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CZECHOSLOVAKIA

"Decommunization" Measures Violate Freedom of Expression and Due Process Standards

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"We are not looking for facts but hunting for ghosts ... Like the Communists, we are giving the state power to control our fate."

-- Jan Urban, March 9, 1992¹

¹ Remarks in Salzburg, Austria, at Conference on Justice in Times of Transition, co-sponsored by Salzburg Seminar and Charter 77 Foundation, New York.

Introduction

When he took office in January 1990, Czechoslovak President Vaclav Havel spoke out against the impulse for vindictiveness in the wake of over forty years of Communist rule. "We cannot lay all the blame on those who ruled before," President Havel asserted, "not only because this would not be true but also because it could detract from the responsibility each of us now faces."

Unfortunately, Czechoslovakia has not followed the course suggested by President Havel. In February 1991 a special commission was asked to review the files of the StB, the repressive former secret police agency; it publicly named Parliamentary "collaborators," using procedures that lack basic elements of due process. In October, a new "lustration" law was passed that bars from a variety of governmental and other public positions individuals who held certain Communist party or related posts or who are alleged to have collaborated with the secret police. As many as a million people could be affected, according to the International Labor Organization, and Helsinki Watch has observed evidence of a "witch hunt" that already exceeds the literal terms of the law. In December, Parliament declared it a crime to propagate such ideologies as communism and fascism. Although the December law is vaguely worded and may prove impossible to enforce, it strikes at core freedom of expression values and raises serious concerns about the government's respect for international human rights guarantees.

What course Czechoslovakia now takes -- a widening "witch hunt" or a narrower focus, with due process protections, on those individually responsible for past human rights abuses -- will have an impact not only in Czechoslovakia but throughout the present and former Communist world.

The Parliamentary Screening Commission

Like each of the post-Communist nations in Eastern and Central Europe, Czechoslovakia has had to face the problem of what to do with the files of the former secret police. More than 15,000 of the StB files -- mainly current files of highly placed agents and officials -- were destroyed by the StB during the last days of the Communist regime. Early in 1990 Jan Langos, who had just been appointed Minister of the Interior, collected police registers from around the country and assembled them in Prague. Both handwritten and entered in computers, they contain the names of approximately 140,000 secret police agents, collaborators and contacts from the period between 1948 and 1989.

In early 1991, the November 17 Commission,² set up to review the violent events of November 17, was asked to review the StB files and "find out which of the Members of Parliament had been registered as secret police collaborators." Because they enjoy immunity from prosecution due to their elected status, deputies whose names appeared in the files were given a choice of resigning quietly or being exposed publicly. On March 22, 1991, at a special, televised session of Parliament, the names of ten alleged StB collaborators -- those who refused to resign after being confronted with the material in their files -- were read aloud.

Petr Toman, a spokesperson for the commission, suggested that even if an innocent person was named, he should quietly resign and not contest the finding and risk "creat[ing] doubts about the whole screening process" that "help the real agents."³

One of those named, Jan Kavan, had been elected to Parliament shortly after returning to Czechoslovakia in

² November 17, 1989, the date of a massive student protest marked by police violence, is considered to be the start of the "velvet revolution."

³ "A Witch Hunt," *Newsweek*, October 14, 1991.

1990 after 22 years in England. During his years in exile, he ran Palach Press, which published the writings of Czech dissidents and worked closely with activists in Czechoslovakia and with human rights organizations abroad, including Helsinki Watch.

According to Kavan's StB file, he had dealings with Czech government agents when he was a student in London in 1969 and 1970. He is alleged to have consciously collaborated with an agent of the Czech Secret Service, Frantisek Zajicek, who was then head of the Education Section of the Czechoslovak Embassy in London. The files also list Kavan as having received 45 pounds from Zajicek during that period -- 10 for renting a hall to convene a session of the Czechoslovak Union of Students; 30 pounds given to him after Interior Ministry officials confiscated a much larger sum -- 160 pounds -- that he had not declared upon entering Czechoslovakia; and 5 pounds in Easter spending money.

Kavan has denied the accusations, expressing outrage at the charges "after I spent 20 years meeting the needs of the opposition and fighting the secret police which arrested my father and brought on his early death."⁴ Kavan explains that he was in contact with Zajicek because he wanted permission to complete his studies while retaining the right to return to Czechoslovakia, and that his contacts with the Embassy were in the context of seeking renewal of exit visas for himself and his fellow students.

In an April 17, 1991, letter to President Havel, Helsinki Watch raised due process objections to the denunciation of the Parliamentary deputies, citing the lack of an independent tribunal, denial of the opportunity to know and confront the evidence, denial of the right to counsel, denial of the opportunity to present witnesses, and denial of the possibility for appellate review.

In addition to raising due process objections, Helsinki Watch and others have pointed out the inherent unfairness of destroying careers based only on the contents of files maintained by the discredited StB -- which, like those of any state security police, are notoriously self-serving and unreliable.

Moreover, it is becoming clear that, whatever the accuracy of the files, they are not being maintained with proper controls to protect individual privacy. In January 1992, for example, Czech state television aired a tape showing three Parliamentary deputies revealing details from Jan Kavan's StB file. On March 19, 24 Parliamentary deputies, including Foreign Minister Jiri Dienstbier, denounced the proceedings against Kavan.

In addition to Kavan, others affected have contested the accuracy of the StB files. Bedrich Moldan, dismissed as environment minister of the Czech republic as a result of the Parliamentary Commission investigation, admits he talked several times with StB agents. "I did not throw them out the door," he says, "because I was convinced this was a normal part of life under a Communist regime."⁵ Rudolf Zukal, another member of Parliament named in the files, says that while on a fellowship in Austria in 1961, he at first turned down requests to inform on American students, but relented in the face of threats to expose a love affair. Even then, he insists, he warned the students that they were under surveillance, and claims he told agents nothing incriminating.

A Slovak journalist, Jan Sokol, put it this way: "It would be very sad if those who did not sign a paper promising to inform, only because no one asked them to, can now publicly spit on others who perhaps slipped once, but on very thin ice."

⁴ "Prague Spy Charges Raise Witch-Hunt Fear," *The New York Times*, April 2, 1991.

⁵ *Newsweek*, *op. cit.*

The "Lustration" Law

The most significant instrument of "decommunization" in Czechoslovakia has been the "lustration" law. Approved in October 1991 by the Czech and Slovak Parliament, the law excludes from a wide range of appointive positions -- in government, state-owned companies, the academy and the media -- those who are said to have collaborated with Czechoslovakia's repressive secret police agency, the StB, or who held positions in the Communist Party or other specific Communist-connected institutions since 1948.

A last-minute compromise exempts people who served exclusively from January 1968 to May 1969, during the "Prague Spring." But it does not apply to many prominent opponents of the Communists, such as Alexander Dubcek, who belonged to the Party before 1968 and led the reform government of the Prague Spring. While Dubcek enjoys parliamentary immunity in his current position as chair of the Federal Assembly, his service to the Party before the Prague Spring would bar him from holding an appointive position under the new law.

President Havel, who has no veto power, signed the lustration law, but said that he was doing so with reluctance and would submit amendments to Parliament. At this writing, however, they have not been acted upon.

"Lustration" -- a word derived from Latin that means "purification" -- was the term used by the StB for conducting checks on citizens' loyalty to the Communist Party during its 40-year rule. Indeed, no purge this extensive has taken place since the aftermath of the Soviet invasion in 1968, when between 70,000 and 100,000 people were expelled from the Czechoslovak Communist Party and lost their jobs.

Those affected by the law are required to submit to their employer a certified statement declaring that they did not work for the StB and an affidavit that they were not Communist Party officials at the levels specified by the law, members of the voluntary People's Militia, of any of the Communist screening committees that operated after 1948 and 1968, or a student at one of the former Soviet police schools.

The inclusion of the People's Militia, for which there are no membership records, has been criticized as an example of the unacceptable overbreadth of the lustration law. For example, during the November 1989 revolution, People's Militia members aided students occupying university buildings by blocking the tram tracks in order to make it more difficult for police to apprehend them.

Any citizen over the age of 18 may request a certificate from the Ministry of Internal Affairs that he or she was not a police informer or agent. There is also a provision for one citizen to request the commission to examine another's past, upon posting of a 1,000-crown deposit with the commission.

The law allows citizens to contest its findings before an independent commission which, as of this writing, has received several hundred requests for review.

There is nothing to prevent any government agency or private firm from voluntarily requiring its employees to obtain a lustration certificate from the Ministry of the Interior, and this is already beginning to take place. The Education Minister said he would lustrate all school teachers and canteen workers even though it is not required by law. Many of the political parties running in the June 1992 elections have indicated their intention to screen all candidates. Institutions not covered by the new law, from university faculties to social service agencies, are considering whether to undergo lustration, and private foundations have even come forward to pay the 1,000-crown application fee.

Some have argued that the lustration law is justified because the country is in a national emergency as a result of a Slovak separatist movement that threatens the existence of a unified nation. Others who favor it see it as the only way to rid the bureaucracy of former Communists who still exercise considerable power. Those opposed to the lustration law, on the other hand, claim that it is being used as a tool to eliminate political rivals. A number of

people who were staunch opponents of the guilt-by-association tactics of the Communist regime believe that the lustration law incorporates the mentality and tactics of the former system.

Novelist Ivan Klima, the President of the Czech PEN Club, wrote that "the habits of 40 years had got into our blood more than we realized. We were willing to change signs and symbols, but not the customary way of doing things. We're purging and again are envying. I've often heard the objection about how is it possible that someone is still in a leading position who is a Communist or the son of a Communist?"⁶

Jan Urban, a former Civic Forum leader who now writes for the independent daily *Lidove Noviny*, received death threats after he came out against the lustration law in a signed column in October. He told Helsinki Watch that it is vital for Czechoslovakia's friends around the world to apply the same standards to the current government that they did to the former Communist leaders: "We are all infected in some way by the instincts of the old regime. We need someone to hold a mirror up to us and show that human rights were not just a tactic to use against the Communists."

Although the lustration law still appears to command much popular support, there have been several recent developments that could force its reform or revision.

The International Labor Organization (ILO) has made a preliminary finding that the lustration law violates Article 111 of the ILO Convention concerning discrimination in the workplace. Ironically, Czechoslovakia was cited by the ILO in the 1980s for sacking people from their jobs because of their activity in Charter 77 and other dissident movements.

In a decision issued on March 5, 1992, the Governing Body of the International Labor Organization,⁷ acting on a complaint filed by the Trade Union Association of Bohemia, Moravia and Slovakia and the Czech and Slovak Confederation of Trade Unions, wrote that "the persons covered by the [lustration law] are implicated essentially on the ground of their political opinion and not on account of any activities prejudicial to the security of the State within the meaning of Article 4 of the Convention." The ILO opinion went on to say:

The Act does not make any difference between persons who really took part in suppressing civil and political rights and those who belonged to a certain group but who themselves were nevertheless subjected to the same plight. The Act creates a fiction of irrefutable legal assumption of guilt and brings the inquisitorial principle into relations with citizens; it derives from the non-legal principle of collective guilt and disregards the principles of individualization of guilt and presumption of innocence.

The ILO estimated that the law would affect more than one million persons. It asked the government of Czechoslovakia to "scrap or change" the law, and to report back on what measures it has taken to bring the law into compliance.⁸

⁶ *Lidove Noviny*, January 24, 1991.

⁷ Copies of the ILO's report can be obtained from Helsinki Watch.

⁸ Report of the Committee set up to examine the representations made by the Trade Union Association of Bohemia, Moravia and Slovakia and by the Czech and Slovak Confederation of Trade Unions under Article 24 of the ILO Constitution alleging non-observance by the Czech and Slovak Federal Republic of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

On March 6, the secretary general of the Council of Europe wrote to Alexander Dubcek, chairman of the Czech Parliament, asserting that the lustration law "must be unequivocally applied on an individual, not a collective, basis."

Ninety-nine members of Parliament recently voted to ask the new Constitutional Court of Czechoslovakia, located in Brno, to review the law to determine its compliance with the Federal Charter of Basic Rights and Freedoms.

On March 4, Parliament rejected a proposal to make public the names of all secret police agents and collaborators, but approved a resolution allowing all citizens access to their own files.

The Law Against the Propagation of Communism and Fascism

On December 11, 1991, Parliament passed Article 260, which reads:

Whoever supports or promotes groups which demonstrably aim to suppress the rights and freedoms of citizens or declare national, racial, class or religious hatred (such as, for example, fascism or communism) will be punished by imprisonment for one to five years.

Frantisek Zelenicky, chief of the Czech police, has stated that Article 260 would be difficult to enforce and subject to abuse because "communism" and "fascism" are not defined. President Havel has made similar criticisms. When the daily newspaper *Mlada Fronta* asked prominent citizens to define communism, Havel said: "I don't know what communism is -- in school, for example, I heard that it would be paradise on earth. I think that in this paragraph it is important to [specify] groups that suppress human rights and declare religious, class or other hatred that must be gone after. I am not sure whether examples in parentheses belong in this law."

***Lidove Noviny* criticized the law for making it possible for Communists to claim that they are the victims of persecution. Others have observed that it makes no sense for the Communist Party to remain legal in Czechoslovakia while the promotion of its ideology is prohibited.**

Recommendations

Clearly, the new leaders of Czechoslovakia have the right and the duty, in the most serious cases, to proceed against those who abused rights during the 40 years they held state power. Indeed, there have been some trials of former officials accused of violating citizens's rights. Former Interior Minister Frantisek Kinc, former deputy Interior Minister Alojz Lorenc, and former counterespionage chief Karel Vykytel are being tried for illegally detaining dissidents. Among the witnesses against them were President Vaclav Havel and Foreign Minister Dienstbier.

But the lustration law does far more than hold high-ranking officials responsible for specific past abuses. It casts a much wider net, allowing for no distinctions about the nature of a person's involvement with the former regime. As the Czechoslovak Helsinki Committee wrote in a letter to President Havel, "The law puts on the same level the young man who cooperated with the police because he could not hold out during a beating after one of the Prague demonstrations and the policeman who beat the young man into signing."

In an October 24 letter to President Havel, Helsinki Watch criticized the lustration law as premised on the notion of collective guilt. The letter urged that "each case should be treated on an individual basis in a proceeding in which the accused has ample opportunity to defend himself. Consideration should be paid to the possibility that false information might have been planted in the files, either maliciously or by agents wishing to enhance their

own accomplishments. Extenuating circumstances should be reviewed -- the person charged may have joined a communist group in high school in a spurt of youthful enthusiasm without being involved in any illegal actions; the person charged may have been blackmailed or tortured into signing a police collaboration form."

The lustration mentality has grown far beyond its initial scope. For Americans, there is a disturbing familiarity about the process, for the anti-Communist purges of the U.S. postwar period began with a relatively limited "loyalty" program for federal employees and before long encompassed everyone from wrestlers in Indiana to actors in Hollywood.

Events in neighboring Hungary are cause for hope. Hungarian President Arpad Goncz refused to sign a bill that would have extended the statute of limitations in order to prosecute those suspected of crimes during the 1956 revolution and its aftermath. Instead, he sent it to Hungary's Constitutional Court, which in March held that it was unconstitutional to make laws retroactive in order to punish individuals.

Helsinki Watch calls on the government of Czechoslovakia and its Constitutional Court to repeal the lustration law and the law against the propagation of communism and fascism.

Instead, we recommend that the government move to:

(1) set up an independent, non-governmental commission to investigate and report on abuses of the previous regime;

(2) prosecute those responsible for actual crimes, on the basis of specific charges and with full due process protections;

(3) assure that no prosecutions or other adverse actions against individuals -- for example, in employment and education -- take place solely on the basis of political associations or party membership.

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This newsletter was written by Gara LaMarche, Executive Director of The Fund for Free Expression, and edited by Jeri Laber, Executive Director of Helsinki Watch. It is in part based on information gathered on fact-finding missions to Czechoslovakia by Mr. LaMarche in December 1991 and by Ms. Laber in March 1992.

News From Helsinki Watch is a publication of Helsinki Watch, an independent organization created in 1978 to monitor domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. The chair of Helsinki Watch is Jonathan Fanton and the vice chair is Alice Henkin. Jeri Laber is the executive director; Lois Whitman is deputy director; Holly Cartner is staff counsel; Erika Dailey, Rachel Denber and Ivana Nizich are research associates; and Sarai Brachman, Pamela Cox and Elisabeth Socolow are associates.

Helsinki Watch is a component of Human Rights Watch, which includes Americas Watch, Asia Watch, Africa Watch, and Middle East Watch. The chair is Robert L. Bernstein and the vice chair is Adrian W. DeWind. Aryeh Neier is executive director; Kenneth Roth is deputy director; Holly J. Burkhalter is Washington Director; Susan Osnos is Press Director.

Helsinki Watch is affiliated with the International Helsinki Federation in Vienna, Austria.

APPENDIX I: TEXT OF THE LUSTRATION LAW

APPENDIX II: ARTICLE 260 OF THE PENAL CODE

