Empty Words on Paper: The Nonexistent Debate on Extending the Lustration Law in Serbia

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As Serbia began legislative debate on whether to renew a 2003 law on lustration, public debates erupted concerning issues of archival access and of dealing with past and present office holders who had allegedly committed mass human rights violations. An analysis of the public discourses, involving both media and civil society, however, shows that this subject is still largely up in the air.

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Empty Words on Paper: The Nonexistent Debate on Extending the Lustration Law in Serbia

A new lustration[1] law needs to be passed in Serbia in 2013 since the one enacted in 2003 on "accountability for human rights violations" is about to expire. This once again raises questions of access to state security records and of dealing with past and present office holders who have grossly violated human rights. A new government coalition took office in 2012, made up of the same political parties and in part the same individuals as during the semi-authoritarian regime of Slobodan Milošević. Thus it could be expected that the political opposition would take advantage of the opportunity to debate how the judiciary should deal with state security records and office holders from the socialist-Yugoslavian period. An analysis of present public discourse in Serbia shows, however, that this subject is still largely a void.

'Lustration' - a none topic?

Based on the present newspaper discourse in Serbia,[2] lustration appears not to be a subject of political debate. In the first nine months of 2012, in all of the country's print media there were only sixty-two articles printed that dealt with the subject of lustration. That does not at all comprise a debate, though one could be expected, since in 2013 at the latest the currently valid lustration law of 2003, which has never been implemented, must either be extended or replaced by a new law. The newspaper discourse involves only comments on the not-yet-implemented lustration[3], some expert opinions on the subject[4], and statements on the need for reform as noted from outside Serbia[5] or on the lustration process in Macedonia. However, politicians who would speak out for a new law and commence discussion on it are definitely lacking.

Rather than advocating lustration, statements favoring just the opposite can instead be heard. In January 2012, Serbian minister of justice Snežana Malović of the Democratic Party (Demokratska stranka, DS) told the daily newspaper Danas that lustration should have been introduced immediately following the "revolution" in 2000, and she expressed rather awkwardly that the former party of Slobodan Milošević "showed an extraordinary degree of responsibility and courage in lustrating itself."[6] According to that, on the one hand it is too late to review state office holders and dignitaries, and on the other hand, the former government party had ostensibly removed at least the most obvious violators of human rights from their party positions. The question remained open whether this dubious and certainly not unbiased practice of "self-lustration"-which does not take all the state security records into account-could eliminate the need for a transparent, official review process.

In other social areas there were a large number of people-members of the state security apparatuses, representatives of NGOs, and some intellectuals-who stressed the need for lustration. As part of a panel of experts from the daily newspaper Blic,[7] Rodlub Šabić, a representative of the national security council, asserted that lustration must begin with the police. General Ninoslav Krstić called for strong parliamentary controls and the depoliticization of the entire security apparatus from the police to the army and finally to the state security services. Reforms such as adaptation to, for example, NATO standards or a parliamentary declaration on these institutions' neutrality would serve to modernize them, but would not take the place of lustration. Borka Pavićević of the Center for Cultural Decontamination (Centar zu kulturnu dekontaminaciju) felt it was important to replace the personnel in the state security services. Historian Predrag Marković viewed even the parliamentary controls as problematic, since he

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said the parliamentarians do not have the relevant knowledge needed for the task. There can no longer be any secrets, he said, and the archives must definitely be opened. The rehabilitation law, too, has up to now remained largely "empty words," according to law professor Jovica Trkulja. He has said that acknowledgement of those wrongly convicted-this concerns first and foremost victims of the socialist regime, as the law applies to the period after 6 April 1941 - and their full rehabilitation has been difficult up to now. Only about 2000 people have been rehabilitated thus far, according to Trkulja, and even payment of compensation for damages has generally been very drawn-out. He sees the cause as lying in the fact that the law of 2006 and its simplification and extension in 2011 were not accompanied by further effective decrees.[8] Consequently, this precludes Serbia from taking the following four steps which he asserts are necessary for a comprehensive process of adequately coming to terms with the past[9]: (1) opening up access to the records and criminal prosecution; (2) lustration of office holders guilty of serious human rights violations; (3) full legal rehabilitation of innocent victims; and (4) restitution.

Pillars of Democracy? Lustration as One of Four Steps following the Transition

To today the crimes of Yugoslavia's authoritarian regime have not been dealt with in any comprehensive manner. The crimes of the Yugoslavian and the Serbian state security services have not been systematically resolved, the relevant state security records have not been opened to the public, and candidates for public offices have not been reviewed regarding their past activities and possible criminal involvement. After the transition began in 2000 there was a short period during which a way to institutionally address the authoritarian past was sought, but concrete instruments and institutions were never created. Even before the parliamentary elections in December 2000, the Democratic Opposition of Serbia (Demokratska opozicija Srbije, DOS) electoral coalition announced that it wanted to create pillars of democracy by proposing four denationalization laws-that is, ending expropriation, privatization, lustration, and rehabilitation. But the DOS, which governed in the first few years after the transition, was itself divided. Opposing each other were, on the one hand, Zoran Đindić, leader of the Democratic Party (Demokratska stranka, DS) and head of state of Serbia, who spoke out for reform and a politics of addressing the past, and, on the other hand, Vojislav Koštunica of the Democratic Party of Serbia (Demokratska stranka Srbije, DSS), the president of Yugoslavia, who stood for a legalistic course to stabilize the country.

In 2001, only a few months after the regime change, a decree was passed that changed the confidentiality rule and aimed to grant individuals and members of their family access to their state security records. However, the document had no legal basis and was repealed only a short time later by the constitutional court. In the few days in which is was in force, only very few people had gained access to their records. The NGO Center for Antiwar Action (Centar za antiratnu akciju), later called the Center for Peace and Democracy Development, then proposed a model for opening the archives of the Security Information Agency (Bezbednosno-informativna agencija, BIA) and the State Security Administration (Državne bezbednosti, DB). In the spring of 2002, finally, a broad-based coalition of NGOs and citizens, lead by the liberal party Citizens Alliance of Serbia (Građanski Savez Srbije, GSS), demanded a lustration law and punishment for human rights violations committed by state officials. A group of members of parliament from the GSS[10] ultimately introduced a draft bill into the parliament in early 2003. They aimed for the law to be applied to the human rights violations committed by Serbian office-holders starting on March 23, 1976, the day in which the International Covenant on Civil and Political Rights went into effect. The Covenant-which together with the Universal Declaration of Human Rights and the subsequent International Covenant on Economic, Social and Cultural Rights makes up the United

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Nations' International Bill of Human Rights-guarantees the first-generation human rights, such as the right to life, the prohibition of slavery and servitude, the right to personal liberty and security, as well as freedom of thought, conscience, and religion. In order for violations of these rights to be reviewed by state authorities, the bill proposed by the GSS calls for the state security records to be opened to the persons involved and a control commission. The goal was to review holders of and applicants for key state positions with an eye toward their past activities, and to exclude them from positions of responsibility in state institutions if they were found to have been guilty of human rights violations.

Shadows of the Past: Lustration as a Means of Combating Crime?

A few weeks after the bill was introduced in parliament, on 21 March 2003, Prime Minister Zoran Đindić was assassinated in Belgrade. Members of the Special Operations Unit (Jedinica za specialne operacije, JSO, or the "Red Berets"), which in the 1990s had been active for the Serbian ministry of the interior and cooperated with paramilitary groups and the mafia, were responsible for Đindić's murder. Once this became known the assassination was interpreted as a warning against further investigation of the crimes of the 1990s.

Following the murder, a state of emergency was declared in Serbia and more than 7000 people were arrested within the scope of Operation Sablja (sable). The JSO was disbanded. Twenty-nine NGOs published an appeal in which they went yet a step further than the proposed lustration law. They demanded that the government "take all the measures necessary to eliminate from the legislature and government services all those who by action or non-action protected war criminals and other criminals."[11] In particular they charged that Vojislav Koštunica had protected the leaders of the state security service and the army and had called upon Serbs to sympathize with those accused of war crimes in The Hague.

Debate on the Law on Accountability for Human Rights Violations took place in late May 2003 in this heated and polarized atmosphere. Under the influence of the current events it was voted on early and passed. The government coalition argued in parliament that such a law could serve to deal with the authoritarian past and could strengthen the new democracy. Especially in view of the assassination of Đindić, it was indicated that this would make it possible to more effectively combat the connections between state institutions and organized crime. Also, lustration was declared a condition for Serbia to join the European Union in the future. The opposition parties such as the Socialist Party and the Serbian Radical Party, which had been part of the government coalition in the 1990s, positioned themselves against the law, declaring it an instrument aiming to weaken political opponents. They said it would bring with it the danger that "undesirables" could be removed from the state security services, the police, and the general staff of the army and of military intelligence for political reasons, to be replaced by political friends. Also, they saw the proposed lustration law as incompatible with Serbian legislation, since it was selective and retroactive, and violated the presumption of innocence.[12] During the vote, only 127 of 250 representatives were present in parliament. The Radical Party boycotted the vote entirely, and the members of the national-conservative DSS also left the hall out of solidarity with the former leaders. The parties assumed to be reform-friendly—DS, GSS, SDU, and DHSS—and the independent representatives voted for the law; but the Socialist Party, as was expected, voted against it. In the end, the Law on Accountability for Human Rights Violations[13] was passed by the parliament with 111 yes votes, 1 no vote, and 15 abstentions. The path toward opening access to the records of the state security services appeared to be clear.

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Never Implemented

Only ten months after the law was passed, lawyer Jovica Trkulja, publisher of Hereticus - Časopis za preispitivanje prošlosti, the journal of the Center for Advanced Legal Studies (Centar za unapređivanje pravnih studija), commented in the foreword to the special issue on controversies regarding lustration that the law was nothing but "empty words on paper."[14] The lustration law has in fact never been implemented. After only eight of nine necessary members of a future lustration committee were named and no consensus on the ninth member could be reached, the commission has to today never started its work. This inevitably evokes parallels to the truth and reconciliation commission established by decree in 2001 by President Vojislav Koštunica, which also failed because some of the commission members named had opposed being instrumentalized and the remaining members could not agree on a common goal.[15] In both cases it can be assumed that part of the political strategy of the Serbian government and especially the president was to symbolically bow to the internal and external pressure on the government and claim to support policies for working through the past, while paralyzing these efforts early on through obstructions. Whereas progress was clearly made through the conditionality policies of the EU and third-party countries with respect to cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), at the same time no political pressure whatsoever was exerted on the country to address its past.

A Subject for Civil Society

Only a few NGOs, such as the Serbian Helsinki Committee, and German political foundations, such as the Heinrich Böll Foundation and the Konrad Adenauer Foundation, hold events and panel discussions in an attempt to publicize the subjects of lustration and opening up access to state security records. In the political landscape, Nenad Čanak of the League of Social Democrats of Vojvodina (Liga socijaldemokrata Vojvodine, LSV) has been a driving force, tirelessly demanding lustration. In 2010 the LSV also introduced a new bill that would extend the 2003 law another ten years and expand it. To today, however, it has not made it onto the parliamentary agenda. The initiative of the SPO and the Christian Democratic Party of Serbia (Demohrišćanska stranka, DHSS), which after unsuccessful attempts in 2004 and 2010 introduced a new parliamentary bill again in August 2012 to open the state security records, has to date not managed to get it on the agenda. Instead, it is still caught up in proceedings. The small parties such as the Liberal Democratic Party, the Social Democrats, and the LSV, and of course the submitters themselves can be considered the supporters of such a law, but they make up less than one quarter of the parliament. Ever since the G17 party, which assumed the name United Regions of Serbia (Ujedinjeni regioni Srbije) in 2011, has been in a government coalition with the SPS and the SNS, its support is no longer certain, even though it had supported the steps taken so far for institutions to address the past.

Still missing in Serbia is the political will to confront especially the most recent past. This concerns not only the crimes during the wars in Yugoslavia, but also the political murders and crimes of the Milošević regime. Here as well, similar to the situation regarding efforts following the assassination of Prime Minister Zoran Đindić, there have been some signs of progress. These include the conviction by the Supreme Court in Belgrade in summer 2012 of three former leaders of the state security service for participating in an assassination attempt on Vuk Drašković, the head of the Serbian Renewal Movement (Srpski pokret obnove, SPO), in Budva in 2000. This was viewed as an important signal for an increasingly independent judiciary,[16] but the chance to use this conviction to jump-start a debate on

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lustration was missed. Despite some success in convicting high-ranking officials, the work of the criminal prosecution agencies continues to be very arduous.

To Today: A Problem of Continuity?

In assessing these legal efforts in Serbia, their structural limitations must fundamentally be taken into account. Up to now none of the ruling elite has clearly dissociated themselves from the previous regime. The transition was negotiated by officers from Serbia's army and state security apparatus. Milošević and his closest cronies were replaced, but above and beyond that the old functionary elite often simply became the functionary elite of the new, democratic Serbia.

Since 2008 the former government party-now the reformed, pro-Europe Socialist Party of Serbia (Socijalistička Partija Srbije, SPS)-is back in power. Under Ivica Dačić-Milošević's former government spokesman and from 2008 to 2012 Minister of Internal Affairs in the DS-led government-it could not be assumed that any reform of the army, state security service, and justice system would reappraise also the past of these institutions and individuals. And even the government recently elected in mid-2012 is led by President Tomislav Nikolić, the former leader of the radicals, and Prime Minister Ivica Dačić, both of whom held important and influential positions in the 1990s.

In May 2012 voices from neighboring countries and the European Union could be heard criticizing the nationalistic statements by the new president Tomislav Nikolić. Observers were given the impression that this and also the mentioned need for judicial reform in the course of preparations for a future accession into the EU served to exercise normative pressure on Serbia. However, not all that much should be expected from either the EU conditions for Serbia or from the current government. Both President Nikolić and Prime Minister Dačić let it be known when they took office that they did not want to worry about the past, but that it was important to deal with the future. In their view it is more a matter of closing a chapter.

Thus parallels with the political and economic situation in the 1990s continue to be the order of the day in political and media discourse in Serbia. These comparisons are being used, on the one hand, as a means of defaming political adversaries, such as to accuse them of practices like those in the 1990s or of continuity from that time. For example, Žika Gojković, vice president of the SPO, accused the DSS of leading a campaign against her party that "was worthy of the methods of the Milošević regime."[17] After the election, the media and political opponents of the new government spoke of the "return" to the 1990s,[18] which Prime Minister Dačić for his part of course denied.

A serious commencement of a lustration process would be a proper sign to mark a clear break with the 1990s and to put a halt to fears of a return to past circumstances of national populism and economic crisis. Instead it now seems as if the 2003 law will go down in history without even having been implemented.

Translated by Allison Brown

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Footnotes

1. In a narrow sense, lustration refers to the review and dismissal of public service employees in post-socialist countries who are considered politically compromised or guilty of having violated human rights. In Serbia this term is used in a wider sense in public and political discourse generally to denote a kind of "cleanup" of personal continuity with the nationalistic, semi-authoritarian regime of Slobodan Milošević.
2. The media discourse was evaluated on the basis of the Serbian media archive (URL: arhiv.rs). The newspaper archive includes texts from 2003 or later from twenty-seven daily and weekly newspapers available throughout the entire territory of Serbia, as well as sixteen newspaper supplements and selected texts from seventeen local newspapers. Among the most relevant national media are the dailies Politika, Vecernje novosti, Dnevnik, Danas, Glas Javnosti, Press, Blic, Kurir, and Pravda, and the weeklies NIN and Vreme, which cover the entire political spectrum.
3. See: Ivana Anojčić, Dačića izvinjenje ništa ne košta, a mnogo znači, Politika online (8 January 2012), retrieved 22 January 2015, URL: http://www.politika.rs/rubrike/Politika/Dacica-izvinjenje-nista-ne-kosta-a-mnogo-znaci.lt.html; Vuk Drašković, Učesnici 9. marta su najvece žrtve, Pravda (8 March 2012) and Sava Simić, Lustracija kao uslov, Danas (25 March 2013), retrieved 22 January 2015, URL: http://www.danas.rs/danasrs/dijalog/lustracija_kao_uslov.46.html?news_id=236789.
4. See E. Radosavljević, Milan Škulić: Puno pravnika, a malo pravde, Večernïe novosti (19 August 2012), retrieved 22 January 2015, URL: http://www.novosti.rs/vesti/naslovna/aktuelno.290.html:393386-Milan-Skulic-Puno-pravnika-a-malo-pravde and Irena Ristić, Slučaj prošlost i teškoće tranzicione pravde, Politika online (23 March 2012), retrieved 22 January 2015, URL: http://www.politika.rs/rubrike/ostali-komentari/Slucaj-proslost-i-teskoce-tranzicione-pravde.lt.html.
5. See Dorotea Čarnić, Medel: u srpskom pravosuđu sve pobrkano, Politika online (14 April 2012), retrieved 22 January 2015, URL: http://www.politika.rs/rubrike/Hronika/Medel-u-srpskom-pravosudju-sve-pobrkano.lt.html and Miroslava Derikonjić, Pravosuđe da se potpuno revidira, Politika online (30 June 2012), retrieved 22 January 2015, URL: http://www.politika.rs/rubrike/Hronika/Pravosudje-da-se-potpuno-revidira.lt.html.
6. Aleksandar Roknić, Dolazi vreme za pregovore sa Hrvatskom, Danas (9 January 2012).
7. On this and the following remarks, see Vuk Z. Cvijić, U čišćenju službi bezbednosti trebalo bi početi od policije, Blic (27 January 2012).
8. The law of 2011 was extended to include the rehabilitation of people who did not live within the territory of the Republic of Serbia, but who had or have Serbian citizenship. Also, only one judge is necessary for rehabilitation trials, instead of previously three. And rehabilitation is now tied to claims for pension payments and compensation for damages. The time period for filing a petition was extended another five years to 2016. For a summary of the law of 2006 and its 2011 extension, see Rehabilitacija, Viši sud u Beogradu, retrieved 5 February 2013, URL: http://www.bg.vi.sud.rs/lt/articles/o-visem-sudu/rehabilitacija.html.
9. See M.D. Milikić, Dosad rehabilitiovano 2.000 nevino osuđenih, Danas (27 August 2012).
10. Nataša Mičić, Dr. Dragor Hiber, Dr. Miloš Lučić, Ljubiša Kesić, Sandor Melank und Sima Radulović.
11. See the daily bulletin issued by the Serbian foreign ministry (26 March 2003), retrieved 1 February 2013, URL: http://www.mfa.gov.rs/Bilteni/Engleski/b260303_e.html#N11.
12. On the parliamentary debate, see Milan Cakić, Lustracija u Evropi i Srbiji, Motivacija za donošenje zakona o lustraciji i njihove društvene funkcije, Sociologija. Časopis za sociologiju, socijalnu psihologiju i socijalnu antropologiju: pp. 285-306, here 300ff.
13. See Službenik glasnik 58 (2003) and for its correction, see Službenik glasnik 61 (2003).
14. See Jovica Trkulja, Uvodne napomene, Hereticus 2 (2003), retrieved 3 February 2015, URL: http://www.komunikacija.org.rs/komunikacija/casopisi/Hereticus/I_2/02/show_download?stdlang=ser_lat.
15. On this, see Dejan Ilić, The Yugoslav Truth and Reconciliation Commission: Overcoming Cognitive Blocs, Eurozine (23 March 2004), retrieved 7 February 2013, URL: http://www.eurozine.com/pdf/2004-04-23-ilic-en.pdf.
16. See Tanja Nikolić Đaković, Udar na eskadron smrti, NIN (28 June 2012).
17. See Snežana N. Kovačević, Boris ipak nije Sloba, Dnevnik (5 February 2012).
18. See Milenko Dereta, Buđenje aveti devedeseti, Dnevnik (15 July 2012).
19. See M. Maleš, Dačić: Ne interesuje me "nebeska Srbija": nema povratka u devedesete, Blic (28 June 2012), retrieved 22 January 2015, URL: http://www.blic.rs/Vesti/Politika/330581/Dacic-Ne-interesuje-me-nebeska-Srbija-nema-povratka-u-devedesete.

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