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## POST-COMMUNIST LUSTRATION JUSTICE

**ABSTRACT:** The paper discusses the phenomenon of post-communist lustration, as a moral condemnation with a disqualifying political logic. Using the case study method, the paper aims to determine whether the lustration processes in the post-communist states were shaped by active political will or if they were the result of the desire to achieve social justice. The findings show that there was no uniform solution to the implementation of lustration and that the lustration elites opted for casuistic logic. A relevant factor, in terms of society and research, is the fact that states with similar structures and a communist past applied variable lustration mechanisms at different times, either at the beginning of the transition period or much later.

**KEYWORDS:** lustration, human rights, accountability, past, corruption

### 1. Introductory Remarks

The fall of the Iron Curtain sparked a worldwide critical debate about the legacy of recent communist regimes. In 1996 the Council of Europe standardized lustration (Resolution 1096 of the Parliamentary Assembly of the Council of Europe on measures to remove the legacy of former communist totalitarian systems) and was therefore at the forefront of the movement to expose and condemn the repressive leg-

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acy of totalitarian regimes. The resolution affirms that lustration must not jeopardize basic human rights and that revenge must not be the *ratio legis* of lustration laws in post-communist states. The purpose of lustration is not to impose criminal sanctions on presumed responsible persons, but rather to protect newly emerging democracies. *Ratione materiae*, lustration is limited to those functions that are of fundamental importance for human rights and democracy, such as the judiciary, security, and intelligence services. The resolution insists that no individual may be subjected to lustration because of their personal beliefs and opinions and that it is exclusively aimed at those persons who are the principals, executors, or assistants in severe violations of human rights which may result in the exclusion from holding public office or position. It is recommended that criminal acts committed by individuals during the communist regime be prosecuted and sanctioned on the basis of criminal law. The resolution is based on procedural and not substantive logic and stipulates the possibility of extending the statute of limitations for criminal acts. The main pillar of lustration, according to the PACE Resolution, is preventing “suspicious” persons from the communist era from holding public offices in the new democracies, since they were not appointed in accordance with ethical and democratic principles, which must be proven *in concreto*.

## 2. Post-Communist Lustrations: Phenomenology

As a legislative or executive decision, lustration logic incorporates the following properties: 1) suspicion of alleged disputable past activities, based on collective responsibility for abuses defined by the lustration program; 2) existence of protected current or future public offices; 3) applying specific methods or procedures (such as screening), which include a potential threat (such as removal or public exposure) (Rožič & Nisnevich, 2016). Some authors see the lustration process as a measure that leads to corruption decrease by systematically limiting political participation to former authoritarian actors. However, this is an overly ambitious approach that ignores the anthropological pessimism and greed of the latter actors. This conclusion was reached after conducting

empirical research that included panel data from 30 post-communist countries over 15 years (1996–2011). Research findings show that lustration disrupts the political, economic, and administrative malfeasance of previous regimes. The empirical data from the post-communist states of Estonia and Georgia confirmed this conclusion, as well as the negative experience of Russia, where lustration has long been an object of scorn (Rožič & Nisnevich, 2016, pp. 257–258).

Lustration might be compared with the phenomenon of *Vergangenheitsbewältigung* (“struggle of overcoming the past”) in former West Germany, which involved a critical re-examining of the Third Reich and ostracizing all the elements of malignant Nazi ideology from public life. The lustration in West Germany became a reference point for the establishment of moral norms of responsibility, “the lingua franca of moral global thought, the main ideological tool in making claims for compensation and reparation” (Ignatieff, 2003, pp. 53–54). Conceptually, lustration involves the process of decommunization, i.e., disqualifying and banning from public office those individuals associated with the past regime, especially those who were professionally and politically disgraced by their activities in the third branch of government and the bureaucratic apparatus (Morgan, 2020). Transitional justice is a methodologically broader term (which also incorporates lustration) that is defined as “a self-conscious construction of a distinctive understanding of justice associated with periods of radical political change following oppressive rule” in Latin American and post-Soviet transitional contexts (Teitel, 2014, p. 3).

It is important to distinguish lustration from decommunization. Decommunization denotes purging the state’s administration and bureaucracy of high-ranking communist officials and somewhat resembles denazification. Most importantly, the intention of decommunization is not to equate the crimes of the Nazi and socialist regimes. In the case of denazification and decommunization, the identity of a high-ranking communist or a Nazi is common knowledge, and they cannot be blackmailed by the threat of revealing compromising information about their past. In the case of lustration, however, a former undercover agent or police informer is very vulnerable to corruption and may be pressed to breach the norms of public service by somebody with access to their

files in order to minimize their involvement and appear “clean” (Kaminski & Nalepa, 2006, p. 384)

Lustration procedures rely on the examination of the former régime’s secret police files to verify how closely politicians collaborated with the regime, either as agents or secret informers. When this process, called declassification, is coordinated with the lustration process, they cumulatively inflict serious moral punishment and public degradation on the collaborator. Finally, lustration laws do not impose criminal punishment on former collaborators. Instead, lustration serves as a soft law instrument, preventing collaborators from holding political and other public positions, such as academic teachers, doctors, and attorneys. In some cases, post-communist lustration laws stipulate that they can hold such offices only by allowing their collaboration to become public knowledge. Based on the lustration logic presented above, lustration can be defined as a legal but not judicial institute (Kaminski & Nalepa, 2006). Lustration can be of a softer and more sophisticated kind, disowning repressive reductionism and advocating the suspension or limitation of the passive political rights of those actors with a history of controversial political involvement. In this case, the implementers of transitional justice would usually be searching for the historical truth, as the most epistemologically elusive phenomenon. In practice, “truth commissions” have proven to be ineffective in delegitimizing previous regimes. Disregarding criminal justice and examining the files of the secret police has the effect of making “the facts less clear and less ambiguous” (David, 2012). The truth, as the agreement of reality with facts, becomes questionable.

The concept of transitional justice involves restitution processes, criminal prosecution of those responsible for human rights violations, declassification of police files, and lustration mechanisms. A particularly sensitive issue related to lustration is the opening of secret police files, which led to social antagonisms and turned into the capital for hegemonic political struggles, especially in Poland. In post-authoritarian and post-conflict milieus, nationalist elites often instrumentalized police archives, as “archives of repression”, in order to promote their anti-communist history of memory. The transformation of the “archives of repression” into the “archives of justice” was often not aimed at pub-

licly exposing violence and uncovering the truth (Gokariksel, 2020, p. 237). Some authors challenge the instrumentalist understanding of the archive as a mediating tool and a depository of objective truth. There are also different viewpoints that plead for the repurposing of archives for various normative-political purposes, such as justice, peace, human rights, and democratization (Katelaar, 2002). The veracity of the documents of the intelligence services and the political police is debatable. In post-communist Romania (after 1989) undercover agents and informers of the *Sekuritatea* (*Siguranța statat*) modified the contents of the files, in order to absolve themselves of responsibility and falsely implicate and incriminate their opponents. The file contents were either faked to begin with or were modified later so that they could become compromat, or compromising material (Perić Diligenski, 2021, 107–108) for future public office holders. Falsified information made the process of distinguishing the victim from the culprit more difficult because it was based on the premise of the accuracy of the archival material (Stan, 2004, p. 357).

### **3. Post-communist Lustration Practices in Europe: Case Study**

Modern examples of successful lustration processes can be found in the Central and Eastern European countries, at the time of the collapse of socialist regimes, in most countries between 1989 and 1991. In the following sections, we will examine the lustration practices in Georgia, Poland, the Czech Republic, Slovakia, and Ukraine, using the case study methodology. We will look at the motives that led to the lustration, the period when the lustration was carried out, and the social consequences that followed.

#### **3.1 Georgia**

The 2003 Rose Revolution in Georgia was a prelude to a determined anti-corruption and lustration policy, which in this case proved to be inconsistent. The Rose Revolution removed the highly corrupt regime of Eduard Shevardnadze, which led to aggressive anti-corruption legislation and zero tolerance of the new elite towards organized crimi-

nal structures. Around 2010, Georgia was lauded as an anti-corruption leader. The lustration process was started only in 2011, so this could be regarded as late lustration. Lustration regulations were long overdue, especially considering that the fall of communism and the collapse of the USSR happened in the early 90s. The Georgian model of lustration was aimed at former communists and secret service agents who were prohibited from holding political office, which also led to violations of electoral rights. On the other hand, lustration measures were incompatible with anti-corruption measures and did not include the circles in which corruption was most widespread (the so-called elite corruption). It appears that instability and bias in this respect only enabled members of the new elite to accumulate more wealth, based on their connections with the party and state (Gricius, 2019).

### **3.2 Poland**

After the collapse of communism and the transition from an authoritarian to a democratic regime, the Polish transitional elite showed enthusiasm towards lustration. The pro-lustration elite founded the National Institute of Remembrance, initiated the dissolution of the Security Service under the Ministry of the Interior, the opening of the communist security service archives while cutting the pensions of its former officers, the extension of the statute of limitations for communist crimes and initiation of criminal proceedings (Czarnota, 2007). Polish lustration was formally introduced in 1997, based on the principle of non-retroactivity of sanctions, and relied on declarations of lustration. In this respect, it can be seen as a mechanism of historical clarification. According to Polish positive legislation, a public office holder or candidate is obligated to submit a statement on whether he or she was an employee, agent, or a voluntary undercover collaborator of the communist security service. If the statement is true, the individual is not subject to any sanctions. However, if the court rules that the statement was false, the public official or candidate for public office is prohibited from holding public office for a period of three to ten years. The validity of the lustration document of judicial officials or candidates for judicial office was decided by disciplinary courts (Krotoszyński, 2019, p. 26).

During the recent constitutional crisis in Poland (2015–2019), the idea of collective revenge against the relics of communism gained a strong foothold in society which demanded social catharsis and the implementation of more rigorous lustration, as a means to achieve social justice. In 2017, the Sejm, the lower house of the Polish parliament, adopted a non-binding resolution condemning the Bolshevik revolution and its communist legacy. This condemnation took an ideological step further toward the indiscriminate criticism of left-wing achievements in general. This is a politically biased project, originating in the right-wing political elite, mostly conservatives from the *Prawo i Sprawiedliwość* (Law and Justice) Party. The second lustration cut, introduced after almost three decades of transition, was questioned from the aspect of the legal principle of proportionality and trust towards the state and its law.

### **3.3 Lustration in Chechia and Slovakia**

The first post-socialist country to introduce lustration legislation was Czechoslovakia, with the Act on Illegal Actions of the Communist Regime passed in October 1991. The ratification of the Act was preceded by an informal screening of individual members of representative bodies (Czech, Slovak, and federal) and the government, which sought to prevent the possibility of blackmailing members of the new political elite, whose past record was not untainted. However, in the context of growing anti-communist sentiment and the spread of ‘agentomania’, the motivation behind lustrations shifted to purging public life of the supposedly “malicious influence of the ‘old structures’” (Kopeček, 2013, p. 7). It is a politically interesting phenomenon that the successor states of Czechoslovakia did not take a unified position regarding lustration and de-communist practices. In the Czech Republic, as well as in East Germany, the issue of lustration was high on the political agenda and represented the backbone of the political struggle (Pauer, 2006; Nadelsy, 2009). The Czech lustrations purged about 140,000 public office holders (secret service agents, high-ranking party officials, military and police officers, etc.), who were responsible for illegal actions and human rights

violations from 1948 to 1989. The morally and politically disgraced communist officials were prevented from getting a job in the civil service, which included over 9,000 systematized jobs (in the judiciary, security services, the academic community, media, public enterprises, etc.). One of the few who escaped the lustrations was Miloš Zeman, the long-standing president of the Czech Republic (2013–2023). In his youth, Zeman was a member of the communist party from which he was expelled, because he opposed the Soviet occupation of Czechoslovakia. The expulsion from the party was a mitigating circumstance for Zeman.

In Slovakia, the political mood was fundamentally opposite, and transitional justice was not the central axis of the political struggle. Based on this line of reasoning, a post-communist demarcation timeline can be made from the introduction of democracy (“democratic revolution”) to the mid-1990s and from the mid-1990s onwards. The first period is defined by the “quest for legitimacy” of the new political order with the aim of delegitimizing the legacy of the communist nomenclature. In the second period, the communist past becomes a political battleground; an anti-communist politics of memory is established, aiming to revive the “memory of the nation” (Kopeček, 2013, p. 1). A more liberal attitude towards lustration in Slovakia also allowed the former communist, Robert Fitz, to be prime minister for a six-year term (2012–2018).

### **3.4 Lustration in Ukraine**

The Ukraine lustration is the result of the demands of the protestors in the 2014 Euromaidan revolution, which began as non-violent protests calling for Eurointegration. In time, the Euromaidan demands became more ambitious, calling for anti-corruption measures and the fight against abuse of power and human rights violations. The most important request of the Euromaidan protestors was the lustration of public officials from the communist era (1919–1999) and from the Yanukovych regime (2010–2014). The Ukrainian lustration model has two specific characteristics, which set it apart from other Eastern and Central European lustration models. First, it combines the idea of transi-



tional justice with socio-economic imperatives (such as the fight against corruption) that moved away from the played-out narrative and became components of *realpolitik*. Secondly, Ukrainian lustration has a militaristic character, as it took place at the time of the armed confrontations in Donetsk and Luhansk. The Ukrainian government conducted a lustration 23 years after the fall of the Iron Curtain and at the time of military confrontations (Zabyelina, 2017). Ukrainian judges, even though they were public officials, were not lustrated, but were subject to a screening mechanism. On April 8, 2014, the highest representative body of Ukraine, the Verkhovna Rada, adopted the Law on Restoring Confidence in the Judicial System of Ukraine (Law No. 1188-17), which provides for a procedure for vetting judicial authorities. The law stipulates that judges who have made politically motivated decisions are subject to dismissal from judicial office. In this regard, the court rulings against the Euromaidan protestors stand out as glaring examples of political jurisprudence.

#### **4. Conclusion**

Ideally, the purpose of lustration is moral restitution, social catharsis, and reparation of the anomic and pathogenic social climate. In order to carry out lustration in the former communist states, it is necessary to have the active political will of the lustration elite and the wider support of the citizens. Society's (un)willingness to face negative phenomena and actors from the communist era may represent additional pressure on decision-makers to adopt and apply lustration legislation. In the post-communist world, there is no uniform lustration methodology, as evidenced by the different times in which the "lustration drama" is played out, the circle of individuals subject to lustration, as well as in the scope of limitations and sanctions imposed on former authoritarian elites and their collaborators. We believe that the most important social goal of lustration is raising awareness about the harmfulness of abuse of power and basic human rights. If the lustration is criminally sanctioned, the sanctions need to be humane, fair, and proportionate, not an act of revenge of political winners on the defeated. In other words, a legal pro-

cedure, acting as a barrier to potential abuse of power and a politically motivated purge, is the only guarantee that lustration will result in social catharsis.

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