



**ARTICLE 19**

**In the European Court of Human Rights**

**Application Nos. 29440/19, 12396/21, 61350/21, 25390/22**

**BETWEEN:**

**Dupuy, Kalakova and Others, Prudovskiy, International Memorial**

**Applicants**

**v.**

**Russia**

**Respondent Government**

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**THIRD-PARTY INTERVENTION**

**ARTICLE 19: Global Campaign for Free Expression**

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Submitted on 16 February 2024

## INTRODUCTION

1. Based on the leave of the President of the Court, granted on 25 January 2024, this third-party intervention is submitted by ARTICLE 19: Global Campaign for Free Expression. This submission does not address the facts or merits of the cases.
2. The present group of cases raises fundamental questions as to the scope of the right to freedom of expression, guaranteed in Article 10 of the European Convention on Human Rights (European Convention), as it pertains to accessing the information about past human rights violations (as a part of so called 'right to truth'). In our submission, we address the following issues:
  - (i) The importance of the 'right to truth' (encompassing also the right to access historical archival documents about past human rights violations) in the international human rights framework;
  - (ii) An overview of comparative standards on victims' and broader public's right to access information from historical archives about past human rights violations; and
  - (iii) Based on the foregoing, conduct an analysis of what should be the approach to request access to archival documents about past human rights violations, in order to assist the Court on assessing the present cases under Article 10 of the European Convention.

## SUBMISSIONS

### **i. The importance of the right to access archives about past human rights violations**

3. The so-called right to truth - the right of victims, their families, and society at large to know the truth about past human rights violations - was originally recognised by the UN bodies, in particular the Human Rights Council,<sup>1</sup> the UN General Assembly,<sup>2</sup> and the UN High Commissioner for Human Rights,<sup>3</sup> in connection to forced disappearances, torture, and extrajudicial killings. At the regional level, the Inter-American Commission on Human Rights explicitly recognised that every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future.<sup>4</sup> The Inter-American Court on Human Rights further iterated that states have an obligation to provide victims' families with the truth about circumstances surrounding crimes.<sup>5</sup>
4. This Court has also regularly emphasised the importance of investigating the truth about gross human rights violations, in particular enforced disappearance. It has also posited a qualified right to access information under Article 10 of the Convention, to allow an historian access to secret service archives from the Communist era.<sup>6</sup>
5. ARTICLE 19 notes that the recognition of this 'right to truth' in international standards and in the Court's jurisprudence has been based on the premise that States must make information about human rights abuses available as means of justice, accountability, and non-repetition. Uncovering and knowing about gross human rights violations in the past supports effective

investigations and prosecutions and limits abuses. In contrast, if this information is concealed, it can lead to impunity for the perpetrators and further abuses. The recognition of the 'right to truth' has become particularly critical in contexts of democratic transitions where coming to terms with the past has been considered a necessary step towards creating a new democratic society.

6. At the core of the 'right to truth' is the right to obtain information. As such, it falls clearly within the ambit of the guarantee of the right to freedom of expression. We recall that the Inter-American Court of Human Rights has noted that "the State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions" and that transparency "promotes the accountability of State officials in relation to their public activities."<sup>7</sup>
7. ARTICLE 19 also observes that securing access to information about past human rights violations also requires opening historical archives for the victims, their relatives, and the public. There is a developing body of arguments supporting the contention that archives are not just repositories of information but have a role in defending human rights, including the right to freedom of expression.<sup>8</sup> For example, archives contain information that can empower victims to seek redress and reparation, prevent impunity and future violations from occurring, and support reconciliation at the national level. Moreover, as part of historical heritage, archives enable researchers of a nation to disseminate information to the public, analyse the past, preserve memory and prevent atrocities from repeating.<sup>9</sup> This is why the ability of not just victims and their families but also of the public, researchers, and the media to access archives is crucial and encompasses an individual as well as a collective right.
8. The importance of access to archives has been therefore recognised in a number of standards:
  - As for the **rights of victims of human rights violations**, the 2005 "Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity" recognises victims of human rights violations have "the imprescriptible right to know the truth about the circumstances in which the violations took place, and in the event of death or disappearance, the victim's fate."<sup>10</sup> To realise the right of victims to know the truth, states "should ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law"<sup>11</sup> and should facilitate access to victims, their families, and persons who may request it for their defence.<sup>12</sup> Similarly, the Principles of Access to Archives, approved by the International Council of Archives, provide that: "Institutions holding archives [shall] ensure that victims of serious crimes under international law have access to archives that provide evidence needed to assert their human rights and to document violations of them, even if those archives are closed to the general public."<sup>13</sup> The Principles also establish that "all persons shall be entitled to know whether their name appears in State archives."<sup>14</sup>
  - As for the **right of the public to access archives**, the Principles of Access to Archives provide for a general right to access archives. They state that both public and private entities should open their archives to the greatest extent possible.<sup>15</sup> Similarly, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity stipulate that "people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to

preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.”<sup>16</sup>

Further, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence have long been emphasising the importance of archives as means to protect the right of access to information.<sup>17</sup> In 2020, the Special Rapporteur recommended that states should “protect the archives of State agencies and civil society organizations, especially those that work in the area of human rights. Archives should be accessible in accordance with established standards, and Governments should remove obstacles to such access.”<sup>18</sup>

In the Council of Europe, the “European policy on access to archives” upheld the right to access public archives and confirmed state obligations to enact specific legislation “providing opening of public archives” that would enable individuals to access those archives.<sup>19</sup> Such legislation should be “co-ordinated and harmonised with the laws concerning related areas, in particular with that on access to information held by public authorities.”<sup>20</sup> Moreover, in Recommendation (2002)2, the Committee of Ministers broadened the same principles to provide individuals with a right to access official documents. This paved the way to the Convention on Access to Official Documents (Tromsø Convention) that reiterated that the principle of maximum disclosure should be applied consistently in order to harmonise laws on access to information with laws on access to archives.<sup>21</sup>

The Inter-American Commission on Human Rights also recommended states to introduce legislation and take all other relevant steps to officialise the right to open access to the information contained in official archives and records, in particular in cases where investigations are geared towards establishing the responsibility of perpetrators of international crimes and major human rights violations.<sup>22</sup>

9. In a summary, the right of victims, their relatives and broader public (in particular researchers) to access information about past human rights violations preserved in national archives, rooted in the right to information, imposes a positive obligation on States to provide access to such information.

## **II. Comparative overview standards on victims’, relatives’, and broader public’s right to access information from historical archives**

10. The right to access historical archives has been recognised and enforced in national laws across all regions of the world, particularly in Europe, Latin America, and Africa.
11. In the majority of the **Council of Europe member states**, victims of past human rights violations and their families as well as the public have the right to access archives related to atrocities perpetrated during totalitarian regimes, particularly during Nazism and Communism, based on dedicated/specialised laws. Making historical archives accessible was considered key to fulfilling three main objectives: i) to allow victims to access records about their families, ii) to allow

researchers to study history, and iii) to allow the general public to know and remember the past. Opening access to historical archives in Europe has been crucial for fostering a deeper understanding of shared heritage and facilitating scholarly research nationally and across borders. Although the process of opening these archives have been gradual, sometimes over extended periods of time, and there are challenges and shortcomings in the way the legislation is implemented, the right of access to historical archives is well established. This also reflects a growing recognition of the significance of preserving and disseminating historical knowledge for the benefit of future generations.

12. Dedicated laws on access to historical archives, including those covering totalitarian regimes, usually preceded the enactment of access to information laws that have enforced the general right to access information held by public bodies. Access to information laws contain the principles of maximum disclosure; that all information in possession of the state belongs to the public with limited and qualified exemptions; and refusals need to be justified on a case by case basis. These laws also ensure a right to appeal against the refusal through an internal review by the oversight body and/or through means of judicial review. ARTICLE 19 believes that the principles of access to information should prevail in any instances of conflict between access to information laws and laws on access to historical archives. Many countries have specifically amended laws on archives to comply with these principles.
13. Although ARTICLE 19 has not conducted a comprehensive review of all national laws in all Council of Europe member states on access to historical archives, we would like to highlight the following examples. We submit that these demonstrate the extent to which victims, their families, and researchers/the general public can access historical archives and confirm that the right of access is firmly established in the region.
  - In **Germany**, the Records of the State Security Service of the former German Democratic Republic (BStU) opened on the first day of reunification on 3 October 1990 as a means to support the democratic transition.<sup>23</sup> Every individual has the right to view the records that the Ministry for State Security collected about him or her, to find out whether they were subject to surveillance by the state security service (Stasi) and to allow them to prevent this data from being used to their detriment.<sup>24</sup> Additionally, access to archives is provided for research and media purposes within the conditions provided in the Stasi Archive Act as a means of ascertaining the extent to which the Stasi influenced and acted in public life.<sup>25</sup> The Stasi Archive Act also provided detailed specification for the use of the information and under which conditions access can be restricted.<sup>26</sup>
  - In **Poland**, the Polish Institute of National Remembrance (IPN) collects, elaborates on, and discloses materials related to the history of the Polish Nation between 1917 and 1990, i.e. mainly under German and Soviet occupation, and during the communist period. These archives are accessible to victims of repression, journalists, researchers, and public institutions under the Act on the Institute of National Remembrance.<sup>27</sup> Under the Act, every person shall have the right to apply for permission from the IPN to inspect copies of documents which concern him or her.<sup>28</sup> Additionally, any researcher in the field of humanities, social or economic studies, and/or law, or a person possessing a letter of recommendation from such a researcher, can apply to the IPN for access to the archived records, but should disclose the subject matter of the research.<sup>29</sup> The Act stipulates that

requests of researchers for access to specific documents can be rejected only in very limited circumstances set in the law.

- In **Slovakia**, individuals and family members of deceased persons can access archives of the State Security or other security bodies of the Slovak State or former Czechoslovakia upon request through application forms under the 2002 legislation.<sup>30</sup> While access to historical archives for researchers is generally facilitated, access to archives of the State Security is subject to specific regulations and procedures. Researchers seeking access to these archives need to comply with specific requirements, including obtaining official authorisation and adhering to established protocols for handling classified or confidential materials.<sup>31</sup> Access may be granted under certain conditions, such as demonstrating a legitimate research purpose and abiding by restrictions imposed by relevant authorities to ensure the preservation of national security interests and the protection of personal data.<sup>32</sup>
- In the **Czech Republic**, everyone over the age of 18 who is not serving a prison sentence or detention has the right to access information in the archives of the former secret police (currently held by the Ministry of Justice, Ministry of Interior, and Ministry of Defence) to the extent set out in the law.<sup>33</sup> Moreover, the archives of the former State Security Police are available to the public in a digital format and are accessible to the public through a request on the website of the Institute for the Study of Totalitarian Regimes.<sup>34</sup> This means that access is permitted not only for victims and their relatives, but to any other interested parties, including students, researchers, commentators or journalists, professional historians, etc. Archival materials are accessible to their full extent, without blacking out or anonymisation. Researchers have full access to archives but need to comply with specific procedures and requirements such as completing a specific research sheet,<sup>35</sup> following identification procedures, and fulfilling conditions for physical access.<sup>36</sup> It is understood that all who access the materials must respect the law on the protection of personal and sensitive information, and that these parties bear entire responsibility for any further treatment or use of the information obtained therein.
- In **Hungary**, individuals can access information about themselves in the archives of the former Hungarian Secret Services under the 2003 legislation.<sup>37</sup> Additionally, scientific researchers may access the information in the Hungarian Secret Services archives within the limits laid down in the law in compliance with law on the protection of personal data and the publicity of data of public interest.<sup>38</sup> Additionally, any person may get to know and may make known in anonymized form the documents contained in the Archives.<sup>39</sup>
- In **Ukraine**, the 2015 Law on Access to Archives of Repressive Organs of the Totalitarian Communist Regime (1917-1991), which regulates access to historical archives from repressive Soviet-era institutions, guarantees the “right of everyone to access archival information of repressive agencies.”<sup>40</sup> Moreover, the state is mandated to take measures to find and receive archival information of repressive agencies, which is stored in the relevant institutions of foreign countries.<sup>41</sup> The Law establishes a prohibition to qualify any archival document of repressive agencies as classified information.<sup>42</sup> The Law provides broad access to everyone who wants to access archives (including to study archival information, to make copies, or to access digital copies).<sup>43</sup> It also stipulates grounds on which access to archives *cannot* be restricted. On the other hand, victims of oppressive agencies have the right to

restrict access to archival information of repressive agencies about himself/herself, with some exceptions set in the law.<sup>44</sup>

- In **Bulgaria**, the law entitles everyone to access information collected about them or their deceased spouse or relatives to a certain degree in the archives of the former Bulgarian secret services and the intelligence services of the Bulgarian National Army.<sup>45</sup> Access is also provided for research and publishing purposes by virtue of the Access to Public Information Act.<sup>46</sup> Under Chapter 4 of the Law, access to documents involves the right to personally consult records, obtain document copies, and request disclosure of the names of persons who provided information in the case. This right is exercised by means of a written application which contains an explicit request to reveal the identity of those persons. Having been granted access to the resources, applicants have the opportunity to personally consult the documents in the reading room of the Committee on Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Army. If the documents contain references to third parties, whose mention could seriously affect the rights and legitimate interests of these parties, and no explicit written consent for disclosure is given by those parties or their heirs, copies of documents shall not include the information regarding those third parties. In such a case, the applicant shall sign a declaration of non-disclosure of the circumstances which have come to his/ her attention. In practice this means that applicants, as a rule, have the right to personally examine the original documents, but if no consent is provided by the third persons mentioned in those documents, all information regarding the latter will be removed from the copies.<sup>47</sup>
  - In **Spain**, based on the Historical Memory Law,<sup>48</sup> amended in 2020, victims of repression of the Franco dictatorship and their families can access archives from the intelligence and military services that operated between 1937 and 1977. The law establishes an individual right to access documents preserved in historical archives.<sup>49</sup> Restrictions to access apply in cases of risks to national security and defence of state, or interference with the investigation of crimes or judicial protection unless the public body concerned authorises its disclosure. In case of documents containing personal data, disclosure of information will only be possible with the individual's consent or 25 years after their death. Classified information under the Official Secrets Act is excluded from access. Researchers can access archives upon filling out a request form that specifies nature and purpose of their research. They also have to be identified in order to physically access the archives. Restrictions to access are in place for government records containing classified information or materials related to ongoing legal proceedings. As for archival documents containing personal data, researchers have to demonstrate that they have a legitimate interest to access the information (for a historical, scientific or statistical purpose). Access to documents containing personal data will then be granted to researchers without the need for consent of the data subjects "when the data is previously dissociated in a manner that prevents the identification of the affected persons."<sup>50</sup>
14. From a comparative perspective, ARTICLE 19 also highlights that in **Africa** and **Latin America**, the right to access archives has played a critical role in ensuring democratic transitions. Truth commissions, created to assist transition process, also played important role in facilitating access to information.<sup>51</sup>

- In **South Africa**, access to historical archives is possible under the 1996 South Africa National Archives Act (NASA)<sup>52</sup> and the 2000 Promotion of Access to Information Act (PAIA).<sup>53</sup> This also covers access to records of past human rights violations collected by the Truth and Reconciliation Commission,<sup>54</sup> currently held in the National Archives. NASA establishes open access for archival documents that are more than 20-year-old. National Archivists can decide to release them sooner upon request.<sup>55</sup>
- In **Argentina**, the government established “the National Memory Archive” in 2003 with the objective to “collect, analyze, categorize, copy, digitize, and archive information, testimony, and documents on the violation of human rights and fundamental freedoms in which the responsibility of the Argentine State is implicated, as well as on the social and institutional response to these violations”.<sup>56</sup> The access to information law contains a specific provision stating that exceptions do not apply to information concerning cases of grave violations of human rights, genocide, war crimes, and crimes against humanity, hence they should be released.<sup>57</sup>

### III. Proper approach in cases involving requests to access historical archives

15. Based on comparative and international standards, outlined in previous sections, ARTICLE 19 submits that the right to freedom of expression, guaranteed in Article 10 of the European Convention, also encompasses the right to access information about past human rights violations preserved in historical archives.
16. The right to freedom of expression under Article 10 of the Convention is not an absolute right and can be subjected to limitations. However, ARTICLE 19 notes that any restrictions to the right need to comply with “the three-part test” for restrictions to comply with the requirements of Article 10 para 2. This means that a public body can restrict access to archives only in cases where the denial has clear basis in the law, the denial is justified under one of the exceptions listed in Article 10 para 2 and is necessary and proportionate to the aim sought. State authorities should always demonstrate that the disclosure of the requested information would cause a substantial harm to the legitimate aim; and the harm to that aim must be greater than the public interest in having the information.
17. ARTICLE 19 submits that the Court should apply these criteria to denials of request for access to information from historical archives for both victims and their families and the researchers.
18. As for the **right of victims of gross human rights violations and their families** to access information in historical archives concerning repressive regimes, the overview of national laws in a number of the Council of Europe Member States shows that this right is firmly established. Moreover, ARTICLE 19 recalls the available standards, such as the Updated Set of Principles, outlined earlier, reaffirm the right of individuals to know the truth about violations of human rights and humanitarian law, and recognize the “inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.”<sup>58</sup> Further, irrespective of any legal proceedings, the victims of human rights violations and their



families have the “imprescriptible right to know the truth about the circumstances in which the violations took place, and in the event of death or disappearance, the victims’ fate.”<sup>59</sup> In order to do so, “access to archives shall be facilitated, both to victims and, as necessary, to persons implicated who request it for their defence.” At minimum, “all persons shall be entitled to know whether their name appears in State archives.”<sup>60</sup>

19. ARTICLE 19 submits that these principles should guide the assessment of necessity and proportionality of denial of requests for access to historical archives in the present case. Based on the comparative standards, we conclude that unspecified and broad denials of access to historical archives for victims and their families, such as in the present case, in general would not meet the test of necessity and proportionality and would not meet the requirements of the protection of human rights, guaranteed by the European Convention, in general.
20. ARTICLE 19 recognises that denial of access to historical archives to a **broader public, including researchers**, could be justified in certain circumstances, including – most likely – on the basis of protecting national security or privacy. However, we make two observations in this respect:
  - First, as for restricting access on the basis of protecting **national security**, we note that there is an overriding public interest in the disclosure of information regarding gross violations of human rights or serious violations. Standards developed by civil society, such as The Johannesburg Principles on National Security, Freedom of Expression and Access to Information,<sup>61</sup> prohibit restrictions on expression unless: the expression is intended to incite imminent violence; it is likely to incite such violence; and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. The restriction cannot be a pretext for protecting the government from embarrassment or exposure of wrongdoing, to conceal information about the functioning of its public institutions, or to entrench a particular ideology. Further, the Tshwane Principles – the Global Principles on National Security and the Right to Information, state that information about gross human rights violations may not be withheld on national security grounds in any circumstances.<sup>62</sup>
  - Second, we recognise that access to historical archives for researchers could be limited based on reasonable restrictions aimed at safeguarding **the privacy and security of victims and other individuals**. At the same time, we note that privacy norms are certainly not absolute and cannot be invoked to shield necessary historical or human rights investigations. Protection of privacy can be also achieved through other means, such as through certain levels of anonymisation of the information concerning some individuals. We observe that national legislation in some Council of Europe member states provides guidance on how to ensure access to archives while protecting privacy. For instance, in Slovakia, the Nation’s Memory Act treats ordinary citizens differently than people who were in the service of the repressive government. It states that the archive shall redact the personal data of individuals mentioned in documents—including “all data on their private and family life, on their criminal activity, health and property condition.”<sup>63</sup> It also stipulates that “if the document being disclosed is a personal (cadre) file of a security authority member, all data on the persons out of the member’s service and public activity shall also be made illegible.”<sup>64</sup> Similar privacy carve-outs are provided under the Hungarian legislation. The Law on the Hungarian State Security Archives contains detailed privacy rules for its archives but exempts

documents already in the public domain, released by the individual's consent, or which are needed to identify officials, contact, or collaborators of the repressive regime.<sup>65</sup>

21. Based on foregoing, ARTICLE 19 submits that blanket denials of access to archival information about past human rights violations to researchers on grounds that disclosure of information would harm national security or privacy of the victims should be considered incompatible with Article 10 para 2. In the light of the comparative standards, outlined above, we suggest that access should be in general provided to researchers based on request. Any restrictions on access should be narrowly construed and state authorities should be obliged to outline why possible denial of access for researchers is necessary to protect a legitimate interest and why such interest cannot be achieved through other means (e.g. through anonymisation of personal information).

## CONCLUSIONS

22. ARTICLE 19 concludes that international and comparative standards on access to information show that victims' family members and the public have a right to access historical archives. The right to freedom of expression under Article 10 of the Convention encompasses an individual as well as a collective right to access archival documents about past gross and other serious human rights violations, including those committed during former authoritarian regimes. The ability to access archives about atrocities during in the darkest times of European history is necessary for the protection of human rights, as a means to safeguard memory, and as a strong guarantee of non-repetition for future generations, which are fundamental conditions in any democratic society.
23. ARTICLE 19's research shows that the majority of the Council of Europe members states have made historical archives about past human rights violations publicly available, even in electronic format. The historical archives are generally accessible online or through requests both for victims and families and for research purposes through laws on access to archives. Any restrictions on access information about past human rights violations must pursue a legitimate aim and be necessary and proportionate. Even in cases where the refusal to disclose information could be justifiable under a specific legitimate aim, it should be assessed under the harm and public interest test.

Barbora Bukovska  
Senior Director for Law and Policy  
On behalf of ARTICLE 19

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<sup>1</sup> Human Rights Council, Resolution 12/12 on the right to truth, 12 October 2009.

<sup>2</sup> UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance adopted (ICCPED), (2006), Article 24.

<sup>3</sup> The UN High Commissioner for Human Rights, Study on the Right to Truth (2006), E/CN.4/2006/91, para 33.

<sup>4</sup> Inter-American Commission on Human Rights, Annual Report of The Inter-American Commission on Human Rights 1985-1986, Chapter V.

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- <sup>5</sup> The Inter-American Court on Human Rights, *Velásquez Rodríguez v. Honduras*, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para 186.
- <sup>6</sup> European Court of Human Rights (the European Court), *El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09 (2021), para 91.
- <sup>7</sup> The Inter-American Court of Human Rights, *Claude Reyes and Others v. Chile*, 19 September 2006, Series C, No. 151, para 84.
- <sup>8</sup> The UN High Commissioner for Human Rights, Report of the Office of the UN Human Rights Commissioner for Human Rights on the seminar on experiences of archives as a means to guarantee the right to truth, A/HRC/17/21 (2011), para 4; or The High Commissioner for Human Rights, Study on the Right to Truth, E/CN.4/2006/91 (2006), para 42.
- <sup>9</sup> Report of the Special Rapporteur on the promotion and protection to freedom of opinion and expression, Frank La Rue to the UN General Assembly, A/68/150 (2013), para 36.
- <sup>10</sup> Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Updated Set of Principles for the promotion and protection of human rights through action to combat impunity (2005), E/CN.4/2005/102/Add.1, Principle 4.
- <sup>11</sup> *Ibid.*, Principle 5.
- <sup>12</sup> *Ibid.*, Principle 15.
- <sup>13</sup> International Council on Archives, Principles of Access to Archives, 2013, Principle 6.
- <sup>14</sup> *Ibid.*, Principle 17.
- <sup>15</sup> *Ibid.*, Principle 1.
- <sup>16</sup> Updated Set of Principles, *op.cit.*, Principle 3.
- <sup>17</sup> See, e.g. the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, the first report to the UN General Assembly, A/HRC/21/46, 2012; the 2015 Report, A/HRC/30/42, 2015, para 96; Annex presenting “Set of general recommendations for truth commissions and archives.”
- <sup>18</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Savioli, A/HRC/45/45, 2020, para 113.
- <sup>19</sup> The Committee of Ministers in Recommendation (2000)13, Adopted by the Committee of Ministers on 13 July 2000.
- <sup>20</sup> *Ibid.*, Section II para 3.
- <sup>21</sup> Council of Europe Convention on Access to Official Documents (CETS No. 205).
- <sup>22</sup> Jens Boel, Perrine Canavaggio and Antonio Gonzalez Quintana (ed.), Archives and Human Rights, 2021, p.19.
- <sup>23</sup> Germany, Stasi Records Act of 29 December 1991.
- <sup>24</sup> Germany, the Federal Archives, Access to records through requests; available at <https://www.stasi-unterlagen-archiv.de>.
- <sup>25</sup> See Requesting access to Stasi files for research or media purposes, available at <https://verwaltung.bund.de/leistungsverzeichnis/en/leistung/99064001080001>.
- <sup>26</sup> See Article 32 of the Act on the Records of the State Security Service of the former German Democratic Republic (Stasi Records Act - StUG), 20 December 1991, as subsequently amended, Article 33.
- <sup>27</sup> Poland, the Act on the Institute of National Remembrance of 18 December 1998 (consolidated text as of 28 January 2021, Journal of Laws of 2021, item 177)
- <sup>28</sup> *Ibid.*, Article 30 para 1.
- <sup>29</sup> *Ibid.*, Article 36 para 1 and 2.
- <sup>30</sup> Slovakia, Act No. 553/2002 Coll., the Law on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 - 1989 and on Founding the Nation’s Memory Institute (Ústav pamäti národa) and on Amending Certain Acts (Nation’s Memory Act), adopted on 19 August 2002.
- <sup>31</sup> *Ibid.*, Articles 20-27.
- <sup>32</sup> *Ibid.*, Articles 20, 21, and 23.
- <sup>33</sup> The Czech Republic, Law No. 107/2002 Coll., the Law Amending Act No. 140/1996 Coll., on the disclosure of volumes created by the activities of the former State Security, and some other laws, Articles 4 -10. For instance, they have a right to know whether a personal volume or a volume with personal data was registered about them in the preserved information systems of the volumes created by the activities of the State Security and whether this volume was preserved and further whether a record recording the results of the deployment of intelligence equipment or surveillance of the State Security against them preserved and whether information output from bundles or actions was preserved about it.
- <sup>34</sup> The Czech Republic, Act No. 181/2007 Coll. of 8 June 2007 on the Institute for the Study of Totalitarian Regimes and the Security Services Archive (SSA) and on amendments to certain acts. For the information how the public can access the archives, see <https://www.abscr.cz/en/how-to-request-archival-materials/>.
- <sup>35</sup> *Ibid.*, Article 35
- <sup>36</sup> The Czech Republic, Research Rules of the Security Services Archive issued on the basis of Section 36 letter a) of Act No. 499/2004 Coll., on archive and records services and on amendments to some laws.

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- <sup>37</sup> Act No. III of 2003 On the Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the Historical Archives of the Hungarian State Security. Article 3 states that “1) a person under observation, a third party, a professional employee, an operative contact person and a collaborator may get to know and may make known the personal data included in a document managed in the Archives, which can be brought into connection exclusively with him. (2) A person under observation may get to know the data necessary for identification of a collaborator, operative contact person and a professional employee who can be brought into connection with him. (3) A person under observation and a third party may get to know, and with the consent of the third party or the person under observation, he may make known the data recording or describing the personal contacts established between the person under observation and the third party (e.g. data gathered on personal meetings, conversations).”
- <sup>38</sup> *Ibid.*, Article 4 onwards.
- <sup>39</sup> *Ibid.*, Article 5 para 1.
- <sup>40</sup> Ukraine, Law No. 326-VIII of 2020 on Access to Archives of Repressive Agencies of Totalitarian Communist Regime Of 1917-1991, Article 4 para 1.
- <sup>41</sup> *Ibid.*, Article 4 para 5.
- <sup>42</sup> *Ibid.*, Article 5 para 4.
- <sup>43</sup> *Ibid.*, Article 7.
- <sup>44</sup> *Ibid.*, Article 9.
- <sup>45</sup> Bulgaria, The Law on Access to and Disclosure of the Documents and Announcement of Affiliation of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Arm, Prom. SG. 102/19 Dec 2006, Article 31 para 1 and 2.
- <sup>46</sup> *Ibid.*, Chapter 4.
- <sup>47</sup> *Ibid.*
- <sup>48</sup> Spain, Law 52/2007 on Historical Memory amended in 2020.
- <sup>49</sup> Spain, [Royal Decree](#) 1708/2011, of November 18, which establishes the Spanish Archives System and regulates the Archives System of the General Administration of the State and its Public Bodies and its access regime, Article 24
- <sup>50</sup> *Ibid.*, Article 28
- <sup>51</sup> OAS, Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights, The Inter-American Legal Framework regarding the Right to Access to Information (2010).
- <sup>52</sup> South Africa, National Archives and Record Service of South Africa Act (previously National Archives of South Africa) 43 of 1996
- <sup>53</sup> South Africa, The Promotion of Access to Information Act [2](#) of 2000, which gave effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights.
- <sup>54</sup> The Truth and Reconciliation Commission (TRC) collected and archived surviving records of atrocities perpetrated during the apartheid. TRC collective a wide range of documentation to show the impact of apartheid on human rights such as court, police and local records (births, death and marriages certificates), diplomatic, political, military and para-military records in all sort of formats (paper-based; audio; visual; audiovisual and electronic). After TRC made its deliberations, these records were acquired by the National Archives.
- <sup>55</sup> South Africa, National Archives and Record Service of South Africa Act (previously National Archives of South Africa) 43 of 1996, Article 12.
- <sup>56</sup> See Argentina, Decree 1259/2003, “Archivo Nacional De La Memoria”, Bs.As., 16/12/2003, Article 1.
- <sup>57</sup> See Argentina, Law 27.275 “Derecho de Acceso a la Información Pública” (2016), Article 8.
- <sup>58</sup> The Updated Set of principles, *op.cit.*, Principle 4.
- <sup>59</sup> *Ibid.*, Principle 2.
- <sup>60</sup> *Ibid.*, Principle 17.
- <sup>61</sup> The Johannesburg Principles, adopted on 1 October 1995. The Principles have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression and have been referred to by the UN Commission on Human Rights.
- <sup>62</sup> *C.f.* Global Principles on National Security and the Right to Information (Tshwane Principles), Principle 10 (a).
- <sup>63</sup> Slovakia, The Act on Disclosure of Documents Regarding the Activity of State Security Authorities, *op.cit.*, Article 23.
- <sup>64</sup> Hungary, The Act No. III of 2003, *op.cit.*, Article 5 para 4.
- <sup>65</sup> *Ibid.*