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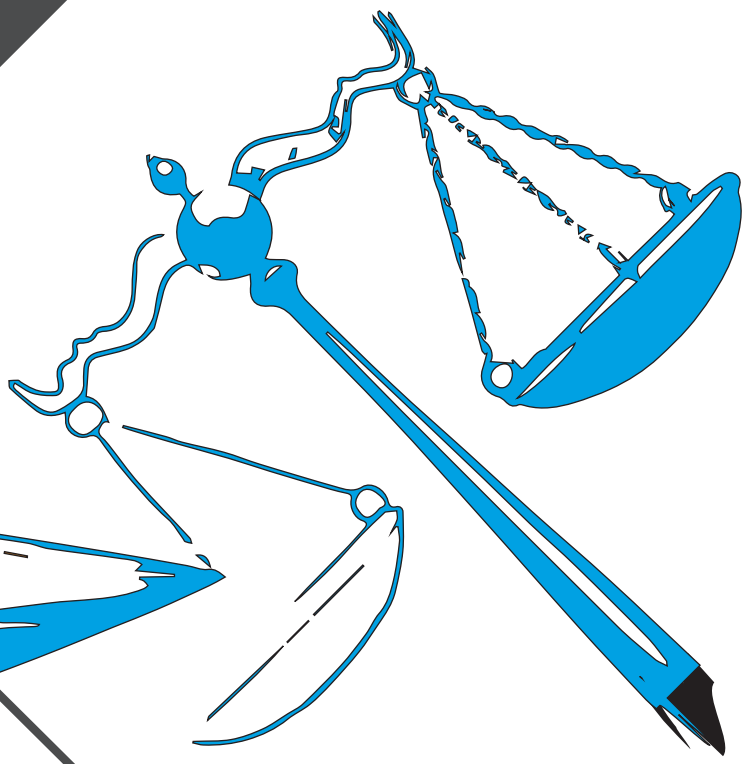

JUDICIAL REFORMS IN TRANSITIONAL DEMOCRACY, FORMS OF LUSTRATION AND VETTING IN THE JUDICIARY

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EAST • WEST MANAGEMENT INSTITUTE
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PURPOSE OF THE RESEARCH

According to international experience, in the event of a democratic replacement of the old authoritarian regime with a new one, there are various possibilities for overcoming the injustices committed by the previous government, including lustration and vetting laws.

Overcoming the past always acquires preventive function. Avoiding the recurrence of injustices and gross human rights abuses committed under the old regime in the future has become a driving force in overcoming the past in many countries. It is the fact of human rights violations brought to light that prevent the attempt to create an authoritarian regime in the future.

After the collapse of the Soviet regime, all post-Soviet countries selected for the research project faced changes in government and reforms, including judicial reform. These countries are characterized by the Soviet model of the judiciary, where the third branch of power was subject to the party and its will, based on the principles of centralized democracy and the unification of power. The court was under the control of the Communist Party. The Communist Party controlled the court through various mechanisms, for example, giving guidelines outlining the political direction and main tasks of the court. Telephone justice prevailed. Prior to the verdict, the judge was called from the party's central committee to determine the operative part of the decision. The judiciary was not an independent branch but only a judiciary whose main purpose was to carry out party policies. Judges viewed themselves as servants of the state, serving the government and the ruling party, which is partly what is happening in Georgia today.

Despite years of change of government and system, as well as a number of judicial reforms, in these countries, including Georgia, the incumbent government, regardless of which political force it belongs to, tries to influence the judiciary and politicize the judiciary. Many former post-Soviet countries (eg the Czech Republic, Germany, Romania) have overcome the problems through legislative changes, including the use of the Vetting and Lustration Law, and judicial reforms. Many of them are currently members and some are associated to the European Union, and are still combatting problems in court.

With the dominant group of judges in Georgia, so called clan[1] monopolizing the reins of administration, judicial independence has faced the most difficult challenge: clan is controlling the behavior of judges, influencing them inappropriately, acting in a coordinated manner, and managing to monopolize all levers of power[2]. The clan was able to appoint judges close to him to vacant positions[3], thus already having the leverage to influence judges. The clan has established ties with other branches of government and serves the political interests of the government. In fact, it is an extended arm of the executive branch[4]. The only way to solve this problem is to study and analyze experience of Eastern European countries the which through vetting and lustration laws have managed to solve the problems with regard to the judiciary.

Many eastern European countries have make systemic and personnel related changes in judiciary, through vetting and lustration, which provides one of the main tools of ensuring judicial independence. Namely, it is possible to remove from the system some discredited judges and prevent those persons, who have been followed instructions of socialist party, later other governing parties also served to State security services[5]. Today, it is

1 **Evolution of clan based governance in Georgian judiciary since 2007, Tsikarischvili K., https://dfwatch.net/evolution-of-clan-based-governance-in-georgian-judiciary-since-2007-53155**

2 Compilation of articles on justice, 2020. Judicial self government in Georgia, problems and perspectives, Nino Tsereteli and Salome Kvirikasvhili, p. 15

3 **Evolution of clan based governance in Georgian judiciary since 2007, Tsikarischvili K., https://dfwatch.net/evolution-of-clan-based-governance-in-georgian-judiciary-since-2007-53155**

4 https://www.transparency.ge/sites/default/files/corruption_risks-geo.pdf, Transparency International, Risks of Corruption in the Court system, p. 29.

5 The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the SecretaryGeneral. UN Security Council S/2004/616, 23 August 2004, p. 2, available at: http://www.un.org/en/sc/documents/sgreports/2004.shtml

important to implement personnel related changes in Georgian judiciary, namely suspend those judges who have violated human rights for years, followed instructions of executive branch, illegally cooperated with State security service, entered into corrupt deal, are dishonest and incompetent.

The study aims to examine the former post-Soviet countries of Eastern Europe, namely, how they were able to implement the EU rule of law standard in terms of judicial independence, what knowledge and experience we can gain for Georgia to balance the independence and efficiency of the judiciary.

1. JUDICIAL REFORMS IN A TRANSITIONAL DEMOCRACY, FORMS OF LUSTRATION AND VETTING IN THE JUDICIARY

Vetting process accompanies the transition period of the former Soviet countries to democracy and is driving force.

The vetting process is defined in the literature as the process of verifying candidates for public office by authorized institutions, and the *lustration* as a process, which ensures the publication of the names of individuals who have deliberately, secretly collaborated with security services[6]

Vetting in terms of justice is effective in transitional democracy. Judges and prosecutors must be suitable for the positions they hold.

One of the main goals of this reform measure is to strengthen the credibility and accountability of the public sector and to restore trust in national institutions and the government.[7] The entire vetting process covers areas in the public sector where human rights abuses are more prevalent, such as the police, the penitentiary, and the courts[8].

Under vetting law, vetting in the judiciary is carried out through a thorough examination and evaluation of the skills, professionalism, personality, property and other aspects of specific officials of the court staff (justice system).

The legal consequences of the vetting process are: sanctions, including dismissal, prevention of holding a similar position, threatening to make the past public, forcing a person to resign voluntarily.

Vetting helps prevent people who have violated the rights of others from re-occupying similar positions. [9]

Lustration: distinction is made between **exclusive**, **inclusive**, **reconciliatory**, **mixed personal** system of lustration. **The exclusive lustration** system prevents individuals associated with the previous regime from holding certain positions in the public service under the new regime.

The inclusive and R**econciliatory** system seeks to reintegrate such individuals, giving them a second chance. These persons have this right provided that they reveal the truth, in particular their activities under the old regime (inclusive system), after which the truth (reconciliatory system) is verified. Mixed Systems is a combination of these two systems. [10]

Exclusive system is the strictest system, and the most radical way out of the past. This system was chosen by the Czech Republic. There is no positive or negative evaluation of these systems because there is no hierarchy in these systems. The choice depends on the political traditions and the path that leads to the transition to democracy. Countries where the transition to democracy was agreed upon (Hungary, Poland) have chosen as the inclusive or reconciliatory system. In countries where the revolution took place even in the case of the velvet revolution, e.g. In the Czech Republic, an exclusive system was predominant.

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6 Czarnota, Adam. – Lustration, Decommunisation and the Rule of Law. – The Hague Journal on the Rule of Law 1 (2009): 307–36. https://doi.org/:10.1017/S1876404509003078

7 The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the SecretaryGeneral. UN Security Council S/2004/616, 23 August 2004, p. 2, available at: http://www.un.org/en/sc/documents/sgreports/2004.shtml

8 The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the SecretaryGeneral. UN Security Council S/2004/616, 23 August 2004, p. 2, http://www.un.org/en/sc/documents/sgreports/2004.shtml

9 United States Department of State Transitional Justice Initiative: Lustration and Vetting (2016), p. 1, available at: https://www.state.gov/documents/organization/257775.pdf

10 David, Roman: Lustration and Transitional Justice. Personnel Systems in the Czech Republic, Hungary, and Poland, University of Pennsylvania Press, Philadelphia, 2011, pp. 27-39.

2. ALBANIA

In Albania, after the overthrow of the communist regime, there was initially no lustration or vetting law for judges and prosecutors serving in the Soviet regime. All subsequent governments, regardless of which political force they belonged to, exercised their influence over the judiciary and politicized the judiciary, so the EU called for a review of the justice system. The situation is similar in Georgia. A mandatory requirement for EU membership was, among other things, justice reform, including judicial reform, within which the vetting law was to be drafted.[11]

According to veting Law, the vetting process, includes review of all judges and prosecutors in terms of their professional skills, property, and alleged links to organized crime (Asset assessment, (b) Background assessment, and (c) Proficiency assessment).

The reform of the judiciary was aimed at:

1. reorganizing the judiciary through the vetting process;
2. Creating an effective anti-corruption unit in the prosecution system;
3. Ensuring real independence of the judiciary;

2.1. Vetting-'s bodies

Vetting-'s process implied the formation of two institutions:

1. First – the first instance Commission, the Independent Commission of qualification
2. Appeal Chamber

These institutions are monitored by International Monitoring Operation – international monitoring mission, under European Union, which consists of judges and prosecutors selected from different EU countries.[12]

2.2. Basis for Ensuring the Fairness of the Vetting Process

A. **Vetting Commission and its Staffing:**

To ensure the fairness of the vetting process, the law sets out a number of prerequisites and requirements for evaluating individuals who may become members of these commissions. Selected members should not be employees of the State Security Service of the 1990s and their favorites. However, the composition of the vetting commission was delayed due to the political crisis that arose between the two parties (SP and DP). At the end of 2017, one year after the start of the reforms, a vetting commission was formally set up, as well as a Judicial Appointment Council. In the first months they did not present the results of their work at all.

Vetting Commission

4 Qualification (vetting) Commissions have been set up, which are considered to be the first instance. (Qualifications Commission). The commission is composed of three members. They do a complete revision.

11 https://euralius.eu/index.php/en/library/albanian-legislation/send/98-vetting/1-law-on-transitional-re-evaluation-of-judges-and-prosecutors-en

12 Romeo Merruko (2017), "Albania: Role of International Actors in the "Vetting" Process", Mondaq, available at: http://www.mondaq.com/x/550690/Constitutional+Administrative+Law/Role+Of+International+Actors+In+The+Vetting+Process

Various oversight bodies have been set up to ensure that the Vetting Commission makes the right decisions: the Qualifications Chamber as an appellate body and two public commissioners (öffentliche Kommissare). At the same time, these institutions are monitored and controlled by the International Monetary Fund (IMO).[13]The Appeals Chamber is an oversight body, in addition to the specialized Qualifications Chamber in the 7-member Court of Appeals. Later, in order to protect the interests of the participants in the process, two so called Public Commissioners. These vetting bodies should act in cooperation with international monitoring operation jointly funded by EU and US. It is important that international observers do not have a decision-making function, they are limited to observation and advice.

Initially, 191 candidates applied for membership, of which only 68 met the requirements of the law. Although the list of candidates was made public before the voting, their biographies were not known. Through the efforts of the media, it became publicly known that some of them had received low level of legal education or had the support of a political camp. Because of this, these commissions came under fire. The criticism was that it was not a transparent process, even though the public interest was too great.

2.3. Delay of the vetting process.

Reasons of delayed process of vetting are very close to the question of whether there really is a political will to clean up the judiciary?

The factual grounds for delaying the process were established.

Vetting began with delays, including the staffing of vetting's bodies did not occur within the first timeframe set.

Problems of competence and subordination have not been resolved to date. A shortage of justice staff was revealed. One of the reasons for this is the Albanian School of Magistrates, the completion of which is a prerequisite for the appointment of a judge, who has a maximum of 25 graduates per year. Currently, many judges are leaving the judiciary, partly because of age, partly because of vetting, because they dont want to participate in the review process. The government has not been able to fulfill its obligations in full technically and financially. The professional education of the vetting commission staff was also unsatisfactory. Parliament has failed to fulfill its obligation to set up a special commission in Parliament with the participation of experts and community representatives to coordinate, monitor and control the implementation of certain reform objectives. The issue of the staff of the members of the vetting commission is also disputed. In 2018, both public commissioners in the vetting process were fired, at the request of international observers. One of the grounds for dismissal was, among other circumstances, that this commissioner had hired staff in violation of the rules of the process and had obstructed the activities of the institution.In general, the advice of international observers was not discussed in the parliament at all, which is explained by the personal interest of individual MPs. Apart from the lack of government will to implement justice reforms, there is also no transparency for the public, which has high expectations for justice reform.

2.4. The components of the review process.

review of the process is based on three elements:

1. asset assessment
2. (b) background assessment,
3. (c) proficiency assessment

- *asset assessment, evaluation of the property*

13 Justizreform unter Beschuss, 28. Juli 2020, vonAnja Troelenberg, https://ba.boell.org/de/2020/07/28/justizreform-unter-beschuss

Asset assessment is the first element of vetting law which sparked strong opposition from judges and prosecutors, which quickly resulted in resignation statements to avoid the vetting process. The main axis of property valuation is the audit of the value of the entire property, the declaration, the valuation of the legitimacy of the property, in particular all property liabilities that lie behind the property, and hence the personal interests of the subject of assessment and other person connected to him/her.[14] All judges and prosecutors are obliged to declare their property. Any person whose property is under investigation should be given the opportunity to justify the origin of his property, to substantiate his legitimate grounds (income tax return). The property owner must submit all the necessary documents together with the property declaration to confirm the truth and legality of his information. If the declared property is more than twice its legal income, the person being assessed is considered guilty and will be released from the jurisdiction if he/she does not prove the opposite.

- *.Background Assessment*

This includes a declaration and other data to determine an individual's connection to organized crime. If such a review establishes the guilty connection of the person being evaluated in relation to the individuals involved in the organized crime, he will be dismissed if he does not prove otherwise.

- *Proficiency Assessment*

Professionalism assessment ensures that the skills of each subject are tested. Judges are assessed according to the skills of the judge. While prosecutors are tested by their ability to conduct investigations. The assessment of professionalism also provides an examination of the organizational skills of the person being examined, an assessment of ethics, personal qualifications, based on the standards established by law.

Individuals with insufficient grading will be recommended to undergo training at the Magisters hool, while those who are assessed as not suitable for the relevant skills will be dismissed from the position.

2.5. Criticism

After the vetting law was passed, the law was appealed to the Constitutional Court.

On 30 August 2016, the Constitutional Court suspended the law and requested the amicus curiae Venice Commission to comply with international law, including the European Convention on Human Rights. The results of the vetting commission, namely the discharge from judicial office has been complained off in ECtHR. The European Court in the case of მაისს Xhoxhonaj v. Albaneti (Application no. 15227/19) has examined the facts with the respect to the judge Xhoxhonaj, which has been dismissed by decision of vetting commission and final ruling of the Chamber of Appeal. On the discussion of this ruling, see below.

2.6. Venice commission opinion, ECtHR caselaw on vetting process and its bodies.

The Constitutional Court addressed four questions to the Venice Commission.

The first question before the Venice Commission was: Does the participation of judges in the vetting process constitute a conflict of interest, since the judges of the Constitutional Court are the subjects of this law. The Venice Commission concludes that the court cannot be relieved of its duty to resolve the issue due to the alleged interest. The Venice Commission emphasizes the Bangalore principles of judicial conduct, which prescribes and offers judges ways to remedy such situations, and determines that in order for a judge not to be biased, he should not normally take part in such a case, although disqualification of a judge is not necessary

14 Council of Europe (2016), "Albania Amicus Curiae Brief For The Constitutional Court On The Law On The Transitional Re-Evaluation Of Judges And Prosecutors(THE VETTING LAW) ", Adopted by the Venice Commission, available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)036-e

if creating another tribunal for this case is impossible. These are always the cases where the disqualification of a judge leads to a denial of justice.[15] If a judge fails to meet the requirements of the vetting law, he or she can resign himself / herself, but also the judge may be forced to resign in various instances, but until it is initially considered that all judges act in good faith. Incumbent judges have the right to discuss vetting law. According to the Venice Commission, all judges of the Constitutional Court are subject to vetting law.

The second question is whether the principle of separation of powers and balance is violated, as vetting procedures are carried out by institutions owned by the executive, such as the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest ("HIDAACI") and Classified Information Security. Directory ("CISD"). The Venice Commission stressed that the involvement and use of these institutions in the investigation and examination of evidence does not constitute a breach of checks and balance, while evaluation of the information and evidence obtained by the executive belongs to independent commission and appellate chamber. According to the law, the executive body is responsible for preparing the report, the final decision is in the hands of an independent commission and the Appeals Chamber.[16] The information collected by CSID or HIDAACI is a final decision. This information is finalized by an independent commission and the Appeals Chamber or independent institutions established by the Assembly.[17]

The third question, which was raised with the Venice Commission: lack of opportunity for judges and prosecutors to appeal the decision of the review institutions to a domestic court, whether it violates the requirement of Article 6 of the European Convention on Human Rights for a fair trial. The Venice Commission stressed that the Chamber of Appeals could be deemed as a specialized jurisdiction (paragraph 63 of the Opinion), which grants broad rights and guarantees to people who will be treated in the re-evaluation process. Article c of the Annex obliges the Appeals Chamber and the Independent Commission to safeguard a fair trial guarantee.

Fourth question: Do the norms of the law contradict the requirements of Article 8 of the European Convention on Human Rights to protect the private and family life of judges and prosecutors? The Venice Commission concludes that background assessment cannot be regarded as an unjustified interference with private and family life and is in full compliance with Article 8 of the European Convention on Human Rights. In this case, the disproportionate relationship of judges and prosecutors with those involved in organized crime poses a threat to national security and public safety. The purpose of the vetting law to investigate such contacts is justified. However, the assessment is entirely under the control of the Appeals Chamber[18].

The European Court of Human Rights in the case of Xhoxhonaj v. Albania discussed the decision of the Vetting Commission and the Court of Appeals to terminate the power of the judge, in particular the important specific issues raised by the applicant before the European Court of Human Rights, which arose during his dismissal of the applicant by the Vetting Commission. The ECtHR came to the conclusion that the decision to dismiss a judge through vetting procedure did not violate the rights guaranteed by the European Convention on Human Rights.

In considering the complaint, the court held that

[1] Xhoxhonaj v. Albaneti (Application no. 15227/19), § 139

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15 http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf

16 https://www.kas.de/c/document_library/get_file?uuid=716633b5-d14e-1267-26f8-f7584363968d&groupId=252038 oogle.com/search?q=Vetting+law&rlz=1C5CHFA_enGE833GE833&oq=Vetting+law++&aqs=chrome..69i57j35i39j0i19j0i19i395j0i19i22i30i395l6.16584j1j7&sourceid=Frome

17 4 Council of Europe (2016), "Albania Amicus Curiae Brief For The Constitutional Court On The Law On The Transitional Re-Evaluation Of Judges And Prosecutors (THE VETTING LAW)", Adopted by the Venice Commission, available at: http: // www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)036-e

18 http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf
https: //www.venice.coe .int / webforms / documents / default.aspx? pdffile = CDL-AD (2016) 009-e

[2] Xhoxhonaj v. Albaneti (Application no. 15227/19), § 295
[3] Xhoxhonaj v. Albaneti (Application no. 15227/19), § 299, 300
[4] Xhoxhonaj v. Albaneti (Application no. 15227/19), § 297, 298
[5] Xhoxhonaj v. Albaneti (Application no. 15227/19), § 310-317
[6] The Venice Commission also stated that the vetting of judges and prosecutors was not only justified but necessary to protect [the country] from the scourge of corruption, which, if not addressed, could completely destroy the judicial system, Xhoxhonaj v. Albaneti (Application no. 15227/19), § 392

2.7. Consequences

After the adoption of the vetting law, the vetting commission made its first decisions in March 2018, a decision concerning the dismissal of a judge of the Constitutional Court who failed to prove the origin of property worth hundreds of thousands of euros. Since then, the cases of 276 judges have been heard. Only 113 retained their positions. 100 were fired, largely because of unsubstantiated property. 35 judges signed a statement of resignation, 22 trials were suspended and 2 persons were temporarily suspended. The Appeals Chamber considered 63 cases, of which 15 were reversed. It all had its consequences. Many judges expired mandate and were not reappointed, leaving one out of the nine judges in the Constitutional Court. In the Supreme Court, one out of the 17 judges remained, rendering both courts incompetent. This was followed by a political crisis, with the ruling party using the incompetence of the judiciary to its advantage and passing unjust laws. Therefore, the question has been repeatedly asked whether the reform has become a victim of its own consequences. However, this question was answered in the negative.

3. ROMANIA

3.1. Personal changes – Lustration

In Romania, there was no lustration in the field of justice. This meant that no personal changes were made to overcome the socialist past. A related statement was made in 1990. This was contained in the Decree Law No. 140 of 11 May 1990 on the Appointment and Salary of Justice Staff. This law provides for the review and inspection of the entire staff of the Ministry of Justice and the Prosecutor's Office, in order to eliminate morally and professionally inappropriate persons, and to appoint staff with new credible values to implement the principle of irreversibility[19]. The 1992 Common Courts Act strengthened the independence of the judiciary by without the removal of morally and professionally incompatible persons. It is clear that Romania's legal policy regarding the rights of judges focuses on improving the education and training of the next generation. Much effort has been made in this regard. In 1997, an amendment to the Law on Common Courts established the Institute of Judges. This institute was for the graduates of the Faculty of Law, as well as for the professional development of the current judges. Until 2004, these reforms were considered successful. However, problems are also acknowledged. [20]

3.2. consequences.

Education and upbringing alone were not enough for the independence of the judiciary, and the fight against corruption was seen as one of the means. A package of anti-corruption bills was introduced in Parliament in 2002. An investigation has been launched against 35 judges. Charges were brought against 9 judges. Corruption was still raging in court.[21]

19 The Venice Commission also stated that the vetting of judges and prosecutors "was not only justified but necessary to protect [the country] from the scourge of corruption, which, if not addressed, could completely destroy the judicial system, Xhoxhonaj v. Albaneti (Application no. 15227/19), § 392

20 https://drive.google.com/file/d/18IDC7vuXcfSZK_O8M0alGvI2sc1ktD5F/view?fbclid=IwAR0lFvwfsP3L-DloalUK43I4rMDL7yVW6uOFtn5PL0psaxs1Bv

21 https://drive.google.com/file/d/18IDC7vuXcfSZK_O8M0alGvI2sc1ktD5F/view?fbclid=IwAR0lFvwfsP3L-DloalUK43I4rMDL7yVW6uOFtn5PL0psaxs1Bv

4. POLAND

4.1. Judiciary After the collapse of the Soviet system.

After the collapse of the Soviet system, Poland introduced a less restrictive model of lustration, although the Lustration Law did not impose any restrictions on members of the Communist Party or public officials before 1989 on further political, legal, academic, military life. The fact that in 1989 superficial judicial reforms were implemented is no longer in doubt. The lustration law was passed in 1997 but was not enacted until 1999. In 1998, the V Department (Lustration Court) was established in the Warsaw Court of Appeal[22].

4.2. Lustration

The definition of the concept of lustration was not in the law. In Poland, lustration meant: examining the connection of individuals related to public service with the security service, only for those who held public service positions in a new democratic country or were candidates for such positions. Lustration was aimed at decommunization. The goal was to clean up the community – wild lustration. This was the period when a list of certain individuals was published who were accused of having close ties to the former communist security service. These individuals had no right to appeal. Wild lustration has become a powerful tool in Polish political life.

Under the law, there was an obligation for all persons who had held public service positions in Poland before the power transformation in 1989, or who wished to hold such a position in the future, to declare whether they had cooperated with the State Security Service in 1944-90. The obligation to make a statement rested with a wide range of people, including judges [23].

Lustration contained parts A and B, namely no

A- connection and cooperation;

B- The above would not be made public, it was a secret.

If the response to the collaboration was positive, a detailed description of the collaboration was mandatory, with the names of these individuals being publicly announced as a list.

However, such persons could still run in the elections, and be candidates for public office. The voters were entrusted with the right to decide on their future. Punishment was only for lying or providing incorrect information about cooperating with the security services. Cooperation with security services itself was not punishable; The lustration involved the initiation of a fraud case, which was considered by the lustration court. Despite the lack of concept, the Lustration Law included three elements:

a. State Security Institute – During the Communist Period, 1944-90
b. Persons holding positions in public service.
c. Past Cooperation[24].

22 Justizrecht und Justizreform in Polen, Vries, Tina ˜deœ . – 2004, S.7ff. https://www.laender-analysen.de/polen/pdf/PolenAnalysen17.pdf

23 Lustration, Akten Öffnung, demokratischer Umbruch in Polen, Tschechien, der Slowakai und Ungarn, Münster, 2005, D. Bingen, S. 19, 57

24 H. Zihang, Die Aufarbeitung der Kommunistische n Staatssicherheizsdienste in Deutschland und Polen, S11 ff

4.3. Lustration Bodies

A. Office of the Public Interest Commissioner

This is an important institution of lustration law. The Commissioner and his two deputies are nominated by the Chairman of the Supreme Court from among candidates who can become judges and who have not collaborated with the Security Service. Candidates complete the lustration declaration, then it is verified by the President of the Supreme Court and sent to the Lustration Court for approval. After approval, they are appointed for a period of 6 years. They have no right to be members of a political party, they may be dismissed by the chairman of the Supreme Court. The decision of the lustration court can be appealed by the commissioner.

B. Function of the public interest commissioner

Main function is to analyze the lustration application and start the lustration process. He is accountable to the President, the Senate, the Parliament, the Prime Minister and the Chairman of the Supreme Court. It has its own office and apparatus. The Lustration Court may initiate ex officio lustration against the Commissioner. The lustration court could have initiated proceedings in cases where the applicant alleges that his co-operation with the security service was coerced.

4.4. Appeal

Within 14 days, the parties may appeal against the decision of the Court of First Instance of Lustration to the same Court of Lustration, which is heard only by a panel of other appellate judges. After the second instance, the parties have the right to cassation. Cassation will be allowed in the Supreme Court under newly identified and discovered circumstances.

4.5 Sanctions

There is only one sanction, only in the case of a false lustration declaration. A person loses the moral right to hold a position in the public service for a period of one to 10 years. Individuals who hold a position in the public service and are found to have made a false statement about collaborating with security automatically lose their position. A retired judge loses his pension in such a case.

4.6. Consequences

As it has been noted, the lustration law does not establish liability for positive lustration. The liability exists for false lustration declaration. However, it is clear that in case of positive lustration, the persons lose the moral right to occupy positions. Positive lustration could practically imply the dismissal of judge by way of disciplinary procedure[25]. Th disciplinary sanctions were deemed as side effect of lustration[26].

25 პოზიტიური ლუსტრაციის შემდეგ თანამდებობიდან გაათავისუფლეს პროკურორები, არსებობდა მოთხოვნა ასეთი მოსამრთლეების თანამდებობიდან გათავისუფლებაზეც.

26 Justice as prevention, Vetting Public Employees in Transitional Societies, 2006. The Politics of the Lustration Law in Poland 1989-2006, p 222

5. CZECH REPUBLIC

After the velvet Revolution, the Lustration Law was adopted in 1991. According to this law, lustration was to block leading communist elite from participating in public and political life. In 1993, a law was passed against the Communist Party, thus declaring the Communist regime illegal. For the first five years, until the end of 1996, the law barred security officials and informants, Communist Party officials, members of the People's Militia, members of the Commission of Inquiry from 1948-68, and graduates of Czech and Soviet party schools from being employed in the public service. All persons who were mentioned as such in the personal database of the Ministry of Internal Affairs were considered as security officers. Two laws were passed. After the enactment of these laws, anyone who held a public service position in 1991, 1992, or was a candidate for a position must undergo a screening procedure. In this process, their obligation was to submit two documents: a so-called lustration certificate and a personal statement. The lustration certificate indicated whether the person was an officer or employee of the State Security Service during the communist era. A positive lustration certificate indicating that this person was an officer or employee of the Security Service contained a prohibition on that person to hold a position in the public service. The certificate is issued upon the request of the candidate or the institution where this person is to be employed, by the Minister of Internal Affairs, after examining the files of the State Security Service, which is administered in the archives of the Institute for the Study of the Totalitarian Regime. The personal statement of a person or candidate in office is a unilateral act in which he claims that he was not a high-ranking official of the Communist Party, a member of the People's Militia or a student of a certain higher education institution. The requirement to make such a statement applies only to persons born before 1971. Any adult citizen of the Czech Republic and Slovakia enjoys the right, in return for a fee, to receive information about whether he or another person is registered as an employee of the Security Service during the Soviet period in the relevant acts of the Ministry of Internal Affairs[27]. In case of a positive answer, the law provided for a complaint. All those positively lustrated had to resign within 15 days of receiving the lustration certificate. Unlike other Eastern European countries, Czechoslovakia opted for a rather radical form of elite cleansing, which soon had consequences, not only for those in office, but also for those to whom lustration also applied. To re-occupy the position lustration was set as a precondition for appointment .. In 1992, 260,000 applications were submitted, of which 8,000 were positive. The lustration law was an effective measure to prevent the return of the Communists. The lustration of Czechoslovakia is narrowly understood. It is a transitional justice tool designed to protect young democratic State from the dangers of the former totalitarian regime and to prevent the return of such a regime by blocking this elite from participating in public life. Lustration in the Czech Republic has never had an anti-crime or anti-corruption agenda.

5.1. Judiciary Law 1991

The judges and prosecutors replacement was dealt with by 1991 law on judicial system. The Minister of Justice was authorized by the Law on the Judiciary to dismiss judges who violated the duties of a judge during the communist dictatorship or unlawfully interfered with the independence and impartiality of the judiciary. In addition, under this law, the Minister of Justice had the right to transfer such judges to a lower court within one year after the entry into force of the law. Czechoslovakia was one of the exceptions in the post-communist state, where the judges' past was revised under the 1991 law[28].

27 Lustration, Akten Öffnung, demokratischer Umbruch in Polen, Tschechien, der Slowakai und Ungarn, Münster, 2005, J. Sonka, J. Basta, S. 101ff

28 Justizreformen in der Tschechoslowakei und ihren Nachfolgestaaten, P. Bohata, 2003 s. 17ff

5.2. Lustration of Judges

Next intervention in personal policy was e. Lustration Law, which was passed by Parliament a few days later after the Judiciary Act. The lustration law did not punish anyone, nor did it impose any punishment or fine. It covered several areas of the public sector. The lustration law was based on issues of change of personnel of justice in Czechoslovakia. The lustration law set out the further preconditions required by a judge for the exercise of his or her profession. Under this law, dismissal of a judge would be allowed if they did not meet the preconditions set out in the law for the profession.

The lustration law was based on person-by-person specific vetting. The Czech lustration model belongs to so called Exclusive personal System of lustration.

There is a distinction between **exclusive**, **inclusive**, **reconciliatory**, **mixed personal** system. **The exclusive lustration** system prevents individuals associated with the previous regime from holding certain positions in the public service under the new regime. [29]

Of these four systems, the exclusive system chosen by the Czech Republic is the strictest system, and is the most radical way out of the past. There is no good or bad evaluation of these systems because there is no hierarchy in these systems. The choice depends on the political traditions and the path that leads to the transition to democracy[30].

5.3. Results

Based on the coverage of the activities of the judges of the communist regime, 484 out of 1,460 judges resigned. Lustration was an important part of the decommunization policy, which aimed at the personal aspect of post-communist politics and legal transformation. It is based on the idea that individuals cannot be trusted to be in office serving under the communist regime and that they should not have access to individual public office under the new democratic regime. Negative certificates were issued to the persons subject to revision by the Minister of Internal Affairs [31].

29 David, Roman: Lustration and Transitional Justice. Personnel Systems in the Czech Republic, Hungary, and Poland, University of Pennsylvania Press, Philadelphia, 2011, pp. 27-39.

30 Probleme des öffentlichen Dienste in der Tschechischen Republik, K. Frauenberger, 2006 S. 37

31 Probleme des öffentlichen Dienste in der Tschechischen Republik, K. Frauenberger, 2006 S. 37

6. GERMANY

Vetting

According to the GDR constitution, a judge is loyal to the people and the socialist state (Article 194). The precondition for this was professional as well as non-professional activity for the Marxist-Leninist party and the working class.[32] After the collapse of the Soviet regime, the question arose in the GDR about how to conceptualize the responsibility for the injustices committed in the past. The vetting mechanism offers sanctions for actions that did not constitute a crime under GDR law but which were nevertheless considered questionable by the majority of GDR citizens and by an outside observer. That was the social understanding of vetting. Vetting was not legally seen as a response to past wrongdoing. Dismissal was more justified if the person was not suitable for public service. Wrong actions by a judge in the past could have been taken into account, but it was not mandatory to take into account in the assessment of fitness, ie the extent to which this or that person would be a judge. Such a dual understanding of vetting led to frustration with the conduct of the vetting process. Vetting in Germany was initially sought on the basis of quasi-punishment, but was codified and implemented, taking into account a number of threats, to create a loyal and credible public service. vetting took place in two different arenas in United Germany[33].

6.1.Unification Treaty

Since the unification of Germany, the courts have not been abolished and no judges have been dismissed. The union agreement seeks to bring law enforcement agencies into line with the federal Republic's law enforcement system. However, this was neither politically possible nor practical. There was an incompatibility between the GDR and the law enforcement agencies of the Federal Republic. The similarities and continuities of the rapprochement between civil and socialist justice systems were ruled out. Continuity becomes impossible with the rule of law of socialist justice.[34]The association agreement provides for the dismissal of a person from public service if his / her data does not comply with the requirements of the agreement (Article 33).

6.2. Forms of status of judges transferred from GDR

Following the fall of the Berlin Wall,transitional regulations necessary for the transition from unjust state to the State of rule of law. No large-scale personal changes have taken place in the judiciary. Prior to the Volkskammer elections on March 18, 1990, the GDR Ministry of Justice considered that, except for the departure of judges known as a odious persons at the end of 1989/1990, all incumbent judges would retain their posts and be appointed as permanent judges while newly appointed judges would be appointed for probation period. Since the unification on October 3, 1990, the current judges of the GDR have retained their temporary positions. They remain in the Judiciary under the Association Agreement until April 15, 1991, in accordance with the GDR Judges Act.There should have been new training for judges. There were 1,600 judges in the GDR.

Under the association agreement, judges' election committees were established on 9 new federal lands. , The committee consists of six members of the Land Parliament and four judges elected by the judges. First,

32 https://www.geschkult.fu-berlin.de/e/tongilbu/publikationen/2015/band42/index.html

33 Justizreformen in der Tschechoslowakei und ihren Nachfolgestaaten, P. Bohata, 2003 s. 19 ff

34 https://www.kj.nomos.de/fileadmin/kj/doc/1992/19922Majer_S_147.pdf

they must consider the case of all acting judges, on the basis of their own application. With the consent of the Committee, the Minister of Justice could appoint an incumbent judge as a judge for a specified period or probation, but not as a permanent judge. (§§ 11 II 1, 12 I DDR-RiG) .. The Selection Committee of Judges was to complete its work by 1991. Prior to the review, all judges maintained their positions. At the end of the unification agreement, it became clear that the GDR's personal and material resources for law enforcement were inadequate and insufficient to meet the legal requirements of Federal Germany. There was a need to increase the number of judges in the GDR. The required number of judges was to be filled primarily by GDR lawyers. From 5 July 1990 to 15 April 1991, the Judicial Selection Committees decided to retain judges. Retaining and further employing GDR judges is the most difficult topic. There are arguments to the contrary that it was believed that even if the GDR judge had been neutral in civil cases, he would have been an ideologically educated and politically tested person who was part of the political instrumentalization of justice at that time. The next problem was the education and professional practice after the unification, which did not meet the requirements of Federal Germany. This concerned not only the lack of knowledge of federal law, but also the high level of different legal techniques and normative order that correlates with the unified free economic and social order.

The unification agreement provides for a very cautious path to integration. A judge may also be a person who has acquired a professional qualification during the GDR period in accordance with the law in force at the time. The regulation was related to the GDR Law on Judges adopted in the summer of 1990. Those who have been appointed by the Judicial Selection Committee on a temporary or probationary basis in accordance with this law and the rules have the right to be equated with judges appointed for life. Regulations thus allow for indefinite reappointment , but after a certain probationary period. A judge appointed under a 1990 law was recalled when an additional fact was revealed that this person could not justify the appointment. Recalling is regulated by law. The Transitional regulation also contains special provisions on professional qualifications. Those who received the qualification of a judge after October 3, 1990 will retain this qualification. A person who is appointed as a judge on the basis of this qualification can be appointed for life and has the right to serve in another Bundesland with this qualification. The selection criteria were disputed as to what was meant e.g. activities for the security service, or collaboration, the only contact was it just by phone or otherwise, the intensity of the relationship and activity. Signs of cooperation in security activities and security bodies are: duration of cooperation, performance of special tasks, intensity and duration of activities, secret cooperation, informational cooperation.[35]

35 https://www.geschkult.fu-berlin.de/e/tongilbu/publikationen/2015/band42/index.html
https://www.kj.nomos.de/fileadmin/kj/doc/1992/19922Majer_S_147.pdf
http://archiv.jura.uni-saarland.de/projekte/Bibliothek/text.php?id=348

7. HUNGARY

Hungary reforms began since 1988. The transfer of power took place after the 1989 National Roundtable Meeting. The change of the Soviet system was discussed at the round table. The discussion of the change in the system revealed little political pressure to lustrate and replace public officials, based on the pseudo-liberal nature of the system. That is why a certain process of adjustment and reconciliation was carried out towards public officials as opposed to repressive process. Consequently, there was a weak public demand for retaliation or accountability for past wrongdoing. This was especially true in court. Following the collapse of the system, the entire public service and the entire judiciary staff retained their positions. The first parliament, only at the end of its first term, passed a rather restrained 1990 **law on lustration** which was amended several times, although the court staff did not change. According to the draft law, all persons who served as superior level of security officers were to be registered. This register should have belonged to the Prime Minister, the President and the Parliamentary Security Committee. The President had the right to publish the names of those individuals who were still in public service. Prior to publication, those on the list were notified that they were on the list. They had the right to resign. In this case, their names would not be published. Or had the right to appeal to the Court of Appeal. Surnames were published only if the data was authenticated and the person refused to leave the title. No official sanction was provided by the lustration law. The only sanction was the threat of publicity. The law did not apply to individuals who were indeed on the list but did not hold office. Both judges and prosecutors belonged to the circle of lustration subjects. The purpose of the lustration law was to establish the totalitarian past of the lustrated. This includes membership in the National Socialist Party, which headed Hungary in 1944, major or additional activities with the Communist Secret Police, or employment in that police, or providing secret information to that police. As well as membership in the Armed Forces (Ordnungskräften) in 1956/57, which took part in the suppression of the popular uprising in 1956. The peculiarity of the Hungarian regulations is reflected in its legal consequences: when investigations establish that the lustratee has committed one of the named offenses, he is notified. Such a person then has the right, within a certain period of time, to resign or wait for the lustration authority to disclose his data on his past. If he resigns his past will not be made public, he will be kept secret. Due to the confidentiality of the process, there are no accurate data on how many judges or prosecutors were lustrated and how many resigned. However the numbers may be minimal. However, the legal consequences of the disclosure are not related to any negative consequences, as practice has shown. The Socialist Gyula Horn was elected Prime Minister in 1994, despite the fact that it was publicly known that he served as a young man in the armed forces. [36]

7.1 Prerequisites for Lustration

According to Lustration Law should have been examined:

1. Whether the person was employed by security service
2. Records of relatives should have been checked, in particular those communist officials who were not directly employed in security but who provided information to them.
3. It was necessary to reconsider whether the suspects were members of a paramilitary unit / unit created to defeat the revolution
4. or a member of the Hungarian fascist party. Until 1945.

36 justice asPrevention, vetting Public Employees in Transitional Societies, New York, 2007, P 265

Constitutional Court declared this law unconstitutional. Partially successful lustration was the disclosure of the names of persons belonging to the communist nomenclature, or who are considered to be a employees of the Security Service officers.

7.2 bodies conducting vetting

In order to screen the important officials the parliament created two screening committees by 1994 XX111 act, which is composed of judges. Judges were nominated by Parliament with the consent of the Chairman of the Supreme Court, usually for a period of 2 years, with the possibility of extension of this term. By 2000, there were 9 judges on the commission. The rule for selecting these judges was not prescribed by law. They were not selected by the court, only the consent of the Supreme Court Chairman was required. The National Security Committee would oversee the possible totalitarian activities of members of parliament, parliament-appointed officials, ministers, secretaries of state, judges, prosecutors, ambassadors, other high-ranking civilian or military officers, and executives of state-owned companies. The aim of the investigation was to establish the screening of persons, whether they were career officers, security officers higher, III / III network members, members of the Nazi party, or have served in the police created for the suppression of 1956 revolution.

7.3 The decisions made by the commission

Based on investigation, the Lustration Commission made three types of decisions:

1. declaratory decision that a person under vetting had carried out an action.
2. data was obtained but there is no enough evidence to establish conduct.
3. to terminate process on the grounds that the person had resigned.

Those who were examined but no information was obtained were sent a relevant letter.

If the commission found that the subject of the screening was an employee of the totalitarian regime, it would call on that person to resign. If an employee refused to resign, he or she could appeal the commission's decision in court. If the court agreed with the decision of the commission, the decision was made public in the official journal. The decision had no binding force, the person could retain the position if he could withstand the pressure of public opinion. Usually they could. The Commission functioned until 2005.

7.4 The process of vetting of Judges

The 1994 law provided for vetting of judges and prosecutors, but before all judges could be screened, judges were omitted from the 1996 amended text of the law. As the result of the decision of the constitutional court, their vetting process was suspended. However, the 1996 law envisages the vetting of judges of the Constitutional Court, the President of the Supreme Court and his Vice-President. The law of 2000 provided for the vetting of all judges

7.5. Vetting of judges

Vetting subjects. Who is Wetting?

According to the law, everyone has the right to request information, files and materials obtained by the Security Service against that person. Information is collected as follows: Since 1997, judges do not collect information, but are provided to them by the Ministry of Internal Affairs. The collection of information from the HO archive began after the commission submitted a list of individuals to be vetted, after which the Ministry of Internal Affairs and later the HO archive were required to verify the register, and they were required to submit the information to the commission. The Minister of Internal Affairs kept the documents and made the decision whether to send them to the Commission.

7.6. Hearing

Before modification of the law in 2000, hearings were held on all cases, regardless of whether the materials were available. After 2000 only on cases where there was evidence. Everyone has the right to request materials, files on individuals who are in the public service, although the term public service was not precisely explained. If scarce information about public servants was found in the archives, information about an individual relationship with the Security Service Directorate could still be published.

Parliament, as another way of publicity, has created specialized archives for the preservation and examination of documents that are still available and which have not yet been classified. Scholars have access to the historical archives of the State Security Services for research. Also, access is given to those who were monitored by the Communist State Security Service to the part of the documents that directly concerns them. The 2003 law allows such persons to know the names of those who directly surveilled them and disclose this data.

8. BOSNIA AND HERZEGOVINA

8.1 History

In 1992, Bosnia and Herzegovina's declaration of independence from Yugoslavia was followed by a heated conflict that quickly escalated into war. In 1992, the country was engulfed in war. In 1995, the Dayton Peace Agreement ended the brutal conflict and set out a program to restore peace in Bosnia and Herzegovina. Bosnia and Herzegovina and Serbia signed the agreement under international pressure, and took responsibility for implementing the agreement in the post-Dayton period. International organizations have abandoned cautious approaches and increasingly interfered directly in the implementation of the peace process. All of this has had an impact on the rule-of-law process, which has included the vetting of public service personnel. In the post-Dayton period, the court was not impartial and could not administer fair justice. Public confidence was rather low. The national government did not carry out reforms, including judicial reform, and did not dismiss judges. As a result, international actors have developed proactive approaches to building the rule of law. From 1999 to 2002, the UN Mission in Bosnia and Herzegovina (UNMIBH) screened twenty-four thousand law enforcement personnel, including judges. The High Council of Justice, composed of a mixed international and local staff, appointed judges from 2002-2004.[37]

8.2. The vetting process

Establishing fair justice system was the most difficult process since Dayton's agreement. The country was divided into numerous territorial jurisdictions. The justice infrastructure was damaged. Unqualified staff were appointed as judges because the qualified had left the country or were compromised by participation in the conflict. The situation was difficult. Police, national politicians, organized criminals continued to put pressure on judges. The National Party ensured the appointment of its own judges. National politicians interfered in the trials by instructing, bribing or intimidating.[38]

UNMIBH Certification Process and HJPC Reappointment Process.

Vetting developed two different approaches: the

1. certification / review process, law enforcement personnel were screened / reviewed and fired if they failed to meet the certification criteria/review process
2. during the review process, the incumbent judges could re-enter the competition.

The main goal in the certification process was to remove irrelevant individuals and select qualified individuals. The purpose of the review was to select qualified candidates for the office through the reassignment process, UNMIBH certification process and the HJPC reassignment process, both of which are a wetting dimensions. The main basis of both processes was a comprehensive staff reform to create fair and efficient institutions and not to impose individual responsibility for past actions.[39]

37 justice asPrevention, vetting Public Employees in Transitional Societies, New York, 2007, P. 186

38 justice asPrevention, vetting Public Employees in Transitional Societies, New York, 2007, P 190

39 justice asPrevention, vetting Public Employees in Transitional Societies, New York, 2007, P 195

9. UKRAINE

The Law on Restoration of Confidence in the Judiciary in Ukraine (N1188-VII) adopted in April 2014 monitors judges of common courts and punishes those accused of unjustly prosecuting Euromaidan protesters[40]. The law created two powerful scrutiny tools:

First, all presidents and deputies of the courts, except the President of the Supreme Court of Ukraine, had to resign from their administrative positions from the moment the law came into force – on April 11, 2014. According to the rule provided by the law, the unions of judges initiated the election of new chairmen of the courts on a rotating basis. As a result, every court elected its chairman and deputy chairman[41].

Second, the law established disciplinary action against judges who were found to have banned Euromaidan rallies or to have participated in other human rights violations. **Special temporary** commission has been set up to investigate judicial crimes[42]. The 15-member commission included members of civil society, members of the Ukrainian parliament and government representatives on anti-corruption measures. The commission lacked members and the quorum problem persisted. The law allowed citizens to file a petition against judges for violating their rights during a Euromaidan protest[43].

The commission held public hearings to determine judicial offenses. The procedure was like a disciplinary investigation. Initially, the commission was considered to have a 1-year mandate. His decision had no final legal force as the High Council of Justice had to certify his decisions[44]. Despite the confidence-building mechanisms enacted by law, court lustration still proved to be symbolic in nature[45].

9.1. Lustration Law

In October 2014, the law on Government Rehabilitation (same as the Lustration Law) was adopted (N1682-VII), which was aimed primarily at government and law enforcement officials, although some provisions still directly affected judges.

First of all, all the judges had to prove that all the real and movable property, the money in the bank accounts have been received legally. The results were posted on the unified website of the Ministry of Justice, which facilitated representatives of the state fiscal agency to monitor the property of judges. In addition, the court administration had to publish the convictions of all participants in the Euromaidan protest. Moreover, certain members of the judiciary were immediately dismissed when the law on government cleansing came into force. The right to ban public office for five to ten years was also used as a sanction. In addition, the State Security Service of Ukraine inspected the connections of judges and other civil servants with the Soviet State Security Committee – the KGB or their Communist Party membership in the former Soviet Union[46].

In October 2014, the Ministry of Justice issued an order (N.1704) and created a unified electronic register of officials covered by the above law. The database contains information about the people who were fired and the number was about 200[47].

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40 O. Ovcharenko; T. Podorozhna, Judge Lustration in Ukraine: National Insights and European Implications, (2020) 4 (8), Access to Justice in Eastern Europe 226-245

41 Id.

42 Id.

43 Id.

44 Id.

45 Id.

46 Id.

47 Interim Opinion, Venice Commission, CDL-AD (2014) 044, para 6.

Judges who failed to pass successful monitoring were fired. Out of 8500 judges, only 42 failed to meet the vetting criteria. The procedure was not successful as the secret connections with the KGB could not be revealed due to the long time elapsed. The only result of the "Government Recovery" law was a complete paralysis of the judiciary. According to the Law on the High Council of Justice and the Law on the Qualification Commission for Judges, all their members were automatically dismissed from November 2014. For almost a year after this demonstrative public moratorium, the Ukrainian judiciary has not had enough tools to elect new judges, evaluate existing judges, and impose sanctions[48].

9.2. Challenges related to lustration

Based on the October 2014 appeal, the Venice Commission evaluated the Law on Government Rehabilitation. The shortcomings, according to the commission, are as follows: Lustration should only apply to positions that truly pose a threat to human rights or democracy; The guilt must be individual and not based solely on the category of position held; Lustration authority should be removed from the Ministry of Justice and handed over to a specially set up independent commission to ensure the involvement of the non-governmental sector; The lustration process should ensure a fair review; Administrative decisions must be suspended until the end of the trial; Lustration of judges should be regulated by a single legislative act and not by a duplicate legislative act; Only the High Council of Justice should be empowered to dismiss judges; The information should be made public only after the final decision of the court[49].

48 Id.

49 Id.

10. VETTING AND LUSTRATION IN GEORGIA

Judicial reform failed after the Soviet Union during the rule of Georgia's first president, after which military formations brought Shevardnadze to power, although corruption and nepotism prevailed in almost every area of the country. At this time there was an attempt to carry out judicial reforms. The Law on Common Courts of 13 June 1997 declared the previous laws, including the law Judiciary in the Republic of Georgia, to be invalid. The new law introduced both judicial and personnel changes. In Georgia, the vetting procedure with personnel changes was reflected in the attestation of judges. Judges who have been appointed (elected) to positions in accordance with the rules established by the legislation in force before the entry into force of this Law were subjected to mandatory qualification attestation. They had to pass a qualifying exam, failure to pass the exam was a ground for dismissal of a judge.[50]

This reform ended in failure, as corruption and nepotism in the judiciary could not be eradicated. [51] After so-called the Rose Revolution, in 2005, a new phase of judicial reform began, which resulted in a change in the staff of judges and judges, in particular, the liquidation of existing courts, as well as reorganization, reduction of judges' positions, on the basis of which many judges have been placed in reserve list.[52] With the legislative process, the events unfolded in following way: the new government intended to take control of the judiciary, namely to influence judges, dismiss independent judges, and establish a judiciary loyal to the new government. In addition to the above, the President of the Supreme Court offered the judges to produce resignation letters in exchange for certain guarantees, otherwise they were threatened with dismissal through disciplinary proceedings. Many judges forcibly resigned. Four judges who have refused to resign were removed by way of disciplinary procedure. [53]

50 The Law on General Court, as amended on 13.06.1997, in accordance with Article 86 (1) , the qualification attestation provided for in paragraph 1, includes the examination of a judge's knowledge through a qualification examination. The failure to pass attestation is a ground of removal. In such case, HCOJ would apply to President of Georgia with request to remove the judge.

51 file:///Users/macbookair/Downloads/152-Article%20Text-281-1-10-20200803.pdf. Transitional justice Lustration and Vetting in Ukreine and Georgia

52 See the law on common courts, art. 54 (1); 88(3), 1997, June 13 . Based on these articles, courts of autonomous republics, district courts have been liquidated, appeal court system was reorganized, accompanied with necessary legal, organizational and personnel related changes. .

53 TI Corruption Risks in Judiciary, 2018, p. 18, https://www.transparency.ge/sites/default/files/corruption_risks-geo.pdf

CONCLUSION

Evaluation of the results.

Common and differential approaches to ways of overcoming the past in Eastern Europe, including post-Soviet countries.

Vetting and Lustration are driving force in democratic transition of post soviet countries.
There are two types of vetting: reexamination and reappointment
Vetting was used in following States[54]

Albania – *Albania* created *vetting commissions* for the purpose of examination of judges and prosecutors in the context of professional, property condition, possible ties with organized crime. For this purpose, an international monitoring operation was established, which includes judges and prosecutors from different countries of EU.

Germany – Following the unification of Germany, the courts were not abolished and judges were not dismissed. The grounds for dismissal are – lack of personal capacity (mangelnde persoenliche Eignung) and / or activities with the former security service. Judges' election committees were formed on the nine new federal lands, consisting of six members of the land parliament and four judges elected by the judges. They would consider the case of all incumbent judges, and on the basis of their application (GDR-RiG), with the consent of the Committee, the Minister of Justice could re-appoint the incumbent judge for a term or probation, but not as a permanent judge.

Bosnia and Herzegovina – developed two different approaches to vetting: a. In the certification / review process, law enforcement personnel were screened / reviewed and fired if they failed to meet the certification criteria; b. Universal competition for the position of an existing judge. Incumbent judges could re-enter the competition.

Georgia – Vetting was carried out through judicial reforms; In 1997 and 2005. The personnel policy of judges was implemented: A. Qualification exams, B. liquidation of the existing courts, as well as the reorganization, reduction of the positions of judges. Most of the acting judges were enlisted in the reserve before the expiration of their term. C. *Through disciplinary proceedings*, D. directly by coercion of specific judges to write a statement of resignation, otherwise criminal or disciplinary proceedings would be initiated against them.

Lustration was used in following States:

Poland used lustration procedures. The lustration included the process of reviewing persons (candidates) holding public office or aspiring to hold such office, whether they had any connection to the security service during the Soviet period. Punishment was only for lying or providing incorrect information about cooperating with the security services. Cooperation with the security services itself was not punishable. Such persons could still run in the elections if they were candidates for public office. They were entrusted with the right to decide on the future. The lustration included the initiation of a case of lying. The bodies carrying out the lustration were the Office of the Public Interest Commissioner and the Lustration Court.

Czechia. The Czech lustration model belongs to so called exclusive personnel system of lustration. The exclusive lustration system prevents individuals associated with the previous regime from holding certain positions in the public service under the new regime. Any citizen of the Czech Republic and Slovakia who wished to hold such a position was entitled to receive a so-called lustration certificate from the Ministry of Internal Affairs in exchange for a fee. The lustration certificate indicated whether the person was an officer or employee of the State Security Service during the communist era. A positive lustration certificate stated that

54 justice as Prevention, vetting Public Employees in Transitional Societies, New York, 2007, P 487

the person was an officer, or employee. Such persons are prohibited from holding office. The lustration law did not punish anyone, nor did it impose any punishment or fine.

Hungary. According to the – the lustration law should have been reviewed whether a person had served in the security service; The nomenclature of the relatives of these persons should also have been checked, in particular those communist functionaries who were not directly employed in security but who provided information to these services; It was necessary to reconsider whether the suspects were members of a paramilitary unit / unit created to defeat the revolution, and whether any of them were members of the Hungarian fascist party before 1945.

Ukraine. According to the Government Rehabilitation Law, the burden of proof rested with the judges, who had to prove the legal origin of all their real and personal property, as well as the money in their bank accounts. In addition, the court administration was to publish the convictions handed down against all participants in the Euromaidan protest.

The State Security Service of Ukraine investigated the connections of judges and other civil servants with the Soviet State Security Committee – the KGB or their Communist Party membership in the former Soviet Union. The Ministry of Justice issued an order (N.1704) and created a unified electronic register with the list of officials covered by the above law

Lustration and Vetting was not carried out in Romania. This meant that no personal changes were made to overcome the socialist past. The Common Courts Act of 1992 strengthened the independence of the judiciary so that no morally or professionally incompatible persons were removed. Romania has passed the main axis of legal policy regarding the rights of judges to improve the education and training of the next generation.

Efficiency and failure of the vetting and lustration process in individual countries

Albania. Despite a number of problems with the vetting process (problems with the staffing and functioning of vetting bodies that have left the judiciary in Albania incapable for a period of time), vetting has finally achieved its goal of appointing judges in Albania. The positions were vacated by incumbent judges who were unable to substantiate the origin of property worth hundreds of thousands of euros.

Germany. Unlike Albania and Bosnia and Herzegovina. It is true that German vetting was not legally seen as a response to past wrongdoing and most of the current GDR judges retained their positions, but despite this approach, judges known as separate odious individuals resigned at the end of 1989/90 and the vetting process continued. This happened through a review of professional fitness ("personlishe eignung") by a specially set up Judicial Selection Committee.

Poland. Although there are ongoing discussions on the topic of whether the purpose of the lustration law has been fully fulfilled, the lustration law is considered to be the most important achievement in Poland. Despite the factors hindering the implementation, such as the lingered terms of the lustration (because the law came into force quite late, which was the basis of the political struggle. This led to frequent changes in the law, which undermined the achievement of its goals) lustration did have significant consequences in the process of decommunization.

Czech Republic

Lustration law in the acted as a filter to isolate former enemies from the new democratic institutions and to help stabilize Czech post-communist society in the early stages of transformation.

Based on the coverage of the activities of the judges of the communist regime, 484 out of 1,460 judges resigned. Lustration was an important part of the decommunization policy, which aimed at the personal aspect of post-communist policy and legal transformation. It is based on the idea that individuals cannot be trusted to hold office under a communist regime and that they cannot have access to public office under a new democratic regime.

Hungary – In Hungary, too, lustration has to some extent become a political tool aimed at harming political opponents. Judiciary was also affected by lustration. Due to the confidentiality of the lustration process, there is no accurate data on how many judges or prosecutors were subject to lustration and how many resigned.

Bosnia and Herzegovina. Lustration in Bosnia and Herzegovina was not only necessary but also the fairest process to carry out the necessary restructuring of the judiciary, with the vetting process increasing court confidence by between 60 and 74 per cent.

Ukraine – Judges in Ukraine who failed to pass successful monitoring have been fired. Out of 8500 judges, only 42 failed to meet the criteria set by the vetting procedure. The procedure was not considered successful, as the secret connections with the KGB could not be revealed due to the long time elapsed.