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Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Stan, L. (2007). Goulash justice for goulash Communism?: explaining transitional justice in Hungary. *Studia Politica: Romanian Political Science Review*, 7(2), 269-291. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-56066-8>

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Goulash Justice for Goulash Communism ?

Explaining Transitional Justice in Hungary

LAVINIA STAN

There is a wide-spread belief in Hungary that the best revenge the new democracy could take for the decades of communist rule it experienced at the hands of an unscrupulous and rapacious nomenklatura is to live well and to prosper quickly¹. Economic redress for political injustice has been the Hungarian answer to de-communization and transitional justice, the two intertwined processes that have gained prominence throughout the post-communist Eastern European block. While its neighbors have struggled to deal with their dictatorial experience by re-examining their recent history, adopting lustration, bringing communist officials and secret agents to court, and opening the secret archives, Hungarians have embraced the position that "the best way to deal with the past is to do better now"². What exactly "doing better" means has never been spelled out, perhaps because ordinary citizens have generally been disinterested in the subject, the political class has been embroiled in its daily struggle for the people's minds and votes, and all Hungarians have taken pride in their exceptionally mild communist regime. In this general climate of apathy for the process of coming to terms with the past, the question we should raise is not "why Hungary failed to take a firmer stand toward its recent past?" but rather "why did it pursue limited lustration, file access and court proceedings at all?". Why did it stop short of embracing the Spanish model of "forgiving and forgetting", when other European post-communist countries were inclined to "prosecute and punish" former communist officials and secret agents? The answer lies partly with the nature of Hungary's communist regime, partly with its type of transition and exit from communism, and partly with its continuing post-communist struggle for power.

Mild, dare we name it "goulash", transitional justice was called for by the mild "goulash communism" of the 1960s and the 1970s. Hungary was one of the most progressive communist countries in Eastern Europe, allowing multi-candidate elections to be organized as early as 1985, tolerating political parties other than the ruling Socialist Workers' Party, and permitting opposition associations to form in the late 1980s. In contrast to neighboring Romania, Poland, Czechoslovakia or East Germany, Hungary's road to socialism cut across the happy hills of state-society

¹ I would like to thank Dr. Tibor Mandi of the Institute of Political Science at the Eotvos Lorand University in Budapest for commenting on an earlier draft of this article, and for patiently correcting my mistakes. My thanks also go to the participants in the Joint Sessions of the European Consortium for Political Research gathered in April 2006 in Cyprus. My students in the Advanced Seminar on Intelligence Services in Peace and War, and the Human Rights and International Justice classes helped with data collection. Research for this article was generously supported financially by the Social Sciences and Humanities Research Council of Canada with a research standard grant. All mistakes are mine.

² See Gabor HALMAL, Kim Lane SCHEPPELE, "Living Well Is the Best Revenge: the Hungarian Approach to Judging the Past", in James McADAM (ed.), *Transitional Justice and the Rule of Law*, University of Notre Dame Press, Notre Dame (IN), 1997, pp. 155-184.

cooperation and accord more than the valley of sorrows harboring outright repression and the leader's cult of personality. True, the communist rule started in Hungary the same way it started throughout Eastern Europe, with massive arbitrary arrests, show-trials of predetermined outcome, a vast network of prisons and labor camps, a ruthless secret political police orchestrated by NKVD agents, and "liberating" Soviet troops that said good bye without leaving the country. But the 1956 Hungarian Revolution showed the population's impatience with communist intimidation tactics, and the citizens' willingness to take to the streets and openly challenge a regime delivering few political and socio-economic benefits. Thus, instead of working against the people, the Hungarian communist leadership was forced to work with them and adapt communism into a local-grown, liberalizing variant. Although the revolution was crushed, it helped Janos Kadar to create the soft "Kadarist" dictatorship based on a social contract forged between state and society. By 1989, the abuses of early communism were a distant memory for much of the population, which was therefore little inclined to seek reparations from a reformed communist leadership it had cooperated with so well¹.

Its non-violent exit from dictatorship further prepared the country for mild, incremental de-communization. Whereas the regimes of Romania and East Germany collapsed quickly without talks between the hard-line communist leaders and the disorganized opposition representatives, the Hungarian roundtable talks took several months of negotiations, even longer than in the Czechoslovak and Polish cases. On 13 June 1989 the ruling party invited the political opposition and "third party" organizations traditionally associated with the communist authorities (mainly trade unions) to formal negotiations in view of effecting a peaceful transition of political power. Deliberations took place at three different levels concomitantly. There were plenary sessions opened to the media, political negotiations between the three groups, and closed expert debates on matters of detail. Decisions were made by consensus among the delegations. The end-product of all those lengthy negotiations consisted of constitutional amendments ratified on 18 October by the communist-dominated Parliament, whose members had been elected in the 1985 multi-candidate elections. Although the legislature was regarded as largely unrepresentative and negotiations were pursued in the absence of concerted efforts to promote meaningful public participation, there was a strong desire on the part of all bargaining parties to proceed in a constitutional manner.

Hungary's negotiated transfer of political power meant that perpetrators of communist crimes have remained very much part of the society undergoing the democratic transition, and have belonged to the political elite responsible for the move away from communism. As in Poland, "the loyalty of the Communist Party activists (however renamed or reformed) to the negotiated rules was a central factor in the peaceful and eventually successful transition"². The weak lustration Hungary adopted in the early 1990s reflected the former communists' influence over the legislative process, and the opposition's tacit recognition of the communist-era

¹ Heiro NYSSONEN, "Salami Reconstructed. 'Goulash Communism' and Political Culture in Hungary", *Cahiers du Monde Russe*, vol. 47, nos. 1-2, January-June 2006, p. 167.

² Wojciech SADURSKI, "De-communization', 'Lustration' and Constitutional Continuity: Dilemmas of Transitional Justice in Central Europe", *EUI Working Paper LAW*, no. 15, 2005, p. 24, and Janos M. RAINER, "Opening the Archives of the Communist Secret Police – the Experience of Hungary", paper presented at the Congress of Historical Sciences, Oslo, Norway, 6-13 August 2000, available at www.rev.hu/archivum/rmj_oslo_00_eng_long.html (accessed 10 June 2007).

institutional and legal systems. That recognition, and its implied continuity between the communist and post-communist Hungarian states, seriously influenced the Constitutional Court decisions regarding the scope of lustration and prevented the adoption of radical vetting similar to the one adopted in Czechoslovakia.

Last but not least, the Hungarian mild transitional justice has been the result of its post-communist struggle for power. Three arguments are worth mentioning here. In other Eastern European countries, demands for retribution were voiced by groups wronged under communism, including former political prisoners, anticommunist dissidents, owners of property abusively confiscated, among others. In Hungary the peculiarities of post-communism led to an unlikely alliance between the former communists and the former hard-core anticommunist dissidents. By 1994 the Socialists had already won the support of the smaller Alliance of Free Democrats (*Szabad Demokraták Szövetsége*), which preferred to join forces with their former abusers than to lend support to the nationalist camp. Such a political choice discouraged an important group of former victims from seeking retribution and redress. Second, radical transitional justice has been unpalatable to the liberal camp, both because it would have exposed the numerous former spies drawn from among its own ranks and because it would have resembled an act of revenge taken on the exponents of "communism with a human face". Third, Hungarian parties have attempted "to restructure the scope of the original lustration laws to strengthen their political power vis-à-vis other political parties. As the intensity of the political competition between parties increases, one would expect to see commensurate changes proposed to the scope of the lustration legislation". The scope would be expanded "to permit more intensive use against political rivals". Horne and Levy further noted that, "as socialist parties have increased their political power, center and right wing political parties have attempted to increase the scope of the laws so as to counter the growing political competition posed by those political candidates"¹. Successive governments have used transitional justice as a bargaining chip, but their choice was always for variants of limited de-communization that would affect them minimally in the event of an electoral defeat.

Transitional justice consists of a range of approaches new democracies adopt in an effort to come to terms with their dictatorial recent past of human rights abuses. Often used synonymously with the politics of memory and de-communization, transitional justice in Hungary and Eastern Europe in general has consisted of a combination of methods with different goals and effectiveness. Only three key methods are discussed here: lustration, access to secret files, and court proceedings².

The Communist Secret Police

In November 1945, the Independent Smallholder Party formed a coalition government after winning 57 percent of the vote in free elections. Although the

¹ Cynthia M. HORNE, Margaret LEVY, "Does Lustration Promote Trustworthy Governance? An Exploration of the Experience of Central and Eastern Europe", October 2002, pp. 24-25, available online at <http://www.colbud.hu/honesty-trust/horne/pub01.html> (accessed 10 June 2007).

² For a definition and discussion of transitional justice, see Lavinia STAN, "Transitional Justice", in *International Encyclopedia of Political Science*, ed. by George KURIAN, CQ Press on behalf of the American Political Science Association, New York (NY), 2007, pp. 1156-1158.

Hungarian Communist Party (*Magyar Kommunista Partja*) garnered barely 17 percent of the vote, Matyas Rakosi was named deputy premier and other communists received key cabinet positions with the assistance of the occupying Soviet troops. During the war, Rakosi had led the Moscow-based Hungarian communists, who returned to Budapest after the Soviet Army invaded Hungary in September 1944. Their close ties to Moscow allowed Rakosi's Muscovites to take the lead of the country's communist movement, a position which the home-based cell of Laszlo Rajk also aspired to. To help communists assert control, the Red Army set up the *Allamvedelmi Osztaly* (AVO) as the Hungarian secret political police charged with suppressing and eliminating anticommunist opposition groups. Initially the AVO was headed by Gabor Peter, an NKVD (People's Commission for Internal Affairs) agent who used purges to weaken the Smallholders' social basis¹. The secret police arrested outspoken anticommunist critics, accusing them of fascist sympathies and wartime collaboration with parties supportive of Nazi Germany. Many of the 40 000 individuals who stood accused by 1948 had indeed been sympathizers of the fascist Arrow Cross movement, and supporters of Hungary's alignment with Nazi Germany². The purge also extended to thousands of loyal communists, who were jailed, tortured, killed and subjected to show-trials.

In the 1949 elections the communists, by then reorganized as the Hungarian Workers' Party (*Magyar Dolgozok Part*), ran unopposed. The new government appointed by President Rakosi continued to use show-trials as a measure to consolidate its position. In the process, Interior Minister Laszlo Rajk was sentenced to death, together with his entire extended family, after a mock trial condoned by Moscow. Throughout the 1950s, all those who headed the Interior Ministry and the AVO lost their positions in power struggles taking place within the party, or between the party leadership and the intelligence services. Rajk's successor, Janos Kadar, fell from grace in 1951, when he was arrested, tortured and stripped of all his privileges. Born under a lucky star, Kadar was rehabilitated five years later to play a dominant role in the aftermath of the Hungarian Revolution. In 1952 Sandor Zold, Kadar's unfortunate and desperate successor, killed his wife, children, mother-in-law, and himself just before he was about to be purged. The following year Stalin denounced the AVO head Gabor Peter as a Western intelligence agent. After his arrest, a frightened Peter "confessed" to having collaborated with British and "Zionist" intelligence services in an attempt to avoid receiving the death penalty. Six years later, he was released from prison by Premier Janos Kadar, who gave him a low-ranking government position until his retirement. After Khrushchev's denunciation of Stalinist purges, Hungarian authorities admitted that the case against Rajk had been totally fabricated³.

The consolidation of communist power in Hungary followed patterns established elsewhere in Eastern Europe and were reminiscent of campaigns conducted earlier in the Soviet Union. As part of the forced collectivization of agriculture

¹ When in May 1947 Premier Ferenc Nagy went on holiday in Switzerland, he was sent word he will be arrested upon his return to Budapest.

² Laszlo KARSAI, "Crime and Punishment: People's Courts, Revolutionary Legality, and the Hungarian Holocaust", *East Central Europe*, vol. 4, no. 1, 2004, available online at <http://sipa.columbia.edu/REGIONAL/ECE/vol4no1/karsai2.pdf> (accessed 10 June 2007).

³ Peter KENEZ, *Hungary from the Nazis to the Soviets. The Establishment of the Communist Regime in Hungary, 1944-1948*, Cambridge University Press, New York, 2006, and Michael G. ROSKIN, *The Rebirth of East Europe*, Prentice-Hall, Upper Saddle River, NJ, 2002, 4th edition, pp. 72-73.

program farmers were compelled to join the collectives, surrender their land and working tools for free, and make deliveries to the government at prices below the costs of production. Nationalization of banking, trade and industry was completed by late 1949, and central planning was introduced in all economic areas at that same time. Landowners were expropriated and driven into exile, while their land was divided into tiny plots allotted to the poorest peasants. In what Rakosi referred to as the "salami tactics" political parties that could serve as an alternative or opposition to the communists were gradually marginalized, co-opted or banned. Non-communist politicians were discredited as "antidemocratic", removed from the government or jailed on trumped up charges. Trade unions lost their independence, while religious groups were robbed of much of their property. Protestant churches skillfully avoided further persecution by reaching a compromise with the communist authorities, but the Roman Catholic Church stubbornly resisted, prompting the government to retaliate by disbanding its orders and secularizing its schools. After 1989, demands for retribution and reparations were voiced primarily by members of the social categories wronged during these early campaigns.

Though the secret police was initially part of the regular police, by 1950 it was subordinated directly to the Council of Ministers and had divisions at the district, town, county and national levels. In 1953 the AVO's independence ceased when different Interior Ministry divisions took over its tasks and operations. The AVO's final organizational structure came into being a decade later, when Department III was organized within the Interior Ministry. Its five divisions were Main Division III/I (foreign intelligence), Main Division III/II (counter-intelligence), Main Division III/III (counter inside reaction service, equivalent to domestic repression), Main Division III/IV (military intelligence and counterintelligence), and Main Division III/V (providing technical supply for all other divisions). The state security service, later known as the AVH (*Allamvedelmi Hatosag*), also included the border guards. The Military Political Department of the Defense Ministry was set up in March 1945 with Soviet permission and support to reflect Kremlin's interests. This overall intelligence structure was maintained, with some minor changes, until the collapse of the communist regime.

In the organization of these structures political reliability took precedence over training, professionalism or personal skills, and thus mostly unprofessional, undereducated and brutish careerists took high positions. Operating without civil and parliamentary control, the AVO generated public fear by using forced interrogation, torture and arbitrary arrests to make innocent prisoners plead guilty. It ran cruel and crude labor and prison camps for political prisoners. Before 1953 ex-communist party members were treated more harshly than other political prisoners, but after 1953 they were a virtual aristocracy among political prisoners. As in other communist countries, prosecutors and courts were asked to cooperate closely with the security services to maintain an appearance of legality and secure the conviction of selected individuals. The AVO assisted the Soviet security services, which in turn helped its efforts to imprison the Roman Catholic bishop Cardinal Jozsef Mindszenty in 1948, and bring Interior Minister Rajk to trial for Titoism the following year. Security services thus operated as a political police defending the communist regime and leaders more than the national interest, which was reflective of the regime's desires and priorities. Thus, with respect to the relationship between secret services and the party-state, Hungary replicated the model characteristic of the communist block. The party was the brain, deciding the main goals, setting the agenda and controlling the mix of carrots and sticks offered as punishment for

opposition and criticism or reward for compliance and loyalty. In turn, secret services were the muscle that transposed the party's wishes into reality.

After Stalin's death, the new Soviet leadership summoned Hungarian party leaders to Moscow, and harshly criticized them for the country's dismal economic record and use of terror, as though earlier Moscow had been completely unaware of these problems. Rakosi remained party head, but Nagy became premier and quickly won the support of the party membership and intelligentsia for his courage to propose sweeping reforms. He ended the purges, freed up the political prisoners, and closed notorious labor camps. He allowed peasants to leave collective farms, cancelled compulsory production quotas in agriculture, granted subsidies to private producers, and increased investments in the production of consumer goods. However, Nagy failed to fundamentally alter the structure of the communist economy, an oversight that led to production levels below those registered in 1953. Following that announcement, Rakosi seized the moment to disrupt reforms, attack Nagy as a right-wing deviationist, and force his resignation from government and ban from the party in April 1956. Some of Nagy's economic reforms were reversed, but the purges did not resume, although Rakosi had to contend with many outspoken critics within the party, including purge victims rehabilitated and readmitted into the party at Moscow's prompting.

During that summer Rakosi's position eroded to the point that it became untenable. The general population and the reformist-minded party members deplored the reversal of economic policy and the lack of any concrete (and realistic) plan for economic revival, and became increasingly frustrated with the faltering living standards. The police and intelligence services became disgruntled when an investigation into earlier purges cleared Rakosi of wrongdoing while blaming them alone for purging innocent victims through abuse of power. Students, writers and intelligentsia members criticized the Central Committee's decision to dissolve the Petofi Circle, which had served as a debate forum, and to expel intellectuals from the party. The press printed official attacks against Rakosi, who in mid-July resigned the position of First Secretary in favor of his deputy, Erno Gero. Intended to help the party-state to acquire a new lease on life, the move turned into a political fiasco. Gero's close proximity to Rakosi reflected poorly on his popularity, and therefore the change of guard was unable to stop public discontent and avert the Hungarian Revolution.

The ruthlessness of the secret political police became apparent on 23 October 1956, when students took to the streets of Budapest in anti-governmental protests. Clashes with the AVH agents resulted in several protesters being killed and wounded that evening. In retaliation, protesters took control of key institutions and important territories sometimes resorting to violence. The nationalist group of Jozsef Dudas executed pro-Soviet communists, and known or suspected AVH agents and informers caught up in the uprising. On 29 October Dudas's commandos stormed the AVH headquarters and massacred the agents inside. The crowd lynched more AVH members when wage ledgers were found attesting to the fact that agents received salaries ten times larger than ordinary wages. Ironically, the AVH was housed in a building that once belonged to the Arrow Cross Party, the inter-war fascist formation that ruled the country from October 1944 to January 1945 and was responsible for sending some 80 000 Jews on a death march to the Austrian border¹. As the situation rapidly deteriorated the Hungarian party leadership asked

¹ After 1989, the building became a museum commemorating the victims of both the fascist and communist regimes.

Moscow for help. Protests continued while Kremlin pondered whether Soviet troops should pull out of Hungary or quell the revolution. Meanwhile, Nagy, whom the Central Committee had appointed as premier, announced plans to negotiate the withdrawal of Soviet troops, disband the AVH, dismantle the one-party system, and allow Hungary to return to its pre-communist political system. The announcement prompted Moscow to dispatch future KGB head and Soviet Premier Yuri Andropov to Budapest. On 1 November Nagy woke to the news that Soviet tanks had entered Hungary, but Andropov assured him that they only sought to protect the withdrawing Soviet troops. That day, Nagy declared Hungary's unilateral withdrawal from the Warsaw Pact and announced its intention to join the United Nations. The revolution ended two days later, when Soviet troops began their assault on Budapest. Nagy was arrested, spirited to Moscow via Bucharest, prosecuted, convicted, and executed in June 1958.

The 1956 uprising significantly impacted state-society relations in communist Hungary. The revolt resulted in 2 500 people being killed, and around 200 000 Hungarians leaving the country for Western Europe. Between 1957 and 1962, some 22 000 people were sentenced in courts, among them 250 to 350 to death¹. Despite Andropov's promises, Soviet troops were not withdrawn, massive arrests were operated, and Kadar established a tight control over the party-state². The fate of the security services remained unclear. Kadar criticized the AVH's methods, but not the thrust of the security work or its ideological foundations, which were left untouched. Many Hungarians sincerely believed that the domestic intelligence service was never resurrected after Nagy's promise to disband the AVH. While some naively took pride in living in the only communist country without secret political police forces, others cautiously suspected that Kadar reorganized the AVH within the regular police force. Because the uprising took the state security services by surprise, and attested to their failure to predict popular support for student demonstrations, communist authorities in Budapest accepted the KGB to operate directly on Hungarian territory. The AVH continued to recruit ordinary Hungarians as informers and to conduct comprehensive surveillance operations, even after the regime adopted the liberalized "goulash communism" and the ruling party membership swelled³. Until 1989 the AVH operated under the direct control of the party-state, the leadership of a Deputy Interior Minister, and the confines of a myriad of secret internal orders and directives.

Those convinced that, compared to its Eastern European counterparts, the mild "goulash communism" of the 1960s and the 1970s required a smaller state security force and elicited lower levels of daily secret surveillance of individuals and groups voicing opposition to the communist regime, ideology and leaders were disappointed to find out that the AVH kept tabs on opposition leaders for the

¹ In June 1988 the Committee for Historical Justice (*Történelmi Igazságtétel Bizottsága*) was founded illegally. Its founding platform insisted on "the full moral, political and juridical rehabilitation of victims, both alive and dead, from the retribution which followed the [1956] revolution". The committee demanded "reliable history-writing on the post-1956 period, publication of documents about 1956, and a national memorial, as well as the reburial of those executed". Heiro NYSSONEN, "Salami Reconstructed...cit.", p. 168.

² By 1963, all political prisoners arrested in conjunction with the 1956 revolution were released. The number of party members in Parliament was the lowest in 1953 (69.9 percent), and the highest in 1958 (81.6 percent). See *ibidem*, p. 150.

³ In 1985 the Hungarian Socialist Workers' Party membership reached some 871 000 in a total population of about 10.5 million.

benefit of the Workers' Party even after 23 October 1989, the day marking the official proclamation of the post-communist Republic of Hungary. The AVH reportedly identified 2 029 new surveillance targets (victims) in the first six months of 1989 alone, and there are reasons to believe that rate was not significantly lower than that registered throughout the decade¹. During the June-September roundtable talks organized that year, the ruling party received regular information reports on the opposition's activities, thus having the upper hand in a negotiation it already initiated and shaped to its liking². While publicly committed to peaceful democratization and increased power sharing with the opposition, top governmental officials like President Matyas Szuros, Premier Miklos Nemeth, Minister of State Imre Pozsgay, Exterior Minister Gyula Horn, and Deputy Premier Peter Medgyessy continued to receive secret intelligence reports.

Following the roundtable talks, the Constitution was amended in October 1989 to allow for a multiparty system, and free elections were organized in 1990. Soviet troops were gradually withdrawn by mid-1991, thereby ending some 47 years of military occupation. Secret services were also reorganized, but not before facing the most severe scandal in their history, popularly called the Dunagate. On 5 January 1990 the Alliance of Free Democrats and the Alliance of Young Democrats publicly showed operative information reports proving that secret services had collected information on the opposition in spite of the new constitutional changes endorsing a multiparty system. While their master, the Workers' Party, formally agreed to democratic changes, secret services continued their usual operative activities, identifying individuals and groups perceived as the "hostile opposition", and serving up information to the communist leadership. Security services had remained behind the times, as the transformation they envisaged was largely superficial, leaving their core secret operative activities unaffected. The opposition called on the government to distance itself from the unlawful activity of secret services, and to dismiss those responsible for gathering the information. Following lengthy investigations into the Dunagate scandal, on 21 January 1991 the Main Division III/III was disbanded without a legal successor. For many Hungarians, the move aimed to shrewdly preserve the bulk of the communist secret services at the expense of one of its divisions, treated as the main scapegoat. Division III/III has remained the only intelligence service declared unconstitutional³.

The scandal brought about a limited reorganization of security services, after several similar proposals were rejected both during and immediately after the roundtable talks. On 6 September 1989 the negotiating subcommittee charged with finding methods to avoid violence and to guarantee a peaceful regime change interviewed Deputy Interior Minister Ferenc Pallagi about the status of the security services. Pallagi blatantly lied, claiming that since December 1989 secret services had reported to the government not to the ruling party, and that all security-related tasks were performed by the regular police not by an independent secret

¹ Renata UITZ, "Missed Opportunities for Coming to Terms with the Communist Past: The Hungarian Saga of Lustration and Access to Secret Service Files", paper presented at the American Association for the Advancement of Slavic Studies conference, Salt Lake City, 3-6 November 2005, p. 16.

² Bela REVESZ, *Dunagate I, II and III*, no press, Budapest, 1995.

³ See P.N. NAGY, "A vad titka" ("The Secret, the Accusation"), *Nepszabadsag*, 19 June 2002, quoted in Csilla KISS, "The Misuses of Manipulation: The Failure of Transitional Justice in Post-Communist Hungary", *Europe-Asia Studies*, vol. 58, no. 6, September 2006, p. 928.

service. Paradoxically, the subcommittee failed to question Pallagi in detail, and showed more interest in recovering the confiscated samizdat literature and dismantling the Workers' Guard, the ruling party's armed unit. Following opposition leader Ferencz Koszeg, these two topics were launched as top negotiation priorities in an effort to divert attention from the more critical issue of state security services. A week later opposition leader Peter Tolgyessy demanded the creation of a self-standing security service without knowing that secret services were already operating outside of the regular police. The ruling party rejected the proposal. With this, the fate of the security services remained undecided and outside the purview of the new Constitution.

The legislation governing the activity of the post-communist security services included Act X of 1990, which terminated the state security tasks of the Interior Ministry, laid down the procedure for authorizing special clandestine methods, and served as basis for Governmental Decree 26/1990 and Act CXXV of 1995, which provided a new legal framework for national security. Security tasks were bestowed on two newly-created civilian structures: the National Security Office (*Nemzetbiztonsági Hivatal* or NBH), responsible for gathering and processing both domestic and foreign intelligence information, and the National Security Services (*Nemzetbiztonsági Szakszolgálat* or NBSzSz), responsible for protecting the national interest within the country's borders and providing protection for Hungarian government officials and diplomats both inside the country and abroad. The NBH has fulfilled national security tasks and has operated under governmental direction and parliamentary supervision, with a nationwide scope of authority and a budget of its own. In addition to civilian structures, Hungary maintains military intelligence forces, including the Military Security Office (*Katonai Biztonsági Hivatal* or KBH) and the Military Detection Agency (*Katonai Felderítő Hivatal* or KFH).

Lustration without Lustrati

As a result of the 1990 general elections, political power reverted to a loose coalition of opposition parties, which together controlled a comfortable majority of 230 seats (out of the total 386) in the unicameral legislature. The Hungarian Democratic Forum (*Magyar Demokrata Forum*), the Independent Smallholders' Party (*Független Kisgazda Part*) and the Christian Democratic People's Party (*Kereszténydemokrata Neppart*) formed the government under the leadership of Premier Jozsef Antall. While committed to sidelining the communists, the ruling partners were unable to bridge their differences and pursue lustration concomitantly with designing strategies to move the country away from communism and closer to democracy and free market economy. Political instability and the nomination of a new government headed by premier Peter Boross, after Antall's untimely death, postponed the adoption of a screening law until the weeks leading to the 1994 elections, by which time a number of drafts had been already discussed and rejected. As serious procrastination threatened to block de-communization altogether, deputies of the ruling coalition introduced the legislative proposal in the house before fine-tuning its details. This oversight came to haunt them later, when the screening law was seriously challenged by the Constitutional Court. Because of its delayed adoption, in which premier Antall was believed to have played a key role, the bill did not apply to members of the first democratically elected Parliament.

The Lustration Act was preceded by another legislative proposal never seriously debated in Parliament. On 3 September 1990 deputies Gabor Demszky and Peter Hack, representing the opposition Alliance of Free Democrats, called for the opening of all secret police files and the drafting a list of all secret officers and informers who worked for Division III/III. The list was to be deposited with the President of Hungary, the Prime Minister and the legislative national security committee. Public office holders whose name appeared on the list could resign within 60 days, in which case their tainted past remained secret. The identity and past involvement with communist secret services of those who refused to give up their office were made public. The proposal failed to gain support, because rumor had it that the ruling coalition planned to employ the files to compromise their political rivals. According to unconfirmed reports, while in office Prime Minister Antall handed out to his opponents within the governmental coalition and his own party sealed envelopes allegedly containing incriminating data about their ties to the communist secret political police. A victim of the process was chauvinist politician Istvan Csurka, then a member of the Hungarian Democratic Forum. After some hesitation, Csurka ultimately admitted to have signed a collaboration pledge under the code name "Rasputin", but claimed that he never provided any information reports¹.

The Law on the Background Checks of Individuals Holding Certain Important Positions (Act XXIII of 8 March 1994 or the Lustration Act) subjected some 12 000 *present* officials to a screening process by at least two three-judge panels, which had to examine the archives of the domestic secret service departments and complete their work between 1 July 1994 and 30 June 2000². The panels examined whether selected public office holders had collaborated with the communist domestic state security, supplied secret reports as informers, received secret information reports, or belonged to the fascist Arrow Cross Party. Collaboration with the communist secret services was established if a pledge to collaborate was found together with proof that the person was remunerated for his or her services. Those screened were not required to give depositions concerning their past before the lustration panel. Vetted officials included only those who had taken an oath before Parliament or the President of the Republic: the President, ministers, deputies, judges, journalists working for public mass-media outlets, and leaders and managers of state universities and public companies. If collaboration was determined, the information was made public only if the persons refused to resign from their post. Those persons could keep the job even if such information was publicized. Thus, the law lustrated only a tiny fraction of public officials who wanted to continue to keep secret their tainted past. In practice, no Hungarian public official unmasked as a former collaborator chose to step down, either before or after sensitive information was made public.

The Hungarian Lustration Act represented a milder solution compared to similar proposals adopted in neighboring countries, as it neither declared incompatible the holding of present public office with past collaboration with the secret police, nor proposed to unveil the entire communist surveillance system. It pro-

¹ I thank Peter Hack for this information. Some of these details are reported by Csilla KISS, "The Misuses of Manipulation...cit.", p. 930.

² "Hungary: Law on the Background Checks to be Conducted on Individuals Holding Certain Important Positions. Law no. 23 (8 May 1994)", in Neil KRITZ (ed.), *Transitional Justice: How New Democracies Reckon with Their Authoritarian Past*, US Institute for Peace, Washington, DC, 1995, pp. 418-425.

noted limited transparency rather than punishment. Complete transparency, the kind that permitted the public to find out the tainted past of post-communist political luminaries, came only when public officers rejected the resignation offer. Hungary's toothless lustration was the result of its liberalized communist past, negotiated transition, and post-communist present. Following historian Laszlo Varga, soft lustration was "a direct continuation of the 'soft' dictatorship, or Goulash Communism, of the previous era in that those who held high positions in the old regime were permitted to remain in leading posts under the new dispensation"¹. Lustration was not discussed during the roundtable talks, but there was a strong desire on negotiating partners to maintain the credibility of the talks by not attacking the credibility of the players. Afterwards, lustration was reluctantly pursued in a general climate of public disinterest in such matters, and a wide-spread belief that the best revenge was to live well, not to ban communist officials from playing a role in post-communist politics². Proponents of lustration stressed that public office holders with a tainted past were susceptible to blackmail³. Their critics mocked the threat of blackmail as unreal, although former secret officers have often come forward to disclose information about post-communist politicians who used to work for them as secret informers

The change in government brought about by the 1994 elections raised a number of important challenges to the lustration process. Dissatisfied with the poor performance of the center-right government, Hungarians brought the former communists back in government. The Socialist Party and the Alliance of Free Democrats, which together controlled 278 seats in Parliament, nominated Socialist Gyula Horn as premier. The ruling coalition represented an uneasy partnership between the former communists and the former hard-core anticommunist dissidents, one time arch-enemies united in their efforts to contain the political right. The new rulers asked the Constitutional Court to review the constitutionality of the Lustration Act. On 24 December 1994 the court passed Decision 60, which deemed the law partly unconstitutional and offered July 1996 as deadline for its implementation. The court criticized the act on several grounds. First, it declared that one of the main functions of lustration – to protect democratic transition against those with a compromised past – was no longer relevant. The Hungarian transition had occurred five years earlier, and thus its protection could not serve as a rationale for lustration. Second, the court explained the need to balance the right of personal data protection (provided by Article 59 of the Constitution) with the right to acquire and disseminate information of public interest (protected by Article 61 of the Constitution). It held that public persons do have a smaller sphere of privacy than private persons, and thus it would be just to come down in favor of the principle of freedom of expression/acquisition of information⁴. Third, the court declared unconstitutional and discriminatory the fact that the act allowed for the verification of members of the public print media, but not members of the electronic media⁵.

¹ Perry GERSON, "Dunagate's Waters Run Deep", *The Budapest Sun*, 9 March 2000.

² As argued by Gabor HALMAI and Kim Lane SCHEPPELE, in their suggestively-titled chapter, "Living Well Is the Best Revenge...cit.".

³ Edith OLTAY, "Hungary's Screening Law", in Neil KRITZ (ed.), *Transitional Justice...cit.*, p. 667.

⁴ Wojciech SADURSKI, "'Decommunization', 'Lustration' and Constitutional Continuity...cit.", p. 24.

⁵ Abid HUSSAIN, "Civil and Political Rights, Including the Question of Freedom of Expression. Report of the Special Rapporteur on the Protection and Promotion of the Right to

In response to the court's recommendations, in July 1996 the Socialist-dominated Parliament set up the Historical Office and amended the Lustration Act to significantly narrow the scope of mandatory lustration and end its application in year 2000. After screening committees examined the records of some 600 officials, in April 1997 they announced that several deputies were suspected of having worked as secret agents¹. During the ensuing public scandal, premier Horn admitted the screening process revealed his own prior activity as a communist-era spy, both on account of his service in the militia assembled to help crush the 1956 revolution and because later he received secret information as Exterior Minister. Ignoring the public outcry, Horn declined to resign and said he regarded the matter as closed. His revelations and his refusal to repent for his past mistakes cost Horn and his Socialists valuable electoral support². The following year, general elections brought the opposition Fidesz (renamed Fidesz-Hungarian Civic Party), the Hungarian Democratic Forum and the Smallholders' Party back to power. Act XC of 2000 extended the scope of mandatory screening to journalists working for electronic and printed media and leaders of political parties receiving national budget shares. The new legislation opened the possibility for voluntary lustration for attorneys, notaries, religious leaders and mass-media journalists and reporters not subject to mandatory screening. Mandatory screening was extended until 2004 and the pool of people to be screened was enlarged from 900 to some 17 000, but the purview of lustration remained limited to involvement with the domestic intelligence branch³.

After the 2002 elections, the Socialist Party and the Alliance of Free Democrats again formed the cabinet with a narrow parliamentary majority. Soon after taking office, Socialist premier Peter Medgyessy was denounced by the leading conservative daily *Magyar Nemzet* as a communist-era spy. According to documents – some of questionable authenticity – the daily published on 18 June, the premier worked between 1961 and 1982 as the counter-intelligence secret agent code-numbered D-209. At first, Medgyessy denied all accusations, insisting that he already had been subject to lustration and cleared of past collaboration, but after more details about his past emerged he defended himself by saying he was an "honest, law-abiding and patriotic citizen" who had only served his country as Deputy Interior Minister and member of the Finance Ministry's counter-intelligence service. As he said, "for five years [1977-1982] I helped ensure that foreign informers did not get a hold of Hungarian secrets so as to prevent Hungary from being admitted to the International Monetary Fund". He further suggested that Hungarians should thank him for securing the country's accession to that international structure in 1982 despite opposition from Moscow and the KGB, and that further disclosure of his past would violate the data-protection and national-security legislation.

Freedom of Opinion and Expression", United Nations Economic and Social Council, Commission on Human Rights, New York, 29 January 1999.

¹ Neil KRITZ (ed.), *Transitional Justice...cit.*, note 261, p. 184.

² Timothy GARTON ASH, *History of the Present: Essays, Sketches and Dispatches from Europe in the 1990s*, Vintage, London, 2001, p. 305.

³ Elizabeth BARRETT, Peter HACK, Agnes MUNKACSI, "Lustration in Hungary: An Evaluation of the Law, Its Implementation and Its Impact", paper presented at the American Association for the Advancement of Slavic Studies conference, Boston, 4-7 December 2004. The paper is an abridged version of an earlier draft prepared for the Institute of Criminal and Transitional Justice, New York. I thank Barrett and Hack for making a copy of this paper available to me. See also Csilla KISS, "The Misuses of Manipulation...cit.", p. 933.

His case officer, lieutenant-colonel Lajos Toth, publicly contradicted Medgyessy, saying the premier's counter-intelligence activities were directed against the West, not against the Soviet Union¹.

Both the opposition and the government demanded details on the premier's past. The opposition asked the Alliance of Free Democrats to support a no-confidence vote against Medgyessy. After some initial hesitation, the junior governing partner decided to support the premier and thus avoid the fall of the entire cabinet. The opposition had to give up on the no-confidence motion, although a public poll revealed that 66 percent of respondents believed the premier should step down². The same poll showed that only 15 percent of the respondents were "very interested" in finding out which politicians collaborated with the communist secret police, 49 percent was "not at all interested", and twice as many thought that the scandal hurt the opposition more than the government³. The scandal revealed some important weaknesses of the Lustration Act, and resulted in a mushrooming of legislative amendments. Medgyessy was able to pass the screening process originally because his primary ties were to the counter-intelligence division. The Lustration Act called only for screening past involvement with Division III/III (domestic repression), not with other state security branches, although in reality documents and information moved freely between branches. None of the changes proposed to address this legislative loophole gained parliamentary support, in part because ambiguity provided opportunities for political blackmail⁴.

On 24 June the government and the opposition proposed competing amendments to Act X of 1990 on secret services. The act allowed the disclosure of the identity of domestic informers only in the exceptional case of "public figures". The opposition's more radical proposal stipulated that former communist spies could not occupy post-communist public office because of a "conflict of interest". The bill asked for the public release of the names of all members of the Politburo and Central Committee of the Workers' Party, full time party secretaries, and secret intelligence agents working for Division III/III. These individuals were barred from occupying high ranking state positions such as those of parliamentary deputies, deputy ministers and ministers, President of the republic, Prosecutor-General, Supreme Court president or National Bank governor⁵. The house rejected the proposal. The government's more modest proposal asked for the release of names of full-time former Division III/III spies, if they were public figures or sought public office, and set up the Security Services Historical Archive to make available documents produced by Division III/III, but not files of Divisions III/I and III/II, classified as state secrets for reasons of national security. The opposition criticized the proposal for "authorizing merciless action against those on the lower echelons of the party-state pyramid, while exempting actual regime operators"⁶. Presenting it to Parliament, Justice Minister Peter Barandy said the bill promoted transparency in public life and settled disputes on the communist past. As such, the rights of persons figuring in secret documents were outweighed by the need for transparency

¹ RFE/RL Newsline (18 and 19 June and 2 July 2002).

² RFE/RL Newsline (24 June 2002).

³ Csilla KISS, "The Misuses of Manipulation...cit.", p. 935.

⁴ "Hungary", *East European Constitutional Review*, vol. 11, no. 3, Summer 2002, available at <http://www.law.nyu.edu/eecr/vol11num3/constitutionwatch/hungary.html> (accessed 10 June 2007).

⁵ RFE/RL Newsline (20 and 24 June 2002).

⁶ RFE/RL Newsline (10 September 2006).

and the demands of national security. The government further limited the categories of screened public officials, and set up lustration committees consisting of 12 judges appointed by Parliament to four-year terms¹. On 10 December 2002 the house adopted the amendments with 173 votes in favor, 168 votes against and 3 abstentions. As a result, lustration was restricted to the President, ministers and deputy ministers, leaders of the Constitutional Court, the Supreme Court, the Prosecutor General's Office, the State Audit Office, the Ombudsman, the Central Bank, the county council presidents, and mayors of towns with more than 10 000 residents. Vetting did not affect church leaders, journalists working for private news agencies or members of trustee boards founded by Parliament or government². At the same time, the Historical Office was replaced with the Security Historical Archive³.

Medgyessy was not the only top official to confess his tainted past. The head of the Hungarian Police, Major General Laszlo Salgo, had to admit he reported the activities of fellow citizens. He did not resign his position. Soon afterwards, a well-known ex-communist journalist casually mentioned that he knew the father of a deputy Zoltan Pokorni was a former spy. For Pokorni, who immediately resigned his position as Fidesz chairman, it was a tragedy to uncover the past, to understand why his parents split in the early 1970s after his mother discovered that her husband had been involved with the secret police since 1956. Pokorni's father was a political prisoner between 1953 and 1956, and he could only survive by reporting⁴. In response to these two cases, on 9 July 2002 Parliament set up two parallel investigative committees. The first committee was formed at the request of the opposition to investigate Medgyessy's career as a secret agent, and establish whether he had worked for Divisions III/III (domestic repression) or III/II (counter-intelligence). Chaired by Hungarian Democratic Forum deputy Laszlo Balogh, the committee wrapped up its activity on 15 August in the midst of a fierce public debate, without producing a final report or uncovering anything substantive. Committee members representing the government and the opposition blamed each other for the failure. Government representatives insisted that Medgyessy's counter-intelligence activity served the national interest and he was not morally responsible for communist wrongdoings. By contrast, opposition representatives concluded that Medgyessy had been involved in activities typical of an oppressive regime, was vulnerable to blackmail, and posed a threat to national security. On 20 August the Socialist committee members presented Parliament with a report claiming that Medgyessy did not violate past or present legal regulations. Their colleagues representing the opposition never drafted a final conclusion. Apparently the premier even benefited from the procedure, with his support in opinion polls increasing.

The other committee was set up at the government's request to look into the past of all post-communist government officials. Chaired by Free Democrat deputy Imre Mecs, who spent two years on death row after 1956, the committee explored the past of some 200 senior top public officials by relying on information provided by the National Security and the Historical Offices. Unsurprisingly, the information it

¹ RFE/RL Newsline (12 and 26 September 2006).

² Parliament rejected a proposal of the radical populist Hungarian Justice and Life Party, whereby church leaders could have been screened if 20 percent of all active priests had voted in favor of such action. See Neil KRITZ (ed.), *Transitional Justice...cit.*, p. 665.

³ RFE/RL Newsline (11 July and 11 December 2002).

⁴ RFE/RL Newsline (8 July 2002).

unearthed tended to be detrimental to the opposition. On 31 July the committee announced that five unnamed ministers of the previous cabinet were communist spies, and revealed that a former minister signed a cooperation pledge and three others filed information reports. A week later opposition members walked out of the commission, accusing the Socialists of using it to divert attention from Medgyessy's past¹. Soon afterwards, Mecs announced that ten former ministers had collaborated with the AVH: five served in the 1990-4 cabinet of Jozsef Antall, two in Gyula Horn's cabinet of 1994-8, and four in Viktor Orban's cabinet of 1998-2002. This time, Mecs pledged to release the names of those individuals². The ombudsman Attila Peterfalvi recommended against such a move and criticized the committee on grounds that its activity infringed the data protection law and violated the prohibition of ex post facto legislation. President Ferenc Madl – a member of the first post-communist cabinet – also questioned the committee's constitutionality and refused to undergo screening, a position from which he later withdrew. Article 21 of the Constitution allows Parliament to establish investigative committees, while Act LXIII of 1992 on data protection permits the disclosure of the names and position of all government officials whose name and rank do not constitute a state secret.

Dissatisfied with the slow pace of lustration, on 24 August *Magyar Hirlap* published, without the consent of those named, the names of post-communist public officials allegedly with ties to the communist secret services. The list included members of the Orban cabinet (State Secretary Laszlo Bogar, PHARE Funds Minister Imre Boros, Finance Minister Zsigmond Jarai, Foreign Affairs Minister Janos Martonyi, and Transport Minister Laszlo Nogradi), members of the Antall cabinet (International Economic Trade Relations Minister Bela Kadar, Finance Minister Ferenc Rabar, Defense Deputy Minister Erno Raffai, and Agriculture Deputy Minister Laszlo Sarossy), Trade Minister Szabolcs Fazakas of the Horn cabinet, and premier Peter Medgyessy (a former Finance Minister from 1996 to 1998). Those named either denied the revelations or claimed they collaborated under duress. The following week, Mecs released a list of tainted politicians that included all names *Magyar Hirlap* identified but Jarai. As a result of his identification as Comrade D-8 of Division III/II, Boros was expelled from the Hungarian Democratic Forum, but continued to serve as an independent deputy. The final report the Mecs committee submitted to Parliament included no names³.

On 25 September 2003 the press identified the public radio head Katalin Kondor as a counter-intelligence agent working from 1974 to 1983. Kondor denied the allegations, and opposition Fidesz leader Annamaria Szalai accused the ruling Socialists of resorting to trumped-up charges to smear the public radio for its refusal to become a left-wing mouth-piece. Similar to Medgyessy, Kondor was unaffected by the lustration law, which applied only to domestic security agents. Days later Levente Sipos, chairman of the three-member commission supervising the transfer of secret archives from the National Security Office to the Historical Archive, confirmed that Kondor appeared as an unpaid secret agent in documents transferred on 7 October, but admitted that her recruitment file was still missing⁴. After reading her

¹ RFE/RL Newswire (10 and 31 July and 1 and 6 August 2002) and "Hungary", cit.

² RFE/RL Newswire (8 and 15 August 2002). Two individuals served in more than one cabinet.

³ On 23 September 2003, the Constitutional Court deemed both committees as unconstitutional. See RFE/RL Newswire (19, 24 and 27 August 2002).

⁴ RFE/RL Newswire (26 September and 8, 9 and 14 October 2003).

secret file, Kondor announced that she never contacted Division III/II, the secret documents described an attempt at recruiting her, and they included no information reports filed by her. On 27 October *Nepszava* reported that a secret agent who knew Kondor in the 1970s described her as a "highly qualified and disciplined agent working to high professional standards". The agent claimed to have met Kondor in a "conspiracy flat", and argued that Kondor helped to blow the cover of an industrial spy who wanted to sell documents from strategically important institutions to foreign spies. Government representatives asked for Kondor to be screened officially due to the fact that she helped to form public opinion in her position as head of a state-run media outlet¹.

In February 2005 another scandal erupted in Budapest when the Political Culture Institute released a list of 19 post-communist politicians who allegedly collaborated with the communist secret services. The list, largely old news, named people who admitted to having collaborated and individuals declared as former collaborators by a screening court. The Institute announced it will continue to release new names from the list of 97 agents it uncovered through scientific research, because it wanted to "pressure politicians to keep their promises to disclose all former communist agents". Among those named were former Socialist premier Peter Medgyessy, Central Bank governor Zsigmond Jarai, and the parents of writers Peter Esterhazy and Zoltan Pokorni, who is also a former Fidesz chairman. Also named was Istvan Csurka, leader of the xenophobic Justice and Life Party (MIEP), represented in Parliament from 1998 to 2002².

Public Access to the Secret Files

Act XXIII of 1994 on the Screening of Holders of Some Important Positions, Holders of Positions of Public Trust and Opinion-Leading Public Figures and on the History Office granted access to the secret political police archive. Promoted by the Socialist government, the act provided for extremely limited access to few files. One could only request to read his own secret file, from which the names of informers and third parties had been blackened. To protect personal data, sensitive information was erased from documents supplied to ordinary citizens and researchers. Curiously, even the act of having been recruited as an informer was classified as sensitive information, in a move which rendered the entire file access effort pointless. The fact that someone had acted as a secret informer for the communist political police was a piece of personal data that needed to be strictly protected, unless that person was a "public figure". Secret informers were denied access to the reports they had submitted to the state security.

A newly-created History Office became the custodian of the secret archive, and had to receive from post-communist information services the archive generated by all branches of Division III. Important archival materials remained classified. They included files needed for the uninterrupted functioning of the intelligence services, and files containing both the vital data that could lawfully be handled by the security services and the data that could be disclosed, if the separation

¹ RFE/RL Newswire (15, 26 and 27 October 2003).

² *Jurnalul național*, 12 February 2005.

of these data proved technically impossible. It was up to the intelligence services alone to determine which files could be transferred to the History Office, as the legislation did not provide for any review procedure in this case. Most pre-1980 secret files were declassified, but the History Office received only five percent of the files produced by the military and counter-intelligence services. Although the file transfer had to occur within 60 days, it was completed only in 2000. The following year, the office asked Parliament to recognize it as an archive, distinguish clearly between victims and spies to grant them different levels of access to their own files, and release more secret archival materials to researchers. Those requests were granted in 2003.

Act III of 14 January 2003 on the Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the State Security Historical Archive turned the Historical Office into a Historical Archive responsible for both communist secret files and documents produced as part of the lustration process¹. The activity of the Historical Archive was supervised by the Speaker of Parliament, who appointed and dismissed the archive chair. Victims of communism were granted access to all secret files. To gain information about the communist repression mechanisms and clearly distinguish between communist and post-communist information services, researchers were granted broader access to secret files and the mass-media could widely publicize the role of the communist secret services. Any person could read or publish data needed to identify a "public figure" as a secret full-time agent or part-time informer. If the identified persons refused to recognize themselves as public figures, the courts could be asked to identify the person as a public figure. File access was allowed to the extent it did not endanger national security interests. To this end, data that remained classified included the names of post-communist secret agents, the names of agents whose public identification would lead to their deportation from a foreign country, prohibition to enter another country, criminal prosecution or a threat to their and their relatives' lives, safety and freedom. After the Medgyessy scandal, Act III was amended to allow for greater file access. As a result, victims could access the records of those who spied on them, provided those records are over 30 years old. Some documents remain classified for longer periods of time in the interest of privacy: state secrets, official secrets and confidential business data².

Given the way the legislation was formulated, file access depended heavily on the willingness of the post-communist information services to relinquish the communist-era secret files. By 2000 the services announced that they had declassified 1 788 archival "items". According to their own declarations, three-quarters of those items were victims' files, while the remainder represented "object files" (reporting on Hungarian émigré organizations), "B" (personal) and "M" (job) agent files from the 1950s. After another periodical file revision, in late 2002 the Service transferred one million secret pages, including 650 000 pages of intelligence reports and briefs from 1957 to 1975 (recorded on 210 microfilms); 4 000 pages of assessments produced in 1975 (1611 files in total); seven files produced from decrypted materials (stored on microfilms or paper); 50 000 pages of encrypted materials produced by foreign ministries, embassies and international organizations (around 60 000

¹ Act III of 2003 is available online at http://www.th.hu/html/en/acts/ABTL_4_2003_evi_III_tv_e.pdf (accessed 10 June 2007).

² "Hungary to Open Spy Files", *Deutsche Welle*, 9 December 2004, <http://www.dw-world.de/dw/article/0,2144,260572117,00.html> (accessed December 2006).

page-long micro-fiches pages and 17 film rolls); 10 000 pages produced before 1970; and 98 search files compiled on individuals and organizations before 1970 (in total 112 volumes of 8 000 pages). The service claimed it handed over a total of 400 linear meters of secret documents. As of 2000, the Historical Archive housed some 70 000 investigation files, 15 000 operative files, 5 600 recruitment files, 8 000 work files and almost 4 000 "building" files (covering life in economic units), reports, studies, lists and manuals. Hungarians have been slow to ask for access to files. During the 1997-2000 period, only 5 000 persons request to read their files. In almost half of all those cases, no secret file was found¹.

Extant files represent only a fraction of the original archive. Communist secret services regularly destroyed materials deemed unimportant, and carried out document destruction campaigns in 1956, the early 1970s and late 1989. There are no reliable estimates of the number of documents destroyed in regular and irregular file selections. Varga claimed that 70 percent of secret files were lost in 1989 and 1990, when, "as part of the last throes of the communist regime, a frenzied wave of shredding swept through the secret services"². Rainer argued that "the destruction of documents took place at a panic-stricken speed" and affected the observer files still in use and some archived material. As a result, "most of the pre-1956 operative files have vanished and so have the ones for immediately before 1989". About 100 000 of the 110 000 agent-recruitment files were also lost³. As no independent investigation was ever carried out to estimate the number of extant files, conspiracy theories abound. Some say the secret archive was moved to Moscow, others believe it remained in Hungary at the disposal of security services eager to determine the course of the new democracy, and still others argue that most files were destroyed⁴. In September 2002 the Historical Office admitted that 54 of its original secret files had been replaced with photocopies. Some of the missing documents concerned Gabor Szalay of the ruling Free Democrats, who admitted his collaboration with Division III/II (counter-intelligence) from 1978 to 1988. During investigations, the legislative security committee interviewed the head of the Interior Ministry records office, the head of the Historical Office, and Gabor Kuncze, Interior Minister in 1995 when the original documents went missing⁵.

Szalay's file was not the first to be altered. During the 1989 roundtable talks the secret political police made considerable efforts to conceal its surveillance operations directed against the anticommunist opposition. In July 1989 the Interior Ministry selected the files that needed to be closed and archived because surveillance of those targets had been terminated. In the process, observers alleged, the secret services covered not only their domestic activities, but also their counter-intelligence and military intelligence operations. In October that year, Division III/III reviewed its operative records with an eye to destroying the files incompatible with the changed legal situation, which allowed opposition activity. On 18 December

¹ Janos M. RAINER, "Opening the Archives...cit.".

² Perry GERSON, "Dunagate's Waters...cit.", p. 20.

³ Janos M. RAINER, "Opening the Archives...cit.", p. 115.

⁴ According to Rainer, during the Dunagate scandal "the 'observer files' still in use were destroyed (these have been kept on members of the opposition) and the closed files were not spared either. Most of the pre-1956 operative files have vanished and so have the ones for immediately before 1989 (the destruction was begun at the two ends, with 1945 and 1989). About 100 000 of the 110 000 agent-recruitment files fell victim". The data seems exaggerated. See *ibidem*.

⁵ RFE/RL Newsline (24 September and 1 October 2002).

Pallagi authorized the destruction of files still used by agents on a daily basis, some archived files detailing the activity of victims, agents, informers, and collaborators. Files detailing ongoing operations were altered to remove all signs of surveillance of crimes against the state which ceased to exist. The order asked for the destruction of archived files detailing the surveillance of schools, opposition parties, religious groups, and the production and distribution of samizdat literature. Among the "network" files slated for destruction were selected files of retired recruiting agents (*beszervezesi dosszie* or "B" *dosszie*), files detailing confidential investigation methods, combinations or security games, files of recruitment agents who were also Workers' Party members, and files of retired network members (*kizart halozatok*). Only the personal information cards of active agents were preserved. Work files (*munka dosszie* or "M" *dosszie*) containing information reports received from network persons were cleansed. Disregarding the services' own internal rules of data organization, Pallagi asked for the removal of memos reporting file destruction. The opposition leaders were told of this file destruction campaign only after it was completed.

The autumn of 2004 turned up more former spies among elected officials, while various lists of agents emerged on the internet and in the press. This prompted new interest in parliamentary circles to amend the legislation exposing communist secret agents. Completely unexpected, Socialist premier Ferenc Gyurcsany took the lead in advocating full disclosure of all secret agents. His vague initial policy proposal met the liking of all political parties represented in Parliament, but the more concrete the proposal became the more rapidly it fell short of consensus. Ultimately, the Constitutional Court rejected the legislative changes adopted in 2005. That year the opposition Fidesz called for opening all communist secret archives, including the files still housed with various ministries, estimated to total around one linear kilometer. The party further asked for the public disclosure of the communist past of post-communist politicians, and the marginalization of tainted public figures who "pursued state security activities against Hungarian citizens, not upon coercion but on their free will". The resolution called for sanctions for those who tampered with the secret archives, a clearer definition of the "public figure" term, and an investigation of the involvement in human rights violations of former communist party officials¹. The proposal received a cold shoulder in Parliament.

Court Proceedings

In Hungary economic injustices inflicted under communism were redressed through the compensation law of 1991, but little was done about the political crimes committed by communist officials. In many cases the relatives of those executed, tortured and harassed during the communist period still wait for the names of those responsible to be revealed. While some offences committed by communist officials and secret agents were legal under the communist law, many other offences amounted to crimes even by those standards but the political circumstances of the time impeded victims from asking for an investigation or trial. For example, contrary to communist legislation minors were executed for their involvement in

¹ *The Position of Fidesz – Hungarian Civic Union on the Opening of Former State Security Files*, 17 March 2005.

the 1956 revolution and other adult protesters were tortured during interrogation and died as a result of their beatings. Kadar's regime ended these practices only as a result of international pressure. As Pataki noted, individual officials whose identity remained unknown were responsible for ordering the shooting into defenseless crowds in Mosonmagyaróvár, Salgotarjan and other towns during and after the 1956 revolution¹. Because the period with the gravest crimes accompanied the 1956 uprising and the limitation periods for these crimes had ran out, criminal suits against human rights violators could not be brought easily.

Hungary was first among Eastern European countries to adopt the legislative framework needed for the criminal prosecution of communist officials. The law on the prosecutability of communist crimes was introduced in Parliament by the Hungarian Democratic Forum deputies Zsolt Zetenyi and Peter Takacs and approved in December 1991 by a large majority, despite warnings that such a measure might be impractical for legal, political and moral reasons. The bill called for the suspension of the statute of limitations for cases of treason, premeditated murder and aggravated assault leading to death in those cases where, for political reasons, prosecutions had not previously been possible. The law covered crimes committed during a period of time which started with 21 December 1944, the day when the first Hungarian Parliament convened in Debrecen following the era of Admiral Miklos von Horthy, and ended with 2 May 1990, the day when the first freely elected post-communist Parliament met. Its primary aim was "not to punish the criminals, but to unmask them", as its jurisdiction was rather limited². The law only covered acts that were crimes at the time when they were committed, targeted only those cases where there had been no trial due to political reasons, and provided for lighter sentences than normal, where applicable.

Court trials were not directed against ordinary communist party members, but against those involved in torturing or killing innocent individuals. Yet, the president refused to sign the law and instead he sent it to the Constitutional Court, which unanimously overturned the bill as lifting the statute of limitations and failing to define treason. The court justified its decision by adherence to the rule of law principles, and argued that "legal certainty, based on objective and formal principles, takes precedence over justice which is partial and subjective at all times"³. Stressing strict adherence to the rule of law, the court refused to let the political change lead to a devaluation of the fallen regime's legislation. Instead the court identified the security of law, understood as "the protection of rights previously conferred, non-interference with the creation or termination of legal relations, and limiting the ability to modify existing legal relations to constitutionally mandated provisions", as the highest principle. In emphasizing procedural over substantive justice, the court forced Parliament to reconcile the quest for a just outcome with the requirement of formal legality⁴. As Teitel noted, the decision further ignored international legislation with respect to crimes against humanity:

¹ Jan PATAKI, "Dealing with Hungarian Communists' Crimes", *RFE/RL Research Report*, 28 February 1992, p. 21.

² Jan PATAKI, "Dealing with Hungarian Communists' Crimes", cit., pp. 21-22.

³ "Hungary: Constitutional Court Decision on the Statute of Limitations, No. 2086/A/1991/14 (5 March 1992)", in Neil KRITZ (ed.), *Transitional Justice...cit.*, pp. 629-640.

⁴ Christiane WILKE, "Politics of Transitional Justice: German, Hungarian, and Czech Decisions on ex post facto Punishment", paper presented at the annual conference of the American Political Science Association, Boston, 28 August 2002, p. 6.

“Protection of the rule of law also implies adherence to fundamental international law norms such as the principle of the imprescriptibility of crimes against humanity. The failure to refer to any national or international precedents on this question is a glaring omission in the Hungarian constitutional court’s opinion”¹.

In February 1993 Parliament amended the 1973 Criminal Code to allow the prosecution of communist-era crimes for which the limitation period had run its course, and passed an “authoritative resolution” reading that the statutes of limitations should not apply to the 1944-1989 period. After the Constitutional Court rejected both decisions, Parliament adopted the Law on Procedures Concerning Certain Crimes Committed during the 1956 Revolution based on international instruments such as the Geneva Convention Relative to the Treatment of Civilians in the Time of War and Relative to the Treatment of Prisoners of War of 1949 and the New York Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968. The law interpreted the 1956 events as war crimes and crimes against humanity. For these types of crimes the statutes of limitations were excluded by the Geneva and New York Conventions, which Hungary had ratified. The Constitutional Court again struck down some parts of the law, but upheld its main provisions grounded in these international norms. According to the court, “the legal system of Hungary shall respect the universally accepted rules of international law, and shall ensure, furthermore, the accord between the obligations assumed under international and domestic law”. The law, ensuring the enforcement of “universally accepted rules of international law”, entered into force in October 1993².

While the law was procedurally acceptable, many wondered whether communist-era crimes could really qualify as crimes against humanity under a regime where political killings were usually masked as suicides. Unlimited privileges for the nomenklatura and a broad array of controls over society exercised through legal measures, a lack of human rights and due process, the absence of individual remedies, censorship, controlled mobility inside the country and abroad, a selective system of benefits to promote loyalty to the system and to create an atmosphere of constant fear – those were the main crimes of the communists during the last two decades of its existence. In that environment, homicide acts, disappearances, torture, though occurred, were not mass-scale, but rather isolated cases.

For Sadursky, the Constitutional Court’s intervention in the

“parliamentary action aimed at bringing the perpetrators of some of the crimes to justice can be seen as an arrogation of the power, by the Court, to dictate the terms of the transition, under the guise of a self-righteous legalism and commitment to the rule of law. For this reason perhaps, the decision was so broadly applauded by the Western observers and commentators: they could identify with the Court speaking the idiom of liberal constitutionalism and the ‘civilized’ rule of law, as opposed to the apparently revengeful and populist Parliament”.

¹ S.J. SCHULHOFER, M. ROSENDEL, Ruti TEITEL, R. ERRERA, “Dilemmas of Justice”, in Neil KRITZ (ed.), *Transitional Justice...cit.*, p. 659.

² K. MORVAI, “Retroactive Justice Based on International Law: A Recent Decision by the Hungarian Constitutional Court”, in Neil KRITZ (ed.), *Transitional Justice...cit.*, p. 662.

At the same time he warned that "there is nothing canonical about this particular interpretation of the rule of law" because

"by denying Parliament the authority to define the parameters of transition – the proportions of continuity and discontinuity with the old legal system – the Court opted for a highly arbitrary interpretation of the rule of law to prevail over politically defined understanding of the mix of continuity and discontinuity"¹.

Teitel also observed that the court decision on the statute of limitation amounted to a "brilliant power grab", which only apparently "represented a victory for the rule of law"².

On 30 October 1993 Parliament passed unanimously a version of the law revised in light of the Positional Court's recommendations. The new legal framework defined by Act XC allowed the Ministry of Justice to investigate fifty episodes of mass shootings that occurred from 23 October to 28 December 1956, during the revolution. In several cases, once investigations were concluded the Prosecutor General promptly brought charges, and court proceedings were launched by the Budapest City Court, the only court allowed to hear those cases. The first trial started in mid-1994. Six months later the court reached an impasse, when two of its chambers adopted two different conclusions, each appealed to the Supreme Court. One chamber ruled that the government forces' shooting into unarmed demonstrators in December 1956 in the town of Salgotarjan were not war crimes, but could count as crimes against humanity. The shootings were deemed to be "prohibited acts in the case of armed conflict not of an international character". Two of the twelve defendants were found guilty, and were each sentenced to five years in prison. In a similar case related to the same incident, another chamber of the Budapest City Court ruled that the acts were to be judged by domestic, not international, norms. As it decided that the statute of limitations applied to the case, the chamber set it aside. Instead of ruling on the two cases before it, the Supreme Court unexpectedly petitioned the Constitutional Court for an interpretation of Act XC of 1993. The petition claimed that the law was unconstitutional because it failed to specify both the procedures under which cases could be brought before the ordinary courts in Hungary and the criminal procedure applicable to those cases. The Constitutional Court sided with the Supreme Court and asked Parliament to amend the law before the ordinary courts could hold more trials³.

Conclusion

Mild lustration not leading to loss of public office, delayed and limited access to the secret archives, and very few court cases bringing to justice communist officials and secret agents responsible for human rights violations – these are the

¹ Wojciech SADURSKI, "Decommunization', 'Lustration' and Constitutional Continuity...cit.", pp. 42-43.

² Ruti TEITEL, "Paradoxes in the Revolution of the Rule of Law", *Yale Journal of International Law*, vol. 19, 1994, pp. 244-245.

³ Gabor HALMAI, Kim Lane SCHEPPELE, "Living Well Is the Best Revenge...cit.", pp. 166-171.

results of the Hungarian post-communist transitional justice process. Weak political will and general public apathy prompted Hungary to shy away from comprehensive lustration, full opening of secret files and vigorous prosecution of communist officials and spies, and encouraged it instead to embrace softer methods of atonement, healing and retribution. Act XXXVI of 1989 overturned the court judgments handed down in connection to the 1956 revolution, Act XXVI of 1990 annulled politically-motivated court verdicts and condemnations handed down from 1945 to 1963, while Governmental Decree 93 of 1990 redressed some injustices resulted from the communist labor law. This legislative framework, however, brought vindication only to those whose conviction was somehow related to the 1956 events and specifically included the words "revolution" or "political". Echoing general public sentiment, philosopher Gaspar Miklos Tamas, a former opposition activist, said he would send the secret archive to the bottom of the Danube river, signaling thus his personal preference for the Spanish solution of "forgiving and forgetting". The patchy archival material that has survived the extensive destruction sweep of the 1989-1990 might just allow Hungarians no alternative but to forget about ever piecing together the puzzle of the activity of the communist-era secret information services. Tamas's radical position would allow Hungary to contemplate its future by forgetting its past, but would also leave important moral questions unanswered, bringing Hungarians little truth and reconciliation. Luckily, his advice was not heeded by the Historical Archive, whose secrets are yet to be uncovered by a new generation of historians.