

MEMORY OF NATIONS

Democratic Transition Guide

[The Argentine Experience]



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REGIME ARCHIVES

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CONTENT OF THE SECRET SERVICE ARCHIVES

The main characteristic of the *archives of repression*¹ related to the last military dictatorship that ruled Argentina between 1976 and 1983 is fragmentation. Thirty-five years after the transition to democracy, the archives remain a disperse collection of heterogeneous and incomplete documents. Several reasons account for this fragmentation. Among these reasons, the nature of the repression carried out by the dictatorship (the so-called Process of National Reorganization, hereafter PRN), stands out. In contrast to the experience of other military dictatorships of Latin America, contemporaneous or previous to the PRN, in Argentina repression was extremely harsh, criminal, and clandestine.

The PRN privileged “illegal” over legal repression. Under legal repression the responsibility is entirely assumed by the corresponding repressive bodies of the state within a framework of previously established norms. Illegal repression by the PRN was based on clandestine actions by state agencies and on the organization and predominance of special “Tasks Groups” belonging to each of the three branches of the Armed Forces as well as to other security forces. State agencies and Tasks Groups worked in coordination, but without a centralized command. Illegal repression was complemented with the creation of a network of about 700 Centers of Clandestine Detention (hereafter CCD) distributed throughout the country and located, often, in military and police quarters. In the CCD, the victims of state terror were tortured and sexually abused, and in most cases killed and disappeared. It is estimated that between 15,000 to 20,000 persons were sent to these CCD, and about 90 percent of them were assassinated.²

The Armed Forces adopted an illegal and clandestine repression methodology for various reasons, but primarily because of the influence, in their training, of the USA Doctrine of National Security and of the French Doctrine of Revolutionary War. With the construction of the “subversive” internal enemy subject as the main hypothesis of military conflict, clandestine and criminal repression was considered an efficient method to defeat the enemy. This clandestine and criminal methodology also allowed the Armed Forces to avoid probable international sanctions, as well as to resolve intra-military conflicts.

The clandestine and criminal nature of repression had a deep impact on the types of records the perpetrators of repression elaborated, the urge to destroy them, as much as possible, once the transition to democracy began in 1982, and on the current availability of such records. In 1995, the former Interior Minister of the PRN dictatorship, General Albano Harguindeguy, cynically stated that “If people (the military) were acting illegally, they were not going to be stupid enough as to leave behind proof of that.”³

Another reason that explains the fragmentation of the archives of repression is linked to the collaboration that existed between the Armed and Security Forces: a “pact of silence” was

established among them, and is still very much in effect, about the crimes committed, the organization of repression, and the final destiny of the victims.

Repression was carried out by dividing the national territory in zones, subzones and areas. The Army had the operational responsibility while the Navy and the Air Force provided supporting resources; they all forged an alliance with a common goal. The security forces Gendarmerie (Border Force), Prefecture (Water Force), the Federal Police, and the Provincial Police, were under the operational command of the former.⁴

This organization with the participation of all forces in clandestine and criminal repression led inevitably to a pact of silence on the actions perpetrated and the absolute incompatibility to initiate any revision of them.⁵

The organizational profile of repression explains not only the convenience, but also the crucial need to destroy all available records on the acts of repression before handing power to the democratically elected government in 1983. The Armed Forces had the capability to order the destruction of most documents, since they had concentrated power in the Junta of Commanders (integrated by one member of each of the three forces) since the coup in 1976.

As a consequence, the primary source of information on the crimes committed by the Armed and Security forces during the dictatorship is not the archives of records produced by them.

The archives of repression are fragmented and of diverse origin. The information they contained has been gathered, produced and systematically organized throughout years of hard work by civil society and human rights organizations as well as by the implementation of various public policies after the inauguration of democracy in 1983.

1 Ludmila Da Silva Catela, El mundo de los archivos, in Ludmila Da Silva Catela and Elizabeth Jelin, eds., *Los archivos de la represión: Documentos, memoria y verdad*, España: Siglo XXI Editores, 2002.

2 Carlos Acuña, Catalina Smulovitz, Militares en la transición argentina: del gobierno a la subordinación constitucional, in VVAA: *Juicio, castigos y memorias. Derechos humanos y justicia en la política argentina*, Buenos Aires: Nueva Visión, 1995. Paula Canelo, “La politique sous la dictature argentine. Le Processus de réorganisation nationale ou la tentative inachevée de fonte de la société (1976–1983)”, in *Vingtième Siècle. Revue d’ Histoire*, No. 105, janvier–mars 2010. Hugo Quiroga, *El tiempo del Proceso. Conflictos y coincidencias entre políticos y militares. 1976–1983*, Rosario: Homo Sapiens Ediciones, 2004. CELS, *Derechos Humanos en la Argentina. Informe 2017*, Buenos Aires: Siglo XXI, 2017.

3 Revista Gente, March 30, 1995.

4 Federico Mittelbach, Jorge Mittelbach, *Sobre Áreas y Tumbas. Informe sobre desaparecidos*, Buenos Aires, Sudamericana, 2000, 17; Paula Canelo, “Construyendo elites dirigentes. Los gobernadores provinciales durante la última dictadura militar (Argentina, 1976–1983)”, in *Anuario del Centro de Estudios Históricos “Prof. Carlos S. A. Segreti”*, Year 11, No. 11.

5 Paula Canelo, *El Proceso en su laberinto. La interna militar de Videla a Bignone*, Buenos Aires: Prometeo, 2008; Paula Canelo, *La política secreta de la última dictadura argentina (1976–1983): A 40 años del golpe de Estado*, Buenos Aires: Edhasa, 2016.

ATTEMPTS TO DESTROY THE OPERATION DOCUMENTS OF THE POLITICAL POLICE

The need to destroy all evidence on aberrant crimes and the capabilities to do so due to the concentration of power in the PRN Junta of Commanders fed the assumption that the Armed Forces had destroyed all, or mostly all, available records on the repression carried out between 1976 and 1983. The need to destroy all records became evident to the Armed Forces when an agreement with democratic opposition parties to avoid sanctions for the crimes committed failed. The transition to democracy in Argentina happened due to the collapse after the defeat in the Malvinas-Falkland war, which deepened the already mounting legitimacy crisis of the military government.⁶ About a month after the defeat in the War, in July 1982, General Bignone of the Army became President with the goal to negotiate an exit from power with opposition forces which would include, first and foremost, an agreement to stop any revisions to the actions carried out in the “fight against subversive groups.”⁷

The following year, the military Junta issued three important norms that reflect the end of negotiations with opposition forces on the matter. In April of 1983, the military Junta issued the report “Documento final sobre la Guerra contra la subversión y el terrorismo.”⁸ The report stated that the disappearances were due to the way “terrorists acted” and denied the existence of clandestine places of detention. Furthermore, the report affirmed that the information and explanations included in the text were the only ones available through the Armed Forces. In September, a few months before democratically elected President Raúl Alfonsín took office, the military Junta sanctioned Law 22.924 known as the Self-amnesty law that considered extinguished all penal actions related to crimes committed in the fight against terrorism from May 25, 1973 till June 17, 1983.⁹

In October of 1983, the military government sanctioned Decree 2726/83 that ordered the destruction of all documents referred to as “those documents about the fight against subversion.”¹⁰ The decree referred to the dispositions of Law 22.924 stating that “nobody could be interrogated, searched or call upon in any way in relation to crimes in the fight against subversion.” Furthermore, the decree stated that the spirit of pacification that should be primordial in the next phase of institutionalization in the country requires that the persons that come back to the community should not feel a negative conditioning about themselves. In sum, the decree stipulated the elimination of all information related to persons detained, or be readily available to the executive power by the exclusive authority granted in Article 23 of the National Constitution when the state of siege is in effect.¹¹

The Armed Forces have systematically denied the existence of archives on the “war against guerrilla groups”. Even though Decree 2726/83 denies the existence of any kind of clandestine record, later statements by the Armed Forces High Commanders confirm that during the last months of the dictatorship, most records on crimes committed were destroyed. For example, in 1991, former PRN Minister of Interior Albano Harguindeguy, stated that in his ministry “there was an archive with files of all (the disappeared) that were burnt during the times of General Bignone (the last President of the Junta).”¹² Later on, General Bignone confirmed that information.¹³

In 1995, while the democratically elected government of President Carlos Menem made available to the public the content of

PRN Decree 2726/83 on destruction of information,¹⁴ all military commanders unanimously expressed the inexistence of any records.¹⁵ By 1999, the Commander in chief of the Army Martín Balza denounced General Cristino Nicolaidis, a member of the last military Junta, for having ordered in 1983 the destruction, integrally, of the archives of repression, an order Balza considered illegal and immoral.¹⁶

The official position expressed by the Armed Forces regarding the total destruction of any information related to the crimes committed, the repression, and the identity of the victims is in sharp contrast with the fact, that since 1983, there have been unexpected and very important discoveries of collections of documents in military and government agencies. The most important discovery is the *Actas Secretas de la Dictadura* (Secret Proceedings of the Dictatorship) found in the main building of the Air Force, the Cónдор Building, in 2013.

This finding questions the official version of the Armed Forces about the inexistence of records. Even though most records have not yet been found, the uncertainty of how many of them still exist, and if they can indeed be recovered continue to feed the expectations and hopes of great part of Argentina's society.

The controversy on the existence, or not, of more official documents related to repression continues to be a central theme in the never-ending agenda in search of Memory, Truth and Justice.¹⁷

PUBLIC CONTROL OVER ARCHIVES

As already mentioned, the archives of repression in Argentina come from several sources, and the Armed and Security Forces are not the main one. To the contrary, active civil society organizations are in charge of fighting against secrecy and silence over the repression.

Among these civil society organizations, human rights organizations stand out. These organizations can be differentiated between those linked to persons directly affected by the repression (such as Mothers of May Square, Family Members of Detained and Disappeared Persons for Political Reasons,

6 Guillermo O'Donnell, Philippe Schmitter, *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*, Baltimore: Johns Hopkins Press, 1986.

7 Canelo, 2016.

8 La Nación Newspaper, April 29, 1983.

9 La Nación Newspaper, September 24, 1983.

10 Memoria Abierta, *Guía de archivos útiles para la investigación judicial de delitos de lesa humanidad*, Buenos Aires: Memoria Abierta and Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas durante el Terrorismo de Estado, 2011.

11 Annex 1 Decree No. 377/95, Boletín Oficial de la República Argentina, March 28, 1995.

12 Revista Noticias, December 8, 1991.

13 La Prensa Newspaper, February 24, 1992.

14 Decree No. 377/95, Boletín Oficial de la República Argentina, March 21, 1995.

15 Revista Microsemanario, Year 5, No. 189, March 25 to April 2, 1995.

16 La Nación Newspaper, April 24, 1999.

17 Paula Canelo, “La H es muda, pero habla. La palabra pública del represor Albano Harguindeguy entre 1976 y 2012”, paper presented at II Seminario de Discusión “Investigaciones y debates sobre la palabra pública de los represores”, Instituto de Desarrollo Económico y Social (IDES), September 7, 2018.

and Grandmothers of May Square), those confessional and pro-victim assistance (such as Service Peace and Justice and the Ecumenical Movement for Human Rights), or those providing legal support or systematization of information (such as The Permanent Assembly for Human Rights, the Center for Legal and Social Studies, or the Argentina League for the Rights of Men). More recently, these organizations have experienced a generational renewal, giving birth to new organizations linked to the descendants of the disappeared such as the organization Sons and Daughters for Identity and Justice against Forgetting and Silence (H.I.J.O.S).¹⁸

It was during the first months of the PRN dictatorship in 1976 that human rights organizations began to unfold an intense campaign on various fronts. They began the communication and public denunciation of repression and violation of human rights, at the domestic and international level, with the goal of obtaining solidarity and support in their fight against the military regime and to organize solidarity networks to assist, protect and help survive victims and their families.

Furthermore, human rights organizations undertook a fundamental role in the systematization of information on acts of repression. The accuracy of the information they gathered was later on confirmed by international organizations. This way, the first archive on disappeared persons was put together by APDH (The Permanent Assembly for Human Rights), an organization that in 1979 had documented 5,818 cases of abuses based on the information provided by family members of the victims and some survivors. In addition, in 1979, the Inter-American Commission for Human Rights of the Organization of American States received 5,580 claims.¹⁹ Claims on abuses were also submitted abroad to CLAMOR, United Nations, Organization of American States, the USA Congress, the French National Assembly, Amnesty International and others civil and religious organizations, especially in Europe and the USA.²⁰

It was also by way of these human rights organizations, many of them linked to intellectuals and academics who were organized in international and domestic research centers²¹ and who had survived repression that many of the new debates on the nature and consequences of the PRN dictatorship began.²²

Since their formation during the dictatorship, until the emergence of democracy in 1983, human rights organizations led the difficult task of document registration that included collecting testimonies, making lists and records, creating archives and centers of documentation, etc. This work created and consolidated an important collection of evidence that allowed for court claims. Once the transition began in 1982, these collections of information were used to put on trial those responsible for the dictatorship's crimes.²³

USE OF THE ARCHIVES DURING TRANSFORMATION

The process of transitional justice in Argentina entailed the implementation of a myriad of mechanisms to foster memory, justice, reparation and lustration.

This process was the result of both strategic innovations proposed by human rights organizations and by the implementation of state public policies.²⁴ In many ways, it was the constant struggles put forward by human rights organizations

and activists that set the pace of the transformation process in the country.

This became evident during the first phases of the transformation process initiated by the democratic government of President Raúl Alfonsín in 1983. The archives compiled by human rights organizations during the dictatorship provided crucial information to start the judicialization of human rights abuses by PRN.

In August of 1983, the Technical Commission for Gathering Data was created to consolidate all information compiled by human rights organizations on victims and perpetrators so as to make it available to the newly elected democratic authorities.²⁵ Beginning in 1984, this big data set was submitted to the *Comisión de Acuerdos del Senado* (Senate Commission for Promotions) in charge of approving military personnel promotions. This way, for the first time civilian control over military promotions became a tool to challenge those accused of severe human rights violations under the dictatorship.²⁶

As a first public policy to know the truth about crimes against humanity, the newly elected democratic government of President Raúl Alfonsín created the National Commission for Disappeared Persons (CONADEP – Comisión Nacional de Desaparición de Personas), a special commission established by a presidential decree on December 15, 1983.²⁷

CONADEP worked with human rights organizations, political parties and other political and social groups that were already involved in investigating state terrorism during the dictatorship to elaborate a special report. The report produced by the commission was titled NUNCA MAS (Never Again) and compiles in 50,000 pages a significant number of cases of human rights violations, torture, disappearances and murder and served as the basis for the trial of the military Juntas.²⁸ The report registered 8,961 disappeared persons and about 380 clandestine centers of detention and torture.

CONADEP functioned between December 15 of 1983 until September 20 of 1984 and it can be considered the first archive that centralized all claims on disappearances dispersed until then in the country and abroad.²⁹ The CONADEP archive has 4 types of

18 Carlos Acuña, Catalina Smulovitz, 1995.

19 Emilio F. Mignone, *Derechos Humanos y Sociedad. El caso argentino*, Buenos Aires: Ediciones Colihue, 1991.

20 Emilio Crenzel, "El archivo de la CONADEP. Una perspectiva desde una experiencia de investigación en Ciencias Sociales", in Memoria Abierta, *III Encuentro Regional de Archivos y Derechos Humanos, "El Archivo y el testimonio"*, Buenos Aires, 21 and 22 of September, 2009.

21 Research centers played a very important political and intellectual role under the dictatorships in Latin America. Among them are CEDES and CISEA in Argentina, CIEPLAN in Chile, CLAEH in Uruguay, IUPERJ and CEBRAP in Brazil, CLACSO and FLACSO at the regional level. See Paula Canelo, 2016.

22 Eduardo Luis Duhalde, *El Estado Terrorista Argentino. Quince años después, una mirada crítica*, Buenos Aires: El Caballito, 1983; Daniel Frontalini, María Cristina Caiati, *El mito de la guerra sucia*, Buenos Aires: CELS, 1984.

23 CELS, *Acceso a la información sobre violaciones a derechos humanos durante la dictadura cívico-militar (1976-1983) en la Argentina*, Buenos Aires, CELS, August 2014.

24 Ibid.

25 Ibid.

26 Ibid.

27 Boletín Oficial de la República Argentina, December 13, 1983.

28 Code of Military Justice, Law 23.049, 9.2.1984, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28157/norma.htm>

29 Crenzel, 2009.

evidence: oral testimonies, photographic collection, blueprints provided by survivors of clandestine centers of detention, and evidence collected in prisons, police stations, hospitals, cemeteries and morgues that could confirm the connection between the illegal and legal system of repression. The archives created by the information gathered by human rights organizations and by CONADEP were crucial to make advances in the judicialization of human rights violations in Argentina and, first and foremost, to judge all members of the military Juntas that ruled the country between 1976 and 1983.³⁰

Since the inauguration of democracy in 1983, there have also been some important advances in “genetic archives.” In 1987 by National Law Number 23.511 the *Banco Nacional de Datos Genéticos* (National Bank of Genetic Data) was created. An autonomous and autarchic institution, the Bank is a systematic archive of genetic material and biologic samples of family members of kidnapped and disappeared persons during the dictatorship that allows for the identification of any remains and of babies born in captivity and later appropriated by acquaintances of the armed and security forces. This “genetic archive” provides crucial information to bring to justice crimes against humanity.³¹ Until today (November of 2018), 128 babies born in captivity in CCD have been identified.

RIGHT TO ACCESS THE ARCHIVES

Access to information is a right recognized in several Articles of the National Constitution of Argentina (Art. 14, 38, 41 and 42). However, there is no National Law regulating access to public information: there is no unified set of norms that clearly establishes the subjects bound to provide information, under which provisions, through which procedures, terms, etc.

The only norm available similar to a National Law is presidential Decree No. 1172/03 (Annex VII) issued in 2003. The decree establishes that any physical or legal person, public or private, has the right to request, access and receive information in equal terms of timing, gratuity and informality. The decree also establishes that all information provided by the subjects bound to do so are presumed of being of public character, except in the cases foreseen by law or when it refers to personal data of sensitive content and whose publicity violates the right to intimacy or honor, among other motives.³²

All norms that somehow are related to access of information in Argentina have a limitation when the request refers to personal data. Data protection is regulated by Law No 25.326 sanctioned in 2000. This Law differentiates between personal and sensitive data. Data that disclose racial or ethnic origin, political opinions, religious, philosophical or moral beliefs, union affiliation, or information related to health or sexual preferences could not be provided without the agreement of the person in question.

In addition, another fact that precludes access to information and, concomitantly, to the archives is the inexistence of a National System of Archives throughout the country to systematize how to deal with documents and how to preserve or destroy them.³³

In this way, there is so far no public policy in Argentina, clear and comprehensive, aimed at the protection of the documental heritage of the State, neither are there agencies of accountability

regarding the obligations public institutions have about their archives. Even though the *General Archive of the Nation*³⁴ (Archivo General de la Nación, hereafter AGN) is the institution with the authority over archives, it is just an agency under the Minister of Interior, Public Works and Housing. The AGN has no independent budget and its bureaucratic structure is minimal.³⁵ This has negatively impacted academic work as well as the use of scientific knowledge in judicial cases.³⁶ In sum, the lack of an integral public policy of archives and access to them has been a major obstacle for the diffusion of the contents of the archives and for academic work.³⁷

As a consequence, all public decisions aimed at searching, recording, and opening the archives of repression have not necessarily implied a better access to them.³⁸ Just in the year 2010, the President sanctioned Decree No 4/2010 that ordered the declassification of information linked to the activities of the Armed Forces during the PRN dictatorship and all information or documents that, even though generated in another period, would be related to the actions of the Armed Forces during that time.³⁹

DECLASSIFICATION AND OPENING UP THE ARCHIVES

The advances, although still limited, in archive declassification established by Decree No 4/2010 have been related to the process of judicialization of human rights violations. In 2001, a renewed phase of judicialization of crimes against humanity began to emerge by the sequential removal of the legal obstacles to bring to justice the perpetrators of the PRN. A first step in this process was the sentence on the “Simon case” that established the unconstitutional status of the “pardon laws.”⁴⁰ On August 12, 2003, under the Presidency of Dr. Néstor Kirchner a new law (25.779) superseded the *Punto Final* and *Obediencia Debida* laws as well as any pardons issued.⁴¹ Starting in 2005, by a Supreme Court decision, any action framed under the figure of “state terror” became a crime against humanity and

30 See the chapter on *Investigation and Prosecution of the Crimes of the Regime* in this Guide.

31 CELS, 2014.

32 Ibid.

33 Ibid.; Memoria Abierta, 2011.

34 In Argentina the legal framework for public archives is Law 15.930 of 1961. The law gives AGN the task of gathering, ordering and preserving all documentation established by the law to communicate knowledge of sources of Argentina’s history; Memoria Abierta, 2011, <http://www.agnargentina.gob.ar/>

35 CELS, 2014; Memoria Abierta, 2011.

36 Canelo, 2016.

37 Gabriela Aguila, “La dictadura militar argentina: interpretaciones, problemas, debates,” in *Páginas. Revista digital de la Escuela de Historia UNR*, Year 1, No. 1, 2008; Mariana Nazar, “Dictadura, archivos y accesibilidad documental. A modo de agenda,” in CELS: *Derechos humanos en Argentina. Informe 2007*, Buenos Aires: Siglo XXI, 2007.

38 Memoria Abierta, 2011.

39 CELS, 2014.

40 The case makes reference to the torture and disappearance of the couple Poblete/Hlaczik and the kidnapping of their daughter.

41 See the chapter on *Investigation and Persecution of the crimes of the Regime* in this Guide. Also <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88140/norma.htm>

imprescriptible. These decisions allowed many cases of human rights violations by the PRN to be reopened. President Néstor Kirchner also changed the extradition policy, allowing extradition for perpetrators prosecuted abroad but not facing charges in Argentina. In 2003, Argentina became a signatory of the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. A creative interpretation of the convention by the courts allowed them to circumvent the statutory limitations to crimes committed decades in the past, and also the *ex post facto* applicability of laws that were not in force at the time of the crimes.

Under the Kirchner's presidency this renewed judicialization was concomitant to the implementation of a series of politics of memory including a revalorization of the archives of repression not only as a primary source to bring perpetrators to justice, but also for research and teaching purposes.⁴²

The renewed phase of judicialization made evident the legal and political obstacles the courts faced, as well as the institutional weakness for the production, systematization and access to information. With the beginning of a new cycle of trials, finding new information and documentation on the Armed and Security Forces actions under the dictatorship became crucial. However, according to the Law of National Intelligence No 25.520 of 2001 a great part of all documents were classified, and to gain access to them, a decree for each claim presented by the courts had to be issued.⁴³ For this reason, in April 2010, President Cristina Fernández de Kirchner decided by Decree No 4/2010 a general declassification of all information related to the actions of the Armed Forces during the PRN dictatorship and of all other documentation linked to that.⁴⁴

An important measure also taken was the resolution No. 308/10 issued by the Ministry of National Defense that created "Teams" for the organization and analysis of all documentation with historical and/or judicial value. These Teams were part of the Human Rights and International Humanitarian Law agency of the Ministry of Defense, and worked extensively on the different archives and places gathering information about the Armed Forces to provide documentation to courts and other public agencies.

At the same time, since 2001 there has been a process of declassification of the dictatorship actions initiated by other countries. Human rights organizations asked the Argentine government to request declassification of documents to France and the USA. The declassification of diplomatic documents is underway with France, while the USA has already agreed to provide documents (of 14 state agencies) in three phases, between 2016 and 2017, and guaranteed public access online.⁴⁵

Furthermore, in 2017, the Archbishops Conference of Argentina announced the opening of a set of documents of their institutional archives, as well as of the Secretary of State of the Vatican that include claims received by the Catholic Church from family members of the disappeared. Access to this information is limited to victims, their families and higher rank members of the church in cases they are somehow linked to.⁴⁶

In spite of these advances in declassification of the archives of repression, obstacles remain due to lack of high quality archival management skills of state officers, overlapping of higher and lower ranking norms regulating the matter, absence of clear categories of types of information, and of mechanisms of declassification.⁴⁷

CURRENT STATUS

Nowadays Argentina has an institutionalized set of significant archives of repression⁴⁸ that contains diverse information from different sources.

In spite of the fragmentation that characterizes the archives, we can classify them as provincial archives, human rights organization archives, bureaucratic-governmental archives produced by the last dictatorship and general archives of the Armed Forces.⁴⁹

The recovery of the archives of repression in Argentina began in 1999, with the archive of the Intelligence Agency of the Police of the Province of Buenos Aires (*Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires*, hereafter DIPPBA). Buenos Aires is the most important Province of Argentina. DIPPBA was created in 1956 with the name of Central Intelligence and was dissolved in 1998 in the context of a police reform. During the dictatorship it was a very important actor of state terrorism in control of the province. In December of 2000, the provincial government transferred the DIPPBA archive to the Provincial Commission for Memory (*Comisión Provincial de la Memoria*, hereafter CPM). The CPM is an autonomous agency whose members represent organizations of human rights, unions, the judiciary, the legislature, universities and different regions of the province of Buenos Aires. The goal of the CPM is to be an archive and a Center of Information with public access not only for those directly affected by human rights violations, but also for anyone interested in research and dissemination.⁵⁰ The program of Management and Preservation of the CPM has been incorporating data, such as the Section of Intelligence of the Naval Prefecture of the North Atlantic, or files of political prisoners in the province, among other information. The program provides information to those directly affected, their families, scholars, and institutions that make claims regarding compensation laws. Since 2006 it also records court cases of crimes against humanity in the province.⁵¹ The DIPPBA archive has been recognized by UNESCO as World Heritage in 2008.⁵²

After the pioneering experience of DIPPBA, other provincial archives of repression were established. Worth mentioning are:

a/ Archive of Memory of the Córdoba Province: created in 2006 by the provincial legislature Law No. 9.286. It is located in the building known as D-2, where the intelligence unit of the provincial police department functioned during the dictatorship.

b/ Archive of the Intelligence Department of the Province of Mendoza: The intelligence department was the most important

42 Memoria Abierta, 2009.

43 CELS, 2014.

44 Ibid.

45 CELS, 2017.

46 Ibid.

47 CELS, 2014.

48 Federico Lorenz, Archivos de la represión y memoria en la República Argentina, in Pérotin-Dumon, Anne, *Historizar el pasado vivo en América Latina*, 2007, <http://www.historizarelpasadovivo.cl/>

49 The list is not exhaustive and follows the criteria Memoria Abierta, 2011.

50 Law No. 12.642, March 2001.

51 CPM, El Archivo, "Gestión y Preservación de Archivos", <http://www.comisionporlamemoria.org/archivo/gestion-y-preservacion/>, September 25, 2018.

52 Ibid.

clandestine center of detention of the province. Comprised of more than 2,300 personal files, it is located in the National University of Cuyo. The archive is digitalized.

c/ *Archive of Memory of the Province of Santa Fe*: created by decree No 2775/2006. The main source of the collection is the provincial Direction of Information, which received information from various other state agencies between the years 1966 to 1984. Since 2011 the information is permanently available and its collections have been declared World Heritage by the Memory of the World program of UNESCO.

d/ *Museum of Memory of the City of Rosario in the Province of Santa Fe*: located in the former building of the Command of the II Division of the Army, it houses the Documentation Center “Rubén Naranjo” (an artist and militant). It has an extensive collection of magazines, newspaper clips, and archives of important court cases of human rights violations.

Among the archives created by human rights organizations the most important one is that of *Memoria Abierta* (Open Memory) created in 1999 by a coalition of several organizations. Its main goal is to coordinate the organization, and to catalogue and preserve the archives of the organizations members of the coalition.⁵³ The catalogue contains 28.000 entries. The oral archive of *Memoria Abierta* contains interviews with victims of state terror. All archives under *Memoria Abierta*'s custody are considered World Heritage and part of the Memory of the World program of UNESCO. Another important archive is the *Archivo Institucional del Centro de Estudios Legales y Sociales (CELS)*.⁵⁴ The Archive has 913 boxes, which covers from 1974 to today. The Archive has seven types of documents and for its relevance is registered in the program Memory of the World of UNESCO.⁵⁵

The National Archive of Memory (hereafter ANM) was created in 2003 by the President of the Republic. Today it is under the authority of the Secretary of Human Rights and Cultural Pluralism of the Ministry of Justice and Human Rights of the nation.

The main collection of ANM is the Archive of CONADEP. The archive also contains the archive of CONADI (the commission in charge of cases of kidnapping of minors), the full video of the trials of the military dictatorship Junta members and an Oral Archive. Access to the collections is restricted.⁵⁶

Besides these archives, significant information has been found in piecemeal fashion out of some of the “legal” agencies of the PRN dictatorship. The most important documents found are the before mentioned *Secret Acts of the Dictatorship*. In 2013, in the basement of the Cóndor Building belonging to the Air Force, 1,500 files were found. These include black lists, actions plans by the dictatorship, receipts of financial contributions, meeting agendas, front desk records, etc. The Secret Acts are in digital form and have public access in the Open Archives site of the Ministry of Defense.

After this finding in 2013, the Ministry of Defense ordered all military units to search for more documents. This led to the finding of 7,000 files of political prisoners at the ex-prison of the Armed Forces in Magdalena, province of Buenos Aires.

Other archives produced by the legal agencies of the dictatorship such as the Fund CAL (Advising Legislative Commission of the Dictatorship) and Fund Consufa (Supreme Tribunal of the Armed Forces) are publicly available through the Department of Intermediate Archive of the General Audit of the Republic (AGN).

In addition to these archives, the Army, the Navy and the Air Force each have their own archives about their personnel that could be eventually consulted.

This fragmentary panorama of the archives of repression improved by the politics of memory implemented since the year 2006 by the administrations of President Néstor Kirchner and President Cristina Fernández de Kirchner.

However, since 2015 the administration of President Mauricio Macri has reversed some of these advances by dismantling state agencies, programs, web sites, and team of experts working on recovering the archives of repression.

LESSONS LEARNT AND RECOMMENDATIONS

In 2011, the NGO *Memoria Abierta* (Open Memory) jointly with the *Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas bajo terrorismo de Estado de la Procuración General de la Nación* (Fiscal Unit of Coordination and Tracing of Court cases for Human Rights Violations of State Terror under the Office of the Attorney General of the Nation) carried out an investigation into the archives of repression that are used as source for court cases on crimes against humanity in the country.

The investigation warned that “the institutions (and the persons in charge of them) do not have the adequate expertise and skills to deal with the documents because of lack of public policies for training and professional development. As a consequence, there is a ‘diversity of archival realities’ in which voluntarism, common sense, and sometimes ignorance set the principles for documentation, instead of professionalism and norms.”⁵⁷

The investigation concluded that, according to several deficits surrounding the issue of the archives of repression in Argentina, political will to search for and disseminate these crucial documents in order to understand the recent past of the country, does not necessary entail effective public access to them.⁵⁸

Since the transition in 1982, many pending issues remain with the organization of the archives of repression; these issues have worsened lately by the public policies implemented by the current government of President Mauricio Macri (2015–2019).

After four decades of experience with archives of repression in Argentina we can draw several lessons and recommendations.

First, it is imperative to raise the status of all “archives of repression”, not only as a resource to promote justice against criminals who committed violations of human rights under the dictatorship, but also as a valuable primary source for historical, comparative, and journalistic research aimed at dissemination and teaching.

Second, the organization, description and systematization of the existing collections should be improved to effectively

53 *Memoria Abierta*, <http://memoriaabierta.org.ar/wp/organismos-integrantes/>, September 25, 2018.

54 CELS Archivo, <https://www.cels.org.ar/web/wp-content/uploads/2017/10/AR-CELS-Descripci%C3%B3n-Fondo-Archivo-CELS.pdf>, page 5, October 16, 2018.

55 Ibid.

56 CELS, 2014; Federico Lorenz, 2015.

57 *Memoria Abierta*, 2011.

58 Ibid.

democratize declassification and allow free access to all so as to deepen the process of Memory, Truth and Justice. Public policy should aim at establishing general and clear norms for access to the information provided by the archives and to instruct public authorities regarding those norms.⁵⁹

Third, we need to advance in norms to regulate the archives of repression especially regarding state obligations on their access and preservation, as well as on the authority of the state on preservation and destruction of data.⁶⁰

Fourth, we recommend the celebration of agreements with countries that are in the process of transitional memory and justice to speed exchange of information, to promote basic standards of preservation and access to archives, and to secure that

international organizations jurisprudence is respected to allow for greater impact in terms of access of information.⁶¹

Finally, we recommend decisively promoting the work of civil society organizations to demand accountability to authorities regarding all aspects of human rights, especially the conservation of archives of repression and access to them.

Argentina is an exceptional model in relation to the politics of Memory, Truth and Justice. However, we must be very aware that any achievements can be at anytime reversed.

59 CELS, 2014 and 2017; Memoria Abierta, 2011.

60 CELS, 2014; Memoria Abierta, 2011.

61 CELS, 2014.

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MEMORY OF NATIONS

Democratic Transition Guide

[The Cambodian Experience]



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CEVRO

[REGIME] ARCHIVES

BERND SCHAEFER

THE NATIONAL ARCHIVES OF CAMBODIA

On 20 August 2012, the author spent some time in the National Archives of Cambodia and had an extensive and detailed talk with its Director in the presence of a (silent) representative from the Council of Ministers. Below the author is drawing on his contemporary notes from this meeting, which are still extremely pertinent and current.¹

The National Archives (NA) are best known for their extensive and exclusive collections from the French colonial period.²

The periods since 1953 are represented in the NA as follows:

- Sihanouk as King and Prime Minister, 1953–1970: extensive collections of public speeches, state bulletins, newspapers, publications, and more than 10,000 photos of the King's activities and visits in Cambodia and abroad. Material mostly in Khmer and French. However, the NA do not have internal policy documents, not even one single transcript or memorandum of conversation from the Cambodian leader. Those materials are with the Royal Palace, the Norodom family, in Paris (see below) or Sihanouk's personal and official biographer Julio Jeldres (see below).
- Lon Nol Period, 1970–1975: It is basically the same pattern, though much less material is available. Nobody could answer questions about the Cambodian memoranda of conversations of the Lon Nol government's bilateral dealings; neither whether they existed, or whether they were really all “destroyed by the Khmer Rouge” (a familiar refrain; the KR left the National Archives completely unscathed, for instance). The fact is, though, no internal policy documents of the Lon Nol period are in the National Archives.
- DK Period, 1975–1979: This is by far the best documented and researched period of Cambodian post-1953 history. Though the material is not in the National Archives, but in the non-governmental Documentation Center of Cambodia (DC Cam) in Phnom Penh (see below). Also, the prosecution and defense teams with the current Khmer Rouge Tribunal (KRT) have left no stone unturned and uncovered much more material. Most of it is still with the ECCC (the KRT court).
- Vietnamese Tribunal against the “Pol Pot – Ieng Sary Clique” held in 1979 in Phnom Penh: This material is at the National Archives and accessible upon request.
- PRK Period, 1979–1989: According to the NA, this material has not been completely transferred to the NA and is “not yet processed”. Since the current government of Cambodia is on its top mostly identical with PRK protagonists, no substantial research access is to be expected here (definitely not during the KRT trial where defense lawyers try to implicate the current government). The NA are under the supervision of the Council of Ministers of Cambodia. The latter has to permit any post-1978 research.
- The NA does not hold post-1989 materials. Those are with respective ministries and government agency archives as well

as with the CCP archive. Do not expect them to be open for public research.

Other noteworthy things:

- The NA do not have any holdings from the various Cambodian Ministries of Foreign Affairs where the country's international relations unfolded (e.g. embassy reports and correspondence). The Cambodian MFA has its own documentation department that must be addressed for any inquiries.
- The NA has an excellent online database where all holdings are searchable for names, subjects, etc. Respective research will yield detailed results down to each individual records box stored at the NA.

THE DOCUMENTATION CENTER OF CAMBODIA (DC CAM)

DC Cam in Phnom Penh, originally founded in 1995 and supported by Yale University, is the largest repository holding documents and other material on the period of Democratic Kampuchea between 1975 and 1979. Some of its documentation is quite unique. The DK years are the only period of post-1953 Cambodian history that are well documented in archival terms and openly accessible. An overview of DC Cam holdings can be found here: <http://www.dccam.org/Archives/index.htm>. For more details on DC Cam see also the respective paragraphs in Savina Sirik's chapter “Education and Preservation of Sites of Conscience” in this guide.

Its origin lies with Yale's Cambodian Genocide Program based on the access by historian Ben Kiernan to 100,000 pages of files from the DK security police, the Santebal,³ during the 1975–79 period.⁴ After the files stored with DC Cam were microfilmed in 1999,⁵ fully searchable Cambodian Genocide databases were established.⁶

1 The National Archives of Cambodia can be found on Street 61 (Oknha Hing Penn), directly next to the National Library Building, in-between streets 90 and 92 (very close to Wat Phnom). Basically, tell a taxi or tuk-tuk to go to Wat Phnom; every Cambodian knows that Buddhist monastery and temple, nobody knows the National Archives.

2 See also: William B. Noseworthy, “National Archives of Cambodia,” University of Wisconsin-Madison, 13 March 2014, http://dissertationreviews.org/archives/8169?utm_source=rss&utm_medium=rss&utm_campaign=national-archives-cambodia

3 Santebal Microfilms, Yale University Genocide Studies Program, <https://gsp.yale.edu/santebal-microfilms>

4 See “Yale scholar of Cambodia, Ben Kiernan, uncovers rare 19th-century Khmer-language documents”, Department of History at Yale University, 17 May 2018, <https://history.yale.edu/news/yale-scholar-cambodia-ben-kiernan-uncovers-rare-19th-century-khmer-language-documents>. The headline is wrong, those are 20th century Khmer documents of course, not 19th century.

5 Richard Richie, “Preserving Khmer Rouge Archives”, in *Focus on Global Resources*, Fall 2005, Vol. 25, Num.1, <https://www.crl.edu/focus/article/493>

6 Cambodia Genocide Databases (CGDB), Yale University Genocide Studies Program, <https://gsp.yale.edu/cambodian-genocide-databases-cgdb>

PAPERS OF KING/PRINCE/PRIME MINISTER NORODOM SIHANOUK

A/ PAPERS IN PARIS

The late King Norodom Sihanouk did not trust a Cambodian institution with holding his papers from 1970 to 2007, but had them transferred to the French National Archives in Paris in 2009.⁷

B/ JULIO JELDRES

The former Chilean diplomat Julio Jeldres became a confidant and close friend of Norodom Sihanouk who shared some papers with him and expected him to become his official biographer. Being affiliated with Monash University in Canberra, Australia, in 2012, Ambassador Jeldres published a sort of book⁸ after he had translated a memoir volume of King Sihanouk from 2005. In September 2015, and in 2016, Ambassador Jeldres donated copies of material he had researched in from public archives, or received from Norodom Sihanouk himself, to DC Cambodia in Phnom Penh where they are accessible to the public.⁹

FOREIGN ARCHIVES WITH HOLDINGS ON CAMBODIA

A/ FORMER COMMUNIST COUNTRIES OF CENTRAL AND EASTERN EUROPE

The Foreign Ministry and other archives of the former Soviet Union, Poland, the GDR, Czechoslovakia, Hungary, Bulgaria, and Romania, as well as of Yugoslavia, are holding material regarding their country's relations with Cambodia. During the DK period between 1975 and 1979 only Romania and Yugoslavia maintained embassies in Phnom Penh. The densest and revealing material comes from the Phnom Penh embassies of pro-Soviet countries pertaining to the period between 1979 and 1989, due to the very close relationship of those countries with Vietnam, which wielded major influence over domestic and foreign policies of Cambodia in those years.

B/ WESTERN COUNTRIES

The same applies in principle to Foreign Ministry archives of Western countries, only that their embassies had valuable insights only up to 1975. Most of them did not return to Cambodia until after 1990. More recent material in Western archives

is subject to 25-years-or-higher-rules of declassification schedules. U.S. archives and the Freedom of Information Act (FOIA) of the United States provide the best opportunity to gain access to certain material on Cambodian developments since the 1991 Paris Agreement.

C/ OTHER COUNTRIES

Very significant holdings on Cambodia are contained in the archives of the Socialist Republic of Vietnam and the People's Republic of China, but they are generally not accessible to researchers.

LESSONS LEARNT

The period between 1975 and 1979 is the only period in Cambodian post-independence history that is well documented in terms of archival access. This is extraordinary since the DK years represent zealous communist ideology and genocidal history at its most extreme. Access to those files laid the groundwork for the international court prosecuting Khmer Rouge leaders and perpetrators, offered the opportunity to Cambodians to come to terms with crimes and criminals, but also exposed limits of doling out justice in contemporary political environments. The relative inaccessibility of records from other periods of Cambodian history, and the subsequent focus on the DK years, make the latter appear to be more representative of Cambodia and its history than they might deserve. Despite the enormous death toll and regression in the country between 1975 and 1979, other periods like the 1960s, 1980s, and 1990s had more lasting long-term effects on Cambodian politics and society. However, their archival documentation remains inaccessible for the foreseeable future.

7 See 2009 reports on holdings and the transfer here in newspaper articles from "Bangkok Post" and "Phnom Penh Post": "In Sihanouk's words: the Cambodian monarch's private archives", in *Bangkok Post*, 25 February 2009, <https://www.pressreader.com/thailand/bangkok-post/20090301/282720517870470>; Pheaktra, Neth, "Sihanouk donates archives", in *The Phnom Penh Post*, 24 February 2009, <https://www.phnompenhpost.com/national/sihanouk-donates-archives>

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9 "Late King's Biographer Donates Archives to Documentation Center", in *VOA Cambodia*, 25 September 2015, <https://www.voacambodia.com/a/late-king-biographer-donates-archives-to-documentation-center/2977210.html>

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MEMORY OF NATIONS

Democratic Transition Guide

[The Chilean Experience]



ARCHIVES OF THE REGIME

MARÍA LUISA ORTIZ, RODOLFO IBARRA, DANIELA FUENTEALBA

INTRODUCTION

The image of La Moneda Palace in flames as a result of the bombing ordered by the military junta on September 11, 1973, to remove the constitutional president Salvador Allende, is probably the first document linked to human rights. It is the symbol of the breakdown of democracy and of a deep fracture in Chilean society. The beginning of a dictatorship that systematically violated human rights for 17 years.

The experience of those years has been recorded in various documents by those who were affected by dictatorial power, at different levels, such as those who protected the people, denounced the events, showed solidarity and mobilized within Chile and around the world, to demand the end of the dictatorship and a return to democracy. Those records constitute what we call the human rights archives.

When the transition process began, these archives were cited as fundamental pieces for the processes of truth, justice, reparation and memory. They allow the possibility to prove facts and victims, to contribute to the reconstruction of what happened, and to remember and learn from it. However, they face multiple difficulties, debates and dilemmas. In addition to the lack of collaboration of those responsible for human rights violations, to make available their archives, and the legal and institutional weaknesses that have hindered their protection and have prevented public access.

All these aspects are addressed in this chapter.

CONTENTS OF THE SECRET SERVICE ARCHIVES

In Chile, the archives of the intelligence services have been systematically denied access to. The most frequent response to queries made by the truth commissions, other instances of judicial or extrajudicial investigations or from civil society, is that these archives do not exist, having been incinerated or destroyed after the legal period that allowed them to do so has elapsed. Regarding the participation of members of the armed forces (FFAA) in intelligence activities, the response has been that they are legally prevented from providing this information.¹

Despite systematic denial, in the post-dictatorship years, some documentary pieces or fragmented files have been found that account for the actions of the intelligence services. These are findings within the framework of a judicial investigation, or in an unexpected and casual way. That is how, during a judicial case, the lawyer of an agent prosecuted for crimes against opponents, delivered to the court documentation and files related to interrogations of political prisoners, among them several disappeared detainees, seeking to obtain some benefit for his defendant and making this delivery look like collaboration.² This documentation, related to disappeared political prisoners, has been incorporated in diverse judicial investigations, however it is not known where their originals are, or the totality of the documentation delivered at that time.

The finding of documentation in other countries of the Southern Cone, have revealed the action of national intelligence agencies beyond the Chilean borders, in the persecution, surveillance, kidnapping, torture and extermination of Chileans and, especially, the coordination of intelligence between countries, known as Operation Condor. These archives have become evidence for investigations in Chilean courts and have played a relevant role in advancing the truth about these crimes.³

At the end of September 2005, carrying out architectural recovery work in a building where the Salvador Allende Foundation currently operates, at 475 República Street, a set of documents were discovered that formed part of the archives of the National Information Centre (NIC):⁴ reports, a register of agents, telephone numbers, accounting with payments to CNI officials; charts (organization charts), trades and more than 400 telexes, among others. The Investigative Police (PDI) seized the documentation and handed it over to the courts of justice. After a few years the telexes were recovered by the Salvador Allende Foundation, and they are now publicly accessible in digital

1 In its report, the National Truth and Reconciliation Commission gives an account of certain nuances among the different armed forces: the Carabineros and the Army are the most vociferous in denying the existence of documentation and to a lesser extent the Air Force, the Navy and the Investigative Police (Report of the National Truth and Reconciliation Commission, CNVR, Reissue December 1996, Volume 1, Chapter 1, pages 6 to 9). The National Commission on Political Imprisonment and Torture Report also states that the responses given to that commission when consulting them by background, records and information were similar. (The National Commission on Political Imprisonment and Torture Report, CNPPT, 2005, pages 53–67, 111 and following).

2 In the mid-1990s, lawyer Fidel Reyes, defence lawyer of the retired colonel of the Carabineros, Guillermo González Betancourt, prosecuted for the murder of three professionals, handed Judge Dobra Lusic a bag with documentation and follow-up files from the repressive body known as the Joint Command, which the defendant would have given him.

3 This has happened, for example, with the archives seized in Buenos Aires from the agent of the National Intelligence Directorate, DINA, Enrique Arancibia Clavel, and found by Chilean journalist Mónica González in the Buenos Aires Judicial Archive in 1986 (several years after her seizure by the Buenos Aires police), which were an important contribution to his book *"Bomba en una calle de Palermo"* (Bomb on a street in Palermo) about the assassination of General Carlos Prats and his wife Sofia Cuthbert in Buenos Aires in 1974 and later also to the investigations of journalist John Dinges for his book *"Los años del Cóndor"* (The Condor Years) about intelligence cooperation in the Southern Cone. They have also contributed to judicial investigations in Chile. Another important finding was that of the so-called "Archives of Terror" in Paraguay, discovered in 1992 at the Lambaré police station in that country. They found evidence of the coordination of intelligence services, from the call in Chile to the formal constitution of this coordination, convened by the head of DINA, Manuel Contreras, as well as a series of documentation of criminal actions and transfer of prisoners between countries. Within which the militant of the Revolutionary Left Movement (MIR) Jorge Isaac Fuentes Alarcón is counted, who was detained in Paraguay, transferred to Chile to the secret torture compound Villa Grimaldi, without his detention ever having been recognized until today, remaining to date as a victim of enforced disappearance.

4 The National Information Centre succeeded the DINA, which was dissolved in 1977, and lasted until 1990.

format, as well as the judicial report on the finding and characteristics of the documentation found.⁵

In 2014, Minister Jorge Zepeda, in charge of the judicial investigation into the events that took place at Colonia Dignidad (“Dignity Colony”)⁶ announced the existence of more than 45,000 files and documentation found there in 2005 in underground graves.⁷ Several human rights organizations criticized the fact that it had been kept secret for almost 10 years, as it could have been useful for the judicial processes on disappeared detainees and political prisoners, and their passage through Colonia Dignidad. The judge handed a copy of part of the documentation and files to the National Human Rights Institution (NHRI), to the Human Rights Program of the Ministry of the Interior and to some sites of memory. A television channel made an extensive report on the find and delivered digital copies of the files to human rights organizations, archives and the Museum of Memory and Human Rights (MMDH). Subsequently, the report issued by the Police Intelligence Leadership (JIPOL) of the Investigations Police of Chile (PDI) was made public, in which all the documentation has been analyzed, and the London 38, Memory Space⁸ has made available to the public in the framework of a campaign for the end of the secret archives.⁹ It remained in the hands of the JIPOL until December 2017, after which it was transferred to the National Archive of Chile.

Other documents related to victims of human rights violations were included as “evidence” in the memoirs¹⁰ of Manuel Contreras Sepúlveda, who was Director of the National Intelligence Directorate (DINA). Although the fate of the documentation of the most important intelligence service of the dictatorship, which had the broadest powers and direct and daily contact with the dictator Augusto Pinochet, is unknown, the inclusion of a few documents to support his version regarding the detainees, is a demonstration that the head of intelligence did keep files in his possession which, however, have not yet been found.

All these findings show that the repressive measures, the persecution, control and registration of detainees, interrogations, itineraries or destinations, in short, the innumerable actions linked to the security services and the maintenance of a dictatorial state, were recorded, generating innumerable and diverse institutional archives, of which their existence has later been denied, or it has been affirmed that they were destroyed. Procedures, appeals, personnel were registered and controlled, and in the generation, the participation of diverse institutions and persons, who were more or less conscience of the relevance of their actions, were configuring the act of archiving, ordering, safeguarding, gathering, conserving and generating criteria for the access of all the information produced.

ATTEMPTS TO DESTROY THE DOCUMENTATION OF THE POLITICAL POLICE OPERATION

In the judicial investigation into the death of former President of the Republic Eduardo Frei Montalva, important testimonies were obtained regarding the fact that the documentation found in the CNI offices was transferred to the Army Intelligence Directorate (DINE), remaining in its custody until several years after the end of the dictatorship. A police report contains statements that claim to have seen these archives on microfilm in a cellar in the underground vaults of the DINE, in the heart of Santiago. Adding that it should have been incinerated from 1999 to after

2000. However, there is no incineration certificate to verify this, as would have been the case.

Due to this discrepancy, the Ministry of Defence ordered an investigation, after which the Commander in Chief of the Army stated that there was no proof of the existence of such documentation, and that it was not possible, given the time that had elapsed, to bring criminal proceedings against those responsible.¹¹ The matter is currently awaiting the resolution of the justice system to criminally prosecute those responsible for the destruction of the archives of the CNI, as well as the concealment of the action of destruction, corresponding to the measures carried out between 1980 and 1982.

USE OF ARCHIVES DURING THE TRANSITION

For the truth commissions,¹² the archives played a vital role. They constituted evidence to document the cases and qualify the victims (forced disappearance; executions outside the law, political imprisonment and torture). These archives were essentially formed by the backgrounds, documents and testimonies provided by the victims themselves, their families and human rights organizations. Throughout the dictatorship, Chile documented human rights violations, whether through national or international denunciations or through appeals brought before the courts of justice. Most of the complaints were brought before the courts and, as a result, their history was preserved both in the courts and in the human rights bodies that brought them.¹³ Complaints to United Nations bodies or to the inter-American human rights system, as well as to international human rights protection organizations, were also highly relevant sources of documentation. It was not the archives from intelligence agencies

5 Judicial and police report on the discovery of documents from the National Information Centre (CNI), Recovered secret archives, London 38, Memory Space, <http://www.londres38.cl/1934/w3-article-97121.html>

6 German enclave in southern Chile related to abuses and slavery of its inhabitants, also with an active link to the dictatorship and its intelligence services. Colonia Dignidad was a place of detention, torture and extermination of political prisoners.

7 Carlos Basso Prieto, “Los secretos de las fichas de Colonia Dignidad”, in *El Mostrador*, 12. 12. 2014, <https://www.elmostrador.cl/noticias/pais/2014/12/12/los-secretos-de-las-fichas-de-colonia-dignidad/>

8 DINA torture centre from which most of the political prisoners who passed through disappeared and which was recovered by civil society as a memorial site.

9 Intelligence Report on Dignity Colony Archives, Recovered Secret Archives, London 38, Memory Space, <http://www.londres38.cl/1934/w3-article-97390.html>

10 Manuel Contreras Sepúlveda, *La verdad histórica: el ejército guerrillero*, Santiago: Ediciones Encina, 2000

11 “New Commander-in Chief of the Army signed report accrediting burning of CNI files”, in *Radio ADN 91,7*, 15. 11. 2017 <http://www.adnradio.cl/noticias/nacional/nuevo-comandante-en-jefe-del-ejercito-firmo-informe-que-acredita-quema-de-archivos-de-la-cni/20171115/nota/3638487.aspx>

12 National Truth and Reconciliation Commission; National Corporation for Reparation and Reconciliation; National Commission on Political Imprisonment and Torture; Presidential Advisory Commission for the Qualification of Disappeared Detainees, Political Executed and Victims of Political Imprisonment and Torture.

13 Committee for Peace in Chile; Vicariate of Solidarity; Christian Churches’ Social Assistance Foundation (FASIC); Corporation for the Promotion and Defence of Human Rights (CODEPU); Foundation for the Protection of Children Damaged by the State of Emergency (PIDEE); Chile’s Human Rights Commission. These were the main human rights bodies that collected and preserved this documentation.

or the armed forces that provided information for the investigation of these commissions.

For the National Commission on Political Imprisonment and Torture (CNPPT), the testimonies of the victims themselves and the documentation they presented were relevant for recognizing their detentions. It included detention centres, movement restrictions, visiting permits, correspondence with the family and humanitarian agencies such as the International Red Cross (IRC), among others.

The commissions made special mention of the archives, both in relation to their use and accessibility. The provisions and their scope have been different in each case.

In its recommendations, the National Truth and Reconciliation Commission (CNVR) expressed the need for an entity to centralize the accumulated information in a specialized library, given the future interest in knowing about human rights violations of investigators and the general public, which can be accessed under conditions regulated by law.¹⁴

The law that created the National Corporation for Reparation and Reconciliation (CNRR)¹⁵ determined that it was appropriate to keep in deposit the information gathered by both instances, ensuring their confidentiality, but allowing access to the courts of justice.

At present, the archives on non-survivor victims under judicial investigation are in the Human Rights Program belonging to the Undersecretary for Human Rights of the Justice and Human Rights Ministry, which is responsible for monitoring judicial proceedings. The courts are the only user of this information; neither researchers, nor lawyers not belonging to this program, nor relatives of the victims have access to it.

The CNPPT initially noted in its recommendations¹⁶ that the information collected was part of the nation's cultural heritage and should be subject to safeguarding measures. It recommended that, at the end of its activity, the collected documentary heritage be handed over to the NHRI or, failing that, to the body entrusted by law with the conservation of the documentary heritage of the Chilean nation, in order to protect it against all theft and destruction. It pointed out that the archive consisted of all documents in physical and digital form: personal files containing the background of the victims and the documents generated by the commission in the framework of its activity. It recommended, in relation to personal files, applying a special time limit for communication to the public of 30 years, in order to protect the privacy and honour of individuals.¹⁷ But later, the law which approved the granting of reparation benefits¹⁸ determined the confidentiality of all the documents, testimonies and background provided by the victims should have a time limit of 50 years, specifying that no person, group of persons, authority or magistrate will have access to these archives. Although, it recognizes the personal right of the owners to make them known.¹⁹ Article 15 of this law provides that the documents, testimonies and background provided by the victims before the commission shall be secret. It adds that the members of the commission, as well as all the persons who participated in it, are obliged to maintain confidentiality with respect to the background and data that are of a secret nature.

The Advisory Commission on the Classification of Disappeared Detainees, Victims of Political Executions and Victims of Political Imprisonment and Torture (2010)²⁰ was authorized by the enactment of a law,²¹ unanimously approved by Parliament, to review the documents, testimonies and background of the CNPPT. Only two commissioners and two professionals were authorized, with an obligation to respect the confidentiality, for the sole purpose of

qualifying the cases that arose, and only during the commission's period of operation. All the archives, as well as the officials of this commission, were finally subject to the obligations of confidentiality and sanctions established by Law 19.992.

Consequently, recognizing that the truth commissions, both in their reports and in their recommendations, gave explicit value to the collected archives, the need for their preservation was raised and reference was made to the issue of access. Noting in this an unprecedented process of assessing their impact on society and the country. The laws subsequently passed arrived at different results, especially on the issue of public access. The CNPPT exceeded almost twice the time limit for public access, as recommended in the report.

Human rights archives are also a source of ongoing consultation in judicial investigations. These archives, generated as a denunciation of violent measures, had a practical and urgent purpose in times when people's rights were violated in a systemic and massive way. Human rights bodies received a complaint either from a victim and/or his/her family, and tried to obtain as much background information, witness accounts, and fingerprints of all kinds, as much as possible. All this information was recorded in forms and files, following a protocol built from the need to cross-check information, data obtained from other sources, official responses, new antecedents, witnesses, etc. The sheer size, systematicity and frequency of the repressive acts made the agencies build protocols and rigorous records immediately after the events. Today they constitute proof and a unique record of the official version of the time.

They have also been relevant for the identification of victims, in the case of the findings of human remains illegally buried by the dictatorship in order to hide all traces of their crimes. As a result of errors in the identification of victims of enforced disappearance in 2007, there was a very strong need to gather the documentation dispersed in various public and private bodies; documentation contained information on the pre-mortem antecedents of the victims, circumstances of their detention and final destination, judicial investigations, examinations, expertise and identifying measures carried out on recovered remains. With the advice of experts, the forensic medical service began to work systematically to organize and systematize all documentary sources related to the victims of enforced disappearance and the possibility of finding and identifying their remains.

The post-dictatorship validation of these archives, both in extrajudicial mechanisms of investigation and in judicial action, as

14 Chapter III: Other Recommendations, under the subheading Centralization of Information Accumulated by the Commission (CNVR Report).

15 Law 19.123. February 8, 1992. At www.leychile.cl

16 Chapter IX, Proposals for reparation, basis for defining proposals for reparation, recommended measures, the safeguarding and confidentiality of the information received is included as one of the institutional reparation measures (CNPPT report).

17 Assuming the time frame that has followed the world archival practice in this type of matters. The European Commission recommends a maximum period of 30 years for the maintenance of the confidentiality of records. This recommendation, however, is not applicable in all countries as the transition processes require quick access to documentation for the investigation and documentation of any type of human rights violation.

18 Law 19.992. December 24, 2004. At www.leychile.cl

19 Law 19.992. Title IV, Article 15. At www.leychile.cl

20 Contemplated in Law No. 20.405, Article 3 transitory and established by President Michelle Bachelet, by Decree No. 43 of February 3, 2010. At www.leychile.cl

21 Law 20.496. February 5, 2011. At www.leychile.cl

well as the growing recognition that they constitute an essential source for the reconstruction of the recent past and the preservation of memory, have been supported by the special mention of their role in transitional justice processes, with respect to the right to truth, the right to memory and the duty to remember in the instruments of the international human rights system.²²

In 2003, the State of Chile declared that eight historical human rights archives²³ be declared heritage of humanity in UNESCO's Memory.²⁴ This was an important recognition and an impulse for the generation of initiatives and special declarations by the State.

The creation of the NHRI through Law 20.405 in 2009, stipulated that it should guard the background gathered by the truth commissions.²⁵

The creation of the Museum of Memory and Human Rights in 2010²⁶ is undoubtedly the most important public policy in relation to memory and archives, taking charge of society's right to know what happened. This museum actively assumes the protection, preservation and dissemination of its archives. Its conceptual framework is based on the truth commission reports and from this perspective it fulfills the task of collecting, preserving and making accessible this invaluable cultural heritage for which, until then, there was no system to guarantee its physical and intellectual survival in the long term.

As the main depository of the collection, generated by different sectors of civil society that undertook actions of solidarity and defence of the victims of the dictatorship, the museum is unique in its class. Both in terms of its collections policy and through the means it explores ways to expand its services and users. It also collects documentation and archives generated by public entities that complement the stories for the reconstruction of the memory of the recent past. Recovering these primary sources, preserving them and making them accessible, is a valuable contribution to the country's historical memory, as well as a contribution to the knowledge, reflection and research on human rights violations in Chile between 1973 and 1990, and their effects and consequences.

Human rights archives have documented and supported the declaration of historic monuments in detention facilities or places where people's rights were protected and defended during the dictatorship. In the process of validating this nomination, the archives have played an essential role as proof of what happened in those places and the need for their protection as sites of memory. From 1996 to December 2018, nearly 40 places with these characteristics have been declared historical monuments.²⁷ Among them 4 human rights archives have been protected with this nomination between the years 2016 and 2018. These are the archives of Colonia Dignidad in 2016; in 2017 the archives of the Vicariate of Solidarity, which includes the documentary collections of the Committee of Cooperation for Peace in Chile and in the same year the archives of the Christian Churches' Social Assistance Foundation (FASIC). In 2018, the archives of the National Headquarters of Crimes against Human Rights and People of the Investigative Police was added to this list. It contains a collection of documents related to clandestine detention centres, structures of the intelligence services, statements and testimonies of victims, witnesses and victimizers, photographs of former agents, among others, and that which was generated from the work supporting investigations in human rights court cases.

The first National Human Rights Plan (2018-2021)²⁸ of the Undersecretary of Human Rights,²⁹ recognized the need to preserve the historical memory in the matter of massive and systematic

violations of human rights. Within this framework, the need to implement a public archives policy and coordinate the creation of a national memory archive was raised. To date, there has been no progress in this area.³⁰

The uses of these archives have expanded over time. As they are promoted, public debates are set up throughout the country by citizens, victims and their families, movements which seek to recover sites of memory as well as to install memorials which remember the victims, carrying out social action work through cultural and educational measures, in which the archives are a source which is sought, claimed and appropriated from different spheres. They become means to work with the new generations, who look for sources and evidence to approach our recent past.

22 "Updated set of principles for the protection and promotion of human rights through action to combat impunity", Commission on Human Rights of the Economic and Social Council of the United Nations, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

23 Association of Families of the Detained-Disappeared (AFDD); Corporation for the Promotion and Defence of Human Rights of the People (CODEPU); Christian Churches' Social Assistance Foundation (FASIC); Foundation for the Protection of Children Damaged by the State of Emergency (PIDEE); Audiovisual Archives of Teleanalysis; Documentation and Archive Foundation of the Vicariate of Solidarity; Chile's Human Rights Commission; Corporación Justicia y Democracia (from this institution, 35 optical discs with information regarding the cases of victims presented to the National Truth and Reconciliation Commission).

24 Created in 1992, the Memory of the World Program (MoW) is a UNESCO initiative aimed at preserving the documentary heritage of the world, housed in libraries, archives and museums, as a symbol of the collective memory of humanity. This heritage reflects the diversity of the people, cultures and languages; it belongs to everyone and must be fully preserved, protected permanently and be easily accessible. At <http://www.unesco.org/new/es/santiago/communication-information/memory-of-the-world-programme-preservation-of-documentary-heritage/>

25 Article Three No. 6 expressly states that its functions shall include "Custody and storage of the records gathered by the National Truth and Reconciliation Commission, by the National Corporation for Reparation and Reconciliation, the Human Rights Program, created by Supreme Decree No. 1005 of April 25, 1997, of the Ministry of the Interior, once their functions have been completed; by the Commission on Political Imprisonment and Torture set up by Supreme Decree No. 1.040, 2003 of the Ministry of the Interior; and by the commission referred to in article 3 of the transitional regulations of this law, once its functions have been completed. It may also request information on the functioning of reparation mechanisms and promote, coordinate and disseminate cultural and symbolic measures designed to complement respect for human rights and to vindicate victims and preserve their historical memory. Likewise, to request, gather and process all existing information in the possession of public or private entities that relates to human rights violations or political violence referred to in the Report of the National Truth and Reconciliation Commission, without prejudice to the provisions of the first paragraph" Law 20.405, at www.leychile.cl.

26 Inaugurated on January 11, 2010 its mission is "To make known the systematic human rights violations by the Chilean State between 1973 and 1990, so that ethical reflection on memory, solidarity and the importance of human rights nationally will be strengthened so that never again will these events that attack human dignity be repeated".

27 Working Paper on Human Rights Heritage: Sites of Memory, Memorials, Archives and Objects of Memory, National Monuments Council, December 2018, 53-58.

28 Presented in December 2017, during the government of President Michelle Bachelet.

29 Law 20.885, article 8. At www.leychile.cl

30 See *Reporte de seguimiento del Plan Nacional de Derechos Humanos (Follow-up report on the National Human Rights Plan)*, March 2018, Undersecretariat for Human Rights, Government of Chile, <http://ddhh.minjusticia.gob.cl/primer-report-de-seguimiento-del-plan-nacional-de-derechos-humanos/>

From the field of art and its different forms, these archives nourish creativity within the theatre, cinema, literature and visual arts, with greater frequency. In 2011, the television series “The Archives of the Cardinal”, inspired by the work of the Vicariate of Solidarity, had a great impact and a massive audience, bringing knowledge of the experience of the dictatorship and the work of human rights organizations to those who did not live in that era, and to those who did not want to know, or did not see what was happening in the country. To commemorate four decades of the coup d’état, the series “Chile: Forbidden images, 40 years later”, collected stories silenced in the media, rescuing images and photographs banned by censorship, especially records of social mobilizations in the 1980s. Recently the documentary “Las Cruces” supports its audiovisual story in the judicial file on missing detainees, forest workers of the commune of Laja. Visual artists have also worked with archives on their works. “*La geometría de la conciencia*”, by Alfredo Jaar at the Museum of Memory and Human Rights works from photographs, the silhouettes of victims.³¹ Voluspa Jarpa has made use of the declassified archives of the CIA for the realization of several exhibitions, among those “*La biblioteca de la no-historia de Chile*” (2011) and “*En nuestra pequeña región de acá*” (2017). In the theatre, the play “No tenemos que sacrificarnos por los que vendrán” (We don’t have to sacrifice ourselves for those who will come) structures its script based on the minutes of the military junta’s sessions, to approve the labour plan proposed by its labour minister, to the detriment of workers’ union rights. The phrase which alludes to the title of the play is a textual phrase of A. Pinochet in those sessions.

These are just a few examples of the numerous cultural productions that, especially after the year 2000, have used archives linked to human rights violations under the dictatorship, in their broadest sense, as a source and inspiration.

PUBLIC CONTROL OVER ARCHIVES

A growing awareness of the value of archives in transitional justice processes has allowed human rights organizations that existed during the dictatorship to seek safeguards to protect their archives. However, this has not been a quick or easy process, especially when it comes to organizations that existed outside the capital, or in small and geographically remote towns. However, the compilation and rescue work carried out by the Museum of Memory and Human Rights has been an important contribution.

With respect to the State archives, there has been no government policy to identify and safeguard these archives, despite the persistent demand of civil society and the recommendations of institutions such as the NHRI. In its Annual Report 2014, NHRI recommended to the executive branch an advancement in the elaboration and execution of a public archives policy that guarantees integrity and public access to the documentary heritage associated with massive and systematic violations of human rights.³²

In spite of this, from the research work developed by the Museum of Memory and Human Rights in the process of its installation, it was possible to locate and rescue archives in different parts of the State, in order to preserve them and make them accessible to the public. At the same time, the very act of making its existence known has allowed its protection, or at least prevented its destruction. This was the case, for example, in the Library of Congress, where the minutes of the sessions of the military junta

were located. Subsequently, the Library of Congress itself digitized all the minutes and made them available online.³³

Thus, the interest of institutions such as the MMDH, proactive public officials or researchers³⁴ has made it possible to identify and safeguard archives in other public departments³⁵ safeguarding them from severe risk of loss. There is no doubt that the dissemination of its existence reduces the risk of its elimination, since in Chile there is no specific rule, either for its protection or to ensure its public access.

RIGHT OF ACCESS TO ARCHIVES

The enactment of Law No. 20.285³⁶ on Access to Information in 2008, during the government of President Michelle Bachelet, has at least established mechanisms for requesting documentation from public bodies that previously had no willingness to give this information, let alone respond to this type of request. This law contains the regulation related to the state administration, the Law on the Transparency of Public Functions and Access to Information, and establishes that information prepared with a public budget, and is in the possession of administrative bodies in any format and support, is public. This has resulted in citizens having real access to a large amount of information, that prior to the enactment of the law, was very difficult to obtain. The transparency law creates an autonomous public-law corporation called the Transparency Council³⁷ to promote transparency in the public service, monitor compliance with regulations and guarantee the right of access to information. However, when it comes to requesting archives and information on human rights crimes, the refusal of parties of the requested institutions always persists.

In 2015, the Chilean Air Force (FACH) refused to provide information on the pilots of the Hawker Hunter planes that bombed the Palacio de la Moneda on September 11, 1973. The Transparency Council ordered the FACH to hand over the background information, which this institution repeatedly refused to do.³⁸

31 The Geometry of Conscience, Museum of Memory and Human Rights, <https://ww3.museodelamemoria.cl/exposiciones/la-geometria-de-la-conciencia/>

32 Annual Report 2014: Situation of Human Rights in Chile, National Institute of Human Rights (NHRI), <http://bibliotecadigital.indh.cl/handle/123456789/740>

33 Diaries of Parliamentary Sessions and Interventions, Legislative Corporations and Diaries of Sessions: 1973–1990, Library of the National Congress of Chile, https://www.bcn.cl/historiapolitica/corporaciones/periodos_legislativos?periodo=1973-1990

34 Carlos Dorat Guerra, Mauricio Weibel Barahona, *Asociación Ilícita. Los archivos secretos de la dictadura*, Santiago de Chile: Ceibo Ediciones, 2012.

35 Ministry of Foreign Affairs, in whose Historical Archive there is a variety of documentation that accounts for the repressive action and control of the dictatorship; Ministry of Public Works, where a file was found on the construction of the Dawson Island Prisoners Camp, the southernmost in Chile, to which the top leaders of the Popular Unity party, ministers and collaborators of President Salvador Allende were taken; this camp was the first public work of the dictatorship in 1973; Ministry of Justice, in 2017 files of war councils against political prisoners at the beginning of the dictatorship were located, of which until that date their existence was unknown, are some examples of these rescues.

36 See <https://www.leychile.cl/Navegar?idNorma=276363>

37 Transparency Council, <https://www.consejotransparencia.cl/>

38 Transparency Council basis for requesting preliminary hearing from the FACH Commander-in-Chief, Transparency Council, 8. 7. 2016, <https://www.consejotransparencia.cl/fundamentos-del-cplt-para-solicitar-instruccion-de-sumario-al-comandante-en-jefe-de-la-fach/>

Faced with this situation, the Office of the Comptroller General of the Republic opened an administrative summary against the Commander in Chief of the Air Force, applying the provision to the effect established in article 49 of the same law.

DECLASSIFICATION AND OPENING

In 2015, a bill was presented to Parliament to repeal Law 18.771, enacted by the dictatorship in 1989, which exempted the armed forces from the obligation that all public agencies have to deposit copies of their documentation in the National Archives of Chile, and authorizes them to destroy their documentation without consulting other bodies. The norm has served to prevent the delivery of information on the human and material resources that the armed forces assigned to repression, through their own intelligence agencies and others specially created, such as DINA and NIC. This project, which had the support of the National Archive and various civil society organizations, was approved in the Chamber of Deputies in November 2015, but to date has not continued in the Senate. In other words, it has stalled.

In relation to the law that established secrecy for 50 years for the archives of the CNPPT, there was extensive debate regarding the right to privacy of torture victims and their stories, and the collective right to truth and justice. Arguments were made in both directions. On the one hand, it was stated that those who had attended the commission were not asked whether they agreed to have their testimonies made public; on the other hand, it was argued that many people, who for the first time, many years after the events, related what they had experienced and the suffering to which they had been subjected, had expressed the wish that their testimonies should remain confidential.

In the context of this public discussion in 2014, a parliamentary motion was presented,³⁹ which ended up not being approved, to establish the public character of these documents. Subsequently, in 2016, emphasis was placed on the presentation of a bill to amend Law 19.992, and give access to the courts of justice. This bill is still in the legislative process.⁴⁰

In 2015, groups of former political prisoners, together with a political artistic collective, began a campaign to access their testimonies presented to the commission, with the slogan “memory is ours”. An artistically disseminated media campaign, increased the demand for access to these files. Appeals were also filed to the courts to obtain the right to this information, which were granted, and the plaintiffs were able to access their testimonies.⁴¹

The NHRI, the custodian of these archives by law, requested the Comptroller General of the Republic to make a pronouncement to determine whether the agency could deliver the information it held to the judges who requested it. The Comptroller’s Office determined that this documentation could reach the judges investigating human rights cases.

At the end of 2015, the NHRI began to deliver only the documents contributed by each victim to the commission, to the holders that requested them, but the following year, it decided to deliver all the documentation contained in the personal files “taking care not to violate the rights of third party victims and of the declarants.”⁴² The procedure used to protect the privacy of third parties has consisted of crossing out all personal data in order to anonymize them.

Currently the request of the organizations of former political prisoners, lawyers and other civil society organizations is to

obtain access to the digital databases of the CNPPT, so that it contributes to the processes of justice.⁴³ This request was rejected by the NHRI and the Transparency Council.⁴⁴ The requirement still continues, depending on the exercise of the right to justice that this information would provide.

In another field, the impact of the declassification in the United States of the CIA and U.S. State Department archives between 1970 and 1990 should be highlighted. Shortly after the arrest of A. Pinochet in London, researcher Peter Kornbluh⁴⁵ promoted, together with the National Security Archive,⁴⁶ a campaign for the declassification of more than 24,000 documents before the Clinton administration. Shortly afterwards, part of the documentation was handed over to the government of Chile and deposited in the National Library of Chile. Almost all these archives were crossed out, and in some cases almost all the documents were covered. Despite this, they revealed the role that the United States had played in the coup d’état, financing, responsibility, and complicity with sectors in Chile, such as the business sector, the press and the armed forces. Subsequently, new groups of documents were declassified and were valuable in clarifying, for example, the link between A. Pinochet and the crime of former embassy official Orlando Letelier in Washington, in September 1976, among others.

The request for the opening of the archives is permanent. In 2013, London 38, Memory Space, called for a public campaign “No more secret archives”, affirming that secrecy is anti-democratic, hinders the truth and justice processes, and perpetuates impunity for the guilty. It claimed that “the State has the obligation to provide all available information, and cannot rely solely on the assertion of the non-existence of the documents requested, or on restrictions to access, such as the privacy of individuals or national security” which are common grounds for denying access.

CURRENT STATUS

The current levels of recognition and need for the protection of archives are closely related to the increased awareness of their value for truth, justice and reparation in transitional justice processes; as well as in the approach to the reconstruction of the historical memory of the recent past and its pedagogical value.

Communities are increasingly interested in gathering and compiling their archives, reconstructing the history of their struggles in different periods, especially those who focused on social

39 Newsletter No. 9598-17

40 Newsletter No. 10883-17

41 Desclasificación Popular has a website on which those who voluntarily so determined may publish their complete files or part of them. See <https://desclasificacionpopular.cl/>

42 Information Valech Commission, National Institute of Human Rights, <https://www.indh.cl/destacados-2/comision-valech/>

43 Rodrigo Fuentes, “Organizaciones de DDHH intentan desbloquear datos de Comisión Valech”, in *Diario Uchile*, 4. 5. 2017, <https://radio.uchile.cl/2017/05/04/organizaciones-de-ddhh-intentandesbloquear-datos-de-comision-valech/>

44 Decisión Amparo Rol C3065-16, Transparency Council, https://extranet.consejotransparencia.cl/Web_SCW/Archivos/C3065-16/DecisionWeb_C3065-16.pdf

45 Kornbluh has published several books on these documents, among them: Peter Kornbluh, *Pinochet: Los Archivos Secretos*, Barcelona: Editorial Crítica, 2004.

46 About Chile Documentation Project, National Security Archive, <https://nsarchive.gwu.edu/about-chile-documentation-project>

and political transformations in the country, and then the struggle for freedom and democracy under the dictatorship. There is a significant development of lines of historical research through oral proceedings, and a growing awareness of the urgency of rescuing and recording sources. Thus, strong archival work has been developed in student federations, contextualizing the social and political process of which they were a part: in the rescue of union histories, agrarian reform and in diverse communities of memory in different parts of the country, the formation of local archives, neighbourhoods, and social organizations. There is an increasing movement that not only places great value in it as an irreplaceable heritage for the reconstruction of historical memory, but also in its value for the strengthening of democracy.

Collaborative work gave birth, in 2011, to the Memory and Human Rights Archives Network RAMDH.⁴⁷ Initially made up of 11 institutions or organizations,⁴⁸ it develops various activities to make visible and promote the use of its archives.

Regarding the State, at the end of 2017, the Ministry of Foreign Affairs made available to the public, through its website, with the purpose of contributing to the knowledge of the historical truth, a sample of documents guarded by its General Historical Archive (ARCHIGRAL). The account is on exchanges between the Ministry of Foreign Affairs and the Ministry of Defence, the armed forces, police, and intelligence services between 1973 and 1990.⁴⁹ After this first publication, the documentary exhibition has not been enlarged.

The National Archive of Chile, in charge of the custody of the Colonia Dignidad Archive, provided for public access, according to its consultation protocols, after having carried out a work of conservation and description.⁵⁰ It also began work aimed at identifying and proposing ways of dealing with documentation related to human rights placed in this institution.

For some years now, the judiciary has been developing a digital platform called Historical Memory, which includes the executive sentences of judicial cases of human rights violations that occurred during the dictatorship.⁵¹ The development of this resource undoubtedly marks some progress in the right to truth and information for all citizens.

However, it should be noted, that while there has been interest in preserving and making publicly accessible these archives in some state administration bodies, the reality is that these isolated and fragmented efforts are not enough. It takes political will and determination, and the investment of resources to catch up on this issue. There is still a great debt to the state archives linked to human rights violations, as well as in laws that protect them and ensure their public access.

LESSONS LEARNED AND RECOMMENDATIONS

The documentation of events, by human rights institutions and victims' groups at the times when they occur, and the awareness of safeguarding these archives, protecting them from the risks of destruction during the dictatorship, have proved essential as evidence in transitional justice processes. However, it was not as clear in the final days of the dictatorship, to demand the protection of the archives of the intelligence services, in order to prevent their possible destruction or concealment. This request was not among the urgent matters at the end of the dictatorship, as it was in other parts of the world, in which citizens took action to request that they not be destroyed.⁵²

As a result of the Chilean experience and the debates regarding the truth commissions archives, it is necessary that these commissions establish from the beginning, and in an informed manner, everything related to the documentation that they collect, compile and produce, both in relation to its subsequent destination, and the access that it will have, having as a support, the right to truth, justice and reparation.

Undoubtedly, the existence of the Museum of Memory and Human Rights, the sites of memory and civil society archives⁵³ are very relevant. There is a need for strong archival institutions, which can promptly take charge of locating, identifying, protecting and making publicly accessible, the documentation existing at the different levels of the state administration, which account for the repressive system and its actions. Having this institutionalization, resources and trained professionals will help prevent the risk of the disappearance of this documentation. Identifying, safeguarding and preserving it are permanent challenges.

There is an urgent need for specific laws on human rights archives that, on the one hand, protect them from possible destruction and, on the other, allow their access for the purposes of justice, research, historical memory, pedagogy or general interest. Safeguarding the dignity of persons and observing the protection of personal data, establishing terms and conditions for the responsible use of them, is critical. Chilean law has not established considerations regarding the right to historical truth, the right of access to public information, or the preservation of archives. This shortcoming should be remedied.

Finally, the appreciation of these archives as a source of knowledge, reflection, research and pedagogical value on the serious violations of human rights that occurred during the dictatorship, as well as their need for preservation and public access, should be understood as an element of the consolidation of democracy.

47 See <https://ramdh.cl>

48 University of Chile Students Federation Archive (AFECH); Archive of Graphic and Audiovisual Documentation of the University of Santiago de Chile (ArchivoDGA); Chilean Human Rights Commission (CCHDH); Parque por la Paz Villa Grimaldi Corporation; Christian Churches' Social Assistance Foundation (FASIC); Foundation for the Protection of Children Damaged by the State of Emergency (PIDEE); Salvador Allende Foundation (FSA); Documentation and Archival Foundation of the Vicariate of Solidarity (FUNVISOL); London 38 Memory Space; Museum of Memory and Human Rights (MMDH); Víctor Jara Foundation. In 2019, a representative of the National Archive of the Administration, dependent on the National Archive of Chile, was added.

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51 Human rights sentencing system, Digital Historical Memory, <http://mhd.pjud.cl/ddhh/index.php>

52 As happened, for example, in 1989 in the former GDR, with the Stasi.

53 They retain their historical archives and continue to operate autonomously: Chilean Commission on Human Rights (CCHDH); Christian Churches' Social Assistance Foundation (FASIC) and Documentation and Archival Foundation of the Vicariate of Solidarity (FUNVISOL); groups of relatives of disappeared detainees and groups of relatives of political prisoners. Other institutions transferred their historical archives to the MMDH and assume current human rights issues in development in their archives; other institutions, their civil society organizations begin to develop and collect archives recently.

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MEMORY OF NATIONS

Democratic Transition Guide

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REGIME ARCHIVES

PAVEL ŽÁČEK

CONTENT OF THE SECRET SERVICE ARCHIVES

During the long period of their existence, the Communist security services issued detailed documents about their activity, specifically about fulfilling the totalitarian regime repressive practice. These special character documents were set up based upon internal, relatively strictly defined, bureaucratic and conspiratorial parameters – the aim of these documents was to provide for the fundamental power conditions for the totalitarian regime’s existence, which especially referred to continuous repression, prevention (intimidation) and to the need to gather necessary information. *Taking into consideration these archive documents’ volume and relative completeness – they have an irreplaceable information value about the rule of the communist regime at that time.*¹

The administrative documents issued due to the activities performed by individual Czechoslovak security services (National Security Corps, Corrections Corps, Border Guard and Guard of the Interior, General Staff of the Czechoslovak People’s Army Intelligence Directorate) was continuously being archived in the respective special importance archive at the Ministry of the Interior and the Ministry of National Defense.² The agency-related operational agenda of intelligence and counterintelligence State Security units, including the Military Counterintelligence, the Public Police (*Veřejná bezpečnost*, hence the abbreviation VB) and of the Border Guard was stored in secret central or regional operational archives that were closely linked to the operational records, or this agenda was stored in the operational archives themselves – i.e. among the individual directorates’ records.

The Ministry of the Interior Foreign Intelligence Directorate (1th Administration) stored the agency-related operational agenda within its operational files in a specialized archive (statistic records department),³ the Counterintelligence Directorates (2nd Administration and its predecessors),⁴ the Surveillance Directorate (4th Administration) and the Directorate for the Protection of Party and Constitutional Officials (5th Administration) stored these in the operational archive pertaining to the central operational records (statistical records department),⁵ the Military Counterintelligence (3rd Administration)⁶ and the Intelligence Technology Directorate (6th Administration) stored these documents among its own special subject records⁷ and the Surveillance Directorate stored the surveillance file agenda at the Department for Surveillance and Information Technology.⁸ The Counter-intelligence Directorate in Bratislava (12th Administration) had its archive at its own analytical-information and statistical records department.⁹

The counterintelligence departments (I., II., III. department and district department) within the regional State Security units archived the agency-related operational file agenda at their evaluation and statistical records departments (groups),¹⁰ the Surveillance Directorate (IV. department) and the department for intelligence technology (VI. department) sent their files for storage to the Prague-based headquarters at the 4th or 6th SNB Administration.¹¹

The Intelligence Department of the Intelligence Directorate at the Central Border Guard and Border Protection Directorate archived its files at the statistical records department of the 1th Administration and the Counterintelligence Department at the statistical records departments within the regions.¹²

Apart from the State Security, the entities recording and archiving their agency-related operational agenda individually were the General Staff of the Czechoslovak People’s Army Intelligence Directorate, the Federal Directorate of the Public Police (including the regional Public Police directorates) and the Department for the Protection of the Interior at the Corrections Corps pertaining to the Ministry of Justice.¹³

As far as the Ministry of the Interior archives are concerned, the documents were stored in fonds of individual organization units (Administrations) that focused on security or administrative issues. The operational archive specific fonds contained agency-related operational files in the fonds mentioned below:

- the Special Fond (Z), containing files of extraordinarily important and secret State Security activities, including the investigations and deployment of agents,

1 Ladislav Bukovsky, “Archivy bezpečnostních složek po dvaceti letech. Úvod k tzv. Quintanově zprávě”, in *Sborník Archivu bezpečnostních složek*, 2009, (7), 7.

2 Czech National Council Act No. 97/1974 Sb., on Archiving, § 24.

3 For comparison, see Pavel Žáček, “Registrace, vedení a archivace svazků ve směrnících čs. komunistické rozvědky”, in *Památ národa*, 2006, (2), 64–65.

4 Prior to 1988, this especially referred to the Counterintelligence Directorate for the Fight Against the External Enemy (II. Administration), the Counterintelligence Directorate for the Fight Against the Enemy Within (X. Administration), the Counterintelligence Directorate for the Protection of the Economy (XI. Administration) and during the 1981–1985 period, also to the Counterintelligence Directorate for the Fight Against Extraordinary and Special Forms of Crime (XIV. Administration).

5 For comparison, see Pavel Žáček, “Administrativa písemností kontrarozvědné povahy II. Jednotný evidenční, statistický a archivní systém StB v letech 1978–1989”, in *Sborník Archivu bezpečnostních složek*, 2013, (11), 218; Patrik Benda, ed., *Přehled svazků a spisů vnitřního zpravodajství centrály Státní bezpečnosti v roce 1989*, Praha: ÚDVZK, 2003, XII–XIII.

6 For comparison, see Pavel Žáček, ed., “Armáda pod drobnohledem. Vojenská kontrarozvědka v dokumentech, 1974–1989”, in *Historie a vojenství*, 2003, (3–4), 825.

7 For comparison, see Pavel Žáček, *Přísně tajné. Státní bezpečnost za normalizace*, Praha: Votobia, 2001, 183.

8 For comparison, see Miroslav Urbánek, “Správa sledování Ministerstva vnitra v letech 1948–89 (Stručný nástin organizačního vývoje)”, in *Sborník Archivu ministerstva vnitra*, 2005, (3), 210.

9 Jerguš Sivoš, ed., *XII. správa ZNB. Dokumenty k činnosti Správy kontrarozvědky v Bratislavě v letech 1974–1989*, Bratislava: ÚPN, 2008, 21–22.

10 For comparison, see Pavel Žáček, *Nástroj triedneho štátu. Organizácia ministerstiev vnútra a bezpečnostných zborov 1953–1990*. Bratislava: ÚPN, 2005, 254–255.

11 For comparison, see Radek Schovánek, “Organizační vývoj technických složek MV 1864–1989 II.”, in *Securitas Imperii*, 1994, (2), 61–62.

12 For comparison, see Patrik Benda, Pavel Žáček, eds., *Denní situační zprávy StB z listopadu a prosince 1989*, in *Securitas Imperii*, 2000, (6/III), 1042; Benda, ed., *Přehled svazků a spisů vnitřního zpravodajství centrály Státní bezpečnosti*, XII–XIII.

13 *Ibid.*, XIV.

- the Secret Collaborators Fond (TS),
- the Counterintelligence Work Fond (KR), containing the files about the persons under surveillance,
- the Object-Related Files Fond (OB), containing files about individual institutions or social groups,
- the Tactical Fond (T), containing selected documents of key importance from the destroyed files and documents,
- the Old Documents Fond (S), containing documents from the time prior to the establishment of the file agenda in the 1950s,
- the Investigation Files Fond.
- the Historical Fond.¹⁴

ATTEMPTS TO DESTROY THE OPERATION DOCUMENTS OF THE POLITICAL POLICE

During the last days of its existence, i.e. on the verge of November and December 1989, the Communist regime decided to destroy evidence about its ruling, to hush up the crimes it had committed, the continuous breach of applicable national and international norms as well as the infringement of human rights. There were documents being destroyed, both in the centres of political power – within the archives and registries of the bodies of the Central Committee of the Communist Party of Czechoslovakia and its organization departments, as well as within the operational archives and registries of the Federal Ministry of the Interior's departments which especially refers to the secret police of the State Security, and files were also being destroyed within the organization units of the Federal Ministry of National Defense, within the units and groups of the Czechoslovak People's Army which especially applies to special units of individual organizations and institutions as well as to other pillars of power.

For various reasons, the exponents of the Communist regime didn't manage to destroy all the compromising documents and archive materials. First and foremost, they didn't have enough time, sometimes their own administrative norms hindered them in destroying the documents and there were also occasions where some of the responsible functionaries resisted participating in this planned and systematic destruction.

During the first weeks and months following November 1989, it was hardly possible to ascertain the scope of documents that had been preserved or destroyed. Mostly, this referred to issues that were subject to secrecy so that neither the public nor their representatives had access to them.

Irrespective of the lustration affair, i.e. irrespective of accessing data in the State Security files about ministers and deputies in the legislative bodies, which occurred during the spring of 1990, which in turn cast shadows over the Ministry of the Interior, the public wasn't granted access to the top secret Communist regime files, not even the public comprising of specialists focussed on this issue. Yet the first politicians were compromised due to their former collaboration with the secret police. During the new security forces personnel purge, thousands of State Security members were forced to resign from their functions.¹⁵

PUBLIC CONTROL OVER ARCHIVES

The Communist archive gradually became a problem which needed to be solved, this situation was aggravated especially

after the parliamentary elections in June 1990. Although in 1990 an agreement was concluded between the Ministry of the Interior of the Czech Republic and the Central Committee of the Communist Party of Czechoslovakia about handing over the archive materials of regional and district Communist Party of Czechoslovakia committees, the Communist Party fiercely resisted handing over the Central Committee of the Communist Party of Czechoslovakia archive.¹⁶ That's why on November 16th 1990, on the eve of the first anniversary of the students' revolution, the representatives of the new democratic power put through the Constitutional Act No. 496/1990 Sb. on giving back the Communist Party of Czechoslovakia's property to the people of Czechoslovakia; this act had an introduction stating that following its coming to power in 1948, the Communist Party regarded the state as its property, handling this property as if it had been its own. In order to get rid of the impacts of such a state at least partially, the Federal Parliament decided that the Communist Party of Czechoslovakia's archive materials issued until December 31st 1989 become the state's property on January 1st 1991 without any compensation. A similar decision was made about other written, visual documents or audio documents as well as other Communist Party of Czechoslovakia documents dating back to the period until November 30th 1989 which were to be taken over by the Central National Archive or its regional branches (§ 3).

Archive materials and documents from Communist security services remained classified temporarily and were stored in the Ministry of the Interior archives or were managed by the new security services.

On October 4th 1991, i.e. following the adoption of Act No. 451/1991 Sb., determining some further prerequisites for certain positions in state bodies and organizations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic, the archive materials from the former State Security that were partially managed by the Ministry of the Interior and partially by the Ministry of National Defense, were used for determining whether a particular person had been a member of the Communist secret police or a secret collaborator within the respective agency category. According to one of the paragraphs, it was even prohibited to publish documents for processing the so-called lustration certificates without the citizen's prior written approval (§ 19).

These documents were used in an identical way for the purposes of complying with Act No. 279/1992 Sb. of April 28th 1992, on some further prerequisites for certain positions filled by appointment or designation of officers of the Police of the Czech Republic and officers of the Penitentiary Service of the Czech Republic.¹⁷

Yet the post-Communist power still held the archive materials in a classified mode and they were not used in public discourse about the totalitarian regime's nature, with historians and other experts being granted access to these documents only on a very

14 For comparison, see Žáček, *Administrativa písemností kontrarozvědné povahy*, 207.

15 For comparison, see Pavel Žáček, "Sachergate": první lustrační aféra. Nesnáze postkomunistické elity (nejen) se svazky Státní bezpečnosti", in *Paměť a dějiny*, 2007, (1), 60–80.

16 Oldřich Sládek, *Ohlédnutí*, in *Archivní časopis*, 1993, (1), 19.

17 Pavel Žáček, *Lustrační zákony v České republice. Aplikace zákonů č. 451/1991 Sb. and No. 279/1992 Sb.* See <http://www.ustrcr.cz/data/pdf/konference/20let-pote/twenty-years-after-zacek.pdf>

limited scale. Not even the former political prisoners or other persecuted people gained access which gave rise to mistrust towards the bodies of the new power.

Communist power archive materials and documents, including the former security services materials and documents were used on an unlimited scale only by the employees of the new intelligence services (which were frequently the authors of these documents), and on a limited scale by police investigators, e.g. from the Office for the Documentation and the Investigation of State Security Activities (since 1995: Office for the Documentation and the Investigation of the Crimes of Communism). This state also didn't strengthen the trust put into the newly established bodies.

USE OF THE ARCHIVES DURING TRANSFORMATION

In the mid-1990s, the International Council on Archives prepared a document of major importance for UNESCO known as the Quintana Report. This report summarized the recommendations regarding the handling of former repressive regime archives. These archives were named the key instrument within the transformation era for strengthening collective and individual rights.

The following rights were described as collective rights:

- 1/ the right of the peoples to choose their own path to political transition.
- 2/ the unquestionable right of the citizens to the integrity of their written memory.
- 3/ the right to the truth.
- 4/ the right to identify those responsible for crimes against human rights.

The following rights were described as individual rights:

- 1/ the right to discover the fate of the relatives who disappeared during the era of repression.
- 2/ the right to know what information on individuals is held in the archives of repression.
- 3/ the right for historical research for the purposes of cognition.
- 4/ the right to amnesty prisoners and victims of political revenge.
- 5/ the right of restitution and compensation for the repression victims' suffering.¹⁸

RIGHT TO ACCESS THE ARCHIVES

On April 26th 1996, the parliament adopted the Act No. 140/1996 Sb., on making files resulting from the activities of the former State Security Police publicly accessible, for which the Ministry of the Interior imposed the duty to inform a citizen of the Czech Republic, or a citizen of the former Czechoslovak Republic, whether the former State Security's information system contains a file on this citizen, whether this file has been preserved and possibly to provide a copy of such a file to the citizen (§ 1).

If the citizen was listed as a collaborator, he was only entitled to access those parts of the file that were written at a time when this citizen was not listed as a Secret Service collaborator (§ 5/d).

In order to protect personal data, the Ministry of the Interior made the date of birth and the addresses of other people illegible, also making unreadable any other data about their private and family life, about their crimes, health and property.

This was done prior to making the file accessible via a copy of the file. If the file in question was one about a deceased person (i.e. when the application was filed by relatives), the data about the private life and about the family of all people were made unreadable (§ 6).

Going through the file, the applicant had the right to ask for the actual names of the people who were listed in the file under a false (a code) name to be told to him. If this was the case of a person listed as a State Security collaborator and if identifying such a person's correct name was possible, the Ministry was to immediately approve the application (§ 7).

The file an entitled applicant asked to be declassified and which was managed by the Ministry, ceased to be classified if it had been established prior to January 1st 1990. Yet the state provided for a precautionary measure, as the file could be classified again upon the Ministry of the Interior's decision, if such a thing served "*the state's security or the safety of people or property*" (§ 8).¹⁹

This act contained a lot of deficiencies. It was limited to the Czech (Czechoslovak) citizens and provided access to only a limited amount of files – roughly 60,000 – from several counter-intelligence State Security units, yet it did not refer to the personal files of the members of the secret police, but for example not even to the Surveillance Directorate's or the Intelligence Technology Directorate's file agenda.²⁰ Furthermore, the processing proved to be too expensive (even for the applicants), too bureaucratic and inefficient, being furthermore of much too low quality.²¹ This act didn't fulfil its role and became subject to criticism from society. The Act No. 107/2002 Sb. of March 8th 2002, which tried to make up for some of these deficiencies, stated that the purpose of the act is "*to reveal as much of the Communist regime practice in suppressing political rights and freedoms, as exerted by the secret repressive forces within the totalitarian state.*" The act was to provide the persecuted people with access to the documents about their persecution and to publish the data about the actors of this persecution and the activities linked to it.

Furthermore, the act stated that all preserved or reconstructed documents established due to the security services activities and managed by the Ministry of the Interior, by the Ministry of National Defense or by the Ministry of Justice during the period from February 25th 1948 until February 15th 1990, and which were recorded in the contemporary files or archive aids (the so-called registers), were subject to declassification and publication. Documents taken out of this process due to specific interests, i.e. because of the assumption that the interests of the Czech Republic in international relations – or its security interests – might be damaged, or documents where "*the life of a person might be seriously threatened*" were not to be subject to declassification and publication. Yet in order to exempt a document from

18 Antonio Gonzáles Quintana, "Archivy bezpečnostních složek bývalých represivních režimů", in *Sborník Archivu bezpečnostních složek*, 2009, (7), 22–24.

19 Act No. 140/1996 Sb., on making publicly accessible files resulting from the activities of the former State Security Police

20 Radek Schovánek, "Zpřístupňování svazků Státní bezpečnosti v České republice", in *Památ národa*, 2005, (2), 85

21 According to data provided by the Ministry of the Interior, within the period from the beginning of 1997 until the end of 1999, only 4,012 applicants received a positive answer to the question whether there was a file about them, and only 2,270 of them saw the file. Pavel Žáček, *Boje o minulost*, Brno: Barrister & Principal, 2000, 114–115.

declassification and publication, the ministries needed a consent granted by the Chamber of Deputies of the Parliament of the Czech Republic for monitoring the declassification process.

The act widened the scope of declassified files by the file (and document) agenda from the Main Directorate of Military Counterintelligence managed by the Ministry of Defense, from the Department for the Protection of the Interior at the Corrections Corps (the so-called prisoners agency, managed by the Ministry of Justice), from the Main Intelligence Directorate, from the Surveillance Directorate, from the Directorate for Intelligence Technology, from the Passport and Visa Directorate of the National Security Corps and from the Border Patrol and National Border Protection Main Directorate.

Another major change was the option to access personal (cadre) files of security services members containing data about the origin, course and termination of their service relationship, or to provide an extract of these documents in the shape of a member's personal record.

The ministries were further on obliged to hand over the information required upon an adult citizen of the Czech Republic's application, if this applicant wasn't imprisoned – or the ministries were obliged to make a copy of the preserved file accessible, including the personal files on collaborators or members of the security services, if they weren't foreigners.

Furthermore, the Ministry of the Interior and the Ministry of Defense were obliged to hand out in writing and in electronic form the register records from preserved or reconstructed protocols, volumes and other register aids of security services, with this information being handed over in the scope of object-related files or files about people listed as State Security collaborators or as Military Counter-intelligence collaborators – data about the establishment of such a volume or changes made herein, about people (if they weren't foreigners), or about objects to whom the volumes were related were to be handed over as well. Similarly, the Ministry of Justice issued in writing and in electronic form a transcript of the volumes from the Department for the Protection of the Interior at the Corrections Corps and it did so within the scope of object-related files or files about people listed as collaborators of this department, if these documents had been made use of by the State security.

The ministries were also to continuously issue lists of the declassified personnel (cadre) files of the security services members, including the date on which they became members of the security service, including the position within the security service and the date on which such an enlistment ended.

Prior to an entitled applicant being provided with access to the document, the ministries were to make the date of birth as well as the addresses of other people, including any data about their private and family life, crimes, health and property illegible when providing a copy of the document. If the declassified file was a cadre (personal) file of a security service member, also any data about people standing outside this member's service activity or public activity was made illegible.

The act enabled the citizens to hand over their own declaration about the content of the file or about the registration in the list itself, and the ministries were then obliged to add these declarations to the data about this person as an integral part of the document and to declassify them for applicants together with the documents or records in the register.

Furthermore, the legal standard amended the then applicable Act No. 97/1974 Sb., on Keeping Archives, stating that perusing the documents in the archives or the archive materials of the Communist Party of Czechoslovakia stored in the archives cannot be rejected nor conditioned by any other body's consent.²²

Especially, this act newly defined the notion of a State Security origin document, i.e. that an entitled applicant has the right to more information from the material that has been preserved than only to what is contained in his file. Furthermore, the files about State Security secret collaborators who weren't citizens of foreign countries, were opened to the public – this referred to the categories of a secret collaborator (*tajný spolupracovník*, hence the abbreviation *TS*), resident (R), Agent (A), Informer (I), holder of a borrowed flat (*držitel Propůjčeného Bytu*, hence the abbreviation *PB*) and holder of a conspiratorial flat (*držitel Konspiračního Bytu*, hence the abbreviation *KB*). Additionally, this act ordered the Ministry of the Interior, the Ministry of Defense and the Ministry of Justice to publish lists of secret collaborators (and object-related files) in counterintelligence units, in the intelligence, in the military counterintelligence and in the prisoners agency who were demonstrably cooperating with the State Security for its benefit. These lists would serve as a form of public control.

On March 20th 2003, the Ministry of the Interior published a list of secret collaborators within the above-mentioned categories. This list was published both in writing and on the internet and equalled 12 A4 notebooks with an overall page number of 6,665.²³ Within the years of 1997–2003, the respective authority made 3,391 investigation, operational and agency-related files accessible to applicants.²⁴ Within the following two years, the Ministry of the Interior presented only 108 personal files about former secret police members.²⁵

Within the period ranging from September 2002 until March 2005, the newly founded Office for the Declassification of the Documents of the Ministry of the Interior of the Czech Republic which focused on processing documents (files) written due to the counterintelligence's work, received a total of 3,671 applications, digitalized 402 documents (equalling 358,522 pages) and processed applications of 210 applicants. Furthermore, the office published data on 15,633 persons listed as members of military counterintelligence within the legally binding period, publishing also 1,881 records about object-related files within the legally binding period.²⁶

It was especially the Ministry of the Interior that was unable to raise the quality of its activities within the area of declassifying file agenda as this work remained ineffective and of low quality, the ministry didn't declassify all the file agenda (e.g. related to

22 Act No. 107/2002 Sb., amending the Act No. 140/1996 Sb., on the access to records created by the activity of the State security, and on some other acts.

23 See Jan Frolík, "Několik poznámek k 'Zveřejnění evidenčních podkladů a seznamu personálních spisů podle zákona č. 107/2002 Sb.' Ministerstvem vnitra České republiky", in *Sborník Archivu ministerstva vnitra*, 2004, (2), 311.

24 Vladimíra Vaníčková, "Odbor archivní a spisové služby MV: rok 2003", in *Sborník Archivu ministerstva vnitra*, No. 2004, (2), 308–309.

25 See Schovánek, "Zpřístupňování svazků Státní bezpečnosti", 86.

26 Jitka Pourková, "Hlavní správa vojenské kontrarozvědky – III. správa SNB – a zpřístupňování dokumentů vzniklých její činností v souladu se zákonem č. 107/2002 Sb.", in *Sborník Archivu Ministerstva vnitra*, 2005, (3), 414, 416 and 418.

the Surveillance Directorate, to the Intelligence Technology or to the Passport and Visa Directorate).

DECLASSIFICATION AND OPENING UP THE ARCHIVES

A new Act on Archiving No. 499/2004 was adopted following several years, and this act declassified archive materials that were created due to the activities performed by organizations united in the National Front and in the Communist security services. This act significantly broadened the access the researcher public had to the Security Service file agenda as it stated that the principle according to which only archive materials older than 30 years are declassified, does not apply to these materials. Furthermore, this act stated that in this case, an exception to the restriction of access to archive materials which contain sensitive personal data applies. This seemed to have solved the blocking paragraph of Act No. 107/2002 Sb., which hindered aliens from applying for their materials filed by the State Security.²⁷

In November 2005, a group of senators presented a bill on the National Memory Institute, a memorial institute designed according to the Polish and Slovak model. Finally, in June 2007, the Act No. 181/2007 Sb. on the Institute for the Study of Totalitarian Regimes and the Security Services Archive, and on Amendments of some Acts, by which a new administration office was established on February 1st 2008, was adopted. This office managed all the document and file agenda of the former Communist security services.

This act stated that the Ministry of the Interior, the Ministry of Defense including the Military Intelligence, the Ministry of Justice, the Security Information Service and the Office for Foreign Relations and Information shall hand over all record and registration aids, archive fonds, including the agency-related, operational files, investigation or cadre files, archive collections and individual archive materials and documents established due to the activities of the security services and due to the activities of the Communist Party of Czechoslovakia and of the National Front organizations that were operating within these services from April 4th 1945 until February 15th 1990, and the act stated that these ministries shall hand over any documents they are in possession of to the Security Services Archive.

CURRENT STATUS

Altogether, the Security Services Archive took over 18,028.54 running meters of archive materials,²⁸ including 201,934 so-called micro-proposals from the intelligence (1th Administration), 141,275 micro-proposals from the Main Counterintelligence Directorate (2nd Administration), 94,503 micro-proposals from the Main Military Counterintelligence Directorate (3rd Administration), from the Military Intelligence and hundreds of other microfilms.²⁹ During the period from February 2008 until December 2012, the Institute for the Study of Totalitarian Regimes, in cooperation with the Security Services Archive, managed to digitalize almost 150,000 inventory units equalling 28,414,834 files (pages), of mostly operational files from the intelligence and counterintelligence.³⁰

Almost nineteen years following the fall of the communist totalitarian regime, the Security Services Archive took over the responsibility for declassifying and publishing documents as well as archive materials related to the security services, according to the act on making publicly accessible files resulting from the activities of the former State Security Police and according to the Act on Archiving and Document Service.

Declassifying these archive materials and documents is further on being governed especially by Act No. 499/2004 Sb. on Archiving and Document Services and on the Amendment of some Acts; and to a lesser extent by Act No. 140/1996 Sb. on making publicly accessible files resulting from the activities of the former State Security Police, as amended; and by Act No. 181/2007 Sb. on the Institute for the Study of Totalitarian Regimes and on the Security Services Archive and on the Amendment of some Acts. The act thus broadened the liberal approach according to the Act on Archiving encompassing also documents of other security services, for example, it also refers to the Police, Border Patrol, Military Counterintelligence, General Staff of the Czechoslovak People's Army Intelligence Directorate, Protection of the Interior at the Corrections Corps etc.

Thus, almost any researcher may apply for access to any material stored in the archives – irrespective of whether he stands in any relation to the person, about whom he asks to receive materials. Furthermore, he may get digital copies, scans, or ask for photocopies or digital forms to be provided to him at his own expense. This scope and access is the most liberal one among all the post-communist countries.

Furthermore, this body provides for the access to this subject and offers the necessary aid and information for state authorities that are part of the security management, or this body helps in investigations led according to the Classified Information Act (National Security Authority), it helps the Intelligence Service of the Czech Republic to fulfil their tasks and the prosecution authorities for the purposes of criminal proceedings.

As far as this act is concerned, the intelligence services didn't delimit merely those documents and archive materials which further on contained classified information if they indispensably needed them in order to fulfil their tasks. They were (are) to hand them over to the Security Services Archive "*immediately after the classification level is abolished*".

LESSONS LEARNT AND RECOMMENDATIONS

It is necessary to prevent the archive materials and documents compromising the political and security functionaries of the totalitarian power being physically destroyed when the power is handed over and when the transformation period starts.

The archives of the authorities of power within the totalitarian (authoritarian) regime, especially the agency-related operational

27 For comparison, see Schovánek, "Zprístupňování svazků Státní bezpečnosti", 87.

28 Ladislav Bukovsky, "Archiv bezpečnostních složek – základní informace", in *Sborník Archivu bezpečnostních složek*, 2008, (6), 17.

29 *Ústav pro studium totalitních režimů & Archiv bezpečnostních složek*. Praha: ÚSTR, 2009, 38.

30 Rafał Leśkiewicz, Pavel Žáček, eds., *Handbook of the European Network of Official Authorities in Charge of the Secret Police Files*. Prague: ÚSTR, IPN, 2013, 141–145.

fonds of the secret police need to be handed over by the Ministry of the Interior or the intelligence services into the hands of a newly established archive which is independent of the national security bodies. It is furthermore necessary to declassify this specific agenda, and to make it accessible to the people for the purpose of re-forging the totalitarian past, and simultaneously making

it accessible to the researchers due to the need of a specialized historical reappraisal.

It is further on necessary to make use of the archive materials in carrying out checks in order to comply with the rehabilitation acts, in order to investigate the previous regime's crimes and in order to reveal to the public how this regime made use of its power.

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REGIME ARCHIVES

MEELIS SAUEAUK

INTRODUCTION

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

DESCRIPTION OF THE DEFAULT SITUATION

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

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

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

DESCRIPTION OF THE TRANSITION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CURRENT STATUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LESSONS LEARNT

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

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

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

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

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

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

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

RECOMMENDATIONS

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

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

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

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MEMORY OF NATIONS

Democratic Transition Guide

[The Georgian Experience]



National Endowment
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REGIME ARCHIVES

ANTON VACHARADZE

INTRODUCTION

Access to the Soviet archives and archival documents remains a contentious topic among many post-Soviet countries. The transition to democracy, de-sovietisation and rethinking of the Soviet past proceeded at a different pace and took various paths in the former Soviet republics. These differences determined state policies toward archives. In many countries, Soviet era documents remain classified, and archives are not accessible to scholars and historians; other countries, only partially. On a legislative level Georgia, together with the Baltic States, may seem like a good example of a post-Soviet country with an open, available, and accessible Soviet archive for researchers and visitors. However, on a practical level, there are problems in transparency and free access that some researchers have faced during their work at the reading rooms of the National Archive.

During the 70 years of the Soviet rule, history was used as an ideological weapon devoid of any real facts; truth was full of falsifications, misinterpretations, communist postulates and clichés. The only space where communists were truthful and honest was with “Secret” and “Top Secret” documents that Soviet bureaucrats circulated among the top level of government and ruling elite. Without archival work, no genuine and accurate scientific and historical research is possible regarding the Soviet era.

Modern day progressive society has agreed that totalitarian regimes, with its political repressions and prosecutions, must not be repeated. In order to ensure this core value, a crucial task and necessity is a proper analysis and study of history. In particular, the study of archival documents, which are often the only accurate sources of information about the tragic events of the past. The democratization of the intelligence agencies and polices can't occur properly if they continue to guard the archives containing information on mass human rights violations and continue to use the same methods of their predecessors. It is possible to construct new state institutes, including, breaking off the continuity chain with the organs of the retaliatory body, which had implemented the repressive actions. Open access to the archives of the totalitarian intelligence agencies, not only gives the chance to restore the violated rights, but also shows that information on all crimes will become known to the public, sooner or later. In order to avoid repeating the totalitarian practices of the past, it is important to inform society how the repressive modes had worked.

Only a full opening of the archives of the intelligence and security agencies can give answers, both to private matters of citizens, as well questions that have enormous value for the entire society. It is impossible to have a valid written history of the 20th century of any former Soviet country without studying these archives. The issue is also important in regards to freedom of information, as access to such documents is one of the components of an open government, especially in post-Soviet states, where openness should start from the archives. Moreover, the issue is relevant in terms of transitional justice as well. Soviet repressions remain one of the main traumatic points in the collective memory of post-Soviet countries. Publishing authentic documented data

on the repressed, as well as the individual stories, will support the process of the rehabilitation of the victims, deliver the truth to the families of the victims, and help restore justice and promote reconciliation within the entire society.

DESCRIPTION OF THE DEFAULT SITUATION

The most important communist secret service archive in Georgian SSR was the archive of the Georgian territorial organ of the Committee for the State Security (KGB) in Tbilisi.

According to official information of the Ministry of Internal Affairs (MIA) of Georgia, the history of the KGB archive follows: in March of 1921, according to a resolution passed by the Presidium of the Special Emergency Committee, or “Cheka”, the registration archive department was formed. Its task was to gather and preserve incriminating materials about numerous “enemies” and “dangerous elements” of the state that the Cheka had identified. Thirty staff units were selected for the registration archive department.

Between 1921 and 1992, 230,000 archival files were created. In the beginning of the 1990's the files were stored in the cellar of the 10th department of the Committee for State Security (KGB) of the former Georgian SSR. In 1990, mass anti-Soviet demonstrations took place in the center of Tbilisi, on Rustaveli Avenue right next to the MIA-KGB building. The demonstrators broke into the building and tried to seize the secret documents. The guards quickly dispersed the protesters. Shortly thereafter, the former KGB's central building caught fire in the Tbilisi Civil War of 1991–1992. As a result, 210,000 archival files were destroyed – about 80 % of the entire collection. The Documents that survived were soggy; most of them suffered water damage from the efforts to put out the fire. War and fire affected MIA archives and a large portion of the collection was destroyed as well. The remaining archival files from the former archives (approximately 20,000 units), most of them in poor condition, were provisionally stored in the cellar of the building of the state Archive. The files suffered even more damage from being stored in the cellar, and their rescue became an urgent matter.¹

Naturally, one can suppose that the complete content and capacity of this archive will remain unclear and the actual number of documents may differ from the official number. In general, this archive is subject to speculations and mystifications. According to the alleged witnesses and participants of the process: some of the important documents from the archive were transferred to a special KGB depository in Smolensk, Russia. A group of Georgian KGB employees escorted the documents, probably in order to sort and then to destroy them. The above sources claim they were the documents about intelligence developments, accounts and reports.² Some of the documents that were not destroyed,

1 The Archival Bulletin, N1, 2008, 6–8.

2 Documentary “Lost History” [*Dakarguli Istoria*], 2014, <https://www.youtube.com/watch?v=5vYIBOxhBj4>

were sent back, but the condition and legal environment of the remaining part of the documents in the Smolensk archive are unclear. Since 2003, there have been talks about the return of the documents (originals or scanned), but without any consequences. After the 2008 war, Georgia broke diplomatic relations with Russia and the archival institutions no longer have any contact.

Besides the KGB archives, the Ministry of Internal Affairs of Georgia is also a repository of the archive of Central Committee of the Communist Party of the Georgian SSR: a resolution passed by the presidium of the Central Committee of the Communist Party (Bolshevik) of Georgia on June 24, 1922, created the *IstPart Commission* (Commission on Party History). *IstPart's* primary mission was to collect, academically process and publish materials on the history of Georgia's Communist organs. In late 1929, under the instructions of the Lenin Institute, the Party History Institute established the Party Archive. On the basis of a resolution passed by the Central Committee of the Communist Party of Georgia on February 23, 1932, the Historical-Revolutionary and Scientific-Research Institute of Stalin was formed in Tbilisi. In June 1934, the Institute became a branch of the Marx-Engels-Lenin Institute of the All-Union Central Committee of the Communist Party, and later, the two merged completely. The *IstPart* archive, as well as the documents from the Central Committee local divisions, was transferred there. Between 1933 and 1937, the so-called IMELI (*IstPart Marx-Engels-Lenin Institute*) building was constructed on Rustaveli Avenue, Tbilisi, where the Party Archive was placed, and where it functioned until 2007.

The predecessor of the modern National Archives of Georgia was established in April 23, 1920, according to the law "About the establishment of Republic's Central Scientific Archive", issued by the Democratic Republic of Georgia. On July 1, 1921 the Revolutionary Committee of Georgia issued a decree "About the reorganization of the Archival Affair". After this, the archival field of the Georgian SSR was ruled according to Soviet legislation almost for seven decades.³ After Georgia regained independence, the National Archives was a subdivision of the Ministry of the Justice. The 29th December, 2006 law, "On the National Archival Fund and the national Archives" was adopted and the National Archives gained the status of a legal entity of public law, still supervised by the Ministry of Justice.⁴ During the Soviet Era, the predecessor of the National Archives had secret materials that were regulated differently and annually only a few people with the permission of the higher Party and KGB organs were granted access to the reading room of the secret materials.⁵ Lack of a suitable finding aid was an obstacle for getting the necessary document too: many titles in the finding aid, books and catalogues, were censored and hidden because of their not very "desired" historical background.⁶ Today the National Archives of Georgia doesn't contain any secret documents, and all their records are available for everyone, if it does not contradict with the state law on personally identifiable information.

Some of the researchers noted, that in order to restrict access to documents the archives tend to find loopholes in current legislation. One such loophole is the concept of "personal information". The National Archive network refer to the Law on the National Archives and Archive Fund, which prohibits third parties accessing documents containing "personal information" without the consent of the person or his/her heirs before the expiration of the 75-year period from their issuing. Referring to this clause, the archive arbitrary blocks all information after 1943,

often making it difficult to access materials from earlier years as well. The law does not consider that the legal concept of "personal information" implies any information that allows identifying the person (including the name and surname). As a rule, that part of the information that requires special control is often called "sensitive" or "personal", as it covers information about the private life, finances and health of an individual. The law does not consider these differences in terms and concepts, and blocks access to all information about all persons, regardless of who the person is – an individual or a civil servant. The situation is even aggravated by the indifferent attitude of the supreme authority towards the problems of collective memory, Soviet totalitarianism legacy and problems in the archival space.⁷

DESCRIPTION OF THE TRANSITION AND CURRENT STATUS

To preserve the remaining part of the KGB Archive from the repeated danger of fire, in April and May of 1995 the governing body of the Ministry of State Security provided space for the materials in the so-called "Moduli" scientific technical center. Preparation work for accommodating the archive materials was carried out in this emergency situation. After the "Rose Revolution" in 2003, attention to the KGB archives in Georgia increased again. As mentioned in the official statement of MIA, after 2004, the conditions of the archive depository started to improve. The merging of the Archive Department with the Ministry of Internal Affairs in 2005, and the combining of the archival materials was especially important. After this, the restoration and systematization of the documents began according to the archival rules and regulations. As it was stated in the "Archival Bulletin", the MIA official magazine, one of the priorities conducted by the Archive Department of the MIA, is searching for key information, and providing certificates for persons, who were subject to unjustified repression. These certificates help in getting court decisions, which assign the victims or their heirs some small pensions and other benefits.⁸

In 2002, the future winning politicians raised the issue of lustration in their pre-election promises and wanted to implement the so-called "10 steps to freedom" – a project offered by several NGO's, but later, when they got into the Government, they quit all discussions about the issue. Their decision, not to develop the idea, was later criticized several times by the Georgian media.⁹ After time, discussions about the issue faded away from Georgian discourse, and no wider discussions took place, only few mentions in media. After the 2008 war between Georgia and Russia, the authorities began a new policy in the field of collective

3 See National Archives of Georgia, "Historical Background of National Archives of Georgia", <http://archives.gov.ge/en/history>

4 Law "On the National Archival Fund and the National Archives", Date of issue: 29. 12. 2006, <https://matsne.gov.ge/ka/document/view/22420>

5 Interview with the Deputy Director of the Central Historical Archive, Ketevan Kobiashvili, 2015.

6 Anton Vacharadze, "Problems of Archival Descriptions in Post-Soviet Countries", Case study according to the Central Historical Archive of Georgia, International Conference Proceedings, Radenci, 2016, 46.

7 Irakli Khvadagiani, "Guide-book – Open Access to the KGB Archives in the Eastern Partnership ('Georgia')", Kyiv, 2017, 29.

8 The Archival Bulletin, N1, 2008, 8–10.

9 See Tea Gularidze, "Deficienes of ruling Party were visable from day one", in *Civil.ge*, 28 February, 2004, http://www.civil.ge/geo/_print.php?id=6139

memory; the Soviet past, terror, and political repressions became a central issue for this project. The authorities decided to restructure and modernize the former Georgian SSR KGB archive. Resolution no. 150, passed by the President of Georgia on April 5, 2007, moved the collection to the KGB Archive Administration of the Ministry of Internal Affairs of Georgia.¹⁰

Noteworthy documents still preserved in the KGB Archive include those on the 1922–1924 Anti-Soviet uprising, the Civil War, the dissident movement, the events of March 9, 1956 in Tbilisi, the so-called “Mingrelian Case” and many others. After the inventory and digitalization of the KGB Archive, it became possible to tell the actual number of documents. According to the official guide-book issued by the archive management, the situation is as follows:

Fonds no. 1 Normative acts – consists of 1,134 the former “Top Secret”, “Secret” and “Non-Secret” volumes, which range in date from 1920 to 1990 (excluding normative acts from 1921). The following themes appear in the acts: personnel; operations against espionage, “hooliganism”, robbery, speculation, smuggling and hard drinking; secret services; transportation; weapons storage and security; internal affairs; internal discipline; the implementation of orders and resolutions; cases brought before the military tribunal; confiscations and requisitions; border security; censorship in state and private theatres; travel abroad; diplomatic property and mail; courier service; secret business correspondence; published journals; employment; association with foreigners; activities of the State Political Directorate (GPU); issuance of credit; secret correspondence; application reviews; prisoners statistics; issuance of diplomatic and transit visas; the organization of sport institutions; concentration/labour camps; rules against photographing/filming military units; military service law; literature storage and security; the rights of consulate representatives; regulation of sanitary inspections; sale of horses; storage of special construction materials; regulations concerning arrival and departure of foreigners to/from the USSR; dactylography (fingerprinting) of criminals; rules concerning human filtration; keeping of state secrets; operations execution; etc.

Fonds no. 6 Criminal Cases – The Archive of the State Security Committee of the Georgian SSR (KGB Archive) combines criminal cases of the Special Committee (Cheka), State Political Directorate (GPU), Joint State Political Directorate (OGPU), People’s Commissariat for Internal Affairs (NKVD), State Security Committee (KGB) and Ministry of Internal Affairs (MVD). These documents range in date from 1919 to 1989. The Archive holds 20,000 criminal cases, most of which are of persons tried under the articles on political crimes: Article 58-10 (anti-Soviet agitation/propaganda) and 58-11 (organizing anti-Soviet activities). The remaining cases are of persons tried under the articles on treason, espionage, terrorist acts, border violation, smuggling, illegal currency operations, drawing up illegal files, organizing mass disturbances, speculation and ordinary crimes under various articles of the criminal code.

These fonds also hold the criminal cases of the 9th and 11th Red Army in pre-Soviet Georgia. These unique cases include photographs, documents and personal correspondence. This fond also contains exclusive materials about the 1924 Anti-Soviet Uprising. These materials (4,100 cases) are dispersed throughout the files from 1925 up to 1927.

Fonds no. 6 contains 4,180 criminal cases of the 1937–1938 Great Purge.

Fonds no. 6 also includes criminal cases from the World War II and after (1939–1950). These cases were built on the basis of Article 58-1 (treason), and those convicted were sentenced to 25 years in prison. Family members of the “traitors” were also tried.

From the later decades, cases of note include those of the 1970s dissident movement in Georgia and Helsinki Group, and the twenty-two volume Hijackers Case (no. 8309) of the 1980s.

Fonds no. 8 Meeting Protocols – combines protocols of the board, presidium, special advisory and so-called “Troika” of the Special Committee (Cheka), State Political Directorate (GPU), Joint State Political Directorate (OGPU), People’s Commissariat for Internal Affairs (NKVD) and Ministry of Internal Affairs (MVD). This fonds consists of 491 cases created between 1921 and 1955.

Fonds no. 9 Filtration Materials – this fond collects state checking and filtration control materials from 1946–1951. After World War II, many combatants were checked and sent to the so called “Filtration Camps”, where they were subject to forced labour. They were charged with cooperation with the German Army.

A considerable part of this 45,000-case fonds was destroyed during the 1991–1992 Tbilisi Civil War. Only 1,300 cases remain.

Fonds no. 12 Executions – holds documents concerning death-penalty sentences from the Special Committee (Cheka), State Political Directorate (GPU) People’s Commissariat for Internal Affairs (NKVD) and Ministry of Internal Affairs (MVD) between 1921 and 1952. This fonds consists of 92 cases; 16,693 persons were executed.

Fonds no. 13 Special Exiles – this fonds collects the “Echelon Lists” of exiled persons and cases of “special exile” from 1941 to 1951.

The “Echelon Lists” provide the following information: number of family members exiled; names of adult exiles; number of underage persons; echelon numbers and railcars used for transport. People sent to exile from Georgian SSR included émigrés, so called “traitors of homeland and people”, former prisoners of the German army (prisoners of the WW II and civilians deported to Germany for forced labour), citizens and families suspected of cooperating with the Turkish secret services, and people of Greek, Iranian, Turkish, German, Kurdish and Armenian, Assyrian nationality / ethnicity. Minors and disabled people were also subject to exile.

On the basis of Resolution no. 744, passed by the USSR Defense Committee on October 8th, 1941, all ethnic Germans were sent to exile.

On the basis of Resolution no. 6279, passed by the USSR Defense Committee on July 31st, 1944, Meskhetian Turks, Azerbaijanis, Kurds, Iezids, Khemshil Armenians,¹¹ Adjarans, Lazs, Iranians and Turks were re-settled.

On the basis of Resolution no. 2214-856, passed by the USSR Council of Ministers on May 29th, 1949, Armenian, Greek, Assyrian and Turkish families were exiled from Georgia.

On the basis of Resolution no. 4893-21136, passed by the USSR Council of Ministers on November 29th, 1951, Georgians

¹⁰ Ministry of Internal Affairs of Georgia, “MIA Archive. History”, <http://police.ge/en/useful-information/mia-archive?sub=428>

¹¹ *Meskhetian Turks and Khemshil Armenians* – Sunni Muslim population of Georgian and Armenian ethnicity from Meskhet-Javakheti and Adjara region of Georgia.

(primarily from the Adjara region), Azerbaijanis (primarily relatives of émigrés) and former prisoners of war and their families were sent to exile.

Fonds no. 14 Missing in Action – This fond collects lists of those missing in action, captured or killed during World War II. There are 105 volumes, preserving information on 120,000 persons. Each volume deals with approximately 1,200–1,800 individuals.

These lists include valuable information including soldiers' military ranks, the names of persons injured, captured or killed, and the whereabouts of the deceased.

Example: Grigol Grigorevich Avalishvili, date of birth – 1902; place of birth – Poti region; summoned by the Poti Regional Commissariat; title – Red Army Soldier; position – rifleman; military unit – 800th Rifle Regiment; mobilized – 5. 7. 1941; cause of death – died of injuries; location of grave – Orel Oblast, Dolgorukov Region, village of Stepanovka.

These documents are preserved in Podolsk, Russian Federation and MIA archives preserve its copies.

Fonds no. 21 Rehabilitations – Lists of people rehabilitated by the Supreme Court Board of Criminal Cases: The Prosecutor's Office of the Georgian SSR issued rehabilitation notices for citizens oppressed by the state political administration and the NKVD.

On January 16th, 1989, the USSR Supreme Council passed a resolution declaring all repressed persons rehabilitated.

The 60-volume fonds provides information on approximately 18,000 victims of repression.

These fonds also hold the lists of those rehabilitated by the Supreme Court Board of Criminal Cases. These lists were transferred from the National Archive.

Between 1955 and 1960, victims of politically-motivated repressions by Soviet authorities were rehabilitated by the Supreme Court Council of the Georgian SSR.

There are six volumes and 10,768 rehabilitations.¹²

The Archive of the Communist Party of Georgian SSR is one of the biggest archives in Georgia, preserving about 8,300 fonds, currently preserved at the MIA Archive. Archival fonds and materials are crucial to the study of the Party history, as well as the history of the Young Communist League (Komsomol). In recent years, interest in the Archive has grown daily and many important projects have been accomplished. An electronic database was created, interesting new data was found and made accessible to society. And over 8,000 photos were digitized. Documentary films, TV programs, publications in newspapers and magazines have incorporated Archive materials. Both Georgian and foreign researchers visit the Archive frequently, and the bilingual magazine *Archival Bulletin* is published on the basis of its holdings.¹³

The National Archives of Georgia is the largest holder of archival materials in the country. It is significant, not only for the local population, but for scholars worldwide, who study the history of Caucasus, Russian Empire, the First Democratic Republic of Georgia, the Establishment of Bolshevik State, the Georgian Soviet Republic, and the Period of transition from Soviet State to Democracy. The Archives registers about 1000 researchers a year, more than 100 of which are from foreign countries.

As I have mentioned, the MIA and the National Archives of Georgia do not keep classified and secret materials. The law "On the National Archival Fund and the National Archives"¹⁴ oversees the openness of the materials of the national archival fonds,

according to the principles declared in the "Law of Georgia on Personal Data Protection";¹⁵ except those materials containing state secret documents, documents that contain personally identifiable information, criminal trial materials, and in some cases, if 75 years from its creation haven't passed, or in other legislative cases that do not extend to it.

According to its official magazine, the Georgian MIA Archive Administration's web site is a perfect model of how the information can be accessed by anyone. Georgia, along with the Baltic States, was a pioneer in opening the archive of special-services. That was a result of the authority's political will. The web site of the Archive Administration was highly praised, as there should be many official documents and data available, which are still secret in neighboring countries. That web site can be, according to the magazine, a model for other countries.¹⁶ However, in criticism of the version that the official magazine offers, we can simply compare the web site with role-model archives, and we'll see that the search tool of the MIA archives web page isn't a successful example of digitization and transparency, and has a minimal degree of digital access.¹⁷ The same may be said of the website of the National Archives: the website is multilingual, with better design, but also has a minimal degree of digital access and more relevant for PR/marketing issues than towards researcher's needs.¹⁸

Also, some questions have emerged about the Archives and some problems are still unresolved. These questions were indicated in the analytical report "Open Access to the KGB Archives in the Eastern Partnership" issued in Kyiv in 2017:

- 1/ What has happened to personal records and personal files of the employees of repressive organs? Whether the archive and the file cabinet of the secret KGB officers were preserved or were burnt?
- 2/ What has happened to the KGB district departments of the Georgian SSR archives?
- 3/ Where is the archive and documentation of the frontier and internal troops?

In the process of writing this article, the author addressed these questions to MIA Archives' officials and received the following answers:

- 1/ The major parts of the records were burnt during the events. The officials suppose that one copy of every created document was sent to Moscow because this was the common practice. After independence, some officials continued to work in Security Service of Georgia and restored their own documents via service record books. Also, according to state law, increased social benefits and pension were provided for officials, who

12 Archive of the State Security Committee of the Georgian SSR, http://archive.security.gov.ge/security_fond.html

13 Ministry of Internal Affairs, "MIA Archive. History", <http://police.ge/en/useful-information/mia-archive?sub=428>

14 Law "On the National Archival Fund and the National Archives", Date of issue: 29. 12. 2006, <https://matsne.gov.ge/ka/document/view/22420>

15 Law of Georgia on Personal Data Protection, Date of issue: 28. 12. 2011, <https://matsne.gov.ge/ka/document/view/1561437>

16 The Archival Bulletin, N5, 2009, 112–114.

17 See The Archive of the Ministry of Internal Affairs of Georgia, <http://archive.security.gov.ge/>

18 See National Archives of Georgia, <http://archives.gov.ge/en/home>

19 Law "On Social Security of Persons Transferred to the Reserve from Military Bodies, Internal Affairs Bodies and the Special State Protection Service, and Their Family Members", Date of issue: 16. 10. 1996.

worked for the Security Service¹⁹ and because of this some of people requested and received the relevant notices from Moscow.

- 2/ All the materials from the district departments of the KGB were sent to Tbilisi for centralized registration and record keeping.
- 3/ These files are not kept in the MIA Archives. They suppose, that these materials were under supervision of the administration of the border district of South Caucasus, and thus were fully under the supervision of Moscow.

The other major problem is that although there is law that regulates the basic principles of archive business and archival institutions – already mentioned “On the National Archival Fund and the National Archives”; the MIA and other state archives, except for the National Archives, led by their own regulations, establish separate regulations or charters of internal order. Therefore, different archives have different working conditions and there is no unified strategy of physically storing documents, keeping records, processing search queries, and the usage of documents on scientific issues. Since 2009, there were no incidents of refusal to provide documents from the MIA archive. Internal order and prices of services are regulated by separate rules:

- 1/ The Decree of the President of Georgia No. 494 from 6. 9. 2011 “On the creation of the Ministry of Internal Affairs Archives” defines the functions and structure of the archives and its offices;
- 2/ The Decree of the Government of Georgia No. 428 from 16. 10. 2012 “On payment for services provided by the Ministry of Internal Affairs Archives”.

Both Georgian and foreign citizens are allowed to access the documents – the law does not provide any restrictions on the basis of nationality. But it also does not give any privileges to scientists, students, etc. Even individuals, who are the subjects of the records themselves, or their heirs, do not have any advantages in accessing documents. They pay very high prices to copy documents that relate personally to them or their family members. Usually the archive issues copies with “watermarks”, which according to scholars, practically excludes the full use of the “product”.²⁰

Currently the MIA Academy Archives is moving to a new building, which gives hope for better working conditions with the documents. Before moving the MIA Archives to a new building, the first MIA Academy Archives department (MIA-KGB Archive) was located in the State Security building, and the second department (Communist Party of Georgian SSR archive) was stored in former communications office building. Working conditions in the reading room are rather uncomfortable. There is not enough space, the hall is located next to the working rooms, and there are no stationary computers or the Internet.

LESSONS LEARNT

The fire in the KGB Archives, the wars and overall chaos in Georgia in the 90’s, strongly influenced the public’s attention to the comprehension of the Soviet past. There has been several wars in the country and there was no initiatives or discussions about the archives and the sensitive problems of Soviet history.

Only in late 90’s, and the beginning of 2000’s, did public initiatives about lustration, rehabilitation of victims of Soviet repressions, rethinking the Soviet past and the Red terror, start to

emerge. Even with the new era, and westernization of the country, these questions still remain.

After the Ministry of Internal Affairs Archives was reformed and opened in the late 2000s, the issue of transparency and access to the data became significant, and since then, the Archive and the authorities have always stressed that the Archive be absolutely transparent and provides modern services. Transparency of the MIA Archives is important and, besides the scholars, who work on various topics, the organization itself publishes a scientific popular magazine – *The Archival Bulletin*,²¹ as well as its online version. The topics in the magazine respond to Soviet repressions, the Soviet regime and the overall crimes committed by the state security apparatus.

During the 1990s, there was only one organization from civil society in Georgia – the Georgian “Memorial”, which tried to unite the members of repressed families, systematize information about the victims, collect family archives and disseminate information among general public by publishing them online. The organization still exists, but does not actively work anymore, and the online archive is not available. The Georgian society “Memorial” started one of the public initiatives about KGB Archive materials. It was engaged in the systematization of archival data regarding repressed persons, who were shot in the Georgian SSR in 1924 and 1937–1938. The Georgian society “Memorial” published this data in its own newspaper, but due to lack of resources and other reasons, the process soon stopped.

Since 2010, the non-governmental organization “Soviet Past Research Laboratory – SovLab” has carried out a number of researches and educational projects in the archives aimed at understanding the Soviet past: “Topography of Red Terror” – a historical and educational tour; a map with stories of the sites, places, houses of the old cities and of the people living there. In 2011–2012, the publications “Topography of Red Terror – Old Tbilisi”, “Comprehension of the Soviet Past – a Collection of Discussions”, “Lost History – the Memory of Repressed Women”, were issued. Two documentaries were also produced: “Great Soviet Terror – People’s Stories”, “Stories Told Live – the Memory of Repressed Women”. Within the framework of this project, exhibitions were organized in various cities of Georgia. That same year, the organization launched the “Public Archive” project (archive.ge) – it is an open web-archive that collects oral stories and digitized versions of unique historical documents – personal archives of Georgian citizens (including those documents that are stored in the families of the repressed persons). In 2013–2017, the organization carried out such projects as: “Memorial Collection of the Constituent Assembly of the Democratic Republic of Georgia”, “Project on the Identification of Places of Mass Executions in 1920–1940s Years in Tbilisi, Telavi and Gori”, “History of the Political Red Cross of Georgia” and “History of the Local Governments Reform in the First Republic of Georgia in 1918”.²² In addition, “SovLab” initiated a draft bill that implies a possibility for the researcher to access the archives’ reading hall with his / her own camera and inadmissibility of interpretation of the Law

20 Irakli Khvadagiani, “Guide-book - Open Access to the KGB Archives in the Eastern Partnership (‘Georgia’); Kyiv, 2017, 29.

21 See The Archive of the Ministry of Internal Affairs of Georgia, “The Archival Bulletin”, http://archive.security.gov.ge/archival_bulletin.html

22 Irakli Khvadagiani, “Guide-book – Open Access to the KGB Archives in the Eastern Partnership (‘Georgia’); Kyiv, 2017, 31–32.

on Personal Data by an archive towards its benefit. This draft bill, being introduced by two members of the Parliament minority, is still in the pending process.²³

Since 2009, the NGO Institute for Development of Freedom of Information (IDFI) launched several ideas with cooperation with the MIA Archives and the National Archives of Georgia. IDFI has valuable experience in collecting, analyzing, digitalizing and publishing archival documents. From 2011–2013, the organization was engaged in the launching of an electronic database of documents related to the events of March 9, 1956 – the massacre of citizens in Tbilisi during a demonstration, by Soviet Militia and troops. The next big project implemented with the MIA Archives was “Stalin Lists from Georgia”. In this database, information about more than 3.600 persons convicted during so-called Great Terror in 1937–1938 was digitized and put online. IDFI has a rich experience of hosting international conferences on archives. IDFI hosted several international conferences in Georgia, in cooperation with the MIA Archive, the National Security Archive at the George Washington University, and the US and International Society “Memorial”. The international conferences are aimed at establishing professional links between high specialist scholars, archivists, archive openness advocates across the post-Soviet space, sharing their experiences working in Soviet Archives, developing archival research, and dealing with state bureaucratic obstacles to information access. For several years, the IDFI has been advocating ideas of openness of archives in political and public circles. One of the steps was advocating for openness of the archives and advocating to the Ministry of Justice of Georgia, and the National Archives of Georgia, to abolish fees for getting original archival document, or digital copies in the reading room. In the framework of the Open Government Partnership (OGP), the IDFI advocated for the digitization of the catalogue of documents of the former KGB Archive of Georgia. The OGP committee positively assessed these novelties and the government officials always note the positive effort towards overall openness of the archives and freedom of information in general. In November 2017, the IDFI launched the project – “Enhancing Openness of State Archives in Former Soviet Republics”. The overarching goal of the project is to ensure the openness of Soviet archives in the post-Soviet era, and to create a network of scholars/NGOs in the post-Soviet era to work on issues of Soviet Archive openness.²⁴ On April 27–28, 2018, the IDFI hosted an international conference titled: Enhancing the Openness of State Archives. The event enabled more than 30 archivists (including directors of state archives, researchers, civil society representatives) from over 20 countries to share their experiences on the accessibility of archival documents to the public.²⁵

Many of these initiatives were supported by the Georgian archives and the organizations were granted free access to the archives. For the creation of the “Stalin’s Lists from Georgia” Project, the MIA Archive gave all the necessary data to the IDFI (several thousands scanned records) to analyse, process, and input into the Archive’s database. The National Parliament Library of Georgia put the database on its website;²⁶ it is now available online. IDFI started litigation proceedings against the National Archives because the institution didn’t provide publicly available information IDFI asked. Sovlab also started similar process because of the misinterpretation of the law about personally identified information. The results of the processes will be clear in the nearest future.

Public initiatives with the support of public institutions are priceless in the overall openness of archives, and have a primary impact on the promotion of archival openness and archival research. Archival openness and research can have a substantial impact on the transition in any post-soviet state. Georgia’s example, and the work done by the IDFI on openness of the KGB Archive, publishing archival catalogs of documents, as well as international research projects on Soviet Studies implemented in Georgia can be taken as one of the best practices, whereby certain type of documents are accessible to any interested individual. Such efforts not only promote openness on matters of the past, but of the present as well.

RECOMMENDATIONS

It is necessary to keep the fonds and documents of the regime archives physically safe: compromising the security and relying only on bureaucracy functionaries is inadmissible. There must be frequent social control mechanisms over archives, especially during the period of transition. Unfortunately, Georgia couldn’t avoid the tragic turnover of the situation during the period of transition and the majority of the archives were destroyed. Allegedly copies of the documents fell into the hands of the successor of the USSR, the Russian Federation, and according to today’s political conjuncture couldn’t be transferred to Georgia in near future.

Concerning the few archival materials that survived: the official standpoint of the MIA Archive is that there are no files that researchers cannot see. Since society cannot independently audit the archive’s repository and does not even undertake such attempts, no one can officially question this statement. The society has to trust the MIA Archive fonds inventory posted on the Archive website. We can clearly say that there is no publicly announced information request that the MIA Archive has rejected to access the records from its fonds.

Also, many independent scholars stress that a fee for using the archival materials, e.g. making copies, is very expensive. The IDFI thinks that allowing researchers to use their own cameras in the reading halls of the archives might solve this problem. But up to this day, neither the National Archives, nor the MIA Archives have made this option available.

For future development, revision and digitalization of documents preserved in the Russian KGB Archives is the most important issue for the Georgian society, but as of now, this task is impossible due to the lack of diplomatic relations between the countries and inaccessibility of the KGB Archive in Smolensk, Russia. Without these archives, there will always be controversy about the activity and history of the Soviet state retaliatory institutions. But this mission seems impossible for now, at least from the year 2018, and because of this, many questions in Georgian society will still remain unanswered.

23 See Soviet Past Research Laboratory, <http://sovlab.ge/en>

24 See “Enhancing Openness of State Archives in Former Soviet Republics, project of the IDFI Georgia”, https://idfi.ge/en/archival_studies_post_soviet_space

25 See “Access to State Archives Discussed by International Researchers in Georgia”, 1 May 2018, https://idfi.ge/en/access_to_state_archives_discussed_by_international_researchers_in_georgia

26 See “Stalins’ lists from Georgia”, 26 March 2018, <http://www.nplg.gov.ge/gwdict/index.php?a=index&d=26>

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MEMORY OF NATIONS

Democratic Transition Guide

[The German Experience]



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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MEMORY OF NATIONS

Democratic Transition Guide

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REGIME ARCHIVES (1989–2017)

FRANCISZEK DĄBROWSKI

INTRODUCTION

In the popular view, the “regime archives” are seen as the archival resources that were kept secret from the public during communist rule. This popular view often focuses on the most secret archives of the regime, i.e. archives of only the party and the security police. There were other institutions running relevant sectors of the totalitarian state, but the dealings of the communist party leadership and the security services built the core of the system and were most hidden – and therefore seen as most important.

The institutions most concerned (and it’s relevant collections) were as follows: the communist party (Polska Partia Robotnicza, PPR 1943–1948, Polska Zjednoczona Partia Robotnicza, PZPR 1948–1990), the ministry of foreign affairs (Ministerstwo Spraw Zagranicznych, MSZ), the Committee for the Defense of the Country (Komitet Obrony Kraju, KOK), satellite parties, networks of the secret services and coercive institutions consisting of the security service (Resort Bezpieczeństwa Publicznego, RBP 1944, Ministerstwo Bezpieczeństwa Publicznego, MBP 1945–1954, Komitet ds. Bezpieczeństwa Publicznego, KdsBP 1954–1956, Ministerstwo Spraw Wewnętrznych, MSW 1956–1990), the military security service (Główny Zarząd Informacji, GZI 1943–1957, Wojskowa Służba Wewnętrzna, WSW 1957–1990), the military foreign intelligence (Oddział/Zarząd II Sztabu Generalnego 1944–1990), the border guard security and reconnaissance unit (Zwiad Wojsk Ochrony Pogranicza, WOP 1945–1990), counterinsurgency troops (Korpus Bezpieczeństwa Wewnętrznego, KBW; Nadwiślańskie Jednostki Wojskowe MSW, NJW MSW), military political bodies (military political directorate: Główny Zarząd Polityczno-Wychowawczy, Główny Zarząd Polityczny, military academies), military HQ (Sztab Generalny WP), censorship (Główny Urząd Kontroli Prasy, Publikacji i Widowisk), other repressive institutions (Komisja Specjalna do Walki z Nadużyciami i Szkodnictwem Gospodarczym, the committee for suppression of the black market and private enterprises; Urząd ds. Wyznań, authority responsible for policy towards religious communities), judiciary bodies, including special military courts (Wojskowe Sądy Rejonowe, Najwyższy Sąd Wojskowy – district military courts, supreme military court) and the special military prosecution service (Wojskowe Prokuratury Rejonowe, Najwyższa Prokuratura Wojskowa – the district military prosecution service office, the supreme military prosecutions service office), and other various government bodies. The number of institutions and organisations engaged in coercive policy comes from the totalitarian character of the state (only the most important bodies were listed above, as decisive centres of power).

The main question for the former regime regarding records were: the threat of destruction (or transfer to the foreign power) of records, the transfer of the archives from regime organisations and institutions to state controlled institutions, and access for researchers and the general public (connected to questions of the legal status of the archives and its declassification).

REGIME ARCHIVES: SITUATION ON THE BEGINNING OF DEMOCRATIC TRANSITION

On the dawn of the transition of archival resources, the main regime body’s documents were held in separate archives, and were in principle not accessible to the general public – with some remarkable exemptions granted to the regime-approved researchers. The communist party records, as well as records of the preceding communist organisations, were kept in the archive of the party’s Central Committee (Centralne Archiwum KC PZPR). The secret police (Służba Bezpieczeństwa, SB whose central units were part of the Ministry of Internal Affairs, Ministerstwo Spraw Wewnętrznych, MSW) ran its own archive and registry unit, the so called “Bureau »C«” of the Ministry of Internal Affairs (Biuro “C” MSW, in local units: Wydział “C” – “C” Division), some units had their own registries. Bureau “C” kept the files of operative procedures, informants’ and agents’ case-files, employees’ personal files in separate and secret collections. Even the existence of Bureau “C” was hidden from the public: it was named “Centralne Biuro Adresowe” (Main Address Bureau – only for the “address information” purposes) or “Centralne Archiwum MSW” (Central Archive of MSW; only in cases of research on the files of the WW2 and pre-war provenience); the dealings of the main operative archive and registry of the security police were kept secret, as well as all actual dealings of the secret police. The military security services had their own secret registries and archives, separated from the military archival service. As the governance of the state was in fact secret, the archives were of key significance, not only for historians, but also for politicians – as a primary source of information about internal affairs. The opening of the archives was not considered a matter of the so called “Round Table” settlements in 1989; political reform and other reforms were discussed with the assumption that the communist party would stay in power. The landslide victory of Solidarność in the June 1989 election and the first events of the political transition did not profoundly change the situation.

CONTENTS OF THE REGIME ARCHIVES

The archives of the former regime central bodies are very large and contain a vast number of different categories of documents concerning matters due to its competence or jurisdiction and internal organisation of those institutions.

The former communist party archives consisted of several archival fonds. Sectors and secretaries’ offices of the party’s central committee were in control of the state’s central ruling bodies, the documentation of those units mirrored the most important governance matters. The minutes of the party’s central committee’s (and other party’s central bodies) proceedings are one of the most important collections. The other main parts of the former party’s central archives were the historical archives (containing records of the communist party from the mid-war period and files of proceedings of the party’s historical research

unit), central registry (containing personal files of members affiliated to the party's central bodies), control committee records (containing files of disciplinary proceedings), and records of the party's school.

The contents of the former security services are similar in general; the collections consist of several separate archival fonds containing case-files of agents and informants, operative and investigative files, object files, personal files of members of the service, administrative documentation like minutes of proceedings, operative guidelines, instructions and orders, information reports and evaluations, financial and accountancy records. The important part of the every security service archive was the registry, containing several card indexes, registration and archival logs, finding aids and archival protocols.

ATTEMPTS TO DESTROY THE REGIME ARCHIVES

On the brink of the transformation, the archives of the regime's institutions were still in possession and use by them; this situation led to the imminent threat of the "cleansing" of the politically sensitive documents. When the downfall of the communist share in rule became visible, the heads of the PZPR, the SB and the WSW apparently ordered the destruction of crucial materials; the minutes of the sessions of the central committee of the PZPR from '80s were destroyed, as well as a great number of documents of the security police and military services. The key preparations for this action were already made in 1980 (during the first Solidarity period, when foreseen martial law measures could lead to unwanted developments).

The files of the secret police were destroyed in formal accordance with, or in open defiance of the internal rules of document weeding: in fact, SB officers were engaged in the destruction of nearly all current operative case-files as "of no operative value"; the SB archives were extracting and weeding closed case-files and relevant cards from registries. The preserved weeding protocols from that period seem to be irrelevant. Apparently (as secondary sources indicate) the destructions of "all documents concerning illegal structures" and clergy, as well as object-files were ordered verbally in the summer of 1989. A report from July 1989 exists, stating that "according to the minister's order" the archive started to "analyse" and "separate and specially secure" documents of special importance in four categories: informants' case-files closed after 1975 (especially of those used against the opposition), operative and investigative case-files concerning opposition members (especially those who entered parliament in 1989), case-files concerning bishops, cardinals, and priests engaged in opposition, and all documents concerning polls and elections since 1946. At the same time (summer 1989) the leadership of the communist party archive sector and the SB were consulting the transfer of some records from the MSW archive to the party archive.

It seems to be enough to suggest that "analysing, securing and separating" of files were in fact preparation for the mass weeding of documents that could compromise covert actions and crimes of the regime, or compromise its active agents and informants.

On 26th August 1989, the deputy minister of internal affairs accepted the proposal made by the directors of Department IV of the MSW (in charge of Church surveillance) and Biuro "C" MSW (archive and registry) to destroy all of the operative case-files of Department IV (and its subordinate units), including those in

the archive. On 1st September 1989, the former director of Department IV (the unit was formally dismissed) ordered former units of this department that all operative case-files concerning priests (the old ones in archive either) were to be destroyed. The preserved files, in this case paperwork, show how the weeding process supposedly started in other units of the security service.

Apparently, nearly all operative case-files concerning priests and parishes (existing since the 1963 in the system of the "permanent invigilation" of Roman-Catholic Church) were destroyed, with only a few accidental exemptions; this action was meticulously done – even the old case-files were withdrawn from the archive and weeded. Also, the records of the MSW's 4th Department (Department IV) from the last 10-year period of activity, and the operative case-files were almost completely destroyed. Other divisions of the SB were also weeding their resources, with apparent priority given to active informant's case files, but in a much more clumsy manner. During the process, some of the internal rules were observed: the operative units informed the registry unit of the weeding of the relevant file; some important case-files that were already archived were withdrawn from the archive and then declared "weeded as of no operative importance". These reports and weeding protocols were however, not in every instance accurate: some (although not numerous) case-files were reported as weeded, but reappeared later untouched; weeding protocols were also unreliable, or not written at all. Unexpectedly (and luckily for the sake of future research and legal proceedings) the main registry tools, i.e. registration and archiving logs remained untouched (perhaps they were not seen as important). The card indexes were damaged only a bit less than archives; the registry cards were probably seen as "statistics paperwork", secondary to the case-files. The weeding of case-file should be followed by the weeding of the relevant registry card – but in many cases those cards were only prepared for weeding. Now, the existing card indexes are, in some cases, the only evidence documenting (with other instruments: registration, archival logs, and operative fund accountancy) the proceedings run by the former communist secret service.

As the entire process was done in a rush, there were also rumours about "privatisation" of files, i.e. theft of documents committed by SB officers awaiting dismissal, or passing of files to informants. The landmark case the "privatisation" emerged in February 2016 when the widow of late Czesław Kiszczyk (former communist minister of internal affairs) proposed selling the case-file of the informant "Bolek" to the Institute of National Remembrance (Instytut Pamięci Narodowej, IPN); the case-file contained compelling documentation pointing to Lech Wałęsa (historical leader of Solidarity) as an SB informant, active in 1970–1975.

Information of the mass weeding of SB documents soon leaked to the public, and became a theme of parliamentary intervention in the MSW. The reaction of the MSW was contradictory; on 31st January 1990, the communist minister of internal affairs, Czesław Kiszczyk, ordered all weeding of all documents to be strictly prohibited; three weeks later, the deputy minister assured the general prosecution service office that no action of the mass weeding of documents was ever ordered or conducted by the MSW. Actually, the weeding of SB files continued, although not in previous extent (for example, a significant part of the main operative card-index was prepared for weeding, but was saved when found in "evacuation sacks" months later), and

was stopped only when the SB was finally dismissed by parliamentary act. The remnants of the SB archives and registries were taken over by new state security police, Urząd Ochrony Państwa (UOP), and were partially reconstructed. Nevertheless, the report of the analysis unit of the ministry of internal affairs published in July 1992 pointed out that the clandestine weeding of SB documents started in the Summer of 1989, and continued to the January 1991.

The size of the loss of the operative archives and registries of the SB cannot be ultimately established. It appears that a majority of case-files of active agents and informants, key operative case-files concerning leading personalities of the opposition, almost all case files concerning priests, parishes, and higher clergy, and a significant number of foreign intelligence case-files were destroyed. The destruction of the files was mirrored by the extracting and weeding of relevant cards from the operative card indexes. "Separated card-index" (assembled in 1989–1990) contained approximately 525 thousands cards; about 55 thousands were weeded by 1990. The remnants of "separated card-index" were also prepared for – but unfinished – weeding. The main operative-archival electronic database (Integrated System of Operative Card-Indexes, Zintegrowany System Kartotek Operacyjnych, ZSKO) was also the subject of data cleansing; the preserved database was reconstructed from the back-ups made in 1988 and 1990. Another example of the weeding of significant documents concerned the SOUD registry; the Polish branch of the SOUD organisation was a part of the SB archive, and from the beginning of the activities of the system, accumulated a significant volume of documents. At the turn of 1989 and 1990, the collection was destroyed; a KGB connection officer took the main normative Russian acts and relevant agreements away in the spring of 1990.

The military security service (WSW) was far more effective than the SB in getting rid of its archives, probably thanks to the deeper secrecy of its dealings. In November 1989, Gen. Edmund Buła ordered the weeding of almost all of the documents of the WSW and the former military security service, the Stalinist Informacja Wojskowa (Head Directorate of Military Information, Główny Zarząd Informacji, GZI). As an extraordinary parliamentary subcommittee for the examining of the dealings of former WSW stated, the destruction of the military security service archive continued until the end of July 1990, when the Chief of Army HQ ordered control of the archives (there were also instances of document weeding after the order). The destruction was described as "total". As the military control body stated in 1991, the weeding of informants' and operative case-files had already started in 1982, but the most profound damages were made in the first months of 1990. Approximately 77 % of all of the resources of the WSW archive were destroyed, and its section containing the files of the GZI suffered an 84 % losses. The action was considered "dealings attempting to destroy compromising evidence". The losses of the WSW archives in the local branches were even higher.

REGIME ARCHIVES IN TRANSITION

The records transfer process of the regime institutions and organizations from the original handlers to institutions of public trust was painful, long, and full of difficulties.

The content of both the party's and the secret service's archive was seen as extremely politically sensitive; as they contained the documents compromising regime policy and dealings

about a great number of citizens involved in the maintaining of totalitarian rule.

The self-dismissal of the communist party (PZPR) on 29th January 1990 enabled the seizure of party's assets – i.e. The archives. On 23th January 1990, the government (although reluctantly) ordered the forming of a committee responsible for the examining of party property and restitution of the state's assets (the decision was approved by parliament on 26th January 1990). One of the committee decisions was that the party's archives should become a part of the state archival network. The relevant parliamentary act on 9th November 1990 declared that all former communist party's assets (as it were on 24th August 1989) were to become state property. These acts were crucial for the seizure and transfer of the records of the communist party from its archives to the national archival service.

In 2000, the commissioner responsible for the restitution of state assets was admitted to see some of the party's records in AAN, he stated later that the documents were in disorder, and pointed out that the extent of missing records, indicated that a deliberated destruction of files had occurred. The Commissioner focused on records concerning the party's financial affairs (and therefore – as they concerned the assets that could be seized – a subject of destruction). The abovementioned statement is contradictory to the general description of the PZPR's archive as seized "by order".

Although the central archive of the PZPR had already been transferred to the AAN in 1990, the records were not accessible for a very long period. Access to the PZPR's archive (as "fonds in the process of ordering") was granted only to a handful of researchers despite the huge interest by historians and the public. However, those obstacles were seen as an impediment, the resources were not declared secret. Access to the PZPR resources was gradually widened.

Initially, the archive of the MSW was a subject of very peculiar scrutiny; in the beginning of 1990 the minister of public education formed a committee tasked with getting insight into the SB archive (but without clear aims or powers); the committee consisted of several public personalities, i.e. Prof. Andrzej Ajnenkiel and Prof. Jerzy Holzer, renowned historians, Bogdan Kroll, then head of AAN and Adam Michnik, former opposition activist (then MP). The dealings of this committee remain unclear, there is no record of the files that were presented to the body, its final report was very brief and mainly stated that the contents of the MSW archive are "incomplete". It should be noted, that abovementioned committee was granted, apparently, direct and significantly wider access to the MSW archive than the parliamentary special committee for the examination of activity of the MSW (already formed on 1st August 1989); the latter committee complained of numerous impediments and the lack of cooperation by the ministry.

After its dissolution, the archives of the former communist security services became part of the new republic's civil (Urząd Ochrony Państwa, UOP) and military (Wojskowe Służby Informacyjne, WSI) services' operative archives – and for a long time were practically inaccessible to the public or press, with a few exemptions granted for researchers in the UOP archive. The range of access was also carefully limited; the case-files of agents and informants were not released at all, the researchers were not granted access to the finding aids and the registry. The resources were treated as secret, and relevant security classifications (dating from pre-1989 period) were deemed still valid.

The significance of information from the former security services archives for domestic policy and for the public was clearly recognized. In June 1992, the matter became a subject of political discussion, when a parliamentary resolution ordered the minister of internal affairs to disclose file information concerning MPs and leading government personalities recorded by the communist security services. The subsequent developments had a catastrophic effect for the, then, government; on the night after the information concerning the MPs was found in the registry and the archive of the MSW were circulated, a parliamentary coalition of fear emerged and voted to form a new cabinet. Two weeks later, the constitutional court declared the "lustration act" unconstitutional and void. The list (called "Lista Macierewicza" after the name of Antoni Macierewicz, then minister of internal affairs in charge of the implementation of parliamentary resolution), although originally secret, was published by some newspapers a few weeks later, revealing that a number of leading political personalities were mentioned in case-files and card-indexes as registered informants; the information held in the archives appeared to be a key factor of any settlements concerning secret liaisons with former communist security services. It appeared later that similar list (called "Lista Milczanowskiego" after the name of Andrzej Milczanowski, then deputy head of UOP) was secretly prepared by the UOP before the 1991 parliamentary election.

The matter of any dealings of the former communist security services became one of the most important issues in Polish politics; the contents of the regime archives also became the focus of public interest. The archive was still deemed secret for several, more or less, legitimate reasons. The secrecy classifications from the communist period were not made summarily void; communist regulations and laws concerning public secrets were upheld as valid. The secret security archive was declared as containing documents still important for national security (especially concerning matters of foreign intelligence) and of extreme personal sensitivity. In the public discussions ignited by the events of 1992 the following matters were considered: state security interests connected to the contents of the security services archives, the protection of dignity and personal data of people affected, and possible threats to the political stability of the country. The subject of the debate quickly became controversial; some emotional arguments were raised, principally describing eventual settlements as a "witch-hunt". The fact that the sole handler of the former security service archive was the UOP; although formally a new service, it was manned and commanded by old SB-men. Also, the fears of politically motivated misuse of documents from the SB archive emerged, as well as for the integrity of the resources.

As the former secret services archives were practically closed, anxieties about its presumed misuse emerged, as well as the general assumption that the government still was using the assets of the former communist security service, i.e. both its functionaries and informants, possibly also its operative networks, and vast collections of documents containing sensitive information. This led to the general assumption, held by numerous post-Solidarity circles, that this particular sector of government, i.e. secret services, got through the democratic transition with only little ruffle of feathers, and can still seriously influence policy and economic life with its clandestine connections – without the control of lawmakers or the public. The existence of clandestine informant networks was seen during the communist rule as a threat to the basic social bond: mutual trust. Keeping records of the former security

service secret, after the democratic change was seen a limited continuity of social technology, contrary to public interest and the democratic rule of law. The fact that someone was a functionary of the communist secret service or its informant was (and still is) seen as a profoundly compromising to persons and their dealings, and makes the person affected vulnerable to blackmail or recruitment. Nevertheless, as long as the former security archives were kept closed, the public was denied the knowledge of such people. The records "privatised" by former SB-men were another matter; former SB circles leaked or even forged documents and information in an attempt to compromise some political personalities, as it happened in cases such as Zbigniew Najder and Jarosław Kaczyński. The missing records could have been smuggled to Russia or sold to foreign powers security agencies.

The popular demand for legal action concerning the crimes of the former regime led to few investigations and trials. There were also opposing attitudes towards the opening of the archives and the releasing of secret information to the public: it could cause public unrest and violent settlements, create a "atmosphere of a witch-hunt", incite victims to revenge (nobody mentioned the eventual revenge by former communist security service men), and also undermining Polish foreign intelligence. The possible resettlements were seen by many as contrary to the "spirit of 1989 reconciliation". It should be noted now, that the lack of access to the regime archives by the public and researchers caused the emergence of populist attitudes and shallow opinions.

The formal examination of records of former regime was only held in few proceedings. In the beginning of '90, the Ministry of Justice – thanks to special entitlements granted by a parliamentary act on 23rd February 1991, launched the judicial review of numerous sentences concerning people "engaged in activities for an independent Polish state". Nevertheless, the proceedings were only based on the contents of the courts' records, secondary to the operative case-files; the latter were not examined and were still kept secret. A parliamentary inquiry concerning the fates of approximately 100 people killed by authorities during the martial law period (1981–1983) was focused on particular cases, and did not lead to the assumption of general rules or acts concerning the settlement of communist crimes. The few trials – concerning massacre in Wujek coal mine (16th December 1981), massacre in Lubin (31st August 1982), murder of Grzegorz Przymyk (12th May 1983), tortures in the detention prison of Ministry of Public Security (MBP) in the '40s and '50s, supervision over the conspiracy to kidnap and murder of Rev. Jerzy Popiełuszko (19th October 1984), introduction of Martial Law in 1981 – were prolonged and only a handful of perpetrators were sentenced. The examination of documents needed during abovementioned proceedings was extensive, and revealed a number of aggravating circumstances, but the outcomes were particular – connected to the specific proceeding. Numerous legal obstacles caused by the natural resistance of the culprits also affected the proceedings.

The rather unsatisfactory outcome of the legal proceedings concerning communist crimes was a significant factor influencing the popular demand for the open access to the regime archives – as a resource of legal evidence and fund of information needed for a healthy social and political life.

The governing of sensitive data by a secretive institution seen as a post-communist organization raised concerns about its information handling; it led to calls for the transfer of the abovementioned resources to an independent institution. The settlements held in the former GDR influenced public opinion and

some political circles demanded the forming of “Polish Gauck-Behoerde”. Another matter was the screening of public personalities for ties with the former communist security service; post-Solidarity movements declared the need for such an arrangement.

Matters dealing with the regime archives were only disputed after the abovementioned disastrous 1992, first attempt to screen MPs was abandoned; the next government and a parliamentary majority were not prone to disclose any information from the archive. The return of the post-communist coalition to power in 1993 halted any possible movement on the issue; social democrats and their agrarian allies, both from former regime provenience, were not interested in disclosing the records of the former communist secret service. The matter was unresolved until the 1996 landslide victory of the post-Solidarity coalition. The subsequent voting of the parliamentary act on 11th April 1997 concerning vetting of public personalities (“lustration”), parliamentary declaration condemning communist totalitarianism of 18th June 1998, and the parliamentary act on 18th December 1998, forming the Institute of National Remembrance cleared the way to the open access to the archives of the communist security services and the legal use of records from those archives. Abovementioned acts formed two new institutions commissioned to deal with the archives of the former communist secret services: Biuro Rzecznika Interesu Publicznego (BRIP, Bureau of the Public Interest Advocate) – in charge of vetting public personalities, and Instytut Pamięci Narodowej (IPN, Institute of the National Remembrance) – in charge of archives, research, and prosecution of communist crimes.

BRIP started its activity in 1998, and in the first years of work it relied on the cooperation of the archival unit of Poland’s security services, the UOP (in 2002, divided to two separate agencies: Agencja Bezpieczeństwa Wewnętrznego, ABW – Agency for Inner Security, and Agencja Wywiadu, AW – Intelligence Agency) and the WSI. Forming of the IPN and the following transfer of archives meant, that “lustration” proceedings run by the BRIP were assisted partially by the archives of the secret services and increasingly of the IPN’s archive. BRIP was abolished in 2007, and its tasks were transmitted to the IPN – since then the use of records for the vetting proceedings were joined into one institution.

Although the Institute of National Remembrance was formally formed of the former Head Commissioner for the Prosecution of Crimes against the Polish Nation (GKŚZpNP, Główna Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu), in fact the IPN was starting from scratch. An act in 1998 was vetoed by, then, Poland’s president, A. Kwaśniewski, a prominent former member of the communist party. Nevertheless, the presidential veto was overturned by parliament, and finally the IPN started its activity in 2000. The main task of the newly established Institute was to secure the transfer of the records of the former communist security services from the archives of the Ministry of Interior, secret services, courts, police, military archives and many other institutions. In the first year of activity, i.e. until 30th June 2001, the IPN took charge of approximately 13 kilometers of files, of the, then, estimated number of 95 km to be seized. In 2003, the archive of the IPN contained about 77 km of files. In 2016, the archival resources of the IPN reached 91 current km of files and 10 meters of card-indexes.

Additional agreements and protocols were needed for the transfer of the records and registries from the archives of the secret services (still rendered secret), and getting security clearance for the employees of the IPN. The transfer, elaboration,

and even housing of the files were a serious challenge; the IPN initially did not have buildings to house the archives.

The reason for the forming of the IPN was to enable access to the files for citizens affected, and to the press, boost research on the communist reign, and enhance the investigations concerning communist crimes. All of these fields of activity relied on efficient archival management. In brief, the task of the IPN was the disclosing of the, then, secret documents to the people lawfully entitled. In subsequent years, the legal use of the regime archives significantly widened, covering the analysis of decoration motions, pensions equality proceedings, compensations applications, research concerning the recovery of regime victim bodies. The IPN education and research branches crucially benefited from the archival research too.

However, the act forming the IPN provided provisions for people affected by the communist regime, and also for researchers and the press; there were also security clauses included: security services were entitled to establish a so called “restricted resource”. “Restricted resource” contained files seen by the security services as still important for national security (supposedly containing information important for their post-1990 operations or revealing identity of their officers and informants). The existence of such a resource was stipulated in the act forming the IPN, and as such was known to the public, inciting numerous rumours towards its alleged contents. One of the most important features of the “restricted resource” was the fact that the operative card-indexes and registry tools (like registry and archival logs, operative databases) of former communist security service were restricted.

The files handed to the IPN (all of them, not only those “restricted”) were listed in protocols that were also given secrecy clauses.

These circumstances led to numerous obstacles in the access to files; there were no other open archival aids. Every inquiry needed procedures for checks in card indexes and additional declassifying proceedings. The elaboration of archival fonds (ordinary element of archival work) in such circumstances was not enough; a need to compose a number of un-classified finding aids (listing not only archival funds or collections, but in every single file) emerged as indispensable and urgent. The restrictions imposed on the part of the archival resource led to some legal cul-de-sacs, for instance barring the decryption and declassification of huge volumes of tapes containing SB encrypted operative databases.

The lawmaker’s decision to fit the access proceedings into the rules of administrative code (that formally guaranteed the judicial review for rejected applications) contributed to the relative complication of the access proceedings (in comparison with access proceedings in state archives).

The declassification and sanitizing of records was a complex issue; the pre-1990 classification clauses were still deemed as valid. The inaccuracy of the official secrets act was a serious impediment to further activities at the IPN; initially the secrecy clauses were interpreted according to formal entitlements of a non-existing communist security service; only secrecy classifications issued before 1983 (when the communist parliament pronounced an act of the office of ministry of internal affairs, formally recognizing the existence of the security service) were abolished. The relevant secrecy laws were gradually changed, allowing declassifying secret documents issued before the dismissal of the SB (31st July 1990) and the military secret services (31st December 1990). An initial clash with the state’s personal

data protection office was dismissed by exempting the IPN from the country's personal data protection rules; lawmakers considered the disclosure of information concerning the communist rule of greater public interest, than an individuals' personal data protection. Finally, subsequent changes in the official secrets act declared all records open, which were to be transferred to the IPN archive – except the “restricted resource”. The existence of the “restricted resource” was terminated in the last enactment of the act forming the IPN (2016): the security services were obliged to conduct an ultimate overview of the resource, release unnecessarily classified files, and submit well-founded requests for the preserving of secrecy classifications of remaining records – till 15th June 2017.

The initial rules of access to the files and data in the IPN's archive followed a very strict German pattern; clauses of the BStU Act were mirrored in the first enactment of the IPN-Act. Subsequent changes in the act relaxed those rules step-by-step; today there is no compulsory sanitizing (“anonymization”) of data in disclosed documents; other terms of access were also loosened. The only important restriction was introduced in favour of people affected by persecutions; they have the right to file a demand for restrictions to access data concerning their personal life.

The development of the terms of access was primarily shaped by the country's policy. The demands for broader access to files, widening of the vetting proceedings (that influenced also archival proceedings), general support for IPN's activities (and relevant expectations) were parts of the political program of post-Solidarity parties, and were mirrored in several major adjustments and changes in acts concerning the IPN and vetting (“lustration”) proceedings. There were also other circumstances that heavily influenced the activities of the IPN and the raised public awareness concerning matters of the regime archives.

Possibly the most important of these incidents was the serious leak of data concerning informants and officers of the SB and the KBW. In the beginning of 2005, one of the databases compiled in the IPN (and accessible to researchers in the IPN's archive reading room) was leaked and broadly disseminated on the Internet. The list was soon named “Lista Wildsteina”, i.e. “Wildstein's List” after the name of journalist, Bronisław Wildstein, who initially admitted that he was the person responsible for leaking the database. The data-sheet was compilation of about 162 thousand entries consisting of names and signatures, without additional information – but an accompanying (apparently true) rumor stated, that the database contains signatures of case-files of SB's informants, personal files of the SB and military security services' officers. The database covered only Warsaw's IPN's resources, and did not contained data concerning operative case-files, records of foreign intelligence and military security services. The “List” attracted great publicity and raised a lot of questions about the contents of the IPN's archive and, above all, about the vast amount of information previously unknown to the general public. The immediate effect of the leak was an adjustment to the IPN Act, forging a “fast lane” for people who wanted to check whether the case-files listed in leaked database with names identical as their own refer in fact to them.

The dismissal of military intelligence and counterintelligence agency (Wojskowe Służby Informacyjne, WSI) in 2006 – following the apparent dysfunction of service and serious criminal allegations against it's officers – unveiled the deceitful conduct of the WSI towards the IPN. The WSI was in charge of numerous records of former communist military intelligence

and counterintelligence agents, directly listed in the IPN Act as belonging to IPN's archive – and therefore under mandatory transfer. Those records were not transferred to the IPN and not even reported. The WSI purposely hid those files in their documentation repositories as “non-archival paperwork” prepared for weeding, in order to pretend that those records were not files required by the IPN, and to avoid putting them into their own archival unit (where such files could be identified and requested by the IPN). The WSI also restricted a great number of former communist military security service's files that already been seized by the IPN, practically rendering them inaccessible for people affected, the press and researchers.

CURRENT STATUS

The main archives holding the collections (collection holding institutions, CHI) of the former communist regime in Poland are:

- Archiwum Akt Nowych (AAN, Central Archive of Modern Records) – the main state archive holding the records of the central institutions existing after 1918, i.e. holding the archives of the communist party, central government bodies, censorship office, and other institutions of country-range importance.
- Instytut Pamięci Narodowej (IPN, Institute of National Remembrance) – holding archives of the former security services (security service, military security services, military foreign intelligence), counterinsurgency troops, border troop reconnaissance unit files, and selected files of the judiciary and penitentiary bodies.
- Wojskowe Biuro Historyczne (WBH, Military Historical Bureau) – the body supervising the military archives holding resources of Army HQ, Committee for the Defence of the Country, military political directorates, military political academies.

The records of local party committees, local government branches, especially district censorship offices are held in local state archives. Records are accessible according to state archives regulation, in a simple and unaffected way (information about rules for access to the AAN is available at address: <http://aan.gov.pl/p,62,zasady-udostepniania>). Information on records kept in the state archival net is available on the Head's Office of State Archives database internet search engine “SEZAM”: <http://baza.archiwa.gov.pl/sezam/sezam.php>. Another search engine of the state archival net (with access to the digital repository) is also available on internet: <http://www.szukajwarchiwach.pl/>. Detailed finding aids kept in the AAN and other state archives are available in reading rooms.

The records of the former communist security services are available at the IPN's central archive in Warsaw and in 17 local branches. Access to the files is granted to people affected (and their relatives), journalists, researchers, and – with some restrictions – for functionaries of the former regime. The files of public personalities are accessible – by a separate proceeding – for every citizen. Access to files are provided after filing a formal application. Information on the access proceedings and application forms are available on internet: <http://ipn.gov.pl/pl/archiw/udostepnianie/rodzaje-realizowanych-w>. Information about the IPN's resources is published in the internet archival inventory: <http://inwentarz.ipn.gov.pl/>; although the internet inventory contains only a part of archival database (constantly updated), the full version of the database is available for researchers in IPN's reading rooms. A brief information about the resources

of the central branch of the IPN' archive is available on internet: <http://ipn.gov.pl/pl/archiw/zasob/31562,Informacja-o-zasobie-archiwalnym-Archiwum-IPN-w-Warszawie-Centrala.html>. Another tool that provides the information to the public about the contents of the IPN's archive, are the Internet catalogues of the IPN's vetting unit (Biuro Lustracyjne, BL, Lustration Bureau). Accessible on-line database (<http://katalog.bip.ipn.gov.pl/>) consist of four lists ("catalogues"): the catalogue of leading functionaries of state and party during communist rule, the catalogue of security services officers, the catalogue of the vetted public personalities, the catalogue of people affected by dealings of the communist secret services. All of the catalogues contain information about files and registry entries concerning the people listed.

The WBH is a body supervising military archival network, i.e. the most important archives are: Centralne Archiwum Wojskowe (CAW, Central Military Archive) in Warszawa-Rembertów, Military Archives in Nowy Dwór Mazowiecki (Archiwum Wojskowe, former Archiwum Ministerstwa Obrony Narodowej, AMON, Archive of Ministry of National Defence), Toruń, Oleśnica and Archive of the Navy in Gdynia. Both the CAW and the AW in Nowy Dwór have published their inventories, and finding aids are available in the reading rooms. Information concerning access, rules for the CAW are available on-line, as well as brief information about the CAW resources. A brief directory of finding aids for the AW in Nowy Dwór Mazowiecki is also available on-line.

The records of the Ministry of Foreign Affairs from communist period are available in the archive of the ministry (Archiwum MSZ). Inventories are not accessible on-line, A brief descriptions of resources is published on the Ministry's website.

The private papers of some of the prominent communist personalities are kept in the Archiwum Dokumentacji Historycznej PRL (since 2011 governed by Akademia Humanistyczna in Pułtusk); a brief description of the contents of the archive is available online.

One of the most important collections of documents concerning communist rule in Poland is kept by the non-profit organization Ośrodek Karta (est. 1984 as underground documentation center). Karta runs the Opozycji (Opposition Archive) and Archiwum Historii Mówionej (Oral History Archive) collections, containing a huge volume on Solidarność records, MSW documents, opposition activists' papers and recordings of history witnesses' testimonies. The description of the collections and detailed finding aids are available online.

Nearly two decades of open archives policy resulted in the boosting of research and a broad use of data from the archives in public life. Since 2001, the IPN has published more than 1700 books, and publishes the editions of three scientific and two popular-scientific journals. The information from archives is still widely used in the vetting ("lustration") proceedings. Archival research has been irreplaceable for the recent efforts in identifying mass graves and the bodies of the victims of the communist regime.

LESSONS LEARNT

The conclusions from the Polish experience concerning dealings with the communist regime archives may be divided into two categories: conclusions concerning the legal system, and conclusions concerning practical solutions.

One of the flaws of the Polish legal system concerning the democratic transition period was the respect for the formal rules of communist law. The communist legal system was illegitimate, in its core; its norms were promulgated in the form of laws by unelected (or "elected" in falsified or mock elections) bodies. In fact, the communist regime, although very committed to the formal shape of its dealings, was in fundamental denial of the concept of the rule of law, and its legal system and laws were only a facade for the party's dictatorship. Communist "laws" and "acts" should be applied in the transition period with regard to their existing and presumable consequences, and their pre-1990 results should be judged after their impact on national, social, and individual interest, and respectively declared void, temporarily valid or valid. The post-1990 Polish praxis did not contain such procedures or evaluations; the validity of laws and acts of the communist period were sustained or judged in accordance with the then binding constitution (also communist, and promulgated by an illegitimate body). The possible adjustments to the legal system were consequently and intensively voted, but the consequences of communist rule were to be challenged as legally binding. This circumstance refers not only to matters of the former regime archives, but also to a vast number of social issues, i.e. restitution of property seized by communist authorities. The main problem that emerged due to respecting the legality of communist activities, and the regard for the archives of the communist regime institutions, was the matter of the validity of the secrecy classifications. It took more than a dozen years of transition to lawfully declare the secrecy classifications from communist period void – and only in relevance to the records seized by the IPN. The positive lesson was that even in such an unfriendly legal environment, institutions and laws needed to deal with the communist past were established, and former regime regulations were successfully overran. The lawmakers in the series of acts and enactments clearly decided that the settlement of communist rule must prevail regarding the particular interests connected to the respect of the secrecy classifications or personal data protection. The core reason for such achievement was the political will to remove the impediments to free speech, to challenge the legacy of former regime, and to change the state's system from post-communist to democracy.

The practical experiences of the Polish dealings with the archives of the former regime were followed legal and political circumstances. The precautionary policy of the first non-communist coalition (1989–1991) and of prime minister Tadeusz Mazowiecki (summarily called "policy of a thick line", dividing the communist past from the democratic present and future, but was also widely understood as an informal amnesty for the former, led to the keeping of the communist generals Czesław Kiszczak and Florian Siwicki, as ministers of internal affairs and national defence. They had apparently ordered or protected the mass destruction of documents of the security services. The parliamentary intervention, subsequent deposition of abovementioned ministers, and the dismissal of the communist secret services in 1990 stopped the destruction of archives. In the beginning of 1990, the government was also very reluctant, or self-restricted, towards the process of the disintegration of the communist party; the lawful measures allowing the takeover of party's assets (archives included) were issued, but only the self-dismissal of the party enabled the seizure of its archives and other property. However the archives were seized quickly and successfully, the forfeiture of party's other property became long, difficult and inefficient process.

A rather unsatisfactory experience concerning the regime archives was the result of the process of the forming of the new security services. Two agencies were in charge of the archives of the dismissed communist secret services, and assumed its contents were of secret operative assets. This led to the long-term restriction of access to the archives. The security services, as collection holding institutions, practically, unilaterally decided on the sequence, contents, legal status, and description of records transferred to the IPN. Another result was the creation of the “restricted resource” in the IPN’s archive – that wouldn’t probably have existed, if former security services archives were not treated as operative assets of the new security services. The cases of continued use of some registry tools, or records and card-indexes resulted in the restriction of its contents, that required sanitization before declassification. The case of the WSI dismissal in 2006 shows that the military security agency hid some records from the IPN and restricted access to many of the records already transferred. In the years 2010–2017, a great number of files initially placed in the “restricted resource” were reviewed, and finally released and declassified. The activities connected to the abolishment of the “restricted resource” revealed a vast amount of records that apparently were restricted without any important reason, and subsequently withheld from access for a number of years.

The secret services passed the records to the IPN’s archive in a number of separate series. The IPN’s archive was then shaped after the sequence of transfers (the transfer protocols were treated as internal finding aids, and its numbers became archival signatures); the original structure of the former communist security services archives was not reconstructed.

The mass destruction of the former communist security services archives (including the erasing of entries in the electronic databases) resulted in a lack or deficiency of evidence concerning numerous crimes by the regime and damages suffered by people affected. The subsequent investigations, access and vetting proceedings were thwarted, or needed additional effort to reveal the activities of the communist secret services. The sustaining secrecy of archives meant that people affected by communist crimes were denied access to vital information.

Another experience is connected to the governing of the archives. The seizure of the archives by an independent institution is not identical with instant access. The legal terms of access are vital for the general public; limitations of access to the files caused by prolonging proceedings, restrictions caused by sanitization (“anonymisation”) or secrecy clauses are significant impediments for people affected and public opinion.

The recognition of contents, and the structure and history of resources is key to efficient access proceedings. The “elaboration of archival fonds”, i.e. arranging of files in the fonds, conservation work, preparation of finding aids and indexes, research of fonds structure and history, digitization needs time, skilled personal, equipment, and money. The secret services run their archives with a strict connection to the card-indexes or electronic databases – which should be used as an independent sources of information and indexes for the archival fonds until the moment of the preparing of the proper finding aids. The IPN’s experience with providing access to the files for numerous applicants in the course of elaboration of the acquisitioned records are generally positive, i.e. the IPN archive managed to provide access to the claimants, researchers and the press; nevertheless, the priority for providing access and acquisition of archival fonds required a substantial effort by the employees (especially those working

with the card-registries), and intensive declassification proceedings slowed down the elaboration of archival fonds.

One of the most important issues of the archival work, especially when a part of the resource or its original finding aids are restricted, or partially unavailable is digitization of the archival resource. The term includes the arranging of electronic finding aids and indexes, and the scanning of the original finding aids, indexes, card indexes, registry instruments, single documents, and whole files and collections. The IPN and the state archival network constructed these databases, although not inter-operative, and in the case of the IPN, only partially available for the general public (although much more detailed). The IPN’s efforts to integrate the digitized original card indexes with the electronic finding aid system provided a powerful archival tool, significantly boosting the efficiency of work.

The general risk related to the use of the former security services archives is the disclosure of information of a sensitive nature. The IPN was exempted from general rules concerning personal data protection; however, these matters are considered significantly important. The employees of the IPN are obliged to keep secret everything they are acquainted with, except for matters of scientific research. The responsibility for the disclosure of sensitive information lies with the people (victims, researchers, journalists) who were granted access to the files; it is assumed, that the Institute bears no responsibility for the contents of records made by the former security services.

In a difference to the BStU, the IPN has only limited experience with the reconstruction of destroyed or damaged records. There is no virtual reconstruction program similar to the German one (it must be noted, that such program is very expensive). The IPN’s branch in Katowice leads the advanced effort of manual reconstruction to a significant number of restored files.

RECOMMENDATIONS

The general recommendations and expectations towards dealing with the archives of former repressive regimes were covered in the so-called Quintana Report of 1995 (redacted in 2009), which also covered the Polish experience (see: Further reading).

Some legal solutions should be recommended:

- Dealing with the regime archives in a democratic transition needs a stable legal environment, providing in the first place the right to free, unrestricted access to the archives for victims of the regimes, parliamentary and judicial bodies, and researchers and the press.
- The seizure of the archives of the former security services, government bodies, military units, courts and penitentiary institutions, coercive and repressive institutions, and other organisations, especially parties, companies, paramilitary groups, must be legally secured.
- The security classifications concerning the documentation of the former regime must be declared void. Access to archives cannot be restricted due to the security classification without independent review and without important reasons.
- The rules concerning personal data protection regarding the contents of regime archives should be relaxed to maximum reasonable extent. The limited right to protect sensitive personal information should be granted to victims of the regime only, provided that it would not harm eventual investigations and judicial proceedings.

- The regime archives should be held in a separate institution, independent from executive powers (especially law enforcement and security agencies), possibly under direct parliamentary control.
- The legal system should provide penal measures against people who destroy, hide or withhold, damage, records, registries, and assets of the former regime secret services and other organisations.

Practical recommendations and observations:

- at the early stage of the transition, the documentation of the regime institutions, i.e. current office paperwork, registry tools (as diaries, logs), archives, registries, card-indexes, microfilm and microfiche collections, and data systems should be carefully secured, at the original premises when possible. Any attempts to steal, burn, flood, scatter or damage the records, registries, data carriers should be prevented. When possible, photographic coverage of *in situ* situation should be provided.
- How to find the secret archives? The archives and card indexes are usually kept in cellars and attics, in rooms without windows (or with windows secured with dense grill and blinds), and with fire-resistant doors. Additional fire and flooding protection devices, as well as air conditioning (files should be kept in stable temperature and in low humidity) are often seen there. Vital IT installations are often housed in rooms without windows, with additional power supply and special fire protection systems. Pay close attention to metal lockers, locked single rooms, and caches.
- Former regime functionaries should not gain access to the premises where records are secured. The theft or destruction of any part of the registry or data system might be fatal to the whole collection. Conceal vital evidence against harm for later investigations and judicial proceedings.
- The remains of shredded, torn, damaged or scattered documents, data carriers, computers must not be disposed of, but should be preserved and described with regard to the exact place of recovery: building, room number, locker, possible unit of origin; Shredded, torn, partially damaged or mixed documentation (data carriers) can be reconstructed or arranged later (with use of technical measures unavailable on spot).
- Wet, fragile or fungus infected records should be kept separately (wet frozen) and as soon as possible undergo conservation, disinfection.
- The electronic data carriers should be technically secured. The carriers' contents (data, metadata and software) should be backed up to a second or multiple safety data carriers. Written manuals, handbooks, notes, instructions for handling data systems and printouts should be secured as well as the computers, data carriers, and other devices.
- Microfilm/microfiche should be secured, as well as the readers, and other reading devices, registry and archival machines

(i.e. rotomats, index-lockers, perforation readers), communication, and encryption devices. Those devices may be unique, or very difficult to replace.

- Secure the seized records, indexes, books, logs in their original state and form. It will later help to attribute the seized documentation to the proper part of archival fonds, unit of origin, and connection to other records and registry aids.
- Do not rearrange or mix the secured card-indexes and document collections – even if such rearrangement (for example, in alphabetical order) would provide some practical gain. Do not dispose of file covers or envelopes, binders, tags, labels.
- Even seemingly the most inferior documentation (untitled logs, officers' personal diaries, minor card-indexes with anonymous data, accountancy records, attendance lists, deployments documentation) might be of vital relevance, especially when other parts of the archive or registry were damaged or destroyed. The complexity of the secret services and government bodies means that important information was noticed in numerous places. The registry systems were often compilations of numerous data sub-systems, card-indexes, and logs that provided full information only when complete. Securing of office paperwork is vital for later investigations concerning the dealings of regime functionaries, and the fate of victims (and even their place of burial).
- The records of the former security services cannot be handled solely by the new security services; it may lead to a merging of old and new registries and case-files and the subsequent continuous secrecy of the archive. Resources important to the new secret services can be separated, when needed, but it should stay under independent control and be catalogued (even if the secrecy of resource would be required).
- Access to the regime archives should be provided as soon as possible. Limitations or restrictions to access will inevitably raise suspicions about the contents of the resources or its presumed mishandling.
- The arranging of seized resources and archival research should be started as soon as possible. The restoration of the original scheme of the archive and registry should ease access proceedings and enable the assessment of eventual losses and damages. The research of contemporary instructions, manuals, internal norms (concerning operative proceedings, registry, secrecy measures, and organisation schemes) of the former security services is key to the reconstruction of the resource scheme, and for explaining the documentation's contents to people granted access to the files (especially investigators).
- Simultaneously to the arranging of the resource, an independent digital finding aid should be completed, enabling efficient inquiries and analysis of the resource structure. The digital finding aids should be accessible on-line.

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MEMORY OF NATIONS

Democratic Transition Guide

[The Romanian Experience]



REGIME ARCHIVES

AN OVERVIEW OF THE CNSAS

ISTVÁN BANDI

ANSWERING SOCIAL DEMAND

Citizens of former Soviet-bloc countries regarded 1989 as an “*annus mirabilis*” [a miraculous year]. Public demand for removing the communist dictatorship and holding accountable those participating in it was had already been formulated in Article 8 of the Timișoara Proclamation of March 1990; the first lustration act initiated by Romanian civic society. “... the act on elections should prohibit, for the first three parliamentary terms, the nomination of former communist activists and former Securitate officers on any list. (...) In order to stabilize the situation and to reach nationwide reconciliation, it is of utmost importance to keep these individuals off of public life.” (<http://www.societateatimisoara.ro/>)

It is a matter of fact that Romania underwent a troubled and long transition to full-blown democracy, and after 1989 the country was governed, for a long time, by political figures whose career and mental setting were deeply rooted into the pre-1989 era. These individuals played a key role in delaying the screening and revelations of the past. Over the last few years, most probably as a beneficial consequence of the intensive public discourse around the crimes and human right violations committed by the communist regime in Romania, the societal attitude towards the recent past experienced a major change. While in the early 1990s, polls taken by CSOP (Centrul pentru Studiarea Opiniei și Pieței) showed that 44 % of those surveyed considered the fall of communism a good thing, just twenty years later in 2011 the same rate was up to 61 %, while 37 % regarded it as a positive thing that the communists took power in Romania after World War II (Agerpres – Sondaj CSOP-IICCMER).

EVOLUTION OF THE INSTITUTION’S LEGAL FRAMEWORK AND POLITICAL CHALLENGES

At the end of the 1990s, as a closing act of the transition period, the first bill was presented in Parliament, enabling insight into the Securitate archives. The bill was pushed forward by Peasant Party Senator Constantin Ticu Dumitrescu, a former victim of the communist dictatorship and chairman of the Association of Former Political Prisoners. The institutional model for this initiative was the German Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic. After suffering several amendments to the content and form, the bill was passed by lawmakers in December 1999 as Act No. 187, “concerning one’s access to his/her own files and the disclosure of the Securitate as political police.” Albeit not conceived by the same intent as Ticu Dumitrescu’s original bill, an act passed during the presidential term of liberal-democrat Emil Constantinescu enabled the formation of the National Council Scrutinizing the Securitate’s Archives (*Consiliul Național pentru Studiarea Arhivelor Securității – CNSAS*) in 2000.¹ The CNSAS was intended as an informal lustration agency similar to

the Bulgarian Dossier Commission, but during its almost twenty years of activity the mandate and scope of activities of the CNSAS have gone through changes to its legal parameters and the political environment surrounding the institution.² The CNSAS was created as a budgetary organ supervised by the parliament and directed by an 11-member board, the members of whom were and still are delegated either by political parties, churches, or other public institutions for six-year terms. The law charged the new institution with preventive screening and disclosure of public servants with a past of collusion with the communist state security. It also charged the CNSAS with the management of access to individual files of former victims and scholars, and with the gradual takeover of the former political police’s archived sources for academic and educational purposes.

However, in the first operational period, the CNSAS did not possess proper infrastructure, archives, or adequate staff. After the 2000 elections, the post-communist Party of Social Democracy in Romania – PDSR, led by Romanian president Ion Iliescu, took the helm again, negatively affecting the Council’s activity. The Board was supposed to name the individuals responsible for severe violations of law by the regime before the change of the political system, while carrying out screenings, without taking over the archives of communist secret services. A major political crisis erupted in 2002, when members of the Council split over the semantics of lustration. Six of them, (public intellectuals **Andrei Pleșu**, **Horia-Roman Patapievici**, **Mircea Dinescu**, former political prisoner **Viorel Niculescu**, and historians **Claudiu Secașiu** and **Ladislau Csendes**) did not accept the idea of unveiling the names of secret collaborators of the Securitate, without also exposing those professional officers who actually performed as *political police*. Five other members disagreed with this stand and therefore did not attend board sessions for months, contributing to the slow down of the lustration process that was progressing slowly anyway due to the lack of archival materials. These members included university professor of law Emil Boc, who was also conservative prime minister between 2009 and 2012, and Social Democrat, lower chamber member, Ion Predescu, who served as a member of the Constitutional Court between 2004 and 2013. Only in 2003 did the Social Democrat cabinet agree to increase the external storage capacity of declassified materials handed over to the CNSAS by the post-1989 security services (**Romanian Information Service** / Serviciul Român de Informații – SRI; **Foreign Intelligence Service** / Serviciul de Informații Externe – SIE; and **Military Archives and Documentation Service** / Serviciul Arhive și Documentare³

1 CNSAS or “council” refers here to the more than 250 staff of the institution, while “board” refers to the 11-member administrative body that supervises the council.

2 Cynthia M. Horne, *Building Trust and Democracy: Transitional Justice in Post-Communist Countries*, Oxford: Oxford University Press, 2017, 141-142.

3 The Romanian word *documentare* equally refers to recording, classifying and retaining information.

Militară – SADM). The CNSAS was assigned a depot in the locality of Popești-Leordeni, located in the surroundings of Bucharest, (hereinafter the permanent external storage of CNSAS). Fast-paced work began, in mixed committees, including members of the CNSAS and the aforementioned secret services, to transfer as many classified documents as possible to the newly established institution. A major benefit of this new approach was that during 2004–2005 the new centre-right government encouraged the services to take major efforts to transfer their archived documents and micro-film into the new depot. The Ministry of the Interior, however, did not take action at all upon the claim that no law or decree had ever specified and regulated the scope of declassified materials that should be (or should have been) handed over to the CNSAS. Thus, the unintended victims of the power clash within the government were not the real targets of the disclosure process – those who had served and/or collaborated with the communist regime, but rather those individuals who attempted to bring over as many documents as possible to the CNSAS archives. In the beginning, the vicious combination of unregulated circumstances and the lack of experience gave rise to expensive document management procedures. Exposing archived files to lengthy transportation is anything but ideal in terms of security. It would have been better to follow the German and Polish practice, according to which the declassified files were kept and made accessible to former victims and scholars in those local state security headquarters where the documents had been previously stored. A different approach would have spared private citizens and researchers long, exhausting trips to Bucharest only to exercise their right to read their own security file.

The outcome of 2004 parliamentary elections and the clear victory of a pro-European, anti-communist centre-right coalition, led by newly elected president Traian Băsescu, produced a major positive impact on the CNSAS and archive policies in Romania. On February 28, 2005 the **Supreme Defence Council (CSAȚ)** issued a resolution to ask for the urgent transfer of 12,000 rm. of documents in addition to the 700 rm. of documents transferred by the SRI to the archives in the previous five years (**see the 2006 annual report of CNSAS**). Urgency decree (Ordonanța de Urgență – **OUG**) No. 149 dated November 10, 2005 set out new provisions to guarantee the regular business of the institution.

In 2006, further positive developments were advanced by the imminence of Romania's membership into the European Union. On February 22, **Emergency government decree No. 16** (OUG 16/2006) expanded the circle of those eligible for lustration and required persons holding important public offices to fill in a form to clarify their position concerning cooperation with the former Securitate. In the case that their declaration proved to be false, they could be held accountable according to this decree. In March, a new executive board was appointed at the CNSAS, this time including the author of the 1999 lustration law, Constantin Ticu Dumitrescu. On December 16, president Traian Băsescu solemnly condemned communism as an “unlawful and sinful” political system.

Further documents were transferred to CNSAS in 2007; when the quantity of documents handed over to the archives reached 20,000 rm., the CNSAS could fully comply with obligations set out in the institution's founding act. The mixed committee formed by CNSAS experts and representatives of the special services convened 32 times throughout that year to promote document transfers and the screenings of a total of 17,734 individuals. 4,159 of

these proceedings were launched automatically based on statutory provisions, while 13,575 were initiated on request of CNSAS. Finally, the Board passed 4,610 resolutions. 101 persons were declared “collaborators” (that is, secret informants) of the Securitate, and another 381 were found to have been in a professional relationship with the political police as officers. In 341 additional cases, the Board passed resolutions on collaboration based on individual submissions. In 2007 security screenings almost tripled compared to the previous year. It must be underscored that in the meantime, the institution's headcount did not increase. Even though the budget would have allowed for a staff of 300, only 255 positions were filled (**see the 2007 annual report of CNSAS**). Although the year 2007 provided major impetus to screening, identification of former agents, research and document transfers, a horde of legal measures passed in 2008 brought a turnaround at the institution in terms of screening and research of the recent past.

A major conflict concerning the attributions of the CNSAS erupted in early 2008, upon a lawsuit about the alleged involvement with secret services of Senate vice-chairman **Dan Voiculescu**. Attorney **Sergiu Andon**, chairman of the Lower House requested the review of Act 187/1999 for compliance with the constitution. Constitutional Court Resolution No. 51 of January 31, 2008 declared the unconstitutionality of the 1999 act establishing the CNSAS and of the subsequent government decree that regulated its activities. The liberal government of **Călin Popescu-Tăriceanu** prevented a full setback by quickly passing two complementary emergency decrees. With the decisive support of the prime minister's security policy advisor, public intellectual **Marius Oprea**, Parliament unanimously passed act 293/2008 in December that year. The act is still in effect and sets the framework for the institution's operation. The new law ordered that each resolution issued by the CNSAS Board declaring the involvement of an individual with the secret police must be reviewed and decided on by a court. [Thus the final verdict must come from a court in each case.] This procedure of law application reduced the effectiveness of the CNSAS and the Board. It required that once approved by a majority vote of the Board, all cases processed in the archives (ACNSAS) by the responsible directorate in charge must be submitted to the Bucharest Court's public administration department. While the proceedings are free of charge, the CNSAS is required to attach to all submissions, authentic copies of the relevant archived documents. The person subjected to scrutiny is entitled to contest the court decision. The court is required to publish its non-appealable final decision in the Official Gazette.⁴ As a consequence, the screening procedure has become more complicated and lengthy. In accordance with the new legal provisions, the CNSAS Board submitted 292 cases to the Bucharest Public Administration Court in 2008. Dated early 2010, the 2009 annual report showed that 213 cases were still underway at the court, 12 cases were voided owing to the subject person's death, while collaboration was confirmed in 53 cases and allegations of collaboration were rejected in 11 cases. For a comparison, the corresponding figures from the CNSAS' counterpart organization in Germany can be quoted. In the first ten years of operation, the Joachim Gauck-led BStU screened 1.7 million persons, identifying 950,000 STASI officers and agents.

⁴ See in detail Dragoș Petrescu, “Public Exposure Without Lustration”, in Lavinia Stan, Lucian Turcescu, eds., *Justice, Memory and Redress in Romania*, Cambridge: Cambridge Scholars Publishing, 2017, 131–136.

Year	Identified individuals
1999	Establishment of CNSAS
2000	none
2001	1 collaborator
2002	2 collaborators
2003	26 collaborators ⁷
2004	60 completed identifications ⁸
2005	49 completed identifications
2006	270 collaborators 156 officers
2007	330 collaborators 402 officers
2008	610 collaborators 210 officers
2009	739 collaborators 298 officers
2010	847 collaborators 337 officers
2011	867 collaborators 234 officers
2012	858 collaborators 206 officers
2013	888 collaborators 253 officers
2014	914 collaborators 214 officers
2015	1047 collaborators 121 officers
2016	not published yet

Table 1. Number of those involved in the lustration process.
Source: CNSAS annual reports, 2000–2015.

Moreover, despite the well-sounding definition put into the 2008 law, *unveiling* (“*deconspiracy*”) only refers to the identification of an alias. This can only be initiated by the target person (or his legal predecessor) who was the subject of the monitoring. The new law made accountable and liable the owners or tenants of “covered” flats,⁵ that is to say individuals who agreed to make their homes available for hosting meetings between state security officers and their secret informants. Often they also allowed state security officers to carry out “operational tasks” at work places. These homes were technically equipped for facilitating secret investigation actions, like roping in agents, having conversations with network members, intimidation, defamation and other actions. A major controversy emerged around the role of the clergy after the extent of the collaboration with the communist state security had started to emerge, causing public scandal among believers and distress in the ecclesiastical hierarchies. According to the law in force since 2008, security screening of church leaders had been removed from the Board’s responsibilities. However, scholarly research carried out by accredited persons has been not restricted.

A new hope emerged in the wake of an international treaty signed in Berlin in December 2008 that placed cooperation between Bulgarian, Czech, Polish, German, Hungarian, Romanian and Slovak archives in a new foundation, which has helped embedded the CNSAS to increase its international visibility. 2009 marked the first time when indemnification of the victims of communism was enabled. There is symbolic significance in

the fact that the *act* regulating indemnification was numbered Act 221.⁶ The rules and procedures of this act were hardly comprehensible. While relatives were also eligible for legal remedy, the related provision was very difficult to apply as the Court of Constitution declared it non-compliant in 2010 (ruling no. 1358, dated 21 October 2010). Finally, the issue of indemnification was escalated to the European Court, but the proceedings were still underway in 2015.

THE CNSAS ARCHIVES: STRUCTURE AND ROLE

The laborious genesis of the CNSAS archives as described in the previous paragraph has several structural reasons that must be mentioned before describing what the archives look like. In compliance with the 1996 archives law, the CNSAS has been defined as the stakeholder and the manager of the Securitate archives. The CNSAS was not allowed to rearrange the incoming documents or to alter the structure of the archive collections as inherited. The CNSAS was compelled by legal force to preserve the documents as they had received them from the former secret services. If these declassified materials had been transferred in the 1990s, their archival processing could have been more efficient and might have involved a larger quantity of documents. Contrary to the method used in Germany and Poland, Romania chose to centralize the document processing, instead of establishing county-level branches of the CNSAS, which would have enabled them to act as stakeholder. On top of this, centralization is not yet over, since the transfer of documents does not mark the end of the process, for individual papers cannot be used unless all documents have been sorted in an inventory. The documents taken over from the Romanian Foreign Intelligence Service (SIE) are structured in the same manner as those of the counter-intelligence (eg. former Securitate) archives. Both possess an “intelligence” archival fond (*Fond Informativ*), a “network” fond (*Fond Rețea*), and a “documentation” fond (*Fond Documentar*). The files of military counter-intelligence have not yet been systematically processed by the CNSAS staff. For the time being, most professional researches and private inquiries have focused on the three aforementioned sub-fonds.

Another initial shortcoming was that the state organs that transferred declassified materials to CNSAS did not hand over any electronic inventories of these files. The list of fonds and sub-fonds was put together by a professional team of the state security

5 The owners and tenants of covered houses (*in Romanian: gazde case conspirative*) were individuals who agreed to make their homes available for hosting meetings of secret agents. Often they also allowed state security officers to carry out “operational tasks” at the work places. These homes were technically equipped for facilitating secret investigation actions, like roping in agents, having conversations with network members, intimidation, defamation and other actions.

6 For a curious combination, 221 was the number of the act that ordered the establishment of the General Directorate for People’s Security (*Direcția Generală a Securității Poporului*) in 1948.

7 The 2003 annual report was controversial regarding the identification of agents. While the “number of unveiled agents” line in the summary chart on page 42 says that 26 identifications were finalized in 2003, the main text on page 36 says that the Board issued a certification of collaboration about three persons and found 46 people to have been officers of the former political police.

8 The 2004 annual report also is ambiguous about the number of identified collaborators and officers, respectively. The only reliable indicator is the 60 completed identifications.

archive personnel only on the basis of the sorting order of the received documents that had been worked out by the Securitate's recording and archiving rules back in the 1970s. The fate of investigation files (*Fond Penal*) can aptly illustrate how difficult it was to sort documents belonging to the same fond. The investigation files had a turbulent past because they shed light on the politically inspired court rulings, and the number of those imprisoned based on political motives in communist Romania between 1945 and 1989. Although some believe that such rulings only existed until 1964, when some 15,000 political prisoners had been released upon a general amnesty, archival evidence shows that politically motivated proceedings continued until 1989, the last political trial being staged in March of that year. During the communist regime, the investigation files were divided among several state institutions, and nothing happened after 1990 to restore the unitary feature of these files. Some of these files were preserved by the Romanian Intelligence Services (SRI) until 2000, when the transfer of the archives to the CNSAS began, while the Ministry of Justice held other significant portion of documents. Thus, the CNSAS was practically forced to initiate cooperation with the Ministry of Justice as well. Owing to other responsibilities, the ministry was required to safeguard the investigation archives. This arrangement generated multiple shortcomings, for whenever a private applicant or a researcher requested insight into the documents of a specific case, those documents may have been kept at two or more different locations. At the same time, the Ministry of Justice had to work with the very same documents in certain rehabilitation proceedings. The situation was worsened by the circumstance that the political rehabilitation of former political prisoners began in the same year, when the CNSAS was established, and the Ministry of Justice launched related proceedings. Judges and attorneys used former Securitate files as a starting point, and many of those files were held at said ministry, while another part of them at the SRI. Parallel to this, the CNSAS requested the transfer of the papers based on its legal obligations. Finally, the CNSAS managed to collect the dossiers of the investigation fond from the SRI, the Ministry of Justice and the Ministry of Public Administration. After the mass document transfers to the state security archives in 2005–2007, the last years of the expansion of the archives slowed down considerably to a yearly rhythm of approximately 200 rm of paper-based documents.⁹ The CNSAS currently stores 25,000 rm of paper documents at the Central Archives of Bucharest (DAC – Direcția Arhiva Centrală), and at the Popești-Leordeni Archives (DAPL – Direcția Arhiva Popești-Leordeni). In addition to paper-based documents, the archives also store microfilm. As of early 2017, more than 600,000 micro films were in possession of the archives. Most of them being transferred in the past three years. When taking micro film and mechanized data storage devices into consideration, the quantity of paper-based data kept in the archives can be actually doubled. Thus if all data on such media were printed, the length of documents kept at the CNSAS would amount to nearly 50 000 rm. This makes the CNSAS the third largest document collection repository, on the activities of the Communist state security, in Eastern Europe.

PROBLEMS AND SUGGESTIONS CONCERNING THE ACCESS TO STATE SECURITY ARCHIVES

Sticking to the principle of “keeping those involved [with secret services] away from public matters”, announced in the March

1990 Timișoara Proclamation, the CNSAS represents a key institution for revealing the past and contributing to transitional justice in its capacity as the main stakeholder of the documents of the communist dictatorship's secret services.¹⁰ Unfortunately, over the last almost twenty years, the societal “high hopes” towards moral regeneration have by far exceeded the narrow manoeuvring space given to the CNSAS by the lawmakers. Day-to-day lustration of the state apparatus has been triggered or slowed by a combination of unwillingness and inertia.

One of the most important public achievements of the CNSAS has been the ability for individual access to state security files. **Eligible individuals entitled by law can get access to relevant files** concerning their security past. However, research conditions are far from ideal due to several factors, such as the small size of the research room, or the excessive workload of archival staff. Professional researchers and individual citizens asking for their own file have to wait for longer periods, and this might especially hurt those belonging to the elder generations, in their right to access relevant documents. Time-consuming procedures for the identification of former informants and/or officers is another potentially disadvantageous factor for elderly applicants. The CNSAS does not possess an integrated catalogue that could provide guidance on which documents are still with their former stakeholders (special services and/or other branches of the public administration), thus one applicant may not receive, upon his first request, all the documents pertaining to him.

Procedures for academic research are in place, albeit there are inconsistencies. In this regard, it would be very helpful to the CNSAS, if the external research staff were allowed to contribute to agent identification as well, although this would require a change to the legal framework. Second, more computers would be needed for a faster and more effective examination of the applications. A personnel increase at all the archival branches of the CNSAS would be one precondition. From an archiving standpoint, as of today, the CNSAS has only processed and utilized a very small portion of the documents received from other archives, as it does not have either enough staff, nor the appropriate technological assets for carrying out any major inventory taking or archiving chores. The headcount at the Archives Directorate (DAC) located in the headquarters is 20, while another 15 staff works at the repository in Popești-Leordeni (DAPL) that was established after 2008. As per applicable regulations, however, the latter staff are not responsible for processing documents for archiving purposes. If the organizational unit comprising 20 archiving

9 CNSAS annual reports 2005–2016, and interview taken by the author with the director of the archives of CNSAS, dr. Laura Stancu (Cornea). Bucharest, March 2, 2017.

10 One major step forward in revealing the Securitate's institutional history was the institutional and organizational history monograph written by the CNSAS research community and published in 2016, titled *Securitatea 1948–1989*, edited by **Florian Banu** and **Liviu Țăranu**. The publication is a piece of academic work encompassing nearly ten years of research in various archives (ACNSAS – **National Council for Investigating the Securitate's Archives**; ACNJ – **Archives of the Gendarmerie's National Command**; AMAE – **Archives of the Ministry of Foreign Affairs**; AMI – **Archives of the Interior Ministry**; AMR – **Romanian Military Archives**; ANIC – **Central National History Archives**; ANR – **The National Archives of Romania**; ASRI – **Archives of the Romanian Counter-Intelligence Services**). Another significant work is a monograph by Florian Banu, a renowned researcher at the CNSAS, published in 2016 and titled *From the SSI to the SIE. The History of Romanian Espionage in the Communist Era (1948–1989)*. This monograph relies on archive sources and reviews organizational history topics along with operational ones.

associates processed 160 files a day, it would take them at least 100 years to create a comprehensive, searchable inventory list that encompasses the entire archives. This calculation assumes static conditions while we know that approximately 100–200 rm of additional documents are transferred to the CNSAS each year. Thus, the processing timeline mentioned above would be extended with additional decades. Digitalization is one possible way for efficient, secure and lasting document processing and retention. An example of a step in the right direction is that the CNSAS has begun to scan archived materials and selectively publish them on their website. However, with the current human resource and financial constraints, it seems a very distant goal to make 10,000 rm of documents available for digital research within the foreseeable future.

Thus the rules of procedure for screening is very complicated and lengthy, as private submissions from eligible individuals, cases revealed through academic research, and investigations triggered by legal requirements all land on the Board's table. The number of staff at the unit charged with preparation is just 20, which even in the election year didn't change. Further, the legal provisions enacted in 2008 slowed down the process of publishing the names of collaborators and secret service professionals who bear responsibility for wrongdoings.

As far as the administration and management are concerned, the CNSAS suffers a serious and structural problem of public underfunding. If decision makers charged with budgeting took into consideration the fact that in terms of size, the CNSAS comes third after its German and Polish counterpart institutions, it would bring significant improvements to the institution's position. While the headcount of these units is several thousand strong, the number of CNSAS employees decreased from 250 after the enactment of new regulations in 2008 to 228 by the end of 2015. Similarly, the CNSAS annual budget of EUR 2.5–3 million between 2008 and 2015 is much lower than that

of the German BsTU or the Polish IPM. Filling the currently vacant general director and deputy positions at the CNSAS could definitely improve the coherence of the organization and its relationship with Parliament. Management representation would bring improvement to the institution. The centralization of the inventory of the archive fonds and sub-fonds, while developing the infrastructure and professional criteria for the searching of materials could improve the flow of information and make the institution even more open to the academic community and society as well.

The screening process of public servants in Romania is still underway. As much as the circumstances allow, the CNSAS delivers on its duties. Regarding the future, the primary objective of the institution is to continue with the process. As the German Lutheran pastor and intellectual Karl Bonhoeffer reminds us, however, the most difficult task in dealing with the totalitarian past is to overcome lethargy. Still, we must proceed through the phases of understanding if we really want to get to know what happened before 1989. Like in every other spheres of life, getting to know the facts can change the quality of our existence in respect to the secret service archives as well. The second task is even more difficult. The harm done to society must be remedied with relentless efforts. However, it requires the identification of the collaborators who contributed to the establishment and sustenance of the past regime. We may hate communism, but no democratic political system can authorize anyone to harm those who dream of reviving the fallen political system of the past. At the same time, tolerance (not acquiescence) and forgiveness should set the path which cannot be brought to conclusion with proceedings based on agent lists. Let us not degrade the need for historical revelation and public access to information to the level of power struggles. Let us prove that we can bear the sometimes painful truth of a better explored past, and that we are bold enough to have faith in a better future.

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REGIME ARCHIVES

SVETLANA SHURANOVA

INTRODUCTION

The breakthroughs in historical, source and archaeographic studies, made using the Russian archives in the 1990s are a generally recognized phenomenon. Before that Soviet archives had long been appendices to the administrative system, which accumulated classified documents. A necessary element of Perestroika after August 1991 was a leap to the information culture, including the removal of unjustified limitations on the access to archive documents. Changes in the political situation triggered the advent of resolutions, temporary provisions and laws, which bridged the existing gap in the issues related to declassifying and using archive documents. Nevertheless, the historical scientific model has not been implemented yet, it is this model that is oriented on involving *shady* documents about the past into the public sociocultural interaction.

In today's Russia it is possible to observe the return of a departmental monopoly on archive documents, the selective approach to users using unforeseeable and subjective criteria. Compared to the openness of the archives in the early 1990s, currently Russia is experiencing a real regress. Therefore, many key aspects of the Soviet past and, first of all, the history of public terror, actually stay unstudied, citizens are not always able to learn information about the fate of their own relatives out of those who suffered from political repressions. The clusters of classified data, the availability of unprocessed documents, partial accessibility of the scientific-reference sources, restrictions arbitrarily imposed by archivists under protectionist ideas, – all this is today's reality. The archive user has to experience the barriers of state order limitations, subjective decisions and technical possibilities.

REGULATION AND FUNCTIONING OF ARCHIVES IN RUSSIA

Archives are valuable storage facilities, which are designed to provide access to historical knowledge, as well as to keep a database. According to the law an archive is an institution, which stores, systematizes and releases the documents, being within its archive fund. The tasks of open usage of documents, in particular, to dispel historical myths are always opposed by the “protective” function of the archive service. An archive document operates in the system, oriented on different values and legal criteria for making decisions. For instance, one and the same document must be accessible for scientific use, but following the administrative logic, it must be protected from attacks against “personal data”, “personal secrets”, and “state secrets”. This is where controversy emerges – on the crossroads of the academic, educational and administrative systems. The conflict of state, corporate, personal and public interests is inevitable: opening and concealing powerful archive resources is an instrument for public conscience manipulation. The infrastructure of storing, searching for archive information and legal regulations are also essential aspects of archive operations as an institution.

There are state (national) archives, departmental archives, municipal archives and non-governmental archives. State archives include federal archives and the archives of the Russian Federation subjects – regional archives. Federal archives are subordinate to Rosarchive – the Federal Archive Agency, – while regional archives are subordinate to the regional administration and Rosarchive. Departmental archives are divisions within different departments (ministries), and are subordinate to them. They may keep documents of the RF Archive funds only temporarily, according to article 18 of the Federal Law on archives in the Russian Federation (dated October 22, 2004). For example, the FSB is a successor of the documents on mass repressions and declassified documents of VChK-OGPU-NKVD-MGB-KGB, and the archives of FSB Directorates store the overwhelming majority of these cases. It is formally clarified whether these documents belong to Rosarchive now, but the period of temporary storage of these documents is specified in article 22 of the law on archives and is 15 years. In the 1990s the transfer of archive investigation cases of the rehabilitated persons from the FSB to the public archives started, but so far it has been implemented only partially. Many departmental archives still enjoy the right of unlimited-period document storage.

Archive operations are mainly regulated by the above mentioned federal law on archives in the Russian Federation. According to part 1 article 24 of this law the user is entitled to freely seek and receive archive documents for studying. In addition, legal bases of the archivists and archive activities are regulated by a great number of other regulations. Pursuant to part 4 article 29 of the RF Constitution, every person is entitled to freely seek and receive information in any legal way. The provision of services on releasing archive documents is regulated by numerous federal laws, decrees of the RF President, resolutions of the RF Government and orders of the Russian FSB.

The issues, arising out of the information being a state secret, its classification or disclosure is regulated by the Law on State Secrets dated July 21, 1993. According to the law the maximum document classification period is 30 years. It means that in 30 years the documents must be disclosed or the classification is to be renewed. As an exception, this period may be extended on the opinion of the Interdepartmental Commission for the Protection of State Secrets. In March 2014 the commission's opinion extended the classification period for a huge volume of information of the state security bodies by another 30 years. Until 2044 the classification will be marked on any documents containing information regarding intelligence, counterintelligence, operative investigation activities, on the persons collaborating confidentially with the state security bodies, on state security staff taking part in special operations, – the list of information categories consisting of 23 points enables it to extend the classification period of any document, executed by the state security bodies between 1917 and 1991.

The term *personal data* should be specifically indicated. It was introduced by the Federal Law on Personal Data, adopted by the State Duma. This federal law does not touch upon

the procedure of accessing archive information. Moreover, according to article 1 of this law, it is not applied to

- processing personal data by individuals for personal and family needs only;
- the issues of storing, completing, recording and using archive documents containing personal data.

In turn, the connection between the “personal data” and access to archive investigation cases of the repressed persons is regulated by order of the Russian Ministry of Culture, the Ministry of Internal Affairs, the Russian Federal Security Service (hereinafter “order of three ministries”) dated July 25, 2006 on approving the procedure of access to the materials stored in the state archive and the archives of the governmental bodies of the Russian Federation, terminated criminal and civil cases against the persons subject to political repressions, as well as filtration and control cases. According to this order, personal data include the information on personal and family secrets, facts, events and circumstances of the private lives of the repressed persons. Personal data can be found in nearly all the documents related to repressed people. Personal secrets include: the secret of intimate relations, the secret of property and financial standing (including bribery), medical secrets (e.g. alcohol addiction), and children adoption secrets. The access to the documents containing personal data is provided to the relatives of the people mentioned in the document, provided the relationship is confirmed. When at least 75 years have passed from the time of executing the document, access to the materials for the researchers, not being relatives, is possible only provided the written consent of the repressed persons, and after their death – their successor. In particular, the research into the materials of the cases against millions of people who were subject to repressions during the Soviet period is given according to the procedure, established in the RF law dated October 18, 1991 on the rehabilitation of victims of political repressions. The rehabilitation process is a powerful foundation for searching for and discovering archive documents on the activities of the repressive bodies, repression campaigns and individual lives.

The provision of access to archives is generally vital for studying the twentieth century history. Today the situation with the publication of the archive documents, related to the evolution and operations of the Soviet totalitarian system, which deprived a person of their basic rights and freedoms, is of the greatest interest. Archive documents of the operative holdings of the Soviet KGB, the holdings of archive criminal investigation cases, classified document management holdings, and the holdings of dossiers of the KGB-NKVD staff members have not been revealed and made public yet. This deprives us of the possibility to reevaluate the past, and estimate the scale of ongoing and expected changes. This, in particular, damages the development of history as a science.

BETWEEN STATE CONTROL AND PUBLIC PROPERTY

The legal restriction on using archive information in the twentieth century started in 1924–26 and gradually the problem of archive and archive document accessibility faded away from the legal public conscience. An interesting case, which took place in 1951, was described by a Candidate of Sciences (PhD) in History and archivist M. A. Leushin: the administration of Moscow

State University contacted the Central Committee of the All-Union Communist Party requesting classification of professors, post-graduate students and undergraduates due to the difficulties in accessing old archive holdings of the 19th–20th centuries and the total secrecy of documents. In response to the letter, archivists prepared a report, approved by the USSR Ministry of Internal Affairs, substantiating the access denial by the fact that most documents were written by “counterrevolutionary elements with the spirit of hatred and hostility to the Bolshevik party and the Soviet state.” The report also refused to classify the university faculty and students.¹

Historians Arseniy Roginsky and Nikita Okhotin remark that over the whole period of its history the Soviet power actually destroyed archive documents with a limited storage time when there was no operative need for them any longer, but, as a rule, it was routine destruction according to the archive management instructions published in the state security bodies. The exception was the mass destruction of documents under L. P. Beria’s order of 1940 to clean the archives of “unrecorded” materials, and also the destruction of archive documents during WWII under the threat of being seized by the enemy. A part of the documents did not survive the evacuation. It is known that in 1954–55 archives were cleaned of the documents “discrediting honest Soviet citizens” along with the starting liberation of the Gulag prisoners. According to the total estimates, out of approximately 20 million of the Soviet KGB archive cases only some 5 million cases had survived by 1991.²

During Perestroika there appeared a number of large-scale programs on reevaluating the past. In the conditions of the dramatically democratized conscience in the early 1990s the issues of accessing the documents and discovering Soviet secrets were in the focus of public attention. In 1992 the decree of the Russian President on protecting state secrets and the resolution of the Russian Government on the issues of organizing the protection of state secrets of the Russian Federation were issued. The work on declassifying archive documents, related to the state archive policy, commenced following the decree of the Russian President of June 23, 1992, on declassifying legal and other regulations, serving the basis for mass repressions and attacks on human rights. The Rosarchive order of June 15, 1992, introduced the temporary procedure of accessing archive documents and the rules of their use, where it declared the principle of general accessibility of Russian archive documents. This document for the first time established a 30-year document access restriction period, provided they contain state secrets, and a 75-year personal document access restriction period. Its essential provisions were confirmed by the resolution of the Supreme Soviet of the Russian Federation on the temporary procedure of accessing archive documents and their use. At that time the Supreme Soviet set up a commission for preparing the guidelines on accessing terminated criminal and filtration control cases, which began being submitted from the Soviet KGB archives to the national storage. In 1992–1993 whole sets of archive cases were declassified. These were related to the CPSU ideological

1 М. А. Леушин, “Проблемы доступности архивов в начале 50-х годов”, in *Вестник архивиста*, 1996, (4), 41–45.

2 А. Рогинский, Н. Охотин, Архивы КГБ: год после путча, in *Современная Россия: взгляд изнутри. Политика. Право. Культура. Сборник статей российских исследователей к 10-летию Института Восточной Европы при Бременском университете*, 1992.

fight against dissidence in the USSR etc. In 1993 the commission on accepting KGB and CPSU documents into the national storage was dissolved, while the law on the state secrets was adopted, and the functions of declassification were delegated to the Interdepartmental Commission for the Protection of State Secrets. In 1994 Boris Yeltsin signed the resolution, according to which the ministries had to delegate the powers to declassify their documents to the heads of the state national archives, but it was never implemented. By 1997 the implementation of the presidential decree on declassifying had slowed down notably, and the archives lost their right to declassify documents themselves. In many governmental bodies at the levels of all subdivisions, declassification expert commissions were established. Groundless secrecy period extensions for most documents became normal again, while declassifying became exceptional. The unlimited authority of ministries and other governmental bodies enabled them to create the full image of the criminal policy of the USSR and led to the inaccessibility of the most valuable information sources for researchers.

Today it is possible to state that there is an expressed institutional conflict between archive users and archivists. The archive is more often considered by users either under the *secular* logic (as a service provider), or under the “messianist” logic as a social institution, designed to store (but not protect) the public knowledge of the society of itself. In turn, archive staff, vice versa, tend to “de-routinize” their professional activities, and do it based on evidence. The minutes of formal meetings document the codes of ethical rules for the archivists and enable them to say that the primary mission of the archives is to protect the integrity and safety of the documents to be stored.³ The protective trends in the archive operations intensify along with a toughening up of archive law. However, the top-bottom legal regulation of the archive practices brings a number of unexpected effects.

The protective trends in the archive institution activities were determined due to the adoption in 2004 of the law on archives, inclusion of the norms of criminal and administrative liability for stealing documents in the Criminal Code, and the adoption of the federal law on information, information technologies and information protection. It is also worth mentioning the *order of three ministries* dated July 25, 2006. It is owing to this order that the access of researchers to the archive investigation cases became highly complicated.

In practice today users face limitations, which are not included in the regulations restricting access to regulations. This can be explained by an ambiguity of wording in the regulations, which leave space for interpretation. From the standpoint of practical relations between archive users and archivists the situation looks as follows: the discrepancies between mutual expectations and rigid regulation of the archive agenda on the one hand, led to “shallowing” the bureaucratic form of the archive on the one hand, on the other – to too much paperwork.

It is known that there have been cases, where the access to information was organized to avoid the formal access procedure – the user with “contacts”, a network in the archive staff, has an opportunity, for example, to get information without being involved in the bureaucratic procedures accompanying the access to information ensuing from a formal request. One of the effects of this situation is the dependence of the research field on the possibility to access relevant materials. When choosing the topic to study, the researcher, experienced in working with archives, looks into the availability of the materials and

the freedom of access to them. The researcher may avoid touching upon a topic, knowing that basically no access may be received to the materials.

The chances to access information are unequal, and the very historical knowledge can still be a manipulation tool, always depending on the will of authorities and bureaucrats.

CURRENT STATUS

At present the practices of providing and rejecting access in Russia differ depending on the region, type of archives, type of documents and other circumstances. To justify rejections different archives may use different regulations as well as arbitrary administration decisions. This is also related to the possibility of the free interpretation of regulations in various regional archive institutions, with the departmental specifics of the archives, and with the role the requested topic plays in the public political discourse. The violation of the rights of researchers and citizens trying to gain access to the collections of archive documents is systematic, and it is deeply rooted in the following practices:

- **Refusal to provide a scientific reference base** (the full list of the holdings, lists, reference cards and other materials, enabling the researcher to get oriented in the volume of archive materials and identify what is generally stored in the archive). Most often it is the case of departmental archives, which are absolutely *non-transparent* to researchers. Article 24, paragraph 1, subparagraph 1.1 of the law on archive activities in the Russian Federation says that the access to archive documents is provided by giving the archive documents user reference search tools and information on these tools, including as an electronic document. This provision is also available in the rules of storing, collecting, recording, and using archive documents, approved by the Order of the RF Ministry of Culture and Mass Communications in 2007. In practice, archives do not always provide full lists of their available holdings and the lists of the written-off cases. National archives frequently do not mention the holdings containing the cases of the repressed persons, at all. It is to be noted that the law on the archive activities in the Russian Federation does not include the term “closed storage”, and the law on the state secrets in the RF does not include this term either. FSB archive subdivisions also do not provide any reference information materials on the documents stored by them. The lists of declassified and partially declassified FSB documents of the secret document management in 1936–1937 are unavailable, because they are documents “for restricted use” upon the decision of the FSB Central expert commission dated January 9, 2014. Regarding departmental archives, the procedure works based on the following principle: in your request indicate the name, or full name and year of birth of the person you are interested in, and we will see if we have the respective documents. In 2016 within the research carried out by the International Memorial, I interviewed a historian, who mentioned the case when he was not given an archive dossier, since it did not have the list of the documents included therein. That means that in the alphabetical index this archive of the specific person was there,

3 А. А. Пронин, М. Н. Швидко, *О международном этическом кодексе архивистов*, Документ. Архив. История. Современность, Екатеринбург: Изд-во Урал. ун-та, 2015.

but it had not been analyzed, therefore, the access to it was not provided. “Actually I know that there is the material, which is of potential interest to me, I know the person in whose archive this material is stored, but I cannot be given access as long as there is an archivist who will analyze and record the elements of the archive”, the researcher told me.

- **Refusal to provide requested materials for imaginary reasons or without any reasons.** Most frequently the reason to refuse access is the reference to the *personal secret* information contained in the case. This secret is not strictly identified legally and the decision on whether there are indeed these data in the case or not is arbitrarily made by the archivist. Other reasons include references to “decay”, “a missing case”, “fungi on the case materials” etc. In addition, the rejection may also be based on various intradepartmental or archive guidelines and instructions contained therein.
- **Restriction of access due to the order of “three ministries” dated July 25, 2006.** The point is about a 75-year limitation period for accessing the documents, under which it is possible to gain access only by providing the archive with a notarized permission of the person whose name is mentioned in the document, or, in the case of his/her death, the permission of his/her descendants.
- **Refusal to provide cases referring to the confidential character of the data therein.** In archives the process of declassification has been nearly terminated. Scheduled declassification of materials, whose classification period has expired, is not in place at all. Researchers’ access is limited even to those archive documents whose maximum classification period has already expired. The requirements of the RF law on the state secrets are not fulfilled in terms of the need to justify the present damage to the security of the Russian Federation by distributing the data, which were referred by the authorities to the state secrets. Pursuant to article 6 of the RF law on the state secrets, the reference of the data to the state secrets is made in compliance with the principles of legality, relevancy and timeliness. The data may be regarded as a state secret following the expert’s findings, which identify the reason for classifying specific data, probable economic and other effects of this action considering the balance of the vital interests of the state, society and citizens. Furthermore, article 8 states that the classification level degree of the data being a state secret must correspond to the severity of the damage which may be caused to the RF security due to the distribution of these data. Currently the legal practice allows for referring the data to the state secret provided no justification is given regarding the security damage due to the distribution of these data.

As was mentioned above, one of the main problems is the absence of a dynamic balance of priorities and interaction in the archive-related administrative and research aspects. In 2014–2016 the International Memorial interviewed archive researchers to analyze well-established routine norms and phenomena, which comprise routine practices of accessing archive documents and materials in Russia. On the level of applying certain provisions, regulating archive activities, researchers singled out common problems related to the influence of specific archive institutions staff to the possibility for citizens to get materials. Several examples are given below:

“Since 2006 the access to archive investigation cases has been closed completely. For relatives only. The point is about the so-called

‘order of three ministries’. And, since we started working on the Memory Book in 2003, before this order, we managed to work a little with archive investigation cases. Despite the fact that I am the head of a working group on creating the Memory Book, that is I was appointed by the regional administration, and I have a kind of FSB representative, who is a member of the working group, as a subordinate, I am not entitled to work with archive investigation cases under this order”. – Anonymous researcher

“Considering regional archives, you can be well prepared legally, know all your rights, understand what you are allowed to receive and what not, but the paragraph ‘at a director’s discretion’ kills all the rules.” – Anonymous researcher

“When my request for cases was rejected, it was not even at the level of the archive administration, these were just some employees who worked in the former special fund. They themselves looked at the cases and at their discretion told me that they would not give them to me, since there may be some personal data. Naturally, it is still an open question what their grounds were not to provide me with those cases.” – Anonymous researcher

Among the most significant for the user and archivist communication practices, the interviewed respondents also singled out insufficient archive funding, overloading archivists with work, inefficient work management, unsatisfactory condition of archive materials, premises, and the problem of digitalizing archive sources.

LESSONS LEARNT

Legal claims against archives in the case of their refusal to provide access are a rare phenomenon. In a number of specific cases justice is very hard to achieve. It is also extremely hard to create the legal field and support infrastructure for the claims from those, whose rights to access information were infringed. The remedies for accessing archives are still legally sought by the researchers who cooperate with the Memorial. As regards the success of this work, in terms of the Russian court orders positive for claimants, it is impossible to expect quick success, but it is the fight against abuses of specific archives that may establish pre-conditions for gradual changes to the situation for the better. Here the legal cases on the access to archive information will be considered.

Archive users regularly face the problem of copying documents they need. Archives under different pretexts prohibit the use of photocopying and offer their often expensive services. In January 2016 Andrey Galinichev submitted a claim where he demanded to recognize paragraph 3.1.12 as partially invalid in the 2013 Procedure of using archive documents in the national and municipal archives of the Russian Federation, which prohibits copying using any technical devices. Part 4 Article 29 of the Russian Constitution says: “Each person is entitled to freely search, receive, transmit, produce and distribute information by any legal means”. Andrey Galinichev and Dmitry Poslavsky appealed to this article and also to the laws on the archive activities and on information when they decided to stand their ground and seek free document copying via the Supreme Court. In March 2016 Galinichev and Poslavsky won the case: the Court recognized limitations on copying archive documents with a user’s technical devices as invalid. The fact of the court decision has already been included into the order issued by the Ministry of

Culture. Now an archive user is entitled to use his or her own technical devices to photocopy documents. Thus, owing to a private civil initiative, users have been legally provided with the right to the free photographing of an unlimited number of documents at their own discretion.

In practice archives continue refusing researchers access to a huge volume of archive documents of the Soviet period, whose maximum classification period has already expired, without referring to the availability of the respective opinion of the Interdepartmental Commission for the Protection of State Secrets. In 2010 the FSB Central archive refused to fulfill a request from the historian Nikita Petrov on declassification and providing him for studying a few archive orders of the USSR MGB dated 1940–1950 referring to the fact that the documents include data that are a state secret. In 2014 it refused the researcher Nikita Astashin access to the documents, related to mass riots in the Union Republics in 1961–1982, stored in the departmental archive. In both cases governmental bodies made decisions on restricting access to information without any legal powers to do so.

The experience of court trials shows that in the law application practice there may be free interpretation of recognizing data as a state secret provided no proof of any damage to the state security. The same may be said about the restriction on a researcher's access to archive documents whose maximum classification period has expired. In March 2014 the Interdepartmental Commission for the Protection of State Secrets decided to extend the classification period of a vast scope of documents of the state security bodies by 30 years. The requirement of the law on the exclusive and exceptional nature of classifying has obviously been violated. The petition requesting the cancellation of the commission's opinion was signed by over sixty thousand people. In response to the petition the commission responded that the decision on extending the classification period does not apply to the materials related to mass repressions. They must be accessible according to the presidential decree of 1992 on declassifying legal and other regulations serving the grounds for mass repressions. However, in practice archives continue refusing access to archive documents of the Soviet period. Researcher Sergey Prudovsky sought the declassification of a letter of the People's Commissar for Internal Affairs of the USSR, Nikolai Yezhov, one of the main organizers of mass repressions. The FSB refused to declassify the document referring to that very opinion of the Commission for the Protection of State Secrets as the one containing "information sensitive for Russia". Moscow city court took the side of the FSB, and later the decision was also supported by the Supreme Court.

Equally topical are still the problems of restricting researchers' access to documents under the pretext of a personal or family secret. According to the existing legislation, the right to access information (including archive documents) may be restricted only under the federal law. However, currently archive legislation includes regulations establishing restrictions on accessing archive information which are not specified in the federal laws. These regulations include the order on approving the procedure of accessing documents dated July 25, 2006, mentioned above. The provisions of this regulation were appealed against by the Memorial organization in the Supreme Court. Nonetheless, the court did not see any controversies. In practice archives often refuse researchers access to any materials of the cases related to

the repressed persons without clarifying the issue of actual *personal data* availability in the requested materials. This is shown by the numerous refusals to provide access to documents received by the Memorial from different archives. The absence of clear criteria of "personal and family secrets" creates the risk of holding people criminally liable groundlessly. A vivid example is the criminal prosecution of the historian Mikhail Suprun for the preparation of Memory Books of the repressed Germans in the USSR. Suprun was accused under Article 137 of the RF Criminal Code of the illegal collection of data on citizens' private lives, which were their personal and family secrets, since the collected information contained different biographical data of repressed persons.

Another problematic provision is paragraph 5 of the "order of three ministries": "This Provision does not regulate the issues of access to the materials of criminal and administrative cases against the persons who were not granted rehabilitation, or the cases which have not been reconsidered according to the procedure established by Russian law. To the applications from citizens regarding the access to the materials of criminal and administrative cases with negative decisions on rehabilitation of the persons mentioned therein, archives issue certificates on the reconsideration findings". This is the basis for refusing to provide researchers with the materials, if the citizens involved were not rehabilitated. Archives reject even relatives' requests to provide the materials on non-rehabilitated persons. A recent example of restricting access on these grounds: Sergey Prudovsky tried to get personal records on three convicted NKVD members, who themselves once took part in organizing repressions. The FSB Directorate in Moscow and Moscow region rejected the request referring to Article 11 of the RF law on the rehabilitation of the victims of political repressions, according to which the case can be studied wither by the rehabilitated person himself/herself or by his/her relatives (at the same time the NKVD employees in question were not rehabilitated and this law does not apply to them).

In 2015 an important effort was made to support the interests of the civil society in Ukraine: the Verkhovna Rada adopted the law on the access to archives of the repressive bodies of the Communist totalitarian regime of 1917–1991. All the documents, related to repressions, violation of human rights and freedoms, are submitted to the national archive at the institute of the national memory of Ukraine. It opened the opportunity to study these materials for all those who wish, including Russian historians. However, this has not been the grounds for declassifying similar documents in Russia. Moreover, Moscow courts refuse to recognize extending the document classification period as illegal, despite the fact that such documents were made public in Kiev and published on the Internet. The Supreme Court does not recognize the documents, which obviously show repressive campaigns, as those referring to repressions.

Today few academic community historians and researchers risk speaking in the courts and in the mass media against well-established access restriction practices. To develop the archive users activity to protect their rights in 2014 Memorial launched the project and an online resource <http://dostup.memo.ru/> designed to inform the public of the status quo and existing access to the archive information. It is also a platform for providing legal advice to citizens and researchers seeking to get information in the state national archives.

RECOMMENDATIONS

At present the trend indicates an intensification of the mechanisms, deepening the political and cultural problems of working with archive evidence and supporting formal conservative memory policy. Therefore, the focus is to be on the public domain, where the issues of access to archive documents are articulated and viewpoints of an active social group of researchers are expressed.

The fight for the researcher's entitlement to be freely granted access and distribute information from archives is among the top priority issues related to solving the tasks of ensuring subordination and transparency of the state management. To seek higher openness of the data related to the crimes of the Soviet regime it

is necessary to take actions in the legal field, the expert's domain and to appeal to the public (and, which is equally important) by actively working with specific cases of violating citizens' rights to access information.

To solve the issue of the access to archive information it is required to comply with the idea of freedom of information, as one of the vital human and civil rights. It means the opportunity to gain free access to the archives for any individual or any legal entity avoiding the use of a selective approach, compliance with the conditions of departmental storage of archive documents, disclosing the documents that are to be declassified, an opportunity to get access to the quality scientific reference base, the possibility of any forms and kinds of using archive information.

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MEMORY OF NATIONS

Democratic Transition Guide

[The South African Experience]



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REGIME ARCHIVES

GERALDINE FRIESLAAR, NOBUKHOSI ZULU

INTRODUCTION

25 years after the new democratic dispensation was ushered in, reality has set in with the sobering cognizance that there are limits to the South African “miracle” and its liberation. Burdened with the legacies brought about by the oppressive, discriminatory and violent acts of colonialism, apartheid and resistance, the transformation discourse became a dream deferred. As the effects of these legacies continue to reverberate in post-apartheid South Africa with an increasing socio-economic divide driven by a cocktail of race and class polarisation, an incongruent ruling party and the resultant, often violent forms of protest action, there has been a return to a focus on basic human rights such as land, housing, employment, education and health care.

Never quite central in public debates and collective memory, archives in post-apartheid South Africa are “far from standing as enduring monuments to the past, instead [archives] appear somewhat fragile, eternally subject to the judgement of the society in which they exist. Neither atemporal nor absolute, the meaning they convey may be manipulated, misinterpreted, or suppressed ... [T]he archives of the past are also the mutable creations of the present!” It is precisely for this reason, and in recognizing the impact left behind by colonial and apartheid legacies, one can begin to understand the limitations and challenges that faces the state archival system within the post-apartheid setting.

Historically speaking, South Africa is perhaps best known for its policy of *apartheid* (which translated from the Afrikaans language means apartness). *Apartheid* was informed by separate development of the different racial groups in the country and was the dominant ideology supported by the National Party (NP) which was formally institutionalized in 1948, although the roots of segregationist policies stretch back to the arrival of colonialism, long before the Afrikaner Nationalist Party assumed power. Though the system of apartheid drew on the discriminatory structures inherited from colonialism, the apartheid regime enacted legislation that legitimized, formalized and even normalized segregation, oppression and racial discrimination. The apartheid laws that came into force from 1948 onwards, destroyed, traumatised and displaced individuals, families and communities through forced removals and control over movement, housing, education and employment.

As apartheid reached into almost every aspect of people’s lives through entrenching white minority rule and discriminatory practices that sought to categorize, catalogue and classify its subjects by the use of oppressive, discriminatory and often violent acts of dehumanization and dispossession in the broadest sense, the apartheid regime produced a vast archive of its own activities of repression, control and discrimination.² While the apartheid regime might have been ardent record keepers, access to the records of the state archive were tightly controlled and shrouded in a culture of secrecy which has prevailed well into the present.

APARTHEID’S ARCHIVE

Although traces of archiving in the form of carvings, rock paintings, body scarification and collective stories that were passed from one generation to the next can be found throughout South Africa today, and predates the arrival of European colonialism, it has habitually been ignored.³ The arrival of European colonialism signaled the beginning of formal repositories to manage the resources and administrative challenges of the respective Dutch and British projects of empire building. The most important reason for the development of formal repositories during colonial times was the centrality of the archive in the formation and creation of the nation. Colonial archives were as much products of state machinery as technologies that bolstered the production of those states themselves, as argued by Ann Laura Stoler in her insightful study on nineteenth century Dutch colonial archives.⁴ Taking her argument further, Stoler contended that “[c]olonial archives were both sites of the imaginary and institutions that fashioned histories as they concealed, revealed, and reproduced the power of the state”⁵

Following these modest pre-national, administrative colonial beginnings, the archival holdings underwent a major development in 1910 with the establishment of the Union of South Africa. The national archives service under the auspices of the Department of the Interior, legislatively came into being in 1922 and was later configured as part of the project of building an Afrikaner nation. The custodial mandate of the newly established State Archives Service (SAS) included the archival records of national and provincial government offices, which was further expanded in 1962 to encompass the archival records of local government offices as well as the records of the former self-governing homelands.

1 Judith M. Panitch, “Liberty, Equality, Posterity? Some Archival Lessons from the Case of the French Revolution”, in *The American Archivist*, 1996, Vol. 59, No. 1, 47.

2 Verne Harris, *Exploring Archives: An Introduction to Archival Ideas and Practice in South Africa*, Pretoria: National Archives of South Africa, 2000, 8.

3 One reason for early traces of archiving being overlooked is that the written record has always enjoyed more privilege at the expense of other modes of communication and recordkeeping such as the oral, visual and other sensory forms. For a discussion on the connections between orality and literacy see Isabel Hofmeyr, “We spend our years as a tale that is told”: *Oral Historical Narrative in a South African Chieftdom*, Johannesburg: Witwatersrand University Press, 1994. Also see Alessandro Portelli, What makes oral history different, in Robert Perks and Alistair Thomson (eds.), *The Oral History Reader*, London: Routledge, 1998 for his argument about the use and function of oral sources in creating meaning, content and form. For a discussion on how visuality has been subordinated to textuality, see Patricia Hayes, Jeremy Silvester and Wolfram Hartmann, Photography, history and memory, in Wolfram Hartmann, Jeremy Silvester and Patricia Hayes (eds.), *The Colonising Camera: Photographs in the making of Namibian History*, Athens: Ohio University Press, 1998, 2.

4 Ann L. Stoler, “Colonial Archives and the Arts of Governance”, in *Archival Science*, 2002, Vol. 2, 98.

5 *Ibid.*, 97; Also read Richard H. Brown and Beth Davis-Brown, “The Making of Memory: The Politics of Archives, Libraries and Museums in the Construction of National Consciousness”, in *History of the Human Sciences*, 1998, Vol. 11, No. 4, 17–32.

Further to its mandate, SAS was also empowered to augment its public archival record holdings with private records. With the institutionalization of apartheid in 1948, and especially after the implementation of the Archives Act in 1962, the SAS was transformed into a formidable system with wide-ranging regulatory powers and “an extraordinary capacity to secure the support of most white South Africans as well as the acquiescence or collaboration of significant sections of the black population.”⁶ In a similar vein as colonialism, the apartheid state also sought to control social memory and the production of knowledge, as well as who had access to knowledge. Focused on legitimizing apartheid rule and building support for their ideology, the apartheid state gave attention to constructing state-funded memory institutions such as archives, museums, libraries and monuments through which they collected and constructed official narratives focused on entrenching a dominant ideology of white minority rule. In particular, apartheid was very successful in reaching into almost every aspect of the lives of the people which it governed by having control over the “racial classification, employment, movement, association, purchase of property, recreation and so on, all were documented by thousands of government offices”⁷

Apart from the public records generated by the apartheid state, the apartheid archival system also encompassed records of the security police and intelligence services that documented their surveillance activities on especially those in opposition to apartheid. While these records constituted a significant part of the SAS, large quantities of records that documented the struggle against apartheid were confiscated during raids from individuals and organizations opposed to apartheid, as opponents to apartheid also started keeping their own account of the struggle against apartheid. Often forced by the long reach of the apartheid system into informal spaces, liberation movements, solidarity organizations and activists generated a vast record of their activism and resistance work that documented the underground activities and exile experiences of those opposed to apartheid.⁸ This material, considered to be subversive by the apartheid state, would constitute the shadow archives of the liberation struggle and would later be deployed as the antithesis or counter archives to the state archives. These archives would remain in the shadows until apartheid was legislatively dismantled in the early 1990s.

The rigidity of the apartheid bureaucratic structures molded the state archives into an apparatus in the service of the apartheid system as access to the state archives and employment opportunities within the state archives mirrored the enforced apartheid era legislation. The adoption of an apartheid bureaucratic culture, contributed to a skewed representation of historical memory in South Africa as the approach of the state archives to archival practices was informed by an ideology that sought to racially exclude, omit and elide the struggles and experiences of colonialism, segregation and apartheid’s marginalized and oppressed.⁹ It is also significant that in examples where documentation of black experiences or other marginalized voices took place, scant as it may be, this was subject to the subjectivities of white archival professionals.

This situation of apartheid fashioned gaps within historical memory and state imposed public amnesia through censure and restricted access prevailed until the end of apartheid. Through a sustained campaign of resistance punctuated with protests, mass mobilization, sanctions and international solidarity which culminated during the 1980s to fever pitch as

the apartheid state clamped down on its opponents, the National Party realized the need to engage with its opponents as the apartheid system would not be able to sustain the mounting pressure for reform calls. On 2 February 1990, then President F.W. de Klerk made an announcement in which he lifted the ban on political and solidarity organizations such as the Communist Party of South Africa (CPSA), African National Congress (ANC) and the Pan Africanist Congress (PAC), along with other political organizations, as well as the International Defence and Aid Fund (IDAF), an international solidarity organization, and also announced that political exiles would be allowed to return and that all political prisoners would be released from prison. After centuries of colonial oppression and four decades of experiencing the brutal force of apartheid, the revolution did not happen. Instead, apartheid was dismantled through a negotiated settlement between the liberation movement and the apartheid regime.¹⁰

The struggle for liberation in South Africa was a long and bitter battle in more ways than one. It is a fragmented story marked by violence, pain, loss and suffering but equally, it is a story about memory erasure, silencing of oppositional voices, exclusion and marginalization. The remnants that remained bear testimony to a tumultuous, divisive and painful past, some of which the apartheid regime managed to destroy in the last few feverish moments of apartheid in the early 1990s, just as the country was casting off the shackles of apartheid and emerging as a fledgling democracy.

The archive as a site of struggle, contestation and ambiguity, in particular the archives of the apartheid era, and after being shrouded in an imposed state of public amnesia for more than two decades following the democratic transition, has recently become prominent again in public discourse through a renewed call for justice for victims of apartheid era atrocities as the process started by the Truth and Reconciliation Commission (TRC) remains unfinished.¹¹ This prominence, however momentary it may be, has underlined the importance of the records of the state archives to assist in piecing together fragments of history, which is crucial in the process of the reopening of inquests, the prosecution of human rights abuses committed during apartheid and for families to find closure. Problematically, it has also brought into sharp focus the indeterminate and opaque nature of the apartheid era archives in the way it seemingly, resiliently and

6 Verne Harris, *Exploring Archives: An introduction to archival ideas and practice in South Africa*, Pretoria: National Archives of South Africa, 2000, 7.

7 Ibid., 8.

8 For an account of some of the struggle material was generated through the activities of the liberation movements and the support work of solidarity organizations such as the International Defence and Aid Fund see Geraldine Frieslaar, “(Re)collections in the archive: making and remaking the International Defence and Aid Fund (IDAF) archival collection”, Unpublished Ph.D Dissertation, UWC, 2015.

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11 In the Final Report of the TRC, one of the recommendations was that at least 300 cases should be investigated and prosecuted, however only two cases have been prosecuted in the past 15 years. Several family members of victims of human rights violations during apartheid has consistently called for justice and accountability but also equally, to provide them with the right to know in respect of what happened to their family members.

stubbornly remains in the long shadow of the apartheid regime's culture of secrecy as it refuses to be fully laid bare in the present.

THE DESTRUCTION OF RECORDS

The apartheid regime was built on secrecy and lack of transparency and as the pillars of apartheid's architecture started crumbling during the early 1990s, those in opposition to apartheid feared that the regime might just be tempted to destroy public records revealing apartheid secrets and culpability in human rights violations as evidence suggested that the regime routinely destroyed public records during apartheid.¹² Engineered by the apartheid state, and designed in part to withhold perceived sensitive information from the future government under the cloak of the very vague and dubious *Protection of Information Act* (PIA) of 1982, the state undertook a comprehensive sanitization exercise on its archival resources. While this operation involved various departmental structures within the regime, the focus of this large scale destruction of public records, were the records of the security and intelligence arms of the state in particular.¹³ According to the findings of an investigation that was launched by the Truth and Reconciliation Commission (TRC) into the destruction of public records, huge volumes of public records were destroyed between 1990 and 1994 in an attempt to sanitize the official record and keep the secrets of the apartheid state buried.¹⁴

Equally disconcerting, especially when viewed against a background of deliberate practices of memory erasure, the silencing and marginalization of oppositional voices during apartheid through exile, banning, detentions, torture, imprisonment, enforced disappearances and deaths, was the destruction of records that went beyond the repressive activities of the state and included the records of those that were opposed to apartheid. As revealed by the TRC investigation into the destruction of apartheid era records, records encompassing material that were confiscated during raids, collected as evidence against individuals or organizations considered to be enemies of the state, were not spared from being destroyed. Sometimes these records were part of the collateral destruction caused by bombings and other violent acts against those opposed to apartheid, but unfortunately, most of these surviving non-public records that made it into the twilight of apartheid were subsequently also destroyed during the early 1990s in the hope of whitewashing the historical record.

Apart from the widespread destruction of public records whether through intentional destruction or through the confiscation of private records which eventually led to their destruction, it remains to be told how many private records were obliterated from social memory within the rigid conditions of apartheid for fear of imprisonment, torture, harassment and even death. Hindered by a lack of resources, coupled with the state confiscation of material considered to be revolutionary and the possibility that individuals and organizations opposed to apartheid might have destroyed some of their own records in order to combat infiltration and prosecution by the apartheid state, this has resulted in an even more fragmented record of historical memory by the end of apartheid. As Verne Harris, a former archivist at SAS commented in his detailed account of the destruction of public records by the South African state between 1990 to 1994, that "this was a struggle of remembering against forgetting, of oppositional memory fighting a life-and-death struggle against a systematic forgetting engineered by the state".¹⁵

TRANSITION TO DEMOCRACY

With the negotiated transition from apartheid to democracy, the new South African state was shaped around the notion of a unified rainbow nation focused on fostering transformation, reconciliation and nation building as the central tenets of building a democracy. Although the negotiated settlement facilitated a Government of National Unity after the sweeping victory of the ANC in the 1994 general elections, the new democracy tentatively emerged in the post-apartheid setting burdened by the deeply entrenched psychological scars and documentary inheritances left behind by apartheid and colonialism. These sometimes deeply etched traces have left an indelible imprint on South African society as they continue to operate in very pervasive and often subversive ways.

Having inherited the documentary traces of apartheid and colonialism, with which the new South African government had to contend with, the early 1990s, in particular, also saw a proliferation of new archival and memory projects focused on the collection of memories of the hidden, marginalized, exiled and the suppressed archive. Some of them included, the South African History Archive (SAHA), the Mayibuye Centre for History and Culture which was later absorbed into the Robben Island Museum, the District Six Museum, the Gay and Lesbian Archives (established as a special project of SAHA but later became an independent project) and the National Heritage and Cultural Studies Centre (NAHECS) at the University of Fort Hare (UFH). Conceived as one of the ways in which to redress "apartheid-fashioned gaps in social memory",¹⁶ the creation of these counter archives and the augmentation of existing collecting institutions with anti-apartheid and liberation struggle material were about "bringing the hidden, the marginalized, the exiled, the 'other' archive, into the 'mainstream'".¹⁷ In addition, these institutions also played a key role in

12 Although it is not clear when a policy on record destruction was implemented, it certainly came into effect in 1978, when "all government departments received guidelines for the protection of classified information, signed by the Prime Minister and empowering department heads to authorize destruction outside the ambit of the Archives Act". See Verne Harris, "They Should Have Destroyed More: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994", in *Transformation*, 2000, Vol. 42, 4.

13 It is estimated that the National Intelligence Service headquarters destroyed 44 tons of paper-based and microfilm records in a 6-8 month period during 1993. See Verne Harris, "They Should Have Destroyed More: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994", in *Transformation*, 2000, Vol. 42, 7.

14 Verne Harris, "The Archival Sliver: Power, Memory and Archives in South Africa", in *Archival Science*, 2002, Vol. 2, 64; Also see Harris, *Exploring Archives*, 9.

15 Verne Harris, "They Should Have Destroyed More: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994", in *Transformation*, 2000, Vol. 42, 13.

16 Verne Harris, *Exploring Archives: An Introduction to Archival Ideas and Practice in South Africa*, Pretoria: National Archives of South Africa, 2000, 11.

17 Ibid. During the early 1990s a number of strategies were employed such as publications and exhibitions as a means of bringing the hidden, lost and exiled archive into the mainstream. Emblematic of this endeavour, was an exhibition curated by Gordon Metz, who at the time was the curator of visual collections at the Mayibuye Centre for History and Culture in 1994. The exhibition was entitled "Margins to Mainstream: Lost South African Photographers" and featured the "lost" work of Ernest Cole, Bob Gosani, Willie de Klerk, Ranjith Kally, Leon Levson and Eli Weinberg. For a further discussion on the "Margins to Mainstream" exhibition see Gary Minkley and Ciraj Rassool, "Photography with a difference: Leon Levson's camera studies and photographic exhibitions of native life in South Africa, 1947-1950", in *Kronos*, November 2005, Vol. 31, 186.

the transformation discourse that emerged alongside the political transformation that South Africa was undergoing both by leading discussions in heritage transformation and through their archival practices premised on activism and social justice.

Repatriated from exile, and consisting of the material of previously banned organizations as well as the records of various international solidarity organizations, and those of activists who fought in the struggle against apartheid, anti-apartheid struggle and liberation struggle related materials were unceremoniously thrust into a national process of heritage and archival transformation in the service of promoting the principles of democracy and reconciliation. Highly controversial because of its enduring contemporary significance and mired in continued secrecy as a consequence of the conditions in which they were constituted, these archives have been at the forefront of intense debates regarding issues of ownership, commodification, competition, marginalization, silencing and collective amnesia.

Constitutive of the “hidden, exiled or counter” archives of the struggle against apartheid, these archives were formally positioned in opposition to the state archives through the emergence of a transformation discourse during the early 1990s. A discourse on transformation, especially one that speaks to issues of memory, education and culture can be traced back to as far as the 1970s, with the emergence of resistance art and literature and the conceptualization of a people’s education during the 1980s as a means of countering apartheid. Crafting a prestigious position within a changing political landscape whose agenda, amongst other things, was concerned with the remembering, recuperating and the rewriting of history, the records of the liberation movements, solidarity organizations and records from anti-apartheid activists that documented different aspects of the liberation struggle, coalesced around a transformation discourse, informed by the assumption that archives in South Africa required a reimagining or a refiguring.¹⁸

Building upon these projects of memory construction and oppositional historiography which emerged from the 1970s, the transformation discourse of the 1990s was primarily informed by the need for reconciliation, redress and equality. Reflecting on this period, Verne Harris noted that the transformation discourse in archives was constructed “around a commitment to redressing inherited balances and rectifying the exclusions of the past”.¹⁹ According to Harris, the impetus of the construction of a transformation discourse around archives was to take the archives to the people.²⁰ However, as Harris thoughtfully observed, “[t]he nature of the transition to democracy meant that there would be no dramatic dismantling and reconstruction of the apartheid archival system. Rather, the new would be built out of the old through a process of transformation.”²¹

Emphasizing the tension and challenges this created for archives, Helena Pohlandt-McCormick argued:

Not surprisingly, the years since 1994 have seen South Africa emerge as a complex and conflicted nation, burdened still with the legacy of apartheid and resistance ... The destruction of historical archives and the concealment or exclusions of materials must be included in the repertoire of the state’s efforts to change what was known and remembered of South Africa’s past. Less visible, but no less dangerous, are complex patterns of behaviour (habits of secrecy, control, dissimulation, accountability or lack thereof) that have as much to do with apartheid bureaucracies as with resistance politics, most of all in the way

they replicate each other. A new culture of remembering and accountability brings new evidence and historical understanding into the open, but it also brings new challenges.²²

Although there was a fervent desire to redefine archives during the 1990s, this reimagining had to occur within the constraints posed by an inherited bureaucratic system built upon the injustices and inequality of apartheid as well as the confines of a reconciliation narrative as set out by the agenda of a new democracy in the making.

It is against this background that the *National Archives of South Africa Act* came into being in 1996, which usurped the SAS and established the National Archives in response to the shifting political changes and the need for transformation within the national archival system. As newly established and reconstituted archival and memory projects were positioning themselves in respect of assuming possession of the counter archives, the National Archives had to work harder to establish their credibility in respect of representation, access and active documenters. Central to transforming the national archival system were issues of representation within the public service that had been at the forefront since 1994, and which have seen changes brought about through the application of affirmative action policies in the recruitment of archivists in the National Archives. Parallel to the transformation of the national archival system, was the question of transparency and accountability and the degree to which public records should be made accessible to the public while also taking into account the interests of the state in safeguarding sensitive national issues.

In balancing the interest of the state with the responsibility of providing access of public records to the public, the *Promotion of Access to Information Act* (2000), also known as PAIA was passed which gives effect to the constitutional right of access to information held by public and private bodies as outlined in the South African Constitution.²³ However, as Veronique Riouful

18 In post-apartheid South Africa, the debate on the archive was made explicit with the publishing of *Refiguring the Archive*, which was the outcome of a project that focused on a series of thirteen seminars hosted in 1998 by the University of the Witwatersrand’s Graduate School for the Humanities and Social Sciences. Constituted around a visit by Jacques Derrida to South Africa, the *Refiguring the Archive* project was conceived as an idea to address and interrogate urgent questions posed to the archive that followed in the wake of the work of the Truth and Reconciliation Commission (TRC) and the transformation of institutions in South Africa after 1994. In their interrogation of the archive, the contributors to the volume *Refiguring the Archive* proposed a (re)figuring of the archive by investigating the ethnographies and histories of archives, the way in which institutions such as archives are implicated in creating a particular vision of society and, very significantly, to understand the conditions and processes of the record. See Carolyn Hamilton, Verne Harris, Michele Pickover, Graeme Reid, Razia Saleh, Jane Taylor (eds.), *Refiguring the Archive*, Cape Town: David Philip, 2002, 7–16.

19 Verne Harris, “Seeing (in) Blindness: South Africa, Archives and Passion for Justice”, in *Archifacts*, 2001, 5.

20 Harris, *Exploring Archives*, 5.

21 *Ibid.*, 10.

22 Helena Pohlandt-McCormick, In good hands: Researching the 1976 Soweto Uprising in the State Archives of South Africa, in Antoinette Burton (ed.), *Archive Stories: Facts, Fictions and the Writing of History*, Durham: Duke University Press, 2005, 319–320.

23 Section 32(1) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution), provides that everyone has the right of access to records or/and information held by the state and any information held by another person and that is required for the exercise or protection of any rights.

and others have argued, the new democratic dispensation of 1994 brought its own conditions in which to reshape representations of South Africa as a country “promoting democratization, fostering reconciliation and national unity,”²⁴ through which South Africa was represented within the lens of as a reconciled and unified rainbow nation. Drawing on Riouful’s argument of the positive and universalist terms in which South Africa was recast in order “to fit the new political situation and to foster cohesion,”²⁵ it can be argued that in the project of recasting South Africa as a unified nation, it necessarily involved the silencing, forgetting or marginalization of certain voices and narratives. In his reflections on the relationship between the archive and the making of the nation state, Kwame Anthony Appiah made a similar argument in which he noted that, “[n]ational history is a question of what we choose to remember, not just in the sense of which facts we use for our public purposes, but equally in the sense that we choose which facts actually count as ours.”²⁶

DECLASSIFICATION AND OPENING UP OF THE ARCHIVES

The widespread destruction of records and the entrenchment of an apartheid culture built on secrecy within the national archival system, which was further shaped by the compromises reached as a result of the negotiated settlement between the apartheid regime and the liberation movements, impacted heavily on the work of transitional justice and truth recovery. Promulgated by the *Promotion of National Unity and Reconciliation, Act 34 of 1995*, the Truth and Reconciliation Commission (TRC), was established and tasked with the responsibility to investigate apartheid’s atrocities through public participation and transparency, granting amnesty to perpetrators, in line with full disclosure by amnesty applicants, providing victims with some form of reparation and making recommendations to the President in order to prevent any future recurrence of systematic violations of human rights. Though the South African TRC has been internationally recognized for its work in assisting the country to deal with issues of the past, the TRC has not been without its critics, especially when it is compounded by the structural inequalities inherited by the previous regime that continue to prevail in post-apartheid South Africa. The memory work that had begun with the TRC has been plagued by a persistent lack of political will, apartheid fatigue, and has been recently revealed, even political interference but all too often, there is the sense of rather leaving the skeletons in the closet where it cannot stir up trouble in the present.²⁷

Pointing to the decisive role that the archive plays in the formation and the subsequent safeguarding of the nation and the state, Jacques Derrida argued that, “[t]here is no political power without control of the archive, if not memory. Effective democratization can always be measured by this essential criterion: the participation in and access to the archive, its constitution, and its interpretation.”²⁸ But how successful has this been? One of the recommendations of the TRC was to protect and make readily accessible to all South Africans the “national asset” that is the records of the TRC archive. In line with this recommendation, the South African History Archive (SAHA), an independent activist archive based at Constitution Hill in Johannesburg, has demonstrated a longstanding interest in making the work and records of, and surrounding, the South African TRC more widely

available, often in the face of little state engagement in continuing the reconciliation agenda begun by the TRC.

One example of the work SAHA has undertaken in making the TRC archive, in its broadest sense, more readily accessible was the development of the SAHA/ SABC Truth Commission Special Report multimedia player and website, an interactive tool built around the 87-part Truth Commission Special Report television series.²⁹ Beyond this initiative, and since the inception of SAHA’s Freedom of Information Programme (FOIP) in 2001, SAHA have made over 2000 requests utilizing PAIA on behalf of individuals and communities, researchers, authors, academics, community based organisations, social movements, and other non-governmental organisations and coalitions in the public interest.

Despite, the necessity for transparency and accountability required within the democratic transition, transformation in respect of providing access to public records has been painfully slow as the new government inherited the apartheid regime’s “organizational culture of clandestine, unaccountable and covert activity.”³⁰ In SAHA’s experience of having submitted PAIA requests for access to TRC records, the state has repeatedly attempted to block access to the TRC archives, which, all too often, has resulted in unnecessarily lengthy, hostile and litigious engagements. SAHA has secured several favourable settlements, forcing government departments to hand over TRC records they had previously refused to disclose and, in some instances, had denied even existed. However, because of these last minute out-of-court settlements, no legal precedents have been set around access to the TRC archive, enabling government departments to continue using such blocking tactics. Furthermore, going to court is expensive and time-consuming and should not be the primary mechanism to gain access to TRC records. It is ironic to consider that, as stated in its preamble, PAIA had, in part, been enacted to counteract “the secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations” in the apartheid era.

To date the records of various pre- and post-1994 Government departments are neither kept at, nor do they fall under the oversight of the National Archive. In fact, as it currently stands the process of concealing of records as classified is of grave concern as it is not a transparent process and is antithetical to the principles of openness enshrined in PAIA. State organs can easily declare information in their archives to be protected on the basis of national security, and challenging such

24 Veronique Riouful, “Behind Telling: Post-apartheid Representations of Robben Island’s Past”, in *Kronos*, August 2000, Vol. 26, 22.

25 *Ibid.*, 26.

26 Kwame Anthony Appiah, *Identity, Politics and the Archive*, in Xolela Mangcu (ed.), *Becoming Worthy Ancestors: Archive, Public Deliberation and Identity in South Africa*, Johannesburg: Wits University Press, 2011, 106.

27 Greg Nicolson, “NPA allowed manipulation of criminal justice system in TRC cases”, in *DailyMaverick*, 4 June 2019, <https://www.dailymaverick.co.za/article/2019-06-04-npa-allowed-manipulation-of-criminal-justice-system-in-trc-cases/>

28 Jacques Derrida, *Archive Fever: A Freudian Impression*, translated by E. Prenowitz, Chicago and London: University of Chicago Press, 1995, 4, note 1.

29 See <http://sabctr.saha.org.za>

30 Graeme Simpson, “A Brief Evaluation of South Africa’s Truth and Reconciliation Commission: Some lessons for societies in transition”, Paper written prior to the publication of the TRC’s Final Report, October 1998, <https://www.csvr.org.za/index.php/publications/1724-a-brief-evaluation-of-south-africas-truth-and-reconciliation-commission-some-lessons-for-societies-in-transition.html>

a classification is a difficult task. This is because the information required to prove that the records should be public record is the very information that has been declared as classified. The legislation in respect of state security is yet to be passed effectively. This applies particularly to the records of the former state security structures such as security police, intelligence, defence, and the former homelands. Therefore, identifying their locations and extent is essential. Many of these records have been classified and therefore they remain unknown and inaccessible to the public. Other factors contributing to the challenges of accessing the records of the state are the result of mismanagement in government archives, general poor resourcing of state archives, skills shortage and lack of professional commitment in the national, provincial and municipal archives.

In 2011, after much uproar, the proposed Protection of State Information Bill, commonly referred to as the Secrecy Bill, was placed on hold to allow for further consideration. The Bill was of great concern to archival work involving right to truth and access to information. The Bill failed to accurately convey how information was classified as “secretive”, as well as allowing blanket categorization of whole groups of information as classified without individually considering each record. The Bill also attempted to usurp the position of PAIA as the key legislation in respect of access to information. PAIA states that in relation to other legislation, it holds supremacy and is the primary mechanism through which an individual can attempt to access information.³¹ Although the Bill was shelved, it demonstrated the thinking of the government around the classification of documents and granting public access to sensitive documents.³²

For the records that are available in the archives, access is not automatic. Individuals are required under PAIA to make a request to gain access to the records. PAIA prescribes how the form should appear and the processes to be followed to access records that are held by the state or a private body. The condition of the national archival system is in a state of crisis and not conducive to promoting access to information. Despite the fact that the law mandates that records must be created and kept in a manner that promotes access to information, this has not been the case. The failure to keep archives in a fashion that is organised and easily accessible makes it difficult for organizations and individuals that make PAIA applications to access records in a suitable manner.

In order to access the records held in state archives, individuals and organisations have often been forced to use more creative ways than just merely submitting a PAIA request and trusting that the records will be released.³³ Whilst the provisions of PAIA are very clear about the responsibility of the state to respond to requests on time, allowing the archivists time to sift through large quantities of records and providing them with greater scope, has proved necessary in ensuring that records released. As a result of the resources that have incrementally shrunk over the years, requests are rarely responded to on time.³⁴ PAIA has specific provisions that dictate specific time frames that must be adhered to in the process of releasing information. Ideally records should be released as per the submitted PAIA requests, but in some instances the archives such as the South African Police Archives and the National Archives have opened up their doors and allowed researchers to go through their records on their own.³⁵

A limitation that exists in the use of PAIA is the requirement that the requested items must be specifically identified. Although PAIA is intended to be used by the general public in accessing

records, an individual requester might not know the exact location and description of the record. This reason could result in a finding that “the work involved in processing (the request) would substantially and unreasonably the resources of the public body”³⁶ and therefore the request can be denied by the information officer. With the complex manner in which the archives are in, there are instances where an ordinary individual would not know where in the archives records are held. It has been the experience of SAHA that a series of PAIA requests need to be sent before records are correctly identified and the PAIA request is responded to.³⁷ The process is long for the expert archivists, and is naturally more cumbersome for the ordinary citizens. PAIA does however have provisions under section 19 that instruct an information officer to offer assistance to individuals who make requests and require help in clarifying their requests.

In addition to negotiating and being flexible on legislative requirements, the most effective tool to gaining access to records that are held by state archives has been the use of litigation. The mechanism of PAIA is such that once an appeal to the minister in charge of the department from whom records are sought has made a decision to deny the request for records the only available option is through the courts. SAHA has extensive experience in using the courts to gain access to public records held in the State archives. The most significant of these cases is the Section 29 Hearings, which saw the records of the hearings that were held in camera during apartheid released as well as the records from the Department of Defence that revealed the depths of corruption pertaining to the arms deals during

31 PAIA, Section 5 provides “This Act applies to the exclusion of any provision of other legislation that- (a) prohibits or restricts the disclosure of a record of a public body or private body; and (b) is materially inconsistent with an object, or a specific provision, of this Act”.

32 Pierre De Vos, “Secrecy Bill Less About Media Freedom, More About National Security State”, in *Constitutionally Speaking*, 21. 1. 2012, <https://constitutionallyspeaking.co.za/secrecy-bill-less-about-media-freedom-more-about-national-security-state/>

33 In one example was the manner in which SAHA worked with the Department of Defence to access from their archives records that concerning the treatment of LGBTQ+ members of the military during apartheid. It came to light during the TRC hearings that the military during apartheid used torturous and inhumane treatments to “treat” homosexuality. For a more detailed discussion on how these records were eventually accessed see Laura Pollecut, *Unlocking South Africa’s Military Archives*, in Kate Allen, ed, *Paper Wars: Access to Information In South Africa*, Wits University Press, 2009, 122–142.

34 The South African History Archive has expert knowledge on using PAIA as a means to access information in archives. For a deeper analysis on the challenges that around the compliance to PAIA see Nobukhosi Zulu and Yewande Adeleke, “There’s many an obstacle in exercising our right of access to information”, in the *Daily Maverick*, 4. 10. 2018, <https://www.dailymaverick.co.za/article/2018-10-04-theres-many-an-obstacle-in-exercising-our-right-of-access-to-information/>

35 For a report on the experience of visiting the SAPS Archive and the condition of the archive see http://www.saha.org.za/news/2019/February/saps_archival_visit.htm

36 PAIA section 45 states that “The information officer of a public body may refuse a request for access to a record of the body if- (a) the request is manifestly frivolous or vexatious; or (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body”.

37 In the SAHA v. SARb matter, PAIA requests were first sent in 2014 but they were considered too broad, and the final request was eventually narrowed down after extensive consultation. That case is currently on appeal and on the papers, a definition of what constitutes a frivolous and vexatious application will hopefully be defined the courts. See http://www.saha.org.za/news/2018/March/court_strikes_a_blow_against_transparency.htm

apartheid.³⁸ The process of litigation is a cumbersome one that requires extensive resources and takes many years for matters to be finalised. In the meantime, requested records are at risk of being mishandled and destroyed. Litigation is an unsustainable and unattainable for the greater majority of the population. So, whilst theoretically archives are meant to be accessible to the public, this not the reality.

DEALING WITH INDIVIDUAL RIGHTS AND PROTECTION OF INFORMATION

In 2013 the president signed into office the progressive and necessary *Protection of Personal Information Act* (POPIA) into law. The purpose of the law is to “... promote the protection of personal information processed by public and private bodies; to introduce information protection principles so as to establish minimum requirements for the processing of personal information”.³⁹ However, the drafters of POPIA failed to take into consideration the right manner in which this law would affect archives and access to archives.

POPIA places a heavy burden on archives in so far as it relates to the processing of materials that are received and processed by archives. POPIA specifies that information of a personal nature must be collected from the relevant affected individual, except for situations where that collection falls under a listed exception,⁴⁰ of which archives is not specifically listed. The difficulty with this section is that organisations dealing with archives receive records from donors who gather information about individuals. This means that for each collection, an archival organisation has to establish that the collection constitutes a legitimate interest to the archive. In theory, this involves testing each record individually for any personal information contained therein. Once an archive has established that a collection is legally acceptable, only then may it process the personal information. In order to store the information in the archival collection, the consent of the individual whose personal information it is, must be obtained, or the archive has to establish that it is pursuing a legitimate interest.

The resource-intensive nature of these requirements is likely to have a crippling effect on archival institutions in a sector that is already under-resourced and struggling to meet the demands of national heritage, serving another blow to the preservation of South Africa’s heritage. A further concern is that the POPIA requires institutions in possession of personal information to take steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary. It is the nature of archive that the records contained therein represent views, opinions or perceptions fixed in a particular moment. It is not appropriate to amend archival records because the information contained therein is later found to be inaccurate or incomplete. This creates an onerous burden on the archive and has the ability the greatly discourage public access to archival records.⁴¹ So, whilst the protection of personal information is an admirable goal, the unintended consequences for archives are regrettable.

LESSONS LEARNT

The *Archives Act* of 1996 held much promise, as was articulated by its optimistic and bold agenda, but this promise has not been realised as the initial energy and optimism around transformation

waned in the absence of adequate resources, funding and a lack of understanding of the work of archives. According to a recent report prepared by the UCT-based archive, heritage information and promotion agency, Archival Platform, “the optimism that marked the 1990s crumbled away as resources failed to materialise, backlogs in processing archives and records grew to unmanageable levels, training and opportunities for professional advancement became limited ...”⁴²

In 2019, the vision of archives in the future seems dismal and unsettling, at best, beset as archives were with epistemic and political uncertainties in the present. The crisis in which the national archival system found themselves in was already flagged as early as 2007 in “Archives at the Crossroads: Open Report to the Minister of Arts and Culture” following deliberations of the conference, “National System, Public Interest” that considered the dismal state of archives in South Africa. The “Open Report to the Minister of Arts and Culture” argued that the significance of archives is, for the most part, unacknowledged and concluded that the danger herein lies in the creation of an inadequate and strained archival system that is plagued by protracted under-funding and poor service delivery.⁴³ The stark reality is that after 25 years of transformation processes that were informed by the promissory note of democratic change, archives are still under siege from both within and from outside the archival realm. In their report, Archival Platform argued that “[m]uch good work was done systematically through the 1990s, but the hopes of that period have not been realised. Today the national archival system is in trouble. Good work is being done only in isolated pockets. There is no overarching policy framework for archives beyond that implicit in national and provincial legislation. The vision of the 1990s has evaporated. Chronic underfunding and a lack of resources is ubiquitous. The political will to change things is largely absent. The system, simply put is not delivering.”⁴⁴

Slightly predating this report of Archival Platform, Carolyn Hamilton attributed the crisis facing the national archival system to a combination of fractures, uncertainties, changes and ambiguities around archival inheritances of the colonial and apartheid periods. According to Hamilton, “[t]he neglect of the official archival institutions also speaks to contemporary epistemic and political uncertainties, ambiguities and contradictions surrounding the formal archival inheritance and the many forms of material

38 The records that were released were released from the DOD contributed extensively to a book that details the corruption of the apartheid government. See Hennie Van Vuuren, *Apartheid, Guns and Money*, Oxford University Press, 2017.

39 Description and title of POPI Act 4 of 2013.

40 The list of exclusions is found POPIA Section 6 and 7 and covers a broad range of exclusions such as those concerning the function of a public body in the interest of national security and journalistic organisations pursuing a legitimate public interest.

41 Although POPIA was signed into law, the effect of the full provisions has been suspended and is awaiting that all provisions become enforceable. Once these provisions become active, it remains to be seen how archives in South Africa will adapt to the enforcement of the law.

42 “State of the Archives: An analysis of South Africa’s national archival system, 2014”, prepared by Archival Platform, 2015, 32, http://www.archivalplatform.org/images/resources/State_of_the_Archive_FOR_WEB.pdf

43 “Archives at the Crossroads 2007: Open Report to the Minister of Arts and Culture” from the Archival Conference “National System, Public Interest”, April 2007.

44 Executive Summary, “State of the Archives: An analysis of South Africa’s national archival system, 2014”, prepared by Archival Platform, 2015.

held in other custodial formations".⁴⁵ Although Hamilton conceded that the crisis in the national archival system was much more complex than bad management and being under-resourced, her argument was mostly concerned with the way in which colonial and apartheid state archives were seemingly being relegated to the margins of history because they were tainted and dubious in nature, and therefore viewed with distrust.⁴⁶

RECOMMENDATIONS

Promoting a culture of openness and accountability is seen to be crucial for the health of a democratic society. PAIA provides a tool for civil society in the sense that it was enacted to foster a culture of transparency and accountability in public and private bodies to prevent, and counteract the secretive and unresponsive culture in public and private bodies that led to an abuse of power and human rights violations in the apartheid era, but it is piece of legislation that will unfortunately not achieve those objectives on its own. Additionally, there continues to be concerns about a work culture that allows important information not to be recorded at all, and ineffective record-keeping systems to identify and retrieve information that would be of use to government and the public. Added to this is the continuing delays in declassification of documents that appear to have been overclassified and which are then either not made available, or take months to process.

Framed against this background it is recommended that:

- The state needs to take appropriate measures to ensure the prevention of the sanitization of records in future through greater safeguarding of records through the provision of adequate resources to the national archival system both in terms of budgetary resources and legislative power;
- Greater integration between public and non-public archives, the safeguarding of records across both public and private archival institutions and promoting access thereof;
- Public archives should transform themselves into active documenters instead of passive antiquarians and foster an outreach programme in order to take archives to its citizens;
- The security establishment should assist in locating and retrieving documents removed without authorization by operatives of apartheid security structures;

- The National Archives should be given the necessary resources to process and make available to the public, as a means to fill many of the gaps in official memory resources and also to assist in the unfinished business of the TRC;
- The National Archives should be given the necessary resources to fill the gaps in official memory resources through the collection of non-public records and the promotion of oral history projects;
- There is an urgent need to revisit existing information security standards and directives that speak to classification and declassification of information, especially those that were put in place prior to the implementation of PAIA dates from the apartheid era. Certain government departments have consistently failed to ensure that their security standards and internal directives are in alignment with PAIA and the standards set therein;⁴⁷
- Although some sections of PAIA mandates the release of certain information after a specified time period, South Africa does not provide for automatic declassification of records after a specified time period, such as 20 years. It is high time that South Africa opened the archive;
- South Africa is behind many other nations that have come from repressive regimes in that, South Africa has failed to automatically (at least systematically) give access to all records of gross human rights violations. This arises from the so called "right to truth" which is recognised in international law and which is fundamental to challenging impunity.⁴⁸

45 Carolyn Hamilton, "Forged and continually refashioned in the crucible of ongoing social and political life: Archives and custodial practices as subjects of enquiry", in *South African Historical Journal*, 2013, Vol. 65, No. 1, 21.

46 Hamilton, "Forged and continually refashioned in the crucible of ongoing social and political life", 20.

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MEMORY OF NATIONS

Democratic Transition Guide

[The Spanish Experience]



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ARCHIVES OF THE REGIME

RICARDO RUIZ DE LA SERNA

INTRODUCTION

The first archive to be mentioned, as an introduction, would be the National Historical Archive, created by Royal Decree of 28 March 1866 and which was, until the creation of the General Archive of Civil Administration, the main recipient of collections from ministries with competence in police matters from the end of the nineteenth century and the first decades of the twentieth century. It conserves 32 collections from Contemporary Institutions, as well as 40 personal and family archives, of personalities corresponding to the scientific (Isaac Peral y Caballero, etc.), political (Margarita Nelken, Marcelino Pascua, etc.), literary (Luis Rosales Camacho, Juan Ramón Jiménez, etc.), diplomatic (Juan Antonio Rascón Navarro, etc.), and military (Vicente Rojo, Valeriano Weyler and Nicolau, etc.) fields.

Mention should also be made of the Central General Archive of Alcalá de Henares, created under the Public Instruction Act of 1858 and destroyed by fire at the end of 1939. It was the first great ministerial archive, although its collections are only partially known to us.

It was not until 1969 that the General Archive of the Civil Administration of the State was created by the Decree of 1969 to continue the work of the archive destroyed by fire in 1939. Initially, its function was purely administrative. Custody of the documentary collections corresponding to the bodies of the Peripheral Central Administration and the Spanish Administration in North Africa, as well as the documents produced by the political-administrative institutions of the period 1939–1975. The collections produced by the activity of the organs of the Judicial Branch are especially interesting for this topic.

Finally, the relevance of the Civil War Archive of Salamanca, today called the Documentary Center of Historical Memory, which was created by Order on 29 May 1937 and whose collections began to house the documentation of the closed Masonic lodges, should be pointed out. Next to the “Masonic Section”, a “Social Political Section” was created. In 1999 it was elevated to the rank of general archive with the denomination of General Archive of the Spanish Civil War.

Today, the Documentary Center of Historical Memory holds the collections coming from the Documentary Services of the Presidency of the Government and from the Special Court for the Repression of Freemasonry and Communism of the Franco era and those incorporated after 1979.

In addition to the collections with documentation relating to the ministries, it should be noted the importance of both the archives of trade unions and political parties in hiding and the private archives, which often keep public documentation among their collections.

These include the personal collections of the University of Navarra’s Historical Collection. It should be noted that personal archives are one of the most valuable sources for historical research. For this reason, the University of Navarra, as an institution committed to quality research, is responsible for safeguarding, organizing and disseminating all the donations it receives. The aim

of these collections is to put them at the service of researchers of different chronologies and various themes, hence the plurality of these collections. At present, it includes the archives of more than one hundred outstanding personalities both from Franco’s regime and from the opposition.

CONTENT OF POLICE AND JUDICIAL ARCHIVES

POLICE ARCHIVES

The police forces during the Franco regime (1939–1975) were of various kinds. As a characteristic of the police state, the entire administrative apparatus was at the service of police control and, in this sense, there was no scope of administrative action that could not be made available to those forces.

During the Civil War, the Information and Military Police Service (SIPM), like its counterpart, the Republic’s Military Information Service (SIM), took on the tasks of espionage, counter-espionage and political police. Created in 1937, its antecedents were the Military Information Service (1936) and the Information Service of Northeastern Spain (1936) as well as the Information and Investigation Service, which depended on the Traditionalist Spanish Falanx and the Councils of the National Syndicalist Offensive. The functions of these bodies were assumed, at the end of the war, by the Political-Social Brigade.

After the war, the armed forces controlled most of the police activity and social control. The Police Services Reorganization Act of 8 March 1941 created a police structure comprising two bodies: the General Police Corps and the Armed Police and Traffic Corps.

The General Police Corps was assigned the tasks of investigation and political repression, while the Armed Police and Traffic Corps was assigned the task of operational intervention and public order.

The General Police Corps was attached to the General Commissariat of Public Order and the most relevant body for the effects of political repression depended on it: the so-called Social Political Brigade.

In fact, the police force that acted during most of Franco’s regime was the Political-Social Brigade, which was active from 1941 to 1978. The Decree of 24 June 1938 indicated among its functions “the control of matters in political action” as well as the prevention and repression of activities that obstruct or deviate from the general guidelines of the government.

In addition to the police services and the information services of the Falanx, the Civil Guard should be mentioned which, under the March 15, 1940 Act “reorganizing the meritorious Civil Guard Corps”, had a military nature and was entrusted with “the surveillance and guarding of the camps, villages, rural agglomerations, factories, industrial and mining centers isolated from the populations, the coasts and borders, the persecution of smuggling and fraud, the anticipation and repression of any subversive movement and, at any time and place, the persecution of criminals”.

Thus, this organization of the apparatus led to the creation of archives of a different nature, civil and military, which in turn were distributed according to the respective deployments.

THE JUDICIAL ARCHIVES

Among the judicial archives, those relating to the special courts dedicated to the prosecution of elements opposed or disaffected to the regime are of particular importance. The three that are mentioned are conserved in the Documentary Center of Historical Memory.

a/ Special jurisdiction for the repression of Freemasonry and Communism (1939–1966)

Created under the March 1, 1940 Act, this new jurisdiction was aimed at persecution and punishment of supporters of ideas “against Religion, the Fatherland and its fundamental institutions and against social harmony”. The Court has the services of the Special Services Section of the Special Delegation for Document Recovery, which was attached as an Auxiliary Office. Its function was to collect the documentation in the Masonic Archives, where the documents seized from the lodges were kept. In 1963, the special jurisdiction for the repression of Freemasonry and Communism was replaced by the Court of Public Order (Law 154/1963).

b/ National Court of Political Responsibilities (1939–1945)

The February 9, 1939 Act on Political Responsibilities created a special jurisdiction with the same name and charged with the persecution of natural and legal persons who, between October 1, 1934 and July 18, 1936, would have contributed to the creation of the social and political climate that led to the coup d'état of July 18, and from that date to all those who had actively or passively opposed the insurgents.

c/ Public Order Court (1963–1977)

Under the Law of December 2, 1963, there was created within the ordinary jurisdiction a Court and a Public Order Court to which the rule “confers exclusive jurisdiction to hear crimes committed throughout the national territory, singularized by the tendency in a greater or lesser gravity to subvert the basic principles of the State, disturb public order or sow anxiety in the national conscience”. The Court was also given jurisdiction over the offences provided for in the Law of March 1st, 1940 while the Special Court for Freemasonry and Communism was abolished.

Article 3 of Law 154/1963 provides that it shall have exclusive jurisdiction to try the following offences:

- *Against the external security of the State, against the Head of State, the Courts, the Council of Ministers and form of government, on the occasion of the exercise of the rights of the person recognized by law, for rebellion, sedition, public disorder or illegal propaganda and, provided that they obey a political or social motive, the following crimes: illegal detentions, abduction of minors, breaking and entering, threats and coercion, discovery and disclosure of secrets*
- *Those whose knowledge is inhibited by military jurisdiction*
- *Related offences and incidental misdemeanors of the above-mentioned offences.*

There should be emphasized the work of the Special Court for Crimes Committed in Educational Institutions, which prosecuted cases involving crimes committed by students at universities and other educational institutions. Also important

are the collections relating to the Special Court for the Investigation of Illegal Propaganda in the National Territory.

CHARACTERISTICS AND CONTENT OF THE ARCHIVES

Probably the first remarkable feature was the dispersion. Without prejudice to the corresponding archives of Ministries that could have a certain link with police control tasks such as Justice or Defense, the archives dependent on the Ministry of the Interior were of the utmost importance precisely because both the police archives and those of the Civil Guard depended on it, and previously on the Ministry of the Interior.

In application of the no-law Proposition approved by the Plenary Session of the Congress of Deputies on June 1 2004, the Council of Ministers agreed, on July 23, 2004, to set up an interministerial commission responsible for *studying the situation of those who, as a consequence of their democratic commitment, suffered repressive actions during the Civil War and Francoism, and until the restoration of the democratic freedoms, as well as for proposing the measures, legal or otherwise, that are necessary to offer them adequate recognition and moral satisfaction.*

Within the framework of the work of this commission, the so-called “Report on Archives” was elaborated, which is a privileged source to know the information contained in the archives of the Ministry of the Interior.

The report states that “a summary in figures of the census-diagnosis carried out at a central and provincial level indicates the existence of 65 linear kilometers of documentation of central services in 46 premises in Madrid and 200 linear kilometers in the units of the peripheral services”.

With regard to content, the report states that the documentation of the *Ministry of the Interior can be classified as follows:*

- *Documentation containing general information. The access regime is free, with no conditions other than material restrictions*
- *Documentation with personal data that does not affect the privacy of persons referring to procedures for the application of the law. In addition to its holders, those who demonstrate a legitimate and direct interest may have access to it.*
- *Documentation containing personal data of a police, procedural, clinical or any other nature that affects the security and privacy of individuals (the majority affected by the Commission).*
- *Documentation affected by regulations on classified matters. This is the case, for example, of the one referring to, and generated by, the information services by the agreement of the Council of Ministers of November 28, 1986. Reference is made in the conclusions of this report to the desirability of revising the scope of this declaration.*

Alongside the archives of the Ministry of the Interior, the police matter was also covered by the workers in the General Archive of the Administration concerning “control and repression of the internal opposition”, which the Report on Archives classifies as follows:

a/ *Administration Control Bodies: As a result of the Civil War, different purification bodies were created in all the Ministerial Departments. A citizen can obtain data on the separation of the public function through the Documentary Series of Political Responsibilities and Purification Files, an archive that contains the purification files of Ministry officials, although those corresponding to the Ministry of Justice are distributed between this Archive and the National Historical Archive.*

b/ *Judicial oversight and repression bodies: this includes a number of special jurisdictions that disappeared during the transition, such as the Political Responsibility Court, the Public Order Court (TOP), the Public Order Courts, etc. The General Archive of the Administration contains the documentation of the National Court of Political Responsibilities, as well as the documentation of the extinct General Secretariat of the Movement, Trade Union Organization, Ministry of Information and Tourism, the Administration of Justice, and the Devastated Regions collection, as well as a large photographic collection. The Archive guards the procedures followed before the Public Order Court, although not all of them, given that the Civil War Archive of Salamanca also keeps part of these judicial collections. To these courts should be added the documentation coming from the jurisdiction of Vagos and Maleantes (Vagrants and Miscreants), where repression was derived for social (and even ethnic, such as the gypsy population) and not merely political reasons, such as homosexuality, dishonest conduct, pregnancies, abortions, etc. Finally, there is the Penalized and Rebels Archive, already used in previous compensations for the deprivation of liberty which occurred during the Franquist Regime.*

c/ *Jurisdictional Bodies: the General Archive of the Administration holds the documentation of the First Instance and Instruction and Municipal Courts of the Province of Madrid, where there are archives referring to the non-recognition after the Civil War of judicial resolutions in matters of rights and liberties, subsequently annulled (among others, the final divorce sentences dictated during the republican period).*

To these archives must be added two of those deposited in the National Historical Archives: the General Cause and the archive of police files, whose actions continued until 1977.

Thus, in addition to dispersion, we must add the variety of matters that the police archives covered and that included not only criminal matters, but also civil, labor and administrative matters, both judicialized and non-judicialized (follow-ups, confidential information, confidential reports, etc.)

Finally, the time elapsed and the lack of proper preservation and maintenance has put some of the archives mentioned in the report itself at risk of becoming unusable.

THE SITUATION OF THE ARCHIVES DURING THE TRANSITION AND THEIR USE. ARCHIVES CONTROL AND ACCESS RISKS.

Decree 914/1969, of May 8, which created the General Archive of Civil Administration, warned of a secular lack of Spanish archives:

Almost all the archives of the Civil Administration of the State, Ministry, General Directorates and other Organisms have currently exhausted their capacity due to the interruption, as of the year nineteen forty, of the periodic remittances that, since the time of Philip II, had been made, first to the General Archive of Simancas and then to the disappeared General Archive of Alcalá de Henares.

This led, continues the explanatory memorandum of the Decree, to the destruction of a large part of the official documentation that possesses not only historical interest, but also on many occasions, full administrative validity.

To this was added the Decree for economic reasons to conclude that it was essential to establish a current of documentation that would guarantee the preservation of documents that have to

have historical value and give adequate treatment to those that have a temporary value as a reflection of the rights and duties of the State or citizens, while decongesting public offices and streamlining administrative action.

This normative provision affected the archives we are now dealing with insofar as it authorized the *General Archive of the Civil Administration* to make a proposal to the *General Directorate of Archives and Libraries* to send to the *National Historical Archive* that documentation which, in its opinion, is more than twenty-five years old, lacks administrative validity and has historical value. The *General Directorate* will decide in each case, after consulting the interested Departments.

Along the same lines was Law 26/1972 of 21 June on the Defense of the National Documentary and Bibliographic Treasure and regulation of the export trade of works belonging to the same.

In effect, the Law integrated in the nation's documentary treasure "the existing collections in the Libraries and Archives of the Public, Central, Local and Institutional Administration, whatever the time to which they belong" but fixed a negative administrative silence to the consultations on whether or not a document was included in this treasure: "Any doubts that may arise regarding the content of this article shall be resolved by the Ministry of Education and Science at the request of the interested party, within two months of the formulation of the consultation, by means of the competent technical services. Once the two-month period indicated has elapsed without the Ministry having replied, it shall be understood that the document or work in question is not included in the concept of Documentary and Bibliographic Treasure of the Nation".

This law foresaw the inclusion of a series of documents in the nation's documentary treasure, but sent the initiative to the Administration: "the National Service of Documentary and Bibliographic Treasure of the Nation will proceed to make a Register-Inventory of the documentary series, collections or pieces that must be integrated in the National Documentary and Bibliographic Treasure".

Thus, the legal framework during the transition was not conducive to the conservation of archives that might have political relevance as such, from the purging of responsibilities to the restitution of property, but only their historical value.

The last law relating to archives, we are referring to Law 16/1985 of 25 June, on Spanish Historical Patrimony, establishes measures for the conservation of documents due to their age, another way of indicating a pretended historical value, but not due to their political transcendence. Thus, article 49 of the law, which is still in force, provides as follows:

Article Forty-nine.

1. For the purposes of this Law, a document is understood as being any expression in natural or conventional language and any other type graphic, sound or image expression given on any type of material medium, including computer media. Non-original copies of publications are excluded.

2. Documentary heritage includes documents from any time generated, preserved or collected during the exercise of its function by any public organization or entity, by legal entities in which the State or other public entities hold a majority share of the capital and by private persons, physical or legal entities managing public services with regard to the management of such services.

3. Documentary heritage also includes documents more than forty years old that are generated, preserved or collected during

the exercise of their activities by entities and associations of a political trade union or religious nature and by entities, foundations and cultural and educational associations of a private nature.

4. *Documentary heritage also includes documents more than one hundred years old that are generated, preserved or collected by any other private entities or persons.*

5. *The State Administration may declare that certain documents, though not as old as those mentioned in the above sections, shall form part of the documentary heritage.*

Only with the approval of the no-law Proposition of the Plenary Session of the Congress of Deputies, of June 1st 2004, approving a text relating to the recognition of the victims of the Civil War and Francoism, and with the approval of Law 52/2007, of December 26, to recognize and broaden rights and to establish measures in favour of those who suffered persecution or violence during the Civil War and the Dictatorship, were specific measures adopted for the conservation and management of the police archives inherited from Francoism. However, as will be seen, the measures did not arrive in time to prevent the destruction of documents during the Transition.

In general, the use of public archives during the Transition remained unchanged since, in a model of political change “from above”, it cannot be said that there were “risks of access” in the sense that whoever wanted access would be exposed to an evil or a harm. Naturally, there were limits to access, which, as we have seen, were ceded as the Transition process progressed. However, it would be an exaggeration to state that there was a risk which, in fact, could be summed up in the denial of access.

In general, access to the archives was controlled by the administrations owning them and this was maintained throughout the entire Transition process as befits a process directed from power so that those administrations continued to function until the democratic period and, in some cases, until the present, after adaptation to the constitutional regime.

ATTEMPTS TO DESTROY ARCHIVES

There is no doubt that, between 1939 and 1975, there was destruction of archives due to different circumstances.

First, archives were destroyed or expunged to prevent or limit future investigations. As Urquijo Goitia points out, “the last years of Francoism and the first years of the Transition were a real disaster for the historical documentation of this country. The Franco dictatorship not only repressed, but also laid the groundwork to make it difficult to study this period. In the last moments, collections of the legitimating organisms of the Regime (Phalanx, Feminine Section, etc.) or police files of opponents disappeared”.

The Order of the Presidency of the Government of December 19, 1977 published in the Official State Gazette (BOE) of January 13, 1978 arrived too late to save all the collections and, although it had a mechanism to prevent uncontrolled destruction, it also referred to the Ministry of the Interior the establishment of limits on access to certain time series:

FIRST. – By personnel of the General Directorates of Security and of the Civil Guard, of the Ministry of the Interior, and of the General Directorate of Artistic Heritage, Archives and Museums, of the Ministry of Culture, an analysis will be carried out of all the data, antecedents and documents relating to legally

recognized political and trade union activities and organizations that exist in the archives of the two general directorates mentioned above, in order to declare their administrative uselessness and to select those that, due to their historical value, should be conserved.

[...]

THIRD. – At the proposal of the general directorates indicated in the first article, the Ministry of the Interior shall determine the periods during which the documentary series selected for conservation may not be consulted, in accordance with the legislation in force

With regard to the destruction of documents, in the early years of the Transition, the debate arose as to whether or not the police archives should be destroyed, precisely in order to prevent the information collected by the Francoist police apparatus from implying illegitimate interference in the privacy of those under investigation.

In 1978, Senator Josep Benet i Morell led an interpellation in the Senate regarding an internal order of the Ministry of the Interior “ordering the elimination and destruction of the part of all the archives dependent on the General Directorates of the Civil Guard and Security that contains documentation relating to the membership or participation of people in activities or political organizations and trade unions yesterday clandestine and today legally recognized”. In his interpellation, Mr. Benet asked “what measures he has taken and intends to take to prevent the continuation of the savage destruction of archives of public bodies and entities, unfit for a modern State, which are the historical heritage of all the citizens and peoples of Spain, and why a commission, made up of historians and archivists, of the various peoples of the State, with parliamentary representation, has not been created to decide which documents should be preserved because they have historical value”.

The response of the Minister of the Interior, Mr. Martín Villa, was that “the decision to proceed to the administrative disablement of personal records in the archives of the General Directorates of Security and the Civil Guard, containing data and records relating to the membership or participation of persons in political and trade union organizations and activities, prohibited under previous legislation and now legally recognized, responds, as I also had occasion to indicate to Senator Fernández Viagas, in a session of the Committee on Justice and Home Affairs of this House, to a spirit of concord derived from the normalization of Spanish political life”.

Thus, for the sake of the “spirit of concord”, archives were expunged and documents destroyed. The aforementioned order of December 19, 1977, the limitations of which we have already seen, was invoked as a defense against the accusation of destruction of documents.

However, most of the documentation is preserved. As the report on archives itself pointed out, “in Spain an enormous amount of collections related to the Civil War and Franco’s regime are conserved. Neither the conflict itself, nor the transition to democracy, produced a massive destruction of documentation”.

DECLASSIFICATION OF ARCHIVES

As indicated in the “Report on Archives”, the non-law proposition on the recognition of the victims of the Civil War and Francoism,

approved on June 1st 2004, already mentioned, “urged the Government to organize, promote and open the archives, both public and private, where the data required for individuals to have access to existing aid would be kept, and to collaborate in the search for those personal data that would allow them to know the particular cases and recall them in a general way, in order to project them in the social culture of our country, what happened during the Civil War and the subsequent Franco repression. Consequently, one of the tasks entrusted to the Interministerial Commission for the study of the situation of the victims of the Civil War and Franco’s regime is to draw up a report on the conditions allowing access to the public and private archives necessary to carry out its purpose (article 2 of the Royal Decree of September 10, 2004), which, according to paragraph (a) thereof, is the general study of the rights recognized to the victims of the Civil War and to those persecuted and retaliated by the Franco regime, as well as to elaborate a report on the state of the matter”.

Law 52/2007, of December 26, to recognize and broaden rights and to establish measures in favour of those who suffered persecution or violence during the Civil War and the Dictatorship, guaranteeing the right of access to both public and private archives held with public resources:

Article 22. Right of access to the resources of public and private archives.

1. For the purposes of the provisions of this Law, the right of access to documentary resources held in public archives and the right to obtain any copies requested is hereby guaranteed.
2. The provision of the preceding paragraph shall be applicable in full to those private archives which are maintained in whole or in part by public funds.
3. The public authorities will adopt necessary measures for the protection, integrity and cataloguing of such documents, in particular in those cases where there is serious deterioration or a risk of degradation

In order to give effect to this right, an administrative procedure has been articulated which, however, is not absolute. There are certain limits:¹

- *The legal accessibility of the document for not having complied with the deadlines established in article 57 of Law 16/1985, of 25 June, on Spanish Historical Heritage. The documents are accessible if they are older than 50 years old or if more than 25 years have passed since the death of the person affected by the file.*
- *If none of the above requirements are met, access to and reproduction of the documents are reserved for persons whose personal, police or procedural data are included in the documents, or third parties, by means of a request for authorization, provided that they have the permission of those affected or their relatives to consult or reproduce the documentation or prove its use for research.*

Simple or certified copies of the documents may be obtained by requesting them from the respective archive centers that hold the documentation.

RIGHTS AND ACCESS PROBLEMS

ACCESS TO ARCHIVES AND CLASSIFIED INFORMATION

As Julio Aróstegui pointed out in his famous 1992 article “Franco’s historiography of Spain. Promises and weaknesses”, “the archives

usable for the history of the Franco period are subject to several types of limitations”. The first of these was the documentation relating to living persons. The second, said the author, “is the serious question of the destruction of certain types of political or police archives, of which there is news, but not enough or contrasted. Third, the illegal removal from the public domain of official documentation of what may be a clear example of what is happening with the documentation emanating from the Head of State during the period, which is currently illegally in private hands”. Aróstegui concluded by pointing out that “certain pretended private archives are, in reality, the result of the improper appropriation of public documents”.

Therefore, there is a problem with access to private archives, which depends on the will of the owner of the archive or, as the case may be, the custodian. However, not all private archives are in the same situation. Perhaps the most interesting case is that of the Francisco Franco National Foundation, which is integrated into the Spanish Archives System, as provided for in Article 66 of Law 16/1985 of 25 June on Spanish Historical Heritage while retaining its status as a Private Archive, and is publicly and freely accessible.

Another issue that should be pointed out is that relating to classified matters which, although they do not directly affect police or judicial archives, may affect other archives such as those of the Foreign Office, which may be relevant to police investigations.

Antonio Malalana Ureña and Lorena Moreno Pérez have analyzed the legal framework that limits the activity of researchers on the basis of the classification of information:

- Law 9/1968 of 5 April 1968 on Official Secrets, as amended by Law 48/78 of October 7, 1978.
- Decree 242/1969 of 20 February 1969 implementing the provisions of Law 9/1968 of 5 April 1968 on Official Secrets.
- Agreement of the Council of Ministers of 28 November 1986 classifying certain matters and matters under the Law on Official Secrets, as extended by the Agreement of the Council of Ministers of 17 March and 29 July 1994.
- Agreement of the Council of Ministers of 16 February 1996 classifying certain matters and matters in accordance with the Official Secrets Law.

The first interesting thing is that two of the four rules that apply date back to the period of the Franco regime. It is true that Law 9/1968 was modified in 1978, in full Transition, but the current regulatory framework presents, as we shall see, notable deficiencies.

In effect, there have been successive agreements of the Council of Ministers which, since Decree 242/1969, have extended the matters considered to be classified. Malalana-Ureña and Moreno Pérez echo a letter from the Ministry of Foreign Affairs listing the matters considered secret:

1. *Spain’s basic positions and strategies in political, security, economic and trade negotiations [...].*
2. *Information on Spanish positions in international or internal conflicts [...].*
3. *Information concerning the actions of terrorist groups and movements associated with them, organized crime and trafficking in drugs, human beings and arms [...].*

¹ See: <http://pares.mcu.es/victimascfpportal/staticContent.form?viewName=copia>

4. Information regarding the deployment of units of the Spanish Armed Forces and State Security Corps and allied both in Spain and in international missions.
5. Negotiations and good offices on kidnappings and the release of Spaniards or foreigners, as well as information on extraditions or transfers of sentenced persons.
6. Contacts for mediation or good offices [...] with third countries and opposition groups and leaders [...].
7. Protection of Human Rights.
8. Asylum and refugee issues.
9. Processing of approvals of Spanish and foreign heads of mission.
10. Issues affecting the sovereignty, independence and territorial integrity of Spain or friendly countries [...].
11. Information relating to the implementation of bilateral or multilateral security and defense agreements, including overflights, stays and stopovers of ships and aircraft.
12. Matters relating to the most serious crimes of international concern over which the International Criminal Court may have jurisdiction.
13. Preparations for the journeys of the King and Queen and the President of the Government and, when circumstances so advise, of ministers and other State authorities.
14. Keys and cryptographic material

Thus, as Malalana Ureña and Moreno Pérez denounce, the classification of documents has gone from a restrictive criterion to extensions that can restrict the freedom of investigators.

ACCESS TO ARCHIVES, INDIVIDUAL RIGHTS AND PERSONAL DATA

The legal framework for access to archives in relation to individual rights and personal data is marked by article 57 of Law 16/1985, of 25 June, on Spanish Historical Heritage, which establishes a triple access regime:

Consultation of documents forming part of the Spanish Documentary Heritage referred to in article 49.2 shall be covered by the following rules:

- a) *In general, once such documents have been duly processed and deposited and registered in the central archives of the appropriate official entities in accordance with legally-established procedure, they shall become available for consultation unless they relate to subjects classified under the Official Secrets Law or that must not be made known publicly because of an express provision of the Law, or unless dissemination of their content*

may involve risks for State safety and defense or investigation of a crime.

b) *In spite of the provisions of the above paragraph, it may be possible to request administrative authorization for access to documents excluded from public consultation. Such authorization may be granted, in cases of secret or reserved documents, by the Authority which made the respective declaration, and in other cases by the head of the department responsible for safeguarding the documents.*

c) *Documents containing personal details of interest to the police, courts, medical services or of any other type that may affect a person's safety, honour, personal and family privacy and image may not be publicly consulted without the express consent on the part of those involved or until twenty-five years have passed after the person's death, if the date is known and, if not, fifty years after the date of the documents*

Thus, there is a general principle of free access for consultation with the exceptions of classified information or information relating to State security or the investigation of criminal offences.

This principle is complemented by two rules. The first is the consent of the data subject to access to documents containing certain personal data. The second is the setting of time limits from death or, in any case, from the date of the document.

In principle, this provision is consistent with paragraph#33 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

LESSONS LEARNED AND RECOMMENDATIONS

With regard to access problems, it is only appropriate to recommend, with the majority of historians, that the expansion of subjects considered to be the object of official classification be discontinued and that at least the cases provided for in the Official Secrets Law be re-conducted.

Similarly, it would be desirable to arbitrate legal mechanisms for the restitution or obtaining of copies of public or official documents held in private archives

Finally, it would be advisable, as recommended in the Report on Archives, to provide the Ministry of Culture with the necessary means to encourage and facilitate the acquisition of private funds, either directly or through agreements with certain countries.

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