TRANSITIONAL JUSTICE DYNAMICS IN SLOVAKIA: FROM SILENCE TO THE NATION'S MEMORY INSTITUTE

By

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Abstract

The purpose of this thesis is to identify and explain the dynamics of transitional justice in Slovakia. Furthermore, it focuses on the Nation's Memory Institute and its role in the process of dealing with the past. The dynamics are explained through the existence of constraints – the type of the regime change, the nature of the Communist regime and elite configuration. Transition process in Slovakia can be divided into three distinct phases, in which the interplay of the constraints allows for the application of various transitional justice mechanisms. Throughout the existence of the independent Slovakia, I argue that elite configuration is the constraint, which affects it the most. Favourable elite configuration allowed for the establishment of the institute in 2002, which can be considered a "breaking of the silence" when it comes to dealing with the past in Slovakia.

Acknowledgements

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List of Abbreviations

HZDS – Hnutie za demokratické Slovensko (Movement for Democratic Slovakia)

KDH – Kresťanskodemokratické hnutie (Christian Democratic Movement)

NMI – Nation's Memory Institute (Ústav Pamäti Národa)

OF – Občianske Fórum (Civic Forum)

SDL – Strana demokratickej ľavice (Party of the Democratic Left)

SDK - Slovenská demokratická koalícia (Slovak Democratic Coalition)

SDKÚ – Slovenská demokratická a kresťanská únia (Slovak Democratic and Christian Union)

SMK – Strana maďarskej koalície (Party of Hungarian Coalition)

SOP – Strana občianskeho porozumenia (Party of Civic Understanding)

VPN – Verejnosť proti násiliu (Public against Violence)

Introduction

Dealing with past crimes is a challenge faced by every new political regime, which is being established in a country with a criminal past. There are two basic approaches to this challenge – either forgetting and forgiving or addressing the criminal past. Huntington argues that the decision to deal with the past has to be quick, because as time passes the discredited groups are able to regain influence. (Huntington 1991, 228) The tendency to forget and forgive simply increases with the passage of time.

The post-communist transitions to democracy are all part of the third wave of democratization and they share some common characteristics that distinguish them from the previous cases of transition. Claus Offe labeled them as "triple transitions." This triple transition encompassed the political regime change (introduction of democratic rules of the game, building up the new constitutional framework), economic transition (the introduction of the market economy) and transformation at the level of nationhood (redefinition of national identities) (Offe 1997). All of these problems had to be addressed simultaneously.

Slovakia experienced the transition from communist rule as a part of Czechoslovakia. Czechoslovak elites addressed the past through a series of measures, including a limited number of criminal prosecutions and a severe lustration. After the break-up of the federation, Slovakia adopted the "politics of silence" – the decision not to address the criminal past and to focus on the future. However, in 2002 a law establishing the Nation's Memory Institute and access to the secret police files was passed in the parliament. This development meant that the silence was broken after 13 years, which goes against the expectation argued by Huntington.

The purpose of this thesis is to provide some insights into the transitional justice developments in Slovakia. The main research question is: What were the dynamics of

transitional justice in Slovakia and how can they be explained? The main focus will be on the above mentioned Nation's Memory Institute and its functions. I will try to answer what the motivations for establishment of this institute were and what is its place in the overall context of transitional justice in Slovakia.

My expectations are that explaining Slovak transitional justice dynamics does not call for a new theory, but all of the details of the Slovak case have to be taken into account. The transitional justice theorists argue that it is the context, which imposes constraints and shapes the choice of transitional justice mechanisms. I am going to argue that the dynamics in Slovakia can be explained by the interplay of hard constraints on transitional justice.

The transitional justice literature on the post-communist societies usually deals with Czechoslovakia as a unit of analysis, with focus on Czech Republic after the federation dissolution. (e.g. Welsh 1996, David 2006) The main exception is the work of Nedelsky who deals with the Slovak case separately (2004, 2009), but in my opinion does not sufficiently take into account all of the specifics of the Slovakian experience with democratization and consolidation of democracy. Moreover, her work focuses mainly on secret file access and lustration, while I am interested in wider analysis. In this sense, Slovakia is still an under-researched topic.

Szomolanyi argues that Slovakia was the only country in the east European region, which experienced a quadruple transition. (Szomolanyi 2004, 11-12) Except for the problems identified by Offe, Slovakia had to build its independent state shortly after the transition. The state-building, which already started in 1992, was a completely different challenge for the Czech Republic, which maintained most of the administrative and institutional capacities of the old republic and for Slovakia, which had only a little experience of self-government.

Erika Harris goes even further and suggests that Slovak transition was so complex that it should be divided into three stages, which "affect one another, but nevertheless have

distinct characteristics within the main post-communist transition." (Harris 2010, 186) The first stage was a common experience in Czechoslovakia within the still existing federation. The second stage was the notorious period of Mečiarism, which is associated with the independent state-building and especially with the period of 1994-1998. The final phase was the period of 1998-2002, after the critical 1998 elections and the victory of pro-European democratic forces. This period is characterized by Europeanization, which later resulted in NATO and EU ascension.

In my thesis, I will work within this analytical framework when assessing the transitional justice dynamics in Slovakia. I expect that because of the elite configuration, the first and then third phases are most conducive to acceptance of transitional justice mechanisms, although they are not the only factors, which influence their choice. The other major constraining factors are nature of the criminal regime and the type of transition.

This thesis has a following structure. In the first chapter I will summarize transitional justice theory, with the focus on its desirability, the selection of mechanisms and constraints, which limit their choice. The second chapter will be the examination of the hard constraints in the case of Slovakia. The third chapter will be the overview of the dynamics of transitional justice policies. The fourth chapter will be focused on the Nation's Memory Institute, the justifications and criticism, which led to its establishment and overview of its functions.

In the third chapter, I will analyze the dynamics of transitional justice based on the following framework of adaptation of mechanisms and goals they are supposed to achieve. The following table presents the mechanisms which were applied in Slovakia.

Mechanisms	**Goals**
criminal justice	punishment of perpetrators
truth revelation	acknowledgement of victims, identification of perpetrators and mechanisms of crimes
reparatory justice	correction of the wrongdoing, reparation of the harm
lustration	legitimacy for the new regime, exclusion of old elites from the political life

Some of them, however, existed only formally and were not applied in practice. Therefore my analysis will take into account the constraints under which they operated – the nature of the criminal regime, type of regime transition and elite configuration. Moreover, I am interested in examining the way these constraints influenced the pursuit of transitional justice since the regime change until the creation of the institute.

This will be analyzed in all of the three phases of transition. Analysis will be based on the primary documents (mostly laws) and secondary literature. This will explain the dynamics leading to the main focus of my research – the analysis of Nation's Memory Institute.

To examine the justification of the institute's creation, as well as the criticism, I will work with primary documents – the founding law of the institute, explanatory memorandum for the law, parliamentary debates and President's reasoning of the veto. I am also interested in finding out what hopes were put into the institution by the politicians and what were the main reasons for its creation, expressed by the elites. This will be achieved by the thematic analysis of the above mentioned documents.

The functions and activity of the institute will be identified mostly in the analysis of the annual reports of the institute (2003-2010), which are official documents presented in the parliament. This analysis will be complemented by the secondary literature and newspaper articles.

1 Transitional justice

Transitional justice can be in its broadest sense understood as a "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes." (Teitel 2004, 69) Pursuing justice after the repressive regime removal is an important challenge for any new regime. Forsberg claims that from the normative point of view, "the values linked to democratic culture" make impossible the avoidance of some sort of transitional justice mechanisms. (Forsberg 2003, 65) According to Zalaquett, any transitional justice policy "should have two overarching objectives: to prevent recurrence of such abuses and to repair the damage they caused." (Zalaquett 1995, 5) He further emphasizes that in terms of aims a transitional justice policy should not only be in connection with the above mentioned universal objectives but should also be able to contribute to the depolarization of the society, reconstruction of the core institutions and securing the economic resources for designated goals. (Zalaquett 1995, 6)

Méndez argues that pursuing transitional justice is necessary for the new political order and that granting impunity to the perpetrators can lead to the recurrence of the abuses in the future. "The pursuit of retrospective justice is an urgent task of democratization, as it highlights the fundamental character of the new order to be established, an order based on the rule of law and on respect for the dignity and worth of each human person." (Méndez 1997, 1) The new regime also holds responsibilities towards its victims. The most fundamental of the victim's rights, according to Méndez, is the entitlement to know the truth about the past injustices, including the details which were kept secret. This information should be provided to the whole society. Connected to this is the duty of the new regime is to grant reparations to the victims and to acknowledge them as valuable members of the new post-transitional society. Moreover, the members of armed and security forces, who carried out the past

crimes, should be excluded from the post-transition enforcement and intelligence bodies. (Méndez 1997, 12)

1.1 Mechanisms

I side with the above mentioned arguments for normative desirability of transitional justice. The question, which needs to be answered, is what kind of justice? There are several transitional justice mechanisms, which can be applied by the new elites. The first one is criminal justice. It attributes responsibility for the wrongdoings to the individual perpetrator. Apart from that, it serves a more symbolic role for the new democratizing society. "Successor trials are said to be politically useful in drawing a line between regimes, advancing the political goals of the transition by delegitimating the predecessor regime, and legitimating its successor." (Teitel 2000, 29) Criminal trials, on the other hand, raise a problem with the rule of law, because the new laws, upon which the trial is based, are often retroactive. In addition, the crimes under the old regime were often perpetrated several years ago and therefore statute of limitation is violated.

Another mechanism is truth-revelation. The fact that the crimes of the regime were often carried out in secret means they were not widely recognized in the society and often even the number of victims is not known. In order for the truth to be authoritative, it is important "that the truth is established in an officially sanctioned way, in a manner that allows the findings to form part of the historical record of the nation and that establishes an authoritative version of the events, over and above partisan considerations." (Zalaquett 1995, 7) Connected to the previous mechanisms is the ability of trials to establish historical accounts in a form of criminal truth. (Teitel 2000, 72) Official truth is often produced by specialized institutions – the truth commission, or in the case of post-communist societies the institutes of memory, which I will discuss later in more detail.

The third type is a reparatory justice, which is a mechanism aimed at victims of the wrongdoings. “For some victims reparations are the most tangible manifestation of the efforts of the state to remedy the harms they have suffered.” (de Greiff 2006, 2) Criminal justice can provide a sense of satisfaction for the victims, but in the end it is a struggle against the perpetrators. Reparations can be provided to victims in various forms – either material reparations (restitutions, compensation for the suffering) or moral acknowledgement, which is just a symbolic act.

The last one is the screening or vetting of the candidates for certain public positions. In the post-communist context, it is a quite common mechanism in the form of lustration laws. According to David, lustration can be characterized as “the examination of certain public officials to determine whether they had been members of or collaborators with the secret police, or held any other listed positions in the repressive apparatus of the totalitarian regime.” (David 2004, 798) The justifications for lustration were manifold. Williams presents two types of arguments. Prophylactic argument assumes that new democracies were fragile and therefore people associated with the past regime had to be excluded from some public positions. The blackmail argument supposes that that new elites, who were associated with the old regime were open for blackmail in case their files were revealed to certain groups. And finally, in accordance with the truth-telling, the public has a right to know about the past. (Williams et al. 2005, 27-28) The most common criticism of lustration was that it presupposes collective guilt.

In practice, transitional justice constitutes a mixture of given approaches and they differ from country to country, even within the same region. It is a result of various constraints on their selection, which I am going to discuss now.

1.2 Constraints

After the removal of the old regime, the new elites usually function within a specific context and they face various challenges. These can be overall labeled as the transitional justice constraints. Jon Elster divides the constraints into two main categories – the hard constraints, which render some mechanisms absolutely unfeasible and soft constraints, which create trade-offs between justice and other goals (such as democracy or economic reconstruction.) (Elster 2004, 188)

The most prominent of the hard constraints is the nature of the regime transition. This was already identified by Huntington in his influential book – The Third Way – as a so called "torturer problem."[1] (Huntington 1991, 231) The decision whether to "prosecute and punish" or "forget and forgive" is determined by the type of transition. In case of transformation (regime change is initiated by the old elite) or transplacement (regime change is the outcome of negotiations between the old elites and opposition), "prosecute and punish" approach is very unlikely due to the ability of the elites to maintain influence and secure impunity. Adoption of more severe transitional justice mechanisms is more likely in the case of replacement (regime change initiated by the opposition, when the government is too weak and therefore collapses or is overthrown). If this occurs, the old elites have virtually no power within the new regime and therefore punishment is a viable option. (Huntington 1991)

Another constraint, which can be classified as a hard constraint in Elster's terminology is the nature of the criminal regime and the type of crimes it committed. It is the "nature of the repression itself." (de Brito, et al. 2001, 19) The reason for this is that different types of crimes call for different ways of their addressing. If the crimes were open to the public – such as Nazi persecution of the Jews – then other mechanisms are preferred than in the case of more clandestine crimes – such as disappearances in Latin America, or secret police activities

[1] Huntington's torturer problem is used as a point because it precisely links the possibilities of transitional justice with the type of regime transition

in the communist environment. The calls for truth-revelation are more desired in the latter case. An integral part of this problem is the legitimacy of the past regime. In such cases where the regime enjoyed relatively high legitimacy among its population, the choice of a severe mechanism is unlikely.

Connected to both these constraints is the issue of balance of power between old and new elites within the new system. If the old elites are able to retain power, or enjoy electoral success in the forthcoming elections, then thorough pursuit of transitional justice remains unlikely.

The soft constraints include the structural constraints – such as the nature of the economy and the need of its transformation, availability of resources or the limited capacity of the legal system. (Elster 2004, 208-213) The complexity of the transition along with the scarcity of the resources creates a trade-off between the other goals of the transition (such as institutional changes or transformation of the economy) and transitional justice. Therefore soft constraints can also lead to the adoption of the "forget and forgive" approach.

> Politics of forgetting is the strategy aimed at overcoming the past by means of refusing to address recent wrongs as a separate problem of the transition to democracy. It focuses on practical legal, political and economic actions that are expressly designed to deal with particular problems of the post-regime change condition from the perspective of the preferred future, hence addressing criminal legacies only indirectly." (Dimitrijevic 2011, 54)

In the next chapter, I am going to analyze the hard constraints in more detail, because they are essential for the possibilities of transitional justice choice. Before that, I am going to discuss some of the specifics of transitional justice in the region, which also play an important role in determination of its outcomes.

1.3 Post-communist transitional justice specifics

Post-communist transitional justice was characterized by adaptation of specific mechanisms, which contrasted with the classical cases (such as post-war transitional justice or Latin America), due to the distinct nature of crimes conducted by the communist regimes. Lavinia Stan asserts that "in Eastern Europe […] de-communization revolved around the Communist Parties and their feared instruments of repression, the secret intelligence services." (Stan 2009, 6) Criminal justice pursuit was very limited in the region due to the fact that most of the crimes (especially the most serious ones) were perpetrated in the Stalinist period. Post-Stalinist regimes replaced the physical violence with "the structural violence characterized by calculated intimidation and public submissiveness. But it also led to more refined forms of political surveillance […] (Welsh 1996, 420) This was a result of well-organized secret police with extensive repression apparatus, which consisted of both full-time employees and a widespread network of collaborators, who were responsible for "keeping dissent in check, discouraging anti-governmental opposition, censoring journalists and artists, and protecting the communist party leaders". (Stan 2009, 6) Therefore the interest of the new regimes in coming to terms with its past was manifested in the exclusion of these individuals from the newly emerging democratic order (lustration policies); debates about the secret police file access, identification of agents and informers, as well as creation of institutes of memory. Since the institute of memory is a primary focus of my research I am going to discuss this type of institution in more detail later.

The subscription of communist regimes to one of the pillars of the Marxist worldview - the idea of common ownership of the means of production and opposition to private property - led to widespread confiscation and nationalization of property. The post-communist regimes therefore faced a challenge of property restitutions. Teitel argues that its purpose was multiple. "[T]ransitional conception of reparatory justice … is justified on the bases of both

righting past wrongs and simultaneously advancing the state's transitional economic goals." (Teitel 2000, 131) Restitutions were therefore desired not only from the normative point of view. Transition towards market economy, which I already identified as one of the components of post-communist transitions, required private property ownership. Therefore restitutions became an issue of discussion shortly after the regime change in all post-communist societies.

1.3.1 Institutes of Memory

Institutes of memory are institutions characteristic to post-communist societies. As I already mentioned earlier, communist regimes relied heavily on the gathering of all sorts of information on its citizens, in order to neutralize the dissent movements and help the preservation of the regime. Therefore secret services produced enormous amount of files. The administration of secret authorities' files became one of the most important functions of the institutes of memory. Information in these files was to be used in "a dignified process of reclaiming the truth about the experience of dictatorship, which was previously hidden from the public. Yet these processes were not value-free attempts to reveal concealed episodes from a dictatorial past; they involved constructing particular historical narratives that would underpin the new political system." (Mark 2010, 27-28) In this sense, the primary function of these institutions is the truth revelation and its aim is to produce "official truth." Teitel used the term for the outcomes of truth commissions – it is a truth about "what really happened", which is produced "through elaborate processes of representation by perpetrators, victims and broader society" and it is established through meticulous documentation of past crimes. (Teitel 2000, 83) Although the outcomes of the institute of memory are not created with such a close cooperation with both victim and perpetrator groups, the information from the secret files can be considered as detailed accounts of perpetrators' activities and they include

information about the victims as well. Moreover the fact, that these institutes are state established organizations gives them a strong mandate to produce the official truth.

The truth revelation of institutes of memory serve important goal of the past-regime delegitimization. Mark argues that the developments in post-communist societies led to mostly unsuccessful attempts to purge representatives of former regimes and therefore the primary mechanism of coming to terms with the past was "the state sponsored propagation of new liberal interpretations of the past …, [in which] the Communist regime was criminalized and liberal democracy celebrated as its political and moral inversion." (Mark 2010, 31)

2 Hard constraints on transitional justice in Slovakia

In this chapter, I am going to discuss what I established as hard constraints on transitional justice – (1) the nature of the communist regime in Czechoslovakia, with a particular focus on the Slovak part of the federation, (2) the type of the regime transition and (3) elite configuration in all of the three stages of the transition in Slovakia. Since I am only interested in how these variables affected the choice of transitional justice mechanisms, I am not going to discuss then in too much detail. Moreover, this analysis will include neither the causes of 1989 transition, nor the dissolution of the federation in 1993.

2.1 Nature of the communist regime

The nature of the communist regime is the first variable, which influences the choice of transitional justice mechanisms after its fall. Nedelsky argues that it is the nature of the former regime – manifested in its level of legitimacy and opposition to the regime – which influenced the pursuit of transitional justice in Slovakia and its divergence from the Czech case. (Nedelsky 2004) I believe that it is the strength of the opposition and its subsequent position within the new regime that plays a role in the selection of transitional justice policies. The emergence of the regime opposition is, however, to a large extent shaped by the nature of the regime and its legitimacy among the population.

The Czechoslovak post-Stalinist communist regime is characterized as rigid and unreformed system. (E.g. Elster et al. 1998, 5 or Judt 1992, 108) Communist elites maintained a high degree of solidarity with the Soviet political elites ant their political formula; the political culture retained a militaristic cast and the regime employed a rather harsh approach towards the political opposition. (Janos 1996, 13-14) The only exception was the short-lived period of the Prague spring, which was however succeeded by a harsh “normalization” regime associated with wide-spread purges within the communist party itself. Until the 1989

revolution, there was no political liberalization, neither economic reform – the economy remained centralized and planned.

Linz and Stepan define the regime of Czechoslovakia between 1977-89 as "frozen-post totalitarianism", which means that "despite the persistent tolerance of some civil society critics of the regime, almost all the other control mechanisms of the party-state stay in place for a long period and do not evolve." (Linz and Stepan 1996, 42) Post-totalitarian regime is a regime different from both totalitarian and authoritarian regimes – it differs on several dimensions. The ruling ideology still exists in the country, although commitment to it is severely weakened. Characteristic of such a regime is de-ideologization and a loss of faith in the utopian visions presented by the ruling ideology. There is a limited social and economic pluralism in the society; however the party state still controls the mechanisms, which are able to suppress it. The regime sponsored organizations dominate the society, but the mobilization potential is already lower. Leadership is still recruited from the party cadres and it is of a more technocratic than charismatic nature. (Linz and Stepan 1996, 42-50) The regime is "frozen in place" and unwilling to make any changes, therefore it can be presumed it will end by collapse.

These characteristics – rather high level of opposition persecution and lack of legitimacy during the normalization (1969-1989), rigid old elites - suggest post-communist elites would employ a rather strict transitional justice approach in both Czech Republic and Slovakia. However, the levels of regime legitimacy as well as the extent of opposition should be treated separately in the two parts of the federation.

2.1.1 Communist regime in Slovakia

Kitschelt classifies the communist system in the Slovak part of the federation as a mixture between "national-accommodative" and "patrimonial communism." (Kitschelt et al. 1999) A patrimonial communism is characterized by construction of industrialized society in

a largely rural environment and for this reason there is a lack of economic opposition with alternative visions of modernity. Moreover it can be characterized by high cooptation and repression, as well as widespread corruption. National-accommodative variant occurred in countries with a weak pre-regime communist party and therefore aimed at cooptation and low levels of repression, more relaxed party control and patronage. (Kitschelt et al. 1999, 23-25)

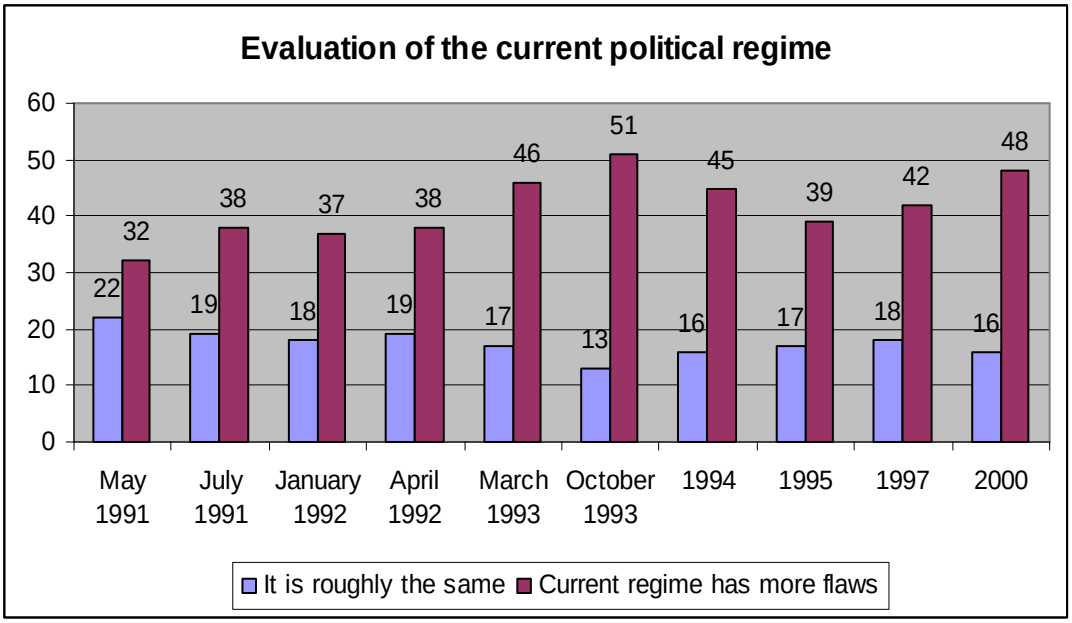
The regime enjoyed higher levels of legitimacy in Slovakia and therefore the opposition was rather weak. The first reason is the modernization of the society. Slovakia experienced a socialist industrialization. In 1948, when the communist regime was installed, there was a large difference between Slovakia and Czech lands.[2] In 1989, the situation was more or less the same in both parts of the federation. Modernization of the society brought improvement in economic, as well as social opportunities for the majority of the society. (Musil 1995, 92)

Secondly, Nedelsky argues that during the Prague spring, "Slovak leaders were much more focused on enhancing Slovak national sovereignty … [than] liberalization and democratization." (Nedelsky 2009, 42) Due to the existence of the wartime Slovak state, which proved that Slovak self-government was possible, the "Slovak question" was to some extent existent within the society since the beginning of the communist regime[3]. This ambition was partly fulfilled in 1968, when political system of Czechoslovakia was federalized and in this sense the legitimacy of the regime was strengthened.

The levels of legitimacy of the old regime can be illustrated on the surveys conducted after the regime change. The following table includes information on the evaluation of the new political regime compared with the communist regime in Slovakia. It can be seen that

[2] In Czech lands 33.1% of the population was occupied in agricultural sector. In Slovakia it was more than 60%. Industrial production in CR was almost 40%, while in Slovakia it was only 20%. (Prucha 1995,74)
[3] Even in the Stalinist times, this can be illustrated at the trials with so-called "bourgeois nationalists" – which included the later normalization leader Husák

more than 50 percent of population considered the old regime better, or did not see any major differences when compared to the post-November regime.



Based on the data from Velšic 2001, 26

The political opposition to the communist regime in Slovakia was very limited in numbers. It was mainly located around the underground church movement[4] and its activities, which only rarely had political character. The most significant opposition event, which apart from religious demands also voiced abidance of human rights and liberties, was the Candle manifestation of 1988. To illustrate the abundance of opposition, it is interesting to do a parallel with the Czech Republic. Charter 77, one of the most important opposition activities in Czechoslovakia around which the various strands of dissident movement were brought together was originally signed by 239 individuals, out of which only 8 were Slovak. Moreover, "in the late 1970s, roughly 95 percent of government suppression of dissidents occurred in the Czech lands, and over half of the remaining four to five percent of anti-

[4] The underground church, or secret church was a illegal movement of both bishops, who were not allowed to or refused to work within the official state church structures, and laymen, who organized secret seminars and masses, produced and copied samizdat literature, etc.

dissident action that took place in Slovakia was directed at only two dissidents." (Nedelsky 2004, 83)

Purges within the party and society after the Prague spring were not as harsh in Slovakia as in the rest of the country. "[I]n Slovakia, when people lost their positions, usually they remained within the same enterprise, the collaborators were tolerated, people retreated to their country cottages and nurtured their networks and generally adapted well." (Harris 2002, 85) People learned to accept the regime and therefore the normalization period in Slovakia was more lenient. This all contributed to the low levels of polarization within the society, the difference between the supporters and opponents of the regime was not so visible.

2.2 Type of the regime change

The second variable which imposes constraints on the possibility of transitional justice mechanisms choice is the nature of the regime change from non-democratic regime. Huntington identifies Czechoslovak transition (along with Polish) as a transplacement of the regime. In this type of transition, "democratization is produced by the combined actions of government and opposition. Within the government the balance between standpatters and reformers is such that the government is willing to negotiate the change of regime […] but it is unwilling to initiate [it]. (Huntington 1991, 151) This type of transition requires initiation of the change from the opposition and then consequent negotiations between the two camps and it leads to non-occurrence of transitional justice, which was not a case in Czechoslovakia.

Other authors, however, do not agree with Huntington's classification. Kitschelt characterizes the Czechoslovak transition as a transition by "implosion of the old order," (Kitschelt et al. 1999) which is more in accord with Huntington's replacement. In this case the old elites succumb to the mass protests of the civil society in a short period of time. This type of transition can also be labeled a "regime collapse." (Linz and Stepan 1996, 316) It leads to the establishment of interim government, because opposition is "surprised by its unexpected

success [and] normally has not developed an articulated political approach." (Linz and Stepan 1996, 321)

Kopeček agrees with the definition as a regime collapse. (Kopeček 2006, 151) Although there were negotiations between the communist elite and the representatives of the opposition both in Prague and Bratislava, the Czechoslovak case should not be understood as a negotiated transition (or a pact). The developments in Czechoslovakia, which were characteristic by mass opposition demonstrations and a general strike, were "so rapid, that the negotiations at the end of November 1989 were, from the point of view of the old regime, just a one-sided "moving out of positions" without any major future political concessions, which are characteristic for the pacts." (Kopeček 2006, 152) Empirical evidence proves that swift changes occurred – creation of the interim Government of National Understanding already in December 1989, the election of Havel as a president on December 29, with following constitutional changes and the scheduling of the free elections for June 1990. However the fact, that half of the members of interim government were communists disproves Kopeček's claim that no political concessions were achieved by the old elite.

Szomolanyi defines the Czechoslovak transition as a "negotiated collapse". (Szomolanyi 2004) The old rigid elites did not participate in the round-table talks, the negotiations were held between the moderate communists, who however did not hold any significant power under the old regime, and the opposition representatives. Therefore the negotiations were not held between the old regime representatives and the opposition elites, but only among the new emerging elite. (Szomolanyi 2004, 109) In this sense the regime transition was a collapse, which afterwards included some negotiations that were not initiated while old elites were in power.

The first impulse was the harsh crackdown of the November 17 student demonstration in Prague. This led to mass mobilization of citizens both in Prague and Bratislava, which

coincided with the creation of umbrella opposition organizations including Civic Forum (OF) in Prague and Public Against Violence (VPN) in Bratislava. The outcome of the mass protests was the initiation of negotiations between the federal Prime Minister Ladislav Adamec and the opposition members led by Václav Havel on November 26. This represents the elements of roundtable negotiations in the Czechoslovak case. (Szomolanyi 1999, 20) The outcome of these talks was the changes identified earlier.

Therefore I would like to argue, that Czechoslovak transition to democracy is better characterized as a "regime collapse", or "replacement" in Huntington's terminology. This means type of transition was not a hard constraint and therefore "forget and forgive" was not the only possible outcome of the "torturer problem."

2.3 Elite configuration

The elite configuration in the transition period is the final hard constraint I am going to discuss. Since it is the elite, who make decisions on the transitional justice legislation, it is important to examine whether the old elite was able to maintain their position in the new emerging political order. It is even more important in the case of Slovakia, which experienced long transition divided into three distinct phases. I am going to discuss elite transformation in each of these periods.

The first phase is to a large extent determined by the nature of regime transition and character of communist opposition. According to Elster, Offe and Preuss, the non-violent character of the regime change implies that the old elite is not completely discredited. Combined with the incoherent and fragmented opposition, which is brought together after the mass-protests, they argue that old elite is needed in the subsequent transformation process. (Elster et al. 1998, 11-14) This problem of "lack of transformative vanguard" occurred in the Czechoslovak case.

The regime change is characterized by the creation of umbrella opposition organizations – in the Czech context, the Civic Forum, in the Slovak, Public Against Violence, which consisted of individuals with divergent opinions – including the dissidents, grey-zone and reform communists (from the period of Prague Spring). Both these movements were formed only after the mass-protests had already started. Calda argues that old elites were able to secure representation and influence in the newly emerging regime due to the fact that personal questions were negotiated in the round-table talks, in which OF and VPN made too much concession to the communists. This was a result of the fear of use of violence, as well as overestimation of the communist real power. (Calda 1996, 162-163) The caretaker government, which initiated some of the important institutional changes, consisted of both old and new elites. Dvořáková and Kunz argue that coalition consisting of moderate representatives of both old and new elite legitimizes both opposition to the old regime, as well as some old regime groups and therefore does not lead to widespread sanctions of individuals or whole groups. (Dvořáková and Kunz 1994, 61)

Another important factor affecting the elite configuration was the ability of the Communist party in Slovakia to undergo a successful transformation. The transformation was initiated a by the young communists from the Institute of Marxism-Leninism of Central Committee of Communist Party of Slovakia, which were in a way on the periphery during the communist regime – with ability of foreign travel and contact with the Western literature - and who gained representation after the old elite resignation in December 1989. Subsequently, it changed its name to the Communist Party of Slovakia – The Party of Democratic Left and the Communist reference was completely excluded in January 1991. This was associated with re-registration of all the members,[5] which served as an alleged break with the past regime,

[5] Only about 1/10 of members re-registered, which caused a steep decline in the membership to less than 50 thousand.

adaptation to the conditions of pluralism and re-orientation as a social-democratic party. (Rybář 2011, 82)

Nevertheless, the first phase was dominated by the anti-communist elite, who had the highest electoral gains in the 1990 elections both in Czech Republic and Slovakia. Civic forum was able to gain more than 50% of the vote, while the biggest representation from Slovakia was secured by VPN (32.5%) and Christian democrats (KDH – almost 19%). This suggests that the first phase delineated by the first two elections resulted in an elite configuration conducive to transitional justice pursuit.

The second phase is characteristic by the dominance of HZDS (Movement for Democratic Slovakia) of Vladimír Mečiar. The party was seceded from VPN in 1991 and it was "dominated by former managers and communist party cadres." (Nedelsky 2004, 90) This was a result of the fact that HZDS was established by the former VPN members who did not agree with the liberal orientation of the party, many of which were former communists. (Szomolanyi 1999, 46) Mečiar himself was a member of the party, who was purged after 1968, although he was able to maintain his job as a lawyer[6]. HZDS became the most popular political party in Slovakia after the 1992 elections (securing 74 out of 150 mandates in the Slovak parliament). These elections brought strengthening of the personal continuity with the old regime representatives in Slovakia – 99 out of 150 members of parliament were former communists. (Szomolanyi 1999, 90) The dominance of HZDS was disrupted for a short period of time in 1994[7], after a larger number of parliamentary representatives left the party. In subsequent early elections, HZDS regained its dominance, securing 61 seats in the parliament. During this phase, SDL (in coalition with 3 smaller parties) became the second

[6] Mečiar was accused of being a secret police collaborator since 1976, although direct evidence was never provided. For a detailed discussion, see Nedelsky (2004, 89-90)
[7] It was a 6 month period of broad coalition between SDL and center-right parties

biggest party with electoral gain of slightly over 10%, but it did not become member of the ruling coalition.

The third period of transition brought a radical change in Slovak politics. HZDS, although winning the largest number of representatives in the parliament (with 27% of the votes), was not able to construct the ruling coalition. Instead, a broad anti-Mečiar coalition of ideologically divergent parties was created. It included both center-right parties united within electoral party SDK[8], the transformed former communist SDL, which was able to secure almost 15% percent of votes, a coalition of Hungarian parties (SMK) and a small party of Rudolf Schuster,[9] SOP. This period was characterized by ever increasing fragmentation of the parliamentary parties – including the collapse of the SDK coalition, the creation of SDKU by Mikuláš Dzurinda in 2000 and the split of SDL which resulted in establishment of Smer by Róbert Fico. This fragmentation of the parliament in fact led to the creation of political groupings, which were more supportive of transitional justice.

The approach of the relevant political subjects towards transitional justice can be roughly identified in the research conducted by Benoit and Laver (2006). The research was based on expert surveys conducted between 2002 and 2003 (with members of academia, research institutes and to a lesser extent journalists and politicians) on various policy dimensions of political parties. One of the dimensions they were interested in was the treatment of former communists by the political parties. The scores of Slovak political parties were following:

[8] Special electoral party SDK, consisting of 5 opposition center-right parties was created due to the changes in electoral law (higher threshold for coalitions) passed by Mečiar before the elections
[9] Schuster became President of the Republic in May 1999

Party	SDL	HZDS	SDKU	KDH	SMK	Smer
Former communists	3.6	7.1	14	17.4	13.1	7.9

Based on (Benoit and Laver 2006, 256)

The score indicates the party position on the continuous scale from 1 to 20, where 1 represents the approach that former communists should have "same rights and opportunities to participate in public life", 20 is the opinion that "former communist should be kept out from public life as far as possible." (Benoit and Laver 2006, 173) This statistic is by no means an exhaustive indicator of attitudes of relevant political actors towards transitional justice, but it but it can serve as an indication of a direction certain party (or their coalition) adopts towards policies of dealing with the past. Moreover, it can be concluded that Christian democrats (KDH) were at the time the most interested in harsh transitional justice pursuit, followed by SDKU and SMK.

To summarize, it can be concluded that the old elites were able to preserve some influence in all of the transition stages in Slovakia. This influence however varied, and the third stage of transition can be expected to be the most conducive for transitional justice from the elite configuration point of view.

3 Transitional justice dynamics in Slovakia

As I already argued, the Slovak transition can be characterized by the existence of three distinct phases. In each of the phases, the hard constraints on transitional justice were interplaying with each other in different way and therefore the enactment of transitional justice legislature, as well as its implementation in practice was different. In this chapter, I am going to inspect the dynamics of transitional justice in detail.

3.1 Slovakia within Czechoslovak federation (1989-1993)

This phase is characterized by the close proximity of the regime change. As I already argued, Czechoslovak transition was a regime collapse, but it was also characterized by negotiations with the old elites. These negotiations resulted in the creation of interim federal Government of national understanding on the December 10, 1989. It had 21 members, out of which 10 were communists and it was led by the communist Prime Minister Marián Čalfa. The period of December 1989 until February 1990 was characterized by resignation of communist deputies from the parliament, which were replaced by cooptation of mostly non-communist representatives. Therefore the beginning of the first phase of transition was characterized by adaptation of almost no transitional justice measures – which can be explained by the retaining of power by the old elites in both executive and legislative bodies. (See 2.2 and 2.3) The only exception was the judicial rehabilitations, which occurred already in April 1990, before the first elections. For more details see next section.

The major turning point was the 1990 June elections, when the elite configuration changed rapidly. The elections brought a major victory for the democratic forces and therefore the constraint of elite continuation was eliminated. The communists were able to

secure less than 14% of the votes in the Czech Republic and around 18% in Slovakia. Therefore the federal assembly[10] was dominated by the democratic representatives (See 2.3)

3.1.1 Reparatory justice

In this section I am going to deal with the following reparatory mechanisms – judicial rehabilitation, extrajudicial rehabilitation and restitutions. As I already mentioned, the first transitional justice mechanism was the Act on judicial rehabilitation (nb. 119/1990 Zb.). The purpose of this law was to "repeal the sentences based on acts that conflicted with the principles of democratic society respectful of political rights and civil liberties guaranteed by the Constitution and provided for in international documents […]" (§1, 119/1990) This mechanisms can be characterized as a symbolic act, in a form of moral acknowledgement of the unlawful suffering, which did not bring any material compensation for the victims. It acknowledged that some activities of the victims, which were labeled criminal under the old regime, were morally right and in accordance with the values of any democratic society. Moreover, some of these former criminal activities were enabled even by the communist constitution and in accordance with international documents (such as Declaration on Human rights in the Helsinki Final Act), which the Czechoslovak regime accepted to adhere. Judicial rehabilitations were granted to more than 220 000 persons in Czechoslovakia. (Morbacher 2011, 147)

The Act on extrajudicial rehabilitation (nb. 87/1991 Zb.) was passed in February 1991 and its aim was to "mitigate grievances, which arose through application of civil law, labor acts and various administrative acts … [and] which were in conflict with the principles of a democratic society." (§1, 87/1991) The mitigation of grievance was to be carried out through revocation of some of the acts, return of the confiscated asset, and provision of financial

[10] Since most of the transitional justice measures in the first phase were adopted at the federal level, I am only dealing with elite configuration on the federal level.

compensation or adjustments in social security payments for the victims. Therefore this act did not only provide symbolic rehabilitation to the victims, but it resulted in limited material gains.

The idea behind property restitutions in Czechoslovakia was the alleviation of the injustices committed by the past regime. The nature of the grievances is the confiscation and nationalization of the property – against the will of its rightful owner, moreover these requisitions were made without proper compensation, or no compensation at all. Jablonovský argues that the state was aware of its lawful duty to compensate owners for the seized property (since the nationalization decrees include provisions for compensation for the expropriated property). Property was often nationalized without proper compensation and therefore the state violated its own legislature. (Jablonovský 2010, 3-4)

A prelude to the actual restitutions of property was the November 1990 Act on the return of the assets of the Communist Party of Czechoslovakia to the people of the Czech and Slovak Federal Republic (nb. 496/1990 Zb). In practice, it meant nationalization of the properties owned by the communist party. The justification for this initiative was the claim that the communist party, after it came to power in 1948, considered "the state its own property and belongings of its people treated as its own assets." (Preamble, 496/1990)

This early initiative was followed by passing of various restitution laws – which can be divided into three broad categories – restitution of the agricultural property, restitution of estates and church property restitution. Restitution of estates was enacted already in October 1990 with the Act on mitigation of certain property-related injustices (nb. 403/1990 Zb.). This law states explicitly that some cases of confiscation and nationalization between 1948 and 1989 were unjust. The mitigation of the injustices was to be carried out either by returning of the property, or financial compensation to the entitled person (owner or lawful heir). The

application of this regulation was problematic in practice, because it instituted a short deadline (less than 6 months) to provide all the necessary evidentiary documents (such as certificate of nationalization). Moreover, it did not allow for restitutions of other types of property. (Jablonovský 2010, 13) Therefore the law had to be amended several times and other restitution laws had to be prepared as well.

Agricultural properties, as well as forests restitutions were regulated in the May 1991 Act on modification of the ownership of land and other agricultural property (nb. 229/1991 Zb.). This law allowed for restitutions only to the citizens of the country with permanent residence.

The church property restitutions were started by the July 1990 Act on the modification of some of the property relations of religious orders and congregations (nb. 298/1990 Zb.). This provided for the return of the property to various church organizations, which were expropriated during the 1950s. At the same time, the Act on the settlement of property relations between the Greek Catholic and Orthodox Church (nb. 211/1990 Zb.) was passed in the Slovak parliament[11]. This was needed due to the fact that communist regime expropriated the Greek Catholic church and transferred its property to the Orthodox.

3.1.2 Symbolic measures

Symbolic condemnation of the communist regime came with the November 1991 Act on the period of oppression (nb. 480/1991 Zb.). This act explicitly labeled the past regime as the period of oppression and stated that "between 1948 and 1989 the communist regime violated human rights and its own laws." (§1, 480/1991) By this, the new democratic regime delegitimized the old one and tried to differentiate itself from the period of oppression – as a period of freedom. However the law provides for the legal continuity of the legislation passed

[11] All the other initiatives mentioned in the first phase were passed on the federal level

under the communist regime. “Legal acts adopted in the period [of oppression] … shall be repealed only if so provided by specific laws.” (§2, 480/1991)

3.1.3 Lustration

The so called “wild lustration” was already applied before the elections – some of the parties screened their candidates voluntarily before the 1990 elections (OF and VPN) and revelations of secret police collaboration was misused for political goals. This wild lustration is associated with the information leaks from the Ministry of Interior and public accusation of collaboration directed towards some publicly active individuals. In this sense the lustration law can be seen as an attempt to govern the screenings and make the process transparent. (Nedelsky 2009, 45) The lustration law – Act establishing certain additional conditions for the performance of certain functions in state bodies and organizations of the Czech and Slovak Federal Republic, the Czech Republic and Slovak Republic (nb. 451/1991 Zb) - institutionalized an exclusive lustration system – a system in which officials associated with the old regime were completely excluded from the public life. (David 2006, 353) The main idea behind the lustration law was to exclude old elites from the new emerging democratic order and in this sense facilitate discontinuity with the totalitarian regime and protect the nascent democratic order. On the other hand, it was criticized on the basis of violation of legal certainty principle and institutionalization of collective guilt by both former communists and some of the dissidents[12]. Group of parliamentarians submitted the law to the constitutional court to evaluate, whether it violates the legal certainty principle. The court justices upheld the law. They argued that “respecting the continuity with the old value system of the previous regime would not be a guarantee of legal certainty, but on the other hand it would cast doubt

[12] For detailed evaluation of the lustration law from the normative point of view and criticism of its shortcomings see Rosenberg 1995, 67-121

upon the new values, endanger the legal certainty and shatter the confidence of citizens in the credibility of the democratic system." (Pl. US 1/1992)[13]

Lustration legislature was valid for the whole federation; however it was never thoroughly applied in Slovakia. (Nalepa 2010, 193) This can be explained by the fact that the ruling Slovak elites (after the 1992 elections) were not in favour of punitive accountability mechanisms (See section 2.3).

3.1.4 Criminal justice

Criminal prosecution was a mechanism, which was used in a very limited manner during this period. Prosecutions were initiated against high-ranking communist officials for abuse of their power – unlawful crackdown of the 1988 and 1989 demonstrations. The first ever trial was with the communist official and the initiator of brutal police interventions, Miroslav Štěpán, who was sentenced to 15 years in jail. Criminal prosecutions concerned mostly Czech nationals, but one of the individuals held criminally responsible was also Slovak Alojz Lorenc, who was the deputy minister of interior and the former head of the state security. Lorenc was found guilty of preventive roundup of citizens in 1988-89. This activity was mainly aimed at dissidents, who were prevented from attending demonstrations. Lorenc was sentenced to 4 years in prison by the Czech court, but in the meantime the federation was dissolved and he avoided imprisonment by staying in the Slovak Republic and refusing to commence his sentence in the Czech Republic. (SME 2001) Therefore his trial had to be opened again in Slovakia.

3.1.5 Truth revelation

As I already argued in the theoretical chapter, transitional justice in post-communist environment is closely connected to the secret police archives and in this sense access to these

[13] For the more detailed analysis of the Czechoslovak lustration law, the motivation for its passing and its implementation see Nedelsky (2005, 2009), David (2006) or Nalepa (2010)

files can be considered as the most important truth-telling mechanism. Despite of the fact that Czechoslovak federal parliament adopted a strict lustration law, the secret files were not made accessible to the public, nor made available for research. Federal Prime Minister Čalfa argued that "the government is convinced that the publication, at a time when democratic institutions and habits are not yet consolidated, would expose these persons and their families to harassment, and would therefore be an ill-considered step." (Nedelsky 2009, 51)

This view, however, was not shared by everyone and it led to the first case of so-called "vigilante justice". According to Stan, vigilante justice is a private action of "self-appointed inquisitors who believed they furthered the common good by publicly releasing the [secret] information." By performance of this activity, the vigilante "sought to compel state institutions and officials to de-block key transitional justice procedures … [and in the case of secret-file access] the need to disclose the names was more urgent and compelling than the need to verify the lists to make sure that they included no mistakes and offered most accurate information possible." (Stan 2011, 321) In Czechoslovakia, it was a personal initiative of former dissident Petr Cibulka, who published information on about 160 000 alleged secret-police officers and collaborators – the so-called "Cibulka list", which in the case of Slovakia remained only source of information about former collaborators for a long time. Later on, when the actual secret police registers were made accessible, it was proved that the list was very accurate. (Stan 2011, 321)[14]

3.2 Slovakia under Mečiar (1993-98)

The second transition phase, which is a phase of the first years of existence of independent Slovakia, was characterized by the government of elites, who were not interested in thorough pursuit of transitional justice. The break-up of the federation, however, meant

[14] For more detailed discussion of Cibulka lists see Stan 2011

legal continuity of the existing federal legislation, which included the transitional justice measures discussed above.

3.2.1 Lustration

It is important to emphasize that lustration law was not implemented in Slovakia even during the existence of the federation. After the break-up of the federation, Slovakia inherited the lustration legislation. There were attempts to repeal the lustration law. The executive petitioned it in the Slovak constitutional court arguing, that it is not consistent with the Charter of Rights and Freedoms included in the Slovak constitution. The court did not proceed with this application with the explanation, that the law was already petitioned in the federal Czechoslovak constitutional court, which decided that it does not violate rights and freedoms of the screened individuals. (Kunicova and Nalepa 2006, 14) Therefore formally, lustration legislation was in effect and it required the establishment of procedural rules. However, no lustration agency was established (the federal one was in Prague) and the lustrations were not carried out in practice. The lustration law, which was originally intended to be in effect for 5 years, simply expired at the beginning of 1996. In this sense it can be argued, that Slovak republic did not enforce its own laws.

The main explanation of non-pursuit of lustration is the elite configuration constraint, which emerged as a consequence of 1992 elections, which brought electoral victory of HZDS. Kunicova and Nalepa argue that HZDS, although agreeing with some mild forms of transitional justice, did not agree with the harsh federal lustration law and "Mečiar's gate keeping powers prevented the federal lustration law from being implemented [in Slovakia]." (Kunicova Nalepa 2006, 18-19) Therefore the elite configuration in the newly established independent state can be considered the main reason for the turn to "politics of silence" in Slovakia.

3.2.2 Reparatory justice

The most important act passed during this period was the March 1996 Act on the immorality and illegality of the communist system (nb. 125/1996 Zb.). Surprisingly this law came during this transition phase and it was supported by both coalition and opposition parties. The facts that HZDS was not interested in punitive measures and this law remained only at the symbolic level throughout the second transition phase can explain its support for it. Such a law was, according to the drafters, necessary to "give special reverence to the victims of the communist system, to acknowledge them significant share in the restoration of freedom and democracy, to keep in the nation's memory suffering and sacrifices of thousands of its citizens, to avoid the recurrence of any attempts to restore the totalitarian system in any form and taking into account the necessity to deal with the communist system … " (Preamble, 125/1996) The law identifies two goals of transitional justice – acknowledgement of the victims and deterrence of the recurrence of crimes. The law officially thanks the victims of the communist repression for their struggle for freedom. Moreover, it creates an obligation to enact another law, which would "mitigate some of the wrongdoings committed on the dissidents of the communist regime and the persons affected by the persecutions." (§6, 125/1996) However, such a law was never enacted during this period.

Another significant outcome of the law was the acceptance of the fact that various crimes were committed under the communist regime by state officials. Although the law did not state explicitly that the regime was criminal per se, it claims that the communist party "did not prevent its members and their accomplices from committing crimes and violations of basic human rights and freedoms." (§1, 125/1996) Moreover, the law lifted the statute of limitation for the crimes[15] committed between February 1948 and December 1989 if "for political reasons incompatible with the fundamental principles of the rule of law of a

[15] These included, for example, crimes of terrorism, murder, bodily harm and other

democratic state there was no final conviction or a waiver of the indictment." (§4, 125/1996) This was an important regulation for the possible criminal justice pursuit. However, no specific mechanisms were created for the criminal justice pursuit and therefore the whole law remained only symbolic in practice. This can be explained by the fact, that the ruling parties were not really interested in opening any criminal cases, due to the circumstances already discussed.

3.3 Slovakia after Mečiar (1998-2002)

The last phase of the transition is characterized by the government of anti-Mečiar coalition of liberal, socialist as well as conservative parties. As I already discussed (in 2.3), this was the phase which was most conducive to the transitional justice pursuit due to the lowest extent of transitional justice constraints.

3.3.1 Reparatory justice

A communist past was not the only non-democratic past Slovakia had to deal with. The November 1999 Act on the mitigation of some of the wrongdoings to those deported to Nazi concentration camps and prison camps (nb. 305/1999 Zb.) was designed to provide compensation to the victims of Slovak state era (1939-45). Although there was wide-ranging transitional justice after the Second World War,[16] there was a need to address some of the wrongdoings even after more than 50 years. The law provided for financial compensation to the families of the victims (a one time payment for the deceased victims) and pension premiums for the victims themselves.

A one time financial premium was provided also to the members of anti-fascist resistance during the period of 1939-45. This was enacted in the January 2002 Act on the one-time financial premium for the members of domestic resistance (nb. 105/2002 Zb.). In case

[16] The period of 1945-48 was characterized by wide-spread criminal justice; some of the leading persons of the Slovak state (including President Jozef Tiso) were executed.

the resistance member was deceased at the time of the passing of the law, the premium was provided to the widow/er.

In connection to the judicial reparations act (enacted already in 1990), the July 2002 Act on one time financial premium provision for political prisoners (nb. 462/2002 Zb.) provided financial compensation to one of the category of the communist regime victims. This law can also be seen as a partial fulfillment of the commitment given in the law on the immorality of the communist regime to compensate the victims. The financial allowance was provided to the victims or the family members of victims, who spent at least 3 years in jail and who were later rehabilitated.

3.3.2 Criminal justice

At the end of 1999, minister of justice Ján Čarnogurský came up with the initiative to establish a body, which would be responsible for investigating communist crimes and initiating criminal prosecutions. It was to be based on the Czech model – where Office for the Documentation and Investigation of Communist Crimes functions under the Ministry of Interior and it is a police body. This was, however, rejected both by opposition, as well as some of the coalition parties – it was especially opposed by SDL. (Kunicova and Nalepa 2006, 20)

The year 2002 also saw the conclusion of the Lorenc case, whose criminal trial was ongoing since the establishment of the independent Slovakia. He was sentenced to 15 months conditionally for the offense of abuse of authority. To this date, it is the only criminal case, which was concluded with a final conviction. (SME 2002)

3.3.3 Truth revelation

The unsuccessful plan of Čarnogurský resulted in the establishment of the Department for the documentation of the crimes of communisms within the Ministry of Justice.

Foundation of this small department did not require the support of parliament and therefore its establishment was possible already at the beginning of the third phase. It consisted of only 2 persons and its responsibility was to collect documents concerning the period 1948-89, start with the documentation of the crimes committed during the communist period and to provide consultation services to the victims (concerning the restitutions and compensations). (Gula 2010) It had access to a limited amount of archival material, because some of it was deposited within the Ministry of Interior.

The major turning point was the year 2002, when just a few months before the elections an Act on the declassification of the documents on the activities of state security authorities between 1939 - 1989 and the establishment of the Nation's Memory Institute and amendments to some acts (law on memory of the nation) nb. 553/2002 Zb. was passed in parliament. This brought "the breaking of the silence", which was a result of the developments after the break-up of Czechoslovakia. I will discuss this in more detail in the next chapter.

3.4 Beyond the three phases

The establishment of the NMI did not bring a complete end to transitional justice. The lawmakers identified some of the victim's groups, which were to be compensated for their suffering. December 2004 Act on provision of one-time financial contribution to the individuals placed in the military forced labor camps between years 1948 and 1954 (nb. 726/2004 Zb.) identified another victim group and provided financial compensation to either the victim himself, or the spouse. In March 2006, the Act on anti-communist resistance (nb. 219/2006 Zb.) was enacted and it created conditions for granting the status of the anti-communist resistance member to the individuals eligible. This status represents a symbolic appreciation of "men and women who risked their own lives, personal liberty and who were

ready for ultimate sacrifices fighting for their homeland and defending the values of freedom and democracy." (Preamble, 219/2006)

4 Nation's Institute of Memory

The establishment of the institute was accomplished in August 2002, after parliament had outvoted the presidential veto. The law establishing the institute was supported by a wide range of political parties and factions in the parliament. This was the result of the political developments after the 1998 elections. (See 2.3) The main exceptions were SDL and to some extent HZDS[17]. In the first voting session in July 2002, 82 out of 93 present MPs voted for the law. Most of the SDL representatives were not present or abstained from the vote.[18] (Vote 2002a) The second time the law was in the parliament after the presidential veto on August 18, it gained 82 votes out of 115 present in the assembly. This time more than half of the HZDS representatives were not present or abstained, although the rest voted for the law. None of the SDL representatives voted for the law, most of them were against and the rest abstained or was not present. (Vote 2002b) Political support for the law was therefore possible due to the favourable elite configuration, which was a result of 1998 elections and subsequent fragmentation of political parties in the parliament. Moreover, the proximity of the elections (in September 2002) created an environment, in which the supporters of the law from the ruling coalition were no longer constrained by its coalition partners, especially SDL. The threat of break-down of the coalition was no longer relevant. (Kunicova and Nalepa 2006, 22)

NMI is supposed to examine not only the era of communist dictatorship, but also the era of Slovak state. This is a result of the fact that Slovakia was not able to address either its communist past, or the earlier non-democratic past in an unbiased sense.[19] The supporters of the law presented it as an attempt to overcome the "forgetting" of the past, by which the Slovak approach to transitional justice can be characterized. The preamble of the founding

[17] At the time of the vote, the parliament was rather fragmented. At the time of the first vote, there were 7 parliamentary factions and one of the largest clubs was independents (30). During the second vote, the number of factions increased to 8 and there were 31 independent representatives.
[18] But even 2 SDL MPs voted for the law.
[19] Impartial study of the Slovak state was not possible during the existence of the Communist regime

law states that it is important to bear in mind that "those who do not know their past, are condemned to repeat it, and that no unlawful act on behalf of the State against its citizens may be protected by secrecy or forgotten." Therefore the state has a duty to disclose the truth about its past, as well as duty to address the harm done to the victims is emphasized. There is "the duty of our state to rectify the wrongdoings to all those who suffered damage on behalf of a State, which violated human rights and its own laws." (Preamble, 553/2002)

One of the most important developments of the Act was the full disclosure of security police files, which were until then still inaccessible. "Subject to being disclosed and made public shall be preserved and reconstituted documents, which were created as a result of the activity of State Security and other security authorities in the period from April 18th, 1939 to December 31st, 1989, of which records are kept in files or archives (registers) from those times." (§6, 553/2002) The duties to administer and research the files were given to the newly established institution – NMI.

4.1 Analysis of the justifications and criticism for Institute's establishment

This analysis aims at uncovering the motivations and justifications of political elites to adapt these transitional justice mechanisms 13 years after the fall of communism. I will treat both NMI and secret police archives as the same issue, since it is one of the NMI's duties to administer and research the files and both these mechanisms were established in the same law in the Slovak case. The analysis includes the thematic analysis of the parliamentary debates[20] leading to the passing of the law as well as the preamble and an explanatory memorandum for the law and president's reservations. This analysis will lead to a better understanding of the motivations and justifications of political elites to pass such a law. These documents were

[20] The law was vetoed by the president; therefore there are 2 rather extensive debates. The first one was during the second reading of the law on July 9, 2002. The second one was before the veto was overruled in the parliament, on August 19, 2002.

chosen for the reason, that they all express justifications of the elites, who prepared the law or who opposed it in the parliament.

The analysis covers five themes, within which several codes were addressed. In the first theme the role of the past and undesirability of forgetting is addressed. The second theme deals with the delegitimization of the past regime and legitimization of the new democratic order, especially the current ruling political elites. The next theme examines the right for the truth, from both individual and collective point of view. The following theme addresses some of the major objections, as well as answers to these problems. The last one deals with the understanding of the presidential veto. Therefore it is only based on the analysis of the second debate, which led to the repeated voting on the law.

4.1.1 The need to address the past

Drafters and supporters of the law perceived the past as something, what shapes our current identity. Therefore the need to address the criminal past was strongly present in the debates. "Past […] shapes our present behaviour and as a result of that also our future. Our traditions, habits and knowledge, but also our weaknesses, mistakes and traumas have their roots in our past. [Therefore] it needs to be properly managed, treated and shared among its owners. If this is done properly, the past is the source of power, identity and knowledge, which facilitate spiritual and material growth …" (Memorandum 2002) The nation needs to know its past if it is to make the right choices for the future. The main author of the proposed law, Ján Langoš, argues that even though we chose forgiving after the 1989 transition, "it can not result in forgetting." (Debate 2002a) Until then, the prevailing approach was "forget and forgive", which the drafters of the law considered as normatively undesirable.

By mid 2002, there had been some results of the secret police archives access debates in the region and Slovakia was lagging behind. Opening these files would help uncover more information about the past. The initiative to establish the NMI and make secret files public

was considered as "completing of the addressing of the communist and Nazi past in our national history." (Debate 2002a) Therefore it was presented as a very salient issue in the Slovak society. On the other hand the elites saw this initiative as something final that Slovak society can do to address the past and stricter transitional justice mechanisms were not mentioned at all.

The need of identification of secret police employees and collaborators is also connected to the problem of the treatment of the past in Slovakia. "We live with politicians, who act like if they only had 12 years old past." (Debate 2002b) This refers to the fact that many politicians act like what they did in their pre-1989 past is irrelevant and forgotten. In this sense it was an initiative against forgetting. The argumentation builds up on two assumptions – everybody should be responsible for his actions and that "those who do not know their past are condemned to repeat it." (Preamble, 553/2002) No thick lines should be made between the present and the past, at least in the symbolical sense. It was argued that the public has a right to know about the past involvement of the present-day politicians in the structures of the old regime. This initiative could lead to damage reputation of some of the politicians.

Attempts at historical revisionism – meaning "ideologically motivated attempts at suppression of historical facts and its substitution with half-truths and rumours" – of the historical periods characterized by lack of freedom can "aim at creation of preconditions for repeated suppression of freedoms." (Memorandum 2002) Deterrence of the recurrence of the crimes and past practices was perceived as a ever-present threat and in this sense revelation of the truth was regarded to be a possible antidote to this problem.

4.1.2 Delegitimization of the past regimes

Uncovering the realities of the past regime – along with the crimes it committed – serves a purpose of its delegitimization. NMI was created with the hope that it would

"examine and remind the fact that in the past century, the freedom of citizens of Slovakia was suppressed during the long period of time, [as well as] democracy and state sovereignty [were not respected] … (Memorandum 2002) This is connected with the construction of specific historical narratives, the characteristic of institutes of memory identified by Mark (See 2.3.1) – both communist regime and the regime of Slovak state should be approached from such a point of view, that it is the regime crimes and violations, which are to be brought to the forefront.

Moreover, delegitimization of the past regime serves as a legitimization of the current regime, which is democratic and which does not suppress freedom of its subjects. "Providing insights into non-democratic past […] will clearly demonstrate that democratic society does not want and will not protect those, who actively participated in the repression of their fellow citizens and in the constraining of their basic human rights and freedoms." (Memorandum 2002) The supporters of the legislation in the debate tried to position themselves as the true proponents of democratic values. The voices of opposition will be discussed later (in 4.1.4 and 4.1.5)

4.1.3 Truth revelation

One of the main reasons presented as a justification for the law was the need to do something about the crimes of the non-democratic regimes. This is obviously connected with the previously discussed "need not to forget" and delegitimization. Both regimes – Slovak state and communist regime – committed a wide range of crimes against their own citizens. The Slovak state was involved in the Holocaust and there were around 58 000 people deported from the country to concentration camps. "During the Slovak state existence, the Jews were deprived of basically all of the human and civil rights, exposed to continual humiliation, all kinds of unlawfulness, brutal violence and vulgar anti-Semitic propaganda."

(Debate 2002a) However, Jews were not the only victims. Political opposition members of all kinds were exposed to various types of persecution.

The communist dictatorship perpetrated various regime-sponsored crimes. In Czechoslovakia, the repressions affected 1.5 – 2 million people. They were manifested in various forms – ranging from killing, torture, being shot while attempting to escape the country to being dismissed from the employment, and prohibited from studying or having one's property confiscated. (Debate 2002a)

Proponents of the law identify one very important principle of transitional justice – that is the right to know the truth. There are two main reasons for that. Victims and communities of victims have a right to know the truth about their own fate or the fate of their family members. Moreover, not just the victims, but the whole society has a right to know who the perpetrators and collaborators with the regime were[21].

First I am going to discuss the victims' right to truth. Although most of the victims of the regime could be identified, some of them were still unknown. And to those unidentified dead victims, we today "have a duty to preserve historical record [about them] in the fullest and most accessible extent possible. (Memorandum 2002) In this sense, the right to know the truth is characterized as an "individual right" – in the form of habeas data. "Everyone has a right to know, what information security authorities gathered about him and then to evaluate in what ways was his personal, family and professional life influenced by these activities." (Debate 2002a)

Furthermore, there is a right of the whole society to know the truth about the national past. From this stems a right to know "names of the public officials of Nazi and communist regimes, as well as names of agents and collaborators of the secret police, who were responsible for infringement of human rights and civic liberties … (Debate 2002a) There was

[21] For a detailed discussion of the right to truth see Teitel 2000, 69-117, Zalaquett 1995 or Forsberg 2003

also a need to uncover the mechanisms of perpetration of the crimes. There were cases of disappearances, in which the information about the burial places of the victims are unknown, as well as the mechanisms of how the individuals were arrested, where were they held and how were they murdered. (Debate 2002a) This information was still classified as confidential and held in the archives.

4.1.4 Selectivity and manipulation

One of the main reservations brought up in the discussion was the problem of selectivity of the documents. There were a number of rumours claiming that many documents were destroyed in various periods after the 1989 transition. Moreover, HZDS representative Húska argued that already at the beginning of 1990s, when lustration was in progress, some of the lustration certificates were manipulated and therefore this new initiative could face similar problems – "some of the individuals […] would be protected for the reason of incompleteness of the documents, and others not." (Debate 2002a) In this point of view, the law institutionalizes mechanisms for possible manipulation and it only affects the persons which are included in the preserved materials – creating double standards. Some of the agents and collaborators simply could not be identified at all.

The provided answer to this problem is twofold. To prevent political manipulation, the main bodies of the Institute – the Board of Directors and Supervisory Board – would be subject to popular control through parliament. "In the parliamentary democracy, the most effective and only […] public control [mechanisms] is parliamentary control, meaning control through committees and […] assembly. (Debate 2002a) Most of the members of these main bodies would be elected in parliament, the rest by the government (which is also subject to parliamentary control).

The answer to the selectivity problem is provided by Langoš. He claims that "records were administered in such a manner, that it is practically impossible to erase any information

by shredding of individual files." (Debate 2002a) The reason for this is that it is possible to reconstruct almost everything from other files, due to the enormous amount of data secret police produced. Therefore destruction of the traces of any individual from the files is almost impossible.

4.1.5 Presidential veto

As I already mentioned earlier, the law establishing the NMI and opening up the secret archives was vetoed by the president Rudolf Schuster[22]. Two months later, it was again presented to the parliament. Here I am going to discuss what the main objections were and how was the veto perceived by the proponents of the law in the parliamentary debate.

The president presented several objections to the law – mainly problems with the lack of clarity and confusing definitions of some terms (Nazi crimes, communist crimes, reconstructed document, period of oppression or public officials). The presidential argumentation was concluded by a vague formulation – "The shortcomings of the law on memory of the nation … can not be removed by any specific comments of particular articles due to their severity and extent." (Ruling 2002) Therefore no recommendations for any specific changes in the law, or suggestions of any new formulations or paragraph wordings were made.

Proponents of the law did not take into account president's objections, on the grounds that all of the supposed shortcomings are addressed sufficiently in the law and no specific suggestions were proposed. Former dissident František Mikloško sees the attitude of president as "a moral failure" (Debate 2002b) and "a demonstrative rejection of this institution [NMI]." (Debate 2002b) The past profile of the president – his position within the communist party

[22] The President of Slovakia has a right of suspensive veto on any act passed by the parliament (article 102(o) of the Slovak constitution). The absolute majority of parliamentarians (at least 76) can pass the law vetoed by the President.

nomenclature[23] – is identified as the main reason for his action. Even the document with his signature on the precautions on elimination of the activity of participants of the pilgrimages in 1987 is presented in the debate by KDH representative Peter Muránsky. (Debate 2) In this sense, the veto can be seen as an attempt to "forget the past" and protect the former perpetrators, a group to which he belongs.

In this manner, the president's office could be considered as a constraint to the transitional justice (due to the fact that he belonged to the communist elite). However, the limited power of the president to override legislation in the Slovak political system did not allow him to suppress the initiative, due to different elite configuration in the parliament.

4.2 Functions of the Institute

The newly established institute was provided with several mechanisms to address the past. In the following section, I will provide an overview of what the NMI actually does and how these functions can be organized from the analytical point of view.

4.2.1 Truth revelation

The truth revelation function is primarily connected to the publication of information from the secret police files[24]. In practice, it includes a wide range of activities. When talking about secret police files, it needs to be stressed that they included two broad categories – those persecuted and collaborators. There were two types of files about the persecuted – personal files, which contained information about a particular individual and files containing personal data, which included intelligence about certain institution or a group of objects (persecuted persons). The information about the collaborators was contained in their personal

[23] President Rudolf Schuster was a member of Central Committee of the Communist Party of Slovakia

[24] Secret police file is a generic term. It includes files produced by various security authorities – "State Security, Main Directorate of the Military Counterintelligence of the National Security Corps (Directorate III), Intelligence Directorate of the Main Directorate of the Border Patrol and State Border Protection, Department of Internal Protection of the Penitentiary Forces, Intelligence Service of the General Staff of the Czechoslovakian Army or predecessors of the above forces in the period from April 18th, 1939 to December 31st, 1989" (553/2002)

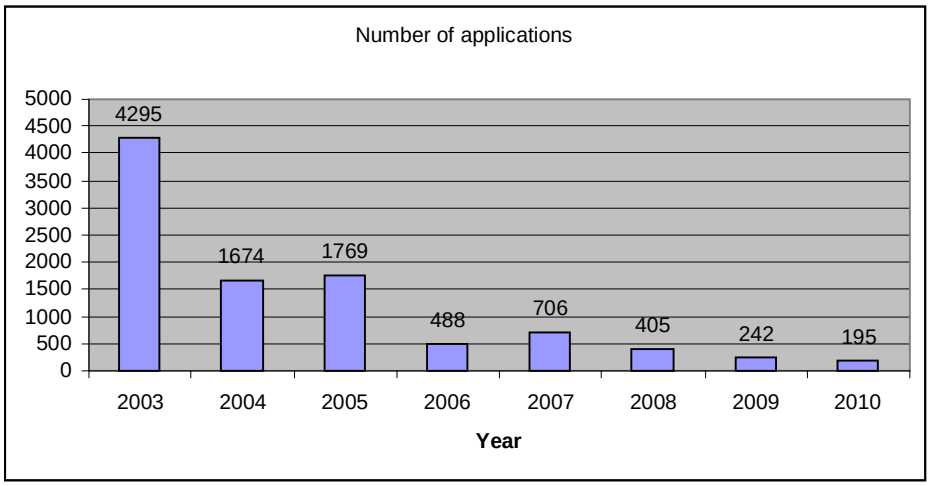
files. Collaborators were grouped into five categories – resident, agent, informer, keeper of a lent apartment and keeper of a conspiracy apartment – which are characterized as deliberate collaboration. (§2, 553/2002)

As I mentioned earlier, all these documents are subject to disclosure and being made public. "The files of the persecuted persons contain thousands of records with information that was detrimental and often also led to their conviction. The source of this information was the secret police collaborators who are registered as agents in the same registration protocols." (Morbacher 2006) Citizens have a right to know whether they were the subjects of interest of the secret police, what kind of information was collected about them and who the persons providing this information were.

One of the functions of the institute is the provision of this information to the individuals interested. Upon request, any person over 18 years of age has to be provided with information whether a file regarding him or her exists, whether there is a report containing the results of the intelligence and be provided with the copies of these relevant documents. The first personal screenings started already in 2003, after the actual establishment of the institute. This was a lengthy procedure, since the Institute had to make an inventory of and analyze all of the relevant documents. Moreover, some of the documents were submitted to the NMI throughout the years after its establishment (e.g security authorities' archives from the regional archives or files about Slovak citizens held in Czech Republic).

Morbacher claims that the disclosure of information contained in the files helps the citizens to uncover the full truth about their past and how it was affected by this repressive component. This function of the NMI enabled both those who knew that they were of interest to the secret police, as well as those who did not know that someone manipulated their lives, to learn what information was collected about them and how the state security influenced their lives. (Morbacher 2006)

As can be seen from the graph below, almost 10 000 applications were submitted to the Institute between 2003 and 2010. This illustrates the fact that citizens are interested in the information held in the archives about themselves.



Information based on NMI annual reports 2003-2010

The institute does not only provide screenings for physical persons. One of its duties is to cooperate with state institutions – such as National Security Authority[25] or intelligence agencies. This activity is related with the granting of the security clearance on the basis of the law on the protection of classified information by these agencies.

The goal of truth telling was not only aimed at provision of information to individual persons, but the whole society. Therefore after the information was processed, the lists of perpetrators, collaborators and victims were made available for the public. Institute does not only work with the files deposited in its own archive, but also conducts research in other archives to fulfill its goals. One of the crucial functions of the Institute is to "to publish data on executors of the persecution and their activity." (§8, 553/2002)

[25] It is the central body of state administration, which is responsible for protection of classified information and encryption services

In 2006, the list of the names of the functionaries of the Central committees of the Communist Party of Czechoslovakia and the Communist Party of Slovakia between 1945 and 1990 were made available to the public on its website. In the same year, secret commands of the interior ministers given between 1948 and 1989 were made public. These commands provide evidence on the mechanisms of crime perpetration – example is the secret command on the use of physical violence during interrogations from 1951. (Annual Report 2006, 39) Information accessed to the public range from the organizational structure and personnel of the state security apparatus to the structure and functionaries of the Hlinka's Guard[26].

When it comes to collaborators, the Institute grants access to the registration protocols of the secret police, which include names of the secret collaborators. The files itself are held in the archive, which was made available for researchers in 2005. In 2007, it was made accessible for the general public as well. This led to an increased interest of the media in the issues of collaboration. (Annual Report 2007, 11) I will discuss the controversies it created later.

An important function is the identification of the victims of the nondemocratic regimes in Slovakia. This includes publishing statistical information (how many victims there were) along with the list of the victim's names. In 2006, the institute published the register of Jewish population from 1942, which is "the most important document containing information about the Holocaust victims in Slovakia." (Annual Report 2006, 41) Lists of the victims include the August 1968 victims or individuals sent into Soviet gulags.

Other truth-telling activities of the institute include historical research. To fulfill the function to "conduct full and impartial evaluation of the period of oppression, particularly to analyze the causes and manner of loss of freedom, symptoms of fascist and Communist

[26] Hlinka's Guard was a paramilitary auxiliary corps of the ruling party during the Slovak state existence which participated in the counter-resistance activities of the regime and served as a political police body

regimes and their ideologies, involvement of domestic and foreign persons …" (553/2002, § 8), the NMI has its own department of historical research. Since its establishment, the vision of the institute was to employ young historians unburdened by the past (meaning that they did not have to carry out their research during the communism). Therefore they would be able to provide unbiased evaluation of the period of oppression. (Medvedický and Podolec 2007, 73) The results of this activity include publication of historical books, studies and professional journal Pamäť Národa (Memory of the Nation), which will not be discussed in detail.

Moreover, the institute organizes various conferences, seminars and its employees hold lectures in high schools and universities. The oral history department captures testimonies from the victims of non-democratic regime. The institute also produces documentary films and cooperates with the mass media (television, newspapers) to inform about the period of oppression.

4.2.1.1 Controversies

The publication of the names of the secret police collaborators created various responses in the society. In a limited number of cases, the identification of collaboration of the persons holding public office led to their resignation.[27] In this sense, the impact of the institute's functioning resembles lustration. However, resignation from the post was a very rare response. The list of identified collaborators included politicians, prominent entrepreneurs, sportsmen and members of the clergy (including the catholic archbishop Sokol). Nedelsky claims that this activity was able to capture public's interest and created a

[27] The first was the case of state secretary Ján Hurný, who abdicated after his name appeared in the collaborators list, in spite of the fact that he denied the authenticity of the file. (SME 2005) The latest was the case of Pavol Ňuňuk, who was a Military Counterintelligence functionary between 1980 and 1989. He was appointed a Head of the legislative section at the Ministry of Agriculture and decided to resign from his position in 2012. (SME 2012)

societal debate, which led to the stark condemnation of these individuals by the public.[28] (Nedelsky 2012, 5)

On the other hand, a number of identified collaborators questioned the reliability of the information included in the files and several lawsuits were filed against the NMI. Until the end of 2010, 43 lawsuits were initiated on the basis of defamation. The plaintiffs claimed that the information in the file was inaccurate and demand a "verdict that they are wrongly registered in the state security protocols and they did not cooperate knowingly." (Annual Report 2010, 11) Twenty four lawsuits were lawfully decided, out of which 12 in favor of the NMI and 12 in favor of the plaintiff. These developments in the courts suggest that indeed the information in the files can not be considered unconditionally accurate and therefore its publication can create moral problems – specifically incorrect label of the collaborator for an innocent person.

Tampering with the information in the files was also identified by the employees of the institute in 2007. The changes were identified in 30 cases, all of which were done in favor of the collaborator – the information in the registration protocols was changed in the manner that they were portrayed as victims (the persons of interest). This means that "demonstrably, unknown persons attempted to amend the details of collaboration with the state security after 1989." (Morbacher and Sivoš 2007, 82) However this proves that employees of the institute are able to identify the cases when the information had been changed due to the fact that information can be cross-referenced with the files of both the persecuted and collaborators. This is the reason why the information published by the institute can be considered reliable. Some of the courts' rulings mentioned above, however, suggest otherwise.

[28] Results of the 2005 survey showed that 82% of respondents think identified agents should resign from public life (Nedelsky 2012, 5)

4.2.2 Acknowledgement of the victims

Since 2006, it is the institute's responsibility to accept and evaluate the applications for granting the status of the anti-communist resistance member based on the law on anti-communist resistance. This status is awarded to the persons who were either members of illegal anti-communist organizations, political prisoners, members of foreign resistance or carried out other anti-communist activity focused on restoration of freedom and democracy. Until the end of 2010, such a status was granted to 371 individuals.

The law on anti-communist resistance was amended in 2009[29]. This change created as special category of a resister – the veteran of anti-communist resistance. Such a status is granted to the political prisoners whose "personal freedom was limited by imprisonment, assignment to forced labor camps, [persons] forcibly abducted or illegally interned for his active resistance against the communist authorities for political, religious or other reasons related to the anti-communist resistance." (§6, 219/2006) This statute is also primarily symbolic, but it also entitles its holder to increased social benefits. Until the end of 2010, the NMI granted this statute to 289 persons.

4.2.3 Criminal justice

Based on the law on memory of the nation, one of the tasks of the institute is to "make motions for criminal prosecution of crimes and criminal offenses under §1 [Nazi crimes, communist crimes and other crimes], in cooperation with the Attorney General's Office of the Slovak Republic." (§8, 553/2002) Morbacher claims that Slovakia lags behind in the pursuit of criminal justice due to the political developments after the split of Czechoslovakia and the reluctance of the state organs to initiate prosecutions. The establishment of the NMI, its documentation of the crimes and identification of the perpetrators was a possibility to initiate criminal prosecutions. (Morbacher 2008, 77-78)

[29] Amendment 58/2009

First four submissions were presented in 2007 – three cases of murder and one case of torture. The first three cases are still open, while the latter was suspended due to the fact that the defendant "in neither of her testimonies, nor in the any written statements stated that the investigators used any kind of physical violence or forced her to confess." (reasoning of the attorney's decision quoted in Annual Report 2008, 20) In 2008, the cases of the 42 murders at the borders by the members of Border Patrol were submitted to the Attorney General's Office. The NMI tried to classify these cases as crimes against humanity, due to the fact that there is no statute of limitation for these crimes. The last two cases were submitted in 2009 and these were also documentations of murders.

The Attorney General's Office prepared a regulation for local attorney offices, which states that the cases submitted by the NMI are not to be qualified as crimes against humanity. Although the law on immorality of the communist regime lifted the statute of limitation on crimes committed between 1948 and 1989, more than 20 years passed and therefore most of the crimes were statute-barred. "[D]espite of the commenced prosecutions in individual cases, [it is very likely that the crimes] will never be punished by the Slovak courts." (Morbacher 2011, 149)

4.3 Independence of the NMI

In order to be able to perform its tasks impartially, it is essential for any institution to have both administrative and financial independence, no matter what the political situation in the country. The highest executive authority of the NMI is the Board of Directors and it has 9 members. The chair of the board (the president of the institute) and 4 members are elected by the parliament, both President of the republic and the Government nominate two members each for the term of 6 years. The administrative independence is secured by the provision, which states that "member of the Board of Directors shall be allowed to be withdrawn by the body which appointed him only on condition that he has been validly sentenced or fails to

execute his office for the period of at least six months." (§12, 553/2002) The financial independence is not secured, since the NMI depends on the financial subsidies from the state budget.

Conclusion

The purpose of this thesis was to analyse the dynamics of transitional justice in Slovakia and to answer the question what was the reason for the "breaking of the silence" in 2002. Moreover, I was interested in finding out what were the justifications for this change, what functions does the Nation's Institute of Memory have and how was it able to perform them.

The analysis of the dynamics showed that it is crucial to divide the Slovak transition into three distinct phases, under which the interplay of the analyzed constraints is different and therefore the approach towards dealing with the past varies as well. The first phase was still confined within the common federation framework and it was affected by both type of the regime change and ability of the new elites to dominate the politics. Therefore a wide range of transitional justice mechanisms – including lustration, reparatory justice and very limited criminal justice – was adopted. These mechanisms were valid for the whole federation and the legislation passed in this period established the basis for Slovak transitional justice.

The second phase, characterized by the domination of Vladimír Mečiar in the Slovak political life, brought the birth of independence for Slovak Republic and the "beginning of silence" when it comes to dealing with the past. The existing legislation was not repealed, but the exclusive measures – such as lustration – were not applied at all. The only exception was the law on immorality of the communist regime, which however remained only in the symbolic realm. The reason for this was the fact that elite configuration in the main legislative body changed dramatically. The continual presence of the old elites in the Slovak politics was to some extent determined by the lack of political opposition under the communist regime, which resulted in the need for them to participate in the political life.

The third phase brought a rapid change, which was primarily a result of complete elite turnover. The conditions for transitional justice pursuit were made even more favourable with the growing fragmentation of the parliamentary forces. These developments led to the breaking of silence in 2002, which resulted in the establishment of the Nation's Memory Institute. Therefore it can be concluded that elite configuration was the key variable, which affected the pursuit of transitional justice in the independent Slovakia.

As I showed in my analysis, the establishment of the institute, as well as declassification of the secret authorities' files was fueled by normative justifications – the law was prepared by former dissidents. None of the opposition reservations were taken into account, because they were perceived as insubstantial by the drafters and supporters of the law.

The primary function of the institute is connected to the truth revelation – creating and publishing a detailed historical record of past abuses. This function appears to be performed effectively; the publication of certain information (in particular list of the secret police collaborators) was able to create a response within the society. The cooperation with the General Attoreny's Office and initiation of criminal prosecutions function did not bring any results and it is unlikely that it ever will. The last function is acknowledgement of the victims, which is limited primarily due to the number of individuals who are eligible to be qualified as members of anti-communist resistance.

Since the Nation's Memory Institute is not the only institute of memory in the region, it would be interesting to compare its functions and the results of their activity with these institutions in other post-communist countries. Especially taking into account the fact, that some of them were established straight after the regime change (such as the Agency of the Federal Commissioner for the Stasi records established in October 1990 in Germany), while other even later than the Slovak one (The Institute for the Study of Totalitarian Regimes in

Czech Republic, which was established in 2007). The dynamics of transitional justice in those countries were completely different and such comparative analysis would provide a complex picture of how it was reflected in the position and functions of the institutes of memory.

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