



***Disclosing hidden history:
Lustration in
the Western Balkans***

A Project Documentation

Edited by

*Magarditsch Hatschikjan
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and Nenad Šebek*



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Disclosing hidden history:
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Thessaloniki 2005

Contents

Acknowledgements	9
Executive Summary	10
Introduction	11
Part 1: Dossier - Conclusions and Recommendations	13
1.1 Foreword	13
1.2 Overview of main activities and achievements	14
1.3 Main findings and conclusions	16
1.4 Recommendations	18
Part 2: Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans ...	21
2.1 Foreword	21
2.2 Regional Overview: Western Balkans	23
<i>Compiled by Magarditsch Hatschikjan</i>	
2.3 Country Overview: Albania	33
<i>Compiled by Elsa Ballauri and Kathleen Imholz</i>	
2.4 Country Overview: Bosnia and Herzegovina	46
<i>Compiled by Nejra Čengić</i>	
2.5 Country Overview: Croatia	56
<i>Compiled by Goranka Lalić</i>	
2.6 Country Overview: Republic of Macedonia ¹	63
<i>Compiled by Goce Adamčeski</i>	
2.7 Country Overview: Serbia and Montenegro	68
<i>Compiled by Aleksandar Resanović</i>	
Part 3: Past and Present: Consequences for Democratisation	73
3.1 Foreword	73
3.2 Past and Present: Historical Experiences	76
3.2.1 The Consequences of Lustration for Democratisation: The Experience of East Central Europe	76
<i>Natalia Letki</i>	

1 "Throughout this publication the CDRSEE has retained whatever term the authors have used including the Republic of Macedonia or just Macedonia. In its works, the CDRSEE uses the name which is applied by international organisations, such as the UN or the EU, i.e. The former Yugoslav Republic of Macedonia."

3.2.2	The Cases of Czechoslovakia and the Czech Republic	80
	<i>Pavel Žaček</i>	
3.2.3	The Case of Romania	83
	<i>Marius Oprea</i>	
3.2.4	The Case of Bulgaria	86
	<i>Emil Tsenkov</i>	
3.2.5	Discussion (Extracts)	89
3.3	Public Debates on the Past: The Experiences in the Western Balkans	96
3.3.1	The Experience in Yugoslavia and in Serbia and Montenegro	96
	<i>Jovica Trkulja</i>	
3.3.2	The Experience in Croatia	99
	<i>Ivo Goldstein</i>	
3.3.3	The Experience in Bosnia and Herzegovina	102
	<i>Jakob Finci</i>	
3.3.4	The Experience in the Republic of Macedonia ²	105
	<i>Iso Rusi</i>	
3.3.5	The Experience in Albania	108
	<i>Kathleen Imholz</i>	
3.3.6	Discussion (Extracts)	115
3.4	Public Debates on the Past: Effects on Democratic Structures	124
3.4.1	Lessons from the Cases of Yugoslavia and Serbia and Montenegro	124
	<i>Vojin Dimitrijević</i>	
3.4.2	Lessons from the Case of Croatia	127
	<i>Žarko Puhovski</i>	
3.4.3	Lessons from the Case of Bosnia and Herzegovina	130
	<i>Dino Abazović</i>	
3.4.4	Lessons from the Case of the Republic of Macedonia ²	134
	<i>Biljana Vankovska</i>	
3.4.5	Lessons from the Case of Albania	139
	<i>Ben Andoni</i>	
3.4.6	Discussion (Extracts)	141

Appendices

I	Dossier - Zaključci i preporuke	153
II	Selected Literature on Lustration and Related Issues	161
III	Contributors	166

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This book, documenting the main results of the project *Disclosing hidden history: Lustration in the Western Balkans*, is the product of the collective work of many excellent colleagues. Our thanks go first and foremost to Ms Corinna Noack-Aetopoulos, Project Coordinator at the CDRSEE. She has been the administrator of the entire enterprise, coordinating activities, reports, press work and publications efficiently. Many thanks are also due to the project coordinators of the partner organisations: Goce Adamčeski from FOSIM, Elsa Ballauri from AHRG, Nejra Čengić from CIPS, Goranka Lalić and later on Srđan Dvornik from CHC, and Aleksandar Resanović from CPDD (formerly CAA). They all mobilised many distinguished experts from the respective countries to participate in different activities and publications, contributed much to the successful organisation and outcome of seminars and workshops, wrote the country overviews for the *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* on the basis of extensive research and took care to inform the media and the experts concerned in their countries about the development and the results of the project. In the context of the project, we owe particular gratitude to Ms Sheila Cannon, Director of Programmes at the CDRSEE, who was instrumental in formulating the project proposal which was subsequently accepted by the donors.

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The editors

Thessaloniki, September 2005

Executive Summary

The process of facing the past and making a clean break with it is a sensitive and contested issue in all post-authoritarian countries. The project *Disclosing hidden history: Lustration in the Western Balkans* was initiated to evaluate the developments in this field in the Western Balkans. It examined, in particular, the legislation on lustration and the public access to the files of the former secret services, its implementation and the general public debates on the past in the countries of the region. The primary aims of the project were to: enhance the public debates on the past, contribute to the improvement of legislation, procedures and practices on lustration and the public access to the files, increase the legal and political awareness and strengthen the role of civil society.

The main findings and conclusions of the project show significant deficiencies both in the legislation and practices of lustration as well as of the public access to the files of the former secret services. In short, lustration did not take place in the Western Balkans. Even in the cases where appropriate lustration laws were passed, the public authorities failed to implement them. The legislation on about the public access to the files and its implementation are at best, unsatisfactory and inadequate. The interest of the general public has been focussed on other issues, and civil society was not strong enough to bring this issue to the fore. The mainstream information media did not place the issue on the public agenda in a way and to an extent that would have been appropriate and necessary. Most international actors involved in democracy building in the Western Balkans paid little or no attention to contested issues surrounding the dealing with the past. All of this had negative repercussions on democracy and the rule of law.

Although there is no single model for lustration legislation and procedures which could be successfully applied in all countries of the region, some parts of legislation and procedures are applicable and recommended for all countries. Legislation on lustration and on the public access to the files of the secret services should cover not only the period up to 1990, but also the subsequent ones, particularly the 1990s. This is especially important for most of the post-Yugoslav states. Public authorities should efficiently implement the laws passed on lustration and public access to the files of the secret services. Parliaments and other competent public authorities control the implementation rigorously, with thorough and regular checks. Public authorities should continuously and systematically include non-governmental experts and organisations in the preparation and implementation of the respective laws and procedures. International organisations should continue to monitor and assist with legislation on lustration and on public access to the files of the former secret services as well as its implementation. They should continue to contribute financial, technical and professional support for initiatives and projects (such as truth commissions) aimed at improving legislation on lustration and public access to the files of the former secret services and its implementation.

Introduction

This documentation includes the three major publications that resulted from the project *Disclosing hidden history: Lustration in the Western Balkans*:

- ◆ the *Dossier – Conclusions and Recommendations*;
- ◆ the *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* and
- ◆ the electronic book *Past and Present: Consequences for Democratisation*.

The project was designed and led by the Center for Democracy and Reconciliation in Southeast Europe (CDRSEE). It was carried out between 1 February 2004 and 31 July 2005. Five partner organisations from the Western Balkans took part:

- ◆ the *Albanian Human Rights Group (AHRG)* in Tirana,
- ◆ the *Center for Interdisciplinary Postgraduate Studies (CIPS)* at the University of Sarajevo,
- ◆ the *Croatian Helsinki Committee for Human Rights (CHC)* in Zagreb,
- ◆ the *Foundation Open Society Institute of Macedonia (FOSIM)* in Skopje,
- ◆ the *Center for Antiwar Action (CAA)* in Belgrade, renamed in June 2005 as the *Center for Peace and Democracy Development (CPDD)*.

The project was financed by the European Union and USAID. This book was financed by The Balkan Trust for Democracy.

The *Dossier - Conclusions and Recommendations* was posted on the web in July 2005. It starts with an overview of the main activities and achievements of the project, summarises its findings and conclusions and provides a number of recommendations:

- ◆ *general recommendations for the Western Balkans*;
- ◆ *specific recommendations on the issues of lustration legislation, procedures and implementation and the public access to the files of the secret services of the former regimes*;
- ◆ *recommendations concerning international actors on the issues of monitoring and support*.

The *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* was posted on the website in March 2005. It provides a concise overview on developments related to efforts to deal with the authoritarian past in the Western Balkans, both on the level of the individual countries and on the regional level. Its focus being on lustration legislation, procedures and practices, the Manual also treats the legislation on public access to the files of the secret services and its implementation as well as the issues of the general public debates on the past. It contains a regional overview of the Western Balkans and country overviews of Albania, Bosnia and Herzegovina, Croatia, The former Yugoslav Republic of Macedonia and Serbia and Montenegro.

The electronic book *Past and Present: Consequences for Democratisation* was posted on the website in December 2004. It deals with contentious issues in all post-authoritari-

an countries: the processes of facing the past, especially disclosing historical facts hidden in secret archives, lustration and lustration procedures, as well as public debates on the past. It treats the experiences in some countries of East Central and Southeast Europe (outside the Western Balkans) with these issues and their consequences for the development of the respective societies. It also includes case studies on the experiences with public debates on the past and on the lustration issue in the individual countries of the Western Balkans. Finally, it analyses the direct or indirect effects of the public debates on the past on legislation and institutions.

The Appendix includes an extensive list of selected literature on lustration and lustration related issues and the list of the contributors, their affiliations and positions.

We are particularly grateful to the authors of the contributions, to the European Union and USAID for the financing of the project and to The Balkan Trust for Democracy for the financing of this book.

This publication has been produced with the assistance of the European Union, USAID and The Balkan Trust for Democracy. It has been implemented by the CDRSEE. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union, USAID, The Balkan Trust for Democracy or the CDRSEE.

The editors
Thessaloniki, September 2005

Part 1: Dossier - Conclusions and Recommendations

1.1 Foreword

This dossier is the outcome of the Recommendations Workshop (26-29 May 2005 in Thessaloniki), organised as the concluding seminar of the project *Disclosing hidden history: Lustration in the Western Balkans*. This workshop was attended by the representatives of the organisations involved in this project: Goce Adamčeski (Project Coordinator, FOSIM), Elsa Ballauri (Executive Director and Project Coordinator, AHRG), Sheila Cannon (Director of Programmes, CDRSEE), Nejra Čengić (Project Coordinator, CIPS), Srđan Dvornik (Executive Director and Project Coordinator, CHC), Magarditsch Hatschikjan (Project Director, CDRSEE), Corinna Noack-Aetopoulos (Project Coordinator, CDRSEE), Dušan Reljić (Member of Board of Directors and Project Supervisor, CDRSEE), Aleksandar Resanović (Executive Director and Project Coordinator, CPDD, formerly CAA) and Nenad Šebek (Executive Director, CDRSEE). The dossier was drafted and revised on the basis of their contributions and discussions.

Thessaloniki, July 2005

1.2 Overview of main activities and achievements

This project has created and expanded a regional network of NGOs and initiated several regional and local activities with the purpose of strengthening good governance, the rule of law, and the participation of civil society in the democratic process. Specifically, the project enhanced the debate on lustration legislation and procedures and on the regulations about the public access to the files of the former secret services. In addition, it also extended and fostered citizen participation in the public debate on the past in the Western Balkans.

The definition of “lustration” which framed and guided the contents of the project was agreed upon by the organisations involved during the Planning Workshop. It was decided not to use the broader definition which includes all possible parts of “decommunisation”, but the narrower one, which focuses on legal acts and procedures for screening persons seeking selected public positions for their involvement with past regimes.

The main achievements of the project are:

- it contributed to the improvement of the debates on lustration legislation and procedures;
- it contributed to the improvement of the debates about the legislation on the public access to the files of the former secret services and the practices in this field;
- it enhanced legal and political awareness about the importance of dealing openly with the past;
- it improved the public debate on the past;
- it initiated constructive analytical and critical discussions on lustration and the public access to the files amongst legal professionals, legislators, public administration officials, academics, journalists and activists from civil and human rights groups;
- it provided a regional comparative analysis and individual country reports on lustration, public access to the files and public debates on the past in the Western Balkans;
- it presented specific recommendations on lustration and public access to the files in the Western Balkans;
- it involved human rights groups in the lustration and files debates and strengthened their role as well as citizen participation in these processes;
- it publicised the project findings widely, and made them easily accessible on the internet.
- it focussed the public attention on project topics by the inclusion of media professionals in the activities, press releases, press conferences and publications.

The direct beneficiaries of the project were more than 150 legislators, legal experts, public administration officials, academics, journalists and activists from civil and human rights groups.

All activities, as foreseen in the original plan of action, have been carried out and all major objectives achieved. In particular:

All **information on the project** is available to the public on the continuously updated **project web page** www.lustration.net

The following **publications resulting from** the project have been posted on the project web page:

- a) *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* (see Part 2 of this book);
- b) Electronic book *Past and Present: Consequences for Democratisation* (see Part 3 of this book)
- c) *Dossier - Conclusions and Recommendations* (see Part 1 of this book).

The following **seminars** and **workshops** have been organised:

a) **Past and Present: Consequences for Democratisation, Belgrade, 2-4 July 2004** (programme: http://www.lustration.net/news_seminar_belgrade.html; participants: http://www.lustration.net/news_seminar_belgrade_list.html)

The seminar was attended by 40 experts from 12 countries and attracted significant local and international media attention.

b) **Lustration, Legislation and Procedures, Tirana, 14-17 October 2004** (programme: http://www.lustration.net/news_seminar_tirana.html; participants: http://www.lustration.net/news_seminar_tirana_part.html)

The seminar was attended by 45 experts from 8 countries and attracted significant local and international media attention.

c) **Lustration, Public Debates on the Past and the Rule of Law, Zagreb, 17-20 February 2005** (programme: http://www.lustration.net/news_seminar_zagreb.html; participants: http://www.lustration.net/seminar_zagreb_participants.html)

The seminar was attended by 49 experts from 8 countries and attracted significant local and international media attention.

d) **Planning Workshop, Thessaloniki, 26-28 March 2004** (programme and participants: http://www.lustration.net/news_workshop_thessaloniki.html)

The initial workshop for the planning of the project, attended by the responsible representatives of the organisations involved in the project.

e) **Recommendations Workshop, Thessaloniki, 26-29 May 2005** (programme and participants: http://www.lustration.net/news_workshop_thessaloniki2.html)

The concluding workshop on recommendations, general results and consequences of the project was attended by the responsible representatives of the organisations involved.

1.3 Main findings and conclusions

The findings and conclusions are mainly based on the results of the research conducted by expert groups in the countries of the region and a regional expert group. The outcome of this research is summarised in the *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* (see Part 2 of this book). They are also based on the experiences presented in the seminars of the project and numerous discussions with and interviews of experts by the project coordinators and the project director.

a) The basic finding of the research within the framework of this project is that lustration of public officials who were active in the time of one-party rule in the countries of the Western Balkans, essentially did not take place.

b) This is a serious failure, since the absence of lustration encouraged political arbitrariness, especially in the time immediately after the demise of one-party rule in the region.

c) Externally enforced lustration, such as activities by international authorities in the regions of the Western Balkans that were, or still are, UN protectorates, cannot be considered a success.

d) It is evident that even in cases where appropriate lustration laws have been passed, the public authorities in most cases failed to implement them.

e) In many parts of the Western Balkans, the legislation on the public access to the files of the former secret services and its implementation are inadequate.

f) Initiatives to establish Truth Commissions in the Western Balkans have all failed in the recent past.

g) The mainstream information media did not place the issue on the public agenda in a manner to an extent that would have been appropriate and necessary.

h) The interest of the general public has been focussed on other issues (ethnic conflicts, wars, social issues).

i) Civil society was not strong enough to bring this issue to the fore.

j) Experts and civil society organisations that participated in this project believe that the rule of law, democratisation and also lustration are of utmost importance for the development of the countries of the Western Balkans not only to help them prepare for EU membership but also to come to terms with their own past and prevent the recurrence of similar crimes.

k) Most international actors involved in democracy building in the Western Balkans paid little or no attention to contested issues about dealing with the past.

l) The EU and USAID support of this project was a useful and constructive step in supporting the efforts to deal with the past.

1.4 Recommendations

There is no single model for lustration legislation and procedures which could be successfully applied in all countries of the region. Due to the different histories, traditions and experiences in the region, particular solutions have to adapt to the specific conditions. Nevertheless, some parts of legislation and procedures are applicable and recommended for all countries.

1.) General Recommendations for the Western Balkans

a) Legislation on lustration and on the public access to the files of the secret services should cover not only the period up to 1990, but also the subsequent ones, particularly the 1990s. This is especially important for most of the post-Yugoslav states.

b) Public authorities should implement the laws passed on lustration and public access to the files of the secret services. Parliaments and other public authorities should control their implementation rigorously, and with thorough and regular checks.

c) Competent public authorities should continuously and systematically include non-governmental experts and organisations in the preparation and implementation of the respective laws and procedures.

2.) Specific recommendations

A. Lustration Legislation, Procedures and Implementation

a) Comprehensive lustration laws should be prepared and passed in those parts of the region where no such laws have been passed so far: Croatia, Bosnia and Herzegovina, The former Yugoslav Republic of Macedonia as well as Montenegro.

b) The time of application of the lustration laws should include not only the period up to 1990, but also the subsequent ones up to the date of the introduction of legislation on free access to public information.

c) Immediately after the passing of the lustration laws, the incumbents of certain offices should be screened. The laws should contain a precise list of these offices.

d) Candidates running for certain offices should also be screened. The laws should contain a precise list of these offices.

e) The main criterion used in the definition of the persons affected in the screening processes should not be the prior holding of a high-ranking state or party position, but the concrete involvement in human rights violations.

f) In the preparation of the comprehensive lustration laws, the parliaments should organise public hearings involving non-governmental experts from academia, civil society and victims' organisations.

g) The investigation (screening) processes should be done by independent commissions, set up by the competent public authorities. The files of the candidates running for public office should be screened by these independent commissions.

h) The independent commission, vetting the incumbents of public offices and candidates running for them, should disclose to the parliament any information contained in the files, which may indicate that the incumbent or candidate has been involved in violations of human rights.

i) The incumbents and candidates on whom information of having violated human rights have been found should be disqualified from holding public office for a period of time. The procedure for disqualification should be defined by law.

j) Governments should regularly report to the parliament on the implementation of the laws.

B. Public Access to the Files of the Secret Services of the Former Regimes - Legislation, Procedures and Implementation

a) Laws on public access to the files of the secret services of the former regimes should be prepared and passed in those parts of the region where public access is currently not allowed.

b) In the preparation of these laws, the parliaments should organise public hearings involving non-governmental experts from academia, civil society and victims' organisations.

c) In the other parts of the region, legislation, procedures and implementation on this issue should be reviewed and, where necessary, modified. This process should be done in a transparent manner.

d) Personal files should, as a rule, be accessible only to the persons to whom the files refer and to their legal successors. A law regulating exceptions to this principle should be passed.

e) For the purpose of the implementation of these laws, parliaments should set up an independent body, responsible for preserving the files and for decisions concerning public and personal access to them, according to the law. This body should be obliged to provide regular public reports to the parliament on its work.

C. Truth Commissions and Public Debates on the Past

a) For the sake of disclosing publicly contested issues of the past and to enhance pub-

lic debates on them, independent truth commissions should be established. They should include distinguished personalities, experts and representatives of all segments of the society. They should work in public sessions, the main task being a solid and proper evaluation of the contested issues of the past. Public authorities should cooperate with civil society actors in the establishment of truth commissions.

b) Regional, bi- and multilateral commissions of historians and other experts from academia as well as representatives of non-governmental organisations should be set up in order to discuss issues of the past which are of mutual interest, in an open and egalitarian manner. These commissions could elaborate propositions relevant to these issues, for example propositions for textbooks on history.¹

3. International Actors

Monitoring and support

a) The Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), the European Union (EU) and other international governmental and non-governmental institutions should continue monitoring and assisting legislation on lustration and on public access to the files of the former secret services as well as its implementation.

b) International organisations should continue to contribute financial, technical and professional support for initiatives and projects (such as truth commissions) aimed at improving legislation on lustration and public access to the files of the former secret services and its implementation.

¹ An example of initiatives on such textbooks and their outcome is the Southeast European Joint History Project of the Center for Democracy and Reconciliation in Southeast Europe which has created Four History Workbooks for History Teachers in the Southeast European region. See the project web page <http://www.see-jhp.org/>

Part 2: Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans

2.1 Foreword

The objective of the Manual is to provide a concise overview of developments related to dealing with the authoritarian past in the Western Balkans, both on the level of the individual countries and on the regional level. Although its focus is on lustration legislation, procedures and practices, the Manual also considers the legislation on public access to the files of the secret services and its implementation as well as the issues of the general public debates on the past. It contains country overviews on Albania, Bosnia and Herzegovina, Croatia, The former Yugoslav Republic of Macedonia and Serbia and Montenegro, preceded by a regional overview based on the findings of the authors of the individual country overviews.

Given the aim of providing both concise and comparable information, a synopsis like approach was chosen. A questionnaire was prepared, serving as guidelines for the issues and questions to be dealt with in the overviews. It contained questions relating to the following matters:

1. Lustration law(s) passed;
2. Proposal(s) for a lustration law rejected;
3. Procedures assigned in the lustration law(s);
4. Implementation of lustration law(s);
5. Inclusion of NGOs in preparation of the law(s);
6. Public debates on the lustration law(s);
7. Laws and procedures on public access to files of the secret services;
8. Proposals for and implementation of other solutions (e.g. truth commissions, general amnesty, (de)certification processes, screening and re-appointments in state administration or the judiciary system, criminal proceedings, etc.);
9. General public debates on the past.

All overviews follow this structure. In the Country Overview: Albania, an additional item on a pending draft law on lustration was included.

The country overviews were compiled by the project coordinators of the partner organisations named above, in the case of Albania by the project coordinator and Ms. Kathleen Imholz, a lawyer working in Albania and legal adviser to the partner organisation. They are based on the research of the authors and their extensive cooperation (consultations, discussions, interviews) with numerous experts on the different topics in the respective country. Many legislators, legal experts, academics, public administration officials, members of civil rights groups and other experts thus contributed in a significant way to the outcome. They are named in the country overviews. The

regional overview is based mainly on the findings presented in the country overviews, but also on extensive discussions of the author with various experts on developments in the individual countries as well as in the entire region.

Our thanks go, first and foremost, to the authors of the country overviews. We also thank the experts who were available for consultations, discussions and interviews and who are named in the country overviews. Our gratitude also goes out to Corinna Noack-Aetopulos for organisational and technical help in the preparation of the publication and to Ruth Sutton for her thorough look, as a native speaker of English, at the final outcome.

Thessaloniki, February 2005

2.2 Regional Overview: Western Balkans

Compiled by Magarditsch Hatschikjan¹

1. Lustration laws passed

In the Western Balkans, comprehensive lustration laws have been passed in one state (**Albania**) and in one member state of the State Union of **Serbia and Montenegro** (**Serbia**). In **Croatia**, in **Bosnia and Herzegovina** and in **The former Yugoslav Republic of Macedonia** as well as in **Montenegro**, no such lustration laws have been passed.

In **Albania**, a comprehensive lustration law, a lustration law affecting only one professional group (private lawyers) and a law containing one lustration-related provision have been passed. The first lustration law, passed on 26 January 1993 (Law Nr. 7666, "On the Creation of a Commission to Reassess Licenses for the Exercise of Advocacy and for an Amendment to Law Nr. 7541 dated 18.12.1991 'On Advocacy in the Republic of Albania'"), only affected the licensing of private lawyers; its essential articles were declared unconstitutional by the Constitutional Court in May 1993. The second lustration law, passed on 30 November 1995 (Law Nr. 8043, "On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State"), was a comprehensive one, amended four times between 1996 and 1998 and modified by the Constitutional Court in January 1996. It remained in effect until 31 December 2001, when it expired by its terms, except for one Article. The law containing one lustration related provision was Law Nr. 8001, passed on 22 September 1995 and entitled "On Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons". The lustration related provision was a general statement, declaring that certain categories of persons could not be elected to certain offices until 31 December 2001. The law itself was not implemented, but a basis for implementing the lustration-related provision was provided by Law Nr. 8043. (An English translation of the texts of all laws and Constitutional Court decisions mentioned above is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

In **Serbia**, a lustration law was passed on 30 May 2003, entitled "Accountability for Human Rights Violations Act". (An English translation of the text is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans*

¹ This overview is based mainly on the findings of the authors of the individual country overviews published within this Manual, but also on extensive discussions of the author with various experts on developments in the individual countries as well as in the entire region. The author's thanks - for instructive discussions and contributions on general lustration issues, on the questionnaire that served as a guideline for this Manual and on various topics of this as well as of the other overviews - go particularly to the authors of the country overviews and to Ms. Kathleen Imholz (Lawyer and Legal Adviser, Tirana), Dr. Natalia Letki (Nuffield College, University of Oxford) and Mr. Jakob Finci (Association for Truth and Reconciliation, Sarajevo). All information given in this overview refers to developments until 31 December 2004.

(http://www.lustration.net/human_rights.pdf).

The lustration law in **Albania**, that only affected private lawyers (later declared unconstitutional), remains a unique case in the Western Balkans, as a piece of legislation that singled out one professional group for lustration. While vetting processes affecting certain professional groups (police officers as well as judges and prosecutors) have taken place in **Bosnia and Herzegovina**, these processes were regulated by special procedures set up by international institutions (the UN Mission in the country and The Office of the High Representative).

The only two comprehensive lustration laws passed in the region (in **Albania** and in **Serbia**) show some formal and procedural similarities, but they differ essentially in terms of the most important provisions, the spirit and the implementation. In both cases, the laws were proposed and mainly supported by post-authoritarian parties and politicians. Both laws contain similar lists of offices and functions that persons affected by the law are not allowed to hold, be elected or appointed to. The space of time during which the affected persons are prohibited from holding the offices and functions listed is also similar: in **Serbia**, it is explicitly determined for five years and in **Albania**, it is implicitly determined (by the expiry date of the law) for six years.

More important, however, are the substantial differences. In the case of **Albania**, the main criterion used in the definition of the persons affected is the prior holding of a state or party position (high-ranking officials of the Party of Labour, i.e. the Communist Party, leading functionaries in the organs of the former State Security or collaborators of them; the law allowed, however, for the exemption of persons who would be otherwise covered if they had “acted against the official line or distanced themselves publicly”). In the case of **Serbia**, the main criterion is the commission of human rights violations. The period lustration is applied to, in the case of **Albania**, is the socialist era (defined in the original enactment as the time between 29 November 1944 and 31 March 1991 and in the 1997 amendment as the time between 29 November 1944 and 11 December 1990), and in the case of **Serbia**, the time since 23 March 1976 (the day the International Covenant on Civil and Political Rights in Yugoslavia came into effect). There has also been a fundamental difference with respect to implementation, which is discussed below (see item 4.).

2. Draft laws on lustration rejected or pending

A draft law on lustration was rejected in **Croatia**, while in **Albania** a draft law is currently in parliamentary procedure. In **Bosnia and Herzegovina** as well as in **The former Yugoslav Republic of Macedonia**, no proposals for a lustration law have ever been filed with the respective parliament.

The ultimately rejected draft law in **Croatia** was proposed by the Croatian Party of Rights which twice initiated a parliamentary procedure (on 11 February 1998 and on 20 October 1999). Both times, the topic was removed from the agenda of the parliament by a vast majority of the deputies, the rejection being led by the then (and cur-

rently again) ruling Croatian Democratic Union. As the title of the proposal (Draft Law on Removing the Consequences of the Totalitarian Communist Regime) indicated, its character was nearer to a broader de-communisation than to a pure lustration approach. It aimed mainly at a systematic disabling of a rather broad range of “privileged members” of the former regime from holding high-ranking offices in the new state.

In **Albania**, a draft law entitled “On checking the figure of an elected or appointed official in important state organs” and proposed by three deputies from two of the small opposition parties was filed with the parliament on 29 June 2004. (An English translation of this draft law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf.) It would provide that persons belonging to one of the 10 listed categories (see Country Overview Albania, item 7, for the list) would be checked as to whether they had been collaborators with the Communist secret police. Appointed persons (not elected ones) would be discharged from their positions if they turned out to have been collaborators and didn’t resign voluntarily. Although not directed to opening Communist era secret police files to the public *per se*, the draft law was another major attempt to bring back a consciousness of the relations that current politicians, civil servants, army and police officials, judges and prosecutors and other public officials had with the secret police of the former regime. The draft law has been discussed in two of the parliamentary commissions but has not been voted on. It is unlikely to be approved, or even voted on, before the elections scheduled to be held in July 2005.

3. Procedures assigned in the lustration laws

As already mentioned, the two comprehensive lustration laws in the region (Law Nr. 8043 dated 30 November 1995 in **Albania** and Accountability for Human Rights Violations Act dated 30 May 2003 in **Serbia**) show some similarities with respect to the procedures assigned. Both laws contain a list of offices whose holders are to be affected by the implementation of the laws. The categories do not differ substantially, the focus being on high-ranking offices of state and in state administration on different levels, state security, various public institutions, national and state owned banks, diplomatic representations and judiciary system. The main difference is related to the ranks included. Generally, the law in **Albania** foresees the lustration of a broader range of persons than the law in **Serbia**. For example, it includes the entire personnel in the State Information Service (after 1998, called the National Information Service), the Military Information Service and the Public Order Information Service, the entire personnel in Albanian diplomatic representations and all judges, assistant judges, prosecutors and officers in the judicial police. The respective categories in **Serbia** include only officials and sworn officers of the Security Information Service and other similar services, the heads of diplomatic missions and the consuls and certain categories of judges and prosecutors. The only exception to this rule is the inclusion of all deputies of the National and Provincial Assemblies in **Serbia**, while the law in **Albania** does not foresee the lustration of parliamentarians. (For the complete lists, see Country Overview Albania, item 2, and Country Overview Serbia and Montenegro,

item 3.) In both cases, the laws determine that a special commission for investigation is to be set up. The same was done in the first lustration law in **Albania** (Law Nr. 7666, later declared unconstitutional). A particular feature of the procedures assigned was the specifications in the law in **Serbia** on vetting procedures prior to appointment and those after appointment.

The main substantial difference, that also refers to the procedures assigned, has already been mentioned: The main criterion used in the definition of the persons affected, in the case of **Albania**, is a former position, in the case of **Serbia**, the commission of human rights violations. In congruence with this difference, the procedural rights of the persons affected by the laws are by far more exhaustively described in the latter case. This also applies to the appellate procedures. In **Serbia**, a complaint against the decision made by the Commission Panel may be submitted to the Commission, and an appeal against the decision of the Commission on the complaint may be lodged at the Supreme Court. In **Albania**, the comprehensive lustration law originally provided for a direct appeal to Albania's highest ordinary court (then known as the Court of Cassation). It was amended by Law Nr. 8232 dated 19 August 1997 to provide a direct appeal to the Court of Appeals. As for the first lustration law, later declared unconstitutional by the Constitutional Court, the High Council of Justice, newly created in 1992, was assigned as the body to hear appeals. This provision was specifically criticised in the Constitutional Court Decision referred to above, for giving an improper competency to the High Council of Justice.

The precise overall number of persons and offices covered by the lustration laws is unknown, in **Albania** as well as in **Serbia**.

4. Implementation

In the entire region, a single lustration law was implemented for the positions covered by it - the comprehensive Law Nr. 8043 in **Albania** (from early 1996 until it expired by its terms at the end of 2001). However, some deficiencies were evident, particularly in connection with the vague formula allowing for exemptions (if persons who would be otherwise covered had "acted against the official line or distanced themselves publicly") which at least offered the possibility of politically motivated manipulation. The total number of persons who lost their jobs or were not permitted to run for office or assume official positions because of this law is not known. According to some serious estimates, it may have been about 250.

The first lustration law in **Albania** (Law Nr. 7666 that only affected private lawyers) was only partially implemented, before being declared unconstitutional. The licenses of 47 persons to practice law were ordered to be revoked, but after the law was declared unconstitutional, these persons did not lose their licenses.

In **Serbia**, practically nothing of the lustration law has been implemented. There was only one measure partially implemented: the National Assembly appointed 8 out of 9 members of the Commission for Investigation of Accountability for Human Rights

Violations. The ninth member has not yet been appointed, and the Commission has not even started to work. According to the assessment of serious observers, there is no political will to implement the law.

5. Inclusion of NGOs and victims of former regimes in the preparation of lustration laws

NGOs have not been included in the preparation of the lustration laws, neither in **Albania** nor in **Serbia**. The same is true for the rejected draft law in **Croatia**.

Some victims of the former regime may have been involved in the preparation of the comprehensive lustration law in **Albania**, but this was not a major factor. In **Serbia**, victims or their organisations were not included in the preparation procedure.

A possible explanation in the case of **Albania** may be the fact that the lustration laws were enacted in an early phase of the transition, and in an expedited manner. The NGO sector was only beginning to develop, although several human rights groups did hold seminars on such general questions as opening the files or restitution/rehabilitation of former political prisoners. In the case of **Serbia**, the law was adopted in an emergency procedure, and the National Assembly very rarely, if at all, involves NGOs in law preparation.

6. Public debates on lustration legislation

Major public debates on lustration legislation have not taken place in any country of the region.

In some cases, smaller public debates on lustration and lustration-related issues have arisen. In **The former Yugoslav Republic of Macedonia**, for example, a debate touched upon the issue of rehabilitation of dissidents when this was a possible subject of legal regulation, but no substantial result was achieved. NGOs also supported several debates on former dissidents in the country, looking at their legal status and restitution legislation, among other issues. In **Serbia and Montenegro**, some NGOs, several legal and other experts and some media representatives initiated discussions on lustration and related topics at round tables and seminars. There were some, albeit not many, reports in the media on such discussions.

7. Laws and procedures on public access to files of the secret services of the former regimes

The legislation on this issue as well as the implementation of respective laws show a broad variety of approaches. It is remarkable that public access to the files is generally excluded solely in those cases where lustration laws have been passed (**Albania** and **Serbia**), while in those countries, where no lustration laws have been passed

(**Bosnia and Herzegovina, Croatia, The former Yugoslav Republic of Macedonia**), various regulations allow(ed) for at least a certain kind of public access to the files. Obviously, there is no automatic correlation between the approaches in lustration legislation and those related to the opening of the files.

The files of the secret services in **Albania** have never been available to the public. The comprehensive lustration law described above made the files available to the seven-member state commission that it set up. Article 16 of this law, the only article remaining in effect after 31 December 2001, instructs that the files are now closed until the year 2025. Some NGOs were active on the issue of the files in connection with the pending draft law on lustration, and various intensive debates on opening the files took place in 2004.

In **Serbia**, a Decree on removing the confidence mark from files of the secret service was adopted on 31 May 2002, but was declared unconstitutional in October 2003. A Decree under the same title was adopted in **Montenegro** in September 2002, which was not declared unconstitutional as had been the case in **Serbia**. Models of a law on Opening Secret Police Files were drawn up by two NGOs and presented to the public, but governmental bodies and particularly the Ministry of Police rejected any discussion on those proposals.

In **Bosnia and Herzegovina**, there is no separate legal act on public access to the files of the secret services. The issue has been regulated within a broader legal act, the *Freedom Of Access To Information Act*. Substantially identical laws under this title were passed on state level in 2000 and on the level of the entities (Federation and Republika Srpska) in 2001. The main provisions, as a rule, enable any citizen to have access to information, including information that has been classified as “confidential”, to the greatest possible extent, if it is in accordance with the public interest. Non-disclosure is declared as the exception, stipulations of exemptions being defined in various articles of the law. Personal files should, as a rule, be accessible only to the respective persons. However, the implementation of the law revealed, and still exhibits, several deficiencies. The public authorities were mainly criticised for insufficient or even non-existent preparatory work regarding the implementation, a lack of knowledge of the legislation and no or incorrect knowledge of other laws. Two general dilemmas were also addressed: the procedure of lodging complaints and the vagueness of the formula “in accordance with the public interest”, since it could be used for arbitrary rejections of requests of citizens to gain access to their files.

In **Croatia**, no particular law on the issue of public access to the files of the secret services was adopted (and none has been proposed). A general Law on the Security Services was passed in March 2002 and has been applied since April 2002. The law makes no distinction between the period from 1945 until 1990 and the period after 1990. Principally, the law allows for access to the documents and material. Security services are obliged to inform the citizens, at each individual request, whether any procedure such as collecting data and information on that particular individual has been undertaken, and whether his/her personal data has been recorded and updated

by the secret services. The security services are not obliged to do so if the information could lead to endangerment of the security of other persons, or if the information could lead to harmful consequences for national security and the interests of the state. In 2001, the Minister of the Interior submitted 38,000 files (from the period 1946-1990) from the Croatian State Archives of the former Socialist Republic of Croatia and around 650 files from the Service for the Protection of the Constitutional Order (from the period 1990-2000), and the respective citizens gained free access to their files.

In **The former Yugoslav Republic of Macedonia**, a law on the access to the files of the secret service was enacted in 2000 ("Law on handling personal files kept by the State Security Service"), proposed by the then Minister of Interior Affairs. By the enactment of this law, a total of 15,000 files became accessible to the persons who had been observed and prosecuted by the state security services. The law determined the period from 1945 till the day it entered into force (July 2000) as the time of application. A deadline was set, giving the possibility of raising requests for access within one year after the law had come into force; this meant that a request could be raised until mid-July 2001. The procedure proved to be highly bureaucratic and ensured a strong protection for officials of the Ministry of Interior Affairs. The law was implemented from July 2000 till July 2001. The Ministry of Interior Affairs never disclosed the precise number of accessed files to the public. In addition, the report that the Ministry had prepared for the Parliament was also never made public. Bearing in mind that the law was implemented in the period when the country was in its biggest security crisis since gaining independence, it could be expected that public interest in this issue would have been rather low at the time. The law only attracted some media interest in the first three months of its application, which was often connected to the local elections that took place in September 2000. In this context, some initiatives were started with the aim of identifying certain candidates for political posts as collaborators or informants of the secret service.

8. Proposals on and implementation of other solutions

Screening and Appointment Processes

On the initiative of international institutions, rather comprehensive efforts with respect to the police and the judiciary have taken place in **Bosnia and Herzegovina**. UNMBIH (the UN Mission in the country) vetted approximately 24,000 police officers in a (de)certification process between 1999 and 2002. The result was that approximately two thirds of the persons vetted were provisionally certified to exercise police power, and over 90 percent of them were later granted full certification. The Office of the High Representative created three High Judicial and Prosecutorial Councils in 2002, which screened the appointment of approximately 1,000 judges and prosecutors between 2002 and 2004. Since this process is still ongoing, it is too early to assess its overall impact. In both cases, some criticisms about various aspects of the procedures and the results were voiced. With respect to the (de)certification process of police officers, the fairness of the procedures were questioned, mainly the vague and non-legislated criteria applied by UNMBIH. The most significant concern with respect

to the process of screening and re-appointing judges and prosecutors is that the goal of restoring the multi-ethnic character of the judicial and prosecutorial services appears not to have been fully achieved, particularly in the Republika Srpska.

A rather unusual and highly questionable sort of vetting and appointment process with respect to the judiciary took place in **Croatia**. The constitution provided that a body named the “State Judicial Council” had to appoint, discipline and remove the judges. But until 1994, this Council had not been established, and there were no precise rules on its composition. As long as the Council had not been established, judges continued to be appointed and removed from office by the parliament. During the first half of the 1990s, the mandate of a significant part of the judges expired. Some of the judges simply continued to perform their functions, some received formal decrees on the expiry of their mandate and the consequent cessation of their office, and some were simply notified that they had to leave office due to the “new situation”. According to provisional results of as yet unfinished research, there were more than 2,200 dismissals and appointments of judges and state attorneys recorded in the Official Gazette in the period 1990-1996, and this number is lower than the real one, since in some periods dismissals were obviously not reported in the Official Gazette. From the recorded dismissals, there were 361 cases in which judges were removed without any explanation.

Truth Commissions

The establishing of Truth Commissions was discussed and proposed in several countries of the region, but only in one case was such a Commission set up, and even in this case, its existence remained on paper only. In the **Federal Republic of Yugoslavia** (which later became the state union of **Serbia and Montenegro**), then President Vojislav Koštunica established a Truth and Reconciliation Commission in March 2001, but some of the most distinguished of the designated members had serious objections with respect to the objectives, competencies, and powers of this commission and refused to participate. Two and a half years later, the commission just vanished, without having undertaken any substantial activities and without having achieved any tangible results.

Serious efforts to establish a Truth and Reconciliation Commission were undertaken in **Bosnia and Herzegovina**, mainly by the Citizens’ Association for Truth and Reconciliation. A draft law was prepared, but never adopted. The main argument in favour of the proposal was based on the assessment that the disclosure of the truth on the war is a precondition for reconciliation. The main argument against the proposal was that the eventual functioning of such a commission could possibly overlap and undermine the work of the International Criminal Tribunal for the former Yugoslavia (ICTY). Another argument was that such a commission could only work effectively if it were a regional one for all former Yugoslav Republics.

In **Albania**, there have been limited discussions, but no formal proposals about a truth commission.

Criminal proceedings, dealing with “crimes against humanity”; amnesty laws

In **Albania**, there has been no general amnesty for people connected to the Communist regime. Several dozen criminal proceedings took place in the 1990s resulting in convictions and the imprisonment of many people who had held important positions in the Party of Labour (including Ramiz Alia, the last Communist Party head and first president of post-Communist Albania).

In **Serbia and Montenegro**, NGOs in particular asked for criminal proceedings for war crimes and crimes against humanity, but there has only been one court case (Ovcara - dealt with in a Special Court for war crimes) which started in 2004. The main reason is obviously that the issue of war crimes is still a “taboo”.

Although not related to the socialist period or the developments in the 1990s, it is important within this context to mention the only amnesty law adopted in the region, which was passed in **The former Yugoslav Republic of Macedonia** in March 2002. The law was the first legal outcome of the Ohrid Framework Agreement (13 August 2001) which led to the end of the military conflict in the country in 2001. This law created an amnesty for further investigative and legal procedures and cancelled the jail sentences for all persons (citizens of the state, persons legally residing as well as persons having family or property in the country) who were found to have prepared or conducted criminal activities connected with the conflict in 2001 prior to 26 September 2001. A total number of 270 persons who had been imprisoned and waiting for the legal proceedings were free after the law entered into force. The law applied to those persons who had handed over their weapons up to 26 September 2001 which was the last day of the weapons harvest operation.

9. General public debates on the past

There has been no comprehensive general debate on the past in any of the countries of the region. However, in every country, a few public debates on various aspects of the past have taken place, although all of them have remained rather isolated debates, touching upon partial features. The focus and the periods referred to in those debates varied considerably, depending on the specific historical experiences of each country. In **Albania**, it can generally be stated that they concentrated on the socialist period, while in all **former Yugoslav Republics**, the interest was mainly directed at the developments in the 1990s. In some cases, particularly in **Albania, Bosnia and Herzegovina** and **The former Yugoslav Republic of Macedonia**, political actors, sometimes supported by sections of the media, tried to initiate or use debates on the past for their own party or political reasons. On the other hand, the low level of interest or even attempts to prevent such debates was due to the fact that many political actors and high-ranking officials had been part of the former regimes.

Major periods referred to in the public debates

In **Albania**, debates on the past clearly concentrated on developments during the socialist period, generally considered to have extended from 1945 either to 1990,

1991 or 1992. In **Bosnia and Herzegovina**, there were some debates on the socialist past during the short pre-war period (1991-1992). After the war (1992-1995), the general public was mainly concerned with the disclosure of war related facts. In **Croatia**, the socialist period and the developments in the 1990s provoked rather few debates. Most of the public discussions concentrated on developments and crimes committed during the Second World War. In **The former Yugoslav Republic of Macedonia**, the confrontation with the consequences of the past authoritarian regimes was generally considered to be of minor importance, mainly because the post-1945 period is assessed as a period of formation and fostering of the state and therefore perceived rather positively. In **Serbia and Montenegro**, the focus was clearly on the period of the Milošević regime and particularly the 1990s.

Main topics of these debates

In **Albania**: Human rights violations, political trials and other abuses during the socialist period. Some debates arose on the issue on public access to the files of the Communist secret service.

In **Bosnia and Herzegovina**: The war (1992-1995) and war crimes.

In **Croatia**: The relations between Ustaschas and Partisans as well as the crimes committed by the

Partisans during the Second World War.

In **The former Yugoslav Republic of Macedonia**: The relations between the Republic and the centre during the Yugoslav period, efforts of the representatives of the Albanian community to achieve greater autonomy for the Albanians and actions against liberal dissidents during the socialist period.

In **Serbia and Montenegro**: The relations between Serbia on the one side and Croatia and Bosnia and Herzegovina on the other, the role of the Milošević regime and particularly the role of the army and the police in the wars in Croatia and in Bosnia and Herzegovina, the issue of cooperation with the Hague Tribunal.

Main initiators of debates and segments of societies directly or indirectly involved

In most cases, NGOs initiated debates on the past. Governmental initiatives (such as in some cases in **Albania**) were the exception. NGOs, sections of the media, academics, experts, students and writers were the main parties involved.

Public interest in these debates and its effect on the public opinion

It is difficult to quantify, but all reports indicate that the interest was generally rather small and the effect even smaller.

2.3 Country Overview: Albania

Compiled by Elsa Ballauri and Kathleen Imholz²

1. Lustration laws passed

Two lustration laws have been passed in the Republic of Albania. The first, which only affected the licensing of private lawyers, was passed in early 1993 and was declared unconstitutional by the Constitutional Court of Albania later that year. It is referred to as “Law Nr. 1” herein.

The second, passed in the fall of 1995, was a much broader law. It was amended several times and also modified by a Constitutional Court decision; as amended and modified, it remained in effect until 31 December 2001, when it expired by its terms (except for one article, as indicated below). It is referred to as “Law Nr. 2” herein.

It should be noted that a third law was passed slightly before Law Nr. 2 that contained a lustration-related provision. This was Law Nr. 8001 dated 22 September 1995, entitled “On Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons” (“Për genocidin dhe krimet kundër njerëzimit kryer në Shqipëri gjatë sundimit komunist për motive politike, ideologjike dhe fetare”). This law charged the prosecutors’ office with investigating such crimes pursuant to the then current Criminal Procedure Code and made a general statement that certain categories of persons could not be elected to certain offices until 31 December 2001. It then charged the Council of Ministers with “preparing legal acts and approving sub-legal acts” by 15 December 1995. Law Nr. 2 dated 11 November 1995 then followed, laying the basis for implementing the general provision of Law Nr. 8001. Since Law Nr. 8001 was not itself implemented, it is not dealt with further here, but for historical completeness, an English translation of it is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Law Nr. 1

Official number and name: Nr. 7666, “Për krijimin e komisionit për rivlerësimin e lejeve për ushtrimin e avokatisë dhe për një ndryshim në ligjin nr. 7541, datë 18.12.1991 ‘Për avokatinë në Republikën e Shqipërisë.’” (“On the creation of a commission to reassess licenses for the exercise of advocacy and for an amendment to law Nr. 7541 dated 18.12.1991 ‘On advocacy in the Republic of Albania.’”)

Date of passage: 26 January 1993.

² The authors are grateful to other personnel of the AHRG for their contributions to this overview. All information in the overview refers to developments up to 31 December 2004.

Official publication in: Official Journal of the Republic of Albania, Nr. 1/1993.
 An English translation of the law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Procedure and margin of majority in Parliament: This law was introduced and passed under the normal parliamentary procedures of the time. The margin of majority cannot be determined, since the records of the Albanian Parliament from 1991-1996 are in the process of being transcribed from tapes. The archive of the law contains only the information that it was passed, duly sent to the President for promulgation and then sent on for publication (and that it was later repealed by the Constitutional Court). Votes were not recorded electronically at this time, but when the tapes have been transcribed and a book of the laws and other acts passed by the Albanian Parliament in 1993 has been prepared, the exact vote may be indicated. Since this was early in the Albanian transition and under the first government of the Democratic Party (DP), the margin of approval was probably roughly similar to the percentage of seats held by the DP and its allies, or approximately 70 percent.

Proposed by: A group of deputies. In the archives of the Parliament, they are not named specifically, but were doubtless DP deputies. Under the Albanian Constitution of that time (and now), submission by at least one deputy is sufficient to properly put a law before the Parliament.

Accepted by: Cannot be determined, as indicated above. The DP was in a coalition with the Social Democratic Party and the Republican Party at the time, and since this was a DP bill, all their deputies doubtless supported it.

Rejected by: Cannot be determined, as indicated above. However, since the Constitutional Court complaint was brought by the Socialist Party (SP) parliamentary group, doubtless their deputies voted against it. In addition, the DP had started to lose some of those elected in its overwhelming 1992 victory, and by January 1993 they had formed another party, known as the Democratic Alliance (DAP). The three or four members of Parliament who were members of the DAP at the time may also have voted against this law.

Main provisions: Article 1 (setting up commission to re-evaluate existing licenses) and Article 3 (amending advocacy law to list categories of persons not entitled to be licensed).

Amendments: None.

Time of Application: According to Article 5, the time of prohibition of exercising the profession of advocacy for the persons affected by the law was to be five years (presumably, starting from the date the license was taken away or refused in the first place; since, as discussed below, the law was repealed by the Constitutional Court, the actual time was never determined).

Subsequent History: On 20 April 1993, a meeting of the commission set up by this law issued a summary decision revoking the licenses of 47 lawyers. A complaint against the law was brought to the Constitutional Court by the Parliamentary Group of the SP (the largest minority party in the Parliament at that time, and successor to the Albanian Party of Labour). On 21 May 1993, in decision Nr. 8/1993, the Court struck down Articles 1, 3 and 4 of the law, these being essentially the entirety of the law. It was never revised or re-introduced in Parliament.

An English translation of Constitutional Court decision Nr. 8/1993 is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Law Nr. 2

Official number and name: Nr. 8043 dated 30 November 1995, "Për Kontrollin e Figurës së Zyrtarëve dhe Personave të Tjerë që Lidhen me Mbrojtjen e Shtetit Demokratik." ("On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State.")

Date of passage: 30 November 1995.

Official publication in: Official Journal of the Republic of Albania, Nr. 26/1995.

An English translation of the law (with all amendments and modifications and some explanation by the translator) is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Procedure and margin of majority in Parliament: Like Law Nr. 1, this law was introduced and passed under the normal parliamentary procedures of the time, but the margin of majority cannot be determined, for the reasons set out above. By the fall of 1995, the still-ruling DP (whose Council of Ministers had proposed the bill) had lost many more of its deputies, including most of those from the Social Democratic Party (SDP). Therefore, the margin of the majority was doubtless less than for Law Nr. 1 in 1993.

Proposed by: The Council of Ministers of the Republic of Albania.

Accepted by: The DP and its remaining allies (see above).

Rejected by: Although we do not have an exact tally, it can be stated with some confidence that all or most of the deputies of the SP, SDP and PAD voted against this law.

Main provisions: Article 1 (persons covered by the law); Article 2 (listing prohibited functions); Article 4 (establishment of seven-member state commission to implement the law).

Amendments: Constitutional Court decision Nr. 1/1996 dated 31 January 1996 modified the law (while approving it in general), for example, removing journalists from its coverage. The law was amended legislatively four times before it went out of effect by its terms (see subsequent history, below): Law Nr. 8151 dated 12 September 1996; Law Nr. 8220 dated 13 May 1997; Law Nr. 8232 dated 19 August 1997; and Law Nr. 8280 dated 15 January 1998.

Time of Application: Article 18 of the law provided that (except for Articles 14 and 16, or after a later amendment, except only for Article 16) it would expire on 31 December 2001, which it did. The persons “lustrated” (barred from serving in the listed government positions) had to have been in one of the listed categories between 29 November 1944 and 31 March 1991 (as Law Nr. 2 was originally enacted) or between 29 November 1944 and 11 December 1990 (after its 1997 amendment).

Subsequent History: Law Nr. 2 was upheld in the face of a challenge to the Constitutional Court in January 1996 (although it was modified in several respects; see below for the most important ones). It was used before the parliamentary elections of May 1996 to disqualify a number of opposition candidates. Thereafter, it was chipped away at, first to remove deputies and mayors from its coverage (because of Council of Europe objections to the application of its principles to elected officials) and in other respects mentioned below, or in the translation of the law. Although Nafiz Bezhani, who was chairman of the seven-member commission between 1997 and 2001 (under the Socialist Party government), undertook a campaign to extend the life of the commission and expand the coverage of the law to include not only the moral figure of the persons affected but their current economic interests, the law was permitted to expire at the end of 2001, leaving in effect only Article 16, which provides that the files are now closed until 2025.

An English translation of Constitutional Court decision Nr. 1/1996 is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

2. Procedures assigned in the lustration laws

Law Nr. 1

Main provisions on procedures: Article 1 (setting up the special commission to re-evaluate existing licenses, but without other procedures); Article 2 (amending the existing advocacy law to require that lawyers meet “moral” criteria, but without defining them); Article 4 (right to appeal to the High Council of Justice); and Article 5 (limiting the time of prohibition of practice as a lawyer to five years; see above).

Additional decrees on procedures: None.

Persons to be affected by implementation of the law: Potentially, the law applied to all persons licensed or to be licensed by the State as lawyers. As indicated above, initially, the licenses of 47 lawyers were taken away by the special commission under the

Minister of Justice, but the licenses were returned after the Constitutional Court gutted the law. The provisions of the law amending the advocacy law (so as to prohibit new licenses from being issued to people in the prohibited categories) were never put into effect. The categories that would have disqualified people from being allowed to work as advocates were:

- a) former officers of Albanian State Security and collaborators with it;
- b) former members of the Committees of the Party of Labour of Albania (Communist Party) and their apparatus at the central, regional and district levels; former directors of state organs at the central, regional and district levels (ministers, deputy ministers, directors of a directorate and chairmen, deputy chairman and secretaries of executive committees in districts and regions);
- c) former employees of prisons and camps where punishment was carried out;
- d) those who finished the Faculty of Law on the basis of education of the high school of the party and former chairmen of the offices of cadre of all levels;
- e) those who had taken part as investigator, prosecutor or judge in special or staged political proceedings as well as those who performed high management functions in the central organs of justice;
- f) those who used physical or psychological force during investigations, or other actions, as well as those who took part in border killings.

Additional institutions, agencies, parliamentary bodies assigned: The special commission under the Minister of Justice set up pursuant to Article 1 of this law was one such additional institution. The criteria for members of this commission, or even the number, were not indicated. The High Council of Justice, newly created in 1992, was assigned as the body to hear appeals. (The latter provision was specifically criticised in the Constitutional Court decision referred to above, for giving an improper competence to the High Council of Justice).

Law Nr. 2

Main provisions on procedures: Article 1 (persons covered by the law); Article 2 (listing prohibited functions); Article 3 (exemption from coverage in the case of "interests of state"); Article 4 (establishment of seven-member state commission to implement the law); Article 5 (procedures of the commission and review of decisions); Article 6 (additional procedures); Article 7 (how a proceeding is initiated); Article 8 (how a clearance certificate is issued); Article 9 (consequences for persons checked); Article 10 (appeal right); Article 11 (prohibition of publicity); Article 12 (applicability to political party heads); Article 13 (information sources for the commission); Article 15 (criminal penalties for misuse of data).

Additional Decrees on Procedures: None (although Article 17 of the law specifically called for the Council of Ministers to draw up additional procedural regulations).

Persons to be affected by implementation of the law:

1. the President of the Republic, persons elected by the Parliament and those appointed by the President;

2. members of the Government, secretaries of state, their deputies, the general directors and directors of directorates of state offices, and those at the same level in other state structures;
3. those who work in the Presidency, in the parliamentary administration and the administration of the Council of Ministers, the ministries and other central institutions, the Constitutional Court and the Court of Cassation (called the High Court since 1998); High State Control; the General Prosecutor's Office; and ranks lower than those mentioned in point 2. if it is judged to be in the interest of the protection of the state by the head of the office;
4. the governor, vice governors and directors of the Bank of Albania;
5. officers in the Armed Forces in high grades (general and colonel) and commanders of independent units;
6. prefects;
7. personnel in the State Information Service (after 1998, called the National Information Service), the Military Information Service and the Public Order Information Service;
8. personnel in the Republican Guard;
9. chiefs of commissariats, police chiefs, employees of the criminal police and other special branches;
10. judges, assistant judges, prosecutors and officers in the judicial police;
11. personnel in Albanian diplomatic representations;
12. persons who are directors and editors in state radio and television and the state news agency;
13. persons who have management functions in economic unions, state financial institutions, insurance institutions and state banks;
14. rectors and directors in universities and schools of higher education.

As enacted, the law first covered journalists and employees in high-level positions in large circulation newspapers, but this was repealed by the Constitutional Court decision referred to above.

In addition, the law originally also covered deputies in Parliament, but that prohibition was removed by Law Nr. 8232 dated 19 August 1997; and in addition to prefects, it originally also covered a number of other local government officials, but with the amendments made by Law Nr. 8232 as well as Law Nr. 8151 dated 12 September 1996, prefects remained as the only local government officials to whom the law applied.

The categories that disqualified persons from working in the 14 categories listed above changed a number of times, and it is convenient to break them into three separate lists, as follows:

A. As Law Nr. 2 was originally enacted (covering the period 29 November 1944 until 31 March 1991, the date of the first pluralist elections), including modifications made by the Constitutional Court decision of January 1996 and Law Nr. 8151 of September 1996:

1. member or candidate of the Politburo [Political Bureau], secretary, member of the Central Committee of the Party of Labour of Albania, First Secretary of the party in the districts and analogous levels, or employee of the sector for State Security in

- the Central Committee of the party; except for cases in which the person worked against the official line or distanced himself publicly;
2. member of the government, member of the Presidential Council, chairman of the High Court, General Prosecutor, deputy before the elections of 31 March 1991; except for cases in which the person worked against the official line or distanced himself publicly;
 3. officer of the State Security (legal or illegal), in the departments of prosecution and those of protecting high state personalities;
 4. registered collaborator in the materials of the State Security (informer, agent, resident or person giving shelter) or conscious collaborator with the State Security or owner of an apartment put at the disposition of the State Security;
 5. person who gave a denunciation or false witness or supplied aggravating circumstances in political trials to the damage of the defendants;
 6. person who worked as an officer in the structure of the camps and prisons for political prisoners;
 7. person who finished the Higher School of the Ministry of the Interior and its previous analogues in the profile of the State Security or courses of three months or longer in the same profile, as well as their analogues outside the state;
 8. person who took part as investigator, prosecutor, judge or assistant judge in special political trials;
 9. person who was or is a collaborator of any foreign investigative service or their analogues;

The Constitutional Court decision of January 1996 said in its discussion, but did not expressly hold, that the phrase “except for cases in which the person worked against the official line or distanced himself publicly” appearing in categories 1. and 2. should be extended to all categories except 9.

B. The above list of categories was significantly revised by Law Nr. 8220 dated 13 May 1997 (i.e., this was the list in effect for the June 1997 parliamentary elections). No dates of coverage were specified:

1. member or candidate of the Political Bureau, except if the person worked against the official line or distanced himself from duty publicly;
2. officer in the State Security (legal or illegal) in departments of prosecution and those of protecting high state personalities;
3. person registered in the materials of the State Security as a collaborator (informer, agent, resident or person who gave shelter) or conscious collaborator with the State Security or owner of an apartment put at the disposition of the State Security;
4. person who gave a denunciation or false witness or supplied aggravating circumstances in political trials to the damage of the defendants;
5. person who finished the Higher School of the Ministry of the Interior and its previous analogues in the profile of the State Security or courses of three months or longer in the same profile, as well as their analogues outside the state;
6. person who was a collaborator of any foreign investigative service or their analogues;
7. person who was punished by court decision for crimes against humanity.

C. Finally, after the 1997 elections (won decisively by the SP), the categories were changed again by Law Nr. 8280 dated 15 January 1998, which also changed the period of coverage to the period 29 November 1944 – 11 December 1990 (the date of creation of the DP):

1. member or candidate of the Political Bureau of the Party of Labour, except for cases in which the person worked against the official line or distanced himself from duty publicly;
2. senior officer or leading functionary in the organs of the State Security, chairman of a branch, director or deputy minister or minister of the organs of Internal Affairs;
3. collaborator of the organs of the State Security with activity of a political nature in connection with the criminal acts contemplated by a 1991 law declaring innocence or amnesty for persons who were politically persecuted and punished under the Communist regime, or a voluntary collaborator for such actions, or a person in foreign intelligence services or other analogous organs;
4. person punished by a final criminal decision for crimes against humanity, defamation or false testimony in political cases; or a person who was a member of the Central Commission of Banishment (the commission that decided on internments).

This was the list of disqualifying categories implemented until the law expired at the end of 2001.

Additional institutions, agencies, parliamentary bodies assigned: The law created a seven-member commission, consisting of the chairman, deputy chairman and five members, who were to be honourable citizens in good standing and not Members of Parliament. The Parliament had the right to name and remove the chairman, while the deputy chairman and one member were to be named and removed by the Council of Ministers, and one member each by the Ministry of Justice, the Ministry of the Interior [Public Order], the Ministry of Defence and the National [State] Information Service.

The law originally provided for a direct appeal to Albania's highest ordinary court (then known as the Court of Cassation). It was amended by Law Nr. 8232 dated 19 August 1997 to provide a direct appeal to the Court of Appeals.

3. Implementation

Law Nr. 1

Measures fully implemented: None.

Measures partially implemented: As indicated, the licenses of 47 persons to practice law were ordered to be removed by the special commission set up under Article 1 of the law, but after it was declared unconstitutional, these persons did not lose their licenses. There was no further action taken against existing or future lawyers.

Deficiencies of implementation: The repeal of the major articles of the law by the

Constitutional Court within a few months of its enactment made implementation moot.

Offices affected by implementation: None

Persons affected by implementation: None (except that, as indicated above, the status of the licenses of 47 licensed lawyers was in question for several months).

Law Nr. 2

Measures fully implemented: From early 1996 until the law expired by its terms at the end of 2001, the law was implemented for the positions covered by it at any given time.

Measures partially implemented: None.

Deficiencies of implementation: As can be seen by its terms, the law had features that made it subject to political manipulation. For example, the exemption of people who would be otherwise covered because they “acted against the official line or distanced themselves publicly” (originally in several subparagraphs of Article 2, but extended to all of Article 2 by the Constitutional Court decision referred to above) was vague enough to permit favoured persons to be excluded at will.

Offices affected by implementation: The full list is given above, in three separate sections as it changed significantly during the time the law was in effect.

Persons affected by implementation: The total number of persons who lost their jobs or were not permitted to run for office or assume official positions because of this law is not known. A Member of Parliament has estimated that around 100 candidates were barred from running in the 1996 parliamentary elections because of it. The law had been amended by the time of the 1997 parliamentary elections and the number of candidates barred from those elections was much smaller. After the law had been amended, so that it no longer covered elected officials, it still continued to be used to remove, or bar from offices, a number of persons, perhaps around an additional 100.

4. Inclusion of NGOs and victims of former regime in the preparation of the laws

Neither Law Nr. 1 nor Law Nr. 2 can be said to have included NGOs in their preparation. Law Nr. 2 may have involved some victims of the former Communist regime in its preparation, but this was not a major factor.

Reasons for deficiencies in exclusion: Both laws were enacted fairly early in the Albanian transition, and in an expedited manner. Civil society was only beginning to develop, although several human rights groups did hold seminars on general questions, such as opening the files or restitution/rehabilitation of former political prisoners. The par-

ticipation of civil society actors has become more common now and would be expected if laws like this were reintroduced.

5. Public debates on the laws

Broad public debates before passing the lustration laws: Neither Law Nr. 1 nor Law Nr. 2 underwent significant public debate.

Initiatives for discussions: None.

6. Proposals for a lustration law rejected

None.

7. Proposal for a new lustration law pending

Name of draft law: "Për kontrollin e figurës së personit zyrtar të zgjedhur apo të emëruar në organe të rëndësishme të shtetit" ("On checking the figure of an elected or appointed official in important state organs").

An English translation of this draft law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Date of proposal: 29 June 2004.

Proposed by: Three deputies from two of the small opposition parties in the Albanian Parliament, Nard Ndoka and Ilirjan Berzani from the Reformed Democratic Party and Alfred Cako from the National Front Party. Nard Ndoka and Alfred Cako have stated that they prepared the law after consultation with the last head of the verification commission under the 1995 law mentioned in the text, Nafiz Bezhani.

Main provisions: The draft law in its current form would provide that the following subjects would be checked as to whether they had been "collaborators"² with the secret police

1. the President, deputies, the Prime Minister, the Deputy Prime Minister, the ministers and deputy ministers;
2. civil servants of the high and medium management levels, as defined in Albania's 1999 civil service law;
3. prefects, chairmen of regional councils, mayors of municipalities and municipal units, communes and members of a municipal council;
4. directors of directorates and commanders of the Armed Forces in the Ministry of Defence and the State Information Service;
5. advisers in the Presidency, Assembly, Council of Ministers and the ministries;
6. judges and prosecutors at all levels;

7. directors of independent public institutions;
8. officials elected and appointed by the Assembly, the President of the Republic, the Prime Minister, the ministers or equivalent persons;
9. general directors, directors of directorates and chiefs of sectors (commissariats) at the central, regional and district levels, the General Directorate of the Police, the General Directorate of Taxation and the General Directorate of Customs;
10. all persons who have or seek to have management positions in political parties.

According to the draft law, a special commission would be created within the State Information Service consisting of five persons. The chair would be the general inspector of the Inspectorate for the Declaration of Assets (an existing institution), while the other four members would be appointed by the President, two on the proposal of the ruling parties and two from the opposition. The commission would meet behind closed doors and review the secret police files of anyone in the above categories about whom a request was made by any citizen or legal person. The person whose file was requested would have the opportunity to block its release by resigning from his position or refraining from running for office. Appointed persons (not elected ones) would be discharged from their positions if they turned out to have been collaborators of the Communist State Security and did not resign voluntarily.

Main intention of the draft law: Although not directed to opening Communist era secret police files to the public *per se*, the draft law was another major attempt to bring back a consciousness of the relations that current politicians, candidates and public officials had with the secret police, whether as officers or agents, or simple collaborators.

Discussion and voting in Parliament: As of the time of writing this report, the draft law has been discussed in two of the parliamentary commissions but has not been voted on. Although introduced with the intention that it would apply to Albania's next parliamentary elections, scheduled to be held in July 2005, the draft law is unlikely to be approved, or even voted on, before those elections.

8. Laws and procedures on public access to files of the secret services

The files of the Albanian secret services have never been available to the public.

Law Nr. 2 described above made the files available to the seven-member state commission that it set up, and in Article 13 made it a crime to use any such data publicly or to hide, destroy, falsify or otherwise manipulate any documentation from those files, or to make false public accusations against an individual. Article 16 of Law Nr. 2, the only article remaining in effect after 31 December 2001, provides that the files are now closed until the year 2025, and that the National Information Service (the successor to the State Security), the Ministry of the Interior (now known as the Ministry of Public Order) and the General Directorate of the State Archives are charged with maintaining them.

Activities of NGOs with respect to public access to the files: None at the time Law Nr. 2 was enacted, but there has been some in connection with the pending law and the current (2004) debates on opening the files.

Official reactions: None, except as set out above.

9. Proposals for other solutions

Proposals for other solutions: There have been limited discussions, but no formal proposals, for a truth commission. There has been no general amnesty of people connected to the Communist regime. Several dozen criminal proceedings took place in the 1990s resulting in the conviction and imprisonment of many people who had held important positions in the Party of Labour (including Ramiz Alia, the last Communist Party head and first president of post-Communist Albania). A number of laws providing restitution and other benefits to persons injured by the Communist regime have been enacted, but defective implementation has weakened their impact.

Main reasons for deficiencies and failures: There are many possible reasons that could be adduced, but it remains for each person to draw his or her own conclusions. At the beginning, the community of former politically persecuted persons and former prisoners of conscience was active in trying to obtain satisfaction for past wrongs, but the interest started to fade. People turned to their own private lives and the need to survive under the new conditions. The “collective amnesia” that has afflicted other post-Communist countries, or Spain after its civil war, was also a factor in Albania. (The first DP president of Albania, Sali Berisha, said after his 1992 election that “we are all jointly guilty, we all jointly suffered”, a state of affairs that is conducive to such amnesia.)

Among the reasons why Albanian society did not do its own catharsis were the social and psychological changes, massive migration and emigration, lack of culture and lack of awareness of the need to establish a social memory. But it would seem, as some events suggest, that this failure of catharsis has left underlying problems unresolved, and aspects of them come to the surface from time to time.

10. General public debates on the past

Major public debates on the past: There have only been isolated debates over the past 14 years, many of them with a narrow focus.

After Law Nr. 2 described above went out of effect at the end of 2001, there was a temporary lull relating to the Communist past of Albania or the files of the secret police, but a kind of public debate re-emerged late in 2003 and early in 2004.

Among other things, a prominent Albanian writer, Ismail Kadare, published an open letter to the President of Albania, calling for the opening of the files of writers from the Communist era. He stated that his request was prompted by an appeal made to him

by the relatives of Vilson Blloshmi and Genc Leka, two writers who had been executed toward the end of the Communist regime. They were the last two literary men sentenced to death - not only in Albania but across the Communist dictatorships of the region. Kadare's letter received a favourable response from President Moisiu, who suggested a legislative initiative on the issue. (It may be noted parenthetically that a book by the director of the state archives, Shaban Sinani, involving Kadare's own files, is about to be published.)

All of these events prompted a broader and rather stormy discussion, particularly in the press and the electronic media. Journalists and civil society members discussed the wisdom of such an action or of broader or different types of action in general. At the same time, former politically persecuted persons renewed their efforts for a law to give them compensation for Communist era imprisonment, and while a law was enacted, they considered the level of compensation to be too low and the situation remains unsettled.

The public debate has, so far, primarily been anecdotal and it is being played out on a larger background that includes the frustration of many Albanians at the country's current political situation, the slow progress being made with integration into European institutions, international and internal dissatisfaction about crime and corruption, and the upcoming parliamentary elections, currently scheduled for July 2005.

Major period referred to in these public debates: The Communist regime in Albania is generally considered to have extended from 1945 to 1990 (when pluralism was permitted, in December of that year), 1991 (when the first pluralist parliamentary elections were held) or 1992 (when the parliamentary elections of 22 March were won by the Democratic Party). As noted, Law Nr. 2 of 1995-2001 used both December 1990 and March 1991 as cut-off dates. The post-Communist period, which includes the state of emergency of 1997, has generally not been the subject of any public debates. *Main topics of these debates:* Human rights violations, political trials and other abuses during the Communist regime.

Main initiators of these discussions: As indicated, these discussions have been isolated. The Government itself has been the initiator of some discussion, but failure to follow through on restitution to the actual victims of the Communist regime has weakened the impact of any attempts made.

Segments of the society directly or indirectly involved in these debates: Deputies and other government personnel, NGO members, representatives of the media, students, writers.

Public interest in these debates and their effect on the public opinion: It cannot be quantified, but does not appear to have been significant.

Main reasons for the effects being so minor: The same factors noted above under paragraph 8, section on "main reasons for deficiencies and failures".

2.4 Country Overview: Bosnia and Herzegovina

Compiled by Nejra Čengić³

1. Lustration law passed

There is no lustration law in Bosnia and Herzegovina.

2. Proposals for lustration laws rejected

A lustration law as such was never proposed to the authorised body, and was consequently never in parliamentary procedure (Interview Halilagić).

3. Procedures assigned

None.

4. Implemented measures

None.

5. Inclusion of NGOs and victims of the former regime

None.

6. Public debates on law

None.

7. Laws and procedures on public access to files of the secret services

Legislation:

There is no separate legal act on public access to the files of the secret services in Bosnia and Herzegovina, neither has such a legal act ever been proposed. The issue of

³ Ms. Čengić's thanks for instructive discussions go to all of the experts who were available for interviews and who are named in the list of the sources; she thanks in particular Prof. Zdravko Grebo (Law Faculty, University of Sarajevo) and Mr. Ahmed Žilić (Lawyer, Sarajevo) for various discussions and Mr. Jakob Finci (Association for Truth and Reconciliation, Sarajevo) and Mr. Dino Abazović (Faculty of Political Science, University of Sarajevo) for the very useful information in their written contributions named in the list of the sources. All information given in this overview refers to developments until 31 December 2004.

free access to information in Bosnia and Herzegovina has been regulated within a broader legal act, the *Freedom Of Access To Information Act*.

The right of free access to information possessed by public authorities is based on the respective legislation on the state level (see "Freedom Of Access..." in the state "Official Gazette", Nr. 28/2000) and on the level of the entities (see the Act for the Federation in its "Official Gazette", Nr. 32/2001, the Act for the Republika Srpska in its "Official Gazette", Nr. 20/2001).

The laws are substantially identical, the only difference being the respective reference to the entire state, the Federation or the Republika Srpska. In its first article, the Act states that "the information in the control of public authorities is a valuable public resource", and that "public access to information promotes greater transparency and accountability of those authorities, and is essential to the democratic process". According to the Act, the disclosure of all information is the general rule and non-disclosure the exception; stipulations of non-disclosure are defined in Articles 4-10.

The term "information" is used in the broadest possible sense, so it means "any material which communicates facts, opinions, data, or any other matter, including any copy or portion thereof, regardless of physical form, characteristics, when it was created, or how it is classified" (Article 3). This means that everything may be regarded as information, from printed to written documents, including notes, correspondence, audio and video recording, photographs, etc. This refers to information from the past as well as to information that has been classified by a public body as "confidential", regardless of the questions as to when it was created and how it is classified (Recommendation 2002).

The main provisions enable any citizen to have access, without any restrictions, to such information to the greatest possible extent, if it is in accordance with the public interest. Without explaining the background of the request, any person is entitled to check all kinds of information, including personal information. That is the general rule that also applies to the so-called "confidential files" that were, or still are, controlled by the police, intelligence or other bodies (Recommendation 2002).

Exceptions (when a piece of information may not be disclosed) may exist, but only those stipulated by the Act (Articles 4-10), and explicitly "upon applying the public interest test" (Articles 5 and 9), by which the authorities can decide that, due to the public interest, non-disclosure is justified (Recommendation 2002).

Exceptions stipulated by the law refer to: information touching upon interests of defence and security, the protection of public safety, as well as interests of crime prevention and any preliminary criminal investigation (Article 6); confidential commercial information (Article 7); the Article 8, it applies protection of personal privacy (Article 8) (Recommendation 2002).

However, there is no possibility for an automatic denial of a request and non-disclosure of information purely because it is foreseen by the Act as exception. In this situ-

ation, there is the obligation of a public authority to apply the “public interest test”. If the authority determines that the disclosure of a piece of information is in the public interest, it must be disclosed. If it is not, the information will be determined as an exception; the public authority has an obligation to explain its decision. In such a situation, it is possible to appeal against the public authority’s decision in an administrative procedure, as well as through addressing the Ombudsman Institution or a court responsible (Recommendation 2002).

The Federation Ombudsmen published and forwarded several Special Reports concerning the application of the Act to certain public organs. Public attention was focused on Special Reports on secret files, particularly during electoral campaigns. There were some requests for the “publishing of all files concerning candidates possessed by intelligence services” so that the public could allegedly be “provided with all necessary information”.

Reacting to such suggestions or requests, the Federation Ombudsmen stated that these were neither in conformity with the Act nor with the spirit of the European Convention on Human Rights and Fundamental Freedoms nor with the attitude of the European Court for Human Rights. A Special Report clarified that, according to the Law, the files in question should be accessible only to the respective persons and only in the way foreseen by the Law. Secret documents could “be accessible to third persons only exceptionally (when justified by public interest) and, eventually, when needed for science researches, under very specific conditions” (Report Ombudsman Institution 2002).

Implementation:

Article 22 of the Act for the Federation gives the Ombudsman Institution the right to direct all its proposals on the implementation to all competent bodies. Based hereupon, the Federation Ombudsman forwarded the “Recommendation on the Implementation of the Freedom to Information Act” to the Parliament and the Government of the Federation of Bosnia and Herzegovina and to other public bodies of the legislative, executive and judicial powers before the implementation had started.

A year later, within its annual report for 2002, the Federation Ombudsman Institution expressed its disappointment with the implementation of the law. According to the report, several deficiencies were particularly visible, e.g. a low public awareness of the Act and insufficient or even non-existing preparatory work of the public authorities regarding the implementation of the law. The report also stated that the office had received numerous complaints from citizens.

Concluding from several characteristic cases, the Ombudsman Institution named a lack of knowledge of the legislation; no or wrong knowledge of other laws (some denials were illegally based on other, irrelevant regulations) and passivity of the current administration as possible reasons for the “silence of the administration with respect to the application of the law. The report also noted that all claimants had

addressed the Ombudsman Institution directly, without having exerted their right to a preceding appeal to second instance administrative bodies. According to the report, this was due partly to deficiencies of the public bodies which frequently did not correctly advise the respective citizens and partly to uncertainties contained within the law itself (Report Ombudsman Institution 2002).

On the basis of these facts and conclusions, the Ombudsman Institution expressed its opinion that a thorough analysis of the law implementation by the Federation Parliament would be desirable and necessary in order to resolve certain dilemmas. It emphasised two main dilemmas – the procedure of lodging a complaint and the issue of defining “public interest” (Report Ombudsman Institution 2002).

Despite these clear recommendations, no substantial progress was achieved. The Annual Report of the Ombudsman Institution for the year 2003 stated that it could not notice any significant improvement.

Various reports indicate that the Republika Srpska, where the issue is regulated by an identical law, faces similar problems.

Apart from the significant work of the Ombudsman Institution, the Center for Free Access to Information has to be mentioned in connection with the issue of law implementation. It provides training, advice and free legal representation to people seeking information to resolve personal issues or to participate in the democratic process. Its experiences till now confirm the observations and conclusions of the Ombudsman Institution. Since the registration of this Centre, there was only one case in which a person approached it in order to seek assistance in accessing his personal file (Interview Krehić).

Public debates on the files issue:

A significant public debate on the files issue arose after the publication of the best-selling four-volume set “Čuvari Jugoslavije” (The Guardians of Yugoslavia) by Ivan Beslić in early November 2003. The book includes top-secret documents from the Bosnian branch of the former Yugoslav State Security Service (SDB) and a list of 1,350 names of informants and operatives active from 1970 until 1990. Two volumes deal with Bosnian Croat agents and informants, one with Bosniaks, and a fourth with Bosnian Serbs (Alic 2003).

The debates touched on topics like the intentions of the author, the possibility of using the book or parts of it as a political tool, the selection of the documents and the names. In general, the opinion presented in the media was deeply divided. The selection of the named collaborators, however, was considered by most of the commentators as highly questionable, since many names of high-ranking members of the Yugoslav secret police had not been included (Lovrenović 2003). The question that provoked the greatest interest was how and from whom the author had got the classified documents; numerous versions of answers were rumoured, without a definite resolution. In any event, legal experts assessed that the publication was a violation of several laws, among them the Archive Law and the laws on the protection of personal information.

8. Proposals on and implementation of other solutions

General background: The fall of communism in Bosnia and Herzegovina has not been followed, as in many post-communist countries, by the process of the so-called de-communisation, but by a very cruel war (1992-1995). The consequences of this war are still very present. Due to these circumstances, public interest in dealing with the past is focused much more on the recent past and especially on the war period than on the period of communist authoritarianism. While a certain part of the population recognises the importance and desirability of coping with some political issues and processes from the communist time, the vast majority of initiatives are oriented towards treating war-related issues and consequences. This is illustrated, for example, by the work of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, which deals with different cases of human rights violations, all of them referring to the post-communist period (Interview Dizdarević).

However, although in Bosnia and Herzegovina a lustration law has never been in force, the relatively short pre-war period of nationalistic parties rule (1991-1992) had also been a period of non-transparent and quite effective "lustration". Removal policies during this period focused on the state institutions in charge of security and financing (high-ranking police officers and members of the state security service, military commanders, and selected public servants). This "lustration" only affected those in opposition to the new establishment, as well as those not willing to cooperate; it is important to stress that removals were not based on wrongdoings of the respective persons during the communist past. As it has been pointed out, the important selection criteria were: ethnic affiliation, a formal declaration of party membership, loyalty towards the respective party leadership and unreserved devotion to the so-called national (i.e. ethnic) affairs. If these criteria were met, candidates could be selected, no matter how their past record had been and despite the fact that many of them had a similar background to those removed (Abazovic 2004).

Major initiatives: In recent times, some comprehensive vetting efforts have taken place in Bosnia and Herzegovina with respect to the police and the judiciary. In a (de)certification process of police officers, UNMBIH (the UN Mission in Bosnia and Herzegovina) vetted approximately 24,000 police officers between 1999 and 2002. With respect to the judiciary, three High Judicial and Prosecutorial Councils screened the appointments of approximately 1,000 judges and prosecutors between 2002 and 2004 (Finci 2004). This process is still ongoing. There has also been a serious effort to establish a Truth and Reconciliation Commission. Since these were the most important initiatives, the following paragraphs concentrate on them:

- a) *De-certification process of police officers;*
- b) *Screening and re-appointment of judges and prosecutors;*
- c) *Establishment of a Truth and Reconciliation Commission.*

It should be noted that, in accordance with the explanation in the introduction to this section, all three initiatives were conducted mainly as a response to the consequences resulting from the war, rather than as a reaction to the communist period.

Proposals by:

a) The *De-certification process of police officers* was proposed and implemented by UNMBIH in accordance with the Dayton Peace Agreement.

b) The *screening and re-appointment of judges and prosecutors* was proposed by the Office of the High Representative whose mandate derives from the General Framework Agreement for Peace of 14 December 1995 (the Dayton-Paris Peace Accords) and who is responsible for co-ordinating the implementation of the civilian aspects of the agreement. The first attempt to implement the proposal was made by the Independent Judicial Commission, the lead agency on judicial reform. In May 2000, the High Representative promulgated laws on the judicial and prosecutorial services to improve the independence of both (the texts are available online at <http://www.ohr.int>).

c) The establishment of the *Truth and Reconciliation Commission* was proposed by the Citizens' Association for Truth and Reconciliation of Bosnia and Herzegovina. A draft law was prepared, but never adopted.

Main arguments in favour of proposals:

a) The main arguments in favour of the *De-certification process of police officers* were based on the fact that at the end of the 1990s there were far more police officers than at the beginning of the wars and far more than are needed in a democratic state of the size of Bosnia and Herzegovina. Moreover, in the early post-war years, police officers operated in ethnically homogeneous forces that mainly served nationalistic agendas (Finci 2004).

b) The state of the *judiciary* was particularly weak in the early post-Dayton years, characterised by the absence of an independent judiciary. In May 2000, the High Representative promulgated laws on judicial and prosecutorial services to improve the independence of both. This process was never adequately resourced and ended in failure. As a consequence, in late 2001, the Independent Judicial Commission (established by the Office of the High Representative), the lead agency on judicial reform, developed a new strategy for the reform. The main aim was to reduce the number of judges and make the judicial and prosecutorial services more ethnically diverse through a formal re-application and appointment process (Finci 2004).

c) The main argument in favour of the establishment of the *Truth and Reconciliation Commission* was based on the assessment that the disclosure of the truth on the war is a precondition for reconciliation.

Main arguments against proposals:

Arguments were mainly raised against the proposal of establishing a *Truth and Reconciliation Commission*. Some of the arguments often mentioned in the media are that the eventual functioning of this commission could possibly overlap and under-

mine the work of the International Criminal Tribunal for the former Yugoslavia (ICTY). Another argument stressed by certain interest groups was that such a commission could only work effectively if it was a regional one for all former Yugoslav Republics.

Implementation:

While the *De-certification of police officers* and the screening and re-appointment of judges and prosecutors were implemented, the Truth and Reconciliation Commission was not established.

a) With respect to the *De-certification of police officers*, the UNMIBH Human Rights Office established the Local Police Registry Section made up of international police officers, local lawyers and administrators, and UN professional staff. The vetting process itself consisted of three stages: mandatory registration, initial screening and final in-depth check. De-certified police officers were barred from serving anywhere in the country. Decisions about de-certification were subjects to an internal appeal only; no oral hearing was ensured. In the end, approximately two thirds of those vetted were provisionally certified to exercise police power. Over 90% of those were granted full certification (Finci 2004, based on the Report of the Secretary General 2002).

Although considered by the UN in terms of mandate implementation as a success, public perceptions of the process were mixed. Some criticised the process of having been too slow and too closed. Within the police itself, many officers, but particularly those de-certified, questioned the fairness of the procedures, and as many as 150 former police officers challenged their de-certification in domestic courts after the departure of the UNMIBH which was replaced in 2003 by the European Union Police Mission. The vague and non-legislated criteria applied by the UNMIBH and the fact that the whole documentation was sent away for storage at the UN headquarters in New York made the situation even more complex. The High Representative, Lord Paddy Ashdown, stressed the danger that some practices within this process could be in contradiction to the rule of law. (Finci 2004)

b) With respect to the *screening and re-appointment of judges and prosecutors*, three High Judicial and Prosecutorial Councils were created by the High Representative in 2002. The Councils are permanent bodies comprising elected and appointed members from the legal and judicial professions. International members have been appointed during a transitional period as well. The task of the Councils is to appoint, transfer, train, remove and discipline judges and prosecutors (Finci 2004).

According to the foreseen procedures, judges and prosecutors were required to submit a detailed application and disclosure form which also included questions about wartime activities. After this the Council nomination panel would review the application, interview the applicant and make a recommendation. Unsuccessful applicants have the opportunity to submit requests for re-consideration (Finci 2004).

Since this process is still ongoing, it is very difficult to assess its overall impact. Some initial concerns may, however, be noted. The most significant one is that the goal of

restoring the multi-ethnic character of the judicial and prosecutorial services appears not to have been fully achieved, particularly in the Republika Srpska, where there was an insufficient pool of minority candidates. Other doubts are related to the limited nature of the investigations conducted into the applicants' suspected wartime activities. Finally, a significant number of complaints were received and the high costs and staff size demanded by the procedure were publicly criticised (Finci 2004).

9. General public debates on the past

Major general public debates on the past: None of the kind practiced in some other post-communist countries, i.e. focusing on the communist era. The first post-communist elites used the referral to the communist period as a tool for the legitimisation of their power. In this respect, each nationalistic party considered itself as the major victim of the former regime.

Main reasons for focus of debates: The main reason was the fact that soon after the fall of communism, the war started in Bosnia and Herzegovina. The conflict and its cruelties completely moved the focus away from the communist era to the war period (1992–1995). What happened during the war, has not been regarded by the public as having any connection to the communist rule; on the contrary, it created nostalgic sentiments within a significant part of the population which are still present. The general public is currently not concerned with any kind of de-communisation, but with the disclosure of war related facts.

Main topics and initiators of debates: During the short pre-war period after the fall of communism (1991–1992), presenting oneself as a victim of the former system had been a widespread phenomenon. Debates on this topic were mainly initiated by politicians and a significant part of the media, which served the interests of the “new” political elites. However, since a considerable portion of these elites had actually belonged to the former political establishment, a major public debate on this issue also arose. Leaders of the religious communities took an active part in the public discussion about the past as well.

SOURCES:

Abazovic, Dino: Lessons from the Case of Bosnia and Herzegovina, in: Past and Present: Consequences for Democratisation. Proceedings of the Seminar Organised within the Project *Disclosing hidden history: Lustration in the Western Balkans* in Belgrade from 2 to 4 July 2004. Edited by Magarditsch Hatschikjan in co-operation with Corinna Noack-Aetopulos, Thessaloniki 2004, pp. 55-58. (Electronic book, available at http://www.lustration.net/pap_cfd.pdf)

Alic, Anes: Keepers of Yugoslavia in BH, in: Transitions Online, Prague, 19 November 2003; available at <http://www.talkaboutgovernment.com/group/alt.politics.yugoslavia/messages/27513.html>

The General Framework Agreement for Peace in Bosnia and Herzegovina (particularly Annex 4, Constitution; Annex 7, Refugees and Displaced Persons; Annex 11, International Police Task Force). Available at http://www.ohr.int/dpa/default.asp?content_id=380

Finci, Jakob: The Experience in Bosnia and Herzegovina, in: Past and Present: Consequences for Democratisation. Proceedings of the Seminar Organised within the Project *Disclosing hidden history: Lustration in the Western Balkans* in Belgrade from 2 to 4 July 2004. Edited by Magarditsch Hatschikjan in co-operation with Corinna Noack-Aetopulos, Thessaloniki 2004, pp. 29-31. (Electronic book, available at http://www.lustration.net/pap_cfd.pdf)

Freedom Of Access To Information Act For Bosnia and Herzegovina. Official Gazette of Bosnia and Herzegovina, Number 28/2000, 17 November 2000. Available at: http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/?content_id=7268

Freedom Of Access To Information Act For The Federation Of Bosnia and Herzegovina. Official Gazette of the Federation of Bosnia and Herzegovina, Number 32/2001, 24 July 2001. Available at: http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/default.asp?content_id=7269

Freedom Of Access To Information Act For The Republika Srpska. Official Gazette of Republika Srpska, Number 20/2001, 18 May 2001. Available at: http://www.ijnet.org/FE_Article/MediaLaw.asp?UILang=1&CID=108633

Interview with Mr. Srđan Dizdarević, President of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, July 2004.

Interview with Mr. Jusuf Halilagić, Secretary to the Ministry of Justice, 23 July 2004.

Interview with Mr. Zdravko Knežević, Chief Prosecutor of the Federation of Bosnia and Herzegovina, 1 July 2004.

Interview with Ms. Amira Krehić, Center for Access to Information, 1 September 2004.

Interview with Mr. Michael O'Malley (Vice President) and Mr. Muhamed Sušić (Head of the Nomination Department), High Judicial and Prosecutorial Councils of Bosnia and Herzegovina, 15 July 2004.

Interview with Mr. Senad Pečanin, Editor-in-chief of the weekly "Dani", 1 September 2004.

Interview with Mr. Ahmed Žilić, Lawyer, 20 July 2004.

Lovrenović, Ivan: Udbini sinovi, in: Dani, 7 November 2003, p. 28.

Recommendation for the Implementation of the Freedom of Access to Information Act. The Ombudsman Institution of the Federation of Bosnia and Herzegovina, Sarajevo, 14.01.2002. Available at <http://www.bihfedomb.org/eng/reports/special/secretfiles.htm>.

Report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina, U.N.S.C., U.N. Doc. S/2002/1314, Par. 11 (2 December 2002), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N02/706/20/IMG/N0270620.pdf?OpenElement>

Report on Activities of the Ombudsmen and Situation of Human Rights in the Federation of Bosnia and Herzegovina for 2002. The Ombudsman Institution of the Federation of Bosnia and Herzegovina. Available at <http://www.bihfedomb.org/eng/reports/2002/rpt2002main.htm>

Report on Activities of the Ombudsmen and Situation of Human Rights in the Federation of Bosnia and Herzegovina for 2003. The Ombudsman Institution of the Federation of Bosnia and Herzegovina. Available at <http://www.bihfedomb.org/eng/reports/2003/rpt2003main.htm>

2.5 Country Overview: Croatia

Compiled by Goranka Lalić⁴

1. Lustration law passed

None.

2. Proposal for lustration law rejected

Name of Proposal: Prijedlog zakona o otklanjanju posljedica totalitarnog komunističkog režima (Draft Law on Removing the Consequences of the Totalitarian Communist Regime).

Proposed by: Croatian Party of Rights.

Dates of proposal: 11 February 1998 and 20 October 1999.

Main contents and provisions of proposal: The draft law mainly aimed to systematically bar high-ranking party and state officials of the former regime from holding high-ranking offices in the new state, if in the past these persons had violated human rights and opposed the establishment of democracy.

The draft law contained 18 articles. It defined the general intention and the time of application (15 May 1945 until 30 May 1990), as well as the victims of persecution by the totalitarian communist regime and the institutions responsible for carrying out surveillance and persecution (the Communist Party of Croatia, the secret police and the secret intelligence services). According to the draft law, persons who had been “privileged members of the totalitarian communist regime” would have to be prevented from holding high-ranking offices in the new state. This referred to:

Persons who had had unlimited or partial access to information collected by the secret intelligence services, particularly persons who had been authorised to dispose of the gathered information in the way they wished to do;

Persons who had been privileged by the secret services or persons who had obtained material privileges and other advantages, entirely denied to other citizens or denied to an equal extent or under equal conditions to other citizens;

⁴ Ms. Lalić’s thanks for instructive discussions on topics of this synopsis go particularly to Professor Žarko Puhovski (Faculty of Philosophy, University of Zagreb), Mr. Davor Gjenero (Publicist), Professor Alan Uzelac (Law Faculty, University of Zagreb), Professor Vlatko Cvrtila (Faculty of Political Sciences, University of Zagreb), Mr. Srđan Dvornik (Director, Zagreb office of Heinrich-Böll-Stiftung), Mr. Tin Gazivoda (Director, Human Rights Center, Zagreb), Ms. Nataša Đurović (Legal Advisor, Croatian Law Centre), Ms. Sovjetka Rezić (Judge, County Court Split), and Ms. Amara Trgo (Judge, County Court Split). All information given in this overview refers to developments up to 31 December 2004.

Persons who had been pardoned by the Communist Party, the secret police and the intelligence services after having committed criminal acts or in cases in which prosecution of committed criminal acts had not been initiated at all because the former secret agents had decided to co-operate with the new authorities;
Persons who were ordered by the secret police or the secret service to plan, support, organise, prepare or commit criminal acts in the territory of the Republic of Croatia and abroad.

The draft law stated who should be considered an active employee, in particular, a secret service agent, and who was to be considered simply an employee and not a secret agent working for the intelligence service. It also stated who should be exempt from the application: persons persecuted by the former regime and prevented from promoting or supporting national rights and democracy.

It concluded that for the purpose of implementation it was necessary to create an archive consisting of all documents belonging to the Communist Party and its successors and also an archive of the documents of the secret and the intelligence services. It proposed that the Parliament should nominate a State Commissioner in charge of these archives who would collect and administer the documents for the period of five years, without the possibility of re-election. The duty of the commissioner would be to check whether high-ranking state officials in the current period had been privileged members of the former regime or secret service agents, especially members of the intelligence service. According to the draft law, holders of or candidates for the following offices should be lustrated:

President of the state;
President, vice-president, ministers and members of the government;
Members of Parliament;
Ambassadors, vice consuls and consuls;
Heads of government offices and administration units within ministries;
Employees selected by or nominated by the parliament and the government;
Officials of the local self-administration and the administration confirmed by the President of the Republic of Croatia;
University professors;
Editors and journalists;
Notaries, judges, state prosecutors and the Ombudsman;
Members of executive or supervisory boards of public enterprises and all firms and funds with a majority share of the property held by the state;
Secret service employees;
Officers of the army and the Ministry of the Interior;
Members of electoral commissions.

If the results of the inquiry proved that the person in question was a privileged member of the former regime as defined or an agent of the secret service or the intelligence service, the commissioner should demand that the respective person withdraws from his/her office within the period of 8 days or give up his/her candidature. If the person refuses to do so, the State Commissioner would inform the Lustration Court. The Court

would be formed with a 10-year mandate and would consist of 5 judges chosen by the parliament; it would apply the procedure prescribed by the Constitutional Court to its work. The decision of the Court would be final, and the respective person would be prohibited from performing public duties until the end of the mandate of the Lustration Court, in any event for a period of not less than five years.

Support by other parties, parliamentary groups: None.

Support by NGOs: None.

Rejection by other parties, parliamentary groups: The Croatian Party of Rights initiated a parliamentary procedure with respect to its draft law for the first time in February 1998, but the topic was removed from the agenda, due mainly to the proposal of the members of the Croatian Democratic Union and of other parties.

In October 1999, the draft law was sent to parliamentary procedure again, but, once again, the members of the Croatian Democratic Union suggested that the topic should be removed from the agenda. Main arguments of the rejection were based on the assessment that the situation in ex-Yugoslavia had not been the same as in other countries of Eastern Europe and that the initiative came too late. 77 Members of the Parliament voted for removing the topic from the agenda, only two voted against its removal.

Debate in parliament: The debate took place between members of the Croatian Democratic Union (HDZ) on behalf of the Club of HDZ representatives, and members of the Croatian Party of Rights.

3. Procedures assigned

None.

4. Measures implemented

None.

5. Inclusion of NGOs and victims of the former regime

None.

6. Public debates on lustration legislation

There were no broad public debates on the necessity of adopting lustration legislation.

7. Laws and procedures on public access to files of the secret services

Legislation on public access to the files of the secret services: No law was adopted (and none proposed) on the issue of public access to the files of the secret services.

The Law on the Security Services of the Republic of Croatia was passed on 21 March 2002, and has been applied since 1 April 2002. The key intention of the law is to initiate the professionalisation and de-politicisation of the secret services as well as the establishment of an appropriate model of supervision of their work (internal and external control). The law makes no distinction between the period from 1945 until 1990 and the period after 1990. Principally, the law allows for access to the documents and material. Article 23 states that security services are obliged to inform the citizens, at each individual request, whether any procedure such as collecting data and information on that particular individual has been undertaken, and whether his/her personal data has been recorded and updated by the secret services.

The security services are not obliged to act in accordance with the provisions of the law if case the information could lead to endangering of the security of other persons, or if case the information could lead to harmful consequences for national security and the interests of the Republic of Croatia. If these reasons are not given, the security service is obliged to act according to the provision. In 2001, the Minister of the Interior submitted 38,000 files (from the period 1946-1990) from the Croatian State Archives of the Former Socialist Republic of Croatia and around 650 files from the Service for the Protection of the Constitutional Order (from the period 1990-2000), and the citizens on whose behalf these files were opened, gained free access to these files.

8. Proposals for and implementation of other solutions

General background and development: The situation in Croatia is extremely complex due to various kinds of non- or anti-democratic regimes in the historical development of the country (fascist totalitarian regime, communist authoritarian regime and national authoritarian regime of populist nature after 1990). The regime in power, after the fall of communism, has not shown any readiness to legally confront the past nor to exclude from public life those who in any way violated human rights. It was believed that only the Serb element was the bearer of the totalitarian character of the communist regime of ex-Yugoslavia. In spite of the fact that Croatia is a member of the Council of Europe, resolution 1096 of the Parliamentary Assembly of the Council of Europe from 1996, (which obliges new democracies to correct injustices done during totalitarian regimes and impose legal sanctions against those who took part in human rights violations), did not have any impact in Croatia. Since the fall of the communist regime, no rational lustration process has been carried out, but a sort of «cleansing» within the public administration and the judiciary system has been done. Such a “covered up” lustration was not carried out according to clear criteria. Instead of removing those who had played an active role in human rights violations or in the repressive apparatus, the then authorities removed those who were considered “nationally unsuitable” or in some other way unacceptable to the new authoritarian regime.

Judiciary system: “Reforms” from 1990-1999 in the Croatian judiciary system may better be qualified as a lack of reform, or as anti-reform. In fact, the very absence of a feasible and transparent mid- and long-range strategy of development was a clear political message to the judicial ranks. Therefore, at least until 1997, there was a strong outflow of judges to other branches of the judicial profession (mostly to the ranks of practicing lawyers and public notaries). To make this tendency even worse, most of the judges who left were among the best qualified and experienced ones. Of course, competent judges with a high reputation had the best possibilities of an alternative career, and many of them considered that their current provisional status and uncertain future of their job (which lasted seven and more years in certain courts) was too humiliating for them to stay in office.

During the period from early 1991 to early 1994, the judiciary was apparently in an informal legal and constitutional limbo. Though constitutionally well-protected, immovable, independent and autonomous, with a life tenure (or at least with a “until retirement” tenure), judges were probably the least protected and the most fragile species in the professional universe in this period. During these years almost none of the warranties were applied, and judges were put into the position of “permanent provisionality”. The constitution provided that a body named the “State Judicial Council” had to appoint, discipline and remove the judges. And yet, until 1994 there was no such body – and no precise rules on its composition. The constitution required a life tenure. And yet, it was regarded that such a tenure had to be given only to judges appointed by the State Judicial Council. Previous legislation was abrogated – and yet, there were still about a thousand active judges who were, according to previous rules, appointed with a mandate of eight years. In such a vacuum (that was, apparently, not entirely accidental), practice responded in various ways. E. g., judges continued to be appointed and removed from office by the Croatian Sabor (Parliament). In some five years, the mandate of a significant portion of judges expired; some of the judges simply continued to perform their functions; some of them received formal decrees on the expiry of their mandate and the consequent cessation of their office; and some were simply notified that they had to leave their offices due to the “new situation”.

The judiciary itself reacted as expected – many judges started to leave the profession. The beginning of the 1990s was the period of the largest exodus of judges. According to fragmentary research by the Croatian Law Centre (HPC), in just two years (1990 and 1991) about 200 judges (one sixth to one fifth of all judges) left the judiciary. This number is not final, because it was obtained on the basis of the analysis of the published appointments in the *Narodne novine* (Official Gazette) – and, according to some statements, there were also other removals that miraculously escaped the attention of this official publisher of legal news and information. According to provisional results of the as yet unfinished research of the HPC, in the period 1990-1996 there were over 2,200 dismissals and appointments of judges and state attorneys recorded in the Official Gazette - and this number is still lower than the real one, since in some periods dismissals were obviously not reported in the Official Gazette. Moreover, there was no systematic reporting on those judges who were dismissed by the very fact that they were not re-appointed in the course of the first appointment by the SJC. From the recorded dismissals, there were 361 cases in which judges were removed without any explanation.

The defenders of these governmental interventions in the judicial area basically invoked two arguments that aimed to legitimise the brutality of the intervention. On one hand, it was claimed that “old” judges were the inheritors of the former, communist regime, and that many of them were compromised by their participation in political processes of the socialist era. On the other hand, it was claimed that, in the past, judges had been recruited disproportionately from the Serbian population, as the political elite of former Yugoslavia, and that (especially under conditions of war with Serbia) they should be replaced by “loyal” Croat cadres.

Both arguments had a certain weight – but were, in our opinion, largely overemphasised and therefore wrong. Even if they had been true, it might be still questionable as to whether they could fully legitimise the actions taken. However, it should be stated, on the account of the first argument, that the judiciary in the former communist regime was, as a whole, largely neutral, although isolated and marginalised. In fact, since the systems of social regulation on “important issues” were to be found elsewhere (in political committees and the communist party elite), the judiciary was simply not interesting enough to be the target of political manipulations. Naturally, there were some judges and some cases (primarily in criminal proceedings) who had to carry out the orders of state politics. But there were times when even judges disobeyed communist politics. For example, several high-ranking judges adhered to strict codes of judicial behaviour in the 1970s, and when communist hard-liners struck against the liberal and national movement of the “Croatian Spring” in 1971, they refused to sentence the accused in the political processes and dismissed the charges – until they themselves left office or were removed. Thus, the number of “compromised” and “pro-communist” judges was low, whereas the large majority did not hold any mortgages from the past – apart from the mere fact that they were appointed in “other times”.

The second argument, pointing at the ethnic composition of the Croatian courts, is per se discriminatory and has to be rejected. If we take it seriously for the purposes of a hypothetical exercise, it should be stressed that, in the early 1990s, there was perhaps a slight overrepresentation of judges of the minority ethnic groups in Croatia. But even if we disregard the arguments in favour of a policy of positive discrimination, the reaction was so radical that, from 1990 to 1999, the situation was turned upside-down to the extent that some may even speak of “ethnic cleansing” of the judicial ranks. According to the (unpublished and apparently confidential) statistics of the Ministry of Justice from May 1999, in Croatia (including the internationally protected area of Eastern Slavonia with controlled warranties of proportional ethnic participation) 93,6% of Croatian judges were ethnic Croats, 3,1% ethnic Serbs and 3,3% belonged to “other ethnic groups”.

Public administration: There are no statistics on removals from public administration offices.

Media: Some findings conclude that 400-600 journalists were “removed” during the period 1990-1992, but no official data is available on this issue.

Public discussions or ruling on implementation: None.

9. General public debates on the past

Major public debates on the past: There were practically no major public debates on the past. In spite of the fact that access to the European Union and the establishment of the rule of law were emphasised as the main goals of the Croatian policy, confrontations with the consequences of the past authoritarian regimes remained isolated cases.

Major topics and initiators of public debates on the past: Most of the public discussions on the past were concentrated on the relationship between Ustashas and Partisans as well as on the crimes committed by the Partisans in the Second World War. It was mainly various Veteran organisations as well as radical right – wing oriented parties that initiated such discussions.

Main reasons for deficiencies: Apart from the war events in the Republic of Croatia in the period from 1990 until 1995, the key factor was the fact that many political actors and high officials of the party in power were members of the past regime. The decisive division line towards the communist regime was marked by the question of the readiness to participate in the populist system in power in the period 1990-2000.

Institutions, organisations, parties displaying a lack of interest in, or even preventing general public debates on the past: Mainly the Croatian Democratic Union.

Opinion polls conducted on this topic: None.

Direct or indirect effects of public debates on the past on legislation and institutions: None.

2.6 Country Overview: Republic of Macedonia

Compiled by Goce Adamčeski⁵

1. Lustration law passed

None.

2. Proposals for lustration laws rejected

None.

3. Procedures assigned

None.

4. Implemented measures

None.

5. Inclusion of NGOs and victims of the former regime

None.

6. Public debates on a lustration law

There were no major public debates on lustration legislation. Some public debates touched upon issues connected with lustration. For example, a debate arose when the rehabilitation of dissidents was a possible subject of legal regulation, but no substantial result was achieved. NGOs supported several debates on former dissidents in Macedonia, focussing on their legal status and restitution legislation, among other issues. (Details, but only in Macedonian language, are available on the web page of “Euro-Balkan,” see <http://www.euba.org.mk/disinmk.htm> and <http://www.euba.org.mk/Mircev.htm>.)

⁵ Mr. Adamčeski's thanks for instructive discussions on topics of this synopsis go particularly to Prof. Biljana Vankovska (Faculty of Philosophy, University of Skopje), Prof. Dimitar Mirčev (Faculty of Social Sciences, Skopje), Mr. Iso Rusi (Editor-in-chief, Lobi, Skopje), Prof. Kadri Haxhihamza (Medical High School, Skopje), Mr. Žarko Hadži Zafirov (Staff Attorney, American Bar Association - Central and East European and Eurasian Law Initiative, ABA-CEELI, Skopje) and Mr. Agim Jonuz (Spokesman of the Government of the Republic of Macedonia, Skopje).

7. Laws and procedures on public access to files of the secret services

Legislation:

The law on the access to the files of the secret service was enacted in 2000. Its official name is: "Law on handling personal files kept by the State Security Service". The law was published in the „Official Gazette of the Republic of Macedonia“, no. 52, on 5 July 2000. It had been proposed by then Minister of Interior Affairs, Ms. Dosta Dimovska, at that time one of the leading politicians of the national conservative party VMRO-DPMNE (Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity). By the enactment of this law, 15,000 files were made accessible to the persons who had been observed and prosecuted by the state security services.

The law was rather unusual compared to similar laws in other countries of Central and Eastern European, because it determined the period from 1945 till the day it entered into force (in July 2000) as its time of application. The main reason for this approach was the notion that after the Republic of Macedonia had gained independence (September 1991), the secret services had not really stopped observing the persons that had been observed under the previous regime. It has to be added, however, that it later became clear that the intensive maintenance of the files had lasted until the mid-1980s.

The law also regulated the procedure of acquiring information on, and access to, personal files kept by the former State Security Service (Office for Security and Counterintelligence of the Ministry of Interior Affairs) and the procedure for the further safeguarding, use and disposal of the files. Therefore, it defined several key terms such as personal file, the persons who have access, the bodies and commissions that deal further with the files. Most of the specific characteristics of the law were included in Chapters II, III and IV which covered 70 percent of the law provisions.

Chapter II dealt with the procedure for access to personal files. The main characteristic of this procedure was related to the request for access. A deadline was set, which granted the possibility of raising requests for access within one year after the law had come into force; this meant that a request could be raised until mid-July 2001. The request had to be lodged with the Ministry of Interior Affairs (the key institution in implementing the procedure) which would provide the file to the requesting person. The procedure proved to be highly bureaucratic and ensured a strong protection for officials of the Ministry of Interior Affairs. For example, information within the files on officials who had worked on them as well as on persons who had provided information to the State Security Service had to be made illegible (Article 11). The highly bureaucratic approach was also evident in the establishment of an additional procedure, if the requesting persons were interested in the names of the officials and informers involved in their case. The original files were not accessible to be viewed, only copies. It was also forbidden to take pictures, damage or remove the personal file.

Chapter III regulated the control of the procedure and the use of personal files. For this purpose, a Parliamentary Commission was established. It consisted of MPs as well as

representatives from other institutions. The Ministry of Interior Affairs continuously informed the commission on the access to the files. After the law had expired, the Ministry prepared a report on the implementation of the law that was presented to the Parliament.

Chapter IV regulated the procedure for the safeguarding, use and disposal of personal files. It was determined that a file had to be transferred to the Archives if a governmental commission found out that this file was of scientific, historic or cultural nature. This process had to be done within six months after the law had expired. Once a file had been transferred to the Archives, it was not considered to be officially secret anymore. Files with no historical, scientific or cultural heritage were destroyed within six months after the law had expired.

Implementation:

The law on the access to the files of the secret service was implemented from July 2000 until July 2001. The Ministry of Interior Affairs never presented the precise number of accessed files to the public. In addition, the report that the Ministry had prepared for the Parliament was also never made public. Bearing in mind that the law was implemented in the period when the Republic of Macedonia was in its biggest security crisis since gaining independence, it could be expected that public interest in this issue would have been rather low at the time. The law only attracted some media interest in the first three months of its application, which was often connected to the local elections that took place in September 2000. In this context, some initiatives were started with the aim of identifying certain candidates for political posts as collaborators or informants of the secret service.

8. Proposals on and implementation of other solutions

Discussion on further measures:

Shortly after the law on the access to the files of the secret service had been passed, a discussion on further measures was raised within the Government. This time the debate focused on the question as to whether a law should be adopted that would oblige future ministers, high-ranking state officials and MPs to state whether they had been collaborators or informers of the state security service. However, this issue remained only a discussion subject; no official initiative for a respective legislation was ever taken. The reason was the obvious propagandistic character of the discussion that had been initiated. Once again, this was connected with the local elections in September 2000. Supporters of the idea (mainly VMRO-DPMNE and some block parties representing parts of the Albanian community) wanted to improve their pre electoral ratings by focusing on the socialist period. In this context, a series of articles was published by the Macedonian Information Agency (MIA) in the period between July and September 2000.

Amnesty law:

Although not related to the socialist period or the developments in the 1990s, it is important to mention and explain the Amnesty law of March 2002 in the context of this overview. It was published in the Official Gazette of the Republic of Macedonia,

Nr. 18/2002, dated 8 March 2002. The Amnesty law was the first legal outcome of the Ohrid Framework Agreement (13 August 2001) which led to the end of the military conflict in the country in 2001. This law created an amnesty for further investigative and legal procedures and cancelled the jail sentences for all persons (citizens of the Republic of Macedonia, persons legally residing as well as persons having family or property in the country) who were found to have prepared or conducted criminal activities connected with the conflict in 2001 prior to 26 September 2001. As a result of this law, four main legal consequences were introduced for the persons involved in the 2001 conflict:

1. All persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were freed from further legal proceedings;
2. All criminal procedures already started for all persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were stopped;
3. All persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were liberated from further jail sentences;
4. The verdicts and the legal consequences for all persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were erased.

A total number of 270 persons who had been imprisoned and awaiting legal proceedings were free after the law entered into force. The law applied to those persons who had handed over their weapons up to 26 September 2001, which was the last day of the weapons harvest operation.

This law was one of the main pre-requisites for the implementation of the provisions of the Ohrid Framework Agreement, providing the possibility for many Albanians to be reintegrated in the social and political life of the country.

Generally welcomed and supported by the Albanians and by the international community, this law was only partly supported by the ethnic Macedonians. Many of them considered it to be a justification for the activities of the UÇK ("National Liberation Army") during the conflict. Even the broadcast of the parliamentary session on the law enactment was curtailed because of the fear that it might lead to riots by ethnic Macedonians.

Nevertheless, the law provided a basis for the peaceful development of the Macedonian society. After the enactment, the Macedonian Police could peacefully penetrate all areas which had not been under their control, up to that point. The developments in the following years showed that this unique legislation act in this part of Europe could be considered to be rather successfully implemented and serving the goals it was drafted for.

9. General public debates on the past

Major public debates on the past: There were very few debates on the past, none of them major, and those that took place only touched on a limited number of issues, with only partial consideration.

Main reasons: Bearing in mind that the “Euro-Atlantic orientation” and the establishment of the rule of law were emphasised as the main goals of the Macedonian policy, the confrontation with the consequences of the past authoritarian regimes was considered to be of minor importance. In addition, the post-1945 period is generally assessed as a period of formation and fostering of the Macedonian State and therefore perceived rather positively. Its authoritarian character is often de-emphasised. Finally, many of the key political actors and high-ranking officials of the parties in power had played themselves a prominent role within the former regime.

Institutions, organisations, parties displaying a lack of interest in, or even preventing general public debates on the past: Mainly the Social Democratic Union (in a certain sense, the inheritor of the League of Communists of Macedonia), but also some high-ranking officials of the VMRO – DPMNE and some block parties representing parts of the Albanian community.

Main topics and controversies of debates on the past: a) Acts against (mainly pro-Western orientated) persons promoting greater Macedonian autonomy and a higher degree of independence from Belgrade-centred power; b) Attempts by the representatives of the Albanian community in Macedonia to promote greater autonomy for the Albanians; c) Activities of and actions against liberal dissidents.

Main initiators of discussions: NGOs.

Opinion polls conducted on this topic: None.

Direct or indirect effects of public debates on the past on legislation and institutions: None.

2.7 Country Overview: Serbia and Montenegro

Compiled by Aleksandar Resanović⁶

1. Lustration law passed

In the Republic of Serbia, a lustration law was passed.

Official name: Zakon o odgovornosti za kršenje ljudskih prava (Accountability for Human Rights Violations Act).

Date of passage: 30 May 2003.

Official publication in: Official Gazette of the Republic of Serbia, no. 58/2003; correction in no. 61/2003.

The English translation of the law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (www.lustration.net); see http://www.lustration.net/human_rights.pdf

Procedure and margin of majority in parliament: Emergency procedure, 111 votes in favour, one against, 15 abstentions.

Proposed by: Six Members of the Parliament: Nataša Mičić (former President of the Parliament), Dr. Dragor Hiber, Dr. Miloš Lučić, Ljubiša Kesić, Sandor Melank, and Sima Radulović.

Accepted by: Members of the Democratic Party, the Civil Alliance of Serbia, the Social Democratic Union, the Demochristian Party, and some independent Members of Parliament.

Rejected by: One member of the Socialist Party of Serbia.

Main provisions: Article 1 (Subject of the Law), Article 4 (Time of Application of this Law), Article 5 (General Forms of Human Rights Violations), Article 10 (Persons accountable for human rights violations).

Amendments: None.

Time of Application: All human rights violations occurring after 23 March 1976, the day that the International Covenant on Civil and Political Rights came into effect, under terms set out by this Law (Article 4).

⁶ The author's thanks for instructive discussions on topics of this synopsis go particularly to Prof. Dr. Vesna Rakić-Vodinelić (Director, Institute for Comparative Law, Belgrade) and to Prof. Dr. Bogoljub Milosavljević (Faculty of Business Law, Belgrade). All information given in this overview refers to developments up to 31 December 2004.

2. Proposals for a lustration law rejected

None.

3. Procedures assigned in the lustration law

Main provisions on procedures: Article 11 (Participants in Proceedings); Article 12 (Investigation of Individual Accountability); Articles 14-17 (Vetting Prior to Appointment); Articles 18-21 (Vetting After Appointment).

Additional decrees on procedures: None.

Persons to be affected by implementation of the law: The overall number of affected persons is unknown. Article 10 states that lustration proceedings are instituted against persons holding, or are candidates for following office:

1. Deputies of the National or Provincial Assemblies;
2. President of the Republic
3. Prime Minister and members of the national government or provincial executive councils;
4. Mayor and municipal president and deputy president;
5. President and members of the executive board of the council of a local self-government unit;
6. Secretary of the National or Provincial Assemblies;
7. Head and managing officer of National or Provincial Assembly services;
8. Head and managing officer of services of the President of the Republic;
9. Deputy and Assistant Minister, managing official of republic and/or provincial bodies and organisations and other heads of bodies and organisations in national and/or provincial bodies and organisations, appointed by the republic government and/or provincial executive council;
10. Secretary of municipal and city councils;
11. District Administrator;
12. President and judge of the Constitutional Court of Serbia (hereinafter: Constitutional Court), president and judge of courts of general jurisdiction and special courts, member of the High Judicial Council, public prosecutors and their deputies, administrator and judge of the court of misdemeanours;
13. Director and managing board member of enterprises founded by the Republic, province or local self-government;
14. Director and managing board member of public organisations founded by the Republic, province or local self-government, as follows:
 - President and member of University Council, president of university and dean of faculty;
 - President or member of managing board or other relevant managing body, director, deputy director, editor-in-chief, deputy editor -in-chief and editor of section of public media or publishing organisation;
 - Director, president and member of the management board of the mandatory social insurance organisation;

15. Governor and Vice-Governor of the National Bank;
16. Director of a bank with majority state capital;
17. Director of tax administration, Deputy Director of tax administration, assistant to the director – chief inspector of the tax police, head of regional tax administration, head of regional tax administration police, director of branch office tax police;
18. Official and sworn officer of the Security Information Agency and/or other similar service;
19. Director and managing officer of penal institution;
20. Head of diplomatic mission in a foreign country and international organisation and/or consul;
21. Chief of staff of the army and/or head of counter intelligence service.

Additional institutions, agencies, parliamentary bodies assigned: Only one: The Commission for Investigation of Accountability for Human Rights Violations (hereinafter “the Commission”).

The law states that the Commission has nine members. Three members are judges of the Supreme Court of Serbia, three members are prominent legal experts, one member is a deputy public prosecutor of the Republic of Serbia and two members are deputies of the National Assembly holding a degree in law, elected from different electoral lists. The President of the National Assembly proposes candidates for Commission members in such a way that a minimum of two candidates are nominated for each position from every group specified above. The National Assembly of the Republic of Serbia elects Commission members by secret ballot. A separate vote is taken for lists of candidates from the Supreme Court, prominent legal experts, deputy public prosecutors of the Republic of Serbia and deputies to the National Assembly holding a law degree (Articles 11, 22 and 23).

4. Implementation

Measures fully implemented: None.

Measures partially implemented: On 15 May 2003, the National Assembly appointed 8 out of 9 members of the Commission for Investigation of Accountability for Human Rights Violations. The ninth member has yet to be appointed, and the Commission has, as yet, not started to work.

Deficiencies of implementation: As yet, one cannot speak of any implementation of the law. There has been no real application of any measures.

Offices affected by implementation: None.

Persons affected by implementation: None.

5. Inclusion of NGOs and victims of the former regime in the preparation of the law

Inclusion of NGOs or victims of former regimes in the preparation of the law: None.

Reasons for deficiencies: The Law was adopted through an emergency procedure, and the National Assembly very rarely, if at all, involves NGOs in law preparation.

6. Public debates on the law

Broad public debates before passing the lustration law: None.

Initiatives for discussions: Some NGOs, several legal and other experts, and some media representatives initiated discussions at round tables and seminars. There were some, albeit not many, reports in the media on such discussions.

7. Laws and procedures on public access to files of the secret services

Legal act on public access to the files of the secret services passed: A Decree on removing the confidence mark from files of the secret service was adopted in Serbia on 31 May 2002, but was declared unconstitutional in October 2003. A Decree under the same title was adopted in Montenegro in September 2002, which was not declared unconstitutional as had been the case in Serbia.

Activities of NGOs with respect to public access to the files: Two NGOs – the Center for Antiwar Action and the Center for Advanced Legal Studies – put forward a model of a Law on Opening Secret Police Files in June 2003. The text is available (in Serbian) at the web page of the Center for Antiwar Action (www.caa.org.yu). Another model had been set out by the Center for Antiwar Action and presented at the International Conference on Opening of Secret Police Files in February 2002.

Official reactions: The Ministry of Police refused to discuss the law model, so it has never been considered by the Government or the Parliament of the Republic of Serbia.

8. Proposals on other solutions

Proposals on other solutions: There were some, but rather few proposals.

In the former Federal Republic of Yugoslavia, then President Vojislav Koštunica established a Truth and Reconciliation Commission on March 2001, but some of the most distinguished designated members had serious objections with respect to the objectives, competencies, and powers of this commission and refused to participate. Two and a half years later, the commission had just vanished, without having undertaken any substantial activities and without having achieved any tangible results.

It was NGOs, in particular, that asked for criminal procedures for war crimes and crimes against humanity, and lustration in the cases of human rights abuses.

Dealing with “crimes against humanity”: There has only been one court case (Ovčara dealt with in a Special Court for war crimes) which started in 2004.

Main reasons of deficiencies and failures: Particularly the fact that the subject of war crimes is still a “taboo”.

9. General public debates on the past

Major public debates on the past: There were some, but only a few public debates on the past.

Major period referred to in these public debates: The period of the Milošević regime and particularly the 1990s.

Main topics of these debates: The relations between Serbia on the one side and Croatia and Bosnia and Herzegovina on the other, the role of the Milošević regime and particularly the role of the army and the police, in the wars in Croatia and in Bosnia and Herzegovina, the issue of cooperation with the Hague Tribunal.

Main initiators of these discussions: Several NGOs – the Center for Antiwar Action, the Humanitarian Law Fund, the Belgrade Center for Human Rights, the Center for Advanced Legal Studies, the Center for Civil-Military Relations, the Victimology Society of Serbia.

Segments of the society directly or indirectly involved in these debates: Mainly NGO members, experts, representatives of the media, students.

Public interest in these debates and their effect on the public opinion: Rather small.

Main reasons for the effects being so minor: In general, collective amnesia is preferred, many people did not want to believe the truth or even listen to the facts, especially not to believe or confess that Serbs were directly involved in war crimes.

Part 3: Past and Present: Consequences for Democratisation

Proceedings of the Seminar Organised within the Project *Disclosing hidden history: Lustration in the Western Balkans* in Belgrade from 2 to 4 July 2004

3.1 Foreword

This electronic book presents the contributions and extracts from the discussions during the seminar *Past and Present: Consequences for Democratisation* which took place in Belgrade from 2 to 4 July 2004. This seminar was part of the project *Disclosing hidden history: Lustration in the Western Balkans*.

The process of facing the past, especially disclosing historical facts hidden in secret archives and making a clean break with it, is a sensitive, complex, and contentious issue in all post-authoritarian countries. Lustration and lustration procedures, as well as public debates on the past, range among the most important issues in the transition period. What is the relationship between public debates on the past and the consolidation of democratic structures, institutions, and procedures? And what is the relationship between lustration and democratic consolidation? Are these strong or even causal relationships? These were the general main questions of the seminar in Belgrade, and these are the main topics of this electronic book.

The first part – *Past and Present: Historical Experiences* – deals with the experiences in some countries of East Central and Southeast Europe (outside the Western Balkans) with respect to public debates on the past and the process of coping with the lustration issue and their consequences for the development of the respective societies. *Natalia Letki* gives an analytical overview on developments in East Central Europe, defining lustration within the broader context of de-communisation, explaining the most important topics connected with the lustration issue, and discussing the various consequences of lustration for democratisation. *Pavel Žáček* describes the legal regulations on lustration in former Czechoslovakia and in the Czech Republic as well as the practices of implementation both in the Czech Republic and in Slovakia. *Marius Oprea* takes up the issue of regime continuity in Romania, illustrating it with the example of the fate of the former state security during the transition period. *Emil Tsenkov* explains the legal acts and the implementation procedures with respect to the lustration issue in Bulgaria, also deliberating on the practices related to the state security sector and the issue of public access to the files of the secret services. All contributions include the analysis of the impact of the debates on the past and on the lustration issue on the development of the respective societies. The *Discussion* concentrates on this question as well as on the definition of lustration.

The second part – *Public Debates on the Past: The Experiences in the Western Balkans* – includes case studies on the experiences with public debates on the past and on the lustration issue in the individual countries of the Western Balkans. *Jovica Trkulja* explains the treatment of the authoritarian past in public debates in Serbia and the reasons why attempts at lustration have failed so far. *Ivo Goldstein* analyses the specific features of an historical revisionism in Croatia which overshadowed the debates on the past in the 1990s and the reasons for more realistic approaches after 1999. *Jakob Finci* describes the legal basis and the procedures of the vetting processes with respect to the police and the judiciary system in Bosnia and Herzegovina. *Iso Rusi* shows different aspects of continuity and change within the political scene in The former Yugoslav Republic of Macedonia, emphasising that besides clear personal and political continuities there are important, albeit still insufficient, institutional changes. *Kathleen Imholz* describes in detail the political, legal, and social approaches in dealing with the past and particularly with the lustration issue in Albania against the background of the general political developments. The *Discussion* concentrates on some ethical aspects of the public debates on the past, including their possible cathartic impact on the respective societies, and on the reasons for the fact that the public interest in the individual countries is obviously concentrated on different periods of the past.

The third part – *Public Debates on the Past: Effects on Democratic Structures* – deals mainly with the direct or indirect effects of the public debates on the past on legislation and institutions. *Vojin Dimitrijević* explains the reasons for the failure of the attempt to establish a truth and reconciliation process in an institutionalised form in Yugoslavia and in Serbia and Montenegro and discusses the question of which period of the past should be investigated and considered. *Žarko Puhovski* analyses the developments in Croatia with a special emphasis on the reasons for the paradox that there has been, on one side, an obvious progress in important political and social elements, while, on the other side, lustration has been disregarded or replaced for some time by ethnic or ethnically based disqualifications. *Dino Abazović* examines the processes of lustration and disqualification, their impact on an ethnically divided society, and the role played by the international community, within the political and social context of Bosnia and Herzegovina. *Biljana Vankovska* explains the specific situation in The former Yugoslav Republic of Macedonia which has led to a relatively low interest in public debates on the pre-1991 period and to a concentration on the present situation marked by the consequences of the violent conflict of 2001. *Ben Andoni* discusses the controversial debate in Albania, in the spring of 2004, over the issue of the opening of the files of the secret services on writers. The *Discussion* focuses mainly on the effects of the public debates on the past and on the effects of the lustration issue on the political and social developments.

Our thanks go, first and foremost, to the contributors and discussants. At the organisational and technical level, we thank, above all, Aleksandar Resanović, Executive Director of the Center for Antiwar Action in Belgrade, who was instrumental in organising the seminar in Belgrade. We also thank the project coordinators of the other partner organisations within this project: Goce Adamčeski from FOSIM, Elsa Ballauri from AHRG, Nejša Čengić from CIPS, and Goranka Lalić from CHC, who all greatly con-

tributed greatly to the successful organisation of the seminar and especially to the participation of many distinguished experts from the respective countries. Our gratitude also goes out to Maria Panagiotara for the transcripts and her thorough look, as a native speaker of English, at the final outcome.

Thessaloniki, December 2004

3.2 Past and Present: Historical Experiences

3.2.1 The Consequences of Lustration for Democratisation: The Experience of East Central Europe

Natalia Letki

To define the issue which is of major interest at this present conference let me refer to the Oxford English Dictionary, which says that 'to lustrate' means to clarify the house, in this case the body of politics, of blood guiltiness, to perform certain purifying rights. Of course, lustration is just one of numerous ways of dealing with experiences of the past. One way is to focus on criminal proceedings and criminal issues – bringing people who are guilty of torturing and killing other people to trial. A second one is property restitution – dealing with the injustices referring to property. And a third one is lustration – the general solution of mass screenings. So, lustration, as defined by most experts, means the procedures of screening individuals who aspire for certain public positions.

Lustration has been a relatively common experience of post-communist states of East Central Europe. However, the scope of lustration differs from country to country. Usually, it refers to the relatively exposed public positions, and people who want to fill them or be elected to them are screened for their involvement in the previous regime (lustrated). So, what does 'involvement' mean in this case? Again, this differs from country to country. Most often, it refers to collaboration with the communist secret service.

A third introductory note on lustration is extremely important and not always emphasised enough. Lustration is regulated by law, it is a part of the legal framework. Lustration should be proposed, discussed and passed by the legislative body, and it should be approved of, or corrected by, the constitutional court. It should never become a part of a political purge.

Lustration is a contentious issue, and serious arguments for and against it have been presented. The most convincing argument in favour of lustration has been provided, in my view, by the social scientist Claus Offe in his *Varieties of Transition. The East European and East German Experience* (Cambridge: Polity Press 1996): that the people in question, their attitudes and incompetence, and the networks of solidarity existing among them would constitute a threat to the orderly functioning of the new democratic system. This argument makes it clear that lustration is not only related to moral and ideological issues, but also to issues of competence and networks of people who are to be lustrated. Another important, and frequently underestimated issue, is that screening people for a compromising past prior to their taking public positions may be helpful in preventing them from being, for example, blackmailed and accused of things they did or did not do in the past which might result in a destabilisation of the political situation. Such a positive effect of lustration has been proven by many exam-

ples in East Central Europe, especially by the Polish case. Of course, there are a lot of other facts that testify to the positive consequences of lustration for the process of democratisation.

Nevertheless, lustration also involves a number of problematic issues. First of all, is it at all possible to build a strong and stable democracy upon exclusion? The second issue is that certain key professions, for example, the army or legal professions which were particularly deeply involved in the previous regime, would be particularly strongly affected. If lustration were to be applied to these professions, there would be hardly anyone left. Another problem, probably even more important than the previous two, is the reliability and completeness of the files of the secret services. And finally, lustration has often been used as a political tool, as a way of dealing with opponents. As a result, instead of contributing to the process of democratisation, it may hamper it through reinforcing non-democratic and manipulative political solutions.

As for the second and third of these issues, obviously no simple answers can be given. Can certain professional groups, particularly those deeply involved in the previous regime, be entirely replaced? The only country in Central Europe that managed to deal with this problem successfully was East Germany, because it was possible to 'import' experts from West Germany. No other country has had similar resources. And in all countries, serious problems arose from the fact that the files of the secret services were neither complete nor reliable, if not sometimes manipulated.

Things are slightly different with the first and the fourth of the issues mentioned. It is recognised amongst politicians, as well as amongst scholars, that every modern democracy implies a certain degree of exclusion. There are always groups of people whose political involvement is, to a certain extent, limited. All democracies have, for example, an age-limit on voting eligibility. In many democratic countries, prisoners' political rights are limited. Or, to take another example, in some countries you must be over a certain age to be a representative in the upper chamber of the parliament. Such kinds of boundaries exist. The most important issue here is how the borders of exclusion/inclusion are defined. Should *all* former secret service informants be automatically restricted from taking certain public positions? Taking into account the caveats discussed above, my answer to this question would be "No". However, the general fact of a certain type of exclusion by lustration should not be perceived as more problematic than other types of exclusion that exist in modern democracies. As for the problem of lustration being used as a political tool, I already mentioned the appropriate way to deal with it. Lustration has to be regulated by law; the Lustration Act should be a constitutional act that should make manipulation impossible.

Lustration may imply various positive consequences for democratisation. Below, I'll discuss the positive impact that a well-regulated and implemented lustration may have on five major 'arenas' of democracy (for the comprehensive discussion of the spheres of democracy, see Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation*, Baltimore and London: The John Hopkins University Press 1996). The first arena that has to be mentioned here is *public administration*, the natural target of lustration procedures. As the experience of the East-Central

European countries in the first half of the 1990s has shown, the most obvious positive effect of lustration was to limit the influence of conformists and communists in public administration. (Whether this experience will be entirely applicable to Balkan countries now or in the next couple of years, remains an open question.). The distinction between conformists and communists, hence the inclusion of both groups here, is stressed, since it is neither desirable that communists have too much influence on the new bureaucracy, because of their values, nor is it desirable that conformists have too much influence, because of their lack of values. Lustration should allow for the assessment of the moral and professional standards of top public officials. It should make state bureaucracy more usable and more cooperative towards a new democratic government. Implementing lustration should stress the importance of competence and efficiency over experience and particularly over inter-personal connections. All these elements taken together would surely increase public confidence in the institutions.

The second sphere is the *economy*. Although lustration, which is applied to public sector positions only, does not directly affect the economic sphere, it could still have very powerful consequences for it. Instant introduction of a well-designed lustration would limit the nomenclatura's access to political capital and its ability to transform this capital into economic capital. Numerous examples from East Central Europe show that such 'transformation' is harmful to the newly emerging financial sector. In Bulgaria, for example, members of the nomenclatura were not prevented from taking the top positions in the banking sector, which resulted in its breakdown. Lustration promotes independence of top positions in finance, banking and key industries. A well-implemented lustration promotes competence over experience amongst top managers in the public sector, making them more independent from developments in the private sector and therefore making the relationship between the sectors healthier. The most obvious example is the economic success of the Czech Republic which has to be linked, at least partially, to the well-performed and radical lustration.

The third sphere to be mentioned here is *political society*. Here, lustration can assist in the dismantling of a strong or even dominant position of the heirs of the Communist parties in terms of resources. Although lustration does not deal with the issue of the resources of the political parties itself, limiting the access of people from parties who have inherited resources, but have a shameful past, would make the competition between parties more equal, thereby assisting the emergence of new democratic parties. As a result, it would promote the emergence of what is a basic condition of democracy – pluralistic politics.

The fourth sphere is related to the *rule of law*. As already mentioned, there are certain professions that have been particularly negatively influenced by the Communist regimes. They were, as people in East-Central Europe say, most 'communised', and the legal profession is definitely one of them. Poland and Hungary, for example, faced a problem of finding enough judges to form a lustrating tribunal. It was impossible to find 10 or 12 judges who would not have, themselves, a 'lustratable' past. Promoting moral and professional standards in this profession would definitely benefit a democratic political order. It would also allow channelling political conflicts to be channelled into legal procedures, thus limiting the use of blackmail and other compromis-

ing political tools. It would reinforce the importance of legal rules in public life. Finally, it would ensure that the people who were working on the creation of the legal basis of the new democratic state were not the same people who had formerly worked for the secret service of an anti-democratic regime.

The last but not least important sphere of a modern democracy is *civil society*. The procedure of lustration is a rite of passage of some sort, showing citizens that the system they are now living in has really changed. Such a sense of transition among the general public should, in turn, contribute to the increase of civic efficacy, strengthening citizens' faith that they can influence political developments and that the political system and the state apparatus are responsive to their needs. This will enhance confidence in public institutions and in the new government. The growth of civil society would additionally be assisted by the fact that the candidates for top non-political public positions, for example, in academia and in the media, were being screened, as well. Ensuring that people who are top managers in these sectors do not compromise their duties and obligations to the public because of their connections from the communist past would contribute to the quality, efficiency, and usability of these institutions for the general public.

To sum up, a well-regulated and implemented lustration promotes transparency, competence, independence from the interpersonal networks, as well as confidence in public institutions and the rule of law. However, some problematic issues should not be ignored. One of the particularly difficult aspects of lustration is, as mentioned above, the quality of the basis for the screening process, i.e. the quality of the files of the secret service archives. Of at least equal importance is the contentious issue of how to define the boundaries of exclusions; what is a lustratable offence, and for what positions should people be screened? All in all, lustration as a solution limiting the negative influence of the past regime on the new democracy is definitely worth promoting, but only if it is practical. No spheres of public life should be completely paralysed by screening, as, for example, the Polish army would have been. Lustration has to be an apolitical process, and must not become a political tool to fight the opposition, as has happened in some cases. It should be an outcome of a legal process, based on a constitutional act and contributing to a legal climate and to the quality of the new regulations in the new democratic system.

3.2.2 The Cases of Czechoslovakia and the Czech Republic

Pavel Žáček

In 2003, two very interesting official publications were edited in the Czech Republic, shedding light upon the processes of opening the files of the Czechoslovakian secret service and the general procedures of screening, or lustration, in the Czech and also in the Slovak Republic. The first one was published by the Ministry of Internal Affairs and includes the official lists of the former informants and agents of the Czechoslovakian secret police. It is the first of 14 volumes. It contains only names, dates of birth, types of agents, registration numbers, code names, and the dates when the files were completed. The second publication is from the Bureau for the Documentation and Investigation of the Crimes of Communism in Prague. It is more sophisticated than the first one, including all lists of the files from 1989, as well as material related to the files that were destroyed in December 1989. Here, one can find not only lists of agents, but also object files, subject files, etc. Both publications are very useful sources for the discussion on the question of which types of lustration procedures are appropriate and which are not.

Almost two years had passed since the 'Velvet Revolution' in Czechoslovakia when the federal parliament adopted, in October 1991, the so-called 'screening' or lustration law. It was the first piece of legislation designed to protect the top state institutions and the state and public administration from the exponents of the former communist regime, including former CP secretaries, state secretaries, officers of the secret police (StB), and a part of its agents, collaborators and networks. The rift between the Czech and Slovak political leaderships led to the split of the Czechoslovakian federation at the end of 1992 and subsequently gave birth to two independent successor states, the Czech and Slovak Republics.

In the following years, different approaches to the past and to the protection of the states and the societies from the residues of the totalitarian past were chosen. As long as Vladimír Mečiar was Prime Minister, Slovakia did not apply the screening or lustration law. What was even worse was that former state security members could use their networks to gather information and to resort to some of their old methods, including murders and kidnappings. In the Czech Republic, four more years had to pass before a bill on the opening of the StB files to the public was initiated. The law passed in 1996, however, was a compromise offering only a partial solution to the problem of StB files and documents. It allowed for public access to the files of the communist secret police and the central and regional counter-intelligence departments.

A second law regulating the opening of the former state security files to the public was passed by the Czech parliament in March 2002. It expanded the range of documents to be opened from the files of the main units of the so-called internal intelligence as well as from other parts of the former state security system. Since then, three ministries have become involved in the opening of StB files: the Ministry of the Interior provides access to the files of the counter-intelligence and the intelligence

department; the Ministry of Defence administers material of the military counter-intelligence; the Ministry of Justice is responsible for the access to the arraignment files of the so-called prison agents network and to the files of persons kept under surveillance in Czechoslovakian prisons between the years 1969 and 1989. For the time being, no access is granted to material of the general staff intelligence section, i.e. to the files of the Czechoslovakian military intelligence service, the only section of the intelligence system before 1989 that was not subordinate to the state secretary or the Ministry of the Interior.

Most Czech citizens and foreign nationals are allowed to ask for and get copies of files of selected categories of state security secret collaborators during the years 1948-1989. This applies, for example, to the categories of residents, agents, and informers, but not to those of confidants, the so-called agent candidates, and to some other categories of intelligence agents. Access is allowed only to the files of persons who are citizens of the Czech Republic. The law obliges the Ministries of the Interior, Defence and Justice to publish lists of StB collaborators which are also accessible on web pages.

However, the publication of the names of secret StB collaborators is currently under discussion in the media as it becomes clear that the ministries have not published all of the names as ordered by law. Tens of thousands of names from the end of the 1940s and the 1950s are estimated to be missing from the lists. On the other hand, Czech courts have, in specific cases, ruled that the names of two persons have to be eliminated from the list following their legal action against the Ministry of the Interior based on their claim that they were wrongfully registered as StB collaborators. Under the law, the ministries should have published, among other things, lists of the objects files kept by the state security on various institutions, representative bodies, social groups, etc. It was the internet service in particular that had published an incomplete list.

The law passed in 2002 aimed to address some shortcomings of the procedures with respect to the opening of old files of StB officers, case officers, and their superiors. Information about the families of former secret police officers is protected. In the case of destroyed files, specialised departments of the Ministry of the Interior and the Ministry of Defence have to search for other existing material such as various memos, assessments, and reports which, to some extent, act as substitutes. They also strive to identify who were given cover names so as to be entitled, as claimants, to ask for their files.

Last but not least, the legislators reacted to the respective criticism and opened a part of the material of the Communist Party of Czechoslovakia which controlled and supervised the activities of the security forces. The current situation on the access to the files, thus covers, at least theoretically, most of the activities of the state security and other intelligence and security bodies of the CP regime, through the hierarchy; from the level of a simple agent to the General Secretary of the CP Central Committee. Some parts remain inaccessible, for example, the files and documents of the special division responsible for party and state officials' protection, as well as the files of the former military intelligence service.

A problem of a systematic nature results from the fact that no special institution was set up by law to take over the administration of state security documents and the process of their opening to the public, as has happened in Germany, Poland, Romania, Hungary, and Slovakia. The activities of the respective ministries and other central state executive bodies with respect to the issue of public access to the files, are confronted daily with current power interests that are not always congruent to the aim of learning about and disclosing the past. This particularly applies to parts of the secret services of today. The respective bodies do not welcome any form of control, and their activities do not really testify to any profound interests in overcoming the totalitarian past or in grasping the purposes of the measures concerned.

In Slovakia, a principal solution to the issue was implemented in August 2002, following a change in the political situation and the formation of a right wing cabinet. The law on public access to the files relating to the activities of the state security forces from 1939 till 1989 enlarged the number of post-communist countries which have decided to form an institutional solution to facing their totalitarian past. Apart from the opening of the existing files on the Slovak state security departments in a way that was almost identical to that applied in the Czech Republic, the law also defined the time of the totalitarian regime (1939-1989), with a particular emphasis on the crimes committed during the periods of the Nazi and the CP regimes. For the purpose of the law, it was also defined that the totalitarian state functioned as a public official and as a person fulfilling or leading a function in state or party bodies and organisations.

In addition to the opening of the files of persecuted persons, the law also deals with issues of penal prosecution of crimes against peace, humanity, and war crimes. Just like in the Czech Republic, the law orders publications of the names of selected categories of former secret police agents. Another important step was the creation of the National Memory Institute (UPN) which began operating in the Ministry of Justice on 1 May 2003. Apart from administering the StB files and enabling public access to them, the institute also carries out historical research. Politicians and people prosecuted by the former regime had called for such an institution since 1989. Only persons without criminal records and who have never been members of the Communist Party or of any of its subordinated organisations can be members of the UPN administrative council.

At present, the process of overcoming the totalitarian past is more dynamic in Slovakia, while it seems that in the Czech Republic, some would rather wait for a more convenient political situation. The future will show the viability of both the Czech and the Slovak past and to what extent they can be affected by a change in the political situation, that is, by the growing preferences and influences of the Communist Parties.

3.2.3 The Case of Romania

Marius Oprea

In Romania, lustration has remained just a dream. In December 1989, the state security (Securitate) department numbered a total of 15,312 persons, of whom 10,140 were officers. 6,600 people worked in the central units of the Securitate, and 6,059 worked in the territorial units and in the unit responsible of the municipality of Bucharest. The undercover special units numbered a total of 2,426 persons, of whom 1,892 were officers. The Communist Party had more than 3,800,000 members. Neither during the general chaos on 22 December 1989 nor in the following days and weeks, was the issue of dissolving, or setting under control, the structures of the state security department or bringing them under control, touched upon by normative acts issued by the provisional power. The same applied to the apparatus of the Communist Party.

In the communiqué of the National Salvation Front to the country, read on TV on 22 December 1989, it was stated only that the entire state power had been taken over by the Council of the National Salvation Front to which the Superior Military Council was subordinated. This council coordinated all activities of the army and the units of the Ministry of Internal Affairs. This formulation was confusing enough to amplify the boundless uncertainty and unclear direction of the period. Just two days later, the National Salvation Front declared that the units of the Ministry of Internal Affairs would be integrated into the Ministry of National Defence which would take over the sole command of all troops and military capabilities of the country. For a very short period, the former state security was shunned, but this was to last no more than a few days. From the time of the dissolution of the former political police in the waters of the new power structures up until now, an official condemnation of its repressive actions has not taken place.

The Securitate disappeared, by itself, without its disappearance being confirmed by a law. The same happened with the Communist Party, and it happened for the same reasons. The decree of the dissolution of the Romanian Communist Party, signed under the pressure of demonstrations on 12 January 1990, was abrogated five days later by a decision of the Council of the National Salvation Front. The dissolution of the CP would have raised the issues of succession and of a legal regulation on the material resources of the party.

In both cases, a factor quite separate from political considerations played a role; we can call it the privatisation of the former regime. A large number of Securitate officials and agents were recruited by the provisional power almost immediately, and they were integrated into the structure of the new intelligence services and into the governmental apparatus of the Ministries of Internal Affairs, Justice, Foreign Affairs and Foreign Trade. The intelligence services took over, almost entirely, the personnel and logistics of whole departments of the Securitate. Indeed, a lot of personnel were required; according to law number 51 (as of 29 July 1991), no less than seven secret services are to operate officially in the field of national security.

A similar approach was taken in the governmental structures. In the following years, many former Securitate officials found refuge in central government bodies, in the local power structures, and in Romanian agencies abroad. There are numerous examples of these developments. In August 1993, the Ministry of Foreign Affairs, the Ministry of Foreign Trade, and the Ministry of Tourism appointed 17 former high ranking officers of the Securitate as military attaches or commercial representatives abroad. Another 11 were transferred to leading positions in the Ministry of Foreign Trade, strengthening the ranks of former Securitate officers already present in these structures. Many parts of the "new" structures thus remained dominated by agents and networks of the past.

Many of those Securitate officials who were not "reintegrated" in this way entered into the world of business. They became a sort of elite force dealing with anything profitable - from the bankrupting of fake enterprises and overvalued supply and sales contracts to large-scale import and export operations and the control of privatisation. Consequently, the crisis period through which the Securitate passed in December 1989 was rather short.

The strong position of Securitate officials was not threatened, even by the reestablishment of the historical parties within a framework of political pluralism. The competition of these parties had to be regulated, as far as was possible, without the violent engagement of the state institutions, which deployed controlling and discrediting tactics - tasks for which the Securitate personnel was trained and willing to do.

The complicity of the new authorities with the structures of the former state security resulted in actions that proved that the latter put themselves unconditionally in the service of the new power. Between 1990 and 1992, slander campaigns became a permanent feature in Romanian politics. They were very similar to those organised in the past by the former disinformation service whose head had become, in the meantime, a general and the Deputy Director of the "new" intelligence service. These attacks sometimes verged on the absurd. The main targets were well-known dissidents, the main methods distortions or simple lies, promulgated with fake "proofs". In the following years, since former Securitate officials were able to successfully infiltrate parties, governmental structures, the intelligence services, and to take the lead in the privatisation processes, such means of the political police were no longer necessary.

Any attempt to break up the huge power of Securitate personnel and structures transferred into the new era has so far ended in failure. Although the proposed general immunity for the abuses committed in the past was not conceded, such abuses were not seriously investigated, not even in cases of assassinations. The setting up of the National Council for the Study of Securitate Archives, created to unveil the activities of the former political police, did not lead to any serious results. The new institution does not even have the material needed for its work, since the secret services refuse, under various pretexts and with the tacit agreement of President Ion Iliescu, to abide by the law and to hand over the archives of the Securitate.

This protection of the past is only a part of the reward given by the new state admi-

nistration to the former Securitate officials for the services rendered by the latter in the regaining and consolidation of power by the present day social democrats who are the inheritors of the former Communist Party. Under the cover of a general silence, instigators of a long series of criminal abuses that the Romanian people were subjected to in the past were sheltered within the structures of the secret services and were allowed to continue with their activities in the shadow of power or to become respected, honourable businessmen or equally respected and honourable politicians.

Let me conclude with a personal experience. Not long ago, Romania having been recently admitted to NATO, I saw, during the break of a football match, my former Securitate investigator, currently a banker, and a former subordinate of his, still active in the secret services. They were sitting together with Americans, telling jokes, eating sunflower seeds from paper bags bearing the mark 'top secret', and were wearing American Red Bull caps.

3.2.4 The Case of Bulgaria

Emil Tsenkov

Lustration focusses on the security sector and its networks of agents and informers. The aims in Bulgaria are, as in all post-communist countries, to abolish the CP control over the whole sector and the political police in particular, to dissociate the security sector from the Soviet (and later the Russian) security services, to adopt primary and secondary legislation in order to legitimise the security sector, to achieve transparency and accountability, and to integrate the security sector within the NATO and the EU security systems.

The initial lustration act in Bulgaria had some specific features. It prohibited state security officials from membership of a political party. Persons who had participated in CP-led governments were dismissed from high or medium rank positions, the network of the intelligence agents of the political police was cut back, the politically motivated informer network was dissolved, and the political functions of the security sector were eliminated. These were some of the initial steps which were taken. Some observers are not sure if the legal procedures did not include a sort of political purge, but they were implemented in the form of structural changes.

The logic of those structural changes of the security sector was to avoid a single institution controlling it, as had been the case in the past. The political police was dismantled, the main director of the state security dismissed. The main director for foreign intelligence within the intelligence service was placed under presidential command. Counter-intelligence was renamed National Service for Protection of the Constitution and given new functions. Military counter-intelligence, which formerly used to be within the state security service, was subordinated to the Ministry of Defence. A national service for combating organised crime was established within the Ministry of Interior, an indication of the new priorities that have been set for the Bulgarian security services.

At the same time, the screening and reduction of the security personnel took place. According to official data, between 1989 and 1991 the number of officers was reduced by half. From the top and middle management levels of the technical and scientific intelligence, the main director of the former state security, along with most officers with up to 5 years or over 20 years of service, were dismissed. A second wave was effected in the period of 1991/1992. As a result of these two reduction stages, between 12,000 and 14,000 people were dismissed. Based on these figures, one can say that lustration within the security sector was partially successful.

The issue which was more difficult and painful to resolve and which is still unresolved is the issue of the state security files. In 1991, the Grand National Assembly decided that the state security archives should neither be taken out of secrecy nor destroyed. Since 1992, every citizen has had the right to ask for, and if the conditions are given, to obtain a "clean past certificate" from the Ministry of Interior. The misuse of secret

information was forbidden by an amendment of the criminal code in 1993. This was also a reaction to relevant developments of that kind, for example, the publishing of a list with names of former intelligence officers working undercover in the Ministry of Foreign Affairs. This action was certainly illegal, but it provoked some very important media publications. Similar campaigns during the 1990s normally focused on the ex-agents of state security services who still served as public officials.

The secret files from the former state security services have been dispersed among different security services. Here again, different ministries as well as the presidential office, are involved: the Ministry of Interior (with most of the counter-intelligence services and the state security archives directorate), the Ministry of Defence (with the military counter-intelligence), and the President, to whom the National Intelligence Service (a security body separate from all the others) is directly subordinate. Furthermore, there are files held by the arms export companies, and a very important part of the files are privatised, which means they lie in some hidden places and are used for the campaigns mentioned above.

Another great problem has been caused by the destruction of a huge number of state security files. The overall number of the destroyed files is 129,917. In the case of 81,820 of these destroyed files (i.e. almost two thirds of all cases), the preservation period had not expired at the time of their destruction or at the time it was found out that they were missing. Nine thousand of them were so-called 'working files', including the whole documentation of the political police. This is why a former minister of interior was convicted for having destroyed a part of these archives. In addition, in 1990, all the data about the secret flats of the state security were destroyed or disappeared. There are also numerous cases of missing files of informers whose names were preserved on the registry cards – but only their names and nothing else.

These are the objective difficulties which the Bulgarian authorities had to deal with in adopting the lustration laws. The first one, the lustration law in 1997, was called the Law on Access to the Documents of the Former State Security and was designed to guarantee that no one involved in activities of the former state security would be allowed to hold a public office. Some exceptions were made, for example, for security intelligence directors, the director of the army and collaborators who are employed by the new security services. No exception, however, was allowed for the participants in presidential elections, for the members of parliament or for candidates in local elections. In addition, it facilitated the access to the documents for those persons who had suffered due to the activity of the state security service and the intelligence director of the general staff of the army.

This law, however, was revised by the constitutional court which limited the scope of lustration by posing the requirement of undisputable evidence proving a person's affiliation to the former state security. The amendment of the law in 2001 also gave access to the archives of the intelligence director of the general staff. Another amendment allowed for the screening of top executive positions, posts in party leaderships, the judiciary, the national media and some positions in scientific and educational institutions.

After 2001, the lustration laws were supervised by a parliamentary commission, the so-called Andreev (the name of an MP) Commission. Its findings were that out of the overall 1,225 members of the four consecutive parliaments since 1989, 129 had been collaborators of the former secret services, which makes approximately one tenth. However, the Andreev Commission was not allowed nor had time to screen ambassadors, magistrates, judges, prosecutors, bank directors and bank trustees even though it had proclaimed its intention to do so.

In 2002, a new law on the protection of classified information was passed and is still valid. It set up a new system of preserving classified information and the mechanism for opening the files, creating three levels of secrecy and giving little possibility for declassifying state security files. Declassified information must be submitted to the state archives fund one year after the expiration of the secrecy period. The declassified information may be used in accordance with the law on the access to public information. A special state commission on information security was established to oversee and implement the law, and a new mechanism was introduced permitting the destruction of declassified materials.

There has been, and still is, some criticism from the media and from NGOs which state that this new commission on information security is not independent from the executive branch of the government and therefore is not subject to parliamentary control. According to media reports, security authorities are, more and more, demanding the destruction of a considerable number of documents, and the illegal destruction of classified documents still causes some problems. Another aspect criticised aspects is the fact that there is no appeal procedure following decisions of the commission.

The procedures linked with Bulgaria's access to NATO also include some elements of lustration, too. Military officers and politicians must receive a certificate to be given access to NATO classified information; this certificate is issued by the state commission. The candidates must be screened by the Bulgarian security services which have to prove that the respective persons did not work for communist state security. The whole screening procedure is in line with NATO standards. So far, there have been three cases of would-be ambassadors to NATO countries who failed to receive such certificates and therefore have not been appointed to these positions.

To sum up with some conclusions: It is very dangerous to let the secret services or the security services control lustration themselves through their ownership of the files. Media campaigns, based on illegal methods and carried out in the manner of a war, do not really help lustration. A serious deficiency should be overcome by developing a mechanism of civic control. On the other side, party monopoly over the security sectors should be strictly avoided, regardless of whether these parties are communist or anti-communist. Massive lustration, of both rank and file, in addition to the destruction or the liquidation of the informants' networks, could lead, as was the case in Bulgaria, to the proliferation of organised crime. Therefore, the general conclusion is that one should find the right balance between lustration of the top positions in the governmental security sector on one side, and continuity in the fight against terrorism, organised crime, and new security threats on the other.

3.2.5 DISCUSSION (Extracts)

Zagorka Golubović

My comment refers to a certain narrow explanation of being in favour of lustration and some positive consequences. It refers to the standpoint that one of the basic positive consequences of lustration is the prevention of dominant positions of communist parties. This was explicitly stated in the presentation by Natalia Letki and implicitly in some contributions during the discussion. What was missing here was the stressing of another very significant factor during the post-communist transitions. This factor is very significant not only for the countries of Southeast Europe, but for all the countries in transition, and that is the prevention of the influence of militant nationalist parties and the consequences of their activities for the democratisation processes.

This has led to the most horrible crimes in the past inter-ethnic wars and to war crimes in ex-Yugoslavia, but also to some problems and controversies in other countries, i.e., in Bulgaria, Slovakia, Lithuania, and Romania. Unsolved problems with respect to the national minorities prevent the introduction of one of the basic laws of democracy – the equality of all the citizens before the law regardless of their national affiliation. Pavel Žaček mentioned a very important element – the hiding or concealing of the murders from the past, not only from a distant past, but from a more recent past, which is due to not implementing the law of lustration. For example, in ex-Yugoslavia, especially in Serbia, the murders from the recent past, political murders and assassinations, have not yet been solved. Why? Because these processes were conducted by people who had been active in the previous, past regimes and were not lustrated, or screened. When we talk about the role of lustration, we have to add that it must present a critical review of the former communist regimes in order to create conditions for a radical disruption with non-democratic structures and practices, and to establish conditions for a democratic transformation. We witnessed a renewed militant nationalism, and it served as a serious obstacle to an unhidden process of a democratic transformation of the society. If we omit this fact, lose it from our sight and speak only about the influences of ex-communist regimes and the secret police, we will not be able to emphasise one of the most significant reasons by which we can prove that lustration is a necessity in this region.

Žarko Puhovski

We should discuss the problem in a bit more precise general terms. We cannot start by using the definition of lustration that deals with communism because this is not part of any definition. This is one type of usage of this procedure. We have had post-1945 anti-Nazi lustration, and we will have to have lustration of the politicians in the so-called post-communist transition in the post-Yugoslav states in the 1990s. There was some, to put it mildly, not very precise terminological interpretation of modern democracy in Natalia Letki's contribution. In dealing with lustration now, we have to

emphasise two issues about a highly formalised procedure. First of all, we need to clarify the real difference between lustration and purge. Highly formalised procedure means, something that unfortunately is not present in the languages such as Serbian or Croat, the distinction between the judge and the referee. The referee in a football game can give you a yellow card or a red card and you are out. There is no discussion. This is not what we need. We need a formalised procedure. Just as an indication, comparing the existing laws, the German law is more than twice as long as most of the others, so we have here a kind of implication as to how far we have to go with formalised procedures.

Secondly, the object cannot be just communists. It has to be linked with a kind of criminal activity. The very formula "criminal activity" was not even mentioned. If you just speak of communists and then add a formulation that it is necessary to protect the state apparatus from the influence of communists and conformists – my God, who is going to work for the state apparatus but the conformists? No one else would ever work for the state apparatus; that is the very essence of being a public servant – to be a conformist. The idea of protecting the state apparatus from conformists would be against the rule of law because we need conformists in the state apparatus in order to have the rule of law. A concept which implies that moral attitudes and moral attitudes have to be translated into legal formulas is a wrong one. If you start condemning conformists, you imply that courage is a kind of moral obligation, which is not true. Courage is luxury. I am not obliged to be courageous. If I can show it, this is a kind of surplus, but at the moment I have reason to believe that my existence is at stake. I am in a position where I cannot really choose and therefore cannot be morally or legally condemned. This is something that has to be taken into account.

We have been informed about activities in different countries that basically have to do with linkages to the secret services. I will quote a popular and famous Polish politician who once, some seven or eight years ago, when asked if he worked for the secret services, said, "No, they worked for me because I was a member of the Central Committee of the Communist Party". These guys would then suddenly be out, because, as some of the experts might tell you, most of the people whose names have not been mentioned in those lists were the real active guys in the secret services, and we know it. So we will have to have a very precise formula. And we have to narrow down the fields to the public administration, the judges, the secret services and the army. Because, if you go further, the question would arise if, let's say, Martin Heidegger should not be read or translated because he was definitely a collaborator of the Nazi regime. Yet his books are very far from being irrelevant for the modern philosophy. There are some things that cannot be taken away or out, that some great poets or philosophers or film makers were active in protecting. A most important Polish film director made three versions of his most popular movie, while the political changes had been going on in Poland in his times, and suddenly, someone would say he is out. This would be a very dangerous moralisation of political life. Whenever there is moralisation of political life there is a point of departure for totalitarian politics; this is why we need legal formalisations to protect societies.

Zoran Pajić

My short intervention contains a comment and a question to the colleagues who have given their presentations this morning. I am interested in lustration as a kind of a process in the context of the rule of law and independent judiciary system. What I would like to know is how we can define the aims of lustration. According to my opinion, this refers to the areas of the state administration and the judiciary system which actually function as the proponents of different ideologies, sometimes resulting in means that do not belong to their professional mandate. The people involved were public servants and judges who were promoted by some interests of political parties, nationalistic movements, chauvinistic plans, or goals which are very important to be mentioned in our case, in the case of this region. And they were involved in different corruptive activities, bribery and some other similar things. So a basic question for me is; what is the aim of lustration?

I believe that the numbers cited in different presentations actually blurred or even hid the problem itself. There are lists of thousands of people and in those lists we will not find any judge – the judge that functioned as an ardent executive of the regime promoting different war goals and projects that were very topical at that time, especially in ex-Yugoslavia. So let us go to the very beginning. I would like to hear from our colleagues from the Czech Republic, Romania, and Bulgaria as to what the process of lustration serves and how we can provide for the functioning of the state apparatus and the judiciary system that will be completely free from this past legacy of promoting one ideology.

Magarditsch Hatschikjan

We are discussing the handling of the past, we are not discussing the past for itself. The question is which is the best kind of handling of the past in view of the present and the future? That's how I understand the question of handling the past and therefore I think it's very important to answer the question of Mr. Pajić. What is the aim of lustration? Natalia Letki presented consequences and arguments for and against lustration, but within those consequences there were only positive consequences. Are there no negative consequences? I would be astonished and feel insecure if any item has only positive consequences and no negative ones. My second question is theoretical. For our project we have to discuss and decide on the question raised by Žarko Puhovski. Do we treat everything the way some people understand lustration or do we have a narrow definition of lustration? Do we make a difference between lustration as a screening process or criminal proceedings against criminal activities? We have decided, for our project, to refrain with only the screening processes, but, nevertheless, we should discuss the difference. My third question is, theoretically, if it is possible that there is an unavoidable contradiction within lustration processes. On one side, there is the goal of social cohesion. But obviously, lustration contains at least something which is also polarising. It would not be good lustration if it does not polarise at all. So, what should the balance be? Is there a general balance which can be achieved considering this contradiction or is it necessary to see it

case by case, country by country, because the histories of the countries are really very different?

Natalia Letki

The definition of democracy which I used today was imprecise out of necessity, not out of ignorance. I had very little time and was trying to make a very broad statement of what I meant by political issues which I later talked about. I think that the term lustration has come to mean screening procedure. As far as I am aware, it has been used to mean this in the context of East Central Europe. It does not mean the procedures as such are a new thing. If you look back into ancient times you can see that the changes of political regimes were followed by political purging.

In the context of East Central Europe, the whole group of problems connected to dealing with the past is usually called de-communisation and this is what lots of other things, apart from lustration, fall into. Here you have got criminal proceedings against people who were either torturing and killing citizens under communist regimes or were given orders to torture or kill people, which is a separate issue from lustration being understood as screening for people aspiring to certain public positions.

I did mention in the beginning that lustration is just one of several methods of dealing with experiences of the past. There is a whole sphere of other, more symbolic changes where national anthems are being changed, history books are being re-written, and families of people who were wrongly accused and sentenced to death and executed, for example in the 1940s and 1950s, are going back to court and are trying to repair these injustices. There is a very large pool of problems that the new authorities have to face in the process of democratisation. I repeat, lustration is just a very small part of it. I would say that there are probably more pressing issues, especially in the context of the Balkan states, than lustration understood as screening people for their involvement in the communist regimes or cooperation with the secret service. I do agree, for example, that dealing with the crimes against humanity or ethnic cleansing is a far more pressing issue.

When we talk about how lustration affects bureaucracy, army and secret service, we miss two other very important spheres, namely media and education. I think that lustration here has a very powerful role to play.

It is true that I focused on the positive consequences of lustration. I agree there are both negative and positive consequences. I think that the suitability of lustration as a solution for a particular country has to be judged on a country by country basis because positive as well as negative consequences will become specific.

Lustration is a polarising issue but it is a polarising issue whether it is introduced or not, and whether you pass the lustration law or not. In any event, it should be a formal legal procedure. In Poland, for example, the public was actually split on the issue of screening, but discussions and the polarisation calmed down after the law had been

introduced. So, I agree that lustration may have negative consequences, and I probably did not pay enough attention to what might be negative consequences. However, in terms of social cohesion, I think the issue of dealing with the past and attitudes towards the past are, and will always be, a very contentious issue, no matter how we deal with it, whether we actually take up lustration or screening or we drop it.

Emil Tsenkov

The negative side of lustration, in my country, is party purges of the anti-communist parties and of those who claim they are carrying out lustration. This means that party appointments of people who are usually not professionals but just political appointees create some kind of conditions for using or misusing the security apparatus for some party purposes which is not their job. This is a very important negative factor. I am not a lawyer but I would rather favour a pragmatic approach to this problem. Certainly, you cannot keep the people who are on the top jobs of the security sector after the democratic changes. It is not realistic to keep the same people, for example, in the context when Bulgaria became a member of NATO. You cannot keep some generals who were leading members of the opposition in the past. It is logical that at least some limited change must take place although some of those people may be very good professionals. On the other side, it has to be considered that we need good professionals, for example, in the fight against terrorism. I am sure our new allies won't ask for the background of a good professional who helps them in the fight against terrorism, so this is a complex issue. But it is common sense that one of the aims of lustration is to prevent the repetition or the survival of some mechanisms of illegal control of public figures by different people or structures. Despite the fact that the security sector is renewed, there are still some groups within the security sector or even some ex-officers who may exert illegal control and use it for other purposes. This is absolutely the opposite of what democracy is about. For me this is one general aim that should be implemented.

Židas Daskalovski

It became clear from the presentation of Natalia Letki that lustration serves the purposes of correcting past injustices and of limiting the influence of the communist party on the political system. However, I would like to emphasise the necessity of bearing in mind the specific features of the developments and the individual cases and experiences of different countries when discussing lustration. Different countries have taken different paths in the democratisation processes. In the Republic of Macedonia, for example, the former ruling League of Communists has taken a reformist stand towards democratisation. In fact, they now rule the country. So, the reality in Macedonia is that a reformed Communist Party rules the country more or less continuously in the last 15 years with one brief exception of the opposition party ruling for four years. It seems obvious that we have to consider the local circumstances. On the other hand, we should think about whether this is an aim that we should we should have at all. Natalia Letki mentioned that democracy excludes cer-

tain people. Perhaps this was somehow connected to justifying the reasons why communist influence should be curbed and diminished but I would like to hear some other explanations or other arguments in favour of lustration, especially given the context of the Western Balkans and ex-Yugoslavia which was rather different than that of Romania or Bulgaria.

Natalia Letki

I would like to ask the experts from particular countries because I never got the impression that lustration aimed at limiting the influence of the Communist Party per se. I do not think that past communist party membership was the basis for lustration in any of the countries of which we are speaking here. It is usually involvement in or collaboration with the secret service.

I would like to make sure of this because it is still very imprecise. It is a way of linking legacy with the past. It is a communist past but it does not mean that the former Communist Party members are being purged because this would mean about 15-16 percent of the adult populations of some countries, and this is just ridiculous for various reasons. Correcting past injustices is also not a target of lustration. There are different other procedures to deal with this, for example property restitution procedures. Lustration is not even about exclusion/inclusion. When Claus Offe, for example, talks about the issue of dealing with the past he talks about backwards looking justice and forwards looking justification. Backwards looking justice would be dealing with the injustices. So, it would be property restitution and taking political criminals to court. Lustration would fall into the category of forwards looking justification. It is possible that in some countries it might just not be practical. In some countries or within certain professions it may not be practical or feasible. It may end up paralysing the country. About the issue of exclusion/inclusion, I would argue that it is more about qualification/disqualification, because people in question are not totally excluded. It is just that their access to certain positions is limited. It doesn't mean that they are entirely excluded from public life. Perhaps you are not judged to be morally fit to be a prime minister of a new democracy if you have been working for the secret service, reporting on your friends, relatives and people you worked with for 20 years. But, you can still have your private business; you can still be a university lecturer. The issue at stake is about how these border lines are defined. But, this has to be decided within each country individually.

Jovica Trkulja

There are generally different paths in dealing with the past, two being the most important ones. If the first path would be the path of memory, the second would be the path of oblivion. The second one would have to be discussed a little bit, especially since we have some guests from Greece here and could share some experiences with them. For example, Greece and Spain actually took the path of democratisation without facing the authoritarian past. Poland took this second path after 1990 and

then realised it had to switch to the path of memory-i.e. facing the authoritarian past. After the first steps having been taken, Adam Michnik excellently showed the Pandora box that had to be opened. He said it is like a grenade falling into a septic pit; a number of people are injured while some of them get killed, but all of us will be smeared with mud.

It is not by accident that the definition of lustration was the top priority on our agenda today. It is obvious that the old letters were right – that the definition is very dangerous. As far as I understand it, the lustration once used in the old Roman Empire has nothing to do with today's definition. So, I believe that it would be most truthful to define the nature of lustration. Our colleague Žarko Puhovski offered two definitions – a political and an ethical one. He actually saw the danger that a moralising approach could lead to renewed totalitarian regimes. All of us have advocated the legal procedural dimension of lustration. For lawyers it is a serious dilemma whether the nature of lustration is legally seen as a punitive, a disciplinarian or maybe an administrative one, or a combination of those three. Then it seems to me that we face a paradoxical problem: Is it a matter of principle to use the mechanisms of an authoritarian state and then try to remove them by the mechanisms of a state based on the rule of law? In this context, it is useful to remember the statements of some German dissidents who said that they had expected justice and were awarded, instead, the rule of law.

Natalia Letki

The Polish solution is perhaps something that you will be happy with because what was done was to ask people to sign a statement whether they had worked for the secret service or not, and even if they had worked for the secret service it was still possible for them to become, let's say an MP. They only can be prevented from holding those positions if they lie. So the offence is called a "lustration lie" and I think this, perhaps, would be an acceptable compromise.

My question with respect to some comments, and this is probably due to my lack of knowledge, is the following: In order to persecute the crimes against individuals or against groups of people and ethnic cleansing, do you really need lustration? Don't countries do this under a criminal penal code? This is something that in other countries is done. If you kill someone or if you pay someone else to kill someone or if you give such orders to someone, you are taken to court, you are responsible for this, and we don't need a special lustration, purging or any other act for these kinds of criminal activities. This should be dealt with within the criminal code.

3.3 Public Debates on the Past: The Experiences in the Western Balkans

3.3.1 The Experience in Yugoslavia and in Serbia and Montenegro

Jovica Trkulja

It would be desirable if I could present some successful results of lustration, but unfortunately, due to the reality of it, I have to speak about a completely failed lustration attempt in Serbia and Montenegro, concentrating on the developments in Serbia. I shall try to answer the general question of how to deal with the authoritarian past. Furthermore, I shall also focus on some important features of the past and how to face the authoritarian past in Serbia. Finally, I shall explain the reasons why there is still no lustration in Serbia.

Despite all the changes in Serbia that started in October 2000, we have still not been able to face the evils of the authoritarian past. The scale of values has remained unchanged. In this respect, one can speak of continuity with the authoritarian regime. In my view, it is imperative for the society to not only to face, but also to overcome the evils of the authoritarian past, in order to avoid repeating them. And it is imperative, because if you turn your back on the past and try to suppress any discussion of it, it will turn up somewhere else, maybe in an even worse form.

In this region, we had some very bad experiences with authoritarian regimes. During their reign, one inch of power was longer than one mile of human rights. It is well known that regimes of this type produce various injustices and evils – violations of human rights, breaching of the laws by public officials, rigged elections, and even war crimes. When a new democratic authority appears after that, it is faced with the problem of how to deal with the past. One conceivable answer is the policy of memory – facing and overcoming the evils of the past. This has been the approach chosen in Germany, Hungary, and the Czech Republic. Another conceivable answer is the path of oblivion – just draw the line and say okay, this has been the past, let us now move on. This has been the approach chosen in Greece, Spain, and Portugal. And there is a third option, in between, the approach chosen in Poland, opting firstly for one path and then switching to another one. In Serbia, something similar happened – there was an attempt to stick to the path of memory which was followed by a switch to the path of oblivion.

Overcoming the past includes two kinds of tasks. The first one is to remove the consequences of the authoritarian party rule. This is directly linked to issues like the opening of the files of the former state security service, denationalisation processes, etc. The second one is to remove consequences not only of the illegal state but also all the consequences that were the result of nationalistic politics and wars waged in the region. Comparable experiences show that this process is very delicate. The experi-

ence in Serbia is an argument in favour of the Pandora's Box thesis – once it is opened have to deal with all of the evils that emerge.

In any case, the first step is to open the files of the former state security services. The democratic authorities in Serbia have undertaken this step rather quickly. In 2001, a decree abolishing the confidentiality rule was published. However, this activity was regulated by a type of document that had no legal basis. It just slightly opened the door where the files were kept, but did not make those files accessible to many people. The constitutional court ruled, soon enough, against the document and the way it was passed, so that Serbia does not have any kind of legal document regulating this issue. Therefore, a well-known NGO, the Center for Antiwar Action, proposed a model of a law for opening the secret files. An ex-minister of justice announced that this law would be adopted by the parliament, but this never happened. On the contrary, the reaction of the authorities to the proposed law model was most negative. Obviously, at least until now, there has been no readiness on the part of the authorities in Serbia to make an important step forward with respect to the opening of the secret files.

There are numerous other issues related to the task of removing the consequences of the past authoritarian regime. In Serbia, for example, an important one is the accountability of judges for having violated laws. During the period of the Milošević regime, there were many cases of serious violations of laws by judges. The criminal code fixed the punitive measures for violating the laws, but it was not applied in such cases during this period. Other important issues in Serbia are those of rehabilitation and denationalisation.

Now to lustration. The prevailing opinion in political science defines lustration as a process aimed at temporarily denying access to high ranking positions to some people – for those who actually violated human rights or were involved in committing crimes. This definition emphasises the preventive nature of lustration (as opposed to the repressive one) and insists on the notion of disqualification, explained by the need for catharsis. To use a popular analogy: in this kind of understanding, lustration equals the red card in football. That means that a person is sent out or disqualified and cannot play for the team anymore, at least for a certain period of time.

In Serbia, the attempt to solve the lustration issue has been a complete failure. In the spring of 2002, one and a half year after the fall of the Milošević regime, some citizens and NGOs launched an initiative to pass a law on lustration and accountability for violating human rights. This initiative was actually not responded to at all. The Center for Advanced Legal Studies then proposed a model law on accountability for violations of human rights. The reactions by the authorities were mainly negative. Finally, in the spring of 2003, the first step was taken. On the initiative of a group of MPs, a bill was discussed in the parliament of Serbia and adopted by the majority. So, Serbia has, since then, had a lustration law ("Accountability for Human Rights Violations Act"), but as future developments showed, the problem itself was shelved again. Firstly, difficulties arose in the procedure of nominating the members of the Commission for investigation of accountability for human rights violations which had to be set up according to the law. And as time passed, attitudes and opinions on this problem faded out.

The result is: Serbia has a lustration law that is not used at all. All this indicates that the majority of the political authorities in the country are not ready to conduct the process of lustration.

There are numerous reasons why there is no lustration in Serbia and no wide-spread will to face the evils of the past. The first reason is that the country is faced with the process of reprocessing the authoritarian past. For many people in important positions, the past is only interesting to take a part out of, reprocess, re-treat and then present in different context, and all of that just for political purposes. The second reason is related to the fact that once lustration starts, Serbia will also be faced with the much more painful problem of removing all negative consequences of the past, including such evils as wars. Obviously, there are many people afraid of that. The third reason is a common one to all countries in transition. Their experiences of the transition process have all been very brief - in terms of the time periods that have elapsed since their inception. The fourth reason is that in Serbia there are no basic conditions for legally overcoming the authoritarian past, because it is very difficult to clearly define the dividing line between perpetrators and victims. Both authoritarian regimes, the one under Tito and the other one under Milošević, had many supporters, and the situation has become even more complicated since October 2000, because after the fall of the Milošević regime, a massive process of switching party membership took place. Finally, there is no political will in Serbia to open Pandora's Box and to face the past, because it would mean that a major part of the current political elite would actually dig its own grave. The consequence is that we do not have a clear distinction between the past and the present. Therefore, the feeling of oblivion that actually prevails in Serbia seems to be impenetrable.

After the fall of the Milošević regime in October 2000, instead of discontinuity, continuity with the ex-regime was chosen. The new authorities just took over the main mechanisms of the ex-regime without any obvious or clear wish to change these mechanisms, among them many monopolies which had been used by the Milošević regime for so many years: the monopoly over the capital, over the ideological apparatus, the media, the law enforcement and the military forces. Therefore, the huge expectations linked with the bringing down of the Milošević regime were not fulfilled. This especially applies to the process of facing and overcoming the past, including the process of lustration. Nothing like that happened in Serbia. The attitudes of the political elite in Serbia are a far cry from those required to start this process. It consists of minor actors and political pygmies who actually profit by scholastic deliberations on lustration; buying time and thereby avoiding the real and serious consequences of facing the past.

3.3.2 The Experience in Croatia

Ivo Goldstein

In the case of Croatia, dealing with and confronting the past has to take into consideration a specific variant of revisionism. During the 1990s, Croatian public and political life experienced an extremely strong influence of negation or distortion of the historical facts related to the pro-Nazi independent states. This specific variant of Croatian revisionism appeared in 1989. Croatian authorities supported and even incorporated it in a specific way into their own political programme and agenda. The essential element that characterised this revisionism was its obsession with the state and constitutionalism.

This revisionism claimed that everything contributed to and longed for the Croatian state. Constitutionalism was overemphasised, all weak features, negative developments and problems that it faced being minimised or neglected. To cite just one illuminating example: At the end of 1989, when the first non-communist parties began to get organised, some of them started distributing petitions for the re-installation of the statue of a Croatian national hero in the main square in Zagreb. The statue was of a general who, by the way, had also been in command of many Serbian soldiers in his units. This statue had been destroyed after 1945 by the communist authorities. The petitions distributed by the Croatian Social Liberal Party simply read: "We, the undersigned citizens, consider that in the republic square in Zagreb, the statue should be returned to where it used to stand." The members of the Croatian Democratic Community (HDZ) were distributing, at the same time, another petition which, incidentally, received a considerably lower number of signatures. It read: "The fate of the statue became a symbol of how the Croatian national feelings were uprooted in the socialist era. It showed... the ruthless hatred towards the Croatian people, tradition, and culture."

As Yugoslavia was collapsing and decomposing in 1991-1992, Franjo Tuđman, the leader of HDZ and the first president of the newly independent Croatian state, was speaking more and more about how for 900 years, the Croatian nation had been trying to find a way to establish a nation state. The medieval Croatian state had disappeared in 1100. Tuđman wanted to emphasise the importance of his own role as the initiator of Croatian independence. He claimed that Croats were among the oldest European nations, that they had always defended western civilisation and Christianity, and that they had always been persecuted by members of other nations who ruled them, whether it was from Vienna, Budapest or Belgrade.

Within such a context, the historical revisionism (re)emerged. The independent Croatian state (NDH) which had existed on the territory of Croatia and Bosnia and Herzegovina between 1941 and 1945 was now considered to be something relatively or virtually acceptable, regardless of the fact that it had been a Nazi ally and a fascist state, regardless even of crimes and genocides organised by the government of this state which was led by the notorious Ustaša. The Ustaša crimes were played down or even justified. A broad spectrum of revisionist opinions, including extremist views, appeared. Some declared that there had been no genocides against the Serbs, the

Jews or the Roma. It went so far that a commission established by the Croatian parliament to investigate some developments during the period of the Ustaša regime declared, after 7 ½ years of work (1992-1999), that in the central camp only 2,280 people had perished. This is about 50 times less than the real number which is between 80,000 and 100,000 victims. As for the Jewish victims, the commission claimed that during the period of the independent Croatian state, 331 had perished (labelled as Jews on the basis of a religious definition) and 231 on the basis of an ethnic definition. In reality, 30,000 Jews were annihilated.

What are the reasons for this revisionism? Firstly, during the socialist period, problems related to the Ustaša state were rarely discussed in an analytical and scrupulous manner, if at all. Most of what was said was done in a propagandist way. At the same time, communist or partisan induced crimes were also taboos. Then, during the 1980s, some discussions began on these crimes, and the result was similar to the picture described by Jovica Trkulja about Serbia, earlier in this seminar. If you suppress some issues for a long time, once they re-emerge, they develop some strength, including feelings of hatred and revenge. Secondly, Croatian revisionism was not seen as a political phenomenon, and it was not motivated by scientific or research-based rationale. It was purely a political action with rather simple political goals. Right wing extremist movements wanted and strove to identify themselves partly or wholly with the Ustaša regime of 1941-1945. There were assorted other factors such as the strong political influence of Croatian emigrants and their organisations, as well.

Once the HDZ gained political power in 1990 with Tuđman as its leader, he proclaimed the reconciliation between the sons and grandsons of Ustaša supporters and partisans to be one of the main political and ideological goals. But that did not lead to reconciliation. On the contrary, it created further rifts and lines of division, because it turned out to be fake, covering the real aim which was to minimise and disguise crimes committed by the Ustaša regime.

There were many contradictory elements. In early 1990, prior to the first elections, it was claimed by the HDZ that NDH had not just been a pro-Nazi, fascist state, but that it had reflected the historical Croatian longing for an independent state. Sometimes it was added that the majority of the Croats had realised that this was not their state, which is historically true. (In the Croatian territories, a significant change occurred, not only among the Serbs, but also among the Croats. The Croats quite quickly distanced themselves from NDH because it soon started to show its pro-Nazi, fascist character. Once the partisans got in power, they joined them.) This contradiction also appeared in the new constitution. Contrary to the contents of the independence declaration, it said that the Croatian state is based on anti-fascist traditions. Obviously, Tuđman and his associates had double standards – one for external, the other for internal purposes. Externally, a kind of sophisticated anti-fascism was used, while internally the ideal of a reconciliation of anti-fascism and fascism in a new constitutionalism was propagated. This approach was completely inconsistent.

Tuđman himself perceived the creation of a Croatian state as the very peak of his activities. Whatever he did, whatever went on, was assessed by him as having a positive impact on the Croatian state, whether it was in fact positive or not. Pretending to

be a historian (when in fact he was not), he liked to use historical motives for his political propaganda. One of his favourite features was the claim that HDZ was trying to unify all Croatian constitutional traditions, from the medieval Croatian state to the awakening in the 19th century, even up to the Croatian communists.

This situation lasted for around 10 years. Many times during this period, the consequences of this mixture of fascist and anti-fascist traditions came to the fore, especially in connection with symbolic acts like the renaming of streets, squares, schools, etc. One of the most painful examples was the renaming of the Square of the Victims of Fascism into the Square of Croatian Heroes. For four years during World War II, this square had been the site where a Croatian camp was located and some ten thousand citizens of the city of Zagreb were sent to execution. Another issue was the naming of the Croatian currency. It was initially called the Croatian Dinar, followed by the decision to rename it Kuna which was the name of the Croatian currency between 1941 and 1945. A third example was the renaming of some schools, streets, and squares, using the name of a mediocre Croatian writer who had been minister of the Ustaša regime for some time. When it came to the renaming, it was claimed that it was not due to his ministerial position, but rather to his status as an author.

After Tuđman's death and the emergence of new authorities, there was a process of de-Ustasisation of the Croatian society. Although being a rather slow process with lots of problems, it has maintained its pace and will not stop. Now, in mid-2004, the general mood is in favour of assessing the situation realistically and of trying to screen the past. During the last years, some truly significant changes have occurred which are beyond any doubt. One of the main reasons is simply the growing temporal distance from the war. The war scenes and pictures are becoming less important for the general mood shaping public opinion. Furthermore, a trial against the ex-commander of a camp during World War II, as well as trials against persons for committing crimes against the Serbian population during the most recent war also had an impact. All these components contributed to the process of weakening the revisionist tendencies and the Ustasha nostalgia.

To illustrate this development, it is useful to look back at the results of a poll that was conducted in early 1999. Back then, the trial against Dinko Šakić, one of the commanders of the notorious Jasenovac camp during World War II, was under way, and a telephone poll was conducted with 960 persons. One of the questions was: "What is your opinion on NDH?" 55 respondents assessed it negatively, 25 positively and more than 90 percent did not want to respond at all. The question whether Šakić should be tried was answered by 65 percent with Yes, by 29.4 percent by No, while the rest did not respond. Another question was: "Do you expect Šakić to be sentenced?" 43 percent expected him to be, while 37 percent did not, 10 percent did not provide any answer, and 9.7 percent thought that the trial would never end. The number of those who expected that Šakić would not be tried can be assessed as the result of doubts about the efficiency of the Croatian legislature. This is a contentious subject and will remain so for a long time. Croatian revisionism, which distinguished Croatia from other ex-communist countries, was an episode that was rather important and shaped political life significantly during the 1990s. Although the period has not fully come to an end, already a subject of historical analysis.

3.3.3 The Experience in Bosnia and Herzegovina

Jakob Finci

In recent years, Bosnia and Herzegovina has been the site of some of the most comprehensive vetting efforts in recent decades. Two experiences stand out: the removal of abusive police officers, and the hiring or re-appointment of judges and prosecutors. In the former case, the United Nations Mission in Bosnia Herzegovina (UNMIBH) vetted approximately 24,000 police officers between 1999 and 2002. In the latter case, three High Judicial and Prosecutorial Councils screened the appointments of approximately 1,000 judges and prosecutors between 2002 and 2004.

Of the two vetting experiences, the vetting of police, proved the most challenging. Police officers were deployed as soldiers during the 1990s wars, often serving at the front lines of ethnic cleansing, alongside military and paramilitary battalions. A thorough purging of the country's police forces was, therefore, necessary in the post-Dayton era. Helpfully, the Dayton Accords provided that civilian law enforcement agencies would have to operate "in accordance with internationally recognised standards and with respect for internationally recognised human rights and fundamental freedoms."¹ It also required the parties to the Agreement to ensure the "prosecution, dismissal or transfer" of police officers and other civil servants responsible for serious violations of minority rights.²

By the end of the war, there were tens of thousands of police officers in the Federation and the Republika Srpska (RS) – far more than at the beginning of the wars and far more than are needed in a democratic state of the size of Bosnia and Herzegovina. In the early post-Dayton years, police officers continued to operate with relative impunity in ethnically homogeneous forces that served nationalist agendas. Although there were some early efforts by the UNMIBH to vet police in the Federation, the results were disappointing and were ended by 1998. In the RS during the same period (i.e., 1995-1998), there was essentially no vetting at all due to resistance by RS authorities.

Subsequent vetting efforts were far more successful. The UNMIBH Human Rights Office established a fifty-person Local Police Registry Section made up of international police officers, local lawyers and administrators, and two UN professional staff, all of whom were supported by the Human Rights Office, and by two ICTY liaison officers. The vetting process itself consisted of three steps: mandatory registration (which involved completion of a detailed registration form), pre-screening (which in most cases resulted in provisional authorisation to continue law enforcement work) and certification (which involved more extensive background checks, performance monitoring and a final determination on whether there were "grounds for suspicion" of wartime violations). Anyone decertified was barred from serving in law enforcement

1 Constitution of Bosnia and Herzegovina, Annex 4, Art. III, Par. 2(c), and Annex 11, Agreement on the International Police Task Force, Art. I, Par. 1.

2 Ibid. Annex 7, Art. I, Par. 3(e).

anywhere in Bosnia and Herzegovina. De-certification decisions were subject to internal appeal only and no oral hearing was provided. In the end, approximately two thirds of those vetted were granted provisional authorisation to exercise police powers. Of those provisionally authorised, over 90% were granted full certification.³

Though generally regarded as successful (the police forces are smaller and more diverse now, and attacks on minority returnees are less common), public perceptions of the process appear to be mixed. The process has been criticised as having been too slow and too closed. Within the police service itself, opinion is less charitable. Many, but particularly those de-certified, question the fairness of the procedures, and as many as 150 former police officers challenged their de-certification in domestic courts after the departure of the UNMIBH.⁴ Regrettably, the vague and non-legislated criteria employed by the UNMIBH, and the fact that the vetting files were sent away for storage at UN headquarters in New York City, have complicated the resolution of these cases. In his March 2004 briefing to the Security Council, High Representative Lord Paddy Ashdown, discussing the legal challenges to certification, stressed that there was a danger that the UNMIBH's vetting efforts could unravel and endanger the rule of law. It is, however, rather late to sound such an alarm. The vetting procedure needed greater scrutiny during its operation.

The other major vetting process in Bosnia and Herzegovina concerned the appointment of judges and prosecutors. In the early post-Dayton years, the state of the judiciary was especially weak, given the absence of an independent judiciary during the prior communist era, the ensuing years of war, and the continuous influence of organised crime and nationalist leaders. In May 2000, the High Representative promulgated laws on judicial and prosecutorial services to improve the independence of both.⁵ These laws established commissions comprising Bosnian judges and prosecutors who assessed the performance of their peers over a period of eighteen months. But the process was never adequately resourced and ended in failure. The vast majority of complaints were dismissed as unsubstantiated.

In late 2001, the Independent Judicial Commission, the lead agency on judicial reform, developed a new strategy for reform. It aimed to reduce the number of judges and make the judicial and prosecutorial services more ethnically diverse through a formal re-application and appointment process. Three High Judicial and Prosecutorial Councils – one for each of Bosnia and Herzegovina, the Federation and the Republika Srpska – were created by the High Representative in 2002. The Councils are permanent bodies comprising, for the most part, elected and appointed members from the legal and judicial professions. The High Representative also appointed international members to serve during a transitional period. The Councils have jurisdiction to appoint, transfer, train, remove and discipline judges and prosecutors.

3 *Report of the Secretary-General, U.N.S.C., U.N. Doc. S/2002/1314, Par. 11 (2 December 2002).*

4 OHR, *Speech by the High Representative for Bosnia and Herzegovina Paddy Ashdown at the United Nations Security Council (3 March 2004)*, available online at <http://www.ohr.int>. The European Union Police Mission replaced the UNMIBH in 2003.

5 The laws are available online at <http://www.ohr.int>.

Under the re-application and appointment process, judges and prosecutors were required to submit detailed application and disclosure forms which included, among other things, questions about wartime activities. A considerable number of complaints were also received from the public. Once a file was considered complete, a Council nomination panel would review the application, interview the applicant and make a recommendation. Unsuccessful applicants could file requests for reconsideration.

Because the re-appointment process concluded only a few months ago, it is too early to assess its overall impact. Some initial concerns may, however, be noted. The most significant concern is that the goal of restoring the multi-ethnic character of the judicial and prosecutorial services appears not to have been fully achieved, particularly in the RS where there was an insufficient pool of minority candidates. Another concern has to do with the limited nature of the investigations conducted into applicants' alleged or suspected wartime activities. This leaves some doubt about the sufficiency of the purge. Lastly, the exceptionally high cost and staff size demanded by the procedure encouraged public criticism.

On the positive side, however, the procedure has the virtue of permanence. With the completion of the re-appointment process, the Councils will continue to operate as the standing appointment and disciplinary bodies for judges and prosecutors, and will be run entirely by nationals of Bosnia and Herzegovina.

Article 64 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina, imposed by the High Representative in May 2002, and after that adopted by the Bosnian Parliament, includes the provision that all civil servants are subject to a review process by the Civil Service Agency. The review is basically to monitor whether they have been appointed in accordance with the Law on Public Administration and whether they fulfil the requirements set by this law. The process of verification of the civil servants on the state level should be completed by September 2004.

3.3.4 The Experience in the Republic of Macedonia

Iso Rusi

Looking at the biographies and the party affiliations of a quite considerable number of high-ranking politicians in Macedonia, one cannot avoid having the impression of a rather strong continuity of the new era with the socialist past. Since the declaration of independence in 1991, the Republic of Macedonia has had four presidential elections and three presidents. Two of these presidents (Kiro Gligorov, with two terms from 1991-1999, and Branko Crvenkovski, elected in April 2004) are members of the Social Democratic Union of Macedonia (SDSM) which is one of the reformed successor parties of the League of Communists of Macedonia (SKM). Only Boris Trajkovski (who was president from 1999-2004) was a member of a new party (VMRO-DPMNE). Almost all governments and the majorities in the parliament represented a similar part of the political spectrum, connected with the socialist period. Branko Crvenkovski was the prime minister of three SDSM governments (1992-1998 and 2002-2004), and his successor is Hari Kostov who had worked during the Yugoslav period in the government services. Only one government, the one from 1998 until 2002, was led by the major new (and nationalistic) party on the ethnic Macedonian side, the VMRO-DPMNE.

There are numerous other examples. The headquarters of the Macedonian army is still dominated by officers whose careers began in the Yugoslav People's Army (JNA). The president of the State Judicial Council was, in the 1980s, a secretary of the biggest SKM organisation, its Skopje branch. The present ambassador to Slovenia was a member of the last two governments in the socialist period (from 1982 until 1990). The present Minister of Internal Affairs, although relatively young, spent no less than twenty years of his career in various positions within this ministry and was, before becoming minister, the director of the intelligence service (the Macedonian version of the FBI).

The general impression is further underlined by the biographies of the leaders of some political parties. Almost all of them started their careers as members of the SKM. Branko Crvenkovski, for example, was, in the late 1980s, a member of the socialist youth organisation from where he was elected to the SKM Central Committee and shortly afterwards became a member of its presidency. The leaders of the Socialist Party (SP), the Liberal Party (LP), and the Democratic Alternative (DA) can also look back to very successful careers in the former political system. Stojan Andov, leader of the LP, had been, for some time, Vice President of the Yugoslavian government, ambassador, and for almost 10 years President of the Macedonian Parliament. Vasil Tupurkovski, leader of the DA, was a member of the highest party and state bodies in the 1980s.

Among the leaders of the political parties representing the Albanians, things are different. The first and for a long time most influential political organisation within the Albanian community, the Party for Democratic Prosperity (PDP), was created and lead

by the victims of the so-called differentiation campaign against "Albanian nationalism and separatism", which led to the exclusion of numerous Albanian politicians from the political scene in the 1980s. However, it has to be noted in that context that the leader of the Democratic Party of the Albanians (DPA), which was in a coalition government with the VMRO-DPMNE (1998-2002) and is now in the opposition, has often been accused of not only having been party secretary (of the party branch in the TV Priština), but also of having been directly involved in the already mentioned differentiation campaign during which Albanian employees were politically punished and lost their jobs. Many current officials of different political parties, who had belonged to the political leadership during the socialist period, now again hold high state positions, as members of the parliament, ministers, or ambassadors.

All these cases may lead to the conclusion that, in terms of breaking with the past, the Republic of Macedonia is lagging behind or should even be considered as a negative example. The critics of the developments in Macedonia indeed emphasise the continuity, some of them even denying that a transformation from a closed society towards an open one has been going on. However, it would be an exaggeration to claim that during the past 14 years there were no substantial changes in Macedonia. As a matter of fact, many important and essential changes have taken place. The former political system was definitively abolished, new foundations of politics, society and economy have been created, and the current sphere of public opinion cannot be compared with the former one. It is true that many changes were implemented slowly, but after all, they are obvious and they show their effects.

Many objective elements contributed to the lack of speed of the transformation. The Republic of Macedonia is a small country with just over two million inhabitants and with a lack of substantive resources for a complete and rapid change of the personnel in politics and the state administration. It played only a marginal role in the dissolution of Yugoslavia, participating in this process with the fear that the conflicts could spill over into its territory as well. After gaining its independence, the main task and aim of Macedonia was to achieve broad international recognition which proved to be very difficult. Relations with Greece remained strained for some years, due to the dispute about the state name and to economic sanctions imposed by Greece. Sanctions imposed on Serbia during the wars in Bosnia and Kosovo also had a highly negative impact on the domestic economy. Internally, although the political parties representing the Albanian community were involved in the political system since the beginning, a series of incidents deepened inter-ethnic tensions. In such a situation, the role of the whole civil sector was similar to that of being a partner of the government rather than being its corrective. It is still the case today, that the NGO sector has to pay the price for this kind of involvement, having remained rather undeveloped and powerless and existing more as a system for servicing the grants of foreign donors.

Within this kind of social framework, many solutions were delayed and many problems put aside, at least for a certain period. One cannot deny that a considerable number of problems were ultimately resolved, but this was often done indirectly, with some delay and not always to an appropriate extent. The decision to open the state security files, for example, was taken quite lately, and instead of helping to expose the

past, in some cases it was abused by the government and the parties in power during the local elections in 2000 for the purpose of discrediting opposition candidates. The lustration issue was not promoted seriously by any political or social organisation, neither by a political party nor by the NGO sector. Substantive public debates on the past did not take place, nor did the media even report on experiences with lustration in other countries.

Therefore, the approach in Macedonia towards high-ranking personnel linked with the past was a very soft one. Apart from some slow reforms within the police which started in 1992/1993, there was no impetus to directly remove people who had held important positions in the former system. Instead, changes of this kind of personnel reflected natural developments or indirect solutions avoiding disputes and conflicts. A typical example was the dealing with some generals of the former Yugoslav army who had been able to arrange for their transfer to high-ranking positions in the Headquarters of the newly established Army of the Republic of Macedonia. They simply got, after some time, early retirement.

3.3.5 The Experience in Albania

Kathleen Imholz

Let me stress at the outset that I am not Albanian. I am a citizen of Ireland and the United States, and I came to Albania for the first time in April 1991, just after that country finally opened up. I visited frequently after that, and I have lived and worked in Albania since 1996. I know the language, I follow the newspapers and I speak with Albanians in all walks of life every day. I have been a close observer of the things that have happened in Albania since the beginning of the transition. But this does not change the fact that I am not Albanian.

It was close to impossible for a foreigner, especially an American, to visit Albania before 1991. Any experience of its Communist past was closed off for me. I am not foolish enough to think that what I read, or the anecdotes people tell me, give me anything like a true picture. In addition, even to the extent that I have first person knowledge of Albania, I see it through the eyes of my own experiences, which have primarily been in New York, far away.

Therefore, I make no judgments. But perhaps my observations can be of some use. I can report what I have seen in Albania since 1991, without partiality to any side or to any story. This will give some background about a little known country.

Like many foreigners, I had been fascinated by Albania's stubborn isolation throughout the post-war period, especially after the successive breaks with Yugoslavia, the Soviet Union and finally China. This was perhaps what brought me to Albania after that isolation melted away in the early 1990s. In the years since then, I have seen deep and sometimes astonishing changes on all fronts. This paper focuses on public debates about the Communist past or, more broadly, the actions that have been taken regarding that past – public debates, lustration laws, criminal prosecutions, and other actions. I will describe below a number of laws that have been enacted in this area, criminal procedures and so forth.

Public discussions have sprung up and intensified in recent months in Albania on several fronts related to the issue of dealing with the past. The primary areas are compensation to persons who were persecuted during the Communist regime and the issue, always controversial, of opening secret police files from Communist times, in this case the files of writers. The debate seems to be spreading, and I think it is an interesting phenomenon. I will return to it, but first let me go through the past 13 years quickly and chronologically.

My initial visit to Albania took place in April 1991, only three weeks after the first pluralist parliamentary elections (won by the Communists, or the Party of Labour). I remember very well being told by a senior person during that trip that "Communism is dead in Albania". Indeed, perhaps in no other country of the region had there been such a devastating economic failure. But obviously, Albania's particularly virulent

brand of Stalinist-influenced and isolationist Communism had not simply evaporated overnight. Its traces, and the way Albanians are dealing with them, have turned out to be much more complex than many thought at first.

Despite the victory in those first elections, the Party of Labour was forced into a coalition with the newly formed Democratic Party (DP) later in the spring of 1991. At its Congress in June of that year, the Party of Labour changed its name to the Socialist Party (SP). The coalition government ruled for most of 1991. It was followed by an SP dominated 'caretaker' or technical government in office for just a few months, leading up to early parliamentary elections held on 22 March 1992. The DP won those elections overwhelmingly and was in office until June 1997.

Even before the DP victory, during the coalition period, there was an attempt to deal with wrongs done under the Communist regime, including the initiation of some criminal prosecutions. In the preamble to law Nr. 7514, passed at the end of September 1991, Parliament apologised to persons who "were accused, tried, sentenced and imprisoned, interned or persecuted during 45 years for violations of a political nature, doing violence to their civil, social, moral and economic rights"; saying that "the first pluralist Parliament of the Republic of Albania... considers it in its honour, as the highest representative of the people,... to ask pardon of these people for the political punishments and sufferings that they underwent in the past".

Law Nr. 7514 started out by proclaiming all those people innocent, as well as those who escaped from Albania throughout the Communist period and various others. It went on to declare that all of them, or their heirs if they had died, were entitled to a long list of rights, from improved pensions to the return of decorations to housing to the right to study (in the country or abroad) up to and including compensation for their years in prison or in work camps.

Law Nr. 7514 is still in effect. It has been amended four times. After the DP victory, amendments were made at two different times in 1993 broadening and adjusting its coverage. At the end of 1993, and again at the beginning of 2003, additional amendments added specific internment camps to its coverage.

From 1993 to 1997, there was some implementation of this law, but to the best of my knowledge, it was erratic. As the issue has recently heated up again, government figures (not undisputed ones) have been released indicating that several billion lek (in the area of 20,000,000 US Dollars) were paid to people during that period.

Criminal prosecutions, including the arrest of Nexhmije Hoxha, the widow of long-time dictator Enver Hoxha, also began in 1991. Most of the criminal prosecutions took place under the DP regime, however, and I will return to this issue (see below).

A final area that has to be addressed is the privatisation and restitution of property, which of course affects almost everyone and not merely privileged people or persecuted people. As early as in the summer of 1991, Law Nr. 7501 provided, among other things, that agricultural land would be given to the persons who had worked it, as part

of collective farms or cooperatives. Since this did not deal with the major land reform of 1946 when the large pre-war holdings were broken up and distributed to the people who worked it thereafter, it has been a continuing source of complaint from the heirs of the pre-war owners. One Albanian said to me recently that this law is holding Albania hostage.

The major restitution and privatisation laws were enacted in 1993, during the DP regime. The political prisoner law was then amended to remove the special reference to restitution of the properties of this category of persons. The entire area of property restitution, however, has not been solved, and I will address that briefly at the end of this paper.

When he accepted the presidency of Albania after the DP victory in 1992 (formally, he was elected by Parliament, which is still the constitutional procedure), DP Chairman Sali Berisha made a statement that was as well known in Albania as was Prime Minister Mazowiecki's 1989 inauguration statement in Poland about drawing a "thick line" with the past. "We are all jointly guilty, we all jointly suffered," said Dr. Berisha in April 1992.

For many reasons, when the DP government took office in 1992 there was great optimism in Albania. But for many other reasons, it did not last. In particular, it would have been impossible for any government to overcome the poverty in which Albania had been left at the end of the Communist regime. Some investments were made in this period; a few people became fairly wealthy. (The wide-scale evasion of the embargo on selling oil to Yugoslavia during the wars of the 1990s was a notable source of enrichment for some, but not the only one). But it was much harder to extend the wealth, or even a modest standard of living, to the rest of the country. The failure to do so led to widespread disillusionment.

In addition, despite Dr. Berisha's noble inaugural statement, the DP government took a number of actions that were seen as divisive. A one-paragraph amendment to the Labour Code a month after the DP victory in 1992 (the infamous article "24/1") permitted people to be removed from their state jobs in the service of "the reform," not otherwise defined. Nor were there any procedures in the law about how this removal would be implemented. Many thousands of people did, in fact, lose their jobs under this law. The underlying rationale, of course, was to cleanse the state administration of those who had served communism. But the law had no procedures to monitor the way that this was done, and it was not what happened in fact. It became another disillusioning factor.

Another example was the law passed in January 1993 for a special state commission involving private lawyers. Albania has not had many laws of the type known as "lustration laws," but this was its first. Like Bulgaria's "Panev law" of the early 1990s which was directed at members of the academic community, law Nr. 7666, dated 26 January 1993, had a narrow focus. It set up a state commission to remove the law licenses of those who had been officers of or collaborators with the Sigurimi (the Communist Secret Police), had served in various party positions and engaged in certain specific

actions, such as taking part in border killings. Albania's new Constitutional Court, established only in 1992, overturned the law.

The legal profession in Albania, it might be noted, was non-existent between 1967 and 1990, having been abolished along with the Ministry of Justice. It was hastily recreated in May 1990 as Albania began to change. I was told in 1993 that the reason private lawyers were the first 'lustration' targets was that many judges and prosecutors, having been removed from their jobs in the service of the reform under article 24/1, were making a good living as private lawyers. I cannot be sure of that, but I do know that when the special state commission had its first and only meeting and came out with a list of lawyers who lost their licenses, the lawyer representing Ramiz Alia (Enver Hoxha's successor) in the then pending criminal case against him was at the top of the list. By the way, there was no indication in that list which of the criteria in law Nr. 7666 was applied against any of the de-licensed lawyers. In any event, after the decision of the Constitutional Court in that case, the lawyers got their licenses back, and there was no further action in that direction. A broader lustration law was passed in 1995 and we will get to it shortly.

A third example involves magistrates, that is, judges and prosecutors. With the aim of filling the places in the judiciary and the prosecutor's offices that were vacant because of the application of article 24/1, accelerated law courses of six months' duration were held in mid-1993 for over 400 persons, who then were permitted to take the final law school exams. All passed, and in May 1994 all were appointed judges and prosecutors. Again, the rhetoric was that this was affirmative action for persons who had been persecuted under the prior regime and had been denied the opportunity for a legal education. However, the program was not applied to that end, among other things in requiring a prior university degree for entrance to the courses. Higher education of any kind had rarely been available to persecuted families. Thus, the program was subject to being seen as an easy way to get a law degree for favourites of the party in power or for those who were willing to pay.

The courses were widely criticised at the time, inside and outside of Albania, for that reason and for their short length. By 2004, however, graduates of those courses who are still "on the job" as judges and prosecutors now have ten years working experience, and it is perhaps time to close the book on that story.

During the period 1991-1995, there were criminal prosecutions of most of the senior communist officials still alive. All resulted in convictions and in sentences of up to about 10 years. In my view, and the view of many Albanians I spoke with at the time, the trials had a limited impact. The main reasons were the difficulty of finding compelling evidence about communist era crimes, the disillusionment I have sketched above, and the fact that the prosecution of the opposition Socialist Party leader Fatos Nano for alleged malfeasance during the transition year of 1991 resulted in a longer sentence than that given to any of the senior Communist leaders.

At the end of 1995, Albania finally enacted a broad lustration law, Nr. 8043, entitled "On the Control of the Moral Figure of Officials and Other Persons Connected with the

Protection of the Democratic State.” Parliamentary elections were approaching and the law was widely seen as being directed at political opponents of the party in power, although its reach was much broader than parliamentary deputies. I know of some specific cases in which it was used against political opponents. In any event, the seven-member commission contemplated by the law, known as the “Mezini Commission”, after its chairman, banned a number of people from running in the parliamentary elections of 1996 on the basis of this law, and most were upheld by Albania’s highest court, to which there was a right of appeal.

Generally, the Council of Europe is critical of laws that restrict the right of persons to run for office unless they have been criminally convicted. Albania had become a member of the COE in 1994. For this and other reasons, over the course of the next few years, law Nr. 8043 was narrowed by amendments many times, and a constitutional court decision also limited its coverage.

In Albania, the year 1996 was characterised by the explosive growth of a large number of pyramidal money-raising schemes. They had elements of true pyramids, that is, where money is borrowed on a large scale solely to pay interest to earlier investors and so on until the pyramids collapse of their own weight, but they were also widely believed to be involved in the laundering of drug money. The DP had won the elections in May 1996 with an overwhelming percentage of the seats in the Albanian Assembly. When the pyramids began collapsing at the end of 1996 and into 1997, the party in power was blamed. A state of emergency followed in March 1997, and early parliamentary elections were held in June of that year, resulting in a strong swing to the Socialist Party (SP), which along with a shifting group of small allies has been in power since then.

It might have been expected – indeed, I expected it – that law Nr. 8043 would be repealed when the SP took power again. But the law, narrowed as it was, remained in effect. The lustration commission had a new chairman, Nafiz Bezhani. In early 1998, a prominent member of the judiciary was removed from office because of alleged secret police collaboration throughout the Communist era. Although the law no longer covered elected officials, it continued to be enforced for other officials, until it expired by its own terms at the end of 2001.

By 1999, I had become an adviser to the Albanian government, and I know from my own experience that Mr. Bezhani and other members of his commission strongly felt that the law should be extended. He also wanted it expanded to cover other ethical areas, such as the source of the assets of public officials. By this time, corruption in the Albanian government had become one of the areas for which Albania was most criticised by the international community and, of course, by its own people, who bore the brunt of it. But a separate law on asset declarations and the sources of assets was prepared instead, and law Nr. 8043 was permitted to expire. The documentation on which lustration was based (including the secret police files) is now closed until the year 2025, unless a new law is enacted.

As mentioned above, the issue of the restitution of properties expropriated in the Communist era has remained a significant problem area in Albania. The legal frame-

work, especially that of 1993, was not too bad, but implementation was poor. In numerous cases, there were major falsifications. Furthermore, law Nr. 7501, that is, the law that did not overturn the 1946 land reform, continued to be a sore point. For these and other reasons, during the preparation of Albania's new Constitution, which went into effect on its independence day in 1998, it was agreed that laws would be issued for the "just regulation of the various matters related to expropriations and confiscations that took place before the approval of this Constitution," guided by the criteria of article 41 of the Constitution. The latter article declares that "private property is guaranteed" and that expropriation, or equivalent measures, is permitted only for a public interest and only against fair compensation. Under article 181/1 of the Constitution, new laws were supposed to be issued by 28 November 2001. Although the Government had presented a draft to the Assembly by that date, more than two and a half years ensued before the Assembly passed a law. But the story is far from over, because President Moisiu has not yet promulgated the new law. (He has the right under the Constitution to return a law to the Assembly one time, and it requires the vote of an absolute majority of the deputies to re-pass it).

This brings us to the present, in which, as I have found to be the usual case in Albania, much is happening. While as noted above there was sporadic action under law Nr. 7514 (compensation and other rights to persecuted persons), it stopped with the state of emergency of 1997 and the SP government thereafter. Amendments to that law to provide compensation to those who have not benefited from the prior implementation have been prepared and are being pressed. (SP chairman Fatos Nano, Prime Minister of the country since 2002, received compensation for his imprisonment between 1993-1997, and this was one of the things that spurred the revival of the issue). Meanwhile, the Minister of Finance points out that the state of the country's budget is such that it cannot take on the large obligation required to pay the compensation contemplated, and has called for a parliamentary investigative committee of the administration of the compensation given between 1993 and 1997. It should also be noted that another parliamentary election is coming up, and this issue is very much embroiled in it. In any event, Parliament's meetings in the last month or two have frequently been accompanied by demonstrations of former prisoners outside its building, and several times its sessions have been interrupted by opposition walk-outs.

On another front, Albania's most prominent contemporary writer, Ismail Kadare, recently called for the secret police files of writers to be opened, and this has been responded to by a number of writers and journalists. Fatos Lubonja, another well-known writer and essayist who was in communist jails for 18 years, has argued that the service of writers to such a regime is multi-faceted, and even a writer whose secret police records are pure may have contributed significantly to support a totalitarian regime. Another journalist has called the preoccupation with secret police informers "the culture of escape from the essence of things," the essence being the Communist leaders themselves. In short, this debate is growing.

Finally, in June 2004, deputies of a small opposition party have prepared a new lustration law for introduction in the Assembly, apparently calling for the disclosure of

secret police activity by those running for office (perhaps on the Polish model). I have not yet been able to get the text of the draft. Although it would seem unlikely to pass, it is another harbinger that there are unsolved issues in Albania.

More and more, the media is devoting time to these and related issues. But has any of it, including the property disputes, been accompanied by significant public debates about the broader nature and meaning of the Communist past in Albania? I will leave it to the Albanians to supply their own answers.

3.3.6 DISCUSSION (Extracts)

Miodrag Živanović

Talking about facing the past, I always remember a true event which has to do with frogs – and with the issue we are discussing. By the end of the 1960s, we had a visit by the queen of a European state. She came to visit Josip Broz Tito. The Central Committee of the League of Communists decided to offer her accommodation in one of Tito's villas. But the organisers realised that in the vicinity of that villa there was a huge number of frogs that made sounds all the night, so the queen would probably be disturbed from her night's sleep. The Central Committee ordered the special units of the Yugoslav army to exterminate all the frogs. However, two of them survived so when the queen was in her suite these two frogs started making noises. The queen called her servants and said that it is excellent that she can listen to the sounds of the frogs because it reminded her of her home town, and that was something that put her to sleep easily. So, the same army units came with a lorry full of frogs, putting them back so the queen could sleep all night. What is the message of this true event? We had had the genocide but the situation remained the same. It is also a metaphor for the logic of the regime I am referring to. If we want to face the past we have to consider the essence by which each and every era was marked, in this case the communist era.

I am convinced that facing the past cannot be done through political, legal, and all other aspects of lustration, but that we have to go back to the old Greek notion of catharsis. How to do that? I do not have an exclusive or absolute answer to that question, but I will offer you a negative answer. I believe that catharsis cannot happen through the forms of education. Education is often mentioned in connection with the issue of facing the past, mostly as a kind of tool to reach catharsis, which could lead us towards reconciliation and democracy. I believe that education has been made into a myth. Whenever we are at a loss for an answer, we resort to the notion of education, but this cannot solve the problem. It is well-known that in many languages the word "education" is derived from a word meaning "mask". So I believe that we are at a ball or game or dancing with masks on our faces. In German, the word "education" is derived from the word "picture". Life is not a picture, but something similar to that. The real question connected with the issue of our debates is, according to my opinion, how we can eliminate constructed relationships with the past and all the things that have happened to us. How can we overcome this structure?

Let me conclude with another story from real life. During the war years in Bosnia and Herzegovina, a true love happened in this ethnically divided country. He was a Muslim and she was an Orthodox Serb. They loved each other and decided to get married. When they married, she changed his confession and converted him to Orthodoxy. But six months after the marriage, he fell in love with another woman. She was a Muslim, but now he was an Orthodox. After the divorce from his first wife, he married his new love. One day, they had a row and he killed her. There was a trial conducted and the minutes from this trial say that the reason for this murder laid in the fact that she

offended his Orthodox feelings. The whole tragedy of ours is that kind of a constructionist structure. How can we eliminate, naturally and authentically, this kind of structure and cope with the things that happened in the past in a decent way in order to turn ourselves around?

Dino Abazović

In the specific context of the ex-Yugoslav republics, today's independent states, we have to examine if there is a momentum of goodwill for lustration. One of the universal traits of the former regimes was the creation of a "homo duplex". Therefore, it is not astonishing that we have too many pros and cons in the public when we talk about lustration. And the privacy of the whole process actually remains untouched by the true level of goodwill to define some of the problems.

I completely agree with the comments of Miodrag Živanović on the necessity of a catharsis as an ethical component that each and every lustration should contain, per se. This is as important and as legal as all the other aspects. But I would add that it would be very significant to have a look at the decision makers and the initiators of different activities and actions related to lustration. If we see that these are politicians, the media, civil society, and international institutions or agents, let us examine how far they can spread their power and see whether the societies are really ready to take the right direction.

According to my opinion, the experiences of democratic transitions teach us that as long as we resort to the measures of lustration in order to support human rights, we cannot achieve any significant results. Until the issue of those who have committed different crimes against different principles of civilisation is not solved, we cannot talk about lustration because it will turn back on us, like a kind of boomerang 10 or 15 years later. So we should decide whether there is a significant goodwill within our societies to conduct lustration, what kind of lustration we want to apply, and against whom. Lustration can have a positive prefix in our societies, but I am not sure that it also brings positive consequences.

Radmila Vasić

I was dealing with the issue of responsibility and accountability in the post authoritarian societies referring to different types of responsibility. I believe that this meeting should yield a message that refers to the type of collective, direct political responsibility.

If lustration is conducted officially, it has to be done on the basis of the existing law. It is obvious that some of the expectations in the countries of Southeast and Eastern Europe related to lustration have not been met. I would leave this discussion as a satisfied person if only we could identify what the plan or the concept of lustration could produce in terms of efficient results. The problem with lustration is in the way it is conducted. Even if we have the best possible law, we have very significant violations of

human rights of those who have violated human rights. So, if we stick to different tricks like this is not the sanction or this is not the measure, gauge, or whatever, that means that we are not serious about this problem. If you do not provide for the proceedings that will be adequate to a state's principles and standards, then the sentencing or adopting of decisions in certain cases is going to be so long that it will lose any meaning.

I want to single out the function of the judiciary system. We know that it is mostly benign in all the systems of constitutional democracies, but we also know that it can produce the most dangerous effects in those countries that are prone to authoritarian styles and manners of *modus operandi*. Finally, one very simple truth for all those who deal with rights is that the judiciary function is the last instance for defending the law and rights. So, if you have the violation of human rights within the courts, the judiciary system, resulting from the orders of the authority, it means that the state is completely ruined. That is not a picture; it is only the frame for a non-existent picture. I would like to cite just one example of Slovenia's so-called "Pučnik amendment". It is a legally based decision of the constitutional court of Slovenia containing eleven pages. Nine members of the court voted. One of them offered his dissent and opinion. Six judges voted in favour, two against, and there were seven dissenting opinions. It is very interesting that each and every judge actually signed this decision. As for the lustration of judiciary bodies in this country, we have massive confusion over there.

So, not only is Bosnia and Herzegovina, to use Jakob Finci's words, a country of paradoxes; the same is true for Serbia and ex-Yugoslavia. We have had a president of the federal state, but we did not have the federal state. We had the king, but we did not have the kingdom. Finally, we had four acting presidents of the republic, so, as I usually say, if it is only for the Serbian state, it is really too much. In 1991 we had adopted five laws which were supposed to serve for the checking of the lustration of the judges and the setting of professional criteria for the responsibility of these judges. These laws were the best ones that were adopted, but later on, they were changed, amended, supplemented three times, and during the state of emergency, these laws were once again changed and amended, which is a tragic fact. It is really unusual to have changes of the laws in a state of emergency. We know that laws can be suspended during this period, but no, they were changed, amended and supplemented.

Therefore, also out of my personal reasons, it is my great wish, for all of us working here at this meeting, to produce a solution that could be very efficient and would actually correspond to the legal state principles and standards.

Magarditsch Hatschikjan

The discussion of this morning was mainly about different attempts to define lustration in a way which is acceptable for all. In my opinion, the result was clear; there is no such possibility. There are some proposals for defining what the subject of lustration is and which kind of activities should be lustrated. I think the proposals are all very important and should be taken into consideration. But the history of the countries

being sometimes very different, the definition of who and what has to be lustrated must also be different.

The contributions in the second panel were concentrated on another question. I think the issue at stake was best explained in three questions by Jacob Finci regarding the period we are talking about. All contributions focussed on different periods. Jovica Trkulja spoke mainly on the period under Milošević. Ivo Goldstein compared the period of the 1990s with a period during the 1940s. Jakob Finci asked about what period we are discussing—the socialist period, the period 1992-1995, or the period after 1995 when different nationalisms were arising. Kathleen Imholz spoke mainly on the lustration issue with respect to the pre-1991 era. So we have again four individual cases focusing on different periods. I think it would be interesting for us all to have an answer to the question if we can find a common basis for a general comparative approach or if we are forced, given the different histories, to deal with different periods on a different basis.

Ivo Goldstein

Comparing, let's say, the ex-Yugoslav republics with Poland or Romania, there are several obvious and important differences. First of all, there has been the collapse of Yugoslavia and the creation of five separate states which, in their own way, had to establish new hierarchies of political values and their relations to the past. A whole series of new facts had been established in the political culture and had to be organised in a specific manner. That is one element which did not happen in Poland and Romania. The Czech Republic and Slovakia were also in a different position because they did not have a war. A second important fact was that the wars in ex-Yugoslavia contaminated the whole situation in many different ways. The third and perhaps most important fact was that the political elite or elites that were ruling in Yugoslavia during the 1980s, in the aftermath of Tito's death, were not strong enough to act in any possible way.

Real problems related to lustration and crime manipulations took place in the 1990s. This is very important for the decision where the starting point of lustration has to be set. It would not be the collective presidencies of the 1980s in ex-Yugoslavia, but related to those elites that were established in the years of 1990 and 1991. So, this is a problem for all ex-Yugoslav republics, especially for those which were involved in the wars, and therefore, the situation in these countries is singled out by these circumstances from the general trends.

Biljana Vankovska

In my view, we have to face our past, as much as is possible for all of us. We should also decide of which past we are mainly speaking – the more distant or the more recent one? But my problem is that I have the feeling that we cannot live in the past or with the past, so actually my present day is somehow very much intertwined with my past. The question is how to achieve lustration and to enhance democratic forces and peo-

ple with democratic credentials. Also, who is going to guard the guardians in terms of providing institutionalised and legal forms of lustration? This is particularly important, because we are still in a post-conflict situation with a lack of democratic political elites or even decent political elites. We are now hoping to get to a point where we can disqualify the ones who do not deserve to hold public offices. But unfortunately, it happens that people who are in the dock in The Hague have their puppets in this region; people can vote for them, and some of them are actually even very popular.

I think that we should be less ambitious in dealing with the past and this very fashionable term lustration, because we should really start from what is currently possible. We are going to lose much time if we turn back to the Second World War, the legacies of the communist period and so on. We have lots of things to do right now, to start with state building, democracy building, institution building. Then, step by step, we can actually raise the capacity of all the actors of the society, not only of those in the political sphere. I fully agree that this is much more than a political issue and far more than a legal issue. It is also a moral and social issue. In order to really have lustration, we need to engage all possible capacities. I am very sorry to say that our capacities are very low. My country, the Republic of Macedonia, has a very different past in this democratic transition, because for ten years we seemed to be the only peaceful society in this region and to be really doing quite well in democracy building. Because of that good image, people did not feel the need to turn to some communist legacies. We did not have obvious bad guys; actually we had a hero from the communist period, and that was our former president Kiro Gligorov who was the only peaceful actor, the only peacemaker in the region. He provided a sense of continuity from the previous regime to this newly independent state. Of course things were not as they looked. After all, we finished with two paths, to use Jovica Trkulja's term. After 2001, we had to bear the two different recent pasts in mind – one of an unfinished democratic transition during the peace period, and after the conflict of 2001, we also had to deal with the causes and roots of the conflicts and their consequences.

To sum up, Macedonia is also a country of many paradoxes, because in none of the other post-Yugoslav countries will you find people who fought in the conflict against the state and afterwards became decision makers, policy officers, etc. We have now actually gone through a very different process of post-conflict reconstruction. The people who took arms and fought against the state in 2001 are now part of the state elite. So I really do have a problem with the questions on how to lustrate and whom to lustrate in my country.

Nataša Hanak

I would like to say a few words on the experiences of the Victimology Society of Serbia relating to the process of lustration. As the contributions and the discussions have shown, we are facing problems of different layers of criminal pasts. Now, the question arises in terms of states that had a history of war in this region. What is the starting point and what would be the priority starting layer? In 2003, the Victimology Society organised in 12 different towns in our country, public panel discussions with an idea

to get opinions from many different people as to how to face the truth, where to start, what the truth is, how responsibility is being perceived and how to follow the path of reestablishment of confidence, which is a precondition for reconciliation in this region. Of course, the process is still under way, and we are analysing different issues. I believe there will be plenty of interesting results with respect to different obstacles and opinions as well as to various perceptions concerning the methods and opportunities of this process of facing the past.

It is interesting that even though our discussions had been focused on the most recent past, on the events that took place during the 1990s, in almost every town the question of previous layers arose which prevented us to reconsider the most recent past. What was mainly asked for was the disclosing of the final truth, the defining of the responsibility and the punishing of the perpetrators linked to the communist crimes in the late 1940s and in the 1950s. It would be interesting to know whether an example of lustration linked to this previous time could possibly facilitate the lustration of other periods. In any event, there is a general opinion prevailing that there is nothing like a popular will or readiness to launch these issues at the very moment and that there are very many obstacles, at least for the time being.

Jovica Trkulja

First let us go to the question regarding the period we are talking about. There is no simple answer to that question. If we talk about rehabilitation and denationalisation, of course we talk about different times and dates. Our models of rehabilitation actually refer to the year 1945. The same refers to the law of denationalisation and the law on secret files. They refer predominantly to the period after the Second World War. Talking about the law of lustration, we actually opted for the year 1974 when, during the then Socialist Federal Republic of Yugoslavia, the international pact on civil and political rights was ratified. So we started with this date because we accepted so-called "soft" model of lustration.

I would like to add some necessary clarifications. In my view, it is essential to understand that in dealing with lustration we do not talk about overcoming the past. In trying to lustrate some of the cases we are actually in the process of reprocessing parts of the past. In our discussion today, we have made a small step ahead in the sense of defining lustration as a political notion and talking about its ethical dimensions. Tomorrow we will discuss other dimensions of lustration, talking about the legal traits and the whole nature of lustration which may be one of the key issues. Lustration can be a punitive measure, a disciplinary measure or an administrative measure.

I will conclude with a rather pessimistic statement. I am sure, every one of us is still very aware of the euphoria after the fall of the Berlin wall. At that time, every one thought it would be quite enough to have an ornament to decorate our railroad car with some new democratic trends and just connect to the train that actually runs through Europe. It was not enough, obviously. The societies in transition thought it would be more than enough to spend some six months to adopt some democratic

laws, and soon enough they would create democratic institutions. Yes, but unfortunately it would take something like 60 years for the people to understand in what kind of state they live and to adopt these new democratic principles. I believe that for the societies of the Western Balkans it takes around six months to adopt the law of lustration, maybe six years to build democratic institutions and at least 60 years in order to achieve tangible results.

Magarditsch Hatschikjan

We are trying to define the objectives of lustration. In my view, the main result of the contributions and discussions so far leads us to consider what should be the main criteria for lustration, and not to search for a single model. Obviously, it is impossible to find a single model acceptable and applicable for all, but it is possible to agree on general main criteria. In my opinion, Žarko Puhovski's proposal was a very instructive one, because it was neither ideological nor political. It was something like a neutral legal proposal. Criteria for the objectives and the people/targets of lustration, if we may call people targets, must be neutral in the legal sense. People who have been connected with state organised crimes is something that has happened in all countries and allows for a common, comparative approach.

Things are obviously different with respect to the period on which we have to concentrate. In some cases, the interest is focused on the 1990s. In one case, at least, it is focused on the pre-1991 socialist era, while in another one it is not focused on a past period, but on the present state of institution building. So, we can have a general conclusion on the main criteria for all countries, independent of the individual waves. But concerning the question of which period we should deal with, the differences are obviously far greater than the analogies.

Žarko Puhovski

The periods we have to deal with should not be defined by the systems but by the fact that we are dealing with human beings. A professional career can be for, let's say, a maximum of 40 years. So, nothing that has occurred over 40 years ago can be relevant for lustration, because lustration is dealing with concrete persons and a possible disqualification of these persons in public life. There is no basis for disqualifying someone for something done when he or she was 17 years old and if he or she is now 85 or even older.

The question is to find the emphasis on a certain phase within a certain period, and this period is changing. It is changing every year, for obvious reasons – because people are dying. There is no sense to discuss the connection of the lustration issue with something done in 1942, because there is no one there who could be the object of this type of intervention. The second important point is that lustration deals with links to criminal activities, but not with criminals. Criminals should be dealt with by the penal code and not by the lustration processes. We are dealing with collaborators

with state or party organised crime. In other words, we are dealing with people who are responsible, not guilty. This is an important difference we need to take into account. We are not dealing with executors, murderers or perpetrators. We are dealing with people who once supported state or party organised crimes, justified them and accepted them in their public activities and might be doing this again. I think these are the limits we have, starting from the pure logic of lustration, if we want to have this as an organised process.

Kathleen Imholz

This has been a really interesting day. I have learned a lot of things and had a lot of stimulating conversations and a lot of interesting thoughts. Let me share with you my view on parts of two issues. One is about the criminal prosecutions. I obviously agree with Žarko Puhovski, and I think most of you will agree, that criminal acts should be dealt with within the criminal process. The problem is that it is very hard to get evidence and people get off on technicalities and there will always be a dissatisfaction or feeling that justice has not been done. If you have gone, meanwhile, after the little people who did not violate a law but who got caught up in a web, you are always going to have some very bitter feelings, and I really do not know how to deal with that.

The second thing is not about Albania but about the country in which I was born, the United States of America. I was very amused to hear this morning that some people may be preparing some kind of a lustration law for the current administration. I do not have an opinion on whether lustration would be appropriate, although I would like to point out that if Vice President Chaney is defeated and is lustrated out of public life, he will make a hell of a lot more money when he goes back to business life, so I am not going to worry about that.

Not too many people know, including very few Americans, that there is a lustration law in the United States constitution. The 14th amendment, which was passed after the civil war to extend civil rights not to women, but to blacks in my country, also included a statement that those who gave aid and comfort to the enemies of the United States, having sworn allegiance to the United States previously, could not serve in the government again unless two-thirds of the congress approved otherwise. That statement is still on the books, still part of the constitution. Of course, everybody who would have been affected by it is long dead, and time does, as Žarko Puhovski mentioned, its work. But if we can figure out some mechanisms for the general idea, maybe we will have done something.

Jakob Finci

I think that we heard today many more questions than we have answers for. This means that this is a topic which is of real interest for most of us, and we should work together to try to find some answers which can be useful for each of our countries. Obviously, they will be useful in different ways, because although geographically we

are in the same region, we have different problems. That is the reason why all of us should find our own model. The final conclusion will probably be that this is just the first in a row of conferences discussing the same issue. But, we should take into account that time is working against us because, as Žarko Puhovski said, 40 years is the time limit, which means we are already in 1965.

Ivo Goldstein

You may ask why I did not touch upon the problem of lustration as it has been touched upon by the vast majority of my colleagues. In Croatia, since 1989 and 1990, the problem of lustration, as covered by most of us, was not discussed in this sense. It was not approached as an issue or as a problem. A few cases occurred which were on the lowest level of political manipulation and nothing else. Some films were produced which were more forged to create a certain impression rather than to document what they were trying to address. They were documenting the people who produced them and the time they were produced.

Why was that so? It was because the new establishment that was created in 1990 was afraid of the kind of lustration that we discussed today. They were afraid, because Croatia, unlike other post-socialist states, did not witness a radical change. There was no replacement of the former establishment by a set of democratic environments such as opposition, social liberalism, etc, as happened in the majority of the other countries. Given the fact that the new state was created along with the new political reality, the first set of leading people were coming from the nationalistic oriented circles which were positioned in a very special way in the socialist societies. Sometimes they were members of the opposition, sometimes they were collaborating with the secret services. This is a problem which will have to be dealt with and which will need to be discussed. However, we in Croatia are blocked, to a high extent, because of one very famous case. When lustration was to be performed, or rather a legal procedure that was carried out towards the end of a process on the matter of the assassination of a Croatian dissident, the suspect was actually liberated. My suspicion which I will articulate now was that he was involved in this assassination. It had taken place in Paris in 1975, and some other people who were part of the post-1990 establishment were also involved. These are the facts which are only partly known, and they have blocked any reasonable discussion on the lustration problem.

3.4 Public Debates on the Past: Effects on Democratic Structures

3.4.1 Lessons from the Cases of Yugoslavia and Serbia and Montenegro

Vojin Dimitrijević

Professor Jovica Trkulja already offered a quite pessimistic overview on the developments related to the lustration law in Serbia. It is most probable that this law will not be implemented, because it was attacked from different sides and different levels, and it is not sure if any of the responsible authorities is willing to apply it.

Transitional justice contains some other elements apart from lustration. Lustration is focused on the – at least temporary – legal disqualification from public life of those persons who violated some of the rules and human rights in the past. Dealing with the past is a broader issue, including other aspects, too, such as moral and ethical ones. It also includes the task of establishing the truth, the truth on the crimes that were committed and that were not disputable at the time they were committed. In Serbia and Montenegro, this is a very interesting and very important issue.

Violations of legal rules and human rights can be qualified as criminal acts either by local or international law. There are two options for dealing with them. One is normal as in normal circumstances, i.e., when you have to identify the individual responsibility for the crime, and it is up to the courts to conduct their proceedings. In Serbia and Montenegro, we still have that option.

The second option is the one we refer to when we talk about truth and reconciliation and all the bodies established for that purpose. This is a step towards the court, but it is not the court itself. It is a step aimed exclusively at finding the historical truth about a specific period, in the sense of identifying the severe violations of local and international law and human rights. The task of the bodies established for such purposes – bodies that are not the court bodies – is the following: they have to reliably ascertain, exactly what happened in the past in order to present it to the public and thus provide a basis for catharsis, i.e., they have to find out the truth, irrespective of whether these criminal activities should be punished or sanctioned. This is generally considered a good remedy for the future of the people and of the respective society.

There are some historical examples for such an approach. An especially interesting one has been provided by the authorities of Florence in the 15th century. After the fall of one particularly cruel usurper whose reign had lasted for ten years, the noblemen decided that one of the priests should write down everything about the events of the past. He was given the task to provide a chronology of the times they had experienced because they thought it would be good and useful for future generations to know something about the evils that had happened. A similar approach, I think, could

be appropriate in cases of Saddam Hussein or Milošević. Sometimes, unfortunately, trials do not serve their purpose.

As for Serbia, the attempt to launch a truth and reconciliation process in an institutionalised form was initiated, almost immediately, after the fall of the Milošević regime. The idea, brought up within the Ministry of Foreign Affairs, was to create a commission, using the model of the South African commission. A law was proposed on which the work of the commission should be based. This body was never fully established, and in the period of preparing the whole activity, the then president of the Federal Republic of Yugoslavia, Vojislav Koštunica, declared, in the official gazette of the Republic, that this commission was established. This happened in March 2001. But in the following time, very little was heard about the work of the commission, and by two and a half years later, it had just vanished. I think we should have a whole investigation about the disappearance of this commission.

What was the problem with this commission and with this way of establishing truth? I have to admit that I am a bit biased on this issue, since I was a designated member of the commission. I attended one preparatory meeting and then told the president that I cannot accept the membership in the commission because I believed that this commission was not granted sufficient competences and powers. It could not have resembled anything similar to an efficient commission. I also made some objections with respect to the complete imbalance within the commission; there were only two priests, both being from the Orthodox Church of Serbia, and not a single member from Montenegro. These were two of the main reasons for my turning down membership of this commission. Another reason that I mentioned, and still stick to, was the fact that it was established to identify truths with a capital "T"; huge historical truths, while I thought, and still think, that it had the task to establish some temporary truths, according to the material available.

The commission later published some of the elements of its first activities, which confirmed my doubts about this body. One of those activities, as it was said, was to free the public from the biased and emotional attitudes towards some events from the past. Another task was to face the deformed image of Serbia and the Serbs created in the decade before. Obviously, the commission saw its task as rectifying a completely distorted picture of Serbia and the Serbs. As one can conclude from these statements, there were enough elements that induced the failure of the commission, one of the reasons surely being the fact that there were too many historians in it.

Now to the question of which period we want to be dealt with by the lustration process. In Serbia, the first problem was that many officials wanted to include time periods other than just that of the last decade of the 20th century. They actually attempted to move this period ever further into the past, 50 years further, showing a tendency inherent in any nationalism, which is to establish a self-victimising position. By this means, the series of crimes during the last decade actually were blurred and seemed less significant compared to some other crimes from other periods of the past. The second problem was connected to the fact that Serbia is a deeply divided society. The full extent of the existing rifts and lines of division came to the fore after

the fall of the Milošević regime, and they showed up again and again, for example, during the last presidential election.

Therefore, there is a double need – the reconciliation among the citizens themselves and the reconciliation of the state with other states. Both tasks were very difficult, because if you have a smooth reconciliation within the state, the whole process of reconciliation of the state with other states poses great problems, especially if we take into consideration some of the criminal activities and crimes committed by some of the then ruling parties in Serbia. This is also reflected in the judiciary system and its treatment of the past. In this respect, for example, at this very moment, the situation in Serbia is lagging behind the one in Croatia. Sometimes, seemingly similar situations and approaches are used in Serbia to justify one's own opinion and decisions. Quotes from Serbian newspapers are, in some cases, almost identical to those found in Croatian print. An ex-minister in Serbia once said the following: "The deputy prosecutor of The Hague... is the one who devours Croats in The Hague. Croatia has to put the moratorium on the cooperation with the Hague tribunal." This is something said by a professor of law and a minister for two terms.

Somehow it seems that there is a widespread opinion that someone is trying to amend our history during the trials. Some authors in Croatia state that the trials in The Hague could actually change and completely alter the history of the country. Similar voices are heard in Serbia. One of the prominent members of the commission for truth and reconciliation, the ex-ambassador to Turkey and now the ambassador to the Vatican, a professor of Oriental Sciences, says that we are faced with the threat of having a completely new history written in The Hague. On the other hand, the attempt to have trials in Serbia itself for all those who are indicted faces a lot of difficulties. People see that the courts are insufficiently equipped for the trials, for example, against the generals who are not willing to go to The Hague deliberately, although those indicted are fully aware that Yugoslavia has ratified the Geneva Convention that speaks about responsibility, accountability, and chain command responsibility.

3.4.2 Lessons from the Case of Croatia

Žarko Puhovski

In Croatia, we are in the fortunate situation of having had no setbacks in our law – because there is no law on lustration, whatsoever. We are facing a serious paradox. Many significant democratic and social elements in Croatia are at a higher level than in other states in the region. However, the lustration issue has been disregarded, and this may challenge the general judgement on the achievements.

It is highly important for the Croatian situation in this respect that, instead of lustration, ethnic cleansing has been implemented. At the very beginning of the democratic transformation of the country, this ensued in frequent cases from lobby disqualifications. After a few months however, they were reinterpreted and later completely replaced by ethnic or ethnically based disqualifications.

For a deeper understanding of the context of the lustration issue it is necessary to start from those environments and experiences that are to be addressed and not from those that are absolutely incomparable and therefore irrelevant. In Yugoslavia, we had a soft totalitarianism in power, completely beyond comparison to states like Bulgaria, Czechoslovakia, Romania or Albania, in terms of violations of human rights. One of the alleged benefits of this kind of regime was, for example, the fact that between 1950 and 1990, no one in Croatia was assassinated on political grounds, the longest period without such assassinations in Croatia. It was not a happy, democratic, rich state, but no one was assassinated for political reasons. There were assassinations of Croat emigrants abroad, but not of people living in Croatia. In this respect, the situation differs completely from experiences in other East European countries. Simultaneously, due to the Soviet model of ethno-federalism, the Yugoslav model itself and the activities of the Yugoslav secret services were interpreted within the matrix of Serbian-Croatian relations or rather the domination of Serbia over Croatia.

Disqualification from public life in Croatia, pursued during the period of full blossoming of this miserable activity between 1990 till the end of 1995, was based on three different grounds. One of them was affiliation to the Serbian ethnic community. The second one was related to dominant positions of Serbs, and during the first few months, a third one, based on ideological affiliations to communist structures, played a marginal role. This third one could not be taken too far, because the new “father of the nation”, Franjo Tuđman, had been, himself, a general of the Yugoslav Army (JNA), and a considerable part of the “new” establishment appointees belonged to the previous structures. Thus it was rather complicated when certain people were kicked out of their flats due to the fact that they were retired JNA officers and thus had participated in the occupational activities, since at the same time the retired JNA general, now President of the country, enjoyed so many privileges.

Methodologically speaking, these disqualifications took place, contrary to the desirable kind of formalised procedure, as a series of individual and sometime group activ-

ities of media induced persecution. Unfortunately, a rather considerable part of the media and many journalists were involved. Meanwhile, some of them managed to shift, pretending today that they are scandalised at these kinds of developments without mentioning their own participation in and contributions to them. Generally speaking, this concept of disqualification, even if it had been perfectly implemented, would always include a hidden lack of confidence towards the democratic capacity of the community. Obviously, there is a widespread belief that citizens could opt for an inappropriate model and they should be prevented from doing so. This is why the new authorities turned back to the most often used model, which was the German occupation model back in 1941.

This was done although alternative and much more appropriate models exist and are well-known. Based on the initial decisions upon which the Nuremberg court was established, five criminal organisations were mentioned and affiliations to them were considered a basis for prosecution. It is highly regrettable that such an approach was not chosen in Bosnia and Herzegovina and later on in Croatia. In my view, the main reason for this deficiency is an inappropriate model of democratisation. If democratisation is reduced to being defined purely as elections, as some tend to suggest, it will inevitably lead to numerous errors. Such errors occurred, for example, in Bosnia and Herzegovina, as well as in Kosovo, where other prerequisites had not been met.

In Croatia, the first free elections took place in April 1990. They reflected a striving for the substantial and moral impetus of a democratic community which was interpreted ethnically. Consequently, the same applied to the following disqualification process which took place instead of lustration. The bodies that were affected by this disqualification process, on a larger scale, were the police and the judiciary.

During the first year after the establishment of the initial democratic government, 25 percent of the people serving in the police lost their jobs, many of them purely on the basis of their names. To a certain extent one can say that there could be a basis for this kind of action towards the police. As for the judicial system, however, the activities pursued can be labelled only as ethnical cleansing. Some of the judges were summoned for information or interviews and they were told that they could not be judges in Croatia with such names, or if their parents had particular names. Between 300 and 400 judges lost their jobs over a certain period, which led to negative moral, political and professional implications within the judicial system. The effects are palpable even today. All these events took place between 1991 and 1995 with a certain additional level of intervention in 1997 and 1998 during the activities of the so-called Pašalić commission (Ivić Pašalić was Tuđman's advisor for internal policy). After Tuđman's death in December 1999, there were some attempts to analyse the developments, but no profound investigation was carried out. There are still people who reject that all this happened as a process of ethnic cleansing.

Two other issues are important in the context of attempts to find a way leading to truth and reconciliation. The first one is related to the period which should be dealt with. A clear distinction has to be made between the period up to 1990 and the last decade of the 20th century, but both periods deserve a thorough investigation.

Obviously, not only in Croatia, but also in other countries of the region, some are interested in addressing only one of these periods. The second issue is related to the widespread tendency to take a different approach towards “our” crimes and “their” crimes, to put it in that way. In Croatia, the majority of public opinion is emphasised that Croatia was attacked, which is beyond doubt. However, these same parts of the public opinion have great difficulties in accepting the fact that the Croatian state was responsible for the military intervention in Bosnia and Herzegovina. There is also a huge paradox that affects all the minorities which were reduced to a third of their former number in Croatia. Only one person in Croatia has publicly declared that this was ethnic cleansing; obviously, everybody else thinks that it was just a demographic change.

These are general issues about where we have to start from, if we want to establish the truth. Within this context, we would be able to discuss, in a more clear and accurate way, different crimes as seen from the positions of the tribunal in The Hague and non-nationalistic points of view. This discussion may then help in establishing the truth. Institutionally, Croatia is lagging behind in that respect. Something like a body aimed at truth and reconciliation, to be set up in the forthcoming period and funded by the government, has not been mentioned. Nor can we expect that such an institution would be easily accepted in Croatia.

At least one could observe a gradual change in public opinion. Nowadays, we can read about Croatian crimes, or the so-called Croatian sides. The media plays a different role compared with the beginning of the 1990s. Crimes perpetrated by Croats are being introduced in the discussions, although the government and other official institutions are still rejecting such an approach. The official commission for missing and captured persons has two lists. One list includes missing ethnic Croats, the other one missing ethnic Serbs. There is still a lack of decision to merge these two lists.

In every society, truth provokes unrest. This is what we have to live with, cope with, and endure. Within the context of lustration and dealing with the past, it has become somehow fashionable to speak of catharsis. Its use should be handled, in my view, a little bit more carefully. We should not forget the fact that before this word became a metaphysical term, it simply meant diarrhoea.

3.4.3 Lessons from the Case of Bosnia and Herzegovina

Dino Abazović

“The law does not yet rule in Bosnia and Herzegovina. What prevails instead are nationally defined politics, inconsistency in the application of law, corrupt and incompetent courts, a fragmented judicial space, half-baked or half-implemented reforms, and sheer negligence. Bosnia is, in short, a land where respect for and confidence in the law and its defenders is weak.” This paragraph from the International Crisis Group report entitled “*Courting Disaster: The Misrule of Law in Bosnia & Herzegovina*”⁶, although published in March 2002, is, unfortunately, still very real.

Of course, such a framework has a negative impact on the lustration issue as well. Therefore, before going into the details of this issue, it is useful and necessary to give a short outline of the political and social context relevant to the dealing with the past and to lustration in Bosnia and Herzegovina.

Processes of an all-prevailing ethnocentrism, currently in their final (malignant) phase, started in 1991/1992, almost immediately after the first free, democratic, multiparty elections in Bosnia and Herzegovina. These processes subjected all developments – social agents, actions, norms, and values – to one single, “highest” referential category – the category of ethnicity. The result was the emergence of ethnocracy instead of democracy. Three national, or more accurately, nationalistic parties triumphed in the elections, due, once again, to their offer of an alternative ideology as a replacement of the previously dominant communist ideology. One rigid ideology was thus replaced by an even worse one, a nationalistic, chauvinistic, and xenophobic ideology, including elements of fascism. Although the pre-war period of the reign of the nationalistic parties was a relatively short one, it allowed for a quite effective and wholly non-transparent process of “lustration” and disqualification. The affected persons were only those in opposition to the new nationalistic establishments, as well as those refusing to cooperate and become blindly obedient to the new elites.

It has to be emphasised that there was no lustration legislation in force, and the vast majority of those disqualified due to their communist past or wrongdoings, were not officially removed. The reasons were more prosaic ones. The preferred areas of interventions and removals were the state institutions in charge of security and financing, the focus on high-ranking police and state security officers, military commanders, and public administration officials. Most of the newly appointed office holders were incompetent and ignorant, while capable and willing to cheat and to act against the law. The important selection criteria were ethnic affiliation, a formal declaration of party membership, loyalty towards the respective party leadership and unreserved devotion to the so-called national (i.e. ethnic) affairs. If these criteria were met, candidates could be selected, no matter what their past record had been and despite the fact that many of them had a similar background to those removed. In short, the new

⁶ See <http://www.crisisweb.org/home/index.cfm?id=1497&l=1>

ethno-oligarchies strove for power in order to satisfy self-interests, not the interests of those who had elected them.

All this happened at the dawn of the war. Its outcomes dramatically changed the political, as well as the socio-cultural environment, in which the lustration issue is supposed to be dealt with. But they did not change the all-mighty power of the nationalistic approach. "Unfortunately the wartime conditions gave access to accentuated authoritarian powers to the nationalistic successors to the communist party. During the armed conflict, the three nationalistic parties in Bosnia... constructed still more authoritarian power structures through their monopoly on violence and control of informal economic activities. A key element to this power was the continuation of the 'nomenklatura' system, an all-pervasive infiltration of public institutions by party personnel ensured subordination of the institutions to the parties, eliminating effectively the separation of powers irrespective of what the constitution may provide and undermining the significance of the electoral process."⁷

The Dayton Peace Agreement (DPA), a compromise that brought the war to an end and established a kind of peace, has contributed greatly to the creation of a fertile soil for political interventions with the prefix "national!" In the salmagundi of legal systems in Bosnia and Herzegovina, some legal experts claim that during the past ten years at least six incompatible legal systems have been in force in the country; the national-ethnic, pseudo-collective element has acquired complete primacy over the civic one. Constitutional patriotism simply does not exist as a concept. The exceptionally high level of mechanisms for the protection of human rights that are built into the system is inversely proportionate to the level of their implementation, and the Agreement's effectiveness in stopping the war and mass atrocities has been, and still is, inversely proportionate to its effectiveness in setting up democratic state institutions. An illuminating indicator in this respect is the fact that the formerly strongest opponents to the Agreement are today its greatest protectors and supporters.

DPA established Bosnia and Herzegovina as a state comprising two entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). The chief civilian peace implementation agency in Bosnia and Herzegovina is the Office of the High Representative (OHR). The High Representative (HR) is "designated ... to oversee the implementation of the civilian aspects of the Peace Agreement on behalf of the international community"⁸ In order to accelerate the process of implementation, the Peace Implementation Council (PIC)⁹ decided, in December 1997, to emphasise the authority of the OHR. Therefore, the High

7 The Danish Centre for Human Rights: "Making Justice Work - Scoping for Institutional Support to Ministries of Justice - Bosnia and Herzegovina", Final report, DFID, October 2002, pp. 6-7.

8 <http://www.ohr.int/ohr-info/gen-info/>

9 Following the successful negotiation of the Dayton Peace Agreement in November 1995, a Peace Implementation Conference was held in London on December 8-9, 1995, to mobilise international support for the Agreement. The meeting resulted in the establishment of the Peace Implementation Council (PIC). The PIC comprises 55 countries and agencies that support the peace process in different ways - by assisting it financially, providing troops for SFOR, or directly running operations in Bosnia and Herzegovina. There are also a fluctuating number of observers. (<http://www.ohr.int/ohr-info/gen-info/#pic>)

Representative was encouraged to use his final authority in making binding decisions on removals and suspensions, including actions against persons holding public offices or other officials.

To date, the High Representative has removed from office or suspended a total of 125 persons¹⁰, from local party leaders to a member of the State Presidency. Many official positions were affected, among others, mayors, governors, deputy ministers, ministers and prime-ministers at all levels, the president of an entity, the secret service head of an entity, judges, civil servants, company managers, etc.

Did these actions of the High Representative include elements of lustration and disqualification? The answer obviously has to be affirmative, but in a limited sense; it was a case-by-case approach personally affecting some individuals, but there was no structural process of lustration and disqualification. The institutions, as such, were neither affected nor structurally changed. And what can be said about a cathartic effect of these actions? It was equal to none.

Bosnia and Herzegovina is divided in many different ways, one of the most significant being the rift alongside ethno-political lines. This applies to practically all spheres of society, from public opinion to the institutions. All-encompassing ethno-political matrices, by generating new divisions and constantly producing differences (in order to maintain the own positions in power), are the biggest obstacle to lustration. Any kind of lustration-like measure is interpreted from the narrow, closed-minded position of ethno-politicians, and interpreted as intentional, unnecessary and unjustifiable.

An additional problem with respect to lustration is the problem of (lack of) transparency. The reform of the judicial sector is an illuminating example.

In Bosnia and Herzegovina, alongside the (de-)certification processes of police officers¹¹ and the removal practices performed by the High Representative, the lustration issue is most visible in the field of the judicial system. The reappointments of judges and prosecutors under the umbrella of the reform of the judiciary are the only processes that involve the examination of the former employment and other records of individuals for the purposes of the decision on hiring or firing them.

As a consequence of the decisions of the Independent Judicial Commission¹², approximately 500 judges and prosecutors will stay jobless. But the justifications for the decisions are not publicly announced or elaborated. The public is only informed about reappointed candidates, while there is no information about those rejected. It is due partly to this kind of practice that there is more and more speculation about the process of reappointments in the local media, and it has become a topic on the agenda of politicians, too. The main feature taken into account in those considerations is the ethnic affiliation of the selected candidates. In a certain way, the insufficient trans-

10 <http://www.ohr.int/decisions/removalsdec/archive.asp>

11 This was performed by the International Police Task Force (IPTF) within UNMIBH (currently European Police Mission, EUPM).

12 The Independent Judicial Commission (IJC) is the lead agency for judicial reform in Bosnia and Herzegovina; its first mandate was by the HR at the beginning of 2001; <http://www.hjpc.ba/ijc/?cid=160>

parency in the work of the International Community representatives in Bosnia and Herzegovina contributed to that kind of understanding amongst the public. Another reason for the uneasiness is the fact that the strategy supported by the International Community mainly continues to address the consequences, while causes are often completely disregarded.

Finally, when it comes to the issue of local involvement in all these interventions, a very illuminating assessment has been provided by the team of the Danish Centre for Human Rights which had been asked to analyse the challenges of the reform of the judiciary system in Bosnia and Herzegovina. In its final report, published in October 2002, it stated: "Apart from the concrete changes, which have taken place, the entire atmosphere between the domestic agencies and the IC also tend to change although in a more indefinable manner. It seems as if the IC at previous stages in the post-Dayton support to B-H sought to apply a rather sincere notion of partnership with their domestic counterparts. In the field of legal drafting, for instance, the international advisors spend hundreds of hours of consultation with the legal drafters in the domestic agencies. Today, the worlds are more or less apart. The team is obviously not in a position to unpack the reasons behind this change of mindset. But one can imagine a combination of two variables: disappointment and lack of results. Unfortunately, relations based on powers and authorities have replaced the notion of partnership. A highly unsustainable scenario."¹³

Therefore, not surprisingly, when asked about lustration in the judiciary, the President of the Supreme Court of the Federation of Bosnia and Herzegovina said: "It is for sure that all persons, not only from the judiciary, that hold public positions, must undergo certain experts and morality tests. The lustration process has a strong justification. However, we should not rush to clean the judiciary from those who, in fact, cannot work in this area, before we take into account what personnel solutions we have on our disposal. And I claim, with responsibility, that Bosnia and Herzegovina is faced with a personnel crisis in the judiciary."¹⁴

More or less, the situation is similar in other social and institutional areas of the country.

It is quite clear that "the key actors in the lustration process are politicians and political elites, citizens, the media, constitutional courts, and international institutions"¹⁵. But this applies to states whose institutions are genuine, and not to states whose institutions are created on the basis of compromises which include elements that should not be tolerated in modern, civilised societies respectful of democracy, *civilité*, basic rights, and fundamental freedoms. In Bosnia and Herzegovina as it is now, according to the constitutional framework set up by the Dayton Agreement, all of its key agents concerning the lustration issue are part of the problem, not part of the solution.

13 The Danish Centre for Human Rights: "Making Justice Work - Scoping for Institutional Support to Ministries of Justice - Bosnia and Herzegovina", Final report, DFID, October 2002, p. 12.

14 See "Entitetske ustavne i vrhovne sudove trebalo bi ukinuti", Intervju: Amir Jaganjac, predsjednik Vrhovnog suda FBiH, *Dnevni Avaz*, June 4, 2003, page 5. ["Entities Constitutional and Supreme Courts should be abolished"; Interview with Amir Jaganjac, President of the Supreme Court of the FBiH]

15 Horne, Cynthia M. - Levi, Margaret (2003): *Does Lustration Promote Trustworthy Government?*, p.11, <http://faculty.washington.edu/mlevi/papers/Lustration.pdf>

3.4.4 Lessons from the Case of the Republic of Macedonia

Biljana Vankovska

The results of various surveys on public opinion show that citizens of Macedonia in general and Macedonians in particular obviously belong to the most nostalgically orientated people of ex-Yugoslavia. To the question when life was better and safer, now or during the Yugoslav period, about 80 percent respond that it used to be better in Yugoslav times. One of the reasons has certainly to do with the fact that we were brought up, in what Žarko Puhovski called “soft totalitarianism”, or, to use the wording that dominated back then, in a “socialism with a human face”.

As far as Macedonia was concerned, the processes in 1990-1991 came as a surprise, and this applies to both the dissolution of Yugoslavia as well as to the state-building process. Macedonia was caught by surprise and completely unprepared for these processes. Actually, the presidents of two ex-Yugoslav republics (those of Macedonia and Bosnia and Herzegovina) were the last ones to propose a quixotic plan for the preservation of Yugoslavia. When the wars began, the dilemma was solved – gaining state independence became the only way to avoid being involved in the military conflicts.

It was only in September 1991 when a referendum on independence took place in Macedonia. Based on its results, it was decided to have a separate state. Different sentiments and attitudes towards the new state emerged, as well as new ethno-nationalist elites. Macedonia gained its independence without demanding it. In other words, the Republic of Macedonia was not the achievement of an intended state-building policy but a by-product of Yugoslavia’s disintegration. Once there was no other choice, Macedonia’s official stand was that 1991 was a glorious year, symbolically pictured as the “Third Ilinden”, referring to the Ilinden uprising of the national revolutionary movement in 1903. (According to this historical approach, the “Second Ilinden” had been in 1944 when the Macedonian people, for the first time in their history, used the right of self-determination at the first session of the Anti-fascist Council of National Liberation of Macedonia (ASNOM).) Thus, 1991 faced two standpoints difficult to reconcile. According to the moderate one, Macedonia had to withdraw from the collapsing Federation because it did not want to take part in a fratricidal war. Nationalists, however, insisted on the accomplishment of the centennial dream for one’s own independent state. They celebrated the death of ‘Serboslavia’ and the final liberation of the Macedonian people. Soon it became clear that the Third Ilinden was not the apotheosis of the final struggle but the overture to a long and uncertain period.

Developments in the Republic of Macedonia had some specific features, distinguishing the new state from what was going on in other parts of ex-Yugoslavia. The most important one was the peaceful transition to a new independent state and a relatively upward process of democracy building. Soon, there were no more military units of the Yugoslav army (JNA) on the territory of the Republic of Macedonia, since JNA withdrew from the country following negotiations between Belgrade and Skopje.

Macedonia was literally 'demilitarised' because the leaving JNA forces took all the weapons with them.

An almost endless list of problems has accompanied the Republic of Macedonia's state-building efforts since 1991. These include, to mention just a few, an extremely weak economic base, almost non-existent state and democratic traditions, an under-developed political culture as well as an immature culture of peace (or, rather, a dominant gun culture), and a turbulent and not always friendly neighbourhood. From the very beginning, Macedonia has had to face problems resulting from external disputes on the identity of the state and the majority nation in it. All attention in the Republic of Macedonia was focussed on proving that this nation existed and that it was as entitled to self-determination as any other nation of ex-Yugoslavia. However, many issues remained externally disputed, the most prominent one being the name of the state which was vetoed by Greece. This is still an unresolved issue, and there is still the bizarre name FYROM which, unfortunately, continues to be used by some states and institutions. Bulgaria was the first state to recognise the Republic of Macedonia, but the then President Želez stated that Bulgaria recognises only the state, not the nation. The Serb extremist Vojislav Šešelj once said that "we may come back any day with one military battalion and we will retrieve southern Serbia". Thus, the ethno-nationalism in Macedonia was instigated by external factors, although at the same time its internal forces were already coming to the fore.

Obviously the farewell to communism in Macedonia as well as in the other ex-Yugoslav republics was overshadowed by state- and nation-building agendas. The specific features of the communist regime, as well as the mode of the transition towards democracy, determined the way the lustration issue was and is dealt with, if at all. The case of the Republic of Macedonia's 'uniqueness' derives out of the peaceful 'divorce' from the communist federal state; hence, the majority of citizens did not bear malevolent sentiments from the communist past, while the growing insecurities even made them nostalgic for the non-democratic past. Unlike the other ex-Yugoslav republics, here the violent conflict took place a decade later. Thus, the burden of the recent conflict additionally contributed to push aside the already delayed lustration issue. The course of developments imposed another prism of dealing with the past as more urgent, regardless of the fact that many of the current problems have their roots in the communist period.

Speaking on the effects of the public debates on the past on democratic structures, one has firstly to begin with a question mark. Some authors point out that mature democracy should be in place in order to have an effective lustration. If so, is it legitimate to evaluate the maturity of the already established democratic structures? This was dubious even before the conflict of 2001, and now, in the post-conflict period, it is even more difficult to make an assessment. It would be fine to have democratic structures which would facilitate the debate and make it more acceptable for the public. As in many other countries, pluralism was vulgarised and exercised in a way that allowed for a total grip of the political parties on the state structures. The political scene was characterised by antagonising postures, party opponents being considered as enemies rather than as competitors. Therefore, a strange form of 'lustration'

has been taking place for years; taking on power would usually mean personal change in the public administration (spoil system) on a merely political (and often ethnic) ground. Paradoxically, the idea of lustration found strong supporters among nationalists from the major ethnic groups. Members of VMRO-DPMNE (Internal Macedonian Revolutionary Organisation – Democratic Party for the Macedonian National Unity) called for dealing with the communist past, having in mind the lustration of their current opponents (reformed communists). Ethnic Albanians had other ethnically-flavoured concerns and reasons to deal with the communist past, especially with respect to the purges carried out by the Communists in times of ethno-political crises (usually incited in Kosovo and spilled over to Macedonia).

What we really had during the period of the so-called 'peace oasis' were coalitions of the dominant Macedonian and Albanian parties. The habit of always having coalition governments with the participation of at least one political party of the Albanians was introduced not as a norm, but for practical purposes as a manner of integration of the Albanian national minority. Yet it was a compromise between the elites with hardly any impact on societal (inter-ethnic) relationships. Most of the ethnic Macedonians, for the first time in decades, became really aware that their next door neighbours were Albanians and not Serbs, Bosnians, Croats, Slovenians, etc. For the Albanians in the Republic of Macedonia there were also paramount changes: their imagined community that embraced all Albanians living in Yugoslavia was shattered and they had to turn to their Macedonian neighbours. However, instead of building new bridges, the inter-ethnic gap and distrust were deepening. The Macedonian 'oasis of peace' was a divided society and nascent democracy.

It is important to mention that it was not only the state itself, that was really young. The same is true for the new political elites. The first prime minister (Crvenkovski), if one neglects the short period of the expert government's rule, was only 30 years old when he took over this position, and his main opponent (Georgievski) was at that time almost as young. In terms of facing and dealing with the past, this created a difficult situation. The new elite that had emerged could not be linked to the developments of the past. Of course, there were some exceptions, the most important one being President Kiro Gligorov who had already been an influential Macedonian politician during the Yugoslav period. But Gligorov, considered at home in a rather positive way as some kind of charismatic "father of the nation", was also internationally perceived as a peacemaker and a reasonable man who managed to lead the country on a path of a peaceful state-building and playing a constructive role in neighbourly relations in the Balkans.

That may explain why some time had already passed since the emergence of the new state when the lustration issue was raised for the first time. It was not even done in clear terms, but only discreetly, because many people in Macedonia, including intellectuals, would not be able to explain what lustration really means, let alone what it is aiming at. The first initiatives for opening the files of the former secret services were launched after VMRO-DPMNE had come to power in 1998. VMRO-DPMNE declared itself to be the only legitimate representative of the Macedonian nation ("the most Macedonian political party"), having been persecuted by the communists in the past.

This also referred to the provision in the constitution of 1991 which stated that all persons who had fought for the Macedonian state and who had been persecuted would be rehabilitated.

With the VMRO-DPMNE in power, the responsible minister was the first one who changed the practice of keeping the files. He denounced the fact that the reformed communists had continued with the former (i.e. Yugoslav) practices of keeping the files when the Republic of Macedonia was already an independent state and put an end to this practice. In 2000, a law concerning the files of the secret services and the state security was adopted. It was a rather technical law on how to deal with the files which allowed for their opening, thus giving the citizens the possibility to see what the secret services had been gathering on them. It was decided that access would be possible for one year. After one year, normal files would be destroyed; only files having an historical, cultural, and national value would be kept in the historical archives of the Republic of Macedonia.

During the whole procedure, some interesting facts came to the fore. It was found out that illegal interventions had taken place in all archives since 1991; some files were not at the place where they should have been, while other files had simply disappeared. Interestingly, there was no discrimination based on ethnic grounds. When the then minister of health, an ethnic Albanian, asked for his file and got access to it, he found out that most of the people figuring in it had been his friends and were members of the same party. This caused certain turbulences, but there were practically no public debates on the whole file issue. It turned out that at least certain politicians were by far more disturbed with it than the citizens.

This may have been one of the reasons why the initial intention for a next step, the adoption of another law which would call for politicians and public officials to declare whether they had collaborated with the secret services, was not realised. But more important was the fact that in this period, the summer of 2000, serious differences arose within the coalition government which had brought together a nationalist Macedonian party (VMRO-DPMNE) and the nationalist DPA (Democratic Party of the Albanians). They managed to overcome the crisis by a joint agreement, but this enforced the tendency of the state to become a place of organised crime. One of the reasons was the division along ethnic lines with respect to state and public structures, with most of the Albanians staying outside of them, while most of the Macedonians were inside. The result was a division of interest zones and business spheres which resulted in detrimental effects.

This was the situation shortly before the armed conflict broke out in February 2001. The swift military escalation was totally unexpected. However, the crisis went on for only six months. This is not the only feature that distinguishes Macedonia from other parts of ex-Yugoslavia. Apart from the fact that the military conflict was terminated within six months, it involved different motives, not only and sometimes not even mainly political but also criminal ones. The conflict intensified due to the fact that forces from outside stepped in, as was the case with the new UÇK now fighting in Macedonia. At a certain point, it looked as if the Republic of Macedonia was on the

verge of civil war. It is not certain that this was really the case because the citizens were not persecuting and killing each other; it remained a conflict between organised structures. The conflict came at a very late stage, ten years after all the conflicts in this area. It ceased as abruptly as it had begun, mainly due to the intervention of the international organisations which brokered the Ohrid Framework Agreement in August 2001. Unfortunately, the solution also offered legitimacy to those political parties which had actually thrown the country into war.

Interpretations of the outbreak of violent conflict in the Republic of Macedonia, like those of the ten-year period of peace, reflect similar elements of "virtual reality." Analysts' interpretations of the developments in early 2001 vary greatly. Was it a "fake war" whose background was a secret agreement to divide the country, including its spoils? Did the crisis arise from criminal activity involving both Albanian and Macedonian groups? Did Albanians employ violence to incite a dialogue over the final political status of Kosovo? Was this an instance of "controlled chaos" to speed up the process of federalisation in the Republic of Macedonia? Or was the violence generated by problems related to issues of human and minority rights? While these different views are not mutually exclusive, they do draw attention to highly divergent explanations of the Republic of Macedonia's security condition and future.

One important part of the peace plan was a rather loose amnesty law on the Albanian rebels. It was not only implemented but another step forward was taken. The former UCK transformed itself into a political party, won the overwhelming support in the parliamentary elections and its elite got to the highest posts in the political establishment and the public administration. What dominates nowadays, in terms of facing the conflicts of the past, is an amalgam of officially promoted amnesia and hidden frustrations and traumas. One of the main challenges on that path for post-Ohrid Macedonia, is related to disclosing both the objective and subjective truths/perceptions about the conflict, depending on the degree of readiness of the societal actors to face problems and talk openly about them. At the time being, there is reluctance to speak out about the frustrations and dissatisfactions arising from the peace process, particularly on the side of the governing elite and the international community. Anybody who dares to speak in a critical and open way takes the risk of being labelled a traitor or trouble-maker. The Ohrid Framework Agreement equals a sacred document, or in other words one should believe that it really ended the conflict regardless of the distressing processes that take place on a micro societal level. Yet many reject the very thought of post-conflict reconciliation either because of the very low death toll or because of differing qualifications given to the 2001 happening (war/conflict/rebellion/terrorist attack, etc. to mention just a few of them). The societal peace-building may not resolve all the problems, but it can encourage the human dimension of the conflict transformation, i.e. to make affected people and participants' *voices heard*. The society has the *right to know* what really happened, why it happened, who benefited and what the losses and consequences of the conflict were.

3.4.5 Lessons from the case of Albania

Ben Andoni

The lustration issue was recently once again in the headlines in Albania, this time connected with the problem of the files of the secret services on writers. In May 2004, the brother of an executed poet asked Ismail Kadare, a very well-known Albanian writer living abroad, to use his power and influence and to speak out in favour of opening the files. This request took the form of an open letter published in a newspaper. The letter was signed by a man who is the brother and cousin of two Albanian poets executed more than twenty years ago. No one could have foreseen the uproar which was triggered by this initiative.

Surprisingly, Ismail Kadare, in such matters till then usually very indifferent, answered publicly one day later. A stormy debate on lustration began again in Albania. It was the second time within a rather short period that such a public debate took place. The statements showed that there were obviously two camps, one in favour of opening the files, the other one opposing it. Some intellectuals supported the idea to begin with the files on the writers, others rejected it. The number of supporters and opponents was almost equal. Even the president of the country took part in this debate. "I will ask the executive to begin with the process for legislation concerning closed archives," he declared.

This was not really astonishing for the Albanians since, some years before, the first democratic prime minister of the country had prepared a lustration law speaking of the necessity of a "cleaning of moral figures". What, however, bothered many people in Albania now, were the questions: Why is it only Kadare who is interested in the files? Why is it only Kadare who has started this initiative? And another big question mark was raised within the Albanian society: Why is the issue about the files of the writers only and not the files in general?

Let us turn our attention again to Kadare. He declared, in this situation, that he had talked on the lustration and the files issue time after time, but that, unfortunately, his voice and the voices of his friends had remained in solitude when the issue was on the files in the spheres of literature and art. A close friend of Kadare, who had also been imprisoned for some time, made even more far-reaching statements and conclusions. He accused a member of the parliament and a well-known writer. As for the writer, he claimed that she had been "the real expert of punishing the artists". She replied immediately that she had only written literary reviews and critiques on poems of the deceased, being obliged to do so by her position as the poetry editor of a newspaper. She added that she had written an artistic analysis with the ideological parameters of the time and not a political analysis. She concluded by claiming that she had only come to know about the punishment of the poets in 1994 and that it was a big trauma for her because the late poets were punished at the time when her review was published. The accused member of the parliament just noted that there had been a public process about his file.

Some writers have noted that the initiatives concerning the persecuted artists are coming very late and raise some difficult questions. Fatos Lubonja, a well-known writer and also a former prisoner, said that if the aim is catharsis, he is fine with that, but if there should be other reasons, then the case would be more complicated. Watching the media campaigns, he fears that the motivation may be purely personal, and this would, in his view, result in a serious damage not only for the former dissidents, but for the whole society.

One could also add for Ismail Kadare himself. There was a collection of material prepared by the Director of the National Archives with documents against Kadare - the so-called "Dossier K". Many Albanian writers have asked if Kadare has a problem with his own conscience. One writer and politician pointed out that Kadare enjoyed some privileges during the socialist period, to publish, travel, and have a car. Nafiz Bezhani, the former head of the Commission on the Scrutiny of Figures, joined the critics in saying that Kadare had better be silent on that matter. Bezhani claimed that Kadare had had the possibility of access to party and state archives, due to the personal endorsement of Enver Hoxha. Kadare responded angrily to all these statements, claiming that a "deafening chorus" was trying to prevent the discovery of the truth and that a kind of solidarity had emerged, bringing together "killers against victims" and "guilty against innocent" people. Their aim was, according to Kadare, to cover the truth.

In any event, the singling out of the issue of the writers' files met with strong reservations on the side of many writers themselves. Some of them asked: "Why only the writers' files? Are the writers the bad part of the Albanian people?" Others interpreted this kind of "privilege" as an attempt to prevent the opening of all files and thus to prevent people from knowing all who were responsible for the evils in the past. The former president Sali Berisha argued in a similar sense when he said: "We are all jointly guilty, and we all jointly suffered."

In my view, we should open all files in order to see who kept the dictatorship alive, who really caused the persecutions, who was responsible and who was guilty. Not less important is that if we lustrate our society, it should be carried out with the aim that we should never repeat the evils and mistakes of the past. It is difficult for our mentality, but not impossible.

3.4.6 DISCUSSION (Extracts)

Zagorka Golubović

I would like to share with you some research results on public opinion related to memories of the past and to the issue of what kind of recalling of the past has what kind of influence on the present. The analysis is based on a survey that was conducted in late 2001 and 2002 through in-depth interviews with citizens in 20 cities of Serbia who expressed their memories of the past. The most important feature indicates a certain kind of multi-layer memory which includes memories of different levels and different expressions of consciousness of the past. Particularly important are memories of two different periods in the past. The first one refers to a more distant past – the era of Josip Broz Tito. The second one refers to the more recent past during the 1990s, the period under Milošević. It is quite important to distinguish between these two memories. However, an interesting phenomenon is common to both types of memories. I would call it a short memory which has a tendency to erase unpleasant experiences from the past by forgetting them and to remember what has been positive from the first period, and, when we speak about the second period, to suppress what was negative and to push it under the carpet.

The memory of the Tito era is increasingly characterised by oblivion of the repressive nature of the, as Žarko Puhovski called it, soft or more moderate totalitarianism compared to other countries in Eastern Europe. Due to this more moderate form, there was the danger that enabled citizens, when they were looking back from a far perspective, to forget the repressive character and evils of the period and overly emphasise what had been positive. There was also a significant emphasis on the perceived advantages of the Tito era compared to the current period. Most often mentioned were factors like social and physical security, free education and health security, insurance guaranteed by the state, and the low criminal rate which increased during the 1990s and afterwards.

What is the outcome of these kinds of memories that erase negative elements and glorify, in a certain way, positive ones outside the realistic context of this period? It is nostalgia for ex-Yugoslavia which includes a nostalgic memory of having lived in a country that offered better conditions than all other East European countries. A rather high percentage looks back to the past in a nostalgic manner and gives preference to a socialist past, as compared to this kind of capitalism that took place in the period of transition. Most of the citizens are naming it a “wild capitalism” which is tearing down all the legacies aiming at the benefits and the well-being of the citizens and their basic needs. This kind of nostalgia can obviously be interpreted as one of the main reasons for the obstacles to lustration.

The vast majority of citizens that were included in this research are looking back to the era under Tito as a golden age of past history. Comparing the 1990s, i.e., the more recent war past, with the more distant past (the “golden age”), most of the citizens were prone to escape from the second type of memory due to the vast human casu-

alties which were a result of the conflicts in the 1990s, to the war crimes committed, to the demonising of the country worldwide, to the isolation and the sanctions imposed by the international community. It was also due to the rapid differentiation in terms of social strata in the country, leading to the rapid enrichment of the war profiteers on one side and to an also rapid impoverishment of many citizens on the other side. Memories of this period differ substantially from the memories of the more distant past, with the obvious tendency of many citizens to blame the regime of Milošević for all the evils perpetrated in Serbia during this period. However, they find it very difficult to admit that the Serbs were capable of perpetrating war crimes. It is very difficult for them to face the fact that the people who are justifiably indicted on the basis of crimes against humanity are Serbs, or they want to suppress this from their memories arguing that not only Serbs committed war crimes, but all the other participants in these conflicts, too. In other words, they are much more likely to push the issue of war crimes under the carpet. They explicitly state that we should forget and not return to this issue, because otherwise the demonising of Serbia would be re-imposed, the nation would be treated as a criminal one, and the country would not be integrated in the European Union.

Considering the current period, i.e., the period after the fall of the Milošević regime, Serbian citizens are likely to be much more strict and rigid in their assessment of the new democratic authorities and much more critical of the new democratic establishment. They focus exclusively, or at least mainly, on economic issues and living standards as the main problems, and they demand that these issues be solved. The new authorities are criticised for not paying enough attention to these issues. Though the surveys show that there is an understanding that it is impossible to change everything overnight, the citizens are disillusioned and disappointed by what the new authorities have achieved over the past. They think that the changes were too slow and that the authorities did not fulfil the basic promises they offered. Therefore, there is an increasing frustration which is reflected in low voting turnouts or even in turning to some representatives of the old regime parties and the strengthening of radical right wing parties which, unfortunately, have a rather large constituency today.

This frustration of many citizens is instigated by some experts, especially by some historians. When you take a look at the new history textbooks for primary and secondary schools, as well as those books which are used at the universities, you will find, in most of them, many examples of falsifying the past in terms of extreme anti-communism and in favour of nationalism. Nationalism is the framework of reference that they use to assess the communist period as well as the period under Milošević. This type of memory building is also an obstacle both for lustration and for the aim of a general overcoming of different negative characteristics and evils of the authoritarian past.

Jakob Finci

I would like to touch upon the part of the discussion that referred to the establishing of the Commission for Truth and Reconciliation in Serbia/Yugoslavia by President Koštunica in March 2001. The biggest blow to the commission was the stepping down of three prominent persons who were nominated to be members of the commission,

including Professor Dimitrijević, who presented his contribution in this panel. It was the biggest setback, because this was a signal, at least to those people and organisations we are used to calling the civil society. This was not the right thing to do, as it turned out later. Simultaneously with this commission, I think there is still a very vivid and active group of B92 which works mainly on collecting data which could certainly be used.

My reason for joining the discussion is a question to Professor Dimitrijević. With the return of Koštunica to power, does he see an imminent danger or risk or possibility that this commission, which vanished but did not die completely, could come back to the scene as a vampire? I am asking this, especially because discussions around the Hague tribunal are still going on and the assessments are indicating that this commission has been formed in order to prove that we do not need any Hague tribunal and that we are able to sort it out ourselves. In Bosnia and Herzegovina, there is, since February 2000, an association of citizens trying to force the government to pass a law establishing a commission on truth and reconciliation with a rather different mandate than the commission established by Koštunica and with a much higher participation of citizens, because everything is based on a series of testimonies of those people who are survivors of the war in Bosnia and Herzegovina. It should not only be possible for people to speak out their truth but also for others to gather information in order to be able to write on this part of our history.

It is common sense that history has been written by the winners, and we know that the war in Bosnia and Herzegovina was stopped, formally seen without winners or losers. But, all three sides took this opportunity to create three different histories. As we have education systems divided on ethnic lines, we teach our children that our neighbours are enemies. By teaching our children so, what can we expect in 20 or 30 years, but a new war? A side effect of this commission for truth and reconciliation should be a major and comprehensive data base which would be very helpful for historians.

When we mentioned truth and reconciliation here, there were some remarks with respect to the term "catharsis" saying that this term was not adequate and appropriate. In my view, the essence is not in a name. Truth does not always serve reconciliation. You will always hear people saying why should they reconcile with anyone when they did not fight anyone. What we are trying to establish in Bosnia and Herzegovina, is, as I think, very important, because it is important to have the process itself, the process of testifying and the process in the sense it has been understood, as we heard, in the United States. If you swallow, for ten years, all sorts of things, and you are full of negative things, then catharsis as diarrhoea is not such a bad thing at all.

Zoran Pajić

It is obvious that our discussion on lustration and reconciliation is a discussion of turning back to the recent past. In this context, we should not forget that today in the region of ex-Yugoslavia there exists, learning, studying, and entering into active life,

a generation of young people born toward the end of the 1980s. These are young people who are between 16 and 20 years old. They will develop new experiences and a new patriotism. Putting it simply, these young people do not have anything to replicate. It seems to me that, for better or worse, we are replicating the past continually, even in this meeting. We get together, we meet, we enjoy our meetings forgetting that in a way we are replicating and recreating the past which is the past – it does not exist anymore and cannot be renewed. I believe that the young people I am thinking and speaking about have no immediate experience of joint existence in life. They have no experience of the tensions in ex-Yugoslavia during the 1980s. They have no experience of the conflict or direct hatred. If we count on the processes of lustration and confidence building seriously, including reconciliation, I think we had better hurry because the generation I am speaking about is not interested in it any longer. And it has another feeling with respect to the whole ex-Yugoslav region. For young people in Bosnia and Herzegovina, the neighbouring counties are foreign countries. For my generation, it is still not so. When someone of my generation goes to Dalmatia or the Croatian coast, we say we are visiting “our” seaside. Young people, however, would say, in that case, that they are going abroad. This is a limiting factor which should be taken into account if we want to be serious about these kinds of processes.

Now to the idea of the truth commission. I have supported this idea from the very beginning, and I have mobilised many people in Bosnia and Herzegovina in this sense. Nevertheless, I have a doubt and a sceptical feeling. I believe that all those who perpetrated crimes in the wars in ex-Yugoslavia, must establish their responsibility and be brought before the courts, whether these are national or international courts. But I see the real fact of the truth commission role. It is meant for those people who have committed a grave violation of their professional integrity, whether we speak about medical doctors, journalists, priests, or judges. These are people who actually assisted and abated evils and crimes. These are people who ruthlessly lied, who underwent a voluntary brain washing and who waged their own wars by spreading lies through literature, journalism or through preaching in churches and mosques. It seems to me that those who were responsible for the crimes should be brought before the courts. But a vast army of their supporters and ardent perpetrators of their ideas remains completely untouched and won't be subject to lustration in the way we expect it to be. As for my personal experience, I observed scepticism with respect to a global reconciliation within Bosnia and Herzegovina. But I am very optimistic about some minor segments where it is feasible.

I have a very positive experience from the past six to eight months in Mostar. As you know, Mostar is again in the limelight of the international community. National and ethnically defined municipalities are now being phased out, and there is a project of reunification of the city. I work in Mostar on confidence building measures involving civil society, and I saw and see a massive enthusiasm there. This kind of small scale approach would achieve more efficient results.

A comment on lustration of the judiciary system. It is true that there was no public explanation as to why 500 or a couple of hundred of those who reapplied for their

functions that they were holding did not get an explanation as to why they were not reappointed. However, let us observe the whole situation from a different angle. Those colleagues who were not reappointed to these positions quite frequently know the situation and know it would be the best not to publicise these reasons. For those who are knowledgeable about the international law, let me remind you that rejections of candidates for ambassadors to foreign countries are not explained in order to protect the integrity of these people. I want to say that those who were not reappointed will be told why they were not reappointed. It is very typical that the media in Bosnia and Herzegovina called for these reasons to be publicised and not those people who were affected personally. You can see that there are no legal proceedings but media campaigns in order to publicise these reasons. I have to point out how much I oppose the development of media activities in Bosnia and Herzegovina because I know how much money was wasted by international donors who paid for training and education for independent media. The results are disastrous. Media are heavily corrupted and I would dare say that in Bosnia and Herzegovina I can see what I saw in 1990 and 1991 – the hatred speech, the speech instigating hatred and denunciation is back. I would like to send out a warning because the situation is not being taken seriously.

Jovica Trkulja

The drafting of the lustration law in Serbia raised many questions and discussions, and the whole process, including the passing of the law, was at least important in the sense that lustration became a public issue. But many indications lead me to the conclusion that, unfortunately, in the foreseeable future this law will just remain a book on the shelf.

It is striking in the context of what we discussed during this seminar that serious legal and political measures with respect to lustration and attempts at overcoming the evils of the authoritarian past were taken in the Czech Republic, Hungary, Germany, and Poland. Something half way through was done in Bulgaria and Albania. It is rather indicative that those countries which did nothing serious in this area and which are examples of unsuccessful lustration attempts are Serbia and Montenegro, Croatia, Bosnia and Herzegovina, and the Republic of Macedonia.

Within those countries which represented what Žarko Puhovski named „soft“ authoritarianism, a clear distinction between executioners and victims was much more difficult than in the countries of hard authoritarianism. An illustration of this thesis gives us the fate of the dissidents. In Albania, for example, the writer Ismail Kadare was a dissident who paid a terribly high price for his engagement, and his human rights were violated in a most dramatic way. This was the fate of dissidents in the hard authoritarian countries, such as the Soviet Union or in Czechoslovakia. Looking at the case of Serbia, things are different. Here there are two or three dissidents who suffered as Ismail Kadare suffered, who were in prison, etc. Most of the other Serbian dissidents were writers who had books with high circulation, very wealthy people, academics, and they did not suffer so much. I call them false dissidents, and I think it is very important to point out the mechanisms of the soft authoritarianism that were producing

false dissidents. It is bad that they cloned themselves in different publishing houses and universities. This makes our problem even more complex and difficult. We have not overcome the authoritarian past; rather it is recycled. This is obviously the case in the sphere of the politicians. And we heard this is also the case with historians which makes our trouble even greater.

Dino Abazović mentioned that in Bosnia and Herzegovina oligarchs are trying to control the key developments related to institutions, personnel, etc. I would like to emphasise this phenomenon, because we are witnessing the same one in Serbia. Oligarchs and tycoons are entering the scene in order to legalise what they robbed in different illegal manners. They do it quite successfully. I believe it will become a rather important determinant in various countries, and it will be much more difficult to overcome these obstacles. Maybe we should be reminded of an example we have in Serbia right now. One of these tycoons who profited very much from the Milošević regime and has built a powerful economic-financial empire in the Balkans actually realised that in this incoming wave he should also draw into the political sphere. It is rather indicative that in the second round of the elections he received almost 30 per cent of the votes although, according to his own words, his constituency is around two per cent. We should be really concerned about these kinds of developments.

The pillars of the authoritarian regimes and other mechanisms remained unaltered. These pillars are linked to the monopolies of the financial capital assets, the media and the ideological apparatus, as well as the state apparatus and the military-police complex. We should take a realistic look at these mechanisms and pillars of rule that are still alive, even in the countries with a successful transition. This is and will remain a major problem, because, as I think, this kind of rule will be unavoidable.

Magarditsch Hatschikjan

I have three questions. The first one is referring to the title of the panel: *Public Debates on the Past: Effects on Democratic Structures*. It is mainly addressed to the panellists. What are your assessments on the effects? In order to simplify the question, is your assessment that no lustration is equal to a less stable democratic development and less stable democratic structures, or the inverse being that more lustration is equivalent to more stable democratic structures? This is just a question but I am adding that if you all say yes to both of these questions, then Albania must be, by far, the most democratic country of the region, because it is the only country where a lustration law was passed and, at least partly, implemented. Serbia has a lustration law, but all the experts on Serbia present here said it will not be implemented. So, the first question is if there is a direct effect of lustration on democratic structures and developments. By the way, some comments, especially on Croatia, indicated clearly, albeit implicitly, a negative answer, because it was argued that Croatia has nothing on lustration but has shown, at least during the last five-six years, an obvious progress in democratisation.

The second question is related to expectations and time periods. Are our expectations not too big? I have heard the word catharsis many times these days. Could you tell me

one case of catharsis which has happened at once? And then, if Jovica Trkulja is right that there is a continuity of, I won't say system, but regime, we should stop speaking of lustration now, because why should the same regime be in favour of lustrating itself? The question is: Do we need more time? In this context, a look at the developments in Germany after 1945 could be helpful. Normally, Germany is being seen as a success story with respect to "overcoming the past." But a serious reconsideration of the past (before 1945) began at least 20 years later, and it was started by a new generation which had not been involved itself.

My third question is addressed to Vojin Dimitrijević. I understand very well the reasons which have led to the failure of the attempts to establish a truth commission in Serbia. Despite or even because of that, is there still a possibility of a real truth commission, not as an alternative to lustration but as an additional effect which could help with what many are naming catharsis? Would it be theoretically thinkable and in which time period would it be thinkable?

Vojin Dimitrijević

First some comments on the tycoons issue which was already mentioned by Jovica Trkulja. One thing astonished me very much when I went to Slovenia on 23rd June. It was a national holiday. That is the day when Slovenia liberated itself from Yugoslavia, so to speak. I went to a party and saw that the majority of invitees were former high ranking officials from the Socialist Party of Serbia. They have become managers and general managers of business companies. Everything is okay with them, and their partners in Slovenia are happy with them.

Concerning the development in Germany after 1945, we have to be very careful with comparisons, because sometimes you are accused of identifying the Serbs with the Nazis. I believe that this process in Germany lasted from 1945 to 1968. That means it lasted for 23 years, but it still happened. It was completed, and I believe that the same thing is going to happen here when the sons start posing questions to their fathers. What is very worrying here and what was also already mentioned, is the fact that these sons will not be given the opportunity to be properly taught about some things. For example, we are witnesses to recent changes to the law on education which will have the consequence that our daughters and sons will be given a very poor educational system. We are still not fully ready for many things.

Now to the question raised by Jakob Finci which is directly linked to the question by Magarditsch Hatschikjan. What are the chances of this commission for truth and reconciliation which has never been officially abolished? What are its chances of gaining operational status once again? The Federal Republic of Yugoslavia does not exist any more, as you know. If this commission is to be established at the level of the Republic of Serbia, we need a government decision on that issue, but also a clear definition of the rules for its operation. One of the reasons that this commission was established was actually clarified to me today. Maybe someone saw the chance in establishing this commission in order to be completely relieved and freed from any indictments coming

from the Hague tribunal. Sixty percent of the citizens in Serbia actually have very negative feelings toward the Hague tribunal, according to a poll conducted two weeks ago.

As I said, reconciliation in this divided society has to be a reconciliation within the two parts of Serbia and reconciliation of the Serbs with others. I believe that this internal reconciliation has been carried out because when you see all the courtesies exchanged between the two presidential candidates you can then conclude that some of the hostilities of the past have been eliminated. But, this kind of compromise in Serbia will lead to some other difficulties, difficulties in communicating with others.

A sort of truth commission is only conceivable on a regional level in order to deal with all the things that happened in the past. There are some initiatives in this direction which can fail, as well, because it seems to me that the right moment is of major importance. I believe that in Serbia this historical moment has been omitted, and this makes the adoption of the law in parliament even more difficult. This law, because it has not been used at all, will become even more difficult to be used in the future because it is almost forgotten and laid aside.

Finally to the law on lustration. It was misinterpreted many times, and a majority of our legal elite almost resorted to forging this good law. I believe that lustration cannot be conducted on the basis of this law. Of course we cannot forget the period that we want to refer to. The period we are mainly referring to is the period of the 1990s. It actually assumed a kind of ambivalent position in the memories of our citizens, but if we want to talk about attempts to raise the feeling of shame, I believe that it will not happen in our situation, even though there are some efforts of historians in Serbia who are trying to contribute, by their papers and reviews, to the overcoming of the lies that are spread about Serbian history.

Žarko Puhovski

Adding to what was just said on the possibility of a commission on a regional level, I would like to mention an initiative of some NGOs from Serbia, Bosnia and Herzegovina and Croatia to establish a regional documentary centre. It would serve as a basis for what some of us were already talking about, i.e., gathering material for interpreting the past events.

Secondly, some comments on the term “reconciliation”. I think that this is, in our context, a wrong term. In my view, we should seek for a process of normalisation. I believe that people have to suppress their feelings of hatred, or maybe we can say okay, hate each other, but do not kill each other. Everything else is too demanding and can produce counterproductive or even the opposite effects to those intended.

There were some comments on what young people accept and what they do not accept. They do not accept some important facts and statements, because they were raised as political idiots, to put it a little bit cruelly. In all post-Yugoslav states we have a lot of young people belonging to radical right wing parties. That means that we

have to do something for these young people, we have to offer facts and let them judge for themselves.

Some other contributions on the situation in Bosnia and Herzegovina during our discussion raise at least my doubts, if not my contradiction. Okay, I agree that there are some things that need to be brought before the court. But at the same time, we have the practice in Bosnia and Herzegovina of not having a judge but more of an arbitrator. This means that there is a decision by that judge who says that by his document or his paper, at that date and that time, this person is forbidden to practice his profession in the court of Bosnia and Herzegovina, period. Then we have all kinds of international interventions – a kind of protectorate after free elections. It has actually managed to disqualify decisions freely adopted in the parliament of Bosnia and Herzegovina by two-thirds majority, and this is something that cannot be accepted.

So we come back to the very beginning. We come back to the complete misunderstanding of the concept of democracy, the belief that democracy is based only on free elections. That leads to absurd perceptions of democracy: The last High Representative offers his hand and shakes his hand with the first freely elected president – and that's it. The same mistake was made in Kosovo. We cannot conduct elections under the conditions of complete immaturity of the constituencies. That is why I spoke about the fact that lustration is a kind of intervention in the conditions of complete immaturity of the constituencies. The German model is very important because it sets precise criteria for disqualifications of judges, university professors and public servants. There are very precise documents about that, and these documents are the reason why the current German law on lustration is the most precise one ever elaborated.

Yesterday, we heard the terms executioner and victim two times. Please let us be very careful with these terms, because they have very different connotations.

Finally, when we talk about democracy and lustration, we can say that lustration actually strengthens the awareness of democracy. However, in the Croatian case, democracy excellently functions on ethnical levels; you drive all the Serbs out of their places or cities and then you can conduct democracies. It is typical not only for Croatia. There are some other countries around the world that have done the same. So, once you clean the scene, you, as a family, try to establish some pillars. Croatia is an excellent example of post-western ethnical cleansing conducted in a democratic environment. But for those who care about democracy, there exists an important question of moral foundations – the moral basis of democratic rationality that cannot be conducted without lustration.

Dino Abazović

In the context of quasi-democratic structures in Bosnia and Herzegovina, the lustration issue is connected with many paradoxes. The Dayton Agreement does not include the proviso that lustration has to be underway within the process of transitional justice before institutions start functioning and begin disqualifying people in an appropriate way and in the way they deserve. But it turned out that the measures

taken by the international community, as well, are having no effect on democratisation or democratic structures. On the contrary, they are strengthening ethno-political concepts and insisting on these kinds of division. The trouble is that you can replace as many people as you can or want, but the institution generates new personnel and nomenclatura that will continue functioning in the way they did before. So the qualification/disqualification effect is of an individual, minor, ephemeral character. Just an example: in a press conference three days ago, the President of the Republika Srpska, one of the entities in Bosnia and Herzegovina according to the Dayton Agreement, publicly declared, on the occasion of the most recent measure of the High Representative, who had replaced eleven high ranking officials permanently and 49 conditionally, saying, "Mr. High Representative, you can dismiss and replace everyone but you cannot replace and dismiss the Serbian nation and republic." I think this paradigm is probably the same in the other ethnic constituencies in Bosnia and Herzegovina

Biljana Vankovska

It was not my wish to instigate nostalgia but once Zagorka Golubović presented her analysis and thoughts I realised that this nostalgia could be a serious obstacle. These kinds of cosmetics of the past could be misused. I used this in terms of the Macedonian situation, because the situation is disastrous and desperate. There is an incredible degree of political apathy. It is a society of politically wandering people, therefore my scepticism about identifying potential subjects and actors who would take over this action of lustration. What we have is continuous lustration because each government is lustrating, in inverted commas, the previous ones. Some minor actions were taken, and now we are facing post-conflict challenges in terms of a post-Ohrid Macedonia which repeated the scenario.

The international community did not learn a single lesson from previous conflicts. After our conflict and the signing of the Ohrid Framework Agreement in August 2001, everything was done in order to organise a successful parliamentary election and to confirm the continuity of a pluralistic democracy. Not only did we have an election and got democracy, we also had election engineering. Mr. Solana came before the elections to arrange for everything and to agree that the next government of the Republic of Macedonia would be a coalition between the winners from the Macedonian and the Albanian sides. On the Albanian side, there was no dilemma at all. More than 80 percent of the constituents would vote for those who fought for changes. On the Macedonian side, it was quite different, similar to the situation in Serbia a few years ago. The vast majority voted for the Social Democrats, some of them wishing to get rid of the VMRO-DPMNE which destroyed the state. Some of them were angry because the VMRO-DPMNE did not defend the state.

Another point which I think is very specific is that we had a fabricated conflict; it was not a real, genuine conflict. Now the political elite and the coalition governments actually function as two parallel governments; they are not willing to work jointly, and they do not know what to do next. The civil societies are divided. Peace building at the grass roots level and at the social level, is a necessity, but very difficult to achieve. We

have in post-Ohrid Macedonia, an amnesia which calls for oblivion and for not addressing any contradictions that are still present. There are legal constitutional reforms but there is no peace building between the people who suffered, no measures that would enhance normalisation, as Žarko Puhovski would put it.

Our options are weak, as our elites are weak. I am not against lustration. However, I wonder who the real subject of it would be. The most important element, in my view, is not the text of the law, but the implementation. Who would be the top decision maker to assess who made which mistakes?



Appendices

Appendix I

Dossier - Zaključci i preporuke

1.1 Predgovor

Ovaj dossier je rezultat Radionice za preporuke (26-29. maja 2005. u Solunu), koja je organizirana kao zaključni seminar projekta Razotkrivanje skrivene povijesti: Lustracija na zapadnom Balkanu. U toj su radionici sudjelovale predstavnice i predstavnici organizacija uključenih u projekt: Goce Adamčeski (koordinator projekta, FOSIM), Elsa Ballauri (izvršna direktorica i koordinatorica projekta, AHRG), Sheila Cannon (direktorica programa, CDRSEE), Nejra Čengić (koordinatorica projekta, CIPS), Srđan Dvornik (izvršni direktor i koordinator projekta, HHO), Magarditsch Hatschikjan (direktor projekta, CDRSEE), Corinna Noack-Aetopoulos (koordinatorica projekta, CDRSEE), Dušan Reljić (član Upravnog odbora i supervizor projekta, CDRSEE), Aleksandar Resanović (izvršni direktor i koordinator projekta, CAA) i Nenad Šebek (izvršni direktor, CDRSEE). Ovaj dossier je napisan i uređen na osnovi njihovih priloga i diskusija.

1.2 Pregledni sažetak

Proces suočavanja s prošlošću i jasnog raskida s njom osjetljivo je i sporno pitanje u svim postautoritarnim zemljama. Projekt Razotkrivanje skrivene povijesti: Lustracija na zapadnom Balkanu pokrenut je da bi se ocijenile promjene na tom planu na zapadnom Balkanu. On je napose propitivao zakone o lustraciji i javnom pristupu dosjeima bivših tajnih službi, njihovu primjenu i opće javne rasprave o prošlosti u zemljama ove regije. Glavni je cilj projekta bio unapređivanje javnih rasprava o prošlosti, čime bi se pridonijelo i poboljšavanju zakonodavstva, procedura i praksa u vezi s lustracijom i javnim pristupom dosjeima, proširila pravna i politička svijest te ojačala uloga civilnog društva.

Glavni nalazi i zaključci projekta pokazuju značajne razlike kako u zakonodavstvu i praksama lustracije, tako i u javnoj dostupnosti dosjea bivših tajnih službi. Ukratko, na zapadnom Balkanu nije došlo do lustracije. Čak i u slučajevima u kojima su bili usvojeni odgovarajući zakoni o lustraciji, vlasti ih nisu primijenile. Zakoni o javnoj dostupnosti dosjea i njihova primjena u najmanju su ruku nezadovoljavajući i neprimjereni. Interes javnosti bio je usmjeren na druga pitanja, a civilno društvo nije bilo dovoljno snažno da to pitanje dovede u središte pozornosti. Informacijski mediji matične struje nisu to pitanje postavili na javna agenda na način i u opsegu kakvi bi bili primjereni i nužni. Većina međunarodnih aktera uključenih u izgradnju demokracije na zapadnom Balkanu poklanjala je malo ili nimalo pozornosti spornim pitanjima bavljena prošlošću. Sve je to imalo negativne reperkusije po demokraciju i vladavinu prava.

Premda nema jedinstvenog modela zakonodavstva o lustraciji i procedurama koji bi se mogao uspješno primijeniti u svim zemljama regije, neki dijelovi zakona i procedura primjenjivi su i preporučaju se za sve zemlje. Zakoni o lustraciji i javnom pristupu dosjeima tajnih službi ne bi trebali pokrivati samo razdoblje do 1990. nego i ono nakon toga, osobito 1990-te godine. To je osobito važno za većinu postjugoslavenskih država. Vlasti bi trebale djelotvorno primjenjivati usvojene zakone o lustraciji i javnom pristupu dosjeima tajnih službi. Parlamenti i ostale nadležne vlasti trebali bi striktno i redovito kontrolirati njihovo provođenje. Vlasti bi u pripremanje i provedbu odgovarajućih zakona i postupaka trebale trajno i sistematski uključivati nevladine stručnjake i organizacije. Međunarodne organizacije trebaju nastaviti promatrati i pomagati zakonodavstvu o lustraciji i javnom pristupu dosjeima bivših tajnih službi, kao i njegovom provođenju. One bi trebale nastaviti novčano, tehnički i profesionalno podržavati inicijative i projekte (kao što su komisije za istinu) kojima je cilj poboljšanje zakonodavstva o lustraciji i javnom pristupu dosjeima bivših tajnih službi i njegovo provođenje.

1.3 Pregled glavnih aktivnosti i dostignuća

Centar za demokraciju i pomirenje u jugoistočnoj Evropi (CDRSEE) planirao je i proveo projekt Razotkrivanje skrivene povijesti: Lustracija na zapadnom Balkanu između 1. februara 2004. i 31. jula 2005. Sudjelovalo je pet organizacija partnerica sa zapadnog Balkana:

- Albanska grupa za ljudska prava (AHRG) Tirana,
- Centar za interdisciplinarnе postdiplomske studije (CIPS) Sarajevskog univerziteta,
- Hrvatski helsinški odbor za ljudska prava (HHO) Zagreb,
- Fondacija Institut Otvoreno društvo Makedonija (FOSIM) Skopje,
- Centar za antiratnu akciju (CAA) Beograd.

Projekt su financirali Evropska Unija i USAID.

Ovaj projekt je stvorio i proširio regionalnu mrežu nevladinih organizacija i pokrenuo nekoliko regionalnih i lokalnih aktivnosti u svrhu jačanja dobre vladavine, vladavine prava i sudjelovanja civilnog društva u demokratskom procesu. Poblize, projekt je unaprijedio debatu o zakonodavstvu i procedurama o lustraciji, o propisima o javnom pristupu dosjeima bivših tajnih službi, te proširio sudjelovanje građana u javnoj debati o prošlosti na zapadnom Balkanu.

Definicija lustracije koja je predstavljala okvir projekta i određivala njegov sadržaj usuglašena je među uključenim organizatorima tokom Radionice za planiranje. Odlučeno je da se ne koristi šira definicija, koja obuhvaća sve moguće komponente "dekomunizacije", već uža, koja se koncentrira na pravne akte i procedure kojima se osobe koje žele doći na određene javne pozicije provjeravaju obzirom na njihovo sudjelovanje u prošlim režimima.

Glavna dostignuća projekta su sljedeća:

- dao je doprinos kvalitetnijem raspravljanju o lustracijskom zakonodavstvu i procedurama;

- dao je doprinos kvalitetnijem raspravljanju o zakonodavstvu o javnom pristupu dosjeima nekadašnjih tajnih službi i praksi na tom polju;
- unaprijedio je pravnu i političku svijest o važnosti otvorenog suočavanja s prošlošću;
- poboljšao je javnu debatu o prošlosti;
- potaknuo je konstruktivne analitičke i kritičke diskusije o lustraciji i javnom pristupu dosjeima među pravnim profesionalcima, zakonodavcima, funkcionarima državne uprave, akademskim stručnjacima, novinarima i aktivistima grupa za ljudska i građanska prava;
- pružio je regionalnu komparativnu analizu te izvještaje o pojedinačnim zemljama o lustraciji i javnom pristupu dosjeima i javnim debatama o prošlosti na zapadnom Balkanu;
- iznio je konkretne preporuke o lustraciji i javnom pristupu dosjeima na zapadnom Balkanu;
- uključio je grupe za ljudska prava u debate o lustraciji i dosjeima i ojačao njihovu ulogu, kao i sudjelovanje građana u tim procesima;
- pružio je širok javni pristup otkrićima i rezultatima putem interneta;
- usredotočio je pozornost javnosti na predmet projekta time što je medijske profesionalce uključio u aktivnosti putem saopćenja za javnost, konferencija za medije i publikacija.

Od projekta je izravnu korist imalo više od 150 zakonodavaca, pravnih stručnjaka, funkcionara državnih uprava, akademskih stručnjaka, novinara i aktivista grupa za građanska i ljudska prava.

Sve aktivnosti su provedene kako je bilo predviđeno izvornim planom djelovanja, a glavni ciljevi su ostvareni. To su osobito:

Sve informacije o projektu objavljene su i trajno ažurirane na web stranicama projekta www.lustration.net.

Na web stranicama projekta objavljene su i sljedeće publikacije proizašle iz projekta:

a) Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans (Priručnik o lustraciji, javnom pristupu dosjeima tajnih službi i javnim debatama o prošlosti na zapadnom Balkanu) (<http://www.lustration.net/manual.pdf>)

Priručnik pruža koncizan pregled o razvoju događaja vezanih uz rad s autoritarnom prošlošću na zapadnom Balkanu, kako na razini pojedinih zemalja tako i na razini regije. U središtu pozornosti priručnika nalaze se zakonodavstvo o lustraciji, procedure i praksa, ali se on također bavi i zakonodavstvom o javnom pristupu dosjeima tajnih službi i njegovom provođenju, kao i pitanjima općih javnih debata o prošlosti. On sadrži regionalni pregled zapadnog Balkana i preglede po zemljama o Albaniji, Bosni i Hercegovini, Hrvatskoj, Makedoniji i Srbiji i Crnoj Gori.

b) Elektronička knjiga Past and Present: Consequences for Democratisation (Prošlost i sadašnjost: Posljedice demokratizacije)

(http://www.lustration.net/pap_cfd.pdf)

Ova knjiga se bavi trajnim pitanjima u svim postautoritarnim zemljama: procesima suočavanja s prošlošću, a osobito razotkrivanja povijesnih činjenica skrivenih u tajnim arhivama, lustracijom i procedurama lustracije, kao i javnim debatama o prošlosti. Analizira iskustva iz nekih zemalja istočne, srednje i jugoistočne Evrope (izvan zapadnog Balkana) s tim pitanjima i njihove posljedice po razvoj dotičnih društava. Također uključuje i studije slučajeva o iskustvima s javnim debatama o prošlosti i o pitanju lustracije u pojedinim zemljama zapadnog Balkana. Konačno, analizira direktne i indirektne učinke javnih debata o prošlosti na zakonodavstvo i institucije.

c) Dossier on Achievements, Conclusions and Recommendations (Dossier o dostignućima, zaključcima i preporukama)
(<http://www.lustration.net/dossier.pdf>)

Na osnovi nalaza i zaključaka projekta, doneseno je i više preporuka:

- opće preporuke za zapadni Balkan,
- specifične preporuke o pitanjima zakonodavstva o lustraciji,
- procedure i provedba i javni pristup dosjeima tajnih službi bivših režima - zakonodavstvo, procedure i provođenje,
- preporuke koje se odnose na međunarodne aktere o pitanjima monitoringa i podrške.

Organizirani su sljedeći **seminari i radionice**:

a) **Prošlost i sadašnjost: Posljedice po demokratizaciju, Beograd, 2-4. jula 2004.**

(program: http://www.lustration.net/news_seminar_belgrade.html; sudionice i sudionici: http://www.lustration.net/news_seminar_belgrade_list.html)

Na seminaru je sudjelovalo 40 stručnjaka iz 12 zemalja; privukao je veliku domaću i međunarodnu medijsku pozornost.

b) **Lustracija, zakonodavstvo i procedure, Tirana, 14-17. oktobra 2004.** (program:

http://www.lustration.net/news_seminar_tirana.html; sudionice i sudionici: http://www.lustration.net/news_seminar_tirana_part.html)

Na seminaru je sudjelovalo 45 stručnjaka iz osam zemalja; privukao je veliku domaću i međunarodnu medijsku pozornost.

c) **Lustracija, javne debate o prošlosti i vladavina prava, Zagreb, 17-20. februara 2005.** (program: http://www.lustration.net/news_seminar_zagreb.html; sudionice i

sudionici: http://www.lustration.net/seminar_zagreb_participants.html)

Na seminaru je sudjelovalo 49 stručnjaka iz osam zemalja; privukao je veliku domaću i međunarodnu medijsku pozornost.

d) **Radionica planiranja, Thessaloniki, 26-28. marta 2004.** (program, sudionice i

sudionici: http://www.lustration.net/news_worshop_thessaloniki.html)
Inicijalna radionica za planiranje projekta, u kojoj su sudjelovali odgovorni predstavnici i predstavnice organizacija uključenih u projekt.

e) **Radionica za preporuke, Thessaloniki, 26-29. maja 2005.** (program, sudionice i sudionici: http://www.lustration.net/news_worshop_thessaloniki2.html)

U zaključnoj radionici o preporukama, općim rezultatima i konsekvencijama projekta sudjelovali su odgovorni predstavnici i predstavnice organizacija sudionica.

1.4 Glavni rezultati i zaključci

Nalazi i zaključci uglavnom se zasnivaju na rezultatima istraživanja što su ih u zemljama regije provele stručne grupe, te regionalna stručna grupa. Rezultat tog istraživanja objavljen je u *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* (<http://www.lustration.net/manual.pdf>). Također se zasnivaju na iskustvima iznesenima na seminarima u okviru projekta te u mnogobrojnim diskusijama i intervjuima koje su sa stručnjacima vodili koordinatori i direktor projekta.

a) Osnovni je ishod istraživanja u okviru ovog projekta da lustracija nosilaca javnih funkcija koji su bili aktivni u vrijeme jednostranačke vladavine u zemljama zapadnog Balkana nije provedena.

b) To je ozbiljan propust, jer je odsutnost lustracije ohrabrila političku samovolju, osobito u vrijeme neposredno nakon prestanka jednostranačke vladavine u regiji.

c) Lustracija provedena izvana, kao što su aktivnosti međunarodnih vlasti na područjima zapadnog Balkana koja su bila ili su još protektorati UN, ne može se smatrati uspješnom.

d) Evidentno je da, čak i u slučajevima u kojima su usvojeni odgovarajući zakoni o lustraciji, vlasti u većini slučajeva te zakone ne provode.

e) U mnogim dijelovima zapadnog Balkana nezadovoljavajući su i manjkavi kako zakonodavstvo o javnom pristupu dosjeima nekadašnjih tajnih službi tako i njegovo provođenje.

f) Inicijative za uspostavljanje komisija za istinu na zapadnom Balkanu u nedavnoj prošlosti bile su neuspješne.

g) Glavna sredstva javnog informiranja nisu to pitanje postavila na 'dnevni red' na način i u opsegu koji bi bili primjereni i neophodni.

h) Interes javnosti usredotočen je na druga pitanja (etnički sukobi, ratovi, socijalna pitanja).

i) Civilno društvo nije bilo dovoljno snažno da to pitanje dovede u prvi plan.

j) Stručnjaci i organizacije civilnog društva, koji su sudjelovali u ovom projektu, vjeruju da su vladavina prava, demokracija, a također i lustracija od osobite važnosti za

razvoj zemalja zapadnog Balkana, ne samo time što im pomažu da se pripreme za članstvo u EU, već i da bi ovladale vlastitom prošlošću i spriječile da se slični zločini opet ne dogode.

k) Većina međunarodnih aktera uključenih u izgradnju demokracije na zapadnom Balkanu posvećivala je malo ili nimalo pozornosti spornim pitanjima bavljenja prošlošću.

l) Potpora koju su ovom projektu pružile EU i USAID bila je koristan i konstruktivan korak u podršci bavljenju prošlošću.

1.5 Preporuke

Ne postoji jedinstven model za zakonodavstvo o lustraciji i procedure, koji bi se mogao uspješno primijeniti na sve zemlje regije. Zahvaljujući različitim povijestima, tradicijama i iskustvima u regiji, posebna rješenja se moraju prilagoditi specifičnim uvjetima. Pa ipak, neki dijelovi zakona i procedura su primjenjivi i preporučaju se za sve zemlje.

I Opće preporuke za zapadni Balkan

1) Zakonodavstvo o lustraciji i o javnom pristupu dosjeima tajnih službi trebalo bi se odnositi ne samo na razdoblje do 1990, već i na sljedeće, osobito na 1990-te godine. To je osobito važno za većinu postjugoslavenskih država.

2) Vlasti bi trebale provoditi usvojene zakone o lustraciji i javnom pristupu dosjeima tajnih službi. Parlamenti i ostale vlasti trebali bi strogo i redovito provjeravati njihovo provođenje.

3) Nadležne vlasti trebaju kontinuirano i sistematski uključivati nevladine stručnjake i organizacije u pripremu i provođenje odgovarajućih zakona i procedura.

II Specifične preporuke

A. Zakonodavstvo o lustraciji, procedure i provođenje

1) Treba pripremiti i usvojiti sveobuhvatne zakone o lustraciji u onim dijelovima regije u kojima takvi zakoni nisu dosad doneseni: Hrvatskoj, Bosni i Hercegovini, Makedoniji i Crnoj Gori.

2) Vrijeme primjene zakona o lustraciji treba uključivati ne samo razdoblje do 1990, nego i ono nakon njega, sve do datuma uvođenja zakona o slobodnom pristupu javnim informacijama.

3) Neposredno nakon usvajanja zakona o lustraciji, osobe koje zauzimaju određene javne funkcije treba podvrgnuti provjeri. Zakoni trebaju sadržati točan popis takvih funkcija.

4) Kandidati za određene funkcije također moraju proći provjeru. Zakoni trebaju sadržati točan popis takvih funkcija.

5) Glavni kriterij za određivanje osoba na koje se odnose procesi provjere ne treba biti ranije zauzimanje visoke pozicije u državnoj ili stranačkoj hijerarhiji, nego konkretna uključenost u kršenje ljudskih prava.

6) U pripremi sveobuhvatnih zakona o lustraciji parlamenti bi trebali organizirati javne rasprave koje će uključiti i nevladine stručnjake iz akademskih krugova, civilno društvo i organizacije žrtava.

7) Procese istrage (provjere) trebale bi provoditi neovisne komisije, koje postavljaju nadležne vlasti. Te neovisne komisije bi trebale provjeravati dosjee kandidata za javne funkcije.

8) Neovisna komisija, koja provjerava nosioce javnih funkcija i kandidate za te funkcije, treba predočiti parlamentu svaku informaciju iz dosjea koja ukazuje na to da je funkcionar ili kandidat sudjelovao u kršenju ljudskih prava.

9) Funkcionare i kandidate o kojima se otkriju informacije o njihovom sudjelovanju u kršenju ljudskih prava treba diskvalificirati iz vršenja javne funkcije za određeno razdoblje. Postupak te diskvalifikacije treba biti određen zakonom.

10) Vlade trebaju redovito izvještavati parlament o provođenju tih zakona.

B. Javni pristup dosjeima tajnih službi bivših režima - zakonodavstvo, procedure i provođenje

1) Zakone o javnom pristupu dosjeima tajnih službi bivših režima treba pripremiti i usvojiti u onim dijelovima regije u kojima javni pristup sada nije dopušten.

2) U pripremi tih zakona parlamenti bi trebali organizirati javne rasprave koje bi uključile i nevladine stručnjake iz akademskih krugova, civilno društvo i organizacije žrtava.

3) U drugim dijelovima regije, trebalo bi pregledati i po potrebi izmijeniti zakone i procedure o ovom pitanju te njihovo provođenje. Taj proces treba provesti na transparentan način.

4) Osobni dosjei bi u pravilu trebali biti dostupni samo osobama na koje se dosjei odnose i njihovim pravnim nasljednicima. Treba donijeti zakon koji regulira izuzetke od tog načela.

5) U svrhu provođenja tih zakona parlamenti trebaju uspostaviti neovisno tijelo, odgovorno za čuvanje dosjea i za odluke koje se tiču javnog i osobnog pristupa tim dokumentima u skladu sa zakonom. To tijelo bi trebalo biti dužno davati parlamentu redovite javne izvještaje o svojem radu.

C. Komisije za istinu i javne rasprave o prošlosti

1) Radi razotkrivanja javno spornih pitanja prošlosti te da bi se unaprijedilo javno raspravljanje o njima, trebalo bi uspostaviti neovisne komisije za istinu. One bi trebale uključivati istaknute ličnosti, stručnjake i predstavnike sviju segmenata društva. Trebale bi raditi putem javnih zasjedanja, a glavni zadatak bi im bio solidno i primjereno ocjenjivanje spornih pitanja prošlosti. U uspostavljanju komisija za istinu vlasti bi trebale surađivati s akterima civilnog društva.

2) Kako bi se zajednički raspravljalo o pitanjima prošlosti od uzajamnog interesa, treba uspostaviti regionalne, bi- i multilateralne komisije historičara i drugih stručnjaka iz akademskih krugova, kao i predstavnika nevladinih organizacija. Te komisije bi mogle razraditi prijedloge relevantne za ova pitanja, na primjer prijedloge za udžbenike povijesti*.

III Međunarodni akteri

Monitoring i podrška

1) Organizacija za evropsku sigurnost i suradnju (OESS), Vijeće Evrope (VE), Evropska Unija (EU) i druge međunarodne vladine i nevladine institucije trebale bi nastaviti provoditi monitoring i pomagati u zakonodavstvu o lustraciji i o javnom pristupu dosjeima nekadašnjih tajnih službi, kao i u njihovom provođenju.

2) Međunarodne organizacije bi trebale nastaviti finansijski, tehničku i profesionalnu podršku inicijativama i projektima (kao što su komisije za istinu) kojima je cilj poboljšanje zakonodavstva o lustraciji i javnom pristupu dosjeima nekadašnjih tajnih službi i njegova provođenja.

Prevod: Srđan Dvornik, Croatian Helsinki Committee for Human Rights (CHC), Zagreb

Appendix II

Selected Literature on Lustration and Related Issues

Eastern Europe

Williams, Kieran / Szczerbiak, Aleks / Fowler, Brigid. 2003. Explaining Lustration in Eastern Europe: 'A Post-communist politics approach'. Sussex European Institute Working Paper No 62. <http://www.sussex.ac.uk/Units/SEI/pdfs/wp62.pdf>

Horne, Cynthia M. and Margaret Levi. 2003. Does Lustration Promote Trustworthy Governance? An Exploration of the Experience of Central and Eastern Europe . Prepared for Trust and Honesty Project, Budapest Collegium (January). <http://faculty.washington.edu/mlevi/papers/Lustration.pdf>

David, Roman. 2003. Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989 - 2001), *Law & Social Inquiry* 28,2: 387-440. <http://www.journals.uchicago.edu/LSI/journal/issues/v28n2/282001/282001.html>

Farley, Gail R. 2002-2003. Lustration, Decommunization, and European Union Enlargement 2004. *Political Science* 595. Independent Research Project. California State University, San Bernardino, CA. www.eucenter.scrippscol.edu/eu_events/paper/panel8/gail_farley.html

Letki, Natalia. 2002. Lustration and democratisation in East-Central Europe , *Europe-Asia Studies* 54,4: 529-552.

Gonzalez-Enriquez, Carmen. 2001. De-Communization and Political Justice in Central and Eastern Europe , in: Barahona de Brito and Aguilar, and Gonzalez-Enriquez (eds.). *The Politics of Memory: Transitional Justice in Democratizing Societies*. Oxford : 218-247.

Rose-Ackerman, S. 2001. Trust and honesty in post-socialist societies. *Kyklos* 54,2-3: 415-443.

Malenovský, Jirí. 2000. Les lois de «lustration» en Europe centrale et orientale : Une «mission impossible»? *Revue québécoise de droit international* 13,1: 187-218. http://www.rqdi.org/fr/volumes/archives/2000/13_1/13Malenovsky.pdf

Rothstein, B0. 2000. Trust, social dilemmas and collective memories. *Journal of Theoretical Politics* 12,4: 477-501.

Tucker, Aviezer. 1999. Paranoïds may be persecuted: post-totalitarian retroactive justice.

Archives européennes de sociologie 40,1: 56-100.

Miller, John. 1998. Settling Accounts with a Secret Police: The German Law on the Stasi Records. *Europe -Asia Studies* 50,2: 305-330.

- Elster, Jon. 1998. Coming to terms with the past. A framework for the study of justice in the transition to democracy. *Archives européennes de sociologie* 39,1: 7-48.
- Boed, Roman. 1998. An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice. *Columbia Journal of Transnational Law* 37,2: 357-402.
- Gibney, Mark. 1997. Prosecuting Human Rights Violations From a Previous Regime: The East European Experience. *East European Quarterly* XXXI: 93-110.
- Cohn, Ellen S., and White, Susan O. 1997. Legal Socialization Effects on Democratization. *International Social Science Journal*, 152: 151-171.
- McAdams, A. James ed. 1997. *Transitional Justice and the Rule of Law in New Democracies*. Chapters 6-8.
- Borneman, John. 1997. *Settling Accounts: Violence, Justice and Accountability in Postsocialist Europe*. Chapters 1-3 and 8.
- Cepl, V, and Gillis, Mark. 1996. Making Amends after Communism. *Journal of Democracy* 7,4: 118-24.
- Ellis, Mark S. 1996. Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc. *Law and Contemporary Problems* 59,4: 181-196.
- Welsh, Helga A. 1996. Dealing with the communist past. *Central and East European experiences after 1990*. *Europe-Asia Studies* 48,3: 413-428.
- Cohen, Stanley. 1995. Crimes of the State Accountability, Lustration and the Policing of the Past. *Law and Social Inquiry* 20,1: 7-50.
- Kritz, Neil, ed. 1995. *Transitional Justice*. Washington, D.C.: United States Institute of Peace Studies.
- Law and Social Inquiry. 1995. Special Issue: Law and Lustration: Righting the Wrongs of the Past. *Law and Social Inquiry* 20,1: 7-273.
- Los, Maria. 1995. Lustration and Truth Claims: Unfinished Revolutions in Central Europe. *Law and Social Inquiry* 20,1: 117-161.
- Stichcombe, Arthur L. 1995. Lustration as a Problem of the Social Basis of Constitutionalism. *Law and Social Inquiry* 20,1: 245-273.
- Rosenberg, Tina. 1995. Overcoming the Legacies of Dictatorship. *Foreign Affairs* 74,3: 134-153.
- Huyse, Luc. 1995. Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past. *Law and Social Inquiry* 20,1: 51-78.
- Schwartz, Herman. 1994. Lustration in Eastern Europe. *Parker School Journal of East European Law* 1,2: 141-171.

Moran, John P. 1994. The Communist Torturers of Eastern-Europe - Prosecute and Punish or Forgive and Forget. *Communist and Post-Communist Studies* 27,1: 95-109.

Nina, Daniel. 1994. Learning from Experiences of the "Past": Reflections on Truth and Reconciliation Commissions in Latin America and the Situation in Eastern Europe. Cape Town : Institute of Criminology , University of Cape Town , Occasional Paper 4-94.

Gibney, Mark. 1994. Decommunization: Human Rights Lessons from the Past and Present, and Prospects for the Future. *Denver Journal of International Law & Policy* 23,1: 87-133.

Moran, John. 1994. The Communist Tortures of Eastern Europe : Prosecute and Punish or Forgive and Forget? *Communist and Post-Communist Studies* 27: 95-109.

Holmes, Stephen. 1994. The End of Decommunization. *East European Constitutional Review* 3,3-4: 33-36.

Michnick, Adam, and Vaclav Havel. 1993. Justice or Revenge. *Journal of Democracy* 4: 20-27.

Darski, Jozef. 1993. Decommunization in Eastern Europe . *Uncaptive Minds* Winter-Spring: 73-81.

Bulgaria

Bertschi, Charles C. 1995. Lustration and the Transition to Democracy. The Cases of Poland and Bulgaria . *East European Quarterly* 2,4: 435-451.

Croatia

Lalić, Goranka (Ed.). 2002. *Croatian Judiciary: Lessons and Perspectives*. Croatian Helsinki Committee for Human Rights and the Netherlands Helsinki Committee. (See especially within this publication: Uzelac, Alan: Role and Status of Judges in Croatia;

Visković, Nikola: Justice of the Nationalist Revolution; Milić, Gojko: The Road to a Real Law-Ruled State and the Rule of Law is a Difficult One; Đurović, Nataša: The Issue of (Non) Functioning of the State Attorney's Office in the Last Ten Years.)

Czech Republic

David , Roman . 2003. Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989 - 2001) , *Law & Social Inquiry* 28,2: 387-440. <http://www.journals.uchicago.edu/LSI/journal/issues/v28n2/282001/282001.html>

Williams, Kieran. 1999. Czech Republic : A Scorecard for Czech Lustration. *Central Europe Review* 1,19; <http://www.ce-review.org/99/19/williams19.html>

Boed, Roman. 1998. An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice. *Columbia Journal of Transnational Law* 37,2: 357-402.

Siklova, Jirina. 1996. Lustration or the Czech Way of Screening, *East European Constitutional Review* 5,1: 57-62.

Bren, Paulina. 1993. Lustration in the Czech and Slovak Republics . *RFE/RL Research Reports* 2,29: 16-22.

GDR

Blankenburg, Erhard. 1995. The Purge of Lawyers after the Breakdown of the East German Communist Regime. *Law and Social Inquiry* 20,1: 223-243.

Hungary

Tomiuc, Eugen. 2002. Hungary: Government Proposes Further Opening of Communist-Era Files. *Radio Free Europe/Radio Liberty Online Reports*, June 27.

Oltay, Edith. 1994. Hungary 's screening law. *RFE/RL Research Report* 3,15: 13-15.

Poland

David , Roman . 2003. Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989 - 2001), *Law & Social Inquiry* 28,2: 387-440. <http://www.journals.uchicago.edu/LSI/journal/issues/v28n2/282001/282001.html>

Szczerbiak, Aleks. 2002. Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland, *Europe-Asia Studies* 54,4: 553-572.

Rohozinska, Joanna. 2000. Struggling with the Past. Poland 's controversial lustration trials.

Central Europe Review 2,30; <http://www.ce-review.org/00/30/rohozinska30.html>

Bertschi, Charles C. 1995. Lustration and th e Transition to Democracy. The Cases of Poland and Bulgaria . *East European Quarterly* 2,4: 435-451.

Osiatynski, Wiktor. Decommunization and Recommunization in Poland . *East European Constitutional Review* 3,3-4: 36-41.

Russia

Yasmann, V. 1993. Legislation on screening and state security in Russia . *RFE/RL Research Report* 2,32: 11-16.

Serbia and Montenegro

Milosavljević, Bogoljub. Pavićević, Đorđe. 2002. Secret Files: Opening of Secret Files of the State Security Service. Centre for Antiwar Action (Beograd: Alnari Print). ISBN 86-82297-52-3

Slovakia

Bren, Paulina. 1993. Lustration in the Czech and Slovak Republics . RFE/RL Research Reports 2,29: 16-22.

Non-European countries and regions

Latin America

Popkin, Margaret, and Naomi Roht-Arriaza. 1995. Truth as Justice: Investigatory Commissions in Latin America . Law & Social Inquiry 20: 79-116.

South Africa

Berat, Lynn, and Yossi Shain. 1995. Retribution or Truth Telling in South Africa ? Legacies of the Transitional Phase. Law & Social Inquiry 20: 163-190.

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"Reconciliation and democracy in post-authoritarian societies cannot be achieved without a committed and sustained effort to shed as much light as possible on an uncomfortable past often of egregious abuses of power. Facing rather than forgetting this burdensome legacy can help achieve the solid foundations of a democratic future. This unique study by the CDRSEE looks into these efforts, or lack thereof, in the five countries of the Western Balkans, examining the ways in which they are dealing with some of the most sensitive aspects of the past such as with the lustration of public figures and with the opening of the files of the secret services."

*Ivan Vejdoda
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