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THE PROCESS OF LUSTRATION IN REPUBLIC OF MACEDONIA: FACING THE PAST OR FACING POLITICAL OPPONENTS

Abstract.

With the proclamation of independence, the period of transition and democratic consolidation began in the Republic of Macedonia. One of the bitter problems during its transition and democratic consolidation was its determination to confront the totalitarian past. The subject of this paper will be the lustration process in Republic of Macedonia. This paper attempts to reveal the approach chosen by the political elites toward the lustration process. While doing that, we will rely on the method of analysis, historical, normative and political method. The overall conclusion is that the decision to begin the lustration process came too late and that in the Macedonian model of lustration prevails the moment of political confrontation of the ruling party with its political opponents.

Keywords: *politics, political system, democracy, transition, lustration.*

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Introduction

The creation of democratic societies after the collapse of the totalitarian regimes in Central, East and Southeast Europe proved to be a complex process. The transition and democratic consolidation in all post-communist countries have been and still is a long and torturous process. Allowing political pluralism, guarantee and protection of human rights and liberties, building democratic institutions based on the principle of rule of law, establishment of civil society and transformation from planned to market economy were the foundations of the transition toward democratic societies in these countries. On the road to democratic consolidation, inevitably, the desire and determination of the new democratic political elites face the problematic totalitarian past. Faced with their communist past, nearly all post-communist countries decided to apply the mechanisms of transitional justice. The most useful of these, but at the same time the most controversial, was the mechanism of lustration. The term *lustration* originates from the Latin words *lustratio* and *lustratum*, which means *purification*.¹ In legal and political science, lustration is defined as a legal process that authorizes government actions ranging from soliciting information, investigating and disqualifying from public office those who have been collaborators of the secret services during the previous undemocratic regimes.² 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 confront 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.³

1. Post-communist states and the process of lustration

Rare are the examples where the new democratic authorities decide to amnesty the crimes of the previous totalitarian authorities⁴, therefore burring and leaving behind the dirty past. A large part of post-communist countries, especially those from Central Europe, decided to begin the lustration process, considering it as essential for the democratic consolidation. Even the recommendations from all relevant international organizations suggested rapid and careful handling of the problematic totalitarian past by the democratic authorities. In the same direction headed the Council of Europe's Resolution on measures to dismantle the heritage of the former communist totalitarian system.⁵ Acknowledging that the lustration process is a highly sensitive topic, the Resolution calls

¹Dariusz Grzyzlo, *Lustration. The Case of Poland*, Krakow: Instytut Filozofii, 2007, 1.

²Cynthia Horne, 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.

³Adam Czarnota, 'Lustration, Decommunisation and Rule of Law', *Hague Journal of Rule of Law*, Hague: Cambridge University Press, 2008, 310.

⁴Wojciech Sadurski, *Decommunisation, Lustration and Constitutional Continuity: Dilemmas of Transitional Justice in Central Europe*, Florence: European University Institute, 2003, 2.

⁵Council of Europe. Parliamentary Assembly, *Resolution 1096 on measures to dismantle the heritage of former communist totalitarian system*, Strasbourg, 1996.

for cautious lustration, respecting the principles of the rule of law, in which the desire to protect democracy, and not revenge, should prevail. It is noticeable that there appears to be a great diversity in the manner and time of implementing the lustration in post-communist states. Therefore, in the remaining part of this paper full attention will be devoted to the approach the Macedonian democratic political elites have toward the issue of lustration and the impact the lustration politics has over the Macedonian society.

2. The Macedonian experience with the lustration process

The historical development of the Macedonian political elites' approach toward the issue of lustration can be divided in two phases. The first phase began with the declaring independence in 1991 and it lasted until 2008, i.e. until the adoption of the Law for determining additional requirement for performing public office⁶ (hereinafter: first Lustration law). The second phase began in 2008 and it lasts to this day. It is a phase in which the Macedonian society began the lustration process. Further in the paper we will analyze in detail both of these phases, while concentrating in particular on the approach of the Macedonian political elites toward the lustration process.

2.1 The approach of the Macedonian authorities toward the lustration process from 1991 to 2008

The analysis of first phase of the approach that the Macedonian authorities have toward the lustration process reveals that the Macedonian political elites lacked the will and determination to carry it out. The Republic of Macedonia was among few states in Central, Eastern and Southeast Europe that did not decide to take any steps during the first ten years of its independence, in order to come to terms with its own troublesome past. Several reasons could be cited to explain why the lustration process had been left out during the nineties of the XX century and the beginning of XXI century.

One of the factors determining the destiny of the lustration process in the newly created democratic system was, of course, the nature of the previous regime.⁷ The degree of totalitarianism, the repressiveness of the previous system and its perception by the public play a major role in the approach that the new authorities have toward the lustration process. The communist systems differ from the classical totalitarian regimes. Most commonly, they have relied on subtle and, in most part, nonfatal forms of repression⁸, i.e. they were a kind of soft totalitarianism, more commonly known as socialism with human face.⁹

⁶*Official Gazette of Republic of Macedonia*, 14/2008.

⁷Tomas 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.

⁸Brian 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, 22.

⁹Biljana Vankovska, 'Lessons from the case of the Republic of Macedonia', *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 59.

That is one of the reasons why the authoritarian character of the previous system in Republic of Macedonia is not much emphasized. The Macedonian people are generally positively inclined toward the period 1945-1991, perceiving it as a period when, in the framework of FPRY, the Macedonian people finally accomplished its long desired dream to create its own state.¹⁰ In addition, the public opinion surveys show that the vast majority of the Macedonian people felt nostalgic toward the period 1945-1991, believing that they had lived much better in the time of Yugoslavia than in the time of Republic of Macedonia. The existence of certain affection of the Macedonian people toward the previous system contributed to the situation when the public did not put enough pressure on the political parties to implement the lustration process.

Secondly, a factor that influences whether and at what time the lustration process will be entered is, of course, the mode of the transition.¹¹ Whether the dissolution of the old system is conducted peacefully, through agreements and negotiations or through radical mechanisms and revolutions has a great influence over the determination and the dynamics of implementation of lustration. Prompt implementation of lustration after the fall of the old regimes is characteristic for states where the changes occurred rapidly and through revolutions. The lustration might come across obstacles and be implemented with great time lag where the fall of the totalitarian regime is going slowly, through negotiation and involving representatives and supporters of the old regime.¹² The Republic of Macedonia fought for its independence without major tremors to the political and social scene. It is true that during the process of abandoning the old system and creating the new democratic system a crisis emerged, but still, all those crises had been solved through dialogue. Additionally, the Republic of Macedonia was the sole state that managed to secede from the SFRY without a military conflict. The political elites entered this period of struggle for independence of Republic of Macedonia and dissolution of the previous system cautiously, preparing all the preconditions for proclamation of independence. It began with organizing multiple-party elections for Members of the Macedonian Assembly, through the adoption of the Declaration of Sovereignty of SRM, right up to the crown of this process – Referendum of Independence. It is noticeable that the politicians who had an extensive career at the time of the previous system were not only involved in the negotiations for abandoning the old system and creating a new democratic independent state, but they were among the main forces leading Macedonia to the battle.

¹⁰Goce Adamceski, 'Country overview: Republic of Macedonia', *Disclosing Hidden History: Lustration in the Western Balkans*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2005, 67.

¹¹Tomas 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.

¹²Tomas 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.

Thirdly, the lustration process might come across obstacles in cases where the transition toward the new system is led by politicians who participated in the communist parties of the previous system.¹³ The political party SDSM - the successor of the Macedonian Communist Party, had the main role during the Macedonian transition. Highly interesting is the Macedonian example where, although the right-wing party VMRO-DPMNE, which had exceptionally negative feelings toward the old system,¹⁴ won the first multi-party elections for Members of the Macedonian Assembly, failed to create parliamentary majority and gain the power to create the first Macedonian Government. Therefore, the Macedonian society entered into a political crisis, which was resolved by establishing an Expert Government. The Expert Government, defined as everyone's and anyone's, survived only 16 months.¹⁵ Two months after the fall of the Expert Government, the first Macedonian political and coalition Government was formed. The President of the Government was Branko Crvenkovski, the leader of SDSM, who managed to compose parliamentary majority in the Assembly. From that moment until 1998, the Republic of Macedonia was governed by a party emerging from the former Macedonian Communist Party through a reform. The fact that the majority of the top politicians in SDSM started their political career during the previous system, as part of the Macedonian Communist Party,¹⁶ explains why this political party did not have the courage and strength to raise the question of lustration.

In 1998, regular parliamentary elections have been organized and VMRO-DPMNE won. Forming a parliamentary majority, the leader of VMRO – DPMNE was the first President of the Government of Republic of Macedonia who did not have previous political career in the Macedonian Communist Party. Despite the expectations that VMRO - DPMNE, which was at that period attacking the previous system, will enter the lustration process, it that did not happen.¹⁷ The implementation of lustration was, once again, left out. The rule of VMRO – DPMNE highlighted certain actions aiming at rehabilitation of people who, during the previous system, experienced injustice and repression. In that direction, two laws were passed - the Law on denationalization and the Law on treatment of personal dossiers kept by State Security Service. After the turbulent developments in 2001, during the Parliamentary elections in 2002, SDSM won overwhelmingly. In the period between 2002 and 2006, a decision to start the lustration process was not made. In 2006, the Assembly of the Republic of Macedonia adopted the Law on

¹³Ibid.

¹⁴Biljana Vankovska, 'Lessons from the case of the Republic of Macedonia', *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 59.

¹⁵Svetomir Skaric, Gordana Siljanovska, *Уставно право*, Скопје: Култура, 2009, 684.

¹⁶Iso Rusi, 'The Experience in the Republic of Macedonia', *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 32.

¹⁷Biljana Vankovska, 'Lessons from the case of the Republic of Macedonia', *Past and Present: Consequences for Democratisation*, Thessaloniki: Center for Democracy and Reconciliation in Southeast Europe, 2004, 59.

the rights of the persecuted and the imprisoned for the ideas of the wellbeing of the Macedonian people and its statehood and their family members.

Regardless of the reasons, the decision to ignore the need for lustration is the mistake of the political elites that dominated during the nineties. The consequences of such a decision particularly affected the privatization process. The decision not to enter a quick lustration after the proclamation of the Macedonian independence provided some space for the people who had gained political capital in the course of the previous system to engage actively in the privatization process in Republic of Macedonia. The Macedonian privatization was accompanied by a number of scandals. Therefore, in the collective memory of the Macedonian people it has been remembered as a dark episode in the building of Macedonian democracy.¹⁸ The implementation of a real lustration would have facilitated a greater transparency in the privatization process, as well.

Moreover, the lustration could have been a solution that would have helped in the process of filtering the public administration. With the failure to implement lustration, the opportunity to do a scan of the competences of the Macedonian public administration was missed. Twenty-two years later, almost each Report of the European Commission about the progress of the Macedonia notes, *inter alia*, the weak administrative capacity of the Macedonian administration.

2.2 The approach of the Macedonian authorities toward the lustration process from 2008 to this day

The second phase of the approach that the Macedonian political elites have toward the lustration process is the period in which the Republic of Macedonia started implementing lustration. In 2008, the first Law on lustration was adopted.¹⁹

During the second phase, the lustration process opened a number of dilemmas and debates in the Macedonian society. Certain articles from the first Lustration law were, on several occasions, repealed by the Constitutional Court. Soon, the Constitutional Court was expected to state its opinion on certain articles from the Law on determining a criterion for limiting the exercise of a public office, access to documents and publication of the cooperation with the bodies of the state security institutions of Republic of Macedonia (hereinafter the second Lustration law).²⁰ During 2012, at a request of the Constitutional Court, the Venice Commission prepared an *amicus curiae* brief on the second Lustration law.²¹

Following the approach of the Macedonian political elites toward the lustration process in the second phase, one obtains the feeling

¹⁸Жарко Трајановски et al, *Македонската лустрација (1999 – 2012) Настани, изјави, наслови, примена на лустрациските прописи*, Фондација Отворено општество – Македонија, 2012, 168.

¹⁹*Official Gazette of Republic of Macedonia*, 14/2008.

²⁰*Official Gazette of Republic of Macedonia*, 86/2012.

²¹Venice Commission. *Amicus Curiae Brief on the Law on Determining a Criterion for Limiting the Exercise of Public Office, access to documents and publishing the cooperation with the bodies of the state security of Republic of Macedonia*, Strasbourg, 2012.

that it serves more as a tool to deal with political opponents than confront the totalitarian past. Such a feeling arises due to a growing number of reasons.

The lustration should be proposed, discussed and adopted by the legislative body in the state and the Law on lustration should be approved or corrected by the Constitutional Courts.²²

The first Lustration law in Macedonia was passed in 2008 by the Assembly with a consensus between the Government and the opposition. This fact was further used by the Government when defending the first Lustration law, particularly in the proceedings before the Constitutional Court.²³ In 2010, the Constitutional Court decided that the time frame in which the Lustration law is being implemented is inconsistent with the Constitution. These findings were also upheld with the Constitutional Court decision from 2012, which further argued “that the Lustration Law places the citizens covered by this process, in an unequal position”.²⁴ In 2010 and 2012, the Constitutional Court decided that the lustration encompasses too broad list of categories of individuals and position. Thus, in 2010 and 2012 the Constitutional Court repealed some provisions from the first Lustration law, which excluded certain categories of individuals and positions from the jurisdiction of the Lustration law.

Following the decisions of the Constitutional Court in 2010 and the beginning of 2012, the Macedonian political elites entered the process of drafting a new Lustration law. Therefore, in the middle of 2012 the Assembly of Republic of Macedonia adopted the second Lustration law, but this time with much opposition and without the consent of the political parties from the Macedonian opposition. The second Lustration law ignores the previous decisions of the Constitutional Court of the Republic of Macedonia. The fact that the Macedonian Government proposed and that the Macedonian Assembly, again, passed Lustration law consisting of articles that had been previously repealed by the Constitutional Court is quite concerning.

The lustration process can be an attractive topic for politicians even many years after the transition period is over. The general perception is that, with the passage of time, the lustration becomes a highly politicized process and an instrument of the dominant political figures to marginalize their opponents.²⁵ This is the case because the lustration could be a powerful weapon in the arms of the ruling political elites against their political opponents. A weapon which can lead to

²²Natalia 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, 5.

²³Жарко Трајановски et al, *Македонската лустрација (1999 – 2012) Настани, изјави, наслови, примена на лустрациските прописи*, Фондација Отворено општество – Македонија, 2012, 180.

²⁴Жарко Трајановски, op. cit, 185.

²⁵Arolda Elbasani, ArturLipinski, *Public Contestation and Politics of Transitional Justice: Poland and Albania*, Florence: European University Institute, 2011, 4.

strengthening the position of the ruling political parties and marginalization of their political opponents.²⁶

The determination of the political elites dominating the political scene in Republic of Macedonia to carry out lustration, 21 years after the proclamation of its independence, without the support of the opposition, failing to follow either the decisions of the Constitutional Court or the recommendations from the Resolution of the Council of Europe, opens a large space for the doubts about the purpose of the lustration process.

The Resolution of the Council of Europe for handling the totalitarian past shows that lustration in the post-communist states should have been carried out only in the time frame from 1980 until the fall of the communist systems. In Republic of Macedonia, the first Lustration law determined that the period from 1944 to 2008 will be the time frame that would be scanned in the lustration process. Such a solution was contrary to the recommendations of the Council of Europe and contrary to the Constitution of the Republic of Macedonia from 1991. The Constitutional Court of the Republic of Macedonia determined that the validity of the Lustration law for the period after 1991 is unconstitutional.²⁷ This decision by the Constitutional Court was entirely justified, because the Constitution of the Republic of Macedonia from 1991 establishes a democratic system built upon separation of powers and guarantees and mechanisms to protect human rights and freedoms. According to the the Constitutional Court of the Republic of Macedonia, the validity of the Lustration law for the period after 1991 represents a denial of the values and institutions established with the Constitution of 1991, which leads to violation of the principle of the rule of law as a fundamental value of the Macedonian Constitution. Even though this kind of provisions in the first Lustration law were repealed by the Constitutional Court, it was not an obstacle for the second and current Lustration law to contain articles permitting that the lustration is carried out for the period after 1991 (specifically until the adopting of the Law on free access to information of public character).

In its amicus curiae brief, the Venice Commission implies that applying lustration measures in respect of acts committed after the end of the totalitarian regime may only be justified in the light of exceptional historic and political conditions. In the continuation of the amicus curiae brief, the Venice Commission clearly states that it is not aware of any exceptional historic – political circumstances having occurred in Macedonia after the adoption of the Constitution and that since 1995 Republic of Macedonia is under constant surveillance by the Council of Europe regarding the democratic performances of the Macedonian society.

According to the Resolution of the Council of Europe, lustration should cover only the positions for which there is a good reason to believe that they represent a threat to human rights or democracy. This means that the purpose of lustration should be the exclusion of holders of public offices and authorities that could seriously endanger the

²⁶Ibid.

²⁷Жарко Трајановски et al, *Македонската лустрација (1999 – 2012) Настани, изјави, наслови, примена на лустрациските прописи*, Фондација Отворено општество – Македонија, 2012, 184.

democratic process in the country. The Resolution of the Council of Europe clearly indicates that there is no need that the lustration is carried out for the positions that are elected directly by the citizens, except when the candidates themselves require it. Additionally, the Resolution indicates that there is no need that the lustration, as a measure, is applied in the private sector or in the semi-private sector, because those positions have either very small or no capacity at all to threaten the fundamental human rights and democratic processes.

Apart from the Resolution by the Council of Europe, in its judgment in the case *Sidabras and Dziautas v. Lithuania*, the European Court of Human Rights also established that the extension of the lustration over positions in the private and semi-private sector violate the basic principles of the European Convention for Human Rights. In this respect, in the analysis of the Lithuanian and Latvian lustration laws the Committee of the International Labor Organization concluded that lustration in private and semi-private sector could not be justified with the need to protect democracy and it represents violation of fair employment laws.

In the Macedonian case, both the first and the second law operate with too broad list of positions that are subject to lustration. In this direction were the decisions of the Constitutional Court in 2010 and in 2012. Thus, in 2010 the Constitutional Court of Republic of Macedonia repealed the provision that stated that lustration covers those who perform function in political parties, who are members of associations, foundations, religious communities and religious groups. In addition, with the decision in 2012, the Constitutional Court drew out from the jurisdiction of the Lustration law the journalists, lawyers, notaries and mediators. These two decisions were related to the first Lustration law. However, equally as the previous, the second Lustration law provides an extensive list of positions that fall under the Lustration law. According to the second law, susceptible to lustration are again the positions for which the Constitutional Court in 2010 and 2012 decided that they should not be subject to lustration. The second Lustration law covers even 143 categories of positions.²⁸ One obtains the impression that both the first and the second Lustration law enable lustration of the entire Macedonian society, which is contrary to the recommendations and the Resolution of the Council of Europe. Particularly concerning is the determination of the Macedonian political elite not to limit the process of lustration only to holders of public offices, but to broaden it extensively. Considering that in the last few years a large number of violations of the freedom of speech, the freedom of information and the freedom to association has been noted in Republic of Macedonia,²⁹ the wide lustration of the Macedonian society could bring doubts regarding the motives and the desire of the ruling political elites to proceed influencing the private and the semi-private sector. It must not be allowed to use the lustration process for blackmailing and revenge, but

²⁸Жарко Трајановски et al, *Македонската лустрација (1999 – 2012) Настани, изјави, наслови, примена на лустрациските прописи*, Фондација Отворено општество – Македонија, 2012, 187.

²⁹Renata Deskoska, 'The Rule of Law and Protection of Human Rights in Macedonia', *Summer Academy Rule of Law, Human Rights and European Union*, Skopje: SEELS, 2012, 116.

as a contribution toward protection and promotion of democracy. These anomalies of the second Lustration law have also been detected in the *amicus curiae* brief of the Venice Commission. The conclusion of the Venice Commission's *amicus curiae* brief clearly indicates that the application of lustration measures to positions in private or semi-private organization goes beyond the aims of lustration.

In this regard, of great concern is the fact that the Lustration laws in Republic of Macedonia envisage the lustration process covering individuals who used to be holders of public offices, but who have been retired or are deceased. As already mentioned, the aim of lustration should be protecting democracy from the holders of public offices that have a serious opportunity to influence the democratic processes in the country. A question arises here - how could individuals who have retired or are deceased influence the future democratic processes in Republic of Macedonia?

One of the novelties introduced with the second Lustration law is the provision that the name of the lustrated should be published on the website of the Commission for verification of facts, after a decision is taken by the Commission. The fact that this publication should be made within three days of the making of the decision by the Commission for verification of facts is highly concerning, which means that the decision by the Commission is being published prior to the confirmation of the decision by the relevant court, so that it can be final. Such a decision violates the presumption of innocence and it is contrary to the European Convention on Human Rights. The Venice Commission in its *amicus curiae* brief states that publication prior to the court's decision is problematic in respect of Article 8 of ECHR. Once again, these solutions provide space for political discrediting and labeling.

Conclusion

The approach of the Macedonian political elites during the nineties of the XX century and during the second half of the first decade of the XXI century toward the lustration process has changed significantly. It seems that in both periods the Macedonian political elites took bad decisions on the lustration process. In the first period, when the need for lustration was greatest, the political scene of the Republic of Macedonia lacked the will and determination to implement the lustration. That situation affected adversely especially the privatization process, as well as the quality and the competencies of the public administration.

The first Lustration law in Republic of Macedonia was passed in 2008, which represents a signal that in this state the lustration process came with a big time lag from the proclamation of Macedonian independence. The period and the manner in which the Macedonian lustration was implemented cast large doubts and suspicions regarding the motives for carrying out this process.

The determination of today's ruling political elites to establish a lustration process that is contrary to the recommendations of the Resolution of the Council of Europe, the decisions of the Constitutional Court of Republic of Macedonia and without any support by the opposition gives the impression that the lustration rather serves the goals of the political parties, than the protection and promotion of democracy. The current Lustration law enables plenty of room for political

manipulation and political discrediting of the political opponents. Additionally, if we look at the list of individuals who have undergone lustration, we can freely conclude that the big names from the list are people who are very close to the opposition political parties and who continually criticize the work of the ruling political parties in Republic of Macedonia. From the ruling political parties, there are names that the wider public is not familiar with.

Unfortunately, when we look at the approach the Macedonian political elites have toward the lustration process, we may conclude that the lustration is an unsuccessful story in the Macedonian democracy. The approach toward lustration was wrong both in the first and in the second phase. In the first phase, the decision to ignore the need for lustration was wrong. In the second phase, the lustration came with a delay, carrying luggage that is only a witch-hunt that should contribute to the interests of the ruling political parties to marginalize and discredit the political opponents.

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