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„ The communists are just as dangerous when they are not protecting the ideology anymore, but their prey.” Sándor Márai

Background

Authorities responsible for managing the secret police archives of seven post-communist states in Eastern Europe formed a **network in Berlin in December 2008** to both commemorate and assist victims of state repression and promote the importance of historical research in raising awareness for building a common European heritage. The European Network of Official Authorities in Charge of the Secret Police Files forms an umbrella organisation for state agencies serving as managers of the vast files kept by the intelligence services of Bulgaria, the Czech Republic, East Germany, Hungary, Poland, Romania and Slovakia teamed up to compare experience and share accumulated know-how. Their representatives acknowledged that each country had chosen different ways to administer the files since the Berlin Wall fell in 1989 mainly in terms of granting access, conducting criminal investigations or endorsing legal acts for lustration or vetting. The **European Commission** promotes the idea that it is strictly **a national competence to set up structures** for helping societies in coming to terms with the past and reaching reconciliation. However, member states **share the view they could benefit from each other's experiences** in the nearly two decades since the collapse of European communism in grappling with the legacy of political police repression or state-spying against citizens. The platform's goal was to establish a forum for the mutual exchange and transfer of information; this applies to the archives, the legal regulations, historical and political education, as well as public relations and facilitates coming to terms with the past in a pan-European and international context. The network aims to focus, in particular, on academic research and education. This is the only network or pan-European structure uniting national archives maintaining and preserving the files of repressive forces of the communist regime. Presidency of the network is rotated every 6 months combined with an extensive meeting at the occasion.

The **European Parliament** strengthened the intentions for community action in the field of promoting the memory of totalitarian crimes with the adoption of a resolution in April 2009. Several conferences have since then underlined the importance of a shared European memory of the repressive communist regimes and the role of national archives as a basis for the eventual reconciliation of historical narratives. In this sense it is very important that Western Europe should have a more profound knowledge of the troubled past of member states in Eastern Europe. It is worth noting that the Commission has addressed the need for stronger community action on the subject in its report dated **22 December 2010** under the title „**The memory of the crimes committed by totalitarian regimes in Europe**”. **The role of the EU** in the consolidation of the archival regulations and practices can only be to facilitate this process by encouraging discussion, fostering the sharing of experiences and best practices while bringing the stakeholders together. The Commission highlighted that the initiative of the network of several member states had the potential to facilitate academic research on the communist repression. As an asset, EU financial programmes, notably in the field of education and citizenship could be used to raise awareness across Europe. The Community Action programme ‘Europe for Citizens’ includes an action called ‘Active European Remembrance’, aiming to keep alive the memory of the victims of Nazism and Stalinism and to improve the knowledge and understanding of present and future generations about what took place and why. In addition the MEDIA 2007 programme offers funding for audiovisual projects deemed to enhance pan-European awareness of state security repression. For instance the well-known movie *Das Leben der Anderen* (The Life of the Others) was supported by this community programme. The commitment of the Commission is clear in facing up to the legacy of totalitarian crimes. However the results of an impact assessment ordered by the Council show that criteria for a community instrument at this stage have not been met mainly because of the fragmented national legal landscapes. The Commission has however committed itself to a continuous review of national measures for future action.

Member State experiences

The adoption of the law for disclosure of documents and announcement of affiliation to the secret services of **Bulgaria** was preceded by a longstanding debate and finally adopted in December 2006. The act enabled the National Assembly to create a 9-person committee which is exclusively responsible for putting the law into effect. The first term of the committee lasts from April 2007 to April 2012. The making public of citizens' affiliation and access to documents is only limited in cases when the interests of Bulgaria could be harmed. The law calls for the compulsory screening of citizens standing as candidates in national, regional and local elections as well as in European Parliament elections and if affiliation is determined, the candidacy is withdrawn. The committee screened 112 445 people until end of 2011, out of which affiliation of 6387 people was found out, with 5782 declared and 605 undeclared. The disclosure of the names and date of the collaborators should be evaluated in harmony with the Access to public information Act.

The legal act in the **Czech Republic** was endorsed by the Senate in 2006 and adopted in the Lower House in May 2007 with the aim of mainly educational purposes for coming to terms with the past. Previous laws were amended in order to extend the remit of archival science in the field of researching documents of state organs, security services and political parties consolidated in the National Front. The Institute for the Study of Totalitarian Regimes and the Security Services Archive started its activities in February 2008. The two authorities are public and independent entities. The institute - which authority is the Council counting seven members elected by the Senate - does primarily research, while the archive ensures access to documents of state security and helps state organs authorized to examine the files in line with the Act on the Protection of Classified Information in order to conduct criminal investigation and prosecution. The two bodies employ 260 people. Transfer of documents previously administered by ministries has been accelerated by the legal act and set off in 2008. Approximately 30% of the personnel and investigative files were destroyed during the transition. It is worth to mention that the Institute transfers know-how to post-communist states such as Albania which is at the initial stage of dealing with its authoritarian past. The archive assists the Ministry of Interior and the National Security Office concerning legally mandated vetting and security investigations. The laws on access to the files are liberal in the Czech Republic and accessible in their full extent without anonymisation. On the other hand the use of data extracted from the files are subject to conditions and regulations of the Data Protection Act.

After the dissolution of the **German Democratic Republic's** Ministry for State Security in January 1990, citizens fought for the opening of the Stasi archives to the public instead of incorporating them in the Federal Archives as a result of the unification process with the Federal Republic. The Stasi Records Act passed by the Federal Parliament came into effect in December 1991 and since then all federal governments have joined the efforts of opening up the archives and thereby the intention for the reappraisal of the SED dictatorship remained undoubted. The act safeguards both the political expectations of the GDR opposition (public's right to information) and the constitutional principles for data protection (individual's right to privacy). The law takes a balanced position when interests and legal rights conflict with each other and thus is a benchmark for post-communist Member States. Regarding the access to the files the law is quite complex and differentiates between individuals, public or private institutions and the press, broadcasting sectors.

In **Poland** the Institute for National Remembrance was endorsed by the Solidarity movement and established by the Sejm in December 1998. Earlier the vetting was done by a different body (Public Interest Spokesman's Office) and access to the files were limited to check only those who held public positions. The institute and archive combines state and justice functions with scientific-educational research and since 2007 incorporates a vetting office. Its tasks are closely linked to the public prosecutor when conducting investigations and prosecutions for war crimes. The President is elected by the Sejm with the Senate's consent and reports to both chambers annually. The institute employs more than 2000 people and 140 prosecutors. The

regulations on access to the files are differentiated based on status of the applicant and type of the document. However, security agencies and ministries can limit access to the files with the consent of the president when referring to protection of state interests. Amid heated debates in the last decade the institute has become a permanent element of Polish public life and most probably amendments to the legal structure will not lead to dissolving the manifold activities.

The National Council for the Study of the Securitate Archives was established in 2000 by an act of parliament preceded by heated political and social debates. **Romania** was the only communist country in the region where much blood was spilt for the democratic transition. The Proclamation of Timisoara initiated the idea of lustration, where civil society played a pivotal role in creating awareness and rehabilitation for the victims of communist pressure mechanisms. Any citizen or foreign national was able to access personal files. The council is empowered to conduct lustration of candidates for and holders of public office where basis of the assessment is individual responsibility instead of collective guilt of collaboration with the secret police. The transfer of the files from ministries was slow until 2004 when the Basescu government introduced new laws. The council's activity experienced a milestone in 2006 when 270 former collaborators were identified. The law on lustration follows the German and the Polish concept.

The Unit for Documentation of Crimes of Communism was founded by the Ministry of Justice of **Slovakia** in 2000, but had few and rather administrative, basic roles. The act establishing the Nation's Memory Institute was passed by the National Council instead of having been vetoed by the President in 2002. The bill was initiated by the Ministry of Justice and the first president also had ties to the Minister beforehand. The institute's survival was questioned twice: in 2006 at the death of its director and in 2008 when deputies introduced and shortly thereafter withdrew a bill for dissolution. The legal successor of the State Security Service, the Slovak Information Service at first rejected to transfer the files to the archive, but finally proper delivery set off in 2003. The other problem is that a considerable amount of documents are still stored by the Ministry of the Interior of the Czech Republic following the split in 1993. The competence of the institute covers cooperation with prosecutors in order to initiate criminal proceedings against perpetrators for communist criminal acts. The political opinion is quite varied concerning the future activities of the institute, ranging from almost full rejection to overwhelming support, mainly on the centre-right.

The Historical Office in **Hungary** was created by a parliamentary act in 1997 as an answer to the lustration law (1994) which was declared unconstitutional. The Parliament did not establish but renamed the Historical Archive of the Hungarian State Security after the scandal on the State Security past of then prime minister Péter Medgyessy in 2003. Screening of public personalities was carried out by judges with the Archive providing them with data and is finished by now. The National Security Services were obliged to start transferring documents to the Archive in 2000, however most of such files are

still classified as secret meaning that every 3 years they are subject to a re-evaluation and are handed over to the Archive only after declassification.

It is necessary to mention some circumstances preventing us from forming a truly realistic and complex picture about state security past:

- vast amounts of the files were eliminated, damaged or burnt in 1989, we lack knowledge about the contents, the most we know is that the files primarily from the latest period of the regime were destroyed,
- it is yet unknown what documents the democratic national security services still dispose of and why,
- files of the intelligence and counter-intelligence services are more limited for research purposes than those of the former internal counter intelligence,
- files covering former secret officers are not accessible for research purposes at all, in spite of the fact that they played a key role both in the transition and the political manipulations of the post-communist period and they continuously hold important public positions,
- capacities of the Historical Archive of the Hungarian State Securities are small, so the majority of the dossiers are still not processed,
- the real name of the agents may only partly be uncovered, the list of names is not publicly accessible, moreover experts could not yet come to a common position in terms of real evidence of different files proving the agent status,
- enabling access to the files of military intelligence would be crucial because it had its own internal counter-intelligence, and thus it managed internal counter-intelligence data.

The bodies administering the secret police files play a pivotal role in the detection, transfer, preservation and disclosure of information, while generating public debate and publishing periodicals facilitating the process of coming to terms with the past. The experiences of the institutes provide a reference when amending legal acts determining the rules for dealing with the files in public.