

Archives of the Security Services of Hungary and East Germany

Marta Fodor

Queens College: City University of New York

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Abstract

This project set out to investigate how access to records of security services of former repressive Communist regimes in Germany and Hungary were managed in these societies after transition to democracy; it was meant to show two diverse reactions to a unifying and similar past of oppression by examining legislation concerning access to secret police records and lustration. It sought to investigate how fundamental dilemmas in archives such as access vs. restriction, retention vs. destruction and the rights to privacy vs. the right to information were addressed in these countries after the fall of Communism. It was shown that the transition type, the political climate and the availability of funds in Germany and Hungary affected the mode of legislation the countries experienced. The study is meant to inform archivists confronted with archives of repressive security services in countries undergoing transition to democracy understand the types of challenges they will face in ensuring access in such politically charged environments.

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Chapter I: The Problem

The development of recordkeeping and archives fundamentally changed government, whereby governments are able to control an archive and thus control history and mold the memory and cultural identity of societies at its will. The records that make up archives become part of the heritage of the society represented, and provide evidence of activities, ideas and people for future generations of users. Access to these records is the way a community creates a history and maintains a consciousness of the community, and when this right to access is taken away memory is stripped from the people. The archives reveal the power relationships that exist among the society that keeps it and it is essentially a battleground of disputed histories. The archives reveal the intentions of the keepers and the society by who and what is included as well as omitted. In democratic societies we have come to expect that government archives are used for democratic accountability thus keeping the power of the government in check and protecting the rights of citizens. In modern states however, archives are also used as a tool for carrying out repressive activities. "It is only with the arrival of democracy and the opening up of the sources, that citizens become fully aware" of the influence archives hold over the lives of people (Quintana, 1997, p. 5).

In the late 1980's a tremendous movement toward democratization swept through Eastern Europe, Latin American and Africa and affected the government records created and accumulated by state security services of former repressive regimes in those countries. The archives of these security forces represent a historic record of the country, a possible source of legal evidence for human rights criminal cases, hold important value

for victims, and under the care of a new political regime it becomes an “important means for enabling new social relationships to be established” (Quintana, 1997, p. 5). However, the transition process creates an uncertainty as to whether the records will survive, be passed on and how they will be used by the successive regimes. Careful thought on the management of these archives is required and it brings new responsibilities for archival institutions. The purpose of this project is to understand the kinds of steps Germany and Hungary have taken to manage the inheritance of security services archives of their repressive predecessor Communist regimes.

The United Nations Commission on Human Rights and the International Council on Archives (ICA) Working Group on Archives and Human Rights advocates that governments of countries transitioning to democracy preserve and provide access to archives of repressive regimes for victims. The United Nations UN Human Rights Council (formerly Commission), Resolution 2005/66 (2005) states the Right to the Truth is:

the imperative for society as a whole to recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families, within the framework of each State’s domestic legal system, to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place.

Louis Joinet, in a 1996 report to the United Nations Commission on Human Rights states:

the right to know is not simply the right of an individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is the 'duty to remember,' which the state must assume, in order to guard against the perversions of history that go under the names of revisionism or negotiationism; the knowledge of the oppression it has lived through is part of a people's national heritage and as such must be presented.

(as quoted in Peterson, 2005, p. 7-8)

Role of Project

This project sought to investigate how access, or lack of access, to records of security services of former repressive Communist regimes in Germany and Hungary have been managed in these societies after transition to democracy; it showed two diverse reactions to a unifying and similar past of oppression through examination of legislation concerning access to secret police records and lustration. It sought to investigate how fundamental dilemmas in archives such as access vs. restriction, retention vs. destruction and the rights to privacy vs. the right to information were addressed in these countries after the fall of Communism. The study is meant to inform archivists confronted with archives of repressive security services in countries undergoing transition to democracy understand the types of challenges they will face in ensuring access in such politically charged and unstable environments.

Importance of archives

“Archives are the most faithful reflection of the history of a people and thus constitute the most explicit memory of nations” (Quintana, 1997, p.8). The records that make up the archives become part of the heritage of the society represented and provides evidence of activities, ideas and people for future generations of users. The archives reveal the power relationships that exist among the society that keeps it and it is essentially a battleground of disputed histories. “It is only the archives, particularly those of the police and intelligence services which controlled the population, which can reflect the social confrontations inherent in these regimes” (Quintana, p.8). The archives of formerly repressive regimes provides an account of the collective protest and resistance that occurred during repression, the side of history that was completely censored by the regimes while trying to present another type of public image and history. Thus a new diversity of ideas that were present during the regime can be included in a country’s historical narrative (Doyle, 2007).

For countries undergoing transition from totalitarian regimes to democratic systems, “there is a special link between archives and human rights. After being a tool for political, religious, ethnic and ideological repression, such documents have become, in a democracy, key elements in repairing the damage suffered by the victims of repression and in assigning responsibility for the atrocities committed” (Quintana, 2003). The archives of repressive regimes provide a chance for historical accountability if not legal accountability, “that is setting the record straight. Yes, it is critical to gather the testimony of victims, yes, we have to dig up the bodies, but we also have the right to

have the official record and incorporate that into the story of what happened” (Doyle, 2007). It is important to protect and preserve the records of repressive regimes as it prevents attempts by the perpetrators to erase evidence of their wrongdoing, to inflict selective amnesia on the repressed society, and they can be used to purge those responsible for crimes and to compensate victims.

The correction or reinterpretation of memories is “profoundly inhibited and controlled by the selective constructions, destruction, and reconstruction of archives” (Burds, 2006. p. 469). “Archives are constructed by human beings, and are therefore subject to the same all-too human limitations” (Burds, p. 469). “With few exceptions, perpetrators of violence- both individuals and institutions- generally conspire to conceal their crimes from investigations. Likewise, victims of ethnic or gender violence- whose identities are often disorganized by torture and brutality- unwittingly conspire through their silence” (Burds, p. 469). “Any nation’s ‘correction’ of history takes various forms, not least of all restrictions of archival access and actual destructions of collections” (Burds, p. 469). “Even regimes that sponsor widespread institutional violence to maintain state control tend to discourage open discussion of the violence. Like individual perpetrators, institutions of violence commonly adopt self-filtering procedures that euphemize the atrocities and serve to conceal the perpetrator’s responsibility” (Burds, p. 471).

This historical research will address the following research questions:

- How has access, or lack of access, to records of security services of former repressive Communist regimes in Germany and Hungary affected these populations after transition?
- How have fundamental dilemmas in archives such as access vs. restriction, retention vs. destruction and the rights to privacy vs. the right to information been addressed in these countries after the fall of Communism?
- What specific solutions were attempted in each country to overcome challenges faced during transition, to ensure access to these archives?

II: Survey of Related Literature

At the end of the 1980s a wave of democratization transitions reached Central and Eastern Europe and the former Soviet Union. Much scholarly research has been done to examine the relation between the conditions under Communist rule within these countries, and how this dictated the type of transition the country experienced towards the establishment of democracy. These studies have examined how the past communist rule has lasting influence on the current political climate. The communist past affects how each country solves problems of “restitution, political rehabilitation, legal problems relating to communist party assets, evaluating roles of the former nomenklatura as privatization proceeds, and dealing with former communist functionaries and state security services” (Welsh, 1996, p. 413).

The Third Wave, by Samuel Huntington

In his book, *The Third Wave: Democratization in the Late Twentieth Century*, the political analyst, Samuel P. Huntington attempts to explain how, and why, and with what immediate consequences the transition of some thirty countries from nondemocratic to democratic political systems occurred between 1974 and 1990 (1991, p. xiii). Huntington describes the establishment of a democratic system as:

“If popular election of the top decision makers is the essence of democracy, then the critical point in the process of democratization is the replacement of a government that was not chosen this way by one that is selected in a free, open,

and fair election. The overall process of democratization before and after that election, however, is usually complex and prolonged. It involves bringing about the end of the nondemocratic regime, the inauguration of the democratic regime, and then the consolidation of the democratic system” (Huntington, p. 9).

According to Huntington, the rise of the Third Wave of democratization can be attributed to five main factors:

- 1) The repressive regime’s loss of legitimacy, due to its inability to follow up on promises, inability to produce growth, or failure of its military.
- 2) Growth in economic development that provided the basis for democracy, by bringing about modernization that increased education, and the rise of a middle class that were able to push for democracy.
- 3) Church opposition to the repressive regime, especially the Catholic Church’s Second Vatican Council that emphasized individual rights.
- 4) New policies of external governments and institutions that helped democratization efforts, such as the push to enter the European Community made up of democratic countries, and efforts of the United States to spread democracy.
- 5) The snowball effect, whereby a successful democratization occurs in one country and this encourages democratization in other countries (1991, pp. 46-105).

Nedelsky (2004) explains Huntington’s transition theories in the following way. Huntington identifies three transition types: transformation, replacement and the transplacement, and levels of regime repression as the key factors shaping a new regime’s response to its predecessor (pp. 65, 67-68). In transformation, the leaders of an

authoritarian regime play the primary role in ending the regime and democratizing the state; in replacement, the opposition to the regime gains strength and the government weakens to the point that the government is overthrown; in transplacements, neither the regime or the opposition is powerful enough and thus democracy is brought about through negotiations (Nedelsky, pp. 67-68). Based on these transition types, assumptions can be made regarding how the new government will prosecute and punish official of the repressive regime, and thereby as to how it will address the questions of managing the repressive regime's records. Huntington also stresses that if justice is to happen it has to happen swiftly or else it will not happen at all. Huntington believes that the "more a regime participates willingly in the democratization process... and the more broadly the society is implicated alongside the regime in its injustices, the less likely it is that its former officials will be held accountable for their previous actions in a new democracy" (Nedelsky, p. 9).

Lustration Laws

"Historically, most system transformations have been accompanied by various forms of political purge and attempts to effect justice" (Welsh, 1996, p. 413). As part of transitional justice, many post-communist countries established lustration laws for "screening and prosecuting former Communist leaders, candidates for office, and selected public employees." Lustration laws are used to determine whether suspected individuals collaborated with the former state security service; it is a method of screening (Ellis, 1996, p. 181). It is a highly controversial tool and the degrees of implementation vary greatly

throughout Europe. Ellis provides a thorough survey of the current use of lustration laws in Europe, and he determined that “political partisanship greatly influences the introduction and adoption or failure of lustration legislation. This is apparent in a comparison of countries of the region in which former communists continue to dominate the political scene... and those in which former communists and former dissidents compete for political power” (Ellis, p. 181). He states that the degree of desire for accountability, restitution, rehabilitation and revenge in each country is unique and this determines the implementation of lustration laws (Ellis, p. 196).

Welsh further explores lustration laws and why it was adopted by certain countries and not others, as well as the complexities of adopting such laws. In Central and Eastern Europe, investigations were primarily focused on whether “individuals have been affiliated with repression by the state, in particular the activities of the state security services, or take the form of legal inquiries into political crimes and corruption charges.” Legal proceedings only occur if they collaborated and had been involved in criminal activities (1996, pp. 414-415). The specifics of the lustration procedures are different for each country, to reflect each country’s particular history under oppression.

The countries that favored lustration policy against previous offenders argued that the new government and its institutions need to be purged of the old elite. “It is justified by providing a basis for democratic beginnings rooted in the rule of law; it rectifies past injustices and provides a basis for a thorough investigation into the past” (Welsh, 1996, p. 414). Others argue that it is more important to concentrate on future issues than the ones of the past, and that “leniency will provide a basis for national reconciliation and will

foster a spirit of tolerance crucial to the building of a democratic political culture” (Welsh, p. 414). There are many complexities involved in analyzing the past Communist involvement in Central and Eastern Europe: “particularly the relatively high level of participation in political parties and mass organizations and the compliance on the part of the vast majority of the population, and the attendant difficulty of separating victims from perpetrators” (Welsh, p. 414). Welsh states that of the former Communist countries in Europe the ones that have made the greatest efforts in coming to terms with their Communist past are former East Germany and the now the Czech Republic. Hungary is characterized by a more lenient policy, and in Romania “the political exploitation of the subject was particularly pronounced; this was the result of as well as additional incitement to political polarization” (Welsh, p. 418).

The United Nations Reports

Two United Nations reports regarding the archival guidelines for the preservation and access to archives of repressive regimes will be examined to provide a perspective and a benchmark when examining Germany and Hungary’s action regarding their respective archives. These reports will provide an understanding of the attempts made by archivists to formulate standards and suggestions.

Archives of the Security Services of Former Repressive Regimes

Antonio Gonzales Quintana’s UNESCO sponsored report on behalf of the International Council of Archives (ICA), titled *Archives of the Security Services of Former Repressive Regimes* provides archivists of countries in the process of

democratization, with information on the range of problems they have to face. The report includes recommendations from archivists and human rights workers in managing archives of former repressive regimes, as well as a code of ethics archivists handling the sensitive materials should follow. The ICA Report draws up a series of recommendations, not rules, as not every action is applicable in all cases, because each process of political transition is different (Quintana, 1997, p.1).

The Quintana report stresses that the documentary sources for the study of repression should be preserved to prevent forgetting and to promote access to the truth. Archives play a key role in political transition and the process of democratization, and are essential in enforcing collective and individual rights:

1. The right of peoples and nations to choose their own path to political transition will be seriously affected by the availability of documents. Without archives their choice may not be properly made...
2. The right of the people to the integrity of their written memory ought to be unquestioned. If a community chooses to pardon as a means of achieving political transition, this must not result in the disappearance of the documentary heritage of the past. Nations have both a right and an obligation to preserve their memory by depositing it in their archives.
3. The right to truth. Intimately linked to the above two rights, citizens have the right to the fullest possible information on the actions of previous regimes.
4. The right to identify those responsible for crimes against human rights... The policy of amnesty or pardon for officials responsible for violations of human

rights has been adopted by various countries in the process of transition to democracy, with the aim of promoting national reconciliation. However, in a democracy, the people have the right to know the names of officials responsible for human rights violations in the former regimes in order to ensure they are not politically promoted. (Quintana, 1997, pp. 9-10).

The individual rights archives enforce include:

1. The right to discover the fate of relatives who disappeared during the period of repression...
2. The right to know what information on individuals is held in the archives of the repression: known as 'habeas data,' this guarantees the right to know whether any information on an individual was held in the police or intelligence services of the former repressive regime, and to evaluate in what way the individual's personal, family or professional life may have been influenced by political, ideological, ethnic or racial prejudice. The same right must also be applied on behalf of the agents and employees of institutions of the repressive regime.
3. The right to historical and scholarly research: all citizens have a right of access to the sources for the study of their nation's history. Access to such documents must take into account the need to protect the victims of repression. Appropriate measures must be taken to protect third parties mentioned in the documents.
4. The right to amnesty for prisoners and political reprisals: in every process of transition towards democracy, those condemned by tribunals or dismissed from their jobs for purely political, religious, ethical or racial reasons, should be freed,

reinstated in their jobs or compensated. Frequently, it is only among the archives of the former repressive regimes that proof can be found of the political, religious, ethnic or racial nature of the tribunals or of those dismissed.

5. The right to compensation and reparation for damage suffered by the victims of repression. When the authorities of a new democratic regime decide to offer compensation to victims of repression, documents produced by institutions of the former regime will provide them with the necessary evidence.

6. The right to restitution of confiscated goods. When citizens of the newly democratic state have a legal right to the return of personal goods, confiscated by the previous regime on account of their beliefs or ideology, documents in the archives of the repression will give details of such goods as well as information on their location or destination. If restitution is not possible because the goods have disappeared or because they have new, legitimate owners, the archives will show that there is a right to proper compensation.

(Quintana, pp. 10-11).

Quintana's UNESCO report states that each country undergoing political transition must locate the relevant records, make them available to the new democratic authorities and integrate them into the archival system "or in institutions established for identifying former officials, compensating victims of repression or ensuring collective and individual rights", with adequate mechanisms for their legal and physical protection (1997, p. 12). "Records produced or accumulated by former repressive bodies must be

placed under the control of the new democratic authorities at the earliest opportunity and these authorities must assess the holdings in detail” (Quintana, p. 12). A temporary institution to assume these responsibilities should be established for this purpose. “This will improve the quality of the services provided, while enabling regular archives to fulfill their traditional mandate” but the “ultimate location of the documents, as part of the collective memory, must be the national repository for historical records” (Quintana, p. 12). “It may be necessary to establish special legislation to protect the documents of former repressive organizations as cultural property. If legislation protecting the cultural patrimony already exists, the documents ought to be covered by it” (Quintana, p. 12). The use of the records need to be regulated so victims can access their files, that documents needed for the enforcement of democratic laws may be made available to law courts, truth commissions or other public bodies that require evidence.

Archival legislation should be established to guarantee the rights of individuals.

These rights include:

1. The right of free access to the archives to obtain information on the existence, or otherwise of personal information in whatever form, providing always that the privacy of third parties is guaranteed.
2. The right, for those who have not been in the service of repressive organizations, to determine whether records containing personal information can be consulted by third parties. Personal files of victims of repression should be closed to public access for a legally established period, except with the special permission of the individuals concerned or their heirs. Individuals should have the

opportunity to make corrections or declarations about the information held about them in personal files. This should be incorporated into the files, but clearly separated from the documents kept by the repressive regime, which should not be modified.

3. The right to obtain files of the agents of repression, with guarantees of security, established by the legislation. (Quintana, 1997, p. 12).

It is necessary to divulge the availability of the archives and the “details of the rights established by the new State” (Quintana, p. 12).

Code of Ethics

Archives that hold responsibility over records of repressive regimes should agree on a set of principles while working with the records. A suggested list of points to include in a Code of Ethics is provided in Quintana’s UNESCO report:

1. The documents of repression are part of the patrimony of the people. They must be preserved in their integrity, serving as a memento of intolerance, racism and political totalitarianism.
2. Archivists are the executors of the will of the people during periods of transition.
3. The individual rights of victims of political repression take precedence over historical investigation.
4. The archive should not dispose of any document through selection criteria based on its value for historical research.
5. Archivists are not censors. The law determines which documents are to be

made available and how.

6. If the legislation is not sufficiently detailed, archivists may interpret it in the light of legal advice from experts in administrative law. In cases where individual privacy and the right to historical investigation are opposed, a solution may be provided by the use of reproductions of the original documents with names of victims or third parties deleted.

7. Archivists must handle with the utmost care all requests for certification or validation of photocopies used in order to validate the claims of victims of repression or of other individuals.

8. Archivists must establish controls necessary to protect documents containing sensitive information. Documents of repression should be kept within the general archives, but in separate strongrooms with special security. Only archive personnel should have access to these documents.

9. Archivists must limit the use of automated databases relating to victims of the repression to what is necessary for the exercise of 'habeas data'. These databases should only be used as finding aids. No other administrative or governmental use of them should be authorized. (1997, p. 13).

UN Commission on Human Rights

In a 1996 report to the United Nations Commission on Human Rights, Louis Joinet describes the fundamental right to the truth of victims of repression in order to know what happened, to prevent it from happening again, and the responsibility of states to preserve this memory as it is part of a people's national heritage (Peterson, 2005, p. 7-8). He also proposes five principles on the "preservation of and access to archives bearing

witness to violations” (quoted in Peterson, p. 91). First, that the “right to know implies that archives should be preserved,” this includes the establishment of necessary safeguards to prevent destruction, falsification “especially for the purpose of ensuring the impunity of perpetrators of human rights violators” (quoted in Peterson, p. 91). Second, “access to archives shall be facilitated in order to enable victims and persons related to claim their rights.” Access should be facilitated to provide records needed for defense, and monitoring of access should not be used for censorship purposes. Third, “the courts and extrajudicial commissions of inquiry, as well as the investigators reporting to them, must have free access to the archives. Consideration of national security may not be invoked to prevent access” (quoted in Peterson, p. 91). Fourth, all persons have the right to know whether their name appears in the archives and have access to these items, and have the right to challenge the validity of the information available about them. The intelligence contained in the archives “shall not by itself constitute incriminating evidence, unless it is corroborated by several other reliable resources” (quoted in Peterson, p. 91). Fifth, that “measures shall be taken to place each archive center under the responsibility of a specially designated person;” archives need to be inventoried to ascertain the reliability of existing inventories and the inventory “shall be extended to relevant archives held by third countries, who shall be expected to cooperate with a view to communicating or restituting archives for the purposes of establishing the truth” (quoted in Peterson, p. 91). These principles and suggestions can serve as a benchmark to evaluating the success of attempts of new governments to open archives of former repressive regimes.

Summary

The literature examined explains attempts by scholars to understand the relation between conditions under Communist rule within the select countries, and how this dictated the type of transition the country experienced towards the establishment of democracy. These studies have examined how the past communist rule has lasting influence on the current political climate, and how it affects how each country solves problems of restitution and legal problems in the post communist era. The United Nations reports suggest that it is the responsibility of states to preserve the records of the repressive regimes as it is part of a people's national heritage; it attempts to provide a code of ethics for archivists working with such records, in order to support the fundamental right to the truth of victims of repression.

III: Methodology

This project sought to investigate how access, or lack of access, to records of security services of former repressive Communist regimes in East Germany and Hungary were managed in these societies after transition to democracy; it showed two diverse reactions to a unifying and similar past of oppression by examining legislation concerning access to secret police records and lustration. It sought to investigate how fundamental dilemmas in archives such as access vs. restriction, retention vs. destruction and the rights to privacy vs. the right to information were addressed in these countries after the fall of Communism. The study is meant to inform archivists confronted with archives of repressive security services in countries undergoing transition to democracy understand the types of challenges they will face in ensuring access in such politically charged environments.

Research Questions

This historical research will address the following research questions:

- Were the governments of Hungary and Germany after post-communism able to secure the archives of their security services from destruction?
- What specific solutions were attempted in each country to overcome challenges faced during transition to ensure access to these archives?
- What types of legislation was passed to provide access to the archives to citizens and with what kinds of restrictions?

- What agency has jurisdiction over the archives?
- How have fundamental dilemmas in archives such as access vs. restriction, retention vs. destruction and the rights to privacy vs. the right to information been addressed in these countries after the fall of Communism?
- Does the archival policy promote the access to truth?
- Does archival policy enforce collective and individual rights as outlined by the UNESCO reports?

Archives Examined

For the purposes of this study the archives of the East German Ministry for State Security (MfS), or the Stasi and Hungary's State Security Department, the AVO were chosen. The AVO was Hungary's internal secret police service, better known by the Roman numerals III/iii, in service from about 1946 to 1989 (Wood, 2004). The Stasi was the secret police force of East Germany, established in 1950 and in operation until 1989 (Poplewell, 1992, p. 40). Both agencies monitored and suppressed any opposition within the countries to secure the Communist party's dictatorship using repressive tactics that violated basic human rights. These two countries were chosen as they represent two varied responses to a similar history of oppression under Communism. They both underwent changes of regime around the same time period, and faced similar challenges posed by their archives of security services. This study focused on the archival issues involved in regime change in two similar countries to provide a point of reference

and thus a deeper understanding of the nuances of responses to a similar set of archival challenges.

Truth Commissions vs. records of the repressive regime

For the purposes of this study, the records of truth commissions were not included. Truth commissions are established through efforts of transitional justice, as “temporary bodies established to look at and report on a pattern of human rights abuses by a repressive regime” (Peterson, 2005, p.1). They play a significant role in assisting countries in turmoil with reporting human rights violations and creating records to be used in human rights investigations. However, their mandates vary widely; often they are established by non-governmental agencies and therefore the eventual disposition of their records is uncertain. The most prominent example of this is the Commission for Historical Clarification that was established during the 1994 Oslo Agreement to end the Guatemalan Civil War. The Commission conducted extensive interviews, created a database and issued a final report in 1997. However, the large majority of the records are sealed until 2050 and held in the archives of the United Nations in New York (Peterson, pp. 68-70). Truth commissions generally act with official sanction, but not really with official participation thus very rarely do they have access to the official records of repression. Their records do not reflect the direct actions of the repressive regime and leave a gaping hole in the understanding what exactly happened and how (Doyle, 2007).

Structure of study

A historical overview opened the study, with an analysis of the historical significance of Communism and its impact on the Soviet Satellite countries, the nature of secret service police files, and the historical perspective of the Communist background of East Germany and Hungary. Data sources chosen to address these issues were secondary sources, retrieved from scholarly journal and newspaper databases. The primary method of searching the databases entailed the use of the following keywords: “Communism,” “secret police,” “secret services,” “Soviet satellite,” “AVO,” “Stasi,” “Hungary,” “East Germany,” “transition,” and “post 1989.” Search results were screened for relevancy using title headings and then the individual abstracts were read to further ensure relevancy. A secondary level of search involved scanning the bibliography of the most relevant articles to provide citations to additional sources. To determine the relevance of the source, it had to address one or more of the following:

- The philosophy of Communism.
- Stalinist policies in Eastern Europe.
- Secret police methods.
- The nature of a police file in Eastern Europe under Communism and its use.

To address issues Communism and the secret police pertaining directly to Hungary and East Germany, relevant sources had to address one or more of the following issues for either county:

- The events that lead to Soviet occupation.

- Governmental structure, leadership, and Communist Party organization.
- Repressive condition of the societies under Communism.
- The establishment of the secret service and its archive.
- Intelligence gathering tactics of the security services.
- Revolutionary attempts to overthrow Communism in the country.
- The downfall of Communism and transition to democracy.

This initial level of historical research established a firm understanding of the nature of the secret police archives in East Germany and Hungary. A detailed investigation of the transition process from an authoritative to a democratic system, the establishment of a new governing body and transitional justice lustration laws, and the role of the archive within each country followed. Data sources for this investigation consisted mostly of secondary sources supported by primary sources. Secondary sources were located by conducting searches within scholarly and newspaper databases using the following keywords: “lustration,” “transitional justice,” “archives,” “access,” “AVO,” “Stasi,” “Hungary,” “East Germany,” “Gauck Authority,” “post Communist,” “secret police,” and “post 1989.” Search results were vetted for relevancy using title headings and then the individual abstracts were read to further ensure relevancy. A secondary level of search involved scanning the bibliography of the most relevant articles to provide citations to additional sources. To determine the relevance of the source, it had to address one or more of the following for either country:

- Lustration efforts within government after Communism
- Transition process to democracy and makeup of government post 1989

- Archival legislation established regarding the police archives. Detailed examination of these laws.
- Level of access for individuals to records.
- Level of privacy protection for victims as well as perpetrators.
- Political use of archives and archival legislation.
- Completeness and extent of destruction of records

The primary sources of data consulted for this investigation include an article written by Joachim Gauck, a dissident pastor who played a leading role in the East German civil rights movement, and the first Federal Commissioner for the Stasi Records in East Germany. Other primary sources include the website of the agency handling the Stasi files, the Office of the Federal Commissioner. Its Hungarian counterpart, the website of the Historical Archives of the Hungarian State Security is also examined. These websites provide detailed information for potential users regarding current laws governing access to their records, extent of holdings, background of the agency whose records they hold and a history of the archive agency's establishment.

Chapter IV: Findings and Analysis of Data

Communism in Europe

Communism is an ideology “advocating that authority and property be vested in the community, each member working for the common benefit according to capacity and receiving according to needs” (Communism, 2000). Karl Marx and Friedrich Engels are attributed to the development of modern Communism with their 1848 publication of the *Communist Manifesto* (Rees, 2005, p. 415). Throughout history, the implementation of this ideology has resulted in repressive totalitarian regimes, causing millions of deaths that were far from achieving the original Marxist ideals. These regimes have transformed Communism into a “doctrine justifying state control of all aspects of society,” (Communism, 2000) through brute force. The death toll worldwide linked to Communism is currently estimated around 100 million, due to terror, torture, famine, mass deportations, and massacres (Courtois, 1999, p. 4).

After World War II, the Soviet Red Army occupied Eastern European countries and communist regimes were installed. These regimes were modeled after the Soviet example: totalitarianism, in which essentially every aspect of the society was controlled by a small political élite or a single totalitarian ruler, such as Stalin in Soviet Union from 1928 until his death in 1953 (Communism, 2000). “Stalinist policies were imposed on the newly formed regimes: collectivization of agriculture, state economic control, the suppression of religion and class differences” (Rees, 2005, p. 421). One-party systems were created by Soviet imposition, and in them the party effectively monopolized power,

access to power was through the party organization, and the party legitimated its rule through ideology (Huntington, 1991, p. 110). The Warsaw Pact, formed in 1955, created a unified military organization of the Soviet satellite countries, with headquarters in Moscow. It enabled the Soviet Union to station troops in the satellite countries, and it included the German Democratic Republic, Albania, Bulgaria, Hungary, Poland, Romania, the Soviet Union, and the Czechoslovak Republic (McLean & McMillan, 2009).

“But by the time of Stalin's death in 1953 it had become apparent that, due to the distinctive social, economic, and cultural conditions that existed in each of these countries, attempts to create systems in the likeness of the Soviet Union could never be completely successful” (Rees, 2005, p. 421). “The central, unsolvable problem for all the Communist states became how to liberalize and renew themselves without rejecting party rule” (Rees, p. 421). “By the 1980s it was generally apparent that communism was neither economically competitive with capitalism nor progressing toward greater freedom and democracy” (Calhoun, 2002). The Party became corrupt, and inefficient and received very little popular support. Most of Europe's communist regimes collapsed in 1989, followed by the Soviet Union in 1991 (Calhoun). It was not until 1989, and 1991 that the full scope of what happened in these countries became apparent.

Security Services and Archives

In these totalitarian regimes, no rival ideology, political or religious was tolerated, and enemies, real or imagined were eliminated. Security services were established to keep strict control of the population by collection of information on all possible ideological

enemies. They were generally very large and their recordkeeping was an essential part of the repressive system, and in many cases “the only way the regime could guarantee its power” (Quintana, 1997, p. 7).

Such control, detentions and executions, along with major population movements, required the maintenance of massive infrastructures and logistical apparatus (jails, concentration camps, supplies, transportation, etc) as well as powerful armies and police forces, together with a complex network of political and judicial bodies amply staffed with officials and collaborators –what we could call the bureaucracy of repression. (Quintana, 2003).

The records that remain testify to the atrocities committed, and their sheer magnitude is a challenge archivists face (Quintana, 2003).

The nature of a police file

To understand what is involved in managing the archives of these repressive regimes, and the files in them, we must understand secret police services methods, and their record keeping to keep surveillance and control over populations. The Soviet secret police methods will be outlined below, as this method was used to varying degrees across the Soviet satellite countries.

Modern criminology developed in the “late nineteenth century based on discoveries about matching traces such as fingerprints, bloodstains, and handwriting with the individual who had left them” (Vatulescu, 2004, p. 244). A police file in Europe

evolved to contain combined mug shots, a spoken portrait (*portrait parle*), and a record of peculiar characteristics (such as tattoos and accents) (Vatulescu, p. 244).

“As the name suggests, the secret police file is a variation on the traditional genre of the criminal record,” but “whereas a criminal record is usually limited to the investigation of a crime, the Soviet personal file provides an extensive biography of a suspect” (Vatulescu, 2004, p. 244). Entire categories of people were considered possible suspects. These criminal records were more like biographies of suspects than records of crimes. “Before the police had knowledge of any particular crime, they thus had the name and some basic incriminating description of the subject. In short, the first task was not to identify the author of a crime but to characterize suspects” (Vatulescu, p. 245). The characterization of the suspect was the task of the surveillance file, the first component of a personal file. Agents could use “all means available to the security services” in order to check previous information and “gather the data that characterizes the individual from all points of view, his political views, his behavior, his relationships, and their character” (Vatulescu, p. 245). The surveillance file collected various materials and from different agents to form a full picture of a suspect (Vatulescu, p. 246). The collection of incriminating evidence would ultimately be used for convicting suspects. In East Germany, the spying agents were given a possible crime with respect to which their objects were to be convicted” to guide their collection of evidence (Lewis, 2003, p. 390). Agents were told to collect all “empirical evidence of potential criminal activity or criminal intent”, which could be as little as an “utterance that could be construed by the observer to be hostile to the aims of the socialist state” (Lewis, p. 391). In East Germany,

if there was not enough incriminating evidence found, then surveillance efforts were increased. Once a person was under surveillance, it was unlikely they would be found innocent, and the only way they could redeem themselves and have the surveillance dropped, was through a pledge to work for the Stasi” (Lewis, p. 393).

Using the collected evidence, the chief of the investigation would characterize the suspect as “the spy, the saboteur, the counter-revolutionary, the terrorist, etc.” (Vatulescu, 2004, p. 247). The suspect’s characterization served as a basis for arrest, and the surveillance file was closed and replaced with an investigation file, which largely contained records of interrogation (Vatulescu, p. 248). "An interrogation begins by having the prisoner fill out a detailed questionnaire and write his autobiography and a list of his acquaintances," the accused was supposed to erase his/her life story and instead offer the particulars of a crime that would fit secret police scenarios (Vatulescu, pp. 248-249). The investigation ended with a confession. Victims signed whatever confession was presented to them to make the physical violence stop. “Proliferation of false confessions that marked the 1930s offer a troubling example of double-voiced discourse” (Vatulescu, p. 251).

In Stalinist files, characterization remained the basis for arrests, but it was often reduced to a bare minimum: people were arrested simply for belonging to a blacklisted group. Being a White [supporters of the old Czarist regime], a kulak [a successful farmer], or even a member of the old guard in the secret police constituted both a sufficient characterization and an accusation. Confession became the centerpiece of the file. (Vatulescu, p. 251)

The personal file essentially created fictional scenarios, plots and secrets. The job of the secret police was “not to infiltrate bedrooms and uncover private secrets as much as to concoct world conspiracies. Everyday trifles became state secrets once they were extracted from their private places and dragged into the giant public spectacle of Stalinist secrecy”(Vatulescu, 2004, p. 254). In Stalinist police files there is a low number of surveillance files compared to a very high number of investigation files (Vatulescu, 2004, p. 251). After Stalin’s death, however, the number of arrests and investigation files dwindled, but surveillance files soared. These surveillance files in some cases would continue for entire lifetimes, never leading to arrests of investigation files (Vatulescu, 2004, pp. 255- 256). Advances in surveillance technology constituted the second major reason for the spectacular increase in the volume of surveillance files. In particular, the 1970s registered an international boom in surveillance technologies and their wide adoption by police agencies (Vatulescu, p. 256). As surveillance methods increased, the files then included narration from daily surveillance and the periodic summaries by agents of higher rank. The file might contain transcriptions of tapped phone conversations, a censored letter, a report of a conversation by an informer, and comments from friends and relatives (Vatulescu, p. 257).

Hungary

History during Communism

Hungary was occupied by Soviet troops from 1944 until 1990; during these years it existed under a communist system imposed by the Soviet Union. Hungary belonged to

the Axis powers during World War II, and German troops were stationed in Hungary from March 1944 until the victorious Soviet army pushed them out westward along with all their Hungarian allies. Soviet forces occupied Hungary in the fall of 1944 (Hollander, 2009).

Following World War II, Hungary faced the challenge of choosing a new government. The Smallholder Party won the election of 1945 and Dr. Zoltán Tildy was named the President, and Dr. Ferenc Nagy was named Prime Minister, both came from the Smallholder Party. The Communists only won 17 percent of the vote and Mátyás Rákosi, a communist was named the Deputy Prime Minister (StateSecurity.org, 2005). A coalition government was formed; however, the Communist Party, led by Mátyás Rákosi who was trained in Moscow, gradually took over key ministries (Kritz, 1995, p. 645). It was a gradual take-over, which Rákosi called the "salami tactics" - a step by step destruction of the opposition (Hollander, 2009). Rákosi purged the judiciary, civil service, and military. He also suppressed the church, his main source of ideological opposition. The State Security Department (AVO), in Hungarian the Államvédelmi Osztály, enforced Communist rule at all levels and became Rákosi's tool of force and terror. By 1947, with Soviet support, the Communists gained complete control of the country (Kritz, p. 645).

The AVO "served as the communists' secret police, it was controlled by Soviet advisors, who were placed in both the military and the state security; they were also dispersed in ministries" (Hollander, 2009). By 1948 political life came under the domination of the communist authorities with the help of AVO and Gábor Péter was named Director (GlobalSecurity.org, 2005). Péter began a series of Stalinesque purges to

eliminate opposition, including the prime minister and the Smallholder party leadership.

The AVO arrested the most outspoken critics of the communists, accusing them of Fascist coercion and of wartime collaboration with the Fascists. Thousands of loyal communists were dragged into Péter's office and systematically tortured and killed (GlobalSecurity.org). By 1948, the Committee report recalls, leaders of non-communist parties "had been silenced, had fled abroad, or had been arrested" (Mabry, 2009).

The totalitarian and communist system in Hungary between 1948-53 was modeled after Soviet Union under Stalin. "The imitation of the Soviet model ranged from the trivial to the far-reaching" (Hollander, 2009). From the uniforms of the army, the Hungarian flag that now included a hammer and sickle, the office buildings, and a new Hungarian Constitution, all followed the Soviet models. Soviet culture was extolled and propaganda infiltrated all aspects of life: Soviet socialist realist literature was required reading in schools and mandatory Russian replaced Western languages. Religious instruction was eliminated as were schools ran by the churches (Hollander). "The economic policies of the government also faithfully mirrored those of the Soviet Union". All enterprises employing over ten workers were nationalized, and a program of rapid, ideologically determined policy of industrialization was introduced that disregarded the resources available in Hungary. ... The production of consumer goods was downgraded and there were food shortages; the standard of living substantially declined while ubiquitous political propaganda assured the population that it lived better than ever (Hollander).

In Jan. 1948 Rákosi, now the President, reduced the government to a one party coalition (GlobalSecurity.org, 2005). Elections only included one party, in which voting

for the official candidates did not require any written endorsement of the ballot; it sufficed to drop it in the ballot box in the presence of the committee supervising the voting. To vote against the party the official candidate's name had to be crossed out on the ballot (Hollander, 2009).

In 1949 Hungary officially became a "People's Democracy," with real power in the hands of Mátyás Rákosi. Under his regime "free speech and individual liberty ceased to exist," with arbitrary imprisonment becoming commonplace. Purges took place both within and outside the communist party (Mabry, 2009). Political repression entailed the arrest and internment of tens of thousands of people on vague and poorly substantiated charges such as "anti-people" or "anti-party attitudes". Show trials took place with the aid of Soviet advisers, to "illustrate, and elucidate specific political goals and policies and teach the population applications of the party-line...in all these trials the accused confessed without fail and were sentenced either to death or long prison terms" (Hollander, 2009). A new form of punishment was introduced (also modeled on the Soviet example): exile (via deportation) from the capital to small villages in Eastern Hungary. Military service (conscription) was supplemented by service in "building battalions" for those deemed politically unreliable or their descendants (Hollander).

The 1956 Revolution

"After Stalin's death in 1953, the new Soviet leadership under Nikita Khrushchev urged Rákosi to divest some control, and appointed Imre Nagy the prime minister in July 1953" (Kritz, 1995, p. 645). Under his leadership, political prisoners were released, the AVO's power was reduced, and concentration camps were abolished. Nagy, however

lacked the support of Moscow and Hungarian hard-line communists and was ousted.

Rákosi was reinstated, but was unable to reestablish control, thus Ernő Gerő replaced him in July 1956 (Kritz, p. 645). “In October 1956, emboldened by Krushchev’s renunciation of Stalinism and the taste of reform under Nagy, Hungarian students staged a peaceful mass march in Budapest. When the police fired into the crowd, however, popular reaction turned the march into a revolution” (Kritz, p. 646). The protesters were joined by the army and the industrial workers to battle the Soviet troops garrisoned in Hungary and the Hungarian state security forces (Hollander, 2009). Gerő was ousted and Nagy returned to power and instituted a new series of reforms. He also renounced the Warsaw Pact and petitioned the United Nations to be considered a neutral country.

On November 4, 1956, Soviet tanks invaded Hungary to reinstate hard-line communist control. Nagy fled, but was caught and executed in 1958 (Kritz, 1995, p. 646). With Soviet support, János Kádár became the new head of the reconstituted and renamed communist party ("Hungarian Socialist Workers Party") (Hollander, 2009). “A reign of terror followed with hundreds executed and thousands imprisoned” (Kritz, p. 646). Kádár purged the Party of Nagy’s followers, realigned Hungarian foreign policy with Moscow, and restored internal repression. Many participants in the revolution, including minors, were executed. By the 1960s, however, Kádár began to relax some controls and the standard of living under his rule improved (Kritz, p. 646). The freedom of expression expanded as did the freedom of travel. “He signaled to the population that while there was no alternative to accepting Soviet domination and determination of basic Hungarian institutions and foreign policies, a degree of autonomy and loyalty to Hungarian

traditional cultural values was within reach” (Hollander).

In 1985, Mikhail Gorbachev assumed power in the Soviet Union and abandoned the Brezhnev Doctrine, the Soviet Union’s policy of intervening with military force, if necessary, to preserve Communist rule in the region (US Department of State, 2009). Kádár was removed from office in 1988, and new reforms allowed multi-party elections, and freedom of assembly, speech, press, and expression expanded, guaranteed by a new 1989 constitution. In 1989 the Berlin Wall fell and revolutionary changes swept across Europe. 1990 saw the first free elections in Hungary in more than 40 years and the Communist Party (now renamed the Socialist Party) was defeated (Kritz, 1995, p. 646).

The AVO

The State Security Department (AVO), in Hungarian the Államvédelmi Osztály, was the “main instrument of Sovietization and reported directly to Stalin's secret services” (Márton, 2009, p. 17). Set up in 1946 it enforced Communist rule at all levels and became Rákosi’s tool of force and terror (Kritz, 1995, p. 645). It had access to all walks of life, “and paid close attention to the Roman Catholic Church, and the Hungarian intelligentsia” (Wood, 2004). It was meant to “infiltrate and control Hungarian political life, through a vast network of informers, usually recruited through intimidation” (Márton, p. 17). “Tens of thousands of Hungarians were recruited to spy on their colleagues and neighbors throughout the 40-year Communist period” (Wood). Recruits were often blackmailed into working as informants. Márton, the daughter of former political prisoners in Hungary recounts: “typically, targets would be snatched from their beds late at night, and released on condition that they would become informers. This

included, as I now learn, most of my family's immediate circle" (Márton, 2009, p. 17-18). At its peak in the 1950s, "the security apparatus was reportedly tracking some 1.5 million of Hungary's 10 million population. The number dwindled to about 215,000 active and inactive files in 1989, when the shredders kicked into gear" (Jordan, 1997).

Legislation in Hungary

Lustration was not clearly addressed in Hungary during the Round Table talks in 1989 when a transition to a democratic state was negotiated (Barrett, Hack & Munkácsy, 2008). However, government and public support grew slowly out of fears that the communist state's security services retained influence in the new democratic system, and that the existence of security services documents and files from the communist era might disrupt the functioning of the new democratic system. The initial motivation for lustration was to prevent blackmail and other abuses, and only after 1995 did the debate become more concerned with a general moral cleansing of society (Barrett, Hack & Munkácsy, 2008).

It was expected that the secret police files would be opened relatively quickly in Hungary as the Communist system was more lenient in Hungary than elsewhere in the Eastern bloc, and during the first four years after transition the government bashed the Communists repeatedly. "But Hungary became one of the laggards" (Perlez, 1997, p. 4). It is speculated that since the transition in Hungary was an evolutionary process and not a powerful explosion as in East Germany, that the same power structures are still in place and halting progress (Bohlen, 1991, p. A3). The former East Germany, on the other

hand, took the painful but necessary step of opening its secret police files relatively quickly (Jordan, 1997).

Attempts at cleaning the government after Communist rule has led to various laws to be passed in Hungary, “but the result has been a clunky legislative compromise” (Szakács, 2004). Lustration and access to files have been used by politicians to gain advantage over their opponents, and the changes in the laws reflect political shifts and interests.

Although the politicization of lustration is perhaps inevitable, it has been exacerbated in Hungary because of the absence of a generalized public disclosure of files. Lustration has not increased transparency in the political sphere because citizens cannot be sure that a serving MP did not work for the communist-era security services. (Barrett, Hack & Munkácsy, 2008)

Only in 2003, thirteen years after democratization, were Hungarians able to gain access to the files of the secret police.

The first democratically elected government in 1994 was “conservative and virulently anti-Communist” (Jordan, 1997, p. 8). But the then Prime Minister, József Antall was reluctant to push the issue, “because upon taking office he'd been handed a long list of former collaborators and agents within his own party” (Jordan, p. 8). As his party was challenged by the “ex-communist Socialist Party, his government selectively released secret police files to damage the opposition. It backfired as the Socialists won resoundingly” (Jordan, p. 8). Also, with “high unemployment and inflation during the transition to a capitalist economy” and voter discontent, the elections of 1994 returned

the former Communists to power. HSP (Hungarian Socialist Party) leader Gyula Horn became prime minister (Kritz, 1995, p. 646). Understandably, the Socialists were even more reluctant to open the files. “Prime Minister Gyula Horn, a member of the paramilitary units that helped put down the 1956 revolution, was also the Communist regime's foreign minister in the late 1980s. Several other current ministers were also party leaders” (Jordan, p. 8).

The Communist Party, renamed the Socialist Party, thus made a comeback, and ensured for a time that former communist party officials are again in positions of power. Thus, no immediate legislative purges were passed (Welsh, 1996, p. 421). As the Communist Party had control of key sectors of government they had “plenty of opportunities for abuse” (Bohlen, 1990, p. 14). It was speculated in 1990, that the number and structure of the secret police was not cut, and that there were still paid agents at work (Bohlen, p. 14). Sure enough, during the 1990 campaign season, the Hungarian secret police admitted that it had been spying on registered opposition parties, “just as it did when they were considered outlawed dissidents not so long ago” (Bohlen, p. 14). This was revealed through a batch of leaked documents from the Internal Security Service that proved that the phones of opposition party leaders were tapped and their meetings were infiltrated by informants” (Bohlen, p. 14). Another scandal involved the firing of top television managers from the state controlled television network during campaign season. They were replaced by a nine-member board, answerable to the Minister of State who was also directing the Socialist Party’s electoral campaign. “Revelations about police surveillance confirmed the suspicion of opposition figures that secret monitoring by the

police was continuing” (Bohlen, p. 14).

After the first free elections, the new coalition government pushed for prosecution of individuals who had helped to crush the 1956 Revolution,” but a law was not passed until 1994 (Ellis, 1996, p. 183). Since the 20-year statute of limitations had expired, a 1991 law attempted to restart the statute for selected crimes committed 1944-1990 that had not been prosecuted for political reasons. The Constitutional Court found the law to be unconstitutional (Ellis, p. 183). The same court, however, in October 1993 accepted a more restrictive law that did make it possible to prosecute those who committed crimes associated with the 1956 uprising (Welsh, 1996, p. 416, by classifying these crimes as "war crimes" and "crimes against humanity,” (Ellis, p. 183) for which the statute of limitations was waived under Hungary’s international law obligations (Kritz, 1995, p. 645).

In March 1994, Parliament adopted a law, Act XXIII/1994, requiring the screening of an estimated 10-12,000 officials to establish whether these individuals had engaged in specified activities relating to the Ministry of the Interior III/III directorate and suppression of the 1956 uprising (Barrett, Hack & Munkácsy, 2008). It decreed that information on the past history of prominent public figures and other individuals of high profile has to be disclosed. The public positions determined to be liable included a broad sweep of offices ranging from members of parliament to heads of insurance agencies and newspaper editors. The law determines the order of those to be investigated by categories of "importance," beginning with Members of Parliament (MPs), the President, and members of government, through high-ranking public servants, media representatives, and

members of local governments and the judiciary (Barrett, Hack & Munkácsy).

The legislation designated special judges to examine whether public figures had been communist agents; those deemed guilty would be offered the choice of resigning their posts or seeing their files published in the official government gazette (Szakács, 2004). Thus, the only sanction of the law was the threat of disclosure. The Constitutional Court proclaimed the main provisions of the law unconstitutional (Barrett, Hack & Munkácsy, 2008). The law established that the judging panels are to complete their work between July 1, 1994 and June 30, 2000, and that the list of agents and all documents of the security services will only be made available to the public on 1 July 2030, 30 years after the lustration process will have ended (Ellis, 1996, p. 184). Incriminating data have been found in 114 cases, of which almost one-third chose to resign from office. The Commission has screened every member of three parliaments, as well as the highest-level officials in public service and the media (Barrett, Hack & Munkácsy).

In 1996, Act LXVII was passed, that decreed that the documents of state security organizations working between 1994 and 1990 have to be placed in a special kind of archives formed for this purpose (Cseh, 2006, p. 3). Thus the Historical Office (HO) was established where all documents of the III/III career officers not relevant to contemporary national security issues were placed (Barrett, Hack & Munkácsy, 2008). This law provided the sufficient legal conditions for exercising the right of informational self-determination (Barrett, Hack & Munkácsy).

The available documents are not complete, as the secret police began a shredding campaign in 1989 when it became apparent that Communism was ending. “There was

tremendous panic, specific, high profile files are those missing” (Perlez, 1997, p. 4). Their frantic document shredding during the winter of 1989-90 was later dubbed "Danube-gate" (Jordan, 1997, p. 8). It is asserted that some were destroyed in 1989 on the orders of the head of Department 3/3, the department responsible for monitoring dissidents (Welsh, 1996, p. 418). It has also been reported that seven tons of files, covering the crucial years 1956 to 1958, just after the uprising, were destroyed in 1961 (Bohlen, 1991, p. A3). In December 1989, “a popular television program showed forage of trucks carting away loads of paper from the party headquarters in Budapest. Spokesmen for the party maintained that the documents being destroyed were unimportant” (Bohlen, 1990, p. 14).

In 1997, many documents were still legally off limits, as documents were moved to other parts of the security apparatus that were “still run by bureaucrats from the old guard,” who according to the 1994 law determined which documents could be released to the History Office. “Anything that the intelligence agencies deem ‘operational’- which seems to include much of the post-1956 spying- can be kept secret by these bureaucrats” (Perlez, 1997, p. 4). This partial release of the files and was widely criticized. One historian called it "historical amnesia," that “stunts Hungary's democratic progress” (Jordan, 1997, p. 8).

The Historical Office received more than 1,300 applications to review files in its first two months of operation. Applications were divided between those born before World War II and active in the 1956 revolution, and those born after the uprising.

“There is also a small number of applicants who are former agents and worried that their files say so. To protect their identities, the names of all informants have been blacked out” (Jordan, 1997, p. 8).

In April 1997, several deputies came under scrutiny for being suspected as having worked as secret agents and a scandal involving a past deputy prime minister revealed that members of the former Hungarian Socialist Worker's Party's had access to state security reports (Ellis, 1996, p. 184). On June 18, 2002, it was disclosed that current Prime Minister Peter Medgyessy had served as a top-secret officer in the III/III directorate (Barrett, Hack & Munkácsy, 2008).

Two new drafts, adopted in December 2003, established a new Public Security Services' History Archive and brought together all of the security service directorates' documents in one location (Barrett, Hack & Munkácsy, 2008). Thus the Historical Archives of the Hungarian State Security was established upon Act III of 2003 and took effect, 1st April 2004, replacing its predecessor, the Historical Archives (Cseh, 2006, p. 3). The new legislation represents a significant shift in policy, changing the focus from the process of vetting those in public positions to how the state should deal with information gathered by the former regime's security services. The law provides for the disclosure of information rather than just the threat of disclosure. It states that anyone can request data and files collected by the former secret service related to him or herself; anyone can request the files of people who are or have been in public office; and in the case of those in public office, some very limited information about an individual's relationship to any of the security service directorates can be published (Barrett, Hack & Munkácsy).

“The law gave individuals the right to see the names of those who informed on them or on their deceased family members” (Szakács, 2004).

The legislation limits access to the archives of the internal secret police service, better known by the Roman numerals III/iii, or "three stroke three," records only. Archives belonging to the three other departments have stayed tightly closed” (Wood, 2004). The decision to limit lustration to the Ministry of the Interior Section III, Directorate III (III/III), reflects both the limited public knowledge of the extent of the security services during the communist era, and the reluctance on the part of the main political parties to extend the scope to other branches and personnel of the security services (Barrett, Hack & Munkácsy, 2008).

The Historical Archives of the Hungarian State Security preserves and maintains the documents of the state security organizations of the period 21st December 1944 – 14th February 1990. (Historical Archives of the Hungarian State Security, 2003d). The Historical Archive of the Hungarian State Security is “an independent, budgetary organization with authorized legal status, that is, it takes an independent position within the Parliamentary budget. The chairman of the Parliament supervises the work of the institution” (Historical Archives of the Hungarian State Security, 2003b). The archive’s activities include:

- on conditions defined by law it ensures people’s right to self-determination; i.e. it offers access to data included by state security organization documents to people who are mentioned in these documents;
- it provides committees that control some important personalities who hold

offices of public confidence or influence public opinion;

- it provides archive researchers with documents that are preserved and maintained in the institute;

- it carries out research in the field of archives and history, publishes the results of such research and participates in publishing the documents preserved in the

institute. (Historical Archives of the Hungarian State Security, 2003a)

The Historical Archives provides access to records for people named in them, independent of their citizenship. The person named in the documents also has access to the “data related to him and the reports about him by an agent or a professional employee and which the data is appropriate for his identification” (Cseh, 2006, p. 6). “If the person named in the document is not alive, his relatives are allowed to inspect the data. In the case of the deceased, the relatives have to certify their relationship with a register” (Cseh, p. 6).

Act III of 2003 enables those interested two possible ways of research. One is scientific research and the other is private research. A scientific researcher is someone who has been issued a research license by the Archive’s Board of Trustees (Historical Archives of the Hungarian State Security, 2003c). To obtain a license, a researcher must address a request to the Archive’s Board of Trustees must be submitted and include: “standpoint of the supporter, declaration of handling personal data according to §32 of the Data Protection Law, and a detailed research plan and the researcher’s list of publication” and “after judgment they will let the researcher know about the decision” (Historical Archives of the Hungarian State Security, 2003c). Those who have no license

from the Archive's Board of Trustees may research as private researchers according to 5. § of Act III of 2003 (Historical Archives of the Hungarian State Security, 2003c)

Foreign citizens may also conduct research in the archive; according to the Archives Law they have access to data created more than fifteen years if it is not classified. "The condition of research in personal data is that a supporting attitude from the certain committee of the Hungarian Academy of Sciences or from the Research Institute has to be obtained" (Cseh, 2006, p. 6). Only citizens from countries that have similar personal data protection laws as Hungary can be allowed access (Cseh, p. 6).

The current law enables any citizen to gain access to information about "well-known figures of public life who once belonged to the network" (Historical Archives of the Hungarian State Security, 2003c). This section of the law, essentially allows informants' names to be disclosed to the person snooped upon. "But there was a catch: the definition of who is a 'public figure' is now made by the figure him- or herself" (Szakács, 2004). The public figure must make a statement that they are indeed a public figure and only then can the Archive release the information, otherwise these requests are denied. According to the Archives Law, there is a possibility for getting legal redress concerning the refusal on behalf of the Archive. During the process the court will take a clear stand on the issue whether the person concerned is a figure of public life" and will release the information if they deem the person to be a public figure (Historical Archives of the Hungarian State Security, 2003c).

The online magazine *Origo* discovered the drawbacks of this clause when its reporters requested the files on 10 politicians mentioned in the findings of the

committee set up to investigate all post-1989 cabinet members after the Medgyessy scandal broke. Of the 10, two admitted their collaboration, two were found by the magazine to have worked for the communist secret services, and three had no records in the archives. The remaining three, two of who are members of parliament, declared that they were not public figures and, therefore, their past was not for public consumption. (Szakács, 2004).

Hungarian Conclusions

Hungary's lack of swift legislation and purification has led to a general mistrust of the public servants and the government: this has hindered its efforts toward democracy. The history of Hungary during occupation has been withheld from Hungarians for thirteen years; they were not able to reconcile with the past through discussion and dialogue, and unable to come to a critical historical knowledge of their past. To provide a new governing structure with legitimacy and trust from citizens, a purge must take place to ensure that the officials in charge "are not the civil servants who previously acted against the principles of democracy" (Letki, 2002, 541). The reasons for this lack of openness in the country is due to several factors: lustration was not clearly addressed in Hungary during the Round Table talks in 1989, access or denial of access to the files had served as a political tool, and politicians from the old regime made their way back into power before any legislation in favor of opening the files was passed. Hungary went through a relatively liberal form of Communism from 1968- 1989 where gradual changes towards democracy took place, so even while communism had fallen in Europe the same

officials and structures were still in place. As the Communists were still in posts of power, they ensured the soft treatment of former conspirators. The political analyst, Samuel P. Huntington states, that in “new democratic regimes, justice comes quickly or it does not come at all” (as quoted in Nedelsky, 2004, p. 68).

East Germany

History during Communism

East Germany, or the German Democratic Republic (GDR), was a separate state controlled by the Soviet Union after its defeat in World War II. It was officially formed in October 1949 out of what had been the Soviet Zone of Occupation in Germany (Kramer, 2009). The violent Soviet occupation of eastern Germany between 1945 and 1949 was unusually harsh and violent and left long-term scars on the public psyche of the GDR. “Soviet forces embarked on summary executions and torture of perceived enemies and ‘hostile elements,’ and Soviet soldiers raped hundreds of thousands, and perhaps as many as two million, German women” (Kramer). The establishment of a Communist system in the GDR was gradual, but by 1949, “a Soviet-style polity was firmly entrenched under the SED (Socialist Unity Party of Germany) leader, Walter Ulbricht, a devoted Stalinist” (Kramer). Under Ulbricht, the usual repressive Soviet tools were put in place: show trials, banning of private enterprise, a “shift toward heavy industry at the expense of consumer production, forcible collectivization of agriculture, and the formation of an East German army” (Kramer). The “bourgeois” class, dissenters, and the Protestant church were especially targeted. “The program quickly led to severe hardships and deprivation,

including widespread hunger and food shortages, rationing and higher prices for basic consumer goods, and prolonged interruptions of heat and electricity during the winter” (Kramer).

East Germans were fleeing to West Germany in large numbers and after 1953 the numbers rose under growing hardships. By mid-June 1953, when higher work quotas were implemented, “another 65,000 people had left East Germany for the West, an average of more than 10,000 a week” (Kramer, 2009). The Soviet Union advised the GDR to adopt reforms to curb the growing unrest in the country, but despite these liberal reform the unrest continued to grow until “strikes and protests erupted in East Berlin on June 15-16, 1953. The rebellion however, was unsuccessful, and with Soviet backing Ulbricht’s hold over the country was instead strengthened. He launched a sweeping purge to eliminate “hostile and anti-party elements” at all levels of the party and gradually removed the last few officials who stood against him (Kramer).

1989 Revolution

Ulbricht was replaced in 1971 by Erich Honecker. Even while Mikhail Gorbachev was instituting reform policies of perestroika (restructuring) and glasnost (greater openness) and moving towards democratization, Honecker insisted on sealing off East Germany from reform. While Honecker was hospitalized in 1989 a political vacuum encouraged the rapid growth of popular unrest and multitudes of East German citizens were fleeing the country at an ever-increasing rate. Honecker returned in September and preparations were made to quell the unrest using force, inspired by the ‘Chinese solution’ in June 1989 of the Tiananmen Square massacre. However, the GDR did not have Soviet

support for a violent crackdown and protesting continued. On October 18, Honecker was replaced with Egon Krenz as SED General Secretary. “By early November, demonstrations in East Berlin were drawing upward of 500,000 people” (Kramer, 2009). A week later, the East German authorities fulfilled one of the protesters’ key demands by granting permission for free travel; and allowed passage through the Berlin wall. The country then moved rapidly toward de-communization, and the GDR was absorbed by West Germany in October of 1990, wiping out the SED (Kramer).

The Stasi

The East German Ministry for State Security (MfS), or the Stasi as it was popularly known, was the secret police force of East Germany, established in 1950 a few months after the creation of the East German state under strict instruction from the Soviet KGB (Committee for State Security) (Popplewell, 1992, p. 40). “It was a secret intelligence service and organ for criminal investigations, primarily in political criminal cases. It was virtually directed and controlled by the head of the SED, the Socialist Unity Party of Germany” (BStU, 2009b). The Stasi was the key player in the monitoring and suppression of dissents and instrument of the SED to secure dictatorship. It was called the "shield and sword of the party" (BStU, 2009b). At the time of its dissolution it had 85,000 full-time employees and 180,000 unofficial informers (Wilke, 2007), making Stasi personnel in total about 2% of the adult population (Miller, 1998, p. 307). Despite the East German regime's illegitimacy, almost everyone with administrative and managerial skills had been associated with it. “Every hundredth citizen had been a part-time informer” (Popplewell, p. 45). The accumulated records are said to cover between 180

and 200 km of shelving and to include reports on six million people (Miller, pp. 307-308). The Stasi combined information gathering with acting on that information. “The Stasi became famous for *Zersetzung*, which was the subversion of people who raised their alarms. This practice refrained from outright physical repression but a hidden network of informers and collaborators would re-shape a person's life to organize personal and professional failure” (Wilke). The pervasiveness of the Stasi in everyday life, the very knowledge that they were there and watching, inhibited free expression of “any hostile thought to the SED line” and prevented independent discussion (Poppowell, p. 41). The Stasi had the authority of police officers: they could open criminal proceedings, make arrests, searches, detentions and interrogations and "to conduct all required investigations up to the final report to the judicial authorities" (BStU, 2009b).

The Stasi Files and Legislation

The right to access to the state security files has been legally established in the case of Germany (Welsh, 1996, p. 418) and the Stasi files have been used “to help society settle accounts with that dictatorship” (Miller, 1998, p. 306). In 1991, just two years after the revolution, German Parliament passed the Law on the Documents of the State Security Service of the Former German Democratic Republic (Stasi-Unterlagen-Gesetz, abbreviated to StUG). This legislation has enabled millions of German citizens to access the files that the Stasi kept on them. The legislation has also enabled “those accused of Stasi collaboration a chance to clear their names” to dispel speculations and gossip (Jones, 1991, p. 20). The opening of the Stasi files was an “important symbolic act of reconciliation between victims and perpetrators. For victims, reading their file provided a

means of re-appropriating stolen aspects of their lives and rewriting their life histories” (Lewis, 2003, p. 377).

According to Joachim Gauck, a dissident pastor who played a leading role in the East German civil rights movement, and the first Federal Commissioner for the Stasi Records in East Germany, during the 1989 protests, many groups assembled in front of Stasi buildings, “against which they rallied in solidarity” (Gauck, 1994, p. 278).

“Demonstrators simply had to point to the Stasi building. No words needed to be spoken, or elaborate justifications provided. A simple gesture summarized years of repression and a morally bankrupt regime (Bruce, 2008, p. 84). The protesters were determined to bring the Stasi down, the prime instrument of oppression and their focal point of unrest.

As the protests began, Stasi workers immediately initiated document destruction: “small flecks of paper floating in the air of East German cities and the smoke billowing from the offices led to obvious conclusions” (Bruce, 2008, p. 85). In some instances, the destruction of documents was complete:

In the district of Schwerin, for example, Stasi workers burned and shredded the entire collection of Department XX, which dealt with underground opposition. Finding that burning documents was taking too long, Stasi workers turned to shredding. When the new Federal Commission to oversee the Stasi files was created, the newly minted workers were shocked by the 17,200 sacks of shredded material that they found, a repository that keeps an entire section of the archive busy to this day. (Bruce, p. 85).

“The revolutionaries knew how important it was to save this data, the old regime’s hold over its former subjects. It was expected that political use of these materials would one day be made” (Gauck, 1994, p. 278).

This destruction of material pushed citizens to action and to storm Stasi offices beginning in December of 1989 (Gauck, 1994, p. 278). All over the GDR civil committees were formed to supervise the closing of the secret police, “to guard documents, and, where possible, to collate the files they found” (Gauck, p. 278). “The resolute actions of many citizen committees in the turbulent autumn of 1989 acted against widespread destruction, and files on over six million people have been secured” (Welsh, 1996, p. 418). “On 15 January 1990, a dramatic occupation of the main Stasi office on 22 Normannenstrasse in East Berlin by a citizens’ committee secured the primary archival holdings” (Bruce, 2008, p. 85). The Stasi personnel in Berlin continued to destroy and tamper documents, and destroy electronic indexes until the very last moment; “others were removed and often remain in private hands or are offered for sale” (Miller, 1998, p. 308). “Nevertheless--a point that was later to assume importance--those now in charge of the records are confident of their ability to reconstruct and interpret them and to detect falsifications” (Miller, p. 308).

Vetting of public employees was one of the first clarification activities to take place after the fall of Communism in East Germany (Bruce, 2008, p. 100). The government “opted for vetting all members of parliament for informant work very early in the unification process” (Bruce, p. 100). This decision showed that the government emphasized the need to start with a clean plate and “to do so in an open, self-critical

way... collaboration, failure, and guilt would not be suppressed; it would be acknowledged, faced up to” (Gauck, 1994, p. 280).

The role of the Stasi and its oppressive use of the secret files drove the revolutionaries, and access to them was a crucial part of their demands after transition (Bruce, 2008, p. 86). In June 1990 the East German legislature formed a special commission for the Stasi files, the Office the Federal Commissioner for the Stasi Records, and put Joachim Gauck, a dissident pastor who played a leading role in the East German civil rights movement, in charge (Muller, 2001, p. 265). This body's task was to supervise the breakup of the MfS, which took place on the orders of the Minister of the Interior (Gauck, p. 278). The committee also influenced legislation; it presented a draft bill that became law in August 1990 that fixed the methods for dealing with the Stasi legacy. This law addressed many of the grievances of the 1990 civil protests; its main aim was to “allow former Stasi documents to be used for political, judicial, and historical reckoning with the past” (Gauck, p. 279). Citizens were to be allowed to examine the files the Stasi had kept on them. It was meant to allow "political reckoning with the past" by vetting political employees to see if they had previously worked for the MfS. Where the vetting process revealed such collaboration the public servant was to be dismissed from his post (Gauck, p. 279). After much heated debate, the law passed and was incorporated into the Unification Treaty, between the GDR and West Germany in the autumn of 1991 (Muller, p. 265).

During this time, there were debates about the merits and dangers of opening the Stasi files to the public:

There was talk of an inquisition, a witch-hunt and large-scale denunciations. In reality, the effect of legislating to permit access to victims as well as historians and researchers was the opposite. The legislation put a stop to media gossip and speculation about East Germany's intelligentsia and the extent of its collaboration with power almost immediately... With the opening up of the Stasi archives, charges of complicity could at least be refuted with a degree of confidence through reference to the facts in the archives. (Lewis, 2003, p. 378)

StUG: Law on the Documents of the State Security Service of the Former GDR

What emerged on December 20, 1991 was the Law on the Documents of the State Security Service of the Former GDR (Stasi-Unterlagen-Gesetz, abbreviated to StUG) (Miller, 1998, p. 309). The Law puts the Stasi records in the charge of a Federal Commissioner for the Documents of the State Security Service of the Former GDR, an independent official elected by the Bundestag (German Parliament) for a five-year term, and removable for reasons, and by procedures, similar to the dismissal of judges (Miller, p. 310). The law provides the legal framework for the various forms of the inspection of files. Gauck was appointed head of the Federal Authority, soon known simply as the Gauck Authority, which was accountable to neither parliament nor particular ministries (Muller, 2001, p. 265).

It was important for Germany to establish these rules early on, so that citizens could be able to trust the elected officials that were to lead the new democratic system, and that politicians in power would not use the files for tactical purposes (Gauck, 1994,

p. 279). The intention was “to respond to the East German people's minimal demand that persons who had conspired with the regime, unbeknown to their fellow citizens, should be deemed unsuitable for public positions of trust” (Gauck, p. 279).

The Stasi files were to be used for "judicial reckoning with the past" in order to facilitate prosecution where crimes had been committed, but also to vindicate those who had been wrongly accused. Finally, there was a historical justification for this legislation. With the aid of the files, historians would be able to portray the actual processes of domination and organization, demonstrating the interplay between the ruling party and its instruments of surveillance and oppression (Gauck, 1994, p. 280).

The overriding consideration in granting East Germans permission to read their Stasi files was to provide citizens with evidence of the wrongs that had been committed against them. Opening the files to the victims constituted therefore an important symbolic act of reconciliation on the part of the new German parliament (Lewis, 2003, p. 378).

BStU: The Office of the Federal Commissioner

The Stasi files themselves are administered by the Office of the Federal Commissioner (BStU) archives. The Commission's main activities consist of providing data for the public service, preserving and arranging the archive (Gauck, 1994, p. 281). The files are made available for various purposes to private individuals, institutions and the public in accordance with the StUG law (BStU, 2009a). Thus, the files were removed from government and transferred to this independent institution. The BStU has the task of instructing the public on the structure, methods and mode of operation of the MfS. In doing so, it contributes to the historical, political, judicial and societal research on the SED

dictatorship. It advances the public examination of totalitarian ideas and structures, in that it makes public questions on political research (BStU, 2009a). The Stasi Records Office also does research on the history of the MfS itself releases its own publications, it “contributes to keeping alive the memory of the SED dictatorship, of its victims, and also of the opposition and resistance to the system. In this way, memory and information take the place of forgetting, silence and revisionism” (BStU, 2009a).

The BStU is one of the largest archives in Germany with a total of 180 km of records, thousands of staff and fourteen branches (BStU, 2009a). The need for such a high level of manpower is dictated by the enormity of the archives and the number of applications for access to the files (Gauck, pp. 280-1). It is apparent that German people view access to the files as necessary and legitimate as more than five million applications have been received since it opened. “In fact, applications to see files rose 20 percent from 2005 to 2006, an unexpected trend after fifteen years of archival access” (Bruce, 2008, p. 103).

In a survey of citizens who viewed their files conducted in the early 1990s, 95 percent considered it “right” that they should view their files. Equally importantly, 64 percent of them discussed the Stasi with their friends and families, something that the Stasi Archive considered important because of its mandate for political education, which also was outlined in the Stasi Files Law. (Bruce, p. 103).

A great amount of work is required to be able to provide Stasi records to individuals, offices and institutions. For just one person to view files, there are thirteen

steps necessary “from evaluating the legality of viewing the document, to the return of the documents to the archive” (Bruce, 2008, 104). Tremendous amount of time is spent by archive workers copying files for victims, “in 1992 alone, nearly ten million copies were prepared by archive workers” and “all of those documents had to be vetted for personal information and, where appropriate, blacked out” (Bruce, p. 104). The BStU alerts potential users of the archive, that due to strict privacy requirements in the law, unlike that of normal archives, and due to the large demand, applicants may experience “significant waiting times” (BStU, 2009, Functions). To operate a facility of this magnitude, large financing is necessary and Germany was able to provide this. As of 2006, there are more than 3000 staff employed at the archive (Bruce, p.103).

Accessing the files

The access to the files has been vital in confronting past injustices and in achieving restorative justice. They were vital in the compensation of victim and to the construction of a competent government, but for victims they provided a “process of personal clarification” (Miller, 1998, p. 308). For the victims, “reading the files was but the first step in a protracted process of seeking recognition for their sufferings and of reclaiming the missing parts of their life stories” (Lewis, 2003, p. 378). “As keen as many were to discover the contents of their files, most found the experience distressing and deeply disturbing...All testify to an overwhelming sense of having been violated and deprived of the fundamental human right to privacy” (Lewis, pp. 384-385). The files have helped fill in missing details and confirm suspicions on who was spying on whom. “The files invariably unlocked falsehoods along with truths and exposed lies that in some instances

had formed the entire basis of the victim's life history" (Lewis, p. 386). The harrowing nature of the experience of reading one's secret police file can be seen in the sheer range of emotional responses that victims have reported... The absurdity of the accounts in the files as well as the painstaking detail of the reports, which were written in a tone of high seriousness, provoked laughter in many victims before the full impact of the file was felt. Amusement, however, soon gave way to shock and outrage (Lewis, p. 386). Most devastating for many victims was the confrontation with lost opportunities and ruined relationships (Lewis, p. 387).

Stasi File Law (StUG)

Access to the Stasi files is governed by the Stasi Files Law on the Documents of the State Security Service of the Former GDR (StUG), which came into force on January 1, 1992 (Bruce, 2008, p. 85). The purposes of the law are:

- (i) To allow the individual access to information stored by the Stasi about himself, so that he can clarify the influence of the Stasi on his personal fate (Miller, 1998, p. 310). This individual reckoning with the past is paramount (Bruce, p. 88).
- (ii) To protect the individual from impairment of personal rights arising from use of information stored by the Stasi about himself (Miller, p. 310). The law is designed to protect the impairment of personal rights arising from use of information stored by the Stasi. German lawmakers were extremely concerned lest the archival material be used anew for repression (Bruce, p. 88).
- (iii) To ensure and promote historical, political and legal analysis of the activities of the Stasi (Miller, p. 310).

(iv) To put at the disposal of public and private institutions the information required for the purposes specified in this Law (Miller, p. 310).

The law tries to balance personal and privacy rights with public interests purposes, which often seem at odds and are very delicately balanced in the law (Miller, 1998, p. 310). The most controversial aspect of the law is that it “leans toward the individual’s right to know rather than her right to privacy,” thus “the names of informants and Stasi workers can be released to the public” (Bruce, 2008, p. 89). In other words, the personal rights of former Stasi agents have to make way for the victims’ personal rights to information. This is also controversial as “since it suggests that in agreeing to work for the Stasi, that individual somehow forewent his right to privacy” (Bruce, p. 89). Hansjürgen Garstka, Berlin’s Data Protection Commissioner, has defended this course of action:

We recognized that right of access to personal files was a categorical right for the victim, for the one affected by the Stasi, in order to come to an understanding, to a catharsis, but that in order to do so there would be groups of individuals who would have to have their rights reduced (as quoted in Bruce, p. 89).

The legislation and its drafters had to develop their own definitions and categories for the persons referred to in the records and established four categories. The law is designed to differentiate the rights of individuals in these categories:

1. An affected person is anyone who was the target of a deliberate information gathering project by the Stasi.
2. A Collaborators are either former official employees of the Stasi or other persons who 'declared themselves ready to supply information' to it. Unofficial collaborators are

grouped in this category if they supplied a written agreement to the Stasi of their readiness to supply information, but not everyone supplied one. Some critics argue that this definition is very narrow protects people who should be treated as collaborators (Miller, 1998, p. 310).

3. Advantaged persons are those who received substantial advantages from the Stasi, typically in the form of material or career advancement, or of protection from prosecution.

4. Third parties are any other persons about whom the Stasi collected information in an indirect way; without them being the object of an information-gathering project. “But for information to be about a third party it must have been collected with a view to use” (Miller, p. 310). In general, affected persons and third parties, are called victims, and have similar rights. In the same way, collaborators and advantaged persons have similar rights under the Law (Miller, p. 310).

“Before personal information in the files may be used outside the Authority, the persons referred to in them must be allocated to one of these four categories” (Miller, 1998, p. 311). This entails much work, as most collaborators are referred to by cover-names, and many persons fit into more than one category: it was common for a victim to be spied upon and then blackmailed into becoming an informant. The law states that people are to be categorized separately for each record and context in which they appear (Miller, p. 312). However, this scenario can be a defense for those who were willingly complicit with the regime. In the law, it is “vital that those who were coerced into being informants be allowed to prove their innocence, while at the same time holding willing

informants accountable for their actions” (Bruce, 2008, p. 95).

The law offers five principles of access to and use of the records:

1. “Any person is entitled to be told whether information about himself or herself is in the records, and, if so, to be given access to and copies of those records without charge” (Miller, 1998, p. 312). “Individuals, who were spied on by the Stasi, are given top priority; they can inspect their files to see how the MfS determined their fate” (BStU, 2009a). “Victims may use any information they obtain from the Authority as they see fit, within the law, in particular they may confront informers personally, or use their knowledge for court actions, or publish it” (Miller, p. 314).
2. “Where records contain personal information about victims other than the applicant, such information must be blanked out in the copies supplied to the applicant but not names of or references to collaborators or advantaged persons” (Miller, pp. 312-313). Official Stasi workers are considered to be “figures of contemporary history” and the information on them is fully accessible (Bruce, 2008, p. 94). Informants are treated the same as official workers in terms of privacy. Their names and activities can be made available to researchers, including to affected individuals. In other words, a “victim is allowed to know the identity of his or her perpetrator” (Bruce, p. 94). There was great fear of violence from victims who would go after their perpetrators, or “families would be ripped apart by revelations that family members reported activities to the secret police” (Bruce, p. 94). However, this has not happened. “Rare has been the case of a family member reporting on another family member, and in the fifteen year history of the Stasi Files Law not one case of individual retaliation has been reported” (Bruce, p. 94). Former

Stasi workers have access to their own files but are not permitted to view reports that they authored containing information on affected individuals unless there is a compelling legal reason (Bruce, p. 94).

3. “After a stipulated period, victims may apply to have information concerning themselves deleted from the original records” (Miller, p. 312). The Authority may transfer the records' contents into electronic form only in order to facilitate location of files; it is forbidden to set up any automatic retrieval or transmission procedures. If anonymizing is impossible, the record is simply to be destroyed (Miller, p. 312).

4. “Personal information about victims may not be used to those victims' detriment” (Miller, p. 312).

5. “Other persons or institutions may have access to certain records for a fee,” but only where that interest is one sanctioned by this Law, and “provided they use the information only for the purpose cited in the application, and not as they see fit” (Miller, p. 315).

“Access to the records, including access to personal information about other persons, may be sought by public and private organizations in their formal capacity, and also by the media and researchers” (Miller, p. 315). Until 2006, the files on victims could only be viewed by the victims themselves, by researchers who had received permission from the victim, or by researchers who receive photocopies of documents with personal information (including identity) blacked out (Bruce, p. 93). As of 1998, there was no 30-year rule, as with the records in the Federal Archives (Miller, p. 315). However, the Stasi Files Law was amended in 2006, and now the files of those affected by the Stasi can be viewed without permission or blacking-out if the individual has been deceased for 30

years, or 110 years after the individual's birth (Bruce, p. 93). Personal records may be used without prior permission "where they concern collaborators and advantaged persons, or public figures and office bearers insofar as these latter are not victims; but the Authority may withhold records which disclose private or intimate details unconnected with the person's role in the files" (Miller, p. 316). Employers may inquire with the Commission whether their employees have a history of Stasi collaboration, but only employees in specific posts may be checked, and only with their consent. "Checks by employers ... have formed the largest category, almost 60% of applications" (Miller, p. 315). "Any public or private organization (but the provisions are aimed particularly at courts and state prosecutors) may apply for a general search to be made for evidence towards cases of specified types," particularly in cases involving rehabilitation and compensation of victims of the former regime (Miller, p. 315).

In only 2000 was the Stasi file law challenged on the basis of infringing privacy rights (Bruce, 2008, p. 90). Access to Chancellor Helmut Kohl's Stasi files was challenged and successfully resisted, by "reiterating the aspirations of the demonstrators who took to the East German streets" (Bruce, p. 82). Journalists had applied to access his files that contained transcripts of tapped conversations, to discover any illegal activity on his part, thus Kohl sued the Federal Commission for the Stasi Files to prevent it from releasing the files (Bruce, pp. 89-90). The Federal Administrative Court supported Kohl arguing that the current laws of the unified Germany's laws guarantee postal and telephone privacy, therefore Kohl, as a public figure could limit access to information on himself. The Federal Commission for the Stasi Files lashed out at this decision, arguing

that this could “terminate serious scholarship emanating from the documents” (Bruce, p. 90). The government then “took the initiative, arguing that the court’s decision was incompatible with Article 1 of the Treaty of German Unification that guaranteed a ‘political, historical, and judicial dealing with the activities of the former Ministry for State Security’” (Bruce, p. 90). As a result, parliament passed an amendment to the Stasi Files Law in 2002, “allowing documents relating to holders of public office to be released for the purposes of historical research or for media purposes, provided that the information in the documents relates to their public life” (Bruce, p. 90). Thus, the BStU now “allows the examination of persons in elevated functions and offices” (BStU, 2009a). In 2004, the Federal Administrative Court announced that the release of documents to researchers and journalists regarding public figures should be the “exception, not the rule” (Bruce, p. 92). The Federal Commissioner for the Stasi Files argued this, saying: “lawyers were taking into account the privacy rights of individuals today, while ignoring the fact that the law had been drawn up in part so that East Germans could deal with the fact that their privacy rights had been violated for forty years” (Bruce, p. 92). Some of the Kohl files were indeed released in 2005. The controversy has slowed the process to view files, but “it has not closed access completely” (Bruce, p. 92).

Since 2005, the Stasi archive has been targeted as an institution that has outlived its usefulness. “It was primarily established to assist in court trials that are now more or less at an end, leaving the remaining task solely to be providing access to victims” (Bruce, 2008, p. 83). Germany has debated whether the files should be incorporated into the Federal Archives, and thus end the special Commission. Some politicians have argued that

integration into the Federal Archive “would reduce access to the files as they would no longer be exempt from the strict privacy rules that govern access to other files” (Bruce, p. 83). Stasi documents have stayed in regional archives in part so that they remain closer to the people (Bruce, p. 103). If the BStU had not been set up and if files had been sent to the Federal Archive and placed under restricted access like other documents instead, “the majority of East Germans would have seen this as a betrayal of their desires expressed on the streets of the dying GDR in the fall of 1989” (Bruce, p. 102). Currently, it is proposed that the archive remain open until 2019, thirty years after the fall of the Berlin Wall, to allow time for East Germans to view their files and “to come to a certain historical understanding of their content” (Bruce, p. 105). The proposed date seems to allow a reasonable timeframe in which healing can take place. As Gauck, a former Archive Commissioner has summarized: “we will be in a position to forgive and forget only if we are given enough time to heal our wounds, to calm our anger, and, yes, to curb our hatred” (as quoted in Bruce, p.105). The incorporation of the Stasi files into Federal Archive would be a symbolic act of moving on and putting the history of the Stasi within the rest of Germany’s history.

Conclusions

East Germany experienced an explosive revolution that cleared out the government of old conspirators, and had the financial and legal apparatus available from West Germany to ensure that swift legislation be passed. The Stasi archives played a key role in democratization in East Germany after 1989. Joachim Gauck, an activist during the

revolution and a former Commissioner for the Stasi Archive has been credited for efforts in pushing for access to the files, has said “reconciliation with such a past can only be achieved not simply through grief, but also through discussion and dialogue” (Gauck, p. 284). The Stasi File law was swiftly created and enforced after the revolution, and the Stasi Files were moved from the government to an independent institution.

Some criticize these swift efforts of ensuring access and preservation of the Stasi records as opening wounds and not moving on:

Some accuse those who refuse to forget of being vengeful. They fail to see that there is a need to remember the times and those who restricted our right to freedom and personal expression, not least because these inalienable rights need to be defended now and in the future. (Gauck, p. 284).

The Stasi File law is fairly complicated in its effort to balance privacy rights and personal and societal rights to know the past, and this delicate relationship requires legal expertise.

Fortunately for East Germany, West Germany had “an administrative and judicial apparatus in place with some forty years of experience,” thus there was an “efficient administrative and legal system available immediately after 1989” (Bruce, 2008, p. 103).

East and West Germany also had a wealthy government to finance such a large archive, with a high demand for access and the complexity of access involved with it (Bruce, p.

103). Essentially all the collective and individual rights, as proposed by Antonio Gonzales Quintana’s UNESCO sponsored report on “Archives of the Security Services of Former Repressive Regimes” are enforced. Stasi victims have the right to know whether files exist on them, they have a right to inspect these files. The files reveal the

names of those responsible for crimes against human rights. German citizens have access to records related to their nation's history, but the privacy of the people named in the records is also protected (Quinata, 1997, pp. 10-11).

Chapter V: Summary, Conclusions and Recommendations

This project set out to investigate how access, or lack of access, to records of security services of former repressive Communist regimes in Germany and Hungary were managed in these societies after transition; it was meant to show two diverse reactions to a unifying and similar past of oppression by examining legislation concerning access to secret police records and lustration. It sought to investigate how fundamental dilemmas in archives such as access vs. restriction, retention vs. destruction and the rights to privacy vs. the right to information were addressed in these countries after the fall of Communism. The attempts made by the governments of Hungary and Germany to tackle such challenges was discussed. The study is meant to inform archivists confronted with archives of repressive security services in countries undergoing transition to democracy understand the types of challenges they will face in ensuring access in such politically charged and often unstable environments. It was shown that the transition type, the political climate and the availability of funds in Germany and Hungary affected the mode of legislation the countries experienced.

Chapter one provided a brief introduction to the problem countries face during transition to democracy in managing the archives of a repressive former security services agency. It discussed the purpose of the study, background of the problem and the importance these archives play in the societies in which they exist.

In chapter two, a review of related literature was examined. The themes discussed were: the relation between the conditions under Communist rule and how this dictated the

type of transition a country experienced towards the establishment of democracy; lustration laws that as part of transitional justice, many post-communist countries established to screen and former Communist leaders; and international reports regarding the archival guidelines, suggestions and code of ethics for the preservation and access to archives of repressive regimes.

The research methods used in the study were described in chapter three. The methods employed consisted of historical analysis of mostly secondary and primary sources. Chapter four the historical findings were discussed. An analysis of the historical significance of Communism and its impact on the Soviet Satellite countries, the nature of secret service police files, and the historical perspective of the Communist background of East Germany and Hungary was provided. A detailed investigation of the transition process from an authoritative to a democratic system, the establishment of a new governing body and transitional justice lustration laws, and the means of access to records of the state security services of Hungary and the former East Germany followed.

Recommendations

The study shows that archival policies diverged in Hungary and East Germany, (later the united Germany), regardless of the shared past. The reasons for this can be explored in future studies. It is possible that factors unique to Hungary, such as: the lack of funds and outside legal assistance, the milder transition process and the relatively milder form of repression in Communist Hungary contributed to this different response.

Future studies could involve archivists who are currently engaged in providing

access to records of former repressive regimes and assess whether the UNESCO Code of Ethics and the United Nations Human Rights Council *Right to the Truth Resolution* has any significant impact in how archivists carry out their work.

Communism and its repressive tactics have spread around the world. This study could include other prominent geographic areas to further investigate the variety of challenges archives of Communist security services around the world are faced with. Expansion of the study to include other country case studies would provide alternative solutions for archivists to consider when faced with such difficulties. Future studies relating to such archives could provide suggested tactics that archivists and activists can pursue in their respective countries, to press their government to pass favorable laws.

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