

Draft Law on the Stasi Files (May 26, 1991)

Abstract

Led by pastor Joachim Gauck, East German dissidents drafted a law to assure the complete preservation and guarantee open access to the masses of documents compiled by the secret service (Stasi) on its own citizens.

Source

Draft Law on the Safeguarding and Use of the Data and Records of the Ministry of State Security of the German Democratic Republic (May 26, 1991)

§1

Purpose of the Law

The purpose of the Law is to

1. guarantee and promote the political, historical, legal and personal appraisal of the activities of the Ministry of State Security (henceforth referred to as MfS),
2. protect individuals from the infringement of their personal privacy rights based on the unauthorized treatment of their personal data collected by the MfS,
3. facilitate access to personal data collected by the MfS for the purposes of information and/or rehabilitation and compensation of the affected individual,
4. provide evidence in the context of criminal trials conducted in conjunction with the activities of the MfS,
5. guarantee parliamentary and public monitoring of the safeguarding and use of the data and records of the MfS and
6. make it possible to determine who worked for the MfS, officially or unofficially.

[...]

Justification

General

I. Political Justification

For nearly 40 years, the Ministry of State Security (MfS), together with the state party—the SED—formed the backbone of the totalitarian system in the German Democratic Republic. The surviving archives of this ministry are one of the key elements of the written record of the former German Democratic Republic. They report on the people and subjects involved in all aspects of societal life: the economy, culture, educational institutions, political parties, organizations and the churches. They provide insight into how the repressive apparatus functioned and evidence of the long-term intimidation and

persecution of actual and imagined enemies of the German Democratic Republic, most of whom simply disagreed with the government. The political, historical, legal and personal appraisal of the last 40 years on the territory of the German Democratic Republic would be impossible without access to these holdings.

It was mainly the citizens' committees that forced the dissolution of the Office of National Security—within which the MfS had tried to conceal itself—and thus also secured the preservation of the remaining portions of this ministry's records. Representatives of the citizens' committees participated in the development of the Peoples' Chamber Law of August 24, 1990, and with their energetic protests attained the September 18, 1990 agreement on the unification treaty, which promised a final legal arrangement on how to handle the data and records of the MfS. The draft presented by the citizens' committees, upon which this draft law is based, integrates the experiences of one year of dealing with the "Stasi Files." Each of the following reasons and considerations supports their recommendation, which revolves around a political, historical, legal and personal appraisal as well as the rights of those affected.

The dissolution of the MfS and the appraisal of its activities were closely linked. A knowledge of the operation and structures of the MfS was a decisive prerequisite for its dissolution. Only what is known and at least to some extent transparent could be dissolved. To this end, from the outset investigative groups existed within the Citizens' Committees for the Dissolution of the State Security. Many errors and omissions during the dissolution process are explicable in terms of the slow progress of reappraisal. That is also why the parliaments newly elected at the time could only partially live up to their responsibility for the dissolution of the State Security Service. The history of the dissolution of the MfS became a struggle over the exposure of its activities. Information came to light only bit by bit. The fact that we still know very little about the operations and structures of the MfS leaves us feeling distrustful about how complete the dissolution was and whether remnants of the MfS's conspirative network might have gone undetected.

The public and scholarly confrontation with the "Stasi past" is an essential precondition for the development of democratic culture in a reunified Germany. It is a vain hope that we may solve the problems of the past by forgetting them. The active confrontation with the operations of the MfS and our own actions is necessary. It can become a source of democratization by promoting self-assured actions by citizens and bolstering the rejection of state abuses of power. By involving a broad public, we can develop a political sense of right, whose weak development has promoted undemocratic forms of rule for long enough.

Processing the history of the MfS is part of informing society and educating each individual about him- or herself. The fundamental right of informational self-determination is especially valuable in connection with the "Stasi Files": The inner peace of the individual and society is possible only if we know what happened to each individual and society in the past 40 years. If uncertainty persists, the "Stasi Files" remain an ominous cancer. Only knowledge can dismantle the lingering fears of the omnipotence of the State Security Service. It is thus also important for the special committees on the Stasi that formed in nearly all state parliaments in the new federal states to pursue investigations of the activities of the MfS.

The comprehensive appraisal of how repressive organs like the MfS operated within a dictatorial system has significance beyond Germany's borders. It can set the tone for an appraisal of similar phenomena in other countries. The complete uncovering of injustice, tyranny and crimes, how we deal with those responsible for them and those who go along with them can serve as an example for democratic movements in the countries of the former Soviet Bloc, including the USSR, and for all those countries in which dictatorships have ruled and continue to rule. Reunified Germany needs to take on this responsibility as well.

A continuation of this appraisal process is a key precondition for reaching the objectives for the treatment of the “Stasi Files“ already set down in the unification treaty:

- compensating and rehabilitating affected individuals,
- uncovering official and unofficial activities for the MfS,
- investigating and prosecuting criminal acts in connection with the activities of the MfS.

Given the state of the sources—the deliberate “purging“ of MfS records containing personal data by staff members in the final phase of its existence and during the dissolution process and the almost total destruction of the holdings of the HVA (Main Directorate for Reconnaissance)—makes it impossible to undertake a uniform investigation of official and unofficial activities for the MfS without analyzing the surviving material in its entirety. Only a comprehensive appraisal will prevent former MfS staff members from continuing to target public personalities for “exposure.“

Moreover, exploring the other “GDR holdings“ (state apparatus, parties and organizations) is also necessary in order to uncover the entanglements between the MfS and other institutions and organizations. Only in this way can we reach a balanced and nuanced assessment of responsibility and develop criteria for the treatment of former members of the State Security Service. We urgently need special regulations for legal access to the politically relevant archival records of the most important parties and organizations in the German Democratic Republic, allowing for their complete and immediate use.

An appraisal of the activities and structures of the MfS is also essential in order to pursue violations of law by MfS staff members and rehabilitate their victims. Only a comprehensive knowledge of the injustices committed allows the legal system to deal with actions by the MfS that led to a curtailment of the freedoms and basic rights of citizens of the German Democratic Republic, such as observation, coercion, false imprisonment, psychiatric abuses and the like. This appraisal must generate public recognition for the victims.

Scholars were and are not prepared to undertake this appraisal of the activities of the MfS. It requires the creation of institutional conditions that guarantee an independent investigation.

The appraisal should not be left up to institutions alone, however. The creation of opportunities for direct participation by citizens is necessary, and the establishment of documentation centers is intended to serve this purpose. The possibility for affected individuals to view the data collected about them by the MfS plays an important role in the appraisal process. By working through their own stories they can contribute to illuminating the history of the MfS.

The clear objective of this appraisal is to inform society and each individual about the operation and structures of the MfS and how it functioned in society.

[...]

Source: “Entwurf eines Gesetzes über die Sicherung und Nutzung der Daten und Unterlagen

des Ministeriums für Staatssicherheit der Deutschen Demokratischen Republik (May 26, 1991),“

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