

"I switched sides": Lawyers Creating the Memory of Shoah in Budapest

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CONFRONTING THE PAST: EUROPEAN EXPERIENCES

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ANDREA PETŐ

“I switched sides”¹⁰² - Lawyers Creating the Memory of the Shoah in Budapest

The paper examines the social composition of lawyers who took up working for the people’s court defending war criminals based on the documents of the Archive of the Budapest Bar Association. The three major changes influencing the composition of the lawyers – anti-Jewish legislation (*numerus nullus*), postwar lustration, and lustrations by the communists in 1948 and after the 1956 revolution – changed the composition of the lawyers fundamentally.

Key words: transitional justice, lawyers, Shoah

Introduction

Lawyers make an important professional group as far as construction of remembering the Shoah is concerned (Joerges and Ghaleigh, 2003). Firstly, as we know it from the path-breaking research by Maria Kovács, who covered the history of these professionals until the Shoah, that as a liberal profession it resisted Aryanization in comparison to other liberal professions during the Second World War (Kovacs, 1994). In this chapter I analyze the lawyers who were practicing in Hungary’s

¹⁰² Interview with Dr. B. Gy., a lawyer who specialized in criminal law after 1945.

capital, Budapest, after 1945. This social group had a very specific characteristic: there were several lawyers of Jewish origin among the lawyers, and the Jews in Budapest had relatively better chances to survive than elsewhere in Hungary. Secondly, legal professionals mediate between the state and individuals; they serve as a transmission belt of norms and values as well as disciplining power. This was especially timely after 1945, when the discourse of normalization was a legal discourse, since the people's tribunals were expected to mark the end of an era and to start a new one. The lawyers had a multifaceted influence on the post-war lustration, as they themselves were victims of the Shoah, members of the legal profession, and involved with the defendants during the trials. This case demonstrates a good example of conflicting identities: professional ethics vs. collective solidarity as far as constructing the memory of the Shoah is concerned.

Between 1938 and 1948, three important events changed the social composition of lawyers in Hungary. Firstly, the anti-Jewish legislation that was implemented in three phases: the *numerus nullus*, the deportations, and finally the murders. Secondly, the controversial post-1945 lustration process that I will discuss in greater detail in this chapter. The third event was the communist takeover, which screened the profession for "class enemies," so those lawyers who were intellectuals and of middle class origin were prohibited from practicing.

In this chapter I will analyze how the lawyers who worked in the lustration processes, and who were targets of lustration themselves, contributed to the construction of the memory of the Second World War.

2. People's tribunals

The memory and the narrative of the Holocaust were constructed through the people's tribunal cases, in Budapest, where I am researching the case of 70,000 individuals (Pető, 2007: 335-349).

The people's tribunals were expected to begin to "normalize" and

construct social cohesion by determining the meanings of social interactions during the Second World War and the Shoah. Language, or more precisely the legal language of the court, was the tool of mediation and expression of emotions. The court was a highly structured space for communication about the crimes and facilitated interaction between the criminals, victims, and witnesses. The people's tribunal was also a space in which different social conflicts appeared: various parties struggled to define the meaning of the Holocaust and its consequences, based on class (the victorious Communist party used these trials to label the previous ruling elite as responsible for class bias) and gender (10% of the perpetrators were women, a comparatively high percentage). The manifestations of these conflicts in the courtroom determined the interpretations of post-war social life and, I will argue, continue to influence our understanding of the events even today (Pető, 2008: 237-253).

The fabric of Hungarian society had been torn apart by the Second World War; there was no functioning social solidarity. Nor was there a domestic armed resistance or partisan movement in Hungary. Individual cases (the rescuers that have received wide publicity in recent years) do not obscure the fact that the Hungarian administrative state system and bureaucracy was morally discredited and collapsed. The contradictory operations of the Jewish Council and an analysis of its lack of choices have been examined and illuminated (Schmidt, 1990). There was, indeed, no institution or organization that was ethically beyond reproach, which could therefore have operated as a cohesive force in the aftermath of the Second World War. That was the institutional vacuum which was expected to be filled by the people's tribunals.

3. Methodology

For my present book project I am examining the people's tribunal files of female perpetrators and analyzing who were the legal professionals who took part in these processes. I am interested in the lawyers

who were defending these female war criminals. I looked up the files of these sixty-two lawyers at the Budapest Bar Association of Lawyers in order to see the impact of these two processes, lustration and the people's tribunals, on their careers and how they wrote and testified about their pasts. I also examined newspapers and interviewed one prominent criminal lawyer who is still active. The lustration files are a rich source for understanding the important waves of registrations. As I have argued, the lawyers were key figures in post-Holocaust Hungary. Based on the analyses of the trials, we see that if the defendant was able to come up with a paid lawyer it was highly possible that they were able to emerge with only a minor sentence. Thus the lawyers were those individuals who played a crucial role in the legal system by negotiating the definition of what was considered a criminal act.

4. Social composition of lawyers: the old and new generation before 1945

Hungarian lawyers were divided during the liberation of Hungary. Being a lawyer before 1914 was not only a respectable and well-paying profession for the middle class, but it was also a means of social mobility for men. Women were not allowed into law school only during the Karolyi government (1918-1919) for half a year. Those who were admitted with a special permit could finish their legal education. Women who managed to graduate either worked as individual lawyers benefitting from the flexibility of working hours, such as Margit Ungar, who was the first female lawyer in Budapest admitted in the Bar Association in 1928 (followed by Lilly Gaspar in 1931), or worked in the field of social affairs, such as Erzsébet Koncz in Kecskemet. After 1945 Erzsébet Koncz served as a people's attorney since she had a meticulous past as a lawyer.

After 1918, when Hungary lost two-thirds of its territory and its population as result of the collapse of the Habsburg Empire, they formed the National Association of Hungarian Lawyers (MŰNE) on

1 June 1927. The MÜNE consisted of 3,000 members in 1939, with the aim to create a counterweight against "Jewish lawyers" (Zinner et al., 2005).

Although 2% of the judges, attorneys, and members of legal institutions were of Jewish origin, half of the lawyers were Jewish, and were mostly assimilated middle or upper middle class. From 1938 onwards, the anti-Jewish legislation aimed to change this. MÜNE however, unlike the similar organization of doctors, the National Association of Hungarian Doctors (MONE), was not so influential.

MÜNE fought for the *numerus nullus* in order to exclude Jewish lawyers from the profession and to compile a list of names, former colleagues with whom they were working on a daily basis at the court, to be called into forced labor service. As a result, 700 Jewish lawyers were deported after 19 March 1944 when Hungary was occupied by the Germans (Kovács, 2001: 163).

5. People's tribunals: who were the lawyers?

The autobiographies submitted to the Budapest Bar Association and the files of the people's tribunals help us to recover the networks that determined who played prominent roles in the people's tribunals.

As far as age is concerned, the majority of the lawyers, 50% belonged to the middle generation born between 1896 and 1913. 31% of the lawyers who were active in the people's tribunals were older, born between 1871 and 1895. This division reflected upon the social composition of the lawyers: this was an aged and highly selective profession, since it took a long time to have the professional right to belong there. 19% were young and survived the war because of their generational luck. These young men were able to show up before the lustration committee with a *tabula rasa* of their life since they were not yet admitted into the profession. They had only been studying law and therefore were not tempted to benefit from the anti-Semitic legislation. Some of them were at the front as soldiers far away from what

happening in the Bar Association. This was the generation of new legal professionals who filled in those places which were emptied by the lustration process.

In the sample I analyzed, 21% of the lawyers who took up cases at the people's court were of Jewish origin. A general observation in reading the submitted life-stories is that mention of the war is missing as if there had never been a war (Archive of the Budapest Bar Association [further BBA] 8660). The narrative frame which favors professional achievement was not opening up space for the individual level of remembrance.

The social background of the lawyers examined was balanced, but the division lines showed clearly that 48% were from lower class intellectual families, while 52% were from the middle class. Lawyers belong to an elite profession, so the high percentage of first generation lawyers reflects those who were more likely to accept cases at the people's tribunal.

Of the lawyers who were active in people's tribunals, 21% came from Hungary outside of the Trianon borders. They were the ones who were the most vulnerable, and therefore they participated both in MÜNE and also in the people's tribunals. For a good career as a lawyer, a stable family background, lucrative marriage, or MÜNE membership was needed. After 1945, active participation in the people's tribunals was likewise believed to promote legal careers.

When we analyze the networks in which lawyers were active, three of them emerge as the most prominent. The first network, the lobby of Debrecen (a city in the eastern part of Hungary that also had a law school), constituted about 5% of the lawyers, since those who graduated from there remained in contact with one another. The second one was the lobby of those who served in the state postal service, which comprised about 8% of the lawyers. The third network, including 3% of the lawyers, was composed of those who belonged to other professional organizations. Thus, 83% of the lawyers who accepted female war criminals were not members of any professional organization. As far as politics is concerned, 53% of them did not have any party af-

filiation. Of the others, 18% were leftists (social democrats who were active during the Republic of Councils in 1919 and protected social democrats and other leftists), 5% were active in religious bodies, 12% published in professional journal, and 10% had links to agrarian parties. One of the lawyers of representing female war criminals was a deputy in the Hungarian parliament (BBA 4701).

The picture that emerges of the lawyers who worked on the people's tribunals is one of a group that was a part of a technocratic network consisting of mostly middle aged or older legal professionals, who were not visible in public life but cultivated professional networks and avoided extremes.

But looking behind the professional cover a surprising fact is visible: only 5% of these lawyers had any previous practice in criminal law. It was only in the post-war boom that they began to work in the field of criminal law. The previous generation of lawyers who were active in the field of criminal law were discredited either because of their strong ties with the Horthy regime, or because of their participation in MÚNE.

In the people's court cases a minimum fee was guaranteed for the lawyer by law, which meant a small but secure income. The people's tribunal cases were considered to be lucrative. On 26 April 1946, a report on one lawyer noted that "he is gaining his clientele with methods well-known from the old times. In prison he had more clients than all the other lawyers together. Only those who are based upon the democratic system of today should work on people's tribunal's cases" (BBA 4770).

As the lustration process started the fight for the massive number of new clients also began. This was a new, expanding but risky market for the legal profession. *Szabad Nép*, the daily of the Hungarian Communist Party, did not leave uncommented the flourishing business of defending the war criminals. On 21 April 1946, the newspaper declared under the heading "Greedy lawyers in the labyrinth of law," that there were three categories of lawyers: those who win all possible cases independently of the crime for a high fee, those who are hunt-

ing to get new clients, and those who are misusing their legal practice to fight against democracy, or, in other words, they were successfully saving war criminals from the legal procedures. I compared the list published in the journal with the list of lawyers I compiled from the lawyers of female war criminals. It is not an accident that one of those “infamous” lawyers mentioned by *Szabad Nép* was also on my list as a notorious protector of war criminal, along with two others who were labeled by the communist journal as “the enemies of democracy.”

The ethnic Germans living in Hungary, who were among the first targets of the people’s tribunals, quickly disappeared, due to the state orchestrated forced expulsion. This experience shaped the public wisdom of the lawyers to have clients whenever possible, and it also proved that the legal processes became unpredictable in Soviet-occupied Hungary. The secure, foreseeable legal environment in Hungary disappeared forever with the anti-Jewish legislation and later by the Soviet intervention into the legal processes.

6. *Lustration process*

After the liberation of the country, lawyers were obliged to apply for a new membership card for the Bar. They had to submit a report about their activity during the war to the Bar where they were previously registered. The lustration process of the lawyers had begun, and the crimes some of them had committed were undeniable.

Membership in the MÜNE should have been considered as war crime based on paragraph 17.2 of the law on people’s tribunals in 1945. But in practice, the people’s tribunals considered membership as a war crime only in those cases when a person was a member of the elected leadership and was active as a member (Zinner et al, 2005: 46). The profession interpreted the law creatively to minimize the personal losses, and they could do so because of the primacy of professional solidarity over the “justice of war” (Michael Walzer).

The recruitment base of MÜNE was not big: in the whole country

there were 3,200 lawyers, and in Budapest only 1,300. This extremist organization was unable to attract big support. In 1939, 2,040 out of 3,386 registered lawyers in Budapest were of Jewish origin, and most of them had converted to Christianity. The elite lawyers joined in a very few numbers to MÜNE, and they left the organization when it was clear the situation was changing (Kovács, 2004). This self-protecting skill, "switching sides when possible" and at the right moment, remained a common practice and contributed to the smooth functioning of the lustration process that resulted in hardly any major changes within the legal profession. Only those prominent lawyers who had played really important and visible roles in the MÜNE were banned from the profession, and only those who had taken property or offices of Jewish lawyers after the *numerus nullus* was implemented were reprimanded.

During the lustration processes, the members of MÜNE who had demanded the *numerus nullus* in the legal profession often defended themselves with the argument that they had forgotten that they had joined the organization, since it was so unimportant they had not even paid the membership fees. The membership in MÜNE did not only mean membership in an influential or an organization aspiring to be influential, but it also meant that the number of Jewish clients immediately increased among the clients of the MÜNE members. Jews asked for help from lawyers who were the members of MÜNE because they were believed to have good ties to the new elite (Kovács, 1994). Those lawyers who were specialized in migration issues were those who had good relations with the authorities, so they set up a flourishing business after 1944 (BBA 4210). Several Jewish lawyers gave their wealth to a fellow gentile lawyer to preserve it.

After 1945 just the opposite happened: war criminals (and former MÜNE members) were queuing in front of the office of Jewish lawyers, because they hoped that in the new regime the leftist ties and the memory of previous persecution would grant them minor sentences. In the case of the female perpetrators, one third of the lawyers were Jewish and responsible for the most important cases.

In my sample, 39% of the lawyers were members of MÜNE, but only one risked leaving the organization or making negative comments about the Arrow Cross (the Hungarian Nazi Party) or the German Nazis (BBA 4770). All of the others considered it too “risky” to leave the organization, and instead they tried to not show up for the meetings (BBA 7573). The technique of cowardice in a case of a profession which is expected to represent “the law” turned to be very harmful in the long run as far as the rule of law is concerned.

During the post-war lustration process of the lawyers I examined, 71% successfully passed the lustration, 21% were reprimanded, 3% were excluded, and 5% had their membership in the Bar Association suspended. The lawyers who were reprimanded were the members of the lawyers’ office which had the most cases before the people’s tribunals. It is clear that MÜNE membership did not automatically result in punishment, since 9% of MÜNE members were not punished. In the text of one lustration verdict, the phrase “he as a lawyer should have known” indicates the trust in law (BBA 5645).

The lustration process did not always go smoothly, as it also marked by *Schlamperei* (Pető, 2008: 24-35). The smart ones immediately asked for lustration in March 1945, but could work until 1947 when they complained that they had still not received the new identification cards (BBA 8407). The later the person got in front of the lustration committee, it was more likely the person could get away with whatever he did (BBA 8804). On 30 November 1946, the last lustration committee of lawyers finished its activity.

7. *Aftermath*

A characteristic of lawyers’ work is that they attempt to mediate the state legislation favoring individuals. The challenge for Hungarian lawyers was the criminalization of the state during the Holocaust. The prestige of practicing criminal law was very low, and decreased even lower after 1948. This was not only because of the characteristics of

lawyers, but because of the professional solidarity that was stronger than solidarity with values. Additionally, Jewish lawyers themselves did not want to be identified as Jewish any more. After the communist takeover the war crimes discourse was formulated within a Marxist-antifascist framework. The Extraordinary Disciplinary Committee of lawyers "declared the critical opinion of survivors of the Second World War. The draconian law was declared on 21 June 1948" (Zinner et al, 2005: 49). The survivors of the Second World War were no longer Jewish, but instead became antifascists.

The general political passivity remained characteristic of this profession. Even though some of the lawyers were excluded from the profession during the lustration process, they were readmitted in the period 1955-56. Out of the sixty-two lawyers I examined, only three were active in 1956. It is a paradox that not only these three were excluded from the Bar Association in 1958 when a new wave of lustration took place, but so were those who remained passive in 1956 but had a previous record of being labeled as class enemy in the earlier post-war lustration process. In this context, not only neutrality and non-participation are notable, but also the lack of collective solidarity and the uncritical reflection on the meaning of law.

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