Theme 5

Decommunization & Transitional Justice

Irena Lasota

We have for this important discussion two speakers. The first presenter is **Petruška Šustrová**, a good friend of IDEE's Centers for Pluralism Network. We met in 1977. She is a veteran of Charter 77 and founder of the Committee for the Defense of Political Prisoners (VONS) in Czechoslovakia. From 1990 to 1992, Petruška was Counselor and Deputy of the Czechoslovak Minister of Interior, where she worked on the issues of lustration and decommunization. Today, she is a journalist and public commentator. **Levan Berdzenishvili** is a founder and leader of the Republican Party in Georgia, for which he spent time in the GULAG. He is presently an MP for the Republican Party as part of the Georgia Dream coalition. Levan was a co-author of bills concerning decommunization and lustration in Georgia.

Presentation

Communist Legacy and Lustration: The Case of the Czech Republic

by **Petruška Šustrová**

I would like to present the issue of lustration as it regards the Czech Republic.

A year ago, in 2013, we held parliamentary elections and 60 percent of eligible voters cast ballots—about 5 million people. The Social Democratic Party won the plurality of seats with 20 percent of the vote and a relatively new party ANO 2011 (YES 2011) got 900,000 votes, or 18.5 percent. The founder of ANO 2011 is a very rich businessman named Andrej Babiš. In the months before the elections, some media drew attention to the fact that Babiš had most likely cooperated with the Slovak division of the Czechoslovak security services and anyone who was interested could have found out that Babiš was a typical representative of the communist nomenklatura. He had been an official of a huge state enterprise and worked abroad. Our voters knew who they voted for.

Some people have written that Babiš and his ANO 2011 are a threat to Czech national security. I am not sure that it is a real threat or any larger threat than other movements that are trying to re-introduce the communist system to Czech society. I am describing this example to explain how the court system operates. In June 2014, a court in Bratislava determined that Andrej Babiš was not in fact an agent working for the state security services. In lustration cases, the Czech and Slovak courts can make such a determination if a former official of the state security services declares that the inclusion of a person on the list of security agents was due to fabrication by security agents of certain documents. In that case, the court usually decides to acquit the person or determine that based on the testimony of witnesses that someone is not a member of the security services. There is a large burden of proof.

The Law on Lustration was adopted twenty-three years ago on November 4, 1991 in the parliament of the then Republic of Czechoslovakia. The Law on Lustration (Law 451/1991, as it was numbered) stated that people who used to work in the state security services could not hold certain official positions. The law was contentious, but it was mainly designed to protect the country's national security. The Ministry of Interior at the time knew that before the communist system collapsed the lists of the state security apparatus had been handed over to the Soviet KGB and there was a real fear that such lists would be used to blackmail individuals to serve Soviet interests in our country. There was also a strong view that people who held key positions in the communist government and structures should not hold high public positions in the new democratic system.

There were not any political purges. This was a groundless accusation. One can say, however, that lustration did play an important role in Czechoslovak and then Czech politics and one can even say that there was some misuse of the law. At first, the law was to last five years and then it was extended several times. At the moment there are no limits for the application of the law, but at some point it will expire simply because of time—the law covers people who were born before 1971, people 44 years of age and older. The law will thus have less and less application.

Last year, nearly 20 percent of the Czech electorate demonstrated that it did not consider the communist past of ANO 2011's party leader an important factor determining its vote—and this is in addition to the 15 percent of voters who voted for the Communist Party. ANO 2011's platform is to establish a flourishing state free of corruption. Whether it is a right or left party on the political spectrum is hard to say, but it does not speak about returning to the communist system. It is a populist movement that offers people what they are most interested in.

The Law on Lustration was admired by a number of other post-communist countries in the region as a way of settling accounts with the communist past. There are public debates about whether or not to revoke the law, but there is not much impetus for repeal.

Another tool of decommunization was the law adopted in 1993 on the lawlessness or illegality of the communist regime. This law had mainly a declarative purpose but it also affects the rehabilitation of those who suffered from the communist regime. This law expressed the will of the majority of parliamentarians to deal honestly with the past regime. It was not easy. There were those taking part in the public discussion in 1991 who wanted to establish a judicial-type process to publicly condemn the communist past and if not a criminal tribunal at least some public process. I myself had doubts about this idea. One proponent was a friend and colleague who himself had been a member of the Communist Party for some time: did he want to lay blame on himself? Many of us remember that a similar problem was tackled by the Russian Federation Constitutional Court of 1992 when Yeltsin banned the Communist Party of the Soviet Union and the party appealed the ban. The Constitutional Court had to look all the way back in Soviet history to the October Revolution and the Court decided that it was not competent to determine the issue. It ruled, however, that communist party members were certainly free to begin a new Communist Party of the Russian Federation. And by February 1993, the Russian Communist Party, with more than half a million members, was the country's largest political party. It showed that adopting a law or process was not sufficient to deal with the communist past. We can see it in the Czech Republic, with its Communist Party, as well as in other countries.

The issue of communist legacy has to deal now with other public institutions. First of all, this has to do with the task of education and media. In this regard, I believe it was very important to revoke the thirty-year ban on public access to files and to open the archives of the former state security service and other public authorities. This was done in the Czech Republic in 2004. Usually, public archives are protected for thirty years, making them inaccessible to researchers and journalists. The public might have overlooked this issue but Law No. 499/2004 opened the archives of public administration for journalists and historians so that the general facts could be looked at. These archives shed some light on the past, although not fully since it is also necessary to hear testimony from witnesses.

Then, of course, historical works, films, textbooks, and art works have a large impact compared to scientific or research papers. Education also plays an immense role. We must remember that there are new generations that did not experience communism. The Ministry of Education does not

focus on history but on sciences. There is a huge gap and NGOs must fill in this gap. Since communism collapsed, the world has changed a lot and our values have changed in Central and Eastern Europe.

I must add that communists would be unhappy with these words. But in order to change the situation, we should enlighten the society. It is our old idea. Politicians usually think they must come up with new ideas. But I am convinced the old ideas are still important. It is still important to nourish these ideas that we had in opposing communism.

Response

Levan Berdzenishvili

The analysis of what happened in the Czech Republic is very thorough and from a legal point of view it is very important how these instruments were used in politics and affected actual people who were accused of violations of the law.

From the time I was young, I was convinced of the importance of lustration and decommunization. I want to thank IDEE for always helping us in this regard. IDEE gave a grant called "Getting Familiar with Decommunization" that allowed several of us from Georgia to learn about the experiences of other countries in the practice of lustration and decommunization. We learned a lot about these processes in Poland, the Czech Republic, and other countries.

It helped us to prepare a Law on Lustration, which we submitted a few times. But it was never adopted. During the Shevardnadze period, Mikhail Saakashvili also tried to prepare such a law as head of a lawmaking committee in parliament; he was joined by several lawyers who later took higher positions. One became a Minister of Justice, although he was accused of other crimes and escaped the country. Another member of the committee became the chairman of the Constitutional Court. But it was impossible to adopt the law at that time. The Republican Party made another failed attempt when it was in opposition.

As time passed, people asked why such a law was needed, since communism was long gone. After all, people change and the threat of communism is not there anymore. In Georgia, there is no Communist Party, nor even a social democratic party or any serious left party. The only parties that exist are liberal or conservative or right-wing. But what is the problem? In fact, the core political party is simply pro-government, following whatever the leaders of the parties say the state should do. There are no ideologies, no vision, and no platforms. Now we are in coalition with just such a party. It is for a European agenda, it is against the communist

regime, and it is against Russia. However, if the government leaders decided one day to change the agenda, the party would change the agenda and justify it by the needs of the state. So it is not just a problem of lustration.

What is the essence of the problem in Georgia? Lustration in the end is about particular individuals. In the end we managed to adopt a law on lustration. It is called the Freedom Charter and we added amendments to it in 2013. To implement the law, an Anti-Totalitarian Commission was established within the Ministry of Interior, with the minister, other important law enforcement officials, and ten members of parliament as members. The committee deals with lustration issues. We found one person who fell under the terms of the law who had to resign his post; he had been a secretary of the district communist party unit and he had come to have a state governmental position. But generally we cannot do anything. The law is quite weak. There is also a group of people who filed an objection to the law with the Constitutional Court.

I wanted to explain another aspect. The Law on Lustration was not able to be implemented when we were in opposition firstly due to the KGB. The KGB took all the documents from the country. We have no documents. Some time ago, I requested my own documents from the KGB in Moscow and I couldn't get them. A former minister was going to deliver them but apparently something happened on the way and I never received them.

I decided that lustration is not enough. Even people who are very anti-communist still have very communistic attitudes. It is not simple. Chernomyrdin was right when he said that whatever party you established in Russia you would have a communist party. This applies to Georgia as well. There will always be a marriage between the state and the party. In that regard, you never know where the money goes. The state was supporting the United National Movement and this money stayed with the party. When we in the Republican Party said that such practices are unacceptable, we were threatened and told "Stop interfering. These are good guys, liberal guys, and you should stop interfering with their business." It is very communistic thinking. The party and the state merged in the minds of party leaders. They became the same, just as in the Soviet Union.

For Georgia, for our statehood and for our democracy, it is important to have a division of the state powers and not to see the "state" as one power. A person comes to politics either through a belief in certain ideas and values or, more usually, in order to work in government, any government, without ideology. For the latter individual, the state is one, a communistic concept of a higher power that decides for them what is good and what is bad. So, members of our parties do not know what they want, except what

the leaders say. They have no real program in response to the challenges of today. But all the members can cite precisely the day's comments by the Prime Minister. And they know what will happen if they express any disagreement. It is a very Soviet attitude that remains from the Soviet times.

I have a solution for this. It echoes Petruška's recommendation: education. In Georgia, we have something very important and interesting going on. In history books, we are told about everything. It even includes information about who founded the Republican Party and who was its chairman. The books are fair concerning the history of Georgia, but you cannot find in these history books what was the essence of the Soviet Union and how freedom differs from slavery.

The textbooks say very simple things, for example that our history was determined and settled in Moscow, not in our country. Children know what independence is but they cannot explain what the Soviet Union was. There was a joke from Stalin's times. One person says that in communism, "Everyone gets what they deserve." And Stalin replies, "No, everyone gets what is mine." In the Soviet Union, everyone got what was theirs. Thank God, todays' government is very weak and cannot practice the politics of "everyone gets what is mine."

Here we are discussing with each other and I have gotten a lot of ideas from this discussion. We try to fill the gap, to finish the unfinished business. Georgia is a little bit ahead in comparison with its immediate neighbors and still we have a chance to catch up with our neighbors in Central and Eastern Europe. But we are 20 years behind.

Discussion

Gábor Demszky

We were asked what were the mistakes that we committed. I believe that the biggest mistake that I committed was to begin the transition with lustration. In 1990, after the first multi-party election, I became the chairman of the national security committee in parliament and we proposed a lustration law. I think it was not a good law. We could not really define the circles we wanted to draw of whom to lustrate. The members of parliament? Politicians? Government officials? Or the whole ruling elite? And who not? Is it constitutional to distinguish between politicians and non-politicians? And whom do you want to restrict? In the end everyone is lustrated. In my opinion we should forget lustration and try to protect the victims of the totalitarian regime. Those people who were under surveillance or interfered with, they have a right to know who did it and why, and to get information from the secret police archives. You need to gather the documents of the

different agencies of the police, put them together, and organize them and everybody can go to get the documents that tell them who was reporting what about whom. In that way, there is a lustration through knowledge and you protect the rights of the individuals. There is some level of moral compensation through this knowledge.

What is the problem? The secret police agents are today the same. Everything has changed: the constitution, the government, and the parties. Who has remained? The agents, the network, and the apparatus. It is still a state secret who are the police agents: it is protected information for 60 years. And so the governing elite can do whatever they want with them.

Petruška Šustrová

In the Czech Republic, we have open archives and everyone can check who was doing what and who was an agent.

Smaranda Enache

Decommunization and lustration are widely debated in Romania's political and intellectual circles. What is my own view? Speaking about lustration, one can speak about it from the point of view of human rights organizations, of the Council of Europe, and of the European Human Rights Conventions. But after twenty-five years we must recognize that the communist regime was a criminal regime and giving such a regime impunity has been a cancer on society.

In March 1990, three months after the revolution, a small group of young people from the "Timişoara Society," referring to the city where the revolution began, adopted a thirteen-point "Proclamation."[1] The eighth point called for all Romanian Communist Party *nomenklatura* and Securitate cadres to be banned from holding public office for a period of ten years, meaning for three consecutive legislatures. It generated a tremendous debate among human rights activists. The politicians who remembered the period after World War II, having experience in the post-Nazi occupation, believed that it was very important to adopt such a ban and to make clear who was who in the communist period. The lustration law drafted by former political prisoners was rejected at first and then, when it was reintroduced, it was postponed and postponed. The Securitate files remained secret for more than a decade. Finally, at the initiative of President Traian Băsescu, the Securitate files were opened and at that point it became possible for citizens to take action in court against those who spied on them.

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1 See "The Timişoara Proclamation" in *Uncaptive Minds*, May-June 1990, vol.3, no.3 (12). — Editor's Note.

But what happened? Now there are just two individuals, both over 80 years of age, who are on trial for exceeding even the standards of terror of the communist regime in the prison camps that they directed. The problem is that when you go to court with such a case, it is difficult to prove an individual crime, that a person actually suffered humiliation, harassment, or worse. My husband, a former political detainee, received three volumes of files, over 800 pages, but the Securitate records end in 1964 when he was arrested and sentenced, so there was nothing about his harassment while in prison or after his release. Even with these documents in hand, it is for him difficult to act and to start a trial in court.

After twenty-five years of transition, I am absolutely convinced of two things. One is that in dealing with the collapse of a criminal totalitarian regime one must, as it happened after the defeat of the Nazi regime, bar the persons responsible for that regime from public positions. Second, such a policy of lustration must be combined with full access of the victims to the police files and to allow criminal actions to be filed in court. In Romania, President Băsescu established a commission to research the crimes of the totalitarian regime. The Romanian Parliament adopted a Declaration condemning the communist government as a criminal regime. But there was no consequence to this declaration; there was no action resulting from it. Nothing followed. The former communists or their descendants still own the banks and the media as well as an important part of the economy. For the victims of the regime there is in place an almost humiliating pension. Meanwhile, the former nomenklatura and Securitate officers benefit from some of the highest pensions in Romania.

From a human rights point of view, it can be discussed. But from my point of view, that original proposal of the Timişoara Society students was the right one: let's have ten years at least to cleanse the society from the criminal actions of a criminal regime.

Tatiana Vaksberg

I come from a country where strangely the archives were opened by the communists, not the democrats. When they did it, they knew that the population had no interest in the information in those archives. Otherwise, there was no lustration in Bulgaria. There was a single law that forbade former officials of state security from belonging to the council that governed radio and television. It was the only law lustrating members of a public commission.

The archives were opened in 2006 by the government of Sergei Stanishev, who was then head of the post-communist Socialist Party. He is now leader of the Party of European Socialists. The law opening the archives provides that any person seeking to work in a public office in the

domain of politics, media, NGOs, banking, large enterprises—the list is very long—has to be checked by an independent commission called the Files Commission. Whatever the commission finds on a person becomes public, but there is no lustration. The person can still hold a public position.

What is the result? We have many thousands of names thoroughly checked by a commission that is working quite well and is at certain times even independent, but there is no requirement for it to make the details public. Because there is no interest in the past in Bulgaria, we practically do not know what the people did when they worked for state security. It means that we have lots of small gossip. Did you know so and so was named yesterday by the Files Commission as working for the state security? Well no, I didn't. And what happened? Well, nothing happened. There is no consequence or follow up. So, in fact, it remains unknown the details of this whole enormous police system.

Irena Lasota

The debate on lustration and decommunization has been going on in every country. In Poland, the discussion between pro-lustration and anti-lustration positions is quite vitriolic. If you want to insult someone, you say "he is a lustrator."

I remember that I was in Petruška's apartment when the Czech Parliament adopted the Law on Decommunization. I was impressed by the law: the statement was short, two pages, and it defined concisely and precisely the period of communism and its specific crimes, ranging from the killing of people to the destruction of the environment. As for the Law on Lustration, it was also quite specific: it defined the range of positions within the communist nomenklatura for which it applied and the public positions that those persons would be barred from for a defined period of time. A first secretary of the party structure of a large enterprise, which was defined as having more than 5,000 employees, could not hold certain positions in the fields of politics, media, and education.

In Poland, by contrast, the media was left untouched and was not decommunized. There were some cosmetic changes on different boards, some privatization, but the former communists kept a strong hold in the media for all this time. Now many books describe how the people who were making up the news on radio and television from 1981–89, that is during martial law, remained in broadcast media after 1989.

I have to say that I, too, have been lustrated. In 1969, after leaving prison, I was expelled from the university and I was barred on political grounds from holding any job except that of a waitress in a restaurant in

Warsaw's Łazienki Park. Even for that job, I was lustrated. I had to bring a certificate that I did not have syphilis because it was specified that anyone with syphilis should not be a waitress. I'm of the view that similarly teachers in post-communist countries should be lustrated so that children should not be taught history by those who previously followed orders and taught lies to children. Teaching history was a profession that meant that one could not be an honest person. It is possible to have just a narrow lustration law, as it is possible to have a narrowly defined requirement for doctors that they can practice their profession if they promise first and foremost to do no harm.

Even so, the issue of lustration in politics is more difficult. One can have the five-year period restricting people from running for public positions but we have seen that after the five years the voters can still choose former communists.

Levan Berdzenishvili

We are in different situations. In Georgia, we have the possibility of opening the archives but there is nothing there. We may know who was an agent but the documents proving it have been taken away. The same has been done in the case of other countries of the former Soviet Union. The KGB wanted to cover all its traces and it has hidden the evidence. There is nothing in Moscow either. This means that it is impossible to compensate victims properly since it is difficult to document who were the real victims. In Georgia, the government simply declared that everyone would be given 200 Lari [about $300 USD] without differentiation. I hope that in the future the real victims of the regime will get proper compensation for their suffering. The European Court of Human Rights has determined that $10,000 is a proper amount for human rights victims.