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Transition, Justice and Transitional Justice in Poland

LAVINIA STAN

Poland adopted limited transitional justice almost a decade after its neighbors Germany and the Czech Republic, but de-communization has been one of the most divisive issues in the political life of this young democracy¹. Poles remain divided about the communist past, its effects on nation-building and political culture, and the way in which the post-communist state should deal with it. Some agree with their country's choice for the Spanish model, whereas transition to democracy is effected without granting public access to secret archives, prosecuting communist leaders for human rights trespasses, and blocking *ancien regime* officials from accessing positions of power and responsibility. Others believe that Poland's soft stand toward communist repression provides the wrong moral example for younger generations, and allows former communists to succeed in the market economy and open electoral competition. Curiously enough, in Poland the strongest case against transitional justice was made not by former communists, but by former dissidents fearful of what it would reveal about the opposition movement, while the hostility towards the old political elite was caused not by its opposition to market economy and democratic politics, but by its successful adaptation to these new conditions.

This article presents Poland's progress in three main areas of transitional justice: 1) lustration, a process by which the government can ban former communist officials and secret political police agents from post-communist politics; 2) access for ordinary citizens to the files compiled on them by the secret political police; and 3) trials and court proceedings against communist officials and secret agents. While substantial, the literature on the Polish transitional justice tends to focus on lustration viewed in isolation from other methods of dealing with the communist past or on the "martial law" trial of General Wojciech Jaruzelski. We know a lot about the key moments which steered the course of legislation towards or against lustration, the parliamentary debates surrounding the issue, the main arguments for and against the screening process, and the reasons why lustration has lagged behind in the country². We also know a lot about the public's sentiments toward

¹ The author thanks Drs. Maria Los and Dariusz Stola for their valuable comments on earlier drafts of this article, Sabina Stan, Ioan Sebastian Chesches, as well as Rodica and Răzvan Zaharia for collecting and analyzing materials, and a number of researchers working for the Polish Institute for National Remembrance for candidly providing information. A number of students in the Department of Political Science and the Center for Post-Communist Studies at St. Francis Xavier University acted as research assistants. Research for this article was generously supported by the Social Science and Humanities Research Council of Canada through a standard research grant. All errors of fact and interpretation are entirely mine.

² See, for example, Wiktor OSIATYNSKI, "Decommunization and Re-communization in Poland", *East European Constitutional Review*, vol. 3, nos. 3-4, Summer 1994; Aleksander SMOLAR,

the martial law, Jaruzelski's justification for imposing the state of emergency, and the positions adopted by various political parties and actors relative to the effort to bringing Jaruzelski to trial and holding him accountable¹. This article fills the gap in the literature by extending the definition of transitional justice beyond lustration, examining an array of court cases investigating abuses throughout the communist era, not just the 1980s, and providing an explanatory framework that could account for Poland's handicap in all three transitional justice areas.

THE POLISH POLITICAL POLICE

After the October 1956 de-Stalinization, the Polish communist secret political police, *Sluzba Bezpieczenstwa* (SB), replaced the Ministry of Public Security (*Ministerstwo Bezpieczenstwa Publicznego*, with its local offices, *Urzad Bezpieczenstwa*) as the political police, intelligence, counter-intelligence, personal protection and confidential communications agency. The SB, meant to protect "the democratic people's system established by the Constitution of Polish People's Republic and the national interest against enemy espionage and terrorist activity"², was part of the Ministry of Internal Affairs and included departments on intelligence, counterintelligence, combating hostile activity and organized opposition, surveillance of religious organizations, industry, transport, communication and farming, operational technology, correspondence control, radio counter-intelligence and protection of the party leadership. The number of full-time agents grew steadily from around 10,000 in 1957 to 25,600 in 1985, in a total population of some 37 million. The agents' profile also changed. Whereas at the beginning of the communist rule most officers were brutish and uneducated, by the late 1980s most of them had secondary education and a middle class background³.

"Comment gerer le passé. Débats polonais", *Commentaires*, no. 65, Spring 1994, pp. 53-64; Andrzej WALICKI, "Transitional Justice and the Political Struggles of Post-Communist Poland", in James A. McADAMS (ed.), *Transitional Justice and the Rule of Law in New Democracies*, University of Notre Dame, South Bend, 1997, pp. 193-196; Aleks SZCZERBIAK, "Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland", *Europe-Asia Studies*, vol. 54, no. 4, 2002, pp. 559-560; Noel CALHOUN, "The Ideological Dilemma of Lustration in Poland", *East European Politics and Societies*, vol. 16, no. 2, 2002, pp. 494-520, and Roman DAVID, "Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)", *Law and Social Inquiry*, vol. 28, no. 2, 2003, pp. 387-440. For general reviews of Eastern Europe that include Poland, see Maria LOS, "Lustration and Truth Claims: Unfinished Revolutions in Central Europe", *Law and Social Inquiry*, vol. 19, no. 1, 1995, pp. 117-162; Mark ELLIS, "Purging the Past: The Current State of Lustration Laws in the Former Communist Block", *Law and Contemporary Problems*, Autumn 1996, pp. 181-197; Carmen GONZALEZ-ENRIQUEZ, "De-communization and Political Justice in Central and Eastern Europe", in Alexandra BARAHONA DE BRITO, Carmen GONZALEZ-ENRIQUEZ, Paloma AGUILAR, *The Politics of Memory. Transitional Justice in Democratizing Societies*, Oxford University Press, Oxford, 2001, pp. 218-247, and Noel CALHOUN, *Dilemmas of Justice in Eastern Europe's Democratic Transitions*, Palgrave Macmillan, New York, 2004.

¹ See Tina ROSENBERG, *The Haunted Land. Facing Europe's Ghosts after Communism*, Vintage Books, New York, 1995, pp. 125-258.

² Antoni DUDEK, Andrzej PACZKOWSKI, "Poland", in Krzysztof PERSAK, Lukasz KAMINSKI (eds.), *A Handbook of the Communist Security Apparatus in East Central Europe, 1944-1989*, Institute of National Remembrance, Warsaw, 2005, p. 228.

³ *Ibidem*, p. 244.

The SB was independent of other state administrative organs, but never more than an tool of the Polish United Workers' Party (*Polska Zjednoczona Partia Robotnicza* or the PZPR), which decided the hiring and promotion of the secret agents. After 1956, the party leadership and particularly General Secretary Władysław Gomułka, the political police's prisoner at one time treated the secret services with reserve and made efforts to underline the supremacy of the party of the party. In 1960, SB officers were prohibited to recruit PZPR members as secret collaborators, but exceptions were still permitted with the approval of the local party leadership. Despite the order, the secret police continued to use party members as operational contacts and official contacts, in the absence of the standard signed pledges required to initiate collaboration. The SB was dominated by PZPR members, but party membership was not a prerequisite to join the secret police. Party membership among SB functionaries decreased steadily from 84% in 1957 to 69% in 1983¹.

The SB maintained an active network of secret collaborators for information gathering and as "an instrument of terror", because "people were recruited to be broken" and mass recruitment meant "humiliating people, creating an aura of fear [...] a way to keep people dependent"². In 1948, 65% of all agents and 33% of all informers were recruited using compromising materials (reports of theft, embezzlement or improper sexual inclination and even having relatives in the West). The information network included a steady 10,000 agents until 1968, when the demand for informers grew rapidly when major events – the Church's Millennium celebrations, the 1968 student protests and the workers' revolt on the Baltic Coast in 1970 – had to be supervised. After the imposition of the martial law in 1981, the network continued to grow, reaching a record level of 98,000 informers in 1988. The entire state administration was obliged to cooperate closely with the SB, which deeply infiltrated it. The most penetrated areas included the northern and western regions, the last to be incorporated into the country, and the Białystok and Gdansk regions (known for their strong anticommunist underground and frequent social unrest). Larger informer networks were planned within the clergy, the judiciary, the social elite and the political opposition groups³.

As other communist political police, the SB had to protect the party's control over the country, crack down on dissent and opposition, and ensure acceptance of official ideology, policies and leaders. Its victims included pre-communist state dignitaries and political party leaders, industrialists, merchants and agricultural landowners, and members of the intelligentsia and the working class who openly opposed or criticized the communist regime. According to a 1979 report of the Ministry of Internal Affairs, from 1944 to 1956 the security apparatus arrested 243,066 persons, with four-fifths of the arrests occurring in the late 1940s, at a time when 350,000 to 400,000 people fell victim to arrests and custody at the hands of

¹ *Ibidem*, pp. 238-244.

² *Ibidem*, pp. 254-255.

³ *Ibidem*, pp. 258-259. The collaboration of priests remains an open wound in Poland, a country with a 95% Roman Catholic population. From 1944 to 1956, the communists arrested almost 1,000 priests, isolated bishops, dismantled the Greek Catholic Church, and deported priests to Siberia. Not all priests behaved courageously. Historian Jan Zaryn listed priests who acted as SB informers, including the Dominican Konrad Stanisław Hejmo, Pope John Paul II's close collaborator in charge of Polish pilgrimages in Rome. Zaryn suggested that in 1977, the SB estimated that 2,600 priests (that is, 15% of the Polish clergy) were informers. The historian knew of no church leader who collaborated with the secret police. See Giovanni CUBEDDU, "From a Distant Country, to Spy Close Up", *30 Giorni*, August 2005, available at www.30giorni.it.

Soviet security agents. Around two million Poles, including Jaruzelski and his parents, were deported to the Soviet Union during or immediately after World War II. The statistics do not include preventive custody, excesses during arrests, torture in interrogation, extermination as result of extreme prison harsh conditions, death sentences, and cases of murder in prisons disguised as suicides. While mass terror began to subside in 1954, an additional 5,600 people were detained and dozens were killed during the mid-1956 mass protests in Poznan, the 1960 riots in Nowa Huta, the 1968 student strike, and the 1970 and 1976 strikes and demonstrations on the Baltic Coast¹.

Once the martial law was imposed in December 1981, country leader General Wojciech Jaruzelski and his army collaborators acquired growing power in the party-controlled political system. The state administration was increasingly staffed with military and secret service agents, and the country's overall command was taken by a military council². Jaruzelski's protégé Czeslaw Kiszczak, who had helped with the preparation and introduction of the martial law, became the first officer to be appointed Minister of Internal Affairs. Although he extended the secret informer network within opposition ranks and designed the repression measures, Kiszczak successfully transmogrified from a hard-line communist personally responsible for the regime's crimes into a key negotiator of the communist side during the Roundtable talks. The PZPR's 1989 electoral defeat led to the SB's funeral as a repressive political police, but its destruction was a controlled process. As Deputy Prime Minister and Minister of Interior in the Mazowiecki government, Kiszczak was able to destroy the most sensitive parts of the secret archive and camouflage the SB's worst activities. The reforms led to the sudden collapse of the information network, which was almost halved in the second part of 1989. By the end of that year, the dying secret service still maintained 52,000 informers. From 1989 to 1991, almost half of the intelligence officers left the service³.

In April 1990, Parliament replaced the SB with a new organization, the State Protection Office (*Urząd Ochrony Państwa* or UOP), and two months later Krzysztof Kozłowski became the first post-communist Minister of Interior. The destruction of the old institution clearly demarcated the past and the future, and allowed for its documents and property, but not personnel, to be transferred to the UOP. SB agents were re-hired by the UOP only after they successfully passed through a verification procedure. Each district formed a qualification commission, which reviewed applications from SB agents who wished to work for the UOP, and determined whether the candidate fulfilled the moral qualifications for service. SB agents who had violated the law, had infringed on human rights or had used their position for private gain were disqualified⁴. But the verification process was uneven among districts, prompting charges of gross unfairness and even "procedural nihilism"⁵.

¹ Antoni DUDEK, Andrzej PACZKOWSKI, "Poland", cit., pp. 272-274. NKVD data suggest that estimated number of Poles deported in 1939 and 1940 reached only half a million. I thank Dr. Dariusz Stola for this information.

² Maria LOS, Andrzej ZYBERTOWICZ, *Privatizing the Police-State. The Case of Poland*, Palgrave MacMillan, London, 2000 and Maria LOS, "Reshaping of Elites and the Privatization of Security: The Case of Poland", *Journal of Power Institutions in Post-Soviet Societies*, no. 2, 2005, available at www.pipss.org/document351.html.

³ Jeff FREEMAN, "Security Services Still Distrusted", *Transition*, 21 March 1997, p. 52.

⁴ *Monitor Polski*, 21 May 1990.

⁵ Noel CALHOUN, *Dilemmas of Justice...cit.*, p. 105.

Of the 14,500 individuals who sought appointment, around 8,000 were approved for further employment in the Ministry of Interior and about 4,000 of them ended up working for the UOP. The rest found employment with the regular police and private security agencies. More than two-thirds of those who were rejected appealed to the central commission for a review of their cases, and the ombudsman received complaints from 589 people regarding these verification procedures. The procedure was never substantially revised, despite the complaints¹. Following this initial vetting, politicians were reluctant to approve further screening of the secret services and the armed forces, on grounds that it would weaken national security by depriving the country of skilled intelligence professionals.

To turn it into a Western-style intelligence service, the UOP was prohibited from monitoring the activity of the political opposition and launching surveillance operations without court approval, and instead was called to gather intelligence material in the fight against terrorism, organized crime and corruption. In May 2002, the Polish secret services were redesigned as an intelligence community formed by the Foreign Intelligence Agency (*Agencja Wywiadu*), whose head was also the head of the intelligence community, and the Internal Security Agency (*Agencja Bezpieczeństwa Wewnętrznego*), constituted on the basis of the UOP. During the 2005 electoral campaign, the Catholic center-right Law and Justice party accused the intelligence services of becoming a tool in the hands of the leftist government, and refusing to uncover the many corruption schemes involving government members and leftist party leaders. After the party won the elections and formed a minority government, Prime Minister Kazimierz Marcinkiewicz announced sweeping reforms of the intelligence community and plans to dismantle the military intelligence services, all in an effort to help Poland to break with the last vestiges of its communist past. It remains to be seen how far the promised reforms will go².

LUSTRATION

Premier Mazowiecki explicitly rejected pursuing lustration, both because he wished to honor the spirit of the Roundtable Agreements and because, as the first non-communist premier in Eastern Europe, he wanted to reassure Moscow that his government sought no revenge against communist leaders. On 24 August 1989, in a speech that set the tone for how Poland would (not) come to terms with its communist past, Mazowiecki announced that a "thick line" would be drawn between the past and the present. Past loyalties were not grounds for discrimination, and everyone, including communist officials, could start a new life if ready to embrace the new democratic order. Satisfied that the new government will not reprimand them, the PZPR leaders accepted the new order, many of them renouncing politics after the party dissolved itself in January 1990. Its legal heir, the Union of Democrat Left (*Sojusz Lewicy Demokratycznej* or the SLD), broke with the principles of democratic centralism, encouraged internal debates, and formally embraced

¹ *Rzeczpospolita*, 3 September 1990.

² For the 2002 reforms, see David M. DASTYCH, "No 'Zero Option' But a Shake Up", available at www.fas.org/irp/world/poland/dastych.html.

parliamentary democracy and free market economy¹. Its young leader, former communist apparatchik Aleksander Kwasniewski, and intellectual and Solidarity activist Adam Michnik, both key architects of the Roundtable Agreements, stressed their commitment to the Spanish way, ignoring the question of its relevance and applicability to post-communist transformations².

The "thick line" policy allowed Poland to avoid bloodshed and effect a smooth transition to democracy, but inhibited government from pursuing lustration as a component of transitional justice, gave victims wronged by the old repressive regime no voice, and reflected no wide public consultations. While catchy, the phrase was never fully explained, and people were not told where exactly the line was drawn. The policy divided the public into two camps with opposite views on lustration. Over the 1994-1999 period, a clear majority of Poles favored vetting key political officials for their links with the SB, while only one in three Poles opposed lustration. From 1996 to 1999, around 45% of Poles supported, and as many opposed, the exclusion of PZPR officials from public office³. Clearly, the policy reflected the popular mood only in the early 1990s, if at all, and helped Poles to postpone dealing with their past honestly, not to put it behind them. In the last 15 years, the country was rocked by numerous scandals exposing top politicians as former SB agents. Each time, supporters of the "thick line" policy reaffirmed its merits, but the usually defiant attitude and repeated denials of the former secret agents, coupled with their uncanny ability to take advantage of communist-era networks to turn their old political power into economic power, prompted many Poles to question the virtues of the "amnesty but not amnesia" option⁴.

As early as 1989, influential politicians denounced the "thick line" policy as a cowardly moral compromise or a "clever communist manipulation, serving the interests of the nomenklatura who wanted to enrich themselves while continuing to rule the country indirectly behind the scenes"⁵. Among the critics were politicians for whom a compromise with the communists was simply unacceptable, and Solidarity members embittered by their marginalization at the Roundtable talks and the new government's failure to offer them a satisfactory share of power as a reward for their sacrifices as underground militants. In the face of demands for de-communization mounted by these groups, in September 1991 President Jaruzelski asked Parliament to shorten his mandate and prepare presidential elections based on direct popular vote. In the poll, Solidarity leader Lech Walesa easily

¹ In January 1990, the Polish communists regrouped under the banner of the Social Democracy of Republic of Poland (SdPR). The SdPR and its allies participated in the 1993 elections as the SLD.

² I thank Dr. Maria Los for this observation. See also Adam SZOSTKIEWICZ, "The Time for De-communization Has Past", *The Warsaw Voice*, 28 June 1998. Mazowiecki's speech appeared in *Sprawozdanie stenograficzne Sejmu PRL*, 24 August 1989, pp. 84-86. Three recent publications worth noting are Piotr GRZELAK, *Wojna o lustracje*, Trio, Warsaw, 2005; Pawel SPIEWAK, *Panic po komunizmie, Slowo/Obraz/Terytoria*, Gdansk, 2005, and Artur WOLEK, "Lustracja jako walka o reguly polityki I proba wzmacniania legitymizacji nowych demokracji", *Studia Polityczne*, no. 15, 2004, pp. 147-173.

³ Aleks SZCZERBIAK, "Dealing with the Communist Past...cit.", pp. 559-560.

⁴ When confronted with one of his victims, an elderly woman, Adam Hunter, an SB officer accused of carrying out brutal torture, replied: "Shut up, you old bitch". The Hunter case is detailed below.

⁵ Andrzej WALICKI, "Transitional Justice...cit.", p. 190.

defeated Mazowiecki, who had lost popularity as a result of the shock therapy reform program of Minister of Finance Leszek Balcerowicz.

Even after it explicitly rejected lustration, Poland was forced to reform its state structure to make it more adapt to effect post-communist transition. A key candidate for reform was the judiciary, which had close and visible ties to the SB. With some exceptions, communist judges and prosecutors were obedient instruments of the repressive apparatus, detaining opponents without legal basis, orchestrating show-trials with pre-determined outcomes, fabricating evidence, and sending thousands to prison for their political opinions. Instead of the Czech lustration model, Poland used another approach to decide which judges and prosecutors could continue their careers. It absolved tainted individuals who confessed to their crimes, however gruesome they were. Confession was not public, but written, as prosecutors had to provide signed declarations describing their communist-era activities. If the Ministry of Justice deemed the declaration false, the prosecutor was not reappointed. While avoiding costly, lengthy and disruptive disciplinary procedures, the procedure allowed for the dismissal of only the prosecutors providing false declarations, not those who had violated human rights with impunity but fully disclosed their activities. After such verifications, only some 10% of all prosecutors and one-third of the staff of the General Prosecutor's Office were dismissed, though it was widely believed that many more had infringed human rights and collaborated with the SB. Solidarity representatives claimed that the screening of the prosecutors stalled democratization by disregarding the rule of law and violating the prosecutors' civil rights¹.

Following the first fully free general elections of 27 October 1991, Jan Olszewski formed a short-lived minority government with the support of a volatile center-right coalition rejecting compromise with the communists and supporting radical lustration. In February 1992, center-right deputies asked Parliament to condemn the communist regime, but the house members refused, wary that a completely new beginning would bring legal chaos and anarchy, and rob them of the many privileges they enjoyed. Shortly afterwards, on 28 May, the lower Sejm accepted in its first reading a decision obliging the Minister of Interior to disclose publicly the names of all current senior public officials occupying the rank of provincial governor upwards who had collaborated with the SB. A special investigation bureau had to compile a list of such collaborators on the basis of the secret archives. Compelling the Ministry of Interior to unmask former spies from among public officials had an obvious advantage. The ministry, as secret archive custodian, could operate the most accurate identification. But the process was opened to political manipulation, since the quality and quantity of revelations depended on the minister, a political figure representing the government. The appeal procedure was not formally laid down, an oversight disadvantaging the opposition over the government, whose representatives could use informal channels to pressure the minister. There were no clear instructions as to whom the bureau should release the information, and the one-week deadline to release the list made errors likely. Leftist representatives denounced the initiative for breaching "state secrets" and

¹ Of the total 3,278 prosecutors, 311 were dismissed. Other 48 dismissal recommendations were overturned by an appeals commission. See *Sprawozdanie stenograficzne Sejmu RP*, 4 February 1994, pp. 24-25, and *Sprawozdanie stenograficzne Sejmu PRL*, 29 September 1989, pp. 84-87, 13 October 1989, pp. 89-93, and 30 December 1989, pp. 134-143.

pursuing partisan aims, and argued that lustration was incompatible with democracy because it violated the principles of inclusiveness and due process, and the bans on retroactivity and collective punishment¹. While the principle that public officials should have clean pasts was reasonable, the opposition denounced its practical implementation as "morally questionable and politically dangerous"².

Those fears were confirmed a week later, when Minister of Interior Antoni Macierewicz presented Parliament with the names of 64 persons who allegedly figured in the SB archives as informers, not least Walesa and some former dissidents advocating lustration³. The list was so hard to believe for some that it sparked a public scandal. On 23 July, the Sejm accepted the view that only ten of those named could be suspected of collaboration, and only six of those ten had signed compromising documents⁴. Faced with criticism from all corners, the minister admitted that the SB unsuccessfully tried to recruit some of those named. Instead of apologizing for damaging those persons' reputation he asked them to come forward and "tell the whole truth" to thereby restore their credibility. Michnik rejected the manner in which individuals were unmasked as informers, noting that the "logic of the guillotine" would demand the blood of all "traitors", including the premier and the Minister of Interior⁵. In the end, not those named, but the minister saw his credibility shattered. The Olszewski cabinet lost the confidence of Parliament, after pro-lustration legislators reconsidered their position. On 19 June, the Constitutional Court ruled the lustration decision unconstitutional, thus blocking its further implementation⁶. More importantly, the release of the names compromised the lustration effort. By coming across as a battle for power among politicians, the name disclosure showed how lustration could be manipulated to shape the politics of the present more than to address the injustices of the past.

In the coming years, Parliament debated six bills on how to deal with former informers, but none advanced. Between 1992 and 1993, the government of Hanna Suchocka, a member of Mazowiecki's Democratic Union (*Unia Demokratyczna* or the UD), focused on economic transition, and neglected the politics of the past. After the SLD and the Peasant Party, the direct successor of the communist satellite, won the September 1993 elections, lustration was hardly ever mentioned in Parliament, but did not entirely disappear from public life. Anticommunist intellectuals and politicians complained about the stolen revolution, deplored the lack of political will to condemn communist mistakes and horrors, and denounced the "thick line" policy. The SLD leaders insisted that employment or secret collaboration with

¹ For the arguments, see *Monitor Polski*, 11 June 1992; Anna SABBAT-SWIDLICKA, "Poland: A Year of Three Governments", *Radio Free Europe/Radio Liberty Research Report*, vol. 2, no. 1, 1993, p. 103; Louisa VINTON, "Poland's Government Crisis: An End in Sight?", *Radio Free Europe/Radio Liberty Research Report*, vol. 1, no. 30, 1992, pp. 16-20; *Rzeczpospolita*, 21 January 1992, and Wiktor OSIATYNSKI, "Agent Walesa?", *East European Constitutional Review*, vol. 1, no. 2, Summer 1992, pp. 28-30.

² Andrzej WALICKI, "Transitional Justice...cit.", p. 197.

³ A second list of 37 names was circulated to a narrower circle of top politicians, including President Walesa.

⁴ Later it became clear that only four of those Macierewicz named had not been collaborators. I thank Dr. Los for this information.

⁵ Adam MICHNIK, Jakub TISCHNER, Jakub ZAKOWSKI, *Miedzy panem a plebanem*, Znak, Cracow, 1995, p. 588.

⁶ For his unwise disclosure of the list, Macierewicz faced a trial behind closed doors, which was discontinued when Parliament refused to indict him.

the communist secret police could not be held against anyone, since these structures were legal state organs. The prevailing popular mood contradicted this view. A 1994 opinion poll found that 75% of respondents believed that SB collaborators should not occupy senior state posts¹.

Lustration did not come to the forefront until late 1995, when the so-called Oleksy Affair tilted the balance in favor of publicly disclosing the politicians' ties to the SB. In view of the presidential elections organized that year, incumbent Walesa ran an aggressive campaign deploying sharp anticommunist rhetoric against his contender, SLD leader Kwasniewski. After his electoral defeat but before leaving the presidency, a bitter Walesa claimed that Poland's security was endangered by SLD Prime Minister Jozef Oleksy, who had been and still was a Russian spy. After the Minister of Interior repeated the accusations, Parliament set up special committees to investigate the affair. Oleksy forcefully declared his innocence, but had to step down before the military prosecutors dismissed the charge and anticommunist dissidents Kuron and Karol Modzelewski accused the secret police of interfering in politics. According to them, the allegations against Oleksy were prepared by the same secret officer who compiled evidence against them in the 1980s. A former PZPR official, Oleksy was friends with a KGB man and, according to former Minister of Interior Krzysztof Kozlowski, failed to notice that "in 1989 Poland became a sovereign state and the contacts that in the 1980s were not *de facto* treated as spying have now changed their meaning [...] Formerly, nobody in the party saw anything wrong with them. On the contrary, for the party activists it was a chance to speed up their career"². A decade later, when a court found that he hid his collaboration with the communist military intelligence service, Oleksy had to step down as Parliament speaker. The decision indirectly vindicated Walesa by establishing Oleksy's collaboration with the Polish military intelligence, not the KGB³. After the issue of collaboration had brought down Oleksy's leftist government, in addition to Olszewski's rightist one, Poland learned that the refusal to adopt lustration imposed costs on parties on both sides of the political spectrum. It was in this context that the center-left Freedom Union (*Unia Wolności* or the UW), the Labor Union (*Unia Pracy* or the UP) and the Peasant Party came to see the merits of "moderate" lustration⁴.

Kwasniewski's apology in Parliament to "all those who had experienced injustices and wickedness of the [communist] authorities and the system before 1989" and his pledge to "complete the process of coming to terms with the past" were deemed insufficient by the pro-lustration camp, and his 1995 electoral triumph over Walesa added more fuel to complaints about the "stolen revolution"⁵. To direct attention away from the Oleksy Affair and protect his tainted SLD allies, but also to honor his pledge to distance Poland from its repressive past and establish his personal control over the screening process, on 1 February 1996 Kwasniewski unexpectedly sent Parliament a modest lustration proposal, which called on a newly created Commission of Public Confidence to vet public officials for their SB

¹ Maria LOS, Andrzej ZYBERTOWICZ, *Privatizing the Police-State...cit.*, p. 147.

² Quoted in Maria LOS, "Reshaping of Elites...cit.". Also *New York Times*, 23 January 1996, and Jakub KARPINSKI, "Polish Security Services and the Oleksy Case", *Transition*, 1 November 1996, pp. 9-13, and IDEM, "The Mystery of 'O'", *Transition*, 14 June 1996.

³ *New York Times*, 14 January 2005.

⁴ Noel CALHOUN, "The Ideological Dilemma...cit.", p. 512.

⁵ *Gazeta Wyborcza*, 11-19 November 1993, and Andrzej WALICKI, "Transitional Justice...cit.", p. 200.

ties. According to the president, the process aimed to protect the state against former secret agents and help innocent people defend themselves against false accusations. The "conscience of the Polish Left", Parliament deputy speaker Aleksander Malachowski, was to chair the commission, made up of senior judges appointed by the president himself. The house turned down the proposal, after the pro-lustration coalition complained that it only affected the secret part-time informers (the muscle), but not the full-time agents or party activists overseeing the activity of the secret political police (the brains)¹.

The house adopted the three-party coalition's counter-proposal in April 1997 as the Lustration Law. According to the initiators, lustration was needed because it allowed citizens to know the backgrounds of their public representatives, ensure that public officials were not vulnerable to blackmail on account of their past collaboration with communist secret services, and de-politicize the issue of SB collaboration by subjecting it to a judicial process². The SLD refused to support the proposal, unless intelligence and counter-intelligence agents were excluded from the provisions of the law, collaboration was narrowly defined as "conscious participation in actions against the church, the independent trade unions, the nation or creating a threat to civil liberties and property of others", and low-level public officials were included among lustrated categories. The house rejected all these amendments, which made the proposal unworkable.

Inspired from the 1989 vetting procedure of the prosecutors, the law was directed not against all former PZPR officials, but only against those with links to the communist political police. The law did not apply collective guilt retroactively, since it did not impose automatic sanctions for collaboration with the SB. All elected state officials from the rank of deputy provincial governor upwards to the ministers, the premier and the president, as well as the barristers, judges, prosecutors and public mass media leaders, were required to submit written declarations stating whether or not they consciously worked for or collaborated with the SB between 1944 and 1990. A 21-judge Lustration Court headed by a prosecutor, subject to lustration itself, checked the declarations' accuracy. As clarified by the Constitutional Court, collaboration had to be conscious, secret and connected with the SB's operational activities. Simply having submitted a declaration of intent to collaborate was not sufficient proof of collaboration, as there had to be proof of actual activities undertaken by an agent or informer, in the form of information reports. The public office holders and candidates to such positions making false statements were banned from politics for ten years and had their names published in the State Gazette. By contrast, the political careers and public image of former SB agents and informers who acknowledged collaboration were not affected, as they retained their posts and were not exposed to public condemnation. In the case of elected officials, it was up to the voters to decide if they wanted to support individuals who had disclosed their tainted past. The Lustration Court was granted access to the archives of the UOP and the Ministries of Defense and Interior, and its verdicts were subject to appeal within 14 days. The decision of the appeal court was binding, and anyone found guilty had to resign the office immediately. If the Supreme Court overturned the decision of the appeal court, the whole lustration process was re-opened.

¹ *Rzeczpospolita*, 2 February 1997.

² See Aleks SZCZERBIAK, "Dealing with the Communist Past...cit.", pp. 562-564.

The greatest impediment to the implementation of the law was the judges' unwillingness to serve on the Lustration Court. While members of the judiciary were among the first to be lustrated in Poland, the process targeted prosecutors more than judges. As a result, few judges were banned from their positions. Those who did continue their careers were part of the old system, thus unwilling to expose SB collaborators, become involved in a process calling them to hand down political judgments, and implement a controversial law which they did not help to formulate. Despite numerous attempts to recruit the 21 required judges, in the end only 11 agreed to serve on the Lustration Court. In June 1998, Parliament recognized the Warsaw District Appeal Court as the Lustration Court (thus circumvented the problem of finding judges willing to conduct lustration trials), transformed the lustration prosecutor from the government's representative in lustration trials to the key figure conducting the process, analyzing declarations, collecting information and interviewing witnesses, and allowed Parliament members to initiate lustration procedures through "parliamentary denunciation".

A year after his reelection in 2000, President Kwasniewski submitted to Parliament changes inspired from his 1996 lustration proposal which significantly limited the applicability of the 1997 Lustration Law. First, persons who collaborated with the intelligence, counter-intelligence and border guard units were exempted from the law, although historians argued and former political prisoners that every Ministry of Interior department, including the SB, functioned as a repressive apparatus, and thus it was senseless to single out some departments as purportedly "harmless" components of the political police. Second, the lustration prosecutor had to notify persons suspected of having lied in their statements in advance of their lustration trial, and the Lustration Court had to pass a clear guilty or not guilty verdict, and no longer set cases aside for lack of evidence. Third, the definition of collaboration was changed to include only the spying actions that harmed church organizations, the democratic opposition, trade union or "the nation's aspirations to sovereignty", although such consequences were difficult to establish indisputably. The SLD-UP parliamentary majority hailed the changes for no longer allowing parties to use lustration against political rivals, but the opposition accused the government of trying to shield some of its allies from being declared lustration liars. At the time, the Lustration Court was hearing the cases of three SLD leaders suspected of having kept silent about their collaboration. After the Sejm approved the amendments on 15 February 2002, the opposition petitioned the Constitutional Court, arguing that the changes exceeded the framework of legislative amendments and constituted an entirely new legislative initiative. Four months later the court embraced that position and ruled the amendments unconstitutional, thus allowing some 20 lustration trials to resume¹. On 15 October, President Kwasniewski promulgated the reformulated changes to the Lustration Law, which *Rzeczpospolita* decried as an attempt to "strip the law of its small significance", and "block the way to the truth"².

The Lustration Court adopted a cautious stance toward unmasking tainted public officials. By mid 1999, only some 300 of all 23,000 officials asked to provide lustration statements admitted to their secret collaboration. The lustration prosecutor

¹ *Radio Free Europe/Radio Liberty Newslines*, 25 October 2001, and "Amendments Water Down Lustration", *Radio Free Europe/Radio Liberty Report*, vol. 4, no. 8, 26 February 2002.

² *Radio Free Europe/Radio Liberty Newslines*, 8 and 23 October 2002.

Boguslaw Nizienski announced that he had sent seven statements to the Lustration Court, which subsequently charged all their unnamed authors (which included two SLD and one Peasant Party deputies, a deputy minister and three lawyers). According to the Lustration Law, statements were first checked by the lustration prosecutor, who sent questionable statements to the Lustration Court for scrutiny. The court could launch proceedings and examine the SB files of the author of the statement. Making excuses for his sluggish activity, Nizienski told journalists that the secret archives contained "significant circumstantial evidence" that some post-communist politicians had been SB collaborators, but offered only "fragmentary traces in the form of journal entries" the Lustration Court found insufficient to lay charges. Nizienski defended the low number of statements he examined by saying that he focused on sure cases. The press charged that it will take Nizienski some 1,333 years to check all statements, based on the slow pace of his work¹.

The Lustration Law was intended to apply to the 1997 presidential elections, but the Lustration Court was not constituted in time. Knowing that their statements would not be properly verified, only 11 candidates admitted to having served as secret agents². In 2000 and 2005, the law was used to screen presidential candidates, but public revelations about the candidate's past marked the first poll only. In 2002, Wieslaw Walendziak, head of the election team of Solidarity leader Marian Krzaklewski, sued for libel his counterpart from incumbent President Kwasniewski's election team, Ryszard Kalisz, for suggesting that Walendziak may have pressured the UOP to provide the Lustration Court with documents alleging that Kwasniewski was a secret agent. After Kalisz asked Premier Jerzy Buzek to declare whether Walendziak gave orders to the UOP, Buzek reminded that a parliamentary Special Services Committee inquiry found no irregularities in the lustration of presidential candidates. As the scandal turned public, commentators bitterly noted that voters had to choose between former SB agent Andrzej Olechowski and a former communist minister suspected of having been a secret informer, Kwasniewski. In his lustration statement, Olechowski admitted that he was a SB collaborator for two decades, but insisted that he dealt exclusively with economic intelligence³.

At the time, two other presidential candidates, Kwasniewski and Walesa, faced court trials designed to clear allegations that they were SB agents, a collaboration they denied in their lustration statements. Kwasniewski stood for re-election once he was cleared of connections with the SB. After reviewing secret documents on the activity of an agent code-named Alek and interviewing four former SB officers, the Lustration Court ruled that Kwasniewski was not a secret collaborator while Minister of Sport in the last communist government. The *Gazeta Wyborcza* daily lamented that "Poland's destiny hung on the testimonies of four communist spooks", but hailed the court decision for averting a political crisis and strengthening the public's trust in the democratic process by paving the way for the reelection of a popular president. Although the information in the secret file was not corroborated by other sources, the court deemed the secret files as being "completely and undoubtedly true", and cleared the president without completely ruling out the possibility that Kwasniewski was Alek. An angry Kwasniewski threatened

¹ *Radio Free Europe/Radio Liberty Newslines*, 8 June 1999.

² "Poland", *East European Constitutional Review*, vol. 6, no. 1, Winter 1997, p. 22.

³ Lubos PALATA, "Split Decision", *Transition on Line*, 14 August 2000, available at www.tol.cz.

“those who falsified documents and palmed them off on the court” that they will never be able “to sleep calmly” because the “Polish democracy will find them”¹.

The next day Walesa rejected accusations of having collaborated with the SB in the early 1970s. According to the secret documents the court studied, false evidence was produced in the early 1980s to block Walesa’s Nobel Peace Prize nomination. The plans succeeded partially. In 1982, Walesa’s name was crossed off the list of nominees, but he received the prize a year later, after Western intelligence services dismissed the allegations. The false documents were used again in 1991, when Walesa figured on Macierewicz’s list, and in 1993, when Jaroslaw Kaczynski reiterated the accusation². While rejecting the charges against himself, Walesa was confident that Kwasniewski, whom he deeply despised, had cooperated with the SB without having to sign a collaboration pledge, because he was “one of them”. After being cleared of collaboration charges, Walesa lamented that the ruling convinced no one, since “those who believed me, will continue to believe me, while those who believed I was an agent will continue to believe that too”³.

In its first five years of application, the law affected prominent cases. Because lustration and appeal procedures were slow, the verdicts were often handed down long after politicians who misrepresented their past ended their public mandate. Thus, even when the Lustration Court branded an individual a lustration liar, the verdict did not result in the loss of position, if the individual no longer occupied a public office. Not surprisingly, the majority of those accused of having lied in their lustration statements appealed the verdict and defended their innocence, but only in 2002 in the case of Marian Jurczyk did the Supreme Court overturn a decision of the Lustration Court. The Lustration Court ruled that Jurczyk lied in his declaration by not disclosing that he worked for the SB in 1977-1979 out of fear for his life. The ruling cost Jurczyk, the leader of Solidarity protests in Szczecin in August 1980, his seat in the Senate. Supreme Court judge Piotr Hofmanski argued that the lower court overlooked evidence showing that the information Jurczyk provided to the SB “had no effect”, and his anticommunist activities proved that his behavior did not amount to “conscious and secret collaboration” with the SB. Jurczyk always insisted that the SB deemed the information he supplied “operationally useless”. The verdict did not convince Solidarity founder Andrzej Gwiazda, who claimed that Jurczyk was not a regular informer, but an agent of influence who could “render greater services by speaking on some matter than by reporting that someone was about to distribute leaflets”⁴.

¹ *Radio Free Europe/Radio Liberty Newslines*, 18 July and 1 and 8 August 2000, and “Polish President Cleared of Secret Police Links”, *CNN*, 10 August 2000.

² In 1993, in the book *Lewy Czerwcowy* Kaczynski accused Walesa’s presidential aid Mieczyslaw Wachowski of collaboration. Walesa asked the Minister of Interior to release his secret file, but the minister refused, on grounds that the president had no legal authority to order the release of any secret documents, not even his own. See Anna SABBAT-SWIDLICKA, “Crisis in the Polish Justice Ministry”, *Radio Free Europe/Radio Liberty Research Report*, vol. 2, no. 15, 1993, p. 14.

³ Lubos PALATA, “Split Decision”, *cit.*

⁴ *Radio Free Europe/Radio Liberty Newslines*, 3 October 2002. Jurczyk convinced communist authorities to endorse the strikers’ demands on 30 August 1980, one day before Walesa did so in Gdansk. Jurczyk was arrested from 1981 to 1984. In 1980, he unsuccessfully challenged Walesa for the Solidarity leadership, and then criticized the Solidarity leaders for violating the union’s statutes when entering the Roundtable talks. After giving up his seat in the Senate, he founded the League of Families, which later became the ultra-Catholic League of Polish Families.

Several other prominent cases are worth mentioning. In late 1999, Deputy Premier and Minister of Interior Janusz Tomaszewski resigned in protest to the Lustration Court's decision to check his statement. The case was important because, as Minister of Interior, Tomaszewski had jurisdiction over the secret archives which the Lustration Court used to verify the statements. After the press alleged that the minister had gathered intelligence to discredit opposition politicians and used the secret archives to settle political accounts, observers took issue with the fact that the secret files and the identity of SB agents remained known only to a handful of high-ranking politicians not subject to parliamentary supervision¹. As a result, an independent institute gained custody of the secret archive (see below).

In 2002, the court cleared SLD parliamentary caucus leader Jerzy Jaskiernia of being a lustration liar by not disclosing his ties with SB in the 1970s, but found that former head of Walesa's Presidential Office Tadeusz Kwiatkowski failed to disclose that he was formally registered as a SB agent in 1974-75, and delivered information to the SB without being a registered agent in 1969-1970². The same year, the Polish commissioner for European Union integration Slawomir Wiatr admitted that he "willingly and covertly" collaborated with the SB, and governmental sources said that, when appointing Wiatr to the post, Premier Leszek Miller knew his past. Ombudsman Andrzej Zoll deemed Wiatr's appointment as dubious, since Poland's European Union integration process might be affected by revelations into Wiatr's past. The opposition asked for Wiatr's removal, as to permit "a person who quite recently served the secret services that fought against institutions of the Free World" to oversee Poland's European integration "discredits the idea of integration and affects Poland's international image", but Miller said that Polish lustration was not high on the European Union agenda. The Sejm's European Integration Commission allowed Wiatr to keep his post³.

The latest scandal took place in mid 2005, when Premier Marek Belka was asked to resign over allegations that he had collaborated with the SB. Secret documents showed that, before undertaking a study trip to the United States in 1984, Belka agreed to inform the SB if approached by foreign intelligence officers and to seek potential informers for Poland, but provided SB with information of "no importance" on his return home. Scholars leaving communist Poland were sometimes approached by SB officers ahead of their trip abroad. Belka refused to step down, asking instead for his 68-page secret file to be declassified. He eventually lost the premiership not because the Lustration Court found him a liar, but because his party failed to win the 2005 elections⁴.

ACCESS TO THE SECRET ARCHIVE

As long as tainted politicians will refuse to publicly acknowledge their former ties to the SB, Poland will continue to face similar lustration scandals when information contained in the secret archives becomes available to the public by other

¹ *Radio Free Europe/Radio Liberty Newslines*, 5 September 1999, and "Poland. Dirty Hands", *Transition on Line*, 6 September 1999.

² *Radio Free Europe/Radio Liberty Newslines*, 20 and 26 June, 3 and 31 July, and 18 November 2002.

³ *Radio Free Europe/Radio Liberty Newslines*, 30 August and 3, 4 and 11 September 2002.

⁴ BBC News, 22 June 2005.

means. As any other communist political police, the SB kept detailed records of its activities, and compiled files on both its victims and informers. The fate of the secret archive became a bone of contention immediately after the collapse of the communist regime, and has represented a subject of heated debates ever since.

There is some controversy with respect to the total number of files the Polish communist secret police compiled. A ministerial instruction issued in 1949, when the record already contained files on 1.2 million people, listed 23 social categories to be automatically included, from prisoners and members of illegal organizations, to pre-war landowners, party activists, industrialists and foreign currency dealers. By 1953, some 5.2 million Poles (in a total population of 26.5 million) had secret files. Following the 1955 thaw, certain documents were removed from the archive, which still contained files on some 1.6 million people. A central card system made it possible to search the data base on those under surveillance and on secret informers without knowing their names. Secret collaborators could be found according to their home address, workplace, professional environment, code name or foreign language command. The SB took great care to prevent leaks of sensitive information by restricting access to the catalogue to a specific department, whose agents each had access only to different parts of the card system. By 1987, the catalogue totaled around 3.1 million cards. The SB started to computerize the archive in 1969, but it is unclear how many files were available electronically by the end of the communist regime¹. According to historians, the extant secret archive totals some 90 linear kilometers of documents, including records on more than 98,000 secret spies². In 1999, 80 meters of "lost" archives, including signed declarations of cooperation and payment receipts, were discovered in a cellar of the former SB headquarters in Warsaw³.

To keep their operations secret, agents started to destroy selected materials as early as August 1989, when it became clear that the PZPR had lost its grip on power. By the end of the year, students stormed the PZPR buildings and found equipment for destroying incriminating files and sacks of shredded documents. In response, they called on the state to take over and preserve the SB and the party archives. The government condemned the students' unlawful occupation of party buildings, but began to take the question of the secret archives more seriously⁴. On 31 January 1990, after Sejm deputies asked for guarantees for the safety of the archive, Minister of Interior Kiszczak issued an order to halt file destruction, and allowed historians and intellectuals to access the archives and report on their content. No external monitoring commission ensured compliance with his order⁵. After Kiszczak's removal and the dismantling of the SB, the Deputy Prosecutor General asked the UOP to investigate the file destruction. The service revealed that from August 1989 to February 1990 many SB secret documents were destroyed, including the files of high-ranking post-communist politicians and operational materials on 1,200 informers and materials documenting the infiltration of the church and opposition circles. The UOP admitted that the SB leaders ordered the docu-

¹ Antoni DUDEK, Andrzej PACZKOWSKI, "Poland", cit, pp. 246-255.

² Giovanni CUBEDDU, "From a Distant Country...cit."

³ Jonathan LUXMOORE, "Poland Fears Its Judas Files", *The Tablet*, 7 August 1999, available at www.thetablet.co.uk.

⁴ *Rzeczpospolita*, 30 January 1990.

⁵ Jakub KARPINSKI, "Politicians and the Past", *Uncaptive Minds*, vol. 5, no. 3, Fall 1992, pp. 99-106.

ment destruction in violation of standard protocol¹. As a result, prosecutors brought charges against those responsible for the damage. The Lodz district court heard a case against three officials who allegedly ordered the destruction of files regarding the clergy and the Solidarity, but the hearing was stalled in 1993, and set aside in 1995². A year later, a military court handed down short suspended sentences to five officers found guilty of destroying from 30 to 50% of the military intelligence secret archive³. In 1993, the Parliamentary Commission on Constitutional Responsibility began investigating the destruction of the summaries of the Politburo and Central Committee Secretariat meetings of 1982-1989, as ordered by Jaruzelski and carried out by Kiszczak. Two years later the case was dropped when the SLD dominated the commission.

In Poland's negotiated transition, the Ministry of Interior was reluctant to open the secret archives and expose its network of informers, while the Solidarity wanted to prevent the violence that could have followed revelations potentially devastating for the unsuspecting families and friends of the secret informers. However, there were rumors that selected politicians close to the Minister of Interior and prominent intellectuals were allowed to see their personal files⁴. The lack of procedure for file access reinforced the feeling that the archive was regarded as a powerful tool to settle political disputes. Repeated leaks of secret archival documents and the circulation of damaging rumors forced victims of these allegations to undertake expensive and lengthy libel suits to clear their names. While most Solidarity successors feared that the archives could not be opened without violating due process and civil rights, the closure of the files imposed heavy costs on innocent people. In addition, the former communists' victory in the 1993 parliamentary poll gave rise to sobering reflection among the Solidarity heirs, who feared that the new rulers would destroy the most valuable archival documents to cover up their past activities. As a result, in 1997 Parliament agreed to partly open the secret archive to the public⁵. Access to personal files was granted to those wronged by the communist regime, but not to the informers. After the Tomaszewski scandal, the Institute of National Remembrance (*Instytut Pamięci Narodowej* or IPN) became the archive custodian.

The Institute was set up in late 1998 to investigate Nazi and communist crimes, gather evidence to prosecute the perpetrators of such crimes, inform and

¹ *Rzeczpospolita*, 16-17 June 1990. In 1993, Minister of Interior Jerzy Kaminski estimated that half of all SB operational materials and 50 to 60% of its informer files were missing, and announced that in some districts officers destroyed even more documents. According to him, 90% of the SB documents in Gdansk, the birthplace of the Solidarity movement, had been lost. These figures were never confirmed from independent sources.

² *Rzeczpospolita*, 7 April and 22 July 1993, and *Sprawozdanie stenograficzne Sejmu RP*, 17 May 1993, p. 137. See also Maria LOS, Andrzej ZYBERTOWICZ, *Privatizing the Police-State...cit.*, especially Chapter 8.

³ *Rzeczpospolita*, 23 October 1996.

⁴ After reading his friends' files, Michnik, the intellectual who has led the fight against lustration, emerged shocked at how many of his colleagues had been SB informers. Many Poles believe that Michnik was the only intellectual allowed to access the archive in the early 1990s. See *Rzeczpospolita*, 21 January 1992.

⁵ The Ministry of Interior began to declassify files on 1 January 1997, with additional files thirty years past being made available to the public, the courts and the prosecutors' offices each year on 1 January. Files documenting the activity of the informers were declassified only if helpful in special murder investigations. See Mark ELLIS, "Purging the Past...cit.", pp. 181-197.

educate the public with respect to Poland's recent past, and give citizens access to their own secret files. The Lustration Law also charged the IPN with helping to investigate claims of collaboration, vetting the background of public-office seekers, and granting file access to researchers, historians and dissidents wishing to conduct their own searches. The Institute employs about 2,000 researchers working in the Committee for the Prosecution of Crimes against the Polish Nation, bureaus for archival research and public education and local chapters. It began to work in earnest in June 2000, when Parliament named independent senator Leon Kieres as the IPN head for a five-year term, after three candidates had previously failed to win the three-fifths required majority. (In December 2005 Kieres was replaced by Janusz Kurtyka¹.) After his appointment, Kieres pledged to gather together the secret files dispersed among institutions and provide "careful" access to secret files in order to avoid "irreversible damage and harm through fast but chaotic activities that would discredit the institute". Kieres further promised to grant access to all those pursued by the SB and ensure that "everyone has an equal chance of access to personal materials"². By 2005, some 14,000 Poles had been allowed to read their files³.

The slow pace at which files were made available and the IPN's failure to fulfill its mandate to publicly name secret agents and informers apparently prompted journalist Bronislaw Wildstein to steal from the Institute a working list of over 240,000 names and posted it on the internet in February 2005s of former SB agents, military intelligence, secret covert informers, prospective candidates to informer positions and victims, and the list did not distinguish between perpetrators and victims, thus exposing all those named to the suspicion that they had collaborated and arousing concern that the incomplete data may be used for political purposes or personal vendetta. Prosecutors launched an inquiry into the case, but were unable to identify the IPN employee who helped Wildstein. Refusing to name his accomplice, Wildstein defended his action as legitimate, since "this is not our past, this is our present. Those people are present and play important roles in our reality". Roman Catholic priest Jozef Maj, whose name appeared on the list, saw the leak as a "blessed offense" that finally launched the process of reaching the truth in public life⁴. But *Rzeczpospolita* fired Wildstein, whom Kieres accused of being irresponsible, and Prime Minister Belka asked the UOP to ensure that agents on active duty were not affected by the revelations⁵. Many of those on the list asked the IPN to allow them to read their secret file, regardless of whether they were victims or informers⁶.

The list's publication increased pressure on Polish authorities to open up the secret archives. However, file access could prove necessary but not sufficient to find the truth about secret collaboration and communist repression. Many histori-

¹ Before assuming the IPN leadership, Kurtyka acted as head of the Institute's Cracow branch. An active participant in the anticommunist opposition of that town, Kurtyka confirmed his readiness to allow access to the Institute's archives to commissions clarifying connections of priests with the communist secret services. *The Warsaw Voice*, 8 March 2006.

² *Radio Free Europe/Radio Liberty Newslines*, 13 June 2000.

³ *Radio Polonia*, 4 February 2005.

⁴ Associated Press, 13 February 2005. The list was available at <http://lista.atspace.org>.

⁵ *Deutsche Welle*, 8 February 2005.

⁶ Wildstein unmasked Leslaw Maleszka as an SB informer. A journalist with *Gazeta Wyborcza*, the most important anti-lustration daily, Maleszka reported on the opposition Student Solidarity Committee he co-founded in 1977 with Wildstein. In 1980, Wildstein emigrated to France, where he worked as a journalist for the Polish monthly *Kontakt* and Radio Free Europe.

ans insist that, since the files were intended for internal use only, secret officers had no reason to fabricate them. But a recent case showed the discrepancy between communist reality and its reflection in the files, and suggested the possibility that officers could have generated records of collaboration under pressure to support their promotion, prove their usefulness in the repression apparatus, cover up inefficiency in intelligence work or complement dwindling networks of active informers. In 2005, Malgorzata Niezabitowska, a *Solidarity Weekly* reporter who later became the spokeswoman for the Mazowiecki government, was accused of collaboration. According to her, accusations were traceable to her only encounter with SB agents on 15 December 1981. Although interrogated for seven hours without food or water, she refused to become their tool and tell them anything other than information they already knew. According to her secret file, however, Niezabitowska ultimately gave in the pressure, acted as an informer under the code name Nowak, and met her contact officer ten more times to provide information. She maintained that her activity as an anticommunist opposition member belied the accusation of collaboration, and insisted that political police agents should not be allowed to write the history of communism¹. Historians believe that archives hold the keys to historical puzzles, but the case suggests that archival documents should be complemented by personal interviews and oral histories.

TRIALS AGAINST COMMUNIST OFFICIALS

As other Eastern European countries, Poland has struggled to bring charges against communist officials and political police agents, and differentiate between crimes subject to the Penal Code (torture and killings) and offences legal when committed whose prosecution could be construed as politically motivated (spying for the SB). Attempts to bring justice by means of criminal law have focused on crimes against humanity, although it was recognized that communist-era human rights abuses took the form of mass surveillance not mass killings. The number of trials has remained low because of flagrant political interference and manipulation, the difficulty to build strong cases resulting in convictions, the legal chicanery employed to prolong or stale the proceedings, intimidation of witnesses, prosecutors and judges, and the judges' unwillingness to take up such cases. Unable to convince judges to support transitional justice, in 1998 Parliament allowed judges who had served from 1944 to 1989 to be brought before a disciplinary court and be removed from service if it was proved that they had issued unjust sentences or obstructed the defendant's right to a defense. Afterwards, the Council of Judges cancelled the retirement pensions of seven Stalinist-era judges, and announced that the past activity of 16 other judges was closely scrutinized (Poland has around 25,000 judges in total). Judges saw these decisions as punishment for their lack of

¹ Niezabitowska's undisclosed past came up when another member of *Solidarity Weekly*, Krzysztof Wyszowski, examined his own file and learned that was spied by a secret collaborator code named Nowak. Researchers at the Institute of National Remembrance determined that Nowak was Niezabitowska, and Wyszowski gave that information to the press. See *The New York Times*, 14 January 2005, and Andrew PURVIS, "The Reckoning. How Accusations of Communist-Era Collaboration Are Shaking up Central Europe", *Time Europe*, 4 April 2005.

co-operation with the Lustration Court and unwillingness to hear criminal cases related to transitional justice¹.

To date, court proceedings have referred to crimes committed either during the Stalinist or the martial law periods, with the cases the courts heard first not necessarily referring to higher repression levels. The only case falling outside these broad categories investigated the military's use of force in the suppression of the Gdansk strikes in 1970. Opened in 1990 at the request of Minister of Justice Aleksander Bentkowski, the case later faced the opposition of those seeing it as a distraction from the more pressing task of judicial reform. The court took four years to investigate the case, not because of lack of documents but because of the excessively voluminous documentation (90 volumes of 200 pages each) presented to it. The trial, considered the Polish equivalent of the Nuremberg trial, began on 28 March 1995 in Gdansk. Some 12 defendants – among them then Minister of Defense Jaruzelski, Minister of Interior Kazimierz Switala and Deputy Prime Minister Stanislaw Kocielek – were accused of ordering the police to shoot at protesting workers, killing 44 and wounding about 200. The order to shoot was initially given by Gomulka and Politburo members Kocielek and Zenon Kliszko, no longer alive. In 1996, the court discontinued proceedings against Jaruzelski, but the Court of Appeals overturned that decision, allowing the General to face trial. Court proceedings against four defendants, including Jaruzelski, were suspended and the opening of the trial of the remaining defendants delayed because it proved impossible to gather all of them for a formal reading of the charges. All claimed they were unable to appear in court for health reasons. Jaruzelski denied responsibility, and at the trial's opening session told the families of those killed that he could not forget the hundreds of wounded policemen and soldiers². The protest of the Gdansk shipyard workers, resulted from steep price increases two weeks before Christmas, took the form of riots, accompanied by violence and efforts to storm the party headquarters³. The involvement of *agents provocateurs* in the damage was never ruled out.

The investigation of these cases depended on whether the statute of limitations applied to communist-era crimes. In 1991, the Constitutional Court dealt a serious blow to transitional justice through court proceedings when it rejected the law giving the Committee for the Research of Hitler's Crimes additional responsibilities to investigate communist crimes. The court argued that by defining Stalinist crimes too broadly, the law retroactively lifted the statute of limitations and contradicted Article 1 of the Constitution, which recognized Poland as a democratic state under the rule of law. After the ruling, the courts were confused about which communist crimes the statute of limitation applied to, the more so since the statute did not apply to crimes perpetrated by Nazis against Poles. Some judges argued that the statute had lapsed for most communist-era cases except those involving murder and crimes against humanity, while other judges claimed that the

¹ "Poland", *East European Constitutional Review*, vol. 7, no. 4, Fall 1998, pp. 25-26, and vol. 8, nos. 1-2, Winter-Spring 1999, pp. 26-27. See also Jonathan LUXMOORE, "Poland Fears Its Judas Files", cit.

² Andrzej WALICKI, "Transitional Justice...cit.", p. 223.

³ *Rzeczpospolita*, 29-30 September and 9 October 1990; Jan B. DE WEYDENTHAL, "Inquiry into the Murder of Father Popieluszko Reopened", *Report on Eastern Europe*, 17 August 1990, pp. 12-15; Gerard DeGROOT, "Accidental Hero of the Revolution", *Scotland on Sunday*, 4 July 2004, and Nigel ASCHERSON, *The Polish August*, Penguin, Harmondsworth, 1981, p. 101.

statute applied to all cases which could not be fairly tried before the end of the communist regime¹.

This later position was reflected in the amendments to Article 108.2 of the Penal Code the UW proposed in 1991. The changes read that "the statute of limitations for deliberate crimes against life, health, freedom or the administration of justice, which are punishable by the deprivation of liberty for a period of more than three years and were committed by public officials from 1 January 1944 to 31 December 1989 during or in connection with that official duties, begins to run as of 1 January 1990". The SLD majority rejected the changes, proposing instead that trials be carried out under the guidelines of international law, which applied the statute to crimes other than murder, war crimes and crimes against humanity. Ultimately, the Sejm approved the changes on tolling the statute as part of a larger package of reforms to the Penal Code. As a result, the statute of limitations was extended for some important cases from the martial law era, including the case of the shootings at Wujek in 1981. Neither the Ministry of Justice nor the Committee for the Research of Hitler's Crimes collected data on the number of trials involving communist state officials, but Calhoun identified at least 30 trials stemming from both the Stalinist and martial law eras, and launched before 2001².

Important moral triumphs for the anticommunist camp occurred in 1998. On 16 April, the Senate declared the Soviet-occupied Poland a non-democratic, totalitarian state, whose political structures violated the 1935 Constitution, and invalidated the 1952 communist Constitution. Two months later, on 18 June, Parliament condemned the "communist dictatorship imposed in Poland with force and against the will of the nation by the Soviet Union and Joseph Stalin", and blamed the PZPR for the "crimes and offences" of a regime which "protected foreign interests" and was maintained "by force, lies and the threat of Soviet intervention"³. Notwithstanding these decisions, hailed as a long overdue moral condemnation of the communist regime, the individual prosecution of communist officials who ordered the atrocities, and secret political police agents who executed them, proved to be difficult. Most trials were based on circumstantial evidence, as the evidential material was often destroyed shortly after the crime was committed. When witnesses were incapable of indicating the guilty, the defendants denied the accusations.

Prosecuting the Abuses of the Stalinist Period

In 1991, Parliament enabled two different committees to investigate Stalinist-era crimes. While their responsibilities overlapped, the committees complemented rather than competed with each other. In April, the house gave the Committee for the Research of Hitler's Crimes the task to investigate communist crimes. The law aimed to facilitate criminal trials of individuals responsible for human rights abuses during the late 1940s and early 1950s by creating an investigative group responsible for examining the cases and by abolishing the statute of limitations for these crimes. The committee made little progress in studying those

¹ See Maria LOS, Andrzej ZYBERTOWICZ, *Privatizing the Police-State...cit.*, pp. 190-191.

² Noel CALHOUN, *Dilemmas of Justice...cit.*, pp. 179-180.

³ *Radio Free Europe/Radio Liberty Newslines*, 11 June 1998.

crimes and preparing cases for prosecution. By August 1992, it investigated 293 crimes, but investigations led to no arrest. Some of the accused were already dead, old or gravely ill and unable to travel, and the evidence linking them to the atrocities was patchy, inconclusive or locked in unavailable archives. Many documents had been destroyed, making it difficult for the courts to have a legal basis for acting. Archival documents were difficult to verify against and complement with information obtained from other sources, and oral testimonies were unreliable, as events happened five decades earlier, people had partial recollections, and memories were subjective¹.

Somewhat more successful was the Coordinating Committee for the Study of Crimes against the Polish Nation, which from 1991 to 1995 conducted over 500 inquiries and passed 95 cases to the State Attorneys' Office, which issued 20 indictments. Only the case of former head of the Investigations Department of the Ministry of Public Security, Adam Humer, led to a public trial. The hearings, seen as a trial of the entire Stalinist system in Poland, lasted five years. On 6 September 1993, just two weeks before the general elections, the trial of Humer and 15 of his associates began, and quickly became a reference point in the electoral campaign. While the SLD defended the old regime and claimed that the crimes of the Polish communists represented a far lesser evil than Nazism, their political rivals insisted to expose publicly the communist atrocities. Humer was charged with murdering an opposition activist, beating and torturing political prisoners (including women) from 1946 to 1952 in Soviet-occupied Poland, and ordering the police not to interfere in the Kielce murder of Jews on 4 July 1946. His conduct during the trial was ostentatiously unrepentant. On 7 March 1996, the Warsaw Court found Humer guilty of nine of the 12 charges of torture, and sentenced him to nine years in prison. Ten of his subordinates received sentences of 3 to 8 years. The judge stated that "the case captured a history that was an open wound in the hearts of many Polish families. It exposed mechanisms which were unprecedented in acts of terror and lawlessness"². Because of Humer's health problems, in mid 1998 his sentence was reduced to seven years to be spent at home, a decision many Poles contested on grounds that the Stalinist regime rested on terror and thus no leniency should be shown to its executants. Prosecutor Lucjan Nowakowski and former head of the Coordinating Committee Witold Kulesza continued to examine new materials concerning the Kielce pogrom, but no other cases were brought to trial since then³.

By 1993, former victims of communism became increasingly dissatisfied with Poland's lack of progress in reconsidering its communist past. *Gazeta Wyborcza* published an open letter of Home Army veterans, who had been heavily persecuted immediately after World War II, expressing disappointment that Stalinist criminals responsible for sending to death Home Army patriots had not been punished. The letter was criticized by intellectuals like Michnik, who stressed that Polish Stalinism was milder than elsewhere and communists helped to make the country "the most comfortable barrack in the block", dismantle Stalinism and pave the way for democracy. Scolding those who assumed that "People's Poland should be treated as a

¹ *Rzeczpospolita*, 6 August and 2 October 1992, and Noel CALHOUN, *Dilemmas of Justice...cit.*, pp. 106-107.

² *Rzeczpospolita*, 9-10 March 1996.

³ *Gazeta Wyborcza*, 6 July 1998. Some Polish historians blame the Soviet KGB for the pogrom. A trial of three civilian perpetrators took place in July 1946. Later that year some military and police officers were arrested and given light sentences.

form of Soviet occupation, and the PZPR as an organization of traitors and collaborators with a foreign power"¹, Michnik called for national reconciliation and amnesty for former communists. But following the SLD's electoral victory in 1993, Michnik became increasingly isolated as many Poles contended that maintaining normal relations with the SLD paved the communists' return to power by blurring the distinction between good and evil. Minister of Justice Włodzimierz Cimoszewicz deplored the lack of political will to prosecute the crimes of the past, and spoke of a pseudo-Christian tendency to absolve all sins in a universal forgiveness. Supreme Court president Adam Strzembosz suggested that the entire pre-1956 PZPR leadership should be treated as a criminal organization, but supported a blanket amnesty law, not applicable to murders and crimes against humanity.

In August 1995, the 80-year-old judge Maria Gurowska stood accused that in 1952 she sentenced to death General August Emil Fieldorf (alias Nil), the Home Army's chief of diversionary activities, following a show-trial. Gurowska rejected the charge, insisting that she had acted in accordance with her conscience. Fieldorf was unable to change, and thus had to be "eliminated from society". Gurowska died before her case came to court, but Fieldorf's death was not forgotten. In October 1998, Poland summoned Helena Wolinska, a 79-years-old Stalinist-era prosecutor, to answer charges that she fabricated evidence, failed to follow arrest rules, and kept Fieldorf in jail without charge for more than 14 days. Fieldorf, arrested in 1951 and executed on 24 February 1953, was purged by communist authorities at Moscow's urging because the Home Army fostered a spirit of independence among Poles resentful of Soviet domination. Recognizing this, in 1989 the Prosecutor General cleared Fieldorf of all charges. Wolinska was accused of fabricating evidence and arresting hundreds of opponents of the Polish Stalinist regime, including dissident Władysław Bartoszewski, who spent 18 months in prison without charge, awaiting trial in 1946-1948. Wolinska took refuge in England after losing job in 1956, when a milder leadership denounced the excesses of early communism. As Wolinska failed to answer the charges, in 1998 the Warsaw District Army Court issued a one-month arrest warrant, but she was never extradited to Poland, where she claimed her case would not be tried justly².

Prosecuting the Authors of the Martial Law

For Solidarity, the most important issue was to settle accounts with the martial law regime, a task made possible only after Jaruzelski renounced the presidency. On 1 February 1992, Parliament created a Parliamentary Commission on Constitutional Responsibility to determine whether the State Tribunal should judge Jaruzelski for proclaiming the martial law, Military Council of National Salvation members for implementing it, and State Council members for endorsing it. The commission was interested not to discuss concrete cases of extra-judicial killings, torture or disappearances, but to establish if the introduction of the martial law was justified. The parliamentary debates preceding the vote revealed two opposing views on

¹ *Gazeta Wyborcza*, 25-26 September 1993.

² Reuters, 8 October 1998, *Warsaw Voice*, 13 December 1998, and *Sunday Telegraph*, 6 December 1998.

Polish late communism. On the one hand, Jaruzelski's defenders argued that the declaration of the martial law spared many Polish lives by preventing a Soviet occupation. Stefan Niesiolowski distinguished between the dark period of Stalinism, when hundreds of victims suffered a cruel fate, and the "mild" martial law regime, when limited numbers of people were imprisoned or lost their lives. On the other hand, Jaruzelski's critics saw the martial law as an unpardonable "crime against the Polish people"¹. These arguments spilled over in the work of the committee, whose second meeting was preceded by a press conference in which member Jaroslaw Kaczynski anticipated the outcome of the inquiry by declaring that "General Jaruzelski and his comrades are guilty of betraying the nation and thus should be prosecuted"². That position was not shared by chairman Edward Rzepka, who accused defendants of the lesser crime of violating Article 246 of the Penal Code which said that public functionaries who used illegal means to promote their material and personal interests should receive up to ten-year prison terms. Jaruzelski rightly rejected the charge of self-enrichment through martial law. In reply, the committee charged the defendants with violating Article 123 of the Penal Code, which prescribed the death punishment for treason.

The treason charge touched on sovereignty, the issue every Pole recognizes as central to the country's history. Was the law proclaimed to protect Poles against a Soviet, East German or Czechoslovak invasion or to protect the interests of international communism? Did it amount to national defense or national treason? Jaruzelski strongly suggested the first possibility, insisting that at the time he genuinely believed that the martial law could forestall the imminent foreign invasion and avoid chaos and economic collapse. According to him, the country had plunged into anarchy, the economy disintegrated, the delivery of coal and food before the winter months was disrupted, thus threatening the people's survival, and the Solidarity's increased radicalism and mounting aggression against the police and secret police pushed Poland on the edge of civil war. Martial law was the lesser evil, and a remarkably mild operation, given its scale. To add insult to injury, Jaruzelski deplored the fact that party reformists like him, committed to Gorbachev's perestroika, were humiliated not thanked. But his position took for granted that an invasion was imminent, that, if unavoidable, it would have been a greater disaster, that martial law was devoid of repressive intentions, and that he wanted to usher in democratization, not effect limited changes to keep the system alive. Mieczyslaw Rakowski, Jaruzelski's friend and the last PZPR general secretary, believed that "Jaruzelski would have called martial law, Soviet threat or no"³. The opposing experts argued that the PCPR leadership explicitly asked the Soviet military and party leaders not to send troops to Poland, and thus the latter fully knew that no Polish leader endorsed plans for intervention. Brezhnev's interventionist impulses were further tempered by the active Polish resistance to outside intervention, and the problems the Soviet campaign in Afghanistan was then facing. Of these two opposing views, Jaruzelski's proved the most popular. Some 71% of Poles believed martial law had been justified⁴.

¹ For more details on the parliamentary debates preceding the vote, see Andrzej WALICKI, "Transitional Justice...cit.", pp. 206-207, and Tina ROSENBERG, *The Haunted Land...cit.*, pp. 125-258.

² Andrzej WALICKI, "Transitional Justice...cit.", p. 223.

³ Tina ROSENBERG, *The Haunted Land...cit.*, p. 217.

⁴ *Ibidem*, p. 242.

After the 1993 elections, the SLD parliamentary majority reshuffled the commission, making sure a majority of its members represented that party. In December 1994, the opposition asked the house to condemn the martial law as unconstitutional, even by communist standards, but the leftist majority toned the proposal down to a tribute to the victims of the struggle for freedom, a reformulation condemned by the opposition as a moral crime against the nation. After four years of activity, in 1996, the commission ended its investigation and recommended Parliament to drop the case against Jaruzelski and his collaborators, without presenting a convincing case for either decision. The vote was split, five out of 18 members announcing their intention to ask Parliament to call for court proceedings be launched against the authors of the martial law. Jaruzelski also believed that only a court decision could clear his name¹.

Jaruzelski and his supporters claimed that the martial law was mild, and refused to admit that political killings did occur in the 1980s. In August 1989, the Sejm set up a commission headed by Jan Rokita to investigate allegations that the SB was involved in political murders after the martial law was proclaimed. The so-called Rokita commission submitted its final report to Parliament just before the 1991 general elections. According to the report, which was never released to the larger public, the commission investigated 122 suspicious deaths in the custody of the SB, recommending in 88 cases that prosecutors launch criminal proceedings against Ministry of Internal Affairs officials and prosecutors who tried to cover up the cause of death. The commission named 100 secret officers and 70 prosecutors unsuitable for further employment in the state organs, and concluded that under communism secret agents acted with almost total impunity because they enjoyed the protection of the PZPR and the judiciary. The ministry often issued express instructions to the prosecutors on how to conduct investigations and sometimes carried out investigations itself. The judiciary cooperated systematically and extensively with the ministry: prosecutors did not request documents from the SB, and the courts routinely dropped charges against SB officers violating the law². Few of the cases mentioned in the Rokita report reached the courts. Characteristic features were the long duration of all inquiries and the extraordinary slowness of the court trials. Of those which did reach the courts in the early 1990s, some of the most important are mentioned below.

On 24 July 1990, an inquiry into the death of Father Jerzy Popieluszko began. The October 1984 brutal killing of the well known Roman Catholic priest, the Solidarity chaplain, was investigated by the courts after his funeral attracted close to one million mourners. Such a reaction could not be ignored, as might have happened in the earlier days of Solidarity. To maintain order and incur favor with foreign governments, Jaruzelski allowed for a trial. Four SB agents received prison terms of between 14 and 25 years, which were later drastically reduced for undisclosed reasons. The communist prosecutor asked for the death penalty for the perpetrators, but also condemned the priest for defying the communist authorities, and allowed the court to become a forum for open attacks on the church. The trial manipulated the public into believing that the murder was an isolated case and all those guilty were punished. In 1990, the Ministry of Justice announced that new evidence confirmed suspicions that two high-ranking officials of the Ministry of Internal Affairs had abetted the crime and supervised its execution. The two were acquitted in mid 1994, but two years later the verdict was quashed by the Court of Appeal. Eventually more charges

¹ For further details on the case, *Ibidem*, pp. 253-258.

² "Sprawozdanie Komisji Nadzwyczajnej do Zbadania Działalności MSW z działalności w okresie X Kadencji Sejmu RP (1989-1991)", Druk no. 1104, 25 September 1991.

were added and a new trial was to begin in 1998, but the case was returned for further investigation. The Supreme Court ruled that the Ministry of Internal Affairs leadership had known about and approved of their subordinates' criminal actions. No one from the then leadership was charged in this case¹.

In 1993, Kiszczak was accused of causing the deaths of nine miners and wounding 25 others in a clash with special anti-riot police at Wujek in 1981. The secret forces were authorized to use live ammunition without strict instructions about when this would be justified. Evidence was destroyed, witnesses were convicted on fabricated evidence or forced into giving false statements. While traveling to the court, Kiszczak had a heart attack and could not cooperate with the investigating magistrates. The courts also had to reckon with the fact that the legal basis of prosecution was the communist law, which condemned the opposition and defended the secret police. In May 1996, Michnik spoke at the trial as a witness for the defense, testifying that Kiszczak had always maintained that the Wujek killings disregarded his orders. Three months later, Kiszczak was acquitted of all charges, but the case was reopened after this verdict was quashed by the Court of Appeals. A protracted trial of 22 other men accused in the killings started in late 1992 and ended in November 1997 with the acquittal of all defendants.

The Warsaw Court indicted three militia men for the alleged beating and death of Grzegorz Przemyski, the teenaged son of the opposition poet Barbara Sadowska, in May 1983. In April 1997, the trial ended as inconclusive. While the judge ruled that there was no doubt that Przemyski's death was caused by the militiamen, there was insufficient evidence to identify the culprits. An accused was acquitted, another one was sentenced to four years in prison for instigating the beating, and the director of the Militia Investigation Bureau received a suspended sentence of one and a half years for trying to cover up the murder. Kiszczak and the Politburo members who orchestrated the murder and cover-up were not on trial, although their involvement was well-documented. In May 1998, the Court of Appeal acquitted the director, quashed the acquittal of a militiaman, and prohibited the other from working in the police for five years, in addition to his four-year prison sentence. The courts also heard arguments against three commanding militia officers for shootings that occurred during the suppression of a 31 August 1982 peaceful demonstration in Lubin, which resulted in killing three people and wounding more than a dozen. The trial resulted in the acquittal of all three militiamen. The Court of Appeal ordered a retrial, but in 1998 the lower court made a controversial legal decision to stay the charges based on past amnesties².

CONCLUSION

Poland was often regarded as a country which opted for protracted but extensive lustration, but a closer look reveals that from inception the Polish lustration departed significantly from and was more modest overall than the Czech model in scope. Of the roughly 23,000 people who submitted lustration statements, only

¹ Jan B. DE WEYDENTHAL, "Inquiry into the Murder...cit.", pp. 12-15, and Anna SABBAT-SWIDLICKA, "Former Security Officials Arrested", *Report on Eastern Europe*, 26 October 1990, pp. 18-21. Also Maria LOS, Andrzej ZYBERTOWICZ, *Privatizing the Police-State...cit.*, p. 71.

² Maria LOS, Andrzej ZYBERTOWICZ, *Privatizing the Police-State...cit.*, pp. 63-64, 67-69.

several tens of officials who denied their previous ties to the communist political police were found to be lustration liars, and even fewer had to give up their public positions as a result. The Lustration Court has been extremely slow to verify the accuracy of lustration statements, and the 2001 legislative amendments made it more difficult to weed out secret agents from among post-communist politicians. Apart from the minimal impact of lustration legislation, I would go as far as saying that the Polish lustration was no lustration at all, since it stopped short of removing the officials and collaborators of the communist regime but rather punished individuals who chose to give false declarations. The country has scored rather modestly in two other transitional justice areas, file access and court proceedings. Only Poles wronged by the communist regime were granted access to their own files, and only a fraction of the extant secret archive (which itself is but a fraction of the original SB archive) has been made available to the public. As time passes and the perpetrators of communist-era crimes die or become ill, it is even more improbable that court proceedings will prosecute such crimes.

There are several possible explanations for this "forgive and forget" policy. First, the Polish communist regime was a relatively liberal, national-accommodative system, which tolerated dissent and opposition to a certain degree, and never actually experienced a period of totalitarian rule, although the first decades of communist rule were marked by unspeakable abuse¹. The communist party allowed families to privately own a substantial share of agricultural land and small parties to participate in politics, a token recognition of pluralism in a region where communist parties ruled unchallenged. Fostered by the Catholic Church, the trade union movement and intellectual-worker collaboration, the civil society remained vigorous in the face of political police intimidation. Although Jaruzelski's martial law entailed widespread surveillance, a ban on public gatherings and travel restrictions, the opposition was able to organize a powerful moral crusade against the regime, which in turn had to legitimize itself by constantly inviting its detractors to a "constructive cooperation". Arguably, "for most Poles, martial law was a period not of intense repression, but of intense boredom"². While one might take issue with the wording of such phrase, its spirit was reflected by international ratings. Freedom House deemed Poland to be partially free in terms of political and civil rights for eight years between 1972 and 1987, when other communist countries were not free³. In addition, Jaruzelski was more flexible than Husak or Honecker, and did not force intellectuals to work at menial jobs. In short, their social contract with the communist authorities allowed Poles to enjoy limited personal freedoms to compensate for lower living standards⁴.

¹ Poland and Hungary were seen as "national-accommodative" communist regimes. See Herbert KITSCHT, Zdenka MANSFELDOVA, Radoslaw MARKOWSKI, Gabor TOKA, *Post-Communist Party Systems: Competition, Representation and Inter-Party Competition*, Cambridge University Press, Cambridge, 1999, p. 40. Linz and Stepan categorized Poland as a milder authoritarian, not post-totalitarian, country. See Juan LINZ and Alfred STEPAN, *Problems of Democratic transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, Johns Hopkins University Press, Baltimore, 1996, p. 255.

² Tina ROSENBERG, *The Haunted Land...cit.*, p. 227.

³ Raymond D. GASTIL, *Freedom in the World*, Freedom House, New York, 1989, pp. 53-54.

⁴ See Andrzej PACZKOWSKI, "Poland, the 'Enemy Nation'", in Stephane COURTOIS et al., *The Black Book of Communism. Crimes, Terror, Repression*, Harvard University Press, Cambridge, Mass., 1999, pp. 363-393, and Joni LOVENDUSKI, Jean WOODALL, *Politics and Society in Eastern Europe*, Macmillan Education, Basingstone, 1987, pp. 68-90, 314-346. I also thank Dr. Stola for his input.

Second, the Roundtable talks of February–April 1989 allowed for the peaceful transfer of power at the price of concessions for the top communist leaders. Jaruzelski and his Minister of Internal Affairs, General Czeslaw Kiszczak, were the two key players who forced the hesitating Central Committee to endorse the Roundtable Agreements, by threatening to tender their resignation if the PZPR maintained its monopoly of power. In turn, the Solidarity parliamentary majority respected its part of the bargain by electing Jaruzelski – true, by a majority of only one single vote – to the office of president. Quite unexpectedly, the elections of 4 June 1989 allowed the PZPR to win only one of the freely contested seats in Parliament (which represented all Senate seats and 35% of the Sejm seats, according to the Roundtable Agreements), a deficit of authority the opposition took advantage of to nominate the Prime Minister. Solidarity intellectual Tadeusz Mazowiecki thus became Poland's first non-communist premier heading a government in which the PZPR was a junior partner. Solidarity honored the Agreements because they were the only guidelines for managing an uncertain political transition, and because it believed that only gradual political reform could work in the face of communist authorities who had used force in the past, and while Soviet troops were stationed in Poland. The talks successfully ended in a compromise because both negotiating partners – the PZPR officials and Lech Walesa's Solidarity team – set aside a serious discussion of the past. Thanks to the "forgive and forget" strategy the political transition proceeded smoothly and allowed the country's new leaders to concentrate on economic reforms.

Third, prominent Solidarity leaders – including Jazek Kuron, Adam Michnik and Bronislaw Geremek – were of Marxist origin and had begun their political life in the PZPR, where they sought to reconcile socialist realism with personal and public freedom. Even premier Mazowiecki had represented a Catholic group in the communist Parliament sometimes in the 1960s. Almost a third of PZPR's three million members joined Solidarity, and many Solidarity members entered Parliament in the 1980s¹. As Osiatynski noted, "for many members of the first-generation power elite after 1989, de-communization would have been a painful and fearsome experiment in soul searching"². Because "the incumbent political elite and the opposition were more closely related than allowed for by the 'society against the state' stereotype of 1980s Poland"³, the debates about transitional justice have hinged on legal procedure more than justice and historical truth. The focus on procedure allowed communists to offer good public reasons for their opposition to transitional justice and, together with the Solidarity liberals, to block transitional justice efforts during the first decade of post-communist rule. The former communists' inclusion in a debate reserved to democratic forces elsewhere in Eastern Europe was possible by setting aside the question of the citizens' moral responsibility under repressive communism⁴.

¹ At least one member of the Politburo joined the Solidarity. See Tina ROSENBERG, *The Haunted Land...cit.*, p. 161.

² Wiktor OSIATYNSKI, "Decommunization and Re-communization...cit.", p. 37.

³ Carmen GONZALEZ-ENRIQUEZ, "De-communization and Political Justice...cit.", p. 238.

⁴ Noel CALHOUN, *Dilemmas of Justice...cit.*, p. 94 and Maria LOS, "Lustration and Truth Claims...cit.", p. 157. In Czechoslovakia and Hungary the moderates saw the need to ban former communists and secret agents from entering the post-communist Parliament, but in Poland the moderates rejected any form of lustration. Aleksander SMOLAR, "Comment gerer le passé...cit.", pp. 53-64.

Last, the post-communist balance of powers also determined the pace of transitional justice, but the dynamic of its influence departed significantly from the theoretical models proposed to date. Calhoun and Walsh have suggested that, once controlling the machinery of government, the former communists will resist transitional justice, while their political rivals will support it. Paradoxically, the Polish example shows a more nuanced constellation of policy positions and ideological options. First, the procrastination of transitional justice came in response to the way Minister Macierewicz disclosed the identity of alleged secret informers by completely disregarding procedure. As a result, even the Poles committed to learning the truth about communism, and aware of the difficulties of morally evaluating past actions, were put off by the unwise choice of rapidly naming names over granting the accused the right to appeal, as though the two were mutually exclusive. While indeed the pro-democratic forces were more inclined to support lustration, a botched identification of "torturers", to use Huntington's term, quelled the appetite for vengeance of former communists and their political rivals alike. Second, note that the former communists and President Kwasniewski were the ones who pushed lustration and file access forward, and insisted on court hearings. Their reasons for supporting transitional justice had to do less with genuine commitment to democratic values or willingness to find out the truth about communist abuses and more with the desire to control the damage done by the collapse of the Oleksy government. As elsewhere in the region, the camps of supporters and denouncers of transitional justice did not perfectly correspond to the ideological camps of pro-democrats and former communists.

The Polish case is also instructive for Romania, a laggard in all transitional justice areas. True, calls for lustration were voiced immediately after the collapse of the Ceaușescu regime, as part of the famous Article 8 of the Timișoara Declaration, but the Romanian post-communist political class has given a cold shoulder to further attempts to unmask former communist collaborators from within its ranks mainly because the country which experienced the bloodiest exit from communism was unable to reshuffle its political elite. Both in 1996 and in 2004 the opposition Democratic Convention and the Justice and Truth Alliance, respectively, have won the popular vote with promises of moving the transitional justice process forward. Both times they were unable to sustain the momentum and push relevant legislation through a disinterested, if not outright resistant, Parliament in which, paradoxically, they controlled a majority of the seats. The Polish solution to downgrade lustration to a screening process sidelining only politicians who deny their past could only remotely address the need to punish the leaders of the *ancien régime*, but represent an acceptable compromise for Romania. Similarly, the Institute for National Memory could constitute a worthy model for the much-politicized National Council for the Study of Securitate Archive. Romania is also well advised to set up special committees tasked with investigating communist crimes other than those related to the December 1989 revolution.