



Parliament Passes Controversial Law on Vetting Officials

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On October 4 the Czechoslovak Federal Assembly adopted a law allowing the dismissal of government employees who had either worked for the communist secret police or had been high-ranking communist officials. The law provides a badly needed legal framework for the screening of government officials, a process that until the law's passage had been governed only by resolutions of the federal and the republican parliaments and affected only certain categories of officials. The law, which could affect hundreds of thousands of people, has been criticized by some leading politicians for being too sweeping and for potentially violating international human rights agreements.

In a step that some Czechoslovak politicians hailed as the most important defeat of communism since the "velvet" revolution of late 1989 and that others criticized as a possible violation of Czechoslovakia's international human rights commitments, the Czechoslovak Federal Assembly approved a law on October 4 that provides for the systematic screening of officials in certain government agencies and offices and the subsequent dismissal of those among them who are found to have worked either for the communist regime's State Security (secret police) or to have been high-level communist officials. The law, which is valid through January 30, 1996, could affect hundreds of thousands of people. It is the culmination of efforts to erect a badly needed legal framework for vetting government officials for links with the former secret police, a

process that, although begun shortly after the November 1989 revolution, has been implemented somewhat haphazardly and only for certain categories of officials. But as the final version of the law not only provides the legal framework for the screening of officials but also collectively bans former communist officials from holding certain government positions for the next five years, some observers have hailed it as the law that will "de-Bolshevize" Czechoslovak society.

The Initial Screening Attempts

The screening of various categories of officials and politicians for possible ties with the former secret police started in early 1990.¹ Prior to the general elections held on June 8 and 9, 1990, almost all political parties had asked that their candidates be vetted, but they

were not required to withdraw candidates found to have had links with the communist secret police. In the spring of that year, the Federal Assembly and the Czech and Slovak National Councils agreed that all members of the provisional federal and republican governments (which were set up after the revolution and which remained in place until the elections) should be screened so that the electoral campaign would not be disrupted by revelations and mutual accusations by rival political parties and candidates. The vetting was implemented by the federal Ministry of Internal Affairs, which was the only institution at that time with legal access to the relevant documents. But the fact that many people still on the ministry's staff had also worked for the former secret police cast considerable doubt on the validity of the screening process.

There were several scandals during this period involving politicians who were not government officials and who were accused of having collaborated with the former secret police. These prompted some politicians to call for firmer regulations on the vetting of officials. However, the federal and the republican parliaments could not agree on how comprehensive the screening should be or what kind of guidelines to employ. In the fall of 1990 the Czech National Council asked the Czech Electoral Commission to order all parties registered in the forthcoming local elections to screen their candidates. Instead, however, the commission merely recommended they do so. As a result, the screening was not uniform, since some parties followed the recommendation and others ignored it.

In a major step, on January 18, 1991, the Federal Assembly approved a resolution calling for the screening of all of its deputies and all employees of the Office of the Prime Minister and the Office of the Federal Assembly. The parliament ruled that all those identified as former State Security collaborators would have 15 days from the date of notification in which to resign voluntarily; if they did not, their names would be made public.

The screening was conducted by a special parliamentary commission consisting of 15 members approved by the Federal Assembly. All parties represented in the parliament had one or more representatives on the commission. On March 22, 1991, a spokesman for the commission informed the parliament that it had identified 10 deputies—all of whom had chosen not to resign after the commission had informed them of its findings—as former collaborators with or agents of the secret police. Two days later, the commission informed the Federal Assembly that two more deputies had been identified as former collaborators with the secret police. The Federal Assembly passed a resolution calling on the accused deputies to step down. Thus far, however, none of them has complied, since the federal electoral law contains no provision for the recall of deputies.

The commission further identified 33 collaborators among the employees of the Office of the Prime Minister and 25 collaborators among the employees of the Office of the Federal Assembly. According to the commission's spokesman, 14 federal ministers and deputy ministers had been identified as agents or collaborators. Apparently, 13 of these were deputy ministers, since the only official with full ministerial rank to step down amid accusations of having collaborated with the former secret police thus far was former Deputy Prime Minister Vaclav Vales. In connection with the parliamentary commission's screenings, in the spring of 1991 President Vaclav Havel asked the Ministry of Internal Affairs to screen the members of his staff; the results were not made public, however.

Some screenings were also conducted at the republican level. On January 18, 1991, the Czech National Council adopted a resolution calling for an investigation into the past activities of its deputies, members of the Czech government, employees of the Offices of the Prime Minister and of the National Council, and republican prosecutors and judges. One month later the Czech National Council approved a set of strict criteria for identifying informers. The criteria included establishing whether the person listed in the secret police files had known that he had been meeting with agents; whether he had met with agents repeatedly and secretly; and whether he had actually carried out the tasks he had been asked to perform by the secret police.

On May 23, 1991, the Slovak National Council adopted a similar resolution demanding that all deputies of the Slovak National Council, ministers, deputy minister, judges, employees of the Offices of the Prime Minister and of the Slovak National Council, and the managers of Slovak Radio and Television should be screened for possible links with the former secret police. A proposal for the adoption of a separate law regulating screening procedures was rejected.

Toward a New Law

Following the passage of the three resolutions, some leading politicians, including President Havel, called for a comprehensive law that would govern the screening of all government officials rather than only certain categories. They also argued that the resolutions offered insufficient means of redress for citizens who might be wrongly accused of having collaborated with the former secret police.

In early September the federal government submitted a draft law to the parliament. The bill arrived in the midst of a controversy caused when some rightist parties, reacting to the attempted coup the previous month in the USSR, demanded the "de-Bolshevization" of public life and insisted that former high-level communist officials be forced to

leave their current government and parliamentary posts. They also demanded that the names of all former agents of and collaborators with the secret police be made public. On September 5 some federal lawmakers even called for outlawing the communist party.² The proposals caused a furor among left-of-center politicians, who considered them an attempt to launch a witch-hunt.

The government's draft law did take into account some of the concerns of the right-of-center politicians, inasmuch as it banned former communist officials from holding government positions. Despite this concession, the right-of-center politicians almost immediately attacked the bill as being too liberal because of a provision stating that in order to ban someone from holding a senior-level government post, he had to be identified as a secret police agent, a secret police collaborator, or a former communist official who had participated in "suppressing human rights between February 25, 1948, and November 17, 1989." Some right-wing deputies said the provision would actually protect former agents, collaborators, and communist officials, since in most cases it would be virtually impossible to prove that someone had violated human rights. Instead, they argued that mere membership in some of the agencies that had constituted the backbone of the communist system of oppression should be reason enough for forbidding certain categories of people from holding senior positions in the new democratic government.³

During the debate on the bill, the right-of-center deputies proposed a number of amendments. Their aims included the elimination of the provision holding an accused or suspected official personally responsible for proving that he did not violate human rights while in office and broadening the range of people to whom the law could apply. The parliament approved most of the amendments. Predictably, all 41 deputies of the right-of-center Civic Democratic Party, headed by Finance Minister Vaclav Klaus, voted for the law; all the deputies of the communist party as well as the Movement for a Democratic Slovakia voted against it. In the end, the vote of the 300-strong bicameral Federal Assembly was 148 to 21, with 22 abstentions; 29 deputies boycotted the vote in protest, and the rest were absent.⁴

People and Posts Affected

Under the law, former agents of or collaborators with the secret police and communist officials will be barred during the next five years from holding positions in the state administration at both the federal and the republican levels; the Czechoslovak Army (the rank of colonel and higher); the federal Security and Information Service (the federal intelligence agency); the federal police; the Office of the President; the Office of the Federal Assembly; the Office of the

Czech National Council; the Office of the Slovak National Council; the offices of the federal, Czech, and Slovak governments; the offices of the federal and republican Constitutional Courts; the offices of the federal and republican Supreme Courts; and the Presidium of the Czechoslovak Academy of Sciences. The law also applies to top positions in Czechoslovak, Czech, and Slovak Radio and Television, as well as in the Czechoslovak Press Agency. Finally, the ban applies to top management positions in enterprises and banks owned by the state, to top academic positions at colleges and universities, and to judges and prosecutors.⁵

More specifically, the government posts listed above are not open to people who between February 25, 1948, and November 17, 1989, were members of the State Security; registered with the secret police as agents; the owners and the occupants of the "conspiracy apartments" used by the secret police; informers and evaluators for the secret police; knowing collaborators with the secret police; Secretaries of the Communist Party of Czechoslovakia at the district level or higher, or members of its Central Committee; members of the presidiums of party committees at the district level or higher; political officers in the Corps of National Security; members of the People's Militia (the party's private army); and members of action committees of the National Front after February 25, 1948, or of committees that conducted party and other purges in 1948 and after August 21, 1968. Also banned from the government positions specified in the law are former students (or fellows for more than three months) of the Felix E. Derzinski College in Moscow for members of the State Security Service; at the College of the Ministry of Internal Affairs of the USSR for the police; or at the Higher Political School at the Ministry of Internal Affairs of the USSR.

The people whom the law describes as "knowingly collaborating with the secret police" are those who were registered with the secret police as "trustees" or "candidates for secret cooperation." To be considered as such, however, it must be proved that these people knew they were in contact with a member of the secret police, were giving him information, or performing tasks for him.

In a special section, the law lists the categories of people who cannot be employed by the Ministry of Internal Affairs, the Federal Security and Information Service, the federal police, and the police protecting Prague Castle (the so-called Castle Police, meaning the special police units guarding the residence of the President). Under the law, people are prohibited from occupying senior posts in these government bodies who between February 25, 1948, and November 17, 1989, were members of the State Security Service's counterintelligence department; heads of departments and divisions in the State

Security Service; students at one of the aforementioned three secret police and regular police training centers in the Soviet Union; or communist officials.

The law provides for some exceptions. First, those party officials who rose to power during the Prague Spring (between January 1, 1968, and May 1, 1969) will not be affected by the ban. Second, the federal Minister of Internal Affairs, the Director of the Federal Security and Information Service, and the Minister of Defense may pardon some of the people affected by the law should their dismissal threaten "an important security concern of the state."

The Screening Process

The people listed above who have been or are to be appointed to a senior government post are required to submit to the head of the state agency, enterprise, or institution where they are working or will work a certified statement affirming that they did not work for the former State Security Service.

The certified statements are to be issued by the Ministry of Internal Affairs upon the request of the official (or prospective official) or of his employer. The employee must submit the certified statement to his employer within 30 days of its receipt. If this is not done, the employer may request a copy of the certified statement from the ministry. This provision is obviously meant to protect those people who, after having received the certified statement affirming that they worked in some capacity for the former secret police, decide to resign from their posts voluntarily. In such cases, an employer is not entitled to receive a copy of the document.

All those holding or applying for the positions listed in the law must also submit a personal affidavit that they were not communist party officials at the district level or above, members of the People's Militia, or students at one of the three Soviet police schools. In addition, the law stipulates that all those who apply for one of the senior government posts listed must submit an affidavit stating that they have never worked for a foreign intelligence service.

Under the new law, a citizen over the age of 18 may request that the federal Ministry of Internal Affairs certify that he or she was not a police informer or agent. Such a certificate will be given only to the citizen who has requested it.

Redress

The federal Ministry of Internal Affairs will set up a special commission soon whose members will be appointed by the Federal Assembly, the Czech and the Slovak National Councils, the federal, the Czech, and the Slovak Ministries of Internal Affairs, the Ministry of Defense, and the Federal Security and Information Service. The commission, serving as a body to which citizens affected by the law can appeal

in the first instance, will examine the backgrounds of certain people, in the special cases specified under the law, using information submitted by the Internal Affairs Ministry, the testimony of witnesses, and the oral and written testimony and documentation submitted by the examinee.

The commission will investigate upon request cases of government officials who claim that the Ministry of Internal Affairs wrongly certified that they were "knowing collaborators" of the secret police. (People certified to be former secret police agents, holders of "conspiracy" apartments, and informers will not be allowed to take their cases to the commission.) The commission will also examine the background of anyone who submitted an affidavit the truthfulness of which is questioned by that person's employer or by another citizen. If someone asks the commission to examine the past of another person, because he doubts the truthfulness of the information contained in that person's affidavit, he must first deposit 1,000 koruny with the commission. Should the commission conclude that the affidavit stated the truth, the money will not be returned. The commission must rule on such cases within 60 days of the start of its investigation.

Witnesses and experts who provide the commission with false statements may be punished by a prison term of up to three years. Publishing any information contained in the commission's ruling is permitted only with the consent of the person whose case is under examination.

If someone is certified as having worked for the former secret police, having been a communist official, a member of the People's Militia, or a student at one of the police schools in Moscow, his employer will terminate his employment or will transfer him to a less important position not specified by the law within 15 days of receiving such information. The employer must also terminate or transfer the employee within 15 days if the employee has refused to submit the required affidavit.

Citizens seeking redress may ask the appropriate civil court to examine the findings of the commission. They must appeal the commission's ruling within two months of the date of the ruling. Also, those who have been dismissed by their employer on the basis of the aforementioned certified statement from the Internal Affairs Ministry, in which the claims are later found to be unsubstantiated, may ask a civil court to reinstate them in their positions.

As the interpretation of the law would suggest, not all officials will be able to seek redress. The apparent reason for the distinction made between those who may and may not seek redress is that the names of former agents, holders of "conspiracy apartments," and informers (most of whom signed a cooperation agreement with the secret police) are all registered in

the files of the Internal Affairs Ministry. The authorities evidently believe that there is little doubt that these people did indeed work for the secret police.

Who Will Be Affected?

It is estimated that as many as 140,000 people were secret police informers under the communist regime. The dreaded secret police itself had tens of thousands of agents. The People's Militia also had tens of thousands of members. Between 1948 and 1989, thousands and perhaps tens of thousands of people worked as party officials at the district level or higher. Obviously, the majority of these people will not be directly affected by the law, as they currently do not hold any of the senior government posts listed in the law and are not likely to aspire to any of these positions in the next five years. Moreover, those recruited by the secret police to be informers or collaborators are for the most part average citizens who have neither held, nor are qualified to hold, the government posts listed in the law.

The most famous official whom the law might affect indirectly is Alexander Dubcek, the Chairman of the Federal Assembly and the leader of the Prague Spring reforms in 1968. Dubcek had been a party secretary long before the Prague Spring. The law does not apply to parliamentary deputies and Dubcek cannot be recalled from his post, but it does in effect ban him from holding any of the posts it lists within the executive branch within the next five years.

Reactions

Reactions to the law's passage were mixed. Right-of-center politicians insisted that the law was a necessary step toward "the purification of public life" in Czechoslovakia.⁶ Prime Minister Marian Calfa said that the parliament's decision to pass the law had gone far beyond what the government had originally envisaged. In Calfa's opinion, only time will tell whether the passage of such a sweeping law was justified.⁷ Former Minister of Internal Affairs Richard Sacher, who himself was in charge of the first round of vetting in 1990, argued that the law "proves not the strength but the weakness of the regime."⁸

Left-of-center parties criticized the law and suggested that the parliament did not realize its possible consequences. The communist party described the law as unconstitutional, an opinion echoed in a letter sent to President Havel by Zdenek Mlynar, who was a party secretary in 1968 and was expelled following the Soviet-led invasion of Czechoslovakia in 1968. Mlynar argued that, in banning entire categories of people from holding certain positions only because they had held certain jobs in the past, the law violated internationally recognized human rights. He asked Havel to reject the law by not ratifying it.⁹ Dubcek also argued that the law violated human rights.¹⁰

Assessment

The law on the vetting of officials provides a legal framework for a process that has caused much controversy. President Havel had repeatedly asked the Federal Assembly to pass such a law, since earlier screenings had been based on nothing more than resolutions. Havel had, however, stressed that the law should be "good and just." In this context, the new law is likely to raise a number of questions. Havel himself said that, in his opinion, the law went far beyond the government's original intent, which was reflected in the draft law submitted initially to the parliament. He added that he would probably ratify the law but might at the same time ask that it be amended. But he would not, he said, "choose to oppose the bill by means of a symbolic gesture but [would] use other methods instead."¹¹ On October 17 Havel ratified the law but, as he had suggested he might do, proposed a number of amendments, which he said he hoped the parliament would act to implement soon. More than anything else, Havel stressed that the law should give all those affected by the ban the possibility to appeal the decision in a court. He also underscored that the case and the possible guilt of each person should be assessed individually. Parliamentary chairman Dubcek refused to ratify the law; deputy chairman Rudolf Battek did so in his stead, in accordance with the federal constitution.¹²

The chief flaw of the new legislation is that it is partially based on a presumption of guilt rather than of innocence; that is, the burden is on people in certain government positions to prove they did *not* work for the secret police or were *not* communist officials. Moreover, by barring entire categories of people, such as former communist officials, from holding certain positions, the law espouses the principle of collective guilt. Impractical as it might have been, the government's original draft sought to avoid enshrining that principle by stipulating the necessity of proving a particular official's participation in the suppression of human rights under the communist regime. Finally, the law does not distinguish between various degrees of guilt. Former secret police officials will be treated no more severely than people who were coerced into collaborating with or informing for the secret police.

Another contentious issue, which is not strictly related to the law itself but rather to the entire screening process, is the reliability of the Interior Ministry's files. Although responsible officials have repeatedly claimed that the files are reliable and that the former secret police had in place an elaborate system of cross-checking, some deputies and other politicians have publicly voiced their doubts about the reliability of the files. It is known that some of the files were destroyed by the secret police shortly after

the revolution; and some former secret police members have testified that they "invented" informers by recording in their files the names of people who had never officially agreed to collaborate with the secret police.¹³

The new law will not affect parliamentary deputies. These officials have been (or will be, in the case of Slovakia, where the actual screening has not taken place) screened on the basis of the resolutions passed by the Federal Assembly and the Czech and Slovak National Councils. Since the resolutions were meant to be applied for a specific purpose or to a single event, it is possible that the federal and the republican parliaments will have to order the screening of their deputies

after the elections scheduled for June 1992—unless some method is devised in the meantime to screen candidates before the elections.

The new law is likely to be popular with the public, which in opinion polls has repeatedly named the survival of the "old structures" in positions of power as one of the main flaws in Czechoslovakia's transition to democracy. However, as some politicians have pointed out, the question of whether the law will indeed "purify" public life or whether it will merely unleash a witch-hunt and open new rifts in society remains to be answered.

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Notes:

1 For a detailed treatment of the earlier screening efforts, see Jan Obrman, "Laying the Ghosts of the Past," *Report on Eastern Europe*, no. 24, June 14, 1991.

2 See AP, September 5, 1991; and CTK, September 6, 1991.

3 CTK, September 17, 1991.

4 AP, October 4, 1991.

5 For the full text of the law, see CSTK, October 9, 1991.

6 For various reactions, see CSTK, October 4, 1991.

7 *Ibid.*

8 AP, October 4, 1991.

9 CSTK, October 6, 1991.

10 *Ibid.*, October 7, 1991.

11 AP and CSTK, October 13, 1991.

12 AP, October 22, 1991.

13 See Obrman, "Laying the Ghosts . . ."; and *Newsweek*, October 6, 1991. See also a copy of a letter sent by Miloslav Tomicek, a former secret police agent, to the Office of the Federal Assembly on March 22, 1991, in which Tomicek revealed that he falsely recorded in the police files the name of Jaromir Gabas, one of the Federal Assembly's deputies accused of having collaborated with the secret police (available from the RFE/RL Research Institute in Munich).

Preparations for Launching a Stock Exchange

Peter Martin

Preparations are underway for launching a stock exchange in Prague in early 1992. Trading is likely to be modest at first but may be boosted significantly if the privatization process is accelerated and confidence restored in the Czechoslovak economy as a whole. However, the preparations may be hindered by the continuing disputes between Czech and Slovak officials over who should supervise the proposed stock exchange in Prague and the one opened in Bratislava in December 1990 (the latter is not yet fully operational).

The continuing transformation of the Czechoslovak economy into a free-market system has increased the prospects for establishing the first fully operational stock exchanges in Prague and Bratislava since

World War II. Only a limited number of bonds are currently available on the so-called temporary secondary securities market, which began trading in Prague at the end of July. On September 25 the Czech government approved a bill (drafted by the