country Studies*. Vol 2. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. With a foreword by Nelson Mandela, 542-586. Washington, DC: United States Institute of Peace Press.

Kritz, Neil J. 1995. *Country Studies*. Vol 2. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. With a foreword by Nelson Mandela. Washington, DC: United States Institute of Peace Press.

Kupka, Martin. 1992. Transformation of Ownership in Czechoslovakia. *Soviet Studies* 44, no. 2: 297-311.

Labaronne, Daniel. 1999. *Les Privatisations à l'Est. Caen*. Quoted in Mariana Karadjova. 2004. Property Restitution in Eastern Europe: Domestic and International Human Rights Law responses, 328. *Review of Central and Eastern European Law* 29, no. 3.

Luža, Radomír. 1964. *The Transfer of the Sudeten Germans: a Study of Czech-German Relations, 1933-1962*. London: Routledge.

Marrus, Michael Robert. 1985. *The unwanted: European refugees in the twentieth century*. Oxford: Oxford University Press.

Marysheva, N., ed. 2004. *Mezhdunarodnoe Chastnoe Pravo* (International Private Law). Moscow: Yurist.

Nagengast, Emil. 2003. The Beneš Decrees and EU Enlargement. *Journal of European Integration* 25, no. 4: 335-350.

Naimark, Norman M. 2001. *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe*. Cambridge, Massachusetts: Harvard University Press.

Neff, Michael. 1992. Eastern Europe's Policy of Restitution and Property in the 1990's. *Dickinson Journal of International Law* 10, no. 2 (Winter): 368-370. Quoted in Kritz, Neil J. 1995. *Country Studies*. Vol 2. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. With a foreword by Nelson Mandela, 579-688. Washington, DC: United States Institute of Peace Press.

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. Oxford: Blackwell.

Obrman, Jan. 1993. Rehabilitating Political Victims. *Report on Eastern Europe* 1, no. 50: 5-6. Quoted in Kritz, Neil J. 1995. *Country Studies*. Vol 2. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. With a foreword by Nelson Mandela, 572-578. Washington, DC: United States Institute of Peace Press.

Paul, David W. 1981. *Czechoslovakia: Profile of a Socialist Republic at the Crossroads of Europe*. Boulder, Colorado: Westview Press.

Pehe, Jiri. 2004. Consolidating Free Government in the EU. *Journal of Democracy* 15, no. 1 (January): 36-46.

Phillips, Ann L. 2001. The Politics of Reconciliation Revisited: Germany and East-Central Europe. *World Affairs* 163, no. 4 (January): 171-195.

Restitution of Serenity on Beneš Decree Discussions. 2002. *European Report*, June 8. EU/Czech Republic section.

Row with Austria over Sudeten Germans. 2000. *Radio Prague*, February 11. <http://archiv.radio.cz/english/cur-affrs/11-2-00.phtml> (accessed March 29, 2008)

Ryback, Timothy W. 1996. "Dateline Sudetenland: Hostages to History," *Foreign Policy* 105 (December): 162-178.

Sher, George. 1979. *Compensation and Transworld Personal Identity*. *Monist* 62: 378-91; quoted in Janna Thompson, Historical Injustice and Reparation: Justifying Claims of Descendants. *Ethics* 112, no. 1 (October 2001): 114-135.

Shumilov, Vladimir. 2001. *Mezhdunarodnoe Publichnoe Ekonomicheskoe Pravo* (Economic International Public Law). Moscow: NIMP

Simoneti, Marko. 1993. A Comparative Review of Privatization Strategies in Four Former Socialist Countries. *Europe-Asia Studies* 45, no. 1: 79-102.

Suppan, Arnold. 2006. *Austrians, Czechs, and Sudeten Germans as a Community of Conflict in the Twentieth Century*. Working Papers. Minneapolis: The Center for Austrian Studies.

Swain, Nigel. 1999. Agricultural Restitution and Co-operative Transformation in the Czech Republic, Hungary and Slovakia. *Europe-Asia Studies* 51, no. 7 (November): 1199-1219.

Target Date Becomes Early 2004. 2002. *European Report*, March 16. Enlargement section.

They're Being Broken. Taboos in Germany. 2002. *The Economist*, May 25, Europe section.

Thompson, Janna. 2001. Historical Injustice and Reparation: Justifying Claims of Descendants. *Ethics* 112, no. 1 (October): 114-135.

Turnock, David, ed. 1998. *Privatization in Rural Eastern Europe*. Cheltenham, UK: E. Elgar.

Unger, Rosalyn. 1991. Federal Republic of Germany (West Germany): Chapter 1. Historical Setting. In *Countries of the World*. Bureau of Electronic Publishing. eLibrary. Proquest CSA. US Department of State. <http://elibrary.bigchalk.com> (accessed March 29, 2008).

Universal Declaration of Human Rights. Adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948.

US Department of State. Property Restitution in Central and Eastern Europe. <http://www.state.gov/p/eur/rls/or/93062.htm> (accessed March 29, 2008).

Waldron, Jeremy. 1992. Superseding Historic Injustice. *Ethics* 103, no. 1 (October): 4-28.

Wallace, Charles P. 2002. Putting The Past To Rest. *Time International*, March 11.

Waters, Timothy William. 2006. Remembering Sudetenland: On the Legal Construction of Ethnic Cleansing. *Virginia Journal of International Law* 47, no. 1: 63-145.

Williams, Rhodri C. 2007. *The Contemporary Right to Property Restitution in The Context of Transitional Justice*. Occasional Paper Series. New York: International Center for Transitional Justice.



Wiskemann, Elizabeth. 1967. *Czechs & Germans: a Study of the Struggle in the Historic provinces of Bohemia and Moravia*. New York: St. Martin's Press.