

# *Past and Present: Consequences for Democratisation*

Proceedings of the Seminar  
Organised within the Project

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

in Belgrade from 2 to 4 July 2004

Edited by

*Magarditsch Hatschikjan*  
in co-operation with  
*Corinna Noack-Aetopulos*

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## Contents

Foreword

### **Part One: Past and Present: Historical Experiences**

*Natalia Letki*

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

*Pavel Zacek*

The Cases of Czechoslovakia and the Czech Republic

*Marius Oprea*

The Case of Romania

*Emil Tsenkov*

The Case of Bulgaria

Discussion (Extracts)

### **Part Two: Public Debates on the Past: The Experiences in the Western Balkans**

*Jovica Trkulja*

The Experience in Yugoslavia and in Serbia and Montenegro

*Ivo Goldstein*

The Experience in Croatia

*Jakob Finci*

The Experience in Bosnia and Herzegovina

*Iso Rusi*

The Experience in the Republic of Macedonia\*

*Kathleen Imholz*

The Experience in Albania

Discussion (Extracts)

### **Part Three: Public Debates on the Past: Effects on Democratic Structures**

*Vojin Dimitrijevic*

Lessons from the Cases of Yugoslavia and Serbia and Montenegro

*Zarko Puhovski*

Lessons from the Case of Croatia

*Dino Abazovic*

Lessons from the Case of Bosnia and Herzegovina

*Biljana Vankovska*

Lessons from the Case of the Republic of Macedonia\*

*Ben Andoni*

Lessons from the Case of Albania

Discussion (Extracts)

Contributors, Discussants, Editors

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\* The author uses the constitutional name of the country, i.e., Republic of Macedonia. The CDRSEE uses in its work the name which is applied by international organisations like the UN or the EU, i.e., The former Yugoslav Republic of Macedonia.

## Foreword

This electronic book presents the contributions and extracts from the discussions during the seminar *Past and Present: Consequences for Democratisation* which took place in Belgrade from 2 to 4 July 2004. This seminar was part of the project *Disclosing hidden history: Lustration in the Western Balkans*, a project led by the *Center for Democracy and Reconciliation in Southeast Europe* (CDRSEE) in Thessaloniki and organised in cooperation with five partner organisations: the *Albanian Human Rights Group* (AHRG) in Tirana, the *Center for Interdisciplinary Postgraduate Studies* (CIPS) at the University of Sarajevo, the *Croatian Helsinki Committee for Human Rights* (CHC) in Zagreb, the *Foundation Open Society Institute of Macedonia* (FOSIM) in Skopje, and the *Center for Antiwar Action* (CAA) in Belgrade.

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

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

Part Two – *Public Debates on the Past: The Experiences in the Western Balkans* – includes case studies on the experiences with public debates on the past and on the lustration issue in the individual countries of the Western Balkans. *Jovica Trkulja* explains the treatment of the authoritarian past in public debates in Serbia and the reasons why attempts at lustration have failed so far. *Ivo Goldstein* analyses the specific features of an historical revisionism in Croatia which overshadowed the debates on the past in the 1990s and the reasons for more realistic approaches after 1999. *Jakob Finci* describes the legal basis and the procedures of the vetting processes with respect to the police and the judiciary system in Bosnia and Herzegovina. *Iso Rusi* shows different aspects of continuity and change within the political scene in The former Yugoslav Republic of Macedonia, emphasising that besides clear personal and political continuities there are important, albeit still insufficient, institutional

changes. *Kathleen Imholz* describes in detail the political, legal, and social approaches in dealing with the past and particularly with the lustration issue in Albania against the background of the general political development. The *Discussion* concentrates on some ethical aspects of the public debates on the past, including their possible cathartic impact on the respective societies, and on the reasons for the fact that the public interest in the individual countries is obviously concentrated on different periods of the past.

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

Our thanks go, first and foremost, to the contributors and discussants. At the organisational and technical level, we thank, above all, Aleksandar Resanovic, Director of the Center for Antiwar Action in Belgrade, who was instrumental in organising the seminar in Belgrade. We also thank the project coordinators of the other partner organisations within this project: Goce Adamceski from FOSIM, Elsa Ballauri from AHRG, Nejra Cengic from CIPS, and Goranka Lalic from CHC, who all greatly contributed to the successful organisation of the seminar and especially to the participation of many distinguished experts from the respective countries. Our gratitude also goes out to Maria Panagiotara for the transcripts and her thorough look, as a native speaker of English, at the final outcome. The design and technical creation of the publication were developed by Beonet, Belgrade. We want to thank especially Dragoljub Dimitrijevic for his creative input. Last but not least we are grateful to the donors of the entire project, the European Union and USAID, for their generous support.

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The editors

Thessaloniki, December 2004

## Part One

### Past and Present: Historical Experiences

#### **The Consequences of Lustration for Democratisation: The Experience of East Central Europe**

*Natalia Letki*

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

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

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

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

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

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

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

Lustration may imply various positive consequences for democratisation. Below, I'll discuss the positive impact that a well-regulated and implemented lustration may have on five major 'arenas' of democracy (for the comprehensive discussion of the spheres of democracy, see Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation*, Baltimore and London: The John Hopkins University Press 1996). The first arena that has to be mentioned here is *public administration*, the natural target of lustration procedures. As the experience of the East-Central European countries in the first half of the 1990s has shown, the most obvious positive effect of lustration was limiting the influence of conformists and communists in public administration. (Whether this experience will be entirely applicable to Balkan countries now or in the next couple of years, remains an open question.). The distinction between conformists and communists, hence the inclusion of both groups here, is stressed, since it is neither desirable that communists have too much influence on the new bureaucracy, because of their values, nor is it desirable that conformists have too much influence, because of their lack of values. Lustration should allow for assessing the moral and professional standards of top public officials. It should make state bureaucracy more usable and more cooperative towards a new democratic government. Implementing lustration should stress

the importance of competence and efficiency over experience and particularly over interpersonal connections. All these elements taken together would surely increase public confidence in institutions.

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

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

The fourth sphere is related to the *rule of law*. As already mentioned, there are certain professions particularly negatively influenced by the Communist regimes. They were, as people in East-Central Europe say, most 'communised', and the legal profession is definitely one of them. Poland and Hungary, for example, faced a problem of finding enough judges to form a lustrating tribunal. It was impossible to find 10 or 12 judges who would not have, themselves, a 'lustratable' past. Promoting moral and professional standards in this profession would definitely benefit a democratic political order. It would also allow channelling political conflicts into legal procedures, thus limiting the use of blackmailing and compromising political tools. It would reinforce the importance of legal rules in public life. Finally, it would allow ensuring that the people who are working on the creation of the legal basis of the new democratic state are not the same people who formerly worked for the secret service of an anti-democratic regime.

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

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

## The Cases of Czechoslovakia and the Czech Republic

*Pavel Zacek*

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

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

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

A second law regulating the opening of the former state security files to the public was passed by the Czech parliament in March 2002. It expanded the range of documents to be opened from the files of the main units of the so-called internal intelligence as well as from other parts of the former state security system. Since then, three ministries have become involved in the opening of StB files: the Ministry of the Interior provides for access to the files of the counter-intelligence and the intelligence department; the Ministry of Defence administers material of the military counter-intelligence; the Ministry of Justice is responsible for the access to the arraignment files of the so-called prison agents network and to the files of persons kept under surveillance in Czechoslovakian prisons between the years 1969 and 1989. For the time being, no access is granted to material of the general staff intelligence section, i.e. to the files of the Czechoslovakian military intelligence service, the only section of the intelligence system before 1989 that was not subordinate to the state secretary or the Ministry of the Interior.

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

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

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

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

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

In Slovakia, a principal solution of the issue was taken in August 2002, following a change in the political situation and the formation of a right wing cabinet. The law on public access to the files relating to the activities of the state security forces from 1939 till 1989 enlarged the number of post-communist countries which have decided to form an institutional solution to their totalitarian past. Apart from the opening of the existing files on the Slovak state security departments in a way that was almost identical to that applied in the Czech Republic, the law

also defined the time of the totalitarian regime (1939-1989), with a particular emphasis on the crimes committed during the periods of the Nazi and the CP regimes. For the purpose of the law, it was also defined that the totalitarian state functioned as a public official and as a person fulfilling or leading a function in state or party bodies and organisations.

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

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

## The Case of Romania

*Marius Oprea*

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

In the communiqué of the National Salvation Front to the country, read on TV on 22 December 1989, it was stated only that the entire state power had been taken over by the Council of the National Salvation Front to which was subordinated the Superior Military Council that coordinated all activities of the army and of the units of the Ministry of Internal Affairs. This formulation was confusing enough to amplify the boundless incertitude and route of that period. Only two days later, the National Salvation Front declared that the units of the Ministry of Internal Affairs would be integrated into the Ministry of National Defence which would take over the sole command of all troupes and combat means of the country. For a very short period, the former state security was anathematised, but this was to last not more than a few days. Since the dissolution of the former political police in the waters of the new power structures and until now, an official condemnation of its repressive actions has not taken place.

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

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

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

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

The strong position of Securitate officials was not even threatened by the reestablishment of the historical parties in the conditions of political pluralism. The competition of these parties had to be regulated, as far as was possible, without the violent engagement of the state institutions, which imposed controlling and discrediting them – tasks for which the Securitate personnel was trained and which it was willing to do.

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

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

This protection of the past is only a part of the reward given by the new state administration to the former Securitate officials for the services rendered by the latter in the regaining of and the consolidating of the power by the present day social democrats who are the inheritors of the former communist party. Under the cover of a general silence, instigators of a long series of criminal abuses that the Romanian people were subjected to in the past were maintained in the structures of the secret services and allowed to continue with their activities in the shadow of the power or to become respected, honourable businessmen or equally respected and honourable politicians.

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

## The Case of Bulgaria

*Emil Tsenkov*

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

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

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

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

The issue which was more difficult and painful to resolve and which is still unresolved is the issue of the state security files. In 1991, the Grand National Assembly decided that the state security archives should neither be taken out of secrecy nor destroyed. Since 1992, every citizen has the right to ask for, and if the conditions are given, to obtain a “clean past certificate” from the Ministry of Interior. The misuse of secret information was forbidden by an amendment of the criminal code in 1993. This was also a reaction to relevant developments of that kind, for example, the publishing of a list with names of former intelligence officers working undercover in the Ministry of Foreign Affairs. This action had surely been illegitimate, but it had provoked some very important media publications. Similar campaigns during the 1990s normally focused on the ex-agents of state security services who still served as public officials.

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

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

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

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

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

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

security was established to oversee and implement the law, and a new mechanism was introduced permitting the destruction of declassified materials.

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

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

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

## DISCUSSION (Extracts)\*

### Zagorka Golubovic

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

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

### Zarko Puhovski

We should discuss the problem in a bit more precise general terms. We cannot start by using the definition of lustration that deals with communism because this is not part of any definition. This is one type of usage of this procedure. We have had post-1945 anti-Nazi lustration, and we will have to have lustration of the politicians in the so-called post-communist transition in the post-Yugoslav states in the 1990s. There was some, to put it mildly, not very precise terminological interpretation of modern democracy in Natalia Letki's contribution. In dealing with lustration now, we have to emphasise two issues about a highly formalised procedure. First of all, we need to clarify the real difference between lustration and purge. Highly formalised procedure means, something that unfortunately is not present in the languages such as Serbian or Croat, the distinction between the judge and the referee. The referee in a football game can give you a yellow card or a red card and you are out. There is no discussion. This is

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\* Referring to The former Yugoslav Republic of Macedonia, one discussant uses the constitutional name of the country, i.e., Republic of Macedonia, or just Macedonia. The CDRSEE uses in its work the name which is applied by international organisations like the UN or the EU, i.e., The former Yugoslav Republic of Macedonia.

not what we need. We need a formalised procedure. Just as an indication, comparing the existing laws, the German law is more than twice as long as most of the others, so we have here a kind of implication as to how far we have to go with formulised procedures.

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

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

### **Zoran Pajic**

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

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

### **Magarditsch Hatschikjan**

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

### **Natalia Letki**

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

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

I did mention in the beginning that lustration is just one of several methods of dealing with experiences of the past. There is a whole sphere of other, more symbolic changes where

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

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

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

Lustration is a polarising issue but it is a polarising issue whether it is introduced or not, and whether you pass the lustration law or not. In any event, it should be a formal legal procedure. In Poland, for example, the public was actually split on the issue of screening, but discussions and the polarisation calmed down after the law had been introduced. So, I agree that lustration may have negative consequences, and I probably did not pay enough attention to what might be negative consequences. However, in terms of social cohesion, I think the issue of dealing with the past and attitudes towards the past are, and will always be, a very contentious issue, no matter how we deal with it, whether we actually take up lustration or screening or we drop it.

### **Emil Tsenkov**

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

## Zhidas Daskalovski

It became clear from the presentation of Natalia Letki that lustration serves the purposes of correcting past injustices and of limiting the influence of the communist party on the political system. However, I would like to emphasise the necessity of having in mind the specific features of the developments and the individual cases and experiences of different countries when discussing lustration. Different countries have taken different paths in the democratisation processes. In the Republic of Macedonia, for example, the former ruling League of Communists has taken a reformist stand towards democratisation. In fact, they now rule the country. So, the reality in Macedonia is that a reformed communist party rules the country more or less continuously in the last 15 years with one brief exception of the opposition party ruling for four years. It seems obvious that we have to consider the local circumstances. On the other hand, we should think about whether this is a general aim we should take at all. Natalia Letki mentioned that democracy excludes certain people. Perhaps this was somehow connected to justifying the reasons why communist influence should be curbed and diminished but I would like to hear some other explanations or other arguments in favour of lustration, especially given the context of the Western Balkans and ex-Yugoslavia which was rather different than that of Romania or Bulgaria.

## Natalia Letki

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

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

## Jovica Trkulja

There are generally different paths in dealing with the past, two being the most important ones. If the first path would be the path of memory, the second would be the path of oblivion. The second one would have to be discussed a little bit, especially since we have some guests from Greece here and could share some experiences with them. For example, Greece and Spain actually took the path of democratisation without facing the authoritarian past. Poland took this second path after 1990 and then realised it had to switch to the path of memory facing the authoritarian past. After the first steps having been taken, Adam Michnik excellently showed the Pandora box that had to be opened. He said it is like a grenade falling into a septic pit; a number of people are injured while some of them get killed, but all of us will be smeared with mud.

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

## Natalia Letki

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

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

## Part Two

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

#### The Experience in Yugoslavia and in Serbia and Montenegro

*Jovica Trkulja*

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

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

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

Overcoming the past includes two kinds of tasks. The first one is to remove the consequences of the authoritarian party rule. This is directly linked to issues like the opening of the files of the former state security, denationalization processes, etc. The second one is to remove consequences not only of the illegal state but also all the consequences that were the result of nationalistic politics and wars waged in the region. Comparable experiences show that this process is very delicate. The experience in Serbia is an argument in favour of the Pandora's Box thesis – once it is opened you have all the evils coming out of it.

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

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

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

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

There are numerous reasons why there is no lustration in Serbia and no wide-spread will to face the evils of the past. The first reason is that the country is faced with the process of reprocessing the authoritarian past. For many people in important positions, the past is interesting just to take a part out of it, reprocess it, retreat it and then put it in a different context, and all of that just for political purposes. The second reason is related to the fact that once lustration starts, Serbia will also be faced with the much more painful problem of removing all negative consequences of the past, including such evils like wars. Obviously, there are too many people afraid of that. The third reason is a common one in all countries in

transition. They all have a very short experience of the transition processes. The fourth reason is that in Serbia there are no basic conditions for legally overcoming the authoritarian past, because it is very difficult to clearly define the division line between perpetrators and victims. Both authoritarian regimes, the one under Tito and the other one under Milosevic, had many supporters, and the situation has become even more complicated since October 2000, because after the fall of the Milosevic regime, a massive process of switching party membership has taken place. Finally, there is no political will in Serbia to open Pandora's Box and to face the past, because a major part of the current political elite would actually dig its own grave. The consequence is that we do not have a clear distinction between the past and the present. Therefore, the feeling of oblivion that actually prevails in Serbia seems to be irresistible.

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

## The Experience in Croatia

*Ivo Goldstein*

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

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

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

Within such a context, the historical revisionism (re)emerged. The independent Croatian state (NDH) which had existed on the territory of Croatia and Bosnia and Herzegovina between 1941 and 1945 was now considered as something relatively or virtually acceptable, regardless of the fact that it had been a Nazi ally and a fascist state, even regardless of crimes and genocides organised by the government of this state which was led by the notorious Ustasha. The Ustasha crimes were played down or even justified. A broad spectrum of revisionist opinions, including extremist views, appeared. Some declared that there had been no genocides against the Serbs, the Jews or the Roma. It went so far that a commission established by the Croatian parliament to investigate some developments during the period of the Ustasha regime declared, after 7 ½ years of work (1992-1999), that in the central camp only 2,280 people had perished. This is about 50 times less than the real number which is between 80,000 and 100,000 victims. As for the Jewish victims, the commission claimed that during the period of the independent Croatian state, 331 had perished by religion and 231 by nationality. In reality, 30,000 Jews were annihilated.

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

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

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

Tudjman himself perceived the creation of a Croatian state as the very peak of his activities. Whatever he did, whatever went on, was assessed by him as having a positive impact on the Croatian state, whether it was in fact positive or not. Pretending to be a historian (what in fact he was not), he liked to use historical motives for his political propaganda. One of his favourite features was the claim that HDZ was trying to unify all Croatian constitutional traditions, from the medieval Croatian state to the awakening in the 19<sup>th</sup> century, even up to the Croatian communists.

This situation lasted for around 10 years. Many times during this period, the consequences of this mixture of fascist and anti-fascist traditions came to the fore, especially in connection with symbolic acts like the renaming of streets, squares, schools, etc. One of the most painful examples was the renaming of the Square of the Victims of Fascism into the Square of Croatian Heroes. For four years during World War II, this square had been the site where a Croatian camp was located and some ten thousand citizens of the city of Zagreb were sent to execution. Another issue was the naming of the Croatian currency. Firstly, it was chosen to be named Croatian Dinar, followed by the decision to rename it Kuna which was the name of the Croatian currency between 1941 and 1945. A third example was the renaming of some schools, streets, and squares, using the name of a mediocre Croatian writer who had been minister of the

Ustasha regime for some time. When it came to the renaming, it was claimed that it was not due to his ministerial position, but rather to his status as an author.

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

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

## The Experience in Bosnia and Herzegovina

*Jakob Finci*

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

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

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

Subsequent vetting efforts were far more successful. The UNMIBH Human Rights Office established a fifty-person Local Police Registry Section made up of international police officers, local lawyers and administrators, and two UN professional staff, all of whom were supported by the Human Rights Office, and by two ICTY liaison officers. The vetting process itself consisted of three steps: mandatory registration (which involved completion of a detailed registration form), pre-screening (which in most cases resulted in provisional authorisation to continue law enforcement work) and certification (which involved more extensive background checks, performance monitoring and a final determination on whether there were "grounds for suspicion" of wartime violations). Anyone decertified was barred from serving in law enforcement anywhere in Bosnia and Herzegovina. Decertification decisions were subject to an internal appeal only and no oral hearing was provided. In the end, approximately two thirds of those vetted were granted provisional authorisation to exercise police powers. Of those provisionally authorised, over 90% were granted full certification.<sup>3</sup>

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

<sup>2</sup> *Ibid.* Annex 7, Art. I, Par. 3(e).

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

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

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

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

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

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

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

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

some doubt about the sufficiency of the purge. Lastly, the exceptionally high cost and staff size demanded by the procedure encouraged public criticism.

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

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

## The Experience in the Republic of Macedonia\*

*Iso Rusi*

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

There are numerous other examples. The headquarters of the Macedonian army is still dominated by officers whose careers began in the Yugoslav People's Army (JNA). The president of the State Judicial Council was, in the 1980s, a secretary of the biggest SKM organization, its Skopje branch. The present ambassador to Slovenia was a member of the last two governments in the socialist period (from 1982 until 1990). The present Minister of Internal Affairs, although relatively young, spent not less than twenty years of his career in various positions within this ministry and was, before becoming minister, the director of the intelligence service (the Macedonian version of the FBI).

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

Among the leaders of the political parties representing the Albanians, things are different. The first and for a long time most influential political organization within the Albanian community, the Party for Democratic Prosperity (PDP), was created and led by the victims of the so-called differentiation campaign against "Albanian nationalism and separatism", which led to the exclusion of numerous Albanian politicians from the political scene in the 1980s. However, it has to be noted in that context that the leader of the Democratic Party of the Albanians (DPA), which was in a coalition government with the VMRO-DPMNE (1998-2002) and is now in the opposition, has often been accused of not only having been party secretary (of the party branch

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\* The author uses in the title as well as in the whole article the constitutional name of the country, i.e. Republic of Macedonia, or just Macedonia. The CDRSEE uses in its work the name which is applied by international organisations like the UN or the EU, i.e. The former Yugoslav Republic of Macedonia.

in the TV Pristina), but also of having been directly involved in the already mentioned differentiation campaign during which Albanian employees were politically punished and lost their jobs. Many present officials of different political parties, who had belonged to the political leadership during the socialist period, now again hold high state positions, as members of the parliament, ministers, or ambassadors.

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

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

Within this kind of social framework, many solutions were delayed and many problems put aside, at least for a certain period. One cannot deny that a considerable number of problems were ultimately settled, but this was often done indirectly, with some delay and not always to an appropriate extent. The decision to open the state security files, for example, was taken quite lately, and instead of helping to expose the past, in some cases it was abused by the government and the parties in power during the local elections in 2000 for the purpose of discrediting opposition candidates. The lustration issue was not promoted seriously by any political or social organisation, neither by a political party nor by the NGO sector. Substantive public debates on the past did not take place, nor did the media even report on experiences with lustration in other countries.

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

ranking positions in the Headquarters of the newly established Army of the Republic of Macedonia. They simply got, after some time, an early retirement.

## The Experience in Albania

*Kathleen Imholz*

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

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

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

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

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

My initial visit to Albania took place in April 1991, only three weeks after the first pluralist parliamentary elections (won by the Communists, or the Party of Labour). I remember very well being told by a senior person during that trip that "Communism is dead in Albania". Indeed, perhaps in no other country of the region had there been such a devastating economic failure. But obviously, Albania's particularly virulent brand of Stalinist-influenced and isolationist Communism had not simply evaporated overnight. Its traces, and the way Albanians are dealing with them, have turned out to be much more complex than many thought at first.

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

elections held on 22 March 1992. The DP won those elections overwhelmingly and was in office until June 1997.

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

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

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

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

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

A final area that has to be addressed is the privatisation and restitution of property, which of course affects almost everyone and not merely privileged people or persecuted people. As early as in the summer of 1991, Law Nr. 7501 provided, among other things, that agricultural land would be given to the persons who had worked it, as part of collective farms or cooperatives. Since this did not deal with the major land reform of 1946 when the large pre-war holdings were broken up and distributed to the people who worked it thereafter, it has been a continuing source of complaint from the heirs of the pre-war owners. One Albanian said to me recently that this law is holding Albania hostage.

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

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

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

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

Another example was the law passed in January 1993 for a special state commission involving private lawyers. Albania has not had many laws of the type known as "lustration laws," but this was its first. Like Bulgaria's "Penev law" of the early 1990s which was directed at members of the academic community, law Nr. 7666, dated 26 January 1993, had a narrow focus. It set up a state commission to remove the law licenses of those who had been officers of or collaborators with the Sigurimi (the Communist Secret Police), had served in various party positions and engaged in certain specific actions, such as taking part in border killings. Albania's new Constitutional Court, established only in 1992, overturned the law.

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

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

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

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

At the end of 1995, Albania finally enacted a broad lustration law, Nr. 8043, entitled "On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State." Parliamentary elections were approaching and the law was widely seen as being directed at political opponents of the party in power, although its reach was much broader than parliamentary deputies. I know of some specific cases in which it was used against political opponents. In any event, the seven member commission contemplated by the law, known as the "Mezini Commission", after its chairman, banned a number of people from running in the parliamentary elections of 1996 on the basis of this law, and most were upheld by Albania's highest court, to which there was a right of appeal.

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

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

strong swing to the Socialist Party (SP), which along with a shifting group of small allies has been in power since then.

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

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

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

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

former prisoners outside its building, and several times its sessions have been interrupted by opposition walk-outs.

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

Finally, in June 2004, deputies of a small opposition party have prepared a new lustration law for introduction in the Assembly, apparently calling for the disclosure of secret police activity by those running for office (perhaps on the Polish model). I have not yet been able to get the text of the draft. Although it would seem unlikely to pass, it is another harbinger that there are unsolved issues in Albania.

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

## DISCUSSION (Extracts)\*

### Miodrag Zivanovic

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

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

Let me conclude with another story from real life. During the war years in Bosnia and Herzegovina, a true love happened in this ethnically divided country. He was a Muslim and she was an Orthodox Serb. They loved each other and decided to get married. When they married, she changed his confession and converted him to Orthodoxy. But six months after the marriage, he fell in love with another woman. She was a Muslim, but now he was an Orthodox. After the divorce from his first wife, he married his new love. One day, they had a row and he killed her. There was a trial conducted and the minutes from this trial say that the reason for this murder laid in the fact that she offended his Orthodox feelings. The whole tragedy of ours is that kind of a constructionist structure. How can we eliminate, naturally and authentically, this kind of structure and cope with the things that happened in the past in a decent way in order to turn ourselves around?

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\* Referring to The former Yugoslav Republic of Macedonia, one discussant uses the constitutional name of the country, i.e., Republic of Macedonia, or just Macedonia. The CDRSEE uses in its work the name which is applied by international organisations like the UN or the EU, i.e., The former Yugoslav Republic of Macedonia.

### **Dino Abazovic**

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

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

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

### **Radmila Vasic**

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

If lustration is conducted officially, it has to be done on the basis of the existing law. It is obvious that some of the expectations in the countries of Southeast and Eastern Europe related to lustration have not been met. I would leave this discussion as a satisfied person if only we could identify what the plan or the concept of lustration could produce in terms of efficient results. The problem with lustration is in the way it is conducted. Even if we have the best possible law, we have very significant violations of human rights of those who have violated human rights. So, if we stick to different tricks like this is not the sanction or this is not the measure, gauge, or whatever, that means that we are not serious about this problem. If you do not provide for the proceedings that will be very adequate to a state's principles and standards, then the sentencing or adopting decisions in certain cases is going to be so long that it will lose any meaning.

I want to single out the function of the judiciary system. We know that it is most benign in all the systems of constitutional democracies, but we also know that it can produce most dangerous effects to those countries that are prone to authoritarian styles and manners of modus

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

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

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

### **Magarditsch Hatschikjan**

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

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

## Ivo Goldstein

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

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

## Biljana Vankovska

In my view, we have to face our past, as much as is possible for all of us. We should also decide of which past we are mainly speaking – the more distant or the more recent one. But my problem is that I have the feeling that we cannot live in the past or with the past, so actually my present day is somehow very much intertwined with my past. The question is how to achieve lustration and to enhance democratic forces and people with democratic credentials. Also, who is going to guard the guardians in terms of providing institutionalised and legal forms of lustration? This is particularly important, because we are still in a post-conflict situation with a lack of democratic political elites or even decent political elites. We are now hoping to get to a point where we can disqualify the ones who do not deserve to hold public offices. But unfortunately, it happens that people who are in the dock in The Hague have their puppets in this region; people can vote for them, and some of them are actually even very popular.

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

unfinished democratic transition during the peace period, and after the conflict of 2001, we also had to deal with the causes and roots of the conflicts and their consequences.

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

### **Natasa Hanak**

I would like to say a few words on the experiences of the Victimology Society of Serbia relating to the process of lustration. As the contributions and the discussions have shown, we are facing problems of different layers of criminal pasts. Now, the question arises in terms of states that had a history of war in this region. What is the starting point and what would be the priority starting layer? In 2003, the Victimology Society organised in 12 different towns in our country public panel discussions with an idea to get opinions from many different people as to how to face the truth, where to start, what the truth is, how responsibility is being perceived and how to follow the path of reestablishment of confidence, which is a precondition for reconciliation in this region. Of course, the process is still under way, and we are analysing different issues. I believe there will be plenty of interesting results with respect to different obstacles and opinions as well as to various perceptions concerning the methods and opportunities of this process of facing the past.

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

### **Jovica Trkulja**

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

I would like to add some necessary clarifications. In my view, it is essential to understand that in dealing with lustration we do not talk about overcoming the past. In trying to lustrate some of the cases we are actually in the process of reprocessing parts of the past. In our discussion today, we have made a small step ahead in the sense of defining lustration as a political notion

and talking about its ethical dimensions. Tomorrow we will discuss other dimensions of lustration, talking about the legal traits and the whole nature of lustration which may be one of the key issues. Lustration can be a punitive measure, a disciplinary measure or an administrative measure.

I will conclude with a rather pessimistic statement. I am sure, every one of us is still very aware of the euphoria after the fall of the Berlin wall. At that time, every one thought it would be quite enough to have an ornament to decorate our railroad car with some new democratic trends and just connect to the train that actually runs through Europe. It was not enough, obviously. The societies in transition thought it would be more than enough to spend some six months to adopt some democratic laws, and soon enough they would create democratic institutions. Yes, but unfortunately it would take something like 60 years for the people to understand in what kind of state they live and to adopt these new democratic principles. I believe that for the societies of the Western Balkans it takes around six months to adopt the law of lustration, maybe six years to build democratic institutions and at least 60 years in order to achieve tangible results.

### **Magarditsch Hatschikjan**

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

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

### **Zarko Puhovski**

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

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

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

### **Kathleen Imholz**

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

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

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

### **Jakob Finci**

I think that we heard today many more questions than we have answers for. This means that this is a topic which is of real interest for most of us, and we should work together to try to find some answers which can be useful for each of our countries. Obviously, they will be useful in different ways, because although geographically we are in the same region, we have different problems. That is the reason why all of us should find our own model. The final conclusion will probably be that this is just the first in a row of conferences discussing the same issue. But, we should take into account that time is working against us because, as Zarko Puhovski said, 40 years is the time limit, which means we are already in 1965.

## Ivo Goldstein

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

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

## Part Three

### Public Debates on the Past: Effects on Democratic Structures

#### Lessons from the Cases of Yugoslavia and Serbia and Montenegro

*Vojin Dimitrijevic*

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

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

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

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

There are some historical examples for such an approach. An especially interesting one has been provided by the authorities of Florence in the 15<sup>th</sup> century. After the fall of one particularly cruel usurper whose reign had lasted for ten years, the noblemen decided that one of the priests should write down everything about the events of the past. He was given the task to provide a chronology of the times behind them because they thought it would be good and useful for future generations to know something about the evils that had happened. A similar way, I think, could apply to Saddam Hussein or Milosevic. Sometimes, unfortunately, trials do not serve their purpose.

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

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

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

Now to the question of which period we want to be dealt with by the lustration process. In Serbia, the first problem was that many officials wanted to avoid that the commission dealt only with the last decade of the 20<sup>th</sup> century. They actually attempted to move this period ever further into the past, like 50 years further, showing a tendency inherent in any nationalism, and that is establishing a self-victimising position. By this means, the series of crimes during the last decade actually were blurred and seemed less significant compared to some other crimes from other periods of the past. The second problem was connected to the fact that Serbia is a deeply divided society. The full extent of the existing rifts and division lines came to the fore after the fall of the Milosevic regime, and they showed up again and again, for example, during the last presidential election.

Therefore, there is a double need – the reconciliation among the citizens themselves and the reconciliation of the state with other states. Both tasks were very difficult, because if you have a smooth reconciliation within the state, the whole process of reconciliation of the state with other states poses great problems, especially if we take into consideration some of the criminal activities and crimes committed by some of the then ruling parties in Serbia. This is also reflected in the judiciary system and its treatment of the past. In that respect, for example, at this very moment, the situation in Serbia is lagging behind the one in Croatia. Sometimes, seemingly similar situations and approaches are used in Serbia to justify one’s own opinion and

decisions. Quotes from Serbian newspapers are, in some cases, almost identical to those found in Croatian print. An ex-minister in Serbia once said the following: “The deputy prosecutor of The Hague ... is the one who devours Croats in The Hague. Croatia has to put the moratorium on the cooperation with the Hague tribunal.” This is something said by a professor of law and a minister for two terms.

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

## Lessons from the Case of Croatia

*Zarko Puhovski*

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

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

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

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

Methodically speaking, these disqualifications took place, contrary to the desirable kind of formalised procedure, as a series of individual and sometime group activities of media induced lynch. Unfortunately, a rather considerable part of the media and many journalists were involved. Meanwhile, some of them managed to shift, pretending today that they are scandalised at these kinds of developments without mentioning their own participation in and contributions to them. Generally speaking, this concept of disqualification, even if it was ideally implemented, would always include a hidden lack of confidence towards the democratic capacity of the community. Obviously, there is a widespread belief that citizens could opt for a wrong model and they should be prevented from doing so. This is why the new authorities

turned back to the most often used model, which was the German occupation model back in 1941.

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

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

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

Two other issues are important in the context of attempts to find a way leading to truth and reconciliation. The first one is related to the period which should be dealt with. A clear distinction has to be made between the period up to 1990 and the last decade of the 20<sup>th</sup> century, but both periods deserve a thorough investigation. Obviously, not only in Croatia, but also in other countries of the region, some are interested in addressing only one of these periods. The second issue is related to the widespread tendency to take a different approach towards "our" crimes and "their" crimes, to put it in that way. In Croatia, the largest part of the public opinion is emphasising that Croatia was attacked, which is beyond doubt. However, these same parts of the public opinion have great difficulties in accepting the fact that the Croatian state was responsible for the military intervention in Bosnia and Herzegovina. There is also a huge paradox that affects all the minorities which were reduced to a third of their former number in Croatia. Only one person in Croatia has publicly declared that this was ethnic cleansing; obviously, everybody else thinks that it was just a demographic change.

These are general issues from where we have to start if we want to establish the truth. Within this context, we would be able to discuss, in a more clear and accurate way, different crimes as seen from the positions of the tribunal in The Hague and non-nationalistic opinion. This discussion may then help in establishing the truth. Institutionally, Croatia is lagging behind in

that respect. Something like a body aiming at truth and reconciliation, to be set up in the forthcoming period and funded by the government, has not been mentioned. Nor can we expect that such an institution would be easily accepted in Croatia.

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

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

## Lessons from the Case of Bosnia and Herzegovina

*Dino Abazovic*

“The law does not yet rule in Bosnia and Herzegovina. What prevails instead are nationally defined politics, inconsistency in the application of law, corrupt and incompetent courts, a fragmented judicial space, half-baked or half-implemented reforms, and sheer negligence. Bosnia is, in short, a land where respect for and confidence in the law and its defenders is weak.” This paragraph of the International Crisis Group report entitled “*Courting Disaster: The Misrule of Law in Bosnia & Herzegovina*”<sup>1</sup>, although published in March 2002, is, unfortunately, still very real.

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

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

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

All this happened at the dawn of the war. Its outcomes dramatically changed the political, as well as the socio-cultural environment, in which the lustration issue is supposed to be dealt with. But they did not change the all-mighty power of the nationalistic approach.

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

“Unfortunately the wartime conditions gave access to accentuated authoritarian powers to the nationalistic successors to the communist party. During the armed conflict, the three nationalistic parties in Bosnia... constructed still more authoritarian power structures through their monopoly on violence and control of informal economic activities. A key element to this power was the continuation of the ‘nomenklatura’ system, an all-pervasive infiltration of public institutions by party personnel ensured subordination of the institutions to the parties, eliminating effectively the separation of powers irrespective of what the constitution may provide and undermining the significance of the electoral process.”<sup>2</sup>

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

DPA established Bosnia and Herzegovina as a state comprised of two entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). The chief civilian peace implementation agency in Bosnia and Herzegovina is the Office of the High Representative (OHR). The High Representative (HR) is “designated ... to oversee the implementation of the civilian aspects of the Peace Agreement on behalf of the international community”.<sup>3</sup> In order to accelerate the process of implementation, the Peace Implementation Council (PIC)<sup>4</sup> decided, in December 1997, to emphasise the authority of the OHR. Therefore, the High Representative was encouraged to use his final authority in making binding decisions on removals and suspensions, including actions against persons holding public offices or other officials.

Since then till today, the High Representative has removed from office or suspended a total of 125 persons<sup>5</sup>, from local party leaders to a member of the State Presidency. Many official positions were affected, among others, mayors, governors, deputy ministers, ministers and prime-ministers at all levels, the president of an entity, the secret service head of an entity, judges, civil servants, company managers, etc.

Did these actions of the High Representative include elements of lustration and disqualification? The answer obviously has to be affirmative, but in a limited sense; it was a case-by-case approach personally affecting some individuals, but there was no structural process of lustration and disqualification. The institutions, as such, were neither affected nor

<sup>2</sup> The Danish Centre for Human Rights: “Making Justice Work – Scoping for Institutional Support to Ministries of Justice - Bosnia and Herzegovina”, Final report, DFID, October 2002, pp. 6-7.

<sup>3</sup> <http://www.ohr.int/ohr-info/gen-info/>

<sup>4</sup> Following the successful negotiation of the Dayton Peace Agreement in November 1995, a Peace Implementation Conference was held in London on December 8-9, 1995, to mobilise international support for the Agreement. The meeting resulted in the establishment of the Peace Implementation Council (PIC). The PIC comprises 55 countries and agencies that support the peace process in different ways - by assisting it financially, providing troops for SFOR, or directly running operations in Bosnia and Herzegovina. There are also a fluctuating number of observers. (<http://www.ohr.int/ohr-info/gen-info/#pic>)

<sup>5</sup> <http://www.ohr.int/decisions/removalssdec/archive.asp>

structurally changed. And what can be said about a cathartic effect of these actions? It was equal to none.

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

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

In Bosnia and Herzegovina, alongside the (de-)certification processes of police officers<sup>6</sup> and the removal practices performed by the High Representative, the lustration issue is most visible in the field of the judicial system. The reappointments of judges and prosecutors under the umbrella of the reform of the judiciary are the only processes that involve the examination of the former employment and other records of individuals for the purposes of the decision on hiring or firing them.

As a consequence of the decisions of the Independent Judicial Commission<sup>7</sup>, approximately 500 judges and prosecutors will stay jobless. But the justifications of the decisions are not publicly announced or elaborated. The public is informed only about reappointed candidates, while there is no information about those rejected. Partly due to that kind of practice, there are more and more speculations about the process of reappointments in the local media, and it has become a topic on the agenda of politicians, too. The main feature taken into account in those considerations is the ethnic affiliation of the selected candidates. In a certain way, the insufficient transparency in the work of the International Community representatives in Bosnia and Herzegovina contributed to that kind of understanding amongst the public. Another reason of uneasiness is the fact that the strategy supported by the International Community continues with addressing mainly the consequences, while causes are often completely disregarded.

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

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<sup>6</sup> This was performed by the International Police Task Force (IPTF) within UNMIBH (presently European Police Mission, EUPM).

<sup>7</sup> The Independent Judicial Commission (IJC) is the lead agency for judicial reform in Bosnia and Herzegovina; its first mandate was by the HR at the beginning of 2001; <http://www.hjpc.ba/ijc/?cid=160>

relations based on powers and authorities have replaced the notion of partnership. A highly unsustainable scenario.”<sup>8</sup>

Therefore, not surprisingly, when asked about lustration in the judiciary, the President of the Supreme Court of the Federation of Bosnia and Herzegovina said: “It is for sure that all persons, not only from the judiciary, that hold public positions, must undergo certain experts and morality tests. The lustration process has a strong justification. However, we should not rush to clean the judiciary from those who, in fact, cannot work in this area, before we take into account what personnel solutions we have on our disposal. And I claim, with responsibility, that Bosnia and Herzegovina is faced with a personnel crisis in the judiciary.”<sup>9</sup> More or less, the situation is similar in other social and institutional areas of the country.

It is quite clear that “the key actors in the lustration process are politicians and political elites, citizens, the media, constitutional courts, and international institutions”<sup>10</sup>. But this applies to states whose institutions are genuine, and not to states whose institutions are created on the basis of compromises which include elements that should not be tolerated in modern, civilized societies respectful of democracy, *civilitéé*, basic rights, and fundamental freedoms. In Bosnia and Herzegovina as it is now, according to the constitutional framework set up by the Dayton Agreement, all of its key agents concerning the lustration issue are part of the problem, not part of the solution.

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<sup>8</sup> The Danish Centre for Human Rights: “Making Justice Work – Scoping for Institutional Support to Ministries of Justice - Bosnia and Herzegovina”, Final report, DFID, October 2002, p. 12.

<sup>9</sup> See “Entitetske ustavne i vrhovne sudove trebalo bi ukinuti”, Intervju: Amir Jaganjac, predsjednik Vrhovnog suda FBiH, *Dnevni Avaz*, Jun 4, 2003, page 5. [“Entities Constitutional and Supreme Courts should be abolished”; Interview with Amir Jaganjac, President of the Supreme Court of the FBiH]

<sup>10</sup> Horne, Cynthia M. – Levi, Margaret (2003): *Does Lustration Promote Trustworthy Government?*, p.11, <http://faculty.washington.edu/mlevi/papers/Lustration.pdf>

## Lessons from the Case of the Republic of Macedonia \*

*Biljana Vankovska*

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

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

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

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

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\* The author uses in the title as well as in the whole article the constitutional name of the country, i.e., Republic of Macedonia, or just Macedonia. The CDRSEE uses in its work the name which is applied by international organisations like the UN or the EU, i.e. The former Yugoslav Republic of Macedonia.

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

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

Speaking on the effects of the public debates on the past on democratic structures, one has firstly to begin with a question mark. Some authors point out that mature democracy should be in place in order to have an effective lustration. If so, is it legitimate to evaluate the maturity of the already established democratic structures? This was dubious even before the conflict of 2001, and now, in the post-conflict period, it is even more difficult to make an assessment. It would be fine to have democratic structures which would facilitate the debate and make it more acceptable for the public. As in many other countries, pluralism was vulgarised and exercised in a way that allowed for a total grip of the political parties on the state structures. The political scene was characterised by antagonising postures, party opponents being considered as enemies rather than as competitors. Therefore, a strange form of 'lustration' has been taking place for years; getting on power would usually mean personal change in the public administration (spoil system) on a merely political (and often ethnic) ground. Paradoxically, the idea of lustration found strong supporters among nationalists from the major ethnic groups. Members of VMRO-DPMNE (Internal Macedonian Revolutionary Organisation – Democratic Party for the Macedonian National Unity) called for dealing with the communist past, having in mind the lustration of their current opponents (reformed communists). Ethnic Albanians had other ethnically-flavoured concerns and reasons to deal with the communist past, especially with respect to the purges carried out by the Communists in times of ethno-political crises (usually incited in Kosovo and spilled over to Macedonia).

What we really had during the period of the so-called peace oasis were coalitions of the dominant Macedonian and Albanian parties. The habit of always having coalition governments

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

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

That may explain why some time had already passed since the emerging of the new state when the lustration issue was raised for the first time. It was not even done in clear terms, but only discreetly, because many people in Macedonia, including intellectuals, would not be able to explain what lustration really means, let alone what it is aiming at. The first initiatives for opening the files of the former secret services were launched after VMRO-DPMNE had come to power in 1998. VMRO-DPMNE declared itself to be the only legitimate representative of the Macedonian nation ("the most Macedonian political party"), having been persecuted by the communists in the past. This referred also to the provision in the constitution of 1991 which stated that all persons who had fought for the Macedonian state and who had been persecuted would be rehabilitated.

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

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

turbulences, but there were practically no public debates on the whole file issue. It turned out that at least certain politicians were by far more disturbed with it than the citizens.

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

This was the situation shortly before the armed conflict broke out in February 2001. The swift military escalation was totally unexpected. However, the crisis went on for only six months. This is not the only feature that distinguishes Macedonia from other parts of ex-Yugoslavia. Apart from the fact that the military conflict could be terminated after six months, it included different motives, not only and sometimes not even mainly political but also criminal ones. The conflict intensified due to the fact that forces from outside stepped in, as was the case with the new UCK now fighting in Macedonia. At a certain point, it looked as if the Republic of Macedonia was on the verge of civil war. It is not certain that this was really the case because the citizens were not persecuting and killing each other; it remained a conflict between organised structures. The conflict came at a very late stage, ten years after all the conflicts in this area. It ceased as abruptly as it had begun, mainly due to the intervention of the international organisations which brokered the Ohrid Framework Agreement in August 2001. Unfortunately, the solution also offered legitimacy to those political parties which had actually thrown the country into war.

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

An important part of the peace plan was also a rather loose amnesty law on the Albanian rebels. It was not only implemented but another step forward was taken. The former UCK transformed itself into a political party, won the overwhelming support in the parliamentary elections and its elite got to the highest posts in the political establishment and the public administration. What dominates nowadays, in terms of facing the conflicts of the past, is an amalgam of officially promoted amnesia and hidden frustrations and traumas. One of the main challenges on that path for post-Ohrid Macedonia, is related to disclosing both the objective and subjective truths/perceptions about the conflict, depending on the degree of readiness of the societal actors to face problems and talk openly about them. At the time being, there is reluctance to speak out about the frustrations and dissatisfactions arising from the peace process, particularly on the side of the governing elite and the international community. Anybody who dares to speak in a

critical and open way takes the risk of being labelled a traitor or trouble-maker. The Ohrid Framework Agreement equals a sacred document, or in other words one should believe that it really ended the conflict regardless of the distressing processes that take place on a micro societal level. Yet many reject the very thought of post-conflict reconciliation either because of the very low death-toll or because of differing qualifications given to the 2001 happening (war/conflict/rebellion/terrorist attack, etc. to mention just a few of them). The societal peace-building may not resolve all the problems, but it can encourage the human dimension of the conflict transformation, i.e. to make affected people and participants' *voices heard*. The society has the *right to know* what really happened, why it happened, who benefited and what the losses and consequences of the conflict were.

## Lessons from the case of Albania

*Ben Andoni*

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

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

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

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

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

One could add, also for Ismail Kadare himself. There was a collection of material prepared by the Director of the National Archives with documents against Kadare – the so-called "Dossier

K". Many Albanian writers have asked if Kadare has a problem with his own conscience. One writer and politician pointed out that Kadare enjoyed some privileges during the socialist period, to publish, travel, and have a car. Nafiz Bezhani, the former head of the Commission on the Scrutiny of Figures, joined the critics in saying that Kadare had better be silent on that matter. Bezhani claimed that Kadare had had, due to a personal signature of Enver Hoxha, the possibility of access to party and state archives. Kadare answered angrily to all these statements, claiming that a "deafening chorus" was trying to prevent the discovery of the truth and that a kind of solidarity had emerged, bringing together "killers against victims" and "guilty against innocent" people. Their aim was, according to Kadare, to cover the truth.

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

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

## DISCUSSION (Extracts)\*

### Zagorka Golubovic

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

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

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

The vast majority of citizens that were included in this research are looking back to the era under Tito as a golden age of past history. Comparing the 1990s, i.e., the more recent war past, with the more distant past (the “golden age”), most of the citizens were prone to escape from the second type of memory due to the vast human casualties which were a result of the conflicts in the 1990s, to the war crimes committed, to the demonising of the country worldwide, to the isolation and the sanctions imposed by the international community. It was also due to the rapid differentiation in terms of social strata in the country, leading to the rapid enrichment of the war profiteers on one side and to an also rapid impoverishment of many

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citizens on the other side. Memories of this period differ substantially from the memories of the more distant past, with the obvious tendency of many citizens to blame the regime of Milosevic for all the evils perpetrated in Serbia during this period. However, they find it very difficult to admit that the Serbs were capable of perpetrating war crimes. It is very difficult for them to face the fact that the people who are justifiably indicted on the basis of crimes against humanity are Serbs, or they want to suppress this from their memories arguing that not only Serbs committed war crimes, but all the other participants in these conflicts, too. In other words, they are much more likely to push the issue of war crimes under the carpet. They explicitly state that we should forget and not turn back to this issue, because otherwise the demonising of Serbia would be re-imposed, the nation would be treated as a criminal one, and the country would not be integrated in the European Union.

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

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

### **Jakob Finci**

I would like to touch upon the part of the discussion that referred to the establishing of the Commission for Truth and Reconciliation in Serbia/Yugoslavia by President Kostunica in March 2001. The strongest strike against the commission was the stepping back of three prominent persons who were nominated to be members of the commission, including Professor Dimitrijevic, who presented his contribution in this panel. It was the strongest strike, because this was a signal, at least to those people and organisations we are used to calling the civil society. This was not the right thing to do, as it turned out later. Simultaneously with this commission, I think there is still a very vivid and active group of B92 which works mainly on collecting data which could certainly be used.

My reason for joining the discussion is a question to Professor Dimitrijevic. With the return of Kostunica to power, does he see an imminent danger or risk or possibility that this commission, which vanished but did not die completely, could come back to the scene as a vampire? I am asking this, especially because discussions around the Hague tribunal are still going on and the assessments are indicating that this commission has been formed in order to prove that we do

not need any Hague tribunal and that we are able to sort it out ourselves. In Bosnia and Herzegovina, there is, since February 2000, an association of citizens trying to force the government to pass a law establishing a commission on truth and reconciliation with a rather different mandate than the commission established by Kostunica and with a much higher participation of citizens, because everything is based on a series of testimonies of those people who are survivors of the war in Bosnia and Herzegovina. It should not only be possible for people to speak out their truth but also for others to gather information in order to be able to write on this part of our history.

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

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

### **Zoran Pajic**

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

Now to the idea of the truth commission. I have supported this idea from the very beginning, and I have mobilised many people in Bosnia and Herzegovina in this sense. Nevertheless, I

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

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

A comment on lustration of the judiciary system. It is true that there was no public explanation as to why 500 or a couple of hundred of those who reapplied for their functions that they were holding did not get an explanation as to why they were not reappointed. However, let us observe the whole situation from a different angle. Those colleagues who were not reappointed to these positions quite frequently know the situation and know it would be the best not to publicise these reasons. For those who are knowledgeable about the international law, let me remind you that rejections of candidates for ambassadors to foreign countries are not explained in order to protect the integrity of these people. I want to say that those who were not reappointed will be told why they were not reappointed. It is very typical that the media in Bosnia and Herzegovina called for these reasons to be publicised and not those people who were affected personally. You can see that there are no legal proceedings but media campaigns in order to publicise these reasons. I have to point out how much I oppose the development of media activities in Bosnia and Herzegovina because I know how much money was wasted by international donors who paid for training and education for independent media. The results are disastrous. Media are heavily corrupted and I would dare say that in Bosnia and Herzegovina I can see what I saw in 1990 and 1991 – the hatred speech, the speech instigating hatred and denunciation is back. I would like to send out a warning because the situation is not being taken seriously.

### **Jovica Trkulja**

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

It is striking in the context of what we discussed during this seminar that serious legal and political measures with respect to lustration and attempts at overcoming the evils of the authoritarian past were taken in the Czech Republic, Hungary, Germany, and Poland. Something half way through was done in Bulgaria and Albania. It is rather indicative that those

countries which did nothing serious in this area and which are examples of unsuccessful lustration attempts are Serbia and Montenegro, Croatia, Bosnia and Herzegovina, and the Republic of Macedonia.

Within those countries which represented what Zarko Puhovski named soft authoritarianism, a clear distinction between executioners and victims was much more difficult than in the countries of hard authoritarianism. An illustration of this thesis gives us the fate of the dissidents. In Albania, for example, the writer Ismail Kadare was a dissident who paid a terribly high price for his engagement, and his human rights were violated in a most dramatic way. This was the fate of dissidents in the hard authoritarian countries, such as the Soviet Union or in Czechoslovakia. Looking at the case of Serbia, things are different. Here there are two or three dissidents who suffered as Ismail Kadare suffered, who were in prison, etc. Most of the other Serbian dissidents were writers who had books with high circulation, very wealthy people, academics, and they did not suffer so much. I call them false dissidents, and I think it is very important to point out the mechanisms of the soft authoritarianism that were producing false dissidents. It is bad that they cloned themselves in different publishing houses and universities. This makes our problem even more complex and difficult. We have not overcome the authoritarian past; rather it is recycled. This is obviously the case in the sphere of the politicians. And we heard this is also the case with historians which makes our trouble even greater.

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

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

### **Magarditsch Hatschikjan**

I have three questions. The first one is referring to the title of the panel: *Public Debates on the Past: Effects on Democratic Structures*. It is mainly addressed to the panellists. What are your assessments on the effects? In order to simplify the question, is your assessment that no lustration is equal to a less stable democratic development and less stable democratic structures, or the inverse being that more lustration is equivalent to more stable democratic structures? This is just a question but I am adding that if you all say yes to both of these questions, then Albania must be, by far, the most democratic country of the region, because it is the only country where a lustration law was passed and, at least partly, implemented. Serbia has

a lustration law, but all the experts on Serbia present here said it will not be implemented. So, the first question is if there is a direct effect of lustration on democratic structures and developments. By the way, some comments, especially on Croatia, indicated clearly, albeit implicitly, a negative answer, because it was argued that Croatia has nothing on lustration but has shown, at least during the last five-six years, an obvious progress in democratisation.

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

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

### **Vojin Dimitrijevic**

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

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

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

Serbia actually have very negative feelings toward the Hague tribunal, according to a poll conducted two weeks ago.

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

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

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

### **Zarko Puhovski**

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

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

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

Some other contributions on the situation in Bosnia and Herzegovina during our discussion raise at least my doubts, if not my contradiction. Okay, I agree that there are some things that need to be brought before the court. But at the same time, we have the practice in Bosnia and Herzegovina of not having a judge but more of an arbitrator. This means that there is a decision by that judge who says that by his document or his paper, at that date and that time, this person is forbidden to practice his profession in the court of Bosnia and Herzegovina, period. Then we

have all kinds of international interventions – a kind of protectorate after free elections. It has actually managed to disqualify decisions freely adopted in the parliament of Bosnia and Herzegovina by two-thirds majority, and this is something that cannot be accepted.

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

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

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

### **Dino Abazovic**

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

## **Biljana Vankovska**

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

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

Another point which I think is very specific is that we had a fabricated conflict; it was not a real, genuine conflict. Now the political elite and the coalition governments actually function as two parallel governments; they are not willing to work jointly, and they do not know what to do next. The civil societies are divided. Peace building at the grass roots level and at the social level, is a necessity, but very difficult to be achieved. We have in post-Ohrid Macedonia amnesia which calls for oblivion and for not addressing any contradictions that are still present. There are legal constitutional reforms but there is no peace building between the people who suffered, no measures that would enhance normalisation, as Zarko Puhovski would put it.

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

## Contributors, Discussants, Editors

Abazovic, Prof. Dino – Director, Centre for Human Rights, University of Sarajevo

Andoni, Ben – Journalist, Korrieri, Tirana

Daskalovski, Dr. Zhidas – Researcher, International Project "War Torn Societies", Skopje

Dimitrijevic, Prof. Vojin – Director, Belgrade Center for Human Rights

Finci, Jakob – Director, Association for Truth and Reconciliation, Sarajevo

Goldstein, Prof. Ivo – Professor, Faculty of Philosophy, University of Zagreb

Golubovic, Prof. Zagorka – Professor, Faculty of Political Science, University of Belgrade

Hanak, Natasa – Victimology Society of Serbia, Belgrade

Hatschikjan, Magarditsch – Project Director, Center for Democracy and Reconciliation in Southeast Europe, Thessaloniki

Imholz, Dr. Kathleen – Adviser to the Council of Ministers of Albania, Tirana

Letki, Dr. Natalia – Postdoctoral Prize Research Fellow, Nuffield College, University of Oxford

Noack-Aetopoulos, Corinna – Project Coordinator, Center for Democracy and Reconciliation in Southeast Europe, Thessaloniki

Oprea, Dr. Marius – Coordinator of the Research Programmes, The Romanian Institute for Recent History, Bucharest

Pajic, Zoran – Head of the Department for Legal Reform, Office of the High Representative, Sarajevo

Puhovski, Prof. Zarko – Professor, Faculty of Philosophy, University of Zagreb

Rusi, Iso – Editor-in-chief, Lobi, Skopje

Trkulja, Prof. Jovica – Professor, Law Faculty, University of Belgrade

Tsenkov, Dr. Emil – Director, Information Centre on the Council of Europe, Center for the Study of Democracy, Sofia

Vankovska, Prof. Biljana – Professor, Faculty of Philosophy, University of Skopje

Vasic, Prof. Radmila – Professor, Law Faculty, University of Belgrade

Zacek, Dr. Pavel – Senior Researcher, Institute of Contemporary History, Academy of Sciences, Prague

Zivanovic, Prof. Miodrag – Professor, Faculty of Philosophy, University of Banja Luka