

LUSTRATION LEGISLATION IN EASTERN EUROPE AND ITS  
MEANING FOR THE WESTERN WORLD

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## ABSTRACT

### LUSTRATION LEGISLATION IN EASTERN EUROPE AND ITS MEANING FOR THE WESTERN WORLD

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Lustration policies spread widely across Eastern Europe in the early 1990's after the fall of the Communism when most of the post-Communist states of Eastern Europe employed a strategy of purging the former Communists from the state apparatus with the help of 'lustration' laws.

The countries of Eastern Europe developed different approaches to lustration, and the practices adopted by Germany, Czechoslovakia and Estonia demonstrated a great degree of variety. The great influence of the lustration policy on societies of the Eastern European countries makes it necessary to rethink the very concept of lustration. The important issue of self-lustration expands the lustration practice beyond the legal sphere.

Lustration should be seen not as set of legal rules, but as a mixture of legal policies adopted by the legislative bodies, and of informal practices, which were usually carried out by the population. This perception of lustration adds another dimension to lustration and expands the object of study beyond the legislation of the country.

The adoption of formal lustration practices assumed a particular viewpoint about the nature of a dictatorial regime, shared by many Western media and senior officials. This viewpoint is based on the premise that an individual or a small group of individuals can seize all power and cut off the rest of the population from all participation in state politics. However, studies of denunciation letters demonstrate that a population often accepts and voluntarily collaborates in the practices of a dictatorial regime. The existence of the denunciation culture has multiple examples in Modern European history such as in Stalinist Russia or in Nazi Germany. Denunciation studies are important for redefining the concept of dictatorship. These studies show that the popular concept of dictatorship as a state of people oppressed by a ruthless dictator, aided by a small group of his followers, is erroneous. In light of those findings a more sophisticated view of dictatorship emerges, one that sees it as a precariously balanced system of relationships between contentious socio-economic or ethnic groups.

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## Chapter 1

### INTRODUCTION

The series of revolutions that spread across Eastern Europe in 1989 marked the end of Communist rule in the Eastern European countries, and started their transition to democracy. The complete change of the nature of regimes from Communism to liberal democracy raised a series of important questions in the changing societies, such as national reconciliation and transitional justice. To deal with these questions, most of the post-Communist states of Eastern Europe employed a strategy of purging the former Communists from the state apparatus with the help of 'lustration' laws.

The lustration policies spread widely across Eastern Europe in the early 1990's after the fall of the Communism. Most of the Eastern European countries adopted lustration practices of some kind. Lustration laws are an important part of the transitional justice and national reconciliation policy, which are necessary for the reunification of a nation, especially after mainly bloodless revolutions and the peaceful transition of power which occurred in most of the Eastern European countries in 1989, except for Romania where a small-scale Civil War occurred. Questions of national reconciliation and transitional justice in a global context were, and still are, important issues for many countries which experienced the

transformation from a repressive authoritarian regime to a democratic one. Thus, lustration laws have not only a theoretical, but also a practical application by offering a possible solution of how to cope with the negative consequences of a rapid democratization process.

Lustration was a part of the process of decommunization in the countries of Eastern Europe. Lustration laws were created to prevent, on the legislative basis, certain political or ethnical groups from getting into power in the new regimes in Eastern Europe. These lustration practices were adopted to some extent in most countries of Eastern Europe such as Germany, Poland, Hungary, Bulgaria, the Czech Republic, the Slovak Republic, Albania, Lithuania, Latvia, Estonia, and Romania after the fall of Communism in 1989-1991.<sup>1</sup> However, "lustration" was not a formal name for all of these laws, but rather an informal term used by journalists or scholars of lustration who usually are political scientists, criminologists, or law professors. The name "Lustration laws" is a collective term used to describe a number of domestic laws which had the similar goal of excluding some groups of individuals from domestic politics. Such situations created a problem of how to define lustration and decide what laws should be referred to as lustration laws. Different scholars came out

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<sup>1</sup> Mark S Ellis. "Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc." In *Law and Contemporary Problems*, Vol. 59, No. 4 (1997): 181.



with a number of definitions varying from a very broad understanding of lustration as a synonym for a political purge, to a narrow understanding as a practice of screening of certain groups of individuals. The definition of lustration is important because it determines which practices and laws could be named as lustration, and if it is possible to extend the term lustration outside of the context of post-Communist Eastern Europe. Some scholars consider the denazification process in Germany after 1945 to be lustration. Another example is the passage of the anti-Gaddafi law in Libya<sup>2</sup>, which was aimed at the removal of the Gaddafi clan from power, and which has striking similarities with the lustration legislation of Eastern Europe. This case demonstrates that lustration laws are not restricted to the specific Eastern European situation of 1989, and have the potential to be adopted in other parts of the world.

The countries of Eastern Europe adopted different approaches to the lustration policy and one of the goals of this paper is to demonstrate the differences among the lustration policies of three different countries: Germany, Czechoslovakia (which split into the Czech Republic and the Slovak Republic in 1993) and Estonia. These approaches can be

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<sup>2</sup> "Libyan anti-Gaddafi gunman 'lift siege of ministries'". *BBC News*, May 11, 2013, <http://www.bbc.co.uk/news/world-africa-22497814> (accessed on November 25, 2013).

examined by the study of various texts of lustration legislation, which are the main sources of information for this paper.

Lustration policy usually included a broad spectrum of laws, which may serve different functions. Some laws were aimed at the prevention of certain groups of individuals from holding offices in the post-Communist governments. High-ranking officials from the Communist regimes were considered as not committed to the values of the new regime and had to be prohibited from taking any positions which might influence the new society. The new democracies were seen as extremely fragile and required protection from the political and socio-economic influence of the communist parties. Lustration played the role of guardian of the new democracies. Such an approach can be illustrated by the Czech lustration legislation, which became one of the harshest examples of lustration legislation in Eastern Europe. Czech lustration laws introduced a mandatory background check for every candidate for a high-ranking position in the state bureaucracy. If this check revealed that a candidate occupied certain positions in the old Communist regime such as positions related to the State Security Service, the People's Militias, etc., or that the candidate was a high-ranking member of the Communist Party from the level of District Committee upward, he would be banned from occupying positions in public service.

Another function of the lustration policy was the identification and ostracizing of the secret police collaborators. This function resembled the previous one as it also made an effort to ban a certain group of individuals from politics but, because the identities of the secret police collaborators had to be revealed first, the opening of the secret police archives became a part of the lustration policy program. Special laws such the Law on the Records of the Secret Service of the Former German Democratic Republic in Germany or the Law on National Memory in the Slovak Republic were adopted to provide public access to the files. These laws regulated the procedure of access to the archives by individuals and scholars, and the duties of the personnel of the archives who, in some cases, had to report the names of the high-ranking officials if it could be established during the file check that such persons had worked as a secret police collaborator. The laws as such are an integral part of lustration policies and should be examined in order to understand the phenomenon of lustration.

Another function of the lustration policy was seen by many policy-makers and researchers as a moral cleansing of society. The practices of the Communist regimes were perceived as immoral by the new Democratic regimes. In order to become a moral state, the people of Eastern European countries believed that they had to cleanse the state apparatus and even the entire society if possible from the previous

political elite and their ardent followers. This vision led to the situation where officially adopted lustration laws went hand in hand with “wild” lustration unregulated by legislative acts. The examples of “wild” or self-lustration could be found in the policy of the restructuring of the East German academia. The sphere of public education is one of the most ideological spheres in all the countries and the GDR was no exclusion to this rule. The new government decided to restructure the East German academia according to West Germany standards. Entire subdivisions of the East German academic structure, such as the departments of Marxism/Leninism and the history of the GDR/working-class movement, were closed by the state governments. Although some employees could have been fired for their collaboration with the secret police, many had to leave because of the abolishment of their positions.

Another example of self-lustration could be seen in the hysterical “witch hunt” which occurred in the post-Communist countries. Peoples of Eastern Europe were concerned with the cleansing of the remains of the previous regime in order to distance themselves from its practices. Secret police collaboration was seen as especially corrupt practice and many activists dedicated themselves to searching and punishing of collaborators. Unfortunately, the information available to those activists was based on the often incomplete and unreliable documents from the

archives of the secret police. Some documents were intentionally destroyed or lost, whereas others did not allow for the unambiguous identification of the collaborator, which could be known only by his unofficial name given to him by the secret service. Many prominent activists argued for punishment of those responsible, but it was often impossible to find those perpetrators. This lack of clarity led to the growth of suspicion in society and false accusations toward prominent public figures. These people were accused of collaboration with the secret service, although there was no real evidence of their participation in such activities or if the documents revealed that the scale of their collaboration was insignificant. But, public hysteria was so pervasive that they were immediately labeled as “informants” or “Stasi spies” by society. Their reputation was destroyed and they had a difficult time to clear their names in court or justify their actions before the public. Such an approach was a clear violation of the “presumption of innocence rather than guilt” principle, but still many prominent public figures such as German politicians Manfred Stolpe and Gregor Gysi, as well as the German writer Christa Wolf, or the Czech celebrity actress Jiřina Bohdalová, became the objects of persecution.

The existence of the phenomenon of self-lustration expands the definition of lustration beyond the framework of legal acts and raises the

question of the redefinition of the meaning of lustration as a compilation of formal legal and informal grass-root practices. However, the question remains still open of what practices constitute lustration and how to differentiate this term from an abstract political purge.

Lustration practices received mixed evaluations among scholars and international organizations. Lustration was praised for its ability to achieve real changes in the political structure of the post-Communist states as well as facilitating the democratic reform process. But, lustration laws were also repeatedly criticized for their violation of fair employment laws and the presumption of innocence rather than guilt. Lustration policy was seen also as a tool in the political struggles in Eastern Europe, where the proponents of lustration represented interests of certain parliamentary factions, which used lustration legislation to oust the factions of their political opponents from the parliament. The ongoing political crisis in the Ukraine could serve as an example of such usage of lustration legislation. The Law about the Cleansing of Government was adopted at September 16, 2014. According to this law, individuals who supported the seizure of power by President Victor Yanukovich, participated in the undermining of the national security and defensive capabilities of the country, and violated the rights of the citizens of the Ukraine. These individuals could not occupy high-ranking positions in the Ukrainian Government such as the

Prime Minister, the Head of National Bank, the General Prosecutor, the Head of the Security Service, etc. According to the law, individuals who occupied high-ranking positions such as the President of Ukraine, the Prime Minister, the Head of the Presidential Administration, the Head of the Security Service, and the Head of the Foreign Intelligence Service, and some other positions, during the presidency of Victor Yanukovich from February 25, 2010 to February 22, 2014, as well as the individuals who occupied high-ranking positions in the Communist Party of the Soviet Union, the Communist Parties of the Republics of the Soviet Union, the Komsomol, and the secret police of the Soviet Union (KGB), were banned from the governmental apparatus.<sup>3</sup> A list of 39 high-ranking public workers who had to resign in accordance with the Law was published on the governmental site.<sup>4</sup> However, the high-ranking members of the Communist party of the Soviet Union or the Ukrainian Soviet Republic were hardly present in the Ukrainian governmental apparatus, because more than twenty years had passed since the collapse of the Soviet

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<sup>3</sup> *The Law about the Cleansing of the Government*, articles 1, 2, 3.

<sup>4</sup> *Do vidoma! Perelik posadovtziv, yaki zvilneni abo pidlyagayut zvilnennyyu v ramkah realizatsii zakonu "Pro otchitschenya vladi"*, <http://www.kmu.gov.ua>, October 16, 2014, [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=247684272&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=247684272&cat_id=244276429) (accessed on November 3, 2014).

Union. The main target of this law was President Victor Yanukovych and the members of his cabinet who represented Eastern Ukraine in politics.

Ukrainian politics before February 2014 was structured around the balance of two conflicting identities: the Western Ukrainian identity and the Eastern Ukrainian identity. Such a duality could be found not only in politics, but in the sphere of culture as well. Both identities had political representation, expressed in the existence of pro-Eastern Ukrainian or pro-Western Ukrainian parties, which struggled with each other in the Parliament in order to get a majority and proposed their own candidates for the position of the President or the Prime Minister. The candidate from the pro-Eastern Party of Regions, Victor Yanukovych, won the elections in February of 2010 and provided the domination of pro-Eastern Ukrainian political forces in the Parliament and the governmental apparatus. But, when the government refused to sign the association agreement with the European Union, pro-Western Ukrainian Parties supported by their electorate, staged a protest movement in Kiev. This situation resulted in mass clashes and led to the seizure of power by the pro-Western political forces in February of 2014. The winners declared immediately that they intended to sign the association agreement with the European Union and would ban political forces which might try to prevent closer relationships with the European Union. A lustration law was adopted which targets



mainly the high-ranking members of the pro-Eastern Ukrainian Party of Regions. This lustration law defines the entire time of the Yanukovich's presidency as the seizure of power by his cabinet, despite the fact that Yanukovich came to power by winning the 2010 elections, which were described by the international observers and the Organization for Security and Cooperation in Europe as "transparent and honest."<sup>5</sup> The Ukrainian lustration law was used to remove the Eastern Ukrainian identity out of Ukrainian politics, which was evaluated by the pro-Western Ukrainian forces as unfit for the interest of the Ukrainian nation. The newly elected president, Petro Poroshenko, explained the signing of the lustration law: "The entire state apparatus must be cleansed from Communist and Komsomol members, agents of KGB, and the leaders of the Party of Regions, who tried to fence us from Europe and to lock us in the Custom Union."<sup>6</sup> The violation of the political balance caused a stir in Ukrainian politics, antagonized the Eastern Ukrainian political forces, and led to the Ukrainian Civil War. The lustration law was not the only trigger of this conflict, but one of the important few factors which provoked it. The Ukrainian lustration law could be an example of how destructive such

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<sup>5</sup> "Ukraine's Tymoshenko Finally Appears, But Next Move Unclear", Radio Free Europe/ Radio Liberty, February 11, 2014.

<sup>6</sup> "V ramkah lustratsii na Ukraine uvoleni desyatki visokopostavlennih chinovnikov", Interfax.ru, October 16, 2014.

policies could be for a society if implemented without a consensus on its past and the direction, in which the society wants to go. Recent adoption of lustration legislation also increased the actuality of lustration studies and assumes the possibility for lustration laws to be adopted in other countries.

Lustration policy moves the public away from the understanding of such a complicated phenomenon as dictatorship in Modern European history. I argue in this paper that the practice of lustration assumes a particular viewpoint about the nature of a dictatorial regime. This viewpoint is based on the premise that an individual or a small group of individuals can seize all power and cut the rest of the population off participation in state politics. However, the studies of denunciation letters demonstrate that a population may accept and voluntarily participate in the practices of the dictatorial regime. Denunciation letters serve as an indicator for the support which a population gives to a dictatorial regime. This situation rejects the primitive black-and-white picture of a dictatorship, which should be changed to the more complicated vision of dictatorship as a balanced system of relationships of various socio-economic or ethnical groups.

A dictatorship could be described as a participatory system which relied heavily on support of the population. However, when a dictatorial system ceases to exist, the population tries to create an image of

oppression. Such an image is created by stating that only few were responsible for the creation of the system, mainly those affiliated with a particular political party or those who collaborated with the secret police. Lustration laws are an attempt to create a black-and-white image of dictatorship, but social reality reveals a different picture.

## Chapter 2

### LUSTRATION POLICY ON THE EXAMPLE OF GERMANY, CZECHOSLOVAKIA AND ESTONIA

#### 2.1 What is lustration?

The rapid change of the political and economical paradigm in the Eastern European countries after the revolutions of 1989 caused a complex set of problems, not only in the sphere of economy and political structure, but also in the sphere of ideology. The former republics of the Soviet Union, which became independent countries after its breakup in 1991, faced these problems as well. The complete change of the nature of regimes from communism to liberal democracy raised a series of important questions in the changing societies, such as national reconciliation and transitional justice.

Questions of national reconciliation and transitional justice in global context were, and still are, important issues for many countries which experienced the transformation from a repressive authoritarian regime to a democratic one. In the case of the peaceful transition of power, the transitory elites were still in power at the moment of actual transition and this situation makes necessary a dialogue between old elites and new ones in order to avoid the risk of possible conflict and the revenge of the new elites on the old ones. Such a compromise permitted some

representatives of old elites to share power with new elites on the condition of accepting the new paradigm. The eventual goal of the compromise is to ensure national reconciliation. But, with the change of paradigm, many actions of the members of the previous government, especially those aimed at suppression of dissent, lost their legitimacy from the point of view of a new legislature and these persons become eligible for prosecution. In order to prevent violence, transitional governments have to make a decision as to what should be done with the crimes committed by the previous regime and what form of transitional justice should be applied in the process of transformation. Transitional justice helps a political consensus to be reached between the old and new elites by establishing a new code of morals according to the values of the new regime.

A problem for national reconciliation is also the question of the attitude toward the past, whether it should be exhumed, preserved, apologized for, or acknowledged. A nation of enemies could be reunited and former opponents could be reconciled despite the context of a violent history. But, although national reconciliation is extremely important, there are thousands of perpetrators still walking free and the government should develop a policy of how to deal with them. Whereas individual survivors of the regime struggle to ease the memory of the torture they suffered or the

massacres they witnessed, society must find a way to recreate a livable environment of national peace and create a framework for the reconciliation of former enemies. Division within a society is a threat to national unity and a possibility for a conflict; therefore governments usually try to reduce the conflict over the past and highlight the concern for human rights by holding trials, purging perpetrators from public posts, creating commissions for the investigations of the crimes of the previous regime, and providing reparations to victims or building memorials.<sup>7</sup>

The revolutions in Eastern Europe were part of the broader wave of democratization, which, according to the political scientist Samuel Huntington, occurred between 1974 and the early 1990's, starting with the 'Carnation Revolution' in Portugal.<sup>8</sup> Democratic changes continued in many Latin American and African countries, as well as in Philippines<sup>9</sup> into the 1980s and came to Eastern Europe at the end of the decade. All of these countries, which experienced a transition to democratic forms of government during the 1970s, faced a similar set of transitional problems, such as the establishment of a new constitutional and electoral system;

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<sup>7</sup>Priscilla B. Hayner. *Unspeakable Truths. Transitional Justice and the Challenge of Truth Commissions*. 2nd ed. (New York: Routledge, 2011.), 3-8.

<sup>8</sup>Samuel P. Huntington. *The Third Wave: Democratization in the Late Twentieth Century*. (Norman and London: University of Oklahoma Press, 1991.), 3-5.

<sup>9</sup>Thomas Adam. *Intercultural Transfer and the Making of the Modern World 1800-2000*. (Palgrave Macmillan, 2011.), 132-133.

the replacement of the authoritarian elite with a democratic one; the modification of laws unsuitable for democracy; the abolishment of repressive institutions and organizations, such as the secret police; and the decision of what to do with those authoritarian officials who had violated human rights.<sup>10</sup> The question of how to treat such individuals determines the strategy of national reconciliation.

Countries such as the GDR, Spain or South Africa, developed different approaches to national reconciliation. Most of the post-communist states of Eastern Europe employed a strategy of purging with the help of the so-called 'lustration' laws. The word 'lustration' is derived from the Latin word 'lustratio', which means 'put light on something or to illuminate'.<sup>11</sup> A ceremony of purification for the Roman people after every five-year census was called lustration in ancient Rome.<sup>12</sup> These laws were designed to remove persons from public employment because of their affiliation with the previous regime. A special committee, whose members had access to secret services' archives, had the power to make the decision to purge a person. The practice of the use of lustration laws has been widely criticized by the international community because the

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<sup>10</sup> Huntington, *The Third Wave*, 3-5, 209.

<sup>11</sup> Ellis. "Purging the Past", 181.

<sup>12</sup> Joanna Rohozińska. "Struggling with the Past". *Transitions online*, September 11, 2000.

prosecution of individuals was based on their previous membership or party affiliation, or on the overreliance on the sometimes inaccurate intelligence files of the prior regime. The solution of lustration is often impossible because not every repressive regime keeps detailed records of collaborators, or the records may have been destroyed during the transition process. Lustration policies have been rare outside Eastern Europe, most of all because it was very unusual for African or South American regimes to keep such detailed records.<sup>13</sup>

A second possible solution to national reconciliation is the creation of truth and reconciliation commissions, which have the right to investigate the crimes of the previous regime. This approach was adopted by many African and South American countries. Because most African or South American regimes did not have detailed records of their crimes, the aim of the commissions was to establish a record through oral testimony of both perpetrators and victims. The commissions relied on the voluntary cooperation of individuals to produce a picture of the past. The usual practice implemented by truth commissions was the granting of amnesty to those perpetrators who participated voluntarily in the work of the commission; however, in some cases such as El Salvador or Liberia the

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<sup>13</sup> Thomas Adam. "Public Memory of Post-dictatorial states", in *World History Encyclopedia, Era 9: Promises and Paradoxes, 1945-Present*, edited by Fred Nadis and Jack Waskey. (Santa Barbara, California/Denver, Colorado/Oxford, England: ABC CLIO, 2011), 658-660.



commissions just paved the way for a later prosecution of perpetrators. The investigations of human rights abuses, made by successor regimes, are often monitored by international human rights organizations, such as the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights, which may interfere in the process of investigation if the efforts of local commissions to establish truth prove insufficient. In the case of Argentina, Uruguay and El Salvador, the Inter-American Commission on Human Rights concluded that the amnesty, which was given to perpetrators by the transitional governments, broke a state's obligations to investigate human rights abuses, to provide victims with compensation and to punish those who are responsible for such violations.<sup>14</sup> Truth commissions focus not only on perpetrators, but also on victims, collecting thousands of testimonies and honoring truth in a public report in order to represent that the claims of the victims are credible and atrocities committed by the system were wrong.<sup>15</sup>

A third possible solution to national reconciliation was implemented in Spain after the death of the Spanish dictator Francisco Franco in 1975. During the Spanish transition to democracy, the new political elite, which

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<sup>14</sup> Paul Van Zyl. "Justice without punishment: guaranteeing human rights in transitional societies." In *Looking Back Reaching Forward. Reflections on the Truth and Reconciliation Commission of South Africa*, edited by C. Villa-Vicencio and W. Verwoerd. (Cape Town: University of Cape Town Press, 2000.), 47-48.

<sup>15</sup> Hayner, *Unspeakable Truths*, 9-13.

consisted of a number of descendents of Republicans who were executed during the Spanish Civil War, had to make compromises with the still powerful Francoist elite on many questions, including the legacy of the past. To ensure democratic reforms in Spain and the political stability of the new regime, the Socialists agreed to an Amnesty Law in 1977, which granted a pardon for crimes committed by both the Nationalists and Republicans during the Spanish Civil War. According to this Amnesty Law, all crimes committed due to political reasons were to be amnestied.<sup>16</sup> This “pact of silence” was a quite ineffective attempt of reconciliation. The decision to forget the past did not provide the necessary reconciliation for Spanish society as can be seen in the polemics between the Socialists and Conservatives about the role of Franco in Spanish history. Conservatives encourage patriotic historical narrative, which emphasizes the role of Franco in successful transition to democracy and modernization of Spanish society.<sup>17</sup> Every attempt of the Socialists to honor all those who suffered under Franco’s rule still encounters the fierce opposition of the

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<sup>16</sup> *The Amnesty Law 46/1977*, The Cortes Generales, 1977.

<sup>17</sup> Xosé-Manoel Núñez. “Die Diktatur vergessen, um die Nation zu retten: Das historische Gedächtnis und der ‘neopatriotische’ Diskurs in Spanien.” In *Verschweigen-Erinnern-Bewältigen. Vergangenheitspolitik nach 1945 in globaler Perspektive*. Edited by J. Zimmerer. (Leipzig: Leipziger Universitätsverlag, 2004.), 74.

Spanish conservatives.<sup>18</sup> The example of Spain demonstrated clearly the weakness of the 'third solution' for national reconciliation. Spanish society is still divided over the evaluation of its authoritarian past, despite almost forty years passed since the death of Franco.

In contrast to the Spanish government, governments of many countries in Eastern Europe, which experienced a transition to democracy in the late 1980's, decided to purge instead of to forget. The purging of the state apparatus in these countries was initiated with the help of lustration laws. Scholars of lustration highlighted three main lines of arguments, which were used to convince legislative bodies to adopt lustration laws. These are 'prophylactic', 'blackmail' and 'public empowerment' arguments.<sup>19</sup>

Pro-lustration groups argue in the 'prophylactic' line that the new democracies are extremely fragile. The public does not know about the secret political and socio-economic networks rooted in the communist parties. Communists infiltrated many state institutions and profited from

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<sup>18</sup> Lisa Abend. "At Last, Spain Faces Up to Franco's Guilt". *Time World*, October 17, 2008.

<sup>19</sup> Kieran Williams, Brigid Fowler, and Aleks Szczebiak. "Explaining Lustration in Central Europe: A 'Post-communist Politics' Approach." In *Democratization*, Vol. 12, No. 1 (2005): 28.

the privatization of state property;<sup>20</sup> therefore the process of lustration is a tool of safeguarding the new state and its fragile institutions either by screening candidates and officials or by establishing a bureaucratic procedure to filter covert communists out of the state sector. Such an argument had a special resonance in Eastern European states with their inter-war history of democratic failure from within, where a major shift from parliamentary to authoritarian systems happened under the pressure of various economic and political factors. Eastern European countries such as Poland turned quickly in the course of the 1920s and 1930s into conservative dictatorships under the influence of Right-Radical parties or leaders.<sup>21</sup>

A sense of alarm at the lack of control over communist security service files became a basis for the 'blackmail' argument. Proponents of lustration warned the public that officials whose past was connected to the security services, and who hold important positions in a democratic state, are open to blackmail, because large amounts of classified documents were destroyed or stolen during the transition period and no one knows who might use the stolen documents to learn the identities of secret police

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<sup>20</sup> Markéta Hulpachová. "Decoded secret system will aid the lustration process". *The Prague Post*, August 22, 2007.

<sup>21</sup> Joseph Rothschild. *East Central Europe between the two World Wars*. 2nd ed. (Seattle and London: University of Washington Press, 1977.), 3-25.

collaborators. These officials may become possible targets for hidden enemies of the regime, who will be able to force them to subvert a fragile democracy by threatening to reveal their files to the public and ruin their political career. According to such arguments, lustration should provide protection from blackmailing for the occupants of important positions, and thus protect the state apparatus of a democratic state.

Ideas of openness and transparency of democratic institutions lie at the basis of the 'public empowerment' argument. By creating democratic institutions that are transparent and open to the public, lustration could give more power to citizens and increase the confidence of society in those new institutions. The process of lustration was seen in such an interpretation as a tool of protection of the fundamental citizen's rights by denying some constituents these rights, such as access to certain jobs.<sup>22</sup> Such a situation creates a dangerous paradox, when a democratic country uses authoritarian methods to protect the basic rights and freedoms of the population.

The fears of communist infiltration were instigated by a number of specific incidents. A parliamentary investigation about the beginning of the Velvet Revolution was started in Czechoslovakia in 1990. The parliamentary commission discovered during the investigation that the

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<sup>22</sup> Williams, "Explaining Lustration in Central Europe: A 'Post-communist Politics' Approach", 28.

Czechoslovak secret service (StB) launched a scheme in 1986 to infiltrate the dissident movement with its agents. Because members of the dissident movement dominated the new post-communist elite, an assumption was made that the StB was still in a position of influence. Some StB's files had disappeared during the Velvet Revolution, which raised the suspicion that they could be used for the purpose of blackmailing.<sup>23</sup> The Czech Interior Minister Stanislav Gross stated that more than one hundred former StB agents were allowed to keep their government posts in the early 1990s after receiving fake clearances. He added that as a result of this discovery about 150,000 out of 400,000 lustration clearances would be reviewed.<sup>24</sup> Revelations such as this made the pro-lustration argument credible for the public and also the political elite. The failed putsch of August 1991 in the Soviet Union, where communist hard-liners tried to overthrow the reformist government of Mikhail Gorbachev, intensified the demands for lustration in many Eastern European countries, including Czechoslovakia.<sup>25</sup>

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<sup>23</sup> Ibid., 29.

<sup>24</sup> James Pitkin. "Ruml case revives 'lustration' disputes". *The Prague Post*, June 13, 2001.

<sup>25</sup> Williams, "Explaining Lustration in Central Europe: A 'Post-communist Politics' Approach", 30.

Scholars of lustration also offered various explanations as to why and how the new regimes in Eastern Europe dealt with the past. Huntington was one of the first scholars in the early 1990s who offered a model to explain different approaches to lustration. He sought to explain the differences in the way of how the transition was achieved and if the leaders of an authoritarian regime were willing to negotiate the conditions of transition. Huntington wrongfully assumed that if the leaders gave up their power voluntarily and peacefully, then they would not be prosecuted. This was false in the case of Egon Krenz, a communist leader of East Germany. Huntington considered that in cases such as those where the elite tried to preserve the regime and refused to initiate the transition process without compulsion, they were punished when the regime eventually collapsed. According to Huntington, prosecutions of officials may happen immediately after the breakdown of the regime or never. Offering his explanation, Huntington saw a tendency to confront the past only in East Germany and Romania.<sup>26</sup>

John P. Moran, an American political scientist who wrote on the topic a few years later, explained different approaches to the transitional justice as to how the officials of a non-democratic regime treated dissidents. If the regime allowed its citizens to emigrate or to protest to

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<sup>26</sup> Huntington, *The Third Wave*, 228.

some extent, then there would be fewer demands for prosecution of the officials later. If the regime did not allow for the exit of dissent, then the former government faced explosive situations in the post-transitional period. Moran considered that in the newly democratized countries of Eastern Europe the calls for punishment would be weaker in countries such as Poland, Hungary and the GDR, where the old regimes were liberal in permitting dissent, and stronger in countries such as Bulgaria and Czechoslovakia, where the regime would not allow the exit of dissent.<sup>27</sup> However, Moran's explanation also proved wrong since calls for punishment grew stronger in the GDR, Poland and Czechoslovakia with time than in Hungary and Bulgaria.

Political scientist Helga A. Welsh proposed a more intricate model of explanation than either Huntington or Moran. Besides the pre-transitional and transitional factors such as how repressive an authoritarian regime was, or whether the government was willing to give up power voluntarily, Welsh added a few post-transitional factors, rooted in the present political condition of the Eastern European countries. The success or failure of the Communists and their successor parties in the political life of a post-communist period is one of the main factors in the

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<sup>27</sup> John P. Moran. "The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget?" In *Communist and Post-Communist Studies*, Vol. 27, No. 1 (1994): 101.



implementation of a lustration policy, according to Welsh. There were no extensive purges in countries where the former communists performed well in free elections and were able to gain some political influence. On the contrary, the success of lustration laws depended on the electoral success of post-Communist parties. Welsh argued that lustration became a tool of political struggle in the countries of Eastern Europe, where it was used by some politicians to undermine their opponents, especially if the former communists were able to restore some of their previously lost positions.<sup>28</sup>

Political scientists Kieran Williams, Brigid Fowler and Aleks Szczerbiak proposed to modify Welsh's model in 2005. They accepted Welsh's argument that lustration is a tool of political struggle, arguing that the advocates of the toughest lustration measures belong to the political right, whereas the centrist and centre-left factions resist lustration legislation. But, in contrast to Welsh, these scholars came to the conclusion that political competition for the prospects of electoral success alone was not sufficient to bar persons from public life. The discourse of lustration was so convincing because it responded to the disturbing discoveries of the transition period, such as chaos in the archives or the

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<sup>28</sup> Helga A. Welsh. "Dealing with the Communist Past: Central and East European Experiences after 1990." In *Europe-Asia Studies*, Vol. 48, No. 3 (1996): 413-428.

fear of hidden communist infiltration of the state apparatus. The passage of each lustration bill was heavily influenced by such rhetoric, according to these scholars.<sup>29</sup>

Debates about lustration in academic circles are not restricted to the problem of its implementation. Many scholars have a different understanding of the term 'lustration' and what political processes should be described as 'lustration'. Arthur L. Stinchcombe has given a modern interpretation of lustration, based on its Roman roots. He argued that: "The purpose of lustration trials can be thought of as drawing a ritual boundary between a new clean democratic regime and a bad old warlike, terrorist, totalitarian, and corrupt regime."<sup>30</sup> Stinchcombe's interpretation of lustration assumed the model of an authoritarian society that was clearly divided into ruling elite and masses, which did not have much influence in this society. Only the elite had the responsibility for the political structure of such a society, and thus, for crimes committed by the repressive regime. The historian Robert Gellately demonstrated in his studies of denunciations in authoritarian regimes that society tended to accept an authoritarian political structure voluntarily and the image of a bad old

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<sup>29</sup> Williams, "Explaining Lustration in Central Europe: A 'Post-communist Politics' Approach", 30-39.

<sup>30</sup> Arthur L. Stinchcombe. "Lustration as a Problem of the Social Basis of Constitutionalism." In *Law & Social Inquiry*, Vol. 20, No. 1 (1995): 246.

warlike, terrorist, totalitarian, and corrupt regime that oppressed the rest of population needs fundamental revision.<sup>31</sup> The first scholar who assigned a new meaning to lustration was the sociologist Maria Łos.<sup>32</sup> She had begun to use the term lustration to mark a certain type of policy. This meaning was shared later by academia but with different nuances. The variety of understandings for lustration can be divided into three categories: wide, intermediate, and restricted.

The term lustration becomes in the wide sense the synonym for a political purge. A sociologist and criminologist Susanne Karstedt understands lustration in such a sense and labels the denazification process in Germany after 1945 as lustration. She considers also as lustration the trial of Erich Honecker, the former chief of state of the GDR, for ordering the shooting of people who tried to cross the Berlin Wall.<sup>33</sup> The sociologist Luc Huyse refers to lustration as the disqualification of the former elites, civil servants and the agents of the secret police. He writes that sometimes such a disqualification is accompanied by a criminal

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<sup>31</sup> Robert Gellately. "Denunciations in Twentieth-Century Germany: Aspects of Self-Policing in the Third Reich and the German Democratic Republic." In *The Journal of Modern History*, Vol. 68, No. 4 (1996): 931-967.

<sup>32</sup> Susanne Karstedt. "Coming to Terms with the Past in Germany after 1945 and 1989: Public Judgements on Procedures and Justice." In *LAW & POLICY*, Vol. 20, No. 1 (1998): 16.

<sup>33</sup> *Ibid.*, 15-56.

conviction, but in other cases lustration is a way to sidestep criminal prosecution. Huyse also considers the trials of former Nazi collaborators in Belgium, France and the Netherlands after the end of World War II as lustration.<sup>34</sup>

The term 'lustration' has a narrower meaning than a political purge in the second case of its usage. Lustration becomes a synonym for the decommunization process, which means the extraction of Communist influence from society in the countries of Eastern Europe. The economist and political scientist Hilary Appel defines lustration as the process of screening groups of individuals for their collaboration with the communist regime and vetting individuals belonging to these groups from holding high-level positions in the public sector.<sup>35</sup> Appel's definition assumes that lustration is a political purge, but in contrast to the definition of the term in its wider sense, a purge is restricted to the particular process of decommunization in the countries of Eastern Europe.

Lustration in its restricted sense is considered by scholars as only a part of the decommunization process in Eastern Europe. Scholars emphasize also the differences between policies of lustration and

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<sup>34</sup> Luc Huyse. "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past." In *Law & Social Inquiry*, Vol. 20, No. 1 (1995): 52.

<sup>35</sup> Hilary Appel. "Anti-Communist Justice and Founding the Post-Communist Order: Lustration and Restitution in Central Europe." In *East European Politics and Societies*, Vol. 19, No. 3 (2005): 383.

decommunization. Adam Czarnota, a law professor, writes that decommunization is a sum of political and legal strategies implemented with the goal of the eradication of the communist legacies in a social and political system, whereas lustration is the process of screening and vetting of former collaborators and members of the secret service. Czarnota notices also that often it is difficult to separate lustration from decommunization and both terms are used interchangeably. In some countries lustration includes decommunization, because the positively screened person is being forced to resign from office, but in some countries, where no sanctions are applied to an official in the case of positive screening, it is possible to draw a strict line between lustration and decommunization.<sup>36</sup> Łos differentiates decommunization and lustration according to the subjects of expulsion. Lustration is based on the exclusion of holders of important public offices in order to bar former secret police collaborators, whereas decommunization is aimed at the former Communist Party officials. Each process requires a different approach to justifications and procedures, because the secret collaborators acted undercover, whereas Communist Party members held

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<sup>36</sup> Adam Czarnota. "Lustration, Decommunisation and the Rule of Law." In *Hague Journal on the Rule of Law*, 1 (2009): 310-311.

their positions openly.<sup>37</sup> Williams, Fowler and Szczerbiak give the most restrictive definition of lustration, referring to it as the process of ascertaining whether an official or candidate for a particular post collaborated with the communist security service.<sup>38</sup>

Lustration is defined in this paper as a part of the process of decommunization in Eastern Europe, which is based on the screening and vetting of members of the former Communist elite. These elite is being vetted with the help of specific lustration laws and other laws such as the citizenship law in the case of Estonia, which was originally intended to exclude non-Estonian nationals from participation in political life. Lustration policies lie outside the legal system and violate some basic rights of citizens and legal principles, such as the innocence principle. The broad understanding of lustration, shared by Karstedt and Huyse, makes lustration interchangeable with a political purge and deprives the term itself of its uniqueness. Lustration does not refer to a specific process in such an interpretation, but is only another synonym for a political purge, thus making the usage of the term lustration unnecessary. The broad understanding of lustration may also lead to the temptation to assign a

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<sup>37</sup> Maria Łos. "Lustration and Truth Claims: Unfinished Revolutions in Central Europe." In *Law & Social Inquiry*, Vol. 20, No. 1 (1995): 121.

<sup>38</sup> Williams, "Explaining Lustration in Central Europe: A 'Post-communist Politics' Approach", 23.

positive meaning to the term, making it a “good” and legitimate political purge, because it is based on the rule of laws created with the help of democratic institutions, in contrast to other “bad” purges, such as those in Stalinist Russia or Maoist China, which were not confirmed by democratic institutions and thus, lack legitimacy. According to my opinion, such a difference is problematic because it assumes the universalism of Western political institutions and the legitimacy of only the Western political model, which is based on representative governance, universal suffrage and the principle of the transfer of power.

In Appel’s interpretation, which suggests that lustration is defined as decommunization in Eastern Europe, the term lacks also some specificity because the policy of decommunization consisted not only of the vetting of the former elite from public life, but also of the restitution of property nationalized by the Communists, or the historical re-evaluation of the communist regime.<sup>39</sup>

To demonstrate the differences in implementation of the lustration policy in Czechoslovakia, Germany and Estonia, it is necessary to examine the following points: 1) Texts of laws, through which the lustration policy was applied 2) Moral and constitutional controversies of the lustration policy 3) Lives and political careers of individuals affected by the

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<sup>39</sup> Czarnota, “Lustration, Decommunisation and the Rule of Law”, 310.

lustration policy 4) Reaction in the society of these countries and in the international community to the lustration policy, both positive and negative.

## 2.2 Lustration legislation

### 2.1.1 The creation of laws

The issue of transitional justice appeared in East Germany after the fall of the Berlin Wall along with the growing demands for changes in East German society. The dismantling of the Ministry of State Security apparatus and access to its files were among the demands voiced by various political parties and citizens movements. The opposition movement New Forum called for the fast dissolution of the secret police apparatus already before the fall of the Berlin Wall in November 1989, organizing demonstrations before the Stasi headquarters in East Berlin. Demonstrators demanded the dismantling of the Stasi and the opening of its files. The last communist Prime Minister Hans Modrow understood the significance of the Stasi files for the political life of the future regime. He began to reform the political structure of the GDR and renamed the Ministry of State Security into the Office for National Security (AfNS). But, despite his efforts to reform the system, the demonstrators saw such measures as insufficient. One of the demonstrations resulted in a violent incident in January 1990, when angry protesters invaded the offices of the Stasi headquarters to prevent the destruction of files, breaking down doors



and smashing furniture. Thousands more chanted outside “Stasi out!”<sup>40</sup> Some researchers suggested that the action was actually orchestrated by the Stasi, whose members wanted to discredit the New Forum and destroy the files containing important information in the emerging chaos.<sup>41</sup>

Modrow wanted to get rid of the huge communist bureaucracy, trying at the same time to protect informants from possible revenge. Many documents were destroyed with the approval of the government and entire divisions of the Stasi were moved to the regular police or to the customs services. But, after the first free elections on March 18, 1990, in which the Alliance for Germany, which was made up of three political parties, the Christian Democratic Union(CDU), the Democratic Awakening(DA) and the German Social Union(DSU), won, the new government halted the destruction of secret police documents and initiated the first lustration procedures, preparing the stage for the coming political purge.<sup>42</sup>

Some East German politicians such as Rainer Eppelmann and Peter-Michael Diestel spoke out against the opening of the files and

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<sup>40</sup> Serge Schmemmann. “Angry Crowds of East Germans Ransack Offices of Spy Service”. *The New York Times*, January 16, 1990.

<sup>41</sup> Christian Helten. “Untergang eines Geheimdienstes. Gesteuerte Wut”. *Tagesspiegel.de*, September 30, 2010, [http://www.tagesspiegel.de/medien/untergang-eines-geheimdienstes-gesteuerte-wut/v\\_print/1946204.html](http://www.tagesspiegel.de/medien/untergang-eines-geheimdienstes-gesteuerte-wut/v_print/1946204.html) (accessed on January 14, 2013).

<sup>42</sup> Erhard Blankenburg. “The Purge of Lawyers after the Breakdown of the East German Communist Regime.” In *Law & Social Inquiry*, Vol. 20, No. 1 (1995): 227.

lustration procedures, arguing that if access would be strictly limited, East German society could be healed without sensationalist revelations and a witch hunt for agents. Pastor Rainer Eppelmann (DA), who became the Minister of Defense and Disarmament in the new government, expressed his concerns that the new political freedoms would be compromised by denunciations and acts of revenge. The Minister of Interior Peter-Michael Diestel (DSU) argued that the Stasi files could not serve for the purpose of determination of guilt, because all GDR citizens were responsible for the political system of their state and, thus, could not claim innocence. Some West German politicians were against the opening of the files as well because they feared revelations about secret service practices. The West German Minister of Interior Wolfgang Schäuble (CDU) proposed to concentrate all efforts on the reconstruction of East Germany and to avoid heated debates over the guilt of thousands of East Germans who had been connected in many different ways with the Stasi.<sup>43</sup>

Despite the doubts of some politicians, many East Germans as well as West Germans were in favor of opening the files. The government of Lothar de Maizière(CDU) began to discuss as part of the Unification Treaty with West Germany conditions for initiating lustration procedures against former political leaders such as SED party general secretary Erich

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<sup>43</sup> Mike Dennis. *The Stasi: Myth and Reality*. (London: Pearson Education Limited, 2003.), 236-237.

Honecker or the head of the trade unions Harry Tisch.<sup>44</sup> The People's Chamber adopted a law on Stasi records on August 24, 1990, which became the basis for the future lustration legislation in unified Germany. This law allowed for access to the files and provided rights of control to East German states. Fears of East Germans that they might lose access to their files, if the federal government would transfer the files to the Federal Archive in Koblenz, provoked a hunger strike and occupation of the Stasi headquarters by prominent members of citizens' groups.<sup>45</sup> But, despite these apprehensions, a supplement to the Unification Treaty included the principles of the law on Stasi records. According to the supplement, the federal government had to respect the East German law on Stasi records, provide not only central storage for the files in Berlin, but also regional ones in the five Eastern states as well, and allow public access to the files. The treaty provided the legal means to the state government to exclude systematically all former secret service collaborators from public office jobs such as lawyers or teachers.<sup>46</sup>

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<sup>44</sup> Blankenburg. "The Purge of Lawyers after the Breakdown of the East German Communist Regime", 227.

<sup>45</sup> Dennis, *The Stasi: Myth and Reality*, 238.

<sup>46</sup> *The Unification Treaty*, Annex I, chapter III/A/III, chapter XIX/A/III, <http://www.gesetze-im-internet.de/einigvtr/index.html> (accessed on June 15, 2013).

After unification, the Law about the Records of the Secret Service of the Former German Democratic Republic was passed with the votes of an overwhelming majority in the German Parliament on December 29, 1991. A Federal Authority for the Records of the State Security Service of the former GDR (BStU) was created in Berlin in the building of the former Stasi headquarters for the purpose of controlled access to the files. The head of the BStU was to be elected by the Parliament, appointed by the Federal President for a term of five years, and be supervised by the Minister of the Interior. The central agency of the BStU was responsible for the administration of the Stasi files. The main office of the agency was located in Berlin, whereas branch offices were established in the five German states (Brandenburg, Saxony, Thuringia, Mecklenburg-West Pomerania, and Saxony-Anhalt). The former pastor from Rostock Joachim Gauck, who was a prominent member of the democratic opposition movement in the GDR, became the first head of the BStU in 1991.<sup>47</sup>

The Czechoslovak lustration legislation became the harshest version of lustration among East European countries. The leaders of the opposition to the Communist government insisted on the control of the files of the Czechoslovak security service StB during round table talks in December 1989. The Communists complied with these demands of the

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<sup>47</sup> Dennis, *The Stasi: Myth and Reality*, 238.

opposition. Lustration in Czechoslovakia started in spring of 1990 with the coming of the first free elections in June. The interior minister Rychard Sacher vetted candidates for parliament for collaboration with the StB. Prior to the elections, parties were asked to submit their candidates for checking. Candidates whose names appeared in the files were removed from the party list by their party leaders.

Lustration began long before a law about lustration was in place. Such lustration cases can be called wild lustration and they were not based on the rule of law, but rather on the assumption of immorality of Communism. However, when Sacher's assistant Jan Ruml discovered that the chair of the People's Party, Roman Bartoncik, has been a collaborator, the leaders of the People's Party refused to remove Bartoncik from the party's list. President Václav Havel got involved and advised Bartoncik to withdraw his candidacy, threatening to release his file to the media. When Bartoncik ignored the threats and decided to remain in the race, Havel made his file public. This event had a wide public resonance and led to a political scandal. Members of the new elite accused each other on several occasions during the elections of being StB collaborators or of using the files to oust the rivals by identifying them as informants. The informal agreement of self-lustration among the political establishment was broken. As a result, an atmosphere of mistrust

surrounded parliamentary elections, and calls were made for a more systematic process of lustration.<sup>48</sup>

A special committee was established after the elections to examine the files on members of parliament, cabinet members, as well as local branches of government and academic institutions, although without any legal basis at that time. This committee was also granted access to the StB files. The Czechoslovak parliament became dominated after the elections by the members of the Civic Forum, a union of all anti-communist political groups, which agreed on the necessity to create a legal basis for the activity of this committee by introducing lustration legislation. But, the question of how broad this legislation should be was an object of heated debates among the various groups of the Civic Forum. President Havel called for an acknowledgement of the collective responsibility for the previous regime. He stated: "None of us is merely a victim of it, because all of us helped to create it together" and "...for everyone in his or her own way is both a victim and a supporter of the system".<sup>49</sup> Havel warned against vindictiveness and harsh lustration

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<sup>48</sup> Monika Nalepa. *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*. (Cambridge: Cambridge University Press, 2010.), 66-67.

<sup>49</sup> Klemens von Klemperer. "What Is the Law That Lies behind These Words?' Antigone's Question and the German Resistance against Hitler." In *Resistance against the Third Reich, 1933-1990*, edited by M. Geyer and J. W. Boyer. (Chicago and London: The University of Chicago Press, 1992.), 142.

measures. In contrast, the right wing of the Civic Forum represented by the Christian Democrats called for tough lustration measures. The members of this party proposed to prevent all former Communists and all officers above a certain level as well as all security services agents and their collaborators from holding any position of authority. Havel replied to this proposition that purges should be limited only to those persons who were actually responsible for the suppression of human rights.<sup>50</sup>

In the end, the right-wing vision of lustration won. Parliament adopted Resolution No. 4 on January 10, 1991, calling upon members of parliament, ministers and civil servants in government who collaborated with the Communist secret service to resign from their positions. All persons who resigned because of receiving accusations were granted a guarantee of full discretion. But, if an accused person refused to step down, then the committee made their files public. In March 1991, the committee released the names of ten members of parliament, who were listed as collaborators in the StB files, but refused to resign from their positions. This investigation led to a political scandal, which was followed by lawsuits against suspected members of parliament. Twenty-five people left their offices in the federal government in May as a result of the

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<sup>50</sup> Stanley Cohen. "State crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past." In *Law & Social Inquiry*, Vol. 20, No. 1 (1995): 25-26.

screening of the federal government.<sup>51</sup> Revelations like this caused heated debates in parliament and led eventually to tougher lustration legislation.

Although, the Czechoslovakian government started screening people already in 1990, it lacked the legal basis for such a process. Without legal basis, lustration was a chaotic process, which broke the principle of the rule of law, because the proponents of lustration had no legal means to force former collaborators to resign from their official positions. For example, the head of the Czechoslovak Press Agency Petr Uhl forced in 1990 twenty-three positively lustrated persons to resign by blackmailing them, threatening to call a meeting in their departments and publicly confront them with their past. In order to avoid such witch hunts, a legal basis for lustration had to be created to prescribe what positions in the governmental apparatus would be the objects of screening.<sup>52</sup> The Czechoslovakian parliament adopted Act No. 451 on October 4, 1991, unofficially called the “Large lustration act”. Act No. 279, called also the “Small lustration act”, was passed on April 28, 1992. Both laws became

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<sup>51</sup> Karel Vrana. “Getting even.” Translated by Eva Pilatova. *Transitions online*, April 25, 2003.

<sup>52</sup> Roman David. “Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001).” In *Law & Social Inquiry*, Vol. 28, No. 2 (2003): 398.



the harshest approach to lustration policy in all of Eastern Europe.<sup>53</sup> After the breakup of Czechoslovakia in 1993, the Czech Republic inherited Czechoslovakian lustration laws and policies, whereas Slovakia adopted a milder approach to lustration. In addition to the first two lustration acts, the Czech Parliament passed the Act Concerning the Lawlessness of the Communist Regime in 1993, which permitted the prosecution of individuals who committed crimes during the communist period.<sup>54</sup> The Act of Public Access to Files Connected to Activities of the Former Secret Police was adopted in 1996. This act established the process of access to the StB files similar to that established by the German Law on the Secret Service files and granted access to the files to persons affected by secret service activities. However, in 2002 this act was amended and access to the main register of secret police collaborators became available for every citizen of the Czech Republic.<sup>55</sup>

The Estonian government decided to use a different approach for lustration policy implementation. Lustration in Estonia was not a consistent governmental policy based on the adoption of a number of lustration laws

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<sup>53</sup> Czarnota, "Lustration, Decommunisation and the Rule of Law", 319-320.

<sup>54</sup> Appel. "Anti-Communist Justice and Founding the Post-Communist Order", 382.

<sup>55</sup> Jiri Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law." In *Justice as Prevention*. Edited by Alexander Mayer-Rieckh and Pablo de Greiff. (New York: Social Science Research Council, 2007.), 322.

as was the policy in many other Eastern European countries. Lustration was enacted through multiple laws, often not specifically written for the purpose of lustration, such as the Citizenship Law. The unique difference of Estonian lustration was that the goal of this policy was aimed not only at keeping certain political groups such as the Communists and their collaborators outside of national politics but it was also aimed to exclude a certain ethnic group, the Russians, from participating in civil service.

The Estonian parliament adopted a Citizenship Law in February 1992. This law was a revival of the 1938 Citizenship Law, which was based on the principle of blood relations,<sup>56</sup> and granted citizenship automatically to those persons whose parents were citizens before 1940. The representatives of the Congress of Estonia argued in the fall and winter of 1991 that the Soviet Government forcibly annexed Estonia in June of 1940 and all those who entered the country after June 1940 did so illegally. Thus, such people could not be granted citizenship automatically. After the adoption of the Citizenship Law, citizenship was granted to only sixty percent of the people living in Estonia.<sup>57</sup> The rest of the population, which consisted mainly of ethnic Russians, was afforded the status of

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<sup>56</sup> Estonia.eu, *Citizenship*, <http://estonia.eu/about-estonia/society/citizenship.html> (accessed on February 07, 2013).

<sup>57</sup> *Integrating Estonia's Non-Citizen Minority*, Human Rights Watch' report, October 1, 1993, 6-7.

residents. They had to go through a procedure of naturalization in order to obtain citizenship. Besides the creation of a gap between the political rights of two major ethnical groups of the Estonian population, this law also implemented a lustration policy since it denied naturalization to those persons who worked for the Soviet intelligence or security service, who served as career soldiers in the Soviet armed forces, and who had acted against the Estonian state and its security.<sup>58,59</sup>

The Law about the Oath of Conscience was enacted on July 8, 1992 to implement a lustration policy which targeted another specific ethnic group, the Estonians who have held positions in the Communist Party or in the security service before 1991. According to this law, persons who wanted to hold key positions in the apparatus of the Estonian government, such as the president, members of parliament or judges, were obliged to take a written oath that they had not been in the service or agents of security organizations of states which had occupied Estonia, and that they had not participated in repressions or persecutions of Estonian citizens for their disloyalty, political convictions or social class. If

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<sup>58</sup> Ellis. "Purging the Past", 192.

<sup>59</sup> The Citizenship Law, chapter 21, <http://www.legaltext.ee/text/en/X40001K6.htm> (accessed on June 15, 2013).

a court determined that the information provided by a person was false, this person was to be excluded from office.<sup>60</sup>

On February 6, 1995 the Estonian parliament passed a Law about the disclosure of names of collaborators. According to this law, the names of persons who had collaborated with the Soviet security services were to be revealed to the public, but in contrast to the Law about the Oath of Conscience, the circle of such persons was not determined by the law. The policy of disclosure was not widely used in Estonia and only seven names were ever made public.<sup>61</sup>

The process of lustration itself and legislation adopted for such a purpose across Eastern Europe were not identical and had unique features in every case of their usage. The German model of lustration revealed itself to be a moderate version of lustration, which did not mean automatic exclusion of an individual from public office, but left the decision about his further employment up to state governments. Because of the federal structure of Germany, lustration in East Germany had some degree of diversity which was not the case in the other centralized Eastern

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<sup>60</sup> Jüri Saar and Jaan Sootak. "Estland." In *Strafrecht In Reaktion auf Systemunrecht. Vergleichende Einblicke in Transitionsprozesse. Band 7: Rußland, Weißland, Georgien, Estland, Litauen*. Edited by A. Eser and J. Arnold. (Freiburg im Breisgau: Max-Planck-Institut für ausländisches und internationales Strafrecht Freiburg, 2003.), 277.

<sup>61</sup> *Ibid.*, 278.

European countries. Because unified Germany consisted of two parts, communist East Germany, where lustration had been implemented, and West Germany, where lustration lost its meaning, there could be no strict lustration legislation for an entire unified Germany. The unique feature of the German model of lustration was that lustration in East Germany went hand in hand with the takeover of the East German states by West Germans and the removal of East Germans from many spheres of public life. Former GDR companies were closed and sold mainly to West Germans. The state-owned newspapers and magazines were bought by Western publishing houses.<sup>62</sup> Positions in public administration and academia were also objects of purge and displacement. Special commissions, consisting of local representatives and West German experts, were allowed to check the background of East German professors to evaluate their qualification for university positions. Many professors were dismissed and their positions were given to West Germans.<sup>63</sup> The responsibility for a lustration policy was divided between the federal government and the governments of the five East German states. But, state governments were given the right to decide whether to

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<sup>62</sup> Godfrey Carr, and Georgina Paul. "Unification and its Aftermath: The Challenge of History." In *German Cultural Studies: An Introduction*, edited by R. Burns. (Oxford, New York: Oxford University Press, 1995.), 328-329.

<sup>63</sup> Maier, Charles S. *Dissolution: The Crisis of Communism and the End of East Germany*. (Princeton: Princeton University Press, 1997.), 303-311.

continue employment of former civil servants or to fire them. Such a policy made the scale of the lustration process unequal in different parts of East Germany. Among these new states different approaches to lustration were adopted. The lustration policy of Brandenburg was relatively mild, whereas the government of Saxony even went so far as to incorporate the principle of lustration into its state constitution. According to article 118, the supreme court of Saxony could start a legal procedure to exclude a person from his office in the state government or from his seat in the state diet, if his collaboration with the Stasi could be proven.<sup>64</sup> The lustration policy in Germany was only a part of the broader process of exchanging elites, which took place also in form of the takeover of East German states by West Germans. Thus, lustration was not as harsh and sweeping as it was in the case of Czechoslovakia; it was unequal in the different federal states of Germany and lacked centralized federal control as it was true for Czechoslovakia.

The Czechoslovakian model of lustration proved to be the harshest model because of its unified policy, which was applied throughout the entire country. In contrast to the process in Germany, Czechoslovakian, and later on, Czech lustration laws provided a rigorous definition of which

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<sup>64</sup> *Constitution of the State of Saxony*, article 118, <http://www.landtag.sachsen.de/de/landtag/grundlagen/86.aspx>, (accessed on June 15, 2013).

positions were not suitable for former informants. This process was controlled by the government and lacked some liberty in decision, as it existed in the case of Germany. The Czechoslovakian model was highly centralized whereas the German model was decentralized. Czechoslovakian lustration laws determined a number of positions in the civil service, which were subject to screening as well as the groups of which were prohibited from taking offices due to their communist past. The automatic exclusion of a positively lustrated person from his office in the civil service made the Czechoslovakian lustration the most severe among Eastern European countries. The policy of access to the files was also more radical in the Czech Republic, because this access was not restricted only to personal data as it was the case in Germany. Although employers and researchers in Germany also could access the files, this access was limited only to specific purposes, such as a public employee check. The Czech government granted broader access to the files, and even published some information in the official media. In contrast to Germany, Czechoslovakian lustration was the main instrument for the change of the elites in the country, and was aimed at the purge of former communist elites from the state apparatus. The list of positions, which were objects for screening, was a perfect tool for control over high-ranking positions in the state bureaucracy.

The process of lustration in Estonia was not as obvious as in the cases of Germany and Czechoslovakia, because the exclusion was based not only on a political affiliation, but on an ethnic one as well. Lustration for different ethnic groups such as the Russians and the Estonians was done differently, because, in the case of Russians, the goal of lustration was combined with the goal of exclusion of the Non-Estonians from national politics. The lustration of Russians was affected through the Citizenship Law, whereas the lustration of the Estonians was enacted through the Law about the Oath of Conscience and the Law about the Disclosure of Names of Collaborators. Due to the disproportionate number of Russians affected by the lustration process, one can argue that priority was given to the lustration of Non-Estonians. The case of Estonia can be described as “hidden” lustration, because the purging of former Communists from the civil service went hand in hand with the purging of Russians from the civil service. Access to the files was given to the persons affected by the security services’ activities. In contrast to Germany and the Czech Republic, no full disclosure of collaborators’ names has happened in Estonia because the government granted immunity and anonymity to those collaborators who admitted their activity. Lustration of non-Estonians was the instrument for the “estonization” of the Estonian state apparatus, and systematically excluded a large number of Russians from the field of



national politics. The lustration of Russians had traits of elite change as in the case of Czechoslovakia. The lustration of Estonians was much milder, individualistic in its approach and did not affect a significant number of Estonians.

Lustration in Germany was based upon a few documents, of which the Unification Treaty and the Law on the Records of the Secret Service of the Former German Democratic Republic were the main acts, which created the legal framework for lustration. According to the Unification Treaty, the territory of the GDR was reorganized into five states, which were admitted to the Federal Republic of Germany, and adopted West German Law. The Unification Treaty allowed employers to make a decision about further employment in civil service at all levels of the German state: federal, state, and local.<sup>65</sup> Employers had the right to terminate the jobs they considered unnecessary for the German state apparatus, such as the jobs of former party members or former members of internal state security. While waiting on the decision about their employment, former employees collected compensation for a period of up to six months and took part in training and qualification programs, which were sponsored by the Federal Labor Board. These programs were created to help them find new jobs. Many employees were considered

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<sup>65</sup> *The Unification Treaty*, Annex I, chapter XIX/A/III, <http://www.gesetze-im-internet.de/einigvtr/index.html> (accessed on June 15, 2013).

unqualified by the government, because most of the GDR state officials had been recruited from among party members.<sup>66</sup>

The legal framework for lustration in Czechoslovakia was created by the Large Lustration Act and Small Lustration Act. The Large Lustration Act was passed by the parliament on October 4, 1991. The Act included two lists of positions, which were the subjects for screening. The first list determined the positions, which would require a lustration certificate from an applicant for a position. This list included positions such as high ranking officers in the Czechoslovakian army, security service and police, staff working in the offices of the president, of the government, of parliament, of the constitutional court, of the academy of science, of state radio, of state television, of the state press agency and of state-owned companies.<sup>67</sup> However, the act did not apply to positions for which individuals were elected by a democratic vote, such as the positions of members of parliament. Thus, democratic legitimacy had a priority over lustration.<sup>68</sup> In Germany elected members of state and federal parliaments could be dismissed from their positions in case of positive lustration.

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<sup>66</sup> Dirk Ehlers. "The German Unification: Background and Prospects." In *Loyola of Los Angeles International and Comparative Law Review*, Rev. 771 (1993): 788.

<sup>67</sup> *Large Lustration Act*, Section 1.

<sup>68</sup> David Kosař. "Lustration and Lapse of Time: 'Dealing with the Past' in the Czech Republic." In *European Constitutional Law Review*, 4 (2008): 463-464.

Members of various political parties were also not affected by the law. However, the overwhelming majority of political parties accepted the policy of self-regulation, demanding of all candidates to submit lustration certificates before nominations to party list. The Communist Party was the only political party to deviate from this agreement.<sup>69</sup>

The second list determined positions under the Communist regime, holders of which were barred from applying to positions from the first list. The prohibited positions were the following: high-ranking members of the Communist Party from the level of a District Committee upward, various positions related to the State Security Service, collaborators and informants of the State Security Service, members of the People's Militias, students at the State Security Service academies.<sup>70</sup>

The holder of or applicant to positions from the first list had to present a lustration certificate issued by the Federal Ministry of Interior, that he or she was not the holder of any position from the second list during the Communist regime. The Czechoslovakian lustration was carried out by the executive branch of government, the Federal Ministry of Interior, which established a special bureau for the purpose of conducting

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<sup>69</sup> Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law", 314.

<sup>70</sup> *Large Lustration Act*, Section 2,3.

background checks and issuing lustration certificates.<sup>71</sup> Positive lustration meant automatic exclusion from office. In contrast to Germany, nothing was left to the employer to decide. Czechoslovakian lustration lacked any form of individualization.

In addition to the Large Lustration Act, parliament adopted the Small Lustration Act on April 28, 1992. The Small Lustration Act supplemented the Large Act by expanding the first list with a more detailed description of which employees within the Ministry of Interior, the Police and the Penitentiary System of the Czech Republic would be the subjects to screening.<sup>72</sup>

#### 2.1.2 Access to files

An important question of lustration legislation which affected the entire policy was access to the security service' files. The Law on the Records of the Secret Service of the Former German Democratic Republic puts a Federal Commissioner in charge of the records. The Federal Commissioner is an independent official elected by the German parliament for a five-year term and supervised by the Minister of the Interior. Every person had a right to access the files created about him by the secret service. An applicant had to submit a written request to the

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<sup>71</sup> Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law", 313.

<sup>72</sup> *Small Lustration Act*, Section 1-11.

Federal Commissioner to check if the Stasi archive had any file about the applicant and if such a file existed, the applicant could see a copy of this file. All personal information about other affected persons or third parties had to be blanked out in this copy, except the names and other information about collaborators, which must be disclosed to the applicant. If the name of the informant is a cover name, the applicant might ask to reveal the real name of the informant and a Federal Commissioner had to disclose it, if the name could be identified unambiguously.<sup>73</sup>

Public or private organizations could receive access to the files only for finding out whether an employee or applicant was a Stasi informant. Applicants had to prove that the purpose of the use is permitted by the Law, it falls within the competence of the applicant and its use would be restricted to that purpose. The Federal Commissioner was not to make judgment and did not have judicial power in employment checks. His only duty was to issue an employer with the statement whether the Stasi viewed his employee as a collaborator or not. The statements of the Federal Commissioner had no legal force and the employment policy of public and private organizations was based on regulations derived from the labor law and the Unification Treaty. Researchers and journalists could also be granted access to the files for the purpose of research. These files

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<sup>73</sup> John Miller. "Settling Accounts with a Secret Police: The German Law on the Stasi Records." In *Europe-Asia Studies*, Vol. 50, No. 2 (1998): 313-314.

could not contain personal data, unless it was data concerning collaborators. To study files containing personal information, researchers had to receive written permission of its subjects.<sup>74</sup>

The Federal Commissioner had a duty to report to the Minister of Interior the names of the high-ranking officials such as members of the Federal Government, local elected officials or judges if it could be established during the file check that such a person had worked as a Stasi collaborator. Stasi files concerning intelligence service agents and means of espionage were to be stored separately and used only by ministerial permission.<sup>75</sup>

In contrast to Germany, Czechoslovakia lacked a clear policy toward the access to the files. This policy was reconsidered a few times in the 1990s and 2000s. At the beginning, access was granted only to the staff of the Czechoslovakian Ministry of Interior with the acceptance of the Large Lustration Act on October 4, 1991. The duty of the Ministry was to issue certificates based on the StB files.<sup>76</sup> The parliament passed the Act of Public Access to Files Connected to Activities of the Former Secret Police, which regulated access for the public. This law granted access

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<sup>74</sup> Ibid., 314-316.

<sup>75</sup> Ibid., 317.

<sup>76</sup> *Large Lustration Act*, Section 4-6.

only to persons affected by the StB activities. However, Parliament amended the law in 2002 to make the main register of collaborators available to the public. The register was published in March 2003 on the Ministry of Interior' website and consisted of 78 000 names of informers and collaborators, quite a few of whom were the top managers of the most prominent companies, such as public-relations director Michal Donath of Donath-Burson-Marsteller or Ales Husak, the general director of lottery operator Sazka.<sup>77</sup> Every citizen of the Czech Republic could access every document of the StB collected between February 1948 and February 1990. Thus, access was not limited to personal data. The Ministry of the Interior provided some degree of protection to privacy of other individuals mentioned in the files, unless they were collaborators. The applicant could access information about the identity of a collaborator, but not information related to their marital life. However, the promulgation of the collaborators' list made the Czech policy of access more open and radical, in contrast to German policy. Such a policy resulted in a number of legal cases in which individuals demanded the removal of their names from the list and their reputation restored.<sup>78</sup>

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<sup>77</sup> Zuzana Kawaciukova. "Boardroom agents". *Prague Post*, April 17, 2003.

<sup>78</sup> Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law", 322.

The Estonian government transferred all of the archives of the KGB and the Communist party to a branch of the State Archive, which was established for this purpose. A person, about whom the KGB had a file, was given the right to examine his personal file. It also became possible to examine the file of one's deceased relatives. Access to the archive was also granted to historians and researchers under special conditions to prevent the misuse of the files. But, in contrast to Germany and the Czech Republic, the informants were not excluded from public life automatically. According to the Law about the disclosure of names of collaborators, informants who voluntarily appeared before the security police and confessed their activities, received legal immunity and their names became a state secret and could not be disclosed unless they had committed crimes against humanities or war crimes. Such a policy led to an unequal percentage of published names of collaborators and only a few names were revealed in contrast to a large numbers of collaborators. Escaping social ostracism were 1,153 people who appeared at the secret police office before the deadline.<sup>79</sup>

The lustration policy created multiple controversies in public life of Eastern European countries and led to heated debates between various factions in parliaments of these countries.

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<sup>79</sup> Aadu Oll. "Estonia under occupation and the reinstatement of open society". *Kharkiv Human Rights Protection Group*, May 22, 2000.



### 2.3 Moral and constitutional controversies of lustration policy

The practice of lustration, as with every new law practice, had to be made consistent with emerging constitutional and moral norms of the Eastern European states. The persecution of individuals based on their affiliation with certain organizations was very ambiguous in terms of the morality commonly expected of democratic states. Proponents of lustration argued that lustration was justified because it helped to restore moral order. A successor government had a moral obligation to the victims of the repressive system, and transitional justice was a way to heal the wounds inflicted by the repressive regime. Transitional justice was seen by its proponents as a cleansing process which paved the way for a moral renaissance. The cleansing of society had to be done through abolishing the monuments of the past, such as the statues of Lenin and Marx, and through the prosecution of those who were responsible for the crimes of the previous regime.<sup>80</sup>

The constitutionality of lustration policy could, however, be questioned. German Basic Law granted to the Germans a right to freely choose their profession and a place of work. Although this right was written into the Basic Law as one of the basic rights of a German citizen, it was also stated in the Basic Law that the practice of an occupation or

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<sup>80</sup> Huyse. "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past", 55.

profession may be regulated by different laws.<sup>81</sup> The constitutional right of a citizen of the Czech Republic to have a free choice of profession was written into the Charter of Fundamental Rights and Freedoms, which was incorporated into the Constitution of the Czech Republic. According to the Charter, everybody can freely choose his or her profession as well as the right to engage in enterprise, although conditions and limitations upon certain professions or activities could be set by different laws.<sup>82</sup> The Constitution of the Republic of Estonia had a similar way of dealing with the right to have a job. The right to freely choose a sphere of activity, profession, and place of work was considered as a fundamental right of an Estonian citizen. But the procedure for the exercise of this right could be provided by additional laws.<sup>83</sup> All of these three constitutions hold a similar ambiguous approach toward the right to a profession. On the one hand, the right to choose a profession is a basic right written into the constitution, but on the other hand, this basic right could be denied by the establishment of limits or special conditions imposed on certain professions. The practice of limitation was known already in West German

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<sup>81</sup> Basic Law for the Federal Republic of Germany, article 12.

<sup>82</sup> Charter of Fundamental Rights and Freedoms, article 26, <http://www.usoud.cz/en/charter-of-fundamental-rights-and-freedoms/> (accessed on June 15, 2013).

<sup>83</sup> Constitution of the Republic of Estonia, article 29, <http://www.president.ee/en/republic-of-estonia/the-constitution/index.html> (accessed on June 15, 2013).

society. The “Radicals Decree” was adopted on January 28, 1972. According to this Decree, any applicant to the German civil service had to assure their commitment to the free democratic order and the Basic Law in order to become a civil servant. Any applicant, who was involved in anticonstitutional activity could not be employed in the civil service.<sup>84</sup> The adoption of the decree was justified by the government as a necessary measure to defend the state from terrorism. The Decree targeted all individuals who could be suspected of disloyalty to the constitutional order because of real or alleged anticonstitutional activities. The West German Communist Party (DKP) became one of the targets of this decree. Such an approach was criticized in West German society because it fostered the system of political vetting and ideological screening.<sup>85</sup> The lustration practice could be seen as following in the tradition of the “Radicals Decree”. For some left-leaning West Germans the “Radicals Decree” appeared to be a violation of one of the fundamental rights written into the constitution. But, lustration laws could be also seen as laws, which regulated the practice of the occupation of a certain profession. Lustration

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<sup>84</sup> The “Radicals Decree”, [http://germanhistorydocs.ghi-dc.org/sub\\_document.cfm?document\\_id=898](http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=898) (accessed on June 15, 2013).

<sup>85</sup> Rob Burns, and Wilfried Van Der Will. “The Federal Republic 1968 to 1990: From the Industrial Society to the Culture Society.” In *German Cultural Studies: An Introduction*, edited by R. Burns. (Oxford, New York: Oxford University Press, 1995.), 279-280.

inherited this legal and moral ambiguity from the various constitutions, which were unclear and contradictory about the right to choose a profession.

Another moral problem of lustration practice was the burden of guilt. Lustration laws assigned collective guilt to specific categories of people who had to prove that they were not guilty. Such a practice violated the principle of assumed innocence, which meant that a person had to be viewed as innocent until proven guilty. The principle of collective guilt legally put a student of the State Security Academy at the same level as a high-ranking member of the Communist Party who might have been responsible for major human rights violations. A person whose name appeared for a short period of time in Stasi documents, could be considered as equivalent to an informant who had worked for years for the Stasi and had denounced many people. A person, whose name was mentioned in the often incomplete and unreliable documents of the security services, had a difficult time to prove his innocence, because he was labeled immediately as a collaborator. The cases of a well-known German politician Manfred Stolpe and a prominent German writer Christa Wolf could illustrate this situation of a witch hunt on secret collaborators, which took place in Eastern Europe. Both cases will be discussed in detail in the next sub-chapter.

The Helsinki Human Rights Watch group criticized lustration policy in Czechoslovakia because there was the lack of an independent tribunal, no opportunity to know and confront evidence, no right to counsel, no opportunity to present witnesses, and no possibility for appellate review. The group pointed to “the inherent unfairness of destroying careers based only on the contents of files maintained by the discredited StB – which, like those of any state security police are notoriously self-serving and unreliable”.<sup>86</sup> Helsinki Watch strongly suggested to the Czechoslovakian government and its constitutional court to repeal the lustration law and recommended to the government to set up an independent commission to investigate the crimes of the previous regime, to prosecute only those who were responsible for actual crimes on the basis of specific charges through the legal process and to assure that no prosecution against individuals took place on the basis of membership in political associations or party membership.<sup>87</sup>

The ambiguities of lustration legislation caused heated debates in countries which adopted such legislation. Calls to lustration were not a universal demand of every citizen. Although lustration was adopted in most Eastern European countries, the terms of adoption and the severity

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<sup>86</sup> *Czechovakia: ‘Decommunization’ Measures Violate Freedom of Expression and Due Process Standarts*, Human Rights Watch’ report, April 30, 1992, 3.

<sup>87</sup> *Ibid.*, 7.

of the legislation differed from country to country. Hungary adopted mild lustration: no sanctions were applied except of making the lustrated persons' past known to the public. The Polish lustration law became a middle-way solution between the soft Hungarian one and the radical Czech one. The candidates for public office had to make a statement about their collaboration with the secret service. If a candidate lied in his statement, he had to be penalized. If he told the truth, even admitting his work for the secret service, then he could not be barred from the office and his future would be decided by the electorate. The Bulgarian parliament tried to adopt harsh lustration legislation twice in the post-communist history of the country, but the Bulgarian Constitutional Court resisted both attempts successfully and was able to remove the laws. The case of Lithuanian lustration was one of the harshest, similar to that of the Czech Republic. The Lithuanian parliament adopted a harsh lustration law that targeted former collaborators. But, the harsher law was implemented to remove high-ranking KGB officers from the civil service and even from some private institutions.<sup>88</sup> Lustration legislation was also not inevitable. The tensions and political struggle between pro- and anti-lustration proponents, as well as different approaches to lustration, could be

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<sup>88</sup> Czarnota, "Lustration, Decommunisation and the Rule of Law", 311, 324-328.

illustrated in the case of Czechoslovakia and its successors, the Czech Republic and the Slovak Republic, after the split in 1993.

The Czechoslovakian version of lustration legislation became the harshest approach to lustration, and created many opponents who tried to question the constitutionality of lustration laws in the Constitutional Court. The secret police collaborators were divided into three categories in the initial version of the Large Lustration Act. Category A consisted of agents, informers and owners of flats used for conspiratorial work. Category B included trustees who were not classified by the activities described by category A, but were conscious collaborators. Category C included candidates for collaboration who were not conscious collaborators, but subjects of police surveillance and interrogation. Category C was harshly criticized for its inability to distinguish perpetrators and their victims. In February of 1992 an Independent Commission was established to review the positive lustration certificates and to check the reliability of available secret police records. Category C became a subject of controversy and resulted in a large number of legal complaints. Due to the large amounts of the complaints, the Independent Commission had reviewed only about three hundred of them by October 1992, which was only eleven percents of the total amount of complaints submitted to the Commission. But, only

in thirteen cases did the Independent Commission conclude that conscious collaboration with the secret police took place.<sup>89</sup>

The chairman of the Commission and a former dissident Jaroslav Bašta criticized the inclusion of category C into the law as well as the law itself. He stated that category C should never have been included into the law, which in turn failed the task of determining individual guilt. Bašta proposed to exclude category C from the law, arguing that only individuals who agreed to work with the secret police should be affected by the law. But, another commission member Peter Folk, spoke in favor of keeping category C, claiming that some candidates could escape prosecution only because the careless StB workers could make a mechanical mistake and simply forgot to shift them from the category of candidate to collaboration into the category of agents. The candidates, Folk also argued, could be so active that a change in their file status was just unnecessary.<sup>90</sup>

After the petition of ninety-nine out of 300 deputies of the Federal Assembly, the Constitutional Court of Czechoslovakia reviewed the constitutionality of the lustration law in November 1992. It upheld the

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<sup>89</sup> Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law", 312-313.

<sup>90</sup> Paulina Bren. "Lustration in the Czech and Slovak Republics." In *Transitional Justice. How Emerging Democracies Reckon with Former Regimes. Volume II. Country studies*, edited by N. J. Kritz. (Washington: United State Institute of Peace, 1995.), 556-557.



constitutionality of lustration legislation in general, stating that such laws did not violate any international conventions on human rights, but declared unconstitutional specific aspects of the law such as category C, which had to be annulled.<sup>91</sup>

Many politicians criticized lustration laws as well. Zdeněk Mlynář, a former dissident, who was a Communist Party secretary in 1968, and who was expelled after the Soviet invasion of Czechoslovakia criticized lustration. He argued that lustration laws violated international human rights principles due to the banning of some categories of people for holding specific positions because they had held certain jobs in the past. Mlynář asked Havel not to sign the law. Parliamentary chairman and former dissident Alexander Dubček refused to ratify the lustration law. The attitude of President Havel toward lustration was also very contradictory. Initially, Havel supported the adoption of lustration law, but opposed it later, because he was displeased with the final version of the law, which assigned a collective guilt to every member of the Communist party regardless of his actual influence on governmental policy. Havel asked the Federal Assembly repeatedly to pass the lustration law, but stressed that the law should be good and just. However, when the law was advanced in the Federal Assembly, Havel stated that the law went far beyond the

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<sup>91</sup> *Pl. ÚS 1/92: Lustration*, Czechoslovak Constitutional Court' decisions, November 26, 1992.

government's original intent and criticized the law for assigning collective guilt to individuals.<sup>92</sup>

The initial version of the lustration law had been enacted for a limited time of five years, but in 1996 the Parliament extended the law until 2000, overriding Havel's presidential veto, which could be overridden by a simple majority in the 200-seated lower house of Parliament. Havel argued that the law was designed originally as an exceptional and temporary measure only for an early post-communist period and that the law was unsuitable for a stabilized democratic state.<sup>93</sup> The deputy of the ruling Civic Democratic Party (ODS), Hana Marvanova, presented the extension, and despite Havel's criticism, a presidential veto was overturned and the law was extended. Havel commented that such a measure could only cast doubt about the Czech Republic's aims in a post-Communist and democratic era.<sup>94</sup> Parliament again extended the law in November 2000 with no limitation, once again overriding Havel's presidential veto. A group of 44 deputies petitioned the Constitutional

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<sup>92</sup> Jiri Pehe. "Parliament Passes Controversial Law on Vetting Officials." In *Transitional Justice. How Emerging Democracies Reckon with Former Regimes. Volume II. Country studies*, edited by N. J. Kritz. (Washington: United State Institute of Peace, 1995.), 554-555.

<sup>93</sup> Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law", 315.

<sup>94</sup> Andrew Heil. "Czechs Keep Check On Ex-Communists." *The Christian Science Monitor*, October 26, 1995.

Court to review the constitutionality of the prolongation of lustration legislation. The Court decided in December 2001 that lustration laws still protected the public interest and had the legitimate aim to protect actively a democratic state from dangers that could be created by insufficiently loyal public servants. But, the Court's decision emphasized also the temporal character of lustration legislation and that the relevance of the lustration law decreased with the passage of time, thus creating premises for a possible revision of the current position in the future.<sup>95</sup>

The Czech Prime Minister Jiří Paroubek, a member of the Czech Social Democratic Party (ČSSD), proposed the annulment of the lustration laws in November 2005. Paroubek argued that after 16 years after the end of communism, the lustration law became irrelevant and should be abolished. Such an initiative was met with harsh criticism from the media and Paroubek's political opponents. A deputy of the Christian and Democratic Union – Czechoslovak People's Party (KDU-ČSL) Vilém Holáň suggested that the lustration laws were still needed to prevent Communists from working within the state apparatus and, thus, lustration legislation was still legitimate and justified.<sup>96</sup>

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<sup>95</sup> *Pl. ÚS 9/01: Lustration II*, Czechoslovak Constitutional Court' decisions, December 05, 2001.

<sup>96</sup> Will Tizard. "Vetting proposal haunts Paroubek." *The Prague Post*, November 30, 2005.

In contrast to the harsh lustration policy adopted in the Czech Republic, the government of the Slovak Republic took a different approach to lustration. After the split in 1993, all federal legislation was valid in both successor states unless it was overruled by their parliaments. One would expect the same approach to lustration legislation in both successor states, but the opposite happened. Whereas the Czech parliament went beyond the original federal lustration law and passed amendments to extend the law beyond 1996, Slovakia did not even start to implement the law.<sup>97</sup>

The Prime Minister of Slovakia from 1992 to 1998 was a former Communist, Vladimír Mečiar, and a leader of the People's Party – Movement for a Democratic Slovakia (ĽS-HZDS), which consisted largely of former Communists. Prior to 1994, Mečiar's cabinet worked on assigning the responsibility to the Slovak secret service (SIS) to deal with the secret police files. But, when it became clear that to deal with the files the SIS would have to implement the federal lustration law, the efforts were put on hold by the HZDS deputies who considered the law as being too harsh. In 1994, Mečiar sent a petition to the Slovak Constitutional Court to remove the lustration laws because of their inconsistency with the Charter of Rights and Freedoms. The Court refused to consider the

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<sup>97</sup> Nalepa, *Skeletons in the Closet*, 193.

petition, arguing that the federal court already had considered this question and ruled that the laws were consistent with the Charter. Mečiar failed to abolish lustration legislation, but simply prevented its implementation by not creating a lustration agency.<sup>98</sup>

In March 1994, Mečiar's cabinet lost a vote of confidence and was temporary replaced by the cabinet of Josef Moravčík, a leader of the liberal party Democratic Union (DÚ). Moravčík's government tried to enforce lustration legislation and Interior Minister Ladislav Pittner even began to prepare lustration certificates. However, Mečiar came back into power in October 1994 due to the electoral success of the HZDS. He immediately stalled any attempts at implementing lustration laws, which resurfaced again after the 1998 elections. The Slovak Democratic Coalition (SDK) consisted of five parties: the Democratic Union, the Christian Democratic Movement (KDH), the Democratic Party (DS), Social Democratic Party of Slovakia (SDSS) and the Green Party in Slovakia (SZS), and was led by Mikuláš Dzurinda, who was able to form a new cabinet in coalition with three other parties: the Party of the Democratic Left (SDL), the Party of the Hungarian Coalition (SMK) and the Party of Civic Understanding (SOP). Although Prime Minister Dzurinda did not consider lustration as an important goal of his government, he appointed a

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<sup>98</sup> Ibid., 194-195.

member of the KDH, Ján Čarnogurský, as the minister of justice. Čarnogurský was a fierce opponent of Mečiar and wanted to bring back lustration into the political discourse. The federal lustration laws had already expired and it was possible to propose a new lustration bill. However, the SDK coalition partners, the SDL' and the SOP, were opposed to the opening of the secret police files or to lustration. The preservation of the coalition was the primary goal for Dzurinda, and, thus, Čarnogurský became isolated in his attempts to exclude former collaborators. Although Čarnogurský failed to establish a lustration agency, by an executive order he created the Department for Documentation of the Crimes of Communism (ODKZ) within the Justice Ministry. The task of this department was to collect documents about crimes committed by the previous regime. In August 2002 the electoral term for the ruling coalition was drawing to an end and the SDK forced the passage of the Law on National Memory at the last session of the parliament before the new elections. The Law created the Institute for National Memory, an institution similar to the German Federal Commission on the Stasi files. The function of the Institute was to disclose the activity of repressive authorities from 1939 to 1989, to perform an evaluation of the period of oppression, to publish data on the executors of the persecution and to make the files of the secret police accessible for

individuals.<sup>99</sup> The totalitarian approach was implemented in the law, which treated the Nazi and the Communist periods of history as equally devastating for the country. The same approach was adopted in some other East European countries such as Poland where the similar the Institute of National Remembrance was created. The Law did not target any specific types such as public servants, it was applied to any person and did not stipulate any legal sanction against an implicated person. Theoretically, the Law could be used as a tool to implement the official exclusion of former Communists from public service, but without additional legislation, it was impossible to stop them from running for or remaining in public office. In contrast to the harsh lustration legislation of the Czech Republic, Slovakia went a different way and implemented almost no lustration at all.<sup>100</sup>

Lustration policy created a stir in the public life of the Eastern European countries also by affecting thousands of individuals in various ways as well as entire professions or social groups.

#### 2.4 Society and individuals in lustration

One of the most important principles of a democratic political community is the principle of equality of all citizens before the law. But,

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<sup>99</sup> *The Law on National Memory.*

<sup>100</sup> Nalepa, *Skeletons in the Closet*, 198-200.

liberal democracy could not be reduced only to institutions and legal principles. Principles are inseparable from the social actors that fostered and implemented them. Thus, every political and legal institution had to be examined not only in terms of its normative structure, but in terms of those who acted within its framework: individuals and social groups. Any political and legal change affected both normative structures and social actors. Therefore, lustration should be examined also in terms of its influence on social groups and individuals.<sup>101</sup>

The lustration policy was based on the idea that some social groups such as the bureaucracy were especially important for preserving democratic principles and, members of bureaucracy had to be screened to protect the state from those who did not share the principles of a liberal democracy. Certain individuals could not be trusted due to their activity under the past regime and must be excluded from access to public offices in the new regime. The idea of lustration implied that democracy was also a matter of civil trust and loyalty. People must trust the new regime, which would be hardly possible if the old elite still kept the power in the new government.<sup>102</sup> The lustration policy led to mass screening and deeply affected the post-communist bureaucracy. Lustration certificates totaling

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<sup>101</sup> Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law", 317.

<sup>102</sup> Ibid., 318-319.



168,928 had been issued in Czechoslovakia by November 1992, among which 11,363 were positive, which meant that these people could not occupy certain positions under the new regime. Approximately 345,000 certificates were issued before 2001, among them about 15,000 positive.<sup>103</sup>

Further attempts were made to keep away from power not only social groups affiliated with positions of power in the new regime but also entire profession as groups of lawyers and teachers, sometimes even those who worked in the private sector. Such an approach was taken in East Germany. East Germany was absorbed during reunification by the legal and political system of West Germany, instead of creating its own institutions. For the restructuring of the East German institutions according to the West German model, managers and civil servants were imported from West Germany. As the legal system was considered to be a main element of establishing the West German rule of law, lawyers had to be purged with special care.<sup>104</sup>

The Federal Parliament enacted the Attorney Screening Act in 1992 which allowed banning from the practice of law anybody who had

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<sup>103</sup> David, "Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)", 413-414.

<sup>104</sup> Blankenburg. "The Purge of Lawyers after the Breakdown of the East German Communist Regime", 225.

violated basic human rights or was a Stasi informer.<sup>105</sup> This law expanded the lustration practice in Germany in theory by including in the lustration framework not only state employees, but also even jurists serving private clients in cases in which the collaboration of such jurists with the Stasi would be made public. Since only state employees were subject to scrutiny, jurists working in the private sector could not be screened by any third party and banned afterwards. Thus, the law had only little influence on private jurists. State-employed lawyers, by contrast, were screened scrupulously. Prosecutors and judges were accused of giving legitimacy to the East German system of surveillance. Every judge and prosecutor had to undergo a test of being professionally qualified in addition to the secret service files check that applied to all civil servants. After reunification all judges and prosecutors had to reapply for their jobs. Only 10 percent were reappointed in Berlin. In other East German states judges had a reappointment chance of 55 percent, prosecutors only of 45. The purge of East German lawyers opened many vacancies in the East German states which were filled by West German lawyers. At least half of the personnel of the East German departments of justice were recruited in West Germany, mainly elderly lawyers who could improve their pension rights by serving in the East and young law graduates who hoped for a career in

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<sup>105</sup> *The Attorney Screening Act*, paragraph 4, <http://www.buzer.de/gesetz/821/index.htm> (accessed on August 3, 2013).

the Eastern states. No candidates from East Germany were appointed among the federal judges by the end of 1993 or even after.<sup>106</sup>

Another social group, which became an object for purges after reunification was university teachers and scholars. The complex process of German unification had no general plan, and the process of changes in German academia also did not follow a general pattern. The scale of changes and the time when these changes occurred was different for every university. However, the process itself could be divided into two phases. The first phase took place in 1989/1990 and was filled with romantic sentiments and hopes that the East German academic system could be reformed. This period lasted no longer than up to December of 1990 and ended in bitter disappointment when entire subdivisions of the East German academic structure such as departments of Marxism/Leninism and history of the GDR/working-class movement were closed by state governments. These closings marked the beginning of the second phase, which lasted until the middle of the 1990's and was characterized by fundamental structural changes in academia. After this

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<sup>106</sup> Blankenburg. "The Purge of Lawyers after the Breakdown of the East German Communist Regime", 236, 239-242.

period the West and East German universities acquired a similar structure.<sup>107</sup>

An important distinction between the East German and West German universities was the mandatory presence of the ruling party in the East German universities, which had been subject to party control since the late 1940s. All faculty members, with the exception of theologians, had to belong to the SED. The Stasi had collaborators in each department to maintain ideological control in universities where critical voices faced collective correction and ideologically unreliable students were subject to expulsion. It was decided by the new government after the fall of the Berlin Wall that Marxism-Leninism departments were to be closed, despite the fact that many social science departments had been merged into the Marxism-Leninism departments and their liquidation meant also a liquidation of East German social science. Many historians were fired, when the sections for the history of the Soviet Union, the Soviet Communist Party, the GDR, and the SED were liquidated. Schools of

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<sup>107</sup> Michael Ploenus. "Die Universität Jena zwischen 1989 und 1995." In *Traditionen-Brüche-Wandlungen. Die Universität Jena 1850-1995*. (Köln, Weimar, Wien: Böhlau Verlag, 2009.), 843-844.

journalism, which were seen by the new authorities as mere propaganda factories, were also purged, and most of their faculty was fired.<sup>108</sup>

The question of collaboration of university employees with the Stasi became an important topic for East German state governments. The banning of the Jena University' employees, which collaborated with the secret service, began already before unification, but continued after October 3, 1990 already on a legislative basis. Before the end of 1992, the University had dismissed about 100 employees, 26 of them according to their own petition, 68 on the basis of an agreement with the university administration and only six were actually fired. The Marxism-Leninism section of the university, in which 32 teachers worked before unification, was shut down. The expulsion of the Jena University personnel revealed some selectiveness in its approach, whereas in the University of Leipzig this expulsion was done differently. All professors in the university were put on what was the German analogue of tenure track in the US universities, but after some time most of the professors did not get tenure and had to leave the university.<sup>109</sup>

The government of the newly united Germany had the task of restructuring East German universities. Dozens of review committees

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<sup>108</sup> Maier. *Dissolution: The Crisis of Communism and the End of East Germany*, 304.

<sup>109</sup> Ploenus. "Die Universität Jena zwischen 1989 und 1995", 858-860.

were created. They consisted mainly of members of the West German Scientific Council with very few promising East Germans. These committees were to decide which institutions would be dissolved or, in those cases where departments were preserved, how they would be restructured. The committees studied staff size, scholarly output and reputation, as well as independence from ideologically imposed functions. The result of the East German academic renewal resulted in an influx of Westerners, who quickly dominated East German universities. The original intentions of creating a better East-West synthesis ended up in Western academic colonization.<sup>110</sup>

In the wake of the fundamental restructuring process, all employees of Jena University had to go through a procedure of inner evaluation. As in the other universities, a special review committee was formed to decide whether their positions had to be abolished according to the new university structure. The committee worked until December 1993 and examined the cases of about 3600 employees, of which 2000 were teachers. As a result, 1600 employees were dismissed. Only 263 new positions were created in contrast to massive dismantling. The vacant positions in the universities were filled by West German scholars. When finally in 2003 only 116 Jena Professors were East Germans out of total

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<sup>110</sup> Maier. *Dissolution: The Crisis of Communism and the End of East Germany*, 303-306.

number 373, it was not just a coincidence, but rather the consequences of the transformation process.<sup>111</sup>

A large transformation took place also in the University of Berlin. In December of 1994 West Germans dominated in many departments of the university. Only 7 professors of economics were East Germans, whereas the number of West Germans was 18. The history department had 4 East Germans and 16 West Germans. The sociology department had 2 East Germans and 14 West Germans. The law department had 4 Easterners and 23 Westerners.<sup>112</sup>

The University of Leipzig suffered an enormous reduction of its employees, which dropped from 8239 at the end of 1989 to 2934 in the summer of 1992.<sup>113</sup> The exact number of East Germans and West Germans in the university was impossible to find, which may indicate the reluctance of scholars even to discuss the problems of lustration in Saxony, the federal state with the strictest lustration approach in Germany.

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<sup>111</sup> Ploenus. "Die Universität Jena zwischen 1989 und 1995", 867-870.

<sup>112</sup> Konrad H. Jarausch. "Umgestaltung von außen, Dezember 1990-März 1994." In *Geschichte der Universität Unter den Linden. Sozialistisches Experiment und Erneuerung in der Demokratie – die Humboldt-Universität zu Berlin 1945-2010*. (Berlin: Akademie Verlag, 2012.), 645.

<sup>113</sup> Fritz König. "Demokratischer Neubeginn und Weichenstellung für die Zukunft. Die Universität Leipzig von der Friedlichen Revolution bis zur Gegenwart 1989-2009." In *Geschichte der Universität Leipzig 1409-2009. Band 3. Das zwanzigste Jahrhundert 1909-2009*. (Leipzig: Leipziger Universitätsverlag, 2010.), 849.

The lustration process had also a personal dimension. Thousands of people were lustrated and their cases demonstrated the hardships and controversies of the lustration process. One of the main problems of lustration as a process of purge based on archival sources was the natural limitation of archival documents. Stasi documents cannot reveal all of the complexities surrounding collaboration, especially the motives of those who collaborated. Many collaborators agreed to work for the Stasi because of blackmail and if it could be demonstrated that the collaboration was involuntarily, some leniency could be expected. However, Stasi officers did not document how they convinced a person to collaborate. Moreover, they were interested in portraying innocent contacts as acts of collaboration to their superiors in order to fulfill their work norms. The archival documents could not give a satisfactory answer to problems such as these and to other complexities and controversies of collaboration cases in Eastern European states, although the records were used as a pretext for the dismissal of many suspected collaborators.<sup>114</sup>

The case of Manfred Stolpe was a good example of how difficult it can be to prove voluntary collaboration by using records in the Stasi archives as evidence. Stolpe served as the head of the Management Board of the Evangelical Church in the GDR. In 1990 he had joined the

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<sup>114</sup> Miller. "Settling Accounts with a Secret Police: The German Law on the Stasi Records", 323.



newly founded Social Democratic Party (SDP) and was elected as the Prime Minister of the state of Brandenburg. Bavarian state television, which was closely associated with the ruling Bavarian party Christian Social Union (CSU), revealed in 1992 some documents about the possible collaboration of Stolpe with the Stasi. Soon afterwards, Stolpe admitted in an interview to the weekly *Der Spiegel* that he had had secret contacts with the Stasi officials on church business. But, Stolpe denied that he was a voluntary unofficial collaborator, insisting that the contacts he made were necessary for his role as a representative of the church. The parliament of Brandenburg ordered a commission to investigate Stolpe's activities. German society grew increasingly divided on the matter of the Stolpe case. Stolpe was able to obtain the support of some prominent German politicians, who saw him as a peacemaker who helped weaken repressions in East Germany and paved the way for the collapse of the Communist system. Klaus von Dohnanyi, the former SPD Mayor of Hamburg and the son Hans von Dohnanyi's, who was a Nazi intelligence agent and was executed in 1945 for his involvement in resistance to Hitler, compared Stolpe to Dietrich Bonhöffer, a prominent German theologian who used contacts with Nazi intelligence in his efforts to assassinate Hitler. Many East Germans saw the Stolpe's case as politically motivated. They accused the West Germans of the political colonization of East

Germany, because the decision to put Stolpe under scrutiny came only days after the resignation of the Prime Minister of Thuringia Josef Duchač (CDU), an East German politician who had to step down because of similar collaboration charges. Duchač was succeeded by the West German politician Bernhard Vogel (CDU), who was also a friend of the German Chancellor Helmut Kohl (CDU).<sup>115</sup>

Stolpe pointed out that the question of his guilt was a very difficult problem because it was impossible to tell when a negotiating relationship becomes collaboration. He explained that one could choose two approaches in the GDR. Civil rights activists criticized the system and placed themselves in opposition, but they accomplished very little. Stolpe, in contrast, took another approach by engaging in negotiations with the system and improve the situation step by step. He had to be in contact with the people in power in order to humanize the regime. He believed it worked in the end when the police did not use their weapons against protesters. Stolpe insisted that he never signed an agreement to collaborate with the Stasi and never provided them with information that led to anyone's arrest. However, the Stasi files suggested that Stolpe was considered to be a reliable informant and the code name "Sekretär" was assigned to him. The files revealed also that Stolpe met with Stasi agents

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<sup>115</sup> John Tagliabue. "Eastern German is investigated." *The New York Times*, February 5, 1992.

and gave them information about bishops and dissidents in church-sponsored social groups. The prominent dissident Bärbel Bohley accused Stolpe of undermining the East German opposition movement by giving to its members misleading advice and providing the Stasi with the information about their plans. Bohley insisted that the relationships of East Germans with the Stasi could be viewed only in terms of either “for it” or “against it” and she declared Stolpe to be a symbol of repression. Stolpe responded her criticism by asking to be judged not by today’s standards, but according to East German conditions.<sup>116</sup>

Despite all accusations, Stolpe was able to preserve his career and won the trust of voters in Brandenburg. Public perception was widespread that he was one of the few capable East German politicians. Stolpe remained the only East German as Prime Minister of Brandenburg (and an East German state), whereas the other four had made their careers in West Germany and came to the East after the collapse of the GDR.<sup>117</sup> Stolpe was re-elected twice and held his position until 2002. From 2002 to 2005 he became the Federal Minister of Transport, Building and Urban

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<sup>116</sup> Stephen Kinzers. “A Portrait of the Informer (as People’s Champion).” *The New York Times*, April 15, 1993.

<sup>117</sup> Ibid.

Affairs.<sup>118</sup> Many in East Germany saw the case as politically motivated and accused the West Germans of applying double standards in dealing with the past. East Germans argued that the same West Germans who conveyed the policy of denazification after the war with outstanding reluctance and dramatic forgiveness were now purging the Communists in East Germany with unprecedented fervor and astonishing diligence.<sup>119</sup>

The case of Manfred Stolpe showed clearly how problematic the usage of Stasi archival sources as the basis for lustration was. The Stasi archive was often insufficient to give solid proof for collaboration accusations, however even the accusation by itself led to the loss of reputation of a politician and could have ruined his career. The direct involvement of the CDU in the accusation of the SPD member Stolpe suggests the existence of particular party interests besides the mere desire to improve German society by lustrating the people associated with the repressive East German past.

Another important case was that of Gregor Gysi, who was a famous GDR lawyer and a member of the SED. However, he was not a proponent of a tough line in the party. Gysi defended prominent East German

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<sup>118</sup> *Chronik der Wende*, s. v. "Manfred Stolpe," [http://www.chronikderwende.de/lexikon/biografien/biographie\\_jsp/key=stolpe\\_manfred.html](http://www.chronikderwende.de/lexikon/biografien/biographie_jsp/key=stolpe_manfred.html). (accessed on May 15, 2014)

<sup>119</sup> Tagliabue. "Eastern German is investigated."

dissidents, criticized the regime and called for preemptive democratic reforms in the GDR in order to prevent its collapse. Soon, after the fall of the Berlin Wall, he became the chairman of the SED, which he tried to recreate as a parliamentary party, suitable for the electoral process in unified Germany. The SED was renamed PDS in 1990 to emphasize its break-away from the GDR past.<sup>120</sup> The PDS participated in the 1994 and 1998 parliamentary elections under the leadership of Gysi. However allegations were brought against Gysi of being an informal collaborator for the Stasi. From 1992, he had been repeatedly accused of betraying his clients by reporting on them to the Stasi. Joachim Gauck examined the file of Gysi and concluded in a 1995 report that Gysi maintained long-standing connections with Stasi agents, who were able to suppress underground political activity due to information obtained from him. Gysi even received two codenames from the Stasi, Gregor and Sputnik, according to Gauck's report. But, despite the strong accusations, Gysi was able to successfully defend himself for two decades due to the lack of evidence. Gauck stated in his report that it was impossible to prove Gysi's formal commitment as an informant. No document with Gysi's signature on it, which could demonstrate his voluntary participation in the Stasi surveillance network, had ever been found. The support or condemnation of Gysi depended

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<sup>120</sup> John Tagliabue. "Communists, Remodeled, Keep Trying In Germany." *The New York Times*, August 19, 1998.

often on the political position of the accuser as it was in the case of Manfred Stolpe. The parliamentary secretary of the pro-business Free Democratic Party (FDP) Jörg van Essen spoke about multiple pieces of evidence that indicated Gysi's collaboration with the Stasi. However, he acknowledged that the actual operation of the Stasi could not be reconstructed due to the lack of information and, thus, Gysi could not be accused of collaboration. The SPD politician Richard Schröder supported Gysi and said that not every suspicion about Gysi had substance. Gysi successfully defended himself from the accusation in the media reports, which came often from newspapers owned by the conservative Springer group or the liberal magazine *Der Spiegel*. Despite all accusations, Gysi remained the acting politician and one of the leaders of The Left Party (Die Linke), which was formed in 2007 through the merger of the PDS and the West German left-wing party, the Electoral Alternative for Labour and Social Justice (WASG). The Left Party under the leadership of Gysi won 11.9 percent of the votes in the 2009 parliamentary elections, despite of these allegations against Gysi.<sup>121</sup>

Not only politicians, but also public figures such as the East German writer Christa Wolf were affected by the policy of lustration. Wolf

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<sup>121</sup> Marcel Fürstenau. "Gregor Gysi and the Stasi's long shadow." *DW.de*, February 17, 2013, <http://www.dw.de/gregor-gysi-and-the-stasis-long-shadow/a-16592768>, (accessed on May 15, 2014).

was born in 1929 in Landsberg an der Warthe, but fled with her family to the city of Mecklenburg toward the end of the war. This city was seized by the Red Army and later became a part of the GDR when it was founded in 1949. Wolf studied literature at the University of Jena and University of Leipzig, and then worked for the German Writers' Association as a literary editor.<sup>122</sup> She became a true believer in Marxism-Leninism until the SED leadership launched an attack on decadent culture in the middle of the 1960's. Wolf decried state censorship and became an author rather critical of the system. However, she preserved her trust in the values of socialism and refused to celebrate the end of the GDR, hoping to reform the state and turn it into an outpost of humanistic socialism. Wolf came under criticism in 1993, when the content of her personal "Stasi" file became known to the public. There was even a call to erase her name from the archives of German literature.<sup>123</sup> The file of Christa Wolf consisted of 43 volumes, which resulted from her continued surveillance by the Stasi agents and only her slim perpetrator file drew the attention of the public. When Wolf was a naïve enthusiastic thirty-year-old socialist who worked in

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<sup>122</sup> Avner Shapira. "Forgetting one's Stasi past: German writer Christa Wolf's revealing works didn't divulge everything." *Haaretz.com*, August, 29, 2013, <http://www.haaretz.com/weekend/magazine/.premium-1.544275>, (accessed on May 15, 2014).

<sup>123</sup> Todd Gitlin. "Dissident or Informant? The Murky Memory of Christa Wolf." *Newrepublic.com*, March 7, 2013, <http://www.newrepublic.com/article/112462/city-angels-christa-wolf-reviewed-todd-gitlin>, (accessed on May 15, 2014).

the *Berliner Zeitung*, she wrote a single denunciation note on a writer colleague. The information in that note was insignificant and harmless for the colleague, who later accepted the apologies of Christa Wolf and defended her from the media defamation. The perpetrator file also contained reports about her meetings with other colleagues, but they were written by Stasi agents and not by Wolf herself. The volumes of the Wolf's case were also filled with multiple spying reports on the writer and her husband in order to put the relationship between her and the Stasi in proper perspective.<sup>124</sup> But, a single denunciation letter she wrote gave to the Stasi agents a reason to classify her as an informal collaborator and a code name was assigned to her.

Christa Wolf was crushed by the revelation and claimed that she had no memories of conversations with the Stasi agents. For years she was known in the West as a prominent critique of the East German system, but now her moral authority had begun to crumble. Wolf explained to the press that she was naïve and became trapped in ideological dogmatism in her younger days. She admitted a meeting with the Stasi operatives, but claimed not remembering a report she wrote, speaking about this as a classical Freudian case of repression. She acknowledged also that she probably repressed the unpleasant memories of writing the

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<sup>124</sup> Christine Kanz. "To Be Recognized Again: Christa Wolf's Paradigm of Sincerity." In *German Studies Review*, Vol. 36, No. 2 (2013): 376.



report. However, some people considered this partial denial as too convenient, because it would seem hardly impossible to forget that one had produced a report for the secret police. Wolf's reputation was damaged severely by her Stasi connection.<sup>125</sup>

Similar problems were revealed when lustration laws were introduced in the Czech Republic. This situation led to the appearance of similar personal cases. One of the most distinguished law experts, Vladimír Mikule, lost his academic position after the invasion of the Warsaw Pact armies in Czechoslovakia in 1968. However, Mikule did not stop his dissident activity, but continued to call for the improvement of human rights in the country and even contributed to the drafting of the Charter 77, which was the famous manifest of the opposition to the Communist regime. Mikule defined the position of this document in terms of human rights and legal principals. During the Velvet Revolution, Mikule joined the Civic Forum to influence the process of transition to democracy. Later he became a Member of Parliament.<sup>126</sup>

The Parliament's special committee found his name on the list of the secret police collaborators and threatened to disclose his record. Mikule decided to resign and left politics in 1990. He explained that he

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<sup>125</sup> Gitlin. "Dissident or Informant? The Murky Memory of Christa Wolf."

<sup>126</sup> Priban. "Oppressors and Their Victims: The Czech Lustration Law and the Rule of Law", 333-334.

was never a conscious collaborator with the secret service. Mikule fits into the category which was classified by the lustration law in 1991 as category C – a candidate for collaboration. He was interrogated on a regular basis by the StB officers, but never gave them any information on the dissident movement. Mikule even provided his dissident friends with useful information about his interrogations. After studying Mikule's case, the appeal commission proposed to remove the category C from the lustration law which was done by the Constitutional Court in 1992. However, it took Mikule three more years to win his civil suit and finally clear his name of the collaboration with the StB. All these events had a great impact on Mikule's well-being. He found this experience very traumatic and recollected his suicidal tendencies during the campaign against him in 1990. He was one of the first victims of the screening process in Czechoslovakia, although he was able to eventually clear his name.<sup>127</sup>

The Mikule case demonstrated how easy the lustration law could hit hard even former dissidents. Those people resisted the regime and were put under surveillance by the secret police which kept records leading to their conviction after the regime fell. The evidences derived from the records were unreliable and they harmed victims, who had to fight for achieving justice and clearing their names. The lustration law also failed to

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<sup>127</sup> Ibid., 333-334.

find criteria according to which a person could be judged if he actually was a secret police collaborator. Some of the dissidents were forced to sign a formal paper in which they agreed to work for the StB. These dissidents did not give any useful information which could harm anyone. However, they were treated as secret agents according to the lustration law despite the fact that they were persecuted by the Communist regime.<sup>128</sup>

One of the most famous cases was that of Jiřina Bohdalová, who was a celebrity actress since the 1950s. In contrast to Mikule, Bohdalová had never been a dissident and after 1989 did not occupy any political position that would be subjected to lustration. But, according to the Act of Public Access to Files Connected to Activities of the Former Secret Police her name was published in the register of secret police collaborators. Bohdalová filed a lawsuit against the Czech Ministry of Interior demanding that her name must be removed from the register. The trial discovered that Bohdalová was psychologically tortured by the StB officers in the 1950s, but rejected an offer to collaborate with the secret police. She was temporarily suspended from working for the state TV corporation for her unwillingness to cooperate, but was promised that if she agreed to do so, the incarceration of her father might be reviewed and her sister might be allowed to obtain university training. According to the secret police

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<sup>128</sup> Ibid., 333-334.

records, Bohdalová was contacted twice a month, but never gave any compromising information. In 1961 the StB officers decided to stop their attempts to establish active contact with Bohdalová. The actress even did not sign any StB papers except a statement of confidentiality. The municipal court of Prague ruled in January 2004 that she had never been a secret police agent and her name must be removed from the register. However, the Ministry of Interior failed to follow the court ruling. The subsequent appeal court also ordered the Ministry to unconditionally remove Bohdalová's name from the register.<sup>129</sup>

Another important case was that of Jiří Černý, who was a politician for the Christian Democratic Union – Czech People's Party (KDU - ČSL). He also occupied the position of deputy mayor in one of the Brno city districts. According to some sources, Černý became a secret agent in 1979 and even was paid for information. Many people in contact with Černý were also suspicious that he was a secret agent in the 1980s. However, Černý was cleared by the court, which ruled that due to the lack of evidence it was impossible to determine if Černý acted like a StB agent, despite the fact that his name was in the register. Final judgment was possible because Černý used a former secret police officer Martin Valehrach as a key witness. Valehrach testified during the hearing that he

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<sup>129</sup> Ibid., 334-336.

had invented Černý's entire file and the list of his paid activities. The practice of the usage of former StB agents in lustration lawsuits in Czech courts became very controversial, but common. Valehrach testified also in the case of Jan Pavlík, who held the position of the dean of the faculty of arts in Masarykova University of Brno. Pavlík claimed also that although he was registered as a secret agent, he never acted as one and Valehrach supported this claim. The case of Černý demonstrated that the files of the secret service were simply unreliable and that testimony of former agents could be self-serving.<sup>130</sup>

The lustration policy in Eastern Europe was very controversial in its evaluations in the West and was a subject of both international criticism and appraisal.

### 2.5 International aspects of the lustration policy

The phenomenon of lustration has been studied by scholars around the world since its implementation. The nature of lustration policy was very complex and there was mixed reaction to this policy. Multiple scholars along with various organizations and courts have repeatedly criticized the legality of lustration because lustration violated fair employment laws and the presumption of innocence rather than guilt. But, lustration policy has been repeatedly praised by international actors for its ability to make real

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<sup>130</sup> Ibid., 336-337.

changes in the political structure of the post-Communist states safeguarding democratic reforms. All of this international attention makes lustration policy not only a domestic phenomenon, but also an international one.<sup>131</sup>

The United Nations organization evaluated lustration policy in general positively by stating that lustration was a tool designed to create rule of law and to establish civic trust. The Office of the United Nations High Commissioner for Human Rights saw lustration as an effective solution to weed out corrupted officials. A number of other international organizations voiced their concerns about lustration. The European Committee of Social Rights within the Council of Europe and the Helsinki Federation for Human Rights argued that lustration laws violated the rights of individual and international treaty obligations. International legal bodies also paid special attention to the legality of lustration legislation. The European Court of Human Rights (ECHR) and the International Labour (ILO) Organizations Committee of Experts have heard a number of cases, which represented a conflict between the state and individuals regarding the implementation of lustration. In most of the cases the ECHR and the ILO ruled in favor of the plaintiff and against the state. Such a result

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<sup>131</sup> Cynthia M. Horne. "International legal rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context." In *Law & Social Inquiry*, Vol. 34, No. 3 (2009): 713-714.

demonstrated clearly that there is a problem with lustration implementation on the individual level. The international organizations ECHR and ILO held a special place in the lustration debate, because the economies of post-Communist Eastern European countries were subjects of scrutiny for these organizations, thus, putting the countries under the jurisdiction of the ECHR and the ILO.<sup>132</sup> The ECHR and the ILO helped to put lustration policy under international scrutiny by highlighting problems with this controversial policy from the point of view of international organizations. Because the ECHR and the ILO were organizations that had jurisdiction over lustration cases in Eastern European countries, they spent a large amount of time dealing with lustration policy. These organizations, thus, are the most suitable for studying the reactions of international organizations to lustration policies.

The main problems identified by the ECHR and the ILO were information problems, due process violations, employment discrimination and bureaucratic loyalty concerns. Most of these problems were discussed in previous chapters and it is important to evaluate in this chapter the attitude of international organizations towards these problems. The information problem was focused on the reliability of information gathered by the secret services. The ECHR ruled that false accusations

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<sup>132</sup> Ibid., 715-721.

based on information taken from secret police files could damage personal integrity. But, the ECHR failed to reject the use of this information, focusing on the appropriate use of the files and on the transparency of sources of information used in the court. The ECHR accepted the secret police information for proving collaboration and even stressed that if the lustration trials were about discovering the past, then the national governments should make secret police information public. The ECHR defined secret police information as viable, but addressed the issue of differential access to information. The state had more access to classified information than an individual, thus, making access unequal. The ECHR focused on the fair use of secret service information, rather than its credibility. In contrast to the ECHR, the ILO evaluated the use of secret police information as evidence in lustration policy cases as being less positive. The ILO ruled that the arbitrariness of state security files and the incompleteness of their content were the potential legal problems.<sup>133</sup>

The due process violation problem was seen by the ECHR and the ILO as an unfair implementation of lustration laws, when procedural protections, such as the right of appeal, were not implemented. This situation occurred often during the transition period from Communist rule to the new regime. In general, the ECHR did not find that due process

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<sup>133</sup> Ibid., 721-723.



safeguards were necessarily incompatible with lustration legislation. However, the ECHR stated that the lack of selectivity, expressed in the guilt by association concept, could be seen as a violation of due process. Individual guilt must be demonstrated according to the ECHR, which was not always the case in lustration trials in which guilt was often established because of an affiliation with the Communist Party. The ILO did not express a clear opinion on this issue.<sup>134</sup>

The employment discrimination problem was seen as an issue of discrimination of employment principles based on past memberships or affiliations. The ECHR took a more positive view on the issue of employment than did the ILO. The ECHR ruled that no one has a right to a certain job, and therefore lustration exclusions in the governmental apparatus were permissible and lustration legislation did not violate the fair employment rule. However, the ILO stated that the lustration process violated the ILO convention which prohibits employment discrimination based on political opinion. The ILO spoke out against a number of lustration laws including the Czech screening law, which limited employment possibilities to certain individuals based on their political opinion or former membership in political groups.<sup>135</sup>

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<sup>134</sup> Ibid., 724-726.

<sup>135</sup> Ibid., 726-731.

The bureaucratic loyalty problem was a problem of the loyalty of the old elite to the new regime. Many proponents of lustration argued that the old bureaucracy inherited from the Communist regime had no reasons to facilitate the new democratic regime and must be banned from occupying certain positions in the state bureaucracy. Both the ECHR and the ILO supported the idea of vetting individuals according to their loyalty. The ECHR stated that democracy needs special protection in times of transitional periods and bureaucratic loyalty is important for defending the new regime. Lustration could be used for testing the integrity and moral credibility of civil servants in order to reduce its danger to democracy. The ECHR upheld the state's right to lustrate individuals based on loyalty criteria. The ILO ruled that lustration is consistent with the state's right to screen for loyalty and that the state also has the right to consider political, civic, and moral qualities in their employment policy. The ILO recognized that certain public service positions require special obligation of neutrality and loyalty.<sup>136</sup>

The ECHR and the ILO, both of whom engaged most actively in the lustration debate among international organizations, supported lustration legislation in general, contrary to wide criticism from other organizations and various scholars. The ECHR and the ILO ruling against the state and

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<sup>136</sup> Ibid., 731-734.

for plaintiffs in many cases demonstrated that there was a problem not with the law itself, but with its implementation on a personal level. These institutions supported lustration as part of a broader program of democratization.<sup>137</sup>

The extensive attention which international actors have paid to lustration legislation makes lustration not only an internal phenomenon, but also an international one. However, scholars of lustration policy have had a tendency to explain lustration only by internal reasons deeply rooted in the process of transition or in the political structures of the post-Communist regimes. The international dimensions of lustration have been studied only from the point of view of how international organizations, such as the European Court of Human Rights or the International Labour Organization, reacted to the lustration policy. But, the policy of lustration could be also analyzed from an international relations point of view to offer an alternative explanation of the policy, based on external factors. Lustration can be explained within the theoretical framework of the liberal school of international relations or an alternative explanation can be found in the constructivist theory of international relations.

Liberal theory of international relations is a complicated multi-dimensional theory, which arises from the basic concepts of the liberal

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<sup>137</sup> Ibid., 737-738.

ideology.<sup>138</sup> Liberal theory emphasizes the necessity to have international institutions based on a set of common rules and practices shared among all participants of such institutions. Such practices include for instance free trade, parliamentary democracy, a strong civil society. Strong international institutions which are based on liberal practices, will encourage the cooperation between the states, mitigate anarchy in the international system and be able to achieve lasting peace. The free market economy principle, which is an important part of the liberal ideology, will create a global network of economically interdependent actors, whose drive for wars would be reduced by the understanding of the inevitable economic losses that they would suffer in the case of an armed conflict. But, if the actors would adopt the politics of peaceful cooperation, they would receive enormous material gains out of a laissez-faire economy. The high reliance on the rule of law is also an important trait of the liberal school. Domestic law creates order within a state, whereas international law creates a stable system of relations between states, promoting security and stability.<sup>139</sup> An important aspect of this system of relations is that the security of a country can be achieved not by the reliance on the military capability of this state,

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<sup>138</sup> Michael W. Doyle. "Kant, Liberal Legacies, and Foreign Affairs." In *International Politics: Enduring Concepts and Contemporary Issues*, edited by Robert J. Art and Robert Jervis. (Boston, Columbus, Indianapolis: Pearson Education, 2013), 111-118.

<sup>139</sup> *Ibid.*, 111-118.

but rather by participation in the international system of collective security within the liberal world, in which every participant is treated as equal. This issue blurs, at least in theory, the boundary between the small states and the great powers. Thus, the proposal of security and substantial material gains is a strong point of liberalism, which makes this ideology attractive.<sup>140</sup>

After the revolutions of 1989, a new non-Communist elite came to power in Eastern European countries. This elite wanted to break away from Marxist ideology, which they saw as an obstacle for further development of their countries. With the failure of the alternative Marxist project of globalization led by the Soviet Union, only the liberal project remained. After the fall of the USSR and the Council for Mutual Economic Assistance, it became obvious that globalization could be fulfilled according to liberal principles. Many countries, including those of Eastern Europe, sought the opportunity to join the important economic institutions such as the International Monetary Fund and the World Bank, because if they isolated themselves from the global world, they suffered serious economic losses. Governments of the Eastern European countries wanted for their countries to adopt liberal principles in order to become a part of the global market and improve their economic condition.

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<sup>140</sup> Ibid., 111-118.

Another important reason for the Eastern European countries to integrate into the liberal world was security. These countries were not able to create formidable armed forces due to a small population and budget constraints. Thus, they considered that it would be possible to achieve security only by joining NATO. The liberal theory of international relations teaches that the principle of equal partnership of the great powers and the small countries in their participation in international institutions is possible, and this issue was especially important to the Eastern European countries, which saw liberal institutions as more respectful to their sovereignty and independence than the Warsaw Pact.

The improvement of economic conditions and the security issue were the main concerns of the governments of the Eastern European countries after 1989. The new political elite decided that the only way to solve these issues would be through integration into the institutions of the liberal world. But, this integration could be achieved only by the consolidation of the elite of these countries. After the revolutions of 1989, the Eastern European countries became increasingly divided because many former Communists created strong opposition movements. The lustration policy was a tool in the political struggle, but this struggle was caused not only by the current electoral situation in the Eastern European

countries, but also by the strategic vision of national development, which was shared among the new elite.

Lustration policy can also be explained through the lenses of the constructivist theory of international relations, which emphasizes the importance of perception in the construction of the social reality.<sup>141</sup> The constructivist theory is a part of a broader postmodernist paradigm, which negates structure as a form of organization of human society; rather, it presents society as an amorphous body, which consists of various components randomly connected with each other without necessarily any predisposition. Such a body possesses enormous plasticity and can construct and deconstruct any structural imitations, which are always subjects of change. The constructivist theory also negates any given structure in international relations and criticizes both the realist and liberal schools, suggesting that the nature of relations between the actors is not something predetermined, but rather is constructed during the interaction itself. The actors are not driven by certain features that arise from a particular structure of society or human nature, but rather they produce such structures themselves. The constructivist approach highlights perception as a basis for an identity creation. The interests of a state

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<sup>141</sup> Alexander Wendt. "Anarchy Is What States Make of It." In *International Politics: Enduring Concepts and Contemporary Issues*, edited by Robert J. Art and Robert Jervis. (Boston, Columbus, Indianapolis: Pearson Education, 2013), 65-72.

depend on social context and identity, which is constructed every day during the continuous process of social formation. Thus, perceptions and the creation of a new identity in Eastern Europe are important for the constructivist approach.<sup>142</sup>

The government and the peoples of the Eastern European countries were encouraged to perceive the principles and practices of a Communist regime as immoral, contrasting them with the principles and practices of a Democratic regime, which were considered as moral. Eastern Europeans were also encouraged to view the Marxist economic model as ineffective; moreover, they were encouraged to view the model of liberal economy as an effective one and felt compelled to adopt it, seeking economic prosperity. Therefore, the peoples of the Eastern European countries believed that to become a moral state they had to cleanse the state apparatus of the political elite of the immoral Communist state. The Eastern European countries decided that they had to follow a certain pattern of moral behavior in order to “purify” themselves and be accepted among the other putatively more moral democratic regimes. Thus, the Eastern Europeans adopted lustration laws as a tool for purification of their state apparatus. Such a linkage between the moral improvement of a state and lustration policy was demonstrated by various

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<sup>142</sup> Ibid., 65-72.



scholars. Although lustration policy was harshly criticized by various international organizations such as the Helsinki Human Rights Watch for the assignment of collective guilt and the violation of due process standards, other international organizations such as the ECHR and the ILO praised the moral purpose of lustration and upheld its consistency with democratic practices. Transitional justice was seen by the Eastern Europeans as morally justified, despite the fact that many citizens questioned the methods which were adopted for such a purpose.

The international aspects of lustration revealed an interest of the countries of Eastern Europe about their image in the eyes of the international community and, especially, Western Europe. Eastern Europeans considered the Western European countries as an example for successful and stable development. Eastern Europeans tried to solve the problems of their countries by reforming their societies according to Western European standards and adopted practices that they perceived as Western European. Lustration was one of these practices which could provide a political system not dominated by a single Party, but rather giving fair representation of all elements of society in the parliament. However, the later questioning by some groups in the West of the morality of lustration legislation itself was an unpleasant surprise for Eastern Europeans.

## Chapter 3

### DENUNCIATIONS PRACTICES IN THE MODERN EUROPEAN HISTORY

This post-Soviet situation can be better understood by comparing it to post-World War II situation where the victorious allies sought to determine who exactly among the Nazi regime was responsible for disastrous consequence of the Nazi rise to power.

In general, the practice of transitional justice is based on certain principles such as the personal responsibility of individuals who hold positions of power in a state. If a state commits crimes under the leadership of those individuals, presumably, they bear the guilt for such acts and should be prosecuted. If those individuals belong to certain organizations or political parties, these parties are usually declared to be corrupted institutions, which should be dissolved. The lustration policy in Eastern Europe was adopted in order to purge the state civil service of individuals who had occupied positions in the Communist Party or its affiliated organizations. Such organizations had to be purged through the prosecution of the individuals who had membership in or were closely affiliated with these organizations. The new regimes perceived members of those organizations as the main wrongdoers, the persons who were responsible for the crimes committed by the previous dictatorial regime.

Such a picture assumes a particular viewpoint about the nature of the dictatorial regime, which is defined as a form of government in which an individual or a small political entity (the Communist party, Nazi party etc.) possesses absolute power without constitutional limitations. A later transition to democracy often raises the question of the responsibility for crimes of the old regime. The tradition of transitional and post-transitional justice assumes that only the group which monopolized power under the old regime should be responsible for state crimes in contrast to the main population, which is considered innocent because it had no power and did not support the dictatorial ruling elite. Assuming as much to be the case, society can easily be cleansed through the purge of organizations or individuals that supported the previous regime.

When the Nazi regime fell in 1945, the Allies had the problem of how to deal with a country whose citizens had committed multiple crimes. The United States, Great Britain and the Soviet Union agreed that Germany should be cleansed of the Nazis and the people who were responsible for mass murders in concentration camps should be punished. However, the main questions were who are these people and how could their guilt be defined. The allies set up the Nuremberg War Crime Trials in 1945. Nineteen high-ranking officials such as the Head of the General Staff of the Army, the Head of the Navy, the Foreign Minister, the Minister

of Armaments and War Production received sentences from imprisonment to death. The Nuremberg Trials raised, however, a number of legal and moral questions. Are these people the only ones responsible for the crimes of the Nazi regime? Could people be punished for actions which were not a crime at the time of their commitment? Could individuals be prosecuted for atrocities ordered by their leaders? Despite initial fear of general resistance, the Allies agreed that the sense of law and order in Germany should be restored and certain individuals should be tried for war crimes. But, the trials of a limited number of individuals could hardly help to deal with broader questions of how to transform German society, which was under the influence of the Nazi ideology for many years.

The Allies adopted different approaches of how to deal with this problem. The Soviets interpreted Nazism as rooted in socioeconomic conditions. The eradication of Nazism required major structural changes in the social and economic organizations of society. Land reform, which abolished the Junker class, was carried out in the Soviet zone along with the expropriation of property of certain Nazi industrialists and with massive purges in the administrative, judicial and educational spheres.<sup>143</sup> In contrast to the Soviet approach, the Western model of denazification was more individualistic. The Americans introduced the Law for Liberation from

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<sup>143</sup> Mary Fulbrook. *A History of Germany 1918-2008. The Divided Nation*. (3rd ed. Wiley-Blackwell, 2009.), 122-127.

National Socialism and Militarism on March 5, 1946. Individuals were to be judged, according to this law, following the principle of personal guilt. External criteria such as membership in the NSDAP were not sufficient criteria for punishment. In order to find all persons responsible, a registration procedure was established, which every German above 18 years had to undergo.<sup>144</sup> The Germans had to complete a detailed questionnaire with 131 questions about their previous political activity. According to the information from the questionnaire, the Germans were divided into five categories: 1) major offenders 2) offenders (activists, militarists and profiteers) 3) lesser offenders (probationers) 4) followers 5) persons exonerated. On the basis of this classification, individuals could be imprisoned, fined, restricted in their employment or declared to be innocent of crimes committed by the Nazi regime.<sup>145</sup>

Despite all the differences between the Soviet and the American model, they also shared some similarities. Both models assigned the guilt for all crimes in Nazi Germany to particular individuals or to particular groups such as the Junkers or Nazi teachers, thus clearing the rest of the German population from all guilt. As a result, denazification did not provoke a serious confrontation with one's past for most Germans. The

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<sup>144</sup> *Law for Liberation from National Socialism and Militarism*, chapter 1, article 2-4.

<sup>145</sup> Mary Fulbrook. *A History of Germany 1918-2008*, 122-127.

German population was concerned primarily with individual survival through self-justification or the reinterpretation of former activities in a favorable light. Such a situation gave birth to the legend that Nazi Germany was divided into two groups: the oppressive political elite and the rest of population, which was against the elite and even resisted the political system. Most Germans attempted to present themselves as always secretly having been against the Nazi government. Some observers commented ironically that it seemed that after the war Hitler was the only Nazi in Germany.<sup>146</sup> Moreover, the general sense of injustice of the Allied approaches to denazification created a common hostility among the German population to the occupying forces. However, both the Soviet Union and the Western Allies agreed to turn a blind eye to this problem, because Germany, which was purified from its Nazi past, could be integrated into their spheres of influence.

The model of dictatorship, which conveniently presented the dictatorial state as divided into a dictatorial elite and the rest of population which was always against the dictatorial government, has major deficiencies. The main deficiency is the failure to explain the existence of such a state in the long-term perspective. A state system without major popular support would hardly have lasted for many decades. However, it

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<sup>146</sup> Ibid., 127-129.

is very difficult to measure the support of the population in a dictatorial state. Dictatorial states do not have opinion polls, and if they do, the result would be doubtful. But, some features exist which can give helpful insight into the life of the people in dictatorial states. Letters of denunciations are one example of such features. The studies of denunciations under dictatorial regimes made by Sheila Fitzpatrick, Robert Gellately and other historians, revealed interesting details that make the general perception of dictatorship irrelevant.<sup>147</sup>

Denunciations may be defined as voluntarily communications from individual citizens to an authority, such as a state or church official. Denunciations contain accusations of wrongdoings of other citizens or state officials and call for their punishment.<sup>148</sup> Denouncers cite often a duty to the state or the public good as the reason for denunciation and disclaim any personal interest on their part. The term “denouncer” should be differentiated from the term “informer”, which implies a regularly paid relationship to the police or secret service. The state is usually the recipient of such denunciations, but in some cases they can be produced during interrogations by the secret police as in the case of Stalinist Russia

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<sup>147</sup> Sheila Fitzpatrick and Robert Gellately. “Introduction to the Practices of Denunciation in Modern European History.” In *The Journal of Modern History*, Vol. 68, No. 4 (1996): 747-749.

<sup>148</sup> *Ibid.*, 747.

or by public organizations such as U.S. House Committee on Un-American Activities. The practice of denunciations is not exclusive to dictatorial states, but also can be adopted in other states that usually are not described by historians as totalitarian, such as the French Revolutionary state.<sup>149</sup>

Interest in the studies of denunciations was sparked by the end of the Cold War and the collapse of the Communist regimes in Eastern Europe in 1989. Revelations about the system of coercion reinforced an interest in the study of authoritarianism, especially when witness's testimonies became available along with books and articles written by dissidents and victims of the regime. The opening of the secret police archives in some countries allowed many historians to rethink the very concept of the dictatorial state. Discussions of regimes such as the GDR have focused on the role of the ordinary citizen who was not a member of the secret police but did participate actively by informing the authorities of suspected illegal activities. The archives were visited by many scholars and private citizens to examine declassified documents. The study of denunciations had an important place in historical research. Denunciations occupied an intermediate place between society and the state authorities, constituting an important ingredient of dictatorial systems. Many people

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<sup>149</sup> Ibid., 747-749.



were involved in the system of denunciations either as agents, who signed a formal agreement with the secret police, or as occasional denouncers, who notified the authorities about “enemies of the state.” The collaboration of ordinary citizens helped to facilitate the system of terror at the grass roots and demonstrated the large degree of support for the dictatorial regime among the population.<sup>150</sup>

The phenomenon of denunciations has multiple historical examples. The French Revolution caused enormous social and political upheaval of French society, in which public participation in politics increased dramatically in contrast to that with the Old Regime. But, along with the mass participation of commoners, especially during the Republican phase (1793-94) came the widespread fear for the safety of the Revolutionary regime and the support of a denunciation policy that was supposed to protect it. The necessity of denunciation was rooted in the fragility of a revolution perceived to be surrounded by numerous dangerous enemies. The imminent danger for the Revolution served as the justification for this policy. The moderate and radical revolutionaries both agreed on the existence of enemies of the Revolution, but disagreed about their identity and what to do with them. The revolutionaries encouraged the public to notify authorities about suspicious activities in

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<sup>150</sup> Ibid., 749-751.

order to weed out the enemies of the Revolution. However, the mass informing issue caused a heated debate between revolutionaries as to how to prevent informing from becoming a tool of vengeance and causing mutual enmity within society. The revolutionaries wanted to differentiate denunciations into two categories: “délation” (informing) and “dénonciation” (denouncing). “Délation” was an act of civic duty committed by vigilant citizens out of a sense of patriotism without any self-serving motives, whereas “dénonciation” was defined as secret informing of the police for personal reasons. The first category of informing was perceived as a virtuous act; the second category was perceived as a corrupt practice connected to the universally hated police spies of the Old Regime and thus part of the tyrannical practices of the Old Regime. The revolutionaries tried to incorporate the denunciations committed out of patriotism into political practices of the Revolutionary regime, and condemned the alternative usage of denunciations for self-serving purposes such as the settling of private scores. Denunciation was the civic duty of a citizen, who should care about public affairs as well as his individual actions to defend and promote the Revolution, thus securing the transition from tyranny to liberty and equality.<sup>151</sup>

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<sup>151</sup> Colin Lucas. “The Theory and Practice of Denunciation in the French Revolution.” In *The Journal of Modern History*, Vol. 68, No. 4 (1996): 768-785.

The principle of publicity was very important in the denunciation debate, because publicity was the line which differentiated denunciation and informing. The revolutionaries insisted that denunciation should be a public act, where the denouncer had to sign his denunciations. In the case of false accusations, the name of the denouncer had to be posted alongside the list of the enemies of the Republic. Such publicity was seen as a guarantee against self-serving usage of denunciations.<sup>152</sup>

However, as radicalization of the Revolution progressed, denunciations changed their meaning. Because denunciations were to be seen as an act by a member of the sovereign people on behalf of these people, this act was seen as a collective action. Such an interpretation meant that denunciation did not require publicity and could be anonymous. Because denunciation was seen as a collective obligation it also served the function of disciplining those who did not denounce other members of community. Denunciation turned from a weapon against treason to the Revolution to a self-disciplinary measure. Such an interpretation blurred the theoretical line between denunciation and informing. The new meaning of denunciation played an important role during the French Revolution

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<sup>152</sup> Ibid., 768-785.

because it became a major tool in the struggle of various factions for power and it cost the loss of life of many revolutionaries.<sup>153</sup>

An interesting case of the denunciation practice could be found within the Roman Catholic clergy in the late nineteenth and early twentieth centuries. Religious communities with an institutionalized structure ought to control the actions and the thoughts of their members, because a religious system is based on a common set of beliefs and rituals. Deviation from this set of rules is a threat to the entire community and to the very existence of the entire religious system. Because a single vision of “truth” is essential for the preservation of the system, this system has to keep watch on the community to check the presence of such deviations. The Modernist Movement, for example, divided the clergy of the Catholic Church in the late nineteenth century by challenging the single vision of “truth”. The Modernist movement was an attempt of committed members of the Catholic Church to integrate the ideas and results of contemporary science and history into Catholic teachings and its belief system. However, many high-ranking members of the clergy saw this attempt as a threat to the basic beliefs of Catholicism. The institutional leadership of the Church was afraid that reforms would undermine the authority of the hierarchy and its ability to govern the Church. Many members of the clergy

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<sup>153</sup> Ibid., 768-785.

adopted an anti-Modernist agenda as a response to the perceived threat. Many denunciations were made to Rome by members of the clergy, resulting in numerous excommunications. Some members of the clergy even wanted to institutionalize the practices of denunciations. The conservative prelate Umberto Benigni was a passionate supporter of the denunciation system. He sought to establish a like-minded network of periodicals and journals along with a sophisticated system of internal correspondence in order to encourage denunciations. Benigni believed that denunciations would help to preserve the control of the Church over the thoughts of its members. He and his associates wanted to save the Church from internal struggles and the revolution of modernity. Benigni's group rejected feminism and the separation of church and state, focusing on promoting the spirit of the Counter-Reformation. Benigni considered that every tool could be used for such a benign goal, including denunciation, which he saw as a natural outgrowth of the Catholic community, and defended it harshly. As a consequence, Benigni and his followers damaged the Catholic Church seriously by disrupting in the lives of many Catholics, promoting an atmosphere of suspicion and mistrust in the Church, and paralyzing scholarly inquiry within its structure. Pope

Benedict XV officially disbanded Benigni's group in 1921 after criticism grew stronger against their destructive actions.<sup>154</sup>

Dramatic changes occurred in the Russian Empire in the second half of nineteenth century. Traditional relationships within Russian society underwent rapid transformation due to the changing economic conditions. These changes could be clearly seen in the traditional Russian village. The rapid transition to a commodity-based economy produced a powerful drive to find nonlocal sources of peasant income. Because of this situation, the rate of peasant labor migration out of the villages increased dramatically. A distinct culture of denunciations developed in the village parishes as a response to the fast-growing peasant migration, which threatened to destroy traditional ties in rural Russia. The popular village perception was that life outside the village could corrupt peasants and young migrant workers who were especially vulnerable to the temptations of nonvillage life and to the absence of strict authority guiding their lives. Labor migrants were considered more likely to be corrupted members of the rural community who neglected their religious duty or engaged in rabble-rousing and debauchery. The social system of rural Russia sought to maintain the peasant migrant's link to his native village and to regulate

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<sup>154</sup> Lease, Gary. "Denunciation as a Tool of Ecclesiastical Control: The Case of Roman Catholic Modernism." In *The Journal of Modern History*, Vol. 68, No. 4 (1996): 819-830.

his behavior if he worked away from his family and village. The agents of control were the village parishes and village priests.<sup>155</sup>

Priests were encouraged to denounce to the Church authorities or the police anyone who could present a threat to spiritual or civil order. Priests were required to take an oath of loyalty to the tsar, and they were perceived by the peasants as channels of information to higher authority. Such a perception created the culture of denunciation in rural Russia. Priests were also expected to pay special attention to the rehabilitation and reintegration of labor migrants into village communities through religious rituals such as collective worship and the celebration of births or weddings. Priests visited every household at least once a year to affirm the relationship between the priest and member of the parish by blessing their houses and praying with the family. Such close relationships based on religion gave the opportunity to root out religious nonconformists. All parish priests were required to file annual reports to record religious attendance and to point out deviants. The Church authorities could monitor the religious life of the villagers through such reports. If a priest failed to submit the report, he could lose his position. Priests usually reported to the Church authorities cases of noncanonical marriages or the

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<sup>155</sup> Jeffrey Burds. "A Culture of Denunciation: Peasant Labor Migration and Religious Anathematization in Rural Russia, 1860-1905." In *The Journal of Modern History*, Vol. 68, No. 4 (1996): 786-818.

failure of families to baptize their children. The priests kept all records in the village such as tax documentation or loan records, forcing peasants to reach an understanding with the priest. However, the efficiency of the priest's work was often undermined by several factors. The Church simply did not have enough priests, and many parishes were too big to be monitored sufficiently. Priests were also overburdened by the large number of religious rituals, which made it impossible to perform them in every household. This situation made priests highly reliant on the voluntary participation of other members of the community in the monitoring process, who were expected to denounce fellow villagers. Priests depended enormously on these denunciations because they were unable to perform their moral duty on their own. Denunciations were passed on to the priests informally and anonymously. They could do a lot of damage in the closed communities in which a family's reputation could last for generations. Non-conformist villagers with a bad reputation could become social outcasts.<sup>156</sup>

Stalinist Russia was by no means different from other regimes in encouraging denunciation practices. The Bolsheviks despised the traditions of denunciations that took place in the Russian Empire and associated them with the corrupt practices of the old regime. However,

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<sup>156</sup> Ibid., 786-818.



they quickly realized that revolutionary denunciations were necessary and virtuous. Citizens had to be encouraged to denounce spies and the enemies of the Revolution. The denunciation of backsliders was the duty of every member of the revolutionary party in order to preserve the transparency and purity of the Revolution. This concept was institutionalized in the periodic party purges in the 1920s and 1930s. But, these popular denunciations were perceived as the people's monitoring of the bureaucracy and as a mass form of democratic political participation. This participation was expressed in the creation of the workers' and peasants' inspectorate, or in the recruitment of workers and peasants correspondents for newspapers to report the local abuses of power by Soviet officials and to monitor activities of class enemies. Self-criticism sessions in the factories were introduced in order to stimulate the expression of workers' grievances, and to denounce the incompetence of managers. The practice of denunciations was greatly encouraged by the authorities in the late 1920s to expropriate and to deport class enemies such as prosperous peasants (kulaks), or private entrepreneurs (nepmen).<sup>157</sup>

According to Soviet authorities, many class enemies tried to conceal their true sentiments and thoughts, so that denunciations had to

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<sup>157</sup> Sheila Fitzpatrick. "Signals from Below: Soviet Letters of Denunciation of the 1930s." In *The Journal of Modern History*, Vol. 68, No. 4 (1996): 831-866.

play a big role in establishing their true identity. The Great Purges of 1937-38 provoked a new wave of denunciations. Soviet citizens were horrified by the show trials, which supposedly revealed the true identity of numerous enemies of the people who disguised themselves as prominent party members. The number of denunciations grew so high that party leaders became increasingly concerned by its disastrous influence on government efficiency and industrial production. The Soviet authorities finally spoke out against hysterical and unfounded denunciations in an attempt to lessen disastrous consequences. Soviet denunciations were usually not addressed to the secret police, but rather to some organ of the Communist Party or even to Stalin himself. Many letters were also sent to the newspapers, which had special paragraphs called "Signals from below". All newspapers maintained large departments to process the readers' letters. Letters were usually signed by their senders and only very few of them were sent anonymously. Despite the fact that most of the letters were signed, secrecy remained a big concern for the denouncers. Many letters were marked "secret" by their writers, because they feared retaliation from their bosses, who were often the objects of denunciations. If a denunciation was based on false accusations, it could backfire and the sender could face prosecution on criminal charges.<sup>158</sup>

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<sup>158</sup> Ibid., 831-866.

Likewise, the regime of the Third Reich was determined to control and modify most of the areas of social life in Germany. Denunciations became an extremely useful tool of control. Denunciations were not restricted to the secret police sphere, they performed various social and political functions, besides facilitating the grass-root terror. However, the Gestapo was the final destination point for the most important Nazi regime denunciations. The Gestapo played the role of the clearinghouse for numerous denunciations, which were sent by the citizens to various institutions of the party or state. A very broad definition was given to political criminality in 1933, thus expanding the function of the Gestapo. Most forms of political dissent were also gradually criminalized. Because of the rapid criminalization, the sphere of misdemeanors punishable by law expanded to the private sphere and to racial and sexual questions. The beginning of War World II brought further restrictive measures and increased the amount of work for the Gestapo, which was expected to work preventively and arrest certain social types before they could commit their crimes. However, the numbers of the Gestapo were always relatively small and it was impossible for this organization to accomplish its goals without the cooperation with the police and the widespread support of German society. In contrast to the Soviet practices of denunciations, the Nazi regime considered the racial question to be highly important and

encouraged Germans to denounce Jews. But, the overreliance of the Gestapo on civilian denouncers led to large numbers of cases which were based on false accusations and were later dropped. Many Nazi leaders, including Hitler himself, expressed alarm about the large numbers of denunciations, because such behavior violated the Nazi concept of Volksgemeinschaft: a community of people of the same race, who shared the ideals of brotherhood and unity. Not only the Gestapo, but also the NSDAP used denunciations for the purpose of keeping its ranks clean. The Nazi officials were asked by state and party institutions about the political reliability of persons applying for state jobs or candidates for promotion. To answer these questions, the Nazi officials used information based on denunciations made by the German population. The Nazi regime existed only for twelve years and there was not enough time for denunciations to become institutionalized. The self-policing and the free flow of denunciations from below were important features of the Nazi practices of control.<sup>159</sup>

In contrast to Nazi Germany, the denunciations practices in the GDR were much more institutionalized. The number of people who worked for the Stasi was much higher than the number of those who worked for the Gestapo. But, the number of unofficial informants was as

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<sup>159</sup> Gellately, "Denunciations in Twentieth-Century German", 931-954.

high as in the Nazi Germany. The Stasi used the practice of rotation of unofficial informers by retiring about 10 percent of them every year and recruiting new people instead, so that most of the informers could be replaced in a few years. According to some estimation, one in every eight citizens informed the GDR authorities secretly. In contrast to the Gestapo, which relied heavily on the voluntarily flow of denunciation letters, the Stasi sent hundreds of regulations about how to deal with recruitments or rewards of unofficial informers. The Stasi preferred to establish working links with their agents by assigning to them the status of unofficial informer. In contrast to the Gestapo, the Stasi regarded spontaneous denunciations from the population with suspicion. However, some information was collected from this source as well. The Stasi wanted to institutionalize denunciation practices by recruiting informers and assigning to each one a precise, politically oriented task. The Stasi officers paid considerable attention to the recruitment of informers, spending months on background checks to ensure the loyalty of potential recruits. The Stasi leaders believed that they were surrounded by numerous enemies and the creation of a widespread surveillance network was the only way for the GDR and Socialism to survive.<sup>160</sup>

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<sup>160</sup> Ibid., 954-964.

The practice of denunciations played a big role in Modern European history. The motivation of the denouncers is usually the most questionable part in the study of denunciations. It is very difficult to define the motives in every case of denunciation. In many cases, denouncers were driven by their self-interest, such as vengeance against a particular official for past abuses, or the desire to get rid of a competitor. However, many denouncers were not motivated by self-interest in denunciations and did it out of support of the regime. Many scholars described denunciation practices as an exclusive feature of totalitarian regimes, but the study of such practices demonstrated clearly that denunciations exist in non-totalitarian regimes as well. There is a thin line between informing the authorities out of patriotic civil duty and the corrupt totalitarian practice of denunciation. The French Revolutionaries tried to differentiate one from the other, and failed. The notion of virtuous denunciation did not work when the contradiction became obvious: If denunciation is supposed to be the guardian of freedom, who could guard freedom from the denouncer?<sup>161</sup> However, the unwillingness of most modern Western regimes to make denouncing a crime punishable by law suggests that a state may be tempted to use the potential of its citizen's vigilance in some cases. The relationship between the practice of denunciation and the

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<sup>161</sup> Lucas, "The Theory and Practice of Denunciation in the French Revolution", 785.

existence of police can be traced in every Western regime. All police forces create and cultivate a network of informers to monitor criminal activity and rely on spontaneous information from the public. The citizens of the United States often inform authorities about minor violations by fellow citizens such as speeding on the highways, tax evasion or illegal immigration. The differences between “good” and “bad” denunciations depend often on an evaluation of the regime. If people disapprove of a regime, they usually condemn the citizens who voluntarily offer the information to this regime. But, if people approve the regime they tend to minimize the distinction between the interests of the state and its citizens, seeing denunciation as a necessary civic duty.<sup>162</sup>

Denunciation studies are important for refining the concept of dictatorship. Denunciation letters demonstrate the willingness of a population to participate actively in the political life of a dictatorial state, thus making the popular concept of dictatorship as a state of people oppressed by a ruthless dictator along with a small group of his followers questionable. However, some political decisions in the Western world are still being made based on the premise of a simplified black-and-white picture of a dictatorship. For example, the ongoing Syrian Civil War was viewed, at least in the beginning, by many in the U.S. media and by senior

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<sup>162</sup> Fitzpatrick and Gellately. “Introduction to the Practices of Denunciation”, 763-767.

officials as an uprising of the people of Syria against the tyrannical government of Bashar al-Assad and a solution for the ending of the conflict was proposed which assumed the removal of Assad from power.<sup>163</sup> But, this picture could not explain the tenacity of the dictatorial Syrian regime, which has been able to remain in power despite unfavorable international conditions. The situation in Syria suggests a more complicated picture of a dictatorial state as a system of checks and balances among the various ethnical and religious groups such as the Kurds, Alawite Arabs or Sunni Arabs, where different factions may have opposing interests and give their full support to the dictatorial regime.<sup>164</sup> Denunciation studies confirm the hypothesis of the dictatorial state as a system of relationships of various socio-economical or ethnical groups. These groups may vary in their attitude to the regime from non-participation in the dictatorial practices to their acceptance and full participation, which may be expressed in denunciation letters. To understand and explain the existence of dictatorial regimes, one should look at these groups and their interrelationships. However, the simplified

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<sup>163</sup> Jonathan Spyer. "Defying a Dictator: Meet the Free Syrian Army." *Worldaffairsjournal.org*, May/June, 2012; Helene Cooper. "Washington Begins to Plan for Collapse of Syrian Government." *The New York Times*, July 18, 2012.

<sup>164</sup> Jonathan Steele. "Most Syrians back President Assad, but you'd never know from western media." *The Guardian*, January 17, 2012; Max Fisher. "9 questions about Syria you were too embarrassed to ask." *The Washington Post*, August 29, 2013.



ideological dictatorial image that dominates media and government rhetoric often leads to the adoption of measures such as lustration, which moves the public further from understanding the phenomenon of dictatorship in Modern European History.

## Chapter 4

### CONCLUSION

Lustration practices affected the societies of Eastern European countries in many ways on both a personal and institutional level. Thousands of people in Eastern Europe had to undergo the procedure of screening in order to get a desired position in public service. The careers of many other individuals were destroyed by lustration legislation, despite the fact that these individuals might not have been involved in crimes committed by the previous regime. Their entire fault might have been membership in organizations such as the Communist Party. Some professions became the objects of screening, such as jurists and teachers in East Germany. They faced dramatic changes which were a pretext for further restructuring of East German academia in accordance with West German standards. In particular, many people were fired from these professions and, in most cases, replaced by West Germans. On a personal level, the hysterical “witch-hunt” for secret service collaborators led to multiple cases of false accusation of many prominent public figures. The German politicians Manfred Stolpe and Gregor Gysi, the German writer Christa Wolf, Czech law expert Vladimír Mikule, and the Czech celebrity actress Jiřina Bohdalová were accused of being collaborators based on information taken from the secret service’s archive. This

information was often incomplete and could not provide an unambiguous answer to whether the person was a collaborator or not. But, just a mention of one's name in the documents, or even mere suspicion, could lead to a branding of this individual as a secret police collaborator and to ostracizing this person from public life. This process of grass-root support of the lower classes of society for the lustration policy could be described as self-lustration. Such support demonstrates an acceptance of the lustration policy among a large percentage of the population.

The lustration policy was very useful in ousting the previous elite from the new regime during the revolutions in Eastern Europe without their physical liquidation, in contrast to the bloody purges of the French Revolution or the Bolshevik Revolution. The lustration policy demonstrated also a dedication of Eastern Europeans to building a society without the practices of mass surveillance and denunciations, which were widespread under the Communist regimes. The main problem was that, to condemn and punish these practices, new regime adopted policies of exclusion, which were similar in some aspects to the old Communist ways.

The great influence of the lustration policy on Eastern European societies makes it necessary to rethink the very concept of lustration. The important issue of self-lustration expands the lustration practice beyond the legal sphere. Lustration should be seen not only as set of legal rules,

but also as the mixture of legal policies adopted by the legislative bodies and informal practices, which were usually carried out by the population. This perception of lustration adds another dimension to lustration and extends the object of study from the legislation of the country to the society itself.

The study of lustration practices adopted by three different countries demonstrates clearly the differences in their approaches toward lustration. The implementation of the lustration policy differs from one country to another. These differences demonstrate the absence of single pattern of lustration policy, making the definition of lustration more problematic. The German lustration policy was an example of moderate implementation of this policy. The lustration principles were written into the Unification Treaty. The treaty provided a legal means for the state as opposed to the federal government to exclude systematically all former secret service collaborators from public office jobs. However, the German model of lustration did not mean the automatic exclusion of an individual from public office, but left the decision about his further employment up to state governments. Because of the federal structure of Germany, lustration in East Germany had some degree of diversity, which was not the case in the other centralized Eastern European countries. Because unified Germany consisted of two parts, Communist East Germany, where

lustration had been implemented, and West Germany, where lustration lost its meaning, there could be no strict lustration legislation for an entire unified Germany. Lustration in Germany varied in its scale from relatively mild in the case of Brandenburg to a harsh version in the case of Saxony, whereas the state government incorporated the principle of lustration into the state constitution. The unique feature of the German model of lustration was that lustration in East Germany went hand in hand with the takeover of the East German states by the West Germans and the removal of East Germans from many spheres of public life. Access to the secret police files was regulated by the Law on the Records of the Secret Service of the Former German Democratic Republic, which provided limited access to the archives to individuals and researchers.

The Czechoslovakian model of lustration proved to be the harshest model because of its unified policy, which was applied throughout the entire country. The lustration policy was adopted with the implementation of Act No. 451, unofficially called the "Large lustration act" and Act No. 279, called also the "Small lustration act". In contrast to the process in Germany, Czechoslovakian lustration laws provided a rigorous definition of which positions were not suitable for former informants, as well as for high-ranking officials of the previous regime. This process was controlled by the government and lacked some liberty in decision, as existed in the

case of Germany. The Czechoslovakian model was highly centralized whereas the German model was decentralized. Czechoslovakian lustration laws determined a number of positions in the civil service which were subject to screening, as well as groups of people who were prohibited from taking offices due to their Communist past. The automatic exclusion of a positively lustrated person from his office in the civil service made the Czechoslovakian lustration the most severe among Eastern European countries. The policy of access to the files was also more radical in the Czech Republic, because this access was not restricted only to personal data as it was the case in Germany. At first, the public access to the archives was not provided. Only in 1996 the Act of Public Access to Files Connected to Activities of the Former Secret Police was adopted to regulate public access. Later on, the Czech government granted broader access to the files, and even published some information in the official media giving, thus, unlimited public access to the personal information of collaborators.

The process of lustration in Estonia was unique to some extent, because exclusion was based not only on political affiliation, but also on an ethnicity as well. Lustration for different ethnic groups, such as the Russians and the Estonians, was done differently, because the goal of the purging of the Communists was combined with the goal of exclusion of

Non-Estonians from national politics. The lustration of Russians was affected through the Citizenship Law, whereas the lustration of the Estonians was enacted through the Law about the Oath of Conscience. Lustration of non-Estonians was the instrument for the “estonization” of the Estonian state apparatus, and was aimed at the exclusion of a large number of Russians from the field of national politics. The lustration of Estonians, in contrast, was much milder, individualistic in its approach, and did not affect a significant number of Estonians. The case of Estonia can be described as “hidden” or “ethnic” lustration, because the purging of former Communists from the civil service went hand in hand with the purging of Russians from the civil service.

The adoption of lustration practices assumed a particular viewpoint about the nature of a dictatorial regime, shared by many Western media and senior officials. This viewpoint is based on the premise that an individual or a small group of individuals can seize all power and cut off the rest of the population from participation in state politics. However, the studies of denunciation letters demonstrate that a population may accept and voluntarily participate in the practices of a dictatorial regime. The existence of the denunciation culture has multiple examples in Modern European history such as in Stalinist Russia or in Nazi Germany. However, the practice of denunciations is not exclusive to dictatorial

states, but also can be found in other states, which usually are not described by historians as totalitarian, such as the French Revolutionary state. Denunciation studies are important for redefining the concept of dictatorship. These studies show that the popular concept of dictatorship as a state of people oppressed by a ruthless dictator, aided by a small group of his followers, is misguided. This situation assumes the more complicated vision of dictatorship as a balanced system of relationships of various socio-economic or ethnical groups.



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