

Dr.Bledar ABDURRAHMANI¹

TRANSITIONAL JUSTICE IN ALBANIA: THE LUSTRATION REFORM AND INFORMATION ON COMMUNISM FILES

Abstract

This paper aims to conduct an in-depth analysis of the concept of transitional justice, of the international legal instruments that address the obligation of former communist states to take measures for the eradication of the communist past as a necessary condition for the construction of a functional democracy that has peace and social prosperity at its fundamentals. This paper provides a detailed analysis of the legal reform of lustration and the right to information on the files of the communist regime, focusing specifically on the arguments that justify the emergence of these reforms, reviewing their content, delineating specifically the category of subjects whom these reforms addressed as well as the rights and obligations that they created, by also outlining the progress and effectiveness of these reforms in relation to the time when they were initiated and were enforced. This paper seeks to identify whether it has achieved or not the purpose for which these reforms were born in order to consolidate the new democratic state and to build a future in peace and social and economic prosperity.

This paper supports the hypothesis that political interest has been the foundation of transitional justice reforms in Albania, while the wider interest of the public and of the different stakeholders has had little impact on the formulation of the transitional justice policies and on their effective implementation. To substantiate this hypothesis, the paper is organized as a study based on the desk research method, namely theoretical consultation with important legal documents as well as historical interpretation of them. The main finding of this paper is that, despite the fact that there is a legal basis for lustration and the right to information on state security files this right has not yet become effective, not

¹ Department of Justice, Faculty of Law and Political Sciences; University “Aleksander Moisiu”, Durrës

only because the Albanian Parliament has been postponing for about 1 year and half the election of members of the relevant state authority charged with this task, but also because the mechanism has proved to be ineffective or at its worst unwilling to realize the purpose for which this important mechanism was set up, namely that of uncovering the truth over the communist period and banning on the exercising public functions by former state security collaborators.

Keywords: Transitional Justice, Lustration, Right to Information on Communist Files

1. Introduction

A quarter of a decade has passed since the beginning of the aspiration of the Albanian people to build a free and democratic society which has at its fundamentals the highest European standards and the country continues to fall into a deep political, social and economic transition. Undoubtedly, the transition from a communist totalitarian system to a democratic one has been and is still considered as a complex and comprehensive process. At first glance, the transition looks like a change of the governing system and of the economic system, but in the deeper analysis it is characterized by another philosophy of the legal system, where the interpretation of the law is not merely of a positivist but of an argumentative character whereby principles and constitutional rules constitute a set of superior norms and values, and law is the instrument for achieving social equity. In this system which we are trying to build, freedoms and human rights are the leading values, while social justice is not just a constitutional concept², but a social, economic and cultural condition that should not only be achieved but excelled not allowing for discrimination³ in the society.

One of the main challenges of the democratic state in the transitional period is finding a way in which to achieve social justice, a mode to build a future of peace, economic and social prosperity, serving the interests of society in general. At this stage of major political, economic and legal transformations the realization of the constitutional aspiration of justice demands taking into account not only certain economic or social values such as: needs, merit, services, but above all, appreciating the protection and respect for human rights and fundamental

² This fundamental value of the rule of law is embodied in the principle of the social state.

³ The principle of non-discrimination is a very important constitutional and legal principle in the democratic state, which serves as a control mechanism for guaranteeing the state of social justice. It should be implemented not only by every state body competent in the provision of public service, but for the monitoring of its implementation there exists an external control mechanism, the Commissioner for Protection from Discrimination.

freedoms, such as private property etc. abused for decades during the communist system. This view is based on the presumption that in a democratic system human rights and freedoms are considered as human rights, inseparable and inalienable to the man. As it will be dealt with in the contribution to follow, this view, known in the doctrine as transitional justice, was an expression of the conviction that a country based on democratic values cannot be constructed and developed without first casting a view on the historical background to consider the infringement of human rights and fundamental freedoms, and without redressing as far as possible the consequences of this violation.⁴

In the context of a transition, doubtlessly arises the dilemma whether or not it is necessary for the new democratic state to deal with the past under the circumstances when it has many other challenges ahead? And consequently, several questions arise, such as: what is the public benefit that justifies substantially legal addressing of issues, facts, events, subjects that have occurred and continued in the past based on a certain legal framework which in turn has authorized these actions? And if there are reasons justifying it, does the new system of values and democratic principles allow, from the formal legal point of view, for such a thing?

If one goes beyond the “narrow” framework of the demands of victims of communist violence to another wider society the one of the general social interest, we can say that two are the main reasons justifying the necessity of addressing the past, first, the need to defend and consolidate democracy from the threats posed to it by the long communist past, its ideology and mechanisms, and secondly that the society really understands what has happened during that system, what crimes have been committed so as to be able to decide on how to convict their authors and redress as far as possible the consequences of the incursions and the injustices made, by not allowing such events to be repeated. If justified such an intervention, the main challenge for the democratic state remains justice, honesty, timeliness, the nature and content of the measures to be taken to address the injustices of the past in order to achieve, through law the social equilibrium, enabling the protection of the rights of the persons injured during the communist regime without causing other injustices. This doctrinal concern is also expressed by the former first democratic president after the changes in the Czechoslovak regime, Václav Havel, who stated that: “It is important to find a fair balance, a proper approach, which is human and civilized, but that does not avoid the past.”⁵ While attempting to provide an answer to the question

⁴ Williams, R., *The Contemporary Right to Property Restitution in the Context of Transitional Justice*. ICTJ, page 1 (2007).

⁵ Citation from the interview of Václav Havel with Adam Michnik: “The Extraneous Building of

regarding the nature and the content of the legal measures to be undertaken, it is necessary to refer to the international legal framework on the concept and the instruments employed by transitional justice. This paper aims precisely at carrying out an analysis of the concept of transitional justice in international and domestic law. It is a study of the political and legal nature and focuses on assessing the progress and problems of transitional justice reforms in Albania.

2. The Conceptual Framework of Transitional Justice in International Law.

In international law, the term transitional justice was originally conceived as a version of the general concept of justice that characterizes and inspires some legal reforms at the transition stage, addressing the need to build and develop a democratic society, based on the principle that a society cannot prosper without addressing concrete measures to correct violations of human rights and fundamental freedoms⁶ that have occurred in the past. (Walker, 2006b: 12). Transitional Justice emerged as a special field of study within human rights discipline at the end of the twentieth century following the collapse of a number of dictatorial powers and pursuant to the democratic changes that took place in Latin American and Eastern European countries and Southeast. (Huntington, 1993). Consequently, the legal basis in international law is the Universal Declaration of Human Rights and Fundamental Freedoms and the European Convention on Human Rights and Fundamental Freedoms, which in their preamble not only state that “ human rights constitute the foundation of justice in the world, “but also list a broad catalog of human rights and fundamental freedoms.

The concept of transitional justice, as a form of justice, was articulated for the first time by Kritz in 1995, upon publication of the book: “Transitional Justice: How New Democracies Should Cope With Past Regimes”⁷. A year later, the concept of transitional justice is embodied in the Council of Europe Parliamentary Assembly Resolution (1096) 1996 “On the Measures to be taken

Post-Communism,” in *Ensayos sobre la justicia transicional*, International Center for Transitional Justice, New York, NY, 2003, p. 65

⁶ In the Preamble to the Universal Declaration of Fundamental Human Rights and Freedoms it is stated: “Given that the dignity of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”, while in the ECHR preamble it is stated: “Reaffirming the deep belief that human rights and fundamental freedoms constitute the foundation of justice ...”.

⁷ Kritz, N., *Transitional Justice, How Emerging Democracies Reckon with Former Regimes*, Volume I: General Considerations, US Institute of Peace Press, 1995.

to remove the Communist Totalitarian System Heritage”⁸. With the main purpose of assisting the ex-Communist states in which violations of human rights and fundamental freedoms have been committed to the building of liberal democracy and the rule of law, the recommendations addressed in this Resolution have been embedded within the paradigm of transitional justice⁹. This Resolution represented a political program for a democratic transition that should be implemented in the ex-Communist countries, as well as a legal document serving as a framework for understanding transitional justice and its constitutive legal instruments. In paragraph 2 of this Resolution, PACE makes clear the main objectives of transitional justice reforms: “the establishment of a democratic society based on the rule of law and respect for human rights and fundamental freedoms, based on the principle of subsidiarity, the market economy, freedom of economic activity, equality of opportunity and transparency of decision-making “. This Resolution identified four basic principles that should guide the transition process: demilitarization, decentralization, de-monopolization and debunking.¹⁰ But what is most important in terms of international law is the articulation for the first time of the transitional justice mechanisms recommended to the ex-communist states for abolishing the legacy of the past and building of a democratic state. According to this Resolution, the application of transitional justice implied the employing of the following instruments:

- a) the punishment of crimes committed during the communist regime. The punishment of these crimes and the punishment of responsible persons should be made according to the standard legal framework applicable in these countries.¹¹
- b) rehabilitation of persons convicted of crimes, which in a democratic society are not considered as such. The indemnity of these persons should not be lower than the one that belongs to the persons who receive compensation from unjust imprisonment.¹²
- c) opening communist files, allowing convicted persons the right to familiarize themselves with secret police materials.¹³
- d) restitution and compensation of unfairly expropriated property during this

⁸ The Resolution of the Parliamentary Assembly of the Council of Europe (1096) 1996 “On the measures to be taken to dismantle the inheritance of the totalitarian communist system”

⁹ Sweeney, J., *The ECHR in the post-cold war Era: Universality in Transition*, Routledge, 2012.

¹⁰ See point 5 of Resolution (1096) 1996.

¹¹ *ibid* , point 7.

¹² *ibid* point 8.

¹³ point 9.

regime.¹⁴

e) control of the purity of the image of senior public officials, lustration.¹⁵

One of the important aspects of this Resolution is the attitude of the Parliamentary Assembly of the Council of Europe regarding the risk of failure to implement transitional justice measures in the former communist countries. According to PACE, if transitional justice instruments are not fully implemented, ex-communist countries are jeopardized by having oligarchic rather than democratic regimes installed, and corruption and organized crime will flourish.¹⁶ PACE's Resolutions No.1481 (2006) "The Need for International Condemnation of the Crimes of Communist-Totalitarian Regimes", which expresses the same view as 10 years ago, is also in the wake of PACE's approach, calling on the member states of the Council of Europe to address the eradication of the communist past, and thereby addressing the necessity of the international condemnation of the past and of the totalitarian regimes in existence.

The most complete and comprehensive definition of transitional justice has been provided by the United Nations Organization in its report of 23 August 2004, which states that: "Transitional justice represents the full range of processes and mechanisms associated with a society's state's or international community efforts to condemn the abuses that have been caused or are caused to the human rights and fundamental freedoms in order to ensure accountability, to serve justice and to achieve reconciliation and social reconstruction."¹⁷ Another very important step in elaborating the conceptual framework of transitional justice instruments has been laid down by the UN General Assembly through Resolution 60/147 of 16 December 2004 "On the Basic Principles of Compensation and Correction of serious violations of international human rights and serious violations of international humanitarian law".¹⁸ Several years later, in 2010, the UN Secretary-General presented a roadmap document titled "The UN Access to Transitional Justice".

The need for transitional justice can be found in several legal documents of the European Union, as in the Prague Declaration "On European Conscience and Communism" (2008) and the European Parliament Resolution on "European

¹⁴ *ibid*, point 10.

¹⁵ *ibid*, point 11.

¹⁶ *ibid*, point

¹⁷ Report of the United Nations Security Council, dated 03.08.2004, No. (S / 2004/616, paragraph 8) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf>.

¹⁸ UN Doc, A / RES / 60/147, <https://documents-dds.ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>

Consciousness and Totalitarianism” (2009)¹⁹. In fact, these two legal standings of the EU have the same objectives and goals as those of the EC. At the heart of the Declaration is the view that Nazi and communist totalitarian regimes were the greatest disasters of the 20th century in Europe and that crimes committed during these regimes should be considered as crimes against humanity and such events should serve as a warning to future generations.

The same way as the Council of Europe, the EU in the Prague Declaration asks the ex-Communist states to take responsibility for recognizing and punishing communism crimes as crimes against humanity, by issuing appropriate legislation and monitoring its implementation,²⁰ by condemning the perpetrators of crimes committed during communist era,²¹ treating equally and non-discriminatingly victims of communist violence²², promoting public debates on the misuse for commercial purposes and political effects of communist symbols²³, and by adapting and altering history texts which reflect historical truths about communist crimes.²⁴ In addition to these national measures, in this Declaration, there can be found articulated a series of international measures such as the necessity to provide an international legal framework on free and unrestricted access to communist-archives²⁵, the need to create committees with independent experts involved in the investigation of communist-based crimes on a national level. These experts will closely co-operate with Council of Europe²⁶ experts. The measures also foresee the assigning of August 23 as the date of commemoration of victims of Nazi and Communist terrorism²⁷, and holding of an international conference on crimes communism with the participation of high representatives of the ex-communist states²⁸ etc.

¹⁹ For more information, see <http://europarl.europa.eu/sides/getDoc.do? PubRef = - // EP // TEXT + TA + P6-TA-2009-0213 + 0 + DOC + XML + V0 // EN>

²⁰ Prague Declaration, point 10.

²¹ *ibid*, point 4.

²² Prague Declaration, point 5.

²³ *ibid*, point 11.

²⁴ *ibid*, point 17.

²⁵ *ibid*, point 14.

²⁶ *Ibid.*, Item 13.

²⁷ *ibid*, point 9.

²⁸ *.ibid*, point 16.

3. The legal regime of transitional justice in the Albanian domestic law

3.1 The legal-constitutional base of transitional justice in Albania.

Since the emergence of democracy in Albania, after the 90s, the Albanian legal system devoted great importance to the concept of justice and fundamental human rights and freedoms. In Law No. 7491, dated 29.04.1991 “On the Main Constitutional Provisions”, it was sanctioned that:” The Republic of Albania is a juridical and democratic state. Man’s dignity, his rights and freedoms, free development of his personality as well as the constitutional order, equality before the law, social justice, and pluralism are the foundations of this state, whose duty is to observe and defend them». “ Article 4 of this law states that: “The Republic of Albania recognizes and guarantees the fundamental human rights and freedoms ... accepted in international documents”. A very important step in the Albanian legal framework in terms of affirmation and protection of human rights and fundamental freedoms is the adoption of Law No. 7692/1993 “On an Annex to Law No.7491 / 1991” On Major Constitutional Provisions “. The need for a new legal regime that is based on fundamental human rights and freedoms and the principle of social justice is justified in the preamble to this law, whereby the legislator states that: “Considering that, during the 46 year wild and inhuman dictatorship of the party-state in Albania civil and political, economic, social and cultural rights as well as the most fundamental human freedoms have been violated and denied through state terror. Considering that the overall respect and enjoyment of these rights and freedoms is one of the highest aspirations of the Albanian people and one of the prerequisites for guaranteeing freedom, social justice and the democratic progress of our society. “

A few years later, the 1998 Constitution of the Republic of Albania in its preamble states that: “... the realization of the aspiration for justice, peace, harmony and cooperation as the highest values of mankind” are the main goals aimed to be achieved by the Albanian people.”²⁹ The Constitution sanctions that justice is established through the law, which constitutes the basis and the limits to the state activity.³⁰ This constitutional statement sanctions the close link between rule of law and law, based on the fact that justice is the fundamental principle governing the lawmaker’s activity in regulating the various relationships in the rule of law. In the Constitution of the Republic of Albania the achievement of

²⁹ Constitution of the Republic of Albania approved by law nr. 8417, dt.21.10.1998, Official Publication nr.28, page 1073

³⁰ Ibid ,article 4

the aspiration of justice is embedded within the concept of the social³¹ state as well as within the constitutional principle of social justice.³² Therefore, the constitutional principle of social justice requires that, through the law, the social balance be achieved, the interests of different groups within the social structure be harmonized and a state of social welfare be built. On the other hand, Article 15 of the Constitution proclaims that: “1. Human rights and fundamental freedoms are inseparable, inalienable and inviolable and remain the foundation of the entire juridical order. 2. The organs of public authority, in fulfilling their duties, must respect the fundamental human rights and freedoms and contribute to their realization. “ Indeed, a very important aspect in the framework of sanctioning the legal-constitutional basis of transitional justice in Albania is that the 1998 Constitution goes beyond the general rule of law, directly defining, in its Article 181, one of the instruments of transitional justice, that of the restitution and compensation of expropriated property during the communist regime.³³

Based on these principles and constitutional obligations, a series of legal reforms have emerged within the scope of transitional justice. In the course of this paper, a detailed analysis of the legal reform of the lustration and the right of information on the files of the communist regime will be conducted, focusing in particular on the review of the content of these reforms, specifying the target groups subject to their regulations as well as the rights and obligations that they have sanctioned, their progress and effectiveness in relation to the time carried out and implemented, the categories of subjects they are addressing as well as the rights and obligations they create. The purpose of this paper is to find out whether or not the purpose for which these reforms were created in terms of protection of human rights and fundamental freedoms, as regards the protection and consolidation of the new democratic state, and building of a future in peace and social and economic prosperity, has been achieved.

³¹ The Preamble of the Constitution of the Republic of Albania states: “We, the people of Albania, proud and aware of our history, responsible for the future, trusting God and / or other universal values have got the determination to build a state ... social ... “.

³² Article 3 of the Constitution sanctions: “The independence of the state and the entirety of its territory, human dignity, its rights and freedoms, social justice ... are the basis of this state, which has the duty to respect and to protect. “.

³³ Article 181 point 1 of the Constitution states: “The Assembly within two to three years from the entry into force of this Constitution issues laws for the correct regulation of various issues related to expropriations of citizens and seizures committed before the adoption of this Constitution, guided by the criteria of Article 41 “.

4. Control the purity of the figures of public officials. The progress of lustration reforms in Albania

In the Albanian legal framework, the first provisions containing elements on lustration date back to the beginning of 1993. Adoption of Law No. 7666, dated 26.01.1993 “On the establishment of a commission for the re-evaluation of the permits for exercising the function of the attorney and for a change in the Law No. 7541, dated 18.12.1991 “On the regulation of the profession of the attorney in the Republic of Albania”, was concerned with the purity of the figure of the subjects practicing the profession of the attorney, by imposing a 5-year ban on exercising this profession for those persons who had been ex- State Security Officers and their associates; former members of Labor Party committees, as well as employees of their center-based apparatus, districts and regions; former heads of state bodies in the center and districts; former prison employees and prison serving camps, for persons who had graduated from the Faculty of Law on the basis of the Labor Party’s high school system; the ones who had been former heads of staff at all levels; who had participated as investigators, prosecutors or judges in specially assembled political processes; etc.³⁴ The constitutionality of this law became subject of review at the Constitutional Court, on the basis of the request of the Parliamentary Group of the Socialist Party. The Constitutional Court declared the law in question as unconstitutional arguing, *inter alia*, that the reassessment of the attorney practicing professional licenses was in contradiction with the constitutional provisions on the judicial system, which provided that the profession of an attorney was a free and consequently self-governing profession. Further, the Court held that the bannings issued by law violated the democratic criterion of individual instead of the collective assessment of the image and qualities of lawyers, the constitutional right to choose the profession and place of work as well as the principles of the separation of powers and the presumption of innocence.³⁵

Law No.8001, dated 22.09.1995 “On the genocide and crimes against humanity committed in Albania during the communist regime for political, ideological and religious motives” regulated for the first time the purity of the figure of senior officials. The regulation of the prohibition of exercising public office, according to this law, was established for a term of 5 years for selected

³⁴ Article 3 of Law No. 7666, dated 26.02.1993 “On the Establishment of the Commission for the Re-Assessment of Permissions for the Exercise of the profession of attorney and for a Change in Law No. 7541, dated 18.12.1991” On the Law of exercising the profession of attorney in the Republic of Albania”

³⁵ Moreover, see Constitutional Court Decision No. 8, dated 21.05.1993.

or appointed functions in the central and local authorities of the state or state administration, the judicial system and the mass media, affected all those former senior executives holding political or appointed, executive and judicial functions during the communist system as well as state security associates. This law had no effect in practice because two months later, control of the purity of the figure of officials was regulated by a special law, specifically Law No. 8043, dated 30.11.1995 "On the control of the figure of officials and other persons who are related to the protection of a democratic state. " Unlike previous laws, Law No. 8043/1995 had as an expressed intent the purity of the figure of the subjects who performed or sought to perform important duties in the structures of the Albanian state during the post-communist transition period. According to this law, the bodies and functions subject to the verification of the image were: the President of the Republic, the appointees in executive and state administration functions, leaders of the Armed Forces and police forces, judicial police, directors and editors in Albanian radio Television Broadcast and Albanian Telegraphic Agency; journalists and employees holding the highest office in newspapers with over 3000 copies; leading functions in economic communities, state financial and insurance institutions, and state-owned banks; rectors and directors at universities and colleges.

To serve in the above-mentioned functions, the person should not have been a leader in the political structures of the Party of Labor, an appointee in the executive, or state administration, or an officer during the period of 28.11.1944 until 31.03. 1991. The person was also not allowed to be an associate of the Directorate of the State Security or any analogous foreign structure, a denouncer or false witness in the political trials, or a detective, prosecutor, or judges in special political processes or trials. According to the law for the verification of the public images, a state commission composed of 7 members, appointed by political bodies such as the Assembly, the Council of Ministers, the Minister and the Director of Secret Services, was established for the verification of figures. Persons affected by the effects of the law against had the right to appeal against the Commission's decision to the Court of Cassation within 7 days from the day of the communication of the verdict. This commission exercised its activity by the end of 2001.

The constitutionality of the two above-mentioned laws became again subject to review at the Constitutional Court at the request of the leftist political forces, namely the Socialist Party and the Socio-democratic parliamentary group. By the decision of 31 January 1996, the Court rejected those claims, arguing that the provisions of the law laid down reasonable limitations that responded to the moral requirements of democratic society in Albania, with the exception of

allegations of unconstitutionality of the provisions envisaging the obligation of journalists to be subject to verification and those who authorize the Minister of Justice to make a request for verification of the heads of political parties and associations. ³⁶From 1996 onwards, the law on the verification of the figures was amended several times, which essentially narrowed the scope of its action. Thus, for instance by Law No. 8151, dated 12.09.1996, were excluded from the verification of the elected figures the appointees and the candidates for election to the local government bodies. Law No. 8280, dated 13.05.1997, narrowed the circle of positions and qualities held during the communist system that were considered as a deterrent aspect for serving in the public functions set forth in the basic law, thereby allowing to serve in elected or appointed public functions, public figures who have served in non-high political functions during the communist regime, in executive functions, judges, prosecutors or investigators.

In 1997 with the coming into power of the left-wing government, the law of lustration again underwent substantial changes, further narrowing the scope of its action to former state security officials. Subject of lustration from that moment on would be, not only the former state security employees and associates, but only the senior officers and high level managers of the Ministry of Internal Affairs. Subject to the law would not be all state security associates in general, but only those collaborators who had participated in political investigation and judicial processes. Also, according to these changes, subject to the law would not be the judges and prosecutors performing their duties during the communist era. On the other hand, some interventions were carried out in the functioning and decision-making procedures of Commission for the Control of the Public Figures.³⁷

Although the Verification Commission dismissed many opposition candidates from the 1996 parliamentary elections, its decisions were later abolished by the Cassation Court and the Constitutional Court, allowing them the opportunity to participate in the June elections. Although with a limited scope of action, the few effects that the lustration law had, caused this mechanism to be severely damaged.³⁸ With the coming into power of the left party, a new commission headed by Nazif Bezhani was elected/appointed to investigate the purity of the figure of senior state officials.³⁹ In May 1998, this commission reached the

³⁶ See further the decision of the NLC no.1 / 1996.

³⁷ See, moreover, Law no. 8232, dated 19.08.1997 and no.8280, dated 15.01.1998

³⁸ Kahtleen Imholz, "Albania, East European Constitutional Review", 6, no. 2 (Spring / Summer 1997): 2-5.

³⁹ See Assembly Decision No.336, dated 18.08.1997, on the release of the former President of the State Commission for the Control of Officers' and Other Persons Related to the Protection of the

conclusion that out of 3000 verified entities, only 81 officials had lost their job as a result of the law's effects, including 4 MPs, two from the socialist party and two from the democratic party. Until the end of the statutory deadline of the commission's activity on December 31, 2001, the commission ceased to have any effect.⁴⁰ The law on the verification of figures ceased to have its effects on December 31, 2001.

About 7 years later, with the coming into power of the rightist forces and concretely at the end of the first governing mandate of these forces, the question of lustration was reconsidered and reopened. In December 2008, Law No. 10034, dated 22.12.2008 "On the purity of the image of high officials of the public administration and of the appointees" was passed. The purpose of this law was the same as the previous one, the control of the purity of the image of any elected public office or appointed person, regarding his participation in the policy-making process or engagement in the enforcement structures of the proletarian dictatorship, as well as in the former security structures of the State for the period 29 November 1944 to 8 December 1990. This law was also subject to strong criticism by the opposition and the international actors and stakeholders⁴¹, claiming that it violated constitutional and democratic standards. Together with the leftist opposition, these representatives strongly argued that the law was aiming to contribute to the fulfillment of the political goals of June 2009. Consequently, the law became the subject of review at the Constitutional Court upon request by a group of left-wing MPs, the National Prosecutors' Association and the Albanian Committee of Helsinki. The Constitutional Court initially accepted the request for the suspension of the law enforcement, and then, by its decision No. 9/2010, abolished it as incompatible with the Constitution with the argument that the law had serious constitutional problems, especially with regard to the dismissal of judges and deputies, it appeared deficient and unclear about the public figure control process. The law was also abolished because the court considered that the public figure control committee was formatted under the political influence of the ruling majority, and violated the standards of due and timely process for subjects under verification, etc.⁴²

The latest legal reform in the field of verifying the cleanliness of the figure of public officials was the adoption of the Law No.45 / 2015, dated 30.04.2015 "On the Right to Information on the documents of the ex -state security directorate of

Democratic State", Mr. Hajri Mezini, and the Appointment in this Position Mr. Nazif Bezhani.

⁴⁰ Austin, C., R., *Transitional Justice as Electoral Politics*, (2008), p.

⁴¹ Embassy of USA, EU, EC Representations, OSCE in Tirana etc.

⁴² See Decision of the Constitutional Court No. 9/2010.

the People's Socialist Republic of Albania". This law, in addition to the primary purpose of guaranteeing the right to information on state security documents, contains provisions that regulate elements of the cleanliness of the figure for public officials. These elements have been integrated into the obligation of the Authority established by this law to inform, up to 5 years after the entry into force of the law, on the figure of officials of constitutional institutions and other public authorities when this is required of the latter with the aim of assessing the ethical, moral and professional qualities of candidates to be appointed or promoted to senior positions in the state. The obligation for providing information, also falls upon the Authority for officials who are elected when this required by them. The obligation of the Authority, is at the same time an opportunity for transparency with the institutions that choose to appoint senior officials and as well as for the candidates for elective functions themselves.

In the procedural aspect, the law sanctions the obligation of the Authority to respond to any request made by constitutional institutions and public authorities on the existence of information in the former State Security Archive when that is required in the framework of the assessment of the ethical, moral and professional qualities of candidates to be appointed or set up in positions such as: President of the Republic; members of the Council of Ministers, deputy ministers, political officials, members of the governing body in the state administration on a senior level and their equivalent positions; members of the High Council of Justice, judges and prosecutors in the courts and prosecution offices of all levels; members of the Constitutional Court; officials of the Armed Forces of the Republic of Albania, members of the Army General headquarters, the Armed Guard Forces of the Republic, officers holding the military rank "General" and "Colonel"; heads of prefecture units; Heads of State Intelligence Service, Defense Intelligence Agency and any other intelligence unit; Heads of State Police on a District and Commissariat level; heads of diplomatic missions; Governors and Deputy Governors of the Bank of Albania; members of the Academy of Sciences, rectors, vice rectors, deans, deputy deans at public universities; General Director and Deputy Directors of the Albanian Public Radio and Television; Director and Deputy Director of the Albanian Telegraphic Agency; any other person decreed by the President or elected by the Assembly. According to the law, the Authority is held accountable to provide information to the constitutional institutions and public authorities for the official who is proposed to be appointed or promoted when this is required by the special law, whether or not there is a person in pursuit of espionage or terrorism, whether or not the person is considered an active collaborator of the former State Security or whether or not the person's name appears in the former State Security File Archive. The law excludes from

lustration all those officials who are proposed to be appointed or recruited in constitutional institutions and public authorities when they have obtained the certificate of purity of the image from the responsible institutions, according to the law no.8001 / 1995, as well as the law no. 8043 / 1995. Article 30 of the law specifically regulates the cases of control of the purity of the image of candidates for deputies, mayors and heads of the regional council, when this is required of them for the purposes of transparency of the image during the electoral campaigns. The Authority, upon the request of these candidates, has the obligation to state that for the period 29 November 1944 to 02.07.1991 these persons were either: (i) members or candidates of the Political Bureau, members of the Central Committee of the Labor Party of Albania, Members of the Presidium of the People's Assembly, President of the High Court, General Prosecutor, Chairman of the General Investigation Unit, Member of the Council of Ministers, Chairman of the internal affairs branches, Member of the Central Commission for the Evictions, and Deportation, Investigator, Judge in special political processes, or senior security officer of the former State Security, (ii) active associate of the former State Security Unit or denouncer or witness of the indictment in special proceedings after the age of 18; (iii) persons against whom there are indications for espionage and terrorism for the former State Security.

Until 2016 the lustration laws, starting from their scope of action, the category of current public functions that were subject to verification, those formerly considered harmful to the new democratic order, the period when they were undertaken, can be said to have not served the cause for which they were initiated, that of justice, namely the building, the consolidation and the well-functioning of the democratic state, in particular, the creation of a state apparatus with public figures with a pure past, of moral and professional integrity. Approval of this law after about 17 years from the collapse of the communist regime and its previous application only in electoral periods shows best that the real purpose was not to make justice in the name of the past and set standards for the construction of the future but to the narrow political interest of a political elite that holds and recycles power in an oligarchic way. Lustration reforms have had a limited and selective scope, focusing mainly on political aims, namely the exemption of political opponents. Although the adoption of Law 45/2015 marks a positive step in controlling the figure of officials involved in several important public positions at the time of appointment or election, it does not turn out to be complete. This was due to the fact that the adoption of this law was not accompanied by legal arrangements in the special laws that regulate the procedures and requirements of recruitment, or the procedures of termination of employment of civil servants in the public administration, representatives

of the judicial power, in the prosecution body, without exception here to the election, or termination of the mandate of senior public officials.⁴³ On the other hand, legal regulation does not include verification of proposals and respective decision-making for awarding decorations, honorary titles, medals and local honorary titles, by state bodies having this right. Also, the implementation of this law by the competent state appellate bodies is the next challenge, in the case when the lustration legislation does not provide any legal consequence if these bodies fail to comply with this legal obligation and, secondly so long after the democratic changes, by also raising questions of the constitutional nature because the criminal, constitutional and international criminal law provides for the principle of rehabilitation of convicted persons rather than those who may have held some public functions at the time of communism.

5. The right to information with communist files. The legal framework and its effectiveness

Knowing the truth about the communist-era files is one of the important measures for eradicating the communist past and building and consolidating the democratic state. In this respect, in Albania the first step was made in 1995 with the law of lustration. Article 7 of Law No. 8043/1995 sanctioned the right for verification of the purity of the image of a person seeking to exercise the public functions set forth by law, the right of the state body competent for the election or appointment of a public official or the right of the person concerned when, there are public accusations in the press or by his relatives when he or she does not live, when the decision is needed for rehabilitation, or indemnity to personality or where the person has been a holder of public functions and is no longer required to perform those functions are addressed to the commission. The law stipulated the obligation of this commission to initiate an administrative procedure upon request, with the right to call for a hearing, not only the person concerned, but also specialists and persons related to the case etc. who in case of refusal to testify or false testimony or expertise, are held accountable in accordance with the penal law.⁴⁴

Prior to the adoption of this law, the files were illegally used by individuals in power to blackmail political opponents.⁴⁵ In fact, the law of lustration did

⁴³ See, 2015 Report of the People's Ombudsman addressed to the Parliament of Albania, p. 91, withdrawn on 03.01.2017. [.avokatipopullit.gov.al / sites / wwwdefault / files / ctools / REPORT% 20SHQIP% 202015% 20.pdf](http://www.avokatipopullit.gov.al/sites/wwwdefault/files/ctools/REPORT%20SHQIP%202015%20.pdf).

⁴⁴ See Article 6 of Law No. 8043/1995.

⁴⁵ Austin, C., R., *Transitional Justice as Electoral Politics*, page 11.

not have any positive effect in terms of informing convicted persons regarding ex-state security files. This is due to the fact that the political nature of the composition of the commission for the verification of the figure of officials enabled only a few dossier verifications to be carried out during this period⁴⁶. Additionally, truth regarding the files was used more for political purposes than for the purpose of revealing information about that period, not allowing access to the files to any interested person. Upon completion of the legal deadline for the lustration process in 2001, the legal effect of the provisions related to the opening of the files was terminated. The next attempt to open the files was that of 2004 and then of 2008, both in hot election periods. The draft proposed in 2004 basically proposed opening of the files unconditionally and to all. The event was supposed to be carried out by a non-political commission and the sphere of action would be for every public official. But such an initiative was not pushed forward by political forces, creating the impression that such a law would have a powerful impact on public officials over their communist past and their engagement in the political and public life. In 2008, after about 13 years it is materialized the right of every citizen to access the personal file of the former state security in law no.10034 / 2008 “On the Integrity of Senior State Administration Officers”.⁴⁷ But such a legal regulation had no effect in practice because its application was suspended and then it was abrogated by the Constitutional Court.⁴⁸

Elements of the right to information on the bitter truths of the communist past based on the criminal events and criminal acts recorded in the files or materials of the former state security are also found in Law No. 10242/2010 “On the Institute for Investigations of Crimes and Consequences of Communism in Albania “. Although this Institute was set up with the mission and responsibility to uncover the grave historical truths of the Communist era in Albania and consequently to inform the public in general, its activity consists in the recognition of the truth based on the individual files of the former state security services and further

⁴⁶ See *ibid*

⁴⁷ See Law No. 10034/2008, Article 26 sanctions that: “1. Every Albanian citizen has the right to be recognized with personal data in relation to what are contained in the files of the former State Security, according to the definitions of this law. 2. For the recognition of such data the citizen submits a written request to the State Authority. Within 30 days from the submission of the request, the Authority is obliged to respond negatively if there is no data or, if there is data, to provide the opportunity for the citizen to be acquainted with them. In any case, the citizen is only acquainted with his personal data and is forbidden to be acquainted with the data or names of third persons that may contain his file. “

⁴⁸ See Constitutional Court decision no. 9/2010.

the publication of these findings in various forms. This transitional justice mechanism emerged, as part of the recommendations of international bodies addressed at the beginning of this paper, as a research institute that has the legal obligation to study and objectively record the period of the communist regime, the crimes committed by the dictatorship, and the consequences during and after the communist period, the causes and the ways of establishing the communist regime, the documents confirming the involvement of Albanian or foreign persons in the endorsement to the regime's arrival and of those who resisted to this regime. The mission of the institute was foreseen to consist in collecting data, documents and evidence to highlight the activity of the State Security structures, on the forms of persecution and resistance against them, as well as records about all the activities that have led to the violation of fundamental rights and freedoms of man under the communist regime. Likewise, the law assigns this Institute the obligation to identify persons who were part of the decision-making bodies responsible for communist propaganda, for administrative acts and decisions that have led to repressive actions in the social and cultural sphere, including war classes, collectivization, the fight against religion, isolation, the prohibition to be informed, censorship in art, culture and science, and the restriction of food supply through food coupons.

Only after 25 years from the change of the communist regime in Albania we find a special law regulating the right of information on the documents of the former state security services. That right is sanctioned in the law no.45 / 2015, dated 30.04.2015 "On the Right to Information on Former State Security Documents in the People's Socialist Republic of Albania". If referring to Law 45/2015, one can state that it is intended to establish detailed rules and procedures for guaranteeing the right to information for any interested person who has been affected by the State Security Service, for whom the State Security has collected data,⁴⁹ who has been a collaborator of the former State Security,⁵⁰ has held a favorite position,⁵¹ has been one of the heirs of the latter, institutions,⁵² one interested on research, historical⁵³ and political⁵⁴ re-evaluation and media⁵⁵. The

⁴⁹ See Article 19 of the Law No.45 / 2015 "On the right to information on the former state security documents of the People's Socialist Republic of Albania".

⁵⁰ *ibid*, Article 23.

⁵¹ *ibid* , Article 24.

⁵² *ibid*, Article 26.

⁵³ *ibid*, Article 36.

⁵⁴ *ibid*, Article 30.

⁵⁵ *ibid*, Article 38.

rules are individualized in accordance with the requesting subject, guaranteeing in every case the right to a private life of third parties, based on the evaluation of legitimate competitive interests.

According to this law, the Authority has the legal obligation to provide information to any affected person that is a person regarding whom it is established that the former State Security has deliberately collected data, including the collection of data in a secret manner or through wiretapping, for documents that previously existed or were prepared for them upon their request.⁵⁶ The opening of the files under this law is not intended as an opportunity for anyone to go to this institution and to seek information about his neighbor, colleague or someone else on whether one has been a state security collaborator. Such an information for third parties can be requested only by public and non-public institutions, arguing the reasons why such an information is needed. The law allows the right of every individual to seek information about himself. Request for information may also be carried out with the intent of rehabilitation, redress, refraining from threatening private life or moral damage or proof of the fact of non-cooperation with the former state security. Such a right under the law is also known to family members or ancestors or descendants if the affected person no longer lives. The information is provided in written form by the institution, while only the relevant documents related to the person concerned are forwarded. The affected person has the right to learn the pseudonyms or true names of ex-security employees. In addition to the right to information of interested parties, the Authority has the legal obligation to respond to the requests of public institutions when this is required in the framework of assessing the ethical, professional qualifications of candidates to be appointed or elected to certain positions in the governmental, legislative or judicial powers, armed forces or state police, members of the academy of sciences, university rectors, etc., thus having, as a law, the nature and features of a lustration law.⁵⁷

Despite the fact that the deployment of this instrument is an important element that serves to the consolidation and development of democracy, the passage of such a long period of social upheaval in Albania raises many questions about the state of the archives of former state security files. The fact that these archives were administered during this period, whether or not affected by the 1997 riots, whether complete or not, have disappeared for certain persons is a serious concern. Although there is already a legal basis on the right to information on ex-insurance files, this right has not yet become effective even at the end of 2016,

⁵⁶ See also Article 5 of the Law.

⁵⁷ See the above approach to this transitional justice instrument in Albania.

for the fact that the Albanian Parliament delayed for about one and a half years the election of state authority responsible for this task.⁵⁸The most recent case where the Dossier Authority fails to verify and identify whether certain persons⁵⁹ who have been a state security co-worker and notification to the competent state bodies for the purpose of excluding them from the right to exercise their functions in the new constitutional institutions of the judiciary represents in the best case an inefficiency of the mechanism created or in the worst case a lack of will to realize the purpose for which this important mechanism of whitening the truth over the communist period and the prohibition of exercising functions public from former state security collaborators.

6. Conclusions

One of the main goals of the transition process in Albania was the creation of a democratic state, based on the rule of law, respect for human rights and social justice. For this purpose, transitional justice reforms were designed as the main instruments of the new democratic state to build a future in peace and social harmony, putting at its fundamentals the demands for respect for human rights violated years ago.

From the above analysis of the timing of the implementation of the transitional justice reforms, their contents and their outcomes and the results achieved, it is clear that Albania has failed to effectively address the communist past in a complete, sustainable and useful way. Moreover, in the conditions of incomplete and not serious reforms of transitional justice, as well as of a long and difficult political, economic and social transition, there is an ever increasing number of people who evoke the return of the former regime as a better and beneficial solution for the social and economic interests of Albania. This shows that in Albania has been going on what the 1096 (1996) Resolution was foreseeing: *a long and incomplete transition process going on which in turn has led the country's fortunes to be in the hands of an oligarchic class, favoring corruption and organized crime*. This shows that besides the anti-communist rhetorics used in the framework of these reforms, the legislation adopted and its effects show

⁵⁸ The members of the Authority were elected by the Assembly on 17 November 2016, moreover see Decisions of the Assembly no.79 / 2016, 80/2016; 81/2016; 82/2016 and 83/2016, dated 17.11.2016.

⁵⁹ The case of Mr. Cozma Jano where opposition from the opposition was disclosed data or documents showing the fact of being a cooperator with the former state security, while the Dossier Authority had given an answer that until then no data or documents were confirmed the fact that the person concerned had been a co-worker of state ex-security

that Albania has progressed little in dealing with its communist past seriously.

The main reasons why transitional justice, as a political and legal platform in Albania, was not implemented seriously and sustainably are: a) lack of a genuine dissident movement in Albania; b) existence of relatively strong links of right-wing and left wing parties with the communist past; c) existence of a weak political elite of the group of persecuted and political prisoners; and d) instrumentalization of these reforms for narrow political gains. Changing the system in Albania did not come as a result of a genuine dissident movement, led by an intellectual elite who had experienced communist violence and gone through sufferings because of communism. At the top of the democratic processes in Albania were people with strong credentials tied to the communist past or the succulent leaders of the communist regime. They used transitional justice reforms for their narrow political and economic goals. Consequently, they are and remain responsible for the economic, political and social situation in which our country is striving today, especially for the fact that the communist past continues to be eminent in the political, economic, cultural, and educational sphere etc.

Transitional Justice in Albania has represented an electoral policy. Consequently, the political interest has been at the foundation of the transitional justice reforms in Albania, while the public interest and the interest of the stakeholders has had little impact on the formulation of transitional justice policy strategies. At the time when these reforms were undertaken, not only it was too late, but they were multiplied with the political interests of the ruling majority in power. On the one hand, time factor was the foundation of the success of these reforms. This was because they were temporary reforms that were to be implemented immediately in the framework of the creation of the democratic state, during the reformation and consolidation of the state administration, in the framework of the condemnation of the initiators and enforcers of the communist terror, during the rehabilitation of the prisoners and the politically persecuted. It was during these temporary reforms that Albania was confronting the politically condemned and politically persecuted ones and the society in general with the half-century bitter truth left behind, the reevaluation of history away from communist ideology. In Albania, transitional justice reforms were initiated too late, making it almost impossible to address properly the communist past. The politicization of these reforms, on the other hand, had a huge cost mainly because in substance they did not adequately represent the interests of society in general and the interest of particularly convicted and persecuted citizens. Moreover, their politicization made the society in general and the politically condemned and persecuted to lose faith in them.

In this context, alongside the sharp economic and social problems, Albanian society continues to suffer the severe consequences of the old model of totalitarian thinking and action, such as the oligarchy, the long dominance on the political scene of only a few political figures, the adoption of a centralized approach to the exercising of power, the presence of harsh political struggle for narrow ends of profit, a closed electoral system, etc., which in itself pose a serious threat to the country's democracy, and especially to the integration processes.

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