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*Reconsideração sobre as lustrações: os desafios da  
execução da lustração na Ucrânia*

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**Resumen:**

Shortly after the Euromaidan protests in 2014, the new Ukrainian government passed two acts to consolidate democracy by means of lustration and vetting. Whilst the first Act On the restoration of trust in the judiciary concerns the judicial system only, the second Act On Government Cleansing impacts most of the public sector, as well as the military. The legislation was supported by the Civic Lustration Committee, whose main goal was to make sure that the President adopted their proposals for lustration. As this did not turn out to be the case, they gathered expertise from Central and Eastern Europe to draft the *Law on Government Cleansing*. The expertise consisted of various lawmakers and academics from Czech Republic, Poland, and Georgia (CIVIC LUSTRATION COMMITTEE, 2015). From these, the study has looked at how the Czechoslovak lustration resemble with the Ukrainian ones, as there is direct evidence of cooperation and both countries adopted exclusive lustrations. Specifically, it looks at their creation, reception, and effectivity. It argues that the Ukrainian lustrations do not fall within the framework of scholarship on transitional justice due to violence, lack of compatibility with the human rights, as well as the lack of effectivity in executing lustrations.

**Palabras clave:**

Lustration, Ukraine, Czechoslovakia, Euromaidan, Corruption, Socialism.

**Resumo:**

Pouco depois do movimento Euromaidan em 2014, o novo governo ucraniano aprovou duas leis com o objetivo de consolidar a democracia por meio da lustração e da verificação. Enquanto a primeira lei, sobre a restauração da confiança no judiciário, refere-se apenas ao sistema judicial, a segunda lei, sobre a limpeza governamental, afeta a maior parte do setor público, bem como o setor militar. A legislação foi apoiada pelo Comitê de Lustração Cívica, cujo principal objetivo era garantir que o Presidente adotasse suas propostas de lustração. Como isso não aconteceu, eles reuniram especialistas da Europa Central e Oriental para redigir a *Lei de Limpeza Governamental*. A equipe de especialistas foi composta por diversos legisladores e acadêmicos da República Tcheca, Polônia e Geórgia (CIVIC LUSTRATION COMMITTEE, 2015). Com isso, o estudo analisou como a lustração tchecoslovaca se assemelha à lustração ucraniana, pois há evidência direta de cooperação, além de ambos os países terem adotado lustrações exclusivas. Especificamente, ele observa sua criação, recepção e eficácia. Argumenta que as lustrações ucranianas não se enquadram no âmbito de estudos sobre justiça de transição devido à violência, à falta de compatibilidade com os direitos humanos e à falta de efetividade na execução das lustrações.

**Palavras-chave:**

Lustração, Ucrânia, Tchecoslováquia, Euromaidan, Corrupção, Socialismo.

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\* The paper was originally written for my dissertation. I have used articles, books, reports, verdicts, and have interviewed two researchers.

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## Introduction

The socialist regimes in Central and Eastern Europe ended between 1989 and 1991. In many cases, the revolutions that brought the change were connected with immediate modifications of the government's composition, or with declaration of independence. Subsequently, some of those that helped to organize the protests and entered the new government, or became part of the new elite, demanded that certain measures be taken to prevent the former staff from working for the state. Key to it was looking at the records of the former Security Services to check on who collaborated. During the 1990s, different models of transitional justice were applied, mainly in Central Europe, given that the transition to democracy was different in each country. For example, in the former Czechoslovakia, the impetus to applying transitional justice measures occurred when it became clear that the Security Services were trying to avoid any future lustration by shredding their files, records, and other documents (SIVOŠ, 2020). Nonetheless, after this process was partially suspended, the country adopted two lustration acts in 1991 and 1992 (ZÁKON č. 451/1991 Zb). These lustrations acts, which were one of the first in the region to be implemented, were specific in that they could lead to one's dismissal as a form of sanction. Soon after this, Hungary, Poland, and Germany adopted similar acts (DAVID, 2006, p.358). The Baltic states followed, each with a different type of lustrations (BERGAME, 2018). After the split of Czechoslovakia in 1993, the Czech Republic continued to implement the lustration legislation, which is in place today, unlike Slovakia (RYCHLIK, 2018, p.57). These lustration legislations were then recorded to have been consulted twenty years later, when Ukraine and Georgia were drafting their own lustrations legislations (CIVIC LUSTRATION COMMITTEE, 2015).

When it comes to Ukraine, the political scientist Igor Lyubashenko, who focuses on transitional justice, agrees that no real political transformation occurred after Ukraine gained independence at the end of 1991 (LYUBASHENKO, 2017, p.25). Nonetheless, the requirement to prevent the emergence of those active during the former regime was promoted by some. The demand for lustration increased after the Euromaidan protests and, largely due to the pressures from below, Ukraine adopted lustration legislation in 2014, which makes it one of the most recent ones. Unlike Ukraine and Georgia, countries like Belarus, Russia, Kazakhstan, or Moldova have not introduced any lustrations. Similarly, the Russian parliament ruled in early 1990s against ever implementing restrictions on former First Party Secretaries and former KGB officials (FIGES, 2014a). The proponent of the lustration bill Galina Starovoytova was found dead in her apartment (FIGES, 2014b). She was allegedly killed by the Federal Security Service (FSB) (FIGES, 2014, pp.318-328).

Numerous countries, including Slovakia (former Czechoslovakia) and Ukraine, were contested at the European Court of Human Rights for the way they carried out lustrations. In summary, the court agreed that

they have the right to use lustrations for purposes of democratic consolidation but ruled against the violations of human rights that occurred in the process (TUREK V. SLOVAKIA, 2006).

The study of transitional justice has been influenced by the democratization processes in Central and Eastern Europe (GRICIUS, 2009, pp.26-42). Nonetheless, the notion of lustration dates to Ancient Rome, where the ritual *Lustrum Condere* was used to express total purification and sacrifice (OGILVIE, 1961, pp.31-39). Within the study of transitional justice, lustrations can be thought of as ‘the mass disqualification of those associated with the abuses under the prior regime,’ as claimed by the political scientist Katy A. Crossley-Frolick, who wrote about the vetting processes in former East Germany (CROSSLEY-FROLICK, 2010, pp.252-283). Igor Lyubashenko, who studies the post-Euromaidan development in Ukraine, associates them with ‘revealing the truth about collaboration with or a position in the institutions of the ancient regime among certain categories of public officials and the ones applying for office under the new regime (LYUBASHENKO, 2017, p.19).’ The political scientist Cynthia M. Horne identifies at least three different types of lustration processes that go all the way from the wide and compulsory institutional change to symbolic change based on public disclosure of facts about the past (HORNE, 2009, p.713). The most detailed classifications of lustration systems can be found in the work of the social scientist Roman David, who distinguishes exclusive, inclusive, and reconciliatory lustrations (DAVID, 2011, p.10). These can be linked with dismissals, exposures, and confessions (Ibid., p.10). Regarding the character of lustrations, he further links them to retribution, revelation, and reconciliation (Ibid., p.10).

Referring to the Ukrainian legislation, the study aims to answer the question on whether the cooperation between the actors of the first wave of lustration legislation and the second wave produced a new set of lustration acts within the traditional understanding of transitional justice. This is illustrated mostly on the close comparison with the Czechoslovak lustrations. Regarding the mutual cooperation, should Ukraine had adopted the exclusive features of the Czechoslovak lustration legislation, it would be one of the strictest in the region due to the nature of sanctions. In this sense, understanding the outcome of the Czechoslovak lustration is instrumental for evaluating the more recent one in Ukraine. So far there has not been a study that would further expand or evaluate to what extent the Czechoslovak lustration experience impacted the Ukrainian one. In spite of the aforementioned cooperation, the study has found that the Ukrainian lustrations differ from the ones adopted in Czechoslovakia. The claim is supported by the opinion of the Venice Commission and the ruling of the European Court of Human Rights, which identified some of their parts to be in conflict with the existing framework of lustration legislation (VENICE COMMISSION, 2015). The main reasons behind this relate to the actors they target, as well as the way in which they were designed and executed (Ibid.). Due to this, the two lustration systems must be interpreted separately, as only one of them matches the understanding of lustrations in the context of democratization and transitional justice.

Apart from these definitions, the study refers to the opinions provided by the European Court of Human Rights, the Venice Commission, and the Parliamentary Assembly of the Council of Europe. It does so to link the research on both cases of lustration, as well as account for the political setting in which they occurred, with the verdicts on their compatibility with human rights. Additionally, it refers to interviews that were conducted with researchers of the at the Nation's Memory Institute in Slovakia (SIVOŠ, 2020). Although Slovakia no longer applies the lustration legislation since 1991, the researchers at this institute work with relevant documents and, for example, try to reconstruct those files that were attempted to be manipulated and falsified to avoid lustrations (ZBIERKA ZÁKONOV, 2002).

The author of this paper realizes the bias of the documents in both cases. In the case of the former Czechoslovakia, I am aware that the data from the Nation's Memory Institute of Slovakia is taken from those engaged in a struggle to support transitional justice measures. They are also involved in campaigns to promote the legacy of political prisoners by increasing their pensions, which are low due to the time they spent in prison instead of working (ZÁKON č.283/2021). They want to do so by taking away from the rather high pensions of their former perpetrators (Ibid.). Likewise, the documents used from the Civic Lustration Committee in Ukraine come from an organization that strongly advocates for lustrations and has been mobilizing people to closely monitor its progress. To overcome obvious biases and limitations, I unsuccessfully attempted to interview key actors of lustration. In targeting the different claims and understandings of lustration, I second the opinion of the Foreign Policy Research Institute according to which lustrations seek to prevent the infiltration of newly established democratic institutions by former network, provide reparations to the past victims, punish their oppressors, and disclose information about the crimes committed during the past regime (BERGAME, 2018).

This article consists of two parts. The first section describes the setting in which lustrations were drafted and approved in the former Czechoslovakia. This involves explaining the process of their creation, which is also demonstrated on the story of the former minister of interior. To account for the reactions to the legislation, the case *Turek v. Slovakia* at the European Court of Human Rights is written on, as it provides an overview of how this legislation was assessed in terms of its compatibility with the discourse on human rights.

The second section considers how the Ukrainian lustration legislation was formed and adopted. It focuses on the period between the Euromaidan protests and the release of the lustration reports in 2015 and 2017 on its implementation. Likewise, it takes into account the opinion of the Venice Commission and the ruling of the European Court of Human Rights in the case *Polyakh and others v. Ukraine*. The differences between the Ukrainian and the Czechoslovak lustration legislation are highlighted with reference to information on the cooperation between both sides.

## Section 1: Understanding the Lustration Experience in the Former Czechoslovakia

The Velvet Revolution, which took place in Czechoslovakia in November 1989, was followed by the Government of National Understanding. The government lasted until the election in July 1990. During this time the Security Services were still active (until February 1990) and some Communist Party members were still formally in power (SIVOŠ, 2020a). The difference was that the interim government contained representatives from seven different political fractions, which came to power after the prime position of the Communist Party was dismissed from the constitution (SIVOŠ, 2020b). Not long after the first free elections, in which the anti-communist parties prevailed, the lustration legislation was drafted and implemented. The first act, also known as the ‘Big Lustration Law’ from October 1991 (Act which sets some requirements to carry out some functions in the state bodies and organizations in Czech and Slovak Federal Republics, Czech Republic and Slovak Republic), was followed by the ‘Small Lustration Law’ (Act of the Czech National Council on some other requirements for carrying out certain functions in the Police of the Czech Republic and Remedial Education of Czech Republic) in July 1992 (ZÁKON č. 451/1991 Zb).

According to the political and legal scholars, Vít Hloušek and Katarína Šípulová, this form of retributive justice was implemented in the former Czechoslovakia as people with anti-communist positions, who could not express their views or leave the country in the past, (non-exiters and non-voicers), came out after 1989 and vehemently supported such measures (MORAN in ŠÍPULOVÁ; HLOUŠEK, 2012, pp.55-89). This was accompanied by the strong support for lustrations among the strongest Czech right-wing party, the Civic Democratic Party, as well as the Public Against Violence party in Slovakia, and the former minister of interior Jozef Langoš (ŠÍPULOVÁ; HLOUŠEK, 2012, pp.55-89). Another reason why lustrations were implemented in 1991 was that random files of the Secret Services leaked shortly before the election in 1990, despite some parties voluntarily lustrating their candidates, and seriously damaged the reputation of some candidates (Ibid., pp.55-89). As a result, the new government, elected in 1991, desired to take control over these files once it assumed office and the Secret Services were formally dissolved.

The two lustration acts set the conditions under which the files of the former Security Services could be used to check on the past activities of those who worked in the public service, or wanted to work, be appointed, or elected to certain positions in the new democratic government (ZÁKON č. 451/1991 Zb).<sup>1</sup> The act made the Ministry of the Interior in charge of handing out affidavit certificates that were issued upon the request of the public institutions or the individual (ZÁKON č. 279/1992 Sb; DAVID, pp.347-372;

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<sup>1</sup>The following positions were included: Member of State and Secret Security, not a resident, agent, owner of a conspiracy flat, informer, ideological collaborator of the state secret security, secretary of the communist party at the district level and higher, member of the people’s militia, student at the Felix Edmundovich Dzerzhinsky school, College of ministry of interior of USSR, higher political school of the Ministry of Interior, scholarly scientific aspirant or a member of the courses that are longer than three months at these schools.

LYUBASHENKO, 2017, p.17).<sup>2</sup> Notwithstanding the controversies that surrounded the lustration processes, like the shredding of files, leakage of documents, and avoidance of the law, the Czechoslovak transitional justice system managed to oversee one of the most screenings in the region and became a source of inspiration for later lustration legislations.

Two approaches prevail when the democratic consolidation by means of lustration in Czechoslovakia is accounted for. The first one seeks to understand the lustrations by comparing their implementation among different countries. Going back to David, they are exclusive in that they seek to consolidate the newly established democracy by reviewing and sanctioning those who work for the state or are interested in doing so (DAVID, 2014, p.353). Rather than comparing them with those of Hungary and Poland, David suggests comparing them with those in the former East Germany, Bulgaria, or Albania (Ibid., p.358, 371). The reason behind it is that they primarily exclude one from working in the public service as a sanction for past actions (Ibid., p.358,371).

Another approach places its core focus on the handling of the primary source of lustration, the documents, which the state and the Security Services operated with during the previous regime. Whilst some argue that the destroyed files limit lustration, others like the Slovak historian JergušSivoš, and his Czech counterpart Pavel Žáček, claim that based on the registers, which have high validity, it is possible to reconstruct and map out the shredding's and correct attempts to modify the files (SIVOŠ, 2010, pp.117-134). During the last fifteen years, legislation in both the Czech Republic and Slovakia has made it possible for one to search and see their file. The law obliges the state sector to hand all documents from 1939 to 1989 to the Nation's Memory Institute in Slovakia (established in 2002) and the Institute for the Study of Totalitarian Regimes in Czechia (established in 2007) (ZÁKON č. 553/2002). For example, in Slovakia the Act on the Creation of the Nation's Memory Institute defines that all documents on the crimes committed on persons of Slovak nationality, or other nationalities, are to be handed in (ZÁKON č. 553/2002). These documents should relate to Nazi crimes, communist crimes, war crimes, crimes against peace and humanity, and other politically motivated repressions (Ibid.). The Act on the Institute for the Study of Totalitarian Regimes in Czechia is also related to obtaining and releasing documents from the period of communist and fascist regimes (ZÁKON č. 181/2007 SB). These documents are to be primarily related to the work of the Security Services (Ibid.).

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<sup>2</sup>The lustration affidavit was needed for the following positions: Public service, Army, Secret Service, Police Department, Department of castle police, Office of the president of Czech and Slovak federal republics, Office of the federal assembly, Office of the Czech and Slovak national council, Government Office of Czech and Slovak Republic, Office of the constitutional court of Czech and Slovak republics, Office of the highest court of Czech and Slovak republics and Czechoslovak republics, Presidium of Czechoslovak Academy of science and Slovak academy of science, Czechoslovak and Czech and Slovak Radio broadcast, Czech and Slovak television, Czecho-Slovak press office, and Czech and Slovak press office, State-owned enterprises – where the state has the majority ownership, state organisations of Czecho-Slovak railways, in state funds, in state financial institutions and Czecho-Slovak State Bank.

Taking these two approaches into account, the chapter accounts for the complications and claims made on the basis of the shredding. It then looks at the quantitative effect that the lustration legislation has had over the last thirty years and compares it with available data from other countries. Lastly, it accounts for the legislation's reception by international actors with regards to its implementation and compliance with democratic consolidation and human rights to account for the precedents the Ukrainian lawmakers faced when drafting the lustration measures.

## Shredding and Reconstruction of Documents

The first problem to be associated with the lustration processes in the former Czechoslovakia was the suspicion that the Security Services were conducting systematic shredding of their files. Indeed, it was confirmed that such actions occurred and were both spontaneous and directed from above (ŽÁČEK, 2015, p.267; ŽÁČEK, 2004, pp.28-41). From the records of the Nation's Memory Institute, it is possible to reconstruct the shredding's and to conclude that the former deputy minister of the interior Alojz Lorenc was fully aware of the process and tried to hide it from the new minister, in early 1990, by claiming that his employees were just 'cleaning their desks (SIVOŠ, 2010, p.117; ŽÁČEK, 2015, p.267).' But since the revolutionaries regularly witnessed trucks that were carrying the files, Lorenc was forced to call off the shredding's immediately (ŽÁČEK, 2015, p.267). Even though suspicion of ongoing shredding remains, and it is known that the destroyed files were those on key politicians and personalities, Žáček has confirmed that the destroyed files do not seriously limit lustration (Ibid., p.267). He did so by highlighting that the vast majority of files from different departments of the Security Services were kept (Ibid., p.267). Another example of manipulation with the files is that some of those in the former Security Services tried to change their file to look like victims (SIVOŠ, 2010, p.117). Nonetheless, this was revealed more recently by the historian Sivoš, who tracked down the changes made to the files to avoid cheating attempts (Ibid., p.117).

## The Problems and Effectivity of Screening

Accusations of deliberate avoidances of lustrations have been frequently raised. Some of them have been contested at courts. For example, David noticed that some of those appointed to head the state companies, shortly before they were privatized, were those who did not comply with the lustration criteria due to their past (DAVID, 2011, p.10,415). Some of these people were later linked with the large political party sponsorships, which there was no regulation on. However, this study does not find the sponsorships to be in breach of lustrations, as the Act no.424/1991 allowed unlimited sponsoring (ZÁKON č.424/1991 Zb; ZÁKON č. 451/1991 Zb). Secondly, there have been a number of medialized court proceedings with notable persons who were found to have collaborated with the Security Services. Perhaps the most recent case is the

court proceeding taking place between the former Czech prime minister Andrej Babiš and the Nation's Memory Institute in Slovakia (DW.COM, 2019a). According to the documents that the Institute has at its disposal, the prime minister was an agent of the Security Services in the 1980s, which was also confirmed by the Constitutional Court of Slovakia (DW.COM, 2019b). The two complications may have led some to question the purpose and fairness of lustrations, like David when he noticed the sponsoring of the parties, but they have not prevented the Czechoslovak lustration system from carrying out large number of screenings. According to Suk, by 2011 more than 480 thousand screenings were carried out (SUK, 2011, pp.135-183). As there is no clear record to clarify the number of screenings in Bulgaria and Albania, from those countries that pursued exclusive lustrations, it is only possible to compare them with the lustrations in the former East Germany. Although more screenings, in total, likely took place in Germany, the decentralized system, in that every region had its own specific rules, meant that some people were vetted more than once, as Crossley-Frollick confirms (CROSSLEY-FROLICK, 2010, p.252). Based on the findings, it is safe to claim that the avoidances of lustration and attempts to stay in the game by other means have not markedly impacted their effectivity in comparison with other countries.

## **Verdict and International Criticism**

In spite of the effectivity, the Czechoslovak lustration system received negative feedback from international institutions, which, this study argues, led to its lack of inspiration and continuation abroad. The decision taken by the European Court of Human Rights in 2006 in the case *Turek v. Slovakia* set forth a negative precedent on the compatibility of their execution with the human rights. The court ruled that Czechoslovakia violated the right to 'private and family life, home and correspondence' of a former government employee (TUREK V. SLOVAKIA, 2006a). The former employee felt compelled to leave his job after he was lustrated positively in 1992 (Ibid.). Additionally, he was given no access to his file and could not provide his lack of awareness of collaborating with the Security Services (Ibid.). Despite the fact that the lustrations acts continued to be implemented in the Czech Republic after Czechoslovakia split in 1993, the court highlighted that they formally existed in Slovakia until 1996 (Ibid.). The court stated that it considers the 'nature of the lustration proceedings to be oriented towards facts dating back to communist-era' rather than being directly linked to the 'current functions of the Security Services (Ibid.)'. This way, the court confirmed the warning of Resolution 1096 of the Parliamentary Assembly of the Council of Europe in that the lustrations are a legitimate tool to 'change the mentalities' and defend democracy but must take place in accordance with human rights (PACE, 1996).

The former minister of the interior Richard Sacher was one of the main actors in the Czechoslovak federal government at the time when the documents were shredded. Shortly after the protests, he was



nominated to the position and was to oversee the democratic transformation of the Security Services, police, and other relevant units. In an interview with the Czech historian Žáček he, however, admitted that, as a victim of espionage during socialism and his opposition to the previous regime, he did not trust the old apparatus of the ministry (ŽÁČEK, 2010, pp.50-58). It soon became clear that he was not fully aware or could oversee the shredding of files, as it was done at by the employers of the ministry before he came to office and continued to take place in secret after he took office (Ibid., p.51). It also turned out that his new deputies, as well as those who returned to the ministry after being forced to leave in 1968, could not be fully trusted and relied on, so he instead trusted another colleague to help him promote the necessary changes (Ibid., p.52). As there was no regulation in place, uncontrolled viewing and screening of files occurred at the same time, some of which ended up in the media (Ibid., p.57). The lack of control can be attributed to people like Josef Rambousek, who headed the department of statistical records, and others, who had ties to certain politicians (Ibid., p.57). Whilst they seemed to be politically neutral, they in fact allowed some to access the secret files (Ibid., p.57). To illustrate how complicated it was to distinguish those who did not collaborate from those that did, years later Sacher himself was found suspicious of having secretly collaborated, although it remains unconfirmed (NOVINKY, 2021).

## Conclusion

In spite of the high number of screenings that occurred under the lustration legislation adopted in the former Czechoslovakia, no other country has fully opted to implement this model. This is perhaps due to the lack of its compliance with the human rights in the way it was carried out in that the European Court of Human Rights stated that the right to private life was violated (TUREK V. SLOVAKIA, 2006). But despite the negative reputation, the adopted legislation in the former Czechoslovakia made it possible for two new institutions to emerge that look after the documents, which are essential for lustration. Furthermore, researchers have been actively working to check on the validity of the files and reconstruct those that were shredded, as numerous examples prove how complicated it is to distinguish between the files of those that were victims and perpetrators.

## Section 2: Lustration Processes in Ukraine

Although there have been at least three different political transitions in Ukraine, since gaining independence in 1991, it is hard to find any evidence of transitional justice carried out before 2014 (LYUBASHENKO, 2017, p.25). Rather, these transitions have corresponded with the ‘grey zones’ between democracy and autocracy and brought changes to the regime within ‘oligarchic democracy (Ibid., p.27).’ Despite declaring liberal democracy as a goal of further development upon its creation, Ukraine has not

witnessed the transformation of elites in the same way as the Central European countries and did not have any lustration legislation in the 1990s (Ibid., p.27). Lyubashenko argues that the reason behind this was that the former communist elites were quick to form the emerging business class that the political parties soon became dependent on (Ibid., p.27). This contributed to accepting the status quo of the unresolved heritage of the past regime (Ibid., p.27).

In spite of the absence, there were attempts to implement other forms of justice regarding the past. For example, shortly before Ukraine declared independence, the Parliament (*Verkhovna Rada*) passed an Act 'On the rehabilitation of victims of political repressions in Ukraine (DISSIDENT MOVEMENT OF UKRAINE, 2006).' As a result, more than 200 thousand victims were rehabilitated within the first ten years of the country's existence (SECURITY SERVICES OF UKRAINE IN LYUBASHENKO, 2017, p.83). Ukraine then passed legislation that led to the official creation and opening of the Ukrainian Institute for National Memory in 2006, which was to restore and preserve the documents related to the national memory of Ukraine (DECREE OF THE CABINET OF MINISTERS OF UKRAINE IN LYUBASHENKO, 2017, p.83). In the same year, the Parliament adopted another law that recognized the legacy of the Holodomor, the man-made famine of 1932-33 declared to be genocide of the Ukrainian people (LAW OF UKRAINE 'ON HOLODOMOR OF 1932-33 IN UKRAINE, 2006). The passing of legislation to commemorate the victims of totalitarian regimes continued with the so-called decommunization legislation in 2015, which officially condemned and banned communist symbols (LYUBASHENKO, 2017, p.83).

The documentation of transitional justice in Ukraine has been researched on by civic initiatives and within the academia. With regards to the first, the Civic Lustration Committee and their partners have been monitoring the development of these two legislations and published two reports about it in 2015 and 2017 (US AID, 2017). From the academia, it is possible to observe the publications of Igor Lyubashenko and Gabriella Gričius, who write about Ukrainian lustrations and compare them with the ones in Georgia (GRICIUS, 2019, p.32). Despite the similarities pointed out between the processes of democratic consolidation in Central Europe in the 1990s and in post-Euromaidan Ukraine, the study has found it necessary, based on the writings of Lyubashenko and others, to make a distinction between lustration in these two cases (Ibid., p.32).

The Ukrainian lustrations have been implemented by the Act on Restoring Trust in the Judiciary and the Act on Government Cleansing (Ibid., p.3). The first one only applies to the judges that ruled against the interests of the Euromaidan protests (Ibid., p.55). As a sanction, it states that if they refuse to step down as a result of positive lustration, their name will be published in the official State Register and made public (Ibid., p.55). Contrary to that, the latter one targets a wide range of positions within the state sector (LAW OF UKRAINE ON LUSTRATION, 2014). Most of its categories are related to the former president Viktor

Yanukovych's administration, whilst two other categories are related to the former regime, and one is related to corruption (Ibid.).

At first sight, the categories of the Ukrainian lustration legislation related to the previous regime are very similar to the ones in the former Czechoslovakia. The similarities concern the covered positions within the structures of the communist party, Security Services, and education. The legislation sets the district level occupation of the communist party as the benchmark for targeting the former communists. The 'communist categories' are more extensive in the Czechoslovak legislation, as it covers more positions in the Security Services, and does not set a time limit of its sanctions (US AID, 2107, p.70; SIVOŠ, 2010, p.117; LAW OF UKRAINE ON LUSTRATION, 2014; ZÁKON č. 451/1991 Zb). Specifically, the legislation works more with the domestic structures and hierarchy of the former Security Services in that it targets all residents, agents, owners of conspiracy flats, informers, ideological cooperators, or members of the People's militia (ZÁKON č. 451/1991 Zb). In comparison, the Ukrainian legislation goes as far as to include covert agents and staff members of the Ukrainian SSR, Committee of State Security of USSR, or any other Soviet Socialist republic (VENICE COMMISSION, 2014). As seen, it covers fewer categories, but unlike Czechoslovakia, includes those from other states.

In terms of education, the Ukrainian legislation is likewise more general in that it includes all the higher educational institutions of the Committee of State Security of USSR with the exception of technical studies (LAW OF UKRAINE ON LUSTRATION, 2014). Moreover, it mentions those who were at least at the Central Committee Secretary position at Lenin's Communist Society of Youth (Ibid.). The Czechoslovak acts focus on higher education on a university level and cover all students who studied at the Felix Edmundovich Dzerzhinsky School, College of Ministry of Interior of USSR, or the Higher Political School of the Ministry of Interior for more than three months (ZÁKON č. 451/1991 Zb).

According to the report of by the Civic Lustration Committee from 2017, the first piece of legislation has led to over 300 screenings and only twenty-five dismissals (US AID, 2017). Therefore, the study focuses mostly on the outcome of the latter act, which has resulted in many more screenings and dismissals. The Ministry of Justice is formally in charge of overseeing the flow and storage of information (LAW OF UKRAINE ON LUSTRATION, 2014). But as the Ukrainian lustrations are decentralized, instead of having a centralized body that would oversee the work of the Ministry of Justice and other relevant institutions, the responsibility for proving a lustration certificate lies within each institution of the state sector. The Public Lustration Council, not to be confused with the Civic Lustration Committee, acts as an advisory body in this process and does not possess any executive competencies (US AID, 2017). In lieu of overseeing the whole process, the final information is stored in the register, which is overseen by the Council at the Ministry of Justice (Ibid.).

Firstly, this section discusses the waves of amendments that formed and changed the Law on Government Cleansing. These include the lustration proposals that were negotiated between the political

parties, civic organization, and reviewed by foreign experts. It argues that as most of the amendments were made behind closed doors, it did not take long before its outcomes left no one fully satisfied. Secondly, it looks at the estimations on how many people were to be affected by the lustration and compares them with the available data. To write on the international reception, the study works with the evaluation of the Venice Commission, which published its findings on the Law on Government Cleansing shortly after it became effective (VENICE COMMISSION, 2014).<sup>3</sup>

## Controversies

Although the Act on Government Cleansing was voted for by 231 out of 450 members of the Ukrainian Parliament, the final wording of the law left no one fully satisfied. This was due to the amendments adopted during the session it was voted on, as well as the amendments made subsequently after the law became effective (CIVIC LUSTRATION COMMITTEE, 2015, p.6a). The dissatisfaction, from both sides, was manifested by lawsuits, court proceedings, protests, and civil unrest. The Civic Lustration Committee noted that it was frustrating to find upon the publication of law, which occurred in no shorter than two weeks after it had been approved in the Parliament, that over 400 amendments were taken in the Parliament on the day the act was voted on (CIVIC LUSTRATION COMMITTEE, 2015, p.6b). It was the more frustrating as the right-wing *Svoboda* (Freedom) party, which was the main protagonist of the law, had already made more than a hundred concessions to its former proposal beforehand (Ibid., p.6). These occurred during the negotiations it held with the UDAR (Ukrainian Democratic Alliance for Reforms) party, headed by Vitali Klitschko, and *Batkivshchyna* (Motherland) party, headed by Yulia Tymochenko. The political parties gathered to negotiate after the president refused to adopt the very first proposal of the Lustration Committee (Ibid., p.6). During the negotiations, these political parties also analyzed the experience of lustration in Poland, Czech Republic, and Germany, as indicated above (Ibid., p.6). The negotiations resulted in the two latter parties dropping their former proposals to stick with the renewed version of the legislation, which was officially presented by the *Svoboda* party (Ibid., p.6). Lyubashenko notes that the two parties originally held a more centrist position and wanted to include only those who acted against the Euromaidan protest and worked for the Yanukovich and Leonid Kuchma administrations (LYUBASHENKO, 2017, p.55; CIVIC LUSTRATION COMMITTEE, 2015, p.6, 7). After these two waves of amendments took place, another set of amendments, which excluded the military, were adopted in January 2015 (CIVIC LUSTRATION COMMITTEE, 2015, p.7, 4). It is speculated that one of the main reasons behind it was that Antoliv Pushyakov, a military general, sought to avoid lustration but his stay was supported by many (Ibid., p.4, 7). Among the supporters was the former president Petro Poroshenko who, as mentioned, refused to

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<sup>3</sup>Venice Commission, *Final Opinion*, 2014.

support the efforts of the Civil Lustration Committee from the start and kept some persons, who were subject to lustration, close to himself (Ibid., p.4, 7). The opponents of lustration were fast to file a lawsuit, which demanded the Supreme Court to assess the compatibility of the Law on Government Cleansing with the constitution (Ibid., p.7). At first, the proponents of lustrations were skeptical, as it turned out that some of the judges at the Supreme Court should have been themselves subject to lustration (US AID, 2017). But in the end, the Constitutional Court, to which the Supreme Court has passed the case, ruled that it was not in breach of the constitution (Ibid., p.50). Lastly, the proponents of lustration continued to protest in the streets after the Law on Government Cleansing was passed, as they were unhappy with the amendments and cases of avoidance that they managed to monitor (Ibid., p.12). Some of these protests escalated to an extent that those who were identified as subjects of lustration were thrown into garbage bins, hence the name 'garbage lustrations' (Ibid., p.12). These protests demonstrated the biggest difference between the lustration processes in the former Czechoslovakia and Ukraine. When it comes to the violence associated with lustrations, in Ukraine, some rather violent protests were recorded to have taken place, as lustrations were fiercely demanded from below. Contrary to that, only some indication of discomfort in the former Czechoslovakia has been recorded by Žáček, who claimed that some of the demonstrators pressured on the Ministry of the Interior to end the shredding of documents, as they witnessed them being carried in trucks from the ministry (ŽÁČEK, 2004, p.51). Overall, the Law on Government Cleansing did not satisfy either side and its implementation has been surrounded by efforts to change it or enforce it even more.

## Numbers

The lack of clarity on how many people it should cover and how many have been screened and dismissed, in relation to the individual categories and as a whole, has been a source of uncertainty. This was depicted as early as 2015 by the Venice Commission, which noticed that there was no clear approximation as to how many people were to be covered by the Law on Government Cleansing (VENICE COMMISSION, 2014). From the medialised estimations, the former prime minister Arseniy Yatsenyuk stated for the Kyiv Post, a Ukrainian journal written in English, in 2014 that 'about one million of all sorts of officials, public servants, and law enforcements officers fall under this law' (INFAREX-UKRAINE, 2014). A few months later, another government official told the Venice Commission that 1000-4000 out of the 289 000 posts within the Prosecutor's Office, Ministry of the Interior, and State Fiscal Services were likely to be screened (VENICE COMMISSION, 2014). But when it comes to the actual number of screenings, the Civic Lustration Committee wrote that within the first year of the Law on Government Cleansing's existence, 405 people were either dismissed or resigned under pressure (CIVIC LUSTRATION COMMITTEE, 2015, p.6). Going further, Lyubashenko wrote that by the end of 2016, 925 people were lustrated in total, and at least 800 left in the first wave of dismissals (LYUBASHENKO, 2017, p.70; CIVIC LUSTRATION

COMMITTEE, 2015, p.6). The latest data contained in the report, from 2017, claims that by mid-2017 lustration prohibitions were applied to 889 officials (US AID 2017, p.68). In saying this, the report also admits that in some of the lustration categories, there have been more screenings and dismissals than in others (Ibid., p.68). From these, the most lustrated were those who worked for the Yanukovich administration. Contrary to that, very few former members of the Security Services or communist party were screened. Differences in the intensity of screenings can be observed throughout the country. For example, the majority of those screened were located in the Kyiv region, which suggests that lustration legislation had little impact elsewhere in the country (US AID, 2017, p.51). Overall, the report concludes that from those who were planned to be checked, approximately half were screened, which adds up to over 350 thousand people (Ibid., p.35). As seen, the number of screenings may be high and comparable to the former Czechoslovakia, despite the uncertain estimations and geographical imbalance, but the categories that were screened the most are different than the ones present in the Czechoslovak lustrations.

## **Verdict and Criticism**

The concerns of the Venice Commission were used as proof to claim that the Ukrainian legislation is not compatible with the existing framework of the transitional justice legislation, as known from the 1990s, and in violation of human rights. This was stated by the European Court of Human Rights, which ruled in the case *Polyakh and others v. Ukraine* that the Law on Government Cleansing violates the Right to Private Life (*POLYAKH AND OTHERS V. UKRAINE*, 2019). Although the proponents of lustration saw the final opinion of the Venice Commission as a victory in 2015, it turned out that the negative assessment on its incompatibility with human rights prevailed in the end (*CIVIC LUSTRATION COMMITTEE*, 2015, p.14; *VENICE COMMISSION*, 2014, p.3). After submitting the official text of the legislation in December 2014 to the Venice Commission, as the first one was only a draft, the institution was noted to have held consultations with those that helped to create the lustration legislation before it published its final opinion in June 2014 (*VENICE COMMISSION*, 2014, p.7). On one side, the Venice Commission acknowledged that Ukraine has the right to protect its democracy in line with the principles outlined in Resolution 1096, as well as the European Convention on Human Rights from 1950, and the International Covenant on Human Rights from 1966 (Ibid., p.5). On the other side, it distinguished this legislation from those of Central Europe, as well as Albania, and North Macedonia, in that it criticized connecting the former members of the Yanukovich administration with those that are subject to lustration into one act (Ibid., p.6). It then questioned the totalitarian nature of the power usurpation by Yanukovich, as the existing precedents states that lustrations are applied when democracy is replaced non-democratic regimes and in 'light of exceptional historical and political conditions' (Ibid., p.14). In addition, it highlighted the lack of clarity as to whom the

law should apply and warned against making assumptions based on the position rather than one's actions (Ibid., p.8). In terms of the long-term impact, the critique was used by the European Court of Human Rights to justify the wrongdoing of the Ukrainian government towards five former civil servants who were dismissed due to the Government Cleansing Act. As justification, it stated that the combination of dismissal and publication of the names of three former employees of the Yanukovych administration breached their right to private life. For the other two, it found that applying lustration sanction for failing to submit a lustration certificate in time or being a member of the communist party on the district level, were by themselves not eligible reasons to apply these lustration sanctions (POLYAKH AND OTHERS V. UKRAINE, 2019).

Consequently, the Ukrainian government had to pay twenty thousand euros to the former employees. But the real cost of the lost case was even higher in that it created a negative precedent for the reception of the Law on Government Cleansing. As seen, the European Court of Human Rights clearly stated that both countries violated human rights, but whereas in the case of Czechoslovakia and later Slovakia it was about the way lustration were executed, in Ukraine it was to do with the existence of the Law on Government Cleansing.

## Conclusion

The verdicts of the European Court of Human Rights serve as one of many indicators that challenge the legality of the lustrations in both the former Czechoslovakia (now enforced only in the Czech Republic) and Ukraine. Despite analyzing other forms of lustration including the one in Czechoslovakia, it is clear that the proponents of lustration in Ukraine from the Civil Lustration Committee, Svoboda, UDAR, and Batkivshchynaparties decided to target the former government instead. They did so by focusing and executing, to various extent, the lustration categories related to the former employees and collaborators of the Yanukovych administration. Even though the other categories and criteria, related to the communist party, Security Services, and education, are similar with the ones from Czechoslovakia, they have been executed rather weakly. The other major difference concerns the implementation of the lustration legislation. Whilst in the former Czechoslovakia the initiative came from the government and hardly any violence occurred, the Ukrainian legislation was accompanied by the violent 'garbage lustration.' This is in conflict with the discourse that the lustration processes of transitional justice in Central and Eastern Europe are in principle non-violent. Amidst the different forms of implementation, both the Czechoslovak and Ukrainian lustration legislations were challenged for allegedly violating human rights. In the case of *Turek v. Slovakia*, this only concerned the way in which the government carried out the lustration when it refused its former employee from accessing his file, thus it violated the right to private life. Even though the same violation was found in the Ukrainian legislation in the case of *Polyakh and others v. Ukraine*, the court has made it

clear that the Ukrainian lustration mechanism automatically breaches this right. The problems with this legislation can also be witnessed on its execution, which differs depending on the categories and regions. Therefore, this study has proved that the Ukrainian lustrations are of a different type than what the transitional justice scholarship observed in the region. Perhaps in relation to the Ukrainian lustration system, more comparison could be done with the lustrations in Georgia, which seems to have similar lustration legislation enforced. Likewise, the Ukrainian experience could be compared with attempts to implement transitional justice in other former Soviet Republics to see what overall difference in democratization there is between the countries that applied lustration and those that did not.

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Submissão: 29/12/2021

Aceite: 02/11/2022