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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the European
Union

Subject: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT
AND TO THE COUNCIL
The memory of the crimes committed by totalitarian regimes in Europe

Delegations will find attached Commission document COM(2010) 783 final.

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
TO THE COUNCIL**

The memory of the crimes committed by totalitarian regimes in Europe

1. INTRODUCTION

Throughout history, totalitarian regimes have resulted in violations of fundamental rights and in the complete denial of any semblance of human dignity. Most Member States have experienced such a tragic past. Now, as stated in the 2007 Berlin Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome, "*European integration shows that we have learnt the painful lessons of a history marked by bloody conflict. Today we live together as was never possible before.*"

The memory of Europe's history is the common heritage of all Europeans, today and of future generations. Reconciliation with the legacy of the crimes committed by totalitarian regimes requires sharing and promoting this memory. The Stockholm Programme¹, underlines that "*The Union is an area of shared values, values which are incompatible with crimes against humanity, genocide and war crimes, including crimes committed by totalitarian regimes. Each Member State has its own approach to this issue but, in the interests of reconciliation, the memory of those crimes must be a collective memory, shared and promoted, where possible, by us all. The Union must play the role of facilitator.*"

In November 2008 the Council adopted the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. The Framework Decision is limited to crimes committed on the grounds of race, colour, religion, descent or national or ethnic origin. It does not cover crimes committed on other grounds, for example by totalitarian regimes. The statement added to the minutes of the Council at the moment of adoption of the Framework Decision requested 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 trivializing 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 convictions. This request was reiterated in the Stockholm Programme.

The importance of keeping the memories of the past alive has also been highlighted by the European Parliament in its Resolution of 2 April 2009 on "European conscience and totalitarianism". The European Parliament underlines that this is particularly important because there can be no reconciliation without truth and remembrance.

Member States have dealt with, and are continuing to deal with, the sensitive and complex issue of how best to establish the truth and how to record history so that future generations can learn from the horrors and crimes that have happened in the past. Each Member State has found its own way to deal with these issues and the Commission can facilitate this process by encouraging discussion and sharing of experiences and promoting best practices.

This report aims to present how the Commission intends to play a meaningful role in this process and to provide a basis for further discussion on how the European Union can contribute to promoting the memory of the crimes committed by totalitarian regimes. It also aims to answer the request from the Council to report on the need of an additional instrument in this area.

¹ Adopted by the European Council on 10/11 December 2009; OJ C 115 , 04/05/2010 P. 0001 - 0038

1.1. Preparation of the Report

In order to prepare this report the Commission took a number of preparatory initiatives. In November 2007, the Commission organised a high level seminar in Brussels on " How to deal with the totalitarian memory of Europe: Victims and reconciliation".²

The statement added to the minutes of the Council at the moment of adoption of the Framework Decision indicated that the Commission will organize a public European hearing on crimes of genocide, crimes against humanity and war crimes committed by totalitarian regimes as well as those who publicly condone, deny, grossly trivialize them, and emphasizes the need for appropriate redress of injustice and-if appropriate-submits a proposal for a framework decision on these crimes. This hearing was held in Brussels on 8 April 2008 and was organised jointly by the Commission with the Slovenian Presidency³.

In 2009 the Commission financed a study by an independent institute with the aim of providing a factual overview of the methods used in Member States to deal with issues relating to the memory of crimes committed by totalitarian regimes⁴. This "*Study how the memory of crimes committed by totalitarian regimes in Europe is dealt with in the Member States*" ('the study') has been achieved at the beginning of 2010 and transmitted to the Member States and the European Parliament. The study is available on the Commission web site.

In May 2010 a questionnaire was sent to the Member States aiming to obtain factual information on the situation in the Member States regarding the memory of crimes committed by totalitarian regimes⁵.

2. THE MEMORY OF THE CRIMES COMMITTED BY TOTALITARIAN REGIMES – SITUATION IN THE MEMBER STATES

2.1. Overview

The study reveals that all Member States concerned have taken measures to deal with the legacy of the crimes committed by totalitarian regimes. Member States have adopted different approaches according to their history, specific circumstances, culture and legal systems. The study shows that there is no one-size-fits-all model, and that the mix of instruments and methods used in each Member State (justice for victims, justice for perpetrators, truth seeking, preservation of the memory, awareness-raising initiatives, etc.) is country-specific. Even among Member States that have suffered the same kind of totalitarian regimes, the choice of instruments, measures and practices adopted may differ significantly.

² The aim of the seminar was to help the Commission attain a greater knowledge of the various aspects related to these issues and to identify the subjects to be discussed at the public European hearing.

³ The hearing was organised around the two key issues of recognition and reconciliation. The Slovenian Presidency published the reports of this hearing: "*Crimes committed by totalitarian regimes. Reports and proceedings of the 8 April European public hearing on crimes committed by totalitarian regimes*" Edited by Peter Jambrek.

⁴ Study on how the memory of crimes committed by totalitarian regimes in Europe is dealt with in the Member States. Submitted by Prof. Dr. Carlos Closa Montero. Institute for Public Goods and Policy. Centre of Human and Social Sciences. CSIC. Madrid, Spain. http://ec.europa.eu/justice/doc_centre/rights/studies/docs/memory_of_crimes_en.pdf

⁵ 16 Member States have answered to the questionnaire: LV, LT, EE, PL, HU, SK, SL, BG, RO, BE, IRL, SE, FI, PT, ES, DE.

Justice for victims is important for the successful transition from totalitarianism to democracy. Trials of perpetrators, truth-seeking mechanisms, the opening of archives, lustration procedures, rehabilitation and compensations of victims and restitution of confiscated properties are among the main tools for achieving this objective. The study also reveals the variety of interested parties involved, in particular NGO, official and non official bodies. For instance, Estonia, Latvia, Poland and Slovenia have created official bodies with general competence whilst other Member States created specialised bodies.

Preserving and promoting the memory of the crimes committed by totalitarian regimes is also crucial, in particular to educate younger generations on the importance of promoting democracy and fundamental rights. The study shows that this conviction is one of the few red threads across the EU in dealing with the crimes committed by totalitarian regimes. A well preserved, organised and accessible memory of the horrors of the past can become a real instrument for awareness-raising and education purposes. The study also reveals the crucial role played by the NGOs in this field.

2.2. Education and awareness raising

Active citizenship education has a major role to play in fostering young peoples' civic competences and democratic values. Recent research shows that education is positively and significantly correlated with active citizenship behaviour. Initiatives aiming to inform and educate about the past include visits to museums, to sites of martyrdom and extermination camps, projection of fiction films and documentaries in schools, support for cultural activities and artistic creations. Based on the information received by the Commission, it would appear that activities related to the awareness and education of the crimes committed by totalitarian communist regimes are only in place in the Member States concerned.

Memorials and monuments dedicated to the memory of the crimes committed by totalitarian regimes exist basically in all Member States. Martyrdom places, concentration and death camps can be found in almost all Member States which experienced totalitarianism. For example, in some Member States specialised museums have been dedicated to the crimes committed by totalitarian communist regimes (for example, in the Czech Republic, Estonia, Hungary, Latvia, Lithuania and Romania).

2.3. Remembrance Days

The study highlights that remembrance days concerning the same events may differ among the Member States. For example, 18 Member States commemorate the Holocaust on 27 January (international Holocaust commemoration day), whilst in 6 Member States another date was chosen. Five Member States commemorate the day of remembrance of the victims of totalitarian regimes (23 August), which was proposed by the European Parliament.

2.4. Research projects

The study reveals that the number of research topics and projects in this field is important. Official bodies have developed extensive research programmes in some Member States. Universities, private institutions and foundations have developed more specific projects. Research projects focus in particular on the establishment of historical facts concerning totalitarian crimes, or on analysing policies in the area of transitional justice. Research on the crimes committed by totalitarian communist regimes is significantly more developed in the Member States which experienced such crimes.

2.5. The symbols of totalitarianism

According to the study Member States concerned accomplished in general relatively quickly the removal of all symbols related to their repressive past (e.g. change of street names, removal of symbols from public places, etc). In some Member States the use of symbols connected with totalitarian regimes is prohibited by the law in explicit terms. For example, in three Member States (Hungary, Lithuania and Poland) this prohibition refers to the use of symbols of the communist past.

2.6. The legal framework on the denial of crimes

The study and the replies to the questionnaires sent by the Commission to the Member States reveal the complexity and the divergent approaches of the legal framework applicable in the Member States to the issue of the condoning, denial or the gross trivialisation 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 convictions⁶. The following schematic picture can be drawn.

Four Member States have national legislation on the denial of crimes committed by totalitarian regimes which explicitly includes the crimes committed by totalitarian communist regimes:

- In the Czech Republic the criminal code contains a specific offence for a person who publicly denies, puts in doubt, approves or tries to justify nazi or communist genocide or other crimes of nazis or communists against humanity⁷.
- In Poland the public and counterfactual denial of nazi crimes, communist crimes and other crimes against peace and humanity or war crimes is a criminal offence⁸.
- In Hungary the public denial, call into question or trivialisation of the fact of the genocide and other crimes against humanity committed by the national socialist and communist regimes is a criminal offence⁹.
- In Lithuania the publicly condoning, denying or grossly trivialising international crimes and crimes committed by the USSR or nazi Germany against the Republic of Lithuania or residents thereof it is a criminal offence¹⁰.

In the other Member States, with the exception of Latvia¹¹, it seems impossible or difficult to envisage a situation where the condoning, denial or the gross trivialisation 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 could be incriminated. This is because of the absence of legislation on the denial of crimes of genocide,

⁶ The study present a systematic overview of the situation in Member States (see § 3.3.)

⁷ New criminal code (in effect from January 1, 2010) § 405.

⁸ Article 55 of the Act establishing the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation of 18 December 1998.

⁹ Amendment to the Criminal Code entered into force on 24 July 2010.

¹⁰ Article 170 of the Criminal Code.

¹¹ The reply from Latvia to the questionnaire indicates that, on the basis of Articles 74 and 71 of the Criminal law, the denial of genocide, crimes against humanity, crimes against peace and war crimes based, among others, on political belief or social class could be considered as a criminal offence.

crimes against humanity or war crimes (irrespective of the grounds) or because the incrimination for such conduct excludes the grounds of social status or political convictions or because such incrimination would have implication on the freedom of expression. However, certain replies to the questionnaire mention that an incrimination on the basis of other provision of criminal law could not be excluded, for example on the basis of the prohibition of incitement to hatred or for having violated the "memory of deceased persons".

From the study and the replies to the questionnaire, it would appear that there is no case in which a national court would have condemned a person for publicly condoning, denying or grossly trivializing 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.

3. ACTION AT EU LEVEL TO PRESERVE AND PROMOTE THE MEMORY

In its Resolution of 2 April 2009 the European Parliament underlined the importance of the issue of promoting the memory of totalitarian crimes. On 16 June 2009 the General Affairs Council adopted conclusions stating that, "in order to strengthen European awareness of crimes committed by totalitarian regimes, the memory of Europe's troubled past must be preserved, as reconciliation would be difficult without remembrance".

The idea of promoting across the EU a shared memory of the crimes committed by totalitarian regimes was also expressed at the hearing organised by the Commission and the Slovenian Presidency in April 2008. This hearing and other conferences have brought to light a strong feeling that the Member States in Western Europe should be more aware of the tragic past of the Member States in Eastern Europe.

A number of international conferences has also underlined the importance of this dimension, such as the international conference in the Senate of the Czech Republic in June 2008 which adopted a declaration on "European Conscience and Communism" (the "Prague Declaration") or the Conference on "Crimes of Communism" organised in February 2010 by the "Institute for the Study of Totalitarian Regimes, the conference "Europe 70 years after the Molotov-Ribbentrop Pact" organised in October 2009 by the Baltic States under the auspices of the President of the European Parliament. In the European Parliament, an informal group of MEPs on "Reconciliation of European Histories" has been established whose main objective is to reconcile the different historical narratives in Europe and to consolidate them into a united European memory of the past.

At these events a number of requests for action have been formulated as regards the preservation of memory and promotion of awareness on the crimes committed by totalitarian communist regimes. An example of the wide range of measures and expectations can be found in the "Contribution of the first European Hearing on "Crimes Committed by totalitarian regimes" signed by a number of participants at the hearing of 8 April¹².

In its Resolution of 2 April 2009, the European Parliament called for the Proclamation of 23 August as a Europe-wide Day of Remembrance for the victims of all totalitarian and

¹² Reproduced in the Report and proceedings of the hearing published by the Slovenian Presidency (see above)

authoritarian regimes, to be commemorated with dignity and impartiality. Estonia, Latvia, Lithuania, Slovenia and Sweden already observed this Day of Remembrance.

The Commission is committed to contributing, in line with its responsibilities, to the promotion of the memory of the crimes committed by totalitarian regimes in Europe. The Commission considers that it is important to address knowledge gaps concerning the totalitarian past of all Member States, and especially concerning the period of time in which Eastern and Western Europe have lived two different experiences. The memory and awareness of the tragic past and of the crimes committed by totalitarian regimes should bring together the peoples of Europe. It is important to contribute to the recognition of, and support for, all victims of the totalitarian regimes that have devastated Europe. The Commission can facilitate the exchange of experiences and practices in this area. This will also confirm the importance of the values of respect for human dignity, freedom and democracy on which the European Union is founded.

3.1. The full use of EU financial programmes

The Commission is ready to use its financial programmes to assist interested parties to support and promote the memory of the crimes committed by totalitarian regimes. EU funding can be particularly relevant to promote cross border and European projects.

3.1.1. The "Europe for Citizens" programme

Action 4 "Active European Remembrance" of the Europe for Citizens programme¹³ is designed to keep alive the memory of the victims of nazism and stalinism and to improve the knowledge about what took place in the camps and other places of mass extermination of civilians. This action supports projects for the preservation of the main sites and memorials associated with mass deportations, former concentration camps and other large-scale martyrdom and extermination sites of nazism, as well as the archives documenting these events and for keeping alive the memory of the victims, as well as the memory of those who, under extreme conditions, rescued people from the Holocaust. This action supports also projects for the commemoration of the victims of mass exterminations and mass deportations associated with Stalinism, as well as the preservation of the memorials and archives documenting these events. The decision of the European Parliament and of the Council establishing the Programme, in its annex, allocates to "Active European Remembrance" approximately 4% of the total resources of the programme (the global amount for the period 2007-2013 being 215 million).

- Given its strategic importance for promoting the values upon which the Union is founded and considering the increasing number of high quality proposals, for the future Programme 2014-2020, the Commission will examine how this action could dispose of sufficient resources in the future. The Commission has already started its preparation for the next programme generation.
- As part of the structured dialogue carried out in the framework of the Europe for Citizens programme, the Commission is considering holding regular meetings dedicated to Active European Remembrance with a view to exchanging experiences, analyse best practices, bringing together key beneficiaries and stakeholders including academic and independent researchers and experts in that area.

¹³ Decision n° 1904/2006/CE of the European Parliament and of the Council of 12 December 2006 establishing for the period 2007 to 2013 the programme "Europe for Citizens".

3.1.2. Other European Union Programmes

Other programmes can contribute to the promotion of the memory of the crimes committed by totalitarian regimes:

- **Seventh Framework Programme for Research and Technological Development.** This programme can fund actions related to the totalitarian past of Europe. The Work Programme for 2010 under theme 8, "Socioeconomic sciences and humanities" includes a specific call for proposals on the topic: "Democracy and the shadows of totalitarianism and populism: the European experience".¹⁴ This call will support a large scale collaborative project involving research institutes in several EU Member States which aim to help to overcome the heritage of the "divided continent" in which the experience and memories of recent totalitarianism differ from one group of Member States to the other. The Commission has received 10 proposals under this topic and negotiation is ongoing following the evaluation by the independent experts and the selection procedure.
- **MEDIA 2007** is a programme for the European audiovisual industry. Its objectives are to preserve and enhance the European cultural diversity and its cinematographic and audiovisual heritage, to guarantee accessibility to this for Europeans, and to promote intercultural dialogue and increase the circulation of European audiovisual works inside and outside the European Union. In line with these objectives, MEDIA 2007 can support films and other audiovisual work dealing with issues related to the totalitarian past. (e.g. the film "The Life Of The Others" *Das Leben der Anderen* was supported by this programme). Funding under MEDIA can also include (but not exclusively) the cost of the subtitling of audiovisual works, which is crucial for facilitating the circulation between Member States of audiovisual works on these issues.
- The **Information and Communication Technologies Support Programme (ICT-PSP)** supports the targeted digitisation of cultural material under one of the objectives related to *Europeana*¹⁵. This programme could be useful to digitise content relating to totalitarian crimes (e.g. books, audiovisual, sound, archival records). Projects financed must be held by cultural institutions from different European countries, and the themes must be of interest to a broad public or content should be made available for citizens through Europeana immediately after digitisation.
- **The EU Lifelong Learning programme** supports transnational projects promoting active citizenship education towards tolerance values, better knowledge of European history and cultural heritage and democratic behaviour. The Commission is also working on an analytical model of active citizenship education covering two composite indicators, one for adults and one on civic skills of pupils. The working definition of active citizenship used for this purpose is '*participation in civil society, community and/or political life, characterised by mutual respect and non-violence and in accordance with human rights and democracy*'. Promoting active citizenship education in formal, informal and non-formal learning settings enables tolerance values, democratic behaviour and mutual respect in cultural and historical terms. Civic competences based on knowledge of the concepts of democracy, justice, equality, citizenship and human rights are part of the European Key

¹⁴ ftp://ftp.cordis.europa.eu/pub/fp7/docs/wp/cooperation/ssh/h_wp_201001_en.pdf

¹⁵ Multi-lingual online collection of millions of digitized items from European museums, libraries, archives and multi-media collections.

Competences Reference Framework adopted by the Education Council¹⁶ and implemented at national level..

- The Commission will better inform the potential beneficiaries dealing with the memory of totalitarian crimes of the existence of the possibility of funding under these programmes.

3.2. 23 August as a Europe-wide Day of Remembrance

The Europe-wide Day of Remembrance for the victims of all totalitarian and authoritarian regimes proclaimed by the European Parliament has been observed so far in Estonia, Latvia, Lithuania, Slovenia and Sweden.

The Commission encourages the Member States to examine the possibility to adhere to this initiative in the light of their own history and specificities.

3.3. Platform of European Memory and Conscience

In its Resolution of 2 April 2009, the European Parliament has called for the establishment of a Platform of European Memory and Conscience to provide support for networking and cooperation among national research institutes specialising in the subject of totalitarian history, and for the creation of a pan-European documentation centre/memorial for the victims of all totalitarian regimes. It also calls for a strengthening of the existing relevant financial instruments with a view to providing support for professional historical research on the issues outlined above. The conclusions of the GAERC Council on 16 June 2009 have welcomed this initiative that would provide support for networking and cooperation among national bodies related to the examination and remembrance of totalitarian regimes. Bringing together all actors from all Member States, including academic and independent researchers and experts, in order to exchange experiences, analysis and best practices, including on how Member States promote collective memory through educational curricula, is a way to contribute to promote awareness and exchange of experiences in this area.

- Such a Platform could be eligible, after one year of formal legal existence, to apply for an annual operating grant under the Europe for Citizens programme. The Commission considers that it is important that exchange of experiences and best practices bring together all actors from all Member States, including academic and independent researchers and experts.

3.4. Scope for harmonisation at EU level?

The Council asked the Commission to examine whether an instrument, additional to the Framework Decision on racism and xenophobia, is needed to cover publicly condoning, denying or grossly trivializing 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 convictions.

Article 83 TFEU is the legal basis for the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. Article 83 (1) TFEU lists these areas. Public condoning, denying or grossly trivializing crimes of

¹⁶ OJ L 394 of 30.12.2006

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 is not one of these areas. The list of areas can be extended unanimously by the Council, after obtaining the consent of the European Parliament on the basis of developments in crime.

The study showed that for the time being each Member State has adopted different measures (e.g. justice for victims, justice for perpetrators, fact-finding, symbolic policies, etc.) depending on its specific national circumstances. Even among Member States with similar experiences of totalitarian regimes, the legal instruments, measures and practices adopted may be different as may be the timing for their adoption and implementation. The Commission considers therefore that at this stage the conditions to use this possibility have not been met but it will keep the matter under review.

4. CONCLUSIONS

The Commission is convinced that the European Union has a role to play, within the scope of its powers in this area, to contribute to the processes engaged in the Member States to face up to the legacy of totalitarian crimes. The European Union is founded on the respect of fundamental rights and is a constant inspiration and source of encouragement to all nations struggling to come to terms with the sufferings of their past. The memory of the horrors of the past must be a shared endeavour for all in the European Union to make a reality of the expression "Your past is our past". Keeping this memory alive is our collective duty as a sign of tribute and respect for all victims who have suffered and died and as a way to ensure that it never happen again. This memory nourishes the commitment of the European Union to democracy and the respect of fundamental rights, and to fight against modern manifestations of intolerance and extremism.