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ACT

of 8 June 2007

**on the Institute for the Study of Totalitarian Regimes and the Security Services Archive,
and on Amendments of some Acts**

Preamble

Those who do not know their past are doomed to repeat it.

The Parliament of the Czech Republic, aware of its duty to cope with the consequences of the totalitarian and authoritative regimes of the 20th century, hereby expresses its will to investigate and recall the consequences of the activity of criminal organizations based on the Communist and Nazi ideologies advocating suppression of human rights and rejecting the principles of a democratic state in the years 1938 - 1945 and 1948 - 1989.

The knowledge of historical sources and other evidence relating to the above regimes and events leading to their establishment makes it easier to understand the consequences of systematic destruction of the traditional values of European civilization, deliberate violation of human rights and freedoms, moral and economic decline accompanied with judicial crimes and terror against proponents of different opinions, replacement of a functioning market economy with directive control, destruction of the traditional principles of proprietary rights, abuse of education, science and culture for political and ideological purposes, and reckless destruction of nature. Citizens' education in these subjects contributes to the strengthening of democratic traditions and enhancement of civil society and at the same time helps to accomplish the ideals of justice, describe the committed crimes and identify their organizers and executors.

The Parliament of the Czech Republic, aware of

- the need to preserve the memory of the huge number of victims and of the losses and damage suffered by the Czech people and other peoples in the territory of the Czech Republic at the time of totalitarian dictatorships,

- patriotic traditions of social resistance against occupation and expressions of

totalitarianism, which reflected the citizens' struggle for freedom and democracy in defending human rights and human dignity,

- obligation to prosecute crimes against peace and humanity and war crimes,

- the state's obligation to indemnify all those who suffered damage caused by the state that violated human rights, the international law as well as its own laws, and

- the state's obligation to allow the public maximum possible access to the secret activity of the totalitarian and authoritative regimes security services, as an expression of its conviction that unlawful acts of any totalitarian or authoritative regime against citizens must not be protected by secrecy or forgotten, has agreed on the following Act:

PART ONE

INSTITUTE FOR THE STUDY OF TOTALITARIAN REGIMES AND SECURITY SERVICES ARCHIVE

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

This Act governs the establishment and activity of the Institute for the Study of Totalitarian Regimes (hereinafter the "Institute") and the Security Services Archive (hereinafter the "Archive"), requirements relating to the staff of the Institute and the Archive, and the conditions set for transferring documents from the time of communist totalitarian power to the Archive.

Article 2

For the purposes of this Act:

a) The time of non-freedom is understood as the period from 30 September 1938 to 4 May

1945¹⁾.

b) The time of communist totalitarian power is understood as the period of Czechoslovakia's history from 25 February 1948 to 29 December 1989, and also the preceding period during which acts relating to the preparation of the totalitarian takeover of power by the Communist Party of Czechoslovakia were under way.

c) Security services are understood as the Federal Ministry of the Interior, Ministry of the Interior of the Czech Socialist Republic with the exception of sections engaged exclusively in activities pertaining to civil law and administration, the National Police Corps with the exception of sections functioning as state archives, the Corrections Force, Frontier Guards Forces, Ministry of the Interior Forces, the Intelligence Service of the Czechoslovak People's Army General Staff, the Internal Protection Section of the Corrections Force of the Ministry of Justice of the Czech Socialist Republic, and their predecessors at the time of communist totalitarian power.

CHAPTER II

INSTITUTE FOR THE STUDY OF TOTALITARIAN REGIMES

Article 3

(1) The Institute is established with its seat in Prague.

(2) The Institute represents an organizational unit of the state, with any interference in its activity allowed only under the law.

(3) The Institute represents an accounting unit. The activity of the Institute is covered from an independent state budget chapter.

Article 4

The Institute shall:

a) study and objectively evaluate the time of non-freedom and the time of communist totalitarian power, investigate the antidemocratic and criminal activity of state bodies, and its security

services in particular, and the criminal activity of the Communist Party of Czechoslovakia and other organizations based on its ideology,

b) analyze the causes and way of the democratic regime liquidation at the time of communist totalitarian power, document the involvement of Czech and foreign persons in supporting the communist regime and in resistance against it,

c) secure and make accessible to the public documents relating to the time of non-freedom and the time of communist totalitarian power, and to the activity of security services and the forms of persecution and resistance in particular,

d) transfer the acquired documents into the electronic form without unreasonable delay,

e) document Nazi and communist crimes,

f) acquaint the public with the results of its activity, and primarily publish information about the time of non-freedom, the time of communist totalitarian power, and about the deeds and fates of individuals; issue and spread publications, organize exhibitions, seminars, professional conferences and discussions,

g) cooperate with scientific, cultural, educational and other institutions for the purpose of exchanging information and experience relating to professional issues,

h) cooperate with foreign institutions and persons of similar orientation.

Article 5

(1) The Institute is entitled to process personal data in the extent necessary for fulfilling its tasks.

(2) State bodies, organizational units of the state, territorial self-administration bodies, and organizations receiving contributions from the state budget and from territorial self-administration units, including the archives they administer - all these entities that keep documents and archival materials concerning the time of non-freedom and communist

totalitarian power and relating to the Institute's tasks are obliged to provide the Institute with the needed assistance free of charge and without unreasonable delay. The Institute is entitled to make copies of the given documents and archival material at its own cost.

Article 6

The bodies of the Institute include the Institute Council (hereinafter the "Council") and the Institute Director (hereinafter the "Director").

Article 7

(1) The supreme body of the Institute is the Council comprised of seven members who are elected and recalled by the Senate of the Parliament of the Czech Republic (hereinafter the "Senate").

(2) Candidates for Council members are proposed to the Senate by the Chamber of Deputies, the President of the Republic, and by civil associations or other legal persons engaged in historical research, archival activities, education, human rights protection, or civil associations of participants in the resistance movement against Nazism or in resistance and opposition against communism, or those associating former political prisoners (hereinafter "Associations").

(3) Of all the nominated candidates, the Senate elects two Council members from the candidates nominated by the Chamber of Deputies, one Council member from the candidates nominated by the President of the Republic, and four Council members from the candidates nominated by the Associations.

(4) Council members are elected for a five year's term of office. No one may be elected more than twice in succession.

(5) Any natural person with legal competence who is reliable and incorruptible may be elected Council member.

(6) Membership of the Council is incompatible with the office of the President of the Czech Republic, a deputy, senator, member of the Government, judge, public prosecutor,

member of the Supreme Control Office, or a member of the Czech National Bank's Banking Council. Membership of the Council is incompatible with membership of any political party or political movement.

(7) Membership of the Council terminates:

- a) on the expiry of the respective Council member's term of office,
- b) as of the day following the date of delivery to the Senate Chairman of a written statement by the respective Council member on resigning his/her office,
- c) by the death of the respective Council member,
- d) as of the effective day of a judgement by which the respective Council member is deprived of legal capacity or by which his/her legal capacity is restricted,
- e) as of the effective day of a judgement by which the respective Council member is convicted of a wilful criminal offence,
- f) as of the day following the day when the Senate adopts a resolution on recalling the respective Council member from his/her office.

(8) The Senate shall recall a Council member if:

- a) he/she ceases to satisfy the incompatibility condition relating to his/her office,
- b) the respective Council member's affirmation of his/her reliability turns out to be false.

(9) The Senate may recall a Council member if he/she fails to duly perform his/her duty for a period exceeding six months.

Article 8

The Council elects from its members its Chairman and Deputy Chairman, and recalls them from their office. The Council's sessions are summoned and chaired by its Chairman, or, in his/her absence, by its Deputy Chairman. The agreement of an absolute majority of Council

members is needed for a Council resolution to become valid. The Council shall adopt its rules of order defining detailed rules for its sessions.

Article 9

(1) The Council is authorized to:

- a) define methods for implementing the tasks of the Institute,
- b) appoint and recall the Institute's Director and supervise his/her activity,
- c) approve the Institute's Rules of Organization and other internal regulations,
- d) approve the annual plan of the Institute's activity,
- e) establish the scientific council as the Director's professional advisory body for the Institute's research activity, appoint its members at the Director's proposal, and approve its rules of order,
- f) approve background materials for the Institute's draft and final budgets,
- g) approve the annual report on the Institute's activity and submit it to the Senate for discussion,
- h) decide on appeals against the Institute's decisions,
- i) monitor and evaluate security of access to documents and archival materials kept in the Archive and submit the results to the Senate for discussion once a year.

(2) The Council is entitled to ask the Government, in exceptional cases, for diplomatic support in gaining access to major documents kept in archives of foreign states and relating to the Institute's field of activity.

Article 10

Membership of the Council is a public office²⁾. Members of the Council are remunerated based on a special legal regulation³⁾.

Article 11

(1) The Institute is headed by the Director. The Director is authorized to:

- a) provide for the processing of background materials for all matters within the competence of the Council, submit these matters to the Council for discussion and decision, and execute the Council's decisions,
- b) participate in the Council's sessions; he/she is entitled to ask the Council Chairman to summon the Council's session and propose its agenda,
- c) appoint and recall the Archive Director based on discussion with the Council.

(2) The qualifications required for the office of the Director include the candidate's personal reliability and impeccability, and completed university education in a Master's programme.

CHAPTER III

SECURITY SERVICES ARCHIVE

Article 12

(1) The Archive is established with its seat in Prague.

(2) The Archive is an administrative office directly controlled by the Institute.

(3) The Archive is headed by the Archive Director who is appointed and recalled by the Institute Director based on discussion with the Council.

(4) The qualifications required for the office of the Archive Director include the candidate's reliability, incorruptibility, and completed university education in a Master's programme relating to archival science or history, or in a relevant specialized field.

(5) The Archive represents an accounting unit and it is part of the Institute's budget chapter.

Article 13

(1) The Archive shall:

- a) publish and make accessible documents and archival materials concerning security services, according to the Act on opening the files of the former State Security Corps, and to the Act on archival activity and file services,
- b) ensure access to documents and archival materials and provide the needed assistance and information to state bodies authorized to security proceedings, or to investigation according to the Act on the protection of classified information, to the Czech Republic's intelligence services in fulfilling their tasks, and to investigative, prosecuting and adjudicating bodies for the purposes of criminal proceedings,
- c) supervise the work of the Institute's file service,
- d) select archival materials in the process of confidential shredding at the Institute and at the holders of documents resulting from the activity of security services at the time of communist totalitarian power, where these documents are concerned,
- e) select archival materials off the process of confidential shredding in the case of documents offered to the Institute or the Archive as a donation or for purchase,
- f) decide on objections to the protocol as raised by the author or owner of a document being selected as an archival material in or off the process of confidential shredding,
- g) decide on petitions filed by researchers who have been denied access to archival materials or disallowed to make abstracts, transcripts or copies of archival materials kept in the Archive,
- h) impose sanctions for administrative offences by those depositing archival materials in the Archive, according to the Act on archival activity and file services,

i) retrieve from the deposited archival material documents for the needs of state administrative bodies and other organizational units of the state, bodies of territorial self-administration units, legal and natural persons, and make their transcripts and copies,

j) allow viewing the deposited archival materials under the conditions defined by the Act on archival activity and file services,

k) maintain the respective records of archival materials,

l) fulfil tasks relating to archival activity as ensuing from international agreements.

(2) In the field of archival care, the Archive shall:

a) look after archival materials relating to security services from the time of communist totalitarian power, archival materials and documents taken over from entities that administered them prior to the date of their transfer to the Archive according to Article 14 Para 1, archival materials and documents acquired by way of donation or purchase, and documents and archival materials originating from the activity of the Institute and the Archive,

b) accept offers for the purchase, donation or custody of archival materials, and conclude the respective agreements on behalf of the Czech Republic,

c) carry out checks of the physical condition of archival cultural monuments and national cultural monuments deposited at its premises,

d) carry out the inventory of archival materials announced by the Ministry of the Interior,

e) cooperate with other archives and enhance contacts with scientific, cultural, educational and other institutions for the purpose of exchanging information about professional issues, in scientific research, and in using archival materials for cultural, educational and economic purposes and for the study of national history and geography,

f) carry out scientific and research activity in the field of archival science, auxiliary historical sciences and related fields,

- g) establish a specialized library for the field of archival science and file service execution,
- h) pursue publishing activity in the field of archival science and file services execution, history of administration, auxiliary historical sciences and history,
- i) provide for the conservation and restoration of archival materials in cooperation with the National Archive,
- j) participate in elaborating national thematic registers of archival materials as organized by the Ministry of the Interior.

(3) The Archive is entitled to process personal data in the extent needed for accomplishing its tasks.

Article 14

(1) The Ministry of the Interior, Ministry of Defence including Military Intelligence, Ministry of Justice, Security Information Service, and the Office for Foreign Relations and Information shall, as of the first day of the seventh calendar month following the publication of this Act in the Collection of Laws, transfer to the Archive file and registration aids, archival funds including agency, operative, investigation and cadre files or records, archive collections and individual archival materials and documents that resulted from the activity of security services and the Communist Party of Czechoslovakia and National Front organizations pursuing activity within the above bodies and services in the period from 4 April 1945 to 15 February 1990, which they have in their possession. The Ministry of the Interior shall also hand over to the Archive archival materials that originated after 1 January 1990 and concern activities relating to the administration of archival materials kept by security services.

(2) Para 1 does not relate to documents and archival materials resulting from the activity of security services and containing classified information, which the respective body listed under Para 1 urgently needs for implementing its tasks. The respective body listed under Para 1 shall transfer to the Archive the documents and archival materials listed in the first sentence above immediately after the given level of classification is lifted.

(3) The archival materials listed under Para 1 must be entered in the National Archive Heritage register within five years following the effective day of this Act at the latest.

Article 15

The Archive may deny access or disallow making copies, transcripts and abstracts from archival materials whose level of classification has been lifted but which contain information that continues to be important for the defence of the constitutional system, major economic interests, and for the security and defence of the Czech Republic. Appeals against a decision on access denial shall be decided by the Archive Director.

Article 16

(1) The Archive is obliged, at the Council's request, to submit to the Council reports and provide explanation allowing the Council to monitor and evaluate security of access to and viewing of documents and archival materials deposited in the Archive. The Council is entitled to acquaint itself with the cases of denied access to archival materials as decided by the Archive under Para 15, and the Archive is obliged to grant the Council all needed cooperation in this respect.

(2) Council members are obliged to remain silent about information contained in an archival document to which the Archive has denied access, even after the cessation of their membership of the Council. In these cases, release from the obligation of a Council member to maintain confidentiality is decided by the Senate.

Article 17

The Archive shall become part of the National Archive as of 1 January 2030.

CHAPTER IV

COMMON PROVISIONS

Article 18

Only a reliable and incorruptible person may become a senior employee of the Institute directly subordinated to the Institute Director, or a senior employee of the Archive directly subordinated to the Archive Director. Other employees of the Institute and the Archive must satisfy the requirements set for discharge of office in state bodies, according to the Act on some other requirements concerning discharge of office in state bodies⁴⁾.

Article 19

Reliability and incorruptibility

(1) For the purposes of this Act, a reliable person is one who in the period from 25 February 1948 to 15 February 1990 was not:

a) member or candidate member of the Communist Party of Czechoslovakia or Communist Party of Slovakia,

b) graduate from a political, security or military institution of higher learning, or a person who has completed a training course of a similar orientation in states that were parties to the Warsaw Treaty⁵⁾,

c) member or employee of security services, or a registered collaborator of security services with the exception of compulsory or alternative military service,

d) member or collaborator of the intelligence service of a state that was a party to the Warsaw Treaty⁵⁾.

(2) For the purposes of this Act, a person may not be considered incorruptible if he/she has been convicted of a wilful criminal offence unless his/her conviction has been expunged from criminal records, or unless he/she is viewed as if non-convicted for other reasons.

(3) The facts conditioning reliability according to Para 1, letters a), b) and d) must be substantiated with an affirmation. The facts according to Para 1, letter c) must be substantiated with a certificate issued by the Ministry of the Interior according to a special Act defining some other requirements concerning discharge of office in state bodies⁴⁾, and the facts according to

Para 1, letter c), which are not certified by a certificate, must be substantiated with an affirmation. Persons born after 1 December 1971 do not need to prove their reliability. The condition of incorruptibility under Para 2 must be substantiated with a statement of criminal records that must not be older than three months.

CHAPTER V

TRANSITIONAL PROVISIONS

Article 20

Up to the date of appointment of the Archive Director according to Article 12, Para 3, this office shall be discharged by an interim director to be appointed by the Minister of the Interior as of the effective date of this Act; the interim director must satisfy the requirements set for discharge of the office as the Institute Director according to Article 12, Para 4.

Article 21

(1) The exercise of rights and discharge of duties ensuing from industrial relations of employees of the Czech Republic assigned to work at the Ministry of the Interior, Ministry of Defence including Military Intelligence, Ministry of Justice, Security Information Service, Office for Foreign Relations and Information, and Police of the Czech Republic – Office for the Documentation and Investigation of the Crimes of Communism shall pass to the Archive as of the first day of the seventh calendar month following the date of this Act's publication in the Collection of Laws if these employees perform activities pursued by the Archive as of the effective date of this Act, and if they satisfy conditions defined in Article 18.

(2) The Archive shall complete administrative procedures concerning free access to documents handed over to the Archives, conducted under the Act on opening files resulting from the activity of the former State Security Corps and under the Act on archival activity and file services and launched by the Ministry of the Interior, Ministry of Defence including Military Intelligence, Ministry of Justice, Security Information Service, and the Office for Foreign Relations and Information prior to the first day of the seventh calendar month following the date of this Act's publication in the Collection of Laws and not concluded upon a final judgement prior

to this date.

PART TWO - ELEVEN

Article 22 - Article 32 (related amendments of other Acts)

PART TWELVE

EFFECT

Article 33

This Act enters into effect on the first day of the first calendar month following the day of its publication in the Collection of Laws, with the exception of provisions under Article 13, Para 1, letters a) and b) and Part Two, which enter into effect on the first day of the seventh calendar month following the day of the Act's publication in the Collection of Laws.

Viček, in his own hand

Klaus, in his own hand

Topolánek, in his own hand

1) Article 1, Para 2 of Constitutional Decree of the President of the Republic No. 11/1945, Czechoslovak Official Journal (appendix to Decree No. 30/1945 Coll.) on restoring legal order. Government Decree No. 31/1945 Coll. defining the end of the time of non-freedom for the field of regulations on restoring legal order.

2) Article 201 of the Act. No. 262/2006 Coll., Labor Code

3) Act No. 236/1995 Coll. on wages and other factors relating to discharge of office by representatives of state power and some state bodies, judges and deputies to the European Parliament, as amended by subsequent regulations.

4) Act No. 451/1991 Coll. defining some other requirements set for discharge of office in state bodies and organizations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic, as amended by subsequent regulations.

5) Agreement on Cooperation and Mutual Assistance between the Albanian People's Republic, Bulgarian People's Republic, Hungarian People's Republic, German Democratic Republic, Polish People's Republic, Romanian People's Republic, the Union of Soviet Socialist Republics and the Czechoslovak Republic as signed in Warsaw on 14 May 1955 and published in the Collection of Laws under No. 45/1955.