

# REFORMING REPRESSIVE STATE APPARATUS – THE CENTRAL EUROPEAN EXPERIENCE

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**Reforming Repressive State Apparatus – The Central European Experience**

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In June 2007, People in Need (CZ), in cooperation with its partners at the Pontis Foundation (SK), the Polish Helsinki Committee (PL) and the Hungarian Helsinki Committee (HU), staged a seminar called: ***“Reforming Repressive State Apparatus – The Central European Experience”*** under the auspices of the Czech Minister of Foreign Affairs, Mr. Karel Schwarzenberg.

The seminar was organized with the support of the International Visegrad Fund, the Ministry of Foreign Affairs of the Czech Republic, and the Opens Society Institute’s “East East Program.”

People came from across Central Europe to this seminar, as well as members from the civil society in several democracy assistance target countries such as Belarus, Moldavia, Georgia, Ukraine, Serbia, and Burma. This publication contains the presentations that were given at the seminar so that it could be studied, analyzed and used by those in attendance and those who were unable to make it.



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**TRANSITION**

# Table of content

Introduction	7
<i>Igor Blažević</i>	
<b>Opening Panel: Reform and Lustration, Discontinuity and Continuity</b>	<b>11</b>
Steering Between Legitimacy and Professionalism	12
<i>Jiří Schneider</i>	
The Challenge of Judging People by the Previous Regime's Files	14
<i>Ján Čárnogurský</i>	
The Czech Experience: the State Security's Dissolution and the Lustration Law	17
<i>Jan Ruml</i>	
Why the Normative Order is the Priority, not Economics	22
<i>Vojtěch Cepl</i>	
The Hungarian Experience: Failing to Make Accountability Happen	25
<i>Ferenc Koszeg</i>	
<b>Workshop 1: Dismantling or Reforming the Intelligence Services</b>	<b>29</b>
Have We Succeeded?	30
<i>Jaroslav Spurný</i>	
Starting from Scratch	32
<i>Oldřich Černý</i>	
Overcoming Identity Crisis through New Challenges	34
<i>Juraj Kohutiar</i>	
Make Parliamentary Control Meaningful	37
<i>Andor Šándor</i>	
Turbulent Developments in Slovakia after the Split	40
<i>Ivan Šimko</i>	
<b>Workshop 2: Reforming the Interior Ministry and the Police</b>	<b>45</b>
Main challenges: Political Interference and Corruption	46
<i>Milan Žitný</i>	
Police: a Protected Island of Communist Heritage	49
<i>Ferenc Koszeg</i>	

Police Reform Still a Long Way to Go <i>Jan Ruml</i>	55
The Slovak Case <i>Ivan Šimko</i>	59
<b>Workshop 3: Archives</b>	<b>63</b>
The Slovak Institute of National Memory <i>Miroslav Lehký</i>	64
What Happened to the Secret Police Archives in Poland <i>Zbigniew Nawrocki</i>	67
Ongoing Controversies with the Polish Archives <i>Irena Lasota</i>	71
The Fate of the Former GDR's Archives <i>Tomáš Vilímek</i>	74
The Importance of Founding the Institute for the Study of Totalitarian Regimes <i>Pavel Žáček</i>	78
<b>Workshop 4: Reforming the Army</b>	<b>83</b>
The Effect of International Developments <i>Ivan Gabal</i>	84
NATO Membership as a Driving Force for Reform <i>Bánk L. Boros</i>	86
Transforming an Obsolete Colossus into a Modern Army <i>Stanislav Koziej</i>	90
Establishing Civilian and Democratic Control over the Army <i>Ivo Samson</i>	93
Short Sighted Planning and Long-Term Consequences <i>Jiří Šedivý</i>	97



# Introduction

Igor Blažević, *People in Need*

Every country that has made the transition to democracy from some form of authoritarianism has had to figure out what to do with the repressive apparatus that was left behind when the former regime crumbled. Following the democratic Velvet Revolutions that spread across Central Europe in 1989, each of the Visegrad countries (Czech Republic, Hungary, Poland and Slovakia) has had to determine what the best course of action would be for reforming the inherited armies, interior ministries, police units and intelligence services, so that they could become institutions that benefited a democratic state rather than propped up a single party or strongman. Even though nearly 20 years have passed, there are debates that have continued about how these reforms were handled in each of these respective countries. It may still be too early to pass historical judgment over what was done, but that does not mean that meaningful lessons can't be learned from analyzing and comparing what was done and what the outcomes have been like in these countries that experienced such radical transformations at the end of the Cold War.

The “*Reforming Repressive State Apparatus – The Central European Experience*” seminar was structured around specific topics connected to reform: Lustration, Intelligence Services, Interior Ministries, Archives and Armies. Each theme touched upon one of the complex areas that needed to be transformed by outlining what was done, what wasn't and how things look in retrospect. Naturally, there are times where these topics overlapped, especially when you look more closely at the experiences of each individual country. As a result, try and take each section as part of a whole, rather than as a singular symptom that has been pulled out for scientific research.

A prestigious group of politicians, journalists and academics have been brought together so that those presenting and in attendance could assess the record of what took place in Central Europe since the Iron Curtain fell. What had worked? What had failed? What opportunities had been missed? How much continuity do institutions need? Not only did these questions help to shed light on how far things had come in this corner of the world, but they also helped to generate useful recommendations and insights for pro-democracy activists in countries either in the earlier stages of transformation or trying to cast off an authoritarian regime.

## Opening Panel: Reform and Lustration, Discontinuity and Continuity

By the end of 1989, decades of Soviet power over Central Europe seemingly evaporated over a matter of weeks. Dissidents, ex-political prisoners, and human rights activists went practically overnight from smuggling samizdat and writing manifestos to being thrust into political power. These former ‘enemies of the state’ were now put in charge of running the government and transforming the institutions that had previously oppressed them and their fellow countrymen. However, removing the leaders from power would end up seeming relatively easy when compared with dealing with the mess that they ended up leaving behind.

By taking over the state’s indoctrinated bureaucracy, the new democratic leaders were forced to deal with what to do with the personnel and structures that had been in place for decades. What should be done with them? Who was worth keeping and who was a threat? Which institutions should be consigned to the dustbin of history and which ones were essential to the functions of a modern state. Which was more important: continuity or discontinuity for establishing a legitimate and effective governmental institution? Could the state’s repressive apparatus be reformed or dismantled?

The opening plenary addressed these questions by taking a cursory look at the reforms that were made in general and at the various lustration laws that were passed to deal with some of these complex issues. Czechoslovakia passed its first lustration law in October 1991, followed by other countries in the region, including Poland, Lithuania, Bulgaria, etc. However, the topic has remained controversial for ethical, practical and judicial reasons. Has the concept of lustrations passed the test of time? Is lustration, like democracy, always imperfect, but at the same time the best tool among those available for blocking the previous regime from re-gaining power?

### Workshop 1: Dismantling or Reforming the Intelligence Services

Authoritarian governments by nature use force as a means of maintaining order over their society. As a result, the secret police, along with a tangled web of collaborators and informants, has often served as the main tool of repression for these regimes. Governments in general are expected to maintain order and stability as a means for fulfilling their half of the social contract, but at what cost. In the former Soviet Bloc, the various regimes spent far more time policing its own citizens, rather than protecting them from the various external threats. In many cases, this was usually done under the name of gathering “intelligence.” Apparently, history is not without its sense of irony.

After 1989, the democratic leadership in Czechoslovakia, Hungary and Poland followed different paths. From today’s perspective, who made the right choice? Did

the reforms in the Czech Republic and in Slovakia go far enough? Or they have gone too far? What role did the secret service networks play in Mečiar's consolidation of power in Slovakia? Did secret service networks facilitate in some way the return of the former-communist parties to power in Poland and Hungary?

Over time, new perspectives and questions have been realized about how the countries of Central Europe went about reforming or completely dismantling the intelligence services that had existed under communism. Should these reforms have happened immediately after the democratic breakthrough? Would it have been better, let alone possible, for it to wait? Was the reform or dismantling of the secret services driven more by the need for justice, than on the need to develop a culture of constitutionality, law and order and efficiency? Has there been enough parliamentary oversight over intelligence agencies? What role can the media and the NGO sector play as a watchdog over a country's intelligence services?

Many of the questions will never be definitively answered, but that doesn't mean that the issue raised by them won't have to be reckoned with by countries that are in transition.

## **Workshop 2: Reforming the Interior Ministry and the Police**

Interior Ministries are generally the governmental institution directly responsible for handling a country's policing, national security and immigration matters. Naturally, when the "new democracies" took root in Central Europe, the Interior Ministry was one of the first major institutions that needed to be transformed from a body that oppressed its own people to one that represented their hopes and aspirations. However, this is easier said than done.

A country's internal affairs need to be managed 24 hours a day, seven days a week. As a result, the reforms that were made to the Interior Ministries and the police forces in each respective country proved to be among the most difficult and controversial. Unlike other institutions, there was no way to start from scratch, which meant that reforms often happened in an ad hoc or piecemeal fashion.

What mistakes were made? What opportunities were missed out on? What lessons have been learned? These were the guiding questions for this panel.

## **Workshop 3: Archives**

When a crime is committed against an individual, usually it is something that the victim wants to forget as quickly as possible. But, when crimes are committed against an entire country can they afford to be forgotten?

One of the more macabre legacies of the communist era's State Security forces and internal police units were the records they left behind, that is if they weren't destroyed. The primary evidence of the authoritarian states' repressive apparatus has proven to be

“Pandora’s Box” in many ways. Were the materials in these archives trustworthy? How much of the archives did the secret services manage to destroy or doctor? Should the files be opened up to the public? How should they be preserved?

It has been something that each country has had to solve in its own way and along its own timeline. The information is so sensitive and potentially explosive that it has to be handled with extreme care. But, where should the line be drawn, when the contents of one file could shed light on why someone’s life was destroyed years ago or turn a prominent political figures life upside down in the present? There are no simple answers.

### **Workshop 4: Reforming the Army**

As part of the Soviet Empire, the armies of Central Europe’s authoritarian states were usually massive forces of conscripts serving under far too many generals and high ranking officers at the USSR’s beck and call. What were these new democracies supposed to do with these huge armed forces that had been designed for the Cold War? The armies were overstocked with out of date, useless equipment, unnecessarily large, and far too expensive to be maintained. How could the armed forces be scaled down and modernized? Should it be done quickly or gradually over a longer period of time?

There were personnel issues that had to be solved. The entire hierarchy of the armed forces, from the Ministry of Defense down to the lowest ranking officers, had been usually under the control of the military and secret service cadres loyal to the Communist Party. Did they all need to be gotten rid off? Were their adequate civilian candidates to manage a transformation of the armed forces for the democratic governments? Was it necessary to put the armed forces under civilian control?

In many cases, these issues remained unclear until accession into NATO became a viable option. However questions still remained. Was participation in international peacekeeping efforts and cooperation with existing military alliances, such as NATO, helpful or even crucial for the process of the reforming the army?

*Igor Blažević is Head of Human Rights and Democracy Department of the People in Need*

# **Opening Panel: Reform and Lustration, Discontinuity and Continuity**

# Steering Between Legitimacy and Professionalism

*Jiří Schneider, Program Director, Prague Institute of Security Studies, Czech Republic*

Let me start with a few introductory words about the design of this seminar's. Although the program is divided into sectors, I would strongly encourage a view that looks not only at each and every sector individually, but on the transition of security, law enforcement and intelligence services as a whole. This is even more necessary, since our program fails to cover one important area, the judiciary, which requires special attention. One of the key lessons that we learned from our Czechoslovak experience, was that we realized too late how important the judiciary would be in implementing a whole set of new legislation. Discontinuity and continuity were deliberately put into the opening panel's title, because of their importance in terms of legislation and human resources.

In all honesty, the democratic transitions in Central Europe that we are going to talk about here were regime changes. We shouldn't be afraid to talk about our experiences with regime changes, since all of us here have been through it. This is the substance at the heart of what some euphemistically call "transition." The basic objective of a democratic transition is to transform an oppressive, corrupt regime into a government that is accountable to its people. However, by changing a regime, we need to face the heritage of that "ancien regime," while determining whether the basic structures of the new political system are sufficiently based on some principles of governmental accountability as a whole.

In my opening remarks, I want to mention two key words that are essential, in my opinion, for debating the reform processes of whatever part of the security sector we have in mind: effectiveness and legitimacy. Focusing on only one is not enough to ensure a successful reform. Some people say that we shouldn't care about legitimacy, that we should rely on the 'professionals' inherited from old regime, because they already know how to work most effectively within the security field. However, we would be ignoring the fact that these people have neither legitimacy nor trust in the eyes of our citizenry if we take such an approach. Yet, if we just focus on legitimacy, then a logical step would be to dismantle armies, secret services and police, as was done with the dissolving of the traffic police in Georgia and in Ukraine. Even when it might be better to dismantle part of a security apparatus that is corrupted from the

bottom up, should this be done with all of the various elements of a country's security forces? Look at what happened in Iraq when this was done.

A certain level of continuity is important, because it takes time before you can have both legitimate and effectively trained people in all aspects of the security sector from intelligence agencies to law enforcement. My thesis is that a balanced approach should be used that keeps both in mind. A security apparatus after transition must strive to be both legitimate and effective. If we build new security and armed forces that have almost no training or skills, we will be held accountable by our citizens and are likely to be seen as illegitimate for not providing what it is expected – effective security to its citizens. How can we do this? This is the key question for us here and I think that there are lessons to be learned from studying what has been done in Central Europe since 1989.

***Jiří Schneider** is the former Political Director of the Ministry of Foreign Affairs of the Czech Republic and also served as the former head of the Policy Planning Department of the MFA. He has served as an International Policy Fellow at the Open Society Institute in Budapest. From 1995 until 1998, Mr. Schneider served as the Ambassador of the Czech Republic to Israel. Mr. Schneider also served as an MP of the Czechoslovak Federal Assembly from 1990 until 1992.*

# The Challenge of Judging People by the Previous Regime's Files

*Ján Čárnogurský, Former Prime Minister and Minister of Justice, Slovak Republic*

Each Central European country that got rid of communism in 1989 has faced a common set of challenges regarding how to uncover former agents and collaborators of the secret services, how to get rid of them or what to do with them once they have been identified. As far as I am aware, no Central European country has managed to solve this dilemma with a singular all encompassing law. In most cases, a law was passed against the former secret services, their agents and collaborators soon after the collapse of the communism regimes and the installation of a new political system. However, public opinion shifted over time or certain political groups no longer considered this initial law to be sufficient to address the problem, so additional laws were passed after a political battle. In some cases even further legislative changes were deemed necessary. The lesson learned was that it was unrealistic to expect countries to be able to solve the problems stemming from the previous repressive regime's former secret service agents with one single stroke.

There are a variety of challenges that stem from whether or not these new democratic governments and societies could successfully handle the problem of dealing with former secret service agents and their collaborators. The information being used to determine who was involved in these past activities is more or less based on the former secret service's files, documents, lists, and registrations. There are instances where this has led to human tragedies. People, who had considered themselves opponents of a communist regime and had spent several years in prison during communist rule, were suddenly identified as collaborators of the former secret service. Figuring out how to tackle this type of problem is a serious challenge.

The new democratic governments realized that they needed certain parts of the former secret service in order to provide security for its citizens even after a democratic transition took place. Let me give you a good example. A few years ago an Irishman, who was one of the IRA's leaders, was apprehended in Slovakia. He had been negotiating a delivery of weapons with an Arab arms dealer for the IRA. The Irishman was detained and later extradited to Great Britain with a help of a twenty-year veteran of the Slovak secret service that had starting working for the Slovak intelligence during the communist era and continued to do so even after the change

in 1989. He had good connections in the Arab world and was able to run this highly valuable secret service operation for Great Britain and Slovakia.

At the time, I was a Minister of Justice in Slovakia and the Slovak media was in the midst of another campaign calling for the secret services to get rid of all former communist secret services' people. I remember being told by a British Ambassador in Bratislava that Great Britain disagreed with this media campaign, because some of the former secret service agents were just too useful. In some cases, it can take ten to fifteen years to establish relationships and to gain the trust of certain contacts necessary for proper intelligence. In essence, this highlights another problem in dealing with former secret service agents and collaborators – how to separate the ones who still have an operational value for the new democratic government from the ones who represent a potential threat. Each country has dealt with this dilemma in the way that it considered most appropriate.

However, I should elaborate further on what I think is the most challenging problem, the sources from which we get the information about former agents and collaborators. The files from the former regime and its secret services are frequently one of the only sources for discovering the secret service agents' identities that the new governments are trying to remove from various state institutions. The former secret service's officers created these files and therefore, they are problematic in many ways. To what extent should these files be used to make serious decisions about people after a democratic transition happens? It is a very sensitive issue that any new, post-authoritarian, post-repressive government will be forced to confront.

Currently, I am working as a lawyer in Bratislava and serving at times as the legal representation for people who have been listed as agents of the former secret services. Naturally, after these individuals' names have been publicized, their worlds are turned upside down and they are looked upon with scorn by the general public and by their social circles. Is this fair? They didn't sign anything and their cooperation with the former secret police was not voluntary or by choice. They met with secret service officers, because secret service officers came to them and requested a discussion. During this time period, it would have been impossible for them to deny such request. For example, if a secret service officer came to a priest's house to discuss the issue of the church or how to make the conditions for the church better, the priest had no option but to talk with the officer. At the time, the priest might have thought it was a harmless conversation, but now, suddenly, the priest finds himself on the list of secret service collaborators.

I am representing about 7 to 8 people against the Institute of National Memory, who found themselves in this position after this institution published the list of former secret service's agents and collaborators. My clients are trying to clear their names and to have their rights restored by the courts. We have won one case so far, when

it became clear that a secret service officer had lied in his internal reports about the stand and attitude of my client. Even though, we have lost two or three cases, but these are in the process of being appealed to a higher court.

In these types of cases, it is essential to determine who the burden of proof should fall upon. Is my client's responsibility to prove his innocence by challenging the Institute for National Memory about his past or is it the Institute's responsibility to prove that my client was guilty of collaborating with the state security? It is a world of difference. However, in all likelihood, each country will have to solve this problem in their own way.

In my opinion, the laws enabling the public disclosure of agents and the activities of the former secret service are necessary. At the same time, it is necessary to give the accused people the legal possibility of defending themselves in front of independent courts. By doing this, it is possible to persuade the general public that the necessary dealing with past crimes is done in a just way and that these former injustices are not redressed by committing new ones.

*Ján Čárnogurský is a graduate of Charles University's School of Law in Prague, who defended political opponents during communist regime. In 1989, he was imprisoned for political reasons. In 1991 he was appointed as a Slovak Prime Minister and 1998 Minister of Justice. He is founding member of KDH (Christian-Democratic Movement)*

# The Czech Experience: the State Security's Dissolution and the Lustration Law

*Jan Ruml, former Interior Minister, Czech Republic*

The Czech communist regime was transformed into a democratic government following a brief revolutionary uprising of students that was quickly joined by the general public. The Czechoslovak student and public uprising took place in the streets, but was not violent. Instead, the transition to democracy was the result of a negotiated agreement between the key political forces at that time, civil society and the communist authorities. Essentially, the communists handed over power voluntarily, or, more precisely, in a peaceful manner by basically acknowledging their defeat and departing temporarily from the political stage. However, as a consequence, the first steps taken after November 1989 failed to deal radically with legacy of the previous regime. This is one of the reasons why the Communist Party was not banned immediately after the transition. The communists agreed to round table discussions and let the democratic forces take over their place in Parliament. At the time, it looked as though they had been so thoroughly defeated that they would never again constitute any real political force. Later, however, it became apparent that this was an illusion.

In Czechoslovakia, we concentrated mainly on the institutions that had served as the extended arm of the Czechoslovak Communist Party, that is, the bodies of state power that formed the apparatus of repression. This apparatus included the State Security and the Federal Ministry of the Interior; and to a lesser extent the national Ministries of the Interior at the level of the Czech and Slovak Republics. These institutions were supposed to be responsible for the protection of the life, health, and property of the people, but each also played a part in upholding the repressive national security system targeted primarily at “dissent” citizens. When I look back almost twenty years later, I think the actions that we took should have been far more radical.

There were various means that we could have been used to break the continuity with the previous regime's personnel, but we only made use of a few of them and did not thoroughly apply them. We succeeded in passing certain legislative measures for achieving discontinuity, such as the restitution law, the lustration law, amending laws that apply retroactively to crimes committed during the communist period, a law

criminalising communism, a law on judicial rehabilitation, and so on. However, it has been more difficult to achieve discontinuity with the previous regime in the area of personnel than we originally thought.

When I took office at the Ministry of the Interior, the State Security service had already been abolished and its members were suspended. We were then faced with the question of what to do with them. After the revolution, citizens' committees emerged that used the files that were made accessible and personal testimony from various people to decide which members of State Security and the Ministry of the Interior would be allowed to continue to serve in the new security units, and which were required to leave unconditionally. Throughout their existence, these citizens' committees were surrounded by a certain amount of chaos. Often they vetted people who did not warrant vetting and failed to do so in cases where it was warranted. It was not a credible tool, but it was a demand from that time period. The people wanted to be able to decide for themselves who was guilty and who wasn't.

Another tool, a more sophisticated one, though obviously no panacea, was the "lustration law". This law established guidelines that would disqualify someone from occupying certain positions in: state administration, state security units, specific parts of public administration, education, and higher education. In short, the law stipulated that anyone who had been a high-ranking functionary in the Czechoslovak Communist Party or a member of the State Security (as an agent or collaborator) or a member of the People's Militias (a communist militia) was unable to hold certain public positions. Certainly, the lustration law has served as a more or less reliable filter for screening people working in state and public administration. It has helped to ensure that public officials are worthy of the people's trust and genuinely loyal to the new democratic system.

The lustration law has been challenged many times before the Constitutional Court. The Constitutional Court has ruled against every case challenging the lustration law, basing its decisions on principle of legal discontinuity with the previous regime. The Constitutional Court ruled that it is impossible for laws not to be scrutinised under the value system created by a pluralist democracy. The court's opinion was supported by a European Court of Justice's decision that ruled that democracies have a right to defend themselves when the principles that uphold democratic rule of law are at risk. As a result, the requirement of loyalty in state administration and state services was deemed, but as something essential for a democracy.

The biggest problem of the lustration law was what my colleague, Čarnogurský, spoke about – determining the criteria that would be used to judge the people under review. The biggest controversy has been over how to distinguish who had and had not acted as agents of State Security. These judgements were made based on the State

Security's own records, in that, whoever was listed in these files as an agent of State Security genuinely was one. However, it is questionable whether or not these lists of agents can be regarded as credible.

In the Czech Republic and Slovakia, judicial protection exists as a basic principle. When a person attempts to defend their name in court against being listed as a State Security agent, the burden of proof falls on the Ministry of the Interior. An example of a valid piece of evidence would be the existence of the person's hand-written signature that confirmed a promise to perform a certain task to assist State Security. There are also various other kinds of written materials that can be used as evidence that a person cooperated with State Security: materials containing information on how many times the person met with State Security and what they talked about, and records regarding financial transactions. Wherever it is not clear whether or not someone worked with the State Security or whenever this kind of evidence is missing, the court will rule that the person did not consciously collaborate with State Security, even if his/her name is on one of those lists. When this type of case happens the person is not subject to the terms of the lustration law.

Today there are debates over whether the lustration law is still necessary and whether it perhaps should be replaced with a more modern national civil service law, which still does not exist in the Czech Republic for various reasons. My belief is that in decisions pertaining to whether members of the former regime can work in one function or another with the current government, greater weight should be given to the considerations connected with the protection of democracy rather than violating someone's rights by punishing them for actions that were not illegal at the time that they were taken.

When I took office at the Ministry of the Interior, a paradoxical situation existed: how to create a professional security corps while thoroughly purging the ranks of the former state security apparatus. It was an illusion to think that an entire troop of new police officers that were professionals in their field and guilty of nothing in the past would just fly in from Mars. Despite these antithetical demands, we managed to build up the civilian intelligence service from scratch by dissolving the State Security and building up our counter-intelligence services with new people.

The same approach was not applied across the board in every unit connected with security. In the case of the army, military intelligence and military counter-intelligence, a partial purge was conducted gradually. There was less emphasis on ensuring that these services were filled with new people. Today, there are people who worked in these services under the previous regime that are still working within the same intelligence community as before.

Another extremely complicated problem that had to be dealt with was that of "family mafias". An example of this would be a situation where you found a father

and a mother both working for State Security. Let's say that the father worked in a counter-intelligence unit, monitoring people who refused to fall into line with the communist regime and the mother worked in the archives. Perhaps their children also worked for the police, but not in State Security, but in an area to which the lustration law does not apply. Add to that that they had relatives and extended family working for the prosecutor's office, in the justice system, and in other security units. So even though we dismissed half the family, they just moved into private security agencies and made use of their relatives to obtain information from state security units. Breaking up mafia rings made up of family clans, which are similar in many ways to organized crime, has proven to be extremely difficult. We are still wrestling with this problem these days.

Allow me to finish by noting that I don't think we messed up everything. Sometimes, when we take a critical look back at the recent past, it seems as though we're sitting here like a group of exiles nostalgically reflecting on everything we could have done better. I believe that we succeeded in laying sound foundations for democratic states in the countries of Central Europe. Today we live in a pluralist democracy, enjoy freedom of the press, constitutionally protected rights and freedoms, and the most essential things are more or less in order, even if we didn't take advantage of every opportunity we had. It is important to remember that the victorious party, in the Czech Republic's 1992 elections, was the one that first introduced a program for radical economic transformation, a transformation that was not restricted by any rules except the "invisible hand" of the market. In my view, the Civic Democratic Party (ODS) did a poor job at executing the transformation, or executed it in such a way that we are still dealing with the consequences today. That's the way life goes sometimes. The things we have not dealt with yet, such as confronting our past (which is more a moral than a security issue today) will have to be dealt with in the future.

In the Czech Republic, a number of legislative tools have been developed to deal with the communist past. The law that criminalised the communist system is one such tool. In the penal code, we managed to amend the rule against retroactivity by extending the statutes of limitation, so that people who committed crimes under communism could still be prosecuted. The Bureau for the Documentation and Investigation of Communist Crimes has been established to help with this matter. Even so, only a fraction of all the people, who committed human rights crimes under communism, have been brought to trial. Among the part of the population that lived through the brutal 1950s this continues to be source of an enormous sense of injustice. Our generation will no longer be able to help this. Today we see moving to the fore a new generation of young people, historians, and politicians who have the will to confront the past. In my view, I think that we are reaching the point similar to the one in Germany, when they started de-Nazification fifteen years after the Second World

War. Much of the generation guilty of collaborating with the communist regime has proven incapable of serious reflection and self-reflection about our past.

I would just like to return briefly yet to the matter of purging personnel. I think that there were two reasons why the purge was not executed thoroughly even after the lustration law went into effect. First, there were fears that certain sections of state administration, such as the police, the judiciary, the educational system would collapse. The other reason was that when the democratic breakthrough initially took place we essentially felt that we had won. Naively, we thought there was no need for radical purges or that people from the previous regime would no longer dare to endanger a pluralist democratic system and the rule of law. At the outset, this was genuinely the case, but over time it became evident that many people, who had been dismissed from their posts returned to their jobs, and that some people had stopped being loyal to the democratic system. That is why today we recognize in hindsight that the purge of the public sector should have been much more thorough.

*Jan Ruml is a former dissident, Charta 77 signatory, who became involved in the Civic Forum information campaign in 1989. In April 1990, he was appointed Deputy Interior Minister of the Czech and Slovak Federal Republic, from 1992 to 1996 he was Interior Minister of the Czech Republic. In November 1998, he was elected as a Member of the Senate of the Parliament of the Czech Republic. Between December 2000 and November 2004, he was Deputy Chair of the Senate for Foreign Affairs.*

# Why the Normative Order is the Priority, not Economics

*Vojtěch Cegl, Professor of Civil Law, Czech Republic*

I am glad that the broad range of problems of a society transitioning from a totalitarian state towards democracy has been narrowed down to the problems of law and order, which far too often has been neglected. The main mistake of our transition in Czechoslovakia was that our efforts focused almost exclusively on the economy, privatization and the introduction of a market economy. I used to say that we have a government of accountants instead of government of laws. Unfortunately, law and order are deeply disrespected in our country, perhaps as part of our post-communist heritage. The official communist doctrine believed that the state and its laws would wither away and as a result, lawyers were merely servants of the regime, while the economy was at the core of Marxist theory. There were thousands of economists, who were more exposed to the outside world and that already spoke English during communist rule. On the other hand, lawyers were recruited through a negative selection process. They were carefully chosen by class origin and similar ideological rubbish. Perhaps this is the reason why the main mistakes of our transition took place in the areas connected to rule of law, why we today talk about the judiciary crisis and why courts are disrespected in general. However, the most important changes during a transition to democracy are not in economics, but are in the normative system where the rules of human conduct are shaped.

The normative system is a general term that encompasses the interconnectedness of the legal system and moral system. It has three levels. The first level is legislative, i.e. what is written in legal text, which was what we concentrated our efforts on. Everybody wanted to write new laws in the utopian belief that once we wrote down the new legal texts everything would be settled, and everybody would be happy. Then we realized that laws had to be enforced. So we found ourselves at the second level being faced with the question how the institutions were working and whether or not the laws were being enforced. This was partially in response to the popular outcry that better law enforcement was needed. Today, we are reaching the third level, the psychological level, which includes a level of conscientiousness regarding the law, where the rules of human conduct are internalized in the hearts and minds of the people. That is to say, not only are rules known, but that the people are in agreement with them.

Changing people hearts and minds is a long, slow journey. It is an educational process of changing the moral rules of the society, family, church, schools, associations, states, and media.

If we just focus on the essentials, most people would likely agree that a Constitution is the starting point for forming a legal order. If changing a Constitution seems like the fundamental problem to start with, it is important to look at the scope and sequences of institutional reform in the aftermath of a regime change. What should we do on the first day, the next day and the day after next? The most essential functions of states are to provide and organize the delivery of general goods and services, such as energy, water, food, shelter, transportation for its citizenry. In addition, it is of utmost importance to maintain law and order by establishing and enforcing the rules of human conduct and cooperation. These are the most important aspects that define every society, not the economic order that it chooses. The economy is a product of this order and of the rules of human conduct. Take ownership as an example. When one thinks about it one realizes that it is a purely legal concept. The idea of ownership without law makes no sense.

Ownership is something that should be protected from the very beginning. That was another mistake we made. We didn't provide a robust legal framework designed to protect private ownership. I think sometimes that French revolution slogan "liberté, égalité, fraternité" was distorted by the left, because it should be "liberté, égalité, propriété". Property is an extension of personality; it's a condition of personal freedom. Every attack on private ownership is attack against the person. This is a basis of our whole civilization. This is a basic condition for a market economy and its miracles, which we believed would work spontaneously after the transition happened. Based on the experiences of the Czech transition, this is not necessarily the case. First of all, you should have law and order, a degree of international security and perhaps basic order in health care. These are all first-day core functions of the state. Fundamental changes with the Constitution are second-day tasks.

When I reflect these days on the process of transition to democracy, Cuba often comes to mind. I have been participating in a working group that comments on drafts of the Cuban Constitution being proposed by some of the leading dissidents. I was horrified with the drafts that have been presented, because these are what I would call a Soviet style constitutional draft with extremely attractive rights aimed at trying to please everyone. It was similar to what we had in our Constitution: free health care, free education, the right to a clean environment, etc. These are goals and aspirations for the future, but they have no place in a constitution. Imagine a person in Usti nad Labem, an industrial city in North Bohemia, going to District Court to demand his constitutional right to clean air. Situations like this are part of the reason why people in all totalitarian regimes don't believe in a constitution in general. Communist

constitutions have always been propagandistic brochures with wonderful aims that were unenforceable, so they weren't worth paper they were written on. They were never written to help develop a culture of constitutionalism.

What we really need to do is to change the people. That's why the lustration law was in fact the greatest intellectual contribution of Czech transition. Institutions are important, but the people working in the institutions are even more important. The theorem I would like to propose is that without lustrations, restitution and condemnation of previous regime you can not make a real transition. This is the basic premise in a concentrated form. It is also necessary to provide the victims of previous regimes some rectification. Above all the state has to send a clear signal to the society about what's right and what's wrong, because these normative structures are what hold a society together. Building a normative system is the greatest and most precious treasure of every society. In times of transition, we need people who have legitimacy and moral integrity and a background that makes them trustworthy. Furthermore, they have to be qualified. People should be specialized professionals in a modern society that know their business well. Even the most honest dissident is sometimes not qualified for a complex job. And that is the hardest challenge of any transition. The most important is selection of the people on the proper places.

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# The Hungarian Experience: Failing to Make Accountability Happen

*Ferenc Koszeg, Founding President of the Hungarian Helsinki Committee, Hungary*

Talking about the Hungarian experience I would like to quote a sentence said by late Prime Minister of the first freely elected Hungarian government, Mr. Jozsef Antall, who once said “You should have made a revolution.” This sarcastic remark was made to the radicals of the moderate conservative party, the Hungarian Democratic Forum, who demanded after the transition and after becoming part of the government more radical treatment for former communists. They wanted to fire former communist officials from their offices and to organize trials against specific people. Mr. Antall’s opinion was that after the peaceful changes it was not possible to do what they wanted. Instead, he called the changes in Hungary a “constitutional revolution.”

The transitions that occurred in Central and Eastern European countries were peaceful, with the exception of Romania, and covered by legal steps and parliamentary decisions within the framework of a constitutional democracy. This constitutional approach set up limits even for demands that might have been right morally, but it also created political and legislative obstacles for more radical steps. However, the people calling for radical revenge against former communists had not always been so radical.

The founding fathers of the Hungarian Democratic Forum, who were mainly writers and historians, believed that it was unrealistic to discuss or to demand changing the former regime. They were convinced for a significant period of time that the most they could hope for was to be partners and to share power together with “nationally minded” communist leaders. So they were in new territory when they suddenly started to demand more radical measures against former communists.

On the other hand, the Liberal Party, the Alliance of Free Democrats, had been set up by dissidents. This was the most consistent party demanding that transition should mean that the regime would change. This was the only party which was concerned with the questions regarding what should happen to the officials and the politicians of the totalitarian regime. They were extremely clear that everything needed to stay within a legal framework. They said that nobody should be put on trial simply for their former political activities, but they did state in their 1989 party program that the people who had committed crimes under the old regime could and should be tried.

Lustration, in the sense of what was done in the Czech Republic, never made it onto the agenda in Hungary. This political development stems from the fact that the two countries' experiences were rather different. In Hungary, as it's well known, there was so-called "goulash communism", a relatively liberal form of communism. For example, Hungary did not experience the "us" versus "them" phenomena, like the Poles, where it was clear who was on one side politically and who was on the other. In Hungarian political life before the democratic changes, there was not always a clear gap between those in power and those out of the power. Of course there was a gap but it was more like a continuous line. On the one end of the spectrum, there were certain members of the democratic opposition, who were permanently harassed by the police, but not arrested. There was some kind of tolerance against the open enemies of the regime in Hungary. On the other side of the spectrum, there were reform-minded people even in the leadership of the party. The leaders of the democratic opposition may not have had connections to party leaders, but they did have connections to economic experts, who were sometimes asked for advice by members of the politburo, especially as the economic crisis became clear in the last years. So actually opinions of the democratic opposition on these days reached the party leadership. This is one of the reasons why it was actually not on the agenda in Hungary after 1989 to have a law on lustration as it happened in the Czech Republic.

Another reason for Hungarian failure to tackle the past lies in the fact that the main competing political forces – the moderate conservative Hungarian Democratic Forum and Liberal Alliance of Free Democrats – had different demands and ideas which mutually blocked each other. Let me give you one example. A member of the Parliament, on behalf of the Free Democrats, suggested putting three groups of people on trial, who had committed crimes during the communist era. The first group concerned members of the former communist leadership that had submitted false data to the Parliament about the state of affairs. The second group was reserved for those who carried on with the construction of the dam on the Danube after Parliament decided that construction should be stopped. The third group concerned those responsible for secret service agents that carried on wire-tapping and following members of the new political organizations and political parties despite the fact that after January 1, 1989 law on freedom of association came into effect and the activities of these organizations were absolutely legal. This was the concrete demand submitted by the Free Democrats to launch criminal investigation against those who were responsible for these violations. When asked in the Parliament about this proposal, the Minister of Interior did not even respond. Instead, he suddenly revealed that the terrorist "Carlos the Jackal" had spent a long time in Budapest and in Hungary through the support of the Hungarian secret service with the knowledge of the Communist Party leadership. He promised to try those people who assisted the terrorist. At the end, nothing happened and nobody was

tried. There were some members of the ruling coalition who wanted to try those who committed certainly the most serious crimes thirty years ago in the most brutal phase of communism. We are talking about the people who murdered other people, who tortured people to death. The Constitution Court ended this intense political debate by ruling that the persecution of these people is not possible in a constitutional state because these crimes happened too long ago. This decision is still debated even now.

In short, accountability did not happen in Hungary as a consequence of all of these factors. Nobody was held responsible for their activities before the changes and after seventeen years many people still fear that it's a problem that will remain unsolved. Recently, there were demonstrations that turned somewhat violent in Budapest. The police reacted by using brutal methods against the demonstrators. The protests were organized by people who believe that the transformation of the regime in 1989 was incomplete and that the country needed new changes that would practically constitute a new revolution. I do not personally agree with that opinion, but it is clear that many Hungarians still have serious feelings that something essential was not dealt with during and after the transition that should have been.

***Ferenc Koszeg** he was an activist member of the Hungarian anti-totalitarian dissident movement during the communist era. From 1990 through 1998, he served as a Member of Parliament, holding the office of the Vice President of the Committee on National Security between 1996 and 1998. Mr. Koszeg is the founding president of the Hungarian Helsinki Committee.*



# **Workshop 1: Dismantling or Reforming the Intelligence Services**

# Have We Succeeded?

*Jaroslav Spurný, journalist, Czech Republic*

When we debate about the reform and transformation of the secret services from totalitarian secret services to democratic intelligence services in Central Europe following the fall of communism in 1989, we need to talk about how it all happened, whether the new democratic intelligence services have ceased being a threat to democracy and whether traces of such a threat remains. This debate should also cover whether or not these services currently perform at a level comparable to the rest of the world, and if we are capable of defining the quality levels of performance of secret services at all.

I think that the actual, fundamental reform of intelligence services has yet to happen in the Czech Republic and surrounding countries. Reforming the intelligence services has to mean more than just technicalities. Let me give you an example. The current debate in the Czech Republic is about whether the three secret services that we have – military intelligence, BIS and ÚZI intelligence – are too much or too little. Should there be an external secret service and an internal secret service that work alongside each other? Should there be a military secret service and a civilian secret service? I don't think this is where reform lies.

Any overall reform will inevitably fail if doesn't address two basic conditions. In order to build a good intelligence service, we must have high quality personnel in charge – minimally one leader, but hopefully more than one. We have to find someone who actually knows what needs to be done. Who understands what the term 'security risk' really means. Who knows the extent to which he wants to serve the state and who can define precisely his relationship to the country's citizens. Without a leader with impeccable character and without politicians, experts, journalists and the public knowing precisely what they want, we won't be able to pull off a real reform of the intelligence service.

The secret services role and impact have been greatly overestimated since the early 1990s until the outbreak of the second war in Iraq. Perhaps during the Cold War they played a big role, but when we're speaking about their actual influence, it has been overestimated. People have often thought that the secret services have amazing information, know almost everything about them and the world, or that they can find out anything using their sophisticated technology, satellites and who knows what. But it is simply not true. The Iraq War has taught us that, if nothing else. Due to this

realization, a question has emerged regarding exactly what area is within the domain of secret service. My response to that question would be that the secret services most important task in the Information and Internet Age is the ability to create accurate and insightful analyses that deal with various security risk situations, anticipated threats and suggest solutions to deal with these threats. Their effectiveness would be measured through the quality of the timely analyses they provide, rather than simply their ability to produce tons of written materials just because that's what intelligence service is supposed to do.

In my opinion, the secret services' transition, from totalitarian to democratic, has not actually been a real reform. Initially, it was all about getting rid of people from the previous regime. This cleansing process wasn't a hundred percent successful and now my question is: to what extent do these people tainted with the past have the right to work in the new secret services and to what extent do they represent a risk? There are two viewpoints. The first is ethical. It basically says that people who worked in the repressive units of the Communist regime since they participated in human rights violations should not have the right to work in the new intelligence services for purely ethical reasons. On the other hand, there is a second argument concerning expertise. On this point, I would argue that people who work in the repressive secret services or police do not have the mandatory expertise needed for the secret services in a democracy. The Communist secret services worked within a totalitarian state and operated on an entirely different set of principles. They were working within a completely different apparatus at their disposal that had different practices, laws, and interrogation techniques. As a result, the training, expertise and experiences that they have are of no particular use in our democratic environment, because the times have changed.

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# Starting from Scratch

**Oldřich Černý**, former director of the Office for Foreign Relations and Information, Czech Republic

Let me start by saying that there isn't a one-size-fits-all approach for how to deal with a totalitarian state's repressive apparatus after the transition to democracy happens. Everything depends on the context and on developments before and after the changes takes place. If you look back to 1989 and compare three countries – Poland, Hungary and Czechoslovakia, there were some evolutionary processes going on in Poland and Hungary, while this country looked like it was covered by ice. Everything was at a stand still. While Poland was getting ready for round table discussions in 1989, the Czechoslovak police were beating up people commemorating the 20th anniversary of Jan Palach's death. Palach was a Czech student who immolated himself to protest the Warsaw Pact in 1969. The Poles were having their first somewhat free elections, while in this country Václav Havel was serving out his last prison sentence. While the Poles, and possibly even Hungarians, had time to reflect on what was happening, get rid of the most compromised people and prepare for a new era, nothing similar was occurring in Czechoslovakia. This was the reason why we adopted a different approach in 1989, than the Poles and Hungarians, when it came to reforming the intelligence community.

In retrospect, I don't think we reformed anything, because there was actually nothing to reform. The former regime's security services were impossible to reform, because their structure was incomprehensible. They influenced not only the political life in this country, but also the social life, culture, youth, religion and so on, so on. So this is why we had to, after certain period of hesitation, undertake drastic measures compared to other countries in reforming our services. However, as I said, we actually did not reform anything – at least when I am talking about the internal security services. Instead, we tried something that had not been attempted before. We tried to build a new one from scratch.

After 1989, the democratic leadership in Poland, Hungary and Czechoslovakia followed their own paths. Seventeen years later, it would be hard to say who made the right choices. Our Czechoslovak approach had certain advantages, in that we made a more definitive break with the communist past. Therefore, we did not suffer from any identity crises like our Polish or Hungarian colleagues. I still remember having a very nice dinner with a close friend (not that I am going to tell you which country

he was from), who after several glasses of wine, said to me: “Well God, we still can’t believe it. I spent 25 years of my life doing everything I could to restrain NATO and now for the past five years I have been doing everything I could to help my country join.” We didn’t have those identity problems. Also, unlike Poland and Hungary, we made reasonably sure that as few skeletons as possible would come out of closet at the least favorable moment. On the other hand, we found out the hard way that it takes more than several months in a training course abroad to make a good spy or counterspy. It takes years. We also learned that dissidents don’t make very good spies or counterspies, because by nature they are independent minded people – not the optimal talent when you traveling in intelligence or counterintelligence circles. Looking back at 1990 through 1992, even though we chose a completely different path than these other post-communist countries, I don’t think that we’re any worse off.

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# Overcoming Identity Crisis through New Challenges

*Juraj Kohutiar, former head of Counter-Intelligence at Sloval Information Service, Slovak Republic*

Allow me go back in time to the historical turning point which occurred at end of the Cold War. The Cold War was an intelligence war without equal and to a large extent the war was really one which was fought between intelligence services. When the Cold war finished, the secret services went through an identity crisis. There were many voices, including those from the US Congress, claiming that the world is safe and that the time had come to dissolve secret services. It was extremely unclear then what secret services would be needed to do in the future. When I recall those times, any plans being made about the future were convoluted – who is a friend, who is an enemy, who will we be working against, who will our allies be?

At the Cold War's end, secret services were massively downsized during the transformation that began in both Western democracies and in Eastern European post-communist countries. In the West, the pace was slow and the process was done under no stress, but there was complete chaos in the post-communist countries. When one organized system is forced to change into another one, there is always transitional period when people look for a new vision and arrangements. That was the situation in the post-communist countries. There were several more pressing issues than reforming the secret services. There were the bigger economic and political issues that overshadowed the transformation of the secret services. Furthermore, there was a deficiency of people, who were qualified enough and uncompromised by the past regimes, who could give a professional judgment on how these reforms should be handled. In such a situation, mistakes are almost inevitable. It is difficult to avoid them.

There were other changes happening as well that also affected the secret services. There was the growing awareness about human rights. Since secret services almost by their nature intrude upon an individual's human rights, there were legitimate questions about under what conditions they should be allowed to do so. For understandable reasons, the atmosphere was not too friendly toward secret services at the time. The revolution in information and communications technology brought up other issues, since with the arrival of computers, cell phones, and the internet it suddenly seemed that it is possible to get just about everything from the internet or from a satellite. It

appeared that the need for the human collection of intelligence was going to largely be an issue of the past. In almost no time, the technical “IT people” and analysts became the nobility of the secret services. A field operative working on the ground became something obsolete, something from the past, and someone who violated human rights. These issues intensified the identity crisis of the secret services.

At the same time, there was also an explosion of organized crime unfolding in the post-communist countries. With the exception of the Italian mafia, Europe was fairly unfamiliar with such extensive organized crime networks. It was a new phenomenon. There were disputes about whether or not organized crime was an issue that secret services should handle. The Council of Europe’s parliamentary assembly took an unhelpful stance that discouraged secret services from working against organized crime. The final consensus adopted was that secret services could target organized crime if it was undermining the roots of the state. However, international terrorism started to grow to everyone’s surprise. All of the sudden, those dissolved human operatives, who had been trained on the ground, started to be highly sought after. These two developments help an entirely new trend to emerge for us, the growth of international cooperation, which raised whole new sets of questions regarding how much could be shared, with whom, and about what.

The dispute about what should be done with former secret service agents began in the context of this identity crisis and amidst this chaos. There were the ethical issues surrounding these figures. They were “bad guys,” who had violated the human rights. Furthermore, the people from these services were clearly symbols from the previous regime and symbols matter in politics. And, then there were the practical issues. Some of these guys knew their field extremely well and proved capable of continuing to work for a new government. As it was already said, the situation in every country was different. As Mr. Koszeg mentioned, the divide between “us” and “them” in Hungary was less distinct, but in the end every country has had to solve this problem in its own way.

Czechoslovakia dissolved more of its former secret service agents than Hungary or Poland. I am not a believer in the zero solution that means no old guys at all. I am more in favor of keeping a very limited number of veterans in the service so that they can help build new services. Use them for limited time, but tell them as clearly as possible up front that their services will only be needed for a limited amount of time. Give them five to eight years, dismiss them and pay them well to retire. Both the old guys, who remained in the service, and the people who are dismissed should be well paid. Is this really the group of people that a government should put in a desperate economic situation? If this happens, it creates too much room for conspiracies, revenge, or revealing of old secrets that could be unpleasant for a new government. This was difficult for the post-communist countries, as it will be difficult for any repressive regime that makes the transitions to a democratic form of government. But at least, the

change is somewhat easier now because these experiences can be drawn upon. Books have been written about the transitions, and there is international assistance now for new democracies. When dissidents under repressive regime systematically prepare for a regime change it is a positive thing. We didn't prepare and, as a consequence, we were not prepared for the changes that needed to be made.

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# Make Parliamentary Control Meaningful

*Andor Šándor, former Director of the Military Intelligence Service, Czech Republic*

In 1989, the Czechoslovak intelligence service had a fourteen state security departments. The first state security department was civil intelligence, the second was civil counterintelligence, the third was military counterintelligence, whose members were not members of the State Security, and I could go on and on. The military intelligence service, or the intelligence service of the General Staff of that time, was not organized and was not charged with suppressing the human rights of Czechoslovak citizens within the Czechoslovak Republic and was never given the task of monitoring Czechoslovak emigrants abroad. This is absolutely necessary to stress, so that we distinguish between members of what we might call the repressive forces and members of something which may have been communist, but was just an intelligence service.

I never served in the communist security services, so I don't have much of an idea about the expertise of the people who were spies and informants at that time, but it seems quite certain that they have no expertise in the current system. Former agents and certain types of collaborators were excluded from continuing to work for the state, because of the lustration law. Yet, perhaps enough attention wasn't given to how these collaborators ended up on this particular list. It is clear from the available archives there are a number of people that were listed either without their knowledge, or who never did anything to suppress human rights or human freedoms. These people have been sidelined from their professional life due to the lustration law, which fails even to state how long a person is not permitted to apply for any state administration position. When you commit murder in this country, after maximum 20 years you are again free. In the cases of lustration, no one is trying to find out anymore whether these members of the state security did anything criminal as part of their work for the state security. I don't wish to create the impression that all state security agents were innocent people. I don't want to say anything of the kind. It is hard to come to terms with the past, when the only member of the former state security brought to trial in the Czech Republic was some small fish, Vykydal or Vykypil, who's name I forget. General Lorenc, the former head of the StB, spent a couple of months in detention and now lives comfortably in Slovakia, having received no punishment. Furthermore,

he has been working as a consultant for a large investment company, J&T, which has substantial property holdings and business dealings in the Czech Republic.

I'd like to stress that when the Communist regime fell here, we thought everything would only be good from then on. It was a time period marked by the end of the Cold War, when Bush Sr. was talking about a new world order, and we thought we were entering into an era of global peace. Then in 1990, Saddam Hussein visited Kuwait without invitation. A year later, the bloody breakup of Yugoslavia began, which ended with over 300,000 dead. The Soviet Union was in the process of being broken apart into Russia and various small successor states, which created new potential threats to our security. Given these situations, it seemed to me that the fact the military intelligence service hadn't been dismantled in Czechoslovakia, as the other intelligence services had, might have been a positive thing. General Procházka took command of the service in 1993. He had had an opportunity to experience personally the 'righteous wrath of the people' under communism, when he worked for 14 years in uranium mines in the labour camps. Such a person had a clear moral authority that guaranteed of a certain degree of correctness in the development of military intelligence services for this country.

I would also like to say something about parliamentary control over the intelligence services. As it is currently set up, parliamentary scrutiny does nothing more than just passing the buck, because the members of parliament are usurping the right to oversee the security sector mainly so that no one else has that right. Instead of providing actual controls, they are just playing a game. They pretend that they are overseeing something, and the heads of security services pretend to give them something to oversee. There has never been an opportunity to verify what the heads of the intelligence services present to the parliamentary committees. I wouldn't have any problem, if someone in this country was empowered to look into the so called "live" operational files. I would just prefer if politicians weren't the only one in charge, because, with all due respect, some of them can't keep a secret. Is it possible that this work could be done by people who are honoured and esteemed by the society? They would undergo security screening and then if there were matters of dispute, they would be able to look into these "live" files. This would be a solution for the current situation in which the head of the intelligence service is the only one who decides whether a file is live or not. A file might be live for 15 years and no one, including the parliamentary overseeing body, is allowed to look at it. The creation of an actual supervising body could prove to be helpful to the heads of the intelligence services. Currently, whenever there is a scandal that pops up in the media, there is no one who can come investigate and analyze the problem in such a way as to be able to say whether or not laws have been violated. The fact that there is no solution for this within the current state of affairs is damaging to the quality of democracy in our country. I would be for parliamentary checks that are

really about checking and not about pretending that something is being checked when in fact we're not checking anything.

In conclusion, I'd like to talk about how many services there should be. The debates about whether a country of this size should have two, three or four services are merely academic. I think the current political elite still don't understand how the intelligence services could help them govern. Politicians have to know what they want from the intelligence services and then, in practice, they have to prepare and thoroughly implement three principles for these services – assigning tasks, coordination and supervision. In addition, the debates regarding whether or not the intelligence service is effective sometimes seem beside the point – if the intelligence service is capable of bringing information important enough to save the lives and property of people in this country once every five years, then it is undoubtedly effective. Trying to tie the effectiveness of an intelligence service to the number of files, the number of agents, or the number of collaborators seems to me a very unwise approach. We are developing this apparatus so that it can help us govern our country in the same way that we invest in an insurance company. As citizens we are responsible for insuring our own health and our own property. We choose such an insurance company that will react quickly and effectively if something happens. Our intelligence system should definitely be able to work as collective insurance tool, but I'm afraid that currently this is simply not the case.

***Gen. Andor Šándor** is the former Chief of Defence Intelligence of the Czech Republic. He is an acknowledged expert in security, terrorism, and crisis management.*

# Turbulent Developments in Slovakia after the Split

*Ivan Šimko, former Interior and Defense Minister, former Minister of Justice, Slovak Republic*

During the most sensitive period of Czechoslovakia's transition from a communist state to one with democratically organized institutions, I was in Prague as member of the Federal Assembly. I was the Defence and Security Committee's Chairman in the Chamber of the People in Czechoslovakia's Federal Parliament when the first basic measures were adopted dealing with security. At that time, there were three main decisions regarding the reform of the intelligence services.

First of all, the former State Security, the communist secret police, had been dissolved, along with the crucial decision of separating the intelligence service from the executive police apparatus. The new state security service that started to take shape in post-communist Czechoslovakia was not authorized to use any repressive measures. It was built up as an intelligence service that would work solely with information and its agents were forbidden from using any instruments of power to which the police are entitled to use in democratic states. The new intelligence service was no longer part of the criminal justice system. This was one set of the fundamental changes that we made.

The second important measure was related to establishing mechanisms for public control over the secret services through Parliament and its relevant committees. Today we have special committees in Slovakia, which are entrusted with specific powers for overseeing the Slovak intelligence services (SIS) and military intelligence services.

The third important measure dealt with the issue of the intelligence services' personnel. Even though the former State Security had been formally abolished, the new intelligence service had still not been fully cleansed of staff that had worked for the Communist state's intelligence services. Several people had remained as a part of these new services, usually under the pretext that they were indispensable professionals. The process of dealing with this personnel issue took place in three phases. The first phase was political. Immediately after the Velvet Revolution, the first personnel nominations were decided on a straightforward political basis. The second phase was shaped by the Lustration Act that the Federal Assembly adopted which, despite the discussions held around lustration past and present, contained a certain aspects of moral evaluation and condemnation of the prior regime and of those who collaborated with it. The third

phase is technocratic and is still being implemented today. Nowadays, the screening of the intelligence services personnel no longer contains a moral element, but instead it views collaboration with the former Communist state security as a security risk to the current democratic one.

Both the Czech and Slovak Republics inherited the consequences of this process that I have just described, because these first basic decisions were adopted before the Federation split. Simultaneously, there were parallel developments going on in each republic, which were sometimes contradictory and intensified over time. For example, when we were still at the Federation stage, there was a decision to separate the intelligence service from the police and from the executive branch, but since the countries split the development in Slovakia has gone in the opposite direction. The embryo of today's Slovak intelligence services began to emerge within the Slovak section of the then-Ministry of the Interior, i.e. within the Slovak police. Even though the Federal Assembly had adopted a controversial but relatively clear lustration law, in Slovakia a different lustration law was adopted for the Ministry of the Interior, one which was much softer. The Slovak interpretation of lustration defined that only those who originally were part of the so called "internal enemy" section of the former secret police could not work at the interior ministry any longer. This obviously gave rise to the distinct developments, which then continued after the split.

Before I go further in describing developments in Slovakia, it's necessary to understand that any measures which have been implemented were a reflection of the of the overall power structure at the time. The reasons why and how the previous dictators gave up power are essential for any further understanding. The events that took place between 1989 and 1990 are to a certain extent unrepeatable. In essence, the communist power-holders retreated under the pressure of the Cold War to the point that it almost looked like the Communists handed over power voluntarily. Of course, it wasn't exactly like that, but the people who were in power at that time evaluated the situation and concluded that it was unsustainable. And this had an enormous influence on further developments. Mr. Čarnogurský has already reminded us that in the government of national reconciliation – the first government after the Velvet Revolution – the democrats had a single-vote majority. The former Communists had a constitutional majority during the first freely chosen Federal Assembly in June 1990. And the former Communists – though now in different political parties – still hold a majority in some of our Parliaments through today. Naturally, this has had an enormous impact on the measures that were adopted, on the entire lustration process and on the thoroughness of the personnel changes that later took place.

In 1990, immediately after the democratic breakthrough, our priority was to establish firmly political conditions in which there would be no more political prisoners, in which people would have freedom of speech, freedom of assembly and

freedom to travel. All of this happened. Democratic institutions were successfully developed and they exercise a certain control over state power. At the same time, we realized over this time span that we are again and again faced with the problem of values, a problem of justice. How is it possible that those who were responsible for the previous regime's crimes are able to be so active today in the public and private sectors with absolute ease? As if nothing happened? It is certainly a moral problem and, as human beings, we are very sensitive to moral problems. However, in addition to the moral issues, this question has had practical implications.

Democratically organized institutions are founded on the presumption that those who control state power will respect these institutions and democratic rules. The premise depends largely upon them being aware that if they break the rules, they will be held accountable and have to assume the responsibility. We have a relevant experience with this issue in Slovakia, which leads me to the final part of my presentation, which is the development of intelligence services in Slovakia after the split.

After the split, Vladimír Mečiar and his populist HZDS political party were in power for a relatively long period of time, with the brief exception of the Moravčík government. The political competition between governing and opposition parties respected the basic democratic rules of the game to some extent, except for one very serious decision undertaken by Mečiar in 1997 during a fairly lively contested debate over how presidents should be elected. In accordance with the Slovak Constitution, we from the opposition organized a citizens' initiative calling for a referendum that would decide about the direct election of the president. The constitution clearly makes such a referendum possible and we fulfilled all the requirements stipulated by the constitution for such initiative to happen. However, Mečiar simply decided at that time that the Minister of the Interior should not print the paper with the pertinent question. This was a classic case of disrespect for the rules and, yet, the opposition was at a loss about what to do and quickly crumbled.

Mečiar's disrespect for the basic rules regarding how democratic institutions are supposed to function happened at the same time that major decision about the Slovak intelligence services were being made. The son of President Michal Kováč had been kidnapped and there were a very serious suspicion (and in my case it is a conviction) that the Slovak intelligence services were behind it. A proper investigation of the case proved to be impossible because Vladimír Mečiar took advantage of events when, after President Michal Kováč's term ended and parliament failed to agree on a successor. Mečiar himself assumed presidential powers for a short period of time, which gave him the authority to grant amnesty for the people involved in the kidnapping. Even though at the time the opposition and the public could not create enough pressure to force Mečiar and his government to respect democratic rules, after the foul with the referendum, the opposition had learned a lesson. The opposition managed to re-

organize itself by preparing measures for the possibility that Mečiar's government might not respect the election results. Fortunately, we didn't need to do so. So this was in brief how turbulently the things have developed in Slovakia after the split of the Federation.

At the end of the 1998, Mečiar lost the premiership in the elections and Prime Minister Mikuláš Dzurinda emerged as the head of a new coalition government that put Slovakia back on the path of strengthening its democratic institutions and greater European integration. As a consequence of the previous Mečiar government misuse of the intelligence services, we felt that after resuming the power it was necessary to adopt further measures which would extend control over the intelligence services. As a result, supervisory committees with special legal powers were established within the parliament. Even though the parliamentary committees have limited opportunities to monitor the ongoing activities of the intelligence services, I still regard parliamentary control over the intelligence services as an important step forward.

Let me conclude, by remarking on the discussion about how many intelligence services we should have in Slovakia is even more complicated than in the Czech Republic for the simple reason that we have a greater number of intelligence services than you have here in the Czech Republic. This was caused by the initial mistake made in Slovakia that kept the intelligence service within the framework of the Ministry of the Interior. As consequence, certain elements of the intelligence services came into being in other ministries as well, and thus we have much more complicated situation that we have not yet managed to solve.

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## **Workshop 2: Reforming the Interior Ministry and the Police**

# Main challenges: Political Interference and Corruption

*Milan Žitný, journalist, Slovak Republic*

First let me sketch what the situation was like with the police and the Ministry of the Interior in 1989 following the Velvet Revolution. Czechoslovakia had three Ministries of the Interior -the Federal Ministry and one for each of the two republics. The Federal Ministry had two main branches within it that dealt with policing – State Security and Public Security. After the revolution, the State Security branch was eliminated and a new intelligence community was constructed from its remains. The public security branch that functioned during the Communist regime dealt with classic police work, i.e. criminal activity. Both the Czech and Slovak Interior Ministries were involved in this area as well.

Reforming the Public Security administration and the police force was overshadowed by the move to reform the intelligence services. No matter that seventeen years have passed since the Velvet Revolution and Czechoslovakia no longer exists as a country. We still have not seen any real reform in either the Czech or Slovak Republics that dealt with the areas of the police, their organizational structure and their methods of work.

In both republics, bringing about personnel changes within the police was one of the first major steps taken. Younger and less compromised police officers were sought out. Naturally, some things have not gone as well as were hoped. Creating a well-functioning police force should have been done through a legislative process in such a way that minimized the risk of the police and their work being politicized. This clearly did not happen in the Czech Republic and Slovakia over the last 17 years. How do we know? Political forces have succeeded in changing the chief of police, the organization's executive, during every parliamentary election or soon after. And, of course, like any other organization, when the person in charge leaves, the hierarchy below changes as well. How can we speak about the need for continuity in police work and its isolation from political influence if this continues to be the case? It is not the right way for things to be done. The current process by which a new person gets promoted to the position of police chief – a person who often has only been a district police officer with no experience in management or international contacts – is basically a form of corruption. Furthermore, this 'tradition' has slowed down the

general reform of the police. Through today, the work of the police continues to be influenced by politicians and political parties and our entire society suffers as a result.

The Czech and Slovak Republics both need to legislate something along the lines of a “law on career progression in the police force”. In Great Britain, for example, someone with political connections can not simply be promoted to the position of police chief following elections. The British have laws that make it impossible for someone to be promoted beyond a certain level within the police, if they fail to meet a set of carefully formulated criteria that measure an officers results and overall level of quality. The people that fulfill each set of criteria for a given post are allowed to keep progressing until they reached the highest positions. The Royal Prosecutor is chosen along similar lines. The systems are mutually linked, in that the police and the judiciary use a similar model, to largely ensure that the highest positions in these institutions are not occupied by people without appropriate expertise or who are otherwise unqualified. Of course, human error remains a factor, but the system is set up in such a way as to minimize its impact.

For our non-European Union colleagues that are here, I would like to call attention to the fact that having police that act amorally or are unable to differentiate what is legal is a typical phenomena in post-totalitarian societies. Their incapacity for adapting to the new rules is something that can only change over a longer period of time. Furthermore, in this post-totalitarian environment, corruption is typically widespread among members of the police and practically every part of the armed forces that work with information and criminal acts. These are problems that we have been dealing from 1989 right up to the present. I could cite any number of cases, but I am mainly bringing this up as examples of the types of significant problems that need to be addressed after a transition. These are issues that can't be solved by remuneration, even if remuneration needs to be part of the solution. In general, there are lots of ways to achieve a solution, but ultimately it will be up to each country determine how they want to solve such things.

Every country has to come to terms with its own internal deficiencies. In the end, even developed countries have been unable to avoid these challenges. Sometimes all you can hope for is that the “right man in the right place” will appear. You can have the best laws around, but decision making is still a human factor. For example, in Great Britain, a new metropolitan police chief took over and only to discover that the corruption ran deep throughout the police culture and organization and decided things need to change in 1997. The new chief of police invited two of his previous colleagues from another workplace to help him create a secret unit outside the inspectorate of the Interior Ministry. Of course, it was dealt with legislatively, which meant that it was debated openly in Parliament and the unit had its own budget, but no one outside of these three people knew where the unit was headquartered and who was working for

it. In 2002 or 2003, they decided to go public with their findings, because they had already compiled a great deal of evidence. In addition, these chiefs then went to other countries to make the experience gained in their work available.

The police chief's success was connected to the development of very specific and strict criteria by which they choose the members of their unit. I was fascinated by their use a so-called negative filter. The criteria they used concerned age, private interests, susceptibility to alcoholism, whether the candidate was divorced, whether his family was functional, and what he does during his free time. After running each prospective candidate through their police officer database using these criteria as a filter only a certain number of people remained for consideration. Then they established additional criteria for screening those who remained and settled on around 80 men. After completing their analysis, they attempt to make contact, very carefully, with each prospective member of their team so that the project would remain confidential. The unit they ended up creating recorded its first great success only after three years of existence. They ran a successful operation that revealed how some of their colleagues had re-sold confiscated drugs to the underworld. At this point, they did an impact study and showed it to all members of the Metropolitan Police. Afterwards, the units began working more effectively, because up until that time the solidarity of the corps had prevailed and no one wanted to turn in his colleagues. They managed to break this culture. That's an example from a country which has greater experience in creating a police force and similar units than all of us here have, but in spite of that they have had to focus on this to get a positive result.

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# Police: a Protected Island of Communist Heritage

*Ferenc Koszeg, Founding President of the Hungarian Helsinki Committee, Hungary*

Hungary's history is slightly different than the rest of the Central European countries that were part of the former Soviet Bloc. In Hungary, the period of transition had already started in 1988 when opposition groups established the Hungarian Democratic Forum. In 1989, the constitution was reshaped and the legal framework for a parliamentary democracy was set up during negotiations between the ruling Communist Party and the parties of the opposition. After the first free election in 1990, the majority of the economy had been privatized over the course of a few years. In some ways, the main goals of our transition – the establishment of a multi-party parliamentary democracy and the shift to market economy – had been realized relatively quickly and smoothly. However, the prime minister of the first freely elected government, Jozsef Antall, sarcastically referred to the transition as a “constitutional revolution”.

This “revolution” failed to address several important parts of public life and large institutions by allowing certain structures and procedures to be preserved. For example, numerous of the Socialist welfare state's benefits have been allowed to survive since the fall of communism, even though the economy in its present state is not able to finance them. A fundamental reform of the health care system has recently made it onto the agenda, but even the first small steps taken by the government sparked harsh resistance from the medical society and from the parliamentary opposition. Another one of the major state institutions that has been able to survive the transition largely intact were the law enforcement agencies. All of this is quite intriguing. It is understandable that people could be scared of losing social benefits or universal health coverage, but who would be scared of losing the Soviet style military structure of the communist police?

There was a general consensus about the future of the police among the main political forces prior to the first freely held election in Hungary that consisted of three main points. First of all, the police should be protected against any political influence. Second, the police should be demilitarized, i.e. it should not be a military organization, but a civilian organization under the control of a civilian administration. Lastly, the maintenance of public order should be partially a responsibility handled by

local government. In order for this last point to be possible, some part of the police responsible for public order would have to be decentralized and made subordinate to local authorities.

The decentralization of the police was the first part of the consensus to fall. Immediately after the first round of the general election in 1990 – weeks before the new Conservative coalition government would take office – the (old) Ministry of Interior's Secretary of State announced that the concept of decentralizing the police was no longer necessary. His argument was that decentralization was a tool in the fight against communist rule over the police, which effectively became obsolete when a freely elected government was successfully voted into office. Therefore, under this new government, it would no longer be necessary to change the centralized character of the police. This conviction gained more traction after the liberal opposition won the elections for local offices. For a short period of time in the early 1990s, local authorities had the right to veto the choice of appointed local police chiefs, but this right was taken away by a new law regarding the police, which stated that local authorities merely had the right to give an opinion on the performance of the local police. Any objections that were given by local authorities could only be evaluated by and acted upon by the higher ranks within the police.

Police officers in democratic countries are not considered to be soldiers, but rather as civil servants with certain special rights and duties. The German law on police explicitly states that policemen are not soldiers. In France, however, certain parts of the police are part of the military while other parts are civilian. In the Soviet system, all law enforcement agencies were explicitly military units. Poland and the Czech Republic were the first countries that successfully transformed their law enforcement agencies from military to civilian status. Romanian and Bulgaria followed suit just before joining the European Union.

In Hungary, the first democratic government's Minister of the Interior attempted to execute the program of transforming the police into a civilian organization. His initial move was to order that police officers, who for all intents and purposes were working as civil servants as part of a ministry, should become genuine civil servants. However, the Independent Trade Union of the Police, an organization founded by reform-minded police officers, was opposed to this move and sought support from the Constitutional Court. The Constitutional Court decided that an order from a minister was insufficient for executing such a measure, which in the Court's opinion had to be based on a law passed by parliament. Soon after, this minister resigned and his successor, who was a hard-line, right-wing Conservative, backed the military tradition of the post-Communist police.

The 1994 law regarding the police had not been drafted to transform the force into a civilian one, but rather the opposite – it actually strengthened the military status

of the police. The 1994 law elevated several rules that had previously been anchored in government decrees or in non-public orders to the level of a law. Under the new law, for example, police officers maintained the right to stop anybody for an identity check and were allowed to search the person's vehicle, parcel and clothing without any indication that the person might have committed a crime or misdemeanor. The new law also stated that a policeman must carry out even an unlawful command from a higher ranking officer, unless he himself would be committing a crime by doing so. This law was voted for by 90% of the members of Parliament – conservatives, socialists and liberals.

A 1996 law on the service relations of members of armed organizations firmly established in the legal code the military status of law enforcement agencies. This law was passed by the coalition government of the Socialists party, i.e. the former communists, and the Alliance of Free Democrats party established by former dissidents. Based on the passage of this new law, all of the armed organizations – the army, police, bodyguards, prison officers, and even firemen, officially became military organizations. Something like this had never even existed during the Soviet era. In essence, this law strengthened the hierarchical and centralized character of the Hungarian police.

There are several advantages for the police in having 'military status.' Members of military organizations are often tried by military tribunals, not by civil courts, depending on the nature of the crime. There are wage issues and benefits that come along with this status as well: higher ranks get higher salaries, a full pension at fifty years of age for officers with more than twenty years of service, a full salary for officers on the sick list, etc. On the flip side of this, by being part of the military, officers are forbidden from joining a political party, needs the permit of his commander for joining any association, may not criticize any decision of his commander, and can be kicked of the police if his/her performance harms the respect of the organization. One could believe all these rules and the entire military status were inherited from the Communist era, but this would be false. As a matter of fact, before the Second World War, the police – unlike the Gendarmerie – were a civilian organization and the long serving minister of interior at the time had managed to successfully reject all of the extreme right-wing attempts to transform the police into a military organization. The police only became part of the military in 1944 during the German occupation, when the pro-Nazi minister of the interior, who was later executed as a war criminal, changed their status.

One situation that did change was party control over the police that had existed during the communist era. In this instance, the police had initiated the fight against being controlled by the former Communist Party themselves, but it actually took things to the opposite extreme. The policemen's fight for independence from political influence was so successful that these days almost any kind of governance of police is

considered suspect. There is a paragraph in the law on police that states that the Interior Minister only “represents” the police before the government and the parliament. Can you imagine any kind of government office where a minister of the government only “represents” its constituents, rather than having the authority and responsibility of being in charge of governing that office. It is an absolutely unique provision within the law that covers the police that has had certain consequences.

Any governmental attempt to actually oversee the police has been immediately criticized by the opposition that the government is interfering in the police matters and trying to strip it of its independent status. The opposition has tried to take on the role of protector of the police’s independence, but to what end. There was recently a situation with the Budapest chief of police following a police clampdown over demonstrations, where he felt entitled to interpret legal regulations himself to the point where he announced that the police should not obey certain laws. As it is, the government has only been able to dismiss some leaders of the police after it had been discovered that serious crimes had been committed by police officers. However, I am afraid that changing some of the police officer’s leaders simply is not enough. In order to change character of the police that we inherited, the country will need to pass more comprehensive real reforms in the area of policing.

In my opinion, the most important task is to have accountability for the police. There is data that contends that less than 10% of the reported cases of crimes being committed by police officers go to court. To make matters worse, it is quite possible that 10,000 or more cases are still going unreported. Furthermore, even when cases go to trial, the results are often disappointing. In some cases, the officers are given a suspended prison sentence by the court that can be expunged from their criminal record. At times, this has been taken care of even before the time span of the suspended sentence had finished. This usually does not happen in cases involving regular civilians, but it is a frequent practice in cases that involve police officers. By making exceptions such as this, a police officer who receives a suspended prison sentence for having been found guilty of committing some type of crime, can continue working within the police services. Clearly such practices are not contributing much to the creation of a system where there is accountability for the police.

This lack of accountability applies to cases of bribery and worse crimes. Some years ago it was discovered that police officers were accepting bribes from drivers who had been pulled over for routine traffic violations. At the time, the response from leading officers was that even though this behavior may not be nice, it is understandable given how poorly police officers are paid. In another highly publicized and embarrassing case where a female motorist had been sexually assaulted by the police, the police spokesman’s response to the charges were that the allegedly rapists were probably fake policemen. There are two contradictory

experiences at work within the police force. On the one hand, police can count upon being protected by the corps even if they commit a crime against civilians. On the other hand, a police officer can be fired any time they criticize the unlawful commands of their bosses or if they break the principle of the inner solidarity. This situation has destroyed the moral core of the police.

How can accountability for the police be achieved? There is no single, simple solution, but there are several methods that have been used to make police more accountable. The establishment of a separate independent unit outside the framework of the police, as is the case in Great Britain, is one good suggestion that has already been mentioned. It would be set up by the parliament with the power to investigate cases where crimes or abuses of power have been committed by police officers. However, at the end of the day, the biggest challenge will be trying to convince police officers that they shouldn't help to hide the crimes committed by their colleagues. The prevailing attitude these days, which sometimes even has the backing of certain politicians, is that police officers are like military comrades and like soldiers they have to fight for each other. There is nothing inherently wrong with such an attitude when soldiers are in battle, but it is certainly not acceptable excuse if it is being used to cover up a crime committed by a colleague in uniform. The mores of a mafia, should not be the mores of a law enforcement agency.

This crisis cannot be solved only by making personal changes at the top of the organization. The government should finally execute reforms that were missed after the fall of communism. The police should be demilitarized, decentralized and effective civilian oversight should be imposed on the organization. It needs a minister who carries the political responsibility for the performance of the police and who is not scared to give orders to the national chief of the police. Furthermore, it needs an independent body that is able to examine complains against the police and is empowered to take effective steps against any unlawful action of police officers.

When it comes to the question of accountability for the police or any governmental institution, the work of non-governmental organizations and public opinion should matter and be taken into consideration as well. I was the leader of a non-governmental organization whose main area of focus was the protection of human rights from abuses by law enforcement agencies. Civic society organizations generally have no option other than turning to the public. We actually had quite a liberal agreement with law enforcement agencies, in that we could, for example, visit prisons and openly report our findings. Even though, we were well aware that we could not change the world alone, I think that by raising the awareness among the police and law enforcement agencies that such organizations existed and monitored their activities and performance, we had some degree of impact on their work. It is my belief that watchdog civil sector organizations can allow for a degree of public control over the police and that it is an

important step towards the greater goal of increasing the accountability of the police and other governmental agencies.

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# Police Reform Still a Long Way to Go

*Jan Ruml, former Interior Minister, Czech Republic*

55

POLICE REFORM STILL A LONG WAY TO GO

In the past, there were actually three Ministries of the Interior here – Czech, Slovak and Federal. These institutions together with the troops of the Ministry of the Interior, People’s Militias, army and border guards were the chief instruments of repression during the communist regime. In the first period, fundamental reforms were necessary to dismantle the state secret service, i.e., the State Security, and to abolish all the military formations noted above which did not belong to the Army of the Czech Republic. These changes took place very quickly. It was possible to abolish the State Security (which was part of the Ministry of the Interior, unlike in Germany and elsewhere where it was an independent institution), and at least in its counterintelligence form, to rebuild it basically from the ground up.

The first task was to remove of all forms of political influence over police and army and to do away with their repressive character, while making them accountable to rule of law, Parliament and public scrutiny. In order for this to happen after November 1989, it was necessary to restore immediately the fundamental constitutionally guaranteed principles of a democratic state – division of power, political plurality, rule of law, guaranteed basic rights and human freedoms, an independent judiciary, and an independent media. The entire security system had to be based on the Constitution, the constitutional law on security and in line with the system of international treaties to which we had already signed.

The Federal Ministry of the Interior, in the form of the State Security, a communist secret police and so called “border army”, a repressive force guarding the border, which were ready at any time to take repressive measures against the population, was transformed relatively easily. The situation with the national ministries, i.e. the Czech and Slovak Interior Ministries, was much more complicated. When the Czechoslovak federation split, all of the responsibilities of the federal ministries were transferred to the national ministries, and each of these began to develop in a slightly different way.

The major challenge of the new period was to cleanse the security corps of people who had been compromised by their activities under the Communist regime. It was a paradoxical situation. The demand of the times was to allow only people committed to democracy to serve in the police force, but they were supposed to be professionally trained as well. These two requirements were impossible to fulfil at the same time. It was possible for the intelligence and counterintelligence services to be built from

scratch, but the police needed to be on the job continually, and the cleansing here was not nearly as rigorous.

Soon after the Velvet Revolution, citizens' committees were spontaneously established with the aim of deciding who could stay in the service and who should leave because of his or her past. These citizens' committees did a rather poor job of decision making during their first selection. Then the lustration law came into effect. The law did not permit anybody who had belonged to the state security in the past to hold positions in new, reformed police units. Also people who had been high-level dignitaries in the Communist Party were not allowed to hold certain jobs, but they were still allowed to serve at the lower levels of the Interior Ministry and police. This is the reason why the cleansing of the police units was not very rigorous as in other areas. Even though 70% to 80% of today's police officers joined the force after November 1989, there are problems that still persist due to the overly soft approach in cleansing the police from those who worked for the previous regime.

Another large problem was the way in which we have dealt with police training. We made a serious mistake when we allowed the police academy to be established as special educational unit. The police academy immediately began to take on a life of its own. Most of the people teaching at the Academy were recruited and served the police during the Communist era. The educational system for police officers lacked a clear set of standards and criteria, not only for teachers, but more importantly the standards and criteria for what kind of people we actually wanted working for the police. The quality level of their education was very low and lacked an ethical framework.

Another problem was connected with the public image of the police. The general public in my country viewed the police as nothing but a repressive unit under communism. In order to renew the public's trust in the security forces, it was necessary to start with a principle characteristic of a democratic state that all possible means will be used to eliminate the threat of criminal act harming the general population and that repression will only be used as a measure of last resort. In general, restoring the rule of law was very complex process and it slowly managed to find its way into the sensitive areas of the Interior Ministry as well.

A further challenge was figuring out how to make a whole range of police functions civilian in nature. Before 1989, the police had been needlessly organized in a military-fashion. When I came to the Ministry of the Interior, every cleaning lady had a rank, a pistol and access to an emergency sack. If necessary, she would have been told to put on a uniform and to go out into the street to act against the population. Given the depth of this culture of repression, it was clear that any parts of the Ministry of the Interior that were not supposed to carry out any repressive, policing actions, had to become completely civilian.

It was also necessary to separate the Interior Ministry from all of the civil administration areas that were embedded there. Previously, the Ministry of the Interior accompanied us from the cradle to the grave because the registry in which births are recorded as well as cemeteries both belonged to the civil administration section of the Interior Ministry. Other areas, such as the granting passports, driver's licenses, citizens' ID cards, all had to be brought under the executive branch of the state administration or to local government. In the end the removal of these activities from the Interior Ministry took place out of necessity, so they could be placed where they properly belonged.

Earlier, Mr. Žitný spoke about the current state of the police 17 years later. Neither the Czech Republic nor the Slovak Republic can hide the fact that in reality the police still aren't in very good shape. The police are still coming far too often under the pressure and influence from politicians. Various police chiefs have been given their positions based on their servitude to the ruling parties or as payback for the Ministers of the Interior. The independence of police work, mainly in the area of criminal justice, has remained constantly under threat on a daily basis. When we add to this the weakly functioning public prosecutor's office, which is under similar political pressure, only one component of the criminal justice system remains relatively independent, and that's the judiciary. Unfortunately, even though the judiciary has not fallen prey to political pressure, it's has not been able to function well due to its own internal problems and because a proper reform of the judiciary never took place.

Another problematic area, aside from political interference in police work, is the lack of adequate human resources. The police don't even have their own clear, enforceable code of protocols and regulations. I have already mentioned the inadequacies in training and education of police officers and that I don't think there should be any special schools for police officers. The police cadre should be educated in the regular secondary schools and universities and should not have their own department of police education, because this leads to a certain way of thinking that doesn't reach beyond the concrete bounds of police expertise. Police officers should receive an education in law and law enforcement, while being educated within normative systems. However, we are still missing a clear set of criteria for the acceptance of people to the police force, and I think that tends to make the police corps very untrustworthy.

The police are subject to varying degrees of control from the parliamentary ones down to internal controls, i.e. in the Interior Ministry there is an "Interior Ministry Inspectorate" which prosecutes police crime. I don't think the Interior Ministry Inspectorate should be in the Interior Ministry but rather under the aegis of some other institution less influenced by daily politics. A supervisory body like this could be formed by the administrative courts that are overseen by the Supreme Administrative Court.

These are the challenges that we are still try to overcome. A week ago, yet another police chief was named in the Czech Republic. It is our tradition that only someone who has served as a police officer can become the police chief and only if that person was an officer who already holds at least the rank of lieutenant or is at least a regional police director. This practice should be abandoned. Instead of constantly reaching into the police force and pulling out someone like a rabbit from a hat that will be loyal to the current political power structure, we need completely different criteria for the selection of the police chief that would allow us to find a trustworthy civilian with an extensive legal education and strong managerial capabilities.

***Jan Ruml** is a former dissident, Charta 77 signatory, who became involved in the Civic Forum information campaign in 1989. In April 1990, he was appointed Deputy Interior Minister of the Czech and Slovak Federal Republic, from 1992 to 1996 he was Interior Minister of the Czech Republic. In November 1998, he was elected as a Member of the Senate of the Parliament of the Czech Republic. Between December 2000 and November 2004, he was Deputy Chair of the Senate for Foreign Affairs.*

# The Slovak Case

*Ivan Šimko, former Interior and Defense Minister, former Minister of Justice, Slovak Republic*

The character and extent of the reforms dealing with the Interior Ministry and the police directly depended upon the way in which democratic change happened and how power was handed over. Conditions at the end of the Cold War were very specific. The communists lost their monopoly over state power, but they hadn't completely lost their position. Naturally, this was reflected in the scope and content of reforms that took place at the time. In the most basic sense, when we analyze the reforms that have been made, we can say that the adopted measures changed the institutions so that they started to function as part of a democratic state. As a result, we can conclude that our main concern at the moment of the transition to democracy – respect for basic rights – was successfully achieved. We wanted to have a society without political prisoners, where we could freely express our opinions, and in which we could travel freely, do business, etc. and all of this has been happened. State institutions began to function in a way that made it possible for these basic democratic values to exist and to be protected in society.

What remains is an ethical question about the extent to which responsibility for the crimes of these institutions and the people who worked in them during the totalitarian period was handled. To what extent does this complicated past still have an impact upon institutional and political power today? If we're talking about the reform of the Interior Ministry and police in Slovakia, which inherited the same situation as the Czech Republic, since the transformation started in Czechoslovakia in 1989 when we were still one state and continued through 1992 when the two countries split at the end of the year. However, in Slovakia there have been some minor differences which took on importance compared with what the developments were at the federal level.

When we talk about the reforms which took place, we can identify three important aspects. The first was the cleansing of personnel, which started in Slovakia in a similar way as in the Czech Republic with the spontaneous establishing of citizens' committees immediately in the aftermath of the democratic breakthrough. However, the lustration law, which was adopted by the Federal Assembly, was implemented differently in Slovakia than in the Czech Republic, in that Slovakia implemented it in a much softer way. Only the people who worked in the so called "internal enemies" section were dissolved. This is why there is presently an overwhelming majority of young

employees in the Slovakia police along side a generation that is just about to retire, who served in the national security services during the Communist period. There are essentially no middle-aged people in the Slovak police right now. The influence of this older generation's presence can be seen in the fact that no new methods of work or evaluation of police work have been implemented. This is something that law can not impose, but that is more a matter of the prevailing mood of the corps.

The second aspect concerns the measures adopted to reform what had been basically a military organization into the current civilian one. This specifically meant abolishing the military units of the Interior Ministry, or the so called "civil defence" regiments. The border patrols had already been abolished during the Federation. Today, the police at the borderline belong to a normal civil service institution. These troops may have a particular status that differs from other parts of the police, but it no longer has elements of a military organization.

The third area of criminal justice has remained the most problematic, even though Slovakia has explored several models. In particular, the prosecutor's office has continued to be a rather unclear institution from a constitutional point of view. The General Prosecutor is basically chosen politically. He is nominated in the Parliament and then appointed by the President. The General Prosecutor supervises prosecution, however, his oversight does not cover the operations carried out by the police that took place before the charges were filed, i.e. the preparatory phase, which can still take a very long time.

Preparatory police activity was regularly abused under communism, basically so that people whom the Communists had no reason to sentence were ordered to present themselves to the police investigator. In so doing, they were exposed to psychological pressure even though there had been no evidence with which to charge them. Unfortunately, the current situation still makes this possible, even if political pressure isn't very likely. A democratic government and a free media substantially reduce the likelihood of political pressure, but they don't rule it out completely. There is little doubt that things, such as a prolonged police investigation having started before charges have been filed, are still taking place in Slovakia, particularly on the local level and for purely economic reasons. Part of the reason for this is that the preparatory phase of prosecution is still open to abuse and these abuses happen. Therefore, I consider it exceptionally important to reform criminal procedures so that the units which are active in the preparatory police investigation phase get their work done in the shortest possible time, so that the case can come before the court as soon as possible. These units of the police force should be responsible for nothing other than collect evidence, period.

In closing, I would like to point out that the Interior Ministry in our country has come to cut a very wide and generous swath. Perhaps this is a legacy from the Austro-Hungarian monarchy or from Bachian absolutism, when any state agency without

a clear place elsewhere ended up in the Interior Ministry. This has remained true until today and it has influenced the scope of Slovak Interior Ministry. No fundamental reform about this has been made, which means that the civil defence, fire fighters and archives are still the part of Interior Ministry. A huge chunk of public administration is also run by the Interior Ministry. The reform of public administration in Slovakia has taken place in such a way that it was never a matter of interest for the interior ministers. Generally the government has appointed a special person to supervise the reform of public administration, but since this figure was not the minister himself, he lacked the real political backing necessary to push reforms through. Or in periods of time where there was no such governmental appointee, no one was responsible for the reform of public administration. As a consequence, we have a rather chaotic state of affairs at times and a Slovak public administration that conforms neither to the aims nor the requirements of a modern state.

***Ivan Šimko** is a co-founding members of Christian-democratic movement in Slovakia, who served as a Member of the Czechoslovakian Federal Parliament from 1990 through 1992. In 1990 he was appointed as an Advisor to the Prime Minister Ján Čarnogurský. He was Minister of Justice of Slovak Republic (1992 – 1994) and later the Deputy prime minister of Slovak Republic responsible for Legislation. He was a member of the Parliament of Slovak Republic (1994–1998), Minister of Interior (2001 – 2002) and Minister of Defense (2003).*



## **Workshop 3: Archives**

# The Slovak Institute of National Memory

*Miroslav Lehký, Institute of National Remembrance, Slovak Republic*

We began to come to terms with communism's archived materials in Slovakia back at the time of the Czechoslovak Federation. In 1990, one of our first steps was to transfer part of the former state security archive materials to the newly-created Institute for the Protection of the Constitution and Democracy. A second portion of the former state security's archived materials remained in the Federal Interior Ministry's archives and a third part was kept within the former regional administrative offices of the National Security Department, i.e. the state security for individual regions. So, the materials were stored and processed in the archives of the Federal Interior Ministry and the newly created secret service during the time period of the Czechoslovak Federation.

When Czechoslovakia split into two countries, the archive materials of the Federal Interior Ministry were divided between the Interior Ministry of the Czech Republic and that of the Slovak Republic. This is where the first problem arose for the Slovak Republic. The department of the Federal Interior Ministry specifically responsible for issuing lustration certificates passed from the Federal ministry to the Czech ministry. This task was also supposed to pass into the hands of the Slovak Interior Ministry, but the ministry refused to issue lustration certificates. Therefore, in April 1993, the government granted the authority for nine months to the newly-created Slovak Information Service (SIS). The former state security archive materials thus came under the control of the new intelligence service, where they were kept under wraps and no one outside the secret service had access to these materials. This is what initially happened with Slovakia's archives.

The second phase began in 1995, when the Slovak Information Service (SIS) received the archive materials coming from the former first administration of foreign intelligence from the Czech Office for Foreign Relations and Information. These materials stayed under the control of the SIS. The third phase came just before the political turning point in Slovakia when Vladimir Mečiar lost the premiership in 1998. After the elections that brought the pro-EU Dzurinda government to power, the SIS transferred a large number of documents from the Ministry of the Interior's archives into its own archives. In this way, a large

portion of the materials of the former state security and its collaborators got into the hands of the Secret Service, and no one outside the Secret Service was able to work with them.

In 1998, Slovakia's new government decided that, like Germany, the Czech Republic and Poland, we would come to terms with communism by declassifying these types of materials and beginning processing them. In 2000, the Department for Documentation of Communist Crimes was established within the Justice Ministry headed by Ján Čarnogurský. This new department began processing materials primarily from the state archives, court files, the remaining materials from the archives from the Ministry of the Interior and the files which had remained in the prisons, which were under the Justice Ministry's authority. From this moment, the Justice Ministry, in cooperation with a member of parliament, Mr. Langoš, began an initiative to pass the law which will provide a legal framework for the work which has already started.

In 2002, the law creating the Institute of National Memory was adopted, which called for the Institute to acquire materials from the former state security and other security units. The period covered under this law was from 1939 to 1989, which meant that it included the time period of the so-called Slovak State, i.e. the vassal state of Hitler, as well as the period of Communist totalitarianism that began after 1945. As in Poland, the Slovak Institute for National Memory encountered immediate political problems over who should be the head of the new public institution, since the person in charge had to be elected by Parliament. After a nine month stalemate, the politicians finally decided that it should be Mr. Langoš, the person who had initially proposed the law which established the Institute of National Memory. He ended up leading the Institute until 2006, when he died tragically.

During its first three years, the Institute of National Memory acquired materials from the former state security, border security agency and foreign intelligence materials which had been stored in the SIS since 1993. There are still efforts being made to acquire materials from the Czech Republic and from the archive of the security units of the Interior Ministry, where there are materials concerning the territory of the former Slovak Republic. The Institute's other activities are primarily in the area of disclosure, since we believe that the victims of former totalitarian regimes have the right to know about the materials which the state security gathered about them. Therefore, the Institute of National Memory has made these materials available to authorized persons. Furthermore, the archive provides materials for researchers and academics under the archive law and to authorized persons under the law on the Institute of National Memory. An additional priority has been reconstructing the materials which were incomplete at the time that they were acquired. The materials which we have been able to reconstruct have been made available to authorized

persons. Lastly, the Institute has a department that focuses on processing records, the result of which has been that the entire registry of files from the former territorial units of the state security in Slovakia have been made public on the internet pages of the Institute of National Memory.

***Miroslav Lehký** was a signatory of “Charter 77” and in 1990 became one of its spokespersons. Currently he is Deputy Head of the recently-established Czech Institute for the Studies of Totalitarian Regimes, after having worked for the Slovak Institute of National Memory.*

# What Happened to the Secret Police Archives in Poland

*Zbigniew Nawrocki, Director of the Institute of National Remembrance, Poland*

My presentation will deal with the experiences that we have had with the archives of the Polish secret police. However, before I start to detail our current experience with the archives, allow me to give some background information. Archives and operational files served as the Communist Security Services' cornerstone of operations starting in 1944, when the Soviet Army entered Poland. The general information file system – a file system with personal information about individual citizens, became the basis of state security operations in Poland in 1944. Until 1965, there were two such file systems – personal files and the already noted general information file system. In the year 1965, these two files systems were merged, which established the so-called “Office C” of the Ministry of the Interior that functioned until the fall of communism in 1989. It is estimated that from 1944 through 1989 a total of 3.5 million files were put into this system, from which we have been able to infer an overall count of people followed by the state security during the 45-year reign of communism. The contents of these files are presently difficult to decipher, since a large percentage of these documents were destroyed between 1989 and 1990. This came about because the Interior Ministry, even after 1989, was led by the communist General Czesław Kiszczak, one of the original drafters of martial law in Poland.

We all know what the word archive means. It refers most simply to an organized collection of material that is looked after by specially trained personnel who provide access to this material. The processing of archive documentation includes file preparation, developing protocols, etc., which facilitates working with these files for all interested parties. When it came to the Polish state security's files, the goal was in direct opposition to normal archival practices. The handling of the state security's files focused on limiting access to the archives to a maximal degree and only granting access to a carefully selected group for propaganda purposes. These were people exclusively connected with the Polish Communist Party, known as the United Workers Party. The goal was to ensure total control of both the individual archives and all of the information contained in them. This control was provided through the creation of a very complicated structure directly involving employees of the state security apparatus. Each level of access to the physical files was separated. The people

who registered the documents, the people who used the information they contained and the people who actually managed the physical files all worked separately from one another intentionally.

Such treatment of the archival materials during the period of communist totalitarianism should come as no surprise to anyone. What is surprising is the fact that the same approach to archive access persisted for several years after the fall of communism. In 1989 and 1990, the previously mentioned General Czesław Kiszczak released only that part of the state archives that covered the anti-communist underground from the period at the end of and immediately following the Second World War. These materials had been kept during the post-war years by the Polish security services. Things remained this way until the first ministerial directive in March 1995 was issued by then-Minister of the Interior Andrzej Milczanowski that allowed access primarily for historians and other interested parties to the archives of the former state security. However, the state security services continued to decide to whom these documents would be actually made available. Ironically, these decisions were primarily made on the basis of laws concerning the protection of state secrets. This was true even for access to the oldest files from the second half of the 1940s.

Now it may be said with certainty that the largest part of these materials gathered by the communist security service served the newly created security units – the so-called “Office of State Protection”. We know that the majority of the new security service’s employees in the 1990s had been hired during the communist period. For instance, in the newly created “Office of State Protection” there were more than 4000 personnel that had worked in some capacity for the former Communist Security Services.

The absence of significant reform regarding the functions of the security services and the lack of access to the archives was increasingly recognized by Polish political figures. Hence, soon after Solidarity Election Action and the Freedom Union formed a centre-right coalition between 1997 and 1998, the idea arose to create the Institute of National Remembrance. The Institute took over not only the state security archives but also the archives of other repressive bodies from the communist era. The law creating the Institute of National Remembrance (IPN) was approved by Parliament on December 18, 1998 even though the members of the post-communist Social Democratic Party voted against. Many political leaders now argue that it was one of Jerzy Buzek government’s most important decisions towards insuring that important systemic changes could happen.

Of course, immediately after the official approval of the law creating the Institute, difficulties connected to the choice of its president arose. Deliberations about the name of the president lasted a year and a half – the first president was not chosen until June 2000, when a political compromise was finally ironed out. Only then could the Institute begin to function, although other problems remained. One was

inadequate space – the huge archives needed to be stored somewhere. Taking over the archives was the largest operation in the history of Polish archival sciences. So far, the Institute has collected a total of 86 km of archived documents. In retrospect, it may be noted that certain mistakes to do with the functioning of the Institute were not successfully avoided, primarily for two reasons: first because of the haste after the election victory of the post-communist Democratic Left Alliance in 2001. And second, because of the reluctance of certain state agencies to hand over their archives to the Institute of National Remembrance, even though this was mandated by law. All the materials which had been brought into the Institute of National Remembrance had received upon arrival new signature systems. After some period of time, the inventory filing system was brought to the Institute of National Remembrance as well. The signatures in these inventory files were different than the files themselves, so searching in these inventories and in the file archives of the Institute is still very complex.

Another frustration, completely at odds with the general principles of archival practices, is that the Institute not only collects but also provides access to materials, including those which have not yet been processed. As noted, over the seven years of its existence the Institute has collected a total of 86 km of files created by both civil components of the security service and by the military services that were part of the repressive communist apparatus. The Institute has taken over materials from all communist bodies:

- the Office of Security and Security Services (similar to the Czech State Security from 1944 – 1990), both the regional and centralized bodies of these services.
- military intelligence, counterintelligence and military border intelligence
- the State Prosecutor's Office and military courts, prosecutor and general courts (concerning political affairs)
- the prison service (concerning political affairs)
- para-police organizations, the so-called Auxiliary Guards (similar to the People's Militias in the Czech Republic)
- military structures focused on pacification (the so-called Internal Security Corps).

All archive records are gathered in the centre in Warsaw and in 10 additional regional centres. 33 km of files are gathered in the central archive in Warsaw. There is currently access to most of these files, with the exception of around half a percent accessible only to the state services.

The Institute of National Remembrance organizational structure is divided into four sections. The first is the Commission for the Prosecution of Crimes against the Polish Nation that deals with the prosecution of communist crimes. The second is the Office for Preservation and Dissemination of Archival Records and the third is the

Public Education Office, which is the section that deals with historical and educational matters. A fourth section, the Vetting Office, is still in a developmental stage and has not started working actively in Poland, due to a recent decision by the Polish Constitutional Court.

Currently, the results of the Institute of National Remembrance's work include 165 sets of charges brought against persons who committed Communist or Nazi crimes. Only a few of these 165 persons have been acquitted by the courts. In comparison, during the 1990s (before the Institute existed), criminal persecutions were only brought against a few dozen people across the entire country. In addition, the Institute's output has also included several hundred books and publications concerning the recent history of Poland and enabling access to the files for tens of thousands of people.

In order to understanding the importance of the Institute's function, one must develop an understanding of the specific nature of its file collections. The Institute has enabled the initiation of a new phase in researching Poland's history by taking over the heritage of the repressive units of the communist state. Broader access to the archives has meant that large portions of recent Polish history have had to be substantially revised, especially the activities of the Communist Party and its collaborators that had been previously presented almost exclusively by the party. And it is precisely this revision of Poland recent history, the so-called People's Republic period, which awakens the greatest emotion, among researchers, journalists and society at large. The question about the trustworthiness of the materials that we have inherited from the Polish state security has emerged and re-emerged again and again, like a mantra in this public debate. The question of the future of these archives is repeatedly brought up in the context of events connected to the lustration process. And although entities from across the political spectrum have been in support of opening the archives, everyone understands the implications of this differently. It seems to me that the debate on this topic is still awaiting Polish society, but at least it seems certain that the archives will never be to closed again.

*Zbigniew Nawrocki became a member of the Independent Students Association at Rzeszów University and he was a strike committee member in 1981. From 1995 to 1998 he was a member of the Commission for the Research of Crimes against the Polish Nation. Director of the Office for Preservation and Dissemination of Archival Records of the Institute of National Remembrance in Rzeszów.*

# Ongoing Controversies with the Polish Archives

*Irena Lasota, Institute for Democracy in Eastern Europe, Poland*

I would like to focus more on the social and political aspects of the treatment of the archives in Poland. As Mr. Nawrocki has already mentioned, the biggest problem was the beginning, 1989–1990 when everything has started. When Havel was president of Czechoslovakia and when Mr. Langoś, Mr. Ruml and Mrs. Šustrová, all of them former dissidents and communist regime opponents, were securing the archives in post-communist Czechoslovakia, in Poland the minister of internal affairs was General Kiszczak. Besides being, the architect of a war of the government against the people ten years earlier (the “State of War” of December 1981) he was also a very good and experienced practitioner. He started his fight with the anticommunist underground already in 1944 or in 1945. Poland’s president in 1989–90, when the first decisions on the archives were made, was General Wojciech Jaruzelski.

A number of countries have achieved transition to democracy through “round table” talks between government and former dissidents. Poland had its own version of the “round table” approach, which has been at the core of what we see today in the heated Polish discussion about the archives and lustration. Initially, the roundtable in Poland looked like an agreement between the government and the opposition. Later on it turn out that it was an agreement between the government representing the interests of its part of the society and individual people who had not been elected to represent the opposition, and who were part of the less radical wing of Solidarity movement.

As an example, I am going to use certain names, names all of you know quite well, but I am going to use them in a generic way. I will first mention the name of Adam Michnik, because he is the most characteristic person opposing the opening up the archives, de-communization and lustration. He is also someone who defended Kiszczak and Jaruzelski by defending the agreements made with them at the round table talks, even when communists were already defeated and out of power.

Mr. Michnik continues to be the editor-in-chief of *Gazeta Wyborcza* – at one point the largest newspaper in Poland – which is still running a propaganda war today, which borders on almost being a hysterical campaign, against the process of de-communization and opening up the archives. It seems like *Gazeta Wyborcza*, as a newspaper and as an organization, has taken on the task of defending anybody who

was at anytime accused of being an agent. The problem is that it seems that it does this a little too prematurely sometimes. A good example occurred last year, when the Institute of National Remembrance (IPN) released information about Father Czajkowski's problematic past. Father Czajkowski was a charismatic priest and it was hard to believe that he had been an agent. He was also a friend of *Gazeta Wyborcza* and *Gazeta* started to defend him ferociously right up until he finally admitted that he actually had been an agent. The same thing has happened with journalists employed at *Gazeta*, like Leszek Maleszka, who has been exposed as an agent that infiltrated students groups in Krakow in the 70s. As Mr. Nawrocki has already stressed, in some cases there are a very small percentages of the documents, which remain. In Katowice, I think only 3% of the documentation were left intact. But there was still enough evidence for few determined people who wanted to find out what happened to a friend of theirs, who had been killed in 1976–77. One researcher from the IPN wrote a 300 pages essay about this event based on the very limited documentation that was found in the archive. Eventually, after his initial denials, Mr. Maleszka admitted that he had worked as an agent. And yet, after being defended by *Gazeta Wyborcza*, he remains employed there. I have mentioned those two cases, because until now we do not have many clear cut cases of the archives being opened, but one thing we can conclude is that yes, large parts of the archives were destroyed. But even when there is very small percentage of an archive left, it is still possible to reconstruct certain things. If we were able to reconstruct the Samarian language from fragments; we should be able to reconstruct the most secret events of the communist regime.

The political approach accepted in 1989 by the first independently elected Polish Prime Minister, Tadeusz Mazowiecki, was the “thick line,” which simply said that we don't look back in the past. We are aware of similar example about Vichy France, when attempts were made to draw a “thick line” around the past in post-war France as well. But memories do not disappear. One generation or two generation later and past has started to come out. It was revealed that some people who belonged to Francois Mitterrand's administration much later were involved in the regime that has collaborated with the Nazis. What we are talking about in Poland is the massive involvement of present day politicians, journalists and heroes with the communist secret police.

I will give you few examples from current day Poland. Yesterday, on the front page of the Polish language version of *Newsweek*, was an ugly face and the title – “Poland, country of the denunciators”. Below the image, there is a note clarifying this title that under Kaczynski's regime Poles had started to denounce each other. As if this has never happened before. But if we look in the IPN archives, we can find an abundance of rather ugly examples. In 1982, a few months after introduction of the “State of War”

the recruitment of new agents was so big and so successful, that the police had to stop it for a while, because there were too many people willing to be the denunciators.

Let me give you one more example that of the former leader of the Polish underground General Niepokulczycki. After the Second World War, he was sentenced to prison and was released ten years later in 1956. There were twelve agents who were responsible for following him until he died in 1974. Two of them were close personal friends whom he often received at home. Or I can mention two famous cases in which wives who were recruited when they were not wives yet, but who were explicitly sent to marry the people in order to report on them. One such case was a famous Polish writer Pawel Jasienica. There is not enough evidence left to reveal all details, but there is no doubt that his wife was reporting on him systematically until his death. The other similar example was just published a few days ago. A Polish writer of Indian origin, Peter Rajna, discovered once he gained access to his files from the IPN that his wife, who died at a young age of a heart attack in 1982, had reported on him constantly for 18 years. She was a paid agent of the secret police. And it is in this context that politicians and journalists claim that “Poles started to denounce each other only under the Kaczynski’s”

We are just at the beginning of opening up the archives. Mr. Nawrocki has mentioned the thousands of cases of people who have obtained access to their personal files, but in many cases they received archive files that had been cleansed, which means that practically every name and address had been erased. Or people were getting their files, but for periods which were irrelevant in their life. If somebody was involved in the opposition before 1972, there is a higher probability that he will get his file for early period, rather than getting files about his activities in the 80s, when he was much more engaged in the opposition movement. What is mainly missing is the last period when totalitarianism was coming to an end in Poland. The documentation regarding the period between 1985 and 1989 and beginning of the dismantling of the communism in Poland and so called “round table” discussions between the regime and part of the opposition is still largely unrevealed. What is particularly missing are the files which would help us reconstruct what the key people from the opposition did during this time period.

*Irena Lasota is an editor, free-lance journalist, political scientist and educator, as well as a former political prisoner in Poland and detainee in Cuba. Mrs. Lasota is the Director of Programs and President of the Institute for Democracy in Eastern Europe (IDEE) since its inception in 1985. IDEE, which she co-founded, has provided support for underground democratic opposition groups within the former communist bloc.*

# The Fate of the Former GDR's Archives

*Tomáš Vilímek, Institute of Contemporary History, Academy of Science, Czech Republic*

In a series of East German cities like Leipzig, Erfurt and Jena, people reacted to the smoke emanating from the local headquarters of the state security services by surrounding them. Afterwards, they got inside and preserved the materials. Interestingly, this was not the only civilian occupation of Stasi headquarters. Similar situations happened twice during hectic discussions about the future fate of the materials.

Even before German Reunification in October of 1990, there had been a lot of discussion in East Germany about what to do with the materials that had been preserved. Some West German politicians thought it would be better if all the materials were moved to the Federal archives in Koblenz, where there would be a 30-year moratorium on their being opened. Some East German politicians were also in favor of this solution. The turning point came when it was revealed that the Prime Minister of the East German government had also been working for the state security. A number of members of the East German opposition once again got into the offices of the state security and insisted that the materials remain within the territory of the East Germany, requesting this be ensured by inserting a clause into the Unification Treaty.

Subsequently the first, and so far still the largest, archive of state security materials was established under the acronym BStU, which stands for Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik (Office of the Federal Commissioner Preserving the Records of the Ministry for State Security of the GDR). The archive was commonly referred to as the Gauck-Behörde, or Gauck office, after the first head of the BStU, the Evangelical pastor Joachim Gauck. At present, though, the archive is called the Birthler-Behörde, or Birthler office, after its second head, the federal commissioner Marianne Birthler. The BStU administers more than 160 km of the archives of the former Stasi, has a budget of more than €100 million a year and since 1992, when the agency began to function, has processed more than 3 million requests to see the materials, granting the vast majority.

The Germans have made a huge effort to reassemble documents which had been shredded during the regime's final days. Therefore in 1996, they established a group to reconstruct materials which had been torn up and thrown into a large number of

sacks found after people got inside the state security buildings. It has been possible to reconstruct roughly 500,000 pages at the present time and the process is a very dramatic one, since one never knows whether the reconstructed material will turn out to be a sheet of paper from the state security's cafeteria or a key document concerned with the East German opposition. At present there is a great deal of negotiation going on about the future financing of the BStU, since 2 to 3 million Euros are being allocated just for document reconstruction in 2007 and 2008 alone.

I should explain how Germany has decided to regulate access to these archives. In 1991, the so-called Stasi-Unterlagen-Gesetz law came into effect, a law concerning the documentation of the East German state security and which regulates accessibility to these materials. This law classifies the materials and the persons mentioned in them into four categories, and based on these categories it is decided who can and can not have access to the actual files and to what extent. The first category mandated by the law includes the so-called *betroffen*, the *suffering* or *victims*, people about whom the East German state security gathered information with the goal of doing harm. Access to the concrete file is only granted with written permission from the person whose name appears in the materials in question. Otherwise the name of the *victim* is blacked out. Another category consists of so-called *third parties*. These are people who were not directly victimized by the East German state security but whose names nevertheless appear in the materials. There is also no access to these materials without permission of these "third parties".

There are also two categories of materials which may be reviewed by anyone whatsoever. These concerned either official or secret collaborators with the East German state security, or *beneficiaries*, i.e. persons who were not directly members of the state security but still did receive payments for their services. An example could be a director from a factory fired an employee after receiving an order from above. As a result of such an action, he would be treated today as someone who is on the same level as members of the state security.

Also materials concerning public officials or historical personalities, so-called *persons in public life* were made accessible. Helmut Kohl protested this approach in 2002 because of the great interest of journalists in reading his files. Subsequent to this, the court denied access for a two-year period to these materials. Archive files about public life figures are now also falling under the stipulation requiring the written permission of the people mentioned within. Marianne Birthler filed several protests against this decision and in the end was able to secure access at least to information which directly related to the function of the person in question. In March 2005, the first thousand pages of Helmut Kohl's file were made public with information about his attitude toward and relationships with the East German opposition.

At present, the function of the BStU is being hotly discussed in Germany. Some have argued that the BStU has already fulfilled its mission and that it would be better

if all the materials were moved into the federal archives. As a result, a commission was established in May 2005, composed of historians, archivists and representatives of the East German opposition to decide what should happen. This commission came to the conclusion that the BStU should develop over time into a research and documentation center called *Dictatorship and the State Security*, which will primarily focus on education, acquainting the public with the basic facts concerning the state security services and making academic research into Germany's totalitarian past. Deliberations are also taking place as to whether the materials should just be handed over to the federal archives by 2020 or 2030 at the latest. A problem remains, however, with the archive law from the year 1988, which does not take into account the specifics of these materials. It would therefore be necessary to amend certain laws, since under present law the former Stasi archives could not be transferred under any circumstances.

It is obvious that Germans have an enormous interest in coming to terms with their communist past. That is probably motivated also by the fact that coming to terms with the previous period of Nazi dictatorship has taken a long time and has not been entirely successful. The BStU has played and is still playing a very positive role in facilitating this process of reconciliation with the communist past. There is a clear political will and pressure to do so, significant financial resources are available and, when compared to the Czech Republic, the German research has gone further ahead. This does not mean that there have been no problems. I will give you one example. A researcher will most likely face a serious obstacle for his research which is set in place by the law on documentation of the East German state security. Experience has shown that this law has its negative effect as well. If, for example, we wish to reconstruct the relations between the East German, Polish and Czechoslovak dissidents, the former Stasi archives may hide a wide range of materials that could be highly valuable for the research. However, the actual names are not accessible to researchers and will be blacked out. Written permission from the affected persons is required in order to obtain access to the documents. The problem is, however, that very often the affected persons are not publicly known figures and, therefore, it is difficult to find them in order to gain their permission.

One consequence of the way in which the archive's materials were saved from destruction is that a range of materials, both copies and originals, have ended up in private archives. These are archives run by representatives from the former East German opposition, of which the best-known is the Matthias-Domaschk Archive in Berlin. This archive is named after Matthias-Domaschk, who was in contact with Petr Uhl and a range of other signatories to Charter 77, and who was murdered on Stasi premises in 1988 under suspicious circumstances. The Matthias-Domaschk Archive houses a relatively large number of personal files of the leading representatives of the East German opposition. It contains also samizdat publications and other

dissident materials, providing opportunities for comparison of Stasi and opposition documentation. Nothing similar exists in the Czech Republic.

The Federal Commissioner heading the Office for Preserving the Records of the Ministry for State Security of the GDR, is chosen by the Bundestag for a five years term based upon the recommendation of the federal government. While carrying out this function, the federal commissioner may not have any other paid source of employment and, upon the completion of duties, is obliged to maintain complete confidentiality regarding the facts to which he or she has been privy to while in office.

Presently, there is a greater emphasis being made on academic research into the East German Stasi archives, on putting these materials into the overall context of *opposition, power and society*, in order to find out how it was possible that the totalitarian rule was able to stay so firmly in control for such a long period of time.

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# The Importance of Founding the Institute for the Study of Totalitarian Regimes

*Pavel Žáček, Director of the Institute for the Study of Totalitarian Regimes, Czech Republic*

A wealth of operational documents concerning the State Security, i.e. the former Communist regime's political police, were shredded over the first ten days of December 1989. Lieutenant General Alojz Lorenc, who was then the first deputy minister of the Federal Interior Ministry, was responsible for initiating this process. The fate of the political police's records had been already determined at a meeting near the end of November 1989, when it was already clear that the Communists would be handing the political power to representatives of a new government. The destroyed documents were comprised of the State Security's "live" or operational files from their counterintelligence unit dealing with persons collaborating or being followed by the StB, as well as the so called "object" files of the regime's "enemies." These files were almost 100% destroyed. There were additional operational documents disposed of that concerned files of monitoring the economy and external enemies. There were valuable files destroyed that overlapped all of these categories. For example, one operational file that was destroyed belonged to a secret collaborator used primarily for work against the American Embassy in Prague, but who was also an inside source of information for the State Security against Vaclav Havel from within his inner circle. Unfortunately, the destruction of these documents encompassed not only writings found in the vaults of the secret police, but also an abundance of files stored in the operational archives of the central and regional units of the State Security.

Additional documents and files were shredded that had belonged to the main intelligence administration. "Live" files, which could have compromised specific State Security agents with the new government, were destroyed. The agency's networks and functions abroad were deliberately obscured. All traces of the operational archive of the National Security Corps First Administration (SNB I Administration) were eliminated, along with older color-coded archived files to be used in case of a military mobilization or outbreak of war. There were other operational components that failed to escape from being destroyed from the Intelligence Equipment Administration (SNB VI Administration), the Surveillance Administration (SNB IV Administration), the

StB Interrogation Administration, the Border Patrol and Surveillance Intelligence Administration, and Internal Security Units that worked in the prison system within the framework of the Justice Ministry. Some files had been transferred to the headquarters of the State Security explicitly so that they could be destroyed after they had been pulled out by members of these administrative units.

There was also inference with the registration of operational documents and materials by the Main Administration for Military Counterintelligence, which had functioned as a specific part of the State Security. In this case, operational documents and files were tampered with so that names and entire lines containing information about top agents working abroad could be deleted and also ones that contained names, references and other information about higher ranking agents including General Červášek, the head of the Military Counterintelligence. The several months long period when the agency was transferred from the Federal Interior Ministry to the national Defence Ministry made this possible. As a special commission later found, members of the military counterintelligence got into the damaged files, in order to reconstruct them with made-up details or to put false information into them.

The lack of precise knowledge about how many files have been destroyed or subsequently manipulated has remained a basic problem. In 2002, the Czech Senate attempted to deal with the problem by passing Law Number 107/2002 in Parliament. This law required overviews of registered secret collaborators with the State Security to be compiled by the Interior Ministry, the Office for Foreign Relations and Information, the Defence Ministry and the Ministry of Justice. At that time, it had been uncovered that there was inadequate compliance with the lustration laws. To be more specific, there were individuals still active in the management of selected public administration position, in spite of the fact that they failed to meet the specifications outlined in laws 451/1991 and 279/1992 for being eligible to hold such posts.

The battle over archive materials were fuelled by the unequal levels of access provided to them, since there was no unified procedure that covered the administration and access to these materials until quite recently. In the case of the intelligence services, the archived materials and documents were part of an operational agenda which maintained continuous ties to the state of affairs in the year 1989. Today, in accordance with Law 181/2007 of the legal code on the Institute for the Study of Totalitarian Regimes and on the Archive of Security Units, which deals with the transfer of this operational agenda of the Communist security units to the Archive of Security Units, standard archival processing and access to the agenda are guaranteed. Thus, the archive documents and materials are finally in the hands of a single archival system that is no longer administered by members of the intelligence community no bureaucrats at the Interior Ministry – the very people who on many occasions were serving special interests or had a personal interest in keeping certain archive materials inaccessible.

The public discourse over our recent past has been and continues to be the subject of political struggle at times. I believe the de-politicization of the archive materials and documentation will happen only when they are removed from the power structure and are independently managed.

In November 2006, soon after I assumed my duties at the Ministry of the Interior, as the director of the Department of the Archives of the Security Units, eight employees left that had been members of the State Security prior to 1989. It is indisputable that these individuals could have had a reason to make the archive system more bureaucratic and even hinder access. We still haven't completed this cleaning process even in our department, since former members of the State Security that were transferred to our department from the Office of Documentation and Investigation of Communist Crimes are still on staff. Today, we need these people as witnesses and interpreters of things that we can't understand. However, this has nothing to do with the thinking of the early 90s when certain people were kept on, because they were believed to be indispensable professionals.

Confronting the recent past understandably has a personal dimension which is highly sensitive regarding the safeguarding of some information. In the Czech Republic, there has been a vocal group opposed to making the files, records and other archival documents accessible. These people, for their own personal and political reasons, believe that these windows to the past should remain closed. Now that we have had the chance to look into their pasts, it is understandable why they feel this way. In the end, consensus was reached on a proposal by the Czech Senate that created a Czech version of the Slovak Institute of National Memory, the Institute for the Study of Totalitarian Regimes. This institute has been organized as a component of the state with an additional unit that will be subordinate to it, the Archive of Security Units. In keeping with Law no. 181/2007, all archive materials of the security units from April 4, 1945 to February 15, 1990 – the period when the Communist were in power – will be housed there. However, there will still be some exceptions in which the intelligence services can justify the need for greater confidentiality around certain information.

A special access law (107/2002) and an archive law (499/2004) have been approved that will govern the rules for documenting and processing the activities of the Communist security services and making the archives materials accessible. The archive materials and documents of the State Security, in particular, have been opened to the maximum extent to the public. According to the existing interpretation of the archive law, if archive materials and documents are more than 30 years old, but have not yet been made accessible under the prior regulation (valid before 31/12/2004), then they must be presented to researchers in their complete form. In essence, this also covers archive materials concerning the Border Patrol, the Interior Ministry forces, Public Security and so on, as well as recently discussed material like the personnel (cadre) records of the Communist security units' members.

Law no. 181/2007 takes effect on February 1, 2008, which means that a certain measure of responsibility will pass to the Archive of Security Units. I feel that archive employees will be forced to cooperate with the Office for the Protection of Personal Information in developing a method for safeguarding sensitive personal information (not ordinary personal information!). There continues to be great pressure from the intelligence community to keep certain archives or documents inaccessible for reasons of national security and state interest. This goes back to the Interior Ministry's department of archives and records, which has been defunct since the last day of October 2006, when the mechanism for making the State Security's documents accessible was set up deliberately to limit access as much as possible. For example, the department's employees blacked out information beyond what the law allowed and upon their own admission, had no idea why they were doing it.

Improving accessibility to the documents belonging to the pillars of power of the Communist regime can be partially done by making it a digital archive so that it is less bureaucratic. Up to this point, archivists have only made accessible around 4% of the archive materials belonging to the file agenda of the counterintelligence and interrogation units of the State Security. And this is only accessibility under the law, which is distinct from using it to doing research or academic work on a standard basis. A substantial number of applicants asking access to files are victims, political prisoners or their families, or persons that want to know who the people were that influenced their lives and in some cases sealed the fate of their family.

Under the law, the Institute for the Study of Totalitarian Regimes will research activity into the actions of both of the totalitarian regimes that were imposed on the Czech Republic during the past century. The Institute will be responsible for documenting Nazi and Communist crimes, and at the same time to publish and edit, educate the general public about their findings. In conjunction with the Archive of Security Units, the Institute will take part in expanding knowledge for both the specialist and the general public about the activities of the instruments of power under totalitarian regimes. Our ambition is to introduce new information and new themes into the public discourse at the high level of quality that the topic deserves.

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## **Workshop 4: Reforming the Army**

# The Effect of International Developments

*Ivan Gabal, sociologist, Czech Republic*

As an introduction to this panel, allow me to make a short historic discourse that points out the main challenges and strategic tasks which have been faced since 1990 by armies of all three former Visegrad states: Poland, Czechoslovakia, Hungary that became four states after the split of the Czechoslovakia in January 1993. The first major challenge they each had to face was the removal of hundreds of thousands of Soviet troops stationed in the former East Germany, Poland, Czechoslovakia and, to a lesser extent, Hungary. This task essentially became one of the main reasons for creation of the Visegrad group of countries. The management of this task was done by our armies and included forging political arrangements, finding technical solutions, and providing security and safety during the transitional process.

In 1991, a second major challenge arrived in the form of the Persian Gulf War against Iraq for the liberation of Kuwait. Czechoslovakian and Polish troops joined the US led coalition of 34 countries, while the Hungarians decided not to participate. It was a difficult mission for the Czechoslovak forces, because it happened so soon after the democratic change had taken place and while the Czechoslovak Army was still in the early stages of its transformation. Furthermore, our military suddenly found itself operating in a completely new environment along side NATO forces.

Soon after Czechoslovakia split, the Czechoslovak military had to be divided into two different armies. No small task. Immediately afterwards, our two countries participated in a peacekeeping effort in the former Yugoslavia – initially within the framework of UNPROFOR, and later on as part of the Dayton Treaty – that included sending troops to participate in the peace-enforcement missions of IFOR and SFOR in Bosnia Herzegovina. Later all four Visegrad countries started to prepare their defense forces for NATO membership which was next important stage of the transformation process.

Since 2001, we have taken part in various military campaigns and peace-keeping missions in Afghanistan, in Kuwait, in Iraq and other places. This has been the case for all four Visegrad countries. In addition, Hungary hosted a US base that was allowed to operate within its territory. After officially joining NATO, we took part in the military operations in Kosovo against the Milosevic-led remnants of the former Yugoslavia.

The Kosovo operations were a difficult test for these new NATO members since it happened almost immediately after we joined the Alliance

In essence, this briefly summarizes what has happened with regards to our armed forces since 1990 when we became part of the democratic world.

**Ivan Gabal** worked as the election campaign manager of the Civic Forum and also acted as consultant in the election campaign for the “Public against Violence” movement in Slovakia in 1990. In 1991, he was the Director of the Department of Political Analyses in the Office of the President of the Czech and Slovak Federal Republic. In 1992, he worked as an election campaign manager again, this time for the Civic Movement. Later, he became a partner in the AISA Research Agency. Since 1994 he has worked exclusively in the Gabal Analysis & Consulting Company, which specializes in sociological, communication and political analyses and developmental strategies.

# NATO Membership as a Driving Force for Reform

*Bánk L. Boros, University of Miskolc, Hungary*

This seminar has raised certain questions about how to spread of democracy and what can possibly be learned from our Central European transitional experiences. Let me stress right away that I am bit skeptical that Burmese democrats, for example, can learn something from our experience. Obviously it is possible to create democratic institutions in another country based on or similar to the ones developed in the West. Likewise it is, at least in principle, possible to import democratic values, to introduce free market economy and to establish rule of law. However, one thing that is absolutely indispensable to genuinely operate a full-fledged democratic system, and more specifically to put a military under democratic control, is to have a certain level of political culture that permeates the general population, as well as military personnel and politicians. However, I will highlight later on another reason why I think that our experiences are not transferable.

In 1990, soon after our transition, we had two immediate tasks regarding the Hungarian armed forces that needed to be addressed. First of all, we had to put our military under democratic control, which meant establishing a new institutional framework for the armed forces so that they could function under the oversight of a democratic government. We managed to do this successfully, since it more or less depended upon making a political decision. Our second task was related to how to respond effectively to the demands and threats of the completely new international environment we have found ourselves in after the Cold War ended.

This is where my problem lies with the idea of the transferability of our experience to countries like Burma or Georgia. We have been operating within a completely different international environment than mentioned countries. The parameters of our international environment have been largely defined through our membership in the NATO alliance. While we can imagine Serbia joining NATO, is it believable that Burma could become a NATO member in the near future? As for Georgia, because of its location between the American and Russian spheres of influence in the Caucasus region, it can hope all it wants for membership in NATO, but nobody knows when this could happen. Therefore, what functioned as the main driving force for the transformation of our military – the prospect of NATO membership, will not work for

these other countries. In essence, how each state transforms its own military and how it decides to respond to the new types of threats in the 21<sup>st</sup> century will include unique problems and challenges for each of them to solve. This is why I am unsure whether or not our experiences can be exported.

We have started to talk about new types of threats that have emerged since the end of the Cold War era and the start of the 21<sup>st</sup> century. We have largely adopted the West's perceived threats here in Central Europe, in that the threats we recognize as threats is primarily defined by the United States, our Western European allies or by those international institutions in which we are members. The threats perceived in Europe and the West, in contrast to what Iran and Pakistan consider to be threats, are not always the same. If you take a look at various Western national security strategies, such as the 2006 US National Security Study or the Georgian military strategy published in 2007, you will find all the same threats being described. In the Hungarian National Security Strategy terrorism is mentioned as the obvious threat; but this really isn't true.

Hungary is under no direct terrorist threat and this is certainly not the number one priority for Hungarians. Even though terrorism is the number one security threat for the British and the Americans, it is not for Hungarians. These days in Hungary, non-militaristic and even non-violent threats are more pressing. Individual Hungarian citizens are more concerned about whether or not they will discover that their family's car has been stolen in the morning. These internal threats are present, as are the newly emerging threats such as environmental problems and immigration concerns. In certain way, we may conclude that if we take a look at the international system today, by taking a look at the different states, everyone's military is going through a period of transformation, since this is not something that is happening just in countries that have gone from authoritarian rule to democracy. Armed forces have been transforming everywhere, because of the new threats that are constantly emerging and the new international environment that we all find ourselves in these days. In addition, the strategies and tactics of warfare are changing as well, which reflect the changing ideas around how to use one's armed forces and what sort of tools and capabilities need to be in place to have an operational and efficient national military.

When it comes to Hungary's experience with the transformation of its defense sector, security policy and our military, we have found that our problems are mainly political in nature. If nothing else, one lesson that could be drawn from the Hungarian experience is how important is it to define your own national interest first and foremost. National interest is what lies at the heart of security and defense policy from any given state's perspective. Unfortunately, there is no political and social consensus about what the Hungarian national interest should be. And if your state's national interest is unknown, how can you transform the defense sector or prepare the military to operate accordingly in a new environment?

The Hungarian defense sector continues to be completely politicized and party politics set the prevailing tone. There is no political consensus among main political parties about what to do with the military and how to respond to a challenge we face due to the changed international environment. Therefore, we have an ad hoc decision-making process in Hungary that changes from one government to the next. If a socialist government is in power, then they will call for better relations with Russia. If a right wing government wins, then the country will turn towards the United States, NATO and the European Union. As a consequence, we have neither a coherent foreign policy nor a coherent defense and security policy that could last for fifteen to twenty years. Furthermore, there is no consensus over what the role of our armed forces should be, but there are at least two options from which we need to choose. The traditional option inherited from the Cold War would be to create an armed force capable of defending the state's sovereignty, territory and people. The alternative view would be international in nature, where we would commit forces to international institutions like NATO or the EU in order to respond to direct and non-direct threats to our country. We are still pondering the two options, since we are still unsure about what our direction should be.

We have faced another problem in that there was a lack of well educated, well trained experts in security and defense policy when we began the transition. I am sure that you can imagine how difficult task it was to introduce democratic civilian control over military or to establish Ministry of Defense with civilians instead of military personal working in it, without a pool of highly qualified experts that could help with this process. The saddest part of the whole story was the behavior of the Hungarian politicians.

Our politicians, both in parliament and governmental institutions, have not generally cared that much about security issues. Until our accession into NATO in 1999, our number one foreign policy goal was simply to join NATO. The decision to try and become part of NATO (and the EU) had been made in 1989–90, because it was thought they will defend us. The idea of collective defense, is at the core of NATO as outlined in article five of the Washington Treaty. The attitude was that NATO would solve all of our potential security problems and would guarantee our security. In fact, once we successfully achieved accession into NATO, Hungarian politicians stopped to care about security issues.

Hungary's politicians believed that their only responsibility was to spend some money on the army's transformation and to fulfil the duties of a NATO member. The politicians were overwhelmed by domestic political issues and had lost genuinely interest in security issues, and as a result they were not even ready to spend the amount of money required and expected by NATO. In 2006, Hungary spent 2% of its GDP on defense and only 1.1% in 2007. Such a level of spending is ridiculous, but stems from our lack of resources and our bottom up approach to planning. Our planning is based

on the resources that are available, rather than as a responding to threats we are facing or could face in the future. The defense ministry was given the amount of money that it could spend. One would expect this to be exactly the other way around, that first of all potential threats would be identified, and then based on the analysis of these threats money would be allocated to cover all the costs necessary to development the capabilities needed to counter these threats.

The leading Hungarian politicians' lack of concern regarding defense has kept us from having a meaningful debate about how our defense ministry performs. Instead, we have had to deal with amateurish politicians without any real experience in security and defense issues usually leading the Ministry of Defense. So it is no wonder that we have experienced more than a few failed military reforms. Until the Prague and Riga NATO Summits we didn't even know how to respond to the questions what we would face as a NATO member. However, in the last one or two years there have been promising signs that we are finally beginning to commit as many possible sources and capabilities towards our duties in NATO.

Let me conclude by highlighting the importance of the predictability and credibility. In the field of international affairs, it is essential for a state to behave predictably. If you have, a new foreign policy doctrine every four years, no one will form an alliance or cooperate with you. And if you are part of an alliance or a certain institution then you should do everything in order to fulfill your duties that are derived from your position in that institution to establish your credibility. If you do not what to spend the amount of money on defense that is expected from NATO members, then perhaps it is better not to enter such an alliance. When a country does not keep its obligations and promises it is seen as shameful from both the domestic and international point of view and will have consequences for the future.

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# Transforming an Obsolete Colossus into a Modern Army

*Stanislaw Koziej, former Deputy Defense Minister, Poland*

The most substantial change that the Polish army has gone through was transformation of its single minded strategy into a multi-faceted one, which included the complete reorientation of our main strategic alliance from the East to the West. But let me start with the so called “internal function” of the armed forces that exists in all authoritarian states, but does not exist in democratic ones. During the Communist Party’s authoritarian rule in Poland the internal function of the armed forces was actually more important than the external function. Actually, the Warsaw Pact was the real provider of the external functions of our army, i.e. deterrent and defense against external enemies. The Soviet Union’s leaders had expected the Polish state’s authorities to concentrate more on the internal function. As a consequence, the army was treated as an important instrument of internal policing, while also serving as a school for ideological education. The army was called the armed power of the Party. And the Polish Army delivered what has been expected from her on several historic occasions. In years 1956, 1968, 1970, 1980 it assisted the forces of internal state security and helped suppress social protests and uprisings calling for democratic changes, which culminated in the imposing of martial law in 1981.

It was obvious that we needed a change after 1989. The new political elites were not the only ones striving for this, but the soldiers themselves who were also interested in abandoning their internal policing functions. The first and the most substantial step in that direction was the elimination of the party’s influence over the army. Soldiers were no longer allowed to join any political party. Of course, the process of removing the communist ideology from the mindset of the army’s rank and file required more than passing one law, but this formal move was extremely important in starting the process of de-politicizing the army.

It was also necessary to reorganize the entire management and command system of the army on both political and strategic levels. The first step was to establish mechanisms for civilian and democratic control over the armed forces. The Minister of Defense position, which had been held earlier by a general and high functionary of the communist party, was taken over by a civilian minister. Naturally, initially it was quite difficult to find civilians, from the ranks of the democratic opposition,

qualified to hold such a position and that had some depth of knowledge about army matters and defense policy. It took a long time to create the civilian structures in the Ministry of Defense that would give it the ability to cover strategic planning and the transformation of the armed forces.

The second major challenge in the transforming the system of management and command was the difficulties we had with developing strategic long term planning. How did this come to be the case? Our high ranking military officers had gotten used to fulfilling operational tasks, rather than being capable of independent, strategic thinking and acting during the two generations of our being a part of the Warsaw Pact. Strategic thinking and planning is usually the main function of the General Staff, which is a central institution for the military. In our case, it proved to be difficult to reorient our General Staff in direction of comprehensive national strategic thinking. In the end, the transformation process of the army was reactive rather than proactive.

The army adapted slowly to the changed conditions and was not capable of actively initiating the necessary long-term reforms required in a radically changing security environment. As a result of us being more reactive than creative, we ended up doing more operational than strategic actions. Furthermore, the lack of capability for thinking and acting strategically delayed the army's transformation and made the whole process far more expensive. Given this situation, the international assistance provided by the US, Great Britain, Germany and France played a more important role in speeding up the process of upgrading of our army personal with modern military education. Joint military trainings, which occurred within the framework of the Partnership for Peace, proved to be the most helpful assistance we received, because it provided practical experience. Another good practice was the implementation of the cadet system for military commanders. In general, the participation in collective international military operations has been a highly valuable learning process for our army.

Another substantial change was achieving a break with the old quantitative approach for a qualitative one. In the post-Cold War world, the quality of one's army has become far more important than amount of soldiers at a country's disposal. This was a completely different mentality than the one that existed during the Cold War, when the number of soldiers was often considered more important than quality of them. Unfortunately this new approach has not been very appealing for both our military and political decision makers. It seemed that the politicians were more attached to this obsolete approach based on quantity than we could have imagined. This provoked the heated dispute amongst experts, planners and decision makers about what it would mean to curtail army recruitment and to create a more professional army. Delaying the decision to shift from mass-recruitment army to the far smaller professional corps was one of the most crucial mistakes that happened during the Polish transformation. Fortunately, this decision has been already made at this point.

The army's modernization is directly linked with the need to reduce manpower. The current Polish armed forces are three times smaller than the one that existed at the end of the Cold War. The challenge of updating technologically was difficult during the transition. We had to replace the old heavy armaments, required for mass operations done with the Warsaw Pact, for more modern and lighter ones. Furthermore, our divorce from the Warsaw Pact and the shift towards NATO forced us to replace Soviet equipment with new Polish and Western equipment so that we would be able to guarantee our readiness to cooperate with the armed forces of our future allies. An additional important obstacle that we had to overcome was the short-term budget planning we had been using, which didn't allow us to prepare properly for technical modernization over a longer period of time. During the 1990s, our budgetary planning was short-term, practically year by year, though now we have adopted long-term budget planning.

In closing, I would like to emphasize that the Polish experience with transforming the military reflected the transition that took place as the whole society shifted from being authoritarian to democratic. It shows how important it is for civilian and democratic leaders to be able to prepare beforehand for control over the strategic management of the army. By this, I don't only mean the passive exercise of civilian oversight of the army, but more importantly the ability of the civilian and democratic leaders to strategically steer the military transformation in accordance with the needs of a democratic society.

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# Establishing Civilian and Democratic Control over the Army

*Ivo Samson, Slovak Association of International Affairs, Slovak Republic*

In Central Europe, countries were used to be integrated in the some type of militarily organization. During the Cold War, Slovakia was part of the Warsaw Pact, when it collapsed, we took the necessary steps to become integrated into a new type of a political and military organization, NATO. Slovakia's experience with reforming its military is quite similar to that of the other Central European countries represented here. Therefore, I will try to focus on the specific aspects of the Slovak experience that have not yet been touched upon.

Slovakia is currently serving as a non-permanent member of the UN Security Council and has found a niche for itself by focusing on security sector reform. In February 2007, the Slovak presidency proposed a policy for dealing with security sector reform that could be applied in developing countries to the UN Security Council. West Africa was the primary area of focus, but more target countries might be included. The Slovak Ministry of Foreign Affairs had asked my security research institute to prepare a draft study based on utilizing a country's experience, whose armed forces had been transformed from totalitarian control to civilian and democratic control. I emphasize the importance of both civilian and democratic control deliberately.

Civilian control over the armed forces has been one of the most basic conditions of military reforms, though it is often overlooked that technically our army was under civilian control even under communism. Our armed forces were under strict party control the whole time. For instance, even though a ruling Politburo member served as the Minister of Defense in Czechoslovakia, his ministry position was absolutely unnecessary, since the armed forces were anyhow under strict party control. The army was one of the three basic instruments of the totalitarian state, in addition to the police and the People's Militias, which was a specific feature in the former Czechoslovakia. All three of these elements in the armed forces were under the complete control of the Communist Party and its Politburo.

It is natural to wonder why the communist elite did not use the army to suppress the Velvet Revolution in 1989. Why didn't the Communist Party have the courage to call in military units to restore order? Today we know that in reality the army had been prepared to intervene. Soon after the public's mass protests started on November

17<sup>th</sup>, there was a huge meeting of the leading representatives of the Czechoslovak People's Army on November 23<sup>rd</sup> in Prague. At that meeting, the army's representatives expressed their full support "for the Communist Party, for peace, for socialism and for freedom". Therefore, it would seem that the Communist Party was in a position to intervene, because army was ready to act if had been ordered. What was missing was order from the Soviet Union, from Moscow. At the time of Velvet Revolution, as we now know, there was nobody in Moscow who was willing to take on the responsibility of telling the Czechoslovak Communist Party that they could use force against their own population. This was the only reason why the army didn't intervene. I believe that the Czechoslovak Army would have intervened, perhaps even brutally, against its own people in 1989, if only there has been such order from the Politburo backed by Moscow's support.

This is why I want to stress so strongly that we need to talk about civilian *and* democratic control over army. During the communist era, the Czechoslovak Army was under civilian Communist Party control, but this did not guarantee that army would not intervene against the civilian population. What were lacking were the democratic controls over the armed forces and democratic control of the armed forces means the control exercised by the parliament.

Slovakia's military inherited absolutely the same things that were inherited in the Czech Republic, Hungary and Poland: a large numbers of military bases and equipment stocks and of course, the army officers ingrained with thinking of the Warsaw Pact's military doctrine. Generally speaking, the transformation of our army happened in several stages. There have been no less than seven attempts to reform the armed forces and all seven of them failed. Only the last reform attempt, which started after 1999, was successful, because it was directly linked to being integrated into NATO. In our case, joining NATO has proven to be the most efficient tool for reforming the armed forces.

The general trends in all four Visegrad countries' armed forces reforms are similar, in that they were all shaped and formulated in response to the general rules expressed by NATO. We are all well aware of the study on NATO enlargement, which was elaborated on further in 1999 as part of the Membership Action Plan (MAP). The basic principles underpinning the MAP were the same as NATO's study for enlargement in September 1995: rule of law, democracy and the market economy. NATO integration added a special set of features that covered compatibility and interoperability. And, last but not the least, we find this seemingly simple idea of "civilian and democratic control of the armed forces."

Establishing civilian and democratic control is the basic condition of transforming the armed forces from being a tool that works for a political group or party into something that works for the benefit of a democratic state. This is why we have

highlighted “civilian and democratic control” so strongly in Slovakia’s army reform proposal presented to the UN Security Council in February 2007. It is true that we avoided explicitly using the term democratic in our proposal. Why? There were real fears that if this product was trying to be sold to an African dictator, then the term “democracy” might potentially scare him off. Instead, we stressed the idea that if you want an efficient armed forces, which is a likable aspiration for an African dictator, then your armed forces should be under civilian control.

A question often raised when we talk about military reform is whether or not the thinking of soldiers should be changed. Personally, I believe that this is unnecessary, because a soldier is supposed to obey orders and not to think. A thoughtful soldier is a dangerous soldier. A soldier should obey. Allow me to use the example of the American mistake that someone mentioned earlier about disbanding the Iraqi Army. The Americans dissolved the Iraqi Army, because it was considered to be too compromised by its past and, therefore, needed to be changed completely. This was a huge mistake. The Iraqi army was ready to serve American interests, and to obey.

Soldiers run tremendous risks exactly because they have to obey orders, even when the armed forces are under civilian and democratic control. A soldier has to act in accordance with the political will of those in power even under democracy. At the same time, he has to know that he will be held responsible for human rights abuses or atrocities if they are committed. These dilemmas are what we are focused on in our future reform plans for the reform of the Slovak army.

The Slovak armed forces of the future should be transformed so that they are capable of participating in peace-keeping missions, as well as combat units of peace enforcement. In order for this to be the case, we need to prepare our soldiers for above described moral and ethical dilemmas. There is a real potential that if our soldier were to be involved in a war or in a combat situation, then they might find themselves on the verge of perpetrating something which might violate human rights and which might be unpardonable. So if we plan to keep building up light flexible and deployable forces specifically designed to be sent on peace-keeping and peace-enforcing missions anywhere in the world (which can often turn into combat situations), then we must recognize that we are exposing them to the situations in which atrocities and violations of human rights can happen. Therefore, preparing our units for such challenges has to be a priority, in order to minimize any potential transgressions.

Historic evidence proves that armies under democratic control perpetrate the least amount of atrocities. This statement holds true, in spite of the atrocities perpetrated in World War II, Vietnam or Abu Ghraib by US soldiers. The empirical evidence speaks for itself if we were to compare the behavior of the armies under the democratic control versus those that have not been under democratic control. An army’s risk of violating human rights is minimized when it is under democratic control. I believe

that was what Israeli Prime Minister Golda Meir had in mind when she addressed the Arab and the Palestinian side thirty years ago by saying that “we can pardon you for having killed our children, but we will not excuse you for forcing us to kill yours.”

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# Short Sighted Planning and Long-Term Consequences

*Jiří Šedivý, former Chief of the General Staff of the Czech Armed Forces, Czech Republic*

Based on our experiences in the Czech Republic, the first pre-condition for implementing a reform of the armed forces is the ability to make firm political decisions. Reform and modernization programs entail political decisions that can only be done after a profound period of analysis, reflection and discussion with experts, and should last not only for five or ten years but rather twenty or more. For example, supersonic jets, armored personnel carriers and other similar equipment have long life cycles and modernizing such equipment should be based on decisions and planning that last for thirty years or so. For that reason it is necessary to have a meaningful discussion about how to equip the army and how to keep its capacities at the level that will be needed for the future.

We went through a painful reform and modernization process with our armed forces. First of all, Czechoslovakia split in 1993 and the Czech and the Slovak Republic became independent states. At the time, the international environment was extremely unclear because the Soviet Union had recently collapsed and our politicians and military experts were unsure about what would happen in the next months and years. This level of uncertainty was not just the Czech Republic's experience, but also that of our prospective NATO partners. Therefore, when we started to reorganize our armed forces the entire process was surrounded by this environment of uncertainty. That is why I wanted to stress that the political decisions must be made after profound consideration is given to all various aspects and possible outcomes.

Let me give you an example from our experience on how you should not handle the reform. Very early on, already in 1993, we started our reform with the decision to modernize 350 pieces of equipment by placing orders for seventy two subsonic planes and thirty six supersonic planes for the air force and other projects for the army corps and its brigades. After several years, most of these expensive projects collapsed. For instance, the army ordered seventy two L159 Czech made planes, but due to the spending on these planes we did not have the money for modernization of other aspects of our armed forces when it became necessary after our accession to NATO. Of the seventy two planes that we bought, currently only twenty four of them are still

operating. The rest of them are sitting somewhere in storage. We would like to sell them anywhere in the world, but nobody wants to buy them.

Another very expensive project shares a similar history, the modernization of our T 72 tanks. The army was in possession of one hundred and twenty T 72 tanks after the Cold War, all of which were in storage, but the decision was made to modernize thirty five of them. The Minister of Defense and the Army's General Staff had submitted the proposal for this modernization project. The proposal passed through the cabinet and parliament and it seemed that everybody agreed with it. But a few years later, when new evaluations were done about this process, we recognized that the modernization programs we had initiated were too expensive. The cabinet's decision this time was that we didn't have the money for such an expensive defense budget. So Army was ordered to cut back on spending for these defense programs and to start a new modernization process, but unfortunately by that time the money had already been wasted on the previous modernization projects.

The second negative lesson we learned was that every newly elected government brought about a change in the defense policy. Everything done by the previous government was proclaimed to be wrong and the new government would try to push things in a new direction. Sadly, this is indicative not only of the Czech experience. Decisions about how to reform the armed forces must be done consensually in a way that cuts across the political spectrum, or at least among major parties, so that each of the key political players are committed sticking with the direction of the reform after each election.

Personnel reform is the next internal problem that needs to be solved, but political support is also important for this to succeed. Reforming personnel is the most important aspect of the armed forces' transformation, because it includes the army's soldiers *and* the civilians in the Ministry of Defense. These people need to have an understanding the specifics of the reform and what a new, modern army should look like. They need to be educated and to be well informed enough to create reforms which will prepare our armed forces for the new tasks and challenges, not only necessary for defending our own countries, but for example to be engaged in the Middle East.

I believe, in our case, it is crucial to focus on the military personnel between the ages of forty to fifty, who already have sufficient experience, but are still able to learn and to accept new trends. In general, people who are fifty and older are either too closely linked to the old regime or are not progressive enough to be able to push through such a far reaching reforms for the army. When I was put in charge of the General Staff of the Czech Army, I relied primarily upon people who were experienced but still young enough to help make these changes happen. In just one year we successfully prepared our armed forces to become a full fledged member of NATO.

So, in short, probably the most important recommendation that I can give to my colleagues from other countries: please don't focus exclusively on the structure and

size of the armed forces. Focus on the people, both in the Ministry of Defense and in the army itself, and don't forget to educate politicians and the members of parliament along the way.

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