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Reviewed work(s):

Source: *Europe-Asia Studies*, Vol. 48, No. 3 (May, 1996), pp. 413-428

Published by: [Taylor & Francis, Ltd.](#)

Stable URL: <http://www.jstor.org/stable/152734>

Accessed: 05/12/2011 19:57

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## Dealing with the Communist Past: Central and East European Experiences after 1990

HELGA A. WELSH

We forget that the past is linked not only to archives—that it is not limited to what was—but that it continues to live. The past walks through the streets. Ghosts talk to us, and sometimes we see them on television. Now and then we are our own ghosts without even knowing it.<sup>1</sup>

AT THE END OF THE 1980s the so-called Third Wave of democratisation<sup>2</sup> finally reached Central and Eastern Europe<sup>3</sup> and the former Soviet Union. Before the recent overthrow of communist regimes, the rather voluminous body of literature on regime transitions was based almost exclusively on political transitions from right-wing authoritarian to democratic political rule. The transitions from communist to pluralist political systems differ from previous transitions in a number of important aspects. Issues of political and economic system transformation required immediate attention and, in several countries, problems of national reconstitution took priority.<sup>4</sup> However, despite important systemic differences among transition processes, the stages, concerns and tasks that are part of democratisation processes bear considerable resemblance to one another even across different regime types.

On a global scale, the re-emergence of authoritarian rule or the succession of unconsolidated pluralist regimes are the frequent result of failed efforts to democratise. In view of the uncertain outcomes of system transformation, much scholarly attention traditionally has focused on (pre-)conditions to democracy and on methods by which the institutionalisation of polyarchy is accomplished.<sup>5</sup> In more than one way, it becomes a question of how the past influences the future. The legacy of communism involves, among other things, the specific impact of the communist past on current political culture, solving problems of restitution, political rehabilitation, legal problems relating to communist party assets, evaluating roles of the former *nomenklatura* as privatisation proceeds, and dealing with former communist functionaries and state security services. It is the last aspect that I will address in this article.

Historically, most system transformations have been accompanied by various forms of political purge and attempts to effect justice. At the same time, the frequency and intensity of purges seem to be declining, as seen in the regime changes in the southern cone of Europe and most of Latin America in the last two decades. Those in favour

of an explicit policy against previous offenders argue that public institutions need to be purged of discredited members of the old élite. It is justified by providing a basis for democratic beginnings rooted in the rule of law; it rectifies past injustices and provides a basis for a thorough investigation into the past. Others maintain that only a policy of leniency will provide a basis for national reconciliation and will foster a spirit of tolerance crucial to the building of a democratic political culture.

In Central and Eastern Europe many emphasise the complexities of past involvement in communist regimes, particularly the relatively high level of participation in political parties and mass organisations and the compliance on the part of the vast majority of the population, and the attendant difficulty of separating victims from perpetrators. In addition, the argument proceeds, it is more important to settle the issues of the future than those of the past. Central to dealing with the past in Central and Eastern Europe is the question whether 'decommunisation' is an integral part of the democratisation process or whether that process automatically entails the decommunisation of society.

Dealing with former high-level communists and security apparatuses were clearly among the central tasks facing governments immediately after communism disintegrated in much of Central and Eastern Europe. In the past years, scattered news from the different countries in Central and Eastern Europe provided an interesting picture: on the one hand, the issues were quite similar across the region; on the other, initially policy outputs differed widely while there was considerable convergence in policy outcomes.<sup>6</sup> That is, despite differing policies, in all countries the extent of decommunisation was quite limited in nature. Lately, the importance of decommunisation has declined substantially and, some argue, has even vanished into oblivion.<sup>7</sup>

I will first outline major characteristics of decommunisation, concentrating on efforts to bring to justice former agents of the state security services and communist officials who have been charged with criminal activities. But the focus of this study is on the factors that have influenced the vigour (or lack of it) with which this issue has been pursued. Specifically, I propose that initially the history of political repression and the specifics of recent political transitions have been important influences upon why certain policies have been attempted in some countries but not in others. However, as time passed, differences in decommunisation have been diminishing across the region. At the same time, its function as a tool in the struggle for political power has become more defined. The communist past has been exploited by some politicians to undermine the legitimacy of political opponents or to enhance their own.<sup>8</sup>

### *Dealing with the communist past: an overview*

#### *The screening and vetting*

In past transitions, for example, in Latin America and in the southern cone of Europe, a primary concern has been the past and future nature of civil–military relations.<sup>9</sup> In Central and Eastern Europe most investigations are primarily focused on whether individuals have been affiliated with repression by the state, in particular the activities of the state security services, or take the form of legal inquiries into political crimes

and corruption charges. In general, communist party officials and members are only included in lustration<sup>10</sup> or legal procedures if they had collaborated with state security agencies or if they had been involved in criminal activities. The major exception to this rule is the former Czechoslovakia, where former communist functionaries from the township level up were barred from holding certain positions. In Bulgaria, former senior communists were not allowed to occupy positions of governance in universities and research institutes. That law was annulled at the beginning of 1995.<sup>11</sup> Both laws attracted international attention; they have been criticised by international human rights organisations and the Council of Europe for applying criteria of collective guilt to former communist officials.

Following the 'revolutionary' upheavals in 1989, in Central and Eastern Europe the communist state security services were dissolved and new ones were created. However, the extent to which the reorganisation also resulted in the legal investigation and/or replacement of the previous personnel has varied considerably. In Poland, special screening commissions investigated former security officers,<sup>12</sup> but the ratio of new-to-old employees in the newly established State Security Office (UOP) is unknown. In Bulgaria, senior officials of the so-called sixth department of the Interior Ministry, the state security service, were asked to retire. However, many others were given the opportunity to participate in building the Bureau for the Protection of the Constitution within the Ministry of Internal Affairs, whose powers were broadened in 1993. With one exception, several decommunisation laws modelled after the Czechoslovak example either failed to get a majority in parliament or were declared unconstitutional.<sup>13</sup>

The absence of significant personnel turnover is most obvious in the Romanian case. In March 1990 a new secret service (SRI-Serviciul roman de informatii) was created in Romania. Many assert that it resembles its predecessor, the Securitate, in many aspects, including the composition of its staff. According to different sources, between 17 and 80% of the former Securitate personnel have been rehired and no more than 20 to 30 former members were tried in court.<sup>14</sup> No legal measures have been passed in Romania that require systematic investigation into past Securitate affiliations with public officials.

In Poland and Hungary, even deciding whether former state security agents or political collaborators should be identified has been particularly uncertain. For a population of 38.4 million people, the Polish Interior Ministry kept approximately three million files and the military counterintelligence added another 400 000. It has been estimated that the number of full-time officers in the secret services amounted to 24 000; there are no reliable estimates of how many secret informants worked for the security services but the number was considerably higher.<sup>15</sup> Repeated efforts by different political groups to investigate, among other things, possible affiliations of members of parliament with the Security Service (SB) in Poland have been aborted or rejected.<sup>16</sup>

After lengthy discussion, many failed efforts, and pressure to act prior to the national elections, the Hungarian parliament passed a law in March 1994 to require screening of high-ranking officials for collaboration with the secret service and participation in the suppression of the 1956 uprising. It is estimated that the law, which took effect in July 1994, will apply to between 10 000 and 12 000 people.<sup>17</sup>

While it was already difficult to identify and bring to justice agents and functionaries of the former state security services, it proved to be especially trying to deal with those who had worked as informants for the state. In Czechoslovakia and Eastern Germany any kind of political collaboration with the state security service was sufficient to exclude former office-holders from public service. The federal parliament of the then Czechoslovakia passed a law in October 1991 that banned certain categories of people (including functionaries, agents and collaborators of the state security service) from holding elected or appointed public or professional positions in state organisations, and in joint-stock companies in which the state holds a majority of the capital, for a period of five years.<sup>18</sup> According to the Annex of the Unification Treaty between the two German states, which took effect on 3 October 1990, active involvement with the East German security service and in crimes against humanity are a 'reason for exceptional dismissal' in the public sector.<sup>19</sup>

### *Statute of limitations*

Can justice now be done for crimes committed under the communist regimes? The problems are myriad, one of the most important being that some of the abhorrent events occurred a long time ago. Specifically, statutes of limitation have expired, many of the accused are elderly and ill, and key witnesses have died or are difficult to find.<sup>20</sup>

In Bulgaria, in March 1990, the statute of limitations was changed from 20 to 35 years. In contrast to some countries in the region, no specific acts of terror or repression stand out. But it is revealing that in a climate of mutual suspicion and amid efforts to undermine the continued popularity of the successor organisation of the Bulgarian Communist Party, current investigations against former communist functionaries are particularly far-reaching. The charges against former members of the *nomenklatura* include, among others, ecological crimes, financial misappropriation by previous governments, embezzlement charges, illegal transfer of arms to Third World countries, crimes against humanity associated with the infamous Lovech and Skravena labour camps (in operation between 1959 and 1962), and crimes committed in connection with the assimilation campaign against ethnic Turks, and, finally, 'national treason'.

In November 1991 the Hungarian parliament passed a law which would have suspended the statute of limitations for all crimes of murder, treason and aggravated assault in the last 45 years. Its clear intention was primarily to prosecute those who had been involved in the suppression of the 1956 uprising, and the law's main objective was not so much the punishment of those involved but the revelation of their identities to the public.<sup>21</sup> President Árpád Göncz referred the law to the Constitutional Court, which decided unanimously that it was unconstitutional since it made laws retroactive for the purpose of punishing individuals.<sup>22</sup> However, in October 1993, the Constitutional Court accepted a more restrictive law that did make it possible to prosecute those who committed crimes associated with the 1956 uprising.<sup>23</sup>

Just as in the case of Hungary, in Poland investigations into political crimes are centred around a specific time period and specific events, in particular the period of

martial law at the beginning of the 1980s. The Polish case also demonstrates the difficulty of prosecuting political murder even if the events remain fresh in the public mind. So far, trials have been prolonged and some cases never were pursued,

partly for lack of sufficient evidence but also because the Minister of Internal Affairs has used his discretionary powers to refuse the prosecutors access to classified material in the ministry's archives....<sup>24</sup>

On 9 July 1993 the Czech parliament passed a law which declared the past communist regime 'illegitimate'. The legislation suspended all statutes of limitation from 1948 to 1989 and allows for the prosecution of crimes committed during these years. It is estimated that approximately 2000 people might be affected by the law.<sup>25</sup>

In Germany, criminal acts associated with the communist regime are liable to prosecution, provided that they were committed prior to 3 October 1990 and were punishable according to the laws of the former GDR. But the provisions of the Unification Treaty regarding the statute of limitations have been criticised for lack of clarity.<sup>26</sup> Tens of thousands of cases await trial. They address a wide range of crimes and accusations: acts of violence along the inner-German border, electoral fraud, economic crimes, torture, and kidnapping.

In Romania, prosecution of crimes and screening of security personnel have made the least progress. Security police files are manipulated and used against the democratic opposition,<sup>27</sup> and only relatively few former communist party officials and security officers have been tried. Those political trials which took place were directly related to the violent December 1989 demonstrations. Former communist officials were charged with complicity in mass murder and/or aggravated murder. The overall extent of those convictions is unclear, as is the extent of subsequent acquittals.

### *The files*

Many of the controversies surrounding the lustration of former communist officials and state security agents are related to the difficult question of how to judge their past political activities in the light of the existing documentation. Access or denial of access to state security files has served as an important political weapon to discredit political opponents and to undermine the credibility of new political institutions. Securing files of the former state security agencies, the reliability of those files, and rumours surrounding the disappearance and/or destruction of many files are major concerns in all countries in Central and Eastern Europe. In all countries the reliability of the files has been questioned and it is well established that many of the files were destroyed after the fall of communism.

The right to access to the state security files has been legally established in the case of Germany. While no one disputes that files were destroyed in Germany too, the resolute actions of many citizen committees in the turbulent autumn of 1989 acted against widespread destruction, and files on over six million people have been secured. The federal agency supervising the files of the former State Security Service of the GDR employs more than 3000 staff members and the administrative costs are extensive; yearly federal appropriations amount to more than DM 260 million. By

mid-1995, more than 950 000 individuals had requested access to their files and approximately 1.6 million public and private investigations had been filed.<sup>28</sup> A somewhat different approach was taken in the former Czechoslovakia. Institutions have the right to seek investigations, provided the person in question consents to it. In turn, individuals can request a 'lustration certificate' which clarifies whether they collaborated with the secret police. Starting in January 1996, in the Czech Republic state security files will be open for inspection by individuals for a period of five years.<sup>29</sup>

In Bulgaria, Hungary, Poland and Romania the state security files have been sealed for 30 to 40 years. In those countries where files are not publicly available, the rationale has been the files' unreliability and the dangers of widespread witch hunts. But closing the files has not necessarily silenced opposition to this measure. Fears associated with political misuse of the files—such as blackmail of politicians and calculated media leaks—have been particularly pronounced in countries where public access to files is closed or highly restricted. For example, in Romania suspicions run high that the closure of the files for a period of 40 years is being used selectively to attack political adversaries because the lack of public access allows politically motivated leakages and the fabrication of documents.<sup>30</sup>

In Bulgaria the 'war of the files' has been raging ever since public access to the state security archives was barred.<sup>31</sup> However, in efforts to curtail illegal use of secret police information, the penal code was amended in 1993; those spreading information related to the activities of the secret police can be sentenced from three to six years in jail.<sup>32</sup> The Ministry of the Interior has repeatedly used the fact that well over half of the files have been destroyed since 1990 to deny further access to the secret police files.<sup>33</sup>

Similar arguments have been used in Hungary to deny public access to files; it is asserted that some were destroyed in 1989 on the orders of the head of Department 3/3, the department responsible for monitoring dissidents. The screening law passed in March 1994 established that the files of the security services will only be made available to the public on 1 July 2030, 30 years after the lustration process will have ended.

In Poland, files of many agents who had spied on jailed Solidarity activists have disappeared and the military secret police has been charged with eliminating registers of most secret negotiators.<sup>34</sup> Overall, approximately 20 000 files have been secretly destroyed since 1989. In principle, files of the secret police are open up to 1965. From August 1995, only those dating from 1944 to 1956 are accessible to prosecutors, courts, historians and journalists; however, the identity of informants will remain undisclosed.<sup>35</sup>

In summary, in the eastern part of Germany and in the former Czechoslovakia (and now in the Czech Republic) the greatest efforts have been made in coming to terms with the communist past while a policy of leniency characterised the situation in Hungary and Poland. Finally, in Bulgaria and Romania the political exploitation of the subject was particularly pronounced; this was the result of as well as additional incitement to political polarisation. The reasons for variation and convergence in lustration policies and in efforts to achieve retributive justice will be explored in more detail in the following sections.

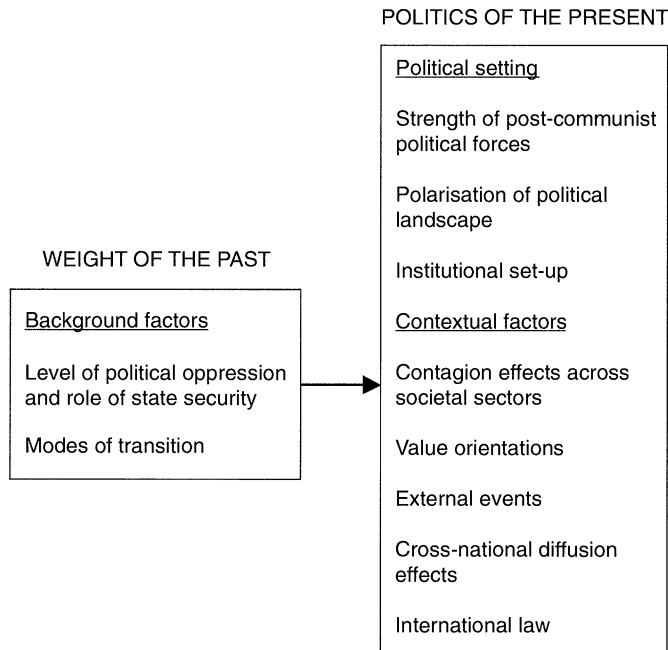


FIGURE 1. PREDICTORS OF EXPLANATION.

### *Predictors of explanation*

Not surprisingly, policy choices in the Central and Eastern European arena have been determined by legacies of the past *and* current political circumstances (Figure 1). This holds particularly true for how the communist past is dealt with. No simple explanation suffices to analyse the dynamics within and the differences among these countries.<sup>36</sup> The extent of political repression and penetration of society by the state security forces, including the time elapsed since acts of terror and political crimes have taken place, are among the factors that explain post-communist policies, as is the impact of different modes of transition.<sup>37</sup> Increasingly, however, the ‘weight of the past’ is being replaced by ‘politics of the present’.<sup>38</sup> In addition, political purges are more likely as an immediate outcome of regime transition; with the passage of time their urgency and the probability of their implementation diminish.

### *The weight of the past*

#### *Political repression and its forces*

In general, a policy of moderation has characterised Central and East European approaches to dealing with the communist past. One of the reasons for the general absence of revenge seeking is linked to the changing mode of repression in those countries. The history of political terror is very much associated with the period of



communist takeover and the initial phase of consolidation, i.e. covering the years from 1945 until the mid-1950s. Show trials, institution of labour camps, elimination of political opposition, and violence associated with collectivisation and nationalisation were largely limited to this period. Only in those countries where de-Stalinisation was rejected (in particular in Romania and Albania, and, to some extent, Bulgaria), was the reign of terror prolonged. Since then, memories of terror have faded, and those who committed the worst crimes are old or have died.

The decline of political terror led to periods of relaxation of political repression which alternated with periods of tightening control, as seen in 1968 in Czechoslovakia and in 1981–82 in Poland. In general, physical violence was replaced by structural violence characterised by calculated intimidation and public submissiveness. But it also led to more refined forms of political surveillance and better coordination among the communist secret services. From 1979 the political police forces of all Warsaw Pact member countries (with the exception of Romania) were linked together in an international electronic network system called Soud (Interlinked Systems for Recognising Enemies). Rather than declining, the number of people working for police and state security forces increased considerably in some cases. Nowhere is this more pronounced than in the former German Democratic Republic, where the number of people working full-time for the Stasi nearly doubled between 1973 and 1989.<sup>39</sup>

Thus it is not surprising that the state security services have been given particular attention in the aftermath of 1989. But it is also true that the penetration of society by the state security service—acting simultaneously as a policing and observation device for the ruling communist parties—has varied considerably across Central and Eastern Europe. On the one hand, in the case of Hungary, there was surveillance, materials printed by opposition groups were often confiscated, and the police kept files on people. However, persecution was limited and political imprisonment of intellectuals did not occur.<sup>40</sup> On the other hand, the sense of control was ubiquitous in the former GDR and in Romania and extended far beyond the circles of identified dissidents. Therefore, East European memories differ substantially in respect of the role of the former security services, contributing to the differences in approaches seen across the region.

### *Modes of transition*

Political environments in Central and Eastern Europe vary across the region and the politics are still characterised by uncertainty and electoral volatility. While the sentiment was widely shared that the powers of the old elite needed to be diffused, the wisdom of completely disarming them was also questioned. Central to this notion is the idea that the authoritarian regime is more likely to agree to liberalisation and ultimately to a systemic transition if a policy of clemency is part of the political transition process.<sup>41</sup> For this reason, political pacts<sup>42</sup> often garner support, but they can only be upheld if the authoritarian parties (i.e. the military, the dominant political party, state security and police apparatus) have not discredited themselves to the point of squandering all rights to legitimate rule.

With the exception of Romania, the transitions in Central and Eastern Europe entailed elements of negotiation between the old and the newly emerging élite.<sup>43</sup>

However, Poland is the only case where the opening of the political system was clearly contingent upon a political pact. Although many details regarding the outcome of the Round Table negotiations have been kept secret, rumours persist that Solidarity negotiators agreed to a settlement safeguarding those who had acted on behalf of the former communist government.<sup>44</sup>

In those cases where opening of political systems evolved over longer periods and where the communist party encouraged at least a slight opening of the political space, as in Hungary, the role of the state security was clearly less pronounced. Just as in the case of Poland, there has been speculation that, in the summer of 1989, a 'gentlemen's agreement' was concluded to prevent a future witch hunt against former communists. Despite accusations by former communist party officials that the agreement has been violated, no major controversies had erupted over the lustration issue before the passage of the screening law in March 1994. A more lenient attitude toward former communists is justified more easily in the Hungarian case than elsewhere since the reform wing of the former communists is credited with playing an important role in liberalising the political regime.

In East Germany and Czechoslovakia, implosion of the communist regimes came unexpectedly and no provisions for former communist officials' fate had been made. In the founding elections of 1990, the communists' defeat was particularly devastating and reckoning with the past has been more thorough than in other countries in the region. It should be noted, however, that the 1991 lustration law was seen as too rigorous by many of the former Czech dissidents-turned-politicians (the then Federal President, Václav Havel, was one of them), and it has been asserted that the coup attempt in the former Soviet Union in August 1991 might partly explain the change from the moderate draft version to the much more extensive final lustration law.<sup>45</sup>

While decommunisation regulations and implementation of lustration policies vary across space and time, there also has been considerable convergence. More recently, as Holmes suggests, 'in most of them, the anticommunist impulse has petered out'.<sup>46</sup> Increasingly, variation and convergence can no longer be attributed largely to the 'weight of the past', but to the emerging political landscape, a topic to which we now turn.

### *Politics of the present*

#### *The political setting*

While past factors must not be completely dismissed in explaining the attitudes of Central and East European governments toward former communist regimes, current political circumstances increasingly dictate policies. Successor parties of former communist parties or emergent parties drawing on the support of former communists continue to play a substantial role in the new political landscape. But even in countries where the former communist forces initially suffered a severe defeat, reconstituted but substantially different—both in ideology and structure—successor organisations have been able to stage a comeback. The electoral successes of those parties have ensured that a number of former communist party officials are once again in positions of power. On the one hand, this means there are no extensive purges or

retroactive legislation. On the other, however, it has also contributed to political polarisation.

Independent of the policy approaches taken, no country escaped scandals associated with lustration, and in some cases the political effects have been far-reaching. For example, political controversy surrounding the lustration process in Poland contributed significantly to the downfall of the Mazowiecki and Olszewski governments. In 1993, following the success of the post-communist forces in Poland, the Democratic Left Alliance and the Polish Peasant Party, issues of lustration and decommunisation resurfaced. Critics of the screening law in Hungary have pointed out that the timing of the law—prior to the May 1994 elections and at a time when the Hungarian Socialist Party was leading in public opinion polls—suggest that it was ‘motivated not by legal or moral considerations but by a desire to damage ... [the government’s] major political rival’.<sup>47</sup> The rigorous approach to lustration which was favoured by the Czechs and opposed by leading Slovak politicians has been cited as a contributing factor in the break-up of the former Czechoslovakia.<sup>48</sup>

The weaker the electoral strength of the former communists, the easier it has been to move ahead with decommunisation efforts. In Bulgaria and Romania, where former communists have continuously been able to garner substantial electoral support, issues of lustration and prosecution of crimes committed under communist rule have added to the already substantial political polarisation. In Bulgaria efforts at political cleansing quickly became a pawn in the struggle for power. Since the first democratic elections in 1990 governmental responsibility has shifted several times between new and old political forces. Mistrust of former communists, manifested in particular by fears that they would undermine economic reform efforts, combined with a perceived need to consolidate political power, led to relatively widespread, politically motivated dismissals under the newly instituted minority government of former opposition groups, the Union of Democratic Forces, in 1991 and 1992. Encouraged by relatively frequent shifts in power, allegations of decommunisation and recommunisation are rampant, and issues of political rivalry are entangled with the question of how to relate to the communist past.<sup>49</sup>

In most countries, and particularly so in Bulgaria and Hungary, the constitutional courts have played an important role in defining the limits of retributive justice and have generally acted as restraining forces.<sup>50</sup> In turn, the courts were most often called into action by heads of state who portrayed themselves as moderators as well. Holmes called this a form of power sharing in which parliamentary anti-communism was mediated ‘with strategies for compromise developed by other branches’.<sup>51</sup> But the Constitutional Court in Bulgaria, normally praised for its moderation, became entangled in political controversies as well. The lustration law that aimed at former communists in leadership positions in state-owned banks was declared unconstitutional. A different law, targeting scholars closely affiliated with the former communist regime, was upheld by the Court. ‘It is almost certain’, Kolarova states, ‘that the context of current political events heavily influenced the justices’ decision. While in the first case the presumption of the justices was to soften the retributive anti-communist policy of the parliamentary majority, in the second case they had to decide against the backdrop of a newly formed and unstable parliamentary majority that included ex-communist deputies’.<sup>52</sup>

German circumstances are distinct because of unification and the continued debate about what went wrong with similar efforts to 'cleans' German political life after World War II. In addition, the legacies of 40 years of mutual suspicion in inner-German relations, the special circumstances and the inhumanity of border fortifications, including the Berlin Wall, have made attempts at dealing with the communist past a special case.<sup>53</sup> Members of the new political élite in the former GDR have been particularly affected by allegations, accusations and suspicions. Some with past connections to the state security service have had to resign, others only 'stumbled' and resumed their political careers.

The picture is further complicated by the dominance of western Germans in the unification process and differing regulations in the five states which constitute the former GDR. Thus, there is considerable variation in the actual implementation of the screening procedures: the 'treatment of politically incriminated public officials of the former GDR' has been called 'confusing and contradictory'.<sup>54</sup> But the widespread replacement of political and administrative élites as well as others in the public service cannot be reduced to issues of politically motivated screening and vetting measures alone but has also been influenced by changed recruitment qualifications, the need to trim the bloated administrative apparatus, and the availability of qualified manpower from the west.<sup>55</sup>

### *Contextual factors*

As time passes, revelations concerning former affiliation with state security services and the communist party have lost most of their potency. In Hungary, as elsewhere, it has been emphasised that lustration 'was an issue not of historical justice but of present accountability and transparency—of not allowing people subject to blackmail to be given power'.<sup>56</sup> Priority has been given to the right to know and not to the need for condemnation or punishment. The general public appears more interested in to what extent the former *nomenklatura* has taken advantage of its privileged position in the privatisation of the economy (*nomenklatura* privatisation),<sup>57</sup> and in the abolition of privileges given to the former communist élite, than in purges. Thus, even former affiliation with the state security services or active involvement in the communist regime often no longer act as a deterrent to a successful political career. At first, this seems surprising. But the perceived unreliability of the files, the difficulty of drawing a line between perpetrators and victims, the increasingly political character of the debate, and the danger of witch-hunts are often cited as reasons for the absence of political cleansing, even among police collaborators. Other factors have reinforced this tendency, such as the re-evaluation of the communist past, the passage of time, and the restriction of political cleansing to the public sector and a climate of compromise and moderation during the transition period.

In view of the severe social and economic disruptions associated with the recent systemic transformations, the communist period is re-evaluated by many. Popular perceptions about life under socialism differ considerably; few had joined the ranks of dissidents while most had come to arrangements with the old regime. The absence of revenge seeking may also call into question common Western perceptions of the 'totalitarian' nature and the causes for the collapse of the communist regimes. Large

segments of society hold a highly differentiated view of the communist period which has little in common with fervent anti-communism. This differentiation also applies to former office holders. Collective, unqualified rejection of *all* functionaries is largely absent; instead, they were and are being judged on performance, which explains, at least partly, the success of many of the previous communist party members in recent elections.<sup>58</sup> In addition, lustration almost always is limited to the public sector. Leniency in employing former communist functionaries and state security agents in the private sector has unavoidable spillover effects that work against continued lustration in the public sector.

A policy of leniency was facilitated by the fact that most former prominent communist officials were close to or beyond retirement age and in many cases did not exhibit any desire to hold political positions. In addition, it should be remembered that the majority of former communist party members who occupy positions of influence in post-communist governments and administrations come from what Baylis calls the 'lower nobility of the communist era', i.e. former communist party officials who had not previously occupied positions of national visibility.<sup>59</sup> In addition, public interest in dealing with the communist past has declined since other issues, in particular economic ones, have claimed priority. This development has been encouraged by a conciliatory attitude on the part of most former dissidents toward the old guard<sup>60</sup> and by the nature of the transition process, which emphasised compromise and bargaining.<sup>61</sup> At times, however, when political competition intensifies, old front lines are resurrected to combat the political opponent and lustration turns into a tool in the struggle for power. But instead of mobilising the public it seems to have added to disillusionment and political apathy; thus, it has been buried relatively quickly.<sup>62</sup>

### *Conclusion*

Overall, the past few years have been characterised by policies of moderation—not of revenge seeking. East European experiences suggest that policy choices were not guided by retribution or reconciliation *per se*.<sup>63</sup> In those countries where lustration has been moderate or conspicuously absent, this has not happened from a desire for reconciliation but because prevailing power arrangements have prevented lustration. In those countries where lustration has been more far-reaching, it was still relatively moderate by most accounts and in general not guided by revenge seeking. It might be this aspect of dealing with the past that explains why different approaches to lustration have not led to more markedly different outcomes. The examples drawn from Central and Eastern Europe also seem to confirm the Latin American experiences, namely, that there is no sure model to follow.<sup>64</sup>

The complaint that too much political energy is being spent on settling the past instead of focusing on the important economic and social issues that will determine the future is common across national settings. So is the use of vetting procedures for political gain in the struggle for elite positions. Criminal prosecution of former communists will take years, and it is reasonable to assume that the number of officials who will be tried and sentenced will be small. Criminal prosecutors repeatedly have cautioned that legal proceedings cannot bring justice to forty years of injustice. Most observers agree that the purpose of much of the legislation in the countries of Central

and Eastern Europe is noteworthy more for its moral than legal implications. In general former communist officials have only been investigated if they had collaborated with the security services or if they could be tried on criminal charges such as embezzlement, mismanagement and corruption. The latter has been confined to relatively few key figures, and the sentences have been largely symbolic. As previous purges have shown, the momentum cannot be maintained forever. The tendency to forgive and forget is enhanced by the passage of time. Interests shift to other issues once the need for making peace with the past has been exhausted.

Ultimately, the question remains whether policies of retribution or reconciliation serve the interests of emerging democracies best; and while it is often assumed that an investigation of the past is necessary to provide the basis for a democratic beginning, in the transition period this may be true more for its moral than for its political or legal implications. Osiatynski, for example, concludes his essay on Polish decommunisation: 'It may also turn out that the failure of decommunisation and resistance to the retributive phase of the revolution—with its predictable violence, injustice and destructiveness—will be praised, in the future, as one of the most important successes of the post-communist transformation'.<sup>65</sup>

A policy of reconciliation might best serve the interests of an emerging democracy in transition periods but may become a liability during consolidation periods. Laying aside cultural and historical differences, and remembering Germany, Italy and France after World War II, shows that the past does not simply disappear with the passage of time and that troubling questions do resurface. Referring to Argentina, Perelli emphasised the significance of the past as 'a central political commodity' in 'all has-been countries', i.e. in those countries where myth building flourishes and nostalgia abounds.<sup>66</sup> Parallels can be found in Central and Eastern Europe.<sup>67</sup> And in a political climate in which former communists have been able to resurrect themselves successfully in the eyes of the public, the issues of dealing with the past never cease to be instrumental in the struggle for political power. Thus, issues of how to deal with the former communists and state security agents will probably continue to resurface as a pawn in the struggle for political power.

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<sup>1</sup> Octavian Paler, 'Wir sind unsere eigenen Gespenster', *Die Zeit*, 30 July 1993, p. 39.

<sup>2</sup> Samuel P. Huntington, *The Third Wave. Democratization in the Late Twentieth Century* (Norman and London, 1991); Doh Chull Shin, 'On the Third Wave of Democratization. A Synthesis and Evaluation of Recent Theory and Research', *World Politics*, 47, 1, 1994, pp. 135–170.

<sup>3</sup> For the purposes of this article, Central and Eastern Europe includes the following countries: Bulgaria, the former Czechoslovakia, the former German Democratic Republic (GDR), Hungary, Poland and Romania. Previous versions were presented at the Fourth Conference of the GDR Studies Association, Washington, DC, 12–15 November 1992 and at the Eighteenth Annual Conference of the German Studies Association, Dallas, TX, 29 September–2 October 1994. The article has benefited from the advice of Thomas A. Baylis, Peter Brod, Patricia Davis, Ann L. Phillips and John P. Willerton as well as from the comments made by the participants at lectures given at Cornell University (February 1994) and the University of Leipzig (July 1994). I gratefully acknowledge the various contributions which have helped greatly to refine my arguments and which have added new ones. Any remaining shortcomings are my own.

<sup>4</sup> See, for example, Claus Offe, 'Capitalism by Democratic Design? Democratic Theory Facing the Triple Transition in East Central Europe', *Social Research*, 58, 4, 1991, pp. 885–901 and Sarah

Meiklejohn Terry, 'Thinking About Post-Communist Transitions: How Different Are They?', *Slavic Review*, 52, 2, 1993, pp. 333–337.

<sup>5</sup> Larry Diamond, Juan J. Linz & Seymour Martin Lipset (eds), *Politics in Developing Countries. Comparing Experiences with Democracy* (Boulder and London, 1990), chapter 1; Philippe C. Schmitter, 'Democratic Dangers and Dilemmas', *Journal of Democracy*, 5, 2, 1994, pp. 57–74.

<sup>6</sup> However, the main focus of the study is not on policy implementation but rather on policy intentions. Political purge is also narrowly defined since it is limited to penal codes and ignores issues that might be subject to labour and social legislation (e.g. retirement provisions for former agents and functionaries).

<sup>7</sup> See Stephen Holmes, 'The End of Decommunization', and Wiktor Osiatynski, 'Decommunization and Re-communization in Poland', *East European Constitutional Review*, 3, 3/4, 1994, pp. 33–36 and pp. 36–41. Stewart & Stewart point out, for example, that 'decommunisation and screening as political themes in Poland have been reduced to the obsession of a segment of the right wing', and that, after the break-up of Czechoslovakia, 'Slovakia pauses in its decommunisation'. Debra W. Stewart & Cynthia V. Stewart, 'Lustration in Poland and the Former Czechoslovakia: A Study in Decommunization', *International Journal of Public Administration*, 18, 1995, pp. 887, 893.

<sup>8</sup> As Bertschi puts it: 'When political power is threatened the weapon of lustration can be wielded to gain sympathy and to quiet opposition. However, one question continues to affect the whole of Eastern Europe: How long can new social conflicts be concealed by the smokescreen of purification?'. C. Charles Bertschi, 'Lustration and the Transition to Democracy: The Cases of Poland and Bulgaria', *East European Quarterly*, 28, 4, 1995, pp. 447–448.

<sup>9</sup> For a discussion of the role of the military in Central and Eastern Europe see Zoltan D. Barany, 'East European Armed Forces in Transitions and Beyond', *East European Quarterly*, 26, 1992, pp. 1–30.

<sup>10</sup> Lustration is the commonly used translation from the Czech term that refers to politically motivated 'cleansing'. The term lustration is derived from the Latin *lustrum* which refers to expiatory sacrifices that are limited to a period of five years.

<sup>11</sup> *OMRI Daily Digest*, 41, Part II, 27 February 1995. At the same time, in the Czech Republic there was some discussion to extend the screening law for another two years.

<sup>12</sup> Anna Sabbat-Swidlicka, 'Problems of Poland's State Security Office', *RFE/RL Research Report*, 1, 28 February 1992, p. 17.

<sup>13</sup> See *Südosteuropa*, 42, 3–4, 1993: 'Bulgarisches Helsinki-Komitee: Menschenrechte in Bulgarien nach den Wahlen vom Oktober 1991', pp. 244–256. See also 'Dokumentation: Menschenrechte', *Südosteuropa*, 43, 6–7, 1994, pp. 403–414.

<sup>14</sup> *Süddeutsche Zeitung*, 5/6 January 1994, p. 8; see also Dan Ionescu, 'Romania's Public War over Secret Police Files', *RFE/RL Research Report*, 1, 17 July 1992, pp. 9–15.

<sup>15</sup> Sabbat-Swidlicka, 'Problems of Poland's State Security Office', p. 17; 'Nothing has Ended Yet. Interview with Zdzislaw Rurarz', *Uncaptive Minds*, 4, 4, 1991–92, p. 33.

<sup>16</sup> For example, on 19 July 1990 a motion in the Senate sought to determine whether candidates for parliament had collaborated with the security police or military counterintelligence. Only 29 senators voted for the investigation, 22 against it, seven abstained and 42 (!) preferred not to show up for the vote. Six days later the government decided that any investigation into parliamentary candidates would violate several laws.

<sup>17</sup> Edith Oltay, 'Hungary's Screening Law', *RFE/RL Research Report*, 3, 15 April 1994, pp. 13–15. By February 1995 only two members of the former communist militia had been convicted for their involvement in the killing of civilians in 1956. See *OMRI Daily Digest*, 34, Part II, 16 February 1995.

<sup>18</sup> For a detailed discussion see Jiri Pehe, 'Parliament Passes Controversial Law on Vetting Officials', *Report on Eastern Europe*, 5 October 1991, pp. 4–9 and Paulina Bren, 'Lustration in the Czech and Slovak Republic', *RFE/RL Research Report*, 2, 16 July 1993, pp. 16–22. The categories are: (a) functionaries or agents of the state security; (b) collaborators of the state security who were fully aware of their collaboration; (c) communist party functionaries from the township level up (except those who served from 1 January 1968 to 1 May 1969) and members of so-called action, verification and normalisation commissions; (d) members of the People's Militia; and (e) students and junior assistants who were in KGB schools for a period longer than three months.

<sup>19</sup> 'Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands. Einigungsvertrag', *Bulletin*, 104, 6 September 1990, p. 1059.

<sup>20</sup> Judith Pataki, 'Dealing with Hungarian Communist Crimes', *RFE/RL Research Report*, 1, 28 February 1992, p. 21.

<sup>21</sup> Pataki, p. 21.

<sup>22</sup> *RFE/RL Research Report*, 1, 13 March 1992, p. 74.

<sup>23</sup> Krisztina Morvai, 'Retroactive Justice based on International Law: A Recent Decision by the Hungarian Constitutional Court', *East European Constitutional Review*, 2/3, 4/1, 1993/94, pp. 32–34.

<sup>24</sup> Anna Sabbat-Swidlicka, 'Crisis in the Polish Justice Ministry', *RFE/RL Research Report*, 2, 9 April 1993, p. 16.

<sup>25</sup> Jan Obrman, 'Czech Parliament Declares Former Communist Regime Illegal', *RFE/RL Research Report*, 2, 13 August 1993, pp. 6–10.

<sup>26</sup> See Rudolf Wassermann, 'Die strafrechtliche Aufarbeitung der DDR-Vergangenheit', *Recht und Politik*, 28, 1992, pp. 130–131.

<sup>27</sup> Ionescu, 'Romania's Public War', pp. 9–15.

<sup>28</sup> See *Erster und Zweiter Tätigkeitsbericht des Bundesbeauftragten für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik—1993 und 1995*; Klaus-Dietmar Henke, 'Zur Nutzung und Auswertung der Unterlagen des Staatssicherheitsdienstes der ehemaligen DDR', *Vierteljahrshefte für Zeitgeschichte*, 41, 4, 1993, pp. 575–587.

<sup>29</sup> *OMRI Daily Digest*, 64, Part II, 30 March 1995. For information on the files see Stewart & Stewart, p. 889.

<sup>30</sup> Ionescu, 'Romania's Public War', p. 9. See the interviews with the head of the Romanian security service in *New York Times*, 30 November 1993, p. A7 and *Süddeutsche Zeitung*, 5/6 January 1994, p. 8.

<sup>31</sup> See Kjell Engelbrekt, 'Bulgaria's State Security Archives: Toward a Compromise?', *RFE/RL Research Report*, 3, 4 February 1994, pp. 21–27.

<sup>32</sup> *RFE/RL News Brief*, 2, 25–29 January 1993, pp. 9–10.

<sup>33</sup> *RFE/RL News Brief*, 2, 29 November–3 December 1993, p. 17.

<sup>34</sup> Janusz Tycner, 'Wohin man packt, man greift im Dreck', *Die Zeit*, 20 March 1992, p. 21.

<sup>35</sup> *OMRI Daily Digest*, 65, Part II, 31 March 1995 and 94, Part II, 16 May 1995. Additional information was provided by the Polish Ministry of Internal Affairs (4 July 1995).

<sup>36</sup> For a similar approach relating to Latin America see David Pion-Berlin, 'To Prosecute or to Pardon? Human Rights Decisions in the Latin American Southern Cone', *Human Rights Quarterly*, 16, 1, 1994, pp. 105–135.

<sup>37</sup> Huntington states that prosecution 'was shaped almost exclusively by politics, by the nature of the democratisation process, and by the distribution of political power during and after the transition'. Huntington, *The Third Wave*, p. 215. For a divergent view see John P. Morgan, 'The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget?', *Communist and Post-Communist Studies*, 27, 1, 1994, pp. 95–109.

<sup>38</sup> These terms are taken from a recent article by John Torpey, 'Coming to Terms with the Communist Past: East Germany in Comparative Perspective', *German Politics*, 2, 3, 1993, p. 415. However, my use of the terms differs from his in a number of important respects. The question of whether the "legacies of the past" or the "imperatives of liberalisation" shape the trajectories of regime change is at the centre of a recent special issue of *Comparative Political Studies*. See in particular Beverly Crawford & Arend Lijphart, 'Explaining Political and Economic Change in Post-Communist Eastern Europe: Old Legacies, New Institutions, Hegemonic Norms, and International Pressures', *Comparative Political Studies*, 28, 2, 1995, pp. 171–199.

<sup>39</sup> See Clemens Vollnhals, 'Das Ministerium für Staatssicherheit. Ein Instrument totalitärer Herrschaftsausübung', in Hartmut Kaelble *et al.* (eds), *Sozialgeschichte der DDR* (Stuttgart, 1994), p. 501.

<sup>40</sup> 'There has not been a Revolution', Interview with András Kovács, *Uncaptive Minds*, 5, 2, 1992, p. 77.

<sup>41</sup> Torpey has suggested that 'the important matter may have been not so much the nature of the transition itself, as the degree of development of civil society before the demise of the communist government'. He contrasts the Hungarian and Polish cases with those in East Germany and Czechoslovakia. However, his reasoning may not hold true for Romania and Bulgaria; in addition, it assumes a relatively high level of civil society in Poland and Hungary. Torpey, 'Coming to Terms with the Communist Past', p. 422. For a critical discussion of the role of civil society see Piotr Sztompka, 'Civilizational Incompetence: The Trap of Post-Communist Societies', *Zeitschrift für Soziologie*, 22, 2, 1993, pp. 85–95 and Meiklejohn Terry, 'Thinking About Post-Communist Transitions', p. 335. I agree with her judgment that 'the term [civil society] has been used altogether too loosely in the East European and former Soviet contexts'.

<sup>42</sup> Political pact 'can be defined as an explicit, but not always publicly explicated or justified, agreement among a select set of actors which seeks to define (or, better, redefine) rules governing the exercise of power on the basis of mutual guarantees for the "vital interests" of those entering it'.



Guillermo O'Donnell & Philippe C. Schmitter, *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*, 2nd edn (Baltimore and London, 1989), p. 37.

<sup>43</sup> Helga A Welsh, 'Political Transition Processes in Central and Eastern Europe', *Comparative Politics*, 26, 4, 1994, pp. 379–394.

<sup>44</sup> 'Nothing has Ended Yet', Interview with Zdzislaw Rurarz, pp. 32–33; 'Verzicht auf eine Hexenjagd als Preis für die Macht', *Süddeutsche Zeitung*, 28/29 December 1991, p. 9.

<sup>45</sup> Engelbrekt, 'Bulgaria's State Security Archives', p. 26 and Bren, 'Lustration in the Czech and Slovak Republics'.

<sup>46</sup> For a listing of examples see Holmes, 'The End of Decommunization', p. 33.

<sup>47</sup> Oltay, 'Hungary's Screening Law', p. 15.

<sup>48</sup> Bren, 'Lustration in the Czech and Slovak Republics', p. 21.

<sup>49</sup> Thus, since in most cases no legal basis has been available, the alleged lack of sufficient professional qualifications was employed both as rationale and justification to defend politically motivated dismissals. But professional qualifications have also been used to retain and/or reinstate professionals with communist ties. Legislation passed in February 1994 stated, for example, that only judges and prosecutors with five years of experience were eligible for higher positions in the judiciary. See *RFE/RL News Brief*, 3, 14–18 February 1994, p. 19.

<sup>50</sup> For an evaluation of the role of the Constitutional Court in Hungary see László Sólyom, 'The Role of the Hungarian Supreme Court in the Change of the Social System', *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*, 76, 1, 1993, pp. 34–45.

<sup>51</sup> Stephen Holmes, *Conceptions of Democracy in the Draft Constitutions of Post-Communist Countries*, Working Paper 5.11, Center for German and European Studies, University of California at Berkeley, April 1993, p. 17.

<sup>52</sup> Romyana Kolarova, 'A Self-Restricting Court', *East European Constitutional Review*, 2, 2, 1993, p. 50. As mentioned earlier, the law is no longer in effect.

<sup>53</sup> For a more detailed account see my chapter, 'Shadows of the Past: Germany and the Legacy of SED Rule', in Peter H. Merkl (ed.), *The Federal Republic of Germany at Forty-Five. Union without Unity* (London and New York, 1995, pp. 113–127.

<sup>54</sup> *Der Spiegel*, 31, 1993, p. 44.

<sup>55</sup> Dieter Segert, 'The State, the Stasi and the People: The Debate about the Past and the Difficulties in Reformulating Collective Identities', *Journal of Communist Studies*, 9, 3, 1993, pp. 205–206. See also Gregg O. Kvistad, 'Accommodation and "Cleansing": Germany's State Employees from the Old Regime', *West European Politics*, 17, 4, 1994, pp. 52–73.

<sup>56</sup> 'What Went Right in Hungary. An Interview with Balint Magyar', *Uncaptive Minds*, 6, 3, 1993, p. 111.

<sup>57</sup> For an interesting account of the *nomenklatura* privatisation in Hungary and in Poland see Ivan Szelenyi, 'Kompradoren, Nomenklaturakapital, Kleinbürger', in Jozsef Bayer & Rainer Deppe (eds), *Der Schock der Freiheit. Ungarn auf dem Weg in die Demokratie* (Frankfurt am Main, 1993), pp. 199–205.

<sup>58</sup> See Stewart & Stewart, pp. 887, 890–891, 895.

<sup>59</sup> Thomas A Baylis, 'Plus Ça Change? Transformation and Continuity Among East European Elites', *Communist and Post-Communist Studies*, 27, 3, 1994, pp. 315–328.

<sup>60</sup> While this generalisation holds true for most of Central and Eastern Europe, it fails to reflect the attitudes of many former eastern German dissidents. Partly because of their political marginalisation, efforts to deal with the communist past have emerged as one of the key issues that have helped to keep alive the legacy of opposition in the former GDR. However, it also assists western German interests since it emphasises the 'totalitarian' nature of the old regime.

<sup>61</sup> See Irena Grudzińska Gross, 'Post-Communist Resentment, or the Rewriting of Polish History', *East European Politics and Societies*, 6, 2, 1992, p. 146 and Welsh, 'Political Transition Processes...'

<sup>62</sup> For a concise overview of reasons why efforts at decommunisation have failed in Eastern Europe see Holmes, 'The End of Decommunization', pp. 34–36.

<sup>63</sup> The dichotomy of the two strategies is explained by Jamal Benomar, 'Justice After Transitions', *Journal of Democracy*, 4, 1, 1993, pp. 4–6.

<sup>64</sup> See Benomar, 'Justice After Transitions', p. 14 and Pion-Berlin, 'To Prosecute or to Pardon?', pp. 129–130.

<sup>65</sup> Osiatynski, 'Decommunization', p. 41.

<sup>66</sup> Carina Perelli, 'Settling Accounts with Blood Memory: The Case of Argentina', *Social Research*, 59, 1992, pp. 415–451.

<sup>67</sup> Tony Judt, 'The Past is Another Country: Myth and Memory in Postwar Europe', *Daedalus*, 121, 4, 1992, p. 100.