

# Reconciliation through Lustration

THE ROMANIAN CASE OF DELAYED LUSTRATION: BETTER LATE THAN NEVER?

## A. CASE STUDY

**Remember that lustration laws are among the numerous means of protecting the newly emerging democratic societies in South Eastern Europe from the negative influences of former authoritarian/totalitarian communist regimes. The aim of lustration laws is to eliminate or significantly reduce the threat posed by the lustration subject (i.e. a person who had in the past been affiliated with a communist regime) to the creation of a viable, free democracy by the subject's use of a particular position to block the democratisation process.**

In Romania, the national debate about how to best (further) dismantle the former communist totalitarian system is still ongoing, regardless of the fact that 16 years have already passed since the collapse of the communist regime.

Let's imagine that you are in a position to exercise political decision-making power in Romania:

- Which steps – if any – would you take to further dismantle the former communist totalitarian system?
- In particular, which measures – if any – would you apply to those persons who had in the past been affiliated with the Romanian communist regime, especially informants of the communist secret police, and who are now active in the successor government or civil service positions?
- Would you opt for the passing of a lustration law?

Bring forward arguments, both for and against the passing of a lustration law.

The following questions may help you to develop such arguments:

- Can persons who hold public offices or civil service positions, and who had been affiliated with the communist regime in the past, be considered to pose a threat to the emerging Romanian democracy? – Support your respective answer with examples.
- Does a country still need transitional justice when the political transition process is officially considered to be ended? – Bring forward arguments for your position.

## B. WORKING DEFINITION AND BACKGROUND INFORMATION

What is understood by lustration?

Lustration is, literally, "a sacrifice, or ceremony, by which cities, fields, armies, or people, defiled by crimes, pestilence, or other cause of uncleanness, were purified" [...]. During the period after the fall of the various European Communist states in 1989–1991, the term came to refer to the policy of limiting participation of people who had in the past been affiliated with the communist regime of their country, and especially informants of the communist secret police, in the successor governments or even in civil service positions. (Cf. Wikipedia, <http://en.wikipedia.org/wiki/Lustration>)

Lustration consists of legal acts and procedures for screening persons who seek to run for public offices using their affiliation with a previous authoritarian/totalitarian regime as a screening principle.

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The aim of lustration is to exclude persons from exercising governmental power if they cannot be trusted to exercise this power in compliance with democratic principles, as they have shown no commitment to or belief in such principles in the past and have no interest or motivation to make the transition to them now. (Cf. Severin, Measures to dismantle the heritage of former communist totalitarian systems, Doc. 7568, 3 June 1996, Report [1])

What is the current status quo with regard to lustration in Romania? Romania is one of the few Eastern European countries that, 16 years after the collapse of the former communist regime, has not yet passed a lustration law.

Up to now, several attempts have been made to pass a lustration law in Romania, i.e. in 1996, 1999 and 2005, but these efforts have not been successful: The draft laws have always been stopped in the Parliament.

Currently, a new draft law is under debate in the Chamber of Deputies after having been passed by the Senate.

The draft law proposes that persons that have held certain public offices during the communist regime (e.g.: leading positions in the Romanian Communist Party, leading positions in the communist students' unions, editors of the media-agencies, rectors and deans from the political educational system, prosecutors, presidents of the Supreme Court) should be banned, for a period of 10 years, from holding certain public offices (president of the state, member of the government, senator or deputy, prefect, mayor, judges and prosecutors, member of the diplomatic corps).

Some further support for reasoning:

- Report[1] on Measures to dismantle the heritage of former communist totalitarian

systems (Doc. 7568, 3 June 1996, Rapporteur: Mr. Severin, Romania, Socialist Group, p. 5, para. g) states that:

*"[L]ustration measures should preferably end no later than 31 December 1999, because the new democratic system should be consolidated by that time in all former communist totalitarian countries."*

Do you agree with this position?

- According to the jurisprudence of the European Court of Human Rights (ECHR) the application of lustration measures after a long period of time (e.g. a decade) can be discriminatory. The belated timing of lustration laws must in any event be taken into consideration when deciding whether a lustration measure is proportional with regard to its limitation on specific human rights.

In the Case of Sidabras and Džiautas v. Lithuania (Applications nos. 55480/00 and 59330/00, 27/10/2004), the ECHR held with regard to a possible violation of the principle of non-discrimination in the light of the right to respect for private life (Art. 8)

*"[T]he Court observes that the KGB Act came into force in 1999, that is, almost a decade after Lithuania declared its independence on 11 March 1990; in other words, the restrictions on the applicants' professional activities were imposed on them thirteen years and nine years respectively after their departure from the KGB. The fact of the KGB Act's belated timing, although not in itself decisive, may nonetheless be considered relevant to the overall assessment of the proportionality of the measures taken."* (Para. 60)

- Romanians have had the highest level of co-operation with the communist regime from the entire region: 18% of the population have been members of the communist party (more than 3.800.000 members out of 22.000.000 people) and 1 out of 8 Romanian was a collaborator for the state security apparatus, "Securitatea".