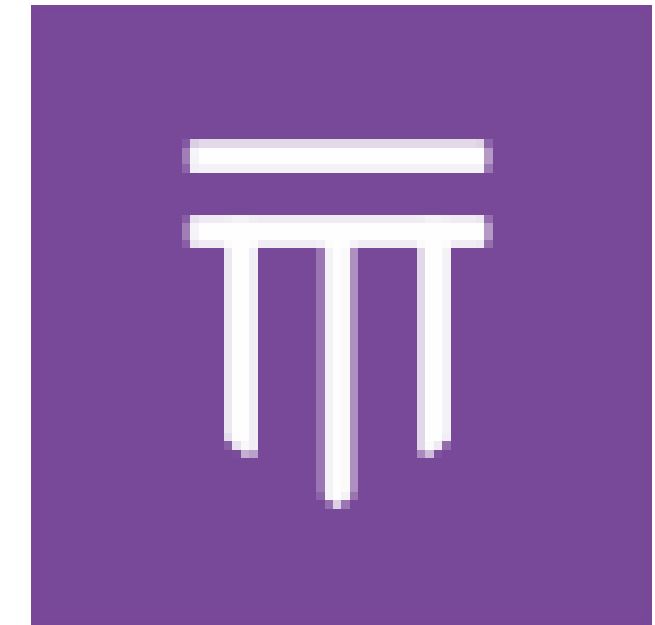


Brno, 10 November 2021

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# Transitional justice

## Truth revelation processes



JUSTIN  
Judicial Studies Institute  
Masaryk University

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Katarína Šipulová



# Access to Secret Files and National Memory Institutes

- Why alternative justice?
  - Legal v political justice
  - Internal (domestic)
  - Retribution v restoration
  - Individual criminal liability v reconciliation



## Meaning of Truth in TJ

- Right of victims to know the truth
- Official acknowledgment: part of the regime reform
  - Establishes new RoL
  - Conditions prosecutions and other reparatory programmes
- Insight into question why violence happened
  - Hannah Arendt: nature of totalitarian regimes and their domination over our lives
  - *It is only through generating such understanding that the horrors of the past can effectively be prevented from occurring again. Knowledge and understanding are the most powerful deterrents against conflict and war (SL TRC)*



## Meaning of Truth in TJ

Commission of inquiry

Court proceedings

Truth commissions

Historical commissions

- goals, methodologies, mandates, tools



## Meaning of Truth in TJ

Court proceedings: legal approach, determine the culpability of perpetrators, aim: establishment of punishment.

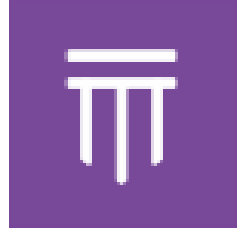
TRCs: much broader inquiry, provide narrative of the abuses during certain historical period. Typically, they have mandate to establish an authoritative and historically accurate record of the past

Historical commission: address events of the past affecting specific ethnic, racial, other groups. They are not part of political transitions, might not even deal with current issues



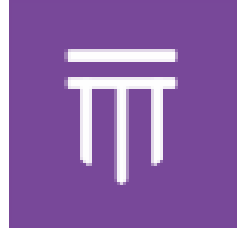
## Tasks of TRCs

- Historical account of the past
- Overcome communal and official denial of the atrocity
- Identify victims
- Certify whether applicants qualify as victims to obtain reparations
- Identify the architects of the past violence
- Restore dignity to victims, promote psychological healing
- End and prevent violence
- Legitimate and promote the stability of the new regime
- Educate the population
- forge the basis for a democratic political order that respects and protects R
- Recommend ways to deter future violations and atrocities
- Determine eligibility of applicants for amnesty



# Tasks of TRCs

- Limitations
  - What is the truth / confirmation of beliefs about the past
  - How to find objective truth
  - Do we really want to establish the truth?
- How to reconcile the truth with the lack of prosecutions?
- *The truth is so commonly use that it seems to be a transparent notion, clear to all who are involved or interested in redressing past abuses, but 'truth', like 'justice' and 'reconciliation' is an elusive concept that defies rigid definitions (Parleviet 1998)*
- Cultures vary in how they approach and value truth telling



## Access to Secret Files and National Memory Institutes

- Truth and reconciliation committees
  - Temporary mandate
  - Financing? (GOV, PARL, UN, NGOs)
  - Independence
  - Investigation





## Access to Secret Files and National Memory Institutes

- East Germany (1990), Hungary (1994), Estonia (1995), the Czech Republic (1996), Bulgaria, Poland (1997), Romania (1999), Slovakia (2002), Lithuania (2006), and Latvia (2007).
- In combination with lustration shifts closer to retributive measures
- Access to individual files vs access to all files
  - Reason for restrictions?
  - Access for historians?



## De-communisation memory institutes

- Trustworthiness and reliability
- Aim of documentation they collect: control of society
- Incomplete
- Politicization
  - The only independent institute: Gauck's committee in GDR
  - Limited power of government
  - The file is not enough to lead to prosecution/punishment

Act allowing the access of individuals to their own files



## Access to Secret Files and National Memory Institutes

- Access is administered by specialized state agencies: ***national memory institutes***
- *To collect, research, and provide information on past crimes*
- More common for *ruptura pactada* form of transition
- Compared to TRC, they have more often a repressive character/function
- Biggest issue: millions of files in GER, ROM, CR – lost or shredded, rest unreliable, with communist secret agents deliberately fabricating the stories.



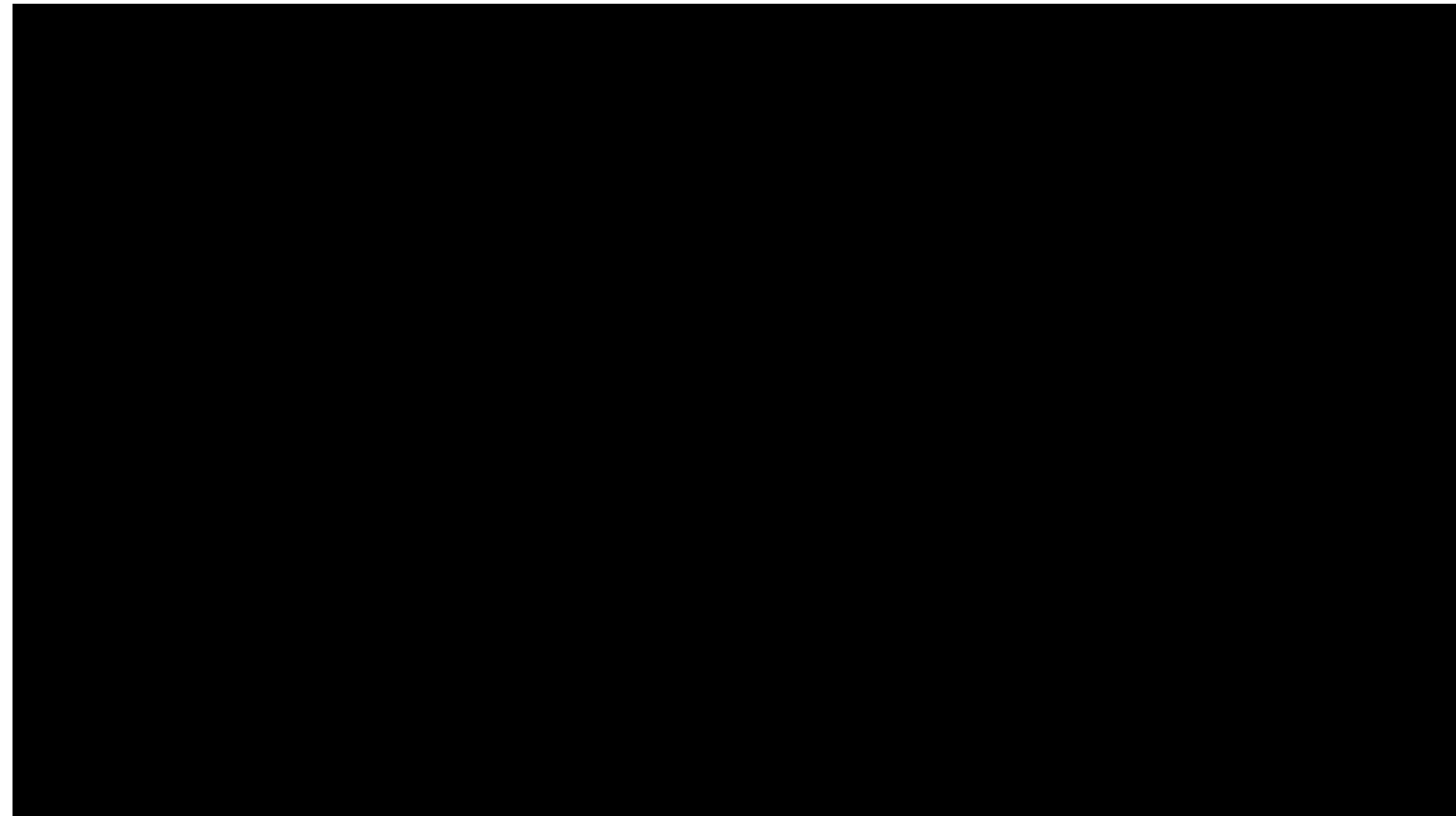
## East Germany

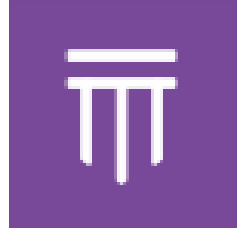
- Joachim Gauck, federal commissioner for Stasi files
- Knowledge and power of individual citizens
- Truth instead of vindication
- Right to access one's files, instigation of criminal prosecution, uncovering the collaborators
- Compared to the rest of CEE, quite reliable



## Das Leben der Anderen

- 1984, Stasi Gerd Wiesler is ordered to spy on the playwright Georg Dreyman, famous for his Communist views and international recognition





# Bulgaria

- Panev's Act
- Anti-communist legislation as a break against reformed communist elites
- 12/1992: lustration





# Hungary

- Ministry of Justice
- Documents pre-1956 events
- House of Terror





## Romania

- No lustration
- Most progressive part of TJ: access to documents
- National council for the study of Securitate archives
  - Questionable authenticity
  - Too many procedural issues





## Poland

- Instytut Pamięci Narodowej 1998
- Investigates Nazi and communist crimes
- Access of public to secret documents
- First publicly accessible files: 2000/2001
- Leak of information in 2005: journalist Bronislaw Wildstein



## Czechia

- Úřad dokumentace a výzkumu (Úřad pro dokumentaci a vyšetřování činnosti StB)
- More than 280thousand individuals convicted under communist regime
  - 234 executions
  - 300 deaths in prisons
  - 176 shot at borders
  - 88 electric current (torture)
  - 300 thousand persecutions (work, study)



## Czechia

- Úřad dokumentace a výzkumu (Úřad pro dokumentaci a vyšetřování činnosti StB)
- Originally part of the Ministry of interior, investigates mostly members of secret police (StB)
- *„None of us here needs the criminal trials, especially not with people at the verge of Their lives. What we all do however need is the history to document and publish.“*  
(general prosecutor Šetina)
- Created in 1995, tasked to address all petitions on politically motivated crimes and initiate criminal prosecutions of respective people



## Czechia

- In 2008, 192 prosecuted in 98 criminal cases, 30 sentences, 8 conditional sentences
- Documentation and criminal investigation, should lead to individual criminal accountability
- In 2002: public access to archives established
- In 2007: Ústav pro studium totalitních režimů
  - Studies period of 2 ww and communist regime
  - Completely independent, took over UDV, however, without the obligation to instigate criminal prosecutions

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Thank you for your  
attention