

MEMORY OF NATIONS

Democratic Transition Guide

[The German Experience]



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TRANSFORMATION OF THE POLITICAL SYSTEM

HANS ALTENDORF

INTRODUCTION

Meanwhile, the communist dictatorship history within the Soviet Occupation Zone (SOZ) and the German Democratic Republic (GDR), the previous history as well as the Peaceful Revolution of 1989 has become a very profoundly and holistically researched topic of contemporary history, of social and political sciences and is part of a number of popular scientific and journalist works. This both applies for overviews as well as for numerous singular studies on the state and society.

The following political system transformation outline can highlight merely a few of the most significant aspects.

Within the context of profound changes in Europe's political order which took place in 1989–1991, dealing with the Soviet Occupation Zone (SOZ) and the GDR requires one fundamental introductory remark.

- On the one hand, the Peaceful Revolution within the GDR that took place in the autumn of 1989 and paved the way towards the reunification of the two Germanies on October 3rd 1990, is partly a story of how the communist dictatorships in Eastern and Central Europe were overcome. There are many parallels regarding the onset, the regime structures, the secret polices' operational methods etc. with the central and eastern European "fraternal countries" belonging to the Soviet imperium.
- On the other hand, the development within the GDR, its fall and the transformation into a democratic constitutional state are most closely linked with the very specific situation prevalent in the separated Germany following WW2: The Soviet Occupation Zone that became the GDR in 1949, and the Western Allies' Zones that called themselves the Federal Republic of Germany from 1949 and became a stabilized parliamentary democracy, embedded into western pacts and value systems. The whole transformation process that was linked to taking over the rules and structures applicable in the western part of Germany, is influenced by this very specific character in many ways (from the political, economic, administrative and societal point of view). This is why the German transition is substantially different in comparison to that in other states from the formerly Soviet-governed sphere.

SITUATION GIVEN AT THE BEGINNING: THE GDR SYSTEM

The allied victorious powers (USA, USSR, Great Britain, France) divided the land following Nazi-Germany's unconditional surrender in 1945 into four occupation zones, with Berlin being divided in the same way, yet being assigned special status.

Following the allies' victory against the mutual opponent, the contrasts between their systems rapidly became apparent again. Different countries were established: within the western zones, it was the Federal Republic of Germany in May 1949, and in the eastern zone, it was the GDR in autumn 1949.

As far as the development of the GDR (and the SOZ) is concerned, different phases and events can be listed:

- The path to a dictatorship has been eagerly paved already in the Soviet Occupation zone by the USSR.
- The process of "Establishing Socialism" was marked by Stalinism.
- The workers' uprising from 1953 has shattered the system.
- The ongoing refugee movements from the GDR to the FRG: From 1949 until 1961 2.7 million GDR citizens left the country.
- The construction of the Berlin Wall that had started on August 13th 1961 prevented a mass refugee movement to the West to a large extent.
- The 1960s witnessed a cautious opening within the interior accompanied with simultaneous striving for international acclaim, attempts at modernizing the economy; all this being linked with reinforced suppression.
- During the 1970s, there was a "controlled opening" within the interior, the influence of the policy détente became visible and the Helsinki Final Act issued at the Conference on Security and Cooperation in Europe appeared (CSCE).
- The 1980s: economic decline, the Socialist Unity Party of Germany's inability to undergo reforms, the formation of an opposition

The number of GDR inhabitants declined from 19.1m in 1949 down to 16.4 m in 1989. In comparison – the FRG's number of inhabitants was 47.7 m in 1950 and 63 m in 1989.

Summing up, it can be said that the GDR's system was a dictatorship shaped by the Soviet Union and a regime where the Socialist Unity Party of Germany (*Sozialistische Einheitspartei Deutschland*, hence the abbreviation *SED* in German) as the Marxist-Leninist workers' class party, i.e. a communist party in effect, was ascribed the key role. There were neither free elections nor an independent judiciary. Both the division of powers and administrative as well as constitutional law matters were unknown to this system. The Ministry for State Security, the Stasi, operated as a secret and uncontrolled police with comprehensive powers and was used to provide for the maintaining of power and suppressing of the opposition or people having a different opinion. Censorship, a non-existent freedom of press, freedom of expression and freedom to travel as well as the persecution of the political opposition were the characteristic traits of this state system. Yet exerting the domination throughout the GDR's 40 years of existence differed: there was the Stalinist repression during the foundation phase, the violent suppression of the uprising in 1953, internal opening phases, concessions in line with international détente processes (e.g. as a result of the Conference on Security and Cooperation in Europe – Helsinki Final Act) accompanied by an ongoing repression of the opposition within the country. Furthermore, it was important that suppressing the freedom of press and freedom of opinion became an important counterbalance as far as the western media and the east-west travelling were concerned.

THE GDR RULERS PRIOR TO THE PEACEFUL REVOLUTION

The Secretariat of the Central Committee and the Socialist Unity Party of Germany Politburo consisted of approximately 40 persons who formed the power core within the GDR. 500 to 600 people can be regarded as the top power elite. Apart from the already mentioned elite, these people were the members and candidates of the Central Committee, the First Secretaries of the Socialist Unity Party District administrations, the Heads of Department within the Central Committee apparatus as well as the top governing committees of the so-called mass organizations. Ideological and social homogeneity was provided for by a targeted cadre policy including careful control exerted by the Ministry for State Security (MfS).

As a second tier, we can name the administrative service class: members of the State Council, of the Ministerial Council, of the People's Chamber, of the managing committees within the State Control Commission, of the combines, of the Stasi and military units, of the higher Socialist Unity Party of Germany managing level, of the so-called block-parties and mass organizations, of the scientific institutes within the Central Committee and of the Academy of Sciences.

Below this kind of administrative service class, we can detect an operative service class that contained the middle level management within the Socialist Unity Party of Germany and within the state apparatus as well as within the state owned enterprises as well as highly qualified state employees such as professors, doctors, engineers and teachers, furthermore, employees within the administrative bodies and further scientific personnel. Loyalty to the system was a precondition that was mostly documented by membership of the Socialist Unity Party of Germany.

Altogether, there were approximately 250,000 people pertaining to the administrative and operative service class.

GOVERNING AND CONTROL STRUCTURES WITHIN THE GDR

Power was vested in the hands of the Socialist Unity Party of Germany that had a claim for absolute leadership which was also anchored within the constitution and based upon Marxism-Leninism. The organization and leading principle of a "Democratic Centralism" as developed by Lenin was applied. Already from the establishment of the GDR onwards, any decrees, acts, ordinances and decisions taken by the People's Chamber and the Government underwent an approval process by the Politburo or rather the Politburo Secretariat. There were clearly hierarchical order structures within the party. The Nomenclature principle was to provide for the rookies staying on the path that had been shown and that they were willing to obey and subdue. The Socialist Unity Party membership number rose from 1.8m up to 2.4m in 1988.

The SED Politburo General Secretaries were: Walter Ulbricht in the period of 1950–1971 and Erich Honecker within the 1971–1989 period.

The Ministry of State Security, i.e. the Stasi, considered itself to be the "shield and sword" in safeguarding these power structures. It was not a "state within a state" nor the covert, actual power centre (as it had been or is the case in dictatorships elsewhere), but served as a secret police with extensive competences and its

own self-perception of providing for the safety and stability of the party's reign.

Furthermore, other state institutions such as the People's Police or the military performed indispensable governance or control tasks for the SED-dictatorship.

REACTION OF THE OLD SYSTEM TOWARDS THE CHANGE

When the political and societal changes in the other Eastern block countries and especially within the USSR became apparent at the end of the 1980s, the Honecker-led SED stuck to its orthodox hardline policy. It was unable to undergo reforms. It has become clear from the files that the SED-leadership had already been in decay during this phase of the Peaceful Revolution. Yet the citizens were not aware of this at all as the state functions were upheld, including all their flaws. The demonstrating people could not have foreseen the party's and state leadership's reactions towards their protest.

The communal elections in 1989 became the starting point of a broader opposition movement that was supported, as it had been in previous years, by the Evangelic Church to a significant extent. There were many protests and numerous criminal charges brought against the state-organized electoral frauds.

During the summer of 1989, the emigration and refugee movement was manifested and openly perceivable due to the Federal Republic of Germany's embassies in Budapest, Prague and Warsaw being cramped with GDR refugees. Apart from the economic crisis situation, this contributed to destabilizing the SED-regime.

Until September 1989, the GDR reacted with repressions towards demonstrations and activities organized by opposition and church groups, using both the police and Stasi to arrest hundreds of people.

As we know today, the mass demonstration in Leipzig on October 9th 1989 gained historical importance – about 70,000 people went to the streets. The police and special forces were ready to intervene. The people feared to a significant extent that this democratic protest would be suppressed by military power – in a way as a reference to the bloody suppression of the protest on Tiananmen Square in Beijing in June 1989 – i.e. lead to a "Chinese solution". Yet the guards were not finally deployed as the respective order from East Berlin didn't come nor did the local authorities within the Party or the State apparatus order them to do so, following rather the societal power that put a lot of emphasis on dialogue. The fact that Leipzig had remained peaceful on this day had an enormous influence on the subsequent development of the Peaceful Revolution.

In the light of these events, the ongoing refugee movement and the desolate economic situation the SED-leadership was aware of, the dismissal of the SED General Secretary Erich Honecker and the election of Egon Krenz on October 18th was meant to bring about the "turn". Yet certain personnel shifts and corrections within state policy did not calm down the situation. The refugee movement went on. New rules for travelling abroad were intended to enable appropriately organized private journeys abroad. Following a press conference where the question regarding the point of time since when this regulation would come into effect was answered with "Now, immediately.", nothing could stop the development of this situation further. GDR citizens gathered at the checkpoints from East to West Berlin, the passport

control officers finally heaved up the barriers – the Berlin Wall fell in the night from the 9th to the 10th October. The SED including the state leadership were virtually unable to act.

Within a few weeks, the SED rapidly lost its influence. 600,000 members left the party. The managing committees agreed upon dissolving themselves as early as in December 1989, leading members were expelled from the party. There was an attempt at a restart by renaming the SED-party the Party of Democratic Socialism (PDS).

Dissolving the Stasi, the secret police of the collapsing regime, first became apparent on December 4th 1989 when the Stasi offices in Erfurt were occupied; for further information on this issue, see also the following chapter.

Altogether we can say that the old system was significantly weakened during the end phase without the citizens knowing whether the system became less willing to become violent or less dangerous. Yet the regime's attempts to maintain its influence by putting through a modified "reform" course and through the resignation of the old leaders which were also attempts to convince the citizens of the will to bring about changes remained unsuccessful. Also the criminal prosecution of those who had committed electoral fraud that was prohibited even within the GDR didn't change anything about this. Following the first free election in the GDR, the People's Chamber elections in March 1990, the prospect for a reunification with West Germany became clear. Yet this required negotiations and agreements with the allies. The reason for this being Germany's sovereignty that had been limited since the Second World War.

LEGAL FRAMEWORK CONDITIONS FOR THE CHANGE

Following the "self-liberation", a "self-democratization" followed within the GDR. The legal issues regarding the transition towards a democracy are partially those that referred to the GDR's internal rules as this country had opened itself up in autumn 1989 in a peaceful and revolutionary way in order to overcome the SED-dictatorship. A former state party fundamentally deprived of power came across a split opposition that was suppressed within the GDR and didn't really have a solid position.

The amendment made to the GDR constitution on December 1st 1989 was rather symbolic: In Art. 1, the passage saying that the "workers' class and its Marxist-Leninist party" performs the leading role was erased. Thus, the SED lost its dominance also in a formal way.

Although the "Central Round Table" – established according to its Polish model – didn't have any formal parliamentary nor executive function, it played a very significant role from December 1989 until March 1990 during the peaceful transition. It was composed of one half of the representatives of the old system, with the other half being occupied by various opposition powers and the task was to openly declare the ecological, economic and financial situation and present proposals for overcoming the crisis. Many cities and communities witnessed round tables being established according to this model and these round tables served for having a dialogue with the state institutions and controlling them.

On March 18th 1990 the first and only free, democratic People's Chamber elections took place in the GDR. The result was to be understood as a clear vote for a rapid reunification. The opposition

movement, the decisive political powers of the peaceful revolution and the round tables, became only a minor group within the parliament.

It was at the latest at this point when the legal framework conditions were influenced by the contract negotiations with the allies and by the perspective for a reunification of both German countries. It was not the GDR-law adaptation to the new, constitutional law and democratic rules that were of the utmost importance as in the other countries of the former Eastern bloc, but the transition modalities into the state of the FRG which had been existing since 1949 which was to be clarified. As we have already mentioned above in section 1, this was a significant characteristic of the GDR's transition process.

As far as this path of German reunification is concerned, which is a highly complex legal as well as politically creative task, there are certain important key legal issues:

- A treaty on establishing a monetary, economic and social union was concluded on May 18th 1990 between the Federal Republic of Germany and the GDR. Taking into consideration that the East German economic system was virtually dissolved and that an East-West mass movement prevailed (mostly a young and highly qualified workforce), rapid and effective measures for establishing a well-functioning social market economy became necessary. The State Treaty was approved by both the West German Bundestag and the East German Volkskammer with a vast majority. Thus, on July 1st 1990, the economic and social structures were transferred from the Federal Republic of Germany to the GDR and the D-Mark had been agreed upon to become the one and only legal currency.
- The Two-plus-Four-Treaty concluded by the four allied victorious powers and both German states was concluded on September 12th 1990: According to international law, this treaty fulfilled the role of a peace treaty providing the reunited Germany with full sovereignty within the country itself and in foreign relations. This treaty defined, among other issues, the German territory (FRG, GDR and Berlin), acknowledging the Oder Neisse border as Poland's Western border.
- A treaty on Establishing a unified Germany (The Unification Treaty) that became effective on October 3rd 1990: This extensive treaty that was ratified by the West German Bundestag and the East German Volkskammer with more than two thirds of the votes basically regulated and in detail the GDR accession to the Federal Republic of Germany. Adapting the legal and administrative structures from the GDR to those in the Federal Republic of Germany became a norm to a significant extent.

ESTABLISHING THE NEW SYSTEM

Carrying out the basic political and economic decisions as well as the international law and national law conditions outlined in section 6, the foundations for establishing a new order within the former GDR were laid down.

As far as the political and the administrative structures were concerned, this meant that there were five new federal states established on the former GDR territory, federal state parliaments were elected and federal state governments came into office. Jurisdiction was built up according to the Federal Republic of Germany's model, the administration was established, profound restructuring within the health and education sector took place

just as they were put through at universities. East Germany's National People's Army (*Nationale Volksarmee* – NVA in German) was dissolved and integrated into the Bundeswehr at a significantly smaller size. The Ministry for State security had already been dissolved earlier when the GDR had still been in existence. Political as well as administrative support provided for this process came to a significant extent from the western federal states. More than 35,000 West German workers became active in East Germany for this purpose.

Altogether, we can say that the new state structures were established relatively fast and successfully.

In order to build up the economy within the new federal states, the large-scale "Aufbau Ost" program (*i.e. East Germany Rebuilding Program*) was called into life that calculated with enormous financial transfers to support these federal states. Yet, the economic situation in this area deteriorated further, the East German economy was mostly desperately inferior to its Western competitors given the East German products and prices. Mass dismissals followed. Unemployment rose rapidly. The privatization of formerly state owned companies brought much less money than expected. Building up a new powerful economy turned out to be far more complicated than had been expected and this process is one that has not yet been completed even after almost thirty years.

TRANSFORMING THE POLITICAL LEADERSHIP

The very specific situation occurring during the German reunification process enabled the exchange of the elite to a significant extent, some even say that the GDR elite "was wiped out". The former GDR top leadership was almost entirely exchanged. According to a survey that was carried out in 1995, only 2.7 % of the 410 top positions within the former GDR were occupied by members of the former GDR elite. Thus, the SED-apparatus including its 44,000 functionaries and the 91,000 Stasi staff ceased performing their previous jobs.

Yet the removal of the former political power elite from its positions didn't happen on the higher socialist service level, which means on the functional elite below. This kind of elite managed to maintain its old positions in a profoundly reduced scale or it switched to other functions – often with the support provided by its old network – and these functions were often in the economic sphere.

About 40 % of the East German top positions were occupied by West Germans – the higher the rank was, the higher the Western employee percentage became.

Thus, within the sphere of the judiciary, the heads of the Highest Courts as well as the heads of the Constitutional Courts came from the west; out of 3,000 judges in the GDR, only 1,000 remained in office.

Only approximately 10,000 of the 50,000 professional and temporary professional soldiers in the National People's Army were absorbed into the Bundeswehr.

Within the schools, approximately every sixth teacher was fired.

All in all, we can say that the rebuilding of the new federal states took place to a large extent under West German leadership – with the degree being different in the individual areas of state duties and the economy.

As far as the further exertion of tasks by former functionaries or taking over new tasks was concerned, the processes that served to check whether a person had been collaborating with the Stasi on an employment basis or unofficially within the GDR played an important role. (For this issue, see the Chapter "Lustration and the process of vetting")

LESSONS LEARNT AND RECOMMENDATIONS

- A (peaceful) revolution and the subsequent rebuilding process towards a politically and economically new state order mustn't be underestimated as far as their complexity is concerned. Overcoming the old order and depriving it of power – as had been brought about in the autumn of 1989 due to the people's movement – became a necessary precondition for the subsequent development. Yet the revolution participants were not those who had the necessary competence and capacity necessary for rebuilding the new. Finally, within the reunited Germany, these resources – *i.e.* large numbers of qualified personnel and a lot of money – from the old Bundesrepublik, *i.e.* the Federal Republic of Germany, were relatively easily accessible. Yet this is a condition that's quite unusual and is normally not given.
- On the one hand, the victims of the old system are the winners of such an overthrow, because the old oppressors are not in power anymore; yet they are not winners in the sense that they would be successful in the new order. These expectations may be disappointed.
- A new constitutional state order sets limits on the criminal prosecution of the actors from the dictatorship that is overcome. These limits are especially vested in the constitutional law principles "Nulla poena sine lege" – no punishment without law – and "In dubio pro reo" – benefit of the doubt. These constitutional state principles were those that led to the old system's victims' disappointment. What's important – as frustrating as it might be in individual cases – is that the criminal law processing is classified realistically.
- It is very important to provide for the dictatorship legacy to be recorded as profoundly as possible. This applies especially to the secret police files. Even if society does not agree upon how to provide access to these files, protecting them against being destroyed or against undergoing an interest-led selection, is important. It is then necessary to carefully clarify what a usage of the files based on constitutional state principles shall look like – taking into consideration the personality and data protection on the one hand and opening the files in order to carry out a reappraisal on the other.
- Overcoming a dictatorship that had lasted for 40 years needs time. Although the basic decisions regarding the main paths for the new legal as well as economic orientation were taken rapidly – as was the case in Germany – the personnel, structural, economic and cultural development steps consume quite a significant time stretch when going into detail. This is something we can also state with respect to Germany and considering a comparison of its highly privileged framework conditions after more than 25 years.
- All this means that: false and unrealistic promises that do not correspond to the challenges of such a complex transition process, are something to be left out. The same applies to promises directed at relieving the suffering that the dictatorship

caused to its subordinates. It is surely necessary to strive for this as far as possible, yet the suffering can only be remedied within limited borders.

- External experts should be welcome in such a rebuilding process with the condition being that they do know the respective subject matter, behave respectfully and sensitively.

Yet it is probably going to turn out that it is indispensable for a country to receive strong support. This should be done in a self-confident way, yet also having in mind that in order to create a transition process and create the new, one also needs the expertise provided by already established constitutional states and that this is then highly valuable.

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DISMANTLING THE STATE SECURITY APPARATUS

HANS ALTENDORF

INTRODUCTION

The process of dismantling the Stasi within the GDR as described within this chapter is to be understood within the context of a preliminary remark that adds up to the preliminary remark from the Chapter “Transformation of the political system”:

On the one hand and due to its structure, the operating methods and its function within the state, the GDR secret police resembled the secret police forces in the other countries under Soviet influence.

On the other hand, the whole post-revolutionary activities, dissolving the Stasi and the transformation into democratic structures is influenced by the very rare framework conditions of German reunification following the date when the GDR entered into the area where the German Grundgesetz (*which is de facto the equivalent to another country's constitution*) applied that was in force within the Federal Republic of Germany. This accession took place on October 3rd 1990. That's why, apart from an attempt which lasted merely a few weeks prior to the accession, there was no Stasi successor organization. The new federal states in the former GDR territory witnessed the establishment of new structures that corresponded to those within the other Federal Republic of Germany's states. In this sense, Germany's transition process differs from that of many other countries that overcame communist dictatorships.

THE STASI'S MEANING AND FUNCTION WITHIN THE GERMAN DEMOCRATIC REPUBLIC PRIOR TO THE PEACEFUL REVOLUTION

The Socialist Unity Party of Germany (*Sozialistische Einheitspartei Deutschlands*, hence the German abbreviation *SED*) governed in the German Democratic Republic. Yet this government had never been legitimated by democratic, free elections. The SED's power had been upheld through a massive security apparatus. The Ministry for State Security (*Ministerium für Staatssicherheit*, hence the German abbreviation *MfS*), the Stasi played a key role in safeguarding these power structures. The Stasi perceived itself as the “Shield and sword” of the Party. It had been constructed according to direct instructions by the Soviet secret service. The accumulation of power was characteristic: The Stasi was a secret police within the country itself, it operated as an intelligence service abroad and was a police investigation authority, it had remand prisons and armed forces. This was one of the most influential institutions within the GDR. This institution was merely controlled by the SED party leadership and within the first years of the Stasi's existence, by the Soviet KGB.

Within the first years of the GDR's existence, the Ministry of State Security went about their business with offensive power and brutality. Physical violence, arbitrary arrests and kidnapping from the West figured among its methods; The Ministry of State Security, furthermore, controlled show trials led against

unwanted political powers and provided for stiff sentences within these trials.

From the 1970s onwards, the Ministry of State Security increasingly relied on “silent” methods. Persecution and repression were to be veiled. At the same time, the interest in preventing unadapted, system-critical, oppositional behavior further prevailed including the monitoring of such behavior. To be able to do so, the Ministry of State Security had access to all areas of life within the GDR. This included monitoring, eavesdropping, spying on, arresting and interrogating. In doing so, it relied on its close cooperation with the Peoples Police (*Volkspolizei*), the customs authorities and other GDR institutions. It was able to gather almost any information and documents.

STASI STRUCTURE AND PERSONNEL

The Ministry for State Security was organized in a military-like and strongly centralized way.

Basically, the territorial structure consisted of (apart from several facility-specific offices) the 209 locally operating district offices. Depending upon the conditions within each region, these were structured differently and mostly had up to 50 employees. Their tasks ranged from controlling state institutions and societal areas, to monitoring certain people and to carrying out security checks.

According to the GDR administration structure, there was a medium level with 14 regional administrations. Their internal structure corresponded to that of the Headquarters: they were organized according to the line principle, they were significantly larger than the district offices and had far more specialization branches. The regional administrations are described as the actual backbone of the Ministry for State Security's operative work.

The headquarters of this ministry were in East Berlin and from 1957 until 1989, Erich Mielke was the Minister for State Security.

The “Feliks Dzierzynski” guard regiment was part of the Ministry for State Security, with its foremost task being to guard the party's and the state's objects as well as to provide for the leading GDR representatives' safety and the safety of its guests

The Ministry of State Security had been continuously growing since its establishment and in 1989, it had 91,000 main employment staff: More than 36,000 within the Berlin headquarters, over 43,000 in the regional and district offices and more than 11,000 in the guard regiment. The Ministry for State Security grew most rapidly during the 1970s: In the light of the détente policy and a rising number of contacts between the West and East, the state leadership feared that it would be massively threatened by “hostile influences”. Monitoring and surveillance measures were highly intensified.

Usually, the Unofficial Collaborators (*Inoffizielle Mitarbeiter* in German, hence the abbreviation *IM*) of the Ministry for State Security committed themselves via a written declaration to cooperate in a conspirative way with the Stasi. They were deployed in all parts of society, the economy, administration and within

the military. They reported from opposition movements, from family circles or from groups of friends or about classmates. They contributed with information of a very varied nature – ranging from moods within cooperatives, to banal issues and up to the most intimate personal details. There were Unofficial Collaborators of various types. A small percentage of the Unofficial Collaborators were abroad, mostly located within the Federal Republic of Germany. In 1989 the Ministry of State Security had 189,000 Unofficial Collaborators on its list.

THE STASI AND THE PEACEFUL REVOLUTION OF 1989 (REACTION TO THE POLITICAL SHIFTS / THE TRANSITION PROCESS UNTIL THE DISSOLUTION)

The Ministry of State Security was already aware of the high level of discontent within the country before the events of autumn 1989. From the domestic policy point of view, the emigration movement and the refugee wave going over to Hungary was regarded as the main problem. The international situation gave rise to worries. The liberalization process in Poland, Hungary and especially within the Soviet Union caused anxiety that similar tendencies might develop within the Socialist Unity Party as well. The civil movement which was perceived as relatively marginal and also believed to be under control caused fewer worries.

On October 7th 1989, the Stasi still reacted towards demonstrations linked to the 40th anniversary of the GDR foundation with repressions, using police batons, water cannons and arrests. The Minister for State Security Erich Mielke's orders of October 8th were directed at preparing sharper conflicts and stronger repressions.

Yet, the development was entirely different than the rulers had expected. Within this context, we can regard the Monday demonstration of Oct. 9th 1989 in Leipzig as the decisive event, when tens of thousands gathered to protest and the state bodies didn't intervene in spite of having carried out the proper preparations. The Stasi, the Volkspolizei and the army, that were prepared for such an intervention would have been able to suppress this civil protest with violence. The fact that there was the threat that a civil war like situation might arise – in combination with a threatened international isolation –, important SED-functionaries on the local level were willing to have a dialogue and an erosion of the top SED leadership level that had already taken place to a significant extent were the most important reasons why repressive intervention against the civil rights movement that had become powerful didn't follow. Furthermore, it was clear that in contrast to 1953, the Soviet Union was not willing to deploy its troops stationed in the GDR – and there were actually approximately 400,000 soldiers – to suppress the protests. The Stasi leadership thought that it was necessary to change the head of the SED and within the following days, it supported the fall of the SED General Secretary Erich Honecker on October 18th, who had been in office for many years, replacing him with Egon Krenz as his successor. Rejecting open repression was intended to regain the political initiative and provide for the Party's power. This in turn was meant to be taken care after by stronger surveillance and an undermining of the opposition movement, also making use of the Unofficial Collaborators.

The newly-elected SED General Secretary promised to carry out the reform steps and explicitly declared that it was possible to solve all societal problems politically. This was to be understood as a no to police-state repressions.

The crisis at the top level of both the Party and the Stasi was mirrored by disorientation, an uncertainty regarding the future development and the role that the Ministry for State Security was to play and that it was actually able to fulfill. A sign of this uncertainty was the Minister of State Security's ordinance of November 6th to move important documents from the Ministry of State Security's District Offices that were regarded as especially endangered to the better protected Regional Administrations. It was at the latest at this point when the document destruction carried out by the Ministry of State Security started. (for further information on the document destruction in relation to the dissolution process, see the Chapter "Regime Archives")

The long-standing head of the Stasi, Erich Mielke resigned with the whole GDR government on November 7th. His last appearance in the Volkskammer parliament on November 13th remained in people's memories due to his last helpless attempt at rescue where he said "he actually loved all people". Within the strongly uncertain Stasi organization, this was regarded as a clear sign of the leadership having failed.

From the end of October onwards, the dissolution of the Stasi became one of the civil movement's key demands; demonstrations in the district and regional capitals were directly focused on the Stasi offices.

On November 18th, Erich Mielke's term of office ended. The Volkskammer renamed the Ministry for State Security (i.e. *Ministerium für Staatssicherheit*) to the Office for National Security (*Amt für Nationale Sicherheit* in German, hence the abbreviation AfNS). According to a government declaration, the new office was to demonstrate "a new way of thinking regarding public order and security" and downscale its apparatus. The details were to be laid down in an act, yet such an act was never adopted.

The new leader informed his employees about the "redefinition of tasks, responsibilities and structures of the Office for National Security"; the renewal process was to be unconditionally supported. A staff reduction of 10 % in the first step and later by 50 % was announced. Many service rules were annulled.

At the beginning of December, the file destruction came into the opposition's focus. It became public that the Ministry of State Security had started to destroy documents on a large scale. From December 4th, the civil rights movement didn't confine itself to merely demonstrating in front of the Stasi offices but actually forced its way into the district and regional offices in order to stop the file destruction. There were so called "Security partnerships" (*Sicherheitspartnerschaften*) consisting of state and civil movement representatives being founded in many places, which was an ambivalent issue that on the one hand contributed to a non-violent process, yet on the other hand, this virtually enabled the Ministry for State Security to go on destroying files.

Within the following days, the AfNS collegium resigned, the heads of most of the central departments and regional offices within the Office for National Security were dismissed.

On December 7th, the Central Round Table (*Zentraler Runder Tisch in German*) demanded the AfNS be dissolved with SED delegate votes also opting for this.

On December 14th, the Ministerial Council decided to dissolve the AfNS. There were meant to be two successor organizations: a GDR foreign intelligence service as a more or less continued

foreign espionage department (the so-called “Hauptverwaltung A”) from the Ministry for State Security with approximately 4,000 employees and a “GDR Constitutional Protection Service” (in German: *Verfassungsschutz der DDR*) with approximately 10,000 employees in charge of internal security issues. There were no former leadership cadres to be absorbed into the “Constitutional Protection Service”.

Yet these resolutions didn’t survive too long. Civil protests were even directed against planning the successor organizations, the Central Round Table rejected this plan following a fierce discussion. Finally, the Ministerial Council decided on January 13th 1990 to abolish the AfNS without any substitution and “in all its aspects”. On January 15th, thousands of people occupied the AfNS headquarters in Berlin-Lichtenberg as part of the regional civil committee’s initiative to add weight to the dissolution. On January 18th, the government decided to put the Stasi dissolution under public control and to create a “State Committee for the Dissolution of the former Office for National Security” (*Staatliches Komitee zur Auflösung des ehemaligen Amtes für Nationale Sicherheit*).

Stasi full time-employees had already started to be dismissed in November 1989. In the middle of January, most of the employees (approximately 60,000) were still in service, yet they were all dismissed by March 31st 1990, with the following exceptions. The exceptions were the approximately 200 employees of the Main Directorate for Intelligence (HVA – i.e. the above-mentioned Hauptverwaltung A), which was allowed to dissolve itself; these people were employed for a further three months. A specific group remaining was the “Officers in special services” (in German: *Offiziere im besonderen Einsatz*) that were actually covertly operating within the state apparatus and in the economic sphere. Here, the dismissals took longer, approximately until autumn 1990. Officially, the Ministry for State Security was declared as entirely dissolved on June 30th 1990.

There hasn’t been any systematic survey regarding the former Ministry for State Security’s former employees in the future Federal Republic of Germany. We know that approximately 1,500 personnel, former full-time employees at the passport control or personal protection were employed by the federal or state police units. Also the office of the so-called special commissioner and the future federal commissioner for Stasi-documents, employed approximately 100 former employees from the Ministry for State Security, predominantly in the building protection service that was responsible for the security of the buildings or they were employed as drivers of the office. A smaller number were entrusted with specialist tasks – which was especially the case in the 1990s. The first Federal Commissioner, Joachim Gauck, who was later elected Federal President, has always described the employment of former full-time employees within the difficult rebuilding process as necessary and defended it against the criticism that had emerged against this situation right from the beginning. Actually, it hasn’t been revealed that these employees neglected their duties – they performed their tasks loyally. Nevertheless, critical voices regarded it as unbearable that an office serving the reappraisal of the Stasi’s activity employs former secret police employees. Meanwhile, only a very small number of these employees are still working in this office – and for a very long time, it’s only been in the building protection service.

From autumn 1989, the Unofficial Collaborators were successively switched off, the last via an order from January 12th 1990. It was as late as on March 8th 1990 that the government decided

to free the Unofficial Collaborators from their commitments to remain discreet that they had agreed upon.

A specific Chapter that is retroactively being regarded as critical with respect to the Ministry of State Security dissolution is the Main Directorate for Intelligence i.e. the foreign espionage department. Following the Round Table’s consent, the HVA was allowed to dissolve itself by June 30th 1990. Yet the Central Round Table had been deceived as far as the character of this department was concerned: The Ministry for State Security declared that the HVA was a normal foreign secret service as is run by any country. Furthermore, it declared that it was necessary to repatriate the agents from abroad, to provide for their protection and proper CV in order not to expose them to threats. At this point, hardly anybody knew that the HVA was also directly participating in persecuting and fighting against political enemies, i.e. that it had been an integral part of the secret police. The result of the consent towards the self-dissolution was that almost all the documents from this department were destroyed.

Although today, there are vast amounts of data regarding the Ministry of State Security’s work stored at the Archive of the Federal Commissioner for Stasi Records (*das Archiv des Bundesbeauftragten für die Stasi-Unterlagen*, hence the abbreviation *BStU-Archiv*) available for the legally defined purposes, we still have to state that the Ministry of State Security itself destroyed large volumes of files in order to conceal its own activities and to protect its full-time employees and Unofficial Collaborators. The approximately 15,000 sacks of torn documents that were seized demonstrate the destruction which hadn’t been completed. There are neither reliable data regarding the overall amount of the destruction nor are there reliable estimates. Furthermore, it’s not merely about the scope but also about the quality of the destroyed documents so that quantitative estimates do say very little about the content.

Again, it was the Central Round Table that approved the special documents be destroyed: All magnetic tapes (10,000), 5,000 discs and 500 removable disc storage devices at the Ministry for State Security were destroyed. The official argument was that these documents were not to be worked with again. The Ministry for State Security declared that these documents were present in writing as well. Later, it actually came out that this declaration was wrong. Later on, people succeeded in reconstructing parts of these electronically stored documents that had been destroyed.

For further details regarding the files and the discussion about their future use, see the Chapter “Regime Archives”.

CITIZENS PARTICIPATING IN THE TRANSITION PROCESS

The citizens participating in the transition process is a broad topic: It ranges from the innumerable demonstrations and manifestations to the cooperation in the newly founded committees and initiatives at a local, regional and central level. Here, we shall outline merely the most significant aspects.

- The Peaceful Revolution within the GDR that took place in autumn 1989 and the subsequent transition process towards democracy would have been unthinkable without a brave and powerful **civil movement**. During the 1980s, a varied opposition emerged. Although it had been rather small-scale at first, mostly linked to the Evangelic Church activities, the number of male and female citizens expressing their protest against

the state and party leadership and in favour of democratization rose enormously throughout the revolutionary year. In autumn 1989 something happened that would have been unthinkable some months before: hundreds of thousands of demonstrators in small and larger cities across the GDR went to the streets in spite of the country's armed forces.

Apart from these dynamics emerging from the population, important framework conditions are to be listed that became important for the Peaceful Revolution and the successful transition process from a dictatorship to a democratic state: the international situation, the dramatic reform processes in the Soviet Union led by Mikhail Gorbachev in the late 1980s, the USSR virtually retreating as far as its troops presence for the GDR's purposes were concerned, the USA's support for a united Germany and on the other hand, the GDR ruling system's visible decay both on the political and economic level.

The East German population's awakening represents a key condition for the success of the revolution autumn of 1989 and the overall successful transformation process. Even an ailing regime would neither have resigned just like that or collapsed, as it had ruled for at least 40 years; the civil movement had been a rather weak and a marginal phenomenon until 1989. In contrast to other Central and Eastern European countries, the emigrations into the Federal Republic of Germany and state-enforced expatriations into this country weakened the opposition's potential or at least reduced the number of discontented citizens remaining in the country. Nevertheless, during the summer and in the autumn of 1989, protests within the population emerged on an unimaginable scale. This development was also reflected in the citizens participating in the Stasi dissolution.

- To be more precise, we can already detect during the autumn **demonstrations** that the Stasi and its operations were being focused on. The demands expressed during demonstrations and manifestations across the country referred to free elections, speaking about the electoral frauds in public, freedom to travel and other democratic rights; and also the Stasi's dissolution or at least its downsizing was the protesting citizens' declared target everywhere. **Occupying** the regional Stasi offices from December 1989 and finally, the seizure of the Ministry of State Security's headquarters on January 15th 1990 clearly express this development. Yet what was being called an "occupation" didn't mean that the civil movement took these offices entirely under its control. This was rather a continuous process of limiting the actual exertion of power and only partially an effective interference into the procedures within the apparatus. Not even the occupations were able to entirely stop the files being destroyed during this phase. Surely, the knowledge about the ruling as well as the apparatus that had hitherto still been working in general was being used – as it had been the case in the subsequent formalized participations of the citizens – in order to monitor the interests of the system that had not yet been changed. During this phase, active citizens were actually also lay people in handling the secret service apparatus.
- Following several local precursors, from December 1989, the **Central Round Table** in Berlin became a location where the rulers negotiated with representatives of the stronger opposition in equal representation about the shape of the transition process. The fact that such a round table had been established clearly demonstrated that the democratization process

was irreversible from now on which thus meant the end for the Socialist Unity of Germany party's reign – it was forced to publicly negotiate with the declared enemies. Dissolving the Stasi was a key issue of these negotiations.

Hundreds of cities and municipalities followed this Central Round Table example, establishing local or regional Round Tables. It was relatively frequent that the Round Tables built thematic work groups that often focused on security issues or on the Stasi dissolution. There were no unified Round Table procedural rules.

The Round Tables manifested that the Socialist Unity Party regime handed over power and the opposition's institutionalization; they may be regarded as an important though not decisive factor contributing to an orderly and non-violent system change. They were important locations where consensus-oriented talks took place. Yet their lacking democratic legitimization as well as the frequent deception within the Round Tables by false information from the state bodies was criticized.

- **Civil committees** were constituted from December 4th onwards in Erfurt in all GDR district capitals and in many regional capitals. These committees occupied the Stasi offices and were primarily focused on halting the Stasi file destruction. Opposition members and active citizens were members of these committees. The civil committee in Berlin was founded, but late on, on January 15th 1990. This came in connection with the mass demonstration that took place in front of the Stasi headquarters and the occupation thereof.
- Civil committees were not composed according to any specific rules.
- **The Security partnerships** of state institutions (the People's Police, prosecuting offices) and citizens active in the civil movement occurred in many places in order to prevent escalations and the emergence of violence. As important as this might be for safeguarding the non-violent character of this revolutionary process, it was, on the other hand also the rulers' last opportunity to put through their interests at various levels, albeit with restrictions. As far as the civil movement is concerned, which couldn't have had any insider knowledge, this was the ticket to the spheres of state power that had hitherto been top secret.
- The **State Committee for the Ministry of State Security dissolution** (formal expression: Office for National Security) was established in February 1990 through a GDR government resolution. It was meant to create a civil control for the dissolution process. Three commissioners, with two of them being from the civil movement, were vested with governing power to control this process.
- Further citizen participation phenomena were – to some extent, together with the previously mentioned institutions – work groups, investigation commissions, commissions composed of equal numbers of representatives, consulting groups and dialogue forums.

LESSONS LEARNT

POSITIVE

- Although the political opposition within the GDR in the 1980s was relatively weak and internally split, it was able to get a response from a vast group of inhabitants during 1989 in relation

to the democratization process. This large-scale participation of citizens in cities and within rural areas can be regarded as one of the key conditions for the success of the revolution process.

- It was neither Germany's unity that became effective on October 3rd 1990, nor was it the decision taken by the first and only freely elected GDR parliament in March 1990: the decision to dissolve the State Security without any substitution had already been taken in December 1989/January 1990. Given all the problems linked with the transition, the rulers didn't even manage to establish small successor organizations. This clear step was surely linked to the reunification that was already on the horizon, yet due to the significant pressure from the civil movement, it already occurred during a phase when these perspectives hadn't yet become clear and when the decision powers hadn't yet been redistributed.
- The different forms in which opposition citizens participated in the change process (especially the Round Tables and the Civil Committees) can be regarded as an important precondition for the revolution's peaceful course. The fact that a transition process which was shaped this way left time for the old rulers to put through their interests (e.g. wiping out any traces by destroying files) is not a counterargument serving against a peaceful transformation which prefers talks and political negotiations.
- People managed to prevent large-scale file destruction. The Archive of the Federal Commissioner for the Records of the State Security Service with its large stock bears witness to this. It is the civil movement's achievement that the destruction was detected and made public and that powerful attempts were made to counterbalance the destruction or to limit it.
- It is to be positively valued that parts of the old system (albeit only small ones) supported the transition process by providing the civil movement, and later the democratically legitimized institutions, with their insider knowledge about the apparatus' mode of operation. Until today, this has remained a controversially discussed issue. For sure, it's a very sensitive one. Yet as far as the highly complex transition processes of this kind are concerned, it hardly appears to be dispensable relying on constructive and expert powers from the old system, albeit for a limited period of time. Within this context, clarifying the preconditions and conditions for such participation is important (honestly meant breakup with the past, indispensability of the expertise, transparent participation, close following/control of the activity, fixed-term activity within sensitive areas).

NEGATIVE

- It was not possible to prevent the Stasi destroying documents entirely or partially on a large scale that would have been of significant importance for reconciling with the past. These file destructions partially took place during a period in 1989 when the course of the revolution had not yet become clear, i.e. these activities couldn't be controlled from the outside. It's the civil movement's achievement having vitally disturbed this process by occupying the Stasi offices from December 1989 onwards and having made it a publicly perceived problem. Nevertheless, an effective or comprehensive prevention or at least monitoring of the destroyed files was not provided due to this. Thus, documents were destroyed in a not precisely definable scope which would have documented the Stasi's activities and listed the people collaborating with the Stasi.

Nevertheless, what is positive and needs to be stressed is that in spite of the file destruction, there have been vast amounts of Stasi documents preserved – which was quite contrary to the situation in any previously collapsed state. These documents enabled a comprehensive analysis of the Stasi's activities. Based upon law, they have been made accessible since 1991 for historical reappraisal with the dictatorship in general, for personal perusal of the files as well as for prosecution purposes, for vetting, for rehabilitating victims, for research, for the media and other purposes – under the condition of protecting the personality rights of the affected persons.

- The Central Round Table approved the Stasi's foreign espionage department, the Main Department for Intelligence (*Hauptverwaltung Aufklärung*) dissolving itself. This self-dissolution caused an almost full-scale destruction of the working documents from this field. The state leaders achieved the approval through deceiving the opposition. As it later came out, the HVA was not “merely” a foreign intelligence service but represented an integral part of the suppression apparatus also within the country.
- Destroying the Ministry for State Security's electronic data carriers was also done with the Central Round Table's approval. Also in this case, deception paved the way to approval: the claim that there was a written copy of all the electronically stored information was proven as false later on.
- Due to the fact that a vast amount of the Stasi documents were already opened in the early 90s, an imbalanced situation occurred that did not correspond to the relation of the Stasi's and the Socialist Unity Party's balance of power. While the sight was almost lost of the governing party and its responsible persons – with some rare exceptions – there were public discussions against Stasi collaborators even in less important cases which had labor law consequences for these people. Irrespective of how important coming to terms with the secret police work and the Stasi was and still is, the Socialist Unity Party's leading role needs to be respected also in relation to the Stasi.

Altogether we can state regarding the negative or critical dimensions that on the one hand, there was a dramatic erosion at the state and party leadership level, but both apparatuses didn't entirely lose their function. And on the other hand, the civil movement and opposition gained importance and power, yet the latter suffered so much from internal disputes, were not ready to take over power jointly and didn't have enough expertise regarding the mode of operation of the bureaucratic apparatus. Thus, it wasn't possible to omit adverse accompanying effects in spite of a highly successful process.

RECOMMENDATIONS

The end of a secret police, of a collapsing and finally also legally ending dictatorship is a complex process if we do not intend to restrict this to the correct but rather bold call for entire dissolution. Each affected country had to find its own ways; this shall apply to the future as well as the respective political and societal context and the very specific power relations within the transition process were and still are of decisive importance. As far as the GDR's collapse is concerned, the specific German-German history and the prospect of uniting both German countries

formed – as has already been mentioned – important framework conditions.

Nevertheless, some general recommendations can be noted down:

- Saving the legacy, preventing file destruction

This recommendation is meant to provide for the material substance being kept that can serve as an information source as comprehensively as possible and inform about the secret police's activity. Democratically legitimized institutions and bodies do have to decide upon the orderly access to these documents from the constitutional state point of view (see below). Although it is not clear yet how the approach to this heritage shall be shaped in detail later on, one has to strive to save the existing sources.

- Do not allow yourself to be deceived, create as extensive controls as possible

The "logic" of a secret police is – on the one hand – to preserve as much information as long as possible – which means so long as the deprivation of power may possibly be prevented. On the other hand, this "logic" also bears the growing probability to such an extent that files will be destroyed by the officers (still) in service as the probability of the regime's collapse grows. It's about wiping out traces, protecting collaborators and destroying all that could serve as evidence against these people later on. Also changes, counterfeits of existing documents can figure among these services' tactics during the transition process. Although the transition should be carried out in cooperation, in a non-violent and as consensual way as possible – for good reason – mistrust of the still active organizations and their activities is apt at this moment and strict controls are necessary. This also applies to situations where the secret police that is to be deprived of power cooperates, as such a situation does not make the above-mentioned "logic" invalid.

- No access to the files without constitutional state regulation

Secret service documents are most sensitive documents. They bear testimony to an intervention into frequently very personal and intimate spheres of people without paying respect to the rules applicable in a constitutional state. The personal rights of all people within a constitutional state deserve high protection. Providing this protection is a priority when overcoming the dictatorship. It's precisely here where the difference of a system that disrespects the fundamental rights of individuals becomes apparent. That's why discussing the rules about the access to these files is of the utmost importance. Carefulness is of more importance than speed, yet it is to be necessary that no unauthorized access occurs during the clarification phase. One has to strive for as large a consensus within the new legal system as possible regarding the document usage; this can prevent an everlasting quarrel about this issue also preventing repeated legal uncertainties or at least diminishing them.

- Inviting external experts to participate in the file access discussion

With all due respect to a national decision – it is advisable that representatives of other countries or possibly international institutions join the discussion about constitutional state governed access to the files. Both positive and less positive experiences should be mentioned just as the legal dimensions should – as this is actually a complex constitutional law, and data protection as well as an archive-legal issue. A path well

paved by constitutional law and the access to the highly sensitive files is to counterbalance the tensions between the interest for reappraising the dictatorship on the one hand and paying due respect to the personal rights of the affected persons on the other – irrespective of whether they are victims or perpetrators – as they are both persons entitled to fundamental rights to an equal extent in a constitutional state.

- Critically reflecting the focus on the secret police

As important as coming to terms with the secret police activities undoubtedly is, it's also important to reflect their role within the dictatorship. In the case of the GDR, it can be taken for granted that the Stasi represented the "Shield and Sword" as it called itself, performing thus a role through which it served the Party. Thus, working on the dictatorship activities may not confine itself to discussing merely the secret service activities as this would virtually relieve of blame the communist party that gave the orders. Thus, the role of the secret service within the collapsed system is necessary in order to define the priorities for coming to terms with the dictatorial past. There is the paradoxically seeming danger of exaggerating the role of the secret police as its activities incorporated suppression.

- Approaching the former secret police full time employees

Generally, further employing the former full time secret police employees within state institutions is to be regarded as a problem. It is to be prevented as far as possible when the newly built institutions' respect and integrity could be in danger. Yet in all cases a transparent and, furthermore, differentiated approach towards this topic is to be recommended. Thus, it may be important for shaping the transition and reappraisal of the dictatorship to use the former employees' expertise for inspecting the secret service's work. Such cooperation in the process of coming to terms with the past should be acknowledged as experience has shown that the vast majority of the former employees are not willing to cooperate in such a way that's perceived as a betrayal. Yet further employment of formerly collaborating employees should be designed in such a way that the feelings of the victims within the system that has collapsed are not unnecessarily burdened. Thus, these people should not be deployed in institutions serving the reappraisal of the dictatorship. Additionally, as far as further employment is concerned, it should be considered which role the particular person has played within the apparatus. Experience has demonstrated that blanket injustice convictions are not helpful, as only a differentiated check of individual cases brings us further on.

- Approach to former Unofficial Collaborators

As far as the transition process is concerned, uncovering the collaboration with the secret police carries a lot of politically explosive issues. This is another reason why it's important to provide for the document security as soon as possible. Actually, only reliable information derived from sources within the files carried out by the offices authorized to do so can establish a solid base for uncovering an Unofficial Collaborator and keeping them far from any political or professional functions. Suspicions or presumptions not based upon facts may not be enough. The consequences for a solidly provable activity as an Unofficial Collaborator have to be differentiated. There was a broad range of unofficial activities; this prohibits blanket decisions. The reactions may range from dismissal from the public services, to changing employment up to unchanged further employment.

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REGIME ARCHIVES

JOACHIM FÖRSTER

INTRODUCTION

The Ministry for State Security's files already played an important role during the Peaceful Revolution and the subsequently led fierce debate regarding the files being opened and finally, when the Socialist Unity Party (SED) dictatorship was reappraised. It was right that people warned about focusing too much on the Ministry for State Security and its files as the Ministry for State Security was no independent actor but a Socialist Unity Party power instrument. Yet also other files such as those coming from the Socialist Unity Party, from the parties and mass organizations, from the state administration or the National People's Army represent important proofs and research opportunities into the repressive structures and activities in the GDR dictatorship. These files were taken over by the Federal Archive (*Bundesarchiv*). On the one hand, the Stasi files' central significance lies in the fact that the Ministry for State Security including its observation and eavesdropping system as well as its collecting mania linked to these activities to many GDR citizens symbolized the lack of freedom and lack of transparency. The goal was to unlock the knowledge about power structures, address openly the injustice and make the information accessible which is indispensable for reappraising, thus turning around the purpose for which they were originally intended and used. The timely opening and use of the secret police files without any archive blocking period furthermore represented a legal challenge as this situation meant getting onto hitherto unknown societal-political territory of which there had been no historical example. The Stasi Records Act (*Stasi-Unterlagen-Gesetzes*, hence the abbreviation *StUG*) of 20. 12. 1991 laid down the foundation for a comprehensive reappraisal by using the Stasi files which is a process that has not been completed yet.

THE MINISTRY FOR STATE SECURITY ARCHIVES AT THE TIME OF TAKEOVER

In many ways, the legacy of the Ministry for State Security constituted an unprecedented and difficult task that was hardly to be coped with by the conventional archive working methods. This was not merely due to the content and the way the files originated but also due to the size, the complicated structure of the search and storage system organized according to the conspiratorial principles and methods used by the secret police and last but not least, it was due to the shape and the order in which the documents were when they were taken over.

As far as the content was concerned, it comprised the product made by a gigantic surveillance apparatus in whose eyes every dissenting person was already a potential enemy. The Ministry for State Security has countless times collected and processed information about citizens from the GDR or other countries infringing elementary personal rights of privacy and documented its own repressive measures. A key role in this process had the reports of the Unofficial Collaborators (*Inoffizielle Mitarbeiter*,

hence the abbreviation *IM*). In the late period there were approx. 180,000 of them. Apart from the files on the victims and the Unofficial Collaborators, there were also files about the permanent staff, the prosecuting offices files as well as other files of various kinds. After completion, the files processed in the numerous service units, were stored in the Archive department XII (*Archivabteilung XII*) which means not according to the usual archive storage principle, i.e. not in the respective service unit section but these files were stored in the "storage space" (*"Ablagen"*), instead. Thus, there was a main "operative storage space" (*"operative Hauptablage"*) and a general main storage space (*"allgemeine Hauptablage"*), with the classification appearing nontransparent, arbitrary to outsiders.

The main issue with the archive was the personal files related to surveillance.

The Ministry of State Security's central search mechanism was a huge index card system. The central card files contained information collected by the Ministry for State Security, which was regarded as interesting – be it for whatever reasons. These card files listed people (the so-called F 16), files (the so-called F 22), code-names (the so-called F 77) as well as streets and important objects (the so-called F 78). The fact that it was possible to take over these files in a virtually undamaged shape played a decisive role for the subsequent use of the archive for reappraisal purposes. Today, this card file classification forms the central search method applied for finding out whether a person was monitored by the Ministry for State Security and whether there are files on this person.

The Ministry for State Security's operational activities had been stopped due to many district administrations having been occupied by angry citizens at the beginning of December 1989 and due to the Berlin Central Administration having been seized by demonstrators and occupants on January 15th 1990. The state of the Ministry for State Security's legacy at the time when it was taken over in the Central Administration in Berlin and in the individual District Administrations proved to be quite inconsistent.

The records from the District and Object-specific Offices pertaining to the Ministry for State Security had already been brought by their staff to the Regional Administrations and partially been destroyed. In the course of the Peaceful Revolution, the scope of the files found was partially packed into sacks and brought to safe places such as bunkers, car parking halls or prisons, even though these facilities were patently unfit for storing and processing the files.

In the Berlin based Central Administration files had also partly been destroyed, though part of them had only been pre-shredded, i.e. torn manually. The majority of these files were saved.

When these files were taken over, only about one half of them had been stored in the archive. The other half of these files was found in the respective bureaus of the service units (and only in Berlin, there were 5,800 of these). As a first step, these incredible amounts of files were wrapped into packs and tied together indicating the respective office they had been found in. In this sense, there was neither order nor were the files accessible.

Following January 15th 1990 when these documents were taken over, this archive was submitted to the GDR State Archive Administration and the buildings were guarded by the police and Civil Committee members.

The overall volume of the rescued documents from the former Ministry for State Security was comprised of:

- Documents: approximately 111 so-called file kilometers, with approximately 41 Mio. index cards
- Filmed documents: if converted, this would correspond to approximately 47 km
- Sacks with torn documents: 15,000 of which containing reconstructible documents
- Audiovisual media (photographs, films, videos, audio tapes): approx. 1.7 Mio.
- Furthermore several computer files, as the Ministry for State Security had been using IT since the 60s as well.

This meant that people had to deal with one of the largest archives in Germany and the fate as well as the use of this archive was now to be decided upon.

The insufficiently secured archive legacy from the Ministry for State Security was now confronted by high expectations and the pressure created mainly by civil rights activists to use the Stasi-files for uncovering the Ministry for State Security's manipulations.

DESCRIBING THE TRANSITION

After the Ministry for State Security Archives had been seized and taken over, securing the buildings and documents became the primary task. The period prior to March 1990 especially, had not been free of uncertainties and uncontrolled influence exerted by forces of the Socialist Unity Party and the Ministry for State Security. Thus, it was mainly the employees of the Ministry for State Security who tied up the documents into bundles. This was carried out under the Civil Rights Committee supervision yet it was not possible to guarantee this supervision everywhere. Even in February 1990, employees of the Ministry for State Security had been destroying files in an uncontrolled manner.

In March 1990, the Central Round Table approved that all magnetic data carriers of the Ministry for State Security that contained personal data – including the electronic card file system of unofficial collaborators – be erased and destroyed. People didn't want to risk this information to be misused, yet were deceived by the misleading explanation that this information was available on paper as well.

Already in February 1990, the Task Force for Security of the Round Table, approved that the files of the Main Intelligence Administration (*Hauptverwaltung Aufklärung*, hence the abbreviation *HVA*) be destroyed in the course of this unit dissolving itself. Later on, this also proved to be a mistake.

Already at the beginning of the 1990s, files from the Ministry for State Security were first used by the GDR Department of public prosecution. Given the compromises and the retreat of the Socialist Unity Party rulers, these institutions as well as the police now appeared to support reappraising the Ministry for State Security's activities together. Though a ministerial decree dating back to 8. 2. 1990 generally blocked the use of files, the prosecuting offices and courts were granted access to the Ministry of State Security files in connection with investigating cases of abuse of power, and mainly in connection with the first applications for rehabilitation.

During the first and only free elections to the GDR parliament, the Volkskammer (*People's Chamber*) on 18. 3. 1990, it became public that several prominent top candidates within the new democratic parties had been long-term Unofficial Collaborators (IM) of the Stasi. The sources of these discoveries were information published by former Ministry for State Security officers. A first check of the representatives had been carried out by a Volkskammer Special Committee following the elections and according to the available options. Among others, two ministers of the new government resigned after their contacts with the Ministry for State Security had become public.

After the democratically legitimized government had been built, the Minister of the Interior became responsible for the Ministry for State Security archives. This partially led to tensions with the civil committees that had hitherto taken over the responsibility. In June 1990, the Volkskammer entrusted Member of Parliament, Joachim Gauck, who was chair of a Special Committee for the control and the dissolution of the Ministry for State Security/ for the Office for National Security (*Amt für Nationale Sicherheit*, hence the abbreviation *AfNS*), to prepare a bill for handling the Stasi files.

A controversial debate flared up in the GDR regarding this issue. The arguments ranged from the demand to destroy at least a part of the files, especially the personal data files, to blocking access to these files for a long time and there were even arguments going so far as to demand a comprehensive opening and handing over of the files to the respective affected victims ("Everybody gets his file"). The GDR government had a restrictive opinion. The Prime Minister de Maiziere – who himself was facing reproaches for having allegedly been an Unofficial Collaborator – expressly claimed that he feared "blood and thunder" would follow especially if the files were made accessible to the citizens. The government bill of 1990 then provided that the files should be used only in exceptional cases.

The Volkskammer Act that was finally passed on 24. 8. 1990 following a critical debate and fundamental amendments granted the affected people the right to information if this wasn't interfering with other people's interests. Furthermore, this act stipulated that additional to rehabilitation purposes and for prosecuting crimes linked to the Ministry for State Security activities, the files should be used for safety checks and for proving whether a person had been officially or unofficially collaborating with the Ministry for State Security – with the affected person's consent. On principle, information to intelligence services was not to be provided.

In the meantime, the German-German negotiations regarding the GDR's accession to the Federal Republic of Germany assumed concrete forms. When it became public that the Act of the Opening of the Stasi's Files was not to be incorporated by the Reunification Treaty in line with the mutual will expressed during the negotiations between East and West and that the Stasi-files were to become part of the Federal Archive agenda both de jure and de facto, the civil rights activists started protesting. They didn't want to abandon this achievement of the Peaceful Revolution. Again, former Stasi offices were seized by civil rights activists.

The discussion regarding Stasi file use gained another dimension due to having been extended to the West German territory. Leading politicians from the West feared as well that granting access to the files would threaten social peace as well as poison the climate in the reunited Germany or even cause a split within

the society. Furthermore, granting access to the personal data without any blocking periods appeared to be hardly compatible with the rule of law in the Federal Republic of Germany.

Due to the time pressure caused by the Unification Treaty that was soon to come into effect, the need to provide for an early and comprehensive legal regulation of the Stasi file use was expressly defined in additional agreements to the Unification Treaty.

Joachim Gauck, the Special Commissioner for Stasi-Documents appointed by the Federal government commenced his work immediately after the reunification on October 3rd 1990. He was supported by a committee that was set-up consisting of members from the Federal Ministry of the Interior and members from the former Civil Rights Committee as well as employees from different federal institutions who were entrusted with this task. Together they faced an almost impossible task: The Special Commissioner had to establish the structure of an authority, in parallel hire employees and train them, provide for the archive's provisional mode of use and to find documents in order to be able to process thousands of official applications and to provide information without delay. For these special, difficult and demanding tasks within the information and archive sector, no trained personnel were available. The staff volume was to rise within a few years from slightly below 60 to more than 3,000. To most, this meant "learning by doing". Based on the preliminary user rules in connection with the additional agreements to the Unification Treaty, it was possible to provide information as early as December 1990 onwards. This information was used in relation to rehabilitation authorities or to prosecuting offices (now anchored in the constitutional state system), and for the purpose of checking the representatives and members within the public service. Several thousand applications came in every day.

Thanks to the central card index system, it was possible to find out relatively quickly whether a person was registered by the Ministry for State Security. Yet, especially finding the files that had not yet been archived proved to be very difficult under the given conditions. There were many cases where this would not have been possible without the insider knowledge of certain individual former staff from the Ministry for State Security who were willing and cooperated.

On 20. 12. 1991 the Act comprehensively governing the access to the Stasi's documents, i.e. the Stasi Records Act (*Stasi-Unterlagen-Gesetzes*, hence the abbreviation *StUG*) came into force. This was preceded by an objective discussion at a parliamentary level. It led to a general consensus, which was last, but not least a result of the lessons learnt from German history after 1945, according to which a comprehensive reappraisal of the Ministry of State Security and the Socialist Unity Party Dictatorship was to be made possible immediately and without any blocking periods. The framework conditions were now defined by the "Grundgesetz" (the Federal German constitution) and the general right of privacy anchored in it, the civil rights activists' interests and the interests of the victims in the former GDR as well as the safety interests of the reunited federal Germany.

The StUG aimed at paying due respect to and balancing the different interests and providing a solution to the main disputed issues and it proved to be surprisingly stable within the subsequent period.

The Ministry for State Security archives became the agenda of the Federal Commissioner for the Records of the State Security Service (*der Bundesbeauftragte für die Stasi-Unterlagen der*

ehemaligen DDR, hence *BStU*) who was elected for a 5-year period (eligible for a maximum number of 2 periods) by the Bundestag (Federal Parliament). Yet they remained decentralized, located at their hitherto sites in Berlin and the former Regional Administrations. The BStU is not subject to a subject-specific supervision, but only to legal supervision by the federal government (§§ 35 ff. StUG). As far as fundamental issues are concerned, he is advised by an advisory committee (§ 39 StUG), the members of which are appointed by the federal parliament and individual federal states.

As the main issue this act stipulates that the BStU has the exclusive competence to store and take custody for the Stasi-files, which is closely linked with the duty of disclosure and duty to hand over all external Stasi-files (§§ 7 ff. StUG) as well as the use of these files exclusively for the purposes specified in the act, i.e. the use is strictly bound to a specific purpose (§§ 4 subs. 1, 29, 32 subs. 4 StUG).

The StUG not merely gave the victims the right to get information but emphasized the individual's right to get access to the information collected on him. This claim of the civil rights activists corresponded to the "Right on information self-determination" derived by the Federal Constitutional Court from the Grundgesetz. This not only refers to the protection of personal data that may not be re-used without consent, but also to the fundamental right to see these data and to determine their use. In order to be able to grant the Stasi victims the right to inspect their personal data, extensive protective rules were required to protect data of third persons. According to the StUG, the right to gain access into "one's own file" also encompasses the right to get to know who provided the information about the person. Disclosing the legal (uncodified) names of Unofficial Collaborators without their consent requires a restriction of the personal rights of former employees of the Ministry for State Security. Differentiating between "victims and perpetrators" (the StUG actually doesn't use these terms) thus became a general principle throughout the whole StUG. This act differentiates between the "affected and third persons" who have an unrestricted right to inspect the files regarding themselves on the one hand, and the "collaborators" or the "beneficiaries" on the other hand, who may only inspect their own personnel files, not the case files. But above all, they do have to accept that their names are disclosed without prior consent within the legally defined purposes of use. The StUG formally defines the previously mentioned groups of persons in § 6 StUG.

The right of access to personal files has been anchored in §§ 12 ff. StUG. If certain conditions are met, information may also be provided regarding the fate of lost or deceased relatives (§ 15 StUG).

The rush of applicants that arose in January 1992 surpassed all prognoses. By March 1992, already 200,000 applications had been filed and in 1995, there were already more than one million. The talks to be led with the applicants required not only expert knowledge but also empathy, as many had been victims of the measures applied by the Ministry for State Security and were now facing file contents that partially felt like a burden. Especially those who opposed the GDR regime and who significantly contributed to the files being opened, but also simple citizens who merely wanted to make use of their most fundamental rights in the GDR, now had the opportunity to gain clarity regarding the methods the Stasi used for interfering in their lives by influencing them covertly. They now had the opportunity to read what the Ministry for State Security knew about

them, which person from their surroundings had provided information, which methods had been applied to recruit Unofficial Collaborators, but also who resisted the recruitment attempts. Especially the last subject was of vital importance for trusting the respective people's personal environment. Particularly tragic fates resulting from particularly insidious Stasi methods called "Zersetzungsmaßnahmen" (*decomposition methods*) became known, due to which friendships and families were destroyed or as a result of which people suffered mental crises. Quite frequently, the Ministry for State Security decisively contributed to youngsters being sent to childcare homes and youths to educational institutions. Understandably, the affected persons' reactions to reading the files that sometimes amounted to several folders and several thousand pages of record were varying – depending upon the circumstances and the persons themselves. Especially during the first period these reactions frequently included horror, speechlessness, disappointment, grief and anger. In cases of less voluminous documents, they were sent to the applicant by post. In difficult or significantly larger cases, an appointment for personal inspection of the documents was made, in which the documents were explained to the applicant in a preliminary talk. It has proven to be sensible to keep in contact with victims' organizations to which the person could be referred if necessary.

For further information on the purpose of vetting, see the Chapter "Lustration and the process of vetting".

The question to what extent the state authorities, investigative bodies and especially intelligence services were to be granted access to the information that had been collected by the previous secret police about affected and third persons proved to be essential. The use of documents that resulted from unconstitutional activities should in no way prolong and repeat the injustice suffered by the victims of the Ministry for State Security. Thus, any use of the documents to the disadvantage of a victim is prohibited (§ 5 Abs.1 StUG). Except in the case of criminal prosecution of regime-related crimes, the Ministry for State Security files may only be used as evidence in cases that are listed in a specific list of serious crimes such as murder, manslaughter etc. (§ 23 Abs.1 Nr.1 StUG). The Ministry for State Security documents were of great importance in detecting the Socialist Unity Party's assets abroad as it enabled the detection of assets that were placed in foreign front companies. A special investigation committee and an investigative commission of parliament had been established for this purpose.

The StUG basically prohibits the use of documents on affected and third persons by the now responsible federal German intelligence services. Exceptions are only allowed in the case of the intelligence services' own employees, if the inspection is serving the employees' safety (§ 25 Abs.1 StUG). This restriction, furthermore, mitigated the sharpness of the previously disputed issue of providing information. In this case, the very specific situation of the reunified Germany became apparent. The secret services active working in the Federal Republic of Germany were interested in counterintelligence-related and terrorism-related information, whereas they didn't show any interest in the Ministry for State Security's reports on citizens pertaining to the opposition within the GDR. First named documents have to be archived separately by the BStU like other documents classified as secret (§ 37 Abs.1 No. 3 StUG) and may only be used if the Ministry of the Interior agrees. Yet this refers to rare cases only.

By granting access to the researchers and media (§§ 32–34 StUG), the foundations for a comprehensive and historical

reappraisal of the Ministry for State Security's and the Socialist Unity Party's activity were laid. The use of personal data in research and by the media naturally represents an especially sensitive area of application as here personal rights require special protection, yet at the same time, they are in a charged relationship with the fundamental rights of freedom of press and freedom of research.

In this case too, a legal distinction is made between the affected and the third persons on the one hand, who do have to give their consent to any provision and use of documents – in contrast to the collaborators and beneficiaries on the other.

Furthermore, there is a special category of people comprising prominent persons of contemporary history and holders of political functions or of a public office, as long as the request refers to their contemporary history role or their line of public action. As a result of a supreme court ruling, caused by the West German politician Helmut Kohl, access to Ministry for State Security documents relating to prominent persons of contemporary history and holders of a public office was modified. In this case, a notification procedure was introduced which gave the person of contemporary history or the holder of a public office the opportunity to raise objections in advance regarding the planned provision of the documents (§ 32 a StUG). Only after following another – judicially reviewable – consideration of legal interests, these objections can be ignored.

According to the law, any provision of documents for research or media purposes is limited by the overriding legitimate interests of third persons who need to be protected, which is especially the case for documents of a highly personal content that aren't connected to the reappraisal in any way. Such documents cannot be handed out.

As additional protection, the legal preconditions for the provision of the documents by the BStU authority have to be observed by the recipient as well, when he himself publishes later on (§ 32 Abs.3 StUG).

The task to inform the public about structure, methods and about the mode of operation of the Ministry for State Security (§ 37 Abs. 1 No. 5 StUG), formed the foundation for establishing basic research in history issues and for using the Stasi-files for political education by the authority of the BStU itself.

CURRENT SITUATION

The legal basis for the use of Stasi-documents, i.e. the StUG has not fundamentally changed within the 25 years of work on millions of cases. Yet there were turning points, new findings and special conflicts in practice, which partially resulted in changes and the further development of the act.

As far as the personal records inspection is concerned, the option that had previously been granted to the victims, namely to demand that their personal documents be erased, was annulled before this provision had actually come into effect, as it is de facto not possible to strictly separate it from information on other people. Yet there is the option to prevent the relatives of a deceased person gaining access after their relative's death if the person stipulates this by a written declaration prior to his/her death (§ 15 Abs. 5 StUG).

In 2006 and in line with the archive law, the use of victim's documents (basically 30 years after their death) was permitted.

More than 25 years after the BStU commenced his work, the numbers of applications are still at a level nobody reckoned

with at the beginning. In 2016, an overall number of 64,000 applications were filed.

Almost 40,000 citizens filed an application in 2016 for personal data inspection; ¾ of them did so for the first time.

Many citizens decide to get an insight into their files only after a very long time. The reasons are manifold (they become pensioners, they hesitate to clear the uncertainty about assumed information in the files, questions of their grandchildren etc.).

In 2016 still more than 3,000 applications related to rehabilitation, compensation and criminal prosecution were made.

The number of research and media applications is currently and constantly at approximately 1,300 per year. In contrast to previous years ¾ are now pertaining to research and ¼ to the media. The respective departments for processing these applications are specialized according to topics, so that during the applicant's topic-related research, specialist advice can be provided. In the future documents shall also be provided in digitalized forms and generally processes shall be digitalized in order to meet the requirements of our time.

The archive indexing of the Ministry for State Security records is not yet finished. Until 2016, at least those documents that had not yet been archived by the Ministry for State Security were indexed according to topics. After the archive indexing process is completed, new search indexes shall be established and made available online as a long-term perspective. Hitherto, more than 1.6 million partly torn or damaged paper sheets have been manually reconstructed by 2016. A pilot project with an IT-supported reconstruction method developed by the Fraunhofer-Institut is intended to help reconstruct at least part of the torn documents in sacks. Due to unresolved issues regarding costs and effort, this process has hitherto not been used on a large scale.

As far as the preservation of the records is concerned, inventory protection measures, such as the digitalization of video- and audio-material play a vital role. Frequently, written documents require preservation too.

Until now, numerous publications and handbooks written by the BStU research department focusing on the Ministry for State Security have been published to inform the public about the Ministry for State Security's areas of activity, to give reports on various aspects of the state and the society within the GDR, as well as on the cooperation of the Ministry for State Security with other Communist secret police forces. Political education such as education at schools is supported by providing appropriate material. The Ministry for State Security's activities are shown in a permanent exhibition in Berlin, through regional as well as trans-regional temporary exhibitions and by a travelling exhibition in Germany and abroad. There is a plan to establish a comprehensive presentation of the Stasi's activity using sample cases in the former Central Administration building of the Ministry for State Security. In previous years, the BStU public relation effort has focused more and more on establishing a media library on the Internet as well as on using the new media.

International relations, be it via cooperating with partner organizations in other post-communist countries and numerous visits paid by delegations from all over the world play an important role as well.

Currently, the BStU has a staff of about 1,600 staff in Berlin and its 12 branch offices (as of 2016).

With regard to the future of the Stasi-files the German Bundestag (parliament) decided on 9. 6. 2016 to promote and consequently support the reappraisal of the Socialist Unity Party

dictatorship and to take care that the existing access options according to the StUG will be maintained in the future. This decision was preceded by a recommendation of 5. 4. 2016 by an expert commission assigned by the German Bundestag. This recommendation says that the Stasi file archive is to be incorporated into the German Federal Archives (*Bundesarchiv*), while still retaining a certain organizational independence and remaining on its historical site in Berlin. The documents nowadays stored in the branch offices shall remain at appropriate locations within the five new federal states on a long-term basis - while maintaining the centralized administration. The territory of the former Central Administration of the Ministry for State Security shall be reshaped and turned into a centre of information and events.

LESSONS LEARNT

Opening the Ministry for State Security archives was based on the historical experience that it's not oblivion but only confrontation and uncovering the actual entanglements, injustice and betrayal that constitute a solid base for overcoming the impacts of a dictatorship. Germany opted for a timely and large-scale opening up, while granting access for its citizens as well, and at the same time providing for a comprehensive guarantee of personal rights to be protected and respect of state-related security interests. The path Germany has embarked on was and still is ambitious and demanding. Especially balancing the interests in coming to terms with the past and the rights of the individual became a central and ongoing challenge in handling the Stasi documents in Germany. The fact that the GDR acceded to the Federal Republic of Germany was a special and favourable factor.

By setting the regulations in the Stasi Records Act (StUG) and establishing the authority BStU and permitting the provision of Stasi documents for certain purposes only, the legislator merely created the preconditions and framework for a reappraisal process within society. There was no intention of claiming to have the sovereignty of interpretation or the sovereignty of evaluation, but the intention of the opening was to deprive the Ministry for State Security staff who were the sidekicks of the Socialist Unity Party dictatorship, and the functionalist elite from the former GDR of the chance from creating legends.

- Taking into consideration that there is an act that has remained stable throughout 25 years as far as the fundamental issues are concerned and given the fact that it formed the basis for 7 million applications for the provision of information or inspection of the Stasi files, we may regard the path that has been chosen as a success story. Especially the fears of negative impacts referring to a split society, social unrest or even acts of vengeance have not been fulfilled.
- Establishing the office of the Federal Commissioner for the Records of the State Security Service (BStU) by parliament and electing him in an election with a consensual result across the political parties, this independent institution with significant instructional autonomy and a centralized responsibility for the Stasi records, has proved to be successful in preventing the misuse or an inappropriate exploitation of the Stasi-documents during the transition period. The BStU is controlled by government, the parliament and the judicial system.
- As far as criminal prosecution, vetting and rehabilitation were concerned, the documents from the Ministry for State Security

- proved to be indispensable information sources. (for further information on these issues, see the respective chapters).
- Since 1992, more than 2 million individuals have made use of their right to apply for a personal inspection of the Stasi-documents. In approximately one half of these cases, the result was that information had been collected on them, and in more than one third of the cases, documents were found. Although facing the facts that came to light was painful for the affected people in many cases, it has generally been perceived as a liberation and an important step towards regaining sovereignty over their lives.
 - The Ministry for State Security records being used by the press, in radio broadcasting and in movies have significantly contributed to the reappraisal of the Socialist Unity Party dictatorship by the public. The media are indispensable actors within the public discourse of civil society. Without the media portraying the Ministry for State Security's and the Socialist Unity Party's power mechanisms, sometimes namely exemplified by the fate of individual people documented in numerous reports or documents, it would not have been possible to explain the Socialist Unity Party dictatorship and the reappraisal thereof to the broad public in the Eastern and Western part of the country equally. It was frequently the press that became the first actor to uncover the connections and the entanglements of important personalities or areas of society.
 - The GDR power mechanisms being reappraised via topic-related research projects is equally important. Thanks to numerous publications, analyses and monographies issued by either private researchers or by research institutes investigations were carried out regarding the Socialist Unity Party dictatorship in relation to any possible aspect using the Stasi documents for this purpose, explaining and presenting them in a more comprehensive context. Also Research projects of the utmost importance, such as those on the victims on the German-German border, on the fate of political victims or the Ministry for State Security's influence on West German policies as well as regarding the cooperation with other Eastern European secret services have been completed or launched only throughout recent years.
 - Furthermore, the Ministry for State Security files are an appropriate starting point for introducing the issues of dictatorship, of rights of freedom and of a constitutional state to younger people in the framework of political education by showing them individual cases that have been prepared for this purpose.
 - Even in the GDR, where the dictatorship fell within just a few weeks, where the secret police archives were occupied and where the Ministry for State Security was finally dissolved, people didn't succeed in saving all Stasi-files without any losses. Such a thing would have required a sharp break without any transition and a strict safeguarding of the files being stored consistently. The question remains, whether it is realistic to interrupt a secret police's activity so abruptly that this secret police does not have any option to destroy file material prior to handing over the archives. In the case of the Ministry for State Security, such destruction took place even after its activity had ended. Yet the type and the scope of this destruction didn't reach a level that would be sufficiently high for questioning the reappraisal itself.
 - Due to the vast amount, it was not possible to complete the topic-related indexing of the records as well as the provision of a complete search system for research purposes even after 25 years.
 - Making personal data available, at an early point, especially concerning the former Ministry for State Security staff, was only possible by differentiating between documents related to different groups of persons ("the affected" and "the collaborators") that were granted a different level of protection as far as handling the documents and the use thereof was concerned. Yet if the content of the information and an Unofficial Collaborator's motives for their activity were not taken into consideration, there was the threat that already the notion of an "Unofficial Collaborator file" (*Unterlage zu einem IM*) would be perceived or used as a stigmatization. First, this was merely about the procedural issue whether providing the information (as information of an affected person) required previous approval. It is difficult and problematic to clearly differentiate between "perpetrators" and "victims". The evaluation of the content is something only the affected person is entitled to carry out, he/she is responsible for considering all the circumstances and sources of information. Classifying whether a document may or may not be provided is a tricky task in cases of doubt. The decision has to be taken on by the BStU staff. If it is not possible to conclusively prove that a person had wittingly and willingly collaborated with the Ministry for State Security, it is not possible to provide the document without consent.
 - The price paid for the extensive access rights granted while ensuring a simultaneous protection of personal rights consists in the high effort linked to this work. The files have to be processed in an appropriate way, which means that, for example, information about unrelated third persons has to be made illegible (i.e. blackened). Furthermore, it was not possible to reject repeated applications as long as the indexing within the archives is not completed.
 - It is not possible to assess whether and to what extent clarifying discussions or reconciliations among friends or in families took place as a result of personal file inspection. Yet apparently, former Unofficial Collaborators hardly ever conceded their guilt. Mostly, former Unofficial Collaborators evade a confrontation with people they had been reporting on. Yet this is an aspect pertaining to private life and something that cannot be influenced by the state.
 - As far as the applicants for research purposes are concerned, they are not used to the indirect research via the BStU-staff, as this method differs from work in other archives with search systems that are tailored to serve their purposes. Many private applicants appreciate the project-accompanying advice offered by BStU employees in relation to the research work carried out in the numerous partial stocks within the Stasi-archive, whereas primarily professional, specialized researchers criticize that they do not have the option of carrying out free, direct research within the archive via externally available search mechanisms as it's possible in other archives. They fear that information gets lost in the indirect research performed by the BStU-staff and complain about the anonymization that is too frequent in their opinion. Within this context the BStU research department finds itself in a charged relationship towards external researchers which have to rely on and go by the application procedure (according to § 32 StUG). Since the option to inspect

non-anonymized files has been introduced for institutionally linked researchers, if certain conditions are met (§ 32 subs. 1 no. 7 StUG) the critique has been silenced to a significant extent. Inspection is being granted when a special obligation of secrecy is signed. But here too, copies of the documents may be handed out either in an anonymized form only or following the affected person's consent. Given the very specific and sensitive content of information and the unconstitutional methods that have been applied in acquiring these documents, it is to be expected that due to constitutional reasons the special legal regulations of the StUG regarding personal data will have to remain valid in the future as well.

RECOMMENDATIONS

- The secret police archives are of special importance in overcoming a dictatorship. They can significantly contribute to make the facts known which are required for achieving the different methods and aims of coming to terms with the past.
- The archives and documents are to be protected from destruction, theft or abuse as rapidly as possible – irrespective of how they are to be used later on. They should be especially protected against further access by the hitherto active secret police forces or by unauthorized third persons.
- Any moving of the documents should be done as orderly as possible. Otherwise, there's the danger that context gets blurred and later use becomes significantly more difficult.
- The documents should be archived, administered and used exclusively by an institution with far-reaching autonomy, which is controlled by parliament based on legal basis.
- The admissible purposes for gaining access to these documents and for using them should be legally defined and formulated as clearly as possible. Especially the victims' personal data (the affected and third parties) should be strictly protected and basically, the use thereof should be permitted only with the victims' consent.
- The information about affected persons being used by security agencies or the intelligence services should be limited to narrowly defined cases of overwhelming public interest. One has to find methods of clearly differentiating secret police manipulations from the past that deserve to be reappraised from future legitimate security interests that have to be taken care of.
- In sensitive cases, the personal file inspection by the victims should include a personal talk with the file specialist from the respective providing institution. Furthermore, the aid by professional psychological victim counselling should be mediated if necessary.
- The media are important partners in the process of coming to terms with the past and the public discussion about it. Inappropriate use should be prevented.
- When handing out personal data, interests that need to be protected should be paid respect to and highly intimate information unrelated to reappraisal as such, should be left out in any case.
- The archive indexing of the archive stock should also be carried out according to research-relevant topics and research as such should be provided with appropriate search mechanisms as soon as possible.
- Due to inventory protection reasons and due to reasons of using the material effectively, digitalization options should be made use of at an early stage. This should be primarily focused on documents that are of fundamental importance as far as research, media and political education is concerned. As far as victim files that are used only a few times, digitalization is not such a current topic.
- Reappraisal is a long-term process both within the private and within the societal sphere and this process requires endurance. The authorities administrating the secret police archives should be prepared for that.

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LUSTRATION AND THE PROCESS OF VETTING

JOACHIM FÖRSTER

INTRODUCTION

A decisive factor in establishing a constitutional democracy following the collapse of a dictatorship is that not merely the leading representatives and functionaries of a country but rather the whole public service shall provide a guarantee for the new constitutional order to become reality in daily life and be reliably promoted. It was necessary for the GDR citizens who hadn't been in touch with democratically legitimized state power to be able to trust the future state institutions. Preventing the hitherto existing political insider relationships also played a vital role. The vetting as to whether the people had collaborated with the Ministry of State Security played a significant role in this respect.

STARTING POSITION

Following the rules stipulated in the Unification Treaty of 27. 8. 1990, the employment relations within the public services in the former GDR generally existed further (Art. 10 as amended by Appendix 1 of the Unification Treaty (in German "Einigungsvertrag"). Yet a termination of employment without prior notice was possible in cases where the principles of humanity of the constitutional state had been breached, or where a collaboration with the Ministry of State Security had been detected which made it unacceptable to further continue the employment. Furthermore, as far as the period of the following two years is concerned (i.e. until 3. 10. 1992), an ordinary right to terminate was provided for in cases of a lack of expertise or of the lack of personal suitability of an employee.

From October 1990 on, many ideologically and politically influenced GDR institutions were shut down and thus, there was a significant reduction in personnel. Also the fact that highly ideology-driven school subjects such as civics or "Wehrkunde" (*Military training*) were abolished led to several dismissals. The same applies to the diplomatic service and the National People's Army. As far as the judiciary is concerned, judges and prosecutors had to pass a special aptitude test. Only about 1/3 of them remained within the federal German judiciary system.

The checks as to whether a person had collaborated with the former Ministry for State Security which had already started in the GDR with regard to the Volkskammer representatives freely elected in 1990, became the key issue from 1992 onwards, following the reunification and the Stasi Records Act (*Stasi-Unterlagen-Gesetz*, hence the abbreviation *StUG*) and led to the vetting of many functionaries and especially public sector employees within the new federal states, that means the territory of the former GDR.

TRANSITION

The Stasi Records Act (StUG) laid down a binding and detailed explanation of the categories of persons that could be checked,

as to whether they had collaborated with the Ministry for State Security. It defines regarding which persons a request to the Federal Commissioner for records of the State Security Service of the former GDR (BStU) (§ 20 Subs. 1 No. 6 and 7 StUG) is admissible. This included all public administration members, members of the federal parliament and of the federal state parliaments (regional parliaments, municipal councils), government members and other holders of official functions, party and association functionaries, judges and lawyers, church functionaries, workers' councils, people in managing posts within the business sphere as well as people in security-relevant areas. Also the applicants for jobs in these offices could be checked. Checking members of parliament was generally possible only on a voluntary basis. The responsibility and right to submit such a vetting application was based on the legal provisions applicable for the office or organization handing in such an application. After checking whether the prerequisites were fulfilled, the BStU archives were searched for clues pointing to a full-time or unofficial collaboration with the Ministry of State Security. If such clues were substantiated and if documentary evidence was found, a report was issued to the applying authority describing and summarizing the file content relevant for evaluating the extent of the activity in question. Copies of the respective documents were attached. As far as the Unofficial Collaborators were concerned, this comprised the type and duration of the collaboration, their code name, the case officers, the size of the files, the reason, aim and course of the recruitment, the date of signing the declaration for commitment, the motives, the type and the number of reports delivered, the benefits such a person received, including awards etc. In certain cases, it was difficult to state whether an Unofficial Collaborator had been cooperating willingly and wittingly with the Ministry for State Security, if neither written declaration of commitment nor clear reports filed to the Ministry for State Security were found. In case of full-time employees, it was usually relatively easy to prove the cooperation and determine their field of work, but the cadre documents usually contain little detailed information on their duties.

In certain cases – e.g. in cases of an Unofficial Collaborator under the age of 18 – no report at all should be delivered.

Evaluating the documented activities was not the BStU's task but was carried out by the applying authority responsible for the respective personnel or by a special commission, which held hearings of the respective person. The eligible authorities and committees that were entitled to hand in an application also decided on whether and which consequences should be taken on base of the report. Frequently, further explanation of the context, especially the specific, conspiratorial working methods of the Ministry for State Security and the meaning of the terminology, were required from the BStU – yet this didn't comprise an evaluation with respect to the future employment of the vetted person.

Only in exceptional cases – if an involvement of members of parliament or of certain higher ranking functionaries with the Ministry of State Security was discovered by chance – the BStU

had to issue a report even without prior application (§ 27 Subs.1 StUG).

On principle, the information given within the context of a report shall only be used for the purpose it has been applied for (§ 29 StUG).

The option of vetting people with regard to activities for the Ministry for State Security was to end on 31. 12. 2006. The legislator presumed in 1991 that after 15 years, a person should not be reproached for such a connection any more. Yet this period was prolonged twice (in 2006 and in 2011) – each time with amendments (see below).

The first years which are decisive for the renewal of the public service, witnessed the highest number of vetting. By May 1993, it had already exceeded one million. In 2006 the overall number of applications regarding members from the public service, MPs or other functionaries amounted to approximately 2 million.

Yet right from the beginning, there were differences between the different new federal states regarding their vetting practice. Frequently, the respective departments decided themselves, whether a check or consequences would be necessary. There were neither any unified federal or state rules regarding which persons in which offices or functions were to be checked nor in which cases a further employment should be regarded as unacceptable. Usually, the employees had to indicate possible activities for the Ministry for State Security in a questionnaire, which meant that it was not only necessary to evaluate the collaboration itself but also, whether a person had fraudulently lied in relation to it.

After some uncertainties at the beginning, judicial decisions on the subject of protection against unlawful dismissal led to a differentiated practice in the individual cases that had to be decided upon. Reports with hints at collaboration with the Ministry of State Security didn't automatically lead to a person being fired. Within this context, the relatively broad definition of an Unofficial Collaborator in the StUG needs to be considered, according to which a written commitment to provide was regarded as sufficient. But even a job applicant's false statement related to contacts with the Ministry for State Security didn't automatically lead to a dismissal. There is no centrally issued statistical evaluation of incriminating reports in relation to the consequences taken. Yet there are studies of individual cases from different categories. According to these there are significant deviations between different groups (police, teachers, financial sector etc.) yet one can presume an average rate of approximately 5 to 6 % of the checks where an involvement with the Ministry of State Security was discovered. In approximately half of these cases, the respective persons retained their employment after the check, but here again – there are clear differences between the individual federal states and areas. According to estimates, in approximately 42,000 cases, the persons concerned were fired. The option of vetting within the non-public sector, especially as far as management employees from the private sector are concerned, was used in only a comparably small number of cases.

The microfilm files (the so-called Rosenholz-files) from the Main Intelligence Administration (*Hauptverwaltung Aufklärung*, hence the abbreviation *HVA*) being handed over to the BStU in 2003 led to another wave of checks during subsequent years within the public service of some federal states and also for members of the parliament. Yet, due to the mostly missing files and additional documents it was often impossible to prove a wittingly and willingly committed collaboration with the Ministry

for State Security. Thus, the frequently expected revelations remained far below expectations. Still, a number of activities for the Ministry for State Security were proven this way. Prior to the vetting options period running out in 2006, fierce political debates were held on the issue of whether the time for a clean break had already come. Furthermore, the fact that it could not be ruled out that further important new information would be uncovered thanks to newly accessed files, played a certain role. Finally, the StUG (7. StUGÄndG of 21. 12. 2006) was amended and determined that the option of vetting should remain only for certain functions (government members, members of parliament and municipalities, leading officers, judges etc.) until 31. 12. 2011 (§ 20 Subs.1 No.6, Subs.3 StUG). Furthermore, a separate provision was made for higher-ranking and international functionaries in the field of sports (§ 20, Subs.1 No.6 g StUG). Finally, several options of vetting now remained for an indefinite period of time (concerning persons working in the field of historical analysis and reappraisal of the GDR and State Security or rehabilitation issues, § 20 subs.1 no.7, for security checks, § 20 subs. 1 no. 11 StUG etc.).

CURRENT SITUATION

Due to the now limited circle of persons to be vetted, the number of checks significantly decreased from 2007 onwards. Within the public service, there were only several hundred applications per year, for members of parliament and other important functionaries – especially within the municipal sector – there were less than 2,000 applications per year on average. Still, the approaching end of the vetting option period again became the subject of political discussions. This was caused by media reports about the past of some public servants being linked with the Ministry for State Security, especially referring to the police force of the federal State of Brandenburg. The checks of the 90s became a publicly discussed topic and within the federal state of Brandenburg, they were also examined by an "enquete", i.e. an inquiry commission within the federal state parliament.

On 22. 11. 2011, the German parliament (Bundestag) prolonged the vetting option period of the StUG yet another time – until 31. 12. 2019, with the circle of leading officials being widened and now including lower level officials (§ 20 subs.1 no.6 d StUG). An additional vetting option for members of the public service was newly introduced in cases of substantiated suspicion. Yet both new regulations do not play a significant role today. Nevertheless, what is of practical importance, are the checks of representatives, even at the municipality level, as these elected people may be of older age and involvements with the Ministry of State Security are still an issue that people are focusing on in the respective regions.

LESSONS LEARNT

- The checks as to whether individuals holding an office or performing a function within the parliament, administration or the judiciary had formerly collaborated with the Stasi contributed to establishing a functioning constitutional democracy within the new federal states and strengthened the trust in the administration and justice system as well as freed the educational sector from insider connections coming from the old

system, particularly in the state sector. This has been facilitated by the special conditions of German reunification.

- Due to the early beginning of the checks, speculation and rumors could be counterbalanced in good time. Basically, thanks to a differentiated vetting practice with decisions taken individually, the proportionality principle has been preserved.
- Dismissals of former employees of the Ministry for State Security from public service in Germany were carried out on basis of a wide societal consensus.
- The confidentiality of the vetting procedure and the reports being linked to a particular purpose prevented persons being stigmatized.
- Time limitation of vetting corresponds to the principle of a state under the rule of law not to reproach a person for his past for their whole life.
- Yet even after 25 years, the public is still very sensitive when it comes to the credibility and trustworthiness especially of elected and high-ranking representatives within state and municipal institutions. Thus, even today, there are heated debates regarding the Stasi's past of people within public life.
- The vetting rules should not be upheld if there is the threat that they would serve a sheer formalism and no new information would be expected.
- It is important that the institutions, which decide upon the consequences resulting from discovered involvements with the Ministry for State Security, receive proper expert advice.
- It has proven to be a disadvantage within a federalized Germany that there were no unified directives as to how to make use of the vetting options. Thus, significant differences appeared between individual Federal States and areas both with respect to carrying out the vetting and to the consequences arising from them.
- It is understandable yet not unproblematic that people significantly focused on the Ministry for State Security. Thus, frequently a prior collaboration with the Ministry for State Security became the one and only criterion for further employment, whereas jobs within the governing Socialist Unity Party of Germany (German abbreviation "SED") were neglected. Unequal treatment, which arose from this situation could only be partially balanced and even this only later on.
- In contrast to the public sector, the private sector used the vetting only to a limited extent. Thus, for example, the publicly owned media and the privately owned media differed significantly as the latter showed little or late interest in coming to terms with the past regarding the State Security.

- Unfortunately prior to 3. 10. 1990 former full-time employees of the Ministry for State Security were not prevented from becoming attorneys.
- In spite of comprehensive vetting and large-scale research it wasn't possible in all cases to answer the question of collaboration with the Ministry for State Security beyond reasonable doubt – including cases of prominent politicians. This was, of course, partly due to incomplete records.
- There's always the danger that contacts to the Ministry for State Security could be politically exploited. This can only be counterbalanced through the greatest possible transparency also by the respective persons themselves.

RECOMMENDATIONS

- The vetting should be started as soon as possible in order to prevent speculation and exploitation regarding secret police contacts.
- The checks should be carried out according to joint directives and criteria in order to prevent unequal treatment. Yet, it is absolutely necessary to decide each individual case while taking the whole context into consideration. The concrete activity performed by individuals for the secret police should be the focus. Furthermore, attention should be paid to how openly, and how honestly, the respective person has dealt with his/her past.
- Setting a time limit for the vetting option is essential when seen from constitutional law and from the societal-political principles point of view. Still, sensitiveness of the public and the victims as well as their claim for coming to terms with the past should not be underestimated. Mistakes committed at an early stage and untimely leniency can hardly be remedied later without new findings.
- Checking whether a person has previously worked for the secret police is correct and important, yet it shouldn't become the one and only criterion per se or the decisive criterion as to whether to employ the respective person further on. Other functions within a dictatorship's repressive system shouldn't be neglected.
- Trust in the judiciary and thus also checking the judiciary is very important. Furthermore, apart from leading functionaries, the police, teachers and other persons of trust should be checked with priority for contacts with the secret police.
- The private economy should not be exempt from checking whether people in its leading positions had connections to the secret police. Also the private media should not refrain from coming to terms with the past.

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INVESTIGATION AND PROSECUTION OF THE CRIMES OF THE REGIME

JUDICIAL RECONCILIATION OF THE GDR'S PAST

CHRISTOPH SCHAEFGEN

INTRODUCTION

There have been two totalitarian regimes in Germany in the previous century with the Nazi regime prevailing from 1933 until 1945 and during the 1945–1989 period, the communist dictatorship gained control over the eastern part of Germany, in the GDR. Following the breakdown of both systems, it was each time the German criminal justice's task to prosecute and punish the injustices that had been committed. The criminal prosecution of Nazi crimes that had been eagerly put through in the early stages by the victorious powers, almost came to a standstill after the Federal Republic of Germany had been founded as there was a massive desire for amnesty. It was as late as in the 60s that the following generation started posing questions when the time of keeping silent and pushing the issue to one side ended. Due to this temporarily missing will to prosecute, the German criminal justice system still has to deal with the darkest chapter of German history even after more than 70 years. In the time between the peaceful revolution in autumn 1989 and the reunification with the old Federal Republic of Germany on October 3rd 1990, criminal justice with the GDR-judiciary was responsible for communist state injustice reconciliation – this judicial system had hitherto remained a supportive structure of the system that had broken down. Thus the focus wasn't laid on the violation of human rights which is an immanent feature of a dictatorship but on the economic privileges provided to communist leaders and on the electoral frauds that could hardly be denied any more. It was only with the judicial system of a reunited Germany when all aspects of state injustice within the GDR were criminally prosecuted. The mistakes committed during the reconciliation of injustice from the Nazi period were not to be repeated and people were able to make use of their legal expertise. The judicial reconciliation that was finished after more than a decade, already belongs to history today.

THE HUMAN RIGHTS SITUATION IN THE GDR UNTIL 1989

The GDR constitution didn't contain any fundamental rights area protected against the state's influence. On the one hand, it laid down civil rights, yet on the other hand, these rights were not to be understood as individual rights of freedom in relation to the state but rather represented rights of participation and discretion in establishing the communist state order and the communist social order. The immanent borders of the fundamental rights that were understood in this way, were constituted by the "societal interests" which in turn were interpreted by the Socialist Unity Party of Germany (SUPG) as binding on the basis of this party's monopoly of knowledge and leadership¹.

The GDR inhabitants had been hindered right from the beginning until the end of the country's existence from living a life according to their own ideas and from 1961 onwards, they were even imprisoned by a border protected by the army. Using power that was not derived from the people's will but vested upon the impeccability of the communist party that was the leader of the workers and peasants, there were trials to establish the first anti-fascist and socialist country on German soil. Heavy human rights violations pertaining to the criminal categories of murder, manslaughter and deprivation of liberty were committed on a large scale and systematically by the military that was protecting the borders, by the judiciary in politically motivated criminal proceedings and by the Stasi which led operations directed against people who had been declared enemies of the GDR. At least 265 people were killed by gunfire or mines in an attempt to cross the border from East to West Germany and several hundreds were partially or very seriously wounded.² According to estimates, more than 280,000 people fell victim to the politically motivated judiciary.³ There were 72 death penalties, 52 of which were actually carried out.⁴ Especially within the first years, political prisoners were housed under inhumane conditions, blackmailed to make certain declarations and mistreated – though not systematically. Prosecuting these deeds as a crime was intentionally hindered.

The Ministry for State Security persecuted persons that had fled from the GDR or who had harmed the GDR from its point

1 Iris Keller, *Die strafrechtliche Aufarbeitung von DDR – Justizunrecht*, Frankfurt: Peter Lang GmbH, 2013, 161 referring to Ernst-Wolfgang Böckenförde, *Die Rechtsauffassung im kommunistischen Staat*, München: Kösel-Verlag, 1967, 45f; Kurt Sontheimer, Wilhelm Bleek, *Die DDR: Politik, Gessellschaft, Wirtschaft*, Hamburg: Hoffmann und Campe, 1979, 126.

2 Falco Werkentin, "Souverän ist, wer über den Tod entscheidet!" Die SED-Führung als Richter und Gnadeninstanz bei Todesurteilen, in Roger Engelmann, Clemens Vollnhals, eds., *Justiz im Dienste der Parteiherrschaft*, Berlin 1999, Ch. Links Verlag, 184; Karl Wilhelm Fricke, *Politik und Justiz in der DDR. Zur Geschichte der politischen Verfolgung 1945–1968*, Köln: Verlag Wissenschaft und Politik, 1990, 525. The number of the hitherto proven death penalties amounts to 205 – see Fricke, *Politische Straf-Justiz im SED-Staat* in *Aus Politik und Zeitgeschichte*, supplement to the weekly *Das Parlament*, B 4/93 (22. 1. 1993), 22, at least 170 death penalties were carried out, see Federal Ministry of Justice (BMJ) – Exhibition Catalogue "Im Namen des Volkes", Leipzig 1994, 217.

3 Andreas Märker, *Psychische Folgen politischer Inhaftierung in der DDR aus Politik und Zeitgeschichte*, in *Aus Politik und Zeitgeschichte*, B 38/95, 30, Falco Werkentin, *Politische Strafjustiz in der Ära Ulbricht Politische Strafjustiz in der Ära Ulbricht. Vom bekennenden Terror zur verdeckten Repression*, Berlin: Ch. Links Verlag 1995, 13, considers the estimations counting from 200,000 up to 250,000 victims as not exaggerated. Ansgar Borbe lists an overview of several estimates, *Die Zahl der Opfer des SED-Regimes*, Erfurt: Landeszentrale für politische Bildung Thüringen, 2010, 16–18.

4 Werkentin, "Souverän ist, wer über den Tod entscheidet!", 184; Fricke, *Politik und Justiz*, 525. Hitherto, at least 205 death penalties have been proven – see Fricke, *Politische Straf-Justiz im SED-Staat*, 22, at least 170 death penalties were carried out, see "Im Namen des Volkes", 217.

of view, even abroad – intending to liquidate these people. Furthermore, hundreds of people were kidnapped from the West, smuggled into the GDR and sentenced there. Within the country, there was a nationwide monitoring of long-distance calls, letters and parcels that also served to gather foreign currency and the so-called *Zersetzung* (or: decomposition) methods were being applied in order to fight the “negative and adverse forces”. The latter especially included systematically discrediting and undermining the self-confidence and opinion of selected people.⁵ The high value ascribed to the performance of athletes in relation to the GDR’s reputation within the world and to stabilizing the country internally made the GDR develop a state-administered doping system where not only the consequent health problems of adults but also those same problems among unaware youths were willingly accepted.

OPTIONS AND LIMITS FOR PROSECUTION

When the GDR entered the FRG on October 3rd 1990, the application area of the old republic, the FRG was extended to the former GDR territory.⁶ A transition regulation was applied to crimes committed within the GDR prior to its accession.⁷ An amnesty for crimes committed by members of the GDR state apparatus hasn’t been provided for herein which is why also impacts on the life, health and freedom of people were subject to criminal inspection. This criminal law was considered as indispensable for a successful unification process, for a reconciliation between victims and offenders and for establishing a strengthening of trust into the constitutional state. On the other hand, all the responsible people were aware of the fact that criminal law could play an important role within the unification process, yet not the main one. It was foreseeable that criminal justice would merely be able to react to part of the injustice. Apart from criminal reconciliation, rehabilitating and awarding damages to the victims, compensating the incurred financial losses but also historical and political revision were to be used.

Criminal prosecution was limited merely by the limitation period. Thus it had been clarified both by jurisprudence and the legislator that the limitation period was suspended during the GDR era because, according to the leadership of the state and the party within the GDR, criminal prosecution of systematically committed injustice hadn’t been promoted during this era.⁸ The criminal prosecution limitation period had been further postponed through two other limitation period acts by three or five years respectively.⁹

Yet it was necessary to stick to the limits laid down by the Constitution. According to this, an act or the failure to act may be punished only if it is considered as criminal both prior to such an event according to an act and if it’s considered criminal during the time when the decision is made as well. Applying this prohibition of retroactive punishment for deeds committed by state functionaries in the former GDR required three aspects: first, it was necessary to check, whether the punishable character was defined by law at the crime scene and at the time of the crime; furthermore, whether the punishability prevailed until the time when the decision was made and finally; which law was the more beneficial one for the perpetrator. This regulation whose principle for legal amendments within a legal system isn’t conflictual, leads to significant problems, if it is to be applied to activities committed in another legal system that appear to be

punishable where there are other value systems and protective mechanisms of norms.

The most significant difficulties were connected with answering the question regarding which law was applicable to the deeds committed during the GDR era. This defined the criminal liability of border soldiers and their commanders for the dead and injured at the border and the GDR judiciary members’ liability for death penalties and deprivation of liberty due to a sentence.

The GDR had laid down a legal permission with the Border Act¹⁰ and permitted the firing of even deadly shots in order to prevent escapes or to wound the so-called “border violators”. The GDR’s political criminal law which criminalized making the use of one’s rights for freedom such as the freedom to exit, the freedom of opinion, the freedom of assembly and the freedom to demonstrate enabled the GDR judiciary to put through a hard line against citizens criticizing the regime or those willing to emigrate by punishing the “traitors” even with the death penalty.

There was a clarification process that lasted several years and referred to the criminal proceedings against the people responsible for killing refugees at the border. During this process, even the German Constitutional Court and the European Court of Human Rights were contacted by the accused and it has been found out that the GDR acts including the interpretation thereof shall not be paid any attention to in cases where the state severely crossed the line in its deeds that is given to any state according to common opinion.¹¹ In doing so, the Federal Court of Justice (*German abbreviation*: BGH) added up to its jurisprudence regarding the reconciliation with injustice from the Nazi period.¹² The standard for reviewing such a “crossed line” was the Human Rights Pact signed by the GDR and the UN Human Rights Declaration from 1948. It has been stated that the right to live in a society of peoples has a role superior to any other value and that the state is entitled to interfere in this right only in limited extraordinary cases. Given the Border Act and its application in everyday life, the protection of the border was prioritized over human life. This constituted an arbitrary decision regarding the right to live that could not be justified by anything. This jurisprudence posing limits to the right of the state “to govern its internal affairs” may be regarded as pioneering and groundbreaking also for the following criminal law approach regarding the misuse of a country’s monopoly of power. The judiciary of the reunited Germany has become the “pacemaker of human rights protection.”¹³

Thus, it was possible to prosecute and punish the people responsible for killing the refugees. The prosecution offices filed

5 Directive 1/76; BStJ, ZA, DSt, BdL-Dok. 3235.

6 Art. 8 of the Reunification Contract from 31. 8. 1990 BGBl. II, 889ff, as amended by the Act from 23. 9. 1990 regarding the contract from 31. 8. 1990 concluded between the Federal Republic of Germany and the German Democratic Republic on the Reunification of Germany – Reunification Contract – and the agreement of 18. 9. 1990, BGBl. II 1990 885 ff.

7 Appendix I Chapter III Topic C Section II Nr. b) regarding the Reunification Contract

8 Limitation Period Act from 26. 3. 1993 (BGBl I 1993 S 392), BGHSt [Federal Criminal Court], Bd. 40, 113 ff.

9 Art. 315a EGStGB; 2. and 3. of the Limitation Period Act 27. 9. 1993 (BGBl 1993 I, 1657) and 22. 12. 1997 (BGBl 1997 I, 3223).

10 § 27 DDR-Grenzgesetz [the GDR Border Act] of 25. 3. 1982.

11 BGHSt 39, 1 ff.; 168 ff., 353 ff.; 40, 218 ff. and lately sentences from 20. 3. 1995 – 5 StR 111/94 – and from 24. 4. 1996 – 5 StR 322/95 –, where the Federal Court of Justice addresses all the arguments opposing its jurisprudence.

12 BGHSt 2, 234 ff.

13 Gerhard Werle, “Rückwirkungsverbot und Staatskriminalität”, in *Neue Juristische Wochenschrift*, 2001, 3001 ff.

charges against approximately 500 persons due to completed or attempted manslaughter. 275 of the accused were also sentenced.¹⁴ The Politburo members and the National Defense Council members who organized the deadly regime and other high ranking military leaders were sentenced to up to seven and a half years in prison. Soldiers acting upon a command and mostly committing a preventable mistake in relation to what they did, were given suspended sentences.

The fundamental conviction of all civilized peoples regarding the general prohibition of killing made jurisprudence consider the GDR judiciary's death penalties as lawful only in cases where the most severe injustice and most severe guilt was punished.¹⁵ A judge blunted by his/her political conviction and submissiveness to his/her political leaders could not refer to having committed an unintentional act nor did a provision of a reduced sentence on the basis of having committed a mistake apply to him/her.¹⁶ The responsible judges and lawyers were sentenced because of a perversion of justice and manslaughter because of the fact that the GDR judiciary pronounced death sentences and executed these even in cases where the act that had been committed didn't cause significant damage. Yet judiciary members who were involved in GDR citizens being hindered on a large scale from exerting their human rights such as the freedom to exit, the freedom of opinion, the freedom of assembly and the freedom of association due to prison sentences, could hardly be criminally prosecuted given the prohibition of retroactivity. It was almost only in cases where the type or the level of the sanction was in gross disproportion to the crime committed that led to the moderate conviction of less than 200 judges or prosecutors.

Punishing members from the Ministry for State Security for the measures that were disrespectful to the life and freedom of people was predominantly complicated due to the difficulties in proving these and due to the perpetrators' bad state of health. On the other hand, there were predominantly legal difficulties preventing a criminal prosecution below the level of interventions that had an impact on life, health or freedom. Only 69 members from the Ministry for State Security were convicted.

FINAL REMARKS

Due to the given legal situation that it was on the one hand necessary to start proceedings even in cases where there was a slight suspicion but on the other hand, it was almost exclusively necessary to apply the GDR's written law as there was the prohibition of retroactivity and to consider also the other procedural rights of the accused applicable in a constitutional state, there was a tremendous discrepancy between the high number of approximately 74,000 investigation proceedings led against approximately 100,000 suspects and the low number of merely 753 convicted people. It is understandable that most of the victims of the systematic injustice within the GDR are disappointed by this result. Bärbel Bohley, the GDR human rights activist who has unfortunately died way too early expressed her discontent this way: "What we wanted was justice, what we've got is a state under the rule of law." Allegedly, if another form of approaching the injustice committed by and in the GDR, such as an amnesty or a commission for finding out the truth and serving the reconciliation had been opted for, the result would not have been more but less justice that can never be achieved but which one can merely strive for. Within Germany, it was politically correct to opt for criminal

prosecution and against amnesty. Penalties for infringements of law are the rule in a constitutional state. In contrast to many other states where the regime changed, people didn't have to fear any civil war like conditions neither did they have to fear social unease. The overwhelming majority in both German countries was against an amnesty. The political rulers from the former GDR and the successor to the Socialist Unity Party of Germany, the SUGP, were too weak to have a decisive influence on forming the political will within the reunited Germany. To a large extent, it was possible to switch the elite within the former GDR territory even in the sphere of the judiciary as there was a large amount of unburdened and competent personnel available in West Germany available to transfer the legal and administration system from West Germany to the former GDR territory. It was due to these positive conditions present during the reunification process that enabled and committed Germany to start an attempt led by rule of law principles and to work on a reconciliation with all forms of communist injustice within the GDR through criminal penalties.

The communist regime in the GDR showed its inhumane face by killing people on the border between East and West Germany and people succeeded in punishing these most severe crimes. Apart from the cases where decisions were made, general declarations were stated regarding the fact where the borders for a dictatorship lie in relation to its interfering with human rights. Currently, given the legal situation and following the change of regimes, the rulers are facing sentences merely in cases of interference into somebody's life or physical integrity. In the case of the infringement of other rights the citizens have, especially their civil liberties, the perpetrators do not have to fear too much. The national law they designed protects them. Something has to change about this. Without freedom of opinion there are no other rights.¹⁷ The Berlin trials contain another lesson international law still has to learn. Withholding fundamental rights constitutes a crime.¹⁸ Let's hope that this understanding falls upon fruitful soil in the long term within the international community and is reflected in international criminal law.

LESSONS LEARNT

Criminal justice thus contributed to protecting fundamental human rights by criminal law. In spite of the GDR's opposed legal practice, it was possible to punish and individually ascribe severe human rights violations. The prohibition of retroactivity did not prevent this. A state's arbitrarily killing people cannot be justified by the state's legalizing this nationally. Another key contribution of these criminal proceedings is clarifying and recognizing the GDR's past. The actual judicial findings can – apart from their legal evaluation – claim to be substantially reliable.¹⁹

14 Klaus Marxen, Gerhard Werle, Petra Schäfer, *Die Strafverfolgung von DDR-Unrecht. Fakten und Zahlen*, Berlin: Stiftung zur Aufarbeitung der SED-Diktatur – Humboldt-Universität, 2007, 41.

15 BGHSt, 41, 317.

16 BGHSt, 41, 317, 339.

17 Salman Rushdie at the occasion of opening the 67th Frankfurt Book Fair; see Volker Breidecker, "Alle Grenzen offen", in *Süddeutsche Zeitung*, 14. 10. 2015.

18 Heribert Prantl, "Honecker, Mielke et al.", in *Süddeutsche Zeitung*, 1. 9. 1999, 4.

19 Klaus, Marxen and Gerhard Werle, *Die strafrechtliche Aufarbeitung von DDR-Unrecht, Eine Bilanz*, Berlin – New York: Walter de Gruyter, 1999, 244, 245.

Both the period required for the whole procedure and a unified approach have been negatively impacted by the fact that the legislator didn't make any declarations regarding the applicable criminal law leaving this aspect up to practical experience and that the competence area for criminal prosecution hasn't been properly adapted given this task's special character. If a **centralized** police and criminal prosecuting office had been established, the procedures would have been speedier and divergences within the prosecution activities would have been prevented.

RECOMMENDATIONS

It isn't possible to generalize answers to the question regarding whether and how a reconciliation with the pre-democratic past is to be carried out. Both the way of the transition from dictatorship to democracy and the balance of political powers prior to and after the change represent the decisive factors. Hitherto and in any discussion led following a dictatorship being replaced by a democracy, the opposite poles are prosecute and punish on the one hand and forgive and forget on the other. Hidden amnesty through factual non-prosecution, full-scale or partial amnesty laid down by the law or the establishment of commissions

striving for the truth and reconciliation are paths one can opt to go along. In our experience, the question as to which option a state chooses furthermore depends upon the fact whether the elite changes and which impacts the decision that is to be made will have on the internal peace and stability of the hitherto young democracy.²⁰ A recommendation to promote a certain approach towards a dictatorship past can thus not be made. Yet seen from the perspective of a constitutional state, punishment represents the normal reaction towards the breach of law. Furthermore, the discussion in many new democracies which opted for impunity demonstrates that the issue of punishing the perpetrators still remains subconsciously vivid and is being re-discussed whenever the slightest impetus emerges. Countries opting for criminal prosecution should consider the experience the German criminal justice has acquired which states that it is very difficult to prove the required personal responsibility for crimes committed by henchmen who have been given orders by their rulers within the regime that has collapsed, if it's the case of crimes below a threat to somebody's life. In that sense, partial amnesty should be considered.

20 Jutta Limbach, *Gerechtigkeit oder Versöhnung*, Speech at the occasion of the Chamber of Industry and Commerce New Year Convention in Berlin on 9. 1. 1998.

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REHABILITATION OF VICTIMS

ANNA KAMINSKY

INTRODUCTION

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

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

than 30,000 political prisoners were bought free by the Federal Republic of Germany between 1962 and 1989.

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

LEGAL FRAMEWORK OF THE REHABILITATION

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

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

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

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

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

Hitherto, 206,000 applications for criminal rehabilitation have been filed. Criminal rehabilitation is in turn the precondition for compensation payments. Until now, 170,000 out of these persons have been rehabilitated. An overall compensation amount of € 660m has been paid. According to statistics provided by the Federal Ministry of Justice as well as according to the overview from the “Report on German Unity” (Bericht zum Stand der deutschen Einheit) an overall amount of over € 2B had been paid as part of the “Criminal Rehabilitation Act” (*Strafrechtliches Rehabilitierungsgesetz*, hence the abbreviation *StrRehaG*) as well as the “Professional Rehabilitation Act” (*Berufliches Rehabilitierungsgesetz*, hence the abbreviation *BerRehaG*) until 2015.⁴

While it was easy to give the evidence necessary for a criminal rehabilitation through the verdict that was to be presented, proving discrimination within the administrative or professional development and politically motivated persecution proved to be much more difficult. People who suffered from politically motivated imprisonment and/or administrative persecution may apply for compensation due to health-related problems resulting

from this. Yet the acceptance rate is very low, only 20 %. It is very burdensome for the affected persons to undergo the necessary questioning and examinations which many people regard as “discriminatory”. Borbe and Siegmund have repeatedly pointed to this fact with Siegmund saying, for example, “that the type and form of discriminations suffered in this way significantly varies”⁵

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

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

SOCIAL SATISFACTION – STATUS OF THE REHABILITATED

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

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

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

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

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

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

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

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

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

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

The people who had suffered under political persecution and state despotism after 1945 and felt they had been forced to remain silent about the injustice they suffered from, believed that after 1989, the time had come for their fate to be publicly brought to light and for them to be acknowledged. What had started as a promising process for many of the affected in 1989/1990, has now been replaced by disillusionment and bitterness which in turn frequently distorts the view even of the positive achievements. Improvements are definitely appreciated, yet the expectations in general and the hope that the injustice they suffered would be acknowledged, have not been fulfilled. Firstly, many formerly persecuted people believe that their financial and professional situation still lags far behind the opportunities the people had who were responsible for the previous regime. Secondly, the impression that following the first regulations dating back to

the beginning of the 1990s one had to argue and fight for every single improvement, be it even the smallest one, is very tiring. The famous German historian Jörg Siegmund stated in 2002 in his investigation into the Associations of the Victims of Socialist Unity Party injustice that “their interests are not backed by society.”⁸ This is not merely due to the fact that only one fifth of the citizens in the current Federal Republic of Germany, i.e. the former GDR citizens, could have been affected to a greater or lesser extent by the persecution in the Soviet Occupation Zone /the German Democratic Republic. The image of the GDR being a moderate or rather “commodious” dictatorship which originated in the 1970s and 1980s overlays the perception of massive suppression and persecution in the Soviet Occupation Zone /the German Democratic Republic carried out by the Soviet occupation power and the Socialist Unity Party in the period from the 1940s to the 1960s. This period was characterized by extraordinarily massive human rights violations and brutal terror. The fact that the GDR had been perceived during the 1970s and 1980s merely as the “other” German country in line with the policy of détente which in turn led to neglecting the repressive traits this regime had, is hitherto making it complicated for the people to accept knowledge about the injustice and crime.

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

8 Siegmund, *Opfer ohne Lobby*.

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

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

ORGANIZATIONS OF FORMER VICTIMS

In order to add weight to their demands, but especially in order to get in touch with fellow sufferers, there were numerous victims' associations founded immediately after the communist dictatorship in the GDR had collapsed. Associations that had already been existing in West Germany such as the oldest victims' association, the Association of Victims of Stalinism (*Verband der Opfer des Stalinismus*, hence the abbreviation *VOS*) established in 1951, founded new unions in the East. The oldest victims' associations founded after 1990, were those consisting of former special camp prisoners as for example in Sachsenhausen, Mühlberg or Buchenwald. These were the prisoners that had been incarcerated by the Soviet occupation force in the former Nazi concentration camps like Buchenwald or Sachsenhausen immediately following 1945. More than one third of the 120,000 prisoners didn't survive the imprisonment. In 1992, the existing associations united, establishing the Union of the Associations of the Victims of Communist Tyranny (*Union der Opferverbände kommunistischer Gewaltherrschaft*, hence the abbreviation *UOKG*),¹¹ which is also a member of the "Internationale Assoziation der Verfolgtenverbände (InterAsso)", i.e. the International Association of Victim's Unions¹² which is organized according to German law. The work of these associations is paid for by donations from its members and relatives as well as from resources provided by the "Federal Foundation for the Reappraisal of the SED-dictatorship" and the respective State Commissioners for the Records of the State Security Service or rather for the reappraisal of the communist dictatorship.

LESSONS LEARNT AND RECOMMENDATIONS

- The way policy and society chooses for approaching the victims is one of the most important issues that are to be solved after a dictatorship is overcome. The experience drawn from *Transitional Justice* processes worldwide shows that the issue of transition is comprised of far more than just court trials or administrative changes. Especially if one reaches the limits of the law within a constitutional state, other forms have to

be found in order to provide the victims and persecuted not merely with financial compensation or criminal rehabilitation.

- In this case, it's important to find forms and means of appreciating the victims and giving them the opportunity through visible identification points such as memorials, national memorial days etc. to see that their fate and experience is reflected and stored in both the public space and awareness
- Furthermore, it's important to establish public structures in order to create a public awareness within commemorations themselves as well as in the education sector, in research and in science, and this awareness is to be about the crimes and the injustice as well as the victims and the responsible people and the perpetrators. Such a thing can be achieved, for example, by:
 - a/ constructing memorials, monuments and commemorations in public spaces, creating public ceremonies and by being appreciated both by the leading representatives of the country and by civil society
 - b/ establishing institutions free of party political instrumentalization and routine policy interests and thus – push forward the clarification regarding the previous regime on a safe financial basis by carrying out diverse activities
- It's necessary to create "sheltered" or safe areas where victims receive psychological care and where there are specialized contact persons with whom they can talk about their fate and consequences they suffer from.
- Funds should be established that enable the representatives of the victims of tyranny, war and dictatorships to publish their topics independently and to represent these topics within the political sphere and society.
- The legal obstacles must be kept as simple as possible, including the approach to regional contact persons. This then serves in order to receive legal advice and to put through material and immaterial claims and to keep these processes as transparent and as simple as possible in order to make up at least partially to the victims.

11 www.uokg.de

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

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EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE

ANNA KAMINSKY

INTRODUCTION

Apart from the criminal prosecution of the perpetrators and responsible people as well as the rehabilitation and compensation for the victims, the educational and memorial work counts as an important element for historical clarification. By passing on historical wisdom and knowledge about the injustice that has been committed, we may at the same time ensure that society acknowledges the suffering and honors the victims with empathy, also acknowledging their courage to stand up against the dictatorship. The discussions in the early stages following the reunification of Germany were characterized by a climate of fear that was expressed both at home and abroad. This fear referred to the situation that Germany now might try to evade its historical responsibility for the Nazi regime and the crimes that had been committed – trying to portray itself as the victim of two totalitarian regimes. It was especially during the 1990s that many discussions were characterized by the issue to what extent people should deal with the second German dictatorship.

Following almost thirty years of focusing on the communist dictatorship and its impacts on Germany, we can say that the fear of the Nazi crimes being relativized didn't manifest itself. Rather, and in a parallel to the communist dictatorship reappraisal, people started considering the Nazi dictatorship more as well. In 1996, January 27th became the official National Holocaust Memorial Day. Following an extensive public discussion, the central Holocaust Memorial was built in the center of political Berlin, in the vicinity of the German parliament – the Reichstag – and the Brandenburg Gate. It was the Inquiry-Commission entrusted with the communist (SED)-dictatorship reappraisal that recommended providing for the stable state funding of the former Nazi concentration camps in West Germany also known as the “Topography of Terror” that would be organized from the capital of Berlin. The Inquiry-Commission succeeded in formulating a principle that's hitherto been characteristic in relation to reappraising both dictatorships in Germany from the 20th century: “Nazi crimes mustn't be relativized by the acts committed after the war, yet the injustice in the aftermath of the war mustn't be minimized by pointing to the Nazi crimes.”¹ This is the Federal Republic of Germany's main motto when reappraising any of the dictatorships.

GDR COMMUNIST DICTATORSHIP REAPPRAISAL INSTITUTIONS

There were numerous institutions founded in the Federal Republic of Germany whose aim was to reappraise the communist past. These institutions cover numerous topics and organizations, including both civil society initiatives and clubs that frequently emerged from former GDR opposition groupings such as, for example, the Robert-Havemann-Gesellschaft (*Robert*

Havemann Society), the Umweltbibliothek Großhennersdorf (*Environmental Library Großhennersdorf*) or the Leipzig Civil Movements Archive. Victims associations were founded that portray the spectrum of repression and persecution by the communist dictatorship. But also state-funded museums such as the Forum of Contemporary History in Leipzig which mainly focuses on displaying opposition and repression within the GDR were founded. Furthermore, regional museums increasingly address recent history in their exhibitions documenting repression and persecution in people's everyday lives.

Institutions were founded both at the level of individual states and at the federal level. They focus on reappraising the second dictatorship. Among these institutions, there were the institutes of the State Commissioners for the Records of the State Security Service of the Former German Democratic Republic and the Federal Commissioner for the Records of the State Security Service of the Former German Democratic Republic (est. in 1991) as well as the Federal Foundation for the study of communist dictatorship that was established in 1998. The reappraisal topics are also being governed by the Federal and State Political Education Headquarters, by adult education centers and many other institutions whose task is to perform political-historical educational work with these institutions coming from the sphere of churches, trade unions or political foundations close to political parties.

Since its foundation in 1991, the largest of these reappraisal institutions has been the office of the Federal Commissioner for the Records of the State Security Service of the Former German Democratic Republic. It has 1,600 employees and a budget exceeding € 100 m. The first act on approaching the Stasi documents already comes from the GDR period and was adopted on August 24th 1990. Each person in question was thus to gain access to the files issued in relation to them. Furthermore, the files were to be used for the criminal and legal as well as the historical reappraisal. Last but not least, people who would be proven guilty according to these documents were to be withdrawn from public life.² The GDR People's Chamber representatives thus laid down the fundamental issues for the Act on the Stasi Documents (*Stasi-Unterlagen-Gesetzes*, hence the abbreviation *StUG*), which was approved by the all-German Bundestag. Retrospectively, Joachim Gauck, the first Federal Commissioner for the Records of the State Security Service of the Former German Democratic Republic summarized the Volkskammer's motivation this way: “These checks are to be carried out because within this part of Germany not a single person has ever had a positive experience since 1933 with the representatives of state power,

1 See Bernd Faulenbach: Probleme des Umgangs mit der Vergangenheit im vereinten Deutschland. Zur Gegenwartsbedeutung der jüngsten Geschichte, in Werner Weidenfeld, ed., *Deutschland. Eine Nation – doppelte Geschichte. Materialien zum deutschen Selbstverständnis*, Köln: Verlag Wissenschaft und Politik, 1993, 190.

2 Act of 24. 8. 1990, a.a.O. (see Fn. 4).

parliamentarians, judges, policemen, officials. (...) We as the representatives figured that the aid of establishing trust into the new democratic structures might consist in removing the Stasi supporters from the offices and parliament.”³

Yet approaching the Stasi files was not quite an undisputed issue both in the Western and Eastern part of Germany. Thus, some spoke in favor of entirely closing the files or even destroying them altogether while others wanted these documents to be comprehensively opened and this legacy of the dictatorship to be preserved. The argumentation lines did not sharply correspond to the former border between the eastern and western part of the country. Looking back, we can say that this discussion was one of the first all-German discussions regarding the future approach towards the dictatorship. Politicians from both the former East and West Germany, such as, Friedrich Schorlemmer or Wolfgang Schäuble, the then Minister of the Interior in the Federal Republic of Germany presented arguments for destroying the Stasi files or at least locking them up in a federal archive for a minimum of several decades. It was a hunger strike and the repeated occupation of the former Stasi Headquarters which in 1990 caused the opening of the files to be codified in the reunification treaty of both German states.

The tasks carried out by the Archive of the Federal Commissioner for the Records of the State Security Service (*das Archiv des Bundesbeauftragten für die Stasi-Unterlagen*, hence the abbreviation *BStU-Archiv*) do not merely refer to the safety and administration of the Stasi files. It also served for providing files that were used in order to check employees in the public service, especially in the former GDR territory. Yet one of its most important tasks was to enable the affected persons to look into the files. The Stasi had collected information on more than six million people.

Influenced by the “fierce debate led in relation to the Stasi file opening during the nineties,”⁴ especially GDR-opposition representatives in the All-German Bundestag argued in favor of establishing an inquiry commission that would focus within the subsequent two legislation periods between 1992 and 1998 on the causes, the history and the impact of the communist dictatorship in the Soviet Occupation Zone and in the GDR. The expertise and eye-witness reports collected in 34 books comprising of more than 30,000 print pages do not merely reflect the then state of knowledge and debates. They also represent the only source for the historical reappraisal. The commission not merely presented far-reaching recommendations on the memorial work regarding both the Nazi- and SED-dictatorships. It furthermore recommended establishing a federal foundation for the study of communist dictatorship that was agreed upon by a vast majority across different political parties. This federal foundation was to support the society, science and political education permanently focusing on the causes, the history and the impacts the dictatorship had on the Soviet Occupation Zone and the GDR. This institution has 25 employees and an annual budget of approximately €5.4m with more than €3m being assigned to supporting third party projects.⁵

RESEARCH AND EDUCATION

On the one hand, the GDR public image during the 1990s appeared to be primarily influenced by revelations regarding the Stasi and the so-called Ostalgy-phenomenon (*i.e. a pun on the words “nostalgia” and “east” that are very similar in German*)

shows; on the other hand, GDR research at universities and research institutions witnessed a real boom. As Ralph Jessen put it in 2010, the comprehensive opening up of the archives and the accessibility of the documents about the dictatorship “(...) placed the historization of the GDR on entirely new foundations (...)”⁶ Almost the entire dictatorship’s archive heritage was available for history research without blocking periods. Although the files of all ministries and administrations in the GDR became accessible, it was especially the secret service documents being opened that created an interest which goes on until today. Until the end of the 2000s, more than 1,500 projects had been carried out. Ralph Jessen found out in relation to his assessment published in 2010 that more than 16,000 contributions appeared during the period from 1990 until 2010 – with 6,000 of these being books. Furthermore, there were more than 900 doctoral theses on the GDR history written between 1990 and 2008.

Apart from the inquiry commissions in the German federal parliament (the Bundestag) whose subject of research was GDR-history, also non-university institutes such as the Center for Contemporary History (*Zentrum für Zeithistorische Forschung*, hence the abbreviation *ZZF*) in Potsdam or the Hannah-Arendt-Institute für Totalitarismusforschung (*HAIT*) in Dresden or research centers such as the Union for researching the SED-country (*Forschungsverband SED-Staat*). The Institute of Contemporary History (*Institut für Zeitgeschichte*, hence the abbreviation *IfZ*) established a branch office of the German Federal Archive in the Berlin district of Lichtenfelde to be primarily focused on GDR research. The Military History Research Office (*Militärgeschichtliches Forschungsamt*) focused on the GDR. The Special Commissioner of the Federal Government for Stasi Documents named in 1990 and transformed into the office of the Federal Commissioner for the Records of the State Security Service of the Former German Democratic Republic established in 1991 received its own research department.

GDR history research has made significant advances especially as far as research into the power structures and the mechanisms for “Durchherrscher der Gesellschaft” (*i.e. approximately “total governance of society”*) are concerned. Meanwhile, even everyday issues of the SED became more and more important in spite of critiques at the onset saying the investigation of everyday issues would further boost the trivializing and glorifying of the dictatorship. Sabrow stated retroactively regarding the Nazi regime research drawing thus a parallel to dealing with the SED dictatorship that “No suspicion could have proven more false: it was the everyday history which gave us a deeper understanding of the cumulative radicalization of the Nazi-regime.”⁷

3 Joachim Gauck, Akten und Gerechtigkeit. Gedanken zum Umgang mit der Vergangenheit, in *Rostocker Philosophische Manuskripte N. F. Booklet 1* (1994), 10, cited according to Jörn Mothes, Jochen Schmidt, *Die Aufarbeitung der DDR-Vergangenheit. Eine Zwischenbilanz*, in Hans-Georg Wehling, ed., *Deutschland Ost – Deutschland West*, Opladen: Leske + Budrich, 2002; see http://www.buergerimstaat.de/4_00/ostwest03.htm

4 See www.bundestag.de/dokumente/textarchiv/serien/23690862_enquete_serie/22090534_kw34_enquete3/

5 See *Tätigkeitsbericht 2011 der Bundesstiftung zur Aufarbeitung der SED-Diktatur*, Berlin: Bundesstiftung zur Aufarbeitung der SED-Diktatur, 2012, 21.

6 Ralph Jessen, Den Zusammenbruch der SED-Diktatur erklären, in Martin Sabrow, ed., *Bewältigte Diktaturvergangenheit? 20 Jahre DDR-Aufarbeitung*, Leipzig: Akademische Verlagsanstalt 2010, 21.

7 Martin Sabrow, *Erinnerungsorte der DDR*, München: C. H. Beck Verlag, 2009, 7 and recommendations made by the Expert Commission for the Establishment of the History Union “Aufarbeitung der SED-Diktatur” 15. May 2006.

In spite of this vast research activity, there have remained some blank spots in relation to the dictatorship. This refers to the everyday mechanisms that serve in order to stay in power and range from loyalty, inclusion and adaptation on the one hand,⁸ as well as intimidation and repression on the other. Furthermore, the previous years have witnessed a rise in investigations about rebellions, opposition and resistance.

Following the end of this boom and the passing away of people who had been focusing on research for a very long time such as the doyen of communism research, Prof. Dr. Dr. hc. Hermann Weber, the respective professorships and departments were abolished without being replaced. Currently, research facilities focusing on issues such as the GDR, Germany and communism research as such are almost exclusively located in the extra-university area, i.e. at institutes such as the ZZF Potsdam, the IfZ München or the HAIT Dresden.

Although research witnessed a boom that manifested itself especially in the 1990s, educating this topic at universities and colleges became criticized during the 1990s. It was not merely about criticizing GDR history appearing in university curricula too little. Further reproaches were that the approach towards the Socialist Unity Party dictatorship was too uncritical.⁹ Pasternack's first evaluation made in 2001 listed the sobering resumé that "the intensity of teaching GDR history is gradually decreasing". According to him, dealing with GDR history as such was said to have dropped down to the level of 1989/1990 just as the research had done – yet without reaching a top level in between. For example in 2001, 62 % of all German universities didn't offer any course about the GDR.¹⁰ Just as the low number of courses were, also the topics of courses about the GDR offered at universities were critically analyzed. While the researchers especially focused on uncovering the structures because there was such a multitude of sources available from the top governing and power group within the dictatorship, the research was dominated by Stasi topics. On the other hand, the GDR was significantly reflected via literary reflections written by Christa Wolf, Erwin Strittmatter or Stefan Heym. Yet authors who were forced to emigrate such as Rainer Kunze or Sarah Kirsch etc. received significantly less attention. Currently, more recent research regarding "education" is to follow.

The picture of research into the second dictatorship being pushed aside more and more at least within the academic sphere, is completed also by the fact that the renowned German magazine *DeutschlandArchiv* (Germany Archive) that had been the only platform for publications and most recent research on GDR history and German policy, ceased to edit paper versions at the end of 2012 being only available as an online platform since 2013.¹¹

In 2016, the German Bundestag decided to provide €30m until 2021 in order to strengthen university research and courses and thus, bringing especially the younger generation closer to the topic of communist dictatorships and the German partition. It's especially the younger generation that has not experienced life within the GDR dictatorship on its own, yet unfortunately, it's being informed about it by the schools too little. Thus, the known deficits within the sphere of university education are to be counterbalanced.

EDUCATIONAL WORK AS PART OF CURRICULAR AND EXTRACURRICULAR ACTIVITIES

In contrast to the business cycles of research on the communist dictatorship within the GDR, the curricular education activity

has an anticyclical shape. The radical changes of 1989/1990 required "(indispensably) that the curricula be revised (...)", as it had also been stated in a first research paper at the end of the nineties.¹² Already in the middle of the 90s, the curricula in most federal states were adequately adapted and thus, the teaching books were adapted as well.¹³ The actual exchange of the teaching materials took a bit longer. According to research on curricular content and teaching that was carried out at the beginning of the 2000s, the issue of the Socialist Unity Party of Germany's dictatorship and the German partition was hardly mentioned. Many pupils left school, without having reached the topic of post war history in classes. Furthermore, even 15 years following German reunification, "a more holistic approach to German post-war history" was regarded as missing.¹⁴ Later, these findings were confirmed by, for example, Klaus Schroeder's findings in 2008.

Yet these studies revealed positive aspects as well: 80 % of the interrogated pupils indicated that they wanted to get to know more about the second dictatorship. Furthermore, and in spite of the missing factual knowledge, 80 % proved to be aware of the difference between a democracy and a dictatorship. It was proven in this survey that the knowledge of pupils living in the former GDR territory regarding the dictatorship was less developed than that of pupils in the western part of Germany (Schroeder 2008). This corresponds to findings from respective polls carried out among adults. There are manifold reasons for this: On the one hand, the pupils perceive their knowledge from their homes first. Taking the general questions that have been posed as a starting point, the opinion "not everything was bad and now it's also the way that not all that glitters is gold" appears to be reflected directly in the pupils' attitude.

Given this impression resulting from the poll results, curricula and coursebooks in all German federal states have been reworked again and newer research results incorporated into them. At least as far as the framework conditions are concerned, the topics of German post war history have been made more easily accessible. Several didactic materials serve to support teaching in classes.¹⁵ The Conference of Cultural Ministers (*Kultusministerkonferenz*, hence the abbreviation *KMK*) has issued a recommendation for dealing with the SED-dictatorship and called for a so-called

8 Christoph Klessman, Überforscht? Verklärt? Vergessen? Zwanzig Jahre nach dem Mauerfall ist die DDR-Geschichte noch immer ein Streitthema, in *Die ZEIT Geschichte*. 1989. *Die geglückte Revolution*, 2009, (2), 86.

9 Ulrich Arnsward, *Zum Stellenwert des Themas DDR-Geschichte in den Lehrplänen der deutschen Bundesländer. Expertise im Auftrag der Stiftung zur Aufarbeitung der SED-Diktatur*, Berlin: Bundeszentrale für politische Bildung, 2004.

10 Peer Pasternack (with Anne Glück, Jens Hüttmann, Dirk Lewin, Simone Schmid und Katja Schulze), *Gelehrte DDR. Die DDR als Gegenstand der Lehre an deutschen Universitäten 1990–2000*, Wittenberg: HoF Wittenberg – Institut für Hochschulforschung an der Martin-Luther-Universität Halle-Wittenberg, 2001.

11 See <http://www.bpb.de/geschichte/zeitgeschichte/deutschlandarchiv>.

12 Karl-Heinz Holstein, Die Schulbuchuntersuchung aus der Binnenperspektive der Schulbuchverlage, in *Buchstab*, 1999, 15.

13 In: 1990 Bavaria, 1994 Baden-Württemberg, 1993 North Rhine Westphalia etc. Ibid; Arnsward, *Zum Stellenwert des Themas DDR-Geschichte in den Lehrplänen der deutschen Bundesländer*.

14 Peter Lautzas, Vorwort, in Ulrich Arnsward, Ulrich Bongertmann, Ulrich Mählert, eds., *DDR-Geschichte im Unterricht. Schulbuchanalyse – Schülerbefragung – Modellcurriculum*, Berlin: Metropol Verlag, 2006, 9.

15 See *Bildungskatalog der Bundesstiftung Aufarbeitung mit über 120 thematischen Angeboten*.

project day to be organized on each November 9th – this project day would be about democracy and dictatorship in the schools in order to encourage the people to deal with German 20th century history.

Furthermore, there have been several initiatives during the past few years that have served for the pupils dealing with German and European post war history more in the classes. This strategy includes that this topic was included as one of the final exams topics with this change being initiated by the Cultural Minister Conference. It's natural that only topics which could become part of the tests were taught at school. The educational reforms put through during the previous years, according to which the so-called MINT subjects (i.e. mathematics, IT, natural sciences and technology) are being extended at the expense of teaching history proved to be another complicating factor. Also the fact that the educational reform in many federal states actually led to cutting school time from 13 to 12 years significantly limited the space available for shaping history lessons. Furthermore, the fact that the education of teachers in teacher training courses now has to include the topic of the time of communism, is an additional factor. Also in this context, the following becomes valid: The teachers will hardly be able to teach the pupils what the teachers themselves don't learn as students in teacher training courses.

EXTRACURRICULAR EDUCATIONAL OPTIONS

The curricula offer is being supplemented by extracurricular offers provided by e.g. memorials and museums providing information at historical places such as the former Stasi headquarters, camps or prisons or along the former German-German border or the Berlin wall about repression, political injustice and partition. These historical places have been witnessing new visitor records in recent years. By now every federal state capital in the former East Germany territory has its own memorial at a history-relevant location which makes up for the frequent deficits in the offer provided by schools through offering project days for children and the youth.¹⁶ Furthermore, the State Centers for Political Education, the Evangelic and Catholic academies as well as political foundations are focusing on topics such as the Socialist Unity Party dictatorship, on the German partition and its impact. In comparison to this, East German institutions are devoting one fifth of their offer to these tasks, whereas in the case of West German ones, it's about 6 %.

ARRIVAL AT THE CENTER OF SOCIETY?

What does the resumé following almost 30 years of reappraising and dealing with the second dictatorship now look like? Lately, Martin Sabrow has stated that there is a "Processing consensus" in Germany due to which the "historical burdens from the time after 1945 are being shifted to the center of attention (more and more)".¹⁷ There are actually numerous offers. Cinema movies such as "The Lives of Others", "Good bye Lenin", "Sonnenallee", "We Wanted To Go To the Sea" or "Barbara" became hits. Best-selling candidate books that have been awarded prizes such as Uwe Tellkamp's "The Tower" influenced the picture of the collapsed state from the literary point of view. Renowned

theatre stages such as the Maxim Gorky Theater in Berlin focus on GDR topics in several productions as was the case, for example, at the occasion of the 60th anniversary of the uprising of June 17th – there was a whole theatre festival planned here.¹⁸ Also music bears some steps of this reappraisal such as, for example, the song "Little Paris" made by the young band "Meisterdeep" from Leipzig.

On the one hand, formal political acts organized at the top level on the occasion of memorial days such as the uprising of June 17th 1953 or the construction of the Berlin wall and that have a manifold shape prove that there is a broad political support provided for dealing with the communist dictatorship. On the other hand, they are a proof of the fact that the collective commemoration of the second dictatorship is on its way to gaining ground in the all-German memory and becoming part of the way the united Germany perceives history, although polls regarding the communist dictatorship reveal a partially different result. On the one hand, there are still differences between the East and West. Life in the dictatorship is perceived more critically by West Germans than by East Germans. Thus, 75 % of West German respondents in a poll answered the poll question whether "the GDR was a country of injustice" positively, whereas in the East, only 37 % shared this view.¹⁹ Furthermore, the East and the West still show differences in their interest in dealing with the second dictatorship in Germany. Most reappraisal institutions are located in the former East Germany.

LESSONS LEARNT AND RECOMMENDATIONS

Transitional Justice processes do not merely serve for answering questions arising with respect to the criminal prosecution of the perpetrators on the one hand, and for rehabilitating and compensating the victims on the other hand. Moreover, they also serve for making the awareness of the crimes that had been committed, of the perpetrators and the victims but also of different forms of resistance, courage displayed in the public and courage in general a part of the national culture of memory.

Doing this, the different actors and civil society need to be supported in carrying out educational work independently on the political parties. This includes, among others.

- Establishing institutions which promote educational work regarding the previous regime on a safe financial basis through various activities, doing so independently of everyday political interests and in a manner independent of party-political instrumentation.
- It is especially important to support research and scientific activities that build up on a factually based approach on the structures as well as the responsible people within

16 See Anna Kaminsky, *Orte des Erinnerns. Gedenkzeichen, Gedenkstätten und Museen zur Diktatur in SBZ und DDR*, Berlin: Ch. Links Verlag, 2016. This volume contains more than 900 places of remembrance, memorial places and museums across the whole of Germany. These places focus on repression and resistance against the communist dictatorship.

17 Martin Sabrow, Reiner Eckert, Monika Flacke u.a., eds., *Wohin treibt die DDR-Erinnerung? Dokumentation einer Debatte*, Göttingen: Vandenhoeck & Ruprecht, 2007, 15.

18 See <http://www.gorki.de/spielplan/und-das-beste-zum-schluss-einabschluss-spektakel>

19 Thomas Petersen, "Auch die 'Mauer in den Köpfen' fällt", in *FAZ.net* on 25. 11. 2009, 5.

the repressive mechanisms and on their representatives as well as the committed injustice and the crimes.

- This represents the basis for passing on knowledge at schools, at universities systematically as an obligatory curriculum topic and within teacher training and it also forms the foundation for working at extracurricular educational facilities.

All this repeatedly requires societal and political negotiation processes to be carried out; knowledge can't be ordered, but needs to be understood as an inclusive subject of formation of opinion through education, through dialogues and the willingness to listen to an opposing opinion. Yet this does not mean that one would admit any kind of topic.

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TIMELINE OF THE MAJOR EVENTS

September 9, 1989	Founding appeal “Aufbruch 89” (<i>Start 89</i>) and establishing the “Neues Forum” (<i>New Forum</i>) as the first GDR state-wide opposition movement
October 9, 1989	70,000 people peacefully demonstrate in Leipzig against the communist dictatorship and for political changes. The state authorities don’t deploy the troops and policemen assembled in Leipzig
November 9, 1989	Following a misleading press conference led by politburo member Günther Schabowski regarding the new GDR act on travelling, hundreds of thousands enforce that the Berlin Wall checkpoints and the checkpoints along the whole border between East and West Germany are opened
November 28, 1989	Federal Chancellor Kohl presents a “10-point-plan” for German reunification
December 1, 1989	The GDR constitution is changed and the leading role of the state party SED is canceled
December 4, 1989	Civil rights activists occupy the Stasi headquarters in Leipzig in order to stop the destruction of files. Further locations follow
December 7, 1989	Establishment of the Central Round Table according to the Polish example. Here, representatives from the opposition and the civil rights movement negotiate together with government representatives about reforms and democratic transformations of the country as well as about preparing free elections
March 18, 1990	The only free elections in the GDR take place. The parties that promise a fast unification with the Federal Republic of Germany emerge as the winners
May 18, 1990	Agreement concluded between the Federal Republic of Germany and the GDR about creating a monetary and economic union on July 1st 1990
July 1, 1990	The monetary and economic union becomes effective. From this date, GDR citizens use the Deutsche Mark (or “DM”) as their currency
August 23, 1990	The East German parliament, the Volkskammer declares the accession to the Federal Republic of Germany according to article 23 of the Federal Republic of Germany’s “Grundgesetz” on October 3rd 1990
August 24, 1990	Act on Securing and Storing the Personal Data at the Ministry for State Security/Office for National Security 24. 8. 1990, GBl. d. DDR 1990, p. 11419ff
September 6, 1990	1. Rehabilitation Act of 6. 9. 1990. GBl. d. DDR I, p. 1459
September 12, 1990	Conclusion of the “Two Plus Four Treaty” concluded between the GDR and the Federal Republic of Germany on the one hand and the victorious powers from WWII on the other
October 3, 1990	GDR accession to the Federal Republic of Germany. Germany is reunited again following 41 years
November 14, 1991	The Act on Stasi Documents (<i>Stasi-Unterlagen-Gesetzes</i> , hence the abbreviation <i>StUG</i>) is adopted and the office of the Federal Commissioners for the Records of the State Security Service (<i>der Bundesbeauftragte für die Stasi-Unterlagen</i> , hence the abbreviation <i>BStU-Archiv</i>) is established by the German Parliament
January 1, 1992	The BStU commences its work
March 12, 1992	The German Parliament decides to establish an inquiry commission “For the Reappraisal of History and the impacts of the Socialist Unity Party dictatorship in Germany”
November 4, 1992	Adoption of the 1st Act on Socialist Unity Party Injustice Settlement for criminal law rehabilitation
November 13, 1992	Start of the 1st East German Border Guard Law Suit led against the people responsible for the deaths on the border between East and West Germany and at the Berlin Wall. Altogether, 246 persons were charged in 112 trials, including 10 Socialist Unity Party leadership members such as Erich Honecker, Günter Schabowski and Egon Krenz as well as 42 leading military officials and 80 former border guards. 132 persons are sentenced, most of them being given suspended sentences
November 20, 1992	Establishment of the offices of the State Commissioners for the Records of the State Security Service of the Former German Democratic Republic (<i>der Landesbeauftragte für Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik</i>) as a contact partner for the victims and affected persons of the Socialist Unity Party dictatorship at the level of the five East German federal states that the former GDR territory is comprised of

December 31, 1992	Closure of the Central Registration Office of the State Judiciary Administrations in the town of Salzgitter that documented more than 40,000 violent crimes in the GDR and at the Berlin Wall and along the rest of the border between East and West Germany
June 23, 1994	Adoption of the 2nd Act on Socialist Unity Party Injustice Settlement for professional and administrative legal rehabilitation
June 22, 1995	Establishment of the 2nd inquiry commission “For overcoming the Socialist Unity Party Dictatorship within the process of German unity”
April 2, 1998	Adoption of the Act on the Federal Foundation for the study of communist dictatorship
July 24, 1999	Adoption of the memorial concept for memorial places of national and international importance
December 31, 2005	End of the criminal reappraisal of injustice in the Soviet Occupation Zone and in the GDR; end of the last legal processes against the former perpetrators
August 29, 2007	Adoption of the 3rd Act on Socialist Unity Party Injustice Settlement, “Act on Special Allowance for victims of imprisonment”, the so-called “victim’s pension” amounting to € 250 per month for prisoners that have spent more than 180 days in prison due to political reasons and who can prove their neediness
November 5, 2010	Prolongation of the rehabilitation period until 31. 12. 2019
December 22, 2014	5th Amendment to the Criminal Law Rehabilitation Acts and increasing the pension to € 300 per month

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