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Accountability for Human Rights Violations by Soviet and Other Communist Regimes and the Position of the Council of Europe

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Accountability for the crimes of totalitarian communist regimes became an issue for the Council of Europe after the velvet revolutions in Eastern Europe and the collapse of the Soviet Union. As numerous archives were released, it became clear that there were no essential differences between Communism and Nazism, as both used similar, criminally inhumane means to maintain power. Twenty million deaths resulted from political repression in the Soviet Union, and 1 million in the Communist states of Eastern Europe (Courtois 4). After new states with totalitarian communist pasts joined the Council of Europe, Resolution 1096 was adopted in 1996, containing measures to dismantle the heritage of former communist totalitarian systems. Ten years later, in 2006, the Parliamentary Assembly of the Council of Europe (PACE) passed Resolution 1481, on the need for international condemnation of the crimes of totalitarian communist regimes, which for the first time strongly condemned the crimes that they themselves had committed. Although most Central and East European states have distanced themselves from their former communist regimes and have condemned the grave human rights violations committed by them, in Ukraine the Communist Party continues to be legal and active; that party has not clearly dissociated itself from the crimes committed by the Communist Party of the Soviet Union and the subsidiary Communist Party of the Ukrainian Soviet Socialist Republic, and it has failed to condemn them without ambiguity. The aim of this chapter is to examine the Council of Europe's resolutions and the former communist European states' practices in regard to accountability for communist rights abuses, as well as to analyze how Ukraine is coping with its totalitarian communist past.

The Council of Europe's Condemnation of Totalitarian Communist Regimes

The position of the Council of Europe regarding totalitarian communist regimes changed: from recommendations to dismantle their heritage to condemnation of their

crimes. In its Resolution 1096 (1996), PACE was rather cautious as it concentrated only upon the goals of the transition process, namely, creating pluralist democracies, based on the rule of law and respect for human rights and diversity. The resolution stressed that the cause of justice should be served in dismantling the heritage of former communist totalitarian systems; otherwise, a democratic state would be no better than the totalitarian regime that it replaced. While the guilty should be prosecuted, they should first be given the right to due process and the right to be heard. The resolution formulated the basic principles of demilitarization, decentralization, demonopolization, and debureaucratization in restructuring the old legal and institutional systems. An equally important aspect of this process is the transformation of mentalities, as suggested in the resolution, with the main goals of eliminating fear of responsibility, disrespect for diversity, extreme nationalism, intolerance, racism, and xenophobia.

In the resolution, PACE welcomed the opening of secret service files for public examination in some former communist totalitarian countries,² and stressed that lustration, introduced in several states to exclude persons from exercising governmental power, can be compatible with a democratic state under the rule of law if these persons cannot be trusted to exercise power in compliance with democratic principles: "The aim of lustration is not to punish people presumed guilty—this is the task of prosecutors using criminal law—but to protect the newly emerged democracy." Furthermore, PACE recommended that employees discharged from their positions on the basis of lustration laws should not, in principle, lose their previously accrued financial rights. In exceptional cases, where the ruling elite of the former regime awarded itself pension rights higher than those of the ordinary population, these should be reduced to the ordinary level.

Calling on the countries concerned to comply with the suggested principles, this resolution was silent on the crimes of the totalitarian communist regimes themselves. Ten years later, it turned out that the fall of the totalitarian communist regimes in Central and Eastern Europe had not been followed in every case by an international investigation of the crimes committed by those regimes. Moreover, the authors of these crimes have not been brought to trial by the international community, as was the case with the crimes of Nazism. As a result of a report on "The Need for International Condemnation of the Crimes of Totalitarian Communist Regimes," authored by Goran Lindblad, a member of the Swedish parliamentary delegation to the Council of Europe, PACE passed Resolution 1481 on January 27, 2006, that for the first time strongly condemned the crimes committed by totalitarian communist regimes.³

The resolution enumerated massive violations of human rights committed by totalitarian communist regimes, which have included individual and collective assassinations and executions, deaths in concentration camps, starvation, deportations, torture, slave labor, and other forms of mass physical terror, persecution on ethnic and religious grounds, violation of freedom of conscience, thought, and expression, of freedom of the press, and also a lack of political pluralism. PACE expressed its certainty that public awareness of crimes committed by totalitarian communist regimes is one of the preconditions for avoiding similar crimes in the future.

The resolution particularly emphasized its practical significance because "totalitarian

communist regimes are still active in some countries of the world and crimes continue to be committed." Furthermore, PACE called on all Communist or post-Communist parties in its member states that had not yet done so to reassess the history of communism and their own past, to clearly distance themselves from the crimes committed by totalitarian communist regimes, and to condemn them without ambiguity.

Although the resolution was adopted, a feeling of a lack of accomplishment remains. A collection of articles written by respected analysts and historians, *Le livre noir du communisme*, counts between 85 million and 100 million victims of communist regimes in the Soviet Union, Eastern Europe, China, and Cambodia, and these deaths, as Stephane Courtois argues in the introduction to the book, deserve the appellation "crimes against humanity"—the term most closely associated with Nazi-lead genocide (Courtois 4–10). Yet, "while it is impossible to imagine any political party with the word 'Nazi' in its name operating successfully anywhere in Europe, communist and former communist parties continue to exist and thrive" (Applebaum). Certainly, in order to condemn the crimes of totalitarian communist regimes, it would be logical to treat them like Nazi crimes: to organize a Nuremberg-style tribunal for the crimes of totalitarian communist regimes.

European States' Stand on Accountability for Human Rights Abuses by Former Communist Regimes

The post-Communist states of Central and Eastern Europe have undertaken different approaches to the issue of coping with past human rights abuses, although they are all facing similar legacies of the past. In his study *Third Wave* (1991), Samuel Huntington argues that the process of democratization may be seen in terms of the interplay between governing and opposition groups along a continuum that produces three types of transition: transformation, when the elites took the initiative to bring about democracy; replacement, when the initiative rested with the opposition; and transplacement, when democratization came about through joint action on the part of both government and opposition (Kritz 1995a, 542). According to Huntington, Hungary and Bulgaria were transformations, Poland and Czechoslovakia transplacements, and East Germany was a case of replacement.

Czechoslovakia

In 1991, the Czech and Slovak Federal Republic (CSFR) adopted the Screening ("Lustration") Law, which banned members of the National Security Corps, residents, agents, collaborators of State Security, and party officials (Article 2) from exercising functions in the state administration, in the Czechoslovak Army, and other functions, as specified in Article 1 of the law, for a period of five years until January 30, 1996. Later, Parliament extended the law to the year 2000, overriding a veto by President Vaclav Havel. This law may have affected 300,000 people (Benda 42). After a complaint from the Trade Union Association of Bohemia, Moravia, and Slovakia, and the

Czech and Slovak Confederation of Trade Unions, however, the International Labor Organization, taking into account the conclusions made in the report of the committee, invited the government of the CSFR to refer the matter to the Constitutional Court of the CSFR for a ruling on Act No. 451/1991 ("Lustration Law"), with due consideration for the provisions of Convention No. 111 Regarding Protection against Discrimination on the Basis of Political Opinion. Subsequently, in November 1992, the Constitutional Court of the CSFR found the provisions of several articles of the Screening Law to be noncompliant with the Bill of Basic Rights and Freedoms. Thus, the Constitutional Court declared them illegal in that the law targeted "potential candidates for collaboration" (Kritz 1995b, 346).

After Czechoslovakia's split into two countries, the Czech Republic continued lustration proceedings under the same law that existed in Czechoslovakia. By August 1993, 210,000 people had been screened, and some of them were banned from the exercise of functions in the state's administration, in the Czech Army, in the Office of the President of the Czech Republic, and in some other offices (Kritz 1995a, 534). As L. Huyse states, however, it is extremely difficult to judge the real impact of the Czechoslovakian Screening Act, as it lasted only one year in its original form (Huyse 68).

In 1993, the Act on the Illegality of the Communist Regime and Resistance to It was adopted in the Czech Republic, which declared the regime that was based on communist ideology and in force from February 25, 1948, to November 17, 1989, to be criminal, illegal, and contemptible (Article 2). The Communist Party of Czechoslovakia was considered to be a criminal and contemptible organization. In response to a petition from a group of deputies from the Parliament of the Czech Republic requesting nullification of that act, the Constitutional Court confirmed the illegal nature of the political regime from 1948 to 1989 (Kritz 1995b, 369–374). According to Jan Obrman, the law on the illegality of the Communist Party could serve as a legal basis for the party's liquidation in the future, similar to the legislation outlawing both the National Socialist German Workers' Party and the propagation of Nazi ideology in Germany (Kritz 1995a, 590). This consequence of the aforementioned law, in addition to providing moral satisfaction for the victims, seems to be its main outcome. The importance of that law was stressed by President Havel: "[T]hrough this law, the freely elected parliament is telling all victims of communism that society values them and that they deserve respect" (Kritz 1995a, 592).

In Slovakia, the new government opposed the Lustration Law and, in January 1994, petitioned the Constitutional Court to overturn it. Though the Court rejected the petition, the law was not invoked before expiring at the end of 1996 (Ellis 183). In February 1996, the Slovak National Council adopted a new law declaring the former Communist regime "immoral" and "illegal."

Hungary

Hungary was the first of the former communist countries to adopt a law that would result in criminal proceedings against former communist officials. It was the November 4,

1991, Law Concerning the Prosecutability of Offenses Committed Between December 21, 1944, and May 2, 1990, introduced by two deputies of the Hungarian-Democratic Forum, Peter Takacs and Zolt Zetenyi. The bill called for the suspension of the statute of limitations for cases of treason, premeditated murder, and aggravated assault leading to death that had been committed between December 21, 1944, and May 2, 1990, as prosecutions of crimes in that time frame had not been possible previously for political reasons (Kritz 1995a, 648).

Arguments in favor of the law concerned the fact that the victims of the crimes committed by the communists were still living alongside torturers and murderers, which distorted the concept of right and wrong (Kritz 1995a, 650). The trials were not aimed against average citizens who might have become communist party members in order to obtain or to keep their jobs, but against those who were involved in torturing or killing innocent individuals. Yet the Constitutional Court unanimously overturned the law because it lifted the statute of limitations on cases involving treason, and the definition of treason had changed several times during the previous decade. The Court justified its decision by adhering to the principles of the rule of law: "Legal certainty based on objective and formal principles takes precedence over justice which is partial and subjective at all times" (Kritz 1995b, 629). This decision of the Court was viewed variously. Teitel provided important justification for the jurisdictional ruling when referring to homicide acts that were subject to the challenged legislation as a category of grave criminal offense: crimes against humanity. "Protection of the rule of law also implies adherence to fundamental international law norms such as the principle of the imprescriptibility of crimes against humanity. The failure to refer to any national or international precedents on this question is a glaring omission in the Hungarian constitutional court's opinion" (Kritz 1995a, 659).

Subsequently, in March 1993, the Hungarian Parliament adopted a law on "Procedures Concerning Certain Crimes Committed During the 1956 Revolution," which was based on such international instruments as the 1949 Geneva Conventions Relative to the Treatment of Civilians in the Time of War and Relative to the Treatment of Prisoners of War, and the 1968 New York Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In its prepromulgation review, the Constitutional Court upheld the main part of the law on the basis of the interpretation of Article 7 of the Constitution: "The legal system of Hungary shall respect the universally accepted rules of international law, and shall ensure, furthermore, the accord between the obligations assumed under international and domestic law." The act was interpreted as ensuring the enforcement of "universally accepted rules of international law" (Kritz 1995a, 662).

As in other Central European states, a screening law was also adopted in Hungary. The Law on the Background Checks to be Conducted on Individuals Holding Certain Important Positions (Law No. 23 of March 8, 1994) included even more positions subject to verification. According to Edith Olta, the purging of former agents from high-ranking state positions was necessary not only because of moral considerations but also because those occupying such positions were susceptible to blackmail. Thus,

it was likely to contribute to Hungary's coming to terms with its past (Kritz 1995a, 667). The law subjected approximately 12,000 officials to a screening process by at least two committees, each consisting of three professional judges, which were to complete their work between July 1, 1994, and June 30, 2000. Information about public officials will be accessible to the public thirty years after the panel's ruling, that is, in 2030 (Kritz 1995a, 664). After the Constitutional Court struck down several provisions of the 1994 law, Parliament enacted a new law in July 1996, which stipulates that all persons born before February 14, 1972, must be screened before taking an oath before the Parliament or the president. After two screening committees examined the records of approximately 600 officials born in April 1977, several deputies came under scrutiny for suspicion of past work as secret agents (Ellis 184).

East Germany

The decommunization of East Germany, which was different from other Central European States that dealt with their former regimes' crimes domestically, was enacted to a great extent by West German laws and courts. According to the decision of the Commission on Security and Cooperation in Europe on "Human Rights and Democratization in Unified Germany," some East Germans found the process unsatisfactory, largely because the system failed to prosecute the leaders of the corrupt and immoral East German regime (Kritz 1995a, 595).

One of the primary goals of the decommunization process in East Germany was the historical, political, and juridical reappraisal of the activities of the State Security Service (Stasi). On November 15, 1991, the united German Parliament adopted a law permitting citizens to see their files, and a month later, on December 20, the Act Concerning the Records of the State Security Service of the Former German Democratic Republic ("Stasi Records Act") was approved. On January 2, 1992, the files were opened and anyone could obtain the contents of his Stasi file. These checks have resulted in the dismissal of thousands of judges, police officers, schoolteachers, and other public employees in eastern Germany who were once informers for the Stasi. However, according to Thomas R. Ronchon, it was hard to find a legal basis for prosecuting Stasi activities. Unlike the genocidal policies of the Nazi regime, the act of telling the secret police about the activities of a friend, a neighbor, or a colleague could not be declared a violation of international law. West German law made it punishable for East German agents to spy on West or East German citizens, but the five-year West German statute of limitations rendered prosecution under those terms nearly impossible. As a consequence, the government had to prosecute officials of the former regime for transgressions of East German law, rather than questioning the morality of those laws (Ronchon 32–35).

The moral consequences of opening the Stasi files were quite unpredictable. As pointed out in the report by the Commission on Security and Cooperation in Europe on "Human Rights and Democratization in Unified Germany," "[f]rom well-respected dissident Vera Wollenberger, who learned with horror that her own husband had be-

trayed her, to Gerhard Riege, a member of the Bonn parliament who hanged himself after it was reported that he had been a Stasi informer, countless lives have been profoundly affected." Yet, who counted the number of lives affected by the activity of Stasi informers? Moreover, as Joachim Gauck pointed out, "[j]ust imagine what would have happened if the files had been kept secret: not only would it have been impossible to create a climate of trust, but the files could have been used to threaten and blackmail people" (Kritz 1995a, 609).

There were efforts in Germany to prosecute former president Erich Honecker and five other high-ranking Communist Party officials. The charges were based on three arguments: (1) that Honecker had exceeded his power under East German law; (2) that he broke international law including the International Covenant on Civil and Political Rights; and (3) that he violated basic human rights. By January 1993, however, a terminally ill Honecker was released from trial, and the Berlin Constitutional Court lifted the arrest order.

Albania

In Albania, the 1992 Law on Political Parties prohibited the creation of "any party or organization with an anti-national, chauvinistic, racist, totalitarian, Fascist, Stalinist, 'Enverist' or Communist, or Marxist-Leninist character, or any political party with an ethnic or religious basis" (Kritz 1995a, 723–727). The government brought charges against more than seventy former Communist officials between 1992 and 1994 (U.S. Department of State, 822). In December 1993, ten senior officials were fined the equivalent of \$60,000 each, and sentenced to prison. The very important Law on Genocide and Crimes against Humanity Committed during the Communist Regime for Political, Ideological, and Religious Motives ("Genocide Law") was adopted in 1995, prohibiting persons with ties to the regime prior to March 1991 from holding selected positions in the government, Parliament, judiciary, or mass media until the year 2002. In January 1996, Albania's Constitutional Court upheld most provisions of the Genocide Law, as well as of the 1995 Law on the Verification of the Moral Character of Officials and Other Persons Connected with the Defense of the Democratic State ("Lustration Law"). As a result of the screening process, 139 candidates were banned from participating in the 1996 parliamentary elections. Democracy turned out to be very weak in Albania, however, and despite the screening results, the Socialist Party was returned to power in the June 1997 elections (Ellis 185–187).

Bulgaria

Bulgaria went a different way, and the Union of Democratic Forces regained power in the 1997 elections. A law that made mandatory the opening of all files on high government officials, and gave them one month to admit their past activities, was adopted in July 1997. It was upheld by the Bulgarian Constitutional Court. But the Court also supported the claim of the opposition party's deputies that the law could jeopardize

the ability of the president, vice president, and members of the Constitutional Court to function, and ruled that the files of individuals in those positions should not be opened (Ellis 189).

During PACE's plenary session before voting on the 2006 Resolution on the "Need for International Condemnation of Crimes of Totalitarian Communist Regimes," Mr. Ivanov, a parliamentarian representing Bulgaria, announced that 800,000 Bulgarian citizens had been forced by the communists to change their names, and some 300,000 had had to flee Bulgaria. He also stressed that it was essential that the archives of the security services in communist countries be opened; otherwise, it would not be possible to understand the full extent of their crimes.⁴

Romania

In Romania, a nineteen-member commission headed by political researcher Vladimir Tismaneanu was created in March 2006 to "undeniably certify the communist crimes and restrictions, from the detention camps to the crimes related to abortions." The commission reportedly found that between 500,000 and 2 million Romanians were killed, imprisoned or placed in labor camps by the communist regime. Presenting a report on Communist-era crimes before Parliament, Romania's President Traian Basescu became one of the first East European leaders to formally condemn communism: "As the Romanian head of state, I clearly and categorically condemn the communist system in Romania, from its beginnings as a dictatorship during 1944–1947 and up to its fall, in December 1989."⁵

Russia

With the exception of the Baltic states, where transition started as replacement and changed into transplacement, all of the former Soviet Union's republics combined the elements of two or more transitions. The leader of the Communist Party of the former Soviet Union Mikhail Gorbachev, and his policy on perestroika (economic reconstruction) and glasnost (openness), launched this transition, and it was continued by the democratic forces of the opposition in almost all of the former Soviet republics after the failed coup, which was organized by a group of Communist Party, military, and KGB officials. On August 25, 1991, President Boris Yeltsin issued decrees suspending the activity of the Communist Party of the Russian Federation and confiscating its assets. Then a decree on November 6, 1991, converted these suspensions into a ban on the Communist Party. Receiving a petition from a group of people's deputies, the Constitutional Court of the Russian Federation examined the constitutionality of the aforementioned decrees. After detective-like court hearings that took more than a year, the Court announced its decision. According to Robert Sharlet, this decision represented a compromise: it gave each side something and served as a mirror reflecting the disorderly, conflict-ridden politics of the transition period in Russia (Kritz 1995a, 749–750). The lawfulness of the ban on the central executive organs of the Communist

party of the Soviet Union/Russian Communist Party was confirmed, but the Party had the right to reestablish local branches of the Russian Communist Party.

Efforts to screen and purge former Communist Party officials and to adopt a lustration law failed in Russia. Moreover, some laws on state security that were enacted only complicated the implementation of lustration. One, the Law on Operative and Detective Activity, banned the public exposure of agents of the KGB (Kritz 1995a, 760). Similarly, the Law on Federal Security Organs of the Russian Federation protected the covert status of persons cooperating with "state security organs" (Art. 17). Such practices, which are quite antithetical to lustration, remain unparalleled in other Central and East European States.

The Baltic States

In Lithuania, the government issued a Decree Banning KGB Employees and Informers from Government Positions, and a Law on the Verification of Mandates of Those Deputies Accused of Consciously Collaborating with Special Services of Other States was adopted. Although these acts were implemented, and although the Temporary Commission of the Supreme Council investigated collaboration with the KGB and other secret services in Lithuania, absolute justice was not achieved. Many of the Lithuanian KGB files were removed to Russia, and not all of them were returned. Soon, replacement gave way to transplacement, and the Lithuanian Democratic Labor Party (LDLP), which was a successor to the banned Communist Party, won the parliamentary election of October 1992. But Lithuania's ex-president and LDLP leader Algirdas Brazauskas, to his credit, did not run for president in 1997, on the basis that Lithuania deserved to have a president who had not been a Communist leader in the past. Such good will from former Communists, to exercise transitional justice and to come to terms with the past, would be the best solution for dealing with the legacy of the past.

In 1998, a new lustration law was enacted in Lithuania. At talks on the evening of July 22, 1998, however, Lithuanian Prime Minister Gediminas Vagnorius said that he supported President Valdas Adamkus's opinion that the recently passed lustration law was "dubious from the point of view of constitution and international law."⁶

Latvia adopted the Declaration on Condemnation of the Totalitarian Communist Occupation Regime Implemented in Latvia by the Union of Soviet Socialist Republics on August 22, 1996, and condemned the actions of all those persons who participated in committing the crimes under that regime. The Seima of the Republic of Latvia charged the Cabinet of Ministers to establish a commission of experts to determine the number of victims of the Soviet Union's totalitarian communist regime. Moreover, it called on the European Union Parliament to establish an international commission for assessing the crimes of the Soviet Union's totalitarian communist regime.

Georgia and Moldova

The Georgian Parliament debated a draft law on lustration, envisaging the exclusion of former Communist Party functionaries and KGB agents from civil service, in

February 2007. The law was rejected by the ruling party, as the main list of ex-KGB agents was in Moscow and was unavailable to the Georgian authorities.⁷ In Moldova, a lustration law failed to pass as well.

Common Approaches

Thus, the practices of Central and East European states, although varied in their approaches to dealing with past human rights abuses, had much in common. Their actions confirm an international obligation to apply punishment for grave human rights violations by prior regimes, and are often based on such a duty. For example, in the Czech Republic's Act on the Illegality of the Communist Regime and Resistance to It, the Parliament declared the Communist Party of Czechoslovakia to be responsible for the system of government in that country in the years 1948–1989, being "[a]ware of the obligation of the freely elected parliament to come to terms with the Communist regime" (Kritz 1995b, 367). Most post-Communist European states outlawed their communist parties and passed laws that provided for the screening and purging of people who sought public office. Although the compatibility of lustration laws with international human rights standards may be questioned, the obligation to come to terms with the past requires states to punish those guilty of human rights abuses. Because of the actions of the communist parties' officials, as well as of the agents and collaborators of the secret services, a great number of innocent people became victims of communist regimes. Moreover, lustration laws may be justified as necessary in a democratic society in the interest of national security and the economic well-being of the country. Former communist officials and secret service agents could not be trusted to carry out democratic reforms.

The Case of Ukraine

Unfortunately, impunity for grave human rights violations of a prior regime still exists in Ukraine, as the issue of justice for crimes committed under the rule of the Communist Party of the Soviet Union (CPSU) and its Ukrainian branch has not been closed. The Ukrainian government has not been as consistent as, for example, the Czech, Hungarian, and Lithuanian leadership. In the case of Ukraine, however, particularly valid arguments exist for dealing with the legacy of the past. Some actions of the Communist Party of the Soviet Union/Ukraine constituted genocide and crimes against humanity.

One such action was the great famine (the Holodomor) of 1932–33, which was a crime of genocide committed against Ukrainians. It was organized by the CPSU, with the intent of eradicating Ukrainians as a national group. As Robert Conquest has shown, the Soviet authorities at first denied the existence of the famine, with the help of Soviet diplomats and Western journalists who had been deceived or corrupted by the Soviet authorities (Conquest 322–323). Internally, the Soviet press simply ignored the famine, but occasionally printed a refutation or rejection of some insolent foreign slander (ibid., 310). When the famine could no longer be hidden, some foreign govern-

ments and politicians took action, as when Congressman Hamilton Fish Jr. submitted a resolution (on May 28, 1934) to the United States Congress, registering the facts of the famine and recalling the American tradition of "taking cognizance" of such invasions of human rights, expressing sympathy and the hope that the Soviet Union would change its policies, and in the meantime admit American relief. It was referred to the Committee on Foreign Affairs and ordered to be printed (House Resolution 39a, 73rd Congress, 2nd Session).

In response to the man-made famine of 1932–33 in Ukraine, Ukrainians in Galicia (Halychyna) and neighboring territories held widespread acts of protest, which found expression in letters from the government of the Ukrainian National (People's) Republic in exile and various organizations and parties, to the League of Nations, namely, to the head of the Council of the League of Nations, Mr. Mowinckel, and the head of the Assembly of the League of Nations, Mr. Voter (Mace 34). The League was asked to raise the painful question of the famine in Ukraine as "the very existence of a great nation is being threatened" (*ibid.*, 36).

The Ukrainian émigré organizations in the West fought very actively to bring the facts to the attention of governments and the public. In Washington, for example, the files of the State Department were full of appeals to the U.S. administration to intervene in some way. They were always answered with the statement that the absence of any American state interest made this impractical (Conquest 311). As the United States at this time had no diplomatic relations with the Soviet Union (until November 1933), and the State Department was under instruction to work to establish such relations, the reports of the famine were regarded by the administration as unhelpful. But the foreign diplomatic corps located in Moscow was not deceived. The British Embassy, for example, reported to London that conditions in the Kuban and in Ukraine were "appalling" (British Embassy dispatch, March 5, 1933). Yet, in general, the West kept silent, pretending not to notice. As the British writer George Orwell complained, "Huge events like the Ukraine famine of 1933, involving the deaths of millions of people, have actually escaped the attention of the majority of English russophiles" and ideological Sovietophiles. But it was not only a matter of Russophiles, but also of a large and influential body of Western thought (Conquest 321). According to Robert Conquest, the scandal was not that they justified Soviet actions, but that they refused to hear about them, that they were not prepared to face the evidence (*ibid.*).

It was not until 1988 that the ninety-ninth Congress of the United States created the Commission on the Ukraine Famine, headed by Dr. James E. Mace, to conduct a study of the 1932–33 famine in order to: (1) expand the world's knowledge of the famine and (2) provide the American public with a better understanding of the Soviet system by revealing the Soviet role in Ukraine's famine (Investigation of the Ukraine Famine V). In its executive summary, the commission formulated nineteen findings, one of which was: "Joseph Stalin and those around him committed genocide against Ukrainians in 1932–33" (Investigation of the Ukraine Famine VII).

There have been some attempts to organize "Nuremberg-style" tribunals for the crimes of the CPSU. Among the first steps in preparing for a trial was the creation

of an International Commission of inquiry into the 1932–33 Famine in Ukraine. The establishment of this commission was a result of the initiative of the World Congress of Free Ukrainians, members of which approached a number of jurists and legal scholars in different nations, asking them to participate in an inquiry into the famine that had taken place in Ukraine during 1932–33. The Commission was formed on February 14, 1988, with seven commissioners: Colonel G.I.A.D. Draper, formerly a British prosecutor at the Nuremberg Trials; Prof. John P. Humphrey of Canada, formerly director of the United Nations Division of Human Rights; Prof. G. Levasseur of France, formerly a member of the Commission for the Revision of the French Penal Code; Prof. R. Levene of Argentina, formerly president of the Court of Appeals; Prof. C.T. Oliver, former U.S. assistant secretary of state and U.S. ambassador; Prof. J. Sundberg of Sweden, appointed president of the Commission of Inquiry; and Prof. J. Verhoeven of Belgium, appointed vice-president.

The Commission of Inquiry was established as an entirely independent, nongovernmental body. Under the Terms of Reference, adopted on February 14, 1988, the commission was to inquire and report upon:

1. The existence and extent of the famine,
2. The cause or causes of the famine,
3. The effect it had on Ukraine and its people, and
4. Recommendations regarding responsibility for the famine (International Commission of Inquiry 1).

In his opening statement, the counsel for the petitioner (the World Congress of Free Ukrainians), Mr. John Sopinka, Q.C., submitted the contention that in 1932–33, between 5 million and 10 million Ukrainians were starved to death as a result of a brutal enforcement of excessive grain-procurement quotas by the Soviet government. Mr. Sopinka asked the commission to find: (1) that the famine was deliberately caused as an instrument of state policy; (2) that the famine was an act of genocide; and (3) that Stalin, Molotov, Kaganovich, Postyshev, and others were responsible (International Commission of Inquiry 2).

As a result, it was established to the satisfaction of the commission that it is beyond doubt that Ukraine was severely affected by the famine in 1932–33, and that the Ukrainian and Soviet authorities were aware of the dire food shortages of the population. It was also indisputable that, although they were aware of the dramatic conditions in Ukraine, the Soviet authorities refrained from sending any relief until the summer of 1933. The commission concluded that the Soviet authorities had adopted various legal measures that amplified the disastrous effects of the famine by preventing the victims from finding any food at all or from leaving the region. It was confirmed that the Soviet authorities at the time had denied the existence of any famine in Ukraine, and that, against all evidence to the contrary, they “persisted in their denials for more than fifty years, with the exception of Khrushchev’s private avowal” (International Commission of Inquiry 45–48).

Although the International Commission of Inquiry into the 1932–33 Famine in Ukraine was not a court, still less a criminal court, nonetheless, the commission, by its Terms of Reference, formulated recommendations regarding responsibility for the famine. During the debates, and particularly in the closing submission by W. Liber, Esq. as counsel for the petitioner, an accusation of genocide was made⁸ (International Commission of Inquiry 51).

In 1983, the government-in-exile of the Sovereign Ukraine (1917–20) presented an Accusation Act against the Government of the U.S.S.R. regarding the Great Famine of 1932/33 to the International Court of Justice in The Hague. The court did not accept the petition, on the grounds that Ukraine did not exist then as an independent state. Now that Ukraine has achieved independence, the case of the artificially enforced great famine or the Holodomor is waiting to be pleaded.

Among the other crimes of the Communist Party of Ukraine and the Soviet Union, there were numerous systematic and massive-scale acts of torture during interrogations in the 1930s–1960s, and hundreds of thousands of deaths resulting from beatings in NKVD, and later KGB, prisons. According to the statistics of the “Chrezvychnyi Komitet” [extraordinary committee], in 1918–19, more than 1,000 people were executed without trial every month. At the height of Stalin’s terror, more than 40,000 people were killed per month, and many more disappeared after imprisonment by those security agencies (Borets 222).

As N.M. Switucha asked justifiably, “why is it that Nazi concentration camps are regarded as a crime against humanity (which is right!), but Soviet concentration camps, that were scattered over the Siberian permafrost and tundras much longer than the Nazi camps, have not been universally condemned as a crime against humanity?”⁹ Millions of people were placed into forced labor in labor camps and remained in that status for many years.

Persecution on political, national, language, and religious grounds was a crime committed on a massive scale by the CPSU. While the Constitution of the Ukrainian SSR formally provided for all internationally recognized human rights, there was little tolerance for actions and practices incompatible with the Communist Party’s ideology (Antonovych 110). Consequently, human rights were not observed. For example, the Ukrainian Helsinki Group, organized in 1976 to promote the implementation of the Helsinki Accords in Ukraine, consisted of thirty-seven members, of whom twenty-five were imprisoned, two were exiled, six were banished, and one was incarcerated in a psychiatric institution (Verba and Yasen 10).

Persecution took many forms. One form was the prohibition against the Ukrainian Autocephalous Orthodox Church. Whole parishes were repressed, bishops and priests were arrested, and churches were destroyed. In 1930, as a result of a political process in the Ukrainian city of Kharkiv, 32 bishops and nearly 10,000 priests were killed (Lyzanchuk 204). The Ukrainian Greek-Catholic Church was also suppressed. Greek-Catholic priests, nuns, and bishops were either killed or incarcerated, and the pitiful remnants were finally forced to acquiesce to the liquidation of the Brest Church Union, in violation of canon law, in March 1946. Both the Ukrainian Autocephalous Orthodox and the

Ukrainian Greek-Catholic churches continued to exist in secret during the entire Soviet period, and were not legalized until after the collapse of the Soviet Union. During the period of 1917–39, 8,000 churches were destroyed by Soviet authorities (*ibid.*).

The Communist government also tried to destroy the Ukrainian people by forcibly transferring hundreds of thousands of Ukrainians to Siberia or to the Far East. Already before and during the 1932–33 famine, thousands of “dekulakized/dekurkulized peasants”¹⁰ were deported. As stated by Khrushchev as the first secretary of the CPSU Central Committee, in his report about the “cult of personality” at the 1956 CPSU Congress, Stalin intended to deport the whole Ukrainian nation, and Ukrainians managed to escape this lot only because there were too many of them, and there was no place to exile them (Avtorkhanov 80–81).

The CPSU may also be accused of the 1986 Chornobyl nuclear disaster, which Phil Reeves called “gambling with the planet.”¹¹ The Communist Party should carry the burden of responsibility for the fact that on April 27, 1986—a full day after the top blew off Reactor Unit 4—children were still playing in the streets of Prypiat, a town created for the workers of the Chornobyl nuclear power station, and on May 1, 1986, millions of adults and children went on a May Day demonstration to greet Communist Party authorities who, meanwhile, were the first to evacuate their own children and grandchildren to safe zones immediately after the catastrophe.

It is worth mentioning that in Bulgaria, Grigor Stoitchkov, who was deputy prime minister from 1978 until 1989, and Lubomir Shindarov, who was deputy minister of public health from 1981 until 1989, were indicted in 1991 for failure to undertake necessary measures against the effects of nuclear radiation, which had permeated Bulgaria following the Chornobyl accident in 1986. They were convicted, and their conviction was upheld on appeal (Gross 97). Nothing of the kind happened in Ukraine, although the justification for such trials was much more weighty.

Therefore, the question remains: why have the crimes of the Communist Party of the Soviet Union and its Ukrainian branch never been condemned universally as crimes against humanity? John Jaworsky gave the following reason for this situation:

After World War II it was (relatively) easy to identify the “winners” and the “losers”; after all, the political system responsible for establishing the Nazi concentration camp system was defeated. . . . However, the Soviet system was never decisively “defeated” in a way which allowed for a decisive “coming to terms” with what happened during the Stalinist years. . . . When the Soviet system finally collapsed, under the weight of the growing inefficiencies and internal contradictions which plagued the ailing Soviet state, you did not have clear-cut victors, with (relatively) clean hands, who wanted to prepare a full accounting of the abuses of the past. For a variety of reasons the new leaders of the post-Soviet states, and much of the post-Soviet public as well, did not want Nuremberg-style trials which would have provided such an accounting.¹²

As Ukraine has ratified the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, and the acts mentioned above do constitute crimes against humanity, as they violated elementary principles of

humanity, the argument that existing penal provisions defining the applicable statute of limitations were in effect at the time that the crimes were committed does not work in the case of Ukraine.

Attempts to Decommunize Ukraine

There have been several attempts to “decommunize” Ukraine. After the collapse of the August 24, 1991, military coup d’état in Moscow (August 24, 1991), the Communist Party of Ukraine was accused of participation in that coup. The Presidium of the Verkhovna Rada (Parliament) of Ukraine issued a Decree (Ukaz) on the Temporary Suspension of the Activity of the Communist Party of Ukraine (August 26, 1991), having accused the Communist Party of participation in the coup. The financial assets and property of the Communist Party were frozen and taken over by the Verkhovna Rada of Ukraine, pending a judicial investigation into their participation in the coup. Another decree concerned the property of the Communist Party of Ukraine and the Communist Party of the Soviet Union on the territory of Ukraine (August 26, 1991).

After a petition from a group of people’s deputies, the Constitutional Court of Ukraine reviewed the aforementioned decrees, and ruled them unconstitutional in its December 27, 2001, decision. The Constitutional Court stated that the Communist Party of Ukraine, which was registered on July 22, 1991, as a public organization (“obiednannia hromadian”), was not a successor to the Communist Party of the Soviet Union and the Communist Party of the Ukrainian SSR. That is why this decision had no consequences concerning the property of the Communist Party of the Soviet Union and its structural part that functioned within the territory of Ukraine before July 22, 1991. That property was turned into state property according to the December 20, 1991, Law of Ukraine on Turning the Property of the Communist Party of Ukraine and CPSU into State Property (Zakon Ukraïny “Pro oberennia maina Kompartii Ukraïny ta KPRS na derzhavnu vlasnist”).

In general, the Ukrainian successor government to the previous Ukrainian Soviet government has never actually denied responsibility for redressing past violations. In 1991, the Verkhovna Rada adopted a Law on the Rehabilitation of Victims of Political Repressions in Ukraine. Imperfect as it may be, the very fact of its enactment is important. Notably, in 1997, the Supreme Court of Ukraine issued a book of the Ukrainian SSR’s normative legal acts on repression, and on the rehabilitation of those who were sentenced. This was the first time that these normative acts, departmental instructions, and clarifications, which were the legal basis for repression in the Soviet state, were presented in total [reabilitatsiia represovanykh]. Many books revealing the truth about the Holodomor of 1932–33 and other crimes of communism have appeared lately.¹² Monuments to the victims of the terrorization and famine have been erected, while many statues of Lenin and other leaders of the Communist Party have been demolished, and streets named after Communist Party leaders have been renamed in many cities and villages.

After numerous calls by President Yushchenko on the Verkhovna Rada of Ukraine to

declare the Holodomor of 1932–33 an act of genocide against the Ukrainian people, the Law on the 1932–33 Holodomor in Ukraine was enacted on November 28, 2006.¹⁴ It states that the 1932–33 Holodomor was genocide against the Ukrainian people. In 2007, Ukraine was urging the sixty-first session of the UN General Assembly to recognize the Holodomor of 1932–33 in Ukraine as an act of genocide against the Ukrainian nation.¹⁵

Yet the Ukrainian government has neither created a state commission to investigate human rights abuses of the past nor demanded accountability from the Communist Party or those of its officials who are responsible for crimes against humanity. Efforts to use secret police files in order to screen and purge those who were affiliated with the former secret service have failed so far in Ukraine. The Ukrainian government has not decisively followed the affirmative international legal obligation on states to investigate and to bring a prior regime to accountability for its grave human rights violations.

Conclusion

The practice of most Central and East European states confirms the existence of a duty to investigate and to bring a prior communist regime to accountability for grave human rights violations. This state practice demonstrates that criminal prosecution of the perpetrators, which has been the main official policy toward collaborators in West European countries after World War II, has received very little support in post-Communist European states. Instead, most post-Communist transitional states that follow the Council of Europe's resolutions have used such measures of dealing with the past as lustration or disqualification of former party elites, of agents of the secret police and of their informers, as well as bans on former communist parties and condemnation of communist ideology, which is as evil as fascism.

The process of lustration was usually criticized by the international community and by many domestic forces as a political rather than judicial measure. But lustration laws have been justified as necessary in a democratic society in the interests of national security and the economic well-being of the country, since former Communist Party officials and agents of secret services may not be trusted to carry out democratic reforms. In particular, PACE Resolution 1096, on measures to dismantle the heritage of former communist totalitarian systems, stresses that the aim of lustration is not to punish people presumed guilty but to protect the newly emerged democracies. Time has proved that the process of lustration has enhanced the growth of democratic institutions in transitional states. Those post-Soviet states that have introduced lustration are now all in the European Union, in contrast to countries like Ukraine, which have not finished dealing with their past.

PACE resolution 1481 (2006), on the need for international condemnation of crimes of totalitarian communist regimes, called on all Communist or post-Communist parties that have not yet done so to reassess the history of communism in their own past, to clearly distance themselves from crimes committed by totalitarian communist regimes, and to condemn them without ambiguity. In some post-Communist states, however, Communist parties continue to exist and thrive.

Ukraine has particularly valid grounds for coping with the legacy of the past, since crimes committed by the Communist Party of the Soviet Union, with the Ukrainian branch as a regional affiliate, constitute genocide and crimes against humanity. As Ukraine's case illustrates, it is often impossible in transitional periods of political flux to put in place a comprehensive domestic process of coping with the past without the international community's participation. The best results in solving the problems of transitional justice may be achieved through joint efforts of domestic and international instruments.

Notes

1. Text adopted by the Parliamentary Assembly of the Council of Europe on June 27, 1996 (13th Sitting), www.assembly.coe.int/.
2. *Rozsekrechena pam'iat'. Holodomor 1932–33 rokiv v Ukraïni v dokumentakh HPU-NKVD* (Kyïv: Stylos, 2007) disclosed material from the state archive of the Security Service of Ukraine on the man-made famine of 1932–33.
3. The text of Resolution 1481, "Need for international condemnation of crimes of totalitarian communist regimes," was adopted by the Parliamentary Assembly of the Council of Europe on January 25, 2006 (5th Sitting), www.assembly.coe.int/.
4. The material from this plenary session of PACE is available at www.clearharmony.net/articles/200601/31217.html.
5. "Romanian President Condemns Communist-Era Crimes," <http://en.epochtimes.com/news/6-12-19/49532.html>.
6. This material, "Lithuanian President, Premier, Discuss Controversial Bills," was e-mailed from list@infoukes.com to politics@infoukes.com (received July 1998).
7. Eurasian Secret Services Daily Review, February 19, 2007, www.axisglobe.com/article.asp?article=1231/.
8. Mr. Liber became a counsel for the petitioner after John Sopinka resigned when he was appointed to the Supreme Court of Canada.
9. E-mail from jjaworsk@watarts.uwaterloo.ca (John Jaworsky) to politics@infoukes.com, "Dealing with the legacy of the past . . ." (received March 19, 1998).
10. In Ukrainian, the term "kurkul" is the equivalent of the Russian "kulak," referring to rich farmers/peasants.
11. E-mail from asydorenko@toltec.astate.edu (Alexander Sydorenko) to announce@infoukes.com, "Lethal legacy" (received April 7, 1998).
12. E-mail from jjaworsk@watarts.uwaterloo.ca (John Jaworsky) to politics@infoukes.com, "Dealing with the legacy of the past . . ." (received March 19, 1998).
13. Among them: L.B. Kovalenko and V.A. Maniak, eds., *33rd: holod: Narodna Knyha-Memorial* (Kyïv: Radians'kyi pys'mennyk, 1991); S.V. Kul'chyts'kyi, ed., *Kolektyvizatsiia i holod na Ukraïni, 1929–1933* (Kyïv: Naukova dumka, 1992); R.Y. Pyrih, ed., *Holod 1932–1933 rokiv na Ukraïni: ochyma istorykiv, movoiu dokumentiv* (Kyïv: Polityvydav, 1990); Volodymyr Serhiichuk, *Iak nas moryly holodom* (Kyïv: Biblioteka ukraïntsia, 1996); F. Zubanych, ed., *Chorna knyha Ukraïny: Zbirnyk dokumentiv, arkhivnykh materialiv, lystiv, dopysiv, statei, doslidzhen', ese* (Kyïv: Prosvita, 1998); O.M. Veselova, V.I. Marochko, and O.M. Movchan, *Holodomory v Ukraïni, 1921–1923, 1932–1933, 1946–1947: Zlochyny proty narodu* (Kyïv and New York: Vydavnytstvo M.P. Kots, 2000); S. Kul'chyts'kyi, ed., *Holod-henotsyd 1933 roku v Ukraïni: istoryko-politohichnyi analiz sotsial'no-demohrafichnykh ta moral'no-psykhohichnykh naslidkiv*, International scientific conference, Kyïv, 28 Nov. 1998 Mizhn. Nauk.-teoret. Konferentsiia, Kyïv, 28 lyst. 1998 rik (Kyïv and New York: Vydavnytstvo M.P. Kots, 2000); and others.
14. None of the Communists in the Verkhovna Rada of Ukraine has voted for this law.

15. See "Ukraine Asks UN to Recognize 1930's Famine as Genocide," Interfax-Ukraine news agency, Kyiv, *Ukrainian World* 3–12 (1993): 34.

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