

In memoriam Dr. Sándor Képiró
(Sarkad, 1914. February 18. – 2011. September 3, Budapest.)
Dr. Zsolt Zétényi

I.

On September 3, 2011, Dr. Sandor Kepiro gave his soul back to his Creator. His life spanned over a turbulent historical period of Hungary. The 25 years, then another 65 following the Trianon dictate, which tore away 2/3 of the country's land and population, were full of severe trials as well as great examples of the nation's will to live. Dr. Kepiro had an active part in the first period, and spent 50 years of the second in exile. The last 15 years he again spent in his beloved homeland, but a malicious and spurious accusation burdened the last five years of his life. His loving family and friends were at his side to help him endure the vicious attacks, which he himself rightfully considered despicable.

He was a noble man in every sense of the word. After receiving his diploma in law and political science, he completed the prestigious Ludovika military academy, and became an instructor in the Royal Hungarian Gendarmerie. He was in Ujvidek (a newly regained southern area of Hungary) in that capacity in January of 1942. While there, he was given a part in the so-called Ujvidek round-up, conducted in January 22-24, in which the military was trying to curtail the escalating partisan activities of the area. The round-up was a military operation. The gendarmerie participated only with about 10-12 patrol units, each with 4-5 gendarmes, who carried out some of the "search" orders, in which they were to check the ID of individuals and escort the ones without a legal ID to the military headquarters. The gendarmerie had no other involvement. Dr. Kepiro, along with a dozen or so other gendarme officers, was overseeing the gendarme units, but only the patrol leader of those patrols had official authority. In the process of the round-up, especially in its last day, there were some bloody events and mass executions, which took the lives of about 900 people, mostly Serbs and Jews. Kepiro was innocent and had no part in these criminal acts, both according to the records, and according to his own conscience and his repeated statements and detailed accounts of the events. In May of 2011, while criminal investigators judged him mentally fully competent, he declared, "I did not rob, did not kill anyone; I dearly loved my country." It is not true that a mentally incapacitated person stood before the court. He was very much able to follow the astounding number of legal documents that were presented relating to the Ujvidek round-up, and in my opinion this mental stress was a definite factor leading to his physical decline, collapse, and death. One may rightly say that he was killed by these trials, which had no legal basis, and were forced onto our legal system by some malicious, profit-hungry, revenge-driven special-interest groups under the false façade of a humanistic endeavor.

I do not wish to comment on the fact that during the last months – due to concerns from the hospital staff and also because in his book (Zuroff, Efraim, *Operation Last Chance, One Man's Quest to Bring Nazi Criminals to Justice*. New York, 2009, Palgrave MacMillan. Képiró: p. 202-219) Zuroff wrote that at one point he was considering killing dr. Kepiro – we have asked the court to give our defendant personal protection, but the Prosecutor's Office has denied this in spite of the court's initiative.

II.

The accusations and legal proceedings were fueled by a hope of “last chance”

Based on §11/5 of the Public Court’s Order (1945) and §165 of the Penal Code, the prosecutor’s office accused Dr. Sandor Kepiro of a war crime. The so-called People’s Courts, established in Soviet occupied areas of Hungary even before WWII ended, were instrumental in the transition of power. They acted on the basis of various orders issued by the Temporary Government. These orders were later retroactively elevated to statutory level by Appendix I. of the 1945/VII. article of law, specifically by the 81/1945. (II. 5.) order of the Department of the Interior.

According to the §11/5 of the Order of the People’s Courts, a person is guilty of a war crime if he seriously violated the international law governing the conduct toward prisoners of war or people living in occupied areas, if he brutalized the population of areas returned to their original country, or if he committed or contributed to the torture or illegal execution of people or enticed others to do so.

Making new penal codes retroactively binding gravely offended even the penal principles of the time. With a purposefully biased interpretation of post-WWII international law, they judged previously committed actions according to this new law, rather than according to the legal facts and laws which were in affect effect at the time of those actions.

The Statutes of the International Military Tribune of Nuremberg defined what constitutes a war crime or a crime against humanity. The General Assembly of the United Nations accepted these statutes as a basis for international law with their resolutions #3/I. (February 13, 1946) and #95/I. (December 11, 1946). Later, in 1968, the New York Convention claimed that these crimes are not exempt from the statute of limitations – while they were already exempted in Hungary as of 1960. In 1994, the Hungarian Constitutional Court has determined (2/1994. AB) that the aforementioned §11. 5. of the Order of the People’s Courts (specifically, point 13. §2.), complies with international law. At the same time, this law condemns the People’s Courts themselves, who convicted and executed many victims – guilty and innocent –, acting out of political revenge by the decision and under the direction of the Communist Party’s emissaries.

Dr. Kepiro’s ordeal started in 2006, when an organization dealing with ethnic crime investigation in the name of the Jewish tragedy has accused him of a war crime to stir up some public sentiment, even though they had no factual basis whatever for their accusations. As there were only a few survivors of the war left whom they could accuse, they brought allegations against Dr. Kepiro, without basis but with much malice. In their conduct they not only ignored human dignity, truth, and any concern for a person, but openly intended to destroy their victim, physically and emotionally, in order to inflame public emotions in their favor. This is a fair summary of the official #347/2007 accusation entered by prosecutor Dr. Zsolt Falvai, on February 14, 2011 (choosing this date, the Gendarme Day, for filing, in itself reveals malice). And he did this, although he should have stopped the investigation considering that there was no indication that a criminal act had been committed, and there was also no indication that the accused had any part in such. Based on these facts, the Capital Court, lead by Judge Dr. Bela Varga, acquitted Kepiro from all accusations in its verdict of 19. B. 155/2011, on July 18-19, 2011. The news agencies used the formula, “legally acquitted

due to lack of proofs,” which conveyed an ambivalent tone to the public as if the acquittal were some second rate decision. It is important to note that Hungarian law is such that the declaration of the judgment does not give a reason whether the acquittal happened because of the innocence of the accused or because of the lack of condemning evidence. These fall under the “explanation” of the judgment.

According to Hungarian and European law, “nobody must be considered guilty until his guilt is legally established” (2nd paragraph of 1949. XX./57 article of law), which was clearly breached in Kepiro’s case. The five years long persecution that was carried out against him also violated the edict of the European Council on Human Rights, which declares that “Everyone has the right for a fair trial, conducted in a legal manner, honorably, publically, and within reasonable time, to come to a decision regarding his lawful civic duties and rights, or regarding the grounds of his accusations.” It further states, “Everyone has the right to receive respectful treatment of his private and family life, home and correspondence.” All these were disregarded in Kepiro’s case.

Innocence has no degrees. Dr Kepiro was innocent, and he would be innocent even if the court did not acquit him after their investigation. The latter became a moot point in the light of Kepiro’s death, but it is still worthwhile to consider the facts of the process, the advanced legal opinions, documents and statements regarding the 1942 Ujvidek round-up and Kepiro’s role within it. These facts would aid future generations in contemplating important issues regarding this legal decision and the evidences on which they are based.

III.

Historical facts and proofs

Some ask the theoretical question of how the Appeals Court might have decided had Kepiro’s death not ended the legal battle. His accusers insist that the Appeals Court would have established his guilt – even though his acquittal was based on lack of evidence.

Dr. Kepiro’s innocence is already established by the fact that he could not be proven guilty. But beyond this, the following three considerations further prove his innocence:

1. The legal character, content and legal attesting ability of the available facts.
2. The conclusions history may draw and which provide important guidance for current and future national politics.
3. The statements and recollections of Kepiro himself, as the last witness of the Ujvidek round-up, matched with other evidences.

Ad 1. The legal character, content and legal attesting ability of the facts available.

The acquittal was based on the evaluation of five evidence-groups, each lacking the power of proof.

A.) The prosecutor’s first evidence was the 1944 January verdict. On January 24, 1944 (not on 22, as they falsely stated), the Court of the Hungarian Royal Army’s Chief of Staff delivered a verdict (H. 448/43/118) against the following officers, in the order of their alleged guilt:

1. Lt. General Ferenc Feketehalmy-Czeydner
2. Major General Jozsef Grassy
3. Retired Colonel Laszlo Deak
4. Lt. Colonel Geza Batori
5. Lt. Colonel Lajos Gaal

6. Retired gendarme Lt. Colonel Ferenc Fothy
7. Gendarme Lt. Colonel Jozsef Horkay
8. Gendarme Captain Laszlo Stepan
9. Gendarme Captain Dr. Imre Kun
10. Gendarme Captain Dr. Jozsef Csaky
11. Gendarme Captain Karoly Budur
12. dr. Nemes Balazs Kacskovics
13. Gendarme Captain Dr. Sandor Kepiro
14. Gendarme 1st Lt. Mihaly Gerencsery
15. Gendarme Captain Marton Zoldi

The verdict, which became effective on February 18, 1944, found these individuals guilty of “disloyalty” regarding the 1930. III. article of law (59.§, 1st paragraph, 1. and 4. points), and therefore sentenced them as follows: the 4th – 7th defendants to 15 years in prison, the 8th to 14 years, the 9th to 11 years, the 10th to 10 years, the 11th to 12 years, and the 12th – 14th defendants to 10 years each, along with a 10-year suspension of their military duty, as well as demotion in rank and barring them from any participation in politics. The verdict did not include a judgment against the first three and the 15th defendants, as they fled from Hungary the day before the verdict, and deserted to the German Army.

The Capital Court (Fővárosi Bíróság) stated these already known facts in its proceedings under #9. Beü. 969/2006/23.

The Army Bulletin (Honvédségi Közlöny) 1944, issues 24 and 28, also stated, based on further investigation of the gendarme officers involved, that dr. Sandor Kepiro is not guilty and the Army Chief of Staff returned him to his full rank and service with his decision dated May 25, 1944, and issued May 31, 1944 (40.116/Eln.fbü.). The Secretary of Defense assigned him to be an instructor at the VII. gendarme district, in Miskolc, effective on June 15, 1944.

According to the expert witness, the restoration of Kepiro’s rank and service unquestionably means that he was considered completely innocent of any charges against him, because the Gendarmerie’s Organizational and Service Manual (19.§ /2.) specifically declares that only persons free of any previous criminal record may serve as officers in the gendarmerie and in the army. Based on this, and on the statement in the aforementioned Army Bulletin, the Capital Court explained in its 2007 decision, “*According to the then used Moral Regulations of the military, it is obvious that the new decision regarding to Dr. Sandor Kepiro had to be the result of a new military investigation or a legal reconsideration of the previous trial, in which they have found no substantiating evidence against him*”.

The quoted Moral Regulation explicitly states that only such officers may be rehabilitated, whose criminal investigation yielded a “favorable outcome”, that is, if they were found perfectly blameless. Thus, according to the defense, the rehabilitation of Kepiro and the testimony of Military Judge Dr. Jozsef Babos unquestionably prove that Kepiro was legally acquitted in 1944, and therefore, a reinstatement of a charge against him for the same alleged offence is forbidden by law. Therefore the defense requested a dismissal of the charge against Dr. Kepiro, even though a new acquittal might have a greater moral and legal significance.

Nevertheless, in its current verdict the Capital Court explained that they did not consider the 1944 case as properly acquitting Dr. Kepiro, because the rehabilitating second decision was not the result of a second trial but a reconsideration of the first verdict on the basis of lack of evidence. According to the Capital Court, the reexamination of the facts renders the verdict contradictory in several regards. It failed to address whether the accused had any part of the alleged criminal acts, it failed to show how the accused might have instigated the criminal acts of his subordinates, and how many people they have killed, if any.

On the other hand, the verdict mentioned the fact that on January 23, 1942, Lt. Jg. Gusztav Korompay executed 250-300 men at the swimming pool and Sergeant Imre Muhlhauser, at the command of an unknown Warrant Officer, executed 38 civilians on the Athletic Field, yet both of them were only used as witnesses in the 1943-44 trials. The court acknowledged that these individuals were not subordinates to the gendarme officers, and that the proceedings did not reveal any connection between the gendarmes and the executions committed by these two soldiers.

According to the Capital Court, the 1943-44 verdict, which was annulled later in 1944, has to be considered as non-existent, and therefore its statements must not be used in these new proceedings to establish the guilt or innocence of the accused. The Court wants to base its decision on the material and facts of the original investigation, but as that material is largely and permanently lost, the Court deems it undeterminable whether or not the original verdict of 1943-44 was properly justified. Therefore, the Court, like the defense, saw it right to neglect the original verdict, although for differing reasons, and in spite of the wishes of the prosecutor. The defense considered the original verdict unusable because it was later nullified by a legal decision. The Court's reason for neglecting the original verdict was based on the fact that none of the still available data contain any evidence against Dr. Kepiro. From those documents we learn that Dr. Kepiro was assigned to the Ujvidek area at the time including January 20-23, but there is no reference to any kind criminal activity on his part. He was simply convicted on the basis of "collective guilt," which is against civil law.

B.) The prosecution's second piece of evidence was the records of Janos Nagy's testimonies given before the various agencies responsible for rounding-up and destroying the "enemies" of the communist dictatorship (KatPol and AVH – see below), on October 14 and 22, and December 15, 1948, and the first and second level court decisions based on the same.

The Capital Court dismissed this evidence for several reasons. Paragraph 4. § (2) of the 1998. XIX. article of law only permits unquestionably truthful evidences, paragraph 77. § (2) specifically warns that all proceedings must respect the personal dignity and privacy of those involved, and guard against exposing details of one's private life, and paragraph 78. § (4) forbids the use of evidence that was gained by illegal or criminal means, by coercion, or by restriction of one's personal rights. It is therefore important to examine the the prosecution's above evidence of in light of these requirements.

We know that Janos Nagy made his "testimony" under the threat of being beaten if he did not say what was expected him to say, that the detective agency only prepared the records of the hearings two days afterwards, that he was illegally kept in custody for 10 days, that he did not have a defender for months, that he was under great mental strain, and that he was judged by a court not having the legal authority to make a decision regarding the matter in question. The two organizations who have obtained the abovementioned testimonies of Janos Nagy were the infamous Military-Political Bureau (KatPol) and the "State Defense Authority" or secret police (AVH). Both of these were expressly formed to serve the ruling communist party in an effort to establish its absolute dictatorship, and by October 1948, numerous illegal executions proved their willingness to use any means possible to reach this goal. Therefore, "Every penal investigation conducted by the AVH – regardless of its object – was a mockery of what a criminal investigation ought to be, and so every part of it must be considered unlawful." (*Illegal Socialism (The report of the Facts-uncovering Committee*, Budapest, s.a., Zrínyi Kiadó - Új Magyarország. p 361.)

Furthermore, the report of the interrogations were customarily only written up days later, and contained the interrogators' opinion, rather than the actual records of the statements and proceedings. The courts have only received these subjective "records" and not the whole

original material. In addition, according to the findings of a legal committee established in 1989 to examine the ideologically driven elements of the communist legal system, the authorities routinely worked over and changed these records.

A person in custody of the AVH was predictably under physical torture and compulsion to say what his interrogators wanted to hear. It is noteworthy that Janos Nagy “confessed” to the willful killing of 30 people, surely a capital offense, even though no evidence or witnesses were presented.

As the testimonies of Janos Nagy were excluded from legally viable evidence, all their content was also excluded from scrutiny. Nevertheless, it should be mentioned for the sake of history that these testimonies also revealed elements of conflicting interests and personal clashes between him and Dr. Kepiro. The latter thwarted Nagy’s efforts to rob and kill the Tanurdsics family, which Nagy had planned in collaboration with his superior and was trying to carry out through giving orders to patrolling Warrant Officer Pozdor. Dr. Kepiro recited the story on several occasions during his emigration –when there was no benefit or disadvantage to him in telling it– and he also repeated it under oath during his recent trial. He came to the scene (as he was staying at the Tanurdsics’s hotel) when the family was already rounded-up to be taken away. When Kepiro demanded an explanation from Pozdor, he pulled him aside and told him of their plan. Kepiro forbid them to use their weapon and ordered them out of the house, saving the family and their possessions. No wonder that Janos Nagy felt so negatively towards Dr. Kepiro.

Another possible reason on Nagy’s part for the purposeful distortion of his testimony against Kepiro was a practical one. He could hope for a significant delay of his own sentencing and execution if Kepiro was to be found and questioned first.

To participate in mass murder would also have been totally against Kepiro’s known personality and convictions. He took a stand against an action that was against the regulations of his profession, and by it he saved a Serb-Jewish family from exploitation and execution. He also believed the Ujvidek round-up was strictly a military action on account of increased partisan activities in the area. He also had no personal inclination whatsoever to torture or kill people. His earned teaching position and great familiarity with and belief in the law also support this notion. Kepiro refused to permit the use of weapons in any way that contradicted regulations, and no evidence could be found to the contrary.

So, in a nutshell, the five groups of evidence on which the acquittal was based are the following:

First, the verdict delivered on January 24, 1944 by the Court of the Hungarian Royal Army’s Chief of Staff was based on an accusation of political disloyalty and fabricated evidence, and the allegations did not contain even a hint of crimes involving homicide. Also, the Supreme Military Court’s nullification of that verdict within a few months also points to its ungrounded nature. Therefore the January 24, 1944 verdict should be considered legally non-existent, and thus its contents cannot be regarded as valid evidence.

Second, army officer Janos Nagy’s unreliable statements regarding dr. Kepiro also had to be excluded in *dubio pro reo* as evidence, because they were made under physical and emotional coercion by the dictatorial state’s secret police during the 1948 interrogations, then later retracted, then again reasserted in 1952, and could not be at any one time supported by any corroborating evidence.

Third, the verdicts of the 1950s declared against the participants of the 1942 Ujvidek round-up also had to be excluded as evidence, because they were ideologically fueled, were based on testimonies extracted by coercion, and were declared by courts lacking proper legal

authority in the matters in question. For these reasons these verdicts have been reversed or are now in the process of being reversed.

Fourth, the testimonies obtained in 1945 by a Yugoslavian committee also lack legal validity; in part because they were extracted under the same one-party communist dictatorship that was committing large-scale genocide at the same time; and in part because they contain no information whatsoever regarding the person of dr. Kepiro. Therefore, these cannot have any bearing in the evaluation of Dr. Kepiro's conduct.

Fifth, the testimonies of Dr. Peter Havas, obtained during the 2009-2010 legal proceedings, do not contain any material relating to the person or personal conduct of dr. Kepiro, and therefore could not have been used as evidence regarding his personal guilt or lack of it.

In summary, most of the evidence mentioned above does not meet the criteria of validity according to civic law and therefore must be excluded from consideration, and the rest of them must be excluded because they cannot support the suspicion of any kind of criminal activity on the defendant's part. They are only useful for historical analysis of the times in which they were born, and on that basis they are further unacceptable as evidence of Dr. Kepiro's guilt. To the contrary, they speak for his innocence.

It must be emphasized that Dr. Kepiro was never, before or after 1945, accused of or sentenced for any war-crimes or activities connected to homicides. He has had a clean criminal record all along, including presently, not because he could not be legally convicted, but because he actually was and is innocent.

Ad 2. The conclusions history may draw and which provide important guidance for current and future national politics.

Even the most thorough historical evaluation of all available material lacks any evidence or even suggestion that Dr. Kepiro was involved in any kind of criminal activity. There is no indication that he committed, ordered or permitted any activities related to the known killings of the time period, and there is no indication that he personally, legally or morally, could be connected with these.

We base this statement mainly on Drs. Tibor Zinner and Sandor Szakaly's expert testimonies given during these proceedings. But we also cannot find any incriminating evidence against dr. Kepiro in the thorough historical evaluations of those times and events in the academic historical works of Dr. Eniko Sajti, Gyorgy Marko, or Krisztian Ungvary; in the publications of government agencies (bulletins of Állambiztonsági Szolgálatok Történeti Hivatala, a volume on military trials); or in the publications of holocaust expert Laszlo Karsai.

During this recent Kepiro-trial some previously unexamined facts have also appeared, such as a copy of the January 24, 1944 (not on 22, as was incorrectly stated) verdict (H. 448/43/118) of the Court of the Hungarian Royal Army's Chief of Staff, which became effective on February 18, 1944. The analysis of this document, along with the expert opinions of Drs. Zinner and Szakaly, provide further useful insight into the events of those tragic days of history, and further prove Dr. Kepiro's innocence.

The "Nazi-hunter" originator of the Kepiro-trial intended to elicit a sense of guilt in the Hungarian nation, but achieved an opposite result. While we agree, that the Ujvidek events deserve further historical study and evaluation, we disagree with the aforementioned intent. Not denying the justification of further exposition of any anti-Semitic crimes, we claim

that there is also an urgent and yet totally ignored need for the evaluation of those events that amounted to an overt genocide against the Hungarians. There is indeed a need to call to account those who have committed these crimes and to request appropriate acts of reparation, as well.

Two important works dealing with the ideological motivation of the trials and legal proceedings during the one-party dictatorship era have already been published:

- *Illegal Socialism (The report of the Facts-uncovering Committee*, Budapest, s.a., Zrínyi Kiadó - Új Magyarország).
- “The Report of the Legal Subcommittee”, established by government-order 3063/1989. MT to review those 1945-1962 penal proceedings which contained ideological elements. Budapest, 1989, s.n. (still not in public domain).

These resources are important to but not sufficient for an adequate study of this subject. There is still much to be done to sort out the historical facts and the many instances of power-abuse, and to make the necessary changes in our laws and legal system to set straight what can still be corrected or revised (e.g. to create legal means to nullify or adjust the politically charged, ideologically based verdicts, etc.). As we expressed earlier, there is a need for a National Remembrance Institute (similar to the one that already exists in Warsaw), especially for the 1944-1989 and the WWII periods, because the proper investigation and administration of justice requires not only the availability of accumulated bibliographic material, but also a coordinated practical effort between the government, financial planning, and various institutions.

The Kepiro trial helped us reach some important conclusions, and has also clarified our future tasks. It became obvious that an international effort is necessary to address the Southern Hungarian events of WWII, other than the Ujvidek round-up, namely, the so-far completely ignored issue of the genocide carried out against Hungarians, Germans and Croats by order of the Yugoslavian party-state. The facts must be disclosed and those responsible must be brought to justice.

Ad 3. Kepiro’s own statements and recollections as the last witness of the Ujvidek round-up, collated with other evidence.

There are occasional claims of inconsistencies in Kepiro’s statements and of contradiction between his statements and other testimonies or documents. These claims are malicious and without grounds. Kepiro clearly and unambiguously stated his opinion and the facts known to him. He still retained an excellent memory of those events, providing us with many important eye-witness details. The questionable or missing elements had no bearing on the matter relating to his personal responsibility regarding the questioned incidents. He wrote the most important of his recollections of those events in the mid-80s, under the title, *The true story of the Ujvidek round-up, or, how I became a ‘war-criminal’*.

(<http://www.csendor.com/konyvtar/szepirodalom/viszaemlekezesek/magyar/Dr%20K%e9pir%f3%20S%e1ndor%20nyilatkozata.pdf>). The Courts referred to this document in several instances.

This is the introduction to his recollection:

“I write these words from the distance of 40 years to record with the trustworthiness of an eyewitness those events which are still waiting for an objective historical evaluation.

There was already a Court that brought a verdict in the matter: the Special Court of the Hungarian Royal Army's Chief of Staff, which examined the events from the aspect of disloyalty based on paragraph 59. § 1. of the 1930. III. article of law. Lt. General Ferenc Szombathelyi headed the Court; Lt. General Istvan v. Naday presided; the members were Major Generals Jozsef v. Nemeth and Janos v. Kiss; Military Judge Colonel Jozsef Babos was the moderator; and Military Judge Captain Imre Gazdag was the prosecutor.

At the same time, I respond to Tibor Cseres' novel (1966) and its film-adaptation, Cold day, in which he used my name."

His most important statements coincide with the current verdict and the facts on which it was based:

"The Ujvidek round-up had two parts. The first part, the patrol units, performed the identity checks. These units mainly consisted of gendarmes. As their numbers were insufficient, some unskilled soldiers were also assigned to them, either to escort those who were apprehended, or to simply provide extra personnel for the patrols' safety. The other part of the round-up, which was responsible for the clean-up activities on the Danube-shore, solely consisted of army corps."

Gendarme Major Lajos Gaal, the immediate supervisor of the gendarmes *"ordered us to use weapons in case of any resistance. I was the only one to request the order to be given in writing, because the gendarme regulations then would have placed the responsibility on him. He responded, 'I don't give it in writing, because I myself have not received it in writing.'"*

Kepiro's reaction was a warning to his supervisor as well as to the other officers, and also made it possible for Kepiro to conduct his gendarme patrols honorably, according to their regulations. Yet, the prosecutor in his 2011 charges against dr. Kepiro, using a quite disjointed logic, interpreted the above quite straightforward incident as the defendant's desire to get a license to kill.

Dr. Kepiro described another unique episode from the Ujvidek round-up, which also speaks of his characteristic attitude:

"It came to my attention that an army patrol in the Rex hotel, where I was lodging, was acting illegally. I hurried to the scene and I have found the owner of the hotel in his own apartment, dressed in overcoat along with his family, ready to be taken by an army patrol. Warrant Officer Pozdor headed the pilfering band. I called him to the side and asked him what was going on. He told me that he is taking the family to the Danube-shore. As he could not bring any accusation against the Tanursics family, I simply told him, "Get out of here!" With this, he left the scene, and I told the family to check to make sure they have all their possessions, and I reported the incident to Major Gaal.

I think, some members of the Tanursich family are still alive –they had three children –and still remember those events and can vouch for my words."

It is noteworthy that the detective authorities did not find it necessary to substantiate Kepiro's account neither in the 1943-44 trials, nor in the current legal proceedings. They refused its use by the defense, for they did not want to deal with any extenuating circumstance.

Kepiro, then, continues:

"This is also my response regarding Warrant Officer Pozdor, who appeared in Cold Days, as well. I would add that I have not had any duty-related relationship with him either during or after the round-up. Speaking of the Cold Days, I must also mention that the story on

page 146 about a gendarme-patrol using his weapon in my presence is a fabricated lie. It was so unrealistic, that the writer has no mention of it in his play (page 312), for either he himself have found it too far-fetched, or maybe he just forgot about it. It seems that Warrant Officer Pozdor gave them the story to take revenge on me for not allowing him to loot and kill that unfortunate family.”

It is undeniably true that the fictional Kepiro of the novel and the real Kepiro have nothing to do with each other. But Cseres' use of Kepiro's name is very important, because the novel made his name well-known, and thus the flood of false accusations against him have gained more weight. Cseres probably came across Kepiro's name during his study of the round-up documents, and probably used the name simply because it appealed to him. He himself stated later in his book, *Blood-Vengeance in Bacska*, that *Cold Days* was not written to convey historical facts; it is not a documentary, but it should rather be viewed as a psychological drama dealing with questions of conscience. If there was a real-life equivalent of the novel's Kepiro, Marton Zoldi would be a better fit.

Also take note that – as Dr. Sandor Szakaly explained in his expert opinion – there was no Warrant Officer named “Pozdor” in the army. This fictional figure best corresponds to Warrant Officer Janos Nagy, who provided those unreliable and illegally gained testimonies that the prosecutor wished to use against Kepiro, but which the Court refused to accept as viable evidence.

The 2011 legal proceedings also revealed the politically motivated, ungrounded and collective nature of the 1944 verdict. Therefore, the Court reached the same conclusion as Kepiro:

“The accusation was collective, which is against civil law. “They committed murders and looting.” – they claimed. The relevant article of law states: “Whoever causes a set-back for the Hungarian government or for its armed forces, or causes the enemy to gain advantage, is guilty of disloyalty and is punishable by death.” If their grave accusation was indeed true, we should have been immediately captured and executed, but they left us free in order that we might not suspect anything.”

After the verdict they were imprisoned, and the Germans had nothing to do with their eventual release:

“When the Germans came in, the SS wanted to bring us out of prison. Lt. General Csataj, Secretary of Defense, heard of it, and sent us a message via under-secretary of state Istvan Olah. He asked us not to leave the prison when the Germans open the door for us, because he knows our innocence and is working on our rehabilitation so we may continue to serve in our previous ranks. We promised Istvan Olah that we will act according to his request. And indeed, we were released on March 22, and Admiral Horthy later ordered the expunging of the trial. On May 25, the verdict was nullified as unfounded.”

Later, the Germans took this same Lt. General Csataj into custody, where he took his own life. Contemporary documents testify that the reversal of Kepiro's verdict and his full rehabilitation was not due to clemency, but rather due to a lack of any incriminating evidence.

In his recollections, Dr. Kepiro questions the authority of the Special Court of the Hungarian Royal Army's Chief of Staff. In this he was mistaken, because in fact its jurisdiction included everyone in disloyalty cases – it is a different matter altogether that Kepiro was not guilty of the disloyalty charge. His reference to the Admiral's expunging of the trial was also partially incorrect, but that whole question is still far from a thorough legal understanding due to the lack of the original documents. He also mistakenly mentioned Pozdor's name, but he himself did not personally know the Warrant Officer (so named in the

Cold days – see above) outside of that one certain encounter. It is also not quite correct that there was no use of weapons by any of his subordinates, for he himself mentions Kalman Szentpali Gavaller's legal weapon-use, which the Warrant Officer reported to Kepiro a few hours after the incident. The Capital Court's verdict (19.B. 155/2011) on page 27 of its electronic version explains: "According to his defense, he did not remember which Ujvidek streets' patrol fell under his supervision. He stated that there was no weapon-use by those assigned to him. There was a case of weapon-use by one of his subordinate, Kalman Szentpali Gavaller, the antecedents of which he did not know but on the same day he reported it to his superior, Major Gaal."

He did not recall that he allegedly had denied the release of the Mariassy brothers, and of course he had no knowledge of the accusations fabricated by Janos Nagy. That is, he had no recollection of those acts he was falsely accused of and which the Court acquitted him. The above errors do not reduce the value of his recollections, which collaborate in every important point with the 2009-2011 legal testimonies, statements, and findings (*The dark side of the Ujvidek round-up; How I became a war-criminal based on a lie 60 years after the war ended?*)

IV.

From a legal standpoint, the Kepiro trial should have never been started, and by no means should have proceeded to the point of officially bringing charges against Dr. Kepiro.

The prosecution attempted to create the illusion that there is continuity between the current legal system and the legal system of the one-party state, in which a perverted administration of justice served the dictatorship's political and ideological agenda. We can categorically state that the detective agencies of the party-state characteristically used illegal and criminal methods against those they accused, and therefore any evidence so produced must be excluded from civil legal proceedings. An exception would be an unlikely situation, in which the evidence would have been collected in a proper, legal manner.

The Kepiro-trial, with all its sordid and dark aspects, made it much clearer what a proper administration of justice ought to do. All its proceedings and verdicts must reflect the fact that a criminal activity is defined in light of the law that was in effect at the time of the examined activity. It also must collate the historical and legal facts of a given case, and it must ascertain that the matter presented has a direct bearing on establishing one's personal guilt and responsibility, or the lack of such. Proper administration of justice must be about the pursuit of truth. There are no different kinds of truths. One is either guilty or innocent of a given crime, regardless of which specific civil society he lives in. Therefore, the legal and judicial activity is continuous between civil societies, while discontinuous with any totalitarian system. Truth cannot be relative, - that is, dependent on the contemporary government. If truth was relative, then legal liability would also be relative and accidental, without any possible claim for moral responsibility. The administration of justice must restore its historic respectability. If there is a universal moral code, then there is also a definite standard we must achieve or restore.

Dr. Kepiro's trial was unique and without precedent. Only Laszlo Kristof's 2006 acquittal shows some similarity to it (former gendarme officer Kristof was executed in 1959 on the basis of fabricated charges related to the death of communist activist dr. Endre Sagvari). These cases are significant in respect to legal history. They even put the historical events in a different light. They establish the claim for legal continuity, and point to the possibility and need for the fair practice of administration of justice, devoid of political

agendas. Legality and justness are indeed connected values, and they are objective, not dependant on political views.

V.

Summary. – A few subjective closing words.

I strongly believe that the first judge of a defendant is his defense attorney, whom the person in trouble seeks out. The defense attorney has to provide support for his client, but must refrain from becoming a psychological prisoner of the case. He must remain objective in pointing out the case's realistic possibilities.

I met dr. Kepiro on the summer of 2006 through a mutual acquaintance. He turned to me with his concern regarding his situation. He told me he returned to his beloved homeland ten years prior, and is facing an onslaught of fabricated, vile accusations and would like know what he can expect from the legal authorities. He urgently needed advice to help him decide whether to stay in the country or leave on the plane he had ticket for the next day. He had to decide where to spend the few remaining years of his life. I invited him for an official consultation. I have questioned him down to the smallest details and have sought the opinion of my historian friend over the phone. Based on these, my advice was for him to remain in Hungary if he felt he had enough strength to withstand the expected onslaught of verbal abuse, sly and vicious media attacks and challenges. I could not have imagined that he would be made responsible for crimes he did not commit. This is how the hardest last five years of his life began.

He was a noble man, and therefore suffered that much more from the malicious and ungrounded attacks. It was torture for him that innocent as he was, they called him a murderer, even a participant in a heinous mass murder. This insult was doubly painful, as his accusers were psychological prisoners of their own delusions, not willing to come to terms with their own misconceptions and double standards. Dr. Kepiro's repeated characterization of the situation was one word: "odiousness."

He died of the strains caused by the relentless, unfair and ungrounded accusations, which lacked any kind of legal basis. The mere facts were simple: he was physically in Ujvidek at the time of the round-up, but had no part in any kind of crime. He received an order for the use of firearms, which he considered to be against regulations, and therefore he requested a written order. He did not receive the order in writing, and consequently he did not comply with the verbal order. It also became an established fact that he saved the lives and property of a Serbian family, for which he should have received praise and a reward, rather than shame and persecution. According to the Christian-European mindset, culture and civil law, revenge is considered to be a vile motive, and even more so, if an innocent person is targeted for such a base reason. There seemed to be no end to the press conferences, reports and expositions relating to the trial, and there were over half a dozen hearings. Not once have I noticed any kind of hesitation, intentional vagueness, or any slyness on part of my defendant. And we have not received any straight answers from dr. Kepiro's accusers as to what specific charge they had against him, what, where, and when did he commit any wrongdoing or negligence or incitement of others that led to someone's torture or murder. They could not produce any evidence against him.

The one-person social crime-hunting organization, with whom the majority of the persecuted Jews do not identify, did not even try to answer these questions. It became more and more obvious that he was not nearly as interested in these questions as in finding a scape goat for his purposes. Clearly, he considered my defendant guilty even if he was found

innocent according to his own shared European-Christian culture and in the lack of any incriminating evidence. For him, facts and questions of personal guilt or innocence were inconsequential, for his irrational demand for revenge somehow attached itself to the person of Dr. Sandor Kepiro and he could not let him go. He considered Kepiro outside of the opinion of the law, and considered him guilty, totally regardless of Kepiro's personal conduct.

The basic tenet of penal law is that the guilty must be brought to justice, while there must be no punishment without a crime.

But Dr. Kepiro had to suffer simply because he belonged to a segment of society that was made to be a scapegoat; because he was an officer of the Hungarian Royal Gendarmerie; because he was collectively incriminated in another era, again for something he himself did not commit; and because in time and space he was connected to an event that caused a dark stain on our history through the actions of other individuals. We have to realize that Kepiro had to suffer and die – just because the interests of some special groups demanded it. And the five years of emotional anguish caused by his persecutors, the trials, the worries, and the pain of false accusations did kill him. The guilt for his death falls on those who caused it, irresponsibly, and without any concern that they targeted an innocent, precious life.

I close with Dr. Kepiro words he penned toward the end of his exile, as a message to us, to his survivors:

“My conscience is clear, because I always fulfilled my obligations toward my homeland according to the traditions of the Hungarian Royal Gendarmerie, ‘Faithfully, valiantly, honorably.’”

God sees all!

Dr. Zsolt Zetenyi

Budapest, October 2, 2011.

Appendix I.

The indictment

Budapest Office of Prosecutor

Form 347/2007.

The accused is Dr. Sandor Kepiro, who was in custody on September 14, 2009, 9:30 am to 5:05 pm, but currently is at large,

ex gendarme captain,
born on February 18, 1914, on Sarkad, Hungary
mother's name: Rozalia Kovacs
address: 1023 Budapest, Frankel Leo utca 78.1/10.
dual Hungarian-Argentinian citizen

was serving in January 1942 as a gendarme 1st Lt. at the Mako Gendarme School of the V. Szeged Regional Gendarme Command.

At this time, partisan attacks proliferated in Bacska, the area recently re-attached to Hungary. To deal with these, Dr. Peter Fernbach, the deputy-lieutenant proposed a military search of the town of Ujvidek, which was then ordered by the Chief of General Staff of the Royal Army, Ferenc vitez . Szombathelyi on January 15, 1942. (Order number 4089/Eln.I.1942). It was to be carried out with the combined participation of the Hungarian Royal Army and the Hungarian Royal Gendarmerie. The Command of the V. Army Corps was responsible for conducting a thorough search.

The Commander of the V. Army Corps, Ferenc Feketehalmy-Czeidner, issued his order on January 18, 1942 (1300/Eln.I.-1942), giving general directions of this planned cleansing operation of the nearby towns and townships. Based on this order, Brigadier General (then Colonel) Jozsef Grassy issued his written command (136/k6.-1942.) on January 20, 1942, detailing the specifics of the search.

Accordingly, they organized patrols for the search. Two police officers or two gendarmes made up each patrol, supported by three soldiers. They were to search the houses and check the identity of the residents. At the command of the patrol leader, suspicious individuals were to be arrested and handed over to those whose specific duty was to gather the arrested people at specific collection sites. There were also escorting patrols, who led the arrested individuals before the screening committee, which was located in the Levente-house.

Two hundred and forty patrols were organized to conduct the search. They grouped 10-12 search-, gathering-, and escort-patrols together, headed by – depending on the composition of the patrols – either a police or gendarme officer whose duty was to direct and supervise the patrols.

Gendarme Captain Dr. Kepiro Sandor was one such group commander. He arrived to Ujvidek on January 20. That evening, gendarme Lt. Col. Lajos Gaal gave an orientation in the Bani Palace to the arriving gendarme officers, including the accused. Lt. Col. Gaal emphasized, alluding to a higher command, that this search is to affectively cleanse the area, and therefore the otherwise unauthorized use of weapon will be allowed.

Gendarme 1st Lt. Dr. Kepiro Sandor and Gendarme Captain Dr. Imre Kun had scruples about this permissiveness and therefore requested it in writing, which Lt. Col. denied, saying that it is not customary to give such a command in writing.

This was the prelude to the Ujvidek cleansing, which started on January 21, at six a.m.. At the briefing that took place the following evening, Grassy expressed the dissatisfaction of their superiors with the current results. He ordered to gun down those civilians who cross over the erected cordons. He said, "The purpose of the search is to let the trash and dirt flow away."

1/1. The patrols under Dr. Kepiro's supervision started their search on January 23, 1842, from Gyula Gombos Street, then continued on Ferenc Rakoczy II. Street toward State-flag Square. In this process, his subordinates, whose names are not known, pointlessly shot the Steinberger couple at the corner of Gyula Gombos and Sarajevska Streets, Ferenc Scheer at 102 Ferenc Rakoczy II Street, and, in her bed, Iren Weiss of 40 Ferenc Rakoczy II. Street.

1/2. In the morning hours of the same day, at the command of Dr. Sandor Kepiro, the patrols arrested Mihaly and Samuel Mariassy, who, according to the residents living in the area, were firing upon the entering Hungarian soldiers in April, 1941, when Ujvidek was returned to Hungary. Soon after the arrest, their brother-in-law, police officer Janos Karpaty arrived, and asked for their release, personally vouching for them. Dr. Kepiro did not accept that, and the Mariassy brothers were escorted to the screening committee in the Levente-house.

Later in the day they were executed along with several hundred others.

1/3. The accused was supervising the patrols with 1st Lt. Janos Nagy on the Ferenc Rakoczy II. Street at around 11 a.m., when they met a group of about 30 prisoners. The military truck belonging to the Command of the V. Army Corps arrived to hand out hot tea to the patrol members. The accused asked the truck driver if he was willing to take the prisoners to the swimming pool, where the executions were carried out. The truck driver was willing. The prisoners were boarded onto the truck, and Janos Nagy volunteered to escort them. He directed the truck to the sport grounds, which was also used for executions. When they arrived, the execution squad was on a break, but Janos Nagy ordered them to execute the people on the truck. They ordered the prisoners to gather at a certain place and killed them with a two minute-long fusillade.

Therefore, Dr. Kepiro Sandor played a role in the illegal execution of people.

Evidence:

- The verdict of the Court of the Hungarian Royal Army's Chief of Staff (Br. 448/43/118.; papers of investigation 93-401)
- The testimony of Janos Nagy (papers of investigation 1673-1687)

Based on the above facts,

I accuse

dr. Képiró Sándor of committing a war crime, based on the People's Courts Order (§ 11/point 5, part 3.), legitimized by Article of Law VII./1945, and Penal Code §165.

The Capitol Court has authority and jurisdiction to judge the accused actions – based on Be. §16., para(1), point c) and Be. §17. para(3).

I report that the travel expenses and translation fees related to the investigation were 3,010,021 Forints.

I propose that the court

- shall sentence the accused to a prison term based on the Penal Code §42, para(2), point a), and
- make the accused be responsible for the incurred expenses of the investigation, and
- summon to the trial Dr. Sandor Kepiro as the accused and Dr. Zsolt Zetenyi as the defense attorney

I also propose that the court shall conduct the investigation in the order the evidence is listed in this indictment.

Budapest, February 3, 2011.

Dr. Zsolt Falvai

Leading prosecutor

Appendix II.

Regarding the law applied in Dr. Sandor Kepiro's case

The official parties' (later only the communist party's) delegates were the judges of the so-called Peoples' Courts of the 1945-1950 period. These Courts mainly served the purpose of political revenge and establishment of power, and their jurisdictional activity was gravely unconstitutional. Their oppressive and criminal practice of "law" was based on the 1440/1945 (May 1) Order of the Department of the Interior, which was modified and expanded with the 81/1945. (February 5) Order of the Department of the Interior, and was elevated to statutory level and retroactively binding with the XXXIV. Article of Law of 1947, and the VII. Article of Law of later 1945. The prosecutor based his charge against Dr. Kepiro on §11/5 of the aforementioned Peoples' Court order.

The armistice agreement between the Allies and Hungary was signed in Moscow on January 20, 1945. According to its 14th paragraph, "Hungary will assist in the arrest of persons accused of war crimes, their handing over to concerned governments, and their litigation."

This simply stipulate the calling to account of persons who have committed war crimes according to international law, and left the methods of fact-gathering and sentencing up to the Hungarian government. The creation of the "Peoples' Courts" and their operation by orders that retrospectively rendered then-lawful past actions unlawful, and the creation of new penalties and retributions for these newly defined "crimes" were the voluntary "sovereign" decisions of the Soviet-dictated Hungarian government.

This retroactive new law only superficially resembled the post-WWII international criminal law. It greatly differed from the previous penal system both in what it considered unlawful and what it considered as appropriate punishment, yet it judged past actions with the newly made laws, offending the very basic principles of penal law. They practiced this political administration of "justice" for years, executing hundreds of people with legally questionable proceedings and verdicts, ordered by judges who were appointed by the communist party.

The international agreement did not require the abandonment of the principle of *nullum crimen, nulla poena sine lege* ("no crime and no punishment without law"), according to which an action cannot be called a crime and cannot be punished if that action did not break any laws in force at the time it was taken.

People committing true war crimes did break laws in effect at the time, and could have been brought to justice in compliance with the international conventions of Geneva and Hague, as these were in agreement with the laws of the Hungarian Military Penal Code X./1920 Article of Law, and §. 113-119 of the II/1930. Article of Law, as well with the still-in-effect III./1848 Article of Law. Therefore, there would have been no need for newly made and retroactively effective laws to comply with international requirements. But in order to serve their intended political purposes, the Peoples' Courts' orders of 11/§5 and 13/§2 broadened the definition of what constituted unlawful action or accessory to crime and made these changes retroactively binding. They also prescribed more severe sentences than the previous Military Legal Codes would have justified, thus violating the principle of *nullum crimen, nulla poena sine lege*.

The Charter of the Nuremberg International Military Court served the basis for the post-WWII international penal code, which was created shortly after the Hungarian Peoples' Courts Orders. Most of the actions defined by the Charter of the Nuremberg International Military Court as war crimes or crimes against peace and humanity were already contained in the pre-WWII international treaties and laws. The Plenary Session of the United Nations

confirmed what these actions are in their 3/I. resolution of February 13, 1946 and 95/I. resolution of December 11, 1946. The New York Convention of 1968 confirmed which crimes never become subjects to the statute of limitation.

The Constitutional Court of Hungary in 1994 established (2/1994. AB) that only § 11./5 and § 13./ 2 of the Peoples' Courts orders correspond to the above international Charter, and therefore nullified the other nine-tenths of the Orders on grounds that their dealing with the previous regime's government officials and workers did not meet the legal standards of constitutional or international law. While these nullified orders were barred from being used in the future, the previous decisions and sentences based on them still remained and remain in force.

Penal Code §165 states under "Other types of war crimes" that a "Separate article of law" remains in effect regarding these, referring to § 11./5 and § 13./ 2 of the Peoples' Courts Orders, which gained statutory force with the VII./1945. Order of the Department of the Interior, and was modified and expanded by the 1440/1945. (V. 1.) and 81/1945. (II. 5.) Orders of the Department of the Interior.

The punishability of the actions blamed on Dr. Kepiro became subject to statutory limitations in 1960, and while this lapse was never reversed, the legal facts of the case became exempt of statutory limitations according to the international decree in 1964, re-awakening the possibility of calling him to account.

According to international law, the "war crimes and crimes against peace and humanity" became exempt of statutory limitations with the New York Convention of the UN, on November 26, 1968. This decision then was made to be a part of national law as well with the addition of the 28./1970. Article of Law to the Hungarian Penal Code.

Nevertheless, even without the formal addition of this law as a separate article, the above Charter has already been a part of Hungarian law, because the Charter, effective through December 31, 2011, is necessarily binding to all nations of the UN.

Appendix III.

The acquittal. (The decision part)

**Capital Court
19.B. 155/2011.**



IN THE NAME OF THE HUNGARIAN REPUBLIC

According to the trial conducted by the Capital Court in Budapest on May 05, 06, 10, 19, 24, 26, 27, 2011, and on June 08, 16, 20, 24, 29, and 30, 2011, and according to the

judgment

as pronounced on July 18, 2011, and publicly elaborated on July 19, 2011,

the accused gendarme captain Dr. K é p í r ó Sándor

(born on Sarkad, February 18, 1914.; mother's maiden name Róza Kovács; address: 1023 Budapest, Frankel Leó út 78. I/10.; having Argentinian-Hungarian dual citizenship)

is acquitted of the charge

of behavior described under Point 3. of the §11./5 People's Court Order and the §165 of the Penal Code, and is thereby acquitted of committing a war crime.

The 4,397,980 Forints cost of the investigation is the responsibility of the government.

Reasons

(The full text of the judgment is posted on the website of the National Legal Foundation at www.nja.hu/ , among other web locations)

Budapest, July 18, 2011.

Dr. Béla Varga

Council Chairman