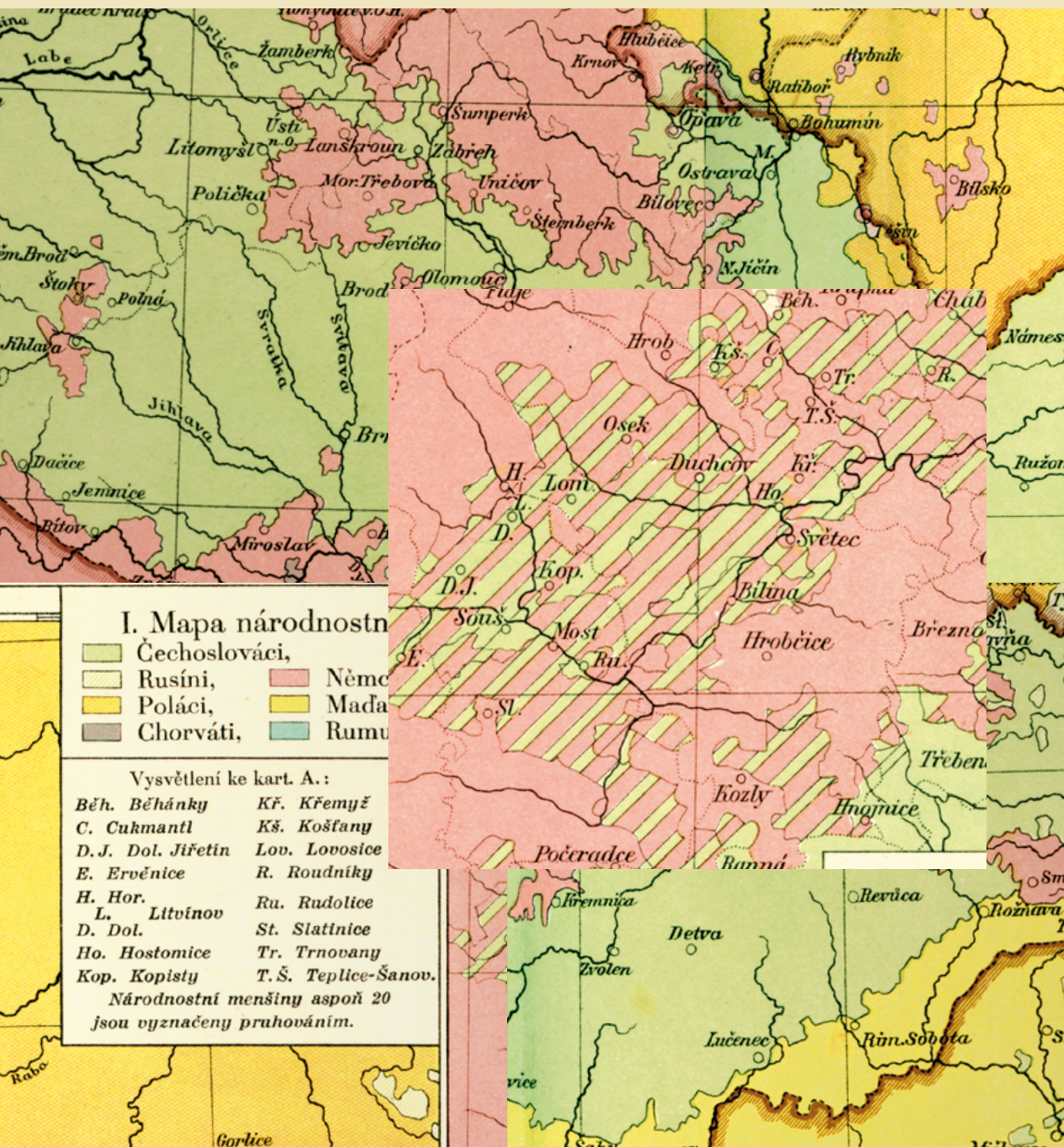


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RENÉ PETRÁŠ

MINORITIES AND LAW IN CZECHOSLOVAKIA, 1918-1992

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Minorities and Law in Czechoslovakia, 1918–1992

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FOREWORD

This book provides its readers with an overview of the development of legal status of minorities in Czechoslovakia. Apart from the outline of the law, it is naturally essential to examine basic historical problems in order to make the question understandable for a foreign reader. The greatest interest has been devoted to the interwar period, when the history of Czechoslovakia was distinctly determined by the existence of extraordinarily large minorities, especially German and Hungarian. Large space is also dedicated to the development of World War II and to both historical and legal aspects of the resettlement of the German minority.

Czechoslovakia, which existed between 1918 and 1992, had been through a surprisingly large scope of entirely different historical phases during its development. Czechoslovakia was established after the collapse of the Austria-Hungary. Its foundation was the traditional Czech Kingdom (ergo Bohemia, Moravia and part of Silesia) where aside from Czechs a very numerous German population lived. The second part of Czechoslovakia was Slovakia, which had practically no traditions as a specific entity. Among Slovaks, who are linguistically very close to Czechs, also numerous Hungarians, Germans or Gypsies lived in its territory. During the interwar period Czechoslovakia was the only Central-European state that had a democracy, but numerous minorities, which represented approximately one third of the state population, had often complicated its functioning. Relations with the native states of the Czechoslovak minorities, hence almost all neighbouring countries of the republic, were often tense. The growing tensions between the Czechoslovak state and its national minorities worsened at the beginning of the 1930s due to international crises in Central Europe. As part of its expansive policy, Nazi Germany, headed by Hitler, demanded fundamental changes in the position of the German minority. The need to solve the Czechoslovak minority issues, especially the problem of the Sudeten German minority, served as an excuse for Hitler's threats. The pressure of Nazi Germany enforced secession of areas populated by the minorities, at the Munich Conference in September 1938, which led to rapid disintegration and occupation of the Czech lands by Germany.

During the Nazi occupation the relations between Czechs and Germans worsened and Czechs were regarded second class citizens and persecuted.

The Nazi regime especially brought the existence of the Jewish minority in the Czech lands to a tragic end. After freezing and confiscating virtually all Jewish property, Germans started transporting Jews to the Ghetto in Terezín in 1941, and later to extermination camps.

After the war German and Hungarian minorities in Czechoslovakia were accused of collaboration with Nazi Germany and, as enemy citizens, especially in case of German minority expelled from the country. Their property, along with the property of the German Reich, Nazi organizations and Czech collaborators, was confiscated. However, in 1948 the Communist regime was established and it existed here until 1989 with the exception of temporary liberalization in 1968, suppressed by the soviet invasion. After the displacement of Germans, the minority question did not play such a big role anymore, moreover most of the native states of the Czechoslovak minorities were also incorporated into the Soviet bloc and Moscow was naturally not interested in any interstate minority conflicts. The Communist regime collapsed in November 1989, democracy was quickly re-established in Czechoslovakia, except the relations between Czechs and Slovaks were getting worse. This led to disintegration of Czechoslovakia and creation of the independent Czech and Slovak Republics on 1 January 1993. Unlike in some other East European regions, such as in former Yugoslavia, no striking revival of the minority conflicts took place after the re-establishment of democracy, not even in the case of the most numerous Hungarian minority.

The development of legal regulation of national minorities' status in Czechoslovakia is exceptionally complicated. Major differences in Austrian and Hungarian legal regulation of relations between nations had existed prior to 1918. The new Czechoslovak state set up quite complicated legislation on minority status within several years after its establishment, where the arrangement of the use of languages in contact with the authorities was especially intricate. An important part in the Czechoslovak legislation was played by the international protection of minorities under the supervision of the League of Nations. The legal regulation of relations between nations had gone through substantial changes during Nazi occupation and in the years immediately after the war and the questions of presidential (pejoratively Beneš's) decrees and displacement of Germans provoke discussions up to the present time. Even though quite numerous minorities lived in post-war Czechoslovakia as well (especially about half a million of Hungarians), almost no legal status of minorities existed. Although larger groups had, for instance, schools with education in their mother tongue, bilingual signs or opportunity to use their language with authorities. However these authorizations were not derived from legal regulation but only from secret inner instructions or even documents of the Communist Party. Only during the time of temporary liberalization in 1968, the Constitutional Act on the

status of national minorities was enacted, along with the Constitutional Act on the federalization of the state. Overall, the minority question was usually on the edge of interest of both the state bodies and the society. This state indeed remained preserved in the Czech Republic, even after the restoration of democracy in November 1989. The minority rights were newly incorporated into the Charter of Fundamental Rights and Freedoms from 1991, while the implementing law was enacted only in the independent Czech Republic in 2001. The long and short of it is that the development of the legal status of national minorities in Czechoslovakia has been through series of major changes.

The development of the minority question in Czechoslovakia and its legal regulation is remarkable also from the wider European point of view. During the interwar period, Czechoslovakia belonged among the states which had dealt with the status of minorities the most actively and it also had influence on the creation, operation and termination of international protection of minorities. Complicated legal discussions on the topic of German displacement are still in motion. Czechoslovakia was geographically situated right in the centre of the most dangerous minority conflicts after 1918. It collided not only with the demands of the German minority like many other countries in the region but it also posed as the chief enemy to Hungary, which was traditionally the most revisionist state. Legal solution to the minority question in the Czechoslovak territory has aroused interest of foreign researchers.

The authors have studied this issue in depth and this book is a follow-up to an array of previous titles. The works of Prof. Kuklík focus on the Czechoslovak exile during World War II and the problems of presidential decrees as well as overviews of Czechoslovak legal history. Dr. Petráš picked up the threads of his books on the legal status of minorities during the interwar and Communist Czechoslovakia. Both authors work at the Law Faculty of Charles University, but apart from law, they naturally study historical circumstances as well, as it is often impossible to understand the legislation without the historical contexts.

The minority question in Czechoslovakia has been a sharply debated issue up to the present time, especially in connection with the displacement of Germans. The opinions of individual authors are often contrary to each other. Even researchers, or rather publicists, who are often only minimally devoted to this question, do not hesitate to present very categorical statements. It is a typical phenomenon to ignore professional literature of the intellectual opponents, as follows from the annotation. The authors tried to avoid this negative phenomenon and they hope this book will contribute to the objective understanding of this question abroad.

1. THE END OF THE HABSBURG MONARCHY AND THE BEGINNINGS OF CZECHOSLOVAKIA

1.1 THE ISSUE OF NATIONALITIES AT THE END OF THE MONARCHY

Before we look at the situation of minorities at the time of the Czechoslovak Republic, in particular at the origins of legal regulations governing their status, we have to familiarize ourselves with the situation at the end of the Habsburg Monarchy, because there was rather remarkable, although not always remembered nowadays, long-term continuity. Not only will we look at legal rules expressly concerned with the legal status of minorities, i.e. language law in particular, but also at issues of public administration, which was closely connected with the issue of minorities.

A key element having an unremitting impact on the relationship between the Czechs and Germans was a marked predominance of Germans in Central Europe. On the other hand, the Czech nation was, in the 17th and especially in the 18th centuries, in a particularly weak position and had experienced a cultural decline. No sooner than at the end of the 18th and the beginning of the 19th centuries did it start to revive in a significantly different form; according to some historians it actually commenced to come into existence.¹ That was the reason the Czechs were only slowly catching up to the lead of the Germans and their priority position in the Czech lands, where they however had always been only a minority in terms of numbers; the Germans were, on the other hand, rather worried about losing their privileged position as of the beginning of the 19th century. Perhaps the most important element of the so-called National Revival was the Czech language² and its assertion in culture, education, and later also in public administration. This situation also manifested itself in the field of law.³ However, the impact of the Czech national

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- 1 See for example Otto Dann, Miroslav Hroch and Johannes Koll, eds., *Patriotismus und Nationsbildung am Ende des Heiligen Römischen Reiches* (Cologne: SH-Verlag, 2003); Otto Urban, "Czech society 1848–1918," in *Bohemia in History*, ed. by Mikuláš Teich (Cambridge: Cambridge University Press, 1998), p. 203ff.
 - 2 See for example Miroslav Hroch, *Naprahunárodní existence* (Prague: Mladá fronta, 1999), pp. 26–29, 66–72, 132–140; František Kutnar, *Obrozené vlastenectví a nacionalismus* (Prague: Karolinum Press, 2003), pp. 167–169, 201–203.
 - 3 Jan Kuklík, *Czech law in historical contexts* (Prague: Karolinum Press, 2015), esp. chap. 8, p. 62ff.

movement should not be overemphasised, particularly its first phases; even as late as the 1840s these efforts were alien to inter alia a great majority of bourgeoisie, who were opportunistically trying to accommodate the establishment even language-wise.⁴

After the consolidation of Austria-Hungary (a specific, and in many aspects peculiar consubstantial Monarchy) at the end of the 1860s, only rare changes occurred regarding the nationalities issue. Minorities in Hungary endeavoured to enforce the practical application of the non-observed Nationalities Law⁵, in particular to have non-Hungarian languages recognised in administration. Generally and strictly speaking, it cannot be deemed as changes in minorities law (except for efforts by the revolutionary government in 1918), so this part of the Habsburg Monarchy may be virtually left out. In contrast, in Austria, i.e. so-called Cisleithan regions, at least efforts to make changes were a frequent occurrence. When the struggle over the character of the state was over, and after the accession to the Imperial Council in 1879, conflicts occurred particularly in connection with language and administration issues, which were to a considerable extent interrelated.⁶ We can say that there were two principal conceptions for the regulation of the situation in the Czech lands: a separatist one, which advanced administrative demarcation corresponding to, if possible, the language boundaries, and a personal one, which strived to preserve the integrity of lands, namely of Bohemia, and to implement the bilingualism of authorities therein. While the effort to maintain the integrity was particularly supported by Czech parties, German parties rather furthered the division of Bohemia.

The Czech parties often relied on historical arguments, often times in a peculiar manner. Even lawyers made use on many occasions of historic documents, such as the Renewed Constitution of the Czech Province of 1627 (1628 adopted for Moravia), as if they were incontestable arguments. Such methods were however common in vast parts of Europe of the 19th century, namely in national disputes (e.g. Finland, Croatia) and/or in fighting against state centralisation (e.g. Spain), which must be taken into account by a critical contemporary historian. Also, it should not be overlooked that historic arguments could have been and were used against the Czech national movement as well, e.g. by defenders of the independence of Moravia.

4 Jana Machačová and Jiří Matějček, *Nástin sociálního vývoje českých zemí 1781–1914* (Opava: Slezské zemské muzeum, 2002), p. 384.

5 For discourse on the nature of hungarianisation see for example Karoly Kocsis and Eszter Kocsis-Hodosi, *Ethnic Geography of the Hungarian Minorities in the Carpathian Basin* (Budapest: Hungarian Academy of Sciences, 1998), pp. 54–57.

6 Karel Kazbunda, *Otázka česko-německá v předvečer velké války* (Prague: Karolinum Press, 1995), p. 48ff.; Karel Malý, "Sprache - Recht und Staat in der tschechischen Vergangenheit," in *Sprache - Recht - Geschichte*, ed. by Joern Eckert and Hans Hattenhauer (Heidelberg: C.F. Müller, 1991), p. 265ff.

The principal issue in these seemingly expert conceptual disputes was the frequent efforts of the German parties to weaken Czech positions and above all to maintain their own privileges from the past.⁷ To illustrate, a so-called Pentecost Programme of German parties from 1889 demanded that Bohemia be divided into regions (as well as into districts and municipalities) according to language boundaries. While German regions were to be monolingual, Czech regions were to be bilingual. Moreover, regions should have taken over most of the administration of the lands, which should have been de facto eliminated; however, the Czech parties traditionally insisted on the unity of the historical lands, whose traditions were perceived as a pillar of national efforts (so-called state law). This attempt in 1890 was unsuccessful, though; the only thing that came about was a division of some provincial bodies.⁸

We are getting to issues of public administration and its reform, which combined national, administrative, financial and other reasons, where the most important conception was the one regarding the possibility of replacing too large traditional lands by smaller units – regions (“zhupas”). The idea of constituting regions was not anything entirely new as the regions had had a long tradition in Bohemia, which was however related to the feudal system of administration; regions were abolished in the Czech lands in the 1860s. Generally, the structure of the administration in Cisleithan regions was highly specific, particularly because of the so-called duality of self-government and state administration. The situation in public administration incited, already at the time of the Habsburg Monarchy, both criticism and reformative efforts which, however, had not been successful, mainly for political (particularly national) reasons. The administration in Cisleithania had been criticised for extensive politicization, which also prevented economic development, as well as for utterly inconvenient distribution of responsibilities between the state and self-governing entities. There literally was rivalry between state administration and self-government where the borders of jurisdiction were unclear and the mutual communication cumbersome, which led to wastage of financial resources and to hindrances to activity. The self-government was rather expensive and party line, especially in political and national matters. This situation had many times led to chaos and almost anti-state behaviour of Czech self-governing units in particular;⁹ for example, mayors

7 Johann Wolfgang Brügel, *Tschechen und Deutsche 1918–1938* (Munich: Nymphenburger Verlags-handlung, 1967), pp. 16–17. He openly speaks about the German fear of democracy, i.e. worries about the loss of their own privileges.

8 Emil Sobota, *Národnostní autonomie v Československu* (Prague: Orbis, 1938), p. 23; Jiří Kořalka, *Češi v habsburské říši a v Evropě 1815–1914* (Prague: Argo, 1996), p. 163ff.

9 There emerged a kind of state within a state, see for example Milan Hlavačka, “Samospráva Království Českého jako předstupeň státní samostatnosti?” in *Vývoj české ústavnosti v letech 1618–1918*, ed. by Karel Malý and Ladislav Soukup (Prague: Karolinum Press, 2006), pp. 600–621.

of municipalities boycotted due co-operation with state bodies, including the military ones, if they did not respect the right to the Czech language.¹⁰ German self-government then considered legal regulations which were disagreeable for them invalid, such as language regulations containing rights to the Czech language.

In efforts for reform, the following issues were considered: joining state administration and self-government, restoring regions, and instituting the system of administrative courts.¹¹ A critical opinion of possibly the highest quality was contained in the Studies on the reform of administration, the elaboration of which had been set in 1904 by the then Minister of the Interior, Ernest von Koerber, who himself was a well-known expert on Austrian administration. A reform of public administration during the First Czechoslovak Republic, important especially in terms of minorities, also partially followed from his opinions. It was often proposed in reform projects that larger administrative units, i.e. regions (“zhupas”), be established (renewed) as an intermediary between lands and districts. There were some who wanted to make use of the regions to settle conflicts between nationalities in Bohemia. The Czechs were however justifiably worried that any reform would only weaken, or possibly eliminate completely, the land of Bohemia, i.e. the traditional pillar of national requirements (so-called historical state law). Unlike the Czechs, the Germans strived for a so-called closed territory, which they later almost successfully achieved during World War I.¹²

At the time of the Habsburg Monarchy there naturally occurred other efforts, besides the plans for the reform of administration, to settle the issue of nationalities, particularly though the regulation of language law.¹³ This publication, however, should not be the elaboration of individual attempted changes, but rather an indication of the society-wide context of legal status of minorities – in conditions of the Habsburg Monarchy, it is better to refer to them as minority nations, especially because of the fact that the complicated situation and mutual animosity remained in existence to a considerable extent also at the time of the First Czechoslovak Republic. The key relationship was the one between the Czechs and Germans (while in the case of the Habsburg Monarchy this relationship was important to a certain extent, it was crucial in the case of the subsequent Czechoslovak Republic). In relationships between the two nations, particularly in Bohemia (the situation was rather different in Moravia) “the mutual separation escalated

10 For situation from 1899 see Allgemeines Verwaltungsarchiv Wien, collection Ministerium des Innern, Präsidiale 3–1848–1918, box 73, P.No. 985/M.J. 1899 Priora 3007–99/M.J.

11 See for example Karel Laštovka, *Zákon župní* (Bratislava: Právnická Jednota, 1925), p. 11.

12 Jiří Kovtun, *Slovo má poslanec Masaryk* (Prague: Československý spisovatel, 1991), pp. 244–247.

13 *Ibid.*, pp. 230–250; Harry Klepetař, *Der Sprachenkampf in den Sudetenländern* (Prague: Ed. Strače, 1930), pp. 35–126.

into estrangement, which also led to a notorious nationalities fight which commenced in the 1880s and gradually became one of the typical features of life in the Habsburg Monarchy.”¹⁴

There was an incessant fight for any real or seemingly national position (jobs in civil service, street nameplates, attendance of children at schools with their mother tongue, etc.). Having disputes over any detail, or literally a trifle, it is not surprising that negotiations on the legal regulation of the status of nationalities incited fanatical flares of national tempers. Hatred gradually increased; a strong response had already been provoked by the so-called Stremayr's language regulations in 1880, and in the ensuing year a fight between Czech and German students in Chuchle claimed the first life – the first one in the new history of Czech-German relations; however, not the last one by a long sight.¹⁵

The Germans were little by little losing their political predominance based chiefly on non-democratic franchise which discriminated in favour of well-off, i.e. primarily German, voters. The steady democratisation of elections thus greatly undermined the positions of the Germans; it also brought about changes in politics, i.e. asserting new political movements, many times influenced by nationalism. The unhurried reinforcement of the Czechs in politics and the economy irritated the Germans a lot, particularly ones from Czech lands, who often considered them as nearly a barbarian nation, and who employed a “racial” issue in their argumentation, where Slavs and Germans were referred to as different races. Compared to the Czechs, the Germans were also losing in demographic development towards the end of the Habsburg Monarchy, and their share in the population of the Czech lands began to decrease.¹⁶

More and more frequent national unrest contributed to a certain coarsening of public life. It was mainly in Bohemia where the separation of nations occurred, and was connected with the chauvinistically eulogized ignorance of the other language, reduction in private and cultural contacts, boycotts of enterprises and shops, and even split-ups of churches and pubs.¹⁷ The notion of a distinct separation of national communities in the Czech lands is, however, somewhat questioned by some historians. They argue that in spite of the application of the to-each-his-own motto, the utter separation was possible neither in the economy nor in public life, science, or art.

14 Jan Křen, *Konfliktní společenství* (Prague: Academia, 1990), p. 226.

15 *Ibid.*, p. 226; Gary B. Cohen, *The Politics of Ethnic Survival: Germans in Prague, 1861–1914*, 2nd ed. (West Lafayette, IN: Purdue University Press, 2006), pp. 107–108.

16 See data in Allgemeines Verwaltungsarchiv Wien, collection Ministerrats-Präsidium, box 354, file Statistische Daten über die sprachliche Zusammensetzung der Zivilbevölkerung des Königreiches Böhmen.

17 Křen, *Konfliktní společenství*, pp. 258–260; Kovtun, *Slovo má poslanec Masaryk*, p. 124.

In the late 1890s, efforts by the Cisleithanian government to spread the use of the Czech language in authorities were swept aside by the unrest of German nationalists; negotiations on the settlement of the issue continued, however. Czech-German controversies were further escalating, and the situation “sidelined and corrupted all other spheres of state life, and it also absorbed a considerable portion of the energy of the society. This was also reflected in the field of nationalities, where problems were so over-politicised (at least in the branches of education and administration) that they could not be resolved rationally.”¹⁸ This apt formulation by a well-known historian accurately depicts the problem of the Habsburg Monarchy that was to a considerable extent taken over by the Czechoslovak Republic. Many critics of the First Czechoslovak Republic ignore this crisis situation at the time of the Habsburg Monarchy; after all, there was unrest which claimed lives even there. At the time of the Monarchy, more competent politicians were trying to resolve said problem; some of them did not believe in a parliamentary resolution and were contemplating a sort of a small coup, in which the emperor would impose a language law for the whole of Cisleithania, as well as numerous other measures. However, these efforts were unsuccessful and the nationalities issue remained a permanent problem till the end of the Habsburg Monarchy.

An agreement that could have been important for reconciliation between the Czechs and Germans was the so-called Moravian Pact of 1905. That peculiar national appeasement was concluded between the Czechs and Germans in Moravia, where the mutual relationships between the two nations were substantially better than in Bohemia; however, it happened only after long negotiations, whereas the common permanent committee was established by the Moravian Provincial Diet already in 1898. When preparing the Moravian Pact and subsequent secret agreements, e.g. from 1914, a key part was played by ad hoc created boards which in many cases did not have support in provincial legislation. The key role was assumed by bodies composed of chairpersons of major parties.¹⁹ Actually, the legal and state systems were not able to cope with nationalities issues in a regular, orderly way, which is an exceptionally important aspect.

The basic feature of the Moravian Pact was the division of the provincial Diet into the fractions called “*curiae*” – two national (Czech and German) and one of farmers owning large areas of land; the allocation of mandates

18 Brügel, *Tschechen und Deutsche 1918–1938*, p. 12.

19 Jiří Malý, “Národnostní klíč z roku 1914 v zemských hospodářských a finančních záležitostech – cesta k ‘druhému moravskému paktu’?,” in *Milý Bore-: profesoru Ctiboru Nečasovi k jeho sedmdesátým narozeninám věnují přátelé, kolegové a žáci*, ed. by Tomáš Dvořák, Radomír Vlček and Libor Vykoupil (Brno: Historický ústav AV ČR; Historický ústav FF MU; Matice moravská, 2003), pp. 139–143.

according to nationality was permanent, which removed a nationalist element from elections. Owing to the Pact the Czechs gained a leading position; however, the Germans had, strictly speaking, the power of veto. A remarkable characteristic of this system was the election based on a so-called nationalities register – a personal element asserted itself to a considerable extent. What was problematic however was sustaining the anachronistic curial system at the time when a universal suffrage was being advanced in the Habsburg Monarchy, and far-reaching strikes and demonstrations for universal suffrage even were one of the main immediate impulses to conclude the Moravian Pact. Apart from this undemocratic character, it is possible to find other questionable aspects (e.g. it did not apply to state administration), therefore, contemporary perspectives on the possibilities of such a settlement of the Czech-German conflict are sometimes sceptical.²⁰ A sort of a parallel at a local level in Bohemia was the so-called Budweiser Pact, which was debated shortly before the war, and other municipalities were considered (Olomouc).²¹

A peculiar part of the Moravian Pact was the so-called *Lex Perek* (Perek's Education Act), which may be virtually beyond the comprehension of a person unfamiliar with the minorities issue, but which represented a reaction to problems occurring in many other fields with language controversies. Education in the mother tongue is absolutely crucial for one's identification with a nation, which was well understood by nationalist movements. Therefore, there were frequent efforts to attract to their schools not only all children of their own nations but also children from ambivalent families, and even members of other nations. In circumstances that existed in the Habsburg Monarchy, where German education was of better quality and better ensured (not only) in Moravia, it was the Czechs who suffered from this tug-of-war for children. They thus tried to accomplish the adoption of a legal regulation that would force Czech children to attend Czech schools exclusively.

Despite a long-standing opposition by German deputies,²² Perek's Act was adopted in 1905 (No. 4/1906 of the Moravian Provincial Code) as a part of the Moravian Pact, and stipulated inter alia that schools providing compulsory education may only admit children who have a command of the language in which the education is provided. There were many disputes over the interpretation of the act, which even allowed for exceptions, whereas the Czechs required that the law be strictly applied. In fact, the law rather brought about

20 Zdeněk Peška, *Kulturní samospráva národních menšin* (Prague: Orbis, 1933), p. 15–17; Křen, *Konfliktní společenství*, pp. 323–325; Kořalka, *Češi v habsburské říši a v Evropě 1815–1914*, pp. 171–173.

21 Kazbunda, *Otázka česko-německá v předvečer velké války*, pp. 336–339, 369–370; Jeremy King, *Budweisers into Czechs and Germans* (Princeton: Princeton University Press, 2002), p. 115ff.

22 Toshiaki Kyogoku, "Národní agitace a obecní školství na Moravě na přelomu 19. a 20. století: Boj o české dítě," in *Místo národních jazyků ve výchově, školství a vědě v habsburské monarchii 1867–1918* (Prague: Výzkumné centrum pro dějiny vědy, 2003), pp. 571–576.

a deepening of nationalist agitation when admitting children to compulsory schooling, as well as numerous complaints about and legal disputes over the language competence of pupils. Moravian Germans feared a decrease in the number of pupils in their own schools and thus challenged the Act on the grounds of it representing unacceptable interference in the responsibilities of parents and schools.²³

In addition to the Moravian Pact, many other proposals and negotiations occurred towards the end of the Habsburg Monarchy that should have resolved national dissensions, but they usually did not give any real results.²⁴ It is not possible to deal with the details of those almost permanent appeasement efforts; it is however necessary to point out at least some typical features, particularly for the important reason that personalities jointly forming the status of minorities at the time of the First Czechoslovak Republic, such as T.G. Masaryk or Karel Kramář, participated in talks at the time of the Habsburg Monarchy and were influenced thereby on a long-term basis.

An important attempt to resolve the Czech-German conflict was made, for example, in 1908, and it was the Czech Provincial Diet in Prague that should have occupied the key role; after all, the competence of the Imperial Council (i.e. Austrian Parliament) in language issues was refused by the Czechs as a matter of principle. The Prime Minister at that time, Max W. von Beck, tried hard to manoeuvre because of the German opposition, however he was not successful and the national tensions only increased. The Germans used a hard filibuster in the Diet, and anti-Czech incidents proliferated in the borderlands; for example, attacks on Czech shops and schools occurred, or Czech filings with courts and agencies were rejected, which illustrates that even state machinery was affected by nationalism. A thing which was particularly bad was that the government did not have enough power to prevent provocations, such as aggravating processions. The weakness of the state and the unwillingness to confront nationalism often resembles the situation at the beginning of the First Czechoslovak Republic. A hard filibuster in the Czech Provincial Diet in 1908, which was a total disparagement of parliamentarianism, would have many parallels in the First Czechoslovak Republic as well. This crisis, like many other conflicts between nationalities, finally lead to the fall of the government.

All in all, both Czechs and Germans in the Czech lands constantly tried to stick to their policies, which deadlocked necessary reforms. The Czech-German relationship was not settled despite plentiful negotiations, which significantly complicated life in the Habsburg Monarchy. In Czech-German disputes

23 Malíř, "Národnostní klíč z roku 1914," pp. 139–140.

24 For drafts and research papers see Allgemeines Verwaltungsarchiv Wien, collection Minister-rats-Präsidium, box 354.

in Bohemia, the Germans fell back on a long-term stonewalling of the Czech Provincial Diet, which prevented the budget from being approved. "When the ordinary legislative mechanism collapsed after 1908, the Ministerial Council more and more frequently resorted to rule through imperial edicts, and officers by profession were gaining greater influence on the administration in Cisleithania than before."²⁵ That finally led to cash-flow insolvency of the Czech Commission; then imperial patents (St. Anne's patents) of 26 July 1913 intervened – the Czech Provincial Diet and Czech Commission were dissolved and replaced by a designated Administrative Commission. It should have been a temporary measure that would eliminate a German filibuster disrupting the funding of the land. The regulation from above should have also resolved national issues, and negotiations between Czech and German politicians continued as well. Many Czechs considered St. Anne's Patents to be unlawful and required that constitutionality be renewed.²⁶ A potentially anti-constitutional, and after 28 October 1918 revolutionary, situation, however, endured in Bohemia under changed circumstances till the end of the operation of the Revolutionary National Assembly in 1920.

Negotiations on the settlement of the Czech-German issue were frequent occurrences, also at the time immediately before World War I. One of the important cases was a secret agreement concluded by chief representatives of Czech and German political parties during the February session of the Moravian Provincial Diet in 1914. The agreement dealt with three main issues: firstly, the allocation of subventions to schools; then, changes in education policy of provincial bodies; and finally, the application of national principle in certain institutions and organisations. Many of these measures actually deepened the separation of the Czechs and Germans in Moravia. It is peculiar that this compromise was agreed upon in Moravia, where the relationships between the nations were less tense, and typical are also some distinctive aspects of this agreement. The agreement was secret, which might be surprising; however, in the context of the time, it was, strictly speaking, a pragmatic approach because many compromises had not succeeded due to loud nationalists on both sides.²⁷

Problematic was also one of the reasons for the willingness of Czech politicians to make concessions in relation to the Moravian Germans, namely a fear of a German filibuster which would have led to the collapse of provincial self-government and to the intervention in government like in the case of St. Anne's Patents in Bohemia. Although this compromise agreement was

25 See G. B. Cohen, *Politics of Ethnic Survival*, pp. 184–186.

26 Kazbunda, *Otázka česko-německá v předvečer velké války*, pp. 183–243, 387–388; Kořalka, *Češi v habsburské říši a v Evropě 1815–1914*, pp. 179–180.

27 Malíř, "Národnostní klíč z roku 1914," pp. 137–145.

most probably beneficial for the conciliation of tense Czech-German relationships, it is impossible not to see its numerous problematic aspects, like in the case of the Moravian Pact of 1905. However, contrary to the Moravian Pact, new laws should not have been adopted; the agreement only contained the undertaking by signatories thereto to abide by certain rules. The nature of issues agreed upon did not indeed require embodying in legal regulations; on the other hand, concluding similar specific agreements represented another unusual element in the regulation of national relations, which itself was a fairly complicated issue, and often times also unclear distribution of competences among Austrian parliament, provincial assemblies, and executive bodies. Unfortunately, a minimum legal regulation of the nationalities issue in Cisleithania, whose basis was a single provision contained in Article 19 of the Fundamental Act of the State No.142/1867 Austrian R.G.B.I., in which however many elemental issues were not dealt with in detail, led to such peculiar instruments and in fact to chaos. The true reality in the case of nationality rights of the Czechs was not bad; however, no system of legal regulation actually existed, and arbitrariness was frequent and often times directed not only against the Czechs but also against the Germans or the use of the German language.

At the time of the Habsburg Monarchy many noteworthy theories of the resolution of the national issue emerged, and it is possible to say that the local situation was inspiring for the whole of Europe. Probably the best elaborated programme of the reform of the nationalities law in Austria was prepared by Social Democracy. The congress of the (all-Austrian) party in Brno in 1899 put forward a demand for the transformation of Cisleithania into a sort of a federation of nationally delimited units. Besides this territorial autonomy there were also ideas for personal autonomy, supported as well by foremen of Social Democracy, Karl Renner and Otto Bauer.²⁸ An idea of establishing national cadastres, i.e. the evidence of persons according to their nationality, which was produced among others by a Viennese professor Edmund Bernatzik in 1910²⁹, was also important.

If we look at the Czech-German issue prior to World War I, then the key element is the successful development of the Czech nation. Around the end of the 19th century the Czech society reached the level of a modern European nation. What was somewhat in contradiction with the successful economic and cultural development was the weak position of the Czechs in the Habsburg

28 Tove H. Malloy and Francesco Palermo, eds., *Minority Accommodation through Territorial and Non-Territorial Autonomy* (Oxford: Oxford University Press, 2015), pp. 125–127; see also Brügel, *Tschechen und Deutsche 1918–1938*, pp. 13–14.

29 Edmund Bernatzik, *Über nationale Matriken: Inaugurationsrede gehalten von Edmund Bernatzik* (Vienna: Manz, 1910); see also Sobota, *Národnostní autonomie v Československu?*, pp. 23–25; Peška, *Kulturní samospráva národních menšin*, p. 26.