

## **THE FEATURES OF THE LUSTRATION OF THE POLICE SYSTEM: THE PRACTICE OF POST-COMMUNIST COUNTRIES OF EUROPE (ON THE EXAMPLE OF POLAND, HUNGARY, SLOVAKIA AND THE CZECH REPUBLIC)**

The article is dedicated to comparative analysis of causes, peculiarities of the implementation and consequences of the lustration of police system in post-communist countries of Europe, in particular in Poland, Hungary, Slovakia and the Czech Republic. It has been revealed that the features of the lustration and liberalization of police system in post-communist Poland, Hungary, Czechia and Slovakia were extremely various and therefore they were able to lead to various organizational and functional consequences and results of police functioning: both at the level of its transformation from an instrument of protection of the autocratic regime into a democracy oriented institution and at the level of processes of its demilitarization, professionalization, specialization, demystification, reduction, decentralization, decriminalization and so on. The author argued that the problem of all the analyzed countries of the region was the fact that the lustration of police system was used (or still continues to do so) to a large extent as manipulative technology by political rivals and media. At the same time, it was discovered that Poland, Hungary, Czechia and Slovakia used various models of lustration law and policy towards secret police and they are largely dependent on different models of transition from authoritarianism to democracy.

*Keywords: police, police system, secret police, lustration, post-communist Europe.*

## **ОСОБЛИВОСТІ ЛЮСТРАЦІЇ СИСТЕМИ ПОЛІЦІЇ: ПРАКТИКА ПОСТКОМУНІСТИЧНИХ КРАЇН ЄВРОПИ (НА ПРИКЛАДІ ПОЛЬЩІ, УГОРЩИНИ, СЛОВАЧЧИНИ ТА ЧЕХІЇ)**

Стаття присвячена порівняльному аналізу причин, особливостей здійснення і наслідків люстрації системи поліції у посткомуністичних країнах Європи, зокрема в Польщі, Угорщині, Словаччині та Чехії. Встановлено, що особливості люстрації та лібералізації системи поліції у посткомуністичних Польщі, Угорщині, Чехії та Словаччині були вкрай варіативними, а тому вони зуміли призвести до різних організаційних і функціональних наслідків та результатів функціонування поліції – як на рівні її перетворення з інструмента захисту автократичного режиму в демократично орієнтований інститут, так і на рівні

процесів деполітизації, демілітаризації, професіоналізації, спеціалізації, демістифікації, скорочення, децентралізації і декриміналізації тощо. Аргументовано, що проблемою усіх аналізованих країн регіону стало те, що люстрація системи поліції значною мірою використовувалась (або досі продовжує це робити) як маніпулятивна технологія політичними конкурентами і засобами масової інформації. Хоча водночас встановлено, що в Польщі, Угорщині, Чехії та Словаччині використано різні моделі люстраційного законодавства та політики щодо таємної поліції і вони значною мірою залежать від різних моделей транзиту від авторитаризму до демократії.

**Ключові слова:** поліція, система поліції, секретна поліція, люстрація, посткомуністична Європа.

Police is one of the institutions of the state, the level of development of which has previously certified and still certifies the prospects and successes or risks and failures of democratization and human and socio-economic development, including in post-communist countries of Europe, in particular in Poland, Hungary, Slovakia and the Czech Republic. However, 30–40 years ago, in particular in the mid 80's – early 90's of the twentieth century, there was very little information about the key features of the police in the countries of Central and Eastern Europe, since the institution of police and other forces and power structures of that time were shrouded by a “veil of secrecy”. The point is that in the autocratic regimes of “real socialism”, raising the question about police or militia and their accountability to interested citizens could lead to a forced visit to the police station and even to imprisonment. And only in the late 1980's and early 1990's, as the part of the fall of the Berlin Wall, the collapse of the communist regimes, total democratization and the reform of politics and society, an unprecedented liberalization of the police system began and it was largely due to the lustration processes in this direction<sup>1</sup>. However, the features of the lustration and liberalization of the police system in post-communist Poland, Hungary, Slovakia and the Czech Republic were extremely varied, and therefore they were able to lead to different organizational and functional consequences and results of police functioning: both at the level of its transformation from the tool of protection of the autocratic regimes into a democratically oriented institution and at the level of the processes of depoliticization, demilitarization, professionalization, specialization, demystification, reduction, decentralization and decriminalization, etc. Therefore, the proposed study is actualized by the need to consider the distinctive features of the lustration of the police system on the example of post-communist countries of Europe as an early predictor of its democratization and future reforms.

The stated problem has been reflected in a number of scientific researches. The main and the most famous of them are by the authorship of such scientists as E. Barrett, P. Hack and

<sup>1</sup> Nalepa M., *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*, Wyd. Cambridge University Press 2010, s. 99.; Roman D., *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*, Wyd. University of Pennsylvania Press 2011, s. 183, 209

A. Munkácsi<sup>2</sup>, D. Bayley<sup>3</sup>, R. Boed<sup>4</sup>, S. Cohen<sup>5</sup>, A. Czarnota<sup>6</sup>, M. Ellis<sup>7</sup>, D. Greenwood and S. Huisman<sup>8</sup>, G. Halmai<sup>9</sup>, N. Kritz<sup>10</sup>, M. Los<sup>11</sup>, O. Marenin and M. Caparini<sup>12</sup>, M. Nalepa<sup>13</sup>, N. Nedelsky<sup>14</sup>, D. Roman<sup>15</sup> and many others. However, almost all of them consider the problem of the lustration of police system at a rapid pace, in particular as a part of the reform of the post-communist countries of Europe. Consequently, they did not produce a synthetic and systematic answer to the question of isolating and grouping the features of the lustration of police system, which is aimed at the proposed study.

The overall results of the reform of police system in the region were its responsibility, the focus on the protection of human and citizens' rights, transparency and service orientation<sup>16</sup>. Of course, they are the result of system processes around the institution of police, but the most important role in these processes was played by the lustration of secret police and by the opening of secret documents (and generally the raising of the veil of secrets) of the period of the communist past of Poland, Hungary, Slovakia and the Czech Republic. The reason is that with the lack of information about what and how the police did and does it cannot be responsible to the public and other power institutions<sup>17</sup>. On this basis, the police in the region have become relatively democratic and transparent, rather than regime-oriented. It turned out that police ceased to exert pressure on oppositional political class and

<sup>2</sup> Barrett E., Hack P., Munkácsi A., *Lustration as a Political Competition: Vetting in Hungary*, [w:] Mayer-Rieckh A., Greiff P. (eds.), *Justice as Prevention. Vetting Public Employees in Transitional Societies*, Wyd. Social Science Research Council 2007, s. 260–307.

<sup>3</sup> Bayley D., *Changing the guard: Developing democratic police abroad*, Wyd. Oxford University Press 2005; Bayley D., *Democratizing the police abroad: What to do and how to do it*, Wyd. National Institute of Justice 2001.

<sup>4</sup> Boed R., An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice, *"Columbia Journal of Transitional Law"* 1999, vol 37, s. 357–402.

<sup>5</sup> Cohen S., State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past, *"Law & Social Inquiry"* 1995, vol 20, s. 7–50.

<sup>6</sup> Czarnota A., *The Politics of the Lustration Law in Poland, 1989–2006*, [w:] Mayer-Rieckh A., Greiff P. (eds.), *Justice as Prevention. Vetting Public Employees in Transitional Societies*, Wyd. Social Science Research Council 2007, s. 222–259.

<sup>7</sup> Ellis M., Purguing the Past: The Current State of Lustration Laws in the Former Communist Bloc, *"Law and Contemporary Problems"* 1997, vol 59, s. 181–196.

<sup>8</sup> Greenwood D., Huisman S., *Transparency and accountability of police forces, security services and intelligence services*, Wyd. Geneva Centre for the Democratic Control of Armed Forces 2004.

<sup>9</sup> Halmai G., *Lustration and Access to the Files of the Secret Police in Central Europe*, [w:] Dvoráková V., Milardovic A. (eds.), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, Wyd. Political Science Research Centre 2007, s. 19–46; Halmai G., Schepelle K., *Living Well is the Best Revenge: The Hungarian Approach to Judging the Past*, [w:] McAdams A. (ed.), *Transitional Justice and Rule of Law in New Democracies*, Wyd. University of Notre Dame Press 1997, s. 155–184.

<sup>10</sup> Kritz N., *The Dilemmas of Transitional Justice*, [w:] Kritz N. (ed.), *Transitional Justice. How Emerging Democracies Reckon with Former Regimes. Vol. 2. General Considerations*, Wyd. US Institute of Peace Press 1995; Kritz N., *Transitional Justice. How Emerging Democracies Reckon with Former Regimes. Vol. 1. General Considerations*, Wyd. US Institute of Peace Press 1995.

<sup>11</sup> Los M., Lustration and Truth Claims: Unfinished Revolutions in Central Europe, *"Law and Social Inquiry"* 1995, vol 20, s. 117–161.

<sup>12</sup> Marenin O., Caparini M., *Reforming the police in Central and Eastern European states*, [w:] Fields C., Moore R. (eds.), *Comparative and international criminal justice: Traditional and nontraditional systems of law and control*, Wyd. Waveland Press 2005, s. 217–242.

<sup>13</sup> Nalepa M., *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*, Wyd. Cambridge University Press 2010.

<sup>14</sup> Nedelsky N., Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia, *"Theory and Society"* 2004, vol 33, nr. 1, s. 65–115.

<sup>15</sup> Roman D., *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*, Wyd. University of Pennsylvania Press 2011; Roman D., Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989–2001), *"Law & Social Inquiry"* 2003, vol 28, nr. 2, s. 387–439.

<sup>16</sup> Bayley D., *Democratizing the police abroad: What to do and how to do it*, Wyd. National Institute of Justice 2001.

<sup>17</sup> Greenwood D., Huisman S., *Transparency and accountability of police forces, security services and intelligence services*, Wyd. Geneva Centre for the Democratic Control of Armed Forces 2004; Mesko G., Fields C., Lobnikar B., Sodar A., *Handbook on Policing in Central and Eastern Europe*, Wyd. Springer Science & Business Media 2013.

oppositional/unofficial journalists and any opponents of the official position of state, ceased to be under the control of government, but instead became law-dependent and semi-autonomous. This was the most pronounced in the fact that the right to receive information was forced to receive not by ordinary citizens, but by police<sup>18</sup>. However, the process of the lustration of police system in Poland, Hungary, the Czech Republic and somewhat less in Slovakia and the mechanisms for its transformation into an institution, which “serves and protects”, took place in different ways, i.e. with varying intensity, focus, timeliness and so on.

Before proceeding with the analysis of the cases of the lustration of police system in Poland, Hungary, Slovakia and the Czech Republic it should be noted that in general the question of the lustration of police system in the region was determined by a number of factors and preconditions. *First*, at the beginning of the processes of collapse of the regimes of “real socialism” and the transition from autocracy to democracy, the politicians of each of the studied countries had to prevent the destabilization of the newly created social and political system, including by the experience of the hidden agents of the secret police and high-ranking members of the communist nomenclature. Since the latter could use their networks and contacts to influence the processes of adopting political and power/management decisions, or they could hypothetically carry out anti-state measures in the event of pressure and blackmail on them for their past. Similar motives were pursued by politicians, especially from the dissident corps, and by ordinary citizens, because they felt the fear of personal work experience or dependence on the secret police<sup>19</sup>. *Second*, the lustration of police system was extremely necessary for the development of socio-economic sphere of life of the analyzed region, as it was expected to be connected to activities related to posts in state apparatus rather than to private economic activity. Consequently, disclosure and removal from the secret police was seen as a very effective measure to improve the quality of privatization and anti-corruption efforts and to liberalize the national economies of the region. *Third*, the lustration of police system (and generally the lustration in socio-political sphere) was perceived both by politicians and ordinary citizens as a rather effective tool for establishing or restoring the rule of law principle. Since it was supposed to give a collective (and not an individual) guilt for the previous political regime on a certain group of officials, primarily a secret police, which hid from the public virtually all the information about real social, political and economic development in the region. Thus, a sort of reconciliation and a “tangle of difference” between offenders and victims of the previous/autocratic regime were expected, that is between those who were forced to cooperate with a secret police and those who did not do this<sup>20</sup>. *Fourth*, the lustration of police system and other security structures was perceived by politics and society as a possibly the best way to draw a line between the old regime and the new order. On the one hand, it was expected to lead to the identification

<sup>18</sup> Bayley D., *Changing the guard: Developing democratic police abroad*, Wyd. Oxford University Press 2005, s. 19.; Marenin O., Caparini M., *Reforming the police in Central and Eastern European states*, [w:] Fields C., Moore R. (eds.), *Comparative and international criminal justice: Traditional and non-traditional systems of law and control*, Wyd. Waveland Press 2005, s. 225.

<sup>19</sup> Halmi G., *Lustration and Access to the Files of the Secret Police in Central Europe*, [w:] Dvoráková V., Milardovic A. (eds.), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, Wyd. Political Science Research Centre 2007, s. 19–46.

<sup>20</sup> Halmi G., Schepelle K., *Living Well is the Best Revenge: The Hungarian Approach to Judging the Past*, [w:] McAdams A. (ed.), *Transitional Justice and Rule of Law in New Democracies*, Wyd. University of Notre Dame Press 1997, s. 155–184.

of guilt/punishment for the wrongful acts of individuals and groups of individuals, from which they benefited (that is, it served as a means of “suppressing the past”), but on the other hand, it was expected to be a proof of the implementation of the principles of supremacy of law and democracy (that is, it was assessed as a “step to the future”)<sup>21</sup>. In this cut, the lustration and check of the secret police were to be supplemented by legal and judicial procedures, reconciliation commissions and truth-clarification issues as well as by processes for declassifying secret police files<sup>22</sup>. However, as the practice shows, in the Czech Republic and Slovakia (in the latter – in a very short periods), such processes took place much more intensively than in Poland and Hungary<sup>23</sup>, and therefore they require separate consideration, comparison and generalization.

The lustration laws in *Czechoslovakia* (including the so-called “big” and “small” laws on lustration in police and guard services system) were adopted in 1991 and 1992 and were constructed on the idea that the post-communist Czechoslovakian (and later the Czech and Slovak) society should deal with its past and facilitate the process of de-communism, including legal and political means. They have regulated and carefully selected a list of senior departments that were not available to persons whose loyalty to the new regime was reasonably questioned because of their political responsibility and powers exercised during the communist regime. At the same time, the laws provided for two lists of posts and functionality in respect of which they were applied: the first list contained positions requiring lustration procedures before they could be acquired; the second list instead listed posts and activities carried out during the communist regime, which disqualified candidates from the first list. In addition to secret police, a number of other spheres of government – civil service, senior positions in constitutional bodies, senior officer positions, intelligence services, prosecutors, judicial bodies, notaries, state corporations or corporations with the state as the main shareholder, national banks, state media, university administrative posts, etc. – was included in the list of the lustrated positions. Instead, disqualifications were imposed both on political grounds and on the basis of affiliation or cooperation with repressive secret police, party militia, state security forces and intelligence services<sup>24</sup>. Among them, it was proposed to subject to lustration persons of secret police with positions of rank of any head of department and above, all members of the intelligence services and all police members who were engaged in political affairs. At the same time, the law initially allowed the Minister of the Interior, the Head of the intelligence service and the Head of the police to amnesty those members of the former secret police, whose release could have caused “security concerns”.

Another controversial moment of the early 90’s of the twentieth century Czechoslovak lustration law was the activities of citizens associated with secret police. Among them were the employees

<sup>21</sup> Kritz N., *The Dilemmas of Transitional Justice*, [w:] Kritz N. (ed.), *Transitional Justice. How Emerging Democracies Reckon with Former Regimes. Vol. 2. General Considerations*; Wyd. US Institute of Peace Press 1995, s. 19.

<sup>22</sup> Ash T., The Truth about Dictatorship, „*The New York Review of Books*”, February 19 1998, źródło: <http://www.nybooks.com/articles/1998/02/19/the-truth-about-dictatorship/> (odczyt: 1 maja 2018 r.).

<sup>23</sup> Priban J., *Oppressors and Their Victims. The Czech Lustration Law and the Rule of Law*, [w:] Mayer-Rieckh A., Greiff P. (eds.), *Justice as Prevention. Vetting Public Employees in Transitional Societies*; Wyd. Social Science Research Council 2007, s. 308–347.

<sup>24</sup> Halmi G., *Lustration and Access to the Files of the Secret Police in Central Europe*, [w:] Dvoráková V., Milardovic A. (eds.), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, Wyd. Political Science Research Centre 2007, s. 19–46.

of secret police such as agents, owners of confidential apartments or person who rented them, informants, political employees with secret police etc., who were also subjects to “lustration selection” for consideration by the Minister of the Interior, the Head of the intelligence service and the Head of the police forces. That is why the Constitutional Court of the Czech and Slovak Federal Republic as well as the relevant bodies within the independent Czech and Slovak Republics “updated” the understanding of the constitutionality of lustration legislation. They stated that lustration did not in principle violate international conventions on human rights, and therefore, as contrary to the principles of equality and due to procedural law, abolished the powers of the officials who were previously authorized to exempt from the lustration certain persons, if this was in the interests of state security<sup>25</sup>. Nevertheless, in practice it turned out that the “positive” lustration legislation in Czechoslovakia, and later in the Czech Republic and Slovakia, concerned mostly not party and political functionaries of the former communist regime, but usually representatives of the forces and intelligence structures. Moreover, it did not apply to those who participated in popular elections. The only nuance is that political parties themselves (with the exception of the Communist Party of Bohemia and Moravia and the Communists in Slovakia) demanded from their functionaries and candidates for the elections a unique certificate of “negative” lustration. Consequently, the lustration legislation in the Czech Republic and Slovakia has created a paradoxical situation when members of parliaments and local councils could have had previous ties with secret police, while, at the same time, heads of different departments of universities were necessarily subjected to lustration. At the same time, lustration did not concern the private sector of economy, because, on the one hand, private companies did not have access to the files of secret police of their employees, and therefore could not use “private lustration”, and, on the other hand, lustration did not apply to positions and cases not regulated by law. As a result, this resulted in a situation when for all persons subjected to lustration procedure “positive” certificates and disqualification about it initially (in the early 90’s of the XX century) were received by about five percent of sample and subsequently – only about three percent of sample (with the simultaneous reduction of the number of people who were checked each year through the lustration procedures)<sup>26</sup>. Even though the legislation on lustration as a result of its prolongation (including after the collapse of Czechoslovakia) remained valid after 2000 (although during this period there were changes concerning the age of persons who could be subjected to lustration procedure: they were about individuals born before December 1<sup>st</sup>, 1972). As the result, this testifies that the lustration law in Czechoslovakia and later in the Czech Republic and Slovakia (1996) was not intended primarily to serve justice, but was rather aimed at ensuring the non-repetition of events similar to the 1948 Communist coup.

In this context, a remarkable situation has developed in *Slovakia*. After the collapse of Czechoslovakia, the former federal lustration law continued to operate in the Czech Republic and Slovakia. However, since it was adopted in 1991–1992 for the period of five years, the independent countries took a very

<sup>25</sup> Halmaj G., *Lustration and Access to the Files of the Secret Police in Central Europe*, [w:] Dvoráková V., Milardovic A. (eds.), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, Wyd. Political Science Research Centre 2007, s. 19–46.

<sup>26</sup> Priban J., *Oppressors and Their Victims. The Czech Lustration Law and the Rule of Law*, [w:] Mayer-Rieckh A., Greiff P. (eds.), *Justice as Prevention. Vetting Public Employees in Transitional Societies*, Wyd. Social Science Research Council 2007, s. 308–347.

viable position in 1996: The Czech Republic has voted for the extension of the law for another five years, but Slovakia has instead decided not to continue the law on lustration and did not adopt its own and updated legislation<sup>27</sup>. Thus, during 1991–1996 the lustration legislation was initially initiated and implemented in the Slovak part of Czechoslovakia and subsequently in the independent Slovakia it was initiated and implemented mostly optionally and not as a deliberate consequence of political and reform process. An indication of this was the fact that the Czechs themselves were the initiators and insisted on the law on the lustration of police system within Czechoslovakia, at least more than the Slovaks did. Therefore, the logic of reforming and clearing the police system was largely traced in Slovakia after the disintegration of Czechoslovakia. In this regard, there was a remarkable fact that Slovak parliament in 1996 (instead of a prolongation of the regulations on lustration) adopted the law “On the immorality and injustice of the communist regime,” which had only a declarative character and therefore actually did not affect the appointment to higher governmental posts of former high-ranking communists or members of secret police. Instead, this law was simply a public statement and manifestation that the communist regime was immoral and unfair. The main reason for such a logic of political and administrative process in Slovakia was that this country lacked the necessary political influence to enforce the law, because it still formally concerned some aspects of lustration proceedings. The main consequence of the absence of lustration law since 1996 was that the leaders and staff of the former regime easily switched to a new political system and were represented in many political parties in the entire political spectrum of Slovakia. This, in particular until 1998, was extremely beneficial to the Slovak government of that time, because the “absenteeist” position of Slovakia regarding the lustration of police system was weak in the context of advancement and protection of young democracy, which was defective over the course of 1993–1998.

The lustration law and practice of police system are even more controversial in *Poland*, since they were officially regulated and initiated only from April to August 1997, but in reality they began to be realized only in December 1998, when the Fifth Department (Lustration Court) at the Warsaw Appeal Court was formed. Moreover, the Commissioner for Public Interest, which is in the framework of the lustration law in Poland, was nominated by the President of the Supreme Court of Poland only in October 1998, but formally took his office only in January 1999. As the result, the lustration system in Poland was fully operationalized only from the late 1990's. And this is despite the fact that the first bill on lustration was adopted by the Polish parliament in 1992, though the Constitutional court found it unconstitutional. And also despite the fact that several more bills were proposed during 1992–1996, but only in 1997 the legislature passed the lustration act initiated in 1996<sup>28</sup>.

An interesting feature of the lustration of Polish police system is that it concerns only persons born before May 11<sup>th</sup> (and later August 1<sup>st</sup>) 1972, that is those adults (in 1989) who were/are officials or candidates for certain positions in post-communist Poland, but who in 1944–1990 worked directly

<sup>27</sup> Nedelsky N., Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia, “*Theory and Society*” 2004, vol 33, nr. 1, s. 66, 76.

<sup>28</sup> Ellis M., Purgings the Past: The Current State of Lustration Laws in the Former Communist Bloc, “*Law and Contemporary Problems*” 1997, vol 59, s. 181–196.

or cooperated with special services and state security agencies of the past regime. The liability of lustration checks in Poland is imposed on a broad category of persons holding government positions or important positions in public administration, in particular on president, members of parliament, senators, judges, prosecutors, lawyers and people who occupy key positions in Polish television (state sector), Polish radio (state sector), Polish press agency and Polish news agency. Moreover, lustration testing is two-stage. Its first part is simply a statement that the person worked/did not work or cooperated/did not cooperate with the state security authorities, and it is officially published in the “Monitor Polski” bulletin or is stated in the election proclamations (in the case of candidates for elective bodies)<sup>29</sup>. Its second part, which is not disclosed, consists of the details of work or cooperation with state security and secret police in case of a decision or statement about “positive” lustration. This means that in Poland, the names of all those persons who received a certificate of “positive” lustration on the basis of their cooperation with secret police and state security bodies are voiced, but they aren’t detailed concerning the type and nature of such cooperation. The most interesting situation is in the case of candidates for elective office, since in their case the information about “positive” lustration without details (as indicated above) is specified in the election proclamations, but this does not mean unilaterally depriving them of the right to occupy certain positions. Since they still can remain candidates for elective positions (even as employees of secret police and/or state security bodies in the past), because their voters decide their fate. This means that the Polish legislation on the system of lustration in police system only punishes the lie about cooperation with special services, but do not concern the cooperation itself.

A somewhat tougher situation is in the case of revealing the concealment of cooperation with secret police for persons who are already endowed with state, including elective, posts. For example, if the Commissioner for Public Interest (during the period of 1997–2007, and starting from 2007, after the reform of legislation, the Institute of National Remembrance) has a suspicion of lying in a statement about lustration, he initiates a case before the Lustration Court. In this case, all judicial decisions confirming the mistake of lustration are made public, although their legal consequences differ significantly depending on the position of the accused person. For example, deputies or senators of the Polish parliament lose their seats, but they can be nominated for the next election. In the case of judges, on the contrary, an additional decision of a disciplinary court is required. Although in practice there are very few such cases and decisions on them are even less popular<sup>30</sup>. This again proves liberalization and incompleteness of Polish legislation on lustration of police and state security agencies. Even though the lustration system was reformed in 2007 and lustration registry was started. Albeit in the light of the fact that many provisions of the reformed legislation were found to be unconstitutional, and thus the issue of declassification of secret police files and security services of the past regime remained a “hangover” problem.

<sup>29</sup> Halmaj G., *Lustration and Access to the Files of the Secret Police in Central Europe*, [w:] Dvoráková V., Milardovic A. (eds.), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, Wyd. Political Science Research Centre 2007, s. 19–46.

<sup>30</sup> Czarnota A., *The Politics of the Lustration Law in Poland, 1989–2006*, [w:] Mayer-Rieckh A., Greiff P. (eds.), *Justice as Prevention. Vetting Public Employees in Transitional Societies*, Wyd. Social Science Research Council 2007, s. 222–259.



The situation is not better in *Hungary*, where the legislation on lustration of police system was also adopted not immediately after the collapse of the communist regime, but only in 1994 and is positioned as a rather compromise solution of the problem of secret police agents of the previous regime<sup>31</sup>. But Hungary's difference lies in the fact that lustration testing in this country is implemented mainly by judicial means, i.e. with the help of a panel of three judges whose work is aimed at checking documents of secret police concerning all those persons who hold public offices (including the president, ministers of government, members of parliament, constitutional judges, judges of ordinary judges, some journalists, people who had high positions in state universities or state-owned companies, as well as a certain list of other high-ranking officials). Each of these categories of persons must undergo a preliminary examination to determine whether they have played a decisive role in the ongoing work of secret police and services of the state security of communist Hungary in the past. If it is established that this is true, then those who are subjected to lustration monitoring are given a chance to resign from the public office. In this case, the information about "positive" lustration of such person remains undisclosed. In the case, when such a person has decided to remain in a certain public office, the panel of judges discloses information about the "positive" lustration of the official. If the person denies the information contained in the materials of the panel, then before its disclosure, this person can apply to the court, which is required to verify the evidence of the relationship with secret police behind the door and take a decision in a particular case<sup>32</sup>.

At the same time, in 1994, when the law on lustration came into force and began to be enforced, it was partially challenged by the fact of petitioning to the Hungarian Constitutional Court, in particular regarding the unconstitutionality of the "verification of persons who occupied key positions" in the past regime. In response, the Constitutional Court outlined the basic principles of protecting the rights of individuals in private life, including the right to publicity of information. In particular, it was established that lustration must be subjected only to those persons whose activities in the previous regime were contrary to the principles of a constitutional state or were carried out in bodies, which carried out anti-constitutional activity. Hence, the lustration system in Hungary was extremely "delicate". Firstly, in political aspect, since at the moment of petition and decision of the Constitutional Court it has already begun to be implemented in relation to the governmental cabinet that was in force at that time. Secondly, in constitutional section, because it was at the intersection of two constitutional principles: the rights to information self-determination of individuals (in this case, spies) and the right of public access to legitimate public data (including those whom they spied on). Consequently, the Constitutional Court ruled in a balanced manner that: a) the preservation of a huge array of secret data is incompatible with the support of the rule of law, since such data have never been drawn up constitutionally; b) public persons have a less personal privacy profile than other individuals in a democratic state, and therefore more detailed information on secret information may be

<sup>31</sup> Roman D., *Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989–2001)*, *Law & Social Inquiry* 2003, vol 28, nr. 2, s. 387–439.

<sup>32</sup> Halmi G., *Lustration and Access to the Files of the Secret Police in Central Europe*, [w:] Dvoráková V., Milardovic A. (eds.), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, Wyd. Political Science Research Centre 2007, s. 19–46.

disclosed only to public persons and not to persons who do not have influential positions. This means that the conflict between confidentiality and freedom of information in Hungary was foreseen to be addressed differently for different categories of people, and thus the lustration system itself was regarded as a political issue that the parliament should consider. It regulated that the parliament has no right either to destroy all the secret data or to maintain absolute secrecy about them, since most of the information they contain represents the interests of society. In addition, the Constitutional Court has insisted on changing the specific list of people who need lustration. This, for example, was partly related to various categories of journalists and representatives of the clergy, university and colleges officials and heads of the majority of state-owned enterprises as non-state actors. As the result, the judgment of the Constitutional Court of Hungary has shown that lustration laws may have different purposes depending on the historical moment. Thus, at the beginning of the transition from the communist regime to democracy, full lustration could serve as a means of identifying the irreversibility of change and the “ritual purification” of society. Instead, a few years after the “rule of law revolution”, the better aim of the constitutional process could be translated into the definition of the freedom of information through the “lustration within the framework of the rule of law”. The duality of this approach in Hungary was given to the facts that: on the one hand, lustration of the representatives of the state became constitutionally grounded; on the other hand, the public availability and publicity of the full list of secret agents did not become constitutionally grounded. In view of this, the lustration of the system of secret police in Hungary was very volatile.

For example, in 1996, a new lustration law was passed, which regulated that lustration procedures should be limited to those government officials who should take an oath before the parliament or the president or who are elected by the parliament. Instead, ordinary judges, prosecutors and mayors as well as other officials were excluded from lustration procedures even if they had direct links with secret police and security services of communist Hungary. In turn, in 2000, due to the pressure of the center-right conservative ruling parties, another law on lustration was adopted, which, in comparison with the previous legislation, considerably expanded the list of persons to be tested. For example, they included even representatives of state and commercial media, with the exception of editors, because they “had a direct or indirect influence on political public opinion”<sup>33</sup>. Nevertheless, in 2002, after the government’s change, it was discovered that Prime Minister P. Medgyessy was the main secret officer of the former department “III/II” (of counter-intelligence) of the Ministry of the Interior of the communist era. Consequently, the scandal resulting from this fact showed that the current lustration law was not sufficient to ensure the “purity” of the social and political life after the transitional period, since it focused solely on the internal surveillance unit of the Hungarian secret police (the former department “III/III”). However, there were other units spying for Hungarians living abroad, for foreigners living in Hungary or for those who served in the armed forces, and these secret police units were not covered by law, despite public protest. That is why,

<sup>33</sup> Barrett E., Hack P., Munkácsi A., *Lustration as a Political Competition: Vetting in Hungary*, [w:] Mayer-Rieckh A., Greiff P. (eds.), *Justice as Prevention. Vetting Public Employees in Transitional Societies*, Wyd. Social Science Research Council 2007, s. 260–307.

in conditions of intense coverage of the case of Prime Minister P. Medgyessy and the pressure from the opposition, the government (in 2003) submitted an amendment to the law on lustration of secret police, according to which it was proposed to include all former directors and clergy into the lustration procedures. Nevertheless, the bill was rejected by parliament, practically leaving the Hungarian lustration system at the previous level. Consequently, despite the considerable volatility of the Hungarian lustration law, its success relates mainly to the publication of the names of those persons belonging to the communist nomenclature or to persons who were considered officers or employees of former repressive internal intelligence agencies, rather than to the system of secret police and force agencies. Instead, a complete list of the officials of the repressive organizations and of the so-called social contributors (informers) of the communist regime was not fully published. The reason for this is simply the absence or destruction of such a list<sup>34</sup>.

What, in general, relates to the breadth of public access to lustration information and various secret data of secret police and other power and political structures of the former communist regimes, it was made a conclusion that the situation in modern Poland, Hungary, Slovakia and Czechia also significantly correlates. For example, Poland (from 1997/1998, when the law on lustration was adopted and the Institute of National Remembrance was formed, as well as after their reform in 2007) purposefully provided limited and incomplete public access to information about “victims” of lustration and, for the most part, stopped on the names of spies and security forces<sup>35</sup>. In turn, Hungary, largely based on Germany’s model, created the Historical Archive of Public Security Services, gathered all the documents of various security services of the communist period and (to a limited extent from 1994, to a greater extent since 1996 and to a large extent since 2003) opened the state secret archives of secret police, providing unrestricted access to the names (but not additional information) of the “victims” of lustration, to the agents of the communist regime and to the public figures who were involved with it, and also created an opportunity for state institutions to submit requests for verification of their employees. However, the system of access to sensitive files and information was the most extensive in Czechoslovakia and later in Czechia (especially since 1996, when the law “On public access to files related to the activities of the former secret police” was adopted) and Slovakia (initially only until 1996, when the law on lustration ceased to be applied, and subsequently from 2002, when the relevant legislation was adopted). The fact is that the files of secret police in them are or were available initially to people who were potentially affected by the activities of secret police, and later for all or most of them<sup>36</sup>. Thus, the current specificity of the Czech Republic is that, in accordance with the law, any adult who is a national of this state may put a request for access to files and documents of secret police for the period from February 25<sup>th</sup>, 1948 to February 15<sup>th</sup>, 1990. Although, on the other hand, the state protects the constitutional rights for personal inviolability and

<sup>34</sup> Varga A., Lustration: The Experience of Hungary, “*European Commission for Democracy Through Law Report*” 2015, nr. CDL-PI (2015) 026, s. 4.

<sup>35</sup> Ash T., Poland has made a humiliating farce out of dealing with its red ghosts, “*The Guardian*”, May 24, 2007, źródło: <https://www.theguardian.com/commentisfree/2007/may/24/comment.comment> (odczyt: 1 maja 2018 r.).

<sup>36</sup> Halmi G., *Lustration and Access to the Files of the Secret Police in Central Europe*, [w:] Dvoráková V., Milardovic A. (eds.), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, Wyd. Political Science Research Centre 2007, s. 19–46.

confidentiality of other persons that may be mentioned in the cases demanded by the applicants. Instead, Slovakia's peculiarity is that in it the law on lustration is not in force, but in 2002 the laws "On disclosure of documents on the activities of state security bodies during the period of 1939–1989" and "On the Institute of National Memory" were adopted. Therefore, in addition to the procedure for disclosure of documents at the request of victims and government agencies, the legislation also regulates the disclosure of secret information by the Institute of National Memory. In this case, only the documents whose disclosure may harm the interests of Slovakia in international relations and field of security or may seriously endanger the lives of people are excluded from the procedures (according to the decision of the Slovak Information Service or the Ministry of Defense).

In general, it has been established that the lustration of police system in Poland, Hungary, Slovakia and the Czech Republic was not necessarily due to normative, legal and ideological program principles and mechanisms of decommunization, since it concerned not so much the people who were former members of the communist nomenclature, how mainly the persons who collaborated with the secret police/militia<sup>37</sup>. At the same time, the politically determined logistics of the lustration of the police system (primarily the secret one) was aimed at the opening of secret documents of the former communist regimes, which finally undermined their legitimacy and reduced their rather positive perceptions in society, which was quite beneficial for new political actors. Another characteristic of the lustration of police system was the fact that it was not carried out on the direct legal basis of the criminalization of responsibility, but rather on the political and legal basis for authorizing and sanctioning punishment and responsibility for participating in servicing the criminal political regimes of the communist past. Moreover, the lustration of police system in the countries under review was regulated on the basis of legislative consolidation and reviews by constitutional courts and was mainly carried out through litigations. At the same time, the procedural attributes of the lustration process concerning the police were and are significantly differed, in particular about that: who initiated or initiates the process of lustration of police system (person falling to lustration or state); how the decision was/is made during the process of lustration of police system and what for were/are punishments for it (for example, from self-identification of collaborationism to public disclosure of collaborationism and even to the removal from office of former collaborators, etc.).

In this cut, it is noteworthy that some laws on lustration of police system in the region allow citizens to have access to files of secret police (the Czech Republic), other laws (Poland and the Czech Republic) require the publication of lists of lustrated persons who occupied positions in secret police, other laws (Poland) keep such information secretly, requiring the resignation of lustrated persons, and other laws (Hungary) regulate the creation of commissions for the consideration of secret files and removal from certain positions of the "guilty" collaborators. In total, the lustration of police system in Poland, Hungary, the Czech Republic and to a certain time in Slovakia proved to be quite an effective tool for legitimizing a new government and a new socio-political reality,

<sup>37</sup> Los M., Lustration and Truth Claims: Unfinished Revolutions in Central Europe, *"Law and Social Inquiry"* 1995, vol 20, s. 121.

for solving the problem of “transitional justice” and “institutional insecurity and turbulence” in the region<sup>38</sup>. Even though the lustration of police system (and, in general, in socio-political sphere) was not supported by all post-communist (but in any case by anti-communist) political parties of the countries of the region after the collapse of their “real socialism” regimes<sup>39</sup>. At the same time, it was noted that in the countries of the region, in parliaments and other institutions of power of which were represented anti-communist political forces at the dawn of post-communism, the mechanisms and legislation on lustration were more reactionary, radical and systematized than in the countries of the region, in parliaments and other institutions of power of which post-communist or even communist political parties represented political majority at the dawn of the post-communism<sup>40</sup>. At the same time, in those countries whose electorate was more volatile and fluctuating between the support of either post-communist or anti-communist political parties, the rules and mechanisms for the lustration of police system were also more variable and, as the result, less far-reaching. A striking example of this fact was the logics of stages of the adoption and amendment of the legislation on lustration of police system in Hungary in 1994 (a less radical and systematized lustration), 1996 (somewhat more radical and systematized lustration) and 2000 (more radical and systematized lustration)<sup>41</sup>. And finally, the problem of all the analyzed countries of the region (but especially of Hungary and Poland) was the fact that the lustration of police system was used or is still used to a large extent as manipulative technology of political rivals and media during elections. In addition, the lustration was initially and technically leveled off by the predictive and even systematic concealment or archiving of a number of secret files of representatives of secret police. That is why they have often avoided and continue to avoid accusations and punishments<sup>42</sup>.

Consequently, it is argued that Poland, Hungary, Slovakia and the Czech Republic have historically or consistently used different models of lustration law and policy concerning secret police. Thus, Czechoslovakia and then mainly Czechia and to a lesser extent Slovakia used the model of the so-called exclusive lustration system, while Poland and Hungary were models of an inclusive or reconciling lustration systems<sup>43</sup>. The first one does not allow persons connected with the communist regime, secret police and security services to retain and receive certain positions in the state apparatus of a new regime. Instead, the latter ones (as well as the model of a mixed lustration system) either seek to reintegrate the

<sup>38</sup> Cohen S., State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past, “*Law & Social Inquiry*” 1995, vol 20, s. 27.; Bertshci C., Lustration and the Transition to Democracy: The Cases of Poland and Bulgaria, “*East European Quarterly*” 1995, vol 28, s. 436.

<sup>39</sup> Kritz N., *Transitional Justice. How Emerging Democracies Reckon with Former Regimes. Vol. 1. General Considerations*, Wyd. US Institute of Peace Press 1995, s. 666.; Boed R., An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice, “*Columbia Journal of Transitional Law*” 1999, vol 37, s. 367.

<sup>40</sup> Ellis M., Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc, “*Law and Contemporary Problems*” 1997, vol 59, s. 188.; Elster J., *Retribution and Reparation in the Transition to Democracy*, Wyd. Cambridge University Press 2006, s. 189.

<sup>41</sup> Tomiuc E., Hungary: Government Proposes Further Opening of Communist-Era Files, “*Radio Free Europe/Radio Liberty Online Reports*”, June 27 2002.; Weschler L., The Velvet Purge: The Trials of Jan Kavan, “*The New Yorker October*” 1992, vol 19, s. 69.; Los M., Lustration and Truth Claims: Unfinished Revolutions in Central Europe, “*Law and Social Inquiry*” 1995, vol 20, s. 132.

<sup>42</sup> Boed R., An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice, “*Columbia Journal of Transitional Law*” 1999, vol 37, s. 367–368.; Kritz N., *Transitional Justice. How Emerging Democracies Reckon with Former Regimes. Vol. 1. General Considerations*, Wyd. US Institute of Peace Press 1995, s. 350.; Michnik A., Havel V., Justice or Revenge, “*Journal of Democracy*” 1993, vol 4, s. 23.

<sup>43</sup> Roman D., *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*, Wyd. University of Pennsylvania Press 2011, s. 27–39.

representatives of secret police of the communist regime, giving them a second chance provided that they reveal the truth about their involvement in the regime, or are mixed with the model of exclusive lustration system. In this context, it is noteworthy that the countries, where the transit to new regime took place in the form of “pact” and negotiations (Poland and Hungary), are outlined precisely by the models of inclusive or reconciling lustration system. Instead, the countries, where the transit to new regime took place in the form of revolution (including the “velvet” one, i.e. the Czech Republic and Slovakia), are determined by the model of exclusive lustration system.

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