



# MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

## *Law and Property to Land Reforms after 1918 and 1945*

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*(Ondřej Horák)*



# General part

## *Interventions to the property and post-war land reforms*



# *I. Law and Revolution*

*„Geling es, ist es Heldentat, misslingt es, ist es Hochverrat.“*

1848

Spring of Nations

March

civil and national

1918

Coup

October

Czechoslovak national-demo.

1945

Revival

May

1948

Putch

February

people-demo.

normative force of reality (G. Jellinek)

interventions to property relations

(confiscation, expropriation, nationalization)



## ***Pillar of the First Republic***

***"... the Czechoslovak revolution stands on three pillars: the coup, the land reform and the constitution."*** Ferdinand Peroutka

***"In addition to the coup, the land reform is the biggest act of the new republic; is the completion and actual realization of the coup."*** T. G. Masaryk

■ legal, political and social dimensions



## ***II. Ownership and its constitutional protection***

### ■ ***La Déclaration des droits de l'homme et du citoyen (1789)***

čl. 17: Ownership is an inviolable and sacred right, no one can be deprived of it, unless it obviously requires a **public interest** in the law and a condition of **fair compensation** in advance.

### ■ ***ABGB - Austrian General Civil Code (1811)***

§ 365: If the **general good** so requires, a member of state must also resign on its full ownership as a reasonable compensation.

### ■ ***sv. December Constitution (1867):***

čl. 5: Ownership is inviolable. Expropriation can only take place in those cases and in the manner prescribed by law.



■ ***Weimar Constitution (1919):*** Art. 153

Property is guaranteed by the Constitution. ... Expropriation can only take place for the benefit of the public and on a legal basis. It takes place against adequate compensation, as far as a Reich law **does not determine otherwise.** ...

■ ***Constitutional Charter ČSR (1920):*** § 109

(1) Private property may be limited by law. (2) Expropriation is possible only on the basis of the law and for compensation, if is not provided by law that the **compensation is not due.**

■ ***sc. Constitution of 9 May (1948):*** Freedom of property § 9

(1) Private property may be limited by law. (2) Expropriation is possible only on the basis of the law and for compensation, if is not provided by law that the compensation is not due.

(3) No one may abuse the property right to damage the whole.



### *III. Land reforms*

- „state intervention into land property for the purpose of its reorganization" /*Dictionary of czech public law*/
- **when?** after World Wars, in ČSR 1919-35 and 1945-49
- **where?** after WW1 in 22 European countries, after WW2?? (in ČSR 2. of 13 eastern countries after WW1 and 2. of 8 after WW2)
- **how many?** in ČSR after both WW about  $\frac{1}{3}$  of all land (more than 4 million ha)
- **why?** political, social, economic, national motivation
- expropriation and confiscation element



## *Expiation of the White Mountain?*

- The Battle of the White Mountain (1620), loss of autonomy
- arguments after 1918, 1945 and 1948
- a series of review after 1918, if it is possible (eg prof. Pekař)







## *1th land reform (1919-1935)*

■ central political and legal project of the First Republic

■ disputes: Social Democrats x Agrarians

range? 50 ha 150/250 ha

compensation? No Yes

whom? cooperatives private

a series of acts, the 3 main acts from 1919-1920  
(**annexation**, apportion, compensation)

■ **29 %** of all land (about 4.1 million ha, of which 1.3 million ha of agricultural land), about half returned



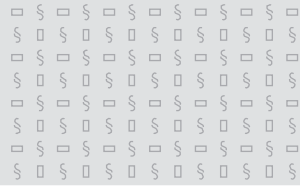
## Annexation act (1919)

- § 9 deals with compensation
- the principle was expropriation for compensation
- without compensation should be 7 categories of persons
  - 1) the property of members of enemy States;
  - 2) the property of members of the former Habsburg-Lorraine family;
  - 3) property of foundations based on the rights of nobility abolished by Act No. 61/1918 Coll. and others;
  - 4) property of which use is based on the performance of offices, offices and dignity of foreigners, or which is associated with such office, office or dignity (goods of the Wrocław Bishopric and the Archbishopric of Esztergom, or knights' orders, especially Order of German Knights);



## Annexation act (1919) - continuation

- without compensation should be 7 categories of persons
  - 5) the property unfairly acquired (confiscation after b. of W.M.);
  - 6) property of persons who have been grossly guilty against the Czechoslovak nation during World War (eg Austrian Foreign Minister Otakar Count Czernin);
  - 7) property which was to be credited to the State as a repayment of a property benefit



## ***2nd land reform (1945-1949)***

- central political and legal project of the Third Republic
- ***form?*** general (SNR and KSS) ***or stage*** (agreement Gottwald with Benes)?
- three phases:
  - a) 1945: occupants and traitors (see below)
  - b) 1947: revision of the first land reform
  - c) 1948: new land reform



## *2nd and reform and decrees*

- decrees of the President of the Republic - legal renewal
- controversial and current topic: *Zeman vs. Schwarzenberg*
- 143 decrees, on property rights: No. 5 (National Administration), **No. 12 (Agriculture)**, No. 50 (Film), No. 81 (Societies), No. 100-103 (Mines, Industry, Banks , insurance companies) and No. 108 Sb. (other hostile property)
- *The Košice Government Program* (April 5, 1945, Košice, March 29, Moscow), about the Germans Chap. VIII: Citizenship and Transfer, IX: Retribution, X: National Administration, XI: Land Reform)



## *confiscation of land property*

- **decree No. 12 Coll. of 21 June 1945, on confiscation and division of land property of Germans, Hungarians, as well as the traitors and enemies of the Czech and Slovak nations**
- repressive and reform goals
- revolutionary solitaire, incompatibility with D.No. 108/1945
- low quality, rush in preparation ("defect in revolutionary norms ... more less chronic" - V. Knapp)
- collective responsibility/fault
- different regimes: Germans, Hungarians x traitors, enemies



## Decree No. 12/1945 Coll.(14 §)

### § 1

- (1) For the purposes of land reform is confiscated (immediately and without compensation) agricultural property, which is owned by:
  - a) all persons of German and Hungarian nationality, irrespective of their citizenship,
  - b) traitors and enemies of the Republic of any nationality, which demonstrated this hostility in particular during the crises and wars between 1938 and 1945,
  - c) joint-stock and other companies and corporations whose management intentionally served German war or fascist and Nazi purposes.



**(2)** Persons of German and Hungarian nationality who have actively participated in the struggle for the preservation of the integrity and the liberation of the Czechoslovak Republic shall not confiscate the agricultural property under paragraph 1.

## § 2

**(1)** Persons of German or Hungarian nationality shall be considered to be persons who, in any census since 1929, have applied for German or Hungarian nationality or have become members of national groups or departments or political parties associating persons of German or Hungarian nationality.

**(2)** Exceptions to the provisions of paragraph 1 shall be determined by special decree.





## *concept of German nationality*

**Boh adm. 2013/48:** Signing up to a nationality other than German or Hungarian, "whether to be Czech, Slovak, other Slavic, or even other, especially Jewish," was not in itself sufficient "as proof of nationality" and was "people always examine whether their other way of life, their behavior have not manifested their inner feelings of belonging to the nation by German or Hungarian in other ways. The correctness of this view, which derives directly from the decree, can not be reversed either by reference to the directive of the Ministry of the Interior or of agriculture, or by the hardness of its consequences, which might perhaps have the meaning of de lege ferenda, but not de lege lata."



## *Double view, double decrees?*

double view: "national" x "democratic"

confiscation (penalty) x expropriation (administrative act)

nationality (fault) x citizenship (responsibility)

relation to 1st republic: discontinuity x continuity

*"The shift to the term "German nationality" was not "a genetic condemnation" in the decree, but a response to the postwar situation, especially the problem of German citizenship."* (Constitutional Court ČR 1995)



## „Beneš“ or Beneš decrees?

- both approaches are present in the post-war realities
- "National" was moderated in practice by "democratic" (substitution ...)
- ***the first one*** is more in keeping with the words of the decrees, the views of the Communists, and in particular Minister Ďuriš
- ***the second*** follows on the ideas of President Benes and is reflected in the jurisprudence of the Constitutional Court



Thanks for your attention