



LUSTRATION IN ALBANIA: THE PAST AND THE FUTURE

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Lustration in Albania: The past and the future

List of abbreviations

AIDSSH - Authority for Information on Former State Security Files 1944-1991

BIRN Albania - Balkan Investigative Reporting Network (Albania)

CEE - Central and Eastern Europe

ISCC - Institute of Studies of Communist Crimes and Consequences

SPAK - Special Prosecutor for the Fight against Corruption and Organized Crime

SIS - State Intelligence Service

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Executive summary

Albania is one of the few Eastern Europe countries that has not yet implemented a credible, uncontested and complete lustration process that would mark the final divorce with the communist past and bring decommunization of society, the purification of political representation, the cleansing of the public administration and the judicial system, and a general catharsis that instills added value in the public discourse by setting forth contemporary ideas and not dealing with the past of certain individuals. In fact, in most of these countries, lustration, in addition to being a moral obligation and a source of legitimacy, has also served as a means of purging former high-ranking public officials and collaborators of the monist security forces and paving the way for democratic elections and the consolidation of the rule of law. What makes Albania an even more *sui generis* example is that it was the purest case of a totalitarian system besides the Soviet Union under Stalin, so the need for a break with the past - especially through lustration - was strong.

On the other hand, although it was the last among the communist dominoes to fall, Albania saw a rapid rotation of the system and deep political, institutional, and economic reforms at first. It was not affected by inter-ethnic warfare like its neighbors in the former Yugoslavia and did not have nation-building and state-building problems like Baltic States or a strong impasse of democratization processes such as in Belarus or the former Soviet countries of Central Asia or the Caucasus. What makes Albania's case even more paradoxical is an almost unifying rhetoric across the Albanian political spectrum for decommunization, punishment of the communism crimes and the need for lustration, but when it comes to practice, such laws were found to be unilateral and were strongly challenged in courts and used as political cannonade against ideological opponents.

This study, in addition to the Albanian case where it focuses mostly, presents also a synthesis of the debate on transitional justice in general and lustration in particular in Eastern Europe countries, focusing specifically on the cases of Romania and Ukraine due to some common features and differences they have with the Albanian case. Further, it probes into the legal corpus, institutional apparatus and political debate that have accompanied the lustration efforts in these three decades of democratic transition in Albania.

Introduction

Transitional justice in Albania is still an unfinished process - it was started but never completed. This is due to several different reasons that this report re-outlines in a structured way. First, Albania has suffered from one of the only genuinely totalitarian regimes for more than five decades. Apart from the Soviet Union during the Stalin period, the communist regime in Albania was the only proper totalitarian one in the Eastern and Central Europe, and moreover autarkic, especially after eventually breaking ties with China in the late 1970s. Second, transitional justice in Albania did not follow a clear form or structure, i.e. it did not go for a model of a punitive justice or restorative justice through truth commissions or genuine reparations. The Albanian model did not follow any of these models strictly and genuinely. Moreover, although attempted amalgam forms that involved lustration and monuments, government commissions and punishments through court decisions, none of them had the desired effect or achieved some catharsis that would allow society to have an immediate break with the communist regime traumas or trigger a dynamic restart which would make the transition shorter and much less painful.

On the other hand, many of these attempts to bring justice to victims of communism and pacify society at large have often remained unfulfilled. In some cases, they even served to target political opponents rather than as courageous and redemptive acts for society. Usually, during election or pre-election periods - given that election campaigns in Albania *de facto* span at least six months before elections - have also served as moments where transitional justice mechanisms have served to gain political capital. A typical example is the awarded decorations, monuments and similar, public apologies and even political courts that often ended up in criminal charges for ordinary administrative violations or in capital decisions followed by amnesties. Equally ineffective have been the reparation mechanisms for the category of former owners and former politically persecuted, many of whom have received little or no decent financial compensation - although 30 years have passed since the overthrow of the monocratic regime - and have been endlessly waiting in courts for judgements to be rendered. Lustration had the same fate, used more as a political instrument rather than as a genuine legal mechanism, consequently failing to receive a willing bi-partisan consensus in the Albanian parliament to be adopted as a legal package - or its adoption was forced by the votes of one political side (majority); the end result is that it was overturned by the Constitutional Court.

Methodology and methods

In order to better understand the lustration process in Albania, the study uses the comparative approach by analyzing some of the best practices in Eastern Europe to see and understand the structural difficulties of adopting and implementing a legal framework that would address the crimes of communism and prevent former high-ranking nomenclature or former Security officials from holding senior positions in public administration and courts or political representation bodies.

The study is based on a triangulation (cross-checking) qualitative methodology consisting of structured and semi-structured interviews with senior political representatives, former senior public officials, heads of important agencies and institutions, members of civil society, journalists, researchers and former politically persecuted. Also, it conducted a focus group with young people and a survey was distributed to expert groups in various fields of expertise, journalists and publicists, researchers and the former politically persecuted. Primary data also includes desk reviews, official statistics, legislation, and court decisions. These have been confronted with a number of secondary sources, quoted interviews from the daily press over the years with important figures of the lustration debate, books, research articles, etc.

Some of the key findings were generated first through the data collection that relied on structured and semi-structured interviews with current representatives of the majority and political opposition and their stance on the lustration process, and with representatives and heads of important institutions such as the Communist Files Authority (AIDSSH), the National Museum, prominent journalists, historians who have dealt with the communist past in general, but also lustration scholars in particular, as well as with representatives of civil society and the former politically persecuted, amongst others.

On the other hand, the survey distributed to stakeholders, including well-known professors of political science, sociology, history, affirmed scholars and researchers, journalists and publicists, or institutes and non-governmental organizations directly or indirectly involved in lustration - such as kujto.al - has generated very valuable and complimentary responses to those who obtained the interviews, in order to have a more complete picture of the lustration process, not only on how it has evolved or stalled but also how it is perceived by different interest groups. Equally valuable are the different opinions regarding Albania's progress measured against other countries of the former communist bloc, and last but not least, how they see

the odds of adoption and implementation of a lustration law in the near future. The latter poses a threefold challenge, as it must make up for the lost time, be effective in enforcement, and guarantee fundamental freedoms and human rights, based also on previous decisions of the Constitutional Court, the Strasbourg Court, the Venice Commission, and the post-communist best practices in Eastern Europe. The opinions collected from the interviews and surveys represented very interesting views, which are synthetically reflected in the current study.

Also, the data collection process relied *inter alia* on a focus group with students, specifically nine alumni and current bachelor and MSc students studying political science and international relations. This focus group served as a test of knowledge on lustration among young people, their respective interest, but also as an information tool seeing the not-so-satisfactory level of knowledge on the lustration process. The focus group method enables the exploration of values and attitudes on lustration policies and young people's ideas on the lustration process so far, and what needs to be done in the near future. An interesting and productive debate was conducted with the nine students through the focus group that generated a lot of valuable observations. Consequently, in addition to the dominant attitudes, there were also opposing ideas from most of the participants. Thoughts, judgments, and observations about the current state of the lustration process and its future trajectory were fair and valuable.

The data collection and analysis process includes a summary of the data generated from the interviews, the focus group survey and discussion, and the notes kept. Data analysis follows the structured model of data analysis built by Creswell (Creswell, 2007). The stages of qualitative data analysis according to this model include data organization, record keeping, categorization of data into valid and separate analytical categories, which are then grouped into important topics, and finally the stage of presentation of findings in the study.

Debates on transitional justice and lustration

The field of transitional justice is as sensitive as still unexplored. On the other hand, it is also quite diverse, given that past regimes may have been Nazi, fascist, communist, or, if grouped together, we would call them totalitarian regimes. But other authoritarian regimes are of a sultanic nature, either of military or post-totalitarian type, which have nevertheless had their share of individual and collective crimes and for which transitional justice has functioned in various empirically tested forms. Since the earliest days of transitional justice, in the theoretical field but with practical implications, there were debates between *retributivists*, who argue for prosecution after massive violations of rights (e.g. Drumbi, 2007), and *restorers* who rely mainly on “soft” reckoning with the past, such as truth-telling (Teitel, et al. 2002; Wiebelhaus-Brahm 2010). However, others have also added reparatory concepts of justice (Muddell & Hawkins, 2018).

A common thread in most debates on transitory justice is that the ultimate goal is a consolidated democracy that somehow solves the problem of lacking justice and closes the wounds of the past. Without a transition cycle involving the need to address injustice, most scholars in the field (such as Arnould & Sriram, 2014; Magara, 2016) rightly believe that we cannot safely assume to have reached the stage of a consolidated democracy.

Heads of state are often responsible for drafting policies that focus on law-based retaliation, such as prosecution. While some others favor indirect ways through restorative mechanisms, such as the truth commissions. The definition of transitional justice remains controversial, but generally refers to the legal and non-legal mechanisms that states undertake after major violations of individual and collective rights by the previous regime. These mechanisms include, but are not limited to, criminal prosecution, truth commissions, reparations, lustration, pardons, memorials, institutional reforms, etc. The early focus of the field was on leadership and mass accountability in the democratic transition. According to Ní Aoláin and Campbell (2005), this enabled the shaping of transitional justice as a coherent set of narratives and discourse, which provided the framework for the field in the future. Later on, the focus expanded to include other aspects, such as reparations and truth-telling, reconciliation, forgiveness, healing, etc. (Stover & Weinstein, 2004; Borer, 2006).

The debate between the need for trials as the main weapon of dealing with the past versus truth commissions is one of the still unsolved dilemmas of the field (Hayner, 2002; Aukerman, 2002). This was essentially a debate between punitive justice and restorative justice. But advocates of the former, especially those who support lustration as the most effective means of punitive justice along with the courts, point out that without such catharsis, it is almost impossible to overcome the past wounds and metamorphose towards a consolidated democracy. For this reason, lustration takes up a central role in this study.

In contrast, restorative justice seeks to make up for and close the wounds of the past by restoring community ties and building a future based on a sense of normality (Zehr, 2002). Thus, restorative justice, as one author puts it, requires “the transformation of subjective factors that harm the community, such as anger, resentment, and the desire for revenge” (Amstutz, 2006, pp. 166-167). Any response to such a collective brokenness should seek to restore the basic fabric of society including the victim, the perpetrator, and members of the community. The principles of restorative justice in general have become the guiding moral force behind the development of truth commissions following mass murders, war crimes and other major human rights violations. Among the benefits of truth commissions are the elimination of a regime’s ability to deny the truth (Hayner, 2011, p. 22), thus giving justice to victims and making it easier to forgive and move forward towards possible reconciliation.

Last but not least, we have the concept of reparative justice. This concept centers on the recognition that human relationships have greatly suffered as a result of a type of regime or a particular conflict and these ties need to be repaired (Muddell & Hawkins 2018). This is particularly relevant in countries that have suffered in the immediate past from genocide, war crimes and other mass atrocities and need to undergo a process of catharsis. Thus, reparation is typically focused on trying to redress the harm suffered by the victim. This cannot be done without enforcing the rule of law and strong institutions that will be able to address the past in an objective way.

Functioning institutions, greater accountability, and the rule of law are highly conditional on the speed and quality of the democratization process. A fast and unequivocal transition from authoritarian rule and planned economy toward liberal democracy and free market economy generates *a priori* the need for stronger constitutionality and rule of law; otherwise the democratic reforms will fail to take off. Thus, transitional justice is important to understand, measure and evaluate how it impacts democracy and democratization processes. Lately, the impact on

democracy has become ever clearer (Thoms, Ron & Paris 2010). Indeed, for many of these studies, the attainment of a liberal democratic regime that respects civil and political rights is the main indicator of success.

Early and swift forms of addressing the past are important to democratic consolidation because, without a general catharsis and reflections on dictatorships and their crimes against individual freedoms and human dignity, society cannot function normally, and progress will be hard to achieve. A scholar captured the importance of particular transitional justice mechanisms, when he noted that “noncriminal sanctions, such as purges, lustration, and public access to Security files, are critical for the democratic reform element...” Kritz (1999, pp. 19-20). It is, therefore, the contention of this paper that, without quick and successful implementation of transitional justice that addresses the dictatorial past, transition will be slow or suffer setbacks and democratic consolidation cannot be achieved. Hence, without a social covenant that takes into account the entire legacy of the past, society simply cannot move ahead. Without accountability, there cannot be forgiveness. The ghosts of the past will continue to torment the formerly prosecuted. This is why it is important to take into account transitional justice measures, and especially the lustration process, as important variables in studying the shape of democracy in post-authoritarian societies.

Transitional justice and lustration in post-communist Eastern Europe

Except for the Soviet Union during the Stalinist rule, totalitarian Albania and the totalitarian-sultanistic regime of Ceausescu's Romania were the most brutal (Stepan & Linz 1996). However, recently 70 percent of present-day Russians have expressed support for Stalin's regime and feel nostalgic (Arkhipov 2019), while Albania (and Romania) is among the two countries with the highest negative views toward the former regime in Eastern Europe (Kajsiu 2016). This, of course, relates to the effects of totalitarian oppression that imposed a false legitimacy and discouraged any form of dissidence by these countries. As F. Tarifa notes, consent to the state-party's authority should not be taken as an indicator of legitimacy for the communist rule, "even among those who agreed, many did so because they considered the cost of resistance too high ... based in part on the painful experiences of those committed anti-communists who dared to express their protest" (Tarifa, 1997). This, of course, left deep traces in the collective psyche and influenced a broadly negative view of the former regime, as is seen in the cases of Romania and Albania. Especially to the latter, which has not yet carried out a proper lustration process that would enable a social catharsis, a cleansing of politics and institutions to increase their credibility in public and make the rule of law more functional.

The speed of transition and democratization processes in Central and Eastern Europe ranges from problematic Albania to successful Slovenia and Estonia. From empirical data, Estonia fares as a fully consolidated democracy with low transitional justice indicators. Others, such as Visegrad countries, started with a speedy democratization and smooth transition, but now seem to be struggling with the democratization processes. I believe and argued that transitional justice could be the missing link to understand why some countries reach faster democratic maturity than others (Kalemaj 2019). However, I see this relationship in correlational rather than causal terms in the case of Eastern European countries.

There is an ever-growing literature about transitional justice in Eastern Europe. One of the best collections to date is that edited by Lavinia Stan (2009), which probes into successful and unsuccessful cases of former communist European countries, and analyses the policy goals and degree of implementation of certain policies, such as lustration. Just as this third wave of transitions in CEE varied a lot from country to country, transitional justice has varied as well. While some countries made rapid progress on democratization, especially in the first decade after the

fall of communism, some recently slid back. This despite the successful European integration of some of those countries, while others are stuck as the example of the Western Balkans proves.

For example, East Germany was by far the outlier in the group of CEE countries because it was fully absorbed by West Germany, which in turn produced high political accountability and thorough lustration processes from the outset. This is a case in point of how early and successful implementation of transitional justice measures effects democratic consolidation. Czech Republic is another equally successful case. In fact, the Czech Republic passed the lustration law as early as 1991, Hungary on the other hand in 1994, while Poland joined the lustration reforms of the Visegrad bloc countries, as they are called, only in 1997 (Williams, 2007).

Romania, on the other hand, did not manage to “enact radical lustration and court trials have been few in number and deficient in procedure” (Stan 2009), although it strongly condemned - via the highest authority of the state - the atrocities of the communist regime, after a report from the Presidential Commission for the Analysis of the Communist Dictatorship in Romania (Vierita 2012), thus differentiating itself from most Balkan countries as well as some of its northern neighbors. But Romania has long suffered from a slow start and rather late democratization, making the first real transition of power from (former) communists to opposition only in 1996 (Marginean 1997). Some authors even argue that “Romania has yet to fulfill its second democratization wave” (Craciun 2017), while still starting to enact, slowly at first and then rapidly, its transitional justice measures, which helped rebuild the social fabric in a country that came a long way from a totalitarian past. I will fully elaborate on the case of Romania in the next section. Bulgaria is a lot similar to Romania, with consecutive governments pushing hard for transitional justice measures such as lustration, but at the same time being criticized by the human rights group as violating individual rights by shifting individual guilt to collective guilt. Also, Bulgaria shares the same democratic features as Romania in most respects.

Case of Romania

One of the best documented cases of transitional justice in general and lustration in particular in former communist Eastern Europe is Romania. One of its characteristic features is a noticeable gap between political elite and civil society. The latter has urged to have a clean break with the past and consistently demanded a stronger lustration process than what the political class' span of willingness allowed. This is highlighted by a scholar when accounting for the Tismăneanu Commission, created at the time by President Basescu, which included several civil rights groups and completed a scientific report that detailed the crime of "1945-1989 period in a systematic and dispassionate manner" (Stan 2009, pp. 25).

On the other hand, tribunals that dealt with communist crimes, their perpetrators and their collaborators have been a common feature implemented by all former East communist countries. They are often compared by the level of success of how much a role they had played for a swift and successful transition and how strongly they influenced the acceleration of democratization in a given country. In Romania, we note a particular type of tribunal, the so-called "Opinion Tribunals". They had another characteristic from ordinary courts: as Romania's citizens' trial and unlike other former communist countries in the East (Klinghoffer and Klinghoffer 2002). They were set up to hold accountable the former regime nomenclature, responsible for crimes against humanity, although, unfortunately, these trials received little attention from Romanian society or its citizens living abroad. They were mostly symbolic and lacked "legal standing", so they achieved very limited success, as Stan (2012) explains.

Regarding the overall lustration attempts and success, Romania started relatively late, only in the second half of the 90s (Stan 2013) and did not do enough to classify as one of the successful cases of former Eastern Europe. As the same author argues, "civil society has promoted lustration without convincing political elites to fully implement it." (Stan 2013). Regarding civil society engagement, Romania has shown to be much more active than the Albanian counterpart. Albania did not have any particular engagement by the civil society to have a swift and effective lustration process. There were certain voices, but not organized as in Romania. The difference is that in Romania it is mostly a bottom-up push for such reforms, emerging chiefly from civil society groups and networks, while in Albania is a highly top-down undertaking, given the structural weakness of civil society actors and the politicization of the debate regarding the adoption and enforcement of

such measures.¹

On the other hand, Romania initially had an active former political prisoners' association called *Asociația Foștilor Deținuți Politici din România*, constituted in 1990 in Bucharest and with branches throughout the country and a membership that reportedly diminished from 98,700 in 1990 to 45,000 by 2000 (Stan 2013). On behalf of this alliance of former political prisoners, Senator Constantin Ticu Dumitrescu:

promoted lustration through his Bill on Access to Files and Unveiling the *Securitate* as a Political Police which, in its original version, permitted citizens to read the secret files compiled on them by the *Securitate* and asked public officials and electoral candidates unveiled as former secret agents to give up their posts or renounce the electoral race. After bitter debates, Parliament stripped the bill of its lustration stipulations. When the bill was adopted as Law 187/1999, Dumitrescu was so dissatisfied with the changes operated by the house that he refused to accept the text's paternity (Stan 2000).

The most successful period regarding calls for the necessity of lustration in Romania was between 2005-07, when the Liberal-Democrats ruled the country. As Stan (2011) recalls, "in 2006, Romanian journalists launched a Clean Voices campaign to identify secret agents from among television reporters, press contributors, and talk-show hosts. In response, Liberal legislators presented a lustration bill, the opposition lodged its own anti-nomenclatura legislative proposal, intellectuals, academics, and civil society representatives called on former and current spies to unveil their ties to communist and post-communist intelligence services, and many politicians admitted to have been spies or collaborators of former *Securitate*. More importantly, civil society groups convinced the Chamber of Deputies leaders to jointly organize a public debate on "Lustration: Principle or Instrument" on 25 May 2006. Besides legislators and ordinary citizens, representatives of 10 civil society groups—including the Timisoara Society, the Civic Alliance, and the Association of Former Political Prisoners—stated their position on this important transitional justice practice."

Thus, Romania saw a strong civil society vocation for lustration and other forms of radical break with the communist past, but initially there was little political will to

1). When it comes to lustration measures in particular, both countries fell short in comparison with other CEE countries (i.e. Czech Republic or East Germany), but even among the Visegrad countries there were huge disparities. For example, "while in the Czech Republic 10,000 people lost their positions because of lustration in Hungary and Poland less than 500 were affected" (Stan, 2009).

adopt the legislation in order to pursue real trials that would consistently ban from office former nomenklatura members, etc.

Romania's trials opened up with the show trial of former communist dictator Nicolae Ceausescu and his wife Elena that ended up with their summary shooting. The last trial in Romania was against Ion Iliescu, the former communist-turned-democrat, responsible for the trial against Ceausescu, who in April 2019 was charged with crimes against humanity for events that took place in 1988, together with Deputy Prime Minister Gelu Voican Voiculescu and former Air Force Cdr Iosif Rus. The trials against former members of communist nomenclature have started since 1989. Civil society was making calls for such swift trials as a clean and swift break with the immediate past and a way to go forward with establishing the rule of law. For example, as early as 1991, the Association of Former Political Prisoners submitted to prosecutors a list of notorious communist perpetrators, including Deputy Head of the *Securitate* Alexandru Nicolschi and Minister of State Security Alexandru Drăghici. In 1998, the name of Gheorghe Crăciun, former Head of the Aiud prison (1958-1964), was added to the list. All three accused died before the courts heard their cases" (Muraru 2011).

The civil society umbrella group "Civic Alliance" called as early as March 1991 in its "Declaration on National Reconciliation," that "the Communist Party leaders, not all of the four million party members, should be considered morally responsible" for communist crimes. Whereas "any reference to a person should include his/ her actions, not mere party membership," "former Central Committee members, party activists and Securitate agents should be banned from occupying public positions until year 2000" (Ștefănescu 1995: pp. 130-131).²

2). In addition, Romania undertook restorative measures such as its Truth Commission, established in the second decade of the 1990s (Stan 2012), as well as reparative means such as rehabilitation and financial compensation that started as early as 1991 and still continues.

Case of Ukraine

The Ukrainian draft law on lustration was proposed about two decades after such laws were adopted by (former) Czechoslovakia,³ Hungary and Poland. The scope of the Ukrainian draft law was very much broader than any of its European neighbors. And, despite the draft law's statement in its preamble that it seeks to help "create conditions for the development of a new state government in conformity with European standards," the draft in numerous ways violated the Council of Europe's standards on lustration (Vitvitsky, 2014). Instead of being administered by a specifically created independent commission of distinguished citizens, as directed by the Council of Europe, the Ukrainian draft law envisions in Article 5 that lustration would be conducted by the head of each agency. This raised all kinds of concerns about possible arbitrariness, selective enforcement, cronyism etc.⁴

Conflict of interest and nepotism are thus inevitable especially in a country like Ukraine, which has fundamental problems with democratization and the rule of law. Therefore, on 19 June 2015, the Venice Commission issued its final opinion on the lustration law in Ukraine. In contrast to the intermediate opinion which was quite critical and explicitly stated that "guilt had to be proven individually and case by case", the final opinion was somewhat more lenient, broadening the government's discretion in enforcing the laws, no longer labelling lustration processes as discriminatory and even abandoned the search for evidence in placing individual responsibility (Bobrinsky, 2015).

However, the law encountered substantial problems in the implementation process, such as postponed lustration processes in practice and transfers to lower positions in the hierarchical career within the public administration to favour individuals with strong connections within the system, etc. (Piasecka and Drik, 2015).

It is also important to note that, "in January 2015, the Civil Lustration Committee published the results of its analysis, according to which the General Prosecutor's Office was the biggest saboteur of lustration", so there were strong interventions from within the justice system to undermine the lustration process in practice. This has a not-so-small impact on the weakening of institutions, threatens trust in the rule of law, hinders rapid democratization in the case of Ukraine and undermines citizens' hope for an effective and credible lustration process (Piasecka and Drik, 2015).

3). Later divided into two separate states Czech Republic and Slovakia as of 1 January 1993.

4). *Ibid*

Transitional justice and lustration in transitional Albania: Institutional apparatus

The traumas of totalitarian communism in Albania cannot be overcome without a proper lustration process that would address the cleansing of the public administration from former collaborators of the State Security who still continue to work undisturbed in it, as well as in law enforcement agencies. Hoxha's main mechanism for controlling the lives of Albanians was the State Security and its surveillance network. State Security had about 15,000 collaborators, including 1,000 agents and 11,000 informants throughout Albania. Its spies were scattered throughout Tirana: in hotels, embassies, post offices, and even grocery stores (Mejdini & Ristic 2018). Albania still has no proper lustration process which has remained a thwarted attempt. In fact, even the institutional initiatives to carry out lustration proved to be ineffective overall (Abdurrahmani, 2018).

It should also be noted that many of the files of Security collaborators have disappeared even before the democratic transition began. As Kastriot Dervishi writes in his study that is expected to be published soon, *Lustration and its archives in Albania* referring to the original files and registry records, "39,519 files from the archives of internal affairs district offices had been destroyed in the period 1980-1992. In contrast to this statistic, data entries from Durrës started from 1974. The destruction was considered regular, i.e. with selection lists in about 20 percent of cases". So, the fact is that many of the files started to be eliminated a decade or so before the fall of communism, and any lustration process in Albania would be truncated, especially when it is delayed by about three decades, if we take the introduction of democratic pluralism as a starting point.

Transitional justice in post-communist Albania is often an overlooked topic and yet not properly researched. One of the analyses that has highlighted the failure of an adequate transitional justice process in post-communist Albania was made by Austin & Ellison (2008), where they argue that the three main factors that influenced the failure of this process were the country's political culture, the impact of the communist regime, and most importantly "the lack of political will of the Albanian political leadership to break away from its communist past". They insist that the country failed particularly with the lustration process, which the ruling class consistently saw as "a political tool to suppress the opposition and consolidate its

power". Thus, the intention behind lustration was to ensure a final break with the past and hold perpetrators accountable of their communism crimes, in order to achieve a catharsis that would allow a traumatized society to move on.

Instead, this (unaccomplished) process was used by the political elite as a political and selective means to get rid of political opponents while consolidating their own power. For the authors, this led to the "transitional justice process in Albania becoming highly politicized and was used by politicians for political gains, which ultimately led to loss of trust from general public and failed to detach the Albanian political scene from its communist past" (Austin & Ellison 2008).

Albania stands in stark contrast even with closest neighbours that share a common past, given the different post-communist trajectories where the Yugoslavs were involved in identity-building and ethnic conflicts/wars that did not occur in Albania. Albania has historically been a country of such paradoxes. Same as the fact that it had the most difficult transition to democratic consolidation, despite having a mono-ethnic society and did not get involved into irredentist and secessionist ethnic conflict of neighbouring Yugoslavia (Kalemaj 2014).

Regarding transitional justice in general and lustration in particular, Albania is neither the best-case scenario, nor the worst. Actually, civil society, media and active citizens have been at the forefront as compared to the political class, which often for petty reasons or conflict of interest has generally been the main obstacle to a swift and complete transitional justice process. Among the measures that Albania has undertaken, a striking one has been the rehabilitation and financial compensation of former prisoners that started in 1991, immediately after the fall of the communist regime, but which continues to this day due to financial constraints. Among some of the recent measures, we can mention the vetting of former State Security officials and collaborators - which is still underway. These former officials and collaborators have to pass the filter of the Authority of Communist Files, before they can be elected or appointed to high State positions.

One of the paradoxes in the Albanian case is that in the immediate aftermath of communism, some quick trials on former high-ranking members of nomenclature gave senseless sentences based on ridiculous charges (Beshiri 1998). For example, they condemned the wife of dictator Hoxha and several members of the former Politburo on financial abuses, the so-called "coffee trials", focusing on financial misappropriation for food and drinks, rather than condemning them for crimes against humanity" etc. These early decisions were somewhat corrected later, when they were condemned for a second time in 1996 under the Genocide Law. For supporters that was appropriate, while for critics they were politically motivated

charges (Beshiri 1998). Thus, they were purged in early post-communism years because not only had actively supported the dictatorship, but were also its top figures by committing crimes against humanity. Most of them, however, benefitted from the 1997 pardon.

On the other hand, *commemorations* have taken place regularly, though much more is expected to purge textbooks from (former) ideological lenses and include that part of population that was unjustly treated and those intellectuals and politicians who were purged because of ideological convictions by the communist regime. Albania also suffered from very limited trials that took place only in the aftermath of communist regime, lack of real apologies, lack of lustration etc. As one of the earliest examples of restorative justice in Albanian case was the apology of former President Berisha, immediately after the fall of communism, in the very first year of transition: "we are all together guilty and we all together suffered" (Berisha 2018). It was often quoted by critics from the right that emphasized that not enough was done in this earlier period to break the ties with the totalitarian past and to punish the guilty, as well as from the left that saw such declaration through the ideological prism.

Another example of restorative justice in Albania were the *truth commissions*, but with very limited success as a transitional justice instrument influencing the democratization process. The Albanian truth commission, i.e. the Bezhani Commission had as its main goal to open the dossiers of high-ranking members of the past administration and to prevent them from holding elected offices during the democratic transition. In fact, it was highly contested and somewhat sabotaged from its inception. In fact, with the sole exception of Chile and South Africa, there is very little evidence for truth commissions contributing to successful democratization overall (Brahm, 2019). Albania could not have possibly been the exception from the rule, also given its overall obstacles - including the high political antagonism associating the troubled transition (Kalemaj 2017).

As far as *reparative* mechanisms are concerned, Albania undertook rehabilitation first through the Amnesty Law in 1991. After the hunger strike by the politically persecuted and political prisoners, the other Innocence Law acquitted these (former) prisoners of any false charge based on their ideological affiliations. But Albania never applied any form of property restitution for former political prisoners and the main reason was the application of the new 7501 Law that distributed the land equally. Among other important reparative measures was the financial compensation through government-issued securities - which soon became worthless but, at the beginning could serve for the privatization of some

public enterprises. The verification trials - as they were called, to certify the real sufferers of conscience under the former regime and ways to compensate them - were dealt with in several forms. First, for those recognized by court decision, their families would benefit a financial compensation. Second, it was the category of the political prisoners. Third, the category of people executed without a court order, after the identification of bodies and data obtained from family members and witnesses. In any case, this is about financial compensation only and did not include property restitution.

Lustration in Albania: Legal apparatus

The first attempts to somewhat start the transitional justice process in Albania emerged in September 1991 with the Law no. 7541 "On innocence, amnesty and rehabilitation of former politically imprisoned and persecuted". It apologized to and declared innocent any persons who "have been charged, prosecuted, convicted, imprisoned, interned and persecuted during the 45 years for violating political, civil and social, moral and economic rights...". Then, we have Law no. 7666, dated 26 January 1993 "On the establishment of the commission for the re-evaluation of licenses to practice law and amending Law no. 7541, dated 18.12.1991 "On lawyer's profession in the Republic of Albania", which can be considered the first law of *lustration* in Albania. A special commission was established under this law to revoke the lawyer's license to those who had been collaborators or agents of the communist secret service (*Sigurimi*). The 'official' argument was that there was a need to "purge these former judges and prosecutors" turned into private attorneys who, after being dismissed under Article 24/1 of the Labor Code had started to 'live well on the legal profession's profits'. Later on, this law was overturned by the Constitutional Court as unconstitutional and all lawyers who had their licenses suspended or revoked got them back.

The sentencing of former senior officials of the communist regime during the 1991-1995 is another dimension of the *Albanian decommunization* process. All were sentenced up to 10 years in prison. At odds to find convincing legal arguments, this process became ridiculous and it is labelled in Albania as the "coffee trials to convict former top officials of the communist regime". Then, we have the Law no. 8043, dated 30.11.1995 "On the background check of officials and other persons connected to the protection of the democratic state", otherwise known among the Albanian public as the Genocide Law, which construed the first attempt to lustration "mainly as a political retaliation against the political opponents and opposition action". The Mezini Commission established under this law took care to prevent a considerable number of opposition figures from running in the 1996 parliamentary elections. The Council of Europe criticized laws that restricted a person's right to be elected, unless they are convicted by a court decision, and specifically targeted this law adopted by the Albanian parliament.

For this reason, this law was adopted three times:

i) by Law no. 8220, dated 13.5.1997 adopted by the parliament with a DP majority; ii) by Law no. 8232, dated 19.8.1997 adopted by the parliament with a SP majority; iii) by Law no. 8280, dated 15.1.1998 adopted by the parliament with a SP majority. After winning the 1997 elections, the SP and its allied set up the Bezhani Commission evoking this law, which would be enforced only on top officials and, according to its Article 16, would no longer be applicable from 2001. This Article also provided for the completion until 2025 "of the entire documentation on which the lustration process was carried out".⁵

For the first time since 1996 we have a legal framework of a potential lustration process, which should in no way violate human rights. This came through the CoE Parliamentary Assembly Resolution no. 1096/1996 "On measures to dismantle the legacy of former communist totalitarian systems", further with the decisions of the Constitutional Court, the European Convention on Human Rights and the *amicus curia* opinion no. 524/2009 of the European Commission for Democracy, known as the Venice Commission. This clear legal framework put the Albanian legislator before a series of dictating rules that clearly define the boundaries that should not be violated. Respecting these boundaries has been a political rather than a legal challenge, as undertakings to have a lustration law were politicized initiatives from the start and aimed at gaining political capital, rather than representing genuine efforts to conclude a process long overdue.

On the other hand, it still remains a fact that we have an incomplete legal framework for punishing the crimes of communism exhaustively, which would help conclude the chapter on dealing with the past, would allow society to carry out a catharsis process, but also rise to the level of best practices coming from the Eastern former communist countries. As Besim Ndrejoni, President of the Nationwide Union of Internees and Politically Persecuted puts it:

"What the government has done to open the files is a demagogy. They say they referred to the German model to open files, but the German model does not even allow a teacher to teach in a democratic school if he has been a collaborator of the regime. The law on files in our country does not penalize any prosecutor, investigator, judge or senior official who directly participated in the commission or execution of a crime at that time. Opening files is not a problem for us, but

5). "Lustration" seeks to suppress the justice system..." <http://www.arkivalajmeve.com/Lustrimi-synon-goditjen-e-sistemit-te-drejtiseise.158036/> 15 December 2008.

for the younger generation, so that this crime is not repeated. Crimes do not end with spying, but begin with it and end with a whole system which had turned into an extermination machine or ideology. Until the communist crimes settle the score with justice and are punished, Albania will be unable to build a democracy”, Ndrejoni says (Cuka, 2015).

Fate of lustration and politics: Quo Vadis?

This May (2020), the draft law “On the ban from appointment, election in senior positions and employment in public, State and political functions of former officials or employees who held senior positions in the period from 28.11.1944 to 8.12.1990”⁶ was presented to the Assembly of Albania as an initiative of 20 parliamentary opposition MPs. Before the parliamentary Committee on Legal Affairs, Public Administration and Human Rights, one of the proposing MPs stated the arguments and reasons of bringing this legal initiative to the Assembly, where he said, *inter alia*, that “it is high time for Albania after 30 years of post-communism and two consecutive requests by the Council of Europe calling for the international punishment of crimes committed by communist totalitarian regimes, to have a law that finally detaches it from the communist past”. Further, he underlined that Albanians deserve to have newly established justice bodies under the Justice Reform free of former investigators, prosecutors or judges of communist times.⁷ It must be noted that the proposed draft law listed 23 public/political functions that left out former communist leaders of the period 28.11.1944 - 8.12.1990, starting with the positions of president, prime minister, member of parliament, ambassador, State Intelligence Service officials, etc.⁸

Since the examination phase at the parliamentary Committee, this draft law was judged by the parliamentary majority’s rapporteur to be bluntly incompatible with the Constitution, but also the decisions of the Constitutional Court, the European Convention on Human Rights, and the *amicus curiae* opinion no. 524/2009 of the European Commission for Democracy, known as the Venice Commission. He stressed, among other things, that the proposers did not define in the explanatory report the need and additional reasons to those presented in 2008 (law that was repealed); the draft law does not provide for an appropriate mechanism for determining individual guilt; excludes persons from election in open breach of

6). “Assembly includes in its agenda the law overthrown by the Constitutional Court”, *Gazeta Dita*. <http://www.gazetadita.al/kuvendi-fut-ne-procedure-nje-projektligj-per-ish-funksionaret-komuniste-qe-e-ka-rrezuar-kushtetues-ja/> 24 April 2020.

7). “The parliamentary Committee on Legal Affairs, Public Administration and Human Rights rejected in principle a draft law and held a hearing for the PPC activity report for 2019” <https://www.parlament.al/News/Index/10100> Posted on 27/05/202.

8). Lustration Law/ Initiated by 20 MPs to remove communist officials from politics <https://top-channel.tv/2020/04/24/ligji-i-ri-per-lustracionin-nisma-e-20-deputeteve-per-te-larguar-nga-politika-funksionaret-ne-komunizem/> 24 April 2020.

international standards according to which lustration should not be applied to elected functions, except when required by candidates; no time limit is set regarding the duration of the lustration measure and finally restricts the right to work and the right of access to public services".⁹ Rejected by the relevant committee, this draft law suffered the same fate in the plenary session with 72 votes against, 30 in favor and 6 abstentions.¹⁰ Roughly one month later, the socialist majority rejected in plenary session another draft law put forward by a parliamentary opposition MP, specifically "On some amendments and additions to Law no. 9831, dated 12.11.1997 "On compensation of former politically convicted by the communist regime", as amended."¹¹

It remains unclear at the moment whether there will be an initiative of the socialist majority to have a genuine lustration law before the April 2021 parliamentary elections, or whether there will be a new legal initiative by the parliamentary opposition. For the socialist majority, even from the electoral point of view, it does not sound too sensible to activate a lustration mechanism in an electoral year. In fact, the expression in 2008 by the then opposition MP Pandeli Majko (currently Minister of Diaspora) that "what we did not achieve in 1992, what we did not achieve in 1996, we will not achieve in 2008" is valid to this day. Logically, it is even more impossible or desirable in 2021, which coincides with the parliamentary elections. Meanwhile, the chances such initiative comes from the extra-parliamentary opposition are quite slim due to its parliamentary boycott, but there may be a bipartisan effort with joint political will to have a generally accepted initiative.

But practice so far has shown that there is little political will to cooperate for joint legal initiatives that do not bring additional political capital, especially just before elections. In fact, the opposite has often occurred; precisely for political capital ahead of an election campaign (mainly for parliamentary elections), political parties have initiated draft laws with a symbolic weight and often unenforceable or with legal shortcomings, with the aim of having an electoral effect in favour of their political subject.

There was no shortage of draft laws on transitional justice in Albania, which, as mentioned, started in 1991 and kept coming in 1992, 1993, 1995, 1998, and so

9). "The parliamentary Committee on Legal Affairs, Public Administration and Human Rights rejected in principle a draft law and held a hearing for the PPC activity report for 2019" <https://www.parlament.al/News/Index/10100> Posted on 27/05/2020.

10). "The Assembly sits in plenary session adopting three draft resolutions, three legislative acts, four draft laws of the penitentiary package and a draft decision. Vote against one draft law and two presidential decrees". <http://parlament.al/News/Index/10194> Posted on 25/06/2020.

11). In plenary session, the Assembly adopted two draft laws, rejected the presidential decree and voted against two legal initiatives proposed by MPs <https://www.parlament.al/News/Index/10260> Posted on 16/07/2020.

on. It is difficult to demonstrate a strong causal link between the passage of these laws and the election cycles, but a clear correlation emerges given the transitional justice mechanisms such as pardons, memorials, truth commissions, or lustration, often adopted and implemented with one-sided political will, and addressed to certain voters to the detriment of others.

Analysis of the survey and interview data

The survey-generated data comprise 32 individualized questionnaires encompassing key stakeholders. Meanwhile, students were organized in a structured focus group, where, among the main findings was the poor information they had on lustration, starting with the term itself, and going on further with the historical background up to its application in the Albanian context. Therefore, in addition to being an empirical observation of how much knowledge and information students acquired in the process, the focus group was an information tool to them due to their limited information and interest in the topic. This is because pre-university and university curricula, including post-university, are sketchy in addressing transitional justice in general and lustration in particular.

In terms of surveys, they involved historians and researchers of politics and sociology, diplomats and heads of public institutions, journalists and publicists who forge public opinion, as well as former politically persecuted. The idea was to create a complimentary database with the interview-generated data, though the categories were relatively similar. The responses themselves reconcile, for the most part, both in terms of the information possessed about the process and the criticisms or methods with which they thought this process could have been done better. This is true also for the recommendations provided, given the current situation.

In terms of the question, for example, on the most effective mechanisms to address transitional justice, although all the categories were affected, the majority were divided between legal punishment on one hand, and forgiveness and forgetfulness on the other hand. Whereas, on the question of what were the most common mechanisms undertaken to redress the crimes of communism, the vast majority believed that the key mechanism was reparations. Only a few of them spoke about lustrations or truth commissions and very few about forgiveness, while none about memorials or head sculptures. The absolute majority also felt that, so far, Albania had not addressed properly the communist past, followed by some who confessed it had been somehow addressed and none who thought it had been completely and exhaustively addressed.

The vast majority of the respondents also thought that the 1990s were the most productive in terms of progress seen on lustration laws rather than the 2000s when, for instance, there was also a lustration law passed by the Parliament and overturned by the Constitutional Court, or the current years when it was established

the Authority for Information on Former State Security Documents or the File Authority as it is most commonly known. This is probably related to the Mezini and Bezhani commissions, the trials for the former nomenclature of the previous regime or some lustration of the judiciary despite the flaws it had as a process. Or, it may even be the army reforms, etc.

Most of the interviewees thought that the electoral reform had no significant impact on the lustration or, at least, was not effective at all. One of them had additionally stated that even if there were attempts, “they were ineffective. Even though there may have been something in written, they were never implemented”. Meanwhile, a few others stated they were effective in reference to the extremes, i.e. in 1992 or 2013 and 2017, but not in between these years. The majority was torn between the fact that lustration was not successful at all with being somehow successful but, again, those thinking that it is was completely unsuccessful still constituted the absolute majority. In addition, the majority thought that Albania has been following the worst lustration practices in comparison to other post-communist countries.

On the other hand, in the interviews conducted with former and current politicians, heads of important state institutions and government officials, journalists and scholars who have written about lustration in the Albanian press and civil society activists in the human rights sector, as well as former politically persecuted, I managed to collect some highly valuable opinions and data leading also to some of the main findings this report offers.

Among the main findings was the need that Albania has had for a comprehensive and effective lustration law since the very first years of its democratic transition. If this had taken place on the basis of the best examples of former Eastern European countries, like East Germany or Czechoslovakia, then Albania could have been decommunized, undergoing a necessary social catharsis process that would have allowed the establishment of the rule of law. Most of the interviewees also shared their opinion that it is never too late to undertake such a process, either through the adoption of a new law that would respect human rights, deadlines, and other limitations, according to previous decisions of the Albanian Constitutional Court, the Strasbourg Court or the Venice Commission, which have been expressed in writing regarding the standards a lustration law must meet, not only for the Albanian case, but also with other references from the former communist Eastern countries. Some of the respondents paid more attention to what was done wrong or not sufficiently enough in the past, while others were more focused on the current stage or what needs to be done in the near future. In a more structured

way, partially quoting the interviewees themselves in a reviewed manner, below are some of their responses, taken in alphabetical order:

Afrim Krasniqi of the Albanian Institute for Political Studies states, for example, that the lustration process has been an ongoing experiment; in fact, there were rather several processes overlapping one-another, often with measures ranging from super soft to draconian ones. He adds that: "being delayed, overlapped, motivated for political purposes on the advent of election campaigns and based on political acts, not on sustainable legal and administrative acts, I, hence, do not think it has been successful." Whereas, regarding the need for a lustration law at the current moment, he says, inter alia, that "lustration was 100% necessary in the first decade of the '90s, became morally necessary later and is now symbolically necessary, as the 45-60 year olds of the '90s, if still alive, are retired and do not claim any public roles. Nevertheless, without the opening and disclosure of the secret files, it would be difficult to justly address and separate from the communist period; myths will continue to dominate truths, the appointed elites will continue to be elites of transition too and the communist system will continue to be addressed "as a fault of the system", not of the people who ran it or benefited from it.

Aleksandër Meksi, the first former Prime Minister of the pluralist Albania from 1992 to 1997, at the same time one of the initiators of the opening of the files and the lustration process, says, inter alia: "[even] though it is a very disputable issue and always under the open advocacy from the left, even from foreign proponents of the same political direction, my opinion is that lustration was needed, is needed and its conclusion by a law that considers the time it will be adopted and implemented, would be extremely useful for ending the transition, breaking up from the communist past of a criminal regime. As the promoter and co-drafter of the Law adopted in 1995 and member of the working group on the improvement and update of the draft law on the opening of files in 2014, presented by the MPs Sh. Idriqi and M. Doda, based on recent experience under the Law "On the Opening of Files", I personally say that, with little work, a fair law can be drafted to ensure lustration, which is also a touchstone for the condemnation of the communist past". He additionally says that, on the other hand, respect for human rights and freedoms must be necessarily taken into consideration, and, simultaneously, the guarantee for not using the methods of the past from those who applied them against the innocent. He adds that: "I understand the difficulty on this, because the Albanian socialists have not yet really condemned the Enverian communism of the PLA nor have they apologized to the victims and the Albanians for that criminal dictatorship. Without a lustration process from the leading positions of the Albanian

state for those who have been tainted with crimes during dictatorship, who have designed and implemented the Secret State Security Platforms, who have dealt with the investigation and punishment of "*crimes of opinions and thoughts*", and false evidence, it is useless to speak in Albania about real democracy".

Blerina Gjoka, Director of Kujto (Remember) Foundation - Online Archive of Communism Victims and Crimes, emphasizes that appropriate laws dealing with the past have not been adopted or have become unconstitutional, such as the Lustration Law 2008 that was overturned by the Constitutional Court, or the Opening of Files Law, which established the Special Authority, a law that, again, needs to be improved as it creates many obstacles to the real opening of the security files. She also emphasizes the fact that lustration as a process always risks being used for political interests to fight opponents, and there is criticism against the way lustration was implemented during 1992-1997 for attacking political opponents. Yet, Mrs. Gjoka emphasizes that "however, I believe that it is better with a bad lustration law rather than without such one, which allows, therefore, former political officials and state security leaders to continue to maintain their positions in politics or administration. This is an insult to the thousands of victims of communism who claim, at least, for some moral justice".

Çelo Hoxha, the Executive Director of ISCC emphasizes, inter alia, that the lustration law had an impact on elections in 1996. He highlights that "the persons the law disqualified from running that year, became much more active a few months later during the violent protests of 1997, and were very soon back in politics through elections imposed by force". Mr. Hoxha's emphasis herewith is that lack of a lustration process allowed the same persons who should have been legally banned from running for office or serving at high levels of the public administration to maintain the status quo and even become protagonists of the political developments in later years.

Whereas Dorian Koçi, Director of the National Museum, emphasized the fact that laws had failed and were seen as biased. He says that "I consider laws of 1995 and 2008. The Authority for Information on Former State Security Files was established only in 2016, i.e. 25 years after the democratic changes and of course the little time available was not enough to fulfill a process that should had started in 1991". He also notes that "lustration is useful and possible to a large extent." "At the same time, it acts as a protective and moral measure against the past atrocities."

To researcher Erald Kapri, the safeguards for a fair lustration process have been lacking. He emphasizes that "we can even say that every started process has been insincere. Either that in 1995, or in 1998, and the one in 2008." For him, the

main thing is the fact that the historical past has not been dealt with. He adds that "Albanians are not very aware of what happened in the dictatorship. Today there is still not a day to honor the thousands of victims. This alone is self-explanatory. Even the process of compensating the victims has been insufficient and sluggish. There was no real rehabilitation process for them".

To the leader of the Republican Party, Fatmir Mediu, the left wing has always been against a complete lustration law and obviously tried legally and illegally to protect all the figures affected by the lustration law, by unfortunately using them as loyal political militants in depoliticized institutions. He thinks "that a nation without historical memory can hardly rise on values. The impunity of evil, at least morally, by the whole society, creates great problems in the organization and political-institutional functioning of a country".

Gentiana Sula, Head of the Authority for Information on State Security Files in the years 1944-1991, notes that legal initiatives from 1990 to 2015 in Albania gave priority to lustration. None of these efforts succeeded, falling prey to legal (constitutional) and political challenges. What distinguishes the Law 45/2015 on Authority and the responsibilities it defines from previous efforts is the separation of access and transparency from lustration. She also points out the following alternatives:

1. Start the preliminary background verification of candidates for MP or mayor. Political parties submit the registration documentation for the elections, the names of potential candidates for MP or mayor (no later than 70 days before the election date), and the application forms completed by each candidate to be checked.
2. Start the background verification of candidates for MP or mayor, within the legal time-limit set for the submission of the multi-name list of candidates for each constituency (50 days ahead of the election date), and political parties must submit the application forms completed by each candidate to be checked.
3. Verify the background of candidates for MP or mayor, where the candidate completes the application form and self-declares (Polish version, where false self-declaration triggers proceedings before the competent court) whether he is in any of the situations set out in Article 30 of the Law 45/2015 - discovery of the existence of such situations leads to corresponding sanctions.

Gjergj Erebara, journalist and analyst of BIRN Albania emphasizes that unlike many other Eastern European countries, Albania has had very little legal intervention in terms of lustration. In 1995 there was a somewhat more serious but not entirely effective process in preventing former State Security persons from holding high public, political or appointed positions. In 1997-1999, a number of rulings by the Constitutional Court - whose majority of members continued to be those appointed by the last communist government - overturned much of the 1995 Lustration Law as unconstitutional, legitimizing the holding of power by the same people from the 1980s onwards. This is particularly noticeable in the judicial authorities, where the class of political prosecutors and judges who began their careers in the late 1980s still hold effective power in the judiciary today. He also thinks that the civil society is better positioned to address this problem, given the weak or change-resistant institutions. Institutional intervention, as in the case of the working group on finding the remains of people missing during the communist era, proved to be a failed test due to the extra-legal refusal of the vast majority of institutions to engage in the process of searching for graves.

Journalist and researcher Kastriot Dervishi, who has written extensively about lustration, points out that Albania had a partial lustration process that worked shortly only in 1996. Law no. 8043, dated 30.11.1995 "On the background check of officials and other persons related to the protection of the democratic state" was implemented in the (Assembly) elections of 26 May 1996 and the (local) elections of 20 October 1996 (where only mayors for candidates were checked). There was no process in the sense of the law, because it did not act on the subjects (that fell within its scope) in the judicial system, administration, etc. The amendments introduced in 1997 greatly narrowed the scope of the law, because it applied only to the former State Security collaborators (moreover, on a time limitation) and its senior officers. Even the latter, thanks to the derogation clause, could be appointed by the Prime Minister (as he did). Therefore, the commission headed by Hajri Mezini in 1996-1997 checked only the candidates for MP and mayor. Chaired by Nafiz Bezhani in 1997-2001, the commission did not check any candidate for MP or mayor, but only a few low-ranked in the armed forces and diplomacy. Practically, it worked only against the Security collaborators. Among the mechanisms proposed are: to introduce an obligation in the Electoral Code for any candidate for MP to disclose the fact that he/she has been part of the criminal structures or collaborator of *Sigurimi*; or issue a Decision of Council of Ministers that does not recognize the higher education diploma, *Sigurimi* profile, issued by the back-then Ministry of Internal Affairs, etc.

Nebil Çika, President of the Association of the Politically Persecuted, emphatically states that there has not been a proper lustration process. He adds that “there have been sporadic efforts and a lot of political will to prevent, divert and sabotage any legal initiative to this end. Although there are laws and institutions in Albania that deal with the communist past, they do not reach out to lustration and are violated or bypassed by the institutions that must implement them. The legal framework for it is entirely inadequate, and coupled with non-enforcement, they become complete inexistent. The laws so far have been blatantly violated and manipulated for political gain”. The law provides for restrictions on perpetrators of communist crimes at all levels of government, parliament, administration, security institutions, justice, etc. But exactly that part of the law that can be considered a kind of lustration is not applied. Mr. Çika goes on to say that: “currently the justice system is under vetting, and the vetting law prohibits the perpetrators of the communist crimes from being part of the new justice institutions. Until now, the vetting bodies have not enforced this part of the law and many perpetrators of communist crimes were reappointed to justice; judges, prosecutors, investigators, State Security members and collaborators did pass through the ‘filters’ and became leaders of the new justice. Vetting not only did not rid justice of the perpetrators of communist crimes, crimes against humanity and genocide, but enabled them to capture justice. The same may be said for security institutions, police, secret service, SPAK (Special Anti-Corruption Prosecutor), etc.”

Simon Mirakaj, a former politically persecuted and member of the board of the Authority for Information on State Security Files in the years 1944-1991 says that “the lustration law was inexistent in Albania, it was not implemented because it did not exist, but it is implemented according to political preferences. We see many former dictatorship legislators or law enforcers who have reached the highest peaks of justice and state administration during democracy. We have had prosecutors who delivered political sentences at the general prosecution, at the high court, at the constitutional court, etc., precisely because we did not have a law but left it to political preferences; this one is ours, keep him, but this one is not ours and must be discarded”. Also, in his opinion, “the political class has no interest in drafting a lustration law, using the argument that Europe does not support it because it violates human rights. This seems to suit the political class, so it felt comfortable with the situation”. He emphasizes once again that “the political spectrum, particularly the left wing, became an obstacle and did not support the initiatives taken by the right-wing spectrum in terms of lustration law. There were initiatives, like in 1995 where a law was adopted to open the *Sigurimi* files called the ‘Mezini law’ and later in 2001 the ‘Bezhanjani law’, but they were not successful because they only dealt with the background of an MP, so they were not lustration laws”.

Uran Kostreci, a former political prisoner states that "justice must be done for the crimes of communism and against those who helped in the process, such as former *Sigurimi* collaborators through a process that deals and recognizes the totalitarian past, unmask the crimes of communism etc., and prevents them from assuming high positions in public administration and judiciary". Also Mr. Kostreci calls for the successful examples of the former communist countries in Eastern Europe to be followed, highlighting the cases of East Germany, the Czech Republic and Romania, where their lustration reforms made it possible for these countries to leave the past behind and democratize more quickly.

Conclusions and recommendations

This research sought to compare how lustration – as the illustrative element of transitional justice – took place in Eastern Europe, focusing especially on the cases of Romania and Ukraine which have some similarities but also essential differences from the Albanian case. These two countries that developed a lustration process at two different times, adopted varying constitutional practices, had political and public debates that accompanied legal changes and had different implementation modalities that triggered public and political controversy. These countries analyzed in this study, but also other former Eastern European countries that are mentioned to highlight their lustration achievements, are examples from which Albania can draw information and best practices to be adopted in a new legal framework that would address lustration.

The report also detailed the history of legal efforts and court decisions, institutional gaps and political clashes that have accompanied these three decades of efforts to have a lustration law which – by many, including those interviewed and consulted for this study – is considered as a lost battle or missed chance. Some even go so far as to call it a closed chapter that is not worth reopening at the moment.

Meanwhile, others think that without a proper lustration process, no matter how late in time, Albania cannot achieve social catharsis, close the wounds of the past, overcome political antagonism where the past of opponents is often used to blackmail them, and consolidate the rule of law. If this is achieved, then it will automatically increase the quality of political representation, leading to democratic consolidation.

For example, recent discussions on the Electoral Code that involved constitutional amendments could have been both an attempt to ‘cleanse’ candidate lists from those who were former State Security agents or collaborators and against whom there is (still) evidence of having collaborated in crimes against individuals or society. But this could be possible only if we had a new consensus on a new lustration law which takes into account both the 2010 decision of the Constitutional Court and the opinions of the Venice Commission, and is compliant with the European Convention on Human Rights and judgements of the Strasbourg Court.

Early successful attempts completed with surgical precision and commendable speed as in the former East Germany or Czechoslovakia, or later attempts that partially or completely saw through the lustration process like the Visegrad countries or Romania, or even where the debate is still ongoing as in Ukraine, are

significant examples from which Albania can draw lessons and apply best practices. This can be achieved by learning from experience, applying successful formulas and tapping on the best international expertise. Valuable assistance in this regard can be provided by international organizations present in Albania and beyond.

Based on the conclusions drawn from the data generated by this study, I think that Albania has a lot to learn, both from its not very successful experience in terms of lustration efforts, as well as from the best experiences of the former communist countries in Eastern Europe, whether those who carried out this process early or those who started it later in time. Below are some modest recommendations that may be considered by Albanian lawmakers:

First, referring to the Romanian case analyzed in this study, it would be advisable to encourage civil society participation or to accommodate the recommendations given by them over the years. Here we are talking about non-profit organizations, human rights activists, former persecuted persons, but also academics and researchers who have dealt extensively with transitional justice in general and lustration in particular. Their inputs would be valuable in consulting any existing or future legislation or other institutional framework.

Second, another recommendation that came up from the focus group used for the purpose of this study is the need to involve more young people in discussions and lustration processes, and the need for curricula or programs at the university level focusing on lustration and recognition of the communist past in Albania in general.

Third, there is an immediate need for a new lustration law. Despite the three decades of lost time since the fall of communism, it is still possible to regain missed opportunities.

Fourth, regarding the further steps that can be assisted by the international community in this still incomplete lustration process in Albania, I would recommend holding a national conference whose output would be a set of specific recommendations that would underlie a legal package for lustration.

This is indispensable and must be done without wasting time, so that we finally have a legal framework that addresses dealing with the past, purge former State Security agents and collaborators from the public administration, and consolidate the rule of law. Moreover, it would reinforce the legitimacy of institutions and strengthen democracy while cleansing politics of political blackmail over the past of political opponents.

An added bonus would be the inclusion of Albania on the map of former communist countries that have seen lustration through; despite the unjustified delay, the positive side is that Albania is fortunate to learn from the best experience of countries that have done this process already or at higher standards.

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