

# MEMORY OF NATIONS

## Democratic Transition Guide

[ The Estonian Experience ]



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# TRANSFORMATION OF THE POLITICAL SYSTEM

TOOMAS HIIO

## LOSS OF INDEPENDENCE DURING WORLD WAR II<sup>1</sup>

**Occupation.** The member states of the League of Nations, Estonia, Latvia, and Lithuania were occupied by the Soviet Union in June 1940. Tens of thousands of the Red Army and Soviet Baltic Fleet soldiers and sailors were stationed to the territories of the Baltic states.<sup>2</sup>

After that the Estonian government resigned. The list of members of the next government, a puppet government, was proposed by the Soviet Legation in Tallinn. Andrej Zhdanov, a special emissary of Joseph Stalin, was sent to Tallinn and coerced the President of the Republic, Konstantin Päts, to appoint a puppet government. Similar events took place in Latvia and Lithuania. A “transitional period” in all three Baltic states created the illusion of the continuation of the former legal order with the so-called people’s governments, controlled by Soviet special representatives, under the cover of the Soviet diplomats, and by the Soviet secret police, NKVD, was finalized by the formal incorporation of all three Baltic states into the Soviet Union in the beginning of August 1940. Three weeks earlier the Soviet-controlled and Soviet-type elections, with only one candidate in each electoral district, were carried out in each Baltic country. Elected puppet parliaments had voted unanimously for the reorganisation of their countries into soviet republics, and asked the Soviet government for incorporation of their states into the “friendly family of the Soviet nations”.

**Non-recognition policy of the USA.** Simultaneously with the first session of the puppet parliaments in all three occupied Baltic states, on 23 July 1940, the US acting Secretary of State Sumner Welles issued a declaration, condemning the political changes in all three Baltic states. It was the beginning of the non-recognition policy of the Western countries in respect of incorporation of the Baltic states that continued until the collapse of the Soviet Union.

**Soviet reorganisation of society.** At the end of August 1940 the constitutions of all three Baltic soviet union republics, based on Stalinist constitution of the USSR from December 1936, came into force. The puppet parliaments declared themselves to the temporary Supreme Soviets and continued in this capacity until new supreme soviets were elected in 1947. Temporary Supreme Soviets appointed new governments, councils of people’s commissars. Although some members of the “people’s governments” continued in new councils of people’s commissars, now also the former underground communists<sup>3</sup> and some citizens of the Soviet Union were appointed to the people’s commissars’ (ministers) posts respectively in Estonia, Latvia and Lithuania.

Before the end of the year 1940 the Soviet legislation was introduced, including the criminal code of the Russian Soviet Socialist Federal Republic of 1926. Estonian currency, kroon, was changed to the Soviet rouble using the extortionate exchange rate 1 kroon = 1,25 roubles.

During 1940–1941 Estonia was ruled in fact by the Plenipotentiary of the Central Committee of the All-Union Communist (bolshevist) Party and the Council of People’s Commissars of

the USSR in Estonia Vladimir Bochkarev and his staff. To each ESSR people’s commissariat a deputy people’s commissar, in fact a supervisor from respective branch institution of the party or the USSR government was appointed. The security services, the People’s Commissariat of Internal Affairs (NKVD) and the People’s Commissariat the State Security (NKGB), created in February 1941 with their branch offices (respective ESSR people’s commissariats) had extraordinary important role.

**Political terror and population losses.** First arrests of the political opponents took place already in June 1940. Since autumn the massive political arrests began, culminating with the deportation of men, women and children from all three Baltic states on 14 June 1941. Repressions and deportation were directed against the bearers of the statehood: the politicians and higher state officials, military officers, policemen, part of educational elites, businessmen, entrepreneurs, wealthier peasants etc. During 1939–1941 Estonia has lost every tenth resident: when in 1939 there was about 1,134,000 inhabitants in the Republic of Estonia, so according to the registration of the population, carried through by the German occupation authorities in the end of 1941, there were little bit less than 1,000,000.<sup>4</sup>

After the German occupation in 1941–1944, according to the registration of the population carried through by the Soviet authorities in autumn 1944, only about 900,000 persons were present in Estonia, i.e during 1939–1944 Estonia has lost every fifth resident.<sup>5</sup>

1 To this chapter see Toomas Hiio, Meelis Maripuu, Indrek Paavle, eds., *Estonia 1940–1945: reports of the Estonian International Commission for the Investigation of Crimes Against Humanity*, Estonian International Commission for the Investigation of Crimes Against Humanity, Tallinn: Inimsusvastaste Kuritegude Uurimise Eesti Sihtasutus, 2006; Andres Kasekamp, *A history of the Baltic states*, Basingstoke–New York: Palgrave Macmillan, 2010.

2 First Soviet military bases were stationed to the Baltic countries after the defeat of Poland beginning with October 1939 following another Soviet ultimatum, but though according to the agreements between the Soviet Union and each Baltic state.

3 The communist parties were illegal in all three Baltic states. The central committee of the Estonian CP was located in the Soviet Union and was subordinated to the Comintern and in turn to the All-Union Communist (bolshevist) Party of the Soviet Union. ECP was the smallest comparing to the other Baltic states with some 100–150 members in 1940.

4 Not all of them were direct victims of the Soviet repressions: among them were the more than 20,000 Baltic Germans, settled to the Germany after the Hitler-Stalin Pact was signed. In summer 1941 more than 30,000 men were mobilised to the Red Army from Estonia, but sent to the labour units, and more than 25,000 were evacuated (mostly the party and Soviet officials, but also skilled workers and specialists). The most of circa 7000 arrested and a majority 10,000 deported persons, who were sent to the Gulag camps or forced settlement in Northern Russia and Siberia, died during first few years. Circa 2000 political prisoners and civilians were executed in Estonia or murdered by the retreating staff of the state security institutions or the Red Army soldiers during the combat in Estonia from July to October 1941.

5 The biggest categories among them were more than 70,000 individuals who escaped to the Germany and Sweden in autumn 1944, including the men who were mobilised in the German armed forces, and probably also part of the men mobilised to the Red Army in Estonia during 1944–1945 (altogether about 20,000 men).

Estonia has lost all its national minorities: the Jews (0.4 % in 1934) who remained in Estonia became the victims of the Holocaust already in 1941 (more than ⅔ of Estonian Jews succeeded to escape to the Soviet Union and the most of them, who had survived there, returned after the end of the war) and the Swedes (7500 individuals) were evacuated to Sweden in 1943–1944. In 1944–1945 the parts of Northeast and Southeast Estonia with mostly Russian population were dispatched from ESSR to the Russian Federation. When in 1939 the proportion of ethnic Estonians in the whole population was little bit less than 90 %, so in 1945 more than 95 %.

## SOVIETISATION AND THE SOVIET LIFE FROM 1944<sup>6</sup>

After the return of the Soviets in 1944 the Sovietisation continued. The model of 1930s with forced industrialisation, collectivisation of the agriculture was followed including the liquidation of private ownership and the sovietisation of educational system and culture. However, under the slogans of “blossoming of the culture and education of the Soviet nations” the language of instruction in the schools and universities remained Estonian. The Russian-speaking population had their own schools. There were few Russian-language departments in the higher education establishments also.

**Continuation of the political terror.** The armed resistance of the so-called forest brothers was suppressed up to 1950s. During 1944–1953 more than 35,000 individuals were arrested on political reasons and sent to Gulag camps. In 1949 more than 20,000 individuals, mostly peasants with their families, were deported to Siberia. After Stalin’s death the survivors were released and returned to Estonia during the second half of 1950s, but remained under surveillance until the collapse of the Soviet Union.

**Population change.** According to last Soviet census of 1989 there were about 1,5 million inhabitants in Estonia. Only 64 % of them were ethnic Estonians yet. Other were mostly Russian-speaking immigrants. Big part of them were brought to Estonia as the workers of big industrial enterprises that mostly served the needs of the Soviet armament production and heavy industry. The labour craft of Estonian mining industry, producing oil shale, mostly used for fuelling of two big power plants, was predominantly Russian-speaking, too.

Estonia remained an important part of the Soviet military system with tens of thousands of soldiers and officers stationed in Estonia. Among others the medium range nuclear missiles were stationed in Estonia at the end of 1950s. In Paldiski a nuclear submarine training center was built up and a strategic air force base was located in Tartu, the second largest town in Estonia. Estonian young men were conscripted into mandatory military service to the Soviet Army. Absolute majority of them served in the units outside of Estonia.

**Organisation of the Soviet government in Estonia.** Estonia was governed by the local branch of the Communist Party of the Soviet Union (CPSU), the Estonian Communist Party (ECP), which was commanded and controlled by the apparatus of the Central Committee of the CPSU. The higher leadership of the ECP was appointed by the Politburo of the CPSU CC. Local Soviet authorities, the ESSR Supreme Soviet with its Praesidium and the Council of Ministers, were controlled by the ECP CC. There were three types of ministries in the Soviet Union:

the all-union, all-union-republican and republican.<sup>7</sup> This allowed to subordinate all important fields to the direct control of central authorities in Moscow.

The dynamics of the personnel of the Soviet authorities in Estonia had four phases, however without very clear borders. During 1944–1950 the leading posts were in the hands of former Estonian underground<sup>8</sup> communists from the interwar period and their fellow travellers, who joined the party soon after the beginning of the Soviet occupation in June 1940. In 1949–1950 a lot of them were fired and many also arrested under the accusation of “bourgeois nationalism”. They were replaced with so-called Soviet Estonians (*liidueestlased* in Estonian), men and women, who had lived or were born in the Soviet Union during interwar period<sup>9</sup> and dispatched to Estonia in big numbers after the WW II, but also with Russians and members of other Soviet nations. Since 1960s they were replaced step by step by Estonians, who had born in Estonia and had lived in Estonia during interwar period, but had received their “baptism of fire” during the World War II in the Red Army Estonian national units or in the Soviet rear. Since 1970s the replacement of “old cadres” with younger men and women born in Estonia began. They were mostly persons without any strong conviction to the communist ideology, treating their membership in the Communist Youth League and later in the Party as an unavoidable step in their career. An important moment in the life of this generation was the short period of hope to the “human-faced socialism” during 1960s that was finished with the suppression of Prague Spring in 1968. At the same time, the Estonian branch of the Communist Youth League in Estonia became a mass organisation and the most of the youngsters beginning with the age of 14 were forced to join it.

During the whole period the power was firmly in the hands of old cadres. The 1st Secretary of the CC of the ECP Johannes<sup>10</sup> Käbin (1905–1999) kept this position from 1950–1978. He was born in Estonia but his parents moved to St. Petersburg already in 1910. He was replaced by Karl Vaino (born 1923 in an Estonian settlement Siberia) led the party during 1978–1988.

The Chairman of the Supreme Soviet of the ESSR during 1961–1970 Alexei Müürisepp died in the office and was replaced

6 To the period until Stalin’s death see Toomas Hiio, Meelis Maripuu, Indrek Paavle, eds., *Estonia since 1944: reports of the Estonian International Commission for the Investigation of Crimes Against Humanity*, Estonian International Commission for the Investigation of Crimes Against Humanity, Tallinn: Inimusvastaste Kuritegude Uurimise Eesti Sihtasutus, 2009. On some more detailed issues see the articles, published on the website of Estonian Institute of Historical Memory: <http://mnemosyne.ee/en/publications/>. Shorter generalisations see *Estonica: Encyclopaedia about Estonia*, [http://www.estonica.org/en/History/1945-1985\\_The\\_Soviet\\_Period/](http://www.estonica.org/en/History/1945-1985_The_Soviet_Period/).

7 Subordinate departments in the soviet republics of all-union ministries were under direct control of Moscow central offices, for example the ministry of defence. The administration of all-union-republican ministries was a combination with central office in Moscow and subordinate ministry in the soviet republic. “Republican” ministries administrated the branches of economy of local importance and culture; there was a ministry of local industry in ESSR, for example.

8 They were called in Estonia “prison communists”, because the most of Estonian communists were arrested during 1923–1924 and sentenced for long time forced labour. They were released with an amnesty in May 1938.

9 A lot of Estonians emigrated to Russia from the second half of 19th century until the Great War. The number of them was estimated in the beginning of 1920s in the Soviet Russia at more than 100,000.

10 In many documents and Russian-language texts the Russian version of Johannes, Ivan has been used.

by Artur Vader (1970–1978). Johannes Käbin was demoted to this ceremonial post in 1978. They all had come from the Soviet Union in 1940s. In 1983 Arnold Rüütel (born 1928) was appointed to this post. He held this position until the end of the Soviet Union. Rüütel was born in Estonia and was popular among Estonians. It is corroborated by the fact of his election to the President of Estonia in 2001.

The government, Council of Ministers, was chaired by Valter Klauson (1914–1988) during 1961–1984. He was dispatched to Estonia after the Soviet occupation. He was followed by Bruno Saul (born 1932 in Estonia). He and the last Chairman of the Council of Ministers of the ESSR Indrek Toome (born 1943) during 1988–1990 belonged to the new cadres already.

**Soviet security service in Estonia.** The State Security Service – Estonian branch office of the KGB – was a local office of the All-Union KGB. The chief of the KGB in Estonia during 1961–1982 was Major General August Pork (1917–2002), an Estonian born in Russia. During 1982–1990 he was followed with Lieutenant General Karl Kortelainen, born 1930 in an Estonian settlement in Siberia. The last KGB-chief dispatched in Estonia during 1990–1991 Major General Rein Sillar (born 1948) belonged to the new local cadres. The dynamics of the personnel in the KGB were similar to those of higher leadership of the party and Soviet institutions. Since 1960s young Estonian men and women with higher education were hired among others – especially for the fields of secret police work where the knowledge of the local language and circumstances was needed. As in all countries of the Soviet Bloc there was a big number of informal collaborators, mostly hired using their personal weaknesses or as a condition of forgiving the minor criminal offences.

**Anti-Soviet resistance.** After the end of armed resistance of the forest brothers in 1950s the resistance was continued by numerous Anti-Soviet organisations of the high school students. The most of them were exposed and the members were sentenced to the prison camps. During 1960s and 1970s the organisations were founded that demanded the finishing of the Soviet occupation. Small demonstrations took place supporting the Hungarian uprising, Prague Spring and protesting against the Soviet invasion to Afghanistan. The movement of the Helsinki groups after Helsinki summit of 1975 to supervise the following of the human rights in the Soviet Union was not active in Estonia; the Estonian, as also the Latvian and Lithuanian resistance members demanded the termination of the Soviet occupation. Their most important achievement was the Baltic Appeal, a public letter to the general secretary of the United Nations, the Soviet Union, East and West Germany, and signatories of the Atlantic Charter by 45 Lithuanian, Latvian and Estonian citizens, big part of them were the former political prisoners, that was sent on 23 August 1979, on the 40th anniversary of the Hitler-Stalin Pact. The signatories demanded public disclosure of the pact and its secret protocols and restoration of the independence of the Baltic states. The appeal constituted the basis of the European Parliament's resolution of 13 January 1983 on the situation in Estonia, Latvia and Lithuania.

**Period of deterioration of the Soviet rule.** After the new Soviet constitution was affirmed in October 1977, aiming among others the creation of the Soviet nation, the Russification in the national soviet republics was strengthened, including the increasing use of Russian language in the public life and expanding the teaching of Russian in the national schools and even kindergartens. These actions incurred one of the biggest

acts of civilian resistance in Estonia before the collapse of the Soviet Union. In September and October 1980 the youth riots took place in Tallinn, protesting among others against the Russification, that were suppressed by the militia forces and KGB using violence. Following to that 40 Estonian intellectuals wrote a public letter, protesting the politics of the authorities in lessening the importance of national language and the indifference of the central agencies towards the interests of the ESSR. The letter was not published in the USSR, but was leaked via Finland and Sweden to the West and red out in the Estonian programs of the Voice of America and Radio Free Europe. The signatories were “prophylactised” (*профилактизация*, a procedure including the conversation with a state security officer with threats) by the KGB and punished with the ban of publication or public presentation, deprivation of some perquisites etc.

**Membership of the Communist Party in Estonia.** There was more than 100,000 members in ECP during the collapse of the Soviet Union. A little bit more than half of them were ethnic Estonians. The number of those party members among ethnic Estonians, who were dispatched to Estonia after the end of the WW II (i.e. Soviet citizens) is not known.

Differently from East European countries, which retained their independence, though as members of the Soviet Bloc, in Estonia the “Soviet-Estonian identity” did not emerged in fact. The absolute majority of ethnic Estonians regardless of their affiliation or non-affiliation to the party or the Communist Youth League felt themselves firstly as Estonians and only then, if at all, as the Soviet citizens. Majority of Estonian party members had joined the party for career or by opportunism or similar reasons. They left the party during a very short time in 1990 and a viable communist organisation was never restored in Estonia. But many members of Estonian parliament elected since 1992 were and are the former members of the ECP, belonging now to all parties from the left to the right.

## RESTORATION OF INDEPENDENCE<sup>11</sup>

**First political movements.** The restoration of Estonian independence on 20 August 1991 began together with the reforms of Mikhail Gorbachev in the whole Soviet Union. In Estonian case an extraordinary important role had the members of Estonian exile organisations, who supported the independence movement in Estonia with information, books, printing facilities and money and raised the issue of the need of termination of the Soviet occupation in the media of their countries of residence and in international organisations.

During 1986/1987–1990 the groups emerged that formed the base of the new political movements. A movement of preservation of Estonian national heritage began already in 1970s with volunteer work in raising awareness of Estonian national heritage and taking care of national monuments that were not demolished by the Soviets. In December 1987 the Estonian National Heritage Society was founded and became quickly to a country-wide mass movement, supported financially by the Estonian exile

<sup>11</sup> See Mart Laar, *The power of freedom: Central and Eastern Europe after 1945*, Tallinn: Sihtasutus Unitas, 2010; Shorter generalisations see *Estonica: Encyclopaedia about Estonia*, [http://www.estonica.org/en/History/1985-1991\\_Restoration\\_of\\_independence/](http://www.estonica.org/en/History/1985-1991_Restoration_of_independence/).

organisations, but also by donations of members. In the 1980s, the Soviet Union had the increasing difficulties with supply with foodstuffs, caused by incapability of the Soviet agricultural sector. As one of the means in the framework of the Soviet Food Programme (1981) the extensive production of fertilisers was foreseen. In Northern Estonia the mining of phosphates was planned with strip mines. Thousands of miners and other needed labour craft were to be imported from other parts of the Soviet Union. A big protest movement against the plans of the Soviet central agencies of fertilisers production began in March 1987 (so-called phosphate war) that resulted in stopping of the development of the project of phosphate mining in Estonia. Part of the activists of this movement tried later to participate in Estonian politics under the flags of green movement, but not very successfully. National Heritage Society and the “phosphate war” were able to mobilise the youth, especially high school and university students, to the activities connected with Estonian environment protection and national heritage.

In August 1987 an organisation MRP-AEG (Estonian abbreviation of the words The Estonian Group for the Disclosure of the Molotov – Ribbentrop Pact<sup>12</sup>) was founded by the former dissidents that demanded the recognition of the existence of the secret protocol of Hitler – Stalin pact by the Soviet Government and annulment of it. The members of MRP-AEG became the initiators of the first new Estonian political party, the Party of Estonian National Independence, founded in August 1988.

The year 1988 was a year of the beginning of the countrywide independence movement. The public appearance of the Estonian national symbol, the blue-black-white flag was prohibited during the Soviet period. In spring 1988 the Estonian national flags were taken largely into use at the public events. The most of them were old flags that had been hidden since the World War II. During the song festivals with some hundreds of thousands of participants in summer 1988 were sung already under blue-black-white colours despite of still valid ban to hoist them. On 24 February 1989, the 71st anniversary of the Republic of Estonia, the Estonian flag was hoisted on the parliament building instead of the ESSR flag.

The supporters of the Gorbachev’s perestroika had established the Popular Front in Spring 1988 that united different people from the reform-communists to the nationalists and grow rapidly into a mass organisation. The supporters of the Popular Front belonged mainly to the middle-aged generation, while in the national heritage movement literally the grandparents with life experience of interwar Estonia and World War II found each other with their grandchildren.

**Soviet Perestroika in Estonia.** In summer 1988 Gorbachev expelled unpopular party chief Karl Vaino, and invited Vaino Väljas, who had been the Soviet Ambassador in Venezuela and Nicaragua since 1980, to become the ECP CC 1st secretary. Väljas was popular, he was Estonian and he supported the changes. On 16 November 1988 the Estonian Sovereignty Declaration was issued by the ESSR Supreme Soviet, asserting Estonia’s sovereignty and the declaring the supremacy of the ESSR laws over the laws of the Soviet Union.

On 23 August 1989 the Baltic Way (Baltic Chain) was organised by the popular fronts of Estonia, Lithuania and Latvia. It was a peaceful political demonstration where approximately two million people from Estonia, Latvia and Lithuania joined their hands to form a human chain from Tallinn to Vilnius (more than 600 km) to commemorate their national states and citizens

who fell victims of the agreement of the Soviet Union and Nazi Germany, signed exactly 50 years earlier, on 23 August 1939.

#### **Political directions inside of the independence movement.**

Two factions emerged in the Estonian independence movement. One, the Estonian members of the ESSR Supreme Soviet and most of the members of the Popular Front, wanted to achieve Estonian sovereignty with reforms in the framework of Gorbachev’s perestroika, initially not declaring the goal of secession. The other, supported by the Party of Estonian National Independence and the Estonian National Heritage Society, demanded the restoration of the Republic of Estonia, occupied in 1940 by the Soviet Union, based on the principle of legal continuity with reference to the policy of non-recognition by Western countries.

The supporters of legal continuity began on 24 February 1989 with voluntary registration of Estonian citizens; those who were Estonian citizens on 16 June 1940, and their descendants. A special certificate of Estonian citizenship was issued to everybody who was accepted as an Estonian citizen by the registration boards. On 24 February 1990 the Estonian Congress was elected by the registered Estonian citizens that came to its first session on 11 and 12 March 1990. The Congress, with 499 elected delegates decided for the restoration of Estonian statehood on the principle of legal continuity and elected a 78-member executive organ, the Estonian Committee.

On 18 March 1990, the first free elections in the ESSR took place for the ESSR Supreme Soviet (Supreme Council). Instead of the earlier 285 members, the new composition had only 105 members. All adult persons on the territory of the ESSR had the right to vote. For the members of the Soviet armed forces in Estonia four seats in the Supreme Council were reserved. Supporters of independence won 73 seats. The new Council of Ministers was formed by the leader of the Popular Front, Edgar Savisaar. The former Chairman of the Praesidium of the Supreme Soviet, Arnold Rüütel, continued as Chairman of the ESSR Supreme Council.

In April 1990, the ESSR Supreme Council abolished Soviet conscription in the territory of Estonia. On 8 May 1990, the official name Estonian Soviet Socialist Republic was replaced with the Republic of Estonia and Estonian national symbols came into official use. On 7 August 1990, the ESSR Supreme Council stated that the relationship between Estonia and the USSR should be founded on the principles of the Tartu Peace Treaty of 2 February 1920.

**Dissolution of the Communist Party.** The Estonian Communist Party held its Congress on 23–25 March 1990. The party was split into two, Estonians who supported the creation of independent ECP with the goal of an independent state, while most Russian speaking members founded a new “ECP on the platform of the CPSU”. A majority of Estonian members left the ECP soon after. The few Estonians who remained in the “independent ECP” reorganised their party in November 1992 to the Estonian Democratic Labour Party which did not win any seats in Parliament. “The ECP on the platform of the CPSU” was banned after Estonia had regained its independence.

The Gorbachev ideas of reforming the Soviet Union (1987–1989) appealed to the Estonian communists and many supporters of the Popular Front. But the idea of full independence in a form of restoration of the pre-war republic, gained

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12 Parallel name of Hitler-Stalin Pact of 23 August 1939 by the names of signatories Vyacheslav Molotov and Joachim von Ribbentrop.

ground also among them from Autumn 1988. Western powers supported the Gorbachev reforms, and were until 1990–1991 against the dissolution of the Soviet Union, warning Baltic politicians not to work against the reforms.

#### **Pro-Soviet resistance to the independence movement.**

The third part of the political environment were the people who wished for the continuation of the ESSR in the Soviet Union. Russian-speaking workers and the staff of heavy industry plants founded the International Movement of Workers in the Estonian Soviet Socialist Republic (Intermovement) in July 1988, as an opposition to the Popular Front. Their best known action was an unsuccessful attempt to take over Parliament and government on 15 May 1990. The Chairman of the Council of Ministers warned the residents of Tallinn by radio, and the members of the Intermovement were forced to leave by volunteers, who had rushed to the government site. Intermovement was banned by the Estonian government on 25 August 1991.

**Independence referendum.** On 3 March 1991, a independence referendum was held. The active service staff of the Soviet armed forces in the Estonian territory had no right to participate. 83 % of the electoral lists participated and 78 % voted for Estonian independence.

Among the most important acts issued by the Estonian Supreme Council was the Republic of Estonia Principles of Ownership Reform Act, passed on 13 June 1991. This act became one of three main cornerstones for the restoration of Estonian statehood, the other two were the citizenship act and international recognition of the restoration of Estonian statehood. The act stated “nationalization, collectivization and expropriation of property in the course of unlawful repression, including mass repression, and by other methods [...] during the period between 16 June 1940 and 1 June 1981 are deemed to be unlawful expropriation of property.”<sup>13</sup> Paradoxically the abolishment of private property by the Soviets helped to restore it, because new private property relationships had not emerged during the Soviet period. The turn back to June 1940, through the restoration of statehood, also made the restoration of legal status of property possible.

#### **Restoration of the independence on 20 August 1991.**

The decisive moment for Estonian independence was the unsuccessful coup d'état in Moscow on 19–21 August 1991. An airborne regiment of the Soviet Army was sent to Tallinn from Pskov on tracked infantry fighting vehicles and took control of the Estonian capital. Government sites, the radio and television center and the TV-tower were defended by the Volunteers. Volunteers were members of two paramilitary organisations: the Defence League, which had been restored in February 1990, and the Home Guard which was founded in May 1990 after the attempted putch by the Intermovement. While the Defence League was supported by the Estonian Congress, the Home Guard men were mostly the supporters of the Popular Front.

The confrontation of the Estonian paramilitary organisations with the Soviet troops did not turn violent. Estonians had a few small arms against the Soviet regular troops and the guns of their infantry fighting vehicles. The Soviet officers, however, were confused and did not know exactly what they were tasked with.

The Estonian Supreme Council and the Estonian Congress agreed on 20 August that Estonian independence should be restored on the principle of legal continuity at once, *de jure* and *de facto*. With same declaration, the formation of the Constituent Assembly was decided; 30 members of the Assembly came from Supreme Council and 30 members from the Estonian Congress.

The restoration of Estonian independence was recognised by a number of countries.

**Bearer of Estonian legal continuity in exile.** Legal continuation of the Republic of Estonia during the Soviet occupation had been based on two institutions: diplomatic representations and the exile government. The Estonian Legation in London and the Consulate General in New York continued their activities during 1940–1991, and were recognised by a number of Western countries. Estonian passports, issued by these institutions were recognised as travel documents by many countries until 1991.

On 18 September 1944, when the Germans were evacuating their forces from Tallinn and the Red Army had not yet arrived, the last Prime Minister of Estonia in 1940, Jüri Uluots, now in the capacity of acting President of the Republic (President Päts was deported to the USSR in July 1940), appointed the government headed by Otto Tief. The actions of the Estonian politicians were not recognised by the German occupation forces, but in September 1944 the main goal of the latter was the evacuation of troops and offices from Estonia. The Red Army took Tallinn on 22 September and most of the government ministers were soon arrested by the Soviet State Security, but some succeeded in escaping to Sweden. Uluots died in 1945. The oldest member of the government, August Rei, took over the post of acting President of the Republic of Estonia and in 1953 appointed new members of the exile Government. After his death in 1963 he was replaced by the oldest member of the exile government at the time. The Estonian exile Government was treated as the bearer of legal continuity similarly to Polish government in exile.

## **RESTORATION OF THE STATEHOOD<sup>14</sup>**

During the transitional period from August 1991 to October 1992, the Chairman of the Supreme Council of the Republic of Estonia, Arnold Rüütel, fulfilled the duties of Head of State, and Edgar Savisaar became the Prime Minister. Savisaar was replaced by Tiit Vähi in January 1992 after the government crisis. Most of the Soviet institutions, including the KGB, ended their activities in Estonia. A couple of months later, in December 1991, the Soviet Union itself was dissolved. Before that, in September 1991, Estonia and the other Baltic countries became members of the United Nations.

Despite of the deteriorated economic situation, the foundations of the renewed Republic of Estonia were completed within a year. The 1938 citizenship act was reinstated on 26 February 1992. According to the implementation regulation of this act, women and men, who were Estonian citizens on 16 June 1940, and their direct descendants, were legal Estonian citizens. The participation in the elections of hundreds of thousands, of possibly pro-Soviet voices, who came to Estonia after World War II were disenfranchised by this act.

Despite recommendations by many foreign economy experts not to, currency reform was carried out on 20 June 1992. The Estonian kroon was stated as the official currency of the Estonian

<sup>13</sup> See Republic of Estonia Principles of Ownership Reform Act, <https://www.riigiteataja.ee/en/eli/525062015006/consolide>.

<sup>14</sup> See Estonica: Encyclopaedia about Estonia, [http://www.estonica.org/en/Society/Development\\_of\\_the\\_Estonian\\_political\\_landscape\\_until\\_2006/?r=/en/Society/Development\\_of\\_the\\_Estonian\\_political\\_landscape\\_until\\_2006/](http://www.estonica.org/en/Society/Development_of_the_Estonian_political_landscape_until_2006/?r=/en/Society/Development_of_the_Estonian_political_landscape_until_2006/).

territory, at fixed exchange rate of 8 kroon to 1 German Mark. This exchange rate remained until Estonia joined the Eurozone 19 years later, on 1 January 2011.

A week later, on 28 June 1992, a referendum was held to approve the new Constitution. 67 % of voters participated, and 92 % of them voted for approving the Constitution which entered into law on 3 July 1992.<sup>15</sup> The fourth constitution of Estonia (the former were adopted in 1920, 1933 and 1937/1938) was a constitution of a parliamentary republic, with a 101-seat unicameral parliament (*Riigikogu*). Members of Parliament were elected for four years. The President of the Republic, as head of state, had limited powers, was elected by the Parliament or special electoral council (in the third round; including in addition to the parliament the representatives of the towns and rural municipalities) for five years, with the right to stand for re-elected once.

On 20 September 1992, the elections to the Parliament, together with the first round of presidential elections were held. The parliamentary elections were won by the Pro-Patria Union (the followers of the Estonian Congress) who got 29 seats. The Chairman of the Pro-Patria Union Mart Laar became the first Prime Minister of independent Estonia. In October 1992, a second round of presidential elections took place, Lennart Meri was elected. The last acting President of exile government, Heinrich Mark, symbolically handed over his powers to Lennart Meri.

In August 1994 the last Soviet (then Russian already) troops stationed in Estonia left, according to an agreement between Russian President Boris Yeltsin and Lennart Meri.

**Era of restitution.** The first half of the 1990s was characterised as an era of the restoration of Estonian statehood, with the ultimate purpose of returning to Europe and joining Euro-Atlantic international organisations. The proportion of foreign trade to Russia decreased rapidly in favour of European countries and North America. The new government began with radical economic reforms that were supported by the majority of Estonian citizens. Besides the restitution of property and real estate, most enterprises from the Soviet era were privatised using the example of East German Treuhand model. Real estate, confiscated by the Soviet authorities, was returned to the former owners or their legal successors. The NGOs, closed by the Soviet authorities during 1940s, were restored. The monuments demolished by the Soviets were restored, financed by voluntary donations and supported with voluntary work. Most of them were the monuments to fallen men in the War of Independence (1918–1920) that were erected at graveyards of every parish, and demolished by the Soviets during 1940s. The number of exile Estonians who returned to the homeland was relatively small, compare with the number of Estonians who had left Estonia in 1944. Some of them played influential role in Estonian state and society, including some government ministers, the Commander of the Armed Forces during 1993–1995, and the President of the Republic during 2006–2016.

In the middle of the 1990s, the Estonian parliament decided to apply for membership in the EU and NATO. Estonia joined both international organisations in 2004.

## LESSONS LEARNT AND RECOMMENDATIONS

Despite the events of worldwide importance, like the collapse of the Soviet Union and the Eastern Bloc, we have to avoid superficial generalisation. Every political ideology uses a current social

and political environment to take the power, democratically or violently, or supported by a military invasion of another country. The restoration of Estonian statehood became possible due to the collapse of the Soviet Union, but how it was realised was defined by national preconditions and the decisions of the people who did participate in the turn.

National identity should not be forgotten here. Estonian national identity is based on language and culture, but also on a similar background (an absolute majority of Estonians belonged to the peasantry until the Great War). The biggest achievement of the Estonians was independence, proclaimed in 1918. Due to the Lutheran faith and parish schools, founded at the end of 17th century, the majority of Estonians were literate. Democratic tradition is important. In the Estonian case, it began during the 1860s with about a thousand rural municipalities of self government by the peasantry. The period of 1918/1920–1934 was a period of a parliamentary republic with frequent changes of governments. During 1934–1940, Estonia was ruled in an authoritarian way, but the regime was among the mildest, compared with other authoritarian regimes and dictatorships at this time Europe. This was supported by a common background of Estonians, and the homogeneity of the population. Estonian national identity was anti-German and anti-Russian. Estonian lands were part of the Russian Empire since 1710 but most of the members of the local higher classes were, from the 13th century to the Great War, the descendants of crusaders and merchants and later immigrants, coming mostly from German lands. The Germanization and later Russification of Estonian peasants did not take place due to the small number of members of local higher classes, the restrictions against Estonian peasants to join the legal-public associations of noblemen, merchants, craftsmen and clergy, and last but not least, the very different language.

The communist ideology was treated as a form of Russian imperial supremacy in Estonia. The land reform of 1919 made most Estonians small landowners. Soviet collectivisation of agriculture in the 1940s, and the confiscation of landed property disinclined Estonians furthermore against the Soviets. One has not to forget the cruel political repressions directed against the young elites of the Republic of Estonia, and the forced attempts of Russification. In 1980s, the only real supporters of the Soviet regime were the people sent to Estonia, beginning in the 1940s, from other parts of the Soviet Union. In contrast with the strong national identity of Estonia, most of the people who were sent to Estonia had only a Soviet identity which lost its foundations with collapse of the Soviet Union.

The agreement achieved between the Estonian Congress, with the goal of the restoration of the Republic of Estonia by way of restitution, and the ESSR Supreme Soviet and Popular Front, initially trying to find a more moderate way of secession from the Soviet Union, was accomplished finally on the restoration of “old” republic with the recognition of Western countries. A referendum held in the beginning of 1991 supported the independence and the Estonian citizenship definition helped to lessen the pro-Soviet political influence. An antagonistic confrontation between different directions of independence movement was avoided. This was supported by a strong national identity and by the fact that irrespective of

15 The Constitution of the Republic of Estonia, <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

their political affiliations, the absolute majority of Estonians supported independence.

An important lesson learnt is that the attempts to win the hearts and minds of the pro-Soviet, Russian-speaking part of the population, who mostly immigrated to Estonia after the World War II, could have been more active. But here, the big number of late immigrants, about 1/3 of whole population, who are strongly influenced by Russian TV-channels in a country bordering with Russia should be taken into account. The strongest argument for supporting Estonia among the pro-Soviet people was the living standards in Estonia versus Russia. In this comparison, the most Russian-speaking Estonians preferred to stay in

Estonia. That was not the case in many other former non-Russian parts of the Soviet Union.

A recommendation derived from Estonian experience of the years 1987–1992 is to avoid the escalation of unneeded conflicts between the different factions of the independence movement. This recommendation is corroborated by the numerous attempts of pro-Soviet forces to create such conflicts. A general recommendation is not to try to import the experience of one nation, to a political environment of another nation or another time. History and culture make every nation and fate unique, a simple copy-paste could result in fatal consequences.

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# DISMANTLING THE STATE SECURITY APPARATUS

MEELIS SAUEAUK

## INTRODUCTION

The Soviet Union's Committee for State Security (USSR KGB) and its predecessors (VeCHEKA – OGPU – NKVD – NKGB – MGB) were of the world's largest and most powerful intelligence and security services; created in 1917 and initially evolved under the conditions of the "Red Terror". Under orders from the higher-ranking Communist Party organs, it was the primary instrument of terror. The KGB identified enemies of the Soviet regime both within the Soviet Union as well as abroad. In the so-called socialist countries, the KGB was the "older brother" of the secret services of those countries, which similarly called themselves "Chekists" according to the KGB's example.

Thanks to historical KGB foreign intelligence documents preserved at the Estonian National Archives, we can trace the interests and activities of this service in Estonia through 1924–1940. From that time, the existence of several parallel structures that operated with the same objective, yet competed against each other in a state rivalry, which already characterised the so-called "state security organs" or "security organs". The functions of the state security organs are traditionally delineated, as they had evolved during the KGB era. These include foreign intelligence, counterintelligence, military counterintelligence and security; the struggle against "anti-Soviet elements" (political police) and against the hostile activity of religious organisations, safeguarding state security in the fields of transportation and the state economy, guarding the state's borders, protection of the leaders of the state and the Communist Party, and other such tasks.

As has been mentioned above, the state security organs were already engaged in foreign intelligence in Estonia during its pre-war period of independence. After the mutual assistance pact forced on Estonia by the Soviet Union at the start of the Second World War, Red Army bases were established in Estonia, bringing with them the army's special Chekist departments. After Estonia's annexation and incorporation into the Soviet Union in 1940, a subordinate office of the KGB's predecessor of that time – the People's Commissariat for Internal Affairs (NKVD) – was also formed in Estonia (respectively in the Estonian Soviet Socialist Republic – the ESSR). The structure of the ESSR NKVD corresponded to that of the USSR NKVD, the lines of work of their subunits overlapped. That is how it remained in the future as well – the ESSR's state security organs emulated the USSR-wide organisation in terms of its structure, only in a scaled-down form.

The Criminal Code of the Russian SFSR was put into effect in Estonia during the final months of 1940, including the notorious articles concerning "counterrevolutionary crimes" (58-1a, etc.), on the basis of which the security organs set about sending Estonian citizens into imprisonment in the territory of the Soviet Union. Yet the true Red Terror was launched in 1941 immediately prior to the start of the war between Germany and the Soviet Union, and in the course of the ensuing warfare. The mass deportation carried out in 1941, where about 10,000 people, including entire families, were taken from Estonia to the Soviet Union's internal oblasts, the bloodshed carried out by the NKVD's wartime

so-called destruction battalions, and the mass murders connected with the deportation of imprisoned persons assured the state security organs of a frightening reputation that they could not shake until the end of their operational existence.

## DESCRIPTION OF THE DEFAULT SITUATION

At the end of 1943, when planning the recapture of Estonia, Latvia and Lithuania, subunits of the state security organs for these countries were formed again in the rear area in the Soviet Union. Upon the recapture of these countries, these state security organ subunits were responsible for taking control in these countries, establishing themselves and setting about executing their assignments. Since the population still remembered the Terror of 1941 very well, the Germans occupying Estonia and their henchmen did not have to go to a great deal of trouble to frighten people with the horrors of the Soviet regime. Unfortunately, this undertaking in frightening the population proved to be not merely a propaganda lie, rather the terror and mass arrests began in Estonia again, and these were most extensive, precisely in 1945. It was also not long until mass deportation was carried out once again – in March of 1949, over 20,000 people, again including entire families, were taken all at once to the Soviet Union's "most distant regions" (primarily the region extending from the Southern Ural mountains to Lake Baikal, including areas of Kazakhstan, which were not far from the Semipalatinsk [Nuclear] Test Site). The struggle waged by the state security organs against freedom fighters hiding in the woods, who were either imprisoned or murdered on the spot, was topical until the mid-1950s. All this created an overall atmosphere of terror and violence where nobody could feel secure.

The only institution in the Estonian SSR, which at least theoretically, was authorised to control the state security organs, was the party apparatus of the local branch of the Communist Party of the Soviet Union (CPSU) – the Estonian Communist Party (ECP). Yet even the Party apparatus operated in Estonia in accordance with the dictates of the Soviet leadership. As a rule, a division of tasks was in effect between these two institutions, where the former suppressed resistance using terror, and the latter dealt with agitation and propaganda aimed at suppressing resistance. As a rule, the Chairman of the ESSR KGB also belonged to the ECP's leading council – the Bureau of the Central Committee of the ECP. The leadership of the ECP never had the kind of power over the state security organs as did the leadership of the CPSU.

The state security organs achieved their largest size as an organisation at the outset of the 1950s when the militia (which was the equivalent of uniformed police force of Western countries), the internal security troops (i.e. military force), etc., which had all traditionally been part of the administrative field of the Ministry of Internal Affairs, were combined with the Ministry of State Security (MGB). According to some sources, the personnel of the USSR MGB had grown to a number between 200,000 and 207,000 (not including the border guards) by 1952. In 1949,

the staff of the central apparatus of the ESSR MGB and its peripheral organs (a total of 15 municipal and county departments) numbered a total of 1,292 positions, including 711 operational staff positions that were directly involved in operational work or in the running of such work. As of 31 December 1949, 636 operational staff positions (89.5 %) and 493 non-operational staff positions (84.5 %) of that total number were staffed with employees. Thus the ESSR MGB had a total number of 1,129 employees on staff at that time. About a quarter of these employees were ethnic Estonian and this relative proportion remained the same until the termination of the KGB's activity. After a brief period that followed the death of the Soviet dictator Joseph Stalin, when the MGB was placed under the jurisdiction of the Ministry of Internal Affairs (1953–1954), the Committee for State Security was formed under the jurisdiction of the USSR Council of Ministers and similarly, its subordinate institution was also formed in Estonia: the Committee for State Security under the Estonian SSR Council of Ministers. The status of the Committee was strengthened somewhat in 1978 and it became simply the USSR KGB (correspondingly the ESSR KGB in Estonia). The KGB distanced itself from the mass terror of the Stalinist era during its initial years and at the same time, the number of its personnel was significantly reduced. A new Estonian SSR Criminal Code was put in effect in 1961.

The more important departments of the central apparatus of the Estonian SSR KGB were:

- 1st Department – dealt with foreign intelligence
- 2nd Department – dealt with counterintelligence
- 4th Department – counterintelligence and security in the field of transportation and communications
- 5th Department – department for combating “ideological sabotage”
- 7th Department – covert surveillance
- Investigation Department – dealt with investigating criminal cases.

Smaller subunits and units for technical and administrative support operated in addition to the above-mentioned units.

In the context of Estonia, the most central unit was the ESSR KGB 5th Department, the task of which consisted of the complete suppression of all manner of dissidence and manifestations interpreted as being anti-Soviet. The department's spheres of work covered all the more important public objects.<sup>1</sup> At the end of the 1980s, about a thousand people worked in the ESSR KGB, about half of which were operational agents.

Its so-called operational departments functioned by the use of secret collaborators; the main categories of which were the agent, the resident, and the tenant of the secret apartment or apartment for covert meetings. The number of operational agents in Estonia during the final years of the KGB's activity has been estimated at between 2,500 and 3,000.

## DESCRIPTION OF THE TRANSITION

In 1988/89, when Estonia directed its course towards seceding from the Soviet Union, Estonia's leadership faced a dilemma – what to do with the KGB. One of the first plans was to take over the KGB's functions and to distribute them among different institutions. On 13 April 1989, an ESSR governmental committee was formed for reorganising the ESSR KGB. The committee's proposals, nevertheless, were not implemented. The committee

also criticised the draft bill of the USSR State Security Organs Act. Changing times also brought a change in ESSR KGB personnel, when Rein Sillar, a KGB cadre officer who was born and raised in Estonia, was appointed Chairman of the Committee for State Security in March of 1990 (persons of non-Estonian origin had formerly been preferred for positions in the leadership of the ESSR state security organs, excluding a few exceptions). It is believed that the reorganisation of the KGB and its partial subordination to the government of the Estonian SSR would actually have come to pass, if the August putsch of 1991 had not taken place.

The government made the decision to do away with the KGB in Estonia a few days after the restoration of independence in August of 1991. A government order issued on 26 August 1991 instructed the Chairman of the ESSR KGB, R. Sillar, to halt the work of the organ under his leadership, on that very same day, until the government issues a special order, and to form a joint committee consisting of authorised representatives of the Republic of Estonia and representatives of the ESSR KGB to resolve issues associated with the KGB. The Ministry of Internal Affairs issued an order for closing off and sealing the workrooms of the ESSR KGB. For its own part, the government pledged to guarantee the human rights of KGB employees and the inviolability of their personal liberty on an equal footing with other inhabitants of Estonia. Regardless of the resoluteness of this document, almost no measures whatsoever followed from it. The KGB continued to operate in its buildings (except for its local departments) until the end of 1991.

The fact that a corresponding agreement had already been reached on 4 September 1991 with Vadim Bakatin, who had risen to the position of heading the USSR KGB, indicated that conditions were favourable for achieving an agreement with the new leadership of the USSR KGB. The agreement was in accordance with the principles of the latter, the most important of which was doing away with the KGB as such, and the distribution of its functions among different institutions.<sup>2</sup>

In Moscow on 4 September 1991, the Chairman of the Government of the Republic of Estonia Edgar Savisaar, the Chairman of the USSR KGB, V. Bakatin, and the Chairman of the ESSR KGB, R. Sillar signed the protocol “Concerning the mutual obligations of the Republic of Estonia, the USSR KGB, and the Estonian KGB”, which prescribed the establishment of a trilateral committee of experts (the Government of the Republic of Estonia, the USSR KGB, and the ESSR KGB), which was to present a list of issues that needed to be solved, first of all, together with draft agreements for implementing the provisions of the protocol. Thus, this protocol took the termination of the KGB's activity back to its starting point. Both the KGB and the Government of the Republic of Estonia accepted different obligations, among which the KGB itself was to be responsible for the preservation of its property and archives, while the Government of the Republic of Estonia, on the other hand, was responsible for securing the social, political and personal rights of KGB employees, pensioners and the members of their families, and was obligated to continue financing the KGB and to provide for its economic upkeep (excluding employment pay, which the USSR KGB was

1 Concerning the 5th Department of the ESSR KGB and other structural information, see for instance: Harri Mägi, *ENSV KGB tegevuse lõpetamine*, Tallinn: Varrak, 2012, 47–54.

2 Вадим Викторович Бакатин, *Избавление от КГБ*, Москва: “Новости”, 1992, 77.

supposed to provide). Only the KGB's local departments were to be shut down.<sup>3</sup>

On 9 October 1991, E. Savisaar, V. Bakatin, and R. Sillar signed the protocol "Concerning the implementation of practical measures connected to terminating the activity of the ESSR KGB". The protocol prescribed that:

- a trilateral committee of experts was to be formed for inventorying the KGB's real estate and movable property, technical means, and weaponry located in the territory of the Republic of Estonia, and for preparing separate protocols for handing buildings, special equipment, means of transportation, weaponry and other tangible assets over to the Republic of Estonia. The handing over of information detailing the structure of the ESSR KGB and lists of its personnel was also prescribed;
- a certain portion of the ESSR KGB archives was to be handed over to the Republic of Estonia.

The USSR KGB was prepared to hand over to Estonia the agent-operational materials of the ESSR KGB in the event that the Republic of Estonia would provide certain legal guarantees (see the chapter "Regime Archives"). In actuality, it was the archives, in particular, that practically were the only object of agreement of any permanent value.

- The Republic of Estonia took upon itself the obligation to guarantee the social, political and personal rights of the ESSR KGB's former employees, pensioners and the members of their families in accordance with generally recognised norms of international law, the laws of the Republic of Estonia, and bilateral and multilateral agreements with the Soviet Union. Even more so, the USSR KGB and the Government of the Republic of Estonia were required to submit proposals on the issues of the legal and social protection of the ESSR KGB's former employees, pensioners and the members of their families, and of providing them with pensions and housing, in order to sign the corresponding agreements at the international level.<sup>4</sup>

The following working groups were formed for the takeover by order of the Government of the Republic of Estonia:

- 1/ working group for issues concerning real estate and movable property;
- 2/ working group for issues concerning weapons, special equipment, and other such matters;
- 3/ working group for issues concerning archives and documentation, and
- 4/ working group for issues concerning governmental communications, private communications, and other such matters.

The takeover of the local state security departments took place first of all. Unfortunately, the entire documentation of the work of those departments had already been removed from almost all of the departments prior to their takeover. Buildings and their furnishings were handed over mostly in undamaged condition. A statement in the protocol was signed on 25 October, according to which weapons and ammunition were handed over to the Estonian side: about 200 Kalashnikov assault rifles, over 1,400 pistols, about 600 hand grenades, over 300,000 cartridges, etc.

The handover of KGB property and the termination of the institution were completed in December, when the "Final act concerning the termination of the activity of the ESSR Committee for State Security" was signed on 18 December 1991. It was signed by the Minister of State of the Republic of Estonia Raivo Vare, the fully authorised representative of the Federal State Security Service,<sup>5</sup> Vyacheslav Shironin, and the former Chairman of the ESSR KGB, Rein Sillar.

According to the act, the measures connected to terminating the activity of the ESSR KGB had been implemented and the KGB's personnel had been removed from their posts or transferred to continue their service outside of the Republic of Estonia (with the exception of 25 people); buildings, property, means for automobile transportation, special equipment, weaponry and ammunition were handed over to the Republic of Estonia to the agreed extent, in accordance with agreements, archival collections and other materials were handed over to the Estonian Police Bureau; additionally, an agreement was prepared concerning the provision of former KGB employees and pensioners with legal and social protection, pension insurance and housing. The provisions of this agreement were to be followed until the conclusion of an agreement at the international level.<sup>6</sup>

## CURRENT STATUS

Although the termination of the KGB in Estonia could have been considered completed at that point in time, an important development later came to light, as along with the final act, an agreement concerning social guarantees for former KGB employees and their families had also been signed. The public only found out about this in 2000 when a copy of this document was presented as evidence in court. This induced the Riigikogu (Estonian parliament) to form a Riigikogu committee of inquiry (its chairman was member of the Riigikogu Aivar Altosaar) as late as 2001 for investigating the termination of the KGB, but primarily for ascertaining the facts and circumstances of the signing of the agreement.<sup>7</sup>

The so-called social guarantees agreement bears the date 18 December 1991 and the title "Agreement concerning guaranteeing legal and social protection, pensions and housing for former ESSR KGB co-workers and pensioners, and the members of their families". The agreement bears the signatures of R. Vare and V. Shironin; although it had been drawn up and worded to be signed by the head of the Federal State Security Service, V. Bakatin, and the Chairman of the Government of the Republic of Estonia, E. Savisaar.

Pursuant to the agreement, the Government of the Republic of Estonia undertook the obligation to:

- guarantee the social, political and personal rights of former KGB co-workers, pensioners and the members of their families and not to permit the restriction of their rights and liberties, their punishment pursuant to criminal procedure, and bringing them to justice in other ways, for their preceding

3 Протокол о взаимных обязательствах Правительства Эстонской Республики, КГБ СССР и КГБ Эстонии, 4 September 1991, Estonian National Archives, ERA.R-1.5.1236, 207–210.

4 Протокол о реализации практических мер, связанных с прекращением деятельности КГБ Эстонской ССР, 9 October 1991, Estonian National Archives, ERA.R-1.5.1236, 211–215.

5 USSR legislation of 3 December 1991 reorganised the USSR KGB as the Federal State Security Service.

6 Final act concerning the termination of the activity of the ESSR Committee for State Security, 8 December 1991, Estonian National Archives, ERA.R-1.5.1236, 18–20.

7 Riigikogu decision to form a committee of inquiry to ascertain the facts and circumstances associated with the termination of the activity of the former Estonian SSR Committee for State Security. Passed on 16 January 2001 – *Riigi Teataja*, <https://www.riigiteataja.ee/akt/72639> (cited on 25 July 2017).

service or work in the state security organs, if their activity was in accordance with legislation that was in effect;

- guarantee the payment of pensions, benefits and compensations deriving from Russia to the KGB's military pensioners and the members of their families who remain living in Estonia;
- carry out the exchange of residential premises of former KGB co-workers and the members of their families who are leaving Estonia and the shipping of their property out of the country pursuant to the laws of the Republic of Estonia;
- recognise documents verifying graduation from USSR KGB institutions of education on an equal footing with the diplomas of other USSR institutions of higher education.

It had been judged that the actual conclusion of this agreement would have either ruled out or significantly hampered the conduct of the lustration process.

The lustration process as a whole in Estonia focused on the elimination of the effect of the KGB and of persons associated with it in independent Estonia.<sup>8</sup> One of the driving forces in this process was the formation of an ad hoc committee in 1993 for investigating the activity of the security and intelligence organs of the Soviet Union and of other countries in Estonia (the committee chairman was the member of the Riigikogu and former political prisoner Enn Tarto).<sup>9</sup> This committee was formed for investigating matters connected with the activity and termination of the above-mentioned organs and also the ESSR KGB, and for working out a legal mechanism for using relevant materials. The committee was charged with the task of submitting draft legislation concerning the procedure for the public disclosure of activities, employees, and networks of agents of the security and intelligence organs of the Soviet Union and other countries. The committee was obligated to pass the relevant materials on to investigative and court organs, or to the Chancellor of Justice in the event that it discovered violation of law, and also if facts and circumstances came to light casting doubt on the oath of conscience of any particular individual.

The ad hoc committee worked out rules and legislation for the preservation and use of the KGB archives that had been taken over.<sup>10</sup> The committee also tried, but failed to achieve the return from Russia of documents that had been taken away.

The most important accomplishment of the ad hoc committee was working out draft legislation for registering KGB employees and individuals who had collaborated with it (along with the employees and collaborators of other intelligence and security services of the Soviet Union and Nazi Germany). The legislation that went into effect in March of 1995 specified the services (including the KGB), the employees of which had to register themselves with the Estonian Internal Security Service within one year, meaning that such individuals had to confess their cooperation with such services. Individuals (agents, residents, confidants, etc.) who had collaborated with these services were also subject to the same requirement. Such confessions were considered state secrets. Collaborators who did not confess were to be publicly disclosed in the *Riigi Teataja*.<sup>11</sup> This registration legislation has been assessed positively because, on the one hand, it enabled the state to obtain information about individuals who had cooperated with secret services and, on the other hand, it enabled those individuals to establish relations of loyalty to the Republic of Estonia and to safeguard themselves against blackmail by a foreign country. Of those who have not registered themselves, so far, the identity of over 600 former KGB operatives has been publicly disclosed.

The ad hoc committee also dealt with starting up the research of international crimes with no statute of limitations<sup>12</sup> and assessed the work of the governmental committee that terminated the activity of the KGB. In the opinion of the committee, the governmental committee for terminating the activity of the KGB did not have a clear and coordinated position in relation to the objectives of its work. The committee concluded that the work of the termination committee cannot be considered satisfactory and its actions cannot be considered the termination of the KGB, but rather, at best, the formal ending of the activities of the KGB.

## LESSONS LEARNT

It is practical to lay open the experiences gained in Estonia from the termination of the KGB, on the basis of the final report of the committee of inquiry formed in 2001, to investigate the termination. The final report of the Committee of Inquiry into the Termination of the Activity of the Former ESSR Committee for State Security, completed in 2002, viewed the termination of the KGB in Estonia in a quite critical light.<sup>13</sup> The committee's main conclusions were as follows:

- 1/ The committee expressed approval of the choice made by the Government of the Republic of Estonia, at that time, to terminate the ESSR Committee for State Security, and of the fact that the KGB's legal activity in Estonia was halted.
- 2/ In the opinion of the committee, the Government of the Republic of Estonia was not sufficiently consistent and demanding in the fulfilment of many of the points agreed upon in the protocols of 4 September and 9 October 1991, and in demanding their fulfilment (first and foremost in matters concerning the archives):
  - a/ the demand for the return of operational files and files on networks of agents was not seen through to the end. The Government of the Republic of Estonia should have initiated legislation in the Supreme Council to work out

8 See the chapter "Lustration".

9 Riigikogu decision to form an ad hoc committee to investigate the activities of the security and intelligence organs of the Soviet Union and other countries in Estonia. Passed on 18 May 1993 – *Riigi Teataja*, <https://www.riigiteataja.ee/akt/13094339> (cited on 25 July 2017).

10 See the chapter "Regime archives" and the legislation Procedure for Collection, Registration, Preservation and Use of Materials of Security and Intelligence Organisations of Other Countries which have Operated in Estonia Act, passed on 10 March 1994 – *Riigi Teataja*, <https://www.riigiteataja.ee/en/eli/522042014002/consolide> (cited on 1 April 2017).

11 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, passed on 6 February 1995 – *Riigi Teataja*, <https://www.riigiteataja.ee/en/eli/524042014001/consolide> (cited on 1 April 2017).

12 See the chapter "Investigation and Prosecution of the Crimes of the Regime".

13 Final report on the termination of the activity of the former ESSR Committee for State Security (part I: *Eesti Päevaleht*, 10 April 2002, <http://epl.delfi.ee/news/eesti/endise-ensv-riikliku-julgeoleku-komitee-tegevuse-lopetamise-lopparuanne-i-osa?id=50920257>; part II: <http://epl.delfi.ee/news/eesti/endise-ensv-riikliku-julgeoleku-komitee-tegevuse-lopetamise-lopparuanne-ii-osa?id=50920258>; part III: <http://epl.delfi.ee/news/eesti/endise-ensv-riikliku-julgeoleku-komitee-tegevuse-lopetamise-lopparuanne-iii-osa?id=50920259> (cited on 20 July 2017).

legislative guarantees that the USSR KGB was pursuing that would have satisfied both sides;<sup>14</sup>

**b/** the return of KGB archival files concerning other Estonian citizens that the USSR KGB pledged to comply with within the space of one year was not demanded (For this reason, Estonia was left without thousands of investigation and filtration files);

**3/** The government was not decisive and consistent enough in halting or obstructing the activity of the KGB, including its local departments. At the same time, it should have been explicitly stated in the protocols that the preservation of all documentation must be guaranteed and that its destruction was prohibited. This, however, was not done.

**4/** The process of terminating the ESSR KGB was not sufficiently open in the opinion of the committee, although even the protocol of 4 September 1991 prescribed that the public would be periodically informed of the negotiations concerning the termination and of the agreements arrived at. The committee of inquiry felt that the KGB would not have had advantages under conditions of greater publicity.

**5/** The control of the Government of the Republic of Estonia over the activity of the governmental committee was insufficient.

**6/** In the opinion of the committee, the conduct of business in terminating the KGB was faulty. The minutes of meetings were not recorded (at least such minutes have not survived, similarly no correspondence, rough drafts, final report, and other such material have been preserved).

The committee of inquiry focused its attention on which problems remained or are still to this day topical for the Estonian state:

**1/** The Estonian side did not obtain the lists of KGB personnel in the course of its termination.

**2/** Materials connected with the KGB's networks of agents and its operational materials, and thousands of other KGB archival files concerning Estonian citizens remain in Russia. The committee noted that, on the one hand, this has an aspect related to state security for the Estonian state because those thousands of people who on the basis of the law have not confessed before the Republic of Estonia their cooperation with the repressive organ of the occupying regime are the potential objects of foreign influence. On the other hand, the aspect of the protection of the rights and interests of Estonian citizens, which the Estonian state is obligated to stand for, is also important. This is manifested by the fact that information concerning Estonian citizens gathered by the ESSR KGB in the course of its operational work is at the disposal of a foreign country, as well as by the fact that criminal, filtration or other files that could serve as the basis for resolving people's pension issues are deposited in Russia. Historical and cultural history aspects also cannot go unmentioned, since thousands of files deposited in and at the disposal of a foreign country concerning the ESSR KGB's networks of agents, operational work, and other such material are indispensable sources for researching that totalitarian regime, its organs of repression, and the period of occupation.

**3/** The alleged disappearance of the "foreign travel files" (files containing background checks of individuals who wished to visit capitalist countries).

**4/** The disappearance of the so-called agreement protecting the social guarantees of KGB personnel bearing the signatures of R. Vare and V. Shironin (18 December 1991). Although this document was judged to be invalid in the course of legal proceedings, and the members of the Government of the Republic of Estonia, of that time, also did not verify the conclusion of this agreement, it was assumed that matters associated with this agreement could cause headaches for the Estonian state in the future as well.

In summary, the Riigikogu committee of inquiry expressed approval that the activity of the ESSR KGB was halted. By taking over the KGB, the Estonian state acquired a significant quantity of weapons and archival documents. Beyond that, special means of communication and many different kinds of equipment needed by special services were acquired that at that time still had practical value. Broadly speaking, the committee of inquiry felt that it was justified to assess the process of terminating the ESSR KGB as having been satisfactory.

## RECOMMENDATIONS

Based on the above, we can also formulate a few recommendations relating to the termination of the activities of secret services of a former regime. Here it must be taken into account that in every specific case, the tactics and results depend primarily on the political situation and on how strong a political agreement for lustration is succeeded in achieving. In an ideal situation (which as we know almost does not exist in reality), recommendations could be as follows:

**1/** The governmental committee that is authorised to carry out the termination of the secret service should have firm objectives, a comprehensive approach and a clear plan for taking over the property of the service and for determining their future ownership;

**2/** The affairs of the committee must be managed properly and its activity must be documented;

**3/** The activity of the committee and the problems that arise should be as public as possible and under the control of parliament;

**4/** Advisors and informers with inside information on the situation in the secret service should be involved in the work of the committee;

**5/** In the event of taking over property, the protocols of inventories from previous years should be requested on a compulsory basis in order to compare them to the quantity of property that is actually handed over.

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<sup>14</sup> Concerning taking over documentation and the archives, see the chapter "Regime archives" for further information.

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# REGIME ARCHIVES

MEELIS SAUEAUK

## INTRODUCTION

Historical themes were of great importance in the Singing Revolution that erupted in Estonia in 1988. The reason for this was the wish of Estonians to study and write their own history that would be free of communist falsification, and to fill the “white patches” or blank gaps in history that the foreign power’s treatment of history had concealed. First of all among these “white patches” were the communist terror and the fate of the individuals who suffered in that terror. The years 1988–1991 were a strange transitional period when the Estonian organ of the Communist Party of the Soviet Union – the Estonian Communist Party (ECP) and the Soviet state security service (KGB) tried to demonstrate a certain complaisance in publicly disclosing information concerning the communist terror. This was part of Soviet state policy – of public disclosure (Glasnost). The disclosure of information took place under the complete control of these institutions, and the public was not allowed access to their secret archives (the archives of the Soviet administration were likewise off limits). Similarly, outside of those institutions, there was no clear idea of the composition of the archives or of current records. The Soviet KGB, for its own part, tried to use public disclosure with the aim of halting the disintegration of the Soviet system of government. It provided Soviet judicial authorities and prosecuting authorities with access to its archival materials in rehabilitating victims of Stalinist terror.

## DESCRIPTION OF THE DEFAULT SITUATION

The most important communist secret service archive in Estonian territory was the archive of the Estonian territorial organ of the Committee for State Security (KGB) – the Estonian SSR KGB – in Tallinn.<sup>1</sup> The complete content and volume of this archive has not been publicly disclosed to this day. On the basis of analogy with the archives of former KGB subunits preserved in other regions of the former Soviet Union, there are grounds for believing that all archived materials of the Estonian SSR KGB and its predecessors from the entire period of their activity, from 1940–1941 and starting from 1944 onward until the present time, were deposited in the archive. This had to include regulative documents, correspondence and records management, operational account files, departmental administration files, files on cadre employees and agents, internal investigation files, investigation files, filtration files, special auditing files, card files and other information apparatus, the secret library, the photo archive, etc. etc. The organisation of the KGB archive, the so-called “operational archive”, and the reception, systematisation, preservation and use of documents were all under the jurisdiction of the KGB’s 10th Department. Additionally, materials that were not archived, that were in use and in circulation were also part of the KGB’s documentation.

According to existing information, the removal of KGB archival material from Estonia already began at the end of 1989. This

was probably connected to events in Germany that ensued from the fall of the Berlin Wall, where the danger that secret service materials could find their way into “foreign hands” became real. According to the former leaders of the ESSR KGB, the USSR KGB “dislocated” its archives as its own property to another location. First of all, archived personal and work files of its network of agents (agents, residents and the tenants of secret apartments whose work had ended or had been discontinued and whose personal files and work files had been placed in the archive) were removed. In January of 1990, operational account files (processing and surveillance files of groups and individuals) were also taken out of Estonia for storage elsewhere. At the same time, the KGB took the KGB Communist Party organisation archive back from the Estonian Communist Party archive and carted it off. In the late spring/early summer of 1990, the personal files of operational agents were taken away, and their work files were allegedly destroyed. The card file of the networks of agents was similarly destroyed at the time of the August putsch in 1991. Since the information concerning these actions derives primarily from oral sources, and documents concerning these actions have not been made public, it cannot be claimed with full certainty that everything really happened like that.

## DESCRIPTION OF THE TRANSITION

After the restoration of Estonia’s independence on 20 August 1991 and the decision of the Government of the Republic of Estonia to discontinue the activity of the KGB in Estonia (26 August 1991), negotiations began with the USSR KGB for the termination of the ESSR KGB and also for handing its archival materials over to the Republic of Estonia. According to the agreement signed on 9 October 1991 by the Prime Minister of Estonia, the chairman of the USSR KGB, and the chairman of the ESSR KGB, the signatories were obligated to trilaterally form a special committee for handing over the archival materials, and the archival collections that were to be handed over were designated. These collections included:

- 1/ Investigation files;
- 2/ Filtration files (personal files of persons detained in so-called vetting-filtration camps in 1944–1946);
- 3/ Materials from the investigation of war crimes;
- 4/ The “special library”<sup>2</sup>

By 25 November 1991, the committee was also supposed find a way to maintain “peace and concord among the citizenry” in its task of working out a procedure for handing over and preserving KGB materials on the “armed conflicts” of the 1940s and 1950s

1 The main sources used for the descriptive part in putting together this overview are the book: Harri Mägi, *ENSV KGB tegevuse lõpetamine*, Tallinn: Varrak, 2012, and the manuscript by Meelis Maripuu *Eesti kogemus KGB dokumentidega* (2016, in the possession of the Estonian Institute of Historical Memory). The author thanks M. Maripuu for his assistance and advice.

2 Protocol concerning practical measures connected to the termination of the ESSR KGB, 9 October 1991 – Mägi, *ENSV KGB*, 168–172.

in Estonia and on the persons who perished in them, as well as materials from KGB supervisory investigations carried out to investigate the violation of legality.

It is not known why only this limited quantity of KGB materials was selected to be handed over. It can be said in advance that the above-mentioned collections ultimately formed the main part of what was handed over to Estonia. The KGB nevertheless expressed its willingness in the same protocol to also hand over materials on agent-operational activities and materials concerning secret collaborators (agents, etc.) in accordance with a separate agreement after “sufficient legislative guarantees” have been established in the Republic of Estonia for maintaining the secrecy and security of individuals who have cooperated with the KGB. It can be said in advance that since the dynamics of Russian–Estonian relations did not develop in the direction of good-neighbourliness, then for this or some other reason, such an agreement was not concluded in the future.

On the basis of the above, the statement of the handing over of the ESSR KGB archive collections and other documentary materials was signed on 24 October 1991. In addition to the collections listed above, a selection of activity documents from the 1940s and 1950s, primarily concerning the struggle against the resistance movement, a collection of KGB internal investigation materials from the same time period, and other smaller collections of materials were handed over to the Republic of Estonia as “operational materials”. It was noted that materials received at headquarters from KGB regional departments and so-called special audit materials can also be destroyed if they have no historical or other value. The greater portion of special audit materials (according to their serial numbers approximately 80,000 files) consisted of so-called foreign travel files, which contained materials concerning individuals who had applied for permits to travel to capitalist countries. The listed materials were handed over to the Estonian Police Board operating under the jurisdiction of the Ministry of Internal Affairs without involving the national archive system and archivists. The justification given for transferring these materials to the internal institutional police archive was the fact that the national archive system is open to all and the procedure for the protection of private information had not yet been worked out. The transfer of materials lasted until December of 1991. The final act of the termination of the activity of the ESSR KGB was signed in that same month and it noted among other things that, “In accordance with existing agreements, archival collections and other materials of state and historical importance for the Republic of Estonia were handed over to the Estonian Police Board”. Historians, however, were not involved in assessing the historical importance of the archival materials that were to be transferred. On the other hand, “historical importance” meant that as a rule, these materials were of no actual operational importance. They dealt with a time period that was long past and with persons who were mostly already dead or who no longer participated actively in social-political life. The transformation of the Police Board, which was given the responsibility of managing the KGB files, from the Soviet militia into a law enforcement agency of an independent state based on the rule of law similarly did not take place overnight, for which reason it did not display any noticeable activeness in making the KGB and Ministry of Internal Affairs archives deposited there accessible to the public.

**In summary, the KGB handed only a small portion of its archive over to the Republic of Estonia.** Thereat, many important groups of documents, like correspondence and normative

materials, personal files of secret collaborators, personal files of cadre employees, and documents concerning operational activity from the 1960s–1980s, were excluded in their entirety from the materials that were handed over. **The complete composition and preservation of the ESSR KGB archive and of documentation that had not yet been archived at that time is unknown at the present time. The most valuable part of what has been handed over to the Estonian state nevertheless makes it possible to research communist crimes at their high point in the 1940s and 1950s, and to ascertain the fates of their victims and identify the individuals who committed crimes against humanity.**

KGB materials initially remained off limits to researchers and the public after their transfer in 1991. Historians and archivists had already been the driving force behind the opening up of access to archives during the period of Glasnost. In February of 1989, Estonian archivists and historians addressed the public in a memorandum, appealing for access for researchers to the archival records of the Estonian Communist Party, the Ministry of Internal Affairs of the Estonian SSR, and the KGB. In reality, however, this was accomplished only after the restoration of independence in 1991. Steps were taken first of all to take over the ECP archive in September of 1991. On 4 December 1991, a committee composed of archivists and historians determined the principles for the subsequent use of ECP archival records. Most archival documents were declassified and restrictions on use remained in effect for only personal files.

In October of 1991, the director of the Estonian Archival Board Peep Pillak also presented a public demand for KGB materials to be transferred to the national archive, which was being reorganised at that time. Yet another year and a half passed before the order issued by the Government of the Republic of Estonia on 19 April 1993 prescribed the transfer of KGB materials from the Police Board’s archive to Estonia’s national archive system. The Estonian Archival Board formed a committee for launching the takeover process. The employees of archives were involved in carrying out an inventory check on the materials that were to be transferred.

By the end of 1993, most of the archival collections of the ESSR Committee for State Security together with their accompanying finding aids had been brought to the depositories of the Estonian National Archives Branch Archive (Communist Party Archive) in Tallinn.<sup>3</sup> Some materials, including special audit materials (“foreign travel files”) and operational materials from the 1940s and 1950s made their way to the National Archives somewhat later by way of the Estonian Internal Security Service, yet by the outset of 1995, even these materials had been transferred in their entirety. Thus 82,529 files, or less than 70 % of the quantity of archival records that had allegedly been taken over from the KGB without conducting an inventory check, made it to the National Archives. A large portion of the “special audit” files had “gone missing” yet it is not known exactly how many.

In addition to the above-mentioned materials, another small quantity of KGB foreign intelligence files concerning Estonia was transferred to the National Archives of Estonia from the Estonian Government Office in 1997. How the Estonian authorities came into possession of these files is not precisely known. Currently, a total of 114,431 files of KGB documents and collections

<sup>3</sup> Valdur Ohmann, “Nõukogude perioodi ajaloo uurimise allikalise baasi avardumine 1990.–ndail aastail”, in *Ajaloolise tõe otsinguil*, Tallinn, 1999.

of photographs are preserved in 19 National Archives' collections. In connection with Soviet era reforms of the ministries of State Security and Internal Affairs, and with the transfer of spheres of responsibility from the jurisdiction of one institution to that of another, some documents originating from the KGB made their way to the National Archives from the ESSR Ministry of Internal Affairs. In addition to documents, books from the ESSR KGB special library, that were also promised to be handed over but only 98 titles of which were actually handed over by the KGB, have been deposited at the National Archives library.

In May of 1993, an ad hoc committee for investigating the actions of the state security and intelligence services of foreign countries in Estonia (chairman Enn Tarto) was formed, with members from all the political parties represented in parliament. The committee's tasks included the investigation of all that was connected to the activity and termination of the Estonian SSR Committee for State Security, and also the working out of the legal mechanism for using KGB materials. Among other things, the committee demanded that the archive of the former Estonian SSR Ministry of Internal Affairs also be handed over to the Estonian National Archives, which indeed was later gradually carried out.

Together with the Archival Board, the parliamentary committee worked out temporary regulations to provide researchers with access to KGB archives. According to these regulations, every person was allowed access to materials concerning himself. As such, Estonia was the second country (after Germany) from the former "socialist bloc" where the materials of the communist secret service were made accessible. Permission for access to the KGB archive was adopted as legislation on 10 March 1994 that went into effect one month later.

The Procedure for Collection, Registration, Preservation and Use of Materials of Security and Intelligence Organisations of Other Countries Which Have Operated in Estonia Act that went into effect regulated the collection, registration, preservation and use of materials connected with security and intelligence organisations of other countries that have operated in Estonia (*resp* the Soviet Union and Nazi Germany), and their activities.<sup>4</sup> These materials were declared the property of the Republic of Estonia, and the Estonian National Archives were made responsible for them. Regarding the right to their use and access, it was prescribed that every individual has the right to peruse information in the archives concerning himself either in person or by way of an authorised representative. In the event that the person in question was dead, the circle of relatives was defined as to who was permitted to gain access to the relevant materials (§ 9). Materials containing information concerning the private life of the subject were to be categorised as "restricted access" materials (§ 10). In addition to the above-mentioned individuals, persons for whom it was necessary for conducting research work and to whom the director of the archive had issued a permit for such access, along with investigation and inquiry organs, court organs and organs of the prosecutor's office, parties participating in court trials and their authorised representatives, and executive organs for carrying out court verdicts within the extent of commenced civil, administrative or criminal proceedings, had the right to gain access to restricted access materials. The legislation also made provision for the right to challenge the decision to restrict the use of materials.

This essentially put into effect the preceding principle that **the Republic of Estonia does not treat or protect state secrets**

**of the Soviet Union (including the KGB) as Estonian state secrets**, for this reason the declassification of these archival materials or any other such procedure was not necessary. In principle, access restrictions were only meant for private personal data, but in practice, separating private personal information from other information, a task which was assigned to archival employees, was very difficult to accomplish. The approach on the part of the archives took on a fairly liberal form, and in order to resolve ambiguous situations, the practice was adopted where the researcher had to sign an obligation not to disclose the private personal data of third parties in order to use archival records with unrestricted access. This procedure has proven to be rather successful in Estonia. No court action has been initiated and over the course of more than 20 years of practical experience, there have been only a couple of cases where the archive has decided to restrict access to archival materials in some specific case on the basis of a protest by the data subject.

KGB and ECP archival material started being used very extensively since 1995. Archival files were the basis for the rehabilitation of individuals and for the associated return of property. To this end, the archive issued official notices to applicants. Individuals were able to peruse their own files and those of their forebears without restriction in the archive's reading room in Tallinn. Professional historians were able to enjoy practically unrestricted access to KGB files. The archive's research staff quickly set about working out reference materials for assisting interested persons and researchers in researching and understanding the hitherto unknown activities of the KGB, and in finding the materials they were looking for.

The transfer of the archives to a public archive provided an immediate impulse to work that was being conducted in research and publication. The first treatment based on KGB documents of the KGB's role in "working over" Estonian expatriates that had fled to the West was published in the following year after the KGB archives had been handed over.<sup>5</sup> Its author, Dr. Indrek Jürjo had himself been the chairman of the committee appointed by the Estonian Archival Board for taking over KGB documents, which gave him an excellent starting position. Looking back at that time twenty years ago, Jürjo's book functioned as an aftershock that accompanied the transfer of KGB documents at that time, which shook society considerably and affects the research of Estonia's recent history to this day. In one sense, the book quickly became a kind of reference book. Verification of the possible collaboration of specific persons with the Soviet secret services was sought from its sizeable index of names. On the other hand, this touched off a broader discussion in Estonia on the authenticity and credibility of KGB materials, since many of Jürjo's archival discoveries and inferences were not at all to the liking of many people and provided unpleasant surprises in the case of people who had until then been known as bearers of Estonian culture or national sentiments. The emergence of this set of problems and their examination in historical treatments corroborates the importance, in terms of schools of thought, of the study of these problems and the role such research has

4 Procedure for Collection, Registration, Preservation and Use of Materials of Security and Intelligence Organisations of Other Countries Which Have Operated in Estonia Act, passed on 10 March 1994, in *Riigi Teataja* (<https://www.riigiteataja.ee/en/eli/522042014002/consolide>), accessed 1 April 2017.

5 Indrek Jürjo, *Pagulus ja Nõukogude Eesti. Vaateid KGB, EKP ja VEKSA arhiivimaterjalide põhjal*, Tallinn, 1996.

in shaping the study of Estonia's recent history. The pioneering nature of this treatment also manifests itself in its own way in the author's later commentary: "This is in a sense a thankless topic. Fear of being suspected of collaboration causes an enormous amount of negative reactions and I'm constantly reviled. This negativity is tiring. Had I written about repressions against cultural figures, military personnel or clergymen, then everyone would pat me on the shoulder. Nobody would dispute the findings and argue that the sources can't be believed." The attitude of society has settled down over the past twenty years and many of the facts that became known from this book have become general knowledge. People no longer wonder where this knowledge originates from.<sup>6</sup> A second edition of this book has already been published.

Additions to Jürjo's book have appeared in subsequent years in the form of a few monographs and publications of sources (the primary publisher of which has been the Estonian National Archives). The repressions of the Stalinist era, the structure of the state security apparatus and its relations with the ECP, the resistance movement and the struggle against it, and other such topics are conveyed in these studies. Some ESSR KGB documents have been publicly disclosed digitally within the framework of the [www.kgbdocuments.eu](http://www.kgbdocuments.eu) Lithuanian-Latvian-Estonian joint project.

## CURRENT STATUS

According to the Estonian Archives Act, access to every archival record preserved at the National Archives is open to all, if restrictions established in the Public Information Act, the Personal Data Protection Act, the State Secrets and Classified Information on Foreign Affairs Act, or in other legislation do not extend to it.<sup>7</sup>

Requirements concerning the protection of personal data that have become tougher year after year have started regulating access restrictions on materials containing personal data concerning third parties in a more clear-cut manner. The Personal Data Protection Act (passed in 1996, 2003 and 2008) has gone through a noteworthy evolution over the years. One of the aims of the wording of the new Personal Data Protection Act (IKS)<sup>8</sup> that went into effect in 2008 was to regulate the processing of personal data for research and statistical purposes, which had previously not been provided for (IKS § 16). The general principle of the act is that the processing of personal data is allowed only with the consent of the data subject (IKS § 10). Without consent, it is permissible to process the data of those individuals since whose death over 30 years have passed (IKS § 13). The implementation of the principles established by the new legislation extended the number of KGB archival collections subject to access restrictions. Thus at the current time, only 4 KGB collections, of a total of 19, can be used without restrictions.

The basis for access restriction is IKS § 4 section 2, which defines so-called "sensitive personal data" among the overall body of personal data. These are:

- 1/ data revealing political opinions or religious or philosophical beliefs, except data relating to being a member of a legal profession in private law registered pursuant to the procedure provided by law;
- 2/ data revealing ethnic or racial origin;
- 3/ data on state of health or disability;
- 4/ data on genetic information;

- 5/ biometric data (above all fingerprints, palm prints, eye iris images and genetic data);
- 6/ information on sex life;
- 7/ information on trade union membership;
- 8/ information concerning commission of an offence or falling victim to an offence before a public court hearing, or making of a decision in the matter of the offence or termination of the court proceeding in the matter.

Information on the existence and conditions for use of archival records with restricted access is public. All archival material in Estonia, including materials of the former KGB, can be found via the network search website [ais.ra.ee](http://ais.ra.ee). KGB and Ministry of Internal Affairs archival collections can be found in the National Archives directory of collections.<sup>9</sup> KGB and ECP materials are physically preserved in the City of Tartu in modern depositories, which were completed along with the main building of the National Archives in 2016.

According to the procedure established at the National Archives, restriction of access is initially applied to the collection as a whole, yet in issuing materials to researchers, decisions are made based on individual files. In order to gain access to KGB archival records to which access is restricted, the researcher must give grounds for his need for access and the National Archives must verify the researcher's need for access, which may derive from his occupational tasks or research interest. For this the researcher submits an application for an access permit. If the researcher's right to access information derives from legislation (fulfilment of occupational tasks, perusing information concerning oneself, perusing with the written consent of the data subject, or other such circumstance), the grounds provided can be minimal and the archive does not implement a deliberation of the decision. In all other cases, a description of the research theme and the expected result that is as detailed as possible must be presented in the application, because the National Archives decide on providing access by way of deliberation. In the course of deliberation, it is decided whether a researcher has a valid reason for access to information subject to access restriction. In the course of deliberation, it is ascertained whether the public benefit anticipated to accrue from the use of data to which access is restricted outweighs the infringement of someone's rights or interests, which may accompany the use of this data. The risks of the data subject and the National Archives that may arise in connection with granting access are also assessed in the course of deliberation. At the State Archive, where KGB documents are deposited, the head of the Access and Enquiry Department decides whether access is granted or refused. If a file with restricted access is digitised, it can nevertheless be used only in the internal network of the archive's reading room. Access permits are valid for one year.

In Estonian society, matters associated with KGB documents preserved in Estonian archives have lost their sensational aura. People have arrived at the belief that major exposés can no longer come from those documents, and have largely come to

6 Pearu Kuusk, "Arhiveeritud agentide tagasitulek", in *Sirp*, 12 December 2015.

7 Archives Act, passed on 17 February 2011, in *Riigi Teataja*; <https://www.riigiteataja.ee/en/eli/504032016002/consolide>, accessed 1 April 2017.

8 Personal Data Protection Act, passed on 15 February 2007, in *Riigi Teataja*; <https://www.riigiteataja.ee/en/eli/507032016001/consolide>, accessed 1 April 2017.

9 Directory of collections - *National Archives* - <http://www.ra.ee/erafondiloend/index.php/structure/index?id=181>, accessed 1 April 2017.

terms with the fact that individuals were extensively involved in covert collaboration with the KGB. A relatively similar perception of the credibility of KGB documents as historical source material prevails among Estonian historians, which allows these documents to be used in research work while carefully applying source criticism. This is all the more so that in the case of many questions, these documents are necessarily the only written sources. Alongside this, a small number of researchers also exists who consider practically the whole of the KGB material *a priori* to consist of fabrications, disinformation, phony confessions and testimony obtained through violence, or other such spurious material.

**In summary, it can be recognised that in regard to the protection of personal data and the interests of scholarly research, a fairly reasonable balance has been achieved in Estonia concerning KGB materials.** This prevents non-authorised persons interested in the subject from obtaining delicate personal data concerning third parties, yet provides researchers access to materials of interest to them on the condition of their joint responsibility.

## LESSONS LEARNT

Estonia's experience in taking over the materials of the former totalitarian regime's secret services demonstrates that the completeness of the takeover and the conditions for accessing those materials depend above all on the political situation. If the new government has decided to make a complete break with the former regime and has declared the actions of the former regime's secret service to be criminal or in violation of human rights, this provides a good starting position for the entire transformation process. Otherwise, negative reactions inevitably emerge – the destruction and removal of documents, the concealment of data, etc. Differences in the political situation also make it more difficult to adopt the experiences of other countries because the same approaches cannot be applied in different political situations. Yet whether the lustration process is nonexistent, ostensible or actual surely remains a circumstance of decisive importance. Only in the latter case is it possible to use the documentation of the former regime successfully for building up a new polity and a state based on the rule of law that respects human rights.

In Estonia's case, two experiences above all can be highlighted as having been positive: abandoning the keeping and protection of the Soviet Union's state secrets, and the immediate transfer of materials to the public national archival system. The former made it possible to avoid declaring information from the Soviet era a state secret of the Republic of Estonia, and the time-consuming procedures for declassifying this information, etc. The latter made it possible to preserve and use these materials under general conditions, not leaving the decision to one agency or making access possible for only a limited number of researchers. This ensured that the first studies disclosing KGB archival materials could be published in 1996. These studies generated intense debate in that part of society that was interested in the topic, and made it possible to immediately begin discussion concerning the verification of KGB materials as well, among other things. It is noteworthy that court disputes and more serious incidents, where the need to restrict access to KGB materials would have been raised, did not emerge.

In terms of the use of documents, the work done by the Estonian National Archives in creating and managing a digital search system merits recognition. Using this system, it is possible for individuals, regardless of their location, to find KGB collections and documents preserved in the archive, to place orders for their delivery to the reading room, and also to use digital versions of materials to which access is not restricted.

As negative experiences, Estonia has to note primarily the deficiencies in competence in archival matters and also specific to the secret services, the taking over the archives. This made it possible for a situation to emerge where the party representing the Republic of Estonia in the negotiations did not have an adequate understanding of the composition, quantity and preservation of KGB materials, for this reason it was incapable of achieving the takeover of a broader and larger quantity of materials. It is unclear from the documents drawn up concerning the takeover whether the KGB submitted registers of the collections or documents contained in its operational archive. The delegation representing the Republic of Estonia, however, lacked members or advisors who would have been capable of bringing such competence to the negotiations.

The opinion has also been expressed that it is even a good thing that not all KGB materials were handed over to Estonia, first and foremost, materials containing information on the personnel of secret agent networks. This has allegedly prevented a situation where a significant quantity of people in a small society like Estonia (with a population of slightly more than one million) would have been forced to be left out of the building up an independent country, since they would have been compromised by their collaboration with the KGB. In the opinion of that same expert, the confessions of such persons concerning their collaboration submitted to the Estonian Internal Security Service mitigated the security risk (see the text *Dismantling the State Security Apparatus*).

On the other hand, the position is widespread that leaving KGB archives and information in a foreign country is a security risk because it makes former collaborators liable to manipulation by that foreign country, or it makes it possible to use the information gathered concerning them for blackmail, exerting influence, or compromising the individuals involved.

The ambivalence of the two viewpoints mentioned above and the shortness of temporal distance hinders arriving at a conclusive assessment of the transfer and takeover of the Soviet secret service archives in Estonia at this time.

## RECOMMENDATIONS

Based on the experience gained in Estonia, a few recommendations can be made for taking over the archives of the secret services of former regimes, taking into account that these are not necessarily universal in every political situation:

- 1/ The takeover of archives should take place with the participation of professional historians and archivists;
- 2/ The heads of the secret services to be taken over and the heads of their archival services must be responsible for the completeness of the preservation of the archives;
- 3/ To minimise the damage of political crosswinds and non-professional preservation, the archives of secret services that have been taken over should immediately be transferred to a public archive for their preservation and for putting them in order;

- 4/ The classification of archival materials should be assessed from the standpoint of the new system of government, not according to that of the old regime, while also taking into account the possibilities of their use in the lustration process as a whole;
- 5/ In the event of radical lustration, the classification of archival materials as a state secret should be removed, and the information contained in them should be protected in accordance with the protection of personal data;
- 6/ A situation where all materials are initially made public and thereafter access starts to be restricted can generate confusion or antipathy, for this reason this kind of course of events should be avoided;
- 7/ Everyone should have the opportunity without restrictions to peruse materials drawn up concerning themselves, similarly everyone should have the opportunity to peruse information concerning their deceased forebears/relatives;
- 8/ Access should not be restricted for scholarly research, yet the use and disclosure of data should take place with the (joint) responsibility of the researcher;
- 9/ Registers of documents should be public and, if possible, accessible digitally;
- 10/ Normative documents and reports of secret services, along with other more important documents necessary for understanding their actions, should be public and accessible digitally via the internet.

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# LUSTRATION

TOOMAS HIIO

## INTRODUCTION

Estonia's independence was restored on 20 August 1991. In September, Estonia became a member of the United Nations together with the other Baltic States. Most of the world's countries recognise Estonia as a state that was created in February of 1918 and the independence of which was restored in 1991 (legal continuity). Russia and a number of other countries consider Estonia to be a state that was born in 1991 due to the collapse of the Soviet Union.

In August of 1991, the Constitutional Assembly, formed on the basis of parity by members of two political forces (30 + 30), the Supreme Council of the Republic of Estonia elected by residents of Estonia in 1990, and the Estonian Congress representing only Estonian citizens by legal succession, drew up a new constitution that was approved in a referendum held in June of 1992 and went into effect on 3 July 1992. Monetary reform was also implemented in June of 1992, in which Estonia abandoned the Soviet rouble, which was rapidly decreasing in value, and adopted the Estonian kroon with its exchange rate fixed at 8:1 Deutschmarks.

On 20 September 1992, the country's parliament, the 7th Riigikogu with 101 members, was elected in accordance with the new constitution. Political parties that set rapid integration with the West (returning to Europe, as it was referred to back then) as their objective won the election. Mart Laar, the young leader of the patriotic Pro Patria (Fatherland) Party oriented towards the West, formed the government. In October of that same year, Lennart Meri was elected president. As a film director and writer during the Soviet era, and as Minister of Foreign Affairs in the transitional government (1990–1991), Meri had already worked in the name of upholding the idea of Estonia belonging to the West and Estonia's return to Europe. Estonia is a parliamentary republic, but until 2011, the President was the supreme commander of national defence of Estonia, from which derived his right to appoint the Commander of the Defence Forces to his post.<sup>1</sup>

A course of radical reform began with the aim of quickly joining the European Union and NATO. One of the election slogans of Mart Laar's party was "Let's make a clean sweep!" Its poster depicted a University of Tartu Professor of Estonian History sweeping a yard with a broom, which was supposed to symbolise the aim of quickly doing away with the Soviet legacy. Yet Pro Patria's political opponents interpreted this primarily as the aim to purge the public sector of Soviet era officials and former members of the Communist Party. Many young people were hired in the public sector once Pro Patria was in power. This was particularly conspicuous in the Ministry of Foreign Affairs and the Ministry of Defence, which were built up from scratch. There was no Ministry of Defence in the Estonian SSR, and the small staff of its Ministry of Foreign Affairs primarily fulfilled tasks related to protocol when one or another foreign delegation visited the Estonian SSR.

In 1996, the 8th Riigikogu, which was elected in 1995, adopted the main orientations of Estonia's national defence policy, in which the objective was set for Estonia to become a full member

of NATO and an associated member of the Western European Union (WEU).<sup>2</sup>

The last Russian troops, the successors of the former Soviet Army, withdrew from Estonia on 31 August 1994.

## ESTONIAN SYSTEM OF VETTING

Only a few post-communist countries succeeded in implementing lustration in relation to the party that was formerly in power and its officials. In Estonia as well, lustration was limited only to purging cadre employees and secret collaborators of the former intelligence and state security service of the Soviet Union – the USSR Committee for State Security (KGB) – from official positions of greater responsibility in the Republic of Estonia, and not allowing them to work in such positions.

Almost no files of the KGB's network of agents ended up at the disposal of the Republic of Estonia. Thus for the most part, it is not possible to rely on the former state security archives for background checks in Estonia.

In July of 1992, immediately after the new constitution went into effect and before the parliamentary election, legislation was passed concerning the requirements and procedure for taking an oath of conscience. The legislation enumerates the posts for which candidates are required to take the oath of conscience:

"[...] 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 [...]"<sup>3</sup>

A person taking the oath of conscience affirms that he "has not been in the service or worked as an agent of the state security organs or armed forces intelligence or counterintelligence of states that have occupied Estonia, and has not participated in prosecuting and repressing citizens for their political convictions, disloyalty, class affiliation or for having been in the civil service or served in the defence forces of the Republic of Estonia."<sup>4</sup>

In February of 1995, the Riigikogu passed the 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.<sup>5</sup> This act obligated individuals who had

1 From 2011 onwards, the Government of the Republic of Estonia appoints the Commander of the Defence Forces to office.

2 Approval of the main orientations of Estonia's national defence policy, 7 May 1996, <https://www.riigiteataja.ee/akt/13009161> (only in Estonian).

3 Act on Procedure for Taking Oath, § 1, <https://www.riigiteataja.ee/en/eli/520052014002/consolide> (cited on 24 July 2017).

4 Ibid.

5 Procedure for Registration and Disclosure of Persons who Have Served in or Co-operated with Security Organisations or Intelligence or ►

collaborated with the state security services of states that have occupied Estonia to register themselves at the Estonian Internal Security Service within one year and to submit a written confession concerning their service or collaboration with the state security service of a state that has occupied Estonia. The names of those individuals who had not confessed their service or collaboration within one year, concerning whose collaboration or service the Estonian Internal Security Service had sufficient information, were publicly disclosed in the *Riigi Teataja* (State Gazette, official journal). At the present time, the names of more than a hundred individuals have been disclosed.

Service in the state security organ of a state that has occupied Estonia, or collaboration with it, does not allow a person to apply for positions enumerated in the oath of conscience. The task of the Estonian Internal Security Service is to monitor that such persons will not apply for such positions: “The Internal Security Service is required to forward the information which contests the oath taken by the person if the person has not contested the notice of the Internal Security Service specified in subsection 8 (2) of this act during the period of time provided for in subsection 8 (4) or after it has been established by a court decision which has entered into force that the person has served in or co-operated with security or intelligence organisations to the Office of the Prosecutor General who has the obligation to contest the oath in court pursuant to the Prosecutor’s Office Act and the Republic of Estonia Act on Procedure for Taking Oath.”<sup>6</sup>

In addition to the oath of conscience, other measures were also employed, for instance as a rule, former KGB personnel living in Estonia who were not citizens were not issued permanent residence permits, to say nothing of citizenship, so that if a security risk came to light, it would be possible to revoke the right of the persons involved to remain in Estonia.

## INTERNAL SECURITY AGENCIES

In the Soviet Union, the Ministry of Internal Affairs was a USSR-wide ministry to which the ministries of internal affairs of the union republics were subordinated. The Ministry of Internal Affairs was an agency with broad jurisdiction. In addition to law enforcement organs (the militia) and fire fighting, prisons and a number of other agencies were subordinated to the Ministry of Internal Affairs. The Ministry of Internal Affairs had its own armed forces – the so-called interior troops. A battalion of interior troops was also stationed in Tallinn. It was manned by conscripts who were mostly from outside of Estonia. In the Soviet Union, the KGB, the Committee for State Security which had the rights of a state committee since 1978, was an independent organ of the central government, fulfilled the tasks of domestic intelligence and counterintelligence. The KGB was also a USSR-wide agency and the Estonian SSR Committee for State Security (the ESSR KGB) was its territorial subordinate division. In the Soviet Union, the Committee for State Security was also the security service of the Communist Party. As a rule, the chairman of the KGB was also a member of the Politburo of the Central Committee of the Communist Party of the Soviet Union.

## TERMINATION OF THE KGB IN ESTONIA

Needless to say, the Republic of Estonia could not take over the KGB’s Estonian subordinate division as its own domestic

security service (a few states that were born when the Soviet Union collapsed took the former KGB as their security service). A large proportion of the Estonian SSR KGB personnel were not citizens of Estonia, and people who had served in the KGB could not be counted on to be loyal to the Republic of Estonia. There was reason to assume that they were more likely to be loyal to the Soviet Union’s legal successor, the Russian Federation.

On 9 September 1991, three weeks after the declaration of independence, the transitional government formed a governmental committee, chaired by Hardo Aasmäe, for terminating the KGB in Estonia. Aasmäe was educated as a geographer. He had been a member of the USSR Congress of People’s Deputies in 1989–1991 and was the mayor of Tallinn in 1990–1992. As one of the leaders of the Estonian Popular Front, he was part of the immediate circle of Edgar Savisaar, the Prime Minister of the transitional government. Work began even earlier on terminating the KGB. On 29 August 1991, the Prime Minister of the transitional government, Savisaar, and the last chairman of the Estonian SSR KGB, Rein Sillar, wrote jointly to the last chairman of the USSR KGB, Vadim Bakatin, to begin the termination of the KGB in Estonia. On 5 September, a protocol of mutual obligations was signed between the government of Estonia, the ESSR KGB, and the USSR KGB. On 9 October, a protocol of the practical measures connected to the termination of the ESSR KGB was signed. The KGB’s activity in Estonia was halted at more or less the same time as the dissolution of the Soviet Union took place, on 18 December 1991. The final act was signed by the last Chairman of the ESSR KGB, Rein Sillar, Minister of State of the Republic of Estonia, Raivo Vare, and on behalf of the USSR KGB, Vyacheslav Shironin. The final act stated among other things that “measures connected to terminating the activity of the ESSR KGB have been implemented and the personnel of the ESSR KGB has been dismissed from service or transferred to continue service outside of the Republic of Estonia with the exception of 25 people, whose dismissal or transfer will be completed by 31 December 1991.”

The results of the termination of the KGB caused dissatisfaction in Estonia. On 16 January 2001 in connection with the question of the right of a former KGB employee to live in Estonia, the Riigikogu formed an eight-member committee of inquiry to ascertain the facts and circumstances connected to the termination of the activity of the Estonian SSR Committee for State Security, which was meant to objectively and impartially determine the factual and legal circumstances connected to the termination of the KGB’s activity.<sup>7</sup> The committee’s report was completed in March of 2002.<sup>8</sup>

► Counterintelligence Organisations of Armed Forces of States which Have Occupied Estonia Act, 6 February 1995, <https://www.riigiteataja.ee/en/eli/524042014001/consolide> (cited on 24 July 2017).

6 Ibid, § 5 (5).

7 Formation of a committee of inquiry to ascertain the facts and circumstances connected to the termination of the activity of the former Estonian SSR Committee for State Security, 16 January 2001, <https://www.riigiteataja.ee/akt/72639> (only in Estonian).

8 Available on the internet: three parts, only in Estonian: <http://epl.delfi.ee/news/eesti/endise-ensv-riikliku-julgeoleku-komitee-tegevuse-lopetamise-lopparuanne-i-osa?id=50920257>, <http://epl.delfi.ee/news/eesti/endise-ensv-riikliku-julgeoleku-komitee-tegevuse-lopetamise-lopparuanne-ii-osa?id=50920258>, and <http://epl.delfi.ee/news/eesti/endise-ensv-riikliku-julgeoleku-komitee-tegevuse-lopetamise-lopparuanne-iii-osa?id=50920259> (cited on 24 July 2017).

The committee identified the following problems connected with the termination of the KGB, which could still have been topical in 2002:

- 1/ The Estonian side did not obtain lists of KGB personnel in the course of terminating the KGB;
  - 2/ Materials on the networks of agents and operational materials, and thousands of other KGB archival files concerning Estonian citizens were taken to Russia;
  - 3/ Some foreign travel files (these are files that were drawn up concerning every person applying to travel abroad) went missing at the time of the termination of the KGB;
  - 4/ The copy of the agreement signed by Raivo Vare and Vyacheslav Shironin concerning social guarantees for former KGB personnel in the Republic of Estonia was missing altogether.
- The committee admittedly commended the government's work in terminating the KGB but stated that "it is nevertheless surprising that during the period of establishing the country's independence, matters connected to terminating the state security and intelligence organ of the occupying regime were not considered a top priority."<sup>9</sup>

## THE USE OF KGB ARCHIVAL MATERIALS

Most of the KGB's paperwork was classified and was subject to the classification procedure in effect in the Soviet Union. It is known that starting in 1989, a large portion of the documents that were in the ESSR KGB's departmental archive was removed from Estonia. The authorities of the Republic of Estonia did not consider it possible to take over the ESSR KGB's central agency by force in August and September of 1991 after the restoration of the independence of the Republic of Estonia. Admittedly, however, a few local KGB departments, for instance in Tartu, were taken over. In the course of these takeovers, some KGB files that were held in local departments allegedly went missing. On 24 October 1991, in the course of organising the takeover of the ESSR KGB, an agreement was concluded concerning the procedure for handing over the Estonian KGB archival collections and other materials to the Police Bureau of the Republic of Estonia.

The KGB archival files that were in Estonia or arrived in Estonia were initially handed over to the Police Bureau of the Republic of Estonia. On 19 April 1993, the Government of the Republic of Estonia issued an order according to which the Ministry of Internal Affairs was to transfer some of the Estonian SSR KGB and Estonian SSR Ministry of Internal Affairs archival documents held in the Police Bureau's Information and Analysis Bureau Archive to the national archive system.<sup>10</sup>

A separate state security services archive was not established in Estonia. The files of the former KGB archive were gradually transferred to the present-day National Archives, where they are accessible for public use if restrictions arising from the protection of sensitive personal data do not prevent this.<sup>11</sup> Thus for instance, the use of most foreign travel files and other personal files is restricted if the persons concerning whom these files were kept are alive or if less than 30 years have passed since their death. The files affected are principally the so-called foreign travel files, or files that were drawn up concerning persons who applied for a permit to travel abroad. The use of these files is permitted for the subjects themselves of the files or with their permission, or in the event

that the subject of the file is deceased, with the permission of a close relatives.

It is known that not all documents that by agreement were to be returned were actually brought back from Russia in 1991. It is also known that some documents have ended up in the hands of private individuals, including documents that have been designated for destruction. The fate of a number of foreign travel files is not known. Not many cases are known where these documents have been used to blackmail one or another individual with the threat of exposing his previous collaboration with the KGB, but such cases have occurred.

In the lustration process, KGB files were used primarily in researching crimes against humanity and war crimes. Since this material mostly covers the 1940s and 1950s, this made it possible to identify the crimes committed, the perpetrators of these crimes, the persons who gave the orders for these criminal actions, and the secret agents involved, etc. The Estonian Internal Security Service has sifted through KGB material within the framework of criminal investigation (see the chapter *Investigation and Prosecution of the Crimes of the Regime*).

The so-called foreign travel files, which could contain direct or indirect information on the collaborative ties between the individual being checked and the KGB, also developed into a separate opportunity for carrying out the lustration process. Thus for instance, information was disclosed in the media in 1997 concerning Toomas Savi, who at that time was the speaker of the Riigikogu, that in 1964 he had been referred to, in his foreign travel file, as a KGB "trustee".<sup>12</sup> At that time, Savi's oath of conscience was not questioned because the Estonian Internal Security Service acknowledged that there was no information at its disposal that would prove that Savi was in the service of the state security organs or intelligence or counterintelligence organs of the armed forces of states that have occupied Estonia as a staff employee or agent.<sup>13</sup>

Professional historians have also used foreign travel files to ascertain the KGB connections of one or another individual.

## THE FORMATION OF THE ESTONIAN INTERNAL SECURITY SERVICE – THE SECURITY AGENCY OF THE REPUBLIC OF ESTONIA

The security service of the Republic of Estonia – the "Security Police" – was initially established as a department of the Police

9 Ibid.

10 Order no. 172-k issued on 19 April 1993 by the Government of the Republic of Estonia, 19 April 1993, <https://www.riigiteataja.ee/akt/13091784> (only in Estonian, cited on 24 July 2017).

11 See for example Archival Information System ([http://ais.ra.ee/static/misonais\\_en.html](http://ais.ra.ee/static/misonais_en.html)), ERAF.129SM, ENSV Riikliku Julgeoleku Komitee lõpetamata uurimistoimikute kollektsoon (Collection of files of unfinished investigations of the State Security Committee of the ESSR), Ajalugu (History) (only in Estonian, cited on 24 July 2017), and others like ERAF.130SM, ERAF.131SM etc.

12 The "trustee" was a separate form of covert collaboration with the KGB where cooperation took place with "Soviet patriots" on a strictly voluntary basis. The nature of his connections with the KGB and the tasks he was assigned were secret.

13 "Toomas Savi seostamine KGB-ga on alusetu", in *Õhtuleht*, 21 May 1997; <http://www.ohtuleht.ee/3582/toomas-savi-seostamine-kgb-ga-on-alusetu> (cited on 24th July 2017).

Bureau on 12 February 1991, even before the formal restoration of independence on 20 August 1991. The Estonian Security Police was established as a new agency, and the vast majority of its employees had never worked in security agencies before, rather they transferred from the police, or were young people with postsecondary education hired from other areas of specialisation. A small portion of technical staff from the former Estonian SSR KGB was nevertheless taken over, which when viewed in retrospect was not justified in the case of every individual concerned.

On 21 April 1993, the Riigikogu adopted a decision concerning the formation of the independent Security Police in the administrative field of the Ministry of Internal Affairs. The Government of the Republic of Estonia appointed the commissioner of the Security Police to his post on 16 June 1993. The first commissioner was Jüri Pihl, whose background was in law enforcement and who had headed the Security Police since its inception. The Security Authorities Act went into effect on 1 March 2001, converting the Security Police Bureau from a police agency into a security agency. The Security Police retained police powers in criminal investigations.<sup>14</sup> A team for investigating crimes against humanity was formed in 1995 as part of the staff of the Security Police. It investigates crimes against humanity, war crimes and genocide committed during the Soviet and German occupations (1940–1991).

The Estonian Internal Security Service is the security agency of the Republic of Estonia responsible for the following functions:

- collection and processing of information for the prevention and combating of activities aimed at changing by force the constitutional order and territorial integrity of Estonia;
- collection and processing of information for the prevention and combating of intelligence activities directed against the state;
- collection and processing of information for the prevention and combating of terrorism (including financing and supporting thereof);
- protection of state secrets and classified information of foreign states, performance of security vetting;
- non-proliferation of weapons of mass destruction, conduct of proceedings of offences related to explosive substances;
- anti-corruption combat;
- conduct of proceedings of other offences within the investigative jurisdiction of the Board.<sup>15</sup>

## CONCLUSIONS AND LESSONS LEARNT

Unlike the countries of the Eastern Bloc in Eastern Europe, Lithuania, Latvia and Estonia were occupied, therefore these countries did not have their “own” domestic security agencies during communist rule. The Republic of Estonia was restored on the basis of legal continuity as a country occupied by the Soviet Union in 1940, which in and of itself already ruled out the “growing up” of the local department of the Soviet Union’s KGB to become the domestic security agency of the Republic of Estonia.

The Estonian division of the Soviet Union’s KGB was terminated within a few months after the restoration of Estonia’s independence. Certain social guarantees for individuals who had previously served in the KGB and remained living in Estonia were guaranteed by agreement between the USSR KGB and

the transitional government of the Republic of Estonia. In return, the USSR KGB agreed to transfer to Estonia some of the KGB’s archival documents concerning Estonia.

The termination of the KGB in Estonia did not take place as properly as it should have. Of course, the era in which it took place must also be kept in mind – Estonia’s economic situation was catastrophic, the future perspectives of the Estonian state were unclear, and at the same time, the entire Soviet Union collapsed. Regardless of this, several tons of KGB documents concerning Estonia were successfully brought to Estonia. For the most part, these documents did not have anything to do with the KGB’s activity and network of agents in Estonia from the 1960s to the 1990s but were instead of historical value. A large portion of the files brought to Estonia were the investigation files of victims of mass repressions, political imprisonments and deportation committed in the 1940s and 1950s.

The KGB’s archival materials were not materials of an agency of the Republic of Estonia and they had no connection to Estonia’s domestic security agencies that were built back up again starting in 1991. This is one reason why a separate state security archive was not formed in Estonia. Instead, the documents were soon transferred to the Estonian National Archives. This, but especially the unrestricted access to those documents for researchers, has fostered the research of primarily the political mass repressions of the era of Soviet occupation, and of the communist period as a whole.

Background checks, the investigation of international crimes committed in the past, and the identification of former collaborators with the state security agencies of states that have occupied Estonia are within the jurisdiction of the Estonian Internal Security Service. For the above mentioned reason – newer materials concerning the KGB’s network of agents are not in Estonia – two laws have been passed for resolving these questions. Persons applying for more important official positions have to take an oath of conscience by which they swear that they have not cooperated with the state security organs of states that have occupied Estonia or participated in political repressions. Persons who have collaborated with state security organs of states that have occupied Estonia were registered on the basis of voluntary confessions. The names of whoever did not appear for registration within a year were disclosed in the *Riigi Teataja*, if their names and the fact of their collaboration had been ascertained.

The distinctive feature of Estonia’s experience is that state security documents concerning persons who were in active service at the time that the independence of the Republic of Estonia was restored were for the most part not at the disposal of Estonian agencies. For this reason, the method of the oath of conscience and voluntary confession was chosen. This is not a one-hundred percent success story, but for the most part, the effect of the KGB’s legacy in Estonia’s domestic policy has been successfully avoided. Some individuals have nevertheless been caught and convicted for collaboration with Russia’s intelligence services, whereas their collaboration had begun before 1991. The best known case is that of Hermann Simm, who was the former chief

14 See Re-establishment of the Security Police, <https://www.kapo.ee/en/content/re-establishment-security-police.html> (cited on 24 July 2017); Security Authorities Act, 20 December 2000, <https://www.riigiteataja.ee/en/eli/521062017015/consolide> (cited on 24 July 2017).

15 See Areas of activity, <https://www.kapo.ee/en/content/areas-activity.html> (cited on 24 July 2017).

of the Estonian Defence Ministry's security department and was sentenced to 12.5 years in prison in 2009. His collaboration with the KGB had begun before 1991.<sup>16</sup>

The key to Estonia's success was how quickly it built up its new domestic security service, which helped to prevent the legacy of

a totalitarian state security service, the KGB, from leaking into the security agencies of the Republic of Estonia.

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# INVESTIGATION AND PROSECUTION OF THE CRIMES OF THE REGIME

MEELIS SAUEAUK

## INTRODUCTION

The Soviet regime committed acts of terror in Estonia in the 1940s and 1950s – mass murders, deportations, etc., which by their nature are qualified as international crimes without statutory limitations – genocide, crimes against humanity, and war crimes. Approximately 2,000 people were killed and about 10,000 people were deported *en masse* in 1941. Mass arrests were made, hundreds of people were executed or perished in prison camps, and over 1,500 people were murdered in the woods in 1944–1945. Over 20,000 people were banished from Estonia in the course of the mass deportation of 1949, etc. A total of about 70,000 people were murdered on the spot, arrested, or deported from Estonia to the Soviet Union.

## DESCRIPTION OF THE DEFAULT SITUATION

After Stalin's death in 1953, the new political orientation was admittedly set towards doing away with mass repressions, and imprisoned persons and deportees started being released in stages. A few leaders of State Security were also prosecuted, but it was inconceivable in the Soviet Union and the Estonian SSR that the acts committed would officially be treated as anything other than “mistakes” and even less so that judicial investigations would be carried out concerning such matters. In the latter half of the 1980s a “new wave” began in the rehabilitation process in the Soviet Union, the distinct feature of which was “further investigation” connected to repressions. The main objective here became the “rehabilitation” of victims.

The investigation of international crimes without statutory limitations has had a central role as a measure of transitional justice since the time of the Nuremberg Trials of Nazis. It became permissible to openly and publicly discuss crimes committed mainly during the Stalinist era in Estonia during the process of restoring independence starting in 1988. After the Estonian SSR declared its sovereignty, the Extrajudicial Mass Repressions in Soviet Estonia in the 1940s–1950s Act was passed, which declaratively proposed that the Estonian SSR Prosecutor's Office should begin reviewing applications and notifications concerning mass murders and other acts against humanity committed in Soviet Estonia, and should make decisions on questions concerning the commencement of criminal proceedings and the criminal prosecution of offenders. Even though a few criminal proceedings were thereafter launched at the Prosecutor's Office concerning the murders of 1941, their investigation did not lead to any convictions. Although victims were rehabilitated and property that had been confiscated from them also started to be returned to them, the perpetrators of these crimes were not brought to justice.

## DESCRIPTION OF THE TRANSITION

It was only the restoration of Estonia's independence in August of 1991 that opened up the legal and political preconditions for investigating the crimes of communism and prosecuting the perpetrators of those crimes. Already on 26 September 1991, Estonia joined two UN conventions – the Convention on the Prevention and Punishment of the Crime of Genocide (1948), and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) – by decision of its transitional parliament, the Supreme Council. With these conventions, Estonia also took upon itself the obligation to work out the corresponding legislative framework and to commence investigation of crimes without statutory limitations and of the perpetrators of those crimes.

The Estonian State Commission on Examination of the Policies of Repression (ORURK) was established in accordance with the decision issued on 26 March 1992 by the Presidium of the Supreme Council of the Republic of Estonia. The committee's task was to:

- 1/ analyse the repressive policy imposed in the territory of the Republic of Estonia in the 20th century during the years of occupation by the Soviet Union and Germany;
- 2/ identify crimes of genocide committed against citizens of the Republic of Estonia during the periods of occupation;
- 3/ assess the economic damage caused to the Estonian people by the occupations;
- 4/ form an objective, research-based assessment of the actions of the 20th century occupying regimes in Estonia.<sup>1</sup> Although carrying out criminal investigations was not within the jurisdiction of OKURK (the chairman of which was the writer Jaan Kross, and later the clergyman, theologian, historian and man of letters Vello Salo), the broad-based and comprehensive expertise of the committee greatly contributed to improving the state of the investigation of international crimes not subject to statutory limitations. The Estonian International Commission for Investigating Crimes against Humanity (the chairman of which was the former Finnish Ambassador to the UN and Sweden Minister Max Jakobson), established in 1998 at the initiative of the President of the Republic of Estonia Lennart Meri, continued doing roughly the same work, using as its legal framework, the Rome Statute of the International Criminal Court definitions of international crimes.

Nevertheless, from among the Baltic States, it took Estonia the longest to start implementing criminal-judicial measures. A curious situation emerged where in 1994; a parliamentary ad hoc committee (the chairman of which was Enn Tarto)

1 Riigikogu, questions of the State Committee for Investigating the Repressive Policy of Occupations, passed on 17 June 1993 *Riigi Teataja*; <https://www.riigiteataja.ee/akt/13098133> (cited on 1 April 2017).

requested the commencement of criminal proceedings to investigate the mass deportations of the 1940s and 1950s, yet this could not be done because the corresponding provisions were missing from the Penal Code.<sup>2</sup> At about the same time for instance (in March of 1994), the former head of the Latvian branch of the Soviet secret service Alfons Noviks was arrested in Latvia and charged with genocide against the Latvian people.

Amongst a background of political bickering, it took until the end of that same year, when finally on 9 November 1994, the Riigikogu passed an amendment to the Criminal Code of the Republic of Estonia, which derived from the time of Soviet rule, establishing responsibility for crimes against humanity and war crimes. Its Article 61-1 stated that “For crimes against humanity, including genocide, as per definition of these crimes in international law, that is for deliberate acts whose aim it is to fully or partially eradicate a group, based on national, ethnic, racial or religious distinction, which is resisting an occupation regime, or any other social group; for the killing of a member of such a group or for causing him/her grave or very grave bodily injuries or mental dysfunction or for torturing him/her; for removal of his/her children by force; for deportation of the indigenous population or for banishment into exile once an armed invasion, occupation or annexation has occurred, and for depriving them of their economic, political and social human rights or for restriction of these rights – the penalty is deprivation of liberty for between 8–15 years or the death penalty.”<sup>3</sup> This definition differed slightly from those usually found in international legislation. For example, deliberate acts against a group, which is resisting the occupation regime, or against a social group, were categorised as crimes against humanity, and the crime of genocide was in a way included in the crimes against humanity.

The pre-trial investigation of crimes against humanity is a task that was assigned to the Estonian Security Police Board (since 2013 in English – *Estonian Internal Security Service*). The Security Police Board was established in 1993 and was formed without employing former employees of the Soviet state security forces – the KGB, except for some technical specialists. A special unit for investigating crimes against humanity was established within the structure of the Security Police Board.

The Security Police acted quickly and by the spring of 1995, five criminal cases were already pending for investigating crimes against humanity and war crimes. Although the Security Police started out by investigating crimes from the Soviet era, it has also worked in parallel on investigating crimes from the time of the German occupation. The criminal cases concerning war crimes and crimes against humanity being processed by the Internal Security Service can be roughly divided into four categories:

- 1/ Crimes committed during the Soviet occupation of 1940/41;
- 2/ Crimes committed during the German occupation (1941–1944);
- 3/ Crimes against civilians committed in Estonia for the purpose of suppressing resistance to the occupying regime during the Soviet occupation of 1944–1991;
- 4/ The mass deportation of March, 1949.<sup>4</sup>

One of the first investigations was launched and carried out concerning the former regional head of state security Vassili Riis. The investigation concerning Riis was launched in 1995 in accordance with the Criminal Code article on crimes against humanity. In 1941, Riis (1910–98), gave written consent to the arrest or deportation of 1,062 citizens of the Republic of Estonia. In 1996,

the criminal case was transferred to the Court, but the trial was suspended due to the poor health of the defendant and terminated in 1998 due to his death.

Some of the subsequent investigations also suffered the same fate – the accused was in such a condition that it was no longer possible for him to stand trial due to his age and the state of his health. Thanks to the time factor (about 50 years had already passed since the crimes under consideration had been committed), most of the higher-ranking figures and the individuals who gave the orders, as well as witnesses, were no longer alive. The archival material that the KGB had handed over to the Republic of Estonia had many gaps in it, for this reason the acquisition of written evidence also required a great deal of work. Thus the investigation of crimes against humanity became a race against time.

The first investigation to result in a court case was in 1999 when the former KGB employee and operative officer Johannes Klaassepp was sentenced according to Article 61-1 of the Criminal Code for participation in the mass deportation of 1949, deporting 15 people and attempting to deport two more. The youngest of Klaassepp’s victims was 4 years old. Enn Sarv, a member of ORURK, was involved in the trial as an expert and drew up a comprehensive statement on the deportation and its legal assessment. The court verdict sentenced Klaassepp to eight years conditional imprisonment with a probation period of two years, and subsequently became a precedent for such cases. Altogether, Estonian courts have found eight people guilty of the deportation of the March, 1949 as a crime against humanity.

## CURRENT STATUS

The ascertainment of offenders continued under slightly amended legal grounds after the reform of the Penal Code carried out at the turn of the century in Estonia. The new Penal Code that went into effect in 2002 added an article on genocide alongside the necessary elements of crimes against humanity. The new definitions of crimes against humanity and of genocide according to the valid Penal Code are as follows:

“§ 89. Crimes against humanity – Systematic or large-scale deprivation or restriction of human rights and freedoms, instigated or directed by a state, organisation or group, or killing, torture, rape, causing health damage, forced displacement, expulsion, subjection to prostitution, unfounded deprivation of liberty, or other abuse of civilians, is punishable by 8 to 20 years imprisonment or life imprisonment.

§ 90. Genocide – 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 child-birth 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

2 Harri Mägi, *ENSV KGB tegevuse lõpetamine*, Tallinn: Varrak, 2012, 125–126.

3 Kriminaalkodeksi (Criminal Code), *Riigi Teataja*; <https://www.riigiteataja.ee/akt/184289> (cited on 1 April 2017).

4 Estonian Internal Security Service, “20 years of investigating universal crimes”, in *Estonian Internal Security Service Annual Review 2015*, Tallinn, 2016, 39.

of the group, shall be punished by 10 to 20 years imprisonment or life imprisonment.”<sup>5</sup>

As we can see, the crime of genocide is now considered to be a separate crime distinct from a crime against humanity, yet the concept of a crime of genocide remains expanded compared to that of the Convention on the Prevention and Punishment of the Crime of Genocide. The treatment of genocide has been internationally contested since the adoption of the concept, and different countries and institutions have interpreted it differently in their legislation as well.<sup>6</sup>

Over the 20-plus intervening years, a total of 12 criminal cases have been prosecuted in Estonian courts under the section of crimes against humanity, and 11 persons have been convicted:

- 1/ 8 persons have been convicted in connection with the deportation of March, 1949 (J. Klaassepp, V. Beskov, M. Neverovski, V. Loginov, J. Karpov, A. Kolk, V. Kask and P. Kislyi (Kislõi)). These persons were former Soviet state security officers (MGB or MVD) and were sentenced for crimes against humanity (See the description of the sections from the Penal Code or Criminal Code). As a rule, the sentence for such crimes was imprisonment for 8 years suspended on probation. Tactically speaking, the investigation of deportations was conducted region by region because this was also how the carrying out of the deportation operation was organised;
- 2/ 3 persons have been convicted of murdering members of the national armed resistance (“forest brothers”) in the 1940s–1950s – K. L. Paulov, V. Penart and R. Tuvi;
- 3/ No person prosecuted for crimes against humanity has been acquitted. In addition, court proceedings were terminated due to the death of the person on trial (11 persons) and due to poor health (7 persons).<sup>7</sup>

The majority of criminal cases against the Soviets are initiated by the Internal Security Service (the former Security Police Board) and its special unit for investigating crimes against humanity. In a few cases (like the Paulov case, who was sentenced for the murders of members of the national armed resistance), criminal proceedings are initiated on the request of citizens. All convicted persons were former officers of the Soviet secret police (NKVD/MGB/KGB) or militia who were operating at the executive level of the deportation operation.

Last, but not least, the Estonian Parliament passed the Declaration of the Crimes of the Occupying Regime in Estonia in 2002, which declared the communist regime of the Soviet Union criminal, which committed crimes against humanity, and the organs of the Soviet Union that violently carried out these crimes, like the NKVD, NKGB, KGB and others, and tribunals and special counsels formed by these agencies, as well as destruction battalions and people’s defence battalions and their activity. The Riigikogu stressed that the Communist Party of the Soviet Union and its subordinate organisation, the Estonian Communist Party, which controlled the repressive organs of the Soviet Union, are responsible for the crimes against humanity and war crimes committed in Estonia by those repressive organs.<sup>8</sup>

## LESSONS LEARNT

In the case of Estonia, the investigation of the crimes of the former regime has developed into an instrument of retrospective justice. This has been done as an attempt to establish justice in regard to crimes that have been committed about half a century ago

and the offenders of which were persons who no longer played a political role in Estonia during the period of transition. While the investigating agencies have been criticised for the fact that the leading figures in the crimes were not convicted, the situation developed in this way because the leading figures were no longer alive by the time the investigation was carried out. The number and volume of investigations corresponded to the resources allocated for this purpose by the government.

Primarily, the fact that communist crimes were given a legal assessment in the form of court verdicts – both domestically and Europe-wide – can be considered positive. In 2004, August Kolk and Pjotr Kislyiy, found guilty of deportation, and Vladimir Penart, convicted of murdering “forest brothers”, lodged appeals with the European Court of Human Rights against the Republic of Estonia. The appeals emphasised that, pursuant to the principles of criminal law, a person is not punishable for an act that was not a crime under the law in force at the time of its commission. The appellants claimed that at the moment the crimes were committed, the 1926 Criminal Code of the Russian SFSR – which did not establish a punishment for a crime against humanity – was effective in Estonia. As the deportation of Estonian nationals and the persecution of “forest brothers” had been carried out under the law of the USSR, the appellants claimed they could not have known that their acts were criminal. The appeals also claimed that, as the Charter of the Nuremberg Tribunal had been developed in order to ensure the punishment of German war criminals for crimes committed during World War II, its principles did not apply to crimes committed by the Soviet authorities after the war. In 2006, the European Court of Human Rights declared all the appellants’ arguments unfounded and rejected the appeals. The court concluded that, even if the acts committed by Penart, Kolk and Kislyiy were regarded as “lawful” pursuant to Soviet law, they were, however, crimes against humanity pursuant to international law. In so doing, the court’s decision equated the crimes of Communism and Nazism, corroborating that the same international principles and legal sources applied to both. The court refuted the appellants’ claims that the principles of the Nuremberg Trials – one of the sources of contemporary international law – did not apply to the USSR, which had won World War II, and that the crimes could be justified by the “specific nature” of the legal system of the criminal regime. In addition, the European Court of Human Rights explicitly noted that, in violation of international law, Estonia was occupied by the Soviet Union from 1940 to 1941 and from 1944 to 1991, and statements to the contrary could not be taken seriously by the international community. In fact, the long period of occupation was the reason the individuals having committed international crimes without statutory limitations in Estonia while serving the communist regime could not be held criminally liable earlier.<sup>9</sup>

5 Karistusseadustik (Penal Code), passed on 6 June 2001, *Riigi Teataja*; <https://www.riigiteataja.ee/akt/126022014006> (cited on 1 April 2017)

6 Eva-Clarita Pettai, Vello Pettai, *Transitional and retrospective justice in the Baltic States*, Cambridge, 2015, 80.

7 Kaitsepolitseiamet (Estonian Internal Security Service), “International crimes not subject to statutory limitations”, *Kaitsepolitseiamet*; <https://www.kapo.ee/eng/areas-of-activity/international-crimes-notsubject-to-statutory-limitations/background-information> (cited on 1 April 2017). Data from the Estonian Internal Security Service.

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9 Estonian Internal Security Service, “20 years of investigating”, 40–41.

The investigation of mass deportation, region by region, and county by county, which formed a separate structural unit of the operation, can be considered a success. This admittedly took more time, but it made it possible to structurally work through the entire mechanism and to achieve synergy in both the investigation and the course of the court session. It was possible for all individuals interested in the matter from the entire region to attend the court session.

In the opinion of Eva-Clarita Pettai and Vello Pettai, in comparison to Latvia and Lithuania, in Estonia, though the national media would report on individual trials and their outcomes, this rarely went beyond mere statements of facts, and the criminal justice process remained rather disconnected from broader historical and moral discourses on the Soviet period.<sup>10</sup>

A deficiency was that due to limited resources and a certain delay in establishing the necessary legislative framework, valuable time for investigation was lost. The accused and the witnesses grew successively more elderly and in some important cases (Vassili Riis, Idel Jakobson, Arnold Meri and others), they did not last until the court session, or to its conclusion. At the current time, the investigation of crimes without statutory limitations is in the home stretch in Estonia because the last individuals that can potentially be accused will soon pass away.

## RECOMMENDATIONS

Based on Estonia's experience, the following recommendations should be highlighted for dealing with international crimes without statutory limitations:

- 1/ In working out the legislative framework, the aim of future trials – the restoration of justice – and the corresponding norms of international law should be carefully followed;
- 2/ When the crimes under investigation have been committed decades ago, limited time should be taken into consideration in planning the investigation and thus to concentrate resources;
- 3/ Experienced historians and experts on secret services should be added to the staff of the investigating agency or be included in their work;
- 4/ A committee consisting of historians, sociologists, etc. that would help to study the crimes that have been committed more broadly and completely should be added to criminal investigations that have focused on gathering evidence for bringing charges against perpetrators who are still alive;
- 5/ The investigation procedure should correspond to rules prescribed by legislation and respect the human rights of the accused;
- 6/ The victims of crimes who participate in the trial as aggrieved parties and witnesses should be provided with access to victim support and legal advice that is free of charge similarly to other crime victims, and taking into consideration their distinctive nature in order to alleviate re-experiencing traumas of the past;
- 7/ The reporting of the investigation and the court trial in the press should correspond to the principles of the presumption of innocence and should not develop into a part of current political competition.

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10 Pettai & Pettai, *Transitional and retrospective justice*, 113.

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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.<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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<sup>5</sup> 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 eligible 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.<sup>6</sup>

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; Dissemination of knowingly wrong fables derogating the Soviet

1 Staatssekretär des Auswärtigen Amtes 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> (cited 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<sup>13</sup>, 60–62, 64, 66, 68–70, 79<sup>1</sup>, 79<sup>2</sup>, 79<sup>3</sup>, 79<sup>4</sup> and 122, and 59<sup>2</sup> (1) b and (2), 59<sup>3a</sup>, 59<sup>4</sup>, 59<sup>5</sup>, 59<sup>6</sup>, 59<sup>10</sup>, 81, 82, 84, 121, 166-a, 182<sup>1</sup>, 192-a, 193<sup>7</sup> (g), 193<sup>10</sup>. 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> (cited on 24 May 2017).

State or the societal order of Criminal Code of the ESSR, valid from 1961, were declared null and void.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

The Republic of Estonia Principles of Ownership Reform Act was passed on 13 June 1991.<sup>11</sup> 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<sup>12</sup> was passed on 15 April 1991 by the Supreme Council of the Republic of Estonia<sup>13</sup> 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,<sup>14</sup> 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).<sup>15</sup> With same

7 The Penal Code of the Republic of Estonia was adopted on 6 June 2001, see English translation <https://www.riigiteataja.ee/en/eli/511032014001/consolide> (cited 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, cited on 15 June 2017).

10 Farm Act, § 8.

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

12 See Eesti Vabariigi pensioniseadus (only in Estonian), <https://www.riigiteataja.ee/akt/30517> (cited 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> (cited 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 individual 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.”<sup>16</sup> 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.”<sup>17</sup> 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.”<sup>18</sup>

## 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.”<sup>19</sup>

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.<sup>20</sup> 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 independence 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.<sup>21</sup> Some convictions were appealed at the European Court of Human Rights (ECHR), but the appeals were rejected by the ECHR.<sup>22</sup>

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> (cited 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> (cited 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> (cited 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](https://www.juridica.ee/juridica_en.php?document=en/articles/1995/10/23934.SUM.php) (cited 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> (cited on 24 May 2017).

21 See Judicial decisions / International crimes not subject to statutory limitations, <https://www.kapo.ee/en/content/judicial-decisions.html> (cited 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> (cited 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.”<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup>

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<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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:<sup>29</sup>

“[...] 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.”<sup>30</sup>

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> (cited 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 Kaitsepolitsei ameti teadaannete ära kirjad, <https://www.riigiteataja.ee/akt/12906970> (cited 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> (cited 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> (cited 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.<sup>31</sup> 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 conscripts 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 several 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 condemn 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

<sup>31</sup> 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> (cited 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\\_represeeeritutele](https://www.eesti.ee/eng/toetused_ja_sotsiaalabi/toetused_ja_huvitised/toetused_represeeeritutele) (cited 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.” [...]”<sup>32</sup> 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,<sup>33</sup> 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,<sup>34</sup> 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,<sup>35</sup> 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,<sup>36</sup> 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.<sup>37</sup> 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 persistent 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> (cited on 24 May 2017).

33 Okupatsioonirežiimi kuritegudest Eestis, 18 June 2002, <https://www.riigiteataja.ee/akt/174385> (cited 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> (cited 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 cited 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 cited 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 became the victims of another. Therefore the precise definition of victim groups was extremely important simply to avoid the creation of 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 injustices 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 have been repressed before their arrival to Estonia,

must be the responsibility 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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# EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE

MEELIS MARIPUU

## INTRODUCTION

After the reign of totalitarian and criminal regimes, education and the perpetuation of memories have an extremely important role. The thorough legal study of the past period, the punishment of the offenders guilty of crimes, and the rehabilitation of victims makes it possible to restore the legal status of aggrieved individuals. The commemoration of sites of conscience and the appraisal by society of what has taken place at those sites are particularly important for restoring the moral dignity of the victims and for society to cope with its history. The field of education has to bear the brunt of educating the new generation. There is no direct experience from the prior regime, and for this reason, there is also no understanding of the dangers connected to such criminal regimes and of their operational mechanisms that seem absurd today. The field of education and commemoration faces a particularly complex task, of great responsibility, in societies that have lived under more than one criminal regime, which have also been hostile towards each other. In Estonia, the Soviet Union's communist regime and the German national socialist regime alternately dominated. By virtue of the end results of the Second World War, where the Soviet Union belonged to the coalition of victors, the receptions of the communist and national socialist regimes are extremely varied and at times outright diametrically opposite. This leads to situations where bringing the crimes of communist regimes to light is labelled as an attempt to diminish the importance of Nazi crimes.

## DESCRIPTION OF THE DEFAULT SITUATION

During the last decades of its existence, the Soviet regime softened somewhat and at the same time stagnated. Active political terror against its inhabitants ended with the death of the Soviet dictator Jossif Stalin in 1953, and in 1956, Nikita Khrushchev, the new leader of the Communist Party of the Soviet Union, denounced the preceding terror. This was admittedly followed by the staggered release of prisoners and deportees from penal institutions, but not by the explicit condemnation of the preceding political terror or the punishment of those who participated in it. The regime's new leaders, who had already risen through the ranks during Stalin's reign, washed the blood off their hands and turned the deceased dictator into a scapegoat. They attempted to continue developing society on the basis of communist dogma and the same applied to their depiction of the past. The official history of Soviet society was the history of class struggle, the writing of which was regulated by the state. Depiction of the Soviet regime in a negative light was an absolute taboo. Even after Stalin's death, the regime simply kept silent about the condemned dictator, he was "written out of history".

The regime attempted to consolidate a society that had suffered for decades under harsh domestic political terror by

modelling the image of a foreign enemy, whose imagined activity was supposed to justify domestic terror and the extensive restriction of human rights until the end of the 1980s. Hitlerite Germany who had lost the Second World War was placed in this role, and when the Cold War broke out, the role was transferred to the entire "imperialist Western world" headed by the Soviet regime's recent ally, the USA. This scheme functioned successfully in regions of the Soviet Union that had fallen under communist rule immediately after the fall of the Russian Empire in 1917. In the case of Estonian and other nations that had managed to fight their way out of the grasp of the communists upon the collapse of the tsarist empire and to gain independence, fell under Soviet occupation after the signing of the Molotov-Ribbentrop pact, such an approach did not work. In addition to being a taboo topic, the geographical remoteness of the sites of terror and conscience hindered the ascertainment, under the conditions of Soviet rule, of the fate of tens of thousands of compatriots who had lost their lives or freedom in the course of political terror. Most of the punishment camps and sites where deportees were forced to settle, which have symbolic value were situated in distant eastern and northern regions of the Soviet Union, access to which was complicated or altogether forbidden. The memory of victims of terror could be preserved and passed on only in the narrow circle of the family and close friends. A few people had secretly drawn up and preserved their own lists of fellow sufferers. All of the pertinent archival documents were in the administrative field of the Soviet Union's Ministry of Internal Affairs, and only a few researchers who were loyal to the regime and whose writings were used for propaganda purposes had access to them.

## DESCRIPTION OF THE TRANSITION

The political changes of the latter half of the 1980s in the Soviet Union enabled social activists and the first historians on their own personal initiative to start eliminating history's so-called blank patches during the last years of the Soviet regime. These referred to formerly taboo topics that obscured the communist regime's domestic political terror and political murders that had continued for decades. As long as the state authorities completely controlled access to the archives, this type of knowledge was primarily based on people's memories and indirectly relevant documents that access was possible to gain. Heritage conservation associations that set about actively gathering the memories of victims of repression played an important role in the transitional period. The fact that throughout the exposure, remembrance and making sense of the communist regime's crimes in Estonia, society has consensually proceeded from the principle of the legal continuance of the Republic of Estonia, must be pointed out as an important point of departure in this entire process. In the given context, this means that neither researchers nor society at large consider the Estonian Soviet Socialist Republic, formed by

the Soviet Union and which existed *de facto* as the power structure in occupied Estonia in 1940/1941 and 1944–1991, as their “own country”, but rather as a foreign state that was part of the invading country’s administrative structure. This gave researchers unrestricted access to the archival materials of Soviet institutions that had been left in Estonian archives and made the moral assessment of their actions considerably easier.

During the final years of the Soviet Union’s existence, as the regime sought a way out of its impasse, it started admitting its earlier domestic political terror step by step and rehabilitating its victims. This new policy made it possible for former victims of political terror to organise legally and founded the Eesti Õigusvastaselt Represseeritute Liit “Memento” (Estonian Memento Association of Unlawfully Repressed Persons) in Estonia in 1989, two years before Estonia regained its independence from its forcible annexation by the Soviet Union. The Eesti Memento Liit (Estonian Memento Association), an umbrella organisation for the non-profit associations and societies united persons who had fought for Estonia’s independence, persons who were repressed during the Soviet era and members of their families, operates as the legal successor of that association since 1999. Typically of associations uniting victims, standing for their rights, the preservation of the memory of what has happened, and drawing up lists of victims and ascertaining their fates have been at the centre of their activity from the very start. The centre for ascertaining victims has been the Memento working group known as the Eesti Represseeritute Registri Büroo (Registry Bureau of Estonian Repressed Persons), which was created in 1990.<sup>1</sup> By 2017, data concerning several hundred thousand persons, who have suffered under the communist regime in various ways, has been gathered from archival documents and other sources, and published as the result of their work. Of this total, over 25,000 persons lost their lives in the course of this terror.<sup>2</sup>

The political regime in contemporary Russia does not support the treatment of former penal institutions and other sites connected to political repressions, all of which are tied to the fates of millions of people, as memorial sites. Victims of political terror and their supporters from Estonia and other countries that were captured by the Soviet Union have both separately and jointly organised expeditions to former penal institutions in Russia’s northern and eastern regions, and have tried to commemorate the victims in those places in a low-key manner. These opportunities, to a great extent, depended on the disposition of Russia’s local organs of power, which can be more favourable than that of the central government. Due to political obstacles and their geographical remoteness, these sites of conscience do not play a direct role in the shaping of today’s culture of memory in Estonia, although they are important to the victims of terror themselves.

The thorough study and use of the heritage of criminal regimes from the aspects of education and the culture of memory requires the scholarly treatment of the whole subject matter in addition to ascertaining the victims. After independence was regained in 1991, the opportunity emerged for society to coordinate important subject matter research. In 1992, the Okupatsioonide Repressiivpoliitika Uurimise Riiklik Komisjon (Estonian State Commission on Examination of the Policies of Repression) was formed to operate under the jurisdiction of parliament. A whole series of very different studies emerged as the result of their work, and the book *Valge raamat. Eesti rahva kaotustest okupatsioonide läbi 1940–1991* was published as the summary of their work in 2005.<sup>3</sup>

The Estonian International Commission for the Investigation of Crimes against Humanity was founded with a narrower scope of investigation at the initiative of President Lennart Meri in 1998. The Commission set as its objective the investigation of crimes against humanity committed in Estonia and/or against citizens of the Republic of Estonia, which were committed from the occupation of Estonia in June of 1940 onward. The Commission proceeded in its work from the definitions of crimes against humanity, war crimes and genocide in the Rome Statute of the International Criminal Court passed in 1998. The objective of the Commission’s historical investigation work was to ascertain what crimes have been committed and their historical background.<sup>4</sup> The research studies that formed the basis for the Commission’s reports have been published in the form of two books.<sup>5</sup> The Estonian International Commission for the Investigation of Crimes against Humanity completed its work in 2008.

The Estonian Institute of Historical Memory, founded at the initiative of President Toomas-Hendrik Ilves in 2008, has adopted the UN General Declaration of Human Rights as the basis of its work and continues the work of the previous Commission in researching the Soviet era in Estonian history.<sup>6</sup>

Universities as institutions have not developed into leading centres in this field of research in Estonia. At the University of Tartu, which is Estonia’s leading university in the field of history, 76 doctoral dissertations in history have been defended after the restoration of independence and only 6 of them are connected to this subject field to a greater or lesser extent.<sup>7</sup> This is the case in a situation where the examination of the criminal Soviet regime has been the theme that has aroused the greatest interest in society as a whole during those years. Historians working at universities have been involved in researching this theme within the framework of other projects or scientific grants. The Estonian Literary Museum and the Estonian Life Stories Association, that operates as part of the museum has played the leading role in gathering and publishing memories.<sup>8</sup>

Within Estonia, primarily a few isolated buildings connected to Soviet repressive institutions, where victims of political terror were interrogated or imprisoned, can be viewed as sites of conscience. A KGB prison cells museum was opened in Tartu,

1 Eesti Memento Liit, <http://www.memento.ee/> (5 June 2017)

2 Memento books, <http://www.memento.ee/trukised/memento-raamatud/> (5 June 2017)

3 Valge raamat. Eesti rahva kaotustest okupatsioonide läbi 1940–1991. Okupatsioonide Repressiivpoliitika Uurimise Riiklik Komisjon, Justiitsministeerium, Eesti Entsüklopeediakirjastus, Tallinn 2005. The English version of the book was published the following year. The White Book. Losses Inflicted on the Estonian Nation by Occupation Regimes 1940–1991, Estonian State Commission on Examination of the Policies of Repression, Republic of Estonia, Estonian Encyclopaedia Publishers, Tallinn 2005. <https://www.riigikogu.ee/wp-content/uploads/2015/02/TheWhiteBook.pdf> (5 June 2017)

4 International Commission for the Investigation of Crimes against Humanity <http://www.mnemosyne.ee/hc.ee/> (5 June 2017)

5 Estonia 1940–1945. Reports of the Estonian International Commission for the Investigation of Crimes against Humanity (Tallinn 2006); Estonia since 1944. Reports of the Estonian International Commission for the Investigation of Crimes against Humanity (Tallinn 2009)

6 Estonian Institute of Historical Memory, <http://www.mnemosyne.ee/> (5 June 2017)

7 Doctoral dissertations defended at the University of Tartu. <http://www.ut.ee/et/oppimine/doktoriope/doktoritood> (5 June 2017)

8 Estonian Life Stories Association. <http://www2.kirmus.ee/elulood/index.html> (5 June 2017)

Estonia's second largest city in terms of population, in 2001, as a branch of the local municipal museum. It is located in a building where the Estonian SSR Ministry of State Security Tartu Department operated in the 1940s and 1950s. An exhibition is open to interested visitors in the preliminary investigation prison cells located in the building's cellar. A small exhibit will be opened in the summer of 2017 on Pagari Street in Tallinn in the cellars of the Estonian SSR Ministry of State Security internal prison. The most monumental site of conscience associated with the fates of thousands of Estonia's people is the prison situated in Tallinn that became known under the name of Patarei (Battery), where victims of terror were held in custody during their preliminary investigations and after their penalties had been imposed, until they were sent to the Soviet Union's penal institutions. The Patarei complex is currently the most important site of memory in Estonia on an emotional level, yet the government has not had the means for fixing it up. Patarei operated as a provisional museum over the course of several years, where the preserved prison atmosphere was demonstrated for visitors, but since the building is in such poor condition, it is in danger of collapse; it is now closed to visitors. Europe's leading heritage conservation organisation Europa Nostra and the European Investment Bank Institute have added the Patarei complex to the list of 14 monuments that are considered to be the most endangered in Europe.

In addition to the above-mentioned buildings, as sites of memory connected to the crimes of the Soviet regime, large numbers of memorial plaques and other such reminders have been mounted in local communities throughout Estonia in memory of local people who fell victim to political terror. There is hitherto no central memorial in memory of the victims of communism with national status in Estonia. Popular initiative has already launched the erection of a heap of stones in memory of the victims in Pilstvere at the centre of Estonia in 1988 at the end of the Soviet regime. The heap of stones has grown considerably over the intervening decades. Memorial stones in memory of victims from different counties of Estonia have been erected there. Furthermore, everyone has the opportunity to add a stone to it in memory of those who were close to him or her. As such, the heap of stones at Pilstvere is thus far the only site of memory that unites all of Estonia. Similarly to the lack of a memorial, a central national museum or exposition for perpetuating the memory of the victims of communism and for organising educational work has not been created in Estonia. The Museum of Occupations founded in 1998 through private initiative has filled this gap. This museum's permanent exhibition and films provide an overview of the occupation era, repressions, the nationalist resistance struggle and the Singing Revolution in Estonia in 1940–1991, when Estonia was occupied, alternately by the Soviet Union, Germany, and once again by the Soviet Union. After the opening of this museum, the government has supported it by covering its fixed costs as a contribution from the Estonian state.

Changes have already begun in the treatment of this topic in general education in the final years of the Soviet regime, when strict ideological control of the content of the teaching of history disappeared and preparations began for developing an entirely new concept and new course syllabuses for teaching history. This process took place through productive cooperation between progressively-minded officials in education, working teachers, lecturers from schools of higher education, and others. The transitional period of 1989–1992 coincided with stages

in the restoration of national independence. The establishment of new course syllabuses was nevertheless only the beginning of the journey; liberation had been achieved from the Soviet regime's ideological pressure and control, but new content had yet to be created. For years, the content of the teaching of history in schools depended on the personal views of the teachers and their wish and capability for gathering and systematising information. Lecture courses given by university historians on the most topical themes played a very important role in the in-service training of teachers. The more active teachers gathered substantial additional material on an ongoing basis from the media as such material was publicly disclosed. This was especially connected to the recent history of Estonia itself, the research of which had been impossible from a non-communist point of view until the last few years of the Soviet period due to the inaccessibility of the archives. The cycle of the completion of new academic treatments of history and of textbooks corresponding to such treatments was a process that lasted many years.<sup>9</sup>

## CURRENT STATUS

Compared to the 1990s, the situation concerning speaking about the political terror and violation of human rights perpetrated by the communist regime, and the preservation of the memory of its victims, has changed in various ways. The changing of generations affects this as an inevitable factor. The new generation that is now already becoming actively involved in shaping society, and the young people currently in schools have no direct experience of the Soviet regime. Society's general interest in this theme has decreased along with the retirement of the preceding generation that has directly experienced the most virulent political terror. Thematic educational work has to a great extent been left as the responsibility of the school system, yet contemporary educational policy favours more exact sciences and language learning. The position and scope in terms of hours allotted in school to history and social studies, as the primary subjects that introduce the heritage of the past and society's values, have declined considerably. Since 2014, these subjects are no longer among the national exams required for graduating from secondary school.

Tying education to political objectives has never been popular in Estonia. Thus German-type political foundations for operating in the sphere of civic, political or historical education, for instance, have not emerged in Estonia.<sup>10</sup> The annual public commemoration of remembrance days on 25 March and 14 June marking the mass deportations carried out by the Soviet regime in 1941 and 1949 has acquired a certain positive role in trans-generational involvement in dealing with the heritage of the communist regime. Young people are included in organising remembrance events through organisations and student governments at secondary schools and universities. One of the few non-student organisations that has organised work in this field

9 Oja, Mare. Muutused üldhariduskooli ajalooõpetuses alates 1987. aastast – nõukogulikust tänapäevaseks (Changes in History Teaching in General Education since 1987 – from Soviet to Modern). Tallinn University, Dissertations on Humanities, 2016. <http://www.etera.ee/zoom/22811/view?page=466&p=separate&view=0,0,1932,2834> (5 June 2017)

10 The larger German political foundations (primarily the Konrad-Adenauer-Stiftung e. V. and the Friedrich-Ebert-Stiftung) admittedly operate in Estonia at varying levels of activity, but do so in order to fulfil their own aims.

among young people is the Unitas Foundation, which has successfully involved young people in various projects.<sup>11</sup> The initiative *Kogu me lugu*<sup>12</sup> can be highlighted as a distinctive project, in the course of which the stories of Estonian families through the years of Soviet and German occupation are gathered as video clips, studied and shared. Young people are carrying out this project and at the same time, young people can also be found among the people telling their stories, telling about how the stories of their families have reached them and how they make sense of these stories.<sup>13</sup>

This year in 2017, Estonia is preparing to erect a national memorial to the victims of communism in its capital Tallinn, which is to be completed in the country's centenary year of 2018.<sup>14</sup> In the course of these preparations, accessible archival sources will once more be thoroughly examined in order to ascertain the victims of political terror by name, and the public will be involved to perpetuate the memory of the victims in the memorial that is to be built. The completion of a national memorial is, on the one hand, in honour of the tens of thousands of victims and the hundreds of thousands who have suffered, yet at the same time it has to bear a message for subsequent generations.

The new era needs an educational and memory political approach to the heritage of the communist regime that differs from previous approaches in order to put the message concealed in that heritage into words for current generations, and to find a way to convey this message to its recipients.

Regardless of the fact thirty years will soon have passed since the collapse of the Soviet Union, there are still blank gaps in the research of the activity of the communist regime in Estonia. This refers to the internal operational mechanisms of the occupying regime as well as the social mechanics manipulated by governmental agencies to force people to obey, adapt and collaborate. The research of these themes requires the active continuation of both local and international comparative studies.

## LESSONS LEARNT

### POSITIVE EXAMPLES

Estonia has by way of shaping its national policy and social attitudes clearly and unambiguously uncoupled itself from the legacy of its communist regime. This has provided historians with unrestricted access to archival documents so that academic studies and the memories of contemporaries of the events in question, together, would form as broad a base as possible for the people's culture of memory and for the clear-cut historical treatment of this theme in school. With the financial support of public funds, the Eesti Represseeritute Registri Büroo has succeeded in documenting by name the lion's share of the victims of the communist regime and those who suffered under it. Work on further ascertainment of their fates will also continue in the future.

Very large numbers of the memories of those who suffered under the regime have been published as books. Massive collections of memories have additionally been deposited at the Estonian Literary Museum, the Museum of Occupations, and other

institutions. The greater part of the population has an overview of the extent of the political terror that has taken place. There were few families that it did not affect at all. This fact is surely one factor that has not allowed political nostalgia for communist ideology to emerge in Estonia, regardless of political crises and the squabbling between the political parties. After the restoration of Estonia's independence, the legal successor to the Communist Party (under the name of the Eestimaa Ühendatud Vasakpartei (United Left-wing Party of Estonia)) has managed to exceed the election threshold in parliamentary elections only once, in 1999.<sup>15</sup> Currently, the party has become utterly marginalised.

## NEGATIVE EXAMPLES

A large Russian-speaking community remained in the country after Estonia regained its independence in 1991. The overwhelming majority of the members of this community, either they themselves or their parents, had come to live in Estonia during the Soviet era. Their relative proportion of the population had risen to about one third; today it has declined to about one fourth. The Russian-speaking community continues, to a great extent, to function in society as a detached segment of the population that is in the information field of neighbouring Russia on a daily basis by way of the mass media. Russia's media channels transmit an image of history that for the most part been approved by the Russian state and in its assessments is more often in the position of trying to justify the previous communist regime and its crimes. Thus the treatment of the heritage of the communist regime in school, and as a theme in society as a whole, is often complicated and generates contradictions. Through the effect of Russia's propaganda, nostalgia is noticeable in the Russian-speaking community, especially among its more elderly members.

## RECOMMENDATIONS

In the case of Estonia, we are reaching the time where due to the temporal factor, the possible judicial punishment of the offenders from the criminal regime is becoming unlikely. The interpretation of the heritage of the past criminal regime for the new generation that has no direct contact with it, therefore becomes all the more important. It is unlikely that this task will be accomplished only on the strength of victims' associations or civil society activists. This requires the existence of an apolitical institution with guaranteed long-term financing that is capable of coordinating undertakings relevant to this theme in different fields: the organisation of research work, the support of educational activity, the conduct of remembrance events, etc.

11 Unitas Foundation. <http://mnemosyne.ee/en/about-us/> (5 June 2017)

12 Kogu Me Lugu (translates as Collect our Story, We're Collecting the Story, also Our Entire Story).

13 Kogu me lugu. <https://kogumelugu.ee/en> (5 June 2017)

14 Memorial to the victims of communism and the monument to officers <https://ajaveeb.just.ee/kommunismiohvitrememoriaal/> (5 June 2017)

15 National Electoral Committee, Riigikogu (Estonian parliament) election of 1999. <http://vvk.ee/varasemad/?v=r99> (5 June 2017).

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# TIMELINE OF THE MAJOR EVENTS

<b>November 7, 1917</b>	Bolshevist Revolution in Russia
<b>February 24, 1918</b>	Estonian independence proclamation
<b>February–November 1918</b>	Estonia is occupied by the German Imperial Army
<b>November 1918 – February 1920</b>	Estonian War of Independence against the Soviet Russia
<b>February 2, 1920</b>	Tartu Peace Treaty between Estonia and the Soviet Russia
<b>June 15, 1920</b>	Adoption of the first Constitution
<b>September 1921</b>	Three Baltic States join the League of Nations
<b>October 14–16, 1933</b>	Adoption of the second Constitution
<b>March 12, 1934</b>	Coup d'état by Prime Minister Konstantin Päts
<b>1934–1940</b>	Authoritarian rule in Estonia
<b>July 28, 1937</b>	Adoption of the third Constitution
<b>August 23, 1939</b>	Hitler–Stalin Pact. According to the secret protocol of the pact, Estonia was included in the Soviet sphere of interest
<b>September–October 1939</b>	Soviet Union threatens the Baltic states with military power. Mutual assistance treaties are signed between the Soviet Union and each Baltic state. Soviet military bases are stationed in the territories of the Baltic States
<b>October 1939 – May 1940</b>	Resettlement of the German population (Baltic Germans) from the Baltic states to Germany
<b>June 14–17, 1940</b>	The Soviet Union occupies the Baltic states
<b>July 21, 1940</b>	Estonian, Latvian, and Lithuanian puppet parliaments established under the control of Soviet legations and special representatives, ask to join the Soviet Union
<b>July 23, 1940</b>	The United States' acting Secretary of State Sumner Welles condemns the occupation by the Soviet Union of the three Baltic states of Estonia, Latvia, and Lithuania. The beginning of the non-recognition policy of the Western powers
<b>August 2–6, 1940</b>	Lithuania, Latvia, and Estonia are incorporated into the Soviet Union as Soviet Union republics
<b>Summer 1940 – Summer 1941</b>	Forced Sovietisation and political terror against bearers of statehood and others
<b>June 14, 1941</b>	Deportation of tens of thousands of men, women and children from the Baltic states
<b>July–October 1941</b>	Battles between the Soviet and German armies on Estonian territory
<b>1941–1944</b>	German occupation
<b>September–November 1944</b>	The Soviets return, the Red Army occupies the country
<b>September 18, 1944</b>	Restoration of the Republic of Estonia proclaimed and the government established, but most government ministers were arrested soon after by Soviet State Security
<b>1944–1953</b>	Continuation of forced Sovietisation and political terror. About 35,000 Estonians are sent to Gulag camps, more than 20,000 deported
<b>1948–1950</b>	Stalinist purges in Estonia; former Estonian underground communists and their later fellow travelers in Estonian leadership are replaced by cadres, brought from the Soviet Union
<b>March 25, 1949</b>	Mass deportation of mostly rural population from Estonia and Latvia
<b>Beginning of 1950s</b>	Ceasation of armed resistance (actions of so-called Forest Brothers) against the Soviets
<b>March 5, 1953</b>	The death of Joseph Stalin
<b>1954–1960</b>	Most of the surviving political prisoners and deportees are released and return to Estonia
<b>1956</b>	Suppression of the Hungarian revolution by the Soviets together with the indifference of the West wipes out hope for the termination of the Soviet occupation in Estonia

<b>1968</b>	Suppression of the Prague Spring wipes out the hopes of the younger generation for the human-faced socialism
<b>August 23, 1979</b>	The Baltic Appeal of 45 Lithuanian, Latvian and Estonian citizens to the general secretary of the United Nations, Soviet Union, East and West Germany, and signatories of the Atlantic Charter demanding public disclosure of the Hitler-Stalin pact of 1939 and its secret protocols
<b>September–October 1980</b>	Youth riots in Tallinn, followed by a public letter of 40 Estonian intellectuals defending the Estonian language and protesting against the recklessness of the government in dealing with youth protests
<b>1985</b>	Mikhail Gorbachov is nominated to secretary general of the Communist Party of the Soviet Union and soon begins his reforms under the slogans of perestroika, uskorenie and glasnost
<b>Spring 1987</b>	Mass public protests, especially of the student youth, against the plans of the Soviet central authorities to begin with stripe-mining of phosphates in Estonia; the plans are cancelled
<b>August 23, 1987</b>	The victims of the Hitler-Stalin pact were publicly commemorated in Tallinn and restoration of Estonian independence was demanded
<b>December 1987</b>	Estonian National Heritage Society is founded
<b>1988</b>	A countrywide independence movement, the “Singing revolution” begins
<b>Since Spring 1988</b>	Prohibited blue-black-white national colours are publicly hoisted despite of the ban
<b>April 1988</b>	Establishment of the Popular Front
<b>Summer 1988</b>	Establishment of the pro-Soviet International Movement of Workers in the Estonian Soviet Socialist Republic
<b>August 1988</b>	Establishment of the Party of Estonian National Independence
<b>November 16, 1988</b>	The Estonian Sovereignty Declaration is issued by the ESSR Supreme Soviet, asserting Estonia’s sovereignty
<b>December 7, 1988</b>	The ESSR Act on Nonjudicial Mass Repressions in the Soviet Union during the 1940–1950s
<b>February 24, 1989</b>	The blue-black-white Estonian flag is hoisted on the parliament building instead of the ESSR flag on the 71st anniversary of the Republic of Estonia
<b>August 23, 1989</b>	The Baltic Way (Baltic Chain) begins, with approximately two million people from Tallinn to Vilnius, remembering the victims of the Hitler-Stalin pact signed 50 years earlier
<b>November 1989</b>	Fall of the Berlin Wall
<b>February 19, 1990</b>	The ESSR enactment on the rehabilitation of unjudicially repressed and groundlessly sentenced persons
<b>March 11–12, 1990</b>	First session of the Estonian Congress, elected by the persons, who were Estonian citizens on 16 June 1940 and their children
<b>March 18, 1990</b>	Free elections to the Estonian SSR Supreme Soviet with success of the supporters of independence
<b>March 1990 – October 1992</b>	Transitional period
<b>March 23–25, 1990</b>	The Congress of the Estonian branch of the Communist Party of the Soviet Union. Party splits into Estonian and Soviet-minded wings. Soon the Estonian members leave the party completely
<b>May 8, 1990</b>	The name of the ESSR is changed to the Republic of Estonia and the national symbols are put into use
<b>March 3, 1991</b>	Independence referendum
<b>April 15, 1991</b>	Pension Act with special provisions for rehabilitated persons
<b>June 13, 1991</b>	Republic of Estonia Principles of Ownership Reform Act
<b>August 19–21, 1991</b>	Unsuccessful coup d’état in Moscow
<b>August 20, 1991</b>	Supreme Council of the Republic of Estonia proclaims the restoration of the Republic of Estonia and establishes the Constituent Assembly with 30 members in the Supreme Council and 30 members in the Estonian Congress
<b>September 1991</b>	Baltic states joining the United Nations

<b>October 21, 1991</b>	Estonia joins the UN Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity of 1968
<b>December 1991</b>	Dissolution of the Soviet Union
<b>February 19, 1992</b>	Rehabilitation of Unjudicially Repressed and Groundlessly Sentenced Persons Act
<b>February 26, 1992</b>	The Citizenship Act of 1938 is reinstated
<b>June 20, 1992</b>	Currency reform: the Estonian kroon with a fixed exchange rate to German Mark is introduced
<b>June 28, 1992</b>	New Constitution is approved by referendum
<b>July 8, 1992</b>	Act on the Procedures for Taking Oath with provisions for disqualification for public service of former collaborators of the security services of states that had occupied Estonia
<b>September 20, 1992</b>	Parliamentary Elections (7th composition of Riigikogu)
<b>October 1992</b>	Lennart Meri is elected to President of the Republic; the last acting President of the exile government symbolically hands over powers
<b>August 31, 1994</b>	Last Soviet (Russian) troops leave Estonia according to an agreement between Lennart Meri and Boris Yeltsin
<b>February 6, 1995</b>	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
<b>June 14, 2001</b>	Statement of the President of the Republic remembering the victims of the Soviet deportation of June 1941
<b>June 18, 2002</b>	Parliament's statement of the crimes committed by the occupation regimes in Estonia
<b>December 17, 2003</b>	Persons Repressed by Occupying Powers Act
<b>2004</b>	Estonia joins the European Union and the NATO
<b>January 1, 2011</b>	Estonia joins the Eurozone
<b>February 14, 2012</b>	Parliament's statement "Paying tribute to the Estonian citizens"
<b>June 14, 2016</b>	Parliament's statement commemorating the victims of the June deportation 75 years earlier
<b>July 1, 2017</b>	Estonian Chairmanship in the EU begins

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