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RESTITUTION OF HATRED, OR RESTITUTION OF MUTUAL UNDERSTANDING?

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RESTITUTION OF HATRED, OR RESTITUTION OF MUTUAL UNDERSTANDING?

- On the 2011 Serbian Act on Restitution – under the angle of the history of my home town –

My father and I, we were born in the same house. (Literally, since in our part of the world, giving birth in hospitals became a common practice only later.) Yet, we were not born in the same country. My father was born in the Austro-Hungarian Monarchy, I was born in the Kingdom of Yugoslavia. (Some changes in the name of the country took place between the times of our births as well.)

When my father was born, the name of our city was Nagybecskerek. After World War I, it became Veliki Bečkerek. Becskerek/Bečkerek is a name of uncertain origin. When I was born, the name of the city had a more pronounced Serbian name. It became Petrovgrad – honoring the Serbian King Petar (Peter). In 1941 Petrovgrad was occupied by the Germans. The name of the town became Grossbetschkerek. An inscription on the old city hall stated: Dieses Land war und bleibt immer Deutsch. (“This land was, and will always remain German.”) This motto was not really indicative of historic facts, but it was indicative of a momentum. Just like when Ratko Mladić was speculating about the borders of a Greater Serbia. He said that these borders will extend over Trieste. A journalist asked why Trieste should be Serbian, and Mladić responded. “Because it was always Serbian.”

But let me move closer to restitution. In my part of the world (and not only in my part of the world) changes of sovereignty have often been combined with changes (or taking) of property. My home town is in Banat, a part of the province of Vajdaság (Vojvodina). When the German Army occupied Banat in 1941, a special act was adopted regulating the confiscation of all Jewish and Roma property. Both my father and my grandfather were lawyers, and I found in their archives many cases in which they were opposing confiscation. But the space for legal reasoning became very limited. In a 1942 case, my grandfather was arguing that the immovables of Ms E. should not be confiscated, because she was married to a Hungarian of Lutheran faith in Budapest, and she became a Hungarian citizen. My grandfather argued that Hungarian law should apply (as the law of her citizenship), rather than
the law of the place of the property. (At that time Hungarian law did not provide for confiscation of Jewish and Roma property.) But the verdict of the German occupation forces was simple. It was stated that Ms E. was a Volljüdin (fully Jewish) – and her property was confiscated. But this is not the end of the story. Under the protection of her husband Ms E. survived the years of horror, and she wanted restitution. And here, a new problem arose. The German occupying forces were driven away from my home town by Tito’s partisans, and Soviet troops. Grossbetchkerek received a new name. It became Zrenjanin (after Žarko Zrenjanin, a partisan hero). The new authorities enacted a law providing for confiscation of all German property - with the only exception of the property of those Germans who joined Tito’s troops. (The number of local Germans excused on this ground was quite limited. The number of local Germans who had no wrongdoings, but who did not join the partisans, was way larger, but they were not excused.) Ms E. had a German family name. Many people serving the new local authorities were not locals. They did not know who Ms. E. was, but the German name caught their attention. This time it was not my grandfather but my father who represented Ms E. He thought that this was an easy case, because the property was taken by the Germans as Jewish property. Documents were there (the files still exist). But the new authorities had said that they were “not willing to consider fascist documents”. So my father had to prove by other means that his holocaust-survivor client was Jewish rather than German. This time with success. Restitution took place.

Within the first years of communism a new wave of confiscations was gaining ground. Legal rules were not particularly mindful of distinctive features – legal practice even less. “Cooperation with the occupying forces” was a common basis for confiscation. The house of a man who was living a few blocks away from us was taken, because he joined the German army, and because he betrayed some Jewish neighbors telling to the authorities where these people were hiding. Confiscation was not the only punishment that reached him – and in this case, punishment was deserved. But the furniture factory of Mr. B. a close friend of my parents was also confiscated on the ground of “cooperation with the occupying forces”. B. was one of the most successful Hungarian entrepreneurs in my home town. My father was handling the case. He lost it. In the decision on confiscation it is stated: “B. was cooperating with occupation forces, because – in addition to citizens – he was selling furniture to German soldiers as well.” B.-s son was my roommate during my studies in Belgrade. He lives now in Germany. I hope that the new Serbian act on restitution will give him a chance.
The new Serbian Act on Restitution is what actually prompted this text. It was enacted after many (too many) postponements. The final push came when the adoption of the Act became important in the context of Serbian efforts to join the European Union. The postponements did not make the situation easier. As a matter of fact, the longer one waits the more evasive justice becomes. Let me add another example, this time not from my home town, but also from the Vojvodina (Vajdaság). Property was taken not only as a punishment for “cooperation with occupying forces”, but also on the ground of specific acts on nationalization. Wealth was a target in itself. Mr. S. had a big house. It was taken, practically without compensation. For a year or two, it would have been easy to render justice; returning the house would have been the right measure. But after five years, the house was reconstructed, and turned into a school. It did not remain a school. After about 20 years it was again remodeled, and it became an apartment house, containing some fifteen apartments. The State gave some of these apartments to persons with political credentials, who acquired a so called “dwelling right” (stanarsko pravo). Others bought apartments at market price. Holders of dwelling rights got later a chance to become real owners for a very low price. Some of them sold their apartment to new owners at market price. Today (about 65 years later) practically all owners are people who paid a fair price for their ownership – and today, one cannot reach justice anymore by simply returning the house to the heirs of the original owner, because this would yield injustice to the new owners. One could say, of course, and with justification, that the State should compensate the family of the original owner. This is logical, but not easy. The State which nationalized the house was the socialist Yugoslavia; the benefits went to the budget of Yugoslavia. The house is now in Serbia. Compensation would be at the expense of the present budget (and present taxpayers) of Serbia. This is not a time of economic affluence in either Serbia or elsewhere. It is clear that justice requires restitution. It is also clear that full restitution with fill value is not possible anymore in all cases. The 2011 Serbian Act contains a restriction in Article 31 stating that compensation cannot exceed 500,000 Euros.

Even more difficult questions were prompted by the fact that the legislator had to face political passions that prompted nationalization and confiscation 65 years ago. Some of these passions were rekindled. This prompted the October 13, 2011 issue of the Belgrade weekly “NIN” to publish an article under the title “Restitution of Hatred”. Anticapitalism and antifascism were on the banner of the authorities who had ordered nationalization and

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1 Zakon o vraćanju oduzete imovine i o obeštećenju – Published in the Serbian Official Gazette (Službeni glasnik Republike Srbije) No 72/2011
confiscation. These slogans were often blurred. Let me return to the story of Mr. B. It was quite well known that he was not a fascist. But putting on him the tag of collaborating with fascist occupying forces (because he was selling furniture to German soldiers as well) was then a convenient way of depriving him of his property. (Let me add here, that Mr. B. kept working as an engineer in the factory he used to own. But he was deprived from the right to get pension.) Perceptions of history have changed since the time of nationalization many times, and these perceptions are still yielding heated debates. Antifascism got, of course, confirmation, but it remained controversial who were the “real fascists”. Let me also add that shutting out some categories of possible recipients of restitution would, of course, also represent a relief for an endangered state budget.

Some qualifications/disqualifications and divisions were renewed. Article 5(3) of the 2011 Act on restitution contains a provision that prompted a particularly heated debate. According to this provision, those who were members of occupation forces cannot apply for restitution – neither can their heirs. On the territory of Serbia three countries had forces which have been qualified – according to the verdict of history – as occupying forces: Germany, Bulgaria, and Hungary. The debate became particularly bitter with regard to Hungary. Bácska (Bačka), part of the Vojvodina/Vajdaság, was occupied by Hungarian forces. Local population was drafted, and thus many people became “members of occupation forces”. The draft – like all drafts over centuries – was compulsory. Those who did not join the Hungarian army were taken to prison. Those who escaped the army were executed (if caught). One can safely assume that some local Hungarians joined the army voluntarily. It is difficult to assume that those who were taken to the Russian front (and this was the majority) did this by their own will. It is also a fact that the draft in Bácska/Bačka was not restricted to ethnic Hungarians. In the Serbian Parliament, members of the Vojvodina Alliance of Hungarians (Vajdasági Magyar Szövetség) argued that exclusion based on “membership in occupying forces” yields collective, rather than individual responsibility. Some noted that during the past decade, the pattern of drafting to the Milošević army was essentially the same. There were people who joined because they shared the frenzy; others were drafted against their will. Some managed to escape. (Many of my present friends in Budapest – including Serbs – came here in order to escape from the draft.) During World War II, quite a few residents of the Vojvodina/Vajdaság managed to escape either from the Hungarian or from the German army. A not negligible number Hungarians escaping one of the armies joined the “Petőfi Brigade” – a Hungarian brigade fighting against the Germans on the side of Tito’s partisans. Nowadays, this is rarely remembered. Many Serbs prefer not to share the pedestal of fighters against
fascism with neighbors belonging to other ethnic groups. At the same time, many Hungarians feel ill at ease in remembering fellow Hungarians from the Petőfi Brigade, because, although they were on the side approved by history, they were also associated with communism. At any rate, according to the wording of the Act on Restitution, even those Hungarians who fled and joined the “Petőfi Brigade” would still qualify as persons who were “members of the occupation army”; because Article 5(3) is not nuanced by any specification, and these people were (for a while) “members of the occupation forces” before they managed to escape.

Another problem with article 5(3) is that it does not allow heeding what specific individuals who were “members of occupation forces” actually do. Some participated in armed conflicts and were shooting towards the other side, others served as cooks or as medical doctors – some of them may have committed war crimes. A great number of them were taken at the age of 21 to the Russian front, and lost their lives near the river of Don. Let me repeat here the story of the man from my home town who served as a member of an occupation army, and who betrayed his Jewish neighbors who lost their lives. But let me add here another true story about F.B., another German resident of my home town, who was drafted to the German army, and taken to the Russian front. He had a Jewish wife. After his wife was taken to Auschwitz, F.B. fled from the Russian front, managed to survive, and returned to Serbia. The wife survived the horror of Auschwitz, and they continued their marriage. Under Article 5(3), both the person who betrayed his Jewish neighbors, and F.B. who escaped from the German army and got later reunited with his Jewish wife, belong to the same category.

Other problems have also emerged in the public debate in connection with Article 5(3). After World War II, those who were discredited (and punished) were not only the members of the occupying armies, but also their collaborators. The most important formations of the collaborators were the “ustasha” in Croatia, and the “chetnik’s” in Serbia. The Ljotić formations in Serbia are remembered as extremists on the fascist side. One part of Vojvodina/Vajdaság (Srem) was for a while to a large extent under the rules of the ustasha forces. Chetnik and Ljotić formations were active in many parts of Serbia (and outside of Serbia as well). Today, the Ljotić formations are still perceived as fascist forces, and they are clearly rejected by the great majority of Serbs. In Tito’s time, the verdict against the chetnik’s was equally negative. Today, there is an open debate about the actual role of the chetnik’s. The wording of Article 5(3) does not extend to collaborators – probably because this would have opened a Pandora’s Box of inter-Serb debate (particularly with regard to the chetnik’s), and such a debate could have jeopardized the adoption of the Act. The Serbian legislator
opted to adopt a wording that does not include collaborators, and it is difficult to square this result with principles.

Article 5(3) – and political confrontations in the ensuing debate – brought Serbian/Hungarian relations to a stunningly low point. Traumatic experiences have been revived. On the Serbian side, in political speeches and in the press, more and more references were made to the infamous raid (razzia in Hungarian, racija in Serbian) during which, under the guise of a retaliation, and on the order of some local officers, Hungarian occupying forces killed 1246 persons in Novi Sad (mostly Jews, Serbs, Roma’s, and some Hungarian communists). The bodies of many victims were dumped under the ice of the Danube. The situation was exacerbated by the fact that about a month before the debate on Article 5(3), a Hungarian first instance court found Sándor Képíró – one of the presumed actors – not guilty for misdeeds during the raid. It has to be said that the Novi Sad/Újvidék raid was perceived as a crime already by Horthy; those who gave the orders and 10 perpetrators were punished already by Horthy’s courts for “disloyalty”, and received each 10 years of prison. Some were punished later. Képíró was among those who were initially convicted, but he was not caught. Last year, he returned from Australia to face a new trial. It is unfortunate that Képíró died (at the age of 96) before an appellate level court could have decided upon the appeal lodged by the Hungarian prosecutor. It is also an upsetting fact that some Hungarian extremists celebrated the first instance decision in the Képíró case as an affirmation of the raid. It is equally upsetting that some people in Serbia perceived the distasteful celebration of the extremists as an official Hungarian position. It is much easier to hate a country that denies such an evident horror as the raid, than to hate a country that accepts responsibility for the raid, but whose courts are hesitant (and maybe wrong) regarding the question whether Képíró was or was not among the criminal perpetrators. At the same time, during the evening news in several consecutive days, the Hungarian TV repeated references to atrocities committed against the Hungarian population of Bačka/Bácska towards the end and after World War II (citing examples like the killing of Hungarians in Ćurug/Csúrog, who were dumped to a site where pound masters were burying dogs).

A short time before these confrontations, Hungary and Serbia agreed to establish a joint commission of the academies of sciences of the two countries in order to investigate the atrocities committed during and after World War II, and to assess the number of victims. Both sides agreed that denials and exaggerations should be replaced by facts, because this could yield reconciliation and mutual understanding. This was approved – and supported – by presidents and prime ministers on both sides. Also, in the period before the recent
confrontations, Serbia enacted an act providing for a quite considerable level of cultural autonomy for minorities in Serbia – and Hungarian officials have repeatedly expressed their appreciation. Focusing again on my home tow, let me say that today both “Zrenjanin” and “Nagybecskerek” are official names. Until a short time ago, Hungary was one of the strongest supporters of Serbia’s accession to the European Union. Now, the confrontation prompted by Article 5(3) let to a situation in which Hungary is threatening with veto.

The positions regarding Article 5(3) got cemented by strong statements, and the fact that elections in Serbia are impending does not help the situation (there is no country in which incoming elections would not narrow the maneuvering room). And yet, there appears to be a chance to supersede the confrontations. There are two acts that have a crucial role in facing the legacy of World War II and the aftermath of World War II (which includes the first years of communism.) In addition to the Act on Restitution, it is also necessary to pass an act on rehabilitation. The draft of this second act is now before a Serbian Parliament, and there is a strong chance that the Act on Rehabilitation will bring a solution. It is expected that the Act on Rehabilitation will include a provision that would state that only those (and the heirs of those) will be deprived of the right to seek restitution, who were “members of occupation forces”, and who were also convicted by competent Yugoslav authorities as perpetrators of war crimes, or as persons who were aiding and abetting war crimes. Such people could also get rehabilitation, if they prove that they were wrongly convicted. This would mean that guilt and innocence would not be allocated anymore by the criterion of membership in a group (to which many people were driven by fate and force, rather than by choice); consequences would be prompted by what particular individuals actually did or failed to do. Changing Article 5(3) directly would have been a more straightforward situation, but an indirect change by way of the Act on Rehabilitation should also represent an acceptable solution.

At the time when this manuscript is being written, details are being hammered out, but there is a strong chance that a solution will be found. Of course, rehabilitation after 65 years is not an easy process. Proceedings in which someone was convicted as a war criminal (or was declared to be a war criminal) were often summary proceedings, without weighing all relevant evidence. In some cases it might be next to impossible to establish the whole truth ex post. There were some instances in which it was simply declared that all members of an ethnic group in a certain region are war criminals. Such a shocking decision was rendered, for example by the “Commission for the ascertainment of crimes of the occupiers and of their collaborators in the Vojvodina”. In its decision rendered in Novi Sad, dated January 22, 1945, after describing sufferings of Serbs, the Commission stated: “…it has been established that
all Hungarian and German inhabitants of the community of Ćurug, district of Žabali in the Vojvodina are responsible as perpetrators, instigators, or accomplices of crimes”. No exception was made, not even for elderly inhabitants or children.

During the war it may have been necessary not to perceive enemy soldiers as individuals. Had one sought that one of the guys on the other side may be a young man thinking of his wife who is about to deliver a baby, that another guy is a musician, a third one a ping-pong player, it would have been difficult to shoot at them, even if one knows that they have a merciless commander. It is easier to target an undivided collective of enemies. Atrocities, frustrations, sufferings tend to extend this mindset to post-war years. But this is not a mindset on which peace, and a European civilization (or any other civilization) can be built. Drafting and discussing norms on restitution and rehabilitation have offered an opportunity for reawakening past partitions and passions. The title in the Belgrade weekly referred to above (“Restitution of Hatred”) managed to capture a threatening mindset. But facing such a mindset also offers a chance to understand it better, and to supersede it. Within the emerging focus on individual people, mutual understanding has become option.

2 „Ustanavljava se da su svi stanovnici madjarske i nemačke narodnosti opštine Ćurug sreza Žabaljskog u Vojvodini odgovorni kao izvršoci, podstrekači ili pomagači za zločine...“ – Odluka Komisije za utvrđivanje zločina okupatora i njihovih pomagača u Vojvodini, Novi Sad, 22.1. 1945