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COMING TO TERMS WITH THE PAST IN THE BALKANS

THE LUSTRATION PROCESS IN MACEDONIA

Henri Bohnet / Daniela Bojadzieva

After the fall of the Berlin Wall, many formerly authoritarian countries in Eastern Europe had to face up to the question of how to come to terms with their past. But even twenty years later, very few countries have made this a topic of public debate, even though it is a key factor in the democratization of these societies. Countries in this region who are already members of the European Union, such as Romania, Bulgaria und Slovenia, but also all those other countries of the former Yugoslavia and Albania who are seeking EU membership, can only sustainably cement the foundations and institutions of their societies and take on common European values if they can learn the right lessons from the past. It is essential for countries to face up to their own history in order to rehabilitate the victims of earlier unjust regimes and to punish those guilty of human rights violations. And, as was learned in post-war Germany, it is also necessary to tell younger generations about what happened and to make sure these mistakes are never repeated.

In the Balkan countries, memories of their totalitarian past are still fresh. However, in contrast to most of the countries of the former Soviet Union, the wars of independence of the 90's following the break-up of the former Yugoslavia meant that there was a significant delay in the democratization of politics and society in the newly-created states such as Serbia. Also many people started to see Tito's Yugoslavia through rose-tinted spectacles in comparison to the years of conflict that followed. Even though the Yugoslavian regime was not as repressive as the Soviet regime, there is no doubt that it was just as guilty of

human rights violations. The intelligence services at the time played a central role in the surveillance, unlawful detention and ill-treatment of political dissidents. In many countries in the region these organizations and the ones that came after them remain largely unchanged and are subject to little if any democratic control. Setting in motion an effective process for facing up to the past and lustration ("purification"), even twenty years after the event, can result in the intelligence services being opened up and placed under democratic control. If they allow access to their records and cooperate with legitimate, democratic institutions, their current, often disproportionately high power and influence can be limited to the kind of levels normally seen under democratic constitutions. In this way they can pave the way for a fundamental renewal of state institutions and a strengthening of trust among the people in their country.

WHAT FACTORS HAVE AN EFFECT ON THIS PROCESS OF DEALING WITH THE PAST?

If you look at the efforts made by the various countries of the former Eastern Bloc to come to terms with their past, it is clear that there have been numerous differences in terms of objectives, legal frameworks, the definition of the relevant players in the lustration process and especially also in terms of the political will and society's readiness to find a sustainable solution. As a result there have been varying degrees of success. A process of lustration has been started in almost every affected country in Eastern Europe. The political, societal and economic situation in each country, however, has had a huge influence on the nature and scope of this process. How far had/has democratic transformation and the modernization of society already come at the point when the process began? What level of influence do the old elite and the collaborators of the former regime still have? The first things to be taken into consideration are the historical circumstances and the level of injustice perpetrated by the authoritarian regime.

The political, societal and economic situation the Eastern European countries has had a huge influence on the nature and scope of the lustration processes.

There are huge differences among individual countries in the definition of target groups, that is to say the people who should be "lustrated". Many countries limit this to former members of the intelligence services, but others also want to hold to account those people who had high-level functions in the old regime and who decided the fate of those unlawfully persecuted. It is also important to highlight differences in terms of access to former secret files as well as their safe-keeping and empirical analysis. In this regard Germany has set important standards since the Wall came down.

COMING TO TERMS WITH THE PAST IN GERMANY – THE SED REGIME.

Reunified Germany set the example for other former communist countries in many areas of coming to terms with the past by establishing a government agency responsible for reviewing Stasi records.¹ For it has shown that it is not only desirable to successfully deal with the past, but also necessary in order to build stable democratic structures within the state and society. After the peaceful revolution of autumn 1989 and the fall of the Berlin Wall the Germans were able to prevent the destruction of most Stasi files, an important prerequisite for Germany to be able to confront its history. When the Stasi began to destroy files during the final days of the old regime, citizens occupied the headquarters and many local offices of the intelligence service and made sure the dossiers were saved.

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Since then these files have formed the foundation and most important source of information for the German process of dealing with the past. In 1991 the "Act relating to the records of the State Security Services of the former German Democratic Republic" (Stasi Records Act) was passed in re-unified Germany. With this act the Stasi Records Authority, the government agency responsible for the records of the State Security Service of the former German Democratic Republic (GDR), was created. With

1 | The Stasi (abbreviation of the German Ministerium für Staatssicherheit, English: Ministry of State Security) was the intelligence service of Eastern Germany.

its many duties and responsibilities, this public “lustration organ” plays a central role in the coming to terms process. This government funded agency has now been working for 20 years to safeguard and maintain around 160 km of files, index cards, films, audio files and microfilms and to make them accessible to academic researchers and above all to victims of the Stasi and their families. The agency also reviews the Stasi files and, when the request is justified, makes them available to law enforcement agencies for relevant legal proceedings. This helps with the rehabilitation of victims and, importantly for the families, to clarify what happened to them.

So if, for instance, it is established that an individual who holds an official or representative position in Germany today worked for the intelligence services in the past, then the relevant files can be requested. Since the creation of the agency almost 6.5 million requests for access to files have been made. Interest in the Stasi records among many citizens, the media and scientific institutions remains undiminished.²

LUSTRATION PROCESSES IN THE BALKANS

A process of coming to terms with the past has also been started in the Balkans. Learning from the German experience, Resolution 1096 passed in 1996 by the Council of Europe Parliamentary Assembly “on Measures to Dismantle the Heritage of Former Communist Totalitarian Systems”, as well as Resolution 1481 passed in 2006 “on the Need for International Condemnation of Crimes of Totalitarian Communist Regimes” created positive incentives for many of the newly created states in the Eastern Bloc and the former Yugoslavia to deal with this issue. However political factors are hampering the lustration process in nearly every country in the region. The German process, with its comprehensive approach, and in particular its solid legal foundation and considerable financial resources, should be considered an exception in Europe and the rest of the world. So the investigations into human rights violations carried out under totalitarian regimes in the most

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2 | For further information: <http://bstu.bund.de> (accessed November 25, 2010).

recent countries to obtain EU membership, Romania and Bulgaria, have a long way to go before meeting the expectations of victims and champions of democratization.

So far Romania has been unable to put in place effective legal frameworks for the lustration process, nor has it encouraged public debate on the topic. It is true that it formed a "National Council for the Investigation of Security Archives" in 2000 with the remit of examining the files of the Ceaucescu-Regime's intelligence services.³ However, the council has so far failed to present any concrete findings on the activities of the security services. For one thing, the current security organizations have shown little willingness to work together with the Council, and so far there have also been no official court decisions made in Romania on the issue of repression carried out by the intelligence services.⁴

Bulgaria also seems to have made little progress in dealing with the past, although some measures were introduced immediately after the fall of communism. Former members of the intelligence services were dismissed and banned from holding political office. In 1992 a lustration act was passed stipulating that all people employed in the country's state educational institutions had to declare their roles in the previous administration. As a result, by 1994 almost 90 per cent of all civil servants, 9,000 employees of state-run enterprises, around 14,000 members of the intelligence services and a third of all diplomatic staff had been dismissed and had legal proceedings started against them.⁵ However, this did not lead to Bulgarian society openly confronting their Soviet past in a comprehensive fashion. Also, the lustration process did not have the desired effect of breaking up organized crime or strengthening official legal institutions. Indeed, the influence of the old elite can still be felt.⁶

3 | Cf. <http://www.cnsas.ro> (in Romanian) (accessed November 25, 2010).

4 | Cf. Sabine Fati and Dan Alexe, "Romania's post-Securitate intelligence service turns 20," in: <http://waz.euobserver.com/887/29799> (accessed November 25, 2010).

5 | Estimates by Marjan Madzovski and Zvonimir Jankulowski: "Commentary on Macedonia's lustration laws" (in Macedonian), April 2010, to date unpublished.

6 | Cf. Nova Makedonija, <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=10510955122&id=9&setIzdanie=22100> (accessed October 5, 2010).

In the newly created states of the former Yugoslavia and in Albania there were also attempts to put in place a legal framework for the lustration of collaborators of the former regime, but, as in Bucharest and Sofia, without a comprehensive process of victim rehabilitation or empirical reappraisal. Only in Bosnia and Herzegovina has there been no similar initiative so far.

Albania was one of the first countries to prepare bills for a lustration act, only a few years after the collapse of the Hoxha regime. However, the latest act, passed in 2008, is politically contentious and has been suspended by the courts due to constitutional concerns.⁷ In Albania today there is currently no legitimate legal access to the files of the former intelligence services.

The political will to deal with the past also seems to be lacking in Serbia, although an act was passed in 2003 for the examination of "Accountability for Human Rights Violations", which among other things provided for the lustration of individuals who held positions in the highest political offices and other public functions. However, to date no legal proceedings have been initiated based on this act. The "Truth Commission" set up by former Prime Minister Kostunica has so far been unable to present any tangible findings.⁸

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According to observers of the lustration process in Croatia, the long-term dominance of the "Croatian Democratic Party" (HDZ) at first hindered attempts to come to terms with Yugoslavia's political heritage within the newly formed state.⁹ A bill presented in parliament in 1998 on the initiative of the "Croatian Party of Rights" for the "Examination of the Accountability for Human Rights Violations" was rejected by the HDZ-led majority. However, an official body

7 | Cf. Besar Likmeta, "Albania High Court Suspends Lustration law," *BalkanInsight*, February 16, 2009, in: <http://balkaninsight.com/en/article/albania-high-court-suspends-lustration-law> (accessed December 14, 2010).

8 | Cf. "Lustration-Net", <http://www.lustration.net/news.html> (accessed December 14, 2010).

9 | Cf. Jeffrey Kuhner, "A modern mafia state," *The Washington Times*, September 30, 2010, in: <http://washingtontimes.com/news/2010/sep/30/a-modern-mafia-state> (accessed December 14, 2010).

has now been set up to investigate judges, but its remit is contentious, mainly because of the controversial investigation criteria which aim to rid the newly-independent state of "national enemies". Since 2006 there has been a "Security and Intelligence Services Act" in place which has led to the existing structures being reformed and placed under democratic control for the very first time.

In Slovenia the lustration process has been predominantly carried out by the judiciary. After the passing of the "Judicial Services Act" in 1999, which provided for an investigation into judges and candidates to be judges, many judges have taken early retirement or ruled out a new term of office. But even here, as in other countries in the region, the past has so far not been dealt with in a comprehensive and public manner.

If we take stock of the efforts made to date by the Balkan states to deal with their past and the results of the lustration processes described above, it is clear that a comprehensive coming to terms, as seen in Germany, has not yet taken place. In fact the different approaches of the various countries seem to have been started mostly with the single aim of using the lustration process for political ends and to weaken political opposition. In the main there has been no opening up of the archives of the former intelligence services.¹⁰ It remains to be seen when the rehabilitation of victims, compensation for injustices committed and empirical analysis can return to centre stage in the lustration processes of these countries.

In the case of Macedonia it is important to examine the beginning and the subsequent development of the national lustration process and to evaluate whether it has outstripped that of their neighbors. For here an act of parliament was passed unanimously in 2008 by representatives of all political parties in the national parliament which was based on the German and East European experiences. The resultant "Commission for Verification of Facts" started work the following year and soon presented its initial findings.

10 | Cf. European Union Resolution, "On European Conscience and totalitarianism," <http://europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0213&language=EN&ring=P6-RC-2009-0165> (accessed December 14, 2010).

COMING TO TERMS WITH THE PAST IN MACEDONIA

Macedonia declared independence in 1991 at the time when wars of secession were starting in many of the newly formed states in Yugoslavia. Today, twenty years after the collapse of the socialist regime and the gaining of independence, Macedonia is on the threshold of membership of the European Union and NATO. The political and economic reforms carried out with renewed vigor in recent years by the Macedonian government have brought membership of the Euro-Atlantic community within reach. The democratization of this two-million-strong multicultural society and the harmonization of inter-ethnic conditions remains a challenge, however, especially in these still difficult economic times. The start of membership talks with the EU as well as acceptance by NATO is also dependent on resolving the two decades old dispute with Greece over the name Macedonia. Athens has disputed its northern neighbor's constitutional name "Republic of Macedonia" ever since its independence, although it has been recognized by more than 120 countries (though not by Germany).¹¹

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Stabilization of democratic structures, implementation of already-started reforms and strengthening of the rule of law are therefore still very important tasks. This was the conclusion of the latest European Commission progress report. For example, the country's three intelligence service agencies remain unreformed and have not yet rid themselves of the vestiges of their Yugoslavian past. They are neither subject to democratic control nor has their role in the former regime been made clear. The start of the lustration process in 2008 meant that an important step could be made in the disclosure of past offences, in undertaking empirical analysis and the introduction of effective democratic control over these services. Such a step would make a decisive difference in improving the transparency and accountability of official institutions in order to win back the declining trust of the country's people, something which can also be observed in neighboring countries.

11 | For more information on the dispute: "What's in a name?," *The Economist*, March 25, 2010, in: http://economist.com/node/15766873?story_id=15766873 (accessed December 14, 2010).

Although Macedonia was one of the last countries in the region to tackle the question of lustration, it has made significant progress in the last two years. But why has it only just started the process of confronting its totalitarian legacy? The answer lies in several developments following Macedonia's achievement of independence. These include the conflict with Greece over their name and the resultant search for a national Macedonian identity, a problem that has still not been resolved today; the challenges following the collapse of the Yugoslavian economy and the "councils for bilateral economic cooperation"; the 18 month-long Greek economic embargo during 1994 and 1995 (as a result of the name dispute) and the UN embargo of the Milosevic regime. At the turn of the century the short ethnic conflict between Albania and Macedonia in 2001 then slowed down the stabilization of social structures and state institutions even further.

As early as the year 2000, the Macedonian parliament made a first attempt to start to come to terms with the former activities of the intelligence services. The act passed in the same year "on the Handling of Personal Files kept by the State Security Service" made it possible for Macedonian citizens to gain access to their own files for the very first time. However, during the first year, when the new law made 19,700 files from the years 1948 to 1998 available for scrutiny, only 2,553 people applied to the Interior Ministry to access the files. It was established that over 30 per cent of those who did apply did indeed have their own file.¹²

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In 2002 the act relating to "the Rights of People Expelled and Imprisoned for the Ideas of the Separate Identity of the Macedonian People and of Macedonian Statehood" was ratified, which had until then rarely been enacted. In April 2006, on the initiative of the Liberal Party, the national parliament passed a Declaration of Forgiveness for the victims of the regime from 1945 to 1990, although it was not legally binding.

12 | Cf. Madzovski, Jankulowski, n. 4.

The most important impetus for a comprehensive lustration act came in 2006 with the shift of power from the former socialists to the by now moderate (earlier revolutionary nationalist) conservative VMRO-DPMNE. As a result of renewed initiatives by the Liberals a bill was presented for a new act "on the Establishment of Additional Conditions for the Performance of Public Office". After two years of debate Parliament unanimously passed the Act in 2008, resulting in the setting up of the "Commission for Verification of Facts" the following year. Its remit is to investigate holders of, and candidates for, high public office in order to establish whether they have links to the former intelligence services. The mandate of the Commission, which ends 10 years after the passing of the Act, does not include the imposition of sanctions against former collaborators, but the appropriate court can ban them from taking public office.¹³

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THE MACEDONIAN LUSTRATION PROCESS UNDER THE MICROSCOPE

The original version of the Lustration Act provided for the identification of individuals who unlawfully cooperated with the intelligence services both before and after Macedonian independence, i.e. the period from 1944 to the passing of the Act in 2008. The findings of the Commission relating to former employees were meant to be published in the Macedonian Official Journal. However, following a complaint to the Constitutional Court, the latter decided early last year to limit the application of the Act to the time of the Yugoslavian regime before Macedonian independence. Due to concerns about violation of the right to privacy and other basic rights, the court also ruled against the publication of the names of former employees of the intelligence services.

This decision of the Constitutional Court sparked a wide-ranging and controversial debate amongst the Macedonian people, mostly about the potential future success of what many people now considered to be a much weaker law. For

13 | For further details on the powers of the Commission and the provisions of the act, see the homepage of the Macedonian Lustration Commission: <http://kvf.org.mk/en> (accessed December 1, 2010).

the first time, expectations started to surface amongst the public that the elite and other beneficiaries of the former system should be brought to account. However, the subject of the rehabilitation of victims was hardly discussed at all.

It should be considered a victory of sorts that the Commission was able to start its work after the Court's decision, in spite of bureaucratic hurdles, poor organization, and in particular a shortage of funding and staff. As of now it is not clear, however, whether the government will give the Commission sufficient funding for 2011 to continue the work they have already started. The need to make cutbacks as a result of the economic crisis has led to extensive restructuring of the government's budget in recent times which has particularly affected the work of the Commission.

In the meantime, the Commission has started its investigation into high-ranking decision-makers. The President, members of the government, parliamentary staff and judges all have to sign statements in which they confirm that they at no time worked with the former intelligence services. However, initial findings resulted in general disappointment and incredulity:¹⁴ every one of the 324 people investigated so far is "clean". Apparently only the President of the Constitutional Court, an open opponent of the current government, was to be found in the files of the security services. A significant amount of doubt has been cast upon the effectiveness of the Lustration Commission: it is not authorized to question the reliability of the findings of the investigation and can only make enquiries of the Federal Archive, the Interior Ministry and the intelligence services – all bodies run by the ruling party – as to whether dossiers on particular individuals exist. So it is hardly surprising that so far the lustration of top political appointees has not been able to identify any "traitors" among the ranks of the ruling party.¹⁵

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14 | The Commission has recently (as at 12/2010) published its third half yearly report (in Macedonian): <http://kvf.org.mk/en/reports> (accessed December 14, 2010).

15 | It is also known that many relevant files from the former intelligence services are not accessible due to their being stored in the archives of the central intelligence service in the former Yugoslavian capital city Belgrade, due to their being

The accusations leveled against the President of the Constitutional Court created an outcry among the Macedonian people. Many observers suspect political revenge lies behind the public allegations, bearing in mind that the Constitutional Court has revoked several controversial government initiatives in recent years. However, the allegations against the President of the Constitutional Court have recently been augmented by further documents and dossiers leaked to the press by members of the public. The files apparently show that the then head of the Albanian Government's coalition partners had cooperated with the Yugoslavian intelligence services.

These events show that there is a danger that in Macedonia the lustration process will become a political tool and that the actual goals of the process will be pushed to one side. In this context, we can see not only the problems of the country's authoritarian past but also the huge potential for conflict in inter-ethnic relations within the country today.

Are these types of developments useful in helping Macedonia's public to face up to the darker side of the transformation of their young country? One thing is certain: Macedonia faces the challenge of investigating the Yugoslavian chapter of their history in

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as fair and transparent a way as possible. The public, and especially the families of victims, are pinning their hopes on this process. After these latest developments, it remains to be seen whether Macedonia today has the professional capacity, stable institutions and political will to throw some light on the dark misdeeds of its past. However, there is a growing desire among the people to see some justice for violations of human rights and to come to terms with their totalitarian past. There is still the chance, based on historic responsibility towards the victims, that the lustration process will not be wound up too early or misused for political purposes. If the process

stolen by people who were able to gain access to them in the first years after independence and due to many of the names in the existing files being rendered illegible by third parties (information gained from personal interviews carried out by the authors with the initiators of the current Lustration Act and members of the Lustration Commission).

of coming to terms is carried on in a democratically and constitutionally acceptable way, then Macedonia can send an important message to its south European neighbors and to Brussels that it is ready to take responsibility for its own past. This would be an important step for the country's future development.