MEMORY OF NATIONS

Democratic Transition Guide

[The Argentine Experience]

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CEVRO

REHABILITATION OF VICTIMS

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INTRODUCTION

Rehabilitating the victims of Argentina's *Proceso de Reorganización Nacional*[1] was not at the top of the agenda when the transition took off in 1983. Almost 35 years later, however, the country has amassed a broad legal framework to rehabilitate the victims and their families, with a focus on economic reparations.[2]

Yet this has not followed a linear path, and to understand the legal framework and its implementation we need to take into account political, social and economic factors. Especially important are the challenges faced and the decisions taken at the political and judicial level, which are covered in other chapters of this study on the Argentina case.

This chapter will explore the scope and typology of rehabilitation, as well as its historical context. A second section will detail the reparation's legal framework in chronological order; the focus is on economic reparations. Information about the implementation and social satisfaction will be provided, when available. We will then briefly describe the Argentine human rights movement. Finally, we will draw lessons learnt and make recommendations for similar situations around the world.

At all times, this chapter should be read along with other sections of the Democratic Transition Guide, especially the Transformation of the Political System, Investigations and Prosecutions of the Crimes of the Regime, and Education and Preservation of Sites of Conscience chapters.

SCOPE AND TYPOLOGY OF REHABILITATION

During the 20th century, political violence in Argentina left a large amount of victims. For the purpose of this report, we will focus on the violence which occurred in the 1970s and early 1980s.

After the military defeat of the Malvinas/Falkland war, the country slowly started its transition. Raul Alfonsín, a candidate from the Radical Party, won the 1983 presidential election by 52 % of the votes; his campaign platform included measures to address the atrocities of the past.

Shortly after his December 10, 1983 inauguration, President Alfonsín issued decree 187/1983 mandating the creation of a sixteen-member commission, the National Commission on Disappeared Persons ("CONADEP" in Spanish). An extra judicial body, the CONADEP was tasked with "shedding light to the facts relating to the *disappearances* of people in Argentina."

It is important to note that its central mandate pertained to enforced disappearances, but not all crime committed by the Junta. Also, that the CONADEP was contested by social and political actors, which pushed for other alternatives.

Following an extensive investigation, which included several thousand testimonies, numerous interviews, and site-visiting, on September 18, 1984 the CONADEP released its final report, *Nunca Más* ("Never Again"). Needless to say, the Commission faced several dilemmas and made crucial interpretative decisions.[3]

The CONADEP estimated an "open" number of 8,960 disappeared, based on complaints and information cross-checked with national and international human rights organizations. The Never Again report was also a milestone because it shed light on the institutional and systematic character of enforced disappearances, identified those responsible making reference to other actors besides the *Junta* and recommended an exhaustive investigation on others, who were not high-rank leaders.[4]

The final report made four key recommendations pertaining to justice and the enactment of new legislation. In particular, it recommended:

> *"[t]hat the appropriate laws be passed to provide the children and/or relatives of the disappeared with economic assistance, study grants, social security and employment and, at the same time, to authorize measures considered necessary to alleviate the many and varied family and social problems caused by the disappearances."*[5]

Only two days after the report was presented, the Undersecretariat of Human and Social Rights was created, under the orbit of the Ministry of the Interior.[6] It would be a key player, following and systematizing the information exposed in the *Nunca Más*, being the custodian of the CONADEP archives and receiving new complaints.[7]

DEFINING THE UNIVERSE OF VICTIMS

First and foremost, in this document we will mainly refer to the victims of the crimes perpetrated by the *Military Junta* – the dictatorship that ruled Argentina from March 24, 1976 to December 9, 1983. That is, to victims of State-sanctioned atrocities.

1 From March 24, 1976 to December 10, 1983. Also referred in this chapter as the Junta, the Military Junta, the Dictatorship.

2 María José Guembe, "La experiencia argentina de reparación económica de graves violaciones de derechos humanos", CELS, 1994, 1.

3 Emilio Crenzel, "Veinticinco años de democracia en Argentina, un balance desde los derechos humanos", in *Naveg@mérica. Revista electrónica de la Asociación Española de Americanistas* [online], 2011, vol. 6, 7.

4 Emilio Crenzel, Ideas y Estrategias ante la violencia politica y las violaciones a los derechos humanos en la trasnicion politic a en Argentina, in Claudia Feld, Marina Franco, eds., *Democracia, hora cero. Actores, política y debates en los inicios de la postdictadura*, Buenos Aires: Fondo de Cultura Económica, 2015, 106.

5 *Nunca Mas* Report, CONADEP, 1984. English version available at: http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_000.htm

6 Guembe, 2.

7 Ibid. As the author notes, the Undersecretariat changed its rank over time. Shortly after its creation it was transformed into a national direction. Nowadays, the Secretary of Human Rights and Cultural Pluralism is part of the Ministry of Justice and Human Rights.

There are other victims, such as those of the para-police organization Triple A (prior to the 1976 military coup), and of guerrilla organizations such as Montoneros and ERP. The acknowledgment and treatment, and the status of these victims are a widely debated issue in Argentina, then and now. As we will see in the next section, certain victims prior to the beginning of the Dictatorship have slowly started to receive compensations.

The Military Junta produced numerous types of victims. In this report, we will focus on certain crimes. Firstly, assassinations by State forces, often in "fake" confrontations, whose remains have been identified and returned to their families. Secondly, *desaparecidos* or disappeared, individuals assassinated by the government, but whose bodies have never been found. It must be noted that the concept of disappeared also includes individuals that were held prisoners at Centros Clandestinos de Detención (*clandestine detention centers*), but were later freed.

Prisoners were overwhelmingly subject to torture and inhumane treatments. Another grave crime was the appropriation and identity substitution of babies born to women held as prisoners. Finally, the Junta also applied labor-related sanctions to political opponents, such as layoffs and suspensions.

The notion of *victim* is a social and historical construction,[8] and the legal framework helps settle the contours of such construction, from the State's standpoint. Besides 'direct' victims, it must be noted that families and other relatives were strongly affected. In this sense, the CONADEP report included a section called "The family as a victim":[9]

> *It is a feature of the disappearance syndrome that the stability and structure of the family of the person who disappears is profoundly affected. The arrest (generally carried out in the presence of the family or of people connected to the family); the anxious search for news at public offices, law courts, police stations and military garrisons; the hope that some information will arrive, the fantasy of a bereavement that is never confirmed; these are factors that destabilize a family group just as much as the individual members. Behind each disappearance, there is often a family that is destroyed or dismembered, and always a family that is assaulted in what is most intimate: its right to privacy, to the security of its members, and to respect for the profoundly affectionate relations that are the reason for its existence.*

LEGAL FRAMEWORK OF THE REHABILITATION[10]

1984–1987: THE BEGINNING: LABOR-RELATED MEASURES

With the democratic transition, a series of laws were enacted with the aim to resolve the situation of workers that had been fired during the Dictatorship.[11] As María José Guembe notes, specific groups, independent from public opinion pressure, enacted this first set of laws upon direct pressure.[12] In 1984, two laws were enacted. Passed in February, Law 23.053 mandated the re-incorporation of Foreign Service employees that had been suspended.[13] Later, a similar law was enacted applying to state companies' workers that had been laid off.[14]

Between 1985 and 1987, several laws were further enacted, pertaining to teachers and bank employees.[15] In September 1985, Law 23.2781 was passed, with important effects. The law mandated that the "inactivity period" due to the dictatorship (being suspended, fired or forced to quit, or being forced to exile) should be counted for retirement purposes.[16]

As Guembe notes, in that time, political detainees began bringing their cases to justice, seeking reparations.[17] This led to the first discussion on general reparations within the judiciary power and the human rights movement.[18]

1986: PENSIONS FOR FAMILIES OF THE DISAPPEARED

In late 1986, Congress approved Law 23.466, creating a package of benefits for families of those disappeared before December 10, 1983, in line with CONADEP recommendations. This benefited underage children as well as spouses or partners and other close family members, which were in charge of the disappeared. The 'package' included a pension of approximately USD $200 per month and medical coverage.[19]

Pablo de Greiff points out that the law was aimed more at responding to the situation of widows and children of the disappeared, rather than satisfying legal criteria on proportional compensations to the damages suffered by them.[20] As Guembe notes, this had to do with the financial problems that human rights organisms were suffering, since before 1986, they were the main providers of resources to the families of the disappeared.[21]

1991: COMPENSATIONS FOR POLITICAL PRISONERS

The late 1980s found Argentina coping with the effects of the *Juicio a las Juntas*, with military coup attempts and the enactment of norms that limited the scope of transitional justice, namely the *Punto Final* and *Obediencia Debida* laws.

As De Greiff notes, the situation made no place for a focus on reparations.[22] Along the same line, María José Guembe argues that the priority was the search for *truth and justice*.[23] Further, at the end of this decade, an acute economic and political crisis shook Argentina, and President Alfonsín had to call for early presidential elections. He was replaced by Carlos Menem, of the Peronist Party.

Several reasons, on the domestic and regional level, pushed Argentina's executive and legislative power to grant reparations.

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8 Emilio Crenzel, "Verdad, justicia y memoria. La experiencia argentina ante las violaciones a los derechos humanos de los años setenta revistada", in *Telar*, 2015, vol. 13–14, 63.
9 *Nunca Mas* Report.
10 Legal framework will focus on national level norms. Argentina has a federal system, and several provinces have enacted specific laws.
11 Guembe, 3.
12 Ibid.
13 In Spanish, "declarados prescindibles."
14 Law 23.117 (1984).
15 Laws 23.238 (1985) and 23.523 (1987).
16 Guembe, 3.
17 Ibid., 3 and 4.
18 Ibid.
19 Pablo de Greiff, "Los esfuerzos de reparación en una perspectiva internacional: el aporte de la compensación al logro de la justicia imperfecta", in *Revista Estudios Socio-Jurídicos*, 2005, vol. 7 (Esp), 166.
20 Ibid.
21 Guembe, 5.
22 De Greiff, 167 and 168.
23 Guembe, 5.

First, as is covered in other chapters of this study, between 1989 and 1991, when President Menem issued a series of decrees pardoning military officers and former guerilla members.

In this context of impunity, human rights organizations and families brought their cases to the Inter-American system, where Argentina's state responsibility was contested. This pushed President Menem, himself a former political prisoner, to issue decree 70/91 in January of 1991. The decree granted compensations to individuals, which were detained by authorities before December 10, 1983 *and* which had started a judicial process against the State before December 10, 1985.[24]

The benefit was calculated according to the number of days the prisoner spent detained. The reparation was of approximately USD $27 per day at that time.[25] It also stipulated a one-time compensation for the families of political detainees that died while in prison and for those detainees that suffered "grave" injuries (approximately, USD $46,275 and USD $34,492 respectively).[26]

Later that year, in November 1991, Congress passed Law 24.043, which considerably expanded the reparations granted by decree 70/91.[27] The law granted economic reparation per day of detention to people detained under the custody of the Executive power or civilians detained by virtue of military tribunals' decisions. It was granted to political detainees between November 6, 1974 (when *the state of siege* was declared under the presidency of Isabel Martínez de Perón) and December 1983.[28] As De Greiff points out, the structure of the reparations was similar to the decree's, yet the economic benefits were larger.[29] Reparation per day of detention jumped to USD $74.50 and reparations for individuals which died or suffered grave injuries in prison were set in USD $136.254 and USD $94.490 respectively.[30]

Victims and their families were given until 1998 to make filings, although this was later extended. 13,600 requests were received, and approximately 7,800 were granted.[31] Further, Law 24.043 introduced a new payment method: Argentine sovereign bonds.[32]

1994: COMPENSATIONS FOR ENFORCED DISAPPEARANCES AND ASSASSINATION VICTIMS

In 1994, Argentina's constitution was reformed and several human rights declarations and treaties were granted "constitutional" level. Further, in mid-1994, the general assembly of the OAS approved the Inter-American Convention on Enforced Disappearance of Persons.

Later that year Congress passed Law 24.411 which established compensation for victims of enforced disappearance and of assassination by armed security, and any other paramilitary forces. De Greiff explains that the law was not a product of the pressure of civil society and was passed without much debate.[33] Yet, Law 24.411's wording lacked operative clauses, and thus three years later, in 1997, it was amended, after an intense debate, by Law 24.823.[34] One of the key contentious points had to do with the *status* of the disappeared.

The law had ample scope, granting compensation for individuals that had been victims of enforced disappearances (at any point in time), and that were still disappeared at the moment the law was promulgated (May 23, 1997),[35] and also for those assassinated by security forces, in both cases before December 10, 1983.

The reparation was tied to the monthly salary of the highest level in the administration, by a coefficient; this was approximately USD $220.000 at that time.[36] Filings were made for 3,151 assassinated and 8,950 disappeared individuals.[37] Again, the reparations were issued in sovereign bonds.[38]

Although covered in other sections of this report, it must be noted that in the mid-1990s a legal maneuver by human rights group started to succeed. *Abuelas de Plaza de Mayo*'s lawyers argued that because the crime of kidnapping minors, and changing their identities, had not been covered by amnesty laws, they could be brought to justice.[39] *Junta* leaders Videla and Massera were detained for charges connected with these crimes. Both the impunity granted to the Military Junta and the character of minors as victims were again a subject of discussion.

CURRENT STATUS: NEW SOCIAL ACTORS AND EXPANSION OF REPAIRS

The early 2000 saw new judicial developments, with the landmark case Simón, later ratified by the Supreme Court. In 2003 Néstor Kirchner was elected president, and he quickly incorporated the human rights discourse into his platform.

Enacted in 2004, Law 25.914 established reparations for individuals born during their mother's captivity and to minors detained with their parents before December 10, 1983. As in other laws, in exchange, beneficiaries could not sue the State for damages in connection with these crimes. Further, the law mandated special compensation for those individuals whose identity had been changed. These victims would receive a compensation equivalent to the one granted by law 24.411 for disappeared and assassinated individuals.[40] Law 25.914 beneficiaries received their compensations in cash.

It is important to note that in 2004 the Supreme Court ruled a case and interpreted the concept of *detention*.[41] In this sense, the Court linked restrictions to freedom of movement, with the notion of *ostracism* associated with exile. Thus this reparation is also available to those individuals, which were forced to exile.

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24 De Greiff, 169.
25 Ibid.
26 Ibid.
27 Ibid., 170.
28 As amended in 1997 by Law 24.906.
29 De Greiff, 170.
30 Ibid.
31 Ibid., 171.
32 Ibid. Águeda Goyochea, Mariana Eva Pérez, Leonardo Surraco, "Definiciones del universo de victimas desde el Estado post0-genocida: la invisibilidad de los hijos de desaparecidos y asesinados como sujetos de derechos", working paper, 2011, 11.
33 De Greiff, 172.
34 Ibid.
35 Thus, it excluded as beneficiaries those individuals which were disappeared but later where freed, among others. See De Greiff, 173.
36 Emilio Crenzel, "Veinticinco años de democracia en Argentina, un balance desde los derechos humanos", 13. Economic reparations were not welcomed by some key players of the Human rights movement, namely the Mothers of Plaza de Mayo Association. See Goyochea, Pérez and Surraco, 14. Compensations were often split among the disappeared children.
37 Crenzel, "Veinticinco años de democracia en Argentina, un balance desde los derechos humanos", 13.
38 De Greiff, 173.
39 Kathryn Sikkink, *The Justice Cascade. How Human Rights Prosecutions are Changing World Politics*, New York: Norton, 2011, 77.
40 It also included more reparations in the case of injuries, for example.
41 Argentine Supreme Court, case *Vaca Narvaja de Yofre*, 2004.

In 2009, Law 26.564 expanded the benefits of Laws 24.043 and 24.411 to individuals that were detained, disappeared or assassinated between June 16, 1955 and December 9 1983. June 16, 1955 marks the beginning of the *Revolución Libertadora*, a coup, which ended with Juan Perón's second presidential mandate.

Finally, in 2013 Congress passed Law 26.913, granting a *pension* to individuals that have been detained due to political, labor or student-related causes, until December 1983. The law was implemented in 2014. Nowadays, the monthly sum is of approximately USD $480.

SOCIAL SATISFACTION

Victims and their families have widely made use of the legal framework described above, although public information regarding this is not available. As of 2016, over 27,000 case files based on the legal framework described above were reportedly being *processed* by the Human Rights Secretariat.[42]

It is important to note several criticisms reparations and its implementation have drawn:

- **High costs of the process:** Both at the economic and symbolic level. As Goyochea, Pérez and Surraco note with regard to the reparations granted by Law 24.411, in order to obtain them, families needed to start both a judiciary and an administrative process.[43] To do this, families had to hire lawyers and, in many cases, brokering agents, since reparations were paid in sovereign bonds.
- **Sovereign bonds as payment:** Families were affected by sovereign bonds' loss of value during Argentina's frequent economic crisis,[44] especially when the national currency was abruptly un-pegged from the US dollar in 2001.
- **Reluctance to accept economic reparations:** Some organizations such as *Madres de Plaza de Mayo* have criticized economic reparations and refused to cash them.[45] They strongly reject "setting a price to the lives of our daughters and sons."
- **Limits of economic reparations:** Often, economic reparations were not enough to rehabilitate victims, many of them coping for example with trauma effects.[46]
- **Scope of reparation to minors:** Reparations to minors have been questioned, and for instance Goyochea, Pérez and Surraco argue that they should be granted not only to those directly affected by the repression as Law 25.914 mandates.[47]

ORGANIZATIONS OF FORMER VICTIMS

As its history of political violence goes back in time, the country has human rights organizations dating back to the early 20th century, such as *La Liga Argentina por los Derechos del Hombre*. At the beginning of the Dictatorship, it also had other organizations such as the Permanent Assembly for Human Rights and the Ecumenical Movement for Human Rights (both dating from the mid-1970s).[48]

Yet the majority of the organizations were founded after the coup in 1976.[49] As Kathryn Sikkink writes, after failed solitary searches for their loved ones, family members of the disappeared created new human rights organizations.[50] In 1977, *Madres de Plaza de Mayo* and *Abuelas de Plaza de Mayo* were created. Along with these two groups, another set of groups started developing, or increasing, their activity over time, such as CELS, SERPAJ and the Permanent Assembly of Human Rights.[51] All of these groups faced repression, and some of their members were even disappeared – such as *Madres*' founder Azucena Villaflor – or imprisoned.[52]

As Sikkink notes, human rights groups started developing connections with international organization, such as Amnesty, regional bodies like the Inter-American Commission, and foreign governments such as the United States under Jimmy Carter's administration.[53] They were especially active pushing for and cooperating with the landmark country visit by the Inter-American Commission in 1979.

Argentina's human rights movement played a key role in the country's transition, activating mobilization, making complaints, and advocating to national and international actors. As Elizabeth Jelin puts it, the most relevant feature of the human rights movement during the early years of the transition was its ability not only to accept or reject, but to *create and build* political opportunities.[54]

Among the most important human rights organizations, we can identify:

- *Liga Argentina por los Derechos del Hombre* (1937)
- *Asamblea Permanente para los Derechos Humanos* – APDH (1973)
- *Servicio Paz y Justicia* – SERPAJ (1974)
- *Movimiento Ecuménico por los Derechos Humanos* (1976)
- *Familiares de Desaparecidos y Detenidos por Razones Políticas* (1976)
- *Madres de Plaza de Mayo* (1977)[55]
- *Abuelas de Plaza de Mayo* (1977)
- *Centro de Estudios Legales y Sociales* – CELS (1979)
- *Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio* – H.I.J.O.S. (1995)

LESSONS LEARNT

After tracing and evaluating the politics of reparations in Argentina, we can draw several lessons. First and foremost,

42 Alicia Panelo, "Terrorismo de Estado: La reparación en números", in *Adelanto24*, March 14, 2017, http://adelanto24.com/2017/03/14/terrrorismo-de-estado-la-reparacion-en-numeros/

43 Goyochea, Pérez and Surraco, 14 and 15.

44 Ibid.

45 See: Madres de Plaza de Mayo, platform. Available in Spanish at: http://madres.org/index.php/consignas/

46 Goyochea, Pérez and Surraco, 18.

47 Ibid., 21.

48 Elizabeth Jelin, Certezas, incertidumbres y búsquedas: el movimiento de derechos humanos en la transición, in Claudia Feld, Marina Franco, eds., *Democracia, hora cero. Actores, política y debates en losinicios de la postdictadura*, Buenos Aires: Fondo de Cultura Económica, 2015, 197 and 198.

49 Hilda Sabato, "Los organismos de Derechos Humanos", in *Derechos Humanos en Argentina. Informe 2004*, CELS, 572, https://www.cels.org.ar/web/wp-content/uploads/2016/10/IA2004-Dossier-2-Los-organismos-de-derechos-humanos.pdf

50 Sikkink, 63.

51 Ibid.

52 Ibid.

53 Ibid., 63 and 64.

54 Jelin, 197.

55 The organization has a spinoff called *Madres de Plaza de Mayo – Linea Fundadora*.

the rehabilitation of victims must be a state policy. Reparations must be carefully considered and planned.

In Argentina's case, the victims were broadly compensated (especially in economic terms), but this was not the product of a straightforward public policy. Rather, it was constructed incidentally along the last three decades. In fact, there was no clear order, and the measures were taken due to several factors – including demands by affected groups, such as unions and victim's organizations or, the product of domestic and international litigation against the State. Putting the task to push for reparations on victims is re-victimizing *per se*. Thus, a political and social consensus on the necessity of granting remedies and reparations to the victims is adamant.

Second, along with the political decision to rehabilitate victims, the financial dimension must be incorporated, calculating and delivering the reparation in a timely manner and format. The use of sovereign bonds, in the case of Argentina with its economic history, has not facilitated the process for victims and families. The use of bonds created barriers of access to reparations, as well as a loss of value that the families had to bear.

Further, we can argue that economic compensations have limitations, and that we should explicitly incorporate other types of reparations. In this regard, the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law"[56] adopted by the UN General Assembly in December 2005 provides interesting input.

On the other hand, the Argentine case shows the importance of a strong, vibrant and proactive human rights movement. Civil society was crucial before and all along the transition, pushing the agenda at its lowest moments – such as after the amnesty laws were enacted in the late 1980s and early 1990s. Countries in transition and the international community in general should aim for a robust civil society, channeling funds and giving them voice and recognition.

Finally, an important lesson, which can be drawn is an ample definition of "victim." Although there is a still a strong debate on the scope,[57] in the Argentina case families and relatives were considered central from the beginning. This has led to the 2004 *Ley de Hijos* and to the reparations in cases of exile.

RECOMMENDATIONS

1/ Make rehabilitation of victims a state policy, backed by a political and social consensus.

2/ Create or empower a centralized State organism in charge of rehabilitations. This organism must be highly-ranked, well-funded and adequately staffed.

3/ Include several dimensions in the reparations, not only the economic. In this sense, recent UN principles and guidelines on remedy and reparations are useful.[58]

4/ Incorporate victims and families in a participative process of designing and implementing reparations.

5/ Adopt a wide criterion of proof for establishing crimes, since valid proofs for many of them such as enforced disappearances are nearly impossible to obtain.

6/ Ensure legal, social and psychological assistance to the victims and their families, both broadly and in connection with the process to obtain reparations.

56 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN General Assembly, December 16, 2005, http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx

57 See footnote 48.

58 See footnote 57.

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National Endowment for Democracy
Supporting freedom around the world

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REHABILITATION OF VICTIMS

Pechet Men

SCOPE AND TYPOLOGY OF THE REHABILITATION

In a broader term, rehabilitation refers to services and programs that are designed to assist individuals who have experienced a trauma or illness resulting in impairment, which creates a loss of function (physical, psychological, social, or vocational).[1]

However, this paper specifically defines rehabilitation as various measures that Cambodia and the survivors of the Khmer Rouge Regime (1975–1979) have taken to come to terms with their past traumatic experiences, during which time almost two million Cambodian people died from exhaustion, starvation, torture, and mass execution.

LEGAL FRAMEWORK OF THE REHABILITATION

After the Khmer Rouge regime collapsed in 1979, Cambodia and the survivors of the regime have struggled to rebuild their lives, reconstruct their society, restore relationships, and resolve collective psychological trauma. Significant efforts have been observed throughout the time. Below illustrates those efforts made by Cambodia and her people.

THE PEOPLE'S REVOLUTIONARY TRIBUNAL (PRT)

Legally, the first and foremost effort was to hold the senior Khmer Rouge leaders accountable for their crimes. Shortly after the fall of the Khmer Rouge regime, Cambodia made a considerable effort to put two senior Khmer Rouge leaders on trial, namely Ieng Sary and Pol Pot, by establishing the People's Revolutionary Tribunal in 1979.[2]

While the People's Revolutionary Tribunal was neither internationally recognized nor in compliance with fair trial principles, and was viewed as a show trial that was projected to legitimize the Vietnamese occupation in Cambodia,[3] to some certain extent, the tribunal contributed to the lifting of Cambodia's spirit,[4] and in the meantime, provided the chance for reconciliation and improved socio-political condition in Cambodia.[5]

THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

In 2006, almost 30 years later, a hybrid court, the Extraordinary Chambers in the Courts of Cambodia (ECCC), or the Khmer Rouge Tribunal, was co-established by the government of Cambodia and the United Nations to address grave human right violations and crimes committed under the Khmer Rouge regime (ECCC).

Located in the Capital of Phnom Penh, Cambodia, the ECCC has brought nine senior Khmer Rouge leaders and other responsible persons to justice in four different cases (ECCC), which has helped Cambodians to achieve a measure of justice and reconciliation.[6]

VICTIM PARTICIPATION BEFORE THE ECCC

The ECCC has claimed that, "One of the major innovations of the [court] is the enhanced recognition of victims in its proceedings. Victims of crimes that fall under the jurisdiction of the court are given a fundamental role in the ECCC [...] Victims may also participate as Civil Parties. In this capacity, they are recognized as parties to the proceedings and are allowed to seek collective and moral reparations".[7]

Victim participation before the ECCC provides exceptional prospects for a more victim-oriented justice process in Cambodia. In addition to telling their stories through their legal application, victims could share their stories in the formal courtroom and even ask questions to the accused.[8]

For some people, the sharing of stories and testimonies are rehabilitating in and of themselves. Victims are also entitled to legal representation and can seek reparations. Victims could participate as either a Civil Party or a complainant.[9]

Subsequently, about 5,124 Civil Party application forms have been submitted before the ECCC, among which 90 were in Case 001,[10] 3,866 in Case 002,[11] 321 in Case 003,[12] and 847 in Case 004.[13, 14]

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1 Robin E. Remsburg, Barbara Carson, Rehabilitation, in Ilene Lubkin, Pamala Larsen (Eds.), *Chronic Illness: Impact and Interventions*, Sudbury, MA: Jones and Bartlett Publishers, 2006, 579-16.

2 Ly Sok-Kheang, *Reconciliation Process in Cambodia: 1979–2007 before the Khmer Rouge Tribunal*, Phnom Penh: Documentation Center of Cambodia, 2017.

3 John D. Ciociari, Ly Sok-Kheang, The ECCC's Role in Reconciliation, in John D. Ciociari, Anne Hendel (Eds.), *On Trial: The Khmer Rouge Accountability Process*, Phnom Penh: Documentation Center of Cambodia, 2009.

4 Savina Sirik, Kunthy Seng, Pechet Men, "Museum of Memory: Promoting Healing in Cambodia through History, Culture and Arts", in Sandra Dudley, Kylie Message (Eds.), "Museum Worlds: Advances in Research", *Berghahn Journals*, Vol. 2, 2014.

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7 Sarah Thomas, Terith Chy, Including the Survivors in the Tribunal Process, in John D. Ciociari, Anne Hendel (Eds.), *On Trial: The Khmer Rouge Accountability Process*, Phnom Penh: Documentation Center of Cambodia, 2009.

8 Ibid.

9 Nadine Kirchenbauer et al., "Victims Participation before the Extraordinary Chambers in the Courts of Cambodia: Baseline Study of the Cambodian Human Rights and Development Association's Civil Party Scheme for Case 002", Phnom Penh: ADHOC, 2013.

10 In Case 001 against the S-21 prison chief, Kaing Guek Eav (alias Duch), there were 90 civil parties, 22 of whom were able to testify before the court. A total of 36,493 people attended the trial and appeal hearings in Case 001 during 80 days of hearings. Duch began serving his prison term in the ECCC detention center in 2012 and was transferred to Kandal Provincial Prison in June 2013 to serve the remainder of his term.

This is the first endeavor of its kind that allows victims to participate, not only as witness, but also as full participants in the proceedings.[15]

THE REPARATIONS BEFORE THE ECCC

As part of the proceedings, Civil Parties are entitled to reparations, should the accused be found guilty. However, pursuant to the Internal Rules of the ECCC, Civil Parties may only be granted collective and moral reparations, but not in monetary form, and Civil Parties cannot receive individual compensation.[16]

Besides the judicial reparations, the Victims Support Section (VSS) of the ECCC is tasked to develop Non-Judicial Measures with external partners in order to address broader interests of victims.[17]

Between 2013 and 2017, 16 reparations and non-judicial measures have been proposed to the ECCC, among which nine are judicial reparations. Projected to be about USD 7 million, those 16 projects have been divided into four different categories, including documentation, education, rehabilitation, and remembrance that have been, and will be, implemented by the Victims Support Section, non-governmental organizations, and the Cambodian government.[18]

In regards to Education, three projects have been identified, namely a Chapter on Victims Participation in a National History Textbook, Community Peace Learning Centers, and the ECCC Virtual Tribunal; Documentation includes four projects, such as the ECCC Documentation Center, the Forced Transfer Exhibition, the Publication of ECCC Verdict, and the Victims Register; Rehabilitation consists of four projects, including the Gender & Transitional Justice Project, a National Reconciliation Event, Self Help Groups for Rehabilitation, and the Testimonial Therapy Initiative; Remembrance includes, the Community Memorials Initiative, a National Remembrance Day, Preservation of Crimes Sites, and the Tuol Sleng Stupa Project; the last one is the Victims Foundation of Cambodia.[19]

In conclusion, a number of notably legal efforts have been made by the Cambodian government, in collaboration with non-state actors, in order to address and acknowledge the suffering inflicted by the Khmer Rouge on the Cambodian people between 1975 and 1979. As a result, some of the senior Khmer Rouge leaders, and other responsible persons have been brought to justice, and a number of reparations as well as non-judicial measures have been proposed to restore the dignity, and to remember the victims of the Khmer Rouge.

SOCIAL FRAMEWORK OF THE REHABILITATION

While we have looked at legal aspect of the rehabilitation of the victims in Cambodia of the Khmer Rouge regime, we should not neglect the social framework established by Cambodia and the survivors, on one hand, the 1979 People's Revolutionary Tribunal was not internationally acknowledged, and on the other hand, the ECCC was established almost 30 years later. Therefore, in the absence of these legal mechanisms in addressing past atrocities, substantial struggles have been endured by Cambodia, and the survivors, in order to cope with the past. These achievements should be taken into account and should serve as model for other post conflict societies.

SOCIAL MOVEMENT

In addition to the abovementioned legal mechanisms, Cambodia has made other, formal and informal, efforts to cope with the legacy of the Khmer Rouge regime. Social movements driven by both individuals and the state have contributed to relieving the suffering of the survivors. These include commemorating remembrance days, such as the Day of Victory on January 7 and the Day of Remembrance on May 20.[20]

Another novel triumph of such an effort is the construction of memorials that are dedicated to those who lost their lives during the Khmer Rouge regime. According to data from the Mapping Project of the Documentation Center of Cambodia (DC-Cam), approximately 81 genocide memorials have been constructed by survivors (Mapping Project).[21]

Even though healing and reconciliation is a personal matter, these continuous social efforts have made an extensive impact on the Cambodian people. For instance, every year on May 20, Cambodians visit various memorial sites throughout the country to celebrate the Day of Remembrance. The process through which they participate in the ceremony, allow for space to remember the victims and find their own reconciliation.[22]

The above movement reflects the Cambodian effort to inspire healing and forgiveness through national events that encourage

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11 Case 002, which was split into two smaller cases, involves two senior Khmer Rouge leaders, Nuon Chea and Khieu Samphan. The two accused were charged with crimes against humanity, grave breaches of the Geneva Conventions of 1949, and genocide against the Muslim Cham and the Vietnamese. The Trial Chamber held the initial hearing in June 2011. Since then, Case 002 has been severed into at least to separate trials, each addressing a different section of the indictment.

12 Case 003 involves Meas Muth, former Central Committee Member, General Staff Deputy Secretary, Division 164 (including the navy) Secretary and Kampong Som Autonomous Sector Secretary.

13 Case 004 involves Ao An, Im Chaem, and Yim Tith. There are about 847 Civil Party applicants in Case 004. Ao An was former Central Zone Deputy Secretary and Sector 41 Secretary. Im Chaem was former Preah Net Preah District Secretary and Northwest Zone Sector 5 Deputy Secretary. Yim Tith was former Southwest Zone Sector 13 Secretary, Kirovong District Secretary and Northwest Zone Deputy Secretary and Sectors 1, 3 and 4 Secretary.

14 Victims Support Section and Civil Party Lead Co-Lawyers of the ECCC, "ECCC Reparation Program 2013–2017 for the Victims of the Khmer Rouge Regime 1975–1979," 2013, http://vss.eccc.gov.kh/images/stories/2014/Reparation.pdf

15 Terith Chy, *When the Criminal Laughs*, Phnom Penh: Documentation Center of Cambodia, 2014.

16 Yim Charline, "Scope of Victim Participation before the ICC and the ECCC", Memorandum, Phnom Penh: Documentation Center of Cambodia, 2011, http://www.d.dccam.org/Abouts/Intern/ECCC_ICC_Victim_Participation_C_Yim.pdf

17 Victims Support Section and Civil Party Lead Co-Lawyers of the ECCC, "ECCC Reparation Program 2013–2017 for the Victims of the Khmer Rouge Regime 1975–1979," 2013, http://vss.eccc.gov.kh/images/stories/2014/Reparation.pdf

18 Ibid.

19 Ibid.

20 Savina Sirik, Kunthy Seng, Pechet Men, "Museum of Memory: Promoting Healing in Cambodia through History, Culture and Arts", in Sandra Dudley, Kylie Message (Eds.), "Museum Worlds: Advances in Research", *Berghahn Journals*, Vol. 2, 2014.

21 In addition to memorials, about 196 Khmer Rouge prisons, 388 killing sites, and 20,000 mass graves have been recorded by the Mapping Project of the Documentation Center of Cambodia.

22 Ly Sok-Kheang, "Remember 17 April", in *Searching for the Truth* Magazine, First Quarter, Phnom Penh: Documentation Center of Cambodia, 2012.

a shared victimhood among the survivors, which in turn helps alleviate society, restore victims' dignity and honor, and allow them to come to terms with the past.[23]

RESTORATION OF CULTURE AND ARTS

Culture and the arts play a vital role in building peace and reconciliation in a post conflict society,[24] although very few efforts have been made to deal with the past trauma in the form of culture and the arts, since the justice process has been the dominant topic for Cambodian and international communities. The arts can contribute to the healing of past painful memories by bringing people and society together to understand its history and learn from past mistakes, and thus, be able to move forward and reconcile the past. However, very few such efforts have been formalized and acknowledged at the national level.[25]

Presumably, the song "Oh, Phnom Penh", which was composed and written in 1979 about the sorrow of Cambodian people during the Khmer Rouge regime, and the love for Phnom Penh, the city from where the Khmer Rouge had evacuated its residents to do forced labor in the countryside, has been the only healing song for the Khmer Rouge survivors to commemorate the past.[26]

Apart from the song "Oh, Phnom Penh", the play *"Breaking the Silence"*, produced by the Amrita Performing Arts, is among the few artistic efforts to promote dialogue as part of the reconciliation process.[27]

GENOCIDE EDUCATION IN CAMBODIA[28]

Shortly after the Khmer Rouge regime collapsed, the effort to bring the Khmer Rouge history into formal classroom has been very minimal, given political sensitivity and instability of the country. It took almost 28 years before the Khmer Rouge history textbook "A History of Democratic Kampuchea (1975–1979)" was published in 2007, and a few years later in 2009, the Teacher's Guidebook: The Teaching of "A History of Democratic Kampuchea (1975–1979)" came into existence.[29]

Since then, there have been more efforts to document and disseminate what happened during the Khmer Rouge to Cambodia's younger generation. One such effort was the development of a smart-device mobile application for learning the Khmer Rouge history.[30]

PSYCHOLOGICAL SUPPORT

The experiences during the Khmer Rouge regime have depressed Cambodian society and the survivors. A number of studies have estimated that millions of Cambodians have suffered from trauma related illnesses as a result of the Khmer Rouge regime.[31]

In an effort to provide psychological support in regard to mental health, Transcultural Psychosocial Organization (TPO Cambodia), Cambodia's leading NGO in the field of mental health care and psychosocial support, has provided mental health care and support to more than 200,000 Cambodians since 1995, in collaboration with both governmental and non-governmental institutions (TPO Cambodia).

While access to psychological and psycho-social rehabilitation is crucial, mental healthcare in Cambodia is still inadequate to address the needs of the people.[32] The number of psychiatrists – 26 of them – cannot fulfill the needs of the Cambodian population. Thus, the Cambodian government needs to allocate more resources, both finance and human resources, to increase awareness to the issue, and facilitate coordination among various players in the field in order to address the issue, properly and adequately.[33]

In conclusion, substantial efforts have been made by both state and non-state actors in order to rehabilitate victims of the Khmer Rouge regime, and socially to restore people's dignity, honor, and to achieve reconciliation; and thus, those efforts should be continued and improved.

ORGANIZATIONS OF FORMER VICTIMS

DOCUMENTATION CENTER OF CAMBODIA (DC-CAM)[34]

DC-Cam is an autonomous Cambodian research institute that records and preserves the history of the Khmer Rouge regime for future generations. Link: www.dccam.org

ANLONG VENG PEACE CENTER[35]

The Anlong Veng Peace Center is dedicated to memory, reconciliation, and peace building, and it achieves these objectives through peace studies and genocide education. Link: http://www.d.dccam.org/Projects/AVPC/avpc.htm

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23 Ly Sok-Kheang, *Reconciliation Process in Cambodia: 1979–2007 before the Khmer Rouge Tribunal*, Phnom Penh: Documentation Center of Cambodia, 2017.

24 Youk Chhang, "Restoring Cambodian Community and Way of Life: Breaking the Silence", in *Searching for the Truth* Magazine, First Quarter, Phnom Penh: Documentation Center of Cambodia, 2010.

25 Savina Sirik, Kunthy Seng, Pechet Men, "Museum of Memory: Promoting Healing in Cambodia through History, Culture and Arts", in Sandra Dudley, Kylie Message (Eds.), "Museum Worlds: Advances in Research", *Berghahn Journals*, Vol. 2, 2014.

26 Ibid.

27 Ibid.

28 Please see the chapter by Savina Sirik entitled "Education and Preservation of Sites of Conscience" for further details on Genocide Education in Cambodia.

29 Khamboly Dy, *Genocide Education in Cambodia: Local Initiatives, Global connections*, Rutgers University, PhD Dissertation, 2015

30 Rayna Stackhouse, "Khmer Rouge History Phone App to Educate Cambodian Youth", in *The Cambodia Daily*, August 29, 2016.

31 Beth Van Schaack, Daryn Reicherter, Youk Chhang, (Eds.), *Cambodia's Hidden Scars: Trauma Psychology and the Extraordinary Chambers in the Courts of Cambodia*, Phnom Penh: Documentation Center of Cambodia, 2nd Edition, 2016.

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34 Please see the chapter by Savina Sirik entitled "Education and Preservation of Sites of Conscience" for further details on Documentation Center of Cambodia.

35 Please see the chapter by Savina Sirik entitled "Education and Preservation of Sites of Conscience" for further details on Anlong Veng Peace Center.

VICTIMS SUPPORT SECTION OF THE ECCC

The Victims Support Section (VSS) was established to support the ECCC by assisting Victims who want to participate in the proceedings. The VSS is the central contact point between the ECCC and Victims or their representatives. The VSS aims to facilitate the effective participation of Victims in the proceedings. This consists of processing complaints and applications of Victims who seek to exercise their right to participate. It also oversees that Victims have access to legal representation of a high quality. To that end, the VSS also provides legal and administrative support to the Civil Party lawyers. Finally, the VSS serves as a meeting place where all the actors involved in the proceedings that is the Victims, the Court members, the lawyers and intermediary organizations can gather and thus share their views for the most efficient representation of the Victims' interests. Link: https://www.eccc.gov.kh/en/victims-support-section

LEGAL DOCUMENTATION CENTER

Launched in 2017, the Legal Documentation Center houses legal and related documents from the ECCC's trial proceedings and serves as a place for the public, as well as national and international researchers, to explore topics pertaining to the trial of former senior leaders of the Khmer Rouge regime.

KDEI KARUNA

Kdei Karuna is a politically-neutral peacebuilding NGO aiming to contribute to sustainable peace efforts in Cambodia. Through an expertise in dialogue facilitation and sustained engagement with communities, Kdei Karuna encourages locally-driven approaches to address conflict, encourage mutual understanding, and promote healing. Link: http://kdeikaruna-organization.squarespace.com

TUOL SLENG GENOCIDE MUSEUM[36]

The Tuol Sleng Genocide Museum is the memorial site of the S-21 interrogation and detention center of the Khmer Rouge regime. Tuol Sleng Genocide Museum aims to serve as a place of reflection and education by preserving and presenting evidence of the past prison system and keeping alive the memory of the Khmer Rouge Regime. Link: www.tuolsleng.gov.kh

TRANSCULTURAL PSYCHOSOCIAL ORGANIZATION (TPO)

TPO Cambodia is Cambodia's leading NGO in the field of mental health care and psychosocial support. TPO Cambodia was established in February 1995 as a branch of the Netherlands-based NGO 'TPO International' with the aim to alleviate psychological and mental health problems of Cambodians. In 2000, it was registered as an independent local NGO, 'TPO Cambodia,' run and staffed by Cambodians. Since its beginnings in 1995, TPO Cambodia has provided mental health care and support to more than 200,000 Cambodians. Link: www.tpocambodia.org

YOUTH FOR PEACE (YFP)

YFP is a Cambodian NGO that offers education in peace, leadership, conflict resolution, and reconciliation to Cambodian's youth. YFP aims to bring about a society of peace and social justice in Cambodia, through the development of good role models and active citizenship of youth who understand and practice a culture of peace. Through its program, YFP anticipates that youth are equipped with peacebuilding tools and skills and are empowered to be agents of social change, and civil society is challenged and impacted for change through education and awareness of peaceful solutions to problems of social injustice. Link: www.yfpcambodia.org

YOUTH RESOURCE DEVELOPMENT PROGRAM (YRDP)

YRDP envisions a society in which youth are empowered to exercise their civil and political rights as leaders for a peaceful, equitable and sustainable development in Cambodia. YRDP engages youth in the development of their critical thinking skills, empowers them to utilize their civil and political rights, and strengthens their social conscience for positive social action on behalf of their own future, family, community and country. YRDP anticipates that youth become committed and active citizens with a better quality of life through taking concrete initiatives and motivating others for the promotion of sustainable peace, justice, and a democratic society. Link: www.yrdp.org

BOPHANA AUDIOVISUAL RESOURCE CENTER

The Bophana Center acquires film, television, photography and sound archives on Cambodia from all around the world and gives free public access to this precious heritage. From the very beginning, the Bophana Center's main objective was to offer young Cambodians vocational training as well as professional support over the long run. Link: www.bophana.org

LESSONS LEARNT AND RECOMMENDATIONS

From Cambodian experiences, rehabilitation of victims of the past traumatic events, like the Khmer Rouge Genocide, has been accomplished in both a legal and a social framework, and both components should not be left out of the process.

Though a legal framework, for some reasons, did not take place soon enough after the fall of the Khmer Rouge regime, it is still important in the rehabilitation process, for it acknowledges the serious crimes committed in the past, ends impunity, and provides justice for the victims.

Additionally, while the Cambodian government initiated a social framework and her people have played significant roles in restoring Cambodian society, relationships, dignity, culture and arts, education, and reconciliation, it is advised that imitation of any activities might not work in other countries. Local, cultural and religious context should be placed into consideration before designing any activities.

36 Please see the chapter by Savina Sirik entitled "Education and Preservation of Sites of Conscience" for further details on Tuol Sleng Genocide Museum.

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CEVRO

REHABILITATION OF VICTIMS

Markéta Bártová

INTRODUCTION

When the Communists took over power in February 1948, a period of a mass persecution of real or potential opponents of the new regime began in Czechoslovakia. In investigations and the following trials, there were illegalities consisting in counterfeiting of the evidence, provocations, fabricated accusations of "crimes against the state", falsifications of expert opinions and using bestial methods of violence and psychological terror towards the imprisoned. Due to such methods of the police and judicial bodies, tens of thousands of Czechoslovak citizens were condemned to many years of imprisonment or to life sentences, more than two hundred people were executed for political reasons.

Efforts to re-open some trials or to open new trials of some cases were made by the convicts themselves already in the early 1950s. This actually happened to a very limited extent and the trials started to reopen approximately in 1954. For the re-examination of some show trials, the state gradually established several investigation commissions that looked at these cases, however, basically all of the show trials concerned the former members of the Communist Party of Czechoslovakia – the victims of purges in the party. These commissions entered into history either under the name of the communist officer who was at its head, or of the place where it held its sessions. They are the Barák's Commission (1955–1957), Kolder's Commission (1962–1963) and Barnabite Commission (1963). The last commission called Piller's Commission (1968–1971) also looked at other cases, not only at cases concerning the Communist Party.[1]

In general, the state tried to deal with the prisoners' situation from the 1950s by declaring two extensive general pardons in 1960 and in 1962. However, these were not the general pardons of the President of the Republic in its proper sense as we know them from the period after the fall of communism in 1989. In fact, it was the leadership of the Communist Party of Czechoslovakia that decided authoritatively on their scope. By declaring these general pardons, the top apparatus of the Communist Party of Czechoslovakia intended to avoid revealing the truth about the course of the show trials from the beginning of its rule, to "come to terms" with its history, and, at the same time, if possible, to look like someone "who showed good will". However, the objective to trigger positive reactions, if there were to be some, did not work. The former political prisoners released from prison both before and during these general pardons, did not feel that they got any moral or social satisfaction in this way. Moreover, even after their release from prison, the former prisoners had to face the consequences of their conviction, including permanent surveillance by the State Security or difficulties in getting a job, linked with the ban on re-entering their original profession. Persecution of the convicts' families was not an exception either. Their children were not allowed to study at high schools or universities because of the "inconvenient cadre profile" of their parents, and if they exceptionally could, they were not allowed to freely choose the field of study they were interested in.

Complaints about illegal investigations and judgements were increased over the years and information about the course and the background of the show trials were brought to light. The public was more and more interested in these issues and the call for rectification of former crimes in the changing political climate became one of the key moments that contributed to the change in society and to the formation of opposition forces leading to the Prague Spring in 1968.[2] During this period, the reformist wing of the Communist Party of Czechoslovakia got more and more support, promoting "socialism with a human face", i.e. political loosening in general and at least a partial democratisation of the situation in the state. At that time, the debate about the possibility of anchoring the judicial rehabilitation in a separate act was stirred. A supporter of this idea was also the group of the "reformed" Communists formed mainly by the recently rehabilitated Communist Party members who were condemned in the 1950s.[3] The rehabilitation of both communist and non-communist victims of past unlawfulness by means of a legal measure was included in the Action Programme of the Communist Party of Czechoslovakia[4] in April 1968, and soon after preparations of the act was launched on request of the Presidium of the Central Committee of the Communist Party of Czechoslovakia.

K 231 – ASSOCIATION OF FORMER POLITICAL PRISONERS

In the relaxed social environment which even favoured various civic activities for a short period, the idea of creating an association of former political prisoners was revived. It was a very large group as, according to estimates of that time, the number of individuals condemned over the two decades, from 1948 to 1968, mainly on the basis of Act No. 50/1923 Sb., *on the Republic Protection*, and Act No. 231/1948 Sb., *on Protection of the Democratic People's Republic*,[5] reached up to 128,000 people.[6] At the end of March 1968, the constituent meeting of the preparatory committee of Klub 231 (also referred to as "K 231 – Association of former political prisoners"

1 About these commissions: Josef Halla, Průběh a podmínky rehabilitací a odškodnění v českých zemích, in Hynek Fajmon, ed., *Sovětská okupace Československa a její oběti*, Brno: CDK, 2005, 85–97.

2 Karel Kaplan, Pavel Paleček, *Komunistický režim a politické procesy v Československu*, Brno: Barrister & Principal, 2001, 212.

3 Petr Blažek, "Akty revoluční spravedlnosti". Limity pražského jara, soudní rehabilitace a bývalí političtí vězni, in Pavel Žáček a kol., *Vyjádření úcty a vděčnosti. 2. sborník o protikomunistickém odboji*, Praha: MO ČR – VHÚ, 2015, 241.

4 Jitka Vondrová, Jaromír Navrátil, Jan Moravec, *Komunistická strana Československa. Pokus o reformu (říjen 1967 – květen 1968)*. Brno: Doplněk, 1999, 332–333.

5 Full text of the act available on-line: http://www.totalita.cz/txt/txt_zakon_1948-231.pdf (citation to the date of 28/ 4/ 2017).

6 Hana Fuková: *Rehabilitace politických vězňů v Československu. Zákony o soudní rehabilitaci z let 1968 a 1990*, Praha: Diploma thesis FSV UK, 2012, 12. Available on-line: https://is.cuni.cz/webapps/zzp/detail/105840 (citation to the date of 13/4/ 2017).

or simply "K 231") was summoned in Prague[7] where several thousand people gathered. The name of the club symbolically referred to the number of the already mentioned Act No. 231/1948 Sb. During the following three months, the club established committees in all the regions and approximately 80,000 people were interested in membership.[8] The main topic of the discussions of the club members, which was one of the fundamental reasons why political prisoners organised themselves in this way, was the judicial rehabilitation. The rehabilitation would result in a restoration of their societal and social status and bring them moral satisfaction.

At first, the K 231 truly could contribute, together with various institutions, to the preparation of the rehabilitation act. The most important thing the club leadership emphasised was the blanket rehabilitation, that is that the majority of persons would be rehabilitated directly by law. Only in cases when a person was judged, besides being judged for political acts, for a delict of criminal nature (battery, rape, murder, etc.), individual investigation was to be carried out. In May 1968, the legal commission of the K 231 even drafted its own bill called act on general reconciliation that was submitted for further negotiations.[9] However, the individual assessment model for each demand was pushed through and the concepts of the association were not carried out. The main reason for the refusal of the proposal of general rehabilitation was that the rehabilitation would deny by law the Czechoslovak legislation itself and recognize it as being unlawful and that there would be a "risk" that even those who were "sentenced fairly" would be rehabilitated by court.[10] Moreover, under pressure from Moscow, the whole Presidium of the Central Committee of the Communist Party of Czechoslovakia opposed the official authorisation for the K 231 to be a legally operating organisation, including the Czechoslovak "pro-reform" Communists. A campaign was launched aimed at dishonouring the club and damaging its reputation in the public eye and making any kind of its operation impossible.[11]

On 25 June 1968, the National Assembly enacted Act No. 82/1968 Sb., *on Judicial Rehabilitation*.[12] Even though it was the first serious attempt to comprehensively rectify the persecutions from 1948 to the enactment of the cited act, its wording was disappointing for the former political prisoners.

ACT NO. 82/1968 SB., ON JUDICIAL REHABILITATION

According to the legislative body, the act was supposed to ensure a quick and effective rectification of injustices caused in the previous period to citizens by the unlawful use of criminal repression. However, in the preamble of the act, it was clearly stated that rehabilitation regards only those convicts who became the "victims" of the investigation and judicial system of the past period: "... In the first place, it is necessary that citizens who were convicted and punished as saboteurs of socialism, although they did not violate the interests of the socialist society by committing any criminal activity, be urgently and fully rehabilitated."[13] The explanatory memorandum of the act states that "deformations in the department of criminal justice affected many citizens. Judgements and heavy punishments especially because of crimes against the republic also concerned those citizens who were not enemies of the socialist establishment and did not develop any criminal activities against it: on the contrary, they were usually [...] active builders of socialism."[14] So, the act applied to the above mentioned citizens; on the other hand, the citizens who actively opposed the communist regime, and were therefore, according to the legislative body, judged "rightfully", were excluded from the act. "However, it is not possible to remove acts of revolutionary legality, weaken or even deny the socialist legal order. The rehabilitation cannot apply to enemies of building socialism who violated the valid laws by their crimes against the republic [...] and were rightfully punished by these laws."[15]

The review of cases started on 24 October 1948, i.e. the enactment day of Act No. 231/1948 Sb., *on the Protection of the Democratic People's Republic*. Pursuant to the act, the review concerned convictions in criminal cases which were ruled in the original proceedings in the first instance by

a/ the Supreme Court

b/ the former State Court, established by Act No. 231/1948 Sb.,[16]

c/ the Regional Court or Higher Military Tribunal[17] from 1 January 1953 to 31 July 1965.

And it was in the trials before these institutions when the biggest violation of lawfulness occurred systematically from 1949 to 1956, and to a lesser extent, later in several waves until July 1965.[18]

7 About the topic in general, comparison Hana Grisová, *K 231. Sdružení bývalých politických vězňů. Příčiny jeho vzniku a zániku*, Olomouc: Diploma thesis FF UP, 2009. Available on-line: http://theses.cz/id/ewfz13/72104-117133767.pdf (citation to the date of 13/4/ 2017). Filip Růžička, *Klub K 231 a jeho pobočky*. Diploma thesis, FF Univerzita Pardubice, Pardubice 2013. Available on-line: http://dspace.upce.cz/bitstream/handle/10195/49470/RuzickaF_KlubK231_VV_2013.pdf?sequence=3&isAllowed=y (citation to the date of 13/ 4/ 2017).

8 Hana Fuková, *Rehabilitace politických vězňů v Československu*, 13.

9 For the full text of the bill see Petr Blažek: "*Akty revoluční spravedlnosti*", 253–255.

10 Hana Fuková, *Rehabilitace politických vězňů v Československu*, 15.

11 Petr Blažek, "*Akty revoluční spravedlnosti*", 251. The same rejecting stand was taken by the Communist Party of Czechoslovakia leadership towards the Club of Committed Non-Party Members, uniting people interested in political engagement who did not want to be members of the Communist Party of Czechoslovakia. The Club of Committed Non-Party Members adhered to the ideals of freedom and democracy and it restored its activity after November 1989. Comparison of The Club of Committed Non-Party Members, available on-line: http://www.kan.cz/home (citation to the date of 20/ 4/ 2017).

12 Full text of the act available on-line: https://www.zakonyprolidi.cz/cs/1990-119 (citation to the date of 20/4/ 2017).

13 Act No. 82/1968 Sb., on Judicial Rehabilitation, preamble.

14 Miloš Jestřáb, Vladimír Hladil, *Soudní rehabilitace. Komentář k zákonu č. 82/1968 Sb., o soudní rehabilitaci*. Praha 1969, 19.

15 Ibid.

16 The State Court, established by Act No. 232/1948 Sb., on State Court, was active from 24 October 1948 to 31 December 1952. It was mandatorily competent to rule on crimes, respectively after 1 August 1950 on criminal offences, for which a death sentence or imprisonment longer than 10 years were imposed by the act. According to the Act No. 231/1948 Sb., on Protection of the Democratic People's Republic, these were mainly the following acts: high treason, spying, spying against an ally, sabotage, etc. The State Court also ruled on criminal offences committed by people subject to military jurisdiction, and used the military criminal law in such cases.

17 The Regional and Higher Military Tribunal ruled on criminal offences, if the Act No. 231/1948 Sb., on Protection of the Democratic People's Republic, stipulated imprisonment of at least five years, and on criminal offences of terror, sabotage, subversion of the republic and damage to the states of the world socialist system.

18 On 31 July 1965, the amendment of the criminal code, Act No. 57/1965 Sb., entered into effect and it was seen as a certain turning point, as it extended the possibilities of the defence to intervene already in the pre-trial proceedings and to control the legal procedure executing the investigative actions. Thus, it was supposed that it ensured a crucial limitation of the possible lawless acts in investigations and the following trials. Miloš Jestřáb, Vladimír Hladil, *Soudní rehabilitace*, 30.

The review proceeding took place before special panels of the Regional and Higher Military Tribunals in the first instance, and in the second instance, i.e. after the appeal of the claimant against the judgement of the first instance, before the special panel of the Supreme Court. Such court panels, created especially for the needs of the Rehabilitation Act and formed by three professional judges for the first instance and by five professional judges in the second instance, were to ensure quick and correct court proceedings. The proceedings were initiated at the request of the convicts, and in the case of their death, of their relatives in the direct line (grandparents, parents, children, grand-children, great-grandchildren) or their siblings, adoptive parents, adoptees, spouses and partners. The proposal to initiate the review proceeding of a given case could have been submitted by the prosecutor himself, for example in the case that the formerly convicted person died and none of the entitled persons submitted a request for a review. Social organisations were denied the right to submit a proposal, on the grounds that "it could lead to reproaches and suspicions of using political influence and exerting a certain pressure."[19]

It was possible to submit the proposal both in a written form and in the form of a testimony in the record at a competent court panel. At the same time, it was also possible to withdraw the proposal. After that, the court asked for all the necessary documents and the addressed national bodies concerned, as well as social and economic organisations, were obliged to provide all the documents regarding the case to the court, if they had them. Thus, they could not deny providing the documents due to the obligation of keeping state, service or economic secrets in the case of matters linked with the original criminal proceeding.

The act cancelled in a blanket manner only some less serious cases that were not originally created by a court decision. These were mainly decisions on placement into Forced Labour Camps which were made by a three-member commission subordinate to the competent Regional National Committees.[20] The act enumerated and stipulated the only reasons for which it was possible to cancel the original legally effective judgement of a conviction in the review procedure and to replace it with a new statement:

"If the panel rules that the reviewed decision is defective because:

a/ it was made on the basis of wrong findings, especially that it was based on artificially falsified accusations, or fake or falsified evidence,

b/ procedural rules were grossly violated, especially by enforcing a confession by violence or in other illegal ways,

c/ the activity which the convicting decision was based on was provoked, organised or directed by security bodies,

d/ the act was recognized as criminal in contradiction to the criminal law,

e/ the act was qualified more strictly than it ensues from the act,

f/ the type of penalty imposed was clearly in contradiction to its legal purpose, or the level of the penalty was in clear disproportion to the level of danger of the act to society, it will cancel the decision, either fully, or partially (the part which is defective), and it will decide on the case using its own judgement."[21]

In the opposite case, the panel rejected the proposal by its ruling.

The act looked quite extensively at the material indemnity of the rehabilitated persons. The original estimates of expenses by the state amounted to approximately 2.5 billion Czechoslovak Crowns (Kčs).[22] The granted indemnity was supposed to cover the compensation of lost wages calculated according to average earnings that the rehabilitated persons earned before they were imprisoned and to the time of their imprisonment. There was a limit in the provision of this compensation – the amount of the compensation could not exceed 20,000 Czechoslovak Crowns a year.[23] Moreover, the indemnity was reduced by finances that the former prisoners earned during their service of the term of imprisonment.

Furthermore, the rehabilitated persons were entitled to an indemnity for health damage that they sustained during their custody and imprisonment and its maximum amount was 40,000 Czechoslovak Crowns. The financial indemnity was awarded to the rehabilitated persons even in cases where they lost earnings due to their inability to work or to their lower ability to work caused by the imprisonment. However, the exact limit was set in this case as well – the indemnity together with the wage and pension was not allowed to exceed the amount of 1,600 Czechoslovak Crowns.

If the rehabilitated person made a claim for an indemnity of the paid costs of the criminal procedure, custody and service of the term of imprisonment, costs of defence or financial penalty, i.e. issues that were usually an integral part of the original punishment, these issues could be dealt with within the rehabilitation procedure and financially refunded by the state, too. The act included the possibility of returning the confiscated property or the forfeited thing to the rehabilitated person after the former judgement. The act preferred "natural restitution", however, if this was not possible or effective, it provided for the possibility to have the "lost" property reimbursed by the state via the Ministry of Justice.

However, the act did not affect the provisions of the then in force criminal code stipulating that the entitlement to indemnity did not appertain to the former prisoner under certain circumstances. The indemnity for the service of the term of imprisonment could not be awarded to a person who, according to the statement of the court, "caused" the custody by himself, e.g. by an attempt to escape. Furthermore, it could not be awarded to a defendant who was acquitted or if a decision not to proceed with the case was taken due to a general pardon.[24]

A very important fact regarding regaining the standard of living of the former political prisoners is that the act provided the rehabilitated person the possibility to modify the height of the paid state pension. In fact, the calculated pension benefit of the majority of convicts was very low due to their imprisonment. The time of imprisonment was therefore added to the time of worked years of the rehabilitated persons, as if they had worked all this time in the job they had had before their conviction.

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19 Ibid., 39.

20 The Forced Labour Camps were established by Act No. 247/1948 Sb., on Forced Labour Camps, with the effective date from 17 November 1948, for persons avoiding work, persons who "threatened the building of people's democratic establishment or the economic life, especially the public supply", and persons whose convictions were legally effective. Decisions about people whose convictions were not legally effective were made by the above mentioned commissions. It was possible to imprison people in the Camps of Forced Labour for the period of 3 months up to 2 years. Miloš Jestřáb, Vladimír Hladil, *Soudní rehabilitace* 89. General comparison of the Camps of Forced Labour: Mečislav Borák, Dušan Janák, *Tábory nucené práce v ČSR 1948–1954*, Šenov u Opavy: Tilia,1996.

21 Act No. 82/1968 Sb., on Judicial Rehabilitation, section 15.

22 Petr Blažek, "Akty revoluční spravedlnosti", 246.

23 Act No. 82/1968 Sb., on Judicial Rehabilitation, section 27.

24 Comparison Miloš Jestřáb, Vladimír Hladil, *Soudní rehabilitace*, 13.

If the convicted and then rehabilitated person did not live to see the act in force, their heirs by intestacy were allowed to make a claim for the indemnity. If a person who was executed or died while serving the term of imprisonment was rehabilitated, the person who was factually provided with support and maintenance by the convict during his life or whom the convict was obliged to provide support and maintenance on a legal ground had the right to claim the indemnity of the lost support and maintenance. The basis for calculation of the compensating financial amount was again the average earnings the convicted persons received before the launch of the criminal prosecution against them.

With regard to the amount of the claims, the act stipulated that the persons concerned were paid compensation of 20,000 Czechoslovak Crowns in cash, and if the amount was higher, the rest was paid in government interest-bearing bonds, payable within 10 years at the latest.

When the rehabilitation judgement was made, both the formerly convicted person and the survivors were able to ask for its publication and this fact was also perceived as a way of moral satisfaction. The financial costs for publication of the rehabilitation judgement, usually in the same media the former convicting verdict was published, were covered by the state.

The legal provision on making persons who participated in the illegalities of the investigation responsible was to become crucial. The criminality of such acts was not to be barred by the statute of limitations before 1 January 1973, unless these criminal offences were already time-barred on the date of the effective day of the rehabilitation act. Therefore, the concept of retroactive effectiveness, which would restore the criminality of acts that were already time-barred, was not accepted with the reasoning that it would be in contradiction with the basic principles of the criminal law.[25] The Rehabilitation Act introduced a provision stipulating that members of the security apparatus who repeatedly and provably acted illegally and occupied public positions in the effective period of the act had to resign from their positions. The level of their guilt was to be assessed by workers of special three-member commissions established at the Ministry of the Interior, Ministry of Defence, General Prosecutor's Office, or eventually in other state bodies as needed. The decision on removing them from their position or on dismissal from their job could still be changed by a high commission which was to be created by the decision of the National Assembly and which the concerned person could appeal to against the decision of the first instance. However, such punishments of former investigators were probably carried out rather sporadically; there is no research depicting this topic. As far as the representatives of the judicial apparatus, i.e. judges or prosecutors, are concerned, the Rehabilitation Act established a review commission – a "disciplinary panel" formed by judges elected by the parliament which was supposed to look at individual cases. Nevertheless, there is no factual information either about investigations of the given persons or about their consequent punishments.

In general, we can state that only a few people from the State Security and Counter-Intelligence Corps stood trial and were convicted for cruelties which the imprisoned had to face during their custody. The judicial representatives who participated in the show trials imposing and executing death penalties were never investigated, let alone prosecuted, for their actions. Unfortunately, with only one exception,[26] they were not prosecuted after the fall of the communist regime in Czechoslovakia either.

To conclude this chapter we can state that pursuant to the act, requests for review could be submitted until 1 August 1969 and 23,306 people did so.[27] Until the amendment of the act in July 1970, 2,898 individual requests were heard, out of which 1,950 (65.2 %) claimants were fully acquitted, 247 claimants (8.3 %) benefited from the decision not to proceed with the case, the sentence was commuted for 157 persons (5.3 %) and 635 requests (21.2 %) were denied as unjustified. Out of the rest, 455 requests were withdrawn by the claimants before the court made a decision and 721 were transmitted to other institutions to deal with them.[28] With regard to the total number of convicts in politically motivated trials estimated at hundreds of thousands between 1948–1965, the result of the Rehabilitation Act was quite poor.[29] It was caused, besides other things, by another important fact: until then, there were actually no staff changes in the judicial apparatus and the courts employed the same judges as in the 1950s.

AMENDMENT TO THE REHABILITATION ACT

As has already been mentioned, the existing studies state that about 24,000 requests were submitted pursuant to Act No. 82/1968 Sb., on Judicial Rehabilitation.[30] This number would have been higher if the political situation had not changed after the occupation of Czechoslovakia by the armies of five states of the Warsaw Pact on 21 August 1968. This tragic event launched a "normalisation process" of the situation in the country and it had the following impact on the topic in question – the 1968 Rehabilitation Act was amended. The amendment, signed by state representatives on 8 July 1970, entered into force on 17 July 1970,[31] modified and, in fact, destroyed the meaning of the Rehabilitation Act.[32] It significantly limited the scope of the reviewed issues which in practice meant it made the rehabilitation of former political prisoners more difficult. Due to the amendment, many of the former prisoners did not even submit their request.

The explanatory memorandum, drafted to the Act on Judicial Rehabilitation amendment on the occasion of the Presidium of the Central Committee of the Communist Party of Czechoslovakia meeting on 19 June 1970, states that "the findings collected by the General Prosecutor's Office of the Czechoslovak Socialist Republic and the Supreme Court of the Czechoslovak Socialist Republic during 1969 on the implementation of Act No. 82/1968 Sb., on Judicial Rehabilitation, indicated many

25 Ibid., 121.

26 The only exception is Ludmila Brožová-Polednová (1921–2015) who between 1950–1952 worked as a prosecutor of the State Court, Prague Department. Brožová-Polednová was sentenced to 6 years of unconditional imprisonment in 2008 for her contribution to the show trial with Milada Horáková (1901–1950) who was sentenced to death. Her sentence was commuted by the pardon of the President of the Republic in 2010. For more see Petr Zídek, *Příběh herečky: Ludmila Brožová a její svět*. Praha: Dokořán, 2010.

27 Václav Veber, "O rehabilitacích a o tom, co s nimi souvisí", in *Securitas Imperii*, 2010, (16), 1, 26.

28 Ibid.

29 On this topic, see also Jiří Hoppe, *Opozice '68. Sociální demokracie, KAN a K 231 v období pražského jara*. Praha: Prostor, 2009.

30 Václav Veber, "*O rehabilitacích a o tom, co s nimi souvisí*", 26.

31 Full text of the Act No. 170/1970 Sb., amending the Act No. č. 82/1968 Sb., on Judicial Rehabilitation, available on-line: https://www.beck-online.cz/bo/chapterview-document.seam?documentId=onrf6mjzg4yf6nzq (citation to the date of 20/4/ 2017).

32 Comparison Petr Blažek, "*Akty revoluční spravedlnosti*", 247.

serious deficiencies."[33] Some of them, allegedly e.g. the insufficient activity of prosecutors before the special panels or the incomplete investigation of the facts by the court, were, according to the memorandum, removed by organisational measures; others were found to be caused by the wording of some provisions of the act itself, and therefore, it was necessary to amend it.[34] The amendment changed the limit date until which the judgements were examined, from the originally stipulated 31 July 1965 to 31 December 1956 (!), and also excluded the alleged "issues of a criminal nature" from the review proceeding.[35] It completely removed several sections from the act, including the section which obliged the witnesses, or more precisely all state bodies and social and economic organisations, to submit the required material on request, as well as to otherwise satisfy the demands of the special court panel. At the same time, it denied these bodies and organisations the possibility to refuse to do so due to their obligation to keep the state, service or economic secret. The reasoning for such a significant interference into the wording of the act was that in some cases, it is absolutely necessary for the state secret to be kept. Another important intervention and one of the main reasons why the amendment was according to the explanatory memorandum necessary, was a modification of section 15: "Decisions of the panel." Newly, the amendment "excluded the possibility to cancel the original judgement only on the basis of serious procedural defects regardless of its factual accuracy."[36] The amendment also changed the section which entitled the rehabilitated person to publish the new decision, on the grounds that the publication of decisions on rehabilitation was used to scandalise the investigative, prosecuting and adjudicating bodies.

The obligation to pay for the costs of the review proceeding was also dealt with differently than in the 1968 Rehabilitation Act. The costs of the review proceeding were to be paid by the complainant whose proposal to open the review procedure was refused. In practice, the provision caused a lot of people seeking rehabilitation to prefer to withdraw their request because they feared the obligation to pay such high financial amounts in case of failure.

Moreover, the amendment significantly altered the rules for financial indemnities of the rehabilitated persons, or possibly of their families, to their detriment. Another change was the adoption of a completely new provision which deprived persons "illegally sojourning abroad" of the possibility to request the review procedure, stating that "there is no reason that the law should provide advantages to people who do not respect the legislation of the Republic and harm its interests."[37]

AFTER 1989

The fundamental rights of the Czechoslovak citizens were suppressed by repression until November 1989 when mass protests against the communist regime culminated and led to its fall. Very soon after, the question of judicial rehabilitations was raised again. The result of the efforts to abolish the convicting judgements for acts that, in contradiction to democratic society principles defined the communist acts as criminal, and to allow for the full rehabilitation of persons who were sentenced for these acts, was the Act No. 119/1990 Sb., on Judicial Rehabilitation, enacted on 23 April 1990. The act followed up on the legislation of 1968; however, it surpassed it in many respects. It was created in free conditions and it reacted to ideological and power changes in the governing structures. Not only did it allow for legality in the field of criminal law implementation, i.e. it did not rehabilitate only those convictions that were illegal for the illegal procedure in the interpretation and implementation of criminal laws (that is in judicial decisions), but as far as certain crimes, enumerated in the act, are concerned, it was based directly on the illegality of the legislation, i.e. on the illegality of acts in force at that time.[38]

The act directly stipulated, i.e. without the review proceeding, cancelling the effective judicial decisions made from 25 February 1948 to 1 January 1990 inclusive that the act exhaustively specified and enumerated in sec. 2 (1) (a–f). This provision concerned all the declared convicting judicial decisions, even if they were in the meantime modified by a legal procedure, e.g. by a general pardon or by a pardon awarded by the President, previous rehabilitation, decision on the complaint in violation of the law, in a new trial, etc. Pursuant to Act No. 119/1990 Sb., on Judicial Rehabilitation, approximately 260,000 persons were rehabilitated in a blanket manner.[39]

The review proceeding applied to decisions on crimes, criminal offences, misdemeanours and less serious crimes that were different from those that were enumerated in the exhaustive list mentioned above. The procedure was initiated in the same way as in the 1968 Rehabilitation Act. Similarly to the previous act, the court had a notification duty, that is if the court learned from its official agenda about a circumstance that could justify the proposal to open a procedure, it had to notify the entitled person who was concerned. The trial took place before the court which made the former, convicting judgement. If the given court did not exist any more, the case was assigned to the court of the subject-matter and local jurisdiction. Some of the provisions, such as the possibility to publish the decision on rehabilitation in the media, but also other, above mentioned provisions, were practically identical to the provisions of the 1968 act. The situation was similar regarding the financial indemnity and evening up the height of the pension, only the amounts calculated as limit amounts differed a little. This act, too, looks at the criminality of persons who participated in illegalities at trials that the Rehabilitation act rectified. Pursuant to this act, the limitation period for such a crime (if it had not already been a statute-barred crime or offence before the Act No. 119/1990 Sb., on Judicial Rehabilitation, entered into force) did not end before 1 January 1995. However, only a few such persons were actually prosecuted.

A problematic issue regarding the rehabilitations according to the mentioned act were the "residual sentences" imposed in connection with some earlier convictions. These were, for example, acts qualified as damaging the socialist property, sabotage, possession of weapons, etc., which concerned about 25,000 cases (!). It can be considered as totally absurd that in several cases, residual sentences were imposed on persons who were executed during the regime for political reasons. It was only on the basis of a complaint of the Confederation of political prisoners, an actual

33 Hana Fuková, *Rehabilitace politických vězňů v Československu*, 25.
34 Ibid.
35 Ibid.
36 Ibid., 26.
37 Hana Fuková, *Rehabilitace politických vězňů v Československu*, 28.
38 Kol. autorů: *Soudní rehabilitace. Komentář k zákonu č. 119/1990 Sb., o soudní rehabilitaci*, Praha 1990, 1.
39 Petr Blažek, "*Akty revoluční spravedlnosti*", 250.

successor of K 231, that the 1990 act was amended several times in the following *two* years thanks to which some other cases were solved and the residual sentences abolished. However, the question of the legitimacy of the resistance against the communist regime being a criminal regime remained unnoticed by the legislature for a long time. The rehabilitation of certain resistance fighters, especially those who went in for armed resistance, was still out of sight.

The enactment of Act No. 198/1993 Sb., on Unlawfulness of the Communist Regime and Resistance against It[40] finally opened the way to the rehabilitation of other persons which the previous rehabilitation acts did not apply to. Actually, the above mentioned legal act clearly stated that "the Communist Party of Czechoslovakia, its leadership and its members are responsible for the way of governing [...] the country between 1948–1989, especially for the programmed destruction of the traditional values of the European civilisation, for the deliberate violation of human rights and freedoms, for moral and economic decline accompanied by judicial crimes and terror against people with different opinions, by replacing a functioning market economy with direct governance, destroying the traditional principles of property rights, abusing education, science and culture for political and ideological purposes, the ruthless destruction of nature."[41] The perception of qualification of some criminal offences, considered as criminal even after the enactment of the 1990 Rehabilitation Act, changed and in the new court trials, the already mentioned residual sentences were imposed for these offences.

Nevertheless, as far as the assessment of the acts committed by citizens in their resistance and opposition to the communist totalitarian regime is concerned, the most important act is Act No. 262/2011 Sb., on Participants in Anti-Communist Opposition and Resistance[42] enacted by the Parliament of the Czech Republic on 20 July 2011. It entered into effect symbolically on the day of the anniversary of the fall of communism in Czechoslovakia, but unfortunately, not earlier than more than 20 years later, on 17 November 2011.

By enacting this act, the legislature expressed "respect and gratitude to all the women and men who during the communist totalitarian regime actively defended the values of freedom and democracy while risking their lives, personal freedom and property" and repeatedly expressed its "deep regret over the innocent victims of the communist regime terror."[43] First of all, this legal act fully legitimized the opposition and resistance against the communist regime defined as the time of oppression from 25 February 1948 to 17 November 1989 and defined its individual forms, including, for example, the cooperation with the foreign intelligence service of a democratic state, people smuggling or trespassing over state borders in order to take part in the resistance against communism, weapons gathering, writing and spreading anti-communist papers, public speaking against the communist regime, etc. It stipulated the conditions for issuing a certificate for the participant in anti-communist opposition and resistance and enabled the former political prisoners to request the status of a participant in anti-communist opposition and resistance. The act also altered the way the former political prisoners were perceived – they were almost without exception considered both by the law and the public to be the "victims" of the totalitarian regime, not its legitimate opponents.

The legislator charged the Ministry of Defence of the Czech Republic to be the first instance body to lead the process of granting the status of a participant in anti-communist opposition and resistance. On the basis of the request submitted by the applicant, the Ministry is obliged to gather archive or other material that can prove the active participation of the applicant in resistance activities against the communist regime. At the same time, the existence of any obstacles to granting the status of a resistance fighter must be excluded during the process as well; these obstacles are exhaustively enumerated in the act, for example cooperation with the State Security or other armed forces of the former communist Czechoslovakia, membership of the Communist Party of Czechoslovakia, studying at universities, etc. If the applicant is recognised as an opposition and resistance participant, the person is pursuant to the act honoured with a certificate and a commemorative badge and is granted, besides the moral appreciation in the first place, a one-off financial contribution of CZK 100,000. According to the existing below average calculation of pensions, the resistance fighter is granted a pension amounting to the height of the average national financial pension.

Besides other provisions, section 11 of the act also introduced the provision on rehabilitation, stipulating that the court has to cancel the sentence imposed for a criminal offence that the rehabilitation did not apply to pursuant to the existing rehabilitation acts, if it was found out that the act which the person was convicted for was committed with the intention of weakening, disrupting or otherwise harming the communist totalitarian power in Czechoslovakia. The given provision does not apply to criminal offences that prove to be committed for low or dishonest reasons. In the case of rehabilitation pursuant to the above mentioned section of the act, which has to be requested within 5 years from the date the act entered into force at the latest, the claimant is entitled to a financial indemnity of the suffered losses. For settlement purposes, the provisions of Act No. 119/1990 Sb., on Judicial Rehabilitation, shall apply.

LESSONS LEARNT

If we wanted to evaluate the rehabilitation process of persons convicted in show trials during the communist regime in Czechoslovakia, i.e. between 1948–1989, we have to refer to the period following its fall only. It was only in the free and democratic society, even though it was developing slowly, that the conditions were created to be able to declare the former totalitarian regime as illegitimate and criminal from its base, and only after having identified with such a position, it was possible to achieve the full rehabilitation of all persons, be it "victims" of the regime, or those who truly stood up against it. As we can observe from the Czechoslovak, or Czech experience, this process was not easy at all and from the point of view of the citizens most concerned by the rehabilitation acts, it was more than a lengthy process.

From 1989, the state governments attempted several times to deal with the tragic heritage of the past, but it was only in 2011

40 The full text of the act available on-line: https://www.zakonyprolidi.cz/cs/1993-198 (citation to the date of 29/ 3/ 2017).

41 Act No. 198/1993 Sb., on the Unlawfulness of the Communist Regime and Resistance against It, preamble.

42 The full text of the act available on-line: https://www.vlada.cz/assets/ppov/eticka-komise-cr/dokumenty/sb262-2011.pdf (citation to the date of 29/ 3/ 2017).

43 Act No. 262/2011 Sb., on Participants in Anti-Communist Opposition and Resistance, preamble.

when they succeeded in enforcing the act on anti-communist resistance, however, not without difficulties. Thus, this act can only be perceived as an act completing the process that lasted for decades, leading, at least from the legal point of view, to an undeniable distancing from the former communist regime and efforts to rectify the damage it caused. Unfortunately, with regard to the disproportionally long period this process had required in the Czech Republic, many former political prisoners did not live to see this moral satisfaction in the first place.

RECOMMENDATIONS

When evaluating the Czechoslovak experience with the rehabilitation of persons oppressed and persecuted by the former non-democratic regime, it can be emphasised in the first place that it is absolutely necessary that the new, democratically elected government openly rejects such a regime by adopting an act on the illegitimacy of the past regime and declares its will to mitigate its consequences. At the same time, it should factually, not only formally, strive to punish the culprits of the persecutions, both in the security forces and in judiciary bodies.

The persons persecuted in the past should be fully rehabilitated, granted a financial indemnity and offered an opportunity of social involvement corresponding to their degrees and former employment. Moreover, the state should particularly appreciate the true opponents of the former non-democratic regime who participated in the restoration of democracy and freedom in their country while risking not only their position and property, but also their lives and the lives of their close ones. And what is really important is that the government considers these issues to be so important that they are dealt with in a satisfactory manner as soon as possible. In this way, a situation that the majority of persons concerned die first could be avoided.

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MEMORY OF NATIONS

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REHABILITATION OF VICTIMS

Toomas Hiio

The period of 1940–1991 in Estonian history was the era of the Soviet (1940–1941 and 1944–1991) and German (1941–1944) occupation. Consequently, the political repression against Estonian citizens and residents, committed during this time, were not a consequence of the politics of the Republic of Estonia. The occupation forces were responsible and their legal successors are responsible for these deeds. The participation of Estonian citizens and residents, however, in the genocide, crimes against humanity, and war crimes committed by the Soviet and Nazi regimes has been condemned by the Estonian state on the highest level a number of times.

In 1995, the German Federal Republic paid compensation to Estonia for the National Socialist persecution of Estonian citizens and residents.[1] The Legal successor of the Soviet Union, the Russian Federation, recognises Estonia as a state, born during the dissolution of the Soviet Union.

REHABILITATION BEFORE THE REGAINING OF ESTONIAN INDEPENDENCE ON 20 AUGUST 1991

The rehabilitation of the victims of the Stalinist terror began in the Soviet Union after the death of Joseph Stalin. During the second half of the 1950s, most of the survived political prisoners were released from the GULAG camps, and the deported men and women sent to forced settlement sites[2] were also released. Most of the former political prisoners and deportees returned to Estonia. However, for some categories of persons, certain restrictions remained in force, for example the ban on living in large towns, and returning to their former place of residence.[3]

During the years of the perestroika in the Soviet Union, a couple of acts were passed by the Supreme Soviet of Estonian Soviet Socialist Republic (ESSR). On 7 December 1988, the Act on Nonjudicial Mass Repressions in the Soviet Union during the 1940–1950s was adopted.[4] The ESSR Supreme Soviet condemned entirely and unconditionally the nonjudicial mass repressions during the 1940–1950s, and acknowledged them as unlawful acts against humanity. All former deportees were rehabilitated with all legal consequences. People who were repressed by the special boards[5] were rehabilitated according to the procedures that were to be prescribed in the legislation. The ESSR Prosecutor Office was tasked with examination of applications concerning the mass murders and other crimes against humanity on the territory of Soviet Estonia and deciding the issue of the prosecution of the offenders. In addition, the ESSR Council of Ministers had to create the procedure for compensation for the losses of the victims of nonjudicial mass repressions, to begin with the commemoration of the victims of Stalinism, to re-establish the lists of nonjudicially repressed persons, and to guarantee the preservation of the documents reflecting the mass repressions and other deeds against humanity committed on the territory of Soviet Estonia.

This document was a part of the rehabilitation process in the Soviet Union as a whole, connected to the work of the USSR special commission, founded in October 1988, and chaired by Alexander Yakovlev. The first step was quite careful and concerned only so-called unjudicial repressions – the deportations and sentences by the special boards.

On 19 February 1990 the ESSR Supreme Soviet issued the enactment "On the Rehabilitation of Unjudicially Repressed and Groundlessly Sentenced Persons". Unlike the act of 1988, anyone who was sentenced pursuant to a number of articles of the Criminal Code of the Russian Soviet Federal Socialist Republic, valid on the territory of the ESSR from 1940–1961, or unjudicially repressed, whose criminal investigation was ended in a way that had not involved the rehabilitation was effected. A person eligable for rehabilitation was any person sentenced according to the articles of 58-1a to 58-14 of the abovementioned criminal code, as long as the sentenced persons had not killed or tortured civilians or prisoners of war, and had not participated in espionage, diversions, terrorist acts, and robbery. In addition, all individuals were rehabilitated, who were sentenced according to multiple other articles of the abovementioned criminal code.[6]

The only exception was the participation of a sentenced individual for crimes that were not covered by the rehabilitation. In addition, anyone who was sentenced by the Soviet authorities for the deeds that were not crimes according to the legislation of the Republic of Estonia until 1940, were rehabilitated. Finally, Articles 68; Anti-Soviet agitation and propaganda, and 194^{1}; Dissemination of knowingly wrong fables derogating the Soviet

1 Staatssekretär des Auswärtigen Amts an dem Botschafter der Republik Estland, Bonn, den 22. Juni 1995.

2 Henceforth the word exile or exiled will be used sometimes as synonym of deportation or deported. The location of forced settlement was usually some remoted village or Kolkhoz in Siberian countryside, where the deportees had to live usually side by side with local inhabitants, but under supervision of the commandant of given location of forced settlement.

3 See comprehensive study: Aivar Niglas, "Release ahead of time of Estonian citizens and residents repressed for political reasons by the Soviet authorities and their rehabilitation from 1953 to the 1960s", in *Estonia since 1944: Reports of the Estonian International Commission for the Investigation of Crimes Against Humanity*, Tallinn: Estonian Foundation for the Investigation of Crimes Against Humanity, 2009, 461–489.

4 See "Kohtuväliste massirepressioonide kohta Nõukogude Eestis 1940–1950-il aastail (only in Estonian)," https://www.riigiteataja.ee/akt/23991 (accessed on 24 May 2017).

5 Special board (*особое совещание*) – a nonjudicial body of the USSR People's Commissariat of Internal Affairs (later of the Ministry of State Security) that acted in the functions of judicial authority and sentenced the people with political indictments basing only on the file of investigation, without presence of accused person.

6 59^{13}, 60–62, 64, 66, 68–70, 79^{1}, 79^{2}, 79^{3}, 79^{4} and 122, and 59^{2} (1) b and (2), 59^{3}a, 59^{4}, 59^{5}, 59^{6}, 59^{10}, 81, 82, 84, 121, 166-a, 182^{1}, 192-a, 193^{7} (g), 193^{10}. See English translation of the Criminal Code of the Russian Soviet Federal Socialist Republic at: Criminal Code of the RSFSR, http://www.cyberussr.com/rus/uk-rsfsr.html (accessed on 24 May 2017).

State or the societal order of Criminal Code of the ESSR, valid from 1961, were declared null and void.[7] The Supreme Court of the ESSR was tasked with the issuing of certificates for the rehabilitation of rehabilitated individuals. The Council of Ministers of the ESSR were tasked with the procedures for the compensation of material losses to the individuals who were rehabilitated.

A month after the invasion of the Red Army, in July 1940, the puppet parliament, appointed by the Soviet invaders, declared all land the people's property; private land ownership was formally abolished.[8] The destruction of Estonian rural lifestyle, based on small landownership, voluntary associations of peasants and rural municipalities, was finalised on 25 March 1949, when more than 20,000 individuals, mostly members of peasant families, were deported to Siberia. The remaining rural population was forced to join the Kolkhozes, a Soviet form of agricultural production and rural lifestyle. Two acts that addressed the restitution of (land) property were indirectly connected to the rehabilitation. The ESSR Supreme Soviet adopted the Farm Act on 6 December 1989.[9] The Farm Act of 1989 imposed the re-establishment of small landownership. The priority to re-establish began with individuals who owned the farms prior to 23 July 1940 (the date of the act that had declared all land to the people's property) or his or her legal successor. Farm Act of 1989 also had a provision for rehabilitated persons who had abandoned their claim of the return of their farm.[10]

The Republic of Estonia Principles of Ownership Reform Act was passed on 13 June 1991.[11] The purpose of this act was "to restructure ownership relations in order to ensure the inviolability of property and free enterprise, to undo the injustices caused by the violation of the right of ownership and to create the preconditions for the transfer to a market economy," and the "return of property to or compensation of former owners or their legal successors". The entitled subjects of ownership reform were former owners of unlawfully expropriated property and their legal successors. Entitled subjects were defined in Article 7 of this act as:

1/ "natural persons whose property was nationalised or communised in the course of collectivisation and persons whose property was unlawfully expropriated in the course of unlawful repression and who have been rehabilitated […] if they were citizens of the Republic of Estonia on 16 June 1940";
2/ "natural persons whose property was unlawfully expropriated pursuant to an unlawful decision or due to the arbitrary action of officials or who, due to a real danger of repression, were forced to give up or abandon their property […] or if they were citizens of the Republic of Estonia on 16 June 1940 and the existence of the unlawful decision or arbitrary action of officials or real danger of repression has been proved in court."

(There are a lot of other provisions in the act, but these two belong to the context of rehabilitation.)

The Pension Act[12] was passed on 15 April 1991 by the Supreme Council of the Republic of Estonia[13] and included special provisions for rehabilitated persons. According to Article 7, old-age pensions, disability allowance or survivorship allowance of the rehabilitated persons was increased by 20 % of the minimum wage. For rehabilitated persons, time under investigation, imprisonment or forced settlement (of deportees) was multiplied by three and calculated by their pension age. The pension was calculated from the average wage of the selected five consecutive years from among the last 15 years before the pension age, but the rehabilitated persons could exclude from this five year period, any months they were in custody, or forced settlement.

The Pension Act was replaced with State Pension Insurance Act,[14] on 5 December 2001. Since 2003, the rehabilitation of the victims of political repressions of occupying regimes is regulated by the Persons Repressed by Occupying Powers Act (see below).

REHABILITATION AFTER THE REGAINING OF ESTONIAN INDEPENDENCE

On 19 February 1992, the Supreme Council of the Republic of Estonia passed the Rehabilitation of Unjudicially Repressed and Groundlessly Sentenced Persons Act. This document was the first act of the Republic of Estonia in the field of rehabilitation. The scope of the rehabilitation was fundamentally changed; according to the act all decisions by the "repressive organs of the USSR" were declared null and void by which extrajudicial repressions had been carried out in respect of:

1/ citizens of the Republic of Estonia regardless of the location where the decision had been taken,
2/ individuals for acts committed in the Republic of Estonia,
3/ individuals in Estonia for acts committed outside the Republic of Estonia.

All individuals whose sentences were the result of these three definitions, were declared to be the victims of deliberate violence committed by the Soviet state. The act provides for the rehabilitation of individuals, who had fought for the independence of Estonia and against the injustice caused to the Estonian people, who had been sentenced by a number of articles of the Criminal Code of the RSFSR and the ESSR Criminal Code (replaced the RSFSR Criminal Code on the territory of Estonia in 1961).[15] With same

7 The Penal Code of the Republic of Estonia was adopted on 6 June 2001, se English translation https://www.riigiteataja.ee/en/eli/511032014001/consolide (accessed on 24 May 2017). Until this time the ESSR Criminal Code of 1961 was valid with many revisions that were adopted during 1990–2001.

8 Estonian Constitutional Assembly had adopted the Land Act that abolished the big landownership in October 1919. The lands of former manorial estates, owned mainly by the Baltic German noblemen, were divided between the Estonian peasants. This decision made the small landownership to the foundation of Estonian economy and society. Rural population constituted about 70 % of Estonian population in 1940.

9 See Eesti NSV taluseadus (Farm Act of the Estonian SSR), 6 December 1989, https://www.riigiteataja.ee/akt/30680 (only in Estonian, accessed on 15 June 2017).

10 Farm Act, § 8.

11 See English translation: https://www.riigiteataja.ee/en/eli/525062015006/consolide (accessed on 24 May 2017).

12 See Eesti Vabariigi pensioniseadus (only in Estonian), https://www.riigiteataja.ee/akt/30517 (accessed on 24 May 2017).

13 On 18 March 1990 free elections were carried through to the ESSR Supreme Soviet. On 8 May 1990 the Supreme Soviet (Supreme Council) changed the name Estonian Soviet Socialist Republic to the Republic of Estonia and the national symbols of Estonia from 1918–1940, flag and coat of arms, were taken into use. On 20 August 1991 the Supreme Council declared the re-establishment of independence. New parliament was elected in September 1992 after the constitution was adopted at the referendum in June 1992. The time from March 1990 to October 1992, when the new parliament took the oath, has been defined as transitional period.

14 See in English: State Pension Insurance Act, https://www.riigiteataja.ee/en/eli/516012017008/consolide (accessed on 24 May 2017).

15 Criminal Code of the RSFSR: articles no. 58-1a–58-14, 59-2, 59-3, 59-4–59-6, 59-10, 59-13, 60–62, 64, 66, 68–70, 79-1–79-4, 81, 82, 84, 121, 122, 125, 126, 182 p. 1, 192a, 193-7 p. "g" and 193-10; ESSR Criminal Code, when the crimes were committed before 20 August 1991: 62–64, 66–68, 70, 73, 74, 74-1, 78–80, 81, 86-1, 87, 137, 167, 177, 189.1, 194-1–194.4, 220–222, 224.

act, the legislature simultaneously acknowledged the activities of these individuals for the fight for the independence of the Republic of Estonia. The Supreme Court of the Republic of Estonia was authorised to deny the rehabilitation of the persons who were sentenced by the Soviet authorities according to abovementioned articles of the Criminal Code of the RSFSR and the ESSR Criminal Code, if an indivdual had participated in genocide or crimes against humanity, or the deliberate killing, injuring, or torturing of the prisoners of war or civilians. The confiscation or appropriation of the property of the unjudicially repressed and groundlessly sentenced persons was declared null and void and their property was returned to them or compensated according to the Republic of Estonia Principles of Ownership Reform Act, passed on 13 June 1991 (see above). The applications for the rehabilitation were to be sent to the Supreme Court.

The above mentioned acts guaranteed the rehabilitation of the victims of the Soviet and Nazi occupations in compliance with the capacities of the re-established Republic of Estonia: the re-establishment of all civic rights of individuals repressed according to political indictments, the restitution of their property confiscated by the Soviets, and the increase of the pension of former victims. The Republic of Estonia does not bear the responsibility for the crimes of occupying forces, but the goal of the Republic of Estonia is to support its citizens and residents who had suffered simply for being a citizen of the Republic of Estonia, or fighting for the re-establishment of Estonian independence.

During 1994–1995, the Estonian Supreme Court issued a number of judgments in cases of individuals, who had been sentenced by the Soviet courts according to the "usual" articles of the criminal code, who were asking for their rehabilitation, and arguing that they were punished for resistance against the Soviet occupation forces. Most cases were connected to thefts of state property by the individuals, hiding from the Soviet authorities and fighting against the Soviet authorities (so-called Forest Brothers). The court did not pass judgement on the rehabilitation in all such applications. However, in some cases the Supreme Court stated that "hiding himself from the Soviet occupation forces was the fight for the independence of the Republic of Estonia and against the injustice caused to the people of Estonia".[16] In another case the court stated that "hiding himself in July 1941 from the Soviet occupation forces and participation in the Forest Brothers movement was the fight for the independence of the Republic of Estonia and against the injustice caused to the people of Estonia."[17] In one case, the Supreme Court stated that "hiding himself in the woods was fighting for the independence of the Republic of Estonia and against the injustice caused to the people of Estonia in accordance with the objectives of the resistance."[18]

DISCLOSURE OF PERPETRATORS

The political repressions by the Soviet authorities were declared to be crimes against humanity or genocidal acts. According to Estonian Penal Code, the definition of the crime of genocide includes the "a group resisting occupation or any other social group":

"A person who, with the intention to destroy, in whole or in part, a national, ethnic, racial or religious group, a group resisting occupation or any other social group, kills or tortures members of the group, causes health damage to members of the group, imposes coercive measures preventing childbirth within the group or forcibly transfers children of the group, or subjects members of such group to living conditions which have caused danger for the total or partial physical destruction of the group, shall be punished by 10 to 20 years' imprisonment or life imprisonment."[19]

On 21 October 1991, Estonia joined the UN Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity of 1968.[20] In the mid 1990s a special department was established at the Estonian Internal Security Service with the task of investigating living persons who had participated in crimes against humanity, war crimes, and genocide in Estonia, and subsequently send them to the court. The task was complicated, because most of the archives of the Soviet State Security offices active in Estonia were brought to the Soviet Union before Estonian indepence was re-established.

Beginning in 1995, 12 criminal cases have been prosecuted in Estonian courts under the section of crime against humanity and 11 persons have been convicted, including eight participants of the deportation operation in March 1949, and three who had murdered the Forest Brothers. No person prosecuted for crimes against humanity has been acquitted.[21] Some convictions were appealed at the European Court of Human Rights (ECHR), but the appeals were rejected by the ECHR.[22]

Living perpetrators was only a part of the problem Estonia faced. By virtue of the character of the Soviet regime, there were a large number of former official and unofficial collaborators of different Soviet security services in Estonia. These individuals could have been re-recruited by the secret services of other countries, or simply pressured by persons who knew of their former connections. Collaboration with the Soviet secret services,

16 Supreme Court in the case of Ülo Holm, who was sentenced to the prison camp for 15 years on 13 April 1950 by the Military Tribunal of the Internal Forces in the ESSR – see Kohtuotsus Eesti Vabariigi nimel, III-1/3-19/95, 20. 6. 1995, http://www.nc.ee/?id=11&tekst=RK/III-1%2F3-19%2F95 (accessed on 24 May 2017).

17 Supreme Court in the case of Julius Linamets, who was sentenced to the prison camp for 20 years on 16 April 1945 by the Military Tribunal of Tallinn Garrison – see Kohtuotsus Eesti Vabariigi nimel, III-1/3-2/95, 24. 1. 1995, http://www.nc.ee/?id=11&tekst=RK/III-1%2F3-2%2F95 (accessed on 24 May 2017).

18 Supreme Court in the case of Elmar Sari, who was sentenced to the prison camp for 25 years on 12 November 1948 by the Military Tribunal of the Internal Forces in the ESSR – see Kohtuotsus Eesti Vabariigi nimel, III-1/3-29, 29. 3. 1994, http://www.nc.ee/?id=11&tekst=RK/III-1%2F3-29%2F94 (accessed on 24 May 2017).; see also English summary of an article of Herbert Lindmäe, who himself was a Justice of the Criminal Chamber of the Supreme Court during the time when these decisions were passed: "Nõukogude okupatsioonirežiimi ohvrite rehabiliteerimisest Riigikohtus = Rehabilitation of Victims of the Soviet Occupation Regime by the Supreme Court," *Juridica* 10 (1995): 430–434, https://www.juridica.ee/juridica_en.php?document=en/articles/1995/10/23934.SUM.php (accessed on 24 May 2017).

19 See Penal Code § 90, translation into English, https://www.riigiteataja.ee/en/eli/511032014001/consolide.

20 See https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-6.en.pdf (accessed on 24 May 2017).

21 See Judicial decisions / International crimes not subject to statutory limitations, https://www.kapo.ee/en/content/judicial-decisions.html (accessed on 24 May 2017).

22 See for example FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 23052/04 by August KOLK Application no. 24018/04 by Petr KISLYIY against Estonia, http://hudoc.echr.coe.int/eng?i=001-72404 (accessed on 24 May 2017).

as such, was not a crime. However, "a solution [was] needed to arrange the relationship between the Republic of Estonia and the individuals who had collaborated with intelligence, counter-intelligence, or state security organisations of states which had occupied Estonia".[23]

On 6 February 1995, Estonian Parliament adopted the Procedure for Registration and Disclosure of Persons who Have Served in or Co-operated with Intelligence or Counter-intelligence Organisations of Security Organisations or Military Forces of States which Have Occupied Estonia Act.[24] The service in, or cooperation with, security or intelligence organisations was defined as follows:

1/ […] serving in security or intelligence organisations is employment as a staff employee of a security or intelligence organisation;

2/ […] co-operating with security or intelligence organisations is being an agent, a resident, a keeper of a conspiratorial flat or being a trustee of security or intelligence organisations or knowingly and voluntarily co-operating in any other manner with such organisations. A person who co-operated or granted consent for co-operation with security or intelligence organisations without having had employment relationships with the latter shall be deemed to be an agent, a resident, a keeper of a conspiratorial flat or a trustee. A person's co-operation with security or intelligence organisations is deemed to be proved by signing a corresponding obligation (consent) or a report expressing co-operation addressed to such organisation by him or her or receipt of monetary or other compensation for co-operation, and other evidence evaluated pursuant to the procedure prescribed by law.[25]

According to the act, the persons, who were in the service of security or intelligence organisations, or co-operated therewith had to be registered by the Estonian Internal Security Service. The registration included "a personal confession submitted to the Security Police Board[26] within one year after the entry into force of this act concerning service in security, intelligence organisations, or co-operation therewith". The names of the persons, who did not register, but whom the Security Police Board had the information, were published in the Appendix of Estonian State Gazette (official Journal). A couple of hundreds of names were published during last 20 years.[27] However, in 2015 the European Court of Human Rights found the publishing of the name of a former KGB driver and the information about his employment by KGB in the Estonian State Gazette as a violation of the right to respect for private life.[28]

Another issue was the need to avoid the election, or nomination, of individuals to public service positions who had had contacts with Soviet security institutions earlier. As the archives of the Soviet security offices were brought to the Russian Federation, this was not always possible. The problem was partly regulated by the Act on Procedure for Taking Oath, adopted on 8 July 1992, that stated in its first paragraph:[29]

"[…] a candidate standing in an election of the President, of the Riigikogu or of the council of a local authority, or a person who seeks the position of Prime Minister, minister, Chief Justice of the Supreme Court, Justice of the Supreme Court, judge, Chancellor of Justice, Auditor General, President of the Bank of Estonia, Commander or Commander-in-Chief of the Defence Forces, or any other elected or appointed position in an agency of the national government or a local authority, is required to take the following written oath of conscience: […] I swear that I have not been in the service or an operative of a security service, or of an intelligence or counterintelligence service of the armed forces, of a state which has occupied Estonia, or participated in the persecution or repression of citizens because of their disloyalty or the political beliefs or social class that they represented or because they had been part of the civil service or defence forces of the Republic of Estonia."

The act was amended in November 1994 with detailed description of participation in the persecution:

"**1/** persons who planned or gave orders for extra-judicial mass repressions (including deportation) or who supervised or gave orders for the preparation thereof;

2/ persons who commanded the preparation of deportation lists and persons who had the right to decide the preparation of such lists or organise and monitor the preparation of such lists;

3/ persons who knowingly and of their free will, although without relevant authority, collected and forwarded information which resulted in other people being included in deportation lists or deported;

4/ persons who directly organised or carried out deportation or commanded it and who had the relevant authority or who had the power to decide or were responsible for it or who did it knowingly and of their free will, although without relevant authority;

5/ persons who belonged to the People's Self-defence or defence battalions or destruction battalions and who knowingly gave or followed criminal commands or orders to persecute or repress citizens;

6/ persons who acted as an investigator, expert, specialist, judge, lay judge or prosecutor in the pre-trial or court proceedings preceding the conviction of persons who were unfoundedly convicted and who have been rehabilitated by the date of entry into force of this act, if it has been proved in court that the intentional activity of such persons lead to the unfounded conviction of a person."[30]

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23 Enn Tarto (chairman of the provisional parliamentary committee), Seletuskiri seaduseelnõu "Eestit okupeerinud riikide julgeolekuorganite või relvajõudude luure- või vastuluureorganite teenistuses olnud või nendega koostööd teinud isikute arvelevõtmise ja avalikustamise korra seadus" (744 SE) juurde (Explanatory report to the draft of Procedure for Registration and Disclosure of Persons who Have Served in or Co-operated with Security Organisations or Intelligence or Counterintelligence Organisations of Armed Forces of States which Have Occupied Estonia Act), 5 December 1994.

24 See in English: https://www.riigiteataja.ee/en/eli/524042014001/consolide (accessed on 24 May 2017).

25 Procedure for Registration and Disclosure of Persons who Have Served in or Co-operated with Security Organisations or Intelligence or Counterintelligence Organisations of Armed Forces of States which Have Occupied Estonia Act, § 4.

26 Earlier official translation of the Estonian Internal Security Service (*Kaitsepolitsei* in Estonian).

27 See for example one of publications only in Estonian: Riigi Teataja Lisas avalikustamisele kuuluvate endise NSV Liidu luure- või vastuluureorganite teenistuses olnud isikute kohta koostatud Kaitsepolitseiameti teadaannete ärakirjad, https://www.riigiteataja.ee/akt/12906970 (accessed on 24 May 2017).

28 See the ECHR judgment in Sõro v. Estonia (no. 22588/08), 3 September 2015, http://hudoc.echr.coe.int/eng?i=001-156518 (accessed on 15 June 2017). I am thankful to Mr. Peeter Roosma for remembering this fact.

29 Act on Procedure for Taking Oath, passed 8. 7. 1992, https://www.riigiteataja.ee/en/eli/520052014002/consolide (accessed on 24 May 2017).

30 Ibid.

PERSONS REPRESSED BY OCCUPYING POWERS ACT (2003)

In the parliamentary elections of March 2003, a new conservative political party, Res Publica, was very successful and formed a government coalition. The program of the coalition paid special attention to the support of the victims of political repressions by the occupying states. These concerns previously belonged to the Pro Patria Union, another national conservative party. Res Publica succeeded in capturing part of Pro Patria Union's supporters during the elections, stressing the need of better support for the people repressed by the Soviet authorities. The Persons Repressed by Occupying Powers Act, initiated by the members of Res Publica, was adopted on 17 December 2003 and enforced on 1 January 2004.[31] The act consolidated most legal provisions connected to the support of the repressed persons.

The act defined the term "unlawfully repressed person". The act limited the individuals covered by this term to citizens of the Republic of Estonia and permanent residents as of 16 June 1940, excepting persons "who were brought or who came to Estonia on the basis of the agreement entered into by the Republic of Estonia and the Soviet Union on 28 September 1939 [...] or acts arising therefrom". The issue is that after 1944 several hundred thousand Soviet citizens were brought or immigrated voluntarily to Estonia. Among them there might have been individuals who had been repressed in the Soviet Union; but supporting them was, and is, the task of the legal successor of the Soviet Union. From 28 September 1939 to 16 June 1940 Estonia continued to be an independent country, but during this period about 25,000 soldiers, sailors and officers of the Red Army and the Soviet Baltic Fleet were stationed to Estonia according to the mutual assistance treaty between the Soviet Union and Estonia that Estonian government was forced to sign under the threat of the Soviet military invasion, and there might have been individuals among them who were repressed before September 1939 in the Soviet Union, or later, and who lived in Estonia in the beginning of 21th century.

The term "unlawfully repressed person" included the following categories: victims of genocide, those imprisoned or sent into exile (i.e deported) due to beliefs, property status, origin or religion, those who were imprisoned or sent into exile due to failure to comply with special obligations established by an occupying state for its own citizens (such as military service, loyalty oaths), freedom fighters and prisoners of conscience punished by occupation regimes, deportees, people sent to forced labour in a Soviet Union labour battalion, people sent to forced labour outside Estonia during the German occupation, people who were prohibited to live in Estonia, children who were born while in exile or in a place of detention, where the parent was a victim of unlawful repression.

In addition to these individuals, two additional categories deserve special attention. Persons "who were subjected to radiation, as a test subject, in connection with the explosion of a nuclear device", were men who had served as concripts to the Soviet Army in service units of nuclear bomb tests, but also men and women, who were deported in 1949 to locations of forced settlement in the neighbourhood of the nuclear test site of Semipalatinsk. Persons "who were forcibly sent to a nuclear disaster area for the elimination of the effects of the disaster" were the several thousand men, who were mobilised from Estonia in the Spring of 1986 for severeral months, as reservists of the Soviet Army for extraordinary training, but in the reality for the liquidation of the consequences of the explosion at the Chernobyl nuclear plant near Kyiv.

Individuals who had served in institutions which carried out the repressions and individuals who joined the Communist Party of the Soviet Union earlier than the 1st of January 1954, were not considered unlawfully repressed persons. Their case could explain some complications of determination of who was an unlawfully repressed person. Namely, from the second half of 1940s until the death of Joseph Stalin in 1953 many communist activists who participated in the Sovietisation during 1940–1941 and since 1944, were arrested and sent to the GULAG. They were not included in the category of unlawfully repressed persons by the act because of their participation in the establishment of the occupation regime. Also the individuals who were mobilised to the Red Army as members of the Communist Party or Communist Youth League (Komsomol), persons who had belonged to different paramilitary units, organised by the Soviet State Security for securing the rear area or fighting the Forest Brothers, individuals who were mobilised to the German Armed Forces as members or member candidates of the NSDAP were not considered unlawfully repressed persons. On the other hand, a number of persons who returned from the GULAG or from the forced settlement during the second half of 1950s and were later accepted as members of the Communist Party (the motivation of joining the party despite having been victims of the Soviet Terror needs a separate article), were considered unlawfully repressed persons. For example, there were thousands of children among the deportees or children who had been born to the deported parents in forced settlement. Joining the Communist Party after the 1st of January 1954 is not an obstacle for receiving benefits as a former repressed person.

OFFICIAL STATEMENTS

The Estonian Parliament (Riigikogu) has adopted three statements addressing the occupation of Estonia, crimes against humanity committed by the occupation powers against the Estonian nation, and lastly, a statement honoring and supporting the victims who survived political repressions.

In June 2001, when the victims of the June Deportation of 1941 were remembered, the Estonian Parliament did not succeed in drawing up a respective statement despite active preparations. Under discussion was, in what way exactly to codemn the communist regime, taking into account that some members of the parliament had been the members of the Communist Party before 1990. The President of Estonia during 1992–2001, Lennart Meri, who himself was deported 60 years earlier with his parents, published a Statement of the President of the Republic

31 See English translation of 2014 without the last amendments: Persons Repressed by Occupying Powers Act, https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/529052014007/consolide (accessed on 24 May 2017). See also Marek Tamm, "In search of lost time: memory politics in Estonia, 1991–2011", in Alexander C. Diener and Joshua Hagen, eds., *From Socialist to Post-Socialist Cities: Cultural Politics of Architecture, Urban Planning, and Identity in Eurasia*, London, New York: Routledge, 2015, 165–187, and a short overview "Benefits for the victims of persecution by totalitarian regimes," compiled by Social Insurance Board at Eesti.ee – Gateway to eEstonia, https://www.eesti.ee/eng/toetused_ja_sotsiaalabi/toetused_ja_huvitised/toetused_represseeritutele (accessed on 24 May 2017).

that stated: "[…] I welcome the wish of the Estonian parliament to draw up a statement that would pronounce the communist regime, which had so many victims, to be equally criminal with the Nazi regime. In World War II, which broke out of the Hitler–Stalin pact, and in the resistance movement, the Republic of Estonia lost one tenth of her citizens. For a people of one million, the execution of the country's political leaders, officers, local government officials and intellectuals, the deportation of their families and the confiscation of their property by the occupying powers meant a criminal method for the elimination of the nation as a whole." […][32] His second term in office ended in October 2001. In June of that year, he made a farewell tour through all 15 Estonian counties. He held a speech in each county and to these open air meetings, all survived victims of the Communist and Nazi terror of respective county were invited. Lennart Meri shook hands with every one of them and handed over the badges of "Broken Cornflower" as a symbol of respect by the state. The badge was initiated by himself shortly before.

The Parliament adopted its statement a year later, on 18 June 2002,[33] declaring the communist regime of the Soviet Union and the organs that implemented its policies by force as criminal. The parliament stated that the Communist Party of the Soviet Union and its Estonian branch were responsible for those crimes. But the statement did not call for collective responsibility of the members of these organizations. The responsibility of each individual person is determined by his or her former actions. Parliament stated that while the crimes of the national socialist regime have been condemned at the international level, similar crimes committed by the Soviet Union have not been condemned.

A controversial issue, parallel to the debate of the consequences of the occupations was the status of Estonian men who were mobilised or joined voluntarily the German armed forces to fight against the Soviet Union. Various NGOs, unions and associations of freedomfighters, demanded the recognition of them by the government as freedomfighters and were cautiously supported by the conservative parties. The majority of them were subject to the legislation supporting the repressed persons,[34] because most of them, who had remained in Estonia in 1944 or taken prisoner by the Red Army in Eastern Europe from Autumn 1944 to May 1945,[35] were sentenced later by the Soviet authorities. They supported their demand with the fact that in February 1944, when the Red Army reached the Eastern borders of German-occupied Estonia, the occupation authorities proclaimed a general mobilisation, that was publicly supported (though under pressure of Germans) by the last Prime Minister of Estonia in 1940, Jüri Uluots, and hence was a legal mobilisation from the viewpoint of Estonian legal continuity. The debate lasted more than ten years. The unavoidable negative impact on the international level of such declaration was taken in account. The Parliament passed its statement "Paying tribute to the Estonian citizens" on 14 February 2012,[36] which was not very enthusiastically received by the NGOs of the former victims and freedomfighters:

"On the basis of the Constitution of the Republic of Estonia and proceeding from the fact that according to international law, the legal continuity of the Republic of Estonia, that was occupied in World War II, was not interrupted,

The Riigikogu pays tribute to the citizens of the Republic of Estonia who, in the years of Soviet or Nazi German occupation, acted in the name of de facto restoration of the Republic of Estonia.

The Riigikogu condemns the repressive politics of the Soviet Union and National Socialist Germany and the activities of the persons who, in the service of these regimes, have committed crimes against humanity, irrespective of their citizenship and location of commitment of these crimes."

A statement of the Parliament was adopted on 14 June 2016 to commemorate the victims of the June deportation 75 years later.[37] The Estonian Riigikogu stated that "it is our moral duty to commemorate the victims of totalitarian regimes and pass the knowledge about those events on to the coming generations."

LESSONS LEARNT AND RECOMMENDATIONS

The Estonian experience has shown that the rehabilitation of the victims of political terror is very important. Besides the fighters for the freedom of their homeland against occupying regimes there were a lot of victims of political mass repressions who actually needed a declaration from the highest level of public authorities to say they were not criminals and were innocent victims. One has to keep in mind the influence persistant communist propaganda which had tried to convince the public that the respective individuals were or had been the enemies of the nation. The surviving victims needed real financial support to compensate for their direct material losses and indirect losses that were caused by the loss of opportunity to study in the universities or to use their professional skills. Former political prisoners were not entitled to apply for many positions. People who were not allowed to return to their homes after the release from prison camps or forced settlement had to begin from zero again. Health problems, mental problems among them, were directly or indirectly caused by long years in inhuman conditions in prison camps or sites of forced settlement in miserable villages of Siberian hinterland with harsh, or at least unfamiliar climate. Keeping in mind that the most these individuals had suffered simply for being good citizens of their homeland, the advantages of health care were unavoidable.

32 See full text in English: The President of the Republic on the Crimes of Totalitarianism on June 14, 2001, https://vp1992-2001.president.ee/eng/ateated/AmetlikTeade.asp?ID=4870 (accessed on 24 May 2017).

33 Okupatsioonirežiimi kuritegudest Eestis, 18 June 2002, https://www.riigiteataja.ee/akt/174385 (accessed on 24 May 2017); English summary: Estonian parliament adopted statement on occupations, see Estonian Review: June 17–23, 2002, http://vm.ee/et/node/35688 (accessed on 24 May 2017).

34 After the re-establishment of Estonian independence the most of Estonians, who had served in German or Finnish Armed Forces during the World War II, got one-time or yearly payments by respective countries depending on the length of their service, injuries etc. through social benefit system for foreign veterans of these countries. In addition to that a number of healthcare services were provided for them.

35 German Supreme Command ordered to take all Estonian units of the German armed forces to Germany at the end of September 1944. Thousands of the members of these units stayed in Estonia intentionally or did not succeed to retreat.

36 Tunnustuse avaldamine Eesti kodanikele, 14 February 2012, https://www.riigiteataja.ee/akt/315022012002; unofficial English translation in a press release of the Parliament: https://m.riigikogu.ee/en/press-releases/statement-of-the-riigikogu-paying-tribute-to-the-estonian-citizens (both accessed on 24 May 2017).

37 75 aastat juuniküüditamisest, 14 June 2016, https://www.riigiteataja.ee/akt/315062016001; English translation see the Riigikogu press release The Riigikogu adopted the Statement on the June Deportation, 14. 6. 2016, https://www.riigikogu.ee/en/press-releases/plenary-assembly/riigikogu-adopted-statement-june-deportation/ (both accessed on 24 May 2017).

Both the Soviet and Nazi regimes tried to find and found individuals, who collaborated with them willingly or unwillingly. The situation was extraordinarily complicated because the regimes changed during a short time; in 1940, 1941 and 1944. There were a number of cases when the perpetrators in the service of one regime bacame the victims of another. Therefore the precise definition of victim groups was extremely important simply to avoid the creation a new injustice.

Another important issue is the persecution of former perpetrators who were guilty of crimes against humanity, war crimes, and genocide. It was important for justice to overcome the unfounded, and sometimes even founded fears in the society.

The Republic of Estonia has the responsibility for its own citizens and residents, but it is not responsible for unjustices and crimes committed by the occupying regimes in the name of their political and economic objectives. Therefore, claims for compensation by individuals determined to be of non-Estonian citizens, meaning mainly the Soviet citizens prior to 1939/1940, who would had been repressed before their arrival to Estonia, must be the responsiblity of the legal successors of the occupying regimes, despite of the expectancies of the claim.

The experiences of one country do not fit the different historical conditions of another country. Therefore the recommendations are general ones. Firstly, the highest authority has to publish a declaration honouring the resistance fighters for resisting the terror and dictatorship or occupation, but also the innocent victims, and condemning the perpetrators. Secondly, the victims should be supported financially, according to the abilities of the current country and its legal system. The supporting system has to be fair and transparent in order to avoid the continuation of the tensions between the different victim groups. In the case of an occupation, the claim should be asserted to the state, which had occupied the country, or to the legal successor of the former. Finally, perpetrators should be prosecuted and their cases sent to the court. Overcoming the legacy of the terror and dictatorship or occupation is an essential part of democratization, and has to be carried out as soon as possible to prevent the continuation of injustice and the influence of actors of the former regime.

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CEVRO

REHABILITATION OF VICTIMS

Levan Avalishvili

INTRODUCTION

Soviet repression has become a popular theme of research among scholars, after the fall of the Soviet Union in almost every former Soviet state, including Georgia. The scale of repression and the approximate number of victims is still unclear in Georgia.

There were several stages of Soviet repression in Georgia: In February–March of 1921, Bolshevik Russia invaded the country, overthrew the democratically elected government and took control over whole territory. The members of the government and the parliament of the Democratic Republic of Georgia (1918–21) immediately became victims of repression. Only some members of the government, and people affiliated it, emigrated to Europe and survived.[1]

After the occupation of Georgia, the most extensive attempt to restore t independence was the August Uprising of 1924. Members of the Committee for the Independence of Georgia, which was established in Europe, initiated the uprising, but the badly planed operation didn't succeed. This failure caused the imprisonment and mass executions of members of the uprising. Estimates of the numbers of deaths, of both rebels and their opponents (including executions), range from 630 to 4,000. Some members of the Georgian government in exile were among the repressed that had emigrated to Europe in 1921, but had later returned to Georgia to take part in the uprising.[2]

The years 1937 and 1938, the period of the Great Terror, was the time of the largest repressions in the whole of the Soviet Union, and Georgia, with no exception. In Georgian the SSR convicted more than 29.000 people, almost half executed by the so-called *"Troikas"*. Among them, 3621 people were convicted by direct order, sent straight from Moscow, with the signature of Joseph Stalin, and other members of Political Bureau (so called "Stalin's Lists").[3]

The repression continued between 1941–1951. In this period representatives of various national, ethnic and religious minorities also became subjects to the mass repression.[4]

Two Separate events, which have deeply affected the Georgian memory, and still leave scars for Georgian society, are the events of the 9th of March 1956, and the 9th of April 1989. On both occasions, Soviet authorities rapidly dismantled peaceful demonstrators in the center of the capital city, Tbilisi.[5]

DESCRIPTION OF THE CURRENT SITUATION

The analysis of the dynamics and specifics of the rehabilitation process, of the victims of Soviet repression, in the Georgian SSR is hindered by complex problems in the archival sphere of Georgia. On the one hand, the fragmentation of the archives of the former KGB, and the Ministry of Internal Affairs of the Georgian SSR (now – the first section of the Archive of the Ministry of Internal Affairs of Georgia), is linked with the loss of a significant part of the archival documents during the Tbilisi Civil War of 1991. Due to this, it makes it impossible to determine the number of victims of the repressions in the territory of Georgia from1921, up to the collapse of the USSR. Due to the low research activity, there is no information yet on what has become of the documents partially reflecting the activities of the repressive apparatus of the security agencies (annual reports, reports on specific issues, "cases" of anti-Soviet political organizations, correspondence on the issues, communication with subordinate structures), which would restore the overall picture.

On the other hand, the main documentary evidence for studying the rehabilitation process has been preserved in the National Archive in the fonds of the Prosecutor's Office and the Supreme Court. Researchers have access to these documents in cases were 75 years have passed from the moment of their creation. The Laws of Georgia "On the National Archives and Archive Fonds" and "On Personal Data Protection" protect "personal information" does not allow "third parties" to access documents related to criminal cases and containing personal information. The rehabilitation materials of the mid-1950s will be available for study from 2030 (unless fundamental changes occur in legislation). As the researchers note in their analytical reports, currently, it is impossible to obtain some declassified documents, since, according to this law, the researchers are not allowed to get access, with the search aid of the fonds (list of cases), because they contain declassified documents, for which the period of secrecy has not yet expired. Thus, the researchers do not have the ability, either to receive records on rehabilitation of a particular person, or to process a complete list of existing cases to recreate an overall picture.[6]

Today we have more or less clear information about the *NKVDs* (People's Commissariat of Internal Affairs of the Georgian SSR) operations on the central and regional levels, and how they were managed by Moscow. In 2015, the Ministry of Internal Affairs of Georgia released a two-volume edition "Bolshevik Order in Georgia", which gives a portrayal of the Bolshevik repression. According to this publication, the *NKVD's* so-called "Kulak" Operation (order N00447) is one of the most researched, repressive operations in the former Soviet countries. The assumption is that the repressive organs worked only to implement the will of the Centre and only according to orders from Moscow, which has not been confirmed.

1 Saqartvelos Damphudznebeli Kreba – 1919 [Constituent Assembly of Georgia – 1919], SovLab, Tbilisi, 2016.

2 Stephen F. Jones, "The Establishment of Soviet Power in Transcaucasia: The Case of Georgia 1921–1928", in *Soviet Studies*, October 1988, 40, No. 4 (4), 616–639.

3 Mark Junge, Omar Tushurashvili, Bernd Bonvec, *Bolshevikuri Tsesrigi Saqartveloshi* [Bolshevik Order in Georgia], Tbilisi: Intellect Publishing House, 2015.

4 See Mark Junge, *Ethnosi da Terori Saqartveloshi* [Ethnos and Terror in Georgia], Tbilisi: Intellect Publishing House, 2015.

5 See Levan Avalishvili, The March 1956 Events in Georgia: based on oral history interviews and archival documents and Jesse Paul Lehrke, The Transition to National Armies in the Former Soviet Republics, 1988–2005, in *Georgia After Stalin: Nationalism and Soviet power*, Edited by Timothy K. Blauvelt and Jeremy Smith, Oxfordshire, UK: Routledge, 2013.

6 See Alexander Daniel, Larisa Eremova and others, *Rehabilitation and Memory: Treatment of the Victims of Soviet Political Repression in Former Soviet Union Countries*, Moscow: Memorial, 2016, https://www.memo.ru/media/uploads/2017/03/02/reabilitacia.pdf

Moreover, the so-called "limits"[7] for arrests and executions were defined before the mass operations, but only upon offers made by the local party leaders, according demands from the Center. The system worked in a way that the Center had the ability to control the number of operations, but also, according to the archival materials, we can see numerous cases, when the regional "nomenklatura" asked the center to increase the "limits" of repression.[8]

DESCRIPTION OF THE TRANSITION AND CURRENT STATUS

Prior to the collapse of the Soviet state, a significant, and most pertinent part of the archives remained inaccessible for studying the process and scope of Soviet terror, and for the identification of its victims. In addition, most of the interested persons and researchers lacked the competence to determine where the relevant materials could be found. For instance, from 1989 to the end of 1991, only a few researchers succeeded in gaining access to materials of the former KGB Archives, and in December 1991, during the Civil War in Tbilisi, a significant part of the archive that was at the epicenter of the fighting, was destroyed as a result of a fire. Naturally, one can suppose that the complete content and extent of this archive will remain unclear, and may exceed the official estimates. In general, the KGB archives give numerous reasons for speculations and interpretations. Alleged witnesses, and participants, of the process claim that some of the most important documents from the archives were later transferred to the special KGB depository in Smolensk. Some claim that a group of Georgian KGB employees escorted the documents in order to sort and destroy them. The above-mentioned sources claim that the documents concerned intelligence developments, accounts and reports. The numbers of the documents destroyed, or sent back, about the state, and the legal environment of the remaining documents in the Smolensk Archive, are also unclear. Since 2003, there have been talks about the return of the documents (originals or scanned) but without any consequences. In 2008, Georgia broke diplomatic relations with Russia, and the archival institutions no longer have contact with each other.[9]

Only a few non-governmental organizations in Georgia are interested in the matters of Soviet repression and rehabilitation, including the Institute for Development of Freedom of Information (IDFI), the Georgian society "Memorial", the Soviet Past Research Laboratory (SovLab) and the Georgian Young Lawyers' Association (GYLA). With the help of the Ministry of Internal Affairs of Georgia, the financial aid from the Heinrich Boell Foundation, and the Embassy of Switzerland in Georgia, the IDFI and "Memorial" implemented the project "Stalin's Lists from Georgia". A large database with search tools was created for this project. It contains more than 3600 short biographies of the victims of the "Great Terror" of 1937–1938, who were convicted based on the decisions of Stalin, and the members the Politbureau.[10]

The Georgian society "Memorial" has been working on this issue since it was founded in 1992. Since then, the society has advocated for quick enactment and implementation of the laws fostering the repressed persons. Also, they have advocated for fulfilling the compensation nominated by the European Court of Human Rights, as a result of the case against Georgia, and for granting the repressed people at least the same social benefits as was granted to former law enforcement officers. The law of Georgia N430 from 16. 10. 1996 "On Social Security of Persons Transferred to the Reserve from Military Bodies, Internal Affairs Bodies and the Special State Protection Service, and Their Family Members",[11] granted persons transferred to the reserve from military bodies, internal affairs bodies, and the Special State Protection Service, who have permanent residence in Georgia and Georgian citizenship, with state compensation. As a member of Georgian society "Memorial", Guram Soselia told us it was an irony of fate that some former KGB and other workers of the system of retaliatory bodies during USSR, who were involved in the executions, were granted much more benefits than the heirs of the executed people themselves.[12]

LAW AND THE PRACTICE OF ACKNOWLEDGEMENT OF CITIZENS OF GEORGIA AS VICTIMS OF POLITICAL REPRESSIONS AND SOCIAL PROTECTION

The first relevant law on rehabilitation was passed in Georgia in 1997; it was titled "On the Acknowledgment of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons".[13] According to the Article 2 of this Law, "different forms of coercion shall be construed as political repression, such as deprivation of life, damage to health, imprisonment, exile, expulsion, deportation from the state, forcible placement in psychiatric institutions, deprivation of citizenship, forced labor, confiscation and destruction of property, illegal dismissal from office or from other work places, movement to special settlements by force, eviction from a dwelling house, as well as other restrictions of human rights and freedoms guaranteed by the legislation of Georgia, which were conducted by the State for political reasons based on the decision of a court or other state authorities, and which were related to false accusations of committing a crime, to a person's political opinion, or to the acts of contradiction by peaceful means against illegal actions of the current political regime, to social or religious affiliation or a social class status, as well as forms of coercion committed by the State as provided for by the Article 4 of this Law". Nevertheless, despite the adoption of this Law, the issue of compensation to the victims of repression remained a serious challenge for

7 "The Soviet secret police worked according to quotas. Just as Soviet economic planners set targets for industrial growth, so too did state security organs set their own 'limits' for arrests and executions". Paul R. Gregory, *Terror by Quota: State Security from Lenin to Stalin*, New Haven: Yale University Press, 2009, https://www.h-net.org/reviews/showrev.php?id=23648

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Georgia. Although article 8 of the Law mentions a separate law that determine the procedures for the revival of property rights of the rehabilitated person, this law has not been enacted, until now... In 1997, when the Law on recognition of the victims was being passed, the Parliament of Georgia postponed the discussion of this issue. In 2009, the Public Defender of Georgia asked the Government to adopt this law,[14] but his request has not been satisfied. The turning point that changed the situation was the decision of the European Court of Human Rights, against Georgia, which was related to citizens Klaus and Yuri Kiladzes

EUROPEAN COURT OF HUMAN RIGHTS CASE: KLAUS AND YURI KILADZE VS. GEORGIA

A court case about the recognition of two Georgian nationals, who were victims of Soviet repressions, to receive the compensation they were entitled to, become a precedent for the other similar cases in Georgia. The case began when the appeal wasn't satisfied by the Georgian Court system, and the case was sent to the European Court of Human Rights.

This case against Georgia originated from application no. 7975/06, lodged to the ECHR under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by two Georgian nationals, Klaus Kiladze and Yuri Kiladze, on the 22nd of February 2006, in order to assert their rights for compensation resulting from their status as victims of political repression. The applicants, two brothers, were born in 1926 and 1928 respectively and live in Tbilisi. Their father was convicted on October 2, 1937 for "sabotage and terrorism" and executed. On November 7, 1938, their mother was condemned to eight years of imprisonment for "propaganda and agitation expressed in a call to the overthrow the Soviet regime" and was sent to the labour camp in the Far North of the USSR. Then aged 12 and 10 respectively, the applicants at first remained alone in their parents' apartment in Tbilisi, with no neighbors, friends or family daring to go near them because of the fear of being arrested. They were then held for one and a half months at a detention center in Tbilisi. They were malnourished, and subsequently contracted typhoid due to unhygienic conditions. They were then sent away from Georgia to the Stavropol region of Russia, and placed in an orphanage, and spent two years there. Both applicants were constantly humiliated and beaten by the staff and by the other orphan children.

Immediately after the arrest of the applicants' mother, the family apartment of 90 m^2 in Tbilisi was confiscated together with all the furniture and personal and family items.

In 1940, the grandmother of the applicants managed to obtain guardianship over them. After returning to Georgia, while still children, Klaus and Yuri had to work hard in order to earn money to live. Subsequently, they faced strong social and political pressure as the children of a "traitor of the Motherland" their entire life working in the USSR.

In 1945, the applicants' mother was freed. On May 4, 1956, the South Caucasus Military Court annulled the decision of November 7, 1938 that condemned her, due to the absence of an offence, and pronounced her rehabilitation. On 30 August 1957, the Panel on Military affairs of the Supreme Court of the USSR annulled the decision of October 2, 1937, for the same reasons, and pronounced the rehabilitation of their father.

On March 16, 1998, the applicants applied to the court of primary jurisdiction in Tbilisi requesting that their parents, as well as they themselves, be declared victims of political repressions. On August 19, 1998, their request was granted in full. On the grounds of this decision, the brothers Kiladze applied on March 15, 2005 to the court of primary jurisdiction for compensation for the material and moral damages based on Article 9 of the Law "On the Recognition of Status as a Victim of Political Repression for Georgian Citizens and Social Protection for the Repressed Persons". Emphasizing the killing of their father, the separation from their mother, their conditions of detention, first at the detention center then at the orphanage, the damage caused to their health, the humiliation and repression suffered from the time of their parents' arrest to an elderly age, as well as the confiscation of property after their mother's arrest, the applicants asked to be granted compensation of 515,000 GEL (approximately 208,000 EUR) each for the total material and moral damages they suffered.

The representative of the Georgian President, the defending party, alleged that the applicants' claim should not be admitted, given the fact that their right to compensation had not been recognized prior to 1997, and that the law that was referred to in the Article 8 of the Law of December 11, 1997 had not yet been adopted. On June 9, 2005, the court of primary jurisdiction Tbilisi Regional Court considered the facts related to the applicants' past to be established, save for the confiscation of possessions. On the latter point, the court cited against the applicants on the grounds of the Article 102 § 3 of the Civil Procedure Code – lack of documentary proof attesting to the confiscation, judging that the submitted written statements of eye-witnesses were not sufficient. The court also considered the applicants' claim to be beyond the period of limitation altogether, without indicating what period of limitation they were referring to and when this period had commenced. Finally, the court concluded that the request of the applicants could not be admitted in any event since the laws the Articles 8 and 9 of the law of December 11, 1997 referred to had not yet been adopted.

The applicants brought a cassation appeal asserting that, by virtue of the Order of August 15, 1937, the spouse of any person condemned as a "traitor of the Motherland" would automatically be condemned to a term of imprisonment from five to eight years, that their minor children would then be placed in an orphanage outside of the Georgian territory, and that their movable and immovable property would automatically be confiscated. The conviction of their father obligatorily led to these measures and, given the context in which these events took place, they could not be blamed for the fact that they were unable to present the documentary proof of the confiscation of property. As to the period of limitation, the applicants asserted that their claim for compensation was based on the Law of December 11, 1997, and could not therefore be beyond the period of limitation at the time, when their requests were decided. The applicants also alleged that nearly eight years had already passed since the Law of December 11, 1997 had entered into force, in which the State had not taken the necessary measures in order to legislate and compensate the victims of political repressions, in accordance with the Articles 8 § 3 and 9 of this Law. They maintained that the number of the victims, all elderly, was falling, and in their opinion, the State was waiting for their death to resolve the problem of compensating them. According

14 See "Ombudsman Demands Concrete Steps for the Social Protection of Political Repression Victims", 5 April 2010, http://www.interpressnews.ge/ge/politika/130412-ombudsmeni-politikuri-represiebis-mskhverpltha-socialuri-dacvisthvis-konkretuli-nabijebis-gadadgmas-ithkhovs.html?ar=A

to the explanatory memorandum of the draft of the law submitted (without any results) to the Parliament in 2001 by the Georgian society "Memorial", to remedy the legal void in question, the number of victims of political repression affected by the abovementioned Article 9 varied, according to the categories, from 600 to 16,000.

The applicants' appeal was dismissed on November 2, 2005 by the Supreme Court of Georgia, which, upholding the reasoning of the regional court relating to insufficient documentary proof of the confiscation of property, dismissed their request for compensation for material damages.

The applicants continued to seek proof of the confiscation of their parents' possessions. In a letter of December 4, 2006, the Registry of Real Estate Property informed them that the apartment in question had only appeared in the archives for the first time in 1940, as a property of the State. Since then, no information has become available on the subject.

The applicants alleged that in delaying in giving substance to their rights guaranteed under Articles 8 and 9 of the law of 11 December 1997, the State was keeping them in a tormenting situation of uncertainty and distress which amounted to degrading treatment.

After about 4 years of examination, the ECHR declared by six votes to one, that there has been a violation of the Article 1 of the Protocol no. 1, and by six votes to one, that it is not necessary to also examine the application from the point of view of Article 13 of the European Convention on Human Rights. Also, the ECHR declared that, if the necessary (legislative and other), measures of the judgment are still lacking, the Respondent State will have to pay each of the applicants 4.000 EUR (four thousand euros) in moral damages and the sum of costs and expenses. The ECHR dismissed by six votes to one, the remainder of the demand for just satisfaction.[15]

The abovementioned case, arguments provided by the Georgian state, and decision of the European court of Human Rights became a showcase for other similar court appeals. The lack of support for appropriate documents that wasn't provided to the court and article 8 § 3 of Georgian law "on the Acknowledgment of Citizens of Georgia as Victims of Political Represion and Social Protection of Repressed Persons" where we read – The procedures for the revival of property rights of rehabilitated persons shall be determined by a separate law that was not adopted till nowadays played a major role in the assessment of the court – partial satisfaction of appealing party.

One of the main points was indicated in the Paragraph 85 of the court decision where we read: Under these conditions, the Court believes that general measures at a national level are without doubt called for within the framework of the execution of the present judgment. The necessary legislative, administrative and budgetary measures must therefore be rapidly taken in order for the people envisaged in Article 9 of the law of December 11, 1997 to effectively benefit from the right, which they are guaranteed in this provision.[16]

REHABILITATION AND COMPENSATION TO THE VICTIMS OF REPRESSIONS AFTER THE ECHR DECISION

Executing the decision of the ECHR, the Georgian authorities passed a certain amendment to the Law "On the Acknowledgment of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons" according to which the repressed person, or his /her first immediate heir, or their representative, should directly apply to Tbilisi City Court in order to get the pecuniary compensation. The total number of victims of Georgia's political repression and their heirs was about 20,000 people before the amendment, but later, the numbers increased. The number of applicants also increased.

According to the Georgian Young Lawyers Association, more than 2,500 suits were filed in Tbilisi City Court within three months after the legislative amendments took effect. Due to the large number of suits, the court established a compensation limit of minimum 200 GEL (about $ 100) and a maximum of 500 GEL (about $ 250). It is noteworthy that these suits could be examined only by Tbilisi City Court, which caused additional expenses for people living in province.

The Georgian Parliament made several changes to the law on 31 October 2014 by. Thus, the definition of a victim of political repressions, and the rules of acknowledgement the victims of political repressions and guarantees of their social protections were elaborated. According to the law, the victims of political repressions are people, who have suffered political repression in the territory of the former USSR from February 1921 until 28 October 1990, from the intervention of the Soviet Red Army until the first free and multi-party elections in the Soviet Socialist Republic of Georgia and later on the territory of independent Georgia. As usual, in all countries, where the similar law exists, not only the persons, who suffered the repressions, but also a spouse, child (adopted child), parent and any other lineal relative, who stayed with such persons in penitentiary establishments, has been in exile and expulsion, and in special settlements with such persons were also acknowledged as the victims of the political repressions. Georgia was not an exception and similar record appears in Georgian law as well.[17]

According to the Law, persons, who have been acknowledged as victims of political repression shall have all of their political, civil and other rights and freedoms that have been violated as a consequence of political repression restored, and shall regain all military and special rank and government awards that have been seized as a consequence of political repression, and shall be granted the allowances as provided for by this Law.

According to the changes in the Law made in 2014, victims of repression were granted with an indemnity: no less than GEL 1.000 and no more than GEL 2.000 (approximately 600–1200$ with regard to the official exchange rates in Georgia). If the person is already dead, the nearest heir can claim the indemnity.[18]

In parallel to the adoption of the amendments to the Law on repressed, an amendment was made to the concomitant law – "The Administrative Procedures Code of Georgia". The repressed person, or his /her first immediate heir or their representative should directly apply to Tbilisi or Kutaisi Court in order to get the pecuniary compensation. The claim had to be submitted by 1st of January 2018. In addition, a person, who had already received compensation, but a sum that was less than

15 See European Court of Human Rights, Second Section, CASE OF KLAUS AND YURI KILADZE V. GEORGIA, (Application no. 7975/06) , Judgment, 2 February 2010, http://ehrac.org.uk/wp-content/uploads/2010/06/Kiladze-v-Georgia_ENG.pdf

16 Ibid., paragraph 85.

17 Ibid.

18 Ibid.

the minimum set by the new amendments, could have applied to the court again.

It is also important to note that the Law applied to Georgian citizens, who suffered political repression in former Soviet Union from the 25th of February 1921 to the 28th of October 1990 and later, on the territory of independent Georgia. But this law does not apply to the persons, who belong to ethnic or religious groups deported from Georgia in the Soviet period; the procedure for their rehabilitation should have been determined separately.

The IDFI requested information from Tbilisi and Kutaisi City Courts about the number of people, who were declared victims of the political repressions. From January 2011 to May 2017, Tbilisi City Court received 13.525 appeals in total, reviewed 11.539, affirmed 11.511 and declined only 28 appeals. Kutaisi City Court from January 2015 to May 2017 received 5.517 appeals and affirmed 4.957 of them. The IDFI requested the information on the total amount of compensation that was granted to people, whose appeals were affirmed, but they received the answer that the Courts did not possess this information. Then, on the 5th of July 2017, the IDFI made a similar request to the Ministry of Finance of Georgia, and asked for the total quantity of compensations (one by one for every year) for the defined list of persons from the national budget. The Ministry of Finance of Georgia answered that the National Bureau of Enforcement satisfied these demands by forced fulfillment, and they have no authority to reveal this information. Thus, the IDFI was unable to get information about the average amount of compensation.[19]

ABOUT THE CATEGORY OF VICTIMS

Ethnic or religious groups deported from Georgia in the Soviet period can be analyzed by looking at the issue of "Meskhetian Turks" – the ethnic group deported from Georgian SSR to Uzbek SSR in 1944 an estimated 90,000–120,000 people. Many of the deportees died *en route*, or as an indirect consequence of the resettlement. There is no consensus on the reasons for the deportation. Unlike other deported people, who were rehabilitated in the 1950s and 1960s (or the Crimean Tatars who have been allowed to return since the late 1980s), the Meskhetian Turks have neither been rehabilitated, or allowed to return to their land of origin, nor has their property been returned.[20]

Programs and attacks on the Meskhetian Turks, in the Ferghana Region of Uzbek SSR, in early June 1989 became the one of the first ethnic conflicts in the disintegrating USSR, and ended with the second forced exile of about 70.000 Meshkhetian Turks who were spread through various countries and never reunited.[21]

The efforts to return the Meskhetian Turks to Georgia first emerged in 1970, but southwest Georgia's special status as a border-region, effectively blocked the start of the process. Since the 1989 events have been noted, repatriation of "Meskhetian Turks" has been on Georgia's agenda, but during Zviad Gamsakhurdia's and Eduard Shevardnadzes' presidency, only several hundred Meskhetian Turk families have returned to various regions of Georgia (though not to their historic homeland), mainly with their own initiative and wages. The official number of repatriates by the end of 2001 was 644 persons.[22]

After high-level meetings in The Hague and Vienna in 1998–1999, hosted by various organizations[23] with the involvement of governments, Georgia's delegation pledged to solve the question of citizenship for returnees by the end of 1999 and announced the establishment of a State Committee, or Repatriation Service, in the near future to address issues relating to the repatriation of Meskhetian Turks.

In 2007, Georgia issued the law – "On the Repatriation of Persons Involuntarily Displaced by the Former USSR from the Georgian SSR (The Soviet Socialist Republic of Georgia) in the 1940's". According to the law, the application for obtaining the status of repatriate in accordance with Article 4 of this Law was no later than July 1, 2009.

After the implementations of the law, the official statistics are as follows: a total of 5.841 individuals applied to Georgia for reintegration status over the past few years. Of these, 1.998 have been granted this status, and 494 people have received "conditional citizenship" that implies that Georgian citizenship will take its effect immediately after they renounce the citizenship of another country.

As officials explain, people are usually refused to be granted citizenship due to a lack of relevant documentation. The implementation of the law has been criticized numerous times; being stateless people, they are not eligible for the public healthcare program. "They don't have social and economic guarantees and property-related issues still remain a problem", reads the Georgian Public Defender's report for 2015.[24]

As we see from the following, the problem still exists; the percentage of people who repatriate is very low and even people who received the status are still waiting for justice to be fully restored.

LESSONS LEARNT AND RECOMMENDATIONS

As the Georgian case shows, there are positive, as well as negative, examples of cases on how Georgia has dealt with the rehabilitation of the victims of Soviet repressions.

The main positive issue is that not only the persons, who suffered the repressions, but also members of their families, close relatives, who were with him/her in the imprisonment and deportation, were acknowledged as the victims of political repression, and if the person is already dead, the nearest heir can claim the indemnity.

The constant conflicts between groups in society, the atmosphere of violence, and the economic crisis, have all distracted society from comprehending the consequences of Soviet terror, and identifying and dismantling the driving mechanisms of the totalitarian system, as well as rehabilitating the victims of repression.w

19 Official correspondence of IDFI with Tbilisi and Kutaisi City Courts and Ministry of Finance of Georgia.

20 See Oskari Pentikäinen, Tom Trier, *Between Integration and Resettlement: the Meskhetian Turks*, ECMI Working Paper # 21, September 2004, https://www.files.ethz.ch/isn/19696/working_paper_21b.pdf

21 See Alexander Osipov, "Ferghana Events: 20 years later. History without a lesson?", in *FerganaNews*, 10 June 2009, http://enews.fergananews.com/articles/2545

22 See Oskari Pentikäinen, Tom Trier, *Between Integration and Resettlement: the Meskhetian Turks*, ECMI Working Paper # 21, September 2004, https://www.files.ethz.ch/isn/19696/working_paper_21b.pdf

23 In Hague, OSCE High Commissioner on National Minorities (OSCE-HCNM), Max van der Stoel, in cooperation with UNHCR and the Forced Migration Projects of the Open Society Institute (FMP-OSI) hosted consultations on issues relating to Meskhetian Turks. The same organizations – OSCE, UNHCR and FMP OSI hosted second meeting in Vienna.

24 See Nino Narimanishvili, Otar Atskureli, "Return from exile: Muslim Meskhetians from Georgia", in *JamNews*, 21 June 2017, https://jam-news.net/?p=45365

The corresponding law on restoring property rights of the rehabilitated persons, which would regulate the process of restoring justice for the victims, has not been elaborated for more than 20 years, which makes the victims, and other stakeholders, think that the state authorities don't have the political will to fulfill it.

Only complete opening of the archives of intelligence agencies and security agencies can give answers, both to the private matters of citizens, as well as to the questions that have enormous value for all society. It is impossible to have a valid written history of the XX century, of any Soviet country, without studying the archives. Soviet repression remains one of the main traumatic points in the collective memory of post-Soviet countries. Publishing authentic documented data on the repressed, as well as individual stories, will support the process of the rehabilitation of the victims, deliver the truth to families of the victims, help to restore justice and promote reconciliation within the entire society.

The tragic events of 1991–1992, when historical documents of the former KGB Archives were lost, and together with them, the chances for rehabilitation of the victims within the country vanished. Thus, the key for restoring the truth through documents only remains in the Russian archives, which are practically inaccessible at the moment, neither to Georgian historians, nor to ordinary Georgian citizens, due to the absence of the diplomatic relations and contacts between the archival institutions of the two countries. In the regard to the situation, as the member of society "Memorial", Guram Soselia told us, some retired KGB officers have addressed the corresponding archives in Moscow and received reference letters, but he did not know of any ordinary repressed person from Georgia, who had done the same. In theory, it is unclear, whether a repressed citizen of Georgia can receive any probative approval documents by addressing the Russian archives or not.[25]

The main recommendations for Georgian authorities are to finalize working on a corresponding law about restoring the property rights of the rehabilitated persons. Also, the prolonged lustration process of former KGB and other workers of the system of retaliatory bodies during USSR is a sensitive topic for Georgian society and needs to be resolved once and for all, as well as repatriation of Persons Involuntarily Displaced from the Georgian SSR.

25 The interview with the Georgian society "Memorial" member – Guram Soselia, 2018.

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REHABILITATION OF VICTIMS

Anna Kaminsky

INTRODUCTION

To the GDR, democratizing the state and society didn't merely refer to fundamentally restructuring political structures within the legal system, in the educational sector or within the economy, but also to the way people dealt with the past. This subject had previously been exclusively oriented towards legitimizing the leading communist party's (Socialist Unity Party – SED) governance. As far as the reappraisal of the past is concerned, the issue of how to deal with the perpetrators and victims forms one of the most important issues that have to be clarified. In other words, it's about considering how those that have been persecuted, imprisoned or disadvantaged for political reasons could be offered legal rehabilitation and how the disadvantage from which they suffered could be compensated. Considerations like this had been made already at the time when the revolutionary upheaval was going on in the GDR. Carrying out this kind of clarification and reappraisal of the injustice and crimes that have been committed during the second, the communist dictatorship in Germany, one should prevent the mistakes that were linked to the sluggish reappraisal of the Nazi crimes.

According to estimates, there were approximately 200,000–250,000 political prisoners in the Soviet Occupation Zone and in the GDR that were sentenced to a total of 1 million years of imprisonment.[1] Furthermore, hundreds of thousands were administratively repressed. People had to be subdued and moved to forced settlements and move out of the border areas, or they faced manifold chicanery and obstacles as family members. After the GDR had been founded, more than one thousand people were kidnapped, taken to Moscow and shot there.[2] Tens of thousands vanished in the Gulag camps. Furthermore, there were hundreds of thousands who were "administratively" persecuted. These were, for example, the people who were forced in several actions to move away from the areas adjoining the border to the FRG as well as a group of persecuted pupils or the children and youths that were taken away from their families due to political motives and put into children's homes. Among the persecuted people, there were also those, whose attitude towards the GDR was regarded as "ill-disposed and hostile" and who had to suffer repressions at work and in their private life and on whom the "*Zersetzung*"-method (decomposition) was applied. Only the registration place in Salzgitter documented more than 40,000 cases from 1961 until 1989. Within recent years, attention has been drawn to new groups of affected persons and new topics: the forced labor system in prisons, as well as the fact that children were brought to children's homes due to political reasons or the sensitive topic of politically motivated forced adoptions or children taken away from their families. The actual numbers are not known in many of these cases, which is partly due to the fact that research and studies are missing which would enable one to estimate the scope of this kind of persecution. More than 1,000 people were shot at the Berlin wall and in other sections of the border to the Federal Republic of Germany by East German border guards when these people tried to flee. More than 30,000 political prisoners were bought free by the Federal Republic of Germany between 1962 and 1989.

Whereas until September 1989, it had not been possible to discuss in public about the arbitrariness one experienced and about the political persecution people suffered, this changed during autumn 1989 already prior to the date when the Berlin Wall fell, i.e. prior to November 9th 1989. One of the important starting points of these debates was a lecture by Walter Janka that took place in the "Deutsches Theater" on October 28th called "Schwierigkeiten mit der Wahrheit" (Difficulties with the truth), which had been forbidden up to that time. This lecture, which starred Ulrich Mühe, one of the most renowned GDR actors who played in the Oscar winning movie "Das Leben der Anderen" (The Lives of Others) later on, was transmitted across the whole GDR. This lecture constituted a twofold breach of taboo: Not only was a hitherto forbidden book read in the most renowned GDR theatre, but above all, this was the first time that people had expressed their experience of injustice and crimes during the communist dictatorship. This lecture led to many letters being sent in by the audience where people described their experience of injustice. From now on, reports on political persecution, suppression and the omnipresent surveillance by the secret police, the Stasi, characterized the public discussion. What had previously been hushed up under the threat of punishment with persecution and imprisonment, now came into the spotlight. Influenced by the nationwide protests in the GDR and the publicly articulated crimes and injustice within the system, already the representatives of the last and only democratically elected East German parliament the Volkskammer and the GDR judiciary prepared various bills for reappraising the past, opening the archives, punishing systematic injustice and rehabilitating the victims.

LEGAL FRAMEWORK OF THE REHABILITATION

Following 1989/1990, a lot of hope was laid on the judiciary, on the prosecution of crimes that had been committed in the communist dictatorship as well as on rehabilitating, compensation and acknowledging the victims. Taking into consideration the trust laid in the legal options of a democratic constitutional state and the possibilities that are limited within the scope of

1 The data on this issue varies. Oliver W. Lembcke indicates that there were 330,000 (Oliver W. Lembcke, Rehabilitierung politisch Verfolgter in der DDR. Politisches Programm und Praxis des Rechts, in *Jahrbuch Politisches Denken 2008/09*, 170); Beer/Weißflog are indicating a spectrum of 170,000–280,000 political prisoners, see Kornelia Beer, Gregor J. Weißflog: "Ich könnte ein dickes Buch schreiben…" Zur gesundheitlichen und sozialen Situation von in der SBZ/DDR politisch Inhaftierten, in *Horch & Guck*, 2009, (3), 56. Ansgar Borbe summarizes the differing figures in a table (see Ansgar Borbe, *Die Zahl der Opfer des SED-Regimes*, Erfurt: Landeszentrale für politische Bildung Thüringen, 2010, 18).

2 Frank Drauschke, Anna Kaminsky, eds., *Erschossen in Moskau*, Berlin: Metropol Verlag, 2008.

applicable law and the chance to be able to fulfil the respective hopes and expectations, one had to create further supportive options in order to achieve reconciliation. In cases where the justified expectations for a legal prosecution of dictatorship injustice committed by the perpetrators were not effective, it was necessary to find other instruments in order to mitigate the damage caused to the victims of dictatorship despotism as well as to mitigate the damage suffered by the politically persecuted. The respective rehabilitation and compensation regulations were adopted in parallel with the legal options of carrying out a criminal prosecution. Thus, already at the beginning of 1990, an attempt was made to "compensate" the injustice caused by the ruling communist party SED dictatorship in a kind of self-cleansing process. The prosecution offices checked the criminal sentences that had been imposed on opponents and critics of the communist party dictatorship and possibly "reversed" these sentences, which meant that they were declared invalid. The criminal sentences against prominent victims of justice such as Walter Janka, Wolfgang Harich, Vera Wollenberger, Rudolf Bahro and Erich Loest were annulled and consequently, these people were "rehabilitated".

On September 6th 1990, the GDR Volkskammer adopted the first Rehabilitation Act.[3] Parts of this act were taken over by the reunification treaty and applied until the communist party SED Injustice Settlement Act of November 4th 1992 that governed the criminal rehabilitation came into force. The first Socialist Unity Party Injustice Settlement Act was followed by the second Socialist Unity Party Injustice Settlement Act in 1994 which regulates the administrative-legal and professional rehabilitation. Hitherto, these legal regulations have been amended five times with new victim groups such as the children that had been accommodated in children's homes under prison-like conditions and the youths brought to reform schools having been included as well. In August 2007, the third Socialist Unity Party Injustice Settlement Act came into effect, which was the act on "Special Allowance for Victims of Imprisonment", introducing the so-called "victim's pension". Former political prisoners that had been incarcerated for more than 180 days are entitled to receive this victim's pension amounting to € 250 (since 2014: € 300) for their entire life. Until the former victims become pensioners, this payment is conditioned by the fact of whether these persons are in social need.

Hitherto, 206,000 applications for criminal rehabilitation have been filed. Criminal rehabilitation is in turn the precondition for compensation payments. Until now, 170,000 out of these persons have been rehabilitated. An overall compensation amount of € 660m has been paid. According to statistics provided by the Federal Ministry of Justice as well as according to the overview from the "Report on German Unity" (Bericht zum Stand der deutschen Einheit) an overall amount of over € 2B had been paid as part of the "Criminal Rehabilitation Act" (*Strafrechtliches Rehabilitierungsgesetz*, hence the abbreviation *StrRehaG*) as well as the "Professional Rehabilitation Act" (*Berufliches Rehabilitierungsgesetz*, hence the abbreviation *BerRehaG*) until 2015.[4]

While it was easy to give the evidence necessary for a criminal rehabilitation through the verdict that was to be presented, proving discrimination within the administrative or professional development and politically motivated persecution proved to be much more difficult. People who suffered from politically motivated imprisonment and/or administrative persecution may apply for compensation due to health-related problems resulting from this. Yet the acceptance rate is very low, only 20 %. It is very burdensome for the affected persons to undergo the necessary questioning and examinations which many people regard as "discriminatory". Borbe and Siegmund have repeatedly pointed to this fact with Siegmund saying, for example, "that the type and form of discriminations suffered in this way significantly varies".[5]

Furthermore, there are victim groups – such as the persons kidnapped from the territory on the Eastern bank of the Oder or the Lusatian Neisse and taken to Siberia – that more or less are not entitled to receive any compensation payment. While the prisoners from Soviet special camps are entitled to receive compensation for having been imprisoned because these camps were in the future GDR territory, the people that had been deported from the former Eastern part of Germany and forced to labor – mostly these people were women – received nothing, because according to the Prisoner Aid Act (*Häftlingshilfegesetz*, hence the abbreviation *HHG*) §1 sent. 6, they pertain to a group of people who were "accommodated in a camp due to a commitment to work" and who counted as "living reparations".

Due to the fact that they are unable to present a certificate according to the Prisoner Aid Act (HHG), they frequently receive nothing. The only place they can turn to in applying for special allowances according to the principle of neediness is the foundation for former political prisoners.[6] On July 6th 2016, the Budget Committee in the German Bundestag decided to provide a total of € 50m until the end of 2018 via the prisoner aid foundation in order to provide further aid to these victim groups comprised of a high percentage of women. This especially refers to women who were taken to the Soviet Union between September 1st 1939 and April 1st 1956 to perform their "work assignment" in the Soviet Union. The respective one-off special payment amounting to € 2,500 can be applied for only until 31. 12. 2017. Yet for most of the women and men who suffered this fate, this acknowledgement comes too late as most of them have already died.

SOCIAL SATISFACTION – STATUS OF THE REHABILITATED

Many statements claimed repeatedly how important it is for the affected to strive for a criminal prosecution of system injustice and that "(…) clarifying and acknowledging the system injustice that has been committed"[7] has a special function for the victims. Nevertheless, given the very low number of actual convictions, this plays only a marginal role. "Ascertaining the truth" and "legal denunciation" of these deeds frequently petered out. It was by far too often due to limitation periods running out, due to missing documents or missing clear evidence of a specific guilt in the criminal law sense as well as the old age of many suspects that

3 Rehabilitation Act of 6. 9. 1990. GBl. d. DDR I, p. 1459.

4 This statistics shall be published soon on the website of the Ministry of Justice.

5 Jörg Siegmund, *Opfer ohne Lobby. Ziele, Strukturen und Arbeitsweise der Verbände der Opfer des DDR-Unrechts*, Berlin: Berliner Wissenschafts-Verlag, 2002, 126.

6 In November 2015, the Budget Committee in the German Bundestag decided that those who had been deported to Siberia to perform enforced labor and had been hitherto excluded from the aid, may file applications from now on. € 50 Million is available for that in total.

7 Klaus Marxen, Gerhard Werle, Petra Schäfer, *Die Strafverfolgung von DDR-Unrecht. Fakten und Zahlen*, Berlin: 2007, 59.

prevented a conviction. Thus, the investigations and reporting contributed to the fact that public awareness of the injustices that had been committed was raised. Yet to those who had become victims of political persecution under the communist regime, the low number of convictions was disappointing and disillusioning. 100,000 preliminary proceedings led to 750 actual trials and in only 40 cases, the accused was sentenced.

Furthermore, many former victims and persecuted people repeatedly experienced significant trouble in pursuing their claims for compensation and acknowledgement which was especially the case if they suffered from health-related problems. Here, especially the regulation that the burden of proof for psychological and physical damage which the affected suffered is placed on the affected people who then have to prove that the damage is a result of the persecution and the imprisonment they suffered from.

The fact that the affected persons are frequently less well off than the former "representatives of the system" is an additional burden. On the one hand, they actually received a one-off payment amounting to € 306 per month in detention as a kind of compensation. The "victim pension" of € 250 per month that was introduced in 2008 and raised to € 300 per month since 2014 and which was meant to appreciate those that had demonstrated their courage towards the dictatorship but paid for it with imprisonment and persecution, is only paid to people in need who in turn have to regularly prove to the authorities that they suffer from a financial crisis. Only after becoming a pensioner, they receive this "victim's pension" automatically, without having to prove their neediness.

Furthermore, many people get to know when they become pensioners which disadvantages they have as a result of the persecution even after several years. This refers not only to victims of unjustified imprisonment but also to tens of thousands who were acknowledged as victims according to the administrative rehabilitation act. Having been persecuted and suffered income loss during the dictatorship period meant that their pension calculation time was shortened as well but many people become aware of this only when they themselves become pensioners. On the one hand former members of the repressive organs may not be punished for their previous activity with a pension reduction, but they actually are entitled to their pension that they earned due to working in the GDR. This was stated in a resolution made by the German Federal Constitutional Court (pension legislation is no pension punishment legislation). On the other hand, the people formerly persecuted by the regime frequently suffer a pension shock when getting old.

The people who had suffered under political persecution and state despotism after 1945 and felt they had been forced to remain silent about the injustice they suffered from, believed that after 1989, the time had come for their fate to be publicly brought to light and for them to be acknowledged. What had started as a promising process for many of the affected in 1989/1990, has now been replaced by disillusionment and bitterness which in turn frequently distorts the view even of the positive achievements. Improvements are definitely appreciated, yet the expectations in general and the hope that the injustice they suffered would be acknowledged, have not been fulfilled. Firstly, many formerly persecuted people believe that their financial and professional situation still lags far behind the opportunities the people had who were responsible for the previous regime. Secondly, the impression that following the first regulations dating back to the beginning of the 1990s one had to argue and fight for every single improvement, be it even the smallest one, is very tiring. The famous German historian Jörg Siegmund stated in 2002 in his investigation into the Associations of the Victims of Socialist Unity Party injustice that "their interests are not backed by society."[8] This is not merely due to the fact that only one fifth of the citizens in the current Federal Republic of Germany, i.e. the former GDR citizens, could have been affected to a greater or lesser extent by the persecution in the Soviet Occupation Zone /the German Democratic Republic. The image of the GDR being a moderate or rather "commodious" dictatorship which originated in the 1970s and 1980s overlays the perception of massive suppression and persecution in the Soviet Occupation Zone /the German Democratic Republic carried out by the Soviet occupation power and the Socialist Unity Party in the period from the 1940s to the 1960s. This period was characterized by extraordinarily massive human rights violations and brutal terror. The fact that the GDR had been perceived during the 1970s and 1980s merely as the "other" German country in line with the policy of détente which in turn led to neglecting the repressive traits this regime had, is hitherto making it complicated for the people to accept knowledge about the injustice and crime.

The discussions that have been led since 1990 concerning the approach to the victims of communism/Stalinism including the value we can ascribe to them within the reunified culture of memory haven't become a less current topic in spite of all the enjoyable developments within the previous twenty-five years. For the persecuted and the victims, the legal reconditioning was especially connected with many disappointments, as, for example, Ulricke Guckes outlines in her thesis.[9] Bärbel Bohley characterized this situation as early as in the 1990s saying "What we wanted was justice, what we've got is a state under the rule of law." Many felt like being discriminated as "second-class victims" and complained that people showed too little interest in their fate. Although it was possible to achieve numerous financial improvements, the financial losses incurred due to the persecution and imprisonment weren't made up for in most cases. It is very difficult for many affected people to understand and notice that there are financial restrictions given the blank spaces in their CVs; especially bearing in mind that these restrictions to pension payments do not apply to the representatives of the former regime. Rainer Wagner, the chair of the Union of the Associations of the Victims of Communist Tyranny (*Union der Opferverbände kommunistischer Gewaltherrschaft*, hence the abbreviation *UOKG*), said during a hearing in the Committee on legal Affairs of the German Parliament in November 2014 that "the victims can only be appreciated if the perpetrators aren't paid court to anymore and if they are not better off than their victims." And Dieter Dombrowski, his successor at the UOKG explained in a paper bearing the headline "How can we advocate our interests effectively" (Wie können wir unsere Interessen wirksam vertreten) that one of the problems of the people persecuted by the communist dictatorship is that they frequently "are facing problems in presenting our interests to the public."[10]

8 Siegmund, *Opfer ohne Lobby*.

9 Ulrike Guckes, *Opferentschädigung nach zweierlei Maß? Eine vergleichende Untersuchung der gesetzlichen Grundlagen der Entschädigung für das Unrecht der NS-Diktatur und der SED-Diktatur*, Berlin: Berliner Wissenschaftsverlag, 2008. See also Borbe, *Die Zahl der Opfer des SED-Regimes*.

10 *Der Stacheldraht*, 2017, (3), 2.

ORGANIZATIONS OF FORMER VICTIMS

In order to add weight to their demands, but especially in order to get in touch with fellow sufferers, there were numerous victims' associations founded immediately after the communist dictatorship in the GDR had collapsed. Associations that had already been existing in West Germany such as the oldest victims' association, the Association of Victims of Stalinism (*Verband der Opfer des Stalinismus*, hence the abbreviation *VOS*) established in 1951, founded new unions in the East. The oldest victims' associations founded after 1990, were those consisting of former special camp prisoners as for example in Sachsenhausen, Mühlberg or Buchenwald. These were the prisoners that had been incarcerated by the Soviet occupation force in the former Nazi concentration camps like Buchenwald or Sachsenhausen immediately following 1945. More than one third of the 120,000 prisoners didn't survive the imprisonment. In 1992, the existing associations united, establishing the Union of the Associations of the Victims of Communist Tyranny (*Union der Opferverbände kommunistischer Gewaltherrschaft*, hence the abbreviation *UOKG*),[11] which is also a member of the "Internationale Assoziation der Verfolgtenverbände (InterAsso)", i.e. the International Association of Victim's Unions[12] which is organized according to German law. The work of these associations is paid for by donations from its members and relatives as well as from resources provided by the "Federal Foundation for the Reappraisal of the SED-dictatorship" and the respective State Commissioners for the Records of the State Security Service or rather for the reappraisal of the communist dictatorship.

LESSONS LEARNT AND RECOMMENDATIONS

- The way policy and society chooses for approaching the victims is one of the most important issues that are to be solved after a dictatorship is overcome. The experience drawn from *Transitional Justice* processes worldwide shows that the issue of transition is comprised of far more than just court trials or administrative changes. Especially if one reaches the limits of the law within a constitutional state, other forms have to be found in order to provide the victims and persecuted not merely with financial compensation or criminal rehabilitation.
- In this case, it's important to find forms and means of appreciating the victims and giving them the opportunity through visible identification points such as memorials, national memorial days etc. to see that their fate and experience is reflected and stored in both the public space and awareness
- Furthermore, it's important to establish public structures in order to create a public awareness within commemorations themselves as well as in the education sector, in research and in science, and this awareness is to be about the crimes and the injustice as well as the victims and the responsible people and the perpetrators. Such a thing can be achieved, for example, by:
  - **a/** constructing memorials, monuments and commemorations in public spaces, creating public ceremonies and by being appreciated both by the leading representatives of the country and by civil society
  - **b/** establishing institutions free of party political instrumentalization and routine policy interests and thus – push forward the clarification regarding the previous regime on a safe financial basis by carrying out diverse activities
- It's necessary to create "sheltered" or safe areas where victims receive psychological care and where there are specialized contact persons with whom they can talk about their fate and consequences they suffer from.
- Funds should be established that enable the representatives of the victims of tyranny, war and dictatorships to publish their topics independently and to represent these topics within the political sphere and society.
- The legal obstacles must be kept as simple as possible, including the approach to regional contact persons. This then serves in order to receive legal advice and to put through material and immaterial claims and to keep these processes as transparent and as simple as possible in order to make up at least partially to the victims.

11 www.uokg.de

12 In English: the International Union of Association of Persecuted People [Translator's note].

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CEVRO

REHABILITATION OF VICTIMS

Radosław Peterman

Despite the lack of major controversy over the rehabilitation of people repressed for political reasons, the restoration of dignity and the redress for the victims through the legislature has encountered resistance until this very day. The Second World War dashed the plans to maintain independence, and after the war, the German occupation was replaced by the Soviet one. In the historical dictionaries of the People's Republic of Poland, the word *independence* was readily replaced by the concept of *liberation*. Admittedly, the Sejm adopted without much opposition in February 1991 a law on nullification of all the rulings granted to persons subject to repressions in the People's Republic of Poland for the activities aimed at the independent existence of the Polish State, and on the granting compensation for damage and redress for the suffered harm (Journal of Laws 1991.34.149). This law initially included persons who were subjected to repression by law enforcement and judicial authorities or out-of-court bodies operating in the present territory of Poland between 1 July 1944 and 31 December 1956 and within the territory of Poland within the limits set by the Treaty of Riga, during the period from 1 January 1944 to 31 December 1956, for activities aimed at the independent existence of the Polish State or because of such activity. The word *independence* used in this act caused controversy when it was decided to extend the law to include the time-limit thereof until 1989. Finally, the amendment of the law covered the activities of the anti-communist opposition until 31 December 1989, including those who were subject to internment as a result of the introduction of martial law in Poland on 13 December 1981. Three possible compensatory measures were introduced:

- compensation for the damage sustained;
- redress of the damage suffered;
- coverage, in whole or in part, of the cost of symbolic commemoration of a person unjustly repressed if his or her death resulted from the execution of a judgment declared invalid.

Article 1 § 1 of the above law considered *"judgments issued by the Polish law enforcement and judicial authorities or out-of-court bodies in the period from 1 January 1944 to 31 December 1956 to be invalid if the alleged or attributed act was related to activities aimed at the independent existence of the Polish State, or if the judgment was issued because of such activity, as well as judgments issued against resistance to collectivization of agriculture and compulsory agricultural supplies."* However, this law requires a person harmed by the communist authorities to prove in a lengthy trial that the acts attributed to him/her, not constituting a crime, were a form of activity aimed at the independent existence of the Polish State. This situation often humiliated those people. The law enacted at the time constituted a specific legal prosthesis in the face of the assumed continuity of statehood between the People's Republic of Poland and the Third Republic of Poland, both from the point of view of international law and of internal law, resulting, for instance, in that in spite of the political transformation, the verdicts given by courts of the People's Republic of Poland did not lose their legal force and thus continue to function in legal transactions today.

Despite the fact that the law has been in force, not all the people have applied for the annulment of judgements given during the People's Republic of Poland for political reasons. Therefore, the Institute of National Remembrance together with the Supreme Bar Council undertook an action entitled "You have the right" under which lawyers provided free legal counselling to victims of the communist authorities.

Originally, the Act established only the obligation for the State Treasury to pay compensation and redress for the damage sustained as a result of repressions for the activities aimed at independent existence of Poland. The 2007 amendment added the decision of internment during martial law as a basis for these benefits to paid out. This decision was the consequence of the need for consistent action of the law maker, as the law regulates the state's attitude toward citizens fighting for its independence and should cover the broadest possible range of forms of conducting independent activity.

The martial law introduced in December 1981 is one of the most important events in the history of modern Poland. It aroused great controversy and political-historical disputes. The founders of the martial law, led by General Jaruzelski, justified its necessity with the economic situation of the state and threat of an armed intervention from the neighbouring countries of Poland, of the so-called real socialism block. A thesis was proclaimed that martial law had been introduced in accordance with the law effective in the state and that it had been implemented in a humanitarian manner and without much loss to society. He was considered so-called a "less evil" solution protecting the public from the tragedy of a civil war or an armed intervention of foreign countries.

Those repressed during the period of martial law in Poland (1981–1983) rejected these justifications and found that martial law had been introduced in violation of the law in force contrary to the opinion of society, that it had been introduced not in the interest of Poland but of the USSR, that it had been a "war with the nation", that it had been introduced in a very brutal way and had caused great personal and moral losses. After the election of the new parliament on 5 December 1991, the Parliamentary Club of the Confederation of Independent Poland [Konfederacja Polski Niepodległej] led by L. Moczulski accused the so-called authors of martial law and requested the Sejm to bring them before the State Tribunal under the charge of the martial law and its consequences. The motion included 9 senior officers of the Military Council of National Salvation [*Wojskowa Rada Ocalenia Narodowego* (WRON)] and 15 members of the 1981 Council of State [*Rada Państwa*]. The Sejm established the Constitutional Responsibility Committee to examine the validity of the motion. On 19 September 1993, new elections were held which brought the victory of the left-wing parties. The new Sejm changed the composition of the Constitutional Responsibility Committee y. On 13 February 1996, the Commission decided, by means of the majority of 12 to 5 with 1 abstained vote, to request that the Sejm should discontinue the case. On 24 October 1996,

the Sejm approved the Committee's motion. It was not until more than ten years later that the Ombudsman [Rzecznik Praw Obywatelskich] requested, in a letter of 12 December 2008, that martial law be considered to have been introduced unlawfully. In its motion to the Constitutional Tribunal, the Ombudsman argued that the assessment of the constitutionality of the introduction of the martial law in 1981 was not irrelevant to social consciousness. Due to the fact that the victims of the actions of the communist oppressors had encountered obstacles and sometimes even blockage on their way to pursue their freedoms and rights in a democratic state of law, the Ombudsman decided to make it easier for victims of the totalitarian repression of the totalitarian state to pursue moral and legal redress and to render justice. It was also necessary, in the Ombudsman's opinion, to officially declare the unconstitutionality of these decrees, in view of the protection of constitutional rights and freedoms, as well as significant from the trial perspective for the judicial authorities to rule as to the possible liability of persons whose actions led to the issuance of these decrees. It should be noted, however, that the Ombudsman did not dispute the Decree of 12 December 1981 on the forgiveness of certain offenses and crimes (Journal of Laws, No. 29, Item 158), since the decree contained amnesty provisions which were beneficial for individuals within the scope of its activity. The Constitutional Tribunal stated that issuing a judgment on the constitutionality of the decree on martial law and the decree on special proceedings was necessary to ensure the protection of constitutional freedoms and rights.

After hearing the case, the Constitutional Tribunal, in its judgment of 16 March 2011, case file no. K 35/08, stated the unconstitutionality of the decree on martial law and the decree on special proceedings because of the lack of the Council of State's competence for the issuance thereof. The Constitutional Tribunal established that the adjudication as to the martial law decrees was necessary for the protection of constitutional freedoms and rights. It was aware, however, of the fact that many of these rights and freedoms could not be restored and their violations could not be redressed. The Tribunal, did however, recognize that the judgment in this case was important for the consolidation of the rule of law and, irrespective of its limited direct effect, served to safeguard the principle of citizens' trust in the State and its institutions. Recently, the Act of 20 March 2015 on the activities of the anti-communist opposition and on people victimized for political reasons which grants cash benefits and financial aid to them, was recently adopted.

In Poland, there are still many burial places of victims of communist terror between 1944–1956 yet to be discovered. Probably one of the most notorious cases is the fate of Gen. August Emil Fieldorf aka "Nil" and captain Witold Pilecki. The enforcement of harsh law was carried out by military courts, which took over the jurisdiction over civilian population accused of so-called state crimes. Military courts operated from January 1946 until the turn of July and August 1955. During this period, they issued 3468 death sentences, of which 1363 were carried out. The communist authorities did not inform families about the sentences and the burial sites. For decades communists strive to erase the memory of the soldiers of the resistance underground from the social consciousness. They tried to obliterate all the traces thereof. The existing legal acts treated the prisoners' bodies as state property and gave prison authorities the power to decide as to their burial. In most cases, the bodies of the executed prisoners were not given to their relatives. The bodies of the people who dies during the investigation or in the course of the penalty was less harsh. Usually it was agreed to provide the bodies to the relatives. However, it was ordered that during the funeral the coffin was to remain closed to hide traces of beating.

To keep everything most secret, burials took place at night, in specially designated sections of the cemeteries. Often the victims were buried without coffins. Some reports indicate that sometimes the corpses were sprinkled or poured over with special corrosive substances to prevent any identification. The prisoners' tombs were not marked, and burials were rarely recorded in the cemetery books.

It was not until the IPN was created that exploration work was started. Only in 2011 did the IPN launch a national research project "Searching for unknown burial sites of victims of communist terror between1944–1956." The partners of the Institute in this undertaking include the Ministry of Justice, the Council for the Protection of Memory of Fight and Martyrdom [*Rada Ochrony Pamięci Walk i Męczeństwa*], the Pomeranian Medical University of Szczecin, the Medical University of Wrocław, the Polish Genetic Database of Victims of Totalitarianism [*Polska Baza Genetyczna Ofiar Totalitaryzmów*], the Institute of Forensic Studies [*Instytut Ekspertyz Sądowych*] in Kraków. This project aims to establish the location of the burial sites of those who were executed and murdered in the Stalinist period, the exhumation and identification of the remains. The remains of several hundred murderers were recovered on the grounds of the "Ł" cemetery quarter in Powązki Cemetery in Warsaw and Białystok Detention Centre, and in many other places. So far, about 50 of them have had their identities recovered by means of DNA-based identification. The law on graves and military cemeteries in force until 2014 did not allow or even impeded effective search. As a result of the amendment to this law, it was possible to exhume and to honourably bury the victims of communist terror of 1944–1956.

After 1989, several hundred veterans' organizations were established or formed according to various criteria (nationwide, regional, gathering veterans of all formation or of a chosen period or organization) including from several hundred thousand to several dozen members. At the same time, the Veterans and Persecuted Persons' Office [Urząd do Spraw Kombatantów i Osób Represjonowanych] was established by virtue of the act of 24 January 1991 *on veterans and some people being victims of war and post-war repressions*. The basic legal acts that define the tasks carried out by the Office include: the Act of 31 May 1996 *on the financial benefit of persons deported for the purpose of forced labour and imprisoned in labour camps by the Third Reich and the Union of Soviet Socialist Republics*; the Act of 7 May 2009 *on the redress to families of victims of collective liberation protests of 1956–1989* and the Act of 20 March 2015 *on activists of the anti-communist opposition and persons repressed for political reasons*.

The Veterans and Persecuted Persons' Office is the central government administration authority in Poland the task of which is to undertake actions to provide participants in the fight for Poland's independence and victims of war and post-war repressions with the necessary aid and care and due respect and remembrance. The specific tasks of the Office include, among others, undertaking initiatives related to the cultivation and popularization of traditions of the struggle for independence and sovereignty of the Republic of Poland and the memory of

the victims of war and post-war period. The Office also issues decisions to grant the rights and benefits to veterans, activists of the anti-communist opposition, and victims of repressive totalitarian regimes, as well as the widows and widowers of them.

LESSONS LEARNT

- It is important to invalidate judicial decisions issued in political trials.
- the Persons who were subject to repressions should receive redress for physical and mental suffering.
- People of merit fighting for state sovereignty should be honoured.
- The procedure involved in invalidation of court judgments should be simplified.

RECOMMENDATIONS

- The country rebuilding its democracy should first and foremost invalidate judgments given as a result of political repression.
- The persons repressed should receive immediate assistance from the state and be appropriately honoured.

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CEVRO

REHABILITATION OF VICTIMS AND COMPENSATIONS

Luciana Jinga

In terms of rehabilitation, Romania represents a special case in the former Soviet Bloc. Most post-communist countries passed rehabilitation laws in the early 1990s: Bulgaria and Czechoslovakia in 1990, Germany and Hungary in 1992, Albania in 1993.

Romania offered rehabilitation with considerably delay. The first law that annulled the communist-era convictions handed down on political grounds came in 2009, only to be declared unconstitutional and blocked. The compensation program, on the other hand, was one of the first measures taken by the first post-communist government, but provided mostly symbolic benefits and very little financial support.

SCOPE AND TYPOLOGY OF THE REHABILITATION

First of all rehabilitation of those convicted on political grounds is a symbolic gesture that speaks itself about the abuses of the communist courts. Second, after December 1989, many former political prisoners were asking for rehabilitation for practical raisons. They needed a clean record in order to occupy public positions or to get a travel Visa. Access to the public system jobs still had the condition of a clean record by Romanian authorities. In the eyes of Romanian society, political prisoners were no better than any other convict. Colleagues, neighbours, and even family members were reluctant to associate with them.

LEGAL FRAMEWORK OF THE REHABILITATION AND THE COMPENSATION PROGRAM

DECREE-LAW NO. 118/1990

In 1990, Romania adopted Decree-Law No. 118, regarding some of the Rights for People Persecuted for Political Reasons during the Dictatorship Installed in Romania on the 6 March 1945, which covered those who were displaced, deported, imprisoned, abused in psychiatric institutions, or confined to a particular place of residence by the communist courts or the Securitate, if the measure was taken as a means of political persecution. The Decree-Law provided symbolic financial compensation for each year of imprisonment (200 lei) or displacement endured, free medical assistance and medication, free use of public transportation, and means and income tax exemptions. Here it is important to stress that a larger category of persons (retired persons for example) benefited from similar measures. The time spent in prison, labor camp, or obligatory residence was recognized as working time for pension purposes. Those who spent time in prison or psychiatric wards could count towards their state pension, both the time period and the time they could not work because of the invalidity resulting from imprisonment. When calculating pension rights, each year of persecution counted as eighteen months. These rights extended to persons who could not work because the Securitate monitored them for some political reason. The victims' living relatives could claim small pension rights as successors. Local commissions consisting of representatives of the Ministry of Labor and the Association of Former Political Prisoners decided which former victims could qualify for these rights. The decision could be appealed within fifteen days after notification of the claimants.

Individuals who were convicted for crimes against humanity or who were proven to have conducted fascist activity within an organization or movement could not enjoy reparations granted through this law. This is an important distinction which was maintained in other laws and in judiciary practice as well.

Until 1996, the Social Democrat government continued to deny the criminal character of the communist regime and refused to raise compensation to more meaningful levels, and adopt the rehabilitation law

EMERGENCY ORDINANCE NO. 214/1999

Emergency Ordinance No. 214/1999, repeatedly amended between 2000 and 2015, also provided reparations to the victims of the communist regime. Based on this legal document, those persons who were convicted for crimes committed for political reasons or subjected to administrative abuse, as well as individuals who participated in activities of armed opposition or forced the overthrow of the communist regime between 1945 and 1989 were entitled to be granted the status of "fighter in the anti-communist resistance". According to article 2 of this law, the main acts which could qualify as crimes committed for political reasons are protests against the communist dictatorship and its abuses, the support for pluralist and democratic principles, propaganda for the overthrow of the communist social order, armed opposition against the communist regime, and respect for human rights and fundamental freedoms. The status of "fighter against anti-communist resistance" is granted by a committee formed by representatives of the Ministry of Justice and the Ministry of Administration and Interior, as well as representatives of the Association of Former Political Prisoners in Romania. The holders of the "fighter against anti-communist resistance" status benefited by recieving restitution of confiscated goods and rights provisioned by Decree-Law No. 118/1990. Again, the title was not granted to members of the far-rightist Iron Guard movement. Law No. 568/2001 extended these benefits to those who engaged in armed fighting against the regime during the 1945–1964 period or who were expelled by the communist regime from schools and universities on political grounds. The consequences of the two laws remained minor as the additional benefits were mostly symbolic. More than that, the ordinance was applied differently across the country, generating a series of discrepancies between former victims who had similar cases but resided in different localities.

1990–2009 – REHABILITATION ON INDIVIDUAL BASIS

For two decades the Romanian post-revolutionary governments passed no measures regarding the rehabilitation of former political prisoners. The rehabilitations were decided on an individual basis at the discretion of the prosecutor general, who could invoke an appeal to the court of last resort (recurs în anulare). This procedure allowed a political figure appointed by the executive to overturn definitive court orders. The prosecutor general used the procedure to block both the return of property awarded by the courts, and also to challenge the legality of the criminal and administrative court verdicts handed down before 1989. Another possibility of obtaining rehabilitation was to convince the courts to reopen the case. Former political prisoners, however, did not use this legal solution because of the time, money, and time consuming procedure. What they wanted was for the state to recognize its past mistakes and grant rehabilitation automatically.

In 2000, sixteen former political prisoners condemned to forced labour by the communist courts from 1951 through 1954 were rehabilitated and their jail sentences were annulled, but the procedure remained discretionary

LAW NO. 221/2009

In 2009, the Romanian Parliament passed Law No. 221/2009 on the Politically Motivated Convictions and Administrative Measures Handed Down from 6 March to 22 December 1989. The project was initiated in 2007 by the historian Marius Oprea, the first president (2005–2010) of the Institute for the investigation of Communist Crimes and the Memory of the Romanian Exile, Constantin Ticu Dumitrescu, head of the Association of Former Political Prisoners, and Minister of Justice, at the time, Monica Macovei. The law rehabilitated all persons sentenced for political reasons by communist courts to jail, forced labor, or forced domicile on the basis of criminal code stipulations, communist laws, and administrative measures that condemned acts of dissidence and opposition, armed or unarmed. The law extended to persons who had already benefited from Decree-Law No. 118/1990 and Government Ordinance No. 214/1999. All abusive court sentences were annulled and erased from all records. In addition, within three years of the law's adoption, politically persecuted persons, and their descendants, could apply to the Romanian state for compensation of moral damages for the time spent in prison and for property lost in abusive confiscations that accompanied the court sentences to jail, forced labor, or forced domicile. Persons who had been demoted to an inferior army rank could also ask for the reversal of that decision. As in the case of previous legislation on rehabilitation, these advantages did not extend to the "persons condemned for crimes against humanity, and those who had promoted racist and xenophobic ideas and doctrines that encouraged hate or violence toward ethnic, racial or religious groups", mostly refering to members of the Ion Antonescu regime and the Iron Guard. According to the law, a crime had a political nature, if the person expressed opposition or protested against the totalitarian regime, had an affiliation with democratic principles by protesting against the communist dictatorship, the communist ideology, the abuse of power by those who held the reigns of the country, supported principles of democracy and political pluralism, participated in propaganda that was aimed to revert the social order to democracy, used weapons to eliminate the representatives of the communist regime by force, respected human rights and liberties, or eradicated communist discriminatory measures grounded in religion, political opinion, wealth, or social origin. The political nature of these convictions had to be assessed by the court, because communist sentences rarely mentioned the political opinions of the accuses or the country's political situation.

As in the case of the previously discussed law, article 7 mentions that the provisions of Law No. 221/2009 are not applicable to persons convicted for crimes against humanity or for carrying out racist, xenophobic or anti-Semitic propaganda. This specification is important as it allows us to ascertain that the political nature of a conviction is determined by the reason for the conviction, and not only by the conviction's legal grounds. While most claims were rather small, a handful of them reached hundreds of thousands of Euros. For the government, already facing a global financing crisis, it became evident that the total sum of claims could seriously burden the national budget and decided to put a cap on the amount of compensations, by the Ordinance No. 62/2010.

One month later, an Romanian Ombudsman challenged Ordinance No. 62/2010 in the Constitutional Court, arguing that it violates provision regarding equality of rights stipulated by article 16 of the Constitution. Basically, the Ombudsman pointed out that the ordinance establishes differential legal treatment between persons who have already had a final decision based on Law No. 221/2009, and persons whose requests had not been settled at that moment. The Constitutional Court acceded to this perspective and ruled that the provisions of Ordinance No. 62/2010, which established thresholds for compensations, are contrary to Romanian fundamental law. Furthermore, the Court considered that the application of the ordinance to situations in which there is an undefinitive judgement, in the first instance, also violates the principle of non-retroactivity, stipulated by article 15 (2) of the Constitution.

However, on 21 October 2010, The Constitutional Court settled the objection of nonconstitutionality raised by the Ministry of Public Finances, in the Tribunal of Constanța with several files regarding the application of Law No. 221/2009. The Court found that there are two legal norms which provision allows for the allocation of money to persons persecuted for political reasons by the communist dictatorship, namely Decree-Law No. 118/1990 and Law No. 221/2009. As Decree-Law No. 118/1990 established the conditions and the value of the monthly compensation, a second regulation with the same objective infringes on the supreme value of justice proclaimed by article 1 (3) of the Constitution. Furthermore, the parallel regulations regarding these types of compensations also infringe on article 1 (5) of the Constitution regarding the mandatory observance of laws. As a consequence, the Court declared as unconstitutional article 5 (1) (a) thesis one, according to which the state is obliged to allocate compensation for moral damages caused by political convictions.

Furthermore, the ruling of the Constitutional Court is also relevant regarding the nature that reparations have in the Romanian legislation. According to this decision, the objective of compensations for moral damages suffered by the victims of the communist regime is not the restoration to the situation before the gross violations of human rights law occurred. The aim is rather to produce a moral satisfaction through the acknowledgement and

condemnation of measures which violated human rights. Furthermore, the Court considered that the obligation to allocate compensation to persons persecuted by the communist regime has only a moral nature. This view is motivated by the Constitutional Court, through several rulings of the European Court of Human Rights, which found that the provisions of the European Convention on Human Rights do not impose on member states specific obligations to repair injustices or damages caused by previous regimes.

SOCIAL SATISFACTION

According to some voices, approximately one million Romanians could have benefited from the provisions of Law No. 221/2009. However, by the time the law was passed the number of political prisoners still alive had quickly declined. In September 2010 there were 174 cases in which the courts handed down definitve decisions awarding compensations in virtue of Law No. 221/2009. The courts awarded compensation packages ranging between 300 and 1 million euros.

One of the arguments in favour of the law was that another important category of victims, the victims of and participants in the 1989 revolution, had already benefited from Law No. 341/2009 that granted substantial benefits including monthly compensation of 3,672 Lei (equivalent to 900 euros) for those disabled during the events, and 2,200 Lei (500 euros) for the participants and the their surviving relatives, as well as free housing, public transportation, access to public cemetery plots, and access to public crèches and kindergartens for their children.

After Law No. 221/2009 came into force, several former political prisoners asked the Romanian government for reparations proportional to the time they spent in communist prison and the suffering they endured.

One of the beneficiaires was Ion Diaconescu, politician and former political prisoner, who was awarded 500,000 Euros by the Bucharest Tribunal in June 2010. Following this groundbreaking decision, the Romanian Government issued Emergency Ordinance No. 62/2010 to amend Law No. 221/2009 and established a threshold of 10,000 Euros for the compensation of the convicted persons, 5000 Euros for the husband / wife and first grade descendants and 2500 Euros for second grade descendants.

The law also included among the beneficiaries, persons persecuted for their participation in the 1987 workers' protests in Brașov, who were assigned forced residences, were relocated to other towns, or were deported.

It is important to stress that according to that piece of legislation, no other group of communist-era victims qualified for that series of advantages, including the miners who participated in the 1977 protests, which were very similar to the events in Brașov 1987. This law also made no reference to other categories of victims, such as the women that suffered or died as consequence of the pronatalist law, the children that suffered and died in the homes for "unrecoverable minors", or those committed to detention centres for minors. The exclusion is odd, taking into consideration that Marius Oprea, the most vocal initiator of the law, as President of IICCR, supervised a team of researchers that documented these situations.

ORGANIZATIONS OF FORMER VICTIMS

THE ASSOCIATION OF FORMER POLITICAL PRISONERS IN ROMANIA (AFDPR)

The first, and still most representative organisation of the former political prisoners created on the 2nd of January 1990, is Asociația foștilor deținuți politici din România, The Association of former political prisoners in Romania. It was formed for the expressed purpose of seeking reparations for the suffering of its members. The initiative group included well known former political prisoners like Constantin Dumitrescu, Radu Ciuceanu, and Constantin Lățea. In December, the organisation reached 120,000 formally registered members and 41 national branches. The headquarters was established in Bucharest, and the first Congress of the AFDPR was in October 1990, in the presence of 600 active members, who elected Constantin (Ticu) Dumitrescu as president of the organization. This event also marked the first official split between the founding members, which resulted in the expulsion of Radu Ciuceanu. 1995 represented a second turning point of the organization. With the support of the The Christian Democratic National Peasants' Party, a group organized around Cicerone Ioanițoiu, they left the AFDPR. The Congress, held the same year, reaffirmed the unity of its members and confidence for the historical leader, Constantin (Ticu) Dumitrescu. As president of the Association of Former Political Prisoners, his initiatives touched on all the important aspects of Romanian transitional justice. The first major breakthrough was the rehabilitation of former political prisoners (Law No. 118/1990). Subsequently, in 1991, he addressed a criminal complaint against those responsible for the crimes of the totalitarian regime. In 1993, he initiated what later become the Ticu Law (Law No. 187/1999 on Access to the Securitate Files and the Unveiling of the Securitate as a Political Police). His last important initiative was the 2007 law project concerning the legal redress for those who received politically motivated convictions, and the administrative measures from 6 March 1945 to 22 December 1989, adopted as Law No. 221/2009, a year after his death.

His successor Octav Bjoza was re-elected for a new mandate until 2019. In 2012 the social democrat government appointed him as honorary ambassador for the European Union, and since 2014 he has been head of the State Office for acknowledging the merits of those who fought the communist regime in Romania. The same year he was decorated by the Romanian President Klaus Iohannis. Recently, Octav Bjoza teamed up with Radu Ciuceanu, the director of the Institute for the National for the Study of Totalitarianism and other representatives of former political prisoners, against Law No. 217/2015 (on the ban of organizations and symbols of fascist, racist or xenophobic character and of the promotion of the cult of people that are guilty of crimes against peace and humanity), by questioning the fascist nature of the Romanian Legionary Movement.

OTHER NATIONAL OR LOCAL ORGANISATIONS OF FORMER POLITICAL PRISONERS

Federația Română a Fostilor Deținuți Politici și Luptători Anticomuniști/ The Romanian Federation of Former Political Prisoners and Anti-Communist Fighters, or Fundația Luptatorii din Rezistenta Armata Anticomunista/ the Foundation

"The Fighters in the Armed Anti-communist Resistance", although an active part in the public actions of former political prisoners remained in the shadow of AFDPR.

ICAR FOUNDATION

Another important organisation is the ICAR Foundation, created in 1992, which provides medical, psychological, legal, and social rehabilitation services to survivors of communist-era political persecution and gross human rights abuses. ICAR is the only organization in Romania that has set out and implemented such a program. It helped to establish 2 other rehabilitation centres that offer a various range of rehabilitation services to victims of serious human rights abuses (such as arrest, condemnations on political, ethnical or religious ground, deportation, exploitation, extermination in concentration camps, torture, inhuman or degrading treatments) among former political prisoners and their immediate families either by in-house services or by referral to external professional networks.

OUTCOMES OF THE LAW NO. 221/2009

NEGATIVE

The National Council for the Study of the Securitate Archive and the Institute for the Investigation of Communist Crimes, the two institutions that could provide the documents and legal assistance to former political prisoners, were quickly overwhelmed by petitions from potential beneficiaries, but also from the courts who asked them to acknowldge their rights. In March 2012, the total number of such requests for the CNSAS reached 11.000, the . IICCMER had less than 20 researchers who had to solve another 2.000 petitions.

Former political prisoners denounced the stipulations of the law that required them to go to court to find justice. The law recognized as political in nature only the convictions expressly included among communist laws and criminal code provisions after 1964, that were listed in article 1.2, and asked the courts to demonstrate the political character of all other convictions. The law obliged political prisoners who received non-political sentence, usually charged with petty crimes, to petition the courts to have their rehabilitation rights recognized. A category particularly problematic concerned those committed to psychiatric facilities, and literally, forgotten by the system and their families. Despite the existence of Securitate records on their names, without medical documentaion, the courts, in many cases, did not granted any reparation packages.

Emergency Government Ordinance No. 62/2010 limited moral damages for political imprisonment to a total of 10.000 Euros for victims, 5000 Euros for their spouses and children, and 2500 euros for their grand-children. It was assumed that the victims who received reparations through Decree-Law No. 118/1990, Emergency Ordinance No. 214/1999 and Law No. 568/2001 qualified for lower compensation levels than the victims who had received no support prior to 2010, whereas victims who had suffered for longer periods of time and from more serious human rights violations were entitled to higher compensation levels.

In November 2010 the Constitutional Court invalidated Emergency Government Ordinance No. 62/2010 and Law No. 221/2009. This decision blocked the reparations program and reversed compensations to the meagre levels in force prior to the adoption of Law No. 221/2009.

The quick and unexpected evolution of the situation generated confusion among potential beneficiaries and divided former communist-era victims into three categories: 1) those to whom court decisions handed down between the adoption of Law No. 221/2009 and Emergency Ordinance No. 62/2010 who were awarded unlimited reparations, 2) those to whom court decisions handed down between the adoption of the Emergency Government Ordinance No. 62/2010 and the Constitutional Court decisions of 2010 granted reparations not exceeding the equivalent of 10.000 Euros, and 3) all other victims who either did not aske for compensations or in whose cases the courts were unable to reach a decision by late 2010 (the vast majority). The Small Judicial Reform of November 2010 scrapped the possibility of contesting restitution verdicts at the Supreme Court with a second appeal. Different appeal courts gave different solutions to similar restitutions cases, adding more frustration to former victims.

The total number of communist-era victims who have asked for reparations and rehabilitation remains unknown. According to the Ministry of Work and Social protection, the total number of communist era victims that received compensations decreased from 63.259 in 2009 to 54.378 in 2013. According to the AFDPR, in 2014, 30.000 wives and descendants entitled to compensations, 20.000 persons deported, and 3000 former political prisoners were still alive.

The court practice shows that the vast majority of requests were for restitution, which implies rehabilitation as first step, and very few asked for rehabilitation alone. Because of the considerably delay; only a small fraction of the former political prisoners were still alive and could benefit from it.

The compensation program, although one of the first measures taken by the first post-communist government, provided mostly symbolic benefits and very little financial support. The Law No. 221/2009 that was meant to expand the compensation scheme produced effects for less than 12 months and was quickly replaced by other less favourable legislative measures. But not even the less favourable Emergency Ordinance No. 62/2010 produced effects because, both legislative stipulations were soon declared unconstitutional and blocked.

The rehabilitation law come into force two decades after the fall of other communist regimes. Because of the considerably delay; only a small fraction of former political prisoners were still alive and could benefit from it.

The associations of victims are pushing for a historical reconsideration of the fascist nature of the Iron Guard. This would increase the number of possible beneficiaires but by default is raising public notoriety of the Romanian extreme right extremists.

POSITIVE

In 2014, the leaders of the Liberal Party initiated a law project to raise the monthly amount of compensations, from 200 lei to 400 lei (90 Euro). The law passed in February 2015.

In 2014, the Romanian Government transformed the former State Office for the victims of and participants in the December 1989 revolution to the State Office for the acknowledgement of merits for those who fought the communist regime in Romania between 1945–1989. This State Office is organised as public institution,

subordinated to the Government, has a clear objective to initiate new legislation and to coordonate the application of current romanian legislation regarding the rights of the revolutionaries of December 1989, the fighters of the anti-communist resistence, but also persones that suffured after participating in the 1987 anti-communist events of Brașov. The exact categories concerned by the activity of this institution are those decribed by Law No. 341/2004, Law No. 221/2009 and the Decree-Law No. 118/1990.

The institution is organised as a link between the associations of victims and the Romanian public authorities, both at local and central level. Besides the legislative responsibilities, other objectives include:

- Financing programs initiated by the anti-communist fighters or by associations of victims,
- Elaborate studies in order to identify sustainable financial resources for the programs initiated by the anti-communist fighters or by associations of victims,
- Insure the creation and administration of a national data base of all the anti-communist fighters;
- Offer support to all the associations of victims in organizing national and international events.
- Initiates memorialisation programs and projects.

The Current head of the State Office is Octave Bjoza, the president of AFDPR.

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REHABILITATION OF VICTIMS

Nikolai Bobrinsky

INTRODUCTION

The rehabilitation of the victims of repressions is an essential part of the Russian policy to overcome the effects of the crimes of the Soviet totalitarian communist regime. Russia has managed to do a lot in this respect. However, the rehabilitation reflects, brighter than other aspects of the policy on the Soviet past, the ambiguous and compromising nature of the post-Soviet transitional justice in Russia.

THE RUSSIAN REHABILITATION CONCEPT IN AN INTERNATIONAL CONTEXT

At the beginning of this chapter a short remark should be made on what rehabilitation means in the Russian and international contexts. In various UN documents on the transitional justice, rehabilitation is understood as a form of reparation for victims of gross violations of human rights, including the provision of "medical and psychological aid, as well as legal and social services".[1] At the same time in the Soviet and Russian legislation and legal practices, rehabilitation has a completely different meaning – "firstly, the restoration of the honour and reputation of an unfairly accused or purged person, secondly, the restoration of the previously existing rights by canceling the decision on finding this person guilty and on applying specific legal sanctions against him/her".[2] As to the terminology used in the above-mentioned international documents, rehabilitation in this meaning refers, first of all, to satisfaction, and, then, to restitution – two other forms of reparations.

Since in Russia the ways of indemnification to the victims of political repression are not limited to rehabilitation, below you will find the review of all these measures based on their classification suggested in the UN General Assembly Resolution 60/147 dated December 16, 2005 "Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law".

REHABILITATION IN THE USSR

The first stage in the rehabilitation of the victims of political repressions in the USSR dates back to the mid-1950s – early 1960s, and it is related to overcoming the consequences of Stalin's personality cult. During that period rehabilitation enabled many prisoners of the Gulag to be released early, freed from limitations on the choice of residence and profession. However, despite the revision of repressive measures, the circumstances of their application and the places of burials were concealed from their relatives and society as a whole. From the mid-1960s the intensity of rehabilitation dropped dramatically. The process was renewed only during Perestroika. That was the first time when the term the "victims of political repressions" was used, and the very image of repressions gradually extended beyond Stalin's period. The most significant decisions of that time include the decree of the Presidium of the Supreme Soviet of the USSR dated January 16, 1989, which cancelled (though, with a number of exceptions) all the decisions on applying repressions, made by extra-judiciary bodies in the 1930s – early 1950s. These years also featured the revision of the verdicts of the Moscow show trials in 1936–1938, which became the public symbol of Stalin's terror towards the contemporaries. The official statistical data of the rehabilitated in the USSR were not published; but according to different estimates, their approximate number was from 1.5 to 1.9 million people.[3]

REHABILITATION AND OTHER FORMS OF INDEMNIFICATION, CAUSED BY POLITICAL REPRESSIONS, IN RUSSIA

Russian Law on the rehabilitation of the victims of political repressions was adopted in October 1991, before the collapse of the USSR. The failure of the putsch in August 1991 created favourable conditions for passing a rather radical version of the law, which was in many respects ahead of its time.[4] Members of the Memorial society, founded by those repressed and their relatives to remember the victims' sufferings, participated in preparing the text of the bill.[5] The main aim of the law was to

1 The UN commission on Human Rights. Sub-commission on the Prevention of Discrimination and Protection of Minorities. Study concerning the right to restitution, compensation and rehabilitation of the victims of gross violations of human rights and fundamental freedoms. The final report, submitted by Mr. Theo van Boven, UN document E/CN.4/Sub.2/1993/8 dated July 02, 1993, Para. 137; UN commission on Human Rights. Sub-commission on the Prevention of Discrimination and Protection of Minorities. Question of the impunity of perpetrators of human rights violations (civil and political). The final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119. UN document E/CN.4/Sub.2/1997/20/Rev.1 dated October 02, 1997. Para. 41; UN Commission on Human Rights. Updated Set of principles for the protection and promotion of human rights through action to combat impunity. UN document E/CN.4/2005/102/Add.1 dated February 08, 2005. P. 34; Resolution of the UN General Assembly 60/147 dated December 16, 2005. "Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law". Para. 21

2 А. Л. Кононов, К истории принятия Закона "О реабилитации жертв политических репрессий", in *Реабилитация и память. Отношение к жертвам советских политических репрессий в странах бывшего СССР*, Москва: "Мемориал" – "Звенья", 2016.

3 The first indicator was found as a sum of the data, given in a thesis by Ye.G.Putilova, the other – in the work by V. N. Zemskov. See: Е. Г. Путилова, *История государственной реабилитационной политики и общественного движения за увековечение памяти жертв политических репрессий (1953 – начало 2000-х гг.)* – Автореф. дисс.на соиск. уч. ст. к.и.н.), Екатеринбург: 2011, 20–22; В. Н. Земсков, *Сталин и народ. Почему не было восстания*, Москва: Алгоритм, 2014, 62.

4 Кононов, 12–18.

5 Rehabilitation of Victims of Political Repressions. Memorial Society; https://www.memo.ru/ru-ru/history-of-repressions-and-protest/rehabilitation/

eradicate the consequences of political repressions. To achieve it, the following measures were stipulated:

- Rehabilitation itself;
- Recognition of those who suffered as victims and condemnation of political repressions;
- Restoration of citizenship;
- Paying damages;
- Paying pecuniary damages for depriving of freedom, forced treatment in mental health institutions;
- Provision of housing;
- Social support;
- Return of the property lost due to repressions, or refunding or paying pecuniary damages for the property.

These reparations were not fully implemented. The 25 years that have passed since the time of adopting the law allow us to review its application practices and provide some interim results.

PERSONAL SCOPE OF APPLICATION OF LAW ON REHABILITATION

The law on rehabilitation applies to two categories of people:

- Victims of political repressions – those, to whom coercion was applied directly, and also children, who were left as minors without parental care (of one or both parents), of the people repressed for political reasons, and those who stayed with them (or the persons, who replaced them) in penitentiaries, exile, expulsion, or a special settlement.
- Those affected by political repressions – children, spouses, parents of people who were executed or died in penitentiaries and then were rehabilitated postmortem, that is the people who were not personally subject to coercion, but were deprived of their close relative as a result of repressions.

The victims of political repressions enjoy more rights than those who were affected by them.

Under the Russian law on rehabilitation the rights are granted only to those victims of political repressions who were subject to them on the territory of the RSFSR. Repressed RF permanent residents may, under certain conditions, also use the law in case the repressions were applied outside the RSFSR. In addition, the law applies to foreigners, repressed by Soviet Union court sentences (including the Supreme Court of the USSR, military tribunals and other national special courts), as well as by the orders of extra-judiciary bodies outside the Soviet Union, provided they were accused of actions against Soviet citizens and the interests of the USSR.

POLITICAL REPRESSIONS AS A CONCEPT

The main criterion of recognizing repressions as political is the respective motive of their application. Some kinds of repressions are specifically indicated in the law on rehabilitation (Article 3). Moreover, five sets of corpus delicti, specified in the Soviet Criminal Codes, are recognized as political repressions *per se* regardless of whether there is any actual evidence for accusation (Article 5). Regarding specific situations of mass repressions – the suppression of the peasants' uprising in 1918–1922 and the Kronstadt Rebellion in 1921, deportation of peoples during the Second World War, repressions against the clergy and believers, shooting protesters at the demonstration in Novocherkassk in 1962 – specific regulations were adopted. They indicated the illegal nature of the repressions against the participants of the above events and the need to rehabilitate the affected. Since the law on the rehabilitation does not indicate all the applicable coercive measures during collectivization (in particular, expropriation of property, cattle, tools), the practice of its application to de-farming (de-kulakization) remains unstable.[6]

The achievement of the 1991 law compared to the preceding official regulations on rehabilitating victims of political repressions was in recognition of the fact that repressions began at the time of establishing the Soviet power and lasted until its demise, and not during one specific limited period in its history.

The criterion of the political motive for repressing leaves significant freedom to the prosecution and internal affairs bodies in the way of how and whom to recognize as the victims of political repressions, and whom to refuse this status. In practice the first priority of rehabilitation belonged to those whose cases were subject to revision by virtue of law, with no verification of the actual circumstances (e.g., accusations of anti-Soviet campaigning).[7]

In addition, the law provided for the crimes, whose commitment (if proven with evidence) excludes rehabilitation (Article 4). Therewith, the body that passed the verdict is of no importance – whether it was a court or an extra-judiciary body, and what the initial accusations against the repressed person were. From the political point of view, exceptions to the right to rehabilitation mean that the contemporary Russian state recognizes such repressions as grounded, regardless of the way prosecution was carried out against the repressed person.

One of the rehabilitation law developers Anatoly Kononov explained the reason for exceptions as being for political issues: "From the viewpoint of *pure law,* any and all extra-judiciary decisions should have been cancelled immediately – those passed by non-constitutional 'troikas', 'special councils', 'executive boards' etc., and the person who underwent criminal repressions because of them, should be considered rehabilitated, since their guilt was not found in court. However, these bodies also punished former military criminals, bandits and raiders. To carry out investigation and legal proceedings anew for their cases many decades after the events was impossible for many reasons. But if they had been rehabilitated, they would have been granted the status of the victims of political repressions automatically as well as given benefits equal to those provided to the veterans of the Great Patriotic War. The social conscience could not put up with it, and the authors of the bill had to introduce exceptions. They referred to such forms of socially dangerous actions, which, though being political, were subject to punishment in any civilized country".[8]

Among the exceptions specified in the law on rehabilitation there is the organization of armed gangs, committing murders, robberies and other violent actions, as well as personal involvement in committing these actions within armed gangs. Any organized armed resistance would meet this definition. If we consider the Soviet state as a *civilized country*, this attitude to armed combating against it would be quite grounded. Out of the political reasons the developers and supporters of the law

6 See: А. Г. Петров О некоторых проблемах органов прокуратуры по исполнению Закона Российской Федерации "О реабилитации жертв политических репрессий", in *История государства и права*, 2007, (3), 10–15.

7 Victims of Political Terror in the USSR; http://lists.memo.ru/

8 Кононов, 21.

in 1991 did not have an opportunity to recognize any armed resistance to the Soviet power as legal. In this respect it is necessary to mention a paradoxical provision of the decree of the RF President dated June 18, 1996 No. 931 On the peasants' uprising in 1918–1922, according to which peasants participating in the rebellions in 1918–1922 could not be considered members of armed gangs in the meaning given in the law on rehabilitation. To establish legal grounds for rehabilitating peasant rebels, it was required to introduce an exception to the exception especially for them. The overall decision on rehabilitating all the participants of the resistance to the Communist regime in Russia was never adopted. The only retrospectively allowed form of resistance, recognized in the law on rehabilitation, was escape from prisons (paragraph "e" Article 5).

The definition of political repressions in the law on rehabilitation is open and includes "another form of depriving or restricting the rights and freedoms of persons, recognized as socially dangerous for the state or political order by class, social, national, religious or other criteria". However, according to the consequences of rehabilitation and legal practices prescribed by law, any politically motivated economic and administrative coercion and discrimination unrelated to imprisonment or deportation – in particular, nationalization of property rights, punitive tax system, coercive collectivization and labour in collective farms, professional and job limitations according to social, ethnic and religious criteria – were not recognized political repressions.

REHABILITATION

Rehabilitation means recognizing that enforced coercion against a person was politically motivated and either illegal or groundless. The decision on rehabilitation is made by the bodies of the Prosecutor's Office or internal affairs. Despite certain doubts about delegating the issue of rehabilitation to the competence of legal successors of those Soviet agencies, which were actually involved in political repressions, and the non-transparency of their activities, the problem of establishing a special body responsible for revising political cases of the Soviet epoch was never raised at the national level.

To confirm the restoration of honour, the victim of political repressions was given a certificate on rehabilitation. In addition, it was expected that the lists of rehabilitated persons would be published in official periodicals indicating the main biographic data and accusations under which the people were rehabilitated. However, the state did not publish these lists, instead, non-governmental organizations and individuals have been engaged in this process.

In total, since the effective date of the law on rehabilitation, over 3.5 million people and over 250 thousand children of the repressed people were recognized as affected by political repressions.[9]

RESTITUTION

The law on rehabilitation outlines different measures of restitution, aimed at restoring the status of the repressed, which existed prior to the coercion against them.

Firstly, their sociopolitical and civil rights (rights to vote, freedom of movement and residence and so on), lost due to repressions, were restored, as well as military ranks and special titles. Their state awards are returned.

Secondly, the rehabilitated were given the right to return and reside in the areas and settlements where they used to live before repressions were applied to them. However, after cancelling most of the existing restrictions on the freedom of movement and residence in the USSR this measure lost its practical significance.

Thirdly, according to the law, all the residents of the Russian Federation who were deprived of citizenship without their free determination, were granted the Russian Federation citizenship again.[10] In practice this provision could only be used by those people who resided in the RSFSR "immediately before emigrating from the former USSR for permanent residence".[11] When applying for a Russian national passport they had to provide a "document, confirming their permanent residence in Russia immediately before going away from the former USSR and a certified copy of the certificate of birth in Russia". Restoration of Russian citizenship on these conditions evidently did not take into account the persons who lost it as a result of emigration from Russia during or after the Civil war of 1917–1922, Soviet displaced persons, refusing to repatriate due to political reasons, as well as the children and other descendants of these people. In particular, the decree of the All-Russian Central Executive Committee and the RSFSR Council of People's Commissars dated December 15, 1921 on terminating the citizenship of certain categories of persons being abroad, was not cancelled. Some of their representatives were granted citizenship by the decrees of the RF President.[12]

Fourthly, rehabilitated persons are given back their property, seized and otherwise alienated from them due to the repressions. In the case of the death of the rehabilitated person, the return, refund or payment of pecuniary damages is to be made to their children, spouse or parents. Besides a relatively narrow pool of candidates for the above return, this measure is limited to some cases of expropriation only, which partly diminishes its value.

Pursuant to the law on rehabilitation, the following items are not subject to return:

- Property, nationalized (municipalized) or subject to nationalization (municipalization) by law, existing as of the time of its confiscation from the rehabilitated person. Therefore, real estate property in towns was not subject to return, except for some cases. The return of residential houses was allowed but carried out only on condition of meeting a number of requirements and in practice depended on the discretion of law-enforcement bodies;
- property, destroyed during the Civil and Great Patriotic Wars, and as a result of natural disasters;

9 The concept of public policy on remembering the victims of political repressions; http://government.ru/media/files/AR59E5d7yB9LddoPH2RSlhQpSCQDERdP.pdf

10 Some persons, deprived of the Soviet citizenship for political reasons in the 1960s–1980s, were granted the citizenship again even before adopting the law on rehabilitation, under the decree of the President of the USSR – The decree of the President of the USSR on cancelling decrees of the Presidium of the USSR Supreme Soviet on depriving certain persons, residing outside the USSR of the Soviet citizenship No. 568 dated August 15, 1990.

11 See: The provision on the procedure of considering the issues of the Russian Federation citizenship, approved by the decree of the RF President dated April 10, 1992 No. 386. P. 10–11.

12 Putin restored the Russian citizenship of Denikin's daughter. Lenta.ru, April 26, 2005; https://lenta.ru/news/2005/04/26/denikin/; President Vladimir Putin handed the Russian national passport to Andrey Shmeman. Official website of the President of Russia, June 06, 2004; http://kremlin.ru/events/president/news/31103

- land, horticultural areas, non-harvested crops;
- property, seized from the civilian circulation (e.g., museum collections).

In our opinion, the nationalization of property, bank accounts, seizure of cultural values also belong to political repressions, in the meaning given to them in the law on rehabilitation. Nevertheless, the results of these coercive measures are not in fact confirmed in the law on rehabilitation. Afterwards, the Parliament and the Constitutional Court of the Russian Federation refused to revise them.[13]

In fact it is possible to seek restitution of movable property, not included in museum collections or otherwise limited in circulation, and buildings in rural areas (e.g., those seized during de-kulakization or lost due to deportation[14]).

Provided it is impossible to return the property, its cost is refunded or (provided evaluation is impossible) compensated. The size of the paid damages and compensations are limited to 4,000 roubles for all property, except houses, and 10,000 roubles for all the property, including houses.

COMPENSATIONS AND BENEFITS

The law on rehabilitation provides for a lump sum monetary compensation for the deprivation of liberty, as well as social support.

The size of compensation is calculated depending on the period the person was deprived of liberty. In the original version of the law it was 180 roubles per month, but not more than 25 thousand roubles. Later on the compensation was calculated based on the minimum wages – three quarters of the minimum wages per month and not more than 100 minimum wages in total. Today the law again indicates fixed rates, though they are rather miserable – 75 roubles per month of imprisonment or stay in mental health institutions, but not more than 10,000 roubles.

Initially the law on rehabilitation established a list of non-monetary benefits to be provided to the rehabilitated persons. This was, first of all, the right to high priority housing allocation in case it was lost owing to the repressions. Furthermore, benefits for the disabled and the retired who were subject to the deprivation of liberty, exile or expulsion for political reasons:

- high priority package tour grants for health resort treatment and recreation;
- top priority medical aid and a 50 % price reduction for prescribed medicines;
- free provision of a Zaporozhets automobile upon providing respective medical indications;
- free pass to all means of city public transport (except for taxis), and public motor transport (except for taxis) in rural areas within the local administrative area where the person lives;
- free travel (a return trip) once a year by railway transport, and in the areas where railway transportation is missing, – water, air or intercity motor transportation at 50 % fare reduction;
- 50 % reduced payment rates for accommodation and utilities within the limits, established by the law;
- high priority fixed telephone installation;
- high priority joining of horticultural societies and housing construction cooperatives;
- high priority admission to care homes for the elderly and the disabled, stay and full board fully funded by the state with at least 25 % of the payable pension;
- free prosthetic dentistry including work and repairs, special rates for other prosthetic and orthopedic products;
- special offers for food and non-food products.

Since 2005 the provision of the rehabilitated persons with housing and social support has been within the competence of the RF regions. They identify the scope and procedures of support themselves.

The report prepared by the Presidential Commission on rehabilitating the victims of political repressions in 2013–2014[15] gave an overview of social support elements provided to the rehabilitated people in different regions of Russia. For example, such a social support element as free or a 50 % price reduction on the supply of prescribed medicines was in place in 28 subjects of the Russian Federation. In addition to the benefits earlier provided in the law on rehabilitation, in some regions rehabilitated persons were given monthly allowances. Their size varied considerably: from some hundreds of roubles (Orenburg, Saratov, and Tomsk regions – 300–370 roubles, the Yamal-Nenets autonomous district – 177.5 roubles) to several thousands (4,092 roubles in the Chukotka autonomous district; over 1,000 roubles in the cities of Moscow and Saint-Petersburg, and, taking into account the benefits in paying for housing utilities, public transport, holiday resort packages and specially priced medicines – over 3,300 roubles). The size of the monthly allowance to the persons affected by political repressions is, normally, lower than that to the rehabilitated people: from hundreds of roubles (Republic of Bashkortostan, Buryatia, Vladimir, Voronezh regions etc.) to one thousand roubles (Saint-Petersburg etc.).

An objective of the law on rehabilitation, indicated in its preamble when adopted, was "to ensure currently possible payment of damages" caused by political repressions. In the conditions of the economic collapse in 1991 this clause was clear and justified. However, it stayed unchanged even during the years of rapid economic growth in the early 2000s, when the state could easily afford to pay damages in the scope, significantly higher than that stipulated by law. On the contrary, it was in 2004 under the monetization of benefits that the payment of damages were limited, and the objective of paying also non-pecuniary damages was excluded from the preamble of the law on rehabilitation. It is no coincidence that after the European Court of Human Rights order under the claim submitted by Klaus and Yuri Kiladze versus Georgia in 2010, thousands of repressed persons and members

13 In a number of its rulings, the Constitutional Court of the Russian Federation specified that the revision of the completed nationalization (municipalization) of the property in compliance with the decree of the All-Russian Central Executive Committee dated August 20, 1918 on cancelling the private property right to real estate in towns referred to the competence of the legislature (see, e.g. Ruling dated June 18, 2004 No. 261-O). The legislature recorded its refusal to perform such revision in paragraph 3 Article 25 of the RF Land Code.

14 The Decision of the Novolakskoye district court, Republic of Dagestan, dated December 20, 2010. Rospravosudie; https://rospravosudie.com/court-novolakskij-rajonnyj-sud-respublika-dagestan-s/act-105197490/

15 The Commission is an advisory body in the RF Presidential Executive Office, which includes representatives of governmental agencies and non-governmental organizations, engaged in remembering the victims of political repressions (http://www.kremlin.ru/structure/commissions#institution-25). Unfortunately, the data of its activities are very limited. In particular, its reports on the implementation of the law on rehabilitation are not published. The text of the most recent report is available on the website of the Russian Association of Illegal Political Repressions Victims – rosagr.natm.ru/dynamic/docs/konsol.doc.

of their families filed cases, being mistaken in believing that this order would bind Russia to indemnify for non-pecuniary damages caused by political repressions.[16]

MORAL CONSIDERATION (SATISFACTION)

As stated above, rehabilitation, according to its content is, inter alia, an individual measure of moral consideration (satisfaction) of the persons affected by political repressions. This objective is achieved via formal recognition of the fact that repressions were applied groundlessly and that the person who suffered from them was innocent. This recognition is documented as a certificate on rehabilitation. The state practice is actually limited to this action in this issue: formally the lists of the rehabilitated people have not been published, and their memory is honoured mainly by non-governmental organization and individuals.

The collective satisfaction to the victims of political repressions is provided as a formal recognition of political repressions in Soviet Russia and their condemnation in the preamble of the law on rehabilitation: "Over the years of Soviet power millions of people became victims of the tyranny of the totalitarian state, were subject to repressions for their political and religious beliefs, as well as due to social, national and other reasons. Condemning the long-lasting terror and mass prosecution of people as incompatible with the idea of law and justice, the Federal Assembly of the Russian Federation expresses profound sympathy to the victims of unjustified repressions and their relatives, declares its steady striving for real guarantees of the protecting legality and human rights".

Besides the overall recognition and discussion of the law on rehabilitation, the Russian authorities published official documents discussing individual cases or kinds of political repressions. A part of these documents is mentioned above. They can include the statement of the State Duma dated April 2, 2008 "to honour the victims of famine in the 1930s in the USSR", where it mentions the reasons of the tragedy, recognizes causative relations between the famine and coercive collectivization and condemns "the regime, which neglected people's lives for the sake of achieving economic and political objectives". The statement of the State Duma dated November 26, 2010 "on the Katyn tragedy and its victims" is also to be mentioned. There the execution of Polish prisoners of war is called a *crime*, committed "upon the direct instructions of Stalin and other Soviet leaders".

In some respects, the CPSU case trial at the Constitutional Court of the Russian Federation was an act of collective satisfaction to the victims of the crimes, committed by the totalitarian Communist regime of the USSR. The documents and materials of the CPSU crimes provided by the RF President during this process may be considered as their formal recognition by the Head of State. However, they are not even mentioned in the text of the RF Constitutional Court order, while the materials of this case were officially published only once in the mid-1990s.[17]

ATTEMPTS TO EXTEND THE POLICY OF OVERCOMING THE CONSEQUENCES OF POLITICAL REPRESSIONS

Over the validity period of the law on rehabilitation its gaps and drawbacks became obvious. During Dmitry Medvedev's presidency there were two attempts to strengthen the measures for overcoming the consequences of political repressions. First in 2009 the Presidential Commission on the rehabilitation of the victims of political repressions suggested revising many provisions of the law on rehabilitation – to recognize the deprivation of property rights during collectivization and punitive tax system as political repressions, apply social support designed for the repressed to their close relatives who survived, increase compensations. In addition, the Commission recommended preparing a state programme of remembering the victims of political repressions, under which it was expected to establish the National Political Repressions Rememberance Book and the Russian National Memorial Museum to the victims of political repressions.[18]

The work on the new policy of overcoming the Soviet past was continued by another body at the RF Presidential Executive Office – the Council for Civil Society and Human Rights. It offered even more decisive steps.[19]

- to erect monuments to the victims of political repressions in the capital and all large cities across the country and open Memorial Museums to the victims in Moscow and Saint-Petersburg;
- engage the Federal Security Service (the KGB successor) and the Ministry of Internal Affairs in the search for the burials of the repressed persons;
- open the access to all archive documents, related to political repressions;
- establish a unified database of the "victims of the totalitarian regime in the USSR";
- cancel Soviet regulations related to the repression policy;
- officially reveal the persons responsible for mass repressions and ban the use of their names for towns and streets;
- ban officials from denying or justifying the crimes of the totalitarian regime;
- change the dates of professional holidays of law-enforcement bodies to those not related to their Soviet predecessors (in Russia the day of the security services is still the day of the founding of the VChK – the first Soviet punitive body, the forerunner of the OGPU-NKVD-MGB-KGB).

These radical, by Russian standards, ideas were not to come true. Instead of the large-scale public and state programme for remembering the victims of the totalitarian regime and the national reconciliation, it was decided to stay limited to rather modest measures – to open a monument to the victims of political repressions in Moscow, to provide access to non-governmental

16 The European court rejects the claims of the relatives of politically repressed persons in Russia. The website of the legal protection center Memorial, March 22, 2013; http://memohrc.org/news/evropeyskiy-sud-otklonyaet-zhaloby-rodstvennikov-politicheskih-repressirovannyh-iz-rossii

17 The materials of the case on verifying the constitutionality of the decrees of the RF President, related to the activities of the CPSU and RSFSR Communist Party, and on verifying the constitutionality of the CPSU and RSFSR CP. – M.: Publishing House Spark, 1996–1998. In 6 volumes.

18 Formally these suggestions were not published. Their text was placed on different online resources, including websites and blogs, e.g.: http://arudnitsky.livejournal.com/50732.html.

19 Suggestions on founding the national public programme on remembering the victims of the totalitarian regime and on the national reconciliation Rossiyskaya Gazeta, April 07, 2001; https://rg.ru/2011/04/07/totalitarizm-site.html

organizations engaged in searching for and arranging burials of the repressed persons and archive research into repressions to the public funding of non-profit organizations and protect newly detected burials.[20]

Other political initiatives include, in particular, a bill, submitted by the LDPR, on rehabilitating participants of the White movement, rejected by the State Duma in 2006.[21]

REHABILITATION AND CONTEMPORARY RUSSIAN SOCIETY

The attitude to the victims in Russian society is still highly controversial. They are on the one hand recognized, while on the other hand they are rejected, remembered or deliberately left in oblivion and even demonized. The examples of positive trends in the public perception of the rehabilitated persons include an annual event called "Returning Names", being a public reading of the names of the killed people, and the "Last Address" movement, engaged in installing memorial tablets on the houses where the repressed people lived before their arrests. Negative examples are more numerous – the recognition of the Memorial Society as a foreign agent, closing the Gulag Remembrance Museum "Perm-36", the increasing justification and glorification of Stalin, which cannot but offend the living repressed persons and their families.

LESSONS LEARNT

It appears that rather unsatisfactory results of the state's efforts to overcome the consequences of repressions have, primarily, political reasons. Even during the first years after the fall of the Communist regime in Russia the victims of repressions and their societies gradually lost their initial positions in the political process, which they had managed to find on the rise of Perestroika during the last years of the existence of the USSR. Later there was no one to protect their interests at the national level.

Institutional reasons should be mentioned too. The rehabilitation of the victims of repressions and related measures including the payment of damages are within the competence of ordinary governmental agencies – the Prosecutor's Office, the Ministry of Internal Affairs, Social Security bodies etc. They have always had some issues of higher priority to deal with. No special body, which would be designed to focus on this task only and therefore related to the interests of the repressed persons, has ever been set up to rehabilitate and remember the victims.

Nonetheless, the work carried out over the past twenty-five years by the state and non-governmental organizations deserves deep respect. Millions of innocent affected people have been revealed and saved from oblivion. However, there is still a long way to go to their full public recognition and a condemnation of the repressive Communist regime. And the opportunities for full indemnification have been irreversibly lost in most cases.[22]

20 Federal Law dated March 9, 2016 No. 67-FZ on amendments to some regulations of the Russian Federation for remembering the victims of political repressions

21 The State Duma rejected the bill on rehabilitating the victims of the White movement. Newsru.com, 14. 6. 2006; http://www.newsru.com/russia/14jun2006/whiteguard.html

22 According to the data of the Presidential Commission on the rehabilitation of the victims of political repressions, as of January 1, 2015, there were 671,738 living rehabilitated victims of political repressions and 8,769 persons affected by political repressions (excluding the data from the Republic of Crimea, Sevastopol and Kirov region).

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