

TRANSFORMATION

The Czech Experience

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Transformation: The Czech Experience

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Preface: The First Days

Petr Pithart

In the days, weeks and months following November 17, 1989, those of us in the Co-ordination Centre of the Civic Forum were highly focused yet blind. Whilst focused on the developments in the country, we were blind to what was going on abroad, to the way the world outside viewed us and how it evaluated our actions.

Initially, our headquarters were literally underground. The “*Laterna Magika*” (“*Magic Lantern*”) theatre in the centre of Prague served as our fortress, with its long corridors leading to overheated dressing, storage and rehearsal rooms. Our fortress was strengthened against the hostile world of external power but at the same time was isolated from external stimuli.

Fifteen years later, we can see that we made many mistakes in that early stage. Though it is difficult for us to agree on the exact nature of our mistakes, it is clear that we underestimated the unique, unrepeatable and original nature of our situation. Leaders of coups and revolutions typically regard themselves as the focal points of the universe, or, as we say in Czech, as the world’s navel. Leaders act accordingly, often in what we may refer to as an autistic manner. To feel like that is both exciting and irresponsible.

Once a revolution or coup begins and its proponents populate a theatre, the odds are that matters have already gone too far. Future leaders of a society which is fit for a radical transition to democracy should acquire the experiences of those that came before them. Certain experiences may be generalised. Free societies are much more diverse than those that lack freedom. Societies ruled by authoritarian or totalitarian regimes are in fact surprisingly alike in the way in which they respond to any movements in society beyond their control. Let us not be fooled by the different backdrops and the bizarre characteristics of different dictators, especially “our own”.

Today, fifteen years on, we are trying to learn from both our achievements and our failures. We try to imagine the position of those who will take power tomorrow or the day after tomorrow, somewhere close or a world apart. In doing so, we assume responsibility for the future of those countries setting out on the difficult road to freedom, countries that will find themselves on a stage, thrust into the spotlight.

I wish to urgently advise them that they will be neither the first nor the last to play this role, though that might be their impression. It has been said that people never learn from the past. This is not the case. It is an understandable excuse made by those who, too dazzled by the light of the moment, refused to learn a lesson.

This privileged moment will be followed by a long fifteen, thirty or fifty years. Now we know. The spotlight is no longer on us, but on the consequences of all the things we could have done better or failed to do at all, dazzled by the feeling that we were pioneers with nothing to learn.

Petr Pithart was involved in numerous activities of the Czech dissident movement before 1989. From February 1990 to July 1992, he was the Prime Minister of the Czech Republic. From autumn 1992, for two years, he worked at the Central European University in Prague; since 1994 he has been lecturing at the Law Faculty of Charles University. In November 1996, he was elected to the Senate of the Parliament of the Czech Republic, becoming its first President in December of the same year. From December 1998, he was the Vice-President of the Senate; in 2000 he was re-elected into the Senate and became, once again, its President. After Václav Havel's term of office as President of the Czech Republic ended, Petr Pithart ran for the office but was not elected. After the 2004 Senate elections, he was elected the 1st Vice-President of the Senate.

Czechoslovakia's Return to Democracy

Jiří Suk

“1989 – The Miraculous Year”

In the second half of the 1980s, the Soviet Communist empire, built to last “for all time”, was undergoing changes that eventually led to its disintegration and the realignment of power and values in the entire world. Although its role was mostly passive, Czechoslovakia played its part in these changes and at the end of 1989 and the beginning of 1990, shaped events substantially. The Soviet “perestroika” programme was not intended to be the trigger for this turn of events. Yet this attempt at deeper reforms of a corrupt and rigid bureaucratic system, closely associated with the name of Mikhail Gorbachev, prepared the ground for what came next. It loosened the Iron Curtain spanning both the “inner” and “outer” Soviet empire and allowed nations and countries to break free of its yoke. In the first years of “perestroika”, changes took place within those Communist parties which (with different extents and motivations) identified with the new wind blowing from Moscow: in the nation states of the USSR, in Hungary, Poland, Czechoslovakia and Bulgaria. Romania and East Germany took a reserved stance towards “perestroika”. However, between 1987 and 1988, developments went beyond the scope of the “enlightened” centres (or those pretending to be enlightened) and moved beyond their control. Political, economic and nationalist problems that had long been taboo were forcing their way to the surface and events of a revolutionary nature were escalating, creating synergies and accelerating political developments.

The main reason for the tendency of Soviet bloc countries to move away from the centre of the Soviet Union lay in the leadership’s reform plans. These advocated the freedom of speech (“glasnost”) as well as the intention of democratising the Communist Party of the Soviet Union, replacing the nomenclature-led bureaucratic control of the economy with managerial control and reshaping East-West relations (“new thinking”). Efforts got under way to find ways to reconcile democratic, pluralist and market principles with the realities of a state controlled by the Communist Party and based on Marxist-Leninist ideology. However, liberalisation and democratisation tendencies largely failed to produce the expected results. Rather, they exacerbated the social and

economic crisis, as well as undermining the Soviet bloc's integrity. Gorbachev and his people started losing popularity. Opinions in the party leadership polarised sharply. The reforms became stuck due to structural disputes. Tendencies towards disintegration abounded in the Soviet bloc; as a result, its leadership had no other choice but to declare the subordinated nations free and give up its strict policing role. In 1989, the outer empire, which included the countries of Central and Eastern Europe, fell apart.

Poland

The new “spring of nations” began in Poland. As early as 1988, the strong and independent Solidarity trade union set up its Citizens’ Committee, made up of 119 opposition representatives. The state accepted Solidarity as a political partner, hoping that it would at least partially discredit itself once given a share of responsibility. The Committee was divided into fifteen groups headed by chairmen responsible for preparing Solidarity for the difficult “Round Table Talks”, which were to deal with the principal political, social and economic issues. Most of the demands it wanted to put forward followed the lines of those made in 1980/81: the elimination of censorship, freedom of the press, access of the opposition to the media, dissolution of the nomenclature and monopoly organisations, the freedom of association, independent territorial self-governance, economic reform and so on. Solidarity wanted to be a powerful pressure group at the “Round Table”, persuading the regime to relax the status quo and hold free elections in the near future. The “Round Table Talks”, which were focused on three major areas – economic and social policy, political reforms and economic pluralism – started on February 6, 1989. They ended on April 5 with an agreement on the gradual liberalisation and democratisation of the regime. In the interest of holding free elections in the future, Solidarity agreed to a model of interim elections in which it could obtain up to 35 percent of the seats in the Sejm, the lower house of the Polish Parliament. Elections to the upper house, the Senate, were to be held without restrictions. Solidarity had decided not to bid for power in government after the elections, because of “the worsening economic crisis, the power of the army and the security forces, as well as uncertainty regarding the position of Moscow.” Solidarity saw its role as parliamentary opposition for a transitional period, initiating legislative changes and curbing the power of the ruling Polish United Workers’ Party. The result of elections held on June 4 and 18 was absolutely unambiguous and crushing for the ruling party. Solidarity, led by Lech Wałęsa, secured nearly all the seats available in the free election – 260 of a total of 560 in the Sejm (with 260 available) and 99 out of 100 in the Senate. The landslide victory prompted Solidarity to change its strategy: it announced that if the ruling party took the seat of the President of the Republic, the opposition would demand the position of Prime Minister. On August 19, Polish President Wojciech Jaruzelski charged Solidarity’s Catholic activist Tadeusz

Mazowiecki with the task of forming the government. The new government, in which Solidarity secured half of the 24 seats, first went into session on September 12, 1989.

Hungary

In Hungary, events also began to move rapidly. The decisive stimuli came from the ruling Hungarian Socialist Workers' Party (MSZMP), which, under strong public pressure, recognized political pluralism and began surrendering its power monopoly. As early as January, the Communist-dominated parliament passed a law on the freedom of assembly and association, which made it legal to establish political parties. The new parties formed the "Opposition Round Table" on March 22, 1989 in order to unite the opposition and prepare for negotiations with the ruling party on transition to a democratic system. After some political twists and turns, negotiations started at a "Three-Party Table", attended by the MSZMP, parties of the Opposition Round Table and the so-called "third party", consisting of official social organisations. A serious defeat was suffered by the ruling Communists on June 16, when a public ceremony was held to bury the remains of the former Hungarian Prime Minister Imre Nagy and his associates, who had been executed for their support of the anti-Soviet revolution in 1956. The funeral turned into a peaceful nationwide commemoration and a demonstration of the desire for freedom and democracy. This period of liberalisation culminated with the extraordinary congress of the MSZMP (October 6–10). The congress dissolved the Hungarian Socialist Workers' Party and established the Hungarian Socialist Party as its successor. The new party gave up its monopoly on power and declared its advocacy of a pluralist parliamentary democracy, mixed ownership, a socially-oriented market economy and civic self-determination. Between October 17 and 20, the National Assembly passed constitutional and other statutory amendments that had been agreed at the "Three-Party Table". These focused on the activity and running of political parties, the abolition of the Presidential Council, election of parliamentary deputies and the President of the Republic, and on rectifying unjust sentences relating to the 1956 revolution. It dropped the word "People's" from the name of the country and declared the Republic of Hungary an independent state with the rule of law. During free parliamentary elections held in March and April 1990, the opposition rightwing Hungarian Democratic Forum was remarkably successful (taking 43 percent of the votes), while the Hungarian Socialist Party, with 8.5 percent of the votes, only narrowly avoided complete failure.

East Germany

Developments in the German Democratic Republic were not based on compromise – the Communist regime, led by neo-Stalinist politicians headed by Erich Honecker, did not accommodate any change and insisted on the continued reality of two German

states with opposing systems of government. East Germans were discontented with the omnipresent police state and their low standard of living, especially in comparison with West Germany, and the mood in the country was one of frustration. For many, escaping to the capitalist Federal Republic of Germany was the only way out. In May 1989, Hungary opened its border with Austria, allowing a large number of East Germans to flee to the West.

Crossing the border was no longer so risky and this encouraged more and more dissatisfied people to flee – the number of refugees grew and soon an exodus was under way. In September, the opposition movement New Forum was set up and called on the state to open a “democratic dialogue on the tasks of a state with the rule of law, on the economy and culture.” In autumn, the ruling elite lost control of the situation and subsequent events were shaped by the masses, which took to the country’s streets and squares. In early October, 20,000 people demonstrated in Leipzig; three weeks later, the number was 300,000. The police force did not dare intervene. The demonstrations spread to other cities with people demanding free elections and civil liberties. On November 9, they forced the border crossings between East and West Berlin to open and the Berlin Wall, a symbol of both a divided Germany and a divided Europe, was brought down. Although the original demands of the opposition called for the liberalisation and democratisation of the German Democratic Republic (GDR), demonstrators soon showed an unequivocal desire for the reunification of the two German states. In March 1990, elections were held in the GDR. Considerable success was achieved by the Christian Democratic Union (CDU) led by West Germany’s Chancellor, Helmut Kohl, advocating reunification. Candidates of the New Forum failed in the elections. On July 1, a monetary, economic and social union of the two states came into effect and on August 23, the East German Parliament voted by a considerable majority for the GDR to accede to the Federal Republic of Germany. After nearly 41 years, the German Democratic Republic ceased to exist on October 3.

Changes also occurred in the remaining states of the outer Soviet empire. The Bulgarian “Palace Revolution” in November and Romania’s “Bloody Revolution” in December 1989 demonstrated two extremes of regime change. In one case, all change occurred within the ruling party; in the other, the power struggle took the form of fighting in the streets. Czechoslovakia took neither of these roads. The first stage of its “Velvet Revolution” was reminiscent of the German image, with squares crowded with demonstrators demanding the end of Communist hegemony and free elections. Next it followed the Polish-Hungarian model, with a historic compromise negotiated between the opposition and the state at a “round table”.

The “Velvet Revolution” in Czechoslovakia

Revolutionary events were triggered by a peaceful student demonstration in Prague on November 17, 1989, which was brutally suppressed by the police. Immediately after the police crackdown, university students contacted intellectuals, artists and theatre and film actors, and in the ensuing wave of public indignation they initiated the first active centres of civil unrest. A strike movement was born. Two days later, the “Civic Forum” (*Občanské fórum* – OF) was set up as a political movement bringing together not only dissident groups, but also other dissatisfied and outraged citizens, even some Communists and members of the “National Front” parties. Václav Havel, the best known dissident in Central Europe, became the universally respected leader of the OF. At the same time, the Slovak capital Bratislava saw the establishment of a similar civic movement, “Public Against Violence” (*Verejnosť proti násiliu* – VPN). Ján Budaj, a dissident cultural activist, and Milan Kňažko, a popular actor, became the public faces of VPN. The goal of both OF and VPN was to open a dialogue with the state on the liberalisation and democratisation of Czechoslovakia. Due to strong pressure from the crowds in the country’s streets and squares, culminating in a widespread general strike on November 27, the Communists, represented by the Federal Prime Minister Ladislav Adamec, began talks with the opposition at the end of the first week of the revolution.

The immediate result of the negotiations was agreement on the first steps towards liberalisation: the release of political prisoners; the elimination of constitutional articles on the leading role of the Communist Party in society and in the National Front’s confined political system; the legalisation of opposition groups; unrestricted access to the media and so on. The OF and VPN demanded major changes in the government’s composition and policy, yet they were not willing to get involved in the process themselves. This reluctance to take power, or at least a share of it, stemmed from the fact that the civic movements had been formed rather hastily. In fact, the process had only begun after November 17, 1989. They needed time to shape their organisations, programmes and political structures. Prime Minister Adamec used the space given to him and on December 3, formed a government still dominated by members of the Communist Party and which held 15 out of 20 seats. Yet the dissatisfied masses, which had not expended all their accumulated energy, remained the most important factor and they vigorously rejected the new federal government. The protests were tempestuous, yet remained cultivated and did not become violent. In the following days the opposition movement realized that, in order to avoid defeat, it had to seek power. Prime Minister Adamec, never called on to resign by the OF, lost his leeway and resigned under massive pressure from below. The OF secured seven key economic and legislative ministerial seats in the “Government of National Understanding” led by Marián Čalfa, an accommodating Communist, although it did not hold the positions of Interior Minister or National Defence Minister. Moreover, the VPN was not represented by a single minister.

Who Would be the New President?

On December 10, the day of appointment of the federal government and the resignation of the Communist President Gustáv Husák, the OF and the VPN announced that their joint presidential candidate was Václav Havel. However, this candidacy was opposed by the members of the Communist Party. The Federal Assembly, as the ultimate legislative body in the Czechoslovak Federation, was largely made up of Communists who decided to promote direct presidential elections in hope of the victory of their candidate Ladislav Adamec, who had resigned from the post of Prime Minister. Slovak political parties and social organisations also refused Havel and proposed Alexander Dubček, the political symbol of 1968. A paradoxical situation developed: the OF, a revolutionary political movement, wanted the president to be elected by the Communist-controlled Federal Assembly in line with the Communist constitution, while the Communist Party, with a specific purpose in mind, intended to make a significant constitutional change by establishing a presidential system. The OF wanted to prevent this but did not know how. It proclaimed its will to construct a new state and take over all constitutional and state bodies, yet it could not influence Parliament as it did not have a single deputy. As yet, the OF had no formal instruments at its disposal – only the mobilised public. It was hesitant to set the public in motion once again, as this could bring about the disintegration of the Federal Assembly and reawaken the revolution, something it definitely wished to avoid.

A way out of the impasse was offered to the fumbling democrats by Prime Minister Čalfa. At a tête-à-tête meeting, held at his insistence on December 15 at the Government Presidium Office, he agreed on a solution with Václav Havel. The objective of their joint plan was that the Federal Assembly, as it stood, should elect Havel the Czechoslovak President before the end of 1989. Čalfa's fast and emphatic intervention in Parliament was decisive. At the session on December 19, Communist deputies gave up their hopes for direct presidential elections and without exception submitted to the will of the democratic movement. To prevent a crisis in the relationship between Czechs and Slovaks, it was necessary to eliminate pressure between the two competitors for presidential office – Havel and Dubček – in a way satisfactory to both of them. The two met several times for this reason. The result of complicated talks, accompanied by negotiations between the political parties at a “round table”, was an agreement on the way to allocate the highest official positions. On December 28, Alexander Dubček was elected Speaker of the Federal Assembly and, a day later, Václav Havel was elected Czechoslovak President. Both were elected unanimously. It was only after these official acts that university students – who had been the momentum and the symbol of the protest movement since November 17 – ended their strike, as they considered events to be irreversible.

The First Six Months

The political hegemony of the Communist Party of Czechoslovakia (KSČ) was broken by the elimination of articles of the Constitution prescribing its leading role in society and the state, its loss of key ministries in the federal government and the election of Václav Havel as President of the Republic. During late January and early February 1990, the Communist Party ceased to be the dominant power even in the highest legislative bodies, yet it retained a very strong and strategic position in politics until the free elections. Some figures showing the results of elections into the highest legislative bodies provided below will give a better idea of the situation. The extent and method of elections were agreed by what were called “decisive political forces” at “round table” discussions on December 8, 1989. The “decisive political forces” were a very non-homogeneous conglomerate, composed ad hoc and in an improvised way of political parties, movements and organisations of greater, lesser and even quite negligible importance. In effect, they consisted of the pre-November National Front plus the OF and VPN.

The main change in the composition of the 350-member *Federal Assembly of the Czechoslovak Socialist Republic* (FS) took place in January 1990. Of the 242 deputies of the Communist Party of Czechoslovakia, 122 resigned or were dismissed. The Civic Forum and Public Against Violence obtained 114 seats (six of them remained vacant) and unaffiliated deputies obtained 41 out of 64 seats. The Czech and Slovak parties of the former National Front retained their former number of seats – the Czechoslovak People’s Party and the Czechoslovak Socialist Party obtained 18 seats each, the Democratic Party and Freedom Party received four each. In early February 1990, the 200-member *Czech National Council* (ČNR) was restructured. The Communist Party, which had 133 seats, dismissed 51 of its deputies and their place was taken by OF Forum deputies. 33 seats were retained by unaffiliated deputies and the Czechoslovak People’s Party and the Czechoslovak Socialist Party each kept 17 seats. A major change in the composition of the 150-member *Slovak National Council* (SNR) took place a few days later. Out of the original 106 Communist deputies, 21 resigned and another 20 were dismissed by the Communist Party of Slovakia itself. The remaining 85 seats were divided roughly fifty-fifty between the other political parties and social organisations with unaffiliated deputies.

In February 1990, political decision-making moved from “round tables” to legislative bodies. *Parliamentary democracy* was thus formally restored in Czechoslovakia. The existing Constitution and the structure of state bodies remained in place. In January, OF’s proposal for restructuring the federal state was defeated, initially because of lack of internal loyalty and later because VPN voted against the motion. The objective had been to introduce better and more effective communication and improve the functionality of state bodies under the approaching conditions

of freedom and political pluralism. However, this attempt at substantial change was defeated by a policy insisting on constitutional continuity, advocated by Federal Assembly officials and Slovak politicians who viewed the country's 1968 federal arrangement as the country's greatest political asset and rejected any changes to it.

Conditions in the partially restructured governments and parliaments, composed of politicians and deputies of diverse backgrounds, leanings and interests, were rather peculiar. The nature of politics in the transitional period was influenced by rather unusual, and in some ways distinctive, types of politicians. Dominant among them were those more or less allied to the Communist Party, advocating Communist or socialist ideologies. They could be divided as follows: (a) *ex-Communists* (former reform Communists) who returned to public life after a forced respite of 20 years (e.g. Alexander Dubček, Speaker of the Federal Assembly and Zdeněk Jičínský, Deputy Speaker of the FS); (b) *neo-Communists*, representing the “new” post-November KSČ; (c) *old Communists*, retaining both their conviction and political style, who had mostly resigned from senior positions or had been dismissed from them; (d) *post-Communists* – political pragmatists who turned away from the Communist Party and its doctrine, mostly in favour of another political doctrine (Federal Prime Minister Marián Čalfa, Federal Deputy Prime Minister Vladimír Dlouhý, Speaker of the Slovak National Council Rudolf Schuster, Slovak Prime Minister Milan Čič, and others). In counterbalance to the four types above, there were two fundamental types of politician representing *civic politics*: (e) non-Communist civic activists with a *dissident* or non-Party background (e.g. President Václav Havel, Czech Prime Minister Petr Pithart, First Deputy to the Federal Minister of Interior Jan Ruml); and (f) *pragmatic activists* who entered politics during the revolution. There were still a few influential officials active in politics who came from the four political parties of the former, Communist-controlled, National Front.

Fundamental Reform Acts

It was in this constitutional and power framework that a gradual liberalisation and democratisation of political, social and economic life began. On January 23, 1990, the Federal Assembly passed the “small act on political parties”, which allowed a pluralist political system to emerge. An advantage was conferred to the well-established parties of the pre-November National Front (including the KSČ), as they were allowed to become part of the emerging political system without any restrictions. The political movements of Civic Forum and Public Against Violence became the new ingredient in the system. In addition to these parliamentary formations, numerous other political parties were established with the ambition of being co-opted in January and February, or elected in the June general election. The new Election Act, passed on February 27, stipulated that elections would be based on the system of proportional

representation. There would be 12 constituencies and 5 percent would be the election threshold (3 percent in the Slovak National Council). The term of office was set at two years and the key task for the MPs and politicians would be to draft and adopt new constitutions. Between March 27 and 29, 1990, Parliament passed important acts establishing fundamental civil liberties – on the association of citizens, the freedom of assembly, the right of petition, as well as amendments of the Press Act and the Civil Code. In the second half of April, acts on the equal standing of all forms of ownership, on joint-stock companies, on running small enterprises owned by individuals and on state-owned companies were approved, preparing the ground for subsequent changes in the economic sphere. The two national parliaments approved new names and symbols for the two states – the word “socialist” was dropped from the names of both republics, changing their names to “the Czech Republic” and “the Slovak Republic” while the common state was renamed the Czech and Slovak Federal Republic. In early May, Parliament abolished the death penalty and passed an amendment of the act on primary and secondary schools, as well as a new Higher Education Act granting freedom and autonomy to academic communities.

Changes in foreign policy were also intended to be highly dynamic, indicating that Czechoslovakia was leaving the “world of yesterday” and taking a new direction. This trend was symbolically underscored by the arrival of two unusual visitors from abroad. On February 2, Tenzin Gyatso, the 14th Dalai Lama of Tibet and fresh Nobel Peace Prize laureate, arrived in the country. On April 21 and 22, Pope John Paul II visited Bohemia, Moravia and Slovakia. As early as January 2, President Václav Havel – embraced and appreciated worldwide as a symbol of swift and peaceful takeover of power – visited both the German states, supporting their reunification and expressing regret over the unrestrained expulsion of Germans from Czechoslovakia after the end of the World War II. The visit by a Czechoslovak delegation led by President Havel to the US between February 19 and 23 culminated in a triumphant reception by the Congress. Three days later, a treaty was signed in Moscow between the Czechoslovak and Soviet Governments on the withdrawal of Soviet troops from Czechoslovakia (the last Soviet soldier left the country on June 27, 1991). At a meeting of the member states of the Warsaw Pact on June 6 in Moscow, delegates agreed to dissolve the pact gradually in favour of building collective security. Czechoslovakia expressed its interest in co-operating with Western European organisations. On May 7, the Council of Europe granted the country special guest status and on the same day an agreement on trade and economic co-operation with the European Community was signed in Brussels.

The political process was much more complicated than might be suggested by a plain list of approved acts, triumphant foreign visits, bold statements and surprising proposals. Diverse power and interest coalitions took shape at all levels of the hierarchy,

with various politicians joining forces or parting company *ad hoc*, depending on the relevant situation. In general, two kinds of alliance took shape in the Czech Republic – between ex-Communists and neo-Communists; and between civic politicians and either of the them. Several spheres of political conflict emerged, including economic reform (between proponents of radical “shock” therapy and the gradualists) and political ideology (left vs. right, state control vs. neo-liberalism).

Economic reform and coming to terms with the legacy of the Communist Party of Czechoslovakia and its crimes became the focus in the Czech Republic. In Slovakia, neo-Communists and ex-Communists united in their resistance against civic politicians, whose anticipated rise to power made them feel threatened. Soon, another field of conflict emerged, concerning Slovak national interests (moderate and radical Slovak nationalists vs. followers of general democratic and civil values). The key topic of political discussion was the position of Slovakia within Czechoslovakia and, soon afterwards, Slovak independence.

Czech and Slovak society had been cut-off from the experience of democratic politics for a period of fifty years. The November revolution stirred up numerous problems and issues that had been left by the wayside for years, and it uncovered old animosities, raised expectations and hopes, and created fresh disputes. The assumption that constitutional continuity would warrant a smooth and well-organised transition to parliamentary elections turned out to be unrealistic. A very general view of continuity, along with the absence of a clear-cut strategy, created space for political games between opposing interests. As a result, what should have been a guarantee of stability was ironically becoming a recipe for disintegration and the partitioning of power. Politics were not dominated by a commanding idea; no traditional or new framework guaranteeing legitimacy (sovereignty of the people, etc.) gained the upper hand. The notion that this was a fruitful restoration of chaos and the beginning of the road to pluralism, proposed by some post-modernist social scientists, is highly questionable.

Initial Problems with the Past

Václav Havel was elected President at the very end of 1989 by a Parliament made up largely of Communist deputies. The Civic Forum respected the Communist Party as a fully-fledged part of emerging political pluralism. Even so, *anti-Communism* became a major problem in the subsequent period. In January, February and March 1990, it surfaced in the second largest Czech city, Brno, the capital of Moravia. The local Civic Forum, led by ex-Communist Jaroslav Šabata, later a signatory of Charter 77, allowed Communist Josef Pernica to take the prestigious and representative office of Mayor of Brno. This set off a wave of protests from a section of Brno's society and its local Civic Forums, headed by Petr Cibulka, a dissident and former political prisoner. Although

Brno's Jacobin-like heretical campaign was subdued, anti-Communism uncontrollably made its way into the Civic Forum's politics and started to act inside it as a dividing factor. In particular, "final hour revolutionaries" found it a suitable tool for fighting for influence and power. District and regional Civic Forums found it to be a simple and compelling instrument for fighting local "Communist mafia" and "nomenclature brotherhoods", which were transferring their political and social capital into the area of private enterprise.

In mid-April 1990, Prague's Municipal Prosecutor Tomáš Sokol (OF) proposed outlawing the Communist Party of Czechoslovakia. The proposal was the final straw and created strong tension between the Civic Forum's compromise-inclined leadership and the ever more radical local Civic Forums. With the approaching elections, anti-Communism was gaining ground, and even National Front political parties that had collaborated for decades with the Communist Party were demanding that the Party be banned. However, there was one group whose legitimacy (the right to speak first and most loudly) in calling for steps to be taken to come to terms with the Communist past was undeniable – the political prisoners of the 1950s. Their minority voice was drowned out by the turmoil of the time, and few people listened. However, it was at their insistence that the Federal Assembly passed the Judicial Rehabilitation Act, which largely copied a similar law from 1968 that also defined its scope to a significant extent – it annulled unjust sentences and allowed for the compensation of victims of Communist judicial tyranny, though it did not brand the Communist regime criminal or illegal. This became a topic of heated discussion in the years ahead.

Throughout the entire period of transition, politics were shaken by questions surrounding the State Security Service (*Státní bezpečnost* – StB), the secret police force. The Interior Ministry immediately became the focal point for various interest groups whose representatives found themselves within its sphere of influence, whether intentionally or by coincidence. It was a meeting point for different interests with various plans and motivations and until the June elections, neither the OF or VPN had much influence on what was going on there. The winners of the revolution gave up trying to gain control over this key power institution, where pre-November officials retained their influence. The main goal of all activities at the Interior Ministry, whether partly public or entirely covert, was to get hold of the power capital concealed in its archives. The first unofficial "screenings" (referred to as "lustrations", they consisted of screening a politician's contacts and links to the Interior Ministry in general, and the StB in particular) were conducted behind the doors of register offices and secretariats. Although lustrations aimed to cleanse the public domain of StB informers, attempts were also made to discredit important political representatives and figures from the democratic movement by fabricating and disseminating incriminating files. This uncontrolled and dubious process (the files of some 15,000 most important informers

were destroyed or removed at the beginning of the revolution) led to official pre-election lustrations of candidates of political parties and movements. In Slovakia, the post-Communists and ex-Communists that were now advocates of nationalism were united in their suspicion of, and resistance against, civic politicians representing liberal and federalist ideas. The Czech Republic, on the other hand, saw a fierce clash between former “post-Communists” and “ex-Communists” concerning policy with respect to the Interior Ministry.

The question of economic transformation also became a topic of discussions (initially these mostly took place behind the scenes). Immediately after the establishment of the “Government of National Understanding”, it might have seemed that the economy would be a matter for academic discussion, yet the first months of the new year showed that it would become a political issue *par excellence*. The Civic Forum initiated an informal competition for the best “scenario of economic reform”, which provided an opportunity for diverse power groups and schools of thought to get involved and promote themselves. Naturally, economic reform blueprints developed by economic experts of the governments eventually turned out to be the most influential. A schedule of reform developed by the team of experts affiliated to the Czech Government had some portions in common with the scenario submitted by the Federal Government’s experts, which later prevailed in the informal contest.

Despite further problems and difficulties (for example the crime rate increased significantly after the President’s generous amnesty), the government enjoyed considerable popularity. Many people projected their desires and expectations into the most prominent politicians. President Václav Havel embodied a “different” politic, characterised by appeals to morality, meaningful gestures and polished language. Jiří Dienstbier, another former dissident and the post-November Foreign Minister, was identified with Czechoslovakia’s new, pro-Western, foreign policy. Already in the transitional period, the Finance Minister Václav Klaus (President of the Czech Republic since 2003) personified a rapid, radical and highly promising economic reform. In Slovakia, the most popular politicians included the Slovak Prime Minister Milan Čič and the Speaker of the Slovak National Council Rudolf Schuster, which was surprising given their connections to the pre-November Communist establishment. This was to a large extent due to the fact that they managed, using skilful manoeuvres and gestures, to convince the public of their ability to successfully defend Slovak interests within the federation.

The popularity of, and confidence in, new political symbols was intricately linked to three post-November myths. The myth of “belt-tightening” nurtured the belief that temporary restraint and modesty would lead to a substantial improvement in living standards and general prosperity, giving politicians leeway to adopt unpopular measures. The second myth went under the slogan “back to Europe” and created

the impression that Czechoslovakia would quickly join the economically developed countries of Western Europe. The third myth could be entitled “political freedom as the road to the rapid culmination of Slovak national independence”.

The First Parliamentary Elections

The anxiously awaited parliamentary elections, held half a year after the November revolution (June 8 and 9, 1990) were attended by nearly 90 percent of the electorate. Czech and Slovak citizens could, after 44 years, select from several dozen political parties and movements. This “Celebration of Democracy” was tainted by two affairs concerning the chairman of the Czechoslovak People’s Party (ČSL) Josef Bartončík and the leader of Public Against Violence Ján Budaj, who were both branded as collaborators of the Communist secret service StB. Budaj was on the list of candidates with positive lustration results and withdrew from the VPN’s list of candidates, although he categorically denied collaborating with the StB. The VPN movement gave him unconditional support and challenged the legitimacy of the entire screening process, which had been prepared hastily by interior ministries lacking systematic management and rife with shady practices. Bartončík was not among the ČSL candidates with positive screening results. However, on the basis of a testimony by a former StB officer and ambiguous information in StB files, the former dissident and Deputy Federal Interior Minister Jan Ruml (OF) singled him out as a long-term and important StB agent. The Czechoslovak People’s Party regarded it as an illegal, politically motivated, attack before the start of the election campaign.

As expected, the Civic Forum was victorious in the Czech Republic, gaining nearly 50 percent of the seats in the 200-member Czech National Council as well as in the 150-member House of the Nations of the Federal Assembly. The victory of Public Against Violence in Slovakia, which had been less certain, was not as overwhelming, but it was still convincing – the VPN secured a third of the seats. The democratic political movements that had been born spontaneously in November 1989 in the squares of Czech and Slovak towns triumphed in the elections. The Communist Party of Czechoslovakia was voted for by 13-14 percent of the population. Given the mounting wave of anti-Communism, this was a success, yet compared to the interim period, the Communists lost a considerable number of votes. This decline also led analysts to believe the party was doomed to gradual extinction; however, subsequent years have shown this to be the wrong assumption.

The election results determined the nature of coalition talks on forming the governments that took power in late June. Despite the objection of the Civic Forum, Marián Čalfa (KSČ/VPN), who had considerable support from President Havel, once again became the Federal Prime Minister. Including the Prime Minister, the Government was composed of 16 members (9 OF, 5 VPN, 1 unaffiliated, 1 KSČ).

Alexander Dubček (VPN) was re-elected the Speaker of the Federal Assembly of the Czech and Slovak Federal Republic; Zdeněk Jičínský (OF) became the First Deputy Speaker. Dagmar Burešová (OF) became the Speaker of the Czech National Council and František Mikloško (VPN/KDH) became the Speaker of the Slovak National Council. The post-election talks culminated in the election of the new Czechoslovak President on July 5, 1990. In a secret ballot, the Federal Assembly selected Václav Havel to be the only candidate (234 for, 50 against). This meant that a full transfer of power to the democratic movement did not take place until a year after the fall of the Communist regime.

The first free local elections were held on November 23 and 24, 1990. The winner was the Civic Forum with 36 percent, ahead of the Communist Party of Bohemia and Moravia (KSČM) with 17 percent and the Czechoslovak People's Party with 11.5 percent. The turnout was nearly 75 percent of eligible voters.

Realignment of Political Forces

The downside of the election triumph was the great instability of those political movements that did not have an elected leadership and were not represented by a generally respected figure either in the Czech Republic or in Slovakia, but instead by a loose group of individuals with different, if not opposing, opinions. The bodies and democratic mechanisms ensuring the functionality and mobility of the movement also continued to lack clarity. Politicians who had headed the movement since the end of 1989 tried to extend the lifetime of the “politics of consensus” which, however, was chaotic in its essence. In fact, the “consensus” had only been maintained because groups with differing opinions were forced to suppress their interests temporarily in order to achieve a good election result. Appeals for non party-political centrist politics, backed by President Havel's authority, turned out to be ineffective after the elections. Full of internal tension, there was no internal or external force to hold the Civic Forum together. A time of division was dawning. The differentiation of opinions foreshadowed the division of both the OF and the VPN into several well-defined political parties. In particular, the differences revolved around the growing dispute between the Czechs and Slovaks, economic reform and attitudes to the Communist past.

The first clash came immediately after the elections. The appointment of some Communists into parliamentary functions came under sharp criticism from rightwing OF deputies. The non-elected OF leadership – whose electoral success strengthened its conviction that no major changes needed to be made to the OF's structure – was showered with expressions of displeasure. This time, however, they were not only coming from outside, but also from their own ranks. Divisions began in the respective parliaments. As early as September, following disputes over the nature of economic reforms, the Inter-Parliamentary Club of the Democratic Right was set up, which was

made up of the Club of Rightwing OF Deputies in the Czech National Council, led by Jan Kalvoda (ODA), and a similar faction in the Federal Assembly, headed by Daniel Kroupa (ODA). In response to the establishment of the Inter-Parliamentary Club, MPs who did not wish the Civic Forum to be divided established the Liberal Club (December 13, 1990), which was joined by most ministers of the Czech and Federal Governments.

An unavoidable and fundamental transformation of the Civic Forum was approaching. The congress on October 13, 1990, brought the defeat of those who wished to preserve the movement in the existing form of a politically undefined centrist grouping until the general election in 1992. In line with the wishes of most district and regional Civic Forums, the charismatic Finance Minister Václav Klaus was elected chairman – he made no secret of his intention to transform the Civic Forum into a rightwing political party with a clearly defined programme and membership that would support him in promoting a radical economic reform. In spite of the objections of President Václav Havel, the founder of the movement and its most influential political figure, the Civic Forum congress backed the intentions of Václav Klaus.

President Havel convened OF representatives to decide on the future of the movement, in particular the continuation of its activities until the next general election. This came from an effort to retain a majority in the Czech half of the Federal Assembly and in the Czech National Council, in order to avoid major changes in the composition of the Czech and Federal Governments. Both the OF's expected successors agreed on a parity-based division of seats in the presidiums of the parliaments, in committees and governments. The last national congress held in Prague on February 23 decided to divide the Civic Forum into the Civic Democratic Party (ODS), led by Federal Finance Minister Václav Klaus, and the Civic Movement (OH), informally led by Jiří Dienstbier, the Foreign Minister. Most of the regional Civic Forums opted for integration into the ODS and it soon became a relatively strong political party and an influential parliamentary faction. On the other hand, most ministers of both the Czech and federal governments – including Petr Pithart, the Czech Prime Minister, and Dagmar Burešová, Speaker of the Czech National Council – joined the OH. This meant that the Czech Government in fact became a minority government. This was yet another surprising paradox of the policy of “constitutional consensus”.

Economic Reform

During the second half of 1990, decisive political and legislative steps were taken towards economic transformation. In September and October, the Federal Assembly approved the scenario of “radical economic reform” developed under the leadership of Finance Minister Václav Klaus. The Assembly passed the “small privatisation” act and the act on mitigating the consequences of injustices regarding property (“Property

Restitution Act”). The Government Council of Economic and Social Agreement (“tripartite initiative”), a body for negotiations between government, trade unions and employers, was established. In mid-October, the Czech crown was devalued against the dollar and other convertible currencies.

As of January 1, 1991, prices were liberalised. The first public auctions of small companies, shops, restaurants and other similar entities launched the “small privatisation”, which continued until December 1993. Over 20,000 entities worth 36 billion Czechoslovak crowns were auctioned in the Czech Republic. At the end of February, the Federal Assembly passed the act on “large privatisation”, enabling the transfer of state-owned assets to private business. The act on the ownership of land and other agricultural property, passed by the Federal Assembly on May 21, was part of a legislative package restoring property to its rightful owners, in this case mitigating the consequences of wrongs done to the owners of farmland and forests between 1948 and 1989. The first wave of “coupon privatisation”, in which the state was offering shares in 1491 companies with a total value approaching 300 billion Czechoslovak crowns, was launched on November 1, 1991, with the registration of “coupon holders”. Under the influence of government propaganda and commercial advertising, 6 million Czech and 2.5 million Slovak citizens participated, each purchasing a “coupon book” containing a thousand “investment points”. In November 1991, the Federal Assembly passed the Environment Act and the act on the regulation of property relations and on settlement of property claims in cooperatives (dubbed the “transformation act”). Starting May 18, 1992, all holders of “coupon books” could invest their coupons either directly into companies undergoing privatisation or into investment funds. Three quarters of the holders of coupons, influenced by an advertising campaign and hoping to become instantly rich in the milieu of “people’s capitalism”, placed their investment points into the hands of investment funds.

There were also other ways to carry out economic reform. The already mentioned disputes between economists of the Federal and Czech Government concerning privatisation, for example, continued after the elections. The different policy blueprints shared some basic steps. It was clear that price deregulation, partial currency convertibility and the liberalisation of foreign trade had to be accomplished at the same time. Neither was there any doubt about the necessity for extensive privatisation, yet the question was “how” this should be done. *The restitution of property* to its rightful owners was one option, which was intended to at least partially remedy injustices and crimes regarding property perpetrated by the Communist state after 1948.

The only major difference of opinion concerned whether the state should restructure key companies prior to their privatisation. The Civic Democratic Party (ODS) promoted the idea that the state should not interfere in any way with business on the microeconomic level. It advocated privatising all companies through

the coupon method, arguing that there was not enough capital in the country for the companies to be privatised using standard methods, i.e. by selling them off to solvent bidders. On a populist note, it emphasised that Czech and Slovak “family silver” could not be left at the mercy of foreign capital. The party promised that this method of privatisation would be fast and would minimise corruption. The economy ministers of the Czech Government, led by minister Karel Vrba, found this approach very risky. They objected that a sound ownership structure could not be established through a process that resembled a lottery. This would result in fragmented ownership, while foreign investors – indispensable for the Czechoslovak industry – would not be interested in buying into such companies. Privatisation proposed by economists from the Civic Movement (OH) envisaged integration of key companies into multinational corporations, stressing that preparation was necessary and mechanisms were needed to control the privatisation process.

Minister Klaus promoted the idea that it was inadmissible to interfere with individual companies, adding that the task of government was merely to create a general framework and everything else would be taken care of by the new owners and the “invisible hand” of the market. This difficult set of questions and issues was considerably politicised and its ideological aspects overemphasised. Klaus described his opponents as supporters of discredited state interventionism, crypto-Communists, leftists and proponents of an irresponsible “third way”. The coming years showed that large companies privatised into the hands of foreign investors were prosperous, while companies privatised through the coupon method were ailing or going bankrupt.

In conclusion, one can say that the “small privatisation” was, despite certain isolated problems, successful and made a major contribution to the dynamic development of the service sector. “Large privatisation” cannot be described as equally successful – it was accompanied by widespread corruption, practices referred to as “tunnelling” and “juicing” (new Czech expressions for asset stripping, the criminal transfer of assets away from companies and banks). The fact that the authors of economic reform failed to introduce controls and a sound legislative framework opened up opportunities for “financial sharks” and subsequently led to intimate liaisons between politics and business.

The public’s response to the chaos, confusion and mounting insecurity of the first two years after the fall of the Communist regime was to elect strong charismatic figures in the parliamentary elections in June 1992. Vladimír Mečiar, the chairman of the Movement for a Democratic Slovakia (*Hnutí za demokratické Slovensko* – HZDS) in Slovakia and Václav Klaus, the chairman of the Civic Democratic Party (ODS) in the Czech Republic, epitomised figures with clear-cut ideas and promises – the former stood for politics of national choice, the latter for politics of economic prosperity. The talks they held on relations between the two republics failed to produce a

mutually acceptable solution and on November 25, 1992, parliament voted to divide Czechoslovakia into two separate countries, to be effective on December 31.

Conclusion

With the break-up of Czechoslovakia into two independent republics, the Czech Republic and the Slovak Republic, a country ceased to exist which had endured for 74 years in the turbulent conditions of Central Europe. It ceased to exist because it never managed to solve the fundamental question regarding its existence in a satisfactory way. Since the political elites considered maintaining the integrity and historical heritage of the country a priority, its disintegration was the key failure of the transformation process. On the other hand, the actual act of division was peaceful, fast and disciplined, which – when compared with the bloody nationalistic score-settling in the former Soviet Union and Yugoslavia – must be considered positive.

The second free elections in 1992 completed the return to a system of parliamentary democracy with the dominant role played by political parties. In this sense, the Czech and Slovak republics approached the Western European model, returning to the ideals that established Czechoslovakia in 1918 as a modern state. However, the activities of the political parties were considerably affected by careerism and favouritism, and especially by intimate ties between the media, businesses and politics. Major political scandals were yet to come. Equally, the results of economic transformation – or rather its victorious scenario, known as “shock therapy” – are very contradictory. Faith in the omnipotent “invisible hand” of the market and in the assumed traditional virtues of the Czech and Slovak people turned out to have its limits, as there was an increasing tendency to get rich quick, at the expense of society as a whole and in contradiction to the rule of law and universally shared values. Visible changes for the better were made in some of the areas that had led to the demise of Communism – everyday consumer goods were no longer scarce and the quality of services had improved. However, when it comes to “large privatisation” (the transfer of large volumes of assets into private hands), the expectations attached to the “coupon method” were not met as it failed to create a stable capital environment or boost the economy. Often, political decisions were intentionally based on self-interest – in particular there was an absence of political will to allow controls into the privatisation process, allegedly due to the concern of causing unnecessary delays by introducing bureaucracy, but often the true reasons were self-indulgence or self-interest.

The question as to how the Communist past should be addressed reached a state resembling schizophrenia as early as the first half of 1990. The historical compromise between the OF and the KSC, brokered at the end of 1989, made it difficult to duly settle accounts with the KSC and come to terms with the heritage of its forty-year unrestricted rule. Thus there was, on the one hand, a clear awareness of the historically

outdated and criminal nature of Communism, yet on the other the democratic elite recognized the KSČ as an equal and fully-fledged part of political life without any restrictions. This resulted in chaos and confusion, for example regarding the return of the KSČ assets, worth billions of Czech crowns, to the state, as well as the punishment of the real criminals and traitors of the Communist era. This ambivalent attitude was set down in law when the act on the criminal nature and lawlessness of the Communist regime was passed in 1993. Czech society condemned Communism, yet the Communist party remained a force in parliament. Although other political parties – with their good reputation in mind – called the Communist party extremist, they co-operated with it on both the local and the national level. Like post-war Germany, Czech society will not be spared a major polarisation, probably along generational lines, and a subsequent fierce debate concerning whether enough was done to come to terms with the past. The dominant feature of foreign policy was the will to join western Euro-Atlantic civilisation, which formally culminated on the eve of the new millennium with the accession of the Czech Republic to NATO and, later, the European Union.

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Constitutionality and Retroactivity in Central Europe

Jiří Přibán

The transformation of the constitutional and legislative framework in Central European countries during the 1990s was based around two fundamental issues: how best to proceed with the transformation process and the definition of national identity. From the point of view of time, these are rather contrasting questions. The first issue prompted the creation of legislation that was largely prospective in nature. That is to say, focused primarily on the future and aimed at creating a standard framework for pragmatic social behaviour and for newly emerging concepts such as the market economy and pluralist democracy. Legislation based on the second issue, on the other hand, intended to identify the political virtues and values inherent in the process of forming a new institutional framework and rules. The first issue may be described as procedural and forward-looking, while the second may be called normative as its aim was to create a new political identity. Naturally, both must be viewed as idealized constructs, which are in reality closely interlinked.

Legislation based on the procedural strategy is typical of economic transformation. The main issue lay in whether the privatisation processes and the creation of a market economy should, wherever possible, proceed spontaneously or whether these processes should be regulated by law. At the time, neo-liberal economists considered market forces a more reliable mechanism of economic transformation and preferred them to legal regulations enforced by the state. Every intervention of the state in economic reform was considered dangerous. Many economists followed the slogan “less legal regulation means more economic freedom”.

Despite this pronounced contradiction between legislation and the economy, economic transformation could not avoid concerns such as historical justice and value judgments. As a result, legislation regulating economic transformation was significantly influenced by property “restitutions” (the restoration of property to its former owners). This was legitimised by the imperative of historical justice and by the demand to return unjustly expropriated property or to provide some form of compensation for it. The process of coming to terms with injustices and wrong-doings committed in the past thus represented an important part of post-Communist transformation, including the normative issue of a collective political identity. This issue focuses on the difference between viewing representatives of the Communist past as “them” and representatives of the post-Communist present as “us”.

Coming to Terms with the Past and Criminal Justice

Post-Communist politics were influenced by an imperative to preserve the past, recording all the injustices committed by the previous political regime and making them accessible to the newly emerging public so that they would be part of the heritage of future generations. From the perspective of retributive criminal justice, this imperative can take a minimal form, renouncing any legal steps; or a maximised form, striving to punish all crimes and injustices committed in the past and compensate the victims. The minimal form, which rejects the application of the general principles of criminal justice, was typical of various truth and reconciliation committees set up after the fall of authoritarian regimes in Latin America and South Africa.

Yet the Central European experience was completely different. In general, new democratic governments did not relinquish the use of the criminal justice system to secure the political stability of the new regime and national unity. However, there were also attempts in Central Europe to deal with the former Communist regimes by extra-judicial means. One example is the decision of the parliament of the Federal Republic of Germany to set up a committee to formally investigate the causes and consequences of the Communist dictatorship in the former German Democratic Republic. Parliament assigned the committee the task of assessing the GDR's forty-year existence. It was a task similar to that of the Truth and Reconciliation Committee in South Africa. Between May 1992 and May 1994, the parliamentary committee comprising of 16 members of parliament, 11 academic advisors and many administrative staff members, organised a series of public hearings, closed meetings and discussions concerning the history of the former GDR. The legislators positively received the results of the committee's work and prolonged its existence until 1995.

The government of the Czech Republic chose a rather different method to fulfil the preservation imperative. At the beginning of 1995, the Office for the Documentation and Investigation of the Crimes of Communism (*Úřad dokumentace a vyšetřování zločinů komunismu* – ÚDV) was established as an administrative unit of the Interior Ministry. The task of this authority was to document all historical injustices, acts of brutality and crimes committed by the Communist regime and its representatives and, at the same time, to initiate penal action in those cases where it was still legally possible. From the very beginning of its existence, this office combined extra-judicial and judicial measures to deal with the past. To enact the principle of making all the crimes and activities of the Communist secret police public, the legislators adopted an act on access to information contained in secret police files in the middle of the 1990s.

Poland also adopted its own minimal version of the preservation imperative when it established the National Memory Institute in July 1999. Its scope of activities included the documentation of Nazi and Communist crimes, political repressions and persecutions. Like the Czech ÚDV, the Polish National Memory Institute also

investigates and documents individual cases. For this purpose, it also makes the confidential information of the Communist secret service accessible to its victims. However, unlike those of its Czech counterpart, investigations by the Polish Institute do not have direct legal consequences.

The Void between the Past and the Future

The preservation imperative can either lead to a confrontation with the past, or to an attempt to create a new consensus as well as to generate hope in the future of politics. The social and political consequences of the preservation imperative often depend on its relation to retributive justice. Some legal scientists claim that every form of the imperative implying criminal liability or administrative discrimination against former Communist functionaries (e.g. the screenings of individuals known as “lustrations”) divides society and leads to social and political tension and confrontation. This opinion is inconsistent, however, as these confrontational legal methods have in fact been supported by a broad social consensus. Most people believed that it is right, in principle, to make those who directly or indirectly participated in the Communist regime accountable for their actions.

Despite the political controversy, retributive criminal justice accompanied the transformation processes in Central Europe for the very reason that it included efforts to redress the balance between political crimes of the past and their just punishment. Retributive criminal justice was one of the most important bridges between the political past and the future. The rejection of justice based on the idea of equivalence and balance actually weakened the principle of a constitutional state in the transitional countries of Central Europe.

In analysing the definition of retributive criminal justice and its various applications, it is important to differentiate between the following problem areas: the criminal prosecution of crimes that were not prosecuted by Communist justice but can be prosecuted pursuant to current provisions of the penal law; retroactive legislation that would enable the criminal prosecution of past crimes even in those cases when the current provisions of the penal law cannot be applied; and legal sanctions outside criminal law that nevertheless allow a certain form of individual punishment for political activities during the Communist regime.

Retroactivity

Unlike in South Africa or in Latin American countries, there was no political agreement or public consensus in Central European countries to guarantee impunity to former Communist representatives or employ a policy of reconciliation. Central European countries generally applied a penal policy in the case of political crime. In many individual cases, however, this policy proved to be difficult and often

technically inapplicable. Institutional failures and the unwillingness of some judges and public prosecutors to prosecute past crimes were common phenomena in the first half of the 1990s.

Public expectation that the new regime would deal with the political crimes of the old regime was not met due to many institutional and normative barriers. This led to a weakening of public trust and questioned the legitimacy of the new regime which was grounded in the principles of a constitutional state. The fact that crimes could be publicly exposed but could not be punished called legal legitimacy into question. The issue of retributive criminal justice and its dysfunctional nature in Central European post-Communist countries reveals one of the paradoxes of transforming into a constitutional state. The strict observation of the principles of a constitutional state and of formal criminal procedures leads to a conflict between public expectation (that Communist political crimes should be punished) and the legal outcome (only a small number of the perpetrators of these crimes could be punished and sentenced).

This politically and morally frustrating situation prompted the idea of applying special rules of retroactive justice to the judgement of past political crimes. The exclusion of retroactivity from penal law is a natural element of a democratic constitutional state and is part of its constitutional nature. However, the legal rationale typical of a constitutional state also includes the principle that no one is above the law and that all crimes should be prosecuted. The new democratic governments in Central Europe were thus expected to bring to justice those people whose political positions had made them immune to prosecution.

In post-Communist countries, the issue of retroactive justice and the prosecution of political crimes was tackled by legislative bodies, constitutional courts, politicians and non-governmental organisations. The symbolic power of this form of justice made it one of the main topics of discussions on the nature of the newly emerging constitutional state. While some considered the *lex retro non agit* principle an absolutely inviolable pillar of the democratic constitutional state, others felt this attitude reflected the cynicism of members of the legal profession belonging to the former Communist elite.

Lon L. Fuller claimed that retroactive legislation is inconsistent with the principles of a constitutional state. At the same time, however, he admitted that there can be special cases of political discontinuity in which such laws actually support the principles of a constitutional state. Fuller used the metaphorical example of Nazi Germany to demonstrate that the application of specific moral principles of law cannot ignore social and political contexts. According to him, retroactive legislation generally contradicts the principle function of law, which lies in the submission of human behaviour to rules. However, in certain historical situations, this function has been impaired to such an extent that retroactive justice becomes tolerable, and even

desirable, if it leads to the restoration of the original function of law. Situations of political discontinuity require imagination and invention in applying legal principles. At a moment of discontinuity, the prospective orientation of legislation is impossible without taking historical justice into account. The strict application and observation of the principles of legal continuity, and of the *lex retro non agit* principle, are harmful because they legitimise the previous legal system and can even result in spontaneous acts of political revenge and violence.

Similarly, Kelsen and Hart argued that every revolution includes an element of political and legal discontinuity. A new constitution and legal system subsequently define a new normative framework, which to a lesser or greater degree differs from the previous one. The constitution represents a normative detachment from the previous legal and political system and it can be used to apply the new legal principles even to those acts committed in the past, only subsequently defined as crimes. The nature and extent of legal discontinuity can vary significantly and can range from the total revolutionary destruction of the previous normative order to a peaceful transformation during which elements of the new order are gradually incorporated into the existing legal system.

If we accept the argument that mutual political trust between the government and citizens is required for the application of retroactive legislation, it is obvious that such trust is typically absent in all tyrannies and totalitarian systems founded on the arbitrary use of political violence and terror. In a post-totalitarian situation, a strict exclusion of retroactivity from penal law can paradoxically prolong the impact and effects of political terror and violence in the new political and legal situation. The extent of political discontinuity and the future effect of retroactive penal laws and justice become the most important issues that a new democratic government and constitutional bodies must resolve. The principal effect of any retroactive legislation in a democratic society has to be the strengthening of political trust, as well as the integrity and stability of the new legal and constitutional regime.

The legal fiction of constitutional continuity is unthinkable without reference to political trust. In Central European countries such as Poland and Hungary which underwent a more gradual political and constitutional transformation, this trust originally consisted of “trust between elites” – the Communist authorities and the political opposition – built during “round table” discussions in 1988 and 1989. Democratic trust between the people and the government was supposed to originate from the limited trust fostered between the different parties at these talks.

On the other hand, in countries such as Czechoslovakia and the former GDR, which went through a quick process of radical, “revolutionary” change, almost no form of political trust was present apart from the trust between revolutionary leaders and the crowds of protesters. This absence and the need to restore political trust was

actually one of the impulses for revolutionary change. Political trust thus represents an external argument that predetermines and influences the constitutional and legal conflict concerning the principle of legal continuity and the prohibition of retroactive legislation. Retroactive justice was supposed to contribute to the restoration of democratic political trust and as such significantly influenced the internal dynamics of the transformation of the different Central European countries.

Retroactive Legislation and Constitutional Justice

A characteristic aspect of changes in Central Europe after 1989 is that the policy of legal continuity, ongoing impunity and the strict exclusion of retroactive legislation had much greater support in countries that transformed gradually (Hungary, Poland) than in the countries that went through a radical revolutionary change (the former GDR, Czechoslovakia). Continuity and the self-constraining nature of the political and social transformation from Communism to liberal democracy were perceived as important political values and the concept of discontinuity was rejected as something that could lead to catastrophic revolutionary politics. The level of political reluctance and opposition to the application of retroactive legislation and justice can thus be considered one of the most important factors for differentiating between the nature of transformation in the different Central European countries.

Retroactive justice is revolutionary justice. There are two principal legal methods of incorporating such justice into the effective application of law: retroactive legislation adopted by representative legislative bodies and retroactive decisions applied by the courts. The former method was used by new democratically elected parliaments in order to deal with crimes committed in the past. It was often used to deal with “the time bomb” intrinsic to the statute of limitations. Post-war Germany had to deal with the same issue during the denazification process. In this case, time limits for initiating legal proceedings were eventually extended for cases of homicide in the 1960s.

Besides extending the period of time for initiating retroactive legal proceedings, post-Communist legal systems had to cope with issues related to actions which could not be classified as crimes from a strictly legal point of view. Yet nonetheless, these acts constituted the worst forms of political repression, discrimination and abuse of power. In such cases, the retroactive criminalization of acts that had been deemed legal in the past was necessary.

The Formalist Approach of the Hungarian Constitutional Court

The Hungarian Constitutional Court formulated a strong doctrine of legal continuity with regard to the Zetényi and Takács Act, which intended to make it possible to prosecute serious political crimes committed between December 21, 1944, and May 2, 1990. The Court ruled that the act was unconstitutional because it would prolong

the statute of limitations applicable under penal law during that period. The act was declared unconstitutional because it represented retrospective, *ex post facto*, legislation. In its ruling, the Court also summed up its opinion on the nature of political regime change in Hungary, including the legal continuity issue. It ruled that "... there is no substantial difference between the legal regulations issued during the Communist regime and after the adoption of the new constitution. For this reason, there can be no double standard when considering the constitutionality of legal regulations... The Constitution and fundamental laws introducing revolutionary changes... were adopted free of formal defects and in accordance with the legislative rules of the old regime and derive legal liability from them..." Furthermore, the Court rejected any influence of historical justice and special political conditions on the fundamental principles of a constitutional state when it declared that "...a legal safeguard based on objective and formal principles has priority over justice that is generally subjective and not free from bias."

The Court applied Kelsen's normative definition of revolution as a framework for its arguments. Revolution is any illegitimate change of the existing legal system, i.e. any legal discontinuity not based on a procedure prescribed by the constitution. On the other hand, the Court viewed the changes in Hungary as a regulated process based on the existing legal framework. The description of changes presented by the Court resembles Hart's concept of transition in which a completely new system of law is gradually defined by applying the existing rules. The declaration that retroactive legislation is unconstitutional is based on the transitional, rather than the revolutionary, view of changes and rejects any possibility for the constitutional order to deal with political or legal discontinuity.

In reality, the Hungarian Constitutional Court's argument for legal continuity and the constitutional state conceals changes of a revolutionary political nature. In a very active manner, the Court even tried to contribute to the progress of political and legal transition when it admitted that the old system was not based on the principles of a state with the rule of law. Yet, they added, it is up to the emerging democratic constitutional state system to strictly protect these principles. The purpose of the legal continuity argument was surely not to legitimise the Communist regime that had been condemned as legally nihilistic. The Court itself took on the role of implementing "a political revolution through law" and for this purpose, it made use of the principles of constitutionality and the legal state. The requirement to take historical justice into account was perceived as a political dictate.

Many legal experts and politicians from both sides of the Hungarian political spectrum criticised this extremely formalistic approach and the paradox of establishing new laws through existing rules by assigning them a completely different meaning. While conservative anti-Communists perceived the Court's activities as a barrier to

the attempt to deal with political opponents, liberals were concerned that the Court had assumed too much normative authority during a historical period that was both temporary and transitional.

The Hungarian Constitutional Court did not only deal with the retroactivity issue in relation to retributive criminal justice, but also with respect to ownership rights and the restitution process that was already under way. In these cases, it typically adopted a much more flexible approach than in those concerning criminal justice. The Court refused to acknowledge the retroactive validity of rights violated by Communist law and thus failed to recognize the unconstitutionality of infringements of ownership rights by the Communist regime. Thereby the Court refused to interfere with ownership rights acquired by the state through nationalization, but at the same time admitted that retroactive judicial intervention and compensation is possible in those cases when it is necessary to protect the legal safeguard principle of claimants.

The Court also rigidly differentiated between the restitution of property as a form of compensation and re-privatisation of property based on national policy. While it viewed the first instance as a form of retribution and compensation for damage suffered in the past, it expediently interpreted the other as a policy leading to economic restructuring. Property restitution through compensation was subsequently defined as the government's effort to restore old obligations on a new basis by granting new title-deeds to property (known as novation). This concept is entirely prospective and forward-looking and rejects the retrospective legal obligation of the new government regarding restitutions.

The Polish Way

The Hungarian Constitutional Court's formalistic and legalistic interpretation of the constitutional state has extraordinary symbolic importance as it excludes historical demands for justice from the system of law in force. The past is viewed as being subjective and the present as objective and impartial in terms of legal (and judicial) rationale. Compared to this formalist approach, the rulings of the Polish Constitutional Court take "historical subjectivity" into greater account and do not place historical justice in such pronounced contrast with the constitutional state.

With respect to retroactive criminal justice, the Court nevertheless decided as early as 1990 that the prohibition of retroactivity formed one of the important principles of a constitutional state, as outlined in the constitutional amendment to Article 1 of the Constitution. According to the Court's ruling on the act of decreasing old-age pensions of former Communist functionaries, such legislative amendments are inconsistent with Article 1 and thus unconstitutional and invalid. Surprisingly, this ruling is consistent with the retroactivity prohibition principle formulated by the Court under the Communist regime in 1986, when it stressed that this principle

“...constitutes a fundamental principle of the legal system. It is based on values such as a legal safeguard, the stability of acts of law and the protection of law.”

Similarly, the Polish Court also formulated a very strong doctrine of legal continuity between the old and new regimes. This was, however, weakened significantly by a later ruling regarding the prosecution of Stalinist crimes committed between 1944 and 1956. In this ruling, the Court set limits for applying retroactivity by deciding that any deviation from the *lex retro non agit* principle requires a very precise definition of crimes to be judged retroactively. Although the Polish Court did not entirely exclude the possibility of applying retroactivity within the existing legal system, it declared that it could only be used under exceptional circumstances when the *lex retro non agit* principle was in conflict with the principles of substantive law.

The Concept of Legality in the Rulings of the Czech Constitutional Court

The rulings of the Constitutional Court of the Czech and Slovak Federal Republic, and later of the Constitutional Court of the Czech Republic, showed a much more flexible approach to issues of historical justice, legal safeguard and retroactive legislation. The Constitutional Court of the Czechoslovak Federal Republic dealt with this problem in its ruling regarding political screenings known as “lustrations”. Despite many restrictive measures, it is obvious at first sight that the “lustration act” is in conflict with the fundamental principle of a constitutional state that lays down the equality of all citizens before the law. When the Court was considering the constitutionality of this act, it had to deal with the issue of discrimination and persecution in its ruling. The Court then adopted the argument that lustrations prevented the destabilisation of the emerging democratic regime.

Instead of pursuing formalistic evidence, the Court’s ruling contains a strong argument claiming that the creation of a constitutional state in fact requires a formal rejection of the legal concept of legislative continuity with the totalitarian legal system as it is based on completely different political values. The Court formally acknowledged the continuity of Czechoslovakia’s legal system before and after 1989, but it rejected the possibility of interpreting legal regulations independently of the value system of a liberal democratic constitutional state. According to the Court, the discriminatory aspects of the lustration act do not call the act’s fundamental purpose, the protection of the fundamental principles and values of a democratic constitutional state, into question. The Constitutional Court thus accepted a strong argument for the policy of “decommunization” which, in its basic features, corresponds with the arguments calling for the denazification policy in Germany following 1945, for example.

Unlike the formalistic approach of the Hungarian Court, the Czechoslovak and later the Czech Constitutional Court preferred an interpretation of political and

legal change based on the assumption of political and substantive legal discontinuity between the Communist and democratic legal systems. The constitutional acts adopted after 1989, and particularly the Charter of Fundamental Rights and Freedoms, substantially changed the value system and the nature of the constitutional and legal systems. The difference between formal legality (including elements of legal continuity) and substantive law (the source of discontinuity between a democratic constitutional state and a totalitarian legal system) is the essential argument for the ruling regarding the lustration act. Later, other important rulings of the Czech Republic's Constitutional Court also referred to it. Political discontinuity defines the changes of values and principles that apply to the new constitutional and legal systems and formal legal continuity cannot restrict these values.

German Lessons in Legal Philosophy

The German approach to punishing political crimes was indisputably the most active of all the Central European countries. In November 1989, the Parliament of the German Democratic Republic, controlled by the Communist Party (SED), set up a committee for the prosecution of crimes related to the abuse of power, corruption and the manipulation of election results. The party's elite was trying to save its own political existence by consenting to the criminal prosecution of its individual members. This policy resulted in the temporary imprisonment of several members of SED's presidium in December 1989.

After the free elections in 1990, all the democratically elected parties in East Germany's Parliament supported the policy of prosecuting Communist crimes. Later, the Unification Treaty adopted this policy and the criminal prosecution of individuals was to proceed in accordance with the Criminal Code that had been valid in the Federal Republic of Germany. According to this Treaty, citizens of the former German Democratic Republic were subject to provisions of a law that was not in force in their country at the time when the acts under scrutiny were allegedly committed. In a sense, the political crimes of Communism, such as shootings on the former GDR border, electoral manipulation and the abuse of power, were in the end prosecuted and punished according to externally imposed justice.

Special attention was originally paid to economic crime and the manipulation of local elections in May 1989. A unified Germany simply took over the retributive criminal justice policy that had been initiated by the former GDR's constitutional bodies. In 1994, a special investigative body was established, whose activities were limited to five years and whose aim was to prosecute political crimes committed by the former GDR's representatives. However, the results of these investigations were disappointing as from a total of 22, 765 cases investigated, only 565 resulted in criminal proceedings.

As for the issue of retroactive legislation, Germany adopted the most active policy which included extensions of the statute of limitations and the re-criminalization of acts that had been legal under the previous system. As in post-war, post-Nazi, Western Germany, the German legislative body after 1989 extended the statute of limitations for crimes committed between 1949 and 1990 to 10 years, meaning that these extensions expired by the 10th anniversary of Germany's unification in October 2000. For cases of homicide, this time period has been extended until 2030. The German legislative body thus created a "legal fiction" much discussed in post-Communist countries, which was based on the notion that the Communist justice system was, like the Nazi system, based on an arbitrary abuse of power and the violation of the fundamental principles of the due process of law.

Border Shootings

Although the retroactive re-criminalization of certain acts is a very exceptional measure, it did occur in post-Communist legal transformation processes. This approach was typical especially for German courts considering the political crimes of Communism and serious human rights violations such as shootings on the borders of the former GDR. As in the period after 1945, following 1989 this approach was also based on the adoption of a "super-positivist" concept of justice. The Federal Constitutional Court and criminal justice bodies thus adopted practices that one could call the return of Radbruch's formula. This formula was originally used for the prosecution of Nazi political crimes, including property seizures. Although the former GDR's legal system technically allowed and justified border shootings, the Court argued that this justification was invalid because it contradicted the "super-positivist" concept of justice, as incorporated in international treaties on human rights and standards signed by the former GDR.

A reference to Radbruch's formula can already be found in the first ruling of the first trial regarding a GDR border shooting case heard by the Regional Court on September 2, 1991. Theodor Seidel, the presiding judge, applied this formula when he drew the conclusion that one cannot rely on laws that were in sharp contrast with the principles of a constitutional state and issued by a state that had no legitimacy. The Federal Court of Justice took a critical approach to this "super-positivist", moral and political argument in its judgment. Yet in reality it supported the fact that individuals carrying out the orders of their superiors cannot in itself be used to defend or justify acts that would otherwise be considered criminal. To a significant extent, the Court based its decision on laws applicable in the former GDR and thus, to some extent, marginalized the application of the formula.

The Constitutional Court later called on Radbruch's formula in its ruling that GDR citizens could not have had legitimate trust in the legal system of the time, as it was

undemocratic and in conflict with the fundamental principles of international treaties on human rights. According to this ruling, the constitutional exclusion of retroactivity in Article 103 (2) of the Constitution was not violated in any way because GDR citizens could not expect acts defined as gross violations of internationally protected human rights to be excluded from criminal prosecution, although legal according to Communist laws. According to the Court, legitimate trust in law can exist solely when these laws are formulated on the basis of democratic rules. The custom of obeying existing legal regulations does not in itself ensure protection against criminal prosecution.

Gauck's Office

To conclude this section, mention should be made of the way the legal system of unified Germany coped with the archives of the secret police (Stasi) and with Stasi collaborators. This even went beyond the framework of criminal liability. Gauck's Office represents an administrative body authorised to provide information on the past records of individuals in relation to the structures and activities of repressive bodies in the former GDR. The body is a typical hybrid of an administrative authority and a public archive. Although the Office was not authorised to issue "lustration certificates" which would, as in the case of the Czech lustration procedures, result in administrative sanctions and discrimination, the information had serious consequences for those involved.

Although the information provided by the Office did not have a direct legal effect, serious legal consequences could develop between the entities concerned, such as an employee and employer. Gauck's Office was thus an interesting and unique institution, set up by a national legislative act. Its activities, though without direct legal effect, made it possible for third parties to take decisions with legal consequences. In this respect, the German perspective differs significantly from the Czech lustration legislation that imposes direct administrative sanction retroactively on activities performed by individuals under the Communist regime.

Discontinuity, or Amendment?

When, more than 40 years ago, Otto Kirchheimer warned against the abuse of the judicial system and legal procedures by successive regimes for political purposes, he was undoubtedly right. The political abuse of law courts is one of the biggest threats to the idea of a constitutional state. Nevertheless, an analysis of constitutional justice in various Central European countries during the period of legislative and political transformation in the 1990s reveals that the new liberal democratic regimes were confronted with problems and issues of a more complex nature.

Issues related to retroactive justice were mostly dealt with by the constitutional courts. These courts had to cope with the issues of the statute of limitations and

retroactive legislation, which introduced various forms of legal sanctions and discrimination in relation to acts committed by individuals under the Communist regime. For example, the Czech Constitutional Court based its rulings on the moral, legal and political discontinuity between the Communist and democratic regimes. In unified Germany, even more consideration was given to this discontinuity. On the other hand, the Hungarian Constitutional Court and, to a greater extent, the Polish Constitutional Court, called on the principle of formal legal continuity to justify their rulings.

The Hungarian Court went as far as to reject historical justice as unconstitutional for its subjective and particular nature. The regime change negotiated at the “round tables” had rested on the prerequisite that political transformation in Hungary would proceed entirely within constitutional law and existing legal procedures. The aim of the constitutional revolution in Hungary was to avoid political conflicts and build new national unity. As Peter Paczolay points out: “...for a long time, the principal requirements of Hungarians were peaceful change, the establishment of a constitutional state and the prevention of potential conflict with the Soviet Union.” The existing constitution was a symbol of stability and continuity, not of change and discontinuity. The Hungarian revolution was the transformation of Communism into liberal democracy, guided and controlled within the existing constitutional and legal framework. This change was rather like a constitutional amendment in its nature. The control of the future through the constitutional present and past was much stronger in Hungary than in any other Central European country.

The Hungarian Constitutional Court argued that it is vitally important for a constitutional state to exclude retroactive justice, thus basing the political processes on the forward-looking logic of “revolution through law”. Yet, the approaches of the German judicial system and the Czech Constitutional Court were entirely opposite, justifying retroactive legislation and court rulings based on public trust as a necessary prerequisite for the existence of any democratic constitutional state. According to this opinion, abandoning efforts to punish past political crimes is much more harmful than adopting a number of retroactive measures.

The revolutions of 1989 were based on the public rejection of the Communist regime and on the related expectation that the crimes of this regime would be justly punished. Political discontinuity included constitutional and legal discontinuity and the new democratic regimes, therefore, had a strong mandate to deal with the past through criminal law or other sanctions. Legal retroactivity had strong support in democratic legitimacy. Any form of impunity or resignation on the possibility of punishment would be interpreted as the weakening of the principle of a constitutional state, according to which no one stands above the law. Public trust in the constitutional state depended on the ability to deal with the crimes of the past.

The various approaches to retroactivity in different Central European countries are convincing proof that there is no simple answer to the question of how to deal with the Communist past. The various strategies, arguments and interpretations presented by governments, legislative bodies and courts reflect the internal logic of the political and constitutional transformations of individual Central European countries. However, the obvious difference between the rulings of the Hungarian Constitutional Court and the Constitutional Courts in Germany and the Czech Republic clearly shows that in countries where rapid revolutionary change occurs, bolstered by crowds of people in the streets, there is generally more willingness to apply “retrospective means for prospective aims”. In countries such as Hungary and Poland, on the other hand, where transformation measures were the result of long discussions at “elitist round tables”, there is more reluctance to deal with the Communist past using the instruments of criminal law.

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The Fall of Communism in Czechoslovakia

Ján Čarnogurský

As in other Central European countries, Communism collapsed suddenly in Czechoslovakia, but signs that it was weakening were apparent several years in advance of its downfall. This was evident in its reduced ability to repress opponents. Although action was still taken against dissidents in the law courts, lighter sentences were given and the police seemed less willing to initiate criminal proceedings. In short, judges, prosecutors and the police were more or less aware of what was going in the world at large and were not willing to put their heads on the line for a regime that was less and less capable of competing with other political systems.

In Czechoslovakia, more and more people were coming to trials with the regime's opponents and they showed their sympathy with the defendants in various ways. Communication channels, which at the end of the 1980s consisted mainly of long-distance telephone calls, made it possible for broadcasters – such as Radio Free Europe, the Voice of America, the BBC and others – to run reports on the progress of the trials, including the full names of the judges, prosecutors and police officers involved as early as the evening of the first day of the trial. This made those involved very nervous since they could no longer serve the authoritarian regime anonymously. Making the full names of judges, prosecutors, investigators and other lackeys of the regime public was very important.

Responsibility of a Minority

Naturally, only a minority in a society puts up resistance against an authoritarian regime. However, this minority can motivate more and more people to take part in individual events that are part of the process of undermining the dictatorship. In Czechoslovakia during the 1980s, the number of people willing to sign a petition, make a proclamation or protest against a trial was increasing. As was the number of people willing to join a demonstration. The responsibility of the active minority lies in not driving people into protests against the regime that would put them at too great a risk, thus surpassing the current degree of awareness or the level of resistance.

During the final period of the Communist regime in Czechoslovakia, growing numbers of demonstrators with increasingly radical demands were visible: during

the “Candle Demonstration” in Bratislava in March 1988, demonstrations in Prague in October 1988 on the occasion of the anniversary of the establishment of Czechoslovakia, the January 1989 demonstrations on the occasion of the 20th anniversary of Jan Palach’s death and finally the November 1989 demonstrations all over the country. Correct assessments of the form and degree of radicalism of individual protests against the regime are important for suitably intensifying pressure on the regime. If resistance leaders assess the social situation in their country incorrectly and take protests further than the level supported by at least a significantly large group of people, they usually end in failure and such a failure, in the end, tends to strengthen the existing dictatorship.

Protests against the regime have a greater chance of succeeding if they are linked to domestic events or traditions, rather than abstract symbols familiar only to a small group of people, usually the intelligentsia. For example, Charter 77 organized a demonstration in Prague on December 10, 1987, on the occasion of Human Rights Day. Despite Charter 77 appealing to the public through samizdat media and international broadcasters, most people in Czechoslovakia knew nothing about Human Rights Day and very few took part in the demonstration. On the other hand, tens of thousands of people demonstrated in Prague in October 1988 on the occasion of the 70th anniversary of the establishment of Czechoslovakia. When organizing protests, it is also important to leave sufficient space for the spontaneity of the participants. Protest organizers should not try to direct the course of the protests in too much detail.

Isolation of the Minority

Opponents of an authoritarian regime usually operate in relative social isolation. This is understandable, as the pressure of the existing regime and the danger of repression prevent most people from participating in social change. This is all the more evident when most people live in conditions that do not allow them to envisage the existence of any other regime in their county. Social isolation tends to encourage the proponents of active resistance to devise various projects for the future that later prove to be unviable.

Between 1988 and 1989, a group of lawyers in Czechoslovakia drafted a Czechoslovak constitution to be applied after the fall of Communism. It was a constitution that met all the standard requirements of democratic states. However, the future constitution project did not reflect the real political pressures that arose shortly after the collapse of Communism in Czechoslovakia and that any constitution must respect to a lesser or greater degree. As a result, almost nothing from the project of the Czechoslovak constitution as drafted by lawyers associated with Charter 77 was implemented.

From Prison to the Government

My personal experience with resistance against Communism came gradually. In 1981, I was barred from the legal profession after ten years of working as an attorney in Bratislava, because I had defended a dissident on trial. The Communist Party did not approve of the fact that I had tried to defend her dutifully and not only formally. The letter from the Secretariat of the Central Committee of the Communist Party of Czechoslovakia, which instigated my exclusion from the Bar, stated that I was not only defending the person on trial, but also her crimes. Let me note that her crimes were copying texts of Czech and Slovak writers who had been excluded from the Writers Association for supporting Alexander Dubček's policies in 1968. After the exclusion from the Bar, I worked as a driver, manual worker and lawyer, until I ended up unemployed.

At the time of the Velvet Revolution in November 1989, I was in prison in Bratislava. I was released at the end of November 1989. One day after my release, I spoke at the demonstration in Bratislava's main square; three days after my release I became a member of the delegation of dissidents led by Václav Havel that was discussing the takeover of power with Czechoslovakia's Prime Minister in Prague. Two weeks after my release from prison, I took the oath as Czechoslovakia's Deputy Prime Minister at the Prague Castle. I was responsible for legislation, i.e. the formulation of laws regulating the change of a Communist state into a democratic one. During the first three weeks of the new government, until Václav Havel was elected President, I was also partly responsible for the Federal Interior Ministry, including the police force.

The first session of the new Government of National Understanding took place on December 10, 1989, which was Human Rights Day. We went to the government building in Prague straight from the Prague Castle where we had taken the constitutional oath. Marián Čalfa, a minister in the last Communist government, had become Prime Minister and the agenda of the government session listed only one item – the approval of a declaration on the occasion of Human Rights Day. It was an unreserved endorsement of human rights protection and the government approved the declaration unanimously, even though nearly half of its members were people appointed by the Communist Party of Czechoslovakia. Valtr Komárek (Che Guevara's former economic advisor) and I had become the first Deputy Prime Ministers. Valtr Komárek had government experience from 1968. For me, participation in the government was something completely new. Until the government session in question, the events in the previous weeks had been incredibly hectic. Only at the government session did I realize that a completely new chapter in my life was beginning and I was assuming part of the responsibility for my country's development. At the end of this government session, Valtr Komárek told me: "Jan, you look a little pale."

Communism in Czechoslovakia ended suddenly and peacefully. The changes in surrounding countries were important prerequisites for the fall of Communism in Czechoslovakia. The wall had fallen in Berlin, Tadeusz Mazowiecki's non-Communist government was in power in Poland and in Hungary the Iron Curtain on its border with Austria had been removed. The peaceful and sudden collapse of Communism in Czechoslovakia meant that legislative changes became important instruments of the subsequent transformation of society.

Changes of the Constitution

The changes began with the removal from the constitution of the article prescribing the leading role of the Communist Party in society. This article was deleted from the constitution by a parliament that had been elected through official Communist elections. Another change of the constitution allowed the replacement of the members of the Federal Assembly of Czechoslovakia and the national parliaments of Slovakia and the Czech Republic, on the basis of agreements brokered by the existing political forces. The aim was for the composition of the parliaments to reflect the existing proportions of political forces in the state. The first democratic elections were supposed to take place in the middle of 1990. From December 1989 to March 1990, more than half of all MPs in all three parliaments were replaced so that non-Communists held a majority.

Before the first elections in June 1990, approximately ten amendments had been made to Czechoslovakia's constitution. The changes were made gradually in line with the adoption of new acts of a democratic, economic and organizational nature. For example, the privatisation of the economy required a constitutional change. Other changes of the constitution were needed for the adoption of acts laying down the democratic rights of citizens and a democratic political system. An important group of constitutional changes included articles stipulating the new constitutional status of the Slovak and Czech republics within Czechoslovakia. When the new Federal Government of Czechoslovakia, in which former dissidents held a majority, took office in December 1989, no one was able to predict the course of future political developments. It was therefore not possible to prepare a comprehensive concept of constitutional changes. Constitutional amendments continued to be implemented until the break-up of Czechoslovakia on January 1, 1993. However, a comprehensive new Czechoslovak constitution had never been adopted.

An Excessively Broad Amnesty

At the end of December 1989, following the election of Václav Havel as President, the government considered his draft resolution on an amnesty for prisoners. The draft had been written by the President's Office. It bore obvious aspects of the legal opinion

that the Communist judiciary had artificially produced criminals and a great many of them should be released. I simply considered the proposed amnesty too broad. I had practical experience as an attorney, had defended criminal cases and I had recent experience from prison. I knew that the vast majority of prisoners were, even before November 1989, real criminals. Now I am referring to the 1980s, not the 1950s.

As the Deputy Prime Minister responsible for legislation, I had reservations regarding the proposed amnesty. Following a long discussion about the proposal, the government decided that I, on behalf of the government, and Alexander Vondra, on behalf of the President's Office, should review the whole proposal once again. Our personal meeting resulted in a compromise. The amended amnesty was not as broad, though not to the extent that I had proposed. The President proclaimed the amnesty at the beginning of January 1990 and thousands of Czechoslovak prisoners were released. However, a great number of them ended up back in prison soon afterwards. They had created problems all over the country and the extent of the amnesty provoked a negative response from the public.

Paradoxically, even such a broad amnesty did not apply to one convict from Poprad. I had shared the cell with his accomplice in a prison in Bratislava. F. B. from Poprad was sentenced in the first half of the 1980s under the charge of terrorism. At the beginning of the 1980s, he had sent a parcel to the Secretary of the District Committee of the Communist Party of Czechoslovakia in Poprad, containing a homemade bomb. The bomb had a light-sensitive trigger, as well as a mechanical one. The mechanical trigger was locked, so the light-sensitive trigger that would activate the bomb following the opening of the parcel did not work. The mechanical switch had not been released and the bomb was only a warning for the Communist functionary who had a very bad reputation in the Poprad district. The amnesty did not apply to F. B. because he was sentenced for an attempted violent crime. I tried to intervene on behalf of F. B. at the President's Office to obtain an individual pardon. I was not successful but F. B. was released on parole a year later, after he had served two thirds of his sentence.

New Government and New Laws

The first entirely new laws included acts on the new social and political systems in Czechoslovakia. The adoption of acts on elections, political parties and civil rights followed legislative traditions that to some extent were still preserved from Czechoslovakia between the wars. The Freedom of Assembly Act, the Freedom of Association Act, the Political Parties Act and the Elections to Legislative Bodies Act were approved. The formulation and adoption of these acts did not encounter any particular political problems. A new political structure of the country formed during the first weeks following the fall of Communism. The Civic Forum (*Občanské fórum* – OF) was established in the Czech Republic, initially as a free social movement, which

soon turned into a political party that included the main opponents of Communism. From November 1989 to its disintegration after the elections in 1990, the Civic Forum dominated the Czech political scene.

Two other political parties were revived and became active in the Czech Republic – the Czechoslovak People's Party and the Czechoslovak Socialist Party – which had more or less existed only formally under Communism. The Communist Party of Czechoslovakia also continued to exist. These four parties on the Czech political scene appointed members of parliament, government and other public authorities, based on agreements reflecting the political changes in the country. In Slovakia, the leading political organisations included the Public Against Violence movement, the Christian-Democratic Movement, the renewed Democratic Party and the newly established parties of the Hungarian minority. The Communist Party of Slovakia also lived on. These political parties, through mutual agreements, formed the political system in Slovakia.

In December 1989, the new government was very busy forming new social and economic systems. State-owned companies, which had had big problems even during Communism, simply started to fall apart under the new circumstances. The employees of many state-owned companies called for the removal of the old management, imposed by Communist functionaries, and they elected new managements. On the one hand, such developments were understandable. However, on the other hand, it was obvious that the appointment of company management could not be done through the ballot box, as even from the mid-term point of view, no management would be satisfactory to a majority of the employees. For this reason, it was necessary to amend the act on state-owned companies to allow for quick management change and to stabilize them to prevent the companies' rapid disintegration. Many companies began to go under in the new conditions. The issue of unemployment, which had basically been non-existent under the previous Communist regime – at the cost of other massive drawbacks, however – very quickly started to gain importance in society. It was necessary to rapidly adopt laws on unemployment benefits and adequately couple them to other social acts.

Criminal legislation also had to be changed rapidly. The overall transformation of criminal law legislation turned out to be a long-term task, though initially it was sufficient to drop clauses that had allowed the prosecution of political acts as crimes. Changing the Civil Code turned out to be a far bigger problem. On one hand, the new social and economic conditions in the country required its swift modification. On the other, every amendment of the Civil Code is a complex issue and requires careful preparation. The amendment that resolved the most pressing issues was prepared within one year. An entirely new Civil Code has to this day not been adopted, either in

the Czech Republic or Slovakia. The Civil Code amendments also had implications for changing the Economic Code into the new Commercial Code.

The State Security Service and Courts

As for the state security apparatus, the first change had to focus on the Czechoslovak political police, known as the State Security Service (*Státní bezpečnost* – StB). One section of the StB was dissolved in December 1989. The StB as a whole was disbanded in 1990 – its members had to leave the police forces gradually in Slovakia and the Czech Republic. However, it turned out to be a more complex process than it had initially seemed. Some units of the StB had performed tasks that required high expertise, such as wiretapping and counter-intelligence operations. Even a democratic state cannot give these activities up and the training of new experts requires significant time.

It was also necessary to clean up the judiciary. An act was adopted that shortened the period in office for judges to approximately one year. However, judges continued to perform their duties. Those judges, against whom objections were raised because of their political decisions under Communism, were screened. The judges whose decisions proved to be in conflict with international agreements on human rights were not reappointed at the end of the given year. It should be noted that very few judges were forced to leave office.

As a general statement, the initial transformation of legislation in Czechoslovakia after the fall of Communism proceeded quite smoothly and was based on logical decisions as to the most suitable solutions. As time went on and new political, social and economic problems arose in the country, the adoption of new laws was becoming more difficult and acts of law were increasingly influenced by competition among political parties.

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Changes in the Judiciary

Jaroslav Marek

After 1989, amendments of the constitution were among the key changes of the Czechoslovak, and later the Czech, legal system required to turn the country into a functioning democratic and constitutional state. In particular, this meant implementing the principles of the division of power and a system of checks and balances. The creation of an independent and functional judiciary was exceptionally important and urgent in this context.

Constitutional Court

First of all, the Constitutional Court and administrative courts had to be integrated into the judicial system. As part of the new Czechoslovak Federation Act, the Constitutional Court had already been incorporated into the Czech legal system during the reforms in 1968. However, the act setting out the scope and organisation of the court was never adopted. The Constitutional Court was thus not instituted and remained a concept on paper until 1989. In addition, it was supposed to deal primarily with issues concerning the division of powers between the federal bodies and those of the two republics. It was thus necessary to redefine its jurisdiction for the new post-1989 situation. Following lengthy discussions, the Constitutional Court was established in January 1992 and was active for one year until the division of the Czechoslovak Federation. Constitutional Court judges were appointed by the President of the Czech and Slovak Federal Republic from a selection of candidates put forward by parliament. The Constitutional Court comprised of 12 judges appointed for a period of seven years. Any person eligible to be a member of the Federal Assembly, without a criminal record, over 34 years of age, with a university law degree and with at least 10 years practice in law could be nominated and appointed a judge of the Constitutional Court.

After the break-up of the federation, the powers of the Constitutional Court were temporarily transferred to the Supreme Court of the Czech Republic. In 1993, the new Constitutional Court of the Czech Republic was inaugurated on the basis of the Constitutional Court Act. Since then, Constitutional Court judges have been appointed by the President, subject to approval by the Senate. The Constitutional Court comprises of 15 judges appointed for a period of ten years. Any person without a criminal record, eligible to the Senate (i.e. over 40 years of age), with a university law degree and at least ten years law practice may now be appointed a Constitutional Court judge.

Importance of the Constitutional Court

The main task of the Constitutional Court is to rule on whether acts and other forms of legislation are in line with the Constitution. Reviewing the constitutionality of acts and other legal regulations is one of the checks and balances with respect to legislative powers. It is either performed by non-judicial bodies (e.g. parliaments and special committees) or by institutions of a judicial nature. In countries with an Anglo-Saxon legal system, normal law courts perform such reviews, whereas in Europe it is more common to use a specialised court which stands beyond the system of normal law courts. In the Czech Republic, the Constitutional Court is also in charge of other proceedings. These include constitutional complaints that natural persons and legal entities are entitled to lodge if they believe that their fundamental rights or freedoms have been violated by a legally binding decision made as part of judicial or administrative proceedings.

The Constitutional Court also adjudicates electoral matters. These include legal proceedings to remedy decisions ruling that a deputy or senator was improperly elected, proceedings in cases when the loss of eligibility to run for election is challenged, as well as proceedings concerning conflicts of interest resulting from positions held by an MP or senator (an MP or senator may not at the same time hold, for example, the post of president or judge, as well as other posts specified by law).

The Constitutional Court also rules on whether action taken by the President constitutes high treason, following a complaint put forward by the Senate. High treason consists of any action taken by the President directed against the sovereignty and integrity of the country and its democratic system. In addition, the Constitutional Court deals with legal actions concerning the scope of authority of public administration and local government bodies. From those listed above, the most common legal proceedings are those regarding the elimination of an unconstitutional legal regulation and constitutional complaints. Decisions of the Constitutional Court thus regulate the activities of general courts and its consistent judicature contributes to the stability of the entire judicial system.

Administrative Courts

The primary task of administrative courts is to review the lawfulness of administrative decisions, i.e. decisions made by executive authorities. Administrative courts thus perform checks and balances with respect to the executive powers. Administrative courts also check various legislative actions taken by public administration bodies (e.g. government decrees, municipal regulations issued under delegated competences) and other types of legal regulations. The administrative judiciary did not exist until 1989, or rather its activities were limited to reviews of a narrow range of decisions. These were decisions specified by a special act as subject to review by a court of law

(e.g. proceedings concerning social security). After 1990, the number of administrative decisions reviewable by the courts gradually increased.

The 1992 Constitution already included articles regarding the jurisdiction of the Supreme Administrative Court. However, a legal provision regulating proceedings before the Supreme Administrative Court, as well as the judicial review of the legality of administrative decisions, was not adopted for another ten years. Until then, administrative courts were regulated by an amendment of the civil regulation on procedure and the so-called general cause, stating that all administrative decisions are reviewable, except where explicitly excluded by legislation. The reason it took ten years to adopt the Administrative Judiciary Act lies in the insufficient political will of the political parties in government. Although the administrative judiciary, including the Supreme Administrative Court, was part of the Czech Republic's constitutional system, the Supreme Administrative Court was not established until 2003.

The administrative judiciary is currently incorporated into the Czech legal system as a special judicial system, partly executed by the general courts. An independent and specialised Supreme Administrative Court represents the top level of this system. As a matter of principle, all administrative decisions are reviewable. No democratic state can function without the judicial review of acts of the executive powers. If the lawfulness of these decisions is reviewed only by higher instances of the executive, there is no objectivity and fairness of decisions. Such reviews thus have to be performed by an institution that is independent of the public administration, preferably a court of law.

Independence of Judges

The independence and impartiality of a judge is another one of the important prerequisites for the due functioning of the judiciary that had not been respected in Communist Czechoslovakia. Judges were elected into office for terms of varying length. Their independence was declared only formally. Until 1964, National Committees elected judges for a period of 3 years and from 1964, it was 10 years. They could only be removed from office by the same body that had elected them. Reasons for dismissal included reaching the age of 65, poor health or a serious breach of judicial obligations.

It is obvious that the position of judges was questionable and that the legal system did not guarantee their independence and impartiality. Judges were dependent on the body that had elected them, which was part of the executive – a National Committee. The fact that judges were only elected for a limited period meant that they relied on being re-elected, something which did not enhance guarantees of their independence. The status of judges changed after 1989. Judges in the Czech Republic were no longer elected but appointed, again by a representative of the executive – the President – but without time limitations. Decisions on the misconduct of judges are no longer made by the body that appointed them but by a court's disciplinary panel, consisting entirely of judges.

Another prerequisite for the independence of judges is that they may not be transferred to a different court. Laws prior to 1989 allowed for the transfers of judges, although only temporarily. Following 1989, legislation allowed the transfers of judges to other courts temporarily only with their consent or upon their request. A judge could only be transferred without his or her consent on the basis of a legitimate decision of the court's disciplinary panel. Prohibiting judges from holding any other paid post or performing any other gainful activity, except that of a scientific, pedagogical, literary or artistic nature, was another step towards ensuring the independence and impartiality of judicial rulings. Gainful activities do not include revenues from property, unless it constitutes active enterprise (e.g. judges may rent their own real estate).

In the 1950s, administrative bodies (National Committees) held a broad range of penal powers. These committees were entitled to impose high penalties and severe prison sentences and their decisions were not reviewable by a court of law. In fact, legislation allowed these National Committees to take on a dictatorial role. Currently, only independent courts can impose prison sentences. Less serious offences are naturally also sanctioned, but never by a prison sentence. Most often, they are dealt with by fines or bans on performing certain activities (typically, drink driving offenders are banned from driving motor vehicles). Such sanctions can also be imposed by executive bodies (administrative bodies). Nevertheless, these decisions are subject to judicial review within the administrative judiciary system.

Objective Truth Principle

Before 1989, civil court proceedings were governed by the objective truth principle. In practice, this meant that "objective truth" was sought in every lawsuit, even in cases when it was not necessary. To some extent, the options of the parties in dispute were restricted during the proceedings. However, it is true that before 1989 and the onset of the market economy there were fewer legal disputes in the Czech Republic. In addition, the vast majority of disputes concerned aspects of civil conduct, such as relations between neighbours.

The prosecutor, who at the time acted as a general control of the legality of decisions, also applied the objective truth principle. Due to their broad powers, prosecutors could basically intervene in any judicial proceedings, including those of civil courts. Currently, the prosecutor's jurisdiction is restricted to criminal proceedings, such as bringing criminal charges and representing the state and society as a whole in criminal cases brought against a defendant. Following 1989, the post of prosecutor was renamed state attorney.

With the development of market relations after 1989, the number of new lawsuits started increasing rapidly and the application of the objective truth principle – always determining the facts and merits of the case – often proved unnecessary and time-

consuming. In many cases, it is practically impossible and beyond the powers of the court to establish the whole objective truth through the means available. For this reason, civil law proceedings adopted the formal truth principle. This means that the court bases its decision primarily on the facts presented by the parties in dispute, ensuring that a standard form of proceedings is observed and trying to find a just solution based on the statements put forward. The parties thus have more control over the dispute and can decide what evidence they present to the court, and thus what the court will consider.

The court is never allowed to accept proposals put forward by the parties in dispute in making its decision. The formal truth principle also makes it possible to apply judgments such as proclaiming a dispute lost if one or other of the parties failed to observe the form of the proceedings (this did not appear before court despite due summons). This is one of the efficient tools for preventing intentional delays in proceedings. After 1989, the speed of the enforceability of laws turned out to be a major issue. The number of lawsuits kept increasing, judges had no experience with the development of market relations and the old procedures favoured those parties trying to avoid or delay judicial proceedings. The possibility of passing judgement if proceedings are not observed is one of the measures that have helped eliminate judicial adjournments.

State Attorney

Prior to 1989, the prosecutor's office was in charge of ensuring that laws and other legal regulations were consistently implemented and observed by ministries and other public administration bodies, National Committees, courts, economic and other organisations as well as individuals. It was led by the General Prosecutor of the Czechoslovak Socialist Republic. The prosecutor's office was a universal body overseeing the law and it was entitled to actively intervene in almost any proceedings held before public authorities.

The State Attorney Act, effective as of January 1, 1994, abolished the prosecutor's office and replaced it with the state attorney's office. Unlike the prosecutor's office, the state attorney's office is not a general authority overseeing the observation of law; its task is to represent the state in protecting public interests in matters stipulated by the law. It plays the role of a public prosecution authority in criminal proceedings and it also has other tasks laid down by the penal code. It supervises the observance of legal regulations in places where custody, prison sentences, protective therapies and protective or institutional education are executed, and in other places where, based on a legal entitlement, personal freedom is restricted. The state attorney's office only becomes involved in other proceedings than criminal, and performs other tasks, if required to do so by a specific legal regulation. Other tasks previously performed by

the prosecutor's office, especially reviewing the activities of other public administration bodies, are now under the responsibility of relevant public administration bodies and within the scope of their own controlling and supervisory activities.

Certain supervisory tasks have been transferred to the Supreme Audit Office. Some tasks are no longer performed by any authority, for example intervention in civil law courts, which is prohibited by the principles of judicial proceedings. The core activity of the state attorney's office is to represent the state in criminal proceedings against a person suspected of having committed a crime. The police force investigates the crime and then hands the complete file over to a state attorney who formulates the charges and presents them to the relevant court of law.

Commercial Register

With the dramatic development of the market after 1989, new business entities were set up and they had to be registered in some manner. For this purpose, the Commercial Register was established. It is a public list of business entities and related important information, such as the date of their establishment, transformation or dissolution, their registered capital, identity of their statutory body etc. The register is maintained by general courts and special procedural regulations apply to registration. The register is public and easily accessible to everyone, enabling individual entrepreneurs to obtain data about their business partners. No market economy can function properly without the existence of a register of business entities. However, the lengthy nature of registering in the Commercial Register is still a thorny issue in the Czech Republic.

Another issue concerns the late establishment of authorities supervising the market and of regulations stipulating sanctions for new offences related to business activities. Relevant amendments to acts were not implemented concurrently with market reforms. For a long time, there were no authorities supervising the capital market, new offences related to unfair business practices and financial fraud were not defined and there was a lack of high quality tax acts and tax offices, and as a result the state incurred significant financial losses.

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My Reflections on the Transformation of the Judiciary

Otakar Motejl

I am afraid that in December 1989, very few legal experts had a clear idea about whether the judiciary should be restructured or reformed during the new era that lay ahead. By January 1, 1990, the judiciary of the Czech Socialist Republic was in deep crisis at all levels. It lacked facilities, was poorly funded and judges had inadequately low salaries. Judges were ideologically involved in the coercive system of justice based on political classes and all of them were to some degree compromised and contaminated by every day contact with representatives of the totalitarian system.

The year 1990 brought one blow after another. The President, in his New Year address, analysed the justice system that we wanted to abandon and aptly called it decadent. This triggered off the process of “judicial exodus”. Within several months, one third of judges had left active service. Although some did so because they felt pangs of conscience, the primary reason for their exodus was that at the time new opportunities were dynamically opening up and switching to the fast and radically liberalised legal profession would also improve their living standards.

The process of building a constitutional state through new legislation began to increase the tasks and importance of the judiciary to an almost absurd level when viewed from the perspective of the reality of the situation. On a daily basis, there were conflicts regarding the powers of the judiciary and its specific duties. The disintegrated and genuinely compromised criminal law judiciary, besides having to deal with an increasing number of ordinary crimes, also had to resolve the issues of rehabilitation. The civil judiciary, as the administrator of what had been a totally useless company register, had to build a new commercial register under very primitive conditions that would provide for the legal existence of tens of thousands of new entities.

Overnight, the formation of the commercial judiciary, which had from the very beginning been encumbered by the socialist economy’s senseless agenda of bureaucratic economic arbitrations, gained a completely new dimension. In the initial post-revolution period, all the areas of justice, except family law, saw a manifold increase in the number of new cases. This was going on in an environment full of often justified, but sometimes unjustified, criticism and reproofs concerning the recent past, and of a related scepticism. This scepticism was often seen in

political attitudes to legal solutions for the current tasks of economic transformation and ongoing privatisation.

One of the obvious initial tasks was not only to replace the judges that had left the judiciary, but also to bring their number up to the required level. There were very few candidates from the standard and traditional sources, i.e. from among fresh graduates of the two existing law faculties. Furthermore, some newcomers, especially a relatively high number of lawyers with company law experience, failed to cope with the post of a judge because they lacked sufficient expertise or their moral credit was questionable. In addition, facilities available to the judiciary were very primitive. The judiciary had few buildings at its disposal, many of which were in a poor state of repair. Furthermore, new technologies were out of its reach.

Thus, the fact that certain powers had not been transferred or returned to the judiciary between 1990 and 1991 was actually a success. There is no other way to interpret the lack of judicial review of extra-judicial rehabilitations and privatisation, or the fact that judicial control of land registers was not renewed. Similarly, the reasons why the judiciary also resisted the development of administrative courts were primarily pragmatic. In speaking about a crisis of the judiciary, it is fair to stress that it was actually a general crisis of the entire legal profession. This was also apparent in the relatively limited political activity of lawyers. This applies to the composition of legislature as well as the governments.

Given this background, it was obvious that it was not possible to satisfy the sporadically formulated requirements for enforcing legal discontinuity. The solution of partial corrections during the formulation and application of legislation was selected. The “desocialization” of current laws was commenced in the area of legislation, mostly taking the form of partial amendments of the main codes of law. Both amendments to existing laws and new regulations, in particular regarding rehabilitations and restitutions, were formulated by active lawyers, especially judges.

Another product of the forty years of building socialism was the gradual degeneration of legal culture in academia. It turned out that not even the scientific sphere, represented by two law faculties and the Institute of the Academy of Sciences, was ready and able to actively participate in the process of creating new legislation with new concepts or qualified analyses of the current situation. Until the end of 1992, many, often chaotic, problems were caused by the fact that the principal legislative body in Czechoslovakia’s federative system was the federal parliament. Yet there was no federal ministry of justice that could be a qualified partner in preparing new legal regulations. Since 1968, the justice ministries of the two republics have had only very limited, mainly administrative, powers.

Only the Supreme Court and the General Prosecutor’s Office had a federal character. Despite the difficult situation, these two institutions managed to prepare

extensive amendments to the fundamental criminal and civil laws during 1990 and at the beginning of the following year, including a new Commercial Code.

At the moment when it became necessary to deal with the past and prepare conditions for the future, a solution regarding the restructuring of the judiciary was also sought, through a new definition of the status of courts and judges. Not even this proved an easy task. From a historical point of view, it is necessary to bear in mind that a crisis of the federative system arose after the Velvet Revolution, although it was initially quite moderate. All that had been prepared and approved regarding the system and its framework during the first two years collapsed in 1992 with the division of the federation and the abolition of its institutions. Nevertheless, a new act on courts and judges and the act on judges' disciplinary responsibility had been adopted in 1991. The second act lay down the life tenure for judges and the prerequisites for their independence, as well as the first system for increasing their salaries. These acts formed the backdrop for the final selection and recruitment of those judges that had worked in the judiciary under the previous regime, but had not compromised themselves by their rulings.

The break-up of the federation closed the first stage of the development of the judiciary. Under the new circumstances of the Czech Republic, the first attempts were made to conduct a general review of the legal system. This took the form of projects for new modern codes of law. A lack of qualified professionals meant, however, that these concepts on an intentional, as well as a subconscious, level tended to return to the legal system prior to 1948. There was not enough energy to reverse these tendencies, even though it meant returning the legal system to principles that applied at the end of the 19th century.

For political and economic reasons, the system of gradually amending acts adopted in the 1960s continued, often with specific purposes in mind. The improper and unviable nature of this method only came to light at the end of the 1990s, when the legislature and the judiciary had to be remodelled in line with the prerequisites of membership of the European Union. The binding and strenuous nature of this process, which culminated with the Czech Republic being accepted as a member of the EU in May 2004, defined the third stage of the transformation of the judiciary, which again required further reviews of repeatedly amended regulations. The only thing that basically remained unchanged since the beginning of the 1990s, and was gradually improved, was the status of judges and some definitions of organisational structure and jurisdiction formulated as early as 1991.

It turned out that the person applying a regulation is more important for the existence of a constitutional state than the regulation itself. No matter how good an act is, it will not serve well in the hands of a bad judge. A good judge can make the right decision even if the law is imperfect.

Otakar Motejl worked as a lawyer after completing law at Charles University in Prague. In 1968 he was elected a judge of the Supreme Court, which he left in 1970. He defended many dissidents and proponents of the unofficial culture in political trials. In December 1989, he was elected a member of the Federal Assembly Committee for Overseeing the Investigation of the November 17 Events; from January to the end of the federal state he was the President of the Supreme Court of the Czech and Slovak Federal Republic. From February 1993 to August 1998 he was President of the Supreme Court of the Czech Republic and until October 2000, Minister of Justice. In December 2000, the Chamber of Deputies of the Parliament of the Czech Republic elected him Ombudsman.

Economic Reforms

Viktor Hanzlík

Economic reforms rank among the most important processes of transformation. Ownership relations, property distribution, economic freedom and incentives created by the economy affect the whole of society. Although the transition from a centrally planned to a market-based economy has not been the only fundamental change implemented in the Czech Republic since 1989, it has been one of the most visible ones. Should we look for a symbol of economic transformation in the Czech Republic, one of the red-hot favourites would be “coupon privatisation”.

Fifteen years after the abolition of the supreme rule of the Communist Party of Czechoslovakia, the Czech Republic is a functioning market economy. The economy is based on private sector activities and private ownership and prices are determined by the market. The level of state participation in economic activities is no different from that common in developed European countries that have not been subjected to a socialist experiment lasting forty years. During these fifteen years, the quality of life of the Czech population and its economic freedoms have been increased significantly. The main problems currently faced by the Czech economy include high budget deficits, unemployment, the unsustainable nature of the pension system in the long-term and the funding of healthcare. Nevertheless, most European economies are facing these problems to some extent. These are post-transformation issues that must be solved using standard market economy instruments.

The road to a market economy has been neither direct, nor without costs. On the contrary, dead ends were encountered, mistakes made and there was much fumbling in the dark. The main reason lay in the unprecedented nature of the situation. There were no instructions on how to transform a centrally planned economy to a market-based one and no example that politicians and economists in transition countries could follow. No transition country managed to avoid mistakes. Transformation could not be a painless process. It was a fundamental and very sudden change of the rules of the game, affecting the life of the entire society and inevitably generating not only winners, but also losers.

It is necessary to bear in mind that a country's experience of transformation can only be transferred to other countries to a limited extent. The initial conditions in every country, as well as their culture, customs and social systems, were different. The political and economic systems in the countries of the former Soviet block were also not uniform. In each country, a different form of socialism had developed, with

various degrees of centralisation, personal and economic freedoms and openness to the Western world. All these factors affect the nature of economic reforms. It is thus not possible to propose step by step instructions for a successful economic transformation. However, the Czech experience can help to answer some principal questions so that the same mistakes are not repeated.

In particular, incorporation into Western economic and political structures, a massive improvement of the quality of life and the enhancement of economic freedom show that the principal direction of the transformation – the transition towards a market economy and the rejection of attempts to create new forms of “socialism with a human face” or look for a “third way” between socialism and capitalism – was right.

Initial Conditions

The Czechoslovak Socialist Republic was one of the most industrially developed countries of the former Soviet block. At the same time, it had one of the most centralised economies – before 1989, only 1.2 percent of the population was employed in the private sector. No partial reforms towards economic liberalisation had been implemented until the regime change at the end of 1989. After the reform attempts in 1968, which were interrupted by the intervention of the Warsaw Pact armies, the Communist Party of Czechoslovakia was determined not to allow any further experimentation with partial liberalisation and small private enterprise.

The Czechoslovak Socialist Republic’s economy suffered from many maladies typical of socialist economies: inefficient fund allocation, excessive development of some sectors (heavy industry, mineral extraction and mining), widespread wasting of resources, lack or a low quality of products and the neglect of environmental concerns. The absence of private business was reflected in a low level of innovation and the limited flexibility of companies, as well as the economy as a whole.

In Czechoslovakia, the events of 1989 were perceived as a real revolution. This political situation made it possible to implement very tough economic measures that, under normal circumstances, would be extremely unpopular. For some time, all negative impacts of the transformation could be presented as the necessary costs of rectifying mistakes made by the previous regime. The situation was thus favourable for major and fundamental one-off changes. Nevertheless, the willingness to adopt painful changes faded soon after the revolution and the time for implementing tough stabilisation measures was limited. As time went on, interest groups allied to the previous regime consolidated their positions and tried to take advantage of their experience and contacts in order to obtain assets and power in the new system.

The importance of the circumstances of regime change can be demonstrated by a comparison with Hungary. Democratisation in Hungary was achieved by a continuous handover of power, which only few considered a revolution. As a result, Hungarians did

not perceive regime change as an important turning point that could justify profound changes in the economy, and thus Hungarian politicians did not have comparable “political capital” in the form of people’s willingness to accept painful measures. When the new Hungarian government tried to adopt tough macroeconomic measures, it had to face public opposition, which managed to block the reforms through civil disobedience. In Hungary, this reluctance to accept painful measures stood in the way of necessary macroeconomic stabilization.

Stabilisation and Liberalisation

In order to transform the centrally planned economy into a market economy, it was necessary to liberalise markets and prices, open the Czech economy to the world, prevent uncontrolled inflation, privatise socialist enterprises and create an adequate institutional framework. Although most economists agreed with the necessity to adopt these measures, the pace and order of their implementation became the bones of contention. Arguments in favour of a fast stabilisation and liberalisation included the public’s temporary willingness to accept tough economic measures, the danger that reforms would be diminished if their pace was too slow, as well as the temporary weakening of the power of interest groups allied to the former regime.

The supporters of a fast-track process were also afraid of the transformation trap, i.e. the situation when halfway reforms would generate significant costs but would not be sufficient to bring about real change in the behavioural patterns of economic entities and to increase economic efficiency. The other opposing concept was gradualism, whose main aim was to implement reforms gradually and selectively. Supporters of gradualism believed that the slow pace of reforms would limit or completely prevent economic decline at the beginning of the transformation. Gradual reforms were also supposed to give the business sector time to adapt to foreign competition. In 1990, the Czechoslovak government opted for fast-track reforms.

The pricing system was almost entirely under administrative control in socialist Czechoslovakia. Relative prices and the relations between domestic and foreign prices were considerably distorted. As a result, prices did not provide a basis for real and qualified economic decision-making. The first changes in the pricing system occurred as early as 1990. The government took the politically very sensitive step of removing subsidies on foodstuffs, which led to an increase in food prices by 25 percent soon after the elections in 1990, when it was least likely that the public would oppose the measure. The prices of diesel and petrol were also increased in 1990. In January 1991, an extensive price liberalisation began, affecting 85 percent of prices of goods and services, measured as a percentage of total turnover. Prices of housing and utilities remained regulated. As for foodstuffs, price fluctuations remained temporarily regulated in order to prevent dramatic price increases.

As of January 1st 1991, subsidies for coal, gas and heating prices were also decreased and industrial product subsidies abolished. The main advantage of this massive price liberalisation was the rapid elimination of price distortions. Following the liberalisation, prices started to reflect the relative scarcity of goods and services and also the demand structure. From then on, prices could again serve as a basis for effective economic decision-making. Due to the monopolised nature of the economy, there was a danger that companies would abuse their monopoly supplier positions and would increase prices inadequately. For this reason, it was important to complement price liberalisation with a liberalisation of foreign trade. This made it possible to couple the Czech pricing system with international pricing mechanisms; at the same time, foreign competition restricted the opportunities of domestic companies to abuse their monopoly standing.

Prior to 1989, Czechoslovakia's foreign trade was determined by a plan. The structure of traded goods was distorted in the same way as the economy's production capacities. Countries with inconvertible currencies, especially the members of the Council for Mutual Economic Assistance, had been Czechoslovakia's main trading partners. During 1990, laws were adopted enabling private and state-owned companies to export their products and import essential production inputs. Foreign trade liberalisation properly commenced on January 1, 1991, with the introduction of the internal convertibility of the Czechoslovak crown (CZK). From that moment on, companies could purchase foreign currencies from the Central Bank in order to pay for imports.

Foreign Trade Liberalisation

Due to concerns about the adverse effect of rapid liberalisation on the current account of the balance of payments, the government introduced an import surcharge of 20 percent on consumer goods. This surcharge was decreased twice during 1991 and later abolished completely. Concurrently with foreign trade liberalisation, the Council for Mutual Economic Assistance was dissolved and its former member states started trading among one another at market prices and in freely convertible currencies.

The principal argument for a rapid foreign trade liberalisation was similar to that for price liberalisation – the need to rectify the distorted price structure. Not only did administratively set prices not correspond to supply and demand, they also differed from prices on the international market. If only domestic prices had been liberalised and Czechoslovak prices had remained separated from international pricing mechanisms, the structure of incentives in the economy would have remained distorted and companies would not have been able to make the right decisions regarding production. Had there been partial and gradual liberalisation, companies would have hesitated to invest because they would not have known what prices they would be able to charge for their products after trade opened up. In other words, the

desired correction of the pricing structure could only be achieved by a concurrent and widespread liberalisation of both domestic prices and foreign trade.

Supporters of gradual liberalisation argued that domestic companies would not have a chance to compete with more efficient foreign producers. Nevertheless, the opening of trade was necessary if only because of the above-mentioned monopoly positions of local companies. Moreover, domestic producers were protected against foreign competitors by two “cushions”. Prior to the 1990 liberalisation, the Czechoslovak crown had depreciated significantly and its exchange rate had stabilised. The undervalued exchange rate made even less efficient companies competitive. Wage regulation, which was part of the stabilisation measures, together with the deregulation of prices, caused a decrease in real wages by nearly 24 percent in 1991. Although painful for the Czech population, it benefited companies by decreasing their real labour costs, thus allowing them to soften the impact of the opening of the domestic market to foreign competitors after the liberalisation of international trade.

The liberalisation of prices and foreign trade brought with it the risk of rapid inflation. It was necessary to couple liberalisation with stabilisation measures in order to prevent an uncontrollable increase of prices and the creation of external and internal imbalances. The government therefore introduced fiscal and monetary restrictions and wage regulation and devaluation. The budgets for 1990 and 1991 were set with a surplus. At the same time, there was a dramatic decrease in the public expenditure share of GDP. In 1989, public spending amounted to 72.3 percent of GDP while three years later it was down to 47.5 percent. Expenditures on transfer payments to companies were decreased most significantly. Their share of GDP decreased from 16 percent in 1989 to less than three percent in 1995.

Fiscal restrictions were complemented by similar monetary policy measures. In the initial stage of transformation, the task of fiscal policy was to prevent radical price increases, caused by devaluation and liberalisation, from becoming a permanent phenomenon. Because money markets did not exist and commercial banks were insensitive to standard indirect monetary policy instruments, the Central Bank’s principal instruments for managing money supply in the economy were administrative limitations on bank loans. Although the 1991 monetary restrictions were strict, they contributed to a rapid decrease in inflation after the initial shock of liberalisation. Administrative liquidity management was gradually abandoned and replaced by indirect instruments (obligatory minimum reserves for commercial banks, interest rates). Limits on loans were abolished in 1992.

Liberalisation and stabilisation achieved the planned targets and are perceived as having been successful. Especially thanks to the well-handled liberalisation and stabilisation, the Czech Republic was used as an example for other transition economies in the first half of the 1990s.

Privatisation

An essential step in introducing the market economy and eliminating the inefficiencies of the Czechoslovak corporate sector was the privatisation of a major part of state assets. The privatisation commenced as early as 1990 through restitutions – i.e. the restoration of real estate, farmland and shares in some industrial enterprises nationalised after February 25, 1948 to their former owners. Arguments in favour of restitutions were both moral (the elimination of serious historical injustices) and psychological (the restoration of public trust in the protection and legitimacy of private ownership). It was also a rapid and simple method of privatising state assets. The major part of restitutions was executed in 1990 and 1991, the total property privatised in this way amounting to approximately 200 billion CZK.

Another means of transferring assets from the state to private owners became known as the “small privatisation”. It consisted of the sale of about 23,000 small enterprises, including shops, gastronomic and accommodation facilities, through public auctions that were only open to domestic bidders. Unlike in Poland, for example, privatisation through the takeover of a company by its management or employees never became a widespread method in Czechoslovakia. This was due to the belief that it was not fair to favour employees and managers above the rest of the population. Also, managers in charge of state-owned companies immediately after the regime change were usually members of the Communist nomenclature and privatisation in their favour was not desirable. In addition, state assets worth 350 billion CZK was transferred to municipalities; and cooperatives worth 150 billion CZK were transformed into businesses.

Large Privatisation

Only small companies were privatised in the way described above. Large industrial companies, forming the backbone of the economy, were privatised in the so-called “large privatisation”. This combined standard methods (direct sales, auctions and public tenders) with “coupon privatisation”. Coupon privatisation was the principal method of privatising large enterprises. More than sixty percent of the companies that the state decided to dispose of in the large privatisation were privatised through this method. However, even after the large privatisation, the state maintained one hundred percent control over some companies in the strategic and monopoly sectors (energy, mining, telecommunications). Some companies in this sector have yet to be privatised – examples include ČEZ (the biggest utility company in the Czech Republic) and Český Telekom (previously the telecommunication monopoly).

In practice, coupon privatisation worked as follows: for 1,000 CZK, every Czechoslovak citizen could buy a coupon book containing investment points. They could then use these points to bid in auctions for shares in state-owned companies

undergoing privatisation, or entrust them to investment funds. If they decided on the latter option, they became shareholders in the fund and the fund then invested their points into shares. The coupon privatisation proceeded in “waves”, each of which was divided into several “rounds”. The first wave was implemented in Czechoslovakia in 1992. The second wave was delayed by Czechoslovakia’s split into the Czech and Slovak Republics and was implemented in 1994.

The coupon method had several advantages considered decisive by the government at the beginning of the 1990s. It is fast and can be executed on a large scale, thus leading to the bulk transfer of a large part of state assets into private hands. Coupon privatisation was also perceived as fair and not providing space for corruption. Another important argument in favour of the method was the fact that the Czech population did not have sufficient capital to purchase companies at market prices. Last but not least, the widespread ownership of shares was to secure support for the new system and for economic reforms. In addition, Czechoslovakia did not have an urgent need to increase its national income and could thus afford to basically “give away” its assets to its citizens.

There were naturally also arguments against this method: new owners of companies thus privatised would lack capital for restructuring. Coupon privatisation also brought the risk that the ownership structure would be highly fragmentary and unable to control the management. Managers could take control of the companies and run them purely for their own benefit. Another argument against the method was that it did not hand companies over to owners capable of managing them effectively.

Investment Privatisation Funds

As a response to such criticism, the government permitted the establishment of investment privatisation funds and their participation in the coupon privatisation. The government hoped that these investment funds would have enough power to make managers respect the interests of owners. Investment funds were precisely defined by a government decree in September 1991. In defining them, the government was very liberal and allowed almost anybody to establish a fund. It justified this minimal degree of regulation on the idea that people would only trust those funds that had been established by powerful institutions (especially banks). Others funds would not have a big chance to obtain people’s investment points and would thus not play a major role in the economy.

Investment funds launched highly persuasive advertising campaigns to lure small investors. Some funds promised to buy coupon books immediately after the first privatisation wave, usually for about ten thousand CZK. Many people, who had previously not considered participating in the coupon privatisation, decided to take advantage of this offer. The establishment of funds and their advertising

campaigns thus contributed significantly to the massive participation of Czechs in the privatisation.

In reaction to the massive advertising campaigns and the unexpected success of the funds, including those controlled by previously unknown groups and individuals, parliament amended a number of legal regulations concerning investment fund activities in January 1992. Importantly, new restrictions meant that funds could not invest more than 10 percent of their capital in one security and could not own more than 20 percent of shares issued by one entity. In doing so, the government intended to secure a sufficient diversification of fund portfolios. Another legislative amendment was adopted shortly before the start of the first round of the first wave of privatisation in May 1992. This law defined open and closed funds (open funds guaranteed the re-purchase of investment certificates by the issuer whereas closed funds did not; on the other hand, the investment certificates of closed funds could be sold on the secondary market). It also made the granting of licences to investment funds stricter and prohibited funds set up by banks from investing in the shares of privatised banks. This measure was to prevent non-transparent cross ownership.

As “bank” investment funds were usually not set up by banks directly, but by investment companies owned by them (to which this measure did not apply), cross ownership could legally develop. The law also restricted the fees that investment companies could charge for the administration of funds. This was calculated either as 2 percent of the average annual value of the fund’s assets or as 20 percent of the fund’s annual profit. Despite such stricter regulation, access to investment funds still remained very liberal.

The funds played a major role in the centralization of control. The control over companies, owned by millions of small shareholders, was transferred to a limited number of privatisation funds. Small shareholders basically had no possibility of affecting the funds’ activities. The funds, whose establishment was supposed to prevent the separation of ownership and control between small shareholders and managers, thus created a new problem, similar to the one they were supposed to prevent. This development was a surprise for the government and the legislation was not ready for it.

“Tunnelling” (Asset Stripping)

As a consequence of inadequate legislation, a lack of institutions (the Securities Commission was not established until 1998) and poor law enforceability, a new phenomenon called “tunnelling” became common in the Czech economy. It did significant damage to the economy as a whole and to many minority owners. In addition, it undermined public trust in economic reforms and in collective investment. “Tunnelling” is a term used for the phenomenon when a group of people controlling a company (but not owning it entirely) transfers its assets or profitable activities to

another company that they control and own entirely. They can then freely dispose of these assets. “Tunnelling” thus naturally does harm to those co-owners of the company who do not control it, since it leaves only an empty, worthless shell behind. “Tunnelling” reached a significant height in the Czech Republic. Some forms of asset transfers from companies were legal for some time and, at times, those doing the “tunnelling” did not even conceal their activities. Thus Czech legislation at the beginning of the 1990s failed to solve the issues regarding the separation of control and ownership.

In the first stages of economic transformation, government politicians responsible for privatisation had unlimited faith in the “invisible hand” of the market. The government believed that if privatisation was completed swiftly and private ownership restored, the free market would itself automatically provide for ideal finance distribution and the creation of sound incentives for owners. State interventions and regulation were to be limited to a minimum. As a result, speed was considered the most important factor for privatisation. On the other hand, institution building, market supervision and regulation, formulation of fair competition rules and corporate governance (owner’s control over the management of a company) were neglected. The timely introduction of adequate legislation regarding the protection of minority shareholders’ rights, making information accessible to the public, market regulation and banking regulation, would have significantly decreased the extent of the abuse of the majority shareholder’s position and “tunnelling”.

The aversion to regulation and the, at times, uncritical acceptance of the ideas of economic liberalism were reactions to excessive regulation and the nonsensical nature of the socialist economic system. The instability of the political situation also contributed to the timely start of coupon privatisation. New Czech elites wanted to make sure that the Communist nomenclature could not take power again and socialism could not be restored. The government wanted to make any return to the conditions prior to 1989 as difficult as possible. Offering a significant share of state assets to any citizen and privatisation in general was an efficient way towards this goal. The fast process of coupon privatisation was thus a consequence of its perceived advantages, political conviction and its necessity.

Central Bank

At the end of the 1980s, Czechoslovakia had a one-tier banking system (the central bank also played the role of a commercial bank). This system was typical of socialist economies. A monobank that performed most operations played a dominant role. The other banks were specialized and were dependent on the monobank’s decisions. The Czechoslovak State Bank (*Státní banka československá* – SBČS) played the role of a central bank and commercial bank for corporate clients. Banking operations of the corporate sector concerning foreign payments were administered by the Czechoslovak

Trade Bank (*Československá obchodní banka*) and the general public was served by the Czech State Savings Bank (*Česká státní spořitelna*) and the Slovak State Savings Bank (*Slovenská státní spořitelna*). There were also the Investment Bank (*Investiční banka*), specializing in long-term investment loans, and the Trade Finance Bank (*Živnostenská banka*), performing operations with foreign entities for small private clients.

Since the second half of the 1980s, a reform of the banking system was under preparation in Czechoslovakia. It was supposed to take effect as of January 1, 1990. Due to the ensuing political events, this reform was not fully implemented. Even so, on January 1 a new Act on the Czechoslovak State Bank came into force. This act had been adopted on November 15, 1989, i.e. before the November revolution. As of January 1, 1990, the Czechoslovak State Bank was divided into a central bank and two commercial banks – Commercial Bank Prague (*Komerční banka Praha*) and General Credit Bank Bratislava (*Všeobecná úvěrová banka Bratislava*).

Even after this reform, the Czechoslovak Central Bank was rather different from standard central banks in market economies – among others, its task was to participate in the formulation of economic and social development plans and national budgets and it was also in charge of the supervision of currency stability and the money market. However, even after this reform the Czechoslovak State Bank had the authority to influence the procedures of the other banks. The banking system still did not comply with market economy conditions and for this reason, a new act on the Czechoslovak State Bank was passed at the end of 1991. This act turned the Czechoslovak State Bank into a standard market economy central bank and provided it with the corresponding functions: issuing currency, determining monetary policy, acting as the banker of other banks and the bank of the state, as well as regulating and supervising the banking system. As a consequence of the split of the federation, the Czechoslovak State Bank was divided into the Czech National Bank and the National Bank of Slovakia on January 1, 1993.

Commercial Banks

The Act on the Czechoslovak State Bank of January 1, 1990 also applied to commercial banks. All commercial banks (i.e. the banks existing prior to 1989 and the new Commercial Bank and General Credit Bank) acquired the character of universal banks. Clients could select their bank, which introduced competition into the Czech commercial banking system. New private banks started to emerge during 1990. The rules for granting banking licences were very liberal at the beginning of the transformation, which led to the establishment of small banks and banks with limited capital.

The Czech commercial banking business was afflicted by a large number of bad loans that had been provided before 1990 and also by a low capital adequacy (a small volume of the banks' capital in relation to the size of loans provided). This is

why Consolidation Program I was introduced, which established the Consolidation Bank, as well as re-capitalizing and clearing the existing state banks of debt. The revitalization of banks proceeded in two stages. In the first stage, banks received a financial injection of 30 billion CZK. In the second, the Consolidation Bank bought debts worth 15.1 billion CZK.

Problems started emerging between 1993 and 1994 when the first private banks got into serious trouble. This was caused by a lack of experience with risk management and bad credit provision. The provision of loans was made all the more difficult because private companies had no financial history. Some banks also lent money to allied entities – i.e. members of their own management or bank owners. Credit exposure rules, which could prevent such practices, were not introduced until 1992. Thus for two years, banks were operating in an environment free of such rules. As a reaction to the problems of banks, the Czech National Bank radically curtailed the issuing of new banking licences and made it almost impossible to enter this sector.

The privatisation of state banks was delayed in the Czech Republic. In 1992, only the Trade Finance Bank (*Živnostenská banka*) was privatised entirely. In the same year, parts of the Commercial Bank, Investment Bank and Czech Savings Bank were privatised through the coupon method. However, the state still kept majority or controlling stakes in these banks. The state's ownership rights in these banks were enforced by the National Property Fund (NPF). This fund was established in 1991 for the temporary administration of state shares in companies singled out for privatisation (thus the NPF did not only administer banks). The NPF's main task was to implement privatisation projects based on the privatisation orders issued by the Finance Ministry of the Czech Republic. The NPF reported directly to the Chamber of Deputies of the Parliament of the Czech Republic. The main reason for the delay of the privatisation of four large banks was uncertainty. If new private owners, for some reason, decided at the beginning of the 1990s to stop providing loans to the Czech corporate sector, it would be a serious threat to the whole economy.

Banking Sector Crisis

State-controlled banks established investment companies which took part in coupon privatisation and thus acquired stakes in many companies. These companies were then dependent on the banks in two ways – the banks owned them and bank loans were their main source of funding. The latter dependence was further intensified by the practical non-existence of a capital market. Even after privatisation, the state was thus able to influence a large part of the industry through banks. The government naturally favoured rapid economic growth and a low unemployment rate and thus was motivated to exert pressure on banks to make them provide loans even to companies that would not normally meet the requirements. In allocating loans, banks were also motivated to favour

companies under their control. This resulted in soft lending (defined as the provision of loans without due verification of the company's ability to repay, or the provision of loans to companies with questionable creditworthiness) and bad loan provision. This meant that companies kept postponing restructuring, since no mechanism forced them to restrict their budgets, while banks kept accumulating suspect loans in their portfolios. Four large state-controlled banks could afford to provide bad loans. They were so large that their demise would cause serious problems for the whole Czech economy and they could thus be sure that the state would come to their rescue, if necessary. This expectation was shown to be correct at the end of the 1990s.

Due to the accumulation of problems of small and medium-sized banks, the Czech National Bank introduced Consolidation Program II in 1996. As a result, the central bank adopted a stricter approach to banks with questionable portfolios. This led to a wave of forced administrations of banks, including, among others, the biggest private bank without state participation. A positive effect of Consolidation Program II was that the Czech banking sector was rid of the most questionable small and medium-sized banks. In an attempt to provide a systematic solution to the banking sector situation, two new legislative measures were introduced in 1998. These amendments restricted the interconnection of banks with the non-banking sector, made conditions for providing banking licences stricter and extended the system of insuring deposits.

Not only smaller private banks got into trouble in the second half of the 1990s. The state's stake in the Investment and Post Bank (IPB) was sold to the Japanese group Nomura in 1998 and re-privatised by the Czechoslovak Trade Bank in 2000 under dramatic circumstances. The Belgian bank KBC had acquired the Czechoslovak Trade Bank in 1999. The Czech Savings Bank ended up in the hands of Austrian Erste Bank in 2000 and one year later, French Société Générale privatised the Commercial Bank. Prior to the privatisation, further state injections had to be provided to the Commercial Bank and Czech Savings Bank, as well as to IPB during its re-privatisation. The total cost of providing assistance to the banking sector is difficult to determine. The Czech National Bank's estimate amounts roughly to 300 billion CZK.

Even the banking sector thus demonstrated that mere free competition is not enough for sound market economy development, but that it has to be accompanied by appropriate regulation. State control over four large banks for a major part of the 1990s and the control exercised by banks over large parts of the industry supported the survival of unviable companies and resulted in the accumulation of bad debts in bank portfolios.

The Tax System

Tax reform was an important step towards changing the state's role in the economy. The Czechoslovak tax system prior to 1989 focused on obtaining tax revenues and achieving political goals without too much consideration of the impact on economic

efficiency. Corporate taxes, whose rates differed according to sector and type of ownership, were the most important source of budgetary revenues. Corporate tax ranged between 55 and 100 percent. The principal form of indirect tax in Czechoslovakia was a complicated system of sales tax. At the beginning of the 1990s, there were more than 1,500 rates of this tax in Czechoslovakia, including negative taxes (the end consumer paid less than the production costs). The sales tax was thus an instrument for achieving political and social goals (e.g. ensuring low prices of staple foodstuffs) and further distorted the pricing system. Companies also paid wage taxes. Czechoslovakia's population was also taxed. The rates were not only related to income, but also to age and number of dependent persons. However, the main part of the tax burden was borne by enterprises.

Between 1990 and 1992, several partial changes of the tax system were implemented (including a decrease in the number of sales tax and profit tax rates and the abolition of negative sales tax rates). A comprehensive tax system reform took effect at the beginning of 1993. The structure of the new tax system corresponded to the systems of western market economies. Currently, the tax system comprises income tax levied on natural persons and legal entities; property taxes; value added tax (this superseded the sales tax) and excise taxes (imposed on fuels, alcohol and tobacco products). After the reform in 1993, the tax system was simplified, with a smaller number of rates and more neutrality (the tax system no longer serves primarily as an instrument to achieve social goals, but to collect a necessary amount of taxes with the least possible distortion of economic activity).

Tax collection is more difficult in a market economy than in a centrally planned economy. This is due to the much higher number of economic entities and the decentralization of economic activity. Private businesses in a market economy are also more motivated to avoid taxation than state-controlled companies in a centrally-planned economy. The elimination of central control of all economic activities provides more space for tax evasion. In this respect, it is necessary not only to implement an efficient tax collection control system, but also to change the relationship between the citizen and the state. Taxes in a market economy are not malevolently imposed levies, designed to finance non-elected elites. In a market economy, taxes are payments for services provided by the central and local governments. Some degree of tax discipline is necessary for the state's efficient functioning, as well as its political stability. A change in the population's way of thinking thus remains crucial. This requires a longer period of time, however.

Initial Recession

In the initial years of transformation, the transition countries of the Central European region saw a dramatic fall in their economic performance and even the Czech Republic was not spared this "transformation recession". The reasons for the economic decline

lay in structural changes – the closing down of inefficient and unnecessary production plants, privatisation, the withdrawal of automatic corporate loans. Changes in foreign trade policy, the dissolution of the Council for Mutual Economic Assistance and the related loss of foreign markets also played an important role. Products supplied to the markets of the Council for Mutual Economic Assistance were usually of inferior quality and their placement on western markets was very difficult.

The output of the Czech economy, which had increased by 4.5 percent in 1989, fell by 1.2 percent in the following year and by 11.5 percent in 1991. In 1992, GDP decreased by 3.3 percent. The Czech economy started growing again in 1993. Despite a significant decline, the Czech transformation recession was moderate, compared to the other countries in the region. It is worth noting that recessions occurred even in countries that had applied the method of slow gradual transformation (Hungary) and countries where real reforms had not even started (Ukraine, Bulgaria). This fact is a strong argument against the statement that “shock therapy” – an excessively fast pace of reforms – was responsible for the economic recession in the first stage of transformation.

The Czech economy continued to grow between 1994 and 1996. In 1995, growth even exceeded six percent. However, the development of the current account of the balance of payments deficit (movements of goods, services and interest rates) was a warning signal. The current account was still basically balanced in 1994, but a year later it showed a roughly three-percent deficit and in 1996, the deficit exceeded 7 percent of GDP. The deficit resulted from an increase in domestic demand and the real evaluation of the crown, which made Czech exports more expensive and imported goods cheaper. In July 1996, the Czech National Bank decided to reduce demand by increasing interest rates and the obligatory minimum reserves for commercial banks. At the beginning of 1997, economic growth slowed down dramatically and the budget, based on optimistic forecasts, showed a deficit.

The government’s reaction was to introduce a package of economic measures in April 1997. The first part of the package was of a stabilizing nature and contained fiscal restrictions and the introduction of temporary import levies. The second part was designed to eliminate the systematic and institutional shortcomings of the Czech economy. The government itself described these institutional weaknesses as follows: inflexible and inefficient structure of ownership rights, interconnection of banks and investment funds, an underdeveloped capital market, insufficient legal awareness and problematic debt collection. The government also saw problems in the imperfect regulation framework, especially regarding the capital market, fair competition and the regulation of natural monopolies (a natural monopoly is formed in those sectors where one large supplier is able to satisfy the market more efficiently than a higher number of smaller suppliers).

Completing Transformation

The government admitted that changes of macroeconomic policy could not have a long-term effect without corresponding changes in the economic system and its institutions. It earmarked these changes as the principal steps towards the completion of Czech economic transformation. The package adopted by the government contained measures to complete privatisation and enhance the state's ownership rights, increase the transparency and standardization of the capital and financial markets and improve conditions for business activities, as well as measures regarding public finance and the prosecution of economic crime. Six years after the beginning of liberalization, economic recession became a driving force for long-needed institutional changes at the microeconomic level.

In May 1997, there was a speculative raid on the Czech crown, made possible by its fixed exchange rate and the liberalisation of movements on the 1995 capital account. After several days of interventions, the Czech National Bank decided to adopt a floating exchange rate of the Czech crown. Subsequently, the central bank implemented a restrictive monetary policy. This, together with a restrictive fiscal policy, strengthened by a second package of budget cuts, resulted in a decline of the Czech economy in 1997 and 1998 and its stagnation one year later. Since 2000, the Czech economy has been growing by roughly three percent per year.

The Czech inflation rate was one of the lowest of all the countries in the region in the first half of the 1990s. Consumer prices increased by 56 percent in 1991 as a result of deregulation, and in 1993 by 21 percent, partly because of the introduction of a new tax system. In following years, however, as a result of fairly restrictive monetary and fiscal policies and the fixed exchange rate of the Czech crown, the inflation rate was kept at around ten percent. This was a success compared to Poland and Hungary (in Poland, inflation reached 586 percent in 1990 and in the following three years, it oscillated between 35 and 60 percent. In Hungary there was no similar radical price increase; nonetheless, inflation fluctuated between 23 and 35 percent during the first four years of transformation). As a result of the recession and the restrictive monetary policy, inflation went down to 2.1 percent in 1999 and since then it has remained below five percent.

Unemployment

Officially, unemployment did not exist in socialist Czechoslovakia. Instead, over-employment was common – companies employed many more people than necessary. These employees either did little work, or performed useless activities. The zero percent unemployment rate of the socialist era was not a natural phenomenon nor a proof of the ability of the socialist system to secure a job for everyone. In a sound market economy, some unemployment is natural. The state has to build a good welfare system

to support those who have lost their jobs. This essentially means replacing wages earned in redundant state-subsidized jobs with direct social benefits. Following 1990, companies started to optimise their staff and the unemployment rate began to rise.

Initially, unemployment grew very slowly in the Czech Republic and in the first half of the 1990s it was significantly lower than in neighbouring countries. Whereas in Hungary, Poland and Slovakia, the unemployment rate surpassed 10 percent as early as 1991, in the Czech Republic it oscillated between three and four percent until the recession in 1997. Causes proposed for the slow increase in unemployment in the Czech Republic include the demand for labour in the fast growing service sector, the relatively high qualification levels of Czech workers and the originally high employment rate of people of retirement age, whose retirement enabled a decrease in the number of jobs without a major rise in unemployment. Another explanation provided is over-employment by companies that had not been forced to restructure and lay people off until the economic recession in 1997. However, the fact that the number of people employed in the industry decreased significantly in the 1990s rather weakens the importance of this hypothesis. Unemployment did not begin to rise until 1997. Within the following two years, unemployment reached nine percent.

The Rejection of the Third Way Proved Right

In the past 15 years, the Czech Republic has followed a thorny path from a centrally-planned economy to a market economy. None of the countries that had set out on this journey managed to complete it without incurring losses and making mistakes. At its end, though, there was a reward in the form of an increase in economic efficiency and the welfare of their population, as well as acceptance among international economic and political structures. The fast rejection of a “third way” between socialism and the market economy was an important factor for the relative success of transformation in the Czech Republic. The Czech case showed that liberalisation and stabilisation alone are not sufficient for successful transformation. Concurrently, adequate market institutions and legislation must be introduced. It is also necessary to change the thinking and behaviour of people who spent their entire lives in systems that were very different from a market economy. Obviously, transformation cannot be implemented instantaneously and takes years to complete.

Experience from other Central European Countries

Hungary

The way towards a market economy taken by Hungary was very different from that of the Czech Republic. The first Hungarian democratic government focused on building institutions at the microeconomic level. This included the regulation and supervision

of economic competition, financial brokering and the starting and termination of businesses. Hungary chose a privatisation based on traditional methods (direct sales, auctions), among other reasons because it needed funds for covering its budget deficits. Unlike the Czech Republic, Hungary adopted an evidently positive attitude towards foreign investors.

Hungarian institutional changes were not accompanied by any real macroeconomic stabilization. As already mentioned, under the circumstances of Hungarian democratisation, one-off drastic measures were not regarded with favour. The Hungarian economy was, after two decades of partial market reforms, relatively liberalized and price imbalances had already been eliminated to a considerable extent. At the beginning of the 1990s, Hungary primarily needed standard monetary and fiscal restrictions. These were introduced in 1995, when the economy faced the threat of a serious financial crisis. The package, containing depreciation, import restrictions, budget cuts and agreements with trade unions on salary decreases, was successful and managed to prevent the crisis. Since then, there has been stable economic growth in Hungary.

While in the Czech Republic macroeconomic stabilisation was introduced already at the beginning of the 1990s, the building of institutions and microeconomic reforms were seriously neglected. This inadequacy was dealt with after the crisis in 1997. Hungary proceeded the other way round – having successfully built regulatory institutions, it was forced to implement macroeconomic stabilisation by the crisis of 1995.

Poland

The initial conditions for transformation in Poland were, in many respects, most unfavourable. Besides the traditional ailments of a socialist economy, Poland also faced a major foreign debt and a high rate of inflation. As in the Czechoslovak Socialist Republic, the new Polish government had political capital in the form of the population's willingness to accept even very hard economic measures. The Polish stabilization program of 1990 earned the title "shock therapy". Most prices were immediately liberalized and the rationing system abolished. The Polish zloty depreciated and its exchange rate was fixed. During the first two years following the introduction of these measures, GDP went down, the unemployment rate went up dramatically and real wages decreased by more than 20 percent. After this, the economy started growing and the other macroeconomic indicators also started to improve.

Marek Belka (Polish Finance Minister in 1997 and from 2001 to 2002) declared that shock therapy was one of the main causes of the relative success of transformation in Poland. This approach eliminated a major part of the distortions of the socialist

economy and significantly pushed the country towards a market economy. Poland thus did not waste time looking for a “third way”. According to Belka, other success factors included the careful process of institution building (independent bank supervision, independent central bank, building of the capital market and its supervision), occasional pragmatic departures from a purely liberal exchange rate and a strong pro-European orientation with the goal of joining the EU.

The German Democratic Republic

East Germany had a very exceptional position among transitional socialist countries. On October 3, 1990, it was unified with the German Federal Republic. At first sight, East Germany obtained a great advantage: joining an economically developed country with a developed democracy, immediate incorporation into Western political and economic organizations, massive money transfers from the federal government and EU Structural Funds, and the possibility of using West Germany’s economic experts and their experience. It might seem that such conditions were ideal for a successful transformation but a look at the federal states that had been part of the German Democratic Republic prior to 1990 is not optimistic: very high unemployment rates, uncompetitive economy and the continuous outflow of people to the West.

West German institutional and legal systems were implemented in East Germany even before the actual unification. This included the introduction of private ownership and liberal pricing, as well as the establishment of the German Unification Fund whose main task was to finance the economic reconstruction of East Germany. The East German budget deficit was covered by the federal government. The monetary union – i.e. the introduction of the German mark in the German Democratic Republic – was another essential step. Despite the warnings of the federal central bank (Bundesbank) that the exchange of East German marks for West German marks in a 1:1 relation would place an excessive burden on currency circulation and jeopardize monetary stability, the decision was taken to convert all salaries, wages, pensions and social benefits in this relation. The population in the East naturally accepted this measure very positively but it caused major problems for local companies.

The principal motives for the 1:1 conversion were of a political nature – they aimed at the fastest possible equalisation of living standards in both parts of Germany. While the income of East German employees amounted to half the Western level in 1991, their productivity of work achieved only one third. This, together with a lower product quality, made East German companies uncompetitive. This was not only true with respect to West Germany and countries of Western Europe, but also other countries of the former Council for Mutual Economic Assistance, compared to which the former GDR had the disadvantage of significantly higher labour costs. The East German transformation recession was thus very deep. As in the other Central European

transition countries, another negative factor was the dissolution of the Council for Mutual Economic Assistance and the related loss of foreign markets. The federal government also massively invested in building infrastructure and the restructuring in the East, without sufficiently considering market signals – politics again won over the economy. East German businesses got used to generous subsidies and became dependent on them.

German transformation showed that even after joining one of the most developed economies in the world and with access to huge funds, the transformation from a centrally-planned to a market economy cannot be painless. Even in this case, the country experienced a hard knock in the form of transformation and restructuring will inevitably take many years. In addition, the case of the GDR also illustrates the negative impact of using transformation to achieve political goals while disregarding economic incentives and principles.

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Privatisation

Tomáš Ježek

From the outset in Czechoslovakia, privatisation unquestionably became the core process in transforming the socialist society into one consisting of free people permitted to use their knowledge to achieve their goals. Privatisation was grounded in relatively good knowledge of the methods used in other countries, particularly the UK. Nevertheless, very soon this knowledge led to the realisation that these methods and procedures could only be used in our country to a marginal extent. Privatisation in the UK was based on the government's hope that a state-owned company would be more efficient after privatisation – from the start, the government focused only on the company. Czechoslovak privatisation first had to create a free market, with the hope of making companies more efficient at a later stage. In order to create the free market system, a critical mass of state-owned companies had to be transferred to private hands. As a result, the government considered the efficiency of individual companies included in this critical mass to be secondary.

Another major difference between privatisation in Czechoslovakia and in market economies was the ratio of assets undergoing privatisation to the volume of savings in the economy. This difference was so huge that it alone made privatisation in Czechoslovakia a totally unique process. The fact that Czechoslovakia's population had insignificant savings after 1989, which were almost negligible in proportion to the national assets deemed for privatisation, soon showed to be of strategic importance.

Privatisation Methods

The proportion of the state's assets to the population's savings had a twofold strategic influence on the selection of privatisation policy. Firstly, privatisation based exclusively on selling the state's assets to citizens, i.e. one whose pace would correspond to the rate at which the population generated savings, would take decades because of the huge volume of these assets. This was entirely unacceptable, especially because the period of transition from one economic system to another is always a period of instability and higher risk of crime. Secondly, one of the purposes of privatisation was to dramatically change the government's role in the economy. It was supposed to lead to a transition from a government that owned assets and conducted business to a government that would be responsible for implementing the rules under which private entities would do business. Viewed in this way, the only possible solution to this initial situation was to opt for a

strategic privatisation method that would transfer the state's assets to domestic private entities free of charge. Special legislation had to be drafted for this purpose. Its principal characteristic was that it was in conflict with the letter and spirit of the Commercial Code.

The decision to privatise the economy through gratuitous transfers of state assets to domestic private entities promised to resolve the problem of the pace of privatisation, i.e. the problem of the duration of the transformation period, as well as the problem of changing the government's role. Implementing this strategic concept was not easy, however. Opposition against it stemmed particularly from the fact that its opponents could not understand that the government was in a very contradictory situation during transformation. Nevertheless, its role as the agent of transformation clearly had to dominate over its role as guarantor of the ordinary operations of sectors dependent on national spending. The poor state of departments such as education, public transport, the environment, or the health service was in fact a strong argument against the state disposing of its assets in the fastest possible way, and without the recompensing its citizens.

The principal strategic concept, which led to the decision to privatise the economy by conferring assets to citizens free of charge, was maintained in the first years of the transformation, although in a considerably modified form. The first adjustment of the original strategy came with the realisation that the public strongly expected the renewal of the market to proceed together with the restoration of ownership rights to individuals who had lost them as a result of nationalisation. The restitution of property turned out to be the quickest privatisation method.

Small Privatisation

The concept of "small privatisation" was the second adjustment. It emerged after the first democratic elections in the summer of 1990 in reaction to the impatience of the public, which was eager to see the first results of transformation nine months after the revolution. With the benefit of hindsight, the most important aspect of "small privatisation" was that it became a major public drama, which drew a lot of attention for more than a year, as well as an important part of the learning curve. Every weekend, people could watch market forces "in action" in any small town and learn to understand them. District privatisation committees gave rise to a highly influential group of people, who became eager promoters of the idea of a liberal market and playing by the rules of the game.

The intensity of the start of "small privatisation" quickly convinced the managers of state-owned companies and their allies at the relevant ministries that privatisation would be serious business. These people were used to the permanent reform process under socialism and they initially thought that privatisation would be just another reform exercise that they would have to survive, just like all those that had come

before. In this respect, “small privatisation” created an important prerequisite for the successful launch of “large privatisation”. Company managements began to view the upcoming “large privatisation” as their salvation and started cooperating very actively. They had to choose between “small privatisation” auctions of the tangible corporate assets under their management (resulting in their loss of control over them), and the transformation of state-owned companies into joint-stock companies through “large privatisation” (allowing them to keep their positions for some time).

Coupon Privatisation

The concept of performing privatisation by giving away the state’s assets to citizens was quickly made operational through the “coupon privatisation” project. Coupon privatisation was expected to be quick and massive and to manage the problem of transforming a huge volume of state assets within an acceptable time frame. It was also expected that the stock market would start operating, i.e. that the stock exchange, one of the key market economy institutions, would open for business. It was obvious that the principal product of the stock market, the price of capital, would be reliable only if the market developed to a massive extent. No other privatisation method could promise to provide the basis for immediately establishing a capital market.

Despite not being the only method for privatising large amounts of assets, the logic of coupon privatisation required that “large privatisation” be performed in two phases or “waves”. Coupon privatisation was the only method that required a precisely pre-defined volume of assets to be privatised at once and with a precisely fixed start and end of the process. All other methods could have been applied continuously without a specific timeframe or phases. On the other hand, the other large-scale methods of privatisation, such as public auctions, public tenders, direct sales and transfers of state assets free of charge to municipalities, also indirectly benefited from the fact that coupon privatisation had introduced a consistent time pressure into the process. The slackening of this pressure after the end of coupon privatisation soon resulted in an increasingly slow pace of the privatisation of the relatively small volume of remaining state assets.

The process of “large privatisation” actually started in Czechoslovakia at the beginning of July 1991 with the publication of four lists, which attempted to record state assets by naming all state-owned companies. The first two lists itemized the companies to be privatised in the two waves, the third list named the companies to be liquidated and the fourth set out companies that were to remain under state ownership. The word company was also used for organizations, such as schools, museums etc. The publication of the first list, giving the names of companies earmarked for privatisation in the first wave, was, at the same time, a call for competitive privatisation projects to be submitted by citizens by October 31, 1991. It was obligatory for company

management to submit a privatisation project. Although coupon privatisation itself was a manifestation of democracy, perhaps even an ostentatious one at that, the democratic nature of privatisation was determined by this second cornerstone – the right of every citizen, including foreigners, to submit a project for the privatisation of state assets. Thanks to the extensive political support of the Czech National Council and the government, the reluctance of company management to provide information to people wanting to submit a privatisation tender was overcome through the adoption of new legislation. Consistent and fundamental political support played a significant role on many other occasions and proved to be one of the key factors of success.

Foreigners submitting privatisation projects – potential investors – and their Czech counterparts did not form an “organized front” against the plans of the Federal Finance Ministry to make coupon privatisation the only privatisation method. Nevertheless, their interests were the same: to get the opportunity to purchase real assets and not only shares, and if shares, then at least a controlling stock. They refused to listen to the Federal Finance Ministry discouraging them from participating in the privatisation and encouraging them to wait and purchase assets once they were in the hands of new Czech owners, so as not to “inconvenience” the state.

Foreign Capital

The massive foreign capital injection to the economy at the very beginning of the privatisation was one of its biggest achievements. In the very short period of 11 months, from the moment when the National Property Fund was established in August 1991 to the end of the first Czech government’s term in office, more than fifty large companies were transferred to foreign investors. All of them are doing well up to now and many of them have become a focal point, around which a network of Czech sub-suppliers has formed. Part of the credit for this achievement must go to the excellent team of American advisors funded by USAID. At the time, the Czech government had to deal with the conceptually defective ideas of the Federal Finance Ministry concerning the involvement of foreign investors in the economy, as well as the animosity of a major part of the public that was against “selling off” national property to foreigners.

In terms of organization, the coupon privatisation was divided into two parts – demand and supply. The demand side, organized by the Finance Ministry, was fully computerized, from the registration of the participants to the exchange of investment coupons for shares, and the coupon privatisation could not have been implemented without computer technologies. The supply side, on the other hand, consisted of a mountain of “manual” work for the Ministry of Privatisation, and in cases of direct sale to local or foreign entrepreneurs, also for the Economic Council of the Czech Government.

The original assumption of the Federal Finance Ministry that the supply side would also be managed by computers, and that the original timeline of the first wave

was based on, did not come true. Due to the significant interest of Czech and foreign entrepreneurs, on average five privatisation projects were submitted for each state-owned company. All of them had to be read and assessed. This high number of projects was also one of the reasons for the dramatic nature of the whole “large privatisation” process, as there were four rejected privatisation projects for one approved. This naturally generated a correspondingly high number of disappointed people.

The high number of privatisation projects made it possible to use the privatisation process to break up regional monopolies and for restructuring large companies. If this had not been the case and if the original “computer-assisted” timetable of the Federal Finance Ministry had been implemented, which did not offer enough time for submitting projects and only ten days for their assessment, it would have been necessary to accept only the obligatory privatisation project put forward by company management. Managements tried to preserve the existing “socialist” structure of the giant companies, including various non-production assets, from nursery schools to swimming pools. According to the submitted privatisation projects, those could then be transferred free of charge to municipalities. Thus coupon privatisation did not start according to the original “computer-assisted” timeline on January 1, 1992, but on May 18, 1992.

Restitution Investment Fund and Endowment Investment Fund

Preparations of the supply side of the coupon privatisation in the winter and spring of 1992 had very important by-products. A legislative amendment enabled the establishment of the Restitution Investment Fund (*Restituční investiční fond* – RIF). The urgent need for its establishment arose during the process of approving privatisation projects, when it became necessary to separate the assets to be privatised from property to be returned to its original owners. RIF accumulated its assets by receiving 3 percent of the shares of every joint-stock company participating in coupon privatisation. The aim of this turning part of the assets into securities was to ensure that those restitution claims that could not be met by returning actual property to its original owners could be satisfied without calling on state revenue by issuing RIF shares.

Analogically, a legal mechanism was introduced making it possible to take 1 percent of the shares of every joint-stock company designated for privatisation in the second wave of coupon privatisation and place them in the Endowment Investment Fund (*Nadační investiční fond* – NIF). NIF’s aim was to support the establishment of the independent sector. Unlike the RIF, the NIF had not been initiated by the end of the first Czech government’s term in June 1992, and as a result, Czech foundations had to wait for NIF funds for another ten years. A legislative amendment also opened a third possibility of solving strategic financial issues through the coupon privatisation – to set aside a portion of the shares for social and health insurance. The NIF’s foundations were laid prior to the end of the first Czech government’s term, thus forcing subsequent

governments to complete the task. In contrast, the establishment of the third fund, that would have been called the Social and Health Security Investment Fund, had not even begun before the end of the first Czech government's term due to a severe lack of time.

It was very easy for the subsequent government to sell the shares that had been allocated for these purposes and use the yields in a different way. In retrospect, it is quite obvious that the third fund, which never even got a chance to see the light of day, would have had the most significant influence on the state of current public finances. The hostile approach of the government representatives who took office following the first Czech government, particularly towards the second and third funds, can only be explained by their desire to get satisfaction for losing the argument on "coupon fundamentalism" in December 1991, according to which coupon privatisation should have been applied to all national assets.

Investment Privatisation Funds

The biggest change after the modification of the original "computer-assisted" timeline was the decision to let investment privatisation funds enter the process. This was only realised once the preparatory stage of coupon privatisation had begun and rules governing its implementation had been put in place. This was a reaction to critical comments claiming that the mere participation of individual citizens – investment coupon holders – would result in a high number of scattered shareholders who would not be able to exercise their ownership rights, i.e. administer and manage the companies whose shares they would own. Looking back, it seems that it was actually a result of concerns that this would lead to the formation of a shareholder structure typical for the developed capital market of the Anglo-Saxon world, in which corporate governance rules are in place to ensure that a company works in favour of its scattered shareholders and not in favour of its managers. The establishment of investment privatisation funds after the beginning of coupon privatisation only partly resolved the issue of the dispersion of shareholders. It also resulted in two other much more serious issues concerning the behaviour of majority shareholders of investment privatisation funds towards their minority shareholders who had also acquired the shares through coupon privatisation, and the behaviour of investment privatisation funds as the majority shareholder of privatised companies towards the minority shareholders.

The efforts of investment privatisation funds, as shareholders, to acquire a controlling interest in privatised companies were mostly driven by one thing. This was the desire to obtain the highest possible short-term yield, rather than a long-term yield that could only come about if the fund decided to hold on to shares for a long period and not see them simply as a short-term speculative investment. The legislature reacted to such behaviour of the funds and amended the Act on Investment Companies and Investment Funds, paradoxically in order to prevent funds from

holding a controlling interest in privatised companies. I say paradoxically because the admission of the funds into coupon privatisation was based on concerns about the dispersion of shareholders and was an effort to help form a more concentrated shareholder structure. With the benefit of hindsight, it is clear that the concentration of shares would have occurred later anyway even if investment privatisation funds had not been established but without the specific problems caused by the conflict of interests between the funds as shareholders of privatised companies and the interests of the fund shareholders themselves, especially those holding majority stakes.

The Devil is in the Details

The improvised involvement of investment privatisation funds in coupon privatisation, organized by the Federal Finance Ministry, later turned out to have fatal consequences. It led to a series of financial scandals and shattered public trust. As usual, the devil was in the details. Investment privatisation funds were, pursuant to the law, established as joint-stock companies. This meant that their shareholders included the founders of the fund, who were supposed to manage it, and the coupon privatisation participants, who had placed their investment coupons in the fund. This violated the canonical principle ruling that the assets of fund managers and investors must never mix, but must always be strictly separated. The result was that the founders of the fund, as the majority shareholders, could freely dispose of all the fund's assets, i.e. even the assets that were allotted to the former holders of investment coupons.

No wonder that as a result, the founders of funds felt like they owned them, the media considered them the fund owners and that the shares of the funds were put up for sale. In reality, this provided the funds with a legal way to sell someone else's assets for their own benefit. Only in 1998 was this problem resolved by an amendment of the crucial 1992 Act on Investment Companies and Funds, prescribing the transformation of investment privatisation funds into open-ended funds. The act could only have been proposed by the federal government and passed by the Federal Assembly in 1992 because of the inevitable gaps in the powers of the Czechoslovak system of "three governments" and the time constraints. These allowed the Federal Finance Ministry to ignore the strategically important comments it had received from the presidium of the National Property Fund of the Czech Republic back in February 1992.

Lawyers and Economists

One of the biggest lessons learned from Czechoslovak privatisation was that cooperation between lawyers and economists is indispensable. Privatisation is, by its very nature, much more a legal problem than an economic one. Yet not only did lawyers not prepare for it in the 1980s, they did not even discuss it due to a total lack of interest. This is why following 1989, economists started steering the privatisation

process and, paradoxically, criticism concerning the underestimation of the legal aspect of the privatisation was then aimed at them. There were a few excellent lawyers at the Ministry of Privatisation, who significantly contributed to the success of the process. Nevertheless, lawyers in general made it quite clear, throughout the transformation process, that economists must solve the conceptual problems of privatisation themselves and that they would get interested only in the cases that would provide work for solicitors.

The last lesson learned from Czechoslovak privatisation was that it is not a task that could be performed only through the cooperation of ministries concerned with the economy, no matter how well organized, i.e. those managing the state assets earmarked for privatisation (ministries of finance, industry, agriculture, culture and healthcare). From the very beginning, public opinion regarded the idea of privatisation with favour. Its support, however, started weakening as cases of the theft of state assets during the privatisation process came to light. The protection of state assets against theft could not, due to the nature of this task, be ensured by the “economic” ministries. On the contrary, they should have been able to rely on the professional work of departments responsible for fighting organized crime.

The success of privatisation was thus seriously threatened by the almost total absence of action taken by the police force, prosecutors and courts that should, in particular, have focused on protecting the unique and high-risk process of the massive transformation of state property into private assets. This transformation process was underway at a time when the old socialist mechanisms of state property protection were falling apart and ceasing to function in expectation of a rapid demise – i.e. sometime after the launch of the small privatisation at the beginning of 1991 – and mechanisms for protecting assets by new private owners were still weak or did not work at all. The police, prosecutors and courts, instead of being particularly alert during this “perilous journey”, were often demonstratively passive because privatisation led to the emergence of structures that most people working in these institutions had been trained to suppress for many years.

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The Seamy Side of Banking Sector Transformation

Jan Hájek

As a result of the conservative and inflexible nature of its Communist establishment during the second half of the 1980s, Czechoslovakia was one of last countries in Central and Eastern Europe to prepare for banking sector reform within the framework of perestroika and began to do so only a few months before the fall of the totalitarian regime. The subsequent tempestuous political developments completely overshadowed the protracted long-prepared changes in the banking system. The more protracted the original Communist banking reform was, the more rapid and wild the developments of this sector were under the new circumstances.

The measures necessary to regulate the banking sector in Czechoslovakia were thus not instituted in advance, but “in progress”, in reaction to unexpected developments, and sometimes even “*ex post*”. The development of the minimum registered capital of banks can serve as an example. The central bank originally wanted to make it as easy as possible to obtain banking licences by newly established business entities. This is why it did not *a priori* limit the total number of new banks and set the minimum capital limit at the very liberal amount of 50 million CZK.

According to the original concept, the unusually low registered capital limit was to help start up a market-driven banking industry. As a result, the number of new banking institutions increased dramatically. Within four years, almost sixty new banking licences had been granted. The continuously increasing number of new banks with very low levels of capital took the central bank by surprise and considerably exceeded initial expectations for the renewal and revitalization of the market-driven banking sector. The conditions were therefore gradually made stricter.

Efforts to curb increases in the number of banks with low capital levels resulted in the introduction of a higher minimum capital limit of 300 million CZK (in the first half of 1991). In the following two years, stronger institutions thus emerged; however, the number of banks continued to increase (partly because foreign entities started entering the market). Another restriction therefore followed at the end of 1993, this time the threshold was set at 500 million CZK. That is approximately three times the registered capital amount common in the European Union (5 million €). In the conditions of the relatively weak Czech economy, this *de facto* meant a moratorium on

new banks. Within almost four years, the unusually liberal conditions for establishing new banks had changed into the exact opposite.

Communist Banks

A few older banks, the residue of the reform attempts at the end of the 1980s, remained part of the new banking sector emerging under new market conditions. These banks bore considerable burdens dating from the Communist era in the form of various debts and, in particular, many suspect loans dating back to the uneconomic practices of the centrally-planned economy. In the first half of the 1990s, the state helped these banks get rid of both the burdens and debts originating from the previous socialist system, and those resulting from transition to the new economic circumstances. The costs of this revitalisation program were fully covered by the state and their total amount is estimated at approx. 100 billion CZK (according to the recapitulation in 2000).

These revitalised old banking institutions, just like all the newly established banks, could start doing business under market economy conditions as free entrepreneurial entities fully responsible for their activities. Despite this, further revitalization programs had to be implemented in the Czech banking sector in the following years. At first, they were non-systematic *ad hoc* interventions of the central bank (usually concerning the imposition of forced administration on a problematic bank, or its liquidation). Subsequently coordinated measures were taken in the form of *Consolidation Program II*, the *Stabilization Program* and the *Solving the Problems of Large Banks* initiative.

The state is estimated to have spent more than 300 billion CZK on all these revitalization programs at the beginning of the new millennium. Tax payers thus paid for the mistakes of free business entities operating in a market economy, which should have borne the full consequences of their economic decisions and actions in line with liberal business principles. The cost was more than triple the amount of financial debts originating from the uneconomical directive planning of the Communist era.

The dominant role of several of the largest banks was a typical feature of the Czech banking sector. In the second half of the 1990s, the operations of the group of the five biggest banking institutions constituted about 60 percent of the total of all the operations of Czech banks and their registered capital represented about the same proportion. As a comparison, the share of the five biggest banks in Germany in 1998 only amounted to 17 percent and in the USA to 35 percent. However, the considerable extent of financial oligarchy within the banking market in the Czech Republic was not the main problem. The share of the largest bank is even bigger in some other countries (e.g. the Netherlands and Sweden). The problem was that the roots and established practices of these banks dated back to the times of the socialist economy. The residues of the socialist banking system thus continued to exist on several levels.

Communist Management

Besides legal aspects (until the end of the 1990s, the state had a stake in all of the largest banks), this situation also influenced human resources. In privatising the economy, one of the aims was to ensure that privatised companies did not end up in the hands of their previous managers, who were mostly members of the Communist nomenclature. This failed to be achieved in the banking sector, however. Although in the most striking cases, prominent Communists were removed from the top management of banks, most old bosses or “under-bosses” were quickly retrained. Communist “reservists” suddenly became “captains” of the economy, handling what were relatively huge amounts of money – especially when viewed from the perspective of the Czech environment – without having to answer to anybody in particular.

These “new Czech bankers” very soon entered the international financial market. Half-baked and bogus, the wannabe financiers had very little chance of success against shrewd financial brains, however. This resulted in the huge losses incurred by the biggest Czech banks from operations on international financial markets, as well as in highly disadvantageous business deals and dubious “partnerships” with catastrophic consequences.

The rapidly developing nature of the banking sector significantly contributed to career advancements of middle and lower ranking employees of the original “socialist” banks. The great demand for labour resulted in an influx of many quite inexperienced people. Anybody who had the least experience with banking immediately went up to middle and higher posts in the hierarchy. These people also brought many “socialist” drawbacks with them – from a complete lack of experience with fundamental market economy principles to a condescending and arrogant attitude towards clients.

Even young people trained under market economy conditions could not fill the numerous gaps in staffing. Despite lacking real practical experience, these young experts very quickly acquired considerable professional self-confidence (at times implanted as part of their “market” training) and a conviction that they could be a match for experienced financiers from developed countries and could compete with them. However, when it came down to a real business confrontation of these greenhorns with ferocious financial professionals, the result was not usually favourable for the Czech banking industry.

Lack of Competition

The near-monopoly position of large banks resulted in a situation when competition pressures had very little regulatory effect on the sector. The original, somewhat naive, notions that the “invisible hand” of the market would set everything right did not materialize. The banks of an essentially “socialist” origin that dominated the market also kept the “socialist” way of working in place for a long time,

especially the condescending and, to put it mildly, unhelpful attitude to customers, particularly small clients.

This could be the only possible reason for the totally unique interest rate spread (i.e. the difference between interest on credit and interest on deposits) maintained in the Czech Republic throughout the 1990s, oscillating between 6 and 7 percent. In functioning market economies, interest rate spreads are at about one third of this level or less. It was the business policy of the above-mentioned large banks that was decisive in introducing and maintaining this situation, which was highly disadvantageous for clients. Medium-sized and small banks, operating in rather small segments of the market, had no chance to influence or modify this situation – on the contrary, they happily adopted these practices for understandable reasons. In many respects, the competitive influence of foreign banking institutions was also rather disappointing. They also very happily adapted to the “regional curiosity” of the given interest rate spread.

The effect of the limited extent of mutual competition between domestic and foreign banks was also apparent in many other areas. While foreign banks adopted the domestic interest rate spread without any protests, local banks were inspired by another factor. In developed countries, the major part of the overheads generated by banks is not covered by interest collected, but by bank fees for various transactions and services. In the second half of the 1990s, Czech banks – in order to “align” their business practices with banks in developed countries – dramatically increased these fees, naturally without significantly decreasing the drastic interest rates.

Bad Loans

Huge losses resulting from bad loans constituted the principal economic problem of the banking sector. Here I mean “new” loans, i.e. loans provided by banks already operating as free business entities in a market economy. The proportion of such bad loans, whose repayment was problematic (often non-existent), was incredibly high in the Czech banking sector throughout the 1990s. In established market economies in the 1980s and 1990s, the rule was that when the proportion of bad loans amounted to 10-12 percent of total bank loans, the banking system in the given country was considered to be in crisis. Nevertheless, even during major banking crises in the middle of the 1990s, the proportion of bad loans never exceeded 20 percent. In the Czech Republic, on the other hand, the share of bad (classified) loans amounted to 38 percent in the mid-1990s and this fact did not evoke any immediate and effective reaction from bank owners and regulatory authorities.

According to sound and qualified estimates, the proportion of bad loans oscillated around 30 percent throughout the second half of the 1990s. This level was further decreased and “adjusted” by write-offs of obviously irrecoverable loans and continuous

transfers of some other bad loans to the Consolidation Bank and other specialised institutions established by the state for this purpose. Bad loans were the decisive agent resulting in the problematic development of banks in the 1990s. There are numerous reasons for the somewhat unsuccessful financial management of Czech banks. They can generally be divided into factors stemming from objective macroeconomic and political conditions, and external or subjective factors, stemming from the developments and practices of the banking sector itself and its employees.

The development of banks was also negatively effected by the complex, unstable and non-transparent nature of relations in the transforming economy, which was something they could not influence. In an environment where macroeconomic circumstances, ownership rights and other external factors were undergoing fundamental change, it was generally very difficult to find the right orientation in the business sector and correctly assess the feasibility of business plans requiring funding through bank loans. Even today, it is sometimes difficult to differentiate between a routine business failure, one that is the consequence of an incorrectly assessed or unrealistic business plan and one that resulted from intentionally unsound planning (or financial fraud). Although Czech banks faced a lack of information about clients, their assets and economic background, they were still willing to provide huge loans to various business entities. They had various motives – from economic reasons to political pressure. Unfortunately, corruption and fraud also often played a role in influencing decisions on loan provision.

Political Pressures

Political pressure, often exerted rather uncompromisingly by state representatives and some political parties, certainly did not encourage genuinely market-driven decisions on credit allocation. Excessive political emphasis was placed on privatisation “at any price”. Banks were pushed to provide loans to new enterprises regardless of potential financial risks. Paradoxically, even in this respect, the residues of the “socialist” approach to banking are apparent in that political requirements won over economic aspects (although here it is “the other way around”).

The state also supported the financially careless behaviour of banks and their frequent crediting of economically suspect businesses in another way. Right from the beginning, it undertook massive efforts to help banks that got into serious financial trouble without much hesitation, not only for macroeconomic, but often also political, reasons. Some of the large banks in particular, considered the millions of the small clients that had deposited their life savings in them to be convenient hostages, enabling them to force the state to remedy their frequent unsuccessful business transactions. Large and small banks very quickly got used to relying on the state always “somehow” solving their problems.

This seriously violated one of the principles of the real market economy – that every business entity is responsible for itself and bears all the positive and negative aspects and all the risks of its enterprise, including losses. The aid offered and provided by the state to the banking sector in the end actually turned against it. The retroactive effect of these measures considerably contributed to maintaining the unsound conditions of its early development. The state's assistance prolonged the distortion of the market environment and to an extent preserved the notion that the state should play a paternal role in the banking sector.

Bad Laws

The non-existence of relevant legislation and totally insufficient business rules were very important aspects that allowed the proliferation of odd and unsound business practices in the banking sector. Particularly in the first half of the 1990s, all institutions of bank supervision and regulation failed, and this contributed to the considerable extent of suspect banking operations, balancing on the edge of legality. The distress calls of the central bank appealing for an introduction of more stringent conditions of bank supervision for a long time met with reluctance and unwillingness on the part of political groups.

In addition, throughout the 1990s, banks had to face an evident unwillingness on the part of debtors to repay their obligations. An important external cause of this unfavourable situation was insufficient legislation, particularly the limited protection of creditors, or rather the limited enforceability of their rights. Although insolvency was sometimes the objective cause of the non-repayment of loans, very often it was related to poor financial discipline of the credited entity, or even the result of *a priori* unsound, or even downright fraudulent, calculations. This situation was indirectly caused, and definitely supported, by the numerous loopholes and considerable shortcomings of legislation, particularly by the non-existence of appropriate legal leverage on debtors. The “socialist” discrimination of creditors continued to exist for a long time and the legal instruments applicable to debtors were totally insufficient.

Trouble with People

The human factor undoubtedly played a considerable role in the unsuccessful operations of banks. It constituted an important part of the subjective (internal) causes for the high number of bad loans. The following general principle proved to be right: once the volume of bad loans starts growing significantly, the first explanation should be sought in the failure of the management, which is always the main internal cause of a bank's crisis. The principal causes include the lack of experience of bank staff, their low qualifications, professional incompetence and,

first and foremost, their frequent failure to observe the fundamental principles of loan provision. This was mostly due to the fact that staff had almost no experience (older bankers did have limited experience, but it had been historically disrupted) with credit provision in a functioning market economy. The inadequacies of employees were compounded by the fact that they overestimated their own abilities and strengths. As for large banks with state participation, it is also necessary to mention the totally insufficient and incorrect performance of proprietary duties by the delegated civil servants.

Intentional violations of crediting principles, resulting in various kinds of credit-related corruption cases, bank fraud and embezzlement, form an entirely separate chapter. Although thousands of bank employees worked honestly on an everyday basis, there were efforts by many individuals, and sometimes entire groups, to personally benefit from their suddenly acquired positions. Many high-ranking bank clerks with authority to approve loans did not hesitate to provide – for an adequate fee – large loans even to problematic individuals for economically suspect projects. They also intentionally accepted greatly overvalued movable and immovable securities for loans.

Large vs. Small

Efforts to get rich quick and capitalize on the atmosphere of big and sudden profits led many to search for loopholes in the imperfect legal system, according to the rule “what is not forbidden (yet), is allowed”. It was actually a certain modification of the sadly notorious slogan from the times of real socialism: “those who do not steal, steal from their family”.

A distortion of the credit market and bias in the provision of bank loans to the entrepreneurial public were indirect consequences of these corrupt and illegal practices. For the above-outlined reasons, it was administratively simpler and easier during the 1990s to obtain a loan of 100 million CZK than to negotiate a relatively small loan of 100,000 CZK over the counter for the development of a small business or to provide backing for a medium-size enterprise.

The dishonesty of some bank clerks only enhanced the following paradox: although most loans provided by banks now went to the private sector, the decisive mass of clients – small and medium-sized entrepreneurs – only obtained loans with difficulty and under relatively unfavourable conditions. Large business entities, on the other hand, received loans without any major problems and thus drained a major part of the money available for loans. In numerous cases, there were difficulties with the repayment of these large sums and they were more difficult to retrieve, which was not the case with small and medium-sized businesses endowed with crystal clear ownership structures.

Other characteristic features of the Czech banking sector included the establishment of excessive numbers of new branches and the totally inadequate building of the network of existing banks. Different banks surpassed each other in these activities. Particularly in the first half of the 1990s, large, medium-sized and small banks set up mutually competing branches even in many small towns. The inefficient nature of the network and a manifold duplicity of offices and administrative staff in the little developed Czech money market were the obvious results. Maintaining this uneconomical situation, often only for reasons of perceived prestige, became an entirely disproportionate burden for the corresponding central offices. As a consequence, this trend reached a turning point in the mid-1990s.

Costly Operation

The underdevelopment of the sector prior to 1990 is only partly to blame for the unusually high operating costs of the Czech banking industry, which is another of its typical features. The essential need to provide most banks with technical equipment and facilities, as well as implementing the required “know-how”, constituted only one part of the high costs of the Czech banking sector. Excessive liberalism and the considerable benevolence of the state also played an important role. Banks very quickly started building luxurious branches – not from the profits they had achieved but very often “on credit”, classified as “unavoidable costs” which eventually became losses. Unfortunately, even banking institutions demonstrated the generally poor payment and tax return discipline of the Czech business sector, which followed the rule “spend what you can, even on things you do not need, it is surely better than paying taxes on it to the state”. It is, however, true that this attitude has its roots in the socialist era, in the negative attitude towards the “all-controlling” state.

From the outset, high salaries were another reason for the high costs incurred by the Czech banking sector. In this respect, the financial sector tried to align with other developed countries very quickly, regardless of the fact that the general level of the Czech economy was much lower. The average salary in the financial sector was permanently at the top of all economic sectors. The number of people working in this sector was not small either. It has roughly tripled since the beginning of the 1990s and by the middle of the decade it amounted to almost sixty thousand employees.

The most striking examples of wage policy abuse and excessive financial remuneration were not to be found within the ranks of ordinary employees but among the top management. It was quite common for bank boards to set their own salaries. The obviously unsustainable nature of such a situation was not only apparent in day-to-day operations, but even more so in extreme situations. In some cases, one of the last decisions of the management of a bank going bankrupt was to approve their own bonuses to the tune of many millions CZK.

Small and Medium-Sized Banks

Small and medium-sized banks constituted a specific problem. They emerged very quickly and their weakness lay in their limited capital. Efforts to obtain more working capital through deposits made by small clients led to promises of high yields. These promises were often unrealistic, however. In order to keep them, banks embarked on more and more risky operations. In most cases, the result was bankruptcy.

Another feature of the small and medium-sized banking industry was that these institutions operated on a local level. Besides the fact that their senior employees had less professional experience, there was another problem – their personal relations with local entrepreneurs. This led to improper loan allocation and “self-financing” through loans provided to companies owned by members of the bank management. These banks also often became the focus of power conflicts between competing entrepreneurial groups, which had a negative effect on their further development. In the case of some large banks, power-struggles between political parties were apparent in their managements. State assistance provided at first to small “problem” banks quickly turned against the whole sector. Banks started relying on the state to remedy all the shortcomings of their management.

Ten Years On

The state’s last fatal intervention in the Czech banking sector was the rapid privatisation of four large banks. Their privatisation had been awaited for almost ten years. The fact that the state held significant stakes in these institutions and performed its role of owner inadequately and incorrectly resulted in a number of predicaments. One of the arguments for the slow and “cautious” preparation of the privatisation of large banks was that they were economically strategic businesses. The state was still providing cover for the business failures of large banks with many tens of billions of Czech crowns in the late 1990s. At the turn of the millennium, it suddenly sold almost all of them to foreign entities. Currently, approximately 95 percent of bank assets in the Czech Republic are thus tied to foreign capital.

From the very beginning of economic transformation, it was clear that it would be utterly impossible to achieve its ambitious goals without a rapid revitalization and sensible restructuring of the banking sector. In pursuit of swift restructuring, there were limited requirements on the trustworthiness, professional qualifications, capital and ownership transparency of the bank founders. To some extent, this is justifiable by the urgent need to have a functioning banking sector serving the whole economy. However, the fact that the state had not created a relevant legal framework for this sector (which even in developed countries is relatively strictly regulated) quickly enough and exposed it to the influence of excessive liberalising pressures are not as pardonable.

Regulatory bodies and a legal framework were created very slowly and in spite of quite a lot of political reluctance. When the state decided to intervene in the “liberal” development of banks, such actions were usually “counterproductive”. In a nutshell, on the one hand, an unusually extensive market liberalism was introduced and applied in the establishment and behaviour of banks. On the other hand, the other side of the liberal market approach – i.e. the full legal and economic liability of banks for their own operations – was suppressed and distorted by the ongoing state paternalism. In other words and even more concisely: what the state should have done, it did not do, and when it should have stayed out, it intervened.

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Army Transformation

Jan Eichler

After the collapse of the Communist regime, the Czechoslovak army consisted of 160 thousand troops. It was oversized, designed to be deployed as the first echelon to face in particular Units 2. and 5. of the Army of the Federal Republic of Germany and the 2nd Army Corps of the French forces. In case of war, the Soviet army was supposed to fight as the second echelon. As the most western of all the Warsaw Pact armies, the Czechoslovak army, at the very end of the Cold War, comprised of two land armies of four divisions each, an air force, an air defence army, two divisions based in Slovakia (these were divisions of a training character, i.e. their main task was to train non-commissioned officers for combat divisions and regiments in the Czech Republic), two independent rocket brigades and a whole range of other independent brigades and regiments (communication, chemical etc.).

In the first ten months following the fall of the regime, the established practice remained that the Defence Minister was an officer with the rank of army general and his deputies were generals. Only in the autumn of 1990 did a civilian become minister (former dissident Luboš Dobrovský), who progressively removed the generals from office and appointed civilians as his deputies. Proper civilian control of the army thus commenced in spring 1991. The armed forces continued to search for an appropriate structure and orientation until the summer of 1992, when the main task became its division in line with the split of the Czechoslovak Federation.

After the break-up of Czechoslovakia, the Czech army comprised of 105,000 members. It was still an oversized army marked by the legacy of its membership in the Warsaw Pact. A land army of more than 45,000 soldiers was its dominant part. At that time, certain anachronisms still remained, such as a railway-based army of six thousand troops. Another anachronism was the excessive number of higher-ranking officers that were concentrated particularly at the Defence Ministry and the General Staff. The defence of the state's territory still remained one of the main priority of military training.

On the other hand, the first considerable changes were implemented. Pre-revolution generals no longer served in the army and higher-ranking officers that in November 1989 held a post higher than regiment commander had been dismissed. The middle commanding positions were taken by the first graduates from western military colleges. New developments included disposing of excessive weaponry,

particularly tanks, armoured combat vehicles, artillery systems and combat aircraft. Army members began participating in UN missions on a more frequent basis.

The coalition government of Prime Minister Václav Klaus did not deal with issues concerning the army and its reform at all in its policy statement of 1992. Czech society was interested in issues concerning defence and safety only to a very limited extent. Most attention was paid to the building of the state and the completion of economic transformation. No significant changes occurred until the government policy statement of 1996. One of its priorities was national security focusing on external threats and the allocation of adequate funds for defence. Another of its goals was an efficient organization of the army. The aim was to achieve a higher professionalization, but as yet a certain level of mandatory conscription was to remain in place.

After the establishment of the independent Czech Republic, a plan to modernize the army began to be implemented. Its principal priorities concerned the procurement of weapon systems and services for the army's modernization. Its main drawback, however, was the large number of poorly coordinated changes and only few priorities had a long-term effect. The plan did not provide guidelines for the decision-making of the army, or the arms industry.

The principle of civilian political control of the army was promoted from the very beginning of the Czech Republic's existence. As a matter of principle, civilians – members of the government coalition political parties – were appointed as defence ministers and their deputies. Three politicians, who had several characteristics in common, held the post of defence minister during a period of four years. Firstly, they were very different from finance ministers, the ministers of trade and industry, health ministers and others, who were required to be experts with a clear vision of the policy they wanted to implement prior to taking office. Unlike other ministers, none of the defence ministers had ever dealt with army issues and defence. They only started to get to know these issues after taking office, which resulted in a whole series of badly conceived measures and decisions. The first defence minister even had to be removed from office due to an accumulation of excesses and scandals. His successor was also dismissed because he could not cope with this post. The first government had one thing in common – the strong, if not dominant, influence of the deputy defence minister for the economy.

During the first four minister's terms in office, the post of general chief of staff was still held by a general who had been a prominent member of the past regime and had graduated from two military colleges in the USSR. On the one hand, he was very loyal and helpful towards people holding senior positions at the Defence Ministry. On the other, he did not have sufficient experience with commanding positions, which decreased his standing and respect within the army. In addition to that, his position was worsened by the fact that he had to solve a lot of serious problems during the implementation of fundamental changes and faced much opposition.

NATO

In the middle of the 1990s, the army was influenced by a very important external positive impetus in the form of cooperation with NATO. The Partnership for Peace Program, the NATO Enlargement Study and later also the accession talks provided a clear framework for the direction the Czech army should take, what tasks it should prepare for and how it should reform. Following several years of uncertainty and fumbling in the dark, a clear long-term objective emerged. At that time, the army also started developing a public relations system in order to comply with NATO standards.

Thanks to NATO candidate country status, the main focus of the Czech Republic's security policy shifted to its involvement in the common air-defence system, the modernization of existing infrastructure and the construction of new infrastructure, the enhancement of territorial defence, the adoption of NATO logistic standards and the gradual unification of weapon systems. Nevertheless, the drawbacks of civilian political control still remained. There were frequent reorganizations and changes in subordination; the different armed forces (land army, air-force, logistics) were first headed by a commander, then an inspector and in the end commander again. The subordination and structure of Civil Defence also kept changing, which decreased the quality of training. A lack of funding for training was also becoming increasingly apparent.

The army continued to face the economic and social consequences of frequent reorganizations and changes in levels of authority. Personnel adjustments and the dissolution of garrisons were continuously increasing the percentage of professional soldiers who had to commute, which was particularly difficult for pilots and technical staff. The army thus generated its own grave internal problems, particularly the inefficiency in the use of the budget, the weariness of the commanders and a decrease in motivation and faith in the importance of the service. In these respects, NATO candidate country status also constituted a positive change. There was less scope for changing priorities and corresponding investments, according to the temporary interests, or even the caprice, of the rapidly changing "winning teams" heading the general staff, its sections and different armed forces.

In 1998, the Army of the Czech Republic comprised half the number of soldiers compared to 1993. The number of tanks, armoured vehicles and artillery weapons also kept decreasing. The chief of general staff was a general trained in the US, at NATO College and on NATO missions. After he had taken office, other graduates from western military schools started taking commanding and general staff positions.

The Czech Republic became one of the three NATO candidate countries in 1997. The main goal of the government was to attain full membership. This resulted in other priorities: emphasis on compatibility with NATO weaponry and its military culture,

the commitment to progressively increase military expenditure up to 2 percent of GDP and further professionalization, while still maintaining some level of compulsory military service.

In reaction to ongoing problems, the government signed a document entitled the Reform of Armed Forces of the Czech Republic in August 2001. The impetus for its drafting was a critical analysis of the army's development prior to 2000, characterized by continuous reorganization without any fundamental change of direction towards a qualitative improvement of its capabilities. The reform was the first comprehensive conceptual document throughout the existence of the army. When it was published, it was an integrated and conceptually highly elaborate blueprint for fundamental changes in the army's structure and its management. Even the NATO General Secretary praised its high quality.

The Czech army went through very many fundamental changes during the short period of the ten years of its existence. Today, it is not as underrated as at the beginning of its existence and it is no longer perceived as a burdensome legacy of the past. Thanks to successful participations in international missions, it has obtained the status of one of the Czech state symbols. However, it is still struggling with frequent reorganisations and an inefficient use of budgetary funds. In the following years, it will have to make investments based on long-term plans that will not be changed as often as its leaders.

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Transformation of the Interior Ministry and Security Forces

Jan Frolík

Prior to 1989, the Czechoslovak police force consisted of the joint National Security Corps (*Sbor národní bezpečnosti* – SNB) and was officially divided into two departments: the National Police Force (*Veřejná bezpečnost* – VB), including criminal law enforcement and public order units, and the State Security Service (*Státní bezpečnost* – StB), which was the secret, or political, police force. In reality, however, there was yet another component – police officers belonging to the National Security Corps who served at the Interior Ministry. Especially at the beginning of the 1970s, career shifts from civilian jobs to “uniforms” became a mass phenomenon, mainly because of financial and material benefits. One could thus come across typists, secretaries and senior clerks at the Interior Ministry ranked as non-commissioned officers, warrant officers or commissioned officers. In fact, one could even use the term “rank inflation”. The National Security Corps merged with purely administrative machinery. One peculiarity of Czechoslovakia should also be mentioned: the State Security Service never formed an independent department (unlike, for example, in East Germany, Romania or the Soviet Union), but was always a part of the National Security Corps and therefore also under the control of the Interior Ministry.

Apart from the National Security Corps, there was also the Border Police, consisting of 12 brigades guarding borders with democratic countries – i.e. borders with West Germany and Austria. In addition, there were the Armed Forces of the Interior Ministry consisting of independent regiments of Civil Defence, which, if need be, could be formed into brigades and operate as back-up repressive forces. These two forces were directly subordinate to the Federal Interior Minister. Both the Border Police and the Armed Forces of the Interior Ministry were mostly composed of regular mandatory military service soldiers. Only professional commissioned and non-commissioned officers were employed on a contractual basis. In 1990, however, regular military service soldiers had only one goal: a reduction in the length of military service (at that time it was two years) which would enable them to go home as soon as possible. Advocates of the “old order” could thus hardly rely on them for support.

The repressive apparatus of the Communist regime was based on three fundamental pillars – the armed forces (besides the police and the secret police, this included

the army and the People's Militia), the judiciary and the legislature. Over a period of several decades, the Communists had created a well thought-out, consistent and efficient legislative framework for the operation of repressive forces (also known as the "order-keeping" forces), the complexity of which was underestimated in 1989. As a result, we are still facing certain legislative "time bombs", for example concerning the disputed act on service contracts. Focusing mainly on the transformation and reform of security forces, we left the judiciary somewhat on the sidelines (though this is also due to the fact that it falls under a different government department). It would have certainly been more efficient to create some form of interdepartmental commission concerned with the transformation of the police, the judiciary and the legislative framework, with special regard given to their interdependencies and operational relations.

Reforms of the judiciary and legislation are quite complex issues. In all countries, the legal community is a relatively closed group (in the Czechoslovakia it consisted solely of graduates from four university faculties) often bound by kinship, which in addition behaves and acts like an elite towards the "rest" of society. Furthermore, no assistance may be expected from abroad in this respect. Police officers may be sent to countries of the democratic world for training in modern methods of police work but their legal training is, in principal, formed by national legislation, which is dependent on domestic resources and is created by domestic experts.

The Case of the Police Academy

At the same time, we have quietly, yet completely, lost the battle for a ministerial training system – the Police Academy. It did not take a great deal – the skilful efforts of one man with knowledge of behind-the-scenes intrigues were sufficient to influence the wording of a new law on university education behind our backs at the beginning of summer 1990. As a result, the new leadership of the Interior Ministry lost all control over the curriculum and general orientation of the Police Academy. The ministry was left with just one obligation – to finance its operation without having any influence whatsoever on the way it is run. This was accomplished by a skilfully hidden adjustment of the wording of the section on the autonomy of universities which – after many years of strict regulation – was a welcome development. The first step should have been to consider whether or not ministerial education was needed at all, and if so, we should have been vigilant during the drafting of the legislation to ensure that efficient control mechanisms remained in place.

We did not even succeed in preventing the politicisation of police work. As a consequence of the ill-considered and extensive amnesty, which came to force on January 1, 1990, there was a dramatic increase in the rate of street crime, both minor

and serious, as well as armed robberies and burglaries. The public is very sensitive to such negative trends. The developments also handed the Communists a valuable argument and they trivialised the situation with the sarcastic remark: “you see, we made various mistakes, but at least streets were safe during our era”. In addition, police officers facing the threat of screenings (“lustrations”) very quickly realized that crime statistics presented them with first rate political capital which they could easily employ in a society with a free press (the tabloids in particular).

In the uncertain and volatile atmosphere prior to the first post-Communist elections, the opposition elites, concerned with ensuring an election victory, addressed a group of reformers in the security forces with a simple, yet contradictory, requirement: perform a radical purge in the police force, without hampering its operability in any way. The two tasks were mutually exclusive. As a result, efforts to purge and transform the criminal and public order units of the police were *de facto* suspended and corrupt and unreliable senior officers were supposed to be gradually replaced by new police officers. However, this concept was seriously hampered by our oversight in the case of the Police Academy. This extremely important battle had been lost, even before we realised that it had started. The Police Academy is the place where professional habits, attitudes towards the service and integrity of future police officers are acquired.

It would have certainly been more pertinent not to have announced the extensive amnesty. If we had simply realised that society will always include people who should be behind bars, regardless of the regime, we could have avoided the dramatic increase in crime. There would have been no space for the police to exercise an indirect, yet strong, influence on the day-to-day activities of the political elite and on the setting of political priorities. The purging of the criminal and public order police could have been more thorough and conducted in a less hectic atmosphere, which at times bordered on hysteria.

Some of the problems we encountered really were impossible to solve. I can remember the desperation of the handful of “new people” that came to reform the passport departments. After the collapse of the Iron Curtain, travelling to the free world became a mass phenomenon overnight. However, passport departments were literally infested with devoted servants of the Communist regime, yet it was impossible to remove them from office as the political repercussions would have been enormous. To this day, I do not know of a recipe for solving this particular problem. Immediately transferring these duties to “civil” bodies of local governments would have probably resulted in chaos and, in terms of human resources, the situation would not have improved a great deal. At least police officers were used to obeying orders and had a deeply rooted respect for their superiors, regardless of what they thought of them.

Family Clans

Another negative phenomenon that we encountered while becoming familiar with the day-to-day life and operation of the Interior Ministry was that both the Ministry and the police force were not only structured in line with the official hierarchy, but also according to family clans in an informal, yet highly operative, manner. From about the mid-1970s onwards, a new generation of officers began joining the police corps. Even official statistical data show that about one fifth were young men hailing from the families of former police officers. After they got married, their spouses usually also found “jobs at the Ministry”. If they subsequently got divorced (the divorce-rate in socialist Czechoslovakia was about 30 percent) and remarried (often with another divorced colleague “from the Ministry”), they started to create a network of family ties. Alliances formed included those between ex-wife and new husband (also from the Ministry) and the new wife and her relatives, including her ex-husband. These family clans were able to control several seemingly unimportant positions, which were very valuable in terms of access to information, however.

These family clans were able to anticipate all the steps taken by the new ministerial leadership and often react to them in advance. When I was appointed head of the Archive Department in September 1991, I had a clear idea about whom I wanted to dismiss and who should remain in office. But I was taken by surprise: no one remained to be dismissed. Those who, in my opinion, should have been forced to leave had already handed in their notice. They had received timely information about my intentions from “their” clan and had resigned of their own will in order not to lose their severance pay. It was very difficult to uncover this network and possible only on a case-by-case basis. It was possible to expose family ties relating to particular individuals, but there was no methodology for making a broad survey within an acceptable time limit so that the clan structures could be broken. In addition, clans extended not only within the security apparatus itself, but also to the judiciary and the legal profession, in fact state administration in general. “Relatives of relatives” and “friends of friends” were thus able to severely hamper reform efforts. And, frankly speaking, they are still doing so.

Secret Political Police

The transformation of the secret political police into a standard counter-intelligence service was entirely successful, but it is difficult to pass this experience on. In the first half of 1990, we found ourselves in an exceptionally favourable situation (unlike the Hungarians and Poles). The Soviet troops of the Central Division were leaving Czechoslovakia in such mayhem and in such a rush that their withdrawal was reminiscent of the retreat of the Red Army in the summer of 1941. It was thus not a priority to monitor Soviet attempts at establishing an intelligence service base on

our territory. All the information acquired in this respect confirmed that given the chaos and disorganisation of commanding structures, Soviet intelligence services were only capable of providing intelligence cover for the withdrawal of Soviet troops and lacked the time, funds, will and capability for anything more extensive. It was possible to dissolve the State Security Service and start to build a new agency with new people. For easily understandable reasons, the only section to escape a radical purge was the Department on Arab Affairs.

The issues we had to deal with were of a totally different nature – how to prevent a flood of new enthusiasts attracted more by the air of mystery surrounding the intelligence services, than by a willingness to serve democratically elected governments and resist the temptation to exercise a political influence over them. By the way, while it is easy to do, it also leads to damnation. Our experience also shows that the position of the counter-intelligence service must be clearly defined and it is imperative that a designated member of the executive be made responsible for its activity rather than a vague group such as the government as a whole.

Personnel Policy

While trying to transform the Interior Ministry, we unfortunately did not succeed in eliminating the system of governance by “deputy ministers” and replacing it with the model of the presidium. The position of deputy minister was only dissolved at the Federal Interior Ministry, in the final stage of its existence. The Ministry was divided into three organisational units headed by civil servants subordinate to the Minister. Only the position of the First Deputy Minister remained unchanged. His position was statutory, however. Besides acting on behalf of the Minister during his absence, he held the post of Director of the Police Corps. In reality, he acted as a deputy of the entire ministry, rather than a deputy of the minister. After the dissolution of the federation, the position of deputy minister at the Czech Interior Ministry was re-established, but this time the deputy minister was also a representative of the government coalition. The post of deputy minister thus became a political position and in assessing his performance the minister also had to consider political aspects, i.e. take account of the cohesion of the government coalition. This development was unfortunate.

Another experience relates to the incorporation of the central human resource department into the organisational structure. The personnel department is the core of every bureaucratic apparatus and of key importance especially during transformation. For this reason, it should report directly to the Minister, even if this creates a significant workload for him. The Minister must exercise direct control over this department because personnel policy and the personnel profile of the ministry are among the essential instruments needed for carrying out transformation.

Lack of knowledge about performing the administrative tasks entrusted to the Ministry, as well as their real meaning and content, also had significant bearing on the process. The reason was very simple. Reformers focused primarily on the Federal Interior Ministry which was only a symbol of power whose competences included a minimum of administrative tasks (nationwide register of driving licences, register of citizens, matters concerning passports). We faced a completely different situation after the dissolution of the federation and the creation of the Czech Interior Ministry. The importance of executing state administration was strengthened because after the handover of power “money once again became simply money” (figuratively speaking). Government policy was thus naturally no longer executed primarily by the police, becoming instead the domain of state administration. The Interior Minister simply lost his privileged position and it was taken over by the Finance Minister. Many people have yet to understand this fact.

Officials in charge of state administration rightly claimed, however, that they had not been part of the security forces or any repressive apparatus. This was often not the case – in fact, the repressive system included state administration as a whole. In addition, the Communists had skilfully extended the long and well-established tradition of the Central European paternalistic state. The state administration “machine” cannot be “switched off” for a certain period of time so that reforms could be carried out and staff replaced. Those who intend to use state administration to promote a new style of government consisting of the proper administration of public affairs, which in reality only consists of the well thought-out and efficient spending of funds generated from taxes, cannot do so without educated and experienced bureaucrats.

The transformation of the inherited state administration apparatus into a body of qualified, efficient, accommodating and incorruptible civil servants proved to be one of the most challenging tasks, one which has not been satisfactorily fulfilled to this day. In retrospect, it turns out that it was a mistake not to have adopted the Act on Civil Service back in 1993. Although the bill intended to protect government officials, if it had been drafted by informed experts and based on a well thought-out system of stipulating qualification as well as ethical and moral conditions, it could have become a tool for a permanent purge of the state apparatus. The first five to seven years would probably have been tough (especially for human resources departments) but after fifteen years we would have made far greater progress. The establishment of a modern state administration is a task for many decades. After all, even in the Federal Republic of Germany, which is very often presented as a model example, it was not established until the late 1960s and early 1970s. Even then it happened naturally (organically) rather than through reforms.

The rash and ill-conceived delegation of power to local government authorities should be avoided. This demand has attained extraordinary political popularity and

is essentially correct. However, if enforced in haste, it only leads to the creation of new “old-style” bureaucratic bodies at lower levels. As a result of the personal history of those responsible for establishing them, these bodies tend to be exceptionally flexible and easily shaped by local influences, especially those that are negative, such as agile favouritism and family ties. This has led to a number of problems on the regional level concerning law and order. Self-interested groupings of influential people have been able to usurp power in a given region and control it entirely. When such situations arise, it becomes very difficult to deprive these political, economic and power “mafias” of their influence and put them on trial using the means considered admissible in a democratic state.

Some people still hold the opinion that it would be more appropriate to copy the legal order of some developed democratic state and introduce it to our own country. In most cases they refer to the example of the former East Germany. However, they tend to forget that the German example cannot be applied elsewhere because the situation in the country was unique. Furthermore, they do not take into account the fact that such a step would challenge the legitimacy of the very existence of parliamentary democracy. If that was not the case, then it would be sufficient to simply employ a relatively small group of good translators without making efforts to establish legislative bodies whose main task – to adopt laws – would thus be cast utterly into doubt.

Jan Frolík graduated from the Charles University Prague. In 1996, he was arrested for “anti-state activities” and spent two years in prison. After his release, he made a living as a worker. In 1990, he started to work as an advisor to the first deputy minister at the Interior Ministry of the then Czechoslovakia. In September 1990, he was appointed the director of the archives at the Interior Ministry which included also materials from the State Security Services. In 1992, he finished his studies of history at Charles University.

My Time at the Interior Ministry

Jan Ruml

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MY TIME AT THE INTERIOR MINISTRY

I arrived at the Interior Ministry with my people too late to be able to prevent the destruction of the State Security Service (*Státní bezpečnost* – StB) archives (unfortunately, during the first weeks after the revolution this ministry remained without a new minister). Nonetheless, I arrived in time to experience the remnants of the totalitarian structure of the Communist repressive system in which every cleaning lady held some kind of rank as a member of the National Security Corps (*Sbor národní bezpečnosti* – SNB).

The entire system at the ministry was based on the idea that every citizen was either a real or potential enemy of the socialist state. The ministry also had unlimited power over every citizen. Socialism was protected by the armed forces and an extensive repressive apparatus, characterised by a strict paramilitary hierarchy, the anonymity of officers and strict secrecy surrounding everything concerning the ministry. When I became the Deputy Interior Minister, I constantly received various nonsensical reports, had to keep everything confidential and go to lunch with the old apparatchiks to a separate officers' canteen. I had my underground “war office” under the Letná hillside. The Interior Ministry also owned a concrete fortress in the mountains to serve as government war offices, and it used hundreds of other buildings, often ecclesiastic, for secret purposes (surveillance, opening mail, wire-tapping, archives). An end had to be put to all of this, the activities stopped and the property returned to its original owners, or transferred to the districts.

Most dangerous of all was the interconnection of various types of authority – a characteristic feature of the former security apparatus. The Interior Ministry had the combined powers to operatively gather information and at the same time to investigate crimes against the republic, carry out direct repressive measures, spy and eavesdrop on “enemy” individuals, beat and torture them during interrogations, without any form of supervision. Individual sections of the State Security Service set up extensive networks of informers and carried out disinformation campaigns against individuals. They also took decisions about who would and would not receive a passport, who would or would not be able to study at university and what kind of employment they could have. The Interior Ministry also had under its control military units such as the Armed Forces of the Interior Ministry, prepared for battle with the so-called enemy within, and the troops of the Border Guard, who shot at those trying to cross the border and leave the republic illegally.

In addition to all these activities, the repressive forces needed an extensive and perfectly functioning system. For example, the department for opening all mail from abroad continued to function for several months after November 1989. Letters were steamed on a 20 metre-long table, poetically named “operational tool ózero” (“ózero” is the Russian word for “lake”), opened and their contents checked. This continued after the revolution apparently in order to intercept narcotic and psychotropic substances. As soon as I discovered this, I immediately abolished this office and dismissed its staff.

Such was the environment that I entered, upon the request of President Havel, initially as the Deputy Minister responsible for the security and intelligence department. My initial shock was replaced by destructive tendencies. It was necessary to put a stop to most activities, the remainder needed to be legitimised and made subject to political and public scrutiny. It is true that at that time the secret police had already been disarmed and suspended. I was faced with an uneasy task: to purge the ministry of the old guard, create a functioning police force and lay the foundations of new intelligence agencies. In short, to create a normal central body of public authority based on the democratic principles of the rule of law, i.e. among other things to place it under parliamentary and public control. The constitutional division of power between legislators, the government together with state administration and the judiciary created the basic framework.

From the very beginning, it was clear that we faced the problem of squaring the circle, an almost unsolvable paradox. It was necessary to meet both the requirement for professionalism and the requirement of staffing the security forces with new people with an unblemished past. Only beings from Mars could have met both of these requirements. I had to take the risk of allowing people with no education and no experience whatsoever in the field of security to suddenly take decisions concerning national security. It was also necessary to maintain public order and protect citizens from crime, which at the time was being carried out by local police authorities reinforced in mixed patrols by soldiers on compulsory military service.

Members of civil society were involved in the screening of personnel in the police and intelligence services. It was extensive, nonetheless in many cases relatively chaotic, full of mistakes and errors. It was not until the act on the conditions for appointing to posts within the state administration and security forces (“the lustration act”) had been passed that there was a qualified means of expurgation, although even a number of ways of getting around it existed. Naturally, those who were most compromised had to leave the security services immediately and without any claim to financial compensation. New people in managerial posts undertook numerous professional study trips abroad and international co-operation in addressing security issues began almost immediately. In 1991, our country became a member state of Interpol.

The foundations of the security of the state and its citizens primarily required a clear legal framework provided by the Constitution and legislation. The Constitution

laid down the parameters for the protection of human rights and freedoms and the principles of the rule of law. A constitutional law on the security of the state was also later adopted, as the basic piece of legislation co-ordinating security activities. Constitutional acts were followed by new legislation on criminal law, both substantive and procedural: the act on the police force and the terms of service of its members; the act on crisis management (floods, large-scale disasters); the act on the intelligence services and their supervision; and numerous other laws in the fields of civil and commercial law, which helped to establish criminal law sanctions as merely a subsidiary instrument. Normal human activities which do not contradict the law were decriminalized.

The organisational structure of the security system was designed so as to enable its individual parts to exercise mutual controls. The central police departments began dealing with the most serious crimes, local police were primarily responsible for public order and transport-related issues. The Interior Ministry underwent a process of civilianisation, whereby only those police officers actively carrying out security services remained members of the police force. The police worked under the ministry's civil administration and a new wage system was introduced. Everything not connected with the work of the police was transferred to the civil state administration, to whose records the security forces have access only on the basis of the law.

The opening of the borders brought new problems, primarily organised and financial crime. Legislation had to be amended accordingly in order to enable the better elucidation and investigation of acts of terrorism, the proliferation of weapons of mass destruction, the production and distribution of drugs, human trafficking and other crimes committed to profit criminal groupings.

The transformation did not, of course, occur without mistakes and errors, especially in terms of human resources and organisation. Furthermore, petty crime in particular rose steeply. Here it did not suffice to say that these negative aspects are the price to be paid for democracy. Citizens perceived security-related problems as a priority and feeling secure was among the highest values. It was a mistake to trivialise these feelings, as was sometimes a lack of courage to stand by one's decisions in spite of public opinion.

The transformation of the security forces took place as part of the general transformation of the country, during which the whole political and economic system was changed – there was extensive privatisation of state property and a market economy was being created. Inevitably, there also emerged a niche for favouritism, the infiltration of the economy into politics and vice versa, and for corruption. If we add to this a lack of respect for the law, inherited from the totalitarian era, unpunished crimes committed in the past and the new economic activities of the former Communist nomenclature, it is hardly surprising that citizens, frustrated by unfulfilled expectations, became markedly sceptical and ceased to take an interest in public matters.

The transformation had its logic and rules, it could have been carried out better, nonetheless it brought about fundamental changes to the life of our society, changes which were undoubtedly positive. The security forces contributed not only to the establishment of the rule of law and the protection of human rights and freedoms, but also to the entry of our country into Euro-Atlantic structures and to the European Union.

***Jan Ruml** was unable to study at university for political reasons as he was involved in a number of activities of the opposition. In November 1989, he was involved in the Civic Forum information campaign. From January to August 1990 he was, together with Miroslav Tyl and Miroslav Lehký, spokesman of Charter 77. In April 1990, he was appointed Deputy Interior Minister of the Czech and Slovak Federal Republic, in the years 1992 to 1996 he was Interior Minister of the Czech Republic. In November 1998, he was elected a senator of the Senate of the Parliament of the Czech Republic. Between December 2000 and November 2004, he was Deputy Chair of the Senate for Foreign Affairs. In November 2004, his term as senator came to an end and he did not stand in the following elections.*

The Transformation of the Intelligence Services

Petr Zeman

In principle, the working instruments of intelligence agencies and security services in various countries, regimes and historical periods do not differ a great deal. They all use secret collaborators as one of their primary sources of information, they all employ equipment for monitoring, surveillance and documentation, though the levels of technical expertise differ. They all observe principles such as secrecy, ensuring their own security and the compartmentalization of essential information. They all exercise special powers.

The goals of the different services differ diametrically, however. The intelligence services of democratic states serve to protect the security of nations and societies against external and internal threats. Similar services in authoritarian and totalitarian states protect regimes and the governing elite, as well as serving goals potentially leading to expansion. In totalitarian countries, the intelligence and security services become the secret police with the task of controlling the population and persecuting opposition members and groups, essentially standing above the law.

The primary task for newly emerging free societies immediately after the defeat or collapse of authoritarian or totalitarian power is to destroy the existing secret police services – it is a task that plays a major role in determining the success of transformation. There are at least two reasons for this. By dissolving their authority, an open society ensures the situation does not turn around and return to the old order, confirming, in a highly symbolic and visible way, its divorce with it before its own public and the world in general. However, in an open society a number of threats that had up to then been hidden beneath the blanket of oppression emerge with an inflationary tendency, the most visible of which is the appearance of new forms of serious crime. The new political elite is faced with the task of building new intelligence and security services (for simplification, I shall use the term “secret police” from here on) or transform the remains of the old ones almost immediately after the fall of a totalitarian regime.

Intelligence services have four main roles, in most cases played by four institutionally diverse organisations – offensive foreign military intelligence; offensive foreign intelligence service, also known as civil intelligence; defensive

military counterintelligence; and the defensive internal security service, also known as the civil counterintelligence. The degree to which they violate human rights and freedoms in dictatorships differs, but in terms of the list above, the level of violations grows from the first to the last institution. The last service mentioned is essentially not even an intelligence service, but rather a repressive secret police force. Even in democracies, citizens view the secret services with an air of suspicion, wary of political manipulation and impropriety. Their concerns are also greatest with respect to the domestic counterintelligence agency.

In Czechoslovakia before November 1989, these roles were played by the following organisations: the General Staff Intelligence Service (*Zpravodajská služba generálního štábu – ZSGŠ*); Section I. of the Federal Interior Ministry (*I. správa Federálního ministerstva vnitra*); Section III. of the Federal Interior Ministry (*III. správa Federálního ministerstva vnitra*), also known as the Military Counterintelligence Service (*Vojenská kontrarozvědka – VKR*); and Section II. of the Federal Interior Ministry (*II. správa Federálního ministerstva vnitra – FMV*), also known as the State Security Service (*Státní bezpečnost – StB*).

After 1989 in Czechoslovakia, and later the Czech Republic, the institutions that took over their roles had the following names: the Military Intelligence Service (*Vojenská zpravodajská služba – VZS*) which took over from the ZSGŠ in 1994; the Federal Office for Foreign Relations and Information (*Úřad pro zahraniční styky a informace – ÚZSI FMV*), which became simply the ÚZSI in 1994; the Military Defence Intelligence service (*Vojenské obranné zpravodajství – VOZ*); and the Office for the Protection of the Constitution and Democracy (*Úřad na ochranu ústavy a demokracie – ÚOÚD*), which became the Federal Information Service (*Federální informační služba – FIS FMV*) in December 1990, the Federal Security and Information Service (*Federální bezpečnostní informační služba – FBIS*) in July 1991 and the Security Information Service of the Czech Republic (*Bezpečnostní informační služba – BIS ČR*) in 1993, known simply as the Security Information Service (BIS) since 1994.

In this brief paper, I will mainly cover the so-called civilian secret services, especially the counterintelligence. I will not discuss military intelligence agencies, though I would like to note that the Czech military intelligence service focusing on external foreign security has yet to get through its identity crisis and complete its transformation.

At end of 1989 and during the first half of 1990 (until the first general election), the political force taking over power consisted of a broad grouping of movements that have only taken shape during the actual process of regime change. Although dissidents, notably those from Charter 77, HOS and other opposition groups, took the role of leaders, they were simply too few in numbers to be able to manage all the necessary tasks. Furthermore, they were not ready to deal with certain tasks and this was apparent

in their somewhat bewildering approach to transforming the power structures of the state. At that point, existing political parties making efforts to emancipate themselves from their past, as well as newly emerging ones, still played second fiddle.

Screening Committees

Section II. of the Interior Ministry (the State Security Service – StB) was dissolved by an order of the Federal Interior Minister two months after regime change. From that moment, its members immediately became subject to screenings by so-called civic and screening committees. The civic committees were composed of representatives of the Civic Forum and other parties and were a typical revolutionary institute. An active role in screening committees, which were the executive instruments of civic committees, was played by reactivated intelligence agents.

The involvement of reactivated agents is a highly specific Czechoslovak trait and as far as I know it has no parallels in any of the other post-Communist countries. It was prompted by highly specific historical circumstances, especially the Soviet invasion in 1968 which put a stop to very bold democratisation efforts within the Soviet empire. During the following era known as normalisation (i.e. re-Stalinization), especially between 1969 and 1972, numerous members of the armed forces, the police and the StB were dismissed (and some of them subsequently also persecuted). Naturally, this mostly affected the staff whose way of thinking was the most modern, democratic and independent. In particular, it concerned those who in 1968 were planning reforms of the state's armed forces. After 21 years, these previously dismissed members of the secret services were rehabilitated and some of them (in my estimate about one hundred in the “state security” and “non-military” spheres) were allowed to return to active service.

Thus it is clear that after 1968, the secret services of the Communist regime in Czechoslovakia underwent a marked discontinuity in terms of personnel. The cementing of ideology during the normalization period made it entirely impossible for secret services to develop towards a form of “national Communism”, such as existed within the Hungarian and Polish secret services. Social developments in Hungary and Poland (with the tragic intermezzo of the state of emergency and the suppression of Solidarity) tended towards a progressive liberalisation, marked cultural freedom and partial political freedom. No wonder then, that after regime change, the public in these countries was “satisfied” with the dismissal of only those members of state security that had dealt with “the enemy within”.

The aim of the screenings was to sort members of the StB into three groups: those allowed to serve in the new services; those to be transferred to the police force; and those to be forced to leave completely. The results were extraordinarily diverse and highly unreliable in detail, mainly because each committee worked “independently”,

autonomously, without central management or methodological preparation. Even so, it was probably the only option at the time and a vital step. And it probably would not have been possible at all without the later much criticised use of reactivated agents. After all, which of the new recruits had any idea whatsoever about matters concerning “lustrations”, personal files, terminology and the entire world of thinking and internal landscape of the security service, let alone the details and nuances?

Counter Intelligence

When the State Security Service (StB) was dissolved and screenings began, its first “successor” was established – an agency named the Office for the Protection of the Constitution and Democracy (*Úřad na ochranu ústavy a demokracie* – ÚOÚD), which was part of the Interior Ministry. Zdeněk Formánek, a reactivated agent, became its first director. Due to stormy relations at the Interior Ministry, he only remained in his position for two months. Jan Ruml, a former dissident and the new Deputy Interior Minister, subsequently took over the service. After the first national election in 1990, it was the turn of Jan Müller, a student leader in the 1960s. At the same time, many members of the screening committees were asked to join the new service under construction. This was the seed of a problem that later grew much larger: employees were selected by those that were performing screenings.

Highly diverse groupings made up the ÚOÚD during 1990 and 1991. The first group consisted of “former” StB operatives that had passed the screenings. These were former members of units focused on the “external enemy” and “protecting the economy”, as well as of technical security and service units (but for one exception, they did not include agents from units focused on “the enemy within”). During the first stage of restructuring, former StB members numbered in the hundreds. After subsequent waves of restructuring and purges, their number was reduced down to dozens. In almost all cases, they did not hold commanding positions. They were people well-versed in the art and craft of the service, motivated to work under the new circumstances and at the same time disciplined and very loyal to their new superiors. The second group consisted of reactivated agents, most of whom subsequently retired within the two years. Their problem was that they viewed the role of the secret service in the same way as they had done in the 1960s and did not understand that the world had changed irrevocably. Yet their body of experience was often of great benefit to new agents. The first “new people” to join the service were former dissidents and members of the opposition (who took commanding positions) and several influxes of their friends and acquaintances followed. To begin with, interview procedures were highly “revolutionary” in nature – informal and with no checks of competence. For a time, a number of people who had none of the attributes of civil servants joined the ranks of the national security service. This entire group was initially a very undisciplined rabble.

Questions such as “what are the secret services for and how should they function?” were never properly discussed and never posed. The rather vague concept of “circular defence” was sometimes cited. The majority of the Czechoslovak public accepted that the development of the entire security sector, secret services included, would be continuous and evolutionary and would involve a gradual change of personnel without the complete dissolution of the former intelligence and counterintelligence agencies. Our post-Communist neighbours had opted for the same strategy. Disputes were only held as to the degree and speed of replacing the old staff.

Everyone was aware that in a democratic state the secret service must have a mandate provided by law. But none of the three groups were aware of the transformations that had taken place in the relationship between the citizen and the state in modern liberal democracies during the previous twenty years. No one fully realized that secrecy must have its limits, that relations with administrative bodies must be more transparent, that in democratic countries secret intelligence agencies publish annual reports and communicate with the media (to a reasonable extent) and that the service must be subject to parliamentary control. It should be emphasised, however, that at the time (the start of the 1990s) these accountability principles were only just being implemented by intelligence agencies in western Europe. Thus it is no wonder that we only grasped them fully at a later stage.

The concept of separating state security, that represents an “information power”, from the Interior Ministry and the police force, that represent “regulatory and repressive powers”, also had majority support. This meant opting for an internal security service without any police or criminal units, in line with British and German models (Poland chose a different option and their counterintelligence secret service still has powers of criminal investigation). When and how to separate counterintelligence from the Interior Ministry became the subject of numerous political disputes, also held in parliament and the media. At the time, some members of the service were suspicious of the activities of the leadership of the Interior Ministry and vice versa. Making the secret service subject only to parliament was also under discussion.

New and Old

The relationship between new and old members of the services reached a peculiar symbiosis. To put it in a somewhat oversimplified manner, the new recruits were at the helm, the reactivated agents set the policy and the old guard determined the way things were actually done. However, symbiosis is merely a mutually beneficial form of parasitism. The new recruits were dilettantes with good intentions. Those who had personally experienced secret police harassment were a subjective insurance policy – though not an absolutely guarantee, for power corrupts – that the new secret service would not go back to using the repulsive tactics of its predecessor. There was

also a certain amount of work to be done besides internal squabbling and defending the service and the new recruits were unable to perform the tasks adequately (the brief training that a few had received abroad could not make them professionals with the wave of a magic wand). The old guard received protection in return for work. Colleagues frequently became mutually dependent on each other and sometimes even friends.

Within about two years, the public's perception of people who joined the new secret services changed considerably. In April 1990, they were admired for being brave enough to enter the lion's den and for a time they were considered a useful channel for exposing real, as well as alleged, matters of concern to the public. But in the end the general perception was that they were either a pitiful bunch of meddling amateurs or suspicious cops. It certainly looked that way according to media reports of the day which focused on serious breaches of conduct in the ranks of the security units. Less known is the fact that this was also a very creative period for counterintelligence. Being a dilettante also had certain advantages, for example in terms of a fresh outlook on the world and enthusiasm for the job.

After an acclimatization period, new operatives contributed to the detection of clues in the Lockerbie terrorist bombing case. They were also timely in detecting new forms of economic and business crime, though at the time none of the customers of the service were particularly receptive to their efforts. In addition, they began to successfully monitor extremist subcultures and collaborated with the police on uncovering mafia-style organised crime. For a time, these activities even replaced operational investigations of the police force, which was initially somewhat reluctant to tackle these new spheres.

The expected and feared threat of subversion by former StB officers was also initially of great concern. After monitoring the matter for a while, domestic counterintelligence concluded that the threat was not high; former StB agents fared well in business and the great majority of them caused no trouble. It must be added that the new operatives were too few in number and the influx of qualified new staff was inadequate. One further note: this turbulent period was characterized by one essentially marginal phenomenon – numerous visits and reports by individuals with paranoid and conspiratorial tendencies. There seemed to be no end of bunkers, hidden treasures and conspiracies for the service to investigate. Even so, it was a good lesson in critical appraisal.

Joining the Club

The attitude of the intelligence agencies of Euro-Atlantic liberal democracies towards the newly emerging secret services in post-Communist countries was noteworthy. After an initial stage of tentative contacts, we were “invited to join the club”. New active liaisons were established, our people were invited to various training exercises. This

was apparently due to efforts of those representing the “new officers”, in particular the office of President Václav Havel.

There is no international provision prescribing, recommending or regulating the organisation of the secret service, either within NATO or the EU. Diplomatic recommendations on best practises provide the only guidelines – the armed forces and the security sector should be managed by civilians and subject to democratic control; they should be politically independent; their position and mandate should be governed by law; and they should be subject to independent parliamentary or similar external control. The much more recent (2002) scientific work of the Geneva-based think-tank Centre for the Democratic Control of Armed Forces emphasises that it is optimal to divide the roles of external and internal security forces in an institutional manner. Each should operate in a different legal framework and they should not be part of the same organisation. Czechoslovakia also opted for this model, although not entirely intentionally.

Our western partners thus had no objections with respect to the fact that our secret service was partly composed of members of the pre-November security services. In thinking about relations with western intelligence agencies, we must also consider “national interests”.

The Division of Czechoslovakia

The atmosphere after the fall of Communism in Central Europe and the disintegration of the Soviet Union was dominated by euphoria and the illusion that “the world was now safe”. This spirit of the time resonated very strongly in the Czech environment, characterized by the feeling of “being small and weak”. Since the end of the Cold War, the intelligence community of liberal democratic countries in the Euro-Atlantic zone has lived in a permanent state of identity crisis (leading to the downsizing of staff and budgets). This situation naturally influenced the emerging secret services in new democracies. Identifying the enemy and the threat posed a certain problem for the Americans, let alone the Czechs.

During the first two years after the revolution, the central political themes in Czechoslovakia were resolving the arrangement of the federal republic, stemming from the pressure of Slovakia’s emancipation which was heading towards a constitutional stalemate, and selecting a model of economic transformation. The results of the election in the summer of 1992 predetermined the resolution of both these issues – select the right way to transform the economy and divide the federal republic into two states.

There was little energy left over for security issues. The new government elites did not have any knowledge about the secret services and they did not know how to use them, give them tasks or control them. Thus they took little notice of them. This lack of interest and understanding, as well as the general nervous atmosphere

of the time, meant that the public yet again viewed the security forces in the worst possible light, making it considerably more difficult for them to operate and develop professionally. Once again, Czech secret services had more recognition from partners abroad than from domestic members of the executive. They made efforts to secure a “circular defence” of their own interests. Another way of putting it is that they had too much time to concern themselves with their own matters, instead of focusing on the real tasks.

The service was dogged by painful external conflicts and internal disputes. In the summer of 1991, the Federal Security Information Service (*Federální bezpečnostní informační služba* – FBIS) was established, which was finally formally independent of the Interior Ministry. Many different directors took turns at the helm. With offices in the main towns of the former regions, it functioned like a confederation of entities that cooperated to a lesser or greater extent, sometimes giving the impression of an improvised drama. Lack of managerial control over the entire entity was its greatest weakness. After the Czech Republic was established, the civil counterintelligence service was renamed the Security Information Service of the Czech Republic (*Bezpečnostní informační služba České republiky* – BIS ČR) and from 1994, simply the Security Information Service (*Bezpečnostní informační služba* – BIS). Interestingly, staff at Slovak offices had a much more pronounced “party-political” alignment than at the Czechs.

Boomerang

Important steps towards society-wide transformation were taken in the Czech Republic during 1993 and 1994. New forms of ownership were introduced, political parties were established and the Czech public gained self-confidence from the country being considered the “fastest learner” in Europe. In the media, a new opinion appeared on the policy of continual transformation as applied up to that point. This was based on the simplest reaction to the fall of the Soviet dictatorship consisting of a wave of “rightwing sensibilities” coupled with boisterous anti-Communism. The public was also sobering up from post-revolutionary euphoria and the debate on coming to terms with the past. The pre-November StB was in the spotlight once again as one of the demonic culprits, as were the new secret services. After all, “how could they function properly if they still included officers of the former StB?”

The decision to adopt the method of continuous change came under scrutiny once again. Would it not have been better to have opted for the often discussed “zero solution” – to have dismissed all the former officers and built a new service on a green field? Arguments against the zero option included warnings that it takes seven to ten years for an intelligence officer to mature professionally and in the meantime the secret service would be weak and unable to protect the country. That was a strong argument.

Defending the chosen solution took a great deal of courage. The heads of the services sought acceptable compromises, often in contradiction to their initial attitudes.

However, once a solution is in place, even though it was not selected entirely consciously and deliberately, it determines further developments and frequently makes it impossible to go back and start again. For this reason, the secret services persisted with “continual transformation”, at times made more rapid through reorganization, at others slowed down for operational reasons. According to my observations, the sections that best matured professionally were those which included some of the “old guard”, even if there was a majority of new officers. Sections that either contained only former StB officers, or none at all, fared worst. My “small scale” observations are in line with the conclusions of expert studies of transition, which generally give weight to the notion that countries which include some of the former elite in their structures develop in a more stable manner. This finding is confined to the academic sphere, however. No one is very willing to mention it in public political or media debates.

One other important note – the secret services have their own mission and purpose. Except for a brief period immediately after the handover of power to the new system (when they must take control of archives and assets), they should not play the role of de-Communization institutions. If there is sufficient political will and an appropriate social atmosphere to start to begin building a case against the former regime, and eventually bring it to criminal court, then it must be done by institutions newly established for the purpose. Conflicts of interest (legitimate on both sides) will of course arise between such institutions and the secret service and to balance them is not an easy matter.

Between 1990 and 1991, the Federal Interior Ministry planned either to disband the external security service entirely or transform it into a benign service evaluating the foreign media, as part of a gentlemen’s agreement with foreign powers. First of all, however, it was necessary to dismantle Communist foreign intelligence outposts abroad, including those of the so-called “illegals”. That is not a trivial task. It is possible to send armed officers to an office in a provincial town, seal the rooms and dismiss the officers, but it cannot be done in a foreign metropolis. The Communist foreign intelligence was dismantled by reactivated officers who knew its methods – they had not changed a great deal since the end of the 1960s. These older gentlemen deserve thanks (which they have never received) for the services they performed. Unfortunately, some of them subsequently slowed down the next phase of development.

In the first half of the 1990s, the foreign intelligence service was on the defensive and floundering to find a way out of its predicament. Unlike its Polish, Hungarian and Slovak counterparts, the Czech service had been expelled from its environment by its natural partners and customers, the Foreign Ministry and the diplomatic service. I venture to suggest that the civil servants in the Foreign Ministry felt that the

ostentatious expulsion of the intelligence agency from the diplomatic service was a form of catharsis. That feeling was incorrect, however. Their mutual relations were not restored until the period between 1997 and 2000. The work of foreign intelligence must of course be based on approved foreign policy and must not compromise diplomacy. It can, however, make a significant contribution by using its specific instruments for gathering required information.

Hungary and Poland

In total, nine different directors took turns as heads of civil counterintelligence between 1990 and 2004. In the same period, foreign intelligence had six different heads. Except for two, none were former Communists. On the contrary, four had been imprisoned by the former regime and five were Charter 77 signatories. Approximately 20 other Charter 77 signatories held senior management positions in the domestic and foreign intelligence services at one time or another. Although it does not say a great deal about their executive qualities, it gives a favourable message about both rightwing and leftwing governments of Czechoslovakia, and later the Czech Republic.

The situation in Hungary was different. When Orbán's rightwing government took power in 1998, it appointed officers from the former Communist foreign intelligence service heads of both the external and internal security services. In Poland, the situation was more complicated. From 1990 until the end of 2002, the role of the civil intelligence was played by the Office for National Protection which combined the function of foreign and domestic security agencies. Two independent services have performed these roles since 2002. Former Solidarity activists headed the Office between 1990 and 2002, with the exception of one "old apparatchik" when the left was in power.

Poland always had a strong and competent intelligence service. This did not change even after 1989, when the secret service was partly subjected to lustrations, although the original agency network was never fully dismantled. Most of the officers who remained in the service declared their loyalty to the new regime and the president. It is well known that President Wałęsa had a soft spot for the Office and often used its services. Directors of the foreign service within the Office until 2004 were always members of the "old guard", both under rightwing and leftwing governments.

Centre-right political parties and movements never accepted the existence of so-called loyal officers, who had worked in the Polish secret police prior to 1989. However, because the right did not have a united and strong position in parliament, it never had a mandate to do anything about it. That could have changed with the unification of post-Solidarity groupings in the AWS (Solidarity Electoral Action) coalition in 1998. Within the AWS there was a discussion about the "zero option" entailing the dissolution of the service and starting from scratch. In the end this did not happen.

Several affairs in the 1990s revealed political connections to various managements of the Office with individual figures of the internal political struggle in Poland. The politicisation of the secret services is still not a thing of the past in Poland.

Slovakia

Slovakia also represents a specific case. Shady figures headed the Slovak combined secret service known as SIS (foreign and domestic security) between 1995 and 1998, whose activities contributed to the deepening international isolation of Slovakia. Unlike the Czech service, the Slovak secret service experienced several staffing discontinuities between 1993 and 2004. In 1993, it rejected the former Slovak officers of the FBIS. Many people were dismissed and, on the other hand, many former StB officers were recruited into the service. The new democratic government that came to power in 1998 had to get rid of these “old acquisitions”.

In 2003, the new director therefore decided to opt for a sudden “zero solution” and dismissed the remaining former StB officers after they had been in the service for many years, even if they had been loyal. This development not only had a negative impact on the professional maturity of the service, but also helped to create the disturbing Slovak phenomenon of so-called parallel services. Dismissed officers sometimes work for non-governmental entities. In comparison with neighbouring countries, and contrary to the opinion of some journalists, the involvement of Czech secret services in the world of domestic politics was highly insignificant.

None of countries mentioned implemented the “zero solution” at the start of transformation, opting instead for a continuous process. In the Czech Republic, the civil secret service and the Military Defence Intelligence (VOZ) opted for a “close to zero” solution after a number of years had passed. Slovakia approved a sudden zero solution at a late stage as already mentioned. Poland, and especially Hungary, have some way to go. In Estonia, and also in Lithuania, though less thoroughly and to a slightly lesser extent, new security services were composed exclusively of new and young people.

What would have been if...

Such questions tend to be the subject of historical musings based on contradictory facts. Sometimes I think about what should have been done to make the transformation of the Czechoslovak and Czech secret service less painful, with fewer mistakes and a more effective result. If I could use a time machine to go back to 1990 and give some advice to myself and my colleagues, my counsel would go something like this: the transformation of the secret services is expensive and long and cannot be done without painful mistakes. Several specific people must be responsibly trained in advance to take on the role of the management, coordination and policy of the secret services in

a democracy. The future head of the secret service should not be a person positioned on one of the sharply defined poles of the political spectrum nor a long-term émigré, a businessman or a professional soldier. Are we seeking an evangelical pastor?

Foreign systems should be studied repeatedly and within all the given contexts. In every country, the security solution stems from specific local historical conditions and almost nowhere was it the result of a rational deliberation. Brief familiarisation is not sufficient – the devil is in the details. A combination of foreign models may be used to produce a solution. The old secret police must be dissolved as soon as possible after taking over power. However, it serves no purpose to place its members in a precarious social situation. The archives of the old secret service must be carefully protected. The different sections of the old secret police must be differentiated – some of them carried out tasks identical to those of the new service.

After the downfall of a non-accommodating regime, the best option appears to be to create a new service on a green field. In the very first stage, however, this is hardly possible without employing the former officers of the services of the previous regime. They must be promised something in return, for example a 5-year period of protection, within which they will be replaced and then generously remunerated. This promise must of course be guaranteed and fulfilled. It is necessary to intensively communicate with, and educate, the new political elite. Limits and tasks must be conferred on the secret services by the executive as soon as possible. After the initial phase of the destruction of the old services and the rapid construction of new organisations (and this should not take longer than a year or two), it is appropriate to find ways of communicating with the public and the media. The secret service protects its country against current threats; it is not an institution for coming to terms with the nation's history. New young people must be recruited intensively and trained, but with due care. Directors of the secret services in the period immediately after the regime change should bear their own timely departure in mind. They should progressively be replaced by new professionals from within the secret services, preferably in the middle of election terms.

Peter Zeman graduated in natural sciences. At the end of the 1960s, he was active in the student movement. In the 1970s and 1980s, he was not allowed to work in his field and made a living as a manual labourer, and later as a technician. In 1977, he signed Charter 77. In 1990, he was a member of the civic committees. From 1990 until 1998, he worked in civil counterintelligence; between 1998 and 2001, he was head of civilian foreign intelligence.

Czech Media during the Transformation Period

Tomáš Klvaňa

The development of Czech media since the end of 1989 reflects the development of the entire country. While the first, and to a significant extent also the second, half of the 1990s represented a period marked by the formation of new principles for professional journalism, the main characteristic of the end of the 1990s and the beginning of the new millennium has been the rise of entertainment-related media – the infiltration of “softer” entertainment-based formats into formerly serious media. As a result, Czech media have become involved in creating conditions for the spread of “Communist bad taste” through the medium of post-Communist pop-culture. This reinforced a unique form of nostalgia for the 1948-1989 regime. Czech media have thus become less relevant for the development of democracy and civil society.

For Czech journalism, 1990 was a fundamental turning-point. After fifty years of oppression, Czech newspapers gained independence. In 1990, there were few foundations to build on. The tradition of free journalism had been terminated by force in the period 1938-39, with only a partial renewal between 1945 and 1948. In addition, the position of journalism during the first Czechoslovak Republic (1918-1938) had been completely different to that of modern media in a present-day free society. There was no modern tradition of independent media, nor a generation of journalists from whom the new generation could learn the principles of journalism. Very young people with no experiences thus ended up in senior positions in some of the key media organisations.

Guiding principles for the profession were sought abroad, particularly in the Anglo-Saxon tradition of journalism. This endeavour could be compared to walking on shifting sands. The working methods and professional principles of journalists in the west were changing under pressure from emerging 24-hour cable television news channels and later the influence of online media. The border between objective and opinion-based journalism became, and is still becoming, less clear. The concept of objectivity itself came under fire from those concerned both with the theory and the practice of journalism. The nature and style of articles in the dailies is changing – new themes, especially from the world of pop-culture, are commonly appearing on the main news pages, whereas in the past they would have been confined to the weekend

supplement. In general, journalism has become more personal and colourful, less serious and more opinionated. There was also a certain confusion of values in Czech journalism in the 1990s.

The media market was one of the first segments to be fully privatised. Freedom of speech was guaranteed by the Constitution and most of the laws that the political class could abuse to limit freedom of press were abolished. The Federal Press and Information Office, which had performed censorship, was dissolved in May 1990. Myriad new newspapers and magazines were established at the start of the 1990s. Yet most did not survive the period of consolidation that came in the second half of the decade. Dozens of new private radio stations appeared. The launch of the first commercial television station in Central and Eastern Europe at the beginning of 1994 was of key importance for the future of the media market.

Fifteen Years On

Fifteen years after the Velvet Revolution, the media market has stabilized. Magazines focusing on television culture and women's magazines have the highest circulation among printed media. The tacky newspaper *Blesk* is the biggest selling daily with a daily circulation of almost half a million copies. Unlike the politically-focused tabloids in western Europe and the US, *Blesk* is not concerned with investigating the world of politics and is essentially merely a medium for popularising television and movie stars.

The Czech Republic has four national dailies. *Mladá fronta Dnes* has the highest circulation, selling more than three hundred thousand copies daily. Together with the daily *Lidové noviny*, which has a much smaller circulation of 70 to 80 thousand copies, they are owned by a regional German publisher. The *Právo* daily (average print-run just below 200 thousand copies), established through the transformation of the former daily of the Communist Party *Rudé právo*, is the only one of the main newspapers owned by a Czech company (though even this company is under German control). *Hospodářské noviny* with a circulation between 70 to 80 thousand copies is published by a company created by the German group Handelsblatt and the American company Dow Jones. A network of regional newspapers with a total print-run in excess of half a million is also published by a German company, Vltava-Labe Press. German companies thus practically command a regional monopoly.

Before 1989, television and radio were instruments used directly by the regime to control the population. The new democratic government understood the importance of restricting any possibility of abusing television and radio for political purposes and of liberalising this sphere but, because of various disputes, the acts on radio and television broadcasting were not passed until October 1991. They turned state television and radio into autonomous and independent public-domain entities, giving them control over the collection of fees through licenses and thus financial

independence. These acts also prescribed broadcasting frequencies allocated to the public and the private sectors, as well as the Television and Radio Broadcasting Board, whose purpose was to administer, monitor and supervise the sector. Members of the Board are appointed by parliament and this has led to a weakening of the political independence of the media, especially television.

Besides dozens of private radio stations, the main public-domain Czech broadcaster is Czech Radio (*Český rozhlas*) with four main radio stations. In terms of listeners, Czech Radio's first channel and two commercial stations dominate the ratings. Television broadcasting is divided into two public domain channels and two commercial stations. Radio and television broadcasting is regulated by a board appointed by MPs on the basis of nominations by important public organisations. Czech Television, Czech Radio and the Czech Press Agency are also regulated by separate boards of a similar nature.

Independence vs. Political and Economic Manipulation

Since 1990, Czech media have been formally independent. Censorship was abolished and in 1994 the Constitutional Court annulled a law enabling the criminal prosecution of journalists under the charge of defaming politicians. President Václav Havel rescinded the clause under which journalists could be prosecuted for slandering the president in 1997. To this day, however, politicians have not given up trying to manipulate the media and threaten troublesome journalists. Several journalists have faced criminal charges and civil lawsuits whilst others have been intimidated for their activities. Two *Mladá fronta Dnes* journalists faced criminal charges for refusing to name their informer before a court of law in 2000. This came after they had published a slanderous document produced by the advisors of the prime minister with the aim of discrediting his political opponent. President Havel stopped the criminal proceedings. Another reporter faced prosecution because he published information about a case of fraud, purportedly concerning the director of the domestic security agency.

In 2001, the prime minister accused a reporter covering the energy sector of having been bribed by the Czech Energy Utility (*České energetické závody – ČEZ*). The reporter filed a lawsuit against the prime minister and even though the court proved that the allegation was untrue, he lost the case and had to cover the legal costs. That same year, the authors of a satirical cartoon were forced, as a result of a lost lawsuit, to apologise to a Czech government minister for purportedly picturing him in an unseemly situation. The most flagrant case of intimidation so far took place in 2002, when a senior civil servant at the Foreign Ministry was arrested for allegedly planning the murder of a reporter who published articles about his use of corrupt practices. The following year the civil servant was found guilty and sentenced to eight years in prison.

Politicians have used the regulatory boards appointed by parliament, which are supposed to supervise the sector, to put pressure on the media, especially those operating online and in the public domain. During the winter of 2000/2001, Czech Television reporters, and subsequently all its employees, went on strike in protest against political manipulation. Tens of thousands of people demonstrated in Prague in their support. Although political pressure appears to have relaxed since then, economic pressures have not. In January 2004, the director of Czech Television made a public apology to the lottery company Sazka, an important advertiser, for broadcasting a report criticizing the company. This was despite the fact that Sazka had lost its lawsuit against Czech Television.

News reporting on the private television station *Nova* was clearly slanted in favour of certain political parties until 2003, when its founder was dismissed from the post of director. The Radio and Television Broadcasting Board was roundly criticized for promoting the narrow interests of the main political parties and *Nova TV* to the detriment of the interests of the public. After the Czech Republic lost its case in the international tribunal with the US investor in *Nova TV*, parliament dismissed the broadcasting board in the summer of 2003. The Czech Republic was ordered to pay damages amounting to more than 300 million dollars to the US investor for failing to protect his investment. The new board has a better reputation and is widely viewed as impartial to the pressure of political parties. In the Czech Republic, investigative journalism is relatively scarce. It is insufficiently funded by the media and some media owners quietly discourage it, especially in the business sphere.

Commercial Television

When *Nova TV* made its application for a broadcasting license, the future license holder pledged to make the station a high-quality broadcaster with programmes focusing on culture, art, children, education and minorities, as well as its own drama productions and serious news reporting. The Radio and Television Broadcasting Board provided the license free of charge, based only on an evaluation of the projects presented. Already at the time, the main media criticized the granting of a license free of charge to an owner for whom the station would be a profitable business. The company received the license under the proviso of a commitment to maintain the level of broadcasting at the quality promised.

In reality, however, none of these conditions were met. The board gradually relaxed all the conditions as a result of aggressive lobbying on the part of company management. From the outset, *Nova TV* has been broadcasting commercial programmes with tabloid-style news reporting, noisy talk shows, action films, aggressive children's cartoons, soap operas and soft pornography. It has also perfected those forms of entertainment preferred under Communism, such as cheap humour variety shows and

pop music productions. During the so-called Communist normalisation era following the 1968 Soviet-led invasion and especially from the second half of the 1970s onwards, Czechoslovak Television broadcasted variety shows several times a year, especially on New Year's Eve. Today, *Nova TV* broadcasts these shows several times a month with corresponding and immediate commercial success. During the latter half of the 1990s its share of the market reached 70 percent, today it is 40 percent. Almost from the outset, its annual profits reached around 100 million USD.

Prima TV, the second of the two nationwide commercial television stations is about half as popular as *Nova TV*, as is Czech TV's first channel (ČT 1). The average ratings of the fourth television broadcaster, Czech TV's second channel (ČT 2), stand at approximately 10 percent. *Nova*, *Prima* and to some extent also ČT 1 broadcast commercial content including films and serials produced under Communism, some of which even contain Communist propaganda. Only ČT 2 shows non-commercial content and plays the role of a public service broadcaster.

All television broadcasters and a large number of radio stations participate in a rather peculiar social phenomenon – the return of “Communist entertainment” and “Communist bad taste”. After a quiet period at the start of the 1990s, Communist vulgarity returned via television. The term covers appearances by stars of pop-culture, singers and actors who had been officially approved and promoted by the Communist Party during the totalitarian regime, as well as entertainment programmes, films and television serials that had been produced at the time. This trend goes hand in hand with nostalgia for the years of Communism (the years of oppression) and it cannot be entirely separated from the success of the unreformed, post-Stalinist, Communist Party of the Bohemia and Moravia (*Komunistická strana Čech a Moravy* – KSČM), which consistently holds large numbers of seats in the 200-strong Chamber of Deputies of the Czech Parliament.

Czech TV's decision in 1999 to show a re-run of the series “The Thirty Cases of Major Zeman” can serve as a case example. The series, produced between 1974 and 1979, was Czechoslovak Television's most extensive project under the direct political management of the secret police (StB). The series was made to celebrate the 30th anniversary of the establishment of the Communist-led police corps. Each instalment was situated in a different post-war year and combined a detective story with an ideological message – a Communist version of history crudely distorting facts. The producers of the series were given a generous budget for that time, however, and employed officially approved television stars. Some sequences were also filmed in the West, which was highly unusual for the period.

The series was re-run many times during the 1970s and 1980s and had a high rating. Czech TV's decision to broadcast the show, clearly in order to boost its ratings, was met with an indignant reaction from civil society. Following pressure from intellectuals

and social organisations, such as the Confederation of Political Prisoners (KPV), the station's management decided to accompany every instalment with an expert panel discussion on the theme of falsifying history. Private television channels, on the other hand, do not bother with trying to creating mitigating circumstances, but simply broadcast whatever increases their ratings. *Prima TV* broadcast another re-run of the series in 2004 with great success.

The Biggest Daily

The changing fortunes of the daily newspaper *Mladá fronta Dnes* reflect the developments of the entire media sector after the revolution. The daily came to life through the transformation of the Communist daily *Mladá fronta*, established in 1945 as an instrument of the Communist youth organisation, into an independent joint-stock company owned by the paper's editors. Under the Communist regime, *Mladá fronta Dnes* was less orthodox than the official Communist mouthpiece *Rudé právo* or the trade union paper *Práce*. During the era of Gorbachev's perestroika, *Mladá fronta Dnes* tested the "limits of what was permitted", especially in the cultural domain. Its editors were among the first to join the anti-Communist forces during November 1989 in clear support of democratic transition. This was the time when the anti-government demonstrations that led to downfall of the Communist regime began.

Mladá fronta Dnes became the most successful newspaper of the 1990s. Its editors were quick to build up relatively high quality domestic and foreign news sections and its opinion columns supported economic and political reform. At times the circulation exceeded half a million copies in a country with a population of ten million. Like other media, *Mladá fronta Dnes* suffered from the inadequacies of Czech journalism, especially the political activism of certain journalists and commentators in favour of certain political parties and interest groups. Often, journalists acted as if they were part of the political scene, instead of playing the role of independent observers. This attribute is in line with the tradition of Czech journalism. All the great figures of Czech journalism have also been political players of one sort or another. That concerns the period of Czech national revival in the 19th century, the struggle against German supremacy, the nation-building period of the 1920s as well as the anti-Nazi and anti-Communist resistance.

The success of *Mladá fronta Dnes* was symbolic of developments throughout the country. People that had collaborated with the totalitarian regime under Communism successfully used their contacts and information to get on in the emerging democratic society based on free market principles. Former dissidents had problems with adapting, however. Unlike their Polish counterparts, for example, they had lived in a kind of intellectual and cultural ghetto, cut off from the mainstream of society. In comparison to its main competitor *Lidové noviny*, *Mladá fronta Dnes* had an advantage in the

already exiting editorial board as it owned the required technologies and a distribution network, and already had subscribers.

From Samizdat to National Daily

The *Lidové noviny* newspaper has played an important role in the history of Czech journalism. It was established in 1893 and has employed, or published the work of, notable figures of Czech culture and important intellectuals. The Communist government abolished the paper in 1952. In January 1988, a group of dissidents renewed *Lidové noviny* in the form of a samizdat monthly and two years later it started coming out as an independent daily. Unlike *Mladá fronta Dnes*, it lacked both know-how and a wider readership. Thus the editors had to learn the craft in progress.

Besides having a head start on *Lidové noviny*, the editors of *Mladá fronta Dnes* also had a better grasp of how to produce a modern daily. The intellectuals and ex-dissidents in *Lidové noviny* fumbled around for a long time and this led to a loss of credit at the beginning of the 1990s and reduced circulation. During the decade, both dailies ended up in the hands of foreign publishers and are currently owned by the same company. The editing team of *Lidové noviny* has changed many times, as has the paper's focus. Today the paper combines informative entertainment articles with serious journalism, generally giving the impression that it is still seeking a position on the market.

At the start of the new millennium, *Mladá fronta Dnes* also took the road of entertaining information, suppressing serious news reporting and emphasising pop-culture coverage. Simple stories have taken precedence over analyses. Articles are more superficial, substance and context are becoming less important and the paper tends towards extremes or deliberately tries to stir up trouble. Headers and editing demonstrate their leanings towards elements of PR and gutter press tactics. The subjects covered are often derived from what is on television. The newspaper *Hospodářské noviny* has thus become the only serious daily, but its reach and circulation cannot be compared to the influence of *Mladá fronta Dnes* or *Právo*. Of all the dailies, *Právo* uses the most archaic form of journalism, chaotically pasting together information without context and mixing serious articles and entertainment. *Právo*'s focus is on the least educated and lowest income segment of the market.

The Czech environment has not produced a high-quality, commercially successful, daily such as the Polish *Gazeta Wyborza*, whose publisher Agora S. A. is listed on the Warsaw and the London stock exchanges. *Gazeta* began in the same way as *Lidové noviny* with a management of former dissidents with experience of underground politics and journalism. The four times larger Polish newspaper market plays to its advantage. *Mladá fronta Dnes* came close to reaching the success of the *Gazeta* in the middle of the 1990s. It had a similar circulation in a smaller market, but it was

unable to maintain the quality of journalism. Its publisher, motivated by profit to the detriment of quality, managed to persuade the editorial staff to change the paper's focus in 2001 and 2002.

With one exception, the downward trend in the quality of the main dailies continued in 2004. At a time when the Czech Republic is a fully-fledged member of the European Union, the main newspapers are becoming less and less important for Czech civil society and the quality of Czech democracy.

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The Changing Face of Czech Media

Petruška Šustrová

I never wanted to become a journalist. Like most other girls, when I was small I wanted to be a princess – or better still a fairy – and when I learnt to tell the world of stories and the real world apart, I imagined being an editor, reading and proof-reading beautiful books and helping them to see the light of day. Just like my mother did. I never really got to know newspapers until I was an adult. They were not around at home or at my grandmother's and all the adults in our family read them at work. As for radio, when we were small we used to listen to the children's story on Sundays after lunch (my mother made some adaptations for radio and naturally she wanted to hear how her work would sound) or to the book readings on Saturday evenings. I still remember the sound of the gong that came between each part of Jack London's *Call of the Wild* and to this day I think it might not be a bad idea to visit Alaska.

That was back in the 1950s and 1960s. Then 1968 came along and journalists became stars overnight. They wrote on subjects that, until then, I had only heard mentioned through careful allusion, such as disputes within the party leadership and about a new, more liberal, direction espoused by the more progressive faction of the Communists. The media was flooded by the recollections of former political prisoners and there was even heretic talk of establishing new political parties. But even then I hardly read the newspapers – I was a student at the Philosophical Faculty in Prague and debates in the student environment went much further than those than in the newspapers and much more information was available by word of mouth.

Then August 21, 1968 came along and overnight Czechoslovakia was occupied by the five countries of the Warsaw Pact. The people flooded the streets, plastered them with posters and fliers, and the media, especially the radio, stood at the head of the protests. It only took a week, however, before the Czechoslovak Communist leadership and the Soviet leadership signed the Agreement on the Temporary Presence of Soviet Armies on Czechoslovak Territory. The occupation was deemed “brotherly help”, although never requested and of the five armies, only the Soviet remained. Journalists began to change. My favourite journalists – the most radical ones – gradually disappeared from the pages of newspapers, the radio and television.

Journalists – Lackeys of the Communist Regime

I ended up in prison for two years for “subverting the republic”. While in detention during the investigation, I carefully studied the party newspaper *Rudé Právo* from cover to cover. I felt that I was reading about some other country than the one I had lived in for twenty years, on some completely different, unknown continent. Back then I came to the conclusion that journalists were in fact clowns, attending meetings with party secretaries completely unknown to me, writing whatever they were told. ‘Why don’t the party officials just write it themselves?’ I wondered. I concluded that they simply did not know how to write and that a journalist is someone who, unlike a party secretary, can string a few words together to make a sentence and paragraph, but who needs someone to tell him what to write so that the article makes sense. And I still think that in the 1970s and 1980s my opinion was not far from the truth.

I could only dream of studying again – I was expelled from the faculty in 1970 after I had been in prison for more than two months. The faculty took the “politically correct” course of action – I was not expelled because I had been charged with “subverting the republic” by the State Security Service (StB) but because I had not passed the prescribed exams. That was hardly possible since I was in Ruzyně Prison. Becoming a professional journalist was out of the question for me. On the one hand, I had nothing but contempt for the profession, and on the other I really did not have the slightest chance that someone would employ me in a newspaper as a released prisoner in Czechoslovakia under “normalisation”. I was glad that after my release, at least the post office employed me once again for a few years.

I came into contact with “underground publications” for the first time not long after I had been released from prison in 1972. My husband at the time worked in a printing works and in the evenings at home he bound the books of the underground edition *Petlice*, consisting of typewritten copies made using carbon paper. They were the result of the resistance of a group of Czech writers who had been blacklisted for their political views, especially because they had expressed disagreement with the occupation of Czechoslovakia. Their existing works had been taken off the shelves and there was not the slightest hope that they could officially publish a new book, or any other text for that matter. For them, the doors of the offices of newspapers and magazines were tightly sealed. They decided, however, that they would not allow themselves to be silenced. Therefore, they made twelve typewritten copies of each book and then personally took them round to their readers – well, the braver ones anyway, since merely having samizdat at home could be a reason for interrogations by the StB.

Samizdat

Gradually, samizdat magazines became established, too. I typed them out industriously. The samizdat distribution network broadened rapidly and so the first twelve copies were often copied further before they even reached their readers. The number of titles

was also increasing. *Information on Charter 77* (*Informace o Chartě 77*) most closely resembled a newspaper, containing Charter 77 documents and communications of the Committee for the Defence of the Unjustly Persecuted (*Výbor na obranu nespravedlivě stíhaných* – VONS), but also brief news items concerning the dissident community and often a feuilleton on the back page. *Kritický sborník* (*The Critical Review*), reviewing samizdat and exile literature, was established at the start of the 1980s; *Vokno* (*The Window*) was a magazine concerned with underground youth culture; and *Informace o církvi* (*Information on the Church*) was also published (although the subject was not entirely taboo in official publications, it was almost impossible to find out what was really happening). In reality, there were dozens of samizdat publications with one for every taste.

However, not even the flood of samizdat magazines changed my view of journalists. These periodicals were not newspapers, after all – their publication was often much delayed as using typewriters to make copies was a little slow. The first underground issues of *Lidové noviny* (*People's Daily*) were produced at the end of the 1980s, although even that was really a magazine, coming out once a month. The typewriter was almost abandoned as a technology for producing *Lidové noviny*. Although the original articles were written on typewriters, often with slightly different character types, they were then scaled-down and pasted together on a page, as in a normal newspaper. Photographs were then added and the final product was reproduced using a photocopy machine. *Lidové noviny* had a fairly large circulation – by the end of the 1980s there were quite large numbers of people brave enough to make a few illicit copies at work which then made their way to new readers. The magazine *Střední Evropa* (*Central Europe*) was also reproduced on a photocopier. I was a member of the editing board and wrote the original on a typewriter. Samizdat technology was improving – several hundred copies of the thick magazine *Revolver Revue*, part socio-political, but mostly cultural, were printed using a stencil printer. The Czechoslovak dissident movement also received its first computers via secret channels from the West.

The era of burgeoning samizdat publications was cut short by the Velvet Revolution in 1989. From November 20, I worked in the Independent Press Centre which published the daily *Informační bulletin* (*Information Bulletin*), that grew in size day by day and sometimes even came out twice in one day. *Informační bulletin* combined the editors of the samizdat publication *Revolver Revue* and a samizdat political magazine with the somewhat eccentric name *Sport* where I had also worked (of course it covered all subjects except for sport). It was the only printed medium providing uncensored information that people could read during the first days after the brutal suppression of the student demonstration on November 17. The Communist regime was crumbling. At the end of November 1989, the media changed from one day to the next. After about two weeks, the small *Informační bulletin* with its improvised printing presses could

hardly compete with the major newspapers, radio and television. At the start of 1990, it became the weekly *Respekt* and this reputable magazine covering political and social issues is still in print today.

After the Collapse of Communism

After the fall of Communism, literally hundreds of new magazines and newspapers sprang up. Some had a very short lifetime, because their founders overestimated their creativity and finances, but some found enough readers and an editorial board and management good enough to hold on to a segment of the market. From autumn 1993, I worked in one such new newspaper and in my opinion its fortunes were to some extent typical of the “life” of the new media. The original title was *Občanský deník* (*Civic Daily*) and it was initially the paper of the Civic Forum (*Občanské forum* – OF), the broad people’s front movement that had formed during the first few days of the November revolution as the opposition to the Communist Party and the leadership of the state at the time. Václav Havel was at the head of the Civic Forum during the first few weeks, but at the very end of 1989 he was elected Czechoslovak President. *Občanský deník* suffered partly as a result of its unclear political position, as, in fact, did the Civic Forum. It was supposed to be an independent paper, though almost all newly emerging media wore the label “independent”, but at the same time it was supposed to support the politics of Civic Forum, making it to some extent a party-political paper. It should be noted that many different political leanings could fit under the “umbrella” of the Civic Forum at that time – its candidates included representatives of the liberal rightwing Civic Democratic Alliance (*Občanská demokratická aliance* – ODA) as well as the left-wingers who later formed the Social Democratic Club (*Klub sociálních demokratů*). This political ambiguity was not a Czechoslovak speciality. Rather, the people’s fronts that took over power from the Communists in other countries of the “socialist camp”, countries in Eastern and Central Europe that had ended up within the Soviet sphere of influence, were similar.

Občanský deník was established in a similar way to many other newspapers at the time, on the basis of political agreements. In spring 1990, the Civic Forum’s Coordination Centre took over the premises and equipment of the daily *Svoboda*, the newspaper of the Communist Party Committee for Central Bohemia. The last issue of *Svoboda* was published on April 30 and the first issue of *Občanský deník* came out on May 2. It was typical of the time that the publishing rights for the daily were not transferred to the Charter 77 Foundation until May 8, at a time when the paper had already been on sale for several days. The daily had an initial print-run of 150,000 issues, but gradually interest declined. In July 1991, the original publisher sold the paper to the company Caster and in October 1991 it was bought with the publishing rights by the company Cesro.

Český deník (The Czech Daily)

Josef Kudláček, the owner of Cesro limited liability company, is to some extent a typical figure of the Czech public scene. Born on August 21, 1951, he was exactly 17 years-old on the day the occupation of Czechoslovakia began. He did an apprenticeship in printing and graphics and in 1980 he emigrated from Czechoslovakia. In 1983, he founded a very successful free advertising magazine called *Annonce* in the Federal Republic of Germany, where he took refuge after emigrating. In 1990, he returned to Czechoslovakia that was no longer under Communist control and began publishing *Annonce* in Czech, with the same level of success. Kudláček also wanted to have political influence on developments in the Czech Republic and that's why he bought *Občanský deník* in October 1991. By then, its print-run was down to 90 000.

He renamed the paper *Český deník (Czech Daily)*, dismissed the editor-in-chief, as well as most of the editorial staff, and began to run the paper as he wished. For about two years the publisher and the new editorial staff got along fine. The paper had rightwing leanings, calling for thorough economic reforms and purging public life of Communists, as well as support for the Civic Democratic Party (*Občanská demokratická strana* – ODS), whose chairman and later President wrote a regular column for the paper, and was severely critical of Václav Havel for his conciliatory attitude towards former Communists. At the end of 1993, however, the publisher began to disagree with the policies of ODS headed by Václav Klaus, who was Prime Minister of the Czech Government at the time, and decided to change the political orientation of the paper, no longer supporting Klaus or his party. The editorial staff disagreed, however, and the result was an “editorial shake-up”. The chief editor and most of the editorial staff handed in their notice. Josef Kudláček had to start building the paper again from scratch.

At this point I joined *Český deník*. Kudláček and his new editor-in-chief originally offered me the position of head of foreign affairs, but before I had made my decision to leave the monthly *Střední Evropa*, the position had already been taken. I ended up joining the domestic politics section and within a few weeks I was its head. Looking back on my work at *Český deník*, I must say that it was the most liberating time of my life as a journalist. The publisher focused on commentaries, opinion columns and readers' letters, political journalism was somewhat side-lined and so I and my colleagues had an entirely free hand. There was a lot of free space in the paper – two, sometimes three, pages a day (depending on the number of adverts). Therefore, besides original reporting, the political section also published a lot of translations, mainly from Anglo-Saxon publications. Mostly we reprinted articles about post-Communist transformation, but we also tried to print articles covering various problematic issues affecting post-Communist countries – something that did not appear in the Czech papers very often.

Český deník was losing readers, however. Kudláček devoted a significant part of the paper to promoting the small rightwing party called the Democratic Union (*Demokratická unie*) which he also supported financially using profits from the sale of *Annonce*. Since he had begun publishing it in other post-Communist countries, he could afford to do so. However, he could not afford to publish a daily that was losing readers and advertisers and so at the beginning of 1995, *Český deník* became *Český týdeník* (*Czech Weekly*) which, somewhat unusually, was published twice a week. The continued loss of interest in the paper is an exemplary case showing the lack of interest in the Czech Republic for papers that overdo it with propaganda. Many interesting articles came out in the paper, but articles requiring deeper concentration were not sufficiently balanced by pieces that could be read on the tram without too much effort. A magazine published twice weekly cannot provide readers with a sufficient number of news items, cannot give daily updates concerning sport events and also falls behind the dailies in terms of providing commentary.

However, in my opinion, most of its original readers were perturbed by the constant promotion of the Democratic Union, which failed to reach the 5 percent threshold in the June 1996 general election and its candidates did not make it into parliament. Bitterly disappointed, Kudláček stopped publishing *Český týdeník* – the last issue came out on October 1, 1997. To Kudláček's credit, a large number of the people who today rank among the most important professional journalists at some point worked for *Český deník* or *Český týdeník*. As a matter of principle, Kudláček did not employ people that had worked in newspapers under Communism. He claimed that they had a “broken spine” and were not up to the job in the new circumstances. On the other hand, he employed a lot of people with no previous experience of journalism. Naturally, for many of them it was not the right job but many also became good journalists.

A Long Road

However, even those new to the profession were burdened by certain aspects of the Communist past. Between 1994 and 1997, few articles critical of the government were published (except for some in the leftwing *Právo* and some smaller periodicals). Most journalists backed economic and social reforms and thus they did not consider it right to criticise the government of the Civic Democratic Party because they regarded it as the legitimate driving force of the reforms. Therefore, they quite deliberately kept quiet about certain transgressions on the part of ODS politicians in an effort to help the transformation of Czech society and the nation.

The road to objective journalism is long and the media cannot change from one day to the next, even if those in charge changed their political orientation. Even in the Czech Republic, there are still many media outlets and journalists with leanings to

one political party or another. This is not so much of a problem in the case of political commentary, where the journalist is expected to give his/her opinion, but it is of more concern in news reporting where skilful manipulation gives less exposure to a critical opinion on a “favourite” figure of the paper. Political manipulation of an analysis which should provide the reader with an impartial breakdown of a phenomenon or issue is of grave concern. Not unusually, the impression that such an analysis will give – ie. who it will favour – is discussed at a meeting of the editors. Sometimes the editors of a media outlet, whether printed or electronic, even force an author to change the conclusions of a piece. To be fair, however, most articles and reports are not affected by this questionable approach.

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Changes to the Legal Position of Local Government

Richard Pomahač

The right to local self-government is regarded in most European countries as one of the fundamental and inalienable rights of local communities (municipalities and towns and in some cases higher territorial self-government distinct from the state). In democratic states, this right is anchored in the constitution – territorial self-government is regarded as one of the independent powers of the constitutional system, along with parliamentary, executive and judicial powers. Concrete institutions of self-government are created on this common constitutional basis, and vary in form in individual countries.

In the 1990s, Czech society transformed its political and financial institutions after the collapse of the so-called Soviet bloc. Reform of local governments was based on an effort to remove out-of-date institutions and also take on board impulses from those European countries whose political systems developed in an environment of democratic pluralism after World War II. Older traditions and experiences connected with the configuration and workings of territorial self-government from the start of the modern constitutional era of the Czech Lands were also clearly recalled. It was not therefore just an appraisal of the developments of the last half-century, but a return to the roots of constitutionally enshrined rights to territorial self-government reaching back to the 19th century.

A government edict of May 1945 characterised National Committees as both representative and public administration bodies, adding that as administrative bodies they were subordinate to the central government. This statute was the basis for a new conception according to which state administration and self-government at the municipal, district and later regional levels fused into one, almost indistinguishable, whole. Thus in the period that followed, which lasted until 1990, earlier conceptions of self-government and the self-governing powers of local communities were fundamentally negated. National Committees managed state property and their budgets became part of the state budget. Territorial reorganisation was achieved by reducing the number of districts and regions. In the vast majority of cases, municipalities were merged by orders from above. The ambits of individual National Committees were differentiated and from the

1960s roughly corresponded to the size, population and economic potential of individual territorial units. This did not however prevent the political muzzling of local administrations.

After the Fall of Communism

Changes were made to the constitution after November 1989. The act on the constitution once again proclaimed territorial municipality as the basis of local self-government. The municipality was again established as independent, a legal entity separated from the state with its own property and financial management. Within a short period of time, the system of National Committees was abolished. In their place self-governing municipalities were established, as well as district authorities as state administration bodies with general scope of authority within the territory of districts. That necessitated a change in the Constitution so that additional indispensable acts could be passed, such as the first act on municipalities, the act on elections to municipal representational bodies, the act on district authorities, changes to their powers and other related measures, and the act on the Prague local authority.

The dissolution in 1990 of all three levels of the National Committee – including the regional office while maintaining the region as an administrative unit – opened a space used by ministries and a number of other central state administration bodies to establish decentralised offices. In districts, district offices operated either as bodies of first instance state administration or as appeal bodies in cases when municipalities with delegated powers, especially those with authorised local councils, acted as first instance bodies.

In 1992, the first elections were held to the Czech National Council, which led to the formation of the first government of the Czech Republic as a newly formed unitary state. In its policy statement, it pledged to continue administrative reforms, mainly by bringing decision-making powers and responsibilities as close as possible to the citizen. The territorial organisation of the state would correspond to that aim and would be based on self-governing municipalities and naturally defined regions. In addition, a draft act on the position of state administration employees was to be prepared expediently and the principles of the rule of law further strengthened. It was not until summer 1994, after tough political debate, that the government put a draft constitutional act on establishing higher territorial self-governing units before the Chamber of Deputies.

The debate begun in Parliament in 1994 continued, with marked delays until the end of 1997 when it resulted in the approval of a constitutional act. Under this act, 14 regions were established, including the capital city Prague, which has the status of both city and region, effective as of January 1, 2000. The management of higher

self-governing territorial units impacted on the delimitation of tasks and powers of municipalities as basic territorial self-governing units and it was necessary for that reason to intercede fundamentally in the legal position of municipalities. Therefore, the task of implementing decentralisation measures fell to the government which was formed after elections in the middle of 1998.

The final stage of administrative reform legislation culminated with acts prepared by the government and submitted to Parliament in 1999. After difficult negotiations, both chambers of Parliament approved acts on: municipalities, regions and elections to regional authorities; the act on the capital city Prague; the act on the transfer of certain items, rights and obligations from the property of the Czech Republic to the property of regions; the act on the budgetary definition of yields from certain taxes imposed by territorial self-governing units; the act on supporting regional development and the act on rules governing territorial budgets.

Czech municipal and regional bodies, which have most recently gone through reforms connected with efforts to decentralise under the influence of the principles and regulations of the European Charter of Local Self-Government. They are naturally also influenced by a number of organisational and functional elements, which to a greater or lesser extent have been derived from the experience of long-term development of territorial administration and self-government in the Czech Lands.

Although the legal form of territorial self-government has in recent years come significantly closer to European standards, the fact that reform of territorial self-government has continued to be accompanied by unresolved problems cannot be overlooked. As a state, the Czech Republic remains far more unitary than decentralised, because the performance of several public tasks is set at the national level and cannot be adapted to local conditions. Though regions and municipalities are legal entities managing their own property, a reliable mechanism of responsibility for orderly financial management has not been created. Municipal and regional bodies leave decisions on key property issues in the hands of political bosses and are replicating the general trend towards a growth in the debt burden of municipalities and regions.

Spontaneous disintegration at the start of the 1990s led to the formation of a great number of small, formally independent but financially weak, municipalities. From a financial point of view, the method of combining funds and co-operation which would lead to more effective administration in the form of groups of municipalities and regions, and in the framework of common public-law institutions was under-estimated. The intermediate administration structure consisting of the regional bodies activated in 2000 and the reorganised decentralised authorities of state administration is not a homogenous entity. Therefore, this makes public administration in the first years of its existence more

complicated and demanding rather than effective, in terms of administration, human resources and finances. Especially in this respect, reform aimed at decentralisation is an open-ended process.

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Experiences of Local Politics

Jiří Růžek

Looking back on the events of November 17, 1989 as I personally experienced them in my home municipality of Dobřichovice, near Prague with around 30,000 inhabitants, I must first mention the social climate of the second half of the 1980s. At that time, it became clear that the government of neo-Stalinists brought to power by the Soviet occupation of 1968 did not have the general support of either the lower echelons of the membership of the Communist Party of Czechoslovakia (KSČ) or its brother organisation, the Communist Party of the Soviet Union, which had set out on the path to reform in the form of perestroika. Nevertheless, it continued to control the state apparatus, including its repressive elements which were still fully operational. According to a widespread joke at the time, society was divided into three classes: those who build socialism, those who maintain it and those who use it, the essential message being that for the majority of the population socialism had become a dated and monotonous phenomenon.

Central planning resulted in resource shortages and opened the way to the turbulent development of a shadow economy. It became the milieu in which bizarre groupings of people were linked by the common purpose of trading various commodities: from all kinds of permits and favours to very particular items, such as scarce goods and services. The reasons for the erosion of the totalitarian regime lay within the system itself: in its omnipresent effort to threaten and scare, even to corrupt, but at the same time in its inability to escape from under its own shadow and open the way to human activity and initiative. After all, the first step of such activities would be to reject the principles of totalitarianism.

The inability of the KSČ leadership to react to new developments, in particular its efforts not to allow any reform whatsoever, necessarily led to social tension. Besides open dissent, as represented above all by Charter 77, various circles and groups began to form. Expelled party members joined the *Obroda* (Rebirth) movement and the Independent Intelligentsia Circle (*Kruh nezávislé inteligence*) was formed in the academic sphere. People also got together in informal groupings which interconnected through their members. Samizdat publications, especially the periodical *Lidové noviny*, were an important source of information. The journal was no longer something imported from abroad: its own readers contributed to its production and distribution. Society was becoming increasingly convinced that changes were inevitably on the way. At the time, we could only speculate as to what kind of changes they would be and where they would lead.

The 1980s in Dobřichovice

In Dobřichovice at the start of the 1980s, the local organisation of the Union of Socialist Youth (*Svaz socialistické mládeže* – SSM) was, paradoxically, a platform for people who were no fans of socialism. They were mostly students or members of the intelligentsia who – in order to keep party agents happy – demonstrated “engaged activity” in their place of residence. That is why I found myself in such company. From the outset I was engaged in environmental activities: we planted trees on re-cultivated land and organised collections of scrap iron. We also went on hiking trips, played sports, put on dances and did our best to use the space the organisation gave us for interesting apolitical activities.

In the mid-1980s, we decided to publish a local newsheet, a monthly called *Kukátko* (“*Spyglass*”). The local KSČ organisation was enthusiastic because it had no idea what kind of an effect such a publication could have. As a result, month after month, local citizens received comments on the activities of the town hall. Sometimes they were satirical, at other times they consisted of an erudite analysis of a particular issue, but always it was the kind of direct and biting criticism that the comrades were not used to. *Kukátko* provoked great ire from the party organisation by publishing pieces on themes which were taboo throughout the country. We often said that if it had been the 1950s we could have expected long prison terms, or harassment and expulsion from educational establishments or employment if it had been the 1970s. Therefore we regarded mere threats as completely adequate repercussion for the “wrongs” we inflicted on the Communists. This was particularly pertinent when we realized that they could do little to punish us, because the district secretary of the KSČ had praised Dobřichovice for being the only small municipality which regularly put out its own information bulletin.

In 1989, the magazine was a focal point for non-party members and its editorial meetings strongly resembled a political club. In Prague, expressions of social disobedience were gaining greater and greater support: from light-hearted protests such as running down Political Prisoners’ Street (*Politických vězňů*) in Prague 1 as a form of support for political prisoners to participating in unauthorised gatherings to signing the “Several Sentences” (*Několik vět*) petition.

“The Velvet Revolution”

The brutal suppression of a student demonstration by the police in the early evening of November 17 was the last straw. A strike by students supported by actors and artists pushed a fragmented opposition into action: the Civic Forum and its Co-ordination Centre were founded, becoming the organisers of the Velvet Revolution. The Civic Forum was the movement which took over power from the Communists, abolished established structures of the party and state power and created the foundations for establishing the institutions of a democratic state.

In Dobřichovice, the editorial board of *Kukátko* provided the impetus for forming a local Civic Forum. Using leaflets and direct personal contact, citizens were called on to take part in gatherings at which they expressed and declared their political aims: the dismissal of the chairman of the National Committee and wholesale changes of personnel in the local representative body. As the elected Civic Forum spokesperson, I negotiated the handover of power with those who had persecuted me throughout my whole life for my class origins. It was a strange feeling.

The widest spectrum of people, often with differing opinions, met on the platform of the Civic Forum. What held them together at that moment was the shared will to get rid of the totalitarian regime. Thus in my hometown, people who had no reason to come together under normal circumstances gathered at the Civic Forum – those harassed by the regime for their class origins, Christians, environmental activists, expelled party members and students. There were even people who at some point in their lives had sympathised with the Communists but had come to realise that they represented an odious chimera. They were united by a hope in the “democratisation” of society, because speaking directly of “democracy” still sounded too audacious to many.

As I indicated earlier, Czechoslovak society lacked a political organisation, a political party which could support it from the outset. Unlike the Poles we did not have Solidarity, we did not even have a unified political programme or party reserves, to use the term current back then. Everything was in flux and every day ended with something which was already out-of-date by the following morning. It was precisely the opposite of Lenin’s preparations for Communist class revolution, something reflected in the slogan: “Parties are for party hacks, the Civic Forum is for everyone!”

Changes at the Local Level

It turned out that overthrowing the chairman of the National Committee was not as difficult as finding a replacement for him. Some were too old for the job, others too young, some wanted to remain in their jobs, others to go into business. In the end it appeared that we would have to ask the current Communist Party chairman to stay in the post until we found a replacement! To my mind, that was completely unacceptable, so I abandoned my academic activities and accepted a nomination for the post of mayor, which I took up as a member of Civic Forum in January 1990.

Similar problems accompanied the reconstruction of the local council. Communist deputies had to be replaced, even though many of them regarded their mandates as purely a formality. In the absence of democratic political infrastructure, it was only possible to call on those citizens I knew personally, or those who had been recommended by a trustworthy person. Therefore the response to the first free elections was more operational than political. Nevertheless, even within the framework of these revolutionary changes I did my best to proceed fairly, bearing

in mind that we would have to continue to live next door to one another. I had also experienced being a second class citizen. During negotiations with deputies from the local council I kept reminding myself that they had been appointed to their posts by the KSČ, the leadership of which had been dissolved with the removal of Article 6 of the Constitution. It was clear at the time that their places would be taken by other citizens mandated by the municipality and supported by the natural authority and trust of the citizens. For this reason, Civic Forum's call on KSČ deputies to resign from their posts was not regarded as an attempt to ostracise them, but as the first step towards the reconstruction of a democratic system, and that is how it was.

I am fairly certain that revolutions and regime changes are not carried out in order for the former elite to remain in place and for nothing to change. The first thing that had to be done was to replace people in exposed places. Not only because power and decision-making are derived from functions, but especially to let citizens see that change was taking place. It was therefore necessary to change the Dobřichovice town hall from a gloomy place representing the dour state administration to a welcoming and functioning authority which worked for the citizen in a friendly way. That meant replacing some of the staff and training others to behave differently. It is worth pointing out that the quickest change occurs in business, the slowest in public administration. Socialist bureaucrats regarded themselves as co-owners of the state and the citizens as its servants. It was not easy to remove that enduring feeling of superiority, and many times it was necessary to emphasise repeatedly that we were servants of citizens and our vocation was to serve them well.

It became apparent that it is not only extremely important to change content, but also form. That is to say, it is worth relocating institutions and renaming them because the "spirit of a place" can be stronger than one might expect. Despite the high financial outlays, it is necessary to change everything, from application forms to uniforms. Communist fortresses – party committees at all levels – have to be converted into something very civilised: libraries, publishing houses, spaces for business activities, so that nobody fears them any longer. I remember a colleague of mine who became director of the office for the protection of constitutional officials. In his office, on the wardrobe stood busts of the great figures of the Third International and, believe me, the sight of Lenin in a red dispatcher's cap or Klement Gottwald in a bobbled woollen hat said more to the members of the abolished State Security Service (StB) than any articles of the new constitution.

Genial Chaos

Many of those who organised and oversaw the changes after November 1989 lived with the idea that the chaos which quite legitimately accompanies a national revolution presented a grave danger to the functioning of state administration. With hindsight,

I believe that chaos is a useful aid which shuffles the cards and forces cheats to leave the table. Democratic revolutions release a great amount of human energy which, like water, finds its own path. We were often mistaken in that, generally speaking, we taught people the game without teaching them the rules and making sure they adhered to them.

I always did my best to ensure that in that period of fundamental change I held on to the context as a whole and the direction that led to our goal. I am convinced that aiming for perfection in detail is unnecessary or even absurd at such a time. Revolutionary change brings with it the opportunity to look at some things, actions and relationships with fresh eyes. It is an extraordinary opportunity to consider whether we need some things at all, whether they should be changed or whether they can be incorporated into the new situation. The most important thing is to understand their purpose and to be able to discern their quality.

It does not reflect well on us that 14 years after the November revolution some organisations of state administration justify their existence merely by saying they are part of the state. This reflects the limited ability of our political representatives to differentiate necessity and quality of work from their simulation. Even democracies are capable – let's hope only for a short time – of creating their own Potemkin villages.

We have seen that what people expect first is the removal of methods of directive rule and dictate. The citizen wants to immediately make use of the rights and freedoms denied to him/her by the totalitarian regime. That is why it is important to hold local elections as soon as possible. It has been confirmed to me that it is good to present elected posts as a service to citizens, whose will is exercised by the mayor, municipal council and local deputies. Clearly, such a process cannot take place without conflict and exchange of opinion. However, it pays to talk to citizens and listen to their arguments, without necessarily agreeing with them. It is infinitely important to inform everybody by the means available about the plans and activities of their representatives, because the citizen needs information in order to evaluate and monitor their activities. I never refused one request for a meeting, even though in a busy daily schedule it may have appeared to be a waste of time, because the trust of the citizen in a democratically elected local government body is more important than dozens of operational decisions, most of which can easily wait until tomorrow.

Punishing Crimes

Looking back, there are a number of issues which could have been dealt with differently. One subject however keeps returning forcefully: continuity or discontinuity with the Communist regime? Clearly, the method by which power was taken over during the Velvet Revolution was one in which tolerance and forgiveness dominated over expected

repression. Václav Havel often said “We are not like them!” Havel, without doubt a moral authority and leader, thus set a standard of behaviour towards the Communists and an attitude towards Communism. We received a clear condemnation of the evil which Communism represented from the mouths of people who had been seriously hurt by it. We witnessed the rehabilitation of those who the Communist regime had executed, imprisoned and terrorised. Property crimes committed after the Communist coup of February 1948 were remedied. What we did not experience was personal accountability for the crimes and injustices which the Communists concocted and carried out. Why?

Perhaps because every tenth Czech and Slovak was a member of the KSČ, and the slogan “Settle accounts with the Communist in your own family” would have been both too personal and too radical. Perhaps because the core membership of the party consisted of people for whom the party membership card opened the way to a career and a field of expertise. Their motivation was self-interest, to a lesser or greater extent, and they had not personally killed, tortured or expelled anybody. What blame and responsibility were they to bear? Perhaps it was because those who gave and carried out orders had closely observed existing laws and regulations. Were they doing anything illegal?!

I am convinced that we failed when we admitted the argument of legal continuity. Instead of casting aside criminal laws passed by criminals in the legislature to meet the needs of the criminals in the executive, we allowed a discussion about what could and could not be approved. That is why the supremely moral gesture of forgiveness was not met with penitence or a public apology by the Communists, but rather they took it as an expression of weakness and the inconsequential nature of the emerging democracy.

The punishment of war crimes after World War II clearly and publicly declared the criminal nature of German Nazism, Italian fascism and Japanese militarism. We Czechs and Slovaks after long hesitation and philosophising toothlessly accepted a declarative law on the era of oppression. Every effort to exact personal accountability for injustices and the suffering of fellow citizens ended for the time being in a fiasco.

When I observe the growing support for the Communist Party of Bohemia and Moravia (KSČM) it makes me wonder: how did we actually understand the President’s humanitarian gesture? Did we understand it to mean that it is always better to be on the side of the victor; that cunning and lack of principles is the best mode of existence; that legal punishment need not follow crime; that we can always find an idealist who makes the sign of the cross above such atrocities? Or even that the more we collaborate with evil and the more of us there are, the smaller the risk of punishment?

I am dogged by the thought that there is nothing more genuine, nothing that obliges so much and nothing which purifies as much as making people accountable with their “property and necks”. Maybe for our own freedom, dignity and strengthening of character, and that of our children, we should have done something differently.

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Transformation of the Czech Health System after 1989

Petr Holub, Vratislav Řehák

After the collapse of the Communist bloc and the creation of a democratic system, the management, organisation and financing of healthcare changed fundamentally. The most modern medication and methods of treatment became increasingly accessible. As a result, since the beginning of the 1990s, mortality has decreased overall and in leaps and bounds with respect to some groups of diseases. That is most clearly reflected in data on the treatment of liver failure and cardio-vascular diseases. This was possible due to a new system of financing, although in actual fact Czechs were attempting to return to the pre-war system, which was based on public solidarity in the form of social insurance. Free choice of doctor and healthcare facility was reintroduced as a general rule, guaranteeing accessible healthcare of a standard comparable to that in the developed world.

Financing of the Health System

The cornerstone of the transformation of the health system was to change its financing. A system of obligatory health insurance was chosen and came into operation in 1992. From the beginning of the following year, when the Czech and Slovak republics separated, the health insurance system in the Czech Republic became independent and was not dependent on the state collecting insurance from citizens and paying for medication and treatment by healthcare providers. The health insurance system was partly codified by the Act on the General Health Insurance Company (*Všeobecná zdravotní pojišťovna – VZP*), which dominated the field from the start, and has held on to 66 percent of registered insured persons. At the same time, an act was approved on employer health insurance companies. To begin with, 26 such companies existed, but by the end of the 1990s their number had decreased to nine thanks to mergers and bankruptcies. Since that time, they have managed to remain financially stable. Citizens have the option of changing health insurers every three months.

However, legislative and regulatory conditions for real competition between different insurance plans have not been created and the original vision of competition between insurers has not become reality. The VZP has maintained what is essentially a monopoly position. Moreover, the state has gradually regulated the conditions

for the functioning of employer insurance companies. Initially, 60 percent of the insurance collected was redistributed according to the age of insured clients. As of 2005, 100 percent was redistributed, eliminating the advantage of insurers with a more favourable client structure. Employer insurance companies are also, in view of their limited portfolio of clients, relatively small and unstable institutions in the Czech Republic's health care market. One solution in the future could be further mergers and stabilisation of these institutions, thus creating the possibility of real competition with the VZP. By contrast, there are also suggestions that the VZP could be subdivided into more entities.

The system of paying for healthcare was broadly conceived from the start, along with the notion that most healthcare should be fully covered by insurers with very low contributions on the part of patients – it is the lowest in Europe, amounting to only eight percent of healthcare costs. Patients basically just pay at the dentist and in pharmacies. The right to coverage of healthcare expenses arises on the basis of the mere registration of a citizen with a health insurer, without regard to whether the patient pays the required insurance payments or not. This fact is positive from the viewpoint of accessibility to health care, but less so for the balance of payments of health insurers. Insurance for those “insured by the state” (the unemployed, soldiers, children and pensioners) is paid at a flat-rate set by the state. The level of insurance corresponds to only 6.6 percent of the minimum wage. Insurance paid by employees amounts to 13.5 percent of their gross salary (9 percent is paid by the employer and 4.5 percent by the employee). For those it insures, the state today pays a tenth of the average insurance paid by employees.

The health system in Communist Czechoslovakia was seriously under-funded. In 1989, four percent of the GDP was spent on healthcare. With the renewal of the insurance system in 1993, expenditures increased to 6 percent of GDP and today this amounts to almost 8 percent. In real terms, however, far lower sums are put into the Czech healthcare system than in the richest European countries – according to the most recent budgets, around 1,000 USD per citizen annually. For this reason, huge hidden debts remain in the health system infrastructure (e.g. neglected hospital buildings and premises). Also, in the Czech Republic more money is spent on material and medication than on salaries. This deformation is given by the country's history. Unlike in developed states, material costs continue to be of primary importance.

A critical problem of the Czech (and not only the Czech) health system is the growing conflict between demand for scope and quality of 21st century health care and the limited resources to finance it. In a system based on financing healthcare through solidarity without effective regulatory instruments – as established in the Czech Republic at the beginning of the 1990s – there is an inherent potential for

budget deficits. During the 1990s such deficits were repeatedly and unsystematically dealt with by state intervention in the form of writing-off the debt burden of some hospitals, or the VZP.

Privatisation

At the beginning of the transformation of the health system in the Czech Republic there was another fundamental change besides the introduction of a health insurance system: the privatisation of surgeries of general practitioners and non-resident specialists. To a lesser extent, small hospital ward facilities and hospitals were also privatised. In subsequent years, the area of private non-resident care experienced the least financial, and other, problems. Thanks to the state's small influence in this area of healthcare, it can currently be regarded as a stable and functioning part of the healthcare system.

This is in direct contrast with the situation of large state-run hospitals, which are in long-term financial difficulties due to the failure of the state to ensure quality management and the general flaws in the system of financing. The conflict here mostly stems from the fact that the state, essentially by directive, determines the scope and quality of healthcare for which health insurers have to pay hospitals, as well as setting the level of wages for health workers. It does so without much worry, as the final responsibility for financing lies with the insurance companies.

The financial crises at the beginning of this decade, which were in the end solved through additional state funding, arose because of purely politically motivated pay rises given to health workers, without any consideration for whether they would lead to an increase in the extent or quality of care.

The state's first attempt to ensure effective use of health funding took place in the mid-1990s. Efforts by authorities to increase their influence on the regulation of the health system led in 1997 to the creation of a system of "hospital selection procedures". The aim was to do away with excess capacity and also to prevent health insurers from extending contracts to certain health facilities, or in some cases their operators. That led to the closure or fundamental restructuring and downsizing of some hospitals. After the Social Democratic government came to power in 1998, the recommendations of the selection bodies were not respected in the majority of cases. This delayed efforts to deal with the problem of hospitals' excess capacity and ineffective operations for a number of years.

Fundamental change was only achieved in the management of smaller hospitals. That was due to administrative reform which placed them under the management of regional bodies in 2002 and 2003. Already in the early phases of transformation of the regional healthcare system, it is clear that hospitals are being better run. Some regions have succeeded in increasing their efficiency. At the same time, the most obvious motivation was the change from being state organisations with non-transparent

accounting into regular business organisations. In some regions at least, the running of hospitals has improved and the health network has begun to work more efficiently. Other changes in the organisation of health care and changes in the ownership structures of hospitals (privatisation or transfer to non-profit organisations) are currently the subject of tough political debate between leftwing and rightwing parties.

Reforms of the Czech healthcare system came to a halt in 1992. With the exception of partial modifications in 1996 and 1997, the democratic political debate was not sufficiently competent to propose and push through a reasonable approach which would adapt the health system to the new conditions. One result is the fact that health ministers are replaced more often than other cabinet members. In one year alone there were three different health ministers and by 2004 there had been twelve ministers since 1990.

World Bank and Czech government experts have recommended that the insurance market and hospital accounting procedures be reformed and that regulation charges and a system of information on health care be introduced as soon as possible. In the end, however, the government did not take on board the World Bank's recommendations since they were rejected by the Health Ministry. Opposition and some government politicians are predicting that the longer reforms are put off, the tougher they will be.

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My Reflections on the Transformation of the Czech Healthcare System, 15 Years On

Martin Bojar

Thanks to a group of economists, sociologists, doctors and other healthcare workers, some of whom had spent time during the years before the fall of the Berlin Wall making an analysis of European healthcare systems, a plan was prepared for the ten-year transformation of the Czech socialist healthcare system immediately after the collapse of the Communist regime. It was to be turned into a pluralistic healthcare system corresponding to the liberal European model. The transformation programme aimed to create a public healthcare system respecting the humanistic, special needs and economic principles of the healthcare systems found in European Union countries. Using a number of Charter 77 documents as a starting point, the programme was partly inspired by the experiences and traditions of pre-war Czechoslovakia and was modelled on healthcare in a social market economy, particularly the systems in Germany and Austria. The core principle of the policy was the need to abolish the state monopoly on the administration and financing of healthcare and the health system.

The health sector in the Czechoslovak Republic was nationalised between 1949 and 1951. No private sector involvement whatsoever was allowed in healthcare and social healthcare provision. Just as in other areas of the national economy, as well as all sectors of society, the leading role of the Communist Party was also consistently promoted in the health system. Management positions and senior posts in hospitals and health facilities were reserved exclusively for members of the Communist Party of Czechoslovakia (KSČ), just as they were in schools of medicine. Healthcare was free and available to all citizens by right. The state (state administration) controlled all health facilities – diagnostic-therapeutic, research and rehabilitation. It guaranteed the formation of a vertically and horizontally structured system of health facilities ensuring accessibility to health care of comparable quality and volume even in the less developed parts of the country.

Between 1980 and 1990, it became increasingly difficult for the state to secure the necessary investment and operational funding to purchase even the most essential modern diagnostic and therapeutic equipment and to buy foreign medication and

diagnostic testing kits. Prices of such products were rising quickly, but they were necessary because the quality of healthcare was deteriorating and there were periodic crises resulting from the lack of certain imported life-saving medications. For some privileged groups of the population these medications and products were available in special healthcare facilities for the “nomenclature” and its relatives.

With certain fluctuations, the Czechoslovak health system maintained an acceptable standard comparable in many respects with healthcare in those EU states with relatively low GDP. At the same time, it undoubtedly outperformed a number of European and overseas countries in terms of accessibility and range of specialist services. However, the quality of care began to fall gradually after 1970 as domestic bio-medical research began to fall behind. That was partly due to the emigration of a number of leading doctors after the occupation of Czechoslovakia in 1968 as well as the subsequent personnel policy of the party. This consisted of restrictive measures and decrees, preferentially allocating senior positions to party members, as well as reserving the vast majority of foreign study programmes for them.

The Necessity of Rapid Change

During the political thaw brought on by Gorbachev’s policies, it became increasingly clear that the situation in health and social care, as well as education, was untenable. Thus immediately after November 1989, demands were formulated for fundamentally transforming the health system and improving the working and living conditions of healthcare workers. This was one of the most urgent priorities for the transformation of Czechoslovak society and there was an emphasis on preserving the principle of accessibility and the quality of health care. For this reason, the architects of the proposed new system took their inspiration from the German model, preferring a broad-based general health insurance system preventing the disintegration of widespread health care thanks to the principle of solidarity, while protecting the health system from having some its funds (collected through health insurance) drained off to other sectors.

Significantly, from the beginning of its preparation, the transformation policy emphasised the role of patients and their right to act freely and make their own decisions with respect to healthcare provision. With hindsight, there is no doubt that intoxication with liberal ideals led to an overestimation of the ability of patients to freely select their doctor or health facility, or even the extent of some kinds of care.

Health Insurers

The creation of independent healthcare facilities, a category which also included the first private practices, was a very important foundation for a new and functional health system. From the summer of 1992, private practices sprang up rapidly in the

Czech Republic. A major turning point for the Czech health system was the formation of health insurance companies, public domain non-profit organisations providing insurance and financing to the public healthcare sphere and providing a bridge to multi-source healthcare financing. It was essential to end the monopoly state health system. In the first two years, there was talk of denationalising and gradually privatising small and medium-sized healthcare facilities which were not essential for preserving the state healthcare facility network and the provision of standard healthcare. Also, greater emphasis was placed on the role of local and regional administrations in the formulation of health policy.

The original proposal for transforming the health system, which was widely opposed in the spring and autumn of 1990, regarded the creation of a competitive environment as another key factor. Nevertheless, there was only partial awareness of the positive and negative aspects of competition in healthcare.

A publication outlining the proposed new health system was distributed to Czech hospitals and policlinics, as well as state administration bodies, civic associations and health workers' associations in May and September 1990. This publication, among other things, proposed a scheme to create compulsory health insurance. The transition to an insurance system independent of the state, which would supervise the system through its representatives on administrative and supervisory boards, was regarded as one of the key aspects of the reform. Between 1991 and 1992, there was general accord that the creation of a network of health insurance companies and a solidarity-based system of health insurance was the surest solution, ensuring that a high percentage of the Czech population would not end up outside the framework of healthcare funded by general health insurance.

The aim of the Health Ministry – which was acting under increasing pressure from health workers' associations and some deputies from the radical wing of the Civic Forum – was to embark without delay on the first steps towards the fundamental transformation of the state-run health system. That is to say, its denationalisation and transition to a health system based on co-operation between public and private health facilities, the private practices of general practitioners and specialists as well as other institutions and civic associations. The transition from financing the health system on the basis of the state budget controlled by an all-powerful Finance Ministry to a model of financing based on public domain health insurers was regarded as being of fundamental importance. The need to maintain accessibility to healthcare, improve its quality and prevent the disintegration of the network of health facilities was repeatedly emphasised.

Between 1990 and 1992, the Czech health system began to change from a state-controlled system into a system corresponding to the pluralist and liberal systems common in the European Union, with primary and institutional care provided by non-governmental, as well as public domain and state-run, healthcare facilities.

Fifteen Years On

Fifteen or so years later, it is worth addressing the question of what was preserved of the original proposal for a new healthcare system and which parts of it proved worthwhile. Despite various difficulties and reservations, it turned out that the decision to create a system of general health insurance was the best solution, which, coupled with the participation of state administration, guaranteed accessibility to healthcare for all citizens. Minority groups of the population did not find themselves outside the framework of healthcare provided on the basis of general health insurance. This was partly because the state became – in line with the proposed new system – the guarantor of adequate healthcare. It is clear from public opinion polls that the position of the citizen in relation to healthcare providers has undoubtedly improved. The right to a free choice of doctor and health facility is being exercised, although it is often used excessively and is connected with a number of uneconomic practices.

On the other hand, not enough emphasis is being put on the need to renew and support the health system. There is more and more proof that prevention has worsened in various areas of healthcare as a result of an excessively liberal approach to the independence and responsibility of potential patients, who often behave most irresponsibly.

The most common reproach of politicians and economists is that the new system is wasteful and inefficient and this is due partly to the establishment of an unquestionably high number of independent health facilities. Lawyers have chosen this relatively neutral term to label private medical practices, small private hospitals and sanatoriums as well as large state-run hospitals.

The fact that non-residential practices are gradually becoming the focal point of medical care is a clear-cut success, because many general practitioners and specialists have become more motivated and more competent. That is partly because successful specialists generally work in thriving private practices and private health facilities. There is no doubt that after 15 years of transformation the Czech Republic has a functioning multiple-source financed health system. That is thanks to the General Health Insurance Company (*Všeobecná zdravotní pojišťovna – VZP*) which has been in existence for over 12 years, as well as other insurance companies. The VZP benefits from a very well constructed information system and from a network of functioning branches ensuring the financing of healthcare for around 70 to 75 percent of the population.

As to the key question of how patients and the Czech public view the attempt to transform the Czech health system, one can quote a poll from 1997, seven years after the start of efforts to transform the system, which found that 75 to 80 percent of the population was satisfied with the quality of healthcare and its availability. The suffering but uncomplaining patients in 1997 thus expressed their opinion that the reform of the Czech health system, half-finished and often criticised from various sides, had led

to positive advances. Improved access to new technology was favourably rated; in the previous decade new diagnostic and therapeutic instruments had been imported to the Czech Republic, creating unprecedented opportunities for treating a number of serious diseases.

Like other countries moving from a socialist economy and healthcare system to a pluralist, market or social market economy, the Czech Republic cannot in the long term overlook the fact that with relatively low productivity in the national economy and a GDP several times lower than in EU countries, Central and Eastern European countries cannot afford to provide healthcare of a maximum extent and guaranteed quality purely on the basis of solidarity-based insurance. At the same time, politicians have blocked increases in health insurance and the introduction of patient contributions.

The question is what can be done in the Czech Republic, Slovakia or Hungary in order for the patient – who will no doubt defend his position as a consumer of largely “free” health care – to become both a conscious insurance payer, a legally-bound contributor and an active controller of the quality and cost of healthcare. Accessibility, quality and preservation of the general nature of healthcare must be of importance to the patient. However, at the same time, patients must take an interest in the issue of the price of health services and medication. It is also in the patient’s interest for the quality of healthcare not to dramatically decrease when costs are reduced and that there is not a reduction in health improvement and sickness prevention programmes. What measures should be taken? Without doubt the effectiveness and cost-efficiency of healthcare facilities can be improved to some extent. Wastefulness can clearly be curbed and the uneconomic spending of resources prevented. However, patients must also change their attitude. There is sufficient evidence that introducing effective financial contributions by patients is the only regulatory mechanism motivating patients to take a more economical and responsible approach to healthcare.

I regard it as a mistake of health policy that not one of the three attempts to introduce patient contributions between 1990 and 1992 found support. Furthermore, the act on health insurance companies did not enshrine the existence of several bigger public domain health insurance companies providing general health insurance or the provision of supplementary private health insurance as another form of patient participation. In the case of the renewal of the activities of the Czech Doctors’ Chamber, the management of the Health Ministry did not succeed in persuading influential politicians of the fact that an institution with compulsory membership for all doctors, including those on a regular employment contract, was not the best possible solution. Neither was the granting of certain powers to the Chamber. Later on, the same politicians who had advocated the concept of the non-liberally oriented Chamber, compulsory membership and several other attributes, became its critics.

The course of transformation of the health system in the Czech Republic can serve as convincing proof that the British economist John Maynard Keynes was right when he said that if he heard anybody talking about the free or unregulated market in the health sector he would say that person needed to see a psychiatrist. The last 15 years have clearly shown that the market does not solve the problems of the health system, although the private sector and many impulses from the market economy do serve as valuable stimuli and inspiration.

I regret that as members of the second post-revolution government we failed to be – and could not have been – more thorough in asserting what appeared to be excessively radical steps of transformation. I believe that governments should have been uncompromising towards efforts by those who were active members of the Communist Party before 1989 and held leading posts in society and the health system under the former regime yet which post-1989 tried to hold on to a share of political and economic power. In the interest of maintaining power and influence and in line with their Machiavellian principles of continuity of power, many former Communists took advantage of the imperfections and the inconsistent nature of the so-called “lustration law”. They adroitly “moved” into the private sector and in many cases rightwing political formations and parties. After a few years these former party members began to pose as democrats, or even victims of the former regime, which they had of course opportunistically supported and developed. I feel that in the fields of the economy, social affairs, education and health, we are still paying an immoderately high price for failing to heed calls for exponents of the previous regime (be they members of the KSČ or their collaborators in various security agencies) not to be allowed to hold positions of control at various levels.

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Environmental Protection before and after 1989

Viktor Třebický

The Environment under the Totalitarian Regime

The catastrophic state of all parts of the environment was without doubt one of the causes of the collapse of the Communist regime in Czechoslovakia and other Soviet satellites. The situation at the time is summed up by the title of a Charter 77 document: “*To Be Able to Breathe*” (“*Aby se dalo dýchat*”).

In Western Europe and North America, the general public became aware of the issues of ecology and environmental protection at the beginning of the 1960s. There was growing proof that the negative impact of human activities on the environment posed a threat not only to nature, but also to humankind and its economy. In the 1960s and 1970s, this led the democratic governments of the Western world to begin to formulate policies and laws aimed at reducing the impacts of pollution. This era was characterised by “end-of-pipe” solutions. At the same time, the public was putting increasing pressure on politicians and experts to deal with these issues. Among other things, that led to growing investment in research and environmental protection.

What was the situation like in the Soviet bloc at that time? In countries which emphasised extensive development of mining, heavy industry and support for industrial forms of agriculture (Czechoslovakia, Poland and the GDR), the devastation of the environment grew at a faster pace than in the industrialised West. By 1970, the Communist Party of Czechoslovakia (KSČ) had ceased to pay attention to such problems. The 1970s and 1980s brought change. The quality of the environment was deteriorating at an ominous pace and state bodies repeatedly discussed the issue. However, as in many other areas, the totalitarian system again demonstrated its inefficient and perverse nature. The relevant government agencies repeatedly accepted measures aimed at changing the situation, but they remained mere words on paper and their implementation was negligible. Meanwhile, the degradation of the environment in some regions led to increased mortality rates and many other problems.

The intensification of the economy remained the government’s priority until the end of the 1980s. Quality of life and the environment were in effect sacrificed on the altar of an economy that was dirty, inefficient and centrally-controlled by Moscow. The repressive

regime severely curbed the free spread of information concerning the real state of the environment. Together with the general passivity of citizens during the “normalisation” period, this meant public interest and publicly-formulated views on environmental issues were practically non-existent. While a number of citizens’ environmental movements had developed successfully from the 1970s onwards in the West, in Czechoslovakia there was only one relatively independent voluntary conservation organisation, TIS – the Union for the Protection of Nature and the Landscape (*Svaz pro ochranu přírody a krajiny*). After ten years of its existence (1969-1979), the TIS was replaced by a new organisation called the Czech Association for Nature Protection (*Český svaz ochrany přírody*), which was centrally controlled and therefore much more submissive to the regime.

Until 1989, the system of environment protection was ineffective and badly conceived. A federal environmental body with the necessary powers was never established, despite calls from a group of ecologists as early as the start of the 1970s. The existing bodies (the Council for the Environment under the government of the Czech and Slovak Socialist Republics and the analogous Commission for the Environment at the regional and local level) were merely consultative and their real influence on the environment was minimal. Responsibility for individual areas of the environment was entrusted to economic ministries, which naturally led to many disputes and further environmental degradation. The legal framework for environmental protection and management of natural resources was fragmented in a great number of ministerial regulations and did not constitute an integrated system. Every regulation came with a great many exceptions and the law was often circumvented or breached without any corresponding sanctions. The quality of the environment in Czechoslovakia at the end of the 1980s was among the worst in the world.

Changing the Old System

Among other developments, the regime change in November 1989 was ushered in by a number of environmental demonstrations. The first was organised by the “Prague Mothers” (*Pražské matky*) association on May 29, 1989. Somewhat unusually, the demonstrators took to the streets with prams during a meeting of environment ministers from countries bordering Czechoslovakia. It took place in Prague and ended with entirely unsatisfactory and vague declarations. However, the awakening activist movement made use of the occasion to point to the extent of the environmental crisis.

Another organisation called the Ecological Society (*Ekologická společnost*) was also formed at that time, with the aim of informing citizens about the true state of the environment. It connected dissidents and environmentalists with people from the so-called “grey zone” of unofficial activity, the sphere of engaged activity between dissident and official structures. Several other environmental demonstrations were held in Prague in the spring and autumn of 1989. Also of significance was the 23rd annual “Meeting of Youth in Šumava” (*Setkání mládeže na Šumavě*) which for the first time

focused on the environment. Delegates included West German Green Party member and Czechoslovak exile Milan Horáček, who subsequently met with the important dissident and future president Václav Havel. Dissident and semi-dissident circles, as well as ordinary citizens, began to take more interest in environment protection.

The “revolution” of November 1989 was preceded by several relatively large demonstrations of citizens from districts in northern Bohemia who suffered health problems during the annual autumn meteorological inversions accompanied by a dramatic deterioration of air quality. Protests calling for clean air were the first demonstrations held outside of Prague. The emergence of north Bohemian citizens from the freeze of normalisation was an important signal of the “beginning of the end” of the regime. Purely environmental issues gained a new, political dimension. For the first time, representatives of the Communist regime were forced to hold a dialogue with ordinary citizens.

Building a New System

During the Communist era the chimneys of coal-fired power stations and large factories belched tonnes of pollutants into the air, the rivers were contaminated by the sewage systems of towns and villages and dangerous toxic waste was kept in wild and unregulated rubbish dumps. Today the whole of Europe is familiar with the term “black triangle”, referring to parts of northern Bohemia, the south-western tip of Poland and the neighbouring part of the former GDR. This was one of the most polluted areas on the continent. The average age of inhabitants was five or seven years lower than in developed countries. Measurements of car exhaust fumes in Prague exceeded the world’s highest values.

People from semi-official environmental structures were very well aware of these facts and tried to act as quickly as possible. Bedřich Moldan was appointed head of a then non-existent ministry, a mere three weeks after the start of the Velvet Revolution and immediately began working on establishing it. Success was soon achieved in halting negative trends in the environmental field, followed by gradual steps towards improvement. While in 1987 total investment to environmental protection was 2 billion Czechoslovak crowns (CZK), by 1997 it had grown to 40 billion CZK a year. The share of GDP devoted to the environment grew from 1.1 percent in 1990 to 2.5 percent seven years later.

In constructing a new system of environmental protection, the Czech Republic drew on the experiences of developed countries, especially European states, which had been developing systems of protecting the environment, nature and natural resources for two decades. The system was defined by laws which were approved between 1990 and 1992, thoroughly covering all areas of the protection of nature, the environment and natural resources.

The interest of the public in the state of the environment in towns, regions and the whole country in the early 1990s was of great importance. It reflected the catastrophic state of the environment at the end of the 1980s and legitimate fears that this unfavourable situation would have negative impacts on human health. It was easy for the state at that time to bring in brand new, often considerably restrictive, legislation, because it felt it had the backing of the public. Ten years later, when it was necessary to adopt a new set of laws in connection with the Czech Republic's accession to the EU, the interest of the public was far lower and support weaker.

The creation of a new system of environmental protection bore fruit. In some indicators, the Czech Republic achieved record-breaking results, for example attaining the fastest rate of lowering emissions of the main harmful substance in the air, sulphur dioxide. This improvement had two causes – the launch of an effective environment protection system and the significant downturn and restructuring of the economy at the start of the 1990s.

An important success of the post-1989 era was the fact that water ceased to be regarded as nothing more than a raw material, as had been the case under the previous regime. It is now seen as an essential component of the environment that must be treated in relation to its other components and should be preserved for future generations in the greatest quantity and quality. Those drafting new policy in the area of water protection were faced with two tasks: to reduce the pollution of surface and ground waters and to reduce the consumption of drinking water as an irreplaceable natural resource. There was success in dealing with the first task, largely thanks to the construction of water treatment plants in large and medium-sized towns and sanitation systems in smaller municipalities. Big industrial plants also gradually started putting their own water treatment plants into operation under pressure from new laws and the threat of sanctions and charges for pollution.

Increasing water prices proved to be the most effective instrument for reducing the consumption of drinking water, as well as its unnecessary wastage. Consumption has fallen by more than a third in both factories and households. The fact that the number of people being supplied with water from public water systems is constantly increasing is also important.

The Air and Protection of the Countryside

In the 1980s, Czechoslovakia was one of the countries with the worst air quality in the world. In 1980, SO₂ emissions amounted to 2.237 million tonnes, while in 1990 it was 1.876 million tonnes, the second highest in Europe per capita (after the former GDR). The principal cause was the structure of industry and unsatisfactory legislation on air protection.

In the first phase, it was necessary to limit emissions from large sources of pollution such as coal-fired power stations. That was achieved in a relatively short period thanks to new legislation and corresponding sanctions. Charges were imposed on releasing the main pollutants from large and medium-sized sources. As a result, pollution was reduced by record amounts. In 1991, 17 kg of SO₂ were produced per 1,000 USD of GDP. In 1999, it was just 1.9 kg.

The Czech countryside bears the marks of centuries of use by man. At the same time, a number of valuable elements of nature and landscape had been preserved until the 1950s. Four decades of Communist agriculture and intensification of industry have, however, left scars on the landscape. An act approved in 1992 became the basis of a new system of caring for nature and the countryside. It is based on the premise that all living and non-living parts of nature in the state's territory are subject to protection, while some components come under special, stricter protective measures.

During the last 15 years, the network of protected areas has been successfully expanded – three new national parks and four protected areas have been created. In total, 14.62 percent of the territory of the state is protected. It has transpired that the existence of the Iron Curtain was in some cases paradoxically beneficial to the environment. Border mountain areas, for example, were preserved as valuable parts of nature because they were exempt from normal use or tourism.

Waste

There were no laws on the storage or treatment of waste in Czechoslovakia before 1989. The result was that the vast majority of waste ended on dumps and tips, recycling and restrictions on waste generation were negligible and the landscape was blighted by many unauthorised waste dumps. The new system introduced after 1989 was based on the declaration that “everybody is responsible for preventing waste generation and limiting its amount and toxicity”. In practice, that primarily meant introducing tighter rules for existing and newly created waste disposal sites, closing down and re-cultivating unsound or hazardous dumps by 1996 and emphasising the need to limit waste generation. The number of recycling facilities is gradually increasing. However, the problem of a relatively low extent of recycling persists – the level is around half of that in neighbouring EU states. The overall production of communal waste is also increasing in connection with the growth of the consumer lifestyle.

The 1991 act on the environment defined mineral resources as one of the key elements of the environment. This means that they are no longer regarded merely as a potential source of raw materials, as was the case under the previous regime, but as an important part of nature which has an influence on other components (such as the water regime or living nature). Under the new system, achievements have been made in limiting some of the most destructive extraction schemes, such as the mining of

gold in the Kašperské Mountains. At the same time the results of devastating mining in the past, for example for uranium and coal, remain with us. Several decades, and very expensive re-cultivation, will be required to deal with this damage.

In the words of the first post-1989 environment minister: “During the previous totalitarian era, our relationship with the environment was marked by arrogance, negligence and exploitation. As a result, the average life expectancy in our country is five to seven years less than in the most developed countries.” Thanks to a decrease in pollution that situation gradually improved during the 1990s, and the average lifespan has begun to rise.

In a relatively short time after the fall of the Communist regime, a functioning system of environmental protection was successfully constructed. This success must be partly attributed to the readiness of a number of people who had been aware of the fact that the situation under the last regime was untenable and saw the need for fundamental change. Such people were involved in the birth of new institutions and the drafting of new laws, though change would not have been possible without great initial support from the general public. Many non-profit organisations which regard the quality of the environment as their own concern also played, and continue to play, a positive role.

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Trade Unions Past and Present

Jana Kašparová

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TRADE UNIONS PAST AND PRESENT

The crisis experienced by totalitarian regimes, which spread rapidly in 1989, also affected the trade unions in Czechoslovakia. The Revolutionary Trade Union Movement (*Revoluční odborové hnutí – ROH*) was the sole trade union organisation and held a monopoly position. Before November 1989, it had seven million members. Following the events of November 17 of that year, many local union branches denounced police brutality and backed Civic Forum's (*Občanské forum – OF*) call for a general strike. Union members perceived the ROH leadership's condemnation of the demonstration and speeches by union management against the strike as a betrayal. They began setting up strike committees in enterprises throughout the Czechoslovak Republic. The Association of Strike Committees (*Sdružení stávkových výborů – SSV*) resulted from an initiative by the strike committees of nine large Prague factories and it quickly became the core of the strike movement. Although the SSV emerged in an essentially spontaneous manner (it did not have any professional apparatus at its disposal, but literally consisted of 20 enthusiasts), it coordinated the preparation of a general strike.

On November 27, 1989, a general strike was held throughout the entire republic between 12 and 2 pm with 75 percent of the population participating. The successful progress of the strike began a new chapter in the activity of the SSV. It called for new trade union elections and for support for the demands of the Civic Forum. Subsequently, however, the SSV found itself at odds with the OF because it disagreed with an OF directive demanding the reorganisation of strike committees in enterprises on an OF platform. On March 2 and 3, 1990, an extraordinary congress of all unions and associations was held, which ended the activity of the ROH, and an entirely new trade union organisation was established – the Czechoslovak Confederation of Labour Union Associations (*Československá konfederace odborových svazů – ČSKOS*). Another very important decision by the congress was to divide ROH's previously integrated assets among local branch organisations and trade unions, while the greater part of its common property was transferred to the central administration of the newly established organisation. In 1994, part of the assets administered by this organisation was transferred to a joint-stock company called GEN, whose shareholders were individual labour unions. These assets were handled in a highly amateurish manner. This, together with a breach of the rules prescribing that GEN shares cannot be sold

to entities other than the trade unions, were the main reasons why the unions lost a considerable part of their valuable real estate.

From the outset, the new trade unions adopted a highly positive attitude towards social transformation. In line with the opinion of most of the population, and thus the majority of their members, they strongly supported the radical measures of liberal economic reform in the initial stages of economic transformation, creating a social consensus favourable for their implementation. Without this stance of the unions, successful transformation in the Czech Republic would have been unthinkable. The unions backed the fast-track privatisation of national assets. In so doing, they were primarily guided by an interest in obtaining employers that would be genuine partners for free and unrestricted collective bargaining. On the one hand, they were concerned that the privatisation process was sluggish and inconsistent. On the other hand, however, they also criticised the state for prematurely abandoning its role as owner at a stage when privatisation was still being prepared, as well as during the actual course of this process. This desertion – generally referred to as the “pre-privatisation agony of state enterprises” – had very unfortunate consequences for the condition of national enterprises and generally had an adverse impact on the cultivation of a business environment.

The social consequences of these processes were taken as the price that had to be paid for the rectification of past mistakes and for the general recovery of the economy. Moreover, it led to a slowing down of inflation after the initial price shock in 1991. Growth of nominal wages, a suitably stratified income compensation system and, most importantly, the low level of unemployment, engendered the feeling that living standards were gradually improving.

Essentially, the labour unions became the government’s only important recognised partner in the formation of social policy and in preparing the reform of the social welfare system. Negotiations based on the tripartite agreement led to many adjustments of upcoming measures. The Council of Economic and Social Agreement (*Rada hospodářské a sociální dohody* – the tripartite agreement for short) was established in October 1990. This consisted of a voluntary agreement between three social partners: the government, the labour unions and entrepreneur organisations. Despite this essentially positive development, however, certain conflicts of opinion occurred, portents of future clashes between the labour unions and the government over the nature of social welfare reform.

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Transitions to Democracy and the “Lustration” Screening Process

Petr Blažek

Fifteen years after the “year of miracles” (as the historian Timothy Garton Ash described 1989), when the regimes of the outer Soviet empire collapsed like with a “domino effect”, we can now compare the experiences of various post-Communist states in dealing with the “legacy of the past”. In the Czech milieu, it is currently possible to identify three wider problem areas connected with “Communism”: a) coming to terms with the Communist past (in line with interpretations of the historical determinants of the present); b) problems concerned with the influence of exponents of the Communist regime on the democracy that has emerged since 1989; and c) dealing with the existence of the current Communist party and other organisations and individuals promoting Communism.

As demonstrated by the experiences of transitions to democracy from various authoritarian regimes with different ideological backgrounds, compiled in a report by the commission of the International Council on Archives in 1998, the archives of former repressive bodies play a significant role in the process. Naturally with the prerequisite that the files on record are preserved and used by the new regime. Long-term transitions, initiated by the authoritarian powers themselves, result in a much greater reluctance on the part of representatives of the new regime to deal with issues concerning reparation and compensation for the victims of repression and the prosecution of those responsible. The Spanish transition from Franco’s authoritarian regime is one such example. Conversely, the case of Germany represents a process which is the complete opposite. In this country, the collapse of the GDR allowed for extensive documentation of the Ministry of State Security (*Ministerium für Staatsicherheit*) to be preserved and used extensively for the aforementioned purposes.

The specific Czechoslovak contribution took the form of legislation (through the so-called “lustration laws”), which used preserved archive documents as a basis for preventing selected groups of citizens from holding certain positions of power within the state. In addition to a small number of trials of representatives of the former regime and members of its repressive apparatus, administrative disqualification was the main way of dealing with the past on a legal level. Besides rehabilitation (mitigating legal injustices) and restitution (alleviating inequities pertaining to property and assets), which were

initiated at the start of the 1990s, lustration was particularly supposed to disqualify the culprits of injustices and their collaborators for a pre-defined period from performing important duties and holding office. The aim of the legislators was primarily to eliminate the influence of these people on the creation of a new political system.

In the Czech environment, the last significant legislative measure in regard to coming to terms with the past is represented by an act dating from 1993, which defined the illegal nature of the Communist regime and gave moral recognition to the resistance mounted against it. This act stipulates that "the statute of limitations does not apply to the era lasting from February 25, 1948, to December 29, 1989, in those cases where a lawful conviction or acquittal occurred for political reasons incompatible with the basic principles of the rule of law of a democratic state". The law describes the Czechoslovak Communist Party (KSČ) as an organisation that was "criminal and contemptible and, like other organisations based on its ideology, aimed to suppress human rights and democracy through its activities".

"Lustration" before November 1989

To understand the importance of lustration in Czechoslovakia (and the Czech Republic) after November 1989, it is first necessary to explain how this concept was applied during the Communist era. In the security apparatus, "lustration" stood for the process of ascertaining whether a selected individual had an entry in the central records of its two main components – the National Police Force (*Veřejná bezpečnost* – VB, literally meaning "public safety") and the State Security Service (*Státní bezpečnost* – StB, the secret police force). Lustration was used to obtain information and prevent a potential conflict of operational interests. If the assessment turned out to be positive (i.e. the targeted person had an entry in the records), workers at the central statistical records department of the Interior Ministry acted in two ways. If the person was on record, they wrote the number of the respective operational file on the back page of the lustration form. With "live" files, the person performing the lustration screening obtained the identification code of the department and the name of the operative worker who kept the dossier. The category of the files referred to by lustration form was not evident and it was unclear whether the selected individual was listed as a secret collaborator, as a person that had been "vetted" or a person "in the process of being vetted". Specific information was only obtained by studying the corresponding documentation or directly from the operative who had worked on the case. Lustration was compulsory whenever a personal file was opened and did not only extend to the person in question, but also to his or her relatives. For instance, when a file was opened on a safe house or apartment, used by members of the StB primarily for meetings with secret collaborators, all the occupants of the relevant building were screened.

For the most part, lustration forms were filled out by hand. At the end of the 1980s, however, some records were automated and consequently machine-readable lettering

was also used. During this period, workers at the central statistical records department of the Interior Ministry looked for entries on an incriminated person in various card indexes, files of microfiche computer print-outs and also in computer databases. Among these, the so-called records of individuals of special interest had an important place. At the end of 1989, these contained around 800,000 cards referring to existing StB dossiers. The "System of Integrated Records of Information on Hostile Entities" (*Systém sjednocené evidence poznatků o nepříteli*) represented another database, created on the basis of an agreement between the interior ministries of nine states of the Soviet bloc in 1977. In particular, these records contained information on foreign citizens with "hostile" leanings and representatives of exiled opposition groups. These remained deposited in Moscow after the collapse of the Soviet bloc, and they were probably appropriated and used by the Russian successor of the ex-Soviet KGB.

While the first important political changes leading to the establishment of a democratic system were taking place in Czechoslovakia, members of the secret political police were shredding extensive volumes of documents of a "compromising nature" from the secret police archives. This was done on the instructions of the First Deputy Interior Minister at the time (who was the *de facto* head of the StB). According to incomplete data, "99 percent of 'live' files on hostile persons (7193), 75 percent of personal dossiers (195), 67 percent of signal files (528), 67 percent of secret agent files (8632), 55 percent of files on vetted persons (4701), 44 percent of agency files (5179), 41 percent of resident agents files (54), 37 percent of files on institutions and organisations (1275), and 36 percent of files on candidates for secret collaboration (1192)" were destroyed. This primarily occurred during the first days of December 1989 (i.e. 14 days after the revolution began).

Later on, this measure substantially limited any overall understanding of StB activity during the Communist era and made it impossible to precisely determine the actual nature of the contacts between many registered clandestine secret police collaborators and their controlling officers. On the other hand, auxiliary aids for keeping records remained preserved. In particular, these comprised so-called file registers, which could still be used for the purpose of screening selected people. Nevertheless, it is necessary to note that these registers represent one of the "pitfalls of the lustration process", because although they encompass an altogether predominant majority of all the files kept by the StB, they do not contain information on all of them.

"Lustration" as a Political Issue and Legislative Standard

The question of "coming to terms with the past" became a political issue as early as a couple of weeks after November 17, 1989. The main impetus was the radicalisation of a section of society, which demanded sanctions against specific culprits responsible for political repression, the dissolution of the StB and the dismissal of its members from

the civil service. Gradually (as of February 1990), an endeavour to ban the Communist Party began to be championed in public discussions. We should add that this effort has not been successful to this day.

The 45-year period during which only representatives of the Czechoslovak Communist Party headed the Interior Ministry did not come to an end until January 3, 1990, with the appointment of Richard Sacher from the Czechoslovak People's Party (*Československá strana lidová – ČSL*) to the post of Interior Minister. He soon found himself under pressure from the Civic Forum. One of the sources of conflict was the existence of different ideas concerning the transformation of police units and staffing issues at the ministry. The new federal minister only disbanded the StB on January 31, 1990. All of its members had to give up their weapons as well as their service cards and they were transferred to the reserve forces. The Office for the Protection of the Constitution and Democracy (*Úřad pro ochranu ústavy a demokracie*) was subsequently part of the ministry. Public control over the "replacement of personnel" at the ministry was arranged by civic and screening committees, composed of Civic Forum representatives. This was only a virtual compromise, however, because from that time onwards a *de facto* "double administration" was in place at the Federal Interior Ministry.

Minister Sacher was soon criticised by representatives of the Civic Forum for the illegal screening of MPs and other constitutional officials. This "wild lustration" was ordered in March 1990 by the head of the Federal Interior Ministry's internal and organisational administration Major Václav Novotný, a longstanding employee of the security services during the "normalisation" era, with the consent of the minister. It was not until April 2, 1990, that access was closed to the cards and files kept by the former StB on certain contemporary MPs. According to a statement by the minister, however, "entire groups of people" had been screened by the director of the Office for the Protection of the Constitution and Democracy. Only after that did the minister allegedly have the MPs' files extracted from the "operational archive" and locked up in his safe so that they could not be tampered with. Regardless of who was the initiator of the screenings of politicians, the "lustration" genie had been let out of the bottle: "Anyone who moved in the higher echelons of politics was a potential subject for the collation or preparation of compromising information. Essentially it was only former Communists, or their contemporary equivalents, that had access to information and sources in the first few months. As a result, the issue as to whether people really were who they were supposed to be soon pervaded the non-violent revolution."

Minister Sacher also stood in the background of the first "lustration scandal" in June 1990. His deputy, former dissident Jan Ruml, publicly announced that the chairman of the Czechoslovak People's Party Josef Bartončík (Sacher's rival for the party leadership), secretly collaborated with the StB and had rejected President Václav

Havel's suggestion to quietly step down. Although this accusation was subsequently shown to be true, the circumstances surrounding how the subject was raised were politically unfortunate (to put it euphemistically). It came to light just a day before the first free parliamentary elections, in which the Czechoslovak People's Party was a rival of the Civic Forum (which eventually won the election by a considerable margin). Despite the fact that the new federal government decided to ban lustration on June 21, 1990, it was not possible to halt activity in this area. In the months that followed, radical MPs became the main "driving force" behind the process. A month before the local elections, their efforts led to the approval of screening all proposed candidates (albeit in a hasty and hurried manner). Moreover, as early as September 1990, parliament set up a new commission, which was meant to review the events of November 1989 again under the direction of Charter 77 signatory Jiří Ruml (the father of Jan Ruml). In December 1990, with the consent of the Federal Interior Minister, its members took control of all the file registers of the regional administrations of the National Security Corps (*Sbor národní bezpečnosti* – SNB).

At the start of the following year, the situation became aggravated once again in connection with new "lustration" scandals. At a meeting of the Federal Assembly Presidium, the former dissident Václav Benda pushed through a motion calling for a "moral purge of parliament". Some days later, the decision was also taken to screen the federal government and a whole host of other federal institutions. The "November 17 Commission" carried out the lustration of MPs. In March 1991, it published the names of 10 deputies registered as StB collaborators in the files of the former first, second, and third sections of the National Security Corps. Two months later, the findings of the lustration of the federal government and its undersecretaries were published (with 14 "positive" results), as were the results of the screening of staff at the office of the government of the Czechoslovak Federal Republic (33 of which were "positive"). The vetting of the office of the Federal Assembly, for example, had a similar outcome. Its chairman Alexander Dubček named a total of 25 people with positive lustration results. More and more new scandals concerning the activity of people at every level of public administration who had been discredited meant that there was an urgent need to regulate the "lustration" process by legislation. In June 1991, the governing elite agreed on "the premises for a future federal act".

The government's draft act prescribed that the following persons be barred from working in state administration ("from ministry department heads to managers at the district level"): members of the former secret police from the domestic service (the "enemy within" section); Communist foreign intelligence workers; secret StB collaborators; and Communist Party officials from all levels of the executive StB. Ministers and MPs were to be exempt from lustration. The "lustration act", however, was eventually adopted on October 4, 1991, in a far tougher form due to the efforts of rightwing deputies.

The rather convoluted name of the "main lustration act" indicates the extent of its scope, which broadly affected relatively large groups of people who were removed from office – a portion of the people from the former nomenclature of the Czechoslovak Communist Party, former members of the Czechoslovak Communist Party's armed units (such as the People's Militia – *Lidové milice*), a considerable number of former StB members and their secret collaborators, members of action committees and students of selected Soviet schools. "Certain other prerequisites for performing certain offices filled by the designation or appointment of members of the Police of the Czech Republic and members of the Corrections Corps (*Sbor nápravné výchovy*) of the Czech Republic" were also later regulated several months later by a special ("small lustration") act.

Although it generally holds true that rightwing politicians mostly agreed with lustration and that leftwing politicians were primarily against it, the different camps actually comprised a cross section of political parties. Supporters of the "lustration laws" perceived them as a legitimate measure preventing discredited people from working in state administration and protecting the democratic system from the residues of the past. Conversely, in subsequent years, representatives of the Civic Movement and of the Social Democratic Party (in addition to the Communists) made efforts to question this measure. Besides the supposed application of the principle of "collective guilt", they criticised the law for its retroactive nature, the generalised way in which it laid blame and the problematic screening of people on the basis of documents of Communist origin.

Although the lustration laws by no means applied only to secret StB collaborators, the public's attention in subsequent years focused primarily on these people and the controversy surrounding lustration often took the form of scandals concerning specific people who were accused of having collaborated with the StB, even though they had passed the lustration screening. Although no figures are available for the total number of people who underwent lustration procedures, it is clear from the figures available that such affairs were unavoidable. 250,000 applications were apparently submitted by the end of July 1994 alone. Almost all of these were processed and they produced more than 14,000 positive results. In 1993 and 1994, the Interior Ministry's lustration department handled more than 100 applications a day.

In this context, as one of the main opponents of the "lustration laws", the radical socialist and former Charter 77 representative Petr Uhl specified his primary reasons for considering the "lustration act" unacceptable: "Even though the official justification for the lustration act consisted of concerns that unsuitable people would infiltrate the state administration and cause harm, nobody believed this. Everyone understood the lustration act as a form of extra-judicial punishment for former StB collaborators. It actually affected them more than those who had been regular employees, who could continue to work under certain conditions or on the basis of special exceptions if

they stayed at the Interior Ministry." In the autumn of 1992, the Constitutional Court assessed the constitutionality of the "grand lustration act" on the basis of a proposal put forward by 99 deputies of the Federal Assembly (i.e. almost one third), who were represented by Petr Uhl. It rejected the complaint and upheld the law's essential features. It only annulled certain provisions of the act, including the controversial category of secret StB collaborators, where the person in question need not have even known about the alleged cooperation (Václav Havel, for example, had figured among the candidates for secret collaboration).

The greatest scandal to date broke in the spring of 2001 in connection with the issuing of lustration certificates. The Interior Minister at the time announced that some of the 150,000 people screened at the start of the 1990s had been wrongly issued with clean lustration certificates. In the end, however, only 117 cases were uncovered – all of them concerned former members of military counterintelligence, which had been part of the StB. The Interior Ministry, which carried out the screenings, had incorrectly issued the documents because it did not have the records of the Defence Ministry at its disposal (this ministry had been assigned responsibility for military counterintelligence as far back as 1990). The former Federal Interior Minister Ján Langoš stated the following in relation to this matter: "The Defence Ministry sent diskettes with data that could not be verified because the Defence Ministry did not give us access to its records."

This case indicates that the "grand lustration act" had many systematic defects. In addition to what has already been said, it is necessary to mention the fact that it fell far short of protecting state administration from all the informers used by the repressive and information-gathering units of the preceding regime: "The question remains as to what extent the secret collaborators of the operative divisions of the surveillance section, the SNB intelligence technology section and the StB investigations section, whose complete files were only kept in the records of these sections themselves, can be identified." Other repressive institutions have also been neglected: the former intelligence administration of the general staff (i.e. foreign military intelligence), which was the only Communist secret service not integrated into the Secret Police after 1945; the agent network of the intelligence management of the central administration of the Frontier Guard and State Border Security (*Pohraniční stráž a ostraha státní hranice*); and finally part of the National Police Force (*Veřejná bezpečnost – VB*) administration as well.

Besides opposition from part of the political representation and Czech NGOs (for example the Czech Helsinki Committee issued a statement), the adoption and application of the lustration laws was also criticised by some foreign institutions. The position of the Governing Body of the International Labour Office from 1992 is often cited, which calls on the government of the Czech and Slovak Federal Republic to take the necessary measures to annul or change "the grand lustration act" and to

ensure compensation for damages for all people who had allegedly been unfairly affected by them. In 1995, an investigating committee from the International Labour Organisation stated that only a little progress had been made in implementing the recommendations of the International Labour Office's Governing Body – the validity of the act had been extended until 2000 despite a veto by President Václav Havel (and then subsequently extended indefinitely). The committee recommended that the Governing Body of the International Labour Office call on the Czech Republic to take measures that would lead to the cancellation or amendment of those provisions of the act which were incompatible with Convention 111. There was also criticism from the Council of Europe, the European Parliament and some European and international NGOs. On the other hand, some post-Communist states followed Czechoslovakia's lead and also introduced lustration to their legal systems, albeit in a different form and with disproportionately less impact.

Conversely, the plenum of the Constitutional Court of the Czech and Slovak Federal Republic reached a different decision, refusing to review the constitutionality of the "small lustration act" and declaring it valid and effective, even in those sections corresponding to the unconstitutional articles of the "grand lustration act". It stated in its justification that measures ensuing from the lustration acts had priority over the basic right of citizens to have access under equal conditions to elected offices and other public offices as well as the basic right to perform employment or a profession without discrimination in accordance with Convention 111.

In January 1999, the Chamber of Deputies of the Czech parliament rejected a bill which would have abolished the "grand lustration act" (another bill submitted in 1998, which had also aimed to annul the act, had also been rejected). The last serious attempt to attack the constitutionality of the lustration legislation came in a petition from a group of MPs, which was submitted to the Constitutional Court in March 2001. A decision by the General Assembly of the Constitutional Court rejected this petition. Nevertheless, it did call on parliament to speed up the adoption of a Civil Service Act.

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Coming to Terms with the Past – the Czech Middle Way

Pavel Žáček

The first practical steps of the extremely long process of coming to terms with our totalitarian past were literally taken as early as the first few hours after the student demonstrations of November 17, 1989. It was entirely logical that they were limited by the amount of information available to the democratically-minded public. Overcoming Communism in moral, political, institutional and material terms understandably affected all spheres of Czech and Slovak society, encompassing everyone. This included members of the nomenclature, the Communist Party, the State Security Service (*Státní bezpečnost* – StB) and its network of agents, members and officers of the People’s Militia, members of the permitted parties of the fractured National Front (*Národní fronta*), citizens who belonged to the “grey zone” of unofficial activity and, last but not least, dissidents and political prisoners.

The initial phase of coming to terms with the past was primarily influenced by a lack of knowledge on the part of opposition representatives, who took on the weight of historical responsibility and progressively seized power. Even in these specific areas, a non-conceptual approach dominated for a long time in many respects. The different experiences of various social groups forming the opposition at the end of 1989 and beginning of 1990, and the different extent of their relations with the post-normalisation regime, played a major role from the very start. Not only the Civic Forum (*Občanské fórum* – OF) gained time through the decision to hold the first free elections in June 1990. The six months before the elections allowed a number of exponents of the previous regime holding “important positions” to survive. Even some entire institutions were thus “preserved” from transformation. A more serious phenomenon, however, was the preservation of the continuity of governance. This manifested itself primarily in the legal sphere, in terms of personnel and also in very specific spheres such as classified information. From the viewpoint of the newly emerging powers, 1990 was the year of a rapid and triumphant campaign. Yet ignorance of the mechanisms of Communist power became the primary reason why the destruction of the nomenclature system was incomplete and not more rapid.

The federal parliament and national council logically became the civic arena for the first phase of addressing the past, initially limited by the will of the demonstrators

on the streets and the attitudes of the Civic Forum elite. This era was characterised by legislative steps taken to redress past injustice, such as the preparation and adoption of acts on restitution, rehabilitation and other subjects which affected social groups and individuals persecuted by the Communist regime. It soon transpired that conditions were substantially different in the Czech Lands and Slovakia, and overcoming the past became one of several reasons for the separation of the joint state.

At first, investigations of cases put forward by individuals and legal entities were carried out by institutions organisationally rooted in the pre-1989 system, whose personnel had strong connections with the past – the military prosecutor's office and inspectorates at various levels, including the inspectorate of the Interior Ministry. Affairs that became the centre of public attention during 1990 and 1991, mostly brought to light by politicians and journalists, were easy to dismiss. A number of these cases subsequently ended up at the Office for the Documentation and Investigation of the State Security Service (*Úřad dokumentace a vyšetřování činnosti Státní bezpečnosti*). However, it was no longer possible to do much with them for a number of reasons.

The Lustration Screening Process

The work of the Federal Assembly committee for the clarification of the events of November 17, 1989, was an important way of making the civic community and the political sphere familiar with the recent past. Thanks to its activity, people were at least partially informed of the state of the normalisation system shortly before its collapse. In addition, the committee finally opened up the issue of so-called lustration. Its activities significantly contributed to the public denouncement of the conditions necessary for the operation of the totalitarian system – the massive use of police informers. As a result of the work of the committee, the so-called lustration act was adopted on the level of the federation on October 4, 1991 (subsequently also on the level of the two republics). This represented the first imperfect legislative regulation to protect state administration from people from the Communist nomenclature and different pillars of totalitarian power. The act, which set out “certain conditions for holding positions in state bodies and organisations” eliminated a certain portion of people from being appointed to selected positions in state administration. This included the nomenclature of the Czechoslovak Communist party (KSČ), members of the People's Militia, the State Security Service (StB) and its secret collaborators, members of action committees and graduates of security schools in the USSR. In simple terms, the act was perceived by right-wingers as a symbol of change after 1989 while those on the left saw it as a means of discrimination and called for it to be amended. Nevertheless, neither of the political camps was able to improve the act or replace it with a substitute. Its principles also failed to be incorporated into the Civil Service Act. The lustration act was partly replaced, however, by a new structure for the protection of public administration and

organisations cooperating with the state. This was implemented within the framework of screening people handling classified information, prior to the establishment of the National Security Authority (*Národní bezpečnostní úřad*) at NATO's instigation.

The Office for the Documentation and Investigation of the Crimes of Communism (Úřad pro dokumentaci a vyšetřování zločinů komunismu)

The second stage of coming to terms with the past began at around the same time as when the lustration act was passed. On the order of the Federal Interior Ministry, the Department for the Documentation and Investigation of the Activity of the State Security Service (*Útvar FMV pro dokumentaci a vyšetřování činnosti Státní bezpečnosti*) was established within the ministry. The department was responsible for analysing archive materials, dealing with cases initiated by individuals and legal entities in relation to the former secret police and investigating the criminal activity of its members. Shortly before the break-up of the Czechoslovak Federation, a new Office for the Documentation and Investigation of the Activity of the State Security Service (*Úřad dokumentace a vyšetřování činnosti Státní bezpečnosti*) was established. This was subordinate to the Office of Investigation of the Czech Republic, which had increased to 50 employees by the end of 1994.

Already during 1993, it transpired that the office had been created too late and had little authority. It became active at a time when the overwhelming majority of its partners (i.e. the administrators of archives and intelligence institutes) were under the impression that the process of coming to terms with the past had essentially been completed. Despite these impediments, the office was able to process 1055 cases. In a further 44 cases, investigators brought charges. On the initiative of the Attorney General, a Coordination Centre for the Documentation and Investigation of Violence Against the Czech Nation was established between May 8, 1945 and December 31, 1989 on the basis of an agreement with the Interior Minister in February 1993. As part of the transformation of the prosecutor's office into the State Attorney's Office, it became the Centre for the Documentation of the Illegality of the Communist Regime within the Czech Ministry of Justice (*Středisko pro dokumentaci protiprávnosti komunistického režimu ministerstva spravedlnosti ČR*).

In July 1993, after a fierce political struggle, Czech legislators, conscious of the "obligation of a freely elected parliament to deal with the Communist regime", approved an act on the "illegality of the Communist regime and on resistance to it". This regulation proclaimed that the Czechoslovak Communist Party, "its leadership and members are responsible for the method of government in our country from 1948 to 1989, and in particular for the systematic destruction of the traditional values of European civilisation, for the deliberate violation of human rights and freedoms,

for moral and economic decline accompanied by judicial crimes and terror against people holding different views, for the replacement of a functioning market economy with direct management, for the destruction of the traditional principles of the right of ownership, the abuse of education, schooling, science and culture for political purposes, [and] the wanton destruction of the natural environment...” A certain paradox in the political development of the Czech Republic remains in the existence of a relatively strong successor to the totalitarian Communist Party, the Communist party of Bohemia and Moravia (KSČM). This was in spite of the fact that the law cited openly declares that: “the Communist Party of Czechoslovakia was a criminal and contemptible organisation, as were other organisations based on its ideology which aimed to suppress human rights and the democratic system through their activities.”

The Office for the Documentation and Investigation of the Crimes of Communism (*Úřad dokumentace a vyšetřování zločinů komunismu – ÚDV*) effectively emerged on the basis of this law as part of a nationwide police investigation authority. It was headed by the exponent of Christian dissent and post-1989 politician Václav Benda, who followed up on the activity of his predecessors within the Interior Ministry and the Justice Ministry. A directive from the Interior Minister Jan Ruml in April 1995 stated that the office was competent to investigate crimes committed between February 25, 1948 and December 29, 1989 “unless a lawful conviction or acquittal had been reached for political reasons incompatible with the basic principles of the rule of law of a democratic state.” The office was also supposed to compile, evaluate and document “facts and activities connected with the illegality of the Communist regime and resistance to it.” In May 1997, its director emphasised the following in the media: “We are the only regular police body of this nature in the states of the former Eastern bloc... Initially, doubts were raised abroad about our concept, but the situation has changed radically. We have been praised in the West and attempts are being made to establish similar institutions in the East.”

At the time, the Office (ÚDV), consisting of a documentation and investigation section, expanded its staff to 90 workers. Its 17 investigators accused 100 representatives of the Communist regime’s political or executive bodies of criminal acts in 43 cases. Experience confirmed the need for close cooperation between both departments of the office – investigators were frequently unable to orient themselves in evidently complex cases without expert help from documentation workers. On the other hand, a fundamental systematic discrepancy existed from the very outset. The investigators proceeded on a case by case basis, from crime to crime. Their output to the public was limited by law to just the initials of the person indicted and the tedious citation of legal articles. Although the documentation section’s primary assignment was to help the investigators, it had a more serious task – to reconstruct the totalitarian system with the aid of an analysis of its own information output and use facts to provide testimony of the totalitarian system and its criminal operations.

In the first instance, the office concentrated on important cases concerning members of party and security service nomenclature (treason during the occupation of Czechoslovakia by Warsaw Pact troops in 1968), the middle and higher-ranking sections of the political police (e.g. the ASANACE or “sanitation” campaign involving the illegal expulsion of opponents of the regime beyond the country’s borders at the start of the 1980s), shootings at the borders and during escapes from forced labour camps and torture by interrogators in the 1950s. The office’s documentation section continuously handled several hundred cases. It formulated expert opinions for investigators and courts and mapped the activity of selected repressive bodies, especially the secret police. Last but not least, it published the “*Securitas Imperii*” edition, including studies, articles and documents, particularly regarding the operation of Communist security institutions.

Problems with the Work of the Office of Documentation and Investigation

For a long time, the State Attorney’s Office and eventually even the courts, which were staffed with former Communists and exponents of Communist “class-based” justice, naturally did not want any kind of investigation. At the end of 1997, Václav Benda openly stated the following: “Since beginning our work, we have been fighting a difficult battle and we have encountered many obstacles. During the last two years or so, a rather dramatic development has occurred whereby, unlike previous ... impediments of a formal nature, purely ideological mechanisms have begun to operate (on the part of the Czech judiciary). This could be connected to the fact that we have begun to prosecute certain judges...” By the end of 1998, when the UDV was reorganised under peculiar circumstances by the Social Democratic government, its investigators had criminally prosecuted 87 people in 47 cases and there were 26 petitions for the indictment of 40 people at the State Attorney’s Office (with 6 others convicted). Another 400 cases were under investigation.

UDV employees were aware that they could not be the only instrument used by the Czech public (or the state) to come to terms with the past, because they were only pursuing a small percentage of the crimes committed by proponents of the former regime. Václav Benda publicly stated: “A large majority of the crimes remain unpunished. That is the harsh reality. We are not deceiving ourselves that we could punish all the evil that was committed in the 42 years of the Communist regime. Our work primarily serves the future and the building of a legal state. We want to renew awareness that every crime may one day be punished no matter how much backing it received from those in power. We want, however, for everyone who committed such an action to live in fear until they die that they will one day have to answer for what they did.”

UDV was reorganised under the management of the new director Irena Kratochvíl. The changes affected both the investigation and documentation sections. Investigation

was reinforced despite proclaimed support for documentation. Nevertheless, no substantial improvement occurred. State prosecutors and the courts prevented sanctions being taken against culprits from the ranks of the Communist Party, the State Security Service and the People's Militia even in serious cases such as that of high treason in 1968.

Despite some new publications, the UDV's media output has not improved a great deal either. The Office is so bound by internal directives that any initiative is effectively suppressed. Moreover, its management is gradually giving up "unnecessary" staff positions, i.e. reducing the number of workers. And this is occurring at a time when the activities of the national memory institutes of Poland and Slovakia are at full tilt. The activity of a similar institution is being revived in Romania and discussions are underway in other Balkan countries regarding the establishment of analogous instruments. In comparison to the Slovak institute, the Czech office is less functional than it could be. This is caused by its subordination to the police force (specifically, its direct subordination to the Police Presidium), limited access to archives, or rather the fact that it does take part in the administration of the archives of Communist security bodies fragmented between the Interior, Defence and Justice departments. Unlike their Czech counterparts, Slovak officials have been able to meet the statutes of limitation for declassification. Located within a public service institution, they focus only on the period between 1939 and 1989 and need not consider the current political situation or power structure.

By about the time of the 2006 elections, the question will be raised in the Czech Republic as to how to proceed regarding the issue of institutionally overcoming the totalitarian past and whether one should attempt to restore the original situation or to choose another solution. So far, the situation is unclear. In the meantime, a draft law to create a Czech form of the National Memory Institute, or a body like the German institute, has yet to be passed.

The Permanently Hidden Past

The question of continuity, which was one of the biggest issues after 1990, not only concerned legislation and staffing, but also classified information, though this became apparent much later on. Unfortunately, the new democratic system partially adopted one of the key features of the totalitarian system. Despite the gradual transformation of Communist institutions and the objective elimination of reasons for classifying documents, as espoused for instance by the State Security Service, it took ten years before the bulk of secret documents was actually declassified. Until the adoption of a law in 1998, certain state officials exploited this ambiguous situation and artificially maintained the classified status of the majority of files and archived documents. Some intelligence institutions even made efforts (and are still making them) to delay or

prevent the complete declassification of the operational materials of their Communist predecessors. And this is done despite their key status in the pre-1989 system as well as the importance and irreplaceable nature of the material administered by them in terms of shedding light on the essential repressive nature of the totalitarian regime and exposing specific crimes.

In recent years, some responsible state representatives have stressed that the bulk of files and archive documents originating from the last regime is no longer classified. They have forgotten to mention, however, that the documentation is not freely accessible, which essentially means the same thing for the public. As if they did not understand that openly confronting the past is now the only way to prevent the misuse of these materials. A democratic society should give a clear signal that colluding with evil does not pay off and that it does not want to protect those who actively participated in the oppression of their fellow citizens and in the restriction of their basic human rights, and that it will not do so. This situation changed in January 2005 in relation to the adoption of a new archive act, which was fundamentally modified in favour of researchers as a result of pressure from experts as well as the general public.

Another substantial component of coming to terms with the totalitarian past is the issue of opening up the archive of the State Security Service, which was not subject to legislative regulation until 1996 when a somewhat imperfect act on the declassification of StB files was adopted. The act paid no attention to the files of certain elements of the StB and other Communist security units (such as the intelligence section of the central administration of the Frontier Guard and State Border Security Service). It essentially blocked access to some information, for example files held on secret StB collaborators. The act ignored several secret service sections, such as surveillance (a controlling agent network in hotels and restaurant facilities), intelligence technology (making use of agencies in post offices, telecommunications, communications and similar areas), as well as the passports and visas section, which comprised of extensive and interesting administrative documentation, and most importantly the dreaded central administration of the secret service. Unlike the German regulation, the law did not provide authorised applicants with access to the personal files of former members of the political police, which contain information on their careers, qualifications, accolades, studies at the KGB college in Moscow and remuneration, as well as on financial or other evaluations of their “operational” activities.

This situation was made worse by the fact that the operational documents (not the files) of the Communist secret police were made accessible only to a limited extent for historians and were simply not made available to journalists. Although the Interior Ministry expended enormous financial resources amounting to tens of millions of Czech crowns, it never mounted any public awareness or information campaigns. No wonder that this method of declassifying Communist secret police files essentially

ended in failure. By the end of 1999, only 2270 files had been made accessible (some repeatedly). In 2001, the Interior Ministry only declassified 300 files. The form of the law thus did not make it possible to fulfil its main purpose – to publicly uncover the hidden face of the totalitarian system, unmask the nature of the operations of the Czechoslovak form of Soviet Communism, expose specific people who aided and abetted the system and initiate the first information-gathering phase of coming to terms with the past.

From 1999 onwards, a group of rightwing senators worked on a fundamental amendment to the act, which was supposed to remove most of the aforementioned deficiencies. The new act was adopted after two years and many political and practical discussions (including discussions with representatives of the Czech intelligence services). Unfortunately, due to the skilful manoeuvring of MPs from the Communist Party of Bohemia and Moravia, opening the files to foreign nationals has been prevented. With the adoption of the new act, parliament confirmed a serious shift in the perception of the past, both in Czech politics and in society as a whole. Moreover, the senators and MPs also managed to move beyond certain political limits that had been set by the social and political reality existing at the start of the 1990s. These stemmed from the specific Czechoslovak form of the handover of power by the Communist nomenclature in the course of the Velvet Revolution and shortly after it. At the same time, it gave an important signal to other post-Communist countries that the Czech Republic had not resigned from its efforts to come to terms with its past.

Today, applicants who receive their file or dossier may also request the files or dossiers of agents who were assigned to investigate them, including the relevant pages of the personal dossiers of StB members from the bodies participating in their surveillance. The law also recalls the not so frequently presented fact that the secret police included the passports and visas section, which in cooperation with the operative workers of the secret police, decided on the issuing of passports, trips abroad, relations with émigrés and which kept the so-called index of undesirable persons and kept family members separated. Its documentation is now also accessible.

The law also makes a fundamental contribution to the discussion of the role of secret collaborators of the State Security Service under the former regime. Documentation on this least known, yet most frequently publicised and most trivialised, form of collaboration with the Communist regime will continue to be accessible to every applicant. The law allows Czech citizens to request the file (or a copy thereof) of any person (naturally with personal details inked out) recorded in the StB register as a secret collaborator working as a resident, agent, informer or holder of a safe house or apartment. This new level of quality brings a specific understanding of the activities of informers, making it possible to identify those responsible for many former misfortunes. On the other hand, it facilitates the civic rehabilitation of some

people who for various reasons were kept on StB records for some time, but whose actual collaboration is highly contentious.

Last but not least, the law finally addressed the problem of the “wild” (and incomplete) lists of collaborators of State Security Service counterintelligence units, which were published by the former dissident Petr Cibulka as far back as 1992. The act requires that the Interior, Defence and Justice Ministries publish clearly arranged lists of files on organisations and institutions and on secret collaborators in both digital and paper form. It also provides information on whom/what the files were kept and, in particular, who was responsible for maintaining each file and the period of time it covered. A discussion is still going on as to whether the law has been fully implemented in this area. Gradually, increasing data is being added on declassified personal files of members of the StB, which anyone can again have access to once the information has been digitalised. In addition, the act also covers the operational documentation of the Communist secret foreign intelligence service. In view of the sensitivity of data collected in its files, a more complicated model of declassification has been created. This procedure ensures that no human life will be endangered and that the foreign policy interests of the Czech Republic will not be jeopardised.

What specifically can an applicant access at the Interior, Defence and Justice Ministries? Besides the actual files of the State Security Service corroborating the level of interest on the part of domestic sections of the political police in the activities of individual citizens and entire social groups, information output and summaries of these files will also be available (briefings on individual operations). These summaries and briefings will be newly accessible even in the event that the actual file on a given person has not been preserved. In addition, applicants have the right to receive information originating from the surveillance section on surveillance operations mounted against them, records of their contacts with opposition representatives and foreign diplomats, as well as information about time spent in restaurant and hotel facilities. Similarly extensive information may also be found in records of telephone and room wiretaps (in terms of both their installation and a transcript of their recorded content), the censoring of the post (the screening of letters), as well as secret incursions into buildings. Somewhat surprisingly, the documentation of the StB section for the protection of party and state representatives is not mentioned among the operational sections intended for declassification. Let's hope that this oversight will not render it impossible – in accordance with subsequent articles of the law – for this information to be opened up to applicants.

Foreign Intelligence Materials

The documentation of the first foreign intelligence section will provide new and substantial information concerning the role of the secret services in the totalitarian system. Its preserved operational files promise a bumper crop of information not just for exiles

living on the other side of what used to be the Iron Curtain, but also for applicants living in what used to be Czechoslovakia. Moreover, the model created for the declassification of Communist foreign intelligence documentation does not restrict applicants to only being able to obtain “their” own files, but actually allows them to get a number of other files, provided that they were not kept on foreigners. The passports and visas section was the last department that fundamentally limited civil rights and freedoms in line with the totalitarian system. Its extensive and interesting records not only exemplify the way that people’s fortunes were manipulated by bureaucrats, but also document close cooperation with operational sections of the StB (and also foreign intelligence).

A year after the publication of the act in the Collection of Laws (2003), applicants may request files kept on organisations, institutions or communities, to which they previously belonged, and look for documentation of action by the political police therein. The same applies to the files of secret collaborators who naturally also provided information on people (thus influencing their lives) on whom the StB kept no files. At the same time, the law reduces the administrative fee for making copies of files to a minimum and, by way of an amendment, renders it impossible to deny access to the archives of the Czechoslovak Communist Party.

On the domestic front, the adoption of the law was the best response to the reaction of some politicians, such as: “It is such an abomination and there is only one thing for a decent society to do and that is to destroy these records.” The widespread opening up of secret police archives also resolves another pragmatic aspect of the problem which is not often mentioned. It reduces the possibility of the state and its officials tampering with these documents, which were created outside of the law or even contrary to it, during the existence of the totalitarian system. Public control is thus being extended from a small quantity of actual and potentially accessible files (pursuant to the previous regulations) to approximately several hundred thousand new items, most of which are currently lying fallow in the records of the former counterintelligence, military counterintelligence and foreign intelligence services.

The Slow Pace of Declassification

Nevertheless, before we get too optimistic, even the current state of this process is limited by many factors. In 2003, for example, the Interior Ministry made files and documents (approx. 77, 242 pages of archives) available to only 565 applicants (i.e. around 1.8 people per day); from September 1997 to the end of 2003, in total only 3,931 operative and agency files were made accessible. The Defence Ministry and the Justice Ministry have so far not felt the need to publish how many files have been requested by individuals and how many of them were actually received.

The logical step to take after the adoption of this law was the creation of an institute for administering and handling these materials under parliamentary control,

which in particular would take over the administration of files and other materials proving the violent nature of totalitarian regimes from the state executive. This has met with incomprehensible resistance, despite the fact that in establishing such a body we would essentially be putting ourselves on a par with Germany, Poland, Slovakia, Hungary and Romania. Further movement in this area obviously cannot be expected until after the widespread opening of files as well as subsequent discussions on these materials and a detailed understanding of them. The state, however, is patently not capable of ensuring this.

The interest of the Czech public and politicians in overcoming our shameful past is far from exhausted. New legislation will no doubt be drafted, which will be influenced by the practical experiences of our post-Communist neighbours. It is obvious that the totalitarian past will continue to influence us for a long time to come, as long as we leave it sitting in the gloom of archives, safes and records offices. We will not be free until we know who was who and what was what. If we can even manage to provoke a discussion with the former exponents of Communist regimes on specific manifestations of totalitarianism, this could eventually lead to their repentance. Then perhaps even a period of forgiveness will begin to dawn. But we still have a long way to go.

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The Assets of the Communist Party

Pavel Molek

Power and influence may be exercised over a society and its people by many different means, including ideology, physical violence and, finally, money and assets. It is a natural tendency for a totalitarian system, in striving to assert itself as broadly and as intensively as possible, to exercise, maintain and consolidate its influence on society using all instruments available. It thus becomes either the exclusive owner, or at least dominant holder, of all the resources needed to control it.

In the case of Communism, the ideological argument that private property is “immoral” (particularly with respect to the means of production) made exercising control over public assets one of the “most legitimate” control instruments available, both on a legal and political level. In the Czechoslovak environment, this principle was already enacted in a relatively moderate form by the 1948 Constitution of the Czechoslovak Republic. It was much more evident in the 1960 Constitution, whose Article 8 introduced the concept of so-called collective socialist property, which encompassed practically every piece of property relevant to holding power. According to Article 10, the only accepted and protected private property comprised the personal ownership of articles of consumption. These principles were later legislatively implemented in the Economic and Civil Codes.

Power-relevant assets were thus transferred into various forms of collective socialist ownership. This enabled the Czechoslovak Communist Party (KSC) to control them largely indirectly via many types of entities, which were subordinate to the state and in which the party played the role of a “controlling authority” in line with Article 4 of the Constitution. It also exercised full control over some of these assets by being their sole owner. At the same time, the KSC was able to delimit the borders between accepted private ownership, socialist state ownership and direct party ownership on the basis of the unspoken principle that no power-enhancing property could be privately owned. The assets of the KSC could include anything that had a direct relevance to the party’s existence and power, i.e. anything that was beneficial for running the party and particularly for promoting it, as well as anything that contributed to the well-being of its members.

The Assets of the Czechoslovak Communist Party

Although the first stage of the Party's efforts to gather assets was somewhat improvised, the principal task of collecting funds for the elections in 1946, and for mass publicity, arms and other purposes in subsequent years, was highly successful. Party functionaries made widespread use of highly illegal means to achieve this goal (racketeering and the illegal transfer of foreign currencies, particularly Reichsmarks that had been withdrawn from circulation, the illegal sale and import of alcohol, smuggling cigarettes to Austria and Germany etc). Naturally, the year the Communists seized power, these activities took on a completely different dimension and, after a short period of recklessness, efforts were made to institutionalise them and bring them in line with the law. This process then continued for the entire 40-year period of Communist rule. At the end of 1989, the KSČ essentially had five sources of wealth at its disposal:

- a) *Membership dues:* This source of assets was substantially overvalued by KSČ members after 1989. In view of the number of members, however, the assets were certainly not insignificant. A special characteristic of membership dues was that paying them could not strictly be considered detrimental to the assets of individual KSČ members as they were almost without exception outweighed many times over by the benefits (including property) enjoyed exclusively by them. Membership in itself meant that there were social benefits, and usually implicit property benefits, for members, which gave them a significant comparative advantage over the rest of the population.
- b) *Direct subsidies from the state budget:* In the last 20 years of Communist rule, the total disclosed level of this form of financial support from the state amounted to 5.6 billion Czechoslovak crowns. The current discussion on whether it is appropriate for the state to provide subsidies to political parties concerns almost negligible amounts in comparison.
- c) *Indirect subsidies* actually comprised the biggest item on the Communist "account." These were provided both in the form of grants from non-productive departments and through various state-owned enterprises. On the basis of a survey conducted among some of the enterprises that provided such grants, the annual level of these subsidies is estimated at 870 million Czechoslovak crowns. Some indirect support for the KSČ was provided neither in the form of finance or property. For example, a special Interior Ministry air-squadron existed with the task of providing security for party activities, at an annual cost of more than 40 million Czechoslovak crowns. A further 35 million was spent on bodyguards. The overall amount of subsidies provided during the Communist regime

amounts to between 50 and 60 billion Czechoslovak crowns. Admittedly, this calculation is not very reliable given the difficulties of assessing the data of this period in accounting terms, particularly for the first years of the totalitarian regime. Nevertheless, it is probably the only calculation available. Using the data of the Czech Statistical Office and taking the level of inflation between the years 1989-2003 as being 309 percent, the total value of these subsidies provided to one political party amount to 204.5–245.4 billion CZK at today's prices.

- d) *State assets under the permanent control of the KSČ*: As of December 31, 1989 the total value of assets fully at the party's disposal, although formally owned by the state, is estimated to have been 4.5 billion Czechoslovak crowns. In particular, these assets comprised of 159 items of real estate, available to the Party at an extremely advantageous rate and serving its needs. Real estate was used as secretariats, political schools, halls of residence, hotels, accommodation facilities and printing houses.
- e) *Assets owned by the party*: Party property was based on a legal institute of that era – collective socialist ownership. The total value of these assets at the end of 1989 is estimated to have been 8.1 billion Czechoslovak crowns. For example, the following entities were among the most important included in this sum:
- The assets of the Central Committee of the KSČ
 - Pragoservis Praha, primarily managing recreation facilities
 - KSČ Printing Enterprises
 - The Institute of Czechoslovak Communist Party History (*Ústav dějin KSČ*)

The assets of other organisations and entities operating under the direct management of the KSČ within the framework of the National Front (*Národní fronta*) have not been included in this list. The most substantial of these were the assets of the Socialist Union of Youth (*Socialistický svaz mládeže – SSM*), which are mentioned below. We also should not forget funding provided by the state to other components of the National Front, which was by no means negligible. For example, the National Defence Ministry provided 939 million Czechoslovak crowns to arm the People's Militia (*Lidové milice*), the armed body of the Party.

Movements of KSČ Assets after November 1989

The first priority during the events of the last months of 1989 and the first months of the following year was naturally to remove the political and legal power monopoly of the KSČ. Therefore, taking control of the assets mentioned above was somewhat overlooked. This is something that party functionaries skilfully exploited. During this

interim period, party officials first managed to transfer some assets (ranging from electrical appliances and office equipment to works of art) to themselves for as little as half or even one tenth of their value. Secondly, certain assets belonging to regional committees and other bodies were rearranged into new legal entities, especially joint-stock companies. At the same time, these conversions were made to appear as if the Party was “relinquishing its assets”. In reality, however, these entities were themselves controlled by the functionaries of the relevant organisations. Finally, accounts were manipulated so that part of the assets could be written off under favourable conditions and part could be sold for an artificially reduced price – particularly in the case of production equipment. Conversely, part could be set into accounts under a higher value for the purpose of an advantageous future sale.

The speed and flexibility of these transfers, which proceeded practically without interruption until May 1990, is demonstrated by the case of KSC Printing Enterprises (*Tiskové podniky KSČ*). This initially changed into the Typografie company and were then fictitiously transferred to the state together with a company called Tipos via a business agreement with the KSČ Central Committee, all before April 1990. The transfer was never actually completed, however. On the contrary, delays in its execution were taken as an opportunity for these enterprises to attempt to merge and form a joint-stock company with the value of 2.3 billion Czechoslovak crowns. The process was suspended by the law courts, however.

The ominous nature of this situation in the spring of 1990 was precipitated not only by the huge value of the transferred and disappearing assets, but in particular by their future political and propaganda potential. There was a danger, for example, that printing machines from Typografie, which had suddenly been written-off, were simply being prepared for future propaganda activities and that the assets would continue to be partly available to the KSČ. This would give the party huge power potential thanks purely to the comparative advantage it would enjoy in a situation where democratic political parties only had slowly accumulating resources available for their own publicity.

The Civic Forum (*Občanské fórum* – OF), in particular, responded to this situation (it was also concerned about the potential abuse of power stemming from these assets during the first democratic elections). First of all, on April 5, 1990 it organised a strike calling for the return of all illegitimately acquired KSČ assets, which was later followed by a general strike and demonstration on April 11. Then, from May 6 to 15, a group of people sympathising with this call went on hunger strike in the centre of Prague. The Presidium of the Federal Assembly responded by passing a resolution, which took the form of a statutory measure dated May 18, 1990 imposing a moratorium on transferring assets of the former National Front. At the same time, a survey of the assets of the National Front parties was completed. This had been carried out on the basis of a resolution by the government of the Czech and Slovak Federal Republic

dated March 26, 1990. One major weakness of this course of action was that the moratorium could not be applied retroactively. The other weak point was that it was not fully respected, particularly by those organisations with assets at their disposal that were not the subject of such direct scrutiny as the assets of the KSČ.

A more effective measure was taken thanks to a two-article decree by the government of the Czech and Slovak Federal Republic dated May 21, 1990, which concerned the confiscation of real estate owned by the state under the permanent care of the KSČ. As of June 1, 1990 all state assets mentioned above in point d) were confiscated (at least on paper, if not necessarily in practice). The decree rescinded the agreements through which the transfers of such assets had been performed, whereby the administration of assets acquired in this way had been awarded to individual district national committees.

Yet the transfer of assets owned directly by the KSČ (point e) above) was an altogether more complex issue. A way of resolving this question was partly initiated by a report in October 1990 from the Federal Ministry of Inspection (*Federální ministerstvo kontroly*) on the outcome of an audit of the assets of political parties, movements and civic associations. Nevertheless, it was primarily the adoption of a constitutional act on the restitution of the assets of the Czechoslovak Communist Party on November 16, 1990, which helped settle this issue.

The Constitutional Act on the Restitution of KSČ Assets to the People of the Czech and Slovak Federal Republic

In October 1990, a bill was submitted by the government to the Federal Assembly, which was meant to become one of the cornerstones of the restitution of KSČ assets. It was discussed and symbolically approved on November 16, just one day before the anniversary of the events of November 1989.

Even the actual debate on this proposal contains several interesting points. For example, some MPs felt that the government led by the former Communist Prime Minister Marián Čalfa was “holding a knife to their throat” because of the limited time given to approve the law. The dissident Jan Ruml reacted to this by claiming it was not the Prime Minister who was responsible, but the commemoration of November 17 itself. The Deputy Prime Minister Pavel Rychetský noted that the bill came in response to the exposed manipulation of KSČ assets, stressing that it was not about confiscation, but rather restitution, which would redress at least part of the KSČ’s debt to Czechoslovak society. Incidentally, this justification was also included in the preamble to the constitutional act: *“After seizing power in 1948, the Czechoslovak Communist Party considered the state to be its own property and treated the assets of the entire population as though they belonged to it. To partly eliminate the consequences of this situation, the Federal Assembly has decided as follows:...”*

Naturally, the “powerful handful” of Communist MPs had a diametrically opposite attitude. First and foremost, they pointed out that the nature of the regulation meant that their assets would be nationalised without compensation. On the one hand, this was unconstitutional and on the other there was also a danger that such an approach would be negatively perceived abroad. As an alternative, they proposed making a political declaration, a kind of public pledge to restore the assets, which would then be supervised by a parliamentary committee. After emotional reactions from both camps, the draft constitutional act was approved with the incorporation of some amendments and after the Communist MPs had stormed out of the parliament chamber in protest. The approval of the regulation was followed by long-lasting applause from the remaining MPs.

According to the regulation, KSCĚ successor organisations were supposed to surrender the following to the state within 30 days of the act taking effect: “*immovable and movable assets, financial resources and property rights which the former Czechoslovak Communist Party held in its possession as of December 31, 1989,*” including the aforementioned archives of the KSCĚ. One exception to this consisted of office property with a value of 5,000 Czechoslovak crowns or less. Conversely, the entities mentioned were obliged to surrender a sum appropriate to the value of assets they had already managed to transfer, unless they had been transferred to the state. The act even stipulated that enterprises and economic facilities of the successor entities were to be transferred by law on the day that it took effect.

The Actual Situation and the Difficulties Encountered

Fundamental difficulties encountered in this process were reflected in a statement by the daily *Lidové noviny* on November 17, 1990, which read: “*The Communists have given up both their leadership role and their ideology a lot more happily than their wealth.*”

KSCĚ assets had a value of 8.1 billion crowns. Assuming control of these assets did not begin on a practical level until February, March, and in some cases even the beginning of April, 1991. This process was complicated partly by the fact that the government’s representatives were not always competent enough to carry out the tasks at hand or did not have sufficiently strong authorisation to do so. Their efforts were also partly hampered by machinations on the part of the KSCĚ’s successor entities. Nevertheless, at the end of May, the responsible Minister of Control was able to tell the *Mladá fronta Dnes* daily that despite, “*the catastrophic condition of documentation and the hostile attitude of their top officials*”, only KSCĚ assets in a dozen Bohemian districts and in five of the party’s former regional committees remained to be transferred as of May 15, 1991. Meanwhile, the assets that had already been appropriated represented a sum of around 5.5 to 6 billion crowns. By deducting this sum from the aforementioned 8.1 billion crowns, Minister Květa Kořínková stated

that at the given time assets with a value of 1.6 to 1.8 billion crowns remained to be acquired, whereby the final sum was necessarily influenced by the number of items that were exempted from transfer.

A final report on taking possession of the assets was not submitted by the federal government until October 8, 1991. The report stated that the appropriation of KSCĚ assets had proven to be more complicated than anticipated by both constitutional laws. Nevertheless, all KSCĚ assets could be considered to have been transferred by the time the report was submitted. This report was accepted by the Federal Assembly, albeit after a heated debate in which deficiencies were blamed on both the Ministry of Control and the Communists, who naturally rejected this and pointed out that confusion had reigned among the government's representatives. It was claimed they had failed to set a clear timetable for the handover of assets, while they had tried to transfer the property as best they could in order to better their standing in society. The subsequent fate of the transferred assets was also considered problematic as they had become the subject of disputes between various entities at the local level.

The takeover of Communist assets on the territory of the Czech Republic was finally concluded by the Ministry for Regional Development in June 1999. At the time, unresolved receivables from the Central Committee of the KSCĚ amounted to 150–350 million Czech crowns. Although these certainly are not insignificant amounts and it should be noted that the takeover of KSCĚ assets was accompanied by the first examples of “tunnelling”, or illegal asset stripping, which was a typical phenomenon throughout the 1990s. Nonetheless, it is possible to conclude this subchapter on a subjective note by stating that, despite the understandable reluctance on the part of KSCĚ officials to hand over Party assets, the volumes of assets unaccounted for were clearly not as large as in the case of the privatisation of many state enterprises and possibly not as problematic as in the case of the assets of the Socialist Union of Youth (*Socialistický svaz mládeže – SSM*), as analysed below.

The Restitution of SSM Assets

In considering Communist assets, it would be an oversimplification to focus only on the assets of the KSCĚ itself. The subsidies provided to the People's Militia have already been mentioned and it would certainly be possible to find many problems in other parts of the organisational conglomerate of social organisations known after World War II as the National Front of Czech and Slovaks (*Národní fronta Čechů a Slováků*). This constantly expanding entity included both political parties and a wide range of other social organisations. Of these organisations, the SSM had at its disposal one of the largest accumulations of assets.

Of all the entities of the National Front, the restitution of SSM property provides the most striking example of asset losses through malpractice. This may be down to

the fact that the KSČ successor entities did not want to countenance losing further ground in their public standing as a result of overly visible manipulations of their assets. Conversely, SSM officials may have been guided by the principle that they “may as well be hung for a sheep as a lamb”.

The huge assets of this organisation were given by its massive size. It included basic organisations operating in all secondary schools, at university faculties and in state enterprises, as well as incorporating the Young Pioneer (*Pionýr*) children’s organisation. Other assets were held by its higher bodies, committees at the district, municipal, regional and national levels. The assets of so-called SSM economic facilities such as the *Mladá fronta* publishing house, the *Mladý svět* magazine, the *Smena* daily and the Youth Travel Club (*Cestovní klub mladých*) were also significant items. At the end of 1991, the assets of the former SSM were estimated at 2,921 billion Czechoslovak crowns and they included 132 items of real estate. The SSM acquired some of this real estate through its own state-financed construction efforts (annual subsidies of 200–300 million Czechoslovak crowns), though the majority was inherited by title deed from the Union of Czechoslovak Youth (*Československý svaz mládeže*), absorbing the assets of youth and children’s organisations banned after 1948.

During the events of 1989, calls grew for this youth-movement juggernaut to be disbanded, particularly among pro-democracy university students, and this actually happened in many cases at the turn of 1989 and 1990 at the local level. At the central administrative level, however, the chairman of the SSM Central Committee managed to avoid this phenomenon and at an extraordinary SSM congress in January 1990 (i.e. two months after the November revolution) he succeeded in removing advocates of winding up the organisation, adopting outwardly democratising statutes and renaming it the Youth Association (*Svaz mládeže – SM*).

The former dissident John Bok championed opposition to this process, which had also been approved by the Federal Interior Ministry. In the spring of 1990, he became the focal point for the unification of re-established youth organisations, establishing the Property Rights Union (*Majetkoprávní unie*), which endeavoured to ensure that SSM’s extensive assets would not be misappropriated. The SSM was also hit by a statutory measure enacted by the Federal Assembly in May 1990, which froze the assets of the National Front’s member organisations. But by then, 300 post-SSM organisations had been established, to which assets were immediately transferred from the SM. It was already too late for the statutory measure to retroactively prevent this from occurring.

Thereafter, SSM assets followed the same fate as those of the KSČ. From October 1990, the extent of its assets was to be ascertained by inspectors from the Federal Ministry of Control and a committee led by Jozef Mikloško worked on estimating the volume of assets expropriated from youth organisations after 1948 and on preparing

legislation to solve the problem. This resulted in the adoption of a constitutional law on the restitution of SSM assets to the people of the Czech and Slovak Federal Republic.

The law was based on the premise that the legitimacy of SSM's succession was even more dubious than that of the KSC itself. For this reason, it instituted the transfer of all enterprises and economic and special-purpose facilities into state ownership immediately upon the constitutional law taking effect, i.e. as of January 1, 1991. The SM was supposed to surrender its remaining assets to inspectors from the Federal Ministry of Control by the end of January 1991 with the exception of assets which basic branches of the former SSM had the right to manage, as well as office property with an acquisition value of up to 5,000 Czechoslovak crowns. The members of post-SSM organisations combined public declarations that they intended to return the assets with skilful use of the fact that the inspectors of the Federal Ministry of Control only had minimum authority at their disposal. This meant that they were only able to refer to information voluntarily provided by them and that the process of identifying SSM assets lasted until the spring of 1992, much longer than expected. Nevertheless, around 90 percent of SSM assets was eventually transferred to the state, which did not alter anything in terms of the dubious transfers of assets in the spring of 1990 or the frequently problematic approach of the Federal Ministry of Control.

One of the most visible cases illustrating the fate of SSM assets was the unsupervised clearance of rooms in the building of the former Central Committee of the SSM. Another was the case of the Zenitcentrum enterprise, which imported and distributed computer technology as part of the development of the scientific and technical revolution in the Czechoslovak Socialist Republic. In 1990, however, a number of private businesses succeeded in breaking away from this lucrative firm along with corresponding assets. Even though a number of individuals later tried to make sense of Zenitcentrum's chaotic accounts in the interests of the state, they achieved little in deciphering these transfers, and the handover of this once very lucrative enterprise ended up with it going into liquidation and insolvency.

Besides manipulating accounts, "post-SSM" officials also exploited legal means at their disposal. In particular, they lodged a constitutional complaint in 1992 and began collectively refusing to surrender further assets in relation to this action. The relevant state authorities responded by filing lawsuits and subsequently even pressing criminal charges against individual officials. By virtue of the Act on the Children and Youth Fund (*Fond dětí a mládeže*), the assets that had been appropriated by the state were subsequently transferred to this fund, which administered them until December 1, 2000, when it went into liquidation on the basis of Act no. 364/2000 of the Collection of Laws on the dissolution of the Children and Youth Fund. A description of this administration, however, would go beyond the scope of this article, whose particular focus is on the actions of National Front organisations.

Conclusions

The accumulation of assets by National Front organisations under the Communist regime was on an incomparably smaller scale than other forms of expropriation and nationalisation carried out during this unfortunate phase of Czechoslovak history. The transfers of assets did not in themselves have as fatal an effect, or an impact on society that was as difficult to repair, as the 40 years of socialist “education” and interference with individual human lives and fortunes. Nonetheless, the fate of these assets also offers evidence of the wildly authoritarian approach of the KSCĚ, and organisations subordinate to it, in acquiring and administering property. Similarly, it also illustrates the adaptability of its proponents and their ability to improvise in obstructing the restitution of assets. This somewhat perverse flexibility of KSCĚ or SSM functionaries frequently enjoyed success and enabled them to enrich themselves, or related entities, in various ways with some of the assets of the organisations they formerly helped to administer. Some of the blame must also lie with the democratic powers, both legislative and executive, and the mistakes they made during this process. In general, however, it reflects the fact that the absence of scruples makes people more effective in acquiring unjustified advantages regardless of whether they are in power, or in opposition. In the long term, however, they certainly cannot get the upper hand over those who apply the principle contained in the previously mentioned finding of the Constitutional Court from 1992: *“Unlike the totalitarian system, which was based on immediate objectives and was never bound by legal principles, let alone constitutional ones, the democratic state is based on completely different values and criteria...”*

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...Today, fifteen years on, we are trying to learn from both our achievements and our failures. We try to imagine the position of those who will take power tomorrow or the day after tomorrow, somewhere close or a world apart. In doing so, we assume responsibility for the future of those countries setting out on the difficult road to freedom, countries that will find themselves on a stage, thrust into the spotlight...

Petr Pithart