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**Study on how the memory of crimes committed by totalitarian regimes  
in Europe is dealt with in the Member States**

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***Disclaimer***

***The views expressed in the study are those of the author alone and do not necessarily represent the official views of the European Commission.***

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## SUMMARY

This study provides a factual overview of the different measures used in EU Member States in order to deal with the issue of the crimes committed by repressive regimes in Europe. The study does not intend to be an assessment of these regimes nor does it intend to be an evaluation of the measures adopted. It rather aims at exposing a factual overview of the various methods, legislations and practices adopted and used in the Member States to deal with the issue of dealing with the crimes committed by totalitarian regimes.

For this aim, the study revises all relevant issues under the following headings: justice for victims; justice for perpetrators, fact finding/truth seeking, archives, symbolic policies and international instruments. One of the constant elements in the study is that different pieces of evidence could be fit in more than one category (for instance, monuments to victims are simultaneously part of reparations to victims and symbolic policies). This requires adopting a comprehensive reading of the study. The key findings could be summarised in the following points:

- 1. There is a huge variety of methods and instruments used by Member States for dealing with the memory of totalitarian (and other repressive regimes) crimes**

Table 2.2 below summarises the findings along the headlines advanced above. More detailed information can be found in the relative chapters of the study.

In relation with *justice for victims*, many Member States have adopted extensive measures aiming at rehabilitation of victims, reparation and restitution of property. Considering all 27 Member States, this seems to be one of the most extensively used instrument for dealing with the past.

*Justice for perpetrators* has adopted three main forms (for further specifications, see Chapter 5 of the Study): war crimes trials have occurred in a number of countries, in a process that initiated in 1945 and which continues until the present. Additionally, trials on different grounds (for instance, collaboration) have been implemented in a number of Member States. Finally, measures such as purges, lustration and disclosure of identity of perpetrators are also common to a number of cases.

*Fact finding/truth seeking* has involved some form of official commissions in certain cases and disclosure mechanisms in others. Additionally, access to archives has been regulated in many cases in relation with the opening and regulation of access to archives.

The very large number of *memory and awareness initiatives* shows the importance of this area but it also shows a wide variety in their treatment among Member States (very clearly, for instance, in the case of educational measures). This creates difficulties for translating into clear cut categories. National remembrance days have different origins although some patterns (for instance, the end of WWII or liberation days) can be simultaneously identified in several Member States. 18 Member States commemorate the 27<sup>th</sup> January (Holocaust commemoration date) whilst 6 others have chosen other dates for their own Holocaust commemoration. Five Member States commemorate the



date of 23<sup>rd</sup> August proposed by the European Parliament as the day of remembrance of the victims of totalitarian regimes (see table 8.1.3.2). Monuments and memorials exist everywhere but their significance varies widely. Some, as the Auschwitz memorial, have a universal reach but there are quite few examples of monuments with local significance. Educational measures are also very different: some cases have specifically designed topics in the school textbooks.

As for the *prevention of the revision of the past*, two types of measures are particularly important from the point of view of this study: legislation on denial of crimes (see below) and legislation on prohibiting symbols (8 Member States do explicitly prohibit totalitarian/authoritarian symbols).

*International instruments* are described in chapter 9 of the study and summarised in tables 9.2.1.1, 9.2.1.2, 9.2.2.1 and 9.2.2.2.

Apart from these specific dimensions, it is worth recalling the *variety of official and non official bodies involved*. For instance, Estonia, Latvia, Poland and Slovenia have created official bodies with general competence across several of the issues examined in this study. Simultaneously, another approach (which may appear conflated with the former) is the creation of specialised bodies in specific policies; thus, not least than 14 countries have created bodies dealing with justice for victims in its different components. As for NGOs, their number is huge as it is their respective area of activity.

## **2. Each Member State has decided a specific combination of legal instruments and policies to deal with the memory of totalitarian crimes**

The kind of measures adopted by each Member State is different and depends on specific national circumstances. In particular, the blend of the different instruments (justice for victims, justice for perpetrators, fact finding, symbolic policies, etc.) is nationally-specific. As an example, Spain has implemented a vast policy of reparations for victims but virtually nothing has been done in the arena of criminal justice. Likewise, removal of symbols of the authoritarian regime was not totally accomplished by the end of 2009.

Even among Member States that have suffered the same kind of regimes, legal instruments, measures and practices may be different as it may be the timing for their adoption and implementation. For instance, purges were explicitly used in Portugal whilst a similar authoritarian regime such as Spain did not implement them during transition. This, of course, does not exclude the existence of some similarities on certain issues.

## **3. The issue of the denial of crimes committed by totalitarian regime is subject to different legal approaches.**

Table 3.3 summarises the findings. 11 Member States have no legislation on the denial of crimes of genocide, crimes against humanity and war crimes.

In Member States which have national legislation on the denial of such crimes, these norms are generally based on the criteria of the type of crime committed: genocide,

crimes against humanity and war crimes or the perpetrator of such crimes (Nazi or communist regimes).

Member States legislation on denial refers generally directly or indirectly to genocide and/or crimes against humanity as recognised by international law and/or international courts. Certain Member States legislation on denial uses a wider definition of genocide or crimes against humanity than in international law or refers to genocide or crimes against humanity as it is defined in national provisions or recognised by national courts.

Only two Member States (Czech Republic and Poland) have national legislation on denial of crimes which explicitly refers to the denial of crimes by totalitarian communist regime.

According to the information collected, it appears that until now there is no, in the EU, national court decision which sanctioned in a concrete case the denial of crimes committed by totalitarian communist regimes.



## Introduction

This study provides a factual overview of the different methods used in the Member States to deal with the issue of crimes committed in the 20<sup>th</sup> century by repressive regimes in Europe. The study does not intend to be an assessment of the nature of the regimes nor it intends to be any evaluation of the measures adopted, it rather aims at providing a factual overview of the various methods, legislation and practices used in the Member States to deal with the issue of remembering totalitarian crimes.

### Context

This study has been commissioned by the Commission in order to provide information which can be used for the preparation of a Report that the Commission should present in 2010 following a request of the Council of the European Union (Justice and Home Affairs).

At the meeting of the Council of the European Union (Justice and Home Affairs) of 19 April 2007, the Member States reached a political agreement on a draft Framework Decision "*on combating certain forms and expressions of racism and xenophobia by means of criminal law*". The Framework Decision (which has been formally adopted on 28 November 2008) is intended to ensure that the same kinds of racist and xenophobic behaviour are punished in all the Member States. The Framework Decision covers crimes committed on grounds of race, colour, religion, descent or national or ethnic origin. In the context of the negotiation of this legislation, the issue was raised of how crimes committed by totalitarian regimes on other grounds should be dealt with. The Council made a statement in this connection saying that the Framework Decision "*does not cover crimes committed on other grounds, e.g. by totalitarian regimes. However, the Council deplores all of these crimes.*" This Council statement also invites the Commission to "*examine and to report to the Council within two years after the entry into force of the Framework Decision, whether an additional instrument is needed, to cover publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin such as social status or political convictions.*"

### Repressive regimes

This Study calls *repressive regimes* all forms of non democratic regimes that have produced abuses of human rights. For references to specific countries, the most established terminology has been followed. Scholarly interpretations normally define 'totalitarianism' including Nazi, Fascist and Communist regimes (e.g. the most reputed among these scholars H. Arendt, *The Origins of Totalitarianism*, New York, Harvest Books, 1951). Although inspired by different ideologies all of them share similar characteristics (such as, for instance, a systematic use of repressive means). The cases of Greece, Portugal and Spain are usually labelled 'authoritarian'<sup>1</sup>. Whenever necessary, this study uses the classical and widely accepted academic designation of totalitarian plus the reference to the ideology which characterised the ruling party and the concept

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<sup>1</sup> Juan J. Linz, *Totalitarian and Authoritarian Regimes*, Boulder, Co. Lynne Rienner, 2000

of authoritarianism. Since the aim of the study is information gathering on the methods, legislation and practices used in the Member States to deal with the issue of the memory of totalitarian crimes, this does not in any form prejudices the definition of what is meant by totalitarian regime nor any kind of evaluation of their characteristics and/or effects.

Member States which were paradigmatic cases of democratic continuity are also covered in the study since they may have adopted measures dealing with the crimes in focus even though they were committed elsewhere in Europe (for instance, measures on ‘negationism’).

### The Measures

The aim of the study is to provide a factual overview of the different methods employed by Member States to deal with the memory of the crimes committed by totalitarian regimes.

In this regard, the study covers the full range of measures that in contemporary academic literature have come to be labelled as ‘transitional justice mechanisms’, i.e. a broader range of methods utilized to respond to the memory of the crimes in focus. On this account, memorialization efforts constitute one category of measures. Other measures include (1) criminal investigations and prosecutions; (2) truth-seeking mechanisms (such as truth commission); (3) reparations for victims; and (4) guarantees of non-repetition and institutional reform. This wide approach render possible to cover the reality of differing national methods and attitudes towards memory of the crimes, and the fact that the memory concerns the commission of serious crimes (as opposed to the memory of mere historical events). It also takes into account the fact that for some Member States the memory of crimes can not be separated from legal actions such as criminal investigations, prosecutions, and punishment, as well as reparation while in other Member States legislation has been passed to block or impede further legal actions.

The study covers both national measures and multilateral efforts to deal with the memory of the crimes in focus.

### The structure of the Study

The object of this study falls within the paradigm of “transitional justice”. To use a widespread and commonly accepted definition, transitional justice refers to how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future. In 2004, the UN Secretary General defined transitional justice as *the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.*<sup>2</sup>

Transitional justice generally involves a combination of complementary judicial and non-judicial strategies, such as prosecuting perpetrators; establishing truth commission

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<sup>2</sup> UN Secretary General Report *The rule of law and transitional justice in conflict and post-conflict societies* S/2004/616 August 23, 2004.

and other forms of investigation about the past; forging efforts toward reconciliation in fractured societies; developing reparations packages for those most affected by the violence or abuse; memorializing and remembering victims; and reforming a wide spectrum of abusive state institutions (such as security services, police, or military) in an attempt to prevent future violations.<sup>3</sup>

Although justice mechanism focussing in perpetrators, victims, fact finding etc. can be identified through history, the paradigm of transitional justice as a distinguishable policy emerged in the late 1980s and early 1990s, mainly in response to political changes in Latin America and Eastern Europe-and to demands in these regions for justice.<sup>4</sup> Strictly speaking, the concept of “transitional justice” was normally introduced into the academic literature only in the nineties.<sup>5</sup> Still, as the basic ideas and practices that the concept builds upon and promotes are not new, but rather recurring historical themes to mark the end of a war or the instalment of a new political regime,<sup>6</sup> it may be useful to think of the notion *transitional justice measures* as referring to actions taken by governments in the context of new political beginnings or political restoration projects in order to tackle past wrongs.

The structure of the study reflects the different components of transitional justice policies. The main focus of interests are the measures adopted from transition to democracy related to justice with victims and perpetrators of former regimes as well as politics of memory, remembrance and symbolic. Naturally, the models of transitional justice adopted are historically conditioned: the instruments, purposes and objectives of dealing with the past have progressively evolved from the first measures after WWII to the later experiences at the end of the XX century.

Rather than providing a comparison among these different experiences, the purpose of this study is to take stock of all the different instruments, procedures, peculiarities, etc. implemented by all 27 member states. Information has been gathered for all 27 member States through contacts with experts in these countries. The application of the same template has the obvious advantage of a consistent and systematic presentation of the information and facts. It is also obvious that there may be absence of information on certain points for some countries. The template also may induce some repetitions and reiterations which are kept in the text for the shake of continuity. This has to do with the difficulties to trace clear boundaries between different types of measures.

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<sup>3</sup> Louis Bickford *The Encyclopedia of Genocide and Crimes Against Humanity* (Macmillan Reference USA, 2004), vol. 3, pp. 1045-1047.

<sup>4</sup> International Centre for Transitional Justice What is Transitional Justice? <http://www.ictj.org/en/tj/>

<sup>5</sup> For more normative accounts on this theme, see e.g. Ruti G. Teitel, *Transitional Justice* (Oxford, Oxford University Press, 2000), and Naomi Roht Arriaza y Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-first Century. Beyond Truth v. Justice* (Cambridge, Cambridge University Press, 2006).

<sup>6</sup> Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge University Press, 2004).



## 1. Repressive regimes in EU Member States

During XX century, few countries in Europe have enjoyed continuous democratic regimes with no experience of repressive regimes on their own soil not even through occupation. Within current EU members, this group comprises Ireland, Sweden and the UK. Ireland and Sweden remained neutral during WWII. In some of these cases, issues are raised in connection with collaboration with Nazis (Sweden). Belgium, Denmark, France, Luxembourg, and the Netherlands were occupied by the Nazi regime and experienced repressive policies. In all these countries, diverse forms of collaboration (with different degrees of intensity) with the occupant appeared but, by and large, experts and scholars tend to consider these repressive regimes as not an autonomous product but the result of foreign occupation, except for France where some scholars consider that the Vichy regime had an autonomous programme going beyond what was imposed by the Nazi occupiers. In Austria, there is an ongoing academic debate on the nature of the relationship with the Nazi regime.

Germany and Italy had their own forms of totalitarian (Nazi and Fascist respectively) regimes whilst Greece, Spain and Portugal had authoritarian regimes. A number of countries in central and Eastern Europe (part of Germany, Czech Republic, Slovakia, Slovenia, Hungary, Rumania, Bulgaria, and Poland) suffered two successive repressive regimes. In these cases, foreign power occupation triggered repressive regimes which, in the case of totalitarian (Communist) regimes, became long duration ones and hence developed domestic structures of repression in tight collaboration with the soviet ones. Three other countries (Estonia, Latvia and Lithuania) shared the same experience and were additionally annexed to the territory of the Soviet Union.

### 1. 2. Period and duration of repressive regimes

Europe has witnessed repressive regimes in one place or the other during much of the XX century. The most intensive period happened from the 1930s, although some countries such as Bulgaria had witnessed before repressive regimes. In 1936, a *coup d'Etat* initiated the Franco regime in Spain (1936-1975). WWII and its preliminaries created between 1939 and 1945, a large number of repressive regimes and occupied countries. The end of the war meant on the one hand, the elimination of occupation by Nazi (and fascist) regimes but also, on the other one, the apparition of soviet domination on a significant number of countries which are now members of the EU. Also, the end of the war prompted the first aspects of what most experts have considered forms of transitional justice.

Duration of repressive regimes varies widely. For example: 4/5 years in Belgium, the Netherlands, Luxembourg, Denmark, Austria and France; 12/16 years in Germany and Greece<sup>7</sup>; 20/22 years in Italy; 39 years in Spain and 44/45 years in the 10 former totalitarian Communist regimes.

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<sup>7</sup> This figure corresponds to three different periods: dictatorship from 1936 to 1940; Nazi, fascist and Bulgarian occupation period from 1940 to 1944 and the 7 years of the Colonels dictatorship.



**Table 1.2 Duration of repressive regimes 1**

Less than 10 years	AT, BE, CY, DK, FR, LU, NL
Between 10 and 20 years	DE (Nazi period); GR
Over 20 years	BG, CZ, EE, ES, DE (GDR), HU, IT, LV, LT PL, PT, RO, SV, SI

### 1.3 Type and nature of the crimes committed

The estimation of the number of victims is a debated issue in several of the countries considered in this study. All possible categories appear: belonging to a national, ethnic or religious minority; having specific ideological or religious beliefs, being part of specific state bodies or civil society organizations, having a specific sexual orientation (i.e. homosexuals), being mentally ill etc. Jews stand as the category with the largest number of victims subjected to the most horrific and systematic process of destruction. Totalitarian Nazi and fascist regimes and some of the countries occupied by them enacted racial laws which provided the ground for the prosecution of Jews and some other groups because of ethnical reasons. There exist difficulties to establish a definitive and exhaustive list of the typology of victims which comprises all cases considered. Some accounts include also collective victims, such as institutions and organizations (political parties, the Church).

All possible categories of violations of human rights are included: executions (in any kind of irregular procedure and/or under illegitimate law) whether individual or massive, torture, sterilisation of certain women<sup>8</sup>, deportation both massive (as forced labour, for instance, in occupied countries during Nazism or during totalitarian Communist regimes); and individually (ideological deportation); imprisonment and interment in concentration camps and labor camps, arrest and imprisonment without trial, arbitrary arrests, purges (civil servants, military, etc), seizure of private property, even re-naming of persons etc.. Repressive regimes developed sophisticated legal and instrumental mechanism for abusing human rights and, in most cases, also resulted in abuses committed by uncontrolled agents in addition to those of the repressive state bodies and organs.

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<sup>8</sup> In Czechoslovakia, the Communist regime systematically and coercively sterilized Roma women from the 1970s until 1990. European Roma Rights Centre, “Challenging Coercive Sterilizations of Romani Women in the Czech Republic,” <http://www.errc.org/cikk.php?cikk=2228> .

## 2. Models of transition

### 2.1. Paradigmatic examples of the main characteristics of the transition process

A comprehensive approach to transitional justice is a late phenomenon which developed during the 1980s and 1990s. The first wave of measures for dealing with repressive regimes happened after the WWII and they are very much linked to the military conflict. Countries that had suffered occupation used, in general, *ad hoc* measures and the existing penal codes (for instance, Belgium, Denmark and the Netherlands). Very clearly these measures emphasised the punishment of perpetrators. In all cases, the trials on War Criminals played a major role in the restorative justice. Occupant democratic powers created *ad hoc* measures focussing of serious perpetrators. These processes were, in general, short in time even though trials for war crimes and genocide have been held until today. The second wave was developed following democratization in Southern Europe in the 1970s and the third wave happened in Central and Eastern Europe after 1989. Among the later group, in the three Baltic States, transition to democracy coincided with regaining independent statehood. A detailed description of all the cases goes beyond the aim of this study so only a few paradigmatic cases are briefly mentioned.

- **Germany** The four powers had agreed on a policy of demilitarization, denazification and democratization of Germany. In the Moscow declaration of 1 November 1943, the governments of Britain, the Soviet Union and the United States had announced their intention to punish the culprits of Nazi crimes. They had also agreed on a joint international tribunal for the main war criminals whose deeds could not be geographically limited to a single country. Furthermore, each ally was to try those nazi criminals who had committed crimes in its territory or against its nationals. At the *Conference of Yalta* in February 1945, T. Roosevelt, W. Churchill and J. Stalin announced their firm wish to destroy the NSDAP, all nationalsocialist laws, organisations and institutions and get rid of all nationalsocialists and militaristic influences in social, political and cultural and economic sphere in Germany.
- **Countries occupied by Nazi Germany (some selected examples).**
  - **Austria** The proclamation of 27 April 1945 claimed to nullify the *Anschluss*, declared Austria independent, and named a variety of ways in which Austria was a victim of Germany, including forcible occupation of a helpless people, and forcing Austria into a war or conquest that "no Austrian ever wanted."<sup>9</sup>
  - **France** On 10 August 1944, a Gaullist ordinance decreed "the re-establishment of the republican legality". (Ordonnance du 10 août 1944 relative au rétablissement de la légalité républicaine sur le territoire continental, Gouvernement provisoire de la République française (GPRF), Paris)
  - **The Netherlands** During the German occupation of the Netherlands, the Dutch Government in exile produced a set of legal instruments intended to nullify measures with the force of

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9. Bundesministerium für Unterricht, Freiheit für Österreich. Dokumente, 11-14.

law taken by, or on instigation of, the German administration in the occupied territories. Doing so, they implemented a *Joint Declaration* by 18 Allied Governments, including the Dutch, given in London on January 5, 1943. The matter had actually been prepared from the very start of the occupation in 1940 onward. The general Dutch name for these measures was *Rechtsherstel* (Legal Recovery), and the measures included related both to the spheres of public and private law. The first issue was to decide about the measures implemented under the regime of occupation. A Decree with the force of law appeared on September 17, 1944 (*Besluit Bezettingsmaatregelen*, published in the *Staatsblad* (State Gazette) under Nr. E 93).

- **Latvia** adopted on May 4, 1990 the Declaration Concerning the Renewal of the Independence of the Republic of Latvia. The declaration included the renewal of the 1922 Constitution. Declaration Concerning the Participation of the Republic of Latvia in International Legal Documents Pertaining to Human Rights – which listed by name altogether 51 international documents, agreements, and organizations created in the West over the period from 1948 to 1989 and announced that “the Supreme Council of the Republic of Latvia will be guided in its lawmaking by the human rights principles embodied in these agreements (and organizations).”

On August 29, 1991, the SCL promulgated a decision entitled Concerning the Removal of the Armed Forces of the USSR from the Republic of Latvia, which requested the government of the USSR to start the removal and asked the governments of USA, the United Kingdom, and France, as well as the United Nations, to support this request. An SCL decision on January 14, 1992, entitled Concerning Latvia’s 1937 Civil Law Code initiated the reinstatement of the 1937 Civil Code of the Latvian Republic, and directed the parliamentary work group to finish its task of incorporating the 1937 law into the current laws of the renewed Republic by May 1, 1992. Until then, these domains of civil life would continue to be regulated by the existing USSR law codes where they were not in conflict with the new laws adopted by the renewed Latvian republic since 1990.

- **Lithuania** The earliest measure that signalled a change in the political direction of Lithuania was a resolution of 7 February 1989 by the Lithuanian Supreme Council ‘*On the 1939 Pacts between Germany and the USSR and the Annulment of their Consequences to Lithuania*’.<sup>10</sup> It condemned Soviet aggression against Lithuania in 1940, declared the occupation and annexation as international crimes, and opened the way for further legal steps leading to independence. Another key measure of similar type was a 28 February 1991 decree of the Soviet Lithuanian Parliament ‘*On the actions of government institutions and citizens of Lithuania in the case of the active occupation by USSR*’.<sup>11</sup> This law de-legalized all institutions of USSR in Lithuania and proclaimed the

<sup>10</sup> ‘Resolution on the 1939 Pacts between Germany and the USSR and the Annulment of their Consequences to Lithuania,’ in *Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios*, 1990, Nr. 8-182.

<sup>11</sup> 1991-03-20, *Vyriausybės Žinios*, 1991, Nr.: 8 -228

superiority of Lithuanian laws over the laws of USSR. Lithuanian citizens and institutions were ‘called upon to observe the principles of non-obedience, non-violent resistance as well as political and social non-cooperation’ as the main means for the struggle for independence. On 11 March 1990 Lithuania declared its complete independence and reinstated its 1938 Constitution.<sup>12</sup> The Declaration of Independence confirmed ‘the restitution of full sovereignty destroyed by a foreign power in 1940’ and adherence to international laws of human and national minority rights.<sup>13</sup> The 1938 Constitution was soon replaced with a Provisional Basic Law, which remained in force until 1992, when a new Constitution was adopted by referendum in the newly-independent Lithuania on 25 October 1992. The key general framing law and the most important piece of national legislation remains the 1992 Constitution. The Constitution has a number of articles (1, 3, 10, 25, 29, 35, 137, 148 and others) which explicitly safeguard Lithuania’s independence, democratic system of government and democratic rights of its citizens and national minorities. Meanwhile, the 1992 Constitutional Act Nr. I-2622 also prohibits Lithuania’s participation ‘into any political, economic and military state unions built on the basis of the former USSR.’ This measure was adopted specifically to prevent another occupation of Lithuania as have occurred in 1940 and 1944.

- **Poland** Amendments to the constitution on December 1989 formally put an end to the existence of the Polish People's Republic: the name of the country was changed to Republic of Poland. Freedom of political association and for creating political parties was instilled. All mentions of the Soviet Union, socialism, planned economy or the Communist Party were removed. In February 1990 the national symbol—eagle in a crown—was reinstated. The Communist Party was disbanded in January 1990 and the security and military apparatus, including the judiciary was restructured. In 1998, the Institute for National Remembrance was created.
- **Spain** Spanish transition unfolded from Francoist legality. Francoist “assembly” (the Cortes) approved the Law on Political Reform (1976) which, in turn, gave way to democratic elections (1977) and the 1978 Constitution which abolished all Franco legislation contrary to it. Spanish transitional justice model payed attention to victims (mainly through reparations) in a progressive process; condemnation only happened in 2002 and no measure of criminal justice was implemented.

## 2.2. Kind of measures adopted

The Sections 4 to 11 of the study provides a detailed overview of the measures adopted, whilst the summary of legislation provides an overview which, in turn, it allows the identification of the main components: measures addressed to establish justice for victims, criminal justice measures against perpetrators; measures designed for fact finding and truth finding; policies of memory, education policies and measures condemning trivialization. The range of variance among countries of the measures adopted is very large. The following table provides a general and non exhaustive

<sup>12</sup> 1990-03-31, *Vyriausybės Žinios*, 1990, Nr.: 9 -223; 1990-03-16, *Lietuvos Aidas*, 1990, Nr.: 11

<sup>13</sup> 1990-03-31, *Vyriausybės Žinios*, 1990, Nr.: 9 -222

overview of the kind of measures adopted measures for fact finding and, specifically, measures related to the opening of archives is the most extensively applied one. Next, measures for creating justice for victims offer a picture of consistent application in a large number of Member States.

**Table 2.2 Measures adopted: Overview 1**

<b>Issues</b>	<b>Type of measures</b>	<b>Countries</b>
Justice on perpetrators	War crimes trials	AT; BE; NL; DE.; DK; EE; FR; LV; LU; ES; CZ; FI; IT; RO; SI See tables 5.1.1.1a, 5.1.1.1b and 5.1.6
	Trials (other than war crimes)	AT; BE; BG; CZ; DK; GR; DE; FR; PT; NL; FI; LU; SE; PL; RO See table 5.1.6
	Lustration, administrative purges and disclosure of identity of perpetrators	AT; BE; BG; CZ; CY; EE; FR; DE; GR; HU; IT; LV; LU; PL; PT; RT; SE (proposed); SV; SI See table 5.2
Justice for victims	Rehabilitation	BG; CY; EE; DE; HU; IT; LV; LT; NL; PL; ES; PT; RO; SI
	Restitution of property	BG; CZ; EE; FE; HU; DE; IT; NL; LV; LT; PL; RO; SV; SI; ES
	Reparations	AT; BE; BG; CY; DK; EE; CZ; HU; IT; LT; LU; NL; RO; ES; SV; SI
Fact finding	Truth Commission	BE; CY; EE; HU; LV; LT; PT; RO; SE; DE; NL See table 6.1
	Access to secret files	BE; BG; CZ; DE; EE.; HU; LV; LT; PO; ES; RO; SV; SI See table 7
Prevention of revision of the past	Legislation on publicly condoning, denying crimes	AT; BE; CY; CZ; DK; FR; DE; LV; LT; LU; PL; PT; RO; SV; SI; ES See table 3.3
	Legislation prohibiting of symbols (explicit or implicit)	AT; BE; CY; DK; EE (proposed); FR; DE; HU; IT; LT; NL; PL; RO; SV; ES; SE See table 8.1.2
Politics of memory and awareness initiatives	National remembrance day	See table 8.1.3.2
	“23 August” day of remembrance	EE; LV; LT; SI; SE See table 8.1.3.2
Specific international agreement or cooperation	Measures on education of youth or in the area of culture	See table 8.2.1 and 8.2.1.b

Source: Own elaboration drawing on information provided by national experts

### 3. Legal Instruments that have been adopted to deal with the Legacy of the Repressive Past

#### 3.1 General legislation on the legacy of totalitarian regime

The analysis of the situation in the 27 Member States reveals that there is not one single case that has adopted *one single piece of legislation*. Policy practice shows that countries have enacted laws and measures according to different specific policy objectives (such as, for instance, restitution of property, lustration, punishment of perpetrators) and in specific circumstances. Evidence also shows that norms have been passed in different stages in most countries and, additionally, evidence also demonstrates that the kind of legal measures adopted has been also linked to the existing parliamentary majorities in certain countries to the point that, in certain cases, laws were not accepted as an objective advance and were, in fact, derogated by a different majority.

Some of the laws have a broader character in the sense that addressed several of the objectives associated with transitional justice. This is the case of the Czech Law on the *Illegality of the Communist regime and resistance to it* (which includes condemnation, reparation and rehabilitation measures, and criminal justice measures). Similarly, the 2007 Spanish Law or the Greek 1975 and 2001 Laws provided ample grounds for dealing with the past.

##### 3.1.1. Laws condemning the previous repressive regime

Laws and other legal (and policy) instruments condemning the pre-existing repressive regime exist in several countries. The table below summarises the situation and shows the broad panoply of instruments used.

**Table 3.1.1 Condemnation of the repressive regime 1**

Member state	Norm or measure referred	Date
Austria	National Socialist Prohibition Act <i>Verbotsgesetz</i> forbids the National Socialist German Workers' Party (NSDAP) and other national socialist groups	1945
Belgium	Flemish regional parliament adopted a specific resolution in which collaboration with the German occupier was condemned unequivocally	2002
Bulgaria	Law declaring the Communist Regime in Bulgaria as Criminal	26/04/2000
	Declaration of the National Assembly for the 60 <sup>th</sup> Anniversary of the Establishment of the Communist Regime in Bulgaria, 9 September 2004	9/09/2004
Cyprus	Law 57/1975 on <i>Coup d'état (Special Provisions)</i> . declares that the coup and its government had no legal basis whatsoever and all their acts were legally non-existent	1975
	Article 2 of the Law 24(I)/2001 on <i>Establishment of 15 July 1974 as a Day of Memory and Tribute for Those who Fell or Fought in Defense of Democracy</i> declares the 1974 a treacherous armed action for the subversion of legal order of the Republic of Cyprus	2001
Czech Republic	Act No. 480/1991 prohibits advocacy of totalitarian/rights repressive ideologies	1991

	Act No. 198/1993 on the Illegality of the Communist Regime declares communist regime criminal and exempted from statutes of limitations	1993
Denmark	No specific legislation	
Estonia	Official declaration <i>On the Historical-Legal Evaluation of the events of 1940 in Estonia</i> qualified the Soviet takeover of the country as “an act of aggression”, “a military occupation” and “an annexation”	1989
	Riigikogu adopts a resolution <i>On the Crimes of the Occupation Regimes in Estonia</i> condemning the crimes of all the occupation regimes in Estonia	18/06/2002
Finland	No specific legislation	
France	<i>Ordinance of 10 August 1944</i> set the principle of the illegitimacy of the Vichy regime: it re-established the republican legality by declaring null and void Pétain’s constitutional Act establishing a “French State” instead of the French Republic	10/08/1944
Germany	The Constitution of Saxony included a reference to the ‘painful experience of National Socialist and Communist <i>Gewaltherrschaft</i> [domination through violence]	05/1992
	The Federal Constitutional Court has declared the unconstitutionality of, for instance, the neo-Nazi Socialist Reich Party (1952) and the Communist Party of Germany (1956)	1952 and 1956
Greece	Legislative decree 59/23 allowed free operation of all political parties and abolished a previous law that outlawed the Communist Party	09/1974
Hungary	Act No. 26 of 1990 on acknowledging the significance of the 1956 revolution and freedom-fight	1990
Ireland	Not applicable	
Italy	Article XII of the Part III, Transitory and Final Provisions of the Constitution bans the reorganization of the dissolved fascist party, under any form whatsoever	27/12/1947
Latvia	First paragraph of the <i>Law Concerning the Determination of Repressed Status for Persons Who Suffered Under the Communist and Nazi Regimes</i> : “To be considered as criminal are the ideologies of communism and Nazism, the communist and Nazi totalitarian regimes, and the political repressions (...)”	12/04/1995
	Saeima issued a <i>Declaration on condemnation of the totalitarian communist occupation regime implemented in Latvia by the Union of Soviet Socialist Republics</i>	12/05/2005
Lithuania	<i>Resolution on the 1939 Pacts between Germany and the USSR and the Annulment of their Consequences to Lithuania</i> condemned Soviet aggression against Lithuania in 1940, declared the occupation and annexation as international crimes	07/02/1989
	<i>Constitutional Act Nr. I-2622</i> prohibits Lithuania’s participation ‘into any political, economic and military state unions built on the basis of the former USSR	1992
	President Brazauskas made an ‘apology speech’ to the Parliament of Israel in which he admitted the involvement of Lithuanians in the Holocaust killings, asked for forgiveness and promised to bring war criminals to justice	1995
Luxembourg	No specific legislation	
Malta	Not applicable	
Netherlands	Decree (later law) against Treacherous Organizations banned the Dutch Nazi Party	1944
Poland	Resolution condemning the Katyn crimes stating that: -Polish officers were murdered in 1940 following the orders of Stalin. -the Soviet Union should transfer archival materials that would facilitate the location of the remaining mass graves	1992
	Resolution condemning the entry of Soviet troops into Eastern Poland in September 1939. The resolution also condemns any attempts to falsify history and urges all people of good will in Russia to take joint efforts to expose and condemn Stalin-era crimes	23/09/2009

	Senat declared the soviet-occupied Poland as a non-democratic and totalitarian state	16/04/1998
	Law condemning the dictatorship imposed to Poland by force and against the will of the nation by the Soviet Union and Joseph Stalin	19/06/1998
	Article 13 of the Constitution prohibits political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, fascism and communism	02/04/1997
Portugal	The Constitution prohibits parties with a fascist ideology	04/1976
	Act concerning Fascist organizations: organizations which advocate Fascist ideology are prohibited in Portugal. Fascist organizations recognized as such by judicial decision shall, by virtue of such decision, be abolished or prevented from exercising any activity	06/10/1978
Romania	Article 40 (2) of the Constitution says that “political parties or organizations which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional”	
	Section 3 of the National Security Act (Law no. 51/1991) provides: “The following shall constitute a threat to the national security of Romania: ... (h) the act of provoking, organising, carrying out or supporting, by whatever means, any totalitarian or extremist action inspired by communism, fascism, ... racism, anti-Semitism, revisionism or separatism that might jeopardise in any manner the unity and territorial integrity of Romania; and the act of encouraging activities that might undermine the rule of law.”	1991
	President Basescu officially condemned the communist regime for its crimes in front of the Romanian Parliament	18/12/2006
Slovakia	Act No. 480/1991 prohibits advocacy of totalitarian/rights repressive ideologies	1991
	Act N. 125/1996 on the <i>Immorality and Illegality of the Communist regime</i> condemns the regime’s role in human rights and the crimes committed not covered by statute of limitations	1996
Slovenia	Crimes of Fascism and Nazism were publicly condemned; there is no condemnation of communist crimes	
Spain	Spanish Parliament approved unanimously the condemnation of the Franco Regime	21/11/2002
	Law on Historical Memory condemns Francoism	26/12/2007
Sweden	Not applicable	
United Kingdom	Not applicable	

Source: Own elaboration from information provided by experts in Member States

- **Bulgaria** The *Law on Declaring the Communist regime in Bulgaria as Criminal* declared in Article 1.1 that “BCP is responsible for the rule of the state from 9 September 1944 until 10 November 1989, which led the country to national catastrophe.” Article 2 enumerated ten specific responsibilities of BCP: “annihilation of the traditional values of the European civilization”, “violation of basic human rights and freedoms”, “dealing with the deputies of the 25<sup>th</sup> National Assembly” and many others through the mechanism of the so-called People’s Court; “the moral and economic decline of the state”; “the directive management of the economic life”; abolishment of “the right to property”; “encroachment upon the religious liberty”; “unceasing terror against those, who disagreed with the system”; “abuse with the upbringing, education, science and culture for political and ideological purposes”; “ruthless destruction of the nature”.



Declaration of the National Assembly for the 60<sup>th</sup> Anniversary of the Establishment of the Communist Regime in Bulgaria, 9 September 2004, passed on 9 September 2004. The Declaration stated, that “unlawful acts, violence and mass murders were committed” in the postwar period, which suggested the type of liability of the perpetrators of these repressions. In this case the search for responsibility was once again more declarative and moral, than judicial.

- **Czechoslovakia** President Václav Havel condemned the previous regime in his 1990 New Year’s Address to the country. The Act No. 198/1993 *Coll. on the Illegality of the Communist Regime and on the Resistance to It* declared communist regime criminal and lifts statutes of limitations on crimes committed under communist regime if no conviction was reached or charges dismissed because of “political reasons incompatible with the basic principles of the legal order of a democratic state”. The Constitutional Court decision of 21 December 1993 (Pl. ÚS 19/93), concerning Act No. 198/1993, on the Illegality of the Communist Regime affirmed constitutionality of the Act.

- **Estonia** In November 1989, the Supreme Soviet or parliament at the time approved an official declaration *On the Historical-Legal Evaluation of the events of 1940 in Estonia*, in which it qualified the Soviet takeover of the country as “an act of aggression”, “a military occupation” and “an annexation”. The Supreme Soviet did not itself admit complicity in having perpetuated Soviet rule, but it essentially acknowledged its own illegitimacy by declaring that the whole founding of Soviet authority in the republic had been unlawful.

In June 2002 a Resolution *On the Crimes of the Occupation Regimes in Estonia* made mention to the Nazi and USSR occupation, although it still made the point that whereas the Nazi regime has been condemned at the highest international level, the crimes of the Soviet communist regime have yet to be internationally denounced. The text retained its denunciation of specific Soviet communist crimes against the Estonian people as well as its censure of the Communist Party. It also, however, made clearer the principle that ultimately all responsibility was individual and that only the courts could rule over any single person’s guilt. The resolution passed with an overwhelming majority of 74 to 1.

- **Latvia** On August 23, 1991, the SCL promulgated a decision entitled *Concerning the Anti-constitutional Activities on the Latvian Communist Party in the Latvian Republic*, declaring the activities of the Party to be anti-constitutional, requiring the Party to turn over all its extensive properties to the Republic’s government, calling on the Procurator’s Office of the Republic to initiate criminal charges for cause against its leaders, but also saying that Party membership alone was not a reason for the denial of human rights or for discrimination and persecution. A special committee was created to oversee the Party property transfers to the government.

On August 24, 1991, the SCL promulgated a decision entitled *On the Cessation of the Activities of the Security Services of the USSR in the Republic of Latvia*, which declared these organizations to be criminal, further cooperation by residents of Latvia with them treasonable, and their activities and records the property of the Republic of Latvia.

On the same date, the SCL, in a decision entitled *Concerning the Cessation of the Activities of Some Social and Socio-Political Organization*, ended the activities of a handful of pro-Moscow organizations (listed by name) that in the period since May 1990 had been organizing meetings, calling for Moscow’s intervention, and, at the time of the 1991 Moscow coup, proclaiming themselves the real governors of the Republic. [A later decision on September 10, 1991, also confiscated the properties of these organizations].

- **Lithuania** In 1989, the Parliament approved a resolution condemning the Soviet aggression against Lithuania in 1940 and declared occupation and annexation as international crimes.
- **Poland** In 1992, Parliament condemned the Katyn crimes. In 1998, the Polish Senate declared the soviet-occupied Poland as a non-democratic and totalitarian state. Article 13 of the 1997 Polish constitution bans parties based upon totalitarian methods and the modes of activity of Nazism, fascism and communism. In 2009, the Parliament approved a resolution on the entry of Soviet troops in Poland in 1939 and condemning any attempt to falsify history.
- **Slovakia** The Act No. 125/1996 *Coll. on the Immorality and Illegality of the Communist Regime* condemns the regime’s role in human rights abuses and makes crimes that were not punished or indicted for political reasons incompatible with fundamental democratic principles liable for prosecution without cover by statute of limitations.
- **Spain** In 2002, the Spanish Congress approved unanimously a resolution condemning Franco’s regime.

### 3.2 Competent authorities and bodies to implement the specific legal instruments or in charge of these issues

#### 3.2.1 Official bodies (Governmental or other regional institutions)

As already mentioned, the paradigm of transitional justice encompasses a large number of measures and policies. States select all or those components that suit their specific requirements and situations rather than composing a coherent policy. This applies also to the bodies entrusted with conducting these policies: there are quite a few examples in EU Member States but their regulation, composition, mission and competences vary greatly and, hence, it is very difficult to draw a common pattern. The table below refers classifies only official bodies and agencies. For those related to specific policies, more detailed information is provided in sections 4 to 10 of the Study.

**Table 3.2 Official bodies and agencies by sector of activity 1**

	<b>Member State</b>	<b>Name</b>	<b>Mission</b>
<b>General Competence</b>	Estonia	Estonian State Commission on Examination of the Policies of Repression (ESCEPR)	To analyze the repressive policies of the Soviet and Nazi occupation regimes, elucidate any “crimes of genocide” carried out during those occupations, and formulate a “general assessment” of these acts

	Latvia	The Ministry of Justice	It deals with specialized tasks relating to the multiple legacies of the totalitarian periods. It issues certificates to repressed people
	Poland	Institute of National Remembrance - Commission of the Prosecution of Crimes against the Polish Nation (IPN)	To preserve the memory of: -the losses suffered by the Polish Nation as a result of the World War II and the post-war period; -patriotic traditions of fighting against occupants, Nazism and Communism; -to prosecute crimes against peace, humanity and war crimes; -to compensate for damages suffered by the repressed people
	Slovenia	Committee of the Government of the Republic of Slovenia for the Execution of the Law on the Restitution of Injustices	To study all forms of violence against and encroachments on basic human rights and fundamental freedoms, committed against the Slovene nation and the members of other ethnic communities in Slovenia during the respective periods of three totalitarian systems: Fascism, Nazism, and Communism
<b>Victims</b>	Austria	National Fund of the Republic of Austria for Victims of National Socialism	To grant benefits to those persecuted by the National Socialist regime on origin, religion, nationality or sexual orientation grounds
		Historical Commission of the Republic of Austria	To investigate and report on the whole complex of expropriation in Austria during the Nazi regime and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria
	Belgium	Directorate General of War Victims (Ministry of Defense)	Allocation, administration and distribution of all social benefits, monetary compensations and pensions granted by the Belgian federal government to war victims and, more recently, victims of racial persecution
	Bulgaria	Ministry of Finance	Responsible for the financial indemnity of the victims of the repressions
	Czech Republic	Czech Social Security Administration	Pays out compensations for victims of Nazi and Communist regimes
	Denmark	National Board of Industrial Injuries (Ministry of Employment)	To grant compensations to those who have suffered loss in their ability to work during the time from 9 <sup>th</sup> April 1940 to the end of the war (i.e.: deported to a prison or a concentration camp abroad)
	Estonia	Estonian Social Insurance Board	To issue identification cards for the wrongfully repressed and to pay out additional social benefits and pension supplements to

			duly certified repressed persons
	France	Commission for the Compensation of victims of spoliations resulting from the Anti-semitic legislation in force during the Occupation (created in 1999)	To review the individual claims submitted by victims or their legal heirs or assigns to receive reparations for damages following spoliation of their property resulting from Anti-Semitic Legislation enforced during the Occupation by either the occupying authorities or the Vichy Government
	Latvia	Public Prosecutor's Office ( <i>Prokuratūra</i> )	Most matters growing out of the confiscation of the substantial properties of the Communist Party were assigned to the Public Prosecutor's Office
		Commission for the Assessment of the Crimes of the Totalitarian Regime	Is responsible for supervising and monitoring the legitimate execution of the act of granting the status of the politically repressed and harmed by the Nazi and Communist regimes
	Lithuania	Centre of Research of the Genocide and Resistance of the Lithuanian Population	It process compensation applications from Lithuanian nationals who suffered the Nazi regime, and pass them to the German Federal Foundation
	Luxembourg	Ministère (later: Office) des dommages de guerre- a "Service des dommages de guerre corporels" functioning within the Ministry of Health.	Payment of compensations
	Romania	Special Compensation Commission	To supervise the return of property abusively confiscated from religious denominations and buildings that once belonged to communities
	Slovakia	Department of Rehabilitation and Redress (Ministry of Justice)	To handle claims for redress, its scope and amount, to grant compensations
		National Property Fund	It settles certain claims through the issuance of bonds
	Slovenia	Sector for Settlement of Hidden Post-War Grave Sites (Ministry of Labour, Family and Social Affairs)	Exhumations mainly. It continues work of the Commission for Settlement of Hidden Mass Graveyards of the Government of the Republic of Slovenia, which functioned between 2005 and 2008
		Committee for the Implementation of the Law on the Reparations of Injustices	Rehabilitation
	Spain	Office for the Victims of the Civil War and Dictatorship	Coordination of the different public administrations and organizations, elaboration of a protocol for un-burying remains and the proceeding of the applications for Declarations of Recognition
		Ministry of Economics	Payment of compensations

<b>Truth/fact finding</b>	Belgium	Parliamentary Committee	To establish facts and responsibility of Belgian authorities in the deportation and prosecution of Jewish population in the period 1940-1944
	Estonia	International Commission for Investigation of Crimes Against Humanity	To lead the investigation of crimes against humanity committed against Estonian citizens or on the territory of the Republic of Estonia during the Soviet as well as Nazi German occupations Also to clarify the different occupations of Estonia to an external audience
	Germany (GDR)	Study Commission for Working Through the History and the Consequences of the SED Dictatorship in Germany	To investigate the practices of the East German government between 1949 and the fall of the SED regime in 1989, to document human rights abuses, and to assess the politico-historic, economic, ideological, and societal factors of the dictatorship as well as the misuse of environmental resources
	Latvia	Commission for Identifying the Number of Victims of the Communist Occupation and their Final Resting Places, Aggregating Information on Repressions and Deportations, and Calculating the Costs to the Latvian State and Its Inhabitants	To summarize the total human and monetary cost to the Latvian state and its people of the entire period during which Latvia was a Soviet Socialist Republic
	Lithuania	International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania	To stimulate process of historical justice and understanding of the origins of the crimes of Nazi and Soviet occupations and their subsequence on the states and societies of Europe To educate society publicizing and disseminating the generated information To influence a formulation of the objective official position on the historical questions
	Portugal	Commission for the Black Book on Fascism, responsible to the presidency of the Council of Ministers (dissolved in 1991)	To denounce the abuses of the authoritarian regime
	Romania	International Presidential Commission for the Study of the Holocaust in Romania	To establish the facts about the Holocaust in Romania based on existing research
		Institute for the Investigation of Communist Crimes in Romania	To scientifically investigate and identify crimes, abuses and human rights infringements that took place during the entire communist period in Romania, and to petition the judiciary when crimes are revealed
	Slovenia	Study Centre for National Reconciliation (formerly, Sector for Redressing of Injustices and National Reconciliation)	Objective examination of historical facts and realisation of the conditions for national reconciliation. Research, organisation, development,

			consultation, co-ordination and education in the area of national reconciliation and examination of totalitarian systems in Slovenia in the 20th century
	Sweden	Sandler Commission	To investigate the activities of the national security service as well as the Swedish treatment of refugees during the war
<b>Perpetrators</b>			
Prosecution/investigation	Czech Republic	Office for the Documentation and Investigation of the Crimes of Communism (Ministry of Interior)	To expose and prosecute criminal acts from the period 1948-1989 where it could not be decided by final judgment for political reasons. Also documentation activities
	Estonia	Estonian Security Police Board and the State Prosecutor's Office	Prosecuting crimes against humanity and gathering information of possible violations of the oath
	Latvia	Centre for the Documentation of the Consequences of Totalitarianism	Forwards relevant information the Office of State Prosecutor about criminal acts
	Lithuania	Centre of Research of the Genocide and Resistance of the Lithuanian Population	Researches archive material and supplies juridical and physical persons with information about Lithuanians and volunteer fighters who were killed, disappeared, were persecuted or otherwise suffered during the occupations Registers cases in the genocide and the persecution of Lithuania's population, and supplies state law enforcement agencies with the names of perpetrators of the genocide Collaborates with law enforcement institutions which investigate the subversive activities of the special agencies of other countries in Lithuania, supplying them with archive material and information uncovered
	Poland	Chief Commission for the Prosecution of Crimes against the Polish Nation (a section of the Institute of National Remembrance)	It investigates crimes for which there is no statute of limitations, committed against Polish nationals and Polish citizens of other nationalities. The Commission also deals with communist crimes committed in the period from September 17th, 1939 to December 31st, 1989
	Romania	Institute for the Investigation of Communist Crimes in Romania (IICCR)	To investigate and identify crimes, abuses and human rights infringements that took place during the entire communist period in Romania, and to petition the judiciary when crimes are revealed
Lustration	Bulgaria	Commission on the Disclosure of Documents and Establishing Affiliation with the Former State Security and	Screens public servants who apply to work with NATO classified information, and issues clearance

		Intelligence Directorate with the General Staff (the “Andreev Commission”)	permits
	Czech Republic	Ministry of Interior	Responding to requests for lustration certificates
	Estonia	Depends on the post of the person taking the Oath	Taking Oath of Conscience
	Italy	High Commissioner for Sanctions against Fascism	To exclude from office those who had participated actively in the political life of fascism
	Hungary	Lustration Commission	Screening of Holders of Some Important Positions, Holders of Positions of Public Trust, and Opinion-Leading Public Figures
	Lithuania	Lustration agency	Designed to filtrate former KGB agents from state services
	Romania	National Council for the Study of Securitate Archives (CNSAS)	To verify the accuracy of personal statements signed by public office holders
	Poland	Lustration Court	It states whether a lustration declaration was true or not
	Portugal	Inter-ministerial Purge and Reclassification Commission ( <i>Comissão Inter-Ministerial de Saneamento e Reclassificação</i> )	To coordinate existing purge commissions or to create new ones to cover all the ministries
		Commission for the Abolishment of the Political Police, Portuguese Legion and Portuguese Youth ( <i>Comissão de Extinção da PIDE/DGS e LP</i> )	In charge of implementing the purge, reclassification and reintegration process on each individual Ministry
		Commission for the Assessment of Purge Appeals and Reclassifications ( <i>Comissão de Análise de Recursos de Saneamentos e de Reclassificação</i> )	To assess the Purge Appeals
<b>Archives/Disclosing documents</b>			
	Bulgaria	Committee for Disclosing the Documents and Announcing Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian National Army	To hold all the available documentation on the repressive mechanisms and the repressive actions of the communist regime
	Czech Republic	Office of the Documentation and the Investigation of the Crimes of Communism	To make the state security (StB) files accessible to the citizens To collect, analyze and evaluate materials, information and documents showing the criminality of the communist regime as well as of its repressive apparatus
		Archive of Security Forces	To make accessible the files and documents of the former state security services
	Germany (GDR)	Federal Commissioner for the Files of the State Security Service of the former German Democratic Republic ( <i>Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik</i> or BstU, the “Gauck Commission”)	Preserves the records of the Ministry for State Security of the GDR in its archives and makes these available for various purposes to private individuals, institutions and the public
Hungary	Historical Archives of the Hungarian State Security	It enables citizens to inspect data made by the former state security	

			organs
		Institute for the History of the 1956 Hungarian Revolution	
	Latvia	Centre for the Documentation of the Consequences of Totalitarianism	Oversees the left KGB documents
	Lithuania	Lithuanian Special Archive	To store the documents from the period 1940-1991
	Poland	Office for the Preservation and Dissemination of the Archival Records of the Institute of National Remembrance	It deals with recording, acquisition/collection, preservation, dissemination, and publication of documents, as produced and accumulated by the state security authorities in the period from 22 July 1944 to 31 July 1990, as well as by the security apparatuses of the Third Reich and the USSR
	Romania	The National Council for the Study of the Securitate Archives (CNSAS)	In charge of the administration of the archives of the former intelligence service in Romania
	Slovakia	Nation's Memory Institute (Archives section)	To disclose the activity of repressive authorities
	Slovenia	Study Centre of National Reconciliation	It deals with former Communist archives
<b>Research</b>			
	Belgium	Centre for Historical Research and Documentation on War and Contemporary Society (Soma/Ceges)	It produces scientific documentation about the war and makes these materials available for large audiences
	Czech Republic	Institute for the Study of Totalitarianism	To study the periods of the Nazi and Communist rule and to secure and make accessible to the public documents from these periods
	Hungary	Institute for the History of the 1956 Hungarian Revolution	To reconstruct and historicize the events of 1956 and also the post-war, coalition period of Hungarian history and of the Rákosi and Kádár era
	Latvia	Totalitarianism Documentation Center (ascribed to the Bureau for the Protection of the Constitution)	To investigate the consequences of communist totalitarianism and to document the evidence
	Lithuania	Centre of Research of the Genocide and Resistance of the Lithuanian Population	Collects and systematises material about the crimes carried out by the occupying regimes and the system for committing crimes against humanity and war crimes, exposing the organisers and perpetrators of the genocide
	Netherlands	Institute for War Documentation (NIOD)	It conducts research on the social impact of war and large-scale violence in recent history
	Romania	National Institute for the Study of Totalitarianism	To investigate totalitarian regimes and repression in Romania in their Fascist and communist forms
		The Institute of the Romanian Revolution	It makes scientific analysis of the causes, the unfolding and the effects of the Revolution
	Slovakia	Nation's Memory Institute (Section of Research)	Carrying out an impartial evaluation of the oppression period, analysing the causes and ways of the demise of freedom, and the



			manifestations of fascist and communist regimes and their ideologies, will be established
	Sweden	Forum for Living History	It is aimed at increasing understanding of contemporary events in the light of the Holocaust and other crimes against humanity
<b>Memory/Commemorations*</b>	Lithuania	Centre of Research of the Genocide and Resistance of the Lithuanian Population	Systematises and exhibits material about genocide victims and resistance participants, about the resistance to the occupying regimes, the activities of the underground organisations, the partisan movement and participants in the fight for freedom
	Luxembourg	Comité directeur pour le souvenir de la Résistance Comité directeur pour le souvenir de l'Enrôlement force	Both institutions organise commemorations aimed at keeping the memory alive
	The Netherlands	National Committee for the Commemoration of May 4 and the celebration of the Liberation on May 5	To find topical input for the commemorations, in connection to the grand themes of struggle against political repression and politics of hate and discrimination in the present world

\* Only bodies with a specific mandate on commemoration are listed. Obviously, bodies with a wider mandate (for instance, those included in this table in the line General Competence) may also deal with commemorations

Source: own elaboration from information provided by experts in Member States

#### a. Specialised bodies

In this section, only the organisms created with the specific purpose of dealing with transitional justice are presented. Commonly, departmental ministries or sections assume some of the mechanisms involved; for instance, it is fairly common that compensations and pensions are dealt with by the corresponding ministry. In this relation, bodies dealing specifically with criminal justice are not listed since they are presented in Section 5. The only exception is these organisms that have a much broader competence than criminal justice. Likewise, archives and museums as well as organisms with a memorial dimension are dealt with in sections 7 and 8 respectively.

##### o Czech Republic

- *Office for the Documentation and Investigation of the Crimes of Communism (Úřad dokumentace a vyšetřování zločinů komunismu (ÚDV)* was set up in 1995 by the Ministry of the Interior, merging that Ministry's Office for the Documentation and Investigation of the Activity of the State Security with the Ministry of Justice's Resource Center of the Unlawful Conduct of the Communist Regime. According to Act No. 283/1991 Sb. (Police of the Czech Republic Act) as amended, beginning 1 January 2002, the ÚDV is part of the Service of the Criminal Investigation Police. Its main office is in Prague and it has a

second office in Brno. Its competence covers the entire state. As of 2008, Dr. Pavel Bret directs the ÚDV.

The ÚDV's investigation responsibilities cover the period from 1948 to 1989 and focus on cases where political reasons prevented the accomplishment of criminal justice. It collects, analyzes, and evaluates documents and other materials concerning the criminal and repressive aspects. It discloses these to the public in a variety of ways, including through free distribution to public libraries, secondary schools, and universities, a variety of publications, the mass media, lectures, and seminars, and by cooperating with brother institutions, both domestic and foreign. The ÚDV can also refer certain cases to the state attorney for prosecution.

- *Institute for the Study of Totalitarianism/Ústav pro studium totalních režimů* (<http://www.ustrcr.cz/en/about-us>). Governed by Act No. 181/2007 *Coll. on the Institute for the Study of Totalitarian Regimes and the Archive of Security Forces*, and on Amendments of Some Acts, its objectives are to study the Nazi and Communist rule and to secure and make accessible to the public documents from these periods. It began operations in 2008. The Institute is tasked with objectively evaluating the Nazi and Communist periods, analyzing the way the Communist regime took over the democratic regime, securing and making publicly accessible documents from these periods, transferring documents into electronic form, documenting Nazi and Communist crimes, making the public familiar with its findings and publishing information about the relevant periods, and cooperating with other relevant institutions, both domestic and foreign. The *Archive of Security Forces*, seated in Prague, is directly controlled by the Institute (see further section 7).
- **Latvia** *Center for the Documentation of the Consequences of Totalitarianism (Totalitārisma seku dokumentēšanas centrs)* was created by a Law on April 16, 1992. The Center began its work under the aegis of the Ministry of Judicial Affairs but on November 6, 1995, it was moved to the Bureau for the Protection of the Constitution. The center was charged with maintaining and organizing the documents of the Soviet-period security organs; documenting the involvement of particular persons with those organizations; forwarding relevant information the Office of State Prosecutor about criminal acts; and through these activities aid in the rehabilitation of persons who were deemed to have suffered at the hands of the Latvian KGB. The mandate thus came to include the investigations called for by the April 12, 1995, law that dealt with the rehabilitation of repressed persons. In subsequent years, the Center produced a host of published studies dealing with various aspects of the Soviet era, including documentary films. The Documentation Center over the next decade was joined by other institutions, funded in whole or in part from the national budget and focusing in whole or in part on researching the totalitarian period. The Center's website <http://www.sab.gov.lv/?page=28&lang=lv> is updated regularly.

- **Lithuania** The *Genocide Research Centre of Lithuania* (established in October 1992) was reorganised into LGGRTC, consisting of the Lithuanian Genocide and Resistance Research Institute and the Lithuanian Genocide Victims Memorial Institute. The *Law on the Centre of Research of the Genocide and Resistance of the Lithuanian Population* (5 June 1997, No VIII-238). The law mentioned above describes the tasks, functions, structure and staff of the Centre. LGGRTC employs more than 130 researchers and technical staff. Its mission is to investigate all manifestations of genocide and crimes against humanity, the persecution during the Soviet and Nazi occupations, and the armed and peaceful resistance to the Soviet and Nazi occupations. It also gives juridical evaluations of the perpetrators of the reprisals and genocide, and immortalises the memory of the freedom fighters and genocide victims. LGGRTC is also involved in 'the immortalization of the memory of the freedom fighters and the genocide victims.'<sup>14</sup> From May 1997 LGGRTC is also responsible for running the Museum of Genocide Victims in Vilnius.
- **Poland** Two main bodies have participated in the lustration process since 2007: the *Public Interest Spokesman (Rzecznik Interesu Publicznego – RIP)*, active 1997 –2007, and the *Institute of National Remembrance (Instytut Pamięci Narodowej – IPN)* since 1998 gathering and administering communist secret service files and prosecuting communist crimes, and since 2007 - lustrating.
  - The *Public Interest Spokesman* was established on the basis of *Lustration Act on the Disclosure by Persons Holding Public Office of Work, Service or Cooperation with the State Security Services during the Years 1944-1990* of April 11, 1997 and transformed into the key vetting office by an amendment from June 1998. Apart from screening statements in past involvement with the SB and filing a case in Lustration Court in case of a suspected lustration lie, the Spokesman would also comment on relevant legislation proposals. The Spokesman's Office activities were financed from the budget of the Highest Court (Art. 17f). The Spokesman must be a qualified judge, with no previous involvement with the communist security services or secret collaboration with the current intelligence units (Art. 17). The Spokesman represents 'interest of the public' in the vetting procedure (Art. 17), is appointed by the Head of the Highest Court for the period of 6 years (Art. 17c), and in his/her activities is subject only to "the Constitution and the law" (Art. 17a). The Spokesman's functions were taken over by the Institute of National remembrance in 2007, on the basis of the *Act on Disclosure of Information on Documents of Security Service Organs Collected during the period 1944-1990 or on the Content of these Documents* of October 18, 2006. During the 6 years of operating the Spokesman received over 20,000 lustration statements to verify; he initiated over 150 lustration cases on suspicion of a lustration lie. 124 unfinished

<sup>14</sup> For the objectives of LGGRTC see: <http://www.genocid.lt/centras/en/#>

cases were passed over to the Lustration Office of the Institute of National Remembrance in 2007.

- *Institute of National Remembrance* was founded on the basis of *Act on the Institute of National Remembrance – Committee for Prosecution of Crimes against the Polish Nation*, of December 18<sup>th</sup>, 1998. The key organs of the Institute are the President and the Council. The President is appointed by the Parliament from among candidates proposed by the Institute Council, and requires 3/5 of the votes to be elected (Art. 10). The President is elected for 5 years, and can be re-elected only once (Art. 10). The candidate must be of Polish nationality, with no involvement with communist security structures and cannot be a member of a political party or a trade union (Art. 11). The Council consists of 11 members, appointed for 7 years: 7 appointed by the Sejm, 2 appointed by the Senate, and 2 appointed by the President of the Polish Republic. Institute's activities are financed from the state's budget and own resources, and it has 11 divisions in all Polish cities which had a court of appeal. Art. 25 of the Act has listed 7 institutions that were obliged to pass relevant documents over to the newly created IPN to archive (including UOP, Archiwum Akt Nowych, Ministry of Justice, and Ministry of National Defence). Access to information can be granted to all people who had been invigilated by the communist secret services.

The Institute has four major divisions:

1. *Head Prosecution of Crimes against the Polish Nation (Główna Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu)* researches and prosecutes crimes against the Polish nation committed between September 1st, 1939 and July 31st, 1990; that is, Nazi, communist and other crimes against peace, humanity or war crimes. It prosecutes on behalf of the state, and it forms part of the Head Prosecutor's Office. Between 2000 and early 2009 6,300 cases were prepared, and 385 people were prosecuted in 242 cases. 67,397 witnesses were examined
2. *Office for the Access and Archivisation of Documents (Biuro Udostępniania i Archiwizacji Dokumentów)*; collects, stores, protects and publishes documents related to state security, which were created between July 1944 and July 1990, as well as documents of the intelligence of the Fascist Germany and the USSR.
3. *Office for Public Education (Biuro Edukacji Publicznej)* has been created to educate and promote the issues related to the communist and Nazi experience. It organises conferences, educational programs, courses for teachers, publishes books, reports and periodicals related to the Institute's field of activity.
4. *Lustration Office (Biuro Lustracyjne)* was created later on the basis of the *Act on Disclosure of Information on Documents of Security Service Organs Collected during the period 1944-1990 or on the Content of these*

*Documents* of October 18, 2006. Active from March 15th, 2007, to carry on tasks described in Art. 52 of the Act on the Institute of National Remembrance of December 18th, 1998 and Art. 20, 23 and 24 of the Act on Disclosure of October 18th, 2006. It has been active since March 15th, 2007 focusing on registering lustration statements, analysing lustration statements on the basis of information gathered, preparing lustration cases, monitoring implementation of the Lustration Law by non-judiciary organs, publishing lists of communist secret service employees and collaborators and their victims, as well as people holding high positions in the communist state bureaucracy. The Lustration Section of the Institute took 124 cases over from the Public Interest Spokesman (*Informacja o działalności...* 2009: 138). Between March and May 2007 the Lustration Office collected lustration statements. After the Constitutional Tribunal's ruling it stopped collecting statements from those who were no longer legally required to submit them. Before the September 7th, 2007 reform of the Lustration Act, the Office registered over 100,000 lustration statements. After the reform it registered 6461 statements. In 2008 the Lustration Office examined 4,744 lustration statements, out of which 2,297 were closed (including the 12 cases which were filed with court (*Informacja...* 2009: 141).

**Table 3.1. Spending on the Institute of National Remembrance in years 2000 - 2008**

Year	Spending (in thousands PLN)
2000	67,411
2001	82,205
2002	82,481
2003	84,259
2004	127,900
2005	287,200
2006	122,073
2007	196,191
2008	205,669

Source: Financial information comes from yearly reports on IPN activities available at <http://www.ipn.gov.pl/portal/pl/31/>

- The *Office for Matters of Combatants and Persecuted Persons (Urzad do spraw Kombatantow i Osob Represjonowanych)*<sup>15</sup> was created in 1991 on the basis of an *Act on combatants and some people who had been victims of war and post-war repressions* of January 24<sup>th</sup>, 1991. Its mission is to provide assistance and care to combatants and people who experienced persecution under the communism. It serves as an office granting entitlements to

<sup>15</sup> Official web page: <http://www.udskior.gov.pl/index.php>

financial assistance and compensation as well as provides documents confirming person's status as a combatant. The head of the Office is appointed by the Head of the Council of Ministers.

○ **Romania**

- *National Council for the Study of Securitate Archives (Consiliul National pentru Studierea Arhivelor Securitatii, CNSAS)*, created in 2000 in virtue of Law 187/1999, is headed by an 11-member College appointed by Parliament from among independent, party-unaffiliated individuals. The Council is the most important transitional justice institution in Romania. As sole custodian of the Securitate archive, the CNSAS allows Romanian citizens to read their own file and to obtain copies of the documents included in it and statements detailing their (non)collaboration with the Securitate. The Council must also investigate the past collaboration with the Securitate as a political police of candidates to and holders of a range of public offices, starting with priests, journalists and judges and ending with deputies, senators, cabinet members and the President of Romania. In addition, the CNSAS is obliged to verify the past of some individuals, if asked to do so by Romanian citizens, organizations or institutions. In 2008, the CNSAS was stripped of its right to publicly identify *Securitate* informers; today, its tasks include 1) offering access to their own files to Romanian and NATO citizens, 2) publicly identifying the Securitate officers who carried out repression, and the informal collaborators who contributed information to the secret files, and 3) developing research and education programs providing information about the structure, methods and goals of the Securitate. As a state agency, the Council is funded from the national budget, and obliged to submit an annual activity report to Parliament, for its approval.
- *Institute for the Investigation of Communist Crimes in Romania (Institutul pentru Investigarea Crimelor Comunismului din Romania, IICCR)* was created by Governmental Decision 1724 of 21 December 2005. The institute, which is a public institution coordinated by the Prime Minister and subordinated to and financed by the Romanian government, has a six-year mandate. Its tasks include “to scientifically investigate and identify crimes, abuses and human rights infringements that took place during the entire communist period in Romania, and to petition the judiciary when crimes are revealed.” The institute has been actively compiling lists of communist perpetrators, and publishing studies on communist repression and crimes.

- **Slovakia** *Nation's Memory Institute /Ústav pamäti národa* (<http://www.upn.gov.sk/v2/index.php?page=about-nations-memory-institute>) is a public-law institution with ten key tasks: to evaluate the period of oppression (both fascist and communist) and analyze the causes and methods of the loss of freedom, including the participation of foreign and domestic individuals; to disclose to those who were persecuted the documents relevant to that persecution; to publish information about the

persecutors; to cooperate with the Attorney General's Office to make motions for prosecution of crimes committed during the relevant periods; to systematically collect and information concerning those periods; to cooperate with parallel institutions abroad; to publicly report on the results of its activities, and especially to declassify documents and publicize information through various venues; to promote freedom and the defense of democracy; and to make decisions concerning the acknowledgement of the position of the participants in the fight against communism. See Act No. 553/2002 *Coll. on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 - 1989 and on Founding the Nation's Memory Institute (Ústav pamäti národa) and on Amending Certain Acts (Nation's Memory Act) (Amended by Acts No. 610/2004 and No. 309/2005 Coll.)*, <http://www.upn.gov.sk/v2/index.php?page=documents>

The ÚPN's work is divided into three sections: the archive section, which preserves documents; the IT Section, which electronically processes documents; and the legal analysis and document reconstruction research section, which explores the records with a view to the potential for criminal prosecution. Finally, the ÚPN plans to set up a research section dedicated to looking into the causes and methods of the denial of freedom under the past repressive regimes. The ÚPN makes StB files available to individual applicants. It also discloses documents of the repressive activities of the wartime and communist states.

#### b. Non specialised bodies

Table 3.2 above summarises the bodies involved in implementing the measures concerning the scope of this study. Several measures are usually dealt with by non-specialised bodies, i.e. bodies which were not specifically set or created for these function but which, nevertheless, assume them as part of their scope of activity. Just as an example:

- **Belgium** The implementation of the laws on amnesty, etc. is in the hands of the *Ministry of Justice* and the *Ministry of Finance* is responsible for the financial indemnity of the victims of the repressions.
- **Czech Republic**
  - *Ministry of the Interior* is responsible for responding to requests for lustration certificates (based on Law 451/1991). It only checks to see if a person falls into any of the law's categories. The avenue of appeal is the civil court system.
  - *Czech Social Security Administration/Česká správa sociálního zabezpečení* pays out compensations focusing on victims of the Nazi and communist regimes.
- **Slovakia**
  - *Department of Rehabilitation and Redress, Ministry of Justice of the Slovak Republic*. The Department describes its competence as follows: "This department handles claims for redress, identifies the group of entitled persons, acquires relevant court files and files on served sentences; searches archival material from the period concerned, identifies the legal basis, the scope and amount of claims and issues decisions on redress; gives material

compensation to persons rehabilitated by courts, grants compensations to injured parties for detriment suffered by the decision of state body or its erroneous official procedure; gives pecuniary compensation to mitigate wrong under special laws; represents the Slovak Republic and the Ministry in lawsuits or redress and enforces claimant's claims according to final court rulings; handles citizens' claims in the field of redress."<sup>16</sup>

- National Property Fund of the Slovak Republic Under Acts 87/1991 and 319/1991 as amended, the National Property Fund settles certain claims through the issuance of bonds.

### 3.2.2 Non Governmental Organizations

In almost all Member States, there exist a huge number of NGOs and associations dealing with one or several of the issues included in this study. For instance, in Spain not least than 200 NGOs and associations are active in the area of transitional justice. This section provides just an overview and further information can also be found under the heading 4.4 on NGOs/associations dealing with victims and also under the heading 6.3 and 8.1.2 (research projects).

- **Austria** The *Jewish Documentation Center* in Vienna, founded by Holocaust survivor Simon Wiesenthal (1908-2005). According to the *Simon Wiesenthal Center* in Los Angeles, the Jewish Documentation Center played a role in finding “nearly 1,100 Nazi war criminals,” the most notorious of which was Adolf Eichmann.<sup>17</sup> *Jewish Claims Committee*, especially active in the 1950s and 1960s and the *World Jewish Congress*.
- **Bulgaria** In the beginning of 2009 the NGOs that are listed below, propagated in Bulgaria the Appeal to the Citizens of European Union, addressed by the participants in the International conference “Communist Crimes and the Common History of Europe”. They also came out with a Call to the Bulgarian citizens not to vote in the coming elections for the European Parliament and Bulgarian National Assembly in favor of candidates that had collaborated with the former State security.
  - *Bulgarian Helsinki Committee* - ([www.bghelsinki.org](http://www.bghelsinki.org)), created in 1990; chairman Krassen Stanchev;
  - “*Truth*” *Union* – founded on 26 July 1990, chairman Georgi Markov. The purpose of the organization is to reveal the crimes of Communist regime and to unite all the repressed and their heirs;
  - “*Hanna Arendt*” Center – Sofia, headed by the sociologist Vassil Kadrinov;
  - “*The Anna Politkovskaya freedom of thought organization*” - ([www.politkovskaya-bf.blogspot.com](http://www.politkovskaya-bf.blogspot.com))
  - *Civil Initiative “Justice”* - ([www.spravedlivost.net](http://www.spravedlivost.net))
  - *Coalition for Fair Rule*
  - *Republican Conservative Institute*

<sup>16</sup> Ministry of Justice of the Slovak Republic, Department of Rehabilitation and Redress, “The scope and competence of the department” and “Legal provisions related with the agenda of the department,” <http://www.justice.gov.sk/a/wfn.aspx?pg=h050&htm=htm=h0/h03/drr.htm>.

<sup>17</sup> See [www.wiesenthal.com](http://www.wiesenthal.com)



- *The Assistance Centre for Torture Survivors* – ACET is a Bulgarian non-governmental organization, founded in the end of 1995. Its main aims are the prevention of torture practices and the providing of rehabilitation services for victims of torture ([www.acet-bg.org](http://www.acet-bg.org)).
- **Czech Republic** *Foundation for Holocaust Victims/Nadační fond oběti holocaustu*. Funded by corporations, governments/municipalities, non-profit organizations, and individuals, the FHV distributed the 300 million crowns the Czech Republic's
- **Latvia** The 1989 founding of the “*Latvian Association of the Politically Repressed*” initiated a twenty-year drive by this NGO to create memorial sites in all prominent and not so prominent places where acts of repression occurred during the Soviet era. Such efforts have been financially assisted by the national government over the years, especially in the case of the most prominent (around Riga) which are frequently included in the itineraries of visiting officials from other countries.
- **Lithuania** *The Union of Political Prisoners and Deportees (LPKTS)* is the oldest, most prominent and largest NVO working on the support, commemoration and memorialisation of the victims of the Soviet regime in Lithuania. It was established on 30 July 1988 and has 58 regional branches and more than 28,000 members of whom the majority are former deportees and political prisoners. Among its principals aims are ‘strengthening of independence, justice, democracy and statehood’.<sup>18</sup> It is also involved in ‘the liquidation of the consequences of the Communist genocide of the Lithuanian nation and the reconstitution of the historical truth about the resistance to occupations.’ LPKTS is most active in the cultural field and is heavily involved in the memorialisation work of the Soviet victims. Hundreds of monuments and several memorials have been built by efforts and means of the Union in memory of the killed Lithuanian partisans and the victims of Soviet occupation. LPKTS also functions as the organization involved in the defence of the interests of the former victims including philanthropic activities of their material support. LPKTS collaborates with LGGRTC, conducts historical research, publishes memoirs of victims and also has its journal and a weekly. LGGRTC is funded partly from its membership fees as well as by state agencies. LPKTS is also a political organisation which takes part in elections of all levels, nominates its candidates and implements its program through the elected representatives. Currently its political representatives are part of the Conservative Homeland Party of Lithuania.
- **Poland**
  - *Ośrodek KARTA* originally created in 1982 as an underground paper, and legalised in 1990, KARTA is another NGO dealing with the issues of transitional justice. It specialises in 20th Century history, with an emphasis on the legacies of fascism and communism. It organises educational programmes and exhibitions, archives relevant documents, and creates databases with information on individuals persecuted during the Stalinist period. It also initiated a creation of the Dom Spotkań z Historią (History Meeting House), which is has been active since March 1<sup>st</sup>, 2006. Its activities are aimed at education about modern history; it organises numerous exhibitions, seminars and

<sup>18</sup> For details see <http://www.lpkts.lt/>

conferences, as well as publishes books and reports. [http://www.karta.org.pl/osrodek/Historia\\_Osrodka/14](http://www.karta.org.pl/osrodek/Historia_Osrodka/14) .

- *Helsinki Fundacja Praw Czlowieka* has created a program entitled "Human Rights and Dealing with the Past" ("Prawa człowieka a rozliczenia z przeszłością"), active since March 200, and financed from CEE Trust and Open Society Institute grants. The program focuses on lustration, WSI report (Military Intelligence Service report), and so-called dezubekizacja, i.e. a proposed vetting law with a very wide scope. Foundation provides legal advice and guidance to those whose rights have been infringed on by the state. They also participate in court proceedings as *amicus curiae*. Foundation's presence in the media provides public opinion with objective information on the issues related to the procedures on dealing with the communist past and their implementation.

#### ○ Romania

- *Timisoara Society (Societatea Timisoara)* is an anticommunist organization promoting transitional justice. Constituted immediately after the Revolution of 1989, it drafted the *Proclamatia de la Timisoara* of March 1990, asking for lustration. Point 8 of this Proclamation called for a temporary ban on former Communist Party officials and Securitate secret agents seeking public office in post-communist times.
- *The 21 December 1989 Association (Asociatia 21 Decembrie 1989)* formed on 9 February 1990 by participants to the Revolution and led by Teodor Marines. Among its objectives are a free press, lustration, and the truth about the Revolution.
- *Association of the Wounded in the Revolution on 22 December 1989 in Sibiu (Asociatia Ranitii Revolutiei 22 decembrie 1989 Sibiu)* was set up on 1990 by persons wounded in the Revolution of 1989 in the town of Sibiu. Its mission is "to find the truth about the anticommunist revolution of December 1989, to protect the ideals of the revolution, and the principles of liberty and democracy, and promoting these values in Romania and abroad. Based on the principles of honor, morality and patriotism, the association will fight against the granting of unwarranted privileges and benefits to those who were not wounded in the revolution." It is funded by membership fees and donations.
- *Association Memorial of the Revolution 16-22 December 1989 Timisoara (Asociatia Memorialul Revolutiei 16-22 Decembrie 1989 Timisoara)* was set up on 26 April 1990. The association has erected in Timisoara 12 monuments dedicated to the memory of the local victims of the Revolution, and has published a number of volumes.
- *Association of Fighters, Wounded and the Victims' Descendants 'Brasov December 1989' (Asociatia Luptatorilor, Ranitilor si Urmasilor Eroilor 'Brasov Decembrie 1989')* was set up on 6 August 1990. It defends the rights of the victims of the Revolution, seeks to inform the public about the Revolution, and fights against totalitarianism and for democracy. It is led by a president (currently Lazar Maior), and a 20-member leadership council elected. The association is financed through membership fees and donations.

- *Association of Former Political Detainees in Romania (Asociația Fostilor Detinuți Politici din România or AFDPR)* represents the interests of the former communist political prisoners. In December 1990, it had a total of 98,700 members, most of them over 70 years of age. Its new president, Octavian Bjoza, claimed that the Association covers its expenses through membership fees. The Association has financed the building of monuments dedicated to victims of the communist regime throughout Romania, has published a number of volumes of memoirs written by former political prisoners, and has tried to help former prisoners in covering their medical costs during the 1990s.
- **Slovakia** *Council for the Compensation of the Victims of the Holocaust in the Slovak Republic (Kancelária Rady na odškodnenie obeť holokaustu)* (<http://www.holocaustslovakia.sk>). Established by the Central Union of Jewish Religious Communities, the Council coordinated the compensation process for Holocaust victims in the Slovak Republic, allocating state funds according to Government Resolution 1027 of 2002.

### 3.2.3 Other type of institutions (research centers and institutes, museums)

Museums are referred more precisely in section 8.1.4. This section presents mainly research institutions. Many of these are also mentioned in section 8 under research projects.

- **Belgium** The SOMA/CEGES (*Studie- en documentatiecentrum Oorlog en hedendaagse Maatschappij/ Centre d'Etudes et de documentation Guerre et Sociétés contemporaines*) ([www.cegesoma.be](http://www.cegesoma.be)), created as a scientific centre to study World War II in 1969. The centre broadened its thematic spectrum from the Second World War to the 20<sup>th</sup> century wars and conflicts in 1997 and has become, after four decades of existence, an international reference as research institution and as collector of relevant documentation. The SOMA/CEGES resorts under the Federal science policy administration. SOMA/CEGES.
- **Bulgaria**
  - *Institute for Studies of the Recent Past* ([www.minaloto.com](http://www.minaloto.com)) – non-governmental organization, founded in 2005 under the guidance of Prof. Ivaylo Znepolski. The purpose of the Institute is to study the regime in Bulgaria from 1944 till 1989 from historical, psychological social and even anthropological point of view.
  - *Institute for the Research of Communist Crimes*. Director: Kalin Manolov. The Institute was founded on 15 January 2005 in Sofia by historians, journalists, scientists and other public figures with the task to study and carry out research work of Communist ideology and practice in Bulgaria and to inform Bulgarian and world society about the Communist crimes, thus bringing about its condemnation. Director of the Institute Board is Kalin Manolov – a journalist.
  - The *Free and Democratic Bulgaria Foundation (Fondacia Svobodna i nezavissima Bulgaria)* (1991) has as main activities the democratization of Bulgarian society, but it is also active in

the publishing of literature, dealing with the Communist past. There are a number of websites, dedicated to collecting and disseminating memories of the repressions. One of them is the web portal “The Bulgarian Communism” (<http://www.red.cas.bg/id-41/about-the-portal.html>), which combines the efforts of academic and non-academic researchers. Another website is dedicated especially to testimonies about the repressive nature of the system ([www.spomeniteni.org](http://www.spomeniteni.org)). Furthermore, the web portal “Decommunization” gathers and publishes various testimonies on the ideology and practice of communism (<http://www.geocities.com/decommunization/Communism/Bulgaria>).

- **Denmark** *Danish Institute for International Studies* has a section on *Holocaust and Genocide* (DIIS). DIIS works with processes that lead to genocide with special focus on the role of the state, both in relation to committing genocide and combating it, and the remembrance and commemoration culture that has evolved in the wake of the Holocaust and other instances of genocide. The research includes studies of European reactions to genocide, historically and in the present; the commemoration culture and the significance of the past in current policies; and philosophical studies of the role and responsibility of the state in relation to genocidal processes.
- **Estonia** *Estonian Foundation for the Investigation of Crimes Against Humanity*, S-KESKUS. S-KESKUS is a non-profit association aiming at developing the academic as well as popular research of the recent history of Estonia creating for its members favourable conditions for launching, carrying out, and maintaining recent history research projects, publishing the findings and source materials, arranging scientific symposiums, conferences, and seminars, co-operating with research organizations of similar nature in Estonia and abroad, publishing materials about the activities of the association.
- **Germany**
  - In the mid 1980s, NS-Dokumentationszentren was created in some German towns. It contains exhibitions on the Third Reich and the history of National Socialism with examples of both consent and coercion and persecution in the region.
  - The *Institut für Zeitgeschichte* (IfZ) (Institute of Contemporary History) in Munich, Germany was founded in 1949 following the American initiative of re-education. It is a national research institution dedicated to research into the Third Reich under a multitude of aspects. Its library contains more than 250,000 volumes, its archives have significant holdings on the Nuremberg trials such as records of court sessions, indictments and sentences as well as files on German trials against Nazi criminals. Two branches of the Institute have been established in Berlin since, one devoted to research on German foreign policy since the 1950s, editing the Documents on the Foreign Policy of the Federal Republic of Germany, the other dealing with the history of East Germany.
  - The *Dokumentation Obersalzberg* (Hitler’s mountain resort) and the *Dokumentationszentrum Reichsparteitagsgelände* in

Nuremberg present an integrated approach to national socialism which focusses not only on the repression and persecution, but explains also the attraction the Third Reich held for ordinary Germans

- The ‘*Federal Foundation for Working Through the SED Dictatorship*’ (*Bundesstiftung zur Aufarbeitung der SED-Diktatur*), which was established in 1998 at the suggestion of a parliamentary commission. The mandate of the Foundation, as a *bundesunmittelbare Stiftung öffentlichen Rechts* (a federal foundation according to public law) was to engage in the *Aufarbeitung* of the dictatorship (its causes, its history and consequences), but also to preserve memory and to contribute to strengthening the ‘antitotalitarian consensus’ in German society, democracy and ‘inner unity’. It also established an archive and a library. Its main activity, however, has been to support NGO-initiated projects to preserve memory and debate the past. The Foundation is under the legal supervision of the *Beauftragte der Bundesregierung für Kultur und Medien*—literally the Federal Delegate for Culture and Media—in the Federal Chancellery—effectively, but not by name or legal position, the German culture minister. The federal foundation has a current annual budget of 4,9 million Euros. The Foundation has created its own archive and a library, its work is supported by three academic advisory councils, or *Fachbeiräte*: one for *gesellschaftliche Aufarbeitung* (coming to terms with the past in society), one scientific/academic one (*Fachbeirat Wissenschaft*) and one devoted to archives. The main work of the Foundation has been to support initiatives from within civil society (which have often had financial difficulties and depend on some form of official funding). Since 1998 the Foundation has spent 22,5 million Euros for more than 1800 projects in (mostly) Germany and abroad; these included 220 exhibitions, 100 documentary films and 250 books. 200 projects have aimed at making sources relating to the GDR opposition accessible; 500 projects proposed by associations of victims of the dictatorship have been supported by the Foundation.<sup>19</sup> Finally, the Foundation also organizes its own workshops and conferences, publishes an academic journal, *Jahrbuch für Historische Kommunismusforschung*, offers advice, counsel and support for victims of the dictatorship (on which 5,5 million Euros have been spent so far), and, not least, advances curricular contents about the dictatorship in schools. It cooperates with research centers and civil society groups outside the Federal Republic, such as Memorial in Russia and the ‘House of Terror’ in Budapest. According to its self-presentation, the Foundation has 300 partner institutions worldwide.
- There are numerous research institutes and projects at universities dealing with the GDR past (the most prominent ones probably being the *Zentrum für Zeithistorische Forschung* in Potsdam and

<sup>19</sup> Bundesstiftung zur Aufarbeitung der SED-Diktatur, *Tätigkeitsbericht 2007* (Berlin, 2008), 6.

the *Forschungsverbund SED-Staat* at the Free University in Berlin)

- **Hungary** The *Institute for the History of the 1956 Hungarian Revolution* (<http://www.rev.hu/portal/page/portal/rev/aktualitasok>) considers itself primarily the successor of the Imre Nagy Institute of Sociology and Politics, which operated in Brussels between 1959 and 1963, and of other western emigrant organizations and writers that maintained the inheritance of the Hungarian Revolution for more than three decades. In Hungary, the efforts of what was to become the 1956 Institute go back as far as the early 1980s, when participants of the Revolution began to reconstruct and historicize the events of 1956. With the help of interviews, memoirs, discussions, and with what documents could be collected, these scholars have attempted to establish a genuine account of the events in Hungary in and around 1956. The Committee for Historical Justice was founded partly with the same purpose in the spring of 1988. The Oral History Archives was established in 1986 with the primary goal of recording as many interviews with figures of the Revolution as possible. The preparatory committee and temporary international board of trustees of the 1956 Institute were formed on June 17, 1989, the day after the reburial of Imre Nagy and his fellow martyrs. On March 1, 1990, the 1956 Institute and its foundation were legally registered. On March 16, on the initiative of Domokos Kosáry, the Hungarian Academy of Sciences formed the Academic Documentation and Research Group for the History of the 1956 Hungarian Revolution. In 1995, the government of the Hungarian Republic granted the 1956 Institute, until then a social organization, the official status of a public foundation.
- **Latvia** The *Institute of History, University of Latvia* has a research program, now funded almost entirely by a national research grants system, that includes a section dealing with the history of the Soviet and Nazi regimes (*Padomju un nacistiskā režīma pētniecības nodaļa*) staffed by ten specialists and focused on producing a detailed history of the two totalitarian regimes in Latvia. Among the current projects is the development of a data base of all the persons arrested by the Soviet authorities in 1940-41 that includes the names of all the victims and the individualized history of their involvement with the repressive organs of the USSR. The home page of the section is [http://www.lvi.lv/lv/okupnod.htm#vestko\\_misija](http://www.lvi.lv/lv/okupnod.htm#vestko_misija).  
*Center for Judaic Studies, University of Latvia*, for details see point 8.1.4.
- **Lithuania** *Genocide and Resistance Research Centre*. Under the rubric of ‘continuous programmes,’ the Genocide and Resistance Research Department conducts research on the history of the armed resistance movement, the Holocaust, the role of émigré organizations in the liberation of Lithuania from Soviet rule, the history of the KGB in Lithuania, and the Sovietization of cultural life and its aftermath in Lithuania. The Memorial Department collects, systematises and exhibits material about genocide victims and resistance participants.
- **The Netherlands** The *NIOD Netherlands (State) Institute for War Documentation* (NIOD). In the first days after the Liberation, a National Centre for the Documentation of World War II (RIOD, since 1996

NIOD) was founded to collect sources of all kinds related to the recent experiences of war and occupation, both of the Netherlands proper and its overseas territories. Thus, it was the first historical centre of its kind in Europe. Besides collecting sources, its assignment was to produce inventories of the sources, make them accessible and prepare historiography. The NIOD is still in existence, since 1999 no longer as part of the Ministry of Education, but as an independent research institute and archive within the Royal Netherlands Academy of Arts and Sciences (KNAW). The writer of these pages is attached to the NIOD.

- **Poland** The *Institute of National Remembrance* is in charge of public education and has been engaged in research regarding the 1939-1989 period, as well as dissemination of the research results in the form of publications, exhibitions, seminars, etc.

*The Jewish Historical Institute* focuses entirely on the study of the history and culture of Polish Jews. It is the largest depository of Jewish-related archival documents, books, journals, rituals and art objects.

- **Romania**

- *Institute for Jewish Studies and Jewish History Moshe Carmilly* in Cluj (*Institutul pentru Studii Evreiesti si Istoria Evreilor Moshe Carmilly*) is part of the Faculty of History of the University Babes-Bolyai. This six-member institute is geared on studies on Jewish presence in Transylvania. It is not clear when exactly was the institute created, but its periodical, *Studia Judaica*, has been published from 1991 to 2004.

- *Center for Research and Study of Jewish History and Civilization, (Centrul de Cercetare si Studiere a Istoriei si Civilizatiei Evreilor din Sud-estul Europei)* at the University of Craiova, is directly subordinated to the university rector. Created in 1995, the center publishes *Anuarul Centrului de Studii si Cercetari ale Istoriei, Culturii si Civilizatiei Evreilor din Sud-estul Europei*, a periodical dedicated to Jewish studies.

- *Center for Hebrew Studies Goldstein-Goren (Centrul de Studii Ebraice Goldstein-Goren)* at the University of Bucharest. Created in 1998 in collaboration with the Cukier Goldstein Goren Foundation, it offers a Master of Arts in Hebrew Culture and Civilization, and publishes the yearly *Studia Hebraica* academic review. It also invites foreign professors, organizes conferences, coordinates research projects in Jewish culture and arts, grants scholarships to students, and supports research of Jewish authors.

- *Center of Jewish Studies and Hebrew Studies (Centrul de Istorie a Evreilor si Ebraistica)* is part of the Faculty of History of the University A. I. Cuza of Iasi. It was created on 12 November 1999, and started its teaching and research activity in 2004.

- **Portugal** “*Não Apaguem a Memória!*” (NAM - *Do Not Erase the Memory*)

- **Slovenia**

- The *Study Centre for National Reconciliation*. Its task is to examine recent Slovenian history with the emphasis on the study of all three totalitarian systems present in the Slovenian territory: Fascism, Nazism and Communism.

- *Institute of Contemporary History* (1989)
- *Museum of Contemporary History of Ljubljana*
- **Spain** The *National Library* has created a specific web site with resources on historical memory containing documents, posters, videos, photos and a whole collection of books (20000 volumes, the Comín Colomer Collection) on Spanish history and the Civil War (<http://www.bne.es/productos/MemoriaHistorica/0-entrada.htm>)
- **Sweden** The *Institute for Information on the Crimes of Communism* (<http://www.upplysningomkommunismen.se/?page=english>). The IICC/UOK (The Institute for Information on the Crimes of Communism) is an organization founded in 2006. The aim of the organization is to honour the victims of Communism and to raise awareness of Communist crimes, with a special attention to the younger generations. The IICC/UOK also promotes vigilance towards other totalitarian and anti-democratic movements. The IICC/UOK publishes information materials and media, surveys, reports, and teaching materials, participates in the public debate, and organizes film screenings, seminars, hearings, media events and exhibitions related to the subject.

**Table 3.2.3 Research centres and institutes (non exhaustive list) 1**

<b>Member State</b>	<b>Institutes and Research Centres</b>
Austria	<ul style="list-style-type: none"> <li>• Jewish Documentation Center in Vienna</li> <li>• Institute for the History of Jews in Austria Former Synagogue in St. Pölten</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>• Centre for Historical Research and Documentation on War and Contemporary Society (SOMA/CEGES)</li> <li>• Auschwitz Foundation, Public utility Institution Memory of Auschwitz, Studies and Documentation Centre</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>• Institute for Studies of the Recent Past</li> <li>• Institute for the Research of Communist Crimes</li> <li>• The Free and Democratic Bulgaria Foundation</li> </ul>
Cyprus	<ul style="list-style-type: none"> <li>• Cyprus Research Centre</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>• Foundation for Holocaust Victims</li> <li>• The Czechoslovak Documentation Centre</li> <li>• The Jewish Museum (Prague)</li> <li>• Memory of the Nation</li> <li>• The Oral History Center</li> <li>• Terezin Initiative Institute</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>• Danish Institute for International Studies, Holocaust and Genocide</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>• Estonian Foundation for the Investigation of Crimes against Humanity</li> </ul>
Finland	n.a.
France	<ul style="list-style-type: none"> <li>• Foundation for the Memory of the Deportation (Paris)</li> <li>• Center of history of the Resistance and Deportation (Lyon)</li> <li>• Edmond Michelet Study Centre (Corrèze)</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Institute of Contemporary History</li> <li>• Gelsenkirchen under National Socialism Documentation Center</li> <li>• National Socialist Documentation Center and Memorial Museum Gestapo Prison in the EL-DE-House</li> <li>• Nürnberg Fascination and Power: Documentation Center at the</li> </ul>



	<ul style="list-style-type: none"> <li>Reich Party Congress Grounds</li> <li>• Topography of Terror Foundation</li> <li>International Documentation and Encounter Center</li> </ul>
Greece	<ul style="list-style-type: none"> <li>• Central Jewish Board of Greece</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Holocaust Memorial Center (Budapest)</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>• The Holocaust Educational Trust of Ireland</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Jewish Contemporary Documentation Center (CDEC) (Milan)</li> <li>• Cultural Centre of the Rome Jewish Community</li> <li>• Centre for Research, Documentation and Promotion of Padule di Fucecchio</li> <li>• Deportation Remembrance Foundation (Milan)</li> <li>• Cultural Centre of the Rome Jewish Community</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>• Association of Politically Repressed Persons</li> <li>• National Human Rights Committee</li> <li>• National Center for the Study of Human Rights and Ethnicity</li> <li>• Institute of History, University of Latvia</li> <li>• Center for Judaic Studies, University of Latvia</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>• Genocide and Resistance Research Centre of Lithuania</li> <li>• Lithuanian Genocide Victims Memorial Institute</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>• Centre virtuel de recherches interdisciplinaires sur le Luxembourg (CRIL)</li> <li>• Documentation and Research Centre on the Resistance Villa Pauly</li> </ul>
Malta	<ul style="list-style-type: none"> <li>• Public Memory Centre at the University of Malta</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>• Institute for War Documentation (NIOD)</li> <li>• Jewish Market Children's Monument Foundation</li> <li>• The Netherlands War Graves Foundation (The Hague)</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• Institute of National Remembrance</li> <li>• Jewish Historical Institute (Warsaw)</li> <li>• European Centre of Solidarity</li> <li>• Lech Wałęsa Institute</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>• Nao Apaguem a Memória (NAM)</li> </ul>
Romania	<ul style="list-style-type: none"> <li>• International Center for Studies on Communism</li> <li>• Romanian Cultural Institute</li> <li>• National Institute for the Study of Totalitarianism</li> <li>• Institute of the Romanian Revolution</li> <li>• The “Goldstein Goren” Center for Hebrew Studies</li> </ul>
Slovakia	<ul style="list-style-type: none"> <li>• Czechoslovak Documentation Centre</li> <li>• Holocaust Documentation Center</li> <li>• Milan Šimečka Foundation</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>• The Study Centre for National Reconciliation</li> <li>• Institute of Contemporary History</li> </ul>
Spain	<ul style="list-style-type: none"> <li>• Centre for the Study of the Franco and Democratic Periods (Catalonia)</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>• Swedish Holocaust Memorial Association (SHMA)</li> <li>• The Institute for Information on the crimes of Communism</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>• Holocaust Research Centre at the Royal Holloway, University of London</li> <li>• The Stanley Burton Centre for Holocaust Studies</li> </ul>

Source: Own elaboration

### **3.3 Legislation on publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political conviction.**

This study aims inter alia to examine whether Member States criminal legislation provides that the following conduct is punishable: publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference **to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political conviction**. The situation at national level is complex. In general, legislation on the denial of crimes is related to the type of crime (*genocide, war crimes, crimes against peace and humanity*) rather than in the categorization of victims.

#### **1. Member States without specific legislation on publicly condoning, denying or grossly trivialising genocide or crimes against humanity.**

**Bulgaria, Estonia, Finland, Greece, Hungary, Ireland, Italy, Malta, The Netherlands, Sweden and the UK** do not have specific legislation on publicly condoning, denying or grossly trivialising genocide or crimes against humanity. *Prima facie*, legislation in these countries does not seem to enable incriminate conducts of publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political conviction.

**All these 11 Member States** have enacted legislation that punishes incitement to forms of hate and racial and other kind of discrimination. Having these legal basis, it is not excluded that in certain circumstances Courts may apply them extensively also to cases of denials. **The Netherlands** provides a case that exemplifies this use: the Supreme Court held in 1987 that the articles of the Criminal Code punishing racist or discriminatory behaviours could be applicable to Holocaust denial (Decision H.R. 27 October 1987, NJ 1988, 538. Adde H.R. 25 novembre 1997, NJ 1998, 261). (See table 3.3.a as regards national courts cases).

#### **2. Member States with specific legislation on denial of crimes of genocide or crimes against humanity**

Within this category, there are three different sub-categories of legal framework:

##### ***a. Member States whose legislation on denial refers explicitly to genocide and/or crimes against humanity as defined in international law.***

Reference can be made to international law in general, to the Statute of the International Criminal Court or to the Charter of the International Military Tribunal or to crimes recognised by international courts.

- **France** Law no. 90-615 of 13 July 1990 refers to *crimes contre l'humanité tels qu'ils sont définis par l'article 6 du statut du tribunal militaire international annexé à l'accord de Londres du 8 août 1945 et*

*qui ont été commis soit par les membres d'une organisation déclarée criminelle en application de l'article 9 dudit statut, soit par une personne reconnue coupable de tels crimes par une juridiction française ou internationale.*

- **Lithuania** A September 2009 Law refers to genocide and crimes against humanity as acknowledged by the legal acts of the Republic of Lithuania or the European Union, or by enforceable judgements of the courts of the Republic of Lithuania or by international courts.
- **Luxembourg** Article 457-3 of the Criminal Code refers to war crimes or crimes against humanity as defined in the statutes of the International Military Tribunal of 8 August 1945 or the existence of a genocide as defined by the Act of 8 August 1985

Additionally:

- **Latvia** On 16 October 2008 the parliament approved in the first reading amendments to the Criminal Law which foresee criminal liability for the public glorification or justification of regimes that have committed genocide or persons convicted of genocide or denial of genocide that would be punishable by imprisonment for up to five years or community service. The amendments were drafted by the Ministry of Justice and referred to Article 1.1 (c) of the draft “Framework Decision on Combating Racism and Xenophobia”, which calls upon Member States to take measures to criminalise intentional public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the statute of the International Criminal Court.

**b. *Member States that have ratified the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer Systems, Strasbourg, 28 January 2003.***

This category is close to the first one since the Protocol also refers explicitly to international law:

Article 6 punishes “*distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.*”<sup>20</sup> (see tables 3.3 and 10.2)

Seven Member States have ratified this Additional Protocol so far: **Cyprus, Denmark, France, Latvia, Lithuania, Romania, and Slovenia**. Among these, the following specificities may be identified: **Cyprus** has ratified by means of a specific law defining the crimes; **Denmark** has entered a reservation; **France** and **Lithuania** have made declarations (see below) and **Slovenia** has a domestic definition for these crimes (see below).

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<sup>20</sup> Seven Member States have ratified this Additional Protocol: Cyprus, Denmark, France, Latvia, Lithuania, Romania and Slovenia. Denmark and Lithuania have entered reservations

- **Cyprus** The Protocol has been incorporated into its domestic law by enacting implementing legislation, i.e. Law 26(III)/2004.<sup>21</sup> As a consequence, the following acts have been made criminal offenses under Articles 5 to 7 of the Law and are punishable with imprisonment up to five years or with a fine of up to 35,000 Euros or with both:
  - insulting publicly, through a computer system persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors.
  - distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity.
- **Denmark** has entered a reservation in its ratification “*In accordance with Article 6, paragraph 2, letter b, of the Protocol, the Government of the Kingdom of Denmark declares that Denmark reserves the right to fully or to partially refrain from criminalising acts covered by Article 6, paragraph 1.*”
- **France** issued the following declaration in its document of approval: “*In accordance with Article 6, paragraph 1, of the Protocol, France interprets the terms "international court established by relevant international instruments and whose jurisdiction is recognised by that Party" (Article 6, paragraph 1) as being any international criminal jurisdiction explicitly recognised as such by the French authorities and established under its domestic law*”.
- **Lithuania** At the moment of ratification the Lithuanian government issued the following declaration: “*In accordance with Article 6, paragraph 2, subparagraph a, and Article 12, paragraph 3, of the Additional Protocol to the Convention on Cybercrime, the Republic of Lithuania states that criminal liability for denial or gross minimisation arises if it has been committed "with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors"*”

**c. Member States whose legislation on denial adds or modifies on the international definition**

- **Lithuania** The legislation of 2009 on denial refers not only to crimes recognised in international law but also by Lithuanian law and Lithuanian courts; “*anyone, who orally or in written publicly condoned or justified, trivialised or denied a crime of genocide or other crimes against humanity, or war crimes acknowledged by legal acts of the Republic of Lithuania or the European Union, or by enforceable judgments of the courts of the Republic of Lithuania or by international courts*”. Additionally, Article 99 Criminal Code includes in its definition

<sup>21</sup> Ο περί του Πρόσθετου Πρωτοκόλλου στη Σύμβαση κατά του Εγκλήματος μέσω του Διαδικτύου, αναφορικά με την Ποινικοποίηση Πράξεων Ρατσιστικής και Ξενοφοβικής Φύσης που Διαπράττονται μέσω Συστημάτων Ηλεκτρονικών Υπολογιστών (Κυρωτικός) Νόμος.

of genocide the belonging to a social or political groups. The combination of these two provisions might open grounds for the criminalization of the denial of crimes against social/political groups.

- **Slovenia** Criminal Code (as amended by the Slovenian Parliament in 2008) Article 297 (2) Whoever provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas on the supremacy of one race over another or provides aid in any manner for racist activity or denies, diminishes the significance of, approves of or advocates genocide or crimes against humanity. However, **Slovenia** has also ratified the *Additional Protocol of the Convention on Cybercrime*.

**d. Member States whose legislation on denial does not refer explicitly to international law for the definition of genocide and/or crimes against humanity**

- **Portugal** Article 240 (2) of the Criminal Code punishes anyone who defames or insults an individual or group of individuals on grounds of their race, colour, or ethnic, national or religious origin, particularly by denying war crimes and crimes against peace or humanity, with the intention of inciting to or encouraging racial or religious discrimination (c1)
- **Spain** Article 607 (2) of the Penal Code prohibits the diffusion by any means of ideas or doctrines [denying or] justifying the crimes of genocide In 2007, the Constitutional Court declared partially unconstitutional this later provision, drawing a clear distinction between *denying* and *justifying* (STC 235/2007, 7 November 2007). The Court established that simply denying a crime differs substantially from other kind of conducts that may imply an evaluative adhesion to the crime and, in principle, denying is inane. The mere diffusion of conclusions around the existence or not of certain facts, without any value-judgement, affects the area of scientific freedom. Quoting a former sentence (STC 43/2004 23 March), the Court argues that historical research is always by definition disputable and polemic, since it is constructed around affirmations and judgements on whose objective true is impossible full certainty. The Court differenced conducts spreading ideas that seek to justify genocide. These can be seen as a provocation and incitation to crimes and their punishment is hence totally acceptable..

Being **Spain** and **Portugal** signatories of the UN *Convention on the Prevention and Punishment of the Crime of Genocide* of 9 December 1948,<sup>22</sup> it might be concluded that their understanding of genocide and/or crimes against humanity is comprised within the limits of the definition contained in the UN Convention (i.e. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such):

- (a) Killing members of the group
- (b) Causing serious bodily or mental harm to members of the group
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- (d) Imposing measures intended to prevent births within the group

<sup>22</sup> All 27 Member States but Malta have ratified the Convention

(e) Forcibly transferring children of the group to another group

See table 3.3.a for a relation of national courts cases

### **3. Member States whose legislation on denial refers explicitly to Holocaust/Nazi and/or Communist crimes.**

#### ***a. Member states whose legislation refers explicitly to Holocaust/Nazi crimes***

- **Austria** National Socialism Prohibition Law (1947, amendments of 1992) Article 3h forbids any denial, gross trivialization, approval or justification of the genocide committed under national Socialism or other National Socialist crimes if carried out publicly. Their public endorsement or justification are a criminal offense if they are of a political or propaganda nature. In the event that the offence is not of this nature, or is of little influence, it is defined as an Administrative offence
- **Belgium** Belgian Holocaust denial law (23 March 1995) “*Whoever, in the circumstances given in article 444 of the Penal Code denies, grossly minimizes, attempts to justify, or approves the genocide committed by the German National Socialist Regime during the Second World War shall be punished by a prison sentence of eight days to one year, and by a fine of twenty six francs to five thousand francs*”
- **Germany** Criminal Code amended by an Anti-incitement Law (1994) Section 130 prohibits denial or playing down of the genocide committed under the National Socialist regime (§ 130.3), including through dissemination of publications (§ 130.4)
- **Romania** Governmental Emergency Ordinance 31 of 13 March 2002 on banning Fascist, racist or xenophobic organizations and symbols and celebrating the memory of those guilty of engaging in crimes against peace and crimes against humanity. Article 6 punishes the act of denying, challenging, approving or justifying, by any means, in public, the Holocaust or genocide or crimes against humankind and its effects. **Romania** has ratified also the Additional Protocol on Cybercrime.
- **Slovakia** Criminal Code (2005) Article 422: “*whoever publicly denies, disputes, endorses or tries to justify the Holocaust*”.

#### ***b. Member States whose legislation refers explicitly both to Nazi and “Communist” regimes***

- **Czechoslovakia** During the period of the Czechoslovakia state, the Act No. 480/1991 *Coll. on the Period of the Lack of Freedom*<sup>23</sup> prohibited advocacy of totalitarian/rights-repressive/hate-mongering ideologies. A Constitutional Court decision of September 1992 (Pl. ÚS 5/92), concerning Act. No. 480/1991, on the Period of the Lack of Freedom<sup>24</sup> affirmed its constitutionality. After the separation in two different states,

<sup>23</sup> Zákon 480/1991 Sb. ze dne 13. listopadu 1991 o době nesvobody.

<sup>24</sup> Nález Ústavného súdu Českej a Slovenskej Federatívnej Republiky ze dne 4. září 1992 sp. zn. Pl. ÚS 5/92.

the Czech and Slovak Republics criminalized holocaust denial via Article 261 of their respective criminal codes.

- The **Czech Republic** punishes the person who publicly denies, puts in doubt, approves or tries to justify Nazi or communist genocide or other crimes of Nazis or communists against humanity. (Law Against Support and Dissemination of Movements Oppressing Human Rights and Freedoms (2001). The new criminal code (in effect from January 1, 2010) states in § 405: Whoever publicly denies, disputes, endorses or tries to justify Nazi, Communist or other genocides or other Nazi or Communist crimes against humanity will be punished by imprisonment from six months to three years.<sup>25</sup>
- **Poland** punishes whoever *publicly and contrary to facts contradicts the crimes mentioned in Article 1, clause 1 (...)*. This article mentions crimes perpetrated against persons of Polish nationality and Polish citizens of other ethnicity, nationalities in the period between 1 September 1939 and 31 December 1989: Nazi crimes, communist crimes, other crimes constituting crimes against peace, crimes against humanity or war crimes) (Article 55 of the Act 8 December 1998 Act on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation). Additionally, Article 118 [1] of the Criminal Code includes in its definition of genocide when committed against a group established by reference to its political affiliation.

Both provisions criminalise, firstly, the denial of genocide or other crimes, either against peace, humanity or war crimes or crimes in general. Secondly, both pieces of legislation identify the perpetrating regime: Nazi and Communist regimes. As for the category of victims, they do not refer explicitly to crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political conviction. The Czech law bears a reference to human rights in its title whilst the Polish law contains provisions referred to nationality (Polish) and ethnicity.

The issue is whether the interpretation of these pieces of legislation may be extended to include publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political conviction. *Prima facie*, as it has been pointed out above, the factor determining the response is the type of the crime (genocide, war crimes, crimes against peace and humanity) rather than the categorization of victims. Again, this interpretation depends on the Courts jurisprudence on the issue in specific cases.

Additionally:

- **Lithuania** is currently discussing the criminalization of denial or justification of Soviet aggression, which under their scheme would be punishable under the Criminal Code. In October, 2009 the Lithuanian *Seimas* approved respective amendments to the Criminal Code with 41 votes in favour, 13 against and 25 abstained ballots. The amended bill

<sup>25</sup> Trestní zákoník ke stažení, <http://www.reformajustice.cz/cz/trestni-zakonik/soubory-ke-stazeni.html>.

was initiated by Vilija Aleknaite- Abramikiene of the Homeland Union - Lithuanian Christian Democrat Party faction in the Seimas. According to the amendments in question, those who publicly voice approval of, deny or downgrade either the Soviet Union's or Nazi Germany's acts of aggression against Lithuania, would be punished by fine, arrest or imprisonment for up to two years.

#### *4. Case-law*

Table 3.3 summarises findings on the case law. At least, 8 Member States have had court cases concerning denial. All these cases refer to the Holocaust. According to available information, there is no case where the denial of “communist crimes” has been punished by a national court in the Member States (or other courts).



**Table 3.3a Legislation related to publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes 2**

<b>Member State</b>	<b>Type of Law and year</b>	<b>Definition of offences</b>	<b>Type of liability</b>	<b>Type and level of penalties</b>	<b>Type of conducts</b>	<b>Type of crimes</b>	<b>Case law</b>
<b>Austria</b>	National Socialism Prohibition Law (1947, amendments of 1992)	<p>Article 3h forbids any denial, gross trivialization, approval or justification of the genocide committed under national Socialism or other National Socialist crimes if carried out publicly. Their public endorsement or justification are a criminal offense if they are of a political or propaganda nature. In the event that the offence is not of this nature, or is of little influence, it is defined as an Administrative offence.</p> <p>Article 3g condemns “whoever performs activities inspired by National Socialist ideas”</p>	criminal or administrative offence	<p>A criminal offence: 1 to 20 years in prison if the offender or his activities are considered particularly dangerous (the maximum under Austrian law)</p> <p>An administrative offence: a fine of between 200 and 2000 Euros</p> <p>Prison term from 1 to 10 years. If the offender or his activity is particularly dangerous, prison sentence of up to 20 years</p>	<ul style="list-style-type: none"> <li>- denial</li> <li>- gross trivialization</li> <li>- approval</li> <li>- justification</li> </ul>	<ul style="list-style-type: none"> <li>- genocide under nazi regime</li> <li>- other nazi crimes</li> </ul>	<p>-1981, B.H., M.W., H.P. and G.K. for offences to the Section 3g of the National Socialism Prohibition Law</p> <p>- 1992 and 2009, Gerd Hosnik for Holocaust denial</p> <p>-1993, Walter Ochensberger for offences under Section 3g of the National Socialism Prohibition Law</p> <p>1997, Herwig Natchmann for offences under Section 3h of the National Socialism Prohibition Law</p> <p>-2006, Daniel Irving for denying the existence of gas chambers</p>
<b>Belgium</b>	<p>Belgian Holocaust denial law (23 March 1995).</p> <p>In 2005 a reform aimed at</p>	Denying, minimizing, justifying or approving of the genocide carried out by the German National Socialist regime during	prison and fine	<p>prison: from 8 days to 1 year and a fine up to 125 Euros.</p> <p>A law of 7 May 1999</p>	<ul style="list-style-type: none"> <li>- denial</li> <li>- minimisation</li> <li>- approval</li> <li>- justification</li> </ul>	<ul style="list-style-type: none"> <li>- genocide by nazi regime. The term genocide “<i>is meant in the sense of</i></li> </ul>	<p>-2008, Roeland Raes for Holocaust denial in accordance with the Belgian Holocaust denial</p>

	extending the scope of the denial to other genocides was debated and postponed by the Senate.	the Second World War. Original text: “ <i>Whoever, in the circumstances given in article 444 of the Penal Code denies, grossly minimizes, attempts to justify, or approves the genocide committed by the German National Socialist Regime during the Second World War shall be punished by a prison sentence of eight days to one year, and by a fine of twenty six francs to five thousand francs</i> ”.		gave the judge the possibility to pronounce an additional punishment, namely the removal from the civil rights		<i>article 2 of the International Treaty of 9 December 1948 on preventing and combating genocide</i> ”.	law
<b>Bulgaria</b>	Criminal Code, as amended in 1993	Art. 162 (1) punish whoever propagates or incites racial or national hostility or hatred or racial discrimination	prison	up to 3 years and public reprobation	No provision on denial (only hate speech)		No case law on denial
		Art. 108 (1) punish whoever propagates fascist or other anti-democratic ideology or forcible change of the social and state system established by the Constitution of the	Prison or fine	up to 3 years or a fine of up to 30.000 BGN			

		Republic of Bulgaria					
<b>Cyprus</b>	Law 26(III) incorporating the Additional Protocol to the Council of Europe Convention on cybercrime (2004) Source: <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/189.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/189.htm</a>	Article 6 of the CoE cybercrime protocol <sup>26</sup> .	prison and/or fine	imprisonment up to 5 years and /or with a fine of up to 35,000 Euros	- denial - gross minimisation - approval - justification	- genocide or crimes against humanity <sup>27</sup> (as referred to in CoE cybercrime protocol)	No case law on denial
<b>Czech Republic</b>	Law Against Support and Dissemination of Movements Oppressing	Article 261a punishes (original text) " <i>the person who publicly denies, puts in doubt, approves</i>	prison	from 6 months to 3 years	- denial - disputes - endorsement	- nazi or communist genocide - other crimes of	No case law on denial

<sup>26</sup> **Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems: Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity:**

1 Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right:

distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide... genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party"

2 A Party may either: a) require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise; b) reserve the right not to apply, in whole or in part, paragraph 1 of this article."

<sup>27</sup> According to the Explanatory Report on Article 6, "the drafters agreed that it was important to criminalize expressions which deny, grossly minimise, approve or justify acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 April 1945. This owing to the fact that the most important and established conducts, which had given rise to genocide and crimes against humanity, occurred during the period 1940-1945. However, the drafters recognised that, since then, other cases of genocide and crimes against humanity occurred, which were strongly motivated by theories and ideas of a racist and xenophobic nature. Therefore, the drafters considered it necessary not to limit the scope of this provision only to the crimes committed by the Nazi regime during the 2<sup>nd</sup> World War and established as such by the Nuremberg Tribunal, but also to genocides and crimes against humanity established by other international courts set up since 1945 by relevant international legal instruments (such as UN Security Council Resolutions, multilateral treaties, etc.)." Source: <http://conventions.coe.int/Treaty/EN/Reports/Html/189.htm>

	Human Rights and Freedoms (2001). The new criminal code (in effect from January 1, 2010) takes the same wording in its new Article 405	<i>or tries to justify nazi or communist genocide or other crimes of nazis or communists”</i>			- justification	nazis or communists	
<b>Denmark</b>	Additional Protocol to the Council of Europe Convention on cybercrime (2005)	Article 6. of the CoE cybercrime protocol (see footnote 1). At the moment of the ratification, the Danish government issued the following reservation: <i>“In accordance with Article 6, paragraph 2, letter b, of the Protocol, the Government of the Kingdom of Denmark declares that Denmark reserves the right to fully or to partially refrain from criminalising acts covered by Article 6, paragraph 1.”</i>			- denial - gross minimisation - approval - justification	- genocide - Crimes against humanity (as referred to in CoE cybercrime protocol)	No case law on denial
<b>Estonia</b>	Criminal Code (2002)	§ 151. Incitement to social hatred. Activities which publicly incite to hatred or violence on the basis of nationality, race, colour, sex, language, origin, religion, political opinion, financial or social status	fine or prison	pecuniary punishment or up to 3 years’ imprisonment	No provision on denial (only hate speech)		No case law on denial
<b>Finland</b>	Criminal Code (1 September 1995)	Section 8 - Ethnic agitation: A person who spreads statements or other information among the public where a certain race, a national, ethnic or religious group or a comparable group is threatened, defamed or insulted	fine or prison	prison: up to 2 years / not specified in the Criminal Code	No provision on denial (only racist hate speech)		No case law on denial
<b>France</b>	Law (13 July 1990)	French Law no. 90-615 of 13	fine and/or	prison: from 1 month	- dispute the	Crimes against	-1983 and 2006 Robert

		<p>July 1990, aiming at repressing any racist, antisemitic or xenophobic act (Loi GAYSSOT) reads:  <i>«Art. 24 bis. (L. n. 90-615, 13 juill, 1990, art. 9). - Seront punis des peines prévues par le sixième alinéa de l'article 24 ceux qui auront contesté, par un des moyens énoncés à l'article 23, l'existence d'un ou plusieurs crimes contre l'humanité tels qu'ils sont définis par l'article 6 du statut du tribunal militaire international annexé à l'accord de Londres du 8 août 1945 et qui ont été commis soit par les membres d'une organisation déclarée criminelle en application de l'article 9 dudit statut, soit par une personne reconnue coupable de tels crimes par une juridiction française ou internationale; [...]</i></p>	prison	to 1 year and/or a fine up to 45.000 Euros	existence of one or more crimes against humanity	humanity (art. 6 IMT London agreement)	<p>Faurisson case for denying the Holocaust.                      -1997, Alain Guionnet for having minimised the number of the victims of the Holocaust                      -1998, Francois Lhideux and Jacques Isorni for aiding and abetting a public defence of the crimes of collaboration with the enemy. The case arrived to the ECtHR.                      -2001, Roger Garaudy for denying crimes against humanity in his book "The Founding Myths of Israeli Politics". The case arrived to the ECtHR                      -2004, Roger Chauvy for defamation under the civil law. The case arrived to the ECtHR                      2008, Jean Marie Le Pen for denying a crime against humanity and complicity in condoning war crimes</p>
	Additional Protocol to the Council of Europe Convention on cybercrime (2006)	Article 6. of the CoE cybercrime protocol (see footnote 1).			<ul style="list-style-type: none"> <li>- denial</li> <li>- gross minimisation</li> <li>- approval</li> <li>- justification</li> </ul>	<ul style="list-style-type: none"> <li>- genocide</li> <li>- Crimes against humanity (as referred to in CoE cybercrime protocol)</li> </ul>	

<b>Germany</b>	Criminal Code, as amended in 1994 (Anti-incitement Law) and 2005 (Anti-sedition Law)	Paragraph 3 of section 130 punishes “Whosoever publicly or in a meeting approves of, denies or downplays an act committed under the rule of National Socialism”	fine or prison	up to 5 years in prison or a fine	-approval -denial --minimisation -glorification -justification	Genocide under National Socialist regime	-1950, Wolfgang Hedler, for minimisation of the Holocaust and for defamation of members of the resistance -1989, Mr. F.P. for denying historical events (the case arrived to the ECtHR) -1992, Otto Remer, for incitement to hatred and race hatred (for denying the existence of gas chambers in some articles). The case arrived to the ECtHR) -1996 and 2001, Hans-Jürgen Witzsch for disparaging the dignity of the deceased. Both cases arrived to the ECtHR) -2007, Gernar Rudolf for inciting hatred, disparaging the dead, and defamation -2007, Ernst Zündel for putting in doubt the existence of the Holocaust -2008, Johannes Lerle for racial incitement -2009, Horst Mahler for Holocaust denial and trivialisation of Nazi war crimes
		Paragraph 4 of Section 130 punishes “whosoever publicly or in a meeting disturbs the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or justifying National Socialist”		Up to 3 years or a fine			
		Section 189 Violating the Memory of the dead (another way for the Courts to prosecute denial of genocide) punishes “Whosoever defames the memory of a deceased person”	Fine or prison	Up to 2 years			

							<p>-2009, Sylvia Stolz (Mahler's wife) for Holocaust denial</p> <p>-2009, the German Constitutional Court upheld the constitutionality of the Anti-sect law banning neo-Nazi marches</p>
<b>Greece</b>	Law (1979), amended by Law 1419/1984 and Law 2910/2001	Law 927/1979 "on punishing acts or activities aiming at racial discrimination" penalizes: (a) to wilfully and publicly, either orally or by the press or by written texts or through pictures or any other means, incite to acts or activities which may result in discrimination, hatred or violence against individuals or groups of individuals on the sole grounds of the latter's racial or national origin or [by virtue of article 24 of Law 1419/1984] religion; (...) (c) to express publicly, either orally or by the press or by written texts or through pictures or any other means offensive ideas against any individual or group of individuals on the grounds of the latter's racial or national origin	prison or fine	prison: up to 2 years	No provision on denial (only <i>racist</i> hate speech)		<p>-2007, Konstantinos Plevris for inciting racial hatred by a Greek court based on excerpts and quotations from well-known international individuals throughout history used in his book "The Jews: The Whole Truth". He was acquitted.</p>

		or religion					
<b>Hungary</b>	Criminal Code (1978)	Section 269 A person who incites to hatred before the general public against a) the Hungarian nation, b) any national, ethnic, racial group or certain groups of the population	prison	up to 3 years	No provision on denial (only hate speech)		No case law on denial
<b>Ireland</b>	Prohibition of Incitement To Hatred Act (1989)	It shall be an offence for a person (a) to publish or distribute written material (b) to use words, behave or display written material (c) to distribute, show or play a recording of visual images or sounds if the written material, words, behaviour, visual images or sounds, as the case may be, are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred.	prison and/or fine	prison up to 2 years. Fine: up to £ 10,000	No provision on denial (only hate speech)		No case law on denial
<b>Italy</b>		Rejected a draft Holocaust denial law proposing a prison sentence of up to four years in 2007  Hate speech: Section 3(1) a. of Law N° 654/1975 as amended by Law N° 205/1993 prohibits the dissemination of ideas based on superiority or racial and ethnic discrimination	prison	Up to three years	No provision on denial (only hate speech)		No case law on denial



<b>Latvia</b>	On 16 October 2008 Parliament approved in the first reading amendments to the Criminal Law	The amendments criminalise the public glorification or justification of regimes that have committed genocide or persons convicted of genocide or denial of genocide	Prison or community service	imprisonment for up to 5 years or community service.	-glorification -justification -denial	-genocide	No case law on denial
	Additional Protocol to the Council of Europe Convention on cybercrime (2004)	Article 6 of the CoE cybercrime protocol (see footnote 1)			- denial - gross minimisation - approval - justification	- genocide - Crimes against humanity (as referred to in CoE cybercrime protocol)	
<b>Lithuania</b>	A bill aimed at establishing criminal responsibility for public condoning, denying or trivialising crimes of genocide, crimes against humanity and war crimes was introduced in the Seimas on 5 June 2007 and approved in September 2009	The bill criminalises: <i>“Anyone, who orally or in written publicly condoned or justified, trivialised or denied a crime of genocide or other crimes against humanity, or war crimes acknowledged by legal acts of the Republic of Lithuania or the European Union, or by enforceable judgments of the courts of the Republic of Lithuania or by international courts”</i>	fine, arrest or imprisonment	prison up to two years	-condonation -justification, -trivialisation -denial	-genocide -crimes against humanity - war crimes  Recognized by Lithuania or EU law or Lithuania or international court	No case law on denial
	Additional Protocol to the Council of Europe Convention on cybercrime (2004)	Article 6 of the CoE cybercrime protocol (see footnote 1). At the moment of ratification the Lithuanian government issued the following declaration: <i>“In accordance with Article 6, paragraph 2, subparagraph a, and Article 12, paragraph 3, of the Additional Protocol to the Convention on Cybercrime, the Republic of Lithuania states that criminal liability for denial or</i>			Denial Gross minimisation with racist intention	Genocide Crimes against humanity (as referred to in CoE cybercrime protocol but <i>if committed with the intent to incite hatred, discrimination or violence against any individual or group</i>	

		<i>gross minimisation arises if it has been committed "with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors".</i>				<i>of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors</i>	
<b>Luxembourg</b>	Criminal Code (Law of 1997)	Article 457-3 "(...) a person who, by one of the means listed in the above paragraph, has contested, minimised, justified or denied the existence of war crimes or crimes against humanity as defined in the statutes of the International Military Tribunal of 8 August 1945 or the existence of a genocide as defined by the Act of 8 August 1985.	fine and prison	between one week and 6 months in prison and/or a fine up to 25,000 Euros	- denial - dispute - minimisation - justification	-war crimes and crimes against humanity (as defined in the statutes of the IMT 1945 London agreement) - genocide as defined by the Act of 8 August 1985 (this law punishes genocide committed on standard grounds (national, ethnic, racial or religious group))	No case law on denial
<b>Malta</b>	Criminal Code (2002)	Article 82A punish any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up racial hatred ('racial' covers colour,	prison	imprisonment for a term from 6 to 18 months	No provision on denial Only <u>racist</u> hate speech		No case law on denial

		nationality, citizenship, ethnic or national origins)					
<b>The Netherlands</b>		Parliament rejected a draft law proposing a maximum sentence of one year in 2006. However the Supreme Court held in 1987 that the articles of the Criminal Code punishing racist or discriminatory behaviours could be applicable to Holocaust denial. (Decision H.R. 27 octobre 1987, NJ 1988, 538. Adde H.R. 25 novembre 1997, NJ 1998, 261.) Article 137d Criminal Code punishes verbal, written or illustrated incitement to hatred, discrimination and violence, if made publicly	Prison or fine	Prison up to 1 year	No formal provision on denial. However, racist or discriminatory behaviours could be applicable to Holocaust denial		-1997, Sigfried Verbeke for denying and trivialising the Holocaust -2004, Mr. "J", for denying the holocaust on his website -2004, Siegfried Verbeke for Holocaust denial
<b>Poland</b>	Act on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation (8 December 1998)	Article 55: He who publicly and contrary to facts contradicts the crimes mentioned in Article 1, clause 1, which reads: This Act shall govern: 1. the registration, collection, access, management and use of the documents of the organs of state security created and collected between 22 July 1944 and 31 December 1989, and the documents of the organs of security of the Third Reich and the Union of Soviet Socialist Republics concerning: a) crimes perpetrated against persons of Polish nationality and	fine or prison	prison: up to 3 years	- denial - dispute	- crimes against persons of Polish nationality and Polish citizens of other ethnicity, nationalities between 1/9/1939 and 31/12/1989: - Nazi crimes, - communist crimes, - other crimes constituting crimes against peace, crimes against humanity or war crimes - other politically	-1999. Dariusz Ratajczak for breaching the Institute of National Remembrance law that outlawed the denial of crimes against humanity committed by Nazi or by communist regimes in Poland (Holocaust denial)

		<p>Polish citizens of other ethnicity, nationalities in the period between 1 September 1939 and 31 December 1989:</p> <ul style="list-style-type: none"> <li>ω Nazi crimes,</li> <li>ω communist crimes,</li> <li>ω other crimes constituting crimes against peace, crimes against humanity or war crimes,</li> </ul> <p>b) other politically motivated repressive measures committed by functionaries of Polish prosecution bodies or the judiciary or persons acting upon their orders, and disclosed in the content of the rulings given pursuant to the Act of 23 February 1991 on the Acknowledgement as Null and Void Decisions Delivered on Persons Repressed for Activities for the Benefit of the Independent Polish State (Journal of Laws of 1993 No. 34, item 149, of 1995 No. 36, item 159, No. 28, item 143, and of 1998 No. 97, item 604),</p> <p>c) the activity of the organs of state security referred to in Article 5,</p>				<p>motivated repressive measures</p>	
<b>Portugal</b>	Criminal Code	<p>Article 240 (2): punishes anyone who, in a public meeting, in writing intended for dissemination, or by any other means of social communication, defames or insults an individual</p>	prison	6 months to 5 years	denial ( <u>with racist intention</u> )	<ul style="list-style-type: none"> <li>- war crimes</li> <li>- crimes against peace or humanity,</li> </ul>	No case law on denial

		or group of individuals <u>on grounds of their race, colour, or ethnic, national or religious origin</u> , particularly by denying war crimes and crimes against peace or humanity, with the intention of inciting to or encouraging racial or religious discrimination.					
<b>Romania</b>	Governmental Emergency Ordinance 31 of 13 March 2002 on banning Fascist, racist or xenophobic organizations and symbols and celebrating the memory of those guilty of engaging in crimes against peace and crimes against humanity	Public negation of the Holocaust or its effects Article 6 punish the act of denying, challenging, approving or justifying, by any means, in public, the Holocaust or genocide or crimes against humankind and its effects	prison and the loss of certain rights or a fine	6 months to 5 years	-denial -challenge -approval justification	-holocaust -genocide crimes against humankind	No case law on denial
	Additional Protocol to the Council of Europe Convention on cybercrime (2004)	Article 6 of the CoE cybercrime protocol (see footnote 1)			- denial - gross minimisation - approval - justification	- genocide - Crimes against humanity (as referred to in CoE cybercrime protocol)	
<b>Slovakia</b>	New Criminal Code (2005)	Article 422, original text: <i>“whoever publicly denies, disputes, endorses or tries to justify the Holocaust”</i>	Prison	from 6 months up to 3 years	-denial - dispute - endorsement - justification	holocaust	

<b>Slovenia</b>	Criminal Code (as amended by the Slovenian Parliament in 2008)	Article 297 (2) Whoever provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas on the supremacy of one race over another or provides aid in any manner for racist activity or denies, diminishes the significance of, approves of or advocates genocide or crimes against humanity  Genocide is defined on standard grounds but also against any social or political group <sup>28</sup>	prison	up to 3 years	-denial -gross minimisation -approval	Genocide Crimes against humanity	No case law on denial
	Additional Protocol to the Council of Europe Convention on cybercrime (2004)	Article 6 of the CoE cybercrime protocol (see footnote 1).			- denial - gross minimisation - approval - justification	- genocide - crimes against humanity (as referred to in CoE cybercrime protocol)	
<b>Spain</b>	Organic Law 10/1995 of the Criminal Code (1995)	Art. 607 (2) prohibits the diffusion by any means of ideas or doctrines [denying or] justifying the crimes of genocide. Art. 607 of the Criminal Code punishes genocide committed on standard grounds (national,	prison	1 to 2 years	Justification (the inclusion of the words "deny or" in art. 607(2) of the Criminal Code was ruled	- genocide committed on standard grounds (national, ethnic, racial or religious group)	-Constitutional Court in 2007 (STC 235/2007, 7 November 2007 -2008, Pedro Varela for justification of genocide

<sup>28</sup> Article 373: (1) Whoever, with the intention of destroying, in whole or in part, a national, ethnic, racial or religious group, gives orders to kill members of the group, to inflict severe bodily injuries upon them, to seriously undermine their bodily or mental health, to forcibly displace the population, to inflict on the group conditions of life calculated to bring about its physical destruction in whole or in part, to impose measures to prevent births within the group, or to forcibly transfer children of the group to some other group, or whoever, with the same intention, commits any of the above acts, shall be punished by imprisonment of at least ten years or by imprisonment of thirty years.

(2) Whoever commits any of the acts under the previous paragraph against any social or political group, shall be punished the same.

		ethnic, racial or religious group)  Spain is part of Convention on the Prevention and Punishment of the Crime of Genocide (date of ratification September 13, 1968).			unconstitutional and void by the Constitutional Court in 2007 (STC 235/2007, 7 November 2007)		
<b>Sweden</b>		rejected Holocaust denial legislation Section BrB 16:8 of the Criminal Code punish: “who in a speech or other message that is disseminated threatens or expresses scorn for a people or other such group of persons with insinuation on race, colour, national or ethnic origin, confession, or sexual preference”	Prison or fine	Minor offence: prison up to 2 years Grave crime: at least 6 months and up to 4 years	No provision on denial. Only hate speech		No case law on denial
<b>United Kingdom</b>	Public Order Act (1986)	Rejected a Holocaust denial bill (tabled in the House of Commons by Mike Gapes, Labour MP for Ilford).  Section 18. Use of words or behaviour or display of written material. (1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if: (a) he intends thereby to stir up racial hatred, or (b) having regard to all	prison and/or fine	imprisonment for a term not exceeding 7 years or a fine or both	No provision on denial Only hate speech		No case law on denial

		the circumstances racial hatred is likely to be stirred up thereby.					
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Source: Own elaboration drawing on information provided by experts in Member States



**Table 3.3a Holocaust denial and similar cases -National courts and the European Court of Human Rights 1**

<b>Member State</b>	<b>Year</b>	<b>Defendant and charges</b>	<b>Penalty (national court)</b>	<b>European Court of Human Rights (and also the European Commission of Human Rights)</b>
Germany	1950	Wolfgang Hedler Charges: minimisation of the Holocaust and defamation of members of the resistance	9 months of prison	No
The Netherlands	1979	J. Glimmerveen and K. Hagenbeek Charges: possessing, with a view of distribution, leaflets considered to be inciting to racial discrimination	2 weeks of prison	The Commission considered that the general purpose of Article 17 of the Convention was to prevent totalitarian groups from exploiting in their own interests the principles enunciated in the Convention
France	1983	Robert Faurisson Charges: denying various aspects of the Holocaust, including the existence of gas chambers	Fine	No
Austria	1984	B.H., M.W., H.P. and G.K. Charges: for offences to the Section 3g of the National Socialism Prohibition Act	Conditional prison sentences of 9, 3, 18 and 12 months respectively	The Commission said that insofar as National Socialist activities are treated differently in Section 3g from those of other political groups, this has an objective and reasonable justification in the historical experience of Austria during the National Socialist era, her treaty obligations, and the danger which activities based on National Socialist thinking may constitute for the Austrian society. The Commission noted that National Socialism was a totalitarian doctrine incompatible with democracy and human rights and that its adherents undoubtedly pursue aims of the kind referred to in Article 17.
The Netherlands	1987	Distributor of the book 'Sechs Millionen? Charges: discrimination against the Jews	The Supreme court said that denial of the Holocaust in certain circumstances felt under the prohibition of discrimination	No
Austria	1992	Gerd Hosnik Charges: Holocaust denial	18 months of prison	No

Germany	1992	Otto Remer Charges: incitement to hatred and race hatred (for denying the existence of gas chambers in some articles)	1 year and ten months' imprisonment and confiscation of publications	The Commission said that the public interests in the prevention of crime and disorder due to incitement to hatred against Jews, and the requirements of protecting their reputation and rights, outweigh, in a democratic society, the applicant's (Remer) freedom to impart publications denying the existence of the gassing of Jews in the concentration camps under the Nazi regime, and the allegations of extortion. It added that the applicants' publication ran counter one of the basic ideas of the Convention: peace and justice
Germany	1993	F.P. (professional soldier) Charges: disciplinary offence	A Military Court ordered his reduction to a lower rank. The Federal Administrative Court declared that by having denied historical events related to Nazi persecution against Jews Mr. F.P. not only had criticised conceptions of history but had tried to clean National Socialism of the stain of mass murder	The Commission upheld the decision and said that the statements issued by F.P. not only denied historical facts but also were aimed at cleansing the totalitarian Nazi regime of the stain of mass murder and therefore discriminated against Jewish people
Austria	1994	Walter Ochensberger Charges: offences under Section 3g of the National Socialism Prohibition Act	3 years of prison (later reduced to 2)	The Commission said that the prohibition against activities involving the expression of National Socialist ideas is both lawful in Austria and, in view of the historical past forming the immediate background of the Convention itself, can be justified as being necessary in a democratic society in the interests of national security and territorial integrity as well as for the prevention of crime. It is therefore covered by Article 10 para 2 (Art. 10-2) of the Convention
France	1996	Pierre Marais Charges: complicity in the denial of crimes against humanity	Fine of 10,000 French francs and damages	The Commission said that the applicant's article run counter the basic ideas of the Convention: justice and peace
Austria	1996	Friedrich Rebhandl Charges: offences under Section 3g of the National Socialism Prohibition Act	1 ½ years of imprisonment and a fine of AS 900.	The Commission noted that the " <i>public interests in the prevention of crime and disorder in the Austrian population due to offences under the National Socialist Prohibition Act, outweigh[ed], in a democratic society, the applicant's freedom to distribute publications denying in particular the existence of the gassing of Jews in the concentration camps under the Nazi regime and the further incriminated publications relating to the National Socialist regime</i> ".

Germany	1996	Hans-Jürgen Witzsch Charges: disparaging the dignity of the deceased. He denied the existence of gas chambers and the mass killing therein	4 months' imprisonment, suspended on probation	The Commission said that the public interest in the prevention of crime and disorder due to disparaging statements regarding the Holocaust, and the requirements of protecting the interests of the victims of the Nazi regime, outweigh, in a democratic society the applicant's (Witzsch) freedom to impart views denying the existence of gas chambers and mass murder therein which were considered historical facts
The Netherlands	1997	Sigfried Verbeke Charges: denial or minimization of the Holocaust	Fine of € 2250 and six month suspended sentence. The Supreme Court held that the denial of the Holocaust amounted to <i>belediging</i> [insult or defamation] of Jews, which means that this conduct falls within the scope of Article 137c Criminal Code	No
France	1997	Alain Guionnet Charges: minimizing the number of victims of the Holocaust	The Court said that denying a crime against humanity did not revolve around the number of victims. However, the Court added that the extravagant minimizing of the number of victims qualified as contestation of crimes against humanity. He was given a sentence of 3 months of prison.	No
Austria	1998	Herwig Natchmann Charges: offences under Section 3h of the National Socialism Prohibition Act	Fine of 240,000 Austrian Schillings (AS) and sentence of ten months' imprisonment on probation. The Court considered that in his publications, Mr. Nachmann, had grossly denied and minimised National Socialist genocide and other National Socialist crimes	The Commission remembered its decision on Ochensberger's case
France	1998	Francois Lehideux and Jacques Isorni Charges: aiding and abetting a public defence of the crimes of collaboration with the enemy	Condemned to pay 1 French franc for damages and the publication of the sentence in the newspaper "Le Monde"	The Court said that the "negation or revision of clearly established facts, such as the Holocaust, would be removed from the protection of Article 10 by Article 17". In the present case, "it does not appear that the defendants attempted to deny or revise what they themselves referred to in their publication as "Nazi atrocities and persecutions" or "German omnipotence and barbarism" The Court considered the applicants' conviction

				disproportionate and unnecessary in a democratic society
Poland	1999	Dariusz Ratajczak Charges: breaching the Institute of National Remembrance law that outlawed the denial of crimes against humanity committed by Nazi or by communist regimes in Poland	Guilty of spreading revisionism, but the Court did not punish him, saying the limited distribution of the book did not prove it to be a social threat	No
Germany	2001	Hans-Jürgen Witzsch Charges: disparaging the dignity of the deceased pursuant Article 189 of the German Criminal Code	3 months' imprisonment. The Fürth District Court signalled that although Witzsch had not denied the Holocaust as such, his denial of Hitler's and NSDAP's responsibility in this respect was tantamount to a negative value judgement	The ECtHR reiterated that the freedom of expression guaranteed under Article 10 of the Convention may not be invoked in conflict with Article 17, in particular in cases concerning the Holocaust denial and related issues. The ECtHR added that while Witzsch had not denied either the Holocaust as such nor the existence of gas chambers, he denied an equally significant and established circumstance of the Holocaust: he considered false and historically unsustainable that Hitler and the NSDAP had planned, initiated and organised the mass killing of Jews
France	2003	Roger Garaudy Charges: denying crimes against humanity in his book "The Founding Myths of Israeli Politics"	Suspended term of six months' imprisonment and a fine of 50,000 French francs	The ECtHR considered that the main content and general tenor of the applicant's (Garaudy) book was markedly revisionist. It noted that denying crimes against humanity is one of the most serious forms of racial defamation of Jews
The Netherlands	2004	Mr. "J" Charges: denying the holocaust on his website	4 weeks' imprisonment for having intentionally made defamatory statements about Jews	No
Belgium	2004	Siegfried Verbeke Charges: Holocaust denial	1 year in prison and a fine of €2500. In June 2008 he was fined €25000 and sentenced again to a one year term, together with Vincent Reynouart, for Holocaust denial	No
France	2004	Roger Chauvy Charges: defamation under the civil law (he accused Mr. Aubrac of treachery)	Fine of 100,000 French francs and the publication of a statement in five daily newspapers	The ECtHR considered that although the issue in question (defamation) did not belong to the category of clearly established historical facts, it had to find a fair balance between the right of freedom of expression and the right of persons to protect their reputation. It concluded that the

				convictions were based on relevant and sufficient reasons
France	2006	Robert Faurisson Charges: Holocaust denial for his saying in an interview with the Iranian television station "Sahar 1" in February 2005	3 months probationary sentence and fine of € 7,500	No
Austria	2006	Daniel Irving Charges: denying the existence of gas chambers	3 years of prison	No
Germany	2007	Germar Rudolf Charges: inciting hatred, disparaging the dead, and defamation	2 ½ years of prison	No
Germany	2007	Johannes Lerle Charges: racial incitement	1 year of prison	No
Germany	2007	Ernst Zündel Charges: putting in doubt the existence of the Holocaust	5 years of prison	No
Greece	2007	Konstantinos Plevis Charges: inciting racial hatred by a Greek court based on excerpts and quotations from well-known international individuals throughout history used in his book "The Jews: The Whole Truth"	Acquitted. The Court said that his book did not lead to "incitement to racial hatred and violence against the Jews" by the 5-member court	No
Belgium	2008	Roeland Raes Charges: Holocaust denial in accordance with the Belgian Holocaust denial law	Suspended sentence of 4 months imprisonment	No

Spain	2008	Pedro Varela Charges: justification of genocide	7 months of prison	No
France	2008	Jen Marie Le Pen Charges: denying a crime against humanity and complicity in condoning war crimes	3 month suspended sentence and a fine of 10,000 Euros	No
Germany	2009	Horst Mahler Charges: Holocaust denial and trivialisation of Nazi war crimes	5 years of prison	No
Germany	2009	Sylvia Stolz (Mahler's wife) Charges: Holocaust denial	3 ½ years of prison and banned from the practice of law for 5 years	No
Austria	2009	Gerd Hosnik Charges: propagating Nazi ideas and Holocaust denial	5 years of prison	No

Source: own elaboration



## 4. Justice for Victims

### 4.1 Identification of victims

#### 4.1.1 Legal definition of victims

Almost all EU member states define legally the victims through the instruments which determine material and symbolic compensations. In few cases, though, there has been a more specific attempt of legally defining the victims in particular form:

- **Belgium** The categories of victims were established by means of a number of *Statutes of national recognition*. It was agreed that could be recognised as a victim, everyone who had been imprisoned for a period longer than 30 days or who had undergone grave maltreatments, or who had been executed or condemned to death. But the ‘title’ of political prisoner was to be reserved only for those who could prove their imprisonment to be a result of a ‘patriotic and selfless activity’. In practice, this meant the exclusion from the title of all Jews and Gypsies, deported for racial reasons. Most of the ‘statutes of national recognition’ were passed in the period 1945-1948 whilst some additional ones recognising more specific groups of victims, were added later. Each of these laws stipulated a limited timeframe within which an application could be sent to the responsible administration.
  - *Armed resister* (Law of 19 September 1945). This law equalled the participation in the armed resistance to service in the regular Belgian army. By consequence, Art. 6 of this law entitled them to the same legal advantages.
  - *Civil resister and objector to the forced labour* (Law of 24 December 1946). Two categories were joined in this one statute: on the one hand those who opposed the enemy without arms or outside the armed units. This mainly covered acts of sabotage, clandestine press and aid to objectors of the forced labour. On the other hand, those refusing to obey an order for forced labour, which led to a life in illegality and hiding. Also recognised were those who, during their time in hiding, were arrested and deported for forced labour, or those who at first obeyed the order, but did not return to Germany after a period of leave. Beside this, the Art. 2 of the law, was commonly interpreted as applicable to those who refused forced enrolment in the German Army.
  - *Deported forced labourers* (Law of 24 December 1946). The statute, published together with the statute on civil resisters and objectors, sought to recognise those deported for forced labour. The date of 6 October 1942 is crucial, as it is on this date that the regulations on forced labour in Germany were published. Those who had contracted work earlier were considered to have done so out of free will, and were therefore to be excluded from the statute, unless they could prove that they had been forced.
  - *Foreigner Political Prisoner* (Law of 5 February 1947). People of non-Belgian nationality, but living in Belgium at the time of their arrest, could be recognised as political prisoners if they could prove to have shown a ‘patriotic and selfless activity’. If so, they were entitled to the same advantages of the ordinary statute on political prisoners. In addition they also had the opportunity to obtain the Belgian nationality.
  - *Political Prisoner* (Law of 26 February 1947). The statute distinguished between those ‘favoured’ and those who could in addition also ‘bear the title’ of political prisoner. The latter was meant purely honorific.



- *Resisters through clandestine press* (Law of 1 September 1948). It referred to those who sought to inform the population or inspire them to resistance through illegal press and leaflets. An activity of at least six months was needed to be recognised.
- *Forced enrolment in the German army* (Law of 21 November 1974). It concerns people from the Eupen-Malmedy Cantons that were drafted into the Wehrmacht. It entitled to a rent and in the case of a handicap also to a pension.
- *Resister against Nazism in the incorporated territories* (Law of 21 November 1974). It concerns people from the Cantons of Eupen and Malmedy, and who:
  - were already recognised in one or more of the above mentioned statutes,
  - or had played an active role in the resistance for at least six months,
  - or had played an active role in the resistance, leading to their imprisonment,
  - or had been expelled from the Cantons because of their resistance,
  - or had left their forced labour or deserted the German Army after their forced enrolment.
  - It entitled to a rent and in the case of a handicap also to a pension.
- *Fishermen in wartime* (Law of 8 February 1984). This statute seeks to recognise those fishermen (of Belgian nationality) who worked, during the war 1940-1945, from British ports. It entitled to a rent and in the case of a handicap also to a pension.
- ‘CRAB’ – ‘RCBL’ (Law of 12 April 1990). The men between 16 and 35 years old, who in May 1940 responded to the appeal of the Belgian Government to report themselves to recruiting centres of the Belgian Army in France. These centres were called ‘Centre de recrutement de l’armée belge’ or CRAB; ‘Recruteringscentrum van het Belgisch Leger’ or RCBL. The law of 12 April 1990 is purely honorific, without entitling to any financial profits. It does give those accorded the statute the right to bear the CRAB – RCBL medal.
- *Jewish children* (Law of 19 April 1999). The statute can be accorded to any child aged less than 21 on 10 May 1940 or born after this date; and was after 1 July 1942 forced to live in hiding to escape the anti-Jewish measures.
- New measures on behalf of war victims (Law of 11 April 2003). New measures were passed in 2003, among which a compensation for racial persecutes. Especially noteworthy is that these victims no longer needed to have the Belgian nationality in May 1940: the acquisition of this nationality before 2003 sufficed. The benefits are:
  - a lifelong rent for orphans, whose parents died in deportation and for children and adults who spent the war in hiding;
  - a rent for deportees.
- Civil invalid of the war 1940-1945 (Law of 11 October 2006). In 2006, as the last statute to date, recognition was attributed to those civil victims whose physical integrity was hurt, as a direct result of an act of violence.
- **Bulgaria** *Law on Political and Civil Vindication of Repressed Persons* 25 June 1991 (with several amendments). Victims of repressions, based on origin, political convictions, and religious beliefs, were recognized, such as: sentenced in criminal cases; labor mobilized; forceful resettlement in the USSR; killed at public places, in their home, or while attempting to escape or flee the country illegally; died in prison, labor camps or under arrest; deprived of work and forced to work in construction, in agriculture or in the garbage collection industry; and deprived of pensions. The law also provides for receiving recognition for repression, when there may not be a written record to prove it. For this purpose it set up a Central Commission, composed of equal number of representatives from the government and from the organizations of the repressed (article 4, paragraph 3). Furthermore, the Law was amended on 6 December 2007 to include the final period of repressions between 9

and 12 September 1944, as well as to include in the list of deeds, for which compensation is due, the passive resistance (hiding from authorities) of Bulgarian Turks against the forceful change of their names in 1984-1989. The administrative and legal mechanisms for vindication and compensation of the repressed in the postwar period were once more expanded by the Parliament on 19 April 2006 with Ordinance № 88, dealing with the application of article 4 of the Law for Political and Civil Vindication of the Repressed.

- **Estonia** The 2003 *Persons Repressed by Occupying Powers Act* established the legal status and rights of individuals deemed to have been wrongfully repressed during the Soviet and Nazi occupations. Specifically, the law enumerated 13 categories of such people (§ 2):
  - who is a victim of genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (RT II 1994, 27, 103);
  - who was sentenced to imprisonment or exilement or who was committed to a psychiatric institution for his or her beliefs, political or other opinions, religion, racial or ethnic origin, nationality, birth, social origin or property;
  - who was sentenced to imprisonment or exilement
    - for failure to comply with a special obligation established for the citizens of the occupying state (military service, allegiance, mandatory worldview, prohibition on leaving a territory, etc.);
    - for an act committed prior to the occupation or during a temporary cessation of occupation, unless such act would also have been punishable under the law of the Republic of Estonia;
    - because of his or her origin or general personal characteristics without ascertaining his or her guilt;
    - for participating in an anti-occupation protest or an act of national self-determination or for exercising or attempting to exercise his or her internationally recognised human rights or fundamental freedoms regardless of the type of criminal offence with which the occupying state formally charged the person;
  - who was unlawfully deported or displaced from his or her permanent place of residence in the occupied territory to the territory of the occupying state or another state, whether occupied or not, or who was subject to forced exile outside of the territory of Estonia after having served his or her sentence;
  - who was taken from Estonia to the Soviet Union in 1941 and subjected to forced labour with restriction of liberty in a labour battalion or a labour or construction unit or who was forcibly sent to work outside of the territory of Estonia during occupation by Greater Germany;
  - who, after having been taken as a prisoner of war or as a person to be repatriated, was subjected to forced labour with restriction of liberty in a labour battalion or a labour or construction unit of the Soviet Union;
  - who, having concealed himself or herself from unlawful repression, was sentenced to imprisonment or exilement for an act or acts which the person committed as self-defence or out of necessity without exceeding the limits established by the law of the Republic of Estonia, unless such act would also have been punishable under the law of the Republic of Estonia;
  - who was prohibited from residing in Estonia;
  - who was subjected to radiation as a test subject in connection with the explosion of a nuclear device;
  - who was forcibly sent to an area of nuclear disaster for the elimination of the effects of the disaster.
- **Germany** According to the West German Federal Compensation Law (BED - Bundesentschädigungsgesetz) of 1953 (entered into force in 1956), a "victim of National Socialist persecution" was someone "who because of political opposition to National Socialism or because of race, faith or ideology was persecuted by National Socialist violence and

thereby suffered damage to life, body, health, freedom, property, assets, or in his or her professional or economic progress (a persecuted person)." Based upon this law, as well as upon bi- and multi-lateral treaties, are so-called "atonement payments" (Wiedergutmachungszahlungen), which attempted to award compensation payments of albeit symbolic amounts to various victim groups for the damage experienced.

- The IMT's and the Allied occupiers' defined two categories of victim, namely war victims and victims of the extermination of Jews and political persecution. Aside this definition remained both prisoners of war and forced labourers, and other victim groups (Sinti and Roma, homosexuals etc.)
- **Lithuania** The instrument for the identification of victims is the *Law on the Legal Status of the People of the Republic of Lithuania Who Fell Victims to the Occupations of 1939-1990* (30 June 1997, No. VIII-342) (new version approved by the 28 June 2007 Law No. X-1234). The Law identifies the categories of persons who were persecuted by the occupation authorities of Nazi Germany and the Soviet Union on political grounds or the grounds of origin (political, religious, national, social or ethnic origins, etc.) and who fell victims to the occupations of 1939-1990, and lay down the basic criteria for recognition of the legal status of victims (to the occupations). Persons granted the status of a victim (to the occupation regimes) shall be entitled to social care and other benefits established by the law and the state aid.
- **Slovenia** The *Act on the Victims of War Violence* (1995) establishes (Article 1) that a national of the Republic of Slovenia who during a war or military aggression against the Republic of Slovenia was subject to the violent acts or forcible measures of an occupier, aggressor, or their collaborators, is entitled to the status of victim of war violence. Article 2 of the Victims of War Violence Act defines the following categories of victims of war violence: exiles, prisoners, prisoners of camps, labor deportees, internees, refugees, and stolen children. Article 4 of the Victims of War Violence Act recognizes the status of victim of war violence also to persons who had been forcibly mobilized into the regular military units of the occupier. Slovenian constitutional court argued that however, it does not follow from the Constitution that the concept of victim of war violence should be restricted to only those civilian persons who had been subject to violent acts or forcible measures by the armed forces of the occupier. Therefore, it is inconsistent with the Constitution that the legislature excluded from the circle of civilian victims of war violence all those persons who had been subject to violent acts or forcible measures by the armed forces of the other warring side. Establishing whether potential victims of war violence collaborated with the occupier can be the subject of concrete procedures and thereby also the subject of a possible constitutional review of acts adopted in such procedures, not the subject of the constitutional review of a regulation (Constitutional Court of Republic of Slovenia, U-I-266/04 Para. 20). A new Law on Victims was approved on September 2009. It recognises some rights to victims of Communism during WWII.

#### 4.1.2 Measures for identification and location of victims (exhumations and inhumations etc.)

- **Belgium** A “*Wartomb Service*” depending on the Belgian Home Office was created in 1944. Its task was searching for Belgians fallen abroad during the war and the recovery and return of their remains.
- **Estonia** Attention has been focused on bringing back to Estonia the remains of Estonians who died in Siberia or elsewhere in Russia as part of the deportations. Concerning exhumations, no specific investigations have been undertaken to unearth any locations where killings occurred.
- **Lithuania** From 28 September 1944 until 16 April 1947, a total of 767 people were executed (seven more died before their execution) in the NKGB/MGB prison, in accordance with rulings by a USSR military tribunal and special sittings. During archaeological excavations carried out between 1994 and 1996 and in 2003, the remains of 724 people were discovered, of which 45 of them were identified. The identification of the other remains was difficult, as the bodies had been disfigured before burial with chemicals. The remains of seven victims have been reburied by their families and the bishopric of Telšiai, the remains of the rest 717 victims of executions were reburied in the columbarium on 2 November 2004.
- **Romania.** The IICCR has conducted several exhumations in collaboration with the Military Section of the Supreme Court in places such as the Sighetul Marmatiei cimiteri, the Big Island of Braila, the Bistrita-Nasaud county and Glodghilesti between 2006 and 2009. The Association of Former Political Prisoners in Romania has assisted in the exhumation and inhumation of the remains of Ioan Andras in 1997 and the Exhumation and inhumation of the remains of 7 members of the Dabija group (members of the anticommunist armed resistance group led by Major Dabija, killed by the Securitate on 28 October 1949). These were exhumed and brought into a new tomb built in the Sibiu Municipal Cemetery on 1995.
- **Slovenia** *Act on War Burial Sites* (2003) *The Commission for Settlement of Hidden Mass Graveyards* has as its long-term goal the exhumation and re-burial of all Slovenian victims killed on Slovenian territory. Three acts of 2003-2004 regulate exhumations and inhumations. The Commission has so far found between 500 and 600 hidden mass graves sites on the territory of Slovenia.
- **Spain** Regarding exhumation and identification of victims, the 2007 Law on historical memory designed a subsidiary position for central authorities in relation to private initiatives and regional authorities (on the grounds that exhumations fell within their powers). In April 2009, the Senate rejected a modification of the 2007 Law that sought to oblige central authorities to assume the tasks of locating and identifying victims.<sup>29</sup>
  - Some of the Autonomous Communities have been very active. At least four regional governments have adopted initiatives in this

<sup>29</sup> Proposición de Ley de Modificación de la Ley 52/2007, BOCG SENADO IX Legislatura Serie III a 3 de Diciembre 2008, Num. 8 (a)

domain: the Basque Country, Catalonia, Galicia and Andalucía. In 2002, the Basque government created an Interdepartmental Commission to facilitate the identification and location of persons executed during the civil war. The same government through the Direction for Human Rights signed a collaboration agreement with the *Sociedad de Ciencias Aranzadi* in 2003 in order to open common graves and to identify the remains there. Since 2003, 530 applications were lodged of which 490 were attended. 9 grave yards were opened in the Basque Country. In total, the Basque government accounted 8,560 *desaparecidos*, dead or *fusilados* between 1936, of which 2352 were *fusilados* prisoners.

- The Catalan government has developed so far the most comprehensive set of actions in this domain. On March 2003, the Catalan parliament requested the Catalan government the elaboration of a census of the disappeared and a map of mass graveyards. In June 2004, the Catalan government supported a pilot exhumation whose main purpose was the drafting of an exhumation protocol. Out of these initiatives, the Catalan government elaborated a list of disappeared persons (3,113 alleged cases) and a map of mass graveyards (around 179). On 2007, the Catalan parliament approved a temporary programme for attention to ex-prisoners and disappeared persons and common graves. The task of this program was to coordinate and assist actions in the domain of digging common graves and complete a map of disappeared persons. Finally, on June 2009, the approach changed: the Catalan parliament approved a law which obliged the government to the location and eventual exhumation and/or dignification of the massive graveyards.<sup>30</sup>
- The Andalusian government created in 2003 a Technical Committee for the identification of the Victims and their exhumation.
- The *Asociación para la Recuperación de la Memoria Histórica* (ARMH) together with regional associations have recovered up to the end of 2008, around 400 bodies and remains in around 200 common graves.<sup>31</sup>

## 4.2. Material Reparation Measures

Material reparation measures comprise actions which appear often conflated within each other. **Rehabilitation** refers to the process of reinstalling a person in her/his situation (personal, professional, etc.) previous to the actuation of the repressive regime. **Reparation** refers to measures offering compensations which normally assume the model of packages of benefits, indemnities and special payments. **Restitution** refers to the devolution of confiscated, stolen property to its legitimate owners or descendents. Although these three categories can be analytically distinguished, in practice, the measures enacted in Member States do usually combine measures that address indistinctively reparation/restitution/rehabilitation. This may explain some apparent inconsistencies in the classification of measures.

<sup>30</sup> Madrid daily El País greeted the law as a model. See leading article Una buena Ley de Fosas, El País 23.06.2009

<sup>31</sup> Natalia Junquera, *No es la sociedad civil. Es el Estado*, El País, 17.11.2008

#### 4.2.1 Personal rehabilitation

##### ○ Bulgaria

- **Amnesty** Law on Amnesty and Release from Serving a Term of Imprisonment (1990). The Penalty Code was amended several times in order to eliminate all the politically motivated punishments (in 1990 and 1991 amendments were undertaken three times, and in 1992 and 1993 - once). The *Law for Amnesty and Return of Property, which had been taken away* came into force on 4 January 1991. It rehabilitated all those, repressed for political deeds, between 17 March 1945 and 31 December 1989 (thus extending the period of the amnesty from to 17 March to 31 December 1945).
- **Rehabilitation:** The first rehabilitation law came into force on 24 November 1989. It rehabilitated those convicted under article 273 of the Criminal code, which provided penalties for those who disagreed with the political system. A second law came into force on 22 December 1989. It rehabilitated all, convicted under the other politically motivated articles of the Criminal code (article 108, 109, 110, 111, 112, 112a, 113, 166, 180, 313a, paragraph 3, and 321).
- The 9<sup>th</sup> National Assembly approved a Decision for the Vindication of the Repressed for Political reasons after 9 September 1944 on 15 January 1990.
- Decree No 96 of the State Council of People's Republic of Bulgaria for the Promulgation of a Decision on the Vindication of Organizations and Individuals, Repressed for Political Reasons (1990).
- Decision of the Council of Ministers for the Abrogation of the so-called Revival Process, 29 December 1989
- Decision for Political and Civil Vindication of Convicted and Repressed Persons, 30 March 1990
- Law on Political and Civil Vindication of Repressed Persons 25 June 1991 (with several amendments). It ensured full vindication of a wide scope of repressed and it was eventually passed by the GNA in June 1991. The law listed the de-criminalized actions, which provided for vindication – illegal arrest; internment or administrative resettling; verdicts for failing to meet state deliveries; expelling students; and the Bulgarian Turks, repressed during the forceful change of their names. Additionally, the missing without a trace was also fully vindicated. This Law introduced an exception to rehabilitation and the amount of compensation due: people convicted by the “People's Court” (1944-1945). Among those who were convicted, only those, who received amnesty by a court or had their sentences revoked by supervision order (Article 2, section 9), were vindicated. This was due to

- the specific character of this special “People’s Court”, which had been set up to put on trials war criminals.
- These first general rehabilitations, however, did not take into account the people repressed between 9 September 1944 and 31 December 1945.
  - **Abrogation of the forced change of the names of the Bulgarian Turks** in 1984-1989. In January 1990 a special Law on Citizens’ Names was voted on 15 January 1990 and it envisaged accelerated procedure for the restoration of the names of Bulgarian Turks that suffered from the so-called Revival process. Decision No 16 of the Council of Ministers for the Conditions that have to be assured for the Change of Bulgarian Citizens’ Names in 1990, 20 March 1990.
- **Czechoslovakia** Act No. 119/1990 *Coll. on Judicial Rehabilitation* makes possible rehabilitation and compensation of those convicted of political crimes. Its beneficiaries are citizens whom the communist state tried and imprisoned for political reasons (more than 275,000). Special judges nullify the verdict and financial compensation was granted.
  - **Cyprus** As a result of Law 57/1975, numerous public officials, especially police officers, were either reinstated to the positions they held before the coup or were dismissed by reason of their appointment by the coup ‘government’. However, most of these reinstatements/dismissals had already taken place upon the restoration of constitutional legality by remedial action taken by lawful organs of the Republic prior to the enactment of Law 57/1975. The acts of such lawful organs were not affected by the Law.<sup>32</sup>
    - In the aftermath of the coup, the dismissal of public servants from their jobs was reversed. This was mostly done by decision of various administrative organs, such as the lawfully appointed Commanders of Police, or the Council of Ministers itself. Any other case would, in any event, be covered by the above-mentioned Law 57/1975 on *Coup d’etat (Special Provisions)*
    - The Supreme Court of Cyprus held in *Aristides M. Liasi v. Attorney-General of the Republic and Another* that “the termination of the services of the applicants as special constables” was “a non-existent act and as such it could not produce legal results” and was, therefore, annulled.
  - **Estonia**
    - The Presidium of the Estonian SSR Supreme Soviet issued a decree to rehabilitate all individuals convicted under a range of paragraphs dealing with political crimes in the Soviet Russian criminal code in February 1990.
    - The Supreme Council passed the *Law on the Rehabilitation of Persons Extra-judicially Repressed and Wrongfully Convicted* in February 1992. The law expanded the range of

<sup>32</sup> See *Leonidas Chrysanthou and Others v. The Republic of Cyprus and Others*, Judgment of 13 February 1986, Supreme Court of Cyprus, (1986) 3 C.L.R. 1128.

paragraphs from the old criminal code. Moreover, it recognized that any person could petition the Supreme Court to have her convictions rehabilitated if they could prove that the basis of their convictions concerned any set of actions taken by them. The law also accorded a right to claim restitution or compensation for any property lost as a result of their wrongful convictions.

- The Parliament of the fully-restored Republic of Estonia passed a set of amendments to the 1992 law in November 1993, adding sections of the Soviet Socialist Republic Criminal code to the list of those deemed repressive and qualifying for rehabilitation.
  - The Parliament passed a law defining a particular legal status for repressed persons along with particular social and other rights to which these individuals would be entitled in December 2003. Individuals recognized as having been repressed would be given an identification card from the Estonian Social Insurance Board that would make them eligible for supplementary health care, free access to state museums, discounts on public transportation, up to 5 years' earlier access to an old-age pension and the right to count their years under repression toward their total number of years worked. Those imprisoned or deported would be entitled to a bonus in their pensions amounting to 20% of a base pension. Finally, the law required the government to set up a commission which would further examine the issue of social guarantees for the wrongfully repressed. It also obliged the government to take initiatives to preserve the memories of these people, and continue studying the repressive policies of the occupying regimes.
  - The *Law on the Rehabilitation of Persons Extra-judicially Repressed and Wrongfully Convicted* (as adopted in February 1992 and amended in November 1993) establishes the complete list of paragraphs from the former Soviet Russian and Soviet Estonian criminal codes, which were used to convict individuals for anti-regime activities and whose convictions have now been declared unlawful.
  - Under the government's 2004 decree regulating the issuing of identification cards for the wrongfully repressed, the main authority for carrying out this task was given to the Estonian Social Insurance Board (*Sotsiaalkindlustusamet*). The Board is also responsible for paying out additional social benefits and pension supplements to duly certified repressed persons. Additionally, the Supreme Court is given the task of examining petitions from individuals seeking to have their status as a wrongfully repressed person be acknowledged.
- **Germany**
    - **(Nazi period)** During the Second World war, about 30,000 death sentences were passed by courts for desertion or conscientious objection, derogatory remarks against the army



and “war treason” (i.e. betrayal of secrets to the Allies). The Bundestag agreed to revoke unjust national socialist sentences in criminal law (28 Mai 1998). Tens of thousands of sentences passed for political, military, racial, religious or ideological reasons were thus revoked. This affected all sentences by the People’s Court as well as all drumhead court martials and also all sentences against conscientious objectors or those found guilty of “Wehrkraftzersetzung“. However, military courts had not been included. In a recent decision of the Bundestag (8 September 2009), these sentences by court martials have been declared invalid, too, the victims have thus been rehabilitated.

- **(GDR)** The first freely elected East German legislature, the *Volkskammer* passed the so-called *Rehabilitierungsgesetz der DDR* (RehaG-DDR) on September 18th 1990. This law rehabilitated anyone who had exercised their constitutional rights in the GDR (such as free speech) and still had been politically persecuted; it was also rehabilitated all those who had fled or had tried to flee the republic. The law was also intended to parallel the already existing West German law of assisting prisoners, the *Häftlingshilfegesetz* (HHG), which de facto compensated inmates of East German prisons, but officially was concerned with helping former prisoners integrate into West German society by providing them with a so-called *Eingliederungshilfe* (initially 30 to 60 Mark for each month spent in a GDR prison). The Unification Treaty of 31 August 1990, in article 17, also reinforced the point that a legal basis should immediately be created in the united country to rehabilitate the victims of political persecutions.
- In general, according to Articles 18 and 19 of the Unification Treaty, verdicts by GDR courts and administrative decisions remained in force – in other words, there was no ‘total revision’ of GDR law through a retroactive validity of the West German *Rechtsstaat*. Consequently, a large number of *Kassationsanträge* were immediately made, most of which had to be rejected, because the courts could only evaluate whether GDR law itself had been gravely violated; the question could not be whether the decisions were compatible with the constitution of united Germany.
- On 4 November 1992 so-called *Erstes SED-Unrechtsbereinigungsgesetz*, containing the *Strafrechtliches Rehabilitierungsgesetz* (*StRehaG*) aimed mainly at the rehabilitation of politically persecuted persons and combined the process of cassation and rehabilitation. The *StRehaG* envisaged that upon request decisions taken by GDR authorities were to be declared illegal, because they had served political persecution or because the punishments were excessive (so-called *Übermaßverurteilungen*). Those subject to forced labour and those admitted into psychiatric hospitals for political reasons also qualified for rehabilitation.

- The so-called *Zweites SED-Unrechtsbereinigungsgesetz*, containing a *Verwaltungsrechtliches Rehabilitierungsgesetz (VwRehaG)* and a *Berufliches Rehabilitierungsgesetz (BerRehaG)* rehabilitate those adversely affected by administrative and employment decisions.
- A third law – *Drittes Gesetz zur Verbesserung rehabilitierungsrechtlicher Vorschriften in der ehemaligen DDR* – was passed on 13 June 2007. All these laws applied to decisions by East German courts; no rehabilitation was possible in the case of decisions by the Allies – that is, in this case, the Soviet Union.
- In the Federal Republic as a whole, up until the end of 2007 there had been 184 428 applications for rehabilitation (*strafrechtliche Rehabilitierung*); by 2008 200 000 judgments reached by GDR judges were declared null and void.
- **Greece** The regime itself promulgated a general amnesty in the summer of 1973 cleared prisons from most political prisoners (in the beginning of 1973, 305 political prisoners were still in prison). The members of the military and the public service who had been removed from their position because of their anti-regime activity were reinstated in their position. This was done on a case-by-case basis and as a result of a process of legal nullification of the decisions that had led to their removal (primarily via the July 27, 1974 amnesty for all political crimes).
- **Hungary** The Hungarian parliament has approved four successive statutes of rehabilitation and, additionally, a Law (Law No. 36 of 1989) on the remedy of convictions related to the uprising of 1956. The statutes do not offer blanket rehabilitation: individual applicants have to approach courts with the papers of their cases in order to seek clearance individually.
  - 1<sup>st</sup> Rehabilitation statute 1989 passed by the outgoing Communist Parliament (Law No. 36 of 1989 on the remedy of convictions related to the uprising of 1956). This law applies to all convictions passed between October 23, 1956 and April 4, 1963 for political crimes in connection with the revolt, and for convictions for homicide, robbery or assault in connection with military activities which were punished as collaterals of the former acts
  - 2<sup>nd</sup> Rehabilitation statute - Act no. 26 of 1990 on invalidating the illegal convictions between 1945 and 1963
  - 3<sup>rd</sup> Rehabilitation statute - Act no. 9 of 1992 on invalidating of convictions for certain crimes against the state and public order between 1963 and 1989 (supplemented by Law No. 11 of February 19, 1992 Law Voiding Certain Convictions resulting for judgments passed for certain crimes committed against the State and the public order between 1963 and 1989)
  - 4<sup>th</sup> Rehabilitation statute - Act no. 130 of 2000 on invalidating convictions in connections with the repression following the 1956 revolution.

- Governmental Decree 93 of 1990 redressing of some injustices resulted from the communist labor law
- Act No. 130 of 2000 on invalidating convictions in connections with the repression following the 1956 revolution, passed much later. The statutes do not offer blanket rehabilitation: individual applicants have to approach courts with the papers of their cases in order seek clearance individually. Rehabilitation does not result in the automatic returning of confiscated property.
- **Italy** Those prosecuted because of racial reasons were reintegrated to their working position. Those readmitted have been readmitted at the level and functions they had when they were expelled. Reintegration did not mean the recognition of the damages suffered because of racial discrimination.
  - Several legal measures have addressed indistinctively political and racial persecuted persons: these are decrees which re-admit into public services persons belonging to different categories (starting with Law-Decree R.d.l. n. 9 1944 and the Law 10 March 1955, n. 96 Provisions in favour of antifascists political or racial persecuted persons and their relatives (*Provvidenze a favore dei perseguitati politici antifascisti o razziali e dei loro familiari superstiti*) (called *legge Terracini*, from the surname of the MP of the Communist party which pursued its approval).
- **Latvia**
  - Legislation dealing with the status of formerly *repressed* persons of the Soviet and Nazi regimes began with a law passed by the Supreme Council on August 3, 1990 entitled *Concerning the Rehabilitation of Illegally Repressed People* which was meant to decriminalize all activities (except common criminal behavior and that violating international law) for which persons had been arrested and tried in the Soviet era (USSR Criminal Code par. 59.4-59.6, 60-62, 66, 68-70, 79.1.-79.4, 84a, 87a, 122, 192a, 193.7d, 193.10, etc.). These were paragraphs in the USSR Criminal Code that punished persons for what broadly speaking in democratic societies was considered normal political activity, but Soviet law interpreted as anti-Party and anti-Soviet. The 1990 law declared these persons to have been “rehabilitated,” i.e. formally declared not to have been guilty of the accusations made against them by the Soviet and Nazi authorities. The “rehabilitation” of repressed persons by the Public Prosecutor’s office (*Prokuratūra*) continued throughout the early 1990s, reaching a total of 12,300 by January 1, 1995 (1990-24, 1991-2258, 1992-2406, 1993-2722, 1994-1991). In all, from 1990 to 2008, the Prosecutor’s Office had rehabilitated 17,866 persons.
  - The *Saiema* elected in 1993 passed a more comprehensive law on April 12, 1995 (*Law Concerning the Determination of Repressed Status for Persons Who Suffered Under the*

*Communist and Nazi Regimes*). This four-section and multi-paragraph law embodied the current national political consensus about past totalitarian regimes. It was altered and amended by additional legislation in 1997, 1998, 1999, 2001, and 2004, and is still in force today. In Section 2, the law dealt with the question of whom to be considered as having been a “repressed person” under the Soviet regime, and Section 3 with whom to be considered as having been repressed by the Nazi regime. Both of these sections note in separate paragraphs that those who carried out repressions are to be excluded from the category of “repressed person.” Section 5 of the law specified that the status of “repressed person” will be granted by the local government of the place where a request for the status is made. A certificate testifying to a person’s “repressed” status is to be granted upon the production of appropriate documents from the Latvian national archives or from archives in other countries. In the events that documentation has been lost or destroyed, status can be ascertained and granted by the Latvian courts. The 1995 law enunciated clearly that the victims of both the Communist and Nazi regimes will be considered to have been repressed, and that both regimes will be equalized as the sources of repression. This legislation finalized the legal status of “repressed persons,” spelled out the “moral and legal” responsibility the Republic of Latvia had toward them, and laid out the procedures that should be followed in determining the status and for compensating persons who were judged to have been punished during the two regimes. The process of acquiring “repressed” status began in 1996, and the actual size of the population who held the status at a given moment has varied from about a maximum of 26,000 in the early 1990s to the current (January 1, 2009) total of 21,424 (18,961 repressed by the Soviet regime; 2,362 repressed by the Nazi regime).

- On August 17, 1991 a Law entitled *Concerning Amnesty for Persons Punished for Military Crimes*, rescinded the convictions of persons who had been found guilty of violating USSR Criminal Code articles 238-269 (relating to military matters). The reasoning in this law was that since the 1940 annexation was illegal, persons who had been drafted into the USSR military services since that date and then found guilty of violating the mentioned articles had been sanctioned illegally.
- **Lithuania** On 2 May, 1990 the Seimas approved the *Law on Rehabilitation of Persons Repressed for Resistance to Occupation Regimes* (2 May 1990, No. I-180) (new version approved by the 13 November 2008 Law No. X-1814). *Article 1* establishes a *Declaration of innocence before the Republic of Lithuania and restoration of civil rights of persons repressed for resistance to occupation regimes*. The participants of the Resistance are declared

- to be the volunteer soldiers of Lithuania and their military degrees and awards shall be recognised.
- **The Netherlands** A Decree established that all those dismissed from public service by the occupier would be enabled to return in office (Decree E 94 of September 17, 1944).
  - **Poland** *Rehabilitation Act* was passed by the parliament on February 23<sup>rd</sup>, 1991, and reformed on October 18<sup>th</sup>, 2007. It was amended a number of times and even sent to the Constitutional Tribunal. The dispute centered around the interpretation of “Polish territories.” Eventually, in 1998, the Lower House passed a bill explicitly interpreting the territories of Poland as specified in the Ryga Treaty from 1921. This meant that the Polish authorities claimed responsibility for persons sentenced by the Soviet NKWD if after serving their sentences they became Polish citizens. Between May 1991-1996, a total of 50,000 claims for compensating unfair sentences by courts of the Stalinist era were filed. About 50,000,000 million zloty were paid in reparations to former political prisoners and their heirs. The key changes of the 2007 reform are the following:
    - Definition of people subject to repressions expanded to cover the period 1956 – 1989 (estimated additional number of people covered due to the change of the definition: 40,000).
    - Maximum compensation that can be awarded: 25,000 PLN, payable not sooner than after January 1<sup>st</sup>, 2008.
    - Limits to the period when the claim can be filed: 12 months from the amendment date.
    - 2 stage procedure: 1) application for invalidation of the pre-1989 sentence (not applicable to those who had been interned, as internment was nullified automatically); 2) application for compensation

In its current shape, the act covers all sentences made by the organs of the Polish justice system between January 1<sup>st</sup>, 1944 and December 31<sup>st</sup>, 1989, if the defendant was accused of activities for the benefit of independence of the Polish State or the sentence was made because of such activities. Also sentences for resistance to collectivisation and compulsory deliveries are covered (Art. 1). The decision about nullifying of the sentence is made by the appropriate District Court, and is equivalent with the court ruling the defendant to be not guilty (Art. 2). The court instructs the defendant about their entitlement to compensation (Art. 6). Compensation, however, is not automatically granted: the claim must be registered with the court and the court compensation is awarded as a result of the court proceedings and in the amount the court finds appropriate taking into account the pecuniary and non-pecuniary damages. Those whose nullified sentence was linked to the Martial Law of December 13<sup>th</sup>, 1981, are entitled to compensation from the State Treasury of maximum 25.000 PLN. In case of their death, entitlement is passed on to their husband/wife, children and parents (Art. 8). Also those persecuted by Soviet justice system in Poland between July 1<sup>st</sup>, 1944 and December 31<sup>st</sup>, 1956 and on the then territory of Poland between September 17<sup>th</sup>, 1939 and July 5<sup>th</sup>, 1946 are entitled to the same

compensation. Their claim must be registered with the court (Art. 8). Apart from financial compensation, the court may also rule the State Treasury to cover entirely or in part cost of a symbolic commemoration of a person wrongfully persecuted (Art. 9). Those, who lost property while being wrongfully sentenced, are entitled to have it returned, or, if this is impossible, they are entitled to compensation from the *Privatisation Fund* (Art. 10).

It is estimated that about 80% of those entitled to compensation as a result of the Act's 2007 reform, have registered claims. The estimated average compensation granted is around 10,000 PLN, with the majority of people settling with this amount and very few people appealing. Awarded compensations are to be paid from the special reserve of the State Treasury. However, there are shortages in resources: in 2001 the Ministry of Justice informed that by the end of 2000 87.400.000 PLN had not been paid due to insufficient resources (including 8.400.000 interest on the overdue payments). The Ministry estimated that it needed 250.000.000 PLN to cover the cost of overdue compensations and compensations in 2001<sup>33</sup>.

- **Portugal** The JSN issued an amnesty for all political crimes, thus liberating all political prisoners, even those accused of violent actions, like the execution of political police informants. On April 30, 1974, the JSN made an announcement authorizing the return of the political exiles
- **Romania** *Draft law on politically-motivated sentences and administrative measures pronounced during the period 6 March 1945 – 22 December 1989*. The legislative proposal benefits all communist-era political prisoners, except those condemned by the courts for crimes of war and crimes against humanity. The proposal allows the prison record and court sentencing to be expunged, and some financial compensation to be offered for moral prejudice suffered as a result of imprisonment or persecution. The beneficiaries were political prisoners and individuals subjected to administrative punishment during the communist regime.
- **Slovakia** Act No. 219/2006 *on Anti-Communist Resistance* defines the period of anti-communist resistance beginning in October 1944 and rights flowing from participation in that resistance, including to full moral rehabilitation and, for some, veteran status.
- **Slovenia** More than 2.000 persons sentenced in political pseudo-legal proceedings have been rehabilitated since independence. The Committee for the Implementation of the Law on the Reperations of Injustices has dealt with 858 applications per year between 1997 and 2004 and with averagely 4.731 applications per year between 2005 and 2008.
- **Spain** The 1976 *Amnesty Law* reestablished in their posts public servants purged and in 1997 local civil servants obtained the same benefits. Ten years later, in 1986, military personnel repressed by Franco were also rehabilitated. Finally, in 2001, Congress

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<sup>33</sup> Sadłowska, Barbara (2001) *Niesłusznie skazani czekają na odszkodowania*, [www.nasze.miasto.pl](http://www.nasze.miasto.pl) [accessed October 20<sup>th</sup>, 2009]

rehabilitated also guerrilleros fighting Franco by eliminating from their records the terms *bandoleros* and *malhechores*.

- The 2007 Law also granted Spanish nationality to descents of exiles, including daughters and sons of original Spanish citizens who were born after the later lost their Spanish nationality. Additionally, the grandchildren of Spanish exiles who had lost their nationality because of exile could apply for Spanish nationality even if their parents had not retained it. No renounce to former nationality is required.
- Francoist trials have not been annulled and the 2007 law merely declares illegitimate certain trials and rulings. The Interministerial Commission created for the study argued that the pretension of obtaining a material and individual justice with retroactive efficacy had enormous difficulties given the limited retroactive application of current norms. It supported this argument also in the Constitutional Court position that the *recurso de amparo* (a specific Spanish device for the protection of individual fundamental rights by the Constitutional Court) could not be an instrument to remedy pre-constitutional situations.

#### 4.2.2 *Compensations, idemnities, subsidies, packages, etc.*

Generally speaking, EU Member States share, as a common characteristic of their diverse forms of dealing with justice for victims, a large development of measures of material reparation. This applies similarly to processes dealing with different kinds of repressive regime and in different temporal moments.

- **Austria** The *1945 Victims Assistance Act* or *Opferfürsorgegesetz* enabled resistance fighters to make claims for pension payments as well as socialists who were persecuted by the Austrian clerical dictatorship which ruled from 1934 to 1938. However, Jews and others persecuted for racial reasons were excluded from this law (unless they happened also to be resistance fighters), which has been amended over 60 times. While there was no restitution for confiscated Jewish apartments, property rights and leasehold and tenancy *were* restored for political organizations through the enactment of three restoration acts in 1949 and amended in 1953.

The 1958 *Insurance Compensation Act* established procedures for claims on life insurance policies nullified by Nazis due to racial laws.

In October 1998 the *Historical Commission of the Republic of Austria* was established with the mandate “to investigate and report on the whole complex of expropriation in Austria during the Nazi regime and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria”. The basis was to be voluntary based on a moral responsibility as opposed to an acceptance of legal responsibility. With US Deputy Secretary of the Treasury Stuart Eizenstat acting as facilitator, Schaumayer negotiated bilateral

agreements with several eastern European countries and the Austrian parliament established the *Austrian Reconciliation Fund* at the end of 2000 with contributions from Austrian industry.

Further international negotiations resulted in the *Washington Agreement* of 17 January 2001 and the *General Settlement Fund Act* to deal with complex compensation claims. Claimants could request money for losses in real estate, bank accounts, a variety of financial instruments, as well as educational and occupational losses. Jewish organizations could also make claims on property and cultural property. Symbolic payments of \$7,000 were to be paid for lost apartment rights.

**Organism in charge:** The *National Fund for Victims of National Socialism* (<http://www.en.nationalfonds.org>) On 7 July 2009, the Board of Trustees of the General Settlement Fund, to which both the presidency of the National Council and representatives of the Federal Government, as well as victims' associations and representatives of the religious communities belong, unanimously determined the final payment quotas. These quotas regulate the shares of the established losses which will de facto be disbursed. In total, claims amounting to approximately 1.5 billion US Dollars were recognized by the independent Claims Committee. As the claimed amounts ascertained from all applications reach a total substantially higher than the 210 million dollars prescribed by the Washington Agreement, each applicant can only receive an aliquot share of his/her claim. This amounts to 10.56 percent in the claims-based process, 20.74 percent for insurance policies and 17.16 percent in the equity-based process. The closing payments constitute the last payment to be received by the victims of National Socialism or their heirs from the General Settlement Fund.

On April 10, 2008, on the occasion marking the 70th Year of Austria's Annexation by Nazi Germany, the National Council decided upon a one-time payment (so-called "Errinerungszulage" or "Remembrance Payment") of € 1,000 for resistance fighters as well as for victims of political persecution by the National Socialist regime<sup>34</sup>.

- **Belgium** The already existing structures created to support victims of the First World War, were used to support victims of another war. The decision of 20 September 1940 (*Moniteur* 28 September 1940) made the laws on the compensation of civil victims of the First World War applicable to the victims of May 1940. In 1944, the Ministry of Defence ordered the National Work for Veterans, Deportees and Political Prisoners to oversee a monthly payment done to the families of the deceased and of those still in captivity. The law of 9 February 1945 created a provisional system of compensating pensions and the law of 18 May 1945 created a 'repatriation fee'. On 26 August 1947 the law on the compensating pensions was agreed upon. The compensation of victims was constructed around two systems of financial compensation: *Pensions*. Based on national solidarity, they were meant to compensate the physical damage the victim suffered. The pension was calculated on a proportional basis, related to the percentage of invalidity. *Interests*. As

<sup>34</sup> Overview of Austrian Payments to Victims of National Socialism. Special Benefits to Victims of National Socialism and Holocaust Education. Embassy of Austria at Washington. Information available at <http://www.austria.org/content/view/414/217/>



an expression of national recognition, they seek to compensate for the danger that went along with a certain patriotic activity (clandestine press, civil resistance, refusal of forced labour,) or with the consequences of this activity (imprisonment, deportation). It is therefore not a compensation of damage: it is sufficient for an applicant to demonstrate that he pertains to a certain legal category.

- *Armed resister and civil resister and objector to the forced labour* (see above laws of 1944 and 1945 for their definition) were:
  - entitled to a rent; and in case of a handicap, also to a pension;
  - social contributions were considered paid for the period of inactivity;
  - free education;
  - material damage, directly caused by the activity in the resistance, was to be compensated through the law on military claims.
- *Deported forced labourers* could be
  - entitled to a rent; and in case of a handicap, also to a pension;
  - social contributions were considered paid for the duration of the deportation;
  - free education
- *Political prisoners*
  - an exceptional fee of 1500 Belgian Francs per month of imprisonment;
  - an additional annual fee of 3000 Belgian Francs per six months of imprisonment, and this during a period of four years;
  - being entitled to a rent; and in case of a handicap, also to a pension;
  - free medical treatment for those with more than 50% invalidity;
  - priority with the national society for cheap houses, for a period of ten years;
  - social contributions were considered paid for the duration of the imprisonment;
  - free education or higher studies;
  - reductions on public transports.
- *Resisters through clandestine press*
  - the time actively spent in the service of the resistance through clandestine press, is considered as active military service, and entitles to the customary military pensions; being entitled to a rent; and in case of a handicap, also to a pension;
  - social contributions were considered paid for the duration of the imprisonment;
  - material damage, directly caused by the activity in the resistance, was to be compensated through the law on military claims.
- **Bulgaria (Indemnities)**
  - Council of Ministers decree N° 38, 28 April 1990 for *the Order of Determining One-Time Indemnity to Persons, Repressed for Political Reasons after 1 January 1946* allowed for indemnities only to legally or parliamentary vindicated individuals, repressed after 1 January 1946<sup>35</sup>). There were limitations also in the amount of the compensation (with a maximum monthly compensation of 140 leva, and a global maximum amount of 15 000 leva).
  - Law on Political and Civil Vindication of Repressed Persons 25 June 1991 (with several amendments). The vindication brought

<sup>35</sup> The possibility to claim indemnity was limited to one year since the publication of the decree. The date 1 January 1946 was pointed as a beginning of the repressions, because it was assumed that breaching of Parliamentary order began from that moment onwards. - ЦДДА, ф. 136, оп. 85, а. е. 39, л. 1 (Central State Archive).

with it the possibility for indemnities “for the suffered property and non-property damages”. The amount of these indemnities was to be determined by the government. The actual settling of the compensations required some more time in order to introduce amendments in the law, which happened in June 1994. Thus, they provided for the payment of a one-time only financial compensation in accordance with the size and the duration of the suffered repression. Eventually, the period of the repressions was further extended, from 12 September 1944 up to 10 November 1989 by amendments to the Law for Vindication in 2004 and in 2005.

○ **Czechoslovakia**

- Act No. 403/1990 *Coll. on the Mitigation of the Consequences of Certain Property Losses* (“Small Restitution Law”) restituted 70,000 small businesses and properties confiscated between 1955 and 1961 beneficiaries were Persons whose property was confiscated under Government Decree No. 15/1955, Act No. 71/1959, and certain decisions based on the nationalization Acts of 1948. Affected properties were confiscated between 1955 and 1961. If the owner has died, then heir or surviving family becomes eligible. State surrendered property to the owner (or heir) by the legal entities holding it prior to the Act, or the offer of financial compensation, or restitution of the purchase price, or repayment of the difference between the financial compensation and the purchase price<sup>36</sup>.
- Act No. 87/1991 *Coll. on Extrajudicial Rehabilitation* (“Large Restitution Law”) (February 21, 1991) made possible restitution of property confiscated by the communist state and also compensation and rehabilitation of those who had not been tried, but had been persecuted by the state for political reasons (such as membership in certain groups). Beneficiaries were citizens who are previous owners of non-agricultural property which came under the possession of the communist state (§ 3), or their heirs/surviving family (if citizens) if they are deceased; persons rehabilitated under Act No. 119/1990 who fall under the criteria laid out in § 3, paragraph 1; also people who had not been convicted of political crimes, but were victims of state persecution (via “legal actions and rulings in both the civil and labor legal spheres”) because they had been involved in democratic activities or were members of socio-economic, religious or other groups (§ 2, paragraphs 1, 2 and 3). The redress covered those who had been for such reasons imprisoned in labor camps, expelled from schools, and fired from employment. State surrendered of (non-agricultural) property to the owner (or heir, including surviving family) by the legal entities holding it prior to the Act, or if this is not possible, financial reimbursement; the

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<sup>36</sup> See Article 2, *Law on the Mitigation of the Consequences of Certain Property Losses*, Act No. 403/1990, in Neil Kritz, ed, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Vol. III: Laws, Rulings, and Reports*, Washington, DC: United States Institute of Peace Press, 1995, pp. 696-7.

repeal of military call-up orders and decisions terminating education, employment or social security; educational rehabilitation, adjustment of pension entitlements, and ability to apply for financial compensation as laid out in other laws, including Act. No. 119/1990.

- Act No. 229/1991 Coll. on the Regulation of Property Relations to the Land and Other Agricultural Property, May 21, 1991. Beneficiaries were citizens of the Czech and Slovak Federative Republic whose land, buildings and structures belonging to agricultural homesteads passed into the possession of the state or other legal entities from February 25, 1948 to January 1, 1990, or if the owner is deceased, to heirs/surviving family.

○ **Czech Republic**

- Act No. 217/1994 Coll. concerns compensation of victims and survivors of Nazi persecution; citizens persecuted by the Nazis (a status defined in Act No. 255/1946 Coll.) who have not received compensation for their persecution from other states, as well as the survivors of persecuted citizens who were executed or died in custody, prisons, concentration and internment camps or were violently killed in connection with roundups<sup>37</sup>.
- Government Decree No. 165/1997 Coll. establishes a compensation scheme for those who suffered the injustices of the Communist regime<sup>38</sup>.
- Government Resolution 1002/1999 for persons who lost property in the Holocaust that cannot be physically returned, and survivors with social/healthcare needs, as well as synagogues, Jewish cemeteries, and educational outreach programs (approx. 500 individual claimants).<sup>39</sup>
- Act No. 39/2000 Coll. establishes a onetime monetary award to the citizens of the Czech Republic meeting the criteria for soldiers in the Czechoslovak External Army and other members of the national struggle for freedom, as laid out in Act No. 255/1946.<sup>40</sup>
- Act No. 261/2001 establishes a single restitution payment to named groups.(citizens of the Czech Republic who were soldiers in the Czechoslovak External Armed Forces, participants in some other ways with the national struggle for liberation, and soldiers in the Czechoslovak Army Corps in the Soviet Union during World War II). Also considered participants in this struggle are

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<sup>37</sup> Act No. 217/1994 Coll. *on the Provision of a Onetime Monetary Sum to Certain Victims of Nazi Persecution*

<sup>38</sup> Government Decree No. 165/1997 Coll. *on Payment of a Lump Sum Compensation to Mitigate Some Injustices Caused by the Communist Regime, June 25, 1997*. Also Government Decree for Victims of the regime rehabilitated by Acts No. 82/1968 Coll., No. 119/1990 Coll., No. 47/1991 Coll., No. 87/1991 Coll., No. 633/1992 Coll., No. 267/1992 Coll., and 198/1993 Coll

<sup>39</sup> The U.S. Department of State notes that “Since applications were first accepted in 2001, the number of survivors has dropped from approximately 2,500 to just over 500.” U.S. Department of State, *Czech Republic: International Religious Freedom Report 2008*, <http://www.state.gov/g/drl/rls/irf/2008/108442.htm>

<sup>40</sup> Act No. 39/2000 Coll. established a onetime monetary award *on the Payment of a Onetime Monetary Award to Members of the Czechoslovak Foreign and Allied Armed Forces in the Years 1939 to 1945*, February 22, 2000

citizens of the Czech Republic who between March 1939 and May 1945 were concentrated in military labor camps within Czechoslovakia's September 29, 1938 borders, for racial or religious reasons, and did not receive compensation according to Act No. 217/1994 Coll., and political prisoners from the period between 1948 and 1990 and their survivors.<sup>41</sup>

- Government Decree No. 102/2002 Coll. compensates persons who did forced labor in the road battalion of the military corps, the auxiliary technical battalion and the military mining division.<sup>42</sup>
- Act No. 172/2002 Coll. compensates citizens of the Czech Republic who as citizens of Czechoslovakia were abducted to the USSR or to camps in other countries established by the USSR, and who were not lawfully convicted of crimes directed against democratic Czechoslovakia (the Third Republic) or considered by one of that regime's laws (No. 128/1946 Coll.) to be a security risk. If the person has died, their children, spouse, and/or parents may apply for the compensation.<sup>43</sup>
- Government Decree No. 145/2004 Coll. compensates persons whose occupational or service relationships were terminated for reasons of political persecution or by methods violating generally recognized human rights and freedoms.<sup>44</sup>
- Government Decree No. 622/2004 establishes an additional pension to the citizens of the Czech Republic who, during the communist period, were convicted of crimes and served a sentence or were unlawfully deprived of their personal freedom, and who were subsequently rehabilitated or had the conviction nullified according to a range of laws (paragraph 1, part a); widows or widowers of such persons who receive a pension in the Czech system, and children of such persons if he or she (or both parents) died in prison or under deprivation of freedom before the child turned 18. Also, the surviving spouses of persons whose deaths were caused by state authorities while those persons were attempting to leave Czechoslovakia, as well as their children if they were under 18 when the parent was killed, if the surviving family receive payments from the Czech pension system. Also, the surviving spouses of those executed between February 28, 1948 and December 31, 1989, after receiving death sentences for acts falling within the definition of acts laid out in paragraph 1,

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<sup>41</sup> Act No. 261/2001 Coll. *On the Payment of a Lump Financial Sum to Participants of the National Struggle for Liberation, Political Prisoners and Persons Concentrated to Military Labor Camps for Racial and Religious Motives and on the Amendment of Act No. 39/2000 Coll.*

<sup>42</sup> Government Decree No. 102/2002 Coll. *on the Payment of a lump sum financial compensation to mitigate some injustices caused by the Communist Regime*

<sup>43</sup> Act No. 172/2002 Coll. *on Compensation for Persons Abducted to the USSR or Camps that the USSR Established in Other Countries*

<sup>44</sup> Government Decree No. 145/2004 Coll. *on the Provision of a Contribution from the Budget of the Ministry of Defense toward the Mitigation of Certain Injustices Caused by the Communist Regime*

part a, if the surviving spouse is a Czech citizen and receives payments from the Czech pension system.<sup>45</sup>

- Act No. 203/2005 Coll. compensates persons harmed or raped in the period from August 20, 1968 to June 27, 1991 by persons carrying out the occupation, as well as survivors of those killed.<sup>46</sup>
- Act No. 357/2005 Coll. acknowledges and compensates named groups and survivors in the struggle for liberation.<sup>47</sup>

○ Cyprus

- Law 114/1988 on the *Relief of Victims* established a monthly pension determined by the Council of Ministers to Freedom fighters who have been rendered temporarily or permanently incapable of working, as well as those who became at least partially disabled due to their fight against the coup.
- On 10 July 1992 the House of Representatives enacted Law 53(I)/1992 on vocational rehabilitation to disabled persons and those who fell dead. Those who “fell dead” were defined to include those who were killed in relation to the coup. Their dependents included the spouse, children, brothers and sisters, and parents. Under Article 3 of the Law, dependent persons would have a preferential right up to 10 percent for jobs in the public sector (with the exception of education), provided that they are qualified for the job and are not inferior to other candidates in terms of value and qualifications.<sup>48</sup>
- By Law 55(I)/1997<sup>49</sup> the same preferential right was retained up to 10 percent, but the ‘victims’ were defined as including the spouse, the children of those who fell dead, the brothers and sisters of the unmarried ones who fell dead, but not their parents. This Law was found to be unconstitutional by the Supreme Court of Cyprus in a judgment of 26 September 2002 in *The Republic of Cyprus, through the Commission of Public Service v. Eleni Constantinou*.<sup>50</sup> The provision on preferential treatment was found to constitute discrimination on the basis of origin in breach of Article 28 of the Constitution safeguarding the principle of equality which does not allow for any exceptions.

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<sup>45</sup> Government Decree No. 622/2004 establishes an additional pension on the *Provision of an Additional Pension Payment toward the Mitigation of Certain Injustices Caused by the Communist Regime in the Social Sphere..* Amended by Government Decrees No. 405/2005 Coll. and No. 369/2007 Coll, November 24, 2004 (as amended on September 21, 2005 and December 19, 2007)

<sup>46</sup> Act No. 203/2005 Coll. *on the Compensation of Certain Victims of the Military Occupation of Czechoslovakia by the Union of Soviet Socialist Republics, German Democratic Republic, Polish People’s Republic, Hungarian People’s Republic and Bulgarian People’s Republic*

<sup>47</sup> Act No. 357/2005 Coll. *on the Acknowledgment of Participants in the National Struggle for the Formation and Liberation of Czechoslovakia and Certain of their Survivors, on Extra Contribution to the Pensions of Certain Persons, on a Onetime Monetary Sum to Certain Participants in the National Struggle for Liberation in the Years 1939 to 1945 and on the Amendment of Certain Acts*

<sup>48</sup> Law 53(I)/1992 (amended by Law 38(I)/1994) *on Vocational Rehabilitation of Disabled Persons and the Dependents of those who Fell Dead, are Missing, are Disabled or Enslaved*

<sup>49</sup> Law 55(I)/1997 (as amended by Law 100(I)/1998) *on Vocational Rehabilitation of Victims and the Children of Enslaved Persons*

<sup>50</sup> 2002 (3) C.L.R. 534.

- In response, the House of Representatives enacted Law 87(I)/2004<sup>51</sup> which included an identical definition of victims with the Law 55(I)/1997. Under Article 3(1) of the Law, the victims who were candidates for jobs in the public sector should be preferred in relation to other candidates who were almost equally qualified. This provision was again found unconstitutional by the Supreme Court of Cyprus in a judgment of 8 December 2006 in *Charalambos Kitis and Others v. The Republic of Cyprus, through the Commission of Public Service*,<sup>52</sup> on the same grounds of prohibited discrimination on the basis of origin as in the above-mentioned case.
- Law 24(I)/2001<sup>53</sup> defines resistance fighters as those who fought in defense of democracy and against the coup as well as the victims of the coup. The Law provides for moral and pecuniary rewards for freedom fighters to be determined by a committee established to that effect. As at December 2005 it had registered 2,965 persons as resistance fighters. The deadline for the register had since been extended twice to enable more fighters to be registered. On 5 May 2000, the House of Representatives enacted Law 62(I)/2000 which defines as ‘fighters’ all the liberation struggles for the freedom of Cyprus including “the defense of the State and democracy before, during, and after the coup of 15 July 1974” along with the anti-colonial liberation struggle of 1955-59, the struggle during the inter-communal hostilities and the resistance to the Turkish invaders since 1974<sup>54</sup>. Those who fought against the coup and survived and have been recognized and registered as freedom fighters are entitled to, *inter alia*, promotion to a higher rank on grounds of braveness. In implementing this provision, the Ministerial Council decided on 19 June 2007 to grant moral rewards to all police officers who were registered as resistance fighters. As a result, 313 police officers were granted honorary promotion upon retirement, implying an additional monthly pension of 35 to 60 euros approximately, depending on their rank.
- According to the Law 46(I)/2005<sup>55</sup> the category of victims entitled to housing benefits includes: the widow or the child of a freedom fighter who fell dead, the parents or the sister of those freedom fighters who fell dead and were not married, a freedom fighter who became at least 40% disabled and a child of a freedom fighter who became at least 50% disabled. These persons are entitled to various benefits, either in the form of a grant to build or buy a house or in the form of monthly subsidy of rent.

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<sup>51</sup> Law 87(I)/2004 on *Provision of Equal Opportunities for Vocational Rehabilitation of Victims and the Children of Enslaved Persons*.

<sup>52</sup> 2006 (3) C.L.R. 734.

<sup>53</sup> Law 24 (I) /2001 on *Establishment of 15 July 1974 as a Day of Memory and Tribute for Those who Fell or Fought in Defense of Democracy*.

<sup>54</sup> Law 62 (I) /2000 on *Recognition of all Fights of the Cypriot People for Freedom and Democracy (Honourary Distinctions) Act* (amending a Law of 1999).

<sup>55</sup> Law 46(I)/2005 currently in force on *Provision of Housing Assistance to Displaced Persons, Victims and Other Persons and the Determination of the Criteria and Terms of such Provision*

- **Denmark** *The Act on Compensation for the Victims of the Occupation Period* (1945, still in force) prescribes (Section 1(1)) that Danish citizens are to be economically compensated if they have incurred disease or injury during the time from 9<sup>th</sup> April 1940 to the end of the war, and therefore have suffered loss in their ability to work. The *Freedom Fund* worked towards locating persons who would be eligible to compensation under the *Act on Compensation for the Victims of the Occupation*.
- **Estonia** The 2003 *Persons Repressed by Occupying Powers Act* provides for extra social and pension rights for the repressed. Concerning pensions, repressed persons would be able to count any years spent in detention, deportation or prison three times toward the calculation of their pensionable service. A special state commission in June 2003 to work out and monitor the issue of social guarantees for repressed persons. As for economic compensation for pecuniary damages and non-pecuniary damages, the Estonian state as such has never paid out any forms of non-pecuniary damages since it considers that the main perpetrator of injustice in Estonia has been considered the Soviet regime.
- **Germany**
  - **(Nazi Period)** The Western Allies demanded that the victims of persecution be compensated. The Federal Republic of Germany agreed to this in a *Treaty of Transfer (Überleitungsvertrag)* of 26 Februar 1952. In the London negotiations on debts related to the war (*Londoner Schuldenabkommen*, 1953), the Allies relinquished their rights to a part of their pre-war debts and a repayment of their economic help to Western Germany. The repayment of remaining debts to the Western Allies, however, had priority over any other financial commitments. All other financial obligations of Germany were postponed until a peace treaty would come into being. Thus the Federal Republic could fend off any demands for compensation until 1990. The Bundestag introduced a bill on 1 October 1953 (*Bundesergänzungsgesetz, BErG*). It was a first attempt to regulate the payments to the victims of racial, religious and political persecution for damages of life, health, liberty, property and professional progress (i.e. such as the loss of educational chances). This excluded certain groups of victims of persecution, such as communists, homosexuals, gypsies, women guilty of “fraternization with the enemy“ (i.e. sexual relations with Polish foreign workers), victims of compulsory sterilization or euthanasia or those stigmatized as “social misfits“ or conscientious objectors and victims of the jurisdiction of the Wehrmacht. It stipulated that each day of loss of liberty by imprisonment in a concentration camp, prison or ghetto was to be compensated by 5 DM per day. A more generous version came into being on 29 June 1956 with the *Bundesentschädigungsgesetz (BEG)*. A common feature of both was the exclusion of victims who were not resident in the Federal Republic of Germany. Several amendments to the law were made until 1965 when the law reached its final version, however, still not all victims of Nazi persecution qualified for compensation under this scheme. The

bureaucratic process and frequently insensitive personnel in the compensation authorities made the procedure of applying for *Entschädigung* an arduous, unpleasant and painful process for the victims who had to confront anew their persecution and more importantly establish proof of the damages of their ordeal. Total payments in the course of compensation amounted to 80-100 billion DM. However, the payments for the individual recipient were modest: one month of imprisonment in a concentration camp equalled 150,- DM. For damages of health, pensions are being paid. Compensation payments were and are limited to those who either lived within the German Reich (in the borders of 1937) or who had established their permanent place of residence after 1945 in the Federal Republic of Germany. Legislature thus aimed at the citizens of the German Reich and the Federal Republic of Germany and did not include the vast majority of victims of Nazi persecution: all foreign nationals. In the 1980s, disadvantaged minorities, such as gypsies, homosexuals, the victims of compulsory sterilization, deserters of the Wehrmacht and forced labourers were publicly recognized as victims. The Bundestag initiated a fund for cases of social hardship of these victims, but still foreign labourers had not received any compensation. Until nowadays, homosexuals were not recipients of either collective or individual compensation.

- **(GDR)** Compensations and pensions were settled within the broader rehabilitation scheme (see above).
  - The *StRehaG* law offered a compensatory payment for every month in a GDR prison of 300 DM (half of the amount then paid in West Germany for wrongful imprisonment); in January 2000 the amount was increased to 600 DM (or 306,78 Euros). Those in difficult economic circumstances are entitled to additional help; as are those who have suffered health problems as a result of imprisonment (or their heirs).
  - The *Drittes Gesetz zur Verbesserung rehabilitierungsrechtlicher Vorschriften in der ehemaligen DDR* (13 June 2007) envisaged a special pension (sometimes called *Opferrente*) of 250 Euros per month for those in economically difficult circumstances. A single individual would have to have a monthly income of less than 1291 Euros to qualify for the special victim's pension; a married victim would have to have an income of less than 1638 Euros (regular pensions do not count as income for these purposes). All special pensions are granted for a lifetime.
- **France** Decree no. 2000-657 of 13 July 2000 established a pension system in favour of orphan children whose parents had been victims of antisemitic persecutions: a monthly life pension of Francs 3,000 (€ 450) or a capital of Francs 180,000 (€ 27,450).
- **Hungary** The legal framework toward compensation is composed by the following instruments:



- *Cabinet decision of 26 July 1951* Compensation for National Socialist injustice, compensation settlements for victims of pseudo-medical experiments.
- *Law No. 25 (June 26, 1991) the Compensation Law*: compensation for economic injustices under communism to the “natural persons whose private property has been violated as a result of enforcing legal provisions created by the State “between 1 May 1939” and “8 June 1949”. The law covered by its directive “Hungarian citizens” (art. 2) as well as “non Hungarian citizens who in manner akin to carrying on their lives resided in Hungary as of 31 December 1990.” (art. 2 d)
- *Law No. 24 (April 7, 1992)* adopted in order to “settle ownership conditions, to provide partial compensation for unjust damages inflicted by the State to the property of citizens as a result of enforcing legal provisions created between 1 May 1939 and 8 June 1949”. The law ruled that “the provisions of Law No. 25 of 1991 shall be applied in conjunction with compensating damages of natural persons’ private property which had been violated by the State as a result of enforcing legal provisions created between 1 May 1939 and 8 June 1949.”
- *Act XXIX of 1997* - compensates the relatives of those deceased persons whose death penalty was enforced on the basis of an unlawful judgment of the Hungarian Court, in the case of whom the cause of death during law enforcement was without any doubt the willful contribution of the Hungarian authority, where the injured party lost his or her life beyond doubt due to the political despotism of the Hungarian authority or an official person, or if the injured person died during deportation or forced labor. Compensation applications could be submitted to the Central Compensation Office within the 4-month term of preclusion (June 7, 1997 and October 7, 1997).
- *Act on the budget of the Republic of Hungary for the year 1999* stated the amount of the lump-sum compensation due for the loss of life of the politically persecuted in HUF 30,000. According to the resolution No. 46/2000. (XII.14.) AB, the Constitutional Court stated that the decision was anti-constitutional; therefore, it annulled the relevant ordinance with retrospective effect to 1 January, 1999.
- *Act XLVII of 2006* on reopening the deadlines stipulated in Act XXXII of 1992 on compensation due to persons unlawfully deprived of life and liberty; the act ruled that claims for compensation could be submitted from March 31, 2006 to December 31, 2006. Also the act stated that for compensation can apply those who lost their life between 1939 and 1989 due to politically motivated despotic action of the Hungarian authorities, or during deportation or Soviet-ordered forced labor.
- The Official bodies which deal with compensation are

- *Central Compensation Office*
- *Office of Justice (Fővárosi Igazságügyi Hivatal)*

The primary objective of Office of Justice is to close all compensation claims with a final and absolute decision (resolution or order) until the estimated date of middle of 2010. The Office had received 97.600 claims until the deadline of December 31, 2006. The 41 decision-maker officials dealing with the compensation claims in the Office of Justice have made a total of 57.438 resolutions and orders until July 31, 2009. There were also 59.394 other actions made along with the decisions, such as supplementary letters, informative letters and notes. The compensation specialty has remitted a total amount of compensation of 2.109.174.689 HUF until the middle of 2009 with the contribution of the Public Foundation of War Orphans. A monthly life annuity was adjudged in 190 cases and compensation notes of a total amount of 18.117.000 HUF were adjudged in connection with claims submitted for unlawful deprivation of liberty.<sup>56</sup>

- The compensation process takes place by age, thus tends from the oldest claimants (i.e. 100-90- 80) to the younger ones. The more of advanced age the claimant is the sooner we process his/her claim. If the claimant files a reasonable request for urgent procedure due to certain reasons and the General Deputy Director agrees then it is possible to process the claim without taking the claimant's age into consideration. The final and absolute decision declaring the portion of the is sending by the Office of Justice to the Public Foundation of War Orphans within 30 days from becoming final and absolute and the Foundation will initiate the transfer or disbursement of the compensation to the claimer within 30 days with the cooperation of the Hungarian State Treasury. In order to accelerate administration separate work groups deal with the certain types of claims at the Compensation and Documentary Department. Claims submitted for loss of life have been distributed among the groups by taking the client's country of residence into account (Israeli work group, American work group, Serbian work group and a work group for all other claims).<sup>57</sup>
- **Compensation for Holocaust victims.** The Compensation Office reported that, of the 5,600 claims filed by U.S. Holocaust survivors, 4,500 have been denied. The denials most frequently result from insufficient documentation provided by the claimant. In December 1998 a compensation program was

<sup>56</sup> Information from [http://www.kih.gov.hu/english\\_pages/Compensation/Information/information\\_090810.html](http://www.kih.gov.hu/english_pages/Compensation/Information/information_090810.html)

<sup>57</sup> Ibidem.

announced allotting less than \$200 for each parent or sibling killed during the Shoah. In 2003, following pressure from the Jewish world, this small payment was increased to about \$1,800 (400,000 forints). The new payment, however, was limited to those claimants who had already applied for the first payment in 1998. In December 31, 2006 Hungary Persecution Program closed Central Restitution Bureau *Kozponti Karrendezesi Iroda*.

- **Italy** Reparations and compensations were constructed accumulatively.
  - Law 336/1970 foresaw career, welfare and pension benefits to certain categories. Law 541/1971 extended these benefits to several categories: ex deported persons and ex persecuted persons (either political or racial). This law established that for the application of Law 541, the qualification as ex-racial persecuted person belongs to Italian citizens of Jewish origin who, by effect of the laws or norms –including those of the Italian Social Republic- with the purpose of racial discrimination, have informed of physical, economic or moral damage. Moral damage is also proved with the notation “Jewish race” on identity certifications.
  - Law n. 791 foresaw the consideration as deported persons in Nazi extermination Camps (K. Z.). These persons had their right to replacement in the work position and sanitary assistance in equal terms to the mutilated and war handicapped persons. If they were either 50 years old (women) or 55 (men) they had a for-life assignment equal to social security pension. The same assignment was recognised for Italian citizens included in the Risiera di San Sabba di Trieste.
  - Law 94 foresaw pensions for the relatives of deported persons to the Nazi extermination camps (K.Z.). In 1998, sentence n. 268 of the Constitutional Court declared the unconstitutionality of art. 8 of Law n. 96/1955. The definitive sentence recognised the specificity of racial persecution without necessarily being related to “antifascism”: The same benefits apply to both categories, i.e. antifascist political persecuted persons and victims of racial persecution, even if the causes and ends of the damaging acts remain different.
- **Latvia** The “repressed” are eligible for free medical services (through the Ministry of Public Health), special procedures for calculating state pensions (Ministry of Welfare), deductions from the national income tax (Ministry of Finance), free transportation on the national railways system and the inter-city bus system (Ministry of Transportation), and a 50% reduction on real estate taxes (Ministry of Finance and local governments). In addition each local government is entitled to extend further releases from the normal costs of everyday life in Latvia. The April 12, 1995 *Law Concerning the Determination of Repressed Status for Persons Who Suffered under the Communist and Nazi Regimes* (amended in 1997, 1998, 1999, 2001, and 2004) in its paragraph 4 sets

compensation measures for the victims of the Communist and Nazi regimes.

- **Lithuania** The *Law on State Support to the Participants of Armed Resistance* (25 November 1997, No. VIII-541) regulates pensionary maintenance for volunteer soldiers; state support (lumps sums) to volunteer soldiers, wounded during the armed resistance fights, investigation or imprisonment; burial of volunteer soldiers. Secondly, the families of the fallen participants of the resistance against the 1940-1990 Occupations are entitled to get a state support (lumps sums) under the *Law on State Support to Families of the Fallen Participants of the Resistance against the 1940-1990 Occupations* (6 October 1998, No VIII-871). Thirdly, the *Law on State Pensions* (22 December 1994, No I-730) regulates the victims' state pensions.
- **Luxembourg** Compensation was seen as a national duty in order to compensate those who had stood up against the German occupation and thus saved Luxembourg's independence and freedom. The law foresees compensation for victims of Luxembourg nationality and for facts that have taken place on Luxembourg territory only. There is an exception concerning foreigners and stateless people who had been living in Luxembourg since 1930 and who had rendered exceptional services to Luxembourg. This excluded refugees who had come to Luxembourg in large numbers from 1933 on. This restriction is included in nearly all compensation laws in Western Europe after World War II. The law established three categories for compensation: loss of revenue; physical injury and movable and real property. Racial persecution and moral compensation were not taken into consideration.
- **Poland**
  - *Act on combatants and some people who had been victims of war and post-war repressions*, of January 24<sup>th</sup>, 1991, (reformed on June 5<sup>th</sup>, 2007), defines combatants as persons, who took part in war, armed actions and national uprisings, being members of military structures or organisations fighting for independence and freedom of the Republic of Poland (Art. 1). Therefore, the act covers both those who were fighting with Fascism during WWII, and those fighting with communism during and after the last world war. The Act deprives of combatant status those who were involved in communist military organisations (such as ORMO) fighting with independence fighters after the War. The act also explicitly excludes service in NKVD. Also periods of detainment in labour or concentration camps, prisons and arrests (for political, national or ethnic reasons) are considered as periods of combatant activity (Art. 4). Finally, the Act applies also to children who were taken away from their parents with the purpose of extermination or deprivation of national identity. In its current form and in combination with other acts the act provides the following privileges and assistance to combatants and people persecuted during the communist period:
    - Combatants receive monthly financial bonuses (combatant's bonus of 173,10 PLN, energy supplement of 131,41 PLN, compensation bonus – 25,97PLN);

- Combatants are entitled to discounts (50% for city public transport, 37% for railway and coach transport);
- Combatants have a priority when using nursing assistance at home, seeking placement in a home, using national healthcare system;
- Periods of combatant activity are included as employment periods for the purpose of pension or other benefits;
- Combatants still in employment are entitled to another 10 days of holidays per year;
- Combatants are entitled to a lower pension age (55 years for women, 60 for men).
- Persecuted persons, i.e. persons who are disabled as a result of combatant activity are covered by the financial and other benefits described in the *Act on provisions for war and military invalids and persecuted persons* of May 29th, 1974, and on top of their combatant entitlements they also receive:
  - war invalid benefit (depending on the degree of disability), which cannot be lowered or taken away even if the person has an additional income, and is not taxable. It can be supplemented with the care benefit, which is also not taxable. The invalid benefit can be combined with combatant benefit, but one of them will be lowered by 50%;
  - employment privileges: war invalid's and a persecuted person's employment is protected: they can only be fired when a written permission from local authorities and only when reasons are serious;
  - persecuted persons are entitled to an early retirement age;
  - persecuted persons with the highest level of disability (classified as 'group I') are entitled to a 78% discount; they are entitled to assistance with the purchase and maintenance of the car;
  - they are exempt from TV and radio licence fee;
  - healthcare (on the basis of the *Act on healthcare services financed from public resources* of August 27<sup>th</sup>, 2004): use of some medicine free of charge, subsidised orthopaedic appliances, access to some treatment without earlier pre-qualification by the GP.

There are 30 care homes, where combatants and persecuted persons have a priority to be accommodated.

- *Act on implementation of the entitlement to compensation for the property left beyond the current borders of Poland* (8th July 2005) Those repatriated between 1944 and 1952 entitled to compensation equal to the 20% of the property left in the former eastern parts of Poland. The final date for compensation claims submission was set at December 31st, 2008.
- *Act on compensation for the families of victims of group independence activities in years 1956 – 1989* (7<sup>th</sup> May 2009). Compensation of 50,000 PLN for each family member of a

- person killed as a result of participation in organised independence activities between 1956 and 1989.
- **Portugal** In 1997, *Law 20/1997* regulated compensations for the anti-Salazar opposition in terms of social security and retirement pension entitlements, for the years they had remained clandestine or in exile<sup>58</sup>. In order to qualify, the claimants must be able to provide evidence of “time spent, either within the country or abroad, during which they were victims of political persecution that impeded their ability to engage in normal professional activities and prevented their social insertion into the community because of their membership in a political group, or their participation in political activities destined to promote democracy” between 28 May 1926 and 25 April 1974.
    - In 2003, a Social-Democratic government, headed by Prime Minister José Manuel Durão Barroso approved a decree-law which determined the attribution of a financial compensation in form of pension to all those who acted in defense of freedom and democracy through exceptional acts.<sup>59</sup> Only a member of the government, an MP, the regional and local administration and/or any institution of public interest can present the proposal which must be accompanied with documents that unequivocally attest such exceptional acts.
  - **The Netherlands**
    - **Material compensation** for damage was regulated by means of a *Decree on Material Damages of War* (*Besluit op de Materieele Oorlogsschaden* of 9 November 1945), to be replaced by a Law of 9 February 1950 (*Wet op de Materiële Oorlogsschaden*). The general definition was founded on the principle that people had to be compensated for lost material property, like houses, equipment, furniture, commercial goods and stocks, in order to enable them to rebuild their individual and commercial existence. Not compensated were less tangible (but nevertheless very important assets) like loss of employment, losses on the stock market and the like). A total amount of 6.3 Billion Guilders (1.75 Billion Dollars) would be paid to claimants. In fact, the taxpayers were to produce the money required for this redistribution of funds. In order to soften that pain, the Minister of Finance conceived extra taxes on capital accumulated during the war.
    - **Pensions** Since the late 1940s, a system gradually developed of *Extraordinary Pension Laws* (*Buitengewoon Pensioen Wetten*) for specific categories of victims. By means of these laws, the State took responsibility for the welfare of these categories and in a way organized collective solidarity. Initially, the purpose of these laws was more limited: providing equal support for members of the former resistance and their families, who could not apply to other sources (like military pensions). The *Law on Extraordinary Pension* (*Wet Buitengewoon Pensioen 1940-1945*)

<sup>58</sup> *Lei 20/1997, de 19 de Junho, “Contagem especial do tempo de prisão e de clandestinidade por razões políticas para efeitos de pensão de velhice ou de invalidez”*

<sup>59</sup> *Decreto Lei 189/2003, de 22 de Agosto, attribution of pension for exceptional acts in the defense of freedom and democracy.*

was approved by Parliament on September 29, 1947. An important partner in the implementation of the law was the ‘*Foundation 1940-1945*’ (*Stichting 1940-1945*), a private organization founded by the unified resistance movement in 1944-1945 in order to provide for the support of the families of those killed or disabled as a result of their participation in the resistance. During the years to follow, the law was adapted several times to include more categories of victims among them Jehovah’s Witnesses and those who had participated in resistance abroad. In 1971, it was decided that the ‘burden of proof’ was to be alternated. Up to then, applicants had had to prove that physical or psychological disabilities had been directly caused by their experiences in war and occupation. From now on, the authorities had to prove that that was *not* the case, in order to be able to turn down applications. With the expansion of the Dutch welfare state, compensations increased, more and more categories of victims were recognized, and more and more applied to the law. In 1986, a separate law providing assistance to those who had resisted the Japanese occupation in the former Dutch East Indies was created (*Wet Buitengewoon Pensioen Indisch Verzet*).

- Parliament created a Law on Benefits for Victims of Persecution (*Wet Uitkering Vervolgingslachtoffers 1940-1945*), in force starting January 1, 1973. It took until 1986 before a related Law for victims from the former Dutch East Indies was created. A next element in the system was a law for the support of civil war victims, like those victimized by air raids or other forms of military operations (*Wet Uitkeringen Burger-Oorlogslachtoffers*), applicable from April 1, 1984 onward.
- **Romania**
  - *Decree-Law 118 of 30 March 1990*<sup>60</sup> recognized every year of detention or invalidity caused by detention/imprisonment as one year of employment toward state pension. Communist-era victims were eligible to receive free medical care in public clinics and hospitals, and priority for state-owned housing assigned by town halls.
  - *Decree-Law 124 of 24 April 1990 on the Liberty Fund* provided for the creation of a public fund that gathered all the money donated for helping the cause of the December 1989 Revolution. The fund was to be used for repairing the public and private buildings destroyed during the Revolution; helping those wounded and incapacitated; building monuments for those who lost their lives; and creating a museum of the Revolution.
  - *Law 42 of 18 December 1990*<sup>61</sup> honoured those killed, wounded, disabled in the December 1989 Revolution, and their surviving relatives.

<sup>60</sup> *Decree-Law 118 of 30 March 1990 on granting some rights to the individuals politically persecuted by the dictatorship installed on 6 March 1945, and to those forced into exile and imprisoned*

<sup>61</sup> *Law 42 of 18 December 1990 on Honoring Heroes-Martyrs and Rewarding Their Relatives, the Wounded, and the Fighters for the Victory of the December 1989 Revolution*

- *Law 49/1991 on granting compensation to war invalids, veterans and widows* offered these categories some facilities, including monthly compensation packages; free use of the train and the public transportation system, exemption from paying local taxes and fees, free hook-up to the national telephone service, free medical care, and one free annual ticket for medical treatment in a sanatorium.
- *Law 44/1994 on war veterans, and on some rights of war invalids and war widows* granted financial compensation to those categories, as well as land plots, free use of the public transportation system, and various other facilities.
- *Law 189 of 2 November 2000*<sup>62</sup> granted compensation packages and benefits to victims of the Antonescu regime persecuted for ethnic reasons<sup>63</sup>. Beneficiaries: Romanian citizens belonging to different ethnic groups who, from 6 September 1940 to 6 March 1945 were persecuted on ethnic grounds as follows: sent to ghettos and concentration camps abroad; imprisoned in detention centers and concentration camps; transferred from a locality other than that where they resided; belonged to forced labor detachments; survived the death trains; are surviving spouses, who did not remarry, of persons assassinated or executed on ethnic grounds.
- *Law 309 of 22 May 2002 on granting some rights to new recruits drafted by the General Direction of Labor Service during the 1950-1961 period* granted financial compensation for each year of military service performed in the service of the General Direction of Labor Service, a communist institution paralleling the army.
- *Law 341 of 12 July 2004*<sup>64</sup> confirmed the facilities and benefits granted to all categories of fighters in the 1989 Revolution.
- *Law 247 of 19 July 2005 on Reforms in Property and the Judiciary* modified Law 10/2001 and created the Central Commission for Establishing Compensation (see below).
- *Governmental Decision 1481 of 21 November 2005 on the Creation of the Property Fund* set up the *Property Fund* and introduced financial compensation for the communist-era abusively confiscated property that could not be returned in nature<sup>65</sup>.

○ **Slovakia**

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<sup>62</sup> *Law 189 of 2 November 2000 for approving Governmental Ordinance 105/1999 for granting some rights to individuals persecuted because of ethnic reasons by the regime installed in Romania from 6 September 1940 to 6 March 1945*

<sup>63</sup> The law granted to each victim compensation packages of 300,000 Lei per month for each year of detention, deportation or forced transfer; 150,000 for those who belonged to forced labor detachments or survived the death trains; 300,000 for the spouse of those assassinated or executed on ethnic grounds; and 300,000 for the spouse of those who belonged to one of the categories of beneficiaries (see below), adopted by the Romanian Parliament on 2000.

<sup>64</sup> *Law 341 of 12 July 2004 on gratefulness toward heroes-martyrs and fighters who contributed to the victory of the Romanian Revolution of December 1989*

<sup>65</sup> It stipulated the level of compensation resulted through the application of *Law 10/2001*; the *Governmental Emergency Ordinance 94/2000*; and the *Governmental Emergency Ordinance 83/1999*.



- *Act No. 319/1991*<sup>66</sup> on mitigation of certain property injustices. Beneficiaries: Citizens of the Slovak Republic with permanent residence there who were illegally and forcibly abducted as civilians to the USSR or the camps established by the Soviet Union in other countries, as well as their surviving family members. Also, persons who have permanent residence in the Czech and Slovak Federative Republic and who were forcibly evicted from their place of residence by the state between 1948-1952 and between 1952-1953, as well as their family members who lived in their common household and have permanent residence in the Czech and Slovak Federative Republic.
- *Act No. 282/1993 Coll. on the Mitigation of Certain Property Injustices Caused to Churches and Religious Societies*, of October 27, 1993. Beneficiaries: State registered churches and religious societies in Slovakia, whose things passed into the ownership of the state or municipality during the period from May 1945 to January 1990; for Jewish religious communities, the period is from November 2, 1938 to January 1990. Restitution of all movable and immovable property.
- *Act No. 305/1999 Coll.*<sup>67</sup> compensates persons who, in the period from 1939 to 1945, were deported for political, national, racial or religious reasons from the territory of the Slovak Republic or the Protectorate of Bohemia and Moravia to concentration or prisoner-of-war camps on Slovak, German, or other territory; also, persons who were in hiding because of racial or religious persecution, if on the day the law came into effect they were citizens of Slovakia and permanent residents there. If the person is deceased, surviving family are included as well, but not if the person was deported from the Protectorate of Bohemia and Moravia.
- *Act No. 105/2002 Coll.*<sup>68</sup> establishes a financial contribution to Slovak citizens with permanent residence in Slovakia who were soldiers in the Czechoslovak External Army or participated in the national struggle for liberation. If the person is deceased, the surviving spouse is also included, if the marriage existed during the struggle for national liberation, and if the spouse is a Slovak citizen with permanent residence in Slovakia.
- *Act No. 462/2002 Coll.*<sup>69</sup> establishes a single financial contribution to Citizens of the Slovak Republic who were imprisoned for at least three months and were rehabilitated by the Ministry of Justice; if the person was imprisoned for at least a

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<sup>66</sup> *Act No. 319/1991 on the Mitigation of Certain Property and Other Injustices and on the Responsibilities of the Organs of State Administration of the Slovak Republic in the Area of Extrajudicial Rehabilitation*, of July 11, 1991

<sup>67</sup> *Act No. 305/1999 Coll. on the Mitigation of Certain Injustices to Persons Deported to Nazi Concentration Camps and Prisoner of War Camps*, of November 3, 1999.

<sup>68</sup> *Act No. 105/2002 Coll. establishes a financial contribution on the Provision of a Lump Sum Financial Contribution to Soldiers of Czechoslovak External or Allied Armed Forces and to Persons Who Participated in Domestic Resistance in the Period from 1939 to 1945*, of January 31, 2002.

<sup>69</sup> *Act No. 462/2002 Coll. on the Provision of a Single Financial Contribution to Political Prisoners*, of July 9, 2002.

- year, after his or her death, the right to claim the contribution passes to their widow or widower; if the widow or widower did not remarry, then the children may claim the compensation.
- *Agreement between the Government of the Slovak Republic and the Central Union of Jewish Religious Communities in the Slovak Republic on the Partial Financial Compensation of the Victims of the Holocaust* (Government Resolution No. 1027 of September 18, 2002), of October 9, 2002. Beneficiaries: Persons who owned property that lay in the territory that now makes up the Slovak Republic and that, as a result of racial persecution, was confiscated between November 1938 and May 1945 and who have not had the title restored or been otherwise compensated; surviving family is eligible as well; also, social and cultural projects of the Slovak Jewish community and the Council for the Compensation of the Victims of the Holocaust in the Slovak Republic (for its operation).
  - *Act No. 547/2005 Coll.*<sup>70</sup> establishes a compensation scheme to Slovak citizens who, during the period between August 20, 1968 and June 27, 1991 were harmed by soldiers from the occupying armies or civilians staying on Czechoslovak territory in connection with the stay of the occupying forces; if the person is deceased, then their surviving family are beneficiaries of the law. If the occupying army or accompanying civilians on Czechoslovak territory killed a person, then that person's surviving family members are also eligible for compensation.
  - *Act No. 219/2006 on Anti-Communist Resistance*, of March 16, 2006. Beneficiaries: Participants in the anti-communist resistance who spent at least 12 months in activities for this cause (the time requirement is not applied to those whose activities resulted in serious damage to their health or death).
- **Slovenia** The *Act about Victims of War Violence* (1995, amended in several occasions) gives special protection of those Slovenian citizens who had been subject during the Second World War to human rights violations. The Victims of War Violence Act connects appropriate categories with a different scope of statutory rights (health care, spa and climate related treatment, the reimbursement of travel expenses, the recognition of years of service for retirement benefits, the right to a pension under more favorable conditions, the right to military compensation according to a special law, a life-time monthly allowance, and priority in the allocation of a government-subsidized apartment).
  - **Spain** In 1990, the Congress approved indemnities for the persons who had suffered prison during at least three years and who were comprised in the categories mentioned in the 1976 law and who were 65 years old (or more) in 1990. The age requirement pursued the exclusion of eventual ETA terrorist applications. 103,000 applications were submitted of which 41,162 were rejected. The large number of persons excluded led Autonomous Communities to pass complementary legislation to

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<sup>70</sup> *Act No. 547/2005 Coll. on the Compensation of Victims of the Occupation of Czechoslovakia by the Forces of the Union of Soviet Socialist Republics, the German Democratic Republic, the Polish People's Republic, the Hungarian People's Republic, and the Bulgarian People's Republic*, of November 8, 2005.

grant indemnities. In 2005, the Parliament approved compensations in favour of the so-called *children of war*, who passed their childhood abroad because of the Civil War. The 2007 law completed the cadre of indemnities: the descendents of those who died or had suffered physical incapability between 01/01/1968 and 06/10/1977 in defence of freedom and democratic rights had the right to an indemnity of 135,000 Euros. Also, the 2007 Law extended the indemnities to those who died between 01/01/1968 and 06/10/1978 in defence of democratic freedoms. A 2008 Royal Decree determined the scope and procedure for the concession of indemnities to those who have suffered incapacitating injuries due to events and within the conditions referred to in article 10 of the 2007 law. It created an Evaluation Commission and regulated two cases: death and in-habilitating injuries.

- **Pensions** The process has evolved through the progressive inclusion of qualifying categories within the state pensions' system: before the 1978 Constitution, public servants repressed by the Francoism and, afterwards, professional Republican military. Then, mutilated persons and former combatants without a requirement of professionalism or date were included and, finally, widows and those affected by prison sentences had their rights recognized. In 2005, a sentence of the Constitutional Court considered that the periods spent at the Disciplinary Battalions of Working Soldiers should be considered periods of privation of freedom and, hence, computed for pensions (ST 180/2005). Thus, the 2007 Law extended the benefits deriving from the 1977 Law of Amnesty to these persons. Previously, complementary pensions had been regulated in 2005 for the Children of War.
- **Packages** The recognition of specific packages of services focussed more on categories excluded from enjoying the rights of citizenship, i.e. those living abroad with or without having Spanish citizenship and, more precisely, the Children of War. A first step was the signature on 3 March 1989 of a convention with the then USSR which obliged this country to pay pensions of these citizens who had Spanish nationality in Spain. Dissolution of the USSR impeded that the convention entered into force. A similar convention (*Convenio Bilateral de Seguridad Social entre España y Rusia*) was signed in 1996 and then in 1998 with Ukraine. However, no agreement was signed with other former Soviet Republics. The Russian federation convention exonerated from the requirement of one year payment to Spanish Social Security for the enjoyment of a pension for these Children of War who decided to return to Spain. Additionally, those who did not want to return to Spain would obtain the minimum pension (around 200 Euros). Previously, a Royal Decree of 1993 had extended the benefit of these pensions to children of war without requiring them to remain abroad. Finally, the Law 3-2005, 18 March 2005 added economic assistance and health insurance for citizens of Spanish origin who lived abroad for the largest part of their lives as a consequence of the civil war.

### 4.2.3 Restitution of property

Additionally to the national measures listed below, there are three **European Parliament** Resolutions on restitution of property:

- Resolution of 14 December 1995 on the return of plundered property to Jewish communities (Official Journal C 17,22.1.1996, p. 141) called on all countries of Central and Eastern Europe to adopt appropriate legislation for the return of property plundered by the Communists or the Nazis and their accomplices to their rightful owners.
- Resolution of 16 July 1998 on the restitution of property belonging to Holocaust victims (Official Journal C 292, 21.9.1998, p. 112) called on the Council and the Commission, out of respect for the memory of millions of victims and the most elementary human rights, to bring every pressure to bear on the governments concerned to ensure that the assets and property belonging to the Holocaust victims plundered by the Nazis were disclosed and returned to their original owners or those entitled to them.
- Resolution on a legal framework for free movement within the internal market of goods whose ownership is likely to be contested', drawn up by the European Parliament's Committee on Legal Affairs and the Internal Market, 17 December 2003 C 91 E/500 15.4.2004, welcomed the recognition among various governments that the unique problems associated with cultural goods (i.e. public or private property considered as constituting an artistic creation or cultural property) which were plundered in wartime through acts of violence, confiscation or by apparently legal transactions or auctions needed to be addressed.

#### ○ **Bulgaria**

- *Law on the Property of the Bulgarian Communist Party, the Bulgarian Agrarian People's Union, the Fatherland Front, the Dimitrov's Communist Youth Union, the Union of the Active Fighters against Fascism and Capitalism and the Bulgarian Trade Unions, 19 December 1991.* The Law transformed this property into state property with the exception of the property of the Communist Party that had been confiscated after 1934 *coup d'état*. The Law condemned the organizations that had put into practice the Communist dictatorship and deprived them of property, thus leaving them on an equal basis with the newly formed political parties.
- *Law on Restoring the Property on Nationalized Real Estates*, voted on 5 February 1992 (amended several times).
- *Law for the Amendment and Supplement of the Law on the Political and Civil Vindication of the Repressed Persons*, 13 February 2004.
- *Law for the Amendment and Supplement of the Law on Restoring the Property on Nationalized Real Estates*, voted on 16 June 2006.
- *The Law for Amnesty and Return of Property, which had been taken Away* came into force on 4 January 1991. It vindicated all those, repressed for political deeds, between 17 March 1945 and 31 December 1989 (thus extending the period of the amnesty from to 17 March to 31 December 1945). Additionally, confiscated real estates had to be claimed within two years after the law was voted, and if they were not returned within 6 months, the defendant could turn to the court. In the following

years, the Law for Amnesty was amended to expand the scope of repressed people and to facilitate the procedures for return or compensation of confiscated property.

- **Czechoslovakia**
  - The Constitutional Act No. 496/1990 *Coll. on the Reversion of Property of the Communist Party to the People of the Czech and Slovak Federative Republic* required the Party to return to the Czech and Slovak Federative Republic all real and movable property worth more than 5,000 crowns within 30 days.
  - The Constitutional Act No. 497/1990 *Coll. on the Reversion of Property of the Socialist Youth Organization to the People of the Czech and Slovak Federative Republic* required the organization to surrender to the Federative Republic its property and other assets worth more than 5,000 crowns within 30 days.
  - *National Property Fund* (Fond národního majetku) has contributed to compensate for confiscated properties that could not be physically restituted and to support both poor Jewish communities and the restoration of Synagogues and cemeteries. This part of the restitution program is now completed.
- **Czech Republic** *Act No. 212/2000 Coll. on the Mitigation of Certain Property Injustices Caused by the Holocaust*, June 23, 2000. Beneficiaries were persons who owned artwork (among 7000 works in the government's possession) confiscated between September 1938 and May 1945, or if the owner is deceased, his or her heirs/surviving family members. Fewer than 1000 artworks were returned to individual owners (though all but two works returned to religious communities).
- **Estonia** In June 1991, the Estonian Supreme Council (or parliament at the time) adopted the *Bases for Property Reform Act*, in which it mandated *inter alia* a policy of property restitution, meaning either the return of nationalized property (if it was still in existence) or the payment of compensation in the form of special privatization vouchers. The law established a deadline of 31 December 1991 until which previous owners could file restitution claims. Within a few months thousands of claims began to cascade into local government offices across Estonia—some 220,000 by the time the whole process was over.
- **France**
  - *Law of 16 June 1948 (Loi n°48-978 du 16 juin 1948 portant aménagements fiscaux)* made the state responsible for the reimbursement of the sums paid for spoliations applied by laws, decrees and other decisions of the Vichy government, including the “billion francs’ fine” exacted by the Germans from Jews in the occupied zone of France.
  - *Decree of 25 March 1997* created a “Mission of Study on the Spoliation of Jews of France” (also called *Mission Matteoli*) in charge of establishing an inventory of the spoliations, which had affected between 300,000 and 330,000 persons.
- **Germany**
  - **(Nazi Period)** Restitution began immediately after the Second World War as the Western Allied powers enforced the return of illegally acquired property to

their rightful owners. This concerned the assets either the German state or individuals had robbed from political opponents (i.e. the trade unions) or Jews.<sup>71</sup> Initially, it was limited to the territory of West Germany, German nationals and concerned mainly the findable property. From 19 July, 1957, the Federal Restitution Law (*Bundesrückerstattungsgesetz*) settled the loss of untraceable assets at 3 billion DM. In East Germany, expropriated Jewish assets were habitually not returned, although in Thuringia the first restitution law in Germany had been initiated in 1945. It was only with the unification of East and West Germany in 1990, that new claims concerning the former territory of the German Democratic Republic could be asserted. This process is still under way, not all claims have been settled so far. Another unfinished business is the restitution of works of art which were confiscated by the Nazis. In the *Washington Principles*, it was agreed to attempt to identify looted works of art, find their rightful owners or heirs and settle on a fair and just solution for all concerned.

- **(GDR)** The *Act for the Settlement of Open Property Issues* referred to property that had been turned into state property or been acquired by fraud, or taken as a result of political persecution (Special provisions applied to land expropriated for building of the Wall. According to the 1996 *Mauergrundstücksgesetz* former owners could buy back property at 25 percent of the *Verkehrswert*). Only expropriations by the East German socialist government could be subject to restitution – that is, expropriations by the Soviet Union were explicitly excluded (This led to a number of court cases. The German Constitutional Court rejected these in 1991 and again in 1996, and the German government's line was also upheld by the European Court of Human Rights). Also excluded were situations where property had been acquired in a bona fide manner by individuals, churches or charitable organizations. Exceptions were also made, if an investor was willing to acquire property and create jobs – in this case financial compensation took priority over restitution in kind (see especially the Investment Acceleration Law of 22nd March 1991).
- **Hungary** Law No. 24 of April 7, 1992 settle ownership conditions and provides partial compensation for unjust damages inflicted by the State to

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<sup>71</sup> Goschler, Constantin and Lillteicher, Jürgen (ed.): *Arisierung und Restitution. Die Rückerstattung jüdischen Eigentums in Deutschland und Österreich nach 1945 und 1989*. Göttingen 2002; Goschler, Constantin and Ther, Philipp (ed.): *Raub und Restitution. Arisierung und Rückerstattung des jüdischen Eigentums in Europa*, Frankfurt am Main 2003

- the property of citizens as a result of enforcing legal provisions created between 1 May 1939 and 8 June 1949.
- **Italy** Two Decree-Laws (January 1944, 25 and 26) restored civil and political rights for the Jewish population and their patrimonial rights.
    - Legislative Decree of 5 May 1946, n. 393 (*Rivendicazione dei beni confiscati, sequestrati o comunque tolti ai perseguitati per motivi razziali sotto l'impero del sedicente governo della Repubblica sociale*) established the devolution of the properties confiscated on the basis of racial laws to their legitimate owners. It also annulled the confiscations of the Social Republic (the Saló Republic) with the exception of the properties acquired in bona fide of the buyers.
    - The Decree 1st December 1988 created a Commission with the task of the reconstruction of the events of acquisition of goods of Jewish citizens by private and public organisms.
    - The Law of 18 July 1997, n. 233 (*Disposizioni di solidarietà per gli appartenenti alle comunità ebraiche ex perseguitati per motivi razziali, ai fini della applicazione della legge 24 maggio 1970, n. 336, e successive modificazioni ed integrazione*) further recognised racial prosecution.
  - **The Netherlands** *Decree on the Recovery of Legal Relations* (called *Besluit Herstel Rechtsverkeer*, nr. E 100, also of September 17, 1944) regulated the State's custody over all enemy property (both German, and of other enemy states, as well as Dutch Nazi property, including all the assets of individual persons) on one hand, and the return of all looted property to the original owners on the other. The whole operation was to be executed and supervised by the Council for Legal Recovery (*Raad voor het Rechtsherstel*). Under its authority, the Dutch Trustee Institute (*Nederlands Beheers Instituut*) was charged with the trusteeship, in the name of the State, over all enemy property taken under control. This Council was inaugurated on August 20, 1945. Chairman was the former Prime Minister in the exiled Government, P.S. Gerbandy. The Council convened until 1963, and the Trustee Institute was formally abolished in 1967; at the time it had exercised its trusteeship over more than 45.000 enemy properties.
    - Jewish property. Representatives of the Jewish population had not been involved in the preparation of the relevant measures during the war. After the Liberation they had to fight a tough battle in order to defend their interests. As regards the application of Decree E 100, legal historian Wouter Veraart concludes that in practice, judgments regarding Jewish cases were 'rather erratic, and hardly of a principled nature'. Especially verdicts concerning the property rights of those who had appropriated Jewish property during the occupation, and maintained they had been of good faith, remained highly controversial.
  - **Latvia** On November 11, 1990, a wide-ranging law entitled *Concerning Lands Reform in the Rural Areas of the Republic of Latvia*, initiated the return of rural land to the rightful owners (as of July 21, 1940). The premise of this law was that the entire process of agricultural collectivization in the 1940-41 period and after 1945 had been involuntary and illegal. This law continued to be amended in subsequent years (until 2007) due the

complexity of the issue. On May 15, 1991, the SCL approved a decision (*lēmums*) entitled *Concerning the Right of Compensation for Land Nationalized in Rural Areas on July 22, 1940*. This decision addressed the nationalization of large agricultural properties on the mentioned date by the so-called People's *Saeima* [Parliament], which was enacting in that year the sovietization agenda of the Latvian Communist Party and the USSR. In two related laws passed on October 30, 1991, the SCL took up the question of the forcible nationalization of private property (real estate) in 1940-41 (*Concerning the Denationalization of Private Real Estate in the Republic of Latvia*) and the return of such properties (mainly housing stock) to their lawful owner or their heirs (*Concerning the Return of Real Estate to Lawful Owners*). Both laws received amendments in the next few years, and both outlined procedures for reclaiming confiscated properties, how to identify lawful owners, what to do with the current residents of such properties, and the question of compensation. A related property law on November 20, 1991 (*Concerning Land Reform in the Cities of Latvia*) initiated the process of returning urban real estate (excluding housing) to those who had owned it as of July 21, 1940.

- Still pending in the *Saeima* at this writing is the question of real estate owned of Jewish victims of the Holocaust that was not reclaimed through the normal procedures because the former owners (and relatives) had died or been killed (an estimated 300 properties).<sup>72</sup>
- **Lithuania** Restitution of the property rights of the Nationals of Lithuania is regulated by the *Law on Restitution of the Property Rights of the Nationals of the Republic of Lithuania to the Remaining Immovable Property* (18 June 1991, No. I-1454) (new version approved by the 1 July 1997 Law No. VIII-359). This Law regulates the procedure and conditions of restitution of immovable property rights of the citizens of the Republic of Lithuania, whose property was nationalized under the laws of USSR (LSSR) or expropriated illegally.
- **Luxembourg** The *Grand-Ducal Decree* of 6 September 1944 established restitution of property rights to those who suffered seizure or confiscation by the occupant.
- **Poland** Restitution of nationalised property. Properly speaking, there is no restitution law in Poland. There have been 20 projects discussed in the parliament so far, but no act has been passed. There are no reliable estimates on the numbers of people and value of property to be returned or compensated for, and no reliable ways of verification of the figures cited by relevant ministries, which has been stressed by the Supreme Chamber of Control.

The information cited after the Ministry of Treasury points to the estimates of around 100.000.000.000 PLN in early 2000s as the value of nationalized property, and this estimate is based on the assumption that around 30% of former owners or their beneficiaries will not be able to prove their entitlement to a given property. At the moment, value of the property is much higher due to a sharp raise in property prices after

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<sup>72</sup> On the original 2006 legislation, see Paporinskis, Martiņš, "Likumprojekts un starptautiskās tiesības." *Jurista Vārds*, December 13, 2006; on more recent actions in this case, see Viesturs Radovics, "ASV iespaidā atgriezās pie ebreju kompensācijas," *Neatkarīgā Rīta Avīze*, August 19, 2008.



Poland joined the EU<sup>73</sup>. It is estimated that around 60.000 restitution claims for the total amount of over 30.000.000.000 PLN will be registered with courts unless reprivatisation law is passed.

There is also no exact information as to the number of restitution or compensation claims processed by courts and the amount of compensation issued, other than that “in recent years over 1.800 individuals and companies have received compensation in total exceeding 350.000.000 PLN”. It is also estimated that around 48.000 of nationalised urban properties (out of 74.500) could be returned to the owners or their beneficiaries, as they have a relatively clear legal situation.<sup>74</sup>

The Ministry of Treasury has published a document outlining possible ways of claiming nationalised property or compensation for such property within the existing law. It groups nationalised property into three categories:

1. Property nationalised on the basis of the Decree on property and use of land in the capital city of Warsaw of October 26<sup>th</sup>, 1945.<sup>75</sup> In the case of this type of property, it is possible to claim either compensation or restitution if compensation was not claimed before 1988 or to apply for freehold if such an application was made before 1988, but either left without an answer or rejected. It is estimated that between 17.000 and 24.000 of properties were taken over by the communist government, with 23% of that being formerly owned by Jews. By 2008 around 3.000 properties had been returned to owners or their beneficiaries; there were a further 14.000 claims waiting to be processed. Before last world war around 1/3 of Warsaw land had private owners, and the estimated value of that property in 2008 was around 18.000.000.000 PLN<sup>76</sup>.

2. Property nationalised as part of industry nationalisation process. A number of decisions made on the basis of nationalising decrees can be verified on the basis of administrative code. Former owners or their beneficiaries can apply to the relevant Ministry with a complaint about the decision nationalising their property. If the act is indeed found illegal in the light of administrative code, they are entitled to restitution or compensation.

3. Property nationalised on the basis of the *Decree on agricultural reform* of September 6<sup>th</sup>, 1944 (*Dekret o reformie rolnej*). It is possible to apply for a verification whether nationalised property met the requirements of the *Decree on agricultural reform*, i.e. over 100 hectares of the property overall or over 50 hectares of farming land. It is estimated that at the moment, there are claims for the return of around 500.000 hectares (out of the 2.700.000

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<sup>73</sup> Wielgo, Marek, *Jaka reprivatyzacja*, Gazeta Wyborcza May 16<sup>th</sup>, 2008 [http://wyborcza.pl/1,97657,5221442,Jaka\\_reprivatyzacja.html?as=3&ias=3&startsz=x](http://wyborcza.pl/1,97657,5221442,Jaka_reprivatyzacja.html?as=3&ias=3&startsz=x) [accessed October 22<sup>nd</sup>, 2009].

<sup>74</sup> Wielgo, Marek, *Reprivatyzacja jak po grudzie*, Gazeta Wyborcza, June 4<sup>th</sup>, 2008.

<sup>75</sup> *Dekret o własności i użytkowaniu gruntów na obszarze m. st. Warszawy*

<sup>76</sup> Op. cit Wielgo.

- hectares nationalised as a result of the agricultural reform). In the majority of cases, local authorities dispute Ministerial decision about restitution.
- *Act on implementation of the entitlement to compensation for the property left beyond the current borders of Poland*, July 8<sup>th</sup>, 2005. Those repatriated between 1944 and 1952 are entitled to compensation equal to the 20% of the property left in the former eastern parts of Poland (Art. 13). The final date for compensation claims submission was December 31st, 2008. Until the end of October 2009, the Ministry of Treasury has passed on to the designated bank details of 22.468 compensation claims for so-called 'mienie zabużańskie' (property left beyond Bug river), and over 967.606.002,10 PLN has been paid in compensations.
  - The *Act on maintaining the national character of strategic natural resources of the country* of July 6<sup>th</sup>, 2001, made restitution of forests impossible, however, Art. 7 of this act guarantees compensation for owners or their beneficiaries. All compensation claims submitted to Ministry of Treasury have been rejected due to the lack of specific regulations allowing payment of such compensations as part of an administrative due process. Former owners and their beneficiaries can, however, sue the state in a civil law case for damages resulting from the negligence in issuing relevant regulations. The first suit of that kind, for almost 134.000.000 PLN, has recently been registered with the court (Frey 2009). There are around 1.500.000 hectares of formerly privately owned forests in Poland.
  - Church property. Restitution of the Catholic Church property is based on the *Act on relations between the State and Catholic Church* of May 17th, 1989. By August 2009, the Church has submitted 3063 claims for the return of property. 263 are waiting to be processed, 700 were withdrawn or rejected. It is estimated that immediately after the last world war the Church owned around 160.000 hectares of land, and after the nationalisation it was left with 30 to 40.000 hectares<sup>77</sup>..
  - Restitution of property of former Jewish religious organisations is based on the Act of February 20<sup>th</sup>, 1997. At the moment, there are 8 Jewish religious organisations registered, and between 197 and 2002 they submitted over 5.000 property restitution claims, of which they were granted 150 properties (by 2002).
- In June 1995, the Sejm approved a scheme to use reprivatization bonds to compensate former owners of properties illegally seized by the Communists. The bill did allow for returning property to nine Jewish communities, albeit in a very restricted form. The Scheme passed in the Sejm required a statute specifying the categories of restitution, both in terms of citizens and property to be returned. These specifics were not settled until September 1999.
    - A March 2005 Provincial Administrative Court decision stated that restitution of palaces and manors in Warsaw should take place through civil courts, not Ministry of Agriculture or provincial governors. The Supreme Administrative Court by

<sup>77</sup> Frey, Danuta and Kosiarski, Michał, *Jawny zwrot majątków, Rzeczpospolita*, January 30, 2009.

upholding the decision radically altered forms of reclaiming nationalized real estate. (Polish News Bulletin, 9 March 2005).

○ **Romania**

- *Law 112 of 28 June 1995 on the legal situation of some dwellings confiscated by the state* stipulated that owners of abusively confiscated dwellings could receive them back in nature if they are renting these dwellings or if the dwellings are vacant. For all other cases, financial compensation was offered in lieu of restitution in nature. Tenants were allowed to continue to rent the confiscated apartments for five more years, and even to buy confiscated dwellings that were not slated for restitution.
- *Governmental Emergency Ordinance 83 of 8 June 1999*<sup>78</sup> permitted the return of buildings to Romanian citizens belonging to different ethnic groups, specifically organized communities of ethnic minorities whose buildings were confiscated by the Fascist and communist regimes. Parliament approved the ordinance without modifications as *Law 458 of 12 November 2003* and then amended it by *Law 66 of 24 March 2004*.
- *Governmental Emergency Ordinance 94 of 29 June 2000 on the Return of Buildings Belonging to Religious Denominations in Romania* stipulated the restitution of buildings other than places of worship. The ordinance created a *Special Restitution Commission* formed of a representative of the State Secretariat for Religious Affairs; and one representative of each of the following Ministries: Justice, Public Works, Finance, Culture, Education, and Public Administration. The beneficiaries were religious denominations.
- *Law 10 of 8 February 2001*<sup>79</sup> allowed for the return of property confiscated to owners whose property was taken over by the Romanian state in virtue of Law 139/1940 by the Antonescu regime. Articles 1 and 10 allowed for the return in nature of buildings confiscated by Law 139/1940, if those buildings still existed, and for financial compensation, if those buildings had been destroyed. The property was to be returned in nature, if still intact. Alternatively, financial compensation was to be offered. Individuals who had already received monetary compensation in virtue of the bilateral agreements on ‘unsolved financial problems’ Romania signed with other countries (Austria, the US, Canada, Turkey, the Netherlands, Italy, Norway, UK, France, Greece, Denmark and Luxembourg) were not entitled to compensation.

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<sup>78</sup> *Governmental Emergency Ordinance 83 of 8 June 1999 on the return of immobile assets that once belonged to communities of ethnic minorities living in Romania*

<sup>79</sup> *Law 10 of 8 February 2001 on the legal status of buildings abusively confiscated during the 6 March 1945 – 2 December 1989*

- From 2006 to 2009 the ECtHR has heard 234 cases related to property restitution in Romania. All these cases were filed by initial owners wronged by the communist regime.
- **Bodies dealing with victims' claims in Romania**
  - *Special Compensation Commission* was constituted in virtue of the Governmental Emergency Ordinance 94/2000. In 2004, its mandate was extended to also implementing Law 66/2004. Initially supervising the return of property abusively confiscated from religious denominations, since 2004 it is also charged with return of the buildings that once belonged to communities representing ethnic minorities.
  - *The Property Fund* created through Law 247/2005 and Governmental Decision 1481/2005, is a public investment fund offering compensation to owners of property abusively confiscated by the communist regime that cannot be returned in nature. It is led by a 7-member Council, which meets at least once a month. Nine months into its activity, the Fund had dividends of 432.3 million Lei and shares in 45 public firms, most of them in the energy sector. In 2008, it announced profits of 127 million Euros. By April 2009, 2,353 former owners owned 28 percent of the Fund shares.
  - The *Central Commission for Establishing Compensation* created by Law 247/2005, directly subordinated to the Prime Minister's Office and tasked to decide the level of compensation to be awarded to each initial owner of abusively confiscated property.
  - The *Special Commission for Returning Buildings Belonging to Religious Denominations in Romania* was set up by Governmental Emergency Ordinance 94/2004 and was formed of representative of the State Secretariat for Religious Denominations, Ministry of Justice, Ministry of Public Function, Ministry of Finance, Ministry of Culture, Ministry of Education, and Ministry of Public Works.
  - The *State Secretariat for the Problems of December 1989 Revolutionaries* is a state agency, responsible directly to the government, enacting legislation related to the participants to the Revolution of 1989. Set up in 1995, in virtue of *Governmental Decision 220 of 10 April 1995*, its mission was to implement Law 42/1990, to monitor the health of revolutionaries, to grant them financial compensation and aid, to facilitate the relationship between the government and the groups representing the revolutionaries, and to organize the annual commemorations and public festivities that mark the 1989 events. It is headed by the State Secretary, nominated by the Prime Minister,

- and a Consultative Council including representatives of the revolutionaries.
- The *Commission for Honoring and Supporting the Heroes of the Revolution of December 1989* was set up in 1990 by Law 42/1990. and directly subordinated to the Prime Minister's Office. It was tasked with recognizing individuals as hero-martyrs and fighters of the December 1989 Revolution, and offering them the benefits stipulated by Law 42/1990. The Commission offered to those recognized as revolutionaries a "certificate of revolutionary" attesting their participation to the 1989 Revolution. It ceased its activity in 1997.
- The *Commission for Granting the 'Fighter in the Anticommunist Resistance' Title* was created in 1999 through Governmental Emergency Ordinance 214 of 29 December 1999 to grant the title of 'Fighter in the Anticommunist Resistance' to individuals persecuted or imprisoned for political reasons during the communist regime. They could: receive their confiscated property, if still available; receive financial compensation. Streets, squares and other public places could be given these persons' names. The Commission is formed of representatives of the Association of Former Political Prisoners, the government, and is chaired by a Ministry of Justice representative.
- **Slovakia**
  - Act No. 319/1991 on the *Mitigation of Certain Property and Other Injustices and on the Responsibilities of the Organs of State Administration of the Slovak Republic in the Area of Extrajudicial Rehabilitation* defines conditions for making claims, scope and manner of restitution and compensation, and Slovak Republic administration responsibilities in relation to Act No. 87/1991.
  - Act No. 282/1993 *Coll. on the Mitigation of Certain Property Injustices Caused to Churches and Religious Societies* restitution of all movable and immovable property to Christian Churches and Jewish organizations.
- **Slovenia** the Denationalization law, December 7, 1991 recognised the right to request the return of property that had been nationalized after the Second World War. So far, the process of denationalisation has yet to be completed.
- **Spain** Measures for devolution of property have addressed almost exclusively political parties and unions (Ley 15 Diciembre 1991) and, less often, public organisms (Ley de 17 de Noviembre de 2005, *de restitución de los documentos a la Generalitat de Catalunya*). In November 17 2005, the Spanish Parliament approved Law 21/2005 which returned official documents

belonging to the Catalan government under the II Republic to the current one.

#### 4.2.4 International schemes for compensations

The German *Bundesentschädigungsgesetz* or BEG-law of 1953 sought to compensate both political prisoners and racial deportees. The *Bundesrückerstattungsgesetz* or BRüG-law of 1957 concerned looted valuables. This as well presented problems: the loss of looted furniture, pieces of art or jewels could only be compensated when could be proved that the goods had been brought to Germany. Even if the Jewish persecutes could in this way be compensated for at least a part of their lost assets, the BRüG-law excluded compensation of financial losses. After WWII, occupied countries benefited from German funded schemes for compensation to victims. In total, eight countries (including Belgium, the Netherlands, Italy) started bilateral negotiations. Two other cases (Czech Republic and Lithuania) have reported contemporary initiatives referred to claims either on Nazi Germany or the USSR.

- **Belgium** Agreement of 28 September 1960; approved by the law of 4 March 1961 established a payment of 80 million German Marks. The distribution of this amount was left to the responsibility of the Belgian government. It decided to hand out the money on the basis of already existing laws, i.e. the statutes of political prisoner and foreigner political prisoner. For reasons of nationality, as described above, this excluded nearly all racial deportees. Even if the original agreement with the Federal Republic of Germany stated that the compensation was primarily meant for the victims of racial persecution, they were not the ones who were to benefit from the agreement.
- **Czech Republic** On January 21, 1997, the Czech Republic and Germany signed the *Czech-German Declaration on Mutual Relations and Their Future Development*. The *Czech-German Fund for the Future* was established under item VII of the declaration and has legal personality under Czech law. The German government contributed 140 million DM, and the Czech government, 440 million Czech crowns, toward its projects, which in addition to youth exchanges and education, includes health and social welfare for the victims of the Nazi regime. These include those who were sent to concentration camps, ghettos, and prisons, and the budget for this part of the project was 46 million euros. Roughly 8,000 Czechs received payments by the time the program wound up at the end of 2007. The Fund included financing a health and social welfare project for victims of the Nazi regime. The Fund, with offices in Prague, also partnered with the German Federal Foundation “*Remembrance, Responsibility, and the Future*” set up to pay compensation to the Third Reich’s forced laborers. The Fund set up a *Nazi Victims Office* to administer the payments in the Czech Republic. The Czech-German Fund’s Board of Directors was composed of four Czechs and four Germans appointed by each country. A four-member Supervisory Board controlled its finances.
  - On February 11, 1999, the Initiative of German Companies formally stated their readiness to negotiate with Central and Eastern European states about compensation for those who had

been forced or slave laborers in the Third Reich. The German Bundestag passed a federal act establishing a foundation called “*Remembrance, Responsibility and the Future*” on August 2, 2000. It partnered with the Czech-German Fund for the Future, which opened a *Nazi Victims Office* to organize and distribute payments in the Czech Republic. In total, 207 million euros were paid to 76,000 Czechs, ninety percent of whom were forced laborers in the Reich, and the remaining 10 percent of whom had been in concentration camps, half of whom were Jews. In addition, 17 million euros have been paid to around 4,400 Czechs for stolen property.<sup>80</sup>

- **Italy** The Bonn Agreement with the GFR of 2 June 1961 for the indemnities to Italian citizens. Article 1 established that the GFR would transfer 40 million DM in favour of Italian citizens that suffered National socialist prosecution because of reasons of race, faith or ideology which had caused them privation of freedom or had suffered health damages (including those deceased because of these prosecutions).
- **Lithuania** On 4 June 1991 the Supreme Council of the Republic of Lithuania adopted the resolution On Compensation of Damage Inflicted by the USSR on the Republic of Lithuania and Its Population in 1940-1991 (4 June 1991, No. I-1403). The Supreme Council of the Republic of Lithuania resolved to:
  - *To commission the Government of the Republic of Lithuania to submit to the State Delegation of the Republic of Lithuania for the Inter-state Negotiations with the USSR calculations giving evidence about the extent of damage caused by the USSR on the Republic of Lithuania and its population in 1940-1991.*
  - *To instruct the State Delegation of the Republic of Lithuania for the Inter-state Negotiations with the USSR to bring up officially the issue of compensation for the damage inflicted to the Soviet Union.”*

On 13 June 2000 the Seimas (Parliament) of the Republic of Lithuania passed the *Law on Compensation of Damage Resulting from the Occupation by the USSR* (13 June 2000, No. VIII-1727). This Law specified more accurately and finished the calculations of the damage caused by the USSR occupation, appealed to the Russian Federation for the compensation of the damage caused during the period of the USSR occupation.

- **Germany (Nazi period)** The two most significant instruments are:
  - The London Agreement on German External Debts in 1953, which postponed the claims of non-German victims, like a shield, to a time when the matter could be cleared up "once and for all via a peace treaty". This led to the FRG predominantly paying reparations to German Jews and exiles.

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<sup>80</sup> Sources: Ministry of Foreign Affairs of the Czech Republic, “Czech-German Fund for the Future,” <http://old.mzv.cz/www/mzv/default.asp?ido=14084&idj=2&amb=1&trid=1&prsl=False&poccl=5> and “Compensation for forced labour and other damage suffered during World War II” <http://old.mzv.cz/www/mzv/default.asp?ido=14085&idj=2&amb=1&trid=1&prsl=&poccl=5>; Randi Druzin, Jewish Telegraphic Agency, “Czech Jews finally get Holocaust reparation,” *Jewish News Weekly of Northern California*, June 5, 1998, <http://www.jweekly.com/article/full/8439/czech-jews-finally-get-holocaust-reparation-checks/>, Kimberly Ashton, “Millions in compensation paid to Czechs for WWII,” *The Prague Post*, July 11, 2007, <http://www.thepraguepost.com/articles/2007/07/11/millions-in-compensation-paid-to-czechs-for-wwii.php>.

- **Israel** The Treaty with Israel and the Jewish Claims conference of 1952 negotiated reparations amounting to a total of 3.45 billion deutschmarks, payable over 14 years. From 1953 to 1965, the Federal Republic of Germany paid compensation to the state of Israel for the Jewish property plundered in Europe. Chaim Weizmann, representative of the Jewish Agency presented an official claim of damages on 20 September 20 1945 to the four Allied powers: identifiable Jewish property was to be returned/relinquished to their owners – if they had survived – or Jewish organizations and institutions. The Western Allies issued laws for the repayment/reimbursement/restituion of real estate in their respective Zones. In the American Zone, the Jewish Restitution Successor Organization, in the British Zone (and from the early 1950s on also in the French Zone) the Jewish Trust organized the handing over/return of Jewish property. It is estimated that several hundreds of millions of marks were thus either returned to their rightful owners or to Jewish successor organizations. Israel – as representative of the Jewish survivors - sent a first diplomatic note to the Four Allies on 16 January 1951 asking to improve and extend the existing Western Allied restitution laws. A second note dated 12 March 1951 specified the material claims: The state of Israel claimed 1.5 billion \$ - 1 billion \$ from West, 500 million \$ from East Germany – based on the calculation that about 500.000 Jews had settled in Israel. The cost of absorption of each immigrant survivor into Israeli society was estimated at about 3000 \$ per person. The plundered property in total was estimated at about 6 billion \$. While the Soviet Union did not react to either of the two notes of 16 January 1951 and 12 March 1951 sent by the state of Israel, the Western Allies stressed that any demands for compensation should be the the subject of direct negotiations between the state of Israel and the Federal Republic of Germany. For West Germany under its chancellor Konrad Adenauer the acknowledgment of the legitimacy of these claims was an obvious diplomatic necessity agreed on by both the ruling Christian Democratic Party and the opposition, the Social Democrats. Adenauer accepted in a speech in the German parliament (*Bundestag*) on September 27, 1951 the responsibility of West Germany as the successor state of the German Reich for the nationalsocialist crimes and promised to undertake the necessary steps for compensation. In New York, Jewish organizations founded the so-called Claims Conference (about material claims of Jews against Germany) under its chairman Nahum Goldmann. In Israel, the reparations from Germany were a matter of heated debates. Opponents criticized that West Germany was using the reparations as an entrée to the European Union and as a way to “buy” itself into reconciliation with the Jewish people. The Israeli parliament, however, voted in favour of direct negotiations with Germany which started on March 21, 1952 in the Netherlands. After long-winded negotiations, West



Germany agreed on the payment of a lump sum of 3.45 billion DM paid in kind (in the form of goods) over a span of 12 to 14 years. Israel was to hand over 450 million DM to the Claims Conference. The German Democratic Republic (East Germany) denied any validity of claims of the Jewish people and did not participate in any compensation scheme to the state of Israel due to East Germany's own anti-Zionist and pro-Arab stance. Only Jews living in East Germany – there were less than 4000 of them – received a meagre additional pension as “victim of facism”. As the GDR never entertained official diplomatic relations with Israel or Jewish organizations, it was only in April 1990 that the first freely elected East German parliament accepted a responsibility for the genocide committed in the German name.

- **European countries.** During the 1960s, the Federal Republic of Germany established treaties with eleven Western European nations in which West Germany committed itself to the payment of 876 Million DM for victims from these countries. After the German unification, treaties with Poland (payment of 500 million DM, White Russia, the Ukraine and Russia (1 billion DM for all three) were agreed on, treaties with the Baltic states were to follow. The *Londoner Schuldenabkommen* of 1953 regulated individual claims for compensation by tying them to a peace treaty, thus excluding the individual bringing of suits. For decades, the matter seemed finally settled. In the mid 1990s, actions against German enterprises were brought from abroad. Both a changed political climate and increasing pressure from abroad led to the creation of the Stiftungsinitiative der deutschen Wirtschaft (foundation of the German industry) which aimed at acknowledging the historical injustice in respect to the victims and injured parties and to achieve a legal settlement to end further suits. In the year 2000, the foundation “*Erinnerung, Verantwortung und Zukunft*” (Remembrance, Responsibility and Future) was created with the explicit aim to regulate payments to the victims. The payments were addressed to those foreign nationals who had been forced labourers during the Third Reich and had thus been exploited. Seven international organisations accepted and processed the applications. The payments lasted until the year 2006 with 1.66 million people in nearly 100 countries receiving a total of 4.4 billion Euro. The capital of the foundation was 10.1 billion DM (5.2 billion Euro). 5.1 billion DM (about 2.6 billion Euro) had been raised by about 6500 German enterprises, some of them successors of concerns existing during the Third Reich, others not linked to enterprises of the Third Reich. Another 5 billion DM (about 2.6 billion Euro) were contributed by the Federal Republic of Germany. About 8,7 billion DM (about 4.4 billion Euro) were handed out in individual payments to surviving forced labourers. The distribution of the payments was carried out by organizations in each of the countries. About 358 million Euro were reserved for the foundation which at the end of the year 2008 had a capital of about 396 million

Euro to fund projects of about 8 million Euro each year. A small percentage of the work force in the Nazi ghettos were “voluntary” workers who were paid and also liable for insurance contributions (such as social security). In 2002, the legislator acknowledged this by proposing an individual pension for voluntary and paid work in the ghetto. The so-called ghetto pensions (*Ghettorentengesetz, ZRBG*) are currently being negotiated, involving expert witnesses as well as pension authorities. The settling of the ghetto pensions will again take up several years to come.

- **The Netherlands** The Dutch claim for compensation of all damage done by the German occupiers originally amounted 26 Billion Dutch Guilders (7.22 Billion Dollars at the time). The damage included all looting, destruction, inundations and other damage done to the economy and the infrastructure. Confiscated German property (an estimated amount of 750 Million Guilders / 208 Million Dollars) was seen as a first step in compensation. In the course of the 1950s, a package deal (*‘Generalbereinigung’*) for all controversial issues between the two neighboring states was discussed. This included restitution by the federal Republic of an amount of 390 million Guilders. In 1960 and 1962, two complementary treaties were concluded, in which both parties settled all matters that impeded their relations. One of the elements was that the German government agreed to pay 280 Million Deutschmark; of this amount, DM 125 Million (113 Million Guilders or 31.38 Million Dollars) were earmarked as compensation of immaterial damage for victims of persecution and their offspring. Representatives of Jewish organizations in particular were disappointed. Their disappointment was stimulated by difficulties experienced by Jewish victims who had aspired to benefit from the German laws for compensation of victims of persecution (the 1953 *Bundesergänzungsgesetz* and the 1957 *Bundesrückerstattungsgesetz*). The Government supported the Jewish claims by offering the assistance of a Central Bureau for the Settlement of German Compensations (in Dutch: *Centraal Afwikkelingsbureau voor Duitse Schade-Uitkeringen*, or CADSU). In this work, experts from the NIOD were involved as well.

**Table 4.2.4 International reparations, compensations and/or restitution agreements concluded by Germany 1**

Year	Treaty	Country	Content
27/02/1953	London Agreement on German External Debts	70 States (not the Communist Bloc)	effect: postponement of restitution payments of NS-victims by the time of a peace treaty
11/07/1959	Global Treaty	Luxemburg	Payment of 18 Million DM
07/08/1959	Global Treaty	Norway	Payment of 60 Million DM
24/08/1959	Global Treaty	Denmark	Payment of 16 Million DM
18/03/1960	Global Treaty	Greece	Payment of 115 Million DM
08/03/1960	Global Treaty	Netherlands	Payment of 125 Million DM
15/07/1960	Global Treaty	France	Payment of 400 Million DM
28/09/1960	Global Treaty	Belgium	Payment of 80 Million DM
05/10/1960	Funding United Nations High	Funding about 45 Million DM for the restitution of	

	Commissioner for Refugees (UNHCR)	refugees and stateless persons classifiable as NS-victims	
02/10/1961	Global Treaty	Italy	Restitution of 40 Million DM
29/10/1961	Global Treaty	Switzerland	Restitution of 10 Million DM
27/10/1961	Global Treaty	Austria	Restitution of 101 Million DM
09/06/1964	Global Treaty	Great Britain	Restitution of 11 Million DM
03/08/1964	Global Treaty	Sweden	Restitution of 1 Million DM
31/10/1969	Global Treaty	USSR (via International Red Cross)	Restitution of 7,5 Million DM for victims of NS-concentration camps
22/01/1971	Global Treaty	Hungary (via International Red Cross)	Restitution of 6,25 Million DM for victims of NS-concentration camps
16/11/1972	Global Treaty	Poland	Restitution of 100 Million DM for victims of NS-concentration camps
10/12/1974	Global Treaty	Yugoslavia	Restitution of 8 Million DM for victims of NS-concentration camps
10/12/1974	Follow up to Warsaw Treaty 1972	Poland	Low-interest credit about 1 billion DM. Inclusion in accounts of welfare payments about 1,3 Billion DM and of pension claims about 12 Billion DM. Immigration clause
09/10/1992	Treaty	Jewish Claims Conference	Restitution of 200 Million DM for Jewish victims in Western Europe (-1999)
22/06/1995	Agreement	Estonia	Financing of social projects for NS victims about 2 million DM
19/09/1995	Princz-Agreement	USA	Compensation about 3 Million US Dollar to avoid action for damage by plaintiff Hugo Princz
26/07/1996	Agreement	Lithuania	Financing of social projects for NS victims about 2 million DM
1997	“Future Funds”	Czech Republic	Restitution of 140 Million DM for NS victims
1998	Agreement	Latvia	Financing of social projects for NS victims about 2 million DM
1999	Global Treaty	USA	Payment to US-inmates of NS concentrations camps (about 24 Million US-Dollars)

Source: Table supplied by C. Leggewie

### 4.3 Symbolic reparations

#### 4.3.1 Memorials (on exhumations and inhumations, public ceremonies, monuments established in memory of the victims, etc.)

Section 8.1.3 below deals with monuments generally dedicated to the memory of the repressive regime whilst this section presents more specifically monuments and memorials who address mainly the victims. Some overlap may happen between both sections and, in fact, they should be read in complementary way. The criteria for classifying monuments to victims are their local or national (or even global) reach and their motive (i.e. the kind of victim to which they were addressed). A large number of memorials to the victims created after WWII are dedicated to Victims of Holocaust and/or persons deported and/or local residents killed during the period. The later category seems to be dominant in local memorials. No EU Member State has compiled in a single catalogue the monuments and memorials locally dedicated to victims.

- **Austria** The *Holocaust monument in Judenplatz* (in Vienna's First District) in 1999 marked a true change in the culture of commemoration. Additionally, numerous monuments have been erected throughout the country, though typically emphasizing Austrian suffering generally rather than those who were targets of Nazi ideology. Monuments specific to the victims of Nazi racial policy were rare, though have become more common since the 1990s. Often, important monuments dedicated to victims are subsumed under the larger theme of Austrian victimization. Vienna: Some monuments specifically commemorating Jewish victims were already being erected in the city's outer districts, such as the Dounaustadt Forest, which was planted by school children to commemorate Austria's 65,000 murdered Jews.
- **Belgium** Armed resister and civil resister and objector to the forced labour could bear the medal of civil resister or objector. Political prisoners could bear the medal of political prisoner. A large number of monuments can be found in many Belgian localities.
- **Bulgaria**
  - *Labor Camp "Belene" – the Perssin Island*. During the transition period after 1989 "Belene" camp is perceived as a symbol of the repressions of the communist regime. Every year on September 9 and on other occasions commemoration ceremonies take place in the former camp and there are religious ceremonies in memory of the victims of the communist regime.
  - *Labor Camp – Lovech*. On 17 April 1990 near Lovech a monument of the victims was erected. It became a symbol of the communist repressions.
  - *Memorial Wall and Chapel in memory of the victims after 1944 – Sofia*. In the centre of Sofia, in the garden in front of the National Palace of Culture (NDK) in 1999 a monument of the victims of communism was erected together with a chapel. The monument represents a black marble wall, on which the names of those who perished after Sept. 9. 1944 are graved. The inscription on the wall reads: "The suffering of our people is built into this wall! The memorial is erected to the memory of our compatriots, victims of the communist terror: those, deprived of life, those missing, and those sentenced to death by the so called "People's court" The chapel is dedicated to "all Bulgarian martyrs". The Memorial wall is a traditional place to commemorate the victims of communism.
  - In the center of Sofia there is a commemorative wall, on which the names of the people, repressed by the communist regime are written, as well as a chapel, dedicated to them.
- **Czech Republic** (non exhaustive):
  - *Act No. 198/1993 Coll. on the Illegality of the Communist Regime and Resistance to It*, July 9, 1993, Law passed by Parliament addressed persons who were unjustly harmed or persecuted by the Communist regime, and did not participate in its injustices listed in § 1 (§ 4); persons who were sentenced for criminal acts not included in the exoneration of Act 119/1990 with respect to regulations of a later date, if the purpose of the defendant's

actions was to protect fundamental human and civic rights and freedoms and the means used were not clearly excessive (§ 6); government is also authorized to use to decrees to rectify injustices done to the regime's opponents and those affected by persecution in the social, health, and financial spheres (§ 8). It promised compassion and moral satisfaction for those defined in § 4, and annulment or reduction of sentence for those defined in § 6; further decrees for those falling within § 8.

- *Memorial to the Victims of Communism (Pomník obětem komunismu)*, in Prague at the base of Petřín Hill, a series of statues commemorating victims of the communist regime from 1948-1949; features the work of Czech sculptor Olbram Zoubek and architects Jan Kerel and Zdeněk Holzel.
- *National Memorial to the Heroes of the Heydrich Terror (Národní památník hrdinů heydrichády)* in the crypt of the Orthodox Cathedral of Sts. Cyril and Methodius in Prague, commemorating Nazi Reichsprotektor Heydrich's assassins, who took refuge and ultimately died there under siege by the SS and Gestapo.
- Permanent exhibition of the Czech Republic at the Auschwitz-Birkenau Museum.
- *Pinkas Synagogue Memorial to the 80,000 Jewish Victims of the Holocaust from Bohemia and Moravia*, in Prague; the names of the victims are inscribed on the walls of the main nave and surrounding areas, as well as birth and death or deportation dates; names of camps and ghettos are also inscribed on either side of the Holy Ark.
- *Terezín Memorial*, on the site of the World War II camp, commemorates victims of Nazi political and racial persecution during the German occupation.
- *Vojna Memorial (Památník Vojna Lešetice)* on the site of the communist-era forced labor camp; many of those sent there were political prisoners.
- The Czech government also decided in May 2009 to establish a memorial at Lety, the wartime internment camp for Roma in south Bohemia; the site has long been controversial, and this issue remains unresolved, at this writing.
- *Kobylisy Shooting Range (Kobyliská střelnice)*, in a northern suburb of Prague, a former military shooting range where about 550 Czechs were killed between May 30 and July 3, 1942, as retaliation for the assassination of Reinhard Heydrich; includes memorial plaques with victims' names, memorial cross, and sculpture by Miloš Zet.
- *Lidice Memorial (Památník Lidice)*, an area covering the graves of the men murdered by the SS in retaliation for the assassination of Reichprotektor Heydrich, as well as foundations of original buildings; includes the *Memorial of Child Victims of the War*, a sculptural group of the town's 82 murdered children.

○ **Cyprus**

- Law 62(I)/2000 on *Recognition of all Fights of the Cypriot People for Freedom and Democracy (Honourary Distinctions) Act* provides for moral reward of the freedom fighters and establishes a register of freedom fighters to be administered by a special committee.
- Law 24(I)/2001 on *Establishment of 15 July 1974 as a Day of Memory and Tribute for Those who Fell or Fought in Defense of Democracy*, those who fought against the coup and survived and have been recognized and registered as freedom fighters, are entitled to medals for braveness. Freedom fighters who felt dead may be granted post-mortem promotion with or without remuneration.
- **Estonia** The 2003 *Persons Repressed by Occupying Powers Act* enacts a procedure for bestowing a special *Broken Cornflower* insignia upon these individuals as part of a symbolic acknowledgement of their past suffering (See also Section 4.a.3.) In February 2004, the government issued an implementation decree regulating such specific issues such as which state agency would issue special identity cards for the repressed and on what documentary basis.<sup>81</sup> In December, a further decree was passed according repressed persons a refund for the use of public transportation.<sup>82</sup>
- **France**: The *Mémorial du Martyr Juif Inconnu* (Memorial of the Unknown Jewish Martyr) was inaugurated in 1956 in Paris.
  - The Monument to the memory of the Jewish victims of the *Vel d'Hiv* roundup (1993) shows an inscription recognizing the complicity of the “Vichy, said government of the French State”.
  - The *Memorial of the Shoah* (2005) contains engraved the names of the 76,000 Jews deported from France.
  - A *Memorial of the deportation* (1960) in Struthof, site of the former concentration camp of Natweiler in France, the only concentration camp set up in France by the Nazis.
- **Germany** A compilation of monuments dedicated to the victims of nationalsocialism was published in two volumes a few years ago and lists several hundred of sites.<sup>83</sup> The remnants of concentration camps or euthanasia sites were turned into memorials. At nearly all those sites, scholarly research and pedagogic programs are being offered, exhibitions and documentations exist at the sites of all former concentration camps

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<sup>81</sup> “Represseeritu tunnistuse andmise korra ning taotluse ja tunnistuse vormi kehtestamine ning represseeritu tunnistusi väljastava asutuse määramine”, RT I, 10.03.2004, 12, 82

<sup>82</sup> Vabariigi Valitsuse määrus nr 365, “Represseeritu ja represseerituga võrdsustatud isiku sõidusoodustuse ulatus, sõidusoodustuse andmise tingimused ja kord”, 24 December 2004 (RT I 2004, 91, 617).

<sup>83</sup> A survey of all memorials for the victims of nationalsocialism is: Ulrike Puvogel and Martin Stankowski: *Gedenkstätten für die Opfer des Nationalsozialismus. Vol. 1: Baden-Württemberg, Bayern, Bremen, Hamburg, Hessen, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Saarland, Schleswig-Holstein*. Bonn 1995; Stefanie Endlich et al.: *Gedenkstätten für die Opfer des Nationalsozialismus. Vol 2: Berlin, Brandenburg, Mecklenburg-Vorpommern, Sachsen-Anhalt, Sachsen, Thüringen*. Bonn 1999. A complete overview can be found on the continuously updated website [www.ns-edenkstaetten.de/portal/index.php](http://www.ns-edenkstaetten.de/portal/index.php) and on the website of the Federal Office for Civic education ([www.bpb.de](http://www.bpb.de)), see also [www.gedenkstaettenforum.de/](http://www.gedenkstaettenforum.de/)

situated in the territory of the Federal Republic of Germany. Furthermore, there are memorial plaques or monuments, exhibitions or guided tours for the hundreds of outer camps of the concentration camps or Gestapo camps or forced labour camps. Similar initiatives exist for former Jewish residences, synagogues or cemeteries or other sites relevant to persecution and resistance. Recently, even individuals have been commemorated in tiny plaques at their former addresses before deportation and murder in a project named Stolpersteine (stumbling stones) in many German cities.

- In the GDR, Buchenwald, Sachsenhausen and Ravensbrück became national memorials under the aegis of the SED in the late 1950s and early 1960s.
- Dachau, Bergen-Belsen, Flossenbürg and Neuengamme memorials—with professional exhibitions and personnel—came into being in the mid 1960s.
- The memorial in Berlin-Plötzensee and the Ehrenhof in the Bendlerblock, Berlin—both dedicated to the execution of the military resistance culminating in the assassination attempt of July 20, 1944—were created in the early 1950s.
- Since 1969, East Germany also had a central memorial site for the “victims of fascism and militarism” in Berlin, Neue Wache, Unter den Linden. Although East Germany generously equipped its three main concentration camp memorials with funds and personnel, other sites—such as the former concentration camps Lichtenburg or Mittelbau-Dora—existed only on the fringes of public consciousness. The Holocaust or the persecution and murder of political opponents other than communists was neglected or marginalized, only in the mid 1980s the Nazi murder of the European Jews entered public conscience in the German Democratic Republic which led to a foundation for the restoration of the New Synagoge in (East) Berlin and the establishment of a—rather problematic—exhibition on the suffering of the Jewish people in the Sachsenhausen memorial. With unification, foundations by the Federal Republic and the Länder became responsible for the memorials at former concentration camps in the GDR.
- The *Topographie des Terrors* which is located at the site where previously the Reich Security Main Office, the Gestapo, the Sicherheitsdienst and the SS had had their headquarters.
- The *Haus der Wannsee-Konferenz*—where the mass murder of the European Jews was co-ordinated on January 20, 1942—opened in 1992 as a memorial and is renowned for its pedagogic programs.
- In 1993, the Neue Wache Unter den Linden became the *central memorial of the Federal Republic for the victims of war and dictatorship*.
- In 2005, the monument for the murdered European Jews was erected, in 2008 the “*Gedenkort für die im Nationalsozialismus verfolgten Homosexuellen*” came into being.

- Construction for a monument for the murdered Sinti and Roma started in 2008, it is due to be finished in 2009.
- A central memorial for the euthanasia victims located at the historical site in Berlin where the planning of the killing took place is also under way.
- A monument to the Polish victims of Nazism is under discussion.
- **Greece** The victims of the dictatorship are regularly celebrated by the media; some are frequently interviewed, especially on and around the anniversary of the Polytechnic uprising, on November 17. In short, they enjoy a type of recognition that is widespread (civic or societal) yet not official. Some streets were named after a few high-profile victims (particularly of Alekos Panagoulis) and many streets were renamed “Iroon Polytechniou” or “Street of the Heroes of the Polytechnic.”
- **Italy** There are large number of signs and lapids which remember single victims or specific episodes of the repressive regime (such as partisans killed, Jews deported, etc.) in particular for the period 1943-1945. However, there is not national census and they are only reflected in local publications.
- **Latvia** Memorial sites for the victims of all the events of World War II and the Stalinist years of Soviet rule have grown numerically and mark the places where particularly heinous acts were perpetrated. The killing sites of Jews at Rumbula and Biķernieki forest have all been refurbished, these being the principal memorial places of the Holocaust in Latvia. A 1941 boxcar has been permanently sited at the Torņkalna railroad station and a memorial plaque has been placed at the station at Sķirotava – both of these placed near Riga being the principal places for assembling deportees in 1941 and 1949.
- **Lithuania**
  - The *Paneriai Memorial* pays tribute to Vilnius Jews killed by the Nazis. The memorial also pays homage to other victims. It is located at the site of the massive killings.
  - The *Tuskulėnai Memorial* in Vilnius pays homage to the victims of the Soviet repression (1940-1941; 1944-1991) at the location of their mass burial site. Some of the names of the persons killed are engraved in the Collombarium.
  - *Names recognised.* In order to pay tribute to the executed members of the resistance, their names have been chiselled on the plinth of the building which used to house the MGB/KGB. There is an exhibition devoted to the victims in the execution cell in the Museum of Genocide Victims.
  - *Certificates for victims.* The *Law on Rehabilitation of Persons Repressed for Resistance to Occupation Regimes* (2 May 1990, No. I-180) (new version approved by the 13 November 2008 Law No. X-1814) *Article 3. Issue of certificates concerning the sentence, imprisonment, deportation and other restriction of freedom. The certificates concerning the sentence, imprisonment, deportation and other restriction of freedom shall be issued at the written request by the persons referred to in Art. 1, their relatives (spouses, children, adoptees, as well as brothers or sisters) or political and social organisations.* Under the *Law on*



*Rehabilitation of Persons Repressed for Resistance to Occupation Regimes* certain institutions issue the certificates concerning the sentence, imprisonment, deportation and other restriction of freedom (the Supreme Court of Lithuania issues the certificates to the persons repressed by judicial institutions; the Office of the Prosecutor General of the Republic of Lithuania – to the persons repressed in extrajudicial (summary) way and the Ministry of Interior of the Republic of Lithuania – to the deportees). Also, the law determines the cases when the findings of the Prosecutor General’s Office and of the *Centre of Genocide and Resistance of Lithuanian Inhabitants* are presented.

- **Luxembourg**
  - The *Monument national de la Résistance et de la Déportation* National monument of resistance and deportation in Luxembourg city, erected in 1946, refurbished in 1976, also called *the Hinzert cross* recalling the victims murdered in the concentration camp of Hinzert, buried under this cross on the central cemetery in the city of Luxembourg.
  - Local monuments. Every village and town erected a monument to their dead. From 1945 to 1959 some 79 “Monuments aux morts” were inaugurated and more than 550 monuments or plaques are counted all over the country, honouring the dead, but also the liberators.
- **Malta** A prominent monument to the victims of the 1919 riots has been erected in the main square of Valletta in front of Parliament house, additional to an older memorial over their tombs in the main Adolorata cemetery.
- **The Netherlands** There are around 1500 monuments distributed around the country.
- **Poland** There is a significant list of monuments which can be classified as general and for victims of specific events.
  - General monuments
    - Pomnik Ofiar Stalinizmu (Monument of the Victims of Stalinism) – erected in Tarnów in 1999, as an initiative of a number of organisations (Stowarzyszenie Rodzin Ofiar Katynia, Związek Sybiraków, Światowy Związek Żołnierzy AK, Związek Więźniów Politycznych Okresu Stalinowskiego).
    - Pomnik Ofiar Hitleryzmu i Stalinizmu (Monument of the Victims of Hitlerism and Stalinism) in Zawiercie.
    - Pomnik Ofiar Terroru Komunistycznego (Monument of the Victims of Communist Terror) in Gdynia.
    - Pomnik Ofiar Komunizmu (Monument of the Victims of Communism) in Radom, erected in 2000.
    - Pomnik Ofiar Komunizmu (Monument of the Victims of Communism) on Rakowicki Cemetery in Kraków.
    - Pomnik Ofiar Komunizmu (Monument of the Victims of Communism) in Łódź, under construction. It was to be financed from private donations, but it will be paid for by the local authorities.

- Pomnik Poległym i Pomordowanym na Wschodzie (Monument of those Killed and Murdered in the East) in Warsaw, erected in 1995.
- Pomnik Niepodległości (Monument of Independence) in Szczecin, erected in 2001.
- Pomnik Ofiar NKWD (Monument of the NKWD Victims) in Rembertów, 1995.
- Pomnik Poświęcony Pamięci Ofiar Hitleryzmu (Monument Commemorating Victims of Hitlerism) in Wronki, erected in 1970, in 1993 acquired an additional plaque devoted to the victims of stalinism.
- Pomnik Orła Białego (Monument of the White Eagle) in Kraków, planned. Since 2007 there has been a debate whether it should commemorate victims of the independence fights in 1939-1989, or only 1944-1956, as well as about the theme of the monument.
- Group monuments of victims of particular events
  - Pomnik Ofiar Czerwca 1956 Poznańskie Krzyże (Monument of the Victims of June 1956) in Poznań, erected in 1981. Commemorates also events of 1968, 1970, 1976, 1980 and 1981.
  - Pomnik Poległych Stoczniovców 1970 (Monument of the Killed Shipyard Workers 1970) in Gdańsk.
  - Pomnik Ofiar Grudnia 1970 (Monument of the December 1970 Victims) in Gdynia; there are two monuments – at Aleja Solidarności and at Aleja Piłsudskiego.
  - Pomnik Pamięci Ofiar Lubina 1982 (Monument Commemorating Victims of 1982 in Lublin), erected in 1992 in Lublin.
  - Pomnik Wydarzeń Marcowych 1981 Monument Commemorating March 1981 Events in Bydgoszcz.
  - Pomnik-Krzyż upamiętniający Ofiary Pacyfikacji Kopalni Wujek (Monument-Cross Commemorating Victims of the Wujek Mine Pacification) in Katowice, erected in 1991
  - Pomniki Solidarności (Monuments of Solidarity). There is a number in various parts of Poland including two in Kraków (in Nowa Huta), in Łódź (“drzewo Solidarności”), Radom, Koziegłowy, Olsztyn (stone monument devoted to NSZZ “Solidarności”).
  - Plaques commemorating “Solidarność”: there is a number in various places, most funded by the unions (NSZZ), for example in Tarnowskie Góry, Zgierz, Kołobrzeg.
  - Pomnik Prasy Podziemnej (Monument of Underground Press) in Kraków.
  - There is also a certain number of plaques commemorating local activists and events, for example a plaque sponsored by the Association of Combatants of the Polish Republic and Former Political Prisoners in Zgierz; plaque

- commemorating a Secret Press Publishing House of the Kielce Civic Defiance Committee.
- Victims of the Wujek mine events: one of the Katowice streets has been named after the "Nine [miners] from Wujek".
  - Personal monuments
    - Father Jerzy Popiełuszko: his grave in the church in Warsaw where he was a chaplain is a monument visited by over 18.000.000 people during the last 10 years. There is also a Popiełuszko museum in the same church (since 2004). There are also museums in Suchowola and Bydgoszcz. There are 70 monuments of Popiełuszko (e.g. in Białystok, Bydgoszcz, Częstochowa, Poznań, Ząbki, Słupsk, 2 in Kraków), of which 8 are located abroad (e.g. in Chicago and Nowy Jork). His name was taken by 21 Polish schools. There are more than 70 streets and squares called after him. On October 13<sup>th</sup>, 2009, Father Popiełuszko was posthumously decorated with the White Eagle Award.
    - Ryszard Siwiec: committed publicly suicide by self-immolation in protest against 1968 intervention in Czechoslovakia; his act was witnessed by a 100.000 people. There is a plaque commemorating his death by the entrance to the Stadium in Warsaw, where he set himself on fire. In 2001 the president of the Czech Republic posthumously decorated Ryszard Siwiec with the First Class Tomáš Masaryk medal. In 2003 he was posthumously decorated with the Krzyż Komandorski Orderu Odrodzenia Polski (Polonia Restituta Commander's Cross), yet his family declined to accept it from the post-communist president Kwaśniewski. In 2009 one of the Prague streets was given his name. In March 2009 Polish Parliament commemorated Siwiec with a special act.
  - **Portugal** In several occasions, as in the anniversary of the creation of the concentration camp of Tarrafal, or the anniversary of the death of Humberto Delgado, a minute of silence was held in parliament in honor of the victims. *Order of Freedom*. Successive Presidents of the Republic have publicly acknowledged members of the anti-Salazar opposition and other people with democratic credentials by awarding them the "Order of Freedom". The majority of the acts of memorialization have been mainly carried out either by specific groups or municipalities. In Lisbon, a memorial to the victims of the concentration camp of Tarrafal was erected in 1978, when the bodies were brought back to Portugal to be placed at the Alto de S. João cemetery. In 1994, the city of Beja placed a statue of a well-known Portuguese sculpture, entitled Monument to the Unknown Political Prisoner (*Monumento ao Prisioneiro Político Desconhecido*). In 2008, fifty years after the death of Humberto Delgado, the city of Oporto, together with the Humberto Delgado Foundation and

the Civil Government decided to organize a local celebration and raise a statue in honor of the “Fearless General”.

○ **Romania**

- *Monumentul Eroilor Deportați* (1947) – located in the center of Dej in the memory of over 10.000 Jews deported to concentration camps.
- *Decree 40 of 9 January 1990 on measures to commemorate heroes of the Revolution* declared Bucharest and Timisoara martyr-towns, and adopted several measures for the commemoration of those who lost their lives during the December 1990 events.
- *Law 42 of 18 December 1990 on Honoring Heroes-Martyrs and Rewarding Their Relatives, the Wounded, and the Fighters for the Victory of the December 1989 Revolution* stipulated that victims of the Revolution received post-mortem the title “Hero-Martyr of the Romanian Revolution of December 1989.” Those wounded received the title of “Fighter for the Victory of the Romanian Revolution of December 1989.” Living relatives of the hero-martyrs received compensations amounting to 30,000 Lei, while the relatives of the wounded received 20,000 Lei. Participants in the December 1989 Revolution who lost partially or completely their work capacity were guaranteed minimal pensions of between 2,250 and 4,500 Lei. Relatives of the dead, those wounded, and those incapacitated received a number of other benefits, including free cemetery plots, free medicines, income tax exemption, free use of the public transportation system, bursaries and scholarships for study at all school levels. The law created the *Commission for Honoring and Supporting the Heroes of the Revolution of December 1989/ Comisia pentru Cinstirea si Sprijinirea Eroilor Revolutiei din Decembrie 1989* (see below).
- *Governmental Emergency Ordinance 214 of 29 December 1999 on granting the title of fighter in the anticommunist resistance to persons sentenced for political reasons and persons subjected to administrative abuse because of political reasons* stipulated the conditions under which a person could be recognized as a fighter in the anticommunist resistance, and the benefits and facilities granted to these fighters. The ordinance created the Commission for Granting the ‘Fighter in the Anticommunist Resistance’ Title.

○ **Slovakia**

- Act No. 125/1996 Coll. on the Immorality and Illegality of the Communist Regime, of March 27, 1996. Law passed by Parliament. Persons who were sentenced for criminal acts not included in the exoneration of Act 119/1990 with respect to regulations of a later date, if the purpose of the defendant’s actions was to protect fundamental human and civic rights and freedoms and the means used were not clearly excessive. Court annulment or reduction of sentence

- Memorial plaque to the Slovak Roma murdered during World War II, at the Museum of the Slovak National Uprising in Banská Bystrica
- Memorial tablet to the first transport of unmarried girls to Auschwitz, in Poprad
- Memorial tablets to the victims of the Holocaust in Bratislava, Poprad, Komárno, Nové Zámky, Košice, Bardejov, Lipovský Mikulaš, Nitra, Hunovce, Topoľčany and Nováky
- Memorial to the Victims of Communism (*Pamätník obetiam komunizmu*) in Žilina on the Square of the Victims of Communism, featuring a sculpture by Milan Lukáč
- Memorial to the Victims of Communism (*Pamätník obetiam komunizmu*) in Bratislava on Jakubovo Square, featuring sculpture by Jozef Barinka
- **Slovenia** In almost every Slovenian village, town and city stands a memorial to local Partisan Heroes. There are a number of large memorials at the cemeteries of the large Slovenian cities such as Ljubljana, Maribor, Koper, Kranj, Ptuj, Velenje, etc. Memorials of the victims of totalitarian Communist system are few and very scarce. Memorial chapel at Kočevski rog grave site or at Teharje.
- **Spain** National authorities have not adopted a general policy for signaling the places of Franco's repression: prisons, concentration camps and detention centres. There exist some dispersed initiatives, such as the memorials at the location of the camps of concentration in Albaterra and Miranda de Ebro. As for monuments, the only general one is at *Plaza de la Lealtad* in Madrid. It was a pre-existing one and it is dedicated to all fallen for Spain. This is joined to two monuments for victims of violence during the democratic transition, more precisely; there is one in Madrid dedicated to 5 labour lawyers assassinated in 1977 by far right extremists and another one to victims of police violence in Vitoria in 1976.

4.3.2 *Public, institutional or other type of apologies and declarations or acknowledgment of wrongdoing (such as copies of truth commission's reports, list of names of victims, personal letters of apology, etc.)*

#### Apologies

- **Austria**
  - In an address to the Austrian Parliament in 1992, Federal Chancellor Franz Vranitzky became the first prime minister to declare officially and explicitly that Austria had been both a victim and a perpetrator of National Socialism.
  - Chancellor Vranitzky again spoke about the role Austrians played in the war and the Holocaust upon the reception of an honorary doctorate at Hebrew University in Jerusalem in June 1993: "We share moral responsibility because many Austrians welcomed the

- ‘Anschluss,’ supported the Nazi regime, and helped it to function...”<sup>84</sup>
- President Thomas Klestil gave a similar speech before the Knesset in Israel in 1994.
  - Prime Minister Viktor Klima said at the Stockholm International Forum on the Holocaust in January 2000: In the awareness of both historical truths-that Austrians were victims and that they were perpetrators-and in view of our responsibility for the future, there must be no doubt about the continuation of the critical confrontation with the Nazi past... Only if we can explain to the coming generations what happened and how it could happen, can we develop in them the ability to resist any form of inhuman ideologies... We need symbolic acts of common remembrance and collective warning never again to stray from the path of democracy and freedom.<sup>85</sup>
  - In 2006, Austrian president Heinz Fischer said in an interview that his country's 1955 Declaration of Independence falsely represented Austria as a victim of the Nazis rather than as a coperpetrator of crimes. He also referred to the Moscow Declaration of 1943, in which the Allied leaders asserted that Austria was the first victim of National Socialism. This, he noted, led to a situation where the perpetrator role of many Austrians was set aside for a long time.<sup>86</sup>
- **Belgium**
    - In 2002 the Prime Minister apologized for Belgian participation in the prosecution of Jews in the commemoration of the 60th birthday of the roundups of the Jews from Brussels and Antwerp. *‘Regrettably, in Belgium, there were too many, also in the administration, who ended up in the collaboration. This fact, we have to find the courage to say it, to recognize it, to assume it’.* These apologies were repeated in 2005 and 2007.
    - In March 2005, during a ceremony at the renewed Yad Vashem Museum in Jerusalem, he pointed out ‘the role that some Belgian officials and administrations played in this tragedy’ and presented his apologies for it.
    - In May 2007 in Brussels: ‘It is only by the recognition of the responsibility of the authorities of that time that we can build a future where this will never happen again’
  - **Bulgaria** On 25 March 1991, in a special Political Declaration of the BSP leadership, the BSP (which considers itself the successor of the BCP that established the repressive system) admitted the political

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<sup>84</sup> Botz, Gerhard and Sprengnagel, Gerald, *Kontroversen um Österreichs Zeitgeschichte*, Campus Verlag GmbH, 1998, pp. 577-580. Vranitzky made similar remarks before the Austrian Parliament in 1991. See *Ibidem.*, 574-576. Chancellor Viktor Klima echoed Vranitzky's statements in a 1997 address before Jewish émigrés upon a visit to Vienna. See “Viktor Klima, Federal Chancellor of Austria: Remarks before former Austrian citizens who had to flee their native country to escape Nazi terror,” *Austrian Information*, 50, nos. 7-8 (1997): 2-3.

<sup>85</sup> Remarks by Federal Chancellor Viktor Klima at the Stockholm International Forum on the Holocaust, 26 January 2000, [www.holocaustforum.gov.se/conference/official\\_documents/messages/klima\\_eng.htm](http://www.holocaustforum.gov.se/conference/official_documents/messages/klima_eng.htm)

<sup>86</sup> Eva Linsinger and Michael Völker, "Kein Wort für die jüdischen Opfer," *Der Standard* [in German], [www.hofburg.at/show\\_content2.php?s2id=506#](http://www.hofburg.at/show_content2.php?s2id=506#)

culpability of the party for the repressions, but rejected the possibility this political culpability to be transformed into judicial one (in other words, to seek collective judicial culpability). The document was published in the BSP official newspaper “Duma” of 27-29 March 1991.

- **Denmark** On 4 May 2005, at the celebration of the sixtieth anniversary of Denmark's liberation, the Prime Minister, Mr. Anders Fogh Rasmussen, on behalf of the government and the Danish State, gave an official apology for having handed over Jewish refugees to the German occupational power in the period 1940-1943.<sup>87</sup>
- **Estonia** In June 1989, the Communist Party did issue a statement condemning the 1941 and 1949 deportations and acknowledging its “complete political and moral responsibility” for these atrocities. This declaration, however, was not followed up until 25 March 1990, when a special ECP congress adopted a resolution acknowledging the Party’s mistakes in terms of having denied the independence aspirations of the Estonian people and thereby put in danger the nation itself (because of the ensuing deportations and other repressions).
  - President Lennart Meri undertook a special tour of Estonia during early June 2001 to remember, on the one hand, the 60<sup>th</sup> anniversary of the first Soviet deportations, while on the other hand to present thousands of Estonians who had been repressed under the Soviets with a special pin depicting a broken cornflower, the national flower of Estonia. The “Broken Cornflower” campaign became an eminent example of symbolic recognition.
  - In relation to the Holocaust, Estonia has always maintained that it was a victim of Nazi occupation and therefore as a state bears no direct responsibility toward the killing of Jews on its territory. However, on 8 May 2005 Prime Minister Andrus Ansip gave a speech at the Holocaust memorial site in Klooga, where he said, “*I apologize for the fact that Estonian citizens could be found among those who participated in the murdering of people or assisted in the perpetration of these crimes.*”<sup>88</sup> In a government statement issued two days earlier, the full cabinet also expressed “regret” that Estonian citizens were among the perpetrators of the Holocaust.<sup>89</sup>
- **France**
  - The first, clear, official recognition of France’s responsibility in assisting in the Shoah was given by President Jacques Chirac on 16 July 1995, at the fifty-third anniversary of the roundup.
  - On 10<sup>th</sup> July 2000, the French Assembly adopted unanimously a *law instituting on 16 July a* “National day to the memory of victims of racist and anti-Semitic crimes of the French State and

<sup>87</sup> Danish Institute for International Studies (DIIS), Department for Holocaust and Genocide Studies.

<sup>88</sup> “Address by Prime Minister Andrus Ansip in Klooga, Estonia”, as released 8 May 2005 by the Ministry of Foreign Affairs, available at [http://www.vm.ee/eng/kat\\_140/5402.html?arhiiv\\_kuup=arhiiv](http://www.vm.ee/eng/kat_140/5402.html?arhiiv_kuup=arhiiv)

<sup>89</sup> “Valitsuse avaldus seoses Teise maailmasõja 60. aastapäevaga”, 6 May 2005, available at <http://www.valitsus.ee/brf/index.php?id=29120&tpl=1007&external=0&search=&aasta=2005-05>

as an homage to the ‘Righteous of France’ (les Justes),<sup>90</sup> correcting the 1993 decree by acknowledging the responsibility of the French State in the crimes.

- On 16<sup>th</sup> February 2009, the *Conseil d’Etat* rendered an *avis* (decision) on the responsibility of the French State in the deportation resulting from antisemitic persecutions.
- **Finland.** At the erection of a Memorial in honour of 8 Jewish refugees extradited to Germany in 1942, on 5 November 2000, Prime Minister Paavo Lipponen apologised to the Jewish community for the extraditions and accepted Finnish responsibility to remember the Holocaust.
- **Germany** Politicians from several countries have been visiting concentration camp memorials (i.e. Obama in Buchenwald, Juschtschenko in Flossenbürg).
  - A Joint Italian-German Declaration was signed in Trieste on 18 November 2008. Germany recognised fully the very grave suffering inflicted upon Italians and retains memory of them. German Foreign Affairs Minister Steinmeier went to Risiera di San Sabba for homaging the memory of Italian military which were transferred there before their deportation to Germany and the memory of all victims represented in the site.
  - On 21<sup>st</sup> January 2007, the governments of Germany and the Czech Republic issued a Declaration on Mutual Relations and their future development in which the German side acknowledges Germany's responsibility for its role in a historical development which led to the 1938 Munich Agreement, the flight and forcible expulsion of people from the Czech border area and the forcible breakup and occupation of the Czechoslovak Republic. It regrets the suffering and injustice inflicted upon the Czech people through National Socialist crimes committed by Germans. The German side pays tribute to the victims of National Socialist tyranny and to those who resisted it. The German side is also conscious of the fact that the National Socialist policy of violence towards the Czech people helped to prepare the ground for post-war flight, forcible expulsion and forced resettlement. In turn, the Czech side regrets that, by the forcible expulsion and forced resettlement of Sudeten Germans from the former Czechoslovakia after the war as well as by the expropriation and deprivation of citizenship, much suffering and injustice was inflicted upon innocent people, also in view of the fact that guilt was attributed collectively. It particularly regrets the excesses which were contrary to elementary humanitarian principles as well as legal norms existing at that time, and it furthermore regrets that Law No. 115 of 8 May 1946 made it possible to regard these excesses as not being illegal and that in consequence these acts were not punished.

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<sup>90</sup> *Loi n° 2000-644 du 10 juillet 2000 instaurant une journée nationale à la mémoire des victimes des crimes racistes et antisémites de l’Etat français et d’hommage aux « Justes » de France* (1), Assemblée Nationale, Paris.



- The Federal Republic of Germany has issued an apology condemning National Socialist crimes in the territory of Slovenia during the Second World War.
- The Constitution of Saxony included reference to the ‘painful experience of National Socialist and Communist Gewaltherrschaft [domination through violence]’, and, in Article 117 stipulated that the Land contributes to ‘reduce the causes of individual and societal failure in the past, to reduce the consequences of violations of human dignity and to increase the capacity for self-determined and responsible conduct of one’s life’. Other constitutions in the new Länder, with the exception of Saxony-Anhalt, have also included references to the past in their preambles and in individual articles.
- The "Darmstadt Word" (Darmstädter Wort), published by the Fraternal Council of the Evangelical Church in Germany (EKD) reacted to the deep involvement of the Church (not only the Protestant) in the National Socialist regime. It was an admission of guilt of Protestant theologians, articulated by Karl Barth and Hans Joachim Iwand and signed and supported by many members of the Church who recognized the failure of the Church during the "Third Reich" and were reflecting on the issues this failure raised for the future of the Church and of its congregation.
- **Greece** In August 1982, the Greek state and government recognized the role of the Greek combatants (resistants) in WWI. The legitimate fighters of the national cause were invited to the march of the national holiday on 28 October 1982.
- **Italy** Law n. 92, 30 March 2004 granted a medal to survivors, sons and grandsons or any other relatives of these suppressed or persecuted between 8 September 1943 and 10 February 1947 in Istria, in Dalmazia or the Eastern border provinces.
- **Lithuania** During his state visit to Israel on 1 March 1995 President Brazauskas read an ‘apology speech’ in which he admitted the involvement of Lithuanians in the Holocaust killings and asked for forgiveness.
- **The Netherlands**
  - In her Jerusalem speech on 28 March 1995 before the Israeli *Knesset*, Queen Beatrix said there were many Dutch people who had resisted the Germans. She added: "But we also know that they were the exceptions and that the people of the Netherlands could not prevent the destruction of their Jewish fellow citizens."<sup>91</sup>
  - In 2000 Prime Minister Wim Kok presented partial apologies for the postwar Dutch governments' treatment of the Jews..
  - In March 2005 Prime Minister Jan Peter Balkenende, at Yad Vashem in Jerusalem, described the deportation of Dutch Jewry as a "pitch-black" chapter in Dutch history.
  - On 29 September 2005 Aad Veenman, president of the Nederlandse Spoorwegen (NS, Dutch Railways), offered an

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<sup>91</sup> Address by Her Majesty the Queen to the Knesset, 28 March 1995 (Rijksvoorlichtingsdienst)

apology to the Jewish community for his company's behavior during the war. The railways transported, on German orders, the Dutch Jews to the transit camp Westerbork in the eastern part of the country. A subsidiary of Dutch Railways also used Jews confined in the camp as forced laborers to construct a railway line to Westerbork to facilitate the transport of the detained Jews.

- **Poland** On 11<sup>th</sup> November 1993, President Kwasniewski leader of the post-communist SLD, apologised in the parliament "to all those who had experienced injustice and wickedness of the [communist] authorities and the system before 1989". In 2004, he also officially acknowledged the wartime suffering of Polish Jews, including their victimization at the hands of Polish themselves. Recently, CDU-CSU, demanded that Poland issue and official apology for the forced transfers of Germans from the so-called "Recovered Land's. Prime Minister Tusk (PO) responded that what happened after WW II to Germans was "Germany's own fault." Leaders of PiS reacted to the events by calling for PO to withdraw from the Eurocoalition with CDU-CSU.

- In 2001, President Kwasniewski attended the commemoration ceremony of the killings of Jews by the local population in the village of Jedwabne. The former Primate of Poland, Cardinal Józef Glemp, led a ceremony for the victims.

- **Romania**

- *President Emil Constantinescu's "Message of Condemnation of Communism"* asked forgiveness, on behalf of the Romanian people, from the victims of the communist regime and Parliament to erase the criminal record of communist-era political prisoners. Delivered in 1997, and later published in one of Constantinescu's books.
- *President Iliescu's apology*, delivered in late 2004, when he received the final report of the Wiesel Commission, acknowledged Romania's role in the Holocaust, and pledged to educate Romanians about their country's past.
- *Sorin Iliesiu's Proclamation for Romania/ Proclamatia pentru Romania* of 30 April 2005 called on the Romanian civil society to support the principles of the Timisoara Proclamation, condemn communism, and clean the justice system of former communists.
- *President's Basescu's condemnation of communist crimes* in front of Parliament on 18 December 2006, days before Romania became a member state of the EU. The civil society saw it as a sign of national catharsis for the crimes perpetrated by the communist regime. The ceremony was attended by former Polish President Lech Walesa, former Romanian President Emil Constantinescu, and former Bulgarian President Jeliu Jeleu.

- **Slovakia**

- In the *Declaration on the Deportation of Jews from Slovakia*, December 20, 1990, the Slovak National

- Council and members of the Government expressed sympathy and regret for the crimes committed against those who were deported to concentration camps from 1942 to 1944 and apologizes for their predecessors' involvement in this, asking surviving Jewish citizens for forgiveness.
- In the Declaration on the 50<sup>th</sup> Anniversary of the End of World War II and on the Victory over Fascism, May 3, 1995, the Parliament referred back to 1990 Declaration on the Deportation of Jews and expresses commitment not to be indifferent to various forms of hatred.
  - **Slovenia** The Slovenian government has issued an apology in 2006 and 2007 to all victims of totalitarian Communist regime, which governed Slovenia during 1941-1990.
    - Primer Minister Borut Pahor, head of Social Democrats political party, which succeeded the Slovenian Communist Party recently stated on the occasion of the the newly discovered mass graves. *We have to face the dark shadows of the past and imprint them into our collective memory. At the same time, we reject any kind of politicisation and abuse of victims for political purposes, whichever side they may come from, and even from other countries. We have a responsibility to our common European history and future, and therefore we should seek to gain a comprehensive understanding of all aspects of war and the post-war tragedy.*<sup>92</sup>
  - **Spain** Homages have been numerous but with very different content and reach. In December 2003, all parliamentary groups at the Congress render an institutional homage to the victims of Francoist repression and their families. In 1996, the Spanish Parliament organised a public homage in the seat of the Congress for the members of the International Brigades (foreign volunteers who enlisted to fight in favour of the Republic). In 2006, the Ministry of Culture published the homage book Spaniards at the Nazi camps 1940-1945 and in the 60<sup>th</sup> Anniversary of the Liberation of Maathausen, Prime Minister Zapatero visited the camp where some 6000 Spanish prisoners died there.
    - In 1996, the Spanish Parliament recognised the role of the International Brigades (foreign volunteers who enlisted to fight for the Republic), granting them Spanish nationality.<sup>93</sup> The 2007 Law (art. 18) improved the procedures: former brigades' members did not need to renounce to their former nationality. The Royal Decree 1792/2008 exempted them from the renunciation requirement. Applications could be lodged without any deadline but the number of potential beneficiaries was small. By May 2009, the government had approved 15 applications.
    - The 2007 law established the right of all citizens to moral reparation and the recovery of their personal and family memory.

<sup>92</sup> See Prime Minister's press conference, 12 March 2009, <http://www.kpv.gov.si/nc/en/splosno/cns/news/article/1914/3630/>.

<sup>93</sup> Royal Decree 39/1996 19 January 1996

Sentences, sanctions etc, of the Francoist repressive tribunals are recognised and declared as radically unjust, as well as the exile that in many cases was the only option for Republicans. From this follows the right of victims to obtain an official Declaration of reparation and recognition. The Declaration is in no case an entitlement for recognition of patrimonial responsibility of the state or any other public administration nor would it generate any kind of effect, reparation or economic indemnity. By May 2009, 630 applications were registered for obtaining the Declaration of Reparation and Recognition.

As for the **naming victims**, projects were reported in Belgium, Finland, Germany, Latvia, Lithuania, Romania and Spain:

- **Belgium** A unique project of the museum is entitled ‘Give them a Face’. In 2004, an agreement was reached with the Department for Alien Affairs of the Belgian Ministry of Interior to digitise the personal files from the archives of the Alien Police. More than 90% of the Jewish population in Belgium did not have the Belgian nationality. Each of the alien files contained a photograph of the person involved. On the basis of these files, the Museum for Deportation and Resistance has succeeded to add an image to the names of more than 17,000 of the 25,000 Jews that were deported from Belgium.
- **Finland.** A *War victims 1914-1922 Committee* was created in 1998 in a spirit of large political consensus. Its main task was to count the number of the victims of civil war so that every victim and the way he or she died – if possible - was clarified.<sup>94</sup> War victim committee final report was published in 2003. It is based on a detailed, comparative and critical analysis from different sources (for example records held by the church, statistics, collected by the organizations of the rivaling parties etc-) according to most demanding academic standards.<sup>95</sup>
- **Germany** Lists of German-Jewish victims have been published<sup>96</sup>, also deportation lists<sup>97</sup> or commemorative books on concentration camp victims or former Jewish citizens.<sup>98</sup>
- **Latvia** The Latvian State Archive has published a valuable series of documents-based books, some of which are essentially lists of persons who experienced the most egregious repressions during the two Soviet periods.  
The Institute of History, University of Latvia is conducting a research project aimed at developing a data base of all the persons arrested by the Soviet authorities in 1940-41 that includes the names of all the victims

<sup>94</sup> Exact data concerning all the cases (Suomen Sotasurmat 1914-1922. Vuosina 1914-1922 sotaoloissa surmansa saaneiden nimitiedosto) is available in the internet. See <http://vesta.narc.fi/cgi-bin/db2www/sotasurmaetusivu/main?lang=fi>

<sup>95</sup> Westerlund, Lars (ed), *Sotaoloissa vuosina 1914-1922 surmansa saaneet*. Tilastoraportti. Valtioneuvoston kanslian julkaisu 10/2004.

<sup>96</sup> Gedenkbuch. Opfer der Verfolgung der Juden unter der nationalsozialistischen Gewaltherrschaft in Deutschland 1933-1945. 2<sup>nd</sup> edition, 4 vols., Koblenz 2006

<sup>97</sup> See i.e. Wolfgang Scheffler and Diana Schulle (ed.), *Buch der Erinnerung. Die ins Baltikum deportierten deutschen, österreichischen und tschechoslowakischen Juden*. München 2003

<sup>98</sup> See i.e. Loose, Ingo, *Berliner Juden im Getto Litzmannstadt 1941-1944. Ein Gedenkbuch*. Berlin 2009

and the individualized history of their involvement with the repressive organs of the USSR.

- **Lithuania**
  - In November 1997 the *Lithuanian Jewry Memorial Foundation* (a non governmentral organisation) initiated a project aiming to collect as many names as possible of victims of the Lithuanian Holocaust (1941-1945) with the objective of preserving the memory of the names of the martyrs for generations to come. In 2002, “*The Holocaust in Lithuania 1941-1945: A Book of Remembrance*”, by Rose Lerer Cohen and Saul Issroff, was published by Gefen: Jerusalem and New York, 2002. The main portions of the book are lists of names of those who perished, from the main cities of Vilna and Kovno and from many other mass murder areas.<sup>99</sup>
  - The *Genocide and Resistance Research Centre* is publishing a series of volumes (*The Genocide of Lithuania's Residents*) with the list of victims. So far, volumes covering from 1939 to 1948 have been published. Each of the volumes is divided in several books according to alphabetic ordering. Victims are reported by families.
- **Romania**, former political prisoner Cicerone Ioanitoiu compiled a dictionary of victims of communism, *Victimele terorii comuniste: Arestati, torturati, intemnitati, ucisi*, identifying by name several thousands victims.
- **Spain**, there are several uncoordinated initiatives. The CEIBM (*Centre d'Estudis d'Investigació històrica Baix maestrat /Montsià*) publishes a list of victims of the Nazi concentration camps (<http://www.ceibm.org/alexca01100.html>.) A further homage is the project *Todos los rostros* (all faces <http://www.todoslosrostros.blogspot.com/>) intended as a place for visual memory of Republican and anti-francoist prisoners.
  - In Galicia, the regional government sponsored an academic project (*As victimas, os nomes, as voces*; Victims, names, voices) whose aim was to number the victims, disclose their fate and record their testimony. the *Asociación de Memoria Histórica y Justicia de Andalucía* (AMHyJA) carried through a Project named (*Todos los nombres* All names) [www.todoslosnombres.org](http://www.todoslosnombres.org) whose main purpose was the creation of a data base of victims. The Association submitted a report which documented 21,951 dissapearances.

#### 4.4 Non-regulatory measures to support victims; for example, NGO support and programs.

- **Belgium** A NGOs assisted victims after WWII: the *Aide aux Israèlélites Victims de la Guerre (AIVG)* (1944). The goal of the after-war AIVG was to help Jewish victims, Jews deported and robbed of their property,

<sup>99</sup> For details see <http://www.jewishgen.org/Litvak/lithnames.htm> (accessed on December 3, 2009)

and to reintegrate them into the socio-economic life. The statutes of the AIVG stated explicitly that the AIVG wished to continue the work of the Joodsch Verdedigingscomité / Comité de Défense des Juifs. The AIVG played an important role in the reconstruction of the Belgian Jewish community after the Second World War. In 1944-1945 it helped 12.000 people, in 1946 around 4.000. In other words, this moral and material reconstruction did not come from the Belgian State, but from the Jewish community itself. On top of this, the AIVG relied financially almost entirely on foreign Jewish support.

- **Bulgaria** The *Union of the Victims of the Repressions after 9 September 1944* (Klub na repressiranite sled 1945) (1989) initially founded as Club of the repressed after 1945. The Club took part in the creation of the Union of Democratic Forces (UDF). The Club had 5 deputies at the Great National Assembly in the group of the UDF. On 31 March 1991 the National conference decided to change the name of the Club – the new name became “Union of the Victims of the Repressions after 9 Sept. 1944” and it moved to Sofia. It organizes together with other institutions conferences and seminars to condemn communism.

In the transition period some NGOs were established, which aim at providing help to victims of repressions. Among these organizations are the unions of the repressed and ASET (Assistance Center for the Victims of Torture, Centur za podpomagane na hora, pezhiveli iztazanie).

- **Czech Republic**
  - The *Confederation of Political Prisoners of the Czech Republic* (*Konfederace politických vězňů České republiky*) is a voluntary association of former political prisoners that seeks to secure, “above all, dignified and reverent remembrance of the victims of communism and the familiarization of the younger generation with their history.” It also has pushed for inclusive restitution, rehabilitation, and compensation legislation for victims. Recently, it has been working to make it possible for surviving spouses of political prisoners to receive compensation from the above-listed laws. The KPV calls as well for “moral satisfaction in the form of the punishment of concrete living persons, who for 50 years participated in the sadistic interrogation and torture of political prisoners.”<sup>100</sup> The group is a primary advocate for the rights and memory of victims of communism in the country. It has also collected written testimonies of political prisoners and their families and friends.
  - *Czech Coordinating Office* is an international non-governmental Czech organization, representing a large number of Czechs abroad who lost their citizenship and helping them to challenge restitution and compensation laws that exclude them on this basis.
  - *Daughters of the Enemies of the State* (*Občanské sdružení Dcery*) is an association that began as a psychological study of the effects on children of having political prisoners as parents, it grew to a voluntary “self-support group” of over 100 daughters of political

<sup>100</sup> Konfederace politických vězňů České republiky, “Kdo jsme,” available at <http://www.kpv-cr.cz/?pid=116>

- prisoners<sup>101</sup>. They are dedicated to keeping the suffering of the past from being forgotten and educating future generations.
- The *Confederation of Political Prisoners and Daughters of the Enemies of the State* has brought public attention to the crimes, and criminals, of the communist period.
  - *European Roma Rights Centre (ERRC)* is an international public interest law organization that engages in strategic litigation, international advocacy, human rights training, and research and analysis with the goal of combating discrimination and human rights abuses against Roma. Its support of coercively sterilized Roma women—both in the Czech Republic and Slovakia—is notable.
  - *Foundation for Holocaust Victims (Nadační fond oběti holocaustu)*. It is funded by corporations, governments/municipalities, non-profit organizations, and individuals, the FHV states that its mission “is to mitigate property injustices caused to Holocaust victims in the past, to support social and health care for Holocaust survivors in the present, to fund Jewish educational and cultural projects, and care for monuments<sup>102</sup>”.
  - *Group of Women Harmed by Coerced Sterilisation (Spolek žen postižených nedobrovolné sterilizace)* is an Ostrava-based group of Roma women advocating for compensation and a state apology for having been sterilized without their informed consent—a government policy from the 1970s until 1990 (this practice continued, unofficially, even after the fall of the communist regime).
  - *Terezín Initiativ (Terezínská Inicitiva)* is an association of Holocaust survivors in the Czech Republic that seeks to represent these survivors, to enforce legal and other rights and claims related to their World War II persecution, and to raise their level of influence in Czech society.
- **Denmark** (for more details see point 8.1.4.2)
    - The *Danish War Children’s Association* supports the interests of Danish war children – and their children – and provides assistance to members in search of their biological father.
    - The *Horsørød Stutthof Association* secures the preservation of institutions which explain the resistance movement and the conditions during the occupation period.
    - *Humanity in Action*. With the Holocaust as the historical starting point, it works to fulfill its mission to engage student leaders in the study and work of human rights. The organisation sponsors an integrated set of educational programs each year for university students and post-graduates in America, Denmark, Germany, The Netherlands, France, and Poland.
  - **Estonia** The *Estonian Union of Illegally Repressed Persons “Memento”* (later called the Estonian Memento Union) was founded in March 1989

<sup>101</sup> For details see <http://www.enemysdaughters.com/?pid=8&lang=en>

<sup>102</sup> Foundation for Holocaust Victims/Nadační fond oběti holocaustu, “About Us,” <http://www.fondholocaust.cz/indexEN.htm>

as an umbrella organization for local repressed persons' associations, which had started to surface across the country. The Union pledged itself to fight for improved rehabilitation procedures, special access to supplementary medical and social care, legal assistance for repressed people to process their claims, research support to compile data on the repressed and on the former security services as well as political measures to condemn the crimes of the communist regime.

- In 2006, the Repressed Persons Assistance Fund (*Eesti Represseeritute Abistamise Fond*) was set up in order to channel roughly 2,500,000 Estonian kroons that has been allocated each year by the Estonian government for support to repressed persons groups.
- **Germany** Concentration camp survivors are organized in *Lagergemeinschaften* which also play an important role the memorials. Important agents are also the Zentralverband der Juden in Deutschland and the Zentralrat Deutscher Sinti.
- **Hungary**
  - The *Kút Foundation* is a Foundation and clinic for psychotherapy set up in 1993 by the dr Teréz Virág. The Foundation is dedicated to Holocaust survivors, their descendents and for all those, who have suffered social traumas and injustice during the last decades:
    - for the first generation, which survived the horror
    - for the second generation, which wants to know and to understand
    - for the third generation, which searches identity.
  - The *Claims Conference and World Jewish Restitution Organization* (WJRO) plays an integral role in the re-opening of a Hungarian Holocaust compensation program to which thousands of potentially eligible victims of Nazism had not applied. In addition, a foundation (MAZSOK)<sup>103</sup> was established which, through modest government funding, provides pension supplements to local Jewish Holocaust survivors. Recently, the Claims Conference/WJRO has obtained the agreement of the Hungarian government to establish a joint committee, consisting of government officials and Jewish representatives, including from the WJRO, to address all remaining open restitution issues, including heirless property, insurance and looted art.”<sup>104</sup>
- **Lithuania** The biggest association of the former guerrilla fighters is the *Lithuanian Movement of Freedom Fighters*. Other repressed persons have been associated into two competitive NGOs with almost the same names: the Lithuanian Union of Political Prisoners and Deportees and the Lithuanian Community of Political Prisoners and Deportees. They also represent a part of former guerrilla fighters who have been repressed by the Soviet occupation regime and therefore fall into the category of political prisoners. The former was a political party, while the latter remained a non-political association. Victims of the Soviet aggression of

<sup>103</sup> The Jewish Heritage of Hungary Public Endowment was created by Hungarian legislation in 1997 and was granted with funds from restituted Jewish communal properties. The fund pays monthly pensions to approximately 18,000 Hungarian Holocaust survivors.

<sup>104</sup> Accessed on website: [http://www.claimscon.org/index.asp?url=negotiations/e\\_europe](http://www.claimscon.org/index.asp?url=negotiations/e_europe)



January 1991 also are represented by two competing associations: the Sodality (Union) of the 13th of January and the Association of the Victims of the 13th of January. Both associations of the victims and victims individually can apply for material support to the Centre of Research of the Genocide and Resistance of the Lithuanian Population which manages a special fund to support victims of the former occupation regimes. This Fund is formed from the State budget allocations to the special programme of the Centre of Research of the Genocide and Resistance of the Lithuanian Population. Material support from the Fund is given for the three main purposes: to pay allowances for those living in poverty, to publications and to construction of monuments.

○ **Poland**

- *Association of Combatants of the Polish Republic and Former Political Prisoners (Związek Kombatantów RP i Byłych Więźniów Politycznych)*, active since 1990, is an organisation grouping independence fighters from the last world war and the period after it. It has 292.038 members, out of which 21.560 are former political prisoners or prisoners of concentration camps. The Association focuses on promoting patriotic attitudes and knowledge about modern history, as well as on representing its members and promoting their rights in contacts with national and local institutions. (Official website: <http://www.kombatantpolski.pl/>)
- *General Polish Association of Persons Interned and Prosecuted under the Martial Law (Ogólnopolskie Stowarzyszenia Internowanych i Represjonowanych w Stanie Wojennym)*. Represents victims of the Martial Law and all other people persecuted between 1980 and 1989. It provides legal advice on their rights and entitlements, lobbies for their interests, provides feedback and opinion on projects of legal acts affecting their situation. The average yearly budget of the organisation is around 3.000 PLN.<sup>105</sup> (Official website: <http://www.internowani-represjonowani.pl.tl/>). There is almost a hundred local organisations representing persecuted persons, most of them—persecuted during the martial law of 1981, and almost 2000 organisations representing combatants: the search in the NGO database identified 72 organisations representing persecuted persons, 9 representing interned persons, and 1999 representing combatants ([www.bazy.ngo.pl](http://www.bazy.ngo.pl)).
- *Ogólnopolskie Porozumienie Organizacji Rewindykacyjnych (OPOR)*. It associates 14 various organisations representing persons seeking restitution of or compensation for nationalised property, in total around 300.000 people. Comments on projects of legal acts, lobbies for the rights of former owners and their beneficiaries.
- *Ogólnopolskie Stowarzyszenie Kresowian (Wierzyielei Skarbu Państwa)*. It Represents persons who lost property as a result of

<sup>105</sup> Personal communication with Janusz Olewiński, head of the Ogólnopolskie Stowarzyszenie Internowanych i Represjonowanych w Stanie Wojennym, November 5th 2009.

- deportation from the eastern lands of Poland, which were assigned to the Soviet Union. Founded in 1991, has several divisions across the country, and several thousand members. Its aim is to promote payment of compensations for the lost property. For more organisations representing former property owners (local and regional units), see <http://www.dekretowiec.pl/>
- **Romania** *The ICAR Foundation – Medical Center for the Rehabilitation of Victims of Torture* (Fundatia ICAR – Centrul Medical de Reabilitare a Victimelor Torturii) offers medical assistance to victims of communist torture, especially members of the Association of Former Political Detainees (*Asociatia Fostilor Detinuti Politici*), beneficiaries of Law 118/1990 and Law 189/2000 and Law 309/2002. It was founded in 1990 with the mission to provide free-of-charge medical treatment. There are three ICAR centers in Romania.
  - **Slovakia**
    - *American Jewish Committee* is an international think tank and advocacy organization that has worked with the Slovak Jewish community on Holocaust-related projects, including developing curricula for use in Slovak schools, surveying Slovak public opinion and knowledge about the Holocaust, and advising the Slovak government about forming a commission to deal with looted assets and property restitution.
    - *Central Union of Jewish Religious Communities in the Slovak Republic/ Ústredný zväz židovských náboženských obcí v Slovenskej republike (UZZNO)* is an umbrella organization representing the Slovak Jewish community and its various organizations, including the *Association of Holocaust Survivors* and the *Hidden Children*. It works to ensure restitution, compensation, health and social care, and senior living assistance/homes for the elderly Jewish population, almost all of whom are Holocaust survivors.<sup>106</sup> It also supports education about the Holocaust and upkeep of synagogues and cemeteries. It seeks to secure funds for these purposes from various sources, including other states (for example, it filed suit against the German government for restitution of the money the wartime Slovak government paid it to deport its Jewish population<sup>107</sup>).
    - *Confederation of Political Prisoners of Slovakia (Konfederácia politických väzňov Slovenska)* offers victims of the communist regime social and psychological support, and, for those former political prisoners in need who have not been compensated, it offers material and, when possible, financial aid. In addition, it organizes memorial and educational events.<sup>108</sup>

<sup>106</sup> Letter from Fero Alexander, Executive Chairman, and Jozef Weiss, Office Director, to Judah Gribetz, 26 October 1999, [http://www.swissbankclaims.com/pdfs\\_eng/CenUnOfJewishRelCommInSloRepub.pdf](http://www.swissbankclaims.com/pdfs_eng/CenUnOfJewishRelCommInSloRepub.pdf).

<sup>107</sup> United States Department of State, Bureau of Democracy, Human Rights, and Labor, 2008 Report on International Religious Freedom – Slovak Republic, 19 September 2008, available at <http://www.unhcr.org/refworld/country,,,SVK,4562d8b62,48d5cbe6c,0.html>

<sup>108</sup> Erste Bank Group, “Confederation of Political Prisoners of Slovakia,” available at [http://www.kontakt.erstegroup.net/projects/archive/sk\\_cpss/en](http://www.kontakt.erstegroup.net/projects/archive/sk_cpss/en)

- *ESTER*: A Slovak Jewish women's group seeking to support Jewish traditions and community, combat myths and prejudice, and promote knowledge of Jewish history, including that of Slovak victims and survivors of the Holocaust.
- *Slovak Union of Anti-Fascist Fighters (Slovenský zväz protifašistických bojovníkov)* is a civic association drawing together participants in the struggle for national liberation and against fascism, for democracy and social justice; works to promote democracy and human rights and against the rehabilitation and/or glorification of the fascist wartime regime and its leaders, as well as extreme nationalism, racism and xenophobia.
- *Union of Anti-communist Resistance (Zväzu protikommunistického odboja)*. It supports and advocacy group for former political prisoners persecuted by the Communist regime.
- See also *Group of Women Harmed by Coerced Sterilisation* and the *European Roma Rights Centre*, described in corresponding section on the Czech Republic.
- **Slovenia** The law firm *Verstovšek* has brought the majority of cases before the ECtHR.<sup>109</sup> A number of NGOs, however, assists victims in bringing human rights claims before Slovenian courts. NGO *Pravno informacijski center* (legal-information centre) offers legal counseling and free legal aid to victims of human rights abuses. *Pravno informacijski center* has also brought cases before ECtHR. NGO *Mirovni inštitut* (Peace Institute) offers some assistance to victims in areas relating to ECHR.
- **Spain** The *ARMH* and *Psychologist without Frontiers* jointly opened in March 2009 an office for support to the victims and their relatives. The main task of the office was to orientate victims and relatives on how and where search for remains and what kind of help and compensations are available from government. Additionally, the support office aimed at recording testimonies of victims and their relatives and it organizes talks and round tables for the diffusion of the defeated ones.

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<sup>109</sup> See <http://www.verstovsek.eu/>

## 5. Perpetrators of the Crimes under Repressive Regimes

### 5.1 Legal situation of perpetrators

#### 5.1.1 Typification of the crimes committed, laws applied (specific or general) and jurisprudence

By and large, information in this section is referred to national legislation. Nevertheless, international legislation and agreements are also an important source for criminal justice when referring to the regulation of genocides, crimes against humanity and war crimes. Section 9.2 contains the information on these instruments and complements the information below.

##### 5.1.1.1 Criminal justice (war crimes, crimes against humanity and genocide)

In some cases, international/supraestatal jurisdictions assumed the role of administering criminal justice. During the World War II, the Allies agreed in principle on trying Nazi criminals after the war. On 8 August 1945, the Four Powers signed the *London Agreement for the Prosecution and Punishment of Major War Criminals* which created the International Military Tribunal and defined the crimes against peace, war crimes and crimes against humanity. Additionally to the Four Powers, the Agreement was open for signature to other countries and a number of countries acceded soon. Table 5.1.1.1 below summarises the accession list and dates.

**Table 5.1.1.1 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal (London, 8 August 1945) (signatories: France, United Kingdom, United States of America and Union of Soviet Socialist Republics) 1**

Member state	Date of accession
<b>Belgium</b>	05.10.1945
<b>Czechoslovakia</b>	26.09.1945
<b>Denmark</b>	10.09.1945
<b>Greece</b>	10.09.1945
<b>Luxembourg</b>	01.11.1945
<b>Netherlands</b>	25.09.1945
<b>Poland</b>	25.09.1945

Source: own elaboration from data in International Committee of the Red Cross (ICRC), International Humanitarian Law - Treaties & Documents, available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=350&ps=P>

Additionally, and for the objectives of this study, it is necessary to recall the creation of the International Criminal Court for Former Yugoslavia whose jurisdiction covered both Slovenian citizens and eventual crimes committed within the Slovenian state, even though jurisdiction was not exercised on either ground.

- **Austria** According to academic sources,<sup>110</sup> there were found thirty-five indictments (with forty-eight defendants) stemming from 5,000 preliminary proceedings. Of those, there were forty-three verdicts: twenty found guilty and sentenced and twenty-three acquitted.
- **Belgium** The decree-law of 13 December 1944 established a special Commission, the *Commission des crimes de guerre* (war crimes commission) to investigate war crimes<sup>111</sup>. The commission cooperated with the *United Nations War Crimes Commission* and investigated among other crimes the persecution of the Jews. The Commission had to collect evidence, identify the perpetrators, and inform the population and the international community on the war crimes committed by the Germans in Belgium. The trial of war criminals was assigned to the military judicial system through the law of 20 June 1947.

The prosecution and trial of the people responsible for the persecution of Jews in Belgium took place between 1945 and 1951. The question of the Gypsy deportation seemed never to be a subject of investigation by Belgian authorities. A new *arrête-loi*, issued on 13 December 1944, permitted the investigation of all crimes that could be seen as “war crimes”, including the persecution of the Jews. The 20<sup>th</sup> of June 1947 a law “concerning the competence of military tribunals with regard to war criminals” was passed.

In 1942, the Belgian government in exile adapted articles 113 (military collaboration), 118 bis (political collaboration) and 121 bis (tattling) to enable the punishment of certain acts of collaboration committed in occupied Belgium. Those who helped the enemy and who obstructed the liberation of the country had to be punished, as well as those who undermined the ‘spirit of resistance’. These were to apply to “enemy subjects”, mostly German war criminals. This meant Germans could be convicted for “serving the plans of the enemy”. Especially article 118b was crucial. The main advantage of this article was that the legal conditions were significantly less strict than with the ‘classic’ penal code articles. Article 118b also allowed using ‘Jewish persecution’ as a general concept, in particular in the accusations against German members of the Sipo-SD.

In an *arrête-loi* of 31 January 1949 (concerning the verdict against the Sipo-SD of Charleroi), the military tribunal judged article 118b not to be applicable on foreigners. The Court of Cassation confirmed this in an *arrête-loi* of 4 July 1949. The article 118b could not be applied to non-Belgians. The judgment had important consequences for the prosecution of German war criminals. It meant among other things that Belgian courts could no longer prosecute them for underlying (‘criminal’) intentions, but only for the acts themselves: “that it are the acts themselves and not the purpose of these acts that constitute the transgression of the laws and customs of the war”. After the negative ruling of the Court of Cassation, the general concept of “Jewish persecution” finally disappeared out of the trials against German war criminals.

The crucial notion of ‘higher command’ was very clearly defined in the Belgian legislation. Article 70 of the Belgian penal code stipulates: “there is no criminal

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<sup>110</sup> Winfried Garscha, *Austrians and the Holocaust: A Reception History from the Perspective of Postwar Volksgerichtsprozesse*, in Bischof, Plasser, and Stelzl-Marx, eds., *New Perspectives on Austrians and World War II*, Transaction Publishers, 2009, p. 281

<sup>111</sup> Beirlaen, André, *De vervolging van oorlogsmisdadigers in België na de Tweede Wereldoorlog*, in De Schutter, Bart (ed.), *De bestraffing van inbreuken tegen het oorlogs- en humanitair recht*, Antwerp-Brussels, 1980, p. 83.

offence when the act is prescribed by the law and ordered by the government”. Article 3 of the law of 20 June 1947 pointed to this explicitly. Two death-sentences against German war criminals were actually executed, but in their verdict the persecution of the Jews hardly played any role. Most German war criminals were released conditionally shortly after their conviction.

- **Czechoslovakia** The “Great Decree” (16/1945, of June 19, 1945), for the prosecution of “Nazi criminals, traitors, and their helpers”; encompassed “crimes against the state”; “crimes against persons”; “crimes against property” and “denunciation.” The “Small Decree” (138/1945, of October 27, 1945) included propagation of Nazism, fascism, and anti-Semitism, as well as social and economic relations with Germans and Hungarians “more than necessary.” Statute 33/1945 (without reference to existing criminal code) the first paragraphs covered four classes of criminals: 1) “fascist occupiers,” 2) “domestic traitors,” defined as “domestic criminals who helped the German and Magyar fascists,” 3) “collaborators,” defined as “significant co-workers of the occupiers,” and “petty criminals of the fascist regime.” Paragraph five added to the “vaguely defined crimes” corresponding to the criminal categories named in the first paragraphs the “self-standing crime” of “Treachery against the Uprising.” Among the most important trials, the wartime state’s leader, Jozef Tiso, “was charged with crimes under four main rubrics: (1) splitting the Czechoslovak Republic in 1938-39; (2) the Slovak fascist regime and support for the Nazi war effort; (3) the crushing of the Slovak National Uprising; and (4) crimes against humanity” (notably, in this last category, “thievery from Czech citizens constituted the first two charges, followed only then by charges related to the deportations of the Slovak Jews”).
- **Denmark** In July 1946, the Folketing approved *Act No. 395 of 12 July 1946 on Punishment for War Crimes* and 77 criminals were tried under this act, and 71 of them were sentenced to punishments from 1 year imprisonment to death. None of the death sentences were executed.
- **Finland** The so called *War Guilt Trial* was based on the provisional peace treaty between Finland and Soviet Union, which was signed in Moscow on 19<sup>th</sup> September 1945. According to it, Finland bound itself to punish its *war criminals* in cooperation with the allied forces. The meaning of *war criminals* was at the time solved by referring to the 1945 *Treaty of London* – by stating that war guilt was besides traditional war crimes absorbed into the concept of *war crime*. In absence of solid legal basis for accusing and putting the burden of responsibility over the political leaders of the country, a special law was enacted which enabled to punish “those who in the Finnish government had had a decisive influence on the decisions to unite with Germany in the war 1941” or “*who had later prevented the attempts to reach peace*”. Acting in the above mentioned way, was defined as “misusing the position for the damage of the state”. To make the procedures rapid enough, the trials were conducted by a special tribunal which was only established for this purpose. Seven leading Finnish politicians were convicted to prison sentences. Ex-president Risto Ryti (who was “the architect” of the decisions that led Finland to cooperation with Nazi-German) got the harshest punishment: 10 years of imprisonment. Other (all leading politicians and except Kivimäki ministers of the Finnish government during the war years) condemned were: Jukka Rangell, 6 years, Edwin Linkomies 5 ½ years, Vöinö Tanner 5 ½ years, T. M. Kivimäki 5, Henrik Ramsay 2 ½, Antti Kukkonen 2 and Tyko Reinikka 2 years of imprisonment.

Most of the condemned were released after serving one half their sanctions. The last prisoner, Ryti, was pardoned on 19<sup>th</sup> May 1949 by president J. K. Aasikivi.

○ **Germany**

- **International Military Tribunal** As Germany was an occupied country without its own government after 8 May 1945, it fell to the Allies to establish a framework in which the crimes committed during the Third Reich could be prosecuted. All four Allies set up the International Military Tribunal (IMT) at Nuremberg (20 November 1945 – 1 October 1946) and the Subsequent Nuremberg Trials (December 1945 – April 1949).. The legal foundation of the IMT was the *London Agreement* of 8 August 1945 which constituted the International Military Court. In the statute, although inconsistently followed in the trial itself, were the principles that every individual who commits a crime according to international law is criminally responsible, even if not punishable according to the respective national law, and that the fact of having acted on orders does not absolve the offender from criminal responsibility according to international law, insofar as the offender could also have acted differently. Prosecutors and judges stemmed from all four Allied nations. They indicted 24 leading political, military and economic leaders. The indictments were crimes against peace, war crimes and crimes against humanity and conspiring in these three aforementioned crimes. In the end, 22 of the 24 defendants were sentenced on 30 September and 1 October 1946 (one defendant had committed suicide, another had become too ill to stand trial.) There were 12 death sentences (one *in absentia*), three life sentences and four sentences imprisonment between 10 and 20 years, as well as three acquittals.
- **Allied trials** In December 1945, the Allied Control Council issued *Law No. 10* which constituted crimes against humanity. The Allied Control Council had intended to find a uniform basis of law which would enable the four military Governments to prosecute war criminals. It entitled the occupying powers to conduct trials concerning crimes against peace, war crimes and crimes against humanity as well as the membership in organizations deemed criminal, such as the NSDAP, SS, the Gestapo and SA. They were to be declared criminal organizations by the judgement of Nuremberg. Law No. 10 was put to use in the International Military Tribunal and other Allied military trials.
  - **USA** The American occupying power subsequently ran twelve military tribunals in their court in Nuremberg (against Reich ministries, the army, SS, industrialists, administration of justice and medical services) (aptly named Nuremberg follow-up trials). There were 177 defendants, the trials took place between December 1946 and April 1949. The subject of the trials were a multitude of Nazis crimes, such as antisemitic indoctrination, the administration of the concentration camps and slave labour, medical experiments in the camps, the Nuremberg Laws as part of genocide, “Aryanization”, the deportation and mass murder of Jews as hostages as part of the retribution for partisan attacks in Yugoslavia, the involvement of the SS task forces in genocide in the Soviet Union, the collaboration of the army with the SS in the killing of Jewish Soviet POWs, the deportations and mass

murder of Jews in Europe. Several further trials were held in Dachau (concerning the concentration camps Buchenwald, Dachau, Mauthausen, Flossenbürg, Mittelbau-Dora and Mühldorf (a set of subcamps of Dachau)). All in all, 434 death sentences were meted out, 196 sentences of life-long imprisonment, 800 sentences of imprisonment 275 acquittals and 175 abandoned court proceedings.<sup>112</sup> Lesser known are the trials concerning the murder of Allied POWs which also took place in military government courts in the American Zone.

- the Doctors' Trial (9 December 1946 – 20 August 1947);
- a proceeding against the General Field Marshall Erhard Milch (2 January – 17 April 1947);
- the Judges' Trial (17 February – 14 February 1947);
- the trial of the Economic and Administrative Head Department of the SS (13 January – 3 November 1947);
- the Flick Trial (18 April – 22 December 1947);
- the I.G. Farben Trial (14 August 1947 – 30 July 1948);
- the trial of the Generals in South East Europe (Hostages Trial, 15 July 1947 – 19 February 1948);
- the RuSHA (Rasse- und Sicherheits-Hauptamt) Trial (1 July 1947 – 10 March 1948);
- the Einsatzgruppen Trial (15 September 1947 – 10 April 1948);
- the Krupp Trial (8 December 1947 – 10 April 1948);
- the Wilhelmstrassen Trial (Ministries Trial, 4 November 1947 – 13 April 1949);
- the High Command Trial (30 December 1947 – 14 April 1949).

- **UK** The first British Military trial concerned the concentration camp Bergen-Belsen and took place from 17 September to 17 November 1945 in Lüneburg. In Germany, there were 329 British war crime trials under the Royal Warrant with 964 defendants. The majority of trials took place in the year 1946, many of them in Hamburg. Nearly 70% (661 defendants) were sentenced, the others acquitted or set free without judgement. 194 defendants (20%) were sentenced to death.<sup>113</sup> The trials concerned mainly personnel from the camps (such as Bergen-Belsen, Auschwitz, Groß-Rosen, Neuengamme, Ravensbrück, Natzweiler-Struthof and several outer camps.) Another important trial was the so-called Cyclon-B-Trial against the manufacturers of the poison gas, Dr. Bruno Tesch who was sentenced to death and executed. German military were tried for crimes against Allied POWs.
- **USSR** In the Soviet Zone, according to official statements, 17,866 people were sentenced by Soviet Military Courts. As the trials were secret, not much is known about the exact indictments and the procedures. The most prominent trials was probably the Sachsenhausen trial against personnel of Sachsenhausen concentration camp.

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<sup>112</sup> Wolfgang Form, *Justizpolitische Aspekte west-allierter Kriegsverbrecherprozesse 1942-1950*, in: Ludwig Eiber und Robert Sigel, *Dachauer Prozesse. NS-Verbrechen vor amerikanischen Militärgerichten in Dachau 1945-48. Verfahren, Ergebnisse, Nachwirkungen*. Göttingen 2007, p. 55

<sup>113</sup> Katrin Hassel, *Kriegsverbrechen vor Gericht. Die Kriegsverbrecherprozesse vor Militärgerichten in der britischen Besatzungszone unter dem Royal Warrant vom 18. Juni 1945 (1945-1949)*. Baden-Baden 2009



- **France** In the French Zone, it is estimated that until 28 March 1949, 2107 persons were accused of war crimes in French Military Courts, 104 were sentenced to death, of those 62 actually executed. 44 defendants received sentences of life-imprisonment, 240 defendants were punished with more than 10 years imprisonment, 1,235 received sentences involving shorter terms of custody. 404 defendants were acquitted.<sup>114</sup> Major trials concerned mistreatment of prisoners in prisons, Gestapo camps, Ravensbrück and Natzweiler concentration camps with several outer camps. Furthermore, both France and the Soviet Union carried out trials on their own territory against Nazi perpetrators and collaborators with trials starting as early as in 1943 in liberated parts of the Soviet Union.

By 1948/1949, the American and British zeal to continue their own war crimes trials program had virtually ceased. The French were more assiduous and continued their trials in Germany right into the 1950s. The last executions of Nazi criminals sentenced previously by the Americans took place in June 1951 – to the by then massive protest of West Germans as the constitution (Basic Law) had abolished the death penalty. By 1955 there were 19 sentenced Nazi criminals in French, 26 in British and 49 in American custody. The last prisoners were released from the British war criminal prison in Werl in 1957, from the American war criminal prison in Landsberg in 1958.

By 1950, the Allied reservation against German courts in their jurisdiction concerning victims of Allied nationality ceased and German courts were entitled to try cases involving Allied victims of Nazi violence. The Treaties of Paris restored sovereignty of the Federal Republic of Germany 1955, one part of these treaties was the so called treaty of transfer (Überleitungsvertrag) which ensured in article 7.1 that all Allied sentences against Nazi criminals were considered legally valid. Although the Federal Supreme Court and the German Federal government raised doubts about the validity, they were legally bound to respect them.

- **German jurisdiction** Three of the four Allies—the British, French and Soviets—decided to declare German courts in their zones competent for the application of *Council Law No. 10*. Shortly, the American Military Government decided against the use of *Control Council Law No. 10* by the German courts in the American zone. The German Courts, however, were to use solely the German Penal Code. Denunciations thus had to be either judged according to the German Penal Code (i.e. as indirect wrongful deprivation of personal liberty or libel) or they had to be referred to the denazification courts. In 1951, the British and French High Commissioners (successors of the occupation authorities) revoked the permission to use *Control Council Law No. 10*. In the Soviet Zone, *Control Council Law No. 10* continued to be applied, the gist of Article 6 letter c of the *Statute of the International Military Court* (crimes against

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<sup>114</sup> Numbers according to Form, p. 58 (see *Ibidem*). See also Yveline Pendaries, *Les procès de Rastatt (1946-1954)*. Bern, Berlin, Frankfurt/Main, New York, Paris, Wien 1995.

humanity) was in fact incorporated into the Constitution of the German Democratic Republic as Article 5.

- In 1952, the Agreement on Transition from the Allied Control Council (Überleitungsvertrag vom Kontrollratsgesetz – KRG) was passed in the regular Federal German jurisdiction, following which serious offences not dealt with by the Allies were to be prosecuted.
- **Luxembourg** German national perpetrators were charged for committing war crimes. Trials started only after the International Military Tribunal had pronounced its sentences.

Two later conventions (the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*, 1968; and the *European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes*; 1974 (see 9.2 below) provided further grounds for criminal justice by lifting prescriptibility for these crimes. New criminal trials against Nazi war criminals happened also as late as 2009. Thus, in:

- **Austria** Charges were brought in 1997 against the medical doctor Heinrich Gross for involvement with the Nazi euthanasia program.
- **France** In the 1980s, there were trials against Nazi perpetrators on the basis of crimes against humanity legislation (cases of Barbie, Touvier, Bousquet and Papon).
- **Germany** By 1955, the statute of limitation applied to most crimes apart of manslaughter and murder. By 1960, all Nazi crimes considered as manslaughter could no longer be prosecuted. In 1965, the West German parliament discussed whether murder (with its 20 year span of statute of limitation) would also be coming under the statute of limitations as previously defined in the penal code. The majority of members of parliament voted against letting murder pass under the statute of limitation. The discussion triggered resulted in the decision of the Bundestag in 1979 not to apply the statute of limitation to any case of murder – thus enabling German judicial system to prosecute Nazi criminals right into present day.
  - The third of the *Majdanek* trials, from November 26, 1975, to June 30, 1981, sixteen defendants, were arraigned before a West German Court at Dusseldorf. Eight were found guilty. Two were released due to ill health and one died during the trial. Five were acquitted and the remaining were sentenced to various terms of imprisonment.
  - The Frankfurt Auschwitz Trials, known in German as *der Auschwitz-Prozess* or *der zweite Auschwitz-Prozess*, (the "second Auschwitz trial") was a series of trials running from December 20, 1963 to August 10, 1965, charging 22 defendants with having been involved in the murder of 1.5 million people under German penal law for their roles in the Holocaust as mid- to lower-level officials in the Auschwitz-Birkenau death and concentration camp complex. Oswald Kaduk (SSUnterscharführer and Rapportführer in Auschwitz) and Josef Klehr (SS Obescharführer in the "sanitary service" of Auschwitz) received life sentences; the most high-ranking of the accused, Robert Mulka (SSHauptstürmführer and adjutant of the camp commander

Rudolf Höss) received a prison sentence of 14 years. The last commander of Auschwitz, Richard Baer, died before the trial started.

- In 1965 Josef Oberhauser, SS-Unterscharführer of a "death's head standard" was sentenced by the Munich regional court to four-and-a-half years prison for aiding and abetting joint murder in 450,000 instances. Also in 1965, ten people involved in Aktion Reinhard were brought before the Düsseldorf regional court, accused among other things of the murder of 700,000 Jews. The verdict ended in four life sentences, four prison terms and one acquittal. In 1966, the Hagen regional court sentenced Erwin Lambert, who had got away with a four year prison sentence in Düsseldorf, along with eleven other members of Aktion Reinhard, to life for, among other things, the murder of 150,000 Jews; the commander of the Sobibor extermination camp, Karl Frenzel, also received a life sentence.
- In 1968, in the so-called "Babi Yar trial" in Darmstadt, ten members of the "special commando 4a" of the Einsatzgruppe C were sentenced to between four and 15 years for the mass shooting in 1941 of around 60,000 Jews, communists, disabled persons and war prisoners in a ravine near Kiev.
- A "supplementary agreement", a clause added to the "Agreement on the regulation of issues arising from war and occupation" (Transfer agreement) between the FRG and the western occupying forces in 1974, allowed the prosecution in absentia of German citizens residing abroad. Exemplary here was the trial at the Cologne regional court of Kurt Lischka, the commander of the Gestapo and the SD in occupied Paris, who was chiefly responsible for the deportation of French Jews. Also tried was Herbert Hagen, head of the Bordeaux branch of the SD, and Ernst Heinrichsohn, the organizer of the deportation from the French town of Drancy to Auschwitz. All three were judged guilty of being accessories to murder; Lischka received a ten-year prison sentence, Hagen twelve and Heinrichsohn six years.
- In 2010 at least two exemplary trials are still pending with a court, the case of a former Dutch member of the Waffen-SS sentenced in Amsterdam who fled to Germany and became a German citizen; the 88-year old is indicted before the County Court in Aachen for the murder of three Dutch civilians in 1944. The case of the Ukrainian-born US citizen John Demjanjuk; the 89-year old defendant is formally charged with 27.900 counts of acting as an accessory to murder, as a guard at the Nazi death camp in Sobibor.
  - On 1 September 1964, the *Volkskammer* (East German parliament) passed a law which declared the statute of limitations not applicable to national socialist crimes. (*§ 1 des Gesetzes über die Nichtverjährung von Nazi- und Kriegsverbrechen vom 1. September 1964*).
  - **Italy** The military jurisdiction incriminated several German military for several massacres (see table 5.1.1.1 below).

- **Spain** The National Audience judge Baltasar Garzón opened proceedings against Franco and 33 other leaders of the regime and charged them with crimes against humanity. Having deceased all of them, the cause was sent to territorial courts requiring the identification of victims. A NGO (*Manos Limpias*) demanded Garzón accusing him of prevarication.
  - In 2009, the Spanish National Audience initiated proceedings against 3 former SS officials charged with collaboration in genocide and crimes against humanity.
- **Sweden** An official investigation was conducted in 1986-87 on suspected War Criminals on Swedish Territory and was the result of a petition from the Wiesenthal Centre in Los Angeles that Swedish authorities should clarify the destiny of twelve named persons. The report of the appointed team was published in February 1987.<sup>115</sup> According to the report, the crimes in question are prescribed according to Swedish law.<sup>116</sup> The report argued that there was no use to investigate the question further and that the persons in question would not be extradited in any case. Only one person was extradited (to Norway in 1948) because of suspected war crimes. The current Swedish Minister of Justice has announced that she intends to put forth a proposal for law during 2009 which abolishes the prescription for grave crime (including murder), which is now 25 years in Sweden.

EU member states which had formerly communist regimes have also modified their criminal codes to include these criminal types (war crimes, crimes against humanity and genocide). (Additionally, 10 of these countries have ratified the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (see below 10.2).

- **Estonia:** The ESSR Criminal Code was amended in 1994 to include crimes against humanity and war crimes (§89). The first paragraph defined crimes against humanity as:
  - A punishment of 8 to 15 years or lifelong imprisonment shall be enacted for crimes against humanity, including genocide, just as these crimes have been defined in international law, that is: any willful acts, whose objective it was to completely or partially destroy a national, ethnic, racial, religious, anti-occupation resistance or other social group, or acts involving the killing or severe or very severe bodily injury or mental injury or torture of any member of such a group, or acts involving the forcible separation of children [from their parents] or in the event of armed attack, occupation or annexation the deportation or expulsion of native residents as well as any deprivation of their economic, political and social rights or any restriction of these rights.<sup>117</sup>

When the Criminal Code was redrafted in 2001, it recognized “*genocide*” as a separate crime (§90).

§ 89. Crimes against humanity

Systematic or large-scale deprivation or restriction of human rights and freedoms, instigated or directed by a state, organisation or group, or killing, torture, rape, causing health damage, forced displacement, expulsion, subjection to prostitution, unfounded deprivation of liberty, or other abuse of civilians, is punishable by 8 to 20 years” imprisonment or life imprisonment.

<sup>115</sup> Certain accusations of war crimes—A general investigation Statsrådsberedning (Dnr SB 9969/86).

<sup>116</sup> *Preskription vid Allvarliga Brott* (Justitiedepartementet, Regeringskansliet, Stockholm, 2007) in which a proposal is set forth to abolish the prescription of genocide, war crimes and crimes against humanity (as well as crimes of terrorism and murder).

<sup>117</sup> § 611, “Kriminaalkoodeks”, Eriosa, as published RT I 1997, 21/22, 353.

§ 90. Genocide

A person who, with the intention to destroy, in whole or in part, a national, ethnical, racial or religious group, a group resisting occupation or any other social group, kills or tortures members of the group, causes health damage to members of the group, imposes coercive measures preventing childbirth within the group or forcibly transfers children of the group, or subjects members of such group to living conditions which have caused danger for the total or partial physical destruction of the group, shall be punished by 10 to 20 years' imprisonment or life imprisonment.<sup>118</sup>

- The *Estonian International Commission for the Investigation of Crimes against Humanity* was tasked to systematize and classify the crimes in focus. The Soviet-era deportations have been classified as 'crimes against humanity' (and later also 'genocide'). The legal-prosecutorial duty of bringing individual perpetrators to justice falls upon the Estonian Security Police Board and the State Prosecutor's Office. Estonia has classified all actions by the Soviet authorities to pacify the civilian populations as a possible crime against humanity or genocide. Estonia has maintained that the random killing and repression of civilians during the Soviet period constitute crimes against humanity under international law. This legal interpretation has been affirmed by the ECtHR on 17 January 2006 (*Kolk and Kislyiy*). Investigations for prosecuting crimes against humanity are carried out equally by the Estonian Security Police Board and the State Prosecutor's Office. Cases are taken to the courts by the State Prosecutor's Office.

○ **Hungary**

- A first law on the prosecution of communist crimes was approved in December 1991 (Law November 4, 1991 concerned "the prosecutability of serious criminal offenses committed between December 21, 1944 and May 3, 1990 and not prosecuted for political reasons). The bill called for: Suspension of the statute if limitations for cases of treason, premeditated murder and aggravated assault leading to death in those cases where, for political reasons, had not been previously possible. The law covered crimes of the period from 21 December 1944 to 2 May 1990. The Constitutional Court found the law to be unconstitutional (*Constitutional Court Decision on the Statute of Limitations Law No. 2086/A/1991/14* (March 5, 1992). The same court, however, upheld a revised version of the law, which classified the 1956 crimes as "war crimes" and "crimes against humanity," neither of which were subject to a statute of limitations.
- In February 1993 the Hungarian parliament amended the 1973 Criminal Code to allow the prosecution of communist-era crimes for which the limitation period had run its course, and passed an authoritative resolution: reading the statutes of limitation should not apply to the 1944-1989 period. Decisions later rejected by the Constitutional Court.

<sup>118</sup> "Karistusseadustik", 6 June 2001 ([RT I 2001, 61, 364](#)). English-language translation taken from Estonian Legal Language Centre. <http://www.legaltext.ee/indexen.htm>

- On 30 October 1993, the Parliament approved Act XC which created new legal framework for investigating by the Ministry of Justice fifty episodes of mass shooting that occurred 23 October to 28 December 1956. The first trial started in mid-1994. After 6 months the court reached an impasse, because of the fact that two of its chambers adopted two different conclusions. Finally the Constitutional Court in response to Supreme Court request, claimed that the Act XC of 1993 was unconstitutional “because it failed to specify both the procedures under which cases could be brought before the ordinary courts in Hungary and the criminal procedure applicable to those cases”.
- *Law on Procedures Concerning Certain Crimes Committed during the 1956 Revolution*. The Law was based on Geneva Convention Relative to the Treatment of Civilians in the Time of War and Relative to the Treatment of Prisoners of War of 1949 and the New York Convention on the Non-Applicability of the Statutory Limitations to War Crimes and Crimes against Humanity of 1968. The law considered the 1956 events as war crimes and crimes against humanity. For these types of crimes the statutes of limitation were excluded by the Geneva and New York Conventions, which Hungary had ratified. The law, ensuring the enforcement of universally accepted rules of international law entered into force in October 1993.
- **Latvia** On July 8, 1997, the *Saeima* adopted changes to the criminal law code of Latvia, in a measure entitled *Crimes against Humanity and Peace, the Crime of Genocide, and War Crime* which spelled out in detail the kinds of activities in these categories that would henceforth be considered criminal in Latvia. Latvia regards crimes against humanity as crimes without a statute of limitations.
- **Lithuania** The first law defining a crime of genocide and establishing criminal responsibility was adopted on 9 April 1992 (the Law on Responsibility for the Genocide Perpetrated against the Population of Lithuania, No. I-2477. Its main purpose was to persecute those who committed crimes against the population of Lithuania. It only provided for a retroactive effect and inapplicability of any statutory limitations. In 1998 the same definition of genocide was included into the Criminal Code by supplementing it with new Art. 71<sup>119</sup>. In the meantime no other laws establishing responsibility for crimes against humanity and war crimes have been adopted until 9 June 1998 when the old Criminal Code was supplemented by the new section on war crimes<sup>120</sup>. This Law also provided for a retroactive force and inapplicability of statutory limitations to war crimes. Although some crimes against humanity had been covered by the section on war crimes<sup>121</sup>, no legal category of crimes against humanity existed until the new Criminal Code was adopted on 26 September 2000 (it entered into force on 1 May 2003). Current Criminal Code contains special section XV “Crimes against

<sup>119</sup> The 21 April 1998 Law No. VIII-708 on Amendment and Supplement of the Criminal Code.

<sup>120</sup> The 9 June 1998 Law No. VIII-776 on Supplement of the Criminal Code by Section XVIII “War Crimes”.

<sup>121</sup> E. g., deportation or massacre of people provided it was committed during an international armed conflict, occupation or annexation of the territory concerned. However, no criminal responsibility was provided for crimes against humanity committed during peace time, i. e. without existence of any armed conflict.

humanity and war crimes” (Art. 99-113) that covers a crime of genocide and most crimes against humanity and war crimes (treatment of persons prohibited by international law, killing of persons protected under international law, deportation of civilians, mutilation, torture or other inhuman treatment of persons protected under international humanitarian law, violation of norms of international humanitarian law with regard to civilians and protection their property, forced use of civilians and prisoners of war by armed forces, destruction of protected objects and plunder of national treasures, delay in repatriation of prisoners of war, delay to release the interned civilians or impediment to repatriate other civilians, illegal use of the emblem of the Red Cross, the Red Crescent, the Red Crystal or the United Nations, or other universally recognised sign or name, aggression, prohibited military attack, employment of prohibited means of warfare, marauding). Art. 3(3) of the Code provides for a retroactive force of those articles contained in Section XV which define the most serious crimes against humanity and war crimes<sup>122</sup>; while Art. 95(5) exempts most of the crimes defined in that Section from statutory limitations<sup>123</sup>.

Lithuania has a broader definition of a crime of genocide than it is defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the 1998 Rome Statute of International Criminal Court. Both under definition in Art 1 of the 1992 *Law on Responsibility for the Genocide Perpetrated against the Population of Lithuania* and the definition in Art 99 of the current Criminal Code, a genocide is understood to be a crime that is directed not only against national, ethnical, racial or religious groups, but against social and political groups as well. Moreover, under Art 2 of the 1992 *Law on Responsibility for the Genocide Perpetrated against the Population of Lithuania*, the crimes committed against the population of Lithuania by both the Nazi and the Soviet occupation regime have to be assessed as the genocide.<sup>124</sup>

- On 23 October 1991 Lithuania established a *Special Investigations Division* (STS) in the Prosecutor’s Office which has the main function of conducting pre-trial investigation into

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<sup>122</sup> Exceptions are Art. 104, 106, 107, 108, 109, 110, 112 and 113 defining the following crimes: violation of norms of international humanitarian law with regard to civilians and protection their property, destruction of protected objects and plunder of national treasures, delay in repatriation of prisoners of war, delay to release the interned civilians or impediment to repatriate other civilians, illegal use of the emblem of the Red Cross, the Red Crescent, the Red Crystal or the United Nations, or other universally recognised sign or name, aggression, employment of prohibited means of warfare and marauding. This approach of the Lithuanian legislator is not consistent since aggression which, according to the Nuremberg Tribunal, is the most serious crime, is also excluded from retroactive responsibility. However, it may be explained by a few reasons. First, aggression traditionally is treated as a crime against peace rather than is included into the list of crimes against humanity or war crimes. Secondly, reluctance to include aggression into the list of crimes with retroactive effect can probably be a result of absence of any internationally unified definition of the crime of aggression for the purposes of individual criminal responsibility.

<sup>123</sup> Exceptions are the following crimes defined by Art. 107, 108, 109 and 113: delay in repatriation of prisoners of war, delay to release the interned civilians or impediment to repatriate other civilians, illegal use of the emblem of the Red Cross, the Red Crescent, the Red Crystal or the United Nations, or other universally recognised sign or name and marauding.

<sup>124</sup> Under the temporary Constitution (the Temporary Basic Law) of 1990-1992 the legislator had the power of authentic interpretation of its laws. In this light Art. 2 of the 1992 *Law on Responsibility for the Genocide Perpetrated against the Population of Lithuania* can be seen as an official interpretation of the definition of genocide with the guidance to apply it in legal assessment by other national authorities of the acts committed by both the Nazi and the Soviet occupation regimes against the population of Lithuania.

crimes against humanity including genocide, war crimes, as well as criminal offences against equal rights and freedom of conscience. There are four prosecutors and one assistant to the chief prosecutor working in the Special Investigations Division which is directed by the Chief Prosecutor. STS plays a key role in collecting and providing evidence for judicial processes of legal persecution of perpetrators of war crimes and crimes against humanity in Lithuania.

- **Case Law in Lithuania.** Both the Appeal Court and the Supreme Court of Lithuania had the possibility to interpret the definition mentioned above in the case of *Martina Žukaitienė and Vytautas Vasiliauskas*.<sup>125</sup> The Appeal Court stated that including “social and political groups” into the definition of genocide is reasonable and connected with reality. Also, the Appeal Court emphasized that the Convention does not prohibit its broadened interpretation.
- In its 22 February 2005 Judgment in the case No. 2K-158/2005 of *Žukaitienė and Vasiliauskas* the Supreme Court of Lithuania rejected arguments that the definition of genocide should be understood in the narrower sense according to the 1948 Convention on Genocide. The Supreme Court stated that accession to the Convention does not prohibit the State to define the acts which are considered to be crimes and to prohibit such acts. Furthermore, under article 5 of the Convention, the parties undertake to adopt certain legal acts so that the Convention will come into force and the effective penalties will be imposed on the persons responsible for the genocide and other crimes referred to in article 3. The provision was implemented by the Law on Responsibility for the Genocide Perpetrated against the Population of Lithuania by which it was accessed to the convention (9 April 1992, No. I-2477). So, the broadening of the definition of genocide including the “social and political groups” is the implementation of Article 2 of the law on Responsibility for the Genocide Perpetrated against the Population of Lithuania. So, V.Vasiliauskas and M.Žukaitienė were sentenced for the participation in destroying a certain number of the inhabitants of Lithuania belonging to the political group, i.e. the guerrillas of Lithuania - the participants of the resistance to the Soviet occupation regime.
- One case is pending before the European Court of Human Rights where the applicant complains to be a victim of breach of Art. 7 of the Convention for the Protection of human Rights and Fundamental Freedoms questioning the compatibility of such national jurisprudence with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. According to the data provided by the Agent of the Government of the

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<sup>125</sup> 21 September, 2004 the decision of the Appeal Court of Lithuania (b.b.1A-392) in the case of Martina Žukaitienė and Vytautas Vasiliauskas; 22 February, 2005 the decision of the Supreme Court (b.b. 2K-158/2005) in the case of Martina Zukaitiene and Vytautas Vasiliauskas



Republic of Lithuania in the European Court of Human Rights Ms. Elvyra Baltutytė, the applicant claims to have been convicted for acts not punishable neither under national law of that time nor under international law, as the Lithuanian laws defining genocide are allegedly too broad and therefore not compatible with the 1948 Convention on Genocide to the extent they cover social and political groups.

- **Romania** has typified as genocide, facilitating genocide or complicity with genocide several cases which in their largest part relate to the crimes committed during the Revolution of December 1989.

**Table 5.1.1.1a Cases for crimes against humanity, genocide and war crimes in EU member states\* 1**

Peperator	State	Year initiation proceedings	Charges	Regime	Sentence/Outcome
Léon Degrelle	BE	1944	Collaboration	Nazi regime (1941-1945)	Sentenced in absentia to death. He escaped to Spain
Pierre Daye	BE	1946	Collaboration	Nazi regime (1941-1945)	Sentenced to death. He escaped to Argentina where the extradition request was not filed
Henri De Man	BE	1946	Collaboration	Nazi regime (1941-1945)	Prison
Hermann Hackmann	DE	November 26, 1975- June 30, 1981	Third Majdanek Trial. Two counts of serving as joint accessory to murder of at least 141 people in Majdanek	Nazi regime (1941-1945)	10 years imprisonment. In 1947 he had been sentenced to death and then commuted to life imprisonment
Hermine Braunsteiner	DE	November 26, 1975- June 30, 1981	Third Majdanek Trial. Murder of 80 people; abetting the murder of 102 children; and collaborating in the murder of 1000	Nazi regime (1941-1945)	Life imprisonment
Hildegard Lächert	DE	November 26, 1975- June 30, 1981	Third Majdanek Trial. War crimes at Majdanek	Nazi regime (1941-1945)	12 years imprisonment
Kurt Franz	DE	October 12, 1964 - August 24, 1965	Treblinka Trials War Crimes	Nazi regime (1941-1945)	Life imprisonment
Erwin Lambert	DE	October 12, 1964 - August 24, 1965	Treblinka Trials War Crimes	Nazi regime (1941-1945)	4 years imprisonment
Artur Matthes	DE	October	Treblinka Trials	Nazi regime	Life imprisonment

		12, 1964 - August 24, 1965	War Crimes	(1941-1945)	
Willy Mentz	DE	October 12, 1964 - August 24, 1965	Treblinka Trials War Crimes	Nazi regime (1941-1945)	Life imprisonment
August Miete	DE	October 12, 1964 - August 24, 1965	Treblinka Trials War Crimes	Nazi regime (1941-1945)	Life imprisonment
Gustav Munzberger	DE	October 12, 1964 - August 24, 1965	Treblinka Trials War Crimes	Nazi regime (1941-1945)	12 years imprisonment
Franz Suchomel	DE	October 12, 1964 - August 24, 1965	Treblinka Trials War Crimes	Nazi regime (1941-1945)	7 years imprisonment
Franz Paul Stangl	DE	October 12, 1964 - August 24, 1965	Treblinka Trials Co-responsibility in the murder of 900,000 people during his supervision of the death camp	Nazi regime (1941-1945)	Life imprisonment
Oswald Kaduk	DE	December 20, 1963 - August 10, 1965	Frankfurt Auschwitz Trials Murder in ten cases, and joint murder in at least one thousand cases	Nazi regime (1941-1945)	Life imprisonment
Josef Klehr	DE	December 20, 1963 - August 10, 1965	Frankfurt Auschwitz Trials Murder in at least 475 cases, assistance in the joint murder of at least 2730 cases	Nazi regime (1941-1945)	Life imprisonment with an additional 15 years
Emil Bednarek	DE	December 20, 1963 - August 10, 1965	Frankfurt Auschwitz Trials Murder in 14 cases	Nazi regime (1941-1945)	Life imprisonment
Stefan Baretzki	DE	December 20, 1963 - August 10, 1965	Frankfurt Auschwitz Trials Murder in 5 cases, and joint murder in at least 11 cases	Nazi regime (1941-1945)	Life and 8 years Imprisonment
Franz-Johann Hoffmann	DE	December 20, 1963 - August 10, 1965	Frankfurt Auschwitz Trials Murder in 1 case, and joint murder in at least 30 cases and participation in the death of 750 people	Nazi regime (1941-1945)	Life imprisonment
Wilhelm Boger	DE	December 20, 1963 - August 10, 1965	Frankfurt Auschwitz Trials Murder in 114 cases and joint murder in at least one thousand cases	Nazi regime (1941-1945)	Life and 15 years Imprisonment
Robert Mulka	DE	December 20, 1963 - August 10, 1965	Frankfurt Auschwitz Trials For having participated in the collective deaths of at least 750 people	Nazi regime (1941-1945)	14 years imprisonment

Viktor Capesius	DE	December 20, 1963-August 10, 1965	Frankfurt Auschwitz Trials For having participated in the collective deaths of 2000 people	Nazi regime (1941-1945)	9 years imprisonment
Bruno Schalge	DE	December 20, 1963-August 10, 1965	Frankfurt Auschwitz Trials For having participated in the death of 80 people	Nazi regime (1941-1945)	6 ½ years imprisonment
Julius Viel	DE	2001	For the murder of 7 Jewish prisoners during World War II	Nazi regime (1941-1945)	12 years imprisonment
Josef Scheungraber	DE	2009	Convicted on 10 counts of murder and one count of attempted murder for ordering the killings of Italian civilians in June 1944 in Falzano di Cortona	Nazi regime (1941-1945)	Life imprisonment
Heinrich Boere	DE	Ongoing	War crimes	Nazi regime (1941-1945)	
Ivan Demjanjuk	DE	Ongoing	Complicity in 28,000 murders in the concentration camp Sobibor	Nazi regime (1941-1945)	
Warner Best	DK	1948	War crimes	Nazi regime (1941-1945)	12 years imprisonment
Günther Pancke	DK	1948	War crimes	Nazi regime (1941-1945)	20 years imprisonment
Otto Bovensiepen	DK	1948	War crimes	Nazi regime (1941-1945)	Life imprisonment
Vassili Riss	EE	1996	War crimes	Communist regime	Suspended trial. Deceased before completion
Idel Jakobson	EE	1998	Crimes against humanity (1800 cases of repression)	Nazi regime (1941-1945)	Suspended. Declared mentally unfit to stand trial
Harry Männil	EE	1990	Crimes against humanity (Killings)	Nazi regime (1941-1945)	Investigation discontinued for lack of evidence
Karl-Leonhard Paulov	EE	2000	Crimes against humanity Killing 3 people	Communist regime	Dead in prison, 2002
Vladimir Penart	EE	2003	Killings	Communist regime	Convicted
7 persons	EE	1995	Crimes against humanity/genocide <sup>126</sup> Complicity in mass deportation	Communist regime	Sentences suspended because of their age
Arnold Meri	EE	2003	Deportation 261 people	Communist regime	
Johann Leprich, Anton Tittjung and Josias Kumpf	ES	2009	Participation on genocide and crimes against humanity	Nazi regime (1941-1945)	Ongoing
Philippe	FR	1945	Crime of conspiracy	Nazi regime	Sentenced to death

<sup>126</sup> On the new 2001 Criminal Code.

Pétain			against the internal security of the state	(1941-1945)	and confiscation of his personal property. De Gaulle commuted the sentence into life detention. He died in 1951
Pierre Laval	FR	1945	Crime of conspiracy against the internal security of the state	Nazi regime (1941-1945)	Sentenced to death. Executed in 1945
Joseph Darnand	FR	1945	War crimes	Nazi regime (1941-1945)	Sentenced to death. Executed in 1945
Fernand de Brinon	FR	1947	War crimes	Nazi regime (1941-1945)	Sentenced to death. Executed in 1947
Xavier Vallat	FR	1947	Crimes against humanity	Nazi regime (1941-1945)	10-year prison term. Released on parole in 1949 and amnestied in 1954
Jean Leguay	FR	1979	Crimes against humanity	Nazi regime (1941-1945)	Died in 1989 without having ever been tried
Klaus Barbie	FR	1987	Crimes against humanity	Nazi regime (1941-1945)	Life imprisonment
Paul Touvier	FR	1989	Crimes against humanity	Nazi regime (1941-1945)	Life imprisonment
René Bousquet	FR	1949	Crime of conspiracy against the internal security of the state	Nazi regime (1941-1945)	5 years of Dégradation nationale
Maurice Papon	FR	1983	Crimes against humanity	Nazi regime (1941-1945)	10-year prison term. Released three years later for health reasons
Priebk Erich	IT	1997	Crimes against humanity (Ardeatine's Mass Grave. Killing 335 soldiers and civilian Italians citizens)	Nazi regime (1941-1945)	Life imprisonment
Kesserling Albert	IT	1947	War Crimes (Ardeatine's Mass Grave. Killing 335 soldiers and civil Italian citizens; and incite and order to kill Italian civilians as reprisal)	Nazi regime (1941-1945)	Life imprisonment
Mackensen and Maelzer	IT	1945	War Crimes (Ardeatine's Mass Grave. Killing 335 soldiers and civil Italian citizens)	Nazi regime (1941-1945)	Sentenced to death, but commuted into a life imprisonment
Saevecke Theodor Emil	IT	1999	War Crimes (Masacre of Piazzale Loreto- Milan. Killing fifteen Italian citizens)	Nazi regime (1941-1945)	Life imprisonment
Engel Siegfried	IT	1999	War Crimes (Benedicta Masacre in Province of Alessandria. Killing 226 Italian citizens and 42 political prisoners)	Nazi regime (1941-1945)	Life imprisonment.
Lehnigk-Emden e Schuster Kurt	IT	1994	War Crimes (Massacre of Caiazzo in Caserta. Killing 22 Italian citizens)	Nazi regime (1941-1945)	Life imprisonment and payment of damages to the civil parties (ITL

					16,950,000).
Seifer Michael	IT	2000	War Crimes (Masacre of Fossopoli - Carpi. Modena. Killing at least 18 citizens from Concentration Camp)	Nazi regime (1941-1945)	Life imprisonment. Payment of damages in favour of a civil parties.
Heinrich Nordhorn	IT	2006	War Crimes ( Massacre of Branzolino and San Tomè. Killing 4 and 6 Italians Citizens of each, as purpose of reprisal and intimidation of local people)	Nazi regime (1941-1945)	Life imprisonment. Payment to the civil parties.
V.Vasiliauskas and M. Žukaitienė	LT	2004	Genocide (destroying inhabitants of Lithuania belonging to a political group; i.e. resistant to occupation)	Communist regime	Sentenced
Pranas Preikšaitis, Ignas Tamošiūnas, Algirdas Lapinskas	LT	2002	Genocide	Communist regime	Crime not proved
Alfons Novik	LV	1995	Crimes against humanity	Communist regime	Life sentence Dead in prison in 1996
Vasily Kononov	LV	1998	War crimes (killings of 9 civilians)	Communist regime	Guilty. 6 years Appeal to ECtHR. Sentence: Latvia breached its obligations under Article 7 ECHR <sup>127</sup>
Mihail Farbuth	LV	2000	Deportations	Communist regime	7 years sentence. Released 2002 health reasons
Yevgeny Savenko	LV	2000	Repression of 60 people	Communist regime	2 years sentence. Apologised
Nicolai Larinov	LV	2002	Deportations 500 Latvians	Communist regime	
Konrads Kalejs	LV	2000	War crimes and genocide	Nazi regime (1941-1945)	Australian citizens. Extraditions requested (Kalejs died in 2001)
Nicolae and Elena Ceausescu	RO	1989	Genocide, other	Communist regime	Death penalty. Carried out the same day, without the right of appeal.
Ceausescu's 4 top collaborators: 1) Interior Minister Tudor Postelnicu; 2) secretary of	RO	1990	Complicity to genocide for not opposing Ceausescu's decision to repress the Revolution, and genocide.	Communist regime	On 2 Feb. 1990 all 4 were condemned to life in prison, the confiscation of all their property, and downgrading of military rank. Their sentence reduced as

<sup>127</sup> ECtHR Ruling (2009) ap. 36376/04, facts committed in 1944 cannot be considered as war crimes under the ius belli of the time. There are not available legal basis in international law and domestic law, the prosecution has been barred.

the Central Committee of the Communist Party Emil Bobu; 3) deputy Prime Minister Ion Dincă; and 4) CPEx member Manea Mănescu (Romanian)					a result of an extraordinary appeal lodged by the Prosecutor General. They were all released shortly afterward.
Iulian Vlad, head of the Securitate	RO	1990	Facilitating genocide; giving the order to start the repression during 1989 Revolution	Communist regime	9 years jail time, 5 years of denying civil rights, military rank demotion. Sentence reduced as a result of an extraordinary appeal lodged by the Prosecutor General.
Nicu Ceausescu	RO	1990	Genocide during the Revolution of 1989	Communist regime	5 years jail time for illegal possession of gun. Died in 1993. Sentence reduced as a result of an extraordinary appeal lodged by the Prosecutor General.
CPex Trial 24 Politburo members (2 Hungarian, 22 Romanian)	RO	1990	Genocide during the Revolution of 1989	Communist regime	In 1998, Nicolae Andruta Ceausescu and Tudor Postelnicu reincarcerated to execute the remaining 11 of the 15 years in jail they were condemned to. Ceausescu had been in jail in 1989-1994 then released on medical grounds. <sup>128</sup>
Timisoara Contingent 46 individuals (4 national and county Communist Party leaders; 2 civilians; 4 army officers; and 38 Securitate officers).	RO	1990	Quashing Revolution, involvement in events of 17-22 Dec. 1989. The 4 party leaders in Timisoara contingent accused of genocide; 10 others of complicity to genocide; and the rest of favoring genocide	Communist regime	sentenced 3 party leaders to jail terms of 20-25 years; 6 officers to jail terms of 4-20 years; found the lesser ranking party leader and 14 officers not guilty. After appeal, the Military Supreme Court reduced jail

<sup>128</sup> “Andruta Ceausescu si Tudor Postelnicu, inapoi la zdup,” *Ziarul de Iasi* (30 January 1998).

Included the Timisoara Contingent (Lotul Timisoara) - in which 25 individuals stood accused (4 Communist Party leaders, 22 Militia and Securitate officers).					terms in 6 cases. Two party leaders sentenced to jail benefited from delays in executing their jail time, and were ultimately pardoned by Presidential Decree 588/2000 <sup>129</sup> (issued by Iliescu). Only one accused, a Militia officer, was still in jail in 2006.
Iulian Rotariu, Virgiliu Petrișor, Major Silvestru Nicu, Gheorghe Pădineanu, Vasile Popa, Lucian Marin și Nicolae Pinciu	RO	1990	Genocide turned to murder (opening fire into protesters in Sibiu and Cisnădie)	Communist regime	In Dec. 1990 the Supreme Court of Justice returned the file to the Brasov Military Tribunal prosecutors for gathering more evidence. Investigations were stopped.
<i>Prosecutor v. Ribičič</i>	SI	2005	Genocide (art. 373 CC Slo). Then, modified into crimes against the civilian population (art. 374)	Communist regime	District Court rejected request for investigation. Slovenia High Court confirmed the ruling

Source: own elaboration from information provided by experts in Member States

\* Some selected examples. See further section 5.1.4 on statistics

The European Commission of Human Rights and later the European Court of Human Rights have also analysed a series of cases related with crimes against humanity. Table 5.1.1.1b summarises the case law of these institutions.

**Table 5.1.1.1b International crimes - European Commission Decisions and European Court of Human Rights Rulings 1**

Case	Year	Issue	European Court of Human Rights (and also the European Commission of Human Rights)
Touvier vs France	1994	Crimes against humanity The Assize Court for the Yvelines department sentenced the applicant to life imprisonment for aiding and abetting a crime against humanity (for his participation in the Rillieux massacre in which seven people, six of Jewish origin	The Commission noted that the offence of a crime against humanity and the rule that there can be no time bar were laid down by the Charter of the Nuremberg International Tribunal annexed to the inter-Allied Agreement of 8 August 1945 and that a French Law of 26 December 1964 referring expressly to that Agreement provides that the prosecution of crimes against humanity cannot be time barred

<sup>129</sup> Decretul prezidential 588 din 11 decembrie 2000 privind acordarea unor gratieri individuale.

		were shot on 29 June 1944 by francs-gardes	
K.H.W. vs Germany	2001	Applicant, as a border guard, was condemned for having fired, in February 1972, five bursts of two shots each which caused the death of a person trying to swim away from East-Berlin. He was convicted for intentional homicide. As for the question of limitation, the Regional Court applied the Act of 26 March 1993.	The Court said that the FRG had enacted in 1993 a statute that provided the limitation in respect of acts committed under the unjust regime of the Socialist Unity Party. As a result, the limitation periods began to run not at the time when the offence was committed but on 3 October 1993, when the GDR ceased to exist. (similar legislation was enacted in Poland). The Court added that even if this limitation had not existed the Court would have relied on Article 84 of the GDR's Criminal Code that established that crimes against peace, humanity or human rights were not subject to rules on limitation
Papon vs France	2002	He was condemned for offences of aiding and abetting unlawful arrest, false imprisonment, murder and attempted murder amounting to crimes against humanity in respect of four police raids and eight transports of deportees	The fact that Papon was prosecuted for and convicted of aiding and abetting crimes against humanity does not deprive him of the guarantee of his rights and freedoms under the Convention (right to appeal)
Penart vs Estonia	2004	Crimes against humanity in the period 1953-1954 for having organised the killing of a person hiding from the authorities because of his political convictions	The Court said that " <i>murder of the civilian population was expressly recognised as a crime against humanity in the Charter of the Nuremberg Tribunal of 1945 (Article 6 (c)). Although the Nuremberg Tribunal was established for trying the major war criminals of the European Axis countries for the offences they had committed before or during the Second World War, the Court notes that the universal validity of the principles concerning crimes against humanity was subsequently confirmed by, inter alia, Resolution No. 95 of the General Assembly of the United Nations Organisation (11 December 1946) and later by the International Law Commission. Accordingly, responsibility for crimes against humanity cannot be limited only to the nationals of certain countries and solely to acts committed within the specific time frame of the Second World War. In this context the Court would emphasize that it is expressly stated in Article I (b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity that no statutory limitations shall apply to crimes against humanity, irrespective of the date of their commission and whether committed in time of war or in time of peace</i> ".
Kolk and Kisilyiy vs Estonia	2006	Crimes against humanity for their participation in the deportation of the civilian population from the occupied Republic of Estonia to remote areas of the Soviet Union (March	The Court noted that deportation of the civilian population was expressly recognised as a crime against humanity in the Charter of the Nuremberg Tribunal of 1945. It remembered that crimes against humanity could not be time barred.



		1949)	
Kononov vs Latvia	2008	War crimes. Applicant was condemned for war crimes for having ordered the attack of nine civilians from the village of Mazi Bati (27 May 1944), who had not taken part in the fighting, for stealing their weapons and killing them. Six of them were burnt alive.	<p>The Court said that “<i>in characterising the Mazie Bati victims as civilians in the present case, the Criminal Affairs Division relied on Article 50 of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts, which was adopted in 1977. It is true that that provision contains a presumption that any person not belonging to one of the predefined categories of combatants or in respect of whom there is a doubt on that point must be considered a “civilian”. However, as the Court has already stated, this Protocol, which was drawn up and adopted more than 30 years after the events in question, cannot be applied retrospectively to characterise the acts the applicant was alleged to have committed</i>” The Court added that the Hague Conventions (1899 and 1907), the law applicable at the time of the facts, did not provide that if a person did not qualify as a combatant he/she should be afforded the guarantees enjoyed by civilians.</p> <p>The Court concluded that applicant could not reasonably have foreseen on 27 May 1944 that his acts amounted to a war crime under the <i>jus in bello</i> applicable at the time. As a consequence, there was, no plausible legal basis in international law on which to convict him of such an offence.</p>
Korbely vs Hungary	2008	Crimes against humanity for having intentionally murdered more than one person as a consequence of the 1956 uprising (Supreme Court)	<p>The Court rejected that the applicant’s behaviour constituted a crime against humanity because there was not certainty about the status of the victims (civilian or combattant) and because the Supreme Court of Hungary did not address the question whether the particular act committed by the applicant was to be regarded as forming part of a State policy. In its opinion, it remained open to question whether the constituent elements of a crime against humanity were satisfied in the case (in this case the elements of the offence would be: a) murder; b) committed against a civilian population; c) systematic conduct in furtherance of a certain policy.</p>

Source: own elaboration

### 5.1.1.2 Criminal justice on national basis (excluding war crimes, crimes against humanity and genocide)

A general mechanism used was the extension of existing criminal law. **Criminal codes** were often amended to include new crimes pertaining the occupation situation (for instance, collaboration with the enemy). This happened in a number of countries. After WWII, there existed the crime of “collaboration with the enemy” in some countries (Belgium) Occupation and collaboration: in Belgium, Denmark and the Netherlands, national administration remained in place and civil servants had to ponder serving national interest and collaborating with the enemy. Thus:

- **Belgium** The decree law of May 6<sup>th</sup> 1944 added to article 123 sexties of the criminal code, a set of dissolution of rights to the sanctions of those convicted of collaboration with the enemy. The aim of this deprivation of rights was to exclude people from public life who had '*pactisé avec l'ennemi*' ('made a pact with the enemy') and 'put the fatherland in danger'. The decree law of 17 January 1945 created an office for the sequestration of the properties of persons or organizations accused of collaboration in order to guarantee the compensation of fines, confiscations and damages, and to avoid insolvency.
- **Czechoslovakia** Before becoming a totalitarian communist regime, Czechoslovakia implemented some measures of criminal justice for Nazi criminals. In the Czech lands, the crimes defined in the Great Decree were tried by twenty-four Extraordinary People's Courts (Decree 16/1945), except for the most prominent Czech individuals, who were tried by the National Court in Prague (Decree 17/1945). The People's Courts were composed of a judicial panel of one chief justice and four lay "people's judges." The Courts' procedure was expedited. National committees tried the crimes defined in the Small Decree (Decree 138/1945). In Slovakia, the crimes defined in Statute 33/1945 were tried by Slovakia's own system of People's Courts, which included a Bratislava National Court, Regional People's Courts, and Local People's Courts, the last corresponding to the Czech national honor committees.<sup>130</sup>
- **Denmark**, the *Civil Criminal Code* and the *Administration of Justice Act* were amended by *Act No. 259 of 1 June 1945 on Amendment of the Civil Criminal Code Regarding Treason and Other Threats to the State*, which *inter alia* listed the crimes with which the collaborationists could be charged, and *Act No. 260 of 1 June 1945 on Amendment of the Administration of Justice Act regarding the Processing of Cases on Treason and Other Threats to the State* laying down the rules on *inter alia* the election of judges for the cases under *Act No. 259*. New provisions of *The Civil Criminal Code* were given retroactive force throughout occupation of Denmark. However, acts committed in compliance with statutes and orders enacted by Danish authorities from 9<sup>th</sup> April 1940 to 29<sup>th</sup> August 1943 were exempted from punishment.
- **France** On 15 March 1944, in Algiers, the National Council of the Resistance adopted its Programme, called the *Charter*.<sup>131</sup> The "punishment of traitors and the eviction from the administration and professional life of all those who have dealt with the enemy or have actively associated themselves with the policy of the governments of collaboration" was to be assured. The property of traitors and black marketers and all enemy property would be confiscated. The *ordinances of 17 and 31 January 1944*<sup>132</sup> provided that handing over or informing on resisters or others sought by the Germans and Vichy was to be

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<sup>130</sup> Frommer, Benjamin, *National Cleansing: Retribution against Nazi Collaborators in Postwar Czechoslovakia*, Cambridge: Cambridge University Press, 2005, p. 321.

<sup>131</sup> The National Council of the Resistance (CNR) comprised 14 Resistance groups, including trade union and political movements, Communist, Socialist, Christian-Democrats, and other political movements.

<sup>132</sup> *Ordonnances des 17 et 31 janvier 1944 relatives à la répression des faits de dénonciation*, Comité français de la Libération nationale, De Gaulle, Alger.

interpreted as an act “harmful to the national defence” under Article 83 of the Criminal Code. *Ordinance of 27 June 1944*<sup>133</sup> authorized the trial and punishment of all civil servants for acts of collaboration with the enemy and for having undermined the [democratic] institutions and public liberties. The ordinance referred to Articles 75 to 83 of the Criminal Code, which had been adopted by decrees of the Daladier government in July 1939. Article 75 is the key article which was used for the trials of collaborationists:

“Shall be guilty of treason and punished by death :

- Every French citizen who, in wartime, will entice military personnel or sailors, to enter the service of a foreign power [...]
- Every French citizen who, in wartime, will entertain intelligence with a foreign power or with its agents, with a view to facilitate the enterprises of this power against France.”
- **Finland** The *Weapon Hiders (or lodgers) Trial* referred to the attempt to hide weapons all over the country in purpose of starting a guerilla war against the soviets in case of potential occupation or possibly also in the case internal (leftist) rebellion against the government. This trial against roughly 1600 accused army (mostly middle or lower range) officers had its legal basis on the mentioned peace treaty between Finland and Soviet Union. On 9<sup>th</sup> August 1946, the Government submitted to the parliament a proposal about “punishing illegal preparation of action resorted to weapons” according to which a special law should be enacted to enable to take into account the large-scale and systematic action of the perpetrators. The Finnish parliament approved a law which was based on these principles on January 17<sup>th</sup> 1947.  
According to the law the first instance in all these cases was the Military Court of Appeals, which was to function within a normal court of appeal. These trials led to 1,488 convictions. Stronger penalties to the “leaders” of the hiding were 5 years of imprisonment.<sup>134</sup> An average punishment was of 3-18 months of imprisonment – in most cases the sentences were conditional. Additionally the suspected had to wait the beginning of trial long time in imprisonment which increased their suffering.
- **Germany (Nazi period)** At the beginning of their occupation of Germany, the Allies closed all German courts and declared all national socialist laws invalid. Instead, the penal code in force before the 30<sup>th</sup> January 1933 was re-established. *Reichsgericht*, the People’s Court, special courts and party tribunals were all abolished. Already in summer 1945 first county and district courts resumed their work. In a second phase from autumn 1945 onwards, the courts of appeal were re-established. The structures of the German administration of justice remained largely unchanged in the West. In the East, the so-called *Volksrichter* (people’s judges) replaced professional judges. *Control Council Law No. 4* ordered that all former active party members and

<sup>133</sup> *Ordonnance du 27 juin 1944 relative à l'épuration administrative sur le territoire métropolitain*, GPRF, Alger.

<sup>134</sup> A traditional issue of discussion in this context has been, whether the leaders of army had been aware of the lodging of weapons. In spite of the fact that no evidence of their knowledge could be found, it seems - according to many commentators – unlikely that they would have not been aware of the plans of their subordinates.

those who had participated in the penal justice of the Third Reich were no longer to be used as judges and state prosecutors.

The crimes committed by Germans against German or stateless victims were to be dealt with by German courts. It was considered that the statute of limitations (which would have affected many “minor” crimes committed during the Third Reich—such as theft or bodily harm) did not apply. Effectively, from May 8, 1945 onwards the limitation period was to start. Nazi crimes such as grievous bodily harm, breach of the peace, wrongful deprivation of liberty or arson as well as manslaughter and murder could be prosecuted by the German courts provided the victims were Germans or stateless citizens.

- The "Ulm Einsatzgruppe Trial" from 28 April to 29 August 1958 brought to court ten former members of the Gestapo, the SD (the intelligence service of the SS) and the police accused of murdering 120,000 Jews in the Baltic region (Einsatzgruppe Tilsit). Sentences were mild, since the accused were convicted not of murder but of being accessories to murder. The main defendant, Bernhard Fischer-Schweder, former police director of the city of Memel, was given a ten-year prison sentence for aiding and abetting murder in 526 instances.
- In 1964/65, Otto Hunsche and Hermann A. Krumej, both close colleagues of Eichmann who had coordinated the deportation of Jews from Hungary, were brought before the court. Initially receiving mild treatment as part of the "Judicature on aiding and abetting" (Gehilfenjudikatur). The Federal Court of Justice overturned the conviction in 1967; Krumej received a life sentence while Hunsche was sentenced to twelve years imprisonment for aiding and abetting.
- **Germany (GDR)** The *Mauerschützenprozesse*, the trials of the East German border guards who shot GDR citizens trying to flee the country were intended to strengthen the case against Honecker and others who had been ultimately responsible for the policy of using firearms without consideration to stop East Germans crossing the border, but, symbolically, they also put the Wall as a whole on trial.<sup>135</sup> However, the first trial of the four East German border guards who had been involved in killing Chris Gueffroy, the last East German citizen trying to cross the Wall, ran up against all the moral dilemmas familiar from institutionalized violence, in particular the question whether the border guards had simply been following orders. The Unification Treaty stipulated that all acts committed before the 3<sup>rd</sup> October 1990 had to be judged according to the existing GDR law, except when West German law was actually milder. The first trial of the four border guards which resulted in the conviction of two of the defendants was surrounded by much media frenzy. The judge, Theodor Seidel, when convicting two of the four defendants, argued very much in terms of natural law, and was widely criticized for it. In the second trial, the judges went out of their way to remain within codified GDR law, and based their conclusions on

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<sup>135</sup> Rosenberg, Tina, *The Haunted Land: Facing Europe's Ghosts After Communism*, New York: Vintage, 1996, p. 265.

the fact that the use of firearms had been ‘out of proportion’. The sentences were immediately suspended.

In subsequent appeals, the *Bundesgerichtshof*, the highest civil and criminal court, held that under GDR law, the actions of border guards and their superiors had actually been illegal, thereby circumventing the prohibition on retroactivity altogether. However, in a further ruling, the *Bundesverfassungsgericht*, the Constitutional Court, reverted to natural law thinking, arguing that the undemocratic nature of the GDR and its failure to protect human rights made GDR law less reliable. Shooting at the border constituted an ‘extreme injustice’, but the political indoctrination of the guards had to be taken into account as well. Consequently, the Court suggested a kind of compromise in that in many cases, only suspended sentences should be handed down. In the end, most border guards were convicted, but given suspended sentences: while 35 soldiers have been convicted, only one has actually been imprisoned.

The trials of GDR leaders had similarly mixed results. In the first major trial, members of the ‘National Defence Council’ were indicted for ordering the ‘shoot to kill’ policy at the border. The prosecution tried to pinpoint the meeting of the Council when the fateful policy had been decided, and sought to establish a direct link between the discussion of the Council and the charge of ‘collective manslaughter’. The trials of the President of the GDR, Willi Stoph, and Erich Mielke, the head of the Stasi, had to be suspended almost immediately due to ill health. The Berlin Constitutional Court of Appeals stopped Honecker’s trial in 1993. A long trial, or so the argument went, would violate the human dignity of the defendant, which was guaranteed by Article 1 of the Basic Law. Honecker subsequently fled to Chile as a free man and died in 1993.

However, the healthy leaders of the National Defence Council were eventually convicted for their ‘co-responsibility’ in the ‘shoot-to-kill’ policy and other acts of what was called *Regierungskriminalität* [government criminality]. Subsequently, four of the military leaders of the GDR were convicted. And in a second major trial, mainly of members of the *Politbüro*, Egon Krenz and others were convicted for breaching GDR and international law: Krenz received a six-and-a-half year sentence for the homicide of four GDR citizens trying to flee the GDR; Günter Schabowski and Günther Kleiber, both members of the *Politbüro*, received three years each, on account of three charges of homicide. Here East German criminal law was replaced by more lenient West German law relating to being an indirect principle to an intentional homicide (Federal Criminal Code Articles 212 and 25); the relevant international law were the rights to life and freedom of movement, as enshrined in the *International Covenant on Civil and Political Rights* (ratified by the GDR in 1974).

To the extent that German decisions came up for formal review supranationally, they were endorsed. In particular, Egon Krenz and two other GDR leaders (Fritz Streletz, the Deputy Minister of Defense and Heinz Kessler, Minister of Defense) took their cases to the European Court of Human Rights, arguing that their convictions violated Article 7 §1 of the Convention (prohibiting *ex post facto* criminal proceedings and

punishments).<sup>136</sup> The Court issued its judgment in the consolidated cases on 22 March 2001, upholding the convictions by the courts of united Germany. In particular, Strasbourg held that East German law did not authorize use of firearms against unarmed citizens trying to cross the border, that use of force at the border contradicted the East German constitution (especially with regard to respect for life) and that prosecution had been foreseeable under international law.<sup>137</sup> The Court also affirmed the leaders' personal liability, rejecting the argument that the actions in question had to be attributed solely to the East German state.

- **Luxembourg** The government in exile took the decision to complete the Criminal Code according to the Belgian legislation in order to have the new situation as it had been created by the German invasion and occupation of Luxembourg covered by law. Criminal as well as administrative measures were applied to Luxemburgish citizens that had collaborated with the Nazis. For Luxembourg nationals. Collaboration was equal to high treason. On the basis of the amended Criminal Code a total of 10,135 cases were opened by the prosecutors. By 1949 nearly all the cases had been treated either by the courts in Luxembourg or in Diekirch. 5,242 sentences had been pronounced; 575 cases were pending. At that time 252 men and 14 women were still in prison. As a grand total 2,272 people had been condemned to imprisonment and 12 to the death penalty (8 were executed; 4 were pardoned) 249 had been condemned to hard labor (from life long to 5 years) 1,366 to detention (between 1 and 20 years) and 645 to imprisonment (5 to 20 years). A large number of cases had been closed as they proved to be of minor interest or the result of gossip and tattling.
- **The Netherlands** (See below under jurisdiction).
- **Sweden** Condemnation for transmitting information to Gestapo. It involved two persons: Robert Paulsson who gave the names of 538 German refugees and John Lönnegren who gave them to the Gestapo. Paulsson managed to receive parole while Lönnegren accepted his punishment.

Similarly, countries exiting totalitarian communist regime also amended their Criminal Codes, which were used albeit supplemented by specific legislation:

- **Bulgaria** The Criminal Code has been amended a number of times with the aim of removing articles dealing with political crimes, rather than creating new articles, applicable to the perpetrators of the repressions. Procedures are the ones of the Criminal Code. Tried perpetrators of the repressions are directors and supervisors in labor camps; militia and State Security personnel carried out the repressions against political opponents of the regime and the arrests, deportations, and resettlements of the "elements of the enemy class" and their families.

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<sup>136</sup> Russell Miller, *Rejecting Radbruch, The European Court of Human Rights and the Crimes of the East German Leadership*, *Leiden Journal of International Law*, vol. 14 (2001), 653-63, and <http://www.echr.coe.int/Eng/Press/2001/Mar/Krenzetaljudepress.htm> [last accessed 20 October 2009]. See *Streletz, Kessler and Krenz v. Germany*, nos. 34044/96, 35532/97 and 44801/98.

<sup>137</sup> *Ibidem*.

- One of the cases was against the perpetrators of 14 murders in the camp near Lovech. The trial started in 1993 and finished in 2002, finding guilty only two of the supervisors in the camp. In the meantime, however, all other defendants deceased. No judicial inquiry was launched against other culprits for the repressive system of the period up to 1953 (this year the camps were closed down), due to the 20 years legal prescription of the crimes and to the lack of perpetrators still alive.
- A second attempt to seek justice for a repressive campaign was the so-called mega-trial on the “revival process” (the forceful change of the names of Bulgarian Turks in the second half of the 1980s). Thus, an inquiry was launched in 1991 against the initiators of the “revival process” from the BCP leadership Todor Zhivkov, Georgi Atanasov, Dimitar Stoyanov, Petar Mladenov, and Pencho Kubadinski. The accusations raised against them were not specifically for the repressions against the Bulgarian Turks, but more generally for “inciting race or national hostility”. After a year of investigation, in 1992, two of the defendants, Petar Mladenov and Pencho Kubadinski, were freed of charges due to lack of evidence. The indictment against the other three people was twice put forward to the Supreme Court – in 1993 and in 1997, but was sent back for further investigation; in order all the pieces of evidence to be collected and all the witnesses to be interrogated. For the trial, there were 446 people designated as witnesses, 312 of them had been interrogated, but 126, who lived in Turkey, could not be traced. Bulgaria asked Turkey for legal assistance, but it was not given for all of them. Consequently, the mega-trial against the initiators of the “revival process” has never even started, and in the meantime all of the accused deceased. Thus, the court found guilty for the “revival process” only two of the State Security agents, and two civilians, convicted for a murder in the district of Varna.
- **Czech Republic** The Act No. 198/1993 on the *Illegality of the Communist Regime and Resistance to it* specifies the crimes in Article 1 as follows:
  - (1) The Communist regime and its active supporters,
    - a) deprived citizens of any possibility of freely expressing their political will, forced them to conceal their opinion on the situation in the country and society, and forced them openly to express their agreement even with what they considered lies or crimes, and that by means of persecution or threats of persecution against the citizens themselves or their families and friends;
    - b) systematically and constantly violated human rights, while oppressing certain political social, and religious groups in a particularly sinister manner;
    - c) violated the fundamental principles of a democratic State based on the rule of law, international treaties, and its own laws, in practice putting the will and interests of the Communist Party and its representatives above the law;
    - d) used every means of exerting power to persecute citizens, and in particular:
      - executed them, murdered them, and imprisoned them in penitentiaries and forced labor camps, used brutal methods against them and exposed them to inhuman suffering—including physical and psychological torture—during investigation and incarceration,
      - deliberately divested them of their property and violated their rights to ownership
      - deprived them of the opportunity to practice their professions or

perform their duties, or attain higher education or specialized training,

- restricted their freedom to travel freely abroad and return freely,
- drafted them into Technical Support Battalions and Technical Battalions for unlimited periods of time;

e) did not hesitate to commit crimes to reach its objectives, facilitated the execution of these crimes with impunity, and provided unfair advantages for those who participated in these crimes and persecutions;

f) joined forces with a foreign power, and from 1968 maintained the aforementioned State by means of occupying troops.

(2) Those who implemented the Communist regime as officials, organizers, and agitators in the political and ideological sphere, are fully responsible for the crimes committed in paragraph (1).

Act No. 327/1999 Coll. which Amends Act No. 140/1961, Criminal Code exempts from statutes of limitations criminal acts committed during this period where the “upper limit of the criminal penalty amounts to at least ten years”. The responsibility was criminal and ordinary jurisdiction intervened. The prosecuting agency was the Office of the Documentation and the Investigation of the Crimes of Communism (ÚDV) which is part of the Service of the Criminal Investigation Police, and its investigation responsibilities focus on criminal acts between 1948 and 1989 where there was no final judgment for political reasons. It refers cases to the public prosecutors for prosecution according to usual procedure.

- **Latvia** On June 17, 1998, the Latvian *Saeima* promulgated a general Criminal Law Code which became operative in 1999. Paragraphs 71 to 79 of this code established sanctions against the advocacy of genocide, advocacy of armed activities, the preparation for use of weapons of mass destruction, the perpetration of war crimes, the perpetration of atrocities against civilians in areas of armed conflict, looting, the advocacy of aggressive warfare, violation of the principle of equality of race and nationality, the violation of human rights, and the destruction of cultural treasures. During the past decade, the Latvian court system has produced a small corpus of decisions that could become precedents about how these prohibitions should be put into practice, but at this writing the process of precedent-creating continues. Among other problems, compatibility between these elements of the criminal law and the basic components of the Latvian Constitution, which guarantees freedom of speech, has to be established. The defence in the cases that have come to trial has been based on the questions of “intentionality” (motive) and the right of free speech. Particularly troublesome have been the cases involving alleged “stoking of hatred” in cyberspace, as well as the question of whether alleged violators, if found guilty, should be sanctioned criminally or administratively. There are no laws calling explicitly for criminal sanctions against “trivializing” or “denying” genocide, war crimes, and similar egregious activities, but it may be that interpretation of the existing provisions in the Criminal Code could move in that direction.
- **Poland** The *Act on the Institute of National Remembrance* of December 18<sup>th</sup>, 1998 established *Head Prosecution of Crimes against the Polish Nation* (*Główna Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu*), which constitutes a sub-section of the Institute. The Act defines communist crimes which constitute bases for prosecution in the following way: “applying duress or infringing on human rights of individuals or groups, which constituted a crime according to the criminal code at the time when committed, or falsifying and using falsified documents classified as subject to the Institute’s archiving activities” (Art. 2). Crimes against humanity are crimes of mass murder as



understood in the *Convention on preventing and punishing crimes of mass murder* of December 9<sup>th</sup>, 1948 (*Konwencja w sprawie zapobiegania i karania zbrodni ludobójstwa*) as well as other serious persecution based on victims' nationality, political, social, ethnic and religious membership if they were committed by public functionaries, inspired or tolerated by them (Art. 3).

Crimes which are classified under the international law as crimes against peace, humanity or war crimes are exempt from statutes of limitations. The statutes of limitations for communist crimes which are not classified as crimes against humanity are as follows: 40 years from August 1<sup>st</sup>, 1990 for a manslaughter, and 30 years from August 1<sup>st</sup>, 1990, if it is a different type of communist crime. Perpetrators of war crimes, crimes against humanity and communist crimes cannot be covered by laws and decrees on amnesty or abolition, which were passed before December 7<sup>th</sup>, 1989.

The *Institute of National Remembrance* brought criminal charges against nine members of the Military Council for National Salvation in 2008. The three main defendants, Wojciech Jaruzelski, Czeslaw Kiszczak and Stanislaw Kania, were accused of "participating in a criminal military organization, appointed with the aim of committing crimes." Jaruzelski was facing additional charges of pressuring the Lower House to approve of Martial Law decrees after he had already began acting on them (leading to the arrest of thousands of Solidarity leaders). Kania and Kiszczak were additionally facing accusations of conspiring to implement Martial Law in March 1989. Age and health complications meant that trials have been complicated. As illustrated in the Wujek case, it was frequently impossible to attribute individual responsibility to those who had been on the order-receiving side of the crime.

- **Romania** The statute of limitations posed specific problems for criminal justice. Following the communist *Penal Code of 1968*,<sup>138</sup> it lapsed 15 years after the crime was committed for murder, after 8 years for torture, and after only 3 years for abusive arrest and interrogation.<sup>139</sup> Thus, in January 1990, for example, only murders committed after 1975, torture committed after 1982, and abuse committed after 1987 could be prosecuted. But Article 128 of the Penal Code allowed for crimes not to be prescribed, if their prosecution was impossible for objective reasons.<sup>140</sup> This stipulation was invoked in 1993 in a case against former communist officials involved in human rights abuses in the 1950s. The court accepted the view that the privileged legal status of these officials had amounted to *de facto* immunity up until 1989. This case set a precedent for other cases for which it was considered that the statute of limitations started on 22 December 1989, the day when Ceausescu fled Bucharest and thus relinquished political power, and ended in 2005 for murder cases. During the early 2000s, with the time of prescription for communist crimes rapidly approaching, the courts looked for additional arguments to extend the time period during which the crimes could be prosecuted, but none were accepted by the courts.
- **Slovakia** Act No. 125/1996 *Coll. on the Immorality and Illegality of the Communist Regime*: condemns the regime's role in human rights abuses and makes crimes that were not punished or indicted for political reasons incompatible with fundamental democratic principles liable for prosecution

<sup>138</sup> Codul Penal al Republicii Socialista Romania din 1968.

<sup>139</sup> Grosescu, Raluca and Raluca Ursachi, *Justitia penala de tranzitie din Romania postcomunista*, Bucharest, Polirom, 2009, p. 109.

<sup>140</sup> Codul Penal al Republicii Socialista Romania din 1968.

without cover by statute of limitations. Responsibility was criminal and the ordinary jurisdiction applies. As for the applicable procedures, § 8 (d) of Act. No. 553/2002, on *Disclosure of Documents Regarding the Activity of State Security Authorities in the period 1939-1989 and on Founding the Nation's Memory Institute*, states that the Institute is “to make motions for criminal prosecution of crimes and criminal offenses” committed under the Nazi and Communist regimes, crimes against peace, crimes against humanity, and war crimes, as well as repressive acts of the Slovak or Czecho-Slovak authorities against those working for freedom and democracy (as defined in § 1), “in cooperation with the Attorney General’s Office of the Slovak Republic” and to (e) “provide necessary information to public authorities”.<sup>141</sup>

- **Slovenia** Criminal jurisdiction may be asserted under the Criminal Code of the Republic of Slovenia on the principles of territoriality, active and passive personality, and protection (Articles 10, 11, 12 and 13). The first and only case was brought against former Communist dictator. Slovenian courts refused in *Prosecutor v. Ribičič* to open investigation in his alleged acts possibly amounting to crimes against humanity.

As for Southern European countries:

- **Greece** The measures adopted to deal with the crimes of the dictatorship were enacted in the context of the *Constitutional Act* of October 3, 1974 which assigned the responsibility for investigating the case of “those primarily responsible for the dictatorship to a higher court, the Athens Court of Appeals. This Act defined them as crimes of the dictatorship not as political crimes but as penal ones, to be dealt in the regular civil court context.<sup>142</sup> Subsequently, one of the first Parliamentary Resolutions of the first post-authoritarian Parliament (Resolution D of January 15, 1975) limited the justice’s focus to the act of conspiracy on the part of military officers who led the coup on April 21, 1967 and ordered the arrest and detentions that followed.
- **Cyprus** Interim president Sampson was brought to trial before an Assize Court in Nicosia for offences against the state, contrary to sections 40 and 41 of the Criminal Code, Cap. 154, and directly connected with the coup of 15 July 1974. He was found guilty and sentenced to 20 years imprisonment on 31 August 1976. In its decision of 3 February 1977 in *The Republic v. Nicolaos Sampson*, the Supreme Court unanimously held that the relevant provisions of the Criminal Code were not rendered inoperative by the President’s announcement of an amnesty without the enactment of a relevant law by the House of Representatives. Sampson’s sentence – like the sentences of all other serving prisoners – was reduced on two occasions in 1977 (following Makarios’ death) and 1978 to a total of 12 years and eight months. In 1979 he was granted suspension of execution of sentence by the President of the Republic for health reasons in order to travel abroad for medical treatment. Following his treatment, he refused to return to Cyprus. He only did so in 1990 when his sentence had nominally expired. He was arrested and immediately jailed, but was granted *habeas corpus*

<sup>141</sup> Act No. 553/2002 Coll. on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 - 1989 and on Founding the Nation’s Memory Institute (Ústav pamäti národa) and on Amending Certain Acts, <http://www.upn.gov.sk/v2/index.php?page=documents>.

<sup>142</sup> Constitutional Decree of October 3, 1974: “Sintaktiki Praxi tis 3is Oktovriou 1974.”

- by the Supreme Court and set free on 6 September 1991 because his imprisonment following his return was irregular (i.e. being a fugitive he should have been arrested by the police and brought to trial and not immediately jailed).
- **Portugal** The assassination of the candidate who had stood against Salazar in the 1958 presidential elections was trial in 1978, in Military Trial at the Santa Clara Court. Only one of the defendants was considered guilty –Casimiro Monteiro (tried in absentia)-, while the others were set free.
  - **Spain** did not enact any provision for criminal justice for perpetrators, no trials were conducted (apart from the proceedings at the *Audiencia Nacional* mentioned above).

### 5.1.2 Types of responsibility or liability and types of jurisdiction (ordinary or special)

As mentioned above, a number of countries (Denmark, France, Luxembourg, Italy and the Netherlands) had death penalty in their criminal codes after WWII.

- **Austria** The Allies did reserve the rights to detain war criminals and deal with German assets. The *Volksgerichte* or People's Courts dealt with the crimes of National Socialism. The jurisdiction of the courts was based on the *Verbotsgesetz* of 8 May 1945 and the *Kriegsverbrechergesetz* of 26 June 1945. People's Courts were seated in four provincial capitals with jurisdictions matching the zones of occupation.
- **Cyprus** There are no statistics on the number of cases relating to crimes committed during the coup. All the more so, since the decisions of lower (district) courts in Cyprus are unreported, unlike the ones of the Supreme Court. An interesting case of civil litigation that reached the Supreme Court was *Demetrios Anastassiou v. Eleni Theodotou-Demetriou and Another (Civil Appeal No. 5806)*. The case involved the killing by shooting of the husband of the respondent/plaintiff who was shot dead by the appellants/defendants on 17 July 1974, while he was going to his work in his employer's bus. The appellants/defendants raised the defence of superior orders as shield to civil liability. This was the first case on superior orders to be decided by courts in Cyprus. Both the trial court and the Supreme Court rightly rejected the defence by making a rather extensive analysis and reference to international and foreign sources. In its judgment of 15 October 1980, the Supreme Court thus concluded that "superior orders could not justify an illegal act", "if illegal superior orders are obeyed, they open the way to lawlessness", "if the officers and men of the Cyprus National Guard did in their majority, refuse the orders of the criminal gang of officers who organized the coup, the coup would collapse *ab initio* and the country would be saved the ruin and destruction that the coup d'état piled on our country" and that "no reasonable human being could, for a moment, doubt the illegality of the orders of those who perpetrated the coup".<sup>143</sup>
- **Czechoslovakia** (after WWII) Responsibility was criminal and the jurisdiction was special ("extraordinary").
- **Denmark** Ordinary judges were to be appointed to handle the cases.

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<sup>143</sup> 1980 (1) C.L.R 599, 600.

- **France** Special jurisdiction: *Ordinance of 26 June 1944*<sup>144</sup> created regional courts of justice to judge facts committed between 16<sup>th</sup> June 1940, and the date of the Liberation as violations of the criminal laws in force on 16<sup>th</sup> June 1940 concerning the intention of their authors to give preference to the activities of the enemy. Following on the doctrine of the illegitimacy of the Vichy regime and the invalidity of its acts, its servants could not enjoy the immunity traditionally offered to those carrying out orders by superiors, except in particular circumstances.<sup>145</sup>
  - The National indignity ordinance established ‘special sections’ attached to the departmental courts of justice. There was no right of appeal on substance, but only a recourse to the Court of Cassation on procedural grounds (Art. 2, 3 and 7).
  - The *Ordinance of 18 November 1944*<sup>146</sup> created the High Court of Justice to judge crimes of collaboration with the Germans. It had jurisdiction over the head of state (Pétain), the chief of government (Laval), all cabinet and sub-cabinet officers and the colonial governors who had participated in the Vichy regime. The laws applied were in fact retroactive and the Court was a “jurisdiction d’exception”. It could assign whatever penalty it wished – from death to national degradation – to any crime. Sentences included eight death sentences (three were executed), forced labour of various durations, national indignity, - three acquittals and 42 cases discharged. The High Court of Justice and all other special courts created after the Liberation ended their activities in 1950. The High Court was reconvened in 1954 and in 1960 to try escaped suspects who had returned to France
  - To judge lower officers the Courts of Justice were set up by *Ordinance of 26 June 1944*, as miniatures versions of the *Cours d’assises*, the French traditional criminal courts.
  - Judgments of *indignité nationale* could order the withdrawal of all civic and political rights, ineligibility to representative functions, destitution and exclusion of public functions, legal and teaching positions, associations and trade unions, leading positions in the media, managing directors and members of governing boards of industrial and business firms. The duration of these punishments would not be less than five years (Art. 9 and 10). Marshall Pétain was indicted for having conspired with the enemy against the security of the state in order to promote its own private ends (Arts. 75 and 87 of the Criminal Code). He was condemned to death, to *national indignity* and to confiscation of his personal property on these grounds.

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<sup>144</sup> *Ordonnance du 26 juin 1944 portant répression des faits de collaboration, Gouvernement provisoire de la République française*, De Gaulle, Alger, revised by : *Ordonnance du 28 novembre 1944 portant modification et codification des textes relatifs à la répression des faits de collaboration*, Gouvernement provisoire de la République française, Jeannenet, Paris.

<sup>145</sup> This ordinance was revised by ordinances of 14th September and 28 November 1944, giving interpretation as to who could be held accountable. See Novick, P., *The Resistance versus Vichy, The Purge of collaborators in Liberated France*, Chatto & Windus, London, 1968, 143-4.

<sup>146</sup> *Ordonnance du 18 novembre 1944 instituant une haute cour de justice, Gouvernement provisoire de la République française*, De Gaulle, Paris.

- **Germany (Nazi Period)** The recognition of previous shortcomings led the Conference of Ministers of Justice of the Federal States (Justizministerkonferenz der Bundesländer) to establish on 18 September 1958 the "Central Office of the State Justice Administration for the Investigation of National Socialist Crimes" (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*) located in Ludwigsburg. It was responsible for prepreliminary enquiries, charging and increasingly also preliminary enquiries. It was tasked with collecting proof, the coordination of all enquiries, and in dealing with legal queries. The achievements of this authority consisting of state attorneys are numerous, the most important being that it researched methodically and systematically all national socialist crimes and prepared cases which were later on passed into the hand of state prosecutors at the courts.
- **Germany (GDR)** In general, *Regierungskriminalität* was investigated by a special office (*Zentrale Ermittlungsstelle für Regierungs- und Vereinigungskriminalität, ZERV*), and by the Berlin state prosecutor (*Staatsanwaltschaft II at the Berlin Landgericht*, also known as *St II*) and covered crimes such as election rigging, fraud, violation of mail privacy, and manslaughter through judicial organs.<sup>147</sup> The *ZERV* was generally considered understaffed and underfunded. The Länder were supposed to have made police officers available for it, but in many cases failed to do so. The head of the office also complained that the *Rechtsstaat* and the content of the Unification Treaty made successful prosecution extremely difficult. Christoph Schaeffgen, the head of the *Staatsanwaltschaft II*, in turn came to the conclusion that the *Rechtsstaat's* fight 'against Stasi terror had been a failure'<sup>148</sup>. Especially the low-level harassment and terror, so-called *Zersetzungsmaßnahmen*, were hard to fit into a coherent case against the perpetrators and mostly went unpunished. Of 21,360 investigations 20,502 never led to an indictment; only 157 of 629 defendants were convicted. As some observers pointed out, this result amounted to a *de facto* amnesty—all the legal system could accomplish was attributing responsibility, rather than meting out retribution<sup>149</sup>. Ultimately, because success in prosecuting remained elusive, the media and the public lost interest in *ZERV's* activities. As public interest waned, financial resources were withdrawn and prosecution became even more difficult.
- **Greece** A constitutional decree (3/3 October 1974) defined that the dictatorship and its crimes were not of a political but of a penal nature. The military personnel involved in acts of torture were court-martialled. Overall, the procedures were general and the jurisdiction ordinary. The main trial was had 23 defendants, the coup organizers and regime leaders; it became known as the "trial of the instigators." Charges included high treason and mutiny. the three coup leaders (Georgios Papadopoulos, Stylianos Pattakos, and Nikolaos Makarezos) were condemned to death, a penalty that was immediately commuted to life imprisonment by Prime Minister Karamanlis. Thirteen

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<sup>147</sup> In addition, there were the 'unification crimes' or *Vereinigungskriminalität*, in particular fraud, committed by both East and West Germans during and after 1990. These crimes were also investigated by *ZERV*. On *ZERV*, see also John Borneman, *Settling Accounts: Violence, Justice and Accountability in Postsocialist Europe*, Princeton: Princeton University Press, 1997, p. 59-79.

<sup>148</sup> Peter Schmelz, Im Kampf gegen Stasi-Terror gescheitert: Für Generalstaatsanwalt Schaeffgen ist der Rechtsstaat beim DDR-Unrecht an seine Grenzen gestoßen', in: *Die Welt*, 12th November 1998.

<sup>149</sup> Ehrhart Körting, Ist (Straf-)Recht ein geeignetes Mittel zur Aufarbeitung der Geschichte? Rechtliche Aufarbeitung oder Amnestie?, in: *Neue Justiz*, vol. 53, no. 1 (1999), 1-4.

defendants were given life, five were condemned to twenty years, and two were found not guilty.

- The second major trial began on October 16, 1975 and focused on the events surrounding the uprising of the Athens Polytechnic uprising. Thirty-two individuals were indicted, including some of the regime leaders who had been convicted in the first trial.
- Six more trials, dubbed “trials of the torturers,” took place in 1975. Unlike the previous ones, these were court-martials and focused on members of the ESA military police. Eighteen officers and fourteen soldiers were tried. Four additional trials involving allegations of torture concerning members of the security forces and the police took place subsequently. Several defendants were found guilty and received moderate convictions, of between five and ten years.
- **Italy** The High Justice Court (*Alta Corte di giustizia*) was created by art. 2 of Legislative Decree n.159 27<sup>th</sup> July 1944. The Court had to deal with the members of the fascist government and the high public officials who were guilty of annulations of constitutional guarantees, destroying public liberties, creation of the fascist regime and compromise the fate of the country. Between September 1944 and October 1945 the High Court had 16 processes against 99 charged persons. Of these processes, 11 were public and they involved 31 charged persons. The High Court imposed 4 death sentences; 6 (ergastoli); 3 thirty years, 6 sentences to condemnations between 15 and 25; 7 between 10 and 15 years”.  
The Legislative Decree n.142 of 22 April 1945 created the *Extraordinary Courts of Assise (Corti straordinarie di Assise)*. They trialed those who after 8 September 1943 had committed crimes against the royalty and military defence of the state which were established in art. 5 of the Decree n. 159. These crimes involved any form of intelligence, correspondence or collaboration with the German invaders or assistance to them. The Legislative Decree n. 625 of 5<sup>th</sup> October 1945 suppressed the extraordinary courts and transformed them in special sections of the ordinary assise courts which operated as the former until 1947 with the same composition as the former.
- **Lithuania** Ordinary jurisdiction applies and the panels of Criminal Division judges examined the cases. Responsibility was only criminal and there are no civil litigations against the culprits. There were some civil litigation cases not against the criminals, but against the State, responsible for the damage, but the applicants did not get any indemnity because of the application of the immunity of the State<sup>150</sup> (the acts were recognized *jure imperii* by the Court). The *Genocide and Resistance Research Centre* collaborates supplying scientific research to the Prosecutor. In 2009 Centre was approached in 180 cases concerning crimes committed by occupation’s regimes against Lithuania’s residence. Out of this number 50 cases were individual applications, the rest of cases were applications from the General Prosecutor’s Office or from the State Security Department.

<sup>150</sup> 26 June, 2008 the decision of the Appeal Court in the case of Z. V. L. and B. P. v. Russian Federation (No. 2-331/2008); 31 October, 2008 the decision of the Appeal Court in the case of L.S. v. Russian Federation (No. 2-764/2008).

- **The Netherlands** The overall framework for legal retribution of crimes of the national-socialist regime was a hybrid one. Most of it was adopted and expanded between 1943 and 1945 by the Dutch government in exile, which issued Royal Decrees with the force of law. These measures were presented as emergency measures, required by the unprecedented crimes of the repressive enemy regime. In order to reinforce the legitimacy of such extraordinary measures, a whole new parallel system of penal laws, courts and procedures was set up under the name of *Bijzondere Rechtspleging*, or 'Extraordinary Jurisdiction'. The system was conceived as of a mixed civil-military nature. The legal framework for retribution of National Socialist and collaborationist crimes consisted of the following elements: 1. *The existing Dutch Criminal Code*. This code (in Dutch: *Wetboek van Strafrecht*) explicitly prohibited collaboration with an enemy invader. In preparing the Extraordinary Jurisdiction during the war, the government in exile decided to retroactively extend the existing clauses (Article 102 of the Criminal Code) against 'assisting the enemy in times of war' and to aggravate penalties. 2. *New ad-hoc legal provisions against collaboration*. Included the punishment of single membership of national-socialist organizations, as well as new laws concerning the purge of government institutions and the bureaucracy, as well as society at large. 3. *Supra-national legal frameworks*.
  - Once the Extraordinary Jurisdiction was actually applied after the liberation, some important modifications in the legal framework were reached by means of new Decrees and Laws: the Decrees on Political Delinquents (*Besluit Politieke Delinquenten 1945* of November 19, 1945, nr. F 280) and the Law Holding New Provisions Relating to the Extraordinary Jurisdiction (*Wet houdende nadere voorzieningen voor de Bijzondere Rechtspleging* of 27 June 1947, Nr. H. 206). The former measures enabled pre-trial decisions concerning conditional release of less important cases; the latter improved procedures and the legal position and human rights of the accused as related to appeal and the position of the legal council. When this law was approved by Parliament, preparations were started for a whole new law, with the purpose to bring the whole system of Extraordinary Jurisdiction to an end. Result was the Law for the Transition of the Extraordinary Jurisdiction (*Wet Overgang Bijzondere Rechtspleging* of May 13, 1948, Nr. I 186). This included that the judicial authority to persecute the crimes under the Extraordinary Criminal Code was transferred to the regular court system.
- **Poland** The institution responsible for investigation and prosecution of communist crimes is the *Institute of National Remembrance*. Investigation and prosecution are carried out on the basis of Polish criminal code by one of the Institute's regional prosecutor's offices.
- **Romania** The jurisdiction has been special for most trials related to the Revolution of December 1989 and ordinary for other crimes perpetrated during the communist period. All trials conducted to date were both civil and criminal. However, in the cases judged during the 1990s and related to the 1989 Revolution, the two litigations were heard by different courts (criminal litigation by military courts, while civil litigation by civil courts).

### 5.1.3 Amnesty or leniency programs

Amnesty is generally understood as the pardon or releasing from their penalties convicted criminals. In most of the cases of EU members states, legislation on amnesty is understood in this sense but there exist however some cases in which amnesty has been used as an instrument for pardoning persons convicted by the repressive regime itself (hence and paradoxically, amnesty applies to victims). These are the cases of Bulgaria, Latvia, Romania or Spain. In these cases, amnesty must be understood as rehabilitation (done by the repressive regime). In other cases, alternatively or additionally, amnesty was self granted by the repressive regime to the perpetrators themselves (Spain). In several cases, de facto amnesty can be identified (for instance, the Netherlands or Slovenia).

- **Austria** President Renner promised leniency even before the *New Denazification Law* had been implemented. In May 1948 the Allied Council approved laws passed by the Austrian Parliament, granting amnesty to most former Nazis and revoking previously handed-down atonement penalties. By the summer of 1948, denazification was over for more than 92 percent of Austrian Nazis. As a punitive program, denazification applied by then to only forty thousand former Nazis.<sup>151</sup> Of this remaining core, most either saw their punishments and sanctions lapse in the 1950s, or benefited from additional amnesties granted in 1955 and 1957.<sup>152</sup>
- **Cyprus** President Makarios made the following speech upon his return to Cyprus on 7 December 1974: *“it is not my intention to persecute my enemies and opponents or to bring to justice those involved in political offences or those who took part in the coup against me. I forgive them all for their sins and grant them amnesty in the hope that the desired concord and unity among our people will come about. The spiritual unity of the Greek Cypriot people is a national dictate: And all of us, the Church, the State, parties, organizations, the Press and individuals, have a duty to contribute to this end”*.
- **Czechoslovakia** (on the Nazi period) Convicted individuals could apply for clemency (though in the Czech lands, executions were to take place within two hours—or in exceptional cases, three—of the verdict). In addition, Act No. 115/46 declared acts of retribution (against the fascists/Nazis) committed before October 28, 1945, to be legal.
- **Czechoslovakia, Czech Republic and Slovakia (after 1989)** In his 1990 New Year speech 1990 the then President Havel announced a “relatively extensive amnesty” for prisoners. This would cover not only political prisoners, but also people imprisoned by the Communist justice system for non-violent crimes, as he considered that system unfair. Afterwards, no blanket amnesty for crimes was granted in the Czech Republic, though some individual amnesties have been granted. Likewise, there was no general amnesty for crimes.
- **Denmark** also adopted pardon starting in 1947. By 1953, the last war criminals in Danish prisons had been released, whereas the last person convicted under the amendments to the Civil Criminal Code was released in 1960.

<sup>151</sup> Military Government Austria: Report of the United States Commissioner, May 1948, 20-21; and *ibidem.*, June 1948, 36.

<sup>152</sup> Dieter Stiefel, *Nazifizierung plus Entnazifizierung = Null? Bemerkungen zur besonderen Problematik der Entnazifizierung in Österreich*, in S. Meissl, K.-D. Mulley, O. Rathkolb (eds.), *Verdrängte Schuld – Verfehlt Sühne. Entnazifizierung in Österreich 1945-1955*, Vienna 1986, p. 33



- **France** *Amnesty Law* was adopted on 5th January 1951.<sup>153</sup> The law granted amnesty to all those who had committed acts for which the punishment involved loss of civil rights and a prison sentence of less than fifteen years. Its proponents cited five major arguments: clemency, reparation for the injustices of the purge, national reconciliation, the political nature of certain offences committed during the Occupation, and the example of Germany and Italy, which had started national reconciliation process.

A second amnesty law was adopted on 6 August 1953.<sup>154</sup> All remaining prisoners of the judiciary purge, except those guilty of the most serious crimes, were released, marking the end of France's post-Liberation purges. Of the 40,000 individuals sent to prison in 1945 for acts of collaboration, only 4,000 remained by jail in 1951 and none by 1964. Pétain: De Gaulle commuted the death sentence into life detention.

- **Germany**
  - **Amnesties.** In 1949 and 1954 two amnesties – concerning crimes with minor threats of punishment - curbed the prosecution of nationalsocialist crimes. The "law on indemnity from prosecution" (Straffreiheitsgesetz) of 31 December 1949 amnestied all offences punishable by up to six months imprisonment, one year probation, or 5000 deutschmarks. This was supposed to amnesty up to 800,000 people
  - **Cold amnesty** In 1970, a change to the criminal code established that aiding and abetting murder was only applicable in instances where the offence was characterized by "particularly personal characteristics, conditions or circumstances (particularly personal features)", i.e. by excessive involvement. Where these features were not present, no charge of murder could be pressed, meaning that the extension of the expiry period was invalid. This effectively amnestied all Nazi criminals of this kind (mainly the so-called Schreibtischtäter or "bureaucrat offenders"). The consequences of this practice, known as "cold amnesty", could be seen in the Majdanek trial, in which 15 SS guards of the concentration camp and extermination camp Majdanek in Lublin, where up to 250,000 people were killed, were tried at the Düsseldorf regional court. Just one person was sentenced to life (Hermine Braunsteiner-Ryan was proved to had committed *excessive offences*). Seven of the other defendants received prison-terms and five were acquitted. The Majdanek trial was considered to have played a major role in the repealing of law on the expiry period in 1979.
  - **End of de-nazification** Denazification ended in West Germany with the *Entnazifizierungsschlussgesetz*, put into effect on July 1, 1951. The German Bundestag passed the law for settlement "*Gesetz zur Regelung der Rechtsverhältnisse der unter Artikel 131 des Grundgesetzes fallenden Personen*" on April 10, 1951. It

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<sup>153</sup> *Loi n°51-18 du 5 janvier 1951 portant amnistie, instituant un régime de libération anticipée, limitant les effets de la dégradation nationale et réprimant les activités antinationales*, Assemblée nationale, Président de la République, Paris.

<sup>154</sup> *Loi n°53-681 du 6 août 1953 portant amnistie*, Assemblée nationale, Président de la République, Paris.

- enabled the return of those persons into the civil service who had been put into groups 3-5, those classified as major offenders or offenders were not covered by the law. All functionaries of Prussia and the German Empire who had been removed from office in the course of denazification turned into "public servants for re-installation" (Beamten zur Wiederverwendung), including salary claims, in effect rehabilitating them. In 1962 paragraph 116 of the German Judges Law (Deutsche Richtergesetz) was introduced; this appealed to judges "compromised" by threats of disciplinary measures to take early retirement -- while retaining full salaries. By 1962, 135 out of 149 of the judges considered "compromised" acceded. As a result of this generous regulation and because of the high degree of continuity, in terms of personnel, between the National Socialist and Federal German legal systems, the process was termed "self amnestying of the judiciary".
- **Italy** The Presidential decree of 22 June 1946 approved the so-called "*Amnistia Togliatti*" (from the Communist minister who drafted it). From April 1944 to December 1949, around 24 dispositions for amnesty, indults and redemptions were approved. The available figures are the following:
    - Out of the 12.000 detained fascist before amnesty, 7000 were released before 31 July 1946. In 1947, 2000 fascist remained in detention.
    - 43000 persons were involved in legal processes for collaboration of which 23000 were amnestied during the proceedings, 14000 released by means of different procedures, 5928 condemned (of which 259 to death penalty). Of these, 5.328 had the benefit of amnesty, indult or pardon: of which 2231 in absolute mode and 3.363 in partial form. In December, 1952 only 266 detained persons remained in jail, of which 119 with serving time pending and 47 still being trial.
    - After the condemnations of the 1950s, all condemned persons were freed by the end of the decade. In this moment, only two SS Officials (Herbert Kappler and Walter Reder) remained in jail for crimes related to the occupation regime.
    - Finally, almost all fascist that had had relation with the depuration process had been rehabilitated by the end of the 1950s.
  - **Luxembourg** From January 1946 onwards a *Commission des Graces* (commission of pardon) worked hard to reduce the sentences. In three years more than 450 sentences were reduced.
  - **The Netherlands** Despite the fact that the '*Extraordinary Jurisdiction*' produced verdicts, which were generally rather harsh, leniency and amnesty policies were employed to diminish the effects of the original measures and verdicts. Tens of thousands of interned and convicted collaborators were set free between 1946 and 1948, and that many of the heaviest cases were released from prison during the first part of the 1950s. More specifically, between 1945 and 1952, of 152 death verdicts, 40 have actually been executed.<sup>155</sup> By the end of

<sup>155</sup> Romijn Snel, *streng en rechtvaardig* 235-24; Führer *Nachspiel* 79-99.

1945, less than 100.000 people remained in the internment camps, a number gradually to decrease down to 60.000 (July 1946), 25.000 (March 1947) and 8.200 (January, 1948).<sup>156</sup>

- **Lithuania.** Whilst imposing a penalty, the age, health of the criminal, the time passed since the date when the crime was committed, the role in committing the crime, the specific situation during that period when it was sometimes impossible to choose the right variant of conduct<sup>157</sup> are taken into consideration by the Court.
- **Poland** An *Act on amnesty* of December 7<sup>th</sup>, 1989 permitted dropping charges against 79 persons.
- **Romania** A first amnesty by Ceausescu himself covering perpetrators. The *Decree 11 of 26 January 1988 on amnesty for some crimes and reduction of others*,<sup>158</sup> signed by Ceausescu (on his birthday), which offered amnesty for all crimes punishable with convictions of up to 10 years jail time. These crimes included most crimes committed by the communist authorities. The same decree reduced by half the jail sentences for crimes punishable with over 10 years of jail.

Iliescu, as head of the National Salvation Front Council, offered amnesty again through *Decree-Law 3 of 4 January 1990 on amnesty for some crimes and pardoning others*.<sup>159</sup> The decree-law offered amnesty for crimes punishable with up to 3 years of jail time, including a number of crimes perpetrated during the Revolution. Presidents Iliescu and Constantinescu offered presidential pardon to a number of Communist Party leaders and Militia and army officers involved in the 1989 Revolution. While Constantinescu pardoned only one individual, Iliescu pardoned more than 20.

- **Slovenia** Non-prosecution of those responsible for totalitarian crimes in Slovenia amounts to informal amnesties.
- **Spain** The 1976 *Law on Amnesty* granted extensive amnesty for perpetrators of the Franco regime. Although it was approved before the 1978 Constitution, it is widely considered valid nowadays and it was invoked to declare illegal the criminal proceedings against Franco and his regime leaders in 2008.
- **Sweden** In May 1945, the Ministry of Defense requested the Military Headquarters (*Försvarsstaben*) to declare the names of those officers and subordinate officers who had exposed a Nazi or German friendly attitude during the war. In total, 389 names were presented. During the years 1945-48, about 160 officers, subordinate officers, and assistant officers, were questioned by the police about their Nazi attitudes. This was the result of the promulgation of a regulation on 17 June 1945 according to which no personnel in the defense was permitted to pertain to extremist parties.<sup>160</sup>

In May 1946, a committee (*Bedömningsnämnden*) was established to judge failing loyalties of state officials, especially police and military officers, because

<sup>156</sup> Romijn Snel, *streng en rechtvaardig* 173-180.

<sup>157</sup> 9 January, 2009 the decision of the Appeal Court in the case of Jurgis Navickas (b.b. Nr. 1A-21/2009); 26 March, 2003 the decision of the Appeal Court in the case of Vincas Misiunas (b.b. Nr. 1A-109)

<sup>158</sup> Decretul 11 din 26 ianuarie 1988 privind amnistierea unor infractiuni si reducerea unor pedepse.

<sup>159</sup> Decretul-Lege 3 din 4 ianuarie 1990 privind amnistierea unor infractiuni si gratierea unor pedepse.

<sup>160</sup> For more detailed information about these investigations and hearings, see SOU 2000:94. Säkerhetstjänst, Nazism och högerextremism, chapter available at: <http://www.regeringen.se/content/1/c4/04/45/b0793ada.pdf>. For a comment, see also Östling, Johan, *Nazismens Sensmoral. Svenska erfarenheter i andra världskrigets efterdyning*, 2008, Atlantis. p. 109.

of their Nazi friendly attitudes. it turned out to be difficult to judge what was meant by “failing loyalty due to Nazi views”. In January 1947, the committee asked to be released from its assignment as it had not been able to establish a firm ground for concluding that state officials had failed in the way indicated.<sup>161</sup>

#### 5.1.4 Statistics available on number of investigations, prosecutions and decisions (convictions, acquittals) as well as pardons and early releases

- **Belgium** Very few Nazi responsible of the prosecution of Jews were actually convicted.
- **The Netherlands** Tens of thousands of interned and convicted collaborators were set free between 1946 and 1948, and that many of the heaviest cases were released from prison during the first part of the 1950s. More specifically, between 1945 and 1952, of 152 death verdicts, 40 have actually been executed. Some 150 Germans were accused and after fair trial sentenced to imprisonment or even acquitted: 20 members of the Gestapo (1 sentenced to death, but later pardoned and expelled to Germany in 1957); 13 members of the courts established by the Germans (7 condemned; 6 acquitted); 7 members of the Nazi administration and 4 party officials (*Kreisleiter*) (all condemned).<sup>162</sup> *Gauleiter* Gustav Simon committed suicide after he had been arrested by a British War crimes officer near Paderborn; others had not survived to the military occupation of Germany. By 1957 all Germans tried in Luxembourg had been released and expelled to Germany.

### The Netherlands

#### Numbers on the verdicts

<i>Special Courts</i> <sup>163</sup>	
Total number of sentences:	14.562
of which:	
Capital punishment	152
Prison:	14.332
Life	148
> 15 years	578
10 – 15 years	1.158
5 – 10 years	4.589
3 – 5 years	3.623
1 – 3 years	2.218
> 1 year	2.018
other punishment *	230

\* not in combination with the above, fines and psychiatric imprisonment

<i>Tribunals</i> <sup>164</sup>	
Total number of sentences:	49.920
of which:	
internment	36.935
10 years	136
5-10 years	1.398
1-5 years	19.250

<sup>161</sup> Ibidem.

<sup>162</sup> Jungblut, Tony: *Luxemburger Kalender 1947: Das sind sie*, pp.195-207 and *Luxemburger Kalender 1948, Die Kriegsverbrecher*, pp. 44-47. It provides the names, photos and accusations of the perpetrators.

<sup>163</sup> Belinfante, August D., *In plaats van Bijltjesdag. De Geschiedenis van de Bijzondere Rechtspleging na de Tweede Wereldoorlog*, Assen, Van Gorcum, 1978, p. 508.

<sup>164</sup> Ibidem. p. 511.

< 1 year	6.151
other punishment **	12.985

\*\* confiscation, loss of civil rights

- **Cyprus** There are no statistics available on the number of investigations, prosecutions and convictions/acquittals. In a judgment of 29 April 1982 in the case of *Andreas Pouris and Others v. The Republic* the Court noted that whilst many (persons) have (...) been prosecuted and punished, it is, indeed, correct that even many more have been allowed to go about scot-free.<sup>165</sup> On 22 April 1982 the House of Representatives adopted a resolution calling on the Government to take all necessary steps to ensure that all those who were burdened with crimes before, during and after the coup would be brought to justice. There is no evidence that this (belated) appeal was acted upon.
- **Germany (Nazi Period)**
  - The Western Allies arrested 178,000 persons automatically and interned them, in the Soviet Zone more than 67,000 were imprisoned. This concerned both suspected war criminals and potential security threats as well as those falling under automatic arrest (i.e. functionaries of the NSDAP such as head of party on city or county level or other high ranking officers within the party). All in all, about 300,000 people were interned. By the end of 1945, there were 117,512 people in American internment camps. Until January 1946, about 12,000 suspected of security threats were released. Denazification courts started their work in the beginning of 1947, which led to the release of many internees. On 1 May 1948, only 2,630 internees were still in internment camps.
  - From 1945 until 2005 the West German administration of justice dealt with 36,393 investigations and trials concerning Nazi crimes.<sup>166</sup> These more than 36,000 cases concerned 172,294 suspects, including 6,340 women. The number of trials until 2005 amounts to 4,964. There were 14,700 people indicted, and 6,656 actually sentenced. The punishment ranged from death sentences (only applicable in the Occupation period) to short-term imprisonment of but a few months. The vast majority of trials (i.e. 90%) took place in the late 1940s and early 1950s. The most frequently investigated crimes until 1950 were denunciations (38%), crimes against political opponents (in the years 1933/1934) (about 16%) and crimes against Jews during the pogrom (15%).
  - In the Soviet Zone of occupation and the German Democratic Republic, estimates run to about 11,000 trials in which about 13,000 people were convicted. These trials did not only concern Nazi crimes proper, but were partially denazification trials as both Nazi crimes as well as the simple membership in the Nazi party, the *Stormtroopers* or the SS (without involvement in

<sup>165</sup> *Andreas Pouris and Others v. The Republic (Criminal Appeals Nos. 4013-4019)*, 1983 (2) C.L.R. 178.

<sup>166</sup> For these and the following numbers see: Andreas Eichmüller, *Die Strafverfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945. Eine Zahlenbilanz*, in: *Vierteljahrshefte für Zeitgeschichte* 4/2008, pp. 621-640.

crimes) were tried by same courts in East Germany (whereas in West Germany special denazification courts had been established). The numbers of convicted are also hugely inflated due to the fact that there were trials held against deceased (!) or absent suspects. This, however, would allow a sentence of “*Vermögenseinzug*” (*dispossession*) and entitle the state to take hold of the property of the deceased or absent defendant. Trials in East Germany were often triggered by circumstances which had little to do with the crimes they were supposed to be about: victims who had been conferred the status of “*Opfer des Faschismus*” (victim of fascism) were encouraged to press charges against perpetrators.

- **Germany (GDR)** The process of bringing perpetrators to justice was not centralized; rather, a number of special prosecutors and offices (*Schwerpunktstaatsanwaltschaften*) were designated and their record-keeping varied significantly, as the German *Länder* (states) could not agree on a common statistical method and on common criteria for grouping different prosecutions. Also, only in some *Länder* were there final reports on trials and prosecutions; there is no official federal summary of the process.
  - According to a study published under the auspices of the *Aufarbeitung*-Foundation there were 1,021 actual prosecutions, involving 1,737 defendants (excluding prosecutions for espionage).<sup>167</sup> These figures have to be seen against the background fact that initially about 100,000 persons had been investigated (that is, an *Ermittlungsverfahren* had been started). The rate of actual indictments is therefore only about 1.4%; only one of 72 *Ermittlungsverfahren* resulted in one. The average age of convicted defendants was 58, and the overwhelming majority was men. The average time from indictment to conclusion of the prosecution was 714 days. Many trials had to be terminated without a judgment because defendants were no longer fit to stand trial. Thus only 1,286 of the 1,737 prosecutions ended with a judgment at the end. The average rate of acquittal was around 25 %, the rate of convictions around 54 %. Most convictions were in the area of perversion of justice, followed by violence at the Wall; there were only 142 actual prosecutions relating to the MfS (the Stasi).<sup>168</sup> Convictions rates for the former were below average, for the latter above average. An above-average number of acquittals was also recorded in the area of crimes relating to the Stasi. In the end, 40 persons actually had to serve prison terms (that is, in only 40 out of 523 cases with prison terms was the sentence one of more than two years and hence not suspended). Prosecutions were concluded by 2005. Some of the prosecutions were started in 1990 by GDR prosecutors—

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<sup>167</sup> Klaus Marxen, Gerhard Werle and Petra Schäfer, *Die Strafverfolgung von DDR-Unrecht: Fakten und Zahlen*, Berlin: Stiftung zur Aufarbeitung der SED –Diktatur and Humboldt-Universität zu Berlin, 2007. All of the information in this paragraph is drawn from this study, unless otherwise noted.

<sup>168</sup> Borbe, Ansgar, *Die Zahl der Opfer des SED-Regimes – Versuch einer Bilanz*, University of Trier, 2009, available at [http://www.stiftung-aufarbeitung.de/downloads/pdf/2009/Examensarbeit\\_Ansгар\\_Borbe.pdf](http://www.stiftung-aufarbeitung.de/downloads/pdf/2009/Examensarbeit_Ansгар_Borbe.pdf), p. 18.

- especially in the areas of election fraud and corruption. Again, the figures are disputed, but the account cited above suggests that 42 persons were put in custody. 38 were charged with corruption or abuse of office, two also with election fraud. Four more people were put into custody because of suspicions of election fraud. In six of the election fraud cases judgments were reached before German unification on October 3rd 1990. Only on judgment in a case of abuse of office came into force before that date.
- **Lithuania** According to the data available from the General Prosecutor's office, during the period 1990-2008, several cases were initiated on crimes against humanity and war crimes (statistics is not accurate as there is no single system for gathering such data):
    - Since the restoration of the independent Republic of Lithuania the public prosecutors have started 237 pre-trial investigations of war crimes and crimes against humanity committed in Lithuania during the occupations. In that period of time 25 criminal cases with 37 accused were passed on to court. The court pleaded guilty and sentenced 7 persons to prison (1 person sentenced in absentia to life imprisonment, 3 – imprisoned at the correctional institution, 4 – sentenced of imprisonment with suspended sentence due to illness or amnesty) and 2 persons of liberty restriction. Likewise, in its ruling the court confirmed the perpetration of the crimes of the named category and 5 persons were pleaded guilty with the sentence suspended due to age mental deterioration. Four persons the prosecutors had raised accusations for were pleaded not guilty due to the lack of guilt proof. 5 persons deceased in trial before the court's sentence. By judgement one person was admitted of participation in crime but he was discharged from liability due to old age. 7 criminal cases (with 10 persons accused) remain unsolved.
  - **Poland** Since 1991 several dozens of communist crimes perpetrators have been convicted:
    - Most of them are employees of the communist security system, who applied torture to investigated persons accused of political crimes, both before and after 1956. In majority of cases torture resulted in a permanent damage to the victim's health. Identification of perpetrators is based on existing documentation as well as witnesses' (victims') statements. In 1994, the first Stalinist criminalist, Adam Humer, employee of the MSW, sentenced to 9 years for torturing, beating, and 'inhumane treatment' of political prisoners. 11 ZOMO members accused of shooting at protesters in WUJEK mine in 1981 cleared; remaining 11 freed due to inconclusive evidence (the process started in 1991). In 1998 Court of Appeal demanded a retrial for procedural reasons. A second trial was held in October 2001 and a third and (so far) final one on June 2008. 15 people sentenced to between 2.5 and 11 years in prison. Appeal rejected in 2009.
    - Another group of perpetrators are those who sentenced persons accused of political crimes to death. So far, no prosecutor or judge involved in those fake trials has been brought to justice.

- Thirdly, there is a group of perpetrators who have been directly or indirectly involved in individual political murder cases, such as those of Stanisław Pyjas, Father Jerzy Popiełuszko or Grzegorz Przemyk. All these cases have been investigated immediately after the crime was committed, yet the investigation results were clearly manipulated. The cases have been re-opened after 1989 and people associated with original investigations were accused of obstructing the course of justice.
- Fourthly, there are communist security structures employees who are guilty of manslaughter (usually during crushing independence demonstrations and strikes).
- Finally, the main leaders of the communist state, such as generals Jaruzelski or Kiszczak, who have been accused of giving orders that led to murder, manslaughter, and persecution (e.g. events in Wujek minery or introducing Martial Law).
- At the moment, there is a number of investigations into communist crimes under way. Between 2000 and 2008, 230 cases against 355 persons have been filed with courts, resulting in 228 sentences. 126 persons received sentences of 1 to 10 years in prison, and the majority of these sentences was of up to 2 years and thus were conditionally suspended for a period of up to 5 years. 23 persons were ruled not guilty.

**Table 5.1.6 Statistics available on number of investigations, prosecutions and decision as well as pardons and early releases 1**

Member state	Investigations (preliminary proceedings)	Prosecutions	Decisions (convictions/acquittals)	Pardons/early releases
<b>Austria</b>	1945-1955: 136.829	28.148	23.477 (13.607 sentences, of which 43 death sentences; executed: 30; 29 life imprisonment and 341 prison terms of ten or more years)	
	1955 and afterwards: 5.000	48	43 verdicts: 20 found guilty (sentenced) and 23 acquitted	
<b>Belgium</b>	N.a.		War criminals: few Germans responsible for the persecution of the Jews were convicted for this (no data available)	
			Collaborators -Convictions by military tribunals: 52.778 (of which 3.165 lost the Belgian nationality and 5.350 financial sanction)	1944-1949: 18.726 persons obtained grace 1955: most convicted for collaboration left prison (release on parole)
			242 collaborators executed	



		Civic purges: 43.889	Civic purges: 21.889	
<b>Bulgaria</b>	N.a.	1992-1998: 4 (including the head of the camp, Petar Gogov, the warder, Nikolay Gazdov (charged with 12 murders), Tsviyatko Goranov (charged with 6 murders, but he died in custody), the head of the women's camp, Yuliana Ragzheva (charged with 2 murders), and the former Minister of the Interior, Mircho Spasov)	2 convictions (three-year prison sentences to the head of the women's camp and the warder)	
<b>Cyprus</b>	N.a.			Amnesty granted by President Makarios to those who took part in the coup
	N.a.	Assize Court in Nicosia: prosecution against Sampson for offences against the state	20 years of imprisonment (1976)	Sentence reduced in 1978 to 12 years and 8 months. In 1979, suspended of execution by the President of the Republic for health reasons
<b>Czech Republic</b>	Nazi regime			
	People's Courts: 132,549	38,316 people judged	21,848 sentences: 70.3% of whom were German, to varying terms of imprisonment. A further 455 Germans and 308 Czechs were sentenced to life imprisonment; 467 Germans and 253 Czech sentenced to death	
	National Court	83 Czech men tried,	65 convicted <sup>169</sup>	
	Communist regime 3.000	192 in 98 criminal cases	30 convictions (prison terms ranging from six months to five years) 17; Prosecution discontinued: -because barred by statute of limitations: 19; -because of death of the	Defendant granted amnesty: 5

<sup>169</sup> Benjamin Frommer, *National Cleansing: Retribution against Nazi Collaborators in Postwar Czechoslovakia*, Cambridge: Cambridge University Press, 2005.

			defendant: 4; -because the fact is not an offense: 1; -prosecution revoked: 1	
<b>Denmark</b>	N.a.	77 war criminals (Act No. 395 of 12 July 1946 on Punishment for War Crimes)	71 sentenced to punishments from 1 year imprisonment to death (death sentences not executed)	
		Leading German war criminal (Best, Pancke and Bovensiepen)	Prison sentences of 12, 20 and life respectively	
		Collaborators	13521 sentences for collaboration with the occupier. Prison sentences (majority less than 4 years) -Armed collaboration: 7.500 -Service with the German police or police-like units: 2.000 -Informers: 1.100 -Serious crimes: 600 - Of those, 78 sentenced to death (46 carried out)	
<b>Estonia</b>	N.a.	18 people for complicity with the 1949 deportation	8 convictions (suspended sentences). Remaining 10 died during trial	
		3 for indiscriminate killings	1 convicted for crimes against humanity (the rest died during trial)	
<b>Finland</b>	N.a.		7 leading Finnish politicians that had a decisive influence on the decisions to unite with Germany in the war 1941 convicted to prison from 2 to 10 years. Ex-president <i>Risto Ryti</i> : 10 years of imprisonment	
		1.600 army officers for illegal preparation of action resorted to weapons	1.488 (average 3-18 months of imprisonment). Leaders: 5 years imprisonment	
<b>France</b>	N.a.	High Court of Justice (March 1945-January 1949): judged Philippe Pétain, Pierre Laval, 106 ministers, secretaries of state and high-level civil	-8 death sentences (of which three were executed) -3 acquittals and 42 cases discharged	De Gaulle commuted Pétain's death sentence into life detention

		servants		
		Court of Justice (1944-1951)	96.753 convictions -Death sentences: 6.763 (of which 3.910 in absentia) Death sentence executed: 767; -Forced labour for life: 777; forced labour for set periods: 10.434 -Imprisonment: 26.289; -National indignity: 49.723 -Acquittals or cases dismissed: 8.867	Amnesty law to those who had committed acts for which the punishment involved loss of civil rights and a prison sentence of less than 15 years By 1964 all sent to prison for acts of collaboration were released
		1983-1988: Barbie, Touvier, Bousquet and Papon trials	Barbie: sentenced for crimes against humanity Touvier and Papon, Bousquet: sentenced for complicity with crimes against humanity Bousquet: (died during trial)	
<b>Germany (Nazi past)</b>	36.393 investigations	14.700 people indicted	6656 sentenced punishment ranged from death sentences (only applicable in the Occupation period) to short-term imprisonment of but a few months	
<b>Germany (GDR)</b>	100.000	1.021 prosecutions involving 1.737 defendants	1.286 of the 1.737 prosecutions ended with a judgment -Acquittals: 321 -Convictions: 523, of those 40 served prison sentences for 1 or more than 2 years)	
	Investigations for low-level harassment and terror: 20.502	629	157 convicted	
<b>Greece</b>	N.a.	Main trial (coup d'état): 23 defendants	-3 sentenced to death, immediately commuted to life imprisonment -13 sentenced to life imprisonment -5 sentenced to 20 years -2 found not guilty	
		Second major trial (Polytechnic uprising): 33 indictments	20 convictions (most of them prison sentences in excess of 25 years)	
<b>Hungary</b>	N.a.			
<b>Ireland</b>	Not applicable	Not applicable	Not applicable	Not applicable

<b>Italy</b>		Until December 1953, 43,000 accused of collaboration	-334 were tried in absence, 259 given the death penalty (with 91 executed) -4,000 freed under various laws	23,000 given amnesty during trial and 5,328 were pardoned (2,231 totally and 3,363 partially)
			War crimes: 9 convictions on war crimes (Kappler, Kesslering, Mackensen and Maelzer, Saevecke, Siegfried, Lehnigk-Emdene, Seifer, Nordhorn. All of them sentenced to life imprisonment); 1 on crimes against humanity (Priebke)	
<b>Latvia</b>	N.a.		-Alfons Novik: life imprisonment for supervising deportations - Vasilij Kononov: sentenced for war crimes <sup>170</sup> - Mihail Farbut: 7 years of prison for participation in deportations (released for health reasons) -Yevgeny Savenko: 2 years of prison for repression (civilians) - Nikolas Tess, sentenced for crimes against humanity (died in 2006)	
<b>Lithuania</b>	1992-2008: 237 pre-trial investigations were conducted	25 cases involving 37 accused persons	7 sentenced to imprisonment, including one for life. 4 found innocent. 5 persons deceased in trial before the court's sentence. 2 cases ongoing. 7 criminal cases (with 10 persons accused) remain unsolved	
<b>Luxembourg</b>	N.a.		5.242 convictions: 2.272 condemned to imprisonment and 12 to the death penalty (8 were executed; 4 were pardoned); 249 condemned to hard labour (from life long to 5 years); 1.366 to detention (between 1 and 20 years) and 645 to	-1946: 450 sentences were reduced in exchange of work in the mine clearance groups of the army  -1955: law granting amnesty to certain criminal offenses or commutation of certain sentences

<sup>170</sup> In 2008 however, the European Court of Human Rights delivered a judgement favourable to Kononov. The Court said that in the evaluation of the events of 1944, the Latvian courts had applied retrospectively international conventions adopted in 1949 and 1977 and at the time of the facts Kononov did not know that the killings and the burning of buildings at Mazie Bati village amounted to a war crime under the domestic and international law in force in 1944.

			imprisonment (5 to 20 years)	delivered against collaborators
<b>Malta</b>	Not applicable	Not applicable	Not applicable	Not applicable
<b>Netherlands</b>	N.a.		<p>Special Courts issued 14.562 convictions:                      -death sentences: 152 (40 executed);                      -prison: 14.332;                      -life imprisonment: 148;                      -&gt;15 years: 578                      -10-15 years: 1.158                      -5-10 years: 4.589                      -3-5 years: 3.623                      -1-3 years: 2.218                      -&lt;1: 2.018                      -other: 230</p> <p>Tribunals issued 49.920 convictions                      -internment: 36.935;                      -10 years: 136;                      -5-10 years: 1.398;                      -1-5 years: 19.250;                      -&lt; 1 year: 6.151                      -other punishment: 12.985</p>	<p>In the 1950's, 4 high rank German officials saw their sentences to death commuted to life imprisonment. In 1966 one was released for health reasons; 2 released and sent to Germany in 1989; the remaining one died in prison in 1979</p> <p>Leniency program: end of 1945, less than 100.000 people remained in the internment camps, a number gradually to decrease down to 60.000 (July 1946), 25.000 (March 1947) and 8.200 (January 1948)</p>
<b>Poland</b>	N.a.	-Adam Humer, director of the investigations department of the Ministry of Public Security in the years 1946-55 -9 other functionaries of the secret police	Sentences for Stalinist crimes: -Humer: 9 years of prison -Functionaries of Secret Service: 4 officers to 8 years each, 1 to 7 years, 3 to 6 each and 1 to 4 years in prison	
<b>Portugal</b>	N.a.	2.667 political police officers and collaborators accused	Military Court Sentences (1976-1982): Prison: -< 1 month: 995 -1 to 6 months: 825 - 6 months to 1 year: 161 -1 to 2 years: 396 -more than two years: 43 -loss of political rights: 103 Absolved: 144	
<b>Romania</b>	n.a.	147 accused for the events connected with the 1989 Revolution	Prison: 67 (2 death sentences (Nicolae and Elena Ceausescu)) Prison and military rank demotion: 20 Prison and denial of civil rights: 30 Acquittals: 24	-Reduced sentence by decree-law 3/ 1990: 18 -Pardoned in virtue of 1994/1996/2000/2003 decrees: 16 -Reduced sentence by General Prosecutor: 7
		14 accused for other communist crimes	Prison: 14	

<b>Slovakia</b>	Nazi regime N.a.	31.240	8,962 sentenced, 22,278 acquitted	
	Communist regime n.a.	1 (General Alojz Lorenc)	Bratislava military court: suspended sentence of fifteen months	
<b>Slovenia</b>	N.a.	Indictments against 2 suspects for crimes against humanity	Rejected as a consequence of a suggestion of the State Prosecution	
<b>Spain</b>	–	–	–	-General indult (1975) -Amnesty Law for acts of political inspiration (1977)
<b>Sweden</b>	N.a.		John Lönnegren and Robert Paulsson for collaboration	
<b>United Kingdom</b>	Not applicable	Not applicable	Not applicable	Not applicable

Source: Own elaboration from information provided by experts in Member States

### 5.1.5 Treatment of victims in legal processes

- **Germany** In the immediate aftermath of the war, survivors of concentration camps and death marches, former prisoners of war or foreign workers were able to testify to their ordeal.
- **Poland** Victims could supply further information to the archives and could also initiate additional investigations. Names of their perpetrators would be made available for them.
- **Slovenia.** The rights of victims in criminal proceedings in Slovenia have been regulated in the Criminal Procedure Act (Official Gazette of the Republic of Slovenia, No. 8/06 - Officially Consolidated Text 3). Criminal Procedure Act gives the possibility for victims to be heard during proceedings and to supply evidence. Victim is during the investigation entitled to call attention to all facts and offer evidence relevant to establishing the commission of a criminal offence, the perpetrator thereof and the property rights claims of the victim. At the main hearing they are entitled to produce evidence, pose questions to the witnesses and experts and comment on and clarify their depositions, and make other statements and motions. The victim is also entitled to inspect the file and the material evidence. The investigating judge and the presiding judge must acquaint the victim with the rights he/she is entitled to.

In year 2005 two important laws were passed: the *Witness Protection Act* (Official Gazette of the Republic of Slovenia, No. 113/05) – and the *Crime Victims' Compensation Act* (Official Gazette of the Republic of Slovenia, No. 101/05). The Crime victims' Compensation Act covers a new national scheme and encompasses also all the cross-border aspects envisaged by the provisions of the Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. This Act regulates the right to compensation to victims of violent intentional crime and their dependants, the respective claiming proceedings and the authorities that make decisions and participate in the decision-making proceedings on the respective rights. Types of recognized damages are physical pains or impairment of health, Suffering, Loss of maintenance, Medical and

hospitalization expenses, Funeral expenses, Damages for destruction of goods, Expenses for compensation claims.

## 5.2 Lustration mechanisms (purges, screening and vetting mechanisms)

A variety of terms apply to the procedures to deal with members of repressive regime which without having necessarily committed criminal offences are nevertheless considered as being collaborators and/or perpetrators. Broadly, the terms of “*denazification*” and “*decommunization*” have been used. Denazification refers to the policy implemented after WWII and as a consequence of Allied powers agreement to eliminate any trace of Nazi presence in social life. Hence, the policy comprehended several measures from criminal justice to education. This applied mainly in Germany and Austria. In other occupied countries (Belgium, Denmark; France, Luxembourg and the Netherlands), processes of lustration addressed mainly purges of collaborators. *Decommunization*, on the other hand, has an analogous meaning: eliminating traces of communist regimes in society. As for the more specific procedures, the notion of *purge* appears often associated indifferently with criminal proceedings in countries which were under Nazi occupation during WWII (the Netherlands, Denmark) but also with administrative procedures. *Lustration* is a word which originally meant all the methods of purification and expiation among the Greeks and Romans. Nevertheless and according to Williams, Szczerbiak and Fowler,<sup>171</sup> the modern use of this term is related to its use by Slavophone activist: to lustrate someone was to check whether the name appeared in a database. It came to public discourse during the discussion on Czechoslovakia files in 1990. It means to ascertain whether an occupant or candidate for a particular post worked or collaborated with the communist party. *Vetting* has a very similar meaning: a process of examination and evaluation, generally referring to performing a background check on someone before offering him or her employment. Screening has a similar meaning. These terms are used often interchangeably among processes and instruments in different member states.

In 1996, the Council of Europe’s Parliamentary Assembly proposed guidelines to ensure that lustration laws comply with the requirements of a state based on the rule of law. These guidelines were developed in 2006 by the Office of the United Nations High Commissioner for Human Rights expressing that fundamental due process guarantees should be observed in any lustration mechanism and include the initiation of proceedings within a reasonable time and generally in public; notification of the parties under investigation of the proceedings and the case against them; an opportunity for those parties to prepare a defence, including access to relevant data; an opportunity for them to present arguments and evidence, and to respond to opposing arguments and evidence, before a body administering the vetting process; the opportunity of being represented by counsel; and notification of the parties of the decision and the reasons for the decision. As an overall rule, a hearing should be guided by the principle of “equality of arms.”<sup>172</sup>

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<sup>171</sup> Williams, Kieran; Aleks Szczerbiak and Brigid Fowler, Explaining lustration in Eastern Europe: ‘A post-communist politics approach’ SEI Working Paper No. 62, 2003, available at <http://www.sussex.ac.uk/sei/documents/wp62.pdf>

<sup>172</sup> Office of the United Nations High Commissioner for Human Rights, “Rule-of-Law Tools for Post-Conflict States. Vetting: an operational Framework”. United Nations, New York and Geneva, 2006, p.26

- **Austria** There was an administrative process of purging Nazis from important positions in government positions and business, or denazification implemented by both the Four Powers and the Austrian government. The *Verbotsgesetz* (Prohibition Law; 1945) outlawed the Nazi party and all National Socialist organizations, transferred Nazi property to the Austrian state, and criminalized attempts to recreate Nazi organizations. NSDAP party members were also required to register themselves. By the summer of 1947, some 960 people had been removed from influential positions in government and the private sector, 70,000 (of 300,000) civil servants had been suspended and 36,000 had been dismissed from private sector jobs. But the law also allowed petitions for exemption based on the claim that one was not an “active” party member; a claim made by 85% of registered Nazis. An initial problem was that the law did not distinguish between “big fish” and “small fry” fostering resentment.<sup>173</sup> The *Nationalsozialistengesetz* (revised *Verbotsgesetz*) (1947) specified various crimes committed under Nazi rule and created two categories of former Nazis. Prominent Nazis or those who had committed offenses were categorized as “*Belasteten*” (incriminated) and those who deemed only followers were called “*Minderbelasteten*” (less-incriminated). Article 4 of the 1947 law also expanded registration to those who were not party members but actively supported the regime. This demarcation meant that there were some 43,468 incriminated Nazis (8% of the total registered) and 487,067 less-incriminated Nazis. As a result of the 1947 revision, an additional 22,000 public servants were suspended.<sup>174</sup> Finally, some *Atonement Measures Required by the 1945 and 1947 Laws* for the implicated and less-implicated Nazis. The implicated Nazis were required to pay an additional 20 percent on their income taxes for five years, surrender 20- to 70-percent of their capital to the state. Political rights were suspended as well. They were also barred for life from university and other public positions. The less-implicated were assessed a 10 percent additional income tax penalty for three years, stripped of 10- to 40-percent of their capital. They were also barred from academic and public positions, but were able to apply for exemptions.<sup>175</sup> As for Nazi teachers from schools, the greater problem was the huge number of implicated teachers. Some 60 percent of *Volksschule* teachers, roughly 50 percent of *Mittelschule* teachers, and approximately 25 percent of *Fach-* and *Berufsschule* teachers had some direct connection to the Nazi Party.
- **Belgium** adopted two different types of purges:
  - *Administrative purge.* The Decree law of 8 May 1944, enacted by the London government organized a system of lustration for the civil service. Civil servants of ministries and institutions under control of the state, magistrates, and governors of provinces, mayors, members of the deputation, aldermen and presidents of local poor relief commissions could be suspended for six months. Following the Decree Law of 5 May 1944 the appointment of many civil servants between 16 May 1940 and the Liberation was null and void.

<sup>173</sup> Garscha, Winfried, “Entnazifizierung und Gerichtliche Ahndung von NS-Verbrechen,” in Tólos, Hanisch, Neugebauer, and Sieder, eds., *NS-Herrschaft in Österreich: Ein Handbuch, Obv & Hpt*, 2001, p. 852-861.

<sup>174</sup> *Ibidem.*, 859-861.

<sup>175</sup> See *Ibidem.* Also see the summary (based on Garscha’s work) in the article, Christian Schafferer, “Transitional Justice in Taiwan: An Austrian Perspective.,” *eastasia.at*, Vol. 6, No. 1, June 2007.



Civil servants who were under disciplinary or judicial inquiry or whose attitude during the occupation had not been ‘absolutely irreproachable’ had to be suspended. Moreover, the Decree Law made it possible to suspend civil servants who could not be considered as unpatriotic, but who did not have the capacities to deal with the problems linked to the reorganization of the administration at the Liberation of the country or for whom it was ‘from a point of view undesirable’ to remain in office. Civil servants who had been punished or put on the list of the military prosecutor automatically lost their job. Estimates are that 10.659 civil servants of the central administration, (65% of the civil servants employed in 1945), were concerned by a disciplinary sanction. 7.278 civil servants were dismissed. The law of 14 June 1948 on the civic purge and the law of 19 May 1949 mitigated the effects of the administrative purge. In 1951, two Royal Decrees paved the way for a revision of the initial decisions. 1278 civil servants requested the revision of the initial sanction.

- *Civic purge.* By decree-law of 19 September 1945 on the so-called ‘civic purge’, individuals, who had held leading positions in collaborationist parties, organizations or institutions, could be excluded from public and political life by depriving them of their civil and political rights for a period of 20 years or for life.<sup>176</sup> Military justice organized the civic purge. The military prosecutor drew up a list of persons who met the criteria of the decree-law. People on the list were automatically deprived of the rights enumerated in the decree-law, although they could make an appeal to the tribunal of first instance<sup>177</sup>. As in article 123 sexties, the dissolution of rights following the decree law of 19 September 1945 was not a penalty and, as a consequence, these sanctions were not subject to pardon, rehabilitation or probation. Specific regulations were also elaborated for civil servants, teachers, and local politicians aimed at a purge of their profession.<sup>178</sup> Those put on the list of the military prosecutor could no longer become civil servant, barrister, teacher, university professor, journalist, banker or stockbroker<sup>179</sup>. Certain professions as the pharmacists and physicians organized the purge of their profession. Political parties, trade unions, cultural organizations excluded employees and officials who behaved unpatriotic according to self defined standards. These ‘private purges’ are not well researched and procedures are not clear.

<sup>176</sup> ‘Arrêté-loi relatif à l’épuration civique. 19 septembre 1945’ in, *Moniteur belge*, 1-2 octobre 1945, pp. 6333-6341.

<sup>177</sup> *Ibidem*.

<sup>178</sup> Huyse, Luc; Dhondt, Steven, *Onverwerkt verleden. Collaboratie en repressie in België 1942-1952*, Leuven, 1991. Also published in French: *La répression des collaborations. 1942-1952. Un passé toujours présent*, Brussels, 1993., pp. 35-40. These legal measures are discussed in the section on lustration.

<sup>179</sup> John Gilissen, ‘Kroniek. Justitie’ in *Tijdschrift voor bestuurswetenschappen*, 1946, I, 1, p. 57-64.

- **Bulgaria** *The Law for Temporary Introduction of Some Additional Requirements for the Members of the Executive Bodies of Academic Organizations and the Supreme Certifying Commission*, 24 December 1992 forced the replacement of the staff in the inquiry department and in the judicial system, inherited from the last years of the communist regime. There were also other attempts to introduce lustration measures in other laws, concerning the state administration, but they either failed to pass in Parliament, or they were rejected by the Constitutional Court.
- **Cyprus** By decision of the Council of Ministers of 31 January 1980, 62 public servants (members of the Army, the police, public education and other public service) had their services terminated in the public interest, on the ground that it would be very detrimental to allow them to remain in the service of the Republic, since – after thorough examination of available material – they had been considered as having collaborated with the army during the coup of 15 July 1974. None of them was appointed by the coup ‘government’, but they were all lawfully serving at the time of the coup. The legality of the decision was challenged before the Supreme Court, which upheld its constitutionality in *Petros Christodoulides and Others v. The Republic of Cyprus, through the Council of Ministers*.<sup>180</sup> Still, this decision has raised questions of double standards which have remained unanswered.  
More than a decade later, the Council of Minister by decision of 22 April 1993 revoked the decision of 31 January 1980. By the *Law on State Servants of 1993*<sup>181</sup>, the House of Representatives legislated to the effect that these 62 servants could not be reinstated. This Law was found to be unconstitutional by a majority (9–4) decision of 10 March 1994 of the Supreme Court in *President of the Republic v. House of Representatives (No. 4)* on the ground that it encroached upon the constitutional principle of separation of powers.<sup>182</sup> As a consequence, the 62 servants were either reinstated to their jobs or granted pension.
- **Czechoslovakia and Czech Republic (Lustration)** The Act No. 451/1991 *Coll. on Laying Down Some Further Preconditions for the Execution of Some Offices in the Apparatus of the State of the Czech and Slovak Republic* (The “Lustration Law”) excludes persons involved in certain elements of the communist regime from employment in a range high public influence jobs. It applies to those who, between 25 February 1948 (the communist takeover) and 17 November 1989 (the beginning of the Velvet Revolution), fell into the falling categories: Communist Party officials from the district level up; employees of the State Security, including not only full-time ŠtB officers but also those who collaborated with them part-time by signing secret agreements to inform on others; People’s Militia members; political officers in the Corps of National Security; members of purge committees in 1948 or after 21 August 1968 (the Soviet invasion); students at KGB schools for more than three months, and owners of ŠtB “conspiracy apartments.” Employees and applicants for employment have to be certified by the Ministry of the Interior or be dismissed, demoted, or rejected for employment. Citizens 18 years and older can ask to have their files reviewed. Political parties, publishers, and radio and television producers may have an employee who shapes the intellectual content of

<sup>180</sup> 1984 (3) C.L.R. 1297.

<sup>181</sup> *Ο περί Κρατικών Υπαλλήλων (Υπαρξη Ασυμβίβαστου) Νόμος*.

<sup>182</sup> 1994 (3) C.L.R. 167.

communication media screened if that staff member consents, and the results not publicized unless the person agrees. Anyone can prompt the investigation of a senior official for a deposit of 1,000 crowns (around \$35 US at the time of the law's passage), which they lose if the official's record was clean. Constitutional Court decision of November 1992 (Pl. ÚS 1/92), concerning Act No. 451/1991 ("Lustration Law") removed "category c" (candidates for collaboration) from law's purview and otherwise affirmed its constitutionality. The Constitutional Court decision of 5 December 2001 (Pl. ÚS 9/01), concerning Act No. 451/1991<sup>183</sup> affirmed Lustration Law's constitutionality (for second time).

- Act No. 279/1992 *Coll. of the Czech National Council on Some Further Preconditions for the Execution of Some Offices Secured by Designation or Appointment of Servicemen of the Police of the Czech Republic and of the Prison Service* extends lustration to areas of police and prison service. In 1992, the Czech National Council passed Act No. 279/1992 Coll. on Some Further Preconditions for the Execution of Some Offices Secured by Designation or Appointment of Servicemen of the Police of the Czech Republic and of the Prison Service, which extended lustration into these realms. The lustration law was set to expire after five years, but in 1995, the Parliament passed Act No. 254/1995, extending its application for five years, and in 2000, it extended it indefinitely via Act No. 422/2000. As of the beginning of November 2005, the Ministry of Interior had issued 451,000 lustration certificates, and approximately 2.03 percent were positive, meaning that the person fell within one of the law's categories.
- Two ulterior acts extended the duration of Lustration: Act No. 254/1995 Coll. extended Act 451/1991 (Lustration Law) for five years and Act No. 422/2000 extended Act 451/1991 (the Lustration Law) indefinitely.
- **Estonia** "*Written Oath of Conscience*". A special Constitutional Assembly convened in September 1991 agreed to install a special "written oath of conscience" [*süümevanne*] which would be required of all persons seeking elected or appointed office whether national or local through 31 December 2000. This oath would ensure that the persons in question had never been a member of any foreign security service or participated in the active persecution of fellow citizens. The measure was codified in a special "Implementation Act" of the Constitution, which specified a number of transitional provisions for the new legal order. In June 1992, the procedure was spelled out in *Procedure for Taking the Oath of Conscience Act*<sup>184</sup> which clarifies to whom the oath must be submitted. The Act was extensively amended on 22 September 1994. In addition, the 1994 amendments would define specifically the full range of possible collaboration with the KGB. This would, in turn, become a benchmark for the 1995 ex-KGB agent disclosure law. When the procedure was in force, both the Estonian Security Police Board and the State Prosecutor's Office had primary responsibility for gathering

<sup>183</sup> Nález Ústavního soudu 35/2002 Sb. k návrhu skupiny 44 poslanců na zrušení zákona č. 451/1991 Sb.

<sup>184</sup> "süümevande andmise korra kohta", (RT 1992, 31, 408) and amended (RT I 1994, 68, 1170).

information about possible violations of the oath. Where sufficient information was uncovered, the State Prosecutor's Office had the right to petition the courts for a removal of that person from her post. Under the relevant legal acts, *the Estonian Security Police Board* is given sole responsibility for registering the names and other pertinent information regarding former KGB and other security service agents.

§ 6. Until 31 December 2000, a candidate for the position of President of the Republic, to the Riigikogu or to a local government council, or a person who seeks the position of Prime Minister, minister, Chief Justice of the Supreme Court, justice of the Supreme Court, judge, Chancellor of Justice, Auditor General, President of the Bank of Estonia, Commander or Commander-in-Chief of the Defence Forces, or any other elected or appointed office in a state or local government body, shall take a written oath that he or she has not been in the service or an agent of a security organisation, or of an intelligence or counterintelligence service of the armed forces of a state which has occupied Estonia, nor participated in the persecution or repression of persons because of political beliefs, disloyalty, social class or service in the civil or defence service of the Republic of Estonia.

If a court proves that the information confirmed in the oath is untrue, the candidate shall be struck from the list of candidates, or his or her mandate shall be voided, or the person shall not be appointed to a position set out in paragraph one of this section, or the person shall be released from office.

§ 7. A person who wishes to remain in a position specified in paragraph one of § 6 which he or she assumed before the convention of the Riigikogu must take a written oath within thirty days after the convention of the Riigikogu. If a person refuses to take the oath or if a court proves that the information confirmed by the oath is untrue, the person shall be released from office.

The procedure for taking the oath shall be enacted by the Supreme Council before the elections to the Riigikogu and for President of the Republic are declared.<sup>185</sup>

- **Germany (Nazi period)** At the Conference of Potsdam (17 July to 2 August 1945), the US, the United Kingdom and the Soviet Union declared their intention to remove all members of the NSDAP who were more than nominal members from public or semi-public offices and to be replaced by persons devoted to establishing a democracy in Germany. Denazification was first in the hands of the Allied themselves and later passed into German responsibility.
  - *Control Council Law No. 2* of 10 October 1945, abolished the NSDAP and its sections (such as SS and SA) and associated organizations, any new formation of them was outlawed. This left the question of how to deal with the estimated 8.5 million Germans who had been members of the NSDAP, by the end of the war there were about 6 million members. *Control Council Directive No. 24* of 12 January 1946 aimed at establishing common guidelines for denazification in all occupation Zones and at the removal of nationalsocialists or people opposed to the democratizing endeavours of the Allied. It defined that those who had been active party members and had held important public or semi-public offices or positions of influence in private enterprises to be immediately removed without the rights to pensions. Besides war criminals, high-ranking civil servants and members of authorities on Reich level it also concerned all NSDAP members who had joined the party before 1937, all who had

<sup>185</sup> Official translation as issued by the Estonian Legal Language Centre.

been more than nominally active for the party, all who were working on a full-time basis for the NSDAP or in party organizations (such as the *Parteikanzlei* or the *Kanzlei des Führers*), all who held officers' ranks in SS, SA or the Hitler Youth or affiliated organizations as DAF, NS-Volkswohlfahrt or several NS professional associations for doctors, teachers or jurists.

- On 12 October 1946 the Allied Control Council issued *Directive No. 38* which specified the arrest and punishment of war criminals, nationalsocialists and militarists. It ordered to sort former nationalsocialists into five groups. Punishments included internment in work camps, a debarment from practising particular professions or trades on political grounds, the loss of entitlement to benefits, loss of a percentage of income and restrictions on suffrage as well. The groups were:
  1. major offender,
  2. offender,
  3. lesser offenders,
  4. mere supporters
  5. exonerated.

Persons categorized in groups 1 and 2 could be punished with internment of up to 10 years, loss of pension benefits and official debarment on political grounds from practicing their particular profession or trade. Both *Control Council Directive No 24* and *No. 38* were based on the American idea of denazification.

- The "Law on the end of denazification" of 11 May 1951 (entry into force 1 July 1951) marked the end of denazification in the West. On 10 April 1951, the German parliament had passed the "Law on the regulation of legal position of persons falling under Article 131 of the basic law" (the so-called "131er law"). With the exception of persons belonging to group 1 (main offenders) and 2 (offenders), this law allowed return to public office.
- **De-nazification (USA sector)** The American occupiers introduced a questionnaire with 131 detailed questions in their zone which was then dealt with by the Special Branch of the Public Safety Division. The detailed questionnaires on one's personal role during the Third Reich and membership in Nazi organisations were then checked against the card file of party members of the former Nazi party which had been discovered in a paper mill shortly before its destruction. Again, those concerned were put into groups. Group 1 was termed mandatory removal: anybody with a membership in the NSDAP dating before 1 May 1937, officers of the Waffen-SS, SA and NSKK and NSFK (branches of the SA) as well as all members of the SS and SA members of before April 1933 was to be removed from any office or not to be employed. For "Discretionary removal, adverse recommendation" Special Branch recommended the dismissal, but left the decision to the responsible officer of the Military Government. For the category (discretionary, no adverse recommendation) no recommendations were made. Group 4 meant that there was no

objection being made and a categorization in Group 5 stood for a recommendation for employment. Mainly, the denazification measures of the American Military Government were aimed at the civil service. About 336.892 persons were affected by denazification measures of the Americans. 1.39 million questionnaires had been submitted by the end of March 1946, 1.26 million questionnaires had been analyzed and evaluated. 24% of all employed in the civil service were considered to be mandatorily removed, for 8% a dismissal was recommended. Until March 1946, 139.996 members of the civil service and 68.568 employed in the industry or trades were dismissed. With the Law for the liberation from Nationalsozialismus and Militarismus (*Gesetz zur Befreiung von Nationalsozialismus und Militarismus of 5 March 1946*), denazification was passed into German hands. Instead of formal criteria, the establishment of individual guilt was at the center of the so called liberation law. Everybody aged 18 and above had to hand in questionnaires to the Spruchkammern (denazification court) which would then categorize them into 5 groups (*Hauptschuldige, Belastete, Minderbelastete, Mitläufer, Entlastete*). Denazification courts on city and county levels were headed by one chairman (preferably a professional jurist) and two committee members. Denazification courts of appeal also existed. More than 20.000 people participated in the Spruchkammern in the American Zone. Expiatory measures could involve debarment from professions, a confiscation of property, loss of pensions and civil rights. In the American Zone, 13.41 million questionnaires were handed in and evaluated by the *Spruchkammern* until 31 August 1949. The denazification courts in the American Zone dealt with 950.126 cases, 1654 persons were put in Group 1 (major offenders), 22.122 in group 2, 106.422 persons in Group 3, 485.057 persons in Group 4 and 18454 persons in Group 5 (exonerated). 89.772 cases were abandoned due to amnesties.

- **De-nazification (UK sector)** The British had a more pragmatic approach, but also tried to mainly purge the civil service. Until 31 December 1945, 538.806 questionnaires had been evaluated: 43.288 Germans were deemed to fall under compulsory removal, 28.585 under discretionary removal. 41.486 applications (of 419.492 applicants) for jobs in the civil service were rejected. In the British Zone, commissions for denazification were established on county and district level. From February 1947 to February 1950, 2.041.454 Germans were denazified. 27.177 persons were put in group 3, 222.028 put into group 4 and 1.191.930 were considered exonerated (group 5). For 512.651 people the law was not considered applicable (*nicht betroffen*); against 87.668 people the procedures were abandoned. The numbers for groups 1 and 2 are not known, as well as the numbers for cases settled before February 1947.
- **De-nazification (France sector)** In the French Zone, Germans were allowed to participate in the denazification procedures from as early as October 1945. German commissions checked questionnaires and suggested expiatory measures. In the spring of 1947, the American model of Spruchkammern and categorization into 5 groups was

adopted in the French Zone. 669.068 Germans were denazified, 13 persons were put into Group 1, 938 in Group 2, 16.826 in Group 3, 298.789 in Group IV, 3489 in Group 5 as exonerated. 71.899 procedures ceased due to the youth amnesty.

- **DE-nazification (USSR sector)** In the Soviet Zone, denazification from the beginning meant not only a purge, but was linked with a restructuring of society. The Soviet Military Administration relied on the support by anti-fascist committees (*Antifa-Ausschüsse*). Justice, inner administration and education were most thoroughly denazified. In administration, economics and culture, key positions were taken over by communists. Until 1946, 390.478 Germans were dismissed from their positions or not readmitted. In December 1946, commissions on county and Länder level were established. In 64.578 cases dismissals were decreed. The Soviet Military Administration of Germany (SMAD) issued order No. 201 (Befehl Nr. 201) of 16 August 1947 which established special criminal divisions at the district courts. With order No. 35 of 27 Februar 1948, the Soviet occupation authority ordered the end of denazification as all industries, mining or banks were declared people's property and had been socialized. Those arrested in the Soviet Zone of occupation faced a harsh fate: 122.671, maybe more, people were arrested. 42.889 interned died due to poor conditions during internment, 12.770 internees – according to Soviet estimates, about 25.000 according to Western assumptions - were deported to the Soviet Union for forced labour. When the last internment camps (termed special camps in the Soviet Zone) were dissolved, 15.038 of 29.632 interned were released, 10.513 who had been sentenced by Soviet Military Tribunals were passed into prisons in the GDR, 3432 were handed over to be tried in the GDR. This led to the infamous Waldheim trials (special chambers of the district court of Chemnitz located at Waldheim). Subject of the sentences was frequently not the former membership in NSDAP or other organizations, but mere criticism of the new order, derogatory remarks about the occupying authority or communists in the GDR.

**GDR** The *Unification Treaty* had stipulated that East German government employees should be excluded from employment if they failed to satisfy the usual West German requirements, including the need to support the 'free democratic basic order'. The procedure was simple: employees would fill out a questionnaire, which would be discussed by a committee which also heard the employee and then made a decision. As initially envisaged, all former party and Stasi members would have failed the West German 'loyalty test'. However, in a 1995 decision, the Constitutional Court held that that the West German 'Radicals Decision' could not retroactively be applied to the GDR public service, and that the behavior of state employees since 1990— i.e. their willingness and ability to adapt to a 'free democratic basic order— should be taken into account. Government authorities and private employers could request their employees' Stasi files and make decisions on an individual basis; vetting was not obligatory. If cooperation with the Stasi had ceased by 1975, there were no grounds for dismissal; neither were there if the person was not yet 18 during the period in question, or performing

compulsory military service or only involved guarding Stasi installations.<sup>186</sup> The BStU received about 1.75 million applications for vetting, before the law requiring vetting of civil servants and politicians was revised so as to make only vetting of people in very high positions possible.<sup>187</sup> Most of those assessed by the BStU as having been involved with the Stasi have nevertheless retained their jobs, while those dismissed had at least recourse to the labour courts. Finally, those who were deemed to be *systemnah* [closely associated with the state], such as employees of the Stasi, military, and academics had their generous ‘special pensions’ which the regime has granted them, cut. However, in the spring of 1999, the Constitutional Court ruled that such cuts were unconstitutional, because they violated the principle of equality (*Gleichheitsgrundsatz*) as well as the right to property, both of which are enshrined in the Basic Law (see Article 3, paragraph 1 for the *Gleichheitsgrundrecht* and Article 14, paragraph 1 *Basic Law* for *Eigentumsgarantie*).

- **France** Illegal purges and abuses took place in many regions. A number of Orders regulated the purges:
  - The *Ordinance of 10 September 1943* established a Commission for the purge of the French administration in liberated North Africa. The Commission was charged with suggesting measures to be taken in the case of all officials and civil servants who, since 16 June 1940, have by their acts, their writings, or their personal attitude, either encouraged enemy undertakings, or prejudiced the action of the United Nations [the Allies] and of Frenchmen who are resisting; or have interfered with constitutional institutions or basic public liberties; or knowingly derived or attempted to derive any direct material gain from the application of regulations enforced by the *de facto* authority [Vichy regime] contrary to the laws in force on 16 June 1940. The Commission was to distinguish between those who merely obeyed orders without having the authority necessary to challenge them, and those who, ‘going beyond their strictly professional obligations, knowingly associated themselves with an anti-national policy’.
  - The *Ordinance of 7 January 1944*<sup>188</sup> authorized the forced retirement of civil servants in specific cases. The *Ordinance of 26 August 1944 instituting national indignity*<sup>189</sup> targeted “every French citizen recognized as guilty of having either given direct help voluntarily in France or abroad, to Germany or to its Allies, or having voluntarily undermined the unity of the nation or the freedom and equality of the French citizens after 16<sup>th</sup> June 1940”. It listed a number of bodies of collaboration, including the *Service d’ordre légionnaire, la milice, la milice antibolchévique*

<sup>186</sup> Gary Bruce, *Access to Secret Police Files, Justice, and Vetting in East Germany since 1989*, German Politics and Society, vol. 26 (2008), 82-111; here 101.

<sup>187</sup> *Ibidem.*, 102.

<sup>188</sup> *Ordonnance du 7 janvier 1944 relative à la mise à la retraite d’office des fonctionnaires, Comité français de la libération nationale*, De Gaulle, Alger.

<sup>189</sup> *Ordonnance du 26 août 1944 instituant l’indignité nationale, Gouvernement provisoire de la République française*, De Gaulle, Paris.



and others, membership in which would be treated as a crime. Publishing articles or books, or giving lectures favouring the enemy, promoting collaboration with the enemy, racism or totalitarian doctrines would also be considered criminal (Art. 1). In relation to its retroactive effect (and hence its eventual violation of the Criminal Code), it was argued that the system of national indignity was not part of the criminal order, but was based on the terrain of political justice, and its judgments could not be pronounced beyond six months after the total liberation of France.

- *Ordinance of 27 June 1944*<sup>190</sup> instituted the purge of the civil service in France itself, with conditions similar to those of the September 1943 ordinance. The scope of the ordinance applied not only to the administrative services, but it included the armed forces, the police, the ‘irremovable’ judiciary and employees of semi-public, state-subsidized entities. It authorized the immediate suspension of all suspect civil servants at half pay while awaiting a final decision and gave procedural guarantees for the accused. The actual purge was left to each Ministry. Administrative sanctions ranged from official reprimand to dismissal without pension. According to statistics given by the Ministry of Justice at the end of 1950, 11.343 Vichy civil servants were subject to legal purge measures.<sup>191</sup>
- Departmental Committees of Liberation (*Comités départementaux de libération*) had a decisive action with regard to both legal and non-legal purges. The purge of the Vichy *magistrates* raised a particular problem and for this, on 7 September 1944, the *Central Commission of purge of the Magistrature* was created.
- **Greece** Lustration mechanisms focused on four institutions: the military and security forces, the civil service, the judiciary, and higher education.
  - 58 members of the Police were prosecuted, of whom 56 (97%) were subsequently tried and 32 (57%) convicted; 34 members of the Gendarmerie were prosecuted, of whom 33 (97%) were tried and 24 (73%) convicted. Lastly, 99 members of the Army were prosecuted, resulting in 95 being tried (96%) and 57 (60%) convictions. Vetting was limited to the highest-ranking officers.
  - All general secretaries of ministries, all prefects and provincial governors, and all mayors and members of town councils were replaced in the first weeks after the transition took place. Likewise, the presidents and directors of various public bodies and state-owned companies were replaced.
  - Vetting affected only a few top positions of the judiciary—ultimately only twenty-three cases were dealt with by the Highest Disciplinary Council.

<sup>190</sup> *Ordonnance du 27 juin 1944 relative à l'épuration administrative sur le territoire de la France métropolitaine, Comité français de la libération nationale, De Gaulle.*

<sup>191</sup> Beigbeder, Yves, *Judging war crimes and torture: French justice and international criminal tribunals and commissions (1940-2005)*, Leiden; Boston: Martinus Nijhoff, 2006, p. 178 and 179.

- A purge took place in the institutions of higher education, largely due to the pressure from the highly politicized student movement. The Constitutional Act of September 3, 1974 removed from the ranks of the faculty all those who had been appointed illegally during the dictatorship. Thirty-five professors from seven universities were thus removed. Additionally, a Special Disciplinary Council was set up to review complaints against faculty members who had shown “antidemocratic behavior and assisted the dictatorship in various ways.” The Disciplinary Council also reviewed automatically the cases of faculty members that had served in important governmental or state positions. Overall, the Board reviewed ninety-two cases of academics of which seventy-eight suffered some disciplinary measure, including temporary suspension.
- **Hungary**
  - **Screening** The screening law was passed by the government through parliaments two months before 1994 elections (Act XXIII of 8 March 1994 *on the Screening of Holders of Some Important Positions, Holders of Positions of Public Trust and Opinion-Leading Public Figures and on the History Office*). The law affected about 10.000 positions, including member of parliament, ministers, deans and heads of university departments, judges, editors of leading newspapers and those who had been members of the “law and order” squads in 1956 (involved in counter-insurgency), or had belonged to the Crossed Arrow Nazi party. Its stated purpose was to prevent anyone who had collaborated with the III/III Department of Interior Ministry (the political police) from holding such posts. Under the law, if the person belonged to one of the already mentioned categories and did not resign voluntarily, their name and relationship with these organizations would be published in the official gazette. The law also provided for the creation of two groups of three judges, which would examine the records and look for files on anyone holding relevant posts. The process was set to last from July 1994 to June 2000. In 2030, the list of agents of the III/III Department will be made public. In July 1996 (*Népszabadság*, 6 July 1996) the reduction of law scope was approved, it limited the number of people under examination to 540 posts. Act XC of 2000 extended the scope of mandatory screening.
  - **Parliamentary investigation.** On 9 July 2002 the Hungarian Parliament set up two investigation Commissions:
    - 1<sup>st</sup> Committee chaired by Hungarian Democratic Forum deputy Laszlo Balogh was set up to investigate Medgyessy’s career as a secret agent and establish, whether he had worked for Division III/III (domestic intelligence) or Division III/II (counter-intelligence).
    - 2<sup>nd</sup> Committee chaired by Free Democrats deputy Imre Mecs set up at the government’s request to look into the past of all post-communist government officials. The Committee explored the past of some 200 senior top

public officials by relying on information provided by the National Security and the Historical Offices. The final report submitted to the parliament included no names. On 31<sup>st</sup> July the Committee announced that five unnamed ministers of the previous cabinet were communist spies, as well as the information that a former minister signed a cooperation pledge and three others filed information reports; soon afterwards Mecs announced that 10 former ministers had collaborated with the *Allamvedelmi Hatosag* (“AVH” state security service). Mecs wanted to release the names of those individuals.

- Discharging secret services. Act X 1990 ruled the termination of the state security tasks of the Interior Ministry and laid down the procedure for authorizing special clandestine methods. On 21 January 1991 the Main division III/III was disbanded without the legal successor.
- **Lithuania** On 16 July, 1998 the *Law on Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of this Organisation* (16 July 1998, No. VIII-858) was passed. This law recognizes the USSR State Security Committee as a criminal organisation. Furthermore, the law imposes certain restrictions on the present activities of former permanent employees of the KGB (describing the cases in which the restrictions shall not be applied).
  - Lustration mechanism operates according to the *Law of the Republic of Lithuania on Registering, Confession, Entry into Records and Protection of Persons who have admitted secret collaboration with special services of the former USSR*. (23 November 1999, No. VIII-1436 (as amended by the 13 June 2000 Law No. VIII-1726) defines the procedure of registering, confession, entry into records and protection of the persons who had secretly collaborated with the special services of the former USSR and the activity of the State institution responsible for this work as well as establishes restrictions for the persons who had secretly collaborated with the special services of the former USSR and have not confessed to having done that in accordance with the procedure established by the Law. The Law also creates the *Commission on Assessment of Activities of Persons Who Have Secretly Collaborated with Special Services of Former USSR* (hereinafter Commission) consisting of five members is established to assess the activities of persons who had secretly collaborated with the special services of the former USSR and adopts decisions on including persons in a report or publication of data concerning secret collaboration. Persons who have secretly collaborated with the special services of the former USSR had a term to voluntarily register and submit information to the Commission. Data of such persons were verified and, in case a person was declared to have secretly collaborated with special services of former USSR, entered into the register. Data

with regard to such persons is protected by law. Certain limitations are imposed on persons who have not voluntarily registered with the Commission, and who were declared as having secretly collaborated with the special services of the former USSR. Data of such persons is published in the 'State Gazette', and they may not be employed as pedagogues in educational institutions, educators and heads of these institutions, occupy positions linked with weapons possession, also work as Republic of Lithuania state officers or employee of state governing and administration, municipal institutions, the national defence system, interior affairs system, customs, prosecutor's office, courts, State Security Departments diplomatic service, State control and other state institutions engaged in control and supervision, also a lawyers and notaries, banks and other credit institutions, strategic economic objects, communications system, protection services and structures thereof and other services that provide detective services. Persons who were declared as having secretly collaborated with the special services of the former USSR may challenge such a decision of the Commission against the court.

▪ **Certain provisions of this Law are challenged in the European Court for Human Rights.**

The ECtHR gave its first lustration judgment in 2004.<sup>192</sup> Mr. Sidabras and Mr. Džiautas both worked for the Lithuanian KGB. After Lithuania declared its independence in 1990, Mr. Sidabras worked as a tax inspector and Mr. Džiautas as a prosecutor. As a result of the KGB Act, they were dismissed from their posts in 1999 and banned from applying for public-sector and various private-sector posts until 2009. The court held that their dismissal violated Article 8 of the ECHR (right to private life) and Article 14 (prohibition of discrimination).

In the Case of Žičkus V. Lithuania (*Application no. 26652/02*), the ECtHR ruled on 7<sup>th</sup> April 2009 that in deciding whether the measures complained of were proportionate, the Court cannot overlook the ambiguous manner in which the Law deals with, on the one hand, the question of the lack of loyalty of former secret KGB collaborators and, on the other hand, the need to apply restrictions to employment in certain private sector jobs. In particular, Article 9 of the Law specifies the private sector positions from which the applicant, as a person deemed to be lacking loyalty, should be excluded (see paragraph 16 above). However, the Court has previously found no reasonable link between the positions concerned and the legitimate aims sought by the ban on holding such positions (*Sidabras and Džiautas*). The Court is likewise not persuaded by the Government's argument that the Law constituted a proportionate measure since the applicant would have faced no restrictions on his private sector employment prospects if he had confessed of his former

<sup>192</sup> ECtHR, *Sidabras and Džiautas v. Lithuania*, Cases Nos. 55480/00 and 59330/00, ECtHR 2004-VIII.

collaboration in due time. In this context, the Court notes the lack of differentiation in the Law itself between different levels of former involvement with the KGB. Furthermore, there are no objective materials in the case file verified by the domestic courts to indicate that the applicant poses a current danger to national security if he were to be employed in certain sectors of private business. The Court also observes that the Law came into force in 2000, i.e. almost a decade after Lithuania had declared its independence on 11 March 1990. Thus the restrictions on the applicant's professional activities were imposed on him at least a decade after he had ceased collaborating with the KGB. The fact of the Law's belated timing, although not in itself decisive, may nonetheless be considered relevant to the overall assessment of the proportionality of the measures taken. Finally, the Court takes into account the fact that the Lithuanian authorities had themselves recognised the applicant's loyalty to the Republic by bestowing State awards upon him (see paragraph 6 above). In view of the above, the Court concludes that the ban on the applicant seeking employment in various branches of the private sector, in application of Articles 8 § 4 and 9 of the Law, constituted a disproportionate measure, despite the legitimacy of the aims pursued by that ban. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

In the process of lustration, 1,289 persons were confirmed as having collaborated with KGB after they confessed to the Commission on Assessment of Activities of Persons Who Have Secretly Collaborated with Special Services of Former USSR. 54 more persons were confirmed as having collaborated with KGB after investigations of the Commission on Assessment of Activities of Persons Who Have Secretly Collaborated with Special Services of Former USSR. About 400 persons were confirmed as not having collaborated with KGB after investigations of the *Commission on Assessment of Activities of Persons Who Have Secretly Collaborated with Special Services of Former USSR*.

- **Luxembourg.** There was no lustration process, except that in being stripped from their nationality the collaborators lost their political rights, at least for some time. But ten years after the trials most of the condemned had regained their nationality and their political rights. For civil servants an additional screening process had been created by a grand ducal decree from July 12th, 1945.<sup>193</sup> All those who had been a member of the Nazi party (NSDAP or attached formations like SS or SA) were immediately suspended from any official function. Later an administrative investigation was made for all civil servants. It was then enlarged and covered areas like postal services, railways, medical

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<sup>193</sup> Dostert, Paul, *Luxemburg zwischen Selbstbehauptung und nationaler Selbstbehauptung. Die deutsche Besatzungspolitik und die Volksdeutsche Bewegung 1940-1945*, Luxembourg, 1985. *Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de législation*. Luxembourg 1945 – to the present, p. 403.

doctors, lawyers, members of parliament, mayors and aldermen, artists, architects, hunters etc.

- **Italy** A High Commissioner for Sanctions against Fascism (*Alto commissariato per le sanzioni contro il fascismo*) was created. There is not data on the number of affected individuals.
- **Latvia** The 1991 legislation directed against the Communist Party stated clearly, that membership in the Party as such was not sufficient reason for indicting anyone, which meant that criminal behavior of some kind had to be proved. Thus, laws passed in 1994 and 1995 essentially barred from public office all persons who had demonstrated their opposition to an independent Latvian state in the period from January 13, 1991, onward, that is, individuals and groups within Latvian society who were promoting (with organizing efforts, public pronouncements, contacts with Moscow officials, contacts with the leadership of the Baltic Military District located in Riga, and denials of the legitimacy of the elected Supreme Council) the establishment in Latvia of a Moscow-directed “presidential rule” and the arrest and imprisonment of persons working on behalf of renewed independence. Persons who subsequently sought government offices were to receive a vetting about their behaviour during the January-August, 1991, period and their possible connections with the Soviet-era security services. The decision to run for office would thus initiate a kind of “self-lustration.”
- **The Netherlands** Purge society of all stains of enemy rule and collaboration.
- **Poland** Both the military and the foreign services remained intact after the transition. Although some screening and employment cuts took place, most of the army and security apparatus remained in office. Only security service operatives in the embassies and the Interior Ministry itself (who were particularly active in tracking down Solidarity representatives abroad) were fired.
  - **Lustration** On May 28th 1992 Sejm adopted a resolution demanding publication of information about involvement in Communist security services for senior public officials (subsequently supported by the Senate on June 17th). On June 4<sup>th</sup>, the Interior Minister Maciarewicz, delivered a list of 64 names, and another list (37 names) was made available to selected senior state officials. A number of then top politicians were on the list, as well as people whose involvement with the SB had not been proven beyond doubt, which contributed to the opinion that the lists were unreliable. This process was later deemed unconstitutional by the Constitutional Tribunal (June 19th).  
*Lustration Act on the Disclosure by Persons Holding Public Office of Work, Service or Cooperation with the State Security Services during the Years 1944-1990* (11<sup>th</sup> April 1997). It demanded that activities performed in connection with intelligence officers' duties were to be excluded from the definition of 'collaboration'. It was intended to cover all elected state officials from provincial governor upwards, i.e. around 27,000 people.

On June 1998, Lustration panel's duties were taken over by the Public Interest Spokesman.

The *Lustration Act on Disclosure of Information on Documents of Security Service Organs Collected during the period 1944-1990 or on the Content of these Documents* was approved on 18<sup>th</sup> October 2006 and its key changes are the following:

- Vetting Office in the Institute of National Remembrance created to take over the lustration duties of the Public Interest Spokesman.
- The number of lustrated people significantly expanded, to cover (among others) artists, scientists, journalists, barristers, members of public companies boards, around 400,000 people in total.
- Open access to files for members of the public.

On 11<sup>th</sup> May 2007, the Constitutional Tribunal ruled some elements of the *Lustration Act on Disclosure of Information* unconstitutional, in particular expanding the list of lustrated positions to include, among others, academia and media, expanding a list of pre-1989 organisation considered 'security apparatus' to include censorship office and office for religious denominations, lack of possibility for the court to rule any other sentence than a 10 year ban from public positions. In total, 39 points were criticised. The verdict was not unanimous: 9 out of 11 judges made reservations about particular points. Following the ruling, a subsequent reform of the Act passed on September 7<sup>th</sup>, 2007.

The introduction of the Act stipulates that positions of "public confidence" require appointees who have proven to be honest, decent, responsible and brave, and that the constitution guarantees all citizens a right to information about persons holding such positions. It also states that work for or cooperation with the communist security organs was equivalent with breaking human and civic rights for the sake of a totalitarian communist regime.

Article 3a defines 'collaboration' as conscious and secret collaboration with operational or investigative units of the state security system, as a secret informer or a person assisting with acquiring information. 'Collaboration' also includes conscious activities resulting from the duties related to one's employment or professional position if information was passed on to the security organs with an intention of infringing human rights and civil liberties. The act applies to collaboration that was taking place between July 22<sup>nd</sup> 1944 and July 31<sup>st</sup> 1990.

Article 4 lists public positions that require screening for secret service collaboration as defined by the act. The list covers all top positions in state structures: 47 types of positions in total (among others, president, parliamentarians and members of the Senate, European parliamentarians, all top positions in state policy units, diplomats, judges and prosecutors, members of the local authorities, deans of public and private higher education units, directors of the educational and scientific units, top officials in state owned media, all employees of the Institute of National Remembrance). Those holding or applying for the positions listed in Article 4 are obliged to file a statement on their collaboration with the communist secret services provided they were born before August 1<sup>st</sup>, 1972 (Article 7). Lustration statement is filed only once; there is no requirement to file it again in case a person candidates for another position that requires vetting (Article 7). Lustration

statements are passed on to the Lustration Office of the Institute of National Remembrance, where they are verified. In case the Lustration Office believes there is evidence pointing to the lustration statement being not true (i.e. when the lustrated person has lied about their involvement with the communist secret service), its prosecutor initiates a court lustration case (Article 20). If the lustrated person stated that they collaborated with communist secret service under duress, the lustration case is initiated by the court. Lustrated persons are treated under the criminal code (Article 20).

In the case when the court rules that the lustration statement was untrue, a lustrated person is deprived of their right to be elected to public positions listed in Article 4 for 3 to 10 years, and are removed from a currently held position if it is listed in Article 4. The court's verdict is publicized; in the case when a lustrated person had collaborated under duress, this information is included in the court's decision justification (Article 21). There are, therefore, no negative consequences linked to the fact of past collaboration, but only to the fact of lying about it. The court's verdict can be appealed.

*Lustration Office of the Institute of National Remembrance* is responsible for archiving lustration statements. Information about the content of a lustration statement can be retrieved on demand by any member of the public; in case a lustrated person is running for an electable office, information about the content of their statement is publicized by an electoral office.

- **Portugal** Purges affected the elite, collaborators, civil servants, regime institutions and even the private sector. The high hierarchies of the regime were given the possibility to go into exile. The President of the Republic in 1974 (Américo Tomás) was sent into exile to Madeira Island on April 26 by the military. On May 20, together with his family, he was sent to Brazil, Rio de Janeiro, where he spent four years. Eanes authorized his return on the basis of "humanitarian reasons". Marcelo Caetano was also forced into exile, first to Madeira, and later to Brazil. He was also given the chance to return but he refused (he died in Brazil in 1980).
  - The political police was immediately dismantled. Many of the officers of the political police were arrested days after the *coup*. The military created the Commission for the Abolishment of the Political Police, Portuguese Legion and Portuguese Youth (*Comissão de Extinção da PIDE/DGS e LP*). The role was to prepare criminal proceedings for trial, even before the retroactive law had been issued, and to co-operate with other purge institutions the postponement of the trials. In the end, the high hierarchies were never punished, except for very few cases: a two-years period during which PIDE-DGS agents awaited trial and punishment, either in protective custody or revolutionary political ethos and, as a result, those who had not taken advantage of their bail to flee the country received only light sentences from the military tribunals.
  - The Inter-ministerial Purge and Reclassification Commission. The Commission for the Assessment of Purge Appeals and Reclassifications (*Comissão de Análise de Recursos de Saneamentos e de Reclassificação*) was created in February 1976 in order to repair the damage that was done during the 1974-75 period, when many of the purges were 'merely arbitrary'. It was directly linked to the Council of Ministers and was charged with



- the co-ordination of the existing purge commissions in the ministries. Decree Law 277/74, June 25, declared that civil servants could be purged for three reasons: non-democratic behaviour in the course of duty after the coup; inability to adapt to the new democratic regime; and incompetence. The minimum punishment was to be transferred to another post, while the maximum was dismissal. At the end of 1974 about 4,300 public servants had been subjected to a purge process. In February 1975, official reports on the purge process stated that approximately 12,000 people had been either removed from their posts or suspended by 1975. By November the figure amounted to 20.000.
- **Military:** The old elite associated with the New State was forced to retire. Immediately after the *coup*, the *Movimento das Forças Armadas* (MFA) handed to the chief representative of the JSN the names of the 60 generals who had pledged their allegiance to the authoritarian regime, and who were subsequently placed on the reserve. Special military commissions administered the purges. Incompetence became the official criterion for removal, as it became impossible to sustain political criteria such as ‘collaboration with the old regime’, given that the whole defence establishment had collaborated with the New State during the colonial war. The JSN removed all university deans and directors of faculties from their posts, and various high-ranking members of the Ministry were transferred. Purges were sometimes undertaken in the absence of any legal proceedings.
  - Within the Ministry of Foreign Affairs, the purge process was limited to a few members of the diplomatic corps who had held government posts under the dictatorship.
  - Between 1976 and the early 1980s, steps were taken to reintegrate those who had been “victims” of the “wild” purges. The purge commission in the ministries ceased to operate in 1976 and the Council of Revolution, which took the role of these commissions, reinforced legal mechanisms to ensure that a process of rehabilitation took place.
  - Economic elite purges were concentrated in the large enterprises in the industrial area around Lisbon. Encouraged by the favourable context, the victims of the purges organized themselves into the Pro Integration Movement of the Unjustly Exonerated (*Movimento Pró-reintegração dos Despedidos Sem Justa Causa*).
- **Romania** The mechanisms mentioned in section 6.1 had also a screening dimension:
- *Law 187/1999 on Access to Secret Files and the Unveiling of the Securitate as Political Police.* Procedure: According to Law 187/1999, the CNSAS verified the accuracy of personal statements signed by public office holders. Verifications ceased if the person gave up the public post within 15 days or the presidential hopefuls withdrew their candidature within 24 hours after the CNSAS interviewed them. The final verdicts were to be published in the *Monitorul Oficial*. The subjects affected would

be elected and nominated officials in the central, regional and local structures of the government. Approximately 300,000 candidates and holders of public positions were affected. The process did not produce any liability. The *Constitutional Court Decision 51/31 January 2008*<sup>194</sup> declared all articles of the Law 187/1999 unconstitutional, citing the fact that the CNSAS was created as an extraordinary court that could decide a person's (non)collaboration with the Securitate, in spite of the fact that the Constitution prohibited the creation of such extraordinary courts. The *Governmental Emergency Ordinance 24 of 5 March 2008*<sup>195</sup>, which abrogated Law 187/1999, was adopted by the government in response to the Constitutional Court Decision 51/2008. It reaffirmed the CNSAS as the state agency responsible for granting Romanians access to their own *Securitate* files, and for verifying the collaboration with the *Securitate* of individuals elected or appointed to certain public positions (starting with the President of Romania and cabinet members to mayors and local councillors).

- *Law 303/2004 on the status of judges and prosecutors*<sup>196</sup> (amended on 8 October 2007). According to Article 6, judges, prosecutors, deputy magistrates and other individuals working in the judiciary must sign a declaration stating their (non) collaboration with the Securitate as a political police. The CNSAS verifies the accuracy of the declarations. The result is included in the personnel file of that individual. In case statements proved untrue, the judges who signed them could be indicted by the courts. This modality of screening which affected to judges, prosecutors and deputy magistrates produced civil liability. The number of affected individuals is unspecified. *Governmental Emergency Ordinance 16 of 22 February 2006 on Amendments to Law 187/1999* amended the Law 187/1999 to limit the attributions of the CNSAS and to specify that politicians who did not disclose their collaboration with the Securitate in their statements were liable to lose their public office if their collaboration was proved. Subjects or sectors affected: elected and nominated officials in the central, regional and local structures of the government. Only politicians who occupied public offices when the ordinance was passed and those who sought future appointments were affected. Verifications ceased if the person gave up the public post within 15 days or the presidential hopefuls withdrew their candidature within 24 hours after the CNSAS interviewed them. The final verdicts regarding the collaboration of public office holders and electoral candidates -- including their real and code names, period of secret collaboration, and political police activities -- were to be published in the *Monitorul Oficial*. If the verdict differed from

<sup>194</sup> Decizia Curtii Constitutionale 51/2008.

<sup>195</sup> Ordonanta de Urgenta a Guvernului 24 din 5 martie 2008 privind accesul la propriul dosar si deconspirarea Securitatii.

<sup>196</sup> Legea 303/2004 privind statutul judecatorilor si procurorilor.

the personal statement (presumably because the statement denied, whereas the *Monitorul Oficial* certified, collaboration), the CNSAS notified the Supreme Court of Justice, as “the final verdict of having offered a false declaration leads to loss of public office” (Article 8).

- **Slovakia** Before the Czech and Slovak Federative Republic split, the Slovak Republic was covered by the federal law No. 451/1991 described in 5.2b, above. With the founding of the independent state, Slovakia did not enforce the law and it expired at the end of 1996.
- **Slovenia** Officials and judges from the former regime retained their post and some remained in positions of power. No lustration mechanisms or measures have been so far adopted in Slovenia. Slovenia adopted only indirect measures of lustration in the respect of Article 8 (3) of the Law on Judicial Office of the Republic of Slovenia: those who were involved in the violations of human rights are incapable to become judges.

**Table 5.2 Lustration mechanisms 1**

Member state	Year of adoption	Law’s main provisions
<b>Austria</b>	1945	<p>-Verbotsgesetz (Prohibition Law): outlawed the Nazi party and all National Socialist organizations, transferred Nazi property to the Austrian state, and criminalized attempts to recreate Nazi organizations. NSDAP party members were also required to register themselves</p> <p>-Atonement Measures Required by the 1945 and 1947 Laws for the implicated and less-implicated Nazis.</p> <ul style="list-style-type: none"> <li>▪ For implicated: were required to pay an additional 20 percent on their income taxes for five years, surrender 20- to 70-percent of their capital to the state. Political rights were suspended as well. They were also barred for life from university and other public positions</li> <li>▪ For less implicated: were assessed a 10 percent additional income tax penalty for three years, stripped of 10- to 40-percent of their capital. They were also barred from academic and public positions, but were able to apply for exemptions</li> </ul>
<b>Belgium</b>	1945	<p>-Decree Law on “civic purge”: individuals, who had held leading positions in collaborationist parties, organizations or institutions, or in certain cases had been or had continued to be a member after a certain date, could be excluded from public and political life by depriving them of their civil and political rights for life or for a period of 20 years</p> <p>-military justice organized the civic purge that sanctioned unpatriotic acts</p> <p>-regulations were also elaborated for civil servants, teachers, and local politicians aimed at a purge of their profession</p>
<b>Bulgaria</b>	1992	-Law on Banks and credit Activity: persons elected to the leading bodies of the Bulgarian Communist Party, the Communist Youth League and other institutions, or appointed to a managerial full-time position in the Central Committee of the Bulgarian Communist Party, as well as officers and paid and unpaid associates to the State Security were banned from being elected and appointed to managerial position in the banking sector. End of ban: 1997
	1992	-Law on the Temporary Introduction of Additional Requirements for Members of Executive Bodies of Scientific Organizations and the

		Higher Certifying Commission (the “Panev Law”): screened leaders of scientific organizations for past links to the Communist Party leadership
	1997	-Law on Public Administration: Prohibited members of the communist nomenklatura from taking high positions in the civil service for five years. Lustration clauses revoked by the CC in 1998
	2002	-Law on Classified Information: the State Commission on Information Security screens public servants who apply to work with NATO classified information, and issues clearance permits
<b>Cyprus</b>	1982 (revoked in 1993)	-decision of the Council of Ministers: 62 members of the Army, the police, public education and other public service had their services terminated for having collaborated with the army during the coup of 15 July 1974
<b>Czech Republic</b>	1991	Act No. 451/1991 Coll. on Laying Down Some Further Preconditions for the Execution of Some Offices in the Apparatus of the State of the Czech and Slovak Republic (The “Lustration Law”): excludes persons involved in certain elements of the communist regime from employment in a range high public influence jobs. It applies to those who, between 25 February 1948 and 17 November 1989, fell into the following categories: Communist Party officials from the district level up; employees of the State Security, including not only full-time ŠtB officers but also those who collaborated with them part-time by signing secret agreements to inform on others; People’s Militia members; political officers in the Corps of National Security; members of purge committees in 1948 or after 21 August 1968 (the Soviet invasion); students at KGB schools for more than three months, and owners of ŠtB “conspiracy apartments” End of screening procedures or ban: initially 1995, extended to 2000, then extended indefinitely
	1992	Act No. 279/1992 Coll. of the Czech National Council on Some Further Preconditions for the Execution of Some Offices Secured by Designation or Appointment of Servicemen of the Police of the Czech Republic and of the Prison Service: extends lustration to areas of police and prison service End of ban: originally 5 years but later extended it indefinitely via Act No. 422/2000
<b>Denmark</b>	1945	-Establishment of a Special Tribunal for Civil Servants
<b>Estonia</b>	1995	-Citizenship Law: denied Estonian citizenship to agents of intelligence and security services of a foreign state, and persons who have acted against the state of Estonia and its security. Ban upheld in 2004
	1995	-Lustration Law: people who collaborated with the Nazi or Soviet security services or the Communist party were required to register with the Estonian Security Service within a year. Those who did not comply were banned from holding high public office until 2002
<b>Finland</b>	Not applicable	Not applicable
<b>France</b>	1943	-Ordinance of 10 September 1943 established a Commission for the purge of the French administration in liberated North Africa
	1944	-ordinance of 7 January 1944 authorized the forced retirement of civil servants, in specific cases, within the year of the cessation of hostilities
	1944	-ordinance of 27 June 1944 applied not only to the administrative services, but it included the armed forces, the police, the ‘irremovable’ judiciary and employees of semi-public, state-subsidized entities. It authorized the immediate suspension of all suspect civil servants at half pay while awaiting a final decision and gave procedural guarantees for the accused
<b>Germany</b>	1990	-German Unification Treaty: Screening for past collaboration with the Stasi. Ban: employers could request from BStU information on an

		employee's prior involvement with the Stasi. End of ban: originally 2006 but extended until 2011 for individuals in leading positions in state and society. Individuals involved with the Stasi files in an official capacity may be vetted indefinitely
<b>Greece</b>	1974	-“soft purge” of the army, civil service, security services, the judiciary and higher education -the Constitutional Act of September 3, 1974 removed from the ranks of the faculty all those who had been appointed illegally during the dictatorship
<b>Hungary</b>	1994	Act XXIII of 1994 on the Screening of Holders of Some Important Positions, Holders of Positions of Public Trust, and Opinion-Leading Public Figures Screening for past activity as agents of Main Division III/III (domestic repression) Screened categories: Parliament and government members; president and vicepresidents of the National Bank; ambassadors; army commanders; the presidents, vice-presidents and editors of Hungarian Radio, Hungarian Television, and the Hungarian News Service; chiefs of police; presidents, deans, general directors, and department heads of state-owned universities and colleges; career judges; district attorneys; editors at daily newspapers and weekly magazines; directors of state-owned agencies; and managers of state-owned banks, financial institutions, and insurance companies End of screening procedure: 30 June 2000
	1996	1996 amendments Screening of all public officials born before 14 Feb. 1972 who take an oath before Parliament or the President
<b>Ireland</b>	Not applicable	Not applicable
<b>Italy</b>	1944	-legislative decree created a High Commissioner for Sanctions against Fascism. According to it, those who had participated actively in the political life of fascism were exempted from office (public administration purge)
<b>Latvia</b>	1994	-Election law barred from candidacy in these elections and from elections in them persons who from January 13, 1991, were active in the Communist Party of the USSR and of Latvia, and in several other pro-Moscow organizations that worked against Latvian independence; as well as persons who has worked for the internal or external security services of the USSR, the Latvian SSR, including espionage agencies or counter-espionage agencies Ban upheld in 2004
	1995	Saeima Election Law: According to Article 5, persons are not to be included in the candidate lists and are not eligible to be elected to the Saeima if they belong or have belonged to the salaried staff of the USSR, the Latvian SSR or another country's state security, intelligence or counterintelligence services; or after 13 January 1991 have been active in the CPSU (the CP of Latvia), the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees
	1995	-Citizenship law refused Estonian citizenship to those who had served in a career position in the armed forces of a foreign state or had entered the reserve forces or had retired from a career position in the armed forces of a foreign state. A large proportion of the Russophone population in Latvia were redefined as “resident aliens” (non-citizen) and were thus excluded from the electoral process (both at the national and local levels)
<b>Lithuania</b>	1991	-Decree N° 418 Banning KGB Employees and Informers from Government Positions End of ban: 1996

	1999	-Lustration law: several categories of former KGB employees were forced to disclose past activity. The law created a special Lustration commission responsible for the investigation of specific cases of collaboration and defined seven different categories of former KGB employees and collaborators who needed to go through lustration
<b>Luxembourg</b>	1945	-Grand ducal decree from July 12th, 1945: all those civil servants who had been a member of the Nazi party (NSDAP or attached formations like SS or SA) were immediately suspended from any official function. Later an administrative investigation was made for all civil servants and then enlarged and covered areas like postal services, railways, medical doctors, lawyers, members of parliament, mayors and aldermen, artists, architects, hunters, etc
<b>Malta</b>	Not applicable	Not applicable
<b>Netherlands</b>	No mechanism	No mechanism
<b>Poland</b>	1997	-Lustration Law on the necessity for a range of public servants or candidates for these positions of a statement declaring whether they had collaborated with or worked in the secret services in 1944-90. Only those who lied lose their public offices for ten years
	2007	-new lustration law implemented on March 15, 2007 required that all chief editors of periodicals, newspapers, radio and TV stations request lustration declarations from their employees within 30 days. The Constitutional Court struck down the parts of the law that extended the scope of lustration to non-public entities
<b>Portugal</b>	1974	-Decree Law 277/74, June 25 declared that civil servants could be purged for three reasons: non-democratic behaviour in the course of duty after the coup; inability to adapt to the new democratic regime; and incompetence. An Inter-ministerial Purge and Reclassification Commission” was created and tasked it with enacting a government-wide effort to purge the state of former collaborationists
	1974-1975	-“Wild purges”: a) military: special military commissions administrated the purges. Incompetence became the official criterion for removal; b) all university deans and directors of faculties were removed from their posts
<b>Romania</b>	1999	-Law 187/1999 on Access to Secret Files and the Unveiling of the Securitate as Political Police. Type of lustration mechanism: screening. Subjects affected: elected and nominated officials in the central, regional and local structures of the government. In 2008 it was declared unconstitutional by the Constitutional Court
	2004	-Law 303 of 28 June 2004 on Judges and Prosecutors, amended in 2008 by which judges, prosecutors, and magistrates were obliged to give signed statements on their (non) involvement as agent or collaborator of Securitate as a political police
	2006	-Governmental Emergency Ordinance 16 of 22 February 2006 amended the Law 187/1999 to limit the attributions of the National Council for the Study of Securitate Archives (CNSAS) and to specify that politicians who did not disclose their collaboration with the Securitate in their statements were liable to lose their public office if their collaboration was proved
	2008	-Governmental Emergency Ordinance 24 of 5 March 2008 re-affirmed the CNSAS as the state agency responsible for verifying the collaboration with the Securitate of individuals elected or appointed to certain public positions
<b>Slovakia</b>	1991	-Act No. 451/1991 Coll. on Laying Down Some Further Preconditions for the Execution of Some Offices in the Apparatus of the State of the Czech and Slovak Republic (The “Lustration Law”): idem Czech Republic
<b>Slovenia</b>	1994	Slovenia adopted only indirect measure of lustration in the respect of Article 8 (3) of the Law on Judicial Service of the Republic of Slovenia: those who were involved in the violations of human rights are incapable to become judges

<b>Spain</b>	No mechanism	No mechanism
<b>Sweden</b>	Not applicable	Not applicable

Source: Own elaboration from data on Lavinia Stan, ed., *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, London: Routledge, 2008, Table 11.2, p. 249-253

### 5.3 Non-regulatory measures applicable to persons suspected of perpetrating or being implicated in the crimes, for instance non-judicial mechanisms

- **Germany** Show trials were staged against alleged Nazi criminals, for example against Theodor Oberländer (Association of Expellees and the Disenfranchised, BHE, later CDU), the Federal Minister for German Expellees, who had been active under National Socialism in researching eastern Europe, and later against the Federal President Henrich Lübke, attacked for having been "master builder of the concentration camps". Lübke remained in office, Oberländer resigned.
- **Lithuania (tribunal on communism)** Within the framework of the International Congress the *Public International Vilnius Tribunal of the Communism* was held. The Public Tribunal heard more than 60 persons from different countries who represented prosecutors and defence of the Communism, victims and witnesses of the crimes of the communist regimes. The Tribunal passed the judgment that recorded main data on crimes of the communist regimes in 15 countries (Lithuania, Albania, Belarus, Bulgaria, Estonia, Kazakhstan, Latvia, Moldova, Romania, Slovakia, Ukraine, Hungary, Chechnya, the Eastern Prussia and Poland) as well as qualified them as crimes against peace, war crimes, crimes against humanity and genocide. All the proceedings of the Congress and the Public Tribunal as well as their outcomes were published by a separate book in Lithuanian.
- **Poland (pension re-assessment)** On the basis of *Act on the change of the act on pension provision for professional soldiers and their families and of the act on pension provisions for employees of the Police, Agency of Internal Security, Intelligence Agency, Services of the Army Intelligence, Central Anticorruption Office, Border Guards, Office for the Government Protection, State Fire Brigades and Prison Officers and their families* (January 23<sup>rd</sup>, 2009) pensions of those who served in the Communist security services between 1944 and 1990 (as defined by the *Act on disclosure of documents* of October 18<sup>th</sup>, 2006) will be reassessed. According to the new rules, every year of service in the communist security services will count towards a pension as a 0.7% of the last salary instead of 2.6%, as previously (ordinary Poles receive 1.3% of their last salary per every year of employment). It is estimated that around 45,000 of the functionaries of the communist services will, as a result, start receiving lower pensions from January 1<sup>st</sup>, 2010. It will, however, be impossible to reassess pensions of a substantial group of former MSW officers, as their documentation is contained in the protected archive of the Institute of National Remembrance and cannot be released. The Constitutional Tribunal is currently reviewing the Act.
- **Portugal (popular tribunal)** A public body known as the "Humberto Delgado Popular Tribunal" (1977) sought to mobilize public opinion to

call for the conviction of those former PIDE agents who had committed the regime's most notorious crimes (the assassination of the candidate who had stood against Salazar in the 1958 presidential elections).

- **Romania (voluntary vetting in political parties)** *Voluntary unveiling of collaboration with the Securitate.* After 1996, political parties introduced on a voluntary basis the requirement for party members to provide the party leadership with signed affidavits detailing their (non)collaboration with the *Securitate*.
- **Sweden (stigmatization)** Three stigmatization measures (total, partial and secondary) have been used in the Swedish case. These informal measures were used to exclude Nazism from Swedish intellectual and political life as well as the entertainment industry. *Absolute stigmatization*, which meant a total condemnation or marking were those who had been engaged in Nazi organizations and who, in a postwar context, were used in public as deterring cases. At least two politicians and four intellectuals were stigmatized in this way. *Partially stigmatized* were those who had shown considerable understanding for and sympathized with essential aspects of Nazism but who had not participated in any Nazi organization. Thirdly, persons who were promoting ideals and ideas that, at the time, were associated with Nazism. These persons were stigmatized in a secondary sense although sometimes with serious consequences.





## 6. Truth-seeking mechanisms

Truth seeking mechanisms are a relative recent institution tightly linked to contemporary processes of transitional justice. In the past, truth seeking was embedded into mechanisms of criminal justice or, eventually, as an accessory instrument for determining who were the victims to the effect of compensations, reparations, etc. Currently, truth seeking has acquired a place on its own in transitional justice as a mechanism in its own for dealing with the past. Nevertheless, specially appointed commissions for criminal justice and/or with other very specific investigation mandates can also have a function of truth seeking. Relevant information pertaining both truth commissions and procedures for disclosing can appear also under the sections 5.1 (criminal justice), 7 (archives) and 8 (research projects).

### 6.1 The establishment of truth commissions or similar bodies

The countries that faced repressive Nazi regime after WWII did not create specific truth commissions. Nevertheless, commissions specially created for investigating crimes performed this role in an implicit way.

- **Belgium** A 2003 Resolution of the Belgian Senate asked the government to establish facts and responsibility of Belgian authorities in the deportation and prosecution of Jewish population in the period 1940-1944. The Senate advised the federal Government to entrust a two-year research mission to the scientific institution Soma/Ceges. Parliament voted a special law which allows Soma/Ceges the access to all the preserved public archives. On 13 February 2007 the final report, under the title *Gewillig België/ La Belgique docile*, was presented in the Senate and later that year published under the same title by Luc Pire editions.
- **Bulgaria.** The mechanisms for truth seeking are revised below in section 6.2 (disclosing).
- **Czech Republic** The mechanisms for truth seeking are revised below in section 6.2 (disclosing).
- **Cyprus.** In relation to the 1974 Military Coup, the House of Representatives of the Republic of Cyprus is conducting a long-lasting investigation of the events that led to the Coup. Their work has not been concluded yet. It was interrupted in 2000 ahead of the forthcoming elections and resumed its work in 2006. Investigations are expected to last until 2010. Its main task is to investigate the events that led to the Coup of 1974 and the subsequent Turkish invasion of the island. Also to collect as much material as possible, put it in an archive and issue a report with its findings. Only part of the (confidential) material that had been examined by an investigation committee of the Greek Parliament in 1986-88 has been given to the Cypriot committee and is expected to facilitate and accelerate the work of the latter. So far the Committee has collected around 85,000 pages of documents and audio-visual material concerning the period in addition to the testimonies from 83 witnesses who appeared before it since 2006. All documents collected are classified while depositions were given behind closed doors. The

decision whether to publish the archive will eventually be taken by the Parliament.

A committee of the Greek Parliament established to this effect in 3 March 1986 to examine the so-called “File of Cyprus” since the Greek military junta ruling Greece until July 1974 was the mastermind behind the coup. The Committee issued its findings in a resolution of the Greek Parliament of 30 October 1988. However, neither the minutes of the committee nor all the documents examined have been made public. Political responsibility was assigned to Averof and Karamanlis.

- **Estonia** Two main historical commissions have operated in Estonia, one with primarily a domestic focus, the other with an external focus.
  - The first is the *Estonian State Commission on Examination of the Policies of Repression* (ESCEPR), formally created in March 1992 by the Presidium of the Estonian Supreme Council or parliament at that time. The Commission was tasked with (a) analyzing the repressive policies of the Soviet and Nazi occupation regimes, (b) elucidating any “crimes of genocide” carried out during those occupations, and (c) formulating a “general assessment” of these acts. The Commission was composed by academics, members of the Board of the Association of Former Political Prisoners and the Deputy Chairman of the Estonian State Commission on Examination on the Policies of Repression. The work remained largely archival. No major public hearings or inquiries were conducted. In total, the Commission produced 17 publications, including its final 2005 report *The White Book: Losses Inflicted on the Estonian Nation by Occupation Regimes, 1940-1991* ([www.riigikogu.ee/public/Riigikogu/TheWhiteBook.pdf](http://www.riigikogu.ee/public/Riigikogu/TheWhiteBook.pdf)) (it includes statistics on Estonian, Latvians and Lithuanians repressed by the Nazi and Soviet regimes). Before the White Book formally came out, the Riigikogu adopted a decision on 9 June 2004 dissolving the Commission.
  - The second major historical commission was formed in 1998 with a much more international focus, meaning with the aim of clarifying the different occupations of Estonia to an external audience. On 1998 a group of renowned public and academic figures were called to form the *Estonian International Commission for the Investigation of Crimes against Humanity* (EICICH) (<http://www.historycommission.ee/temp/index.htm>). The official task of the EICICH was to lead the investigation of crimes against humanity committed against Estonian citizens or on the territory of the Republic of Estonia during the Soviet as well as Nazi German occupations. While the Commission consisted exclusively of non-Estonians, a group of Estonian historians was charged to help it in the assessment of past crimes. This group was chaired and coordinated by the historian and presidential advisor Toomas Hiio. The work of the Commission was financed by the Estonian state. By Spring 2008, the investigative work had been completed and the EICICH dissolved when the last of three reports was published. Each of

these reports focused on a distinct historical phase, the first Soviet occupation 1940-1941 (released 2004), the Nazi-German occupation 1941-1944/45 (released 2001) and finally the second Soviet occupation from 1944 (released 2008). The EICICH was set up as a non-judicial body and its findings were not intended to give political recommendations or even to launch any kind of judicial action against anyone or any institution in- or outside of Estonia. However, the Commission's research findings have started to serve as basis for court decisions.<sup>197</sup>

- In February 2008 President Toomas Hendrik Ilves launched a third initiative, a *Memory Institute*, which in his words was to continue the spirit of the second commission. The founding members of the institute are lawyer Tiit Sepp, businessman Rein Kilk, lawyers Leon Glikman and Indrek Teder, businessman Hannes Tamjarv and businessman and former foreign minister Jaan Manitski. Its mission is to examine the events that took place in Estonia during the second half of the 20th century and to examine the systematic violations of human rights in Estonia in 1944-1991.
- **Finland** The Finnish authorities have sponsored a number of research projects which are listed in section 8.1.4.
- **Germany** After unification, many Eastern dissidents demanded a kind of truth commission which had the power to summon witnesses, but not to impose punishment. All parties, including the post-communist PDS, were in favour of such a commission, which, under the chairmanship of East German pastor Rainer Eppelmann, began its work in 1992. The Enquete Commission held numerous hearings, conducted research and, only five years after unification, produced a comprehensive report running to an impressive 15,378 pages and brought out in 18 volumes.<sup>198</sup> 327 experts and witnesses were heard, in 44 public hearings –in Bonn and Berlin, but also a number of East German cities. The Commission also drew explicitly political and historical lessons, by stressing the need for an 'anti-totalitarian consensus' in Germany, and by pointing to National Socialism as the root cause of the Soviet occupation and therefore the existence of the 'second German dictatorship'. Finally, the Commission at least made the conscious effort not to reduce the history of the GDR to that of the Stasi, but to understand it as a part of a common German history. The first Enquete Commission was immediately followed by a second, which was charged with carrying the

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<sup>197</sup> For example, in 2006 the European Court of Human Rights used material from the International Commission to justify its decision not to hear the appeal by August Kolk and Pjotr Kislõi against their conviction for crimes against humanity.

<sup>198</sup> Deutscher Bundestag (ed.), *Materialien der Enquete-Kommission 'Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland'*, 9 volumes, Frankfurt/Main: Suhrkamp, 1995. The post-communist PDS issued its own publication series ('Ansichten zur Geschichte') alongside the volumes of the Commission. See Maser, Peter, "Die parlamentarische Aufarbeitung von Diktaturgeschichte am Beispiel der Enquetekommission des Deutschen Bundestages", in: Peter März and HansJoachim Veen (eds.), *Woran erinnern? Der Kommunismus in der deutschen Erinnerungskultur*, Cologne: Böhlau, 2006, p 138.

process of *Aufarbeitung* further and to develop ‘all-German’ forms of remembering the two German dictatorships. ‘Investigative commissions’ were repeated at the Land level: Mecklenburg-Vorpommern, for instance, produced a 3 volume report of documentation and testimony.<sup>199</sup>

- **Hungary** Institute for the History of the 1956 Hungarian Revolution ([http://www.rev.hu/portal/page/portal/rev/az\\_intezet/intezet\\_tortenete](http://www.rev.hu/portal/page/portal/rev/az_intezet/intezet_tortenete)). The Institute was formed on June 17, 1989 it is composed by academics and its main task is to reconstruct and historicize the events of 1956. The period the institute covers has gradually been widened, turning it into a centre for research into the history of the post-war, coalition period of Hungarian history and of the Rákosi and Kádár era. At present, a limited part of the data base is freely available. There are plans, however, to introduce more detailed access as well, as a paid-for service.
- **Latvia** Two different commissions have operated in Latvia:
  - *Commission for Identifying the Number of Victims of the Communist Occupation and their Final Resting Places, Aggregating Information on Repressions and Deportations, and Calculating the Costs to the Latvian State and Its Inhabitants.* Consisting mostly of representatives of the national government’s ministries and agencies, the eighteen-member Commission was formed by a decision of the Cabinet of Ministers (August 2, 2005) on the model of similar commissions operating in Estonia and Lithuania. The objective of the Commission was to create a “White Book” that would summarize the total human and monetary cost to the Latvian state and its people of the entire period during which Latvia was a Soviet Socialist Republic, and this was to serve as the basis of reparation demands from the Russian Federation.
  - *The Extraordinary Commission of the Republic to Investigate the Crimes of the Nazi Occupiers and their Collaborators and to Estimate the Damage done to the Citizens of the Latvian SSR, its Agriculture, Social Organizations, State Enterprises and State Offices.* Created on August 23, 1944, for a period of 2 years, the Extraordinary Commission continued its work until July 27, 1946. Although the Commission was not a “truth-seeking mechanism” because of its ideological premises, the materials gathered by it have been useful as a starting point for the post-1991 investigations of the Nazi-era crimes and atrocities, especially at the local level and particularly in connection with the implementation of Holocaust policy. Post-1991 researchers have noted that the findings of the Commission were heavily politicized, especially in the processes through which multi-level local reports were aggregated for final reports to higher Soviet authorities.  
The *Commission of Historians of Latvia* (Latvijas vēsturnieku komisija) was created in 1998 by President Guntis Ulmanis and it was charged with the investigation of the historical record of the

<sup>199</sup> Landtag Mecklenburg-Vorpommern (ed.), *Aufarbeitung und Versöhnung: Leben in der DDR, Leben nach 1989*, Schwerin: Stiller & Balewski, 1998.

totalitarian years, the presentation of its findings at conferences with an international composition, and the publication of book-length compilations of research results (see also reference in section 8.1.4). The composition of the Commission consisted on professional historians from the Institute of History and the Faculty of History and Philosophy of the University of Latvia, State History Archives of Latvia as well as the Museum of Occupation and employees of the Chancery of the President. Since the beginning the Commission has included scholars from Germany and the United States, and the conferences on which the published volumes are based have always been international in scope. Information about the Commission and its activities is carried on the home page of the President's Chancery and is updated regularly. Many of the Commission's published volumes are downloadable. The Commission's work is funded by the President's budget and the website is [http://www.president.lv/pk/content/?cat\\_id=7&lng=lv](http://www.president.lv/pk/content/?cat_id=7&lng=lv). The Commission and the Institute of History of Latvia together with Madona Museum of Local History organised a conference in connection with the 50th anniversary of the deportations of 1949. The Conference materials were published in the journal of the Institute of History of Latvia. Three other international conferences can be mentioned:

- "Latvia in World War II" (14-16 June 1999) organised by the Commission together with the Institute of History of Latvia and State Archives. There were all together 36 reports delivered during the Conference. A separate Symposium on the related problems was published in 2000.
- "The Issues of the Holocaust Research in Latvia" (16 and 17 October 2000).
- "Deportation of 14 June 1941: Crimes against Humanity" (12 and 13 June 2001).
- **Lithuania** The *International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania*, ([www.komisija.lt](http://www.komisija.lt)) created by Decree of the President of the Republic of Lithuania, Valdas Adamkus on September 7, 1998 has, as its objectives, *inter alia*, to stimulate process of historical justice and understanding of the origins of the crimes of Nazi and Soviet occupations and their subsequence on the states and societies of Europe; to educate society publicizing and disseminating the generated information and to influence a formulation of the objective official position on the historical questions which are the most painful, stereotyped and still uncovered. The Regulations of the Secretariat of the *International Commission for the Evaluation of the Crimes of the Nazi and the Soviet Occupation Regimes in Lithuania* (Approved by the 8 October 1999 Decision No. 1131 of the Government) regulate the legal status, functions, rights and duties of the Secretariat.

- Two sub-commissions examine the responsibility of the two occupying powers: The *Sub-commission for the evaluation of the Soviet crimes* covers the two Soviet occupation periods (1940–1941 and 1944–1990). The *Subcommission for the evaluation of Nazi crimes* is responsible for the period in 1941–1944 of Nazi occupation and Holocaust research. Findings of the Commission are published in the Research Works Database section of its webpage and it has also published a book series. It is composed by national and international academics; Member of the Seimas of the Republic of Lithuania (Emanuelis Zingeris). The Commission has released several publications:
  - Book Series “The Crimes of the Totalitarian Regimes in Lithuania. The Nazi Occupation”. Three volumes were released: The Preconditions for the Holocaust: Anti-Semitism in Lithuania (2004); Murders of Prisoners of War and of Civilian Population in Lithuania in 1941-1944 (2005); The Persecution and Mass Murder of Lithuanian Jews during Summer and Fall of 1941 (2006).
  - Book Series “The Crimes of the Totalitarian Regimes in Lithuania. The Soviet Occupation”. Five volumes were released: The First Soviet Occupation. Occupation and Annexation (2006); The First Soviet Occupation. Terror and Crimes against Humanity (2006); The First Soviet Occupation. Occupants and Collaborators (2007); The Second Soviet Occupation. Political Bodies of the Soviet Union in Lithuania and their Criminal Activities (2008); Second Soviet Occupation. The Establishment of the Communist Regime in Lithuania and its Crimes (2009).
- **The Netherlands** From the 1960s, a number of specific *ad hoc* experts committees were created with the purpose of investigating specific events and report to Parliament, the Government, and the public in general. Examples of *ad hoc* committees of experts are:
  - the Weinreb-Report (1976)
  - the committee of enquiry into the Menten-affair (1979)
  - the Report on the Looting of the Jewish Citizens (2000)
  - the Report on the Return and Relief of War Victims (2001)
  - on Trauma and the Compensations for War Victims
  - on the Long-Lasting Legacies of Collaboration (to be finished 2010-2012).
  - In 1998, the Dutch government commissioned a historical research project in order to investigate the treatment of Jews after 1945. The immediate cause to do so was the recent discovery of a collection of documents, documenting in detail the spoliation of the Dutch Jews. The single element that caused the largest commotion was that the agency charged with restitution to the

lawful owners during the early 1960s had auctioned off remaining personal items at knock-down prices to its own staff. The files had subsequently been forgotten. The historical project was intended to find causes and circumstances of the general phenomenon of ‘chilliness’. It was conceived as fact-finding in order to offer insight and at the same time as immaterial compensation for recognizing historical injustice<sup>200</sup>.

- **Portugal** The *Commission for the Black Book on Fascism* was created in April 1977 as a governmental organism built to denounce the abuses of the authoritarian regime, responsible to the presidency of the Council of Ministers. It was composed of socialist and left-republican intellectuals and politicians. The Commission published 22 books containing primary documentation, which, amongst other issues, denounced the regime’s repression, the treatment of political prisoners, censorship, and the collaboration between economic groups and the political police.
- **Romania** It has had two truth commissions, one for the Nazi and other for the Communist period and, additionally, the *Institute for the Investigation of Communist Crimes in Romania* (see section 3.2 and below) fulfils also this function.
  - *International Presidential Commission for the Study of the Holocaust in Romania (Comisia Internationala pentru Studierea Holocaustului in Romania)* ([http://www.romanianjewish.org/ro/index\\_fcer3.html](http://www.romanianjewish.org/ro/index_fcer3.html)) was a truth commission created in October 2003, chaired by Nobel laureate Elie Wiesel. Members: historians and public figures. Its mission was to investigate the crimes perpetrated from December 1937 to May 1945 related to “the discrimination, isolation, deportation, and physical destruction of Jews in Romania,” “the persecution of parts of the Roma community from 1942 to 1944, as well as the trials launched from 1945 to 1951 against those accused of these crimes. Another important task was to investigate the actions of the perpetrators (Romanian, Hungarian, and German administrations or individuals) who were involved in the persecution of the above-described categories of victims The commission presented its final report on November 2004, which included a number of recommendations such as the creation of an *Institute for the Study of the Holocaust in Romania*.
  - *Presidential Commission for Analyzing Communist Dictatorship in Romania (Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania* known also as the Tismaneanu Commission) was a truth commission created in 2006 under the chairmanship of the University of Maryland political science professor Vladimir Tismaneanu. Its mission was to investigate the crimes committed by the communist regime during 1945 and 1989. The commission included 20 members (one of whom had to withdraw when his long-term collaboration with *Securitate* became public), and numerous experts. Commission members and experts had privileged access to all archives in Romania. The

<sup>200</sup> The monograph resulting from the project is: Bossenbroek, Martin, *De Meesltreep. Terugkeer en opvang na de Tweede Wereldoorlog*, Amsterdam: Bert Bakker, 2001.



final report detailed the mechanism of communist repression in Romania, and named individuals responsible for communist crimes. The report named a number of communist activists who helped model communist Romania, but also used an *extended definition of genocide, including political, economic, social and cultural aspects*. The commission, which had no subpoena powers, was criticized for its membership, for its refusal to interview victims and witnesses, as well as for the many factual and interpretive mistakes included in its report.

*Institute for the Investigation of Communist Crimes in Romania (Institutul pentru Investigarea Crimelor Comunismului din Romania, IICCR)* was created by Governmental Decision 1724 of 21 December 2005. The institute, which is a public institution coordinated by the Prime Minister and subordinated to and financed by the Romanian government, has a six-year mandate. Its tasks include “to scientifically investigate and identify crimes, abuses and human rights infringements that took place during the entire communist period in Romania, and to petition the judiciary when crimes are revealed.” The institute has been actively compiling lists of communist perpetrators, and publishing studies on communist repression and crimes (for example: *Fortifications of Cruelty. A History of the Securitate (1948-1964)* (2008); *Prison Experiences in Communist Romania, vol. II* (2008); *The Dictionary of Communism* (2008); *Repression Forms within Communist Regimes* (2008)).

- *National Institute for the Study of Totalitarianism (Institutul National pentru Studiul Totalitarismului)* was founded on 13 April 1993 to investigate totalitarian regimes and repression in Romania in their Fascist and communist forms. It is funded by the Romanian government. It is composed mainly by academics. Its main publication is the journal *Arhivele totalitarismului*, recollections of former political prisoners, and historical analyses. (<http://www.totalitarism.ro>).
- *The Institute of the Romanian Revolution (Institutul Revolutiei Romane)* was created in 2004 by the Parliament for the “scientific analysis of the causes, the unfolding and the effects of the Revolution”. President Ion Iliescu was extremely influential in supporting its creation, but the institute has been viewed with scepticism by the civil society. It is funded by the government and publishes 12 annual issues of *Caietele Revoluției* and two numbers of “Clio”, being the latter an academic journal.
- *National Center for the Documentation, Research and Public Information about the December 1989 Revolution (Centrul de Documentare, Cercetare si Informare Publica privind Revolutia din Decembrie 1989)* was set up in 1998 under the aegis of *Association Memorial of the Revolution 16-22 December 1989 Timisoara (Asociatia Memorialul Revolutiei 16-22 Decembrie 1989 Timisoara, see above)*. Law 46/2000 declared the Center a national objective. As a result, it qualifies for financial support from the government through the Ministry of Culture. Its mission

is to provide the public with information on the Romanian communist period. Through an oral history project, it collects testimonials on the events that took place in Timisoara in 1989. The Center has published only one issue (2007) of a new electronic journal *M89*.

- **Sweden** In January 1945, the Swedish Parliament appointed a commission (the *Sandler Commission*) to investigate the activities of the national security service (that had been discovered by the public in 1942) as well as the Swedish treatment of refugees during the war. The Sandler Commission prepared three reports:
  - SOU 1946:36 *Report concerning the treatment of refugees*.
  - SOU 1946:93 *Report concerning the release of information concerning refugees*.
  - SOU 1948:7 *Report concerning the national security service*.<sup>201</sup>

In 1997, the Swedish Government appointed a commission with the task of clarifying as far as possible what happened with the property of Jewish origin that was brought to Sweden in connection with the persecution of Jews before and during the Second World War (Dir 1997:31).<sup>202</sup> It was given five questions of inquiry: Did the Riksbank (Sweden's central bank) receive any looted gold or gold plundered from individuals? What happened to unclaimed Jewish assets in Sweden after the war? Can Jewish property have come to Sweden as part of the trade exchange with Nazi Germany? Can Jewish assets have been included in the disposal of German assets in Sweden after the war? The commission published an interim report in 1998 concerning Nazi Gold and the Riksbank (SOU 1998:96). In its final report (SOU 1999:20), the commission emphasized various urgent research requirements, including the following: *The issue of the 'Baltic refugees' is an extremely complex one that, to be clarified, requires large-scale research inputs. It is imperative for further research to be initiated to elucidate the complex of issues relating to collaborators who fled to Sweden from the nearby areas that were occupied by the Germans during the war* (p. 33). The commission was unable to rule out the possibility that Jewish property was transferred to Sweden in conjunction with the refugees' arrival. Thus, further research may therefore show whether *'it is possible that jewelry and other assets from Jews came to Sweden via the influx of Baltic refugees'*. Moreover, *'the interaction between traders and the Government during the various phases of the Second World War is an urgent research task'*.<sup>203</sup> Apart from other findings, the commission concluded that there are still several questions that must be clarified and that "the crucial issue is not one of financial compensation for stolen assets. Instead, it is a matter of justice and moral redress".

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<sup>201</sup> This report entails criticisms and accusations. For example, Nazis had been judged as not constituting the same degree of threat as the communists. Above all, it criticized the secrecy of the actions of the national security service as it was regarded as a threat against the rule of law. The national security service was abolished.

<sup>202</sup> Final Report "Sweden and Jewish Assets". Swedish Governmental Official Report (SOU 1999:20), available in English at: <http://www.regeringen.se/content/1/c6/09/36/77/317efa73.pdf>.

<sup>203</sup> Cited in Report of the Swedish Research Council, "Sweden's Relation with Nazism, Nazi Germany and the Holocaust: A Research Programme" (2006), pp. 4-5.

Several “white books” were elaborated in relation to selected chapters of the war. A board consisting of academics and diplomats monitored these matters and decided to publish four white books during 1946 and 1947. The aim of these measures was, above all, to clarify certain issues in relation to the Nordic neighbors, in particular Norway, which lamented, in deep ways, the Swedish adjustment politics during the war. The conclusions were that, while Sweden had not behaved in a heroic manner, neither had it really been given any choice but to adjust to German demands. In spite of this apologetic stance, the conclusions were well received, including in Copenhagen and Oslo. The explanation for this non-confrontational stance from the Swedish neighbors was a will in the name of Nordic unity to accept Swedish attempts towards reconciliation in its foreign relations. The relations were thus “normalized”.<sup>204</sup>

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<sup>204</sup> Johan Östling, *Nazismens sensmoral. Svenska erfarenheter i andra världskrigets efterdyning* (2008), pp. 108-109. See also Wilhelm Carlgren, *Korten på bordet? Svenska vitböcker om krigsårens utrikespolitik*, Stockholm, 1989, pp. 63-73.

**Table 6.1 Truth-seeking Mechanisms 1**

<b>Member state</b>	<b>Type and year of creation</b>	<b>Type of body</b>	<b>Mandate</b>	<b>Results</b>
<b>Austria</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Belgium</b>	Resolution of the Belgian Parliament (2003)	-scientific public institution: Soma/Ceges -duration: two years --type of members: academics	Mission: -to establish facts and responsibility of Belgian authorities in the deportation and prosecution of Jewish population in the period 1940-1944	- 13 February 2007, a final report, under the title Gewillig België/ La Belgique docile, was presented in the Senate. -on September 2007 the report was published by Luc Pire editions
<b>Bulgaria</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Cyprus</b>	Established by the House of Representatives of the Republic of Cyprus	-Parliamentary Committee -Investigations are expected to last until 2010	Mission: -to investigate the events that led to the Coup of 1974 and the subsequent Turkish invasion of the island -to collect as much material as possible, put it in an archive and issue a report with its findings	- so far the Committee has collected around 85,000 pages of documents and audio-visual material concerning the period in addition to the testimonies from 83 witnesses who appeared before it since 2006 - All documents collected are classified while depositions were given behind closed doors. The decision whether to publish the archive will eventually be taken by parliament
<b>Czech Republic</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Denmark</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Estonia</b>	-Decision of the Presidium of the Estonian Supreme Council -March 1992	-Estonian State Commission on Examination of the Policies of Repression (ESCEPR) -type of members: academics, members of the Board of the Association of Former Political Prisoners and the Deputy Chairman of the Estonian State	Mission: -to analyze the repressive policies of the Soviet and Nazi occupation regimes, -to elucidate any “crimes of genocide” carried out during those occupations, and -to formulate a “general assessment” of these acts	-the Commission produced 17 publications, including its final 2005 report The White Book: Losses Inflicted on the Estonian Nation by Occupation Regimes, 1940-1991 (it includes statistics on Estonian, Latvians and Lithuanians repressed by the Nazi and Soviet regimes)

		Commission on Examination on the Policies of Repression		
	Launched by the president of the Republic, Lennart Meri -October 1998	Estonian International Commission for the Investigation of Crimes against Humanity (EICICH) -financed by the Estonian government -type of members: exclusively non-Estonians. However, a group of Estonian historians was charged to help it in the assessment of past crimes	Mission: -to lead the investigation of crimes against humanity committed against Estonian citizens or on the territory of the Republic of Estonia during the Soviet as well as Nazi German occupations -to clarify the different occupations of Estonia to an external audience	Three reports presented: -the first Soviet occupation 1940-1941 (released 2004), -the Nazi-German occupation 1941-1944/45 (released 2001) -the second Soviet occupation from 1944 (released 2008)  The findings were not intended to give political recommendations or even to launch any kind of judicial action against anyone or any institution in- or outside of Estonia
	President Toomas Hendrik Ilves launched a third initiative -February 1, 2008	-Memory Institute -founding members of the institute are lawyer Tiit Sepp, businessman Rein Kilk, lawyers Leon Glikman and Indrek Teder, businessman Hannes Tamjarv and businessman and former foreign minister Jaan Manitski	Mission: -to examine the events that took place in Estonia during the second half of the 20th century -to examine the systematic violations of human rights in Estonia in 1944-1991	
<b>Finland</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>France</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Germany (GDR)</b>		-Study Commission for Working Through the History and the Consequences of the SED Dictatorship in Germany -27 members, headed by East German Parliamentarian and human rights activist Rainer	-to investigate the practices of the East German government between 1949 and the fall of the SED regime in 1989, to document human rights abuses, and to assess the politico-historic, economic, ideological, and societal factors of the dictatorship as well as the misuse of environmental resources	Produced 8 volumes edited by Suhrkamp publishing house

		Eppelmann -duration: 2 years		
<b>Greece</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Hungary</b>	June 17, 1989	-Institute for the History of the 1956 Hungarian Revolution (public foundation) -type of members: academics	Mission: - to reconstruct and historicize the events of 1956 - the period the institute covers has gradually widened, turning it into a centre for research into the history of the post-war, coalition period of Hungarian history and of the Rákosi and Kádár era	- At present, a limited part of the data base is freely available. There are plans, however, to introduce more detailed access as well, as a paid-for service
<b>Italy</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Latvia</b>	August 23, 1944	-Extraordinary Commission of the Republic -duration: 2 years	Mission: -to investigate the Crimes of the Nazi Occupiers and their Collaborators and to Estimate the Damage done to the Citizens of the Latvian SSR, its Agriculture, Social Organizations, State Enterprises and State Offices	-the materials gathered by it have been useful as a starting point for the post-1991 investigations of the Nazi-era crimes and atrocities, especially at the local level and particularly in connection with the implementation of Holocaust policy.
	Created on 3 November 1998 following the initiative of the former State President Guntis Ulmanis	-Commission of the Historians of Latvia -members: professional historians from the Institute of History and the Faculty of History and Philosophy of the University of Latvia, State History Archives of Latvia as well as the Museum of Occupation and employees of the Chancery of the President. Also scholars from Germany and the United States -funded by the President's budget	Mission: -to study the issue "Crimes against Humanity Committed in the Territory of Latvia under Two Occupations, 1940 - 1956" -to organise the production of the final report on the theme	-the Commission and the Institute of History of Latvia together with Madona Museum of Local History organised a conference in connection with the 50th anniversary of the deportations of 1949. The Conference materials were published in the journal of the Institute of History of Latvia - 14-16 June 1999, the Commission together with the Institute of History of Latvia and State Archives organised an international conference "Latvia in World War II". There were all together 36 reports delivered during the Conference. A separate Symposium on the related problems was published in 2000 - on 16 and 17 October 2000, an international

				conference called: "The Issues of the Holocaust Research in Latvia" took place. -on 12 and 13 June 2001, an international conference called "Deportation of 14 June 1941: Crimes against Humanity" took place
	-Decision of the Cabinet of Ministers -August 2, 2005	-Commission for Identifying the Number of Victims of the Communist Occupation and their Final Resting Places, Aggregating Information on Repressions and Deportations, and Calculating the Costs to the Latvian State and Its Inhabitations -members: mostly representatives of the national government's ministries and agencies	Mission: -to create a "White Book" summarizing the total human and monetary cost to the Latvian state and its people of the entire period during which Latvian was a Soviet Socialist Republic, and this was to serve as the basis of reparation demands from the Russian Federation	
<b>Lithuania</b>	-Decree of the President of the Republic of Lithuania, Valdas Adamkus -September 7, 1998	-International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania -members: national and international academics; Member of the Seimas of the Republic of Lithuania (Emanuelis Zingeris)	Mission: -to stimulate process of historical justice and understanding of the origins of the crimes of Nazi and Soviet occupations and their subsequence on the states and societies of Europe -to educate society publicizing and disseminating the generated information -to influence a formulation of the objective official position on the historical questions Two sub- commissions: -for the evaluation of the Soviet crimes -for the evaluation of Nazi crimes	- Book Series "The Crimes of the Totalitarian Regimes in Lithuania. The Nazi Occupation". Three volumes were released: The Preconditions for the Holocaust: Anti-Semitism in Lithuania (2004); Murders of Prisoners of War and of Civilian Population in Lithuania in 1941-1944 (2005); The Persecution and Mass Murder of Lithuanian Jews during Summer and Fall of 1941 (2006) - Book Series "The Crimes of the Totalitarian Regimes in Lithuania. The Soviet Occupation". Five volumes were released: The First Soviet Occupation. Occupation and Annexation (2006); The First Soviet Occupation. Terror and Crimes against Humanity (2006); The First Soviet

				Occupation. Occupants and Collaborators (2007); The Second Soviet Occupation. Political Bodies of the Soviet Union in Lithuania and their Criminal Activities (2008); Second Soviet Occupation. The Establishment of the Communist Regime in Lithuania and its Crimes (2009)
<b>Luxembourg</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Malta</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Poland</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Portugal</b>	-Governmental decision -April 1977 -dissolved in 1991	-Commission for the Black Book on Fascism, responsible to the presidency of the Council of Ministers -members: socialist and left-republican intellectuals and politicians	Mission: -to denounce the abuses of the authoritarian regime	-it published 22 books containing primary documentation, which, amongst other issues, denounced the regime's repression, the treatment of political prisoners, censorship, and the collaboration between economic groups and the political police
<b>Romania</b>	Created by the President of Romania (October 2003)	-International Presidential Commission for the Study of the Holocaust in Romania -members: historians and public figures	Mission: -to investigate the crimes perpetrated from December 1937 to May 1945 related to "the discrimination, isolation, deportation, and physical destruction of Jews in Romania," "the persecution of parts of the Roma community from 1942 to 1944, as well as the trials launched from 1945 to 1951 against those accused of these crimes" -to investigate the actions of the perpetrators (Romanian, Hungarian, and German administrations or individuals) who were involved in the persecution of the above-described categories of victims	Presented a final report on November 2004



	Created in 2006 under the chairmanship of the University of Maryland political science professor Vladimir Tismaneanu	-Presidential Commission for Analyzing Communist Dictatorship in Romania -members: 20 members and numerous experts	-to investigate the crimes committed by the communist regime during 1945 and 1989	-It presented a final report on December 2006 which detailed the mechanism of communist repression in Romania, and named individuals responsible for communist crimes -The Romanian President, Traian Basescu, accepted the report conclusions
	Created by Governmental Decision 1724 of 21 December 2005	-Institute for the Investigation of Communist Crimes in Romania - public institution coordinated by the Prime Minister and subordinated to and financed by the Romanian government -duration: six years mandate	Mission: -to scientifically investigate and identify crimes, abuses and human rights infringements that took place during the entire communist period in Romania, and to petition the judiciary when crimes are revealed	-the institute has been actively compiling lists of communist perpetrators, and publishing studies on communist repression and crimes, for example: Fortifications of Cruelty. A History of the Securitate (1948-1964) (2008); Prison Experiences in Communist Romania, vol. II (2008); The Dictionary of Communism (2008); Repression Forms within Communist Regimes (2008)
	Created on April 13, 1993	-National Institute for the Study of Totalitarianism -funded by the Romanian government -members: academics	Mission: - to investigate totalitarian regimes and repression in Romania in their Fascist and communist forms.	-Its main publication is the journal <i>Arhivele totalitarismului</i> , recollections of former political prisoners, and historical analyses
	Created in 2004 by the Parliament	The Institute of the Romanian Revolution -funded by the government	Mission: -“scientific analysis of the causes, the unfolding and the effects of the Revolution”	- It publishes 12 annual issues of <i>Caietele Revoluției</i> and two numbers of “Clio”, being the latter an academic journal
	-set up in 1998 under the aegis of Association Memorial of the Revolution 16-22 December 1989 Timisoara	-National Center for the Documentation, Research and Public Information about the December 1989 Revolution - Law 46/2000 declared the Center a national objective -funded by the government through the Ministry of Culture	Mission: -to provide the public with information on the Romanian communist period -through an oral history project, it collects testimonials on the events that took place in Timisoara in 1989	-it has published only one issue (2007) of a new electronic journal <i>M89</i>
<b>Slovakia</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Slovenia</b>	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms
<b>Spain</b>	No truth seeking	No truth seeking mechanisms	No truth seeking mechanisms	No truth seeking mechanisms

	mechanisms			
<b>Sweden</b>	Appointed by the Parliament (January 1945)	-Sandler Commission	Mission: -to investigate the activities of the national security service as well as the Swedish treatment of refugees during the war	Prepared three reports: SOU 1946:36 on treatment of refugees. SOU 1946:93 on release of information concerning refugees. SOU 1948:7 on national security service
	Government resolution of 13 February 1997	-Governmental Commission	Mission: -to clarify as far as possible what can have happened in Sweden with regard to property of Jewish origin brought here in connection with persecutions of Jews before and during the Second World War	A report was released on March 1999. The commission concluded that there are still several questions that must be clarified and that “the crucial issue is not one of financial compensation for stolen assets. Instead, it is a matter of justice and moral redress”
<b>The Netherlands</b>	Created by State’s decision	Several ad hoc experts committees -the Weinreb-Report (1976) -the committee of enquiry into the Menten-affair (1979) -the Report on the Looting of the Jewish Citizens (2000) -the Report on the Return and Relief of War Victims (2001) -on Trauma and the Compensations for War Victims -on the Long-Lasting Legacies of Collaboration (to be finished 2010-2012)		

Source: Own elaboration from information provided by experts in Member States

## 6.2 Disclosing mechanisms relating to the perpetrators

Disclosure initiatives seek mainly unveiling the names of perpetrators. They are usually accompanying measures for truth seeking commissions (see above section 6.1) and/or with criminal investigations (see section 5), but, in certain cases, they have been used in isolation.

- **Bulgaria** The prevalent mechanism of truth seeking was disclosing information (see also section 7).
  - The *Committee for Disclosing the Documents and Announcing Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian National Army* was created in 2001. It gathers and publishes documents of the State Security, generally related to political and other repressions. However, the archive documents remained under the control of the Ministry of the Interior and the National Investigation Agency. In 1990, a small part of the personal files of the staff and collaborators of the State Security were destroyed.
  - A 1994 decision of the National Assembly had made public “the information about the organization, methods, and means of carrying out the specific tasks of State Security organs, as well as the information of the agents of these organs”. It removed the protection that the Law for the State Secret ensured for the State Security. This opened the way to hold responsible for the committed crimes and to bring to the court both the State Security as an institution, and its functionaries in person.
  - The first decision to allow public access to the documentation related to the repressive organs and the repressions in Bulgaria was the Law for Access to Documents of the Former State Security, passed by the National Assembly on 30 July 1997. The goal of the law was to disclose the names of public figures – deputies, ministers, and high state officials, who had collaborated with the repressive system in socialist Bulgaria. Furthermore, under article 13 of the law, the archives of the State Security are to be made public: “the documents of the former State Security are to be handed over to the Central State Archive in no longer than an year following the entry of this law in operation”. This has not been fully complied with, but victims of repressions were temporarily allowed to consult their State Security files in the reading room of the Archive of the Ministry of the Interior.
- **Czech Republic** A 1996 Act (Act No. 140/1996 Coll. on the Opening of the State Security Files) made the state security (StB) files accessible to the citizens. Both the opening of communist-era secret police files and the research and documentation carried through by the *Office for the Documentation and Investigation of the Crimes of Communism* and by the *Institute for the Study of Totalitarianism* served for disclosing crimes and perpetrators.
- **Estonia** A 1995 law regulating the *Procedure for Registration and Disclosure of Persons Who Have Served in or Co-operated with Intelligence or Counter-intelligence Organisations of Security*

*Organisations or Military Forces of States which Have Occupied Estonia Act* establishes a procedure for securing information about, registering and, where necessary, making public the names of individuals found to have actively cooperated with foreign security services (i.e. KGB agents). The law stipulates that information was to be gathered concerning individuals linked to both Nazi and Soviet powers. The Estonian Security Police Board was given sole responsibility for registering the names and other pertinent information regarding former KGB and other security service agents. From 1998 to 2008, the Board released twelve lists of individuals who had not given an account of their activities to the Board, but in relation to which it had evidence that they had been employed by foreign security services. Some observers estimated that as many as 20,000 people might come under the measure's rather broad definition of collaboration. In the event, as of the 1 April 1996 deadline, by which time individuals were required to either register themselves with the Security Police Board or face potential disclosure, only 1,153 people had contact the Security Police. The total number of persons disclosed is 616 (138 women and 478 men). All of them have been linked to the Soviet KGB. No names of persons linked to the Nazi secret services have been disclosed. The law listed the secret services and other repressive agencies to be covered by the policy. A subsequent amendment to the law in 2002 gave the Security Police Board the right to summon for interrogation individuals suspected of having been former security agents. Failure to appear before the Board was made punishable by a fine of up to 10,00 Estonian kroons. Alongside the law the Estonian government also issued an implementation decree on 5 July 1995, stipulating the exact procedures for how former KGB and other agents would be able to register themselves with the Security Police Board before the 1 April 1996 deadline. The decree included a sample form for individuals to fill out asking about their former service, including dates and places served.

- **Hungary** The Act LXIII of 1993 on date protection permits the disclosure of the names and position of all governments officials whose name and rank do not constitute a state secret (see more in section 5.2).
- **Romania** *Governmental Emergency Ordinance 149/2005 on Measures Extending the Activity of the National Council for the Study of Securitate Archives*<sup>205</sup> extended the activity of the CNSAS to another six years.
- **Slovakia** The Act that created the Nation's Memory Institute (Act No. 553/2002 *Coll. on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 - 1989 and on Founding the Nation's Memory Institute (Ústav pamäti národa) and on Amending Certain Acts (Nation's Memory Act) (Amended by Acts No. 610/2004 and No. 309/2005 Coll.)*) opened simultaneously state security archives to the public.

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<sup>205</sup> Ordonanta de Urgenta a Guvernului 149 din 10 November 2005 privind unele masuri pentru asigurarea continuarii activitatii Consiliului Nacional pentru Studiarea Arhivelor Securitatii

### 6.3 Non-regulatory measures to support victims and record their testimony for example NGO support and programs

Among the 27 member states, there exist quite a few associations, NGOs and organisms dedicated to collecting and recording the testimony of victims.

- **Bulgaria** The Literature Workshop “Vasil Stanilov” (*Literaturna rabotilnica “Vassil Stanilov”*), established in the beginning of the transition period collects and publishes testimonies of the repressed. It publishes memories of victims of the “*People’s Court*”, the camps, the political purges, and other repressions. Similar publications can be found in Vasil Stanilov’s weekly newspaper “*Anti*” (later renamed “*Pro and Anti*”).
- **Czech Republic** Several organisms and NGOs record testimonies of victims and survivors in the Czech Republic. Among these (it is not an exhaustive list):
  - *Czech Oral History Association/Česká asociace orální historie o. s.*: a non-profit organization that supports and presents oral history research.
  - *The Jewish Museum in Prague/Židovské museum v Praze*: Records and compiles the memories of Nazi concentration camp survivors.
  - *Memory of the Nation/Paměť národa*: A large digitized archive of witnesses’ memories of Nazism and Communism in original language and in translation, including recordings, diaries, archival documents, and photographs gathered by individuals, educational institutions, non-profit organizations, and governmental and semi-governmental institutions in Europe. The witnesses include World War II veterans and resistance fighters, Holocaust survivors, political prisoners from the 1950s, as well as regime officials, including StB, KGB, and NKVD agents. Post Bellum, Czech Radio, and the Institute for the Study of Totalitarian Regimes cooperated to create the publicly accessible portal. Since 2008 the Memory of Nation initiative has been joined by dozens of projects from all over Europe.
  - *The Oral History Center/Institute of Contemporary History*: Part of the Czech Republic’s Academy of Sciences, it seeks to support the development and application of oral history methodology in the historical research in the Czech Republic.
  - *PoliticalPrisoners.eu*: Geared at the youth, this non-governmental, non-profit project made accessible on the website the life stories of survivors of Stalinist prisons and labor camps in the former Czechoslovakia and other European countries.
  - *Post Bellum*: a non-governmental nonprofit organization that works to systematically compile and make accessible to the public an archive of audio recordings, written text and photographic material concerning World War II veterans, Holocaust survivors, political prisoners, and Communist-era dissidents. Drawing on oral history methods, its core projects are “*Heroes’ Voices*” and “*The Nation’s Memory*,” as well as a

weekly Czech Radio documentary series “Stories of the 20<sup>th</sup> Century.” It is also the initiator and coordinator of the Fellowship of National Remembrance, which includes Czech Radio, The Oral History Center/Institute for Contemporary History, The Military History Institute of the Army of the Czech Republic, The Jewish Museum in Prague, *Živá paměť* (Living Memory), and the Collegium Bohemicum. The project is divided in 3 phases: the third one foresees the utilization of archival units that will permanently contribute to the cultivation of the country’s historical consciousness and its commemorative culture.

- *Terezín Initiative Institute/Institut Terezínské iniciativy*: a non-profit organization seeking to support and produce research on the Holocaust in Bohemia and Moravia and the history of the Terezín ghetto and to communicate it to the public; testimonies of survivors are key to this effort.
- *Živá paměť* (Living Memory). It was founded by employees of the Czech-German Fund for the Future who had worked at its Nazi Victims Bureau, who as part of their work in compensating victims had compiled an archive of documents. *Živá paměť*, is a Public Beneficial Organization that works to process and expand this, focusing especially on developing oral history documentation of the experience of Czech forced laborers in Saarland, the history of the Flossenbürg concentration camp, and cooperating with a video- and audio-interview project funded by the German fund “Reminders and the Future.” It is also involved with an educational project titled “Missing Roma – the Roma of Today” and a publication titled “Nazi Persecution of the Inhabitants of Bohemia and Moravia.” In addition, it works for the social welfare of victims. As such, it runs the Counselling Centre for Survivors of Nazism since March 2007. Social workers of the Counselling Centre are provided with assistance within the field of social benefits, housing and health care. The Counselling Centre cooperates with National Council for Persons with Disabilities of the Czech Republic.
- The *Confederation of Political Prisoners Documentation Centre*, the *Museum of the Third Resistance* in Přeborn, and the *Libri Prohibiti* Library of Samizdat and Exile Literature in Prague have all collected written testimonies of political prisoners and their families and friends.<sup>206</sup> It cooperates with legislative and governmental institutions in order to achieve a moral satisfaction and full rehabilitation of former political prisoners and the complete de-bolshevization of the public and political sphere in the Czech Republic. The Documentation Commission collects documents and other evidence on violation of human rights and other crimes by the Communist Party of Czechoslovakia. The Legal Commission, using this documentation, proceeds according

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<sup>206</sup> Petr Blažek and Pavel Žáček, “Czechoslovakia,” in *A Handbook of the Communist Security Apparatus in East Central Europe 1944-1989*, Krzysztof Persak and Łukasz Kamiński, eds., Warsaw: Institute of National Remembrance, 2005, pp. 152-3.

to the law No. 198/1993 and submits the charges with the respective organs of Czech justice.

- **Estonia** Alongside its direct NGO assistance to repressed persons, the Estonian *Memento Union* has also engaged in wide-ranging archival research to compile a database of all those deported, politically repressed, murdered and disappeared during Soviet rule. It is a civil society association composed by several associations of those that suffered and fought for Estonia's independence in all counties (except Rapla, Põlva and Jõgeva), and Tallinn and Narva and the Estonian Association of the Former Members of the Labor Battalion. The Estonian Union of Political Prisoners and its Society of Northwest Estonia are also associated members.
- **Germany** Several Oral History Projects were carried out and results have been published. The eyewitness (*Zeitzeuge*) and the personal testimony have been crucial figures in Holocaust education in Germany since the 1970s. Holocaust survivors were invited to speak to pupils and adult audiences about their painful experiences. Since 2006 the Visual History Archive at Freie Universität Berlin is connected with the Visual History Archive of the Shoah Foundation Institute for Visual History and Education based at the University of Southern California (USC). Students, teachers and researchers have free access to the world wide most comprehensive video archive with about 52.000 videotaped interviews with Holocaust survivors and witnesses (/see <http://www.vha.fuberlin.de/>). There are a couple of analogous archives like the „Room of names“ (*Raum der Namen*) in the Information Centre of the Holocaust Memorial in Berlin. The room is devoted to the individual stories of victims of the Holocaust, no additional visual material is displayed. Full names and short CV's of the victims can be heard while they are projected to all four walls. The foundation of the Berlin Holocaust Memorial cooperates with the Yad Vashem Memorial in Israel and is updating the archive with new historiographical evidence. The oral archive started 1995 with 800 short biographies, until 2009 3.800 names were added and 5.100 CV's are in preparation ([www.holocaust-denkmalberlin.de/index.php?id=144](http://www.holocaust-denkmalberlin.de/index.php?id=144)). A digital archive containing interviews with about 600 survivors of forced foreign labour in Germany is provided by the Foundation "Erinnerung, Verantwortung und Zukunft" in cooperation with the Freie Universität Berlin (Free University) and the Deutsches Historisches Museum (German Historical Museum) in Berlin ([www.zwangsarbeitarchiv.de/sammlung/index.html](http://www.zwangsarbeitarchiv.de/sammlung/index.html)). An important regional archive is provided by the Gedenkstätte Bergen-Belsen (Bergen-Belsen Memorial), Survivors of the concentration camp and former prisoners of war of the camps in Bergen-Belsen, Oerbke and Wietendorf can be consulted for scientific research and the general public. Until 2007 340 interviews have been recorded; the interviews frame the permanent exhibition in Bergen-Belsen ([www.bergenbelsen.de/de/ausstellung/videointerviews/](http://www.bergenbelsen.de/de/ausstellung/videointerviews/)) as a prologue and an epilogue. Many local archives add to the stock of personal memories in Germany, e.g. the collection of interviews with 16 survivors of the concentration camps in Ravensbrück (reserved for women) and Uckermark (reserved for adolescents) ([www1.bpb.de](http://www1.bpb.de)).

- **Perpetrators** the major source for testimonies of perpetrators in Germany has become the TV-History Channel and the archive of interviews of the producer Guido Knopp which will be accessible via internet soon. Knopp keeps the most comprehensive collection of about 6.000 interviews, in 2012 15.000 interviews shall be available.
- **Hungary** *Oral History Archives*.
- **Latvia** Two main initiatives have been reported:
  - *Association of the Politically Repressed of Latvia* (Latvijas Politiski Represēto Apvienība) (created in 1993) represents the interests of all the repressed persons in Latvia. Since 1997, it has maintained a regularly updated web site: <http://vip.latnet.lv/lpra/lpra1segments.htm>. It is a national organization, consisting of chapters and affiliated groups at the local and regional levels. It is estimated to have about 10,000 members in 2009. Among its specific goals is support for continuing research on repression during the Soviet period, identification of the burial sites and settlements of those deported to Siberia, the collection and preservation of memoirs and other documents of the repressed, the continuing upkeep of memorial sites in Latvia, assisting members with legal questions relating to their “repressed” status, and maintaining in force the demand that the official of the Soviet period in Latvian history be subjected to a Nuremberg-type trial.
  - *Crimes Against Humanity* Web Site (<http://vip.latnet.lv/lpra/default.htm>). The web site was created in 1997 by LATNET (now SIGMANET), a network run by the Mathematics and Informatics Institute of the University of Latvia. The site features links to the sites of virtually every organization that has been or is concerned with repression during the Soviet period of Latvian history as well as with similar sites in Estonia, Lithuania, and the Russian Federation.
- **Lithuania** Support of victims and recording their testimony is one of the main functions of the State-run organisation – the *Centre of Research of the Genocide and Resistance of the Lithuanian Population* ([www.genocid.lt](http://www.genocid.lt)). Only occasionally NGOs publish books with testimonies of victims without State support provided through the Centre. It investigates all manifestations of genocide and crimes against humanity, the persecution during the Soviet and Nazi occupations, and the armed and peaceful resistance to the occupations. It also gives juridical evaluations of the perpetrators of the reprisals and genocide, and immortalises the memory of the freedom fighters and genocide victims.
- **Malta** The collection of the oral testimonies - as well as written life histories and documentation - of private citizens who were affected by the events of the late 1970s and 1980s forms part of two major oral history projects that have been commissioned by the *Oral History Archive*. This is now being transformed into Malta's only Public Memory Centre at the University of Malta (Public Memory Centre, UOM). By privileging individual and shared memories of the people the Centre seeks to create a space where official historical interpretations can be



contested and their possible manipulation for partisan political purposes challenged.

- **Romania** As many as eight associations are reported collecting and/or recording the testimony of victims:
  - The *National Institute for the Study of the Holocaust in Romania Elie Wiesel (Institutul National pentru Studierea Holocaustului din Romania Elie Wiesel)* was created through Governmental Decision 902 of 4 August 2005 at the recommendation of the Wiesel Commission. The institute is active in research and education. Using oral history methods, it has started to interview Holocaust survivors in Romania. Led by a 31-member scientific council, it collects, archives, analyzes, and publishes documents relevant to the Holocaust. It also looks at solving some scientific issues and the elaboration and implementation of educational programs concerning this historical phenomenon. One of its main prerogatives is to contribute by means of expertise to the preservation of the spiritual inheritance of the communities in Romania which have been affected during the Holocaust. It is an autonomous institution funded by the government. Its director is appointed by the Ministry of Culture and Religious Affairs.
  - *Oral History Institute (Institutul de Istorie Orala)* is part of the University Babes-Bolyai. Part of its activity tries to use oral history for investigating communist crimes. Founded in 1996, it has published an irregular journal and a series of volumes, and has organized a number of conferences open to the public. Some of its projects deal with the memory of the Fascist and communist regime in Romania.
  - *The Aspera Romanian Education and Charitable Foundation of Boston ([www.memoria.ro](http://www.memoria.ro))* runs an “electronic library of interviews, oral history, books and pictures on Romania’s recent history.” The library includes a wealth of electronic data relevant to the history of communist crimes in Romania (from postings of the recent events organized by the IICCR to volumes edited by the CNSAS and movies dealing with the communist crimes)
  - *The National Institute for the Memory of Romanian Exile (Institutul National pentru Memoria Exilului Romanesc)* was created in 2003 as a public research institute whose mission includes the gathering, the analysis and the publication of documents related to the Romanian émigré community during the 1940-1989 period.
  - *The Center for the Study of Communism and Post-Communism (Centrul de Studii asupra Comunismului si Postcomunismului)* was set up in 2007 in the Faculty of History at the University Alexandru Ioan Cuza of Iasi, with the support of the IICCR. The center offers a MA in the History of Romanian Communism.
- **Slovakia** The following organisms and NGOs collect testimonies of victims and survivors.
  - *Holocaust Documentation Center/Dokumentačné stredisko holokaustu* Grew out of collaborative work between the Milan Šimečka Foundation and the Jewish Community in Bratislava,

- this institution collects information and supports research and dissemination of knowledge about the Jewish Holocaust in Slovakia (including a publication focusing on the survivor testimonies of people who were children during that period), as well as issues concerning the Jewish minority in Slovakia in the 20<sup>th</sup> and 21<sup>st</sup> centuries. It is a nongovernmental civic association.
- *Milan Šimečka Foundation/Nadácia Milana Šimečka*: A non-governmental organization. One of its main research and education projects is titled “Program on the Fate of those who Survived the Holocaust” and draws on the testimony of both Jews and Roma, using the oral history method. The Foundation supports research and produces works and materials geared at Holocaust specialists, students, and the general public. It also works on Roma issues and human rights education, with focus on intercultural and interethnic relationships.
  - *Mosaic of the Century of the Daily SME/Mozaika Storočia Denníka SME*: The publisher of the Slovak daily *SME*, in cooperation with the Nation’s Memory Institute, the Slovak Film Institute, and Slovak Radio, collected the testimonies of ordinary people concerning major events of Slovak twentieth century history, including the Slovak National Uprising, the end of World War II, the Communist takeover, the invasion by the Warsaw Pact forces in 1968, the Velvet Revolution, and the founding of the new Slovak state. All the testimonies are publicly accessible on a dedicated website, and a smaller collection was published in *SME*.
  - The *Confederation of Political Prisoners of Slovakia* has collected written testimonies of former political prisoners and their families and friends. It helps former victims of the communist regime with social and psychological support, on the other CPPS also provides material and if possible financial support to those victims in material need.
- **Slovenia** The *Committee for the Implementation of the Law on Reparation of Injustices* has recorded the history of systematic violence and human rights violations in the totalitarian regime. *Radio Ognjišče* runs every week the radio show ‘*My story*’, where individuals can tell their story about totalitarian regime.
  - **Spain** The *Centro Documental de la Memoria Histórica* has among its objectives gathering testimonies on the Civil War and Francoism. The *Asociación para la Recuperación de la Memoria Histórica, Association for the Recovery of Historical Memory (ARMH)* and *Psychologist without Frontiers* jointly opened in March 2009 an office for support to the victims and their relatives. The main task of the office was to orientate victims and relatives on how and where search for remains and what kind of help and compensations are available from government. Additionally, there are regional initiatives for the recording testimonies of victims and their relatives For instance, in Galicia, the regional government sponsored an academic project (*As vítimas, os nomes, as voces*; Victims, names, voices) whose aim was to number the victims, disclose their fate and record their testimony. All these initiatives are

available at [www.anodamemoria.com](http://www.anodamemoria.com) (web site close by the regional government after 2009).

Asociación de Descendientes del Exilio Español. It was created in 2003. Objectives: 1) to keep the historical memory alive; 2) to promote the recovery of the Spanish nationality to the descendants of those forced to leave the country as a result of the military rebellion against the II Republic; 3) to facilitate the return to Spain to those who wish so and to help them to obtain social and economic protection. Website: <http://www.exiliados.org/>

**Table 6.3 Non-regulatory measures to support victims and record their testimony, for example NGO support and programs (based on available information) 1**

Member state	Institution	Nature	Activities
<b>Austria</b>	N.a.		
<b>Belgium</b>	N.a.		
<b>Bulgaria</b>	Literature Workshop “Vasil Stanilov”		-collecting and publishing testimonies of the repressed -publishing memories of victims of the “People’s Court”, the camps, the political purges, and other repressions
<b>Cyprus</b>	N.a.		
<b>Czech Republic</b>	Czech Oral History Association	NGO	Supports and presents oral history research
	The Jewish Museum in Prague		Records and compiles the memories of Nazi concentration camp survivors
	Memory of the Nation	NGO	It collects witnesses’ memories of Nazism and Communism in original language and in translation. Since 2008 the Memory of Nation initiative has been joined by dozens of projects from all over Europe
	Oral History Center/Institute of Contemporary History		It seeks to support the development and application of oral history methodology in the historical research in the Czech Republic
	PoliticalPrisoners.eu	NGO	It makes accessible on the website the life stories of survivors of Stalinist prisons and labor camps in the former Czechoslovakia and other European countries
	Post Bellum	NGO	To systematically compile and make accessible to the public an archive of audio recordings, written text and photographic material concerning World War II veterans, Holocaust survivors, political prisoners, and Communist-era dissidents. The project is composed of 3 phases: the third one foresees the utilization of archival units that will permanently contribute to the cultivation of the country’s historical consciousness and its commemorative culture
	Terezín Initiative Institute	NGO	It seeks to support and produce research on the Holocaust in Bohemia and Moravia and the history of the Terezín ghetto and to communicate it to the public
	Living Memory	Public Beneficial Organization	-To develop oral history documentation of the experience of Czech forced laborers in Saarland and the history of the Flossenbürg concentration camp. -It is also involved with an educational project titled “Missing Roma – the Roma of Today” and a publication titled “Nazi Persecution of the Inhabitants of Bohemia and Moravia.” -It runs the Counselling Centre for Survivors of Nazism since March 2007. Social workers of the Counselling Centre are provided with assistance within the field of social benefits, housing and health care. The Counselling Centre cooperates with National Council for Persons with

			Disabilities of the Czech Republic
	Confederation of Political Prisoners Documentation Centre	NGO	To collect written testimonies of political prisoners and their families and friends. It cooperates with legislative and governmental institutions in order to achieve a moral satisfaction and full rehabilitation of former political prisoners and the complete de-bolshevization of the public and political sphere in the Czech Republic. The Documentation Commission collects documents and other evidence on violation of human rights and other crimes by the Communist Party of Czechoslovakia. The Legal Commission, using this documentation, proceeds according to the law No. 198/1993 and submits the charges with the respective organs of Czech justice. <sup>207</sup>
<b>Denmark</b>	N.a.		
<b>Estonia</b>	Memento Union	Civil society association	To compile a database of all those deported, politically repressed, murdered and disappeared during Soviet rule
<b>Finland</b>	N.a.		
<b>France</b>	N.a.		
<b>Germany</b>	Union of associations of the victims of communist dictatorship	NGO	Comprises more than 30 specific associations and is particularly active in providing citizen advice
	Bürgerbüro Berlin e. V	NGO	Founded in 1996 by many prominent German figures to help individual victims with advice (the office also publishes books about injustices in the GDR)
	Robert-Havemann-Gesellschaft	NGO	Founded by the leading civil rights movement Neues Forum in 1990 for the purpose of political education and historical education about the GDR
<b>Greece</b>	N.a.		
<b>Hungary</b>	Oral History Archives	Attached to the he Institute for the History of the 1956 Hungarian Revolution	It preserves and process the recollections of more than a thousand witnesses of the Communist period
<b>Italy</b>	N.a.		
<b>Latvia</b>	Association of the Politically Repressed of Latvia	National organization , consisting of affiliated	It supports the continuing research on repression during the Soviet period. It also participates in the identification of the burial sites and settlements of those deported to Siberia, in the collection and preservation of memoirs and other documents of the repressed, the continuing upkeep of memorial sites in Latvia, assisting members with legal questions relating to their “repressed”

<sup>207</sup> <http://www.bundesstiftung-aufarbeitung.de/downloads/pdf/survey.pdf>

		groups at the local and regional levels	status, and maintaining in force the demand that the official of the Soviet period in Latvian history be subjected to a Nuremberg-type trial
	Crimes Against Humanity Web Site		The site features links to the sites of virtually every organization that has been or is concerned with repression during the Soviet period of Latvian history as well as with similar sites in Estonia, Lithuania, and the Russian Federation
<b>Lithuania</b>	Centre of Research of the Genocide and Resistance of the Lithuanian Population	State-run organisation	It offers support of victims and recording their testimony. It investigates all manifestations of genocide and crimes against humanity, the persecution during the Soviet and Nazi occupations, and the armed and peaceful resistance to the occupations. It also gives juridical evaluations of the perpetrators of the reprisals and genocide, and immortalises the memory of the freedom fighters and genocide victims.
<b>Luxembourg</b>	N.a.		
<b>Malta</b>	Public Memory Centre at the University of Malta		It seeks to create a space where official historical interpretations can be contested and their possible manipulation for partisan political purposes challenged
<b>Netherlands</b>	N.a.		
<b>Poland</b>	N.a.		
<b>Portugal</b>	N.a.		
<b>Romania</b>	National Institute for the Study of the Holocaust in Romania Elie Wiesel	Autonomous institution funded by the government	It collects, archives, analyzes, and publishes documents relevant to the Holocaust. It also looks at solving some scientific issues and the elaboration and implementation of educational programs concerning this historical phenomenon. One of its main prerogatives is to contribute by means of expertise to the preservation of the spiritual inheritance of the communities in Romania which have been affected during the Holocaust
	Oral History Institute	Part of the University Babes-Bolyai	Tries to use oral history for investigating communist crimes
	Aspera Romanian Education and Charitable Foundation of Boston		It runs an electronic library with data relevant to the history of communist crimes in Romania
	The National Institute for the Memory of Romanian Exile	Public research institute	It gathers, analyse and publish documents related to the Romanian émigré community during the 1940-1989 period
	The Center for the Study of Communism and Post-	Set up in 2007 in the	It offers a MA in the History of Romanian Communism

	Communism	Faculty of History at the University Alexandru Ioan Cuza of Iasi	
<b>Slovakia</b>	Holocaust Documentation Center	NGO	It collects information and supports research and dissemination of knowledge about the Jewish Holocaust in Slovakia
	Milan Šimečka Foundation	NGO	It supports research and produces works and materials geared at Holocaust specialists, students, and the general public
	Mosaic of the Century of the Daily SME		It collects testimonies of ordinary people concerning major events of Slovak twentieth century history, including the Slovak National Uprising, the end of World War II, the Communist takeover, the invasion by the Warsaw Pact forces in 1968, the Velvet Revolution, and the founding of the new Slovak state
	Confederation of Political Prisoners of Slovakia	Civil society association	It collects written testimonies of former political prisoners and their families and friends, It helps former victims of the communist regime with social and psychological support, on the other CPPS also provides material and if possible financial support to those victims in material need
<b>Slovenia</b>	Committee for the Implementation of the Law on Reparation of Injustices		It has recorded the history of systematic violence and human rights violations in the totalitarian regime presented by the victims
<b>Spain</b>	Association for the Recovery of Historical Memory (ARMH)	Civil society association	It orientates victims and relatives on how and where search for remains and what kind of help and compensations are available from government
	Asociación de Descendientes del Exilio Español	Civil society association	Objectives: 1) to keep the historical memory alive; 2) to promote the recovery of the Spanish nationality to the descendants of those forced to leave the country as a result of the military rebellion against the II Republic; 3) to facilitate the return to Spain to those who wish so and to help them to obtain social and economic protection
	Asociación de Confiscados, Incautados y Requisados por causa de la guerra civil española de 1936-1939 y sus Derechohabientes (RECUPERA)	Civil society association	It collects copies of the receipts issued by the Franco regime to certify the confiscated amounts
<b>Sweden</b>	N.a		

Source: Own elaboration from information provided by experts in Member States

## 7. The Archives

### 7.1 Competent authority

National and/or central archives store documents pertaining repressive regimes and their crimes although there exist, in some cases, more than one central or national archive. Some countries have created *ad hoc* bodies with the task of archiving documents and, eventually, additional task such as research, awareness, prosecution, etc. In several countries, regional, local or sectorially specialised archives (such as for instance, the ones held by the military) add further elements.

- **Austria** The most significant are the Austrian State Archive and *Dokumentationsarchiv des Österreichischen Widerstandes* (Archive of the Austrian Resistance), or DÖW (1963). The stated mission of the archive was to “serve the education of youth in contemporary history through documentary evidence. They [Austrian youth] should be made aware of the results of the loss of independence and freedom of Austria, as well as the heroic fight of the resistance fighters.”
- **Belgium**
  - *Belgian State Archives* ([http://arch.arch.be/index.php?lang=en\\_GB](http://arch.arch.be/index.php?lang=en_GB)) contain documents regarding prisons and internment centers and archives of certain administrations of the Ministry of Justice. Information on the organization of the internment camps, the lives of the inmates and the problems can be found in the archives of the High Commission for the Security of the State, kept at the state archives.
  - The *Archives of the military justice* contain the files of the trials against collaborators can be consulted in the Palace of Justice in Brussels.
  - The *Archives of the former Auditorat Général* (Military Prosecutors’ Office) contain the files of the trials against the perpetrators and the aides of the persecution of Jews.
  - The Archives of the *Office of the Public Prosecutor* are territorially distributed around Belgian cities.
  - The archive of the *Vereeniging van Joden in België / Association des Juifs en Belgique (Association of Jews in Belgium)*, founded by the occupier, is kept in the Jewish Museum of Deportation and Resistance in Mechelen. The documentation centre has the statutory mission to collect and make accessible all information on the persecution of Jews and Gypsies (Sinti and Romany) in Belgium and the North of France. The documentation centre keeps original archives and documents, but also digitizes the existing public and private archives.
  - An important source for studying the history of the Jewish victims is the *Archives of the Department of War Victims* in Brussels, created immediately after the war as a department of the Ministry of Reconstruction. In the Department of War Victims are kept among others the filing cards of all Jews registered by



the Sipo-SD, more than 56,000 altogether. Notably the 3,000 envelopes with relics of Jewish deportees, which are now kept in the Jewish Museum for Deportation and Resistance, were originally kept there.

- **Bulgaria** The *Central State Archive* contains documents from the Central Committee of the BCP and many personal archives of repressed political activists. Other archives are the *Archive of the Ministry of the Interior*, the *Archive of the Ministry of Justice*, and the *Central Military Archive*. In 2007, a Committee was set up as a result of the implementation of the Law for Access and Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian National Army. In accordance, construction of a special archive began, which is to hold all the available documentation on the repressive mechanisms and the repressive actions of the communist regime. This archive has not yet been completed, but, in accordance with article 31 of the law, the Committee has provided a special reading-room in its building, which allows for the free access of citizens and researchers to the documentation they are interested in. The Supreme Court condemned on 11 April 2002 former Interior Minister general Atanas Semerdjiev to four and a half years in prison for ordering the destruction of 144.255 files from the 1990 State Secret Service archive. The two erased dossiers related to the illegal activities of the secret service during the ruling of Todor Zhivkov.
- **Cyprus** The most significant part of the archives related to the coup is in Greece, since the Greek military junta ruling Greece until July 1974 was the mastermind behind the coup. The relevant archives were gathered and examined by a committee of the Greek Parliament established to this effect in 3 March 1986 to examine the so-called “*File of Cyprus*” (see above section 6.1).
- **Czech Republic** Competent authorities are the *Institute for the Study of Totalitarian Regimes*. The Act creating the Institute placed Security Service Archives (including StB files) under its purview. The *Archive of Security Forces*, seated in Prague, is directly controlled by the Institute and is headed by the Archive Director. Among its tasks are caring for and making accessible the files and documents of the former state security services according to Acts 140/1996 and 499/2004. The Archive also provides materials to the intelligence services and state bodies dealing with security proceedings, the protection of classified information, and investigating criminal cases.
- **Denmark** The *Danish State Archives* ([www.sa.dk](http://www.sa.dk)) collects and stores historical sources and makes them available to the public. In 1998, a project was initiated with a view to creating a database (*Guide to the Museums and Archives of the Occupation Period*) contained all significant material from 1940-1945.
- **Estonia** Official archives in Estonia are managed by the National Archive (NA) or *Rahvusarhiiv*. The NA is divided into 9 sub-sections, one of which is the State Archive (*Riigiarhiiv*), which has the main responsibility for maintaining records and documents from the Soviet era, including from the KGB, the Soviet Interior Ministry and the full archive of the Estonian Communist Party.

- **Finland** The main body is the *National Archives Service* (<http://www.narc.fi/Arkistolaitos/eng/>) which since 2009 integrates the Military Archives and the Archives of the Council of State.
- **France** The High Council of Archives, created in 1990 and placed under the Minister of Culture, is the body to be consulted on the policy related to public and private archives.
- **Germany**
  - **(Nazi period)** The *Central Office for the investigation of Nazi crimes (Zentrale Stelle der Landesjustizverwaltungen)* has passed the bulk of its files of preliminary investigations (and copies of indictments and trials) into a branch of the Federal Archives (Bundesarchiv – Außenstelle Ludwigsburg). Records of investigations and trials are located in the archives of the federal Länder. (Generallandesarchiv Karlsruhe, Hauptstaatsarchiv Düsseldorf, Hannover und Wiesbaden, Landeshauptarchiv Koblenz, Landesarchiv Berlin, Landesarchiv Saarbrücken, Landesarchiv Schleswig, Landesarchiv Speyer, Staatsarchiv Amberg, Staatsarchiv Augsburg, Aurich, Bamberg, Bremen, Bückeburg, Coburg, Darmstadt, Detmold, Freiburg, Hamburg, Landeshut, Ludwigsburg, Marburg, München, Münster, Nürnberg, Oldenburg, Osnabrück, Sigmaringen, Stadt, Wolfenbüttel und Würzburg.) In few cases, the records might still be with the state attorneys as some investigations and trials against Nazi criminals are still being prepared and under way.
  - **GDR** The archive dealing with the Stasi files is the *Behörde des Bundesbeauftragten für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik* (usually abbreviated *BStU*). Joachim Gauck—a pastor—was named as the ‘special delegate’ (*Sonderbeauftragter*) by the last Volkskammer on October 3rd, 1990. He started working with a staff of 52 (as is now known, partly recruited from the MfS itself), and was supported by special representatives from the Interior Ministry. Apart from the central archive in Berlin, there were 14 branches in East Germany. Apart from the federal head of the Authority, each Land (federal state) can have so-called *Landesbeauftragte* as well as regional archives and offices for individual citizens to receive information and counsel. The Authority has to report to the German Federal Parliament at least every two years; the Bundestag also decides who the head of the Authority will be. It is not accountable to the Chancellor or to particular ministries. Its budget in 2008 was 99,462,000 Euros, which, among other things, paid for 1,909 employees (in the late 1990s there had still been 3100 employees). The Authority has extensively cooperated with similar institutions, as well as civil society actors, in Central and Eastern Europe, as well as Asia and Latin America. In December 2008 a European network of authorities dealing with secret police files was founded (*Europäisches Netzwerk der für die Geheimpolizei zuständigen Behörden*). The Authority is active in four main areas: maintaining the archive, providing

information (*Auskunftswesen*), historical research and historical and civic education (an area in which it also organizes exhibitions, offers education material and programmes for further education for school teachers). The first two have constituted the core activities of the Authority. The Authority has had to classify the files which stretch for more than 111 kilometers, with each meter containing something like 10,000 pages. There are 15,550 containers with torn files and other materials. In addition, there are 1,4 million *spezielle Informationsträger* (special information materials). The classification system which the Authority inherited from the Stasi contained six million filing cards. Authority employees are still – almost twenty years after the peaceful revolution -- busy piecing together the files which were shredded in 1990, and in recovering information from hard discs which have been erased.

- **Greece** The *State General Archive* (<http://gak.att.sch.gr/index.htm>) holds most relevant documents.
- **Hungary** Relevant documents are in the *Historical Archives of the Hungarian State Security* and the *State Archives of Hungary*. The former is the most relevant one and was set up by *Act no. 3 of 2003 on the disclosure of the secret services activities of the Communist regimes and on the establishment of the Historical Archives of the Hungarian State Security*. It contains documents and data which were produced at and belonged to the archival materials of, in connection with the operation of the Hungarian State organs performing state security activities between 21 December 1944 and 14 February 1990. It inherited the funds of the History Office. Some sources argue that in 1989 and 1990 70% of secret files were lost; about the 100,000 of the 110,000 agent-recruitment file were also lost. Further, in December the destruction of file sill used by agents on daily basis were authorized. Among the files, only the personal information cards of active members were preserved.
- **Italy** The documents regarding the fascist period can be freely consulted in several sections of the *State Archives* and at the *State Central Archives* in Rome. Some private foundations store also relevant documentation.
- **Latvia** The historical records of the two totalitarian periods are to be found mostly in the Latvian State Archive (*Latvijas valsts arhīvs*), which houses all records pertaining to Latvia's historical experience since 1940 (<http://www.lvarhivs.gov.lv/>). Records pertaining to Latvian history before 1940 are housed in the Latvian State Historical Archive (*Latvijas valsts vestures arhivs*) (web site in five languages: <http://www.arhivi.lv/index.php?&16>). The holdings of the two totalitarian periods are a complex collection.
- **Lithuania** The *Lithuanian Special Archive* (which is administered by the Lithuanian Archives Department under the Government of the Republic of Lithuania) keeps the documents of the *special part* of the *National Documentary Fund* (<http://www.archyvai.lt/archyvai/changeSite.do;jsessionid=86EAD2B2E2BEB70459A67D70937CB609?siteId=4&pathId=103>). According to Law on Documents and Archives of the Republic of Lithuania (amended in 2004), the special part comprises the activity documents of the Resistance to both the Soviet and the Nazi occupations,

as well as the activity documents of the repressive structures (including the KGB, the Soviet ministries of defence and interior, the armed forces and structures of intelligence and counterintelligence) of those occupation regimes. A large part of the Resistance documents had been destroyed by the Soviet occupation regime; meanwhile a number of files containing the documents regarding the KGB and the Communist party activity in Lithuania (including a lot of personal files of the persons who have been involved in secret collaboration with the KGB) had been either removed or destroyed.

- **Luxembourg** Public archival documents pertaining to World War II are entrusted to three national institutions:
  - The *National Archives*,
  - The *Centre de Documentation et de Recherche sur la Résistance* (created in 2002),
  - The *Centre de Documentation et de Recherche sur l'Enrôlement force*, created in 2005.
- **Malta** In 1994 the National Archives were opened to the public. Most of the official records are to be found here (<http://www.libraries-archives.gov.mt/nam/index.htm>). Archives are regulated by the 1990 *National Archives Act*.
- **The Netherlands** The *National Archives* gather different collections. The single most important collection to document the crimes of the National Socialist regime is the CABR, the *Centraal Archief van de Bijzondere Rechtspleging*, or Central Archives of the Special Criminal Procedures. This collection encompasses the archives of the section of the Ministry of Justice that was assigned the task of persecuting the crimes of those involved in the repressive regime and its collaborators. Other collections in the National Archives are the *Archives on the Purge of the Civil Service*, originating from the Ministry of the Interior, the Archives of the Prime Minister's Office, and the *Archives of the Dutch Branch of, and Liaison to, the United Nations War Crimes Commission*. The *Netherlands Institute for War Documentation* (NIOD) in Amsterdam has a collection that specifically concerns the crimes committed during the repressive regime: the German *Reichskommissariat*, and SS and Police apparatus, the Dutch Nazi movement, the collection of the Jewish Council, of a number of resistance organisations, and more and more of post-war organisations of resistance veterans and different categories of victimized groups.
- **Poland** The *Institute of National Remembrance* is the holder of the Archives on the basis of the *Act on the Institute of National Remembrance–Committee for Prosecution of Crimes against the Polish Nation* of December 18<sup>th</sup>, 1998.
- **Portugal**. The two most important archives are:
  - The *National Archive (Arquivo Nacional da Torre do Tombo)*, which contains the archives of presidents of the authoritarian regime Oliveira Salazar and Marcello Caetano
  - The *Archives of the Centro de Documentação 25 de Abril* (University of Coimbra).
- **Romania**.

- The *National Council for the Study of Securitate Archives (CNSAS)* (<http://www.cnsas.ro/engleza/mission.html>) is the custodian of the secret files of the *Securitate*.
- National archives keep ordinary files whilst the *Archives of the Romanian Communist Party (Arhivele P.C.R.)*, part of the National Archives (*Arhivele Nationale*), contains the collections of documents produced by the Romanian Communist Party from its creation in 1921 until its demise in 1989.
- **Slovakia**. Competent authority keeping files is the *Nation's Memory Institute*.
- **Slovenia**
  - *Archives of the Republic of Slovenia*.
  - The *Study Centre of National Reconciliation* deals with former Communist archives since 2008.
- **Spain**
  - The *Documentary Centre for Historical Memory and General Archive of the Civil War* (<http://www.mcu.es/archivos/MC/AGC/index.html>) is the central archive for civil war and Francoist periods.
  - In 2009, the Defence Ministry created the *Archivo General Histórico de Defensa* which holds relevant military documents.
- **Sweden** The state central archive *Riksarkivet* contains e.g. the documents of the Sandler Commission (see section 6). (<http://www.statensarkiv.se/default.aspx?id=1200&refid=1160>)
- **UK National Archives** (<http://www.nationalarchives.gov.uk/>).

Additionally to national bodies, there is a pan-European coordination initiative:

- The **Foundation of a European Network of Official Authorities in Charge of the Secret-Police Files** [http://www.th.hu/html/hu/aktualitas/megallapodas2\\_angol.pdf](http://www.th.hu/html/hu/aktualitas/megallapodas2_angol.pdf)). On 16<sup>th</sup> December 2008, the representatives of the German BStU; Bulgarian COMDOS; Polish IPN; Romanian CNAS; Slovakian UPN; Czech USTR and Hungarian ABTL (order of signature) signed the foundation paper of this Network of state-operated agencies which seeks increasing cooperation among them. The partnership seeks to facilitate the access to secret files of Eastern European citizens by allowing them to submit their request to only one agency, but receive all documents compiled on them in different Eastern European countries.

## 7.2 Access conditions

The Council of Europe approved a Recommendation which offers some principles inspiring legislation on access (Recommendation No. R (2000) 13 of the Committee of Ministers to member states on a European policy on access to archives (Adopted by the Committee of Ministers on 13 July 2000, at the 717<sup>th</sup> meeting of the Ministers' Deputies):

- Access to public archives is a right. In a political system which respects democratic values, this right should apply to all users regardless of their nationality, status or function.
- The legislation should provide for:
  - a. either the opening of public archives without particular restriction; or
  - b. a general closure period
- Exceptions to this general rule necessary in a democratic society can, if the case arises, be provided to ensure the protection of:
  - a. significant public interests worthy of protection (such as national defence, foreign policy and public order);
  - b. private individuals against the release of information concerning their private lives.
- All exceptions to the general closure period, whether relating to the reduction or to the extension of this period, should have a legal basis.
- The applicable rules should allow for the possibility of seeking special permission from the competent authority for access to documents that are not openly available. Special permission for access should be granted under the same conditions to all users who request it.
  - o **Belgium** All documents that are more than 100 years old and deposited at the *State Archives* by a public authority are public archives. The *Archives of Military Justice* have been opened gradually for research purposes (but for each penal file an authorization by the chief military prosecutor or the board of chief prosecutors is necessary) since the late 1970s. The penal files of people who were not brought before the judge and during a certain period of time, and the files of convicted collaborators who had obtained rehabilitation remained closed. A few years ago, these files also became available for scholarly research. Under certain circumstances, relatives are given now the authorization to refer to the penal files of their relatives
  - **Bulgaria** The Law for Access and Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian National Army was passed by the National Assembly in December 2006, that full access to the archive documents was granted. Citizens have the right to read the secret files compiled on them. Files touching on issues of “national security” remain classified. In particular, according to chapter 2, section 2 of the law, all archive documentation, related to the activities of the institutions, mentioned in the law, has to be handed over by all the archives in the country to the specially created by the Committee archive. Bulgarian citizens, who wished to consult the files of the State Security, which concerned them, could do so in a special reading-room of the Committee, but there was no widespread public interest, with only 526 people taking up the opportunity in 2001.

The archives have different requirements for access to documents. Most departmental (ministerial) archives can be accessed with an administrative approval, obtainable by written request. The Central State Archive documentation is open to all citizens in exchange for a minimal fee. Most documents, related to the political decisions for the repressions, are located in the Central State Archive, but documents on

the political trials, the organization of camps, and other repressive practices of the State Security are kept in the archives of the Ministry of Justice and the Ministry of the Interior. In order to facilitate the access to this information, construction of a new specialized archive to contain all documentation, related to the State Security, began in 2008. This documentation is available for both researchers and victims of the repressions.

- **Czech Republic** By *Act 140/1996 on Access to Secret Files*, citizens can view their files, with the names of third-parties blacked out. The vast majority of StB materials are now declassified. Anyone can access the archive. One needs to complete a research sheet indicating the materials sought and present identification on each visit (relevant acts: Act No. 107/2002 Coll., on *Access to Documents Created through Activity of the State Security* (Amendment of Act 140/1996): broadened access to security files; Act No. 499/2004 Coll., *Archiving and Filing Act* broadened amount of information available to citizens who access the state security files). According to this Act, adult citizens (at least 18 years of age) can have access to their own files and to the files of StB collaborators, StB personnel files, and entries recorded with intelligence technology and monitoring. Archive Act 499/2004 further broadened access. Citizens can view files of anti-communist dissidents, including compromising information on them.
- **Denmark** All citizens are granted free access to material that is thirty years old or older.
- **Estonia** Pursuant to Paragraph 9 of *the Procedure for Collecting, Registering, Preserving and Utilizing the Materials of Security and Intelligence Organs of Other Countries, Who Have Operated in Estonia Act*, all individuals have the right to see Soviet-era materials pertaining to them contained in the National Archive. Where such individuals are already dead, the right to request information about them is extended to their parents, spouses, sisters, brothers, and descendants. Upon special permission, these materials can also be examined by researchers and law enforcement authorities. Citizens can read agent reports, mission statements by the secret police, observations on ordinary people, and the files of arrestees. Citizens do not have access to the files of KGB agents. All secret KGB files dated prior to 1960 are available to the public.
- **France** A *Circular of 2 October 1997 concerning the access to public archives of the period 1940-1945* addressed by the then Prime Minister, Lionel Jospin, to government ministers and secretaries of state affirmed that the French Republic has the responsibility to maintain the memory of events which occurred between 1940 and 1945. Historical researchers must be provided with an easy access to archives. To this effect, the Prime Minister promoted the use of general or individual derogations (exceptions to the Law). Individual derogations have been granted by the Direction of National Archives for the access to archives for the period 1940-1945. A general derogation, since July 1983, on all documents kept by the National Archives, including in particular the periodical reports addressed by prefects to the Minister of the Interior between 1940 and 1944 has also been granted by the Prime Minister.

- **Germany** As with all official files, there is a waiting period of 30 years for the use of records. Restrictions can be waived if scholarly interest is proved. The user of the files has to agree to protect the rights of third parties (i.e. relatives of perpetrators named in the records).
  - Law on the Securing and Use of Individual-Based Data of the former Ministry for State Security/Office for National Security (1990): right to information without right to documents. The same applies to the Stasi files (Stasi Files Law, 1992). Documents compiled by the communist era military intelligence remain classified. Anybody could apply to see ‘their file’ and find out who had spied on them. In that sense, there was an asymmetry of rights: victims had the right to find out about their past, without any restrictions, while perpetrators – considered ‘figures of contemporary history’, not just private individuals -- do not have a normal right to privacy or to keeping their past hidden. Gaining access to information about deceased close relatives is in principle possible. According a survey conducted in the late 1990s, 90% of those who had access to their files viewed the experience as in some sense positives – although they dealt with it in mostly personal, rather than political terms. Public authorities and private institutions have had the right to ask the BStU for information on whether any of their members was a member of the Stasi itself or an informer. As of today, such checks can only still be done officially for politicians or civil servants in leading positions, and these checks are to end completely in 2011. Information can also be requested about pension matters, for rehabilitation purposes and to investigate crimes. Finally, researchers and journalists can request information from the BStU (as number of court decisions have suggested that researchers ought to be privileged over journalists in terms of access). The material they receive will generally have names blackened out. There is an in-house historical research unit whose members are the only historians with full access to the files, without names blackened. The StUG generally holds that the data of members or informers of the Stasi are not worthy of protection, but leaves to courts individually to balance the competing claims of the the ‘public interest in working through the past’ (*Aufarbeitungsinteresse der Allgemeinheit*), the right to free speech, and the personal rights to dignity and privacy of individuals (so-called *Persönlichkeitsrecht*), especially the personal interest not to be stigmatized or even ostracized. The BStU has been careful to emphasize that it merely provides material upon request and does not make any final judgments about the Stasi involvement of individuals; it also stresses that the ultimate responsibility for respecting the personal rights of others rests with those



publishing the names of people they deem to have been involved with the Stasi.

- **Greece** A political consensual decision among political actors led to the destruction of individual files after dictatorship.
- **Hungary** As for the *Historical Archives of the Hungarian State Security*, any natural person may have free of charge access to archives created after 1 May 1990, or archives older than thirty years from the calendar year of their creation, archives that were created before 2 May 1990, if older than fifteen years from the calendar year of their creation. As for the *State Archives of Hungary*, any natural person may, upon preliminary application for access submitted to the archives, have free access to archival records held in public archives. Citizens can read the secret files compiled on them, and the records of people who spied on them. Files touching on “national security” issues remain classified. By 2000 the services announced that they had declassified 1,788 archival items. As of 2000, the Historical Archive housed some 70,000 investigation files, 15,000 operative files, 5,600 recruitment files, 8,000 work files, and almost 4,000 files, reports, studies, lists and manuals<sup>208</sup>.
- **Latvia** While most of the totalitarian era records are accessible to researchers, records pertaining to individual cases of repression are governed by special use regulations as defined by the laws that consigned these records to the State Archive.
- **Lithuania** Under the current version of Art. 20(3) of the Law on Documents and Archives, access to the documents of the special part of the National Documentary Fund, including the documents of the Soviet occupation repressive structures, is open to the public on common grounds, i. e. it is not restricted to any persons and free of charge. The only two exceptions are: 1) the documents containing information about the persons who, within the time prescribed by the special lustration law<sup>209</sup>, have confessed to secret collaboration with the special services of the USSR and therefore have been entered into the Record of the persons who have confessed. Data about the persons entered into the Record is classified as a State secret since the State is committed to protect those former collaborators of the special services of the USSR who have demonstrated loyalty to the Republic of Lithuania by confessing to secret collaboration and submitting all the related information within the time prescribed. This data has to be declassified only if a person concerned is occupying or is a candidate to one of the highest political post. It can be used for research purposes only with the permission of the Lustration commission and if encoded by that Commission; 2) the documents containing data about the persons who have suffered from the special services of the USSR, if they expressed their will to restrict access to the information on them. Access to those documents is restricted until the death of a person concerned.

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<sup>208</sup> Stan, Lavinia, Hungary in (ed.), Lavinia Stan *Transitional justice in Eastern Europe and the former Soviet Union: reckoning with the communist past*, London New York, Routledge, 2009.

<sup>209</sup> See the Law on Registering, Confession, Entry into Records and Protection of the Persons Who Have Admitted to Secret Collaboration with Special Services of the Former USSR (23 November 1999, No. VIII-1436), in particular Art. 6-8.

- **Malta** Research is usually unhindered and subject to the usual provisos, such as the 30 years rule for access. No serious problems have been recorded regarding access to what is available in these state archives. On the other hand, access to the archives of the Maltese Catholic Church is still very restricted and arbitrary, especially as regards material from the 1930s and 1960s. The National Public Library (*Biblioteka Nazzjonali*) at Valletta holds most if not all of the literature (including newspapers) published in Malta during the nineteenth and twentieth centuries to-date. Similarly to the national archives it operates on the basis of open access to everyone on presentation of any form of identity card or passport.
- **The Netherlands** The CABR collection (see above 7.1) is conditionally accessible for scholars and the public at large. The present legal basis for the right of access is the Dutch Archival Law, which in general enables all interested parties to research both files on policies and on individual perpetrators, only limited by protection of the privacy of people who are still alive.
- **Poland** The Act on disclosure of information on documents of security service organs collected during the period 1944-1990 or on the content of these documents of October 18<sup>th</sup>, 2006 regulates access. Everyone who applies on a formal form can be granted access to the archives (Article 30). Persons who had not been collaborators or employees of communist secret services can access files that have been anonymised (Article 30). Those who had been involved with the communist secret services can access only those documents which they had prepared or contributed information to as informers (Article 31). After an initial viewing of anonymised documentation a person who had not been a secret service collaborator can apply to access documents with all details included, provided these documents are connected to the person applying (Article 34). Everyone can apply to the Archives of the Institute to supplement existing documentation with their own documentations related to their case (Article 35). A person who was not a collaborator of communist secret services can demand that documents related to their case will not be available for the sake of academic research and press releases for a specified period of time, yet not longer than 50 years from the moment given documents were produced (Article 37). Everyone can apply to access documents related to employment details of the employees of the communist secret services, including the communist secret services' employees themselves (Article 35). Everyone can apply to access contents of the court lustration proceedings, which have been archived with the Institute, provided they have made a formal application. Documents from the Institute's archives can be accessed for the purpose of academic research and press releases, provided a formal application is made (Article 36). Those applying for access are responsible for how the information is used. The same rules apply to the access for the purpose of formal proceedings, such as court investigations, police investigation etc. (Article 36). Everyone can access documentations of persons holding public positions, as listed in Article 4 of the *Act on Disclosure of Information*, provided they have made a formal application. The Institute publishes information on persons holding public positions in the *Public Information Bulletin*

(*Biuletyn Informacji Publicznej*), which is available electronically over the internet.

- **Portugal** The *National Archives* are open to the public after 25 years of the decease of their original holders (Salazar and Caetano). Exceptionally, interested persons could access before the 25 years period with the permission of the government member responsible.
- **Romania** Access to the three kin of archives are regulated differently:
  - *Archives of Securitate*. The CNSAS keeps them (see section 3.2.1). A 1999 Law (*Law 187/1999 on Access to Secret Files and the Unveiling of the Securitate as Political Police as Political Police*) regulates access to secret files of *Securitate*. It grants citizens of Romania and other European Union and NATO member states access to the files the *Securitate* compiled on them. Both victims and informers have access to the original documents, including the names of third parties. Victims have access to all documents included in their files. Informers have access only to their file, not to the information reports they provided. According to the law, citizens can also read the secret files compiled for their deceased relatives. Citizens can also delegate another person to read their own file, and can read their own file together with another person of their choice. To obtain permission to see the files of other persons, researchers must pledge not to disclose in their research publications any personal information that could damage the reputation of third parties and the victims. ‘Accredited’ historians can access the nominal files of other persons or files on a given ‘problem’ for research purposes. It is to the CNSAS to decide which files are relevant for a given research project, and which volumes of a given relevant file are to be made available to researchers.
  - As for the *National Archives (Arhivele Nationale)*, a 1996 law (*Law 16 of 2 April 1996 on the National Archives*) establishes that documents included in the National Archives can be read by interested Romanian and foreign citizens, at their request, 30 years after their creation. More recent documents can be consulted only with the approval of the organization that created them. Documents touching on issues of national security or on the privacy of some persons are not opened to the public. In 2008, the National Archives proposed amendments to Law 16/1996 meant to give the public extended access to the documents, streamline the process of accessing documents, and increase the transparency of the Archives. According to this proposal, access to archives of public interest is granted: immediately, for the archives created by the Communist Party during the 1921-1989 period; 25 years after the creation of the document, if their owner or the law does not specify otherwise; and after 75 years, for documents detailing the private life of a person. Documents on public figures cannot be considered to touch on their privacy.
  - As for Communist party archives, the same Law 16/1996 limited access to some parts of the archive. A 2008 legislative proposal

for the modification of Law 16/1996 allows the free access to these collections.

- **Slovakia** Persons 18 years and older may request, in writing, to see files kept and information collected on them by the state security services, as well as the files of persons named or referred to by codename in their files, if they are listed in the StB (see section 3.2.1) registers as collaborators or security service employees. Persons 18 years and older may also request the files of persons recorded by the security service as a collaborator or member of the security service, if that person is a Slovak citizen.
- **Slovenia** A constitutional provision (Article 39) provides that ‘everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law with the exceptions regulated by law’. A large number of Acts regulate access and data protection. Among these, the most important one is the *Protection of Documents and Archives and Archival Institution Act*. Article 67 provides that ‘all types and levels of confidentiality indicated in documents, funds and collections, respectively which were created by the authorities and other organizations of the former SFRY shall be null and void; the same applies to the limitations on the use of archives transferred by the authorities and organizations of the former SFRY until independence of the Republic of Slovenia. Article 41 notes that ‘public archives not intended for the general public at the time of their creation shall be made available for use 30 years after their creation’ and ‘public archives containing data relating to defence and international affairs, national security, including the maintenance of law and order, and economic interests of the country, the disclosure of which might cause damage, shall become available for use 40 years after their creation.’ In this context, Article 42 provides that ‘The periods of restricted access to public archives, laid down in Article 41 may be shortened exceptionally under certain conditions, provided that the use of public archives is absolutely necessary for attaining the set scientific goal and provided that public interest prevails over the interests to be protected.’ The decision on exception shortening of the restricted access is made by the Government of Republic of Slovenia upon the user’s proposal and based on the opinion of the archival commission. However, the periods of restricted access may be exceptionally extended at the proposal of the entity under public law which transferred the public archives, but not more than for a period of 10 years.
- **Spain** The *Centre for Documentation on Historical Memory* is opened to the public without restrictions (apart from the legally established for protection of personal data). Access to military archives is free *except* for classified documents. More than an exception, this provision is the crucial regulation for files: most military documents are classified and access to them is regulated by specific legislation: the Franco’s time *Ley de Secretos Oficiales* (Law on Official Secrets, amended only before the enactment of the Spanish constitution). This establishes a very difficult procedure for de-classifying documents.
- **Sweden** Several documents from the postwar years were classified as secret for a period of forty years. According to the law regarding the

classification of documents as secret of 1980 (*Sekretesslagen*), documents that could harm national security can be classified as secret for at most forty years. However, if special reasons prevail, the government may prescribe that the classification should prevail for a longer period. Materials from the National Defense Radio Center (*Försvarets Radioanstalt*, FRA) are not available for research. Legislation places obstacles to accessing the archives both of the security police and the military intelligence and secret service.

- **UK** National Archives are open to the public. Records bearing a last date of 1973 were released into the public domain on 1 January 2004. The Freedom of Information (FOI) (2005) Act gives people two new rights of access; the right to be told whether the information is held by the public authority; and the right to be provided with the information.

### 7.3. Rules on data protection

- **Austria** With certain exceptions allowed, materials in the Austrian State Archives are sealed for 50 years before they can be accessed. The US National Archives has a large collection of captured German war records which includes material relevant to Austria. The records are readily accessible.
- **Bulgaria** Decision of the National Assembly about the Information for the Organization, Methods and Means of the State Security Structures (according to it the documents of the former State Security were declassified), 13 October 1994.
- **Czech Republic** Personal data is not blacked out (unless the files are requested under Act No. 107/2002, which allows third party data to be made illegible).
- **Denmark** Confidential information about individuals, adoption, divorce, suicide, crime, etc. is protected during 75 years. Documents on sensitive security policy issues can have even longer protection periods.
- **Estonia** Personal data are protected thanks to the restrictions on who can access individuals' respective files.
- **France** Access to archives is liberalised since 1979 liberalized access to archives. Documents whose communication was free before their transfer to public archives will continue to be communicated without any restrictions to anyone requesting them. All other documents of public archives may be freely consulted after the expiry of thirty years, or special measures as hereunder. This reduced the previous 50 years' restriction for the consultation of archives for the period 1939-1945. Documents containing information on individuals' private life or concerning the security of the state or national defence have a 60 years protection clause.
- **Greece** Rules on data protection are regulated by a Law of 1997 L 2472/1997 on Protection of Individuals with regard to the Processing of Personal Data. The body supervising data protection is the Hellenic Data Protection Authority ([http://www.dpa.gr/portal/page?\\_pageid=33,40911&dad=portal&schema=PORTAL](http://www.dpa.gr/portal/page?_pageid=33,40911&dad=portal&schema=PORTAL)).

- **Hungary** As for the *Historical Archives of the Hungarian State Security*, archives containing personal data shall be disclosed for access by anyone 30 years after the year of the data subject's decease. If the year of death is unknown, protection period shall be 90 years from the birth of the subject, and when neither the date of birth nor of death is known, it shall be 60 years from the creation of the record held by the archives. As for the *State Archives of Hungary*, records created before 2 May 1990 are made available to the public 15 years after their creation. Records created after 1 May 1990 are made available to the public 30 years after their creation. The *Supplement of the Privacy Act* contains the detailed list of state secret categories indicating the longest possible validity of classification of every category: maximum 90 years. For access to records containing classified data the permission of the classifier is necessary.
- **Italy** The limits to the conditions of access to data are set by the general legislation on archives (art. 122-127 del D. lgs. 42/2004, *Codice dei beni culturali e del paesaggio*). Documents which contain personal ultra-sensible data can be consulted 70 years after their date and documents that contain judicial data can be consulted 40 years after their date.
- **Lithuania** Access to the documents of the National Documentary Fund containing information on person's private life, as well as to structured sets of personal data is restricted for a term of 30 years after that person's death, or in the event of failure to determine the date of death – for a term of 100 years from his birth, or if neither the date of birth nor the date of death of a person is determined – for a term of 70 years from the creation of the document. In addition, under the special rule specified in Art. 20(3) of the Law, personal data regarding the victims of the repressions can be protected: as it was mentioned above, access to the documents containing information about the persons who have suffered from the special services of the former USSR has to be restricted until the death of the persons concerned, if they expressed such a will.
- **Luxembourg** establishes a general closure of 30 years for documents that were not open before their deposit in the archives (*Règlement grand ducal* in 2001)<sup>210</sup>. Longer periods of foreclosure exist for personal and medical records, records concerning juridical matters and records regarding national security and defence matters.
- **Malta** Personal protection: rules under the Data Protection Act (enacted in 2001) apply.
- **The Netherlands** Law of Archives applies to them.
- **Poland** The 1997 Law on personal data protection. A law on personal data protection was passed on August 29, 1997 (Dz. U 1997 Nr 133 poz833). A person who has been granted access to non-anonymous copies of documents concerning him/herself may reserve that his/her personal details should not be made accessible for a period not exceeding 50 years since the date they were produced.
- **Romania** Documents containing private information are to be released 40 years after their creation.

<sup>210</sup> Mémorial 2001, pp.612-13. *Règlement grand ducal du 15 janvier 2001 sur la consultation des fonds d'Archives nationales*

- **Portugal** The current law determines that if the person identified in the case is still alive, or has been dead for less than 50 years, their file may be consulted only with permission from the individual concerned or from their descendents. The majority of documents, expunged of names, are open for consultation. As for the Archives of the *Centro de Documentação 25 de Abril*, researchers (credentials required) or legitimized special interest.
- **Slovakia**: Names and information of third parties are blacked out, but names of collaborators and members of the security service are not.
- **Slovenia** The Act provides in Article 41 that ‘public archives containing data relating to the privacy of an individual shall become available for use 75 years after their creation, or 10 years after the death of the person to whom they relate, provided the date of death is known, and unless otherwise provided by relevant regulations.’ It continues that ‘a entity under public law which transfers public archives to the archival institution must, with respect to the foregoing two paragraphs, mark the archives with the relevant periods of restricted access and indicate the periods of restricted access for individual public archives in the record of transfer.’ Archival material may be opened to the public at an earlier date if the interests of the general public or of science prove more important than the aspects of confidentiality, in particular considering the protection of personal and family life of individuals. On the request of the entities under the public law that transferred public archival material to the Archives, the date of restricted use of archival material may be extended for a maximum of 10 years. Access to archival material containing personal and private data is not restricted to individuals to whom the data refer, their trustees, legal representatives and heirs, as well as to state authorities, authorities of self-government communities or bearers of public authority which require documents for their work, or when documents are required by persons for the assertion of their rights. Private archival material is used in accordance with the relevant laws and other legal instruments on the basis of which the Archives acquired the private archival material (agreement on the acquisition of archival material). Where private archival material is only available under specific conditions, a person who wishes to use such material must obtain permission for its use from the owner as well as fulfil his/her potential obligations to the authors (moral and material copyrights). Legal and natural persons that transfer archival material to the Archives must indicate the types and dates of restricted use in the acquisition reports and in the agreements on the acquisition of archival material.
- **Spain** Basic provisions on access are contained in the *Law on Historical Heritage* which establishes that 50 years must pass to have access to files or 25 years if the person affected is death or there exist express permission (art. 57.1).
- **UK** Data Protection Act 1998 applies.

#### 7.4 Consultation statistics

Statistics on consultation of archives have been reported in very few of the national studies. In several cases, these are not available.

- **Czech Republic** As of November 2005, the archive had provided about 5,000 files to applicants (requests were 10 times that many, but either there was no file or it had not been preserved).
- **Estonia** No direct statistics are available concerning the consultation of materials linked specifically with the Soviet and Nazi occupations. The National Archive releases statistics only for its entire network of archives.
- **Germany (GDR)** By the end of 2008 there had been 6,315,792 requests for information (*Anträge und Ersuchen*), of which 2,559,311 were from individual citizens, 1,753,869 involved assessing the past of members of the civil service, 455,734 had to do with compensation, rehabilitation and criminal justice, and 1,129,551 involved pension matters.<sup>211</sup> 21,383 requests came from researchers and journalists. In the case of roughly a third of all individual applications, files could actually be found. The number of applications has been consistently higher than expected and calls for closing the files, often voiced by the postcommunist PDS, have been resisted, although there appears now to be a consensus that the files will eventually be incorporated into the Federal Archive in Koblenz.<sup>212</sup> The number has been up and down over the years, partly depending on new legislation that makes information newly relevant (such as the law relating to the *Opferrente*). In 2006 there were 97,000 request for personal access to files, in 2007 there were 101,000, and more than 87,000 in 2008.
- **Hungary** During 1997-2000 period, only 5,000 person requested to read their files; among them half all those cases, no secret file was found.
- **Lithuania** The following statistics are available concerning consultation of materials preserved in the Lithuanian Special Archive (without indication what precisely documents have been requested)<sup>213</sup>:

Table 7.4.1 Consultation statistics in Lithuania

Period of time (year)	Number of regular readers (various professionals)	Number of readers having visited reading-rooms
2005	642	8676
2006	511	7901
2007	930	8537
2008	1087	8416
first half 2009	615	4633

- Poland February 2001- end of June 2002: more than 11,000 people requested access to records accumulated by the former security organs. 28,237 other applications were received by the Institute which requested access to documentation on legal and private entities. In the same period,

<sup>211</sup> [http://www.bstu.bund.de/cln\\_012/mn\\_712442/DE/Behoerde/BStU-in-Zahlen/bstu-in-zahlen\\_node.html\\_\\_nnn=true](http://www.bstu.bund.de/cln_012/mn_712442/DE/Behoerde/BStU-in-Zahlen/bstu-in-zahlen_node.html__nnn=true) [last accessed June 24, 2009]

<sup>212</sup> In 1997, a majority among East and West Germans also opposed closing the files. The exception were PDS voters, 79% of whom were in favour of doing so. See "'Ideologischer Schießbefehl'".

<sup>213</sup> This data is provided by Kęstutis Remeika, the Deputy Director of the Lithuanian Special Archive.



31,618 answers were given out by the Institute and 109 168 research procedures were launched.

- **Romania** Whilst there are not available statistics for consultation of the Romania National Archives, the CNSAS has submitted activity reports during the 2000-2007 period. No activity report on 2008 is available to date. According to its own data, the CNSAS has granted the following access to secret files to Romanian citizens:

**Table 7.4.1 Secret File Access in Romania (2000-2006)**

<b>Year</b>	<b>Number requests accepted</b>	<b>Number requests solved</b>
2000	250	0
2001	5097	2891
2002	2568	2987
2003	1950	1501
2004	2171	1350
2005	1568	2048
2006	3482	914
2007	N/A	1678
<b>Total</b>	<b>17,086</b>	<b>10,777</b>

Source: National Council for the Study of Securitate Archives, *Activity Reports 2002-2007*, available at <http://www.cnsas.ro/main.html> (accessed 5 June 2008).

- **Slovakia:** In 2008, the Nation's Memory Institute disclosed 25,064 pages of files. In its first six years, it received 9,337 requests for disclosure.<sup>214</sup>

<sup>214</sup> Email correspondence with Jan Palffy, Nation's Memory Institute Spokesman, June 4, 2009.

**Table 7. Archives 1**

Member state	Competent authority	Type of information	Access conditions		Rules on data protection	Consultation statistics
			Individual files	General files		
<b>Austria</b>	-Austrian State Archive -Archive of the Austrian Resistance	-archives of the federal services of the Republic of Austria (supreme bodies and ministries)			With some exceptions, materials in the Austrian State Archives are sealed for 50 years before they can be accessed	
<b>Belgium</b>	-Archives of the military justice	-files on the trials against collaborators	-For each penal file an authorization by the chief military prosecutor or the board of chief prosecutors is necessary. -Under conditions, relatives can access to their relatives' files	The criminal files of people who were not brought before the judge and those convicted collaborators who had obtained rehabilitation remain closed.		
	-Belgian State Archives	-documents regarding prisons and internment centers and archives of certain administrations of the Ministry of Justice - also information on the organization of the internment camps and the lives of the inmates		All documents that are more than 100 years old and deposited at the State Archives by a public authority are public archives		
	-Archives of the former Auditorat Général -Office of the Public Prosecutor -Archive of the Vereeniging van Joden in België /					

	Association des Juifs en Belgique (Association of Jews in Belgium) -Archives of the Department of War Victims					
<b>Bulgaria</b>	-Central State Archive	-documents from the Central Committee of the BCP and many personal archives of repressed political activists		Documentation is open to all citizens in exchange for a minimal fee		
	-Archive of the Ministry of the Interior, -Archive of the Ministry of Justice			Documents on the political trials, the organization of camps, and other repressive practices of the State Security available for both researchers and victims of the repressions	According to a law of 1994, documents of the former State Security were declassified	
	-Central Military Archive					
	Committee for disclosing the documents and announcing affiliation of Bulgarian citizens to the State Security and the intelligence services of the Bulgarian National Army	-documents of the State Security and the Intelligence Services of the Bulgarian National Army, inclusive of the documents of their predecessors and legal successors, for the period from 9 September 1944 to 16 July 1991	-citizens have the right to read the secret files compiled on them	-files touching on issues of “national security” remain classified		
<b>Cyprus</b>	State Archives	-public records of government departments		The most significant part of the archives related to the coup		

		and other bodies subject to the State Archives Law		of 1974 are in Greece		
<b>Czech Republic</b>	-Institute for the Study of Totalitarian Regimes -Archive of Security Forces	The Archive of Security Forces has among its taskscaring for and making accessible the files and documents of the former state security services according to Acts 140/1996 and 499/2004. The Archive also provides materials to the intelligence services and state bodies dealing with security proceedings, the protection of classified information, and investigating criminal cases.	- Act 140/1996 on Access to Secret Files: citizens can view their files, with the names of third-parties blacked out -Act 107 of 2002 gave much broader access: Adult citizens (at least 18 years of age) can have access to their own files and to the files of StB collaborators, StB personnel files, and entries recorded with intelligence technology and monitoring Access conditions: -fill a research sheet indicating the materials sought, -present and identification on each visit	Archive Act 499/2004 further broadened access: Citizens can view files of anti-communist dissidents, including compromising information on them	Personal data is not blacked out (unless the files are requested under Act No. 107/2002, which allows third party data to be made illegible)	As of November 2005, the archive had provided about 5,000 files to applicants
<b>Denmark</b>	Danish State Archives	-collect and store archival records from the Danish Royal House, central state authorities, military forces and from private organisations and individuals.		All citizens are granted free access to material that is thirty years old or older	Access dates: -75 years: confidential information about individuals, adoption, divorce, suicide, crime, etc. -Extended dates: E.g. documents on sensitive security policy issues	
<b>Estonia</b>	National Archive	-records and documents from the Soviet era, including from the KGB, the Soviet Interior Ministry and the full archive of the Estonian	-All individuals have the right to see Soviet-era materials pertaining to them. -Researchers and law enforcement authorities only under special permission	-Citizens can read agent reports, mission statements by the secret police, observations on ordinary people, and the files of arrestees -Citizens do not have access to	Personal data are protected thanks to the restrictions on who can access individuals' respective files	

		Communist Party		the files of KGB agents. -All secret KGB files dated prior to 1960 are available to the public		
<b>Finland</b>	National Archives Service					
<b>France</b>	High Council of Archives		-Individual derogations have been granted by the Direction of National Archives for the access to archives for the period 1940-1945, -A general derogation authorises the access to the periodical reports addressed by prefects to the Minister of the Interior between 1940 and 1944	-Documents whose access was free before their transfer to public archives are still free. All other documents of public archives may be freely consulted after the expiry of thirty years	-Documents containing information on individuals' private life or concerning the security of the state or national defence: 60 years protection clause	In 1996, 2201 derogation requests were reviewed by the Direction of National Archives
<b>Germany</b>			Law on the Securing and Use of Individual-Based Data of the former Ministry for State Security/Office for National Security (1990): right to information without right to documents. The same applies to the Stasi files (Stasi Files Law, 1992)	-Documents compiled by the communist era military intelligence remain classified		
<b>Germany (Nazi past)</b>	Central Office for the investigation of Nazi crimes		The user of the files has to agree to protect the rights of third parties (i.e. relatives of perpetrators named in the records)			
<b>Germany (GDR)</b>	Stasi Records Authority (Office of the Federal Commissioner (BStU))		Anybody could apply to see 'their file' and find out who had spied on them	researchers and journalists can request information from the BStU with names blackened out		6.315.792 requests for information of which 2.559.311 were from individual

						citizens, 1.753.869 involved assessing the past of members of the civil service, 455.734 had to do with compensation, rehabilitation and criminal justice, and 1.129.551 involved pension matters
<b>Greece</b>	State General Archive		-individual files were destroyed after the dictatorship	- free-access to public documents		
<b>Hungary</b>	-Historical Archives of the Hungarian State Security	-documents and data which were produced at and belonged to the archival materials of, in connection with the operation of the Hungarian State organs performing state security activities between 21 December 1944 and 14 February 1990	-citizens can read the secret files compiled on them, and the records of people who spied on them. Files touching on “national security” issues remain classified	-Any natural person may have free of charge access to archives created after 1 May 1990, or archives older than thirty years from the calendar year of their creation, archives that were created before 2 May 1990, if older than fifteen years from the calendar year of their creation	Archives containing personal data shall be disclosed for access by anyone 30 years after the year of the data subject’s decease. If the year of death is unknown, protection period shall be 90 years from the birth of the subject, and when neither the date of birth nor of death is known, it shall be 60 years from the creation of the record held by the archives.	1997-2000 period, only 5 000 person requested to read their files; among them half all those cases, no secret file was found

	-State Archives of Hungary		Any natural person may, upon preliminary application for access submitted to the archives, have free access to archival records held in public archives		-Records created before 2 May 1990 are made available to the public 15 years after their creation -Records created after 1 May 1990 are made available to the public 30 years after their creation -The Supplement of the Privacy Act contains the detailed list of state secret categories indicating the longest possible validity of classification of every category: maximum 90 years. For access to records containing classified data the permission of the classifier is necessary.	
<b>Ireland</b>	- National Archives		Open to the public. Information access is free in all cases		Data Protection Act (Archives and Historical Research) Regulations 2008	
<b>Italy</b>	-State Archives -State Central Archives			Documents regarding the fascist period and fascist republicans can be freely consulted in various sections of the State Archives, the Central Archive of the State of Rome as well as a few private foundations	Documents which contain personal sensible data can be consulted 70 years after their date and documents that contain judicial data can be consulted 40 years after their date	
<b>Latvia</b>	-Latvian State Archive -Latvian State Historical		Records pertaining to individual cases of repression are governed by special use regulations	Totalitarian era records are accessible to researchers.		

	Archive					
<b>Lithuania</b>	Lithuanian Special Archive	-documents of the special part of the National Documentary Fund	Open to the public: it is not restricted to any persons and free of charge. Two exceptions: -documents of those who confessed to have secretly collaborated with the special services of the USSR -documents on data about the persons who have suffered from the special services of the USSR, if they expressed their will to restrict access to the information on them		-Restricted for a term of 30 years after that person's death, or in the event of failure to determine the date of death – for a term of 100 years from his birth, or if neither the date of birth nor the date of death of a person is determined – for a term of 70 years from the creation of the document. -Access to the files of those who suffered from the special services of the USSR: restricted until the death of the persons concerned, if expressed such a will	-Number of regular readers (2005-2009): 3,785 -Number of readers having visited reading-rooms (2005-2009): 38,163
<b>Luxembourg</b>	-National Archives; -Centre de Documentation et de Recherche sur la Résistance -Centre de Documentation et de Recherche sur l'Enrôlement force	- all archives from ministries and administrations of Luxembourg - information regarding to the Resistant Movement in Luxembourg			Documents not open before their deposit in the archives: closure of 30 years Longer periods for personal and medical records, records concerning juridical matters and records regarding national security and defence matters	
<b>Malta</b>	National Archives			Research is usually unhindered and subject to the usual provisos, such as the 30 years	Data Protection Act (2001)	



				rule for access		
<b>Poland</b>	Institute of National Remembrance	- documents produced and accumulated by the state security authorities in the period from July 22, 1944 to July 31, 1990, as well as by the security apparatuses of the Third Reich and the Union of Soviet Socialist Republics	-Individuals who were not collaborators, employees or officers of the state security authorities, are granted, by the Institute, access to all of the documents, as available, following the anonymous of third parties' personal details -Collaborators, employees and officers of the state security bodies are granted access to anonymous documents, save those that were produced by them or created with their participation.	-for access and use of the documents with the purpose of conducting scientific research, Researchers must fill an application form. Documents are made accessible subject to consent by the head of the Branch Office	A person who has been granted access to non-anonymous copies of documents concerning him/herself may reserve that his/her personal details should not be made accessible for a period not exceeding 50 years since the date they were produced	February 2001-end of June 2002: more than 11,000 people requested access to records accumulated by the former security organs. 28,237 other applications were received by the Institute which requested access to documentation on legal and private entities. In the same period, 31 618 answers were given out by the Institute and 109 168 research procedures were launched
<b>Portugal</b>	-National Archive	-archives of presidents of the authoritarian regime Oliveira Salazar and Marcello Caetano	Open to the public after 25 years of the decease of their original holders		-The majority of documents, expunged of names, are open for consultation. -If the person identified in the case is still alive, or has been dead for less than 50 years, their file may be consulted only	

					with permission from the individual concerned or from their descendents	
	-Archives of the <b>Centro de Documentação 25 de Abril</b>			Archives: researchers (credentials required) or legitimized special interest		
<b>Romania</b>	-National Council for the Study of Securitate Archives	-secret files of the <i>Securitate</i>	-citizens of Romania and other European Union and NATO member states have access to the files the Securitate compiled on them. -Victims have access to all documents included in their files while informers only to their file.	-Researchers need permission	Documents containing private information are to be released 40 years after their creation	-Number requests accepted (2000-2007): 17,086 - Number requests solved (2000-2007): 10,777
	-National Archive	-ordinary files		-Documents can be read by interested Romanian and foreign citizens, at their request, 30 years after their creation. -Documents touching on issues of national security or on the privacy of some persons are not opened to the public		
	-Archives of the Romanian Communist Party	-collections of documents produced by the Romanian Communist Party from its creation in 1921 until		Limited access to some parts of the archive. A 2008 legislative proposal allows the free access to these collections		

		its demise in 1989				
<b>Slovakia</b>	Nation's Memory Institute	-archival documents of the former State Security and other security agencies	-Upon request, persons 18 years and older can see their files kept and information collected by the state security services, as well as the files of persons named on them, if they are listed in the StB registers as collaborators or security service employees	-Files touching on "national security" issues remain classified	Unlike names of collaborators and members of the security service, names and information of third parties are blacked out	In its first six years, it received 9,337 requests for disclosure
<b>Slovenia</b>	Study Centre of National Reconciliation	-Communist archives	-Public archives not intended for the general public at the time of their creation available for use 30 years after their creation	-Public archives containing data relating to defence and international affairs, national security, the disclosure of which might cause damage, available for use 40 years after their creation	Public archives containing data relating to the privacy of an individual shall become available for use 75 years after their creation, or 10 years after the death of the person to whom they relate if: -the date of death is known, and -unless otherwise provided by relevant regulations. The date of restricted use of archival material may be extended for a maximum of 10 years or shortened	
	Archives of the Republic of Slovenia					
<b>Spain</b>	-Documentary Centre for	-Archivo General Histórico de Defensa		Open to the public without restrictions. Access to military	50 years must pass to have access to files or 25	

	Historical Memory and General Archive of the Civil War			archives is free except for classified documents which are subject of a very difficult procedure for de-classifying	years if the person affected is dead or there exist express permission	
<b>Sweden</b>	State central archive (Riksarkivet)		Obstacles to accessing the archives both of the security police and the military intelligence and secret service	Documents that could harm national security can be classified as secret for at most 40 years.		
<b>Netherlands</b>	-National Archives (contains the Archives on the Purge of the Civil Service)					
	-Central Archives of the Special Criminal Procedures	-contains a collection that document the crimes of the National Socialist regime		Conditionally accessible for scholars and the public at large		
	- Archives of the Dutch Branch of, and Liaison to, the United Nations War Crimes Commission. -The Netherlands Institute for War Documentation			- accessible for research and documentation -Dutch Archival Law enables all interested parties to research both files on policies and on individual perpetrators, only limited by protection of the privacy of people who are still alive		
<b>United Kingdom</b>	-National Archives:	-houses records from across the UK central government and, in smaller numbers, from the central courts	Open to the public. Information access is free in all cases		Data Protection Act 1998	

Source: Own elaboration. Information from several sources and also from Lavinia Stan, ed., *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, London: Routledge, 2008, Table 11.2, p. 256-25



## 8. Preservation of memory

### 8.1 Measures and practices for memory preservation

#### 8.1.1 Removal of the symbols of the totalitarian/repressive past (i.e. street names, monuments and other symbols)

With few exceptions (i.e. Spain), EU member states accomplished relatively quickly the removal of all symbols related to the repressive past. The following offers a general non-exhaustive overview, indicates some exceptions and shows some practices of symbol conservation.

- **Belgium** Since the second German occupation had ‘only’ lasted in Belgium for four years, the *Militärverwaltung* had not been able to revolutionize the Belgian symbolic streetscape.
- **Czechoslovakia** Most communist-era street, square, park, public building, and metro station names were changed, and Communist monuments removed, in the Czech and Slovak Federative Republic in the first years after the Velvet Revolution (though a few remained, prompting, for example, debate in the Czech Republic in 2007 over whether to rename a few streets named after controversial figures that had been honored by the Communists, such as the Soviet Marshal Ivan Stepanovich Konev, who liberated Prague in 1945, but also participated in crushing the Hungarian Uprising in 1956).
- **Estonia** The reversion of thousands of street names to their original designations after they had been changed by the Soviets. Streets were either given back their original names from before 1940 or were re-designated with a less political label. The first Soviet monuments to be removed were the statues of Vladimir Lenin. Across Estonia, a number of Soviet military monuments were dismantled. The only not dismantled monument is the Bronze Soldier memorial (which has been toned down in successive steps from its original memorialization of the Soviet liberators of Tallinn to a site commemorating all those who died fighting in World War II). The Bronze Soldier was re-opened on 8 May 2009 at its new location (a military cemetery still relatively close to the downtown area). On the facades of some buildings in Tallinn and Tartu, bas-reliefs of the hammer and sickle have been left untouched as part of the buildings’ original design.
  - Removal of symbols had also a *linguistic* dimension: *all* street and road signs in Estonia were gradually changed in the early 1990s from being bilingual (Estonian and Russian) to unilingual (Estonian only).
- **Germany (Nazi period)** The use of Nazi symbols (such as the swastika) was first outlawed by the Allies, then also in the (West) German constitution, the Basic Law. Major buildings the Nazis had built were either destroyed in air raids during or shortly after the war, i.e. Hitler’s mountain resort at the Obersalzberg which was blown up by the Americans. Buildings bearing symbols of the Nazi past were altered, i.e. the symbols were destroyed.

- **Greece** The symbols and slogans of the Colonel's regime were erased and disappeared from the landscape almost immediately after the collapse of the regime.
- **Hungary** Most of the names introduced during communism disappeared from street maps after 1989 and by 1993 main changes had already taken place. In Budapest, the post-1990 authorities did not remove words referring to freedom, but only the three names referring to liberation, such as *Felszabadula's te'r* in the center of the city. Instead of freedom, they added one name referring to 'independence': *Fu'ggetlense'g* park since national sovereignty was expressed through independence. The bust of Endre Ságvári (the most celebrated martyr of the Hungarian working class movement) was removed although visitors can still find a commemorative plaque.
- **Italy** Immediately after the war, all local councils revised street names with the elimination of all the names of characters with a Fascist link. This also applied to the fascist symbols (such as the fascist host, sentences of Mussolini, etc.) and the monuments that reproduced Mussolini's effigy or face.
- **Latvia** There has been systematic changing of street and place names in Latvia after 1991. The main purposes of the post-1991 changes were (1) to reintroduce names that would symbolize continuity with the first independence period; (2) expunge from public signage all links to the Soviet past; and (3) in the language used for signage assert that Latvian, with its Latin alphabet, was the language of the state, thus totally replacing Russian with its Cyrillic alphabet.

No all Soviet-era statuary was removed from public places. Lenin statues disappeared quickly in 1990-1991 but several figures in the history of Latvian literature, for example, such as the poet Jānis Rainis and the novelist and critic Andrejs Upītis, were important figures in both the first independence periods and the Soviet period, and memorials to them remained in place. A significant case of not removal is the large "Victory" statue erected in Victory Park in Pārdaugava (on the left side of the Daugava River) to commemorate the victory of the Soviet Army in World War II and the "liberation of Latvia from fascism,". The Riga City Council has rejected repeated calls to have the Victory Statue removed.
- **Lithuania** The names of the streets have been changed and many monuments symbolizing the Soviet regime have been dismantled (for example, the sculptures of Lenin, Josif Stalin, Vincas Kapsukas-Mickevičius, F.Dzeržinskiy and other monuments and sculptures of the activists of Soviet times). Some monuments have remained (for instance, the monuments "Agriculture", "Industry and Building", "Youth of Education", "On Guard for Peace" on "Žalasis tiltas" ( Green Bridge) in Vilnius). Aleksoto tiltas ("Aleksoto Bridge" (now Vytauto Didžiojo Bridge in Kaunas) raised a lot of discussions because it was decorated with the Soviet symbols (e.g. five-pointed red Soviet stars, a hammer and sickle, the coat of arms of the USSR). In December, 2008 the municipality of Kaunas decided to hide the Soviet symbols with which the bridge was decorated. Dismantled sculptures and monuments were taken to Grutas Park (opened on 1 April, 2001 <http://www.grutoparkas.lt/istorija.htm>). Monuments to Soviet soldiers

- can be found in the cemeteries (e.g. there is the monument-obelisk to the Soviet soldiers in the cemetery of soldiers in Palanga, the eternal fire in the memorial to Soviet soldiers in the cemetery of soldiers in Vilnius).
- **The Netherlands** All symbolic representations of the former regime (pictures of German and Dutch Nazi-leaders, swastikas and similar) were removed immediately after the liberation.
  - **Poland** A number of monuments representing communist officials or commemorating communist events were removed in early 1990s (some have been moved to the Museum of Socrealism in Kozłówka), but some 200 to 300 remained (*Symbole komunistyczne znikną z polskich miast* 2007). Also most Communism-related street names have been replaced with either pre-1944 names or new names, related to heroes and events of the 1944–1989 period. One of the first statutes passed in the new *Sejm* changed the official name of Poland and the state flag and emblem back to the same insignia that were present prior to the Communist take-over. However, there have been no regulations in place to coordinate either removal of monuments or change of places' names, and decisions to do so, including to covering the cost, have been left with local authorities. The 1998 *Act on the Institute of National Remembrance* requires that memory of losses and heroism of the WWII and the period after it is preserved. Therefore, the Head of the Institute has created a program within which relevant authorities will be reminded of the names of streets and other places that still commemorate communist oppression, and therefore need to be replaced. In some cases local authorities have initiated a consultation process with local communities.
  - **Portugal** The only public statue of Salazar, built in his hometown after his death in 1970, was bombed twice having been partially destroyed in the first attack only to be irreversibly damaged in 1978.
  - **Romania** Post-communist Romania quickly removed the vast majority of communist symbols. The statues of Lenin, Stalin, Engels, and Marx were transported out of sight. Nicolae and Elena Ceausescu's portraits were also removed, as were the communist slogans posted on public institutions and squares. The destruction of the *Monument of Heroes in the Fight for the Freedom of the People and Country and for Socialism* (known also as the Monument of Communist Heroes) in Bucharest and its replacement with a colossal Orthodox Cathedral of National Salvation. Until 1991, the tombs of several top Romanian communist leaders (Petru Groza, Gheorghe Gheorghiu-Dej and Constantin I. Parhon, Lucretiu Patrascanu, Alexandru Moghioros, Grigorie Preoteasa, Ilie Pintilie, Constantin Dobrogeanu-Gherea, and others) were located in the monument. In 1991, these tombs were exhumed and their remains moved to other cemeteries.
  - **Slovenia** Almost all street names, monuments and other symbols from the period of the Fascist and the National Socialist totalitarian regimes have been removed and their traces and relic erased. In contrast, several symbols of the Communist totalitarian regimes have not been removed or replaced with other symbols. A number of statutes of Slovenian Communist leaders are still standing in the cities and towns all over Slovenia, most notably in the capital Ljubljana, where the statute of Edvard Kardelj, former Communist leader, still stands. The City Council



of Ljubljana decided in April 2009 by 24 votes for and four votes against to name a street in the capital after former Yugoslav communist leader Josip Broz Tito. The cities of Koper and Velenje maintain a street with the name of the former communist dictator. It is true, however, that after the fall of communism, many streets named after Communist leaders were given back their old pre-communist names.

- **Spain** Removal of symbols of Francoism has been very slow, uneven and nowadays still some items are pending. Franco effigies in coins and stamps disappear quickly as did his portraits in public buildings. The removal of monuments depended on the local authorities and, in fact, last ones were removed in 2009. Street names are a permanent source of contestation and even nowadays some streets in Madrid bear names associated to the Franco's regime (for instance, General Mola). The most important among the Franco monuments is the so-called Valley of the Fallen, a mastodon basilica and monument. It is the burial place of Franco and the founder of the Spanish fascist party, the *Falange* (José Antonio Primo de Rivera). It is owned by the Spanish National Heritage (*Patrimonio Nacional*) and public funds sustain both the monument and the church annexed. The *Arch of Victory* in Madrid is dedicated to the fallen for God and Spain. The 2007 *Law on Historical Memory* proposed the removal of signs and symbols that glorify the military uprising, the Civil War or Dictatorship. Private commemorations with no glorification purposes and signs and symbols with artistic or architectonic-religious value are excluded. These provisions were implemented in a 2008 Order in which the government instructed for proceeding in the removal of Francoist symbols in goods of the central state administration. The three exceptions for this general removal order were symbols with historical significance which are declared Good of Cultural Interest; those symbols with artistic or artistic-religious value and those whose removal is not advised because of technical criteria.

### 8.1.2 *Specific legislation prohibiting or limiting the use of symbols of the totalitarian/repressive past*

Some countries do prohibit in explicit terms the use of symbols of the repressive past. Of those, three refer to the use of symbols of the Communist past (Hungary, Lithuania and Poland). Romania has announced plans to draft a law banning the use of Fascist and communist symbols in public places.

Thus, in:

- **Austria** The 1960 Insignia Act (Sections 1 & 3) prohibits publicly wearing, displaying, disseminating insignia of a prohibited organization (insignia includes emblems, symbols and signs).
- **France** Article R645 of the Criminal Code prohibits wearing or exhibition in public a uniform, insignia or emblem reminiscent of the uniforms, insignia or emblems worn or exhibited either by members of an organization declared criminal pursuant to the statute of the International Military Tribunal annexed to the London Accord of 8 August 1945 or by a person found guilty by a French or international court of one or more crimes against humanity.

- **Germany** Article 86a of the Criminal code prohibits distribution of propaganda material and the use of symbols of “anti-constitutional” organisations. The right-wing Sozialistische Reichspartei (SRP) in West Germany was outlawed in 1952. A ban of the neo-Nazi party, NPD, has been discussed for the last years.

The German Government and the Constitutional Court have banned several organizations: People's Socialist Movement of Germany/Labour Party (1982); the Action Front of National Socialists/National Activists (1983); the German Alternative and the Nationalist Front (1992); Free German Workers' Party (1995); German Youth Faithful to the Homeland (2009).

As regards the use of Nazi slogans, such as “Blut und Ehre”, on August 2009 the German Federal Court of Justice ruled they are not illegal if they are translated into another language. The Court said that translating the words represented a fundamental change in the slogan and that Nazi slogans were characterized not only by their actual meaning but also by the fact that they were in German<sup>215</sup>.

- **Hungary** The 1996 Criminal Code forbids that the images of the German Third Reich such as Swastikas, Flags of the Nazi Party, Flags of different kinds of Military Units of the German Third Reich and also the images of Communism such as red star, hammer and sickle be sold, bought, or owned, used or put them on display in any form. Article 269/B of the Hungarian Criminal Code (Büntető Törvénykönyv) which sanctions the use in public of ‘totalitarian symbols’

(1) Any person who:

- (a) distributes
- (b) uses in public
- (c) publicly exhibits,

the swastika, the insignia of the SS, the arrow cross, the hammer and sickle, the five-point red star or any other symbol representing one of those signs commits – where the conduct does not amount to a more serious criminal offence – a minor offence, punishable by a fine.

(2) The acts set out in paragraph 1 are not punishable if performed for the purpose of disseminating knowledge, education, science, art or information on historical or contemporary events.

(3) The provisions of paragraphs 1 and 2 do not apply to current official State symbols.

In 2000, the Constitutional Court of Hungary analysed the legality of **Section 269/B – The use of totalitarian symbols** of the Criminal Code. In that opportunity the CC said: “Allowing an unrestricted, open and public use of the symbols concerned would, in the present historical situation, seriously offend all persons committed to democracy who respect the human dignity of persons and thus condemn the ideologies of hatred and aggression, and would offend in particular those who were persecuted by Nazism and Communism. In Hungary, the memories of both ideologies represented by the prohibited symbols, as well as the sins committed under these symbols, are still alive in the public knowledge and in the communities of those who have survived persecution; these things are not forgotten (...) All of these symbols represent the despotism of the State, symbolise negative political ideas realised

<sup>215</sup> Lost in Translation, *Spiegel Online*, 8/13/2009 available at <http://www.spiegel.de/international/germany/0,1518,642288,00.html>

throughout the history of Hungary in the 20th century, and are expressly prohibited by Article 2 § 3 of the Constitution, which imposes upon everyone the obligation to resist such activities” (see below the ECtHR case law).

On 21 February 2003, Mr. Attila Vajnai (Vice-President of the Workers' Party, a registered left-wing political party) was speaker at a lawful demonstration in central Budapest. On his jacket Mr. Vajnai wore a five-pointed red star as a symbol of the international workers' movement. For that reason, criminal proceedings were instituted against him for having worn a totalitarian symbol in public.

Mr. Vajnai complained before the ECtHR that his prosecution for having worn a red star infringed his right to freedom of expression guaranteed by Article 10 of the Convention. In *Vajnai vs Hungary (8 July 2008)*, the Government of Hungary argued that all ideologies of a totalitarian nature (including bolshevism symbolised by the red star) should be treated on an equal footing, and their expression should be removed from the protection of Article 10. In its opinion, the red star symbolised totalitarian ideas and practices directed against the Convention's underlying values and that wearing it – being a conduct disdainful of the victims of the Communist regime and the very antithesis of the rule of law and pluralism– meant the justification of a policy aimed at the destruction of the rights and freedoms under the Convention. The ECtHR argued that utmost care must be observed in applying any restrictions, especially when the case involves symbols which have multiple meanings. While underlying that mass violations of human rights committed under Communism discredited the symbolic value of the red star, the Court affirmed that the red star could not be understood as representing exclusively Communist totalitarian rule. In its opinion, it was clear that this star also still symbolised the international workers' movement, struggling for a fairer society, as well certain lawful political parties active in different Member States. The ECtHR argued that the displaying of that symbol by a leader of a registered political party with no known totalitarian ambitions could not be equated with dangerous propaganda. It considered that the prohibition of Section 269/B unacceptably broad because does not require proof that the actual display amounted to totalitarian propaganda. As a result of this decision, on December 17, 2008, the Prosecutor General's Office filed a petition *ex officio* for review in respect of the final judgment convicting the applicant. Thereafter, the applicant's case was reopened before the Supreme Court. On March 10, 2009, the Supreme Court acquitted the applicant and reversed the previous decisions in this matter. Thus, the Supreme Court changed its case-law concerning Section 269/B of the Hungarian Criminal Code at issue.

- **The Netherlands** Symbols like swastikas, NSB symbols, names of periodicals, books issued by the NSDAP, the NSB and their branches, among them the German and Dutch editions of Hitler's *Mein Kampf* were banned under the provisions in the *Decree on the Dissolution of Treacherous Organisations*, as well as in Article 137 of the Penal Code.
- **Lithuania** The Republic of Lithuania passed two laws concerning the prohibition of the use of symbols of the totalitarian or repressive past: the

Law on Meetings (2 December 1993, No I-317; (as amended on 17 June 2008 by the Law No. X-1609) and Code on Administrative Offences (as supplemented by Article 188(18) on 3 July 2008 by the Law No. X-1675 and amended on 16 June 2009 by the Law No. XI-305). The Constitutional Court of Lithuania in its ruling of 19 September, 2005 stated that the legislator should place the responsibility for the incitement of hatred, violence and discrimination based upon social, racial or national grounds if they encroach on the constitutional values and such acts should be considered criminal.

- According to the law on meetings, the meetings shall be prohibited, if their participants: (...) 5) demonstrate the flag or coat of arms of Nazi Germany, the USSR or the Lithuanian SSR, or a flag, coat of arms or uniform the constituent part of which is the flag or coat of arms of Nazi Germany, the USSR and the Lithuanian SSR, the images of the leaders of the German National Socialist Party or the USSR Communist Party, responsible for repressions of the Lithuanian population, the symbols or uniforms of the Nazi or Communist organisations, or the flags or badges composed on the basis of the flag or coat of arms of Nazi Germany, the USSR or the Lithuanian SSR, as well as the symbols of the Nazi swastika, the Nazi SS, the Soviet hammer and sickle, the Soviet five-pointed red star, perform the national anthem of Nazi Germany, the USSR or the Lithuanian SSR.
  - The Code on Administrative Offences prohibits the dissemination, use in a meeting or other mass event or other public demonstration of a flag or a coat of arms ... (same wording as above).
  - Draft Amendment to Articles 4 and 8 of the Law on Political Parties was introduced in the Seimas on 19 June, 2008 and is still under consideration in the Seimas of the Republic of Lithuania. Under draft amendment to the law mentioned above, political parties shall not make use of their symbols of the flag, the coat of arms or the anthem of the Nazi Germany... (same wording as above).
- **Poland** On 24<sup>th</sup> November 2009, President Kaczynski signed an amendment to the Criminal Code which would adjust the country's hate-crime legislation to criminalize the "production, distribution, sale or possession ... in print, recordings or other means of fascist, communist or other symbols of totalitarianism." The punishment could be a fine or up to two years in prison. Exceptions could be made for artistic, educational, collecting or research purposes.
  - **Romania** The *Governmental Emergency Ordinance 31 of 13 March 2002 on banning Fascist, racist or xenophobic organizations and symbols and celebrating the memory of those guilty of engaging in crimes against peace and crimes against humanity* banned the public display of Fascist, racist and xenophobic symbols, and allowed the Romanian government to dissolve organizations or institutions that are named after perpetrators of crimes against peace and crimes against humanity. The manufacturing and use of such symbols is punishable

with jail terms of between 3 months and 3 years. The final report of the *Tismaneanu Commission* suggested the adoption of legislation banning the public display of communist symbols. In 2007, the Romanian government announced plans to draft a law banning the use of totalitarian (Fascist and communist) symbols in public places. The draft is to be prepared by the IICCR. It has not yet reached Parliament.

Legislation of several other member states lacks an explicit prohibition of the use of these symbols. In a number of cases, the legislation prohibiting exaltation, reorganization of fascists/Nazi organizations, or denial of Holocaust or re-establishing pre-repressive legality or promoting the use of violence may be eventually interpreted as an *implicit* prohibition or, else, as an important and useful ground for courts action in this direction. Similarly, legislation directed against promotion of violence is implicitly considered addressed to groups that exalted authoritarian/totalitarian regimes.

- **Belgium** A specific legislation prohibiting the use of the symbols of the second German occupation never appeared in Belgium. Nevertheless, the decree of 1981 against discriminations makes an indirect, although crystal-clear, allusion to it. The decree represses different acts inspired by racism and xenophobia, whereby “images or emblems posted up, distributed or sold, shown to the public”. There is no doubt that the law maker did (also) have in mind the symbols used by the Nazis during the occupation of Belgium.
- **Cyprus** has no legislation designed to restrict the ownership, display, purchase, import or export of Nazi flags [by analogy, the reasoning may apply to other symbols], nor does the Criminal Code of Cyprus expressly allow for racist or other bias motives to be taken into account when sentencing. Nevertheless, use of Nazi flags in a manner likely to cause discrimination, hatred, or violence may be dealt with under Cyprus' ratification of the *UN Convention on the Elimination of All Forms of Racial Discrimination*. This allows for the prosecution of anyone who expresses an idea (in public, using almost any medium including flags) which insults another person's race, religion or ethnicity.<sup>216</sup>
- **Estonia** The Government proposed a draft bill (December 2006) which would ban the display of the flags of the Soviet Union and Nazi Germany, and other official symbols of these regimes if it is likely to fuel hatred between different ethnic or social groups. The Act was dropped in 2007 from the legislative proceeding of the Riigikogu. There has been no new initiation so far, although it is spoken about from time to time.<sup>217</sup>
- **Greece** No specific legislation prohibiting or limiting the use symbols of the totalitarian or repressive past has been enacted.
- **Italy** A Law of 1952 (L. 2 n. 645 del 6 giugno 1952, “Norme di attuazione della XII disposizione transitoria e finale (comma primo) della Costituzione” (known as “Legge Scelba”) punishes whoever makes acts of exaltation, threat or uses violence, or denigrates democracy; that exalts facts and persons linked to historical fascism.

<sup>216</sup> This interpretation follows from a letter from the Cyprus Ministry of Justice and Public Order. Cyprus. 13th September 2006 available at <http://en.wikipedia.org/wiki/File:NAZIFLAGS-cyprus.jpg>

<sup>217</sup> Email correspondence with Helin Noor, Information Adviser of the Riigikogu.

Associations which have anti-democratic finalities, which uses/exalts/threats violence, which supports the suppression of constitutionally guaranteed freedoms, which denigrates democracy and their institutions, which denigrates the values of resistance, which carries through racists propaganda, which exalts the principles, facts and methods proper of the Fascist party are included.

- **Luxembourg:** There is no legislation prohibiting or limiting the use of Nazi symbols, but there is a very strong public attitude against the use of Nazi symbols.
- **Latvia:** There is no absolute prohibition on the use of symbols of either the Soviet or Nazi periods although there are limitations to freedom of speech along traditional “hate” speech.
- **Slovakia** The new criminal code (300/2005 Z.z., in effect since January 1, 2004) states in § 422 that (1) Whoever publicly, especially when using flags, badges, uniforms, and slogans, manifests sympathy for movements that use violence, the threat of violence or the threat of other such harm with the aim of repressing fundamental rights and freedoms of persons will be punished by imprisonment from six months to three years.
- **Spain** There is no specific legislation banning the use of Francoist or other totalitarian regimes symbols. Nevertheless, they are associated with promotion of violence, xenophobia, hate and terrorism.
- **Sweden** There is no specific legislation on the issue. However, the Supreme Court considered that Section 16:8 of the Criminal Code on incitement to hatred against a people applies not only to words, writings or pictures, but also to racist behaviour, such as the public wearing of emblems or symbols reminiscent of Nazi uniforms.

**Table 8.1.2 Specific legislation prohibiting or limiting the use of symbols of the totalitarian/repressive past 1**

<b>Member state</b>	<b>Legislation and year</b>	<b>Type of symbol prohibited</b>	<b>Penalty</b>	<b>Type of prohibition</b>
<b>Austria</b>	Sections 1 and 3 of the Insignia Act (1960)	-public wearing, display, dissemination of insignia of a prohibited organisation (The NSDAP and all other National Socialist organisations and institutions are dissolved; their renewal is prohibited). Insignia include emblems, symbols and signs <sup>218</sup>	fine or imprisonment of up to one month	explicit
<b>Belgium</b>	-decree of 1981 against discriminations	-represses different acts inspired by racism and xenophobia, whereby “images or emblems posted up, distributed or sold, shown to the public”.  Judgement of 15 July 1996 by	fine or imprisonment	implicit

<sup>218</sup> For details see [http://www.coe.int/t/dghl/monitoring/ecri/legal\\_research/national\\_legal\\_measures/austria/austria%20sr\\_EN.asp#TopOfPage](http://www.coe.int/t/dghl/monitoring/ecri/legal_research/national_legal_measures/austria/austria%20sr_EN.asp#TopOfPage)

		Brussels Criminal Court: Two National Front councillors were given a suspended sentence of four months' imprisonment and fined 100,000 BEF for giving the Hitler salute while taking an oath and for making racist and discriminatory remarks.		
<b>Bulgaria</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Cyprus</b>		-According to the Ministry of Justice and Public Order of Cyprus, the use of Nazi flags in a manner likely to cause discrimination, hatred, or violence may be dealt with under Cyprus' ratification of the UN Convention on the Elimination of All Forms of Racial Discrimination		
<b>Czech Republic</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Denmark</b>		-Public display, use or wearing of Nazi symbols in principle not prohibited, but may be, if it targets a specific group <sup>219</sup>		implicit
<b>Estonia</b>	-a draft bill has been proposed by the government (December 2006)	-bans the display of the flags of the Soviet Union and Nazi Germany, and other official symbols of these regimes if it is likely to fuel hatred between different ethnic or social groups <sup>220</sup>		explicit
<b>Finland</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>France</b>	Article R645-1 of the Criminal code	-wearing or displaying in public any uniform, insignia or emblems reminding those worn by the members of an organisation declared criminal under Article 9 of the Charter of the International Military Tribunal, appended to the London Agreement of 8 August 1945, or by a person found guilty of crimes against	fine	explicit

<sup>219</sup> European Monitoring Center for Racism and Xenophobia, Monitoring systems and Monitoring systems and criminal legislation in EU Member States, Combating Racism and Xenophobia as a Crime, ENAR Conference - September 11, 2004, available at [http://cms.horus.be/files/99935/MediaArchive/pdfevents/eumc\\_dimitra\\_kopoulos.pdf](http://cms.horus.be/files/99935/MediaArchive/pdfevents/eumc_dimitra_kopoulos.pdf)

<sup>220</sup> Unofficial translation of an extract of that draft of the Penal Code Amendment Act, provided by Helin Noor, Information Adviser of the Riigikogu: "Activities, including exhibiting or dissemination of the flag, coat of arms, slogan or another official symbol of the Soviet Union, a Republic of the Soviet Union, the Communist Party of the Soviet Union, the National Socialist German Workers Party or the SS, which knowingly and in a manner which disturbs public peace incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status are punishable by a fine of up to 300 fine units or by detention."

See also Estonia proposes ban on Soviet, Nazi symbols, *European Jewish Press*, 30 November 2006, available at <http://www.ejpress.org/article/news/11977>

		humanity by a French or international court <sup>221</sup>		
<b>Germany</b>	Article 86a of the Criminal code	-distribution of propaganda material and the use of symbols of “anti-constitutional” organisations <sup>222</sup> (National Socialist German Workers' Party, or Nazi Party. The Federal Constitutional Court has declared the unconstitutionality of, for instance, the neo-Nazi Socialist Reich Party (1952) and the Communist Party of Germany (1956))	imprisonment for not more than three years or a fine	explicit
<b>Greece</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Hungary</b>	Criminal code (1996). Section 269-B	Any person who: (a) distributes (b) uses in public (c) publicly exhibits, the swastika, the insignia of the SS, the arrow cross, the hammer and sickle, the five-point red star or any other symbol representing one of those signs	fine	explicit
<b>Ireland</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Italy</b>	-Law of 1952 (L. 2 n. 645 del 6 giugno 1952)	-whoever makes acts of exaltation, threat or use violence, or denigrates democracy; that exalts facts and persons linked to historical fascism -associations with the above wording and also which denigrate the values of resistance, which carry through racists propaganda, which exalt the principles, facts and methods proper of the Fascist party	Prison, fine, dissolution of the association, confiscation of property	implicit
<b>Latvia</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Lithuania</b>	-Law on Meetings (2 December 1993, No I-317; (as amended on 17 June 2008 by the Law No. X-1609)	-demonstration of a flag or coat of arms of Nazi Germany, the USSR or the Lithuanian SSR, -or a flag, coat of arms or uniform the constituent part of which is the flag or coat of arms of Nazi Germany, the USSR and the Lithuanian SSR, the images of the leaders of the German National Socialist Party or the USSR Communist Party, the symbols or uniforms of the Nazi		explicit

<sup>221</sup> For details see [http://www.coe.int/t/dghl/monitoring/ecri/legal\\_research/national\\_legal\\_measures/france/france%20sr\\_EN.asp#TopOfPage](http://www.coe.int/t/dghl/monitoring/ecri/legal_research/national_legal_measures/france/france%20sr_EN.asp#TopOfPage)

<sup>222</sup> Article 21 (2) of the Basic Law of Germany: Parties that, by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.



		or Communist organisations, -or the flags or badges composed on the basis of the flag or coat of arms of Nazi Germany, the USSR or the Lithuanian SSR, as well as the symbols of the Nazi swastika, the Nazi SS, the Soviet hammer and sickle, the Soviet five-pointed red star, perform the national anthem of Nazi Germany, the USSR or the Lithuanian SSR		
	-Article 188 of the Code on Administrative Offences (16 June 2009 by the Law No. XI-305)	-dissemination, use in a meeting or other mass event or other public demonstration of a flag or a coat of arms (same wording as above)	Fine from 145 to 290 Euros	explicit
	Draft Amendment to Articles 4 and 8 of the Law on Political Parties (introduced in 2008, under consideration)	-political parties shall not make use of their symbols of the flag, the coat of arms or the anthem of the Nazi Germany (same wording as above)		explicit
<b>Luxembourg</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Malta</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Netherlands</b>	-Decree on the Dissolution of Treacherous Organisations	-swastikas, -NSB symbols, -names of periodicals, books issued by the NSDAP, the NSB and their branches, among them the German and Dutch editions of Hitler's <i>Mein Kampf</i>		explicit
	-Article 137 of the Criminal Code	-the ban on hate crimes against people for reasons of race, religious and other convictions, or sexual orientation, is also applied to persecute public expressions of National Socialist character and racism	Imprisonment or fine	implicit
<b>Poland</b>	Criminal code as amended by Act of 25 September 2009	-dissemination (is producing, recording or bringing, acquiring, having, showing, transporting or sending copy) of any object of fascism, communism or any other totalitarian content	Prison up to 2 years and forfeiture of the objects	explicit
<b>Portugal</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Romania</b>	Governmental Emergency Ordinance 31 of 13 March 2002	-banned the public display of Fascist, racist and xenophobic symbols, and allowed the Romanian government to dissolve organizations or institutions that are named after perpetrators of crimes against	The manufacturing and use of such symbols is punishable with jail terms of between 3	explicit

		peace and crimes against humanity	months and 3 years	
<b>Slovakia</b>	Criminal code (2005)	-manifestation of sympathy for movements that use violence, the threat of violence or the threat of other such harm with the aim of repressing fundamental rights and freedoms of persons by publicly using flags, badges, uniforms, and slogans	Prison from 6 months to 3 years	implicit
<b>Slovenia</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation
<b>Spain</b> <sup>223</sup>	Article 66.1 of Law No. 10/1990 of 15 October 1990	-prohibits the introduction into and display at sports events of signs, symbols, emblems or placards potentially inciting to violence, xenophobia, racism or terrorism.	The event organisers are required to remove any such signs immediately	implicit
<b>Sweden</b>	Section 16:8 of the Criminal Code on incitement to hatred against a people	- punishes anyone who expresses or spreads hatred against a group of persons because of their race, skin colour, nationality or ethnic origins <sup>224</sup>	fine if the case is "of little gravity"	implicit
<b>United Kingdom</b>	No specific legislation	No specific legislation	No specific legislation	No specific legislation

Source: own elaboration from information provided by experts in Member States

#### 8.1.2.1 ECtHR case-law on totalitarian symbols

The ECtHR has dealt two times with the issue of wearing symbols of the repressive past in public. One is the case referred above in relation to Hungary; the second one refers to Sweden.

#### *Sugg and Dobbs vs Sweden (28 August 2001)*

On 3 January 1998 Swedish police arrested two individuals present in a concert for having done so-called “Hitler salutes” with their arms and shouting the words “*Sieg heil*”. One of them was the singer of an American rock group that performed at the concert and the other was a member of the audience. They were later indicted for agitation against a national or ethnic group and sentenced to one month’s imprisonment. The appellate Court had regard to the *travaux préparatoires* to chapter 16, section 8 of the Criminal Code and to a judgment by the Supreme Court of 17 October 1996<sup>225</sup>

<sup>223</sup> For details see [http://www.coe.int/t/dghl/monitoring/ecri/legal\\_research/national\\_legal\\_measures/spain/spain%20sr\\_EN.asp#TopOfPage](http://www.coe.int/t/dghl/monitoring/ecri/legal_research/national_legal_measures/spain/spain%20sr_EN.asp#TopOfPage)

<sup>224</sup> The Supreme Court considered that the said provision applies not only to words, writings or pictures, but also to racist behaviour, such as the public wearing of emblems or symbols reminiscent of Nazi uniforms.

<sup>225</sup> In that case, a person who had been wearing several symbols on his clothes in public was convicted of agitation against a national or ethnic group. The Supreme Court found that the symbols in question were clearly associated with symbols used in Nazi Germany and by National Socialist movements in the 1930’s and 1940’s. The symbols conveyed the ideas of racial supremacy and racial hatred. The Supreme

concerning the use of Nazi symbols and concluded that the “Hitler salute” and the words “*Sieg heil*” were clear manifestations of Nazism and racist ideology and expressed contempt for other persons on account of their race or colour.

The individuals complained before the ECtHR that they had been convicted of a crime not clearly described by law.<sup>226</sup> The Court recalled that it is, in the first instance, for the national authorities and courts to interpret and apply domestic law. In the present case, the Court of Appeal had regard to the *travaux préparatoires* to the relevant legal provision and to Supreme Court case-law in finding that the applicants’ conduct constituted a criminal offence. The case-law, which had been published and was accessible, supplemented the letter of the legal provision and was such as to sufficiently enable the applicants to regulate their conduct. As a consequence, the ECtHR declared inadmissible the complaint.

### 8.1.3 *Erection of monuments and memorials, commemoration days or national holidays*

Section 4.3.1 above refers to memorials and monuments specifically dedicated to victims, hence, even though these may have a dual character (both as a specific dedication to victims and as part of broader symbolic politics) these are not listed again here and only these with a broader character and reach are included. Four member states have implemented a sort of national policy framework on monuments on the repressive past (Cyprus, Latvia, Lithuania and The Netherlands). Apart from physical memorials, other kind of memorials, such as books, (e.g. in France and Spain), are included in the list. As for themes, memorials to resistance were quite common after WWII among occupied countries.

The PACE Recommendation 898 (1980) suggested the conservation of “monuments set up by invaders or by a regime regarded as oppressive or hated” in museums as an alternative to their demolition. The PACE Resolution 1652 (2009) on attitude to memorials exposed to different historical interpretations in Council of Europe member states set the CoE policy. The fate of memorials is a sovereign decision of the state in which a monument is located although based on the norms of international conventions and bilateral agreements. PACE emphasises the need for deeper and mutual understanding and conciliation action to prevent memorials of disputed symbolic significance becoming a source of tension in intra-state relations. PACE Recommendation 1859 (2009) requested the creation of a common European database of war graves and memorials located in CoE member states. Where graves and burial sites containing the remains of foreign soldiers and war victims are concerned, national decisions must fully abide by the respect for the dead, often victims rather than occupiers, and bilateral or multilateral agreements, notably the Protocol I to the Geneva Convention. The same Recommendation suggested the creation of a European centre of expertise for helping member states with historiographical and archaeological investigation. *Support for the conservation of memorials*. The Polish government

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Court concluded therefore that the accused, by wearing these symbols, had expressed contempt for other national or ethnic groups.

<sup>226</sup> The norm in question was Chapter 16, section 8 of the Criminal Code that reads as follows: “A person who, in a disseminated statement or communication, threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin or religious belief shall be sentenced for agitation against a national or ethnic group to imprisonment for no more than two years or, if it is a minor offence, to a fine.”

requested on February 2009 financial help for the conservation and maintenance of the Auschwitz Memorial/Museum.

Following an amendment in the EP, the 2007-2013 Programme “Citizens for Europe” included a new action 4 for the preservation of European memory. It referred specifically to the preservation of memorial sites related to Nazi and Stalinist deportation and mass extermination which was originally included in the 2007 Culture Programme.

- **Austria**
  - *Mauthausen* concentration camp in Upper Austria (its significance probably goes much beyond the victims of Holocaust in Austria and reached universal meaning).
  - *Monument against War and Fascism* (1991).
- **Belgium** Since 1945, Belgian authorities at all levels have taken literally countless initiatives to commemorate the legacy of the German repression. During the first period following the war, the commemoration evoked many similarities with the older remembrance of the German occupation in 1914-1918. Many local monuments dedicated to the victims of the First World War, for instance, were simply adjusted in order to fit the new commemorative needs. The names of fallen soldiers and dead resisters against the second German occupation were added up to the monuments. These monuments in cities, small towns and villages did not only remember the victims of ‘1914-18’ but also the victims of ‘1940-1944’, inscribing both groups in the same history of patriotic defeat and victory. Belgian authorities even mixed both remembrances up to the level of official commemoration days.
  - Most important among these national monuments was the site of Breendonk, a fortification built in 1906 and used as an SS-Auffanglager by the German occupier during World War II. In 1947 *Fort Breendonk* was declared to be a national memorial by a decree of the Belgian Parliament. From the 1990s onwards, Breendonk became all the more a memorial for human rights, leaving the strictly patriotic framework aside.
  - The *Tir National* (‘*National Rifle Range*’), a nineteenth century base of the Belgian military (built in 1859), had been claimed by the Germans during both occupations. Belgian resisters had been executed by the occupiers on both instances. Shortly after the First World War, the site had become a site of memory. After the liberation in 1944, when new executions had been carried out by the German occupiers, the monument was loaded with new meaning. A *Champs d’Honneur des Fusillés* (‘Field of Honor of the Executed’) was added to the military base and yearly commemorations took place at this site. The monument, however, quickly fell into oblivion from the 1960s onwards.
  - The most renowned memory site in Belgium, however, was not built by the Belgian authorities alone. In 1950, the American government helped to erect the American Memorial of Bastogne to the memory of nearly 80.000 American soldiers who had lost their lives in the Battle of the Ardennes. From 1950 onwards, the American Memorial at Mardasson Hill quickly became the most

- visited war memorial in Belgium. Different from other memorials in Belgium, the American Memorial heralded a triumphant army, instead of individual resisters. This military memory became deeply intertwined with Allied memory.
- Increasing attention was given to the **victims** of racial persecution (especially Jews, but also Gypsies). In the commune of Anderlecht (Brussels) the construction of the *Mémorial National aux Martyrs Juifs de Belgique* was started in 1965 and the inauguration took place on April 19, 1970. local monuments were erected to the Jewish memory too. In 1997 the city of Antwerp has erected a Monument to the memory of transported Jewish Citizens at the request of the Forum of Jewish Organisations. And in Auschwitz itself, Belgian authorities have also taken several initiatives. At the initiative of the Prime Minister an in depth restoration and functional re-orientation of the ‘Belgian pavilion’ in Auschwitz-Birkenau is taking place.
  - **Cyprus** Law 24(I)/2001 on *Establishment of 15 July 1974 as a Day of Memory and Tribute for Those who Fell or Fought in Defense of Democracy* provides for the establishment of monuments as tribute to freedom fighters, the naming of streets and squares after freedom fighters and other measures of a similar nature. However, most of them are named after fighters who fell either during the anti-colonial liberation struggle of the ‘50s or during the Turkish invasion.
  - **Estonia** The *Memorial to the Victims of Communism* begun in November 1988 in the small central Estonian town of Pilstvere. The ensemble features a large cross, which at the same time is ensconced in pile of thousands of simple field stones, mostly brought to the site by visitors themselves. The nature of the monument was inspired by an old Estonian tradition of laying stones in places where blood had been spilt. Elsewhere in Estonia a number of sites exist to remember the killing of Jews and others in the country as part of the Holocaust. Many of these commemorative markers were established by the Soviet regime, but have since been worn down or disintegrated. Moreover, many of them referred merely to “victims of fascism” in very general terms. In 2004, the Jewish Community of Estonia undertook a project (together with financial support from the United States) to place additional markers at five Holocaust sites in Estonia drawing specific attention to the killing of Jews at these locations.
  - **France**
    - *Livre-Mémorial des déportés de France arrêtés par mesure de répression et dans certain cas par mesure de persécution, 1940-1945*, produced by the *Fondation pour la Mémoire de la Déportation*.
  - **Finland**
    - Memorial in honour of 8 Jewish refugees extradited to Germany in 1942.
  - **Germany** Monuments were erected in various parts of the GDR; former prisons and state offices have become memorials (in particular *Gedenkstätte Hohenschönhausen* in Berlin, *Gedenkstätte Berliner Mauer* and *Forschungs- und Gedenkstätte Normannenstraße*, all in Berlin);and

various foundations were established. Particular care was taken that monuments in spaces which had also been associated with National Socialism, such as Buchenwald and Sachsenhausen, would not lead to a kind of mutual relativization. In former concentration camps where the Soviets had also interned and killed Germans after the war, smaller monuments were built for post-war victims.

- The *Memorial to the Murdered Jews of Europe* (also known as Berlin Holocaust Memorial) has an adjacent Information Centre.
- The memory of the so-called "men of 20 July" (who tried to kill Hitler) altered: in 1953, a memorial to them was placed in the Bendlerblock (the government building in whose courtyard the Stauffenberg plotters were assassinated) and the Federal German minister of the interior Gerhard Schröder (CDU) honoured their actions as an "uprising against a state that incorporated injustice instead of standing for justice"
- **Hungary**
  - *Memento Park Budapest* The project came into being in the year 1994. Memento Park is a member of Council of Cultural Tourism Memento Park fulfils its function as touristic destination; Artistic target and educational centre for secondary school and university students. In the Park are displayed 42 pieces of art from the Communist era between 1945 and 1989, including allegorical monuments of "Hungarian-Soviet Friendship" and "Liberation", as well as statues of famous personalities from the labour movement, soldiers of the Red Army and other gigantic pieces: Lenin, Marx, Engels, Dimitrov, Captain Ostapenko, Béla Kun and other "heroes" of the communist world.
  - *Holocaust Memorial Centre*. The institution is operated by the Holocaust Documentation Center and Memorial Collection Public Foundation (founded by the Hungarian government in 2002). The Center was created to collect and study materials related to the history of the Holocaust in Hungary, to integrate the Holocaust into the curriculum of Hungarian schools and to honor the victims of the Holocaust.
- **Malta** Monuments dedicated to Independence and 'Freedom Day' have been erected in prominent locations.
- **Latvia**: The creation and maintenance of monuments is the responsibility of the *National Inspectorate for the Protection of Cultural Monuments (Valsts Kultūras Pieminekļu Aisardzības Inspekcija)*, of the Ministry of Culture.
  - A section of a Riga building (Brīvības street 61) which in the Soviet period housed the headquarters of the KGB is being transformed into "monument" status. The KGB headquarters is classified as a "national monument" (rather than a "local monument), and as a "site commemorating an historical event".

- Known in everyday parlance as the *stūra māja* (corner building), the site is associated in the collective memory of many Latvians with the repression, torture, and execution of actual or suspected anti-regime citizens during the periods of Soviet control.
- **Lithuania** *Genocide and Resistance Research Centre of Lithuania* is implementing *Program of Remembrance Signs and Monuments*. In 1996-2008, 8 Monuments were built for the Partisans districts. 244 typical remembrance signs were built. Among the most significant:
    - Tuskulėnai memorial, where remains of about 700 victims killed by the KGB are buried.
    - The Museum of Genocide Victims (see below 8.1.4.1) fulfils also a memorial function. For the whole Lithuanian nation, this building is a symbol of the 50-year-long Soviet occupation. Set up in the former KGB headquarters, the museum is the only one of its kind in the former Soviet republics.
  - **Luxembourg:** Two “national” monuments recall the sufferings of the Luxembourgers under the German occupation:
    - The *Monument national de la grève* National monument of the strike in Wiltz erected in 1956, recalling the general strike of September 1942.
    - The *Monument national de la solidarité/Monument of national solidarity*, erected 1971 in the city of Luxembourg, recalling the « referendum » of 1941 where Luxembourgers voted to a very large majority (90-95%) in favour of Luxembourg’s independence.
    - The *Memorial of Deportation/Gare of Hollerich* (1996).
  - **The Netherlands** The first monuments were founded already during the early days of the war, for Dutch soldiers fallen during the German invasion of May, 1940. As the liberation had come, private persons, often related to the resistance, started to found local monuments. In October 1945, the competent Minister of Education, Arts and Science ordered a moratorium for the construction of monuments. Provincial and National Committees for Memorials for War and Peace were founded, and assigned to judge designs and concepts. From then on, ‘*approved*’ monuments were generally characterized by a classical style, related to generally Christian concepts of suffering, martyrdom and perseverance. Once again, monuments like these stressed that suffering had not been in vain. In the early monuments, the element of resistance was dominantly represented, from the 1960s onward, suffering as such became represented more dominantly. The representation of Jewish suffering was treated in those early years to illustrate the perversion of the Nazi-regime and the suffering of the Dutch people in general. The first national monument for the persecution of the Jews was only founded in the former Jewish transit camp at Westerbork, in 1970. Only afterwards, in 1978, a monument was also founded in Amsterdam for the deported and killed Sinti and Roma – the first one in the world nevertheless. In 1980 a national count of monuments produced a total number of 1,500 nationwide. A recent tendency is the development of digital monuments,

for instance the one devoted to the Jewish victims of the Nazi policy of extermination, and a number of websites devoted to concentration camps, both in Europe and in Asia.

○ **Poland**

- *Auschwitz Bikernau Memorial and Museum* <http://en.auschwitz.org.pl/m/> is a museum and memorial site which carries through a vast range of activities. It is probably the most important site in Europe.

○ **Romania** There are not least than 79 monuments and memorials. Additionally, the Romanian Revolution counts with an enormous number of items; in almost every locality.

- *The Sighet Memorial: The Memorial of Victims of Communism and Resistance (Memorialul Sighet: Memorialul Victimelor Comunismului si ale Rezistentei)* was started in 1993. It comprised of a Museum (the former prison of Sighet) and the *International Center for Studies on Communism*. The Memorial is financed through a combination of funds, but because it is not a governmental institution, it is almost always short of money. The Memorial is supported by the Civic Academy Foundation. In June 2009, construction started for the *Holocaust Memorial* in Bucharest.
- The *Jilava Monument (Monumentul de la Jilava)* (1990) erected near the wall of the underground Fort 13 of the Jilava prison in Bucharest.
- *Memorial Museum Ramnicu-Sarat (Muzeul Memorial Ramnicu-Sarat)*. Governmental Ordinance of 6 June 2007 transformed the former communist prison into a memorial administered by the IICCR and dedicated to the victims of communism.
- *Gherla Prison (Inchisoarea de la Gherla)* – In 1994, two rooms adjacent to the Gherla prison were transformed into a museum commemorating its communist victims.
- The declaration of *martyr towns* to several cities for their role in the 1989 Revolution is a specific Romanian practice. Some 15 cities have recognized as martyr towns; among these Bucarest and Timisoara (1990); Brasov and Sibiu (1992); Cluj-Napoca (1994); Arad, Braila, Buzau and Targoviste (1994); Targu-Mures (2000); Hunedoara (2001); Resita (2001); Alba-Iulia (2001); Cugir (2002); Logoj (2003).

○ **Slovakia**

- Memorial plaque in the entry hall of the Slovak Parliament, mandated by the 1996 Law on the Immorality and Illegality of the Communist Regime, giving credit to members of the anti-communist resistance for the fall of the communist regime and the reestablishment of democracy, noting that thanks are due to them.
- *Monument to the Slovak National Uprising Pamätné budovy Slovenského národného povstania*, in Banská Bystrica, bordering the city center, unveiled in 1969, designed by the architect Dusan Kuzma and sculptor J. Jankovič.



- *National Holocaust Memorial*, in Bratislava, at the site of a former synagogue; features sculpture by Milan Lukáč, and is run by the Jewish Culture Museum.
- Permanent Slovak exhibition titled *The Tragedy of Slovak Jews* at the Auschwitz-Birkenau State Museum.
- Postage stamp “*To the Memory of the Victims of the Political Trials*,” issued October 9, 2001.

**Table 8.1.3.1 Monuments and memorials 1**

<b>Member State</b>	<b>Monuments, museums and memorials (non exhaustive)</b>
Austria	<ul style="list-style-type: none"> <li>• Monument against War and Fascism (Vienna)</li> <li>• Holocaust monument (Judenplatz)</li> <li>• Gusen Concentration Camp Memorial</li> <li>• Hartheim Castle - Place of Learning and Remembrance</li> <li>• Mauthausen Concentration Camp Memorial</li> <li>• Memorial for the Victims of National Socialist Tyranny</li> <li>• Kreuzstadl Memorial</li> <li>• Memorial to the Roma and Sinti Lackenbach “Gypsy” Camp</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>• Fort Breendonk</li> <li>• Tir National (‘National Rifle Range’)</li> <li>• Field of Honor of the Executed</li> <li>• Mémorial National aux Martyrs Juifs de Belgique</li> <li>• Jewish Museum of Belgium</li> <li>• Museum of Deportation and Resistance</li> <li>• Fort Huy Museum of the Resistance and Concentration Camps</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>• Memorial Wall and Chapel in memory of the victims after 1944 – Sofia</li> </ul>
Cyprus	<ul style="list-style-type: none"> <li>• Mace Street &amp; Tagg Street WWI</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>• Memorial to the Victims of Communism</li> <li>• Memorial to the Victims of Evil/Meditation Garden</li> <li>• National Memorial to the Heroes of the Heydrich Terror</li> <li>• Terezín and Vojna Memorials</li> <li>• Museum of the Third Resistance</li> <li>• Museum of the Victims of Communism</li> <li>• Museum for Roma Culture, Brno</li> <li>• Jewish Memorial at Cernovice</li> <li>• Monument of Hodonín</li> <li>• Memorial Site at Lezaky</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>• The Resistance Museum</li> <li>• Frøslevlejrens Museum</li> <li>• Bangsbo Museum</li> <li>• The Danish Jewish Museum</li> <li>• The Freedom Museum, Copenhagen</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>• Memorial to the Victims of Communism</li> <li>• Occupation Museum of the Recent Past in Estonia</li> <li>• KGB Cells Museum</li> <li>• Klooga Memorials</li> <li>• Memorial for the Imprisoned and Murdered Jews of Patarei Prison</li> <li>• Memorial for the Jews Murdered in Kalevi-Liiva</li> </ul>
Finland	<ul style="list-style-type: none"> <li>• The Museum of the Winter War and the Continuation War of Säkylä, Säkylä</li> <li>• The Frontline Museum of Hanko, Hanko</li> </ul>
France	<ul style="list-style-type: none"> <li>• Shoah Memorial (The Wall of Names) (Paris)</li> <li>• Memorial to the Martyrs of Deportation (Paris)</li> </ul>

	<ul style="list-style-type: none"> <li>• Monument to the memory of the Jewish victims of the Vel d'Hiv roundup</li> <li>• WWII and Resistance museums in Besançon, Grenoble, Caen, Nice, Lyon, etc.</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Museum Gedenkstätte Hohenschönhausen in a former Stasi prison in East Berlin</li> <li>• Memorial to the Murdered Jews of Europe</li> <li>• History park on Berliner Strasse in Falkensee</li> <li>• Grafeneck Memorial Museum</li> <li>• Kaltenkirchen Concentration Camp Memorial</li> <li>• Fuhlsbüttel Memorial Museum, Concentration Camp and Penitentiary 1933-1945</li> <li>• Münchener Platz National Memorial Site, Dresden</li> <li>• Memorial for the Victims of the National Socialist Justice System in the JVA Wolfenbüttel</li> </ul>
Greece	<ul style="list-style-type: none"> <li>• Memorials at Alikianos, Distomo, Kalavryta</li> <li>• Memorial to the Jews of Ioannina</li> <li>• Monument at Alikianos to those shot at the River Keritis</li> <li>• Holocaust Monument in the Jewish Cemetery in Athens</li> <li>• Holocaust Monument in Chalkida</li> <li>• Monument to Jews in Tsaloniki</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Monument Raoul Wallenberg Memorial Park</li> <li>• Jewish Museum Budapest</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>• WW II Memorial, Newcastle, St. John's Church</li> <li>• World War II Memorial, Dublin 06, The High School</li> <li>• Screen wall memorial, Dublin 07, Grangegorman Military Cemetery</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Liberation Historical Museum (Roma)</li> <li>• Audiovisual museum of the Resistance (Fosdinovo)</li> <li>• Resistance Museums (Torino, Bologna)</li> <li>• Memorials Commemorating the Deportation of Jews from Rome</li> <li>• Museum for the Commemoration of Persecution</li> <li>• Fossoli Police Transit Camp</li> <li>• Jewish Museum of the Ferrara Jewish Community</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>• Memorial of the Holocaust in Salaspils concentration camp. Also in Rumbula and Daugavpils</li> <li>• The KGB headquarters (classified as a “national monument” and as a “site commemorating an historical event”)</li> <li>• Museum of the Occupation</li> <li>• Libau Memorial Stone</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>• Memorial Stones for the Mass Shootings in Gargždai and Vėžaičiai</li> <li>• IX Fort Museum and Memorial Site</li> <li>• Paneriai Memorial</li> <li>• The Vilna Gaon Jewish State Museum</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>• National Liberation Memorial 1944-1945</li> <li>• Sentier du souvenir 1944-1945</li> <li>• Deportation Memorial</li> <li>• Monument to National Unity</li> <li>• National Monument of Resistance and Deportation 1940-1945</li> </ul>
Malta	<ul style="list-style-type: none"> <li>• Monument to the victims of the 1919 riots (Valletta)</li> <li>• Memorial over the tombs of the victims in the main Adolorata cemetery.</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>• War and Resistance Memorial Centre Groningen</li> <li>• National Museum for War and Resistance at Overloon</li> <li>• Airborne Museum Hartenstein</li> <li>• National Museum for the Liberation 1944-1945 at Groesbeek</li> <li>• Kamp Westerbork Remembrance Centre</li> <li>• Jewish Historical Museum</li> <li>• Rotterdam War and Resistance Museum</li> <li>• Friesland Museum of Resistance</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• Auschwitz Bikernau Memorial and Museum</li> <li>• Museum of the Warsaw Uprising</li> </ul>

	<ul style="list-style-type: none"> <li>• Memorial Stone and Plaque for the Victims of National Socialism</li> <li>• Memorial to the Victims of National Socialist Crimes</li> <li>• Memorial to Sinti and Roma</li> <li>• Belzec Memorial Site and Museum Belzec</li> <li>• Memorial to Struggle and Martyrdom in the Bydgoszcz Region</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>• Monument to “the Downtrodden”</li> <li>• Monument to the Unknown Political Prisoner</li> <li>• Monumento aos Marinheiros Insubmissos</li> <li>• Monumento aos Resistentes Antifascistas</li> </ul>
Romania	<ul style="list-style-type: none"> <li>• Memorial of Victims of Communism and Resistance (Sighet Memorial)</li> <li>• Memorial Museum</li> <li>• Ramnicu-Sarat Museum of Communism</li> </ul>
Slovakia	<ul style="list-style-type: none"> <li>• Memorial to the Victims of Communism (Bratislava and Žilina)</li> <li>• National Holocaust Memorial</li> <li>• Monument to the Slovak National Uprising</li> <li>• Memorial plaque for deported Jews at Poprad railway station</li> <li>• Memorial plaque for the victims of the Nováky forced-labour and concentration camp</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>• Loibl Süd Concentration Camp Memorial</li> </ul>
Spain	<ul style="list-style-type: none"> <li>• Plaza de la Lealtad (Madrid)</li> <li>• Foundation Peace Museum Guernica</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>• Holocaust Monument Stockholm</li> <li>• Jewish Museum Stockholm</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>• Women of World War II Memorial</li> <li>• UK's War Dead</li> <li>• Royal Tank Regiment Memorial</li> </ul>

Source: Own elaboration from information provided by experts in Member States

- **European Sites of Conscience Network.** (Member of the International Coalition of Sites of Conscience) Launched at the Monte Sole Peace School in June 2008, the European Sites of Conscience network joins sites remembering the Holocaust — such as the House of the Wannsee conference in Germany, where Nazi leadership decided the “final solution,” and Terezín Memorial in Czech Republic, a Jewish ghetto and transport station – with sites remembering more recent conflicts – such as the Museum of Free Derry in Northern Ireland or the Gernika Peace Museum in Spain to work together on the common goal to address the alarming rise in xenophobia and discrimination in Europe. Network members are developing on-going programmes that use the history of the sites to facilitate public dialogues on contemporary issues of prejudice, exclusion, immigration, and/or violence in their own community (<http://www.sitesofconscience.org/resources/networks/europe/en/>).

**Table 8.1.3. 1a Members of the International Coalition of Sites of Conscience 1**

Member State	Institution	Website
Belgium	Le Bois du Cazier	<a href="http://www.leboisducazier.be/">http://www.leboisducazier.be/</a>
Germany	Die Gedenkstätte Hadamar	<a href="http://gedenkstaette-hadamar.de">http://gedenkstaette-hadamar.de</a>
Italy	Coordinamento delle Associazioni per la Scuola di Pace di Monte	<a href="http://www.landis-online.it/">http://www.landis-online.it/</a>

	Sole	
<b>Poland</b>	Historical Museum of the City of Krakow, Pomorska Street	<a href="http://mhk.pl/oddzialy/ulica_pomorska">http://mhk.pl/oddzialy/ulica_pomorska</a>
	Historical Museum of the City of Krakow, Schindler's Factory	<a href="http://mhk.pl/oddzialy/fabryka_schindlera">http://mhk.pl/oddzialy/fabryka_schindlera</a>
	Historical Museum of the City of Krakow, The Eagle Pharmacy	<a href="http://mhk.pl/oddzialy/apteka_pod_orlem">http://mhk.pl/oddzialy/apteka_pod_orlem</a>
<b>Spain</b>	Gernika Peace Museum	<a href="http://www.peacemuseumguernica.org/">http://www.peacemuseumguernica.org/</a>
	Memorial Democràtic de la Generalitat de Catalunya	<a href="http://www.gencat.cat/memorialdemocratic">http://www.gencat.cat/memorialdemocratic</a>
<b>UK</b>	19 Princelet St.	<a href="http://www.19princeletstreet.org.uk/">http://www.19princeletstreet.org.uk/</a>
	Diversity Challenges	<a href="http://www.diversitychallenges.ik.com/">http://www.diversitychallenges.ik.com/</a>
	Healing Through Remembering	<a href="http://www.healingthroughremembering.info">www.healingthroughremembering.info</a>
	Museum of Free Derry	<a href="http://www.museumoffreederry.org/">http://www.museumoffreederry.org/</a>

Source: own elaboration from data on the International Coalition of Sites of Conscience website (<http://www.sitesofconscience.org/about-us/institutional-members/en/>)

#### 8.1.3.2. Commemoration days and/or public holidays

EU Member States commemorate dates related to events such as national independence, Constitution day, etc. A group of dates coincide in the commemoration from Nazi domination. Apart from national motives, there are two commemorations (27<sup>th</sup> January and 23<sup>rd</sup> August) promoted by international instruments:

##### ○ 27<sup>th</sup> January

- EP Resolution of 15 June 1995 on a day to commemorate the Holocaust (OJ C166/132) called for an annual European Day of Remembrance of the Holocaust to be instituted in all the Member States of the Union.
- EP Resolution on countering racism and xenophobia in the European Union OJ C 377/366 29.12.2000 (point 13) encourages Member States and EU institutions to mark Shoah Day and International Day against Fascism and Anti-Semitism (9 November anniversary of Krystallnacht; 1938).
- EP Written Declaration on the remembrance of the Holocaust OJ C 121/503 24.4.2001.
- Declaration by the Ministers of Education of the Council of Europe (18 October 2002) called to establish in close cooperation with the Council of Europe a "Day of Remembrance" in member states' schools, as from 2003, according to national practice and priority.
- EP Resolution on remembrance of the Holocaust, anti-Semitism and racism 27<sup>th</sup> January 2005 (point 5).
- Resolution 60/7, the UN General Assembly on 1 November 2005 resolved that "the United Nation will designate 27 January as an annual International Day of Commemoration in Memory of the victims of the Holocaust". Many states choose to commemorate

the Holocaust on the day that marks the liberation of Auschwitz-Birkenau concentration camp by the Red Army on 27 January 1945. Several Member States have adopted this date (see table 8.1.3.2 below) whilst other Member States commemorate the victims of the Holocaust on a day of national significance.

- **23<sup>rd</sup> August**
  - On 2<sup>nd</sup> April 2009 the European Parliament adopted a resolution on European conscience and totalitarianism, determining 23 August, the date on which in 1939 the infamous Ribbentrop-Molotow agreement was signed between Nazi Germany and the Soviet Union. The Resolution called *inter alia* for “the proclamation of 23 August as a Europe-wide Day of Remembrance for the victims of all totalitarian and authoritarian regimes.” So far, Estonia, Latvia, Lithuania, Slovenia and Sweden have adopted this date as a day of remembrance (see table 8.1.3.2 below).

**Table 8.1.3. Commemoration Days 1**

Member State	Holocaust Memorial Day 27 January (HMD)*	Holocaust Memorial Day alternative (National)	23 August**	National Commemoration Day and Motive
<b>Austria</b>	Holocaust Remembrance Day	<b>May 5</b> , National Day against Violence and Racism in Memoriam of the Victims of National Socialism. Day of Liberation of the Mauthausen Concentration Camp in 1945.		<b>November 9</b> , Day of the pogrom of 1938
<b>Belgium</b>	Remembrance Day of the Genocide committed by Nazi Germany	<b>May 8</b> , Peace Day; make the end of the Second World War. (Until 2004, had been the official Holocaust Remembrance Day. In 2007, the main official event was again held on 8 May)		<b>November 11</b> , Day of the ceasefire at the end of the First World War.
<b>Bulgaria</b>		<b>March 10</b> , Day of the Holocaust and Saving of the Bulgarian Jews (Known also as the Day of Holocaust Victims). The date signifies the 1943 efforts by the Bulgarian parliamentarians to halt deportations of Bulgarian Jews to National Socialist concentration camps.	A proposal to make August 23 the European Day of Remembrance for victims of all totalitarian and authoritarian regimes is under consideration by the Parliament.	<b>September 9</b> , Anniversary of the Establishment of the Communist Regime in Bulgaria. Commemoration ceremonies in memory of the victims of the communist regime

<b>Cyprus</b>				<b>July 15</b> , Day of Memory and Tribute for those who fell or fought in defense of democracy and against the treacherous coup of 15 July 1974
				<b>July 20</b> , Day of memory and tribute for the fighters and the victims of the struggles for liberation and democracy
<b>Czech Republic</b>	Memory Day of Holocaust Victims and for the prevention of crimes against humanity and International Day of these Remembrances			<b>June 27</b> , Victims of the Communist Regime Remembrance Day. Date is anniversary of the execution of Milada Horáková, a Czech politician, after a show trial for treason and espionage; she is considered a symbol of anti-Communist resistance
				<b>November 17</b> , Fight for Freedom and Democracy Day. Commemorates student anti-Nazi demonstration in 1939 and the start of the Velvet Revolution in 1989
<b>Denmark</b>	Auschwitz Day (commemorates the victims of the Holocaust and other genocides)			<b>Night of 4 May</b> , Night of liberation. It is tradition to put lit candles in the windows to symbolize the end of the blackouts during the war.
				<b>May 5</b> , Official “flag day” in memory of the liberation in 1945.
				<b>April 9</b> , Official Danish “flag day”. The flag is at half mast on all public buildings until noon to mark the first day of the German occupation in 1940.
<b>Estonia</b>	Day of Holocaust (commemorate the victims of the Holocaust and all other crimes against humanity)		Europe-wide Day of Remembrance for the victims of Stalinism and Nazism. Commemorating the Baltic Way – a historic act of the Baltic solidarity and non-violent protest against the Soviet occupation as a consequence of the Molotov-	<b>March 25</b> , Ceremonies to remember the deportations of 1949. Public ceremonies, participants light candles and honor those who suffered
				<b>June 14</b> , Ceremonies to remember the deportations of 1941. Not officially stipulated by law
				<b>September 22</b> , Day of remembrance for resistance. The day when the Soviets re-entered Tallinn in 1944 and formally began their second occupation of Estonia. Not officially

			Ribbentrop Pact	stipulated by law
<b>Finland</b>	Victims of Persecution Memorial Day			<b>April 27</b> National War Veterans` Day
				Third Sunday in May, Remembrance Day
				<b>June 4</b> The Flag Day of the Finnish Defence Forces
				<b>December 6</b> Independence Day. Finland also celebrates the International Holocaust Remembrance Day which was firstly celebrated the 17th of January 2009.
<b>France</b>	Holocaust Remembrance Day	<b>July 16</b> , National Day to the memory of victims of racist and antisemitic crimes of the French State and as an homage to the "Righteous of France". Anniversary date of the Vel d'Hiv roundup		
<b>Germany</b>	Memorial Day for the Victims of the National-Socialist Regime. Many groups hold commemoration ceremonies on the anniversary of the Reichkristallnacht of 1938			<b>November 9</b> , annual commemoration of the Kristallnacht of November 9, 1938 <b>8 May</b> , Capitulation of the Reich <b>November, 9 2009</b> . XXth Anniversary of the Fall of the Wall
<b>Greece</b>	Commemoration Day of the Greek Jewish Martyrs and Heroes of the Holocaust			<b>November 17</b> : 1973, uprising of the students at the Polytechnic School <b>October 28</b> Opposition to the Annexation to Germany
<b>Hungary</b>		<b>April 16</b> , Hungarian Holocaust Memorial Day. The date signifies the establishment of the first Hungarian ghetto		<b>February 25</b> , Memorial day of the victims of Communism
				<b>October 23</b> , Day of national commemoration. (1956 Revolution)
				<b>June 19</b> , Day of the Independence (former day of Hungarian Freedom)
<b>Ireland</b>	Holocaust Memorial Day (The Sunday nearest to 27 January)			

<b>Italy</b>	Day of Memory			<p><b>February 10</b>, Day of memory for the victims of the Foibe massacre, the giuliano-dalmata exodus, the events in the eastern border and acknowledgement of those victims of deportation. This date also commemorates the peace treaty of 10 February 1947 by which Italy granted Istria, Fiume and Zara to Yugoslavia.</p> <p><b>March 24</b>, Commemoration at Fosse Ardeatine (Rome), where a mass execution was carried out by Nazi German occupation troops.</p>
<b>Latvia</b>		<p><b>July 4</b>, Holocaust Memorial Day. The date signifies the National Socialists' burning in 1941 of the Riga Choral Synagogue with Jews trapped inside</p>	<p>Europe-wide Day of Remembrance for the victims of Stalinism and Nazism. Commemorating the Baltic Way – a historic act of the Baltic solidarity and non-violent protest against the Soviet occupation as a consequence of the Molotov-Ribbentrop Pact</p>	<p><b>May 8</b>, Victory over Nazism and in memory of the victims of World War II</p> <p><b>June 14 &amp; March 25</b>, Commemoration Days of Victims of Communist Terror. On June 13 started the Soviet occupation regime and on June 14 is referred to as “The Day of Terror”. In this day of 1941, the Soviet occupation regime deported over 15000 people from Latvia to Siberia, and 43000 on March 25<sup>th</sup> 1949</p>
<b>Lithuania</b>		<p><b>September 23</b>, National Memorial Day for the Genocide of Lithuanian Jews. The date signifies the 1943 murder of the remaining prisoners of the Vilnius ghetto</p>	<p>Europe-wide Day of Remembrance for the victims of Stalinism and Nazism. Commemorating the Baltic Way – a historic act of the Baltic solidarity and non-violent protest against the Soviet occupation as a consequence of the Molotov-Ribbentrop Pact</p>	<p>Day of Mourning and Hope (<b>June 14</b>) - in commemoration of the mass deportations of 1941</p> <p><b>January, 13.</b> Commemoration of the killing of 14 civilians in 1991 by the Soviet Army forces (paratroopers, sent to Vilnius from Pskov)</p> <p>Day of Occupation and Genocide (<b>June 15</b>) - in commemoration of the Soviet occupation of 1940</p> <p>European Day for commemoration of Stalinism and Nazism victims and a Day of the Baltic Road (<b>August 23</b>) - in commemoration of the Ribbentrop-Molotov Pact and its secret protocols</p>



				Day of Commemoration of the Jewish Genocide ( <b>September 23</b> )
				Day of Commemoration of Tuskulėnai victims ( <b>September 28</b> ) - in commemoration of victims killed by Soviet secret services and buried in Tuskulėnai site
<b>Luxembourg</b>	Day in Memory of the Holocaust and for the Prevention of Crimes against Humanity	<b>Sunday next to October 10th</b> , National Commemoration Day for all victims of Nazi occupation in Luxembourg. This day was chosen as a reminder for the population of the victims of repression, but also of the national solidarity shown in the so-called referendum off October 10th, 1941		
<b>Malta</b>				<p><b>June 7</b>, Date of the 1919 riots. National Holiday</p> <p><b>September 21</b>, Independence Day (commemorating independence from Britain) national holiday</p> <p><b>December 13</b>, Republic Day (the coming into force of the republican constitution on 13 December 1974). National Holiday</p> <p><b>March 31</b>, Jum il-Helsien (Freedom Day). Celebrating the end of the Military base from Malta in 1979. National Holiday</p> <p><b>September 8</b>, The lifting of the Great Siege in 1565 and of the Axis blockade in 1943. National Holiday</p>
<b>Netherlands</b>	Holocaust Remembrance Day. On the Sunday after 27 January, Commemoration for the victims of Auschwitz. On the Thursday before 27 January, a Never again Auschwitz			<p><b>May 4</b>, Remembrance of the Dead for the people who have fought and died during World War II and wars in general</p> <p><b>May 5</b>, Liberation Day. Mark the end of the occupation by Nazi Germany during World War II. National Holiday</p>

<b>Poland</b>	Holocaust Memorial Day	<b>April 19</b> , Day of the remembrance for the victims of the Holocaust (to commemorate the heroic Warsaw Ghetto Uprising)		<b>June 28</b> National Day of Commemoration of the Poznan June (since 2006) <b>August 31</b> Day of Solidarity and Freedom. It commemorates the 1980 August Agreement between Solidarity and the Communist government
<b>Portugal</b>				<b>April 25</b> , Celebration of the foundation of the new democratic regime <b>October 5</b> Celebration of the Republican revolution 1910
<b>Romania</b>		<b>October 9</b> , Commemoration Day of the Holocaust in Romania. (Mark the starting of the deportation of Jews from Northern Romania a to Transnistria)	Romania is reluctant mainly because 23 August was the national day during communist times. Even victims' are reluctant to re-add 23 August on the list of national days	<b>December 1</b> , Memory of the date in which the National Assembly of Romania adopted a Resolution on the unification of Transylvania with the Romanian Kingdom
<b>Slovakia</b>		<b>September 9</b> , Day of the Victims of the Holocaust and Racial Violence. The wartime Slovak state issued the Jewish Codex of 1941		<b>March 25</b> Remember the first Slovak transportation of young Jewish girls and women to Auschwitz in 1942 Struggle for Human Rights Day. Commemorates 1988 candlelight demonstration in Bratislava. <b>August 29</b> , Anniversary of the Slovak National Uprising. Against the WWII regime. <b>November 17</b> , Fight for Freedom and Democracy Day. Commemorates student anti-Nazi demonstration in 1939 and the start of the Velvet Revolution in 1989.
<b>Slovenia</b>	National Day of the Remembrance of the Holocaust		European Day of Remembrance for victims of all totalitarian and authoritarian regimes together with the 70th anniversary of the Molotov-Ribbentrop Pact	<b>May 9</b> , Commemorations are held to remember all the victims of fascism and National Socialism <b>September 15</b> . Anniversary of the return of the Primorska region (once occupied by the Italian fascists) on 15 September 1947 to the motherland. The ceremony emphasizes the facts that Nazis and fascists were unable to destroy the

				battlefield morale of the people of Primorska.
<b>Spain</b>	Holocaust Memorial Day Order 15 Dec. 2004			<b>2006</b> , Declared year of Historical Memory
				<b>October 12</b> , National Holiday
				<b>December 6</b> , Day of the Constitution
<b>Sweden</b>	Holocaust Memorial Day		Remembrance Day for the victims of Communism and National Socialism	
<b>United Kingdom</b>	Holocaust Memorial Day			<b>June 21</b> , Day of private reflection where people from Northern Ireland, Great Britain, Ireland and further afield are invited to reflect, individually and privately on the conflict in and about Northern Ireland and the future

\* Resolution 60/7, the UN General Assembly on 1 November 2005 resolved that "*the United Nations will designate 27 January as an annual International Day of Commemoration in Memory of the victims of the Holocaust*". Many states choose to commemorate the Holocaust on the day that marks the liberation of Auschwitz-Birkenau concentration camp by the Red Army on 27 January 1945 (See also relevant EU documents mentioned above). Some states commemorate the victims of the Holocaust on a day of national significance.

\*\* European Parliament resolution of 2 April 2009 on European conscience and totalitarianism, determining 23 August, the date on which in 1939 the infamous Ribbentrop-Molotov agreement was signed between Nazi Germany and the Soviet Union, as a date of remembrance to victims of both regimes.

Source: Own elaboration from information provided by experts in Member States

#### 8.1.4 Museums (specify public authorities involvement) and research projects

##### 8.1.4.1. Museums

There is a huge quantity of museums dealing with repressive regimes in EU Member states. The following offers a non-exhaustive selection. (See table 8.4)

- **Austria**

- *The Hohenems Jewish Museum* Thematically and chronologically, the museum covers the times of the insecure existence of the 'Schutzjuden' ('chartered Jews') in the 17th century through to religious life in the synagogue and everyday life, Jewish-Christian life together, the period of the cultural and political departure into the liberal area of the second half of the 19th century, right up until the times of the persecution and destruction of people of Jewish descent and Jewish religion in the Nazi era. One chapter about Jewish refugees in post-war times ends the exhibition of temporary cohabitation of majority and

minority. The temporary exhibitions and the programme of events of the Jewish Museum of Hohenems revolve around three thematical points of focus: firstly, the consolidation of regional history and secondly, artistic and other expressions of memory and remembrance.

○ **Belgium**

- The *Jewish Museum of Belgium* attaches the highest importance to the Holocaust. Since 1990, the Jewish Museum of Belgium has assembled its collections, set up a first permanent exhibition and staged some thirty temporary exhibitions.
- The *Jewish Museum of Deportation and Resistance* in Mechelen. This museum is located in the former Dossin-barracks, which was during WWII transformed into Sammellager Mecheln. From there transports to Germany of 24,906 Jews and 351 Gypsies started in the direction of Auschwitz. Following proposals for the creation of a Flemish museum, the old museum would evolve into The new “Kazerne Dossin”, Memorial, Museum and Documentation Centre on Holocaust and Human Rights, to be built would rather become an ‘extension’ of the existing Museum at the Dossin site.

- **Denmark:** The memory of the occupation is preserved by numerous museums

Name of Museum	Organisation/ Year	Theme	Location/ website
The Resistance Museum (Frihedsmuseet)	The National Museum Established in the current location in 1957 – the present exhibition is from 1995	The story of Danish resistance during Nazi occupation. Springs from an exhibition called Fighting Denmark, arranged by the Freedom Council in the summer of 1945.	Churchillparken, Copenhagen  <a href="http://www.nationalmuseet.dk">www.nationalmuseet.dk</a>
Frøslevlejrens Museum	The National Museum Established in 1969	The history of Frøslev concentration camp 1944-1945	Lejrvej 83, Padborg  <a href="http://www.froslevlejrensmuseum.dk">www.froslevlejrensmuseum.dk</a>
Horsørødlejrens Museum	The National Museum (administered by the State Prison of Horseød) Established in the 1969	The history of Horsørød concentration camp 1940-1945	Esrumvej 367, Helsingør  <a href="http://www.nationalmuseet.dk/sw4613.asp">www.nationalmuseet.dk/sw4613.asp</a>
Museum Center Hanstholm	The “Atlantic Wall” exhibition opened in 2002	Northern Europe’s largest fortifications from the Second World War. The bunker museum covers about 3000 m <sup>2</sup> and is one of the largest bunkers, which the Germans built in Denmark.	Molevej 29, Hanstholm  <a href="http://www.museumcenterhanstholm.dk">www.museumcenterhanstholm.dk</a>
Bangsbo Museum	An extensive new exhibition of the resistance movement in Jutland was established	The resistance movement in Jutland	Dr. Margrethes Vej 6, Frederikshavn  <a href="http://www.bangsbo.com">www.bangsbo.com</a>

	in 2000		
The Occupation Museum of Aarhus	The museum is driven by volunteers (As of 2008 officially part of Aarhus City Museum)	Everyday life in Aarhus during the occupation and the city's resistance movement	Mathilde Fibigers Have 2, Århus <a href="http://www.besaettelsesmuseet.dk">www.besaettelsesmuseet.dk</a>
Bornholm Museum	Official state museum of Bornholm and Christian's Island	The exhibition on the Second World War in Bornholm deals with the Russian bombardments and life in Bornholm 1940-1946	Sct. Mortensgade 29, Rønne <a href="http://www.bornholmsmuseum.dk">www.bornholmsmuseum.dk</a>

- **Hungary** *The House of Terror (Terror Háza)* is built on the so-called *House of Loyalty* which was the party headquarters of the Hungarian Arrow Cross Party. Between 1945 and 1956, the building became the seat of the ÁVO and the ÁVH, the repressive branches of the communist regime. The museum commemorates the victims of terror and remembers the dreadful acts of the perpetrators.  
[http://www.terrorhaza.hu/en/museum/first\\_page.html](http://www.terrorhaza.hu/en/museum/first_page.html)
- **Czech Republic** Selected museums followed by organizer<sup>227</sup>:
  - *Ghetto Museum at the Terezín Memorial/Památník Terezín – Muzeum ghetta* (Ministry of Culture of the Czech Republic).
  - *Jewish Museum in Prague/Židovské museum v Praze* (Federation of Jewish Communities in the Czech Republic).
  - *Museum at the Lidice Memorial/Památník Lidice, Muzeum* (Ministry of Culture of the Czech Republic).
  - *Museum of Communism/Muzeum komunismu* (Legacy, s.r.o.).
  - *Museum of Romani Culture/Muzeum romské kultury* (Association of Specialists and Friends of the Museum of Roma Culture).
  - *Museum of the Police of the Czech Republic/Muzeum Policie ČR* (Ministry of the Interior of the Czech Republic).
  - *Museum of the Third Resistance in Příbram/Museum III. Odboje Příbram* (Confederation of Political Prisoners of the Czech Republic).
  - *Museum of the Victims of Communism - Vojna Memorial/Památník Vojna u Příbami – Muzeum obětí komunismu* (affiliated with *Hornické muzeum Příbram*, organized by Central Bohemia Region).
  - *National Museum/Národní museum* (Ministry of Culture of the Czech Republic).
  - *Pinkas Synagogue, Permanent Exhibition of Children's Drawings from 1942-1944/ Pinkasova synagoga, Expozice dětských kreseb z Terezína*, overseen by the Jewish Museum in Prague (Federation of Jewish Communities in the Czech Republic).
- **Estonia**
  - *Occupation Museum of the Recent Past in Estonia* (Eesti Lähimineviku Okupatsioonide Muuseum) (2003) (Tallinn).

<sup>227</sup> Association of Museums and Galleries of the Czech Republic, <http://www.cz-museums.cz/amg/faces/adresar/>

- *KGB Prison Cells* (Tartu). It focuses on Soviet occupation. It is located in the building that once served as the municipal headquarters for the Soviet secret police. The museum consists basically of access to the basement, where the KGB regularly detained prisoners. Many of the cells have been restored to their gruesome state, while the permanent exhibition features information about not only the KGB, but also post-war resistance in Estonia and the crimes of communism more broadly.
- There are two privately-run museums:
  - The *Museum of Estonia's Freedom Struggle* (1994) (Lagedi).
  - A small museum dedicated to the Estonian SS-Legion (Pärnu).
- **Finland**
  - *Military Museum*, Helsinki ( <http://www.mpkk.fi/fi/sotamuseo/> )
  - The *National Museum of Finland*, Helsinki (<http://www.nba.fi/fi/skm> )
  - The Head Quarters Museum, Mikkeli [http://www.mikkeli.fi/fi/museot/02\\_paamajamuseo/](http://www.mikkeli.fi/fi/museot/02_paamajamuseo/)
  - Museum Center Vapriikki, Tampere <http://www.tampere.fi/vapriikki/>
  - Mannerheim Museum, Helsinki <http://www.mannerheim-museo.fi/>
  - The Museum of the Winter War and the Continuation War of Säkylä, Säkylä <http://www.sakylantalvijajatkosotamuseo.fi/>
  - The Frontline Museum of Hanko, Hanko [http://www.mannerheim.fi/13\\_erity/s\\_hanko3.htm](http://www.mannerheim.fi/13_erity/s_hanko3.htm)
- **France** Several centers were created in various cities to preserve this memory: among them, the *Centre d'histoire de la Résistance et de la Déportation* (Center of history of the Resistance and Deportation) in Lyon, the *Musée de la Résistance et de la Déportation de l'Isère* (Museum of Resistance and Deportation in the Isère Department), in Grenoble. They also include detailed references to the Holocaust.
- **Germany**
  - The *German-Russian museum* at Berlin-Karlshorst commemorates the Soviet victims of the Nazi dictatorship.
  - The *Jüdisches Museum Berlin* is dedicated to Jewish history in Germany since Roman times, but also commemorates the victims of the Holocaust.
  - Museums and memorials on the GDR have proliferated since 1990; probably the best-known in the country as a whole is the *Gedenkstätte Hohenschönhausen* in a former Stasi prison in East Berlin. In addition, there is the *Dokumentationszentrum Berliner Mauer*, the *Erinnerungsstätte Notaufnahmelager Marienfelde*, and the *Forschungs- und Gedenkstätte Normannenstrasse* in Berlin itself. There are many memorials in other parts of East Germany, as well as memorials located at former transit points between East and West. Some of these are organized as 'associations' (*eingetragene Vereine*, which often emerged from civic committees) or as independent foundations.

- **Italy**
  - *Museo della civiltà istriano-fiumano-dalmata* (Trieste).
  - *Archivio museo storico di Fiume* (Roma).
- **Latvia**
  - *The Museum of the Occupation (Okupācijas muzejs)*. Initiated in 1993 by Latvian émigrés, the Museum eventually came to house a permanent exhibit of the visual record of the two totalitarian periods. Starting mainly as a photographic exhibit, the Museum's holdings were enhanced by donations of personal memorabilia of persons from their years in deportation. A small staff of researchers began to publish an annual yearbook in 1999, which contains the results of their own research and that of other scholars in Latvia on subjects related to the Museum's main theme, and translated and reprinted relevant documents from the totalitarian past. A travelling exhibit of the Museum's holdings was added to its activities later. In 2006, the Museum was included in the government-funded museum system of the country, and its budget in 2007 consisted of financial support from the national government (about 100,000 Latvian *lats*, which is about 2/5 of the Museum's operating budget) and private donations. The Museum's web page (<http://www.occupationmuseum.lv/>) is updated regularly, and future plans (made before the recession of 2008-09) included substantial expansion of the physical facilities.
  - *Jews in Latvia Museum (Muzejs "Ebreji Latvijā)*. Founded in 1989 through the initiative of Holocaust survivors in Latvia, the Museum opened its doors in 1996. It covers the history of Jews in Latvia from the beginning to 1945, but also includes a section on those who sought to save Jews in the Holocaust period. An accredited museum in the museum system of Latvia, it combines the functions of a museum, a documentation centre, and a research institute, and has numerous ties with other research and documentation centres in Latvia and other countries.
- **Lithuania** *The Museum of Genocide Victims* (14 October 1992) set in the building where plans for deportations and the arrests of peaceful inhabitants, the persecution of opponents and the suppression of the resistance were devised and carried out by Soviet institutions between 1940 and 1991. By a resolution of the government of the Republic of Lithuania, dated 24 March 1997, the responsibility for running the museum was taken over by the Genocide and Resistance Research Centre of Lithuania. The museum's objective is to collect, keep and present historic documents about forms of physical and spiritual genocide against the Lithuanian people, and the ways and the extent of the resistance against the Soviet regime.
- **Luxembourg** *National Museum on Resistance* in Esxch/Alzette. In 2000 the government also decided to create a Centre for Documentation and Research on the Resistance.
- **The Netherlands** There exist around 84 museums related to the memory of the war. Among these, the most important ones are:

- The *National Museum for War and Resistance* at Overloon, founded 1946;
  - The *Airborne Museum Hartenstein*, close to Arnhem (1949);
  - The *Jewish Historical Museum*, Amsterdam (1932/1955);
  - The *Anne Frank House*, Amsterdam (1960);
  - The *Liberation Museum Friesland*, Leeuwarden (1979);
  - The *National Memorial Camp Westerbork* (1983);
  - The *Museum Park 'Wings of Liberation'* at Best, Noord-Brabant (1984);
  - The *Amsterdam Resistance Museum* (1984);
  - The *National Museum for the Liberation 1944-1945* at Groesbeek (1984);
  - The *Zuid-Holland Resistance Museum* at Gouda (1984)
  - The *War and Resistance Memorial Centre* Groningen (1991).
- **Poland**
    - *Muzeum Niepodległości* (Museum of Independence) in Warsaw, founded in 1990 under the auspices of the Ministry of Culture and Art as a Museum of the History of Polish Independence and Social Movements (*Muzeum Historii Polskich Ruchów Niepodległościowych i Społecznych*), to replace the Museum of the History of Polish Revolutionary Movement (*Muzeum Historii Polskiego Ruchu Rewolucyjnego*). One of the permanent expositions is devoted to the opposition movements in communist Poland 1945-1989.
    - *Muzeum Zamoyskich–Muzeum Socrealizmu* (Museum of Socialrealism) in Kozłówka, founded in 1990 under the auspices of the Ministry of Culture and Art. Contains a significant portion of communist monuments removed from various places in Poland, as well as other object of social art.
    - *Muzeum Izba Pamięci Kopalni WUJEK*, founded in 2008, financed mostly by the regional Solidarity trade Union and coal industry, receives no subsidies from local or regional authorities.
    - *Muzeum PRL* (Museum of the Polish People's Republic), since 2008, still collecting items for exposition. Located in Kraków, it is a division of the Museum of the History of Poland. Museum subsidised by the Kraków authorities.
    - *Museum of the Warsaw Uprising* (2006).
  - **Romania**
    - *Museum of Communism (Muzeul Comunismului)* – one of the proposals included in the final report of the Tismaneanu Commission saw the construction of a Museum of Communism in Bucharest, which will depict the most gruesome crimes of the communist regime. Construction has not begun, as there is still some discussion about the location.
    - *Northern Transylvania Holocaust Memorial Museum*.



- Memorial Museum.
- **Slovakia** (Selected museums).
  - Exhibition in *Synagogue in Trnava/Expozícia judaik v synagoge v Trnave* (part of the Slovak National Museum - Museum of Jewish Culture).
  - *Museum of Jewish Culture Bratislava/Múzeum židovskej kultúry Bratislava* (part of the Slovak National Museum).
  - *Museum of Roma Culture in Slovakia Martin/Múzeum kultúry Rómov na Slovensku Martin* (part of Slovak National Museum – Martin).
  - *Museum of the Slovak National Uprising, Banská Bystrica Muzeum/Slovenskeho narodneho povstania Banská Bystrica* (main partner: Ministry of Culture of the Slovak Republic).
  - *National Holocaust Memorial Exhibition in the restored Neolog Synagogue in Nitra/Expozícia holokaustu v synagóge v Nitre* (part of the Slovak National Museum – Museum of Jewish Culture).
  - *Police Museum, Bratislava/Múzeum polície Bratislava* (Ministry of the Interior of the Slovak Republic).
  - *Slovak National Museum/Slovenské národné museum Bratislava* (Ministry of Culture of the Slovak Republic).
- **Slovenia** The *National Museum of Contemporary History* is a state museum, which provides a central public service in the area of the intangible heritage of contemporary history, from the beginning of the 20th century. It preserves studies and communicates the material and non-material heritage in the sphere of the history of the Slovene ethnic space from the beginning of the 20th century.

**Table 8.1.4 Museums (non exhaustive list)1**

Member State	Museums	Website
Austria	Hohenems Jewish Museum	<a href="http://www.jm-hohenems.at/">http://www.jm-hohenems.at/</a>
	Lind Castl - The Different Museum of Local History	<a href="http://www.schlosslind.at/">http://www.schlosslind.at/</a>
	Museum at Judenplatz	<a href="http://www.jmw.at/">http://www.jmw.at/</a>
Belgium	Jewish Museum of Belgium	<a href="http://www.new.mjb-jmb.org/">http://www.new.mjb-jmb.org/</a>
	Museum of Deportation and Resistance	<a href="http://www.cicb.be/">http://www.cicb.be/</a>
	Fort Huy Museum of the Resistance and Concentration Camps	<a href="http://www.huy.be/">http://www.huy.be/</a>
Bulgaria	No available information	
Cyprus	No available information	
Czech Republic	Museum of the Third Resistance	
	Museum of the Victims of Communism	
	Museum of Communism	<a href="http://www.muzeumkomunismu.cz/">http://www.muzeumkomunismu.cz/</a>
	Museum for Roma Culture, Brno	<a href="http://www.rommuz.cz/">http://www.rommuz.cz/</a>
	Ghetto Museum at the Terezin Memorial	<a href="http://www.pamatnik-terezin.cz/showdoc.do?docid=196">http://www.pamatnik-terezin.cz/showdoc.do?docid=196</a>
	Jewish Museum in Prague	<a href="http://www.jewishmuseum.cz/">http://www.jewishmuseum.cz/</a>
	Museum at the Lidice Memorial	<a href="http://www.lidice-memorial.cz/history_en.aspx">http://www.lidice-memorial.cz/history_en.aspx</a>
Museum of the Police of the Czech	<a href="http://web.mvcr.cz/archiv2008/ministerstvo/muz">http://web.mvcr.cz/archiv2008/ministerstvo/muz</a>	

	Republic	<a href="http://eumen.html">eumen.html</a>
	National Museum	<a href="http://www.nm.cz/english/">http://www.nm.cz/english/</a>
Denmark	The Resistance Museum	<a href="http://www.nationalmuseet.dk">www.nationalmuseet.dk</a>
	Frøslevlejrens Museum	<a href="http://www.froeslevlejrensmuseum.dk">www.froeslevlejrensmuseum.dk</a>
	Bangsbo Museum	<a href="http://www.bangsbo.com">www.bangsbo.com</a>
	Horsørøllejrens Museum	<a href="http://www.nationalmuseet.dk/sw4613.asp">www.nationalmuseet.dk/sw4613.asp</a>
	Museum Center Hanstholm	<a href="http://www.museumcenterhanstholm.dk">www.museumcenterhanstholm.dk</a>
	The Danish Jewish Museum	<a href="http://www.jewmus.dk/">http://www.jewmus.dk/</a>
	The Freedom Museum, Copenhagen	<a href="http://www.frihedsmuseet.dk/sw4604.asp">http://www.frihedsmuseet.dk/sw4604.asp</a>
	The Occupation Museum of Aarhus	<a href="http://www.besaettelsesmuseet.dk">www.besaettelsesmuseet.dk</a>
	Bornholm Museum	<a href="http://www.bornholmsmuseum.dk">www.bornholmsmuseum.dk</a>
Estonia	Occupation Museum of the Recent Past in Estonia	<a href="http://www.okupatsioon.ee/english/activities/">http://www.okupatsioon.ee/english/activities/</a>
	KGB Cells Museum	<a href="http://linnamuseum.tartu.ee/?m=2&amp;page=front&amp;change_lang=en">http://linnamuseum.tartu.ee/?m=2&amp;page=front&amp;change_lang=en</a>
	Museum of Estonia's Freedom Struggle (private)	
	Museum dedicated to the Estonian SS-Legion (private)	
Finland	Military Museum	<a href="http://www.mpkk.fi/fi/sotamuseo/">http://www.mpkk.fi/fi/sotamuseo/</a>
	National Museum of Finland	<a href="http://www.nba.fi/fi/skm">http://www.nba.fi/fi/skm</a>
	Head Quarters Museum	<a href="http://www.mikkeli.fi/fi/museot/02_paamajamus eo/">http://www.mikkeli.fi/fi/museot/02_paamajamus eo/</a>
	Museum Center Vapriikki	<a href="http://www.tampere.fi/vapriikki/">http://www.tampere.fi/vapriikki/</a>
	Mannerheim Museum	<a href="http://www.mannerheim-museo.fi/">http://www.mannerheim-museo.fi/</a>
	Museum of the Winter War and the Continuation War of Säkylä	<a href="http://www.sakylantalvijajatkosotamuseo.fi/">http://www.sakylantalvijajatkosotamuseo.fi/</a>
	Frontline Museum of Hanko	<a href="http://www.mannerheim.fi/13_erity/s_hanko3.htm">http://www.mannerheim.fi/13_erity/s_hanko3.htm</a>
France	Bondues Museum of the Resistance	<a href="http://www.ville-bondues.fr/musee/">http://www.ville-bondues.fr/musee/</a>
	Resistance and Deportation Museum in the Isère Region	<a href="http://www.resistance-en-isere.com/mr/index/num/1/lan/1">http://www.resistance-en-isere.com/mr/index/num/1/lan/1</a>
	Regional Resistance and Deportation Museum in Lorris	<a href="http://www.coeur-de-france.com/resistance.html">http://www.coeur-de-france.com/resistance.html</a>
	Nice Resistance Museum	
	Centre for the History of the Resistance and Deportations	<a href="http://www.culture.lyon.fr/culture/sections/fr/musees_expositions">http://www.culture.lyon.fr/culture/sections/fr/musees_expositions</a>
	Shoah Memorial	<a href="http://www.memorialdelashoah.org/">http://www.memorialdelashoah.org/</a>
Germany	Museum Gedenkstätte Hohenschönhausen	
	Ahlem Memorial Museum	<a href="http://www.hannover.de/">http://www.hannover.de/</a>
	Beendorf Concentration Camp Memorial Museum	
	Bergen-Belsen Memorial Museum	<a href="http://www.bergenbelsen.de/">http://www.bergenbelsen.de/</a>
	Berlin German Resistance Memorial Museum	<a href="http://www.gdw-berlin.de/index-e.php">http://www.gdw-berlin.de/index-e.php</a>
	Berlin, Karlshorst Museum	<a href="http://www.museum-karlshorst.de/">http://www.museum-karlshorst.de/</a>
	Bisingen Local History Museum	<a href="http://www.memorial-museums.net/WebObjects/ITF.woa/1/wo/urX2pZ4EpuzlOr2av1ec2w/68.47.17.1.1">http://www.memorial-museums.net/WebObjects/ITF.woa/1/wo/urX2pZ4EpuzlOr2av1ec2w/68.47.17.1.1</a>
	Buchenwald Memorial Museum	<a href="http://www.buchenwald.de/">http://www.buchenwald.de/</a>
Düsseldorf Memorial Museum	<a href="http://www.ns-gedenkstaetten.de/nrw/duesseldorf/index_2.php3">http://www.ns-gedenkstaetten.de/nrw/duesseldorf/index_2.php3</a>	
Greece	Museum of the Jewish Community of Thessaloniki	<a href="http://www.jmt.gr/">http://www.jmt.gr/</a>
Hungary	Jewish Museum Budapest	
	Budapest History Museum	<a href="http://www.museum.hu/museum/index_en.php?ID=14">http://www.museum.hu/museum/index_en.php?ID=14</a>

	Hungarian National Museum	<a href="http://www.hnm.hu/">http://www.hnm.hu/</a>
Ireland	No available information	
Italy	Liberation Historical Museum (Roma)	<a href="http://www.viatasso.eu/">http://www.viatasso.eu/</a>
	Jewish Museum of Bologna	<a href="http://www.museoebraico.it/">http://www.museoebraico.it/</a>
	Jewish Museum of the Ferrara Jewish Community	<a href="http://www.comune.fe.it/museoebraico/">http://www.comune.fe.it/museoebraico/</a>
	Museum for the Commemoration of Persecution	<a href="http://www.fondazionefossoli.org/">http://www.fondazionefossoli.org/</a>
	Museum of the Resistance of the Provinces of Massa Carrara and La Spezia	<a href="http://www.museodellaresistenza.it/">http://www.museodellaresistenza.it/</a>
	Museo della civiltà istriano-fiumano-dalmata	
	L'Archivio museo storico di Fiume	<a href="http://www.romaspqr.it/ROMA/Musei/Museo_storico_di_fiume.htm">http://www.romaspqr.it/ROMA/Musei/Museo_storico_di_fiume.htm</a>
Latvia	Museum of the Occupation	<a href="http://www.occupationmuseum.lv">http://www.occupationmuseum.lv</a>
	Museum of the Jews in Latvia	
Lithuania	IX Fort Museum and Memorial Site	
	The Vilna Gaon Jewish State Museum	
	Museum of Genocide Victims	<a href="http://www.muziejai.lt/Vilnius/genocido_auku_muziejus.en.htm">http://www.muziejai.lt/Vilnius/genocido_auku_muziejus.en.htm</a>
Luxembourg	National Museum on Resistance	<a href="http://www.villeesch.lu/esch/pages/default.aspx">http://www.villeesch.lu/esch/pages/default.aspx</a>
	General Patton Memorial Museum	<a href="http://www.patton.lu/index2.html">http://www.patton.lu/index2.html</a>
	Museum of the Battle of the Bulge in the Castle of Wiltz	<a href="http://www.amba.lu/pageshtml/home-fr.php">http://www.amba.lu/pageshtml/home-fr.php</a>
	World War II Museum in Insborn	
Malta	No available information	
Netherlands	National Museum for War and Resistance at Overloon	<a href="http://www.oorlogsmuseum.nl/index.php?t=en">http://www.oorlogsmuseum.nl/index.php?t=en</a>
	Airborne Museum Hartenstein	<a href="http://www.airbornemuseum.org/">http://www.airbornemuseum.org/</a>
	National Museum for the Liberation 1944-1945 at Groesbeek	<a href="http://www.bevrijdingsmuseum.nl/">http://www.bevrijdingsmuseum.nl/</a>
	Jewish Historical Museum	<a href="http://www.jhm.nl/english.aspx">http://www.jhm.nl/english.aspx</a>
	Rotterdam War and Resistance Museum	<a href="http://www.ovmrotterdam.nl/">http://www.ovmrotterdam.nl/</a>
	Friesland Museum of Resistance	<a href="http://www.verzetmuseum.nl/">http://www.verzetmuseum.nl/</a>
	Amsterdam Resistance Museum	<a href="http://www.verzetmuseum.org/">http://www.verzetmuseum.org/</a>
	Zuid-Holland Resistance Museum	
	War and Resistance Memorial Centre Groningen	
Poland	Museum of the Warsaw Uprising	<a href="http://www.1944.pl/index.php?lang=en">http://www.1944.pl/index.php?lang=en</a>
	Belzec Memorial Site and Museum Belzec	<a href="http://www.deathcamps.org/belzec/memorial.html">http://www.deathcamps.org/belzec/memorial.html</a>
	Museum for the History of Polish Jews	<a href="http://www.jewishmuseum.org.pl/">http://www.jewishmuseum.org.pl/</a>
	State Museum Stutthof	<a href="http://www.stutthof.pl/">http://www.stutthof.pl/</a>
Portugal	Museum of the Republic and Resistance	
	Mário Soares Foundation	<a href="http://www.fundacao-mario-soares.pt">http://www.fundacao-mario-soares.pt</a>
Romania	Memorial Museum	
	Ramnicu-Sarat Museum of Communism	
	Northern Transylvania Holocaust Memorial Museum	<a href="http://www.mmhntn.org/">http://www.mmhntn.org/</a>
Slovakia	Museum of Jewish Culture Bratislava	<a href="http://www.slovak-jewish-heritage.org/jewish-museum-slovakia.php">http://www.slovak-jewish-heritage.org/jewish-museum-slovakia.php</a>
	Museum of Roma Culture in Slovakia	<a href="http://www.snmem.sk/zlozkymuzea/mkrs/mkrsindex.html">http://www.snmem.sk/zlozkymuzea/mkrs/mkrsindex.html</a>
	Museum of the Slovak National Uprising	<a href="http://www.muzeumsnp.sk/">http://www.muzeumsnp.sk/</a>

	Police Museum	<a href="http://www.minv.sk/">http://www.minv.sk/</a>
	Slovak National Museum	<a href="http://www.snm.sk/">http://www.snm.sk/</a>
Slovenia	Museum of Contemporary History of Ljubljana	<a href="http://www.muzej-nz.si">http://www.muzej-nz.si</a>
Spain	No museums	
Sweden	Jewish Museum Stockholm	<a href="http://www.judiskamuseet.a.se/grund/grund.htm">http://www.judiskamuseet.a.se/grund/grund.htm</a>
United Kingdom	London Museum of Jewish Life	<a href="http://www.jewishmuseum.org.uk/Our-new-museum">http://www.jewishmuseum.org.uk/Our-new-museum</a>

Source: Own elaboration from information provided by experts in Member States

#### 8.1.4.2 Research projects

The number of research topics is simply countless. In particular, official institutions have developed extensive research programmes in some countries. Additionally, private institutions and foundations have developed more specific or *ad hoc* projects (see also section 3.2.3). Research is also conducted as part of the activities of institutions and organisms mentioned elsewhere in the study (for instance, some archive authorities do have a mandate for research –see further section 7).

- **Czech Republic** Two official bodies have carried through systematic research in the Czech case:
  - Institute for the Study of Totalitarian Regimes. It carries around 15 projects plus 5 specific education projects and edits on-line materials.
  - Office for the Documentation and the Investigation of the Crimes of Communism/Police of the Czech Republic. It keeps some 45 ongoing and/or completed research projects.
  - A European Shoah Legacy Institute in Terezin has been proposed in 2009.
- **Denmark** There are some examples of projects of civil society regarding the occupation period:

Name	Members	Purpose	Website
Danske Krigsbørns Forening (“Danish War Children’s Association”)	Children born of German soldiers in Denmark during or immediately after the occupation	To support the interests of Danish war children – and their children - and to provide assistance to members in search of their biological father	<a href="http://www.krigsboern.dk">www.krigsboern.dk</a>
Horserød Stutthof foreningen (“Horserød Stutthof Association”)	Persons who have been interned in Horserød camp or in Stutthof	<i>Inter alia</i> to work against fascism nationally as well as internationally, to secure preservation of institutions which explain the resistance movement and the conditions during the occupation period.	<a href="http://www.horserød-stutthofforeningen.dk">www.horserød-stutthofforeningen.dk</a>
Buchenwaldklubben (The Buchenwald Club”)	Police officers who spent time in Buchenwald concentration camp	To gather Danish police officers who spent time in Buchenwald and remember the events	The club was closed down in 2002
Humanity in	The organisation	With the Holocaust as the	<a href="http://www.humanityinaction.org">www.humanityinaction.org</a>

Action	sponsors an integrated set of educational programs each year for university students and post-graduates in America, Denmark, Germany, The Netherlands, France, and Poland.	historical starting point, Humanity in Action works to fulfill its mission to engage student leaders in the study and work of human rights.	
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- **Estonia** *Kistler-Ritso Foundation* has sponsored the activities of other NGOs, such the “S-Keskus” or center for the study of recent Estonian history.<sup>228</sup> The S-Keskus was founded in 1996 by the State Archive with the aim of encouraging research about the Soviet era.
- **Finland**
  - On 1998 the Finish Government commissioned a research project under the title “*War victims 1914-1922*”. The *War Victims committee’s* final report was published 2003. It is based on a detailed, comparative and critical analysis from different sources (for example, records held by the church, statistics, collected by the organizations of the rivalling parties, etc.) according to most demanding academic standards. The committee also funded and encouraged during its existence substantial research on topics connected to victimization: for example, on political violence and repression during and after Finnish civil war of 1918.
  - A request from the *Simon Wisenthal Centre* to the President of Finland triggered a number of research projects.
    - Firstly, prf. Heikki Ylikangas wrote a report for the Prime Minister in response to the request. The numbers presented are: 18,700 dead and over 2,800 surrendered prisoners - figures which significantly exceed the claimed number of 2,661 surrendered persons announced immediately after the war. According to Elina Sana, 74 Jews were handed over from Finnish prison camps. Heikki Ylikangas states that some 100 Jews died in the Finnish camps. The fate of the 56,000 Ingrians after they had been returned to the Soviet Union under the truce agreement is also mentioned. The Report proposed to open research on two different lines:
      - The first referred to repatriations and prisoners handed over during continuation war and after. As a result to this demand, the National Archives launched in 2004 a research project on “*Prisoner of war deaths and people handed over in Finland 1939-1955*”. The aim

<sup>228</sup> For details see <http://www.s-keskus.arhiiv.ee/eng/next.htm>

of the study was to clarify the circumstances of the prisoners of war that died in Finnish prisoner camps during the war, the hand-overs and exchanges of prisoners between the Finnish and the German authorities during the war, and finally the post-war hand-overs of people into the Soviet Union. The project, which lasted till 2008, evaluated critically the conduct of the Finnish authorities in these cases. It obtained significant results by giving partly new and partly more detailed information about the issues under focus. The project has generally been estimated as a great success offering new analytical information on the practices of the Finnish authorities during and after the war. It has also raised public awareness, debate and research on these issues.

- A second line would involve a joint effort with Russian researchers and would deal with the fate of Ingrians returned to the Soviet Union. The Finnish Academy of Science will lead research.
- **Hungary** Both the Memento Park and the Holocaust Memorial Centre carry through research and education projects. In addition:
  - *Haver Informal Jewish Educational Public Benefit Foundation*. The Foundation was established in 2002 with an aim to provide a wide range of information and knowledge about Judaism, Jewish culture and heritage and the Holocaust.
- **Latvia** (see also section 6.1) *Commission of Historians of Latvia (Latvijas vēsturnieku komisija) (Center for Judaic Studies, University of Latvia)*. Established in 1998 as both a teaching, conference-organizing, and research institution, the Centre launched in 2002 an ongoing research project called the “*Latvia Holocaust Jewish Names Project*” which has as its goal a computerized data base of all of the Jews who perished in the Holocaust in Latvia.
- **Lithuania** A joint initiative of a few NGOs (the Lithuanian Movement of Freedom Fights, the Lithuanian Union of Political Prisoners and Deportees, the Lithuanian Community of Political Prisoners and Deportees) on public evaluation of crimes of the Communism which seems to become a continuous and long-term programme. On 12-14 June 2000 in Vilnius these NGOs, with the support of the highest political leadership of the State, organised the International Congress “Evaluation of Crimes of the Communism”.
- **The Netherlands** The *Bureau for War Documentation* was founded in May 1945 and it became subsequently the Netherlands (State) Institute for War Documentation (NIOD). It followed from a decision taken in March 1944 by the Minister of Education in the London government in exile which, in a radio address to the occupied territory, asked the listeners to collect and keep all materials that after the war could serve as document of war, occupation and repression. The Bureau was funded provisionally by the State and started its work immediately after the liberation. The whole body of legal provisions for those who have been

victimized by war, resistance, persecution, oppression, and its aftermath are researched as part of a project commissioned by the Dutch Ministry for Public Health, Welfare, and Sports (responsible for caring for victims of the war) to the NIOD.

○ **Poland**

- *Ośrodek Karta* has been involved in the following programs related to the Communist past in Poland:
  - *Archives of Spoken History (Archiwum Historii Mówionej)* – archives of biographical recordings, collected since 1987; contain around 2.500 records. (<http://www.audiohistoria.pl/>)
  - *Close History (“Historia Bliska”)* – yearly research project competition for school children. Since 1996 there have been 11.724 participants, who have sent 6.744 entries. Part of [www.eurostory.org](http://www.eurostory.org), sponsored by Körber-Stiftung. (<http://historiabliska.pl/>).
  - *Index of Prosecuted Persons (Indeks Represjonowanych)* – since 1988, covers Polish citizens persecuted 1939 – 1956 in eastern parts of Poland under the Soviet occupation. Contains 946.000 entries with biographical descriptions. (<http://www.indeks.karta.org.pl/>) International partners are “Memorial” Foundation in Russia, the Genocide and Resistance Research Centre of Lithuania, “Pokajanije” Foundation in Komi Republic.
  - *Archival ER (Pogotowie Archiwalne)* – since 2007 collects all sort of unwanted documents related to the 1900 – 1989 period. Provides services of collecting the items, organising and cataloguing them, and making them available to the public. (<http://pogotowiearchiwalne.pl/>)
  - *Learning from History (Uczyć się z historii)* – since 2005, a website providing details of educational programs and competitions on 20<sup>th</sup> Century history. Sponsored by Stiftung "Erinnerung, Verantwortung und Zukunft". (<http://www.uczyc-sie-z-historii.pl/>). International partners are Fördergesellschaft Kulturelle Bildung e.V., Stiftung "Erinnerung, Verantwortung und Zukunft", Moscow-based Memorial Foundation.
  - *Portal of the 20<sup>th</sup> Century (Portal XX wieku)* – detailed documentation of day-by-day history of the 20<sup>th</sup> Century. Under construction.
  - *Remembering PRL 1956-1989 (Pamiętanie PEERELU 1956-1989)* – an individual research project by Anka Grubińska. Records everyday life under the Communism through the eyes of “ordinary people”. (<http://pamietaniepeerelu.pl/>)
  - The *Institute for National Remembrance (Instytut Pamięci Narodowej)* carries out a number of research projects, as well as subsidies external research projects. Around 11 projects are implemented internally or in cooperation with external organisms.

Moreover, the Institute of National Remembrance publishes the following periodicals:

- *The Institute of National Remembrance Bulletin*
- *Remembrance and Justice*
- *The Apparatus of Repression in the People's Republic of Poland 1944-1989*
- *The Archival Review of the Institute of National Remembrance*

Since 2000 the Institute of National Remembrance has published a total of 543 publications. 76 in 2006, 136 in 2007 and 152 in 2008.

○ **Romania**

- *Romanian Institute of Recent History (Institutul Roman de Istorie Recenta)* is an independent NGO established in 2000 at the initiative of Coen Stork, former ambassador of the Netherlands to Romania (1987-1993). The Dutch Ministry of Foreign Affairs has provided the initial funding, currently administered by the UN Development Program in Romania. Its mission is to study the Fascist and communist regimes in Romania, to influence Romanian historiography, and to disseminate its findings to the public.
- *The Gheorghe Ursu Foundation (Fundatia 'Gheorghe Ursu')* was set up by the family of engineer Ursu, who was killed by a fellow inmate at the instigation of the guardians in the dungeon of the Bucharest Militia Headquarters in 1985. The foundation's mission is to keep the memory of Gheorghe Ursu alive; to bring his murderers to justice; to support activities that commemorate and celebrate the victims of communism; and to support activities that would fight against the Securitate's continuous hold over Romania.
- 14 selected projects on the Antonescu regime (a mere sample) and 25 more dealing with the Communist regime.

○ **Slovakia**

- *The Nation's Memory Institute*. Its web site <http://www.upn.gov.sk/> announces 12 research/documentation projects available at the site. Additionally, some 20 projects have been also published and 7 films have been prepared for broadcast.

○ **Sweden**

- In April 2000, the Swedish Government assigned to the Swedish Research Council to develop a research program concerning "Sweden's Relation with Nazism, Nazi Germany and the Holocaust". The initiative was intended to satisfy both the Government's interest in knowledge and the wish of the research community to establish a broader basis for research on this theme. A report was published in 2006.<sup>229</sup>

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<sup>229</sup> Swedish Research Council, "Sweden's Relation with Nazism, Nazi Germany and the Holocaust: A Research Programme" (2006).



- In December 2006, the Swedish Government assigned to Forum for Living History the task of mapping and collecting information about existing research in Sweden and internationally concerning the crimes against humanity committed by communist regimes (Soviet, China and Cambodia between 1917 and 1989 (as well as to analyze the need for complementing and comprehensive research, if need, to initiate such research). The Forum was requested to work in an open manner through seminars, educational efforts and exhibitions around the country.<sup>230</sup>
- *Forum för levande historia* (Forum for Living History) is a governmental agency attached to the Ministry of Culture which was established on 1 June 2003 by the Social Democratic government which ruled at the time. It was tasked to promote initiatives about democracy, tolerance and human rights using the Holocaust as a starting point for its work. 2007 the Forum extended its programs to include crimes against humanity by communist regimes.

## 8.2 Awareness initiatives

8.2.1 *Educational measures (youth education measures to preserve and pass on the memory of totalitarian crimes in Europe; i.e. school books and educational practices or academic programs).*

As for education, the situation is highly varied among EU member states. By and large, educational measures on totalitarian and authoritarian regimes are assumed with the teaching of history. Civic education may also play a role taking into account the recommendations and programmes of the Council of Europe (see below 8.2.1.1)

- **Austria** The stated goal of the Allies was to ensure the institution of a progressive long-term educational program designed to eradicate all traces of Nazi ideology and to instill into Austrian youth democratic principles. Central to the identity-building plans of Austrian education officials was eliminating “Germanness” from the curriculum and replacing it with “Austrianness.” The official organ for disseminating education policy was (and still is) the monthly *Verordnungsblatt für den Dienstbereich des Bundesministeriums für Unterricht*, which appeared in February of 1946. The inaugural issue of the *Verordnungsblatt* called for the "dismantling of all that was un-Austrian" (*Abbau alles Unösterreichischen*) and building Austrian consciousness. Only one history book covering the World War II years was approved for use during the occupation period. *Allgemeine Geschichte der Neuzeit von der Mitte des 19. Jahrhunderts bis zur Gegenwart*, by Franz Heilsberg and Friedrich Korger, was published in 1953, and subsequent versions were

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<sup>230</sup> The results were presented in March 2008 and are available at: [http://www.levandehistoria.se/files/brott\\_faktaskrift.pdf](http://www.levandehistoria.se/files/brott_faktaskrift.pdf).

used in Austrian classrooms until the early 1970s. The authors treated the *Anschluss* as the "occupation of Austria" and emphasized the forced takeover of Austrian economic assets. Austrian educational policy and materials embraced democracy and rejected Nazism, however, Austrians were generally cast as victims of Nazism rather than as supporters. Extensive textbook analysis demonstrates the following trends for the years 1955 through the mid 1980s in teaching about the war and Nazi crimes. The *Anschluss* was treated as an act of German aggression, with little attention paid to Austrian support for the annexation and little coverage of anti-Semitic violence that went along with it. The war was treated as tragedy where Austrian soldiers preserved their honour in a conflict they had no control over. The Holocaust was typically covered with the inclusion of Jewish victims, but crimes against the Jews were often conflated with a general level of suffering experienced by soldiers and those on the home front who were bombed by the Allies. Austrian resistance to Nazism was heavily stressed with emphasis on there being both conservative and Socialist patriotic anti-Nazi resistance. The Allied occupation was portrayed as a long and unjust ordeal and conflated with the German "occupation".

○ **Belgium**

- The *Auschwitz Stichting / Fondation Auschwitz* ([www.auschwitz.be](http://www.auschwitz.be)) is an independent - but government sponsored - body. It operates both in the French and the Flemish community. This study and documentation center on German crimes and genocides was created in 1980. One of its main objectives is 'Education after Auschwitz', informing and training teachers, trainers, accompanying personne to acquire a higher degree of knowledge on the Holocaust and related issues, in order to integrate these in the historical consciousness. One of the better known activities is the yearly prizes accorded to secondary school students for dissertations on specific topics related to Auschwitz.
- An organization with a similar educational ambition is the *Jewish Museum of Deportation and Resistance* (in Mechelen), a non-governmental organization (Jewish Board of Deputies/Consistory) funded by the Flemish Government and several provincial and local authorities. In the same category are to be mentioned the Buyens/Chagoll Fund for the distribution of movies concerning the Holocaust.

○ **Bulgaria** The Holocaust is integrated into individual mandatory subjects, including in history and in ethics and law. Students are taught that Bulgaria did not allow the Holocaust in its territory. A Holocaust memorial day is marked in schools with a special lesson called 10 March: Lesson of Dignity. The day involves meeting with survivors, visit to monuments and sites, art and essay competitions, etc.

As for communism, on October 2009, Bulgarian Members of Parliament voted against the proposed changes of the Public Education Act suggesting a greater emphasis on communist regimes and their crimes.

○ **Cyprus** The Minister of Education issues a message for the young pupils which is read in schools on the various commemoration days celebrating the independence of the Republic of Cyprus and the fights for democracy

and independence. This message traditionally refers to the coup and its tragic effects. History books make only a general reference to the coup.

- **Czech Republic** Holocaust education: After the Velvet Revolution, it took several years before the Holocaust entered the curriculum. From the mid-1990s onward, restitution programs, a government commission investigation of the Aryanization of Jewish property, and pressure from the Jewish community brought the issue to public attention. One of the texts given an official certificate was blatantly anti-Semitic; widespread criticism led the Ministry to revoke the certification and to agree that inclusion of Holocaust and Jewish history would become criteria for certification.

Public attention to the Roma and Sinti genocide was also raised by the controversy over the fate of the former Roma internment camps and the *Fenomén Holocaust Project* launched by President Havel's Office. Textbooks published from the year 2000 onward include considerable information on the Holocaust of the Jews, Roma and Sinti. Teacher's manuals are also available.

- Teacher training programs at the Terezín Memorial Museum. Jointly organized by the Ministry of Education, Terezín Memorial, Jewish Museum and the Terezín Initiative Institute, the courses began in 2000 and were evaluated by international experts, who offered suggestions, since implemented, to improve the course content and modernize its methodology. The training sessions, now under the auspices of the Terezín Initiative Institute, has generated significant participation.
- An educational website titled [holocaust.cz](http://holocaust.cz), supported by the Anne Frank House and others, that offers a substantial database of information on the Holocaust in the Czech language, including texts and documents, as well as materials designed for teachers and students.
- A documentary film project for students titled "Vanished Neighbors," a joint initiative of the Czech Ministry of Education and the Jewish Museum of Prague, in which students are instructed in documentary filmmaking and then ask residents of their hometowns if they know who once owned their homes, or lived in neighboring houses. If the interviewee does not know, the students inform them, based on their research, about the Jewish families' former homes. The results have been shown on Czech television and exhibited in the Jewish Museum in Prague. By all accounts, the project has been very successful, not only in engaging and educating students but also in opening broader discussions in Czech communities. The Anne Frank House is now drawing on the program as a model.
- Cooperation with the Anne Frank House, which brought the traveling exhibition "Anne Frank – A Story for Today" to the Czech Republic.  
Experts agree that much progress in Holocaust education has been made, but also that it could be improved, especially in

that the crimes of the Holocaust are generally portrayed as the responsibility of the Nazi German occupiers, leaving Czech culpability largely unexplored.<sup>231</sup>

The question of how, and what, to teach students about the Communist past remains highly contentious. Czech schoolbooks contain little information on the Communist period, and earlier periods of history receive vastly more attention; sometimes, classes do not even manage to get to the most recent period of history.<sup>232</sup> Indeed, a school inspectors' report published in 2004 noted that the period often was not mentioned in history lessons.<sup>233</sup>

Part of the mission of the recently founded Institute for the Study of Totalitarian Regimes is the support of education, especially in secondary schools. To this end, it has three main tasks: to provide training for teachers on new information and effective methods of teaching it; to produce educational materials, both written (textbooks and handbooks) and audio-visual; and to provide specialized lectures for students (a substantial list of topics is available<sup>234</sup>).

In 2008, the Institute provided a summer school for history teachers, seminars for history teachers throughout the fall, and textbooks and handbooks for schools. It is also developing a student competition titled "Ask Your Parents."<sup>235</sup>

- **Denmark** The occupation period is an important part of the history curriculum of Danish school children. The Holocaust is taught within the framework of history and civic classes and to a smaller extent in German and theology. During the week of 27th January, high school students have the opportunity to participate in seminars and learn more about the Holocaust and other genocides. Each year 2000 high school students participate in workshops where the Holocaust and other genocides are discussed. The Department for Holocaust and Genocide Studies and the Regional Centres for Educational Services organize teacher training courses.<sup>236</sup>
- **Estonia** The *Estonian History Teachers' Association (Eesti Ajalooõpetajate Selts, EAS)* has been involved in a number of projects targeted at improving the teaching of critical issues of the recent past in both Estonian and Russian language schools in Estonia. As active member of the European Association of History Educators

<sup>231</sup> This is a point made by both Frankl and Hájková. Both work with the Terezín Initiative Institute.

<sup>232</sup> Cameron, Rob, Pupils intrigued, communists angered by controversial schools project, *Český rozhlas 7 - Radio Praha*, November 17, 2008, available at <http://www.radio.cz/en/article/110380>.

<sup>233</sup> Diana Kosslerova, Czech schools revisit communism, *BBC News*, November 1, 2005, available at <http://news.bbc.co.uk/2/hi/europe/4388764.stm>.

<sup>234</sup> Institute for the Study of Totalitarian Regimes, "Lectures for Schools and the Public," available at <http://www.ustrcr.cz/en/lectures-for-schools-and-public>.

<sup>235</sup> Institute for the Study of Totalitarian Regimes, "Plan of Activity for the Year 2008," available at <http://www.ustrcr.cz/en/plan-activity-year-2008#part1a2-1>.

<sup>236</sup> OSCE/ODIHR, "Education on the Holocaust and on Anti-Semitism: An Overview and Analysis of Educational Approaches", 2006, page 80 available at [http://www.osce.org/publications/odihr/2006/04/18712\\_586\\_en.pdf](http://www.osce.org/publications/odihr/2006/04/18712_586_en.pdf)

(EUROCLIO), EAS received funding from the EUROCLIO Matra programme and the Dutch Ministry of Foreign Affairs (€379,506) for a two-year project between 2002-2004 entitled “*The Integration of Society in Estonia.*” This project worked to improve the dialogue among Estonian and Russian history teachers and produced a resource book for upper-secondary school students and teachers featuring primary and secondary source material including photos, personal memories of time witnesses, quotes of Stalin-era political leaders, announcements and laws etc. The book focuses on a number of controversial turning points in Estonia’s history since 1933 and students are asked to discuss the issue of collaboration with criminal regimes, the question of guilt and responsibility (providing them also with comparative material from other countries); they are asked to evaluate individual motivations of both political leaders and ordinary citizens and critically analyze historical photo material and official documents. The final assessment of the project noted an “extensive public debate with good media coverage” and the successful training of about 300 teachers and teacher trainers. It declared the project an “example of good cooperation between Estonian and Russian speakers.”

- **Finland** All history textbooks contain a reference to the Holocaust. And some schools offer additional courses and projects on the Holocaust. The subject is taught within the framework of history course, literature, ethics, and religion and approximately 2-3 hours are allocated to teaching this issue.
- **France** A decree of 25<sup>th</sup> April 1988 (43 years after the end of the war), the Ministry of National Education inserted the history of the Second World War, including the Jewish genocide, to the primary school program. A Decree of 14 June 1995 introduced the “world from 1939 to now” as part of the last year secondary studies. The history of the extermination of the Jews was then placed at the beginning of the school year, potentially part of the final examination for the *Baccalauréat*. Advice to teachers said that “one should lay stress on the concentrationary world and the systematic extermination of the Jews and *tsiganes*.”
- **Germany** Educational measures in Germany started with Denazification and Reeducation efforts after 1945. Educational books of the Third Reich were abolished and new materials compiled, furthermore curricula revised and the teachers’ staff (partly) cleansed in 1951 the „Internationalen Instituts für Schulbuchverbesserung“ was founded in Braunschweig by the Social democrat pedagogue Georg Eckert; 1953 it developed into the „Internationales Schulbuch-Institut“ which since 1975 is still active as the “Georg-Eckert-Institut für internationale Schulbuchforschung”. The Institute is very instrumental in overcoming national curricula in history and is developing common textbooks with France, Poland and other European countries with a converging approach to the history of the 19<sup>th</sup> and 20th centuries. Since 1959 the “Standing Conference of the Ministers of Education and Cultural Affairs” initiated as a reaction to Anti-Semitic graffiti at the Cologne synagogue the school subject *Gemeinschaftskunde* (civics) that intensified the study of contemporary history in schools and universities. The main focus was on

WW II, the personality of Adolf Hitler, the individual fate of victims like Anne Frank, and the resistance of generals against Hitler. The Holocaust as school subject became prominent as late as the early 1980's; in this period a new methodological approach on oral and local history motivated more than 18.000 students to participate in a concourse „Alltag im nationalsozialismus“ (Everyday life under National Socialism) sponsored by the German President.

- The Holocaust is a mandatory subject in the Federal Republic of Germany. The Holocaust Education Report of the International Task Force states: Through curricula, the corresponding ministries arrange at what age, in which context, and to what extent the Holocaust is taught. They do not establish lesson plans. The students are taught about this complex topic in line with the teaching profiles of the respective school types and with due regard to the stage of their psychological development.” The Report continues: “The Holocaust is taught as a part of the subject ‘History’. It is dealt with as a major topic of German and European history in the twentieth century. This is done in a way which clarifies the historical context: rise of the National Socialist movement in a specific historic situation, establishment of a dictatorship in Germany and the abolition of the rule of law, Nazi ideology, Anti-Semitism in Germany, Nazi crimes against other groups, and the Nazi criminal war of aggression. It is taught not only in history lessons but also in other subject matters, in particular civics, German literature, religious instruction (both Catholic and Protestant), Courses on the Holocaust or courses which include Holocaust history are offered at German universities (most frequently at departments for history, political science, pedagogy, literature).
  - School classes form a large part of the visitors to Holocaust memorials. Teaching the history of the Third Reich and the Holocaust is part of all history curricula in schools in Germany. Courses on the Holocaust and study trips for teachers to historical sites are offered by teacher-training centers, state agencies for political education, associations (e.g. the trade-union for teachers, foundations of political parties), and by memorials.
  - The Archives Authority (BTsU) remains highly active in research and civic education. It is supposed to be part of a future *Geschichtsverbund zur Aufarbeitung der kommunistischen Diktatur in Deutschland*, which is mainly devoted to political/civic education (or *politische Bildung*).
  - Since the 1980's more actors of civil society joined this effort, some of them giving a long experience like the association “Aktion Sühnezeichen” (founded 1958 by the Evangelical Church), the business-sponsored „Fonds Erinnerung und Zukunft“, sponsored by the foundation „Erinnerung, Verantwortung und Zukunft“, the German parties (e.g. the “Arbeitsgemeinschaft ehemals verfolgter Sozialdemokraten”).
- **Greece** The Holocaust is a mandatory subject taught in the history curriculum under the topic of WWII. Literature, art, maps, photographs,

archives and the new technologies are all used to teach the Holocaust in schools. Students first encounter the subject at the ages 11-12. Activities and ceremonies organised to mark 28 October join schools and the public in general.

- **Hungary** The Holocaust is included in the history curriculum and partially in literature, social sciences, art and ethics. Hungarian non-governmental institutions also undertake informal education projects. Copies of “Fateless” by Imre Kertész (Nobel Prize) have been distributed to all school libraries in Hungary.
- **Italy** The Holocaust forms part of the history curriculum on WWII, although is not a mandatory subject. Since 2001, students are directly concerned in an annual competition, “I giovani ricordano la Shoah” (Young people remember the Shoah), which has been organised by MIUR (Ministry of Education, University and Research) in cooperation with UCEI (Union of Jewish Italian Communities).  
A book was written and published on behalf of the Ministry of Education, “La lezione della Shoah”, in 2008.  
A webpage “Scuola e Shoah” (“Schools and Shoah”) was created within the Ministry of Education’s official website. This page provides information about activities carried out at national and local level, and suggestions are provided on materials and teaching methods. Best practices and students’ works are also published on the site.  
The University of Rome 3 has an specific MA on the Shoah didactics *Master internazionale Didattica della Shoah* (International Master of Shoah’s Didactics).
- **Ireland** The Holocaust is taught primarily under the history syllabus but also in civics and social studies. Students encounter the topic at both primary and secondary-schools levels and for the first time at the age of 12. School textbooks focus primarily on anti-Semitism and concentration camps. Approximately one page in each is dedicated to the Holocaust.
- **Malta** The events of the 1960s and the 1980s are still considered ‘too controversial’ and do not feature with any prominence in the history textbooks, although the matriculation syllabus touches on some issues related to these historical periods. However, the religious-political disputes and modern political do form part of undergraduate courses on modern Maltese history at the University.
- **Latvia** Latvian publishers of schoolbooks have carefully patterned accounts of long-term Latvian development by reference to “western” examples, with the totalitarian phases of twentieth-century Latvian history presented in a straightforward fashion.<sup>237</sup> Since the entire school system through all grades is funded by the national government, textbooks have to be approved by the Ministry of Education. There is now a positive portrayal of the fact that the territory of the Latvian state has always been ethnically and nationally diverse; the texts do not hesitate to call the two totalitarian periods “an occupation” (even though this description is generally disputed by many authors in the Russian Federation); and the texts discuss the Holocaust both as a European and as a Latvian event in a separate section (including original documents

<sup>237</sup> See, for example, the high school text Gunars Kurlovičs and Andris Tomašūns, eds. *Latvijas vēsture vidusskolai*, Riga: Zvaigzne ABC, 2000, Chapters 5 and 6.

and photographs). Assistance in the preparation of a “Holocaust curriculum” for grade schools was rendered by both the Latvian Jewish community as well as teams of educators from the United States.

- **Lithuania** The *Genocide and Resistance Research Centre of Lithuania* has implemented various educational programs for youth in the last 10 years. The *International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania* is organizing educational programs as well. In 2003, National Holocaust Education Programme was prepared and approved on the basis of the Teaching about the Crimes of Totalitarian Regimes, Prevention of Crimes against Humanity and Tolerance Education Programme (Tolerance Education Programme), which has been implemented by the Commission since 2002.

The *Council of the Youth Organizations of Lithuania* (hereinafter the Council) has been organizing the expedition to the places of exile and imprisonment of Lithuanians in Siberia for four years (Project “Mission Siberia”). The objectives of the project are to enshrine historic remembrance and national patriotism among the youth, urge the dialogue between the generations, remember and pay homage to the perished and victims of the Genocide of the inhabitants of Lithuania.

- **Luxembourg** World War II (including questions like Resistance, Shoah, genocide, etc.) is part of the curricula in secondary schools since the 1950’s. Schools are commemorating the *Day of remembrance of the Holocaust and prevention of crimes against humanity*.
- **The Netherlands** Topics related to World War II, its causes and effects are repeatedly selected. In order to discuss these issues, the *National Committee for the Memory of May 4 and 5*, as well as the *Anne Frank Foundation* and others produce educational programmes for schools. A relatively recent initiative occurred in 1999, when a ‘National Centre of Support for Guest Speakers on World War II in Schools’ was founded. This institution organizes and coordinates presentations in classrooms by witnesses of war and persecution.
- **Poland** All programs and text books have to be submitted to the Ministry of Education for a review and an opinion of a board of experts. History as a subject appears in Grade 4. Page 239 of the *Decision of the Ministry of National Education on the program of pre school and school education in particular types of schools* of December 23<sup>rd</sup>, 2008<sup>238</sup> states that at the end of the first stage of education (grades 1 – 6) a pupil should be able to point out the Polish People’s Republic on the map and list her neighbours, and to talk about dependency on the Soviet Union, Communist Party dictatorship, censorship, democratic opposition, and then about the emergence and activities of Solidarity movement, strikes, fight without violence, marital law, round table. On page 335 of the same document it is stipulated that the pupil finishing the 2<sup>nd</sup> and 3<sup>rd</sup> stages of education (grades 7–12) should have knowledge about beginning of Communism in Poland, repressions of the Stalinist period, events of 1956, 1968, 1970, 1976, 1980, martial law, Solidarity movement, Catholic Church and its role under the Communism, political, economic

<sup>238</sup> Rozporządzenie Ministra Edukacji Narodowej w sprawie podstawy programowej wychowania przedszkolnego oraz kształcenia ogólnego w poszczególnych typach szkół



and cultural changes after 1989. History books not containing these issues cannot be enlisted as textbooks.

2009 has been a Year of Independent Culture (*Rok Kultury Niezależnej*): this project is organised by the Institute of National Remembrance under the auspices of the Ministry of Culture and National Heritage, in cooperation with a number of institutions (Rada Ochrony Pamięci Walk i Męczeństwa, Narodowe Centrum Kultury, Stowarzyszenie “Pokolenie”, Oficyna Wydawnicza Wolumen. It is an educational project focused on all dimensions of culture (music, art, literature, film etc.) under the totalitarian regimes of the 20<sup>th</sup> Century in Poland. (<http://kultura-niezalezna.pl/>)

- **Portugal** A Protocol was signed along with the Associação 25 de Abril (Association 25<sup>th</sup> April), the *Instituto de Estudos de História Contemporânea/ISCTE (Institute for the Study of Modern History)* and the *Instituto de História Contemporânea/UNL (Institute for Modern History)*, and the *Mario Soares Foundation*, and it aims at promoting and stimulating the research into the involvement of the military in politics and the democratization process.
- **Romania**
  - *The National Institute for the Study of the Holocaust in Romania Elie Wiesel (Institutul National pentru Studierea Holocaustului din Romania Elie Wiesel)* is working on a textbook on the History of the Holocaust in Romania to be used in pre-university schools throughout the country. The subject will be optional.
  - *The Center for Hebrew Studies Goldstein-Goren (Centrul de Studii Ebraice Goldstein-Goren)* at the Faculty of Letters at the University of Bucharest offers a Master of Arts in Hebrew Culture and Civilization.
  - *The Center of Jewish Studies and Hebrew Studies (Centrul de Istorie a Evreilor si Ebraistica)* at the Faculty of History of the University A. I. Cuza of Iasi offers an MA in Jewish Studies.
  - The *Sighet Memorial* has organized an annual summer school for adolescents since 1998.
  - The *IICCR* authored the first textbook on communism, *O Istorie a Comunismului din Romania (A History of Communism in Romania)*. Order 4699 of 7 July 2008 of the Minister of Education on approving the school curricula for the optional subject “A History of Communism in Romania” allowed high schools in Romania to use the textbook in their history class starting the 2008-2009 school year. In 2008, the *IICCR* organized its first summer school.
- **Slovakia**
  - As for the Holocaust, temporary history textbooks were issued after the revolution for use in all school forms. In 1996, a new text by Milan Ďurica (who left Slovakia after WWII), titled *History of Slovakia and the Slovaks*, was published with the help of EU PHARE funds. Commissioned by the Education Ministry as a school text, *History of Slovakia and the Slovaks* offered a whitewashed portrayal that contained egregious misrepresentations, false claims and justifications of the Slovak

state's treatment of its Jewish citizens and its role in the Holocaust. Its status as a school text soon caused widespread criticism, including from Jewish groups and the EU, who called for its removal from the Slovak school system. Initially, there was resistance to these demands but in 1997 it eventually agreed under pressure to remove it.

According to a 2005 Baseline Study the Slovak Republic did as part of its membership application for the Task Force for International Cooperation on Holocaust Education, Remembrance and Research, Slovak students learn about the Holocaust in history, civics, social science and Slovak language in all types of primary and secondary schools; the subject is mandatory. It is also taught in ethics classes.<sup>239</sup> The Study noted as well that “the curricular transformation of the education system in the Slovak Republic is currently being prepared, which will devote more space to the topic of History of the 20<sup>th</sup> century in history classes. This will also broaden teaching about World War II.” Additional elements of Slovakia's efforts to offer Holocaust education include:

- Ministry of Education funding of a project titled “Training of Secondary School Teachers for Holocaust Education” (between 2001-2005, the amount spent was SKK 2.3 million); state funds are also allocated for a project for teachers titled “How to Teach about the Holocaust.”<sup>240</sup>
- In 2000, Parliament passed a law designating September 9 as the Memorial Day of the Victims of the Holocaust and Racial Violence. The Ministry of Education has tasked the Museum of Jewish Culture in Bratislava with organizing activities on this day, including discussions in schools, guided tours of memorial sites and the use of teaching aids in classes.<sup>241</sup>

As for the education about the Communist period, the state passed an educational reform package in 2008 and the Ministry of Education plans to produce 102 new textbooks at a price of 3.2 million Euros. To supplement the curriculum, the *Nation's Memory Institute* offers a substantial list of lectures available for middle and high schools covering a variety of topics the period from 1939-1989.<sup>242</sup>

- **Slovenia** It must be noted that there are several nationwide attempts to present totalitarian crimes to students and pupils. The history textbooks for primary and secondary schools in Slovenia mention only in part of totalitarian crimes suffered by Slovenian in 20th century. In contrast, the long-lasting communist totalitarian regimes has hardly found place

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<sup>239</sup> *Task Force for International Cooperation on Holocaust Education, Remembrance and Research Membership Application – Baseline Study*, Primary Contact: Ministry of Foreign Affairs of the Slovak Republic Human Rights Department, [www.minedu.sk/data/USERDATA/Mspolupraca/MSDOC/20070525\\_holokaust\\_education\\_Baseline\\_study%20\\_AJ.pdf](http://www.minedu.sk/data/USERDATA/Mspolupraca/MSDOC/20070525_holokaust_education_Baseline_study%20_AJ.pdf).

<sup>240</sup> *Task Force for International Cooperation on Holocaust Education – Baseline Study*, p. 6.

<sup>241</sup> Yad Vashem, “Slovak Republic,” <http://yad-vashem.org.il/education/ceremonies/liberation/map/slovak.html>.

<sup>242</sup> Nation's Memory Institute, “Prednášky,” <http://www.upn.gov.sk/prednasky>

in the the school curriculum. Surely, the overt communist ideology was removed from the textbooks and school curriculums, however a number of communist crimes appear to be intentionally not mentioned. There is hardly mention of show trials of the political opponents of the Communist Party in 1950s.

- **Spain** The education component has been largely absent from Spanish transitional justice policy. Spanish authorities did not implement a clear policy on teaching history from the point of view of transitional justice but even in factual knowledge there existed notorious shortcomings.
- **Sweden** Two initiatives regarding awareness are the following:
  - *Sweden and the Holocaust: an exhibition (2008-2009)*: In focus is the work of the race biological institute in Uppsala. German nazi were inspired by Sweden and not the other way around.
  - Forum for Living History has also participated in the *Task Force for International Cooperation on Holocaust Education, Remembrance and Research (IFT)* and carried out research concerning experiences and understandings of Swedish teachers related to teaching about the Holocaust.
- **UK** The Holocaust is addressed as part of the history subject in 9<sup>th</sup> grade and certain aspects of the Holocaust may also be addressed in religious education, English literature, science, citizenship, and art. Each Day of Remembrance has a special theme. In 2002, this was “Britain and the Holocaust”; in 2003, it is “Children and the Holocaust”. Teaching aids and a website are provided for teachers.

**Table 8.2.1 Educational measures on crimes committed by totalitarian regimes 1**

<b>Member state</b>	<b>Dates of days of remembrance</b>	<b>Activities in schools</b>	<b>Websites and teaching aids</b>
<b>Austria</b>	5 May	<p>-Holocaust studies are primarily addressed in history and civic-education courses. Students first encounter the subject at the age 14. In the upper grades, 5-10 hours are allocated to education.</p> <p>-For 20 years, Austrian schools have been inviting Shoah survivors and experts on twentieth century politics and history to discuss and give talks on this theme. Schools also run projects and visit sites of memory.</p> <p>-Annual conferences on this theme are organised as part of teacher training.</p> <p>Ministerial project: “National Socialism and the Holocaust, Remembrance and the Present”, in co-operation with the International School for Holocaust Studies at Yad Vashem. This project is based on the “Memorandum of Understanding on Cultural and Educational Co-operation” concluded between Austria and Israel</p> <p>-The Auschwitz Stichting gives prizes to secondary school students for dissertations on specific topics related to Auschwitz</p>	<p>-<a href="http://www.lernen-aus-der-geschichte.de/?site=pp20051007103904&amp;lp=en">http://www.lernen-aus-der-geschichte.de/?site=pp20051007103904&amp;lp=en</a></p> <p>-The Documentation Center for Austrian Resistance provides tour guides for schools that focus on both historical acts of persecutions and efforts to combat present day right wing extremism.</p>
<b>Belgium</b>	8 May	<p>-Holocaust is incorporated into history lesson of World War II. The subject is taught during the final two years of secondary school, at the equivalent student ages of 16-18. A total of two hours is allocated to the subject.</p> <p>-In September 2004, the federal authorities launched a teacher training programme on the Holocaust and antisemitism</p> <p>-Holocaust Museum at Malines (educational section);</p>	<p>-<a href="http://www.v-dag.be">www.v-dag.be</a> (official site)</p> <p>-English-language site, “The Mechelem Museum of Deportation and Resistance”: <a href="http://www.cicb.be">www.cicb.be</a></p> <p>-Book by Maxime Steinberg and Ward Adrians “Jewish Museum of Deportation and Resistance” on the Holocaust in Belgium.</p>

		commemorative cycle tour, thematic walks and tours in towns and sites of memory, visits to museums and exhibitions, schools projects (e.g. graffiti for peace), concerts, etc.	
<b>Bulgaria</b>	10 March	<p>-In 2003, Bulgaria celebrated the 60th anniversary of the saving of the 50,000 Bulgarians Jews whose deportation to Treblinka was prevented.</p> <p>-The Holocaust is integrated into individual mandatory subjects, including in history and in ethics and law. Students are taught that Bulgaria did not allow the Holocaust in its territory.</p> <p>-A Holocaust memorial day is marked in schools with a special lesson called 10 March: Lesson of Dignity. The day involves meeting with survivors, visit to monuments and sites, art and essay competitions, etc.</p>	-Bulgaria: Book by Professor Michael Bar-Zohar "Beyond Hitler's Grasp" and documentary film of the same name
<b>Cyprus</b>	15 July	<p>-The Minister of Education issues a message for the young pupils which is read in schools on the various commemoration days celebrating the independence of the Republic of Cyprus and the fights for democracy and independence.</p> <p>-Students first learn about the subject at the age of 15 and 18. A maximum of 4 hours is allocated to the teaching of the Holocaust</p>	
<b>Czech Republic</b>	27 January	<p>-The Holocaust forms an obligatory component of the education standards at both primary and secondary-schools levels. Most students learn for the first time at the age of 15. A total of 1-2 hours are allocated through the history curriculum.</p> <p>-The Ministry of Education in the Czech Republic is very active in organising activities for the Day of Remembrance (teacher training, seminars, teaching aids, subsidies for visits to museums in other countries, etc.)</p> <p>-Textbooks published from the year 2000 onward include considerable information on the Holocaust of the Jews, Roma and Sinti</p>	-An educational website titled <a href="http://www.holocaust.cz">www.holocaust.cz</a> supported by the Anne Frank House and others, that offers a substantial database of information on the Holocaust in the Czech language, including texts and documents, as well as materials designed for teachers and students

		-Czech schoolbooks contain little information on the Communist period, and earlier periods of history receive vastly more attention; sometimes, classes don't even manage to get to the most recent period of history. Indeed, a school inspectors' report published in 2004 noted that the period often was not mentioned in history lessons	
<b>Denmark</b>	5 May	<ul style="list-style-type: none"> <li>-The occupation period is an important part of the history curriculum of Danish school children.</li> <li>- During the week of 27th January, in many cities of Denmark, high school students have the opportunity to participate in seminars and learn more about the Holocaust and other genocides. The Auschwitz Day has each year a new thematic focus, in order to illustrate the complexity of genocide.</li> <li>- The Holocaust is taught within the framework of history and civics classes, and to a smaller extent in German and theology.</li> <li>-Students encounter the issue of the Holocaust at both primary and secondary schools, and for the first time at the age of 12. No particular number of hours is allocated to teaching.</li> <li>- A wide variety of basic history textbooks and thematic books regarding are available.</li> </ul>	
<b>Estonia</b>	27 January	<ul style="list-style-type: none"> <li>-The Holocaust is incorporated into history courses that deal with WWII and crimes against humanity. Students first encounter the subject at the age 12 and subsequently at ages 16 and 18-19, respectively. No particular number of hours is allocated to teaching, but the teachers spend approximately three hours at the secondary level.</li> <li>-The Estonian History Teachers' Association has been involved in a number of projects targeted at improving the teaching of critical issues of the recent past in both Estonian and Russian language schools in Estonia</li> </ul>	-Partners for school activities for the Day of Remembrance: Memento Union, Jewish Communities in Tallinn, Ida-Virumaa, Tartu and Pärnu
<b>Finland</b>	27 January	-All history textbooks contain a reference to the	-Official website: <a href="http://www.holocaustinfo.org">www.holocaustinfo.org</a>

		<p>Holocaust. Some schools offer additional courses and projects on the Holocaust.</p> <ul style="list-style-type: none"> <li>- The subject is taught within the framework of a history course, and literature, ethics, and religion courses.</li> <li>- Approximately 2-3 hours are allocated to teaching about the Holocaust, and learn about the topic first at the age of 14 and then in upper secondary school at the ages of 16-17.</li> <li>-The Minister of Education has requested that seminars be held on the Holocaust and Education; that schools vary their approach to the subject; that it be included in teacher training; and that teaching aids and websites be introduced</li> </ul>	<ul style="list-style-type: none"> <li>- During a visit to the Auschwitz-Birkenau concentration camp, a group of Finnish students attempted to identify a man portrayed in a photo that was taken in Finland in 1911. This photo was presented at a photography exhibition at the Auschwitz-Birkenau concentration camp</li> </ul>
<b>France</b>	27 January	<ul style="list-style-type: none"> <li>-The Ministry of National Education inserted the history of the Second World War, including the Jewish genocide, to the primary and secondary school program</li> <li>- The Holocaust may also be taught in literature and philosophy courses. The theme is also often incorporated into graduating exams in middle and secondary schools.</li> <li>-In 2004, the Ministry of National Education distributed to middle and secondary schools a DVD with a summary of Claude Lanzmann’s film “Shoah”</li> <li>- The subjects are including at elementary schools at he ages of 9-10, and later in secondary schools at the ages of 14-15 and 16-17.</li> </ul>	<ul style="list-style-type: none"> <li>-Numerous websites, including:  <a href="http://www.anti-rev.org">http://www.anti-rev.org</a> on the Vél d’hiv round-up)  <a href="http://www.camp-de-drancy.asso.fr">www.camp-de-drancy.asso.fr</a> (on the camp at Drancy)  <a href="http://www.memoire-juive.org/chrono_auschwitz.htm">www.memoire-juive.org/chrono_auschwitz.htm</a>                      (chronology of the deportation of French Jews), etc.</li> </ul>
<b>Germany</b>	27 January	<ul style="list-style-type: none"> <li>-The Holocaust forms a major component of the module German and European history in the 20<sup>th</sup> century.</li> <li>-In German schools, special prizes are awarded to pupils who suggest ways of marking the day (e.g. the Bertini Award in Hamburg, the Geschwister-Scholl-Preis)</li> <li>- 16-20 lessons are scheduled for the period of National Socialism at both lower and upper school levels.</li> </ul>	<ul style="list-style-type: none"> <li>-Site “Memorial museums for the victims of national socialism in Germany”:<a href="http://www.topographie.de/gedenkstaettenforum/uebersicht">www.topographie.de/gedenkstaettenforum/uebersicht</a> (Map showing all sites of memory in Germany)</li> <li>-School projects: <a href="http://www.lernen-aus-der-geschichte.de">www.lernen-aus-der-geschichte.de</a></li> <li>-Book: “27. Januar – Tag des gedenkens an die Opfer des Nationalsozialismus”, supplied with teaching aids and a booklet.</li> <li>-Schools have been issued with a special portfolio, “Die Erinnerung darf nicht enden”</li> </ul>

		- The Holocaust is also discussed during civics and German literature and religion or ethics classes.	-See also <a href="http://www.holocaust-education.de">www.holocaust-education.de</a>
<b>Greece</b>	28 October	-The Holocaust is a mandatory subject taught in the history curriculum under the topic of WWII. Literature, art, maps, photographs, archives and the new technologies are all used to teach the Holocaust in schools. Students first encounter the subject at the ages 11-12 and subsequently at the ages of 14-15 and 17-18. -Not only schools, but the whole population, join in the activities and ceremonies organised to mark 28 October. During the activities, detailed and solemn reference is made to the crimes against humanity committed by the Nazis, and particularly the atrocities against Greek Jews in Thessaloniki and other parts of Greece.	
<b>Hungary</b>	16 April	-The Holocaust is included in the history curriculum and partially in literature, social sciences, art and ethics. Some schools offer options where the topic is elaborated in greater detail. - Students learn about the Holocaust at the age of 14 and then in subsequent years through secondary-school curricula. - Hungarian non-governmental institutions also undertake informal education projects. Copies of "Fateless" by Imre Kertész (Nobel Prize) have been distributed to all school libraries in Hungary	-One example of a student project is the bilingual publication Eva Weinmann's Diary of 1941-1945. The publication is available on the Internet and in print.
<b>Ireland</b>	27 January	-The Holocaust is taught primarily under the history syllabus but also in civics and social studies. Students encounter the topic at both primary and secondary-schools levels. Students encounter the topic of the Holocaust at both elementary –and secondary- school levels, and for the first time at the age of 12. - According to the Department of Justice, Equality and Law Reform, no specific number of hours is allocated to teaching about the Holocaust in any of the syllabi.	



		<p>School textbooks focus primarily on anti-Semitism and concentration camps. Approximately one page in each is dedicated to the Holocaust.</p> <p>-Holocaust memorial day has been commemorated since 2003</p>	
<b>Italy</b>	27 January	<p>-The Holocaust forms part of the history curriculum on WWII, although is not a mandatory subject. But a percentage of schools have included the topic in their curricula.</p> <p>- History textbooks usually devote a maximum of three pages to the Holocaust.</p> <p>- Students first encounter the topic at the age of 9-10 and then at least twice more during their history education in primary and secondary school.</p> <p>-The estimated number of hours allocated to teaching about the Holocaust throughout various initiatives is 8-10 hours per year.</p> <p>-Italy has a competition for art and literary projects in schools: "Europe – from the horrors of the Shoah to the values of unity"</p> <p>-The University of Rome 3 has an specific MA on the Shoah didactics</p>	<p>-website "Olocausto: per non dimenticare": <a href="http://www.cnnitalia.it/2001/DOSSIER/olocausto/">www.cnnitalia.it/2001/DOSSIER/olocausto/</a></p> <p>-Use of books by Primo Levi "If this is a Man", Ullman, Anne Frank's diary; films by Roberto Benigni "La vita è bella", Polansky "The Pianist", and De Sica "Il Giardino dei Finzi-Contini", plus the book by Giorgio Bassani.</p> <p>-The Children for the Holocaust Association, with cooperation with the PROEDI publishing house, created a documentary on Italian Holocaust survivors which went on become part of the Holocaust Kit for schools</p> <p>- A webpage "Scuola e Shoah" ("Schools and Shoah") was created within the Ministry of Education's official website. This page provides information about activities carried out at national and local level, and suggestions are provided on materials and teaching methods. Best practices and students' works are also published on the site.</p>
<b>Latvia</b>	4 July	<p>-Pupils are introduced to issues of Holocaust history in grade 9 (approx. age 14). The overarching aim is to shape an awareness of human life as being of the highest value and develop a sense of tolerance. The pupils receive approximately 4-5 lessons allocated to the basic facts of the Holocaust.</p> <p>- In grade 12 (age 17-18), pupils receive approximately three lessons that approach the Holocaust topic in a more scientific and theoretical way.</p> <p>-Textbooks do not hesitate to call the two totalitarian periods "an occupation"</p>	
<b>Lithuania</b>	23 September	<p>-Teaching about the Holocaust occurs three times in the framework of history courses. Students encounter the subject at the ages of 12, 16, and 18. The number of</p>	<p>-Genocide and Resistance Research Centre of Lithuania, website <a href="http://www.genocid.lt/centras/en/476/a/">http://www.genocid.lt/centras/en/476/a/</a> This center has prepared a CD called "The Holocaust in Lithuania"</p>

		<p>hours allocated to teaching about the Holocaust is not specified, although estimates provide that approximately 10 lessons are dedicated to the subject, and it is discussed in literature, ethics, and religion classes.</p> <p>National education syllabus on the Shoah:</p> <ul style="list-style-type: none"> <li>- Maintaining places where Jews were massacred</li> <li>- Day of Remembrance on 23 September</li> <li>- Publications for schools and several books on Jewish history and culture (Book on the Holocaust in Lithuania)</li> <li>- In 2003, National Holocaust Education Programme was prepared and approved on the basis of the Teaching about the Crimes of Totalitarian Regimes, Prevention of Crimes against Humanity and Tolerance Education Programme</li> </ul>	
<b>Luxembourg</b>	10 October	<ul style="list-style-type: none"> <li>- World War II is part of the curricula in secondary schools since the 1950's</li> <li>- The Holocaust is discussed in history classes and sometimes into language and religion courses.</li> <li>- The Holocaust is a compulsory topic under the official state curricula and is aimed at students age 12 and 15-19. On average, two to six hours are devoted to teaching about the Holocaust.</li> </ul> <p>Activities launched in Luxembourg schools in 2003:</p> <ul style="list-style-type: none"> <li>- Conferences, round tables, eye-witness accounts</li> <li>- Week of "Luxembourg Literature on the Second World War"</li> <li>- Organised visit to the Villa Pauly, the deportation memorial</li> <li>- Floral tribute and silent remembrance before the cross at Hinzert</li> <li>- Organised visits to the Resistance Museum and the Synagogue at Esch</li> <li>- Exhibition on Auschwitz</li> <li>- Film "D'Shoah zu Letzebuerg"</li> </ul>	<ul style="list-style-type: none"> <li>- Pupils at a secondary technical school launched "Contre l'oubli" project (René Oppenheimer prize), comprising: <ul style="list-style-type: none"> <li>- a travelling exhibition on the Struthof camp</li> <li>- a teacher's booklet</li> <li>- conferences and round tables with eye-witnesses</li> <li>- contacts with schools in Germany</li> <li>- a documentary DVD made by pupils</li> </ul> </li> </ul> <p>This was a full-scale consciousness-raising campaign, even extending to the training of future teachers</p>

		<ul style="list-style-type: none"> <li>- Showing of documentary films</li> <li>- Guided tour of the capital: “Luxembourg under Nazi occupation”</li> <li>- Arts workshops, theatre performance;</li> <li>- Visit to Auschwitz; visit to Bergen-Belsen</li> </ul>	
<b>Malta</b>		<ul style="list-style-type: none"> <li>-The events of the 1960s and the 1980s are still considered 'too controversial' and do not feature with any prominence in the history textbooks.</li> <li>-The Holocaust is taught at the secondary school in the context of History classes on WWII.</li> <li>- Students encounter the subject once, at the age of 15.</li> </ul>	
<b>Netherlands</b>	4 May	<ul style="list-style-type: none"> <li>-Children in schools are told about the war and human rights. The Holocaust is addressed at both primary and secondary school levels.</li> <li>- At the primary-school level, lessons address the rise to power of the National Socialists in Germany and the occupation of the Netherlands from 1940 to 1945. In secondary schools, the Holocaust is addressed in relation to the history of the Third Reich and the racist ideology of National Socialism or in relation to the history of the occupation.</li> <li>- The Holocaust is also addressed through projects that deal with prejudice, discrimination, racism, and the promotion of tolerance and acceptance within pluralistic societies.</li> <li>-The Association of Dutch History Teachers and the publishers of history textbooks organize annual conferences that include workshops on issues relevant to the Holocaust</li> </ul>	<p><a href="http://www.uclorug.nl/project/holocaust/boven.htm">www.uclorug.nl/project/holocaust/boven.htm</a>                      Website aimed at schoolchildren, designed to counter Holocaust-denial</p>
<b>Poland</b>	April 19	<ul style="list-style-type: none"> <li>-The Holocaust is not taught as a separate subject, although it is incorporated into the history, polish literature and civic education curricula of lower and upper secondary school. Students first learn about the subject at the age of 13-14 and again at 17-18.</li> <li>- State legislation has not prescribed a fixed number of hours dedicated to teaching about the Holocaust.</li> </ul>	<p>-The Polish-Israeli Forum of Dialogue is a one week exchange project for university students held in Poland and Israel</p>

		Teachers have the freedom to choose how much time they would like to devote to the issue.	
<b>Portugal</b>	25 April	<p>-Holocaust is taught in elementary and secondary schools in the context of history courses on World War II. Students first encounter the topic at the ages of 13-14. The subject is studied more intensively at the secondary-school level at the ages of 16-17. Students carry out research about the Holocaust, collect data by using maps and photographs, and register this data onto a CD.</p> <p>- Não Apaguem a Memória! Protocol was signed along with the Association 25<sup>th</sup> April, the Institute for the Study of Modern History and Institute for Modern History, and the Mario Soares Foundation, and it aims at promoting and stimulating the research into the involvement of the military in politics and the democratization process</p>	
<b>Romania</b>	21 January	<p>-Holocaust education is a compulsory topic for pupils between 7<sup>th</sup> and 10<sup>th</sup> grades and it is also addressed in 11<sup>th</sup> grade. The topic is addressed in the context of history classes. The Holocaust is taught in approximately 25 per cent of high schools.</p> <p>-The Institute for the Investigation of Communist Crimes in Romania (IICCR) authored the first textbook on communism, “A History of Communism in Romania”. By Order 4699 of 7 July 2008, the Minister of Education approved the school curricula for the optional subject “A History of Communism in Romania” and allowed high schools in Romania to use the textbook in their history class starting the 2008-2009 school year. In 2008, the IICCR organized its first summer school.</p> <p>-The Romanian Ministry of Education and Research has, in co-operation with various Israeli institutions, introduced ongoing training for teachers.</p> <p>-The academic communities in Cluj, Timisoara and</p>	<p>-The Institute for the Investigation of Communist Crimes in Romania (IICCR) has a Master's Degree in The History of Romanian Communism  <a href="http://www.crimelecomunismului.ro/en/">http://www.crimelecomunismului.ro/en/</a>                      -On Holocaust memorial day, students visit the Bucharest Synagogue and other monuments within the country.</p>

		Bucharest have set up Jewish Studies Centres.	
<b>Slovakia</b>	9 September	<p>- The Holocaust is taught in elementary and secondary schools in the framework of courses on national and world history, as well as in Slovak literature and a course on the science of society. Students first encounter the subject of the Holocaust at the age of 10. 3-10 hours of teaching are allotted to the Holocaust. Textbooks dedicate 2-10 pages to the history of Judaism and the persecution of the Jewish people during WWII.</p> <p>-As for the Holocaust, temporary history textbooks were issued after the revolution for use in all school forms. In 1996, a new text by Milan Ďurica (who left Slovakia after WWII), titled History of Slovakia and the Slovaks, was published with the help of EU PHARE funds.</p> <p>-The Ministry of Education has given the Museum of Jewish Culture in Bratislava the task of organising activities for the Day of Remembrance.</p> <p>Activities: discussions; guided tours of sites of memory; use of special teaching aids and presentation of theme in various classes.</p> <p>-As for the education about the Communist period, the state passed an educational reform package in 2008 and the Ministry of Education plans to produce 102 new textbooks. To supplement the curriculum, the Nation's Memory Institute offers a substantial list of lectures available for middle and high schools covering a variety of topics the period from 1939-1989</p>	
<b>Slovenia</b>	9 May	<p>-The Holocaust is taught within the framework of history syllabus and also in literature course. Students first learn about the subject at the age of 14-15, then again in some secondary schools at the ages of 18-19. Approximately one to two hours are allocated to teaching. On average, one page of a textbook is devoted to the issue of the Holocaust.</p>	

		<p>-The first Day of Remembrance was organised in 2004.</p> <p>-The history textbooks for primary and secondary schools in Slovenia mention only in part of totalitarian crimes suffered by Slovenian in 20th century. In contrast, the communist totalitarian regimes have hardly found place in the school curriculum.</p>	
<b>Spain</b>	27 January	<p>-Teaching about the Holocaust is not defined as an obligatory subject to be elaborated in school curricula. Approximately, one paragraph of school textbooks is allocated to the Holocaust.</p>	
<b>Sweden</b>	27 January	<p>-Students encounter the subject of the Holocaust at the age of 11-12 and 16 and learn about it in the context of history lessons of World War II. The number of pages of School textbooks dedicated to the Holocaust varies between two and seven and depends on the history textbook in use.</p> <p>-The “Living History” project carries out research concerning experiences and understandings of Swedish teachers related to teaching about the Holocaust</p> <p>-A Day of Remembrance journal is to be distributed to all 7th grade classes a year in advance, so that pupils can make suggestions on commemorating it.</p> <p>-At Uppsala University, the Programme for Holocaust and Other Genocide Studies offers undergraduate and postgraduate courses</p>	<p>-Official website: <a href="http://www.levandehistoria.org">www.levandehistoria.org</a></p> <p>-“Tell your children – A book about the Holocaust in Europe 1933-1945”</p> <p>- Other teaching aids include meetings with Holocaust eyewitnesses, films, and visits to memorials and authentic sites.</p>
<b>United Kingdom</b>	27 January	<p>-The Holocaust is addressed as part of the history subject in 9<sup>th</sup> grade (13-14 years old). Aspects of the Holocaust may also be addressed in religious education, English literature, science, citizenship, and art.</p> <p>Each Day of Remembrance has a special theme. In 2002, this was “Britain and the Holocaust”; in 2003, it is “Children and the Holocaust”. Teaching aids and a website are provided for teachers</p>	<p>-Official website: <a href="http://www.holocaustmemorialday.gov.uk">www.holocaustmemorialday.gov.uk</a> and also:</p> <p>- <a href="http://www.dfes.gov.uk">www.dfes.gov.uk</a> (Department for Education which produces teaching aids for this Day of Remembrance)</p> <p>- <a href="http://www.english.upenn.edu/~afilreis/Holocaust/holhome.html">www.english.upenn.edu/~afilreis/Holocaust/holhome.html</a> (“Literature of the Holocaust”)</p> <p>-The Holocaust Educational Trust takes groups of teachers and students on two-days visit to Auschwitz-Birkenau. Over the last six years, 3200 people have participated in these trips.</p>

Source: own elaboration from data on OSCE/ODIHR, “Education on the Holocaust and on Anti-Semitism: An Overview and Analysis of Educational Approaches”, 2006, available at [http://www.osce.org/publications/odihr/2006/04/18712\\_586\\_en.pdf](http://www.osce.org/publications/odihr/2006/04/18712_586_en.pdf)

Also Council of Europe. Available at <http://www.coe.int/t/e/culturalco-operation/education/remembrance/4.Reference%20documents.asp#TopOfPage>

### 8.2.1.1 International and bilateral initiatives

Apart from national measures, the Council of Europe has approved several recommendations and runs two programmes: one on Holocaust Day of Remembrance and a second one on Education for democratic citizenship and human rights.

- Recommendation N° R (2000) 12 of the Committee of Ministers to member states on the social sciences and the challenge of transition stressed the importance of social sciences for creating a true democratic citizenship.
- Recommendation N° R (2001)15 of the Committee of Ministers to member states on history teaching in twenty-first-century Europe (*Adopted by the Committee of Ministers on 31 October 2001 at the 771<sup>st</sup> meeting of the Ministers' Deputies*). Among other recommendations, the Council of Europe argues that “while emphasising the positive achievements of the twentieth century, such as the peaceful use of science towards better living conditions and the expansion of democracy and human rights, *everything possible should be done in the educational sphere to prevent recurrence or denial of the devastating events that have marked this century, namely the Holocaust, genocides and other crimes against humanity, ethnic cleansing and the massive violations of human rights and of the fundamental values to which the Council of Europe is particularly committed*”.
- Recommendation (2002) 12 of the Committee of Ministers to member states on education for democratic citizenship recommended making education for democratic citizenship a priority objective of educational policy-making and reforms.
- Declaration by the European Ministers of Education (18 October 2002) which promoted the establishment of "Day of Remembrance" in member states' schools, as from 2003, according to national practice and priority. It equally requested the Council of Europe to set up a European network of places of remembrance, foundations and other relevant bodies, for the purpose of jointly organising seminars and scholarly events. A number of EU states have developed initiatives along this line (see table 8.2.1).
- Declaration by the European Minister of Education, 6 May 2005, Cracow.

**Table 8.2.1b International Cooperation on Remembrance 1**

Member State	Task Force for International Cooperation on Holocaust Education, Remembrance, and Research (ITF) *	Educational Measures
<b>Austria</b>	Member	<b>International Teachers Seminars</b> Austrian teachers participate in in-service seminars at Yad Vashem in Jerusalem.
<b>Belgium</b>	Member	<b>International Teachers training seminar</b> Teacher training seminars in Yad Vashem and trips to Auschwitz.
<b>Bulgaria</b>	No	There are no official government directives regarding the teaching of the Holocaust.
<b>Cyprus</b>	No	
<b>Czech Republic</b>	Member	<b>Teacher Training</b>



		The Terezin Memorial has, since 2000, organized educational programmes for teachers, with approximately four seminars attended annually by 200 teachers and were evaluated by international experts, who offered suggestions, since implemented, to improve the course content and modernize its methodology. Both the Czech Ministry of Education and the ITF fund the training programmes.
<b>Denmark</b>	Member	<b>International Seminars</b> Teachers participate in training courses held by Yad Vashem in Jerusalem.
<b>Estonia</b>	Member	<b>Cooperation between Estonia-Russian.</b> Estonian History Teachers' Association (EAS) received funding from the EUROCLIO Matra programme and the Dutch Ministry of Foreign Affairs (€379,506) for a two-year project between 2002-2004 entitled "The Integration of Society in Estonia." This project worked to improve the dialogue among Estonian and Russian history teachers and produced a resource book for upper-secondary school students and teachers featuring primary and secondary source material including photos, personal memories of time witnesses, quotes of Stalin-era political leaders, announcements and laws etc. In 2009, EAS together with the newly founded Memory Institute and the Ministry of Education organized a conference for Estonian and Russian teachers to discuss "Communist crimes" and how to teach about them. New teaching material was presented that was compiled by a joint group of historians, both from Estonia and Russia. <b>Teachers Training</b> Teachers are given the opportunity to participate in training courses organized by Yad Vashem in Jerusalem, as well as training sessions held in the United States. <b>International Seminars</b> The Ministry of Education and Research has organised international seminars in Estonia.
<b>Finland</b>	No	
<b>France</b>	Member	<b>Teacher training</b> Every year in several European countries.
<b>Germany</b>	Member	With a view to improving Holocaust education, teacher training institutions, state agencies and memorials also organise seminars for teachers. All educational actors are increasingly aware of international best practices
<b>Greece</b>	Member	<b>International Seminars and meeting</b> Greek teachers attended a special seminar for Greek educators at the International School of Holocaust Studies at Yad Vashem in July 2006 and July 2008. Greek representatives attended the ICHEIC program for Holocaust Education in Europe at Yad Vashem (February 2007), the Workshop of the Council of Europe "The Remembrance of the Holocaust and of the Roma Samudaripen" (Budapest, July 2008), the 6th International Conference on the "Holocaust and Education, Teaching the Shoah, Fighting Racism and Prejudice" at Yad Vashem (July 2008). Greek teachers have participated in training seminars with the assistance of the ITF and international specialists, that it has created a network of teachers who follow developments in the methods of teaching the Holocaust at all different levels.
<b>Hungary</b>	Member	<b>International Teachers Training</b> <u>Holocaust Memorial Centre</u> : it has educational programs for teachers: Online correspondence course in cooperation with the Yad Vashem Institute in Jerusalem and training of Roma teachers. <u>Hannah Arendt Association</u> : Teacher trainings have an educational program, which was developed in the United

		States but is also implemented in Canada and Europe. The program (the introductory and advanced training as well) has been submitted to the teacher training accreditation committee of the Hungarian Ministry of Education and teachers receive certificate and credit points for participating at the trainings. <u>Democracy and the Heritage of the Soviet System</u> <u>International Education Forum</u> : An international conference on the Soviet dictatorship with the intention to help introducing teaching programs on the Soviet System as well as organizing the Remembrance Day for the Victims of the Communism.
<b>Ireland</b>	No	The Department of Education and Science does not provide direct teacher training on the subject of the Holocaust.
<b>Italy</b>	Member	<b>International Education and Seminars</b> University of Rome runs an International Master of Didactics of the Shoah. The results of the two international seminars promoted during the Italian Chairmanship by the Ministry of Education, University and Research were spread among Italian teachers through publications and meetings.
<b>Latvia</b>	Member	<b>Teacher-training</b> In collaboration with the Swedish Institute and the USA Embassy in Riga, LAHT organises regular seminars on Holocaust education for teachers in Latvia. LAHT coordinates visits by teachers from Latvia to the USA under a teacher-training programme, and sent teachers to the Yad Vashem International School of Holocaust Studies in Jerusalem in 2003. Practical initiatives include workshops and visits to memorial sites and travelling exhibitions.
<b>Lithuania</b>	Member	Cooperation agreements on implementation of the Holocaust education program were signed between International Historical Commission, Yad Vashem and other institutions. <b>Teacher training in Lithuania and abroad</b> (question: Jewish history, Antisemitism and Nazi ideology, between two world wars, ghettoization, "final solution", reaction of the world, methodology of teaching the Holocaust, field trips, elements of modern educational science, and educational management.)
<b>Luxembourg</b>	Member	<b>Teacher Training</b> Organised on a regular basis with experts from Belgium and France. In 2004 Latvian teachers were invited for teacher training in Luxembourg.
<b>Malta</b>	No	
<b>Netherlands</b>	Member	
<b>Poland</b>	Member	<b>Teachers Training</b> Teachers take part in courses offered by the International Centre for Education on Auschwitz and the Holocaust, the National In-Service Teacher Training Centre, as well as by Polish universities.
<b>Portugal</b>	No	
<b>Romania</b>	Member	<b>Teacher training</b> sessions in Holocaust education have been provided to teachers by the Babes Bolyai University of Cluj Napoca as of 2001, the University of Bucharest (in cooperation with IDEE Association and the Association for Civic Education and Dialogue) as of 2002, the Teachers' Association of Bacau as of 2004 and the Elie Wiesel National Institute for the Study of the Holocaust in Romania as of 2008, most of them with the logistic support of Yad Vashem and other international organisations.
<b>Slovakia</b>	Member	<b>International Teachers Seminars</b> During 2000-2008, in cooperation with partners from Germany, Israel, the US and the Czech Republic, the Ministry of Education sent approximately 180 Slovak

		teachers to about 40 international events organised abroad.
<b>Slovenia</b>	No	State authorities reported that teacher-training courses do not specifically address Holocaust education.  <b>Practical initiatives:</b> A group of researchers financed by the American Joint Jewish Distribution Committee and Claims Conference conducted a project called Jews and Anti-Semitism in Slovenia.
<b>Spain</b>	Member	Teaching about the Holocaust is not defined as an obligatory subject
<b>Sweden</b>	Member	<b>Cooperation</b> A from 2001 and onwards, German-Swedish academic cooperation initiatives focusing on German-Swedish relations with Nazi Germany have been established.
<b>United Kingdom</b>	Member	<b>Education teaching</b> Since the project's inception in 1998, HET - Holocaust Educational Trust - has taken over 5000 students and teachers to Auschwitz-Birkenau as part of a four-part course. The visits to Poland are combined with orientation and follow-up seminars and leave an unforgettable emotional and educational mark on participants. The Imperial War Museum: staff from the Museum have contributed to ITF and supported teacher training seminars in many states including the Czech Republic, Ukraine, China, and Argentina.

\* *"We pledge to strengthen our efforts to promote education, remembrance and research about the Holocaust..."* Declaration of the Stockholm International Forum on the Holocaust. Members must be committed to the Declaration of the Stockholm International Forum on the Holocaust, and must accept the principles adopted by the Task Force regarding membership.

Countries wishing to create programs in Holocaust education or to further develop their existing information materials and activities in this area are invited to work together with the Task Force.

Source: own elaboration from data in OSCE/ODIHR, "Education on the Holocaust and on Anti-Semitism: An Overview and Analysis of Educational Approaches", 2006, available at [http://www.osce.org/publications/odihhr/2006/04/18712\\_586\\_en.pdf](http://www.osce.org/publications/odihhr/2006/04/18712_586_en.pdf)

Coherently with these recommendations, the Council of Europe has developed a programme called *"Teaching Remembrance. Education for the prevention of crimes against humanity"*.

Additionally, it is necessary to mention the *Task Force for International Cooperation on Holocaust Education, Remembrance, and Research* (<http://www.holocausttaskforce.org/about-the-itf.html>) whose purpose is to place political and social leaders' support behind the need for Holocaust education, remembrance, and research both nationally and internationally. Initiated in 1998, the Task Force currently has twenty-seven member countries including the following EU Members: Austria, Belgium, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Spain, Sweden and the United Kingdom. Members must be committed to the implementation of national policies and programs in support of Holocaust education, remembrance, and research.

Finally, it is worth mentioning the UNESCO's Culture of Peace which seeks to promote a set of values, attitudes, modes of behaviour and ways of life that reject violence and prevent conflicts by tackling their root causes to solve problems through dialogue and negotiation among individuals, groups and nations (UN Resolutions [A/RES/52/13](#): Culture of Peace and [A/53/243](#): Declaration and Programme of Action on a Culture of Peace). It is promoted through *UNESCO's network of National Commissions, UNESCO Chairs, UNESCO Clubs, Artists for Peace, Associated Schools Project Network, Field Offices, Institutes, and Non-Governmental Organizations.*

The **European Association of History Educators (Euroclio)** (<http://www.euroclio.eu/site/>) whose overall aim is to promote and support the development of history education so that it strengthens peace, stability, democracy and critical thinking runs several projects with different geographical and thematic areas. In 2009, it launched an inquiry on the **teaching of common European history** whose results will be presented to the Annual Conference in Nijmegen, the Netherlands on March 22-28 2010.

#### 8.2.1.2 Bilateral programmes and initiatives

The elaboration of common textbooks and, more ambitiously, proposals for some form of “common history” definition are a constant attempt. Baltic MEPs sponsored a study on *Reunification of European History* (8<sup>th</sup> June 2006 at the EPP group at the EP). The aim was to overcome the mental barrier created between Eastern and Western Europe. In 2007, the German Presidency of the EU proposed a common history book for secondary education. Whilst the Commission adopted a cautious approach on the topic, the European Association of History Teachers (EUROCLIO) endorsed enthusiastically the proposal arguing that a nation-centric approach still dominates history teaching leading to poor understanding of shared and common experiences. The PACE Resolution 1652 (2009) on attitude to memorials exposed to different historical interpretations in Council of Europe member states set the Council of Europe policy. The PACE affirmed its belief that *disputes related to divergent interpretations of history can only be resolved with time a through a process specific to each nation*. These initiatives were preceded by bilateral ones, chiefly, the Franco-German textbook project and the analogous Polish-German one.

- In 1972, a German-Polish Textbook Commission (the *Join Polish-German Commissions of Historians and Geographers for the Revision of School Textbooks*) was created following an initiative of the Commission of the UNESCO in both countries. The goal of the initiative was to reach an agreement about mutual portrayals in history and geography textbooks via regular, scientific and didactic analysis of German and Polish teaching materials. The Georg Eckert Institut for International Textbook Research leads the initiative. The Commission has held some 30 conferences and it published in 2001 a teachers’ manual for the history of Polish-German relations in the twentieth century.
- On 23<sup>rd</sup> January 2003, the Youth Parliament (a gathering of 550 French and German pupils) assembled with the occasion of the 40<sup>th</sup> Anniversary of the Franco-German friendship Treaty proposed a joint history textbook.<sup>243</sup> As a final result of the initiative and under the guidance of a team of 10 historians (5 for each country) responsible for the contents, three volumes are being published. The first of these- *Europe and the world since 1945*<sup>244</sup>- was published on March 2006 and it addresses French official curriculum and the curricula of the 16 German Länder. The aim is not provide an official history and the two versions had the

<sup>243</sup> The volume has been published by Editions Nathan and Ernst Klett Verlag

<sup>244</sup> Next volumes are *From Greek democracy to the French Revolution* (which aims at 10th and 11th grades in Germany and 10th –secondary grade in France) and *From the industrial revolution to WWII* (for 11th and 12th grades in Germany and 11th grade (premiere) in France).

same structure documents, index and annexes. 80% of the content of both is identical although some themes are treated differently: the role and history of the GDR; the French colonial history and the Christian Church.

- In January 2008, the German Foreign Minister Frank-Walter Steinmeier launched a project of a Joint history textbook following the Franco-German model (the initiative was launched in a moment of large tension among both countries). The project was officially set in motion by the Polish Education Minister Krzysztof Stanowski and Brandenburg Minister of Education Holger Rupprecht. A significant difference between the two projects refers to the time span they cover: the Polish-German initiative focuses on the *Middle ages to the French Revolution* only (therefore leaving outside the most controversial historical moments related to WWII).
- After the collapse of communism, a group of German and Czechoslovak scholars created a Commission of Historians to re-examine the transfer of Sudeten Germans and other sensitive topics in the relation between these countries. After the breakdown of Czechoslovakia, two Commissions were created. Additionally, the website CzechKid for Teachers contains some orientations on the topic (<http://www.czechkid.eu/si1010.html>)

### 8.2.2. Existing surveys on public awareness

Polls reported are very few but this is just a small sample of a very complicated landscape. Holocaust is a significant topic in several of these.

- **Germany** A highly contested survey published in 2008 showed that many East German pupils were shockingly ignorant of the GDR past; a majority thought the Stasi was an intelligence service like any other; many held that the West had erected the wall; they were convinced that Willy Brandt and Konrad Adenauer had been East German politicians; they also opined that the environment had been cleaner during socialism.<sup>245</sup> Recently, there have been voices claiming that the Stasi even after 1990 kept playing its assigned role of being the ‘shield and sword of the party’: with all attention focused on the Stasi archives, the fact was often forgotten that the levers of power in the GDR were pulled not by the secret service, but by the SED (with its more than 2 million members).
- **Greece**
  - According to a survey published in the newspaper TO VIMA, on April 22, 2007, only 35,1% of the respondents considered the dictatorship to have been harmful for the country, whereas 50,9% agreed with the proposition that despite the negative characteristics of a dictatorial regime, the Greek dictatorship

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<sup>245</sup> Deutz-Schroeder, Monika und Schroeder, Klaus, *Soziales Paradies oder Stasi-Staat? Das DDR-Bild von Schülern - ein Ost-West-Vergleich*, Stamsried: Ernst Vögel, 2008. Pupils in East Berlin and Brandenburg knew least about the GDR; the report concluded that the more young people knew about the GDR, the more critical they tended to be- It has been severely criticized for its methodology.

produced some benefits for the country. As for the negative consequences of the regime, 53% of the respondents ranks the Turkish invasion of Cyprus as the most important one compared to 43% who point to the repression of freedom.

○ **The Netherlands**

- The *National Committee 4 and 5 May* commissioned a ‘*National Liberty Study*’ to know more about the public awareness of what has happened during World War II. General conclusions are that a majority of the respondents (together a cross-section of Dutch society) are generally well-informed concerning the causes of the War in Europe, the role of the Netherlands in that war, and the ideology and consequences of Nazism. The knowledge about the specific situation in the Netherlands during the occupation, and the war in Asia were found less general. Least satisfactory was knowledge about the scale of the Second World War (especially the number of states involved), the founding of international organisations after the war and the involvement of the Netherlands in recent and present international peace-keeping and peace-enforcing operations.

Some results: 89 % of the interviewed actually knew that the Second World War in the Netherlands started in 1940, and 98 % mentioned 1945 as the year in which the war ended. Asked to mention three elements of Adolf Hitler’s ideology, 51 % mentioned extermination of ‘inferior races’; 47 % the domination of the ‘Aryan race’; 24 % the so-called ‘Thousand Year’s Empire’; 16 % the occupation of other states; 15 % the concept of world domination; 7 % the exploitation of other nations in favour of the German people; and 4 % rule by dictatorship. Of all interviewed people, 96 % knew about the systematic persecution of the Jews; 81 % about the same of the Sinti and Roma; 77 % about homosexuals; 76 percent about disabled people; and 45 % about communists. At the same time, 87 % knew about the establishment of concentration camps and transit camps in the Netherlands itself, while 70 % knew that interned Dutch in the Dutch East Indies were subjected to forced labour, and 51 % that the Constitution had been suspended<sup>246</sup>.

○ **Lithuania**

The *International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania* ordered public

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<sup>246</sup> Bas Swinkels en Dieter Verhulst, *Nationaal vrijheidsonderzoek 2007: kennisdeel* (Amsterdam: Veldkamp, 2007) and: [http://www.4en5mei.nl/mmbase/attachments/106343/2007.04.190\\_Veldkamp\\_Marktonderzoek\\_BV\\_Nationaal\\_Vrijheidsonderzoek\\_2007\\_kennisdeel\\_april\\_2007.pdf](http://www.4en5mei.nl/mmbase/attachments/106343/2007.04.190_Veldkamp_Marktonderzoek_BV_Nationaal_Vrijheidsonderzoek_2007_kennisdeel_april_2007.pdf)

survey to be implemented in 2001<sup>247</sup>. Questions were asked about the investigations of the crimes of the Totalitarian regimes:

- according to your opinion, were investigations of the Lithuanian history of the WWII unbiased during the Soviet times?

Unbiased – 5,2 %

Partially unbiased – 31,9 %

Partially biased – 42,9%

Biased – 20 %

- Is it necessary to investigate thoroughly crimes of the World War II and post-war period now?

Only crimes of the Nazi regime – 1,7%

Only crimes of the Soviet regime – 2,3 %

Crimes of both Nazi and Soviet regimes – 40,6%

It is too late to investigate – 46,8%

It is difficult to tell – 8,6%

September, 2005. Is it necessary to abolish symbols of the former USSR?

Yes – 30,6%

No – 61,2%

n.a. - 8,2%

○ **Romania**

- In May 2007, the *Elie Wiesel Institute and the Task Force for International Cooperation on Holocaust Education, Remembrance and Research* released the results of an opinion survey on Holocaust in Romania and the perception of inter-ethnic relations. A total of 1,026 respondents participated. The poll revealed that 16 percent of respondents said Romania had anti-Semitic political parties (84 percent of them identifying the Greater Romania Party as one such formation). More than half of the respondents relieve that Jews have a good relationship with the rest of the population, and only 12 percent relieve that Jews brought communism to Romania. Some 65 percent of respondents heard about the Holocaust, only 28 percent agree that Romania had a role in the Holocaust, and as many know about the national day for the commemoration of the Holocaust. Around 40 percent of respondents could not say anything about Antonescu.
- The Public Opinion Barometer organized by the Foundation for an Open Society in October 2006 showed that half of the respondents believed lustration to be necessary for blocking the access to public functions of former Securitate informers and Communist Party leaders. Another poll, organized by the Social Research Bureau (Biroul de Cercetari Sociale) in May 2006

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<sup>247</sup> Data of this survey is available in the official website of the Commission: <http://www.komisija.lt/lt/dokumentas.php?id=16>.

showed that half of the respondents believed lustration had to be implemented as soon as possible.<sup>248</sup>

- A June 2007 opinion poll administered by the Social Research Bureau included a question on lustration: “Do you consider necessary the Lustration Law, which bans former Securitate collaborators and officers from seeking public office?” Over 49 percent of respondents answered yes, and only 5.7 percent said no.<sup>249</sup>

- **Spain**

The official CIS (Centro de Investigaciones Sociológicas) has carried the most completed poll so far in April, 2008 with the title *Memory of the civil war and Francoism*.<sup>250</sup> The study contains 64 questions including these referred to socio-economic and ideological indicators (gender, age, income, level of studies and vote). Among the most significant findings, 53,1% thought that remembrance of civil war remains in the memory of Spaniards; 57,5% thought that the memory of Francoism remained alive; 36% thought that the divisions and rencours provoked by the civil war were forgotten and 30,5% though that in Spain there is still fear to speak about the past.

- **Sweden**

A questionnaire was sent out to pupils between 15 and 20 years old. 90 % of the pupils did not know what the Gulag camps were and believed that the number of victims of totalitarian crimes by communist regimes during the 20<sup>th</sup> century was less than a million. 40% believed that Communism had contributed to increased prosperity in the world and 22% considered Communism a democratic form of government.

Apart from the specific Member State polls, the Harris Institute conducted an International one on Remembrance of WWII of over 20,000 adults in 13 countries (Austria, Czech Republic, Germany, France, Hungary, Italy, Poland, Russia, Slovenia, Spain, Ukraine, United Kingdom and United States): The Harris Poll #46, June 8, 2005, *Harris Interactive and IMAS International Conduct Thirty-Country Survey in Remembrance of 60<sup>th</sup> Anniversary of World War II*

The main findings of the survey were:

-Majorities in most countries, except in Austria, Hungary, Spain and the United States, say that they are quite or very well informed about events before 1945.

-Majorities in each of the countries surveyed say they can roughly identify leaders during the War such as Hitler, Stalin, Churchill, Roosevelt, de Gaulle, and Mussolini, and are aware of their role in history.

-On the issue of whether present-day Germans should somehow accept responsibility for the extermination of Jewish people during World War II, majorities across the countries surveyed say the Germans *should not* feel jointly responsible. However, higher percentages of those in Russia, Poland and Ukraine, than in other countries, say today's Germans *should* feel jointly responsible for those atrocities.

<sup>248</sup> Adrian Cioflanca, “Jurnal American: La cinc minute de Evul Mediu,” 30 October 2007, available online at <http://adriancioflanca.blogspot.com/2007/10/iarasi-lustratia.html> (accessed on 10 June 2009).

<sup>249</sup> Biroul de Cercetari Sociale, “Barometrul politic national. Sondaj de opinie publica. 22-30 iunie 2007,” available online at <http://sociologie.dreamstyler.ro/assets/BCS1.pdf> (accessed on 10 June 2009).

<sup>250</sup> Memoria de la guerra civil y el Fraquismo Estudio N. 2760 [http://www.cis.es/cis/opencms/-Archivos/Marginales/2760\\_2779/2760/Es2760.pdf](http://www.cis.es/cis/opencms/-Archivos/Marginales/2760_2779/2760/Es2760.pdf) accessed on 21 September 2009



-When asked whether they talk about World War II with their families, adults in most countries said these discussions take place occasionally or frequently. In the United States and Western Europe the percentages range from seven to 16 percent who say they frequently talk about the war to 47 to 61 percent who say they do so occasionally. In Germany and Eastern Europe the percentages are slightly lower with six to 11 percent saying frequently and 30 to 50 percent saying occasionally. However, in Russia and Ukraine, the number who say they talk about it frequently is significantly higher than in other countries (27% in Russia and 31% in Ukraine). In Germany, the Czech Republic, Austria and Slovenia, the number who say they never talk about World War II with their families is quite high, ranging from 51 to 62 percent.<sup>251</sup>

On the occasion of the 20th anniversary of the Fall of the Berlin Wall, the website <http://www.sofeminine.co.uk> conducted an opinion poll on "How did the fall of the Berlin Wall affect you?". The results, as to December 04, 2009 are the following<sup>252</sup>:

<b>Q1 - What are your memories of the day the Berlin Wall fell?</b>		
	I was glued to the TV and saw every minute of it	29 %
	I remember the event but I didn't realise the importance of it at the time	11 %
	I don't remember it, it didn't have much of an impact on me	23 %
	I wasn't even born!	35 %
<b>Q2 - What does the fall of the Berlin Wall symbolise for you?</b>		
	The end of the 80s	6 %
	The end of communism and its ideologies	46 %
	The definitive end of the Second World War	26 %
	The end of the Cold War	20 %
<b>Q3 - Which political personality represents the fall of the Wall for you?</b>		
	Mikhail Gorbachev and his <i>perestroika</i>	53 %
	John F. Kennedy, who in 1963 declared "Ich bin ein Berliner" ("I am a citizen of Berlin")	13 %
	Helmut Kohl, the German chancellor who architected the German reunification	33 %
<b>Q4 - Did the fall of the Berlin Wall change the world?</b>		
	Yes, Europe has become more united and stronger	40 %
	Yes, democracy has made a huge step forwards	20 %
	Not entirely, East/West divides still exist in another form	26 %
	No, it only affected the citizens of Berlin	13 %
<b>Q5 - What have you culturally inherited from this event?</b>		
	The notion of freedom	15 %
	The notion of fighting for one's rights	15 %
	The notion of solidarity amongst peoples	30 %
	Nothing, I've never given it any thought	38 %
<b>Q6 - What do you think to the commemorations taking place in Berlin 20 years later?</b>		
	They are splendid festivities that do the occasion justice	61 %
	It's been 20 years... it's time to move onto other issues!	7 %
	They represent an opportunity to reopen diplomatic debate because there's a lot of work still to be done	30 %
<b>Q7 - Which part of the Berlin Wall's history did you find the most moving?</b>		
	The families that were separated	46 %
	The militants who never stopped striving for its destruction	7 %

<sup>251</sup> Harris Poll #46, June 8, 2005, Harris Interactive and IMAS International Conduct Thirty-Country Survey in Remembrance of 60<sup>th</sup> Anniversary of World War II. Available at [http://www.harrisinteractive.com/harris\\_poll/index.asp?PID=575](http://www.harrisinteractive.com/harris_poll/index.asp?PID=575)

<sup>252</sup> Source: <http://www.sofeminine.co.uk/tests-quizzes/fall-of-the-berlin-wall-d9059c169119.html>

	The first strikes made at it with pickaxes	15 %
	The East Germans who attempted to escape over the Wall, putting their lives in peril	30 %
<b>Q8 - Which do you feel is the most significant diplomatic event of the 20th century?</b>		
	The fall of the Berlin Wall	53 %
	The construction of the European Union	7 %
	The creation of the United Nations	38 %
<b>Q9 - You believe that buying a piece of the Berlin Wall is:</b>		
	An opportunity to keep a piece of history	15 %
	A bit twisted, it was first and foremost a tragedy	23 %
	Just contributing to the money-making tourist trade	61 %

On November 9, 2009, the French magazine “Paris Match” conducted a poll (823 participants) on « Qu'évoque pour vous la chute du Mur de Berlin? » (What does it mean for you the fall of the Berlin Wall?) with the following results:

- 49% La réunification des deux Allemagne.
- 39% La fin du communisme en Europe.
- 9% Un grand moment de liesse, hélas, sans lendemain.
- 3% Je n'étais pas né en 1989<sup>253</sup>.

Another poll was conducted by the French website “programme.tv” in which the participants (4312) were asked as to whether they considered the media coverage of the fall of the Berlin Wall:

- a) a good thing (because it is important to remember the images of this key event): 22%
- b) an interesting thing (because we are still living with consequences of the fall of the wall): 17%
- c) it would be better to pay attention to other walls of the contemporary world: 62%<sup>254</sup>

### 8.2.3 Support of foundations, project of civil societies or other cultural and artistic initiatives, etc.

The number of projects from different sectors of civil society is simply countless. Here, some examples are mentioned. Some other relevant information is contained in section 3.2.2).

- **Austria** Historical exhibits on or related to the Nazi period and its aftermath are very common in Austria. Sometimes such exhibits are controversial. For example in the mid 1990s, the exhibit “Vernichtungskrieg. Verbrechen der Wehrmacht, 1941 bis 1944” (War of Annihilation: Crimes of the Wehrmacht, 1941 to 1944).
- **Czech Republic** (Selected examples).
  - *Libri prohibiti Library of Samizdat and Exile Literature* has regularly received grants from the Ministry of Culture (490,000 crowns in 2008) and the Ministry of Foreign Affairs of the Czech Republic (439,663 crowns in 2008).

<sup>253</sup> Source: <http://www.parismatch.com/Actu-Match/Sondages/Qu-evoque-pour-vous-la-chute-du-Mur-de-Berlin-183/>

<sup>254</sup> Source: <http://programme-tv.orange.fr/sondage-tv/La-chute-du-mur-de-Berlin.html>

- The “Memory of the Nation” project has among its supporting partners the Czech Government, The Ministry of Defense of the Czech Republic, and the Institute for the Study of Totalitarianism.
- People in Need, the NGO that produces the “Stories of Injustice” educational program (see 8.b.1 below) receives support from the Prague City Hall, the State Fund for the Support and Development of Czech Cinema, the National Archives, the Institute for the Study of Totalitarian Regimes, and the Vojna Memorial and Hornické Museum Příbram (organized by Central Bohemia Region).
- [www.Politicalprisoners.eu](http://www.Politicalprisoners.eu) project titled “Czechoslovak Political Prisoners - Life Stories” has secured financial support from the Office of the Government of the Czech Republic.
- Post Bellum lists among its sources of financial and/or material support Czech Radio, the Foundation for Holocaust Victims, the Czech-German Future Fund, and the City of Litoměřice.
- The Terezín Initiative Institute’s project “Seeking a Refuge” received support from the Foundation for Holocaust Survivors, a foundation to which the Czech Republic is a contributor.
- Živá paměť/Living Memory counts among its supporters the Ministry of Labour and Social Affairs and the Ministry of Education, Youth and Sports of the Czech Republic, and the Foundation for Holocaust Survivors.
- **Hungary**
  - *Verzio International Human Rights Documentary Film Festival.* The Festival is organized by the Open Society Archives at Central European University and the Hungarian Helsinki Committee. The 1st Festival took place in the year 2004 in Budapest. The Festival seeks to promote the ideals of open society, democracy, rule-of-law, tolerance, political and cultural pluralism within a global context as well as to expose abuse and human rights' violations throughout the world. (source: festival’s website).
  - *Zachor Foundation for Social Remembrance.* The Foundation awarded in the year 2009 a grant “Research, Education, and Documentation” of \$44 500 sponsored by the Jewish Material Claims Against Germany, Inc. (Claims Conference; Claims Conference Grants for 2009, from Successor Organization Funds). Zachor Foundation.
  - *Hannah Arendt Association* The Association mission is to introduce new teaching materials into schools, which attempt to combat racism, prejudice and group violence and which encourage students to advocate human rights, to develop multicultural thinking, and to become committed and conscientious citizens.

- **Luxembourg** Two foundations focus exclusively on questions pertaining to World War II and the German occupation:
  - *Fondation Nationale de la Résistance*, created in 1988, committed to preserve the memory of resistance.
  - *Fondation du Mémorial de la Déportation/Gare de Hollerich*, created in 1998 focuses on the deportation and forced resettlement of Luxembourgers in Silesia and the forced service of young men in the German *Wehrmacht*.
- **Portugal**

Official exhibition on the twentieth century in Portugal, with the sponsorship of the Presidency and the government, aimed at celebrating 25 years of Portuguese democracy. On 7 June 2008, the parliament unanimously approved Resolution n. 330/X, in favour of the diffusion of knowledge on the resistance against the dictatorship to future generations. The document has no particular effect, besides from symbolic meaning<sup>255</sup> the “pathway” of memory in Lisbon (Lisbon municipality and NGO NAM).
- **Slovakia** Selected examples:
  - The Confederation of Political Prisoners of Slovakia has received grants from the Ministry of the Interior of the Slovak Republic.<sup>256</sup>
  - ESTER has received support from the Ministry of Culture of the Slovak Republic.<sup>257</sup>
  - The Milan Šimečka Foundation has received support from the Ministry of Culture of the Slovak Republic – Pro Slovakia State Fund, the Office of the Government of the Slovak Republic, and the Ministry of Education of the Slovak Republic.<sup>258</sup>
  - The Mosaic of the Century of the Daily SME has received support from the Nation’s Memory Institute.<sup>259</sup>
  - The Slovak Union of Anti-Fascist Fighters has received grants from the Ministry of the Interior of the Slovak Republic.<sup>260</sup>
  - The Union of Anti-communist Resistance has received grants from the Ministry of the Interior of the Slovak Republic.<sup>261</sup>

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<sup>255</sup> 10<sup>a</sup> Legislatura, Sessão 3, Diário de 6/7/08 ([www.parlamento.pt](http://www.parlamento.pt))

<sup>256</sup> Ministry of the Interior of the Slovak Republic, *Informáci a o poskytnutých dotáciách občianskym združeniam v rámci rozpočtovej kapitoly Ministerstvávnútra Slovenskej republiky – sekcie verejnej správy na základe uznesenia vlády SR č.1231/200*, <http://www.civil.gov.sk/documents/p15-01-02-f07.pdf>.

<sup>257</sup> ESTER, “Projekty,” <http://www.ester.host.sk/projekt.htm>.

<sup>258</sup> Milan Šimečka Foundation, “Donori,” <http://www.nadaciamilanasimecku.sk/index.php?id=8>.

<sup>259</sup> Mozaika Storočia Denníka (SME), <http://www.mozaika.sme.sk>

<sup>260</sup> Ministry of the Interior of the Slovak Republic, *Informáci a o poskytnutých dotáciách občianskym združeniam*.

<sup>261</sup> Ibidem.



## 9. International cooperation

### 9.1 International Organizations declarations and recommendations at the European Level.

The EU member states are members of the Council of Europe and they are therefore committed to comply with the regulations, resolutions and declarations of this Organisation. The Parliamentary Assembly of the Council of Europe has approved several recommendations and resolutions regarding the repressive past in Europe.

- **PACE Recommendation No. 415** (28 January 1965) and **549** (30 January 1969) *on statutory limitations as applicable to crimes against humanity* recommended “member Governments to take immediately appropriate measures for the purpose of preventing that, by the application of the statutory limitation or any other means, crimes committed for political, racial and religious motives before and during the second world war, and more generally crimes against humanity, remain unpunished”.<sup>262</sup>
- **PACE Recommendation No. 855** (2 February 1979) *on statutory limitations as applicable to war crimes and crimes against humanity* urged member governments to take whatever steps may be necessary to ensure that neither the application of statutory limitation nor the implementation of any other legal measures should enable crimes against humanity and other very serious crimes to escape punishment.<sup>263</sup>
- **PACE Resolution No. 743** (1 October 1980) *on the need to combat resurgent fascist propaganda and its racist aspects* urged the governments and parliamentarians of the members states to adopt legislation directed against actions inspired by racism and xenophobia and called on the Committee of Ministers to approach the member governments with a view to their taking more positive and appropriate action against subversive fascist and Nazi groups and safeguarding free and democratic institutions.<sup>264</sup>
- **PACE Resolution No. 1096** (27 June 1996) *on measures to dismantle the heritage of former communist totalitarian systems* notes that “the key to peaceful coexistence and a successful transitional process lies in striking the delicate balance of providing justice without seeking revenge” (§3), and that this must be done within the “rule of law” (§4). It makes a number of recommendations to help formerly communist states achieve transitional justice along these lines, including that criminal acts should be prosecuted (§7); that those who were prosecuted under the former regime for non criminal acts should be rehabilitated and compensated (§8); that the “Assembly welcomes the opening of secret service files for public examination” and finds that the secret service files should be disclosed to those affected by them (§9); that property

<sup>262</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta65/EREC415.htm>

<sup>263</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta79/EREC855.htm>

<sup>264</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta80/ERES743.htm>

confiscated by the state unjustly should be restituted (§10); that lustration “can be compatible with a democratic state under the rule of law” if the guilt is proven individually, if there is a presumption of innocence and a right to appeal, if the process does not serve the purposes of revenge and is not politically or socially “misused,” if it focuses on “threats to fundamental human rights and the democratization process” and if it does not deprive people of ordinary levels of financial and pension rights (§11, §12, §13 and §14).

- **PACE Recommendation No. 1438** (25 January 2000) on *Threat posed to democracy by extremist parties and movements in Europe* notes that public denial of the Holocaust should be regarded as an expression of anti-Semitism.<sup>265</sup>
- **PACE Resolution No. 1481** (25 January 2006) on *Need for international condemnation of crimes of totalitarian communist regimes* states that 'the fall of totalitarian communist regimes in central and eastern Europe has not been followed in all cases by an international investigation of the crimes committed by them. It called for the condemnation of the repressive communist system, established by the Soviet Union in Eastern Europe after World War II.
- **PACE Resolution No. 1495** (12 April 2006) on *Combating the resurgence of Nazi ideology* expressed its concerns as regards: cases of desecration of memorials and graves of soldiers of the “anti-Hitler coalition”; attempts to rehabilitate, justify and even glorify those who participated in the war on the Nazi side, especially in the ranks of groupings found to be criminal organisations at the Nuremberg Tribunal; the increasingly common use of Nazi symbols such as the fascist swastika, flags, uniforms, and others which clearly relate to Nazism; denying or minimising the significance of the crimes committed by the Nazi regime, in particular of the Shoah<sup>266</sup>.
- **PACE Resolution No. 1522** (5 October 2006) on *Establishment of a European remembrance centre for victims of forced population movements and ethnic cleansing* recommends the establishment of a centre that favours reconciliation by promoting impartial studies of history and contributing to the creation of a common European memory, overcoming the divisions of the past<sup>267</sup>.
- **PACE Resolution No. 1563** (27 June 2007) on *Combating anti-Semitism in Europe* called the governments of the Members states to: prosecute any political party which puts forward anti-Semitic arguments in its activities, manifestos or publications; *make a criminal offence the public denial, trivialisation, justification or praise, with racist intentions, of crimes of genocide, crimes against humanity or war crimes*; not endorse the construction of monuments and the holding of ceremonies

<sup>265</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta00/EREC1438.htm>

<sup>266</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/ERES1495.htm>

<sup>267</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/ERES1522.htm>

celebrating those guilty of genocide or crimes against humanity during the Second World War<sup>268</sup>.

The Parliamentary Assembly of the Council of Europe has also approved several recommendations and dispositions on the specific topic of memorials.

- **PACE Recommendation No. 898** (3 July 1980) on *Memorials* recommends the elaboration of “a general study of memorials in member states which might lead to proposals on systematic recording, on protection against destruction, on responsibility for upkeep, and on informing the public of the existence and interest of memorials of local, as well as of national, value”.<sup>269</sup>
- **PACE Recommendation No. 1859** (29 January 2009) *Attitude to memorials exposed to different historical interpretations in Council of Europe member states*.<sup>270</sup>
- **PACE Resolution No. 1652** (29 January 2009) *Attitude to memorials exposed to different historical interpretations in Council of Europe member states*.<sup>271</sup>

European level instruments more specifically addressed to particular countries are the following:

- In a decision of 21 January 1968 the **Human Rights Commission of the Council of Europe** declared admissible four applications introduced against the government of Greece by the governments of Denmark, Norway, Sweden, and the Netherlands in alleging the use of torture and complaining about the human rights situation in Greece.<sup>272</sup> On 5 November 1969, the Plenary Commission adopted its report drawn up on these applications. Faced with almost certain expulsion on charges that its government had violated human rights, the Greek government opted for leaving the Council of Europe following the submission of a formal denunciation submitted on December 12, 1969. The Council responded by stating that this denunciation would not affect the proceedings instituted by the four governments. Indeed, the Consultative Assembly of the Council of Europe with its **Recommendation 547 (1969) 1** commented negatively on the human rights situation in Greece (30 January 1969). The final decision on the Greek Case, which the Committee of Ministers took under Article 32 of the Convention, was taken on the 15<sup>th</sup> of April of 1970 with **Resolution DH (70) 1** of the Committee of Ministers of the Council of Europe (15 April 1970) which urged the Government of Greece “to restore, without delay, human rights

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<sup>268</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/ERES1563.htm>

<sup>269</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta80/EREC898.htm>

<sup>270</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta09/erec1859.htm>

<sup>271</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta09/eres1652.htm>

<sup>272</sup> Pelt, Mogens, *Tying Greece to the West: US-West German-Greek relations 1949-1974*, Copenhagen, Museum Tusulanum Press, 2006, p. 296.



and fundamental freedoms in Greece, in accordance with the Convention and the First Protocol, taking into account, inter alia, the proposals made by the Commission which are attached hereto” and “in particular, to abolish immediately torture and other ill-treatment of prisoners and to release immediately persons detained under administrative order.” Lastly, **Resolution (70) 34** of the Committee of Ministers of the Council of Europe (27 November 1970) drew the legal and financial consequences of the withdrawal of Greece from the Council of Europe.

- **Opinion No. 175** (29 June 1993) *on the application by the Slovak Republic for membership of the Council of Europe* states that the Assembly “encourages the authorities of the Slovak Republic to continue the efforts they have begun to eliminate from its legislation all the laws or decrees adopted by previous governments which are likely to contain elements discriminating against a group of persons or an ethnic, national community living on its territory, particularly those concerning ‘collective guilt’” (§10).<sup>273</sup>
- **PACE Recommendation No. 1338** (22 September 1997) *on the obligations and commitments of the Czech Republic as a member state* notes that among the “principle issues for dialogue with the Czech authorities under the monitoring procedure” was the replacement of the lustration law with a law on civil service (§6.v.).<sup>274</sup>
- **PACE Resolution No. 1196** (adopted by the Assembly on 21 September 1999) *Honouring of obligations and commitments by Slovakia* notes with approval that legislation was being prepared to “repeal the possibility to grant an amnesty while a criminal investigation is imminent or pending” (§5.2.d).<sup>275</sup>
- **PACE Recommendation No. 1736** (17 March 2006) *on the Need for international condemnation of the Franco regime*. The text was adopted by the Standing Committee, acting on behalf of the Assembly, on 17 March 2006.<sup>276</sup>

Other organizations and institutions at the European level have approved declarations and resolutions relevant for the memory of the totalitarian crimes.

The **European Parliament** has adopted:

- On 15 June 1995 a resolution *on a day to commemorate the Holocaust* by which it called for an annual European Day of Remembrance of the Holocaust to be instituted in all the Member States of the Union.<sup>277</sup>

<sup>273</sup> Parliamentary Assembly of the Council of Europe, Opinion No. 175 (1993) *on the application by the Slovak Republic for membership of the Council of Europe*, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta93/eopi175.htm>

<sup>274</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1338 (1997) *on the obligations and commitments of the Czech Republic as a member state*, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta97/EREC1338.htm>.

<sup>275</sup> Parliamentary Assembly of the Council of Europe, *Resolution 1196 (1999) Honouring of obligations and commitments by Slovakia*, for the full text see <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta99/eres1196.htm>

<sup>276</sup> Parliamentary Assembly of the Council of Europe. For the full text see <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/EREC1736.htm>

<sup>277</sup> For the full text of the resolution see here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51995IP0866:EN:HTML>

- On 27 January 2005 a resolution on remembrance of the Holocaust, anti-semitism and racism by which it paid homage to all the victims of the Nazis and expressed that it “is convinced that lasting peace in Europe must be based on remembrance of its history; *rejects and condemns revisionist views and denial of the Holocaust as shameful and contrary to historical truth.*”<sup>278</sup>
- On 12 May 2005, in the context of commemorations of the 60<sup>th</sup> anniversary of the end of WWII, a resolution that acknowledged the ‘magnitude of the suffering, injustice and long-term social, political and economic degradation endured by the captive nations located on the eastern side of what was to become the Iron Curtain’.<sup>279</sup>
- On 23 September 2008, a Declaration on the proclamation of 23 August as European Day of Remembrance for Victims of Stalinism and Nazism in which it proposes that “23 August be proclaimed European Day of Remembrance for Victims of Stalinism and Nazism, in order to preserve the memory of the victims of mass deportations and exterminations, and at the same time rooting democracy more firmly and reinforcing peace and stability in our continent”.<sup>280</sup>
- On 2 April 2009, the Resolution on *European Conscience and Totalitarianism* underlines the importance of keeping the memories of the past alive, because there can be no reconciliation without truth and remembrance.<sup>281</sup>

The European Parliament has also adopted three resolutions on restitution of property. For details see point 4.2.3.

For its part, the Organization for the Security and Cooperation in Europe Parliamentary Assembly has approved:

- At the 1990 Copenhagen meeting, a document which, in its paragraph 40, condemns “clearly and unequivocally” totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds.<sup>282</sup>
- On 8 July 1997, the Warsaw Declaration by which, in its paragraph 150, called upon the governments and parliaments of the developing democracies to adopt appropriate legislation enabling the files from the totalitarian era of all citizens, including journalists and the heads of the mass media, to be opened, and allowing free access to the information contained therein.<sup>283</sup>

<sup>278</sup> For the full text of the resolution, see here: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0018&language=EN>

<sup>279</sup> ‘The future of Europe sixty years after the Second World War’, *Resolution on the sixtieth anniversary of the end of the Second World War in Europe on 8 May 1945* P6\_TA(2005)0180; 12 May.

<sup>280</sup> For the full text of the resolution, see here: [http://www.europarl.europa.eu/sides/getDoc.do?reference=P6\\_TA%2008%290439&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?reference=P6_TA%2008%290439&language=EN)

<sup>281</sup> For the full text of the resolution, see here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0213+0+DOC+XML+V0//EN>

<sup>282</sup> For the full text of the resolution, see here: [http://www.osce.org/documents/odhr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odhr/1990/06/13992_en.pdf)

<sup>283</sup> For the full text of the resolution, see here: [http://www.oscepa.org/images/stories/documents/declarations/1997\\_-\\_warsaw\\_declaration\\_-\\_english.2268.pdf](http://www.oscepa.org/images/stories/documents/declarations/1997_-_warsaw_declaration_-_english.2268.pdf)

- a Declaration on *Divided Europe Reunited: promoting human rights and civil liberties in the OSCE region in the 21st century* during its 18th Annual Session, 29 June – 3 July 2009. Through the also called *Final Vilnius Declaration*, the OSCE parliamentary Assembly reconfirms in its paragraph 11 “its united stand against all totalitarian rules from whatever ideological background. It also urges the participating states to raise public awareness of the totalitarian legacy, to develop and improve educational tools on totalitarian history and to promote and support activities of NGOs which are engaged in areas raising public awareness about crimes committed by totalitarian regimes.”<sup>284</sup>

It is also worth mentioning Recommendation 9 of 25 June 2004 adopted by the **European Commission against Racism and Intolerance**, by which it urged the States to ensure that criminal law in the field of combating racism covers (...) e) the public denial, trivialisation, justification or condoning of the Shoah; f) the public denial, trivialisation, justification or condoning, with an anti-Semitic aim, of crimes of genocide, crimes against humanity or war crimes committed against persons on the grounds of their Jewish identity or origin.<sup>285</sup>

Finally, on 5 February 2005, the 16<sup>th</sup> Congress of the **European People’s Party** adopted a Resolution for the creation of an independent expert body to gather and assess information about the violation of human rights in the time of the totalitarian Communism.<sup>286</sup>

## 9.2. International treaties or agreements which are relevant for the memory of the crimes

### 9.2.1 Ratification of International treaties of International Human Rights Law

Besides the UN general framework for the protection of International Human Rights and the International Conventions and Protocols that conform the canon of International Humanitarian Law, most European Union Member States have signed and/or ratified the most relevant treaties of International Human Rights Law drafted under the frame of the Council of Europe. See tables 9.2.1.1 and 9.2.1.2 for specific information.

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<sup>284</sup> Vilnius Declaration of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe and Resolutions adopted at the 18h Annual Session, 29 June – 3 July 2009, Para. 11.

<sup>285</sup> For the full text of the resolution, see here: [http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation\\_n9/Rec.09%20en.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n9/Rec.09%20en.pdf)

<sup>286</sup> In 2000, after the UDF-proposed *Law for Declaring the Communist Regime as Criminal* was passed in Bulgaria, UDF representatives in the fraction of the European People’s Party (EPP) in the PACE pushed for the acceptance of a similar resolution from the EPP, which was eventually submitted to the PACE Bureau. The first efforts in this direction took place during the XV congress of the EPP in Estoril (17-18 October 2002). Later, on 22 June 2003, the Bulgarian representative Lachezar Toshev provided a draft resolution to the EPP session in Strasbourg. The text of the draft resolution was promulgated on 10 July 2003 as Document № 9875 – Draft Resolution for the Need of International Condemnation of Totalitarian Communism. The document was revised and was given the official title “The Need of International Condemnation of Totalitarianism”. This document was officially adopted by the EPP during its XVI congress in Brussels (4-5 February 2004), thanks to the support by French (Stephane Courtois) and other experts (the Russian dissident Vladimir Bukovsky) and to the support from Hungarian and Baltic deputies in the PACE. The EPP resolution called for the establishment of an independent expert institution to gather and evaluate information, related to violation of human rights during the period of totalitarian communism.

**Table 9.2.1.1 *European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, Strasbourg, 25 January 1974 1***

<b>Member state</b>	<b>Signature</b>	<b>Ratification/Accession/Succession</b>
Austria	No	No
Belgium	04.05.1984	26.03.2003
Bulgaria	No	No
Cyprus	No	No
Czech Republic	No	No
Denmark	No	No
Estonia	No	No
Finland	No	No
France	25.01.1974	No
Germany	No	No
Greece	No	No
Hungary	No	No
Ireland	No	No
Italy	No	No
Latvia	No	No
Lithuania	No	No
Luxembourg	No	No
Malta	No	No
Netherlands	06.04.1979	25.11.1981
Poland	No	No
Portugal	No	No
Romania	20.11.1997	08.06.2000
Slovakia	No	No
Slovenia	No	No
Spain	No	No
Sweden	No	No
United Kingdom	No	No

**Table 9.2.1.2 *Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer Systems, Strasbourg, 28 January 2003 1***

<b>Member state</b>	<b>Signature</b>	<b>Ratification</b>
Austria	30.01.2003	
Belgium	28.01.2003	
Bulgaria	No	
Cyprus	19.01.2005	23.06.2005
Czech Republic	No	
Denmark	11.02.2004	21.06.2005
Estonia	28.01.2003	
Finland	28.01.2003	
France	28.01.2003	10.01.2006
Germany	28.01.2003	
Greece	28.01.2003	
Hungary	No	
Ireland	No	
Italy	No	
Latvia	05.05.2004	14.02.2007
Lithuania	07.04.2005	12.10.2006

<b>Luxembourg</b>	28.01.2003	
<b>Malta</b>	28.01.2003	
<b>Netherlands</b>	28.01.2003	
<b>Poland</b>	21.07.2003	
<b>Portugal</b>	17.03.2003	
<b>Romania</b>	09.10.2003	16.07.2009
<b>Slovakia</b>	No	
<b>Slovenia</b>	26.02.2004	09.09.2004
<b>Spain</b>	No	
<b>Sweden</b>	28.01.2003	
<b>United Kingdom</b>	No	

Source: own elaboration from data in European Council Treaty Office, available at <http://conventions.coe.int>

In relation to the provisions of International Criminal Law only 13 of the 27 European Member states have either signed or ratified the International and/or European Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Tables 9.2.2.1 and 9.2.2.2 reflect this information.

**Table 9.2.2.1 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, New York, 26 November 1968 1**

Member state	Date of signature	Date of ratification/accession
<b>Bulgaria</b>	21.01.1969	21.05.1969
<b>Czech Republic</b>		22.02.1993
<b>Hungary</b>	25.03.1969	24.06.1969
<b>Estonia</b>		21.10.1991
<b>Latvia</b>		14.04.1992
<b>Lithuania</b>		01.02.1996
<b>Poland</b>	16.12.1968	14.02.1969
<b>Romania</b>	17.04.1969	15.09.1969
<b>Slovakia</b>		28.05.1993
<b>Slovenia</b>		06.07.1992

Source: own elaboration form United Nations Treaty Collection, available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-6&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en)

**Table 9.2.2.2 European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes. Strasbourg, 25 January 1974 1**

Member State	Date of signature	Date of ratification
<b>Belgium</b>	04.05.1984	26.03.2003
<b>France</b>	25.01.1974	No
<b>Netherlands</b>	06.04.1979	25.11.1981
<b>Romania</b>	20.11.1997	08.06.2000

Source: own elaboration form data in European Council Treaty Office, available at <http://conventions.coe.int>

Additionally, the law creating the *Institute of National Remembrance* in Poland lifted statutes of limitation for “communist crimes” committed between 1944 and 1990. The

new limitation period established for those crimes would start running in 1990 and last for 20 years.<sup>287</sup>

### 9.2.2 Other Bilateral and multilateral treaties or agreements

Besides the general international treaty framework, different groups of European member states have signed specific bilateral treaties multilateral or that are relevant to the memory of the crimes committed during the repressive past in Europe.

On 8 August 1945 the Allies during World War II (France, United Kingdom, United States of America and the Union of Soviet Socialist Republics) signed in London the *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*, and *Charter of the International Military Tribunal* that would develop the legal framework under which the Nuremberg trials were carried. During the following months other European countries joined the agreement. See table below.

Member state	Date of accession
Belgium	05.10.1945
Czechoslovakia	26.09.1945
Denmark	10.09.1945
Greece	10.09.1945
Luxembourg	01.11.1945
Netherlands	25.09.1945
Poland	25.09.1945

Source: own elaboration from data in International Committee of the Red Cross (ICRC), International Humanitarian Law - Treaties & Documents, available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=350&ps=P>

As it is reflected on section 4.2.2 of this report, there is an extensive network of agreements in the international level to deal with the issue of compensation to the victims, specially in the cases of Austria and Germany. In this same line, there are also some examples of bilateral treaties signed by European member states in relation to the perpetrators of the crimes.

- **Latvia** signed in October 1991 a bilateral treaty with Australia for cooperation in searching for war criminals. In 1991 and 1992 Latvia's General Prosecutor's Office (*prokuratūra*) concluded agreements with law enforcement institutions in Australia, Canada, the United Kingdom, the USA, and New Zealand for cooperation in investigation of war crimes and the capturing of Nazi war criminals.
- **Bulgaria** The Committee for Disclosing the Documents and Announcing Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian National Army, which was established in 2007, has signed several agreements with similar organizations in Germany, Romania, the Czech Republic, Poland, and other countries.
- **Cyprus** The involvement of Greek Officials, who collaborated with army officers in the 15 July coup in Cyprus has been subject to investigation in the Greek Parliament by a committee established to this effect in 3 March 1986 to examine the so-called "File of Cyprus". The

<sup>287</sup> *Ustawa o Instytucie Pamięci Narodowej*, 1999, art 4.

work of the investigation committee lasted more than two years in the course of which it examined 131 witnesses and thousands of pages of documents. Its findings were issued in a resolution of the Greek Parliament of 30 October 1986. The Committee blamed the leaders of the military junta then ruling Greece and Greek army officers for organizing and executing the coup.

Finally, and although it will be dealt more extensively in the next section, there are also some important instances of international collaboration in relation to very particular issues related to the memory of the crimes which cover different topics like memorials, archives and research:

- **Austria** signed in 2004 a Joint Declaration of Agreement with the United States reaffirming their mutual interest in the protection and preservation of burial sites, places of worship, and other places of commemoration in their respective territories, in particular those important to individuals and groups that were victims of genocide during World War II (2004).
- **Hungary** signed with Russia a Treaty on mutual care for the graves and memorials for Hungarian and Russian (Soviet) soldiers who fell in the other country's territory on 6 March 1995.
- **Slovenia**
  - An exchange of notes, in October 1993, between the Foreign Ministers of both Italy and Slovenia lead to the creation of a Mixed Italo-Slovene Historical- Cultural Commission. The idea was to carry out encompassing research of all relevant aspects in the history of highly conflictive, bi-lateral political and cultural relations. It is planned that this Commission be made of a co-president and 6 members for each of the two groups and it was determined that a final report be prepared to present to both governments. The Commission met for the first time on the 19<sup>th</sup> of November in 1993 and for the last on the 27<sup>th</sup> June in 2000 in Udine (when the true final report was unanimously adopted). Although it was never officially published, this last report was sent to both Ministers for Foreign Affairs<sup>288</sup>.
  - Slovenia has also signed several treaties on war burial sites with Italy, Germany and Croatia.
- **Romania:**
  - In 2003, the Romanian government approved the three-year collaboration agreement signed by the Romanian National Archives and the Holocaust Memorial Museum.<sup>289</sup> *The Agreement of 12 November 2002 of Collaboration between the National Archives of Romania and the Memorial Museum of the Holocaust, United States of America* allowed Museum representatives to have access to the National Archive

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<sup>288</sup> [http://www.kozina.com/premik/indexita\\_porocilo.htm](http://www.kozina.com/premik/indexita_porocilo.htm). For complete account of this event see Raoul Pupo, *The Italo-Slovenian historico-cultural commission*, in Hasrriet Jones, Kjell Östberg, Nico Randeraad (eds), *Contemporary history on trial. Europe since 1989 and the role of the expert historian*, Manchester, Manchester University Press, 2007, pp. 144-158. An analogous Italo-Croat commission has met only once.

<sup>289</sup> Acord din 12 noiembrie 2002 de cooperare între Arhivele Nationale ale României și Muzeul Memorial al Holocaustului din Statele Unite ale Americii, *Monitorul Oficial* (15 July 2003), available online at [http://www.legestart.ro/\(X\(1\)\)/Acord-din-2002-\(MjA1ODM-\).htm](http://www.legestart.ro/(X(1))/Acord-din-2002-(MjA1ODM-).htm) (accessed on 13 June 2009).

documents from the 1933-1948 period referring to the Holocaust, and to copy 900,000 microfiches relevant to that period. The Archive representatives had access to the archives of the Museum.<sup>290</sup>

- The National Council for the Study of the Securitate Archives (CNSAS) of Romania has been a signatory of *The European Network of Institutions Managing the Archives of the Former Political Police Forces*, which united seven independent agencies working in Eastern European countries. On 16 December 2008 in Berlin, the CNSAS president Ladislau Csendes signed the cooperation agreement with the Bulgarian, German, Czech, Polish, Slovak, and Hungarian institutes and agencies.

### 9.3 Joint international initiatives (joint declarations, establishment of joint committees of historians, cooperation between institutions and agencies, etc.)

#### 9.3.1 Joint Declarations

- **Baltic Countries** The three Baltic States have issued joint declarations commemorating repressive crimes committed on their soil, although these have always had a symbolic character. Some of these declarations include:
  - The declaration on the evaluation of the crimes of the Communism which was adopted after the International Congress "Evaluation of Crimes of the Communism" held in Vilnius on 12-14 June, 2000.
  - In 2005, during the session of the Baltic Assembly, the parliamentarians of Lithuania, Latvia and Estonia adopted the declaration inducing Russia to recognize the occupation of the Baltic States and bear both the moral and material responsibility.<sup>291</sup>
  - On 23 August 2009 the Prime Minister of Estonia, Andrus Ansip, the Prime Minister of Latvia, Valdis Dombrovskis, and the Prime Minister of Lithuania, Andrus Kubilius, signed a joint declaration in Vilnius, dedicated to the 20th anniversary of the Baltic Way, in which the Baltic Way is remembered as a unique, peaceful demonstration that led to the restoration of the independence of the Baltic States.<sup>292</sup>
- **Italy-Germany** At the Italo-German summit in Trieste on November 18<sup>th</sup>, 2008 a joint declaration was issued that stated: "Italy and Germany share the ideals of reconciliation, solidarity and integration which form the basis of the process of building Europe, and it is towards advancing this goal that our two countries have met and will continue to meet in order to make a determined contribution and in order to develop a leading role. With this cooperative spirit Italy and Germany are also jointly facing the painful events of the Second World War; together with Italy, Germany fully recognizes the extremely grave sufferings inflicted upon the Italians, particularly the bloodshed, and upon the ex-Italian Military Internees and upon the preservation of memory. With this

<sup>290</sup> Acord din 12 noiembrie 2002 de cooperare între Arhivele Nationale ale României și Muzeul Memorial al Holocaustului din Statele Unite ale Americii, *Monitorul Oficial* (15 July 2003).

<sup>291</sup> [http://www.politika.lt/index.php?cid=9315&new\\_id=3285](http://www.politika.lt/index.php?cid=9315&new_id=3285)

<sup>292</sup> <http://www.balticway.net/index.php?page=naujienos&hl=en>



understanding the ex-Vicechancellor and minister of Foreign Affairs Steinmeier, accompanied by Minister for Foreign Affairs Frattini, have today gone- with a gesture of great moral and humanitarian value- to Risiera de San Sabba to pay homage to the memory of the Italian soldiers that that were sent for deportation to Germany and to all the victims that this emblematic place represents. Italy respects the German decision to turn to the International Court of Justice to obtain a decision on the principle of State immunity. Italy, as contractual party, like Germany at the European Conference on the pacific nature of the controversies of 1957, and just as Paris has to respect international law as a cardinal point in its own conduct, considers that the decision of the International Court on the immunity of the state is useful to clear up a complex question”.<sup>293</sup>

- **Czech Republic-Germany** The Czech-German Declaration of 1997 acknowledges responsibility and expresses regret for injustices committed against the other, and commits the two states to reconciliation and mutual support; also agrees to the establishment of the Czech-German Fund for the Future.

### 9.3.2 Conferences, Establishment of Networks and other forms of cooperation between institutions and agencies

Three major international conferences, after which a Declaration was issued, have led to the creation of Networks of collaboration in relation to the memory of the crimes of both Nazism and Communist regimes in Europe. These are:

- *The Task Force for International Cooperation on Holocaust Education, Remembrance, and Research (ITF)* is an inter-governmental organisation initiated by former Swedish Prime Minister, Göran Persson, in May 1998. It currently has twenty-seven member countries (20 members of the EU- see table 9.3) and its purpose is to place political and social leaders' support behind the need for Holocaust education, remembrance, and research both nationally and internationally. Membership in the Task Force is open to all countries and members must be committed to the *Declaration of the Stockholm International Forum on the Holocaust* (adopted on January 28 2000) which recalls that the Holocaust challenged the foundations of civilization and proclaims the commitment “to promote education about the Holocaust in our schools and universities, in our communities and encourage it in other institutions.”<sup>294</sup> Part of the process of becoming a full member of the ITF is the establishment of the international Holocaust Memorial Day on January 27.
- Holocaust Era Assets Conference was a major international conference to be hosted by the Government of Czech Republic, in cooperation with a number of

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<sup>293</sup> During the meeting, the two governments “have agreed to establish a body made up of Italian and German historians under the common mandate of deepening understanding of the past of the Italo-German War and, in particular, of the Italian Military Internees, as a contribution to building a common culture of historical memory.” The Commission was formed by five German historians and five Italians, at the Italian-German Cultural Centre at Ville Vigoni (March 28, 2009). It is still not known how the Commission, which has a triennial mandate, plan to develop their project or which resources they will have available for their research.

<sup>294</sup> See Declaration on the ITF website: <http://www.holocausttaskforce.org/about/index.php?content=stockholm>

institutions, in Prague and Terezín, from June 26-30, 2009 and after which the *Terezin Declaration on Holocaust Era Assets and Related Issues* was proclaimed. The Chairman of the Organizing Committee, Miloš Pojar, explains the conference's rationale: "More than six decades after World War II the terrible ghosts of the Holocaust have not disappeared. The perverse ideology that led to the horrors of the Holocaust still exists and throughout our continents racial hatred and ethnic intolerance stalk our societies. Therefore, it is our moral and political responsibility to support Holocaust remembrance and education in national, as well as international, frameworks and to fight against all forms of intolerance and hatred."<sup>295</sup> A special focus of the conference is property restitution and financial compensation projects.

- The international conference "The European Conscience and Communism", held in the Senate of the Parliament of the Czech Republic, June 2-3, 2008, resulted in the *The Prague Declaration on European Conscience and Communism*, which states, in part, that "the Communist ideology is directly responsible for crimes against humanity," that "many of the perpetrators committing crimes in the name of Communism have not yet been brought to justice and their victims have not yet been compensated," and that "the millions of victims of Communism and their families are entitled to enjoy justice, sympathy, understanding and recognition for their sufferings in the same way as the victims of Nazism have been morally politically recognized".<sup>296</sup>

As regards networks, seven countries established on December 16, 2008, the "Foundation of a European Network of official Authorities in Charge of the Secret-Police files" with the aim of building a forum for the mutual exchange and transfer of information that applies to archives, legal regulations, historico-political education and public relations, and research. The Network also seeks to define minimum requirements for access to the secret-police files kept by dictatorships.

Its members are: the Office of the Federal Commissioner (BStU) (Germany); the Committee for disclosing the documents and announcing affiliation of Bulgarian citizens to the State Security and the intelligence services of the Bulgarian National Army (COMDOS) (Bulgaria); The Institute of National Remembrance - Commission of the Prosecution of Crimes against the Polish Nation (IPN) (Poland); the National Council for the Study of the Securitate Archives (CNSAS) (Romania); The Nation's Memory Institute (UPN) (Slovakia); Czech Institute for the Study of Totalitarian Regimes (USTR) (Czech Republic); Historical Archives of the Hungarian National Security Services (ABTL) (Hungary).

Finally, there are several institutions and research centers from different Member States which have signed cooperation agreements in different fields of research, remembrance and education:

- **Belgium** The *International Committee of Historical Sciences* collaborates with the *International Committee on the History of the*

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<sup>295</sup> Miloš Pojar, "Holocaust Era Assets Conference: Why We Are Convening the Conference," Prague, February 9, 2009, <http://www.holocausteraassets.eu/>.

<sup>296</sup> *Prague Declaration on European Conscience and Communism*, June 3rd, 2008, Prague, Senate of the Parliament of the Czech Republic, <http://praguedeclaration.org/>.

*Second World War*<sup>297</sup>. This committee groups prominent historians and researchers from 37 nations. It was founded on 12th of May, 1967. The first presidents were the Italian senator Parri and the French historian Henri Michel (from 1970 to 1975). The Belgian historian and director of the Soma/Ceges-predecessor NCWO II Jean Vanwelkenhuyzen acted from 1975 to 1985 as its secretary-general, while being appointed president in 1985, a function he performed until 1987. The Netherlands and Luxembourg also collaborate with this Committee.

- **Bulgaria** The *Committee for Disclosing the Documents and Announcing Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian National Army*, established in 2007 has signed agreements for cooperation with similar organizations in other EU member states (including Germany, Romania, the Czech Republic and Poland) in the area of the repressions of the postwar regimes.
- **Czech Republic** The Institute for the Study of Totalitarian Regimes has signed cooperation agreements with:<sup>298</sup>
  - The Institute of National Remembrance, Warsaw, Poland
  - Nation's Memory Institute, Bratislava, Slovakia
  - United States Holocaust Memorial Museum, Washington DC
  - Historical Archives of the Hungarian State Security, Budapest, Hungary
  - The Institute for the Investigation of Communist Crimes in Romania
  - Institute of National Memory, Ukraine
- **France** The Shoah Memorial is a member of the Association of Holocaust Organizations, an international network of organizations and individuals for the advancement of Holocaust education, remembrance and research.
- **Lithuania** The *International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania*, formed pursuant to a Decree issued by President Valdas Adamkus on 7 September 1998 in the context of Lithuania's political, social and cultural integration Europe cooperates with foreign partners from all over the world. In September 2002, the Commission signed cooperation agreements on Holocaust education and training with the Beth Shalom Holocaust Centre, the Yad Vashem International School for Holocaust Studies, the Holocaust Martyrs' and Heroes' Remembrance Authority, and the New Jersey Commission on Holocaust Education. The International Commission signs short-term cooperation agreements with B'nai B'rith International on an annual basis concerning the organization of the seminars for the teachers on Holocaust education. It has also cooperated with the Facing History and Ourselves, the Eli and Edythe Broad Foundation. The International Commission worked closely with the *National Fund of the Republic of Austria for Victims of National Socialism* in organizing International Vilnius Forum in 2000 and the international conference 'Holocaust in Lithuania in the Focus of Modern History, Education and Justice' in 2002. The membership of the

<sup>297</sup> <http://www.ihtp.cnrs.fr/cih2gm/>

<sup>298</sup> Institute for National Memory, "About Us," Available at <http://www.ustrcr.cz/en/press>.

Commission is international, with as many members from abroad as from Lithuania, including several leading representatives of Jewish communities in Israel, the UK and USA.

- **Poland** The *Institute of National Remembrance* has signed cooperation agreements with foreign partners in the Czech Republic, Germany, Slovakia, Hungary, Romania, Estonia, Latvia, Lithuania, Denmark, France and the USA.
- **Romania Romanian** Institutes and governmental agencies related to memory have been very active in launching cooperation with similar agencies in other Eastern European countries. Among them:
  - In November 2008, the Institute for the Investigation of communist Crimes in Romania (IICCR) became a member of the *European Memory Association*, which also includes The Czech Institute for the Study of Totalitarian Regimes, the Czech Post Bellum Association, and the Czech Radio.
  - On 23 September 2008, the IICCR and the Polish Institute of National Memory signed a cooperation agreement to collaborate in the areas of research, exchange of information, the organization of exhibitions, conferences, and publication of analyses.<sup>299</sup> On 16 April 2009, the IICCR signed in Prague a Cooperation Agreement with the Czech Institute for the Study of Totalitarian Regimes. The two institutes pledges to cooperate in the areas of education and research, joint publication of research analyses, and exchange of information regarding archival records available in their two countries.<sup>300</sup>
- **Slovakia** The Nation's Memory Institute lists as its foreign partners:<sup>301</sup>
  - The Institute for the Study of Totalitarian Regimes, Czech Republic
  - The Office for the Documentation and Investigation of the Crimes of Communism, Czech Republic
  - The Institute of National Remembrance, Poland
  - Federal Commissioner for the Records of the National Security Services of the former DDR, Germany
  - Foundation for the Processing of SED Dictatorship, Germany
  - Historical Archives of the Hungarian State Security, Hungary
  - Genocide and Resistance Research Centre of Lithuania
  - The International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania
  - The National Council for the Study of the Securitate Archives, Romania
  - United States Holocaust Memorial Museum, Washington DC

<sup>299</sup> "Semnarea Protocolului de Cooperare dintre Institutul Memoriei Naționale (IPN) și Institutul de Investigare a Crimelor Comunismului în România (IICCR)," available online at [http://www.crimelecomunismului.ro/ro/presa/comunicate/protocol\\_de\\_cooperare\\_intre\\_ipn\\_si\\_iiccr/](http://www.crimelecomunismului.ro/ro/presa/comunicate/protocol_de_cooperare_intre_ipn_si_iiccr/) (accessed on 9 June 2009).

<sup>300</sup> "Semnarea Protocolului de Cooperare între Institutul de Investigare a Crimelor Comunismului în România și Institutul pentru Studierea Regimurilor Totalitare din Republica Cehă," available online at [http://www.crimelecomunismului.ro/ro/presa/comunicate/protocol\\_de\\_cooperare\\_iiccr\\_institutul\\_pentru\\_studierea\\_regimurilor\\_totalitare/](http://www.crimelecomunismului.ro/ro/presa/comunicate/protocol_de_cooperare_iiccr_institutul_pentru_studierea_regimurilor_totalitare/) (accessed on 9 June 2009).

<sup>301</sup> Nation's Memory Institute, <http://www.upn.gov.sk/odkazy/>.

- **Slovenia** The Study Centre for National Reconciliation cooperates with:
  - The Institute for the Study of Totalitarian Regimes, Czech Republic
  - Nation’s Memory Institute, Slovakia
  - Institute of National Remembrance, Poland
  - Historical Archives of the Hungarian State Security, The Institute for the History of the 1956 Hungarian Revolution, Hungary
  - The National Council for the Study of the Securitate Archives, The Institute for the Investigation of Communist Crimes in Romania,
  - Committee for Disclosing and Announcing affiliation of bulgarian Citizen to the State security and intelligence services of Bulgarian National Army, Institute for Studies of the Recent Past, Bulgaria
  - The International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania
  - The Estonian War Museum, Museum of Occupations, IKUES - Estonian Foundation for the Investigation of Crimes Against Humanity, S-KESKUS, Estonia
  - Center for Peace and Democracy Development, Serbia
  - Center for Democracy and Reconciliation in Southeast Europe, Greece
  - Die Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen DDR (BStU), Bundesstiftung für Aufarbeitung der SED-Diktatur, Germany
  - The Institute for Information on the Crimes of Communism, Sweeden
  - Rehabilitation and Research Centre for Torture Victims, Denmark
  - Yad Vashem – The Holocaust Martyrs’ and Heroes’ Remembrance Authority, Israel

### 9.3.1 Joint international initiatives 1

Member State	Terezin Declaration on Holocaust Era Assets and Related Issues	Task Force for International Cooperation on Holocaust Education, Remembrance and Research	European network of official authorities in charge of the totalitarian communist secret police files
<b>Austria</b>	Member	Member	No
<b>Belgium</b>	Member	Member	No
<b>Bulgaria</b>	Member	No	Member
<b>Cyprus</b>	Member	No	No
<b>Czech Republic</b>	Member	Member	Member
<b>Denmark</b>	Member	Member	No
<b>Estonia</b>	Member	Member	No
<b>Finland</b>	Member	Member	No
<b>France</b>	Member	Member	No
<b>Germany</b>	Member	Member	Member
<b>Greece</b>	Member	Member	No
<b>Hungary</b>	Member	Member	Member
<b>Ireland</b>	Member	No	No
<b>Italy</b>	Member	Member	No

<b>Latvia</b>	Member	Member	No
<b>Lithuania</b>	Member	Member	No
<b>Luxembourg</b>	Member	Member	No
<b>Malta</b>	Member	No	No
<b>The Netherlands</b>	Member	Member	No
<b>Poland</b>	Member	Member	Member
<b>Portugal</b>	Member	No	No
<b>Romania</b>	Member	Member	Member
<b>Slovakia</b>	Member	Member	Member
<b>Slovenia</b>	Member	No	No
<b>Spain</b>	Member	Member	No
<b>Sweden</b>	Member	Member	No
<b>United Kingdom</b>	Member	Member	No

Source: Own elaboration



## **Annexes**





## Annex 1: Relevant provisions on denial crimes

### Austria

Practicing or “re-engaging” with National Socialism has been illegal in Austria since the founding of the Second Republic with provisions spelled out in the *Verbotsgesetz* of 1947. In 1992, that law was amended to include public speech or broadcast that denies the Holocaust or Nazi crimes, or trivializes or seeks to justify and support those crimes. The Austrian judiciary has prosecuted such cases several times. For example, in April 2009 the Vienna Landesgericht sentenced Gerd Hosnik to five years in prison for *Wiederbetätigung*.

#### Relevant provision

-Section 3g of the National Socialist Prohibition Act (*Verbotsgesetz*)

*“Whoever performs activities inspired by National Socialist ideas in a manner not coming within the scope of Section 3a to 3f shall be liable to punishment by a prison sentence between five and ten years, and if the offender or his activity is particularly dangerous, by a prison sentence of up to twenty years, unless the act is punishable under a different provision stipulating a more serious sanction”*. The 20 March 1992, changed the range of punishment from “five to ten years” to “one to ten years”.

-According to Section 3h of the Prohibition Act, *anyone who, in particular in public media, denies, grossly minimises, approves or justifies the “mass murder under the National Socialist regime” (nationalsozialistischer Völkermord) or other “National Socialist crimes against humanity” (nationalsozialistische Verbrechen gegen die Menschlichkeit)*, is also punishable pursuant to section 3g.

### Belgium

On the 23th of March 1995 the law which made it illegal to deny, minimize, justify or approve the genocide committed by the German National Socialist regime during the Second World War was passed.<sup>302</sup> It is sometimes called the (Anti-)Negationism or Revisionism Law. An important reason for the coming about of the *Negationism Law* was that negationist or revisionist writings and expressions were not necessarily punishable by the Anti-Racism Law of 1981 (the law of 30 July 1981 that punishes certain acts inspired by racism or xenophobia).

In 1999 an amending was made in the law by means of the law of 7 May 1999 that amends the law of 30 July 1981 that punishes certain acts inspired by racism or xenophobia as well as the law of 23 March 1995 against the denial, minimization, justification or approval of the genocide committed by the German National Socialist regime. This adjustment gave the judge – by implementing both the anti-racism and Negationism law – the possibility to pronounce an additional punishment, namely the removal from the civil rights (art. 5b)<sup>303</sup>.

Furthermore, on the 7th of May 1999, article 150 of the constitution was altered to make it possible to try press crimes “inspired by racism or xenophobia” no longer before the Assize Court but before the Correctional Court. Thus, the possibility to act legally against negationism in Belgium happened in two phases: via an adjustment of the legal framework and via an adjustment of the constitutional framework.

<sup>302</sup> Belgisch Staatsblad / Moniteur Belge (Belgian Statute Book), 30 March and 22 April 1995.

<sup>303</sup> Belgisch Staatsblad / Moniteur Belge (Belgian Statute Book), 25 June 1999.

In the case against Roeland Raes (2008) the defendant was given a suspended sentence of 4 months imprisonment after having said on Dutch television: "I doubt the systematism of the extermination of the Jews and I also doubt the number of deaths, [...] and also whether camps such as Auschwitz were all meant to be extermination camps".

#### Relevant provision of the Belgian Holocaust denial law

*"Whoever, in the circumstances given in article 444 of the Penal Code denies, grossly minimizes, attempts to justify, or approves the genocide committed by the German National Socialist Regime during the Second World War shall be punished by a prison sentence of eight days to one year, and by a fine of twenty six francs to five thousand francs".*

#### **Bulgaria**

No provision on denial

#### **Cyprus**

Cyprus is a party to the *Additional Protocol to the Council of Europe Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems* and has incorporated the Protocol into its domestic law by enacting implementing legislation, i.e. Law 26(III)/2004.<sup>304</sup> As a consequence, the following acts have been made criminal offenses under Articles 5 to 7 of the Law and are punishable with imprisonment up to five years or with a fine of up to 35,000 Euros or with both:

- insulting publicly, through a computer system persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors.
- distributing or otherwise making available, through a computer system to the public, material which *denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity*.

There are no reported cases concerning the application of this law to date.

#### **Czech Republic**

Previous to its new Criminal Code, the Czech Republic criminalized holocaust denial or Communist crimes via Article 261 of its Criminal Code.

#### Relevant provision

New criminal code (in effect from January 1, 2010) § 405: *"Whoever publicly denies, disputes, endorses or tries to justify Nazi, Communist or other genocides or other Nazi or Communist crimes against humanity will be punished by imprisonment from six months to three years"*.<sup>305</sup>

#### **Denmark**

Section 140 of the *Danish Criminal Code* provides that any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months. Under section 266 b(1) of the *Danish Criminal Code* any

<sup>304</sup> Ο περί του Πρόσθετου Πρωτοκόλλου στη Σύμβαση κατά του Εγκλήματος μέσω του Διαδικτύου, αναφορικά με την Ποινικοποίηση Πράξεων Ρατσιστικής και Ξενοφοβικής Φύσης που Διαπράττονται μέσω Συστημάτων Ηλεκτρονικών Υπολογιστών (Κυρωτικός) Νόμος.

<sup>305</sup> Trestní zákoník ke stažení, <http://www.reformajustice.cz/cz/trestni-zakonik/soubory-ke-stazeni.html>

person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, scorned or degraded on account of their race, color, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

In the developed case law, Sections 140 and 266b have not been applied to public condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes against any kind of group.<sup>306</sup>

Denmark has ratified the *Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems* but has reserved the right to fully or partially refrain from criminalising acts covered by Article 6, paragraph 1.

### **Estonia**

No provision on denial.

### **Finland**

No provision on denial

### **France**

The *French Law no. 90-615 of 13 July 1990, aiming at repressing any racist, antisemitic or xenophobic act (Loi GAYSSOT)*<sup>307</sup> forbids any discrimination based on the belonging or non-belonging to an ethnic group, a nation, a race or a religion. A new Article 24 bis was inserted in the law of 29 July 1881 on freedom of the press:

*“Shall be punished ... those who will contest, by one of the means given in Article 23, the existence of one or several crimes against humanity such as they are defined by article 6 of the Statute of the International Military Tribunal [the Nuremberg Tribunal] annexed to the London Agreement of 8 August 1945 and which have been committed either by members of an organization declared criminal by application of article 9 of the Statute, or by a person recognized as guilty of such crimes by a French or international jurisdiction”.*

A new Article 48-2: *“Any association regularly registered since at least five years, which, by its statutes, aims at defending the moral interests and the honour of the Resistance or of deported persons, may exercise the rights recognized to a plaintiff concerning the apology of war crimes, crimes against humanity or crimes or offences of collaboration with the enemy ...”*

A number of personalities in France have signed petitions requesting the “repeal of the articles of law which put constraints on research and teaching of this subject” (“Freedom for history” petitions) arguing that it breaches freedom of opinion and the right to investigate and debate historical matters. For supporters of the law, the law

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<sup>306</sup> On 6th June 1988, The High Court of Western Denmark denied a request for extradition to Germany of a German citizen residing in Denmark. In an article in a journal, the German citizen had expressed doubts about the number of victims of the Holocaust and made the following statement: “I am hardly exaggerating; A Jewish life consists of two elements: collecting money and protesting”. The High Court did not find these statements to fall within Section 266b of the Danish Criminal Code and therefore the requirements for extradition were not met. See UfR1988.788V.

<sup>307</sup> LOI n° 90-615 du 13 juillet 1990 Tendant à réprimer tout acte raciste, antisémite ou xénophobe. (Loi GAYSSOT)

sanctions negationism not because it is an insult to the victims, but also as an incitement to racial hatred.

Robert Faurisson was the first to be prosecuted under the *Gayssot law*. He was convicted on 18 April 1991 of contestation of crimes against humanity, together with his publisher to a fine of FF 326,832<sup>308</sup>. Faurisson appealed to the United Nations Human Rights Committee over the legality of the Gayssot Law. The Committee upheld the legality of the law<sup>309</sup>.

The Gayssot law has been applied several times by French Courts (1997, Alain Guionnet for having minimised the number of the victims of the Holocaust; 1998, Francois Lehideux and Jacques Isorni for aiding and abetting a public defence of the crimes of collaboration with the enemy. The case arrived to the ECtHR; 2001, Roger Garaudy for denying crimes against humanity in his book “The Founding Myths of Israeli Politics”; 2004, Roger Chauvy for defamation under the civil law; 2008, Jean Marie Le Pen for denying a crime against humanity and complicity in condoning war crimes).

### Germany

Denying the Holocaust is an offence in Germany. Any form of praising nationalsocialism or its aims is deemed incitement of the people (*Volksverhetzung*) and was included as § 130 of the penal code in 1960, it was amended and further tightened in 1994. In 1985, the denial of mass murder at Auschwitz became part of § 140 StGB (condoning of crimes). Denial of the Holocaust is considered libel according to § 185.

There have been several cases on Holocaust denial in German Courts (F.P., Remer, Rudol, Zündel, Lerle, Mahler).

Furthermore, § 189 protects the honour of the memory of the victims, giving yet another means to the courts to prosecute denial of genocide. For example, in the Witzsch case the Fürth District Court signalled that although the applicant had not denied the Holocaust as such, his denial of Hitler’s and NSDAP’s responsibility in this respect was tantamount to a negative value judgement.

#### Relevant provision

Section 130 Agitation of the People (Criminal Code)

*(3) Whosoever publicly or in a meeting approves of, denies or downplays an act committed under the rule of National Socialism of the kind indicated in section 6 (1) of the Code of International Criminal Law, in a manner capable of disturbing the public peace shall be liable to imprisonment of not more than five years or a fine.*

*(4) Whosoever publicly or in a meeting disturbs the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or justifying National Socialist of arbitrary force shall be liable to imprisonment of not more than three years or a fine.*<sup>310</sup>

Also Section 189 Violating the Memory of the dead (another way for the Courts to prosecute denial of genocide)

<sup>308</sup> Ass. Résistants et déportés c/ Faurisson et Boiseau, 18 avril 1991, 17e Chambre correctionnelle du Tribunal de Grande Instance de Paris.

<sup>309</sup> Faurisson v France CCPR/C/58/D/550/1993, (1996) 2 BHRC 1.

<sup>310</sup> Source: German Federal Ministry of Justice, [http://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#StGB\\_000P130](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGB_000P130)

*Whosoever defames the memory of a deceased person shall be liable to imprisonment of not more than two years or a fine.*

### **Greece**

No provision on denial

### **Hungary**

No provision on denial

### **Ireland**

No provision on denial

### **Italy**

No provision on denial

### **Latvia**

On 16 October 2008 the parliament approved in the first reading amendments to the Criminal Law which foresee criminal liability for the public glorification or justification of regimes that have committed genocide or persons convicted of genocide or denial of genocide that would be punishable by imprisonment for up to five years or community service. The amendments were drafted by the Ministry of Justice and referred to Article 1.1 (c) of the draft “Framework Decision on Combating Racism and Xenophobia”.

#### Relevant provision (in Latvian)

14. Papildināt likumu ar 74.1 pantu šādā redakcijā:

*“74.1 pants. Genocīda, nozieguma pret cilvēci, nozieguma pret mieru un kara nozieguma attaisnošana*

*Par genocīda, nozieguma pret cilvēci, nozieguma pret mieru vai kara nozieguma publisku slavināšanu vai īstenotā genocīda, nozieguma pret cilvēci, nozieguma pret mieru vai kara nozieguma publisku noliegšanu vai attaisnošanu — soda ar brīvības atņemšanu uz laiku līdz pieciem gadiem vai ar piespiedu darbu.”*

### **Lithuania**

Lithuania is currently discussing the criminalization of denial or justification of Soviet aggression, which under their scheme would be punishable under the Criminal Code. In October, 2009 the Lithuanian *Seimas* approved respective amendments to the Criminal Code with 41 votes in favour, 13 against and 25 abstained ballots. The amended bill was initiated by Vilija Aleknaite- Abramikiene of the Homeland Union - Lithuanian Christian Democrat Party faction in the *Seimas*. According to the amendments in question, those who publicly voice approval of, deny or downgrade either the Soviet Union's or Nazi Germany's acts of aggression against Lithuania, would be punished by fine, arrest or imprisonment for up to two years.

#### Relevant provision (in process)

Article 110(1) Public condoning, justification, trivialisation or denial of a crime of genocide or other crimes against humanity or war crimes

*“Anyone, who orally or in written publicly condoned or justified, trivialised or denied a crime of genocide or other crimes against humanity, or war crimes acknowledged by legal acts of the Republic of Lithuania or the European Union, or by enforceable*

*judgments of the courts of the Republic of Lithuania or by international courts, shall be punishable by a fine, arrest or imprisonment up to two years.”*

### **Luxembourg**

The Criminal Code was completed by the Law of 19 July 1997<sup>311</sup>. As far as we know there have been no offences against this law.

#### Relevant provision

Article 457-3 of the Criminal Code

“(…) whoever by speech, shouting or menaces uttered in public or in a public meeting; or by written or printed works, sketches, engravings, paintings, symbols, pictures or any other support of written work, speech or images sold or distributed, offered for sale or shown in public or in a public meeting; by posters exposed to public view or any other means of communication would **dispute, minimise, justify or deny the existence of one or more crimes against humanity or crimes of war as they are defined by article 6 of the statute of the International Military Tribunal annexed to the treaty of London of 8<sup>th</sup> August 1945 and that were committed either by the members of an association declared as criminal in application of article 9 of the same statute, or by a person found guilty of such crimes by a Luxembourg court or a foreign or international court**”, would be punished with imprisonment between 8 days and six months and/or a fine of 251 to 25000 Euros.

The same penalty applies to those that have *disputed, minimised, justified or denied the existence of one or more genocides as they are defined by the Law of 8<sup>th</sup> August 1985 on repression of genocide and recognised by a Luxembourgish or international jurisdiction or authority*. This law punishes genocide committed on standard grounds (national, ethnic, racial or religious group).

The Court may also apply additional penalty such as the deprivation right to vote, to be elected, to stand for election, to hold public office or employment, to teach, to act as an expert or tutor, etc.

### **Malta**

No provision on denial

### **The Netherlands**

While The Netherlands does not have specific legislation on Holocaust denial the Supreme Court held in 1987 that the articles of the Criminal Code punishing racist or discriminatory behaviours could be applicable to Holocaust denial (Decision H.R. 27 October 1987, NJ 1988, 538. Adde H.R. 25 novembre 1997, NJ 1998, 261). In that case, the conviction of a distributor of the book 'Sechs Millionen?' was kept upright by the Supreme Court on grounds of insulting Jews because of their race. From statements by the distributor, it was deduced that she should reasonably have presumed that the book contained expressions which were offensive to Jews. The Court concluded the book contained no intended scientific arguments and did not address historical scientific

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<sup>311</sup> Mémorial A, 1997, pp. 1680-82 : Loi du 19 juillet 1997 complétant le code pénal en modifiant l'incrimination du racisme et en portant incrimination du révisionnisme et d'autres agissements fondés sur des discriminations illégales.

sources in a decent way.<sup>312</sup> This approach is still followed by the courts (Verbeke case, 2004).

## Poland

### Relevant provision

Article 55 of the *Act on the Institute of National Remembrance* of December 18<sup>th</sup>, 1998. “Who **publicly and against facts denies** crimes described in Article 1 point 1, is subject to a fine or a punishment of imprisonment for up to 3 years. The sentence is made public.”

### Article 1

*This Act shall govern:*

*1. the registration, collection, access, management and use of the documents of the organs of state security created and collected between 22 July 1944 and 31 December 1989, and the documents of the organs of security of the Third Reich and the Union of Soviet Socialist Republics concerning:*

*a) crimes perpetrated against persons of Polish nationality and Polish citizens of other ethnicity, nationalities in the period between 1 September 1939 and 31 December 1989:*

*ω Nazi crimes,*

*ω Communist crimes,*

*ω other crimes constituting crimes against peace, crimes against humanity or war crimes,*

*b) other politically motivated repressive measures committed by functionaries of Polish prosecution bodies or the judiciary or persons acting upon their orders, and disclosed in the content of the rulings given pursuant to the Act of 23 February 1991 on the Acknowledgement as Null and Void Decisions Delivered on Persons Repressed for Activities for the Benefit of the Independent Polish State (Journal of Laws of 1993 No. 34, item 149, of 1995 No. 36, item 159, No. 28, item 143, and of 1998 No. 97, item 604),*

*c) the activity of the organs of state security referred to in Article 5<sup>313</sup>.*

So far, there has been one case in which Dariusz Ratajczak was convicted of Holocaust denial and found guilty of breaching the Institute of National Remembrance law but the Court did not punish him because the limited distribution of the book did not prove it to be a “social threat.”

## Portugal

### Relevant provision

Article 240 (2) of the Criminal Code

“(…) *punishes anyone who, in a public meeting, in writing intended for dissemination, or by any other means of social communication, defames or insults an individual or group of individuals on grounds of their race, colour, or ethnic, national or religious origin, particularly by **denying war crimes and crimes against peace or humanity**, with the intention of inciting to or encouraging racial or religious discrimination*”.

So far, there are no reported cases concerning the application of Article 240 (2).

## Romania

<sup>312</sup> Denial of the Holocaust in Holland. Judicial Aspects, June 3, 2009, available at <http://blog.balder.org/?p=694>

<sup>313</sup> Source: [http://ipn.gov.pl/portal/en/31/46/Act\\_on\\_the\\_Institute.html](http://ipn.gov.pl/portal/en/31/46/Act_on_the_Institute.html)



### Relevant provision

Article 6 of the Emergency Ordinance N° 31 of 13 March 2002

*“The act of **denying, challenging, approving or justifying**, by any means, in public, the **Holocaust or genocide or crimes against humanity and the effects thereof** is punishable by imprisonment from 6 months to 5 years and the loss of certain rights or by a fine.”*

### **Slovakia**

Previous to its new Criminal Code, Slovakia criminalized Holocaust denial via Article 261 of its Criminal Code.

The new criminal code (300/2005 Z.z., in effect since January 1, 2004) states in § 422:

*“(1) Whoever publicly, especially when using flags, badges, uniforms, and slogans, manifests sympathy for movements that use violence, the threat of violence or the threat of other such harm with the aim of repressing fundamental rights and freedoms of persons will be punished by imprisonment from six months to three years.*

*(2) The same as in paragraph 1 will be punished, whoever **publicly denies, disputes, endorses or tries to justify the Holocaust**”.*<sup>314</sup>

### **Slovenia**

The Slovenian National Parliament amended the Slovenian Criminal Code in 2008, which now criminalizes in Article 297 (2) “Stirring up Hatred, Strife or Intolerance based on Violation of the Principle of Equality”.

### Relevant provision

Article 297 (2) of the Criminal Code

*“Whoever provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas on the supremacy of one race over another or provides aid in any manner for racist activity or denies, **diminishes the significance of, approves of or advocates genocide, crimes against humanity** may be punished by imprisonment of up to three years.”*

### **Spain**

Diffusion by any means of ideas or doctrines that [deny or] justify the crimes typified in the article as genocide or which pretend the rehabilitation of promoter regimes or institutions is punished with one to two years in prison (art. 607).

In 2007, the Constitutional Court declared partially unconstitutional this later provision, drawing a clear distinction between *denying* and *justifying* (STC 235/2007, 7 November 2007). The Court established that simply denying a crime differs substantially from other kind of conducts that may imply an evaluative adhesion to the crime and, in principle, denying is inane. The mere diffusion of conclusions around the existence or not of certain facts, without any value-judgement, affects the area of scientific freedom. Quoting a former sentence (STC 43/2004 23 March), the Court argues that historical research is always by definition disputable and polemic, since it is constructed around affirmations and judgements on whose objective true is impossible full certainty. The Court differentiated conducts spreading ideas that seek to justify genocide. These can be seen as a provocation and incitation to crimes and their punishment is hence totally acceptable.

<sup>314</sup> Trestný Zákon, z 20. mája 2005, 300/2005 Z.z., [http://mestskapolicia.bratislava.sk/vismo/dokumenty/2.asp?id\\_org=700011&id=1008](http://mestskapolicia.bratislava.sk/vismo/dokumenty/2.asp?id_org=700011&id=1008).

In 2008, Pedro Varela was condemned to 7 months of prison for justification of genocide by Spanish tribunals.

Relevant provision

Article 607 (2) of the Criminal Code

*“The diffusion by any means of ideas or doctrines that deny or [ruled unconstitutional] **justify** the crimes in the previous section of this article (genocide), or tries the rehabilitation of regimes or institutions which they protect generating practices of such, will be punished with a prison sentence of one to two years”.*<sup>315</sup>

**Sweden**

No provision on denial

**United Kingdom**

No provision on denial

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<sup>315</sup> Source: <http://www.preventgenocide.org/es/derecho/codigos/espana.htm>



## **Annex 2: Holocaust denial cases in the jurisprudence of the European Court of Human Rights**

### **Glimmerveen and K. Hagenbeek vs. the Netherlands (11/10/1979)**

The applicants complained that the Netherlands authorities had convicted them (both members of the Nederlandse Volks Unie) for having possessed, with a view of distribution, leaflets considered to be inciting to racial discrimination. The European Commission of Human Rights considered that the general purpose of Article 17 of the Convention was to prevent totalitarian groups from exploiting in their own interests the principles enunciated in the Convention.

The applicants also complained that they were prevented from participating in the municipal elections because their candidatures were declared invalids. The Commission observed that the applicants had declared that they wished to pursue their aims and objectives even if it were not formally on behalf of that association. As a consequence, the refusal of the list could not be characterised as an arbitrary act.

### **B.H., M.W., H.P. and G.K. vs. Austria (1987)**

On 2 April 1984 each of the applicants was convicted of one or more offences under Section 3g of the National Socialism Prohibition Act. They received conditional prison sentences of 9, 3, 18 and 12 months respectively. The applicants filled a complaint before the European Commission of Human Rights. The Commission said that insofar as National Socialist activities are treated differently in Section 3g from those of other political groups, this has an objective and reasonable justification in the historical experience of Austria during the National Socialist era, her treaty obligations, and the danger which activities based on National Socialist thinking may constitute for the Austrian society. The Commission noted that National Socialism was a totalitarian doctrine incompatible with democracy and human rights and that its adherents undoubtedly pursue aims of the kind referred to in Article 17.

### **Walter Ochensberger vs. Austria (2 September 1994)**

On 30 May 1991 the Feldkirch Public Prosecutor's Office accused the applicant of having edited, published and distributed in 1989 and 1990 articles in the periodical "Sieg-AJ-Pressedienst", which, having regard to the contents of these articles, constituted National Socialist activities under Section 3g of the National Socialism Prohibition Act. The Court of Assizes found that in 1989 and 1990 the applicant had engaged in National Socialist activities by having edited, published and distributed articles and contributions in the periodical "Sieg-AJ-Press-Dienst" specified in the judgment. It sentenced him to three years' imprisonment (later reduced to 2 years). In the Court's opinion, the articles presented in a biased and propagandist manner the actions and aims of the Third Reich dominated by Adolf Hitler, in particular by justifying the installation of concentration camps in the territory of the Third Reich and in the territories occupied in the course of the Second World War, by minimising the killings therein and by putting the blame for those killings on the allied powers.

The applicant complained under Article 10 of the Convention that his conviction for National Socialist activities violated his right to freedom of expression. The Commission said that the prohibition against activities involving the expression of National Socialist ideas was lawful in Austria and, in view of the historical past forming

the immediate background of the Convention itself, could be justified as being necessary in a democratic society in the interests of national security and territorial integrity as well as for the prevention of crime. It was therefore covered by Article 10 paragraph 2 (Art. 10-2) of the Convention.

### **F.P. vs. Germany (23/03/1993)**

On 9 June 1989 a Military Court in Germany found Mr. F.P. (professional soldier) guilty of a disciplinary offence and ordered his reduction to a lower rank. He was condemned because, in a private party, he had stated, among other things:

- that the Holocaust was a lie of Zionists while in reality Jews had never been persecuted and killed
- that he had evidence showing that allegations about persecutions of Jews in Germany were a part of a strategy of Zionism and Communism in order to discredit Germany
- that lists about killed Jews had been faked
- that there were no proof of the existence of Auschwitz

The Federal Administrative Court declared that by having denied historical events related to Nazi persecution against Jews Mr. F.P. not only had criticised conceptions of history but had tried to clean National Socialism of the stain of mass murder.

Mr. F.P. filed a complaint before the European Commission of Human Rights in which he considered that his rights to manifest his beliefs and to freedom of expression had been violated. The Commission upheld the decision and said that the statements issued by F.P. not only denied historical facts but also were aimed at cleansing the totalitarian Nazi regime of the stain of mass murder and therefore discriminated against Jewish people.

### **Remer vs. Germany (06/09/1995)**

On 22 October 1992 the Schweinfurt Regional Court convicted the applicant of incitement to hatred and race hatred. The Regional Court found that the applicant was the editor of an irregularly issued publication "Remer Depeschen", and the author of some of the reports and comments.

The "Depeschen" of June, August and December 1991 as well as of February and April 1992 had contained articles suggesting that the gas chambers in the concentration camps during the Nazi regime had never existed. Further publications contained information about the applicant's efforts to inform the population about the truth regarding in particular the concentration camp in Auschwitz and to fight against the lies about the gassing of four million Jews in Auschwitz.

The Regional Court considered the applicant had not only sought to open a public discussion on this matter, but also to instigate to hatred against Jews. It also found that it was common knowledge that the contents of the publications concerned, namely the allegations denying the existence of gas chambers in the concentration camps as well as the gassing of millions of Jews and the allegation that the Jews extorted money from the German people, were untrue, as these matters were historically proven facts.

The applicant considered that his case was of a political nature and that his conviction of incitement to hatred infringed his right to freedom of thought and conscience, as well as his right to freedom of expression.

The Commission found that the applicant's publications ran counter one of the basic ideas of the Convention, as expressed in its preamble, namely justice and peace, and further reflect racial and religious discrimination.

#### **Rebhandl vs. Austria case (16/01/1996)**

Mr. Rebhandl was accused and condemned to a one year of imprisonment for having distributed between 1988 and 1990 the periodical "Der Volkstreue", which, having regard to the contents of the various issues of this periodical, constituted National Socialist activities under S. 3 g of the National Socialism Prohibition Act. He complained before the European Commission of Human Rights arguing the unfairness of the criminal proceedings against him.

The Commission noted that the "*public interests in the prevention of crime and disorder in the Austrian population due to offences under the National Socialist Prohibition Act, outweigh[ed], in a democratic society, the applicant's freedom to distribute publications denying in particular the existence of the gassing of Jews in the concentration camps under the Nazi regime and the further incriminated publications relating to the National Socialist regime*".

#### **Marais vs. France (24/06/1996)**

In a judgement of 10 June 1993, the Paris Criminal Court sentenced Mr. Marais to a fine of 10,000 French francs for complicity in the denial of crimes against humanity. The applicant filed a complaint against the European Commission of Human Rights arguing that his right to freedom of expression had been infringed. The Commission said that the applicant's article ran counter the basic ideas of the Convention: justice and peace and therefore. It said that there were sufficient reasons to convict the applicant.

#### **Natchmann vs. Austria (09/09/1998)**

By a judgment of 8 August 1995 the Graz Regional Criminal Court sitting with a jury (Geschworenengericht beim Landesgericht für Strafsachen) convicted the applicant of National Socialist activities (Betätigung im nationalsozialistischen Sinne) within the meaning of Section 3h of the National Socialism Prohibition Act (Verbotsgesetz), fined him 240,000 Austrian Schillings (AS) and sentenced him to ten months' imprisonment on probation. The court found that the applicant, as the head of the editorial staff of the periodical "Aula, Das freiheitliche Magazin", was responsible for the publication of an article in that periodical entitled "Natural laws apply to Nazis and anti-fascists". In that article the National Socialist genocide and other National Socialist crimes, according to the court, had been grossly denied and minimised. The court analyzed in detail the statements suggesting that the number of the victims of the mass killings, in particular of Jews, by poisonous gas and cremation was highly exaggerated and technically impossible.

The Commission referred to its previous case-law in which it had held that "*the prohibition against activities involving the expression of National Socialist ideas is both lawful in Austria and, in view of the historical past forming the immediate background*

*of the Convention itself, can be justified as being necessary in a democratic society in the interests of national security and territorial integrity as well as for the prevention of crime. It is therefore covered by Article 10 para. 2 of the Convention"*

### **Lehideux and Isorni vs France (23/09/1998)**

In 1998, Francois Lehideux and Jacques Isorni were charged in France for aiding and abetting a public defence of the crimes of collaboration with the enemy. They were condemned to pay 1 French franc for damages and the publication of the sentence in the newspaper "Le Monde". The defendants complained before the ECtHR that their conviction had breached Article 10 of the Convention. The Court said that the "*negation or revision of clearly established facts, such as the Holocaust, would be removed from the protection of Article 10 by Article 17*" However the Court added: (...) "*it does not appear that the defendants attempted to deny or revise what they themselves referred to in their publication as "Nazi atrocities and persecutions" or "German omnipotence and barbarism"*". As a consequence, the Court considered the applicants' conviction disproportionate and unnecessary in a democratic society.

### **Witzsch vs. Germany (20/04/1999)**

On 27 February 1996 the Fürth District Court convicted Mr. Witzsch of disparaging the dignity of the deceased. The applicant had written letters to Bavarian politicians in which he complained about a planned amendment of the Criminal Code expressly penalising the denial of national socialist mass killing. He denied the existence of gas chambers and the mass killing therein. The Federal Court of Justice and the Constitutional Court had already established that the mass killing of Jews and other persons in gas chambers and in the Auschwitz concentration camp was a historical fact. The Regional Court considered that the content of the letters objectively amounted to the denial of gas chambers.

Mr. Witzsch complained before the ECtHR that his freedom of speech as a historian had been infringed. The Court noted that the findings of the German courts that the applicant's statements denying the existence of gas chambers and mass killings therein and his reference to "historical lies" amounted to disparaging the dignity of the deceased who had a particularly cruel fate. The Court also found that the public interest in the prevention of crime and disorder due to disparaging statements regarding the Holocaust, and the requirements of protecting the interests of the victims of the Nazi regime, outweighed, in a democratic society the applicant's freedom to impart views denying the existence of gas chambers and mass murder therein.

#### Few years later (new case)

Same applicant condemned again in 2001 for disparaging the dignity of the deceased pursuant Article 189 of the German Criminal Code. He was sentenced to three months' imprisonment. The Fürth District Court signalled that although the applicant had not denied the Holocaust as such, his denial of Hitler's and NSDAP's responsibility in this respect was tantamount to a negative value judgement.

The applicant complained before the ECtHR that his right of freedom of expression as a historian had been infringed. The Court reiterated that the freedom of expression guaranteed under Article 10 of the Convention may not be invoked in conflict with Article 17, in particular in cases concerning the Holocaust denial and related issues. The Court added that while the applicant had not denied either the Holocaust as such nor the existence of gas chambers, he denied an equally significant and established

circumstance of the Holocaust: he considered false and historically unsustainable that Hitler and the NSDAP had planned, initiated and organised the mass killing of Jews. The fact that the views were expressed in a private letter was considered irrelevant to the Court.

### **Garaudy vs. France (24/06/2003)**

Between February and July 1996 four criminal complaints were lodged against Mr. Garaudy for denying crimes against humanity in his book *The Founding Myths of Israeli Politics*. The book was distributed through non-commercial outlets by “La vieille taupe” publishers. The Paris Court of Appeal found the applicant guilty and sentenced him to a suspended term of six months’ imprisonment and a fine of 50.000 French francs. It examined the question as the compatibility of section 24 bis of the Act of 29 July 1881 with Article 10 of the Convention. The Court said that “*section 24 bis of the Act of 29 July 1881 is aimed at preventing or punishing the public denial of facts that have been the subject of a final ruling by the Nuremberg International Military Tribunal and relate to the events that are totally incompatible with the values of the Convention for the purposes of Article 17*”.

In 2000 the Court of Cassation concluded that “*denial of the existence of crime against humanity falls within the provisions of section 24 bis of the Act of 29 July 1881, even where presented indirectly or in terms expressing doubts or by insinuation*”.

Before the ECtHR the applicant submitted that his right to express his opinions freely had been violated. The Court noted that denying crimes against humanity is one of the most serious forms of racial defamation of Jews; it continued by saying that the real purpose of the author of the book was to rehabilitate the National-Socialist regime and, as a consequence, accuse the victims of falsifying history. This behaviour constituted a serious threat to public order and was incompatible with democracy and human rights. As a conclusion, the Court considered that the main content and general tenor of the applicant’s book was markedly revisionist.

### **Chauvy and others vs. France (29/09/2004)**

On 14 May 1997 Mr. and Mrs. Aubrac sued Mr. Chauvy for defamation under the civil law. Chauvy, in his book, had accused the Aubracs of treachery. He said that Raymond Aubrac was the French officer whom the Germans used to infiltrate the leaders of the Secret Army upon its formation and a member of the Resistance whom Barbie turned into one of his department’s agents on his arrest in March 1943. The civil parties considered that the entire book tarnished their honour and reputation. The applicant was found guilty.

The applicant complained before the ECtHR that his right of freedom of expression had been infringed. The Court considered that although the issue in question (defamation) did not belong to the category of clearly established historical facts, it had to find a fair balance between the right of freedom of expression and the right of persons to protect their reputation. It concluded that the convictions were based on relevant and sufficient reasons.





## Annex 3: Main transitional justice legislation by Member State

### Austria (1945-2001)

- 1945, *Verbotsgesetz*, which outlawed the Nazi party and all National Socialist organizations
- 1946, decree on *Assets Confiscation Registration*
- July 1946, *First Restitution Act*, which covers property in the hands of the Austrian state
- February 1947, *Second Restitution Act*, which covers state-owned property that related to war crimes law
- February 1947, *Third Restitution Act*, which creates legal framework for restitution of property not in the hands of the state. Limits the right to inherit claims
- 1947, *Nationalsozialistengesetz* of 1947 (revised *Verbotsgesetz*)
- May 1947, *Fourth Restitution Act*, which creates legal framework for restitution of company names
- June 1949, *Fifth Restitution Act*, which established that companies could reclaim property
- June 1949, *Sixth Restitution Act*, which creates framework for reclaiming commercial patent rights
- July 1949, *Seventh Restitution Act*, which creates framework for dealing with private employment contracts not honored between 1938 and 1945
- June 1958, *Insurance Compensation Act*, establishes procedures for claims on life insurance policies nullified by Nazis due to racial laws
- June 1969, *Law on Settlement of Ownership of Art and cultural Properties in the Custody of the Federal Office for the Protection of Monuments*, which provides advance payments and claiming points for art objects. Original claim period to end of 1970 extended to end of 1972
- December 1985, *Second Art and Cultural Property Settlement Act*, which reopens claims for art objects in federal possession to be followed by an auction of unclaimed objects to benefit needy Holocaust survivors
- 2000, *Austrian Reconciliation Fund*, provides payments for forced laborers on Austrian soil
- 17 January 2001, *Washington Agreement and General Settlement Fund Act*, which creates framework for reparations based on losses in real estate, bank accounts, and other losses

### Belgium (1944-2006)

- Decree-law established a special commission to investigate war crimes, 13 December 1944
- Legislative Order of 17 January 1945 concerning the sequestration of the property of persons charged with crimes or offences against the external security of the State and the property of suspects
- 18 May 1945, *Law on 'repatriation fee'*
- September 1945, Decree Law on "*civic purge*",
- Law of 19 September 1945 on "*Armed resister*" which equaled the participation in the armed resistance to service in the regular Belgian army

- Law of 24 December 1946 on civil resister and objector to the forced labour
- Law of 24 December 1946 on *deported forced labourers* which sought to recognize those deported for forced labour
- Law of 5 February 1947 on *Foreigner Political Prisoners*
- Law on the competence of military courts concerning war criminals, 20 June 1947
- 6 August 1947, *Law on the compensating pensions*
- Creation of the National Memorial of the Fortress of Breendonk, 1947
- Law of 1 September 1948 on *Resisters through clandestine press*
- Creation of the Centre for Historical Research and Documentation on War and Contemporary Society, 13 December 1967
- Law of 11 April 2003 on new compensation measures on behalf of war victims (racial persecution)
- Law of 11 October 2006 on civil invalid of the war 1940-1945 by which recognition was attributed to those civil victims whose physical integrity was hurt, as a direct result of an act of violence

### **Bulgaria (1990-2006)**

- 29 December, 1989 Decision of the Council of Ministers for the *Abrogation of the so-called Revival Process*,
- 15 January, 1990 Decision of the 9<sup>th</sup> National Assembly for the *Vindication of the Repressed for Political reasons after 9 September 1944*,
- 15 January, 1990, *Law on Citizens' Names*, voted by the 9<sup>th</sup> National Assembly
- 1990, *Law on Amnesty and Release from Serving a Term of Imprisonment*
- Decree No 96 of the State Council of People's Republic of Bulgaria for the *Promulgation of a Decision on the Vindication of Organizations and Individuals, Repressed for Political Reasons*
- 20 March, 1990 Decision No 16 of the Council of Ministers for the *Conditions that have to be Assured for the Change of Bulgarian Citizens' Names in 1990*
- 30 March, 1990 Decision for *Political and Civil Vindication of Convicted and Repressed Persons*
- Decision No 38 of the Council of Ministers for the Order of Determining One-Time Indemnity to Persons, Repressed for Political Reasons after 1 January 1946, 28 April 1990
- 25 June, 1991 *Law on Political and Civil Vindication of Repressed Persons* (with several amendments)
- 19 December, 1991 *Law on the Property of the Bulgarian Communist Party, the Bulgarian Agrarian People's Union, the Fatherland Front, the Dimitrov's Communist Youth Union, the Union of the Active Fighters against Fascism and Capitalism and the Bulgarian Trade Unions*,
- 5 February, 1992 *Law on Restoring the Property on Nationalized Real Estates*, (amended several times)
- 24 December, 1992 *Law on Temporary Introduction of Some Additional Requirements for the Members of the Governing Bodies of the Scientific Organizations and the Supreme Attestation Commission*
- 13 October, 1994 *Decision of the National Assembly about the Information for the Organization, Methods and Means of the State Security Structures* (according to it the documents of the former State Security were declassified)
- 13 February, 2004 *Law for the Amendment and Supplement of the Law on the*

*Political and Civil Vindication of the Repressed Persons*

- 9 September, 2004 *Declaration of the National Assembly for the 60<sup>th</sup> Anniversary of the Establishment of the Communist Regime in Bulgaria*
- 16 June, 2006 *Law for the Amendment and Supplement of the Law on Restoring the Property on Nationalized Real Estates*

### **Cyprus**

- Law 53(I)/1992 (amended by Law 38(I)/1994) on *Vocational Rehabilitation of Disabled Persons and the Dependents of those who Fell Dead, are Missing, are Disabled or Enslaved*
- Law 55(I)/1997 (as amended by Law 100(I)/1998) on *Vocational Rehabilitation of Victims and the Children of Enslaved Persons*
- Law 24(I)/2001 on *Establishment of 15 July 1974 as a Day of Memory and Tribute for Those who Fell or Fought in Defense of Democracy* defines resistance fighters as those who fought in defense of democracy and against the coup as well as the victims of the coup

### **Czech Republic (1990-2007)**

- *Law on Judicial Rehabilitation* (119/1990)
- Act No. 403/1990 Coll. on the *Mitigation of the Consequences of Certain Property Losses* (“Small Restitution Law”)
- Constitutional Act No. 496/1990 Coll. on the *Reversion of Property of the Communist Party to the People of the Czech and Slovak Federative Republic*
- *Law on Extrajudicial Rehabilitation* (87/1991)
- Constitutional Act No. 497/1990 Coll. on the *Reversion of Property of the Socialist Youth Organization to the People of the Czech and Slovak Federative Republic*
- *Law on the Period of the Lack of Freedom* (Act No. 480/1991 Coll.), prohibits movements that advocate ideologies that suppress citizens’ rights and freedoms
- Act 451/1991 “*Lustration Law*” passed by the Czech and Slovak federative Republic
- Act No. 279/1992 Coll. on *Some Further Preconditions for the Execution of Some Offices Secured by Designation or Appointment of Servicemen of the Police of the Czech Republic and of the Prison Service*, extended it indefinitely via Act No. 422/2000
- Act No. 198/1993 on the *Illegality of the Communist Regime and on the Resistance to it, exempts from statutes of limitations crimes committed during the communist regime under certain conditions*
- Act No. 217/1994 Coll. on the *Provision of a Onetime Monetary Sum to Certain Victims of Nazi Persecution*
- 1995, establishment of the *Office for the Documentation of the Crimes of Communism*
- Act No. 140/1996, Act No. 107/2002, Act 499/2004 on Archives
- Decree No. 165/1997 Coll. on *Repayment of a Single Indemnity to Reduce Some Injustices Caused by the Communist Regime*. Also Act No. 261/2001 Coll. on *Political Prisoners Jailed Between 1948 and 1990* and Act 172/2002 on *Persons Abducted to the USSR*
- Act No. 327/1999 Coll. which Amends Act No. 140/1961, Criminal Code:

removes certain crimes committed during the Communist period from statutes of limitations

- Act No. 212/2000 Coll. on the *Mitigation of Certain Property Injustices Caused by the Holocaust*, June 23, 2000
- Act No. 422/2000, extended Act 451/1991 the Lustration Law indefinitely
- Act No. 261/2001 Coll. *On the Payment of a Lump Financial Sum to Participants of the National Struggle for Liberation, Political Prisoners and Persons Concentrated to Military Labor Camps for Racial and Religious Motives*
- Act No. 107/2002 Coll., on *Access to Documents Created through Activity of the State Security, broadened citizens' access to state security files*
- Act No. 499/2004 Coll., *Archiving and Filing Act*
- Act No. 203/2005 Coll. on the *Compensation of Certain Victims of the Military Occupation of Czechoslovakia by the Union of Soviet Socialist Republics, German Democratic Republic, Polish People's Republic, Hungarian People's Republic and Bulgarian People's Republic*
- Act No. 357/2005 Coll. on the *Acknowledgment of Participants in the National Struggle for the Formation and Liberation of Czechoslovakia and Certain of their Survivors, on Extra Contribution to the Pensions of Certain Persons, on a Onetime Monetary Sum to Certain Participants in the National Struggle for Liberation in the Years 1939 to 1945 and on the Amendment of Certain Acts*
- Act No. 181/2007 Coll. on the *Institute for the Study of Totalitarian Regimes and the Archive of Security Forces, and on Amendments of Some Acts*

#### **Denmark (1945-1946)**

- Act No. 259 of 1 June 1945 on *Amendment of the Civil Criminal Code Regarding Treason and Other Threats to the State*
- Act No. 260 of 1 June 1945 on *Amendment of the Administration of Justice Act Regarding the Processing of Cases on Treason and Other Threats to the State*
- Act No. 322 of 7 July 1945 on *Establishment of a Special Tribunal for Civil Servants*
- Act No. 406 of 28 August 1945 on *Amendment of Act No. 259 of 1 June 1945 on Amendment of the Civil Criminal Code regarding Treason and Other Threats to the State*
- Act No. 490 of 9 October 1945 on *Satisfaction for Undeservedly Interned Persons*
- Act No. 500 of 9 October 1945 on *Repayment of Profits Made by Commercial Activities in German Interest*
- Act No. 356 of 29 June 1946 on *Changes to and Amendments of Act No. 259 of 1 June 1945 on Amendment of the Civil Criminal Code regarding Treason and Other Threats to the State*
- Act No. 395 of 12 July 1946 on *Punishment for War Crimes*

#### **Estonia (1992-2009)**

- February 1990, decree to rehabilitate all individuals convicted under a range of paragraphs dealing with political crimes in the Soviet Russian criminal code
- 1992, *Law on the Rehabilitation of Persons Extra-judicially Repressed and*

*Wrongfully Convicted*

- 1991, *Bases for Property Reform Act* which mandated a policy of property restitution, meaning either the return of nationalized property (if it was still in existence) or the payment of compensation in the form of special privatization vouchers
- 1992, *Act on Procedure for Taking the Oath of Conscience*, extensively amended on 22 September 1994
- 1994, *Holidays and Commemorative Days Act* (amended in 2009)
- 19 January, 1995, *Law on Citizenship* denied Estonian citizenship to those who have been employed or are currently employed by the intelligence or security service of a foreign state
- 1995, *Law on Procedure for Registration and Disclosure of Persons who Have Served in or Co-operated with Intelligence or Counter-intelligence Organisations of Security Organisations or Military Forces of States which Have Occupied Estonia*
- June 2001, new Criminal Code: Paragraph 90. punishes Genocide even when directed against a group resisting occupation or any other social group
- 2003, *Individuals repressed by the occupation regimes Act*, which defines a particular legal status for repressed persons along with particular social and other rights to which these individuals would be entitled
- February 1, 2008, *Law creating the Memory Institute*

**Finland (1945-1947)**

- September 15, 1945, Law 890/1945 on punishing those “*guilty of war*”
- January 17, 1947, Law 5/1947 punishing *illegal preparation of action resorted to weapons*

**France (1944-2009)**

- Ordinance of 7 January 1944 authorized the forced retirement of civil servants, in specific cases, within the year of the cessation of hostilities
- Ordinance of 27 June 1944 authorized the trial and punishment of all civil servants for acts of collaboration with the enemy and for having undermined the [democratic] institutions and public liberties
- Ordinance of 9 August 1944 *on the restoration of republican legality on the Maitland*
- Ordinance of 26 August 1944 instituting *national indignity*
- Ordinance of 18 November 1944 created the High Court of Justice to judge crimes of collaboration with the Germans committed by senior Vichy officials
- Law of 16 June 1948 making the state responsible for the reimbursement of the sums paid by persons spoliated as a result of laws or decrees of the Vichy government
- *First amnesty law* for the early liberation of certain detained persons, n° 51-18 5 January 1951 (a second amnesty law was adopted in August 1953)
- *Law on archives*, No. 79-18 of 3 January 1979
- Decree of 25 March 1997 creating a *Mission of Study on the Spoliation of Jews of France*, called Mission Matteoli, by the name of its president
- Decree of 10 September 1999 the “*Commission of indemnities of victims of spoliations effected as a result of antisemitic legislative measures in force*”

*during the Occupation”*

- Decree no. 2000-657 of 13 July 2000 instituting a measure of reparation in favour of orphan children whose parents have been victims of antisemitic persecutions: a monthly life pension of Francs 3,000 (€ 450) or a capital of Francs 180,000 (€ 27,450)
- Law No. 2008-696 of 15 July 2008 related to archives liberalized the law of 1979. It created the Conseil supérieur des archives (High Council of Archives), placed under the Minister of Culture
- Decision of the Council of State of 16 February 2009 on France’s responsibility in deportation resulting from anti-semitic persecutions

**Germany (Nazi past) (1953-1998)**

- 1 October 1953, *Compensation Law (Bundesergänzungsgesetz)* which regulated the payments to the victims of racial, religious and political persecution for damages of life, health, liberty, property and professional progress
- 19 July, 1957, *Federal Restitution Law (Bundesrückerstattungsgesetz)*
- During 1960, treaties with eleven Western European nations in which West Germany committed itself to the payment of 876 Million DM for victims from these countries
- 28 May 1998, Bundestag revoked unjust national socialist sentences in criminal law

**Germany (GDR) (1990-2007)**

- 24 August 1990, *Gesetz über die Sicherung und Nutzung der personenbezogenen Daten des ehemaligen MfS/AfNS*, calling for the preservation of the Stasi files under parliamentary control and for making their contents available to the victims
- 18 September, 1990 *Rehabilitation law*, to clear the names of victims and ensure compensation for them
- 1991, *Stasi Files Act (Stasi-Unterlagengesetz, StUG)* which facilitated individual access to personal data which the State Security Service stored regarding him
- 4 November 1992, first law to remove ‘SED injustice’, aimed at rehabilitation of politically persecuted persons and combined the process of cassation and rehabilitation
- 1993, Law rehabilitating those adversely affected by administrative and employment decisions followed: the so-called *Zweites SED-Unrechtsbereinigungsgesetz*
- 1996, *Act for the Settlement of Open Property Issues*
- 13 June 2007, new rehabilitation law (*Drittes Gesetz zur Verbesserung rehabilitierungsrechtlicher Vorschriften in der ehemaligen DDR*)

**Greece (1974)**

- Constitutional Act reinstating the Constitution of 1952, August 1, 1974
- Legislative decree 59/23, September 1974 allowed free operation of all political parties and abolished a previous law that outlawed the Communist Party
- Constitutional decree, September 3, 1974 concerning those high ranks of the faculty illegally appointed during the dictatorship

- Definition of the crimes of the dictatorship, October 3, 1974
- *Amnesty law*, July 27 1974, for those convicted on political grounds
- Legislative Decree (59/ 23 September 1974) allowed the free operation of all political parties and abolished Law 509 of 1947 which had outlawed the Communist Party

### Hungary (1990-2006)

- 1989, 1<sup>st</sup> *Rehabilitation statute* passed by the outgoing Communist Parliament;
- Law No. 36 of 1989 on the remedy of convictions related to the uprising of 1956
- 2<sup>nd</sup> *Rehabilitation statute* - Act no. 26 of 1990 on invalidating the illegal convictions between 1945 and 1963
- Governmental Decree 93 of 1990 *redressing of some injustices resulted from the communist labor law*
- June 26, 1991 *Compensation Laws No. 25*
- December 1991 the law of the prosecutability of communist crimes
- 3<sup>rd</sup> *Rehabilitation statute* - Act no. 9 of 1992 on invalidating of convictions for certain crimes against the state and public order between 1963 and 1989, passed by the first democratically elected parliament
- Law No. 11 of February 19, 1992 *Law Voiding Certain Convictions 1963-1989*
- Law No. 24 of April 7, 1992 the law adopted in order to “settle ownership conditions, to provide partial compensation for unjust damages inflicted by the State to the property of citizens as a result of enforcing legal provisions created between 1 May 1939 and 8 June 1949
- 30 October 1993 Act XC a new legal framework for investigating by the Ministry of Justice fifty episodes of mass shooting that occurred 23 October to 28 December 1956
- Act XXIII of 8 March 1994 on the *Screening of Holders of Some Important Positions, Holders of Positions of Public Trust and Opinion-Leading Public Figures and on the History Office*
- Act CXXV of 1995 on the *National Security Services*
- Act LXV of 1995 on the *State secrets and service secrets* (or the Secrecy Act)
- Act XXIX of 1997 - compensation is due to the relatives of those deceased persons whose death penalty was enforced on the basis of an unlawful judgment of the Hungarian court
- 4<sup>th</sup> *Rehabilitation statute* - Act no. 130 of 2000 on *invalidating convictions in connections with the repression following the 1956 revolution*
- Act XC of 2000 extended the scope of mandatory screening
- Act no. 93 of 2000 Legislation allowing *access to files of the Communist secret services to victims and researchers*, creating the Agency for History [Történeti Hivatal] was adopted as an afterthought, forced upon Parliament by the Constitutional Court
- 58/2000. (VI. 16.) OGY decision on Holocaust Memorial Day and the Memorial Day of the victims of Communism
- Act no. 17 of 2001 on the significance of regaining the freedom of the country and on the Day of Hungarian Freedom
- Act III of January 2003 on the *Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the State Security Historical Archive*



- Act XLVII of 2006 on reopening the deadlines stipulated in Act XXXII of 1992 on compensation due to persons unlawfully deprived of life and liberty; the act ruled that claims for compensation could be submitted from March 31, 2006 to December 31, 2006

#### **Ireland**

- Not applicable

#### **Italy (1943-1949)**

- July 27, 1943, creation of commissions for *purging of the public administration*
- July 27, 1943, *dissolution of the National Fascist Party, suppression of the 'Grand Council' and of the Special Court*. The militia is incorporated into the army
- August 1943, *substitution of rectors of the large universities*.
- Decree of December 9, 1943 on *rehabilitation of those civil servants suspended from office because of their political motivations before 1943*
- Royal legislative decree of December 28, 1943, *law on anti-fascist purges from Public Administration, regional institutions and any other governmental organism*
- July 27, 1944 Decree on *Sanctions against Fascism* (Creation of a High Court of Justice)
- Law decree of June 22, 1946 on *Amnesty and Indult to common, political and military prisoners*
- February 9, 1948, *Grant of amnesty and pardon for the political and common crimes regarding supplies*
- December 23, 1949, *Authority to grant pardon given to the President of the Republic*

#### **Latvia (1990-2001)**

- August 3, 1990, *Law Concerning the Rehabilitation of Illegally Repressed People*
- November 1990, *Law Concerning Lands Reform in the Rural Areas of the Republic of Latvia* (return of rural land to the rightful owners).
- August 17, 1991 *Law Concerning Amnesty for Persons Punished for Military Crimes* rescinded the convictions of persons illegally condemned
- March 19, 1991, *Law Concerning the Free Development of National and Ethnic Groups and their Rights to Cultural Autonomy*
- August 23, 1991, decision entitled *Concerning the Anti-constitutional Activities on the Latvian Communist Party in the Latvian Republic*
- August 24, 1991, the SCL promulgated a decision entitled *On the Cessation of the Activities of the Security Services of the USSR in the Republic of Latvia*
- October 30, 1991, *Law Concerning the Denationalization of Private Real Estate in the Republic of Latvia and Law Concerning the Return of Real Estate to Lawful Owners*
- November 20, 1991, *Law Concerning Land Reform in the Cities of Latvia*
- January 13, 1994, the *Election Law on City and Town Councils, District Councils and Pagasts Councils, banned those who belong or have belonged to the salaried staff of the USSR, the Latvian SSR or another country's state*

*security, intelligence or counterintelligence services from running in local elections*

- March 16, 1995, *Law on Citizenship*, denied Latvian citizenship to those who after 4 May 1990, have propagated fascist, chauvinist, national-socialist, communist or other totalitarian ideas or incited ethnic or racial hatred or discord, if such has been established by a judgment of a court
- April 12, 1995, *Law Concerning the Determination of Repressed Status for Persons Who Suffered under the Communist and Nazi Regimes* (amended in 1997, 1998, 1999, 2001, and 2004. Paragraph 4 of this law sets compensation measures and commemoration dates)
- On 12 May 2005 the Saeima issued a *Declaration on condemnation of the totalitarian communist occupation regime implemented in Latvia by the Union of Soviet Socialist Republics*

### **Lithuania (1991-2007)**

- According to article 150 of the Constitution, (1) The constituent parts of the Constitution of the Republic of Lithuania shall be (2) The 11 Feb 1991 Constitutional Law "On the State of Lithuania" and (3) The 8 June 1992 Constitutional Act "*On the Non-Alignment of the Republic of Lithuania with Post-Soviet Eastern Alliances*"
- May 2, 1990, *Law on rehabilitation of persons repressed for resistance to occupation regime* (last amended on November 13, 2008, No. X-1814)
- 1991, Decree N° 418 *Banning KGB Employees and Informers from Government Positions*
- 18 June 1991, *Law on Restitution of the Property Rights of the Nationals of the Republic of Lithuania to the Remaining Immovable Property*
- 22 December 1994, *Law on State Pensions*
- 5 December 1995, *Law on Documents and Archives*
- 5 June 1997, *Law on the Centre of Research of the Genocide and Resistance of the Lithuanian Population*
- 30 June 1997, *Law on the Legal Status of the People of the Republic of Lithuania Who Fell Victims to the Occupations of 1939-1990*
- 1 July, 1997, *Law on the Restitution of Remaining Immovable Property Rights of the Citizens of The Republic of Lithuania*
- 25 November 1997, *Law on State Support to the Participants of Armed Resistance*
- 6 October 1998, *Law on State Support to Families of the Fallen Participants of the Resistance against the 1940-1990 Occupations*
- 16 July 1998, *Law on Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of This Organisation*
- 23 November 1999, *Law on Registering, Confession, Entry into Records and Protection of the Persons Who Have Admitted to Secret Collaboration with Special Services of the Former USSR*
- June 13, 2000 No. VIII – 1727, *Law on Compensation of Damage Resulting from the Occupation by the USSR*
- June 2000, *Rules of Procedure of the International Commission for the Evaluation of the Crimes of the Nazi and the Soviet Occupation Regimes in Lithuania*

- 28 June 2007, amendments to the *Law on the Legal Status of Participants of Resistance to 1939-1990 Occupations (1997)*

### **Luxembourg (1944-1951)**

- Grand-Ducal Decree of 17 August 1944 on *sequestration of enemy property*
- Grand-Ducal Decree of 6 September 1944 concerning the *restitution of property to those who suffered seizure or confiscation by the occupant*
- Grand-Ducal Decree of 4 October 1944, concerning the *creation of the War Damages Office*
- Law of 25 February 1950 concerning *indemnities to those damaged by the war* (modified in 1993)
- Law of 26 April 1951 concerning the *sequestration and liquidation of German goods, rights and interests*

### **Malta**

- Not applicable

### **Netherlands (1944-1987)**

- 1944 decree (later law) against Treacherous Organizations, banning the Dutch Nazi Party
- 17 September 1944, *Decree on the Recovery of Legal Relations regulated the issue of property recovery as related to the occupation*
- November 19, 1945, *Decree on Political Delinquents*
- Decree on *Material Damages of War*, 9 November 1945, on compensation of damages as a consequence of the war (replaced by a Law of 9 February 1950)
- 27 June 1947, *Law Holding New Provisions Relating to the Extraordinary Jurisdiction*
- Law on *Extraordinary Pension*, September 29, 1947, granted pensions for specific categories of victims
- 1965, a National Monument for the memory of World War II was established
- 1 January 1973, Law on *Benefits for Victims of Persecution for victims of persecution on the basis of race, religious belief or political opinion*
- 1986, Law providing assistance to those who had resisted the Japanese occupation in the former Dutch East Indies
- 1987, creation of the National Committee for the Commemoration of May 4 and 5

### **Poland (1991-2009)**

- Article 13 of the Constitution bans political parties whose programmes are based upon totalitarian methods and the modes of activity of Nazism, fascism and communism
- January 24, 1991 *Act on combatants* and some people who had been victims of war and post-war repressions (reformed on June 5<sup>th</sup>, 2007)
- 23 February, 1991, *Rehabilitation Act*, which rendered all sentences aimed against those fighting for independence of the Polish state invalid
- 11 April, 1997, *Screening Law* (also known as Lustration Law) on the necessity

for a range of public servants of a statement declaring whether they had collaborated with or worked in the secret services in 1944-90.

- 16 April, 1998, Senat declared the soviet-occupied Poland as non-democratic and totalitarian state
- June 18, 1998, parliament passed a *law condemning the communist dictatorship imposed by the Soviet Union and Josep Stalin*
- December 1998, parliament passed a law stating that judges serving in the period 1944-89 could be brought before a disciplinary court and removed from office if was proved that they had issued unjust sentences or obstructed the defendant's rights
- 18 December, 1998, parliament passes a bill establishing the *Institute of National Remembrance - Commission of the Prosecution of Crimes against the Polish Nation "IPN"*
- May 24, 2002, *Act on the Internal Security Agency and Intelligence Agency*
- 8 July, 2005 *Act on implementation of the entitlement to compensation for the property left beyond the current borders of Poland*
- 18 October 2006, *Lustration Act on Disclosure of Information on Documents of Security Service Organs Collected during the period 1944-1990 or on the Content of these Documents*
- 9 January, 2009 *Act on the change of the act on pension provision for professional soldiers and their families and of the act on pension provisions for employees of the Police, Agency of Internal Security, Intelligence Agency, Services of the Army Intelligence, Central Anticorruption Office, Border Guards, Office for the Government Protection, State Fire Brigades and Prison Officers and their families*
- 7 May, 2009, *Act on compensation for the families of victims of group independence activities in years 1956 – 1989*

### Portugal (1974-2003)

- Article 46.4 of the Constitution, organizations which adopt fascist ideology are not permitted
- Decree-law 277/74, 25 June, dismissal from public administration and scrutiny of behaviour that contradict the new established order
- Decree-law 398/74, 28 August, *impossibility of application of Habeas Corpus to those under military law* (affecting former officers of the political police)
- Decree-law 621-B/74, 15 November, "*civic disqualification*". Prohibition of running for elections and vote
- Decree-law 123/75, 11 March, reinforcement of the purges adopted through DL 277/74 for acts committed during the dictatorship
- Decree-law 147C/75, 21 March, GNR officers who did not 'obey the principles espoused by the MFA' are placed in the reserve
- Law 8/75, 25 July, *criminalization of all former officials and collaborators of the political police during 1945-74*
- Decree-law 729/75, 22 December, a pardon of 90 days is applicable to all officers of the political police held in preventive detention
- Law 16/75, 23 December, *extinction of the Military Court*
- Decree-law 43/76, 20 January, *moral and material reparation to those injured during sacrifices having been made in the armed forces in name of the nation*
- Decree-law 471/76, 14 June, ideologically motivated purges conducted by

workers in the private and public sector from 1974 to 1976, regardless of the existing laws, are legally null and void

- Decree-law 139/76, 19 February, allows the rehabilitation of all those dismissed by the decree-law 123/75 when the individual has not acted against democracy or when the individual has in the meantime rectified the behaviour
- Decree Law 171/77, 30 April, establishes a pension for exceptional merits in the defence of freedom and democracy
- Decree Law 43/78, 11 March, determines that pensions should be attributed according to decree law 47084, 9 July 1966 and adds the requisite of proof
- Law 64/78 prohibits racist organizations or organizations adhering to a fascist ideology
- Decree Law 31/81, 28 February, gives the Council of Ministers the possibility of fixing the pensions to be attributed
- Resolution 34/95, 19 April, inquiry into the hypothetical providing of information and documents of the PIDE/DGS archive to KGB
- Law 9/96, 23 March, amnesty to acts committed for political reasons from 27 July 1976 to 21 June 1991
- Law 20/97, 19 June, inclusion of time spent in prison or underground activity for political reasons
- Decree Law 189/2003, 22 August, attribution of pension for exceptional acts in the defense of freedom and democracy

### Romania (1990-2007)

- Decree-Law 3 of 4 January 1990 on *amnesty for some crimes and pardoning others* (applicable to crimes perpetrated during the Revolution of December 1989)
- Decree 40 of 9 January 1990 on *measures to commemorate heroes of the Revolution*
- Decree-Law 118 of 30 March 1990 on granting some rights to the individuals politically persecuted by the dictatorship installed on 6 March 1945
- Decree-Law 124/24 April 1990 on the *Liberty Fund*
- Law 42/1990 on *Honouring Heroes-Martyrs and Rewarding Their Relatives, the Wounded, and the Fighters for the Victory of the December 1989 Revolution. The law also created the Commission for Honouring and Supporting the Heroes of the Revolution of December 1989*
- Law 49/1991 on granting compensation to war invalids, veterans and widows
- Law 128/1992 on declaring martyr-towns
- Law 138/1994 on declaring Arad, Braila, Buzau and Targoviste martyr-towns of the December 1989 Revolution
- Law 44/1994 on war veterans, and on some rights of war invalids and war widows
- Law 112 of 28 June 1995 on the legal situation of some dwellings confiscated by the state (restitution in nature or compensation depending on the circumstances)
- Governmental Emergency Ordinance 83/1999 on *Restitution of Buildings Belonging to Communities Representing Ethnic Minorities in Romania*
- Law 187/1999 on *Access to Secret Files and the Unveiling of the Securitate as Political Police* (known as the Ticu law); in January 2008 the law was deemed unconstitutional by the Supreme Court

- Law 189/2000 for approving Governmental Ordinance 105/1999 for granting some rights to individuals persecuted because of ethnic reasons by the regime installed in Romania from 6 September 1940 to 6 March 1945
- Governmental Emergency Ordinance 214 of 29 December 1999 on *granting the title of fighter in the anticommunist resistance to persons sentenced for political reasons and persons subjected to administrative abuse because of political reasons*
- Governmental Emergency Ordinance 94/2000 created a *Special Restitution Commission on the Return of Buildings Belonging to Religious Denominations in Romania*
- Law 10/2001 on the *Legal Status of Buildings Abusively Confiscated during the 6 March 1945 – 22 December 1989 Period*
- Law 690/2001 on declaring Resita martyr-town of the December 1989 Revolution
- Law 766/2001 on declaring Alba-Iulia martyr-town of the 1989 Revolution
- Law 309/2002 on granting some rights to new recruits drafted by the General Direction of Labor Service during the 1950-1961 period
- Law 351 of 6 June 2002 on declaring the town of Cugir martyr-town of the Revolution of 1989
- Law 572/2003 on declaring Lugoj martyr-town of the 1989 Revolution
- Law 303/2004 on the statute of judges and prosecutors (amended on 8 October 2007)
- Law 341 of 12 July 2004 on gratefulness toward heroes-martyrs and fighters who contributed to the victory of the Romanian Revolution of December 1989
- Governmental Decision 1481/2005 on the *Creation of the Property Fund*
- Governmental Emergency Ordinance 149/2005 on *Measures Extending the Activity of the National Council for the Study of Securitate Archives*
- Law 247/2005 created the Central Commission for Establishing Compensation
- Law 95 created the Sighet Memorial as a national historical site. Also Romanian Government's Decree No. 1724/ 21.12.2005 setting up the Institute for the Investigation of Communist Crimes in Romania
- Governmental Emergency Ordinance 81/2007 for accelerating the procedure of granting compensations for abusively confiscated buildings
- Presidential Commission for the Analysis of Communist Dictatorship in Romania, January 2007

### **Slovakia (1990-2006)**

- *Law on Judicial Rehabilitation (119/1990)*
- Act No. 403/1990 Coll. on the *Mitigation of the Consequences of Certain Property Losses* ("Small Restitution Law")
- Constitutional Act No. 496/1990 Coll. on the *Reversion of Property of the Communist Party to the People of the Czech and Slovak Federative Republic*
- *Law on Extrajudicial Rehabilitation (87/1991)*
- Constitutional Act No. 497/1990 Coll. on the *Reversion of Property of the Socialist Youth Organization to the People of the Czech and Slovak Federative Republic*
- Act No. 319/1991 on the *Mitigation of Certain Property and Other Injustices and on the Responsibilities of the Organs of State Administration of the Slovak Republic in the Area of Extrajudicial Rehabilitation*

- Act 451/1991 *Lustration Law* passed by the Czech and Slovak federative Republic
- Law on the *Period of the Lack of Freedom* (Act No. 480/1991 Coll.), it prohibits movements that advocate ideologies that suppress citizens' rights and freedoms
- Act No. 282/1993 on the *Mitigation of Certain Property Injustices Caused to Churches and Religious Societies*
- Law on the *Immorality and Illegality of the Communist Regime* (Act No. 125/1996), establishes that crimes that were not punished or indicted for political reasons incompatible with fundamental democratic principles remain liable for prosecution and not covered by statute of limitations
- Act No. 305/1999 Coll. on the *Mitigation of Certain Injustices to Persons Deported to Nazi Concentration Camps and Prisoner of War Camps*
- Act No. 105/2002 Coll. on the *Provision of a Single Financial Contribution to Soldiers of Czechoslovak Foreign or Allied Armed Forces and to Persons Who Participated in Domestic Resistance in the Period from 1939 to 1945*
- Act No. 462/2002 Coll. on the *Provision of a Single Financial Contribution to Political Prisoners*
- Act No. 553/2002 Coll. on *Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 -1989 and on Founding the Nation's Memory Institute*
- Act No. 547/2005 Coll. on the *Compensation of Victims of the Occupation of Czechoslovakia by the Forces of the Union of Soviet Socialist Republics, the German Democratic Republic, the Polish People's Republic, the Hungarian People's Republic, and the Bulgarian People's Republic*
- Act No. 219/2006 on *Anti-Communist Resistance* (establishes "full moral rehabilitation" and, under certain circumstances, status as a war veteran)

### **Slovenia (1991-2003)**

- December 7, 1991 *Denationalization law*, recognised the right to request the return of property that had been nationalized after the Second World War
- Act of 17 October 1995 on *war invalids* which provides for rights of war invalids and their family and rights linked with the death of a war invalid (establishment of invalidity, invalidity benefit, social protection), rehabilitation, family benefit, eligibility, loss of the right, realization of rights.
- 1996, *Act on repatriation of wrongs*
- July 1, 2003, *Act on war burial sites* regulated maintenance of burial sites from wars in Slovenia and the maintenance and restoration of war cemeteries in Slovenia and abroad
- 2003, *Victims of War Violence Act*
- 2003, *Redressing of Injustices Act*
- 12 May 2006 *Act on the Protection of the Right to a Trial without Undue Delay*

### **Spain (1975-2008)**

- Decree 2940/1975, 25 November 1975, which grants general indult with the occasion of the proclamation of King Don Juan Carlos (BOE 26 November 1975)
- Order 17 December 1975 which extends to local entities the application of the

**Indult (BOE 24 December 1975)**

- Order 5 December 1975 which extends the benefits of the Decree 2940/1975, of 25 November, to the academic domain (BOE 298 12 December 1975)
- Order 5 December 1975 which extends measures of indult to public servants and public organism sanctioned in application of the law 1939 on political responsibilities (BOE 308 d24 December 1975).
- Decree-Law 10/1976, of *Amnesty*, 30 July 1976 (BOE 186 4 August 1976)
- Law 21/1976, 14 June on the *right to political association* (BOE 144 16 June 1976) which refers explicitly to the requirements of a democratic society
- Law 1/1977 4 January for *Political Reform* (BOE 4, 4 January, 1977)
- Royal Decree 388/1977, 14 March on *general indult* (BOE 66, 18 March 1977)
- Royal Decree 1081/1978, 2 May, for the application of amnesty to the civil servants of the Catalan Government (BOE 126/1978, 27 May 1978)
- Royal Decree 44/1978, 21 December, which regulates the situation of auxiliary personnel of courts who were separated from service because of politically motivated reasons (BOE 308 23 December 1978)
- Decree 1891/2004, 10 September for the creation of the *Interministerial commission for the study of the situation of the victims of the Civil War and Francoism* (BOE núm. 20september 2004)
- Law 24/2006, 7 July, on the *declaration of the year 2006 as the Year of Historical Memory* (BOE 8 July 2006)
- Law 52/2007, of 26th December, by which rights are recognised and extended and measures are established in favour of those who suffered persecution or violence during the civil war and the dictatorship (BOE 310 27 December 2007)
- Decree 1791/2008, November 3, 2008, on *declaration of reparation and personal acknowledgement to those persecuted or repressed during the Civil War and the Dictatorship* ((BOE 17 November 2008)
- Decree 1792/2008, November 3, 2008, *granting Spanish nationality to the volunteers of the International Brigades* (BOE 17 November 2008)

**Sweden (1945-2006)**

- January 1945, the Swedish Parliament appointed a commission to investigate the activities of the national security service as well as the Swedish treatment of refugees during the war
- Regulation on 17 June 1945 according to which no personnel in the defense was permitted to pertain to extremist parties
- February 13, 1997, the Minister for Foreign Affairs appointed a Commission to clarify what happened with the property of Jewish origin that was brought to Sweden in connection with the persecution of Jews before and during the Second World War
- 2006: The Government assigned to Forum for Living History the task to collect information about the crimes against humanity committed by communist regimes (Soviet, China and Cambodia between 1917 and 1989)

**United Kingdom**

- Not applicable





## Annex 4: Bibliography

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