

## LUSTRATION AS A MECHANISM OF TRANSITIONAL JUSTICE: DILEMMAS AND CHALLENGES

### **Abstract.**

The fall of one totalitarian regime and the creation of new democratic system, among other things, imposes a question regarding the approach of the new authorities towards the problematic totalitarian past. One of the most used mechanisms, and at the same time, one of the most contradictory, in the process of facing the problematic past is the mechanism of lustration. The subject of this paper will be an analysis of the mechanism of lustration and the impact the process of lustration is having on democratic consolidation. The paper attempts to demonstrate that lustration is a mechanism which, if implemented according to the recommendations of the Council of Europe, contributes to democratic consolidation. The main methods being used are: analysis, historical, normative and political method. The overall conclusion is that although the process of lustration leaves plenty of space for manipulation, a well implemented and well regulated lustration which follows the recommendations of the Council of Europe, has positive impact on democratic consolidation.

**Key words:** *politics, political system, democracy, transition, lustration.*

### 1. Defining the concept of transitional justice

“It is really hard to define what transitional justice is”<sup>2</sup>. As for many other terms in legal and political science, it is also very difficult for this term to find a commonly accepted definition. However, in spite of the numerous definitions in theory, we can freely say that in all of them we can find elements according to which transitional justice refers to the situation in a certain country where in the past there were vast violations of the human rights, for which now society must find a way to handle, and cure, in order to provide a peaceful coexistence in the future. In recent years the definition provided by the International Centre for Transitional Justice has become commonly accepted. “According to the International Centre for Transitional Justice “Transitional justice refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as the move from a period of violent conflict or oppression toward peace, democracy, the rule of law, and respect for individual and collective rights.”<sup>3</sup>

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<sup>2</sup> Noemi Turgis, “What is transitional justice”, International Journal on rule of law, transitional justice and human rights No.1, Sarajevo: Pravnik and Konrad Adenauer – Stiftung: 2010, 14.

<sup>3</sup> Maria Avello, *European Efforts in Transitional Justice*, Madrid: Fride, 2007, 1

In most of the literature dedicated to the study of transitional justice, authors describe the phenomenon through its mechanisms<sup>4</sup>. By analyzing the concept of transitional justice, it is visible that this concept contains a whole range of mechanisms that can generally be divided in two groups: judicial and non – judicial. Whether the trials are in international, domestic or hybrid form, truth commissions, institutional reforms, amnesty, lustration, reparations, rehabilitation, memorialization, reconciliation projects, monuments, commemorations, demobilization, disarmament and reintegration, they are one of the fundamental mechanisms practiced in the concept of transitional justice.

We can easily deduce that no matter which mechanisms of transitional justice we analyze, the purpose of all mechanisms this concept uses is the same – “promoting justice, accountability, reconciliation and the rule of law, deterring future human rights violations, establishing democratic institutions, restoring dignity to those who suffered abuse and memorializing those who perished.”<sup>5</sup>

Looking back in time certain roots of the concept of transitional justice can be traced to Ancient Greece, but still the Nuremburg and Tokyo trials after the Second World War are widely considered to be origin of the concept of Transitional Justice, in its current form<sup>6</sup>. The fall of the dictatorial regimes in Latin America, Spain, Portugal in the 70s and 80s in the 20<sup>th</sup> century, the situation in South Africa and of course the breakup of Soviet Union and Yugoslavia have left enough room for this concept to develop drastically these last 30 years and today to be one of the most interesting issues in the field of legal and political science. The significance of transitional justice can be also seen in the approach that influential international organizations like the UN, and the Council of Europe, have towards the mechanisms of transitional justice as mechanisms which are going to contribute to the protection of human rights, and way which will deepen and improve the quality of the modern democracy

## 2. Defining the term lustration

As already mentioned, the mechanisms of transitional justice are used with the purpose of one particular society to be able to face its own problematic past, which arises either from former repressive regime or from suffered military conflict. In this regard, most of the countries which have had experience with totalitarian regime, after the fall of such a regime, are faced with the following question: “What is to be done with the problematic past?” The new political elites that come after the fall of the totalitarian regime are facing the dilemma whether “to forgive and forget” or “to remember and to punish”<sup>7</sup>.

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<sup>4</sup> Noemi Turgis, op cit.,15

<sup>5</sup> Patricija Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice From the Bottom Up” *Journal of Law and Society* Vol. 35 No.2, Cardiff: Cardiff University Law School, 2008 265-292, 268

<sup>6</sup> Ibid

<sup>7</sup> Samuel Huntington, *The Third Wave: Democratization in the Late 20<sup>th</sup> Century*, Norman: University of Oklahoma Press, 1991, 211

Rare are the examples in which the new democratic authorities decide to amnesty the crimes of the former totalitarian authorities<sup>8</sup>, and thus bury and leave behind the dirty past. Analyzing the mechanisms of the concept of transitional justice it can be concluded that the lustration process is one of the most frequently used mechanisms in the process of facing the problematic past arising from the former totalitarian system. The term lustration originates from the Latin words *lustratio* and *lustratum*, which means purification. In legal and political science, lustration is defined as a legal process that authorizes government actions ranging from soliciting information, investigation and disqualifying from public office those who have been collaborators of the secret service during the previous undemocratic regimes<sup>9</sup>. It can be said, freely, that lustration is a small, but perhaps the most significant and, at the same time, the most controversial step to face the totalitarian past in the process of creating democratic institutions, in order to establish institutions based on the foundations of democracy and the rule of law.<sup>10</sup>

### 3. Lustration – dilemmas and challenges

The collapse of the totalitarian regime always brings up the question of how, in the process of creating a new democratic system which is still fragile, the people who had been collaborators of the secret services of the former totalitarian system should institutionally be treated. For a long time there have been numerous debates on this issue in academia. The views are profoundly divided. For some authors the lustration is a necessary step for the purification of the new regime from the past sins<sup>11</sup>, and a key step towards democratic consolidation. For them, a well implemented and well regulated lustration has a positive impact on all five arenas of democracy<sup>12</sup>. On the other hand, there are theoreticians who claim that the process of punishing the collaborators of the secret services of the former system by the democratic governments leaves the possibility to violate the vital principles upon which every democratic country is based<sup>13</sup>. Additionally, for them, the lustration process is often manipulated by the ruling political elites in order to

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<sup>8</sup> Wojciech Sadurski, *Decommunisation, Lustration and Constitutional Continuity: Dilemmas of Transitional Justice in Central Europe*, Florence: European University Institute, 2003, 2.

<sup>9</sup> Cynthia Horne and Margaret Levi, *Does Lustration Promote Trustworthy Governance? An Exploration of the Experience of Central and Eastern Europe*, Budapest: Budapest Collegium /Trust and Honesty Project, 2002, 2.

<sup>10</sup> Adam Czarnota, "Lustration, Decommunisation and rule of law", *Hague Journal of Rule of Law*. Hague: Cambridge University Press, 2008, 310.

<sup>11</sup> Cynthia Horne and Margaret Levi, *Does Lustration Promote Trustworthy Governance? An Exploration of the Experience of Central and Eastern Europe*, Budapest: Budapest Collegium /Trust and Honesty Project, 2002, 4.

<sup>12</sup> Natalia Letki, „The Consequences of Lustration for Democratization: The Experience of East Central Europe“, *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 6.

<sup>13</sup> Cynthia Horne and Margaret Levi, *Does Lustration Promote Trustworthy Governance? An Exploration of the Experience of Central and Eastern Europe*, Budapest: Budapest Collegium /Trust and Honesty Project, 2002, 2.

discredit their political opponents. Let us further go over arguments in favor of and against lustration.

### 3.1 Arguments in favor of lustration

Theoreticians, who support lustration, consider that a society cannot move forward until it faces its past. “According to them, a democratic society has to free itself from the black spot of the former regime in order to be able to build solid, legitimate and democratic institutions.”<sup>14</sup> This would not be possible if the state institutions of the new system held a place for politicians and civil servants who have had close relationships with the secret services of the former totalitarian regimes. It would be hard for the citizens to have confidence if they see that the democratic values in the new institutions proclaimed by people who in the former system used methods inherent to the totalitarian systems<sup>15</sup>. Obviously the people who had been collaborators with the secret services of the totalitarian regimes, and thus progressed in the hierarchy of that system have developed values and competencies that do not correspond to the needs of the democratic society, and, therefore, are not competent to execute a public function in a democratic society. Accordingly, the lustration represents a way to purify the public administration, so that only competent and moral civil servants stay and work in it; civil servants that respect the democratic values and have no mortgages from the previous regime. The lustration should assist in assessing the moral and professional standards of those who perform a public function<sup>16</sup>. All this contributes to an increase in the efficiency, professionalism and openness of the public administration. At the same time, the lustration will represent a message to the citizens that the system is changing, and also a message to the totalitarian forces that in the democratic society there is no longer a place for them<sup>17</sup>. The message will be that there is no place for bribery, corruption and nepotism. An efficient, professional and responsible public administration, one with no mortgages from the former regime, supplemented with the possibility for the citizens to be actively included in the political system will result with an increase in the legitimacy of the authorities in the new systems.

The public administration, as mechanism which implements decisions taken by the political institutions, represents a powerful group of interest which has the capacity to block the enforcement of reforms.<sup>18</sup> There is a great danger of serious problems in the enforcement of democratic reforms when the civil servants who had been collaborators

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<sup>14</sup> Arolda Elbasani, Artur Lipinski, *Public Contestation and Politics of Transitional Justice: Poland and Albania*, Florence: European University Institute, 2011, 1.

<sup>15</sup> Natalia Letki, „The Consequences of Lustration for Democratization: The Experience of East Central Europe“, *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 6.

<sup>16</sup> Ibid.

<sup>17</sup> Cynthia Horne, “International Legal Ruling on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context”, *Law and Social Inquiry Volume 34 No 3*, Chicago: American Bar Foundation, 2009, 714.

<sup>18</sup> Саво Климовски, Тања Каракамишева, *Политички партии и интересни групи*, Скопје: Правен факултет Јустинијан Први, 2006, 342.

of the secret services of the former system stay inside the institutions even after the change of the regime. Such individuals would not wish for changes and they as part of the public administration would have the capacity to slow down and in some cases capacity to stop the reforms<sup>19</sup>. The lustration will enable the purified public administration to be loyal to the new democratic authorities. That would mean that democratic authorities have the whole administrative capacity and will to enforce the necessary reforms.

For many authors, the forces that collaborated with the secret services of the former totalitarian regime represent a big threat to the stability and maintenance of the new democratic system<sup>20</sup>. Lustration is a necessary measure which should contribute for protection of the fragile democracy in one society. Lustration represents “guarantee against the return of the old regime”<sup>21</sup>. For them the criticisms that the lustration relies upon the principle of retroactive justice are unbearable recalling that every democracy must have its own mechanisms for protecting it self.

In the countries where lustration was left out, or came with delay, there was room left for the people who had strong political capital during the communist regime to take part in the transition and through the privatization process to transform that capital into economic capital.<sup>22</sup> Such a possibility had negative effects over the privatization process in those countries, and further over the development of their economies. On the other hand, it is often emphasized that timely and well enforced lustration contributes to quick economic development and success. In that direction, the positive experience of the Czech Republic is well noted.

Moreover, the lustration deprives the attempts of street lustrations, which can be big problem for the stability of the system<sup>23</sup>. The enforcement of a formal lustration, precisely determines which individuals had been collaborators of the secret services of the former system. Institutionalized and well regulated lustration will leave no space for speculations and blackmails.

### 3.2 Arguments against lustration

Criticisms against lustration are based on several arguments. Authors, who attack the lustration process, consider that enforcement of

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<sup>19</sup> Dariusz Grzybło, *Lustration. The Case of Poland*, Krakow: Instytut Filozofii, 2007, 6.

<sup>20</sup> Marek Safjan, “Transitional Justice: The Polish Example, The Case of Lustration”, *European Journal of Legal Studies*. Florence: European University Institute, 2007, 13

<sup>21</sup> Brian Grodsky, „Beyond Lustration: Truth – Seeking Efforts in the Post – Communist Space“, *Taiwan Journal of Democracy Volume 5 No 2*, Taipei: Taiwan Journal of Democracy, 2009, 26.

<sup>22</sup> Natalia Letki, „The Consequences of Lustration for Democratization: The Experience of East Central Europe“, *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 6.

<sup>23</sup> Dariusz Grzybło, op.cit., 7.

lustration involves application of retroactive justice<sup>24</sup>. One of the fundamentals of each democratic country is the rule of law, and in the concept of the rule of law there is no space for retroactive justice.<sup>25</sup> According to them, the implementation of lustration by the new democratic government means treading upon the principles of democracy in the name of democracy.

Additionally, one of the main arguments against lustration process is that the lustration often violates the fundamental human rights. The European Court for Human Rights at the end of the XX century and beginning of the XXI – century had plenty of work as a result of the lustration in the countries of Central, East and Southeast Europe. In a number of cases related to lustration, the European Court for Human Rights passed decisions in which the provisions from the lustration laws of the post-communist countries violate the principles of the European Convention for Human Rights. Most frequently, the complaints before the European Court for Human Rights concerned the violation of the Right to a fair trial (Article 6), right to respect of private and family life (Article 8), freedom of expression (Article 10), freedom of assembly and association (Article 11), right to an effective remedy (Article 13), prohibition of discrimination (Article 14) and right to free elections (Protocol 1, Article 3)<sup>26</sup>.

As one of the problems highlighted is the problem with uncompleted and unclear evidence. Namely, the collaboration with the totalitarian regimes is proved with the secret services' archives. In many of the countries from Central, East and Southeast Europe, in the course of the fall of one system and the entering of another system, the secret services' archives had been destroyed or stolen, and in certain situations the authenticity of the existing archives was questioned.<sup>27</sup> The fact that the lustration was based upon suspicious archives could have a negative impact over the legitimacy of the whole process.

The enforcement of democratic reforms requires strength, unity and dedication, but the determination to carry out lustration could lead to opening old wounds and division of the society which might adversely affect the pace of the democratic consolidation<sup>28</sup>.

In part of the debates regarding justification of lustration, one argument was imposed as an argument against this process and that was the fact that one country does not have the human capacity to fully replace certain professional groups, particularly those strongly involved

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<sup>24</sup> Cynthia Horne, "International Legal Ruling on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context", *Law and Social Inquiry Volume 34 No 3*, Chicago: American Bar Foundation, 2009, 715.

<sup>25</sup> Саво Климовски, Рената Дескоска, Тања Каракамишева, *Политички систем*, Скопје: Просветно дело, 2009, 204.

<sup>26</sup> Cynthia Horne, op cit., 720.

<sup>27</sup> Natalia Letki, „The Consequences of Lustration for Democratization: The Experience of East Central Europe“, *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 6.

<sup>28</sup> Wojciech Sadurski, *Decommunisation, Lustration and Constitutional Continuity: Dilemmas of Transitional Justice in Central Europe*, Florence: European University Institute, 2003, 5.

in collaboration with secret services of a former totalitarian regime<sup>29</sup>. Almost each post-communist country in the process of lustration was facing the problems regarding this issue. East Germany was the only country that succeeded to overcome this problem easily, but only because was having great support by West Germany.

A big problem that lustration is facing is the possibility of abuse by the ruling party with the aim of dealing with political opponents. Many authors warn that lustration hides the danger of political discreditation and revenge. Lustration is known to be a powerful weapon for fighting political opponents, as it is a process that could affect not only the results of the election of the political candidates, but also their political carrier.<sup>30</sup> Lustration could be a powerful weapon in the hands of the ruling political elites against their political opponents. A weapon that could lead to strengthening the position of the ruling political parties and marginalization of their political opponents.<sup>31</sup>

#### 4. Factors which determine the path of the lustration in one country

Lustration became a very popular issue after the fall of the totalitarian systems in Central Europe and East Europe. It is noticeable that there is huge diversity in the manner and the time-frame of enforcing lustration in post-communist countries. There are several factors which determine whether, when and the dynamics of the lustration in one country.

One of the factors which determined the destiny of the lustration process in the newly created democratic system is, of course, the nature of the former system<sup>32</sup>. The degree of totalitarianism and the repressiveness of the previous system and its perception by the public, play a major role in the approach that the new authorities have towards the lustration process. If the experiences that come from the post-communist systems are being analyzed it can be concluded that the lustration process came quickly in the countries that were greatly influenced by the Soviet Union. Unlike them, in the countries that emerged from Yugoslavia, the process of lustration was either left out, or it was enforced with big delay. The degree of totalitarianism in Yugoslavia was far soft than in the countries that emerged from or were greatly influenced by the Soviet Union. Additionally, the majority of the

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<sup>29</sup> Natalia Letki, „The Consequences of Lustration for Democratization: The Experience of East Central Europe“, *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 6.

<sup>30</sup> Tomas Besak, „An Explanation of the Adoption Timing and Severity of Lustration in Central and Eastern Europe“, *Rational choice theory and applications to political science*, Dublin: European Consortium of Political Research, 2010, 10.

<sup>31</sup> Arolda Elbasani, Artur Lipinski, *Public Contestation and Politics of Transitional Justice: Poland and Albania*, Florence: European University Institute, 2011, 4.

<sup>32</sup> Tomas Besak, „An Explanation of the Adoption Timing and Severity of Lustration in Central and Eastern Europe“, *Rational choice theory and applications to political science*, Dublin: European Consortium of Political Research, 2010, 6.

citizens of the states that emerged from the breakup of Yugoslavia, even today, feel a great degree of nostalgia about the former system.

Secondly, a factor that influences whether and at what time the lustration process will be entered is, of course, a way of demolition of the previous totalitarian system<sup>33</sup>. Whether the demolition of the old system is conducted peacefully, through agreements and negotiations or through deinstitutionalized mechanisms and revolutions, everything has great influence over the determination and the dynamics of the implementation of the lustration. Prompt enforced lustration after the fall of the old regimes is characteristic for states where the changes occurred rapidly or through revolutions. The lustration might come across obstacles and be implemented with great delay in time where the fall of the totalitarian regime is going slowly, through negotiation and involving representatives and supporters of the old regime<sup>34</sup>.

If we plot a timeline for reflections on the communist past in Central and Eastern Europe, we can see that a lustration law was first adopted in Czechoslovakia (in 1991) where the transition was quickest. In the countries where the fall of the totalitarian regime is going slowly, through negotiation and involving representatives and supporters of the old regime either there was no lustration or it came with a great delay (Poland and Post-Yugoslavia States).

Thirdly, the lustration process might come across obstacles where the transition towards the new system is led by politicians who were part of the communist parties of the former system.<sup>35</sup> This factor had a major role in the fact that the lustration process had not been implemented at all or it had been implemented with a huge time delay in the countries which emerged from the breakup of Yugoslavia. Almost in each of them, the transition from a totalitarian system to democracy had been led by politicians with great political carrier in the former system.

##### 5. The role of the Resolution on measures to dismantle the heritage of former communist totalitarian system and the decisions of the European Court of Human Rights

After the fall of the communist regimes in Europe, the Council of Europe, as organization which was founded in 1949 with the aim to protect and promote the ideals of democracy and human rights in Europe, felt obliged to give directions as to how the new democratic systems should handle the problematic totalitarian past that arose from the previous communist systems. Stressing out the importance of the facing the communist totalitarian past the main objective of the Council of Europe was to contribute to the strengthening of the democratic values in these countries and thereby influence the democratic consolidation. Thus, in the middle of 1996 the Council of Europe adopted the famous resolution on Measures to dismantle the heritage of former communist totalitarian systems.<sup>36</sup> Recognizing that the process of lustration is a very sensitive issue, within the framework of the Resolution, the Council of Europe also included guidelines according to which the post-communist

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Council of Europe. Parliamentary assembly. *Resolution 1096 on measures to dismantle the heritage of former communist totalitarian system*. Strasbourg, 1996.



authorities should manage the enforcement of the lustration process in their countries.

At the very beginning, the Resolution's guidelines indicate that the dominating thing in the process of lustration should be the desire to defend democracy, and not revenge. The Council of Europe condemns any attempt to abuse the process of lustration and its use for achieving political-party goals of the dominating political elites.

In terms of the time scope that should be put under the magnifying glass of the lustrates, the guidelines of the Resolution of the Council of Europe, clearly indicate that solely the period from 1980 until the fall of the totalitarian regime should be of concern to the lustrators. This recommendation is made because the creators of the Resolution believe that someone who has not committed any violation of human rights in the last ten years of the totalitarian communist regime would not have done that after the fall of the totalitarian regime. However, the European Court of Human Rights ruled a decision that in certain historical and political circumstances the extension of the timeframe of the lustration can be justified even after the fall of the totalitarian regime. Such justification is possible only in the countries where during the process of building a democratic system, after the fall of the totalitarian system, arise forces loyal to the former system that are organized against the democratic institutions and trying to overthrow the democratic system and restore the previous totalitarian system.

Thus, in the case *Zdanoka v. Latvia*, the European Court of Human Rights ruled that the timeframe for which lustration in Latvia will be enforced can also stretch after the fall of the totalitarian regime taking into account that certain groups (Communist Party of Latvia) loyal to the former regime in the 1990 and 1991, who tried, several times, to carry out a coup against the democratic government, and thereby stop the development of the democratic system and to contribute to the restoration of the previous regime. According to the European Court of Human Rights, Zdanoka as an active participant in the attempts for coup in the 1990 and 1991 could be subject to lustration, although its activities originate after the fall of the totalitarian system. The European Court of Human Rights, however, noted that such extension of the lustration process cannot be justified in a country that has a long established framework of democratic institutions.

The Resolution's guidelines also state that prohibition of executing a public function in each separate case should take no longer than five years and that the lustration measures should preferably be completed by the end of 1999. Such recommendations are argued with the fact that the human capacity for positive change in the personal behavior should not be underestimated and that by the year 2000 the new democratic system is expected to be consolidated. Theoreticians dealing with the problem of lustration indicate that as time passes since the fall of the totalitarian regime the need for lustration is reduced and that lustration becomes a very politicized event and instrument of the dominant political figures in their calculations with their opponents, if it is introduced after a lot time has passed since the transition from the old

to the new system.<sup>37</sup> Delayed enforcement of lustration always opens space for doubt regarding the motives of lustration and its enforcement can be justified only by cogent reasons.

The Resolution of the Council of Europe clearly indicates that there is no need for lustration to be carried out on the positions that are elected directly by the citizens, except when the candidates themselves requires it. According to the Resolution of the Council of Europe, lustration should cover only the positions for which there is good reason to believe that they represent a threat to human rights or democracy. This means that the purpose of lustration should be exclusion of holders of public function that could endanger the democratic process. Additionally, the Resolution indicates that there is no need for lustration, as a measure, to be applied in the private sector or in the half-private sector, because those positions have either a very minor or no capacity at all to threaten fundamental human rights and democratic processes. The European Court of Human Rights, with the decisions in the *Sidabras and Dziautas v. Lithuania* and *Rainys and Gasparavicius v. Lithuania* cases also established that the extension of the lustration over positions in the private and the semi-private sector violate the basic principles of the European Convention for Human Rights. In the Court's view, State-imposed restrictions on a person's opportunity to find employment with a private company for reasons of lack of loyalty to the State cannot be justified from the Convention perspective in the same manner as restrictions on access to their employment in the public service, regardless of the private company's importance to the State's economic, political or security interests.

Last but not least, the Resolution of the Council of Europe is gave the guideline that in no case may a person be lustrated without being given full due process protection, including, but not limited to, the right to counsel (assigned if the subject cannot afford to pay), to confront and challenge the evidence used against him, to have access to all available inculpatory and exculpatory evidence, to present his own evidence, to have an open hearing if he requests it, and the right to appeal to an independent judicial tribunal. On several occasions the European Court of Human Rights ruled that the lustration process in post-communist countries is happening in order to violate Article 6 of the European Convention of Human Rights concerning the right to a fair trial. That can be seen from the decision in the case *Lubock v. Poland* where the European Court of Human Rights determined that the body conducting the lustration in Poland is in a privileged position because it has access to all relevant facts while the person who is subject to lustration has limited access to the necessary documents. Additionally, in the case *Turek v. Slovakia* the European Court of Human Rights went a step further and determined that in terms of the lustration cases there can be no valid basis for restricting access to certain documents and materials. The bodies that are obliged to carry out the process of lustration must submit all available information to the party which is subject to lustration in due time.

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<sup>37</sup> Arolda Elbasani, Artur Lipinski, *Public Contestation and Politics of Transitional Justice: Poland and Albania*, Florence: European University Institute, 2011, 4.

### Conclusion

The fall of the totalitarian regime, among other things, inevitably raises the question of how the new democratic elites will face the problematic totalitarian past. In the process of facing the problematic totalitarian past most of the post-communist countries have opted to apply the mechanism of lustration. The process of lustration is a very controversial process, which even today disturbs the academia. For certain theoreticians the lustration process is inevitably needed towards the democratic consolidation process, while for others it is a process that is contrary to the basic ideas of democracy and often can be abused by the dominant political elites.

On one hand lustration contributes to protecting the fragile democracy of its possible collapse, and a return towards totalitarian system. Furthermore, the lustration is a mechanism for filtering the public administration i.e. through the lustration process a scanning is performed which determines if the civil servants in the public administration have competencies that correspond to a democratic society. In this direction, also, through the process of lustration the democratic political elites secure loyalty of the civil servants towards democratic institutions. All this will contribute to the creation of an open, efficient and democratic public administration; Administrations that will be able to increase its legitimacy in the eyes of the public. One should take into account that the rapid implementation of lustration after the fall of the totalitarian regime will contribute to preventing people who gained political capital during the former system to actively engage in the process of privatization. Through that, the quality of the privatization, that will later directly influence the economic development of that country, will also be influenced.

On the other hand, experience tells us that the lustration can often be subject to abuse for party-political purposes and that it hides in itself a danger of violating the fundamental human rights and freedoms. Therefore, it is extremely important during the creation of the lustration law and its subsequent enforcement, to follow the recommendations by the Council of Europe and the decisions of the European Court of Human Rights. What should prevail in the lustration process is the desire to preserve and promote democracy, not revenge.

Analyzing the arguments in favor of and against lustration, it can be concluded that a well regulated lustration, without any mortgages that serve as a tool for dealing with political opponents, enforced in due time, following the recommendations by the Council of Europe and the decisions of the European Court of Human Rights, has a positive influence over all of the five arenas of democracy, and contributes to the democratic consolidation of society.

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