

Uncaptive Minds



Seminar Papers

Communist Legacy and Lustration:

The Case of the Czech Republic

by Petruška Šustrová

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The Author

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Theme 5

Decommunization & Transitional Justice

Communist Legacy and Lustration: The Case of the Czech Republic

by **Petruška Šustrová**

I would like to present the issue of lustration as it regards the Czech Republic.

A year ago, in 2013, we held parliamentary elections and 60 per-cent of eligible voters cast ballots—about 5 million people. The Social Democratic Party won the plurality of seats with 20 percent of the vote and a relatively new party ANO 2011 (YES 2011) got 900,000 votes, or 18.5 percent. The founder of ANO 2011 is a very rich businessman named Andrej Babiš. In the months before the elections, some media drew at-tention to the fact that Babiš had most likely cooperated with the Slovak division of the Czechoslovak security services and anyone who was interested could have found out that Babiš was a typical representative of the communist nomenklatura. He had been an official of a huge state enterprise and worked abroad. Our voters knew who they voted for.

Some people have written that Babiš and his ANO 2011 are a threat to Czech national security. I am not sure that it is a real threat or any larger threat than other movements that are trying to re-introduce the communist system to Czech society. I am describing this example to explain how the court system operates. In June 2014, a court in Bratislava determined that Andrej Babiš was not in fact an agent working for the state security services. In lustration cases, the Czech and Slovak courts can make such a determination if a former official of the state security services declares that the inclusion of a person on the list of security agents was due to fabrication by security agents of certain documents. In that case, the court usually decides to acquit the person or determine that based on the testimony of witnesses that someone is not a member of the security services. There is a large burden of proof.

The Law on Lustration was adopted twenty-three years ago on November 4, 1991 in the parliament of the then Republic of Czechoslovakia. The Law on Lustration (Law 451/1991, as it was numbered) stated that people who used to work in the state security services could not hold certain official positions. The law was contentious, but it was mainly designed to protect the country's national security. The Ministry of Interior at the time knew that before the communist system collapsed the lists of the state security apparatus had been handed over to the Soviet KGB and there was a real fear that such lists would be used to blackmail individuals to serve Soviet interests in our country. There was also a strong view that people who held key positions in the communist government and structures should not hold high public positions in the new democratic system.

There were not any political purges. This was a groundless accusation. One can say, however, that lustration did play an important role in Czechoslovak and then Czech politics and one can even say that there was some misuse of the law. At first, the law was to last five years and then it was extended several times. At the moment there are no limits for the application of the law, but at some point it will expire simply because of time—the law covers people who were born before 1971, people 44 years of age and older. The law will thus have less and less application.

Last year, nearly 20 percent of the Czech electorate demonstrated that it did not consider the communist past of ANO 2011's party leader an important factor determining its vote—and this is in addition to the 15 percent of voters who voted for the Communist Party. ANO 2011's platform is to establish a flourishing state free of corruption. Whether it is a right or left party on the political spectrum is hard to say, but it does not speak about returning to the communist system. It is a populist movement that offers people what they are most interested in.

The Law on Lustration was admired by a number of other post-communist countries in the region as a way of settling accounts with the communist past. There are public debates about whether or not to revoke the law, but there is not much impetus for repeal.

Another tool of decommunization was the law adopted in 1993 on the lawlessness or illegality of the communist regime. This law had mainly a declarative purpose but it also affects the rehabilitation of those who suffered from the communist regime. This law expressed the will of the majority of parliamentarians to deal honestly with the past regime. It was not easy. There were those taking part in the public discussion in 1991 who wanted to establish a judicial-type process to publicly condemn the communist past and if not a criminal tribunal at least some public process. I myself had doubts about this idea. One proponent was a friend and colleague who himself had been a member of the Communist Party for some time: did he want to lay blame on himself? Many of us remember that a similar problem was tackled by the Russian Federation Constitutional Court of 1992 when Yeltsin banned the Communist Party of the Soviet Union and the party appealed the ban. The Constitutional Court had to look all the way back in Soviet history to the October Revolution and the Court decided that it was not competent to determine the issue. It ruled, however, that communist party members were certainly free to begin a new Communist Party of the Russian Federation. And by February 1993, the Russian Communist Party, with more than half a million members, was the country's largest political party. It showed that adopting a law or process was not sufficient to deal with the communist past. We can see it in the Czech Republic, with its Communist Party, as well as in other countries.

The issue of communist legacy has to deal now with other public institutions. First of all, this has to do with the task of education and media. In this regard, I believe it was very important to revoke the thirty-year ban on public access to files and to open the archives of the former state security service and other public authorities. This was done in the Czech Republic in 2004. Usually, public archives are protected for thirty years, making them inaccessible to researchers and journalists. The public might have overlooked this issue but Law No. 499/2004 opened the archives of public administration for journalists and historians so that the general facts could be looked at. These archives shed some light on the past, although not fully since it is also necessary to hear testimony from witnesses.

Then, of course, historical works, films, textbooks, and art works have a large impact compared to scientific or research papers. Education also plays an immense role. We must remember that there are new generations that did not experience communism. The Ministry of Education does not

focus on history but on sciences. There is a huge gap and NGOs must fill in this gap. Since communism collapsed, the world has changed a lot and our values have changed in Central and Eastern Europe.

I must add that communists would be unhappy with these words. But in order to change the situation, we should enlighten the society. It is our old idea. Politicians usually think they must come up with new ideas. But I am convinced the old ideas are still important. It is still important to nourish these ideas that we had in opposing communism.