

9. Summary / Conclusion

The National Council passed two resolutions calling upon the Federal Minister of the Interior to evaluate the ordinance on the designation of prohibited symbols (*Symbole-Bezeichnungsv*) for its applicability to symbols used by the Ustaša movement and calling upon the Federal Government, specifically the Federal Minister of the Interior, to explore all available options to lawfully ban the ceremony to commemorate the “Bleiburg Repatriations”. The resulting multidisciplinary panel of experts set up at the behest of the Federal Ministry of the Interior came to the following conclusion:

9.1. History

Given that the event at Loibacher Feld is a commemorative ceremony, it was first necessary to look back at the historical origins, focusing in particular on the role of Croatia in the period from 1939 to 1949 and outlining in more detail the historical events that are actually at the root of the commemoration itself.

When it came into power, the Ustaša wanted to turn a highly heterogeneous society into an ethnically homogeneous one through the massacre of Serbs, Jews, Roma and Sinti. The core of its vision was to have a Croatian nation belonging only to Croats and Bosnian Muslims. The violence towards Jews was spurred on by Germany, although in Croatia the vast majority were murdered by the Ustaša.

In 1944, all Balkan nations, with the exception of Greece, came under communist rule, an extremely violent process that caused hundreds of thousands to lose their lives or be forced to flee. The massacre committed by Yugoslav Partisans of some 60,000 Croatian and Slovenian soldiers and paramilitaries, along with any civilians fleeing with them, remains very present in the minds of people today. Those rounded up were forced to unconditionally surrender to the people’s liberation army. While women and children were mostly allowed to return home in the first few days, higher-ranking officers were brought before a military court and overwhelmingly sentenced to death. Soldiers and members of associations with ties to the Ustaša were killed without trial in nearby execution camps (also referred to as the “Bleiburg repatriations” or the “Way of the Cross”). It is difficult to determine the exact number of murdered soldiers and civilians as this is exaggerated both by Croatian émigrés and ignored or played down by socialist literature, in particular regarding the fleeing of civilians.

The events associated with Bleiburg formed the core of how “political émigrés” identified themselves. The association known by its Croatian name Počasni Bleiburški vod (or PBV for short) was set up to honour the memory of the “innocent victims of communist terror”. The commemorative events were initiated and sponsored by former Ustaša officials and supporters living in Austria, who were involved in a large network of pro-fascist clubs and associations under the leadership of *Ante Pavelić*. The commemorative ceremonies, first held on All Souls’ Day in 1952, were subsequently held in mid-May and evolved into rallies of an extreme and fascist right-wing nature, a development also reflected in numerous judicial and administrative criminal proceedings.

9.2. Prohibition

In consideration of the provisions of the ECHR forming part of the constitution, of the State Fundamental Law (*Staatsgrundgesetz*) and the Federal Constitution Law (*Bundesverfassungsgesetz*), the event needs to be evaluated primarily in the context of the Public Gatherings Act (*Versammlungsgesetz*), the Symbols Act (*Symbole-Gesetz*), the associated ordinance on the designation of prohibited symbols (*Symbole-Bezeichnungsv*), the Prohibition Act (*Verbotsgesetz*) and the Emblems Act (*Abzeichnungsgesetz*).

Given that the origins of the event can be found in a service for All Souls’ Day and that it continued to comprise church-related elements until very recently, the first step was to assess whether this event falls under the constitutive element providing an exemption under section 5 of the Public Gatherings Act, in particular for being a legally permitted religious celebration in the traditional sense. The gathering was divided into three parts, referred to by the event organiser as “Remembrance of the dead at the cemetery”, “Procession” and “Celebrating Mass”. While at the cemetery, participants would already carry and display banners entirely unrelated with a conventional ceremony of remembrance. This continued to be the case during the “Procession” phase, when the crowd proceeded from the cemetery to the Loibacher Feld. The Mass itself did contain elements typical of a memorial ceremony, but it also

included political speeches and was held at a site where a memorial honouring the army of a fascist regime had been erected.

The entire set of circumstances pertaining to such a gathering must be considered when determining whether an exemption can be assumed to apply. In addition to the actual person organising the event, the primary focus is on whether these gatherings at the cemetery, the processions to the Loibacher Feld and the Masses actually constitute the exercising of a legally permitted religious celebration in the traditional sense. In view of the circumstances outlined above, the event was certainly to be viewed as one with a mixed purpose to which the exemption could only apply if the role played by the elements not constituting part of the conventional nature of the events was of very minor significance. That cannot be assumed here, meaning that the provisions of the Public Gatherings Act apply in full.

Not only have there been incidents involving National Socialist activity time and again in recent years, which themselves provide grounds for the event to be prohibited in view of relevant rulings made by the Austrian Constitutional Court, but the association events were aimed at commemorating a fascist regime, meaning that Article 9 of the Austria State Treaty, itself part of constitutional law, applies in full. In this, Austria has made a commitment to the other treaty signatories to take decisive action against all forms of fascism, not just those of a national socialist nature. Any failure on the part of the Republic of Austria to do so would make it liable under international law vis-à-vis the signatories to the Austria State Treaty. The inscriptions on the memorial, the banners carried by the participants, the emblems on display and the speeches being held show that a regime is being honoured, which installed a fascist and oppressive regime and which collaborated with the National Socialists.

The panel of experts therefore comes to the conclusion that such an event, particularly as was held in 2019 and before, must be prohibited.

The emblems and symbols used must be evaluated in accordance with the provisions of the Symbols Act, the associated ordinance relating thereto, the Prohibition Act 1947 and the Emblems Act. To the extent that the resolutions of the National Council refer to the *Symbole-BezeichnungsV*, we draw your attention to the evaluation process carried out and the new version of the ordinance. The shield starting with a white square is to be considered a banned emblem under the scope of the Emblems Act because it was used by the 13th division of the SS Handschar and is thus connected to National Socialism.

Final remarks

Even if an event as was held in the years before 2020 were to be prohibited in the future, this does not preclude the holding of a remembrance service. The panel of experts expressly emphasises that it is not making a statement against a remembrance service or a Catholic Mass.

There are plenty of examples that can be found for neutral remembrance services in which the focus is on remembering all the victims of war, violence, fascism and expulsion and not on paying tribute to a fascist society with principles that are in no way compatible with those of a democratic and liberal society where the rule of law prevails. The panel of experts points out that the memorial at Loibacher Feld in its current form is not consistent with an event that is free from such connotations.

Attention is also drawn here to an initiative of the Bleiburg municipal authority aimed at addressing this issue in autumn 2021 as part of the Bleiburg Dialogtage event.

The deliberations of the panel of experts regarding Austria's obligations under the Austria State Treaty have also shown there is a need for legislators to clarify that Austria is resolutely against all forms of fascism, not just National Socialism.